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DEJAN ROBERT COKIC *v.* FIORE POWERSPORTS, LLC, ET AL.
(AC 45740)

Bright, C. J., and Elgo and Eveleigh, Js.

Syllabus

The plaintiff appealed to this court from the judgment of the trial court awarding attorney's fees to the defendant V Co. in connection with the repair of a jet ski. The plaintiff had brought an action against V Co., alleging, inter alia, claims of conversion, fraud and negligence. During the underlying trial, the plaintiff offered evidence in the form of an email purportedly from V Co. to a friend of the plaintiff, which contained a copy of an invoice for jet ski repairs, for the purpose of establishing that the plaintiff had a colorable claim against V Co. The trial court rendered judgment for the defendants, concluding that no evidence implicated or tied V Co. to the plaintiff's claims, and, without scheduling a hearing, granted V Co.'s postjudgment motion for attorney's fees. The plaintiff appealed to this court, which reversed the trial court's judgment only as to the award of attorney's fees and remanded the case to that court for a hearing on the issue of attorney's fees. On remand, the trial court conducted a hearing after which it ordered the plaintiff to pay V Co. $2360.89 in attorney's fees. The trial court determined that the plaintiff had failed to articulate the basis of his conversion and negligence claims against V Co. and concluded that the plaintiff's claims were entirely without color and had been brought in bad faith. *Held* that the trial court abused its discretion in granting V Co.'s postjudgment motion for attorney's fees, as the court failed to set forth, with a high degree of specificity, the factual findings necessary to support its determination that the plaintiff's claims were without color and had been brought in bad faith: the court failed to address the plaintiff's assertion that the email purportedly sent by V Co. demonstrated a colorable basis for the plaintiff's belief that V Co. had been involved with the repairs to the jet ski and, thus, might be responsible for the damages that allegedly resulted from those repairs, as V Co.'s reliance on the plaintiff's inability to demonstrate an agency relationship between V Co. and the author of the email or to otherwise prove the plaintiff's claims against V Co. was not sufficient to establish that the plaintiff's claims were entirely without color or that he had acted in bad faith; moreover, despite having the burden to prove that the plaintiff had acted in bad faith, V Co. presented no evidence that the plaintiff knew the email's author was not affiliated with V Co. and, thus, that the plaintiff's claims were therefore baseless; accordingly, because V Co. failed to present any evidence that the plaintiff lacked a colorable claim against it and that his pursuit of those claims was undertaken in bad faith, a new hearing on V Co.'s motion for attorney's fees was unwarranted.

Argued September 11—officially released October 31, 2023

Procedural History

Action to recover damages for, inter alia, the defendants' alleged violation of the Creditors' Collection Practices Act, brought to the Superior Court in the judicial district of Ansonia-Milford and tried to the court, *Hon. Arthur A. Hiller*, judge trial referee; judgment for the defendants; thereafter, the court granted the postjudgment motion for attorney's fees filed by the defendant Village Marina, LLC, and the plaintiff and Peter A. Lachmann appealed to this court, which dismissed the appeal in part, reversed the judgment in part and remanded the case for further proceedings; subsequently, the court, *Brown, J.*, granted the post-

judgment motion for attorney's fees filed by the defendant Village Marina, LLC, and the plaintiff appealed to this court. *Reversed*; *judgment directed*.

Peter A. Lachmann, for the appellant (plaintiff).

Opinion

BRIGHT, C. J. The plaintiff, Dejan Robert Cokic, appeals from the judgment of the trial court awarding $2360.89 in attorney's fees to the defendant Village Marina, LLC.[1] On appeal, the plaintiff claims, inter alia, that the court abused its discretion in awarding the defendant attorney's fees on the basis of its conclusion that the plaintiff's claims against the defendant were brought without color and in bad faith. We agree and, therefore, reverse the judgment of the trial court.[2] This court set forth the following facts, as found by the trial court, *Hon. Arthur A. Hiller*, judge trial referee, and procedural history in the plaintiff's prior appeal. See *Cokic* v. *Fiore Powersports, LLC*, 209 Conn. App. 853, 269 A.3d 214 (2022). "A friend of the plaintiff brought a jet ski to Fiore Powersports, LLC (Fiore Powersports), for repair. The form that authorized the repairs listed Pruven Performance, Inc. (Pruven Performance), as the owner of the jet ski and the party responsible for payment. After the repairs were completed, an invoice was provided to Pruven Performance. One night, the jet ski was removed from Fiore Powersports, without payment or permission, and brought to the plaintiff's residence. Fiore Powersports commenced a small claims action against Pruven Performance to recover the cost of the repair work, and, on January 29, 2016, judgment was rendered in favor of Fiore Powersports in the amount of $1908.80.

"In December, 2016, the plaintiff commenced the underlying action in this appeal against Fiore Powersports, its principal, Christopher Fiore, and the defendant. The plaintiff brought several claims against Fiore Powersports, Fiore, and the defendant related to the repair of the jet ski, including claims for conversion, fraud, and negligence, as well as claims under the Creditors' Collection Practices Act, General Statutes § 36a-645 et seq., and the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq.[3] On July 30, 2019, after considering the plaintiff's claims during a bench trial, the court rendered judgment for Fiore Powersports, Fiore, and the defendant. In its memorandum of decision, with respect to the claims against the defendant, the trial court specifically found that '[n]o document, and no credible evidence ties or implicates . . . [the defendant] into or with the claims made by the plaintiff, with any contract or agreement with the plaintiff, with any work on the jet ski, or with any representation, statement or misstatement about the jet ski.'

"On September 3, 2019, the defendant filed a post-judgment motion for attorney's fees. The motion requested that the court 'award attorney's fees against the plaintiff and or the plaintiff's counsel [Peter A. Lachmann] for bringing this action against . . . [the defendant] in bad faith.' The plaintiff objected, arguing, inter

alia, that the court did not give the plaintiff an opportunity to be heard on the issue of attorney's fees. On January 13, 2020, the court ordered that the plaintiff's counsel provide, by February 6, 2020, any evidence found in discovery to explain why the plaintiff believed that he would have a colorable claim against the defendant. The plaintiff filed a response to the order.

"On October 14, 2020, without scheduling a hearing, the court granted the motion for attorney's fees and awarded $893.75 to the defendant. The plaintiff then sought clarification of the court's order granting attorney's fees to the defendant. In a memorandum of decision on the motion for clarification, the court stated that, following its order of January 13, 2020, in which it ordered the plaintiff to provide any evidence 'indicating that [the defendant] has responsibility or ownership in this action,' the plaintiff provided no such evidence. The court further stated that what the plaintiff did provide to the court in 'claimed compliance [with the order] . . . totally failed.'

"The court also addressed the plaintiff's request to clarify 'whether the order is against [the] plaintiff or [the] plaintiff's counsel.' The court stated that the order was issued 'against both the plaintiff and [the] plaintiff's counsel' because '[n]o facts known to the plaintiff or his counsel . . . would allow a reasonable person or a reasonable attorney to conclude that a colorable claim might be established against the defendant . . . .'

"On November 5, 2020, the plaintiff and Lachmann [appealed] from the decision of the court granting the motion for attorney's fees against both the plaintiff and Lachmann." (Footnote added.) *Cokic* v. *Fiore Powersports, LLC*, supra, 209 Conn. App. 854–57.

This court dismissed Lachmann's appeal because he was not a party to the underlying action, but the court agreed with the plaintiff's claim that the trial court improperly had failed to provide him with a hearing on the defendant's motion for attorney's fees. Id., 859, 861. Accordingly, the court reversed the judgment "only as to the award of attorney's fees against the plaintiff" and remanded the matter "for a hearing on the issue of attorney's fees." Id., 861. On February 1, 2022, the appellate clerk taxed costs in the amount of $489.11 in favor of the plaintiff pursuant to Practice Book § 71-2.[4]

On remand, the court, *Brown, J.*, held a hearing on the defendant's motion for attorney's fees on April 22, 2022. In its memorandum of law in support of that motion, the defendant argued "that there was no colorable claim to be made against it and that both the plaintiff and his attorney were aware of that fact when the suit was brought. The defendant . . . is a legal entity which could only be held liable for the actions of its agents with express or implied authority to act on its behalf. . . . The evidence produced by the plain-

tiff at trial showed that neither he nor his attorney could identify any agent of [the defendant] who had any contact with the plaintiff or the jet ski in question. The plaintiff also failed to produce any evidence to show that he was damaged by any actions of the defendant . . . .

"The evidence produced at trial by [Fiore Powersports] showed that Pruven Performance (not the plaintiff), was the party to the contract to repair the jet ski. [Fiore Powersports] was never paid by anyone, and there was no evidence linking the actions of any defendant to the condition of the jet ski when it showed up at another repair shop disassembled approximately a year and one half after it was removed from the premises of [Fiore Powersports]." (Citation omitted.)

In his objection to the defendant's motion for attorney's fees, the plaintiff argued that the defendant's "sole reliance on the judgment is irrelevant" to whether the plaintiff's claims against the defendant were colorable and noted that "[t]here [was] no mention of any bad conduct on the part of [the] plaintiff's counsel in the decision, which is the sole claim made by counsel for [the defendant]."

At the hearing, counsel for the defendant stated: "I am not going to offer evidence other than the decision of the trial court, which is already part of the file, and . . . the list of exhibits that [was] before the trial court . . . . And as you can see from the finding of Judge Hiller, there was no evidence linking [the defendant] with the actions—with anything to do with the jet ski in question. I would like the court to just take a quick look at the findings of fact, which to me are—show a case that was brought without merit and right for these types of sanctions.

"The court has found specifically that someone other than the plaintiff, a Mr. [William] Jackowitz, brought the jet ski to Fiore Powersports and represented to Fiore that it was owned by Pruven, an entity named Pruven. Fiore Powersports was never informed that somehow the named plaintiff in this case was even a part[y] to anything to do with the repairs that Fiore [Powersports] was supposed to make on the jet ski. After there was a dispute between Fiore and the parties, Mr. Jackowitz, and maybe [the plaintiff], the jet ski was removed under the cover of night without permission, and returned to [the plaintiff], with no money being lost by [the plaintiff].

"Further, there is no evidence before this court as to any causation, as to whether or not there [were] any damages caused by whoever had possession. Moreover, there is absolutely no evidence that [the defendant] was involved in this transaction any other way. . . .

"I look at the memorandum I filed . . . and I look at the standard for awarding attorney's fees, which says

it means no reasonable person can conclude. There is absolutely no evidence presented. If there is no evidence linking my client to anything to do with the jet ski, no reasonable person can conclude that the case would come out any different and that there would be a finding against my client. And, for those reasons, I would ask that the court award attorney's fees."

Daniel Robert Bagley, the president of the defendant, testified that the defendant had paid its attorney $2850 in connection with the defense of the underlying action, and the plaintiff's counsel declined to question Bagley. Instead, counsel for the plaintiff argued: "[W]e responded to Judge Hiller's request for information of a [colorable] claim . . . and we provided that information. And it shows, I'll try to find [it], but it shows a document that involved the jet ski. It was sent by Village Marina, according to the document, and it was sent through the friend of the plaintiff. So, it's clear that they were involved. And that's all—it's all a basis of their motion for attorney's fees. And that document, which is the one where the Appellate Court says the plaintiff provided evidence to the court . . . to comply with the order. The court dismissed the evidence as unresponsive to its inquiry. That was evidence that should have been considered, and it shows that there is a colorable claim. Okay, I have a piece of evidence right here. I can direct you to where the evidence is. . . . Okay. The evidence is, I filed a notice of compliance on January 21, 2020, and it is exhibit A. . . . Exhibit A is the document from—the document from Village Marina, which is being forwarded to . . . Jackowitz, who testified at trial. He was a friend of the plaintiff. And it shows the [defendant's] involvement. So, if you have any questions, it shows that they were involved with the jet ski, with the repair of the jet ski . . . ."

Exhibit A is a copy of an email sent from "casey@villagemarinact.com" with the subject, "Jetski Invoice From Fiore's Powersports," and includes a copy of an invoice. The email reads: "If you have any questions send me an email back and I will try to get in touch with Chris. I have no idea what they did to the ski I'm just the messenger. Thanks." The email is signed by "Casey Shackett," and "Village Marina" is written below that name. In his notice of compliance, the plaintiff claimed that exhibit A "relates to the bill that was at issue. It also establishes a prior history of [correspondence] related to the jet ski repair." Exhibit B to the notice of compliance was an email sent by the defendant's counsel to the plaintiff's counsel, stating that "I have met with my client and even assuming the authenticity of the email that you sent to me, I see no reason to file a supplemental response to your interrogatories. The author of the [e]mail is neither an employee of Village Marina, LLC nor a member of Village Marina, LLC. Further, that is not an email address used or owned

by Village Marina, LLC." In his notice of compliance, the plaintiff noted that exhibit B "only states that the sender is currently not an employee or member of [the defendant]. It does not deny that he was an agent or employee at the time the email was sent in June of 2016. It does not deny that the email may have been used by [the] defendant at the time of the incident alleged in the complaint."

In response to that line of argument, the defendant's counsel asserted that exhibit A "was a hearsay document not admitted [into evidence]. The author of the document did not appear on behalf of the plaintiff. And, in fact, the evidence [presented at trial] was [that] the author of this document had never been an employee or an officer of [the defendant].

"What should have been done [is] a proper investigation of the claim; those are the questions that should have been asked before the lawsuit [was filed]. Does Village Marina really mean Village Marina, LLC? Who is this person? Is he an employee? That was not done. It was not done by the plaintiff, and it was not done by counsel. There is a basic difference between an LLC and someone simply using the name. . . .

"What should have been done was the proper investigation once that document was received to see if this person was in any way, shape, or form related to [the defendant]. There has been no evidence that that was done. That evidence was not admitted. And, in fact, the person that authored the document never appeared at trial to testify to any of these facts. So, this is why Judge Hiller dismissed it out of hand." After the plaintiff's counsel interjected that the email had been admitted into evidence, counsel for the defendant reviewed his file before conceding that the email had been marked as a full exhibit at trial.[5] Counsel for the defendant still maintained that "it proves nothing."

On August 5, 2022, the court issued a memorandum of decision, in which it granted the defendant's motion for attorney's fees in the amount of $2850. In light of the February 1, 2022 taxation of costs in the amount of $489.11 in favor of the plaintiff for his successful appeal from Judge Hiller's decision, the court offset the two awards and ordered the plaintiff to pay the defendant $2360.89 in attorney's fees. This appeal followed.

On appeal, the plaintiff claims that the court abused its discretion in granting the defendant's motion for attorney's fees. He argues that "no evidence, either clear or otherwise, was put forth by either [the] defendant . . . or the court, as to bad faith conduct by the plaintiff." We agree and further conclude that the court failed to find with adequate specificity that the plaintiff's claims were entirely without color and that he acted in bad faith.

We begin our analysis by setting forth the relevant legal principles regarding awards of attorney's fees for litigation misconduct. "An exception to the common-law rule that attorney's fees are not allowed to the successful party in the absence of a contractual or statutory exception is the inherent authority of a trial court to assess attorney's fees when the losing party has acted in bad faith, vexatiously, wantonly or for oppressive reasons. . . . [A] litigant seeking an award of attorney's fees for the bad faith conduct of the opposing party faces a high hurdle. . . . To ensure . . . that fear of an award of [attorney's] fees against them will not deter persons with colorable claims from pursuing those claims, we have declined to uphold awards under the [bad faith] exception absent *both clear evidence* that the challenged actions are entirely without color and [are taken] for reasons of harassment or delay or for other improper purposes . . . *and a high degree of specificity in the factual findings* of [the] lower courts. . . . [Our case law] makes clear that in order to impose sanctions pursuant to its inherent authority, *the trial court must find both that the litigant's claims were entirely without color and that the litigant acted in bad faith.*" (Emphasis in original; internal quotation marks omitted.) *Puff* v. *Puff*, 334 Conn. 341, 371–72, 222 A.3d 493 (2020); see also *Berzins* v. *Berzins*, 306 Conn. 651, 661–63, 51 A.3d 941 (2012); *Maris* v. *McGrath*, 269 Conn. 834, 846–47, 850 A.2d 133 (2004).

"Although this exception . . . is often referred to in shorthand as 'the bad faith exception,' the label is somewhat of a misnomer as it encompasses *both* of the required findings . . . that the litigant's claims were entirely without color and that the litigant acted in bad faith." (Emphasis in original.) *Rinfret* v. *Porter*, 173 Conn. App. 498, 509 n.14, 164 A.3d 812 (2017). "The court must make these findings with a high degree of specificity . . . . When, as in the present case, the actor's bad faith is predicated on the theory that he knowingly brought claims entirely lacking in color, colorability and bad faith are, by necessity, closely linked. . . .

"Colorability is measured by an objective standard, whereas bad faith is measured by a subjective one. . . . Although [our Supreme Court has] stated that the standard for colorability varies depending on whether the person against whom sanctions are sought is a party or the party's attorney; see *Maris* v. *McGrath*, supra, 269 Conn. 847; [it recently clarified] that the inquiry is the same in either case. . . . [A] claim is colorable, for the purpose of the bad faith exception, when it has some legal and factual support, considered in light of the reasonable beliefs of the individual making the claim. . . . Put simply, the colorability inquiry asks whether there is a *reasonable* basis, given the facts, for bringing the claim, regardless of whether it is brought

by an attorney or a party.

"A determination of bad faith, by contrast, rather than focusing on the objective, reasonable beliefs of the person against whom sanctions are sought, focuses on subjective intent. . . . [I]n determining whether a party has engaged in bad faith, [t]he appropriate focus for the court . . . is the conduct of the party in instigating or maintaining the litigation. . . . From that conduct, the court may infer the subjective intent of the person against whom sanctions are sought. Some examples of evidence that would support a finding of bad faith include a party's use of oppressive tactics or its wilful violations of court orders . . . or a finding that the challenged actions [are taken] for reasons of harassment or delay or for other improper purposes . . . . When . . . the claim that an individual has brought or maintained an action in bad faith is predicated on the individual's personal knowledge that there is no factual support for the claim or claims at issue, in order to infer that the individual acted in bad faith, the court must make a finding that the individual knew of the absence of that factual basis." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Lederle* v. *Spivey*, 332 Conn. 837, 844–46, 213 A.3d 481 (2019).

On appeal, "we review the trial court's decision to award attorney's fees for abuse of discretion. . . . This standard applies . . . to the trial court's determination of the factual predicate justifying the award." (Internal quotation marks omitted.) *Berzins* v. *Berzins*, supra, 306 Conn. 661. Therefore, we must "examine the court's findings to determine whether they are sufficiently specific to support the conclusion that the court did not abuse its discretion in arriving at its ultimate findings of bad faith and lack of colorability." *Lederle* v. *Spivey*, supra, 332 Conn. 848 n.8.

In the present case, the court accurately set forth the relevant legal standard, i.e., "[t]he moving party must establish that the challenged conduct was entirely without color and taken for reasons of harassment or delay or for other improper purposes." In concluding that the defendant had satisfied that standard, the court reasoned that "[c]ounsel for the defendant referred to its previously filed postjudgment motion for attorney's fees, wherein it articulated that the plaintiff never produced any document or other credible evidence linking the defendant to the plaintiff's jet ski. . . . [Bagley testified] that the total amount paid to counsel to represent the [defendant] in this matter . . . was $2850. Counsel for the plaintiff chose not to cross-examine . . . Bagley, or to challenge any of the defendant's bad faith assertions. Counsel for the plaintiff, rather [than] putting forth evidence and argument that the claims against the defendant were pursued in good faith, attempted to relitigate [Judge Hiller's] ruling on the merits. Counsel

chose not to question . . . Bagley regarding the claimed amount of attorney's fees. Counsel also failed to argue that the claims of conversion or negligence were in fact colorable claims against the defendant. Instead, [the] plaintiff's counsel simply made reference to his filings before the trial court wherein he asserts he provided support for these claims. The Appellate Court already ruled [that] the trial court did not hold a hearing prior to awarding attorney's fees in this case. The hearing before this court on April 22, 2022, was the plaintiff's opportunity to be heard on the issue of attorney's fees. Nothing in counsel's statements that day leads this court to conclude that the claims of conversion or negligence against the defendant were based upon anything other than bad faith or a desire to delay the proceedings. The court finds the defendant is entitled to attorney's fees in this case on the grounds [that] the plaintiff's claims were entirely without color. Counsel was given an opportunity at the April 22, 2022 hearing to challenge . . . the nature and amount of the claimed attorney's fees, as well as to thoroughly articulate the basis of the conversion and negligence claims and why said claims were not brought in bad faith; he failed to do so."

Although the court summarily concluded that the plaintiff's claims against the defendant "were entirely without color" and were brought in "bad faith or [with] a desire to delay the proceedings," it failed to set forth with a high degree of specificity any factual findings to support the award.[6] Because the court failed to make the necessary findings as to both prongs of the bad faith exception with any specificity, we conclude that the court abused its discretion in granting the defendant's motion for attorney's fees. See, e.g., *Berzins* v. *Berzins*, supra, 306 Conn. 663 (Supreme Court reversed this court's judgment that affirmed the trial court's award of attorney's fees because, "although the court found that the administrator's actions were entirely without color and supported that finding with a high degree of specificity in its factual findings, the court did not make a separate finding that the administrator acted in bad faith"); *Fredo* v. *Fredo*, 185 Conn. App. 252, 270, 196 A.3d 1235 (2018) (vacating trial court's award of attorney's fees because court's "decision contain[ed] no express findings, made with a high degree of specificity, that the defendant's claims with respect to her motions and the subpoena duces tecum served on the plaintiff were entirely without color and that the defendant had acted in bad faith"); *Sabrina C.* v. *Fortin*, 176 Conn. App. 730, 755, 170 A.3d 100 (2017) ("[a]lthough the court stated that it found the defendant's claims unpersuasive and without merit, the court did not provide, with a high degree of specificity, factual findings to support a determination that those claims were made in bad faith and were entirely without color"); *Rinfret* v. *Porter*, supra, 173 Conn. App. 517–18

("[b]ecause we conclude that the court has failed to make [its] finding [of lack of colorability] with the specificity required . . . we need not consider whether the court adequately found that the plaintiff also acted in bad faith"); *Kupersmith* v. *Kupersmith*, 146 Conn. App. 79, 99, 78 A.3d 860 (2013) ("[b]ecause the court made no other findings of fact to support its conclusion that the defendant filed his motion in bad faith, we conclude that the court abused its discretion in awarding attorney's fees . . . to the plaintiff").

Our conclusion that the court failed to make the necessary findings to justify its attorney's fees award does not end our inquiry. We must address whether the matter should be remanded for another hearing or with direction that the defendant's motion for attorney's fees be denied. Our resolution of this question turns on whether the defendant, having been given an opportunity to do so, presented sufficient evidence of the plaintiff's lack of a colorable claim and his bad faith to support the required findings. See *Puff* v. *Puff*, supra, 334 Conn. 371 ("[a] litigant seeking an award of attorney's fees for the bad faith conduct of the opposing party faces a high hurdle" (internal quotation marks omitted)). Having reviewed the record, we conclude that the defendant failed to present any evidence that the plaintiff lacked a colorable claim against it and that his pursuit of his claims was undertaken in bad faith. Therefore, a new hearing on the defendant's motion for attorney's fees is not warranted in the present case.[7]

In support of its motion before Judge Brown, the defendant principally relied on Judge Hiller's finding that "[n]o document, and no credible evidence [links] the defendant . . . [to] the claims made by the plaintiff, with any contract or agreement with the plaintiff, with any work on the jet ski, or with any representation, statement or misstatement about the jet ski." Although the plaintiff's counsel directed Judge Brown's attention to the notice of compliance he had filed in response to Judge Hiller's January 13, 2020 order, the court did not address the import of exhibit A or consider the plaintiff's argument that exhibit A demonstrated that the plaintiff had a reasonable basis to believe that the defendant was involved with the repairs made to the jet ski and, therefore, might be responsible for the damages that allegedly resulted from those repairs.

To be sure, the defendant's counsel disputed the significance of exhibit A for several reasons, including that "[t]here is a basic difference between an LLC and someone simply using the name," and that there was no evidence that the plaintiff investigated whether the author of the email "was in any way, shape, or form related to [the defendant]." The defendant's counsel also argued that "the person that authored the document never appeared at trial to testify to any of these facts. So, this is why Judge Hiller dismissed it out of

hand." Nevertheless, the defendant failed to identify any evidence either that there was some other entity, "Village Marina," which was separate and distinct from Village Marina, LLC, or that the plaintiff knew that the author of the email in exhibit A was not affiliated with the defendant. Simply relying on the fact that the plaintiff ultimately was unable to demonstrate an agency relationship or otherwise prove his claims against the defendant is not sufficient to establish that the plaintiff's claims were entirely without color and that the plaintiff acted in bad faith. See, e.g., *Kupersmith* v. *Kupersmith*, supra, 146 Conn. App. 97 ("[w]hether a claim is colorable, for purposes of the bad-faith exception, is a matter of whether a reasonable [person] could have concluded that facts supporting the claim might be established, *not whether such facts had been established*" (emphasis added; internal quotation marks omitted)). In other words, although Judge Hiller found that the email signed with the defendant's name was insufficient to prove that the author of the email was affiliated with or acted on behalf of the defendant, that email provided a colorable basis for the plaintiff to believe that the defendant was involved in the transaction that gave rise to his claimed damages. Thus, there appears to be *some* factual basis for the plaintiff's claims against the defendant, as someone using the defendant's name emailed a copy of an invoice for the repairs made to the jet ski to a friend of the plaintiff. Similarly, the defendant, despite having the burden to prove the plaintiff's bad faith, presented no evidence to the court that the plaintiff knew that the author of the email was not affiliated with the defendant and that his claims against the defendant were, therefore, baseless. See *Lederle* v. *Spivey*, supra, 332 Conn. 846 ("[w]hen . . . the claim that an individual has brought or maintained an action in bad faith is predicated on the individual's personal knowledge that there is no factual support for the claim or claims at issue, in order to infer that the individual acted in bad faith, the court must make a finding that the individual knew of the absence of that factual basis").

The judgment is reversed and the case is remanded with direction to deny the defendant's motion for attorney's fees, to reinstate the February 1, 2022 taxation of costs in favor of the plaintiff and to render judgment thereon.

In this opinion the other judges concurred.

[1] The plaintiff brought the underlying action against Fiore Powersports, LLC, its principal, Christopher G. Fiore, and Village Marina, LLC. None of the defendants is participating in the present appeal, which concerns only the judgment of the court granting the postjudgment motion for attorney's fees that was filed by Village Marina, LLC. Accordingly, all references to "the defendant" in this opinion are to Village Marina, LLC, only.

On February 16, 2023, the defendant filed a notice of intent not to file a brief and requested that this court affirm the judgment of the trial court. Pursuant to Practice Book § 85-1, this court ordered that the appeal will be considered on the basis of the appellant's brief and the record, as defined by Practice Book § 60-4, only. During oral argument before this court, counsel for the plaintiff requested sanctions and an award of attorney's fees

pursuant to Practice Book §§ 85-1 and 85-2. We decline to consider counsel's oral request for sanctions. See Practice Book § 85-3 ("Sanctions may be imposed by the court, on its own motion, or on motion by any party to the appeal. A motion for sanctions may be filed at any time, but a request for sanctions may not be included in an opposition to a motion, petition or application. Before the court imposes any sanction on its own motion, it shall provide notice to the parties and an opportunity to respond.").

[2] The plaintiff also claims that the court erred by (1) awarding $2360.89 in attorney's fees in the absence of sufficient evidence to support that award, (2) failing to comply with this court's remand order, (3) placing the burden of proof on the plaintiff as to the defendant's claim of bad faith, (4) granting the defendant's untimely motion for attorney's fees, and (5) failing to allow the plaintiff to fully litigate the motion for attorney's fees. Because we conclude that there was insufficient evidence of bad faith to support the court's award, we do not address those additional claims.

[3] Specifically, the plaintiff alleged that the defendant (1) was "liable for conversion because [it] wrongfully exercised dominion and control over [the] plaintiff's property," (2) violated CUTPA "by committing conversion of the plaintiff's jet ski [and] by engaging in a joint venture, supervising, or consenting to the actions of Fiore," and (3) was negligent in failing to "accurately represent whether . . . [it] would be making repairs to the jet ski and to seek permission from the plaintiff or [his] representative before transferring the jet ski to Fiore."

[4] Practice Book § 71-2 provides in relevant part: "[I]n all appeals . . . which go to judgment in the Supreme or Appellate Court including an order for a new trial, costs shall be taxed to the prevailing party by the appellate clerk, in the absence of special order to the contrary by the court. . . ."

[5] The list of exhibits from the trial court reflects that exhibit 3, identified as "[e]mail from Shackett with invoice," was admitted into evidence as a full exhibit at the underlying trial before Judge Hiller.

[6] It is unclear what motive the plaintiff had to delay the proceedings that he had initiated against the defendant.

[7] As previously noted in this opinion, the defendant declined to file a brief in the present appeal. Thus, although it requested that this court affirm the judgment of the trial court, the defendant has failed to offer any support for our doing so.