

Circuit Court for Montgomery County  
Case No.: 481068V

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1784

September Term, 2021

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4620 NORTH PARK AVENUE  
CONDOMINIUM ASSOCIATION, INC.

v.

LISA DRAZIN, TRUSTEE, ON BEHALF OF  
4620 NORTH PARK AVENUE REALTY  
TRUST

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Kehoe,  
Ripken,  
Eyler, James R.  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Eyler, James R., J.

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Filed: April 6, 2023

\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

\*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.

In an amended complaint filed in the Circuit Court for Montgomery County, 4620 North Park Avenue Condominium Association, Inc. (“the Association”), sought injunctive relief, money damages based on an alleged breach of contract, and attorneys’ fees against the 4620 North Park Avenue Realty Trust (“the Trust”). A bench trial was held on June 23, 2021. Nearly six months later, the circuit court entered an order awarding the Association one dollar in nominal damages, granting a permanent injunction requiring the Trust to make specified repairs to the condominium unit it owned, and denying the Association’s request for an award of attorneys’ fees.

The Trust filed a motion to alter or amend the judgment and a notice of appeal. On the thirtieth day after the court’s order was entered, the Association filed a motion to open the judgment to amend the court’s decision so as to award attorneys’ fees and a notice of appeal of the court’s decision denying its request for attorneys’ fees. The circuit court denied the Trust’s motion to alter or amend the judgment and the Association’s motion to open the judgment. Both the Trust and the Association filed timely notices of appeal.

By order dated December 8, 2022, we dismissed the Trust’s appeal for failure to file an appellant’s brief. In the same order, we held that the Association’s cross-appeal would proceed as the only appeal in the case and ordered that the caption of the appeal would be reformed so as to designate the Association as the appellant and Lisa Drazin, Trustee, on behalf of the Trust, as the appellee. A subsequent motion to reconsider our dismissal of the Trust’s appeal was denied.

## **ISSUES PRESENTED**

The sole issue presented by the Association for our consideration is whether the circuit court abused its discretion in denying its request for attorneys' fees. For the reasons set forth below, we shall vacate the ruling of the circuit court on the issue of attorneys' fees and remand the case for further proceedings on that limited issue.

## **FACTUAL BACKGROUND**

This case has its genesis in an April 1, 2019 flood that caused damage to 59 units within the 4620 North Park Avenue Condominium, a high-rise condominium located in Chevy Chase, Maryland. The Trust was the owner of condominium unit 1601 West, one of the units damaged by the flood water, and Ms. Drazin was the Trustee. The Association's initial complaint was filed against Ms. Drazin, as the alleged owner of unit 1601 West, but an amended complaint was later filed against the Trust. The Association sought injunctive relief, money damages based on a breach of contract, and attorneys' fees. The parties' dispute centered around the Trust's responsibility to repair the water damage to its unit.

After the flood, the Association submitted a claim against its insurance policy for the repair and restoration of the affected units and common areas. An insurance adjuster conducted an inspection, determined the scope of work, and assigned a value to the necessary work. The Association retained a contractor to perform the required repairs.<sup>1</sup>

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<sup>1</sup> Some unit owners elected to engage their own contractors and used the insurance proceeds to pay for the work, consistent with the values and scope of work determined by the insurer. According to the Association, those unit owners were required to execute a hold harmless  
(continued...)

The Association maintained that Ms. Drazin, as Trustee, refused to permit the contractor it had retained to access the unit and perform the necessary repair work. She also refused to retain her own contractor to perform the work.

According to the Association, the Trust’s refusal to have the necessary repair work performed violated its contractual obligations as a member of the Association and created a risk of further damage to the common areas and adjacent units “as well as the health and well-being of the occupants of other units in the” condominium. In addition to money damages for breach of contract, the Association sought an injunction compelling Ms. Drazin, as the Trustee, to allow performance of the repair work or to perform the required work herself, “in a manner consistent with the governing documents.” The Association also sought “[a]n award of legal fees . . . as permitted by the Condominium Act [Md. Code Ann., Real Property § 11-101 *et seq.*],” as well as an award of costs. The Trust maintained that the scope of work proposed by the Association’s insurer was insufficient in light of the damage caused to the unit and the time that had passed since the flood.

A bench trial was held on June 23, 2021. Prior to the start of the trial, the Association abandoned its claim for money damages and limited its suit to a request for injunctive relief and attorneys’ fees:

THE COURT: So, what is the relief that you’re – I mean, I read the complaint and it’s for breach of contract. There’s an allegation about damages. What’s the relief that you’re asking for today?

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and indemnification agreement, the purpose of which was “to ensure the insurance proceeds were utilized for the appropriate scope of repair work and that the repairs would be performed in good and workmanlike manner.”

[COUNSEL FOR THE ASSOCIATION]: What we want, Your Honor, is we want to be able to either get in to do the work and we can coordinate it with [Ms. Drazin] without threats of lawsuit against our contractor. The contract is between the association and the contractor, not with Ms. Drazin. But she, nonetheless, came in and threatened to sue him.

What we want to do is get in there, get the work done, or have her take the money and be done with this issue. That the Court find that that sum of money is adequate and that scope of work is adequate to restore the unit to its original condition absent betterments. And if she wants to coordinate betterments with the contractor and with her own HO6 carrier, she can do that. She's already been paid by her insurance carrier for that.

THE COURT: So, are you asking for declaratory relief because that's not been pleaded in the complaint. What are you asking for?

[COUNSEL FOR THE ASSOCIATION]: I'm asking for an order allowing us to do the work, Judge.

THE COURT: An injunction?

[COUNSEL FOR THE ASSOCIATION]: Yes, Judge.

THE COURT: Okay. All right, thank you. There's no damages claimed. Because that was pleaded in the complaint.

[COUNSEL FOR THE ASSOCIATION]: There are no damages, other than attorney's fees at this point, Judge.

THE COURT: Okay. So, part of your claim for relief is attorney's fees as well?

[COUNSEL FOR THE ASSOCIATION]: It is true.

THE COURT: What is the amount of attorney's fees that you're going to be claiming in the case?

[COUNSEL FOR THE ASSOCIATION]: Your Honor, I will have to provide that subsequently. I can do that.

THE COURT: Okay. All right. Well, today's the trial so – I'll hear from you, sir.

In his opening statement, counsel for the Trust argued that the Association did not seek declaratory relief and, as a result, the issue of the sufficiency of the scope of work proposed for the condominium unit was not before the court. Counsel argued that the Trust was “prepared to defend the claim for injunction by showing that it’s unnecessary because [Ms. Drazin] never prevented [the Association] from doing anything.” Counsel further argued that “dragging [Ms. Drazin] into court and making her pay attorney’s fees for something, for an action they didn’t have to take in the first place, is nothing more than punitive.”

The issue of attorneys’ fees was again addressed during closing argument. Counsel for the Trust argued that both parties should pay their own attorneys’ fees and noted that the evidence did not show that Ms. Drazin acted in an unreasonable manner with respect to the scope of work required to repair the condominium unit. The following exchange occurred:

THE COURT: I haven’t heard anything counsel, about attorney’s fees. What are we doing with that?

[COUNSEL FOR THE ASSOCIATION]: Your Honor, under Section 7, I was going to submit if the Court ruled in favor of the association in light of the time limitations we’ve got, my intention was to submit under Section 7, the fees. We did not have in this case a scheduling order under Section 7 where the Court set forth what we were going to have to do. So in light of the –

THE COURT: I don’t think anybody requested it.

[COUNSEL FOR THE ASSOCIATION]: Well, the attorney’s fees we definitely requested.

THE COURT: I know the attorney's fees were requested, but I don't think at a scheduling conference, and I think that might have been, I'm not sure if that was during Covid or pre-Covid.

[COUNSEL FOR THE ASSOCIATION]: It was, Your Honor.

[COUNSEL FOR THE TRUST]: It was during Covid. We didn't really have a scheduling conference.

THE COURT: So perhaps it didn't get raised at the scheduling conference.

[COUNSEL FOR THE TRUST]: It didn't, it didn't.

THE COURT: Because that's normally when that would be addressed, is at a scheduling conference under the rules. And this is not intended to be a criticism of our rules and the drafters of the rules, but the procedure still is not 100 percent clear in terms of how these kind of claims are to be handled. They're better than they used to be, but I think there's still some open questions about what the procedure is, because I have this come up a lot, and how do we do it.

[COUNSEL FOR THE ASSOCIATION]: I think in a situation like this where the fees are permitted by statute, under the prevailing party statute, it is even less clear. If it's a contract, then you have the proof during the case in chief that here this is arising out of a statute, and a prevailing party section, and so hence, Your Honor, because of what happened and didn't happen during the scheduling conference or issuance of a scheduling order, the intention here was to submit; we'd submit whatever the Court wishes. My intention was to submit itemized invoices and affidavit.

THE COURT: All right, I'll address the attorney's fees issue when I address the merits of this case. And if I rule, and this is a prevailing party statute, so if I – it's not either way, is that correct? You're the only one that can make a claim for attorney's fees in this case, correct?

[COUNSEL FOR THE ASSOCIATION]: Under the Maryland Condo Act, that's correct, Your Honor.

THE COURT: Okay, and so that's the governing statute. So, if I rule in the plaintiff's favor, then I'll address the attorney's fees. Obviously, if I rule in the defendant's favor, I don't have to address that at all, because we don't get to that because the plaintiff is not the prevailing party in that circumstance.

The Court took the case under advisement. In a written order entered on December 20, 2021, the Court held, in part:

The Association has conceded that “there are no damages other than attorneys’ fees at this point.” Although the Association has requested in the Amended Complaint an award of legal fees, it has established neither a legal basis for such an award nor facts supporting such an award. Moreover, no evidence of the amount of, necessity for, and fairness and reasonableness of any attorneys’ fees has been presented.

Maryland follows the American rule which stands as a barrier to the recovery, as consequential damages, of foreseeable counsel fees incurred in enforcing remedies for breach of contract. *B & P Enterprises v. Overland Equipment Co.*, 133 Md. App. 583, 620 (2000). Attorneys’ fees may be awarded, however, if authorized by contract or statute. *Id.* at 621. The Association has not proven a contractual or statutory entitlement to an award of attorneys’ fees.

The Association has established neither a legal basis for such an award nor facts supporting such an award and has not proven a contractual or statutory entitlement to an award of attorneys’ fees. The Court shall therefore deny the Association’s request in the Amended Complaint for a judgment for money damages.

On the thirtieth day after the court’s order was entered, the Association filed a motion to open the judgment to amend the court’s decision with respect to the request for attorneys’ fees. It attached to its motion invoices and an affidavit in support of its request for an award of attorneys’ fees. The court denied the Association’s motion.

We shall include additional facts as necessary in our discussion of the issues presented.



## DISCUSSION

### I.

The Association contends that the circuit court abused its discretion in denying its request for attorneys’ fees. It argues that it was entitled to an award of attorneys’ fees pursuant to the Maryland Condominium Act, § 11-101 *et seq.* of the Real Property Article (“RP”). Specifically, it relies upon RP § 11-113(c), which provides:

(c)(1) If any unit owner fails to comply with this title, the declaration, or bylaws, or a decision rendered in accordance with this section, the unit owner may be sued for damages caused by the failure or for injunctive relief, or both, by the council of unit owners or by any other unit owner.

(2) The prevailing party in any proceeding under this subsection is entitled to an award for counsel fees as determined by court.

We analyze a circuit court’s interpretation of statutory provisions *de novo*. *Powell v. Breslin*, 195 Md. App. 340, 346 (2010) (citing *Maryland-National Cap. Park & Plan. Comm’n v. Anderson*, 395 Md. 172, 181 (2006)), *aff’d*, 421 Md. 266 (2011). “Although the factual determinations of the circuit court are afforded significant deference on review, its legal determinations are not.” *Goss v. C.A.N. Wildlife Tr., Inc.*, 157 Md. App. 447, 456 (2004). When a circuit court’s order involves an interpretation and application of Maryland statutory and case law, we must determine whether the circuit court’s conclusions are legally correct under a *de novo* standard of review. *See Mayor and City Council of Baltimore v. Thornton Mellon, LLC*, 478 Md. 396, 410 (2022) (quoting *Schisler v. State*, 394 Md. 519, 535 (2006)); *Walter v. Gunter*, 367 Md. 386, 392 (2002) (citing *In re Mark M.*, 365 Md. 687, 704-05 (2001)).

According to the Association, the use of the phrase “is entitled” in RP § 11-113(c) indicates that an award of attorneys’ fees was mandatory and not subject to the discretion of the trial court or the satisfaction of any further conditions. We agree. The circuit court had no discretion as to whether to grant an award to the Association as the prevailing party. The only area of discretion was with regard to the amount of the award the Association would receive.

With certain exceptions not applicable to the instant case, Chapter 700 of the Maryland Rules applies “to actions in which, by law or contract, a party is entitled to claim attorneys’ fees from another party.” Md. Rule 2-702(a). Rule 2-703(a) addresses claims for attorneys’ fees that are allowable by law to a party in an action in a circuit court. A party seeking attorneys’ fees from another party pursuant to Rule 2-703 must set forth its claim for such fees in its initial pleading “or, if the grounds for such a claim arise after the initial pleading is filed, in an amended pleading filed promptly after the grounds for the claim arose.” Md. Rule 2-703(b). There is no dispute that the Association included a request for attorneys’ fees in both its initial and amended complaints.

Rule 2-703(c) sets forth specific requirements for cases in which a claim for attorneys’ fees is made pursuant to the Rule. It provides:

Unless the court orders otherwise, if a claim for attorneys’ fees is made pursuant to this Rule, the court shall conduct a scheduling conference and, as part of a scheduling order entered pursuant to Rule 2-504 shall:

- (1) determine whether to require enhanced documentation, quarterly statements, or other procedures permitted by section (d) of this Rule;
- (2) determine whether evidence regarding the party’s entitlement to attorneys’ fees or the amount thereof may practicably be submitted during the parties’ cases-in-chief with respect to the underlying cause of action or

should await a verdict by the jury or finding by the court with respect to that underlying cause of action; and

(3) in light of the determination made under subsection (c)(2), determine whether, pursuant to section (f) of this Rule, any award of attorneys’ fees will be included in the judgment entered on the underlying cause of action or as a separate judgment.

The Rule makes special provisions for cases that are “likely to result in a substantial claim for attorneys’ fees for services over a significant period of time[.]” Md. Rule 2-703(d). In such cases, “the court may:”

(1) require parties seeking an award (A) to keep time records in a specific manner, and (B) to provide to parties against whom an award is sought quarterly statements showing the total amount of time all attorneys, paralegals, and other professionals have spent on the case during the quarter and the total value of that time;

(2) determine whether, and to what extent, the Guidelines Regarding Compensable and Non-Compensable Attorneys’ Fees and Related Expenses contained in an Appendix to this Chapter shall be applied; and

(3) establish procedures and time schedules for the presentation of evidence and argument on issues relating to a party’s entitlement to an award and the amount thereof.

*Id.*

“If, under applicable law, the verdict of a jury or the findings of the court on the underlying cause of action do not permit an award of attorneys’ fees, the court shall include in its judgment entered on the underlying cause of action the denial of such an award.”

Md. Rule 2-703(f)(1). Otherwise, if an award is permitted or required, Rule 2-703(f)(2) provides:

If, under applicable law, the verdict of the jury or the findings of the court on the underlying cause of action permit but do not require an award of attorneys’ fees, the court shall determine whether an award should be made. If the court determines that a permitted award should be made or that under applicable law an award is required, the court shall apply the standards set forth in subsection (f)(3) of this Rule and determine the amount of the award.

In cases where claims for attorneys’ fees are permissible, there are certain factors that must be considered in making a determination under subsection (f)(2). Rule 2-703(f)(3) provides:

In making its determinations under subsection (f)(2) of this Rule, the court shall consider, with respect to the claims for which fee-shifting is permissible:

- (A) the time and labor required;
  - (B) the novelty and difficulty of the questions;
  - (C) the skill required to perform the legal services 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.

The grant or denial of an award of attorneys’ fees “may be included in the judgment on the underlying cause of action or in a separate judgment, as directed by the court.” Md. Rule 2-703(g). “The court shall state on the record or in a memorandum filed in the record the basis for its grant or denial of an award.” *Id.*

In the instant case, the trial court failed to hold the scheduling conference required by Rule 2-703(c) and the Association did not request the court to do so. Nevertheless, at trial, the court stated that if it ruled in favor of the Association, then it would address the request for attorneys’ fees. Notwithstanding that ruling, the court addressed the request for attorneys’ fees in its written order and denied the Association’s request on the ground that

it had not established a factual or legal basis for such an award. The court’s determination that the Association failed to establish a legal basis for an award of attorneys’ fees was erroneous. As we have already determined, the plain language of RP § 11-113(c)(2) makes clear that “[t]he prevailing party in any proceeding under this subsection *is entitled* to an award for counsel fees as determined by court.” (Emphasis added.) The failure of the Association to provide a factual basis for its request for attorneys’ fees was the result of its reasonable reliance on the court’s statement that it would address the fee issue if it ruled in favor of the Association. For those reasons, we shall vacate the circuit court’s order denying the Association’s request for attorneys’ fees and remand the case to allow for further proceedings relating to the amount of attorneys’ fees to be awarded to the Association.

**JUDGMENT OF THE CIRCUIT  
COURT FOR MONTGOMERY  
COUNTY VACATED WITH  
RESPECT TO ITS DECISION TO  
DENY ATTORNEYS’ FEES ONLY;  
CASE REMANDED FOR FURTHER  
PROCEEDINGS CONSISTENT  
WITH THIS OPINION; COSTS TO  
BE PAID BY APPELLEE.**