Circuit Court for Frederick County
Case No. 10-C-17-000401

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 195 & 450
September Term, 2020

CONSOLIDATED CASES

JEFFREY CAHALL, ET AL.

v.

TYLER DONEGAN DUNCAN REAL ESTATE SERVICES, INC., ET AL.

Kehoe,
Nazarian,
Sharer, Frederick, J.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Kehoe, J.

Filed: September 16, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is a consolidated appeal from a judgment of the Circuit Court for Frederick County entered in favor of Tyler Donegan Duncan Real Estate Services, Inc. ("TDD") and TD Healthmed Realty Partners, LLC, against Jeffrey Cahall, Jacqueline Pieterse, HMRP, Inc., and TD Healthmed Realty Partners – Robinwood, LLC. Cahall and Pieterse are the only appellants in this case.

Pieterse and Cahall present the following issues for our consideration:

> 1. Did the trial court exceed its authority and power, act without subject matter jurisdiction and deprive Pieterse of her constitutional rights to due process by piercing the corporate veil and finding her liable for the damages HMRP, Inc. allegedly caused TDD by conspiring with Cahall to convert TDD's alleged property?
>
> 2. Alternatively, even if appellees had properly pleaded counts for fraudulent conveyance, fraud and piercing the corporate veil against Pieterse, did the trial court otherwise err in finding her liable for conspiracy to convert TDD's alleged property?
>
> 3. Did the trial court err in ruling that Pieterse tortiously interfered with the Jeff Jenkins-TDD employment contract?
>
> 4. Did the trial court err in denying Cahall's motion seeking judicial notice of certain adjudicative facts?
>
> 5. Did the trial court err in finding that Cahall infringed upon TDD's trademark and illicitly used it to usurp TDD's "rightful" business opportunities and convert TDD's "property"?
>
> 6. Did the trial court err in not finding the agreement was illegal, void and unenforceable and a bar to all of TDD's claims?

These contentions are not persuasive. We will affirm the judgment of the circuit court.

BACKGROUND

TDD and Cahall

At all times pertinent to this case, *TDD* was a full-service real estate firm that also provided property management, residential and commercial brokerage, development, and consulting services in, among other locales, Washington County. *Chadley S. Tyler* was president of TDD. Tyler was a licensed real estate broker in Maryland and several other states. *Joseph Donegan* joined TDD in 1990 and was a partner from 2000 to August 2018. *Brian Duncan* was also a principal of TDD.

In 2009, *Cahall* entered into an affiliation agreement with TDD and began pursuing business opportunities for the company.[1] Cahall, who did not have a real estate brokerage license, always worked as part of a team, frequently with Donegan, who had a broker's license. Donegan and Cahall shared the commissions earned from the projects they worked on together.

Cahall was paid a draw against his commissions. TDD advanced Cahall $75,000 per year in 12 monthly installments, and the draw balance was reduced by the commissions Cahall earned. Tyler testified that by 2013, Cahall owed TDD about $187,000 and TDD ended Cahall's draw, but continued to pay him commissions. At about that time, an agent from the Internal Revenue Service appeared at TDD's office looking for Cahall. Tyler

[1] The parties do not dispute that Cahall had a written affiliation agreement with TDD. Cahall maintained that the agreement did not include non-competition or confidentiality provisions. The copy of the agreement retained by TDD was lost as the result of a computer virus in about 2009. No copy of the agreement was produced at trial.

later learned from Cahall that he owed the IRS about $700,000. Cahall testified that his draw was ended by agreement with TDD because the IRS was going to garnish his wages for the $700,000+ that the agency claimed was owed by him.

The Robinwood Project

In late 2012, Tyler learned from Cahall and Donegan that the Meritus Health System in Washington County was interested in giving up its management of the Robinwood Medical Center Condominium. The Robinwood Condominium was a large medical office building attached to a hospital in Hagerstown. Cahall began soliciting the management business, which we shall refer to as "the Robinwood Project." Tyler received weekly updates from Cahall about his efforts. Donegan testified that Cahall put together a proposal and that he reviewed it and drafted "small portions" of it.

Eventually, on September 17, 2013, a management agreement was entered into by the Robinwood Medical Condominium Association, Inc. ("Condominium Association"), which was identified as the Owner, and "TD Healthmed Realty Partners – Robinwood, LLC.," which was identified as the Manager.[2] The parties do not dispute that pursuant to the terms of the management agreement, the Manager was "the sole and exclusive

[2] Several versions of the management agreement were admitted in evidence and they differed with respect to the Manager's contact information. One version identified the contact as Tyler, and used his business address in Ijamsville, Maryland. Another version identified the contact as Cahall and listed his address as 8751 Pete Wiles Road in Middletown, Maryland. (This was Pieterse's residence.) At trial, appellees asserted that Cahall altered the management agreement sometime after it was delivered to him. The circuit court did not make a specific factual determination as to which, if any, of the various versions of the management agreement was authentic.

management agent for the common elements, associated land, and appurtenances to the Medical Office Condominium Building commonly referred to as Robinwood Professional Center[.]"

It was the Manager's duty "to operate, manage, and maintain" the condominium building "in a diligent, orderly and efficient first-class manner similar to other comparable medical office buildings in the Central Maryland area." Among other things, the Manager was responsible for collecting "all rents, operating expenses, capital reserves, maintenance reserves and all other income and reimbursements from the Project on behalf of Owner[.]" It was also responsible for maintaining the books and records for the project and for depositing all money collected or received in a bank account in trust for the Owner. For its services, the Manager was paid a management fee of $38,166.67 on the first day of each month.

In addition to the management fee, the agreement provided other possible sources of revenue. Individual unit owners and tenants in the condominium were free to enter into contracts for maintenance work and similar services for their own units. The Manager could compete with other companies for that business. According to Tyler, there were about 62 units in the Robinwood condominium and, over time, TDD entered into service agreements, separate from the management agreement, with a majority of the owners and occupants for services that were not covered by the management agreement. Finally, the Manager was to provide the Owner with "exclusive project management services" which

involved overseeing certain specified construction projects for which the Manager was to be paid an amount equal to six percent of the cost of the construction work.

Tyler was responsible for forming "TD Healthmed Realty Partners – Robinwood, LLC," but at the time the agreement was executed, he had not done so. On December 10, 2013, Tyler formed "TD Healthmed Realty Partners, LLC," a wholly owned subsidiary of TDD. The name "Robinwood" was missing from the name of the entity, but Tyler claimed that was an oversight and that the entity formed was intended to be the contracting party for the management agreement.

Tyler testified that Cahall was the Manager's representative for the Robinwood Project and Cahall acknowledged that he filled that role. There was no dispute that Cahall also continued to do other work for TDD. Tyler considered Cahall to be TDD's representative and responsible for making sure that duties under the management agreement and the various service agreements were fulfilled. Cahall had a different understanding of his role. At trial, he testified that he did not know "what manager's rep" meant and he described his role as "manag[ing] the relationship and the asset." Cahall maintained that he provided Tyler with updates but never "sought approval for anything." The record is clear, however, that Cahall had no financial responsibility under the management agreement or otherwise for the Robinwood Project. As the monthly management fees and other fees were collected, Cahall had the checks sent to TDD's office. A commercial bank account, ending in 2270, was maintained in trust for the

Condominium Association, and rent and owners' fees were deposited into it. Both Cahall and Tyler approved checks, but only Tyler signed them.

Cahall maintained that he and Tyler had agreed that he should have an ownership interest in the entity formed to serve as the Manager under the management agreement and that they agreed to negotiate the details after the management agreement was signed when they would have a better idea of the project's worth. Tyler denied that Cahall asked for an ownership interest and stated that no ownership interest was ever offered to him. Tyler did agree, however, to re-negotiate Cahall's compensation in light of his role as the Manager's representative, but he and Cahall never reached an agreement.

The books and checks for the Robinwood Project were kept in TDD's office. Cahall testified that he did not know that the proper entity to serve as the Manager had not been formed. He assumed that it had been formed and that a bank account had been established for that entity. He later learned that the employees and the bills for the Robinwood Project were paid by TDD and not the entity listed as the Manager under the management agreement.

Tyler acknowledged that TDD hired and paid the staff on the Robinwood Project, supplied vehicles, maintained the accounting records, and paid for insurance, including workers compensation coverage. Tyler agreed to hire staff from Meritus Health System who previously had done work at the Robinwood condominium. Cahall did not hire employees, but he facilitated new staff coming onto the TDD payroll. One of the people hired was Keith Clever who became the on-site, day-to-day manager at the condominium

building. According to Tyler, TD Healthmed Realty Partners, LLC was a wholly-owned subsidiary of TDD. As president of TDD, he had final authority for decision making but the day-to-day decisions were left to Cahall and Clever because they were on-site.

Cahall typically worked from an office at TDD's headquarters, but after the management agreement was signed, he spent an increasing amount of time at Suite 10, the manager's office located in the Robinwood condominium. Any name on the office door at Suite 10, on stationary and business cards, and on the company truck was "Healthmed Realty Partners." Ozzie Stoner, the Senior Director of Engineering Services at the Robinwood condominium building, who was paid by TDD, testified that his business cards and the service agreements that were used had the name "Healthmed Realty Partners" printed on them. According to Stoner, customers referred to the business as "Healthmed" and did not use the longer version of the name.[3]

Jacqueline Pieterse

In August 2011, Cahall began a romantic relationship with Jacqueline Pieterse. Pieterse had worked as a registered nurse and nursing instructor and had owned and managed a home health care business. Cahall thought she would be helpful in advising as to some of the medical nomenclature and work that was being done on the Robinwood

[3] Cahall testified that he registered with the State of Maryland the trade names "Healthmed Realty Partners" and "Healthmed." He claimed that Healthmed Realty Partners was his name and he owned it. In August or September 2013, Cahall was notified that there was a business in California called "Healthmed Realty" and that the term was a federally-registered trademark owned by that entity. The significance of the trademark plays a role in one of Cahall's contentions on appeal.

Project and, in late 2013 or early 2014, she was hired as an advisor or consultant. TDD did not have a written contract with Pieterse, but paid her $7,500 per month. TDD's bookkeeper Robin Stark, testified that during the period when Pieterse was being paid, Cahall was not receiving the $7,500 per month he previously had been paid. According to Tyler, Cahall had an agreement with Pieterse to receive a "share" of the money she was paid. Cahall claimed that his compensation was being deferred until he resolved with Tyler the issue of his equity interest.

In October 2013, Pieterse's house burned down. One of TDD's affiliate companies, Real Estate Maintenance Services and Construction ("RMS"), was retained to rebuild it. Construction began in 2014 and was completed in early 2016. Clever testified that Cahall asked Jeff Jenkins, an employee of TDD, to do work on Pieterse's home. Jenkins testified that he was assigned to work at Pietersie's home from about May through December 2015 and again from May through December 2016. During those times, Jenkins continued to receive his regular pay and mileage reimbursement from TDD. Tyler testified that he was unaware that Jenkins was working at Pieterse's home.

Cahall begins to compete with TDD and its affiliates

After the management agreement was signed, Cahall and Tyler discussed Cahall's compensation. Cahall wanted an ownership share and an adjustment in his compensation for his work on the Robinwood Project. As we have already noted, Tyler maintained that Cahall owed TDD money from the advance on his draw, that he never sought an

ownership interest, and none was ever offered to him. Tyler made several proposals with regard to Cahall's compensation, all of which were rejected.

On May 20, 2015, Tyler sent a proposal to Cahall via email. Cahall responded that the offer was "not equitable" and that they would "have to go in different directions." Tyler responded, "[t]hat's fine Jeff, we'll both present our positions and see how it shakes out. May not benefit either one of [u]s in the end." Cahall testified that he took Tyler's comments to mean, "go ahead and compete with me[.]"

At about the same time, Cahall began performing certain services for owners and tenants at the Robinwood condominium building for compensation. Cahall prepared the paperwork necessary for Pieterse to form a corporation, HMRP, Inc., which was established on July 6, 2015. Pieterse was the president and sole shareholder of the corporation and used her home address as the corporation's address. Cahall stated that he formed HMRP, Inc. on Pieterse's behalf because he wanted to start a construction company and "other health-care related businesses with her." Cahall ran the day-to-day operations and kept the books and records for HMRP, Inc. Pieterse authorized Cahall to sign her name and use her credit card to pay for items needed by HMRP, Inc. Pieterse maintained that she was not involved in HMRP, Inc. and had no "understanding of it." Cahall provided health insurance for certain individuals working on the Robinwood Project notwithstanding that they were employed by TDD. Ozzie Stoner testified that when he was first employed by TDD, he received money that was intended to be used for

the purchase of health insurance, but later, Cahall took care of providing him with health insurance coverage.

Cahall did not tell Tyler or any of the occupants or tenants at the Robinwood condominium about the formation of HMRP, Inc., although he used the name of that company in service contracts. Cahall stated that he "unapologetically was competing with Mr. Tyler[.]" Both Cahall and Pieterse testified that the initials "HMRP" stood for Healthmed Realty Partners and Cahall testified that they secured contracts under the name "Healthmed Realty." Cahall denied that Healthmed Realty Partners was a trade name used by Tyler and claimed that he was the one who came up with the name. Cahall did not view HMRP, Inc. as different from "Healthmed Realty Partners" and he believed they both belonged to him.

On November 1, 2016, HMRP, Inc. entered into a contract with Maryland Vascular Specialists ("MVS") for a construction project affecting two suites in the Robinwood condominium. Cahall did not tell Tyler that he had bid on the MVS job or that he was awarded the contract. HMRP, Inc. began work on the MVS project in November 2016 and completed the work in mid-2017. Ozzie Stoner, an employee of TDD, worked on the MVS project at Cahall's direction and without TDD's consent.

Lawrence Abramson, the executive director of MVS, testified that although his contract was with HMRP, Inc., he "always thought" that Cahall was the owner of the management company for the Condominium Association and he did not know there was a difference between HMRP, Inc. and the management company. Similarly, Kathleen Su,

the business manager for Su Surgical Group, also located at the Robinwood condominium, testified that on June 14, 2016, she entered a service contract for the removal of medical waste. The contracting party was identified as HMRP with "the words Healthmed Realty Partners in parentheses next to the HMRP."

Funds received by Cahall were deposited into HMRP, Inc.'s bank account, ending with the numbers 7343, that was opened on July 10, 2015. Pieterse was the signatory on the account. Tyler claimed that from July 17, 2015 through January 7, 2017, the defendants took 415 checks for a total amount of $418,000, that were made out to "our entity," "Healthmed Realty Partners," and put them into the HMRP, Inc. bank account. The first deposit, in the amount of $41,768.08, was made on July 17, 2015. Most of the checks deposited were payable to Healthmed Realty Partners or Healthmed. Two checks were payable to "Tyler Donegan Real Estate Services, Inc. d/b/a Healthmed Realty Partners," several were payable to "Healthmed Realty Partners – Robinwood, LLC," and at least two were payable to "HMRP, Inc." When asked about checks payable to "Healthmed Realty Partners" that were deposited in HMRP, Inc.'s account, Cahall testified that "Healthmed Realty Partners was part and parcel of HMRP, Inc." No party disputed that the checks deposited were for services performed for condominium owners and tenants, but they disputed whether the entity providing the services was HMRP, Inc. or TD Healthmed Realty Partners, LLC. Tyler maintained that the business belonged to TDD or TD Healthmed Realty Partners, LLC, which it owned, while Cahall claimed he

was not precluded from competing with TDD and the business belonged to his construction company, HMRP, Inc.

In December 2015, Pieterse received a check in the amount of $25,000 from HMRP, Inc. She testified that she did not know what that money was for. In early December 2016, she received from HMRP, Inc. a check for profit distribution in the amount of $60,000. Pieterse did not recall what she did with the money. Pieterse trusted Cahall to operate the business and she consented to everything he did, although she did not specifically approve any of his actions because she claimed she did not know about them.

Tyler testified that he first learned that HMRP, Inc. existed on January 19, 2017, after Cahall had been terminated. On the same date, he also learned that Cahall had formed TD Healthmed Realty Partners – Robinwood, LLC. Cahall acknowledged that he had formed that entity in June 2016, and that he did not inform Tyler about it. No evidence about the assets or activities of that entity was presented at trial.

The events leading to Cahall's termination

The books for the Condominium Association were kept at TDD's main office and Tyler had always signed checks as the Condominium Association's agent. Cahall sought to have the books for the management of the Robinwood project brought "in house," apparently referring to the office in Suite 10 at the Robinwood condominium, but Tyler refused.

At the end of December 2016, and unbeknownst to Tyler, Cahall closed the bank account ending in 2270 that was held in trust for the Condominium Association. The

branch manager for the bank testified that Cahall had contacted her to say that the account was not properly titled. A commercial account agreement was submitted in the name of TD Healthmed Realty Partners - Robinwood LLC. It appeared to have the signatures of Pieterse, as a member, and Cahall and Clever each identified as a "signer." Tyler was not included as a signatory on the new account. The new account, ending in 4047, was opened and all of the funds from the account ending in 2270 were transferred to it. The branch manager, however, questioned Pieterse's signature and requested additional documentation, but none was provided. Eventually, the new account was closed at the request of the Robinwood Medical Center Condominium.

Robin Stark provided bookkeeping services for TDD and TD Healthmed Realty Partners, LLC. Cahall did not notify her of his intent to close the account ending in 2270 in December 2016. She discovered that he had done so because she checked the account balances daily and noticed that a check written on the account had bounced. After being notified about the bounced check, Tyler contacted the bank and learned that the account had been closed.

Clever was told by Cahall that everything was being brought "in house." Clever was added as a signatory to the bank account ending in 4047 so he could sign when Cahall was not present. According to Tyler, the prior balance of the account ending in 2270 was $446,373.64. In December 2016, Cahall offered Stoner and Jenkins employment contracts with HMRP, Inc., but neither signed a contract prior to January 10, 2017. In January 2017, Cahall told Jenkins that the company name would change to HMRP, Inc.

On January 5, 2017, Cahall sent Tyler an email stating that "the management company has taken in house the management of the books for the client, RMCC, as well as other functions your firm was performing." Tyler responded that he knew "nothing of the sort[.]" On January 10, 2017, Tyler, Duncan, and Donegan delivered a letter to Cahall terminating his employment.

Pieterse testified that on or about January 12, 2017, at Cahall's instruction, she withdrew $124,027.14 from HMRP, Inc.'s bank account ending in 7343 and deposited that money into a new account that she opened for HMRP, Inc. at BB&T bank. In her deposition, Pieterse claimed she used the money to pay legal fees. At trial, she testified that the money was used by the company "in different ways" and for "products, and what have you."

After Cahall was terminated, the management agreement was amended to remove all references to TD Healthmed Realty Partners – Robinwood, LLC and to reflect that TD Healthmed Realty Partners, LLC was the entity that would serve as the Manager. Tyler testified that the amendment to the management agreement was necessary to dispel any confusion about the entity that actually served as the Manager. The management agreement was also extended to run through September 2018, but effective January 1, 2017, the monthly management fee was reduced by $1,200 because the Condominium Association decided to handle its own bookkeeping responsibilities.

PROCEDURAL HISTORY

The parties were unable to resolve their differences. TDD and Healthmed Realty Partners filed a civil action against Cahall, Pieterse, HMRP, Inc., and TD Healthmed Realty Partners – Robinwood, LLC.[4] In their operative complaint, appellees asserted claims for breach of employment contract, interference with contracts, interference with prospective advantage, conversion, and civil conspiracy, and infringement of the tradename/trademark "Healthmed Realty Partners." In addition to damages, appellees sought a declaration of *lis pendens* and an accounting.[5] Cahall and Pieterse filed various counterclaims.

The circuit court conducted a bench trial that extended over twelve days. All of the counterclaims asserted by the defendants were eventually dismissed, some voluntarily and others by order of court. Several of appellees' claims were dismissed as well.

After the close of all the evidence and the court's resolution of motions for judgment, the following claims by TDD and TD Healthmed Realty Partners, LLC remained: Count I, breach of employment contract against Cahall; Count II, interference with contracts;

[4] Appellees also asserted claims against Keith Clever, the TDD employee who had done work for Cahall, Pieterse, and the entities controlled by either or both of them while on TDD's payroll. The trial court entered judgment in Clever's favor as to all claims against him.

[5] Specifically, Cahall, Pieterse, and entities controlled by them—namely, TD Healthmed Realty Partners – Robinwood, LLC , and HMRP, Inc.—asserted various claims against Tyler, TDD, and TD Healthmed Realty Partners, LLC. All of these claims were resolved in favor of the counter-defendants.

Count IV, conversion; Count V, civil conspiracy; Count VI, accounting; Count VII, trademark infringement; and Count VIII, application of *lis pendens*.

On July 9, 2019, the court issued a written opinion finding in favor of TDD and TD Healthmed Realty Partners, LLC on most but not all of the claims asserted against Cahall and Pieterse. Specifically, the court found that Cahall: (1) breached his contract with TDD; (2) converted funds properly payable to TDD for his and Pieterse's use; and (3) tortiously interfered with TDD's employment contracts with Ozzie Stoner and Jeff Jenkins. The court found that Pieterse was jointly and severally liable with Cahall on the conversion count and the tortious interference with contract count relating to Jenkins's work on her home. The total judgment in favor of TDD and TD Healthmed Realty Partners, LLC was against Cahall was $442,785.67, and Pieterse was jointly and severally liable for $434,062.27 of that amount. In addition, the court enjoined the defendants from using the names "HMRP, Inc." and "TD HealthMed Realty Partners – Robinwood, L.L.C.," and further ordered the defendants to cancel the registration of those names with the Maryland State Department of Assessments and Taxation.

Ten days after the court issued its opinion, TDD and TD Healthmed Realty Partners, LLC filed a motion to alter or amend the judgment which the court denied. On the same date, Cahall, Pieterse, and HMRP, Inc. also filed a motion to alter or amend the judgment. The court denied that motion on all issues except for the request to reduce damages. After hearing arguments limited to that issue, the court issued an amended judgment reducing the damages awarded in favor of TDD and TD Healthmed Realty

Partners, LLC by $66,538.48. Subsequent to the filing of their motion to alter or amend, Cahall and Pieterse also filed a motion asking the court to take judicial notice of certain "adjudicative facts," which the court denied. Cahall and Pieterse noted timely appeals.

After the appeals were noted, this Court was notified that Pieterse had filed for protection from creditors in the United States Bankruptcy Court. An automatic stay was imposed pursuant to 11 U.S.C. § 362(a). Subsequently, the United States Bankruptcy Court provided relief from the automatic stay and the appeal was permitted to proceed as to Pieterse. At the same time, the two appeals were consolidated.

THE STANDARD OF REVIEW

Md. Rule 8-131(c) states:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of witnesses.

We consider the evidence in the light most favorable to the prevailing party. *City of Bowie v. MIE Properties, Inc.*, 398 Md. 657, 676 (2007) (citations omitted). We "decide not whether the trial judge's conclusions of fact were correct, but only whether they were supported by a preponderance of the evidence." *Id.* "In deciding whether there is sufficient evidence to support the trial court's factual finding, we assume the truth of all the evidence relied upon by the trial court, and of all favorable inferences fairly deducible from that evidence." *Leavy v. American Fed. Sav. Bank*, 136 Md. App. 181, 200 (2000).

We review the circuit court's legal conclusions without deference. *See, e.g.*, *Plank v. Cherneski*, 469 Md. 548, 569 (2020).

ANALYSIS

1. Piercing the corporate veil

At the trial, the court found that Cahall and Pieterse converted property of appellees, specifically checks, and wrongfully deposited them into HMRP, Inc.'s account number -7343 in order to deprive appellees of the proceeds of the checks. The court concluded that Cahall was personally liable because he had personally deposited the checks in the wrong account. The court concluded that Pieterse had conspired with Cahall to accomplish this. The court then "pierced the corporate veil" to hold her personally liable. The court stated that it was "difficult to believe that Pieterse had no knowledge that her partner in life and in business was diverting funds belonging to TDD into a bank account [that] she controlled." With respect to piercing the corporate veil, the court found:

> The facts in this case are such that an inference of fraud is available to the Court. Pieterse opened and was the signatory of account #7343. She received large amounts of money from this account. Signing as the principal agent of HMRP, Inc., Pieterse had the duty of due diligence to ensure that funds funneled through her business were ethical and just. As a prior business owner, Pieterse was well equipped to understand the intricacies of business ownership and the duties required therein.
>
> Crucial to the Court's decision is the fact that on January 12, 2017, Jacqueline Pieterse personally closed the account #7343 and removed $124,627.74. Pieterse closed the bank account two days after Cahall was fired, essentially ensuring that creditors, or those asserting an interest, could not reach the money. This was a fraudulent act. This Court, therefore, finds that she is personally liable for the conversion of the financial instruments which occurred.

To this Court, Pieterse asserts that the trial court erred. She argues that the trial court "exceeded its authority and power," acted "without subject matter jurisdiction," and deprived her "of her constitutional rights to due process" when it pierced the corporate veil of HMRP, Inc. and found her personally liable for damages resulting from her conspiracy with Cahall to convert checks that belonged to TDD. She maintains that the circuit court had no authority to make a finding of fraud because "these fraud-based issues . . . were clearly not pleaded" and, as a result, she was "given no notice or the opportunity to be heard regarding the issues of fraudulent conveyance, fraud and piercing the corporate veil, no opportunity to conduct discover[y], and no opportunity to put forth a viable and reasonable defense, thus depriving her of her rights to due process and her property as guaranteed by the 14th Amendment to the United States Constitution and the Maryland Constitution, Declaration of Rights, Article 24." Alternatively, Pieterse argues that even if issues of fraud had been pleaded, appellees failed to prove by clear and convincing evidence that she engaged in fraudulent behavior sufficient to justify piercing the corporate veil. We disagree.

Piercing the corporate veil is an equitable remedy and not a distinct cause of action. *Serio v. Baystate Properties, LLC*, 209 Md. App. 545, 558-59 (2013) (recognizing that the "availability of an action to disregard a limited liability entity" is congruent with "the equitable remedy of piercing the corporate veil."). It is "a tool that allows courts to disregard the corporate form and hold shareholders individually liable under certain circumstances." *Qun Lin v. Cruz*, 247 Md. App. 606, 639 (2020) (citing *Residential*

Warranty Corp. v. Bancroft Homes Greenspring Valley, Inc., 126 Md. App. 294, 306 (1999)). When the corporate veil is pierced, the court disregards the technical separateness of a corporation from its stockholders and deals "'with substance rather than form, as though a corporation did not exist.'" *Starfish Condominium Ass'n v. Yorkridge Service Corp., Inc.*, 295 Md. 693, 714 (1983) (quoting *Bart Arconti & Sons, Inc. v. Ames-Ennis, Inc.*, 275 Md. 295, 310 (1975)).

There are three scenarios in which a corporate entity will be disregarded: (1) when "the corporation is used *as a mere shield for the perpetration of a fraud;*" (2) "*in order to prevent evasion of legal obligations*;" and (3) when stockholders or a parent corporation owning the stock of a subsidiary corporation "*fail to observe the corporate entity, operating the business or dealing with the corporation's property as if it were their own[.]*" *Qun Lin*, 247 Md. App. at 640 (quoting *Hildreth v. Tidewater Equip. Co., Inc.*, 378 Md. 724, 734 (2003)) (emphasis in original). As a general rule, Maryland courts may pierce the corporate veil only when necessary to prevent fraud or to enforce a paramount equity. *Starfish Condominium Ass'n, Inc.*, 295 Md. at 714 (1983) (quoting *Bart Arconti & Sons, Inc.*, 275 Md. at 310). At trial, TDD's piercing the corporate veil theory was premised the proposition that Pieterse and Cahall conspired with one another to defraud TDD.

As a general rule, the "burden of proof is on the one charging fraud to establish by clear, specific acts, facts that in law constitute fraud." *Starfish Condo. Ass'n v. Yorkridge Serv. Corp.*, 295 Md. 693, 714 (1983) (internal quotation and citations omitted).

Generally, in order to establish fraud, a litigant is required to establish (1) a material representation of a party was false, (2) falsity was known to that party or the misrepresentation was made with such reckless indifference to the truth as to impute knowledge to him or her, (3) the misrepresentation was made with the purpose to defraud, (4) the person justifiably relied on the misrepresentation, and (5) the person suffered damage directly resulting from the misrepresentation. *Maryland Environmental Trust v. Gaynor*, 370 Md. 89, 97 (2002); *Colandrea v. Colandrea*, 42 Md. App. 421, 428 (1979).

In its written opinion, the circuit court relied on a Supreme Court decision that addressed a section of the Bankruptcy Code that prohibited debtors from discharging debts "obtained by . . . false pretenses, a false representation, or actual fraud." *Husky Intern. Electronics, Inc. v. Ritz*, 578 U.S. 356, 357 (2016). In considering whether actual fraud required a false representation or whether it encompassed other traditional forms of fraud that can be accomplished without a false representation, the Supreme Court held that "actual fraud" encompasses forms of fraud such as "fraudulent conveyance schemes, that can be effected without a false representation." *Id.* at 359. In reaching that conclusion, the Supreme Court wrote:

> Although 'fraud' connotes deception or trickery generally, the term is difficult to define more precisely. *See* 1 J. Story, COMMENTARIES ON EQUITY JURISPRUDENCE § 189, p. 221 (6th ed. 1853) (Story) ("Fraud . . . being so various in its nature, and so extensive in its application to human concerns, it would be difficult to enumerate all the instances in which Courts of Equity will grant relief under this head"). There is no need to adopt a definition for all times and all circumstances here because, from the beginning of English bankruptcy practice, courts and legislatures have used

> the term "fraud" to describe a debtor's transfer of assets that, . . . impairs a creditor's ability to collect the debt.

Id. at 360.

In the case at hand, the circuit court found that Cahall and Pieterse conspired to convert checks that belonged to appellees. The conversion was accomplished, in part, by the use of the name "Healthmed Realty Partners" and the acronym "HMRP" in the name of the corporate entity formed by Pieterse. The court was not clearly erroneous when it concluded that those names were clearly intended to cause confusion with the entity "TD Healthmed Realty Partners" that Tyler had set up to serve as the Manager under the management agreement.

The converted funds were funneled through HMRP, Inc.'s bank account. In Maryland, it is well established that corporate directors owe a fiduciary duty to their corporation. *Lasater v. Guttmann*, 194 Md. App. 431, 455-56 (2010) (quoting *Buxton v. Buxton*, 363 Md. 634, 654 (2001)). Directors of a corporation are required to perform their duties (1) "[i]n good faith;" (2) "[i]n a manner [they] reasonably believe[ ] to be in the corporation's best interests;" and (3) "[w]ith the care that an ordinarily prudent person in a like position would use under similar circumstances." Md. Code, Corps & Ass'ns § 2-405.1(c). As the circuit court noted, Pieterse had a duty of diligence "to ensure that the funds funneled through her business were ethical and just[.]"

Pieterse permitted Cahall to deposit converted checks into HMRP's bank account, to sign her name, and to write checks on HMRP, Inc.'s account and she received large amounts of money from that account. Pieterse argued that she did not ask Cahall about

the business, did not know what HMRP, Inc.'s business was or where its money came from, did not open the corporation's mail, and did not pay attention to the bank account. She acknowledged that she received payment of $60,000 for a profit distribution from HMRP, Inc., but did not know what she did with the money. She also acknowledged that she withdrew $124,627.74 from HMRP, Inc.'s account ending in 7343 and deposited that money into a new account that also belonged to HMRP, Inc. She claimed that she did not know what the money was for and did not ask Cahall about it, although in her deposition she stated that the money was used to pay legal fees.

The court rejected Pieterse's claims of ignorance and found, among other things, that she was a "sophisticated woman" and that her willful ignorance was no excuse. As we have noted, we "give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). From the evidence presented, the court inferred that there was clear and convincing evidence that HMRP, Inc. was used by Cahall and Pieterse as a mere shield for the perpetration of a fraud. The evidence supports the circuit court's finding and its decision to pierce the corporate veil.

2. Civil conspiracy and conversion

Pieterse next contends that, even if the circuit court did not err in finding her personally liable for damages arising from conspiracy to commit conversion, the court erred in finding that the following four checks were converted by Cahall: (1) a check dated December 16, 2016, payable to HMRP, Inc. in the amount of $65,000; (2) a check dated January 3, 2016, payable to TD Healthmed Realty Partners – Robinwood LLC in

the amount of $20,135.97; (3) a check dated January 3, 2016, payable to TD Healthmed Realty Partners – Robinwood LLC in the amount of $39,175; and, (4) a check dated January 3, 2016, payable to TD Healthmed Realty Partners – Robinwood LLC in the amount of $4,033.32. Pieterse argues that the evidence was not sufficient to show that she had engaged in a conspiracy to convert the checks. We disagree.

One conspirator may be held liable civilly for the harm caused by an act of another as long as the act in question was taken to further the conspiracy. *Windesheim v. Larocca*, 443 Md. 312, 349 (2015) ("For the acts of one co-conspirator to be regarded as acts of the other co-conspirators for purposes of establishing liability, the acts must be in furtherance of the conspiracy."); *Mackey v. Compass Marketing, Inc.*, 391 Md. 117, 144 (2006) ("[W]here the acts done in furtherance of the conspiracy by the members of the conspiracy constitute a separate tort, these acts are attributed to other members of the conspiracy for purposes of establishing civil tort liability over them.").

In the present case, the circuit court specifically found that (1) the funds in question rightfully belonged to TDD, (2) Cahall diverted those funds into a bank account that she controlled, and (3) Pieterse knew of Cahall's actions. This was a sufficient factual basis to impute Cahall's conduct to Pieterse. Certainly, Cahall's conduct violated the duties of loyalty, good faith, and fair dealing that he owed to TDD. *See Broadway Services, Inc. v. Comptroller of Maryland*, 478 Md. 200, 221-22 (2022) (discussing agent's duty to act primarily for the benefit of the principal). Pieterse's argument that the judgment against her for conversion must be reduced by $128,344.29 is not persuasive.

3. Tortious inference with a contract

Pieterse next contends that the circuit court erred in finding that she tortiously interfered with a contract between TDD and one of its employees, Jeff Jenkins.

In order to establish a claim for tortious interference with contract, the moving party must show: "(1) The existence of a contract or legally protected interest between the plaintiff and a third party; (2) the defendant's knowledge of the contract; (3) the defendant's intentional inducement of the third party to breach or otherwise render impossible the performance of the contract; (4) without justification on the part of the defendant; (5) the subsequent by the third party; and (6) damages to the plaintiff resulting therefrom." *Brass Metal Products, Inc. v. E-J Enterprises, Inc.*, 189 Md. App. 310, 348 (2009) (citations omitted). The tort has two general manifestations: "'inducing the breach of an existing contract'" or, absent an existing contract, "'maliciously or wrongfully'' infringing upon an economic relationship. *Blondell v. Littlepage*, 413 Md. 96, 124-25 (2010) (quoting *Kaser v. Financial Protection Marketing, Inc.*, 376 Md. 621, 628 (2003)). This case involves the first type of interference, namely, that Cahall and Pieterse induced Jenkins to breach his employment contract with TDD for months at a time for two consecutive years.

There was conflicting evidence as to Jenkins's work at Pieterse's home. Interpreted in the light most favorable to TDD as the prevailing party, it can be summarized as follows:

After Pieterse's house was destroyed, she hired Cahall to serve as her construction manager for the re-construction of her home. He hired Real Estate Management Services ("RMS") to do the work. RMS was an affiliate of TDD.[6] Cahall was not satisfied with RMS's work. Jenkins was employed by TDD and generally worked at the Robinwood condominiums. Cahall ordered Jenkins to work at the Pieterse job sites between May and November in 2015 and 2016 during the hours he normally would have been working at his regular job at the Robinwood condominium campus. Cahall claimed that Tyler, the TDD principal who was supervising the Robinwood project, was aware Jenkins was working at Pieterse's home, but Cahall acknowledged that he did not inform Tyler about Jenkins' work at Pieterse's house. Tyler denied knowing that Jenkins or anyone else on TDD's payroll was working at the Pieterse home. Betz, the co-owner of RMS, testified that Jenkins never worked under his direction and that it appeared to him that Jenkins was doing work that should have been done by one of Cahall's subcontractors. Cahall denied that Jenkins was paid by TDD for his work at Pieterse's home. But this testimony was contradicted by TDD's payroll records.

In finding Cahall liable for tortious interference with Jenkins' employment contract with TDD, the circuit court clearly did not credit Cahall's testimony. Pieterse argues that there was no evidence that *she* interfered with Jenkins's contractual relationship with TDD. We do not agree.

[6] TDD owned a 51% interest in RMS. The remainder was owned by Joe Betz.

Although Pieterse did not know how Jenkins was being paid, she knew that she was not paying him. Moreover, Pieterse appointed Cahall to be her representative for the re-construction of her home. Knowledge gained by an agent can be attributed to the principal. *Messall v. Merlands Club, Inc.*, 233 Md. 29, 36 (1963) (citing *Durst v. Durst*, 225 Md. 175, 180 (1961) ("It is axiomatic that knowledge acquired by an agent in the course of his agency is imputed to his principal.")). Pieterse is charged with Cahall's knowledge that Jenkins was employed by TDD at the time he performed work at her house. As we have noted, the court did not credit Cahall's testimony that he assumed Jenkins was being paid by Betz. As Jenkins' supervisor at TDD, Cahall knew that Jenkins was employed by TDD and he did not take any steps to inform Tyler that Jenkins was being loaned out for the construction work or to suspend Jenkins's pay by TDD during the time he was working at Pieterse's house. Pieterse, as Cahall's principal, is charged with the knowledge of her agent. The record before us fully supports the circuit court's determination that Pieterse tortiously interfered with the employment contract between appellees and Jenkins.

4. – 5. "HealthMed Realty" as a tradename

On December 31, 2019, that is, more than five months after the circuit court issued its written opinion and order, but prior to its actual entry of judgment, appellants filed a

motion requesting the circuit court "to take judicial notice of certain adjudicative facts."[7] Appellants asserted that the attorneys who represented them at trial[8] failed to present arguments at trial that showed that TDD's case was irredeemably flawed.

Specifically, appellants asked the court to take judicial notice of certain provisions of the Maryland Real Estate Brokers Act, § 17-101 *et seq.* of the Business Occupations and Professions Article ("BOP") of the Maryland Code, the Lanham Act, 15 U.S.C. § 1051 *et seq*., a certified copy of a United States trademark registration for "HealthMed Realty," showing that that tradename had been reserved by a California business.[9] In addition, appellants asked the court to take judicial notice of a website for a company known as Maryland Appellate Support, purportedly owned by two attorneys who represented appellees at trial.

On January 22, 2020, the circuit court denied appellants' motion. Cahall and Pieterse argue that the trial court erred in denying their motion and that the court's error prejudiced Cahall. They also argue that the circuit court erred in denying their motion to alter or amend the judgment on the ground that appellees failed to establish, and could

[7] Appellants' motion requesting judicial notice of adjudicative facts was filed while the circuit court was holding *sub curia* the issue of the reduction of damages as raised in appellants' motion to alter or amend.

[8] Appellants' attorneys were granted leave to withdraw as counsel on October 15, 2019.

[9] Additionally, and as further support for their contentions, appellants asked the court to take judicial notice of the United States Patent and Trademark Office website and certain specified webpages.

not establish, that they had a right to use the name Healthmed Realty because in 2011 another entity had registered that trademark with the United States Patent and Trademark Office. We do not agree with any of these contentions.

Appellants are correct that Rule 5-201 requires trial courts to take judicial notice of a "fact not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Md. Rule 5-201(b). And, if a request is timely made and otherwise appropriate, a trial court must take judicial notice of fact when asked to do so. Md. Rule 5-201(d). At this point, however, their arguments fall apart.

First, Rule 5-201 governs judicial notice of *adjudicative facts* as opposed to statutes or principles of law. *See* 5 Lynn McLain, MARYLAND EVIDENCE STATE AND FEDERAL § 201:1 (3d ed. 2013). Adjudicative facts are those that help the fact-finder answer "questions of who did what, where, when, how, why, with what motive or intent." *Dashiell v. Meeks*, 395 Md. 149, 175 n.6 (2006). Maryland's Real Estate Brokers Act and the federal Lanham Act are statutes, not adjudicative facts. Judges are presumed to know the law and to apply it properly, even in the absence of a verbal indication of having considered it. *Christian v. Maternal-Fetal Med. Assocs. of Md., LLC*, 459 Md. 1, 28 (2018). There was no requirement for the trial court to take judicial notice of the existence or the substance of these statutes.

Second, appellants' request was not made during the trial, but after the evidence had been presented, closing arguments had been made, and the court had issued its decision on all but one narrow issue of damages. Appellants were clearly seeking to re-open the case in order to present additional legal arguments that were neither based upon newly discovered evidence nor unavailable to appellants at the time the case was tried. Maryland appellate courts have long recognized that "[t]he refusal to re-open a case and to admit testimony after the case has been closed and argued is . . . within the trial court's discretion and usually affords no ground for reversal of the judgment." *Sellers v. Zimmerman*, 18 Md. 255, 258-59 (1862). Having devoted twelve days to trying the parties' claims and issuing its findings of fact and conclusions of law as to all but one issue, the trial court was under no obligation to reopening the proceedings to permit a party to present an argument that could have been presented at trial.[10, 11]

[10] Additionally, any hypothetical error or abuse of discretion on the part of the trial court would have been harmless. "Appellate courts of this State will not reverse a lower court judgment for harmless error: the complaining party must show prejudice as well as error.'" *Sumpter v. Sumpter*, 436 Md. 74, 82 (2013) (cleaned up). Prejudice means an "'error that influenced the outcome of the case.'" *Id*. There was no issue in the instant case relating in any way to There was nothing about the conduct of the attorneys at trial or their website would have impacted the circuit court's decision in any way.

[11] For the same reason, we deny appellants' request that we take judicial notice of "*Guidelines for the Use of Unlicensed Employees and Online Chat Providers Real Estate Commission*, issued in 1995 by the Maryland Office of the Attorney General – Department of Labor and posed on the Maryland Real Estate Commission's website." (cleaned up). *See* Md. Rule 8-131(a) (stating that, with the exception of certain jurisdictional issues, an appellate court "[o]rdinarily . . . will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.")

6. The scope of Cahall's duties to TDD

Appellants next contend that the trial court erred in finding that Cahall was an "employee/fiduciary/agent" of TDD and that he breached his employment agreement. They maintain that Cahall's employment agreement was illegal and void *ab initio*. In support of that argument, appellants direct our attention to the Maryland Real Estate Brokers Act, Md. Code, Bus. Occ. & Prof. § 17-101 *et seq.*, which prohibits, among other things, real estate brokers from retaining an unlicensed individual to provide real estate brokerage services and from paying compensation, in any form, for the provision of real estate brokerage services to an unlicensed person. *See* Bus. Occ. & Prof. §§ 17-603(b) and 17-604(a). There are two fatal flaws with this argument.

The first is that it was neither raised to nor decided by the trial court. As a result, that issue is not preserved for appellate review. Md. Rule 8-131(a). The second is that the Real Estate Broker's Act regulates individuals who act as real estate brokers. Cahall was not a real estate broker; he was an employee of a company that, among other things, employed persons who were licensed brokers and engaged in brokerage activities. His elaborate arguments that his employment contract with TDD was illegal and therefore unenforceable are not persuasive.

THE JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY IS AFFIRMED; COSTS TO BE PAID BY APPELLANTS.