Circuit Court for Garrett County
Case No. C-11-CV-000008

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1934

September Term, 2019

JEFFREY TELEP ET AL.

v.

JUDY STEELE ET AL.

Graeff,
Kehoe,
Zic,
JJ.

Opinion by Kehoe, J.

Filed: August 18, 2022

*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. *See* Md. Rule 1-104.

Appellants, Jeffrey Telep and Kelly Jennings (the "Teleps"),[1] own one of the two units that comprise the Rock Lodge Condominium, which is located in Garrett County. Appellees, Julie C. Steele and Robert A. Steele, own the other. In 2018, the Steeles filed a civil action against the Teleps and others setting out a variety of causes of action, all related to the condominium. After the claims against them were resolved, the Teleps sought an award of attorneys' fees and costs pursuant to the fee-shifting provision of Md. Code, Real Prop. § 11-113. The circuit court denied the Teleps's request. They have appealed from this judgment and present one issue:

> The question presented in this appeal is whether the Circuit Court erred as a matter of law in determining that [Md. Code, Real Prop.] section 11-113(c) was inapplicable in a unit-owner against unit-owner action for injunctive relief and damages seeking compliance with the governing condominium declaration and the Maryland Condominium Act.

We will affirm the judgment of the circuit court.

BACKGROUND

The Rock Lodge Condominium was established by a declaration, by-laws and a condominium plat recorded in the land records of Garrett County on October 15, 2004. The condominium consists of two units, each a separate single-family dwelling, and known as Unit 1106 and Unit 1116. Each unit is described in the declaration and depicted on the condominium plat. The declaration provided that it could be amended only with the consent

[1] This is how Ms. Steele and Mr. Telep refer to themselves in their brief.

of the owners of both units and that amendments were effective as of the date that the amendment was recorded in the land records.

Relevant to the issues raised in this appeal, the condominium plat depicted a patio and outdoor fireplace that is located between the two residences. In the 2004 condominium plat, the fireplace and patio were identified as common elements, i.e., available for the use of either unit.

Dudley Smith and Sharon Parry (the "Smiths") were the developers of the condominium and, from 2005 to September 2009, they owned both units. In 2009, they entered into a contract to sell Unit 1106 to the Teleps. As part of their negotiations, the Teleps requested that the condominium documents be amended to reserve the patio and outdoor fireplace for the exclusive use of the unit that they intended to purchase. The Smiths agreed to this. The following timeline formed the factual core of the arguments later asserted by the Steeles against the Teleps:

- August 24, 2009, the Smiths signed the documents to amend the condominium declaration to designate the patio and outdoor fireplace as a limited common element of Unit 1106;
- September 3, 2009, the Smiths conveyed Unit 1106 to the Teleps;
- September 4, 2009, the condominium amendment was filed in the land records of Garrett County.

In 2015, the Smiths sold their remaining unit, Unit 1116, to the Steeles. In 2018, the Steeles filed a multi-count civil action against the Teleps and the Smiths. The operative complaint is the second amended complaint. In Count I, the Steeles alleged that the 2009

amendment to the condominium was invalid because, on the date that it was recorded in the land records, the Teleps owned one of the units in the condominium and they hadn't signed the document. They sought a judgment declaring this to be so. In Count II, the Steeles alleged that the Teleps had "expanded" their unit into the common elements of the condominium by placing "timbers and landscaping ties in the common elements." In Count VII, the Steeles asserted claims against the Smiths and the Teleps. The Steeles alleged that the Rock Lodge condominium documents were defective in a variety of ways that "were fatal to the existence" of the condominium. As for relief, they sought a declaration that the condominium regime was not legally valid coupled with requests for a variety of forms of relief. As pertinent to the Teleps, the Steeles asked:

> A. That this Court determine and adjudicate the rights and liabilities of the parties with respect to the existence of the Rock Lodge Condominium.
>
> B. That this Court make a declaration that the Rock Lodge Condominium is not a valid condominium.
>
> C. That the Court partition the real property comprising the purposed Rock Lodge Condominium, in the alternative, declare that the said property be declared jointly titled between Defendant[s] Telep and Jennings as tenants in common.[2]
>
> * * *
>
> E. Actual damages in excess of thirty thousand dollars.
>
> F. That this Court award Plaintiffs such other and further relief as in law and justice they may be entitled to receive, including, but not limited to, any

---

[2] We assume that what the Steeles were actually seeking was a declaration that they and the Teleps were owners of the real property as tenants in common.

> injunctive relief that may be determined to be necessary and appropriate including determining the boundaries of Rock Lodge Properties.

The Steele's litigation efforts met with decidedly mixed results:

(1) On June 29, 2018, the circuit court granted the Teleps's motion for summary judgment as to Count I.

(2) On August 12, 2019, the circuit court granted summary judgment to the Teleps as to Count II coupled with a consent order[3] in which the Teleps and the Steeles agreed to file an amended declaration and condominium plat addressing a variety of matters, including an amended condominium plat that depicted the landscaping around the Teleps unit as a limited common element of that unit. The amended documents were also to show that the patio and outdoor fireplace were limited common elements of the Teleps's unit, subject, however, to a covenant that they would "maintain the character of the stone patio and fireplace in substantially the same condition for a period of 10 years" from the date of recordation of the amended declaration and condominium plat.

(3) On the same day, the Steeles dismissed Count VII with prejudice, stipulating that the Rock Lodge Condominium was validly formed and that they no longer contested the validity of any of the condominium documents. This brings us to the issues raised in this appeal.

---

[3] The substantive portions of the consent order are attached an appendix to this opinion.

On September 17, 2019, the Teleps filed a motion for an award of attorney's fees and costs incurred by them in defending against the Steeles' claims. The Teleps asserted that a fee award was justified pursuant to the fee-shifting provision in the Maryland Condominium Act, Md. Code, Real Prop. § 11-113(c), or, alternatively, pursuant to Md. Rule 1-341, which authorizes a court to award fees and costs as a sanction for proceedings undertaken in bad faith or without substantial justification. The circuit court denied the motion on October 11, 2019. The court's memorandum and order stated:

> Maryland Annotated Code, Real Property § 11-113(c) requires the Court to award attorney's fees and related expenses in issues involving an allegation of non-compliance with the Maryland Condominium Act. The instant case involves the validity of source documents beyond the scope of compliance with the Maryland Condominium Rules. Consequently, the award of attorney fees and expenses is discretionary to the Court.
>
> The Court, finding that the litigation was not the result of bad faith on the part of the [Steeles], it is hereby ORDERED, this 11th day of October, 2019 the Defendant's Application for Attorney's Fees and Expenses is DENIED.

The court's order resolved the last of the claims between the Teleps and the Steeles. Later, at the Teleps' request, the court certified its judgment as final for the purposes of appellate review pursuant to Md. Rule 2-602(b).

ANALYSIS

A. The Rule 2-602(b) certification

Md. Rule 2-602(b) authorizes a trial court to enter a final judgment "as to one or more but fewer than all of the claims or parties" when the trial court "expressly determines in a written order that there is no just reason for delay[.]" Certification under Rule 2-602(b) can

only be used when a court "made a ruling that disposes of one entire claim or of all claims against a party." Kevin F. Arthur, FINALITY OF JUDGMENTS AND OTHER APPELLATE TRIGGER ISSUES, 69, § 33 (3d ed. 2018) (hereafter "FINALITY OF JUDGMENTS").

Rule 2-602(b) is an exception to "Maryland's strong policy against permitting piecemeal appeals." *Id*. at 70, § 35. The relevant public policy is judicial economy and its purpose "is to benefit the appellate courts." *Murphy v. Steele Software Sys. Corp*., 144 Md. App. 384, 392 (2002). For these reasons, Rule 2-602(b) certification should be used "'sparingly'" and only in "'the very infrequent harsh case.'" FINALITY OF JUDGMENTS at 70, § 35 (quoting *Md. Nat'l Capital Park & Planning Comm'n v. Smith*, 333 Md. 3, 7 (1993)).

While trial courts make the initial Rule 2-602(b) certification, appellate courts review the trial court's decision for abuse of discretion. *Miller Metal Fabrication, Inc. v. Wall*, 415 Md. 210, 222 (2010). The scope of the circuit court's discretion is, however, "limited." *Smith v. Lead Indus. Ass'n, Inc*., 386 Md. 12, 25 (2005).

In the present case, we conclude that the circuit court did not abuse its discretion in certifying its judgment as to the claims involving the Teleps as final. The court resolved the last of the disputes between the Teleps and the Steeles when it denied the Teleps's motion for fees and expenses. The only remaining claims involved the Steeles' claims against the Smiths for damages, which were unrelated to the matters at issue between the Teleps and the Steeles.

B. The Motion for Fees and Expenses

As we have explained, the Teleps's motion for fees and expenses was based on two legal bases: Real Prop. § 11-113(c) and Md. Rule 1-341. On appeal, the Teleps do not challenge the court's denial of their request for fees pursuant to Md. Rule 1-341. Their appellate contentions are focused exclusively on their Real Prop. § 11-113(c) claim. They assert that the circuit court erred as a matter of law when it concluded the statute did not apply to the claims made by the Steeles against them.

Our analysis begins with the statute. Section 11-113 is part of the Maryland Condominium Act (the "Act"), which is codified as title 11 of the Real Property Article. Section 11-113(a) and (b) set out dispute resolution procedures for disagreements between a unit owner and the condominium's council of unit owners or board of directors. Those parts of the statute are not directly relevant to the issues raised in the present appeal. Subsection (c), however, is. It states (emphasis added):

> If any *unit owner fails to comply with this title, the declaration, or bylaws*, or a decision rendered [by a council of unit owners] pursuant to this section,[4] the unit owner may be sued for damages caused by the failure or for injunctive relief, or both, by the council of unit owners or by any other unit owner. *The prevailing party in any such proceeding is entitled to an award for counsel fees as determined by [the] court.*

[4] In very brief summary, § 11-113(b) provides that, before a condominium's council of unit owners can enforce a rule of the condominium against a unit owner, the council must provide an opportunity for an adversarial hearing on the matter. The council's decision is "appealable to the courts of Maryland."

The circuit court concluded that the claims asserted by the Steeles fell outside of § 11-113(c)'s ambit. The court explained it interpreted the statute to:

> require[] the Court to award attorney's fees and related expenses in [cases] involving *an allegation of non-compliance* with the Maryland Condominium Act. The instant case involves *the validity of source documents* beyond the scope of compliance with the Maryland Condominium Rules.

In other words, the circuit court interpreted § 11-113(c) as distinguishing between a dispute arising out of a claim that a unit owner failed to comply with the provisions of the Act, and a dispute arising out of an assertion that the "source documents," *i.e.*, the condominium declaration, by-laws, and plat, were invalid. The court reasoned that its authority to award counsel fees to the prevailing party was limited to the first scenario and did not extend to the second.

The proper interpretation of a statute is a question of law that appellate courts review *de novo*. *Henriquez v. Henriquez*, 185 Md. App. 465, 476 (2009), *aff'd*, 413 Md. 287 (2010) (citing, among other authorities, *Nesbit v. Government Employees Ins. Co*., 382 Md. 65, 72 (2004)). Our goal when construing a statute "is to ascertain and effectuate the actual intent of the General Assembly." *Mercer v. Thomas B. Finan Ctr*., 476 Md. 652, 694 (2021) (cleaned up)). Statutory interpretation begins with "an examination of the statutory text in context." *Blue v. Prince George's County*, 434 Md. 681, 689 (2013). In this context, "text" means "'the plain language of the relevant provision, typically given its ordinary meaning, viewed in context, considered in light of the whole statute, and generally evaluated for

ambiguity[.]'" *Id.* (quoting *Town of Oxford v. Koste*, 204 Md. App. 578, 585-86 (2012), *aff'd*, 431 Md. 14 (2013)).

When we apply these standards to Real Prop. § 11-113(c), we reach precisely the same conclusion as did the circuit court. The language in the statute is clear and unambiguous.[5] Section 11-113(c) requires a court to award attorneys' fees to the prevailing party in cases in which it is alleged that a unit owner "fails to comply with this title, the declaration, or bylaws[.]" The statute does not address actions in which one owner of a condominium unit challenges the legal validity of the condominium documents. Absent a fee-shifting mechanism, the so-called "American Rule" applies, namely, that each party pays its own way. *See, e. g., Selective Way Ins. Co. v. Nationwide Prop. & Cas. Ins. Co.*, 242 Md. App. 688, 750–51, (2019), *aff'd*, 473 Md. 178, 248 A.3d 1044 (2021) (explaining that the "general rule" is that "all parties must bear their own legal fees[.]").

In arguing that this case falls under § 11-113(c)'s purview, the Teleps make four points. We will address them separately.

The Steele's motivations in filing suit

As a background to their other arguments, the Teleps assert that, regardless of the ways that the Steeles articulated their claims for pleading purposes, their motivation, intent, and goal in the litigation was to obtain access to the patio and outdoor fireplace, that is, to

[5] Because the language is clear and unambiguous and there appears to be nothing else in the "statutory scheme," i.e., the Maryland Condominium Act, that addresses awards of attorneys' fees, there is no reason for us to consider the Act's legislative history.

render the 2009 amendment a nullity, and to require the Teleps to remove the landscaping appurtenant to their unit from the common areas. From our review of the record, we think that the Teleps may be correct as to the Steeles' motivations in bringing the lawsuit. But the Steeles' subjective motivations in filing this action are not relevant for the purposes of the fee-shifting provisions of § 11-113(c). The statute makes it clear, for purposes of subsection (c)'s fee-shifting provision, that the relief sought in the litigation is what matters

Count I

Second, the Teleps contend that as to Count I, the Steeles argued that:

> "***the Teleps did not execute the [2009] Amendment***, despite being owners of 1106 Rock Lodge at the time of its recordation, i.e., the date on which the Amendment became effective, ***as is required by the Declarations***." Further, the Steeles argued strongly that the Patio Amendment was invalid and they were seeking enforcement of the original language of the Declaration via an injunction that would force the Teleps to comply with that original language.

(Extract references deleted, emphasis added by the Teleps.)

In other words, the Teleps assert that the Steeles contended that the Teleps violated the Act because they didn't execute the 2009 amendment. We read the pleadings differently. The Steeles argued that the Act requires amendments to be signed by all unit owners. The 2009 amendment was recorded in the land records (and thus became effective) after the Teleps acquired their unit. The Teleps didn't sign the amendment. Ergo, reasoned the Steeles, the 2009 Amendment was ineffective.

The Teleps's contention to the contrary notwithstanding, the claim set out in Count I was that the 2009 amendment was invalid and ineffective because the Teleps didn't sign it, and not that the Teleps violated the Act because they didn't sign it.

Count II

The Teleps assert (emphasis added):

> Count II clearly was an action brought on the theory that the Teleps failed to comply with paragraph 6 of the Declaration. The action sought injunctive relief, which would have forced the Teleps to remove their landscaping from the general common elements of the Condominium. *The Teleps prevailed on Count II when the Circuit Court entered judgment in their favor pursuant to a Consent Order.*

We disagree with the Teleps' assertion that they "prevailed" on Count II. In that count, the Steeles alleged that the Teleps had installed landscaping in the vicinity of their unit that intruded into the general common elements of the condominium. In the consent order, the parties agreed to make seven changes to the condominium declaration, plat, and by-laws including one that amended the condominium plat to depict the landscaping in controversy as a limited common element of the Teleps' unit. In Count II, the Steeles alleged that the landscaping was located in the general common elements. In the consent order, the Teleps effectively conceded the point and, as part of a global settlement of all the issues between the parties (other than attorney's fees), they agreed to amend the plat. There is no logical basis for the Teleps' assertion that they "prevailed" as to Count II.

Count VII

In Count VII, the Steeles asserted that all of the condominium documents were ineffective *ab initio* because the condominium plat failed to include all of the information required by the Act. The circuit court accurately characterized the condominium plat as a "source document" and correctly concluded that the allegations in that count challenged the plat's legal validity and not the Teleps' compliance with the Act or any of the condominium documents.[6]

We see no error in the circuit court's disposition of the Teleps' request for attorney's fees and affirm the court's judgment.

THE JUDGMENT OF THE CIRCUIT COURT FOR GARRETT COUNTY IS AFFIRMED. APPELLANTS TO PAY COSTS.

[6] Alternatively, in the consent order, the parties agreed to make a number of changes to the condominium plat. If, as the Teleps now assert, they had prevailed on Count VII, then no changes to the condominium plat would have been necessary.

Appendix

The August 12, 2019 Consent Order

l. ORDERED that summary judgment is hereby granted in favor of the Defendants Jeffrey M. Telep and Kelly M. Jennings (the "Teleps") and against Plaintiffs Judy Steele and Robert Steele (the "Steeles"), on Count Il of the Second Amended Complaint.

2. ORDERED that Plaintiff, the Steeles, and Defendants, the Teleps, shall amend the documents in subparagraph 3(a)-(d) below in accordance with the procedures set forth in the Maryland Condominium Act and the Existing Rock Lodge Declaration and Bylaws, including but not limited to securing the consent of any and all mortgagees on the respective Rock Lodge Condominium Units. Such amendments shall be referred to herein as the "Amended Declaration" and the "Amended Condominium Plat," respectively. The parties shall record such amendments in the land records of Garrett County, Maryland. The parties shall equally share in the cost of preparing and recording such amendments.

3. ORDERED that the following documents are to be amended:

a. The Declaration of Rock Lodge Condominium and Bylaws previously recorded at Liber 1071, Pages 0078-0094 in the Land Records of Garrett County, Maryland (the "Existing Declaration and Bylaws");

b. The Rock Lodge Condominium Amendment To Condominium Declaration previously recorded at Liber 1462, Pages 0372—0374 in the Land Records for Garrett County, Maryland (the "Patio Amendment");

c. The Rock Lodge Condominium Amendment Of Condominium Declaration previously recorded at Liber 1536, Pages 0116-0118 in the Land Records for Garrett County, Maryland (the "Garage Amendment"); and

d. The Final Plat For Rock Lodge Condominium previously recorded at Plat Case DKM 2, Page 346 in the Land Records for Garrett County, Maryland (the "2004 Condominium Plat").

4. ORDERED that the Amended Declaration and Amended Condominium Plat shall effect the following changes:

a. The Amended Condominium Plat shall diagrammatically depict the existing garage on the Rock Lodge Condominium property as part of the 1116 Unit, and the Amended Declaration shall refer to the Liber/Page number of the Amended Condominium Plat as recorded in the land records of Garrett County, Maryland;

b. The Amended Declaration shall narratively describe, and the Amended Condominium Plat shall diagrammatically depict, as limited common elements dedicated for the exclusive use of the 1106 Unit the entire area situated on the southeast side of the 1106 Unit bordered by the stone patio and replace described in subparagraph 4(c) below, the wooden retaining wall/landscape timbers encircling the 1106 Unit and the 1106 Unit. For the avoidance of doubt the limited common elements dedicated to the exclusive use of the 1106 Unit include all landscaping, retaining walls, landscaping timbers, rocks, trees, bushes, shrubs, unplanted grounds, and the stacked rocks forming a planter between the two oak trees on the border of the gravel driveway between the units, but shall not include such oak trees or the HVAC unit appurtenant to the 1106 Unit. The oak trees are general common elements, the HVAC is part of the 1106 Unit.

c. The Amended Declaration shall affirmatively describe, and the Amended Condominium Plat shall diagrammatically depict, the stone patio and fireplace that is immediately adjacent to the 1106 Unit as part of the 1106 Unit, subject to a covenant that the current and future owners of the 1106 Unit shall maintain the character of the stone patio and fireplace in substantially the same condition for a period of ten years from the date of recordation of the Amended Declarations and Amended Condominium Plat in the land records of Garrett County, Maryland.

d. The Amended Plat Map shall contain the following language: "The general and limited common elements are more specifically defined in paragraph 5.2 of the Rock Lodge Declaration, as amended."

5. ORDERED that the Steeles and the Teleps shall jointly select and hire a mutually acceptable landscaper to investigate water drainage issues on the general common elements in the area defined by the 1116 Unit, the shed, the stone patio and fireplace referenced in subparagraph 4(a) above, and the buffer strip abutting Deep Creek Lake. In consultation with the landscaper, the Teleps and Steeles shall identify any water drainage issues in that area and mutually agree to a plan to remediate the issues identified. Any

remediation plan requires the consent of both parties, although neither party shall withhold their consent unreasonably. The Teleps and Steeles shall equally share in the cost of the landscaper and remediation.

6. ORDERED that the Steeles shall remove, at their cost, the oak tree between the 1106 and 1116 Units that is closest to Deep Creek Lake and closest in proximity to the corner deck post of the 1116 Unit. The tree shall be cut down to a stump no higher than one inch (1") from the ground. The stump shall not be ground.

7. ORDERED that neither the Steeles nor the Teleps shall drive, tow, or otherwise transport a vehicle, truck, and/or trailer of a length greater than twenty-four feet (24') on the gravel driveway between the Units. The parties shall cause a condominium association rule to be enacted in accordance with the procedures outlined in the Rock Lodge Declaration and Bylaws, as amended, to further implement this Order.

8. ORDERED that the Teleps have not waived any claim for attorney fees and costs on Counts I, II, and [VI] and will be permitted to argue for those attorney fees at a later date.