

PAUL C. CLARK,

Plaintiff,

v.

ZALCO REALTY, INC., et al.

Defendants.

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IN THE

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CIRCUIT COURT

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FOR

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BALTIMORE CITY, PART 23

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Case No.: 24-C-13-000322

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MEMORANDUM OPINION

This cause comes before the Court on Paul C. Clark’s (“Plaintiff”) Verified Complaint for Preliminary and Permanent Injunction, Specific Performance, and Breach of Contract (docket #00001000), filed January 16, 2013, Zalco Realty, Inc. (“Zalco”) and 100 Harborview Drive Council of Unit Owners’s (“Council”) (collectively, “Defendants”) Answer to Plaintiff’s Verified Complaint (docket #00001001), filed March 5, 2013, Defendants’ Verified Counterclaim for Declaratory Judgment (docket #00006000), filed March 5, 2013, and Plaintiff’s Answer to Verified Counterclaim for Declaratory Judgment (docket #00006001), filed April 8, 2013. A trial was held before the undersigned on the 8th and 9th days of October, 2013.

Having reviewed and considered the testimony and evidence as well as the arguments presented at the trial, and for the reasons stated herein, in accordance with the accompanying Order issued on even date, Plaintiff’s request for permanent injunction and specific performance is **GRANTED IN PART** and Defendants’ request for declaratory judgment is **GRANTED IN PART**.

I. FACTUAL HISTORY

The 100 Harborview Drive Condominium (“Harborview”) is a condominium project, subject to the Maryland Condominium Act,¹ located in Baltimore, Maryland. Defendant

¹ MD. CODE ANN., REAL PROP. § 11-101, *et seq.*

Council is an unincorporated legal entity administered by Harborview's Board of Directors ("Board") and charged with managing the business, operations, maintenance, and affairs of Harborview. Defendant Zalco was appointed by the Council to act as its managing agent. Harborview's By-laws set forth the "terms, conditions, provisions, and restrictions" that apply to it. (Pl.'s Ex. 2). Article X of the By-Laws declares, in relevant part:

The Board shall keep the books of the Council, with detailed accounts in chronological order, noting all receipts and expenditures affecting the property and its administration, and specifying the maintenance and repair expenses of the common elements and any other expenses incurred. . . . The books, together with all bills, statements and vouchers accrediting the entries made thereupon, [and] all other records kept by the board . . . shall be available for examination and copying by any unit owner . . . and the duly authorized agents or attorneys of such unit owner . . .

(Id.)

In November of 2009, Plaintiff purchased a condominium unit ("unit") in Harborview. Since Plaintiff's purchase, the parties have had a long-standing adversarial relationship. Namely, Plaintiff has filed complaints with the United States Department of Housing and Urban Development ("HUD"), alleging familial status housing discrimination. The first HUD complaint, filed in February of 2010, concluded with a finding of no probable cause for the discrimination complaint.² (Defs.' Opp'n to Pl.'s Mot. for Prelim. Inj. Ex. 1). Plaintiff appealed that finding and HUD denied the appeal. Plaintiff's second HUD complaint, filed in September of 2011, alleging familial status housing discrimination and retaliation, is presently pending. (Defs.' Bench Mem. ¶ 9).

Plaintiff has also filed complaints with the Baltimore City Health Department ("Health Department"). His first complaint, filed in May of 2010, alleged the presence of mold in his unit and resulted in an environment citation being issued to Harborview.

² This complaint was additionally referred for an investigation to the Maryland Commission on Human Relations, who similarly found no probable cause. Plaintiff moved for reconsideration of this finding, which was denied.

(Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction, Ex. 2). Harborview contested the citation and it was ultimately dismissed after an evidentiary hearing before the Baltimore City Environmental Control Board. Plaintiff's second Health Department complaint, filed in June of 2010, was dismissed. His third complaint to the Health Department, filed in June of 2013, alleged contamination to his unit as a result of pathogens from pigeon droppings.

Moreover, Plaintiff has initiated two cases in addition to the instant suit — which is the second of the three — against Defendants in the Circuit Court of Maryland for Baltimore City. Plaintiff's claims in the other two cases arise from the alleged presence of mold in his unit. In the first suit,³ filed in October of 2010, Defendants were granted summary judgment. Plaintiff appealed, and the Court of Special Appeals of Maryland unanimously affirmed the decision.⁴ Plaintiff filed a petition for certiorari to the Court of Appeals of Maryland, which was denied. In the third suit,⁵ filed in May of 2013, Plaintiff's Petition for Order of Arbitration and Stay of Action was granted. Defendants' appeal of that decision is pending.

In addition, Plaintiff and another unit owner, James W. Ancel, Sr. ("Ancel"), who has also instituted proceedings against Defendants, have entered into a cooperation agreement whereby they share any material they receive from Defendants. Defendants have retained counsel to defend them in the aforementioned complaints and cases filed against them.

By letter dated November 20, 2012, Plaintiff requested to inspect and copy all of Harborview's legal bills, in unredacted form, from October, 2009, to the present. The inspection was scheduled to take place on December 19, 2012. By letter dated December 12, 2012, Plaintiff expanded his request to include the inspection and copying of any "written advice of legal counsel" concerning himself, his family, and his unit.

³ Case Number: 24-C-10-007236.

⁴ *Clark v. Zalco Realty, et al.*, No. 0227, slip op. (Md. App. Apr. 24, 2013).

⁵ Case Number: 24-C-13-002770.

At the December 19th inspection, Plaintiff's wife, Rebecca Delorme ("Delorme"), acting as his authorized agent, inspected and copied invoices for the legal services provided to Harborview during the requested time period, but she was not permitted to inspect or copy any detailed billing reports for the invoices or any written advice of legal counsel. During her inspection, Delorme further requested to inspect all electronic messages ("e-mail") between the Defendants concerning the financial well being of Harborview. Defendants did not make any such correspondence available to her at that time. As of the date of the trial, it is uncontradicted that Defendants produced all e-mail correspondence related to the financial well being of Harborview. The president of Harborview's Board, John Cochran ("Cochran"), who would be included in any e-mails dealing with Harborview's finances, reviewed thousands of e-mails and transmitted those fitting Plaintiff's request to him.

II. PROCEDURAL HISTORY

On January 16, 2013, Plaintiff commenced the instant suit, seeking three remedies from the Court: preliminary and permanent injunctions (Count I); specific performance (Count II); and damages for breach of contract (Count III). (Pl.'s Compl. 14-21). For Count I, Plaintiff relies on Section 11-116 of the Maryland Condominium Act ("Section 11-116"), *supra*, and Article X of the By-laws in urging the Court to enter a preliminary injunction ordering Defendants to make the following available to him for inspection and copying: (1) detailed billing reports or supporting documentation for Harborview's legal invoices concerning him, his family, and his unit; (2) written advice of legal counsel concerning him, his family, and his unit; and (3) e-mails between the Defendants concerning the financial well being of Harborview ("three requests"). (*Id.* at 17). Plaintiff further requests entry of a permanent injunction directing Defendants to

comply with Section 11-116 and Article X of the By-laws for all requests for books and records made by him. (*Id.* at 17).

Count II calls on the Court to order Defendants to make available to Plaintiff for inspection and copying the information described in the three requests. (*Id.* at 19). In Count III, Plaintiff claims damages as a result of Defendants' refusal to make this information available to him for inspection and copying, which he asserts is a breach of the By-laws, i.e., their contract. (*Id.* at 19-21).

Defendants responded by filing a counterclaim against Plaintiff, seeking a declaratory judgment on the following matters: (1) that Section 11-116 does not require them to make the detailed billing reports for Harborview's legal invoices concerning Plaintiff, his family, and his unit available to Plaintiff; (2) that Section 11-116 does not require them to make the written advice of legal counsel concerning Plaintiff, his family, and his unit; and (3) that the aforementioned detailed billing reports and written advice of legal counsel are privileged attorney-client communications and/or attorney work product, which Plaintiff cannot require Defendants to produce under Section 11-116. (Defs.' Countercl. 13).

Defendants' Motion for Judgment on Count III, Breach of Contract, was granted by this Court at the conclusion of the trial, as there was no evidence presented to support Plaintiff's claim of damages.

III. MARYLAND CONDOMINIUM ACT

Despite popular usage to the contrary, a condominium is not a physical structure such as a building or a complex of dwellings, but rather, a creature of statute: "a legal structure created by subjecting real property to a regime established under the law." Gregory Reed, *Land*

Condominiums in Maryland What Are They? Why Use Them?, MD. B.J., Sept./Oct. 2006, at 4, 6.

The Court of Appeals has expounded,

A condominium is a communal form of estate in real property consisting of individually owned units which are supported by collectively held facilities and areas. . . . The term may be defined generally as a system for providing separate ownership of individual units in multiple-unit developments. . . . A condominium owner, therefore, holds a hybrid property interest consisting of an exclusive ownership of a particular unit or apartment and a tenancy in common with the other co-owners in the common elements.⁶

Ridgely Condo. Ass'n, Inc. v. Smyrnioudis, 343 Md. 357, 358-59 (1996).

In Maryland, the Maryland Condominium Act (“Act”), found in title 11 of the Real Property Article of the Annotated Code of Maryland, provides the legislative framework for establishing a condominium regime. *Anderson v. Council of Unit Owners of Gables on Tuckerman Condo.*, 404 Md. 560, 589 (2008). *See also Jurgensen v. New Phoenix Atl. Condo. Council of Unit Owners*, 380 Md. 106, 115 (2004) (stating that the Act “regulates the formation, management, and termination of condominiums in Maryland”). Originally enacted as the Horizontal Property Act in 1963, the Act has always included a requirement that accounting information be kept and made accessible to unit owners. Today, Section 11-116, *supra*, of the Act governs the maintenance of books and records kept by a council of unit owners of a condominium project.

Throughout the years, the language of Section 11-116 has been amended to clarify who must keep the accounting information, where it must be kept, who is entitled to view it, and what may be concealed from the public.⁷ The most substantial, and most relevant, changes to Section

⁶ Common elements may include “the land, foundations, columns, supports, walls, roofs, halls, lobbies, stairs, entrances, recreational areas, parking lots, gardens, and installations for utilities.” *Ridgely*, 343 Md. at 576.

⁷ These amendments are not relevant to the case at bar.

11-116 took place in 2004 and 2009,⁸ and thus, those modifications will be discussed in greater detail. Prior to 2004, a council of unit owners had no authority under Section 11-116 to withhold records it kept from any unit owner:

(c) Every record, including insurance policies, kept by the council of unit owners shall be maintained in Maryland or within 50 miles of its borders and shall be available at some place designated by the council of unit owners within the county where the condominium is located for examination and copying by any unit owner, his mortgagee, and their respective duly authorized agents or attorneys, during normal business hours, and after reasonable notice.

2004 Maryland Laws Ch. 382 (H.B. 879).

In 2004, this section was modified to limit disclosure by a council of unit owners and to provide for a reasonable charge:

(c) (1) *Except as provided in paragraph (2) of this subsection, all books and records, including insurance policies, kept by the council of unit owners shall be maintained in Maryland or within 50 miles of its borders and shall be available at some place designated by the council of unit owners within the county where the condominium is located for examination and copying by any unit owner, his mortgagee, and their respective duly authorized agents or attorneys, during normal business hours, and after reasonable notice.*

(2) Books and records kept by or on behalf of a council of unit owners may be withheld from public inspection to the extent that they concern:

(i) Personnel records;

(ii) An individual's medical records;

(iii) An individual's financial records;

(iv) Records relating to business transactions that are currently in negotiation;

(v) The written advice of legal counsel; or

(vi) Minutes of a closed meeting of the board of directors or other governing body of the council of unit owners.

⁸ Various letters sent to the Legislature in support of these amendments depict the citizenry's concerns regarding the resistance faced in response to requests for, and the costs associated with gaining, access to information. (Defs.' Bench Mem. Ex. A). In the 2004 amendments, the Legislature included the following: "FOR the purpose of requiring all books and records kept by or on behalf of a cooperative housing corporation to be made available for examination and copying by certain persons except under certain circumstances; . . . authorizing a council of unit owners of a condominium to impose a reasonable charge on a person desiring to review or copy the books and records; . . ." The 2009 amendments' description stated: "FOR the purpose of . . . prohibiting certain common ownership communities from imposing certain fees other than a reasonable charge imposed on a person desiring to review or copy certain books and records or who requests delivery of certain information; providing that a charge for copying certain records may not exceed a certain amount; . . ."

(d) The council of unit owners may impose a reasonable charge upon a person desiring to review or copy the books and records.

2004 Maryland Laws Ch. 382 (H.B. 879) (additions in italics). Instead of “every record,” the Legislature allowed “all books and records” to be obtained, subject to certain exceptions. The council could refuse to provide books and records to the extent that they concerned the following: (1) personnel records; (2) an individual’s medical records; (3) an individual’s personal financial records; (4) records relating to business transactions that are currently in negotiation; (5) the written advice of legal counsel; or (6) minutes of a closed meeting of the board of directors or other governing body of the council of unit owners.

A letter from the Office of the Attorney General, offering support for these amendments, observed:

Access to the books and records of the governing body of the association is of vital importance to unit and home owners who wish to participate in the democratic process of their associations regardless of the type of common-ownership community they live in. However, some of the records maintained by the governing bodies contain sensitive information, such as private information about individual home or unit owners, employees, or legal proceedings or advice.

...

Section 11-109.1 of the Maryland Condominium Act provides that meetings of the Board of Directors may be closed for discussion of most of the same topics as those listed in the Homeowners Association Act. However, Section 11-116 of the Act provides that “every record” of the condominium be kept available for inspection by unit owners and provides no exception for any topic.

...

HB 879 provides a uniform standard for unit and homeowner access to association records regardless of the type of common-ownership community and limits the records that may be withheld from unit and homeowners to those topics that the General Assembly has already deemed to be sensitive in nature. This uniform standard will provide both clarity and certainty for unit and homeowners as well as the governing bodies of these associations.

(Defs.’ Opp’n to Pl.’s Mot. for Prelim. Inj. Ex. 8).

In 2009, several conditions restricting a council’s authority to withhold were added to the section. Describing its purpose for the amendments, the Legislature explained, “clarifying the

availability of certain books and records kept by or on behalf of certain common ownership communities *for certain purposes and to certain persons*. 2009 Maryland Laws Ch. 659 (H.B.

137) (emphasis added). The amended Section 11-116, which currently remains in effect, directs:

(c) (3) Books and records kept by or on behalf of a council of unit owners may be withheld from public inspection, *except for inspection by the person who is the subject of the record or the person's designee or guardian*, to the extent that they concern:

(i) Personnel records, *not including information on individual salaries, wages, bonuses, and other compensation paid to employees*;

(ii) An individual's medical records;

(iii) An individual's *personal* financial records, *including assets, income, liabilities, net worth, bank balances, financial history or activities, and creditworthiness*;

(iv) Records relating to business transactions that are currently in negotiation;

(v) The written advice of legal counsel; or

(vi) Minutes of a closed meeting of the board of directors or other governing body of the council of unit owners, *unless a majority of a quorum of the board of directors or governing body that held the meeting approves unsealing the minutes or a recording of the minutes for public inspection*.

(d) (1) *Except for a reasonable charge imposed on a person desiring to review or copy the books and records or who requests delivery of information, the council of unit owners may not impose any charges under this section.*

(2) A charge imposed under paragraph (1) of this subsection for copying books and records may not exceed the limits authorized under Title 7, Subtitle 2 of the Courts Article.

MD. CODE ANN., REAL PROP. § 11-116 (additions in italics).

IV. STATUTORY CONSTRUCTION

The cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the Legislature. *Lockshin v. Semsker*, 412 Md. 257, 274 (2010). The first step in ascertaining the legislative intent is to look at the language of the statute, giving it its natural and ordinary meaning. *Md.-Nat'l Capital Park & Planning Comm'n v. Anderson*, 395 Md. 172, 182

(2006). When the statutory language is clear, courts do not need to look beyond the statutory language to determine the Legislature's intent. *Id.* However, if the language of the statute is ambiguous (i.e., subject to more than one interpretation), then courts endeavor to resolve ambiguities by looking beyond the statutory language. *Barbre v. Pope*, 402 Md. 157, 173

(2007). For example, courts look to the structure of the statute, how the statute relates to other laws, the legislative history (including the derivation of the statute, comments and explanations regarding it by authoritative sources during the legislative process, and amendments proposed or added to it), the general purpose behind the statute, and the relative rationality and legal effect of various competing constructions. *Mamsi Life & Health Ins. Co. v. Kuei-I Wu*, 411 Md. 166, 177

(2009). When the statutory language is ambiguous, courts consider the literal or usual meaning of the words and their meaning and effect in light of the setting, the objectives, and purpose of statute. *Md.-Nat'l Capital Park*, 395 Md. at 182.

When the statute is part of a larger statutory scheme, "it is axiomatic that the language of a provision is not interpreted in isolation." *Anderson*, 404 Md. at 572. Instead, courts "analyze the statutory scheme as a whole considering the purpose, aim, or policy of the enacting body and attempt to harmonize provisions dealing with the same subject so that each may be given effect." *Id.* (internal quotation marks omitted). *See also Koste v. Oxford*, 431 Md. 14, 26 (2013) ("We presume that the Legislature intends its enactments to operate together as a consistent and harmonious body of law, and, thus, we seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the statute's object and scope.").

Furthermore, courts "seek to avoid constructions that are illogical, unreasonable, or inconsistent with common sense." *Frost v. State*, 336 Md. 125, 137 (1994). In doing so, a court must interpret a statute as a whole, so that "no word, clause, sentence, or phrase is rendered

surplusage, superfluous, meaningless or nugatory.” *In re Adoption/Guardianship of Tracy K.*, 2013 WL 4491576 (Md. 2013). When a statute expressly sets forth exceptions, those exceptions must be strictly construed. *BAA, PLC v. Acacia Mut. Life Ins. Co.*, 400 Md. 136, 152 (2007). A court may not insert exceptions not made by the legislature. *Arthur E. Selnick Associates, Inc. v. Howard Cnty. Md.*, 206 Md. App. 667, 694, *cert. denied*, 429 Md. 529 (2012). *See also Selig v. State Highway Administration*, 383 Md. 655, 672 (2004) (“When the legislature has expressly enumerated certain exceptions to a principle, courts . . . should be reluctant thereafter to create additional exceptions.”); *O’Connor v. Baltimore County*, 382 Md. 102, 113 (2004) (“We will not . . . insert language to impose exceptions . . . not set forth by the legislature.”).

Similarly, “statutes are presumed not to make any alterations or innovations in the common law further than is expressly declared.” *Nickens v. Mount Vernon Realty Grp., LLC*, 429 Md. 53, 73-74 (2012). *See also Zetty v. Piatt*, 365 Md. 141, 153 (2001) (noting that “absent a clear indication to the contrary, we shall assume that the rule was not intended to amend, nullify, or supersede the common law”). The rules of the common law are “not to be changed by doubtful implication, nor overturned except by clear and unambiguous language.” *Lutz v. State*, 167 Md. 12, 12 (1934). In order for a statute to abolish a right available through the common law, “the statutory language must indicate an express abrogation or an abrogation by implication by adoption of a statutory scheme that is so clearly contrary to the common law right that the two cannot occupy the same space.” *Nickens*, 429 Md. at 74 (citing *Selig v. State Highway Admin.*, 383 Md. 655, 677 (2004)). A statute will abrogate common law rights existing at the date of its enactment if it clearly appears that the common law rights are “repugnant to [the statute]” and that “their survival would in effect deprive [the statute] of its efficacy and render its provisions nugatory.” *Lutz*, 167 Md. at 12. The Court’s goal is to “harmonize, as much as possible, the

statute with the common law.” *Nickens*, 429 Md. at 74. *See also Fisher v. E. Corr. Inst.*, 425 Md. 699, 710 (2012) (“[V]arious statutory provisions covering the same subject matter are to be construed, if at all possible, so that together the sections harmonize with one another and no section is rendered nonsensical or nugatory.”).

IV. ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT DOCTRINE

The attorney-client privilege, the oldest privilege protecting confidential communications, is a rule of evidence “that forever bars disclosure, without the consent of the client, of all communications that pass in confidence between the client and his attorney during the course of professional employment or as an incident of professional intercourse between them.” *State v. Pratt*, 284 Md. 516, 521 (1979); *Harrison v. State*, 276 Md. 122, 133-34 (1975). The privilege is not only “deeply rooted in common law,” but also statutorily memorialized in Maryland. *Pratt*, 284 Md. at 519; MD. CODE ANN., CTS. & JUD. PROC. § 9-108 (“A person may not be compelled to testify in violation of the attorney-client privilege.”). The privilege is designed to encourage individuals needing legal advice to disclose information freely without fear that such facts will be made public. *Levitsky v. Prince George’s Cnty.*, 50 Md. App. 484, 491 (1982).

Whether a particular communication or item of information is privileged is a matter for the court to determine after considering the circumstances under which the information was gained. *Harrison*, 276 Md. at 136 (“The threshold question of the existence of the privilege must be determined without first requiring disclosure of the communication.”). The burden of persuasion rests with the party asserting the privilege. *Maxima Corp. v. 6933 Arlington Dev. Ltd. P’ship*, 100 Md. App. 441, 456 (1994). However, “[a] blanket assertion is generally extremely disfavored.” *Id.* Instead, the privilege must ordinarily be raised as to each record so that the

court can rule with specificity. *Id.* at 457. An in camera inspection may be conducted to inspect alleged confidential communications to determine whether the privilege applies. *Id.*

Given that the attorney-client privilege has the effect of concealing relevant information from the fact-finder, “it is applied only when necessary to achieve its limited purpose of encouraging full and frank disclosure by the client to his or her attorney.” *Id.* at 455-56. The privilege does not extend so far as to protect information that does not disclose the nature of the legal advice or services sought; for example, a client’s payment of his attorney’s fees is generally unprivileged. *Id.* at 455. The Court of Special Appeals illustrated this point:

[T]he identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege. However, correspondence, bills, ledgers, statements, and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of the law, fall within the privilege.

Id. at 457. The *Maxima* Court further noted that “a finding that information in attorneys’ bills is within the attorney-client privilege is the exception.” *Id.* at 457-58.

Furthermore, communications not shielded by the attorney-client privilege may nonetheless find shelter in the work product doctrine. *See E.I. du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396 (1998). The work product doctrine protects from discovery the work of an attorney done in anticipation of litigation or in readiness for trial. *Id.* at 407. A party generally may not obtain such work without demonstrating a substantial need for it and an inability to obtain its substantial equivalent by other means without undue hardship. Md. Rule 2-402(d). Again, the party who asserts the doctrine, in resistance of his opponent’s discovery request, bears the burden of proving that the materials sought were prepared in anticipation of litigation or readiness for trial. *E.I. du Pont*, 351 Md. at 406.

Only the holder of a privilege has the ability to waive it. *Smith v. State*, 394 Md. 184, 201 (2006). The attorney-client privilege is held by the client while the work product doctrine is “historically and traditionally a privilege of the attorney and not that of the client.” *E.I. du Pont*, 351 Md. at 406. The Court of Appeals has defined “waiver” as “the intentional relinquishment of a known right,” and determined that “intrinsic to the definition of waiver is the recognition that the client must be informed of both the scope and nature of the right being relinquished as well as the consequences of so doing.” *Id.* (quoting *Harrison*, 276 Md. at 138). In contrast,

A disclosure of a communication or information covered by the attorney-client privilege or work product protection does not operate as a waiver if the holder of the privilege or work product protection (A) made the disclosure inadvertently, (B) took reasonable precautions to prevent disclosure, and (C) took reasonably prompt measures to rectify the error once the holder knew or should have known of the disclosure.

Md. Rule 2-402(e)(3).

V. ANALYSIS

Section 11-116 allows Plaintiff to inspect and copy the e-mails requested by him concerning the financial well being of Harborview. The language of Section 11-116 indicates that “books and records” under that section relate to financial information, as it makes reference to “accounting practices” and “audits.” MD. CODE ANN., REAL PROP. § 11-116(a)-(b). The Defendants do not dispute this interpretation. Indeed, Cochran produced these e-mails to Plaintiff. Cochran uncontrovertedly described his process of sifting through thousands of e-mails and supplying all of those fitting the description of Plaintiff’s request.

Plaintiff is additionally entitled to inspect and copy the detailed billing reports or supporting documentation for Harborview’s legal invoices concerning him, his family, and his unit. Although Defendants have asserted the attorney-client privilege and work product doctrine with respect to this information, they have not demonstrated the applicability of either of these.

Defendants' blanket assertion is insufficient to overcome the presumption that information contained in detailed billing reports is generally unprotected. *Maxima*, 100 Md. App. at 457.

The parties agree that Defendants have in their possession written advice of Harborview's legal counsel related to Plaintiff, his family, and his unit. The issue is whether the legal advice shall be disclosed pursuant to Section 11-116. This Court recognizes that, pursuant to Section 11-116(c)(3), Plaintiff is unambiguously granted the right to inspect the written advice of Harborview's legal counsel if he, his family, and his unit are the subject of that information. MD. CODE ANN., REAL PROP. § 11-116(c). Notwithstanding that statutory language, Plaintiff may only obtain such information if the statute clearly abrogated the common law privilege and doctrine. Section 11-116 does not amend, nullify, or supersede common law rights unless there is a clear indication, either expressly or impliedly, to the contrary. *Nickens*, 429 Md. at 73-74; *Zetty*, 365 Md. at 153.

The language of Section 11-116 displays no express abrogation of the above-described common law privilege and doctrine. *Nickens*, 429 Md. at 73-74. Section 11-124 of the Act is instructive:

Neither the rule of law known as the Rule Against Perpetuities nor the rule of law known as the Rule Restricting Unreasonable Restraints on Alienation may be applied to defeat or invalidate any provision of this title or of any declaration, bylaws, or other instrument made pursuant to the provisions of this title.

MD. CODE ANN., REAL PROP. § 11-124(a). As the Rule Against Perpetuities and the Rule Restricting Unreasonable Restraints on Alienation are both common law rules, Section 11-124 plainly depicts the way in which the Legislature may (and did) amend, nullify, or supersede common law rights. *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877, 887 (2007); *The Arundel Corp. v. Marie*, 383 Md. 489, 496 (2004).

Further, Section 11-116 does not impliedly abrogate the common law privilege and doctrine. Neither is the language of Section 11-116 “so clearly contrary” to them that they “cannot occupy the same space” nor would the existence of the privilege and doctrine have the effect of “depriving the statute’s efficacy and rendering its provisions nugatory.” *Nickens*, 429 Md. at 74; *Lutz*, 167 Md. at 12. Accordingly, Section 11-116 is read as being in harmony with the common law privilege and doctrine: it allows a unit owner who is the subject of the written advice of the condominium’s legal counsel to inspect that information, provided that it is not protected by the common law attorney-client privilege or the work product doctrine. *Lutz*, 167 Md. at 12; MD. CODE ANN., REAL PROP. § 11-116(c). Both parties having admitted that the attorney-client privilege is applicable to the written advice of legal counsel, the Council may conceal this information. Plaintiff is precluded from accessing the written advice of Harborview’s legal counsel.

Moreover, Plaintiff affirms that Defendants waived the privilege through disclosure made by an off-site manager of Defendant Zalco to Ancel. The Maryland Rules make clear that such a disclosure does not constitute a waiver. Md. Rule 2-402(e)(3). *See also* McLain, Maryland Evidence § 503:15 (“[A]n inadvertent disclosure does not reflect an intention to forfeit confidentiality.”).

VI. CONCLUSION

For the foregoing reasons, Plaintiff’s prayer for injunctions and specific performance with respect to inspecting and copying the detailed billing reports or supporting documentation for Harborview’s legal invoices concerning him, his family, and his unit is **GRANTED**.

Defendants are enjoined from refusing, and required to comply with, Plaintiff’s request for this

information. Accordingly, Defendants' proposal for declaratory judgment that Section 11-116 does not compel them to make this information available to Plaintiff is **DENIED**.

In light of the fact that all e-mails between Defendants concerning the financial well being of Harborview have been delivered to Plaintiff, his application for injunctions and specific performance regarding those documents is **DENIED**. This Court notes, however, that Defendants are enjoined from refusing, and required to comply with, any future request by Plaintiff for e-mails concerning the financial well being of Harborview.

Furthermore, Plaintiff's demand for the written advice of legal counsel concerning him, his family, and his unit is **DENIED**. Section 11-116 does not invalidate the common law attorney-client privilege and work product doctrine, which safeguard this material from public view. Defendants' submission for declaratory judgment that they are not obligated under Section 11-116 to distribute this written legal advice is **GRANTED**.

IT IS SO ORDERED, this ____ day of October, 2013.

Judge Audrey J.S. Carrión
Case No.: 24-C-13-000322

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