

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0879

September Term, 2015

MUNDI ENTERPRISES, INC.

v.

SERVICE ENERGY, LLC

Eyler, Deborah S.,
Wright,
Harrell, Glenn T., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: April 13, 2016

*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.

On April 26, 2013, appellee, Service Energy, LLC (“Service Energy”), filed a complaint in the Circuit Court for Charles County against appellant, Mundi Enterprises, Inc. (“Mundi”), for breach of contract and *quantum meruit*. On October 1, 2014, Service Energy filed a motion for attorney’s fees and costs pursuant to Md. Rule 1-341, alleging that Mundi opposed Service Energy’s claims “in bad faith and without legal or factual justification.” Following a motions hearing on January 14, 2015, the circuit court found that Mundi acted in bad faith and without substantial justification in defending the claim. Thus, on March 2, 2015, it awarded Service Energy \$20,597.50 in fees and costs.

On March 16, 2015, Mundi moved to alter or amend the circuit court’s judgment. After the court denied Mundi’s motion on June 1, 2015, Mundi timely appealed to this Court, challenging the grant of Service Energy’s motion for attorney’s fees and costs.¹

¹ In its brief, Mundi presented the issue as follows:

- I. Whether the lower court erred in granting appellant’s motion for attorney’s fees and costs because Judge Bragunier failed to make an explicit determination as to the existence of bad faith and lack of substantial justification and failed to provide an adequate basis for her finding.
- II. Whether the lower court erred in concluding that the actions of appellant or its corporate representative constituted bad faith.
- III. Whether the trial court’s award of attorney’s fees, against Mundi Enterprises, Inc., pursuant to [Md.] Rule 1-341, was clearly erroneous and an abuse of discretion because Mundi presented a colorable defense.
- IV. Whether the trial court erred by awarding \$47,056.23 in fees and costs to appellee because the amount is too large relative to the amount in controversy.

For the reasons that follow, we affirm the circuit court’s judgment in part, vacate in part, and remand for further proceedings not inconsistent with this opinion.

Facts

Service Energy is engaged in the sale and delivery of gasoline and diesel fuel to gasoline stations. Meanwhile, Mundi owned a service station called “Stemmers Run” located at 1601 Eastern Boulevard, Essex, Maryland 21221. Over a period of several years, Service Energy made multiple deliveries of gasoline to Stemmers Run, as evidenced by numerous invoices. Relevant to this case were the following deliveries of various grades of gasoline: (1) on April 13, 2010, 8,000 gallons, for a total cost of \$21,387.00; (2) on April 17, 2010, 8,000 gallons, for a total cost of \$21,502.00; (3) on April 25, 2010, 8,527 gallons, for a total cost of \$23,939.98; (4) on May 1, 2010, 8,003 gallons, for a total cost of \$22,559.61; and (5) on May 7, 2010, 8,140 gallons, for a total cost of \$21,290.79.

On April 26, 2013, Service Energy filed its complaint, seeking judgment against Mundi for those five deliveries totaling \$110,679.38. According to Service Energy, Mundi had only paid \$13,160.00 towards that sum and, thus, it sought judgment for the remaining \$97,519.38. On January 16, 2014, Mundi filed an answer to the complaint, denying the material allegations and stating that it was “without sufficient information at this time to either admit or deny [Service Energy] delivered gasoline to [Mundi] over the period of time as alleged and totaling more than \$110,679.38 as alleged.”

On or about June 4, 2014, Service Energy propounded its first set of interrogatories and first request for production of documents to Mundi. In its answer to one of Service Energy’s interrogatories, Mundi admitted that Service Energy had delivered gasoline on April 13, 2010, and May 1, 2010, as was alleged in the complaint, and Service Energy averred that it made \$40,000.00 in payments between June 6, 2010, and April 29, 2013. For the other three deliveries, Mundi stated, “it is unknown where and when the deliveries were made as there is no documentation.”

In light of the applicable regulations,² Service Energy propounded the following requests for production of documents to Mundi:

² COMAR 03.03.05.06 provides, in pertinent part, as follows:

A. A location registered under the Motor Fuel and Lubricants Law shall retain on the premises to which motor fuel has been delivered a loading ticket, a delivery ticket, or any other combination of documents that provides the following information:

(1) Date, terminal name, city of origin, shipper, consignee name, volume of each grade, and type of motor fuel loaded and delivered including the product cost and freight charges per gallon;

* * *

B. Retention of documentation required by this regulation shall be limited to the four most recent deliveries of each grade of the product; however, all parties should be aware that federal retention requirements are for 5 years.

C. All documents shall be readily available for inspection at the delivery site during normal business hours.

See also 40 C.F.R. § 80.77 (addressing “[p]roduct transfer documentation”); 40 C.F.R. § 80.106 (addressing “[p]roduct transfer documents”); and 40 C.F.R. § 80.365 (listing “[w]hat records must be kept”). The documents required to be maintained by Mundi would have indicated whether deliveries of fuel were made by Service Energy on April 17 and 25, and May 7, 2010.

REQUEST NO. 2: Any and all documents relied upon, referenced, cited, and/or used in any of your Answers to Plaintiff's First Set of Interrogatories.

* * *

REQUEST NO. 5: Any and all documents, electronically stored information, or tangible things that support a position that you have taken or intend to take in this action.

* * *

REQUEST NO. 8: All documents relative to any deliveries of gasoline Plaintiff made to Defendant.

REQUEST NO. 9: All documents relative to any payments Defendant made to Plaintiff for gasoline it delivered to Defendant.

The only documents produced by Mundi Enterprises with its initial responses were the invoices and bills of lading for the April 13 and May 1, 2010 deliveries, a handwritten ledger, a transaction report prepared by Service Energy, a commercial lease dated February 16, 2011, for a parcel of property located at 1601 Eastern Boulevard, Baltimore, Maryland 21221, and a letter from White Marsh Business Services purporting to be from Mundi's accountant. Subsequently, Mundi produced additional documents containing the following information: (a) the name and address of the transferor; (b) the name and address of the transferee; (c) the volume of gasoline, RBOB,³ or pentane being transferred; (d) the location of the gasoline or pentane at the time of the transfer; and (e) the date of the transfer.

On September 17, 2014, Service Energy deposed Mundi's President, Regina Mundi, who admitted that the foregoing documents were required to be kept, that she had

³ Reformulated Gasoline Blendstock for Oxygen Blending.

directed her employees to keep the same, and that she had made no effort whatsoever as of the date of her deposition to locate or produce the same as required by the outstanding discovery requests:

[COUNSEL FOR SERVICE ENERGY]: All right. Did you tell Mr. Singh at any time prior to 2010 that he was to maintain books and records regarding the date and time when fuel was delivered to the station?

[MS. MUNDI]: I not only told him, I taught him how to do it and I set the books up for him.

Q. Did you tell him that he was to note the truck identification for each fuel delivery that was received?

* * *

A. He was to maintain the bill of lading and the delivery receipts for the fuel.

Q. Okay. Did you tell Mr. Singh, prior to 2010, that he was to maintain the identity or the amount or volume of each grade of gasoline received or delivered at the station?

A. Yes.

Q. And did you tell him that he needed to maintain the type of motor fuel loaded at the station?

A. Yes. All of this is on the bill of lading.

Q. Did you tell him that he needed to maintain records of the freight charges per gallon associated with the fuel delivery?

A. Yes.

Q. Okay. To your knowledge did Mr. Singh maintain those records during the year 2010?

A. To my knowledge he did.

Q. What is that knowledge based upon?

A. My training of him, my instructions to him, that he needs to maintain these records on a daily basis, on a yearly basis, and put them away wherever he put the storage, but I don't know where that's at.

Q. Have you ever discussed with Mr. Singh at any time subsequent to the year 2010 whether or not he was in fact maintaining these records that you had instructed him to maintain?

A. No.

* * *

Q. Okay. Have you had any discussion with Mr. Singh concerning where the present whereabouts of these records may be?

A. No.

Q. Why not?

A. I just haven't.

Q. Why?

A. I just haven't. I don't know why.

Q. Well, do you realize that those records would be important to establish that the defense that you're asserting in this case is bona fide or real, that in fact the fuel deliveries weren't received because you could easily just reference your records and it would show that the fuel was not received?

A. That might be helpful, but I don't have the records.

Q. And I'm trying to inquire why didn't you ask Mr. Singh to try and maintain – obtain those records?

A. And I answered your question and I said I don't know.

Q. Well, do you think it would be – would have been helpful to your defense if you would have those records?

A. Potentially. If I had the records. But I don't have them.

* * *

Q. Right. And potentially the records could show that there were in fact deliveries made and that would hurt your case, correct?

A. Not necessarily.

Q. Wait. So if the records demonstrated that you received the fuel as alleged by my client and that's noted in your records, you don't think that would hurt your case?

A. No, because at the same time the record potentially, if I had it, would also show that the fuel, perhaps, was paid by check at the time of delivery to the driver.

Q. But you would have those checks, correct?

A. No, it would just be written on the invoice, paid by check number, whatever it is. But I don't have either. I don't have the checks and I don't have the records. I don't have the fuel invoices.

Q. Well, what investigation if any did you make with your banking records in order to ascertain all payments made to Service Energy, LLC during the year 2010?

A. I did not go to the bank.

Q. Why not?

A. I just did not.

Q. Don't you think it would be helpful if you're alleging that you may have paid for the fuel deliveries by check that you would produce copies of those checks?

A. If I received the fuel, perhaps. But I have not been to the bank, I have not been asked to go to the bank. And I did not go to the bank. I do have other jobs.

Q. You were asked to produce all documents which evidence payments made to my client?

A. I produced all documents which evidence payments that I knew about to your client on whatever day. I have not been to the bank, I did not think about going to the bank, it never once dawned on me to go to the bank.

Ms. Mundi further testified that she understood that Service Energy was being forced to incur attorney's fees and costs as a result of Mundi's defenses, *i.e.*, that no deliveries of gasoline were made on April 17 and 25, and May 7, 2010, and, accordingly, that Service Energy was not entitled to any payment:

[COUNSEL FOR SERVICE ENERGY]: Okay. You understand that lawyers generally charge in representing businesses in matters such as this an hourly rate, correct?

[MS. MUNDI]: Correct.

* * *

Q. You understand that. And you understand that when a lawsuit is filed against you that it takes time to prepare that lawsuit, correct?

A. Yes.

Q. And you understand that when you hire an attorney to defend the lawsuit, that in fact you are going to incur legal costs?

A. Yes.

* * *

Q. And if you defend the lawsuit, you understand that the opposing attorney, in this case Service Energy, is going to incur legal fees in opposing your defense to the suit, correct?

A. Correct.

Q. And you understand that if you interpose objections such as the fact that – or defenses such as the fact that you never received the fuel that was delivered, that Service Energy, Inc. and their attorneys are going to have incur[red] additional costs in attorney fees in order to prove those allegations, correct?

A. That's fine.

Q. That's fine. You understand that in this particular case I'm taking your deposition today and we're having to expend time in terms of preparing for the deposition and preparing for trial because you are not agreeing on behalf of Mundi Enterprises to pay the amounts that are due, correct?

A. I don't know that I agree with that.

Q. Well, you were disputing the amounts due; is that correct?

A. Yes, I'm disputing the amounts due.

Q. And as a result of you disputing the amounts due, my client continues to incur attorneys [sic] fees in order to prove that your defense is not a bona fide or acceptable defense?

A. I understand what you're saying.

Q. And you understand those fees will continue to accrue?

A. I understand what you're saying.

* * *

Q. Let me repeat the question just to make sure. Do you understand that Service Energy, Inc., or LLC, is seeking an award of attorney's fees because of the defense that you have posted or postulated in this case?

A. Okay.

Q. You're aware of that?

A. Yes.

Q. And nonetheless, you want to continue to maintain the defense that you've asserted in this case?

A. Sure.

Q. Do you think that you're asserting your defense in good faith?

A. I do.

Q. And are you going to tell me all of the reasons why today why your defense is made in good faith?

A. I believe you know them, but okay, if you wish to ask, I will answer.

Q. Why don't you just in one general statement tell me why is the defense you asserted today or in this case at all asserted in good faith?

A. Because we don't owe them.

Q. Why don't you owe them?

A. We've paid them – well, almost paid them the two invoices that have signatures on them from our location or any type of evidence from our location that says we got the fuel. We have paid. Or almost fully paid those invoices. The other invoices have no signatures from anyone at our locations. Although they were delivered according to the bill of lading during the times that we were open, I don't know who signed for them, we don't know where they were delivered.

Q. You don't know where they were delivered?

A. No, sir. I was not there.

On October 1, 2014, Service Energy filed its motion for attorney's fees and costs, alleging that it had incurred a total of \$46,172.97 in those expenses. Trial on the merits was held the following day, on October 2, 2014, before Judge Jerome M. Spencer, at which time Mundi did not present any evidence to support its position.⁴ Upon the close of all testimony and evidence, the circuit court found that Mundi owed Service Energy

⁴ In this Court's previous opinion addressing Mundi's appeal from the merits of the case, we noted:

[Mundi] called one witness in its case: Regina Mundi, the president of Mundi Enterprises. Ms. Mundi's testimony was brief. She did not contend that the fuel deliveries at issue were not made. She simply testified that her brother-in-law ran the location in question.

Mundi Enters., Inc. v. Service Energy, LLC, No. 1978, Sept. Term, 2014, unreported opinion at 7-8 (Jan. 7, 2016) (footnote omitted).

\$93,518.38.⁵ Judgment was entered on October 14, 2014, and we later affirmed the circuit court’s ruling on January 7, 2016. *See Mundi Enters., Inc. v. Service Energy, LLC*, No. 1978, Sept. Term, 2014, unreported opinion (Jan. 7, 2016).

On November 18, 2014, Service Energy filed a supplemental affidavit, along with detailed billing statements, stating that it incurred an additional \$5,451.50 in attorney’s fees and costs from October 3, 2014, and as of November 18, 2014. On January 14, 2015, a hearing on Service Energy’s motion for attorney’s fees and costs was held before the County Administrative Judge Amy L. Bragunier,⁶ just after Service Energy filed a second supplemental affidavit stating that it incurred an additional \$15,442.50 in attorney’s fees and costs subsequent to the filing of the earlier affidavit, for a revised total of “\$65,847.50 in attorney’s fees and \$1,646 in costs,” or \$67,493.50.

At the conclusion of the hearing, the circuit court found as follows:

I do, after reading the transcript and reading through this file, I do find that . . . it should be held against [Mundi] for its representative being evasive and not even looking for documents that were requested, and would appear to be taking a cavalier attitude . . . about the responsibilities that one has when they are involved in litigation like this, and being a corporate representative of a company. And so I do find that there was bad faith, and lack of justification in defending the claim.

In addition, the court determined that the \$67,493.50 claimed by Service Energy was unreasonable. As such, it stated that it would review the affidavits and billing statements

⁵ The difference between the amount sought by Service Energy and the amount awarded by the court was the result of a payment Mundi made to Service Energy subsequent to the filing of the complaint.

⁶ The trial judge who presided at trial left the bench on December 11, 2014.

submitted by Service Energy in accordance with the Guidelines Regarding Compensable and Non Compensable Attorneys' Fees and Related Expenses set forth in the Appendix to Title 2 of the Maryland Rules (the "Guidelines"), to determine an appropriate amount to be awarded. Counsel for Service Energy offered to revise the amount of attorney's fees and costs sought in accordance with the Guidelines, and the circuit court accepted the offer, without objection by Mundi's counsel. Specifically, the court directed counsel for Service Energy to: remove any billing for two attorneys being present, as well as billing related to the Md. Rule 1-341 motion; prepare a proposed order reflecting the revised amount of attorney's fees and costs; and submit the same to Mundi's counsel before submitting it to the court. Thereafter, Service Energy reduced the amount of its attorney's fees and costs sought to \$46,548.96.

On or about January 20, 2015, Service Energy submitted its proposed order, to which Mundi objected, arguing that the reduced amount of attorney's fees and costs sought by Service Energy was still excessive and unreasonable. On March 2, 2015, the circuit court entered an order granting Service Energy's motion and directing Mundi to pay Service Energy or its counsel attorney's fees and court costs in the amount of \$20,597.503, within 15 days. On March 16, 2015, Mundi filed a motion to alter or amend the judgment, which the court denied on June 1, 2015. On June 25, 2015, Mundi filed this appeal.

Standard of Review

Maryland Rule 1-341 “represents a limited exception to the general rule that attorney’s fees are not recoverable by one party from an opposing party.” *Thomas v. Capital Med. Mgmt. Assocs., LLC*, 189 Md. App. 439, 473 (2009) (citation omitted). In pertinent part, it states:

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 or 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.

Md. Rule 1-341(a). But, before imposing sanctions under this rule, the court must make two separate findings:

First, the judge must find that the proceeding was maintained or defended in bad faith and/or without substantial justification. This finding will be affirmed unless it is clearly erroneous or involves an erroneous application of law. Second, the judge must find that the bad faith and/or lack of substantial justification merits the assessment of costs and/or attorney’s fees. This finding will be affirmed unless it was an abuse of discretion.

Seney v. Seney, 97 Md. App. 544, 549 (1993) (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 267-68 (1991)) (additional citations omitted).

“Under the clearly erroneous standard, we must consider the evidence in the light most favorable to the prevailing party and decide not whether the trial judge’s conclusions of fact were correct, but only whether they were supported by a preponderance of the evidence.” *Gebhardt & Smith LLP v. Maryland Port Admin.*, 188 Md. App. 532, 563-64 (2009) (citation omitted). If there is any competent, material

evidence to support the circuit court’s findings of fact, we shall uphold those findings. *See Fitzzaland v. Zahn*, 218 Md. App. 312, 322 (2014). With regard to the “abuse of discretion” standard, we have stated that a trial court abuses its discretion when it “acts without reference to any guiding rules or principles[,]” “where the ruling under consideration is clearly against the logic and effect of facts and inferences before the court, or when the ruling is violative of fact and logic.” *Philip Morris Inc. v. Angeletti*, 358 Md. 689, 792 (2000) (citation omitted).

“If a court determines that sanctions are appropriate under [Md.] Rule 1-341, the court has latitude to exercise discretion in the dollar amount it awards.” *Blitz v. Beth Isaac Adas Israel Congregation*, 115 Md. App. 460, 489 (1997), *rev’d on other grounds*, 352 Md. 31 (1998). “In this regard, the court may consider various factors, including time spent by counsel defending an unjustified or bad faith claim, the judge’s knowledge of the level of legal expertise involved in litigating the case, the attorney’s experience and reputation, customary fees, and affidavits submitted by counsel.” *Id.* (citing *Major v. First Virginia Bank-Cent. Maryland*, 97 Md. App. 520, 540 (1993)).

Discussion

In this appeal, Mundi argues that the circuit court erred in granting Service Energy’s motion for attorney’s fees and costs. Specifically, it asserts that the court “failed to make an explicit determination as to the existence of bad faith and lack of substantial justification and failed to provide an adequate basis for [its] finding.” In that regard, Mundi contends that the circuit court “erred in concluding that the actions of

appellant or its corporate representative constituted bad faith.” In addition, Mundi asserts that the court abused its discretion because Mundi “maintained a colorable defense and therefore did not lack substantial justification.” Finally, Mundi avers that the amount of attorney’s fees and costs awarded by the circuit court was “too large relative to the amount in controversy.” We shall address each of these contentions, in turn.

First, contrary to Mundi’s assertion, the circuit court explicitly found that “there was bad faith, and lack of justification in defending the claim.” In support of this finding, the court noted that “it should be held against [Mundi] for its representative being evasive and not even looking for documents that were requested, and would appear to be taking a cavalier attitude . . . about the responsibilities that one has when they are involved in litigation like this.” This conclusion was supported by a preponderance of the evidence and did not involve an erroneous application of the law.

“Previously, we had said that ‘[u]nder [Md.] Rule 1-341, ‘bad faith,’ in some circumstances, may include an action taken for the purpose of causing unjustifiable delay.’” *Johnson v. Baker*, 84 Md. App. 521, 531 (1990) (quoting *Blanton v. Equitable Bank, Nat’l Ass’n*, 61 Md. App. 158, 163 (1985)). “Generally, the [m]isuse of a pleading . . . amounts to bad faith.” *Id.* (citation omitted). Thus, the bad-faith exception for the award of attorney’s fees may be applicable in cases such as this, where bad faith is found “in the conduct of the litigation.” *Id.* (citation omitted).

As Service Energy notes, Mundi initially stated that it was without sufficient information to admit or deny the material allegations in Service Energy’s complaint, but

later changed its position when it admitted during discovery that two of the five deliveries did, in fact, take place. Moreover, during Ms. Mundi’s deposition, she testified that Mundi did not owe Service Energy for three of the five deliveries of gasoline even though she did not know whether the deliveries were made. She acknowledged that she made no effort to locate those records required to be kept by law, even after Service Energy requested them during discovery. More importantly, some 17 days later at trial, Mundi presented no evidence refuting Service Energy’s claims that the deliveries were made and, therefore, that payment was due.

We agree with the circuit court that Mundi’s evasive conduct caused unjustifiable delay, forcing Service Energy to unnecessarily incur attorney’s fees and costs to prove the amount due at the trial of this case was indefensible. Thus, we refuse to set aside the court’s finding of bad faith and lack of substantial justification as clearly erroneous as to the trial.⁷

Turning to the amount awarded by the circuit court, Mundi, in its initial brief, challenged the court’s award of “\$47,056.23 in fees and costs . . . because the amount is too large relative to the amount in controversy.” After receiving Service Energy’s brief, however, Mundi acknowledged in its reply brief that “it misstated the record when it asserted in its initial brief that the [t]rial [c]ourt [a]warded [a]ppellee \$47,056.23 when in fact, the amount [] awarded was \$20,597.50.” To the extent that Mundi maintains its

⁷ For these same reasons, Mundi’s argument asserting that it presented a colorable defense also fails. As we noted above, and as the circuit court found during trial on the merits, there was no “serious dispute from [Mundi] that this money was owed.”

challenge to the corrected amount, we vacate the court’s judgment and remand the case so that the court can ensure or clarify that its award compensates only for “the costs of the proceeding and the reasonable expenses, including reasonable attorneys’ fees, incurred [by Service Energy] in opposing it.” Md. Rule 1-341(a); *see also* *Beery v. Maryland Med. Lab., Inc.*, 89 Md. App. 81, 100 (1991) (restating that “Md. Rule 1-341 is not a punitive measure; its intent, as manifested by its language, is to compensate a party for expenses incurred in opposing another party’s conduct in maintaining or defending a proceeding in bad faith or without substantial justification”); *Worsham v. Greenfield*, 187 Md. App. 323, 338 (2009) (stating that “[t]he Rule’s purpose is to deter abuse of the judicial process and does so by compensating a party who opposes a party proceeding in bad faith or without substantial justification”), *aff’d*, 435 Md. 349 (2013).

In this case, the lone offending “proceeding” was the trial on the merits held on October 2, 2014, but Service Energy’s “reasonable expenses” could include attorneys’ fees incurred in preparation for, and during, that proceeding. *See* *Blitz*, 115 Md. App. at 489 (stating that “the court may consider various factors, including time spent by counsel defending an unjustified or bad faith claim, the judge’s knowledge of the level of legal expertise involved in litigating the case, the attorney’s experience and reputation, customary fees, and affidavits submitted by counsel”).

To be clear, we are not stating that the circuit court’s decision to award \$20,597.50 was erroneous on its face and unsupported by the record. Indeed, we recognize that the court was presented with extensive documentation detailing the work performed by

Service Energy’s counsel, and it was able to observe the parties firsthand during the motions hearing. *See, e.g., Johnson*, 84 Md. App. at 543-44 (finding no abuse of discretion where the circuit court judge, who “was familiar with the case from his review of the record” and from oral arguments, awarded \$15,000 in attorney’s fees rather than the \$23,000 that was requested). However, we remand the case so that the circuit court can either explain that its award is consistent with the intent of Md. Rule 1-341, or modify it to ensure that the amount of attorney’s fees and costs to be awarded to Service Energy reflects that which it incurred in opposing Mundi’s frivolous defense at trial.

**JUDGMENT OF THE CIRCUIT COURT
FOR CHARLES COUNTY AFFIRMED IN
PART AND VACATED IN PART. CASE
REMANDED FOR PROCEEDINGS NOT
INCONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLANT.**