UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 857

SEPTEMBER TERM, 2015

CAMILLE BARONI, ET VIR.

v.

AVENEL COMMUNITY ASSOCIATION, INC., ET AL.

Eyler, Deborah S.,
Woodward,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: April 26, 2016

Camille and Greg Baroni,[1] the appellants, own a home in Avenel, a residential community in Montgomery County. They applied to the Avenel Community Association, Inc. ("the Association"), the appellee, for permission to replace their natural cedar shake roof with an asphalt shingle roof. The Association denied their request. The Baronis challenged that decision before the Montgomery County Commission on Common Ownership Communities ("the Commission"). A three-member panel of the Commission held hearings and ultimately issued a written decision reversing the Association's decision and ruling that certain roofing guidelines adopted by the Association were invalid. The Association petitioned for judicial review in the Circuit Court for Montgomery County. The circuit court heard argument and reversed the Commission's decision, thus affirming the decision of the Association.

The Baronis present three questions, which we have combined and rephrased as two:

> I. Did the circuit court err in ruling that the business judgment rule applies to decisions made by the Association and insulates those decisions from judicial scrutiny absent a showing of fraud or bad faith, and that there was no evidence in the record before the Commission that could support a finding of fraud or bad faith?
>
> II. Even if the business judgment rule applied to the Association's decision, did the circuit court err by rejecting the Commission's finding that that the 2006 Roof Specifications violated section 22-98 of the Montgomery County Code?

For the following reasons, we shall affirm the judgment of the circuit court.

[1] For ease of discussion, we shall refer to the parties by their first names when necessary to distinguish between them. Camille's name is spelled incorrectly as "Camile" in the Notice of Appeal and the briefs in this Court. We have used the correct spelling.

FACTS AND PROCEEDINGS

Avenel is a residential community in Potomac that is comprised of about 900 homes in thirteen villages. It is governed by the Association, a chartered Maryland corporation. On April 23, 1986, the developer of Avenel recorded in the Land Records for Montgomery County the "Declaration of Covenants, Conditions, and Restrictions for Avenel Community Association" ("the Declaration").

As relevant here, Article XI of the Declaration pertains to "Architectural Standards." It prohibits the owner of any house in Avenel from "undertak[ing] . . . any modification, change or alteration of a Lot or Residential Unit, whether functional or decorative, except in strict compliance with this Article XI, and until the approval of . . . [the] Modifications Committee." Section 2 of Article XI establishes the "Modifications Committee" and vests it with "exclusive jurisdiction over modifications, additions, or alterations" to homes in Avenel. The Modifications Committee is to be composed of between three and five members to be appointed by the Association's board of directors ("the Board"). The Modifications Committee is empowered to "promulgate and amend Modifications Standards."

Article XII of the Declaration, entitled "Use Restrictions," incorporates Exhibit C, entitled "Declaration of Protective Land Use Standards" ("Land Use Standards"). Section C.1 of the Land Use Standards establishes certain pertinent design standards for homes in Avenel:

> Generally, homes will be traditional in design and substantially of brick construction *with roofs of cedar shakes, slate or other shingles of at*

> *least 360 pound weight*. Considering that there are and will continue to be innovations in building materials, upon application, the [Modifications Committee] . . . may approve other materials coming on the market which in its sole discretion provide similar high quality aesthetic appeal and long-term value both in utility and appearance. . . . *Plans may be disapproved for any reason including purely aesthetic reasons*.

(Emphasis added.)

In October of 1993, the Association and the Modifications Committee adopted an "Architectural Guidelines and Architectural Renew Process" manual ("Architectural Guidelines") as an "adjunct to the [Land Use Standards]" and to "implement the Modification Standards and Application Review Procedures" contemplated by Article XI of the Declaration. These guidelines were updated in 1998 and again in 2001. The "goal" of the Architectural Guidelines was to "preserve the unique traditional quality of Avenel." In a section entitled "Design Criteria," the guidelines provide that owners of "detached housing" in Avenel have "more leeway in choosing acceptable design solutions or making improvements on their property, especially if they are the owners of a lot of two acres or larger." The Architectural Guidelines included specifications for numerous improvements to houses and lots in Avenel, including pools, tennis courts, storm windows, decks, and fences. They did not address roof materials, however.

In 2002, the Baronis purchased a house at 9871 Avenel Farm Drive in the Oaklyn Woods village of Avenel for $2.6 million. The homes in Oaklyn Woods are on 2-acre lots. As originally constructed, they all had either natural slate or natural cedar shake roofs. The Baronis' house had a natural cedar shake roof.

In 2003, the Baronis' roof was damaged in a storm, requiring it to be completely replaced. They replaced it with a new natural cedar shake roof at a cost of $100,000.

Also in 2003, the Baronis' next door neighbor on Avenel Farm Drive, Rand Fishbein, applied to the Association for approval to replace his natural cedar shake roof with an asphalt shingle roof manufactured by Certainteed and known as "Grand Manor." Grand Manor asphalt shingles are one of the most expensive asphalt shingles on the market. Because they are made up of more than one layer of shingle and come in a variety of sizes, they offer a dimensional appearance that the typical flat asphalt roof does not.

The Association denied Fishbein's request and he appealed that decision to the Commission. A panel of the Commission held a series of evidentiary hearings and ultimately, on July 26, 2006, issued a decision reversing the Association. It ruled that, because the trusses supporting Fishbein's roof were not strong enough to support a natural slate roof and because there were no other approved roof materials that qualified for a Class A fire safety rating under section 22-98 of the Montgomery County Code ("the Fire Code"), it was "unreasonable" for the Association to deny his application.[2] In

[2] Section 22-98(a) of the Fire Code states that

> [a] person must not make or enforce any deed restriction, covenant, rule, or regulation, or take any other action that would require the owner of any building to install any roof material that does not have a class A rating, or equivalent rating that indicates the highest level of fire protection, issued by a nationally recognized independent testing organization.

(Continued…)

reaching that result, the Commission commented on the lack of any "plan, scheme of development or theme with respect to roofs" in the Architectural Guidelines and that a homeowner had no "resource to consult to determine what he may or may not be permitted to do when he replaces his roof." The Association elected not to seek judicial review of the Commission's decision.

The Association moved expeditiously after the *Fishbein* decision to promulgate roofing guidelines. In November of 2006, the Modifications Committee and the Association, through its Board, approved new specifications for roofing materials permitted in each of the thirteen villages ("the 2006 Roof Specifications").[3] On December 4, 2006, Lucy Wilson, the General Manager of the Association, circulated the 2006 Roof Specifications to all Avenel homeowners and directed them to insert them in their Architectural Guidelines.

The 2006 Roof Specifications state, as a general rule, that "roofs should remain of the same type as that used in the original construction of the home." A homeowner who wants to change the original roof material must apply to the Modifications Committee for prior approval. Asphalt shingle roofs are "expressly prohibited unless used by the builder as part of the original roof of [the] home or as part of the original roofs of other homes within [the same] village." (The latter condition applies in only two villages in Avenel:

(…continued)
The term "person" is defined to include a "homeowners' association." 22.98(b).

[3] As we shall discuss, the guidelines were approved by the Board on November 2, 2006, and by the Modifications Committee on November 13, 2006.

Pleasant Gate and Saunder's Gate.) The 2006 Roof Specifications expressly approve the use of four roofing materials in the Oaklyn Woods village: natural cedar shake, natural slate, synthetic cedar, or synthetic slate.

The 2006 Roof Specifications also list approved synthetic shingles that are advertised as being "Class A fire rated roofs," stating, among other things, that such a rating "may be achieved by the roof system installation method," *i.e.,* by use of underlayment material, "or may be achieved by the roof material itself."

In August of 2011, the Baronis' roof was irreparably damaged by Hurricane Irene. On November 1, 2011, they applied to the Modifications Committee for permission to install a "Grand Manor" asphalt shingle roof, the same type installed by Fishbein. A letter they sent with their application explained that their roof trusses were not strong enough to support a natural slate roof and they did not want to use natural or synthetic cedar shake or synthetic slate because those materials are not as durable as Grand Manor shingles.

By letter dated November 23, 2011, the Modifications Committee denied the Baronis' application. It stated that "Grand Manor is not an approved roof product in Oaklyn Woods," and asphalt shingles "do not meet the aesthetic standard that is present in [Oaklyn Woods]." The letter listed three approved types of synthetic cedar shake shingles and four approved types of synthetic slate shingles.

In December of 2011, the Baronis appealed the Modifications Committee's denial to the Board. The Board took up their appeal at its January 24, 2012 meeting. By letter

dated February 3, 2012, the Board advised the Baronis that it had voted unanimously to uphold the decision of the Modifications Committee.

The Baronis then appealed the Association's final decision to the Commission. The Commission held hearings over nine days. During those hearings, Camille testified and the Baronis called three witnesses: Fishbein;[4] Richard Merck, a Senior Fire Protection Engineer for the County Fire Chief; and Michael Williams, a certified roofing consultant.

According to Camille, it would cost the Baronis about $110,000 to replace their roof with natural cedar shake, $121,000 to replace it with Grand Manor, and $200,000 to replace it with natural slate, including the cost to reinforce the roof trusses to support the weight of slate. She later presented a report from a roofing contractor estimating that a natural slate roof could cost "as much as $60,000" more than a Grand Manor roof.

Merck testified that a given roofing material may be rated Class A, B, or C, or may be unrated. A Class A rating is the highest rating and means that the roofing material is the most fire resistant and prevents the spread and formation of embers and the penetration of embers from the surface of the roof to the house itself. A shingle will be rated Class A as a standalone material if it needs no reinforcement to meet the highest fire resistance rating. Other shingles are rated Class A as a "system," that is, by adding a fire retardant underlayment material between the shingles and the roof deck, the highest

[4] Fishbein was then a commissioner on the Commission, but testified on behalf of the Baronis as a fact witness.

fire resistance rating is satisfied. Merck interpreted Section 22-98 of the Fire Code to give a homeowner in Montgomery County the right to install a standalone Class A roofing shingle. He testified that DaVinci brand synthetic slate might qualify as a standalone Class A material, that natural slate qualifies, and that Grand Manor also qualifies. The other synthetic shingles approved by the Association could qualify as Class A as a "system, but not as a standalone material." In Merck's opinion, natural cedar shake does not qualify either for a standalone or system Class A rating.

Williams testified that a natural slate roof on the Baronis' house would cost twice as much as a Grand Manor roof. He commented on the relative weights, fire resistance, cost, and durability of the various synthetic shingles on the market. He disagreed with Merck that any of the synthetic shingles could be standalone Class A rated. He took the position that the only roofing material approved by the Association that meets that standard is natural slate.

The Association presented testimony from Wilson; Mark Sullenberger, an architect who had been associated with the development of Avenel; Scott Becker, the president of the Board; and Kirk Parsons, an engineering roof consultant.

Sullenberger testified that natural and synthetic cedar shake and slate shingles have a "textured" appearance that complements the mass and appearance of the large brick and stone facades in Oaklyn Woods. By contrast, asphalt shingles, including Grand Manor, have a flatter look.

Wilson testified about the history of the 2006 Roof Specifications. She explained that she had worked with two ad-hoc committees formed by the Association in 2004 and 2006 to study the different available roof materials. She drafted the proposed specifications and sent them to the Board and the Modifications Committee for review. The Board approved them first, at a meeting on November 2, 2006, and the Modifications Committee then approved them at a meeting on November 13, 2006.

On December 4, 2014, a year after its final hearing session, the Commission issued a lengthy decision reversing the Association's denial of the Baronis' application. We set forth its relevant findings of fact and conclusions of law.

The Commission found that, because the Board approved the Specifications first (on November 2, 2006) and the Modifications Committee approved them next (on November 13, 2006), the Association adopted the 2006 Roof Specifications in apparent "violat[ion of] its own rules that [provided that] the Modification[s] Committee has the final say on architectural guideline changes." It declined to reach the issue of whether the Association had acted in bad faith, but noted that the 2006 Roof Specifications were adopted "in a vacuum" without sufficient community input or notice. The Commission found this conduct to be "inexcusable."

The Commission construed the language of the Land Use Standards permitting three types of roofing materials—natural cedar shake, natural slate, or "other shingles of at least 360 pounds weight [per square foot]"—to mean that any roofing material used in Avenel other than natural cedar shake or slate must weigh *at least* 360 pounds per square

foot. It found that the only roof material approved for use in Oaklyn Woods that meets the "minimum of 360 pounds per square" is natural slate. Therefore, it concluded, the Association "ignored or intentionally disregarded" the Land Use Standards when it adopted the 2006 Roof Specifications, approving the use of synthetic shingles that do not meet the 360 pound per square foot minimum.

Turning to Fire Code section 22-98, the Commission found that two roofing materials approved for use in Oaklyn Woods are "standalone Class A roofing materials": natural slate and DaVinci synthetic slate. Natural cedar shake "never [could] achieve a Class A fire resistant rating." TruSlate could achieve a Class A rating if combined with a fire-retardant underlay, but was not a "standalone" Class A material. Thus, the only material approved for use in Oaklyn Woods that satisfies what the Commission viewed as the "weight minimum" under the Land Use Standards *and* achieves a standalone Class A rating is natural slate.

The Commission found that the Baronis' roof could not bear the weight of a natural slate roof unless it was structurally reinforced, and those improvements would "significantly raise the cost of the roof repair and [impose] an unfair burden" on them. It further found that Grand Manor, which weighs between 425 and 500 pounds per square foot, meets the minimum weight requirement under the Land Use Standards and also qualifies as a Class A roofing material. The Commission found that, although Grand Manor is "visually different from natural slate and natural synthetics," the Association intended to give homeowners of large lots in Avenel "broader leeway" in making design

choices and "the addition of Grand Manor to the Baroni home, which is next door to the house that already has Grand Manor [*i.e.,* the Fishbein house], will not adversely affect the overall consistency of appearance, or impair the value of, [sic] the Oaklyn Woods neighborhood."

Acknowledging that its review of the Association's decision ordinarily is constrained by the business judgment rule, the Commission found that the Baronis had

> produced ample evidence that [the 2006 Roof Specifications] are in actual conflict with [the Association's] own Declaration as well as with Section 22-98 [of the Fire Code] insofar as they deny [the Baronis] their statutory right . . . to install a stand-alone Class A material without requiring them to spend significant sums of money to upgrade their home.

It concluded that this case is distinguishable from *Reiner v. Ehrlich*, 212 Md. App. 142 (2013), which we shall discuss *infra*, because there was evidence that the Association lacked the "legal authority to make the decision it did," making the business judgment rule inapplicable.

The Commission recognized that the Land Use Standards permit the Association to deny a request for approval of a modification to a home for any reason, including "purely aesthetic reasons," but found that this provision was "trumped" by Section 22-98. In the Commission's view, the Association's denial of the Baronis' application had the effect of forcing them to "spend significant additional amounts of money to [use natural slate,]" which would "make the[ir] house look *different* from the way it was designed and built." This was unreasonable and *ultra vires* because the Declaration and the Land Use Standards do not empower the Association to "compel a homeowner to alter the

appearance of a house from what it originally was." Moreover, even if natural slate were not unreasonably costly, the Association lacked the authority to "compel [the Baronis] to make structural alterations to their home to facilitate compliance with a covenant that is merely aesthetic in nature."

Given that there were no other roof materials approved for use in Oaklyn Woods that qualified as a standalone Class A material and exceeded the 360 pound weight minimum, the Commission ruled that it was "clearly . . . unreasonable" for the Association to deny the Baronis' request to install a Grand Manor roof, which met both criteria.

The Commission declared the 2006 Roof Specifications invalid to the extent that they compel a homeowner to use a non-Class A roof material, a roof material weighing less than 360 pounds per square foot, or to make structural changes to his or her home to accommodate the weight of natural slate. It further ruled that any homeowner in Avenel may choose Grand Manor as a roofing material until such time as the Association adopts new guidelines approving roof materials that comply with section 22-98 and the Declaration.[5]

The Commission issued an order providing that: 1) the Baronis could immediately proceed to install a Grand Manor roof; 2) the Association was to give approval of the Baronis' application within 30 days; 3) the Association was barred from enforcing the

[5] The Commission also declared invalid the "total ban on ridge vents" in the 2006 Roof Specifications.

2006 Roof Specifications to the extent the Commission had declared them invalid; 4) the Association was to reimburse the Baronis for a $50 administrative fee; 5) the Association was to give notice to all Avenel homeowners of the Commission's decision and post it on its website within 60 days; 6) the parties should refrain from disparaging each other or any witnesses; and 7) Montgomery County could enforce the order pursuant to the County Code.

On December 16, 2014, the Association filed a petition for judicial review in the circuit court and moved to stay the Commission's decision and order. On January 20, 2015, the circuit court granted in part and denied in part the motion to stay. By agreement of the parties, the court did not stay provision one, permitting the Baronis to immediately install a Grand Manor roof, or provision six, the non-disparagement clause.[6] The circuit court stayed the remaining provisions.

On May 21, 2015, the circuit court heard argument and announced its decision from the bench. It ruled that the case is controlled by *Reiner*, which holds that a decision by a homeowners' association is protected by the business judgment rule, absent a showing of bad faith or fraud. In its decision and order, the Commission "just decided and took it unto itself to disagree with the business decision made by [the Association]." The court concluded that the Commission misapplied the law, acted arbitrarily and capriciously, and that its decision was not supported by substantial evidence in the

[6] The Baronis installed a Grand Manor roof during the pendency of the action for judicial review.

record. The court declined to remand the matter to the Commission for further fact finding regarding fraud or bad faith because there was "no evidence in th[e] record that would support a non-clearly erroneous finding of fraud or bad faith."

The court entered its order reversing the Commission's decision and order on May 29, 2015. This timely appeal followed.

DISCUSSION

I.

The Baronis contend the business judgment rule does not apply to the Association's decision to deny their application to install a Grand Manor roof because that decision was based upon the 2006 Roof Specifications, which are "not in conformance" with the Declaration and the Land Use Standards. They argue that Article XI, Section 2 of the Declaration vested the Modifications Committee with exclusive authority to "promulgate and amend Modifications Standards." In their view, and as they argued below, the Association violated this section by approving the 2006 Roof Specifications before the Modifications Committee approved them. Alternatively, they argue that the 2006 Roof Specifications are invalid because they approve synthetic shingles that do not meet the "360 weight requirement for shingles" set forth in the Land Use Standards.

The Association responds that this Court's decisions in *Black v. Fox Hills North Cmty. Ass'n,* 90 Md. App. 75, 82 (1992), and *Reiner* make plain that the business

judgment rule applies to its decision to deny the Baronis' application and bars judicial interference with that decision.

"The 'business judgment' rule . . . precludes judicial review of a legitimate business decision of an organization, absent fraud or bad faith." *Black*, 90 Md. App. at 82; *see also Mountain Manor Realty, Inc. v. Buccheri*, 55 Md. App. 185, 193-94 (1983) ("the general rule . . . with but limited exceptions, [is that] a court may not interfere with or second-guess the business decisions made by the directors of a corporation in their management of the corporation"); *Martin v. United Slate Tile & Composition Roofers,* 196 Md. 428, 441 (1950) ("when the tribunals of an organization, incorporated or unincorporated, have power to decide a disputed question their jurisdiction is exclusive, whether there is a by-law stating such decision to be final or not, and . . . the courts cannot be invoked to review their decisions of questions coming properly before them, except in cases of fraud-which would include action unsupported by facts or otherwise arbitrary.")

In *Black*, the owners of a house in a residential community sued their homeowners association and their neighbors, challenging the installation of a fence on their neighbors' property. Before installing the fence, the neighbors sought and obtained approval from the homeowners association. Claiming that the location of the fence violated the covenants and restrictions binding all homeowners in the community, the homeowners sought to have the homeowners association order the neighbors to remove the fence. When the homeowners association declined to do so, the homeowners brought a

declaratory judgment action. The circuit court dismissed their claim against the homeowners association, and they appealed.[7]

We affirmed the circuit court's decision. The homeowners association followed its "prescribed procedures" in considering and approving the neighbors' application to install the fence and in denying the homeowners' protest of that decision. 90 Md. App. at 82. Because the homeowners association was "authorized to make" the decision on the neighbors' application and had given the application and the protest "due consideration," its decision was not subject to judicial scrutiny. *Id.* at 83. This was so "[w]hether that decision was right or wrong" because, absent a showing of fraud or bad faith, any decision "fell within the legitimate range of the association's discretion." *Id*.

In 2013, this Court decided *Reiner*, 212 Md. App. at 142, a case involving nearly identical facts to the case at bar, although presenting a different procedural posture. The Reiners owned a house in the "Player's Gate" village in Avenel. Their house originally had a cedar shake roof. In 2010, they applied to the Association for permission to install an asphalt shingle roof. When the Association denied their request, they appealed to the Commission. Shortly thereafter, they withdrew their appeal and filed a declaratory judgment action against the Association in the circuit court. They sought declaratory

[7] The homeowners prevailed in the claim against their neighbors.

relief "'with respect to use of roofing materials in the homes at Avenel.'" *Id*. at 147. The court granted summary judgment in favor of the Association.[8]

On appeal to this Court, we affirmed. We held that the decision of a homeowners association to approve or deny an application for modification within its exclusive jurisdiction is subject to the business judgment rule and therefore only may be disturbed upon a "showing of fraud or bad faith." *Id*. at 155. This is true even if the homeowners association violated its covenants or restrictions in making the decision at issue. Because the Reiners did not allege fraud or bad faith, the Association's decision to deny their application for approval of an asphalt shingle roof was insulated from judicial scrutiny, and the circuit court properly entered summary judgment in favor of the Association. We also addressed the Reiners' contentions that the 2006 Roof Specifications violated the Fire Code and were not adopted in accordance with due process. We rejected both arguments, concluding that the Reiners had not presented any evidence to the circuit court to create a dispute of material fact on either issue.

We return to the case at bar. The Modifications Committee, which under the Declaration was vested with exclusive jurisdiction to rule on the Baronis' application to alter their home by replacing their natural cedar shake roof with an asphalt Grand Manor roof, made the decision to deny the application. The Modifications Committee and then

[8] In the declaratory judgment action, the Reiners also sued a number of other homeowners in the community and "the Avenel Community Association," which they alleged was a separate entity from the Association. The court granted motions to dismiss the claims against those defendants.

the Association followed the prescribed internal procedures for the homeowners association in making that decision. In keeping with the 2006 Roof Specifications, the Modifications Committee denied the application for purely aesthetic reasons, as fully authorized under the Land Use Standards binding all Avenel homeowners. After an internal appeal to the Association, the application was finally denied. As in *Black* and *Reiner*, because the Association gave "due consideration" to the Baronis' application, its decision is not subject to judicial scrutiny absent a showing of fraud or bad faith.

The Baronis made no showing whatsoever of bad faith or fraud. They alleged a procedural irregularity in the promulgation and adoption of the 2006 Roof Specifications. There is no dispute, however, that the Modifications Committee in fact adopted the 2006 Roof Specifications, as was within its power under Article IX of the Declaration. Moreover, the 2006 Roof Specifications were not promulgated in bad faith because they violated a "360 weight requirement for shingles." The Land Use Standards contain no such requirement. They expressly provide that, as new materials come on the market, the Modifications Committee may approve new roof materials for use in Avenel. Thus, its approval in 2006 of synthetic shingles weighing less than 360 pounds per square foot was in keeping with the Land Use Standards and certainly did not rise to the level of fraud or bad faith. Because there was no evidence supporting a finding of fraud or bad faith, the circuit court did not err in reversing the Commission's decision outright.

II.

The Baronis contend that even if the business judgment rule applies the circuit court nevertheless erred by reversing the Commission's decision. Specifically, they argue that the Commission made a non-clearly erroneous factual finding that the 2006 Roof Specifications violated section 22-98 of the Fire Code, and on that basis the decision should be affirmed. We disagree.

Under section 22-98, a covenant or restriction that "would require the owner of any building to install any roof material that does not have a class A rating" is not enforceable. The 2006 Roof Specifications do not violate this provision. The Commission found that natural slate satisfied section 22-98 because it was a standalone Class A shingle.[9] Natural slate was an approved roof material in Oaklyn Woods under the 2006 Roof Specifications. Thus, because the Baronis had the option to replace their roof with natural slate, they were not required to use a "roof material that does not have a class A rating." The Fire Code does not protect a homeowner from having to spend more money to install a roof material that has a Class A rating. Accordingly, the fact that natural slate costs more to install than Grand Manor and will require structural changes to support its weight does not alter this result.

[9] Although it is not determinative, we note that in so finding the Commission ignored the provision of the 2006 Roof Specifications that provides that a Class A rating is satisfied by a standalone Class A shingle or by a roof system installation.

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