Circuit Court for Montgomery County
Case No. 412696V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0093

September Term, 2019

MADHABI SHETH, ET AL.

v.

SALEMA HORN

Fader, C.J.,
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: May 18, 2020

Salema Horn, the appellee, prevailed in a lawsuit initiated by appellant Madhabi Sheth and four corporate entities controlled by Ms. Sheth and Ms. Sheth's husband, appellant Sanjay Sheth. After this Court affirmed that judgment, the Circuit Court for Montgomery County granted Ms. Horn an award of attorneys' fees pursuant to a contractual fee-shifting provision.[1] The court entered the award of fees against Ms. Sheth, the four corporate entities, and, the parties believe, Mr. Sheth. The Sheths contend that the court erred in entering its award because (1) Ms. Horn failed to comply with applicable pleading rules, (2) the court did not limit its award to fees that were subject to fee-shifting, (3) the amount of the award is unreasonable and excessive, and (4) neither Mr. Sheth nor the four corporate entities were subject to an award of fees. We will affirm the award of attorneys' fees against Ms. Sheth, but will reverse that award to the extent that it was entered against Mr. Sheth and the four corporate entities.

BACKGROUND[2]

Factual Background

The Sheths and Ms. Horn were once business associates as members of five limited liability companies that each owned and operated a daycare center: MSL International Children Center LLC; MSL International Children Academy LLC; MSL International

[1] In adopting the 2-700 Rules for "Claims for Attorneys' Fees and Related Expenses," the Court of Appeals confirmed its official position in the debate regarding proper placement of the apostrophe in "attorneys' fees." *See also* Md. Rule 1-341 (providing for award of "reasonable attorneys' fees" for certain litigation conduct). We will therefore adhere to that placement except when quoting from other sources.

[2] The underlying facts are set forth in more detail in this Court's prior opinion. *See Sheth v. Horn*, Nos. 480 & 759, Sept. Term 2017, 2018 WL 3025862 (Md. Ct. Spec. App. June 18, 2018).

Children Center-Three LLC; MSL International Children Center-Four LLC (collectively with the other three MSL entities, the "MSL Centers"); and Hope Grows Child Development Center LLC. In 2013, Ms. Horn initiated litigation to dissolve the companies. In 2015, the parties reached a full settlement pursuant to which they divided ownership of the daycare centers. The Sheths became the sole owners of the MSL Centers and Ms. Horn became the sole owner of Hope Grows.

To memorialize their agreement, the parties executed two documents, a "Settlement Agreement and Mutual General Release" (the "Settlement Agreement") and an "Acquisition of Membership Interests and Withdrawal Agreement" (the "Acquisition Agreement"). Two provisions of the Settlement Agreement are particularly relevant to the current dispute. First, the agreement contained a confidentiality and non-disparagement clause that provided, in pertinent part: "The Parties shall keep in confidence the terms and conditions of this Agreement. . . . [N]o party shall make any statements, written or verbal, . . . that defame, disparage or in any way criticize the personal or business reputation, practices or conduct of any other Party." Second, the agreement contained the following fee-shifting provision:

> Attorneys' Fees. If any Party commences any action or proceedings to enforce the provisions of this Agreement, or if any Party asserts in any action or proceeding any claim or other matter of any kind released by this Agreement, the prevailing Party shall be entitled to an award of its costs, expenses, expert witness fees and attorneys' fees reasonably incurred in connection with such action or proceeding, including any appeals thereof, in addition to any other claims or damages incurred by the prevailing Party. The obligations of the Parties to pay costs, expenses and attorneys' fees under this Agreement shall not be deemed merged into, but shall survive, any judgment.

The following indemnification clause in the Acquisition Agreement is also relevant to the current dispute:

> Sheth Parties. The Sheth Parties, jointly and severally, for themselves and their heirs, personal representatives, successors and assigns, as the case may be, shall indemnify and hold harmless each and every of the Horn Parties, jointly and severally, from and against any and all losses, claims, causes of action, demands, rights, damages, costs, expenses, taxes, judgments, penalties, fines, interest, professional fees, expert witness fees, attorneys' fees and any other liabilities of any kind whatsoever (collectively "Loss"), incurred by any Horn Party and arising out of or related to any of the following: (i) any misrepresentation, breach of warranty or nonfulfillment of any covenant or agreement of any of the Sheth Parties contained in this Agreement and/or any Operative Document; . . . and (v) any Action or Proceeding, demands, judgments, costs and expenses incident to any of the foregoing.

The Acquisition Agreement contained a parallel indemnification clause undertaken by the "Horn Parties."

The Underlying Litigation and Appeal

In December 2015, Ms. Sheth initiated this action against Ms. Horn in the Circuit Court for Montgomery County. In her complaint, Ms. Sheth alleged that Ms. Horn had violated the Settlement Agreement's non-disparagement clause by making "false and defamatory statements" about Ms. Sheth and the MSL Centers. Specifically, Ms. Sheth alleged that Ms. Horn had told a third individual that Ms. Sheth was "a crook" and that her daycare centers did not feed children sufficiently and served expired food. Ms. Sheth also alleged that Ms. Horn had attempted to coerce the third person into writing a letter of complaint to accuse Ms. Sheth of, among other things, fraud. The complaint included counts for breach of contract, defamation per se, injurious falsehood, false light, and intentional infliction of emotional distress. All five counts recited the full text of the

confidentiality and non-disparagement clause from the Settlement Agreement. Ms. Sheth attached to the complaint an unredacted copy of the Settlement Agreement.

In late January 2016, Ms. Sheth moved for an order of default. Ms. Horn timely opposed that motion and filed a motion to dismiss two of the counts. At an ensuing hearing, the court denied the motion for an order of default, ordered Ms. Sheth to respond to the motion to dismiss, and ordered Ms. Horn to file an answer to those counts of the complaint not addressed by her motion to dismiss.

On March 11, 2016, Ms. Horn filed four separate documents with the circuit court. The clerk first docketed Ms. Horn's answer to the complaint, in which Ms. Horn generally denied the allegations of the complaint, identified affirmative defenses, and demanded a jury trial. The answer did not request any affirmative relief. The second and third documents the clerk docketed were, respectively, Ms. Horn's reply in support of her motion to dismiss and a motion to file her counterclaim under seal.

The fourth document docketed by the clerk was the counterclaim, in which Ms. Horn alleged that Ms. Sheth violated the confidentiality and non-disparagement clause of the Settlement Agreement when she attached an unredacted copy of that agreement to her complaint and made disparaging allegations about Ms. Horn. The counterclaim included the following ad damnum clause:

> WHEREFORE, Counter-Plaintiff/Defendant Salema Horn respectfully requests that this Honorable Court:
>
> (1) Enter judgment against Counter-Defendant/Plaintiff Madhabi Sheth for damages in excess of $10,000.00 resulting from its breach of contract described herein, along with costs, interest and attorney's fees; and

(2) Grant such other and further relief as it deems appropriate.

After the circuit court granted Ms. Horn's motion to dismiss two counts of the initial complaint, Ms. Sheth filed an amended complaint and, later, a second amended complaint, which was the operative complaint at the time of trial. The second amended complaint identified five plaintiffs—Ms. Sheth and the four MSL Centers—and two defendants—Ms. Horn and Hope Grows. The new complaint recited the same basic factual allegations as the initial complaint and included counts based on that conduct for breach of contract, defamation per se, injurious falsehood, false light, negligent misrepresentation, and tortious interference with economic relations.[3] In the first count of the second amended complaint, the plaintiffs sought damages of $250,000, in addition to attorneys' fees and indemnification, among other things. In each of the second through sixth counts, the plaintiffs sought $1 million in compensatory damages and $5 million in punitive damages. Neither amended complaint attached a copy of the Settlement Agreement.

In between the filing of the first and second amended complaints, Ms. Horn filed an amended counterclaim. The amended pleading included the same breach of contract count against Ms. Sheth, with the same ad damnum clause as the initial counterclaim, and added a second count for abuse of process against Ms. Sheth and the four MSL Centers. The second count was dismissed before trial.

[3] Ms. Sheth's second amended complaint included a separate breach of contract count in which she alleged that Ms. Horn had breached a different confidentiality agreement that resulted in an investigation into Ms. Sheth's immigration status. That count was dismissed before trial.

The parties tried their dispute to a jury in May 2017. As identified on the verdict sheet, Ms. Sheth and the MSL Centers submitted four counts to the jury, asking whether: (1) Ms. Horn had breached the confidentiality provisions of the Settlement Agreement or the Acquisition Agreement; (2) Ms. Horn had breached the non-disparagement provisions of the Settlement Agreement or the Acquisition Agreement; (3) Ms. Horn had defamed the Sheth entities; and (4) Ms. Horn was liable for injurious falsehood. The jury answered no to all of those questions. Ms. Horn submitted one count to the jury, asking whether Ms. Sheth, the MSL Centers, or Mr. Sheth[4] had breached the Settlement Agreement. The jury answered yes to that question and awarded $5,000 in damages.

The Sheths appealed. In June 2018, this Court affirmed the judgment in an unreported opinion. *See Sheth*, 2018 WL 3025862, at *7. We held that the circuit court had not erred in denying the Sheths' requests for a continuance, excluding documents because of their discovery violations, excluding evidence regarding "pre-settlement matters," denying consolidation of the two underlying cases, and denying a setoff. *Id.* at *4, *7. A passage from that opinion delves into the chaotic procedural history of this action, which "mostly [w]as a result of the comings and goings of several different

[4] It is not clear how or why Mr. Sheth came to be treated as a party in the trial court. He is not named as a plaintiff, defendant, counter-plaintiff, or counter-defendant in any pleading, and his name does not appear on the docket sheet. At oral argument, neither counsel could shed any light on the question. Nonetheless, Mr. Sheth somehow came to be identified at trial as a plaintiff and counter-defendant, and the jury entered a verdict against him on Ms. Horn's counterclaim.

attorneys for [the Sheths]." *Id.* at *3. Ms. Sheth's initial complaint was filed by counsel Andrew Ucheomumu.[5] Then,

> [o]n April 7, 2016, Mr. Ucheomumu withdrew his appearance and Steven Lewicky and Megan O'Connor entered theirs. Two months later, on June 6, 2016, they withdrew their appearance and Mr. Ucheomumu replaced them.
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> On December 15, 2016, Mr. Ucheomumu was suspended indefinitely from the practice of law for conduct unrelated to this case. *See Attorney Grievance v. Ucheomumu*, 450 Md. 675 (2016). The next day, Temitope Odusami entered her appearance for appellants. . . . On April 18, 2017, Ms. Odusami's motion to withdraw her appearance was granted, and Sylvia Rolinski, who ended up serving as trial counsel, entered her appearance. Ms. Odusami's motion to withdraw is not in the record extract, but appellee asserts, without contradiction, that it was due to the appellants' failure or refusal to sign a retainer agreement and to pay her fees.
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> Juxtaposed with this revolving door of attorneys was that the case was proceeding. In March 2016, appellee filed a counterclaim. An amended complaint was filed in May 2016 and an amended counterclaim was filed a month later. None of those pleadings are in the record extract. On March 14, 2016, a Scheduling Order was entered. That, too, appears nowhere in the record extract, but we are informed that, presumably pursuant to that Order, discovery closed on August 15, 2016. On August 8, after having received discovery material from appellee, appellants moved to extend the discovery deadline in order to take appellee's deposition. That motion was denied. On October 11, 2016, appellants sought leave to file an amended complaint in order to implead a State employee and to reopen discovery. That, too, was denied, as was a motion to reconsider the denial of appellants' request to reopen discovery.
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> Upon the suspension of Mr. Ucheomumu in December 2016, the appellants, apparently through Ms. Odusami, sought a postponement of the January 9, 2017 trial date. On January 13, the court granted that motion and set a new

[5] Our prior opinion identifies Mark G. Chalpin as "[t]he attorney listed first on the docket, when the complaint was filed." *See Sheth*, 2018 WL 3025862, at *3. It appears that Mr. Chalpin's name was then listed first because he was the attorney of record at the time the appeal was taken, not when the complaint was filed. According to the docket as it appears currently, Mr. Chalpin first entered his appearance on July 19, 2017, and withdrew his appearance on September 13, 2018. Mr. Ucheomumu signed the original complaint.

> trial date of May 22, 2017. That gave the parties an additional nineteen weeks to prepare for trial. As noted, Ms. Rolinski did not enter her appearance for the appellants until April 18. She immediately moved for a further extension, which was opposed by appellee and, on May 4, was denied by Judge Rubin. Neither the docket entries nor the record extract reveal whether there was a hearing on that motion or what was presented to Judge Rubin. On May 16, an emergency motion to reconsider Judge Rubin's ruling was filed. That motion was considered and denied by Judge Debelius on May 22—the first day of trial.

Id. at *3 (footnote omitted).

The Motion for Attorneys' Fees

In June 2017, shortly after the trial, Ms. Horn filed a motion for attorneys' fees and costs.[6] Her motion sought a total award of $102,170.33 for attorneys' fees incurred through trial. Ms. Horn argued that because she was the "prevailing [p]arty" and the "action was 'to enforce the provisions of' the Settlement Agreement," she was entitled to attorneys' fees under the fee-shifting provision of that agreement. She also claimed "entitle[ment] to reimbursement in the form of a fee award" under the indemnification provision of the Acquisition Agreement. In support of the request, Ms. Horn's counsel, Jan I. Berlage, submitted a verified statement of the attorneys' fees incurred as a result of the litigation.

In August 2017, the Sheths filed an opposition to the motion. The sole issue identified in the opposition was reasonableness of the amount of attorneys' fees sought. With the support of an expert report and affidavit, the Sheths contended that $16,993.23 of Ms. Horn's claim for attorneys' fees was unreasonable and, therefore, asked "that the

[6] For simplicity, rather than referring to "attorneys' fees and costs" throughout the remainder of this opinion, we will refer only to "attorneys' fees," but intend that term to also encompass costs unless specified otherwise.

amount awarded in attorneys' fees and costs to [Ms. Horn] not exceed $85,177.10." Two weeks later, the Sheths filed a supplement to their opposition in which they complained that an attorney responsible for nearly a quarter of Ms. Horn's claimed attorneys' fees had not been admitted to the Maryland Bar. The Sheths did not argue any surprise, lack of notice, or failure to adhere to any procedural requirements in either of these oppositions.

On October 3, 2017, at the Sheths' request and over Ms. Horn's objection, the circuit court stayed all proceedings in that court pending the result of the appeal pending in this Court. That stay was lifted after this Court issued its opinion in June 2018.

In October 2018, almost 17 months after the verdict, the Sheths, through new counsel, filed a second supplemental opposition to the motion for attorneys' fees. In that filing, the Sheths contended, for the first time: (1) that Ms. Horn was not entitled to any award of attorneys' fees because she had not complied with the procedural requirements of Rule 2-705; and (2) that if she were entitled to an award of fees, it should not encompass the entire litigation.

The court scheduled a hearing on Ms. Horn's motion for February 7, 2019. The evening before the hearing, Ms. Horn supplemented her initial request with documentation supporting an additional $39,015.82 in fees and $1,686.39 in costs attributable to appellate and post-judgment proceedings.

The Hearing on Attorneys' Fees

During the February 7 hearing, the parties presented evidence and argument regarding Ms. Horn's request for attorneys' fees. As discussed further below, although the

court initially was not inclined to consider Ms. Horn's supplemental request for fees during that hearing, Ms. Sheth's counsel then questioned Mr. Berlage extensively regarding the time entries and expenses that had been provided the evening before. At the end of the hearing, the court took the matter under advisement.

On February 19, the court granted Ms. Horn's petition in a written opinion. The court rejected the Sheths' procedural complaints, concluding either that Ms. Horn satisfied the requirements of Rule 2-705 or that the Sheths were not prejudiced by any noncompliance. The court also rejected the Sheths' contention that Ms. Horn's eligibility for fees was limited to those attributable to her counterclaim or, alternatively, to litigation over contract claims. The court concluded that Ms. Horn was the prevailing party in what was "clearly an action to enforce the provisions of the parties' Settlement Agreement" and, therefore, that she was entitled to recover all of the attorneys' fees she reasonably incurred in the litigation. The court also concluded that the indemnification provision in the Acquisition Agreement provided an independent basis for the award.

After expressly considering each of the factors set forth in Rule 2-703(f) applicable to the reasonableness of the requested fees, the court determined to disallow four different sets of charges totaling $6,171.15. The court determined that the remaining amounts sought by Ms. Horn were reasonable and entered an award of $136,445.09 in attorneys' fees. This timely appeal followed.

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN FINDING THAT MS. HORN WAS ENTITLED TO AN AWARD OF ATTORNEYS' FEES.

The Sheths argue that Ms. Horn was ineligible for an award of attorneys' fees because she failed to comply with the procedural requirements of Rule 2-705. Because this challenge involves "[i]nterpretation of the Maryland Rules," we "construe [the Rule at issue] without giving deference to the [circuit court's] interpretation." *Lisy Corp. v. McCormick & Co.*, 445 Md. 213, 221-22 (2015) (quoting *Duckett v. Riley*, 428 Md. 471, 477 (2012)). The Court of Appeals confirmed "the standard for interpreting a Maryland Rule" earlier this year:

> A court interprets a Maryland Rule by using the same canons of construction that the court uses to interpret a statute. First, the court considers the Rule's plain language in light of: (1) the scheme to which the Rule belongs; (2) the purpose, aim, or policy of this Court in adopting the Rule; and (3) the presumption that this Court intends the Rules and this Court's precedent to operate together as a consistent and harmonious body of law. If the Rule's plain language is unambiguous and clearly consistent with the Rule's apparent purpose, the court applies the Rule's plain language. Generally, if the Rule's plain language is ambiguous or not clearly consistent with the Rule's apparent purpose, the court searches for rulemaking intent in other indicia, including the history of the Rule or other relevant sources intrinsic and extrinsic to the rulemaking process, in light of: (1) the structure of the Rule; (2) how the Rule relates to other laws; (3) the Rule's general purpose; and (4) the relative rationality and legal effect of various competing constructions.

Won Bok Lee v. Won Sun Lee, 466 Md. 601, 618 (2020) (quoting *Green v. State*, 456 Md. 97, 125 (2017)). If the "Rule's language is clear, a court neither adds nor deletes language so as to reflect an intent not evidenced in the plain and unambiguous language of the Rule,"

and such "[u]nambiguous language will be given its usual, ordinary meaning unless doing so creates an absurd result." *Lee*, 466 Md. at 619 (quoting *Green*, 456 Md. at 125).

Rule 2-705 "applies to a claim for an award of attorneys' fees attributable to litigation in a circuit court pursuant to a contractual provision permitting an award of attorneys' fees to the prevailing party in litigation arising out of the contract." Md. Rule 2-705(a). The Sheths contend that Ms. Horn failed to comply with Rule 2-705(b), which, in turn, caused the court to fail to comply with Rule 2-705(c), (d), and (g). Those provisions state:

> (b) *Pleading*. A party who seeks attorneys' fees from another party pursuant to this Rule shall include a claim for such fees in the party's 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 arise.
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> (c) *Scheduling Conference and Order.* If a claim for attorneys' fees is made pursuant to this Rule, unless the court orders otherwise, the court shall conduct a scheduling conference in conformance with Rule 2-703(c).
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> (d) *Enhanced Procedures and Requirements for Certain Cases*. Upon a determination by the court that the case is one that likely will result in a substantial claim for attorneys' fees covering a significant period of time, the court may enter orders in conformance with Rule 2-703(d).
>
> . . .
>
> (g) *Part of Judgment*. An award of attorneys' fees shall be included in the judgment on the underlying cause of action but shall be separately stated. The court shall state on the record or in a memorandum filed in the record the basis for its findings and conclusions regarding the denial or issuance of an award.

The cross-referenced portions of Rule 2-703 provide, in relevant part:

> (c) *Scheduling Conference and Order*. 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, . . . shall:

> (1) determine whether to require enhanced documentation, quarterly statements, or other procedures permitted by section (d) of this Rule;
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> (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
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> (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.
>
> (d) *Enhanced Procedures and Requirements for Certain Cases*. Upon a determination by the court that the case is likely to result in a substantial claim for attorneys' fees for services over a significant period of time, the court may:
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> (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;
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> (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
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> (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.

A. Compliance with Rule 2-705(b)

Rule 2-705(b) requires a party making a claim for attorneys' fees to "include a claim for such fees in the party's initial pleading." The Sheths contend that Ms. Horn failed to comply with Rule 2-705(b) because her request for attorneys' fees was not made in the first-docketed pleading she filed—her answer—but instead was included in the second-docketed pleading she filed—her counterclaim. The Sheths acknowledge that the answer

and counterclaim were filed on the same date, but maintain that because the circuit court clerk docketed the answer first, Ms. Horn waived her right to an award of attorneys' fees. We find no merit in that argument for two reasons.

First, the Sheths' interpretation would lead to absurd results that are entirely inconsistent with the intent of the Rule. The clear purpose of the requirement to identify a claim for attorneys' fees in a party's initial pleading "is to provide early notice of the claim so all parties are aware that the procedures of this rule apply." Paul V. Niemeyer, et al., *Maryland Rules Commentary* 971 (LexisNexis 5th ed. 2019). As identified in an early discussion of what became the initial pleading requirement in the 2-700 Rules,[7] "the entire purpose [of the initial pleading requirement] was to encourage demanding the attorneys' fees as early as possible." *See* Md. Standing Committee on Rules of Practice and Procedure ("Rules Committee"), Minutes of Rules Meeting, at 77 (April 15, 2011), *available at* https://www.mdcourts.gov/sites/default/files/minutes-rules/04-15-11.pdf (last visited May 15, 2020). The Rules Committee explained that "[t]he idea" behind the requirement is "to alert the defendant" of a fee request early in the action, thereby ensuring that "the defendant knows that the plaintiff is going to be asking for a fee." *Id.* at 68-69.

[7] In March 2013, the Rules Committee submitted its proposed 2-700 Rules to the Court of Appeals. *See* Md. Standing Committee on Rules of Practice and Procedure, 177th Maryland Rules Report (March 28, 2013), *available at* https://mdcourts.gov/sites/default/files/rules/reports/177threport.pdf (last visited May 15, 2020). The Court adopted the Rules in October 2013, and they became effective on January 1, 2014. *See* Maryland Court of Appeals, Rules Order (Oct. 17, 2013), *available at* https://www.mdcourts.gov/sites/default/files/rules/order/177ro.pdf (last visited May 15, 2020).

The requirement thus serves the important role of providing notice that attorneys' fees will be at issue, *see, e.g.*, *Huntley v. Huntley*, 229 Md. App. 484, 491 (2016) (noting that pleadings serve to, among other things, "provide[] notice to the parties as to the nature of the claim or defense" and "define[] the boundaries of litigation" (quoting *Scott v. Jenkins*, 345 Md. 21, 27-28 (1997), *superseded by rule on unrelated grounds as stated in Hoile v. State*, 404 Md. 591, 610 (2008))); John A. Lynch, Jr. & Richard W. Bourne, *Modern Maryland Civil Procedure* § 6.1, 6-4 (LexisNexis 3d ed. 2016) (observing that although Maryland is not a "notice pleading" jurisdiction, the "principal role [pleadings] play today is that of notice"), and also permits the court and parties to consider whether enhanced procedures should be implemented, *see* Niemeyer, et al., *supra*, at 971. Such enhanced procedures can, in turn, provide even greater notice, certainty, and efficiency in resolving claims for attorneys' fees by requiring ongoing transparency regarding fees as they are incurred; establishing upfront the guidelines for determining what fees will and will not be deemed compensable; and establishing "procedures and time schedules" for resolving the claim for attorneys' fees. *See* Md. Rule 2-703(d). Viewed in light of the purpose of Rule 2-705(b), when a party files two pleadings on the same date, it does not matter which of the two pleadings contains the demand for attorneys' fees.

Second, even if including a claim for attorneys' fees in the second-docketed of two simultaneously filed pleadings would not suffice to satisfy Rule 2-705(b), we discern no error in the circuit court's finding that the Sheths suffered no prejudice. The Sheths *assume* that the consequence for technical noncompliance with Rule 2-705(b) must be automatic

waiver of the claim for attorneys' fees. However, Rule 2-705 does not specify any particular consequence for failing to include a claim for attorneys' fees in the initial pleading. Thus, as with all other requirements of the Maryland Rules that do not specify a consequence for noncompliance, the consequence for any noncompliance with the Rule is left to the discretion of the trial court. Rule 1-201(a) makes this explicit:

> These rules shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay. When a rule, by the word "shall" or otherwise, mandates or prohibits conduct, the consequences of noncompliance are those prescribed by these rules or by statute. If no consequences are prescribed, the court may compel compliance with the rule or may determine the consequences of the noncompliance in light of the totality of the circumstances and the purpose of the rule.

Cf., e.g., *In re Keith W.*, 310 Md. 99, 109-110 (1987) (affirming court's decision not to dismiss juvenile proceeding for noncompliance with the time requirements of previous Rule 914, the predecessor of Rule 11-114); *Smith v. State*, 219 Md. App. 289, 295 (2014) (trial court had discretion not to remand case for violation of Rule 15-207's post-conviction procedures); *Wilson v. N.B.S., Inc.*, 130 Md. App. 430, 451 (2000) ("[T]he court may exercise its inherent authority to dismiss an action for failure to comply with an order for examination under Rule 2-423.").

Anticipating the argument that a claim for attorneys' fees "is waived [if] it was not raised in the first pleading," Judge Niemeyer, et al. conclude that "[a] waiver should not occur, however, except when clear prejudice can be shown." Niemeyer, et al., *supra*, at 971. We agree. Waiver of a party's contractual right to an award of attorneys' fees in the absence of clear prejudice would not advance the purpose of the Rule. This approach is

consistent with our general reticence to find waiver of a claim for a Rules violation except where necessary. *See, e.g.*, *Thomas v. State*, 397 Md. 557, 571 (2007) ("[I]n fashioning a sanction [for a discovery violation], the court should impose the least severe sanction that is consistent with the purpose of the discovery rules."); *see also Weaver v. ZeniMax Media, Inc.*, 175 Md. App. 16, 46 (2007) ("[T]here is always 'a preference for a determination of claims on their merits.' The rules and the courts 'do not favor imposition of the ultimate sanction absent clear support.'" (quoting *Holly Hall Publ'ns v. County Banking & Tr. Co.*, 147 Md. App. 251, 267 (2002))).

Here, the circuit court found that the Sheths suffered no prejudice from the inclusion of Ms. Horn's request for attorneys' fees in her counterclaim rather than her answer. We consider that conclusion unassailable. For that reason as well, we conclude that the circuit court did not err in determining that Ms. Horn did not waive her claim for attorneys' fees by including it in her counterclaim instead of her answer.

B. Compliance with Rule 2-705(c) and (d)

The Sheths next argue that Ms. Horn should also be held responsible for the circuit court's failure to comply with Rule 2-705(c) and (d), which collectively require the court to hold a scheduling conference and, if the claim for attorneys' fees is likely to be "substantial," to consider whether to require enhanced procedures. We find no merit in this contention.

As an initial matter, it would be grossly inappropriate to allow a *court's* procedural failure to forfeit a *party's* contractual (or statutory) right to fees. The Rule imposes upon

the court the obligation to schedule a conference; it does not impose upon the parties an obligation to request one. The Sheths suggest that Ms. Horn indirectly caused the court's lack of compliance with the Rule, presumably premised on the belief that the court clerk may have looked for the claim for attorneys' fees only in the answer and, not finding one, failed to set the case in for a scheduling conference. That, however, cannot explain the lack of a scheduling conference because, among other things, the Sheths' complaint included a claim for attorneys' fees that should have triggered such a conference. Moreover, because "any amended pleading" also might include a new claim for attorneys' fees, Md. Rule 2-705(b), the Sheths' two amended complaints and Ms. Horn's amended counterclaim all should have triggered the scheduling conference contemplated by Rule 2-705(c). In any event, as discussed below, both sides were clearly aware that the other had made a claim for attorneys' fees and neither requested that the court convene a scheduling conference or consider enhanced procedures. The Sheths cannot fairly pin blame on Ms. Horn.

We also discern no error in the circuit court's finding that the Sheths suffered no prejudice from the lack of a scheduling conference or "enhanced procedures." The Sheths' sole claim of prejudice is that if they had been apprised of the amount of fees Ms. Horn was incurring—assuming anyone had requested periodic updates and that the court had been willing to require them—perhaps they would have given more consideration to settling their claim against her rather than proceeding to trial. That proposition is wholly speculative. Furthermore, the circuit court's finding that the amount of attorneys' fees

awarded to Ms. Horn was reasonable seems to us to be manifestly correct in light of the many challenges presented by the manner in which the Sheths pursued their claims and the frequency with which they changed counsel, none of which could likely have been anticipated at the time of a scheduling conference.[8] As a result, it is difficult to imagine that the Sheths could reasonably have expected Ms. Horn's claim for attorneys' fees to be much lower than it was.

C. Compliance with Rule 2-705(g)

Finally, the Sheths complain that Ms. Horn's failure to identify her claim for attorneys' fees in her answer "indirectly precluded compliance with" Rule 2-705(g), which provides:

> An award of attorneys' fees shall be included in the judgment on the underlying cause of action but shall be separately stated. The court shall state on the record or in a memorandum filed in the record the basis for its findings and conclusions regarding the denial or issuance of an award.

The court issued a memorandum opinion containing a detailed explanation of the basis for its findings and conclusions regarding the award of attorneys' fees, but did not include the award of attorneys' fees in the judgment on the underlying cause of action. This argument also fails for multiple independent reasons.

First, the Sheths are simply incorrect to suggest that the court's failure to include the award of attorneys' fees in its initial judgment resulted from Ms. Horn including her claim in her counterclaim rather than in her answer. The court decided that it would not

[8] The Sheths' appellate counsel was not their counsel during the merits phase of the litigation.

entertain either party's claim for attorneys' fees until after the jury had rendered a decision on the merits. The court then entered a judgment on the jury's verdict without first resolving Ms. Horn's claim for attorneys' fees. We fail to see how Ms. Horn including her claim for attorneys' fees in her answer rather than in her counterclaim would have influenced these subsequent decisions in any way.

Second, the consequence of the court not resolving Ms. Horn's claim for attorneys' fees before entering judgment on the jury's verdict was that its initial judgment may not have been a final judgment. As described by Judge Niemeyer, et al.:

> Prior to adoption of [Rule 2-705(g)], a claim for attorneys' fees pursuant to a prevailing party provision in a contract was not an element of damages because the claim is based on the outcome of litigation rather than on the merits of the underlying substantive claim. *See Grove v. George*, 192 Md. App. 428 (2010). As a result, some courts did not determine the amount of an award of attorneys' fees until after the exhaustion of all appeals in order to ensure that the prevailing party remained the prevailing party. This practice is no longer permitted because the award of attorneys' fees now forms an integral part of the judgment and must be decided before judgment can be entered.

Niemeyer, et al., *supra*, at 975. Thus, the circuit court should have resolved the claim for attorneys' fees and then entered a single judgment encompassing both the jury's verdict and the court's award of attorneys' fees. But it was the Sheths who noted an appeal even though the attorneys' fees claim had not yet been resolved. Although neither Ms. Horn nor this Court identified the potential final judgment problem before our decision in that appeal became final and beyond our jurisdiction to reopen, that oversight hardly provides the Sheths with a defense to Ms. Horn's claim for attorneys' fees. What was a potential final judgment problem for purposes of the earlier appeal is a non-issue for this one.

Third, the Sheths have not identified any prejudice resulting from the court awarding attorneys' fees in a separate judgment that followed resolution of the first appeal. Although the two judgments resulted in piecemeal appeals, it was the Sheths who pursued the first prematurely. And to the extent the bifurcated proceedings led to delay in resolving the attorneys' fees claim, that too is the responsibility of the Sheths, who successfully petitioned the circuit court, over Ms. Horn's objection, to stay resolution of the request for attorneys' fees while the first appeal proceeded.

In sum, that the court did not include its award of attorneys' fees in the same judgment as the underlying jury verdict did not foreclose it from subsequently resolving Ms. Horn's claim in a separate judgment.

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DETERMINING THAT MS. HORN WAS ENTITLED TO AN AWARD OF ATTORNEYS' FEES.

The Sheths next dispute the circuit court's determination that the fee-shifting provision in the Settlement Agreement entitled Ms. Horn to an award of nearly all the fees she incurred in litigating this action. "We review a trial court's award of attorneys' fees under an abuse of discretion standard." *Monmouth Meadows Homeowners Ass'n v. Hamilton*, 416 Md. 325, 332 (2010); *see also SunTrust Bank v. Goldman*, 201 Md. App. 390, 397 (2011). "[W]hen there are contract provisions requiring the award of attorneys' fees to the prevailing party, the amount of the fees to be award[ed] is 'within the sound discretion of the trial court,'" *Monmouth Meadows*, 416 Md. at 332 (quoting *Myers v. Kayhoe*, 391 Md. 188, 207 (2006)), and its award "will not be overturned unless clearly erroneous," *Myers*, 391 Md. at 207. "[W]hile a decision whether to award attorneys' fees

is reviewed under an abuse of discretion standard, '[t]he standard that a trial court applies in evaluating whether to award attorneys' fees and costs is a legal decision' that we review without deference.'" *Lockett v. Blue Ocean Bristol*, 446 Md. 397, 414 (2016) (quoting *Ocean City Chamber of Commerce v. Barufaldi*, 434 Md. 381, 391 (2013)) (emphasis removed).

The Sheths argue that the court erred for three reasons. First, they contend that because Ms. Horn's request for attorneys' fees was pled only against Ms. Sheth, the court erred in awarding fees against Mr. Sheth and the MSL Centers. Second, they contend that because the fee-shifting clause in the Settlement Agreement applies only to contractual claims, Ms. Horn should not have been awarded attorneys' fees incurred in defending against the Sheths' tort claims. Third, they assert that because Ms. Horn's claim was identified only in her counterclaim, she should only have been awarded attorneys' fees incurred in pursuit of that counterclaim. We address each argument in turn.

A. The Circuit Court Erred in Awarding Attorneys' Fees Against Parties Other than Ms. Sheth.

As we have noted, the ad damnum clause in which Ms. Horn stated her claim for attorneys' fees was included in a count that was pled only against Ms. Sheth, and it requested that the court "[e]nter judgment *against Counter-Defendant/Plaintiff Madhabi Sheth* for damages in excess of $10,000.00 resulting from its breach of contract described herein, along with costs, interest and attorney's fees." (emphasis added). Ms. Horn thus

claimed "costs, interest and attorney's fees" only against Ms. Sheth.[9] We will therefore reverse the award of attorneys' fees against Mr. Sheth and the MSL Centers. The remainder of our discussion focuses on the award as entered against Ms. Sheth.

B. The Circuit Court Did Not Err or Abuse Its Discretion in Applying the Fee-Shifting Provision to All of Ms. Horn's Attorneys' Fees Incurred in This Litigation.

Ms. Sheth contends that the circuit court erred in awarding Ms. Horn attorneys' fees attributable to litigation of Ms. Sheth's tort claims. According to Ms. Sheth, only the breach of contract claims were "counts [] seeking to enforce the [Settlement] Agreement," and fees attributable to the tort claims were not subject to fee-shifting.

"Contract provisions providing for awards of attorney's fees to the prevailing party in litigation under the contract generally are valid and enforceable in Maryland." *Myers*, 391 Md. at 207. "A party is 'a prevailing party, and thus eligible to seek a fee . . . if the plaintiff succeeds on any significant issue that achieves some of the benefit sought in bringing the action.'" *Giant of Md., LLC v. Taylor*, 221 Md. App. 355, 368-69 (2015) (quoting *Friolo v. Frankel*, 373 Md. 501, 523 (2003)).

In interpreting the fee-shifting provision of the Settlement Agreement, we "employ the objective theory of contract." *See Kaye v. Wilson-Gaskins*, 227 Md. App. 660, 677 (2016) ("Settlement agreements are . . . subject to the same general rules of construction that apply to other contracts." (quoting *Maslow v. Vanguri*, 168 Md. App. 298, 316

[9] Ms. Horn also made a claim for attorneys' fees in Count II of her counterclaim, which was pled against the MSL Centers in addition to Ms. Sheth, but that claim was dismissed before trial.

(2006))). "[O]ur paramount concern . . . is to objectively determine what a reasonable person in the position of the parties would have intended this agreement to mean at the time it was effectuated." *Kaye*, 227 Md. App. at 678. "When the language of the contract is plain and unambiguous . . . , a court must presume that the parties meant what they expressed." *Id.* (quoting *Spacesaver Sys. v. Adam*, 440 Md. 1, 7 (2014)).

Here, the fee-shifting provision, in relevant part, states: "If any Party commences any action or proceedings to enforce the provisions of this Agreement, . . . the prevailing Party shall be entitled to an award of its costs, expenses, . . . and attorneys' fees reasonably incurred in connection with such action or proceeding, including any appeals thereof . . . ." The language of the provision is broad in its coverage and mandatory in its application, as long as the action or proceeding at issue is one "to enforce the provisions of this Agreement."

The circuit court determined that the underlying lawsuit, in its entirety, "was clearly an action to enforce the provisions of the parties' Settlement Agreement." We agree. The thrust of all three complaints was that Ms. Horn had disparaged Ms. Sheth and her business in violation of her agreement not to do so. In the initial complaint, Ms. Sheth quoted the confidentiality and non-disparagement clause of the Settlement Agreement in each and every count, including the tort counts. In the amended complaints, that language was quoted in the "Facts" section, the entirety of which was then incorporated by reference into every count. Throughout the litigation, the non-disparagement clause was at the center of Ms. Sheth's claims, with the tort claims playing the role of alternative theories of relief for

the same conduct. We find no error in the circuit court's conclusion that the entire lawsuit was "to enforce the provisions" of the Settlement Agreement and, therefore, subject to fee-shifting.

Moreover, even assuming that the circuit court *could* have analyzed the tort counts separately from the contract counts for purposes of assessing Ms. Horn's fee-shifting claim, the court would not have been required to do so.[10] We have affirmed the discretion of circuit courts to apply the common core of facts doctrine to award fees on all counts of a complaint that share a "common core of facts and related legal theories," even if not all of the counts would themselves be subject to fee-shifting. *See Weichert Co. of Md. v. Faust*, 191 Md. App. 1, 16 (2010), *aff'd*, 419 Md. 306 (2011); *Reisterstown Plaza Assocs. v. Gen. Nutrition Ctrs.*, 89 Md. App. 232, 245 (1991) (affirming trial court's award of fees to a prevailing party in an action involving contract and tort claims, where the "attorney fees rendered in connection with all claims . . . [were] 'so interrelated that their prosecution or defense entails proof or denial of essentially the same facts'" (quoting *Coleman v. Rotana, Inc.*, 778 S.W.2d 867, 874 (Tex. Ct. App. 1989))). Here, all of Ms. Sheth's claims that proceeded to trial arose out of the identical core of facts and related legal theories. The

[10] As Ms. Sheth pointed out at oral argument, of the five claims that went to the jury—four submitted by the Sheths and one by Ms. Horn—three were contractual claims that she acknowledges were subject to fee-shifting. The two tort claims that were submitted to the jury were for defamation and injurious falsehood.

court thus acted well within its discretion in deciding to award Ms. Horn a fully compensatory fee.[11]

C. The Circuit Court Did Not Abuse Its Discretion in Finding that Ms. Horn Was Entitled to Fees Beyond Those that She Incurred in Prosecuting Her Counterclaim.

The Sheths next assert that Ms. Horn's award should be "limited to fees incurred in litigating" her counterclaim, because that claim "raised a single, very narrow issue: the alleged failure of [Ms. Sheth] to file her complaint under seal." Ms. Horn responds that as the prevailing party, she was "entitled to the full value of her attorney's fees" incurred in the action. Resolution of this issue turns on whether Ms. Horn's request for attorneys' fees, as stated in her counterclaim, was limited to attorneys' fees incurred in prosecuting that counterclaim, or whether it extended to attorneys' fees incurred in defending against the claims brought against her by Ms. Sheth. Although this is a close call, we ultimately agree with the circuit court that Ms. Horn's demand for attorneys' fees was not limited to the counterclaim.

We again begin with the language of the ad damnum clause contained in the counterclaim:

> WHEREFORE, Counter-Plaintiff/Defendant Salema Horn respectfully requests that this Honorable Court:

[11] In light of our conclusion that the court did not err or abuse its discretion in awarding Ms. Horn attorneys' fees pursuant to the Settlement Agreement, we need not address separately her claim that she was also entitled to such an award under the indemnification clause of the Acquisition Agreement.

> (1) Enter judgment against Counter-Defendant/Plaintiff Madhabi Sheth for damages in excess of $10,000.00 resulting from its breach of contract described herein, along with costs, interest and attorney's fees; and
>
> (2) Grant such other and further relief as it deems appropriate.

We have noted that "*ad damnum* clauses . . . promote the recovery of realistic awards borne out by investigation and evidence." *Kunda v. Morse*, 229 Md. App. 295, 311 (2016). In granting recovery under a prayer for relief, "the court is left free to adopt any mode by which it can most readily and effectually administer that relief which the equity of the case may require." *Terry v. Terry*, 50 Md. App. 53, 61 (1981) (quoting *McKeever v. Wash. Heights Realty Corp*., 183 Md. 216, 224 (1944)). However, a prayer for relief "must contain such averments as to fairly apprise the [opposing party] that the particular form of relief . . . is within the range of reasonable possibility if the complainant proves those averments." *Terry*, 50 Md. App. at 61.

As Ms. Sheth points out, the location of the request for attorneys' fees within the ad damnum clause of the counterclaim could suggest that it was limited to fees incurred in connection with the counterclaim. Indeed, it is contained within the same paragraph as a request for compensatory damages that clearly is limited to the counterclaim. On the other hand, whereas the request for compensatory damages is expressly limited to the counterclaim ("for damages . . . resulting from its breach of contract described herein"), the request for "costs, interest and attorney's fees" is not. That request is proximate to, but grammatically untethered from, the direct link to the subject of the counterclaim ("along with . . . attorney's fees"). Nonetheless, that language alone, divorced from the broader context of the case, favors Ms. Sheth's interpretation.

But we are not left with only that language, divorced from the broader context of the case. As we have already observed, the clear purpose of the requirement to identify a demand for attorneys' fees in a party's initial pleading is to provide early notice of the demand. *See also Tshiani v. Tshiani*, 436 Md. 255, 270 (2013) ("The primary purpose behind our pleading standards is notice."). Here, it seems apparent that all parties understood fully that both had made claims for attorneys' fees incurred in the litigation, and that whichever party prevailed would be entitled to recover those fees from the other. In her initial complaint, Ms. Sheth quoted the fee-shifting paragraph of the Settlement Agreement in its entirety. The two amended complaints summarized that paragraph. The complaints thus clearly identified the contractual basis for an award of attorneys' fees to *whichever* party prevailed.

Ms. Sheth also argues that the compensatory damages sought by Ms. Horn in her counterclaim were attorneys' fees she incurred in litigating whether the complaint should have been filed under seal. That point, however, cuts against Ms. Sheth's interpretation of the ad damnum clause. If, as Ms. Sheth suggests, the damages requested in that clause were the attorneys' fees Ms. Horn incurred related to the counterclaim, then the separate reference to attorneys' fees in the clause could only have been to other attorneys' fees that were *not* related to the counterclaim, i.e., the attorneys' fees Ms. Horn incurred in litigating Ms. Sheth's affirmative claims. That interpretation is also supported by the general structure of Ms. Horn's pleadings, with all of her defenses stated in her answer and her

own claims for relief—including her claim for attorneys' fees—included in her counterclaim.

Finally, in reviewing Ms. Sheth's current claim of insufficient notice, we consider telling her initial response to Ms. Horn's petition for attorneys' fees. Ms. Horn filed her fee petition in June 2017, shortly after trial. Ms. Sheth's initial opposition, filed in August 2017, expressed no surprise or protest of a lack of notice. Instead, the opposition focused exclusively on the reasonableness of the amount of fees requested. Ms. Sheth's second opposition, filed in September 2017, also failed to identify any surprise or lack of notice. It was not until October 2018, well over a year after the motion was filed and with new counsel involved, that Ms. Sheth first claimed that the scope of the request for attorneys' fees should be limited to the counterclaim. This course of events suggests strongly that Ms. Sheth and her trial team understood all along that both parties' respective claims for attorneys' fees encompassed the litigation as a whole, that the notice provided in Ms. Horn's counterclaim was adequate to convey that, and that the argument for limiting the fee award was the product of creative hindsight.

We therefore conclude that the circuit court did not err in ruling that Ms. Horn was entitled by the prevailing party fee-shifting provision of the Settlement Agreement to an award of attorneys' fees she reasonably incurred in litigating all of the claims against her.[12]

[12] Ms. Sheth also argues that the award of fees to Ms. Horn was disproportionate to the amount at stake in the litigation. That contention, however, is tied to her view that the award should have been limited to the counterclaim, for which Ms. Horn recovered only $5,000 in damages. When viewed in the context of the amount at stake in the litigation as a whole, the award was not disproportionate.

III. THE CIRCUIT COURT DID NOT DENY THE SHETHS DUE PROCESS.

Finally, the Sheths claim that they were denied due process because they did not receive Ms. Horn's supplemental claim for attorneys' fees until the evening before the motions hearing. Ms. Horn responds that the Sheths were not deprived of due process. Although we do not condone the manner in which the proceedings unfolded, upon consideration of the totality of the circumstances and in the absence of a showing of prejudice, we conclude that the Sheths were not denied due process.

"Both Article 24 of the Maryland Declaration of Rights and the Fourteenth Amendment to the United States Constitution prohibit the denial of life, liberty, or property without due process of law." *Regan v. Bd. of Chiropractic Exam'rs*, 120 Md. App. 494, 509 (1998), *aff'd sub nom. Regan v. State Bd. of Chiropractic Exam'rs*, 355 Md. 397 (1999). "The question of whether a party is deprived of the right to due process involves an issue of law and not of fact. As such, the standard of review applied by an appellate court is *de novo*." *Regan*, 120 Md. App. at 509 (citing *Liberty Nursing Ctr. v. Dep't of Health & Mental Hygiene*, 330 Md. 433, 443 (1993)).

Due process "is a flexible concept that 'calls for such procedural protection as a particular situation might demand.'" *Knapp v. Smethurt*, 139 Md. App. 676, 704 (2001) (quoting *Wagner v. Wagner*, 109 Md. App. 1, 24 (1996)). "Just what process is due is determined by an analysis of the particular circumstances of the case, including the functions served and interests affected." *Wagner*, 109 Md. App. at 12-13 (quoting *Techem Chem. Co. v. M/T Choyo Maru*, 416 F. Supp. 960, 968 (D. Md. 1976)). Due process "does

not require procedures so comprehensive as to preclude any possibility of error." *Wagner*, 109 Md. App. at 13.

We turn to an examination of the "particular circumstances of the case." As noted, documentation regarding the bulk of Ms. Horn's claim for attorneys' fees—more than $100,000—had been provided in June 2017. Documentation supporting the supplemental claim of an additional $39,015.82 in fees—supported by invoices containing time billing entries covering the period from June 2017 (post-trial) through December 2018—and $1,686.39 in itemized costs was provided the evening before trial. None of those fees or expense items had previously been shared with the Sheths' counsel. As a result, near the beginning of his presentation, Ms. Horn's counsel acknowledged that the supplemental "portion of our fees may not have been fully vetted" and, therefore, may be "best saved for today." In his own presentation, the Sheths' counsel confirmed that he had received the supplemental documentation shortly after 5:00 p.m. the day before and contended that "due process concerns" were implicated.

As this colloquy unfolded, the Sheths' counsel remarked that should the court "accept [Ms. Horn's supplemental documentation] as an evidentiary matter, then [he] would request the ability to call a witness to the stand so that [he] can do . . . [a] cross-examination." The court stated that it had accepted the supplemental statement into evidence, although it had not yet made any decisions regarding how it would treat the supplemental claim. The Sheths then called Mr. Berlage to the stand and questioned him extensively regarding the relatively brief and uncomplicated supplemental statement. The

questions covered, among other things, items listed on the statement for parking, mileage, lodging, transcript fees, and meals. Counsel also questioned Mr. Berlage about his firm's billing practices. Notably, the Sheths did not request the opportunity to provide any further submissions regarding Ms. Horn's supplemental claim, even though the court expressed a willingness to consider supplemental submissions on a different topic.[13]

Twelve days later, the court issued its memorandum opinion awarding attorneys' fees, including fees and costs included with the supplemental statement. In view of the totality of the circumstances, we find no violation of due process. "Due process . . . does not mean that a litigant need be satisfied with the result." *Bugg v. Md. Transport. Auth.*, 31 Md. App. 622, 630 (1976). Rather, "due process merely assures *reasonable* procedural protections, appropriate to the fair determination of the particular issues presented in a given case." *Wagner*, 109 Md. App. at 13. Here, although the court was initially inclined not to address the costs and fees identified in the supplemental statement at the hearing, the Sheths requested and were afforded the opportunity to cross-examine Mr. Berlage regarding the statement. They thus had advance notice of the presentation of the statement—short though it was—and the opportunity to be heard with respect to the statement at the hearing. Importantly, they also did not request an opportunity to provide any further submissions on the issue following the hearing. Had they requested and been denied such an opportunity, our decision may very well have been different.

[13] During the hearing, Ms. Horn's counsel had argued that the court still had the opportunity to order the scheduling conference required by Rule 2-705(c). The court was skeptical, but offered Ms. Horn's counsel the opportunity to submit authority on that point following the hearing. The docket sheet does not reflect any such filing.

We also observe that Sheths have failed to allege—except in bald, conclusory terms—any actual prejudice as a result of receiving the second verified statement on short notice. The statement itself was relatively brief and uncomplicated. The Sheths have not pointed us to any testimony that could have been elicited but was not, or to any time entry or expense item that could have been challenged if they had had more time. Although they assert that an expert witness could perhaps have found flaws in the supplemental statement if they had had the opportunity to retain one, they have not identified any part of the submission that reasonably required expert analysis to identify a flaw.[14]

In sum, the procedure, albeit not ideal, did not fall short of the minimum requirements of due process. *See Knapp*, 139 Md. App. at 704 ("[D]ue process is met when 'there is at some stage an opportunity to be heard suitable to the occasion.'" (quoting *Drolsum v. Horne*, 114 Md. App. 704, 713 (1997))). We certainly do not condone the timing of Ms. Horn's presentation of the supplemental statement. Indeed, the court would have been within its discretion to refuse to consider the supplemental claim. However, the court also acted within its discretion in allowing the Sheths' counsel to examine Mr. Berlage regarding the statement and, in light of that opportunity and the absence of a request to be heard further in writing, to render a decision. Under the circumstances, due process did not require more.

[14] We do not suggest that the absence of sufficient time to retain an expert could not, by itself, constitute prejudice in other contexts. Here, however, the subject is a relatively small number of attorney billing entries, a subject that is not beyond the ken of the ordinary litigator.

We will therefore affirm the circuit court's award of attorneys' fees to the extent that it was entered against Ms. Sheth and reverse that award to the extent it was entered against all other parties.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED AS TO THE AWARD AGAINST MADHABI SHETH AND REVERSED TO THE EXTENT THE AWARD WAS ENTERED AGAINST OTHER PARTIES. COSTS TO BE PAID 75% BY MADHABI SHETH AND 25% BY APPELLEE.

The correction notice(s) for this opinion(s) can be found here:

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