Circuit Court for Anne Arundel County
Case No.: C-02-CV-21-000404

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1093

September Term, 2022

THOMAS W. FURLOW, JR.

v.

ULMSTEAD GARDENS COMMUNITY ASSOCIATION, INC.

Nazarian,
Shaw,
Kenney, James A., III,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: November 21, 2023

*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).

Thomas Furlow, Jr. ("Dr. Furlow"), appellant, a homeowner in the Ulmstead Gardens community, filed suit in the Circuit Court for Anne Arundel County against the Ulmstead Gardens Community Association, Inc. ("the Association"), appellee, challenging its right to claim a lien against his property under the Contract Lien Act ("CLA"), Md. Code, Real Property ("RP") §§ 14-201-14-206. Dr. Furlow asked the circuit court to declare 1) that the Association had unlawfully levied annual assessments against him and other homeowners in violation of the terms of the community declaration and 2) that "unobtrusive electronic recording" of the Association's meetings was permissible. The Association filed a counterclaim for breach of contract premised on Dr. Furlow's failure to pay annual assessments and seeking declaratory and injunctive relief permitting the Association to record liens against Dr. Furlow's property for failure to pay annual assessments. Following a half-day bench trial, the court ruled in favor of the Association on both Dr. Furlow's complaint and the Association's counterclaim. It declared that the Association could record liens for unpaid assessments in 2021 and 2022, entered judgment against Dr. Furlow for unpaid assessments between 2020 and 2022, plus fees and costs, and awarded attorneys' fees to the Association. Dr. Furlow appeals from that judgment, presenting four questions,[1] which we have rephrased as:

[1] The questions as posed by Dr. Furlow are:

> 1. Did the lower court err when it denied that a justiciable controversy existed in Appellant Furlow's case regarding the procedure by which Appellee UGCA adopts annual assessments without a vote of its members, and, if so, what is the proper interpretation of the Appellee's Declaration in creating an annual assessment that can be "duly levied"?

(continued…)

1. Did the circuit court err by not declaring that that the Association violated its declaration by the way it imposed annual assessments?

2. Did the circuit court err by not granting declaratory relief to Dr. Furlow on the propriety of the electronic recording of the Association's meetings?

3. Did the circuit court err or abuse its discretion in its determination of attorneys' fees?

4. Did the circuit court commit structural error in its conduct of the bench trial?

For the reasons set forth below, we hold that the circuit court did not err in granting judgment against Dr. Furlow on his complaint and in favor of the Association on its counterclaim or in its conduct of the bench trial. We conclude, however, that the circuit court's declaration was not fully adequate and that it erred in its determination of attorneys'

---

2. Did the lower court err when it denied that a justiciable controversy existed in Appellant Furlow's case seeking a declaratory judgment as to whether audio recording made by a homeowner member at Appellee's routine business meetings violates the Maryland Wiretapping and Electronic Surveillance Act, and, if so, does the Maryland Homeowners Association Act that requires such meetings be "open" thereby exclude "an expectation of privacy" for attendees?

3. Did the lower court abuse its discretion **(a)** by awarding attorney's fees without a posttrial hearing or an alternative procedure for due consideration of those fees and **(b)** by awarding said fees without proper notice, fees that were misrepresented, and fees that unreasonably exceeded the amount of annual assessments collected?

4. Did the lower court abuse its discretion when it permitted the roles of plaintiff and defendant to be reversed during the trial thereby introducing a structural error into the proceedings and thus harmfully prejudicing Appellant Furlow's case at trial?

fees. Therefore, we shall vacate the attorneys' fees award and remand for further proceedings.

BACKGROUND

Ulmstead Gardens was established in 1980 in Arnold, Maryland by the filing of a Declaration of Covenants, Conditions, and Restrictions ("the Declaration") among the Land Records for Anne Arundel County. It consists of 238 townhomes with common spaces maintained by the Association.

In 1999, Dr. Furlow purchased a townhouse in Ulmstead Gardens at 505 Greenblades Court ("the Property"). He has never lived in the townhouse, but various family members have lived there during his ownership. Neither he nor his family members have paid annual assessments to the Association since 2012.

The Declaration

Under the Declaration, the Association was charged with, among other things, maintaining the common areas of Ulmstead Gardens and contracting with vendors to perform the maintenance. Article IV creates a covenant for the payment of maintenance assessments. Section 1 of Article IV provides that "by acceptance of a deed[,]" the owners of lots in Ulmstead Gardens covenant agree "to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements[.]" The annual assessments, along with any special assessments, interest, costs and reasonable attorneys' fees "shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made." Each lot owner is personally liable for those charges and fees.

Section 2 governs the imposition of annual and special assessments. It states that "[t]he assessments levied by the Association against the Lots . . . , shall be for the exclusive purpose of promoting the recreation, health, safety, and welfare of the Owners of lots in Ulmstead Gardens and for the improvement and maintenance of the Common Area or portions thereof[.]" Subsection (a) provides:

> (a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be $120 per lot, provided, however, that the maximum annual assessment for each unimproved lot owned by the Declarant shall be 25% percent of said amount until such lot has had an improvement completed thereon.
>
> (i) From and after January 1 of the year immediately following the conveyance of the first Lot to an owner, *the annual assessment may be increased each year not more than six percent (6%) above the maximum assessment for the previous year* ***without a vote of the membership***.
>
> (ii) From and after January 1 of the year immediately following the conveyance of the first [L]ot to an owner, the maximum annual assessment may be increased above six percent (6%) by the vote of two-thirds (2/3) of each Class of members[2] who are voting in person or by proxy, at a meeting duly called for this purpose.
>
> (iii) *The Board of Directors may fix the annual assessment at an amount not in excess of the maximum*.

(Emphasis added.) Subsection (b) governs special assessments, which require approval by "the vote of two-thirds (2/3) of each Class of members who are voting in person or by proxy, at a meeting duly called for this purpose."

[2] The Declaration created two classes of members, Class A and Class B. Only the former remained at the time of the relevant proceedings. The Class A members are all lot owners. Each lot is entitled to one vote. If a lot is owned by more than one person, they must agree upon how their one vote is cast. The declarant was the Class B member and entitled to 3 votes per lot owned. Class B membership ceased to exist when either the Class A votes exceeded the Class B votes or in August 1985, whichever occurred first.

Section 3, titled "Notice and Quorum for any Action Authorized Under Section 2," provides:

> Any action authorized under Section 2 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes of each Class of members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Article V establishes remedies available to the Association for nonpayment of assessments. An assessment past due beyond 30 days will bear interest at a rate of 6% per annum, and permits the Association to bring an action at law against the lot owner to recover the unpaid assessments and, upon compliance with the notice provisions set out in Article IV, it may foreclose the lien against the lot to recover the unpaid assessments. If the Association obtains a judgment, "such judgment shall include said interest and a reasonable attorneys' fee, together with costs of action."

Annual Assessments on the Property

As mentioned, Dr. Furlow has not paid the annual assessments since 2012. For the years 2013 through 2019, the Association notified Dr. Furlow of its intent to claim a lien against the Property for the unpaid assessments and other amounts allowed under the CLA *and,* after the requisite time had passed, recorded statements of liens among the land records. In addition to recording liens against the Property, the Association obtained a $8,406.83 judgment against Dr. Furlow in the District Court of Maryland for Anne Arundel

County for the unpaid assessments from 2013 through 2019.[3] *See Ulmstead Gardens Cmty. Assoc., Inc. v. Thomas Furlow*, Case No. D-07-CV-17-009908.

In 2020, 2021 and 2022 the Association, by a vote of its Board of Directors ("the Board"), increased the annual assessments by six percent or less and imposed assessments of $740, $760, and $790, respectively.[4] On May 1, 2020, the Association, after giving notice under the CLA, recorded a lien against the Property for the unpaid 2020 assessment of $740, plus attorneys' fees and costs totaling $628.42.

On February 5, 2021, the Association gave Dr. Furlow notice, through regular mail and, thereafter, by posting on the Property, of its intent to claim a lien against the Property for nonpayment of the 2021 annual assessment ("2021 Lien Notice"). The written notice specified that the amount of the lien claimed was $1,247.82, comprised of the $760 annual assessment and $487.82 in interest, attorneys' fees, and costs. The 2021 Lien Notice informed Dr. Furlow that he could pay the amounts due within 30 days or file a complaint in the circuit court "to determine whether probable cause exists for the establishment of a lien."

The Complaint

On March 25, 2021, Dr. Furlow filed this declaratory judgment action in the circuit court "against a 'Notice to Owner of Intention to Claim Lien[.]'" He alleged that the 2021

[3] Of that amount, the unpaid assessments were $3,690 and collection costs, interest, and attorneys' fees comprised the remainder.

[4] The annual assessment in 2019 was $700, which was increased under 6% in 2020 to $740.

Lien Notice was posted on the Property on February 27, 2021. Dr. Furlow's brother, Marsden Furlow, who we will refer to as "Marsden" for ease of discussion in the opinion, was then living at the Property. He notified Dr. Furlow of the 2021 Lien Notice.

Dr. Furlow asserted that the Association could not claim a lien on the Property for the unpaid assessment for two reasons. First, he claimed that the Board was improperly constituted in 2020 because notice had not been given in compliance with the Association's By-Laws.[5] Consequently, the Board could not lawfully impose the 2020 annual assessment. According to Dr. Furlow, Marsden, acting as Dr. Furlow's proxy, had attended the Association's 2020 Annual Meeting to elect the Board and had "attempted to record the proceedings." Marsden informed the members in attendance that the meeting was "illegally constituted[,]" but he was asked to leave the meeting because he was not a member and was directed to stop recording the proceedings because other members had not given their consent to be recorded. Dr. Furlow subsequently wrote a letter to the Association's attorney, Sara Arthur, Esq., "detailing the . . . irregularities and violations[,]" but she did not respond.

Second, Dr. Furlow claimed that the Board had not followed the procedures in the Declaration for the imposition of annual assessments, which rendered the assessments levied null and void. Specifically, he asserted that the Board was obligated to 1) "call a special meeting for the purpose of making assessments[,]" 2) give notice of the meeting between 30 and 60 days in advance; and 3) comply with the quorum requirements set out

[5] The By-Laws require that notice of a meeting of members be given 15 days in advance, by written notice mailed to each member's address on file with the Association.

in Article IV, Section 3 before it could impose an annual assessment under Article IV, Section 2(a)(i) & (iii).

Dr. Furlow asked the court to declare: 1) that the Board was improperly constituted in 2020; 2) that the Board did not comply with the Declaration when it convened to raise the annual assessment in 2020 because a quorum was not present; 3) that the Association's imposed assessment on Dr. Furlow in 2020 was improper; and 4) that "unobtrusive electronic recording" of the Association's meetings by a proxy was permissible under Maryland law.

Four exhibits were attached and incorporated in the amended complaint by reference: the Declaration, the 2021 Lien Notice, the By-Laws, and the February 10, 2020 letter from Dr. Furlow to Ms. Arthur recounting Marsden's experience at the 2020 Annual Meeting.

The Counterclaim

In January 2022, the Association filed a counterclaim alleging that it had obtained a judgment against Dr. Furlow for unpaid assessments through 2019 but Dr. Furlow had not paid the annual assessments levied by the Board for the years 2020 and 2021. The Association recorded a statement of lien in the amount of $628.42 against the Property for the unpaid 2020 assessment ("2020 Lien"). Because of this litigation, it had not recorded a lien against the Property for the unpaid 2021 assessment. *See* RP § 14-203(h)(1) (prohibiting the filing of a statement of lien during the pendency of litigation challenging the basis for the lien). The Association alleged having incurred attorneys' fees defending

against this litigation in addition to the attorneys' fees and other costs incurred seeking to collect the unpaid assessments.

Count one of the counterclaim alleged that Dr. Furlow breached his obligation under the Declaration to pay the annual assessments on the Property in 2020 and 2021 and sought a judgment against him for the unpaid assessments, collection costs, interest, and attorneys' fees. Counts two and three sought a declaration and/or an injunction authorizing the Association to record a statement of lien against the Property for the unpaid 2021 annual assessment, plus costs, interest, and fees.

The Amended Complaint

In February 2022, Dr. Furlow amended his complaint. He alleged that after this litigation commenced, the Association posted a second lien notice, dated February 5, 2022, on the Property ("2022 Lien Notice"). The 2022 Lien Notice gave notice of the Association's intent to claim in lien for $1,135.19, including the $790 annual assessment and $345.19 in interest, attorneys' fees, and costs.

He asserted that the 2021 and 2022 Lien Notices were improper for the previously stated reasons but expanded the temporal reach of his arguments by alleging that the Board was improperly constituted between 2013 and 2020 because the Association did not mail every member the "mandated notice" for the annual meeting to elect a Board of Directors. Therefore, it could not lawfully impose annual assessments for the years 2014 through 2021. In addition, he asserted that from 2013 through 2021, the Board had not complied with the procedure set out in the Declaration pertaining to notice and approval of the annual assessments.

Dr. Furlow asked the court to declare: 1) that the Board was improperly constituted from 2014 through 2020;[6] 2) that the Board did not comply with the Declaration when it imposed the 2021 and 2022 annual assessments because a quorum was not present; 3) that the Association imposed improper assessments on Dr. Furlow in 2021 and 2022; 4) that the Association imposed improper assessments on Dr. Furlow between 2013 and 2019; 5) that "unobtrusive electronic recording" of the Association's meetings by a proxy was permissible under Maryland law; 6) that all annual assessments improperly collected from 2014 through 2022 be refunded to members of the Association; 7) that liens previously imposed on the Property be rescinded; and 8) that the Association pay Dr. Furlow's court costs and fees. In addition to the exhibits previously incorporated in the initial complaint, he attached the 2022 Lien Notice.

The Bench Trial

A bench trial went forward on August 12, 2022.[7] At its outset, counsel for the Association posited that it should put on its case first. That was because Dr. Furlow was challenging the Association's right to impose a lien on the Property, and therefore, under the CLA, the Association bore the burden of proof. *See* RP § 14-203(d) ("If a complaint is

[6] Dr. Furlow did not pursue this argument at trial and does not pursue it on appeal.

[7] In May 2022, the parties filed cross-motions for summary judgment. By order entered June 14, 2022, the court deferred ruling on the motions until trial. At the outset of trial, Ms. Arthur alerted the trial court that there were pending motions for summary judgment. The court implicitly denied the motions at that time, stating "Everybody is here. You are going to present your cases."

filed, the party seeking to establish the lien has the burden of proof."). The court agreed and Dr. Furlow did not object to proceeding in this manner.

The Association's position, as summarized in a memorandum of law filed with the court in advance of trial, was that it was entitled to record liens against the Property for the unpaid 2021 and 2022 annual assessments and to hold Dr. Furlow personally liable for the unpaid 2020, 2021, and 2022 annual assessments. The Association also sought $21,000 in attorneys' fees incurred defending against this action and prosecuting the counterclaim and it submitted an affidavit in support of its fee request. It asserted that it was entitled to fees under the CLA and under the terms of the Declaration.

Dr. Furlow framed the two issues before the court as 1) whether the Association "complies with the contractual provisions" in the Declaration when it proposes and adopts annual assessments and 2) "whether sound recordings at business meetings . . . violates the Maryland Wiretap Act if conducted without explicit permission of attendees."

In its case, the Association called three witnesses: Victoria Burnett, who owned and operated Ulmstead Garden's management company, Victory Management; Robert Hannon, Jr., a member of the Board for the past ten years; and Dr. Furlow.

Ms. Burnett testified that her company had acted as manager for the Association since Fall 2021. It collected annual assessments, paid vendors, and provided administrative guidance to the Board. Ms. Burnett explained that annual assessments were determined by the Board under its budget process. Each year, the Board proposed an annual budget, which was sent to members 30 days in advance of the annual meeting, along with notice of the meeting. The proposed budget included any proposed increase in the annual assessment.

Article IV, Section 2 of the Declaration established a six percent "cap" on annual assessments, according to Ms. Burnett. Unless the proposed annual assessment exceeded that cap, which would require it to "go out to the membership" for approval, "the budget and the resulting [annual] assessments" were approved by a vote of the Board. This was a common practice among the 61 homeowners' associations Ms. Burnett manages.

The Association introduced into evidence copies of the notices sent to homeowners on December 8, 2020, for a January 12, 2021 annual meeting and on November 24, 2021, for the December 27, 2021 annual meeting.

With respect to attorneys' fees, Ms. Burnett testified that counsel for the Association charged $295 per hour for her services and, in Ms. Burnett's experience, this was a reasonable and ordinary rate. She further testified that the fees reflected in the Association's petition for attorneys' fees were "fair and reasonable[.]"

Mr. Hannon testified that, as a Board member, he was "a little more active in the financials[.]" He explained that proposed budgets were sent to members by regular mail and posted on the Association's website in advance of the annual meeting. In his experience, very few members attended the annual meeting. Under the By-Laws, the "basic quorum required" was ten percent of owners, which amounted to 24 members, including members of the Board.[8] During his tenure on the Board, the annual assessment was never increased by more than 6%. The budget and annual assessment were adopted by a vote of the Board, not a vote of the membership.

[8] The Board of Directors must have at least 3 but no more than 11 members. The record does not reflect the composition of the Board during the relevant proceedings.

Dr. Furlow testified in the Association's case that he had never lived at the Property, but that it was the mailing address he had on file with the Association. He did not dispute his obligation to pay "proper and legal" annual assessments.

Dr. Furlow did not testify or call any witnesses in his case but he did question counsel for the Association briefly about her affidavit in support of the request for attorneys' fees. We will discuss that testimony, *infra*.

The Circuit Court's Ruling

The court, ruling from the bench, entered judgment in favor of the Association and against Dr. Furlow for $2,484.10 for the unpaid assessments in 2020, 2021, and 2022, plus fees and costs. With respect to 2021 Lien Notice and the 2022 Lien Notice, the court ruled that the Association had met its burden of showing probable cause to record the liens and denied Dr. Furlow's requests for declaratory relief "because [it] can't rule in favor of both." The court, finding Dr. Furlow not to be credible, explained that it construed the Declaration consistent with the Association's position and contrary to Dr. Furlow's position. With respect to attorneys' fees, the court determined, for reasons we will discuss in more detail later, that the Association was entitled to recover the $19,260 in fees it incurred defending against the complaint and prosecuting its counterclaim.

On August 24, 2022, the circuit court entered an order incorporating these findings. This timely appeal followed.

STANDARD OF REVIEW

Under Rule 8-131(c), we review a case that "has been tried without a jury," on both "the law and the evidence." We "will not set aside the judgment of the trial court on the

evidence unless clearly erroneous," giving "due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id.*

DISCUSSION

I.

Association's Imposition of Annual Assessments

A. Legal Background

The Maryland Homeowners Association Act, Md. Code, RP §§ 11B-101 – 11B-118 ("the HOA Act") "provides the legislative framework under which HOAs operate and manage their affairs." *Goshen Run Homeowners Ass'n, Inc. v. Cisneros*, 467 Md. 74, 91 (2020) (footnote omitted). Pertinent here, an HOA, like the Association, that "has responsibility under its declaration for maintaining and repairing common areas[,]" must submit an annual proposed budget to its membership at least 30 days before its adoption. RP § 11B-112.2(a)–(b). "The budget shall be adopted at an open meeting of the homeowners association or any other body to which the homeowners association delegates responsibilities for preparing and adopting the budget." RP § 11B-112.2(e)(1).

"In connection with the establishment of a budget, the HOA has the authority to adopt assessments and charges to cover the expenses for maintaining and repairing common areas." *Goshen Run*, 467 Md. at 92. "As provided in the declaration, a lot owner shall be liable for all homeowners association assessments and charges that come due during the time that the lot owner owns the lot." RP § 11B-117(a)(1). The HOA Act "permits homeowners associations to collect delinquent assessments through both in rem

proceedings under the Maryland Contract Lien Act, as well as in personam proceedings at law." *Goshen Run*, 467 Md. at 80.

B. Contentions

Dr. Furlow contends that the circuit court erred by not construing Article IV of the Declaration to require the Association to submit proposed annual assessments to the membership for ratification by a vote, subject to the quorum requirements in Article IV, Section 3. Because the Association violated the Declaration by imposing annual assessments by a vote of the Board rather than the membership, he maintains that he cannot be held personally liable and his Property cannot be subjected to a lien for the unpaid assessments.[9] Dr. Furlow asserts that Article IV, Section 2(a)(i) applies only to annual assessments levied by the declarant and ceased to apply after all the lots in Ulmstead Gardens were sold by the declarant.

The Association contends that the evidence adduced at the bench trial establishes its compliance with the HOA Act and the Declaration in its preparation and adoption of an annual budget and the resulting increase in the annual assessment. It argues that the quorum requirements in Article IV, Section 3 of the Declaration only apply to actions taken under

[9] As previously noted, the propriety of the annual assessments imposed between 2013 and 2019 is not before us. The Association filed suit against Dr. Furlow in the District Court and obtained a judgment against him for those unpaid assessments. Dr. Furlow may not collaterally attack that enrolled, final judgment in this action. *See, e.g., Facey v. Facey*, 249 Md. App. 584, 607 (2021) ("Enrolled civil judgments. . . [are] not . . . subject to collateral attack on any ground other than the lack of fundamental jurisdiction to render those judgments." (internal quotations marks and citation omitted)). He likewise may not attack the liens recorded against the Property under the CLA that predate this action as he did not file suit challenging those liens within 30 days of being served with notice of the Association's intent to claim the lien.

Article IV, Section 2 that require approval by lot owners at a meeting called for that purpose.

C. Analysis

We construe the Declaration as we would any contract. *See MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condo., Inc.*, 253 Md. App. 279, 300 (2021). In other words, we "give effect to the plain meaning of the contract, read objectively, regardless of the parties' subjective intent at the time of contract formation." *Impac Mortg. Holdings, Inc. v. Timm*, 474 Md. 495, 507 (2021) (citing *Myers v. Kayhoe*, 391 Md. 188, 198 (2006)). "If there is no ambiguity, the court's task in interpreting the contract is 'at an end.'" *MCB Woodberry*, 253 Md. App. at 300 (quoting *Impac Mortg.*, 474 Md. at 507).

Article IV, Section 2(a)(i) of the Declaration unambiguously authorizes an increase in the annual assessment of "not more than six percent" over the maximum annual assessment for the previous year "without a vote of the membership."[10] An increase of six percent or less over the prior year may be "fix[ed]" by the Board.[11] This is in contrast to an increase above the six percent cap or a special assessment, both of which must be

[10] Dr. Furlow's argument that Section 2(a)(i) applies only to increases imposed by the declarant finds no support in the language of the Declaration and we decline to address it further.

[11] In his reply brief, Dr. Furlow argues for the first time that the term "fix" as used in Article IV, Section 2(a)(iii) means "propose or determine[,]" suggesting the Board may propose an annual assessment below the cap, but that it must then be approved by the membership. We "ordinarily do not consider issues that are raised for the first time in a party's reply brief[,]" *Gazunis v. Foster*, 400 Md. 541, 554 (2007), but even if we did, Dr. Furlow's definition is inconsistent with the ordinary meaning of "fix," which is "to set or place definitely: ESTABLISH." *Fix*, Merriam-Webster (2023), https://www.merriam-webster.com/dictionary/fix.

approved by a two-thirds vote of the members voting in person or by proxy "at a meeting duly called for this purpose." The evidence presented by the Association indicated that the annual assessments in 2020, 2021, and 2022 were not increased by more than six percent over the assessment of the previous year. Thus, under the plain language of Article IV, Section 2(a)(i), (ii) and (iii), those assessments could be adopted by the Board without a vote of the membership.

Article IV, Section 3 does not require otherwise. That section governs notice and quorum for "[a]ny action authorized under Section 2" and requires that it be "taken at a meeting called for that purpose," after written notice, and with a quorum of 60 percent "of members or of proxies[.]" If a quorum is not present at the initial meeting, subsequent meetings with reduced participation thresholds may be held. Read in conjunction with the preceding section, we construe Article IV, Section 3 to apply to increases in the annual assessment above the six percent cap or to special assessments, but not to increases in annual assessments that the Board may clearly fix without a vote of the membership. To hold otherwise would render the phrases "at a meeting duly called for this purpose" as used in Article IV, Section 2(a)(ii) and "without a vote of the membership" in Article IV, Section 2(a)(i) nugatory because approval of any increase in the annual assessment would require "a meeting called for that purpose" under Article IV, Section 3. *See Dumbarton Improvement Ass'n, Inc. v. Druid Ridge Cemetery Co*., 434 Md. 37, 52 (2013) (emphasizing that contract language must not be read in isolation so as to "disregard[] a meaningful part of the language" (quotation marks and citation omitted)).

Article IV, Section 2(a) cannot reasonably be construed to permit the Board to increase the annual assessment by up to six percent without a vote of the membership, but require it to do so at a meeting with a strict quorum requirement of 60 percent of members or of the proxies. Conversely, for actions taken by the Association that require approval at a meeting by a vote of two-thirds of the members or proxies present, quorum requirements serve to ensure that the two-thirds vote for approval represents of a significant share of the membership.

In sum, the evidence that the annual assessments for 2020, 2021, and 2022 were increased by less than six percent and were approved by the Board at the annual budget meeting was not seriously disputed. The Association, through its Board, was authorized under the Declaration to increase the annual assessment by six percent or less without a vote of the membership. In other words, the 2020, 2021, and 2022 annual assessments were duly levied and Dr. Furlow is personally liable for the delinquent amounts and the Property may be subjected to a lien under the CLA for the 2021 and 2022 assessments. The court did not err or abuse its discretion by granting judgment in favor of the Association on its counterclaim, denying Dr. Furlow's claim for declaratory relief and granting certain declaratory relief to the Association in its Order filed August 24, 2022. In that Order, the court declared that "probable cause exists to establish a lien" against Dr. Furlow's property for the unpaid 2021 and 2022 assessments but that declaration does not, in our view, go far enough.

The Supreme Court of Maryland has, on many occasions, "reiterated that 'whether a declaratory judgment action is decided for or against the plaintiff, there should be a

declaration in the judgment or decree defining the rights of the parties under the issues made.'" *Bowen v. City of Annapolis*, 402 Md. 587, 608 (2007) (quoting *Case v. Comptroller*, 219 Md. 282, 288 (1959)). Both Dr. Furlow, in his amended complaint, and the Association, in its counterclaim, sought declaratory relief. Though the trial court declared the Association's rights to impose liens on the Property for the unpaid 2021 and 2022 annual assessments, it did not enter declaratory relief expressly defining the parties' rights under the Declaration of Covenants, Conditions, and Restrictions of Ulmstead Gardens, as requested by Dr. Furlow in his amended complaint. For that reason, we shall remand for the court to enter a revised declaratory judgment in favor of the Association and against Dr. Furlow that resolves the issues raised in paragraphs A, B, C, and E of the prayers for relief in Dr. Furlow's amended complaint, *i.e.*, by declaring that the Board was properly constituted and that the annual assessments were duly levied. As will be explained below, the declaration need not address the issue of the recordation of meetings as that claim was not properly presented to the court for decision.

II.

Recordation of Association Meetings

Dr. Furlow contends that the trial court erred by not declaring that he or his proxy could record Association meetings without violating the Maryland Wiretap Act. As previously explained, this claim was premised on allegations in his complaint that his brother, Marsden, attempted to record an Association meeting in 2020, but was directed to stop recording and to leave the meeting. Although he addressed the issue in closing argument, Dr. Furlow did not present any evidence on this claim during the bench trial and

when the Association's counsel started to comment on "wiretap law" to this case, the court, having not heard anything "from either side, evidentiary-wise" requiring it, declined to consider it.

"The existence of a justiciable controversy is an absolute prerequisite to the maintenance of a declaratory judgment action." *Stevenson v. Lanham*, 127 Md. App. 597, 611 (1999) (cleaned up). "Whether a justiciable controversy exists depends, of course, on the facts presented to the court." *Anne Arundel Cnty. v. Ebersberger*, 62 Md. App. 360, 368 (1985). Here, Dr. Furlow presented no facts to the court on this issue: he did not call Marsden as a witness; he did not testify about any other attempts to record meetings; and he did not question the Association's witnesses about the alleged refusal to allow recording at the 2020 meeting. Given the complete absence of any evidence on this issue, the circuit court did not err or abuse its discretion by denying declaratory relief.[12] Nor are we persuaded on this bare trial record to exercise whatever discretion we may have under Md. Rule 8-131 to decide an issue not properly presented to and decided by the trial court.

[12] Dr. Furlow relies upon facts alleged in his pleading and an affidavit by Marsden attached to his motion for summary judgment. The court, however, exercised its discretion to deny summary judgment in favor of a full hearing on the merits. *See Newsom v. Brock & Scott, PLLC*, 253 Md. App. 181, 200 (2021) (explaining that when "presented with a pretrial motion for summary judgment," the circuit court "has discretion to affirmatively deny a summary judgment request in favor of a full hearing on the merits; and this discretion exists even though the technical requirements for the entry of such a judgment have been met" (cleaned up)); *accord Dashiell v. Meeks*, 396 Md. 149, 165 (2006). Dr. Furlow was not relieved of his burden to pursue his claim and present evidence on this issue at trial.

III.

Attorneys' Fees

"We review a trial court's award of attorneys' fees under an abuse of discretion standard." *Monmouth Meadows Homeowners Ass'n, Inc. v. Hamilton*, 416 Md. 325, 332 (2010) (citing *Myers*, 391 Md. at 207). We will not disturb an award of attorneys' fees "unless [the court] exercised [its] discretion arbitrarily or [its] judgment was clearly wrong." *Rauch v. McCall*, 134 Md. App. 624, 639 (2000) (quotation marks and citation omitted). "The cornerstone for awarding attorney's fees is reasonableness." *Steele v. Diamond Farm Homes Corp.*, 464 Md. 364, 383 (2019) (citing *Monmouth Meadows*, 416 Md. at 333). "The trial court's determination of the reasonableness of attorney's fees is a factual determination within the sound discretion of the court and will not be overturned unless clearly erroneous." *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 457 (2008) (cleaned up).

In determining the amount of any award of attorneys' fees as an element of damages under both Rule 2-703, fees allowed by law, and Rule 2-704, fees allowed by contract, the court is obligated to consider the factors set out in Rule 2-703(f)(3)[13]:

> (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;
> (F) whether the fee is fixed or contingent;

[13] Rule 2-704(e)(4) contains an exception when the claim for attorneys' fees "does not exceed the lesser of 15% of the principal amount found to be due or $4,500[.]" That exception is inapplicable here.

(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.

Under both rules, the party seeking fees has the burden of producing evidence addressing these factors. *See* Md. Rule 2-703(e) ("Evidence in support of or in opposition to an award shall focus on the standards set forth in subsection (f)(3) of this Rule."); Md. Rule 2-704(d)(1) ("Unless the court orders otherwise, evidence in support of or in opposition to a claim for attorneys' fees under this Rule shall be presented in the party's case-in-chief and shall focus on the standards set forth in Rule 2-703(f)(3)" unless limited evidence is permitted under subsection (e)(4).).

In this case, the Association sought attorneys' fees allowed by law under the CLA and as an element of damages allowed by contract under the Declaration. The CLA states that the court "may award costs and reasonable attorney's fees to any party" in an action brought to challenge the basis for a lien. RP § 14-203(i)(2). Article V, Section 1 of the Declaration provides that if a lot owner is delinquent paying assessments, the Association may bring an action at law against the owner and, if the Association obtains a judgment against the owner, "such judgment shall include . . . a reasonable attorneys' fee, together with costs of action." Therefore, the court had discretion to award fees incurred by the Association in defending against Dr. Furlow's suit under the CLA and for fees incurred for prosecuting its breach of contract claim against Dr. Furlow.

A. Proceedings in the Circuit Court

The Association claimed attorneys' fees under each count of its counterclaim. For the breach of contract count, it sought attorneys' fees of "$1,500.00 to date, together with additional attorneys' fees as they are incurred[.]" In the counts for declaratory and injunctive relief, it sought "reasonable attorneys' fees [and costs] incurred in bringing this action[.]"

The evening before trial, the Association filed an affidavit in support of its fee claim with an attached billing statement detailing the work performed, which involved 64 attorney hours billed at an hourly rate of $295 and 3.8 paralegal hours billed at an hourly rate of $100, totaling $19,260. In the affidavit, counsel averred that:

> 1. She was admitted to the bar in Maryland in 1983 and had practiced continuously since, first as an associate and then a partner in two medium sized firms, and since 2007 with her own firm.
> 2. The Association was exclusively represented by her in this matter.
> 3. She bills an hourly rate of $295 per hour for her work and $100 per hour for paralegal work. That rate was standard in the Annapolis area with similar levels of experience to her.
> 4. Her representation in this case was time sensitive and precluded her from representing other clients.
> 5. The case involved unique issues and was complicated by Dr. Furlow's refusal to "cooperate in even the most basic procedural issues." In his amended complaint, Dr. Furlow dramatically expanded the relief sought to "nullify the annual elections" of the Board and the adoption of Association budgets from 2012 forward and "to wipe out any amounts owed by him" for unpaid annual assessments back to 2012 including previously recorded liens and the 2019 district court judgment. He further sought relief on behalf of all lot owners in Ulmstead Gardens. Finally, he sought the right to record the meetings of the Association.
> 6. Dr. Furlow was self-represented in this matter and had represented himself in other actions brought by him and against him. He had refused to respond to any discovery until ordered to do so by the court, including refusing to appear for deposition.

> 7. Because the Association charged nominal assessments, it has limited means to defend itself in actions such as this.

During her opening statement, Ms. Arthur argued that the Association was entitled to an award for the fees set out in the billing statement.[14] Ms. Burnett testified that in her experience, the hourly rate was "standard in the industry" and fair and reasonable, and that she had personally reviewed all the charges and authorized payment because she believed them to be fair and reasonable.

Both Ms. Burnett and Mr. Hannon testified that the Association's budget for attorneys' fees did not include prolonged litigation. Therefore, the proposed fees were a hardship and detrimental to the Association's financial stability.

Ms. Arthur testified that she had represented the Association since 2012, serving as general counsel and as collections counsel. She charged a fixed fee for general lien actions, plus routine out-of-pocket expenses which, "in most cases," she recovered from the unit owners. Her hourly rate for litigation was $295.

Ms. Arthur submitted her affidavit regarding the request for attorneys' fees during closing argument. Dr. Furlow did not address attorneys' fees in his closing argument.

After ruling in favor of the Association on the amended complaint and the counterclaim, the court turned to fees:

> And because I have ruled down the line in favor of the [Association], I have looked at Ms. Arthur's legal fee statement, her affidavit, and [$295] is

[14] Dr. Furlow interjected that he had not received the affidavit and that this was a "surprise." The record reflects that the Association filed its affidavit electronically on MDEC on August 11, 2022 at 6:10 p.m.

> an extremely reasonable fee nowadays. I have taken judicial notice of that fact, and I hardly ever see[] a legal fee that is more reasonable.
>
> I have looked at the factors under Maryland Rule 2[-]703(f)(3). I have considered all those factors. Time and labor, skills, the novelty. This is not a complicated case, but the legal fee reflects that. It is not a complicated legal fee.
>
> So the bottom line is every one of these items listed on her affidavit, in my view, are reasonable and justified and should be paid by you. You did not prevail here in any aspect of your case. So I am going to award counsel fees, as reflected on -- that was not entered as an exhibit, was it? It was just --
>
> THE CLERK: It was submitted in the file.
>
> THE COURT: Yes. It is $19,260.00.

B. Contentions

Dr. Furlow contends that the fee award was improper for four reasons. First, the filing of the Association's affidavit in support of its fee claim on the eve of trial deprived him of the opportunity to contest the fees charged at trial. Second, the court failed to comply with Rule 2-703(c) that required it to hold a scheduling conference or otherwise order an alternative method of determining fees. Third, the fees awarded were unreasonable in relation to the total amount recovered by the Association for unpaid assessments. Fourth, the fees reflected needless litigation and work unrelated to the breach of contract count in the counterclaim.

C. Analysis

Dr. Furlow's procedural challenges are unpersuasive. The Association's counterclaim provided notice of its claim for attorneys' fees. In addition, the scheduling order expressly specified that the court would "not conduct a scheduling conference if a party has made, or will make, a claim for attorneys' fees pursuant to Md. Rules 2-703, 2-

704, or 2-705" and that "[t]he determinations listed in Md. Rule 2-703(c)[] shall be made by the trial judge." Those determinations included the form of fee documentation and whether evidence on a claim for attorneys' fees "may practicably be submitted during the parties' cases-in-chief with respect to the underlying cause of action[.]" Md. Rule 2-703(c)(2). Here, the trial court permitted the Association to put on evidence on its fee request at trial and Dr. Furlow did not ask the court to defer ruling on that at the trial.

That said, however, it appears from the record that some fees claimed at trial may have been awarded previously to the Association during discovery. On May 16, 2022, the circuit court entered an order denying a motion for protective order filed by Dr. Furlow and awarded the Association $275, "representing the reasonable costs and expenses incurred" and "including its attorneys' fees" to respond to the motion and the cost of the deposition for which Dr. Furlow failed to appear. The court entered another order on June 21, 2022 denying Dr. Furlow's motion to alter or amend the May 16, 2022 order and increasing the award of attorneys' fees to $500 for the time spent responding to the original motion for the protective order *and* the motion to alter or amend.

The billing statement attached to Ms. Arthur's affidavit in support of the Association's request for fees reflects four entries, on May 10 through May 13, 2022, that include time expended responding to the motion for a protective order, totaling $1,401.25. That statement contains two entries on June 9 and 10, 2022 that include time expended responding to the motion to alter or amend, totaling $1,106.25. Because counsel utilizes block billing, we cannot determine how much time was spent on those particular tasks, but the fee request should not have included any time billed for responding to the motion for

protective order or the motion to alter or amend because the circuit court already had determined that the upper limit of the reasonable fee for that work was $500 and had awarded that amount to the Association. Based on that possible error and a second concern that we will discuss below, we will vacate the fee award and remand for further proceedings.

In *Monmouth Meadows*, the Supreme Court of Maryland addressed "how courts should determine the amount of attorneys' fees to be awarded in suits by homeowners associations against property owners to collect annual assessments in cases where recovery of fees is governed by contractual provisions in the homeowners agreement." 416 Md. at 328. Because the CLA lacked "public policy underpinnings," it held that the lodestar method was inappropriate in such cases. *Id*. at 335-36.

The Court held that the factors set out in Rule 1.5 of the Maryland Lawyers' Rules of Professional Conduct, later incorporated into what is now Rule 2-703, should govern the fee inquiry. *Id*. at 337. In applying those factors, courts "should consider the amount of the fee award in relation to the principal amount in litigation," which may "result in a downward adjustment." *Id*. Even though "fee awards may approach or even exceed the amount at issue, the relative size of the award is something to be evaluated." *Id*.

In *Steele*, 464 Md. at 368, those principals were applied in a case in which a homeowner defended a suit filed against her in the District Court of Maryland by her homeowners' association seeking to recover annual assessments. She argued that the prior assessments had been improperly increased in violation of the community's declaration of covenants. That court ruled in favor of the homeowner and the HOA noted a *de novo* appeal

to the circuit court, which ruled in favor of the HOA, and awarded it $1,257.60 for unpaid assessments plus interest. *Id*. at 371-73. But in awarding attorneys' fees allowed by contract, the court adjusted the HOA's $26,589.13 fee request to $4,200, reasoning:

> (i) attorney's fees in contract cases can be or even exceed, the amount in controversy; (ii) as opposed to *Monmouth*, where the defendants were not represented by counsel, Steele was represented by counsel—requiring the [HOA] to mount "vigorous" opposition; (iii) the [HOA]'s requested fee was not reasonable based on its claim that the issues in the case were novel (holding that "[the issues are] not particularly novel and they're not particularly unusual."); (iv) the [HOA]'s requested fee was 18 and a half times the amount at issue, and "under the circumstances, given the amount in controversy, the . . . upper level of fees would be no more than three times the fees of the amount in controversy[.]"

Id. at 386. On appeal, the Supreme Court of Maryland affirmed the judgment and the award of attorneys' fees, noting that the circuit court "provided a thoughtful analysis" to arrive at its determination of a reasonable fee. *Id*.

In the instant case, the fee award of $19,260 was 7.75 times the amount recovered by the Association for unpaid assessments ($2,484.10). In its ruling, the circuit court recognized that the issues involved in this case were not novel or complicated and largely turned upon the construction of the language of the Declaration, which, in its view, was "an easy issue for [it] to decide." Though the Association emphasizes the breadth of Dr. Furlow's claims, the court recognized during opening statements that his challenge to previously recorded liens, the 2019 judgment, and his attempt to recover on behalf of other lot owners were without merit. In other words, the only amounts at issue were the unpaid assessments for 2020, 2021, and 2022, plus interest and costs that, as the statement of account attached to the Association's counterclaim reflected, then totaled $2,469.84.

Clearly, the court was aware of the Rule 2-703 factors, but we cannot discern from the record whether the amount of fees claimed in relation to the amount recovered was evaluated to determine if a downward adjustment was warranted. We are in no way suggesting that the fees to be awarded may not exceed the amount recovered, especially given Dr. Furlow's conduct during discovery in this matter, but on remand, the circuit court should consider the fee request in relation to "the principal amount in litigation" in determining the reasonableness of the total fee. *Monmouth Meadows*, 416 Md. at 337.

IV.

Dr. Furlow also contends that the court committed "structural error" by permitting the Association to put on its case first, based upon its position that it bore the burden of proof under the CLA to establish its entitlement to a lien on the Property. Dr. Furlow did not object to proceeding in this manner before the trial court and he does not articulate how this procedure prejudiced him in the presentation of his case. We consider this issue waived and do not consider it.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED, IN PART, AND VACATED, IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID THREE-QUARTERS BY APPELLANT AND ONE-QUARTER BY APPELLEE.