

Circuit Court for Howard County
Case No. 13C15106167

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2498

September Term, 2019

BYUNG MOOK CHO,

v.

CHONG OK LIM, *et al.*

Friedman,
Wells,
Zic,

JJ.

Opinion by Wells, J.

Filed: March 12, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2015, Appellees Chong Ok Lim (“Chong”) and Young Jun Jun (“Young”) sued Byung Mook Cho (“Byung”) in the Circuit Court for Howard County. Chong and Young alleged that they were defrauded through the conveyance of a dry-cleaning business that they purchased from Byung. The parties reached a settlement during a court-ordered settlement conference, but the agreement was not placed upon the record. The attorneys later reduced the agreement to writing. After the agreement was drafted, however, Byung refused to sign it and otherwise refused to perform consistent with the agreement.

Byung’s refusal led the parties to file an array of motions. First, on May 17, 2017, Chong and Young filed a Motion to Enforce Settlement Agreement. At the June 29, 2017 hearing on this motion, the circuit court found that the settlement agreement should have been executed and ordered the parties to execute the agreement or perform the agreement’s terms within seven days. Eleven days following this hearing and with new counsel, Byung filed a Motion for Reconsideration & To Amend Judgment. The circuit court denied that motion. Chong and Young subsequently filed a Petition to Show Cause for Constructive Civil Contempt and sought attorneys’ fees.

Just prior to the civil contempt hearing, scheduled for September 12, 2017, Byung filed for bankruptcy. This automatically stayed the case in the circuit court for the duration of the bankruptcy case. Byung’s bankruptcy case stretched nearly two years and was dismissed in August 2019. In the meantime, Chong and Young participated in the bankruptcy hearing arguing for the dismissal of the case. Upon the bankruptcy case’s dismissal, Chong and Young renewed their petition for civil contempt. Following a hearing in October 2019, Byung agreed to execute the settlement agreement. Later, the parties

litigated on Chong and Young’s demand for attorneys’ fees. The circuit court awarded fees in the amount of \$119,237.48. The attorneys’ fees award included fees for work completed in the bankruptcy action.

Byung appealed the award of attorneys’ fees and presented four questions for our review, which we have slightly rephrased and reorganized for clarity purposes:¹

1. Was the circuit court’s award of attorneys’ fees in error due to its inclusion of legal work performed in Byung’s federal bankruptcy case?
2. Was the circuit court’s award of attorneys’ fees in error because it was based on a civil contempt petition that Chong and Young agreed to dismiss?
3. Did the circuit court err by awarding attorneys’ fees based on a record that was

¹ Byung’s verbatim questions read (emphasis in original):

- I. DID THE TRIAL COURT ERR IN AWARDING ATTORNEY’S FEES TO APPELLEES PURSUANT TO RULE 1-341 WHERE:**
 - a. ATTORNEYS’ FEES WERE INCURRED FOR WORK PERFORMED IN THE APPELLANT’S FEDERAL BANKRUPTCY PROCEEDING; AND WHERE**
 - b. THE APPELLEES REQUEST FOR ATTORNEYS’ FEES WAS BASED UPON A CONTRACT AND A SHOW CAUSE ORDER THE APPELLEES AGREED TO DISMISS; AND WHERE**
 - c. THE RECORD IS ENTIRELY DEVOID OF FINDINGS OF FACTS TO SUPPORT BAD FAITH AND/OR WITHOUT SUBSTANTIAL JUSTIFICATION?**
- II. DID THE COURT ERR IN ASSESSING ATTORNEY’S FEES AWARD BASED UPON THE LODESTAR METHOD?**

devoid of facts to support a finding that Byung maintained or defended the lawsuit in bad faith and/or without substantial justification?

4. Did the circuit court err in its method of computing attorneys' fees?

For the reasons that we will discuss, we conclude that the circuit court erred in awarding attorneys' fees for work completed in the bankruptcy case. But we hold that the circuit court did not err in awarding attorneys' fees based on a show cause order that Chong and Young filed. With respect to the third issue, the circuit court properly awarded attorneys' fees that were factually based and upon substantial justification. Finally, we hold that the circuit court did not err in the way in which it calculated the attorneys' fees award.

FACTUAL AND PROCEDURAL BACKGROUND

A. Failed Conveyance

This case was originally brought to the Circuit Court for Howard County in 2015 due to a failed conveyance to Chong and Young of a dry-cleaning business, New Belvedere Cleaners, owned by Byung. According to Byung, he acquired the business in September 2015 when the previous owner was evicted from the building for failure to pay rent.

Before this Court, the parties stipulate, just as they did before the bankruptcy court, that the specific facts regarding the failed conveyance are unimportant for the resolution of the attorneys' fees issue. The parties do not give us any details about the failed conveyance of the business. And, this background information does not appear in any of the documents from Byung's Record Extract or Chong and Young's Appendix. What is apparent with respect to the failed conveyance, however, is that Chong and Young filed a complaint

against Byung alleging fraud in the transaction.

B. Failed Settlement Agreement

On April 13, 2017, the parties participated in a settlement conference before the Honorable Lynne Ann Battaglia and reached an agreement. The settlement agreement, however, was not put on the record because of the absence of a court reporter during the settlement conference. When the settlement agreement was reduced to writing, Byung refused to sign and execute the agreement. Byung’s refusal was based on his claim that Chong and Young breached a confidentiality provision and a restrictive covenant provision in the agreement. In testimony before the Honorable Dennis M. Sweeney in the circuit court, Byung declared that he did not sign the settlement agreement (1) because he was upset that Chong came to the dry cleaner business and told Byung that his landlord was going to turn his lease over to her and (2) because he felt like he could not conduct business in the community anymore because Chong had untruthfully told members of the community that he had scammed her and labeled him as a “fraudulent person.”

C. Bankruptcy Case

Three days before a hearing scheduled to address Chong and Young’s Petition to Show Cause for Constructive Civil Contempt, Byung filed for Chapter 11 Bankruptcy. The proceedings in the bankruptcy court stayed the proceeding in the circuit court until the bankruptcy case’s dismissal in August 2019.

In the bankruptcy proceeding, Byung argued that the settlement agreement should be rejected as an executory contract. Chong and Young, for their part, actively participated in the bankruptcy proceeding against Byung. In his brief, Byung notes that Chong and

Young’s attorneys documented more than four hundred hours of legal work that they spent in the bankruptcy proceeding. Also, as Byung points out to us, the bankruptcy court considered and denied Chong and Young’s petitions for attorneys’ fees for the work performed by the attorneys before that court.

D. Resumption of Circuit Court Proceedings

The bankruptcy court dismissed Byung’s proceedings on August 16, 2019. The circuit court case resumed with Chong and Young’s contempt proceedings against Byung. At the October 18, 2019 contempt hearing before the Honorable Ronald A. Silkworth, counsel for Chong and Young informed the court that the parties had reached an agreement: Byung would execute the 2017 settlement agreement and in exchange Chong and Young would withdraw their motion for contempt. At that hearing, Chong executed the contract on the record and Chong and Young’s counsel requested that the circuit court take no action.

Following the contempt hearing, Chong and Young filed a petition for an award of attorneys’ fees. A hearing was set for January 28, 2020 with the presiding judge as the Honorable William V. Tucker. After that hearing, in a written memorandum and order, the court granted Chong and Young’s petition and ordered Byung to pay \$119,234.48 in counsel fees.

DISCUSSION

I. STANDARDS OF REVIEW

The parties agree on the relevant standards of review. When reviewing questions of law, we apply a *de novo* standard of review. *Beall v. Holloway-Johnson*, 446 Md. 48,

76 (2016). Although we grant to the trial court “broad discretion in granting or denying equitable relief, where an order [of the trial court] involves an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine whether the trial court’s conclusions are ‘legally correct’ under a *de novo* standard or review.” *Schisler v. State*, 394 Md. 519, 535 (2006).

Meanwhile, when reviewing mixed questions of law and fact, we apply a clearly erroneous standard of review:

If any competent material evidence exists in support of the trial court’s factual findings, those findings cannot be held to be clearly erroneous. When reviewing mixed questions of law and fact, we will affirm the trial court’s judgment when we cannot say that its evidentiary findings were clearly erroneous, and we find no clear error in that court’s application of the law.

Fischbach v. Fischbach, 187 Md. App. 61, 88 (2009) (citations omitted).

Finally, the review of an award of attorneys’ fees is reviewed on an abuse of discretion standard. *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 487 (2002) (citations omitted). We will only disturb a circuit court’s award of attorneys’ fees in situations where the circuit “court’s discretion was exercised arbitrarily and the judgment was clearly wrong.” *Petrini v. Petrini*, 336 Md. 456, 468 (1994). More specifically, with respect to attorneys’ fees cases brought under Md. Rule 1-341, we determine whether the case was “maintained or defended in bad faith and/or without substantial justification.” *Barnes v. Rosenthal Toyota*, 126 Md. App. 97, 104-105 (1999). If it is determined that the action was maintained or defended with bad faith and/or without substantial justification, then the circuit court’s award of attorneys’ fees will be “affirmed unless it is clearly erroneous or involves an erroneous application of law.” *Major v. First Va. Bank*, 97 Md. App. 520, 529-

30 (1993) (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 267-68 (1991)). Then, if the circuit court judge finds that the bad faith or absence of substantial justification “merits the assessment of costs and/or attorney[s]’ fees[, the] finding will be affirmed unless it was an abuse of discretion.” *Id.*

In sum, we review questions of law *de novo*, mixed questions of law and fact on a clearly erroneous standard and review the attorneys’ fees award under Rule 1-341 on an abuse of discretion standard.

II. THE CIRCUIT COURT ERRED BY AWARDING CHONG AND YOUNG ATTORNEYS’ FEES FOR WORK PERFORMED FOR THE FEDERAL BANKRUPTCY PROCEEDING.

A. The Parties’ Contentions

Apart from whether attorneys’ fees should have been awarded for work performed on the case before the circuit court, Byung’s first argument is that the circuit court erred by awarding attorneys’ fees to Chong and Young’s attorneys for work performed before the bankruptcy court. Byung asserts that this case is controlled by our decision in *Major*, 97 Md. App. 520. He points us to our language from that case where we declared:

It is axiomatic that the Rules should be interpreted by their plain meaning, and this issue relates directly to the scope of Rule 1–341. Rule 1–341 applies to “any civil action.” Maryland Rule 1–202 defines “action” as any steps taken to enforce rights in a “court.” “Court,” for the purposes of Title I of the Rules, is a “court of this state.” We agree with appellants that the scope of Rule 1–341 does not encompass proceedings in federal court.

Id. at 536. According to Byung, because 100.3 out of 109.3 hours of work occurred by Chong and Young’s senior counsel and 330.2 out of 340.5 of co-counsel for Chong and Young occurred during the automatic stay, and because these fees were requested to the

bankruptcy court and denied by the judge there, the trial court erred as a matter of law.

Chong and Young counter that the award of attorneys’ fees, including the work performed for the bankruptcy court, was properly given by the trial judge. Specifically, Chong and Young “contend that the fees incurred by in (*sic*) litigating the validity and enforceability of the Settlement Agreement in the bankruptcy court was a necessary consequence of [Byung’s] unjustified bankruptcy filing, which was done solely by [Byung] in retaliation of [Chong and Young] attempting to enforce the Settlement Agreement.” Chong and Young attempt to distinguish *Major* on this basis by pointing out the fact that here, they “were forced to file motions and fight tooth and nail in the bankruptcy court” in order to prevent Byung from avoiding his obligations in the circuit court. Additionally, Chong and Young point us to a different portion of our *Major* opinion in which we allowed for attorneys’ fees to be awarded for work performed on the portions of the case that occurred for Maryland courts.

B. Analysis

Attorneys’ fees may be awarded under Rule 1-341, provided that the Rule’s requirements are met:

(a) Remedial Authority of Court. In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys’ fees, incurred by the adverse party in opposing it.

Accordingly, in order for Chong and Young to prevail on their action for the award of attorneys’ fees, there must be a finding that Byung’s conduct in maintaining or defending

the proceeding was in bad faith and without substantial justification. If such a finding is made, the court may require Byung to pay the reasonable attorneys’ fees that Chong and Young owe their attorneys.

Additionally, definitions of important terms in the above Rule prove useful in interpreting the Rule:

(a) Action. “Action” means collectively all the steps by which a party seeks to enforce any right in a court or all the steps of a criminal prosecution.

....

(i) Court. “Court” means a court of this State and refers, as applicable under the circumstances, to the court (1) to which the title, chapter, or rule applies or (2) in which the particular action or proceeding has been filed or properly could be filed.

....

(w) Proceeding. “Proceeding” means any part of an action.

Md. R. 1-202.

The first issue we must resolve is whether a Maryland state court may award attorneys’ fees for work performed in proceedings of the court of another jurisdiction. For purposes of this analysis, we begin by assuming, for the sake of argument, that the remaining requirements of Rule 1-341 are met, namely, the existence of bad faith and/or substantial justification to warrant the award of attorneys’ fees. We then look only to whether fees for work performed by Chong and Young’s attorneys for the bankruptcy proceeding could be awarded by a Maryland judge.

On this issue, Byung points us to this Court’s decision in *Major*. In *Major*, the action was filed in Maryland state court but then removed to federal court. *Major*, 97 Md.

App. at 525. The case was remanded back to Maryland state court, however, upon the plaintiff voluntarily dismissing her federal Racketeer Influenced and Corrupt Organizations Act (“RICO”) claim. *Id.* After a dismissal by the circuit court with leave to amend and subsequently a dismissal with prejudice, the defendants filed a motion for attorneys’ fees under Rule 1-341, the same rule that Chong and Young now argue for attorneys’ fees. *Id.* at 525-26. The circuit court granted a total of \$25,000 in attorneys’ fees. *Id.* at 526.

We agree with Byung that *Major* controls here with respect to whether attorneys’ fees can be awarded with respect to work completed by parties to a case before a federal court. *Major* provides us with a straightforward, plain-meaning interpretation of the key terms in Rule 1-341:

Rules should be interpreted by their plain meaning, and this issue relates directly to the scope of Rule 1-341. Rule 1–341 applies to “any civil action.” Maryland Rule 1–202 defines “action” as any steps taken to enforce rights in a “court.” “Court,” for the purposes of Title I of the Rules, is a “court of this state.”

Id. at 536. Following this plain-meaning interpretation of Rule 1-341, we held in *Major* that the scope of the Rule does not extend to work performed for federal courts: “We agree with [the] appellants that the scope of Rule 1–341 does not encompass proceedings in federal court . . . We therefore hold that attorneys’ fees, to the extent that they were incurred solely in federal court, cannot be reimbursed under Maryland Rule 1–341.” *Id.* at 536-39.

Again, today we are faced with the same scenario as that of *Major*, albeit for attorneys’ work performed for a federal bankruptcy court rather than for a federal district court. We think it is unwise to depart from our holding in *Major* and are unpersuaded by

Chong and Young to do so. The holding from *Major* has direct application to the matter before us today. Moreover, our Court and the Court of Appeals have reached the same conclusion—that Rule 1-341 allows attorneys’ fees to be obtained only for work performed for Maryland courts—on other occasions as well. For example, in a case involving a request for attorneys’ fees in a Maryland circuit court for legal work performed for a Health Claims Arbitration Office (“HCAO”), the Court of Appeals opined:

The short answer to the[] contentions is that Rule 1–341 was adopted by this Court in the exercise of its rulemaking power under Maryland Constitution art. IV, § 18(a) which concerns “the practice and procedure in and the administration of the appellate courts and in the other courts of this State[.]” By CJ § 3–2A–03(a) the HCAO “is created as a unit in the Executive Department. It is headed by a Director appointed by the Governor with the advice and consent of the Senate.” The interpretation urged by Dr. Newman raises substantial questions concerning the constitutional power of this Court to regulate conduct before an executive agency. We therefore interpret Rule 1–341 not to include within the sanction power of a circuit court the power to sanction conduct in HCAO proceedings.

Newman v. Reilly, 314 Md. 364, 377 (1988). Similarly, in *Marquardt v. Papenfuse*, citing *Newman*, this Court held that the Rule 1-341 did not provide authority for the circuit court to award attorneys’ fees for work performed at administrative proceedings apart that occurred prior to the commencement of the lawsuit in the circuit court. *Marquardt v. Papenfuse*, 92 Md. App. 683, 713-15 (1992).

In attempting to differentiate *Major* from the facts here, Chong and Young assert that Byung

rests his argument on the *Major* case, contending that Md. Rule 1-341 “does not entitle [Chong and Young] to fees incurred in pursuing [Byung] in bankruptcy.” (See Appellant’s Brief, page 12). However, [Chong and Young] contend that the fees incurred by litigating the validity and enforceability of the Settlement Agreement in the bankruptcy court was a

necessary consequence of [Byung]’s unjustified bankruptcy filing, which was done solely by [Byung] in retaliation of [Chong and Young] attempting to enforce the Settlement Agreement.

We find that Chong and Young’s argument here misses the mark. Neither Rule 1-341 nor our *Major* opinion creates an exception for work performed in courts of other jurisdictions simply because such work is “a necessary consequence of [an opposing party’s] unjustified . . . filing[s,]” as Chong and Young assert. Indeed, we cannot rationalize how Chong and Young’s participation in the bankruptcy proceeding was any more necessary than that of the opposing parties in the above-discussed cases. In *Major*, the party claiming attorneys’ fees participated in the federal case because the case had been removed to federal court from state court before being remanded back to state court. *Major*, 97 Md. App. at 525. In *Newman*, the initial filing to the dispute occurred in the HCAO before the case made its way to the circuit court. *Newman*, 314 Md. at 370. And in *Marquardt*, similar to *Newman*, the attorneys’ work commenced before the Commissioner of Land Patents prior to the case being filed in circuit court. *Marquardt*, 92 Md. App. at 713. In short, we can think of no basis—and Chong and Young do not provide us with one—on which it would be rational to create an exception for work that is considered “necessary” to complete in other jurisdictions with respect to the proceedings before Maryland state court, especially given our precedent to the contrary.

We note that this Court does articulate an exception in our *Major* opinion to the general rule against awarding fees for work performed for other jurisdictions—although it is a different exception than the one that we reject in our preceding paragraph. If any work product that appears in the federal court case also appears in the Maryland state court case,

reimbursement by a Maryland court is appropriate. *Major*, 97 Md. App. at 540 (“We add, however, that while we agree . . . that Rule 1–341 does not reach fees incurred solely in federal court, we believe that [the prevailing party is] entitled to fees for work product presented in circuit court even if that same work product was presented in federal court.”). As Chong and Young, however, make no argument that the work performed for the bankruptcy court was work product used before the circuit court, we find that this acknowledged exception is inapplicable for purposes of our analysis.

As a final point on this issue, we must note that Chong and Young requested and were denied attorneys’ fees by the federal bankruptcy court for their work in those proceedings. We believe it to be the role of the federal bankruptcy court to determine whether attorneys’ fees are appropriate in legal work performed for its proceedings. Similarly, we believe the bankruptcy court to be in the best position to come to a correct conclusion as to whether attorneys’ fees should be granted in its proceedings. Therefore, we decline to second guess the determination of the bankruptcy court in its decision that an award of attorneys’ fees for the work performed for its proceedings was inappropriate.

III. THE CIRCUIT COURT DID NOT ERR IN AWARDING ATTORNEYS’ FEES BASED ON THE SHOW CAUSE ORDER AND CONTRACT.

Byung’s remaining arguments concern the award of attorneys’ fees with respect to the work performed for both the Maryland court proceedings and the federal bankruptcy court proceedings. Because we have already concluded that the work completed solely for the federal bankruptcy court proceedings may not be awarded, we consider the subsequent issues of this opinion solely with respect to legal work completed for Maryland court

proceedings.

A. The Parties' Contentions

In this part of Byung's brief, Byung contends that the bases for Chong and Young's requested relief come from the Show Cause Order and Paragraph 10(j) of their contract. Byung claims that other than these two sources, Chong and Young's Petition for Attorneys' Fees "provides no other grounds or authority for the requested relief" of an award of attorneys' fees. More specifically, Byung breaks this broad argument into three separate parts.

1. Estoppel Argument

First, Byung claims that Chong and Young are estopped from being awarded attorneys' fees because they agreed to dismiss their petition for contempt without requesting attorneys' fees. This argument centers on the agreement between Byung and Chong and Young, in which Byung agreed to sign and execute the settlement agreement in exchange for Chong and Young agreeing to drop their petition for contempt. With respect to this agreement, the following exchange took place between Byung's attorney and Chong and Young's attorney:

[COUNSEL FOR BYUNG]: Okay, would you be willing to sign [the contract] now so that we could just enter it[,] and then I'm guessing what the posture would be that we just strike the contempt hearing, is that right?

[COUNSEL FOR CHONG AND YOUNG]: And I would ask that that be entered in this record. And beyond that, then I would ask that the [circuit c]ourt take no action.

Due to Chong and Young's failure to make reference to preserve their request for attorneys' fees, according to Byung, the doctrine of equitable estoppel applies and prevents him from

being liable for the award of attorneys’ fees.

Chong and Young argue that the doctrine of equitable estoppel is entirely inapplicable. Chong and Young initially contest Byung’s assertion that they never dismissed their Petition for Contempt. Rather, they claim that they simply requested that the circuit court take “no action” against Byung in exchange for him signing the settlement agreement. Chong and Young argue that their request to take no action was in reference to the action for civil contempt and had nothing to do with attorneys’ fees. Because nothing exists in the record that amounts to a promise to withdraw their request for attorneys’ fees, Chong and Young assert that no promise exists on which Byung could have justifiably relied. Chong and Young also argue that Byung does not state what detriment he suffered as they do not believe continuing with a hearing on attorneys’ fees made Byung worse off than had he not signed the agreement and been held in civil contempt. For his part, Byung never filed a reply brief to address this or any other of Chong and Young’s arguments in writing. Finally, Chong and Young argue that, as Byung had signed but as of the time of them filing their brief had not executed the settlement agreement, the civil contempt motion is still open and pending until Byung executes the agreement.

2. Breach Argument

Second, Byung argues that the fee shifting language of the contract requires a breach of contract for there to be an award of attorneys’ fees. He asserts that no finding of a breach has been made, and, therefore, the award of attorneys’ fees could not have been granted. Specifically, Byung relies on the language in Section 10(j) of the contract, which reads:

If any future proceeding is needed to enforce the terms of this

Agreement, the non-prevailing Party agrees to pay all fees, costs, and expenses incurred by the prevailing Party, as determined by a court of competent jurisdiction, in connection with the enforcement and litigation of the Agreement, including but not limited to, all reasonable attorneys' fees and expert witness costs.

According to Byung, because the hearing was not brought to enforce the agreement but rather to have Byung sign the agreement, it was inappropriate for the circuit court to award attorneys' fees. Chong and Young, on the other hand, read the contract to not require any breach for attorneys' fees to be awarded. They state that future proceedings are needed to enforce the terms of the settlement agreement that allows for attorneys' fees, and that the civil contempt proceeding had the purpose of achieving just that.

3. *Sua Sponte* Argument

Third, Byung claims that the circuit court awarded attorneys' fees *sua sponte* and that doing so was an error. Byung argues that while he was on notice of the hearing for attorneys' fees, he was not on notice that the attorneys' fees were being requested through Rule 1-341. At the hearing, counsel for Byung argued:

And as far as [Rule] 1-341, I don't even see that raised in their petition. I see it hinted at, but I'm not on notice to come in here and argue a [Rule] 1-341 motion because there wasn't a [Rule] 1-341 motion[;] this was a Petition for Attorneys' Fees pursuant to an executed contract.

Byung looks to Rule 2-311(c), which states that a "written motion and response shall state with particularity all the grounds and authorities in support of each ground." Byung also states that Rule 1-341 requires that the motion be brought by an adverse party. Without such notice, Byung reasons that the court's decision was *sua sponte* and in error.

Chong and Young argue that their 2017 Petition to Show Cause for Constructive

Civil Contempt, to which they simply renewed in their 2019 Petition to Show Cause for Constructive Civil Contempt, specifically sought an attorneys’ fees award via Rule 1-341 through its language that the fees were sought due to Byung’s “bad faith.” They look to Md. Rule 2-303(b) to support their argument, which states that a “pleading shall contain only such statements of fact as may be necessary to show the pleader’s entitlement to relief or ground of defense.” They claim that Md. Rule 2-311(c) has no requirement that a specific rule be pled.

B. Analysis

1. Estoppel Analysis

Byung’s first argument on this front is that the doctrine of estoppel prevents attorneys’ fees from being awarded: “[Chong and Young] are equitably estopped from relying on the Show Cause as a basis for their Petition for Fees.” In support, Byung quotes a passage of the Court of Appeals’ decision in *Cunninghame*:

Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.

Cunninghame v. Cunninghame, 364 Md. 266, 289 (2001) (quoting *Knill v. Knill*, 306 Md. 527 (1986)). While this passage is undoubtedly helpful to define equitable estoppel, it does not paint the full picture as to what is required for equitable estoppel to exist. A cursory examination of *Cunninghame*, however, reveals that more is required to succeed on an equitable estoppel claim. First, “equitable estoppel requires that the party claiming the

benefit of the estoppel must have been misled to his injury and changed his position for the worse, having believed and relied on the representations of the party sought to be estopped.” *Cunninghame*, 364 Md. at 289 (internal quotation and citations omitted). Byung makes no assertion that he was misled, nor does he make any assertion that he changed his position for the worse based on the representations of Chong and Young or their attorneys. He simply argues that he “relied on their dismissal of the Show Cause and [Chong and Young’s] requested relief including an award of attorneys’ fees[,]” but he does not explain how he was misled or describe any change in his position. Accordingly, his claim for equitable estoppel cannot succeed.

Of equal importance, Byung makes no argument as to how the three basic elements that comprise equitable estoppel are met. “[E]quitable estoppel is comprised of three basic elements: ‘voluntary conduct’ or representation, reliance, and detriment.” *Cunninghame*, 364 Md. at 289-90 (internal quotation and citations omitted). Although Byung does not explicitly make the connection, we understand his argument to imply that the first voluntary conduct or representation element is satisfied via Chong and Young’s counsel’s statement requesting that the court take no further action. Looking at the context of the statement as it was made to fulfill Chong and Young’s side of the bargain, we agree with Chong and Young that this statement should be interpreted only with respect to them not pursuing an action of civil contempt, unrelated to attorneys’ fees. Regardless, with respect to the second element of reliance, Byung states that he relied on Chong and Young’s dismissal of the show cause action but does not explain how he relied on it. And as for the third and final element, as Chong and Young state and as we agree, Byung “does not set

forth exactly what detriment [he] suffered.” We do not see how Byung would be in any different of a position or suffer any detriment whether he relied on what he believed to be a promise not to pursue attorneys’ fees or not.

2. Breach Analysis

Next, we determine whether breach is required to allow for attorneys’ fees based on Section 10(j) of the settlement agreement between the parties. Neither party disputes that “when the language [of a contract] is clear and unambiguous[,] ‘we must presume that the parties meant what they expressed,’ leaving no room for construction.” *See Smith v. Luber*, 165 Md. App. 458, 471 (2005) (quoting *General Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985)). The relevant language of the contract here is clear and unambiguous. Section 10(j) reads that “[i]f any future proceeding is needed to enforce the terms of this Agreement, the non-prevailing Party agrees to pay all fees . . . in connection with the enforcement and litigation of the Agreement, including but not limited to, all reasonable attorneys’ fees[.]”

We do not agree that this language requires a breach to occur in order for attorneys’ fees to be awarded. The term “breach” is not written in the contract. Instead, the contract clearly refers to “any future proceeding” that is needed “to enforce the terms” of the settlement agreement. As this case has proven, a finding of breach need not have occurred to necessitate proceedings to ensure enforcement of the settlement agreement. Rather than execute the settlement agreement as agreed upon in 2017 even after the circuit court ordered him to do so, Byung refused to sign the agreement until 2019. The civil contempt proceedings brought by Chong and Young were simply them trying to secure enforcement

of the settlement agreement—which is precisely what Section 10(j) of the contract speaks to. While the courts made no finding of breach, that does not change the fact that those proceedings were “future proceeding[s] needed to enforce the terms of this Agreement” and thus Byung, as the non-prevailing party, could be required “to pay all fees . . . in connection with the enforcement and litigation of the Agreement, including but not limited to, all reasonable attorneys’ fees[.]” Accordingly, we determine that the circuit court did not err with respect to Section 10(j). Given the clear and unambiguous language of the contract, we find no merit in Byung’s argument to the contrary.

3. *Sua Sponte* Argument

We likewise find Byung’s *sua sponte* argument unavailing. Here, the crux of Byung’s argument is that he was not provided with notice that he would be arguing against an award of attorneys’ fees due to bad faith according to Rule 1-341. That Rule provides that if bad faith or lack of substantial justification is found in maintaining or defending an action, then the circuit court can award reasonable attorneys’ fees. Byung argues that because Rule 1-341 was not mentioned by name, then his right to notice according to Rule 2-311(c) was violated. Without a pleading for Rule 1-341, which is required by that Rule, Byung asserts the judge acted in *sua sponte* fashion.

We do not read Rule 2-311(c) as rigidly as Byung. Rule 2-311(c) does not necessarily require that a party must mention by citation the specific statute. Rule 1-341 allows for attorneys’ fees when a proceeding was maintained or defended in bad faith, and Chong and Young in their 2017 Petition to Show Cause for Constructive Civil Contempt as renewed by their 2019 Petition to Show Cause for Constructive Civil Contempt

specifically pled for attorneys’ fees on account of bad faith. We conclude that this satisfied Rule 2-311(c)’s requirement to “state with particularity the grounds and authorities in support of each ground” as well as Rule 2-303(b)’s requirement that pleadings “shall contain only such statements or facts as may be necessary to show the pleader’s entitlement to relief or ground of defense.”

Therefore, we conclude that Chong and Young sufficiently pled Rule 1-341, making the court’s action not one *sua sponte*, and furthermore find that Byung was sufficiently on notice to address the bad faith aspect of attorneys’ fees under Rule 1-341. Accordingly, we find no error in the finding of the circuit court on this account.

IV. THE CIRCUIT COURT DID NOT BASE ITS AWARD OF ATTORNEYS’ FEES ON A RECORD THAT WAS DEVOID OF FACTS TO SUPPORT THE EXISTENCE OF BAD FAITH OR LACK OF SUBSTANTIAL JUSTIFICATION.

A. The Parties’ Contentions

Byung here contends that the circuit court did not base its award of attorneys’ fees on a record that exhibited that he had acted in bad faith or without substantial justification per Rule 1-341. According to Byung, “[t]he record and the Order are completely devoid of any fact finding or other analysis.” Byung contests that the circuit court judge made “no inquiry of what occurred before The Honorable Judge Sweeney at the June 29, 2017 hearing to determine if in fact [Byung]’s refusal to execute the Contract was a colorable claim.” Byung maintains that he did not execute the agreement because he believed that material terms had been violated.

Chong and Young note that Judge Sweeney specifically determined that the

settlement agreement was valid and that no justification existed for Byung not to sign the settlement agreement. Importantly, they also note that Judge Tucker, the circuit court judge who ordered the attorneys’ fees award, heard arguments from Byung and Chong and Young specifically on whether bad faith and/or a lack of substantial justification existed. They furthermore point out that in his order, Judge Tucker explained that he granted the award of attorneys’ fees because he found that Byung’s refusal to sign and execute the settlement agreement was without substantial justification.

B. Analysis

In order for a judge to award attorneys’ fees under Rule 1-341, the Rule requires that “the court find[] that the conduct of [the] party in maintaining or defending [the] proceeding was in bad faith or without substantial justification[.]” Specifically, “[t]he trial judge must make explicit findings of fact that a proceeding was maintained or defended in bad faith and/or without substantial justification.” *Major*, 97 Md. App. at 530 (internal citations omitted). In order to prevent “chilling access to the courts” and “innovation or exploration beyond existing legal horizons, unless such exploration is frivolous[.]” awards of attorneys’ fees under Rule 1-341 “is an extraordinary remedy[] and . . . should be used sparingly.” *Christian v. Maternal-Fetal Med. Assocs. of Md., LLC*, 459 Md. 1, 19-20 (2018) (internal citations and quotations omitted). Rule 1-341 “serves as a deterrent and is intended to compensate as opposed to punish. *Id.* at 19 (internal citations omitted).

First, it is clear that the circuit court found that the proceeding was maintained or defended in bad faith, per Rule 1-341. In his order, Judge Tucker wrote, in relevant part:

Upon review of the record, the Court notes that the parties reached an

agreement after attending a Settlement Conference on April 13, 2017. On May 17, 2017, the Plaintiffs filed a Motion to Enforce Settlement Agreement, contending that the Defendant, Byung Mook Cho, refused to execute the written agreement that memorialized the agreement reached at the Settlement Conference. Subsequently, the parties came before the Court on June 29, 2017. Based upon the testimony of [Byung], the Court ordered that an agreement was reached on April 13, 2017, that the agreement should be enforced, and directed the parties to execute the agreement within seven (7) days. **Still, [Byung] did not execute the agreement.**

....

At a Show Cause Hearing on October 18, 2019, **[Byung] finally signed the written settlement agreement.**

....

While the Court agrees with the Defendant’s assertion that he was exercising his right to stay this case, **the Court does find that [Byung]’s conduct prior to the stay was without substantial justification.** The parties had reached an oral agreement upon the conclusion of the Settlement Conference and memorialized such agreement in writing. **[Byung] was without substantial justification to refuse to sign the written agreement.** Further, even after this Court found that an agreement had been reached, that the agreement was enforceable, and ordered the parties to execute the written agreement, **[Byung] still refused to sign the agreement.** After such a finding, **[Byung]’s actions were without substantial justification. The actions taken by the [Chong and Young] have been in response to [Byung]’s refusal to execute the settlement agreement.**

(Emphasis added). Moreover, prior to issuing this order, Judge Tucker heard arguments at the attorneys’ fees hearing between the parties, which lasted approximately 26 transcript pages, that focused precisely on this issue. Accordingly, we are satisfied that the circuit court made “explicit findings of fact that [the] proceeding was maintained or defended . . . without substantial justification.” *See Major*, 97 Md. App. at 530 (internal citations omitted).

Furthermore, we note that while attorneys’ fees awards pursuant to Rule 1-341 “is

an extraordinary remedy[] and . . . should be used sparingly,” *see Christian*, 459 Md. at 19-20, the award here was granted in a scenario in which such sparing use is entirely appropriate. The actions taken by Byung in this case do not relate to the concerns of “chilling access to the courts” or suppressing “innovation or exploration beyond existing legal horizons[.]” *See id.* The award of legal fees was not granted due to the contestation of some innovate legal argument that Byung put forward in his defense. Rather, the remedy was applied to Byung because of his repeated refusal to sign and execute the settlement agreement. As such, we see it entirely appropriate and in line with Rule 1-341 that attorneys’ fees be awarded not to punish but to instead serve as a deterrent of such conduct and to compensate the opposing party due to such conduct. *See id.* at 19.

In conclusion, we do not agree with Byung that the circuit “judge’s assertion that [Byung] acted without substantial justification, (*sic*) is a bold conclusion, *sans* any finding of fact.” On the contrary, we believe that the circuit judge’s finding that Byung acted without substantial justification was, as the circuit judge wrote in the Order, due to the fact that Byung “still refused to sign the agreement” “even after [the circuit c]ourt found that an agreement had been reached, that the agreement was enforceable, and ordered the parties to execute the written agreement.” Accordingly, we find no error by the circuit court regarding the basis of its award.

V. THE CIRCUIT COURT DID NOT ERR IN ITS METHOD OF COMPUTING ATTORNEYS’ FEES.

A. The Parties’ Contentions

On the final issue, Byung contends that the circuit court erred in its method of

computing attorneys’ fees. Specifically, Byung takes aim at, as he alleges, the circuit court using the lodestar method of calculating attorneys’ fees, which he argues is an approach that has been rejected in Maryland. Byung cites *Monmouth Meadows Homeowners Ass’n v. Hamilton*, requiring that “trial courts are required to read such a term into the contract and examine the prevailing party’s fee request for reasonableness[,]” 416 Md. 325, 333 (2010) and claims that “[t]he trial court entirely failed to examine the reasonableness of the fee request in the context of Rule 19-301.5.” He goes on to state that beyond “vague entries, the [circuit] court received no evidence regarding the necessity of the work and how it related to the case in the circuit court. The trial court conducted no inquiry and provided no consideration of the factors in Rule 19-301.5.”

Chong and Young, meanwhile, are unclear as to why Byung believes that the lodestar method was even applied as the circuit court’s order did not breakdown its calculation of the award. They argue that Md. Rule 19-301.5 provides factors that should be, but are not required to be, considered by the circuit court when determining the amount of its award. Importantly, Chong and Young claim that the reasonableness of the fees was stipulated to by the parties at the fee petition hearing. Accordingly, they believe that Byung’s argument now contesting the fee calculation is “baseless.”

B. Analysis

The parties agree that Rule 19-301.5 provides the factors that courts should look at to determine the reasonableness of fees. The factors provided by the Rule include:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the attorney;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the attorney or attorneys performing the services; and

(8) whether the fee is fixed or contingent.

Importantly, the reasonableness of fees was discussed by counsel for both parties and the circuit court judge:

[Counsel for Chong and Young]: **I believe we've stipulated to at least the reasonable -- reasonableness of the fees themselves. That our firm charged a reasonable rate** as did the expert witness. The issue lies in whether the work performed was necessary for the goal in mind.

....

[Counsel for Byung]: **Not challenging any of the professionalism of it, I -- I believe that they charged a fair rate and that they did the work they said that they've done and those sorts of things.** My argument is A was it necessary given the posture of the case at the time that they performed the work and B is it even the responsibility of [Byung] given the nature of the agreement which they're relying on to switch the fee. **So it's really a legal argument more than it is a question of what they've done or alleged to have done -- or have done, I believe they've done it.**

[Counsel for Chong and Young]: Your Honor[,] I have [co-counsel] here to testify as to the attorney fees, I also have Mr. Runch (*sic*) here to testify as to the expert witness fees. **And we've discussed I think that [counsel for Byung] understands that their testimony would be that**

everything was fair, reasonable, and necessary. If Your Honor would like testimony on that we could do it. I am going to keep them up here because issues could arise during legal argument in which their testimony may be necessary.

THE COURT: **Do you think it would be necessary?**

[Counsel for Byung]: **I don't think so[,] Your Honor, I think that the -- the -- I think that the issue really lies in the agreement upon which the basis for the claim is, and the posture of the case procedurally when all these fees were incurred.**

THE COURT: Okay. Alright, I would suggest let's proceed without them, have them here in case they are going to be needed.

(Emphasis added).

We read the above colloquy between counsel and the circuit court judge to be an unambiguous stipulation as to the reasonableness of the attorneys' fees. If Byung had an issue with the reasonableness as to the attorneys' fees, he had the unmistakable opportunity to raise the issue in circuit court. Instead, he explicitly declined to do so and instead stipulated to the attorneys' fees reasonableness. Accordingly, we decline to consider the issue as the reasonableness was stipulated to.

Even if we were to consider the reasonableness, however, we, like Chong and Young, are unclear as to why Byung believes that the lodestar method was utilized. Chong and Young raised this issue in their brief, but Byung failed to file a reply brief to clarify why he thinks the lodestar method was utilized. Still, looking at the matter through Rule 19-301.5, Byung concedes in his brief that factors 1, 2, 3, 7, and 8 were addressed. Given that this list is not a rigid set of requirements, *see Monmouth Meadows Homeowners Ass'n., Inc.*, 416 Md. at 337-38 (finding that a circuit “court also may consider, in its discretion,

any other factor reasonably related to a fair award of attorneys’ fees), we find no error in the circuit court basing its decision on consideration of these factors.

CONCLUSION

For the reasons discussed, we vacate the circuit court’s judgment with respect to its issuance of attorneys’ fees for work performed solely for the bankruptcy court. We remand the case to the circuit court and instruct it to modify its award of attorneys’ fees in a way not inconsistent with this opinion. Specifically, while the circuit court may allow fees for work product that overlaps between the two cases, no work performed solely for the bankruptcy court may be included. As far as attorneys’ fees awarded with respect to work performed in the proceedings in the Maryland circuit court, we affirm the award.

**THE JUDGMENT OF THE
CIRCUIT COURT FOR HOWARD
COUNTY IS AFFIRMED IN PART
AND REVERSED IN PART. CASE
REMANDED FOR THE COURT
TO REASSESS THE AWARD OF
ATTORNEYS’ FEES IN A
MANNER NOT INCONSISTENT
WITH THIS OPINION.
APPELLANT AND APPELLEES
TO EVENLY SPLIT THE COSTS.**