

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 380

September Term, 2007

JOHN C. DODD, III, ET AL.

v.

STRATEGIC MANAGEMENT PARTNERS,
INC.

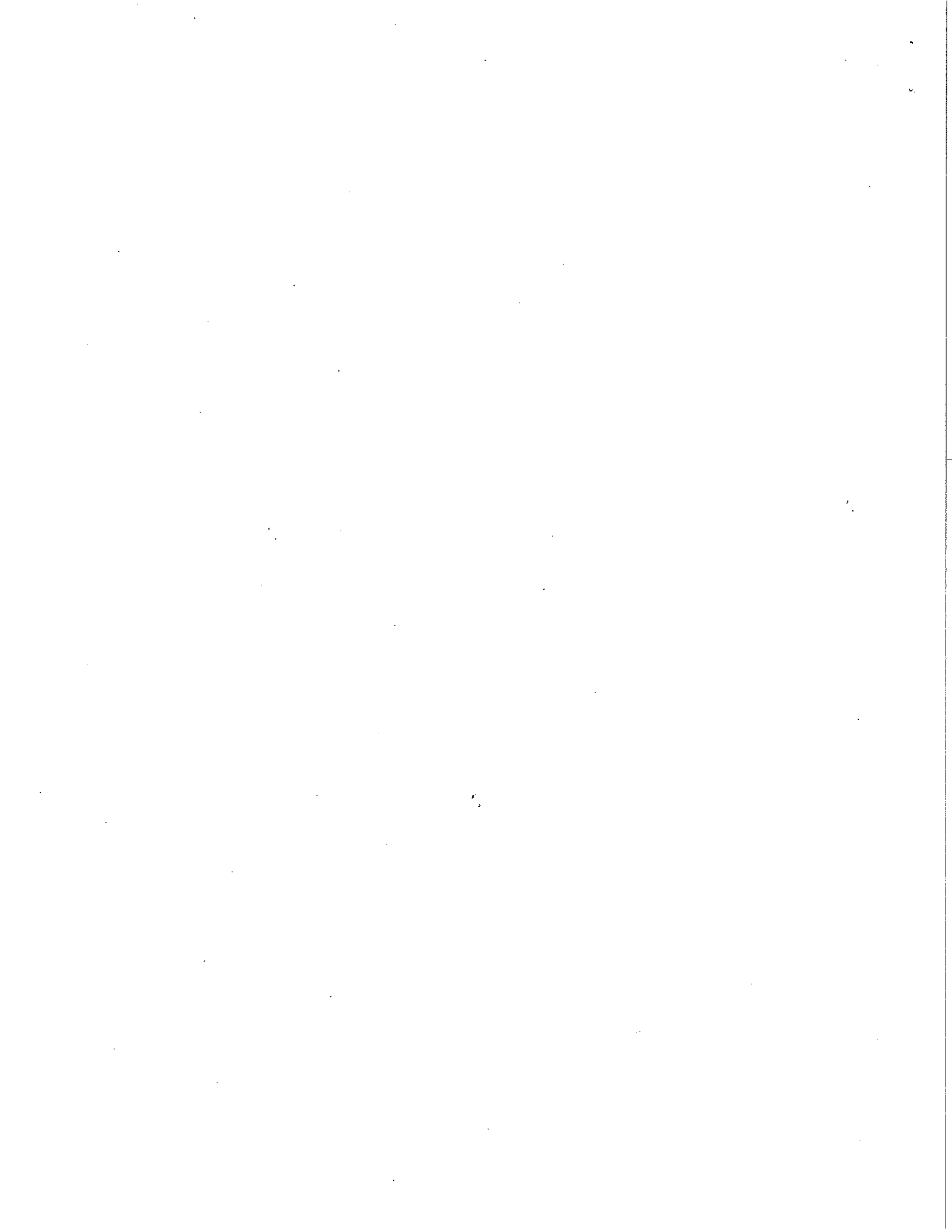
Murphy, Jr., Joseph F.,
(Judge of the Court of Appeals
of Maryland, specially assigned),
Barbera, Mary Ellen,*
Kenney III, James A.
(Retired, specially assigned),

JJ.

Opinion by Barbera, J.

Filed: April 8, 2009

* Mary Ellen Barbera, now serving on the Court of Appeals, participated in the hearing and conference of this case while an active member of this Court; she participated in the adoption of this opinion as a specially assigned member of this Court.



The parties to this appeal are appellants, John C. Dodd, III and the company of which he was Chairman of the Board, S2i Corporation ("S2i"); and appellee, Strategic Management Partners, Inc. ("SMP"). The genesis of the dispute is an employment agreement between the parties that involved the hiring of the president of appellee SMP to serve as an expert witness for appellants in a lawsuit in which they were involved.

Appellee later sued appellants for failure to fulfill the payment obligations under the employment agreement. The case went to trial before a jury in the Circuit Court for Talbot County. The jury found for appellee and awarded damages.

Appellants present the following questions for our consideration:

I. Did the trial court err by refusing to give a jury instruction on fraud in the inducement to contract when there was testimony that the individual who had been hired to testify as an expert witness had misled defendants below to believe he had prior experience as an expert witness and failed to disclose that he had never been accepted by any court as an expert witness and had not testified in court as an expert?

II. Did the trial court err by allowing the former attorney and former forensic accountant of defendants below to be questioned concerning fees paid and monies claimed to be owed to them by defendants below?

III. Did the trial court err by refusing to instruct the jury on the criteria set forth in [Maryland Rule of Professional Conduct ("MRPC")] 1.5[(a)] regarding the factors to be considered in determining whether a claimed attorney's fee is reasonable?

IV. Did the trial court abuse its discretion by refusing to grant a new trial where a jury verdict awarded \$44,677.22 in attorney's fees and costs in addition to \$53,087.50 damages for breach of contract?

Finding no error or abuse of discretion, we affirm the judgment.

FACTS AND PROCEEDINGS¹

In the middle of May 2003, appellants were plaintiffs in litigation with some of the employees, officers, and directors of S2i. Kenneth S. Knuckey, at the time an attorney at the law firm of Semmes, Bowen & Semmes, represented appellants early in the litigation. Pursuant to that representation, Mr. Knuckey contacted Mr. John Collard, the president of SMP, to discuss hiring him to serve as an expert witness for appellants in the litigation. During the conversation, Mr. Collard informed Mr. Knuckey that, although he (Mr. Collard) had once been hired as an expert witness and had written a report in connection with that employment, the case settled before trial.

Mr. Knuckey sent Mr. Collard a letter summarizing their conversation and enclosing some materials connected to the litigation, for Mr. Collard to review. The letter stated, in part:

As we discussed, we are initially retaining you solely as a consulting expert in this matter. Following your initial review of the enclosed documents and any other information you may request, we will discuss with you your initial conclusions and determine at that time whether we will retain you as an expert witness for the purpose of testifying at the trial of this case.

The letter also explained that the law firm anticipated Mr. Collard's initial review to take approximately twenty hours, and named a fee of \$350 per hour. The letter added: "If we decide to go forward with you as a testifying expert, your fees may be renegotiated based

¹ In our factual summary, we shall set forth any disputed facts in the light most favorable to appellee, as the party that prevailed at trial. *See City of Bowie v. MIE Properties, Inc.*, 398 Md. 657, 676-77 (2007).

in part on the time that we expect will be required for your review of additional information and preparation of your report.” Finally, the letter discussed the timetable for designating Mr. Collard as a testifying expert and the details of the report that he would have to submit.

Mr. Collard sent Mr. Knuckey a contract entitled “Expert Consulting Agreement” (hereinafter, the “Agreement”). Under the terms of the proposed Agreement, Mr. Collard agreed to provide consulting services, specifically, to advise and consult regarding matters related to the litigation. The proposed Agreement identified appellants as the Client, and it stressed that “[t]he specific deliverable in this engagement will be Practitioner’s [Mr. Collard’s] time.” Moreover, “[c]lient understand[s] that because of the uncertainties regarding cooperation, available information, etcetera that could affect progress, no specific outcomes are hereby guaranteed. Practitioner [Mr. Collard] will perform work on a best effort basis with no specific deliverables other than an accurate accounting for Practitioner’s time, expressed or implied.”

The proposed Agreement provided that the contract would endure for a term of up to six months, but if no action was taken at the end of six months to cancel the agreement, the Agreement was to be considered extended on a month-by-month basis. Under the proposed Agreement, Mr. Collard would be paid a \$10,000 retainer, and at a rate of \$350 per hour, with travel expenses covered by the Client, appellants.

The proposed Agreement also provided that, if Mr. Collard needed to use an attorney to enforce the Agreement, appellants were responsible “for all attorneys’ fees, costs and other

expenses incurred by [Mr. Collard]. This liability shall be in addition to any other relief, which may be obtained.” Mr. Collard submitted to Mr. Knuckey his resume together with the proposed Agreement. The resume outlined Mr. Collard’s qualifications.

Messrs. Collard and Knuckey conversed about the terms of the proposed Agreement and related matters until mid-June 2003. About that time, Mr. Knuckey told Mr. Collard of his plans to leave the law firm.

A meeting was held at the offices of the law firm, on June 24, 2003. Present at that meeting were Mr. Collard; appellant Dodd; Lisa Andrew, the president of appellant S2i; and various attorneys, including James A. Johnson. Mr. Johnson had taken over as lead counsel in the lawsuit. Mr. Knuckey did not attend the meeting. Mr. Collard and Mr. Dodd had not met or spoken to each other before the meeting.

At attorney Johnson’s request, the Agreement was modified at the meeting to reflect that Mr. Collard would be working under the authorization and instruction of the attorneys, not Mr. Dodd. Mr. Collard explained that the Agreement was modified to make clear

that the work that [he] would be doing would be instructing the attorneys in addition to Mr. Dodd, so [he, Mr. Collard] would be taking [his] instruction from Semmes, Bowen, & [] Semmes, the contract being with the parties that it is, but essentially in getting prepared for a trial and going through all this, etc., [he’d] be working very closely with the attorneys[.]

With that modification to the Agreement, the parties signed it at the June 24 meeting. Mr. Collard signed the Agreement as president of appellee SMP, and appellant Dodd signed the contract in both his individual capacity and as Chairman of S2i.

Mr. Dodd gave Mr. Collard a \$10,000 retainer check at that time. Mr. Dodd had no questions for Mr. Collard, and he made no inquires concerning Mr. Collard's qualifications.

The meeting continued with a discussion about the trial preparations, trial strategy, and the roles of the various people involved. Mr. Johnson took the lead in describing to Mr. Collard the background of the litigation and what was contained in various documents he would be viewing. The plan was for Mr. Collard to serve as one of several expert witnesses. His specific assignment was to explain to the jury the mismanagement of S2i, by addressing the management's shortcomings and explaining what the managers and directors of the company had done improperly. It was anticipated that Mr. Collard would be on the stand for one day of the month-long trial.

Mr. Collard did not specifically explain at the meeting that his prior experience as an expert witness did not include going to trial. Mr. Collard made no assurances regarding his involvement with the lawsuit, and he told Mr. Dodd and the attorneys that "the only thing I have to deliver that has any value is my time. . . . I make no guarantees."

Appellants thereafter designated Mr. Collard in the lawsuit as an expert who would testify for appellants as a "turnaround professional." He was duly disclosed as such to the defendants in the underlying litigation.

Pursuant to the Agreement, Mr. Collard prepared a report that was submitted to the court as an expert report. Then, in November 2003, he testified at a deposition, which Mr. Dodd attended. Responding to a question from opposing counsel, Mr. Collard testified that,

although he had been named as an expert witness in a previous trial in Superior Court for the District of Columbia, he had not testified in that case because it had settled.

Prior to the start of trial, the defendants filed a motion *in limine*. The court partially granted the motion by limiting the testimony of various witnesses, including Mr. Collard. The order did not prohibit Mr. Collard from testifying, but it changed the scope of his testimony, preventing him from making legal conclusions and from testifying to the misrepresentations allegedly made by one of the underlying defendants. In the months that followed, Mr. Collard reviewed thousands of pages of documents sent to him by the attorneys, in preparation for what he and the attorneys expected would be his permitted testimony at trial.

Throughout the time that he worked as an expert under the Agreement, Mr. Collard sent his bills and confirmation of work activity directly to appellant Dodd. Initially, Mr. Collard sent Mr. Dodd weekly or biweekly invoices, although that changed when there was inactivity in the litigation. Mr. Dodd promptly paid the amount of the invoices through April 23, 2005.

Issues connected to the payment of invoices arose in June 2005. Payment was delayed on an invoice dated June 5, 2005. Payment was eventually made, however, on August 1, 2005. Part, if not all, of the delay was due to an endorsement problem. Mr. Collard did not receive any payment for services he rendered after June 5, 2005, however. Specifically, Mr. Dodd did not pay the invoices dated June 30, 2005 and July 31, 2005.

Mr. Collard repeatedly attempted to contact Mr. Dodd expressing his concerns about the nonpayment of those invoices. Mr. Collard finally contacted an attorney, Mr. Hartman, to write a letter on behalf of SMP to one of Mr. Dodd's attorneys. The letter demanded payment on the past due invoices.

Correspondence was exchanged between Mr. Hartman and Mr. Dodd's attorneys continuing to demand payment before further hours were spent and before Mr. Collard was set to testify at trial. A payment plan was established, to which Mr. Dodd agreed on the morning of the day that Mr. Collard was scheduled to testify in the underlying litigation, August 15, 2005.

Mr. Collard was, in fact, called to testify on that day. When appellants offered him as an expert as a "turnaround professional," the defendants conducted *voir dire* of his expert qualifications and experience. Following that, the court commented that it had never heard of a turnaround professional. The court noted Mr. Collard's qualifications and abilities in management and corporate governance, but did not agree that his testimony would be helpful to the jury, and so did not permit him to testify as an expert witness. Appellants lost their lawsuit.

Meanwhile, Mr. Collard confirmed the payment plan agreed upon, by sending a confirmation letter on August 17, 2005. He attached a copy of the document outlining the plan.

The deadlines for the payment plan passed without fulfillment. Mr. Hartman sent a

letter on behalf of Mr. Collard to Mr. Dodd's attorneys, demanding payment. Again, there was no response.

The present lawsuit

Appellee SMP filed suit in Anne Arundel County Circuit Court, naming appellants S2i and Dodd, and seeking damages for breach of the Agreement. The complaint claimed that Mr. Collard was entitled to \$64,487.50. That sum represented the amount he had not been paid pursuant to the Agreement, plus attorney's fees and costs.

SMP filed a motion for summary judgment, to which was attached the affidavit of Mr. Collard. In that affidavit, Mr. Collard stated that he had performed the services designated in the Agreement, and, despite a demand for payment, he had not been paid the full amount for the services he performed.

Appellants moved to dismiss for improper venue, after which the parties jointly filed a motion to have the matter transferred to the Circuit Court for Talbot County. The Circuit Court for Anne Arundel County granted the joint motion to transfer the case to Talbot County and denied the motion to dismiss as moot.

Appellants answered the motion for summary judgment and, following that, the court denied the motion.

The case came on for trial on January 31, 2007. At trial, Mr. Collard testified that he never misrepresented his experience or qualifications to Mr. Dodd or his attorneys. He testified that he did everything that the attorneys directed him to do in connection with the

underlying lawsuit, and nobody ever criticized or complained that he was not doing what he was asked. Mr. Collard further testified that he never had any reason to believe that he would not be allowed to testify at the trial of the underlying lawsuit. Following the grant of the motion *in limine*, moreover, the Semmes attorneys reassured him that he would be allowed to testify, and would only have to alter his testimony from the original plan.

Mr. Collard further testified that, after deducting the retainer of \$10,000, appellant Dodd still owed him \$54,487.50 from outstanding invoices. Mr. Collard added \$330.00 to that amount for the ordering of transcripts from his deposition in the underlying litigation, and \$875.00 for a bill he paid regarding that deposition. Mr. Collard also testified concerning his claim for attorney's fees he had paid in connection with his efforts to enforce his rights under the Agreement.

Mr. Johnson, the lead attorney representing Mr. Dodd in the underlying lawsuit, also testified. Mr. Johnson testified that he had thought Mr. Collard would be a good expert for their side of the case, because he could describe to the jury the duties of corporate officers, discuss what S2i's corporate officers had done, and render an opinion as to whether those officers acted in accordance with the relevant standard of care. Responding to a question about the law firm's investigation of Mr. Collard's qualifications, Mr. Johnson testified that Mr. Collard had been recommended to the firm; he and Mr. Knuckey reviewed Mr. Collard's background; and, after reviewing Mr. Collard's resume, they decided that he fit their needs.

Mr. Johnson also testified that he did not recall a time when Mr. Collard told him anything about his background that was untrue. Mr. Johnson then explained that Mr. Collard had not been allowed to testify at the trial in the underlying lawsuit because “the judge did not recognize him, his particular field of expertise.” Mr. Johnson had been surprised, however, that Mr. Collard had not been allowed to testify.

Mr. Johnson testified that Mr. Collard did everything the attorneys had asked. Moreover, he noted that Mr. Collard’s preclusion from testifying was not due to any mistakes or errors that he had committed.

Mr. Johnson was asked about how much Mr. Dodd had incurred in attorney’s fees in the underlying lawsuit and whether Mr. Dodd had paid these fees. Appellants objected, arguing attorney-client privilege and relevance. The court overruled the objection, disagreeing that the questions sought information protected by attorney-client privilege and ruling that the testimony was relevant because it went to Mr. Dodd’s motive and intent for nonpayment of Mr. Collard’s fees. The court stated that “the jury may find the reason he isn’t paying this fee is because the litigation went sour on him.”

Mr. Robert A. Garvey, the forensic accountant who testified as an expert witness in the underlying lawsuit, was also called to testify at trial. He testified that he had outstanding invoices with appellants. Appellants objected to the relevance of this testimony. Appellee responded that it was important to establish that Mr. Dodd stopped paying Mr. Garvey’s bills at the same time he stopped paying Mr. Collard’s bills, because that testimony was relevant

to establishing Mr. Dodd's motive for nonpayment. The court overruled the objection.

Ms. Lisa Andrew, president of S2i at the time of the underlying lawsuit, testified for appellants. She testified that prior to the contractual agreement with Mr. Collard, she had performed internet research, and Mr. Collard seemed to have the qualifications and experience that would meet their needs at trial. She further testified, however, that "it was understood" that Mr. Collard's purpose as an expert witness was to testify at trial, and he did not disclose to them that he had never testified in a trial before. Ms. Andrew testified that the fact that Mr. Collard had never testified as an expert in a prior trial would have made a difference in their decision to hire him, and to do so at an hourly rate of \$350.

Mr. Dodd also testified for appellants. He testified that, in anticipation of the June 24, 2003 meeting, he reviewed information provided by Ms. Andrew regarding Mr. Collard, and he believed at that time that Mr. Collard would be ideal for their needs throughout the litigation. Specifically, Mr. Dodd testified that Mr. Collard's website had the word "expert" all over it.

Mr. Dodd testified about the June 24, meeting. He said that there had been a presentation concerning Mr. Collard's experience and qualifications. In addition, the attendees discussed the various dimensions of the case, explaining to Mr. Collard that his role would be to explain to the jury how each defendant was responsible or involved with the various issues in the case.

Mr. Dodd testified that Mr. Collard told him at the meeting that he previously was an

expert witness, and Mr. Collard never informed him that he, Mr. Collard, had not testified in court or been accepted and qualified as an expert witness. Mr. Dodd testified that, if he had known Mr. Collard had never been qualified or testified as an expert witness, he “would never have been interested in even talking to Mr. Collard about [the case], let alone hiring him, signing any agreements or anything else.”

Mr. Dodd testified that he was not pleased with Mr. Collard’s written expert report because it was difficult to read and expressed some inaccuracies. Mr. Dodd testified that Mr. Collard “assured” him that his testimony was going to be “very devastating to Defendants and extremely helpful” to them.

Finally, Mr. Dodd testified that he paid Mr. Collard a total of \$137,662.50, which included the \$10,000 retainer. He testified that he had every intention of paying the two unpaid bills until he learned that Mr. Collard had never before been qualified as an expert witness and was unable to testify during the underlying lawsuit. Mr. Dodd alleged that, even though Mr. Collard testified to such a fact during his deposition in November 2003, he, Dodd, did not learn of it until after Mr. Collard was called to testify at trial.

The court denied appellants’ request to instruct the jury on fraudulent inducement to contract, ruling that there was not sufficient evidence to establish the elements of that defense. The court also denied appellants’ proposed instruction on MRPC 1.5(a), which addresses the reasonableness of attorney’s fees.

The jury rendered its verdict in favor of appellee SMP and awarded damages of

\$97,735.22. That award included \$44,647.22, in attorney's fees.

On February 12, 2007, appellants filed a Motion For New Trial raising, among other claims, the grossly excessive amount of attorney's fees awarded appellee. Appellee answered in opposition to the motion, and the court denied it, without a hearing.

This appeal followed.

DISCUSSION

Issues I. and III.

Appellants argue that the trial court erred in failing to instruct the jury on fraud in the inducement to contract and MRPC 1.5(a). We disagree.

The purpose of jury instructions is to aid the jury in understanding the case and guide the jury's deliberations "by directing their attention to the legal principles that apply to and govern the facts in the case; and to ensure that the jury is informed of the law so that it can arrive at a fair and just verdict." *Molock v. Dorchester County Family YMCA, Inc.*, 139 Md. App. 664, 672 (2001) (internal citation and quotation marks omitted). In reviewing the denial of a proposed jury instruction, "we must examine 'whether the requested instruction was a correct exposition of the law, whether that law was applicable in light of the evidence before the jury, and finally whether the substance of the requested instruction was fairly covered by the instruction actually given.'" *Id.* at 671 (quoting *Farley v. Allstate Ins. Co.*, 355 Md. 34, 47 (2001)).

Moreover, a trial judge is not required to give a particular instruction, even if a

requested instruction is an accurate statement of the law and supported by evidence, as long as the trial judge has covered the applicable law in another instruction or combination of instructions. *Farley*, 355 Md. at 47. The party challenging the court's ruling concerning jury instructions must show error and resulting prejudice. *Id.*

Against this backdrop, we shall consider appellants' two claims of error relating to the jury instructions.

A.

Appellants argue that the trial court should have instructed the jury on the defense of fraud in the inducement to contract. In particular, appellants wanted the judge to give the jury the instruction listed as MPJI-Cv 9:14, which provides:

Fraudulent inducement means that a party has been led to enter into an agreement to his or her disadvantage as a result of deceit. Deceit means that the person entered the agreement based on the other party's false representation or willful non-disclosure of a material fact that the other party had a duty to disclose.

A fact is material if:

- (1) under all of the circumstances a reasonable person would attach importance to that fact in deciding whether to enter into the agreement;
- or
- (2) The person willfully not disclosing or making the material misrepresentation knows the other party with whom he or she is dealing probably will regard it as important in determining whether to enter into the agreement.

The court and counsel discussed proposed jury instructions on the morning of the second day of trial. Discussions resumed later that day, just before the court instructed the jury. On the first occasion, the court said that it "was not inclined to give" the fraudulent

inducement instruction, but it would defer its final decision until after all the testimony had been heard. Later, the court simply said that it would not be giving the instruction. Appellants' counsel excepted to the refusal to give the instruction.

Appellants argue that the testimony of Mr. Dodd generated their entitlement to the instruction. Appellee responds that the trial court was correct not to give the instruction. Appellee points out, among other things, the lack of any evidence that Mr. Collard misrepresented his qualifications to appellants or their attorneys in the underlying lawsuit. Appellee argues, from that lack of evidence, that appellants failed to generate a material misrepresentation that induced them to enter into the Agreement. We agree with appellee.

We have reviewed the testimony of Mr. Dodd, to which appellants direct us as support for their claim that they had generated their entitlement to the instruction. Mr. Dodd testified that Mr. Collard told him at the June 24, 2003 meeting that he, Collard, had "been an expert witness before," and he did not tell Mr. Dodd that he "had never testified or never been qualified as an expert in court." Mr. Dodd testified that, had he known those facts, he "would have never been interested in even talking to Mr. Collard about this, let alone hiring him, signing any agreements or anything else."

Viewing that testimony in the light most favorable to appellants, we fail to see how it shows that Mr. Collard made a material misrepresentation to Mr. Dodd. Maryland does not normally recognize a general duty of a party to a transaction to disclose facts to the other party, although suppression or concealment of material facts may constitute fraud. *Sass v.*

Andrew, 152 Md. App. 406, 430 (2005). Mr. Collard, however, did not conceal the fact that he had never testified at a trial as an expert witness, nor did he conceal the fact that he had never been qualified by a court as an expert witness. To the contrary, the evidence is undisputed that Mr. Collard disclosed those very facts to appellants' attorney, Kevin Knuckey, when he approached Mr. Collard to provide his services in support of appellants' lawsuit.

Further, assuming that Mr. Collard told Mr. Dodd at the June 24, 2003 meeting that he had been an "expert witness," that statement was not a material misrepresentation, given the Agreement that the parties signed at that meeting. Under the terms of the Agreement, Mr. Collard agreed to provide consulting services—specifically, to advise and consult regarding matters related to the underlying lawsuit. The Agreement further provided that "[t]he specific deliverable in this engagement will be Practitioner's [Mr. Collard's] time." The Agreement appellants now claim Mr. Dodd would not have signed had he known the full facts neither described Mr. Collard as an expert witness nor represented that he would deliver anything other than his "time" in consulting and advising the attorneys and appellants on the underlying lawsuit.

In short, appellants offered no evidence that appellee, through Mr. Collard, either affirmatively misrepresented a material fact, or suppressed or concealed a material fact, so as to generate the defense of fraud in the inducement to contract. The court did not err in declining to give an instruction on that subject.

B.

Appellants also argue that the court erred by refusing to instruct the jury to consider the criteria set forth in MRPC 1.5(a), when assessing appellee's claim for attorney's fees. Appellants argue that the lack of guidance on how to assess the reasonableness of those fees led the jury to award the full amount of the claim. That amount, appellants argue, is excessive and unreasonable in light of the total damages awarded, and it violates the general rule that the attorney's stake in the result should not exceed the client's stake.

Appellee responds that the court properly declined to give the requested instruction. Appellee argues that the proposed instruction was irrelevant to the issue to be decided because it relates, not to the payment of attorney's fees under a contract, but rather to attorney-client relationships. Appellee also interposes the contention that appellants did not preserve this issue for appeal because they did not assert a basis for inclusion of that instruction among those given to the jury, and appellants failed to except to the instructions after they were given. *See* Md. Rule 2-520(c).

We disagree with appellee that appellants have waived their right to challenge the court's refusal to instruct the jury concerning MRPC 1.5(a). Appellant asked for the instruction, argued at the appropriate time that the instruction should be given, and excepted to the court's final decision not to give it, immediately before the court instructed the jury. Then, just after instructions, the court noted for the record that appellants had "already taken exceptions on the record." The claim is properly before us.

Appellants' claim fails, however, on its merits, as the court did not err in declining to instruct the jury about MRPC 1.5(a). When the court and parties discussed appellants' proposed instruction, counsel for appellants argued that "the jury should be instructed on what the law says with respect to attorney's fees." To that the court responded:

Well, this [MRPC 1.5(a)] has to do with professional conduct where perhaps someone is contesting the fee that's charged by his lawyer. I don't hear that here. Mr. Collard is perfectly happy with the fees of Mr. Hartman. He says he's paid substantially all of them and the question is must there be a, an arrangement in writing for Mr. Hartman to bill his client. Certainly this jury doesn't expect him to work for nothing.

The court's reasoning is sound, and we adopt it.

Moreover, the court correctly instructed the jury concerning the requirement that any fee award "must adequately and fairly compensate" and "should not be based on guesswork." That instruction properly encompassed the underlying principle of reasonableness. Appellants received all to which they were entitled. *See* Md. Rule 2-520(c).

We hold, therefore, that the trial court did not err or abuse its discretion by denying appellants' request to instruct the jury on MRPC 1.5(a).

Issue II.

The court permitted appellants' former attorney, James Johnson, and former forensic accountant, Robert Garvey, to testify about the fees appellants paid them for their services during the underlying lawsuit and monies they claimed appellants still owed them. Appellants argue that, by allowing that testimony, the court violated Maryland Rules of Procedure 5-402, 5-403, and 5-404(b). Appellants specify that the challenged testimony is irrelevant and thus

prohibited by Rule 5-402; and, even if relevant, its probative value is outweighed by the danger of unfair prejudice to appellants, confusion of the issues, or misleading the jury, thereby violating Rule 5-403. Appellants further argue that the challenged testimony violated Rule 5-404(b), which prohibits evidence of other wrongs or acts to prove the character of a person in order to show conformity therewith.

In support of their contention, appellants refer us to *Lewin Realty III, Inc., v. Brooks*, 138 Md. App. 244 (2001). We stated in *Lewin Realty*:

When evidence of a defendant's other crimes, wrongs, or acts is offered, the trial court must engage in a three-part analysis in deciding admissibility. First, it must determine whether the evidence is 'specially relevant,' and; therefore, is excepted from the presumptive rule of exclusion. The special relevancy exceptions enumerated in Md. Rule 5-404(b) (proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident) are non-exhaustive and not exclusive. This is a legal determination that does not involve the exercise of discretion. Next, it must determine whether the defendant's involvement in other crimes, wrongs, or acts has been established by clear and convincing evidence. Finally, the court must weigh the necessity for and probative value of the other crimes evidence against any undue prejudice likely to result from its admission and, with that in mind, exercise its discretion to admit or exclude the evidence.

138 Md. App. at 268 (internal citations and quotation marks omitted).

Appellants maintain that evidence of fees paid and claimed unpaid debts to others was not specially relevant to any contested issue in appellee's case against them. Further, appellants contend that the second prong of the test discussed in *Lewin Realty* was not satisfied because appellants' alleged wrongs were unsubstantiated and not established by clear and convincing evidence. Finally, appellants argue that there was inherent prejudice

in the admission of this evidence because the jury could unfairly and improperly conclude that appellants did not pay their legitimate bills, and the amounts of appellee's claim would appear to be validated without expert testimony.

Appellee responds that appellants waived the argument that the challenged testimony of Messrs. Johnson and Garvey was evidence of prior bad acts, because the basis for the objection to that testimony was simply relevance and, in the case of Mr. Johnson, also attorney-client privilege. Appellee further argues that the evidence produced was relevant and admissible to prove the falsity of appellant Dodd's assertions concerning his intent and motive for nonpayment. Appellee notes that the testimony established that Mr. Dodd stopped paying Mr. Collard at the same time he stopped paying his attorneys and Mr. Garvey, which was also the time that Mr. Dodd's case began to go badly. Appellee also points out that appellants' nonpayment of Mr. Garvey's bills contradicts Mr. Dodd's assertion that Mr. Collard's inability to testify was the reason for the nonpayment. Appellee states, too, that Mr. Garvey did testify as an expert witness at trial, yet, appellants still failed to pay him all that they owed him.

We disagree with appellee that appellants waived their appellate claim. Nonetheless, the claim fails. The court's decision to permit the testimony is subject to an abuse of discretion standard of review. *Titan Custom Cabinet, Inc. v. Advance Contracting, Inc.*, 178 Md. App. 209, 218 (2008). Appellants have failed to show that the court abused its discretion in allowing the testimony.

Mr. Dodd's motive and intent for nonpayment of Mr. Collard's bills were at issue at trial, and the evidence concerning the nonpayment of other bills at the same time in the course of the litigation was probative evidence on those issues. Further, we are not persuaded, on this record, that appellants suffered unfair prejudice from admission of the evidence.

We hold that the court did not err or abuse its discretion by admitting evidence of Mr. Dodd's failure to pay other bills during the course of the underlying lawsuit.

Issue IV.

Appellants challenge the court's denial of their motion for a new trial. They argue:

In this case, the trial court abused its discretion by denying the motion for new trial. As discussed above [an apparent reference to their argument concerning the court's not instructing the jury on MRPC 1.5(a)], in the absence of any guidance from the trial court with regard to [appellee's] claim for attorney's fees, the jury verdict awarded the entire amounts claimed – \$43,322.50 – together with \$53,087.50 for the underlying breach of contract claim. The sums awarded for attorney's fees amount to 81.6% of the breach of contract damages.

Appellants then argue, in a single paragraph with an accompanying footnote, that pre-trial motions filed by the attorney for appellee, including a motion to dismiss and a motion for summary judgment, were "unnecessary but obviously time-consuming and wasteful filings and paperwork which should not be rewarded."

Appellants had the opportunity to test the reasonableness of appellant's fee claim, and did so, through examination of both Mr. Collard and his attorney, Mr. Hartman. The jury was entitled to assess the witnesses' testimony in its entirety, including Mr. Hartman's

testimony that he charged appellee far less than Mr. Hartman's usual hourly rate. The jury also had before it Plaintiff's Exhibit 35, Mr. Hartman's "Affidavit in Support of Attorney's Fees." It was the jury's prerogative to weigh the evidence, find that the claimed attorney's fee was reasonable, and award the entire amount sought. *See Taylor v. State*, 407 Md. 137, 171-72 (2009).

Given all of that, we cannot begin to discern an abuse of discretion on the part of the trial court in denying appellants' request for a new trial on this issue. *See Kleban v. Eghrari-Sabet*, 174 Md. App. 60, 83 (2007) (stating that a trial court's discretion in the decision whether to grant a new trial is "virtually unfettered," and, when the trial court has exercised its discretion in reaching its decision, the decision is not reversible on appeal unless there are the most compelling reasons).

JUDGEMENT AFFIRMED.

APPELLANTS TO PAY THE COSTS.