

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Latch's Lane Owners Association	:	
	:	
v.	:	No. 2408 C.D. 2009
	:	
Tawoos Bazargani, M.D.,	:	Submitted: March 12, 2010
Appellant	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: April 13, 2010

Tawoos Bazargani, M.D., *pro se*, appeals from the August 10, 2009, order of the Court of Common Pleas of Montgomery County (trial court) denying Bazargani's Motion for Relief from Judgment. We affirm.

Bazargani is a resident of Latch's Lane Condominiums (Latch's Lane), a housing complex located in Montgomery County, Pennsylvania. The Latch's Lane Owners Association (Association) serves as the management company overseeing the care and maintenance of Latch's Lane.

As part of its duties, Association coordinates all repairs and upgrades to the building and collects payments for such improvements from residents. In 2005 a special assessment was approved by Association and ratified by the residents of Latch's Lane to upgrade the windows, replace hot water heaters and

renovate hallways. The cost of these projects would be paid by the residents. Bazargani agreed to pay her share in three installments with a 7% fee for any late payments.

Bazargani failed to pay each of her three installments on time and was assessed a 7% penalty for each overdue installment. Association filed an action against Bazargani with the magisterial district judge and a judgment was entered for Association and against Bazargani on February 20, 2007, in the total amount of \$1,054.64.¹ Bazargani appealed to the trial court on March 16, 2007, and Association filed a complaint against her on April 2, 2007. Association alleged that Bazargani owed Association certain unpaid late fees in the amount of \$702.29 as well as attorney's fees in the amount of \$1,219.45. Bazargani filed a *pro se* counterclaim seeking damages for wage loss, court costs and miscellaneous costs in the amount of \$2,000.00.

Thereafter, the parties participated in discovery and various motions were filed and disposed of by the trial court over an 18 month period. An arbitration hearing was held on October 9, 2008. An arbitrators award was entered on October 10, 2008, in favor of Association and against Bazargani in the amount of \$10,116.74. The arbitrators' also found against Bazargani on the counterclaim. Bazargani filed a motion for relief from the arbitrators' award on October 20, 2008.

A bench trial was held before the trial court on July 22, 2009. Based upon the evidence presented at the trial, the trial court found in favor of Association and against Bazargani and awarded damages in the amount of

¹ The amount of the judgment consisted of \$702.29 in late fees, \$92.95 for costs, \$8.40 for interest, and \$250.00 for attorney's fees.

\$18,000.00. The trial court also found in favor of Association and against Bazargani on the counterclaim. Bazargani filed a *pro se* motion for relief from the judgment on the basis that: (1) Association presented perjured testimony; (2) the award of attorney's fees was inappropriate and the amount was not in line with the complexity of the case; (3) the 7% fee for any late payments exceeded the maximum amount permitted by law; (4) Association's memorandum of law relied upon irrelevant cases; and (5) Bazargani was denied "benefiting from Metropolitan Management, Inc., who has managed the entire dues involving Capital Improvement plan whom has been subpoenaed to testify during the hearing of the instant claim on July 22, 2009."

By order of August 10, 2009, the trial court denied Bazargani's post trial motion. This appeal followed.²

Bazargani argues first that the trial court erred by awarding Association damages. Bazargani contends that she has been victimized because Association, while implementing the capital improvement plan, treated her with less privileges and less respect than the rest of the owners and occupants of Latch's Lane. Bazargani contends that such treatment is a violation of 42 U.S.C. §1981³ and her due process rights under Latch's Lane's bylaws.

² This Court's scope of review of an order of a trial court denying a motion for post-trial relief is limited to a determination of whether the trial court abused its discretion or committed an error of law. Pikur Enterprises, Inc. v. Pennsylvania Department of Transportation, 641 A.2d 11 (Pa. Cmwlth.), petition for allowance of appeal denied, 539 Pa. 657, 651 A.2d 543 (1994).

³ Section 1981 of the Civil Rights Law governs equal rights under the law and provides as follows:

- (a) Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and

(Continued....)

Upon review of Bazargani's motion for relief from the judgment, we conclude that she has waived this argument by failing to raise it before the trial court. See Pa.R.A.P. 302, Requisites for Reviewable Issue, (a) General rule ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."). As such, we will not address her contentions with respect to this issue.

Next, Bazargani argues that Association charged an illegal and outrageous rate of interest involving the late fees. Bazargani contends that the 7% interest charge imposed by Association violates Section 3314 of the Uniform Condominium Act (Act), 68 Pa.C.S. §3314.⁴ Bazargani's argument appears to be

proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined. For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment. The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

⁴ Section 3314 governs assessments for common expenses and provides as follows:

(a) GENERAL RULE.-- Until the association makes a common expense assessment, the declarant shall pay all the expenses of the condominium. After any assessment has been made by the association, assessments shall be made at least annually and shall be based on a budget adopted at least annually by the association. The budgets of the association shall segregate limited common expenses from general common expenses if and to the extent appropriate.

(Continued....)

that Association erred by charging a flat one time interest rate of 7% per total amount of each capital improvement installment of \$4,740.17 instead of charging upon percentage base per year as mandated by Section 3314. Bazargani contends that Association charged her \$331.82 interest for the past due amount of one installment of \$4,740.17 for one month resulting in a compounded interest rate of 74% per year. Bazargani argues that this violates Section 3314, which mandates

(b) ALLOCATION AND INTEREST.-- Except for assessments under subsection (c), common expenses shall be assessed against all the units in accordance with the common expense liability allocated to each unit (section 3208) in the case of general common expenses and in accordance with subsection (c) in the case of special allocations of expenses. Any past due assessment or installment thereof shall bear interest at the rate established by the association not exceeding 15% per year.

(c) SPECIAL ALLOCATIONS OF EXPENSES.-- Except as provided by the declaration:

(1) Any common expense associated with the maintenance, repair or replacement of a limited common element shall be assessed in equal shares against the units to which that limited common element was assigned at the time the expense was incurred.

(2) Any common expense benefiting fewer than all of the units shall be assessed exclusively against the units benefited.

(3) The costs of insurance shall be assessed in proportion to risk and the costs of utilities that are separately metered to each unit shall be assessed in proportion to usage.

(4) If any common expense is caused by the negligence or misconduct of any unit owner, the association may assess that expense exclusively against his unit.

(d) REALLOCATION.-- If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

that the maximum interest rate that Association can collect from her is 15% per year.

Pursuant to Section 3302(11) of the Act, 68 Pa.C.S. §3302(11), a unit owners' association may "[i]mpose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws and rules and regulations of the association." As noted herein, Section 3314(b) of the Act provides that the association may charge no more than 15% annual interest on any past due assessment or installment thereof. 68 Pa.C.S. §3314(b). Moreover, Section 14.6 of the Declaration of Latch's Lane Condominium (Declaration) authorizes Association to assess a late charge for failure to pay any assessment or other charge on the date it was due. See Certified Record (C.R.), Exhibit P-35.

In addressing this issue, the trial court pointed out that Association charged Bazargani a *one-time* penalty of 7% on each of her outstanding installments in conformity with Section 3314(b) of the Act. While Bazargani's calculations may appear to result in Association charging her 74% per year if Association had levied a compounded charge of 7% per month on the overdue installment payment, the fact remains that Association did not charge her compounded late fees but only charged her a one-time penalty of 7%. Accordingly, we agree with the trial court that its decision to permit the 7% one-time penalty was appropriate.

Bazargani argues further that Association has deprived her of the right to due process by providing her with illegal information and a false final notice. In support of this argument, Bazargani appears to be arguing that the final notice provided by Association was somehow defective because it demanded a large,

undue and baseless amount of money from her under the excuse of illegal late fee charges.

We first point out that Bazargani is not contending that she did not receive a final notice from Association regarding the payment of the overdue assessment and late fees. What Bazargani is challenging seems to be the amount due to Association as set forth in the final notice. However, the fact that Bazargani disagreed with the content of any notice received from Association does not mandate a finding that she was denied reasonable notice and therefore denied due process.

We further point out that Bazargani was not denied proper notice and an opportunity to be heard. The complaint against her by Association was the subject of a bench trial before the trial court wherein both Association and Bazargani had the full opportunity to present evidence and witnesses. In addition, the parties were given the full opportunity to cross-examine witnesses and to object to the introduction of any evidence into the record.⁵ See C.R., Transcript of July 22, 2009, Bench Trial. Furthermore, the issue of whether Association had the

⁵ We note that Bazargani did not object to the introduction of any of the numerous exhibits offered into evidence by Association which included copies of the various notices that were sent to her by Association demanding payment of the past due assessment as well as late fees. Moreover, Bazargani has failed to direct this Court as to where in the record she preserved any of the issues she has raised before this Court. This Court has held that where a party failed to direct the appellate court to where the alleged errors were raised before the trial court, as required by Pa.R.A.P. 2117(c) and 2119(e), and where the party failed to show that the claims were raised before the trial court, the alleged errors were not reviewable pursuant to Pa.R.A.P. 302(a). Riverwatch Condominium Owners Ass'n v. Restoration Development Corp., 980 A.2d 674 (Pa. Cmwlth.), petition for allowance of appeal denied, __ Pa. __, 985 A.2d 220 (2009). We advise Bazargani to educate herself on the proper procedural and appellate rules if and when she ever finds herself proceeding *pro se* in future litigation. We point out, however, that a *pro se* litigant must to some extent assume the risk that her lack of legal training will prove her undoing. Vann v. Unemployment Compensation Board of Review, 508 Pa. 139, 494 A.2d 1081 (1985).

authority to collect the late fees and whether the amount thereof was proper was fully litigated before the trial court. Id. As such, we reject Bazargani's contention that she was somehow deprived of her due process rights based on defective notice.

Next, Bazargani argues that the trial court committed reversible error in finding in favor of Association because Association's witnesses failed to testify truthfully while under oath thereby committing perjury. We disagree.

The law is well settled that questions as to credibility, the resolution of conflicts in the evidence, and the weight of the evidence are for the fact finder, in this case the trial court, and they will not be disturbed on appeal. Spera v. Department of Transportation, 817 A.2d 1236 (Pa. Cmwlth.), petition for allowance of appeal denied, 576 Pa. 728, 841 A.2d 534 (2003). Additionally, when reviewing a decision of a trial court or an administrative agency, this Court may not reweigh the evidence presented or judge the credibility of witnesses. Mateskovich v. Department of Transportation, Bureau of Driver Licensing, 755 A.2d 100 (Pa. Cmwlth. 2000). Thus, the trial court is free to accept or reject the testimony of any witness in whole or in part. DiCola v. Department of Transportation, 694 A.2d 398 (Pa. Cmwlth. 1997). Moreover, on review, the evidence must be viewed in a light most favorable to the party which prevailed before the trial court. McDonald v. Department of Transportation, 708 A.2d 154 (Pa. Cmwlth. 1998).

Herein, the trial court accepted the testimony of Association's witness, Claire Staffieri, the former manager at Latch's Lane, as credible and also found that the exhibits presented by Association provided sufficient evidence to support the award of damages. Upon review, we can discern no abuse of discretion that would justify this Court's interference in the role of the trial court as

fact finder in this matter. See Thatcher's Drug Store v. Consolidated Supermarkets, 535 Pa. 469, 636 A.2d 156 (1994). As a result, we will not accede to Bazargani's request to conclude that the testimony and evidence offered by Association was false, and to view the totality of the evidence more in her favor. Additionally, we cannot conclude that the findings of fact are not supported by substantial evidence of record.

Next, Bazargani argues that Association was not entitled to attorney's fees. Bazargani contends that Association should not receive attorney's fees because: (1) its witness committed perjury; (2) it treated her with less privilege and less respect as the rest of the owners; (3) it over charged her interest for the past due amount, (4) it demanded a baseless amount of charges through the final notice; and (5) they brought an action against her when she did not comply with their illegal demands.

Bazargani also objects to the amount of attorney's fees awarded to Association. Bazargani contends that Association's expert admitted that his assessment of the total amount of attorney's fees was based only on his review of the docket entries with no knowledge about the volume of the pleadings and the related demanded time and with no consideration about those pleadings that resulted from Association's lack of cooperation. Bazargani contends that it was Association's lack of cooperation which necessitated further pleadings such as her requests for discovery.

Pursuant to Section 3315 of the Act, Association, as the prevailing party, is entitled to an award of attorney's fees.⁶ In addition, Section 14.6 of the

⁶ 68 Pa.C.S. §3315. Section 3315(f) provides that "[a] judgment or decree in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing

(Continued...)

Declaration provides that a delinquent owner shall be obligated to pay, *inter alia*, reasonable attorneys' fees incurred in collection by legal proceedings. C.R., Exhibit P-35. Thus, this real issue is whether the amount awarded by the trial court for attorney's fees was reasonable and supported by the record.⁷

In support of its claim for \$22,396.33 in attorney's fees, Association presented the expert testimony of William Henry Pugh, IV, Esquire. Mr. Pugh testified that, with respect to this action, he reviewed the docket entries, two volumes of pleadings, discovery packet, motions packet, arbitration exhibits, Association's arbitration memorandum and the past and current billings of the law firm representing Association. C.R., Transcript of July 22, 2009, Bench Trial at 87-88. Mr. Pugh testified further that he reviewed the billings totaling \$22,396.33 and compared the hourly rates of \$175 charged in 2006 when this dispute began, to \$225 currently being charged in 2009 with the hourly rates being charged generally for commercial litigation. *Id.* at 89. Mr. Pugh determined, based on his review, that the hourly rate charged generally for commercial litigation was in the range of \$300; therefore, Mr. Pugh opined that the rates charged by the Association's law firm were reasonable. *Id.* Mr. Pugh testified further that the attorney's fees were reasonable and necessary in light of the particulars of this case. *Id.* at 90.

Thus, contrary to Bazargani's contentions, Mr. Pugh reviewed more than just the docket entries in this matter. The trial court accepted Mr. Pugh's testimony and awarded \$17,297.71 (\$18,000.00 less \$702.29 in late fees) in attorney's fees. While the amount awarded for attorney's fees may seem

party." 68 Pa.C.S. §3315(f).

⁷ A trial court must receive evidence on the amount of attorney's fees a condominium association is entitled to, rather than select an arbitrary figure. Centennial Station Condominium Ass'n v. Schaefer Co. Builders, 800 A.2d 379 (Pa. Cmwlth. 2002).

unreasonable in light of the amount of late fees being sought, it is not unprecedented. In Mountain View Condominium Ass'n v. Bomersbach, 734 A.2d 468 (Pa. Cmwlth. 1999), appeal dismissed as improvidently granted, 564 Pa. 433, 768 A.2d 1104 (2001), we affirmed an attorney's fees award far in excess of the damages recovered. The appellant in Mountain View refused to pay condominium fees. In suing to collect the past due fees, the condominium association incurred nominal attorney's fees; however, the appellant refused to pay attorney's fees pursuant to the association's governing rules. A battle raged on and, in the end, the association incurred over \$46,000 in attorney's fees to collect less than \$ 3,500 in association fees. The trial court awarded the association the full attorney's fees incurred.

Rejecting the appellant's claims the fees were unreasonable, this Court noted the rules governing the parties' relationship specifically provided an award of fees, and therefore, the association was not required to accept less than the full sum to which it was entitled. The defensive manner in which the appellant waged battle over her contractual obligations supported the award of attorney's fees.

Herein, as in Mountain View, the history of the dispute between these parties over three years and the record supports the award; accordingly, we conclude that the trial court did not err and the award of attorney's fees was reasonable. Association is entitled to be reimbursed for the expenses of pursuing its legally correct position.

Finally, Bazargani argues that her due process rights were violated when she was prevented access, through discovery, to the records maintained by Metropolitan Management, Inc. Bazargani contends that Metropolitan is the entity that collected the assessments due by each owner for the capital improvement project. Bazargani argues that she is entitled to discovery of Metropolitan's

records because the basis of Association's claim is that all the other owners paid their assessments accordingly and timely. Bazargani contends that Association's actions in denying her discovery and depriving her of her legal rights have never been challenged before a discovery judge. Bazargani contends further that Metropolitan was subpoenaed to appear at the arbitration hearing and the bench trial in this matter and it failed to appear or respond to the subpoenas.

Our review of the transcript of the July 22, 2009, bench trial reveals that the issue of whether Metropolitan was required to respond to Bazargani's subpoena was fully argued and resolved by the trial court. See C.R., Transcript of July 22, 2009, Bench Trial at 22-27. Our review further reveals that Bazargani was provided with discovery pertaining to Metropolitan; however, she was dissatisfied with what was provided through the interrogatories. Id. Moreover, the trial court permitted Bazargani to explain her position as to why she was seeking certain records from Metropolitan. Id. In response, Association explained that the information/documents that Bazargani was seeking were provided through the discovery process and that further, the trial court had entered an order in Association's favor in response to Bazargani's supplemental motion to compel.⁸ Id. As such, Bazargani's claim that her discovery request was never heard by a "discovery" judge is erroneous.

After considering the parties' positions, the trial court quashed the subpoena in regard to Metropolitan. Id. at 27. Based on the discussion contained in the transcript and the certified record regarding the subpoena and the discovery process, we conclude that the trial court's decision was proper.

⁸ See C.R., Order Denying Supplemental Motion to Compel entered April 8, 2008.

Accordingly, the trial court's order denying Bazargani's motion for relief of the judgment is affirmed.⁹

JAMES R. KELLEY, Senior Judge

⁹ Bazargani also "strongly" objects to Association's memorandum of law filed with the trial court because the memorandum contains cases involving other unit owners that are irrelevant to the instant claim. While Bazargani is entitled to disagree with the contents of Association's memorandum of law, she has not provided any factual or legal basis to this Court to support how her disagreement has any legal bearing upon the trial court's decision. Therefore, her objection is patently without merit.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Latch's Lane Owners Association	:	
	:	
v.	:	No. 2408 C.D. 2009
	:	
Tawoos Bazargani, M.D.,	:	
Appellant	:	

ORDER

AND NOW, this 13th day of April, 2010, the order of the Court of Common Pleas of Montgomery County, dated August 10, 2009, at docket number 07-06290, is affirmed.

JAMES R. KELLEY, Senior Judge