Circuit Court for Prince George's County
Case No.: CAE 15-25458

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 038

September Term, 2017

PRESIDENTIAL TOWERS
CONDOMINIUMS, INC.

v.

TODD GORDON, et al.

Meredith,
Nazarian,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: February 12, 2018

Following a series of drain backups at a condominium unit they owned, Todd Gordon and Mark Gordon, appellees, made demand on Presidential Towers Condominium, Inc. ("Presidential"), appellant, to remedy the problem and repair damage in the unit because the Gordons contended that the source of the water problem was a blockage in a common element. Eventually, the Gordons made the repairs to the damages caused by the backups, and then filed suit against Presidential to recover their damages. At the conclusion of a bench trial in the Circuit Court for Prince George's County, judgment was entered in favor of the Gordons against Presidential for damages in the amount of $5,946.47. The court also awarded the Gordons attorney's fees of $7,500.00.

Presidential presents six questions for our review, which we have distilled as follows:[1]

[1] In its brief, Presidential phrased its questions as follows:

(a) Whether the Judge erred in not dismissing the case for failure to state a claim.
(b) Whether the appellee [sic] met their burden of proof in showing that the damage to their unit was caused by failure of the appellant defendant to maintain common areas.
(c) Whether the damage to appellee's [sic] unit was caused by leaks for which the appellant was responsible for [sic].
(d) Whether the evidence presented supports the appellee's [sic] position that all instances of damage to Unit 116 resulted from leaks.
(e) Whether the Judge erred in awarding attorney fees to the appellee [sic] contrary to the Bylaws.
(f) Whether the appellant is responsible for all leaks in each individual condominium unit.

1. Did the trial court properly enter judgment in favor of the Gordons for compensatory damages?

2. Did the trial court err in awarding attorney's fees?

For the reasons we explain below, we answer the first question in the affirmative, and affirm the judgment as to compensatory damages, but we vacate the award of attorney's fees because it was not authorized by contract or statute.

FACTS AND PROCEDURAL HISTORY

At trial, the evidence revealed the following. Todd Gordon, a Florida-based commercial real-estate broker, purchased Unit 116 in Presidential Towers Condominium with his two brothers, Jeff and Mark Gordon, in 1989. In 2004, a deed was recorded that resulted in Jeff Gordon transferring his interest in the condominium to Todd, and vesting a 2/3 ownership in Todd and a 1/3 interest in his brother Mark, as tenants in common. The Gordons did not reside in the unit, but rented it to tenants, with Todd taking on primary duties of dealing with the tenants and Presidential. At the times relevant here, the Gordons' tenant was Whitney Holsey.[2] Ms. Holsey moved into Unit 116 in March 2014, and, at the time of trial, resided there with her two children, ages 5 and 9.

Unit 116 is one of 510 units in the twenty-story building, and is located on the ground floor.

[2] In the record, Ms. Holsey's surname is also sometimes spelled "Hallsey," but "Holsey" appears to be correct as it is part of her e-mail address in the e-mail chains among Ms. Holsey, appellee, and building management that were introduced into evidence at trial.

At trial, the Gordons entered into evidence as Exhibits 1 and 2 the condominium's Declaration and Bylaws, respectively. These documents established that the "Common Elements" included "[a]ll pumps, pipes, ducts, wires, cables, conduits and other apparatus relating to the water distribution . . . sewer . . . and plumbing systems located outside of Units," and that the Board of Directors was responsible for maintaining and repairing common elements. Section 5 of Article V of the Bylaws, titled "Maintenance and Repair," provides in pertinent part:

> (a) By the Board of Directors. The Board of Directors shall be responsible for the maintenance, repair, and replacement of the general common elements (for purposes of this paragraph, air-handling units including, however not be [sic] limited to the filter, the duct, the condensate line, the fan, the fan motor and coil, shall be deemed a general common element), the cost of which shall be charged to all Unit Owners as a Common expense.
>
> (1) Except as otherwise provided in Paragraph (b) all of the Common Elements, whether located inside or outside of the Units; and
>
> (2) Except as otherwise provided in Paragraph (b)(2) below [related to maintenance of balconies and terraces], all repairs in, to, or with respect to the balcony or terrace adjacent to a Unit and to which such Unit has sole access through the interior of the Unit; and
>
> (3) All incidental damage caused to any Unit by such work as may be done or caused to be done by the Board of Directors in accordance with the provisions of these Bylaws.
>
> (b) By the Unit Owners
>
> (1) Except for the portions of his Unit required to be maintained, repaired, or replaced by the Board of Directors, each Unit Owner shall be responsible for the maintenance, repair, and replacement, at his own expense, of the following: any

> interior walls, ceilings and floors; kitchen and bathroom fixtures and equipment; lighting fixtures; and those parts of the plumbing and electrical system which are wholly contained within his Unit and serve his Unit and no other.

Todd Gordon testified at trial in support of the Gordons' claim for reimbursement for the damages incurred as a result of water-incursion episodes in December 2014, March 2015, June 2015, and May 2016.[3] Todd Gordon testified that he reported every incident of flooding to Presidential's building management personnel, and the Gordons introduced a series of e-mail "strings," consisting of correspondence among himself, his tenant, and building management personnel, to support this testimony.

Plaintiff's Exhibit 5 was an e-mail string beginning on December 10, 2014, and included an e-mail from Todd Gordon to Kasia Natale, the building's general manager, reporting that Ms. Holsey had "advised [Mr. Gordon] that the unit has water damage that has occurred from a unit above," and asking that the building personnel "please check into this[.]" Ms. Natale responded a short time later, by sending Mr. Gordon a copy of her e-mail addressed to Safiatou Amadou-Daouda, the building's assistant general manager, in which she directed Amadou-Daouda to "create a work order for unit #116 so we can check for the leak and potential damage." Amadou-Daouda replied a few hours later that the work order had been done, and that "maintenance will get back to us with the full assessment."

[3] Mark Gordon did not appear at trial, and all further references in this opinion to "Mr. Gordon" relate to Todd Gordon.

Plaintiff's Exhibit 6 was the continuation of the e-mail string from Exhibit 5. Exhibit 6 included a December 13, 2014, e-mail from Mr. Gordon to Natale, advising: "Whitney [Holsey] has reported more leaks tonight. We need immediate resolution, please contact her and correct the problem and repair my property damage please. I look forward to an update Monday [December 15]." On December 14, Natale sent an e-mail to Mr. Gordon to report that "**maintenance was in the unit yesterday. They found the leak coming from the 5th floor. We will follow up with repairs**." (Emphasis added.)

Building management did not, however, promptly "follow up with repairs." Plaintiff's Exhibit 7 contained a January 8, 2015, e-mail from Mr. Gordon to Natale, asking about the status of repairs to his unit. Natale replied that building personnel were waiting for Ms. Holsey to give them access to the unit. Exhibit 7 also contained a March 6, 2015, e-mail from Mr. Gordon to Natale and Amadou-Daouda, informing them that "Unit 116 has been damaged for the third time since December 2014 and no repairs or remediation [has] been completed by [Presidential] to the Apartment. This is unacceptable, what will [Presidential] do to correct this problem?" On March 10, 2015, Natale responded, writing:

> "We sincerely apologize. We would like you to confirm that you were able to speak to Sophia and Dennis (maintenance tech) on Friday, March 6, 2014 [sic-2015]. Dennis explained [to] you what was the issue and talk[ed] to you about **the preventative maintenance schedule they have for the pipe in order to avoid any reoccurrence**."

(Emphasis added.)

Plaintiff's Exhibit 8 contained a March 10, 2015, e-mail from Mr. Gordon to Natale, in response to her e-mail of earlier that date in which she confirmed with Mr. Gordon that he had spoken to Dennis Warner, who had told Mr. Gordon what the problem was and that there would be a preventative maintenance schedule put in place to avoid any recurrence. Mr. Gordon wrote:

> I did have a chance to speak to Sophia and Dennis on Friday and I appreciate that if you snake the line (preventive maintenance) that this will minimize the like[li]hood of this occurring again.
>
> That is very nice, however I have property damage as a result of the HOA not taking preventive maintenance action in the past.
>
> I want my property restored to the condition it was in prior to the three water leaks that have occurred since December 2014.
>
> I want the carpet replaced, the walls skimmed and painted as well as any other damage.
>
> I should not have to suffer financially as a result of an outdated building and plumbing system.
>
> When will you have someone assess the damage? Should I hire a third party to evaluate my losses and seek reimbursement from the HOA[?]

At trial, Mr. Gordon testified about a conversation he had had with Dennis Warner, the maintenance technician:

> [BY TODD GORDON]: [Dennis Warner said] [t]hat the water damage being sustained in my unit is due to a pipe that needs regular maintenance and if there is a preventive maintenance program put in place, then the overflowing pipe or the pipe will not overflow and then create damage into my unit and **that they would take the necessary steps to have [the] pipes maintained so I would stop receiving property damage.**

(Emphasis added.)

Mr. Gordon further testified that the "preventive maintenance program" Presidential told him it would be implementing to prevent further flooding was to snake the pipes on a quarterly basis. Mr. Gordon repeated, on cross-examination, that he was told by Presidential's representatives that his recurrent floods were coming from a sewer/wastewater line that ran the height of the building, and that the floods would be curtailed if the pipe was regularly snaked:

> [BY APPELLANT'S COUNSEL]: When you were told that water was leaking into your unit, you did not personally identify . . . where the leak came from.
>
> [BY TODD GORDON]: No.
>
> Q. What makes you think it is the responsibility of [Presidential] for every water leak in your unit?
>
> A. It's outside my four walls, sir, and going back to 2015[,] I was advised by the maintenance staff that if a regular program were in place and they were to snake the sewage lines in the building then they wouldn't be backing up causing damage to my unit.
>
> Q. Okay. What do you understand to be the sewage line in your building?
>
> A. A pipe that goes through the building that disposes of sewage.
>
> Q. How did you know that it was the failure to snake out the sewage line that was responsible for —
>
> A. Being advised by staff. That's it.
>
> Q. And they told you on the phone?
>
> A. In 2015, yes.
>
> Q. Okay. But for 2016 the damage specifically that happened in 2016 —

A. It's the same damage, sir. It's the same type of damage.

He reiterated the point later on cross-examination, testifying that the maintenance technician "explained to me what the, why the water was running into the unit. That the pipes were backing up because . . . they were not being regularly cleaned through and flushed through."

None of the e-mails introduced into evidence reflected that Presidential ever informed Mr. Gordon that it would not be making the repairs. Plaintiff's Exhibit 9 contained a March 16, 2015, e-mail from Ms. Holsey requesting that something be done about replacing her wet carpet, and an e-mail from Mr. Gordon to Amadou-Daouda, asking when the carpet would be replaced. There appears to have been no response. Mr. Gordon e-mailed Amadou-Daouda on March 19, 2015, writing the following:

> Presidential Towers:
>
> > Earlier today you visited Unit 116 to inspect the damages that have occurred from the most recent water leak. The damages as a result of the two prior leaks remain unrepaired.
> >
> > Per Whitney Holsey you have not agreed to restore the unit to its condition prior to past several water leaks.
> >
> > [These quotation marks appear in the e-mail:] "maintenance came to look at the apartment today they didn't see mold and wouldn't change the carpet out, and patch work on the walls. This is un[acc]eptable and I will not stand for the lack of accurate inspection of the carpet. My children and I are having health issues and I will take action if I have to."
> >
> > Please note she has removed sections of the carpet only to find the padding wet and mold growing in addition to mold forming from wet drywall.

> If the association[] does not take correct[ive] matters and replace the carpet/padding, skim and paint the walls immediately, I will make the repairs and sue the association for damages.
>
> I am tired of having to request that the association be responsible for damages to my property and no corrective action is taken by the association.
>
> I do not mean this as a threat, I will not continue to suffer property loss due to outdated building systems.
>
> I expect an immediate reply with a timeframe for repairs.

Amadou-Daouda responded on March 20:

> I was part of the crew that went to your unit #116 to assess the issue. The purpose of our visit was to check the area of the carpet [that] needs to be replaced or cleaned, and also the affected area of the wall.
>
> I was going to get back with you today, after the maintenance confirmed the date the[y] were going to do the work . . . Maintenance will do the patching and the painting on 3/23/15. A contractor will be in your unit on Monday to give us a price on replacing the carpet.

On March 24, 2015, Mr. Gordon e-mailed Amadou-Daouda to report another active leak. This e-mail was included in Plaintiff's Exhibit 10, which also contained a reply from Amadou-Daouda on March 25, stating that Amadou-Daouda would call Mr. Gordon around 11 a.m. and was "waiting on the contractor for the price quote to replace your carpet."

Mr. Gordon testified that he had engaged an expert to perform a mold inspection on or around March 24, 2015, because Ms. Holsey was concerned about her children suffering respiratory problems due to mold growth following the repeated instances of flooding. The inspector, Werner Kanitz, testified as an expert witness at trial, and his

report was introduced as Plaintiff's Exhibit 29. Mr. Kanitz's report and testimony reflected that, as of March 24, 2015, there was an active leak coming through the kitchen ceiling, a high level of moisture (above 35%) at the kitchen top wall "due [to] active leak from plumbing systems behind the wall," and that the living room carpet was wet and had visible mold on it. He recommended, *inter alia*, that the carpet be deep cleaned and/or replaced, and that building management be contacted so it could "take care of the plumbing problems observed[.]" Mr. Kanitz's mold inspection report was attached to a March 25, 2015, e-mail from Mr. Gordon to Amadou-Daouda, in which Mr. Gordon demanded, again, that the repairs be made and that Mr. Kanitz's recommendations be carried out.

Although Presidential performed the preventative maintenance of snaking the pipe, it did not repair the damages in Unit 116. Mr. Gordon noted in a May 4, 2015, e-mail to Amadou-Daouda: "More than one month has past [sic] and you have not corrected the damage to my property. Both Ms. Holsey and myself have lost patience, I will be turning this matter over to legal and seeking reimbursement for damages."

On the afternoon of June 8, 2015, Mr. Gordon sent an e-mail to Amadou-Daouda to advise, in part: "Presidential Towers: As you may or may not be aware the repairs have been completed at the unit as a result of the repeated water damage. I will be compiling the invoice and submitting for reimbursement this week."

But, later that same day, new leaks were observed in Unit 116. Plaintiff's Exhibit 12 included an e-mail from Mr. Gordon advising Presidential of the water problem:

> All:
>
> Ms. Whitney Holsey has reported active leaks yet again this evening.
>
> After repairing the walls, painting and replacing the carpet it is occurring again.
>
> I ask you WHAT ARE YOU GOING TO DO TO CORRECT THIS PROBLEM?
>
> I am at my wit's end. I have called [Amadou-Daouda] at least three times last week. No return call.
>
> This is WRONG, WRONG, the condo association has an obligation to keep the building in good order.
>
> Based on the ongoing leaking activity since December 2014 I would say the building is not being operated in good order.
>
> I will therefore take legal action.

The next day, June 9, 2015, Mr. Gordon e-mailed Presidential, attaching an "invoice for the replacement of the carpet and repairs of the walls as a result of the multiple leaks that have occurred since December 2014," demanding appellant remit $2,246.47 for his property damage within ten days.

Presidential never reimbursed the Gordons for the expenses they incurred in repairing the damage to their unit as a result of the floods. On August 22, 2015, the Gordons filed a two-count complaint against Presidential in the Circuit Court for Prince George's County, asserting that Presidential had breached its duty under the Bylaws to maintain the common elements of the condominium. In Count I, the Gordons requested an order directing Presidential to "immediately take those actions necessary to correct the common areas of the condominium so as to stop the leakage into the [the Gordons']

Property," and an order "directing that [Presidential] repair and maintain the common areas of the condominium," along with attorneys' fees and costs. In Count II, the Gordons requested an award of $10,000 in compensatory damages resulting from Presidential's breach of the Bylaws. The original complaint was superseded by a First Amended Complaint, filed on June 28, 2016. The counts and relief requested were generally the same, except that the amended complaint sought $20,000 in compensatory damages because there had been yet another flood in May 2016.

As we noted above, the Gordons introduced a variety of exhibits at the trial, including e-mail strings representing Todd Gordon's correspondence with Presidential's representatives regarding the water problems, and bills he incurred to repair the damage. Other support for the Gordons' case included the testimony at trial of Whitney Holsey, who testified that she had been the Gordons' tenant since March 2014. Ms. Holsey testified that there had been a flood in July 2014, when "funky-smelling" "black" water bubbled up from the kitchen sink drain, and black water ran down the kitchen and living-room walls. The black water overflowed out of the kitchen sink, joined the flow of water running down the walls, and seeped into the living room carpet. The flood damaged the carpet, which was eventually replaced, and some furniture, which was not.

Ms. Holsey testified that there were two floods in December 2014, both emanating from the kitchen sink. Again, the overflows were preceded by a gurgling sound and accompanied by water running down the walls in the kitchen and living room, resulting in a flood 1-2" deep on the floor. The water was dark and, in the instance of the second

flood, dark and soapy. The two December 2014 floods damaged the carpet. Ms. Holsey also testified that there had been a flood in March 2015, this one seeming to emanate from the lower part of the wall, in addition to gurgling out of the kitchen sink as before.

Ms. Holsey testified that the same pattern occurred three more times, with another flood in June 2015 and two floods in May 2016. The water coming from the sink "is always black" and preceded by a gurgling sound, and the floods caused damage to the carpet, walls, and furniture. The floods necessitated two mold inspections by Werner Kanitz, in March 2015 and June 2016, both of which detected the presence of mold. Both of Mr. Kanitz's mold inspection reports were admitted as exhibits at trial. The Gordons also introduced a series of color photographs depicting the flood damage, including water ponding on the floor and a sink full of black water.

Presidential's witnesses were Mr. Amadou-Daouda (who had been the general manager since March 2015 and had been the assistant general manager before that) and Tony Bhola (the Chief Engineer for the condominium building). Mr. Amadou-Daouda admitted that the March 2015 flood was Presidential's responsibility, and that Presidential never paid for the Gordons' damages, as the following colloquy illustrates:

> [BY PRESIDENTIAL'S COUNSEL]: What was your determination after the investigation of the damage of March, for which the [Gordons are] claiming in court?
>
> [BY THE WITNESS]: Yes, per the assessment it states the rise, the drain to the main riser is clogged and then causes, I mean caused the damages.
>
> Q. Okay. And whose responsibility was that?

A. Per the work order [prepared by Presidential's maintenance staff] it says Presidential Towers.

Q. Okay. And what did you do when you discovered that that was the responsibility of Presidential Towers?

A. Yes, we snaked the drain.

Q. Okay.

A. To stop the leak.

Q. And after you snaked the drain, was there any other things you were supposed to do to the damage to remedy it?

A. Yes. Fix, fixing the wall and replacing the carpet.

* * *

Q. Now did you ever send a check to the plaintiff in this case?

A. No.

Q. Before he filed this suit?

A. No.

Q. Okay. But you were going to send him a check for payment?

A. Yes.

Although Presidential admitted its responsibility for the March 2015 flood, it disputed that it was responsible for the floods in December 2014, June 2015, or May 2016. Rather, it introduced into evidence a variety of work orders showing other reasons that maintenance was dispatched to Unit 116, and argued that these other issues caused the flooding in the Unit. Alternatively, Presidential argued that the Gordons could not definitively confirm that the floods, other than the one in March 2015, were due to a

blockage in the common area, even though Ms. Holsey testified that all of the floods were essentially the same as the March 2015 flood.

The trial court found in favor of the Gordons, noting that the overwhelming evidence was that there had been a repeated blockage in the riser pipe, which was unquestionably part of the common elements and was Presidential's responsibility pursuant to the Bylaws. The court noted that Presidential had acknowledged its responsibility for the March 2015 flood, and the evidence was persuasive that the same pipe was also the cause of the similar floods that occurred in December 2014, June 2015, and May 2016. The court entered judgment in favor of the Gordons in the amount of $5,946.47, which consisted of: 1) $2,246.47 for the March 2015 flood; 2) $3,450 for the repairs necessitated by the May 2016 floods, which amount was supported by Plaintiff's Exhibit 22; and 3) $250 for the second mold inspection by Werner Kanitz in June 2016. Additionally, the court awarded the Gordons $7,500 in attorneys' fees. The court noted that the provision in the condominium documents relative to attorneys' fees "appears to be a one-sided attorney's fees provision" that permitted the prevailing party to recover attorney's fees if the association alleged a default by a unit owner, but made no provision for attorney's fees in a proceeding alleging a default by the association. The court indicated that it would award the Gordons attorney's fees in this instance because "my main theory of attorney's fees is that, that attorney's fees provisions should not be one-sided."

This appeal followed.

STANDARD OF REVIEW

Maryland Rule 8-131(c) provides:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

"In addition, we must consider the evidence in the light most favorable to the prevailing party, and decide not whether the trial judge's conclusions of fact were correct, but only whether they were supported by a preponderance of the evidence." *Urban Site Venture II Ltd. P'ship v. Levering Assocs. Ltd. P'ship*, 340 Md. 223, 230 (1995) (internal citations omitted.) "It is not our role as an appellate court to re-evaluate or re-weigh the testimony and other evidence presented at trial and substitute our judgment for that of the trial court." *Deyesu v. Donhauser*, 156 Md. App. 124, 136 (2004).

DISCUSSION

I. Sufficiency of the evidence[4]

Presidential states in its brief: "The Appellees are required to show and prove the source of each incident separately. The appellees did not show that each incident of leaks was caused by something [Presidential] is responsible for." But there was ample testimony and documentary evidence to support the trial court's finding that the source of the water damage that occurred in Unit 116 was a clog in the "riser" pipe inside the wall between Unit 116 and the adjacent unit. It was not "clearly erroneous" for the trial judge to conclude that this was a common element for which Presidential is responsible.

The evidence excerpted above permitted the trial court to draw certain reasonable inferences leading to its conclusion. For instance, the March 2015 flood was, Presidential

[4] As a preliminary matter, we note that Presidential complains that the "trial court erred in not dismissing the case for failure to state a claim," arguing that the complaint failed to comply with Rules 2-305, 2-304(c), and 2-303(b). On April 29, 2016, Presidential filed a motion to dismiss the Gordons' initial complaint for failure to state a claim. The court denied the motion without a hearing in an order issued on June 16, 2016. Thereafter, on June 28, 2016, the Gordons filed a First Amended Complaint, changing the relief requested in Count I from a declaratory judgment to an injunction, and raising the *ad damnum* amount from $10,000 to $20,000. Presidential never filed a motion to dismiss the First Amended Complaint. "For pleading purposes, an amended complaint that does not incorporate or otherwise reference a prior complaint supersedes prior complaints and becomes the operative complaint." *Shapiro v. Sherwood*, 254 Md. 235, 239 (1969). No argument regarding the sufficiency of the First Amended Complaint was made. Furthermore, Presidential has included in its brief no argument that it was prejudiced by the alleged inadequacies in the complaint, and any error in the court's failure to require greater specificity was, at most, harmless error.

admitted, caused by a blockage in a riser located in a common area for which Presidential was responsible.[5]

[5] Presidential conceded at trial on several occasions that it was responsible for paying the damages of $2,246.47 that resulted from the March 2015 flood. For instance, Amadou-Daouda testified at trial that maintenance staff determined that "the drain to the main riser is clogged and . . . caused the damages." Tony Bhola, Presidential's Chief Building Engineer, testified that his investigation of the March 2015 leak revealed "that [Presidential] was responsible for the damage." Finally, during Presidential's counsel's closing argument, the following colloquy occurred:

> [THE COURT]: [Presidential] admitted they're responsible for [the March 2015 flood damage]. Their documents contain evidence as to the source of it. They acknowledge that they're responsible for repairs and no payments were made and no repairs were done.
>
> [COUNSEL FOR APPELLANT]: Okay. Your Honor, if I may just address that? Even in court today, the defendant admitted in the presence throughout the proceedings that that was their fault. Your Honor, the witness for the defendant explained —
>
> THE COURT: So right now I have to, based on what you said, award the $2,600, wait a second, was it $2,446 —
>
> [COUNSEL FOR APPELLANT]: $2,246.
>
> THE COURT: — and $0.47.
>
> [COUNSEL FOR APPELLANT]: Yes.
>
> THE COURT: So right now based on what you say, I have to award that, is that right?
>
> [COUNSEL FOR APPELLANT]: Your Honor, if the Court awards that, as we said before, in fact, Your Honor, we apply the same amount, so we have not disputed that and however —
>
> THE COURT: Okay.

continued…

The March 2015 flood was described by the eyewitness, Ms. Holsey, in identical terms as the December 2014, June 2015, and May 2016 floods – their appearance, smell, point of origin, and consequences were all the same. Although Presidential urged the trial court to find that a malfunctioning garbage disposal and a toilet in Unit 116 were possible sources of floods in May 2014, according to work orders Presidential introduced into evidence, the trial court was unpersuaded by Presidential's argument that the garbage disposal or a toilet flapper could cause black water to leak from the ceiling of Unit 116.

Presidential itself introduced other work orders indicating that Presidential's maintenance staff had concluded, at various times, that the riser pipe (a common element) was clogged, was causing the leaks, and needed to be snaked. Defendant's Exhibit 15 was a work order dated 4/9/15, regarding a "leak in kitchen from the wall & the ceiling" of Unit 116 on April 9, 2015. The work order provided: "Went into unit 116 did not see any water coming down in kitchen. Told tenant to call someone when ever see any water

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continued…

[COUNSEL FOR APPELLANT]: — what I wanted to call —

THE COURT: **So we'll take that out and I'm going to make a note that I'm to award that amount at a minimum**.

[COUNSEL FOR APPELLANT]: **Okay**.

(Emphasis added)

That portion of the compensatory damages award is beyond review because it was conceded by Presidential that there was sufficient evidence to support liability for that flood, which testimony indicated occurred in the same manner as the other floods.

co[ming] down at that time again." In a different hand, someone wrote beneath that: "Leak was coming from kitchen main drain in Unit 220 repair is now fixed."[6] Defendant's Exhibit 16 was a work order dated 4/12/15, noting that Unit 116 had "Kitchen ceiling leaking." On the work order was written: "Riser pipe leaking. Repair riser pipe." Defendant's Exhibit 17 was a work order dated 11/9/15, reflecting: "The kitchen line caused the kitchen sink in Units 120 and 116 to become backed up and flood the units. The flooding reached to the T-level store (B-2)." On the work order was written: "Snake drain, riser drain. Mop up water."

In other words, it was not clearly erroneous for the trial court to find, based on the evidence before it, that Presidential's failure to maintain the riser — an element in the common area — caused the flooding and led to the damages suffered by the Gordons.

II. Attorney's Fees

Presidential also argues that the trial court erred in awarding appellee $7,500 in attorneys' fees. Pointing specifically to Art. XI, § 1(c) of the Bylaws, Presidential asserts that there is no basis for an award of attorney's fees in a suit filed against the association by a unit owner. That provision of the Bylaws states: "Costs and Attorneys' Fees. In any proceeding arising out of any alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the court."

[6] Presidential never disputed that the handwriting on the work orders it introduced into evidence was all handwriting of its agents or employees.

As we said in *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 456-57 (2008):

> "Maryland generally adheres to the common law, or American rule, that each party to a case is responsible for the fees of its own attorneys, regardless of the outcome." *Friolo v. Frankel*, 403 Md. 443, 456, 942 A.2d 1242 (2008). A trial court may award attorney's fees if "(1) the parties to a contract have an agreement to that effect, (2) there is a statute that allows the imposition of such fees, (3) the wrongful conduct of a defendant forces a plaintiff into litigation with a third party, or (4) a plaintiff is forced to defend against a malicious prosecution." *Nova Research, Inc. v. Penske Truck 457 Leasing Co.*, 405 Md. 435, 445, 952 A.2d 275 (2008) (quoting *Thomas v. Gladstone*, 386 Md. 693, 699, 874 A.2d 434 (2005)). "Where an award of attorney's fees is called for by the contract in question, the trial court will examine the fee request for reasonableness, even in the absence of a contractual term specifying that the fees be reasonable." *Atlantic Contracting & Material Co., Inc. v. Ulico Cas. Co.*, 380 Md. 285, 316, 844 A.2d 460 (2004). "The party requesting fees has the burden of providing the court with the necessary information to determine the reasonableness of its request." *Myers v. Kayhoe*, 391 Md. 188, 207, 892 A.2d 520 (2006). Although the interpretation of a clause in a contract providing for attorney's fees is a question of law reviewed *de novo*, *Nova*, 405 Md. at 448, 952 A.2d 275, "the trial court's determination of the [r]easonableness of [attorney's] fees is a factual determination within the sound discretion of the court, and will not be overturned unless clearly erroneous." *Id.* n.4; *accord Holzman v. Fiola Blum, Inc.*, 125 Md. App. 602, 637, 726 A.2d 818 (1999).

The trial court acknowledged that there was no provision in the condominium documents that authorized an award of attorney's fees in this case, even though fees could be awarded to the prevailing party in a "proceeding arising out of any alleged default by a Unit Owner." The court explained:

> [BY THE COURT]: With respect to an award of attorney's fees it raises an interesting question. So the condominium association documentation does appear to allow attorney's fees as a matter of default and that's found in [appellee's] Exhibit Number 2 and using the Bates numbers it's found at page 458 or page 34 and it talks about compliance and default. **Essentially, this appears to be a one-sided attorney's fees provision**. ["]In any proceeding arising out of an alleged default by a unit owner the prevailing party should be entitled to recover the cost[s] of [the] proceeding and such

> reasonable attorney's fees as may be determined by the Court.["] In any proceeding that arises out of an alleged default by a unit owner the prevailing party . . . . Prevailing party is not really defined in that as being only the condominium association. There is a vagary [sic] to it. The vagary talks about in any proceeding arising out of an alleged default by a unit owner. So arguably and I'm not necessarily making this argument for appeal purposes, but this is a proceeding arising out of alleged default and it's being made by the unit owner.[7]
>
> Either way**, my main theory of attorney's fees is that, that attorney's fees provisions should not be one-sided**. If there is a prevailing party that prevailing party could be the defense and it could be the prosecution.
>
> I've had an opportunity to review the attorney's fees submission in this matter. I worked as a practicing attorney for over 25 years before I became a judge. I'm satisfied that the attorney's fees are ordinary, reasonable and necessary. I'm not going to award all of the attorney's fees in this matter, so I am going to grant an award of attorney's fees which I think is ordinary, reasonable, necessary and appropriate and that award will be $7,500.

(Emphasis added.)

Notwithstanding the trial court's understandable desire to compensate the Gordons for their shabby treatment by the condominium association, the court was not at liberty to unilaterally revise the plain language of the Bylaws to authorize an award of attorney's fees under circumstances other than one expressly addressed in the condominium documents. See *Royal Inv. Group, supra*, 183 Md. App. at 456. Consequently, we will vacate the award of attorney's fees.

[7] On appeal, the Gordons argue that the trial court viewed the language in the bylaw as ambiguous. We do not agree that the trial court concluded that the bylaw was ambiguous, and it is clear to us that this particular provision authorizes an award of attorney's fees to a prevailing party only in a proceeding in which it has been alleged that there was a "default by a Unit Owner." This case was not such a proceeding.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED IN PART, NAMELY AS TO THE JUDGMENT FOR COMPENSATORY DAMAGES IN THE AMOUNT OF $5,946.47; THE AWARD OF ATTORNEY'S FEES IN THE AMOUNT OF $7,500.00 IS VACATED. COSTS TO BE DIVIDED EQUALLY BETWEEN THE APPELLANT AND APPELLEES.