Circuit Court for Anne Arundel County
Case No. C-02-CV-18-003392

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 488

September Term, 2019

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DANIEL DAVIS

v.

ELMORE & THROOP, P.C.

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Berger,
Arthur,
Gould,
JJ.

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Opinion by Berger, J.

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Filed: July 2, 2020

This appeal arises from an action filed in the Circuit Court for Anne Arundel County by Appellant, Daniel Davis ("Davis"), against Appellee, Elmore & Throop, P.C. ("Elmore & Throop"). Davis owns a home located within a homeowner's association known as The Oaks at Old Court ("the Association"). Davis fell behind on his monthly assessments that were owed to the Association. The Association retained Elmore & Throop, a law firm, to initiate collection activities against Davis. On December 28, 2018, Davis filed a complaint seeking a class action against Elmore & Throop, challenging their collection activities and alleging violations of the Maryland Consumer Debt Collection Act ("MCDCA"). Davis sought a declaratory judgment, injunction, and attorneys' fees pursuant to the Maryland Consumer Protection Act ("MCPA"). Thereafter, Elmore & Throop filed a motion to dismiss the complaint, or in the alternative for summary judgment. The Circuit Court for Anne Arundel County granted Elmore & Throop's motion for summary judgment, entered a declaratory judgment in favor of Elmore & Throop, and dismissed Davis's request for attorneys' fees.

On appeal, Davis presents the following issues, which we have rephrased for clarity:

I. Whether a debt collecting law firm violates the MCDCA by attempting to collect fees and other charges in amounts in excess of what the consumer is contractually obligated to pay.

II. Whether a debt collecting law firm is exempt from liability to pay attorneys' fees if a consumer prevails on a MCDCA claim against it.

III. Whether the circuit court erred in denying Davis's request for a declaratory judgment and an injunction.

For the reasons provided herein, we hold that the circuit court was legally correct in granting summary judgment in favor of Elmore & Throop on Davis's MCDCA claims. We further hold that the circuit court did not err in denying Davis's requests for a declaratory judgment and injunctive relief. In light of our holding affirming the circuit court's grant of summary judgment in favor of Elmore & Throop on Davis's MCDCA claims, we need not address whether the circuit court erred in dismissing Davis's claim for attorneys' fees.

## FACTS AND PROCEEDINGS

Davis owns property located within the Association. The Association is governed by a Declaration of Covenants and Restrictions ("the Declaration") and By-laws.[1] All property owners are obligated to pay assessments, which are established by the Declaration. Article IV, § 4.1 of the Declaration creates the obligation of homeowners to pay assessments to the Association. Section 4.1 provides the following:

> Except as provided in Section 4.3 of this Article, the Declarant, for each Lot owned by it within the Property, hereby covenants, and each Owner, by acceptance of a deed hereafter conveying any such Lot to his, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay to the Association (i) Annual Assessments or charges, and (ii) Special Assessments or charges for capital improvements, such Annual Assessments and Special Assessments to be established and collected as hereinafter set forth. The Annual and Special Assessments or charges, together with interest at a rate of twelve percent (12%) per annum accruing from their due date until payment is made, and a late charge not in excess of ten percent (10%) as hereinafter set forth, and the cost of collection thereof and reasonable attorneys' fees, shall be a charge on, and a

[1] It is undisputed that the By-laws are harmonious with the Declaration.

> continuing lien upon each Lot against which an Assessment is made. Each Assessment or charge, together with interest at a rate of twelve percent (12%) per annum accruing as aforesaid, and such Late fees, costs and reasonable attorneys' fees incurred or expended by the Association and the collection thereof shall also be a personal obligation of the Owner of the Lot. The personal obligation for any delinquent Assessment or charge, together with interest, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successors in title, unless expressly assigned by them.

Section 4.11 governs enforcement procedures that the Association may take when a property owner is delinquent on their assessments. It provides the following:

> If an assessment or any amounts due pursuant to this Declaration are not paid within thirty (30) days of the date when due (being the date specified in this Article IV), then such amount (i) shall be delinquent, (ii) shall bear interest from the date of delinquency at a rate not to exceed twelve percent (12%) per annum, and (iii) shall be subject to a late charge not in excess of ten percent (10%) of the amount due, including interest. Any lien resulting from an Owner's nonpayment of an assessment or any other amounts due shall be deemed to have been created under, and shall be enforced pursuant to, the provisions of the Maryland Contract Lien Act, as amended from time to time. . . .

The section additionally governs notice requirements that the Association must adhere to if it intends to impose a lien on a delinquent property owner's lot. It further provides:

> The Association may then bring an action at law against the Owner personally obligated to pay the same or a proceeding in equity to foreclose the lien against the Lot, and there shall be added to the amount due the reasonable costs of preparing and filing the complaint of such action. In the event that a judgment is obtained, such judgment shall include late charges, pre-judgment and post-judgment interest on the amount due as provided above, and reasonable attorneys' fees to be fixed by

> the Court together with the cost of the action. Each Owner of a Lot shall by accepting title thereto be deemed to have assented to the passage of a decree for the foreclosure of any lien upon his Lot which results from his failure to pay an Assessment on the due date thereof.

Beginning in 2010, Davis became delinquent on his monthly assessments. From 2010 through January 2015, the assessments were $28.00 a month. Thereafter, the assessments were increased to $31.00 a month. Davis failed to pay these assessments through 2018. In addition to the late assessments, he was charged a 10% late fee, 6% interest, lien costs, attorneys' fees, and charges labeled "other" on his account ledger.

On October 25, 2018, Elmore & Throop sent Davis a letter that he still had a $1,696.28 balance on his account, which included assessments through December 31, 2018 and a $100.00 consent judgment preparation fee. Elmore & Throop informed Davis that he may avoid additional collection costs by paying the full balance of the debt on or before the close of business on November 15, 2018. The letter further represented that if Davis did not pay the total amount, he could sign a consent judgment, which was enclosed with the letter. Elmore & Throop informed Davis that the Association would accept a payment plan until the amount was paid in full. The consent judgment provided that Davis pay the amount of $2,096.28, which included assessments from January 1, 2017 through December 31, 2018, as well as late fees, interest, costs, fines, and attorneys' fees through October 25, 2018. The balance also included a fee for the preparation of the consent judgment and trial, plus related court costs. Elmore & Throop informed Davis that a $350.00 waiver would be extended if no court appearance was necessary. Lastly, the letter represented that if

Elmore & Throop did not receive the executed consent judgment, it would proceed with a collection action at Davis's expense.

On November 5, 2018 counsel for Davis sent a letter to Elmore & Throop demanding that the firm stop all communication with Davis. On the same day, counsel for Davis filed a class lawsuit against Elmore & Throop in the Circuit Court for Anne Arundel County that is the subject of this appeal. In his First Amended Class Action Complaint Davis sought a declaratory judgment declaring that Elmore & Throop may only collect attorneys' fees and costs for collection lawsuits actually filed and may only charge a fee based on the percentage of the recovery actually obtained. He also requested a permanent injunction enjoining Elmore & Throop from collecting or attempting to collect fees and other charges not expressly authorized in the Declaration. Moreover, Davis sought actual damages for a violation of the MCDCA, Md. Code (1975, 2013 Repl. Vol.), § 14-202(8) of the Commercial Law Article ("CL") § 14-202(8) and 14-202(11), as well as attorneys' fees, pursuant to the MCPA, CL § 13-408. Elmore & Throop filed a motion to dismiss the First Amended Complaint, or in the alternative, motion for summary judgment. The Circuit Court granted summary judgment in favor of Elmore & Throop and found the following:

> First, the Court finds that there is no genuine dispute as to material facts in this case. Both parties are in agreement that the Plaintiff was delinquent in paying fees to the homeowner's association and that the Defendant was attempting to collect those fees on behalf of the homeowner's association. There is no dispute that the Defendant charged the Plaintiff for attorney fees pursuant to efforts they made to collect the delinquent fees. There is also no dispute that a Declaration of Covenants (Declaration) and By-laws exist for the community and that Plaintiff knew of their existence and applicability to him.

The circuit court further explained the applicable sections of the Declaration and provided explanations for granting summary judgment in favor of Elmore & Throop:

> However, the Plaintiff would have the Court read 4.11 and Article VII to the exclusion of Section 4.1. The Court refuses to do so. The Court agrees that 4.11 and Article VII explain the mechanism for the Homeowner's Association to collect attorney's fees once the case enters into the litigation phase. However, those sections do not preclude attorneys' fees for collection efforts of delinquent payments. Section 4.1 explicit[ly] explains that homeowners are responsible for payment of attorneys' fees incurred in the collection efforts of the association.
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> First, Count Three alleges a claim for actual damages for violation of the Maryland Consumer Debt Collection Act, Section 14-202(11). This claim fails as a matter of law. There were no false or deceptive representations made by the defendant in their efforts to collect the debt nor were there any unfair or unconscionable means used to collect the debt. The inclusion of attorneys' fees to the debt sought to be collected by the Defendant was authorized by the Declaration. Therefore, the court grants Defendant's motion for summary judgment as to this count.
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> Count Four alleges a claim for actual damages for a violation of the Consumer Debt Collection Act, Section 14-202(8). The Plaintiff can only prevail on this count if the Defendant, while attempting to collect a debt "claim(s), attempts, or threaten(s) to enforce a right with the knowledge that the right does not exist. Again, the Plaintiff is alleging that Defendant's attempt to collect attorneys' fees incurred in collection efforts are not a right that exists. However, Section 4.1 of the Declaration establishes that very right. Therefore, this count fails as a matter of law and the Court grants summary judgment for the defense on this count.

Additionally, the court denied declaratory relief and Davis's request for a permanent injunction because the Declaration expressly provided for the collection of costs and reasonable attorneys' fees incurred in Elmore & Throop's collection efforts. The court, instead, entered a declaratory judgment declaring that Elmore & Throop was entitled to collect reasonable attorneys' fees expended in the collection of outstanding debts, pursuant to § 4.1 of the Declaration. Additionally, the court dismissed Davis's claim for his own attorneys' fees as damages pursuant to the MCPA.

## DISCUSSION

### I. MCDCA Claims.

Davis contends that Elmore & Throop collected and attempted to collect amounts that were not authorized by the Declaration. He urges, therefore, that Elmore and Throop violated CL § 14-202(8) and § 14-202(11). Davis does not dispute that he was late on some of his assessments and, therefore, was obligated to pay the assessments, plus a 10% late fee, as well as 6% interest. Rather, he disputes attorneys' fees and "other charges" that were added to his account, such as a $25 monthly fee to monitor his account, Pacer charges, bankruptcy searches, and owner verification searches. Davis argues that none of these charges are explicitly delineated in § 4.1 or § 4.11 of the Declaration.

The Circuit Court granted summary judgment in favor of Elmore & Throop regarding Davis's MCDCA claims. "With respect to the trial court's grant of a motion for summary judgment, the standard of review is *de novo*." *Dashiell v. Meeks*, 396 Md. 149, 163 (2006) (emphasis in original). "Prior to determining whether the trial court was legally correct, an appellate court must first determine whether there is any

genuine dispute of material facts." *Id.* "All factual disputes must be resolved in favor of the non-moving party." *Hector v. Bank of New York Mellon*, 244 Md. App. 322, 223 (2020). "Only when there is an absence of a genuine dispute of material fact will the appellate court determine whether the trial court was correct as a matter of law." *Dashiell*, *supra*, 396 Md. at 163.

### A. The Declaration authorizes Elmore & Throop to collect reasonable attorneys' fees and costs of collection.

In order to determine whether Elmore & Throop violated the MCDCA, we must first determine whether the Declaration authorizes the firm to collect costs it incurred in attempting to collect Davis's delinquent assessments and reasonable attorneys' fees. The Court of Appeals has articulated the following standard for our review of a contract:

> "The interpretation of a contract, including the determination of whether a contract is ambiguous, is a question of law," which we review de novo. *Clancy*, 405 Md. at 556–57, 954 A.2d at 1101 (internal quotation marks and citations omitted). We employ in Maryland an objective approach to contract interpretation, according to which, unless a contract's language is ambiguous, we give effect to that language as written without concern for the subjective intent of the parties at the time of formation. *Cochran v. Norkunas*, 398 Md. 1, 16, 919 A.2d 700, 709 (2007). This undertaking requires us to restrict our inquiry to "the four corners of the agreement," *id.* at 17, 919 A.2d at 710, and ascribe to the contract's language its "customary, ordinary, and accepted meaning." *Fister v. Allstate Life Ins. Co.*, 366 Md. 201, 210, 783 A.2d 194, 199 (2001) (internal quotation marks and citation omitted).

*Ocean Petroleum, Co. v. Yanek*, 416 Md. 74, 86 (2010).

The Association is governed by a Declaration and By-laws. Section 4.1 of the Declaration creates the obligation of a property owner to pay assessments to the Association in addition to actions and charges that the Association may charge in connection with the collection of such assessments. Section 4.11 governs the enforcement procedures that the Association may employ when a property owner does not pay their required assessments, including the initiation of a lawsuit by the Association against the property owner.

We agree with the circuit court that the Declaration clearly authorized Elmore & Throop to collect costs it incurred in its efforts to attempt to collect Davis's delinquent assessments. The language of both provisions is clear and unambiguous. As the circuit court readily observed, § 4.1 of the Declaration explicitly provides that the property owners are responsible for payment of attorneys' fees incurred in the collection efforts of the association. As the circuit court further observed, § 4.11 explains the mechanism for the Association to collect attorneys' fees once the case enters into the litigation phase. This section, however, does not preclude attorneys' fees for collection efforts that Elmore & Throop took before filing a lawsuit against Davis. We, therefore, hold that § 4.1 of the Declaration explicitly authorizes the inclusion of attorneys' fees and costs incurred in attempting to collect the debt from Davis.[2]

[2] Davis, in the fact section of his brief, argues that the collection of these fees and costs is inconsistent with the Maryland Contract Lien Act, Md. Code (1974, 2010 Repl.Vol.), Real Property ("RP"), § 14-204. He argues that while Section 4.1 of the Declaration provides for the creation of a lien that may be enforced using RP § 14-204, this code provision makes it clear that such lien is enforceable only if it includes reasonable

Davis next avers that reasonable attorneys' fees, as set forth in § 4.1, may only be determined by the court. Davis, however, provides no case that directly supports this argument. Davis relies on *Monmouth Meadows Homeowners Ass'n., Inc. v. Hamilton*, 416 Md. 325 (2010) in support of his argument that a court must determine the amount of attorneys' fees to be awarded in suits by a homeowner's association against property owners to collect assessments, where the recovery of fees is governed by a contractual provision.

We are unpersuaded by Davis's reliance on *Monmouth*. In *Monmouth*, the Court of Appeals discussed the appropriate methods by which trial judges calculate a reasonable award of attorneys' fees after a Homeowners' Association ("HOA") obtains a judgment against a homeowner. *Monmouth*, *supra*, 416 Md. at 333. *Monmouth* involved a law firm's collection of delinquent HOA assessments, which involved placing liens on the debtors' properties and initiating lawsuits against them in two counties. *Id.* at 329-30. Pursuant to the HOA agreement, residents were required to pay interest on the past-due assessments, as well as "costs and attorneys' fees incurred by the Associations in the pursuit of delinquent assessment payments." *Id.* at 329. The creditor filed liens against the property owners, which included attorneys' fees. *Id.* at 330. The creditors also sought the award of

costs and attorneys' fees directly related to the filing of the lien. He also avers that these costs and fees may not exceed the delinquent assessments pursuant to RP § 14-204. RP § 14-204, however, does not limit attorneys' fees that may be charged before a lien is placed on a property and a creditor initiates a lawsuit against a property owner. Further, RP § 14-203(b)(2)-(4) provides that a lien may secure the payment of "[a]ttorney's fees provided for in a contract or awarded by a court for breach of a contract," and "[c]osts of collection."

attorneys' fees in both district courts when it obtained judgments against the debtors. *Id.* The creditors challenged the methods that the lower courts used in determining the amount of attorneys' fees awarded, post-judgment. *Id.* at 331. The Court of Appeals held that the "Circuit Courts in these cases acted within their discretion in making the fee awards that they did, and correctly rejected the approach adopted by the District Court of awarding attorneys' fees based merely on a percentage of principal sought." *Id.* at 345. The Court also held that it was "improper to use the lodestar method in calculating attorneys' fees in contractual debt-collecting cases, and instead affirmed the use of MRPC 1.5 as a rubric for determining a reasonable fee." *Id.* at 345.

Notably, *Monmouth* does not stand for the proposition that only a court may determine reasonable attorneys' fees before a creditor initiates a lawsuit against a debtor. *Monmouth* concerned the method of calculating reasonable attorneys' fees at the conclusion of litigation.

Davis contends that the costs of collection provided for in the Declaration must also be considered and approved by the court. In support of this argument, Davis relies on *Shula v. Lawent*, 359 F.3d 489 (7th Cir. 2004). In *Shula*, the debtor mailed the creditor a check for the full amount of his debt, once the creditor initiated suit against him. *Shula*, *supra*, 359 F.3d at 490. Subsequently, the creditor abandoned the suit, which was dismissed by the court two years after it was initiated. *Id.* The creditor, however, demanded that Shula pay the court costs. *Id.* To establish a violation of the relevant FDCPA provision, the debtor had to establish that the debt obligation neither arose by agreement or operation of law. *Id.* at 492-93. Critically, the Court held that Shula was

not obligated to pay costs because the District Court had not awarded costs pursuant to its statutory authority, and there was no agreement between the parties that allowed the creditor to collect costs. *Id.* at 493. *Id.* As a result, the Court held that the creditor had violated the FDCPA. *Id.* In contrast, in the instant case, the parties had an agreement that authorized the recovery of the costs of collection.

### B. Davis cannot prevail on his MCDCA claims because Elmore & Throop had a right to collect costs associated with collection and reasonable attorneys' fees.

Davis contends that Elmore & Throop has violated the MCDCA, CL § 14-202(8) and § 14-202(11) by attempting to collect costs and fees that he is not contractually obligated to pay. "The MCDCA, and in particular § 14–202, is meant to proscribe certain *methods* of debt collection and is not a mechanism for attacking the validity of the debt itself." *Fontell v. Hassett*, 870 F. Supp. 2d 395, 405 (D. Md. 2012) (emphasis in original). "A collector who violates any provision of this subtitle is liable for any damages proximately caused by the violation, including damages for emotional distress or mental anguish suffered with or without accompanying physical injury." CL § 14-203.

CL § 14-202(8) provides that "[i]n collecting or attempting to collect an alleged debt a collector may not . . . [c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist[.]"[3] CL § 14-202(11) provides that "[i]n collecting or attempting

[3] The "knowledge" requirement of CL § 14-202(8) "has been held to mean that a party may not attempt to enforce a right with actual knowledge or with reckless disregard as to the falsity of the existence of the right." *Allen v. Bank of Am., N.A.*, 933 F. Supp. 2d 716, 729 (D. Md. 2013) (quoting *Kouabo v. Chevy Chase Bank, F.S.B.,* 336 F. Supp.2d 471, 475 (D. Md. 2004)).

to collect an alleged debt a collector may not . . . [e]ngage in any conduct that violates §§ 804 through 812 of the Federal Fair Debt Collection Practices Act." CL § 14-202(11). The FDCPA, codified at 15 U.S.C. § 1692, provides, in pertinent part that "[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. Section 1692f(1) further provides that "[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt" including "[t]he collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law."

Critically, the Declaration authorized Elmore & Throop to collect costs and attorneys' fees that it incurred in attempting to collect the delinquent assessments from Davis. The circuit court, therefore, was legally correct in determining that Elmore & Throop did not violate the MDCA.

Davis relies on *Allstate Lien & Recovery Corp. v. Stansbury*, 219 Md. App. 575, 577 (2014) and *Mills v. Galyn Manor Homeowner's Ass'n, Inc.*, 239 Md. App. 663, 676 (2018), *aff'd sub nom.*, *Andrews & Lawrence Prof'l Servs., LLC v. Mills*, 467 Md. 126 (2020), in support of their argument that Elmore & Throop collected or attempted to collect "unauthorized charges." In *Allstate*, *supra*, 219 Md. App. at 577, a vehicle repair shop placed a "garageman's lien" on a vehicle that it repaired, once the owner could not pay for the repairs in full. The repair shop included a $1,000 processing fee in the lien amount that

the owner was required to pay in order to redeem his vehicle. *Id.* The vehicle owner alleged that the processing fees were not authorized by statute. *Id.* The owner, therefore, alleged that the repair shop violated the MCDCA by including the processing fee in the lien amount. *Id.* The repair shop argued that it had "absolute legal right to execute upon the lien and sell the vehicle because of the garageman's lien on the vehicle, even if a portion of the lien amount [was] disputed." *Id.* at 590. The repair shop further argued that "the MCDCA addresses the method of debt collection, as opposed to a challenge to the amount of the underlying debt." *Id*.

This Court first determined that CL § 16-202, which authorizes a garageman's lien, did not authorize including processing fees as part of the lien amount. We next addressed whether the inclusion of those fees constituted a violation of the MCDCA. We rejected the repair shop's reliance on *Fontell*, *supra*, 870 F. Supp. 2d at 406, in which a homeowner challenged the validity of an underlying homeowner's association debt under the MCDCA. The *Fontell* Court held that the MCDCA is "meant to proscribe certain *methods* of debt collection and is not a mechanism for attacking the validity of the debt itself." *Id.* at 405 (emphasis in original). This Court observed that *Fontell* was unhelpful to the repair shop, because the vehicle owner was not disputing the underlying debt, but rather the "method of collecting the debt, i.e., front-loading processing fees and including those fees as part of the lien." *Allstate*, *supra*, 219 Md. App. at 530. Accordingly, we held that because the repair shop did not have the right to include the processing fees as part of the lien amount, the vehicle owner could recover under the MCDCA. *Id.* at 591.

More recently in *Mills*, *supra*, 239 Md. App. at 676, we considered whether a Homeowner's Association violated the MCDCA. The homeowners challenged the Association's right to file liens against them because the statute of limitations had expired. The homeowners further alleged that the Association levied fines against them that were not authorized by the Association's governing documents. We held that "the Homeowners may pursue a MCDCA claim because they challenge [the Association's] methods in filing liens." Further, we remanded the case to the trial court to determine whether the fines levied against the homeowners "are the type of 'unauthorized' charges covered by the statute." By "unauthorized charges," we addressed charges that the Association did not have the *right* to assess at all.

Davis argues that *Mills* and *Allstate* allow a debtor to bring claims under the MCDCA to challenge collections of unauthorized charges, not just methods of collecting debts. We disagree. Critical to both the *Allstate* and *Galyn Manor* holdings was that the creditors sought to collect fees that they did not have the *right* to collect. Neither holding suggests that a debtor may use the MCDCA to challenge the *amount* of a debt, which the creditor had a *right* to collect. Davis contends that Elmore & Throop had no right to collect the attorneys' fees and costs on the basis that the Declaration and Maryland law did not authorize it. Nevertheless, as we have determined, the Declaration expressly provides that Elmore & Throop maintains such a right.

## II. Davis is not entitled to attorneys' fees because he has not prevailed on his MCDCA claims.

Davis maintains that because Elmore & Throop violated the MCDCA, he is entitled to attorneys' fees pursuant to the Maryland Consumer Protection Act, CL § 13-303. The circuit court, however, dismissed this claim. Pursuant to CL § 13-303 "[a] person may not engage in any unfair, abusive, or deceptive trade practice . . . in . . . [t]he collection of consumer debts." "Unfair, abusive, or deceptive trade practices include any [f]alse, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers[.]" CL § 13-301. Generally, "any person may bring an action to recover for injury or loss sustained by him as the result of a practice prohibited by [the MCPA]." CL § 13-408.

The General Assembly has provided that a violation of the MCDCA is a *per se* violation of the MCPA. *See* CL 13-301(14)(iii). Pursuant to CL § 13-408(b) "[a]ny person who brings an action to recover for injury or loss under this section and who is awarded damages may also seek, and the court may award, reasonable attorney's fees." The MCPA, however, does not apply to the professional services of a lawyer. CL §13-104. In light of our holding that Elmore & Throop did not violate the MCDCA or the MCPA, we need not undertake an analysis of whether CL § 13-408(b) is applicable to the law firm.[4]

[4] The Court of Appeals recently affirmed our decision in *Mills*, *supra*, 239, Md. App. 663, in addressing whether the MCPA exemption for the professional services of a lawyer, applies to all services of a lawyer when engaging in a debt collection activity. *Andrews & Lawrence Prof'l Servs*, *supra*, 467 Md. at 168-69. The Court, however, observed that "in the context of debt collection activity, not all services provided by a

## III. The circuit court did not abuse its discretion in denying Davis a declaratory judgment and injunctive relief.

Davis next challenges the circuit court's denial of declaratory and injunctive relief. Davis requested a declaratory judgment, seeking to declare that Elmore & Throop could not charge attorneys' fees and costs until after litigation, and disputing the amount of attorneys' fees. Davis also sought a permanent injunction enjoining Elmore & Throop from collecting costs and fees that were not authorized by the Declaration.

Maryland Code (1973, 2013 Repl. Vol.), § 3-409 of the Courts and Judicial Proceedings Article ("CJP") allows a court to grant a declaratory judgment if the following criteria are satisfied:

> (a) Except as provided in subsection (d) of this section, court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if:
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> (1) An actual controversy exists between contending parties;
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> (2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or
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> (3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it.

"[W]e generally review a trial court's decision to grant or deny declaratory judgment under an abuse of discretion standard." *Sprenger v. Pub. Serv. Comm'n of Maryland*, 400 Md.

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lawyer or a law firm fall within the 'professional services' exemption under the CPA." *Id.* at 168.

1, 21 (2007). The circuit court entered a declaratory judgment in favor of Elmore & Throop, declaring that it had the right to collect reasonable attorneys' fees expended in the collection of outstanding debts, pursuant to § 4.1 of the Declaration. The circuit court did not abuse its discretion in denying Davis's request for declaratory relief. The circuit court properly held that the Declaration authorized Elmore & Throop to recover its fees expended in its collection of the outstanding debt.

The circuit court further denied Davis's request for injunctive relief because Elmore & Throop had "an absolute right to collect attorneys' fees as authorized by the Declaration." We also review the denial of an injunction under an abuse of discretion standard. See *Yaffe v. Scarlett Place Residential Condo., Inc.*, 205 Md. App. 429, 440 (2012). A party requesting "permanent injunctive relief must allege and prove facts 'that it will sustain substantial and irreparable injury as a result of the alleged wrongful conduct.'" *Id.* at 457 (quoting *El Bey v. Moorish Sci. Temple of Am., Inc.,* 362 Md. 339, 355 (2001)). As the circuit court properly held, Elmore & Throop was authorized to collect costs and fees. Accordingly, the circuit court did not abuse its discretion in denying Davis's request for a permanent injunction.

**JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**