Circuit Court for Howard County
Case No. C-13-CV-19-000260

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1147

September Term, 2020

CHRISTIAN HURLEY

v.

HICKORY HOLLOW COMMUNITY ASSOCIATION, INC.

Arthur,
Beachley,
Wilner, Alan M. (Senior Judge),
Specially Assigned,

JJ.

Opinion by Wilner, J.

Filed: August 3, 2021

Before us is an appeal from an Order of the Circuit Court for Howard County reinstating a case that had been dismissed pursuant to a Settlement Agreement and entering a judgment in that case upon a finding that appellant had violated the Settlement Agreement. Finding no error, we shall affirm that judgment.

BACKGROUND

Hickory Hollow Community is a townhouse community in Howard County that was created by a Declaration of Covenants, Conditions and Restrictions filed among the Land Records of that county. Among other things, the Declaration created the Hickory Hollow Community Association, which consists of the owners of the lots that are subject to assessment under the Declaration, one of whom is appellant, Christian Hurley.

The Association is a corporate entity that operates in accordance with its By-Laws. Article IV of the By-Laws provides that the affairs of the Association shall be managed by a Board of Directors elected annually by the members of the Association through a process set forth in the By-Laws. Board members serve a one-year term but may be re-elected for an additional two terms. They may not serve more than three consecutive years. The Board is authorized to exercise for the Association all powers, duties, and authority vested in the Association, including the powers to employ both independent contractors and employees of the Association, to prescribe their duties, and to supervise all officers, agents and employees of the Association.

The By-Laws also provide for the election of officers of the Association, including a President. The President is authorized to preside at meetings of the Board, see that orders and resolutions of the Board are carried out, and sign all written instruments on behalf of the Association.

The action that generated what is now before us arose from long-running disputes between the Board of Directors and Mr. Hurley, who once was a member of the Board, over attempts by Hurley to exercise personally the authority committed to the Board. Those efforts involved, in part, threats made by Hurley to officers and members of the Board, directives and threats to employees and contractors of the Association, and multiple lawsuits and administrative complaints he filed against Association contractors and employees, none of which had been approved by the Board. Those ongoing disputes led the Board, on behalf of the Association, first to have the Board's attorney send Hurley an order to cease and desist that activity and then to attempt to mediate their disputes with him. When those efforts failed, the Board, in April 2019, filed a six-count Complaint against Hurley in the Circuit Court for Howard County.

The gist of the Complaint was that, as a result of his disagreements with Board decisions, Hurley began a pattern and practice of "harassing, intimidating, and filing lawsuits and administrative complaints against anyone who disagreed with him," including the Association's attorneys, management agents, property manager, and landscaping contractor, all without any authority. The Complaint alleged that he

"continues to insist that he is the management and legal liaison for the Association, despite not a single other Board member supporting this position." *See* ¶ 30.

Count I sought injunctive relief; Count II sought damages for interference with contracts between the Association and its contractors; Count III was for breach of contract generally; Count IV accused Hurley of illegally recording private communications between Board members and Association attorneys and employees and others in violation of the State wiretap law; and Count V accused him of violating Md. Code, § 3-805 of the Criminal Law Article for sending contractors electronic mail for the purpose of harassment.

Count VI involved a separate matter – Hurley's attempt to nominate a proxy for himself for a fourth term as a member of the Board of Directors. As noted, the By-Laws limit a person to three consecutive terms. The Complaint sought a declaratory judgment that Hurley's nomination of the proxy was invalid and that the Association could withhold it from the ballot.

The filing of the Complaint did not deter Hurley but instead seemed to act as a stimulus, producing an avalanche of lawsuits and administrative complaints by him, none of which were successful. In October 2019, the Association filed a motion to deem Hurley a vexatious litigant and enjoin him from filing any new lawsuits and from filing any further pleadings, motions, or other filings in existing cases. After a hearing, the

court, on November 13, 2019, filed an Order granting that motion based on the five factors set forth in *Safir v. U.S. Lines, Inc.*, 792 F. 2d 19 (2d. Cir. 1986).

Recounting Hurley's litigious history, the court noted that he had initiated 12 lawsuits, administrative actions, or complaints in retaliation for the Association's Complaint against him, none of which had been successful, and in the instant case had filed more than seven requests for injunctive relief, four motions for sanctions, five counterclaims, and five motions to dismiss or for sanctions, none of which were successful. Noting the nearly 400 filings by Hurley just in the instant case, the court concluded that his actions were vexatious, harassing in nature, and duplicative. Given that all ten of his motions to dismiss or for sanctions were found deficient, the court concluded that his motive was to burden others rather than to seek redress, causing needless expense and waste of time to others, and that a simple warning would be insufficient to protect the court or the parties.

The court's Order precluded Hurley from filing any further pleadings or civil actions in the Circuit or District Courts of Howard County without leave of the Administrative Judge and directed the clerk of the court not to accept any further pleadings from him without his obtaining such approval.

Three weeks later, on December 3, 2019, the parties entered into a Settlement Agreement under which Hurley agreed:

(1) At his expense, to file a notice of dismissal, with prejudice, in all lawsuits and administrative actions then pending and not to seek to reopen or appeal any actions that he had filed against Association-related parties for which dismissals already had been entered;

(2) To abide by the November 13 Order and to an extension of it to preclude the filing of any pleading or action in any other Maryland court without the approval of the Administrative Judge of that court;

(3) Not to run for or apply to participate in an election for the Board of Directors of the Association for the next three years;

(4) Not to contact any member of the Board of Directors, vendor, attorney, manager, or their successors except in writing through a community liaison appointed by the Board for the purpose of receiving communications from Hurley and, if dissatisfied with the community liaison's response, by a letter addressed to the Board, which would make a final determination; and

(5) For three years, not to communicate through e-mail, text message, or any other means with other members of the Association regarding Association business which the Board has the sole authority to control, which included covenant enforcement matters, architectural issues or applications, and lawsuits filed by the Association, and to refrain from any threatening, harassing, or otherwise untoward communications with members of the Association.

The Association, in turn, agreed to file a notice of dismissal of its lawsuit pursuant to Rule 2-506(b) along with a copy of the Settlement Agreement and "provided Hurley abides by all terms within the Agreement, the Lawsuit shall remain dismissed."

Hurley agreed that it was his intent to resolve all existing and potential disputes with the Association concerning the matters alleged in the various lawsuits filed since October 2018 and, as part of the Agreement, agreed to a general release of the Association and all of its agents, stockholders, officers, directors, employees, **insurers**, and members. Significantly, in ¶ 13, Hurley declared his consent that, upon any breach of the Settlement Agreement, the Association would have the immediate right to move to reopen its lawsuit and request the court to "vacate the § 2-506(b) dismissal and . . . move for the entry of a consent judgment against [him]" for all attorneys' fees and costs incurred by the Association as a direct result of Hurley's actions between October 2018 and the date of default, with the amount of judgment being determined at a hearing on damages before the court.

On December 6, 2019, Hurley filed an affidavit listing various actions he had dismissed and stating that he had "no knowledge of any other open, pending complaint or causes of action of any kind involving, directly or indirectly, the Association, its members, vendors, attorneys, et al." With that assurance, three days later the Association filed a dismissal of its action against Hurley pursuant to Rule 2-506(b).

As noted above, one of the allegations in the Association's Complaint against Hurley was that he had recorded conversations among Board members in violation of the State wiretap law. Unknown to the Association, Hurley, as a Board member at the time, had filed a demand with State Farm Fire and Casualty Company – the Association's liability insurance carrier – that it represent him in defending against that allegation, which State Farm denied, apparently on the ground that its policy did not cover criminal conduct. Also unknown to the Association, was that (1) in May 2019, Hurley had filed a complaint against State Farm with the Maryland Insurance Administration (MIA) for the company's refusal to provide the coverage, (2) that action was pending when the Settlement Agreement was signed, and (3) that action was not disclosed in Hurley's affidavit. That complaint ended up before an administrative law judge in the Office of Administrative Hearings (OAH).

The Association did not discover that complaint until subpoenas requested by Hurley were served on the Association's attorneys, the Board president, and members of the Association's management company to testify at a hearing before an administrative law judge regarding that complaint. The attorneys insisted that Hurley immediately dismiss that action, and, when he refused to do so, the Association, on May 29, 2020, filed a motion to vacate the Rule 2-506 dismissal and enter a consent judgment on the reopened case.[1] The MIA action eventually was dismissed by the administrative law

[1] The court directed the clerk to accept the filing on June 12, 2020.

judge, whereupon Hurley sought judicial review of that dismissal in the Circuit Court for Carroll County.

The motion to vacate was based on Hurley's continuing to pursue a personal action against the Association's liability insurer in violation of ¶¶ 5, 6, 7, 8, 10, and 11 of the Settlement Agreement by (1) failing to dismiss the MIA action, (2) issuing subpoenas to the Board president, counsel for the Association, and two members of the Association's property management company, (3) sending communications regarding Association business to persons other than the designated community liaison, (4) seeking to apply for a position on the Board of Directors in contravention of his contractual commitment not to do so, and (5) filing a motion to reopen the case and vacate the Settlement Agreement based on claims of harassment.

Apparently anticipating that the Association would carry through with its threat to move to reopen the case, Hurley filed his own motion to vacate the Settlement Agreement. In its motion, the Association moved to dismiss Hurley's motion, enter a consent judgment against him, enjoin him from further violations of the Settlement Agreement, and schedule a hearing on attorneys' fees.

All of this was set for a hearing in the Circuit Court on October 23, 2020. At that hearing, Hurley argued that his complaint against State Farm with MIA and the judicial review action of OAH's dismissal of that claim did not constitute a violation of the Settlement Agreement because the company he named in that action, State Farm Mutual

Fire and Liability Company, was a fictitious company that did not exist. The company that serves as the Association's insurer, he said, is State Farm Fire and Casualty Company, which other evidence showed was the case. Suing a fictitious company was not an innocent misnomer, he acknowledged, but was deliberate. He was hoping that MIA would not notice the error and that he would be able to issue subpoenas for the Association's president, its attorneys, and members of its management company to require their appearance at the OAH hearing, which is what he did.

Although his complaint to MIA did allege the insurer to be the fictitious State Farm Mutual Fire and Liability Company, the appeal docket for that case shows that it was, in fact, State Farm Fire and Casualty Company that was sued.

Hurley's response to the allegation that he had applied for election to the Board of Directors in violation of his commitment not to do so was that he was not the actual applicant. Rather, he said that the person he proposed was a Mr. Dye, who was the treasurer of an entity known as Youth Services American Corporation Board, of which Hurley was the president and which holds a trust on Hurley's residence. The deed to the property showed, however, that Youth Services American Corporation had no interest whatsoever in the property, which actually was owned by the Christian Hurley Memorial Trust and Christian Hurley Trustee. He admitted that he individually, as the owner of his property, had served on the Board previously.

With respect to its claim for attorneys' fees, the Association placed in evidence extensive time sheets establishing the work done and the hourly rates charged, showing an aggregate expense of $127,901.50.

On the evidence presented, much of it from Hurley, the court found multiple violations of the Settlement Agreement. It characterized the handling of his claim against State Farm as "the very definition of bad faith" and "frankly shocking," but was "emblematic of the kind of behavior that Mr. Hurley has exhibited in this case." Based on those violations, he was subject to having the Settlement Agreement vacated, something he, himself, sought. The court accepted the $127,901.50 as reasonable attorneys' fees. On November 11, 2020, the court entered a consent judgment against Hurley in the amount of $127,901.50 and enjoined him from future acts in violation of the Settlement Agreement dated December 3, 2019.

Hurley immediately filed a motion to vacate, alter, or amend that judgment, which was denied, followed by motions for reconsideration and to reopen, which also were denied, and ultimately this appeal.

DISCUSSION

Hurley, who is not an attorney, raises two complaints in this appeal. First, he claims that the Settlement Agreement was ambiguous and that the trial court erred in concluding otherwise. Second, with respect to the award of attorneys' fees, he avers that

the trial court erred "by deeming that Appellant had a realistic opportunity for informed challenge, or by deeming that Appellee's damages claim was proven with the certainty under the standards ordinarily applicable for proof of contractual damages."

With respect to his first complaint, he asks this Court "to take judicial notice" from the evidence he presented "that the parties do not have the requisite meeting of the minds with many of the Settlement Agreement terms." This appears to be based on the cease and desist letter sent to him by the Association's attorneys on April 20, 2020, warning him that if he continued to proceed with the MIA case before OAH, the Association would move to reopen the case against him. His point seems to be that his obligation not to pursue appeals applied only to cases that already had been dismissed and that his appeal to OAH, and ultimately to the Circuit Court for Carroll County, of MIA's rejection of his claim against State Farm, had not been dismissed by him.

We shall not take judicial notice of any such ambiguity or error. We agree with the trial court's conclusion that "Mr. Hurley knew what he was signing, what he got into." Paragraph 3 of the Settlement Agreement obligated Hurley to dismiss with prejudice "all lawsuits and administrative actions currently pending." Paragraph 4 forbid him from filing "any pleading or action in any Court in the State" without the approval of the administrative judge of that court. There is nothing ambiguous about those provisions. By continuing to pursue his clearly fraudulent claim against State Farm with OAH and later with the Circuit Court for Carroll County, Hurley knowingly violated

those provisions. That alone sufficed to justify the court's finding, without regard to his effort to elect a proxy for himself to the Board of Directors or whether there were impermissible communications with Board members or others.

With respect to the attorneys' fees, Hurley complains that "no Appellee witness ever stated that any of Appellee's 837 listed attorney fees, incurred by the Association, was a result, or even a consequence, let alone a direct result or an immediate consequence, of any Appellant act."

The hearing on the Association's motion to reopen its case and enter a consent judgment for damages, which consisted entirely of costs and attorneys' fees, was set for 30 minutes. In light of that, the Association pre-filed as exhibits the affidavits from the Board's President and a representative from the property management company and spreadsheets from the attorneys documenting the attorneys' fees by initials of the attorney, time spent, hourly rate, and date of service. A proffer by the Association that those witnesses would testify in accordance with their respective affidavits was accepted by the court without objection from Hurley.

That proffer included testimony by the Board President that the spreadsheets, showing a total of $127,901.50, were a true and accurate representation of all attorney's fees incurred by the Association, that they had been reviewed by the Association, by the Association's management agent and by the Association's management company and

were determined to be fair and reasonable under the circumstances and were "aligned with those of other attorneys in this locale for similar circumstances."

The spreadsheets are in the Record Extract; the affidavits are not. Based on the unobjected-to proffer, the court found that the applicable standards for an award of attorney's fees in terms of scope and reasonableness within the legal community were met and were "all seemingly caused by Mr. Hurley's excessive and marginally unjustified efforts to pursue various actions against the Community Association." We find no error in the damages award.[2]

JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.

[2] We note in passing a serious deficiency in the Record Extract filed by Hurley. This appeal is from an MDEC county, and Hurley, though not an attorney, filed his Record Extract in electronic format. The pages in a Record Extract must be consecutively numbered. *See* Rules 8-501(i) and 5-803(a). The electronic version of the Extract filed by Hurley is in compliance with those Rules. Rule 20-403, however, requires that, in addition to the electronic filing, the party responsible for the preparation and filing of the Record Extract shall file eight copies of the document in paper form. Hurley filed paper copies, but the page numbering ends at 74, and the Extract, in fact, consists of 194 pages. Had the clerk's office not gratuitously gone to the trouble of correcting that deficiency, we likely would have required Hurley to reprint the paper version of the Extract.