

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1687

September Term, 2010

---

WEST VIEW SHORES ENVIRONMENTAL  
PRESERVATION ASSOCIATION, INC., ET AL.

v.

WEST VIEW SHORES CIVIC  
ASSOCIATION, INC., ET AL.

---

Zarnoch,  
Hotten,  
Thieme, Raymond G., Jr.  
(Retired, Specially Assigned),

JJ.

---

Opinion by Zarnoch, J.

---

Filed: April 20, 2012

This case involves a conflict between two incorporated community groups: appellants, West View Shores Environmental Preservation Association, Inc., its individual officers, members of the board of directors, and stockholders (the "Preservation Association") and appellee, West View Shores Civic Association, Inc., (the "Civic Association"). On June 21, 2010, the Circuit Court for Cecil County entered an order declaring that the corporations had merged effective September 30, 2008, and that the Civic Association was the sole successor corporation. After the court denied its motion to alter or amend, the Preservation Association timely noted this appeal.

### **Procedural History**

On November 11, 2008 in the Circuit Court for Cecil County, the Preservation Association filed a Complaint for Injunction, Permanent Injunctive Relief and Declaratory Judgment ("Complaint"), later amended, requesting that the court quiet title and enter a declaratory judgment as to the rights of the Preservation Association to a particular undeveloped parcel of land in the West View Shores development known as the "Basin Area." The Complaint named as defendants the Civic Association, the Maryland State Department of Assessments and Taxation ("SDAT"), and William Brueckman, Clerk of the Circuit Court of Cecil County. On December 15 and 23, 2008, SDAT and the Clerk filed answers and indicated that they would comply with any court order with respect to the counts alleged.

On May 22, 2009, the Civic Association filed a motion to dismiss, asserting that the Preservation Association "lacks capacity to sue in that it is no longer a valid entity," because

it had “been merged into the Civic Association” sometime in the 1986-1987 time frame, and had “no legitimate stockholders.” On December 9, 2009, the Civic Association filed an Answer.<sup>1</sup> It also filed a Counter Complaint raising claims of adverse possession, breach of contract, quantum merit, unjust enrichment, and specific performance. The Civic Association prayed that the Articles of Merger be specifically enforced, and that Preservation Association be ordered to transfer to it the deed to the Başın Area. The court denied the motion to dismiss on January 6, 2010, and the Preservation Association answered the counterclaim on January 12, 2010.

The case proceeded to a bench trial on May 3 and concluded on May 5. In an order dated June 18, 2010, the court granted a declaratory judgment finding that the Preservation Association merged with the Civic Association effective September 30, 2008 and that the Civic Association was the sole successor corporation. Thus, the Civic Association’s counter-complaint was dismissed as moot. Thereafter, the court denied the Preservation Association’s post-judgment motion to alter or amend, and the Preservation Association brought this appeal.

### **Factual Background**

West View Shores, a residential community located in Cecil County, was subdivided in 1947 by a recorded subdivision plat that parceled the community into 210 lots, private

---

<sup>1</sup>One of the defenses raised in the Answer was: “Through its own conduct and/or inaction, Plaintiff has consented to or waived any right to object to Defendant’s control over the property.”

roads, and an unsubdivided, undeveloped 24-acre area of land, the "Basin Area". On June 9, 1969, the Civic Association was incorporated as a non-stock corporation by the filing of the Articles of Incorporation with the Maryland State Department of Assessments and Taxation ("SDAT"). According to its Articles of Incorporation, the Civic Association was formed for two purposes:

- (a) To encourage active participation in all things pertaining to the civic and social betterment of the community known as West View Shores. . . [;]
- (b) To cooperate with other organizations engaged in worthwhile endeavors for the community's betterment.

In 1974, the developer of West View Shores expressed an intent to sell the Basin Area. This raised concerns within the community that, if sold, the Basin Area would be "turned into a trailer park" which "would have torn [the Community] apart." After a failed attempt to raise the \$60,000.00 necessary to buy the Basin Area, the homeowners in the community decided to form a "for-profit" corporation that was empowered by its Articles of Incorporation to issue 150 shares of common voting stock.

To that end, the Preservation Association was formed on July 19, 1974 by those willing to financially contribute to the purchase of the Basin Area. Frank Cross ("Cross") was elected President, and the Preservation Association began selling stock shares for \$600.00 per share. After raising and expending the necessary funds, the Preservation Association took title to the Basin Area on September 5, 1974. Shares of stock continued to be sold to new homeowners in the community. As each share was purchased, a person who

had more than one share would be repaid until such time that each person had “no more than \$600 invested.”

Until the mid-1980s, the Preservation Association and Civic Association existed as parallel organizations. Though the two entities shared members, they operated independently, and each had its own board of directors. The Preservation Association held title to the Basin Area, but allowed the residents of West View Shores to use the area for recreation purposes, free of charge. In an undated letter to the property owners, Vince Sakovich (“Sakovich”), President of the Civic Association, explained the early relationship between the two corporate entities relative to the Basin Area:

The. . . beach front property [on the plat of the basin area] is privately owned by the [Preservation Association which], in turn, has leased the property to the [Civic Association] in return for the annual payment of taxes and insurance and the upkeep of the roads.

However, as one original Preservation Association stockholder explained, as time went on, the two Associations became more intertwined. At first, the funds associated with the Basin Area were kept in a separate Preservation Association account, “[b]ut later on to get a better interest rate,” the accounts were “combined. . . .” Accordingly, when a new share was purchased, “that money would go into [the Preservation Association] account, or if there were any donations to it, plus the interest each month.” Despite this reported co-mingling of funds, it was the general understanding that the Civic Association did not use the money intended for the Preservation Association.

By the mid-1980s, it became apparent to several officers and directors of both associations that having two parallel organizations created problems within the organizations and community. To resolve these issues, individuals from the two corporations “had discussions to combine the two” and proposed a merger, with the Civic Association absorbing the Preservation Association, and the Preservation Association dissolving. Through the proposed merger, the Civic Association would acquire all of the assets of the Preservation Association, including the Basin Area. The proposed merger also recognized that the Civic Association’s Articles of Incorporation and by-laws would have to be amended to allow for the issuance of stock certificates.

On May 24<sup>th</sup> 1985, at the Preservation Association’s Spring meeting, Cross discussed the merger with association members. The minutes from that meeting reflect that “[m]ost [attendees] seemed to be in favor of the merger, but all of the votes [were] not in as of yet.” It was also Cross’s understanding that “ 51% in favor is needed.”<sup>2</sup>

The Civic Association held a meeting in August 1985, after which the presidents of both Associations sent a letter to their respective members informing them of the proposed merger, with instructions on how to vote on the proposal. Addressing the Civic Association, Sakovich wrote: “We, the Civic Association, as a corporation, will merge with and absorb

---

<sup>2</sup>This understandably was incorrect, because, as noted below, a two-thirds vote was needed.

the [Preservation Association]. We are required to announce a general meeting, at which you may be present, or send a proxy vote approving the merger.”

Thereafter, an undated “Notice of Special Meeting” was sent to the members of the Civic Association, informing them that special meeting would be held on May 18, 1986 at 7:30 p.m. at 106 Basin Drive “for the purpose of approving the terms of a proposed plan to merge with [the Preservation Association]. . . to be successor corporation, and transacting other business as may properly come before the meeting.” A similar “Notice of Special Meeting of the Stockholders of the Preservation Association” was also mailed. The Preservation Association’s notice informed its stockholders that a special meeting would be held on May 18, 1986, at 6:30 p.m., at 106 Basin Drive, “FOR THE PURPOSE OF APPROVING THE TERMS OF A PROPOSED PLAN TO MERGE WITH [THE CIVIC ASSOCIATION], THE SUCCESSOR CORPORATION, AND TRANSACTING OTHER BUSINESS AS MAY PROPERLY COME BEFORE THE MEETING.”

Minutes from the Civic Association’s Special Meeting indicate that votes were taken in person and by proxy at both its special meeting at that of the Preservation Association.

During the Civic Association meeting:

Sakovich addressed the subject of the merger of the [Preservation Association] with the [Civic Association] to transfer the ownership of the Basin Area. . . . [Cross] reported that between the shareholders present at the meeting of May 19<sup>3</sup>

---

<sup>3</sup>It is likely that the minutes intended to reflect Preservation Association action at its special meeting on May 18, 1986.

and the proxy ballots received there were eight negative votes and 55 - 2/3 positive, which showed a clear majority in favor of the merger. . . Vince then reported on the result of the West View Shores vote. Of the 92 paid up members, there was a 74 percent vote return, 91 percent of which was positive; therefore, the West View Shores Civic Association also voted favorably for the merger.

Sakovich also announced that a meeting of the directors from both Associations was scheduled for June 21, 1986 to "formulate the procedures for transfer of the stock and the method of payment for those who will be purchasing new shares." He declared that until "all legal business is finalized, no other business concerning the Basin Area will be conducted and no plans for its future use will be implemented." There are apparently no minutes of the Preservation Association meeting that apparently occurred that same day.

Thereafter, and until June 21, 1986, proxy votes in favor of the merger continued to be submitted. On June 21, the boards of directors from both Associations met "to establish the Articles of Consolidation for the merger of the two Associations, disband [the Preservation Association] and amend the Constitution and By-Laws of [the Civic Association] to conform to the new status as a stock corporation." The directors agreed that all residents would have access to the beaches and roads in the Basin Area, but only residents owning a share of stock with dues current would have voting rights on "any decision pertaining to stock assets." It was also decided that each owner of a Preservation Association share would exchange for one Civic Association share, and owners of additional shares would be paid \$600.00 per additional share transferred. At the conclusion of the discussion

concerning the merger, “the representatives of [the Preservation Association] then left the meeting, since [it] was. . .dissolved.”

Sometime later, the Articles of Merger were drawn, incorporating the decisions arrived at during the June 21 meeting. The Articles of Merger indicated that the effective date of merger was June 1, 1987 and that they were:

[D]uly submitted to and approved by the affirmative vote of two-thirds of all the votes entitled to be cast thereon at the said meeting of stockholders, as required by the Charter[s] of [the Preservation Association and Civic Association] and the laws of the State of Maryland.

The Articles of Merger contained several irregularities. It is undisputed that several important dates were missing from the 1987 Articles of Merger, including the date merger was to occur, the date the notice of the special meeting was mailed to the stockholders, the date the special meeting occurred, the date when the Articles of Merger were approved, and the date when the Preservation Association directors had adopted a resolution declaring that the merger had occurred. In addition, Cross and Sakovich signed the Articles of Merger on July 10, 1987, more than one month after the Articles’ purported effective date. And, on the last page of the Articles of Merger, both Cross and Sakovich signed an attestation clause, affirming under oath that the “matters and facts set forth” in the Articles of Merger “with respect to the approval thereof” were true “in all material respects. . . .”

After the Articles of Merger were signed, shareholders in the Preservation Association

exchanged their shares for Civic Association shares or a monetary reimbursement and gained voting rights within the Civic Association. The Preservation Association ceased conducting any further business and did not hold any further meetings. Instead, the Civic Association conducted itself as a stock corporation, and informed its members that it was selling shares. At the Spring 1987 Civic Association meeting, Sakovich “announced that the merger of the [Civic Association] and [Preservation Association] was completed.” However, by letter dated August 12, 1987, the lawyer facilitating the merger alerted Cross “I have not received the executed articles for filing.”

None of the parties dispute that, as of that point, the Articles of Merger had not been filed with SDAT. Nevertheless, the Preservation Association transacted no further business and had no board of directors and the Civic Association became the primary entity charged with responsibility for the Basin Area. The Civic Association issued stock to homeowners in the community and allowed shareholders to vote on issues related to the Basin Area at Civic Association meetings. However, at trial, witnesses for both parties presented conflicting testimony as to whether they believed the merger occurred and which entity they thought owned the Basin Area.

For example, James Higgins (“Higgins”) testified that in August 1993, he began a revetment<sup>4</sup> campaign on behalf of the Civic Association. Homeowners in support of the

---

<sup>4</sup>A revetment is “a facing of stone, concrete, fascines or other material to sustain an embankment.” MERRIAM-WEBSTER'S THIRD NEW WORLD INTERNATIONAL DICTIONARY 1944 (2002)

project made contributions directly to the Civic Association, which, in turn, contracted with various companies for the job. Despite having used the name of the Civic Association at all points during the project, Higgins testified that, at that time, he believed that the Basin Area belonged to the Preservation Association. Other evidence presented at trial demonstrated that, in 1999, the Civic Association defended a lawsuit concerning the use of roads that, prior to the merger, had been owned by the Preservation Association. The Civic Association retained an attorney to litigate the suit and eventually received a settlement in the amount \$21,000.00 in exchange for granting the plaintiff an easement across certain roads in the Basin Area.

In 2006, after an attorney reviewed revisions to the Civic Association bylaws, it became clear to its board of directors that the purported merger with the Preservation Association had not been completed. In response to this information, the board of directors held several meetings throughout 2006 and 2007 to discuss the seemingly defective merger and how to address it, ultimately deciding to invite all Civic Association members to attend a meeting in October 2007 and address the merger and title issues.

During that meeting, Civic Association members were told for the first time that the 1987 merger with the Preservation Association was never formally finalized or completed. Testimony reflects that property owners “were told the merger didn’t occur, the [Preservation Association] still owned the land. . . [and] had the shareholders.” The board of directors

presented “options that [the attendees] could vote on” concerning the merger, but no vote was taken because the attendees had questions and were confused.

On March 28, 2008, property owner Gloria Bertz and two “acting trustees” of the Preservation Association traveled to SDAT file Articles of Revival for the Preservation Association allegedly “to correct not having the merger completed.”<sup>5</sup> According to her later testimony, shareholders were “very much in support” of the decision to revive the corporation, but no vote was taken on the matter because the members of the Civic Association were not shareholders of the Preservation Association. Upon arriving at SDAT, Bertz paid “almost \$7,000” in filing fees and back taxes to file the Articles of Revival. Once revived, the Preservation Association began to function as an independent organization, meeting on May 3, 2008 to elect directors and to authorize the issuance of shares of stock.

Later that year, a member of the Civic Association board of directors Timberlake Townes (“Townes”) attempted to solidify the purported 1987 merger by filing by mail Articles of Merger and a Certificate of Conveyance. These Articles of Merger were signed in 1987 by the president of each association. SDAT rejected these documents on September 15, 2008, returning them to Townes with a “note” indicating that “a number of things. . .

---

<sup>5</sup>According to SDAT records, the Preservation Association’s Charter was forfeited on October 7, 1987. It is unclear from the record how these trustees came into being, *see* Md. Code (1975, 2007 Repl. Vol.) Corporations & Associations Article (CA), § 3-515(a) (“When the charter of a Maryland corporation has been forfeited, until a court appoints a receiver, the directors of the corporation become the trustees of its assets for purposes of liquidation”), how they became “acting” and whether they had the authority to revive the Preservation Association.

needed to be cleaned up. . . .”<sup>6</sup> According to Townes, SDAT “wanted. . . basically two forms submitted. . . to complete the merger” and asked him to “remove a paragraph from one form, insert it on the second form, submit both of them along with the Certificate of Conveyance. . . .” It was his understanding that after performing these tasks, “the merger could be completed along with some fees.”

On September 25, 2008, Townes participated in a “phone conference” with the “majority of the board” of directors of the Civic Association to discuss SDAT’s rejection of the Articles of Merger and how to obtain SDAT’s approval of corrected documents. Afterwards, he electronically altered the Articles of Merger to conform with the SDAT instructions. This required him to “simply cut” the paragraph “dealing with the issue of making the Civic Association a stock corporation” and “[paste] it on the correct form attached to the charter for the Civic Association. . . .”<sup>7</sup> On September 30, 2008, Townes

---

<sup>6</sup>It is unclear whether at that time, Townes was acting at the direction of the Civic Association in filing the merger documents.

<sup>7</sup>However, according to Bertz’s testimony, there were several differences between the 1987 Articles of Merger and those changed by Townes in 2008:

[P]age number three [was] missing. . . On page number two, Article 7 was whited out and something was typed in there intentionally left blank. And in Article 9, . . . there is a word whited out. Originally Article 9 read “West View Shores Civic Association has no authority to issue capital stock” and this one reads, “West View Shores” – the word “no” is whited out, so it reads, “West View Shores has authority to issue capital stock.”

traveled with several other property owners to file these Articles of Merger and the Certificate of Conveyance with SDAT, which “accepted” his submissions.

Less than one month later, on November 11, 2008, the Preservation Association filed a complaint for declaratory judgment in the Circuit Court for Cecil County, seeking to quiet title and to obtain a declaration of its rights to the Basin Area. The thrust of the Preservation Association’s complaint was the alleged failure of the merger to obtain a two-thirds vote as required by CA § 3-105(e). After disposition of pre-trial motions, a bench trial began on May 3. At its conclusion on May 5, the circuit judge issued his ruling in favor of the Civic Association and stated:

Although the evidence has been contradictory as to whether or not there was in fact the requisite two thirds vote before the Civic Association approving the merger, I find from the evidence, from the testimony, and as a matter of fact that there was the requisite two thirds affirmative vote in favor of the merger.

Accordingly, in an order dated June 18, 2010, the circuit court declared that the Preservation Association had merged with the Civic Association, the successor corporation, on September 30, 2008. After a rejection of its motion to alter or amend, the Preservation Association noted an appeal.

### **Questions Presented**

The Preservation Association presents two issues for our review:

1. Did the trial court err in determining that a legal merger of the two corporations had occurred?

2. If the merger was valid, [is the Preservation Association] entitled to an award for corporate costs paid to file the Articles of Revival?

We affirm the circuit court's decision as to the first issue and conclude that the second has not been preserved.

## **Discussion**

### **A. Standard of Review**

The question of whether a legal merger did, in fact, occur, is one of fact. The trial court's determination of such a question is entitled to deference by an appellate Court. *See* Md. Rule 8-131(c). We review "the factual findings of the Circuit Court for clear error, observing due regard to the opportunity of the trial court to judge the credibility of the witnesses." *City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 676 (2007). We will not reverse the circuit court's finding unless "clearly erroneous," viewing the evidence in a light most favorable to the party who prevailed. *Burroughs International Co. v. Datronics Engineers, Inc.*, 254 Md. 327, 337-38 (1969). Where there is substantial evidence to support the lower court's factual determination, it is not clearly erroneous and therefore may not be set aside. *Id.* at 337.

### **B. Corporate Merger Requirements**

Under the Maryland General Corporation Law, in effect both currently and in 1986, directors proposing a merger must

- (1) Adopt a resolution which declares that the proposed transaction is advisable on substantially the terms and conditions set forth or referred to in the resolution; and
- (2) Direct that the proposed transaction be submitted for consideration at either an annual or a special meeting of the stockholders.

CA § 3-105(b)(1)-(2). In addition, the directors must provide notice of such a meeting to the shareholders which “states that a purpose of the meeting will be to act on the proposed consolidation, merger, share exchange, or transfer of assets.” *Id.* at § 3-105(c). Generally, a board seeking to merge with another and sell its assets must obtain stockholder approval by a two-thirds vote. *Id.* at § 3-105(e). Once that occurs, articles of merger are to be filed with SDAT. *Id.* § 3-107. Where, as here, the transferor is a Maryland corporation, the earliest time when articles of merger can become “effective” is the date on which SDAT accepts them for record. *Id.* at § 3-113(a). At that point, “[t]he assets of the transferor . . . transfer to, vest in, and devolve on the successor to the extent provided in the articles without further act or deed.” *Id.* at § 3-115(b)(1).

These statutory requirements are mandatory, and must be met before a Maryland corporation may sell its assets. *Prince George's Country Club, Inc. v. Edward R. Carr, Inc.*, 235 Md. 591, 596 (1964). Failure to comply with these statutory requirements renders the merger ineffective. *Id.*

### **C. Whether the Merger Occurred**

The Preservation Association asserts that the circuit court erred in concluding that there was a valid merger of the two entities because there was no factual basis upon which the court

could conclude that two-thirds of the Preservation Association's shareholders approved the merger. See CA § 3-105(e). In our view, the court's ruling was not clearly erroneous.

The Preservation Association relies on *Downing Development Corp. v. Brazleton*, 253 Md. 390 (1969), but we think the case differs substantially from the one before us. In *Downing*, the Court of Appeals held that the record failed to establish compliance with the statutes governing the sale of assets of a Maryland stock corporation because

there was not the slightest evidence. . . that any notice setting forth the purpose of a membership meeting, at which the resolution would be presented to the membership for their vote, was ever given; nor does the record reveal any minutes showing any tally of the number of voting members present at the annual meeting or what the vote may have been on the proposed resolution purportedly authorizing the sale; nor is there any evidence that any definitive articles of sale were ever presented for approval to either the board of directors or the voting members.

The evidence here is vastly different than that in *Downing*. The record contains copies of the notices sent by both associations setting forth the purpose of the special meeting, and the minutes from the Civic Association's special meeting reveal that both organizations actually held their meetings. The minutes also establish the number of voting members and, at the time of the special meetings, the count of the votes in favor of the proposed merger.

Moreover, unlike the factual scenario in *Downing*, where there was no "testimony which would support [the] finding by the court," here, the trial judge heard the testimony of witnesses and reviewed other competent and relevant evidence confirming the merger. 253 Md. at 400. Throughout the course of trial, a number of Civic Association members testified

that they believed that the requisite two-thirds vote had been obtained and that a merger had occurred. In fact, when asked whether he had identified anything in the 1500 documents he reviewed to indicate that the two-thirds favorable vote had not been obtained, Townes stated “Quite the contrary. There is nothing in there that would suggest that.”

Other evidence suggests that the community operated as though the merger had occurred and that the Civic Association was the only entity responsible for the Basin Area. Once the Articles of Merger were signed in 1987, the record reveals that the Preservation Association shareholders became members of the Civic Association, and that the Civic Association assumed all of the responsibilities of ownership of the Basin Area, including directing a revetment project and litigating a property dispute involving an easement over the property. Bertz testified that neither she nor any other community members were aware that the merger failed until 2007, when they learned “for the first time” that the Articles of Merger were not filed in 1987, as anticipated. This evidence supports the court’s finding that, as of 1987, the Civic Association took ownership rights to the Basin Area, and has, since that time, conducted itself as the owner of the property.

Further supporting the trial court’s determination are the 1987 Articles of Merger themselves, which include an attestation clause signed by Cross and Sakovich, indicating that both presidents believed that the requisite two-thirds shareholder approval had been obtained. When asked whether he would have signed this provision if he believed the information contained therein was false, Cross unequivocally stated “absolutely not.” He and other

Preservation Association shareholders considered the organization “dissolved,” which, after the Articles of Merger were signed, ceased to exist as a corporate entity.<sup>8</sup>

We also reject the Preservation Association’s claim that the Articles of Merger on file with SDAT are invalid because they are not identical to those originally drafted in 1986 and signed in 1987. Townes’ testimony demonstrates that the changes to the corporate document were made at the direction of SDAT officials. He said that the SDAT instructions “literally meant taking a paragraph out of the original Articles of Merger and placing it on the second form.” Though Bertz offered contradictory testimony, we are not in the position to second-guess the circuit court’s evaluation, given the court’s unique position to weigh the credibility of the witnesses.

Finally, even if we assume that there were serious defects in the procedure governing merger, these defects were cured by the subsequent transfer of all outstanding Preservation Association stock to the Civic Association and the Civic Association thereafter conducting itself as though the merger had occurred. *See Baker v. Standard Lime & Stone Co.*, 203 Md. 270, 280 (1953). In *Baker*, the holder of common stock attacked on procedural grounds a new company financing plan and the charter amendments necessary to make it effective. *Id.* at 276. Yet, he had voted for the amendment. *Id.* at 280. The Court of Appeals reasoned that even if the stockholder had correctly identified procedural errors, he was estopped from challenging the amendment because his behavior amounted to a ratification of the corporate

---

<sup>8</sup>In fact, by 1987, the Preservation Association’s charter had been forfeited.

action. *Id.* at 280. Here, where the Preservation Association stockholders acted pursuant to the 1987 Articles of Merger, exchanged their shares for shares in the Civic Association, and did not object to the Civic Association's control over the Basin Area, they too are barred by waiver or estoppel from challenging the validity of the merger. *See* n. 1, *supra*.

In short, there is sufficient evidence contained in the record to demonstrate that the Preservation Association complied with the mandates of the corporation laws, and completed the merger with the Civic Association, effective on September 30, 2008, the date SDAT accepted them for record. CA § 3-113(a). The lower court so found, and we affirm.

#### **D. Reimbursement**

The Preservation Association next asserts that if the merger is legally valid, it is entitled to judgment in the amount of \$7,132.00, representing the sum paid to SDAT by its individual members to file the Articles of Revival. Although counsel stated twice during trial that the Preservation Association's independent shareholders paid SDAT over \$7,000.00 in fees and penalties, the issue of reimbursement was not raised until the motion to alter or amend. Because the issue was raised for the first time in a post-trial motion, it was not properly preserved. *See Steinhoff v. Sommerfelt*, 144 Md. App. 463, 483-85 (2002).

**JUDGMENT OF THE CIRCUIT COURT FOR  
CECIL COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANTS.**