Circuit Court for Howard County
Case No. 13-C-14-101273

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 817

September Term, 2016

RAJ YADAV, *et ux.*

v.

PINDELL WOODS HOMEOWNERS ASSOCIATION, INC.

Meredith,
Berger,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: December 26, 2017

This appeal concerns the fate of thirteen cypress trees in a Howard County subdivision. Appellants, Rita and Raj Yadav, planted the trees on the property line with their neighbor, hoping that the foliage would provide privacy between the two properties. The Yadavs applied for approval to plant the trees from Appellee, the Pindell Woods Homeowners Association ("Pindell Woods"), but their application was denied by Pindell Woods' Architectural Committee, which ordered the trees be removed. The Yadavs sued to block the enforcement of this decision in the Circuit Court for Howard County. The circuit court found for Pindell Woods. The Yadavs now appeal, arguing that the declaration that formed Pindell Woods did not give the Architectural Committee authority over the cypress trees, and that even if it had, the denials of the Yadavs' various applications were untimely. The Yadavs also appeal the circuit court's grant of attorney's fees. We affirm.

BACKGROUND

Pindell Woods is a neighborhood in Howard County, which consists of 47 single-family houses. All properties within Pindell Woods, including the Yadavs' property, are encumbered by the Declaration of Covenants, Conditions and Restrictions, and Grant of Easements of Pindell Woods Homeowners Association, Inc. ("the Declaration"). The Declaration organizes the Pindell Woods Homeowners Association and its Architectural Committee, and grants the Architectural Committee the power to approve or disapprove of a variety of structural and landscaping changes to homes in Pindell Woods. Decl. § 8.2; 9.2.

Raj and Rita Yadav purchased a streetfront residence in Pindell Woods in 2003. In 2005, Gregory Olaniran purchased the lot behind the Yadavs' residence and built a house

there. The Olaniran lot is a "flag lot;" it is located behind the Yadavs' lot, and its street access is limited to a narrow driveway that runs alongside the Yadavs' property. As a result, Olaniran's house and extended driveway wraps around the back and side of the Yadavs' property.

Both Olaniran and the Yadavs were concerned with the proximity of the Yadavs' house to Olaniran's house and driveway, and Olaniran eventually planted a line of Leyland Cypress trees between the two. The Yadavs were not completely satisfied with the privacy this afforded, however, as it left a clear line of sight between their house and Olaniran's extended circular driveway. Over the next several years, the Yadavs talked to Pindell Woods and the Architectural Committee about using more trees to extend the barrier. In April of 2014, the Yadavs planted fifteen Leyland Cypress trees along the back edge of their property—which abuts Olaniran's driveway—thus extending the line of trees planted by Olaniran.

Shortly after the Yadavs planted the trees, Olaniran complained to Pindell Woods. In response, Pindell Woods asked the Yadavs to submit an Architectural Improvement Request Form to the Architectural Committee. The Yadavs did so on April 28, 2014. Pindell Woods asked the Yadavs to submit their application again, which they did, in an application dated "May 2014." On June 5, 2014, the Architectural Committee denied the application. The Yadavs removed two trees and made an application for the thirteen remaining trees in November 2014. The Architectural Committee responded by proposing that the Yadavs remove all but seven trees. The Yadavs did not accept this proposal, and the Architectural Committee denied the application.

The Yadavs declined to remove the trees and filed a complaint against Pindell Woods in the Circuit Court for Howard County, seeking a declaratory judgment that the Declaration did not grant Pindell Woods authority over the trees. Pindell Woods countersued, seeking a declaratory judgment that the Declaration granted it authority over the cypress trees, along with injunctive relief compelling removal of the trees, and the award of attorney's fees. After a two-day trial, the circuit court found that language in the Declaration supported Pindell Woods' interpretation, and that the Architectural Committee's decision that the trees were a traffic hazard was supported by the business judgment rule. The circuit court further found that the Architectural Committee's denials were both timely. The circuit court entered the declaratory judgment for Pindell Woods, ordered that the trees be removed, and ordered the Yadavs to pay $31,908.33 in attorney's fees.

The Yadavs bring this timely appeal. We address, first, their contention that the Declaration does not give Pindell Woods authority over the cypress trees. Next, we address the timeliness of the Architectural Committee's decisions in June and December of 2014. Finally, we address the award of attorney's fees.

ANALYSIS

I. Pindell Woods' Authority to Regulate Trees

The Yadavs argue, first, that they may plant trees wherever they wish on their property and that Pindell Woods does not have the authority to prohibit them from doing so. Alternatively, the Yadavs argue that even if Pindell Woods has the authority to tell them that they cannot plant trees generally, the Architectural Committee was wrong when it

determined that these cypress trees were a traffic hazard. Pindell Woods argues that its authority to regulate trees is expressly granted by the Declaration and, moreover, that its decision that these cypress trees are a traffic hazard is protected from court review by operation of the business judgment rule.

A. The Declaration

The Architectural Committee denied the Yadavs application because it found that the cypress trees were a traffic hazard:

> Because of the curvature of the driveway leading to the Olaniran house specifically at the point where the Olaniran pipe stem opens to allow access to their building site, *your new trees*, when they become more established in size, *will block the view of operators of motor vehicles so as to create a traffic hazard.*

(emphasis added). Pindell Woods argues that it derived the authority to make this decision from the Declaration.

The Declaration is a contract. When analyzing the legal obligations created by a contract, in the absence of any ambiguity in contractual language, the plain meaning of the contract controls. *Nesbit v. Gov't Emps. Ins. Co.,* 382 Md. 65, 76 (2004). Whether the Declaration authorizes Pindell Woods' and the Architectural Committee's actions and decisions is a question of contractual interpretation, which we review without deference to the circuit court. *Pines Plaza Ltd. P'Ship v. Berkley Trace, LLC*, 431 Md. 652, 663 (2013).

Section 9.2 of the Declaration contains a list of land uses that are prohibited in Pindell Woods unless they are approved by the Architectural Committee. Decl. § 9.2. One of the prohibited land uses in this list is "trees" that "create a traffic hazard":

> Unless the [A]rchitectural [C]ommittee has approved [a modification] … the front yard of each lot shall be kept only as a lawn, including trees, flowers, and shrubs and no fences or any other structures shall be erected on the front yard of any lot. *No trees or shrubs shall be located on any lot which block the view of operators of motor vehicles so as to create a traffic hazard.*

Decl. § 9.2.10 (emphasis added). The Yadavs read the first sentence of this Section as a limitation on the second. Thus, according to their reading, the Architectural Committee has the power to regulate trees but only if the trees are located in a homeowner's front yard. We disagree with this proposed reading. We think that the two sentences, while both concern landscaping, are independent grants of authority. Thus, as we read it, the Architectural Committee has the power to reject applications to plant trees anywhere on a property, if it finds that these trees will be a traffic hazard. Moreover, we cannot conceive of a reason why the authors of the Declaration, concerned with trees creating a traffic hazard, would limit that concern to trees planted in a front yard. We hold, therefore, that the Declaration unambiguously grants the Architectural Committee the power to regulate trees that create traffic hazards no matter where they are planted on a homeowner's property.[1]

[1] Pindell Woods spends much of its brief arguing that the Declaration, in a wholly separate section, grants the Architectural Committee the power to regulate "structures," which, it argues, includes trees and shrubs. Br. at 15-18 (discussing Decl. § 8.2). The circuit court rejected this argument, and because of our interpretation of § 9.2.10, we need not reach it.

B. The Business Judgment Rule

As discussed above, the Yadavs argue that even if the Declaration grants Pindell Woods the authority to regulate trees, its decision to regulate their trees was wrong and should be overturned. The Yadavs principal support for this argument is that the Howard County Department of Planning and Zoning does not consider their trees to be a traffic hazard.[2] The circuit court determined that the decision of whether these trees presented a traffic hazard was the type of decision protected by the business judgment rule and, as a result, the court declined to review the determination that the trees presented a traffic hazard. Regrettably, Pindell Woods misunderstands the circuit court's ruling on this point and argues for an even broader application of the business judgment rule.[3]

[2] Because of the application of the business judgment rule, we need not reach this argument. Nevertheless, we note that this argument is less than persuasive because, even according to the Yadavs, the Department only considers things that affect public roads—not driveways—as possible traffic hazards. There is no reason that Pindell Woods must adopt such a limitation.

[3] Because we find that the circuit court properly applied the business judgment rule in this case we need not reach Pindell Woods' claim for its broader application. Nevertheless, it is our obligation to dispel a confusion that our prior opinions may have created. Pindell Woods argues that its interpretation of the Declaration (addressed in the prior section of this Opinion) is protected from court review by the business judgment rule. That is wrong. The question of whether an entity has or does not have the power to take an action—whether an action is *ultra vires* or not—is outside of the business judgment rule and remains subject to court review. *Greenbelt Homes v. Nyman*, 48 Md. App. 42, 57 n.4 (1981) ("An *ultra vires* act is one not within the express or implied powers of the [organization] as fixed by its charter."). Some of our cases have, by use of short-hand, obscured this black-letter rule. *See, e.g., Reiner*, 212 Md. App. At 156 ("[D]ecisions made by a homeowners association … will not be disturbed unless there is a showing of fraud or bad faith"). Whether an entity has the power to take an action or whether it is *ultra vires*, however, remains outside of the business judgment rule. *Sadler v. Dimensions Healthcare Corp.*, 378 Md. 509, 539 (2003).

The business judgment rule provides that courts "should not interfere with internal [organizational] decisions." *Sadler v. Dimensions Healthcare Corp*., 378 Md. 509, 539 (2003). Maryland law recognizes that the decisions of homeowners associations are protected by the business judgment rule. *Reiner v. Ehrlich*, 212 Md. App. 142, 155 (2013) (applying the business judgment rule to decisions of homeowners association's board of directors).

The decision by Pindell Woods that these trees present a traffic hazard is precisely the kind of decision that is protected by the business judgment rule. For example, in *Reiner*, this Court held that the homeowners association's decision regarding whether a type of roofing materials was permitted by the declaration was insulated from court review by the business judgment rule. *Reiner*, 212 Md. App. at 158-59. Similarly in *Black v. Fox Hills*, this Court, applying the business judgment rule, deferred to the judgment of a homeowner's association about whether its declaration permitted a particular type of fencing. *Black v. Fox Hills North Cmty. Ass'n, Inc*., 90 Md. App. 75, 83 (1992). Whether trees are a traffic hazard is the same sort of decision. Therefore we hold that the circuit court, applying the business judgment rule, properly declined to review the Architectural Committee's determination that the Yadavs' cypress trees presented a traffic hazard.

II. Timeliness of the Denials

The Declaration creates a process by which homeowners may apply to the Architectural Committee for its approval of changes. The Declaration states clearly, and both sides agree, that any application not decided by the Architectural Committee within 30 days is deemed approved. Decl. § 8.4.4. The Yadavs interpret this as a hard and fast

deadline, which may not be varied. By contrast, Pindell Woods argues that this provision should be treated more flexibly, so as to accommodate a give-and-take process between an applicant and the Architectural Committee. The circuit court agreed with Pindell Woods's interpretation of the Declaration. Moreover, the circuit court found that the facts here demonstrate that the Architectural Committee's denials of the Yadavs' applications—first in June and again in December—were timely and therefore effective (and not, as the Yadavs argue, untimely and therefore deemed approved).

The issue of timeliness presents a mixed question of law and fact; we review the circuit court's interpretation of the Declaration without deference, but review its factual determination that the denials were timely on the clearly erroneous standard. *Liddy v. Lamone*, 398 Md. 233, 247 (2007). "A finding is clearly erroneous when … the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Kusi v. State*, 438 Md. 362, 383 (2014).

Article 8 of the Declaration establishes the Architectural Committee, assigns its powers, and establishes many of its rules. For context, we quote most of Article 8:

> 8. **ARCHITECTURAL COMMITTEE AND CONTROL.**
>
> 8.1 **Architectural Committee.**
>
> 8.1.1. The architectural committee shall be comprised solely of the Developer. Developer shall hold this position until it decides to resign the position as sole member of the architectural committee. Then, and in that event, the Board of Directors shall designate three or more individuals to constitute a committee to be known as the architectural committee, which shall have the powers

and duties conferred upon it by the provisions of this section.

* * *

8.2. **Architectural Control.**

8.2.1. No structure may be commenced, constructed, erected, placed, maintained or permitted to remain on a lot, and no structure existing on a lot may be altered in any way (including exterior painting, but excluding interior painting or other modifications which are not visible from the exterior thereof) which in the judgment of the architectural committee, materially changes the exterior appearance thereof, and no use may be commenced on a lot, unless prior thereto plans and specifications therefor, and a description of any such use, have been submitted to and approved in writing by the architectural committee.

* * *

8.4. **Basis For Disapproval.**

8.4.1. The architectural committee may disapprove any plans submitted to it whenever, in its opinion, any of the following circumstances exist:

(i) such plans, or any structure or use covered by such plans, are not in accordance with the provisions of this Declaration or of the said rules and regulations and statements of policy;

(ii) such plans do not contain information which the architectural committee may reasonably require to be contained therein;

(iii) any structure covered by such plans is incompatible with any structure on or use of any lot, due to the former's exterior design, height, bulk, shape, color scheme, finish, style of architecture, configuration,

appearance, materials, location or relative cost;

(iv) any use covered by such plans is incompatible with any structure on or use of the lot;

(v) the existence, size, configuration or location of any parking area proposed for such lot is incompatible with, or insufficient, inadequate or inappropriate in relation to, any existing or proposed use or structure on such lot or elsewhere within the subdivision; and

(vi) any other set of circumstances which, in the reasonable judgment of the architectural committee, would render any structure or use, which is the subject of such plans, inharmonious with the general plan of development of the subdivision.

8.4.2. If the architectural committee disapproves any plans or approves them only upon the satisfaction of any specified condition requiring the modification of such plans or the taking of any other action, it shall promptly notify the applicant thereof in writing and shall furnish with such notice a statement of the grounds on which it was based.

8.4.3 If the architectural committee approves any plans without conditioning such approval on the satisfaction of any such condition, it shall promptly notify the applicant thereof in writing.

8.4.4 Unless the architectural committee, by written notice to the applicant, disapproves any plans submitted or approves them only upon the satisfaction of any specified condition, as aforesaid, within thirty (30) days

> after such … plans are submitted the architectural committee shall conclusively be deemed for all purposes of this Declaration to have approved such plans unconditionally for each lot for which they were so submitted.

This last provision, section 8.4.4, is most relevant to the timing of denials. We read section 8.4.4 to provide the Architectural Committee with four options upon receipt of an application. *First*, it can deny the application. *Second*, it can approve the application. *Third*, it can approve the application conditionally upon the satisfaction of a given condition. And *fourth*, it can do nothing, wait 30 days, and the application is deemed approved.

The Declaration is silent about whether the 30-day clock can be restarted. In situations where a contract is silent, we look to "the character of the contract [and] its purpose." *Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. 405, 418 (2014). We think that the purpose of the provision is to create a cooperative, iterative process by which the Architectural Committee and the applicant negotiate a mutually-acceptable resolution. We see evidence of this in at least two provisions of the Declaration. First, section 8.4.4 explicitly creates the possibility of the Architectural Committee approving an application conditionally, which itself demonstrates this cooperative, iterative approach. Moreover, a conditional approval is contingent on the applicant's acceptance, which is not (at least on the face of the Declaration) time-limited. At the very least, this makes a hard deadline impractical with the operation of the application process, if not impossible. We also see evidence of this cooperative approach in section 8.4.1(ii), which makes an applicant's failure to include necessary information a grounds for denial of an application. It would

make little sense to limit Pindell Woods' ability to seek clarifying information on a point on which it could simply deny an application.[4] Finally, beyond the words of the Declaration, we are supported by our view of the purpose of all of these provisions, which we understand to be neighborhood control rather than mere speedy decision-making. For these reasons, we hold that the Declaration should be interpreted to permit the Architectural Committee to pause and restart the 30-day clock found in section 8.4.4 in situations where it is attempting to resolve applications in accordance with this cooperative process. The remaining question, then, is whether, factually, it did pause and restart the 30-day clock before it denied the Yadavs' applications in June and again in December.

The timeline of events is critical to this analysis:

April 28, 2014 The Yadavs email their initial application, proposing to:

> Plant 15 Leyland Cypress trees for privacy in our backyard from Point A to Point B (see exhibit A), trees are 3-4 feet tall at present.

Attached to the April 28 application is a plat map on which the proposed positions of the trees marked.

May 22, 2014 Robert Lewis, president of Pindell Woods, emails the Yadavs, asking them to resubmit their application and

[4] Our interpretation is also supported by the converse of this situation. If the deadline was in fact inviolate, the Architectural Committee could always subvert that deadline by denying the application pursuant to its authority under section 8.4.1(ii) and requesting a new application, thus restarting the 30-day clock. That an inviolate provision would be so easily subverted is support for the idea that it is not really intended to be inviolate.

"just wri[t]e the number of trees (type) and where planted." [5]

May 27, 2014[6] The Yadavs submit a document, proposing to:

> Plant trees in back of property. See attached drawing and supporting documentation.

June 9, 2014 The Architectural Committee, by email, denies the Yadavs' application, stating:

> I am unable to approve this project at this time for the following reason:
>
> ***The architectural covenants provide for the following restriction as it relates to the planting of trees upon lots:***
>
> *No trees or shrubs shall be located on any lot which block the view of operators of motor vehicles so as to create a traffic hazard.*
>
> Because of the curvature of the driveway leading to the Olaniran house specifically at the point where the Olaniran pipe stem opens to allow access to their building site, your new trees, when they become more established in size, will block the view of

[5] The characterization of this May 22 email is hotly contested: Pindell Woods characterizes this email as a request for information; the Yadavs disagree and point out that no information was submitted in response.

[6] This date is approximate. The submission is dated only "May 2014." As it was submitted in response to the May 22 request, it could not have been submitted before that date. Logically, it could not have been submitted after May 31. Testimony suggests that May 27 is the most likely date, but the difference is not material to our analysis.

> operators of motor vehicles so as to create a traffic hazard.

Nov. 11, 2014 The Yadavs remove two trees and email an application, stating:

> 13 Leyland Cypress trees for privacy in our backyard from Point A to Point B (see Exhibit B) last tree near Point B is about 15-20 feet away from driveway.

Attached to this application are two plat maps showing both the 15 tree and the 13 tree proposals.

Nov. 24, 2014 Pindell Woods sends an email to the Yadavs in which it writes that it will approve their application if the Yadavs remove six trees:

> Upon the removal of six (6) of the newly planted trees from the corner, counting inward, this being the six trees located immediately adjacent to the Olaniran private driveway accessing their home, the issue relating to sight distance safety shall be resolved. … If an agreement is not reached within the next 14 calendar days, then the Architectural Committee will proceed to review the Yadav landscaping plan as submitted.[7]

Dec. 17, 2014 Dale Thompson emails Pindell Woods and Olaniran, noting that he has not received a response from the Yadavs and that the condition is unfulfilled.

Dec. 19, 2014 Pindell Woods sends an email formally denying the Yadavs' application.

[7] While the Yadavs contest both the June and December denials as untimely, they make no specific argument about why the December denial was untimely, or why this document doesn't constitute a permissible conditional approval under section 8.4.4.

A. The June Denial

The Yadavs' initial application, submitted on April 28, was formally denied on June 9, 42 days later. The key question, then, is the significance of Pindell Woods' email of May 22. *See* n.5. The Yadavs argue that the May 22 email does not change anything, and that it does not restart the clock. Pindell Woods argues, and the circuit court agreed, that it did.

Pindell Woods asked the Yadavs to resubmit their application on May 22, 24 days after the initial application. The circuit court found that the Architectural Committee's denial on June 9, 2014 was timely because Pindell Woods had requested more information on May 22, before the 30-day deadline expired. The Yadavs make two arguments: that because Pindell Woods was the cause of the delay, it shouldn't get the benefit of its delay; and that the May 22 email was not really a request for additional information, because, they believe, Pindell Woods simply lost their first application.

There is sufficient evidence in the record to support the circuit court's interpretation, and insufficient evidence to convince us that a mistake has been made. The circuit court found that the May 22 email was a request for more information by Pindell Woods and the Architectural Committee. The May 22 email, on its face, asks for the Yadavs to supply the location and number of the trees. Pindell Woods President Robert Lewis testified that the email asked for, and the Yadavs provided, "updated" information for the application. Donna Hughes, a property manager, testified that "the exact location and type of girth of the trees proposed to be installed wasn't clear" from the original application. Further, once the resubmission was received, the Architectural Committee made its decision expeditiously, suggesting that the request was not dilatory.

We are unpersuaded by the Yadavs' arguments that the May 22 email was anything more sinister than a request for more information, as permitted by the Declaration, and conclude that it operated to pause the 30-day clock. In light of this evidence, the circuit court's determination that the June denial was timely is not clearly erroneous.

B. The December Denial

After a period of negotiations following the June denial, the Yadavs removed two trees and submitted a new application on November 11, 2014. Thirteen days later, on November 24, the Architectural Committee offered that:

> "Upon the removal of six (6) of the newly planted trees … located immediately adjacent to the Olaniran private driveway accessing their home, the issue relating to sight distance safety shall be resolved."

When the Yadavs and Pindell Woods were unable to come to an agreement—on December 19, 25 days after the counterproposal—the Architectural Committee informed the Yadavs that it had rejected the entire proposal.

The circuit court found that this December 19 denial was timely but its opinion offered no elaboration. The Declaration, however, anticipates precisely this situation. It provides that if the Architectural Committee "approve[s the application] only upon the satisfaction of any specified condition" within the 30 day time frame, then the Architectural Committee has rendered a timely decision. Decl. § 8.4.4.

The Architectural Committee offered conditional approval for seven trees, provided the Yadavs removed the other six. This conditional approval came thirteen days after the November 11 application, and was therefore timely. The Yadavs did not accept the

condition. The December 19 denial simply acknowledged that no agreement had been reached, and the condition was unfulfilled. We affirm the circuit court's finding of timeliness.

III. Attorney's Fees

Finally, we address the attorney's fees. The Yadavs concede that should we hold that the Declaration gives Pindell Woods authority over the trees, the following provision applies:

> [Pindell Woods] may levy special assessments for the following purposes: … [o]btaining from an owner reimbursement for all costs incurred by [Pindell Woods], including reasonable attorney's fees, in enforcing the terms of this Declaration against any owner.

Decl. § 6.3.1.2. Contract terms for the payment of attorney's fees are enforceable in Maryland. *See, e.g.*, *Osche v. Henry*, 216 Md. App. 439, 458 (2014). Because we already concluded that Pindell Woods' actions were authorized by the Declaration, we also conclude that section 6.3.1.2 of the Declaration applies. We therefore affirm the circuit court's award of attorney's fees.

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