Circuit Court for Harford County
Case No. 12-C-14-2632

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1544

September Term, 2016

BACKYARD PARADISE OF EDGEWOOD, INC., ET AL.

v.

LESLIE C. WALKER, *et al.*

Nazarian,
Shaw Geter,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: January 5, 2018

This case arises from a pool installation gone wrong. Leslie Walker and Richard Riley (the "Homeowners") hired Admiral Enterprises of Maryland d/b/a Backyard Paradise of Edgewood Inc. ("Backyard") to install a fiberglass in-ground swimming pool in the back yard of their Baltimore County home. The pool Backyard installed didn't meet the specifications in the contract, so the Homeowners filed suit in the Circuit Court for Harford County against Backyard Paradise and Craig Revai, Backyard's owner, alleging breach of contract and other claims. After contentious pre-trial proceedings and a four-day trial, a jury found that Backyard had breached the contract and awarded consequential damages and attorney's fees to the Homeowners against both Backyard and Mr. Revai. We correct an obvious clerical error in the circuit court's judgment against Backyard and affirm that judgment as corrected, as well as the attorney's fee award, but decline to enter judgment against Mr. Revai personally.

I. BACKGROUND

On July 23, 2013, the Homeowners entered into a contract with Backyard, under which Backyard would install a Blue Hawaiian St. Augustine fiberglass in-ground pool in their backyard, to be completed in two weeks, for a price of $32,200. It is undisputed that Backyard proposed a design for the pool and that the parties modified the proposal into the specifications contained in the contract.

Backyard finished the project, but the Homeowners claimed that Backyard failed to construct the pool as agreed and to finish it on time. They contended that Backyard built

the pool twelve inches above the ground, left it unbonded[1] and undecked, that it failed to pass inspection several times, and was unusable. The Homeowners testified that they expected the pool to look exactly like, or at least similar to, the pool pictured in the brochure that Mr. Gennerella, Backyard's salesman, had showed them, and that they would not have purchased the pool that Backyard built. The Homeowners sought arbitration, as the contract required, and hired another pool company, Leisure Pools, to assess, remove, and reinstall the pool. Leisure Pools reconstructed and installed the pool, which passed inspection, at a cost to the Homeowners of $20,500.

On August 26, 2014, the Homeowners filed a four-count Complaint against Backyard and Mr. Revai personally. The complaint alleged that Backyard and Mr. Revai[2] (1) breached the contract by failing to complete the swimming pool according to the contract's specifications ("Count I"); (2) installed the swimming pool negligently, rendering it unusable ("Count II"); (3) breached their express warranty to deliver an operable and usable pool ("Count III"); and (4) engaged in unfair and deceptive trade practices, in violation of the Maryland Consumer Protection Act ("CPA") ("Count IV").

[1] Section 680.26 (B)(1)(a) of the National Electrical Code requires parts of a permanently installed pool to be bonded together with a solid copper conductor as a safety measure against transmitting electrical currents to the pool equipment, such as metal handle rails and ladders. NFPA 70 NATIONAL ELECTRICAL CODE (2017). *See also* MD. PUB. SAFETY § 12-603 (2010) ("Each electrical installation in the State shall conform to the National Electrical Code.").

[2] Unless otherwise specified, references to Backyard include both the company and Mr. Revai.

Backyard filed a counter-complaint also alleging that the Homeowners failed to make the payments required under the contract; the court later dismissed this claim.

After some contentious motions practice, including several unsuccessful motions by Backyard to dismiss, the case was tried to a jury over a four-day period. The jury found for the Homeowners on all four counts[3] and awarded $20,500 in consequential damages, jointly and severally against Backyard and Mr. Revai. On May 5, 2016, the circuit court entered judgment to reflect the jury's verdict and, on the Homeowners' petition for attorney's fees, awarded reasonable attorney's fees, costs, and expenses totaling $23,931.50, jointly and severally, pursuant to the contract and the CPA. Backyard appeals. We will supply additional facts as necessary below.

II. DISCUSSION

Backyard raises ten categories of contentions on appeal[4] that we have consolidated, reordered, and rephrased. Stated concisely, Backyard challenges the jury's consequential

[3] The jury did not award damages on Count II.

[4] Backyard Paradise phrased the Questions Presented as follows:

> I. THE TRIAL COURT VACATED THE JUDGMENT FOR CONSEQUENTIAL DAMAGES AND THE JUDGMENT WAS NOT REINSTATED, THEREFORE THERE CANNOT BE AN AWARD FOR CONSEQUENTIAL DAMAGES, ATTORNEY'S FEES AND EXPERT WITNESS DEPOSTION AND TESTIMONY FEES AND CONSTS AND/OR AN AWARD OF DAMAGES UNDER THE CPA.
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> II. FAILURE OF THE JURY TO AWARD DAMAGES UNDER THE MARYLAND CONSUMER

PROTECTION ACT (CPA) IS FATAL TO APPELLEES' CLAIM FOR ATTORNEY'S FEES.

III. THE TRIAL COURT ERRORED IN NOT SEVERING PERSONAL LIABILITY OF MR. REVAI FROM LIABILITY OF BACKYARD PARADISE TO THE JURY.

IV. ABSENT FRAUD, THE OFFICERS OF A CORPORATION ARE INSULATED FROM PERSONAL LIABILITY. THE AMENDED COMPLAINT AND DISCOVERY RESPONSES FROM THE PLAINTIFFS FAIL TO STATE FACTS WHICH INDICATE MR. REVAI OR AN AGENT COMMITTED FRAUD.

V. THE PLAINTIFFS' AMENDED COMPLAINT DOES NOT INCLUDE A COUNT OF NEGLIGENT MISREPRESENTATION BY MR. REVAI

VI. APPELLEES' EXPERT FEE OF TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500.00) FOR EXPERT DEPOSITION FEE AND CHARGE OF TWO THOUSAND FIVE HUNDRED DOLLARS FOR EXPERT TESTIMONY WAS UNREASONABLE AND DESIGNED TO PROHIBIT APPELLANT FROM OBTAINING DISCOVERY AND WAS EXCESSIVE FOR EXPERT TESTIMONY.

VII. THE AWARD OF ATTORNEY'S FEES WAS NOT SUPPORTED BY REQUIRED DOCUMENTATION OR APPLICATION OF FACTORS UNDER THE MARYLAND RULES.

VIII. THE WRONG STANDARD OF EVIDENCE WAS APPLIED BY THE JURY FOR VIOLATING THE CPA.

IX. THE COURT ABUSED IT DISCRETION IN DENYING APPELLANTS MOTION FOR JUDGMENT AT THE END OF THE APPELLEES CASE

X. FRAUD BASED CLAIMS MUST IDENTIFY ACTUAL MISREPRESENTATIONS.

damages award, the court's attorney's and expert's fees awards, and the imposition of personal liability for Backyard's CPA violation against Mr. Revai.[5]

A. The Circuit Court Did Not Intend To Vacate Both Judgments.

First, Backyard contends that we must reverse the award for attorney's fees and costs because the circuit court vacated the underlying damages judgment. This supposed "gotcha" moment arises from a clerical error that occurred after Backyard filed, and the court granted, a post-judgment motion to amend the judgment and to hold a hearing on attorney's fees. Backyard isn't wrong about the progression of events, but rather than giving it a litigation windfall, we will fix the clerical error and move on to the merits.

The Maryland Rules require the circuit court to enter judgment on a separate document, Md. Rule 2-601(a), and that judgment becomes effective when entered on the docket, Rule 2-601(a)(4):

> The clerk shall enter a judgment by making an entry of it on the docket of the electronic case management system used by the court along with such description of the judgment as the clerk deems appropriate.

Md. Rule 2-601(b)(2). In determining whether a final judgment was entered, we start with the docket entry. *Waller v. Maryland Nat'l Bank*, 332 Md. 375, 378 (1993).

After the jury reached its verdict, the court entered judgment for damages and attorney's fees in favor of the Homeowners. On May 9, 2017, though, Backyard filed a

[5] We decline to address Backyard's contention that the jury instructions contained the wrong CPA standard because Backyard never lodged an appropriate objection, *see* Md. Rule 2-520(e), and therefore failed to preserve the issue for appellate review.

timely motion to amend the judgments and requested a hearing on the issue of attorney's and expert's fees, which they claimed were excessive. So the court vacated the judgment on June 16 and scheduled a hearing. The court continued the hearing at Backyard's request, and rescheduled it to August 15, 2016. These actions were memorialized in docket entries that, as Backyard argues now, appear to vacate the entire judgment in favor of the Homeowners:

> Order
> Ordered that the judgment shall immediately be entered and is her[e]by in favor of Plaintiffs, Leslie C. Walker and Richard F Riley, against Defendants Backyard Paradise of Edgewood, Inc., Admiral Enterprises of Maryland and Craig Revai as to the consequential damages under Count I, III, & IV in the amount of Twenty Thousand Five Hundred Dollars ($20.500.00), jointly and severally. All open court costs to be paid by the Defendants. Ordered that the Plaintiffs are entitled to the reasonable attorney fees, costs and expenses as specifically determined by the Court below, and as provided in Paragraph 34 of the Contract below, and pursuant to the Maryland Consumer Protection Act, in the amount of: $18,840.00 for reasonable attorney fees; Complaint filing costs of $91.50; and case and/or trial expenses of $5000.00 for both Plaintiff Expert deposition fees (not reimbursed by Defendants as of yet) and Plaintiff Expert trial testimony fees. Accordingly, judgment shall immediately be entered and is her[e]by entered in favor of Plaintiffs, Leslie C. Walker and Richard F. Riley against Defendants Backyard Paradise of Edgewood, Inc., Admiral Enterprises of Maryland and Craig Revai, jointly and severally, in the amount of Twenty Three Thousand Nine[] [Hundred Thirty] One Dollars and Fifty Cents ($23,931.50) for reasonable attorney fees, costs and expenses.
> *Order vacated, scheduled for hearing 6/6/16 per AME
> Ordered Vacated 06-06-2016 AME

During the hearing, counsel for Backyard argued first that the damages award was excessive, and also that the court had vacated it altogether. That is not, however, what the court believed it had done:

> [BACKYARD'S COUNSEL]: Your Honor, the jury awarded $20,500, which I believe from the evidence was what they thought would be for the pool to be pulled out and reinstalled. However, that $20,500 included a complete concrete pool deck for 2,400 and furnish and install mesh cover for 2,700. So those costs were not related to pulling the pool out of the ground and reinstalling it to the level the plaintiffs wanted. So that should not be awarded. The award should be at least reduced by –
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> [THE COURT]: I think you are a bit untimely if you're making that request of the Court with respect to the judgement. More than 30 days have past. The judgment was entered more than 30 days ago.
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> [BACKYARD'S COUNSEL]: I think a judgment was vacated, is what I saw.
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> [THE COURT]: The attorney's fees.
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> [BACKYARD'S COUNSEL]: No, I thought the whole judgment.
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> [THE COURT]: No. The attorney's fees is what the Court reserved on. The judgment that the jury awarded, that was entered. That was not vacated. [Counsel] filed a Petition for Attorney's Fees. The Court entered that judgment. You filed a Motion to Vacate that. I did. *So it's only the attorney's fee award that was vacated*.

(Emphasis added.)

After the hearing, the docket reflects that the court entered a new judgment on attorney's fees, but there is no new entry as to damages:

> Hearing Held

> Matter before the (Eaves/gill) 8/15/16 for hearing on attorney's fees. Arguments heard. Court rules that Plaintiff is entitled to attorneys fees of $23,931.50 reduced to judgment in favor of the Plaintiffs, against the Defendants, joint and several.

It's obvious from the transcript that the circuit court never meant to vacate the judgment for damages, and that the court believed it had only vacated its original fee award. We know this with even greater certainty from the fact that the court went ahead after the hearing and awarded attorney's fees—a ruling that necessarily was grounded in the predicate damages award that the court had issued previously and that wouldn't make sense otherwise. The result isn't, as Backyard hopes, that the court entered judgment in its favor on Counts I, III, and IV—the record reveals no such intention. Instead, the court simply never entered the judgment on those counts that it intended to enter.

The judgment from which Backyard appeals adjudicated fewer than all of the claims, *see* Md. Rule 2-602(a), and therefore isn't an appealable final judgment. But because the trial court absolutely had discretion to direct the entry of a final judgment—indeed, it thought it had—Rule 8-602(e) gives us options: we can dismiss the appeal, remand the case for further proceedings, or enter judgment. We choose the third option. Pursuant to Md. Rule 8-602(e)(1)(C), we (re-)enter judgment on Counts I, III, and IV in favor of the Homeowners and against Admiral Enterprises, d/b/a Backyard Paradise of Edgewood, Inc.,[6] in the amount of $20,500. *See Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 174, *cert. denied*, 444 Md. 641 (2015). And from here, we can address the merits.

[6] For reasons we explain in Section II.E, we do not enter judgment against Mr. Revai in his personal capacity.

B. The Jury Found That Backyard Violated The Maryland Consumer Protection Act And Awarded Consequential Damages.

Backyard's second set of arguments is difficult to discern. As best we can tell, Backyard contends that the court erred in awarding attorney's fees because (a) among the claims in this complaint, attorney's fees are available only for violations of the CPA, and (b) this verdict sheet didn't distinguish the portion of the damages award attributable to the violation of the CPA the jury found in Count IV. Backyard is right that attorney's fees are available for violations of the CPA[7] when they wouldn't normally be available for breach of a construction contract. *Andrulis v. Levin Constr.*, 331 Md. 354 (1993). In this case, though, the verdict sheet doesn't distinguish the damages by count. It asked the jury, after finding liability or not, to state the amount of compensatory damages (zero) or consequential damages ($20,500) that the Homeowners sustained.

Backyard hasn't cited, and we haven't found, any request in the circuit court that the verdict sheet break out damages by count, or any objection to the form of the verdict sheet (other than a request that the court include a specific finding of fraud against Mr. Revai, which the court denied). So there's no error in the form of the verdict sheet itself. The verdict reflects that the jury found that Backyard had violated the CPA. And the verdict

[7] Maryland Code, Commercial Law Article § 13-408(a) permits "[a]ny person [to] bring an action to recover for injury or loss sustained by him as the result of a practice prohibited by this title." Plaintiffs must prove that they are entitled to recover actual damages sustained "as the result of" the defendant's deceptive practices. *See Lloyd v. General Motors Corp.*, 397 Md. 108, 143 (2007) ("[A] private party suing under the Consumer Protection Act must establish 'actual injury or loss.'").

All Maryland Code citations from this point on are to the Commercial Law Article unless otherwise noted.

reflects that the Homeowners sustained damages as a result of Backyard's conduct: they incurred the costs of removing and reinstalling the pool to the correct elevation ($15,500) and the cost of installing the concrete decking and safety cover ($5,000), a total of $20,500. These damages were recoverable under § 13-408, *see Mercedes-Benz of N. Am., Inc. v. Garten*, 94 Md. App. 547, 567 (1993) (holding incidental and consequential damages resulting from rental services obtained as a substitute for defective goods are recoverable under § 13-408), and satisfied the prerequisite for an award of attorney's fees under the CPA.

We will address the amount and reasonableness of the fees in the next section. For the purposes of this section, though, the verdict supported the court's conclusion that the Homeowners were eligible to seek attorney's fees under the CPA.

C. The Court Did Not Err In Finding The Attorney's And Expert Witness's Fees Awards Reasonable.

Third, Backyard Paradise challenges the sufficiency of the evidence supporting the attorney's fees award, and contends that the court failed to evaluate the fee award against Rule 1.5 of the Maryland Rules of Professional Conduct ("MRPC").

In their post-trial motion for attorney's fees and costs, the Homeowners submitted a three-page invoice that included the dates services were rendered, the initials of the person performing the task, a brief description of the service provided, the hours spent, the rate charged, and the amount charged. Counsel also submitted a supporting affidavit describing the amount of time he invested in assisting his clients with preparing and filing their Complaint(s), the discovery process, attempts to settle, and the four-day trial. He

stated that he discounted his hourly rate by $50.00 and charged only for the legal work he performed. After hearing arguments from both parties, reviewing the billing invoice, and analyzing the various Rule 1.5 MRPC factors, the circuit court found the fees reasonable and awarded the Homeowners $23,931.50.

Maryland follows the American rule that each party to a case generally is responsible for its own attorney's fees, regardless of the outcome. *See Montgomery v. Eastern Correctional Inst.*, 377 Md. 615, 637 (2003) ("[A]ttorney's fees are to be borne by the party that incurs them, irrespective of the outcome of the case."). But a prevailing party may recover attorney's fees by contract or by statute. *Hess Constr. Co. v. Board of Educ.*, 341 Md. 155, 160 (1996); *Maxima Corp. v. 6933 Arlington Dev. Ltd. P'ship*, 100 Md. App. 441, 452 (1994). If attorney's fees are permitted, the award is a factual matter for the trial court that we review for clear error. *Holzman v. Fiola Blum, Inc.*, 125 Md. App. 602, 637 (1999).

The statute underlying one of the Homeowners' claims—the CPA—authorizes the award of reasonable attorney's fees. § 13-408(b). When calculating an award under Maryland fee-shifting statutes, courts employ the lodestar approach,[8] which begins by multiplying the reasonable number of hours expended by an attorney by a reasonable hourly rate. *See Friolo v. Frankel*, 373 Md. 501, 505 (2003) ("*Friolo I*"). In *Friolo I*, however, the Court of Appeals cautioned that the lodestar methodology involved more

[8] The term "lodestar" means a "guiding star." *Lodestar*, BLACK'S LAW DICTIONARY (10th ed. 2014).

than a simple multiplication of reasonable hours spent by a reasonable hourly rate—the court also must consider other adjustments on a case-by-case basis. *Id.* at 504–05. "[H]ours that [a]re excessive, redundant, or otherwise unnecessary should be excluded, as hours not properly billed to one's client are also not properly billed to the adversary." *Id.* at 524. After determining the reasonableness of the fees, the court must "weigh the fees requested by the result achieved and decide whether an upward or downward adjustment in the award is warranted." *Hyundai Motor Am. v. Alley*, 183 Md. App. 261, 277 (2008) (citing *Friolo I*, 373 Md. at 504). "If the court determines that the appellee has obtained excellent results, his attorney should recover the full fee, which would normally encompass all hours reasonably expended on the case." *Id.* at 277 (citation omitted). But if the trial court determines that the prevailing party achieved only partial or limited success, a downward adjustment may be necessary even if the claims were "interrelated, non-frivolous, and made in good faith." *Friolo I*, 373 Md. at 525 (citation omitted). Courts consider a variety of factors, including but not limited to those listed in MRPC Rule 1.5. *See Hyundai Motor Am.*, 183 Md. App. at 276–77 ([T]he trial court "need[s] to apply the factors from [MRPC] Rule 1.5 and assess the level of skill of each staff person who performed services; whether time limitations were placed upon the firm by the client; the nature and length of the professional relationship between the appellee and her counsel; whether the case was considered undesirable and/ or required the attorney to work on this case to the exclusion of other cases; the amount of attorney's fee awarded in similar cases, what the fee arrangement was, and the novelty and difficulty of the case.").

Here, the trial court's "lodestar approach" expressly considered the factors listed in *Friolo I*, *Friolo v. Frankel*, 403 Md. 443 (2008) ("*Friolo II*"), and MRPC Rule 1.5, and *Monmouth Meadows Homeowners Association, Inc. v. Hamilton*, 416 Md. 325 (2010):

> This is pursuant to the Consumer Protection Act, you reserved the issue of attorney's fees, and the Court has to find that fees are entitled to be shifted pursuant to that statute, which is why there is no contract that needs to be proven between the plaintiffs and the plaintiffs' attorney in this case, and under all the relevant case law, *Frankel*, both one and two, as well as *Monmouth Meadows*, the Court has to consider certain factors in making its determination.

We have reviewed the record as a whole and the court's analysis of each factor to determine the issue, and we find no error in the court's calculation of the amount and reasonableness of the attorney's fee award, which was entirely consistent with *Friolo I.* Furthermore, the court's analysis of the factors set forth in Rule 1.5(a) to ensure a reasonable fee award was clearly justified. *See Monmouth*, 416 Md. at 336–37 ("Courts should use the factors set forth in Rule 1.5 as the foundation for analysis of what constitutes a reasonable fee when the court awards fees based on a contract entered by the parties authorizing an award of fees.").

Backyard relies on *Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 673–74 (2003), arguing that the attorney's fees award "should have been commensurate with the amount awarded for consequential damages." But *Garcia* is easily distinguishable. There, the trial court reduced the amount of attorney's fees requested because it found that Garcia succeeded *only* partially, and granted fees for the prevailing claim and those fees reasonably related to that claim. Here, the trial court found the Homeowners prevailed at

trial, recovering as much as the jury could have awarded for the replacement value, which could be construed as "excellent results." Although the jury found both violations of the CPA and breach of contract, the damages tracked the damages they could have recovered for defective performance of a real estate construction contract, *i.e.*, the cost of repairing or remedying the defect. *Andrulis v. Levin Constr.*, 331 Md. 354 (1993). There was a claim of breach of warranty, but it didn't matter because the measure of damages for the breach of an express warranty is the same as the measure of damages for breach of contract. *Hooton v. Mumaw Plumbing*, 271 Md. 565, 573 (1974) (applying contract law and stating that the "measure of damages [in a breach of warranty action] is that amount of money which will render that which is guaranteed to be as warranted.") (cleaned up). Because the court determined that the Homeowners obtained excellent results, we see no error in its decision to award the full fee.

As for the expert fees, Backyard did not challenge the reasonableness of those fees during the hearing. And because the reasonableness of a fee in a given case is a matter of fact, we see no basis on which to find clear error in the to the trial court's finding that the expert fee awarded was reasonable. *See* Md. Rule 2-402(g)(3).

D. The Court Did Not Abuse Its Discretion In Denying Backyard's Motion For Judgment.

Fourth, Backyard Paradise contends the circuit court abused its discretion in denying its motion for judgment at the close of all the evidence. We review the decision for legal correctness and view the evidence in the light most favorable to the non-moving party. *Scapa Dryer Fabrics, Inc. v. Saville*, 418 Md. 496, 503 (2011). We may affirm the

lower court's denial of the motion if there is any evidence, no matter how slight, legally sufficient to generate a jury question. *Washington Metro. Area Transit Auth. v. Reading*, 109 Md. App. 89, 94 (1996). We review a trial court's grant of a motion for judgment under the same analysis used by the trial court. *Moore v. Myers*, 161 Md. App. 349, 362 (2005).

Here, in viewing the evidence in the light most favorable to the Homeowners, we agree that the evidence created jury questions on all counts. Over the four-day trial, the Homeowners presented evidence and testimony, including expert testimony, from which a jury readily could find the pool did not meet the specifications agreed in the contract; that the pool was defective and not usable when Backyard said it was finished; that Backyard made misrepresentations about the pool and the work Backyard had done; and that the Homeowners had to hire another contractor, and incur substantial cost, to bring the pool into the condition the contract required. Those points were all disputed, of course, but there was ample evidence from which a "reasonable fact finder could find the existence of elements of the cause of action by a preponderance of the evidence." *See Univ. of Maryland Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012) (cleaned up).

E. Mr. Revai Is Not Personally Liable For Backyard's Violation Of The CPA.

Finally, Backyard challenges the imposition of personal liability against Mr. Revai under the CPA. Before trial, Backyard moved to dismiss Mr. Revai as a party, and the court denied the motion. They argued that the Homeowners and Mr. Revai were not in contractual privity and that the Homeowners didn't plead sufficient facts to support the

claim that Mr. Revai personally misrepresented facts that caused them injury. At the close of trial, Backyard moved again for judgment on all counts and argued again that Mr. Revai hadn't made any (mis)statements that could give rise to personal liability under the CPA:

> [BACKYARD'S COUNSEL]: Unfair trade practice. I am still -- there is no evidence before the Court of any misstatements by Mr. Revai. In fact, he wasn't there when the contract was signed. All the statements occurred after. So you can't rely on Mr. Revai as part of the contract business -- business relied on Mr. Revai's statements. That didn't happen. The only conversations I understand that were before the Court is that they had conversation about the elevation of the pool, and I believe beginning on August 28th. It's in the log, which is in evidence. So there are no unfair trade practices, and that requires misstatements directly with the consumer. That didn't happen. There is no evidence of any misstatements, I don't believe, to warrant that going to the jury.
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> * * *
>
> Regarding the personal liability of Mr. Revai, Your Honor, again I will incorporate my arguments for the breach of contract and negligence. There is no evidence that the plaintiffs relied on him for anything, or that he made false statements to them.
>
> * * *
>
> So I don't believe any of these charges should go to the jury, and especially any personal liability attaching to Mr. Revai.
>
> * * *
>
> [THE COURT]: With regard to whether Mr. Revai can be held personally liable in this matter, I am going to deny the Motion for Judgment at this stage of the proceedings that Mr. Revai is the properly sued party in this matter to proceed as the president and owner of [Backyard].

Counsel for Backyard later challenged the proposed jury instruction relating to Mr. Revai's personal liability:

> [BACKYARD'S COUNSEL]: Thank you, Your Honor, Regarding instructions to the jury, and I guess the Verdict Sheet, I believe there has to be an instruction. Mr. Revai is still in this case personally, so there would have to be an instruction that to find that to pierce that corporate veil as a corporation that he or, I guess, one of his agents had to be guilty of fraud.
>
> I don't want the jury to come back, just for example, the way it is now, they could find for the plaintiffs, for example, breach of contract, and the way it is now, that would include Mr. Revai. They might exclude and only find as to the corporation. So I think it has to be clear to the jury what has to occur to pierce the corporate veil; and that is, fraud, so forth like that.
>
> I understand the Consumer Protection Act may cover that, but there are multiple things that cover the Consumer Protection Act, one of them being fraud. But again, still they could find against the corporation without finding against Mr. Revai, and I think that has to be included.
>
> * * *
>
> [THE COURT]: Yes. There has to be no separate finding of fraud against Mr. Revai. These counts are simple. None of them are outside of the representations in the Consumer Protection Act requiring any particular finding of fraud. Even with respect to that particular finding, it doesn't have to be broken out separately with respect to Mr. Revai.
>
> * * *
>
> [THE COURT]: I am going to deny that request.

We review the trial court's legal conclusions *de novo*, and hold that the trial court erred in finding Mr. Revai personally liable.

The General Assembly enacted the CPA to provide "strong protective and preventive steps to investigate unlawful consumer practices, to assist the public in obtaining relief from these practices, and to prevent these practices from occurring in Maryland." § 13-102(b)(3). "The gravamen of an 'unfair or deceptive trade practice' under the Consumer Protection Act is whether the false or misleading statements or representations have the capacity, tendency, or effect of deceiving or misleading consumers." *MRA Prop. Mgmt., Inc. v. Armstrong*, 426 Md. 83, 110–11 (2012) (cleaned up). The Court of Appeals has recognized that "in limited circumstances, liability under the Consumer Protection Act may extend to one who is not the direct seller." *MRA Prop. Mgmt., Inc.*, 426 Md. at 109 (quoting *Hoffman v. Stamper*, 385 Md. 1, 32 (2005)); *Morris v. Osmose Wood Preserving*, 340 Md. 519, 541 (1995) ("It is quite possible that a deceptive trade practice committed by someone who is not the seller would so infect the sale or offer for sale to a consumer that the law would deem the practice to have been committed 'in' the sale or offer for sale.") (cleaned up).

The issue here isn't the applicability of the Consumer Protection Act, but the identity of the actor. Liability under the Consumer Protection Act extends to third parties where his actions were so integral that the sale of consumer goods would not have proceeded without their involvement. *See Hoffman*, 385 Md. at 32 (misleading appraisals directly infected the sale of property because the sale would not have proceeding to closing absent the appraisals); *MRA Prop. Mgmt., Inc.*, 426 Md. at 109 (holding a statutory obligation to provide materials to prospective buyers injected MRA and the Association

into the sales transaction as central participants because a failure to provide the materials would have rendered the sale unenforceable). But we don't have a third party here. The Homeowners entered into their contract with Backyard Paradise, not with Mr. Revai personally. Mr. Revai is the owner of Admiral (and thus Backyard), not a third-party sales agent or contractor. He owns and operates that corporation for the purpose of conducting his pool-building business, and the Homeowners interacted with him (and vice versa) in that role. Given the absence of any allegations or evidence that Backyard or Admiral served an alter ego for Mr. Revai personally or that otherwise would support a piercing of Backyard's corporate veil, any actions or statements he and Backyard's other employees took in their corporate roles exposed Backyard to liability under the CPA, not Mr. Revai personally. Accordingly, and although we have affirmed the jury's verdict in all other respects, we decline to enter judgment against Mr. Revai under Maryland Rule 8-602(e)(1)(c), which has the effect of reversing the verdict in that regard.

JUDGMENT ENTERED PURSUANT TO MARYLAND RULE 8-602(E)(1)(C) ON COUNTS I, III, AND IV IN FAVOR OF APPELLEES AND AGAINST ADMIRAL ENTERPRISES, D/B/A BACKYARD PARADISE OF EDGEWOOD, INC. IN THE AMOUNT OF $20,500. JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY OTHERWISE AFFIRMED. COSTS ASSESSED 75% TO APPELLANT, 25% TO APPELLEE.