Circuit Court for Talbot County
Case No.: C-20-CV-22-000075

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2189

September Term, 2023

LEWIS D. THOMAS

v.

PATRIOT SQUARE
HOMEOWNERS' ASSOCIATION, INC.

Shaw,
Ripken,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: February 5, 2025

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

"The quality of mercy is not strained.
It droppeth as the gentle rain from heaven."
Shakespeare, *The Merchant of Venice*,
Act IV, Scene 1, lines 1-3
…but not necessarily in every case.

This case is about some modern-day descendants of the dinosaurs, i.e., chickens, and the U.S. mail. Lewis D. Thomas, appellant, owns a home on real property that is subject to a recorded Declaration of Covenants, Conditions, and Restrictions, the enforcement of which is committed to the Patriot Square Homeowners' Association, Inc., appellee ("Patriot Square"). Patriot Square learned Thomas was keeping chickens in a coop he built on his property, in violation of those covenants. It sent notice to Thomas, by Certified Mail, First-Class "snail" mail and email, of a hearing before Patriot Square's Board of Directors to determine whether Thomas should be fined for his violation. Thomas did not attend that hearing. The Board voted to impose a fine. When Thomas neither brought his property into compliance nor paid the fine, Patriot Square sued him, in the Circuit Court for Talbot County, seeking declaratory and injunctive relief, as well as attorney's fees and damages.

By the time of trial, the only issues remaining were the monetary ones.[1] Thomas contended that Patriot Square could not recover the fine because it failed to notify him of the predicate hearing through a method permitted under the Declaration or Patriot Square's Bylaws. The trial court disagreed and awarded Patriot Square damages and attorney's fees. The court found that Patriot Square complied with its notice obligations and, in any event, Thomas had actual notice of the hearing before the Board. This appeal followed.

[1] Thomas agreed finally to remove the chickens and the coop from his property.

On appeal, Thomas presents one question for our review:

> Whether the [c]ircuit [c]ourt erroneously determined that [Patriot Square] had complied with its Bylaws and Declaration of Covenants, Conditions and Restrictions by sending the Notice of Hearing and other notices to . . . Thomas by [C]ertified [M]ail (which was returned "unclaimed") and electronic mail (email).

For the reasons that follow, we shall affirm.

BACKGROUND

Thomas lives in Talbot County, Maryland, in the Patriot Square community. Properties in this neighborhood, including Thomas's, are subject to a Declaration of Covenants, Conditions, and Restrictions. Patriot Square, the enforcer of the Declaration, is governed, in turn, by its adopted Bylaws.

In early 2020, Thomas's grandchildren brought several baby chicks to his home. At first, Thomas kept the chicks in his garage. Eventually, he and his grandson built a coop on his property in which to keep the growing chickens. Before doing so, Thomas checked with the Town of Easton and was told that raising and keeping chickens was permitted under the Town's ordinances as long as they were contained.

Unfortunately for Thomas, Article X, Section 1(p) of the Declaration forbade "[t]he maintenance, keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number . . . in the Common Areas and on any Lot or within any dwelling[.]"[2]

[2] Thomas testified that he was unaware of the Declaration when he started keeping the chickens, but he conceded ultimately that his property is subject to it.

Consequently, when Patriot Square learned of Thomas's chickens, it acted to enforce the restrictive covenant.

Patriot Square's enforcement powers, and the procedures it must follow to exercise them, are set out in the Declaration and the Association's Bylaws. Under Article XIII, Section 6 of the Declaration:

> After providing such due process as is required by the Bylaws, the Board shall have the power to impose a fine of not more than $250.00 for each initial violation or $500.00 for each repeated violation by an Owner or a tenant, guest, or member of the family of an Owner, of any of the provisions of this Declaration, the Bylaws or the Rules and Regulations. . . . In the event of litigation to collect the amount of any fine imposed pursuant to the terms of this Declaration, the Articles, or the Bylaws, the person obligated to pay such fine shall further be obligated to pay to the Association reasonable attorneys' fees of not less than Three Hundred Fifty Dollars ($350.00) and any costs of collection incurred in connection therewith.

The "due process" required is set forth in Article VIII, Section 2 of the Bylaws:

> The Board shall not impose a fine, suspend voting, or infringe upon any other rights of a Member or other resident of the Property for violations of the Declaration or the Rules and Regulations unless and until the following procedure is followed:
>
> a) **Demand.** Written demand to cease and desist from an alleged violation shall be provided to the alleged violator specifying:
>
> i. the alleged violation;
> ii. the action required to abate the violation; and
> iii. a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of a

sanction after notice and hearing if the violation is not continuing.

b) **Notice.** At any time within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Board or its delegate shall provide the violator, by hand-delivery first class mail, with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

i. the nature of the alleged violation;
ii. the time and place of the hearing, which time shall not be less than ten (10) days from the giving of the notice;
iii. an invitation to attend the hearing and produce any statement, evidence, and witness on his or her behalf; and
iv. the proposed sanction to be imposed.

c) **Hearing.** The hearing shall be held by the Board pursuant to this notice. The alleged violator shall have the right to be present at this hearing and to present evidence. The hearing shall be held in executive session and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

The Declaration contains also a provision, in Article XVII, Section 2, regarding the adequacy of the method to send Notice:

> Any notice required to be sent to any Member or Owner under the provisions of this Declaration, the Articles, the Bylaws, or the Rules and Regulations shall be deemed to have been properly sent when mailed, by ordinary mail, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Finally, if there is a conflict between the Bylaws and the Declaration, "the provisions of the Declaration shall control[.]"

On 12 August 2021, Patriot Square sent Thomas a Notice of Violation and Request for Action directing him to remove the chickens from his property.[3] When Thomas did not comply, Patriot Square sent, by U.S. First-Class Mail and email, a second notice directing Thomas to bring his property into compliance with the Declaration within ten days. This notice set forth the alleged violation and warned Thomas that "failure to comply . . . could result in the imposition of a fine . . . following notice and a hearing." Thomas did not comply. Accordingly, Patriot Square moved to the next steps in the enforcement process.

On 25 February 2022, Patriot Square sent to Thomas, by U.S. Certified Mail, First-Class and email, a Notice of Hearing. This notice informed again Thomas of the alleged violation and that an electronic virtual hearing would be held on 14 March 2022, at 6:00 p.m. It invited Thomas to attend the hearing and signaled that Patriot Square proposed a fine of $250 for the violation. In the email notice, Patriot Square included a link to access the virtual hearing.

[3] The record does not indicate how this notice was sent. Thomas does not suggest specifically it was defective, although he testified that he never received any correspondence from Patriot Square before being served with the complaint filed in the circuit court.

The Board held the hearing as scheduled, but Thomas did not attend or participate. The Board placed on the record the correspondences it sent Thomas notifying him of the violation and the hearing. The Board's attorney noted that the notice sent via Certified Mail, First-Class did not appear to have been read by Thomas; the letter went out for delivery on 28 February 2022, but its receipt notice was not signed for and, thus, went unclaimed. The Board's attorney expressed "confiden[ce] that [Thomas] received" the notice sent by email, however, because Thomas communicated with him previously from that email address.

Counsel emphasized that "[s]ervice [was] really an issue that [the Board would] want to address before doing a fine" and floated the option of hiring a process server, even though "the bylaws don't call for something like that, and that's an additional cost." The Board was satisfied, however, that Thomas received the notice sent by email and chose to move forward with assessing a fine. The Board voted to fine Thomas $250 per day, beginning ten days from when a post-hearing notice was sent, until the chickens were removed.

On 23 March 2022, Patriot Square sent, by Certified Mail, First-Class and email, a Notice of Penalty Assessment to Thomas detailing the results of the hearing. The next day, Thomas replied electronically to the email: "Stop harassing me. Thank you. No trespassing on my property."

When Thomas had not removed the chickens by 15 June 2022, Patriot Square sued him, seeking declaratory and injunctive relief, as well as damages and attorney's fees. After

being served with the complaint, Thomas consulted an attorney and removed the chickens and the coop in early July 2022.[4]

On 2 February 2023, the parties stipulated that Patriot Square was entitled to injunctive relief to remove the chickens. The court granted later partial summary judgment to Patriot Square, declaring that Thomas's property was subject to the Declaration. As a result, the only remaining issues before the court were monetary ones.

The court held a hearing on 19 December 2023. Thomas argued that Patriot Square could not impose the fine against him because it had not followed the proper notice procedures, thus depriving him of due process. In Thomas's view, under the Declaration, Patriot Square had to send notice by "ordinary mail," which, he contended, does not include Certified Mail or email. Thomas testified that he never received the notice sent via Certified Mail, First-Class and claimed not to have received even notice from the United States Postal Service that he had Certified Mail to pick up at the Post Office. He explained that, although he has an email address, he does not "know how to really use email properly" and uses it only "every now and then." When pressed about his response to the Notice of Penalty, Thomas claimed to not know what the email he received was about. Overall, Thomas asserted that sending notice of the hearing by Certified Mail, First-Class and email did not satisfy the requirements of the Declaration and the Bylaws, and that, in any event,

[4] His original attorney discovered in short order that he had a conflict of interest and could no longer represent Thomas. Thomas failed to file an Answer, so, on 30 November 2022, the court entered an Order of Default against him. Thomas was able eventually to find new counsel, who filed an Answer on 27 December 2022. The court vacated the Order of Default.

he had not received the notice through either channel. As a result, he concluded, Patriot Square could not impose any fine against him.

The trial court was not impressed with much of Thomas's testimony or arguments. It found that the Declaration did not mandate sending notice only by ordinary mail, rather, that such was the "minimum level of communication" required. The court held that sending notice by Certified Mail, First-Class exceeded this minimum requirement and was consistent, therefore, with the Declaration.

The court determined also that Thomas had actual notice of the hearing. Although it agreed that the notice sent by Certified Mail, First-Class went unclaimed, the court found that Thomas's testimony was not credible that he was never notified by the Postal Service of his Certified Mail. The court found that Thomas's testimony about his infrequent resort to his email account also was not credible because he had replied to Patriot Square's email containing the Notice of Penalty. As a result, the court found that Thomas had actual notice of the 14 March 2022, hearing and that Patriot Square was authorized to impose the fine.

The court awarded Patriot Square $12,500 in damages, representing the daily fines accrued by Thomas,[5] and $15,372.50 in attorney's fees. This appeal followed.

STANDARD OF REVIEW

When an action is tried without a jury, we review the case on both the law and the evidence. Md. Rule 8-131(c). We review, without deference, the trial court's legal

[5] The true total was $14,500, but, because Patriot Square, in its complaint, requested only $12,500, without requesting further relief, the court determined it was limited to the lower sum.

conclusions. *Griffin v. Bierman*, 403 Md. 186, 195 (2008). That said, we are bound by the trial court's findings of fact, unless they are clearly erroneous. *Id.* We will not set aside a trial court's judgment "on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c).

DISCUSSION

The Declaration speaks of "due process." Restrictive covenants, however, are not laws; they are contracts. *See Dumbarton Improvement Ass'n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 52–53 (2013). Thus, we are dealing here with contract law, not constitutional law.[6] Accordingly, we begin by summarizing the principles governing interpretation and enforcement of restrictive covenants.

Covenants, as a species of contract, are interpreted and enforced like other contracts. *Id.* Maryland observes the law of objective contract interpretation. *Id.* at 51. Under this theory, "the written language embodying the terms of an agreement will govern the rights and liabilities of the parties, irrespective of the[ir] intent . . . at the time they entered into the contract, unless the written language is not susceptible of a clear and definite understanding." *Id.* (cleaned up). Put simply, if the language of a covenant is unambiguous,

[6] At oral argument, we asked Thomas's counsel if he contended that constitutional due process applied here. Although he suggested initially that that was his position, he was unable to explain how the facts of this case implicated any constitutional rights. The bare fact that the Declaration uses the term "due process" does not invoke constitutional protections; there still must be state action in play. *Wassif v. N. Arundel Hosp. Ass'n, Inc.*, 85 Md. App. 71, 78 (1990). Because the Declaration is, essentially, a contract between private parties, it does not raise, on its own, any constitutional concerns.

our analysis ends, and we "simply give effect to that language unless prevented from doing so by public policy or some established principle of law." *Id.* at 53 (cleaned up).

If, on the other hand, a covenant is ambiguous, we may examine extrinsic evidence to divine "a reasonable interpretation of the language in light of the circumstances surrounding its adoption." *City of Bowie v. MIE, Props., Inc.*, 398 Md. 657, 681 (2007). "[A] covenant is ambiguous if its language is susceptible to multiple interpretations by a reasonable person." *Dumbarton Improvement Ass'n*, 434 Md. at 53. Strained constructions of words is not sufficient to create an ambiguity. *Id.*

The parties' dispute here centers on how Patriot Square was required to provide Thomas with notice of the 14 March 2022, hearing. Our first step, then, is to determine the specifics of Patriot Square's notice obligations.

I. Notice Obligations

Under the Declaration, notice "shall be deemed to have been properly sent when mailed, by ordinary mail, postpaid[.]" Under the Bylaws, in contrast, notice is provided "by hand-delivery first class mail[.]" Thomas focuses much of his initial argument contending that the Bylaws' notice provision is ambiguous and that sending a letter by Certified Mail is not satisfactory. As Patriot Square points out, however, when the Bylaws and the Declaration conflict, "the provisions of the Declaration shall control[.]" Thus, the Bylaws' notice provision is irrelevant here. Under the Declaration, Patriot Square needed to send notice of the 14 March 2022 hearing to Thomas, by "ordinary mail."

The parties offer dueling definitions of "ordinary mail." In Thomas's view, ordinary mail is First-Class Mail, which, according to him, does not include Certified Mail. Patriot

Square, on the other hand, contends that ordinary mail is all mail sent via the United States Postal Service (as opposed to a private deliverer like FedEx or UPS). Despite their competing interpretations, we conclude that the term "ordinary mail" is unambiguous. Although not perfectly symmetrical, Thomas's definition is closest to the mark on this issue.[7]

We commented previously that "one may think of [F]irst-[C]lass [M]ail as the default form of mail when one ventures to the post office seeking to mail a letter[.]" *Md. State Bd. of Nursing v. Sesay*, 224 Md. App. 432, 438 n.3 (2015). First-Class Mail and Certified Mail, however, are not mutually exclusive designations. Rather, Certified Mail is an extra service that a mail sender may add, for a fee, to First-Class Mail.[8] United States Postal Service, Domestic Mail Manual ("DMM") § 133, 2.2.3 (4 Nov. 2024). In other words, a unique letter is sent Certified Mail, First-Class.[9] This extra service "provides the sender with a mailing receipt and, upon request, electronic verification that an article was delivered or that a delivery attempt was made." DMM § 503, 3.1.1.

We have observed also that "[t]he public frequently uses the terms '[F]irst-[C]lass [M]ail' and 'regular mail' interchangeably, and the two are, in fact, the same thing." *Sesay*,

[7] Even if we were to credit Patriot Square's interpretation of "ordinary mail" as well, the term would then be, at best, ambiguous. *See Dumbarton Improvement Ass'n*, 434 Md. at 53. "[A] contract will be most strongly construed against its drafter when a court finds the contractual terms at issue to be ambiguous." *Credible Behavioral Health, Inc. v. Johnson*, 466 Md. 380, 399 (2019) (cleaned up). Thus, because Patriot Square prepared the Declaration, we would construe the term "ordinary mail" against it.

[8] Certified Mail may also be sent as Priority Mail. DMM § 503, 1.4.1.

[9] The hearing notice was sent this way.

224 Md. App. at 438 n.3. Further, the Postal Service does not consider Certified Mail to be ordinary mail. Although it "is dispatched and handled in transit as ordinary mail[,]" Certified Mail is treated differently when delivery is attempted and is thus a different category. DMM § 503, 3.1.1.

In short, under the Declaration, Patriot Square had to send notice of the 14 March 2022, hearing to Thomas by "ordinary mail," which means First-Class Mail, without any extra services. *Cf. Sesay*, 224 Md. App. at 438 n.3. This excludes Certified Mail.

II. Compliance

The trial court interpreted the Declaration similarly. The court differentiated "regular mail" and Certified Mail, acknowledging implicitly that Patriot Square did not send its notice by "regular mail." Thus, Thomas is correct that Patriot Square did not comply strictly with the Declaration's notice provision. Our analysis, however, does not end there.

Recast in the language of contract law, the circuit court held effectively that strict compliance with the Declaration's notice provision was not required here; rather, Patriot Square fulfilled its obligations through substantial compliance. Thus, we must decide whether, under Maryland law, substantial compliance was enough.

Although "the doctrine of substantial compliance has been more widely applied to building contracts, it has not been confined to them, but has been applied in many cases where the breach was relatively small as compared to the whole contract and did not go to the root of the contract[.]" *Dep't of Hous. & Cmty. Dev. v. Mullen*, 165 Md. App. 624, 656–57 (2005) (cleaned up) (quoting *Presstman v. Fine*, 162 Md. 133, 135 (1932)). Maryland

has not applied as yet the doctrine specifically to restrictive covenants, but we have applied it to notice requirements in other kinds of contracts.

In *B & P Enterprises v. Overland Equipment Co.*, 133 Md. App. 583 (2000), for example, we applied the doctrine of substantial compliance to the notice provision of a commercial lease. There, the contract provided that, if the landlord failed to perform any term of the contract within thirty days after receiving written notice, personally delivered or sent by Certified or Registered Mail, from the tenant specifying such default, the tenant had the right to cure the default at the landlord's expense. *Id.* at 602–03. This Court held that, although the tenant did not provide notice through a contractually-proper method, the landlord had "actual, ongoing knowledge" of the tenant's complaints through other written and oral communications and was not prejudiced by the lack of strict compliance with the notice requirements. *Id.* at 612. In other words, the purpose of the notice provision was fulfilled by actual notice, so "the departure from the form of notice was insignificant and trifling." *Id.* (quoting *Red River Commodities, Inc. v. Eidsness*, 459 N.W.2d 805, 809 (N.D. 1990)). Thus, any written notice in strict compliance with the contract "would have been, at best, duplicative." *Id. Cf. Bush v. Pub. Serv. Comm'n of Md.*, 212 Md. App. 127, 140 (2013) (holding that, where appellant received actual notice of an agency's decision from its website, any issue of "whether procedural due process concerns, statutory provisions, or rules entitled" him to receive notice by service of process was moot (footnote omitted)).

Outside Maryland, "[t]he substantial compliance doctrine is primarily applied by courts where *actual notice* has been timely received through an improper method of service[.]" *Trustco Bank v. Pres. Dev. Grp. Co., LLC*, 141 N.Y.S.3d 148, 151 (N.Y. App.

Div. 2021) (emphasis in original). The Supreme Court of Texas, when considering whether substantial compliance was the proper standard by which to evaluate satisfaction of contractual notice conditions, remarked that "the doctrine serves the important purpose of preventing parties from engaging in bad-faith 'gotcha' tactics to avoid their own contractual obligations based on a technicality." *James Constr. Grp., LLC v. Westlake Chem. Corp.*, 650 S.W.3d 392, 406 (Tex. 2022). *See also Elmen Holdings, LLC v. Martin Marietta Materials, Inc.*, 86 F.4th 667, 678 (5th Cir. 2023) (applying Texas law) ("A defect in the mode by which notice was sent will substantially comply with a notice provision if the content of the communication has put the party on notice.").

Indeed, even states that otherwise require strict compliance with contractual notice provisions will yield when actual notice is achieved through alternative methods. *See Rose, LLC v. Treasure Island, LLC*, 445 P.3d 860, 864 (Nev. 2019) (collecting cases). This is because "the point is to ensure that the defaulting party actually receives the information to which it is entitled, not to penalize the noticing party for minor technical failures that caused no prejudice to any other party." *Id.* Thus, most states agree that "when actual notice is received and the defaulting party is fully aware of the problem, how the notice was sent becomes immaterial." *Id. See also Onthank v. Onthank*, 260 A.3d 575, 582 (Conn. App. Ct. 2021) (holding that, even if the method of delivery "did not mechanistically comply with the contractual notice provision, literal enforcement would serve no purpose" when actual notice was achieved (cleaned up)); *Vole, Inc. v. Georgacopoulos*, 538 N.E.2d 205, 210–11 (Ill. App. Ct. 1989) (noting that provisions requiring a particular form of notice are meant only to ensure delivery).

We conclude that the circuit court here did not err as a matter of law in holding that Patriot Square was not required to comply strictly with the Declaration's notice provision. We turn, then, to whether Patriot Square complied substantially with the Declaration's notice provision.

At bottom, "[t]he touchstone of substantial compliance is whether the alleged 'notice' was sufficient to fulfill the purpose of the requirement." *Hansen v. City of Laurel*, 193 Md. App. 80, 94 (2010) (quoting *Faulk v. Ewing*, 371 Md. 284, 308 (2002)). Thus, to comply substantially with a contractual notice provision: (1) the notice must contain the information required by the contract; (2) the defaulting party must have actual notice; and (3) the defaulting party must not be prejudiced by the deviation. Thomas does not contend that the notice was defective substantively, and he does not claim any prejudice beyond contending he did not receive the notice. Accordingly, the only remaining issue is whether Thomas had actual notice.

III. Actual Notice

Actual notice can be either express or implied. *Windesheim v. Larocca*, 443 Md. 312, 327 (2015). "As the name suggests, express notice is established by direct evidence and embraces not only knowledge, but also that which is communicated by direct information, either written or oral, from those who are cognizant of the fact communicated." *Id.* (cleaned up). *See also Express Notice*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("Actual knowledge or notice given to a party directly, not arising from any inference, duty, or inquiry.").

Implied notice "is notice implied from knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry (thus, charging the individual) with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued." *Windesheim*, 443 Md. at 327 (cleaned up). *See also Implied Notice*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("Notice that is inferred from facts that a person had a means of knowing and that is thus imputed to that person; actual notice of facts or circumstances that, if properly followed up, would have led to a knowledge of the particular fact in question."). Implied notice and express notice are "equally actual notice." *Cent. GMC, Inc. v. Helms*, 303 Md. 266, 274 (1985) (quoting *City of Balt. v. Whittington*, 78 Md. 231, 235 (1893)).

Harkening back to the relevant standard of appellate review, whether a party has actual notice is a finding of fact that will be overturned only if clearly erroneous. *McClure v. Montgomery Cnty. Plan. Bd. of Md.-Nat'l Cap. Park & Plan. Comm'n*, 220 Md. App. 369, 380 (2014).

Here, the trial court found first that Thomas received actual notice of the hearing by Certified Mail. The court acknowledged that the mailed notice was returned "unclaimed," but found that Thomas received notice of the Certified Mail from the Postal Service and chose not to retrieve it. A person of ordinary prudence, on receiving such notice of Certified Mail, would have gone to the Post Office to retrieve it. Such an investigation "would in all probability have disclosed" the contents of the hearing notice. *Windesheim*, 443 Md. at 327 (cleaned up). *See also Whittington*, 78 Md. at 235 ("[A] notice is regarded in law as actual when the party sought to be affected by it . . . is conscious of having the means of knowing

[a particular fact], although he may not employ the means in his possession for the purpose of gaining further information." (quoting *Rhodes v. Outcalt*, 48 Mo. 367, 370 (1871))). Thus, Thomas had implied actual notice of the hearing.

The trial court found also that Thomas received actual notice of the hearing by email. The court pointed out that Thomas replied to subsequent communication sent to his email address. There was evidence adduced at trial that Thomas corresponded even earlier with Patriot Square's attorney via that email address. The notice in dispute here was communicated directly to Thomas from Patriot Square's representative. Thus, as a separate finding by the trial judge, Thomas received express actual notice of the hearing. *See Windesheim*, 443 Md. at 327.

To be sure, Thomas testified that he did not receive the notice of Certified Mail from the Postal Service and that he consulted rarely his email account. The trial court, however, found explicitly his testimony in these regards was not credible. "It is not our role, as an appellate court, to second-guess the trial judge's assessment of a witness's credibility." *Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020). Thomas does not point to anything in the record that shows the trial court's factual findings were clearly erroneous. Thus, we are bound by them. *Griffin*, 403 Md. at 195.

Our holding would be different had the trial court not found these facts. Despite the court's suggestions, Certified Mail is not superior inherently to ordinary mail in this context, *cf. id.* at 199–202, 202 n.11 (discussing potential issues that arise when a mailer knows that a notice, sent by only one method, was not received), and merely sending notice by Certified Mail and email did not comply substantially with the Declaration's notice

provision. Rather, Patriot Square achieved substantial compliance because the trial court made the factual finding that Thomas had knowledge of the notice of Certified Mail and the email. *See Trustco Bank*, 141 N.Y.S.3d at 151. This charged him with implied and express actual notice.

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