

Circuit Court for Kent County
Case No. 14-C-13-009588

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2083

September Term, 2015

PAMELA A. QUARSTEIN

v.

STILL POND TIC INTERESTS BUYERS,
LLC

Eyler, Deborah S.,
Friedman,
Raker, Irma S.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Friedman, J.

Filed: August 3, 2017

*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.

After trial concluded, Pamela Quarstein claimed that she found an important additional document in her attic. She gave it to her attorney, Gene Foehl, who, in turn, sent it to some (but not all) of the opposing parties. The document caused one party to file a motion to revise. Another party, Still Pond TIC Interests Buyers, LLC (“Still Pond”), argued that the document was a forgery.

The Circuit Court found that the document was a forgery and ordered sanctions against Quarstein and Foehl totaling \$53,245.55. In this Court, Quarstein and Foehl challenge both the award of sanctions and the amount.¹ For the reasons that follow, we will affirm the award of sanctions against Quarstein, but remand, without affirming or reversing, the award against Foehl for additional fact-finding. As to the amount of the

¹ We note the ethical issues that this case presents. Generally, “when sanctions are sought against a party and [its] attorney, a potential conflict of interest arises.” Paul V. Niemeyer et al., MARYLAND RULES COMMENTARY 92, (4th ed. 2014); *see also Watson v. Watson*, 73 Md. App. 483, 500 (1988) (trial court ordered attorney to advise his client of a conflict of interest if the attorney sought to argue that sanctions should not be entered against him, but still could be potentially entered against his client). Indeed, in some circumstances, a client’s best argument may be to blame his lawyer. *Newman v. Reilly*, 314 Md. 364, 388 (1988) (“The conflict is that it may be in the client’s best interest to defend against the sanction by putting all of the blame on the attorney.”).

As noted, Foehl was Quarstein’s lawyer at trial and on appeal. Foehl has, thus far, made only arguments that apply equally to him and his client. But for reasons that will become clear, we do not think that Quarstein and Foehl are similarly situated. Thus, as this case continues on remand, Foehl must decide if he can continue to represent Quarstein. *See* Md. Rule 19-301.7(a)(2) & (b)(4) (governing conflicts of interest).

sanctions, we remand the entire award, without affirming or reversing, for additional fact-finding.

FACTUAL AND PROCEDURAL BACKGROUND

The Circuit Court for Kent County, in its Memorandum Opinion, described the genesis of this litigation:

The litigation began with the filing of the complaint ... by Still Pond TIC Interests Buyer[s], LLC (hereinafter, “Still Pond”), Plaintiff, against John Vernon Quarstein (“John”), Pamela Quarstein (“Pamela”), Marianne Q. Riding (“Marianne”), Substitute Trustee, Marianne Quarstein Riding and Joseph B. Riding, Martha Carol Jones Quarstein, John Moran Quarstein, Maryland Environmental Trust (“MET”), and Eastern Shore Land Conservancy, Inc. (“ESLC”), Defendants. The Complaint alleged that Plaintiff is the successor[-]in[-]interest to Chesapeake Bank and Trust Company (“Bank”) as a purchaser at a sheriff’s sale of the interest of ... John V. Quarstein in a farm containing 213.27 acres (“Farm”) and a lot containing two acres (“the Lot”). Both the Farm and Lot are located in the Second Election District of Kent County, near Still Pond, Maryland.

The Complaint alleged ... various procedural errors and irregularities with respect to the [s]heriff’s [s]ale. The Complaint sought, among other relief, a declaratory judgment to cure said errors and irregularities.

The Complaint also alleged that many of the named Defendants were owners as tenants-in-common with the Plaintiff, as successor-in-interest to John; that the title to the Farm and Lot was, “extremely convoluted,” and that a declaratory judgment was necessary to confirm the respective interests of the various owners. ...

[T]he Complaint requested that the Court order a sale in lieu of partition, alleging that the properties could not be partitioned among the various owners without undue loss or injury to the [parties' interest].

After two years of litigation, the circuit court entered a Memorandum Opinion and Judgment declaring who owned what percentage of the Farm and the Lot. We set out that declaration in part:

1. On November 5, 2012, after proper levy, execution and notice, the Sheriff of Kent County, Maryland purported to sell at public sale to Chesapeake Bank and Trust Company, all of interest of John V. Quarstein as co-tenant in the property described as Property A, being 213.27 Acres on the East Side of Royal Swan Road, Southeast of Betterton, Kent County, Maryland and Property B, being Lot 2, comprised of 2 acres at 26751 Royal Swan Road, Southeast of Betterton, Kent County, Maryland.

* * *

3. As a result of the [s]heriff's [s]ale, assignment of interests by Chesapeake Bank and Trust Company, and the July 22, 2014 Quitclaim deed from John V. Quarstein to Plaintiff, Property A is now owned [in various proportions by the John L. Kronau Family Trust; Still Pond TIC Interests Buyers, LLC; John V. Quarstein and Martha Quarstein; Joseph Riding and Marianne Riding; Marianne Quarstein Riding; Pamela Quarstein; and John Moran Quarstein].

* * *

8. Either by virtue of the [s]heriff's sale or Quitclaim Deed, Plaintiff is now the owner of John V. Quarstein's interests in Property A as set forth in declaration 3 above. The surviving heirs and legatees of Mary K. Quarstein and the Executor of her estate all having been made parties to

this declaratory judgment action, it is ADJUDGED, ORDERED, and DECLARED that the resulting trust that held Property B (Lot 2) for the benefit of Mary K. Quarstein’s three children as her successors under the residuary clause of her last will and testament is hereby discharged and terminated by this Declaratory Judgment, and that the ownership, title, and right to possession of Property B (Lot 2) is now held [in three equal shares by Still Pond TIC Interest Buyers, LLC; Marianne Q. Riding; and Pamela Quarstein].

9. [N]either Property A nor Property B is subject to partition in kind. Plaintiff, as an owner of a tenants-in-common interest in both properties, is eligible to compel a sale of the Properties in lieu of partition. Accordingly, the Court hereby [orders the sale of] Property A and Property B in lieu of partition at public auction, and to divide the net proceeds of that sale (after deducting all costs of sale, the trustee’s fees, applicable taxes and withholding taxes) pursuant to the respective shares of ownership set forth in paragraphs 3 and 8.

Thus, among other things, the circuit court found that Still Pond had an interest in the Farm and Lot, and was entitled to force the sale of the properties rather than have them partitioned amongst the owners.

Two weeks after the circuit court issued its Memorandum Opinion and Judgment, Quarstein sent Foehl a document, captioned “Resignation of Trustee and Assignment of Successor Trustee of the John L. Kronau (Family) Trust.” Foehl, in turn, sent this “Resignation of Trustee” document to Martha Quarstein, John Moran Quarstein, and Still Pond. Foehl’s cover letter explained that the “Resignation of Trustee” had been “discovered by [his] client, Pamela Quarstein, while going through documents in light of the [circuit court’s] Memorandum Opinion [and Judgment].” The Resignation of Trustee

document purported to report the resignation of Mildred A. Kronau as a trustee of the Kronau Family Trust and the appointment of Vernon Alfred Quarstein as a substitute trustee. The receipt of this document induced Martha Quarstein and John Moran Quarstein to file jointly a Motion to Revise Judgment, arguing that the “Resignation of Trustee” document was newly discovered evidence that they believed would provide the grounds to change the circuit court’s decision. By contrast, Still Pond opposed Martha Quarstein and John Moran Quarstein’s Motion to Revise, arguing that the “Resignation of Trustee” document was a forgery.

Without holding a hearing, the circuit court issued an Order denying Martha Quarstein and John Moran Quarstein’s Motion to Revise. The circuit court found that “at least one of the documents provided by Pamela A. Quarstein and her attorney, Gene A. Foehl, the ‘Resignation of Trustee and Assignment of Successor Trustee’ appended to and offered in support of the Motion to Revise Judgment filed by Defendants Martha ... Quarstein and John Moran Quarstein [was] not a genuine document.” The circuit court also found that Pamela Quarstein and Foehl “attempted to perpetuate a fraud on [the] Court,” and that their conduct constituted bad faith or lacked substantial justification. As a result, the circuit court ordered “that Pamela A. Quarstein and her attorney Gene A. Foehl [shall] pay [Still Pond’s] reasonable attorney[s’] fees and expenses incurred in opposing the Motion to Revise Judgment.”

Quarstein filed a Motion for Reconsideration of the Order, and the circuit court held a hearing on that motion. At the hearing, Quarstein testified that, after reading the circuit court's Memorandum Opinion and Judgment, she became aware of the relevance of the Resignation of Trustee document. Foehl questioned Quarstein as follows:

[FOEHL]: Now, if you take a look at the document ..., at the top says, "Resignation of Trustee," where did that document come from, ma'am?

[QUARSTEIN]: It came from my files in the ... attic.

* * *

[FOEHL]: How did you use this document, ma'am, as trustee of the Kronau [F]amily [T]rust?

[QUARSTEIN]: I used it—I'm sorry—I used it to be able to change names and titles on financial institutions.

THE COURT: To change what?

[QUARSTEIN]: Names.

THE COURT: Names of what?

[QUARSTEIN]: Of trustees.

THE COURT: Okay.

[QUARSTEIN] On financial institutions.

THE COURT: Alright.

[QUARSTEIN]: On accounts, and to open accounts at suppliers for the farm.

* * *

[FOEHL]: [D]id anyone ever raise any issues with you, any banks or financial institutions, about whether or not that document was ... questionable in any way?

[QUARSTEIN]: No, sir.

[FOEHL]: Did you ... have any reason to question it, any at all, while you served as trustee of the Kronau [F]amily [T]rust?

[QUARSTEIN]: No, sir.

[FOEHL]: Do you ever recall having the original of that document?

[QUARSTEIN]: I saw the original, yes, sir.

[FOEHL]: Now, when you read [the circuit court's Memorandum] Opinion and some questions were raised and you went and pulled the documents from your attic ..., what did you do with them?

[QUARSTEIN]: I called you, and we set up a meeting for the next evening, and I handed 'em to you.

[FOEHL]: And do you know what I did with them?

[QUARSTEIN]: I know that you took 'em back and you then sent ... because I received a blind carbon copy that you sent it to all the lawyers that were in this case.

* * *

[FOEHL]: Now, was there a time when in fact there was a question raised about [the document], which is the one at the top “Resignation of Trustee[?]”

[QUARSTEIN]: Only when I heard from you that there was a question.

[FOEHL]: And when you heard there was a question about [the Resignation of Trustee document] as to its genuineness or authenticity, what did you do?

[QUARSTEIN]: I went to specific places to see if they ... still had copies of what I had given them.

* * *

[FOEHL]: And, as a result of that inquiry, did you find either the original or any copies of [the Resignation of Trustee document]?

[QUARSTEIN]: No, sir.

In sum, Quarstein claimed that she had used the Resignation of Trustee document in the past, that she did not know its authenticity was in question, and that she had unsuccessfully attempted to locate an original copy.

At the conclusion of the hearing, the circuit court made the following additional findings about Quarstein’s actions:

Sometimes, coincidences happen, but not in this series of events. We have an opinion that was issued and then, several days later, the only person that could benefit from these documents produced documents that she said she already knew

about in an effort to ... change the events and ... the Court's decision one way or the other[,] directly or indirectly.

I think it's true that it's unbelievable ... that a lawyer would decide not to act on a document that is so salient. I mean, this is an epiphany. We have this miracle that we find ... a relevant document. ... I choose to disbelieve Ms. Quarstein's testimony. ... I am satisfied and conclude that these documents are forged. I had concluded that before this ... hearing. ... [T]his hearing has only served to reinforce that opinion. And I concluded, before this hearing, that Ms. Quarstein knew they were forged. That has only been [set] in concrete now as a result of her testimony.

Relevant to our analysis, the circuit court did not make any additional finding regarding Foehl's actions. The circuit court denied Quarstein's Motion for Reconsideration, thus reaffirming its prior finding of bad faith or lack of substantial justification against both Quarstein and Foehl.²

² The circuit court issued an Order finding that Quarstein and Foehl acted in bad faith or lacked substantial justification, and, within its sanctions Order, made findings in support of that ruling. After Quarstein submitted her Motion for Reconsideration, the circuit court held a hearing and then made additional findings regarding Quarstein's misconduct. On appeal, Quarstein argues that we should not consider these additional findings in our review of the circuit court's ruling. Instead, she contends, our review should be limited to only those findings made prior to the Motion for Reconsideration. However, "[w]hen an appellate court reviews the decision of a trial court[,] it may affirm the judgment if there is *any evidence in the record* to support the lower court's judgment." *Dep't of Health & Mental Hygiene v. Dillman*, 116 Md. App. 27, 40 (1997) (emphasis added). Thus, we may review any evidence in the record relevant to Quarstein and Foehl's bad faith or lack of substantial justification. We, therefore, will consider all of the circuit court's findings regarding bad faith or lack of substantial justification as to Quarstein and Foehl.

Thereafter, Still Pond submitted a Statement of Fees and Costs to the circuit court. In the statement, Still Pond listed costs and expenses of \$53,245.55 that it claimed to have incurred as a result of defending against Martha Quarstein and John Moran Quarstein's Motion to Revise. The circuit court awarded Still Pond that amount in full, and ordered that it be withheld from Pamela Quarstein's share of the proceeds from the sale of the properties. This appeal followed.

DISCUSSION

The award of sanctions is governed by Maryland Rule 1-341. That Rule provides as follows:

- (a) **Remedial Authority of 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 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.
- (b) **Statement Regarding Costs and Expenses, Including Attorneys' Fees.**
 - (1) *Generally.* A motion requesting an award of costs and expenses, including attorneys' fees, shall include or be separately supported by a verified statement that sets forth the information required in subsections (b)(2) or (b)(3) of this Rule, as applicable.

- (2) *Costs and Expenses Other Than Attorneys' Fees.*
The statement in support of a request for costs and expenses other than attorneys' fees shall itemize the type and amount of the costs and expenses requested and shall include any available documentation of those costs and expenses.
- (3) *Attorneys' Fees.*
- (A) Except as otherwise provided in subsection (b)(3)(B) of this Rule or by order of court, the statement in support of a request for attorneys' fees shall set forth:
- (i) a detailed description of the work performed, broken down by hours or fractions thereof expended on each task;
 - (ii) the amount or rate charged or agreed to in writing by the requesting party and the attorney;
 - (iii) the attorney's customary fee for similar legal services;
 - (iv) the customary fee prevailing in the attorney's legal community for similar legal services;
 - (v) the fee customarily charged for similar legal services in the county where the action is pending; and
 - (vi) any additional relevant factors that the requesting party wishes to bring to the court's attention.

- (B) Unless otherwise ordered by the court, a statement in support of a request for attorneys' fees not exceeding \$500 need not contain the information set forth in subsection (b)(3)(A)(iv) and (v) of this Rule.
- (c) **Response.** Within 15 days after the filing of the statement, the offending party may file a response.
- (d) **Guidelines.** In determining an award of attorneys' fees and related expenses in excess of \$500 under this Rule, the court may consider the Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses contained in an Appendix to these Rules.

Md. Rule 1-341.

The Rule, therefore, envisions a two-step process. *First*, “a court must make an explicit finding that a party conducted litigation either in bad faith or without substantial justification.” *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 72 (2017). A court must support its finding with “specific findings of fact on the record as to a party’s bad faith or lack of substantial justification in pursuing a cause of action.” *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 106 (1999). *Second*, on receipt of an appropriate Statement of Costs and Expenses, including Attorneys’ Fees, the trial court may, in its discretion award reasonable costs and expenses. *Johnson v. Baker*, 84 Md. App. 521, 541 (1990) (“Once the court has determined the existence of bad faith or lack of substantial justification under

Rule 1-341, the [R]ule is permissive as to the imposition of sanctions, *i.e.*, the court has the discretion to impose sanctions as long as they are reasonable.”).

An appellate court reviews the two-step award of sanctions under two different standards of review. *Sydnor v. Hathaway*, 228 Md. App. 691, 725 (2016). “A court’s finding that there was (or was not) bad faith or lack of substantial justification on the part of a party in prosecuting or defending a proceeding is reviewed on appeal for clear error.” *Id.* A court’s decision to award reasonable costs and expenses is reviewed for an abuse of discretion. *Id.*

I. Bad Faith or Lack of Substantial Justification

A. Pamela Quarstein

Pamela Quarstein contends that the circuit court erred in finding that she acted in bad faith or that her actions lacked substantial justification. As mentioned above, we review a trial court’s ruling of bad faith or lack of substantial justification for clear error. *Sydnor*, 228 Md. App. at 725. In reviewing for clear error, “we determine whether the court had an adequate factual basis for the decision it rendered and whether the decision the court reached was clearly erroneous.” *Glenn v. Maryland Dep’t of Health & Mental Hygiene*, 446 Md. 378, 383 (2016).

Here, the circuit court had an adequate factual basis to find that Quarstein acted in bad faith or without substantial justification. After the circuit court issued its Memorandum Opinion and Judgment mandating sale of the properties, Quarstein sent copies of the

Resignation of Trustee document to Foehl. Quarstein testified that she knew the Resignation of Trustee document existed, that she only became aware of its relevance after the circuit court issued its Memorandum Opinion and Judgment, and that she made several failed attempts to locate an original copy of the document. The circuit court, however, did not find Quarstein’s testimony about the document’s origin credible and, as a result, made a finding that the Resignation of Trustee document was not genuine. The circuit court also found that Quarstein—by giving the “Resignation of Trustee” document to her attorney—attempted to maintain (or at least delay) the litigation. That is an adequate factual basis for the circuit court to find that Quarstein acted in bad faith or that her actions lacked substantial justification and thus there is no clear error in its finding, and we affirm.

B. Gene Foehl

As to Gene Foehl, by contrast, although the circuit court found that both Quarstein and Foehl provided the fraudulent document, it did not make the type of specific findings about Foehl’s conduct sufficient to maintain an award of sanctions. *See Smith v. Luber*, 165 Md. App. 458, 472 (2005) (explaining that, on appeal, the record must show the finding and basis for the circuit court’s finding of bad faith or lack of substantial justification); *Barnes*, 126 Md. App. at 107 (holding that the circuit court’s finding of bad faith and substantial justification was “to put it gently, insufficient for purposes of a Rule 1-341 inquiry”). The sole finding the circuit court made regarding Foehl’s conduct was that he attempted to defraud the court by submitting the Resignation of Trustee document to other

counsel. That finding, however, was not specific. The circuit court did not find that Foehl knew the Resignation of Trustee document was fraudulent, that Foehl knew he could benefit from the Resignation of Trustee document, or that Foehl knew that the Resignation of Trustee document would likely be used in the litigation. Because the record lacks specific findings about Foehl’s intentions and conduct, we cannot affirm the circuit court’s finding that he acted in bad faith or that his actions lacked substantial justification. We, therefore, remand, without affirming or reversing, the award of sanctions against Foehl. *See* Md. Rule 8–604(d) (“If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand.”). On remand, the circuit court may provide specific factual findings about Foehl’s conduct.³

³ Quarstein additionally argues that, even if the Resignation of Trustee document was a forgery, the Maryland Rules of Professional Conduct compelled Foehl to produce the document to opposing counsel and co-counsel and that, as a result, the production of the document could not have been in bad faith or lacked substantial justification. In the abstract, we agree that a lawyer taking action compelled by the Rules of Professional Conduct cannot form the basis for imposition of sanctions, and that a lawyer’s compliance with the Rules of Professional Conduct should be a defense to a sanctions motion. Further, we agree that if a lawyer’s action is compelled by the Rules of Professional Conduct, this might also provide a defense for the lawyer’s client. Here, however, we disagree with the claim that Foehl was acting under the compulsion of the Rules of Professional Conduct when he produced the Resignation of Trustee document. This is because the Rules of Professional Conduct cited by Quarstein, 3.3, 3.4, and 3.5, are inapplicable to this situation:

- Rule 3.3 requires a lawyer to be candid in statements to a court, and to correct previous false statement made to the court once the lawyer acquires knowledge of the statement's falsity. Md. Rule 19-303.3. Here, Foehl did not submit the Resignation of Trustee document to the circuit court and, consequently, he did not make any representation to the circuit court regarding the document's authenticity. Moreover, Foehl did not submit the document in an attempt to correct an earlier false statement to the circuit court. Therefore, Rule 3.3 is inapplicable.
- Rule 3.4 requires a lawyer to treat opposing counsel fairly. Md. Rule 19-303.4. Quarstein argues, in effect, that to be fair to opposing counsel, Foehl was required to produce the Resignations of Trustee document. This argument is undercut by the fact that there was no discovery whatsoever conducted in this case. Thus, Foehl was not responding to a request for production of documents, which requires a lawyer to turn over documents requested by opposing counsel (even assuming that obligation were construed to continue after trial). *See* Rule 2-401(e) (allowing a party to request documents from an opposing party, and requiring a party to supplement that documentation when necessary). Further, we fail to appreciate how a lawyer's ethical obligations require him to send a forged document to other counsel without any warning, especially when no one requested it. Rule 3.4, therefore, was not applicable here.
- Rule 3.5 concerns impartiality and decorum to the tribunal, and does not apply here. *See* Md. Rule 19-303.5 (prohibiting an attorney from trying to improperly influence a judge, jury, or other court official, and engaging in conduct to disrupt the court).

Thus, we do not think the Rules of Professional Responsibility that Quarstein cites preclude a finding of bad faith or lack of substantial justification against Foehl or his client. Although we agree that a lawyer should not be put into the position of choosing sanctions for producing or failing to produce a document, we do not think that situation occurred

II. Fee Amount

Quarstein and Foehl both challenge the circuit court’s award of \$53,245.55 to Still Pond to be paid out of the sale proceeds. Specifically, they argue not only that the circuit court’s award to Still Pond was unreasonable, but that Still Pond failed to provide sufficient documentation of its costs and expenses. As quoted above, a party seeking sanctions must provide a detailed Statement Regarding Costs and Expenses. *See supra* at *11; Md. Rule 1-341(b)(3)(A).

Still Pond sought reimbursement for expenses it incurred opposing the Motion to Revise. In Still Pond’s Statement Regarding Costs and Expenses, it listed services performed by three entities:

Saunders Law Firm	\$8,224.55
Atlanta Forensic Document Examiner Services, Inc.	\$3,500.00
Sutherland, Asbill & Brennan	\$41,521.00

For reasons that follow, we think that the Saunders Law Firm and Atlantic Forensics’ costs and expenses are sufficiently detailed. We hold, however, that Sutherland, Asbill & Brennan’s costs and expenses are not sufficiently detailed. We therefore remand the entire award, without affirming or reversing, for a more particularized statement.⁴ The circuit

here. None of the Rules of Professional Conduct that Quarstein cites would have compelled Foehl to submit the fraudulent Resignation of Trustee document to Still Pond, to Quarstein’s codefendants, or to the circuit court.

⁴ To be explicit, because we leave open the question of whether fees are to be paid by Quarstein alone or jointly by Quarstein and Foehl, and because we can imagine that the

court must then determine if Still Pond's statement of costs and expenses is reasonable and what amount, if any, it finds appropriate to award to Still Pond.

A. Saunders Law Firm

We set out the portion of Still Pond's Statement Regarding Costs and Expenses regarding the Saunders Law Firm:

Since April 29, 2015, [Still Pond] has expended in excess of the following amounts in legal fees, consultants' fees, costs, and expenses:

Saunders Law Firm: \$8,224.55

- Reviewing Defendant's documents, conferring with counsel and client[:]

.90 hrs. at \$285
7.25 hrs. at \$325

- Researching: due diligence, newly discovered evidence, party vouches for own documents, sanctions, primary and secondary sources of evidence:

5.55 hrs. at \$285

- Obtaining documents from land records and Orphans' Court:

1.75 hrs. at \$285

- Drafting the Plaintiff's response and Motion to Strike, preparation of exhibits:

decision on who is the payor may influence the circuit court's determination of how much it is reasonable to make them pay, we leave the entire amount open for the circuit court's consideration.

7.58 hrs. at \$285
1.50 hrs. at \$325

- Conferences among counsel about forensic report and for consent to extension of time to respond to Motion to Revise and drafting the consent document:

.50 at \$285
2.50 at \$325

- COSTS:

394 photocopies @ .25	\$98.50
Lexis Research	\$111.65
Postage	\$13.68

These charges are at rates customarily charged over the last several years by [the Saunders Law Firm] for similar legal services. These rates are consistent with prevailing rates of Maryland attorneys for services of this type with this degree of complexity and this degree of opposition. It is believed that Kent County attorneys charge between \$150 per hour and \$500 per hour for litigation representation.

As reproduced above, the Saunders Law Firm spent considerable hours on issues related to the Resignation of Trustee document and the Motion to Revise.

The circuit court approved the Saunders Law Firm’s costs and expenses without comment, and we think that those costs and expenses were sufficiently detailed for the circuit court to make a reasonableness determination. The Saunders Law firm’s work performed is—as required by Rule 1-341(b)—detailed, specifically describing the tasks performed, such as “[d]rafting the Plaintiff’s response and Motion to Strike” and

researching “due diligence, newly discovered evidence, party vouches for own documents, sanctions, primary and secondary sources of evidence,” etc. *See* Md. Rule 1-341(b)(3)(A)(i). The statement also includes the firm’s hours and price of services, with a total of \$8,244.55. *Id.*

B. Atlantic Forensic

A relatively small portion of Still Pond’s costs and expenses, \$3,500, are for services performed by Atlanta Forensic Document Examiner Services, Inc. As a result of the submission of the Resignation of Trustee document, Still Pond consulted a document examiner to check the document’s authenticity. The examiner’s report is in the record and contains his curriculum vitae and hourly rates. With that evidence in hand, we think the circuit court had enough information to make a determination about the reasonableness of the Atlantic Forensic expenses.

C. Sutherland, Asbill & Brennan

The lion’s share of Still Pond’s claimed costs and expenses, however, were for a law firm whose appearance was never entered in the case: Sutherland, Asbill & Brennan. Sutherland, Asbill & Brennan, principally located in Atlanta, Georgia and Washington D.C., recently merged with Eversheds, LLP, a multinational British law firm with over 1,800 attorneys in 55 offices across the globe, to form Eversheds Sutherland.⁵ The record

⁵ *Eversheds and Sutherland Vote to Join Forces*, Eversheds Sutherland (Dec. 12, 2016), <https://perma.cc/9ZLU-MYZX>.

does not reflect that this firm regularly appears in the Circuit Court for Kent County. Still

Pond listed Sutherland's costs and expenses as follows:

Sutherland, Asbill & Brennan \$41,521

- Document Review, Land Records research and review
12.50 hrs.
- Consultation with counsel, strategy preparation, background review
6.0 hrs.
- Consultation with forensics experts
20.60 hrs.
- Research and review of trust and probate issues
5.00 hrs.
- Drafting, composition, editing of memoranda
22.70 hrs.

Attorney time billed at \$550 per hour and \$490 per hour. These rates are Sutherland's counsel's customary rates and are consistent with rates prevailing in Sutherland's legal community for similar legal services. [Rule 1-341(b)(3)(A)(iv)]

Costs:

Courier and copies \$50.10

Detailed ledgers will be provided for inspection *in camera* if requested by the Court.

The circuit court approved Sutherland’s costs and expenses without comment.

We do not think that Sutherland’s costs and expenses are sufficiently detailed in Still Pond’s Statement Regarding Costs and Expenses and, therefore, we cannot determine if the circuit court abused its discretion in approving those costs and expenses. Although Sutherland provides a general description of the tasks it performed, it does not describe them in any particular detail. For example, Sutherland alleges to have consulted with forensic experts for 20 hours, but does not state the purpose of this consultation or why it would take twenty hours. It also does not mention the Motion to Revise or Resignation of Trustee document. This does not satisfy the “detailed description of the work performed” required by the Rule. Md. Rule 1-341(b)(3)(A)(i). Moreover, although Sutherland lists the total hours expended, it does not state the price it billed for each hour even though it alleges to have billed at between \$550 per hour and \$490 per hour, respectively. Although this type of hourly breakdown is not explicitly required by the Rule, it is troubling that we can’t check Sutherland’s math. For these reasons, we remand, without affirming or reversing, the circuit court’s sanction award for additional evidence regarding Sutherland’s fees—should Still Pond wish to resubmit.⁶

⁶ In Still Pond’s Statement Regarding Costs and Expenses, it offered to allow the circuit court to conduct an *in camera* review of detailed ledgers to support Sutherland’s bills, apparently suggesting that there was information protected from disclosure by the attorney-client privilege in Sutherland’s bills. As a general rule, although attorneys’ bills may contain privileged material, they are generally not protected by the attorney-client privilege and, critically here, a blanket assertion of the privilege is insufficient. *See Maxima*

In sum, we are persuaded that Still Pond’s statement of costs and fees sufficiently details the Saunders Law Firm and Atlantic Forensics’ costs and expenses. We hold, however, that Sutherland, Asbill & Brennan’s costs and expenses are not sufficiently detailed. We, therefore, remand the entire award—without affirming or reversing—for (1) a more particularized statement of Sutherland’s costs and expenses; (2) the circuit court to determine whether Still Pond’s statement of costs and expenses is reasonable; and (3) the circuit court to decide what amount, if any, it will award to Still Pond.⁷

Corp. v. 6933 Arlington Dev. Ltd. P’ship, 100 Md. App. 441, 457 (1994) (explaining that “[a]ttorneys’ bills are generally not protected by the attorney-client privilege; and to the extent that portions of a bill might [be] privileged, [a party’s] blanket assertion [of privilege] [i]s inadequate”). Thus on remand, if Still Pond continues to seek reimbursement for Sutherland’s bills, it must make them available for inspection or make specific and clear assertions of privilege based on Maryland law.

⁷ Quarstein argues that, if we vacate any of the costs and expenses awarded to Still Pond by the circuit court, “it would be unfair and prejudicial to give [Still Pond] a second opportunity” to submit a Statement Regarding Costs and Expenses to the circuit court. We disagree for two reasons. *First*, because the circuit court found that Quarstein acted in bad faith or without substantial justification—and we affirm that finding—Still Pond is entitled to request reasonable attorneys’ fees under Rule 1-341. Thus, it would be unfair to Still Pond to prohibit it, even in a second instance, from providing evidence of fees it incurred defending against Quarstein’s misconduct, because of a documentation error. *Second*, our cases generally allow, and in some cases, require a circuit court, on remand, to consider evidence. *See Fuge v. Fuge*, 146 Md. App. 142, 182 (2002) (ordering the circuit court to consider financial information upon remand of a monetary award); *Woodson v. Saldana*, 165 Md. App. 480, 490 (2005) (“On remand, the circuit court must consider ... evidence that [Plaintiff] earned retirement points for activities other than days of military service.”). Thus, we think it is both fair and appropriate to allow Still Pond to provide, if it chooses, a more detailed Statement Regarding Costs and Expenses.

**JUDGMENT OF THE CIRCUIT COURT
FOR KENT COUNTY AFFIRMED IN
PART. CASE REMANDED WITHOUT
AFFIRMANCE OR REVERSAL FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID $\frac{1}{4}$ BY APPELLANT AND $\frac{3}{4}$ BY
APPELLEE.**