2016 IL App (2d) 120622-U
No. 2-12-0622
Order filed February 26, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THOMAS P. MATHEWS, Plaintiff-Appellant and Cross-Appellee, v. MASTER PROPERTY OWNERS ASSOCIATION, Defendant-Appellee and Cross-Appellant.	))))))))))	Appeal from the Circuit Court of McHenry County. No. 10-CH-1004 Honorable Michael T. Caldwell, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly awarded attorney fees to the Master Property Owners Association (MPOA), pursuant to a fee-shifting provision in the by-laws. However, the two legal opinions by the MPOA's attorney and the 6% administrative fee were not recoverable under the by-laws, and we remanded the case so that the fee award could be reduced by those amounts. Also, the trial court erred by denying the MPOA's petition for supplemental attorney fees as to the preparation and prosecution of the original fee petition. On remand, the trial court is to add that fee amount to the MPOA's attorney fee award. Finally, the trial court properly denied the MPOA's motion for sanctions. Therefore, we affirmed in part, reversed in part, and remanded the cause.

¶ 2 Defendant, the MPOA, filed a petition for attorney fees, pursuant to a fee-shifting provision of its by-laws, against plaintiff, Thomas P. Mathews. The MPOA also filed a petition for supplemental attorney fees and a motion for sanctions against Mathews. The trial court granted attorney fees of $99,005.06 to the MPOA pursuant to the by-laws, which included a 6% administrative fee. The court denied the MPOA's petition for supplemental fees as well as its motion for sanctions.

¶ 3 On appeal, Mathews argues that the trial court erred by awarding the MPOA attorney fees pursuant to the by-laws. The MPOA has filed a cross-appeal, in which it argues that the court erred by denying its petition for supplemental fees and its motion for sanctions.

¶ 4 We affirm the fee award pursuant to the by-laws, with the exception of the 6% administrative fee and the two legal opinions by the MPOA's attorney. We remand the case so that the trial court may reduce the fee award by those amounts. In addition, the trial court erred by denying the MPOA's petition for supplemental fees as to the preparation and prosecution of the original fee petition. Therefore, we reverse that ruling, and on remand, the trial court is instructed to add that amount to the MPOA's fee award. Last, we affirm the trial court's denial of the MPOA's motion for sanctions.

¶ 5 I. BACKGROUND

¶ 6 The MPOA, a not-for-profit corporation, was formed in 1965 to maintain Wonder Lake, a private lake in McHenry County. The MPOA is managed through its by-laws, which contains 27 Articles, and is governed by a board of officers, directors, and delegates. Numerous subdivisions surround Wonder Lake and belong to homeowners associations. These homeowners associations are members of the MPOA and listed in Article I, Section 6, of the by-laws. Each association is represented by a certain number of delegates, depending on the number of lot owners in the

association. Each set of delegates then selects one person to be the director and represent the delegates at the directors' meetings.

¶ 7 The issues in this case involve one member of the MPOA, a homeowners association called the Wooded Shores Property Owners Association (Owners Association). The Owners Association, founded in 1945, is a not-for-profit corporation formed to own, maintain, and supervise the common grounds in the Wooded Shores subdivision. The Owners Association carries two votes in the MPOA. The Owners Association selected Richard Hilton as one of their delegates, and he then became the MPOA's president.

¶ 8 Mathews owns undeveloped property in the Wonder Lake area and is listed as a member of the MPOA in the by-laws. Based on his property ownership, Mathews is entitled to participate as a delegate and director of the MPOA; he has one vote. Mathews also owns property in the Wooded Shores subdivision.

¶ 9 In 2002, the Owners Association was administratively dissolved based on its failure to file an annual report with the Secretary of State, although it continued to operate and perform as usual. Mathews learned of the dissolution in 2007. In May and June 2007, Mathews and four residents of the Wooded Shores subdivision filed the necessary paperwork to create a new, not-for-profit corporation/association to represent the Wooded Shores subdivision. Because the Owners Association had been dissolved, Mathews used that same name - The Wooded Shores Property Owners Association - for his new association/corporation.

¶ 10 On August 1, 2007, the previously dissolved Owners Association submitted an application of reinstatement with the Secretary of State. However, because its name had been assumed by Mathews and the four other residents of Wooded Shores, it was required to create a new name: the Wooded Shores Property Improvement Association (Improvement Association).

As stated, during the five-year period that the association had been dissolved, it had continued to operate and perform as usual. See 805 ILCS 105/112.45(d) (West 2006) ("Upon the filing of the application for reinstatement, the corporate existence shall be deemed to have continued without interruption from the date of the issuance of the certificate of dissolution, and the corporation shall stand revived with such powers, duties and obligations as if it had not been dissolved").

¶ 11 On August 2, 2007, an individual who had helped Mathews assume the name of the Owners Association, Deanna Conley, sent a letter to the MPOA. The letter informed the MPOA that the original Owners Association had been involuntarily dissolved; that a new Owners Association had been legally formed; that the newly formed Owners Association would act on behalf of the Wooded Shores subdivision; and that Conley and another individual, Joseph Hynes, had been selected as that association's delegates. Essentially, the newly formed Owners Association attempted to become the legal member of the MPOA and replace the Improvement Association. This would have the effect of replacing the existing delegates under the Improvement Association, including Hilton, the MPOA's president.

¶ 12 In September 2008, the MPOA considered an amendment to its by-laws that would have corrected its list of members in Article 1, Section 6. The amendment would have corrected the name of the Owners Association to the Improvement Association, but it did not pass.

¶ 13 The MPOA requested an opinion from its attorney as to which association was a legal member of the MPOA. On October 7, 2008, the MPOA's attorney issued a written **legal** opinion, stating that the Improvement Association, rather than Mathew's newly formed Owners Association, was the legal member of the MPOA. Because the Improvement Association was the legal member of the MPOA, Hilton could remain president.

¶ 14 The next day, the directors of the MPOA met and unanimously passed a motion recognizing Hilton as president. Also on that date, Mathews distributed a flier stating that the Improvement Association was not a legally recognized association because it was not authorized by the developer of the Wooded Shores subdivision. Mathews claimed, in his flier, that he was the "successor developer" of the Wooded Shores subdivision, and, as "successor developer," he had authorized only the Owners Association to serve as the legal association of the Wooded Shores subdivision.

¶ 15 In 2009, the MPOA asked its attorney for a second legal opinion addressing Matthews's "successor developer" theory. The attorney's legal opinion, dated September 3, 2009, concluded again that the Improvement Association, rather than Mathew's newly formed Owners Association, was the legal association of the Wooded Shores subdivision and thus the legal member of the MPOA.

¶ 16 On April 7, 2010, Mathews filed a complaint for declaratory judgment and injunctive relief against the MPOA. Specifically, Mathews asked the court to declare that the Improvement Association was not the legal member of the MPOA. In addition, Mathews sought to void two MPOA resolutions from March 2010 that concerned the issuance of bonds to finance a multi-million dollar dredging project (bond resolutions). In his complaint, Mathews alleged that the vote of the MPOA directors to approve the bond resolutions passed by a narrow margin of only two votes. He further alleged that the two votes from the Improvement Association in favor of the bond resolutions were void, meaning the bond resolutions failed to pass. Later in April 2010, Mathews filed a motion for a preliminary injunction with respect to the bond resolutions, but the trial court denied this motion.

¶ 17 On May 4, 2010, the MPOA filed its answer, affirmative defenses, and counterclaims for declaratory and injunctive relief. In particular, the MPOA requested an injunction preventing Mathews from claiming that the Owners Association was a legal member of the MPOA or represented the Wooded Shores subdivision. The MPOA also filed a motion seeking to add the Improvement Association and the Owners Association as necessary parties. Finally, the MPOA filed a motion to expedite the case based on the availability/closing date of the bonds. The trial court granted both of the MPOA's motions.

¶ 18 The trial on Mathews's complaint occurred in August 2010. Six witnesses testified on behalf of Mathews; four witnesses testified on behalf of the MPOA; and the parties submitted numerous exhibits.

¶ 19 The court rendered its decision on August 20, 2010, and its findings were memorialized into a written decision on August 30, 2010. The court found that Mathews's act of incorporating another not-for-profit association/corporation with the "Wooded Shores name" was "very sharp, very clever." However, it was a "formulaic act without substance or impact." The court described it as "a flagrant" and "unscrupulous attempt to co-opt" the name of the Owners Association, and "a not too sophisticated form of corporate identity theft."

¶ 20 The court further ruled that: (1) the Improvement Association was the legal member of the MPOA; (2) in the event that the MPOA failed to amend its by-laws to reflect the name change to the Improvement Association, Mathews was enjoined from using the Owners Association in his dealings with the MPOA; (3) Mathews was not a "successor developer" of the Wooded Shores subdivision; and (4) the MPOA's directors' votes for the bond resolutions were valid. Thus, the court denied Mathews's complaint in its entirety. In addition, the court entered judgment in favor of the MPOA on its counterclaims.

¶ 21 On September 23, 2010, the MPOA filed a motion for sanctions and an alternative petition for attorney fees pursuant to a provision, Article XIII, of the by-laws. Article XIII provides:

> "If at any time the officers determine that it is necessary to employ professional legal services to enforce any of the provisions of these By-Laws, the Member against whom any such action is necessary shall be held liable for payment of all attorney's fees, as well as any damages, MPOA late charges, liens, and court costs."

¶ 22 The MPOA alleged that it was necessary to employ legal services to: (1) prepare two legal opinions (the October 7, 2008, and September 3, 2009, letters) pertaining to Mathews's allegations; (2) defend the MPOA in the lawsuit; and (3) file counterclaims for declaratory and injunctive relief and a third-party complaint. According to the MPOA, all of these services had the purpose and effect of enforcing the provisions of its by-laws against a member, Mathews.

¶ 23 Mathews filed a response to the MPOA's motions, arguing, among other things, that the MPOA was not entitled to attorney fees under the by-laws. According to Mathews, the fees were not incurred "to enforce" any of the provisions of the by-laws.

¶ 24 The court ruled on the MPOA's motions on November 30, 2010. The court noted that "[b]ut for the inadvertent dissolution of the [Owners Association], none of this would have happened." Stating that it was a "close" issue regarding sanctions, in that the court had used the words "flagrant" and "unscrupulous" in describing Mathews's conduct, the court nevertheless denied the motion for sanctions on the basis that the issue in the case was unique. The court did, however, grant attorney fees to the MPOA pursuant to the provision of its by-laws. According to the court, it would be "absurd" to interpret the by-laws "to say that they were restricted to the enforcement of covenants and restrictions" with the land or "the collection of dues and would not

encompass the corporate purposes" expressed in the by-laws. The court reasoned that "[t]he very existence" of the member associations and "their ability to operate was at the crux" of the lawsuit, and the lawsuit "generated the necessity for the fees."

¶ 25 On December 8, 2010, the MPOA filed its petition for approval of attorney fees of $101,182,87. On November 1, 2011, the MPOA also filed a petition for supplemental attorney fees incurred since December 2010.[1] The total amount of attorney fees sought by the MPOA was $133,750.62.

¶ 26 The court conducted a hearing on the amount of attorney fees on May 11, 2012. The MPOA's attorney, Dean Krone, testified regarding the reasonableness of the fees ($175 per hour plus a 6% administrative fee). The 6% administrative fee represented the attorney's customary charge to all of its clients, including the MPOA, for copying, long distance telephone and facsimile transmissions, overnight mail, messenger services, and employee overtime costs. Expert witness Mark Gummerson also testified that the attorney fees and the 6% administrative fee were reasonable. In regard to the petition for supplemental fees, Krone testified that it included the preparation of the petitions for attorney fees, work related to the bankruptcy matter, and work in response to Mathews's requests to settle the fee issue by selling various properties.

¶ 27 The trial court determined that the attorney fees requested by the MPOA were reasonable. Nevertheless, the trial court also stated that "none of those" common law "considerations" applied because the controlling issue was the contractual language of the fee-shifting provision. The fees alleged in the original petition were recoverable, including the fees for the two letter opinions issued by the MPOA's attorney. According to the court, the attorney's two letters were "preliminary" to the "whole controversy." The court also allowed recovery for the 6%

[1] The case was delayed due to Matthews's bankruptcy proceedings.

administrative fee, which was "an additional attorney fee," charged in lieu of itemized office costs. Turning to the petition for supplemental attorney fees, the court found that the services rendered related to a possible settlement with Mathews and the attorney fee petitions themselves. The court denied the petition for supplemental fees, reasoning that "the petition for fees is not an action undertaken specifically to enforce the provisions of the bylaws against the members." The court awarded attorney fees of $99,005.06.

¶ 28 Mathews timely appealed, and the MPOA timely cross-appealed.

¶ 29 II. ANALYSIS

¶ 30 A. Matthew's Appeal

¶ 31 1. Attorney Fees

¶ 32 Mathews disputes the award of attorney fees in this case. Although he agrees that the by-laws constitute a contract between the MPOA and its members, with a corresponding fee-shifting provision, he argues that the fees incurred by the MPOA are not covered under that provision.

¶ 33 Generally, a prevailing litigant is not entitled to recover the costs and expenses of the litigation from the losing party. *In re Marriage of Tiballi*, 2014 IL 116319, ¶ 24. There is an exception to the rule, however, which is a contractual fee-shifting provision for the award of attorney fees. *In re Marriage of Heinrich*, 2014 IL App (2d) 121333, ¶ 40; see also *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 96 (the general rule is that attorney fees are not recoverable by a prevailing party in the absence of a statute or agreement).

¶ 34 Typically, a trial court's decision to award attorney fees is not reversed absent an abuse of discretion. *Peleton, Inc. v. McGivern's Inc.*, 375 Ill. App. 3d 222, 225 (2007). The reason for this standard of review is that the party challenging the award is actually challenging the reasonableness of the trial court's decision. *Id.* However, Mathews does not contest the

reasonableness of the award but instead argues that the MPOA is not entitled to fees as a matter of law. According to Mathews, the language of the fee-shifting provision does not allow the recovery of fees, which is a question of law that we review *de novo*. See *Bright Horizons Children's Centers, LLC v. Riverway Midwest II, LLC*, 403 Ill. App. 3d 234, 254 (2010) (the construction of a contract's fee-shifting provision presents a question of law entitled to *de novo* review); see also *Work Zone Safety, Inc. v. Crest Hill Development, LLC*, 2015 IL App (1st) 140088, ¶ 28 (courts review *de novo* the trial court's interpretation of an agreement or contract provision governing attorney fees).

¶ 35 Given that fee-shifting provisions are the exception to the rule, we are required to strictly construe them. *Bright Horizons Children's Centers, LLC*, 403 Ill. App. 3d at 254. In other words, a fee-shifting provision is construed to mean nothing more - but also nothing less - than the letter of the text. *Id.*

¶ 36 As previously stated, attorney fees were awarded to the MPOA under Article XIII of its by-laws, which provides:

> "If at any time the officers determine that it is necessary to employ professional legal services *to enforce any of the provisions of these By-Laws*, the Member against whom any such action is necessary shall be held liable for payment of all attorney's fees, as well as any damages, MPOA late charges, liens, and court costs." (Emphasis added.)

¶ 37 Mathews first argues that the trial court erred by interpreting the language of the fee-shifting provision too broadly. According to Mathews, the phrase "to enforce any of the provisions of these By-Laws," allows recovery "only for actions enforcing the by-laws' covenants and restrictions"; it does not allow recovery for the "corporate purposes" expressed in the by-laws. To support his position, Mathews sets forth certain definitions of the words

"enforce" and "provision." See *Landis v. Marc Realty, LLC*, 235 Ill. 2d 1, 8 (2009) (it is appropriate to employ a dictionary to ascertain the meaning of an otherwise undefined word or phrase). According to Mathews, applying the plain, ordinary, and popular meanings of these terms, the fee-shifting provision should be interpreted to allow recovery only when the MPOA takes action against a member "to compel obedience to or make effective a requirement, condition or limitation in the by-laws, such as an express covenant or restriction."

¶ 38 As an initial matter, we note that Mathews ignores the plain language of the fee clause by restricting the type of provision that, if enforced, permits the recovery of fees. See *Barth v. State Farm Fire & Casualty Co.*, 228 Ill. 2d 163, 174-75 (2008) (the court may not read into the language any additional terms or give it a more extensive or a more limited meaning than that expressed therein). The fee-shifting provision states that the MPOA may recover fees incurred "to enforce *any* of the provisions of these By-Laws" (emphasis added), without limitation. Consequently, there is no restriction, as Mathews asserts, limiting the recovery of attorney fees to the enforcement of provisions containing covenants or restrictions. Moreover, the by-laws encompass a variety of provisions relating to purpose, members, governance, and dues. Given the plain language, the MPOA's enforcement of "any" of these provisions against a member permits the recovery of fees.

¶ 39 Next, we note that Mathews offers limited definitions of the terms "enforce" and "provision," even though there are multiple definitions of these two terms. Although he admits that the language at issue is not ambiguous, he nevertheless urges the most restrictive definitions of these terms. See *Richard W. McCarthy Trust v. Illinois Casualty Co.*, 408 Ill. App. 3d 526, (2011) (the parties' disagreement on the meaning of a term does not, in itself, render that term ambiguous).

¶ 40 For example, Mathews argues that the term "enforce" should be defined as "to compel obedience to." See The American Heritage Dictionary ___ (5th ed. 2013) (defining "enforce" as "[t]o compel observance of or obedience to"). He thus concludes that attorney fees are recoverable under the by-laws only if incurred "to compel obedience to" the provisions in the by-laws. However, the word "enforce" is also defined as to "to give force to." Webster's Third New International Dictionary 751 (1986); see also Black's Law Dictionary 549 (7th ed. 1999) (defining "enforce" as "[t]o give force or effect to (a law, etc.)"). In any event, this distinction is without a difference because our result would not change whether we define "enforce" as "to give force to" or "to compel obedience to."

¶ 41 Mathews's definition of "provision" is also quite limited. Based on The American Heritage Dictionary, Mathews "suggests" that "provision" means a "requirement, condition or limitation in a contract or agreement." See The American Heritage Dictionary ___ (5th ed. 2013) (defining "provision" as "[a] particular requirement in a law, rule, agreement, or document"). However, "provision" is also defined as simply a stipulation or a clause in a document. See Webster's Third New International Dictionary 1827 (1986) (defining "provision" as "a stipulation (as a clause in a statute or contract) made in advance."); Black's Law Dictionary 1240 (7th ed. 1999) ("provision" means a "clause in a statute, contract, or other legal instrument" or a "stipulation made beforehand.").

¶ 42 While we agree with Mathews that the term "provision" is not ambiguous, we consider only a reasonable interpretation of that word. See *Lease Management Equipment Corp. v. DFO Partnership*, 392 Ill. App. 3d 678, 686 (2009) (a court will consider only reasonable interpretations of the language and will not strain to find an ambiguity where none exists). Under the relevant language, attorney fees are recoverable if incurred "to enforce any of the

provisions of these By-Laws," and, as stated, the by-laws are numerous and varied. See *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011) (a court will first look to the language to determine the parties' intent, and if the words are clear and unambiguous, they must be given their plain, ordinary, and popular meaning). Given the overall language and the plain, ordinary, and popular meaning of the word "provision" - a clause in a document - we interpret "provisions" to refer to all of the clauses contained in the by-laws. Nevertheless, even under Mathews's more restricted definition, our result would not change, in that the provisions of the by-laws may be read to include various requirements, conditions, or limitations.

¶ 43 Guided by these meanings, we examine whether the MPOA is entitled to attorney fees. Mathews challenges the entire fee award, which consists of the two legal opinions issued by the MPOA's attorney, the MPOA's defense of Mathews's suit, and the MPOA's counterclaims. We begin by addressing the two legal opinions.

¶ 44 After assuming the Owners Association name, the name listed for the Wooded Shores subdivision in the by-laws, Mathews sought to become the legal member of the MPOA, thus entitling that association to act on behalf of the Wooded Shores subdivision and have voting rights. In the meantime, however, the administratively dissolved Owners Association had continued to operate and, to be reinstated, had to assume the new name of the Improvement Association. In order to determine which association was the legal member of the MPOA, and thus the association representing the Wooded Shores subdivision, the MPOA sought a legal opinion from its attorney. The attorney determined that the Improvement Association was the legal member of the MPOA, which meant that its delegate, Hilton, could remain president. The MPOA then met and passed a motion recognizing Hilton as president.

¶ 45 The same day that Hilton was recognized as president, Mathews asserted a new theory of why his newly formed Owners Association, as opposed to the Improvement Association, was the legal member of the MPOA. According to Mathews, he was the "successor developer" of the Wooded Shores subdivision, and, as such, had the power to authorize which association represented the Wooded Shores subdivision. Again, the MPOA requested a legal opinion from its attorney to address Mathews's "successor developer" theory. In its second legal opinion, the MPOA's attorney concluded, as before, that the legal member of the MPOA was the Improvement Association.

¶ 46 Mathews argues that the two legal opinions did not "enforce" any of the provisions of the by-laws, meaning they are not recoverable. We agree. The trial court allowed recovery for the two legal opinions based on them being "preliminary" to the "whole controversy." While it is true that the legal opinions predated Mathews's suit against the MPOA, the legal opinions, in and of themselves, did nothing to "enforce" the by-laws. The MPOA sought legal advice to clarify the situation with Mathews and to address his evolving claims. Seeking legal advice, however, was not the same as "enforcing" the by-laws, in that there was no official act of "enforcement." Essentially, the trial court considered the legal opinions recoverable because they were part of the chain of events that culminated in Mathews's suit. However, until the time that the MPOA took legal action to "enforce" the legal opinions, they were just that: legal opinions. Interpreting the fee-shifting provision otherwise would run counter to the requirement that it be narrowly construed. Accordingly, the trial court erred by determining that the legal opinions were recoverable under the by-laws, and we remand the case so that the fee award may be reduced by that amount.

¶ 47 Turning to the suit that Mathews filed against the MPOA, Mathews sought declaratory and injunctive relief that the Improvement Association was not the legal member of the MPOA. In addition, Mathews sought to void the bond resolutions on the basis that the votes from the Improvement Association were not valid, meaning the bond resolutions failed to pass. The MPOA defended the suit and filed counterclaims for declaratory and injunctive relief. Afterwards, the trial court determined that the Improvement Association was the legal member of the MPOA. Based on this determination, the trial court concluded that the votes of the Improvement Association were valid, and consequently, the bond resolutions were valid.

¶ 48 Mathews argues that the fees incurred in the MPOA's defense of the suit and in its counterclaims are not recoverable under the by-laws. The MPOA responds that all of the fees incurred had the purpose and effect of enforcing the provisions of its by-laws. We agree that these fees are recoverable.

¶ 49 The following provisions of the by-laws relate to membership and governance of the MPOA. Article I, Section 6, of the by-laws contains a list of the member subdivisions of the MPOA. Article VI, Section 1, states that each member subdivision shall be represented by one delegate for each 100 lots and that each delegate is entitled to one vote. Section 3 then states that the delegates from each member subdivision shall select one of them to serve as director. Article VII, Section 1, provides that each director's vote is weighed the same as the number of delegates.

¶ 50 Mathews's plan was to become the legal representative of the Wooded Shores subdivision and thus a legal member of the MPOA. In trying to become a legal member of the MPOA, Mathews sought to replace an existing member, including its delegates, and to void the bond resolutions. However, Article I, Section 6, limits the legal members of the MPOA to the list contained therein, and Articles VI and VII of the by-laws govern delegate representation and

vote allocation. Pursuant to these provisions, the Wooded Shores subdivision was entitled to two votes. Because the bond resolutions passed by a narrow margin of two, the question of whether the Improvement Association or the Owners Association was the legal member of the MPOA affected the validity of the bond resolutions, in that the Improvement Association had voted in favor of the bond resolutions. The MPOA's defense of the suit and counterclaims had the effect of determining that the Improvement Association was the legal member of the MPOA, meaning that its votes were valid, and also that the bond resolutions were valid. Therefore, the MPOA incurred fees enforcing the provisions governing legal membership, representation, and voting rights.

¶ 51 Finally, Mathews argues that the MPOA is not entitled to attorney fees for the underlying suit because his complaint for declaratory and injunctive relief, as well as the MPOA's counterclaims, were brought to determine the parties' rights, not to enforce the by-laws. See *Wheeling Trust & Savings Bank v. Citizens National Bank of Downers Grove*, 142 Ill. App. 3d 333, 339 (1986) (generally, where an action for a declaration of rights has been brought, it has been held that an attorney fee provision does not entitle the party to the suit to attorney fees because the underlying action was to declare rights, not to enforce the obligations of the parties, as contemplated by the provision for attorney fees). Mathews's argument lacks merit.

¶ 52 First, as the MPOA points out, it sought more than declaratory relief in its counterclaims. The MPOA sought and received an injunction preventing Mathews from claiming that the Owners Association represented the Wooded Shores subdivision and was the legal member of the MPOA. At the very least, this injunction enforced the provision designating which associations were legal members of the MPOA. Second, and more important, it is the language of the fee-shifting provision, above all else, that controls. See *Bright Horizons Children's*

Centers, LLC, 403 Ill. App. 3d at 254 (a fee-shifting provision is construed to mean nothing more - but also nothing less - than the letter of the text). Indeed, in the case cited by Mathews, *Wheeling Trust & Savings Bank*, the court's basis for denying attorney fees was the "operative language" of the fee-shifting provision itself. See *id.* at 339. Therefore, we are not persuaded by Mathews's argument.

¶ 53 2. 6% Administrative Fee

¶ 54 Having determined that the MPOA was entitled to attorney fees pursuant to the fee-shifting provision of the by-laws, we next consider Mathews's argument that the court erred by awarding it the 6% administrative fee as well. According to Mathews, nothing in the fee-shifting provision allowed recovery for overhead expenses or costs. We agree.

¶ 55 The court allowed recovery for the 6% administrative fee ($5,604.06), which represented the attorney's customary charge to all of its clients for copying, long distance telephone and facsimile transmissions, overnight mail, messenger services, and employee overtime costs. The court deemed the 6% administrative fee "an additional attorney fee," charged in lieu of itemized office costs. The MPOA routinely paid the 6% administrative fee when billed by the attorney.

¶ 56 The fee-shifting provision allows "payment of all attorney's fees, as well as any damages, MPOA late charges, liens, and court costs." Thus, the fee-shifting provision in this case allows for the recovery of attorney fees, which are an attorney's compensation for services rendered. See *Guerrant v. Roth*, 334 Ill. App. 3d 259, 267 (2002). However, given that contractual provisions for attorney fees are strictly construed, fees cannot be recovered for any services unless they are provided for by the specific terms. *Id.* Although the trial court referred to the 6% administrative fee as an additional attorney fee, it is undisputed that the fees consisted of overhead office expenses, which generally are not recoverable as costs of litigation. See *Johnson*

v. Thomas, 342 Ill. App. 3d 382, 401 (2003) (generally, overhead office expenses, namely expenses that an attorney regularly incurs regardless of specific litigation, including telephone charges, in-house delivery charges, in-house photocopying, check processing, newspaper subscriptions, and in-house paralegal and secretarial assistance, are not recoverable as costs of litigation). Because such overhead refers mainly to fixed expenses which are already reflected in an attorney's hourly rate, they should not be apportioned to any single cause of action so as to constitute an additional charge. *Id.* at 402; see also *Harris Trust & Savings Bank v. American National Bank & Trust Company of Chicago*, 230 Ill. App. 3d 591, 599-600 (1992) (same).

¶ 57 The MPOA argues that the $175 hourly rate was more than reasonable, and that in *Kaiser v. MEPC American Properties*, 164 Ill. App. 3d 978 (1987), the court left open the possibility that the agreement between the client and law firm could control. In *Kaiser*, the court stated that it was not persuaded by the attorney firm's claim that its policy was to separately charge for overhead expenses according to each client's use rather than raising the hourly rate charged to all clients. *Id.* at 990. The *Kaiser* court stated that there was nothing presented establishing the existence of such a policy or any showing that its fees were lower than those customarily charged in the community for the same services. *Id.*

¶ 58 Here, we agree with the MPOA that the evidence showed that the attorney's $175 hourly rate was reasonable and that the attorney's policy was to charge all of its clients a standard 6% administrative fee for overhead expenses. However, we are bound by the language in the fee-shifting provision, which, as relevant here, allows only for the recovery of attorney fees. Because the 6% administrative fee was not an attorney fee, the trial court erred by awarding it to the MPOA, and we reduce the award by that amount.

¶ 59 B. Cross-Appeal

¶ 60 1. Petition for Supplemental Fees

¶ 61 The MPOA first argues that the trial court erred by denying its petition for supplemental fees. The MPOA argues that it was entitled to the supplemental fees because in filing that petition, it was enforcing a provision of the by-laws; namely, the fee-shifting provision itself. In other words, the MPOA argues that the fee-shifting provision of the by-laws has "dual significance" and that the services involved in the petition for supplemental fees were necessary to enforce that provision itself. Again, the fee-shifting provision provides:

> "If at any time the officers determine that it is necessary to employ professional legal services to enforce any of the provisions of these By-Laws, the Member against whom any such action is necessary shall be held liable for payment of all attorney's fees, as well as any damages, MPOA late charges, liens, and court costs."

¶ 62 After the court's November 2010 ruling that the MPOA was entitled to attorney fees of $99,005.06 under the fee-shifting provision of the by-laws, the MPOA filed a petition for supplemental fees incurred since December 2010. In this petition, the MPOA sought approximately $35,000 for attorney fees stemming from the preparation of the petitions for attorney fees, work related to Mathews's bankruptcy proceedings, and work in response to Mathews's requests to settle the attorney fee issue by selling various properties. The trial court awarded attorney fees on the original fee petition but denied the petition for supplemental attorney fees. After noting that the services rendered related to a possible settlement with Mathews and the drafting of the fee petitions themselves, the court stated that "the petition for fees is not an action undertaken specifically to enforce the provisions of the bylaws against the members."

¶ 63 Mathews argues that the trial court properly interpreted the fee-shifting provision not to permit the recovery of the supplemental fees. Mathews points out that we are required to strictly construe fee-shifting provisions (see *Bright Horizons Children's Centers, LLC*, 403 Ill. App. 3d at 254), and he argues that the MPOA's "dual significance" position runs contrary to a strict construction.

¶ 64 Once again, we are called to interpret the fee-shifting provision, this time to determine whether it allows the recovery of fees for its own enforcement. It is undisputed that the MPOA's petition for supplemental fees included fees for the preparation and prosecution of its original petition for fees. We agree with the MPOA that those fees are recoverable to enforce the fee-shifting provision. See *Taliani v. Herrmann*, 2011 IL App (3d) 090138, ¶ 42 (it would be inconsistent to dilute a fees award by refusing to compensate attorneys for the time they reasonably spent in establishing their rightful claim to the fee); see also *In re Marriage of Powers*, 252 Ill. App. 3d 506, 513 (1993) (refusing to award fees for prosecuting the fee petition would dilute the effect of the statute by requiring successful litigants to incur additional costs to enforce their rights). Therefore, we remand the case so that the amount incurred for the preparation and prosecution of the MPOA's original petition for fees may be added to the fee award.

¶ 65 Beyond this amount, however, the MPOA has not shown that it is entitled to fees. The fees incurred representing the MPOA in bankruptcy court and pursuing a possible settlement relate to collection, not enforcement, and the MPOA has not shown otherwise. See *In re Gregory G.*, 396 Ill. App. 3d 923, 928 (2009) (the burden is on the respondent to clearly define the issue with pertinent authority and a cohesive argument). Accordingly, we reverse the denial

of the petition for supplemental fees and award fees to the MPOA only for the preparation and prosecution of the original fee petition.

¶ 66 2. Motion for Sanctions

¶ 67 The MPOA's second and last argument is that the trial court erred by denying its request for sanctions under Illinois Supreme Court Rule 137 (eff. July 1, 2013). The purpose of Rule 137 is to prevent the filing of false and frivolous lawsuits, and it permits a trial court to impose an "appropriate sanction," including an award of reasonable attorney fees to the opposing party. *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 393 Ill. App. 3d 1, 15 (2009).

¶ 68 In this case, the MPOA's motion for sanctions requested the court to award it "the amount of reasonable expenses incurred because of the filing of the Complaint, including reasonable attorneys' fees." However, the MPOA also filed an "alternative" motion for attorney fees, which was based on the fee-shifting provision of the by-laws. The trial court awarded fees pursuant to the fee-shifting provision and denied the motion for sanctions. We have determined that the MPOA was not entitled to the 6% administrative fee under the fee-shifting provision of the by-laws. Because that fee would be recoverable pursuant to the MPOA's motion for Rule 137 sanctions, however, it is necessary for us to consider whether the trial court properly denied the motion for sanctions.

¶ 69 Rule 137 provides, in relevant part:

> "The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of

> existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *** If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee." Ill. S. Ct. R. 137 (eff. July 1, 2013).

¶ 70 Accordingly, Rule 137 allows sanctions under two different circumstances: (1) when a pleading, motion, or other paper is not well grounded in fact or is not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; or (2) when it is interposed for purposes such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *Patton v. Lee*, 406 Ill. App. 3d 195, 202 (2010). "The standard for evaluating a party's conduct under Rule 137 is one of reasonableness under the circumstances existing at the time of the filing." *Id.* Because Rule 137 is penal in nature, it must be construed strictly; courts should reserve sanctions for the most egregious cases. *Id.* The purpose of the rule is to discourage frivolous filings, not to punish parties for making losing arguments. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 15. The trial court's decision to deny a motion for sanctions is reviewed for an abuse of discretion. *Id.* ¶ 16.

¶ 71 The MPOA argues that the trial court abused its discretion by denying its motion for sanctions because the "name change" theory advanced by Mathews was "absurd." According to the MPOA, assuming the Owners Association name in an effort to become the legal member of

the MPOA, with corresponding voting rights, was not well grounded in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

¶ 72 When ruling on the motion for sanctions, the court acknowledged that it had used the words "flagrant" and "unscrupulous" in describing Mathews's conduct of assuming the Owners Association name after it had been administratively dissolved. Nevertheless, the court stated that it was not sure whether "it's a stunt or whether it's a lawful attempt to promote a good faith effort." Noting that the issue of sanctions was "close," the court denied it "primarily on the fact that the question of law presented was unique." The trial court's decision was not an abuse of discretion.

¶ 73 Once the Owners Association was administratively dissolved and Mathews assumed its name, the Owners Association remained a legal member of the MPOA pursuant to the by-laws. Mathews's theory was that the Owners Association, as a listed member of the MPOA, was the legal representative of the Wooded Shores subdivision, with corresponding voting rights on the issue of the bond resolutions. According to Mathews, because the MPOA allowed the newly named Improvement Association, rather than the Owners Association, to represent and vote on behalf of the Wooded Shores subdivision, he challenged the validity of a vote by an entity that was not a named member of the MPOA. Relying on the principle that the MPOA was obligated to follow its own by-laws (see *Kendler v. Rutledge*, 78 Ill. App. 3d 312, 316 (1979) (the Board was obligated to act in accordance with its by-laws)), Mathews argued that only a named member in the by-laws could vote. In further support of his position, Mathews pointed out that the MPOA knew that it was necessary to amend the by-laws to correct the name of the Owners Association to the Improvement Association; however, that amendment did not pass.

¶ 74 Though the court ultimately concluded that the change in the association's name was ministerial, and that the Improvement Association was the legal member of the MPOA, the fact remains that there was a discrepancy between the listed members in the by-laws and the association that was allowed to vote. Moreover, as stated, this discrepancy was not cured by the proposed amendment. Therefore, as the trial court recognized, the facts in this case were unique, and it did not abuse its discretion by denying the motion for sanctions. See *Patton*, 406 Ill. App. 3d at 202 (a court should not impose sanctions on a party for failing to conduct an investigation of facts and law when the party presents objectively reasonable arguments for his or her position, regardless of whether those arguments are unpersuasive or incorrect).

¶ 75 III. CONCLUSION

¶ 76 For the foregoing reasons, we affirm the judgment of the McHenry County circuit court awarding attorney fees pursuant to the by-laws, except as to the 6% administrative fee and the two legal opinions by the MPOA's attorney. In addition, we reverse the denial of the petition for supplemental fees as to the preparation and prosecution of the MPOA's original fee petition. We remand the case with directions that the trial court order the following in regard to the fee award: (1) subtract the 6% administrative fee and the fees for the two legal opinions; and (2) add the fees related to the original fee petition.

¶ 77 Affirmed in part, reversed in part; cause remanded.