Circuit Court for Baltimore County
Case No. 03-C-18-009235

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED

No. 2522

September Term, 2019

BRIGHTON COURT LLC

v.

LORI CIOCIOLA, ET UX.

No. 0328

September Term, 2020

ALAN KLATSKY, ET AL.

v.

PATRICK CIOCIOLA, ET UX.

Graeff,
Wells,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: March 12, 2021

Brighton Court, LLC, Prestige Development, Inc., and Alan Klatsky (appellants) filed motions in the Circuit Court for Baltimore County seeking attorney's fees from Patrick and Lori Ciociola (appellees), following the entry of summary judgment in favor of appellants in a civil suit filed by the Ciociolas. The court awarded Brighton $9,729.16 in attorney's fees, but denied Klatsky's and Prestige's requests. Appellants, whose individual appeals were consolidated, present two arguments, which we have slightly rephrased, for our review:

> I. Did the circuit court err in: A) awarding Brighton only 1/3 of the attorney's fees it requested, pursuant to a fee-shifting provision in a contract between Brighton and the Ciociolas, and/or B) using the wrong monetary numbers to calculate the award?
>
> II. Did the circuit court err in denying Prestige's and Klatsky's requests for attorney's fees pursuant to Md. Rule 1-341?

For the following reasons, we shall affirm, on this record, the court's methodology of calculating Brighton's award of 1/3 of the attorney's fees requested, but shall direct that court to correct what appears to be a mistaken mathematical calculation of the amount of the 1/3 award, and shall affirm the court's denial of Prestige's and Klatsky's requests for attorney's fees.

## FACTS

In 2009, Brighton Court, LLC, a Maryland company, contracted with Prestige Development, Inc., a custom home builder, to have a "spec" home[1] built on a lot owned by Brighton at 13306 Brighton View Court, Phoenix, Maryland. Once the home was built,

[1] A "spec" home is one constructed before a specific buyer is under contract.

Brighton rented the home over the next seven years to a variety of tenants. Relevant to the circumstances of this case, in 2014, Brighton repaired a crack in the poured concrete foundation of the home. In the following year, Brighton caused some grading and drains to be installed because of water leaks around the basement sliding door.

In January 2017 (eight years after construction on the house)[2], Patrick and Lori Ciociola, husband and wife, signed a residential contract of sale with Brighton for the purchase of the home "as is." The contract included a statutory Maryland Residential Property Disclosure and Disclaimer Statement, in which Brighton asserted, among other things, that there were no problems with the home's foundation and there was no evidence of leaks or moisture in the basement. As part of their pre-settlement due diligence, the Ciociolas hired a home inspector who reported some water infiltration around the basement sliding door. At the Ciociolas' request, Brighton lowered the patio outside the basement door as a means intended to fix the problem.

Brighton and the Ciociolas settled on the sale on 26 May 2017. On the morning of settlement, Patrick notified Klatsky that there was some water in the basement.[3] Brighton agreed to, and following settlement, completed some modest regrading and caulking to address the problem.

In August 2017, the Ciociolas discovered and advised Brighton of water infiltration and several vertical foundation cracks in the basement. Because the foundation was still

[2] Brighton rented the house, over the eight years, to various tenants.

[3] Klatsky was the resident agent and sole member of Brighton, and president and sole shareholder of Prestige.

under warranty to Brighton from the contractor who installed it, Brighton arranged for the contractor to repair the foundation. The Ciociolas, however, refused to let the contractor make the repairs. Instead, the Ciociolas hired an engineer to inspect the foundation, who recommended repairing the cracks by excavating around the foundation, at a cost of $82,000. The Ciociolas demanded that Brighton pay this amount to have the work done. Brighton refused. In October 2018, the Ciociolas had the basement repaired by injecting, from inside the basement, polyurethane into four cracks in the foundation, for a total cost of $8,100.

On 14 September 2018, the Ciociolas filed in the circuit court a five-count complaint against Brighton, Prestige, and Klatsky, which the Ciociolas amended on 13 May 2019 to include an additional two counts, alleging defects in the home stemming from the cracks in the foundation. Specifically, the Ciociolas alleged the home sold to them was a "new home" and appellants breached several implied and express statutory warranties applicable to new home sales (Counts 1 and 2); appellants made negligent and fraudulent misrepresentations and deceived the Ciociolas in the contractual disclosure statement (Counts 3, 4, and 5); and appellants failed to comply with statutory new home warranty and consumer protection laws (Counts 6 and 7).[4] The Ciociolas sought $250,000 in damages, plus attorney's fees and costs, in each count, but sought also $1,215,000, plus

[4] *See* Md. Code Ann., Real Property Art., §10-203(a) (governing breach of implied warranty); §10-202 (governing breach of express warranty); and §10-601, *et. seq*. (governing new home warranty protections); and Commercial Law Art., § 13-101, *et. seq.* (the Consumer Protection Act).

attorney's fees and costs, in the count alleging violations of Maryland's new home warranty law.

Appellants moved for summary judgment. They sought dismissal of the counts against Klatsky and Prestige on grounds that they were not parties to the residential contract of sale; Klatsky acted only as Brighton's agent and was not responsible personally; and, Prestige was nothing more than the home's builder eight years earlier. Appellants sought dismissal of counts 1, 2, 6, and 7 on grounds that the eight-year-old home was not new when sold. Lastly, appellants sought dismissal of counts 3, 4, and 5 on grounds that there was no evidence that they were aware of any defects in the home and therefore there was no evidence of misrepresentation or fraud. The court agreed with appellants' arguments and granted their motion for summary judgment.

Brighton petitioned then the court for attorney's fees in the amount of $28,911.60, pursuant to a provision in the sales contract between it and the Ciociolas that survived merger with the deed.[5] Its attorney, who represented all of the defendants/appellants,

[5] The fee-shifting provision in the contract of sale provided:

> 36. ATTORNEY'S FEES. In any action or proceeding between Buyer and Seller based, in whole or in part, upon the performance or non-performance of the terms and conditions of this Contract, including, but not limited to, breach of contract, negligence, misrepresentation or fraud, the prevailing party in such action or proceeding shall be entitled to receive reasonable attorney's fees from the other party as determined by the court or arbitrator. . . . The provision of this Paragraph shall survive closing and shall not be deemed to have been extinguished by merger with the deed.

attached to the motion a four-page affidavit that included an explanation of his fees. In this affidavit, he stated that:

> 9. . . . Each count in Plaintiffs' Amended Complaint was directed to each Defendant, so the effort required to defend Brighton was the same if only it had been sued. The only time invested to defend Prestige Development, Inc. and Mr. Klatsky that did not also relate[] to Brighton was the argument that Prestige Development, Inc. and Mr. Klatsky were not parties to the contract between Plaintiffs and Brighton so they were not responsible for any damages to Plaintiffs. I would estimate that the time to defend Prestige Development, Inc. and Mr. Klatsky, separate and apart from the time to defend Brighton, was one (1) hour at most.
>
> 10. This litigation involved novel legal issues, including what constitutes a new home. Plaintiffs' argued that a new home is any home which is transferred for the first time to a buyer. Brighton argued that a new home is determined on a case-by-case basis based on the particular facts of each transaction. The litigation also concerned a seller's obligation to report prior repairs made to the premises to buyers, even repairs that seller believed were completed successfully. These and other issues required substantial legal research in both Maryland and other jurisdictions.
>
> 11. The discovery phase of this litigation was extensive because it involved the preparation of and responses to Interrogatories and Requests for Production of Documents, review of hundreds of pages of documents and hundreds of photographs, review of expert's reports, review of estimates and invoices for work performed or to be performed on Plaintiff's property, attending depositions, completing on-site inspection of the property, and attending a mediation session, a pre-trial settlement conference, and a motion's hearing. The preparation of the forty-two (42) page Motion for Summary Judgment was extremely time consuming as it involved a detailed legal and factual analysis of each of Plaintiff's claims, as was the review of Plaintiffs' responses to the motion and preparation of a reply to the motion.

Attached to the motion were 13 monthly billing letters from the attorney to Klatsky, as agent for Brighton. The letters contained itemized billing that included dates; a description of the services rendered; and the amount of time dedicated to those services. The entries for services used only the generic term "client" and did not distinguish between the three

appellants.[6] Also attached to the motion were each appellant's answers to the amended complaint and interrogatories, and responses to the requests for production of documents, all of which were similar across the appellants.

The Ciociolas filed a response opposing the request for attorney's fees. The Ciociolas argued that Prestige and Klatsky could not claim attorney's fees under the contract because they were not parties to it, and Brighton's motion did not distinguish any time spent as between the appellants. Following a hearing on the matter, Brighton filed a revised request for attorney's fees, increasing the amount sought from $28,911.60 to $32,406.10. The increase sought was based on additional work counsel performed on the motion requesting attorney's fees, specifically, attending the hearing and filing an additional supporting memorandum.

The court filed a written order and opinion awarding Brighton $9,729.16 in attorney's fees, which purported to be 1/3 of $29,187.50.[7] The court stated that $29,187.50 in attorney's fees was reasonable to defend the instant litigation, but the court held that Brighton had failed to meet its burden of demonstrating it was entitled to that amount, explaining:

> Co-Defendant provides an affidavit from Defense Counsel estimating that he only spent "one hour at most" preparing a defense for the other Co-Defendants, and a billing statement that offers no discernable method of

[6] As examples, the entries for services included: "Conference in office with client"; "review of client comments"; "E-mail to client"; "Correspondence to client"; and "Telephone conference with client[.]"

[7] Although Brighton requested originally $28,911.60 in its petition for attorney's fees and amended that amount to $32,406.10, the court based its use of $29,187.50 on an internal "client ledger" that Brighton filed with the court on 12 January 2020.

> distilling what amount of work is attributable to each defendant. Consequently, this Court is not convinced that Defense Counsel allocated most if not all his time toward Co-Defendant. In fact, a more thorough review of the line-items on Co-Defendant's billing statement subverts Defense Counsel's assertions. To wit, the billing for June 27, 2019 indicates Defense Counsel attended a four-hour deposition for Mr. Klatsky, but fails to identify whether he was deposed in his individual capacity, as the owner Brighton Court LLC's, or as President of Prestige Development, Inc. Regardless, this clearly exceeds the estimated time claimed in the affidavit. While this Court acknowledges the various challenges that can arise while representing multiple defendants against several claims, simply submitting an affidavit and supplying the court with mere guesswork regarding the allocation of time billed to each defendant is inadequate. The onus must remain on the attorneys to maintain accurate billing, especially while handling claims involving multiple clients. Hindsight and speculation simply will not suffice. Here, the billing statement is far too convoluted to avoid conjecture.

Given the "nature and complexity of the claims and litigation," the court believed it was "more likely" that defense counsel had "expended a relatively equal amount of time and effort in preparing a defense for each Defendant." Therefore, the court apportioned the total requested attorney's fees into thirds for each of the defendants and awarded Brighton one-third, or $9,729.16. Brighton filed a motion to alter the order, which the court denied.

Prestige and Klatsky filed subsequently a motion for attorney's fees pursuant to Md. Rule 1-341, which permits a court to award attorney's fees if the court finds that a party maintained or defended a proceeding in bad faith or without substantial justification. The court denied the motion, finding that the Ciociolas had not acted in bad faith or without substantial justification. Prestige and Klatsky filed a motion for reconsideration, which the court also denied.

## DISCUSSION

### I. Brighton

Brighton argues that the court abused its discretion in awarding it only 1/3 of the amount it requested for fees because the time spent in defending the lawsuit was devoted almost entirely to Brighton's representation. Brighton argues that even if we were to conclude ultimately that the circuit court did not abuse its discretion in dividing the total fees by thirds, the "court still got the math wrong" and should have awarded Brighton $14,022.76 in attorney's fees, instead of $9,729.16. The Ciociolas respond that the court did not abuse its discretion in dividing the attorney's fees as it did because the court's decision was based on "sound legal principles and competent material evidence."

"Maryland generally adheres to the common law, or American rule, that each party to a case is responsible for the fees of its own attorneys, regardless of the outcome." *Royal Investment v. Wang*, 183 Md. App, 406, 456 (2008) (quotation marks and citation omitted). An exception to the rule is where the parties have contracted for an award of attorney's fees under certain circumstances. *Id*. at 456-57 (citation omitted). Where the parties' contract contains a provision providing that the prevailing party in litigation "shall be entitled" to reasonable attorney's fees from the other party, "the trial court d[oes] not have discretion to refuse to award fees[.]" *Myers v. Kayhoe*, 391 Md. 188, 207-08 (2006). The only area of discretion is in formulating the amount of the award. *Ochse v. Henry*, 216 Md. App. 439, 455, *cert. denied*, 439 Md. 331 (2014). On review, we will not disturb an award of attorney's fees "unless the court exercised [its] discretion arbitrarily or [its] judgment was clearly wrong." *Id*. at 455-56 (quotation marks and citations omitted)

(brackets in *Ochse*). *See also Wang*, 183 Md. App. at 457 ("[T]he trial court's determination of the [r]easonableness of [attorney's] fees is a factual determination within the sound discretion of the court, and will not be overturned unless clearly erroneous.") (quotations marks and citation omitted).

A circuit court's overarching "duty in fashioning an award pursuant to a contract is to determine the reasonableness of a party's request." *Ochse*, 216 Md. App. at 458. Maryland Rule 2-705 provides guidance for a court in determining the reasonableness of the request in those circumstances.[8] Rule 2-705(f)(1) states that "the court shall consider the factors set forth in Rule 2-703(f)(3) and the principal amount in dispute in the litigation, and may consider the agreement between party seeking the award and that party's attorneys and any other factor reasonably related to the fairness of an award."[9] A court is not required

[8] This Rule was adopted and became effective on 1 January 2014, and applies only to actions commenced after that time. Prior to its adoption, the Court of Appeals had suggested looking to the eight factors listed in Rule 1.5(a) of the Maryland Lawyer's Rules of Professional Conduct to determine what constituted a reasonable fee. *See Monmouth Meadows Homeowners Ass'n v. Hamilton*, 416 Md. 325, 336-37 (2010).

[9] Md. Rule 2-703(f)(3) lists the following 12 factors for a court to consider in determining an award of attorney's fees:

(A) the time and labor required;

(B) the novelty and difficulty of the questions;

(C) the skill required to perform the legal service properly;

(D) whether acceptance of the case precluded other employment by the attorney;

(E) the customary fee for similar legal services;

(continued)

to "explicitly comment on or make findings with respect to each factor." *Monmouth Meadows Homeowners Ass'n v. Hamilton*, 416 Md. 325, 337 n.11 (2010).

The party seeking an award of attorney's fees bears "the burden of providing the court with the necessary information to determine the reasonableness of its request." *Monmouth*, 416 Md. at 333 (quotation marks and citation omitted). "The sufficiency of the evidence presented as to attorneys' fees must be more than simply the number of hours worked, but less than a line by line analysis of services rendered." *Wang*, 183 Md. App. at 458 (quotation marks and citation omitted). "[I]t is incumbent upon the party seeking recovery to present detailed records that contain the relevant facts and computations undergirding the computation of charges[.]" *Id*. at 458-59 (quotation marks and citations omitted). "[W]ithout such records, the reasonableness, *vel non*, of the fees can be determined only by conjecture or opinion of the attorney seeking the fees and would therefore not be supported by competent evidence." *Id*. at 459 (quotation marks and citations omitted). "[W]hen separate claims, each allowing fee-shifting, are filed against

(F) whether the fee is fixed or contingent;

(G) any time limitations imposed by the client or the circumstances;

(H) the amount involved and the results obtained;

(I) the experience, reputation, and ability of the attorneys;

(J) the undesirability of the case;

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

(L) awards in similar cases.

different defendants, the lawyer must be prepared to establish how much time is allocable to the claims for which fee-shifting is sought against each of the defendants." *Diamond Point Plaza Ltd Partnership v. Wells Fargo Bank, N.A.*, 400 Md. 718, 760 (2007). It is understood, however, that a precise allocation may not always be practicable. *Id*. at 761 ("It is not reasonable to expect the lawyer to have in tow an industrial engineer with a stop watch to measure how much time was devoted to one claim or another.").

### A. Did the circuit court err in selecting a divisor of 1/3 to determine Brighton's attorney's fees?

There is no dispute that Brighton was the prevailing party in the action filed by the Ciociolas or that the fees requested were reasonable. Rather, Brighton argues principally that the circuit court abused its discretion in awarding it only 1/3 of the requested fees because the time spent on defending the lawsuit was spent demonstrably on defending Brighton. As evidence that Brighton was the law firm's main client in the litigation, Brighton points out that only seven pages of the 42-page summary judgment motion defended Klatsky and Prestige; the claims against Klatsky and Prestige were of no merit simply because they were not parties to the contract; and the rest of the motion focused on the Ciociolas' substantive claims that the home was "new" and misrepresentations were made about the condition of the home when sold. Additionally, Brighton points out that on each of its attorney's itemized billing statements, the client was identified as Brighton, not Klatsky or Prestige, and the discovery responses were nearly identical for all three defendants. Brighton argues therefore that it was unreasonable for the court to "demand that each [billing] activity be allocated to a particular defendant[.]" We disagree and are

persuaded that the court's 1/3 divisor for awarding attorney's fees was reasonable under the circumstances.

From the court's written opinion, it clearly was aware of the evidence on the issue of attorney's fees and was aware of the applicable law. It nevertheless found the attorney's affidavit "inadequate" because it supplied "the court with mere guesswork regarding the allocation of time billed to each defendant[.]" Additionally, the circuit court found the attorney's claim that he spent "one hour at most" on defending Prestige and Klatsky questionable where the case involved multiple defendants, several claims, and diverse theories of defense. The court seemed troubled particularly by the generic billing of a four-hour deposition of Klatsky by appellants' counsel, which exceeded clearly the defense attorney's asserted total "one hour at most" claim. Given the court's doubt as to the amount of time defense counsel spent defending Prestige and Klatsky, which had different defenses than Brighton, and the lack of any designation regarding "other" clients in defense counsel's 12-months of billing, we find no error by the circuit court in dividing the fees requested by one-third.

### B. Did the circuit court err in its numerical calculation of 1/3 of the attorney's fees?

Brighton argues next that, even if we were to hold that the circuit court did not err in using the 1/3 divisor for calculating attorney's fees, the court "got the math wrong" and should have awarded Brighton $14,022.76 in attorney's fees, not $9,191.66. On this record, we must agree.

Brighton argues that the court should have applied its divisor to $31,812.50, the amount requested in its memorandum following the hearing on its request for attorney's fees. As its formula was explained, the court should have subtracted $4,237.50 from that amount, which is the amount Brighton claimed to have expended in recovering the attorney's fees. The sum of $27,575 should have been divided by three for a total of $9,191,67.[10] Brighton argues that the court should have then added back to that sum, $4,237.50, being the amount it alone expended for recovery of its attorney's fees, plus $593.60 for costs, for a total sum of $14,022,77. The Ciociolas did not respond in their appellate brief to Brighton's argument regarding the court's calculations.[11] We agree that the court should have begun its calculations with a base of $31,812.50. We are persuaded by Brighton's further calculations, i.e. removing the sum of $4,237.50 from the beginning sum that is then divided into thirds, but adding it to the overall calculation, would be the reasonable application of the 1/3 divisor under the circumstances. In short, although the trial judge was reasonable in using 1/3 as the divisor, he erred apparently in the mathematical application of that factor to the record before him. Accordingly, we shall vacate the court's attorney's fees award of $9,191.66, and direct the entry of a new award in the amount of $14,022.77.

[10] Conventional math endorses "rounding up" sums of fifty cents or greater. Thus, the amount of 1/3 of $27,575 is $9,191.67, rather than the $9,191.66 claimed by Brighton.

[11] During oral argument, the Ciociolas did argue that Brighton should not be reimbursed for time spent to collect its attorney's fees, analogizing it to a credit card company suing for a debt, but also suing for money that was spent to collect the debt.

## II. Prestige and Klatsky

Prestige and Klatsky argue that the circuit court erred in denying their request for attorney's fees under Md. Rule 1-341, which allows a court to award costs for bad faith filings. They argue that "there was no basis in law or fact for the claims" brought against them by the Ciociolas because they were not parties to the contract and had no knowledge of any latent defects in the grading or foundation of the home. They claim that the Ciociolas pursued a suit against them only "to cast a wide net hoping to secure a settlement." The Ciociolas respond that the circuit court found properly that their claims were non-frivolous, albeit "novel."

Md. Rule 1-341 governs a court's ability to award fees for bad faith filings and provides, in pertinent part:

> (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.

The Rule "is considered an extraordinary remedy, which should be exercised only in rare and exceptional cases." *Christian v. Maternal-Fetal Medicine Assocs. of Maryland, LLC*, 459 Md. 1, 19 (2018) (quotation marks and citations omitted). We explained the objective of the Rule in *Needle v. White*, 81 Md. App. 463, 470, *cert. denied*, 319 Md. 582 (1990):

> to fine-tune the judicial process by eliminating the abuses arising from . . . litigation that is clearly without merit. The inherent danger in the process is that overzealous pursuit of the objective may result in . . . stifling the enthusiasm or chilling the creativity that is the very lifeblood of the law.

(quotation marks and citations omitted). *See also Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 680 (2003) (stating that a litigant should not be "penalized by an award of attorney fees or costs for innovation or exploration beyond existing legal horizons unless such exploration is frivolous") (quotation marks and citations omitted) and *Christian*, 459 Md. at 20 (stating that "judges have the responsibility of properly applying the rule to calibrate its application such that abusive practices are deterred and aggrieved parties are compensated without stunting the development of the law") (citation omitted).

Maryland Rule 1-341 requires a circuit court "to make two separate findings, each with different, but related, standards of review." *Christian*, 459 Md. at 20 (citation omitted). First, the court must find that a party's conduct during a proceeding, either in defending or maintaining the action, was without substantial justification or was done in bad faith. *Id*. at 20-21. We then review this finding "for clear error or an erroneous application of the law." *Id.* at 21 (citation omitted). We will review the evidence "in a light most favorable to the prevailing party[,]" and the appealing party bears the burden of demonstrating the court committed clear error. *Id*. (quotation marks and citations omitted). Second, the court must "find that the acts committed in bad faith or without substantial justification warrant the assessment of attorney's fees." *Id*. (citation omitted). We review this finding under an abuse of discretion standard. *Id.*

"Bad faith," in the context of Rule 1-341, is defined as "vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons." *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md 254, 268 (1991) (citation omitted). The test for determining substantial justification is whether the litigant had "a reasonable basis for

believing that a case will generate a factual issue for the fact-finder at trial." *Id*. (quotation marks and citations omitted). "Substantial justification is established where the legal position taken by counsel is fairly debatable." *Needle*, 81 Md. App. at 473 (quotation marks and citation omitted).

The circuit court concluded that Brighton failed "to provide any evidence to support its claim that the Ciociolas acted in bad faith" and failed to show that the Ciociolas' decision to pursue the action was without substantial justification. The court noted that the Ciociolas advanced several causes of action, ranging from agency claims, allegations of fraud and failure to disclose, and breach of warranty claims. The court stated that the Ciociolas' "claims were justified by the fact that the foundation of their home was cracked and in alarming condition." The court continued that, although it granted appellants' motion for summary judgment, "the decision to [do so] was not one that was easily reached." The court added that "the Ciociolas raised legitimate legal questions of law and, perhaps, even drew attention to an area in Maryland's Real Property Article that might require clarification."

Under the circumstances, we are not persuaded that the court committed clear error in determining that the Ciociolas' lawsuit was not brought in bad faith or without substantial justification. Prestige was not a legal stranger to the Ciociolas, but rather the builder of their home. Klatsky was the only human "person" with whom the Ciociolas interacted from the seller's side when buying their home. The Ciociolas' claims for breach of warranty and misrepresentation regarding the eight-year-old as a "new to them" home were unusual, but not wholly without merit. Given the extraordinariness of the Rule 1-341

remedy and the lack of evidence of bad faith or substantial justification, we find no error by the circuit court. *See Legal Aid Bureau, Inc v. Bishop's Garth Assocs. Ltd. Partnership*, 75 Md. App. 214, 222, *cert. denied*, 313 Md. 611 (1988) ("Rule 1-341 sanctions are not to be imposed upon a losing party because an innovative or tenuous legal theory was not embraced by the court[.]").

**ATTORNEY'S FEE AWARD AS TO BRIGHTON VACATED AND CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE COUNTY WITH DIRECTION TO ENTER AN ATTORNEY'S FEE AWARD OF $14,022.77 TO BRIGHTON.**

**JUDGMENT AFFIRMED AS TO PRESTIGE AND KLATSKY.**

**COSTS TO BE DIVIDED ½ BY APPELLEES AND ½ BY PRESTIGE AND KLATSKY.**