

Circuit Court for Baltimore City
Case No. 24-C-23-003722

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2428

September Term, 2023

SILVER STAR PROPERTIES REIT, INC., ET
AL.

v.

ALLEN R. HARTMAN, ET AL.

Graeff,
Berger,
Zic,

JJ.

Opinion by Zic, J.

Filed: April 9, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This case arises from a preliminary injunction proceeding in the Circuit Court for Baltimore City. Allen Hartman, appellee, served as the original CEO of Silver Star Properties REIT, Inc. (“Silver Star”), appellant, until he was removed from the position in October 2022. In August 2023, Mr. Hartman, in his capacity as a shareholder, filed suit seeking an order compelling an annual stockholder meeting for Silver Star. Mr. Hartman filed his first amended complaint for preliminary and permanent injunctive relief in October 2023, in which he alleged that Silver Star had not held an annual meeting and, instead, had improperly amended its bylaws to allow for election of Silver Star’s corporate directors via written consent solicitation in violation of Maryland law.

The court partially granted Mr. Hartman’s motion for a temporary restraining order. At the January 2024 hearing on Mr. Hartman’s second amended complaint, the court granted his request for a preliminary injunction.

Silver Star noted a timely interlocutory appeal, presenting two questions for our review, which we have recast and rephrased as one:¹ Whether the circuit court erred in

¹ Silver Star phrased the questions as follows:

1. Did the Circuit Court err in issuing a preliminary injunction halting the tallying of votes cast in the Consent Solicitation where the Appellees failed to demonstrate a likelihood of success on the merits?
2. Did the Circuit Court err in granting preliminary injunctive relief where the Appellees failed to demonstrate that they would suffer irreparable harm in the absence of an injunction stopping the Consent Solicitation?

issuing a preliminary injunction. For the following reasons, we reverse the judgment of the circuit court and remand for the court to dissolve the preliminary injunction.

BACKGROUND

History Of Silver Star And Its Corporate Leadership

In 2009, Silver Star was incorporated in Maryland as a business that owned and operated commercial real estate properties in Texas. Mr. Hartman served as Silver Star’s CEO and Chairman of the Board of Directors from 2009 until October 2022, when he was removed from his roles after an internal investigation. Following Mr. Hartman’s removal, Silver Star’s Board of Directors (“Board”) created an executive committee comprised of three Board members (“Executive Committee”), who are additional appellants in the instant case. Further separation negotiations between Silver Star and Mr. Hartman were unsuccessful.

On August 25, 2023, Mr. Hartman, in his capacity as a Silver Star shareholder, filed a “Complaint To Compel Annual Corporate Meeting As Required By Md. Corp. and Assn. Art. 2-501” in the Circuit Court for Baltimore City, seeking an order compelling Silver Star to hold an annual meeting.

In August 2023, the Executive Committee adopted an amendment (“Amendment”) to Silver Star’s bylaws (“Bylaws”) in accordance with Section 8.5 of its corporate charter (“Charter”). Section 8.5 of the Charter states:

Action By Stockholders Without a Meeting. To the extent allowed under Maryland Corporation Law, the Bylaws of the Company may provide that any action required or permitted to be taken by the Stockholders may be taken without a

meeting by the written consent of the Stockholders entitled to cast a sufficient number of votes to approve the matter as required by statute, these Articles of Incorporation or the Bylaws of the Company, as the case may be.

The Amendment to the Bylaws, which was ultimately approved in October 2023 pursuant to Section 8.5 of the Charter, permits written consent solicitations for non-unanimous consent actions by stockholders. In pertinent part, the Amendment states:

Any action required or permitted to be taken at a meeting of stockholders [. . .] to the extent permitted by Maryland law, the Corporation’s Charter and these Bylaws, may be taken without a meeting if a consent in writing, setting forth the action, is signed by the holders of outstanding shares having at least the minimum number of votes that would be necessary to authorize or take action at a meeting at which all shares entitled to vote on the matter were present and voted, and the consent is delivered to the corporation.

On October 19, 2023, Mr. Hartman filed a “First Amended Complaint For Declaratory And Preliminary And Permanent Injunctive Relief,” (“First Amended Complaint”) adding Hartman vREIT XXI, Inc., additional appellee in the instant case, as another plaintiff shareholder and raising three counts. Count I stated that Silver Star had failed to hold an annual meeting and had attempted to circumvent an election of Board members at an annual meeting by seeking written consents through the Amendment. Count II claimed that Silver Star failed to provide a stockholder list upon request as required by Maryland law. Count III alleged that the Amendment was void and unenforceable and adopted in bad faith. As relief, the First Amended Complaint requested an injunction to stop the collection of written consent solicitations.

On November 17, 2023, the Executive Committee filed a proxy statement with the SEC, announcing its intention to solicit written consents, rather than hold an annual meeting, to elect new directors. Five days later, on November 22, 2023, Mr. Hartman filed a “Second Amended Complaint For Declaratory And Preliminary And Permanent Injunctive Relief” (“Second Amended Complaint”). Count I alleged that, in addition to Silver Star’s failure to hold an annual meeting, Section 15.2(a) of the Charter requires Silver Star to begin liquidating its assets, because the Board failed to have the common stock listed or traded within ten years of the initial public offering.² Counts II, III, and IV of the Second Amended Complaint mirror Counts I, II, and III, respectively, of the First Amended Complaint.

Particularly relevant to this appeal, the Second Amended Complaint reiterates that the attempts by the Executive Committee to hold written consent solicitations in lieu of an annual meeting under the Amendment were void and unenforceable because the process conflicted with Maryland Code Ann., Corporations and Associations (“CA”) § 2-505(b)(2) (1975, 2014 Repl. Vol., 2019 Supp.),³ which states:

If authorized by the charter of a corporation, the holders of shares of common stock entitled to vote generally in the election of directors may take action or consent to any action

² After filing the Second Amended Complaint, Mr. Hartman proceeded to file two additional amended complaints. The case proceeded to trial on the liquidation issue before oral argument in the instant appeal. On January 21, 2025, the circuit court ordered that Silver Star hold an annual meeting within six months to decide whether to liquidate or defer to an alternate strategy. This order does not impact the issues raised in this appeal.

³ All statutory references are to the Corporations and Associations Article, unless otherwise noted.

by providing a consent in writing or by electronic transmission of the stockholders entitled to cast not less than the minimum number of votes that would be necessary to authorize or take the action at a stockholders meeting at which all stockholders entitled to vote on the action were present and voted if the corporation gives notice of the action not later than 10 days after the effective date of the action to each holder of shares of the class or series of common stock and to each stockholder who, if the action had been taken at a meeting, would have been entitled to notice of the meeting.

On December 1, 2023, Mr. Hartman filed a “Motion For Temporary Restraining Order, Date Setting Preliminary Injunction Hearing And Request For Hearing,” again alleging that the Amendment was invalid and seeking to enjoin Silver Star from soliciting written consents from shareholders. The circuit court partially granted the motion for a temporary restraining order on December 21, 2023, and required Silver Star to provide Mr. Hartman with a stockholder list.

Preliminary Injunction

On January 29, 2024, the circuit court held a hearing regarding Mr. Hartman’s request for a preliminary injunction. After arguments, the circuit court granted the motion for a preliminary injunction, finding that the Amendment allowing consent solicitations violated § 2-505(b)(2).

In its oral ruling, the circuit court highlighted the language of § 2-505(b)(2), specifically the phrase “[i]f authorized by the charter of a corporation,” ultimately finding that this language:

[I]ndicates that there must be an *express* statement in the charter of the corporation that consent actions can take place. Shareholders need to know that when they buy the stock, it’s in the charter, that this could happen.

* * *

[I]t also seems clear that any granting of the option of a consent solicitation needs to be in the charter. And it can't be in the bylaws.

(Emphasis added.)

Based on its interpretation of § 2-505(b)(2), the circuit court then analyzed the preliminary injunction factors in *Ehrlich v. Perez*, 394 Md. 691, 707-08 (2006). The court found that “there is a likelihood of success on the merits that the [Amendment to the Bylaws] was passed improperly because it is violative of [§] 2-505.” The court next found that Mr. Hartman demonstrated irreparable harm, because the Amendment “impair[ed] and impeded the shareholders’ rights to vote” in violation of Maryland law. The court then analyzed the balance of convenience factor, *Ehrlich*, 394 Md. at 708, stating: “It’s not a harm for the corporation to do what it’s supposed to do under Maryland law and[], arguably, under the [C]harter and the [B]ylaws.” Finally, the court determined that public policy weighed in favor of granting Mr. Hartman’s motion for an injunction because “Maryland law requires that [the Amendment to Silver Star’s Bylaws] be set forth *expressly* in the [C]harter, and it’s not here.” (Emphasis added.)

The circuit court also responded to the parties’ arguments concerning whether the Maryland business judgment rule applied, explaining:

So it’s not clear to the [c]ourt that the business judgment rule applies in this case. To me, if we were to follow Delaware law, it would seem to indicate that the trend seems to be that anything that could affect an election, an attempt to have an election, affect an attempt to nominate directors, any of that sort, would be outside of the business judgment rule, [and]

would fall under the enhanced scrutiny analysis of the Delaware courts.

And importantly, that would shift the burden to the directors to find -- to show many things. But importantly, it would shift the burden of proof to the directors. But I'm not going to decide that here. I don't think I need to.

The court issued its ruling from the bench and entered a written order the same day. Silver Star timely appealed. We supplement with additional facts below as appropriate.

STANDARD OF REVIEW

This Court has jurisdiction over a circuit court's order granting or dissolving an injunction. Md. Code Ann., Cts. & Jud. Proc. § 12-303(3)(i) (1974, 2020 Repl. Vol.). "In reviewing a trial court's decision to issue a preliminary injunction, we determine whether the trial judge exercised sound discretion in examining the four factors that must be found[.]" *Ehrlich*, 394 Md. at 707. The four factors are:

- (1) the likelihood that the plaintiff will succeed on the merits;
- (2) the "balance of convenience" determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; []
- (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and
- (4) the public interest.

Id. at 708 (citation omitted).

"[E]ven with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards." *LeJeune v. Coin Acceptors, Inc.*, 381 Md. 288, 301 (2004) (internal quotation marks and citation omitted). Thus, "[w]here a trial court's determination as to one of the factors for issuing a preliminary injunction

involves a purely legal question, *i.e.*, a question of law, we review the trial court’s decision as to that factor without deference.” *State v. Falcon*, 451 Md. 138, 157-58 (2017) (citing *Ehrlich*, 394 Md. at 708).

DISCUSSION

I. THE CIRCUIT COURT ERRED IN ISSUING THE PRELIMINARY INJUNCTION.

On appeal, Silver Star argues that the circuit court erred when it issued the preliminary injunction based on its reasoning that § 2-505(b)(2) requires corporate charters to permit board member elections to be held by consent solicitation in lieu of annual meetings. Silver Star contends that the court impermissibly inserted the word “express” into its reading of § 2-505(b)(2). Instead, Silver Star argues, § 2-505(b)(2) permits holders of common stock to vote via consent solicitation if a corporation’s charter authorizes its bylaws to allow such action, as Section 8.5 of the Charter does. In opposition, Mr. Hartman argues that the court was correct in determining that the word “authorize” in § 2-505(b)(2) means that a corporation’s charter, and not its bylaws, must “expressly” authorize shareholders to vote by written consent solicitation for the process to be valid and enforceable.

A. Statutory Interpretation

In statutory interpretation cases, our primary goal is to ascertain the purpose and intention of the General Assembly when it enacted the statutory provisions. *Washington Gas Light Co. v. Maryland Pub. Serv. Comm’n*, 460 Md. 667, 682 (2018). We assume that the Legislature’s intent is “expressed in the statutory language” and begin our analysis with the plain language of the statute. *Spevak v. Montgomery Cnty.*, 480 Md.

562, 571-72 (2022) (internal quotation marks and citation omitted). “If the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute as it is written.” *Bottini v. Dep’t of Fin.*, 450 Md. 177, 187-88 (2016).

Moreover, “we neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words that the General Assembly used or engage in forced or subtle interpretation in an attempt to extend or limit the statute’s meaning.” *Id.* at 188. Instead, we “analyze the statutory scheme as a whole considering the purpose, aim, or policy of the enacting body[.]” *Williams v. Morgan State Univ.*, 484 Md. 534, 547 (2023) (internal quotation marks and citation omitted). If the language of the statute is ambiguous, meaning that it can be interpreted in two or more reasonable ways, we may look to other sources, such as legislative history, to resolve that ambiguity. *Bottini*, 450 Md. at 188. “If there is no ambiguity in the language, either inherently or by reference to other relevant laws or circumstances, the inquiry as to legislative intent ends.” *Id.*

Several provisions of the Corporations and Associations Article pertain to corporate charters and consent solicitations in lieu of meetings. Section 2-505(a), the general rule, states that “any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting” with unanimous consent. Section 2-505(b) provides two exceptions to this general rule that do not require unanimous consent. Section 2-505(b)(2) is at issue here. Finally, § 2-505(e) authorizes a corporation’s board to “adopt reasonable procedures for providing consents” to take action without holding a meeting.

Beginning with the statutory language in dispute, *Spevak*, 480 Md. at 571-72, § 2-505(b)(2), one of the exceptions to the general rule, states that written consent solicitations are allowed without unanimous consent “[i]f authorized by the charter of a corporation[.]” The plain language of § 2-505(b)(2) *allows* a corporate charter to permit consent solicitations; it does not describe the way in which a charter must do so, *i.e.*, it does not require that a charter do so “expressly.”

Distinguishably, other statutes within Corporations and Associations Article include the terms “express” and/or “expressly” when referring to the method in which corporate governing documents must be written. *E.g.*, CA § 2-502(e) (“Unless the charter or bylaws expressly provide otherwise[. . . .]”); § 2-205 (“Unless the charter expressly grants[. . . .]”). Concluding that § 2-505(b)(2) compels a corporate charter to “expressly” authorize non-unanimous written action for such authorization to be valid would require us impermissibly to add language to the provision. *Bottini*, 450 Md. at 188.

For these reasons, we conclude that § 2-505(b)(2) unambiguously permits a corporate charter to authorize non-unanimous action without a meeting, but by its plain language, does not require that a charter do so “expressly” for the process to be lawful.⁴

We now apply our interpretation to the present case. Section 5.1(b) of the Charter states in pertinent part:

⁴ Because we conclude that § 2-505(b)(2)’s language is unambiguous, we do not reach the legislative history arguments raised by Mr. Hartman.

Except as otherwise provided in the Bylaws, the Board of Directors, *without any action by the Stockholders, shall have and may exercise, on behalf of the Company, without limitation, the power to: adopt, amend and repeal Bylaws; to elect officers in the manner prescribed in the Bylaws; to solicit proxies from Stockholders; and to do any other acts and deliver any other documents necessary or appropriate to the foregoing powers.*

(Emphasis added.)

Section 8.5 of the Charter, as previously quoted, then goes on to authorize the Bylaws to permit when non-unanimous consent solicitations may take place in lieu of a stockholder meeting. The Amendment to the Bylaws approved by the Board detailed such an authorization. This is consistent with—and not in violation of—the requirements of § 2-505(b)(2) because the Board was specifically authorized by the Charter to act without notice to amend the Bylaws and allow for such action. The Amendment is also in conformity with § 2-505(e), which allows corporate boards to adopt reasonable procedures for providing consents instead of holding a meeting. Thus, the application of the provisions of the Corporations and Associations Article, and the interplay between the Charter and the Amendment to the Bylaws, demonstrates that the Board was lawfully authorized by the Charter to permit written consent solicitation procedures in the Bylaws.

We conclude that the court’s interpretation of the statute was in error and, thus, the court abused its discretion in granting the preliminary injunction. Because the court’s analysis was dependent upon its understanding of the statutory language, we hold that its analysis of the *Ehrlich* factors, namely the likelihood of success on the merits, risk of

irreparable harm, and public policy considerations, was in error and remand with instruction to dissolve the injunction.

B. Business Judgment Rule

Silver Star also argues that the circuit court improperly applied Delaware’s enhanced scrutiny standard, instead of the Maryland business judgment rule, as part of its application of the preliminary injunction analysis. Silver Star argues that the court should have applied the Maryland standard provided in § 2-405.1, deferring to the business judgment rule, and that by applying the enhanced scrutiny standard, it committed reversible error.

“Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Md. Rule 8-131(a). Here, the circuit court noted that it did not need to reach a decision on the business judgment rule’s application to decide on whether to grant the preliminary injunction. Because the court did not come to its decision based on its analysis of the business judgment rule or the Delaware enhanced scrutiny standard, we decline to review this issue.

CONCLUSION

We hold that the circuit court erred in its interpretation of § 2-505(b)(2) because the plain language of the statute does not require “express” authorization within a corporation’s charter to allow a non-unanimous action in the form of written consent

solicitations. We, therefore, reverse the decision of the circuit court and remand for the court to dissolve the preliminary injunction.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY REVERSED;
CASE REMANDED TO THE CIRCUIT
COURT TO DISSOLVE ITS INJUNCTION
ISSUED ON JANUARY 29, 2024; COSTS
TO BE PAID BY APPELLEES.**