Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2019-410 & 2020-167

FEBRUARY TERM, 2021

Virginia Gardner* & Howard Malovany* v.	}	APPEALED FROM:
Janice Hokenson, Chad Hansen & Shelburne Cliffs Condominium Association, Inc.	}	
	}	Superior Court, Chittenden Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 1007-10-17 Cncv
		Trial Judge: Helen M. Toor, Robert A. Mello

In the above-entitled cause, the Clerk will enter:

Condominium unit owners, who sued other unit owners, the condominium association, and its insurer in response to what began as a water drainage problem, appeal various trial court rulings leading up to and following a jury verdict in the case. We affirm.

Plaintiffs Virginia Gardner and Howard Malovany own units in the Shelburne Cliffs Condominium. In the summer of 2017, Gardner asked the Condominium Association's Board of Directors to address her concerns with water pooling in the patio and alcove common areas outside her unit.[1] When the Association made an effort to rectify the problem, Gardner was not satisfied with the work, and plaintiffs expressed concerns about who authorized the work, as well as the Board's alleged failure to give them an opportunity to voice their concerns. After plaintiffs requested a special meeting to discuss these concerns, defendant Chad Hanson, who had recently been elected Board president, called for a vote to amend the Association bylaws to reduce the size of the Board from ten to five members.

On October 30, 2017, the Board, with Malovany casting the lone dissenting vote, voted in favor of reducing the number of Board members from ten to five. That same day, plaintiffs filed an action seeking compensatory and punitive damages, as well as injunctive and declaratory relief, against the Association and unit owners Hansen and Janice Hokenson, the then-current Board vice-president, claiming violations of the Association's Declaration of Condominium and bylaws and of the Vermont Common Interest Ownership Act (VCIOA), 27A V.S.A. §§ 1-101-4-120. Plaintiffs alleged that Hokenson and Hansen were personally liable and not entitled to indemnification from the Association for acting outside the scope of their authority as Association Board members by causing unauthorized work to be performed on common areas outside Gardner's unit and by unlawfully reducing the size of the Board. Plaintiffs asked the civil division to: (1) issue preliminary and permanent injunctions preventing defendants from reducing the number of Board members and requiring the Association to restore the common areas outside

[1] At that time, each unit was permitted to have one owner serve on the Board.

Gardner's unit; (2) award compensatory damages against Hokenson and Hansen for the cost of restoring and repairing those common areas and for Gardner's loss of value and loss of use and enjoyment of her unit; and (3) award punitive damages against Hokenson and Hansen. Defendants filed an answer that included several affirmative defenses and counterclaims.

On November 3, 2017, the civil division issued a temporary restraining order prohibiting defendants from changing the size or composition of the Board, disbursing any funds without the written approval of a majority of board members, or taking any action without written authorization by the Board at a board meeting. On December 8, 2017, following an evidentiary hearing, the civil division issued a preliminary injunction containing essentially the same restraints, in addition to prohibiting defendants from taking any action on behalf of the Board to address issues related to the underlying dispute concerning the alleged damage to Gardner's unit. The court also prohibited plaintiffs from voting "on any decisions to hire counsel to represent the Association or in dealing with the Association's insurance company during the pendency of this litigation."

On May 25, 2018, plaintiffs filed a thirty-page amended complaint that: (1) added as defendants the Association's insurer, Vermont Mutual Insurance Company (VMIC), and two other Association members; (2) asserted eleven causes of action; and (3) responded to defendants' counterclaims.[2] By this time, VMIC had appointed counsel for the Association and also for the individual defendants. In the amended complaint, plaintiffs alleged, among other things, that VMIC had a conflict of interest in defending both the Association and the individual unit owners, tried to pressure plaintiffs to drop their claims against the individual defendants, and failed to obtain board authorization for several of its filings.

In response to plaintiffs' request for a preliminary injunction requiring defendants to restore the common areas outside Gardner's unit in accordance with their exhibit photographs, the civil division held a two-day evidentiary hearing in the summer of 2018. At the conclusion of the first day of the hearing, the court ordered defendants to meet with Gardner and make some specific repairs. At the end of the second day of the hearing on July 24, the court orally ordered defendants to restore the Gardner alcove area "back to the condition as originally designed by the engineers," which would involve removing extra-sized rocks and replacing the current flora with specified plants to help address drainage issues.

On August 20, 2018, plaintiffs asked the civil division to adopt and issue their proposed written order clarifying that the court's oral July 24, 2018 order required defendants to restore the alcove area back to its original 2004 specifications. Three days later, without waiting for a response from defendants, the court signed off on the proposed order, requiring that the patio and alcove areas be "restored to their original design condition as shown in the Original Drawings." The order required that the restoration work be performed under the supervision of Civil Engineering Associates, Inc. (CEA), which would certify by September 22, 2018 that the work had restored the area as originally designed. In an August 31, 2018 order, in response to defendants' motion, the court agreed that CEA's "scope of work included provisions that the court had not intended to include in the scope of its preliminary injunction." The court clarified that the Association, and not CEA, had the authority and responsibility to hire contractors to do the restorative work. Both parties filed further motions to clarify the court's orders. On September 13, 2018, in response to another motion to clarify filed by plaintiffs, the court found "disturbing" a letter indicating that the Association intended to proceed with a different scope of work than the court-approved CEA specifications and that the Association had instructed its contractor to

[2] The civil division dismissed three of defendants' counterclaims in a May 11, 2018 order.

respond to instructions only from the Association's expert and legal counsel. The court ordered the Association to comply with certain CEA specifications as performed under CEA's supervision.

Unhappy with the work that was being done, plaintiffs filed a motion for contempt, alleging that defendants were refusing to comply with the civil division's orders regarding the work. The motion also alleged contempt by VMIC. The day after a December 3, 2018 evidentiary hearing, the civil division issued three separate orders addressing plaintiffs' renewed motion for contempt, as well as motions filed by VMIC for sanctions and to bifurcate plaintiffs' claims against the insurer. In one order, the court denied plaintiffs' motion for contempt, noting "that both side's experts agreed that the court-ordered design was a bad idea and created potential safety hazards." In a second order, the court granted VMIC's motion for sanctions against plaintiffs for including VMIC in its motion for contempt. The court stated that plaintiffs had presented no evidence to support the contempt motion against VMIC, which it labeled as "utterly frivolous." Accordingly, the court awarded VMIC attorney's fees for having to defend against plaintiffs' contempt motion. In its third order that day, the court granted VMIC's motion to bifurcate plaintiffs' claims against the insurer, ruling that the claims against VMIC would be tried, if necessary, following a trial on plaintiffs' claims against the other defendants. While recognizing the overlap between the claims, the court reasoned that the nature of the claims against VMIC were different and more complicated than those against the other defendants and could lead to jury confusion, that trying the claims together could prejudice defendants by referencing insurance coverage and could raise evidentiary problems with respect to privileged communications, and that trying the claims against the Association and individual defendants first might moot out some of the claims against VMIC.

A jury trial on plaintiffs' claims against the Association and the individual defendants was held over four days from May 20 through May 23 of 2019. The week before trial, in response to the parties' competing motions in limine, the trial court precluded the parties from presenting evidence of orders the court put in place after plaintiffs' amended complaint was filed and of the parties compliance with those orders. The court determined that the parties' knowledge of specific facts in the orders was not at issue, that the prior orders were not relevant to damages, and that introducing claims of noncompliance of prior orders would be more prejudicial than probative and would likely confuse the jury by creating a trial within a trial on a collateral issue. On the first day of trial, the court also disallowed evidence allegedly demonstrating defendants' misconduct after May 25, 2018, the date that plaintiffs filed their amended complaint.

On May 23, 2019, the jurors returned a verdict in which they concluded that: (1) the Association violated one or both of two sections of the Declaration of Condominium; (2) the violation caused damages to Gardner in the amount of one dollar; (3) neither Hokenson nor Hansen violated the sections of the Declaration that defendants alleged they violated; (4) none of the individual defendants breached a fiduciary duty to either Gardner or Malovany; (5) the October 2017 vote to reduce the number of board members was done without a meeting and failed to comply with all seven of the requirements of the governing statutes for holding a vote without a meeting, although the verdict form did not require the jury to identify the precise requirement or requirements that were not complied with; and (6) with respect to defendants' remaining counterclaims, Malovany did not create a nuisance that harmed either Hokenson or Hansen.

Following the jury verdict, plaintiffs filed motions asking the trial court to order defendants to repair damaged common areas adjoining Gardner's unit and other nearby units and to rescind the bylaw amendment reducing the Board from ten members to five members. The court denied both requests. Regarding the first request, the court concluded that the jury's verdict on the Association's violation of the Declaration and its nominal damages award based on that violation could only be interpreted to mean that the jury concluded that adequate repairs to the water-pooling

problem had been made, albeit not promptly. Regarding the second request, the court declined to rescind the bylaw amendment on the number of board members because the governing statute did not provide a remedy for a violation of the statutory requirements and the evidence showed the only noncompliance was the failure to give notice of the manner by which a unit owner wishing to deliver information to other unit owners could do so. It found that neither plaintiffs nor anyone else was harmed by what amounted to only a minor procedural violation. Instead of invalidating the vote, the court issued an injunction "requiring that any future votes taken without meetings comply with the provision requiring notice of the way to communicate with other unit owners."

After granting defendants' motion for a partial final judgment, the trial court issued orders ruling that plaintiffs were not entitled to recover attorney's fees from the Association and that both the Association and the individual defendants, as the prevailing parties, were entitled to recover attorney's fees from plaintiffs.

On appeal, plaintiffs argue that the trial court erred by: (1) excluding evidence of prior orders and events occurring after the filing of their amended complaint; (2) refusing to grant them post-trial injunctive relief consistent with the jury's verdict; (3) concluding that defendants were entitled to attorney's fees as the prevailing parties; (4) bifurcating their claims against VMIC; and (5) sanctioning them for seeking an order of contempt against VMIC.

I. Claims of Error Concerning VMIC

We first consider the latter two claims of error concerning VMIC, starting with plaintiffs' challenge to the trial court's decision to bifurcate their claims against VMIC. "[A] court may order a separate trial of any claim or issue in furtherance of convenience, expedition and economy, or to avoid prejudice." Mobbs v. Cent. Vt. Ry., Inc., 155 Vt. 210, 215 (1990) (citing Vermont Rule of Civil Procedure 42(b), and noting that Vermont's rule is "substantially similar" to Federal Rule of Civil Procedure 42(b)). The "trial court is given broad discretion to determine whether a joint trial is appropriate." Id.; see 9A C. Wright & A. Miller, Federal Practice and Procedure § 2388, at 113-14 (3d. ed. 2008) ("It is well-established by a wealth of case law that ultimately the question of whether to conduct separate trials under Rule 42(b) should be, and is, a matter left to the sound discretion of the trial court on the basis of the circumstances of the litigation before it.").

Rule 42(b) acts as a counterbalance to relatively unlimited joinder rules at the pleading stage by giving trial courts "virtually unlimited freedom to try the issues in whatever way trial convenience requires." 9A Wright & Miller, supra, § 2387, at 91. When addressing certain claims first "could be dispositive of the case or is likely to lead the parties to negotiate a settlement, and resolution of [those claims] might make it unnecessary to try the other [claims] in the litigation, separate trial may be desirable" to save the court's time and reduce the parties' expenses. Id. § 2388, at 100. But if the separate claims "involve extensive proof and substantially the same facts or witnesses as other [claims] . . . or if any saving in time or expense is wholly speculative," a court is likely to deny a motion to bifurcate. Id. § 2388, at 101-03. Separate trials "may be ordered to avoid prejudice, as when evidence admissible only on a certain issue may prejudice a party in the minds of the jury on other issues." Id. § 2388, at 108. This principle has been applied, even in cases when a single trial would otherwise be preferable, if the jury would learn in a single trial that the defendant was insured; however, if the claims are related, courts may hold a single trial with the understanding that jurors assume the existence of insurance. Id. Courts consider a multitude of factors on a case-by-case basis, id. § 2388, at 123, but the principal consideration "must be which procedure is more likely to result in a just and expeditious final disposition of the litigation." Id. § 2388, at 122.

In this case, the trial court concluded that plaintiffs' claims against VMIC—consumer fraud, breach of the duty of good faith and fair dealing, inducing breach of fiduciary duty, and negligence, which were based on allegations that the insurer, among other things, had a conflict of interest with the Association, directed certain of the other defendants' actions complained of, failed to settle the claims quickly, and failed to communicate a settlement proposal—were "significantly more complicated and entirely different from those against the other parties," which had "to do with the need to fix outdoor areas at the condominium association due to the pooling of water, damage to Plaintiff Gardner's unit as the result of water infiltration, and actions of the condominium association in responding to these issues." The court opined that litigating these claims together would likely confuse the jury and would prejudice the Association and individual defendants "by informing the jury of insurance coverage" and possibly raising "evidentiary problems with respect to privileged communications among defendants that might be admissible against only some parties." The court also noted that "how the underlying claims are resolved might moot out some of the claims against Vermont Mutual." The court recognized that "some of the evidence would obviously overlap," but concluded that bifurcation was appropriate because the negatives of hearing all the claims together outweighed the positives of doing so.

We conclude that the civil division acted well within its broad discretion in deciding to try plaintiffs' claims against VMIC separately from their claims against the Association and the individual defendants. Plaintiffs argue that the court abused its discretion by bifurcating the claims because the claims against all of the defendants were "all part of the same story," the ruling created the potential for inconsistent jury verdicts, the court's concern about potential evidentiary problems was speculative considering that discovery against VMIC had been stayed, there was significant overlap in the evidence and witnesses concerning both claims, and the ruling prejudiced plaintiffs by delaying resolution of the matter and by actively encouraging defendants' misconduct. Plaintiffs contend that any prejudice stemming from the jurors' awareness of insurance coverage could be mitigated by way of a limiting instruction and that the evidentiary issues concerning privileged communications would likely arise irrespective of whether the claims were bifurcated.

All of plaintiffs' arguments were considerations for the trial court to weigh in determining whether to bifurcate the claims under the particular circumstances of this case. The court determined that the distinctive nature of the claims, the potential for jury confusion and prejudice to defendants, as well as the potential for a more expeditious resolution of the various claims without prejudicing plaintiffs' right to a fair adjudication of those claims warranted bifurcation in this instance. We find not basis to disturb the court's exercise of its discretion.

Plaintiffs also argue, with respect to its claims against VMIC, that the trial court abused its discretion by sanctioning them for including VMIC in a motion for contempt without presenting any evidence supporting the motion against the insurer. Plaintiffs contend that it was not given adequate notice of the need for them to present evidence in support of their opposition to VMIC's motion for sanctions. We find no merit to this argument, and no abuse of discretion on the part of the trial court. See Stopford v. Milton Town Sch. Dist., 2018 VT 120, ¶21, 209 Vt. 171 (stating that trial court's discretionary imposition of sanctions will be upheld on appeal "unless the court's discretion was either totally withheld or exercised on grounds clearly untenable or unreasonable" (quotation omitted)).

In early October 2018, plaintiffs filed a renewed motion for contempt and attorneys' fees, arguing that defendants, including VMIC, had willfully refused to comply with the civil division's order with respect to repair of the common areas outside Gardner's unit. Defendants opposed the motion, and VMIC filed a separate opposition that sought sanctions against plaintiffs for seeking contempt against it without referencing any specific acts or conduct on the part of VMIC or its

employees. VMIC argued that, as with their prior motion for contempt in September 2018, plaintiffs had provided no factual support for their bald assertions that VMIC was directing the actions of the Association, its individual members, and its contractors with respect to the repair work, for which it had no authority. On November 15, 2018, the civil division issued an order stating that all pending motions, including the contempt motion, would be considered at a hearing on December 3, 2018.

At the beginning of the December 3 hearing, plaintiffs' attorney indicated that he expected to provide witness testimony on the status of the repair work in connection with plaintiffs' motion for contempt. The attorney proceeded to present testimony by CEA's principal and Gardner regarding the status of the repair work. The court then asked the parties if they needed a hearing on VMIC's motion for sanctions against plaintiffs for including VMIC in their contempt motion. Gardner's attorney agreed, along with VMIC's attorney, that the court could decide the motion on the papers filed. Gardner's attorney then stated that he strongly disagreed with VMIC's position that the insurer had nothing to do with the events leading up to the contempt motion. When the court stated that it had no evidence before it to support contempt against VMIC, Gardner's attorney responded that he "was not prepared for today's hearing as [he] should have been" because he thought the court would consider affidavits submitted by the parties. The court pointed out that the parties had not agreed to take the affidavits into account and that "it's abundantly clear that when you have a hearing on a motion, affidavits are not part of the evidence unless there is some special arrangement made in advance." Gardner's attorney responded that he was "not asking for a second chance" but would like the court to hear a brief further argument. The court stated that it had run out of time but that it would be happy to accept a follow-up memorandum of law on any further argument. Gardner's attorney then stated that plaintiffs' brief set out their position that VMIC "is liable as a principal for the contempt. So we have no need to submit further brief on that." The following day, the civil division granted VMIC reasonable attorney's fees for having to respond to plaintiffs' motion for contempt against the insurer, which the court deemed unsupported and "utterly frivolous."

In light of this procedural history, we find no merit to plaintiffs' argument that it had no notice of the need to present evidence in support of its motion for contempt against VMIC and in opposition to VMIC's motion for sanctions based on the contempt motion. Plaintiffs claim that they had no notice that the December 3 hearing would be an evidentiary hearing, but at the onset of the hearing, plaintiffs' attorney indicated it had witness testimony to present, and in fact he presented that testimony. Moreover, for months, in opposing plaintiffs' multiple motions for contempt, VMIC argued that plaintiffs had failed to present any facts in support of the contempt motions with respect to defendants' insurer. Plaintiffs' claim of being blindsided rings hollow. We find equally meritless, plaintiffs' contention that even assuming they had had adequate notice of the need to present evidence in support of their contempt motion against VMIC, they did not have enough time at the end of the December 3 hearing to do so. This argument ignores the fact that Gardner's attorney agreed that the motion for sanctions could be considered on the papers filed and that those papers adequately presented its position that VMIC was liable as a principal—an argument that plaintiffs do not make on appeal.

II. Claims of Error Concerning the Association and the Individual Defendants.

Plaintiffs also challenge several pre-trial and post-trial court rulings concerning the Association and the individual defendants. We first consider, and reject, plaintiffs' related arguments regarding the trial court's refusal to allow plaintiffs to present evidence of prior court orders and of events occurring after plaintiffs filed their amended complaint.

Before trial, the parties filed competing motions in limine regarding the scope of the evidence to be admitted at trial. The parties disagreed over whether evidence could be presented of prior court orders issued in the case and whether those orders were complied with. In response to those motions, the trial court excluded evidence of prior orders issued in the case and whether the parties complied with those orders. In denying plaintiffs request to present such evidence, the court stated that knowledge of specific facts in any prior order was not at issue and that none of the prior orders were relevant to damages. Cf. United States v. Dupree, 706 F.3d 131, 137 (2d Cir. 2013) (concluding that jury could infer from timing, posture, and language of order that defendant knew of his obligations under agreement); Abbot Labs. V. Sandoz, Inc., 743 F. Supp. 2d 762, 787 (N.D. Ill. 2010) (concluding that evidence of court's preliminary injunction and product recall order was "directly relevant to the issue of damages"). The court determined that any reference to noncompliance with prior orders would be significantly more prejudicial than probative and would create a trial within a trial on a collateral issue likely to confuse the jury. In so ruling, the court emphasized that the case was not about whether any of the defendants had violated a prior order.

In challenging this ruling, plaintiffs argue that there would not need to be a trial within a trial because nothing would have to be relitigated to show defendants' defiance of prior court orders, which, according to plaintiffs, was relevant to their claims of defendants' bad faith and breach of fiduciary duty. Plaintiffs contend that any potential for confusion could be overcome through an appropriate limiting instruction.

Upon review of the record, we conclude that the trial court acted within its discretion in excluding evidence concerning defendants' alleged violation of prior court orders issued between the time the second amended complaint was filed and the trial. See Brown v. State, 2018 VT 1, ¶ 20, 206 Vt. 394 (stating that trial court has "broad discretion" to admit or exclude evidence so as to discharge its "obligation to ensure a fair trial for both parties, conducted in an orderly an expeditious manner" (quotation omitted)). The tangled history, summarized above, concerning plaintiffs' efforts to obtain injunctive relief following the initiation of their lawsuit and of the civil division's multiple clarifying orders in response to the parties' disputes over the meaning of those orders amply supports the trial court's discretionary decision not to bring that collateral fight into this case. Indeed, the confusion over the meaning of the prior court orders regarding the required repair work resulted in the civil division consistently denying plaintiffs' motions for contempt alleging defendants' violation of those orders. Furthermore, despite the filing of repeated motions, the court did not find any of defendants in contempt, undercutting plaintiffs' argument that defendants acted in bad faith by defying court orders. Under the circumstances, the court acted well within its discretion in not allowing plaintiffs to expand their allegations of a breach of fiduciary duty set forth in their amended complaint by claiming that defendants violated all or some of the civil division's string of clarifying orders following plaintiffs' initiation of their lawsuit and their repeated requests for injunctive relief and for contempt. Further, we reject plaintiffs' argument that evidence of the prior orders and the parties' responses to those orders was so probative that the trial court was compelled to give a limiting instruction rather than exclude the evidence altogether. Cf. Southface Condo. Owners Ass'n, Inc. v. Southface Condo. Ass'n, 169 Vt. 243, 249-50 (1999) (concluding that trial court could have given limiting instruction that would mitigate any prejudicial impact of highly probative evidence of defendant's violation of licensing statute in support of plaintiffs' joint-venture claim).

By the same token, the trial court did not abuse its discretion in refusing to allow plaintiffs to present evidence of defendants' actions after plaintiffs filed their amended complaint, which led to plaintiffs' repeated requests for injunctive relief and the civil division's series of orders concerning the required repair work. For the reasons explained above, including the potential for jury confusion, the court acted well within its discretion in limiting the evidence to defendants'

conduct that was the subject of plaintiffs' claims raised in their amended complaint, including claims of bad faith and breach of fiduciary duty. See id. ("Trial courts have broad discretion in ruling on the relevance and admissibility of evidence, reversible only for abuse of that discretion."); see also State v. Longley, 2007 VT 101, ¶ 18, 182 Vt. 452 ("Generally, the trial court's discretionary ruling will be upheld where there is some indication . . . that the court actually engaged in the balancing test and exercised its discretion under V.R.E. 403." (quotation omitted)). Putting aside the fact that plaintiffs' amended complaint was thirty pages in length, the fact that Vermont has adopted a liberal pleading standard requiring only short and concise averments giving fair notice of the grounds upon which the complaint is based, see V.R.C.P. 8(a), (e), does not give plaintiffs full reign to present evidence of events occurring after the events that formed the basis for their complaint.[3]

Plaintiffs also challenge on appeal the trial court's post-verdict rulings denying their request for injunctive relief based on the jury's verdict and awarding defendants attorney's fees. We first consider the denial of plaintiffs' request for post-verdict injunctive relief.

At the beginning and end of trial, the parties agreed that the trial court would determine what if any injunctive relief was warranted based on the jury's answers to specific questions posed on the verdict form. Following the jury verdict, plaintiffs sought injunctive relief requiring repair work to the patio and common areas near Gardner's unit and rescission of the 2017 vote reducing the size of the Association's Board of Directors from ten to five members.

Regarding the request for further repair work, the jury awarded the nominal amount of $1 to plaintiffs based on its determination that the Association violated "sections 5.6 and/or" 6.1" of the Declaration of Condominium. Section 5.6, in relevant part, provides that if the Association is responsible for damage to the common areas, it "shall promptly repair such damage, restoring the Unit to substantially the condition which existed immediately prior to the event causing the damage." Section 6.1, in relevant part, requires that any portion of the property for which insurance is required "shall be repaired or replaced promptly by the Association."

The trial court concluded that no injunctive relief was appropriate with respect to repair of the patio and common areas. Noting that plaintiffs asked the jury in closing to compensate them for the true value of the time they were unable to use the damaged areas, the court ruled that the jurors' award of nominal damages for the Declaration violation could "only be interpreted to mean that they concluded that adequate repairs to the pooling water problem were made, but were not made promptly." Citing the differing views of the parties' experts as to whether proper repairs had been made, the court determined that the jury verdict showed that the jury "found either that

[3] After the jury returned its verdict concerning plaintiffs' claims against the Association and the individual defendants, plaintiffs moved to file a proposed supplemental complaint against all defendants. The trial court denied the motion, ruling that "allowing amendment of a complaint against parties after the case against them has already been resolved" would "most assuredly prejudice" defendants. Plaintiffs do not challenge this ruling in a separate claim of error, but rather note in their statement of the case that the ruling did not address new claims against VMIC or claims against defendants' arising after the jury's verdict and that they are not aware of any legal principle preventing them from seeking to file a post-verdict amended complaint. Accordingly, we do not address this issue, as it is not adequately raised or briefed. See V.R.A.P. 28(a)(4) (providing that briefs must state, among other things, each issue presented with citations to authorities relied upon); see also Allen v. Dep't of Emp't Sec., 141 Vt. 132, 134-35 (1982) (finding inadequate briefing where counsel failed to "direct this Court's attention to some relevant authority that supports his position, or explain the absence of such authority").

the only violation was of Section 6.1, which has no . . . requirement [of restoring the property to its prior condition], or that the work did return the property to substantially the same condition as before." While acknowledging evidence of "some broken or stained areas on the patio, and a rather unattractive gravel border around it," the court ruled that "the jury apparently concluded that the minor aesthetic impact of such issues was not sufficient to affect Ms. Gardner's use and enjoyment of either the patio or her vacation home as a whole, perhaps on the theory that the spectacular view of Lake Champlain was more likely to be her focus than the patio or alcove."

On appeal, plaintiffs argue that the trial court's interpretation of the jury's verdict regarding the Association's violation of the Declaration to mean a failure to repair the patio and common areas promptly makes no sense. According to plaintiffs, because their lawsuit, as indicated by the evidence presented at trial, was always about damage to the patio and common areas done by the defendants in attempting to repair those areas after October 2017, the jury's determination that the Association violated Section 5.6 "and/or" Section 6.1 of the Declaration can only be interpreted as a finding that the Association failed to repair the damage to the patio and common areas done in its attempt to address the water pooling issue after October 2017. Plaintiffs also argue that the nominal damage award does not preclude granting injunctive relief because the jury determined that the Association violated sections of the Declaration that concerned common areas and because Gardner testified as follows[4]:

> If they would restore the value, safety, and the beauty, and if they would install gutters, a drain spout, and a conduit to take the water away from my unit, I would return every dime to the Shelburne Cliffs Condominium Association reserve fund except for a dollar which I would keep as a symbol of how important it is to be kind and fair.

We find these arguments unavailing and conclude that the trial court acted within its discretion in denying plaintiffs injunctive relief with respect to the repair work based on the jury's responses on the verdict form. As the trial court pointed out, plaintiffs argued at trial that the Association did not respond promptly to Gardner's requests to address water pooling on the patio and that the repairs made created a worse situation and impaired Gardner's use and enjoyment of the property. As for the delay in addressing the water pooling problem, Gardner's attorney pointed to an exhibit showing that the Association had failed to address a water pooling problem that was getting worse two months after Gardner first complained of the problem in the summer of 2017. Gardner's attorney told the jury that between July and September of 2017, "[w]eek after week after week after week went by to solve, and this went unsolved." Further, as the trial court also pointed out, Gardner's attorney asked the jury to award plaintiffs compensatory damages for loss of use and enjoyment of Gardner's property, damage to the common elements, and defendants' failure to abide by the Declaration and bylaws.

When the jury returned its verdict, the trial court asked the attorneys to approach to discuss a potential problem with the jury's special verdict response indicating that the Association violated Section 5.6 "and/or" Section 6.1 of the Declaration but awarded zero damages based on that violation. With all attorneys in agreement, the court called the jury back in and told them "that, if your view is that the damages were minimal, you can award as low as a dollar if you wish to do that. But you guys need to do something. We can't have yes and zero." After the jury retired and

[4] In response to the objection to this testimony made by the individual defendants' attorney, the trial court stated: "It sounds like settlement negotiations which are not appropriate, so we'll stop here."

returned two minutes later, the foreperson told the court that they had adjusted the damage award in question from zero to one dollar.

This sequence of events substantially undercuts plaintiffs' conjecture that the jury awarded Gardner only one dollar based on her trial testimony that she would give back to the Association all but one dollar if the common areas around her unit were repaired as she believed they needed to be repaired. The court did not abuse its discretion in interpreting the jury's verdict as determining that there was a minor violation of the Declaration that did not result in any significant damages to Gardner. As the trial court noted, the parties' experts gave differing opinions on the appropriateness of the repair work, and the parties' attorneys had been warned that if they wanted the court to make legal rulings based on the jury's factual findings, the rulings would have to be supported by the jury's answers to very specific questions on the verdict form. None of the jury's answers to the questions on the special verdict form plainly support plaintiffs' request for post-verdict injunctive relief regarding repair of the common areas adjoining Gardner's unit.

Lastly, plaintiffs argue that the trial court abused its discretion by awarding attorney's fees to defendants. According to plaintiffs, they were the substantially prevailing parties in their claims against the Association, and the individual defendants were not the substantially prevailing parties with respect to the claims and counterclaims as between those defendants and themselves.

The trial court declined to award attorney's fees to plaintiffs regarding their claims against the Association, concluding that plaintiffs had prevailed on only one of their claims against the Association, for which the jury awarded them only one dollar. The court also noted that the post-trial injunctive relief it granted plaintiffs requiring the Association in the future to provide notice of a non-meeting vote in the manner set forth in the bylaws stemmed from the Association's technical notice violation that did not prejudice plaintiffs.

According to plaintiffs, the trial court's analysis ignores the reality that most of plaintiffs' litigation efforts were aimed at enforcing a preliminary injunction and repairing the common areas rather than obtaining a damages award. In plaintiffs' view, the court abused its discretion in not awarding them attorney's fees against the Association for the same reason it abused its discretion in denying them post-verdict injunctive relief.

As the trial court pointed out, under the VCIOA, the court "may," in exercising its discretion, award reasonable attorney's fees and costs when a person brings an action under that law. 27A V.S.A. § 4-117(a). See Arapaho Owners Ass'n, Inc. v. Alpert, 2015 VT 93, ¶ 34, 199 Vt. 553 (citing § 4-117(a) and stating that, "where, as here, an award of attorney's fees is not mandatory, we review the award solely to determine whether the trial court abused its discretion"). Section 12.1(d) of the Declaration of Condominium also entitles the prevailing party to attorney's fees in a proceeding concerning an alleged failure of a unit owner to comply with the Association's bylaws or regulations. In the context of actions under the Prompt Pay Act, we have held that the trial court's discretionary determination of what party was the substantially prevailing party for purposes of awarding attorney's fees "is not a mathematical calculation" but rather requires "a flexible and reasoned approach focused on determining which side achieved a comparative victory on the issues actually litigated or the greater award proportionately to what was actually sought." Birchwood Land Co., Inc. v. Ormond Bushey & Sons, Inc., 2013 VT 60, ¶ 36, 194 Vt. 478 (quotation omitted); see Fletcher Hill, Inc. v. Crosbie, 2005 VT 1, ¶ 12, 178 Vt. 77 ("[T]he question of whether any party to a lawsuit substantially prevailed is left to the trial court's discretion."); see also Arapaho Owners Ass'n, 2015 VT 93, ¶ 38 ("For determining an award of attorney's fees under Vermont law, the touchstone is reasonableness." (quotation omitted)).

Here, plaintiffs point to their success in obtaining injunctive relief prior to trial; however, as shown above, the pre-trial injunctive relief orders concerning the repair work required repeated clarification. Ultimately, plaintiffs were dissatisfied with that relief and sought further injunctive relief post-trial based on the jury's verdict, which the trial court denied. Moreover, other than requiring the Association to comply fully with the bylaws regarding notice of votes held without a meeting, the court declined to award plaintiffs the injunctive relief they desired—rescission of the vote to reduce the number of Board members—for what the court described as a minor technical violation that did not prejudice plaintiffs. Nor did the jury award plaintiffs the compensatory and punitive damages they sought, other than a $1 award based on what the jury apparently considered to be a de minimus violation of Section 5.6 "and/or" Section 6.1 of the Declaration. Plaintiffs have unsuccessfully challenged the jury's verdict and the court's pre- and post-trial rulings in this appeal. Given that verdict and those rulings, the trial court plainly did not abuse its discretion in awarding the Association attorney's fees as the prevailing party.

Plaintiffs also challenge the trial court's determination that the individual defendants were entitled to attorney's fees as the prevailing party because the jury rejected all of plaintiffs' claims against those defendants and, although the individual defendants did not prevail on their counterclaims, the counterclaims "were a minor part of the case and took an insignificant portion of both trial time and the massive motion practice in the case." Here, even more than with respect to the Association, the individual defendants were plainly the prevailing party. Plaintiffs did not win a clear victory on any of its claims against those defendants, whose counterclaims were a relatively minor part of the action in direct response to plaintiffs' unsuccessful claims. Accordingly, the trial court did not abuse its discretion in awarding the individual defendants attorney's fees.

Affirmed.

BY THE COURT:

_____

Paul L. Reiber, Chief Justice

_____

Karen R. Carroll, Associate Justice

_____

William D. Cohen, Associate Justice