UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1263

September Term, 2014

SAAD MIKHAIL

v.

COUNCIL OF UNIT OWNERS OF SEA WATCH CONDOMINIUM

Meredith,
Berger,
Nazarian,

JJ.

Opinion by Meredith, J.

Filed: February 8, 2017

Saad Mikhail, appellant, filed suit in the Circuit Court for Worcester County against the governing body of his condominium, Council of Unit Owners of Sea Watch Condominium ("Sea Watch"), appellee. By letter dated January 3, 2014, Sea Watch had given notice to appellant and his wife of the appellee's intent to create a contract lien against the Mikhails' condominium unit. On June 17, 2014, Mr. Mikhail filed a document captioned "Complaint in Response to Notice of Intention to Create a Lien and Request for Hearing." Sea Watch filed two motions in response: (1) "Defendant's Motion to Strike Plaintiff's Complaint, and Request for a Hearing"; and (2) "Defendant's Alternatively Filed Preliminary Motions to Dismiss, and Request for a Hearing."

By order signed August 8, 2014, entered on August 12, 2014, the Circuit Court for Worcester County granted the motion to strike and dismissed the action with prejudice. This appeal followed.

QUESTION PRESENTED

In his brief, appellant presents this Court with four questions for our review.[1] The only question properly before us, however, is: Did the circuit court abuse its discretion in granting appellee's motion to strike appellant's complaint, and in its dismissal of the case?

[1] We reproduce here appellant's questions presented as stated in his brief:

> 1. Did the Circuit Court err in granting Appellee [sic] preliminary motion to strike Appellants' [sic] complaint when the motion does no [sic] comply with Maryland Rule 2-322?

(continued …)

For the reasons that follow, we answer "no," and affirm the judgment of the Circuit Court for Worcester County.

FACTS AND PROCEDURAL HISTORY

This appeal arises from the third of three cases between appellant and appellee, all arising from appellant's unwillingness to acquiesce in appellee's decision to replace his

(…continued)

2. Did the Circuit Court err in issuing the order to strike Appellant [sic] complaint and to dismiss with prejudice action #23-C-14-000775, under the caption of action # 23-C-1000133 which was dismissed without prejudice by Court order entered on 05-08-2014, for insufficiency of service of process?

3. Did the Circuit Court err in granting Appellee the motion to strike plaintiff Complaint and to dismiss with prejudice action #23-C-14-000775 by order entered on 08/12/2014 which is 15 days before the expiry [sic] of the automatic extension of time for filing answer, without special order, to 15 days after entry of the court's order on the motion, according to rule 2-321(a) when a motion is filled [sic] pursuant to Rule 2-322.

4. Did the Circuit Court err in Order of Court that Appellant's motion to dismiss Appellee's motion to strike the complaint and the motion to dismiss preliminary Appellee's motions, are considered to be MOOT[?]"

Appellant's brief and record extract are rife with violations of the Maryland Rules of appellate procedure, found at Title 8 of Volume 1 of the Maryland Rules (2014). The record extract, for instance, contains extraneous material from the records of other cases, in violation of Rule 8-501(c). We have omitted from our recitation of appellant's original questions presented the arguments that he interspersed between some of the questions in violation of Rule 8-504(a)(3). The brief also does not contain any "clear concise statement of the facts material to a determination of the questions presented," in violation of Rule 8-504(a)(4), nor does it contain proper citations to the record extract (which, as noted, is itself not in compliance with the Rules), also in violation of Rule 8-504(a)(4). We nevertheless will not exercise our discretion to dismiss the appeal as provided in Rule 8-602.

balcony doors, and to require unit owners --- including appellant --- to pay the expense. Appellee also demanded, pursuant to its by-laws, that appellant reimburse appellee for the attorneys' fees occasioned by appellant's actions in litigating the dispute.

Appellant (with his wife) owns Unit # 1211 in the Sea Watch Condominium in Ocean City, Maryland. We glean from the record and briefs that, sometime prior to August 2010, appellee determined that all of the balcony doors in the condominium building needed to be replaced. The total cost of the replacement work was to be $4,000,000. Appellee amended its by-laws to permit it to assess each unit owner with the cost of the replacement of the balcony doors in his or her unit. Although most of the unit owners accepted this amendment and paid for the replacement doors, appellant (along with a handful of other unit owners not involved in this appeal) disputed the authority of appellee to effect such a change in its by-laws, and refused to pay.

On August 12, 2010, appellee filed a declaratory judgment action in the Circuit Court for Worcester County, asking the court to declare that it possessed such authority, and declare that appellant was required to pay for the replacement of the balcony doors in his unit. The declaratory judgment action was docketed as 23-C-10001437 ("the First Case"). Appellant responded with a counterclaim, but, following a hearing, summary judgment was granted in appellee's favor, and an order was docketed on October 3, 2011.

On November 15, 2011, a hearing was conducted at which it was established that the amount owed by appellant for the replacement of his balcony doors was $15,232.00. Appellee also requested, in a November 4, 2011, filing, that the court order appellant to

pay the attorneys' fees it had incurred in litigating the declaratory judgment action. Appellee invoked a provision of its by-laws, which provided, at Article VI, § 10(e):

> **In the event of breach** of any of the provisions of the Declaration, these By-Laws or rules adopted by the Board of Directors pursuant hereto **by any unit owner** or tenant, **the Council**, through its Board, officers, managers or other agents **shall take such actions as it shall deem appropriate, including legal action through court proceedings, to cure such breach and cause an abatement thereof. All costs of taking such action**, **including** the time of employees of the council or the council's agents in connection therewith, **counsel fees, and all other costs and expenses incurred in connection therewith, shall be a charge against the unit owner** who, or whose tenant, causes such breach, **payable to the Council on an individual assessment basis**.

(Emphasis added.)

On January 13, 2012, the circuit court filed an order finding that appellant was liable to appellee in the amount of $29,305.55, representing attorneys' fees appellee had incurred in attempting to obtain appellant's compliance with the balcony-door-replacement issue. By March 15, 2012, appellant had satisfied the $15,232.00 assessment for the replacement of his balcony doors, and by check dated March 28, 2012, appellant paid the $29,305.55 in attorneys' fees. But appellant then filed an appeal to this Court, which was dismissed as moot based on his payment of the above-referenced charges (the validity of which he was disputing in the appeal to this Court), in an unreported opinion filed on May 23, 2013.[2] *Saad A.H. Mikhail, et ux. v. Council of Unit Owners of Sea Watch Condominium*, No. 0512,

[2] More specifically, appellant filed an appeal to this Court on March 21, 2012. In an order filed on April 20, 2012, the circuit court struck that appeal as untimely. On May 18, 2012, appellant filed an appeal to this Court of that decision. The appeal filed May 18, 2012, was the one that was dismissed pursuant to the unreported opinion of May 23, 2013.

Sept. Term, 2012. This dismissal ended the First Case.

On January 3, 2014, appellee sent appellant a Notice of Intention to Create a Lien, advising him that he was in breach of the declaration and by-laws "for failure to pay legal fees/expenses incurred in defending the appeals and related legal proceedings filed by you from and including April, 2012 through October, 2013." The Notice advised appellant that appellee had calculated those fees and expenses as $64,687.37. The Notice further advised appellant that, if he contested the lien, he had thirty days to file a complaint "to determine whether probable cause exists for the establishment of the lien[.]"

Appellant responded by filing such a complaint. It was docketed as Case No. 23-C-14000133 ("the Second Case"). However, on May 7, 2014, the Second Case was dismissed, on appellee's motion, for insufficiency of process. This dismissal ended the short-lived Second Case.

The "Third Case," the dismissal of which is at issue in this appeal, was filed on June 17, 2014, when appellant filed a "Complaint in Response to Notice of Intention to Create a Lien." In the complaint, appellant argued that the by-laws did not authorize the imposition of further "supplemental attorney fees for appellate and post judgment services that are unrelated to protecting the underlying judgment, and in securing the specific relief afforded by the trial court." He also argued in this motion that the "contract under which the lien is sought" — *i.e.*, the by-laws, which had already been found, in the First Case, to be a valid contract subjecting a breaching party to the obligation to pay appellee's attorneys' fees incurred in appellee's efforts to bring the breaching party into compliance

— "is not a valid contract & Lien is not supported by COSA Mandate or Statute."

On July 17, 2014, appellee filed two motions. It filed a motion to strike appellant's complaint, asserting that it was unintelligible and noncompliant with the Maryland Rules in a variety of ways. Appellee asked that the court first consider the motion to strike, before it considered the appellee's second filing of July 17, which it captioned "[Appellee's] Alternatively Filed Preliminary Motions to Dismiss." In this "alternatively filed" motion, appellee argued that appellant's complaint should be dismissed as untimely, for failure to state a claim on the merits, for lack of a proper affidavit, and for appellant's failure to join his wife as a necessary party.

On July 30, 2014, appellant filed a motion to extend the time to respond, which was denied by the court on August 5, 2014.

Pursuant to Maryland Rules 1-203(c) and 2-311(b), appellant's response to appellee's July 17 motions needed to be filed no later than August 4, 2014 (*i.e.*, 15 days, plus 3 days for mailing, plus one day because of a weekend). Appellant filed no opposition to appellee's motions on or by that date; he merely requested additional time to respond, but the court found no merit in the request.

On August 8, 2014, appellant filed a motion to dismiss the motion to strike, and a motion to dismiss the alternatively-filed motion to dismiss. On the same day, the court

signed and filed an order granting appellee's motion to strike appellant's complaint, dismissing the Third Case with prejudice.[3]

On August 15, 2014, appellant noted the instant appeal.[4]

STANDARD OF REVIEW

We are reviewing here the court's grant of appellee's motion to strike appellant's complaint, which is a decision we review for abuse of discretion. *First Wholesale Cleaners Inc. v. Donegal Mut. Ins. Co.*, 143 Md. App. 24, 41 (2002) (citing *Lancaster v. Gardiner*, 225 Md. 260, 269–70 (1961), and *Patapsco Assoc. Ltd. Part. v. Gurany*, 80 Md. App. 200, 204 (1989)). Although the result of the grant of the motion to strike was a dismissal with prejudice, we do not review this *de novo* as we would the grant of a motion to dismiss, because the court never reached the merits of appellee's motion to dismiss, which was filed as an alternative request for relief.

An abuse of discretion

> occurs when a decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *King v. State*, 407 Md. 682, 711, 967 A.2d 790, 807 (2009) (internal quotation marks and citation omitted). Thus, "a ruling

[3] The "Order Granting [Appellee's] Motion to Strike [Appellant's] Complaint" bears the case number for the Second Case, which had been dismissed already, and not the Third Case, in which these proceedings were occurring. We do not regard this error as significant because this order was properly docketed in the Third Case.

[4] We note that, on August 27, 2014, the court filed an order finding that both of appellant's August 8 motions were moot. Appellant did not note a separate appeal of that order. Nevertheless, he asserts, as his Question 4, that the court's order of August 27 was in error. But he makes no argument regarding this issue in his brief, and we have not considered this question further.

> reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling." *Id.* (internal quotation marks and citation omitted). "Whether there has been an abuse of discretion depends on the particular circumstances of each individual case." *Pantazes v. State*, 376 Md. 661, 681, 831 A.2d 432, 444 (2003).

Consolidated Waste Industries, Inc. v. Standard Equipment Co., 421 Md. 210, 219 (2011).

DISCUSSION

The circuit court did not abuse its discretion in granting appellee's motion to strike appellant's complaint of June 17, 2014. Maryland Rule 2-322(e) provides:

> On motion made by a party before responding to a pleading or, if no responsive pleading is required by these rules, on motion made by a party within 15 days after the service of the pleading or on the court's own initiative at any time, the court may order any insufficient defense or any
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> improper, immaterial, impertinent, or scandalous matter stricken from any pleading **or may order any pleading that is late or otherwise not in compliance with these rules stricken in its entirety.**

(Emphasis added.)

The Maryland Contract Lien Act ("MCLA") is found at Maryland Code (1974, 2010 Repl. Vol.), Real Property Article ("RP"), § 14-201 *et seq*. It defines "contract" to include a condominium association's properly-recorded declaration or by-laws. RP §14-201(b)(2)(i). When confronted with the need to replace $4,000,000 worth of balcony doors, appellee amended its declaration and by-laws to permit it to assess the cost of replacement to individual unit owners, and the amount appellant was required to pay was judicially determined to be $15,232.00. When appellant refused to pay for the replacement of his balcony doors — even after appellee obtained summary judgment in its

favor in the declaratory judgment action it brought to determine that it had the authority to amend its by-laws in this manner and that appellant was required to pay for the replacement of the balcony doors in his unit — he was in breach of contract.

Appellee's declaration and by-laws permitted it to "take such actions as it shall deem appropriate, including legal action, to cure such breach," and provided that "[a]ll costs of taking such action, including . . . counsel fees . . . shall be a charge against the unit owner who . . . causes such breach, payable to the Council on an individual assessment basis."

It was established in the First Case that appellant owed $15,232.00 for the doors, and $29,305.55 in attorneys' fees incurred by appellee in its efforts to cure appellant's breach. Whether that ruling was correct is no longer open for debate. In this case, appellant was trying to dispute --- based on the same section of the by-laws that permitted appellee to collect the fees in the First Case --- that he was liable for the attorneys' fees incurred by appellee in defending against appellant's appeals to this Court and its fees in defending against the Second Case and the Third Case. Aside from the fact that appellant's liability in this regard had already been conclusively established as a matter of law, the complaint he filed in the Third Case on June 17, 2014, to make this argument suffered from a number of deficiencies, both technical and substantive.

According to the complaint, it was "filed pursuant to §14-201(c) [sic] of the" MCLA "to preclude [appellee] from establishing a lien on [appellant's] property for consequential damages alleged to have occurred because of [appellant's] failure to meet his contractual

obligations which do not include attorney fees paid to defend appeals filed by [appellant]."[5] To the contrary, the circuit court found in the First Case that Art. VI, §10(e) *does* encompass appeal expenses.

In any event, it is beyond question that the complaint in the Third Case was not timely filed. Under § 14-203(c)(1) of the MCLA, a party against whom a lien is to be imposed has thirty days after service of the notice of intent to create a lien in which to file a complaint disputing the opposing party's right to establish a lien. Here, appellee sent its notice of intent to create a lien to appellant on January 3, 2014, and the complaint in the Third Case was not filed until June 17, 2014. Because it was clear on the face of appellant's complaint that the appellant had not initiated this action within the time prescribed by RP § 14-203(c), the circuit court did not abuse its discretion in striking the complaint and dismissing the action with prejudice.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[5] RP § 14-201(c) of the MCLA defines damages under the statute. We assume appellant intended to say that the complaint was being filed pursuant to RP § 14-203(c), which permits the unit owner to file a complaint "within 30 days after the notice is served" to "determine whether probable cause exists for the establishment of a lien."