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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE MIDWEST CLUB, INC.,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellant,)	
v.)	No. 13-CH-1049
)	
ANSAR AHMED, SOOFIA AHMED,)	
IBRAHIM AHMED, YOUSEF AHMED,)	
and WEST SUBURBAN BANK, not)	
Individually, but as Trustee of Land)	
Trust No. 13505, dated March 8, 2010,)	Honorable
)	Bonnie M. Wheaton,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Hudson and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in dismissing count I of the plaintiff's fifth amended complaint, seeking fines for violation of homeowner's association rules, because the defendants did not have notice or an opportunity to be heard on the issue as required by the applicable statute. Because count I was dismissed, the trial court properly found that the plaintiff was not entitled to attorney fees on that count.

¶ 2 On November 19, 2011, two trees were cut down on property owned by one of the defendants, West Suburban Bank, as trustee of Land Trust No. 13505, dated March 8, 2010 (Land Trust). The property was occupied by the defendants, Ansar Ahmed, Soofia Ahmed, Ibrahim Ahmed, and Yousef Ahmed. The property was part of the plaintiff's, The Midwest

Club's, homeowner's association. The plaintiff filed this suit because cutting down the trees violated the plaintiff's rules and regulations. On December 7, 2017, the trial court granted the defendants' motion to dismiss count I of the plaintiff's fifth amended complaint, which stated a claim for breach of contract. The plaintiff appeals from this order. We affirm the dismissal of count I and remand for additional proceedings consistent with this order.

¶ 3

I. BACKGROUND

¶ 4 The plaintiff is a not-for-profit association of single family homes in Oak Brook. The plaintiff enacted a declaration of trust that established specific conditions, covenants, restrictions, reservations, grants and easements for all the homeowners within the plaintiff's association. In January 1995, the plaintiff enacted its First Amended Declaration of Covenants, Conditions, and Restrictions (Declaration). The Declaration empowered the plaintiff to appoint a Board of Directors (Board) to be responsible for the overall administration of the association.

¶ 5 The plaintiff also adopted bylaws, rules and regulations, as well as a First Amended Architectural and Landscape Control Manual (Landscape Manual). Section 2.2 of the Landscape Manual provided that prior written approval from the Board was required before any existing trees could be removed or relocated.

¶ 6 On June 6, 2011, Ibrahim entered into a contract to purchase 2016 Midwest Club Parkway, a property within the plaintiff association. On November 14, 2011, title to the property was conveyed to West Suburban Bank. At the time the property was purchased, the beneficiaries of the Land Trust were Soofia and her mother, Safia Khatoun. On the day the property was conveyed, the plaintiff gave Ibrahim a copy of the plaintiff's Declaration, bylaws, and rules and regulations. Ansar, Soofia, Ibrahim, and Yousef (the Ahmeds) all reside on the property. Ansar and Soofia are husband and wife. Their sons are Ibrahim and Yousef.

¶ 7 On or about November 19, 2011, the Ahmeds cut down two large, fully mature trees on the property without prior written approval from the Board, in violation of section 2.2.2 of the Landscape Manual. Under the plaintiff's Declaration, a failure to comply with the requirements of the Landscape Manual allowed the plaintiff to avail itself of all remedies permitted at law or in equity. Additionally, the plaintiff, if it prevailed, was entitled to seek reasonable attorney fees. Furthermore, the property was subject to the Illinois Common Interest Community Association Act (Act) (765 ILCS 160/1 *et seq.* (West 2012)). Section 1-30(g) of the Act (765 ILCS 160/1-30(g) (West 2016)), provided that the Board "shall have the power, after notice and an opportunity to be heard, to levy and collect reasonable fines from members or unit owners for violations of the declaration, bylaws, operating agreement, and rules and regulations of the common interest community association."

¶ 8 The record indicates that an emergency meeting of the Board was held on November 21, 2011. At that meeting, the Board determined that the Ahmeds' removal of the two trees violated the plaintiff's Declaration, that the trees needed to be replaced within 30 days, and that the Ahmeds would be fined \$100 per day after the 30 days and until the trees were replaced. The Ahmeds were not invited to or present at the emergency meeting of the Board.

¶ 9 On December 2, 2011, the plaintiff's property manager sent Ibrahim a letter informing him that the removal of the two trees without prior written approval from the Board violated section 2.2.2 of the Landscape Manual. The letter stated that the trees would have to be replaced with the largest size and exact same type of trees in the same locations. The manager named a tree company that could provide this service but noted that the Ahmeds could use a different tree service if they chose. The manager stated that the trees had to be replaced by December 31, 2011, and that if they were not replaced by that date, the Ahmeds would be fined \$100 per day until the trees were replaced.

¶ 10 On December 22, 2011, the plaintiff's president, who was also a member of the Board, sent a letter to "Mr. Ahmed" noting that the trees had yet to be replaced. The letter further indicated:

"If the replacement of the trees has not been completed before January 1, 2012, the fine of \$100.00 per day until the trees are replaced will be imposed. Please understand this was a decision voted upon by the Board of Directors and sent to you in a letter. I understand you informed [the property manager] you would not replace the trees until you meet with the Board. The Board acted upon your violation of the Rules and Regulations in the required proper manner when a homeowner disregards the Rules. There was no need for a meeting with the Board. You clearly broke the rules. The Board decision is final."

In closing, the president demanded that a proposal to replace the trees be provided to the property manager immediately.

¶ 11 On January 4, 2012, Ibrahim sent a letter to the plaintiff's president. Ibrahim claimed that he did not receive a copy of the bylaws at the time of closing and was not aware he needed prior written approval to cut down trees. He explained that one of the trees needed to be cut down for safety reasons and because it was enabling raccoons to enter the attic of the home. The other tree was diseased. Ibrahim stated that requiring the trees to be planted in the exact same locations and be replaced by December 31 was "ridiculous" because planting in the exact locations would be detrimental to the trees' growth and because it was winter. Ibrahim believed replacement trees should be planted in the spring to ensure long-term survival. Finally, Ibrahim stated that if the plaintiff was going to require him to plant large trees next to his home, he wanted the plaintiff to provide him with a \$5 million insurance policy naming him and his property as additional insureds.

¶ 12 On January 31, 2012, the property manager sent a letter to Ibrahim noting that the trees had not yet been replaced and including an invoice for \$3100 in fines for January 2012 (\$100 per day).

¶ 13 The record includes minutes from an April 23, 2012, Board meeting. The minutes indicated that Ibrahim and Yousef attended the meeting and asked why they were denied access to the gatehouse. The plaintiff's president explained that it was due to an accrued balance on their account because they had not paid the fines for cutting down the two trees. Ibrahim threatened the Board with a lawsuit. The president informed him that a lawsuit would not resolve the matter.

¶ 14 The record also includes minutes from a May 8, 2012, meeting of the Landscape Review Committee (Committee). The minutes indicated that Ibrahim and Yousef attended the meeting to explain their plan for replacing the trees that were cut down. The brothers explained that they cut down the trees because there was raccoon damage to the roof of the house and one of the trees had a fungus. The brothers further explained that they would like to replant the trees in the plaintiff's common area because there were already too many trees on their property. The Committee told them to submit a landscape plan showing current trees and the proposed placement of new trees. The brothers were to return with a plan at the June 12, 2012, meeting.

¶ 15 Minutes from the Committee's June 12 meeting indicated that the brothers did not attend the meeting. However, the next meeting was July 10, 2012. The minutes for that meeting indicated that "Mr. Ahmed" attended the meeting to inform the Committee that a landscaper was working on a plan of existing trees but had not yet completed it. He also submitted a list of improvements he wanted to make to his property. Minutes from an August 14, 2012, Committee meeting indicated that "Rob" met with "Mr. Ahmed" and explained the need for him to present a plan for the replacement of the trees that were cut down. Mr. Ahmed indicated that he would

attend the August meeting with plans, but he did not attend and no plans were submitted. The Ahmeds failed to attend the next Committee meeting in April 2013 and did not present any landscaping plans.

¶ 16 The plaintiff's rules and regulations authorized the Board to impose fines against a homeowner for violations of the Declaration, bylaws, rules and regulations, or the Landscape Manual. The Declaration provided that the occupants of a home were bound by the plaintiff's rules and regulations and could be sanctioned for any violation of the Declaration, bylaws, or rules and regulations of the club. Specifically, section 15.1 of the Declaration provided that the failure of a homeowner to comply with the plaintiff's bylaws and rules and regulations would constitute a default and that if a default occurred, the plaintiff would have the right to recover damages at law, to procure injunctive relief, or to avail itself of any other rights or remedies permitted in law or equity. Section 15.3 of the Declaration provided that in any proceeding commenced by the plaintiff, arising out of an alleged default by a member or owner, the plaintiff, if it prevailed, would be entitled to recover all expenses of the proceeding, including reasonable attorney fees.

¶ 17 Accordingly, on March 22, 2013, the plaintiff filed a two-count complaint against Ibrahim seeking an order compelling him to replace the trees and attorney fees for enforcing its rights (count I), and damages of \$100 per day starting January 1, 2012 (count II). Minutes from an April 22, 2013, Board meeting indicate that "Mr. Ahmed" attended. The minutes further indicated that:

“[The Board’s attorney] talked to Mr. Ahmed and explained procedure. A lawsuit was filed March 22, [the Board’s attorney] will go to court next week to compel Mr. Ahmed to submit plan, replace trees and pay fine.”

On May 17, 2013, the plaintiff filed a motion for default judgment because, although Ibrahim had been served with summons and the complaint, he failed to appear or respond to the complaint.

¶ 18 On June 11, 2013, the trial court entered a default order requiring Ibrahim to submit a landscape plan to the Board within 30 days and further requiring Ibrahim to replace the two trees at issue with two new mature trees of the same sizes and types in the same exact locations. The trial court continued the matter as to fines and attorney fees. On July 19, 2013, the trial court entered an order noting that Ibrahim personally appeared at a hearing, ordering him to comply with the June 11 order, and continuing the matter as to damages. On August 6, 2013, the trial court entered an order granting plaintiff's motion for default judgment, granting \$68,179.77 as a judgment against Ibrahim and in favor of the plaintiff, and noting that the plaintiff was granted leave to file a petition for attorney fees.

¶ 19 On September 5, 2013, Ibrahim filed a motion to vacate the trial court's August 2013 default judgment and a motion to dismiss the complaint pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2012)). Ibrahim argued that the complaint should be dismissed because the home was purchased by West Suburban Bank on November 14, 2011; he was not a resident of the home until December 1, 2011; and he was not a beneficiary of the Land Trust. He further argued that, because he did not own the home at the time the trees were cut down, he could not be held responsible for "a failure by an Owner to comply with the Declarations" (as expressed in section 15.1 of the Declaration). Ibrahim noted that he was not at the Board meeting when the \$100 fine was levied. He was scheduled to attend a December 10, 2011, Committee meeting, but the meeting was canceled. Additionally, he did not receive a reply to his email dated January 4, 2012.

¶ 20 On September 20, 2013, the trial court entered an agreed order vacating its August 6, 2013, order, substituting Ansar for Ibrahim as the defendant, allowing Ansar's counsel seven days to file an appearance, and granting the defendant time to file a response to the plaintiff's complaint.

¶ 21 On January 3, 2014, the plaintiff filed a motion to reinstate the August 2013 default judgment because Ansar never filed a response to the complaint. On January 24, 2014, Ansar filed a response to the motion to reinstate. Ansar argued that the fine was assessed without due process. Ansar noted that Ibrahim was not the owner of the property and was not given notice or an opportunity to be heard prior to the imposition of the fines. Further, the trees were ultimately replaced and the plaintiff had not suffered any damages. Additionally, Ansar argued that the legal fees were excessive because the plaintiff wasted six months pursuing the wrong party. Ansar also argued that the default judgment was entered in error because Ibrahim talked to plaintiff's counsel on August 5, 2013, informed him that the trees would be replaced on August 8, 2013, and the parties agreed it was not necessary for Ibrahim to appear in court on August 6, 2013. Finally, Ansar argued that he should not be required to pay fines for the time period that the plaintiff pursued its claims against the wrong party (Ibrahim).

¶ 22 On February 7, 2014, Ansar filed an answer and affirmative defenses to the plaintiff's complaint for injunctive and other relief. Ansar raised an affirmative defense of equitable estoppel, asserting that the property manager had given him verbal authorization to cut down the two trees. Ansar also raised the affirmative defense of laches, arguing that the lawsuit was not filed until March 2013, the proper party defendant was not added to the suit until September 2013, and that he had been prejudiced by the plaintiff's unreasonable delay. Attached was an April 23, 2012, letter from Ibrahim to the plaintiff, noting that it was hand delivered to the property manager. In the letter, Ibrahim stated that he was not the legal owner of the property,

he received verbal authorization from the property manager to cut down the trees, and he had never received a response to his offer to replant four trees in the plaintiff's common area.

¶ 23 On July 21, 2014, the plaintiff filed a motion for leave to file a first amended complaint to add additional defendants. The first amended complaint named as defendants: Ansar, Soofia, Ibrahim, and West Suburban Bank. The trial court granted the motion.

¶ 24 On January 6, 2015, the defendants filed a section 2-619(a)(9) motion to dismiss the first amended complaint. The defendants argued that the claim for injunctive relief was moot because the trees had been replanted. To the extent the plaintiff would argue that it was still entitled to attorney fees, the defendants argued that the plaintiff was not so entitled because it did not name the record owner of the property until 2014 and the defendants should not be prejudiced for the plaintiff's failure to check the title of the real estate. The defendants also argued that the claim for breach of contract seeking the fines should be denied because neither Ansar nor Ibrahim were given notice or an opportunity to be heard in violation of section 1-30(g) of the Act. Finally, the defendants argued that if the case was not dismissed, Ansar, Ibrahim, and Soofia should be dismissed as parties because they were never owners of the property, because it was always owned by West Suburban Bank.

¶ 25 Attached to the defendant's motion to dismiss the first amended complaint were affidavits from Ansar and Ibrahim. In his affidavit, Ibrahim stated that, in January 2012, he attended a Board meeting with the intention of explaining why he cut down the trees and why he should not be fined \$100 per day. He was told that he was not on the agenda and would not be allowed to speak. Ibrahim also asserted that, in April 2013, he attended another Board meeting with the same intention. He was told that the trees needed to be replanted and that there would be no further discussion. In his affidavit, Ansar stated that he and Soofia established the Land Trust. On August 15, 2011, he assigned his interest in the Land Trust to Safia Khatoon, such that

Soofia and Safia each became 50% beneficiaries. On November 14, 2011, West Suburban Bank, as trustee of the Land Trust, purchased the property. Shortly thereafter, he and his family moved in. Ibrahim had been the one who mostly dealt with the Board. Ansar stated that he was never given the opportunity to argue against the fines that were imposed.

¶ 26 On March 31, 2015, following a hearing, the trial court granted the defendants' motion to dismiss and allowed the plaintiff 14 days to file an amended complaint. A transcript of the hearing is not included in the record on appeal.

¶ 27 On May 28, 2015, the plaintiff filed a second amended complaint naming Ansar, Soofia, Ibrahim, Yousef, and West Suburban Bank as defendants. The second amended complaint restated the claim for injunctive relief (count I) but noted that the trial court had granted injunctive relief in June 2013 in favor of the plaintiff and against Ibrahim. The second amended complaint also stated a claim for breach of contract and requested an order compelling defendants to pay the \$100 per day fines and reasonable attorney fees incurred in enforcing its rights (count II). The plaintiff alleged that the Board and property manager had met with Ansar and Ibrahim periodically starting in November 2011 and that the two had held themselves out as owners of the home at issue. Finally, the second amended complaint included a claim based on conspiracy to damage the plaintiff's computer system (count III). The plaintiff alleged that Ansar, Ibrahim and Yousef had wrongfully gained access to and damaged the plaintiff's computer system, server, and email system. The plaintiff requested damages in excess of \$20,000.

¶ 28 On June 16, 2015, the defendants filed a section 2-619(a)(9) motion to dismiss count II of the plaintiff's second amended complaint. On August 7, 2015, following a hearing, the trial court granted the defendants' motion to dismiss. The trial court found that the provision of the Declaration that purported to bind occupants, as opposed to owners, was void as against public

policy. Accordingly, the trial court dismissed the individual defendants other than Soofia, as Soofia was the only named defendant that was also a beneficial owner of the property. The trial court further found that Soofia was never given notice or an opportunity to be heard as to the fines. The trial court thus granted the motion to dismiss count II as to Soofia as well. As to attorney fees, the trial court stated that the plaintiff could not be awarded attorney fees until it prevailed. The plaintiff reminded the trial court that it did prevail on the injunction. The trial court stated that it was “only on a preliminary injunction part” and “that issue is moot now.” The trial court further stated that even if the plaintiff was “entitled to attorney’s fees up to the point of the [*sic*] when the trees were replanted, then there is still the issue of notice to Soofia.” The plaintiff was granted 21 days to replead count II as to Soofia only.

¶ 29 On September 18, 2015, the plaintiff filed a third amended complaint, still seeking judgment against all the defendants. Count I restated the claim for mandatory injunctive relief. Count II was entitled breach of contract and sought reasonable attorney fees that the plaintiff incurred in enforcing its rights in obtaining the mandatory injunction. Count III again stated the claim for conspiracy to damage the plaintiff’s computer system. The defendants moved to dismiss count II of the third amended complaint based on the trial court’s August 7, 2015, ruling. On March 23, 2016, the trial court dismissed count II.

¶ 30 On May 23, 2016, the plaintiff filed a fourth amended complaint. On May 24, 2016, the plaintiff sought leave to file a three-count fifth amended complaint, which was filed on June 3, 2016. In its fifth amended complaint, count I was a claim for breach of contract and sought attorney fees for obtaining and enforcing the mandatory injunction and the \$100 per day fines for not replanting the trees in the time allowed. The plaintiff included the following allegations in support of count I, presumably to show that it named the proper parties as defendants. The plaintiff alleged that the purchase contract for the property named Ibrahim as the buyer. On the

day of closing, Ibrahim was provided a copy of the plaintiff's Declaration, rules and regulations, and bylaws. When applying for a gate opener, Ibrahim identified himself as a new homeowner in the community. When filling out a vehicle registration form, Soofia and Ansar represented that they were the owners of the property. The plaintiff alleged that, prior to filing the lawsuit, none of the Ahmeds informed it that the West Suburban Bank was the record title holder of the property. The plaintiff alleged that in a January 4, 2012 email, Ansar represented himself as the owner and referred to the property as "my property." Further, on a proxy ballot for the plaintiff's annual meeting that took place on November 13, 2012, Ansar listed himself as owner of the property and cast his vote as owner. The plaintiff further alleged that Soofia acquiesced in Ibrahim's and Ansar's representations that they were the owners of the property. In his motion to vacate the default judgment, Ibrahim asserted that Ansar was the owner of the property. At an April 2014 settlement conference, Ibrahim and Ansar held themselves out as the owners of the property.

¶ 31 Count II of the fifth amended complaint stated a claim for conspiracy. The plaintiff alleged that the defendants had hacked its computer server and were able to view confidential communications. In addition, the plaintiff alleged that the defendant launched a virus into its computer system and caused other damage to the system. In count III, for mandatory injunctive relief, the plaintiff stated that the trial court adjudicated the claim when it entered the June 11, 2013, injunction in favor of the plaintiff and against Ibrahim.

¶ 32 On June 24, 2016, the defendants filed a section 2-619(a)(9) motion to dismiss count I of the fifth amended complaint. The defendants noted that the plaintiff's bylaws required 48 hours' notice to all members of the association of any special meeting of the Board. The defendants alleged that they never received notice of the November 21, 2011, Board meeting. Further, the Board refused to speak to them, as evident in the December 22, 2011 letter from the plaintiff's

president stating that there was no need for a meeting with the Board and that the Board's decision was final. The defendants argued that the Board's failure to speak to them was a violation of section 1-30(g) of the Act, which required notice and an opportunity to be heard before the Board had the power to impose fines.

¶ 33 The defendants further argued that if the complaint was not dismissed for violation of the Act, the individual defendants Ansar, Ibrahim, and Yousef should be dismissed with prejudice from count I. The defendants alleged that a November 16, 2011, form that they filled out (namely, the plaintiff's Public Safety Department Vehicle Registration Form) indicated that Ibrahim was the son of the homeowners. Further, the defendants argued that the trial court had already ruled that the plaintiff could only proceed against Soofia because she was the only individual defendant that was a beneficiary of the Land Trust.

¶ 34 The plaintiff filed a response to the motion to dismiss, arguing that Ansar and Ibrahim had repeatedly held themselves out as owners of the property: Ibrahim signed the purchase contract; Ibrahim signed for a copy of the Declaration, Bylaws, Rules and Regulations; Ibrahim signed for a gate opener as a "homeowner"; a vehicle registration form filled out for the plaintiff indicated that Soofia and Ansar were homeowners; and Ansar had signed a ballot and a proxy at the Association's annual meetings. Further, in a deposition, Soofia testified that she told Ibrahim that it was his responsibility to deal with the tree issue. The plaintiff argued that Soofia either consented to or acquiesced in Ansar and Ibrahim's exercise of authority in managing the property and that Ansar and Ibrahim had apparent authority to act as agents on behalf of Soofia. The plaintiff requested that the motion to dismiss be denied.

¶ 35 On December 7, 2017, a hearing was held on the defendants' motion to dismiss. Following argument, the trial court found that the plaintiff was a mini-government and that the Act and bylaws required notice and an opportunity to be heard prior to the imposition of fines.

The trial court found that there was no notice of the November 21, 2011, Board meeting and that the defendants never had an opportunity to be heard on the issue. The trial court stated that it would “dismiss the complaint *** and that will be a final and appealable order. And since I’m dismissing the case, there is no basis for the award of attorney’s fees.” A written order entered the same day stated that count I was dismissed with prejudice and that it was a final and appealable order under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). The plaintiff filed a timely notice of appeal.

¶ 36

II. ANALYSIS

¶ 37

A. Daily Fines

¶ 38 On appeal, the plaintiff argues that the trial court erred in granting the defendants’ section 2-619 motion to dismiss count I of its fifth amended complaint. Specifically, the plaintiff first argues that the trial court erred in determining that the defendants did not have notice or an opportunity to be heard before the imposition of the \$100 per day fines. In arguing that it provided notice and an opportunity to be heard, the plaintiff cites to allegations in its complaint that set forth the correspondence between the parties; allegations that, during 2012, the Ahmeds periodically met with the Board to discuss the improper removal of the two trees; and allegations regarding the Landscape Review Committee meetings that were attended by some of the Ahmeds.

¶ 39 Where a claim has been dismissed pursuant to section 2-619, the question is whether there is a genuine issue of material fact and whether the defendant is entitled to judgment as a matter of law. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 494 (1994). When reviewing a trial court’s disposition of a motion to dismiss filed under section 2-619, the reviewing court accepts all well-pleaded facts as true and makes all reasonable inferences therefrom. *Northern*

Trust Co. v. County of Lake, 353 Ill. App. 3d 268, 278 (2004). A dismissal under section 2-619 is reviewed *de novo*. *Chicago Motor Club v. Robinson*, 316 Ill. App. 3d 1163, 1171 (2000).

¶ 40 The provisions of the Act are applicable to the plaintiff. 765 ILCS 160/1-10 (West 2016). Section 1-30(g) of the Act (765 ILCS 160/1-30(g) (West 2016)), provides that the Board “shall have the power, after notice and an opportunity to be heard, to levy and collect reasonable fines from members or unit owners for violations of the declaration, bylaws, operating agreement, and rules and regulations of the common interest community association.” As such, property associations, in addition to the due process guarantees set forth in their rules and regulations, are required to comply with general principles of due process.

¶ 41 The crux of due process is the right to notice and a meaningful opportunity to be heard. *World Painting Co., LLC v. Costigan*, 2012 IL App (4th) 110869, ¶ 14. “[D]ue process is a flexible standard, satisfied by a form of procedure that is suitable and proper to the nature of the determination to be made.” *Brooks v. Board of Trustees of University of Illinois*, 90 Ill. App. 3d 591, 592 (1980). “Due process entails an orderly proceeding wherein a person is served with notice, and has an opportunity to be heard and to present his or her objections, at a meaningful time and in a meaningful manner, in a hearing appropriate to the nature of the case.” *Village of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 31.

¶ 42 In *Fischetti v. Village of Schaumburg*, 2012 IL App (1st) 111008, ¶ 16, one of the issues was whether the proceedings, involving a red light violation notice, had comported with the plaintiff’s, Gina Fischetti’s, procedural due process rights. The reviewing court held that her rights had not been violated, noting that:

“It is undisputed that Fischetti received written notification of the proceedings against her, that she was offered the opportunity to contest through the mail or at a hearing, that she chose to dispute the allegations by sending a letter to the municipality

regarding its ‘jurisdiction,’ and that her letter was taken into consideration by the hearing officer who found her liable for the violation and responsible for the \$100 fine. The record, thus, indicates that Fischetti was afforded procedural due process.” *Id.*

¶ 43 In the present case, assuming for the sake of argument that the plaintiff’s December 2, 2011, letter to Ibrahim served as proper notice of the tree cutting violation, the record establishes that the defendants never had a meaningful opportunity to be heard on the issue of the fines. The plaintiff held the emergency Board meeting two days after the trees were cut down but did not invite the defendants. The December 22, 2011, letter indicated that while the Ahmeds wished to speak to the Board about the issue, the Board was not interested in hearing from them. Further, Ibrahim and Ansar both stated, via affidavit, that their attempts to speak with the Board on the issue were rejected.

¶ 44 The record also indicates that Ibrahim sent a letter dated January 4, 2012, to the plaintiff’s president, who was also a member of the Board. In that letter, Ibrahim explained why the trees were cut down and gave his thoughts as to when and where the trees should be replanted. However, there is no indication in the record that the Board ever considered this letter. In *Fischetti*, the reviewing court held that the proceedings had comported with the requirements of due process because Fischetti was able to dispute her ticket by writing a letter and that letter was considered by the hearing officer that found her liable for the violation. Here, although Ibrahim contested the fine by letter, there is no indication that the Board ever reconsidered its earlier determination. While the record indicates that various defendants attended Board meetings and Landscape Review Committee meetings, there was no indication that there was a meaningful opportunity to be heard or that the Board ever reconsidered its initial decision that was made at the emergency Board meeting.

¶ 45 The plaintiff argues that, even if it failed to initially provide adequate notice and opportunity to be heard, it ultimately did provide due process and that the Act would thus limit, but not preclude, the recovery of fines. However, as discussed above, the record indicates that the Board never gave the defendants a meaningful opportunity to be heard on the issue. The Board's decision was made on November 11, 2011, and at no point was that determination ever reconsidered in light of any of the meetings attended by various members of the Ahmed family or any letters sent to the Board.

¶ 46 Finally, the plaintiff argues that notice and an opportunity to be heard were not required until the fines were "levied," the fines were not levied until December 31, 2011, and, at that point, the defendants had both notice and an opportunity to be heard. This argument is without merit as we previously determined that the record establishes that the defendants were never provided a meaningful opportunity to be heard. Based on the foregoing, the trial court did not err in dismissing count I of the fifth amended complaint.

¶ 47 B. Attorney Fees

¶ 48 The plaintiff next argues that the trial court erred in dismissing count I of its fifth amended complaint to the extent it sought attorney fees. Count I was a claim for breach of contract and sought not only fines for not replanting the trees in the time allowed, but also attorney fees for obtaining and enforcing the mandatory injunction. In dismissing count I, the trial court found that there was "no basis" for the imposition of attorney fees. The plaintiff argues that, even if it is not entitled to recover any fines, it still prevailed in obtaining the mandatory injunction and should be entitled to seek the related attorney fees.

¶ 49 Generally, in the absence of a statute or an agreement, a successful litigant is not entitled to recover attorney fees from the opposing party. *Amoco Realty Co. v. Montalbano*, 133 Ill. App. 3d 327, 334 (1985). However, provisions in a contract that specifically provide for an award of

attorney fees are an exception to this rule. *Id.* In the present case, section 15.3 of the Declaration provided:

“In any proceeding commenced by the Association, based upon or arising out of an alleged default by an owner, the Association, if prevailing, shall be entitled to recover all expense of the proceeding, including reasonable attorney’s fees.”

As such, the plaintiff is entitled to recover reasonable attorney fees to the extent that it was the prevailing party in a proceeding to enforce an owner’s obligations under the Declaration, bylaws, and rules and regulations. *Id.*

¶ 50 In the present case, the trial court correctly found that the plaintiff was not entitled to recover attorney fees for its related pursuit of the \$100 per day fines as it was not the prevailing party on that issue. The trial court dismissed count I of the plaintiff’s complaint and we affirm that dismissal. Nonetheless, counts II and III are still pending. On remand, the plaintiff may petition for attorney fees on count III, related to procuring the mandatory injunction. The trial court may then consider what, if any, attorney fees the plaintiffs are entitled to in relation to that claim. -

¶ 51 III. CONCLUSION

¶ 52 For the foregoing reasons, we affirm the dismissal of count I of the plaintiff’s fifth amended complaint and remand for additional proceedings consistent with this order.

¶ 53 Affirmed and remanded.