

Circuit Court for Prince George's County
Case No. CAE21-10013

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 832

September Term, 2024

LARRY D. JOHNSON, *et al.*

v.

FRANKLIN FARMS HOMEOWNERS
ASSOCIATION. INC.

Leahy,
Reed,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by McDonald, J.

Filed: July 22, 2026

*Under Maryland Rule 1-104, an unreported opinion may not be cited as precedent as a matter of stare decisis. It may be cited for its persuasive value if the citation conforms to Rule 1-104(a)(2)(B).

This case arose out of a dispute between Appellee Franklin Farms Homeowners Association (the “HOA”) and a group of its members (“petitioning members”), including Appellants Larry Johnson, Margarita Vargas, and Ulises Vargas, over the meaning of the HOA’s By-Law provisions on meetings and elections of HOA board members. In November 2020, the HOA’s board decided to postpone the organization’s annual election due to legal restrictions on gatherings related to the Covid-19 pandemic. Shortly thereafter, the petitioning members asked the HOA board to call meetings to create a nominating committee and conduct an election. When the HOA board declined to do so, the petitioning members formed the view that the By-Laws entitled them to hold those meetings without the HOA board’s approval. They then announced meeting dates to the HOA membership.

In August 2021, the HOA initiated this action by filing a complaint for injunctive and other relief against Mr. Johnson, the Vargases, and two other HOA members in the Circuit Court for Prince George’s County. Asserting that the By-Laws required that meetings to conduct HOA business be sanctioned by the HOA board, the HOA asked the court to enjoin the defendants from distributing communications to HOA members purportedly on the board’s behalf, from holding unsanctioned meetings and election activities, and from using the “Franklin Farms” name in communications with the HOA membership. The HOA also asked for an award of attorneys’ fees against the defendants under the HOA’s governing instruments or other applicable law.

The court’s scheduling order designated a trial date in February 2024. Neither Mr. Johnson nor the Vargases, nor anyone on their behalf, appeared in court on that date. Mr. Johnson had sought a continuance of the trial as to himself, asserting that he had contracted Covid. The court granted that request contingent on Mr. Johnson providing documentation of his condition, which he later did. No explanation was offered for the Vargases’ absence. The Circuit Court held a bench trial as to the HOA case against them in their absence and issued a judgment against the Vargases, which included an award of attorneys’ fees in favor of the HOA.

In May 2024, the court conducted a second bench trial concerning the HOA case against Mr. Johnson. The court again ruled in favor of the HOA at that trial. It then issued largely identical injunctions against the Vargases and Mr. Johnson, enjoining them from hosting HOA meetings not sanctioned by the HOA board and from distributing to HOA members “any materials ... that reference or use the name or address of Franklin Farms or of Franklin Farms Homeowners Association, Inc. on the envelope or in the title of the letter, e-mail, or other correspondence without [the board’s] express written permission” In addition, the court ordered Mr. Johnson to “immediately remove from the internet the website that he owns with the title of ‘myfranklinfarms.com’” and enjoined him from “maintaining or managing any website that uses the name of Franklin Farms or Franklin Farms Homeowners Association, Inc. in [its] title” The court awarded attorneys’ fees against Mr. Johnson and ordered that a portion of that award be entered jointly and severally against the Vargases.

Appearing *pro se* in this Court, Mr. Johnson raises 10 issues that fall into five broad categories: (1) whether the Circuit Court erred when it interpreted the HOA’s governing instruments to preclude the petitioning members from calling a meeting to elect HOA directors without the board’s authorization; (2) whether the record of Mr. Johnson’s trial supported the Circuit Court’s finding that Mr. Johnson participated in conducting an election not sanctioned by the HOA board, and, if so, whether the injunction that the Circuit Court issued was over-broad; (3) whether certain events during the proceedings resulted in a violation of Mr. Johnson’s right to due process; (4) whether the Circuit Court erred by enjoining Mr. Johnson from using the words “Franklin Farms” in the name of his website; and (5) whether the evidence supported the awards of attorneys’ fees to the HOA.¹

As explained below, we conclude:

First, the Circuit Court correctly interpreted the HOA By-Laws to allow only the board secretary or a board designee to call a meeting of the HOA membership for the purpose of electing directors. Although HOA members may ask the board secretary or board’s designee to call a meeting for any purpose, the members themselves lack the power to call a meeting of the HOA to perform an HOA function.

Second, we defer to the Circuit Court’s factual finding that the Appellants participated in conducting an unauthorized election for board directors and thereby violated

¹ The Vargases filed timely notices of appeal in the Circuit Court but have not filed a separate brief in this Court. The HOA has treated the Johnson brief as stating the issues raised by all parties. (Notably, all three Appellants filed identical civil information reports in this Court describing the issues on appeal.) We will do the same and will address only the issues raised in Mr. Johnson’s brief.

the HOA's By-Laws. However, the Circuit Court's injunctions extended to some conduct that was protected by State law concerning HOA members' communications with each other. We remand the case to the Circuit Court to limit the injunction to permit communications protected by the Maryland Homeowners Association Act and to prohibit only the conduct that violated the governing instruments.

Third, we conclude that some of Appellants' arguments concerning the fairness of the proceedings were not preserved for our review. Others are rendered moot by our resolution of other issues.

Fourth, the Circuit Court erred by enjoining Mr. Johnson from maintaining his "myfranklinfarms.com" website. The court did not state a finding as to which, if any, provision of the HOA governing instruments Mr. Johnson had violated by creating the website and, as explained below, we perceive none. We reverse the Circuit Court's judgment as to Mr. Johnson's maintenance of the website.

Fifth, the Circuit Court's awards of attorneys' fees must also be vacated and remanded for that court's consideration of which fees were attributable to enjoining the Appellants' violations of the HOA instruments and for its analysis of whether the HOA's evidence met the requisite standard of proof and reasonableness factors applicable to claims for attorneys' fees.

I

Background

A. *Legal Framework*

Franklin Farms is a subdivision of 74 homes in Prince George’s County managed by the HOA. Consistent with State law, three interdependent instruments create and govern the operation of the HOA. Those instruments are: the Articles of Incorporation, the Declaration of Covenants, Conditions, and Restrictions, and the By-Laws, as amended from time to time. All three instruments were introduced into evidence at trial. The By-Laws specify that, in case of a conflict between the Articles of Incorporation and the By-Laws, the Articles control, and in case of conflict between the Declaration and the Articles, the Declaration controls.²

Also pertinent to the decision of this case is the Maryland Homeowners Association Act, (“HOA Act”), Maryland Code, Real Property Article (“RP”) (1974, 2015 Repl. Vol.), §11B-101 *et seq.* In the event of a conflict between the Act and the governing instruments, the Act prevails. RP §11B-103.

1. The Franklin Farms Governing Documents

The Articles of Incorporation

The HOA was established in 1998 by the filing of the articles of incorporation (“Articles”) as a non-stock, non-profit Maryland corporation under Title 2 of the Maryland Corporations and Associations Article (“CA”) of the Maryland Code. The Articles declare

² This case does not present conflicts among the instruments.

that the HOA was established for the purpose of exercising the powers granted to it by the Declaration of Covenants, Conditions, and Restrictions (“Declaration”) applicable to the subdivision. The Articles provided for the governance of the HOA by a board of directors to be elected to a term of years by the membership at the first annual meeting and then at each subsequent annual meeting. Each homeowner, including Appellants, is a member of the HOA, with voting rights limited to one vote per lot.

The Articles do not address either the use of the subdivision name – “Franklin Farms at Ammendale” or “Franklin Farms”³ – by HOA members or the manner in which HOA members may disseminate HOA-related information among themselves.

The Declaration of Covenants, Conditions, and Restrictions

The Declaration⁴ was recorded in the Prince George’s County land records pursuant to the HOA Act. It provides that the lots in the subdivision are subject to the covenants, restrictions, and conditions that it contains. As in the Articles, each lot owner is a voting member of the HOA, with votes limited to one per lot.

³ According to the Amended Declaration, the recorded subdivision plat referred to the development as “Franklin Farms at Ammendale.” The HOA was simply named “Franklin Farms Homeowners Association.”

⁴ Under the Act, “homeowners association” means “a person having the authority to enforce the provisions of a declaration” and “includes an incorporated or unincorporated association.” RP §11B-101(i).

A “declaration” is a recorded instrument “that creates the authority for a homeowners association to impose on lots, or on the owners or occupants of lots, ... any mandatory fee in connection with the provision of services or otherwise for the benefit of some or all of the lots, the owners or occupants of lots, or the common areas.” RP §11B-101(d)(1).

The Declaration grants powers to the HOA regarding logistical matters such as common-area maintenance; easements; assessments; insurance; utilities; the right to enter a lot to remove a nuisance or correct a violation of the Declaration; and the employment of a manager and other contractors. The Declaration does not address either the use of the subdivision name by HOA members or the manner in which HOA members may disseminate HOA-related information among themselves.

The Declaration also grants enforcement powers to the HOA. As amended in 2018, the Declaration authorized the HOA to bring legal proceedings to enforce any provision of the Articles, Declaration, By-Laws, and “any rule or regulation promulgated by the Association pursuant to its authority as provided in the Declaration or Articles of Incorporation or By-Laws.” The 2018 amendment also provided for awards of attorneys’ fees in an enforcement action:

There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation [or] breach of any of the within covenants or restrictions or any provision of the By-Laws or the Articles of Incorporation of the Association cannot be adequately remedied by action at law or exclusively by recovery of damages. If the Association ... successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration or Articles of Incorporation or By-Laws of the Association, the costs of such action, including legal fees, shall become a binding personal obligation of the Owner committing or responsible for such violation, and such costs shall be a lien upon the Lot of such Owner....

The By-Laws

As relevant to this case, the HOA By-Law provisions fall into the following categories: the election and terms of the directors, special meetings, meeting notices, and HOA board powers.

Election and Terms of Directors. The By-Laws elaborate on the provisions of the Articles concerning the election of directors at an annual meeting. Under the By-Laws, each annual meeting must be held in the same month as the first annual meeting “at a date, time, and location within [Maryland] selected by the Board of Directors.” After the expiration of the initial directors’ terms, “each director ... shall be elected at the annual meeting” to a term of “one (1) year or until his successor is elected, whichever shall be the longer period.”

Special Meetings. The By-Laws provide: “Special meetings may be called at any time by the President or by the Board of Directors, or upon written request of the Members.” The By-Laws require the board president to “preside at all meetings of the Members....”

Meeting Notices. The By-Laws provide: “Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of the notice, postage prepaid, ... to each Member” The Secretary’s duties include “serv[ing] notice of meetings of the Board and of the Members[.]” The By-Laws do not specify by whom, or by what method, a person other

than the Secretary would be “authorized to call a meeting.” The Articles and the Declaration do not address that question, either.

HOA Board Powers. The HOA board may “exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Members by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration[.]” The powers, duties, and authority that the By-Laws assign to the board pertain to such matters as rules for the use of the common areas, setting the amount of assessments and administering the collection of those assessments, imposing a sanction for a member’s failure to pay assessments, the hiring of a manager and contractors, and the purchase of insurance.

The By-Laws do not address the use of the subdivision name by HOA members, do not regulate the manner in which HOA members may disseminate HOA-related information, and do not authorize the board to regulate those matters.

2. Relevant Provisions of the HOA Act

The HOA Act contains several provisions pertinent to this case.

Concerning HOA members’ communications about the operation of the HOA, RP §11B-111.3 provides:

Except for reasonable restrictions to the time of distribution, a recorded covenant or restriction, a provision in a declaration, or a provision of the bylaws or rules of a homeowners association may not restrict a lot owner from distributing written information or materials regarding the operation of or matters relating to the operation of the homeowners association in any manner or place that the governing body distributes written information or materials.

Concerning meetings of HOA members to discuss the operation of the HOA, RP §11B-111.4 (b) provides:

Subject to reasonable rules adopted by the governing body, lot owners may meet for the purpose of considering and discussing the operation of and matters relating to the operation of the homeowners association in any common areas or in any building or facility in the common areas that the governing body of the homeowners association uses for scheduled meetings.

B. The Events Leading to this Litigation⁵

The HOA Board Decides to Postpone 2020 Election

Under the By-Laws, the HOA membership meets in the same month every year to elect board members as needed to fill vacancies arising from an expired term or other cause. That month is November. In 2020, however, the HOA board voted to postpone the annual meeting in light of Covid pandemic measures that limited in-person gatherings.

Some HOA Members Seek to Have an Election

The Appellants and certain other HOA members disagreed with the board's decision. In December 2020, they sent the board secretary a petition in which they asked him to call a meeting to hold the election. The board secretary did not respond. A second letter was sent on January 26, 2021, to the secretary in care of the HOA's counsel. Neither the secretary nor any other representative of the board responded to the letter.

In June 2021, Ko Klaver, a member of the HOA, sent a letter to HOA members inviting them to a “townhall meeting” at the community playground on July 15, 2021, to

⁵ These facts are largely derived from the testimony and exhibits admitted into evidence at the trial of the HOA case against Mr. Johnson.

discuss the governance of the HOA. In the letter, Mr. Klaver stated that the HOA had taped collection notices on many homeowners' doors. He stated that the notices threatened fines and property liens, that the HOA members had not had the opportunity to hold board elections for the past two years, that 24 members had petitioned the HOA for a meeting without success, and that "[the board] is still acting as if it can rule over our Homeowners Association." He stated that "the situation is out of control and must be fixed." The letter was captioned "Petitioning Shareholders of Franklin Farms HOA, PO Box 632, Beltsville, MD 20704." That address was not the HOA's mailing address.⁶ The letter concluded, "With kind regards, Ko Klaver, your neighbor at 12026 Benjamin Street" over a handwritten signature. The envelopes containing the letter bore a return address for "Members/Shareholders of Franklin Farms" and also listed Post Office Box 632.

On July 12, 2021, Scott Wheat, an attorney with the Piel law firm representing the HOA, sent a letter to HOA members on behalf of the HOA board. In the letter, Mr. Wheat stated that it had "come to this firm's attention that various Lot Owners have distributed letters to homeowners using Franklin Farms HOA's name without the express written permission of Franklin Farms Homeowners Association (HOA)." Asserting that "[t]his action is unlawful," he stated that the HOA board had "instructed [him] to inform you that certain correspondence sent to homeowners purportedly by Members/Shareholders of Franklin Farms HOA was not authorized by [the board] and does not reflect their opinions

⁶ According to Denise Crawford, the HOA president, P.O. Box 1623 was the HOA's post office box.

on matter[s] concerning the community.” Finally, he stated, “The information contained in the unauthorized correspondence is not endorsed by [the HOA board].”

The Petitioning Members Plan a “Nominating Committee”

The July 2021 meeting to which Mr. Klaver had invited the homeowners occurred. The record does not disclose what transpired there. On August 8, 2021, Mr. Vargas sent to all HOA members a letter in which he told them that the HOA By-Laws required that candidates for election to the HOA board be nominated by a nominating committee. Mr. Vargas stated that in 2018 the HOA board had pledged that the HOA would follow that procedure in future elections, and that if the members “received a letter saying otherwise,” they should be aware of the requirements in the By-Laws. Attached to his letter was a letter that the HOA’s attorney had sent to a mediator in the Office of the Attorney General of Maryland in 2018 in response to a complaint that Mr. Johnson had filed with that office about various matters, including the board’s failure to establish a nominating committee.

On August 9, 2021, another letter was sent to the HOA members. It bore the following caption:

Franklin Farms Homeowners, Association, Inc.
Special Members’ Meeting
Director Election’s [sic]
Nomination Committee Appointment.

That letter stated that “the first step of installing a legitimate Board of Directors, is the mandatory appointment of the Nomination Committee prior to the election,” that that task would be “the first and only agenda action scheduled in the Special Members Meeting’s first session,” that voting instructions would be sent separately, and that the meeting would

be held by Zoom on August 25, 2021. The letter concluded, “Respectfully Sent, Petitioning FFHOA Members/Shareholders for Elections.”

The voting instructions and a ballot appeared on a document captioned “Special Members Meeting/Franklin Farms Homeowners Association/August 25, 2021.” The document advised the HOA members that they were voting to appoint the “Nomination Committee” for the HOA election process, that a request for volunteers to serve on the committee had been mailed to all members in March 2021, that seven members, including Messrs. Johnson, Vargas, and Klaver, had responded, and that members could vote by mail, electronically during the virtual meeting, or by proxy. The ballot gave the voter the choice to “appoint” or “not appoint.” Ballots submitted by mail were to be sent to “Members/Shareholders of FFHOA” at P.O. Box 632 for receipt by August 24, 2021.

The HOA Announces a Sanctioned Election and Files Suit Against Appellants

On August 19, 2021, the HOA’s management company sent to the HOA members a letter that announced that the HOA would hold an election (the “sanctioned election”) to fill the positions of the HOA directors whose terms had expired in November 2020. On August 24, 2021, as detailed further below, the HOA filed this action, together with a motion for a temporary restraining order, against Mr. Johnson, the Vargases, and Mr. and Mrs. Klaver to enjoin them from holding the meeting that the petitioning members had announced. The Circuit Court denied the motion.⁷

⁷ The court order denying the motion stated that the HOA had failed to file a bond, or a request for a waiver of the bond requirement, as required by the Maryland Rules, and

Appellants Named to the Unsanctioned “Nominating Committee”

On September 3, 2021, a letter captioned “Members Shareholders of Franklin Farms HOA” announced to the HOA members that the August 25, 2021 Zoom meeting had been held, that the seven volunteers for the nominating committee had been elected to it, and that they would meet on September 29, 2021. The letter was signed, “Kindly, the Petitioning Members Shareholders of the Franklin Farms Homeowners Association.” The envelope showed a return address for “Members/Shareholders of Franklin Farms” and listed P.O. Box 632 at the Beltsville post office as their address. Attached to the letter were minutes of the August 25, 2021 meeting, submitted by Mr. Klaver, who reported that the meeting had been called by “24 Members/Shareholders” to form a “Nominee Committee” in order to “hold elections to install a legitimate Board of Directors[.]” and that the seven HOA members who had volunteered had been selected.

The HOA Conducts a Sanctioned Election

Shortly thereafter, the HOA conducted the sanctioned election on September 8, 2021, at which the members elected a new board. Nonetheless, the petitioning members continued to work towards nominating candidates for their own election.

The Petitioning Members Hold Zoom Meetings and an Unsanctioned Election

On October 8, 2021, the “Petitioning members shareholders of FFHOA” sent to the HOA members a notice of a nominating committee meeting to be held on October 27,

had failed to plead specific facts, supported by affidavit, that it would suffer immediate, substantial, and irreparable harm.

2021. The letter included a form on which HOA members could nominate candidates for election to the HOA board. Members could mail the form to “FFHOA Members Calling for Elections” at P.O. Box 632 or email it to election@myfranklinfarms.com. The return address on the envelope again showed “Members/Shareholders of Franklin Farms,” at P.O. Box 632 in the Beltsville post office.

The petitioning members’ election activities continued during 2022. In February 2022, the “FF-HOA Nominating Committee” sent to the HOA members a notice of a “special member meeting for the ELECTION of the BOARD OF DIRECTORS” to be held by Zoom on March 2, 2022. The letter contained a ballot form, a list of three nominees⁸, and instructions on registering so that the electronic voting system could record votes.

According to minutes dated March 4, 2022, later sent to the HOA members from Mr. Klaver as “Chair of the nominating/election committee,” the March 2 Zoom meeting and election were held. The minutes reported that 12 individual lot-owners attended the virtual meeting, that all had voted for the nominees, and that “[t]hese elected officials are seated immediately and will be deciding the slate of executive officers who will be handling the executive matters of the Franklin Farms Homeowners Association, Inc.” The letter invited the HOA’s members to send any questions either by mail addressed to “Members/Shareholders of Franklin Farms HOA” at P.O. Box 632 or email to ffhoashareholders@myfranklinfarms.com.

⁸ Those nominees did not include the Klavers, Mr. Johnson, or the Vargases.

The Dispute over the “Franklin Farms” Website Created by Mr. Johnson

All the while, the HOA board had had a running dispute with Mr. Johnson over a website that Mr. Johnson had created in 2017 and named “myfranklinfarms.com.” At the time Mr. Johnson established his website, the HOA did not have its own website. In a letter to the HOA membership that year, Mr. Johnson stated that he had decided “to standup a private website” where members could log in and find information about HOA matters, including a complaint about the HOA board that he had filed with the Office of the Maryland Attorney General. In 2018, the HOA board, through its counsel, sent a letter to the HOA members informing them that the board had not endorsed the website, that it did not reflect the board’s views, and that no “official Franklin Farms website exists.”

The HOA later created its own website, “Franklin Farms HOA.com.” The HOA’s website, like Mr. Johnson’s, bore a photograph of the “Franklin Farms” sign at the entrance to the subdivision.

It does not appear from the record that Mr. Johnson or anyone else posted anything on Mr. Johnson’s website regarding the unsanctioned election activities. However, a proxy form for the unsanctioned election and a form for nominating candidates for the board instructed that those forms could be returned to election@myfranklinfarms.com, and Mr. Klaver’s March 2022 letter invited members to submit questions to ffhoashareholders@myfranklinfarms.com.

C. Litigation of this Case in the Circuit Court

1. The HOA’s Complaint

As noted above, on August 24, 2021 – one day before the unsanctioned selection of nominating committee members was to be held – the HOA filed this action and sought a temporary restraining order against Mr. Johnson, the Vargases, and Ko and Donna Klaver in the Circuit Court for Prince George’s County. In its complaint and accompanying motion, the HOA sought an order prohibiting the defendants from convening the August 25, 2021 meeting or any other unsanctioned meeting of the HOA membership and from sending correspondence “purporting to be from [the HOA]” to HOA homeowners. Specifically, the HOA alleged that the Articles delegated the management of the HOA to the HOA board. The HOA further alleged that the By-Laws required the board secretary or a “person authorized to call a meeting” to provide written notice of all meetings of the HOA members, required the board president to preside over all meetings, and required the secretary to keep minutes. The HOA alleged that the defendants had violated these provisions because they were not board officers. Additionally, the HOA alleged that the defendants “[did] not have the right to distribute letters and other correspondence that are false, misleading and cause actual confusion or creates a high likelihood of confusion among Franklin Farms ... homeowners.” The HOA sought an award of attorneys’ fees.

After the Circuit Court denied the motion for temporary restraining order, it issued a scheduling order that set a trial date of February 13, 2024 for a bench trial of the HOA’s claims against Mr. Johnson, the Vargases, and the Klavers. The HOA settled its claim

against the Klavers and dismissed them from the case. The court ultimately tried and decided the claims against the Vargases and Mr. Johnson in two separate bench trials in February and May 2024. We describe below only the events of those trials that pertain to issues raised in Mr. Johnson’s brief.

2. The Vargas Trial

As indicated above, the trial of the HOA’s claims against all defendants had been scheduled for February 13, 2024. On that date, none appeared in court; nor did any counsel on their behalf. Mr. Johnson had requested a continuance on the grounds that he had Covid, and the court held that request *sub curia* pending his submission of documentation.⁹ The HOA’s counsel explained that he had attempted to serve the Vargases with a trial subpoena, without success. After observing that the HOA was not required to serve named defendants, the court stated, “If they aren’t here, it seems to me they are conceding.”¹⁰ The court then conducted the trial as to the Vargases in their absence.

⁹ The Vargases later informed the Circuit Court that they had mistakenly believed that the trial would not go forward because they had a pending motion for summary judgment that had been assigned to another judge of the Circuit Court. It appears from the record that the judge assigned to decide the defendants’ summary judgment motions issued an order denying those motions on the same date as trial date.

¹⁰ It is unclear whether the court at this point considered the trial to provisionally include claims against Mr. Johnson. As detailed below, the HOA introduced some evidence pertaining only to him but did not introduce all of its evidence because it anticipated a judgment against the Vargases. The court, however, was prepared at the end of the trial to enter an order against Mr. Johnson, to be contingent on whether he submitted documentation of a positive Covid test that supported his request for a continuance of the trial of the HOA’s case against him.

During that trial, the court heard testimony from two HOA witnesses and admitted two exhibits.

Testimony about Attorneys' Fees

First, the HOA called Tracy McAbee, an employee of the property management company for the HOA, to testify about attorneys' fees that the HOA had incurred. He testified that Mr. Wheat from the Piel law firm had filed the complaint and handled the litigation for about two years, and that the HOA had then retained David Gardner, from a different firm.

As to the fees charged by the Piel law firm, Mr. McAbee testified Mr. Wheat's rate was \$305 per hour. Asked whether that rate was "fair and reasonable and in line with what other attorneys charge in this line of work in this area, Mr. McAbee stated, "It's average." Mr. McAbee testified that the Piel law firm charged the HOA \$16,977 for its services.

The itemized bill from the Piel law firm was admitted into evidence. The \$16,977 total included time spent on the matter identified as "Unauthorized Use of Corporate Name," time spent on tasks pertaining only to defendants other than the Vargases, and time spent on other matters.¹¹

¹¹ Examples of the many charges regarding other defendants or matters include "Review Draft Response Letter to Attorney General re Larry Johnson Complaint MU-332191 and "Review Klaver Answer to Complaint re unauthorized communications." The bill also included charges and costs spent on both the HOA's unsuccessful request for a temporary restraining order, which was denied on August 26, 2021 (apparently before the Vargases had been served), and the subsequent litigation of this matter.

Next, Mr. McAbee testified about a compilation of fees that the HOA's current law firm had charged for the services of Mr. Gardner, who charged \$295 per hour, and a paralegal, whose rate was \$125 per hour. Mr. McAbee responded "Yes" both when asked if the fees were "similar to what other attorneys charge in this area for this type of work" and when asked whether, in his opinion, those rates were "fair and reasonable for work that's been done in this case." The compilation was attached to an affidavit by Mr. Gardner, which recited that the fees were "fair, reasonable, and necessary in light of *Monmouth Meadows Homeowners Ass'n v. Hamilton*, 416 Md. 326 (2010) and the factors set forth in Rule 1.5(a) of the Maryland Rules of Professional Conduct." Both documents were admitted into evidence as the HOA's second exhibit. The bill from the Gardner firm totaled \$9,604. It included time spent responding to discovery propounded by Mr. Johnson and on the dismissal of the HOA's case against the Klavers.

Counsel then asked Mr. McAbee, "And all of those fees were rendered in connection with the lawsuit against Larry Johnson and Mr. and Mrs. Vargas, correct?" Mr. McAbee responded, "Correct." Asked "how would you describe this lawsuit as far as complexity, the amount of time and work involved?", Mr. McAbee stated: "It's like nothing that I've ever seen before with the amount of complaints that I've seen that he's written. The fight that the Board has to go through day in and day out with Mr. Johnson is just something that I've never seen before"

Counsel next asked: "I mean, I have three notebooks ... this width, about three inches, just with pleadings in this case. And there's now 38 exhibits that we'll be

introducing today, correct?” Mr. McAbee answered, “Yes” to that question and to counsel’s questions as to whether he had seen the “500-odd requests for admissions that was submitted[.]”

Testimony about the Sanctioned and Unsanctioned HOA elections

Regarding the book of exhibits, the HOA’s counsel told the court that he did not need to introduce them “if we’re going to get a judgment against the Vargases.” The HOA then called Denise Crawford, the HOA president, who testified about the HOA’s election practices and described communications that the petitioning members had sent to the HOA membership. She essentially provided an abbreviated version of the chronology set forth earlier in this opinion.

Testimony about Mr. Johnson’s Website

During Ms. Crawford’s testimony, counsel asked her about Mr. Johnson’s website. After the court asked her why the HOA would want the website taken down, she testified that it confused members because the HOA now also had a website, and both bore a photo of the sign at the Franklin Farms entrance.

After the court excused Ms. Crawford, it asked HOA counsel whether the HOA had any other evidence. Counsel replied, “No, Your Honor. I have all the documents if Your Honor wants to see them. I have 34-” The court asked, “You were going to go through 34 documents?” Counsel responded, “I’m sorry. Well, if Johnson was here, we’d be here

for two days. . . .” The trial of the case against the Vargases concluded without introduction of those exhibits.¹²

The Circuit Court’s Request for Separate Draft Orders

At the conclusion of the trial, the court instructed the HOA’s counsel to prepare two orders. First, the court asked counsel to prepare “a separate order for Mr. Johnson that says it’s held in abeyance until he brought a doctor’s note that says he was sick, and if not, then the order will be against him.” Second, the court asked counsel to prepare an order for the Vargases to reflect that the court “assume[d] that they weren’t – their inability to participate was an election of their own . . . and that the case went forward.” The court added, “And that includes the attorneys’ fees.” Counsel responded, “And the HOA case we did last year. I don’t know if you remember.”¹³ The court stated, “I remember now. . . . Yes. It was a mess. A very big mess.” The court then decided to hold a disposition hearing, which was scheduled for February 28, 2024.

That same day, the court signed a judgment order dated February 13, 2024, in favor of the HOA against the Vargases in the amount of \$26,581.62 jointly and severally, apparently representing the award of attorneys’ fees.

¹² Those exhibits were introduced into evidence during the separate trial against Mr. Johnson.

¹³ It is unclear what the “HOA case that we did last year” was and whether it involved the Vargases. It is also unclear whether the charges listed in the HOA’s attorneys’ fees exhibit included fees for that case.

3. The February 28, 2024 Hearing

At the February 28, 2024 hearing, Mr. Johnson and Mr. Vargas both appeared.¹⁴ During the hearing, the court accepted Mr. Johnson’s documentation of his Covid infection and scheduled a new date for the trial of the HOA’s case against him. The court also heard an explanation from Mr. Vargas as to why he and his wife had not appeared on the trial date – i.e., that they thought it would be devoted to the defendants’ summary judgment motions rather than a trial. The court decided that his explanation did not constitute a valid reason for failing to appear in court that day and denied his request to be permitted to belatedly submit evidence.

4. The Johnson Trial

The Circuit Court held a bench trial of HOA’s case against Mr. Johnson, then represented by counsel, on May 22, 2024. In his opening statement, the HOA’s counsel stated that the HOA would introduce a book of exhibits, beginning with a letter that Mr. Johnson sent to the HOA membership in 2017 to announce that he was setting up a website. Counsel then described a series of letters that concerned the election of directors, that sometimes purported to come from the HOA, and that were not sent by the HOA. In his opening statement, Mr. Johnson’s counsel countered that the HOA would not be able to prove that that Mr. Johnson was “directly involved” in the events alleged in the complaint.

¹⁴ There is no indication in the transcript of that hearing that Mrs. Vargas was present.

Testimony by HOA President

The HOA called Ms. Crawford and Mr. Johnson to testify. Through Ms. Crawford's testimony, it introduced the HOA governing instruments and the correspondence described in the Background section above. Those exhibits were admitted without objection by the defense.

Ms. Crawford also testified about Mr. Johnson's website. She identified a screenshot of its homepage that was then admitted into the record. The homepage bears the title "My Franklin Farms" over a photograph of a gatepost with a "Franklin Farms" on it. The viewer is then introduced to the website, as follows:

Welcome to My Franklin Farms Website

The purpose of this website is to provide Franklin Farms Homeowners and Residents with easy access to our association and information related to our neighborhood and community. This website is not run or owned by the Franklin Farms Homeowners Association, Inc., but is privately owned and maintained. In addition to access to important Association information, the website is intended to be a medium to share thoughts, views, and ideas about our community or to just simply get to know each other better.

To gain access to this website, you must be a Homeowner and/or resident of the Franklin Farms Community. ...

Thank you
Larry Johnson
Homeowner/Site Developer

"For Homeowners by Homeowners"

Ms. Crawford stated that the website was "confusing" to the HOA members because the HOA did not have a website at that time, Mr. Johnson's website "had nothing to do

with Franklin Farms,” “[the HOA board] didn’t direct it,” and “[i]t creates confusion in the community.”¹⁵

Testimony by Mr. Johnson

The HOA’s counsel then called Mr. Johnson to testify about his involvement in the petitioning members’ election activities. At times, Mr. Johnson denied involvement in drafting the various letters to the membership; at other times, he said “I provide language to many different letters” but “I did not participate in every correspondence.” He testified that he “gave [the petitioning members] the domain to use for their email address.” He denied “send[ing] anything,” but agreed that “I drafted language, correct.” He asserted that

¹⁵ The exhibit contained four pages, each with a footer (“Franklin Farms”) and number. The first page was “Franklin Farms 162.” The second page was numbered 163. It was blank but for the word “search” and a header in small font: “© 2009 My Franklin Farms. All rights reserved.” The third page, number 164, contained a photograph of a playground, a heading for “H.O.A. Business,” and an icon of a money tree over the words “Pay H.O.A. annual fees here online \$400.00.” The fourth, number 165, contained a “get started” page for “create your own website” software and nothing about Franklin Farms or the HOA.

Referring to the exhibit, the HOA’s counsel asked Mr. Johnson, “Is that your website...?” After initially responding, “Absolutely,” Mr. Johnson said, “Oh, no. I’m sorry. I’m sorry. No sir. You – in your Exhibit 12 – ... this is not my website. These additional pages that you’re showing right here is marked Franklin Farms 164, that’s not my website.” Counsel proceeded, “Okay. So that’s the real website?” Mr. Johnson answered, “I don’t know what it is.” Counsel asked, “Okay, but the first page is your website, correct? The first page, correct?” Mr. Johnson answered, “Yes. Page – right, 162, that’s my website, yes.”

We infer from the HOA’s counsel’s questions that the HOA was not contending that the additional pages were from Mr. Johnson’s website.

the 25 petitioning members¹⁶ represented 35% of the HOA membership and therefore constituted the HOA. He denied knowing whether the HOA secretary had authorized the August 9, 2021 notice of an August 25, 2021 zoom meeting. He denied drafting the announcement of the October 27, 2021 nominating committee zoom meeting, stated that the committee had drafted it, and agreed that he was on the committee. He testified that he understood the By-Laws to authorize the members to call a special meeting.

5. The Court’s Orders, Injunctions, and Awards of Attorneys’ Fees

On June 7, 2024, the Circuit Court entered two injunctions and orders – one against the Vargases and the other against Mr. Johnson. While the background recitals of the circumstances of the two bench trials differed,¹⁷ the operative provisions of the injunctions and orders were very similar.

The Court’s Findings

In those orders, the court briefly stated its findings of fact. The court found that the HOA’s evidence “establish[ed] that [the Vargases and Mr. Johnson] had actively participated in a group that used the name Franklin Farms Homeowners Association, Inc., in the title of various correspondence and on envelopes addressed to members of the

¹⁶ As noted earlier, in some communications with HOA members, Mr. Klaver referred to 24 petitioning members. A copy of the petition attached as Exhibit E to the complaint in this case included 26 signatures. In his testimony, Mr. Johnson stated that one signature was a duplicate and that 25 lot owners had signed the petition. These differences have no bearing on the merits of the issues in this appeal.

¹⁷ For example, in the order relating to the Vargases, the court stated that they were absent on the trial date, and that they “did not present any reason to continue their case”

Franklin Farms Homeowners Association.” The court found that that they had each been involved in a group that used a website that used the name “Franklin Farms” and had a picture of the entrance to the community and that the group had “sent notices to the homeowners of Franklin Farms and hosted special meetings of the homeowners of Franklin Farms during which they conducted an election for a separate Board of Directors of Franklin Farms.”¹⁸

The court found that the notices and special meetings “were not sanctioned by the actual Board of Directors,” and “determined that this was a violation of ... the By-Laws, which only permit written notice of a special meeting to be given by, or at the direction of the secretary....”

As to attorneys’ fees, the court found that the HOA Declaration “authorizes an award of attorney’s fees when actions are taken to extinguish a violation of the By-Laws” and that “[the HOA’s] legal fees were incurred in order to extinguish violations,” and “were fair and reasonable.”

Injunctive Relief

The court enjoined the Vargases and Mr. Johnson from: (1) distributing to the HOA members “any materials ... that reference or use the name or address of Franklin Farms or of Franklin Farms Homeowners Association, Inc. on the envelope or in the title of the letter, e-mail, or other correspondence without [the board’s] express written permission ...”; (2)

¹⁸ In the order pertaining to Mr. Johnson, the court additionally found that he had hosted the website and had drafted notices sent to homeowners by the group.

“participating in any attempt to host any meeting of Franklin Farms Homeowners Association, Inc., or any Committee thereof, that has not been sanctioned by the Board...; and (3) maintaining or managing any website that uses the name Franklin Farms or Franklin Farms Homeowners Association, Inc , in the title of the website.”

In the order pertaining to Mr. Johnson, the court also ordered that he “immediately remove from the internet the website he owns with the title “myfranklinfarms.com.”

Awards of Attorneys’ Fees to the HOA

In the order pertaining to the Vargases, the court ordered them to pay to the HOA attorneys’ fees in the amount of \$26,581.62, which apparently corresponded to the total of the fees that the two law firms had charged the HOA in the exhibits admitted at trial. The court entered that judgment “jointly and severally” against Mr. Johnson.

In the order pertaining to Mr. Johnson, the court ordered him to pay \$28,236.00 in legal fees, of which \$26,581.62 was entered “jointly and severally” with the judgment against the Vargases.¹⁹

Mr. Johnson filed a motion to vacate and for a new trial. In denying the motion, the Circuit Court found that “substantial evidence supported this Court’s finding that Defendant Larry Johnson participated in the group that held unsanctioned meetings of the Plaintiff Association, and used letterhead containing the Plaintiff’s name, which was not authorized by the Plaintiff’s duly elected Board and was misleading and confusing to

¹⁹ We note that the total amount of attorneys’ fees awarded against Mr. Johnson appears to be about \$1,000 less than the sum of the amounts set forth in the exhibits admitted at the Johnson trial. No explanation appears in the record for this discrepancy.

members of the Plaintiff Association [.]” Similar post-trial motions filed by the Vargases were also denied.

II

Discussion

A. *Standard of Review*

Maryland Rule 8–131(c) governs our review of an action tried without a jury. That rule generally requires: “When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence.”

As to the trial court’s findings on the evidence, the rule provides that the appellate court will not set aside the judgment of the trial court on the evidence unless clearly erroneous and “will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Maryland Rule 8-131(c). A trial court’s finding “is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion.” *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996). In evaluating the trial court’s findings of fact, “[t]he appellate court must view the evidence “in the light most favorable to the party prevailing below[.]” *Clemson v. Butler Aviation–Friendship, Inc.*, 266 Md. 666, 671-72 (1972) (citations omitted).

An appellate court considers whether the trial court’s conclusions are legally correct when they involve “an interpretation and application of Maryland statutory and case law.” *Nesbit v. Government Employees Ins. Co.*, 382 Md. 65, 72 (2004) (internal citation and quotation marks omitted). A trial court’s interpretation of legal instruments such as deeds

and covenants also presents a question of law. *Beka Indus., Inc. v. Worcester Cnty. Bd. of Educ.*, 419 Md. 194, 235 (2011).

To determine the applicable standard of review, the appellate court must first be able to discern the basis of the trial judge’s decision. Maryland Rule 2–522(a) requires that the judge in a bench trial, “before or at the time judgment is entered, shall prepare and file or dictate into the record a brief statement of the reasons for the decision and the basis of determining any damages.” *See, e.g., Beka Indus., Inc.*, 419 Md. at 234-37 (reversing the trial court’s judgment and remanding the case for a new trial because of the dearth of “factual and legal conclusions upon which to assess whether it would be appropriate to affirm”).

B. Whether the Circuit Court Interpreted the By-Laws Correctly

In its complaint, at trial, and in this Court, the HOA has asserted that the defendants violated the By-Laws by calling a special meeting of the HOA without the HOA board’s permission. The HOA based that assertion on Article III, §2, of the By-Laws, which provides: “Special meetings may be called at any time by the President or the Board of Directors, or upon written request of the members” and on §3, which provides that “[w]ritten notice of each meeting of the Members is to be given by the Secretary or person authorized to call the meeting[.]”

Mr. Johnson states that the HOA is a non-stock corporation subject to the Maryland general corporation law and that CA §2-502(b) requires a corporation’s secretary to call a meeting when requested by 25% of the shareholders. From those propositions, he reasons

that the petitioning members comprised 35% of the membership, that they constituted the Association because that number exceeded the 25% threshold in the statute, and that they were therefore entitled to call a meeting themselves. The Circuit Court noted that Mr. Johnson’s interpretation could result in competing notices of meetings and rejected it.

The interpretation of the By-Laws presents a legal question subject to our *de novo* review. Viewed in a vacuum, the provision in Article III, §3 that meetings are to be noticed by the secretary “or person authorized to call the meeting” might seem open-ended as to whether a group of members may designate themselves as “authorized” to call a meeting of the HOA. Article III, §2 answers the question. Read in conjunction with §3, §2 means that when members want the membership to meet to conduct HOA business, they must “request” a special meeting, and then the board “may” (not “must”) hold one. There may be ambiguity as to whether the president or the board has the power to authorize a person other than the secretary to call a meeting, but what is clear is that HOA members who are not on the board may neither authorize someone to call an HOA meeting without the board’s permission nor call it themselves.

CA §2-502(b) does not lead to a different result. While it indeed requires a corporation to call a meeting upon the written request of at least 25% of the corporation’s shareholders (here, the HOA members), it does not authorize the members to call a meeting themselves. Instead, it requires the members to make a “request.” Subsection (e) then provides: “Unless the charter or bylaws expressly provide otherwise, the board of directors has the sole power to fix: ... (2) The date, time, and place, if any, and the means of remote

communication, if any, by which stockholders and proxy holders may be considered present in person and may vote at the special meeting.” In short, nothing in the Corporations & Associations Article authorized the petitioning members to decide the time, place, and manner of a meeting of the membership to elect board members, to give notice of such a meeting, or to hold it.²⁰

The Circuit Court did not err when it interpreted the HOA By-Laws to preclude HOA members from calling a meeting to conduct HOA business without the president’s or board’s authority and in the absence of notice given by the secretary or other duly authorized person.

C. Sufficiency of the Evidence that Mr. Johnson violated the By-Laws

The Circuit Court found that the By-Laws did not permit HOA members to convene a meeting of the HOA membership to conduct an election of the HOA board without the permission of the board, that a group of HOA members had convened such an election anyway and thus had violated the By-Laws, and that Mr. Johnson had participated in the group’s activities. Additionally, the court found that Mr. Johnson’s use of the HOA’s name

²⁰ One remedy for the HOA’s failure to acknowledge the petitioning members’ request for a meeting might have been a request for an injunction requiring the HOA to call a special meeting. *See, e.g., Cummings v. United Artists Theatre Cir., Inc.*, 237 Md. 1, 13, (1964) (shareholder filed a petition for a writ of mandamus ordering the corporate board to grant shareholders’ request for a special meeting). Another might have been a request to the Office of the Attorney General for assistance. *See* RP §11B-115(c) (“A violation of this title shall be within the scope of the enforcement duties and powers of the Division of Consumer Protection of the Office of the Attorney General, as described in Title 13 of the Commercial Law Article.”). The remedies available to the petitioning members did not include self-help.

in the letterhead violated the By-Laws. In this Court, Mr. Johnson argues that the evidence introduced at trial was insufficient to establish his participation in the group’s activities.

We defer to the trial court’s credibility findings and therefore to its determination that Mr. Johnson was not a credible witness. In any event, Mr. Johnson did not challenge the HOA’s exhibits. At a minimum, they establish that he served on the nominating committee that the petitioning members established and that the nominating committee met to nominate candidates for the unsanctioned election. That evidence supported the Circuit Court’s finding that Mr. Johnson participated in the petitioning members’ conduct of the unauthorized election and the wording of its communications to the HOA membership.

At the same time, we vacate the Circuit Court’s injunction both as broader than necessary to enjoin the violation of a By-Law and as contrary to the rights that the HOA Act confers on HOA members. Among other things, the HOA Act entitles HOA members to meet among themselves in common areas to discuss HOA governance and to petition the HOA secretary to call a meeting. It is hard to see how a member might announce a meeting among homeowners or submit a petition without referring to “Franklin Farms” and the “Franklin Farms HOA” in the member’s communications. Such communications are distinguishable from communications that explicitly purport to be from or on behalf of the HOA.

On remand, the Circuit Court should identify which conduct violated an identifiable By-Law and which communications were protected by the HOA Act, and tailor its injunction accordingly.

D. Bias, Deprivation of Due Process, and SLAPP issues

Mr. Johnson raises various issues bearing on the fairness of the proceedings.

1. Bias and Due Process Claims

Mr. Johnson argues that the trial judge was biased against him. Citing comments that the judge made during the trial, he asserts that the court had pre-judged the HOA's case against him, was unduly critical of the fact that he had interpreted the HOA By-Laws without the aid of a lawyer, had admitted evidence against him during the Vargases' trial and in his absence, and was dismissive of his argument that the HOA's action against him was a "Strategic Lawsuit Against Public Participation ("SLAPP") in retaliation for his various complaints to the Maryland Attorney General's office and other HOA members.

The violation of a litigant's right to a fair and impartial judge deprives the litigant's right to due process and constitutes an abuse of discretion by the judge. *Harford Mem'l Hosp., Inc. v. Jones*, 264 Md. App. 520, 541, *cert. denied*, 490 Md. 640 (2025). A litigant who claims that a trial was tainted by a judge's bias bears the burden of overcoming the presumption in Maryland that judges "are impartial participants in the legal process." *Jefferson-El v. State*, 330 Md. 99, 107 (1993). Further, a litigant who wishes to preserve the claim for appellate review must assert it with particularity during the trial. *Harford Mem'l Hosp.*, 264 Md. App. at 542 ("[A] litigant must identify the conduct to which they object and the relief they want during the trial..."). Specifically, "(1) facts [must be] set forth in reasonable detail sufficient to show the purported bias of the trial judge; (2) the facts in support of the claim must be made in the presence of opposing counsel and the

judge who is the subject of the charges; (3) counsel must not be ambivalent in setting forth his or her position regarding the charges; and (4) the relief sought must be stated with particularity and clarity.” *Id.* at 543, quoting *Braxton v. Faber*, 91 Md. App. 391, 408–09 (1992).

The record of Mr. Johnson’s trial does not establish that either Mr. Johnson or his counsel asserted a claim of bias on the part of the trial judge. Therefore, it was not preserved for our review.

2. SLAPP issues

Mr. Johnson argues that the trial court erred by “fail[ing] to recognize and dismiss this action as a Strategic Lawsuit Against Public Participation (SLAPP suit)[.]” Citing Maryland’s anti-SLAPP provision, Maryland Code, Courts & Judicial Proceedings Article (“CJ”), §5-807, Mr. Johnson asserts that the HOA sued him in retaliation for his complaints to the Office of the Maryland Attorney General, his discussions with other HOA members about HOA governance, and his “proper petition for a special meeting signed by 35% of members[.]”

The goal of CJ §5-807 is to provide a remedy to defendants in “unwarranted” litigation that a plaintiff has initiated “to deter, punish or intimidate efforts at critical public comment and participation in governmental proceedings involving the [plaintiff’s] interests.” *MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condo., Inc.*, 253 Md. App. 279, 287 (2021) To constitute a SLAPP suit under the statute, the action must be “(1) brought in bad faith, 2) brought against a party who has made protected

communications to a government body or the public on a matter within the authority of government body or on an issue of public concern, 3) materially related to the protected communications, and 4) intended to inhibit or to have inhibited the making of those protected communications.” *Id.* at 297. If those criteria are met, and if the defendant acted “without constitutional malice” when making the protected communications, the defendant is entitled to civil immunity. *Id.*, citing CJ §5-807(c). A defendant claiming anti-SLAPP immunity “may move to: (1) Dismiss the alleged SLAPP suit, in which case the court shall hold a hearing on the motion to dismiss as soon as practicable; or (2) Stay all court proceedings until the matter about which the defendant communicated to the government body or the public at large is resolved.” *Id.* at 297-98, citing CJ §5-807(d).

Mr. Johnson did not seek either form of relief in the trial court. Thus, whether or not the HOA’s lawsuit against him met the criteria of a SLAPP suit, the question of whether the Circuit Court erred by not conferring immunity on him under CJ §5-807 is not before us.

3. Alleged Use of Testimony from the Vargas Trial against Mr. Johnson

Mr. Johnson argues that the trial court was predisposed against him because of the testimony about him that the court heard in his absence during the Vargas trial. Most of that testimony at the Vargas trial pertained to the HOA’s claim for attorneys’ fees. It appears that the trial court used the attorneys’ fee award that it granted in the Vargas case

as the starting point for the its award of fees against Mr. Johnson.²¹ For that reason and others, as explained below in Part E, we vacate the fee award against him.

Additionally, the HOA president testified at the Vargas trial, as she did at Mr. Johnson’s trial, that the name and appearance of his website caused confusion. Because we resolve the website issues in Mr. Johnson’s favor (see below), we need not speculate on whether the trial court had formed an opinion about Mr. Johnson before his trial.

E. The Use of “Franklin Farms” in the Name of Mr. Johnson’s Website

In contesting the Circuit Court’s order that he immediately take down the “myfranklinfarms.com” website, Mr. Johnson asserts that the injunction infringed on his right to free speech, was issued without regard to whether he could refer to “Franklin Farms” under a theory of fair use, and was overbroad. The HOA argues, as it did at trial,

²¹ At the conclusion of Mr. Johnson’s trial, the court discussed permissible names for Mr. Johnson’s website with his counsel and then turned to attorneys’ fees:

THE COURT: I mean, you can say Mad Members of Franklin Farm. I mean, but not that. All right. So judgment is for the plaintiff.

[HOA COUNSEL]: We are asking for our legal fees, Your Honor, which are now \$28,236.

THE COURT: Judgment is for the Plaintiff for \$28,236.

[HOA COUNSEL]: I’m sorry? Yes, that’s the two bills that have been--

THE COURT: Severally and individually.

[HOA COUNSEL]: Jointly and severally with Mr. Vargas?

THE COURT: With – yeah, jointly and severally with Mr. Vargas.

that the website was “confusing” to members of the HOA. After viewing a screenshot of the website, the Circuit Court found that “[I]t’s too close ... to their name.” Addressing Mr. Johnson, the court stated “[i]t just is misleading ... You need to do something to change it so it’s not confusing.” In its written order, the court “enjoined [Mr. Johnson] from maintaining or managing any website that uses the name Franklin Farms or Franklin Farms Homeowners Association, Inc. in the title of the website” and ordered him to “immediately remove from the internet the website that he owns with the title of “myfranklinfarms.com.”

The HOA Act provides the most direct route²² to resolving whether the HOA was entitled to an injunction against a member for establishing a website that contained the name of the development (but not of the HOA). RP §11B-111.3 provides in relevant part that the governing instruments and rules of an HOA generally “may not restrict a lot owner from distributing written information or materials regarding the operation of or matters relating to the operation of the [HOA] in any manner or place that the governing body distributes written information or materials.” In this case, the HOA president’s testimony established that the HOA currently maintains a website. Thus, RP §11B-111.3 entitled its lot owners to disseminate information among themselves in that same manner. Even had the HOA identified a rule or other applicable provision that restricted the members’

²² We do not reach constitutional issues when other law resolves the question. Here, the HOA Act resolves Mr. Johnson’s free speech claims.

distribution of written materials to the membership – and it did not²³ – such a restriction would have been unenforceable under the Act.

In any event, neither the HOA nor the Circuit Court identified the cause of action underpinning the HOA’s claim and the court’s injunction. The Circuit Court’s finding that the website was “too close” and was “confusing” suggests that the Circuit Court might have had a tort or trademark action in mind. If that was the court’s reasoning, the court erred on the law and the facts. As to the law, the HOA neither pleaded such causes of action in its complaint nor alleged anything about the website; the HOA’s complaint protested the defendants’ notice of a meeting to choose nominating committee members and did not mention the website.²⁴ As to the facts, the record does not reflect any attempt by the HOA to prove the elements of either a trademark violation or one of the misrepresentation torts recognized in Maryland law. Ms. Crawford testified that the HOA was seeking to keep Mr. Johnson from violating the By-Laws by holding special meetings.

²³ We have not found Maryland law that supports the proposition that, in the absence of bylaws or other governing provisions, an HOA may prohibit its members from referring to the subdivision or its HOA (as distinct from purporting to represent the HOA) in the title of a website about HOA affairs.

²⁴ Maryland Rule 2-303 provides: “Each cause of action shall be set forth in a separately numbered count.” *See also* Rule 2-305 (“A pleading that sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for the relief sought.”)

We vacate the Circuit Court’s injunction concerning the “myfranklinfarms.com” title of Mr. Johnson’s website. Mr. Johnson apparently does not object to the prohibition against including “Franklin Farms Homeowners Association, Inc.” in the title.

F. Attorneys’ Fees

Appellants challenge the court’s award of attorneys’ fees on two fronts: first, that the trial court awarded fees for legal services not related to any violation of the By-Laws, and, second, that the court did not evaluate the reasonableness of the HOA attorneys’ rates and expenditures of time under the factors applicable to the award of attorneys’ fees. Mr. Johnson did not assert these objections at trial at the time that the court made its determination. However, our vacatur and remand on the merits of the underlying case necessitate the Circuit Court’s reconsideration also of the appropriate attorneys’ fee award. For the Circuit Court’s use in making that determination, we explain the applicable principles and note issues that occurred in this case.

1. Applicable Principles

Under Maryland law, the prevailing party in litigation is not entitled to recover the attorneys’ fees it expended in that litigation unless the losing party acted in bad faith or without substantial justification,²⁵ or a statute or contract provides for them. *Nova Rsch., Inc. v. Penske Truck Leasing Co.*, 405 Md. 435, 445-46 (2008); *see also Maxima Corp. v. 6933 Arlington Dev. Ltd. Partnership*, 100 Md. App. 441, 452 (1994). A claim for an award of attorneys’ fees under a contract is “subject to a trial court’s examination of the

²⁵ Maryland Rule 1-341.

prevailing party's fee request for reasonableness.” *Nova*, 405 Md. at 447-48; *see also Steele v. Diamond Farm Homes Corp.*, 464 Md. 364, 383-84 (2019) (“The cornerstone for awarding attorney's fees is reasonableness.”). Trial courts must read reasonableness into a contractual fee-shifting provision and must “routinely undertake an inquiry into the reasonableness of any proposed fee before settling on an award.” *Monmouth Meadows Homeowner's Ass'n v. Hamilton*, 416 Md. 325,33 (2010).

Maryland Rule 2-705 sets forth the procedures that are to be followed and the factors that the trial court is to consider in addressing a claim for attorneys’ fees pursuant to a fee-shifting provision in a contract. Under Rule 2-705(f)(1), a court that has found that a prevailing party is entitled to attorneys’ fees “shall consider the factors set forth in Rule 2-703(f)(3) of this Rule” and “may consider” other factors. Rule 2-703(f)(3) lists 12 factors, including “the time and labor required,” “the skill required to perform the legal service properly,” “the amount involved and the results obtained,” “the experience, reputation, and ability of the attorneys,” and “awards in similar cases.” *Id.*, (A), (C), (H), (I), (L). Then, under Rule 2-705(g), “[t]he 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 the award.”

2. Whether the Trial Court Addressed the Reasonableness Factors

The record does not demonstrate that the Circuit Court undertook the requisite analysis as to the fees that it assessed jointly and severally against the Vargases and Mr. Johnson. In calculating the fee as to Mr. Johnson, the court seemingly added to the Vargas

fee award the cost of services that the HOA’s law firm had rendered following the judgment against the Vargases. Neither trial record suggests that the Circuit Court evaluated the factors in Maryland Rule 2-703(f)(3), or, for that matter, reviewed the entries on the exhibits that the HOA submitted.

For example, Rule 2-703(f)(3)(H) requires the court to consider “the amount involved and the results obtained.” *See Long v. Burson*, 182 Md. App. 1, 29-30 (2008) (vacating the fee award because the trial court did not apply that factor and because of the inadequacy of the claimant’s proof). As far as we can tell, the court did not consider factor (H) at all when it accepted the total amounts shown on the exhibits submitted by counsel. Those exhibits showed time billed for services regarding the HOA’s unsuccessful motion for a temporary restraining order and for other services not related to a result as to Mr. Johnson in this case, such as responding to Mr. Johnson’s complaint to the Attorney General.

3. Whether the Circuit Court Adequately Explained its Reasoning

In support of its claim for fees, the HOA introduced a “matter history report” from the Piel law firm and Mr. Gardner’s affidavit with an itemized list of fees charged by his firm. The following colloquy occurred at trial:

[HOA COUNSEL]: We are asking for our legal fees, Your Honor, which are now \$28,236.

THE COURT: Judgment is for the Plaintiff for \$28,236.

[HOA COUNSEL]: I’m sorry? Yes, that’s the two bills that have been--

THE COURT: Severally and individually.

[HOA COUNSEL]: Jointly and severally with Mr. Vargas?

THE COURT: With – yeah, jointly and severally with Mr. Vargas.

The court’s written orders as to the Vargases and Mr. Johnson recited only that the fees were incurred to extinguish a violation of the By-Laws and were “fair and reasonable.”

The court’s oral statement and written order did not satisfy the requirement in Rule 2-705(g) that “[t]he 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 the award.”

We vacate the fees awards and remand the issue to the Circuit Court to identify the legal services for which the HOA’s governing instruments entitle it to claim fees; to consider, on the record, the adequacy of the record to support findings on whether the claimed fees satisfy the reasonableness factors; to evaluate the HOA’s claims in light of those factors; and to state on the record the basis for its findings and conclusions as to the HOA’s claims for the awards of attorneys’ fees.²⁶

²⁶ We note one anomaly in the record that may, or may not, affect the Circuit Court’s analysis of the attorneys’ fees awards. In a separate case in the Circuit Court before a different judge, Mr. Johnson and the Vargases sued the HOA, among others, and challenged the validity of the 2018 amendment to the Declaration that added the fee-shifting provision to that instrument. *Johnson, et al. v. Franklin Farms Homeowners Association, Inc., et al.*, Case No. 22-00673 (Prince George’s County Circuit Court). On July 3, 2024, about one month after the orders including the injunctions and attorneys’ fees awards in this case, the judge in that case issued an order declaring the 2018 amendment invalid. The plaintiffs later dismissed that case “with prejudice.”

In identical Civil Appeal Information Reports filed at the outset of this appeal, each of the Appellants cited that ruling in describing the issues in this appeal. However, Mr. Johnson did not include that issue in his opening brief (and, as noted earlier, the Vargases did not file any briefs). Mr. Johnson did refer to the ruling in his reply brief and included

III

Conclusion

The Circuit Court correctly interpreted the HOA's By-Laws to allow individual members to call a meeting of the HOA to conduct HOA business only as sanctioned by the HOA board, and it did not clearly err in finding that the Appellants had violated that requirement. However, the Circuit Court erred when it issued injunctions that encompassed conduct that did not violate the By-Laws as well as the conduct that did violate the By-Laws. We therefore vacate the injunctions and the attorneys' fees awards that the Circuit Court apparently based in part on the results that we have held to be erroneous.

On remand, the Circuit Court should tailor the injunctions to the requirements of the By-Laws and should evaluate the HOA's claim for attorneys' fees both for a nexus to a violation of a By-Law and for reasonableness in accordance with Maryland Rules 2-703 and 2-705.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY ARE VACATED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID ONE-HALF BY APPELLANTS AND ONE-HALF BY APPELLEE.

a copy of the order in the appendix to that brief. However, he did not argue that the order in the other case undermined the attorneys' fees awards in this case; rather, he relied on that order to challenge the HOA's authority to "impose fines and restrict communications." Arguably, Appellants have waived the issue of the HOA's authority to seek an award of attorneys' fees. In the absence of any briefing on this issue in this appeal, we cannot resolve it in this opinion, but note what appears in the record before us for the benefit of the Circuit Court, should it be raised on remand.