Circuit Court for Queen Anne's County
Case No.: C-17-CV-18-000274

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1780

September Term, 2019

WALTER J. ADCOCK

v.

QUEEN'S LANDING COUNCIL OF UNIT OWNERS, INC.

Reed,
Wells,
Gould,

JJ.

Opinion by Wells, J.

Filed: December 14, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal concerns appellant Walter J. Adcock's battle to get his condominium association, Queen's Landing Council of Unit Owners, Inc., appellee, to approve his requests for permission to construct dormers on the roof of his residence. In this appeal, Mr. Adcock challenges the decision of the Circuit Court for Queen Anne's County, which granted summary judgment in favor of the condominium association.

Appellant filed a timely appeal and poses four questions for our review that we have distilled into one question: Did the circuit court err in granting appellee's motion for summary judgment?[1]

We hold that the circuit court erred in granting appellee's motion for summary judgment because material factual disputes existed, and it was not entirely clear that appellee was entitled to judgment as a matter of law. Additionally, we hold that the circuit court should have granted appellant's request for a declaratory judgment but need not have automatically granted him specific performance, as he requested. Consequently, we

[1] Appellant's verbatim questions are:

1. Did the Circuit Court err in denying Mr. Adcock's Motion for Summary Judgment and failing to provide a declaratory determination that the Association's 2017 adoption of a Dormer Prohibition was invalid?
2. Did the Circuit Court err in entering summary judgment for the Association 14 days after the filing of both Motions for Summary Judgment and without consideration of Mr. Adcock's timely filed Opposition and Supplemental Memorandum?
3. Did the Circuit Court err in entering summary judgment for the Association without a hearing as requested in the Opposition and Supplemental Memorandum filed 14 days after filing of the Motion for Summary Judgment?
4. Did the Circuit Court err in entering summary judgment for the Association without a proper determination of whether material facts were in dispute and consideration of the reasonable inferences to be drawn from those facts?

reverse the entry of summary judgment for appellee, instruct the circuit court to issue appellant a declaration as described below, and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

The Circuit Court for Queen Anne's County did an admirable job summarizing the facts and proceedings in its written memorandum addressing the parties' dueling motions for summary judgment. With minor alterations, we reprint the circuit court's factual and procedural summary:

> Walter Adcock owns a unit in the Queen's Landing Condominiums, located in Chester. Queen's Landing is the governing body responsible for the management of the condominium. When the condominium residences were constructed, the developer offered prospective buyers the option to have dormers; consequently, many units in the community have dormers.
>
> In 2009, Mr. Adcock made his first Architectural Change Request ("ACR 1") to add dormers to the exterior roof above his unit, which the Covenants Committee of Queen's Landing, responsible for approving the addition of features such as dormers, denied. In 2012, Mr. Adcock resubmitted his request ("ACR 2"). Through June 2015, the Covenant Committee worked with Mr. Adcock and identified nine issues that Mr. Adcock was to address before his request could be considered for approval. On June 14, 2015, the Covenants Committee denied Mr. Adcock's request because he failed to meet those nine conditions for approval.
>
> In February 2016, Mr. Adcock filed suit, claiming ACR 2 was improperly denied. On November 28, 2016, the circuit court concluded that Mr. Adcock had not submitted what was required for approval. Mr. Adcock dismissed that lawsuit. Upon Queen's Landing's request, the court awarded them attorney's fees.
>
> In June 2017, Mr. Adcock submitted a third application to add dormers ("ACR 3"). The Chair of the Covenants Committee, Bruce Mulford, reviewed ACR 3 and found it was identical to ACR 2. More importantly, Mr. Mulford noted that the application failed to address any of the nine conditions he had set for ACR 2 to be approved.

On July 21, 2017, while a final decision on ACR 3 was pending, Queen's Landing's Board of Directors ("the Board") called a special meeting to amend the internal policies regarding "Limited Common Elements" (i.e. roofs), effectively prohibiting the addition of dormers to any of the condominium units. On August 7, 2017, Mr. Mulford formally denied ACR 3 and attached a copy of the amendment to the Limited Common Elements that the Board approved at the July meeting.

On August 21, 2019, pursuant to Md. Code, Real Prop. Art. § 11-111, the Board notified the unit owners of its desire to formally adopt the July 21, 2017 amendment to the Limited Common Elements policy, which Mr. Adcock refers to as the "Dormer Prohibition." The Board ultimately adopted the amendment on September 16, 2019. That amendment now prohibits construction of a dormer on the roof of any building within the condominium association.

This matter first came before the court on February 22, 2019 for a hearing on Queen's Landing's motion to dismiss predicated on res judicata and the "business judgment rule." On March 7, 2019, the court entered an order denying the motion to dismiss but restricted Mr. Adcock to litigating the issues surrounding Queen Landing's adoption of the Dormer Prohibition and the amount of consideration the Board gave to ACR 3. At that time, the court decided that it would not entertain argument about ACR 3's supposed compliance with the Covenants Committee's nine preconditions for approval as the issue was barred by res judicata.

The parties are now before the court on cross-motions for summary judgment, which Queen's Landing and Mr. Adcock both filed on September 20, 2019. Apparently, counsel for both parties believe these motions are dispositive, as neither counsel nor the parties appeared for the scheduled settlement conference on September 23, 2019 at 1:30 p.m. Although the matter is presently scheduled for jury trial on November 20 and 21, 2019, it does not appear that either party requested a jury. Furthermore, based upon the court's ruling on the motion to dismiss, it would not appear that there are any issues that a jury might properly consider.

In its written ruling, the court stated that the following facts were not in dispute:

- The Board of Queen's Landing adopted its restriction on the addition of dormers after providing notice of the proposed change to the condominium owners under Md. Code, Real Prop. Art. § 11-111(a).

- Mr. Adcock is seeking damages for breach of contract based on the theory that ACR 3 was denied after the Board adopted the Dormer Prohibition while ACR 3 was pending.

- The Covenants Committee Chair, Mr. Mulford, had the authority to deny ACRs that he deemed did not meet Queen's Landing's written policies.

- Mr. Mulford testified (via affidavit) that the reason he denied ACR 3 was that it was identical to ACR 2 and Mr. Adcock had not addressed any of the preconditions the Covenants Committee set for approval of ACR 2.

The court ruled on the motions for summary judgment as follows:

> Coming to the heart of the issue, it is clear that given these circumstances, the denial of ACR 3 was proper, and summary denial [is] proper given that [Mr. Adcock] submitted an identical application without addressing the nine conditions that were required as part of his ACR 2. There was no requirement that the same process be utilized for ACR 3 given all of the consideration that went into the denial of ACR 2. The court concludes that the reason for the denial of ACR 3 by [Mr. Mulford,] the Chair of the Covenants Committee of the Board was solely due to the identical nature of the application. The issues regarding the [Dormer Prohibition], notice, and the September 2019 vote precluding structures on the roofs of the association's units is of no moment. The formal enactments associated therewith had nothing to do with the denial of ACR 3. Consequently, the Court will grant summary judgment in favor of [Queen's Landing]. Mr. Adcock's summary judgment motion will be denied.

Mr. Adcock's timely appeal followed. Additional facts may be introduced, as warranted.

DISCUSSION

I. The Backdrop: Bylaws, Rules, and a Statute

Appellee, Queen's Landing, is a condominium association. In 2005, the Queen's Landing Board of Directors ("the Board") adopted its own rules. Those rules state that any unit owner's request to alter a limited common element ("LCE"), such as the roof of a unit

owner's residence, "must be made in writing via the Architectural Change Request form ("ACR")."

The Board created and invested a Covenants Committee with the authority to investigate and approve or reject all ACRs. The Covenants Committee is to evaluate ACRs on a case-by-case basis and, as stated in the rules, should consider six factors, at a minimum:

- Does the proposal increase or decrease the value of the unit or condominium?
- ls the proposal consistent with the architectural theme and visual harmony of the condominium?
- Does the proposal interfere with or obstruct the enjoyment or comfort of other unit owners?
- Does the proposal impede access by utility workers, Queen's Landing Maintenance or residents?
- Is there precedence of the proposal (sic)?
- Does the proposal encroach on Common Areas?

Further, section 5.7 of the Board's amended bylaws state:

> The Board of Directors or Covenants Committee shall be obligated to answer any written request by a Unit Owner for approval of a proposed structural addition, alteration or improvement in such Unit Owner's unit **within forty-five (45) days after such request**, and failure to do so within the stipulated time shall constitute a consent by the Board of Directors or the Covenants Committee to the proposed structural addition, alteration or improvement.

(emphasis supplied.)

Finally, the notice provisions of Maryland Code Annotated, (1974, 2019 Repl. Vol.), Real Property ("RP") § 11-111 play a role in this dispute. RP § 11-111(a)(1) and (2) state:

> (1) The council of unit owners or the body delegated in the bylaws of a condominium to carry out the responsibilities of the council of unit owners may adopt rules for the condominium if:
>
> (i) Each unit owner is mailed or delivered:
>
> 1. A copy of the proposed rule;
>
> 2. Notice that unit owners are permitted to submit written comments on the proposed rule; and
>
> 3. Notice of the proposed effective date of the proposed rule;
>
> (ii) Subject to paragraph (2) of this subsection, before a vote is taken on the proposed rule, an open meeting is held to allow each unit owner or tenant to comment on the proposed rule; and
>
> (iii) After notice has been given to unit owners as provided in this subsection, the proposed rule is passed at a regular or special meeting by a majority vote of those present and voting of the council of unit owners or the body delegated in the bylaws of the condominium to carry out the responsibilities of the council of unit owners.
>
> (2) A meeting held under paragraph (1)(ii) of this subsection may not be held unless:
>
> (i) Each unit owner receives written notice at least 15 days before the meeting; and
>
> (ii) A quorum of the council of unit owners or the body delegated in the bylaws of the condominium to carry out the responsibilities of the council of unit owners is present.

II. Standard of Review

Maryland Rule 2-501(a) permits a party to "file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any

material fact and that the party is entitled to judgment as a matter of law." A circuit court may grant a motion for summary judgment "if the motion and response show that there is no genuine dispute as to any material fact" and the moving party "is entitled to judgment as a matter of law." Md. Rule 2-501(f).

We review a trial court's grant of summary judgment for legal error. Our task is to determine whether the court was correct in its legal determination that there existed no genuine dispute of material fact and that the prevailing party was entitled to judgment as a matter of law. "We review a circuit court's decision to grant summary judgment without deference, by independently examining the record to determine whether the parties generated a genuine dispute of material fact and, if not, whether the moving party was entitled to judgment as a matter of law." *Colbert v. Mayor & City Council of Baltimore*, 235 Md. App. 581, 587 (2014). *See Powell v. Breslin*, 195 Md. App. 340, 345–46 (2010); *ABC Imaging of Wash., Inc. v. Travelers Indem. Co. of Am*., 150 Md. App. 390, 394 (2003) (quoting *Tyma v. Montgomery County*, 369 Md.97, 503–04 (2002)). "[O]rdinarily, an appellate court will review a grant of summary judgment only upon the grounds relied upon by the trial court." *Hamilton v. Kirson*, 439 Md. 501, 523 (2014) (citation omitted). In so doing, "[w]e look only to the evidence submitted in opposition to, and in support of, the motion for summary judgment in reviewing the trial court's decision to grant the motion." *Cent. Truck Ctr., Inc. v. Cent. GMC, Inc*., 194 Md. App. 375, 387 (2010) (quoting *La Belle Epoque, LLC v. Old Europe Antique Manor*, 406 Md. 194, 209 (2008)).

III. Lack of a Hearing

The first issue is really two interrelated issues. They are, *first*, Mr. Adcock's complaint that the circuit court did not provide him with a hearing before deciding the pending motions for summary judgment. And, *second*, that the court entered judgment before he had time to respond to Queen's Landing's motion for summary judgment.

Queen's Landing responds that neither party requested a hearing when they filed their motions for summary judgment. Mr. Adcock only requested a hearing when he filed a separate opposition to Queen's Landing's motion for summary judgment. In Queen's Landing's view, Mr. Adcock was not prejudiced by the circuit court not giving him a hearing because the court had the parties' cross motions for summary judgment and accompanying exhibits. So, in their opinion, there was no need for the court to hear from the parties or wait for more information when the parties' positions were already well-briefed.

Maryland Rule 2-311(b) states:

> Except as otherwise provided in this section, a party against whom a motion is directed shall file any response within 15 days after being served with the motion, or within the time allowed for a party's original pleading pursuant to Rule 2-321(a), whichever is later. Unless the court orders otherwise, no response need be filed to a motion filed pursuant to Rule 1-204, 2-532, 2-533, or 2-534. If a party fails to file a response required by this section, the court may proceed to rule on the motion.

And, Maryland Rule 2-311(f) states:

> A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading "Request for Hearing." The title of the motion or response shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a

> hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

These rules require a trial court to hold a hearing on a motion only if its decision would be dispositive of a claim or defense. *Logan v. LSP Marketing Corp*., 196 Md. App. 684, *cert*. *denied*, 418 Md. 588 (2010). For a decision to be deemed "dispositive" of a claim or defense within the contemplation of Rule 2-311, it must actually and formally dispose of the claim or defense. *Uninsured Employers' Fund v. W.M. Schlosser Co., Inc*., 186 Md. App. 599, *rev'd on other grounds*, 414 Md. 195 (2009). A court can grant a motion that disposes of a claim if there is no request for hearing, but, if request for hearing has been made, then the relevant civil procedure rule limits the circuit court's ability to grant a motion without hearing. Md. Rule 2-311(f). *See Adams v. Offender Aid & Restoration of Baltimore, Inc*., 114 Md. App. 512 (1997).

Our review of the record leads to the conclusion that Mr. Adcock did not make his request for a hearing in a timely manner as required by Rule 2-311(f). Specifically, he did not request a hearing in his motion for summary judgment with a heading titled "Request for Hearing," which would have alerted the court that he demanded a hearing. He instead made his request only in an opposition, filed later. Consequently, the circuit court did not err in not giving him a hearing.

And as for the second issue, we determine that because we are reversing and vacating the entry of summary judgment for Queen's Landing, we decline to address Mr. Adcock's contention that the circuit court acted hastily and denied his motion for summary judgment before the expiration of the 15 day period specified in Rule 1-203(a).

IV. Counts III and IV: The Contract Claims

First, we examine Mr. Adcock's damages claims. His argument is that because the Board failed to properly give due consideration to his latest request to construct dormers, the Board breached its contractual and fiduciary duties to him. We review the facts presented in the record to determine whether there were no material factual disputes and whether Queen's Landing was entitled to judgment as a matter of law.

A. Additional Facts

While the circuit court did a good job summarizing the facts, we must look at them in greater detail. After the Covenants Committee denied his 2009 ACR to add dormers to his unit's roof, Mr. Adcock submitted a second request in 2012 ("ACR 2"). At that time, the Covenants Committee required that Mr. Adcock meet nine conditions before his second request could be considered.[2] Among the nine conditions were that Mr. Adcock had to

[2] The following is taken from Mr. Adcock's complaint at paragraph 39:

> The Covenants Committee recommends the [Association] approve the ACR to add a dormer to [the Adcock Unit] contingent on the following steps being completed to the satisfaction of the Covenants Committee and the BOD:
>
> **A**. The unit owner agrees to pay for all of the expenses relating to the approval of his ACR, including the legal expenses incurred by the [Association].
>
> **B**. Legal determination as to:
>
> 1. Whether the expansion requires the approval of 100% of unit owners due to the conversion of common area (the roof is limited common area). (Note: The Declaration states there is no upper or lower boundary of this type of unit so, perhaps just approval of the unit owners who share in the limited common are--those owners in the entire building -- would be sufficient), and
>
> 2. Whether the Board can approve under MCA 11-107 which states there is no conversion of common area;
>
> **C**. The unit owner in 23F consenting to the addition;

obtain the consent of the neighboring unit owners, submit architectural drawings of the dormers, obtain the necessary permits from the county, and submit a timeline for the project.

After three years, Mr. Adcock could not satisfy all nine conditions for approval of ACR 2. Consequently, on June 14, 2015, the Board denied ACR 2 "without prejudice." The denial of ACR 2 prompted Mr. Adcock to file suit against Queen's Landing in the Circuit Court for Queen Anne's County. More than a year's worth of litigation ensued. Mr. Adcock filed a complaint in February 2016 and ultimately dismissed it in November 2016. The circuit court later denied his request to alter or amend the judgment on May 22, 2017.

Mr. Adcock submitted ACR 3 a little more than a month later, on June 27, 2017. ACR 3 went before the chair of the Covenants Committee, Bruce Mulford. According to

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D. Evaluation at the unit owner's expense by a licensed engineer and possibly in consultation with a Geo-Technical Engineer providing an Opinion that the addition of a dormer is structurally sound;

E. Architectural drawing of the proposed dormer at the unit owner's expense;

F. All applicable permits granted by Queen Anne's County;

G. Submission of project timeline with listing of all licensed contractors to be involved; and

H. Agreement pursuant to Queen's Landing Rules and Regulations, Section 2.1(0), the unit owner is responsible for all costs and future maintenance of approved changes or additions. Also, when selling the [his] unit with an approved change or addition, [the unit owner] must notify the buyer of his/her responsibility to maintain such change or addition in writing and a dated confirmation of this notification sent to the General Manager of Queen's Landing;

(Cont.)

I. Any additional costs or fees for this project will be borne by the unit owner; the [Association] shall not incur any expenses related to any legal research, the construction of the dormer or maintenance thereof.

Mr. Mulford, ACR 3 was "a wake-up call" that Mr. Adcock's construction requests were not going to end unless the Board acted. As a result, on July 21, 2017, the Board convened a special meeting and voted to amend its rules to prohibit the construction of dormers anywhere within Queen's Landing. Mr. Adcock refers to this amendment as the "Dormer Prohibition," and so shall we. The Dormer Prohibition went into effect immediately. About two weeks later, the Covenants Committee notified Mr. Adcock that it had denied ACR 3 and attached a copy of the Dormer Prohibition to the denial letter.

B. Analysis

Mr. Adcock argues that the Dormer Prohibition was passed without notice to him or the unit owners in contravention of RP § 11-111(a). In support of his argument, he points to the fact that a town hall-style meeting was held on July 17, 2017, four days before a special Board meeting. At the town hall, the unit owners were not informed that there would be a modification of the rules concerning LCEs and there was no discussion about an outright ban on the installation of dormers. Mr. Adcock asserts that the Board hastily passed the Dormer Prohibition at a special meeting as a means to reject ACR 3. As a result, the Board failed to consider the merits of his request, thus breaching its contractual and fiduciary obligations to him. Queen's Landing asserts that the Board's Covenants Committee had ample reason to deny ACR 3, aside from the adoption of the Dormer Prohibition. They contend that ACR 3 was identical to ACR 2 and that fact was immediately apparent to the Covenant's Committee's chair, Mr. Mulford, who said that Mr. Adcock's third request was "dead on arrival."

We agree with Mr. Adcock, in that there appears to be a material factual dispute about the reason ACR 3 was denied. Mr. Mulford testified that he "denied ACR 3 in [his] capacity as Chair of the Covenants Committee," because ACR 3 had not resolved any of the conditions that disqualified ACR 2. But at his deposition, Mr. Mulford testified he did not recall when he denied ACR 3, or, more importantly, whether he had considered ACR 3 as the bylaws required. He only recalled signing the denial form.

> [MR. ADCOCK'S COUNSEL]: Do you recognize if, by the time of your email in July of 2017, had the Covenants Committee or had you considered and investigated or acted upon what we're calling ACR number three?
>
> [MR. MULFORD]: I know there's a point where I denied ACR number three.
>
> Q: Do you know when that point came?
>
> A: Not exactly, no.
>
> Q: Can you tell me whether it was before July 13, 2017?
>
> A: I don't recall.
>
> Q: We've established that ACR number three was submitted on June 27, 2017. Do you recall whether your decision to deny it was made in the first week, in the second week? Do you have any recollection at all?
>
> A: Now you're talking about ACR number three?
>
> Q: Yes, sir.
>
> A: There's a piece of paper that tells you when I signed that.
>
> Q: You actually signed a denial?
>
> A: Yes.
>
> Q: Was that then sent to Mr. Adcock?
>
> A: It should have been. It's not my job to send it.

Mr. Adcock's position is that Board denied ACR 3 on the basis of the Dormer Prohibition. Specifically, he notes that on the denial form Mr. Mulford signed, it explicitly

states that the "reason(s) for denial attached Limited Common Elements Policy." Mr. Mulford and the Board maintain that, in fact, it considered ACR 3. They denied ACR 3 because it was identical to ACR 2 and Mr. Adcock did not show that the conditions to approve ACR 2 had been met. Critically, the Board's position is that they attached a copy of the Dormer Prohibition when they rejected ACR 3 to deter Mr. Adcock from making similar future requests. The problem with that explanation is that it appears nowhere on Mr. Mulford's denial form. The most reasonable conclusion one could draw after reading that form is that ACR 3 was denied because of the Dormer Prohibition. The conflicting rationales about the timing and the reason why the Board adopted the Dormer Prohibition create material disputes of fact sufficient to defeat the Board's motion for summary judgment.[3] Consequently, we must reverse the circuit court and vacate the summary judgment entered for Queen's Landing.

V. Counts I and II: The Equitable Claims

Mr. Adcock asserts that because the Dormer Prohibition was improperly adopted, the circuit court should have declared it invalid (Count I) and summarily approved ACR 3 (Count II). Queen's Landing responds saying that the question of whether the Board should have summarily approved ACR 3 is barred by res judicata. And, the circuit court had previously found the Board's decision to deny Mr. Adcock's identical request—ACR 2—was protected by the business judgment rule. So, disposition of ACR 3 was covered by the business judgment rule as well.

[3] Frankly, the factual disputes would have defeated Mr. Adcock's motion for summary judgment too.

Perhaps more importantly, Queen's Landing argues that even if the Dormer Prohibition was improperly adopted in 2017, by 2019, after Mr. Adcock filed suit, the Board amended its rules consistent with RP § 11-111(a). This new amendment prohibits any owner from adding dormers to their unit within the condominium association. Queen's Landing maintains that the 2019 amendment renders Mr. Adcock's equitable claims moot.

A. Mootness

Preliminarily, we address Queen's Landing's assertion that Mr. Adcock's equitable claims are not justiciable or moot. A case is moot if, "**at the time it is before the court**, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy that the court can provide." *Frazier v. Castle Ford, Ltd*., 430 Md. 144, 162–63 (2013) (emphasis supplied). Although appellate courts generally do not offer opinions on moot questions, *City of College Park v. Cotter*, 309 Md. 573, 580 (1987), an appellate court may address moot issues under certain circumstances. *See Hammen v. Baltimore Cty. Police Dep't*, 373 Md. 440, 450–51 (2003). One area that might require an appellate court to decide an issue that is otherwise moot would be to address recurrent issues and to avoid future litigation. The Court of Appeals held in *Robinson v. Lee*, 317 Md. 371, 376 (1989), that moot questions may sometimes be addressed when they "merit an expression of our views for the guidance of courts and litigants in the future." *See also State v. Neiswanger Mgmt. Servs., LLC*, 457 Md. 441, 457 (2018).

On August 29, 2019, the Board sent notice to all owners within Queen's Landing that it would hold a hearing on September 16, 2019 to discuss adoption of an outright ban on the construction of dormers anywhere within the association. A written notice

announced that the Board welcomed comments from the owners. And if passed, "the proposed rule and regulation [would become] effective as of September 17, 2019." Attached to the notice was a copy of the proposed amendment. Included was a paragraph which stated:

> Notwithstanding the foregoing, Unit Owners are prohibited from building or improving upon existing common element roofs, except that the integration of a patio enclosure roof, skylight, or attic fan may be permitted with the express written approval by the Board of Directors.

The record does not contain a summary of what occurred at the meeting. We know, however, that the Board passed the amendment "in accordance with the requirements of the Maryland Condominium Act [RP § 11-111] for the adoption of rules."

We think that this amendment, which no one disputes was properly adopted, may prohibit **a future** request by Mr. Adcock or any other unit member who wishes to construct dormers. The 2019 amendment does not render moot Mr. Adcock's equitable claim to a declaratory judgment that the Dormer Prohibition was improperly passed.

B. The Circuit Court's Rulings

We note that when the circuit court decided Queen's Landing's motion to dismiss, it made two rulings. First, as for Queen's Landing's claim that res judicata barred Mr. Adcock's complaint, the court found that the parties to the 2018 lawsuit (ACR 3) that form the basis of this appeal were identical to the parties to the 2016 (ACR 2) lawsuit. That 2016 lawsuit was resolved in Queen's Landing's favor. But, the court noted, in 2016, Mr. Adcock challenged the Board's denial of ACR 2 on the merits. In the 2018 lawsuit Mr. Adcock was,

> challenging **the process** by which [Queen's Landing] denied ACR 3, claiming that [Queen's Landing] circumvented its own rules and the rules of the State of Maryland in order to deny ACR 3 without full consideration. The circumstances surrounding the defendant's denial of ACR 3 had not transpired when the 2016 case was heard, and thus, could not have been raised. The issue is different, and one that could not have been raised previously; therefore, res judicata does not apply.

(emphasis supplied).

Second, in 2016, the court found that the business judgment rule applied to the Board's decision to deny ACR 2 on the merits. The circuit court specifically found that, "[Mr. Adcock] was unable to present the slightest evidence to overcome the business judgment rule."

Before the circuit court in 2018, Mr. Adcock alleged that the Board passed the Dormer Prohibition to summarily deny ACR 3 without having to consider the merits of his request. In disposing of Queen's Landing's motion to dismiss, the court decided that it would

> limit argument related to the business judgment rule to [Queen Landing's] decision to adopt the Dormer Prohibition. [**Mr. Adcock] will be precluded from re-litigating whether ACR 2 and its identical twin ACR 3 complied with all reasonable requirements, including the nine conditions recommended by the Covenants Committee.**

(emphasis supplied).

Later, when disposing of the competing summary judgment motions, the circuit court ruled that the Board gave due consideration to ACR 3. Mr. Mulford's denial of ACR 3 was,

> proper given that [Mr. Adcock] submitted an identical application without addressing the nine conditions that were required as part of his ACR 2. There was no requirement that the same process be utilized for ACR 3

> given all of the consideration that went into the denial of ACR 2. The Court concludes that the reason for the denial of ACR 3 by the Chair of the Covenants Committee of the Board was solely due to the identical nature of the application. The issues regarding the amendment [the Dormer Prohibition], notice, and the September 2019 vote precluding structures on the roofs of the association's units is of no moment. The formal enactments associated therewith had nothing to do with the denial of ACR 3.

C. The Business Judgment Rule

We have previously held that "the default level of judicial scrutiny applied to review corporate decisions is the 'deferential business judgment rule, which insulates the business decisions made by the director from judicial review[.]'" *Oliveira v. Sugarman*, 226 Md. App. 524, 537 (2016) (quoting *Boland v. Boland*, 423 Md. 296, 328 (2011)). The business judgment rule has been described as,

> [same question re indent] a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company. Absent an abuse of discretion, that judgment will be respected by the courts. The burden is on the party challenging the decision to establish facts rebutting the presumption.

Boland, 423 Md. at 328 (citations omitted). The business judgment rule "insulates 'the business decisions made by the director[s] from judicial review.'" *Id*.

Also, we have held that the business judgment rule is designed to limit a court's intervention in the internal disputes of incorporated and unincorporated organizations, such as homeowner's associations, absent fraud or bad faith. *Black v. Fox Hills North Community Ass'n, Inc*., 90 Md. App. 75 (1992). There, the circuit court granted summary judgment in favor of one set of homeowners, the Blacks, against another set of homeowners, the Kupersmiths, and their community association, Fox Hills North, because

the Kupersmiths had improperly placed a fence on part of the Black's property. *Id*. at 78-79. The Blacks sued the community association claiming that the association's failure to "take appropriate legal action [to remove the fence was] a breech (sic) of the duty and obligation owed by the [community association] to it members…." *Id*. at 81. We held that the community association's decision to approve the fence after seeking the advice of counsel and giving the matter "due consideration," was protected by the business judgment rule.

> The decision which the association made to approve the Kupersmiths' fence was a decision which it was authorized to make. Whether that decision was right or wrong, the decision fell within the legitimate range of the association's discretion. As such, the association was under no obligation to proceed against the Kupersmiths to remove the fence. There was no allegation in the complaint of any fraud or bad faith. Absent fraud or bad faith, the decision to approve the fence was a business judgment with which a court will not interfere.

Id. at 83.

D. Res Judicata

As has been stated on countless occasions, res judicata, or claim preclusion, requires:

> 1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute;
> 2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and
> 3) that there was a final judgment on the merits.

Colandrea v. Wilde Lake Community Ass'n, Inc., 361 Md. 371, 392 (2000); *see also Martin v. Dolet*, ___ Md. App. ____ (decided June 18, 2020), 2020 WL3317789. Slip op. at 8; *Scott v. State*, 379 Md. 170, 182-84 (2004); *Mackall v. Zayre Corp*., 293 Md. 221, 227-28

(1982). The basic rule of claim preclusion is: "A valid and final personal judgment rendered in favor of the defendant bars another action by the plaintiff on the same claim." Restatement (Second) of Judgments § 19 (1982).

We agree with the circuit court's analysis on res judicata. The 2018 lawsuit posed a different issue from the one in 2016. Specifically, the 2018 suit focused on process, whereas the 2016 suit addressed the merits of ACR 2. That difference is enough for us to conclude that res judicata was not a bar to Mr. Adcock's 2018 complaint.

We disagree with the circuit court's analysis of the application of the business judgment rule. The record is bereft of any allegation that the Board acted fraudulently. However, we think there is sufficient evidence in the record to raise a presumption of bad faith, which would defeat a motion for summary judgment and leave the matter to be resolved by the trier of fact.

The main issue concerns the timing of Dormer Prohibition's passage. Rather than simply considering ACR 3 and denying it because it did not meet the criteria for passage under the then-existing bylaws, the Board created a question of its motivation when it passed the Dormer Prohibition while ACR 3 was still pending. As discussed, Mr. Adcock claims the Board speedily passed the Dormer Prohibition as a means of circumventing its obligation to consider ACR 3.

Mr. Mulford says he attached a copy of the Dormer Prohibition to the denial of ACR 3 in an effort to get Mr. Adcock to understand that similar requests were going to be denied unless he satisfied the Board's nine preconditions, as outlined with ACR 2. Patti Darling, a Board member, sent an email to Bob Lever, another Board member, which explained Mr.

Mulford's rationale for attaching a copy of the Dormer Prohibition with the letter denying ACR 3.

> Bob,
>
> Just so you know, Bruce [Mulford], Tammy and I spoke and **Bruce felt strongly that the Limited Common Element Policy [the Dormer Prohibition] should go with the denial so Walter [Adcock] understands the ACR [III] is dead in the water** so-to-speak. If he still chooses to pursue something legally, so be it, let him try. **I understand Bruce's rationale** and respect his position so Tammy will send the Policy with the denial letter. **We all agreed on the end result anyway, *it was just a matter of a suggesting a different process*.**
>
> Patti

(emphasis supplied).

Presciently, Ms. Darling acknowledged the potential for unnecessarily raising suspicions about the Board's motives when she stated in earlier email to Mr. Mulford and other Board members:

> **I think it would be a mistake to attach the Limited Common Element policy [the Dormer Prohibition] to the denial letter since it was adopted after [Mr. Adcock's] ACR was filed**. [**ACR 3] can be denied by you [Mr. Mulford] and Bob B. [Chair of the Board]. … The Board decides how LCE can be modified/used** so they can decide no on that…at least that is my understanding. Patti.

(emphasis supplied).[4] Ms. Darling may very well have been correct; the Board could have denied ACR 3 on the merits. It did not, nor at least the Board never told Mr. Adcock that it denied ACR 3 on its merits. To a neutral observer, the Board seems to have acted quickly and did not give due consideration to ACR 3, as Mr. Adcock alleges.

[4] It is clear from the time stamps on the email that the "mistake" email came first on August 7, 2017 at 2:52 p.m. The "rationale" email was sent on the evening of the same day at 7:59 p.m.

While ultimately it may be that the Board's motives were ill-conceived rather malicious, Mr. Adcock has rebutted the presumption that the Board "acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests" of Queen's Landing. *See Boland*, 423 Md. at 328. The collision of differing rationales about why the Dormer Prohibition was passed leaves open the question of the applicability of the business judgment rule and makes summary judgment inappropriate.

E. Conclusions

Although we have determined that summary judgment was inappropriate, we are persuaded that with the adoption of the 2019 amendment to the bylaws which prohibits the construction of dormers by any unit owner, the Board tacitly acknowledged that the 2017 Dormer Prohibition was passed in contravention of the requirements of RP § 11-111. As discussed, the Board did not inform the unit owners that a ban on dormer construction was going to be discussed at the Board's 2017 emergency meeting. In short, the unit owners were not given an opportunity to voice their opinions of the proposed changes. We conclude that the unit owners' lack of notice and an opportunity to be heard means that the Dormer Prohibition was adopted contrary to the requirements of RP §11-111.

Additionally, the record suggests that that it was because of Mr. Adcock's 2018 lawsuit, the basis of this appeal, that the Board decided to revisit how the Dormer Prohibition was passed. In 2019, the Board announced that it would hold a hearing about restricting the construction of dormers. The unit owners could comment on any of the Board's proposals. This process, giving the unit owners notice and an opportunity to respond before the Board acted, satisfied the requirements of RP § 11-111. We think the

Board's action was remedial and an implicit acknowledgement that the Dormer Prohibition was improperly passed. We conclude that the circuit court erred in denying Mr. Adcock a declaration stating as much, which is the relief he requested in Count I of his lawsuit.

As to Count II, Mr. Adcock claims that if the Dormer Prohibition was improperly passed then the circuit court should have summarily approved ACR 3. His argument is that under Section 4.5 of the amended bylaws, if the Board does not consider an ACR within the prescribed time limit, then there is no Board action, thus, a pending ACR is deemed approved.

Our reading of Section 4.5 requires the Board to render a decision on any ACR within 45 days. In this case, the Board rendered a decision on ACR 3 within that time period. Thus, a decision was made in a timely manner, but, as we have discussed, the decision was made for seemingly improper reasons. We think that a fair reading of the bylaws would not necessarily mandate a summary approval of ACR 3, but rather, that the Board should consider Mr. Adcock's request under the bylaws as they existed before the passage of the Dormer Prohibition in 2017.

Finally, in the concluding paragraph of his opening brief, Mr. Adcock requests that we "remand the case for the award of costs and reasonable counsel fees." In this Court's order, we will allocate costs, as we do in every appeal. The circuit court stayed any award of counsel fees pending the outcome of this appeal. We leave to the circuit court, in its discretion, the assessment of counsel fees, if any, on remand.

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY GRANTING APPELLEE SUMMARY

JUDGMENT IS REVERSED AND THE CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. THE COURT IS DIRECTED TO ENTER A DECLARATION THAT THE 2017 AMENDMENT TO THE APPELLEE'S BYLAWS WAS PASSED IN CONTRAVENTION OF MD. CODE RP § 11-111. APPELLEE TO PAY COSTS.