SIXTH DIVISION
August 22, 2014

No. 1-13-0503

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BEACON PLACE CONDOMINIUM ASSOCIATION, Plaintiff-Appellant, v. RAYMOND M. LAVELLE and CLAUDETTE M. LAVELLE, Defendants-Appellees (All Unknown Occupants, Defendants).	)))))))))))))	Appeal from the Circuit Court of Cook County. No. 08 CH 48469 Honorable Peter Flynn, Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Circuit court properly denied condominium association's petition for an award of attorney fees and costs, where association was not entitled to such an award under either the association's own declaration, its regulations, or the Illinois Condominium Property Act.

¶ 2 Plaintiff-appellant, Beacon Place Condominium Association (the Association), filed the instant lawsuit against defendants-appellees, Raymond M. Lavelle and Claudette M. Lavelle (the Lavelles), and defendants, all other unknown occupants, in order to address water damage to a condominium building it administered. This water damage was purportedly caused by tile

flooring installed on the balcony of a unit owned by the Lavelles. That tile was removed by agreement of the parties during the course of this litigation, and following a bench trial the circuit court ultimately found that—while the Lavelles did not improperly install the tile initially and the tile was not proven to be the cause of any water damage—the tile could not be reinstalled. The Association thereafter filed a petition for an award of attorney fees and costs. That petition was denied, and for the following reasons we affirm that decision.

¶ 3 I. BACKGROUND

¶ 4 This matter proceeded in the circuit court over the course of four years, developing a significant record on appeal. We recite here only those facts necessary for our resolution of the issues raised on appeal.

¶ 5 On December 30, 2008, the Association filed its initial complaint against the Lavelles. Therein, the Association generally alleged that it was an Illinois not-for-profit corporation authorized to administer a condominium building located in LaGrange, Illinois. That authority had been granted to the Association by the "Declaration of Condominium Ownership and of Easements, Restrictions Covenants and By-Laws for the Beacon Place Condominium Association," dated May 5, 2003 (declaration). Pursuant to the declaration, the Association also had the authority to adopt or amend rules and regulations (regulations) governing the administration of the condominium building. A copy of the declaration and the current regulations, adopted by the Association in October of 2005, were attached to the initial complaint.

¶ 6 The Association further alleged that the Lavelles were the owners of a residential unit located in the condominium building. According to the complaint, the Lavelles had installed ceramic tile on their balcony without first installing a waterproof protective membrane

underneath. The tile was alleged to have been installed without prior approval of the condominium building's Board of Directors and to have not been properly maintained as required by the declaration. As a result, a water leak had developed which was causing damage to the condominium building, including at least one of the other residential units.

¶ 7 Citing to its authority to enter the Lavelles' unit to conduct inspections and make emergency repairs, authority purportedly granted pursuant to the declaration, regulations, and the Condominium Property Act (765 ILCS 605/1 *et seq*. (West 2008)) (Condominium Act), the Association alleged that the Lavelles had improperly refused to allow the Association access to the balcony for purposes of inspection and repair and had refused to remove the tile. This refusal had been consistent since at least July 12, 2007.

¶ 8 Based upon these allegations, the Association's complaint asked for declaratory and injunctive relief. Specifically, the Association sought a declaration that: (1) the Lavelles' failure to grant access to their balcony for inspection and repair constituted a violation of the declaration; (2) the Lavelles be held responsible for the costs of any repairs; and (3) the Lavelles pay the Association's attorney fees and costs. The Association also sought an injunction requiring the Lavelles to: (1) grant access to their balcony for inspection and for making any necessary repairs, with the cost of those repairs to be paid by the Lavelles; (2) comply with the Association's declaration and regulations; and (3) pay the attorney fees and costs the Association had incurred in this matter.

¶ 9 On July 29, 2009, the Lavelles filed their answer and affirmative defenses. Therein, the Lavelles contended, *inter alia*: (1) they had purchased their condominium unit in 2004, and had received permission from the original developer to install the tile on their balcony; (2) the tile had not caused any leaking or water damage to the building; and (3) while the tile had been

voluntarily removed for purposes of an inspection, the Lavelles intended to reinstall it at the conclusion of these proceedings.

¶ 10 Indeed, the record reflects that after nearly a year of litigation, the Lavelles and the Association entered into an agreement by which the Association would be allowed to inspect the balcony and install a waterproof membrane. During the course of coming to this agreement, the Lavelles had removed the tile. However, the Lavelles also informed the Association of its intention to reinstall the tile following the completion of any inspection and repair.

¶ 11 As a result of the Lavelles' announced intention to reinstall the tile, the Association filed an amended complaint on March 9, 2010. The allegations of the amended complaint generally mirrored those of the original complaint. However, the Association also sought an injunction barring the Lavelles from reinstalling the tile on the balcony, relying upon a specific regulation provision that had been adopted after the Lavelles had purchased their unit and installed the tile. The Lavelles responded by filing an amended answer and affirmative defenses.

¶ 12 In addition, the Lavelles filed a counterclaim against the Association on September 22, 2011. Therein, they generally alleged that it was the Association that was responsible for the water damage to the condominium building, as it had failed to repair defects in the building's roof, walls, doors and windows. They further alleged that this water damage was now damaging the Lavelles' unit, causing mold to develop. This mold was alleged to have caused the Lavelles to suffer various physical ailments, as well as property damage to their unit. The Association filed a motion to sever this counterclaim from the chancery action on March 7, 2012.

¶ 13 Before a ruling on the motion to sever was entered, this matter proceeded to a bench trial in September of 2012 solely upon the issues raised in the Association's amended complaint and the Lavelles' affirmative defenses. At trial, the circuit court heard testimony from a number of

witnesses. The court also received into evidence deposition testimony from additional witnesses, including experts retained by both the Association and the Lavelles. The court was also presented with a great deal of documentary evidence, including the declaration and the regulations.

¶ 14 This matter was thereafter continued to November 19, 2012, for the circuit court's ruling. On that date, the circuit court orally announced its finding that the evidence at trial established that the Lavelles did not act wrongfully in originally installing the tile on their balcony, as they had been granted permission to do so by the original developer of the condominium building. The circuit court further concluded that there was no need to rule upon whether the tile had to be removed, as the parties had already done so pursuant to agreement. In addition, the court found that the Association had not established that the tile the Lavelles installed on their balcony had caused any water damage to the condominium building. However, in light of the fact that the Association's current regulations precluded the installation of any tile, the circuit court ruled that the Lavelles would not be permitted to reinstall their tile.

¶ 15 In light of these rulings, the Association indicated that it would be filing a petition to recover its attorney fees and costs. The circuit court responded by stating: "I'll save you the problem of doing the petition." The circuit court then indicated that it would deny any possible petition for fees and costs, reasoning that because each side of this dispute was successful on individual portions of the litigation it was not prepared to conclude that the Association was a "prevailing party." Nevertheless, the circuit court stated that the Association was free to file a written petition for fees in order to "make a record." A written order reflecting the circuit court's oral pronouncements was entered on November 29, 2012.

¶ 16 On December 14, 2012, the Association filed its written petition for fees and costs, contending that it was entitled to recover those expenditures pursuant to specific provisions contained in the declaration, regulations, and the Condominium Act. That petition was denied in an order entered on January 7, 2013. In that written order, the circuit court also severed the Lavelles' counterclaim from this matter, transferred the counterclaim to the law division of the circuit court, and found that there was no just reason to delay enforcement or appeal of its order. The Association timely appealed from the denial of its petition for fees and costs on February 6, 2013.

¶ 17 II. ANALYSIS

¶ 18 On appeal, the Association solely contends that the circuit court improperly denied its petition for attorney fees and costs. The Association thus asks this court to remand this matter to the circuit court for a calculation of the amount it is owed, an amount the Association contends should include the fees and costs it has incurred in pursuing this appeal.

¶ 19 We must first address the parties' dispute regarding the proper standard of review with respect to this issue. The Association contends we should review the circuit court's decision *de novo*, while the Lavelles assert that the denial of the fee petition should not be reversed absent an abuse of discretion. We conclude that neither position is entirely correct.

¶ 20 As an initial matter, the Association specifically contends that it was entitled to an award of attorney fees and costs pursuant to the terms of its own declaration, regulations, and the Condominium Act. It is well recognized that whether a party may recover attorney fees and costs pursuant to a specific statutory provision or contract is a question of law. *Grate v. Grzetich*, 373 Ill. App. 3d 228, 231 (2007) (statutory provision); *Bright Horizons Children's Centers, LLC v. Riverway Midwest II, LLC*, 403 Ill. App. 3d 234, 255 (2010) (contractual

provision). The circuit court's resolution of such a question is therefore subject to *de novo* review. *Id*. However, the circuit court's application of such statutory or contractual language to the facts of a particular case is reviewed for an abuse of discretion. See *Peleton, Inc. v. McGivern's Inc*., 375 Ill. App. 3d 222, 226 (2007). An abuse of discretion occurs when no reasonable person could take the view adopted by the circuit court. *Fennell v. Illinois Central R.R. Co*., 2012 IL 113812, ¶ 21. Thus, whether the court has authority to grant attorney fees is a question of law we review *de novo*, whereas a court's decision to as to whether to award authorized fees is reviewed for an abuse of discretion. *Spencer v. Di Cola*, 2014 IL App (1st) 121585, ¶ 34. Nevertheless, we may affirm a circuit court's denial of a request for attorney fees and costs on any basis appearing in the record. *Trustees of Wheaton College v. Peters*, 286 Ill. App. 3d 882, 887 (1997).

¶ 21 As our supreme court has long recognized, Illinois follows the "American rule" which prohibits prevailing parties from recovering their attorney fees from the losing party absent an express statutory or contractual provision. *Sandholm v. Kuecker*, 2012 IL 111443, ¶64. Accordingly, statutes or contracts which allow for such fees are in derogation of the common law and must be strictly construed. *Id*.; *Powers v. Rockford Stop-N-Go, Inc*., 326 Ill. App. 3d 511, 515 (2001). "That is, we construe the fee-shifting provision 'to mean nothing more—but also nothing less—than the letter of the text.' " *Bright Horizons*, 403 Ill. App. 3d at 255 (quoting *Erlenbush v. Largent*, 353 Ill. App. 3d 949, 952 (2004)).

¶ 22 Here, the Association cites to several sections of its declaration, its regulations, and the Condominium Act in support of its contention that it was entitled to an award of attorney fees and costs. Specifically, section 20 of the Association's declaration provides that "[i]n the event of a default by any Unit Owner under that provisions of the [Condominium Act], Declaration,

By-Laws or rules and regulations of the Association," the Association has the right to "prosecute any action or other proceedings against such defaulting Unit Owner and others for enforcement[.]" Section 20 of the declaration further provides that "[a]ll expenses of the Association in connection with any such actions or proceedings, including court costs and attorney's fees ***, shall be charged to and assessed against such defaulting Unit Owner[.]" Similarly, section 31.6 of the Association's regulations provides that "[i]n the event of any violation of the Rules & Regulations or Declaration and By-Laws of the Association[,]" the Association has "the right to pursue any and all legal remedies to compel enforcement, legal and equitable. Any and all costs and attorney's fees shall be assessed back to the account of the offending Owner at the time they are incurred." Finally, section 9.2 of the Condominium Act provides that the Association has the right to bring an enforcement action "[i]n the event of any default by any unit owner," and that "[a]ny attorneys' fees incurred by the Association arising out of a default by any unit owner, his tenant, invitee or guest in the performance of any of the provisions of the condominium instruments, rules and regulations or any applicable statute or ordinance shall be added to, and deemed a part of, his respective share of the common expense." 765 ILCS 605/9.2(a), (b) (West 2012).

¶ 23 What is plain from each of these provisions is that the Association is only entitled to recover its attorney fees and costs from the Lavelles if they were in *default* of or had actually *violated* a provision of the Association's declaration, its regulations, or the Condominium Act. Again, each of these provisions is to be strictly construed to mean nothing more than the plain letter of the text therein. *Bright Horizons*, 403 Ill. App. 3d at 255. Without such a default or violation, there would be no contractual or statutory basis to award the Association any attorney

fees or costs and we would be compelled to apply the "American rule" which prohibits any such award.

¶ 24 Indeed, the Association recognizes this requirement in its briefs on appeal, contending that it was entitled to an award of fees and costs as the Lavelles were in default because they: (1) "refus[ed] for nearly two years to allow the Association to *** inspect and repair their Unit's balcony;" and (2) announced, after the agreement to remove the tile, that "they intended to *reinstall* the tile that was plainly forbidden by the Association's Rule and Regulations, which then required further litigation by the Association[.]" (Emphasis in original.) For a number of reasons, we conclude that the Association may not rely upon these purported defaults to support its right to an award of attorney fees and costs.

¶ 25 First, while the circuit court clearly indicated that it would not grant the Association's request for fees and costs, it also allowed the Association to file a written petition to "make a record." In that written petition, the Association merely referenced the contractual and statutory provisions cited above, asserted that it therefore had the "authority to collect its attorney's fees," and contended that "[t]he only remaining question relative thereto is the reasonableness of the attorney's fees incurred by the Association." Other than vague, unspecific references to the "allegations in the Association's Amended Complaint" and the Lavelles' "actions and inactions" and "ongoing refusal to cooperate," the Association's petition contained *no* specific assertions as to exactly how the Lavelles were in default, such that an award of fees and costs was mandated. Having failed to raise below the specific arguments it now presents to this court in the circuit court, the Association has forfeited those arguments on appeal. *Rodriguez v. Frankie's Beef/Pasta & Catering*, 2012 IL App (1st) 113155, ¶ 23 (particular issues not brought before the circuit court are forfeited upon review).

¶ 26 Any forfeiture aside, we also note that in announcing its ruling on the merits following the bench trial on November 19, 2012, the circuit court specifically found that: (1) the Lavelles did not act wrongfully in originally installing the tile on their balcony; (2) there was no need to rule upon whether the tile had to be removed, as the parties had already done so pursuant to agreement; (3) the Association had not established that the tile the Lavelles had installed on their balcony caused any water damage to the building; and (4) the Lavelles would not be permitted to reinstall the tile. The circuit court then concluded that these findings alone "deal[t] with the amended complaint and with the affirmative defenses to the amended complaint." Thus, the circuit court itself *never* concluded that the Lavelles were in default of or had violated any specific provision of the Association's declaration, its regulations, or the Condominium Act. Without such a finding of a default or violation, we fail to see how—pursuant to the above discussion—the Association can be entitled to an award of statutory or contractual fees and costs.

¶ 27 Indeed, to the extent that the specific assertions of default raised on appeal could be constituted as a challenge to the circuit court's ruling on the merits, it would be improper. The circuit court announced its oral judgment on the merits on November 19, 2012, and its written order on the merits was entered on November 29, 2012. The Association did not file its petition for fees and costs until December 14, 2012, and that petition was not denied until January 7, 2013. The Association's notice of appeal was filed on February 6, 2013, and specifically indicated that the Association was challenging *only* the January 7, 2013, order denying its petition for fees and costs. Because the Association's notice of appeal specifically sought review of only the circuit court's January 7, 2013, order denying its petition for attorney fees and costs, the notice of appeal did not confer jurisdiction upon this court to consider any other aspect of the

circuit court's prior orders. See *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011) ("A notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts of judgments specified in the notice of appeal.").

¶ 28 Even if we were to overlook the Association's forfeiture, the fact that the circuit court did not enter any findings of default against the Lavelles, and our own lack of jurisdiction over the matter, there are yet other reasons why the Association's specific assertions of default would not entitle it to relief on appeal. While the Association generally contends that the Lavelles were in default for their refusal to allow their balcony to be inspected and repaired, nowhere does the Association address the circuit court's findings that the Lavelles properly installed the tile in the first place and that the tile did not cause any damage. We fail to see how the Lavelles can be deemed to have defaulted on their statutory or contractual obligations, when they merely refused to allow the removal of tile that they properly installed and which was not actually the cause of any water damage.

¶ 29 In addition, we also reject the Association's contention that the Lavelles were in default because they announced their intention to reinstall the tile after it had been removed by agreement. While—as the circuit court concluded—the Association's regulations now preclude the reinstallation of any tile on the balcony, the Lavelles did not actually install any such tile. They merely announced their *intention* to do so. Other than the bald assertion in its briefs that this announcement constituted a default, the Association has provided no further argument or legal support for this contention. They cite to no specific statutory or contractual provision that this announcement of intention supposedly violated.

¶ 30 It is well understood that " '[a] reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The

appellate court is not a depository in which the appellant may dump the burden of argument and research.' " (Internal quotation marks omitted.) *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010) (quoting *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1995)). Thus, "[w]e will not sift through the record or complete legal research to find support for [an] issue." *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 6. Without any proper argument or legal support, we will, therefore, not further consider this argument.

¶ 31 Finally, we note that the circuit court did not provide any specific analysis of the terms of the Association's declaration, regulations, or the Condominium Act in denying the Association's petition for attorney fees and costs. Rather, it focused on the question of whether or not the Association was a "prevailing party." On appeal, the Association contends that this focus was improper. Alternatively, the Association contends that even if it was proper, the circuit court incorrectly concluded that the Association was not a prevailing party entitled to an award of fees and costs.

¶ 32 We conclude that any focus on the concept of a prevailing party—while common in the context of requests for attorney fees—is unnecessary and irrelevant here. None of the relevant contractual or statutory language relies upon that concept. Nevertheless, as noted above our review of the language of the relevant agreements and statute is *de novo,* and we may affirm the circuit court's denial of a request for attorney fees and costs on any basis appearing in the record. For the reasons indicated above, we conclude that the circuit court's ruling was correct regardless of the reasoning it employed.

¶ 33 Moreover, even if we assumed that the circuit court's analysis was proper, we would affirm its conclusion that the Association was not a prevailing party. A prevailing party, for purposes of awarding attorney fees and costs, is one that is successful on a significant issue and

achieves some benefit in bringing suit. *Peleton, Inc. v. McGivern's Inc.*, 375 Ill. App. 3d 222, 227 (2007). Thus, a litigant does not have to succeed on all of its claims to be considered a prevailing party. *Id.* Nevertheless, "when the dispute involves multiple claims and both parties have won and lost on different claims, it may be inappropriate to find that either party is the prevailing party and an award of attorney fees to either is inappropriate." *Powers*, 326 Ill. App. 3d at 515. This determination remains a matter committed to the discretion of the circuit court. *Id.* at 516. Here, the record clearly reflects that the circuit court properly considered the fact that both the Association and the Lavelles were successful in different aspects of this case before concluding that the Association was therefore not a prevailing party. On the record before us, we cannot say that this conclusion was an abuse of discretion.

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, the judgment of the circuit court—which denied the Association's petition for attorney fees and costs—is affirmed. We therefore also deny the Association's request for an award of the fees and costs it has incurred in pursuing this appeal.

¶ 36 Affirmed.