Circuit Court for Anne Arundel County
Case No.: C-02-CV-20-002064

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 601

September Term, 2023

MICHAEL R. HUNTLEY

v.

CAPE ARTHUR IMPROVEMENT ASSOCIATION, INC.

Zic,
Albright,
Eyler, James, R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.

Filed: June 24, 2024

*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 Rule 1-104(a)(2)(B).

This appeal and cross-appeal concern the interplay of riparian rights and restrictive covenants. Michael Huntley, appellant/cross-appellee, jointly with his wife, Karen Huntley,[1] owns a property fronting on the Magothy River in Cape Arthur, a residential subdivision governed by the Cape Arthur Improvement Association ("CAIA"), appellee/cross-appellant. Mr. Huntley appeals from a decision of the Circuit Court for Anne Arundel County declaring that the CAIA acted within its authority and not arbitrarily, unreasonably, capriciously, or in bad faith when it denied permission for the Huntleys to construct a pier.

He presents two questions for our review, which we have rephrased:

> I. Did the circuit court err by holding that the CAIA enforced a restrictive covenant in a manner that did not deprive Mr. Huntley of his common law and statutory riparian rights?
>
> II. Did the circuit court err by finding that the CAIA's denial of Mr. Huntley's request to build a pier was not made in bad faith, arbitrarily, unreasonably, and/or in a manner inconsistent with the general plan of development?

In its cross-appeal, the CAIA presents one question, which we have also rephrased:

> Did the circuit court err in its application of the doctrines of *res judicata* and/or collateral estoppel?

[1] Ms. Huntley was not a party to the litigation in the circuit court and is not an appellant/cross-appellee in this Court. Though her interests as a joint property owner are implicated by the resolution of this lawsuit, we are satisfied that she falls into a well-recognized exception to the mandatory joinder rule. *See Bodnar v. Brinsfield*, 60 Md. App. 524, 532 (1984) ("Persons who are directly interested in a suit and have knowledge of its pendency and refuse or neglect to appear and avail themselves of their rights are concluded by the proceedings as effectually as if they were named in the record." (cleaned up)); *City of Bowie v. MIE, Props., Inc*., 398 Md. 657, 703 (2007) (identifying the "controlling principles" of the non-joinder exception as "the non-joined party's knowledge of the litigation affecting its interest and its ability to join that litigation, but failure to do so" (emphasis omitted)).

For the following reasons, we conclude that Mr. Huntley's action is not barred by *res judicata* and that he is not collaterally estopped from litigating the issues before us in this appeal. We answer both of his questions in the negative and affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS[2]

In 1950, Arthur and Lydia Giddings (collectively "the Developers"), purchased a large parcel of land in Severna Park, Maryland, that became known as "Cape Arthur," which they subdivided for sale. In its current form, Cape Arthur is a 213-home residential subdivision. The CAIA is the governing homeowners' association, which itself is governed by a thirteen-member Board of Directors ("the Board").

The Cape Arthur development plan included certain "covenants, conditions and restrictions[,]" that were to "run with the land and to be binding upon each and all of the purchasers, their heirs and assigns, of said lots, plots, or building sites, or any part thereof" ("the 1950 covenants"). As pertinent, Covenant 13 provides:

> No piers, boat shelters or other buildings are to be built on the beach, or in the waters, without written permission from the Developers.

In 1986, the Developers conveyed to Cape Arthur Beach, Inc. ("CABI") certain reserved areas within Cape Arthur and "all rights with respect thereto, all as more particularly set forth in the aforementioned covenants." In 1987, CABI transferred all of its remaining interest in Cape Arthur to the CAIA.

[2] In setting out the background facts, we borrow from this Court's prior unreported decision, *Michael Huntley, et ux. v. Cape Arthur Improvement Ass'n, Inc.*, No. 2363, Sept. Term, 2012 (filed Jan. 6, 2014).

In 2009, the Huntleys purchased their home in Cape Arthur at 10 Beach Road ("the Property"), which is located on Lot 5 of the original subdivision plat. Beach Road runs parallel to the shoreline of the Magothy River. The southernmost portion of Beach Road is common space owned by the CAIA, which is improved with a community pier that extends into the Magothy River, boat slips available to rent, and a community beach. The water is very shallow along the shoreline, and community members use it for swimming, kayaking, and other water sports.

North of the common area are eight waterfront properties with addresses on Beach Road, numbered 4, 8, 10, 12, 14, 16, 18, and 20. The northernmost property – 20 Beach Road – has waterfront access on both the Magothy River to the east and Browns Cove to the north. It is improved with a pier that extends into Browns Cove. The remaining seven properties fronting only on the Magothy River do not have piers. As we will discuss, at various times, some of these property owners have requested permission to build piers, but their requests uniformly have been denied by the CAIA.

Six other properties in Cape Arthur front on either Browns Cove or a cove on Cypress Creek at the southern end of the development. All are improved with piers.

A. The First Lawsuit

In March 2007, the Huntleys' predecessors in interest, Wayne and Kathleen Wallace, requested permission from the CAIA to construct a pier at the Property. The CAIA denied their request. Thereafter, the Wallaces, on advice of counsel, informed the CAIA that the Property was not bound by Covenant 13.

In November 2008, after the Wallaces obtained a Tidal Wetlands license from the Maryland Department of the Environment ("MDE"), the CAIA filed an action for declaratory and injunctive relief against the Wallaces in the Circuit Court for Anne Arundel County seeking to prevent them from constructing a pier. In the interim between the filing of that action and service, the Wallaces commenced construction of the pier. MDE issued a stop-work order and construction of the pier – then approximately 100 feet in length – ceased. During the pendency of that case, the Wallaces sold the Property to the Huntleys, who were substituted as defendants.

The circuit court held a three-day bench trial in June 2011. The CAIA asserted that Covenant 13 was binding on the Property, that construction of the pier was commenced without written permission from the CAIA, and, consequently, that the partially constructed pier must be removed. The Huntleys responded that Covenant 13 did not apply to Lot 5, relying upon a 1987 quitclaim deed that they asserted transferred an interest in Lot 5 free and clear of the covenants. Even if Covenant 13 applied, however, the Huntleys maintained that they should be allowed to retain the partially constructed pier and/or complete construction because they had vested rights in the pier; that the CAIA was equitably estopped from requiring them to halt construction and/or remove the pier; and that the CAIA has waived its right to enforce Covenant 13 by acquiescence or abandonment.

The circuit court issued a memorandum opinion and order in December 2011, which it later supplemented in response to the Huntleys' motion for reconsideration. The court ruled that Covenant 13 applied to the Property, concluding that the quitclaim deed did not

clearly express an intent to remove Lot 5 from the burdens of the covenants. It rejected the vested rights defense, concluding that the rights could not have vested given that the lawsuit was filed before construction commenced. Considering that the Wallaces began construction of the pier without permission from the CAIA, in violation of Covenant 13, the court ordered the Huntleys to dismantle it. Nevertheless, because the court concluded that the CAIA failed to give the Wallaces timely notice of the filing of the declaratory judgment action, it ruled that the CAIA should bear the cost to remove the partially constructed pier.

After holding a post-judgment hearing on the Huntleys' motion for reconsideration, the court rejected their affirmative defense of waiver. In so ruling, it opined:

> The covenant prohibiting piers, boat shelters or other buildings on the beach or in the waters of the community without written permission from the CAIA, as set forth in [Covenant 13], has been consistently applied and maintained from the time of the original developers. It was the intent of the Developers to keep the waters in front of the homes along Beach Road free of piers or other structures to preserve the unaltered view of the Magothy River and allow the residents of Cape Arthur the unobstructed access to the shallow water in front of those homes. *See, e.g., Steuart Transp. Co. v. Ashe*, 269 Md. 74, 97-98 (1973). The Court is convinced that the CAIA has continued to further the intent of the Developers by continually denying residents' request[s] to construct piers extending into the Magothy River.
>
> Defendants contend that the construction of the "extremely large, multi-slip community marina" violates the covenant and therefore the CAIA is estopped from prohibiting the completion of construction of the Huntley pier. . . . Presently, the only piers that are located off of the Beach Road properties are the community pier extending from the community beach property at the end of Beach Road and the pier off of the property at 20 Beach Road,[3] which were constructed in the 1960s. When contrasting these structures against the partially constructed pier at the Huntley property, it is

[3] As mentioned, this pier did not extend into the shallow waters of the Magothy River, but rather into Browns Cove.

> clear to the Court that the proposed pier is greater than any present structure that exists along the waterfront and would violate the common scheme and development plan of the CAIA that has been in place for over 60 years.

(Footnotes omitted.)

The Huntleys appealed from the circuit court's ruling and the CAIA cross-appealed on the issue of it bearing the cost to remove the pier. On January 6, 2014, this Court issued an unreported decision affirming the circuit court's decision. *Michael Huntley, et ux. v. Cape Arthur Improvement Ass'n, Inc.*, No. 2363, Sept. Term, 2012 (filed Jan. 6, 2014) ("*Huntley I*"). We reasoned that the Huntleys were "riparian landowners because they own 'land bordering upon, bounded by, fronting upon, abutting or adjacent and contiguous to and in contact with a body of water.'" *Huntley I*, slip op. at 9 (quoting *Olde Severna Park Improvement Ass'n, Inc. v. Gunby*, 402 Md. 317, 331 (2007) (citations omitted)). They were thus entitled to "construct riparian improvements" absent an enforceable restrictive covenant. *Id*. at 9-10. We held that Covenant 13 was a valid and enforceable restrictive covenant, that it expressly was intended to run with the land and bind future purchasers, and that the circuit court correctly ruled that it applied to the Property. *Id.* at 12-13; 15-18. Consequently, the Huntleys "were required to obtain consent from the CAIA as a condition precedent to constructing the pier." *Id*. at 13.[4] We affirmed the circuit court's determination

[4] In a footnote, this Court opined:

> The Huntleys argue, at length, that Covenant 13 improperly vitiates their riparian rights. The Huntleys, however, ignore the fact that the Developers expressly divested *all* Cape Arthur properties of the right to construct a pier without the prior approval of the CAIA. Accordingly, an

(continued…)

that the Huntleys' rights did not vest when construction of the pier commenced. *Id*. at 19. We also affirmed the court's decision to order the CAIA to bear the cost to dismantle the pier. *Id*. at 20-22.

The Huntleys filed a petition for a writ of *certiorari* in the Supreme Court of Maryland, which was denied. *Huntley v. Cape Arthur Improvement Ass'n*, 437 Md. 639 (2014).

B. The Second Lawsuit

On November 7, 2013, while their appeal in *Huntley I* remained pending, the Huntleys obtained a reinstated MDE Tidal Wetlands license to construct a 222-foot pier at the Property. On December 2, 2013, they requested permission from the CAIA to construct the pier.[5]

By email dated January 21, 2014, the Board notified the Huntleys that, on January 9, 2014, it voted to deny their request to construct a pier. The Huntleys requested that the CAIA provide the reasons for the denial. In March 2014, the Board responded that it was not obligated to justify its vote and did not intend to provide any reasons for the denial.

> analysis of the Huntleys' riparian rights absent a restrictive covenant such as Covenant 13 is of no significance to this Court.

Id. at 12 n.5 (emphasis in original).

[5] The Huntleys also requested that the Board include discussion of their application as an agenda item during the open portion of the CAIA meeting in January 2014. The then president of the CAIA informed the Huntleys that that request was denied.

Three months later, the Huntleys submitted a new request to construct a shorter pier – 111 feet in length – to the CAIA. In July 2014, the CAIA denied that request, also without providing reasons for its denial.

Nearly three years later, in March 2017, the Huntleys filed a complaint for declaratory and injunctive relief against the CAIA in the circuit court. The parties mediated the dispute and ultimately stipulated to the dismissal of the lawsuit. The settlement stipulation provided that the CAIA committed to

> consider any subsequent application submitted by the [Huntleys] to build a pier, which will be permitted to be presented in open session as early as the September 2017 Board meeting. The [Huntleys'] application will be considered on its merits and the Board will timely provide a written decision either approving or denying the pier request, which will state the reasons for its decision.

C. The 2017 Pier Application

On September 11, 2017, the Huntleys submitted a written request to build "a 222-foot long by 6-foot wide timber pier with a 10-foot long by 20-foot wide 'L' head and a boat lift." They attached a copy of a building permit issued by Anne Arundel County and the MDE Tidal Wetlands license.

The Huntleys made a formal presentation on their application at the September 19, 2017 open Board meeting. Thereafter, the Board held several meetings and calls to discuss the merits of the proposal before voting unanimously to deny the request in October 2017. By letter dated November 8, 2017, the CAIA provided the Huntleys with four reasons underlying its decision. First, the CAIA found it "compelling" that the Developers imposed a restrictive covenant governing the construction of piers that granted decision making

authority to the Developers, which later passed to the CAIA. Second, the CAIA determined that it was in the best interest of the community to take a "consistent position regarding the request for piers on Beach Road" and it previously had denied pier applications from the owners of 16 Beach Road, 4 Beach Road (twice), and 10 Beach Road. Next, the CAIA found that it was in the best interest of the community "for the cove along Beach Road to remain in its current state without the construction of piers" and for residents who desired to boat on the Magothy River to use the community pier. Fourth, the CAIA considered whether the "mood of the Community" had changed since the previous denials but determined that its decision continued to reflect the "predominant sentiments" of Cape Arthur. The CAIA closed by stating that it "remain[ed] willing to review and discuss any alternative proposals you may have now or in the future."

D. The Current Lawsuit

Almost three years later, Mr. Huntley filed this action seeking declaratory and injunctive relief and money damages. In Count I, he sought a declaration that the CAIA's denial of his 2017 pier application was "issued in bad faith, was unreasonable, arbitrary, high-handed, whimsical, captious, and unsupported by facts" and asked the court to order the CAIA to approve the request. In Count II, he sought a declaration that the CAIA's denial of the 2017 pier application improperly deprived the Huntleys of their riparian right of access and asked the court to award him $400,000 in compensatory and punitive damages for loss of their use and enjoyment of their property.[6]

[6] Mr. Huntley did not present any evidence on damages at trial.

The circuit court held a two-day bench trial in October 2022. In his case, Mr. Huntley testified and called four witnesses: David Chen, the president of the Board since 2020; Olivia Bourland, the former treasurer and president of the Board; Thomas Kearney, the president of the Board at the time of the 2017 pier application; and John Riganati, the vice president of the Board at the time of the 2017 pier application.

On April 21, 2023, the circuit court issued a lengthy memorandum opinion and order. The court made fifty-eight findings of fact, many of which pertain to the history of Cape Arthur and of this dispute set out above. As pertinent, the court found that the CAIA had rejected pier applications by property owners on Beach Road on four occasions: in 1993, 2004, 2007, and 2016. The CAIA Board consistently informed these property owners that the reason for the denial was to keep the beach and waterfront area "uncongested" and to allow community members to use the shallow waters for swimming and water sports, like kayaking and canoeing. "For 60 years, there have been no piers from Beach Road properties into the Magothy River." The CAIA had permitted "[g]roins[7] and small landings[.]" The only piers allowed in Cape Arthur were the community pier and piers extending into Browns Cove and the cove on Cypress Creek.

As Mr. Huntley acknowledged, the evidence showed that the Board permitted him to give a full presentation of his 2017 pier application and that they considered it on its merits. Kearney and Riganati both testified that the process for considering the Huntleys'

[7] A groin is "a structural shoreline stabilization measure comprised of stone, wood, plastic, steel, or other similar material that is: (a) Typically placed perpendicular to the shoreline; and (b) Designed to trap sand and reduce erosion." COMAR 26.24.01.02B(22-1).

application was consistent with the process used for other pier applications. The Board "was concerned that a lengthy pier into the Magothy River from Beach Road would disrupt the ability of community members to engage in recreational activity in the river, such as kayaking, canoeing, swimming, etc." This was consistent with the community sentiment, as assessed by the Board in informal communications with community members.

Mr. Huntley did not assert that any of the Board members harbored ill will or malice towards him or his wife and he did not allege that the decision to deny his pier application was tainted by fraud. Kearney and Riganati confirmed in their testimony that there was no ill will toward the Huntleys and that the Board had fairly considered the 2017 application with an open mind and had not delegated decision making authority to the non-Board members that it informally polled.

As a threshold matter, the circuit court considered whether all or part of the current litigation was barred under the related doctrines of *res judicata* and collateral estoppel. It determined that its prior decision in *Huntley I* conclusively determined that Covenant 13 applied to the Property, a matter not disputed by Mr. Huntley, but that the circuit court was not asked to decide in the earlier litigation whether the CAIA's denial of the Wallaces' pier application "was a reasonable determination, made in good faith." Further, the Huntleys did not file a counterclaim in the first lawsuit and the defenses it raised all pertained to the enforceability of Covenant 13 against their Property. For these reasons, the court determined that Mr. Huntley's claim that the CAIA made its decision to deny the 2017 pier application in bad faith, unreasonably, arbitrarily, high-handedly, whimsically, captiously,

and/or that the decision was unsupported by facts was not barred by *res judicata* and that he was not collaterally estopped from litigating the claim.

Turning to the merits, the court ruled that the Huntleys were riparian landowners who, by law, enjoyed rights of access to the water under the common law and by statute. Because a valid and enforceable restrictive covenant burdens the Property and limited the Huntleys' riparian right to construct a pier by conditioning it on approval by the CAIA, however, the only issue was whether the CAIA enforced Covenant 13 unreasonably, arbitrarily, or in bad faith. If not, the CAIA's decision was protected by the business judgment rule. The circuit court ruled that the CAIA's decision was consistent with its prior denials of pier applications by property owners on Beach Road, it was consistent with the general scheme of development which was reflected by the lack of any piers extending into the Magothy River except the community pier, and it was consistent with community sentiment. The Board also followed appropriate procedures in considering the 2017 pier application.

For those reasons, the court entered an order declaring that the CAIA "acted appropriately and within its[] authority when it denied the application for permission to build a pier submitted by [Mr. Huntley]" and denied Mr. Huntley's request for an injunction and money damages. Though the court ruled that the CAIA had authority to deny pier requests consistent with Covenant 13, it determined that the CAIA's refusal to provide any standards or guidelines governing its review of applications was "arbitrary and unreasonable." Consequently, it declared that the CAIA must provide "guidelines and

standards to be used in the approval process for piers or other structures" within 120 days of the filing of the judgment.[8]

This timely appeal followed.

STANDARD OF REVIEW

In an appeal from a judgment entered following a bench trial, we "review the case on both the law and the evidence." Md. Rule 8-131(c). "[We] will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and [we] will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id*. A trial court commits clear error if its factual findings are not supported by competent evidence. *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 339 (2017).

DISCUSSION

CROSS-APPEAL

Because the CAIA's cross-appeal concerns the threshold issues of whether this action is barred by *res judicata* and/or collateral estoppel, we address it first.[9] The distinct but related doctrines of *res judicata* and collateral estoppel prevent parties from relitigating

[8] The 120-day deadline passed in August 2023. Thereafter, Mr. Huntley filed a petition for contempt in the circuit court. Before the CAIA could respond, the court ruled that the petition for contempt would be stayed because of the pending appeal.

[9] In its reply brief, the CAIA argues for the first time that the "law of the case" doctrine also operates to bar relitigation of these issues. Because *Huntley I* and this case are separate lawsuits, the first brought in 2008 by the CAIA and the second brought in 2020 by Mr. Huntley, that doctrine has no applicability. *See, e.g., Schisler v. State*, 177 Md. App. 731, 743 (2007) (explaining that the law of the case doctrine stands for the proposition that a "ruling of an appellate court upon a question becomes the 'law of the case' and is binding on the courts and litigants *in further proceedings in the same case*" (emphasis added; quotation marks and citation omitted)).

matters that have already been decided and are based upon the judicial policy that "the losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on issues raised, or that should have been raised." *Colandrea v. Wilde Lake Cmty. Ass'n*, *Inc.*, 361 Md. 371, 390-91 (2000). Collateral estoppel, or issue preclusion, applies when a subsequent proceeding "'does not involve the same cause of action as a previous proceeding between the same parties[.]"' *Id*. at 388 (quoting *Mackall v. Zayre Corp*., 293 Md. 221, 228 (1982)). Under the doctrine of collateral estoppel, a previous judgment only precludes relitigation of "those facts or issues actually litigated in the previous action[.]" *Id*. (quotation marks and citation omitted). The foundation of the rule of collateral estoppel is that "the party to be bound must have had a full and fair opportunity to litigate the issues in question." *Welsh v. Gerber Prods., Inc*., 315 Md. 510, 518 (1989).

By contrast, *res judicata*, or claim preclusion, applies when a subsequent case "'involves the same cause of action as a previous proceeding between the same parties[.]"' *Colandrea*, 361 Md. at 388 (quoting *Mackall*, 293 Md. at 227). A subsequent claim must meet three required elements to be precluded:

> (1) the parties in the present litigation should be the same or in privity with the parties to the earlier case; (2) the second suit must present the same cause of action or claim as the first; and (3) in the first suit, there must have been a valid final judgment on the merits by a court of competent jurisdiction.

Id. at 389 (quotation marks omitted) (quoting *deLeon v. Slear*, 328 Md. 569, 580 (1992)). Under the doctrine of *res judicata*, the judgment in the previous action is conclusive "'not only as to all matters that have been decided in the original suit, but as to all matters which

with propriety could have been litigated in the first suit."' *Id*. (quoting *Alvey v. Alvey*, 225 Md. 386, 390 (1961)).

This action is not barred by *res judicata*. *Huntley I* was an action for declaratory and injunctive relief prosecuted by the CAIA and no counterclaim was filed. The issues raised by the CAIA concerned whether Covenant 13 applied to the Property, requiring permission from the CAIA prior to construction of a pier, and whether the CAIA was barred under the vested rights doctrine or equitably estopped from forcing the Huntleys to remove the pier and/or had waived or abandoned its right to enforce Covenant 13. Those claims are not identical to the claims raised by Mr. Huntley in this action, which concerns whether Covenant 13 allows the CAIA to deny outright any pier application and whether its denial of the 2017 pier application was made in bad faith, arbitrarily, or captiously.

The CAIA maintains that because these claims could have been raised in *Huntley I*, this action is barred. It is mistaken. It is well-established that because Maryland's counterclaim rule is permissive and not mandatory, a *defendant* in a first action is not barred from bringing subsequent claims against the *plaintiff* in the first action concerning the same general subject matter unless the later claim would nullify the initial judgment or would impair rights established in the initial judgment. *Mostofi v. Midland Funding, LLC*, 223 Md. App. 687, 698 (2015) (citing *Rowland v. Harrison*, 320 Md. 223, 232 (1990)). Examples of subsequent judgments which would nullify previous judgments include allowing the defendant "to enjoin enforcement of the [previous] judgment," or seek to "depriv[e] the plaintiff in the first action of property rights vested in him under the first judgment[.]" *Id*. (quotation marks omitted) (quoting *Rowland*, 320 Md. at 237). The claims

raised by Mr. Huntley, the defendant in the first action, would not nullify the prior judgment obtained by the CAIA, and, consequently, he is not barred from bringing this lawsuit.

Mr. Huntley *is* collaterally estopped from relitigating issues that were fully litigated and decided in *Huntley I*. Consistent with the circuit court's decision in that case, these issues include the validity and enforceability of Covenant 13, the applicability of Covenant 13 to the Property, that the CAIA did not waive or abandon its right to enforce Covenant 13, and that it was "the intent of the Developers to keep the waters in front of the homes along Beach Road free of piers or other structures to preserve the unaltered view the Magothy River and allow the residents of Cape Arthur the unobstructed access to the shallow water in front of those homes." Though this Court's decision in *Huntley I* addressed additional issues that are being raised in this case,[10] the circuit court did not clearly err in determining that those issues were not actually litigated in the circuit court in *Huntley I*. Because Mr. Huntley was not given a full and fair opportunity to litigate those matters in *Huntley I*, he is not collaterally estopped from litigating them in this case.

APPEAL

I.

The primary issue raised by Mr. Huntley in this appeal is whether the circuit court erred by ruling that the CAIA did not deprive him of his common law and statutory riparian rights when it denied his pier application. In his view, as a riparian landowner, he is imbued

[10] For example, our decision in *Huntley I* addresses whether the CAIA's denial of "the Huntleys' request to build a pier" was "high-handed, arbitrary, or captious[.]" *Huntley I*, slip op. at 1. Though this issue apparently was raised by the Huntleys on appeal, it was not actually litigated in the circuit court and was not essential to its judgment.

with a right to construct a pier so as to access the navigable waters abutting the Property and, though the CAIA may restrict that right by requiring permission, it "cannot use this permission requirement to deprive the Huntleys of their riparian right[.]" (Emphasis omitted.)

"A person who owns property bordering on, bounded by, fronting upon, abutting or adjacent and contiguous to a body of water is known as a riparian." *Worton Creek Marina, LLC v. Claggett*, 381 Md. 499, 508 (2004) (citing *Becker v. Litty*, 318 Md. 76, 82 (1989)). "[R]iparian property ownership includes rights regarding the use of the water that borders the land." *Id*. That "bundle of rights" includes rights:

> (i) of access to the water;
> ***(ii) to build a wharf or pier into the water***;
> (iii) to use the water without transforming it;
> (iv) to consume the water;
> (v) to accretions (alluvium); and
> (vi) to own the subsoil of nonnavigable streams and other "private" waters.

Gunby v. Olde Severna Park Improvement Ass'n, Inc., 174 Md. App. 189, 239-40 (emphasis added; quotation marks and citations omitted), *aff'd*, 402 Md. 317 (2007). The right of a riparian landowner to construct structures to provide access to the water also is accorded by statute:

> A person who is the owner of land bounding on navigable water . . . may make improvements into the water in front of the land to preserve that person's access to the navigable water[.]

Md. Code, Env't § 16-201(a).

It is equally well-established that riparian rights may be severed from land in a conveyance *or* that "they may be restricted by the owner of those rights." *Steuart Transp.*,

269 Md. at 98-99. It was conclusively determined by our decision in *Huntley I* that Covenant 13 is a valid and enforceable restrictive covenant that burdens the Property. When Lot 5, now known as 10 Beach Road, was conveyed by the Developers to the original purchaser and in all subsequent conveyances, it was conveyed subject to Covenant 13. Thus, we must determine whether and how Covenant 13 restricts the Huntleys' riparian rights in the Property.

"Where the language of the instrument containing a restrictive covenant is unambiguous, a court should simply give effect to that language unless prevented from doing so by public policy or some established principle of law." *City of Bowie*, 398 Md. at 682 (quotation marks and citations omitted). "[I]f the words are doubtful, they will be resolved in favor of keeping the restriction within the narrowest limits." *Peabody Heights Co. of Baltimore City v. Willson*, 82 Md. 186, 203 (1895). "The presence or absence of ambiguity in a contract (such as a restrictive covenant) is a question of law which we review *de novo*." *City of Bowie*, 398 Md. at 682 (footnote omitted).

Covenant 13 states: "No piers, boat shelters or other buildings are to be built on the beach, or in the waters, without written permission from the Developers." The language is unambiguous. The covenant restricts a property owner's right to construct a pier (or other structure) on the beach or in the water unless approval is granted by the Developers, now the CAIA.

Mr. Huntley asserts that because Covenant 13 does not absolutely prohibit the construction of piers, it is a "mere approval requirement[.]" He emphasizes that if the Developers had intended to reserve riparian rights, they could have stated that expressly.

He maintains that to construe Covenant 13 as the CAIA does, to include a "substantive right to actually approve or disapprove whether piers may be constructed[,]" would violate Env't § 16-103(a). We disagree.

That statute, which appears within the Wetlands and Riparian Rights title, states that "[e]xcept as specifically provided in this title, a riparian owner may not be deprived of any right, privilege, or enjoyment of riparian ownership that the riparian owner had prior to July 1, 1970." Env't § 16-103(a). The statute does not restrict the right of an owner of land to separate riparian rights from the ownership of that land in a conveyance or to restrict those rights by a conveyance of that land containing a covenant expressly burdening those rights.

Mr. Huntley further argues that "at worst," Covenant 13 is an architectural control requirement not unlike Covenant 8 in the 1950 covenants. That covenant states, in pertinent part, that the "Developers *shall approve* the exterior plan and construction of any building and the position of house on lot."[11] (Emphasis added.) By its plain language, Covenant 8 requires the Developers to preapprove the exterior plan and construction of a building on a lot in Cape Arthur. Though the Developers could require modifications to an exterior plan, the plain meaning of this provision would not permit the Developers to reject outright a plan to construct a home on a lot in the community.

[11] Covenant 8 further specifies the maximum number of stories for any house (two and one-half) and that construction may not be commenced until plans have been approved by the Developers.

Covenant 7 is more instructive. It specifies that there "*shall not be* erected, converted, permitted, maintained or operated any building or other structure for any purpose other than residential, and no business of any kind shall be permitted, *except by special permission, in writing, of the Developers*." (Emphasis added.) Covenant 7 is phrased in the negative. It bars any non-residential uses unless permission is granted by the Developers.

Like Covenant 7, Covenant 13 is phrased in the negative to prohibit piers, boat shelters, or other structures on the beach or in the water unless and until permission is granted. It cannot be construed to require the CAIA to grant permission for a pier. Because the Huntleys took title to the Property subject to Covenant 13, they received less than the full bundle of riparian rights.[12] Their right to make improvements in front of the Property to access the navigable waters is restricted and may not be exercised without permission from the CAIA. The CAIA has authority to withhold that permission because Covenant 13 limited the Huntleys' riparian rights otherwise afforded under the common law and by statute. Its decision to do so did not violate their rights.

II.

Mr. Huntley contends that the trial court erred by not declaring that the CAIA's decision to deny his pier application was made in bad faith and "fraudulently" and/or

[12] Mr. Huntley contends that the CAIA conceded at trial that he had full riparian rights. Though counsel may have been inartful when she used the phrase "full riparian rights," she continued by stating that those rights were validly restricted by Covenant 13. The CAIA's position on this issue has been clear throughout the litigation.

enjoining the CAIA from denying his application. Before addressing this argument, we set out the legal standards governing the CAIA's decision.

When a restrictive covenant grants approval or disapproval authority to a governing entity, the exercise of discretion to deny permission will be upheld so long as it was "based upon a reason that bears some relation to the other buildings or the general plan of development" and "th[e] refusal" was "a reasonable determination made in good faith, and not high-handed, whimsical or captious in manner." *Kirkley v. Seipelt*, 212 Md. 127, 133 (1957). This Court applied that standard in *Souza v. Columbia Park & Recreation Ass'n, Inc*., 70 Md. App. 655 (1987). There, property owners in a residential subdivision in Columbia were bound by a covenant providing that "[w]ithout the prior written approval of the Architectural Committee: (a) No lot shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise[.]" *Id*. at 657. The Souzas sought permission from the Architectural Committee to divide their lot into four smaller lots. *Id*. The committee denied approval and its decision was upheld by an appeals board. *Id*. Thereafter, the Souzas obtained subdivision approval from Howard County and recorded a subdivision plat. *Id*. The overarching homeowners' association filed suit, seeking declaratory and injunctive relief, which was granted by the circuit court. On appeal, we affirmed. *Id.*

We reasoned that though the covenant lacked "criteria for the evaluation of applications to subdivide[,]" it was enforceable under the authority of *Kirkley* so long as approval was not withheld unreasonably, in bad faith, whimsically, or captiously. *Id*. at 658. The appeals board had found that allowing subdivision of the Souzas' lot would be contrary to the best interest of the community and inconsistent with the original design

concept, which included larger "estate lots" like the Souzas' "among smaller lots[.]" *Id*. at 659. These reasons were not unreasonable, arbitrary, or in bad faith.

We return to the case at bar. The Board provided four reasons for its denial of the Huntleys' pier application. Of particular relevance, it found that it was "in the best interest of the Community" to take a "consistent position regarding the request for piers on Beach Road" and "for the cove along Beach Road to remain in its current state without the construction of piers." The trial court made non-clearly erroneous findings that there were no piers extending into the Magothy River in Cape Arthur except the community pier. It further found that the Board was predominantly concerned about preserving the ability of community members to use the shallow waters of the Magothy River for swimming, kayaking, canoeing, paddle boarding, and sail boating. We have no difficulty in determining that the CAIA's decision was reasonable, was not arbitrary, and was made in good faith.

As set out above, the circuit court found in *Huntley I* that the exclusion of piers from the shallow waters of the Magothy River was consistent with the general plan of development and that finding was affirmed on appeal. This issue was conclusively decided against Mr. Huntley and may not be relitigated.

For all these reasons, we affirm the judgment of the circuit court declaring the rights of the parties and denying injunctive relief. On remand, the circuit court may conduct

further proceedings pursuant to its order directing the CAIA to promulgate standards and guidelines "to be used in the approval process for piers or other structures."

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