UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 31

SEPTEMBER TERM, 2015

LYON VILLAGE VENETIA, LLC, *et al.*

v.

CSE MORTGAGE LLC, *et al*.

Eyler, Deborah S.,
Wright,
Friedman,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: February 4, 2016

This is the second appeal in this case. On limited remand from this Court in the first appeal, the Circuit Court for Montgomery County reconsidered its prior award of contractual attorneys' fees to Capital Source Finance LLC and its affiliate, CSE Mortgage, LLC, (collectively "CSE"), the appellee, and in particular reassessed the reasonableness *vel non* of the fees CSE sought. The court entered a 30-page Memorandum Opinion and Order setting forth its reasoning and granting CSE the same award of attorneys' fees plus additional fees for the appeal, for a total of $2,781,961.31.

Lyon Villa Venetia, LLC, Lyon Villa Venetia, II LLC, Wolff Villa Venetia 224 LLC, and Wolff Villa Venetia 224 II LLC (collectively the "Villa Partners"), the appellants, challenge the attorneys' fees award on appeal. They also attempt to challenge for the second time the liability rulings this Court affirmed in the first appeal.

We shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

The 2004 Loan and the 2010 Modification

In May of 2004, the Villa Partners, all real estate developers, entered into a series of agreements with CSE by which the Villa Partners borrowed $35 million to improve an apartment complex in Marina del Rey, California. In 2006 and 2007, CSE securitized the loan and transferred it into a collateralized debt obligation ("CDO").[1] On December 20,

[1] A collateralized debt obligation is "a basket of assets or income streams that are pooled together, split into subordinated repayment rights ('tranches'), rated by a credit rating agency and sold to investors." Neal Deckant, *Criticisms of Collateralized Debt Obligations in the Wake of the Goldman Sachs Scandal*, 30 Rev. Banking & Fin. L. 407,

(Continued…)

2006, CSE filed a form 8-K with the SEC making the securitization information available to the public. CSE became the collateral manager and servicer of the Villa Partners' loan.

Over time, a number of modifications were made to the loan. On May 14, 2010, the parties negotiated a Tenth Modification, which was effective retroactive to January 31, 2010. In that modification, CSE promised that, if it intended to sell the entire loan to a third party, it would notify the Villa Partners. The Villa Partners would have the first right to purchase the loan. In consideration of that right, the Villa Partners contributed $4.2 million in fees and additional equity, agreed to an $868,682 exit fee, and also agreed that if any future litigation arose, the Villa Partners would pay the customary rates and reasonable attorneys' fees and expenses for counsel of CSE's choice. The Tenth Modification also included a release provision. The Villa Partners later maintained that, when they entered into the Tenth Modification, they were unaware that the loan had been securitized, even though this information was available in the public SEC filings.

In July of 2010, CSE sold to NorthStar Realty Financial Corporation ("NorthStar") a subordinated equity interest in the CDO that contained The Villa Partners' loan. CSE delegated the CDO's management and servicing rights to NorthStar and agreed to indemnify it against any claims arising out of the sale. NorthStar filed a form 8-K with

(…continued)
410 (2010). Assets that make up a CDO are, among other things, bonds, mortgages, and loans. *Id.*

the SEC reflecting the purchase and sent the Villa Partners a letter explaining the delegation.

On August 8, 2011, the Villa Partners sold the apartment complex and paid the loan in full.

The 2011 Litigation

On August 19, 2011, the Villa Partners filed suit against CSE, NorthStar, and other affiliates. In a five count amended complaint, they alleged that CSE had breached the right of first refusal granted in the Tenth Modification; that they had been induced to enter into the Tenth Modification by fraud and negligent misrepresentation; that CSE had tortiously interfered with their right of first refusal by entering into the transaction with NorthStar; and that CSE and NorthStar were unjustly enriched by the fees the Villa Partners had paid for the right of first refusal. The Villa Partners sought $25 million in damages. CSE filed a counterclaim for contractual attorneys' fees.

The court dismissed the Villa Partners' claim against NorthStar and granted summary judgment in favor of CSE on all the Villa Partners' claims.

CSE moved for summary judgment on its counterclaim for contractual attorneys' fees. On September 14, 2012, the court held a hearing on that motion, at which it took evidence. Kori Ogrosky, CSE's General Counsel, testified about the process CSE employed to review invoices from outside attorneys and vendors. She explained that

invoices are submitted through CSE's Tymetrix software,[2] that the system analyzes the invoices and flags entries that are inconsistent with company guidelines for reasonable fees, and that two individuals independently review the invoices after they are vetted by the system. She further testified that one in-house attorney, Joanne Fungaroli, worked on the case at an hourly rate of $600, and that outside counsel was retained. For outside counsel, Fungaroli negotiated blended hourly rates of $600 for partners and $500 for associates.[3] Ms. Ogrosky testified that this was "a really good deal" and a "very good rate" and that these rates were "at the bottom of [CSE's] range" for this type of matter. She also discussed the discovery process and explained that an outside firm was hired to conduct document review, create privilege logs, and respond to the Villa Partners'

[2] Tymetrix is a "task-based time and billing software system" created in 1993 that provides web-based applications for law firms to manage legal invoices and vender information. *See Company History,* TyMetrix Inc., (2015), available at http://www.tymetrix.com/history.asp.

[3] A blended hourly rate is

> a single hourly rate at which all attorney work is billed. It is a weighted average of the billing rates of the full range of attorneys—from the newest associates to the most senior partners—staffed on a case. Significantly, the blended rate is set to account for the fact that relatively more hours will be spent by attorneys with lower hourly rates than by attorneys with high hourly rates. Use of a blended rate has two benefits: First, it is simpler for the court to rely on a single billing rate. Second, when set at the right level, use of the blended rate encourages a socially optimal allocation of work among higher- and lower-priced attorneys within . . . counsel's firm.

Vaughn R. Walker and Ben Horwich, *The Ethical Imperative of a Lodestar Cross-Check: Judicial Misgivings About "Reasonable Percentage" Fees in Common Fund Cases*, 18 Geo. J. Legal Ethics, 1453, 1472 n.77 (2004-2005).

numerous document requests. CSE negotiated reduced rates for those services as well. CSE introduced into evidence invoices from outside counsel reflecting the reduced rates; invoices from e-discovery vendors and law firms retained to assist with the electronic discovery; documents showing the allocation of time spent by CSE's in-house counsel on the case; and invoices for expert witnesses.

The Villa Partners maintained that CSE "could have obtained the same result with equally or more experienced counsel who charged far less." They argued that CSE's fees were much higher than the fees they had incurred and also were higher than the Attorney Fee Guidelines for the United States District Court for the District of Maryland.

In a Memorandum Opinion and Order, entered on October 18, 2012, the circuit court addressed CSE's claim for contractual attorneys' fees and awarded it $2,561,541.40 in attorneys' fees, the amount it had requested.

2012 Appeal and Subsequent Remand Proceeding

On November 16, 2012, the Villa Partners noted an appeal to this Court raising seven issues, including a challenge to the circuit court's award of attorneys' fees. In an unreported opinion, we affirmed the circuit court's liability rulings in favor of CSE on the claims by the Villa Partners and also affirmed the circuit court's decision that CSE was entitled to contractual attorneys' fees. We vacated the court's award of contractual attorneys' fees, however, on the issue of reasonableness and remanded the case for further proceedings on that limited issue. *See Lyon Villa Venetia LLC v. CSE Mortgage*

LLC, No. 1860 Sept. Term 2012 (Mar 11, 2014) (hereinafter "*Venetia* [*I*]"), *cert. denied*, 438 Md. 740 (2014).

In our opinion, we noted that, although the circuit court found that the Villa Partners "generated most of the necessity of court involvement" in resolving discovery disputes that *could* have been avoided, the court did not explain how the disputes that *could not* have been avoided "affected the reasonableness of [CSE's] fees." *Venetia I*, slip op. at 25. Also, although "[t]he circuit court's opinion correctly note[d] that '[t]he party requesting fees has the burden of providing the court with the necessary information to determine the reasonableness of its request[,]'" *Myers v. Kahoe*, 391 Md. 188, 207 (2006), the court shifted the burden by finding that the Villa Partners "failed to provide any evidence for [their] contention" that CSE's attorneys' fees were "unreasonably high." *Venetia I*, slip op. at 25. In addition, the court did not "inquire into the reasonableness of billing $500 per hour for a fifth year associate." *Id.* Finally, we were "troubled with the court relying on its own experience to appraise the value of services in such a complicated case, where the time and energy spent cannot be easily gleaned from the record and observations at trial alone." *Id.* at 27. We noted that "[b]efore the circuit court 'perfunctorily adopted' the exact amount [CSE] requested, it should have stated the basis of the decision so it could be properly reviewed, especially when determining a prevailing market rate." *Id.* at 27-28. We stated that on remand the court should address the reasonableness of the fees charged for associates and "should also look at the fees charged for this appeal." *Id*. at 28.

The Villa Partners filed a petition for writ of *certiorari* in the Court of Appeals, and CSE filed an opposition. The Court of Appeals denied the petition on June 19, 2004.

On remand, CSE filed a renewed motion for attorneys' fees, with supporting memorandum. On October 28, 2014, the circuit court held a status conference to determine how to proceed. The parties agreed to submit memoranda, affidavits, and supporting documentation in advance of a hearing. The court set a submission deadline of January 23, 2015, and scheduled a hearing for January 29, 2015.

In its renewed motion, CSE outlined the costs it had incurred in defending the underlying lawsuit. It referred the court to the testimony taken and exhibits introduced at the September 14, 2012 hearing. It also filed two supporting declarations. The first was entitled "Declaration of Kori Ogrosky in Support of Counterclaimants' Renewed Request for Award of Attorneys' Fees and Costs." It detailed the practices and procedures CSE uses in collecting and reviewing invoices from outside counsel. Attached were invoices from September 14, 2012, through November 14, 2014, that reflected "preparation for and attendance at the September 14, 2012 hearing and trial; preliminary work to enforce the original judgment; the appeal and opposition to the petition for [writ of] *certiorari*; and work to prepare for the proceedings on remand." The declaration stated: "I also reviewed each of the invoices attached to this declaration and determined that each was reasonable." Ms. Ogrosky was made available for deposition, but the Villa Partners declined.

The second declaration was entitled "Declaration of William S. D. Cravens." Mr. Cravens, formerly a partner at Bingham McCutchen, LLP, represented CSE together with David Butler, another partner, and Margaret Sheer, a fifth-year associate. Mr. Cravens's declaration included a chart that showed the following standard hourly rates for the attorneys working on the case from 2011 through 2014:

Attorney	**2011 Standard Hourly Rate**	**2012 Standard Hourly Rate**	**2013 Standard Hourly Rate**	**2014 Standard Hourly Rate**
David J. Butler (Partner)	$830	$865	$910	$945
William S. D. Cravens (Partner)	$650	$675	$700	$730
Margaret Sheer (Associate)	$500	$550	$590	$655

The Villa Partners filed an opposition, reiterating the arguments they had made at the September 14, 2012 hearing. In response to the request for fees incurred on appeal, they attached an affidavit by Michael Barmettler, the Executive Vice President and General Counsel for one of the Villa Partners entities. Mr. Barmettler compared the fees the Villa Partners had incurred on appeal to the fees CSE had incurred on appeal and noted that CSE's fees were "quite excessive in light of the fact that the appeal was based on legal issues that had been previously been [sic] briefed during the trial court proceedings." He concluded that CSE had "billed in excess of $180,000 for the appeal" and that it had overbilled at the trial court level.

At the hearing on January 29, 2015, CSE argued that Mr. Barmettler's affidavit had "no evidentiary value" because he was not involved in the litigation and was not

familiar with the facts of the case; that his "view that too much time was spent on some activities and that the rates charged . . . were too high" was subjective; and that CSE had brought in an experienced appellate lawyer to handle the appeal.

The Villa Partners countered that the court improperly had relied on other cases in which it awarded comparable attorneys' fees to justify its prior award. They argued that the burden was on CSE to prove that the fees were reasonable and the court was required to view only the information in the record. (Counsel for the Villa Partners specifically stated: "I don't think you get to substitute your experience for lack of evidence presented to you in a particular case.") For the first time, they argued that expert testimony was required to establish reasonable market rates for attorneys in similar cases and, by failing to provide competent expert testimony, CSE failed to meet its burden of proof. The Villa Partners further argued that the electronic discovery invoices did not provide detailed information about what was redacted from the discovery documents, did not identify who made the redactions, and did not specify when the redactions were made.

As noted, in a Memorandum Opinion and Order entered on February 20, 2015, the trial court awarded CSE attorneys' fees in the total amount of $2,781,961.13, which encompassed the additional costs incurred. The Villa Partners noted this appeal.

We shall include additional facts as pertinent to the issues.

DISCUSSION

I.

The Villa Partners devote most of their opening brief to arguing that the decision of this Court in the first appeal affirming the liability rulings of the circuit court in favor of CSE was wrong. They take the position that, under *Hawes v. Liberty Homes, Inc.*, 100 Md. App. 222 (1994), we should not apply the law of the case doctrine to these issues and should re-decide them differently.

Under the law of the case doctrine, a decision of a prior panel of this Court generally will be followed in a second appeal in the same case unless "(1) the previous decision is patently inconsistent with controlling principles announced by a higher court and is therefore clearly incorrect, *and* (2) following the previous decision would create manifest injustice." *Id.* at 231.

In *Hawes*, a dispute between homeowners and a building contractor, the parties wound up in court on many claims and counterclaims, some legal and some equitable. A jury found in favor of the homeowners for breach of contract, awarding them damages. After the homeowners refused to accept a remittitur, the court ordered a new trial. At the same time, the court ruled against the homeowners on specific performance. The homeowners appealed. In an unreported opinion, this Court affirmed, expecting that the case then would be retried as the circuit court had directed. On remand, the building contractor argued for the first time that the homeowners were bound by the circuit court's ruling on specific performance and therefore no longer were entitled to a new trial. The circuit court agreed, and entered judgment for the building contractor. The homeowners took a second appeal. We reversed, holding that we had incorrectly answered one of the

prior questions presented by stating that the court had not had to factually conform its decision on the specific performance claim to the jury's decision on the breach of contract claim. Therefore, the homeowners remained entitled to the new trial on the breach of contract claim, which the first panel had thought was going to happen on remand anyway.

The only other case in Maryland in which an appellate court has declined to apply the law of the case doctrine in a second appeal is *Chesley v. Goldstein & Baron Chartered*, 145 Md. App. 605 (2002), *aff'd,* 375 Md. 244 (2003). Like *Hawes*, *Chesley* was a procedurally messy case. A law firm for an estate that had sold a parcel of land and the purchaser of the land entered into an agreement by which the purchaser would indemnify the law firm for legal services incurred defending the estate against a suit by a real estate brokerage firm for failure to pay a commission. When the purchaser failed to pay under the indemnity agreement, the law firm sued. The purchaser defended on the ground that it had been induced to enter into the indemnity agreement by fraud and misrepresentation. The purchaser then filed a counterclaim on the same grounds, and prayed a jury trial. The circuit court granted summary judgment to the law firm on the counterclaim on the ground of limitations and then, in a bench trial on the law firm's claim, ruled in its favor, rejecting the fraud and misrepresentation defenses.

On appeal, in an unreported opinion, this Court affirmed the circuit court's ruling in favor of the law firm on the indemnity agreement, but reversed the ruling in favor of the law firm on the counterclaim on limitations. On a motion for reconsideration filed by

the purchaser, we ruled that the purchaser *was* entitled to a jury trial on his counterclaim on remand, but declined to reconsider his argument that he had been entitled to a jury trial on the law firm's claim because his request for a jury trial had not been timely as to the claim against him. On remand, the law firm again moved for summary judgment on the counterclaim, this time on the ground that the issues presented in the counterclaim were the same as those that had been decided on the claim and that had been affirmed on appeal. The court granted the motion, and the purchaser noted a second appeal. We reversed, concluding that it was manifestly unfair for the purchaser only to be afforded his right to a jury trial on his counterclaim when the issues in the claim and counterclaim were intertwined, and when he had been legally entitled to a jury trial on *all* claims. We declined to apply the law of the case doctrine and instead reversed the judgment on the law firm's claim even though it had been affirmed by the first panel.

In *Hawes* and *Chesley*, there were multiple, inter-related claims, a decision on one issue by the first appellate panel that contemplated a partial retrial and a decision on a second issue by the same panel that was revealed to be wrong on remand, when it was used, unexpectedly, to thwart the partial retrial. The second appeal panel could not untangle the procedural mess and accomplish the purpose of the first panel in remanding the case without disregarding the law of the case doctrine and undoing the portion of the prior panel's decision that had been wrong and was being used to undermine a fair process on remand.

The case at bar is nothing like *Hawes* or *Chesley*. It is procedurally clean. The circuit court made liability rulings in favor of CSE and granted CSE's counterclaim for contractual attorneys' fees. On appeal, we affirmed all the liability rulings and the ruling that CSE was entitled to contractual attorneys' fees. We vacated the fee award on the limited ground of reasonableness, directing the court on remand to make certain considerations in deciding the amount of reasonable attorneys' fees CSE is entitled to. There was not going to be a new trial on liability issues, as was the case in *Hawes* and *Chesley*; and when the case was before the trial court on remand, there was no unexpected turn of events or new theory of liability. The court did as it was directed on remand, and determined whether CSE had proven that the fees it sought to recover were reasonable. Now, on appeal from that decision, which did not entail a reconsideration of any liability issue, the Villa Partners attempt to resurrect all the liability issues that were settled in the first appeal. The law of the case doctrine precludes them from doing so, and there is no reason to deviate from that doctrine here.

II.

We review a circuit court's award of contractual attorneys' fees for abuse of discretion. *Monmouth Meadows Homeowners Ass'n., Inc. v. Hamilton*, 416 Md. 325, 332–33 (2010); *Myers*, 391 Md. at 207. "The reasonableness of attorneys' fees is generally a factual determination within the sound discretion of the trial judge and will not be overturned unless clearly erroneous." *Bd. of Tr., Cmty. Coll. of Balt. Cty. v.*

Patient First Corp., 444 Md. 452, 486 (2015). There must be "sufficient information in the record to enable a reviewing court to follow the reasoning of the trial court." *Id*.

A party asserting entitlement to attorneys' fees has the burden to show that the fees requested are "necessary and reasonable." *Diamond Point Plaza, Ltd. P'ship v. Wells Fargo Bank, N.A.*, 400 Md. 718, 757 (2007). Whether an award of fees is reasonable is governed by Rule 1.5 of the Maryland Lawyers' Rules of Professional Conduct ("MRPC").[4] These factors are:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skills requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent.

[4] On October 17, 2013, the Court of Appeals adopted new rules related to attorneys' fees in cases commencing on or after January 1, 2014. The applicable rules in those cases are: new Title 2, Chapter 700; new Rule 3-741; new Appendix: Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses; and the amendments to Rules 1-341, 2-305, 2-433, 2-603, and 3-305. These rules do not apply to the instant case, which commenced before December 31, 2013.

"[T]he trial court need not explicitly comment on or make findings with respect to each factor[.]" *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 465 (2012) (citations omitted). Moreover, "the trial court has discretion to consider any other factor reasonably related to fair award of attorneys' fees[.]" *See id.* (citations omitted) (considering the relief achieved by the prevailing party); *see also, e.g., Zachair, Ltd. v. Driggs*, 135 Md. App. 403, 438–39 (2000) (considering attorneys' testimony); *Milton Co. v. Council of Unit Owners of Bentley Place Condo*., 121 Md. App. 100, 121 (1998) (expert testimony); *Major v. First Va. Bank-Central Md.*, 97 Md. App. 529, 541 (records of billable hours); *Kirsner v. Edelmann*, 65 Md. App. 185, 197–98 (1985) (affidavits of counsel).

As noted, in *Venetia I*, we criticized the trial court for not explaining how discovery disputes that could not have been avoided "affected the reasonableness of [CSE's] fees." *Venetia I*, slip op. at 25. The Villa Partners contend that, in its decision on remand, the trial court abused its discretion by awarding CSE fees for time spent on discovery disputes where court involvement was not necessitated by them and where CSE did not prevail.

In its opinion on remand, the trial court emphasized that the time spent by CSE relative to discovery was largely a function of the overbreadth of the discovery requests made by the Villa Partners to begin with. The Villa Partners prevailed in some of the discovery disputes, in that they were permitted to obtain a portion of what they had sought, but, as the court pointed out, CSE had to devote "a significant amount of time on

discovery in the first place . . . because [the Villa Partners] insisted on broad discovery requests even when [CSE] asked to narrow down those requests." The court acknowledged that it had the discretion to adjust the fee requests downward, but concluded that, under the circumstances, it would be arbitrary to do so. The court also took into account that CSE had prevailed across the board on the claims against it.

The trial court gave an adequate explanation of why the full amount of fees CSE incurred with respect to the discovery disputes was a reasonable sum to award and did not err or abuse its discretion in making the award.

The Villa Partners also argue that the trial court did not properly examine the document review invoices, as required by *Board of Trustees, Community College of Baltimore County v. Patient First Corporation*, 444 Md. 452 (2015). They maintain that, under that case, to support an award for attorneys' fees, records must be provided that give a detailed description of the services rendered. They assert that the trial court abused its discretion by awarding fees relating to the document review services because "[l]ike the bills at issue in *Board of Trustees*, the one or two page invoices submitted by [CSE] in support of the charges for redaction and privilege review are lacking meaningful detail and clearly do not satisfy what is required."

The circuit court entered its order awarding attorneys' fees six months before the Court of Appeals filed its opinion in *Board of Trustees*. Nevertheless, the invoices on which the trial court based its award satisfy the standard in that case. They show charges for, *inter alia*, ESI processing, computer consulting services, document review, redaction

review, and privilege review for 256.57 gigabytes of information and 228,359 documents. They reflect the typical charges for a document review firm and are not so devoid of information that the trial court's finding that the charges were reasonable was clearly erroneous.

In *Venetia I*, we observed that "[t]he circuit court's opinion correctly note[d] that '[t]he party requesting fees has the burden of providing the court with the necessary information to determine the reasonableness of its request,'" citing *Myer*, 391 Md. at 207, but that the court shifted the burden to the Villa Partners when it concluded that they "failed to provide any evidence" that CSE's fees were "unreasonably high." *Venetia I*, slip op. at 25. The Villa Partners maintain that, on remand, the court once again incorrectly placed the burden on them to adduce evidence to prove that CSE's fees were unreasonable, instead of placing the burden on CSE to prove that its fees were reasonable. CSE counters that the trial court properly allocated the burden of proof and that the evidence it generated satisfied its burden to prove reasonableness.

At the January 29, 2015 hearing, the trial court stated: "Well, the Court of Special Appeals correctly said [that the Villa Partners] don't have any burden to prove or disprove anything, that the burden is on the -- they're right." In its written order, the court examined the evidence adduced by CSE and found it "qualitatively and quantitatively to be detailed and informative." It was not until ***after*** the court determined that CSE had satisfied its burden to show the reasonableness of the fees that it was seeking that the trial court evaluated the Villa Partners' rebuttal evidence, which it found

not to be reliable. The court did not shift the burden of proof to the Villa Partners in making its reasonableness decision.

On remand, the trial court specifically considered whether the $500 per hour rate for a fifth year associate was reasonable, and concluded that it was. The Villa Partners contend that finding was clearly erroneous because CSE "provided no expert testimony or competent evidence linking the $500 hourly rate for associates who worked on this case with market rates for lawyers of similar experience and ability." They also contend the circuit court erred by relying upon its experience in prior cases and decisions in other jurisdictions in finding the $500 hourly rate to be reasonable.

CSE counters that the testimony and declaration by Ms. Ogorsky provided a sufficient basis for the trial court's finding that the $500 hourly rate was reasonable and that the court's reliance on its past decisions and decisions from other jurisdictions simply provided a "market check" to support its finding of reasonableness.

The evidence at trial on remand included the prior testimony and current declaration by Ms. Ogrosky explaining that the blended rates for partners and associates were negotiated and that they were good rates, based on her experience with hiring outside counsel to represent CSE in comparable cases. The declaration furnished by Mr. Cravens showed that the blended hourly rates for partners and associates were significantly less than the hourly rates ordinarily charged, and that, while the regular rates increased each year, the blended agreed rates remained the same. The trial court credited

this evidence to conclude that the hourly rates charged, including the $500 rate for the fifth year associate, were reasonable.

The court then stated that its experience for nearly a decade in complex business cases in Montgomery County "confirm[ed]" its reasonableness finding, and rejected the contrary opinion offered by Mr. Barmettler.

The court adequately explained the basis for its conclusion that the fees requested by CSE were reasonable and ***after*** doing so used its own experience as a "'market check'" on its reasonableness finding. The court's decision was not in error or an abuse of discretion.

Finally, with respect to the award of fees to CSE for the first appeal, the Villa Partners maintain that Mr. Barmettler's affidavit shows that CSE's counsel "billed in excess of $180,000 for the appeal" and these fees were "quite excessive" compared to the "less than $100,000" the Villa Partners spent "during the appeal process"; and the trial court should have found that CSE's counsel spent unnecessary time on various tasks–*i.e.*, drafting a motion for a status conference, drafting the appellate brief, preparing for oral argument, and conferencing among firm attorneys–that made CSE's appellate fees unreasonable.

CSE counters that the fees the court awarded included not just those incurred for the appeal but also those incurred for post-judgment enforcement, opposition to the Villa Partners' petition for writ of *certiorari*, and the remand hearing on CSE's renewed motion for attorneys' fees; that the fees were reasonable, especially given that the Villa

Partners raised seven issues on appeal; and that CSE brought in experienced appellate counsel to optimize the likelihood that it would prevail on appeal, as it had at trial.

The court found:

> In this complex commercial real estate ligation, with numerous court jackets and exhibits, with an enormous amount of discovery exchanged between the parties, where numerous legal questions were briefed, argued and decided, it was not unreasonable for [CSE] to employ a significant amount of time to assure their success on appeal on every issue challenged by the [Villa Partners].

The court rejected Mr. Barmettler's opinion, finding "it to be devoid of pertinent evidentiary detail and lacking in a cogent understanding of the facts of this case, or how the facts of the case relate to the attorneys' fee request. In a word, it is not helpful to the fact finder."

The trial court's factual findings were not clearly erroneous. And it is not our role on review to second guess factual findings that are supported by the evidence or to overturn the court's exercise of discretion to award fees it has found to be reasonable, in the absence of any abuse of discretion. *See Myers*, 391 Md. at 207 ("The trial court's determination of the reasonableness of attorney's fees is a factual determination within the sound discretion of the court, and will not be overturned unless clearly erroneous.").

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANTS.