Circuit Court for Baltimore County
Case No. 03-C-18-000442

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 24

September Term, 2022

CATONSVILLE EYE ASSOCIATES LLC

v.

MAH MOUNTAIN LLC, *et al*.

Wells, C.J.,
Graeff,
Leahy,

JJ.

Opinion by Wells, C.J.

Filed: January 10, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This is the second appeal in this Court stemming from a commercial real estate lease dispute between the appellant, Catonsville Eye Associates LLC ("Catonsville Eye"), and appellees MAH Mountain LLC ("MAH Mountain"), Medhi Kalarestaghi, and Ali Kalarestaghi, in the Circuit Court for Baltimore County. After MAH Mountain successfully sued Catonsville Eye for failure to pay rent in the District Court of Maryland for Baltimore County, Catonsville Eye appealed that decision to the circuit court. In another lawsuit — filed in circuit court — Dr. Erick Gray, a principal of Catonsville Eye, sued Medhi (a.k.a. "K") Kalarestaghi and Ali Kalarestaghi, principals of MAH Mountain. In that lawsuit, Dr. Gray claimed that K and Ali[1] had fraudulently induced Dr. Gray to sign the lease. The circuit court joined that lawsuit with the case appealed from District Court.

After a bench trial, the circuit court issued a declaratory judgment that rewrote the lease to benefit Catonsville Eye. The circuit court also vacated the District Court's judgment and remanded to the District Court for proceedings consistent with the circuit court's opinion.

MAH Mountain appealed from the circuit court's judgment and Catonsville Eye filed a cross-appeal to this Court. On appeal, we concluded that the circuit court erred by

[1] To avoid confusion, we refer to Medhi Kalarestaghi by his nickname, "K," and Ali by his first name. We mean no disrespect. Moreover, as we noted in *Kalarestagi v. Catonsville Eye Associates, LLC*, No. 1861, Sept. Term, 2019, 2021 WL 305752, at *1 (Md. App. Jan. 29, 2021):

> Ali Kalarestaghi testified that his surname is spelled "Kalarestaghi." The briefs and the caption of the appeal as it is now filed with this Court omit the "h." We shall use the appropriate spelling throughout the opinion but omit the "h" in the caption as that is the spelling under which the appeal was filed.

reforming the lease when it issued a declaratory judgment in favor of Catonsville Eye. *Kalarestagi v. Catonsville Eye Associates, LLC*, No. 1861, Sept. Term, 2019, 2021 WL 305752, at *1 (Md. App. Jan. 29, 2021) ("*Catonsville Eye I*"). We also determined that the court erred in dismissing Catonsville Eye's punitive damages claim. We remanded the case for the court to reassess the proof on the fraud count: "On remand, if the court finds by clear and convincing evidence that Catonsville Eye has proven the five elements of fraud, then Catonsville Eye should either: repudiate the lease or ratify it." *Catonsville Eye I*, at *11.

On remand, the circuit court determined that Catonsville Eye had proven all five elements of fraud, but the court denied Catonsville Eye's request for punitive damages. The circuit court entered an $18,000 judgment against MAH Mountain and in favor of Catonsville Eye, representing the security deposit that Catonsville Eye posted to secure the lease. Based on the court's finding that fraud had been proven, Catonsville Eye moved to amend the judgment to enter judgment against the individual defendants: Ali and K. The court denied that motion. Catonsville Eye timely appeals and presents three questions for our review:

1. Did the trial court err when it refused to award Plaintiff its cost of building out the leased premises despite having found by clear and convincing evidence that it was induced to enter into the lease agreement by fraud?

2. Did the trial court err when it ruled that punitive damages were unavailable absent proof of Defendants' ability to pay?

3. Did the trial court err when it declined to enter judgment against Defendants Mehdi Kalarestag[h]i and Ali Kalarestag[h]i where the uncontroverted evidence was that

the fraudulent representations upon which judgment was entered against MAH Mountain were made by the individual defendants?

For the reasons to follow, we shall vacate the circuit court's denial of entry of judgment against the individual defendants, remand the case for further proceedings consistent with this opinion, and otherwise affirm the judgment of the circuit court.

BACKGROUND

Our previous opinion in *Catonsville Eye I* summarized the events leading to the first appeal as follows:

> **A. The Negotiations**
>
> Sometime in November or December 2016, Dr. Erick Gray, a principal of Catonsville Eye Associates, was interested in relocating the business to a location near Maryland Route 40. A new office building being constructed at 6567 Baltimore National Pike in Catonsville offered him that opportunity. Dr. Gray contacted Mehdi Kalarestaghi, an owner of the building. The two set up a meeting to discuss leasing options and were joined by Mr. Kalarestaghi's son, Ali, and Dr. Gray's business partner, Dr. Norman Fine.
>
> Dr. Gray testified that during the meeting he and Dr. Fine expressed interest in relocating to a middle or end space in the Kalarestaghis' building, but Dr. Gray was adamant that he and Dr. Fine could not afford to pay rent at the new address and at their current location, 40 West Rolling Road. The lease at Rolling Road ran through December 2017. Ali Kalarestaghi, an attorney, offered to review the Rolling Road lease. Dr. Gray testified that Ali later said that in his legal opinion, the Rolling Road lease would end in August, not December 2017. Dr. Gray said he relied on Ali's advice and went forward with the negotiations, which, in January 2017, resulted in Dr. Gray receiving a version of the lease which he did not sign.
>
> For various reasons, the negotiations stalled and restarted over several months. Dr. Gray testified that during this time he developed what he thought was a friendship with Medhi Kalarestaghi, who referred to himself simply as "K," and encouraged Dr. Gray to do the same.[1] At one point, when Dr. Fine began to reconsider the move, K offered to become Dr. Gray's

business partner, evenly splitting the profits and in return providing office space rent-free in the new building. That plan fell through, but negotiations continued.

On March 24, 2017, K sent another version of a lease to Dr. Gray, who testified that he looked at it "in general." He noticed that the start date was August, which corresponded to when Ali had said the Rolling Road lease would end. Dr. Gray said he did nothing with this copy of the lease. He did not sign it, show it to an attorney, or review it further.

B. Pivotal Day: April 4, 2017

About four days later, April 4, Dr. Gray said he got a "frantic" call from K. According to Dr. Gray, K said that his bank "required that he show that he got money in from [Dr. Gray] as a tenant and asked [Dr. Gray] to come over with a check for a security deposit and a first month's rent." Dr. Gray did as he was asked and arrived at K's office within hours with a check for $21,500, reflecting four months' rent of $4,500 ($18,000) to act as a security deposit with the balance ($4,500) to be used as the first month's rent. By agreement, $1,000 was deducted as Ali's contribution for reviewing the Rolling Road lease.

Although Dr. Gray had the check, K explained that the bank needed a signed copy of the lease, too. Dr. Gray had not brought the last iteration of the March 24 lease with him. So, K called Ali and asked him to bring a copy of the lease. According to Dr. Gray, within several minutes, Ali arrived with two copies of the lease. Dr. Gray testified that he told the Kalarestaghis that he had not reviewed the lease thoroughly. According to Dr. Gray, K "promised me that he would make any and all changes that I wanted to the lease, that he was not going to cheat me." And Ali said that "he would make any changes his father told him to do." According to Dr. Gray, Ali "shuffled it up this way and got to the signature page like this, folded it like this ... you could only see the signature page." Dr. Gray signed the lease and then K signed it. Dr. Gray left with a copy of the lease.

C. May to August 2017: The Build-Out

Dr. Gray testified that Catonsville Eye began the build-out of the office space starting around May or June, including the construction of a wall separating the optometry business from another tenant, a GEICO office. Dr. Gray said that Catonsville Eye spent about $104,000 for this work which continued throughout the summer. During this same time frame, May to

August 2017, Dr. Gray said he was receiving rent invoices from MAH Mountain, LLC, the Kalarestaghis' company. The rent notices included a fee to maintain common areas (CAM) of the building. Jerrold Samuel, MAH's account manager, confirmed that he sent the rent notices, including the increasing CAM fees through part of 2017. On cross-examination, Samuel also admitted that he had not given Catonsville Eye credit for a month's rent, and so, the rent payment schedule started with May 2017.

As a result of the rent notices he kept receiving, Dr. Gray testified that sometime in August he called K to ask what was going on. Dr. Gray explained that he thought, based on prior negotiations, that his rent payments did not begin until November 2017. He told K he did not understand why he had been getting rent notices when Catonsville Eye had not yet moved and, based on prior discussions, he thought he was to get free rent during the build-out period. According to Dr. Gray, K told him, "Don't worry about it." . . .

Later, Dr. Gray received an invoice for the September rent. He admitted he did not pay it, because he thought he was still within the months for "the build-out allowance." But the September rent notice prompted Dr. Gray to call K again. Feeling that their discussions were, as Dr. Gray put it, "unsettled," he and K spoke about the situation and, according to Dr. Gray, the two agreed that Catonsville Eye would begin paying rent in November.

D. September 2017: An Attorney Reviews the Lease

While Dr. Gray gave no additional details about the September conversation with K, his testimony revealed that after that telephone call he took a copy of the lease to an attorney. From the attorney's review of the lease, Dr. Gray learned that the lease he had signed obligated Catonsville Eye to pay rent beginning in May 2017, obligated Catonsville Eye to pay for the installation of a bathroom without a reimbursement credit, and Catonsville Eye would not get a credit for Ali's legal services up to $5,000, as Dr. Gray thought.

Upon his attorney's advice, Dr. Gray sent the November rent check with what Dr. Gray called "a restrictive endorsement"[] and a proposed amendment to the lease. Although it was unclear what the amendment said, Dr. Gray's testimony suggested it included the three points previously mentioned that were missing from the signed lease.

E. December 2017: MAH Sues Catonsville Eye for Unpaid Rent

Upon receipt of the November rent check, K texted Dr. Gray the following:

> Dr Gray[,] we finally found the envelope and the check from your attorney[.] Here is the problem[.] I said to you it is ok for you to pay rent as of November and we both agree[d] that way the problem [was] solved and now the rent [will] be on time[.] But now your attorney wants to modify the lease[.] My son and the law firm that I deal with [are] saying absolutely not[.] [S]o we are back to square one.
>
> I really don't understand all of this. I let go almost $30,000 to make you happy and you are fitting (sic) me for nickels just b[e]c[ause] [n]ow your attorney wants to start the lease as of November[.] So it[']s up to you[.] I am really getting tired of this[.] I have done my best for you but it seems like it isn't good enough[.] You want to save penn[ies] with me but w[i]lling to pay you[r] attorney $$$$[.][]

On December 6, 2017, MAH sued Catonsville Eye in the District Court of Maryland for unpaid rent from June through December 2017 at a monthly rental rate of $4,764.68, plus late charges, for a total of $34,782.16. After a hearing, in which Dr. Gray and the Kalarestaghis testified, the District Court found in MAH's favor and granted a judgment in the amount MAH demanded.

D. Proceedings in the Circuit Court

1**.** Catonsville Eye's Lawsuit

Dr. Gray and Catonsville Eye appealed the District Court's decision to the Circuit Court for Baltimore County. In addition, they filed a four-count lawsuit against MAH. Count I alleged that Dr. Gray had been induced to sign the lease by fraud. Count II alleged that Ali had committed legal malpractice for, essentially guaranteeing, in Dr. Gray's opinion, that Catonsville Eye could get out of the Rolling Road lease in August 2017, several months before the stated December 31, 2017 termination date. Count III alleged that MAH breached the lease by not giving Dr. Gray an accounting for the CAM charges, as requested. And, Count IV requested a declaratory judgment with four specific declarations: (1) that the lease start on November 1, 2017; (2) that Catonsville Eye receive a credit of $9,000 for the

construction of a bathroom ($5,000) and the demising wall ($4,000); (3) that Catonsville Eye receive a credit for CAM fees charged before it took possession of the leased space; and (4) that Catonsville Eye could terminate the lease based on MAH's breach of Section 7 of the lease by not giving Catonsville Eye an accounting of the CAM fees.

The circuit court joined the two actions and set the matters for trial on August 14 and 15, 2019. The trial testimony unfolded as has been described. Notably, K did not testify. At the end of Catonsville Eye's case-in-chief, the court dismissed Count III, largely without objection, finding that they had not proven that MAH refused to give an accounting of the CAM fees. The court found that the evidence was that Dr. Gray paid the CAM fees and those costs were explained to him. After counsels' closing arguments, the court took the matter under advisement.

2. The Circuit Court's Ruling

On September 20, 2019, the circuit court issued its written factual findings and order. The circuit court first dealt with the District Court judgment. As that appeal was "on the record," the circuit court reviewed the record of the proceedings below and concluded that the District Court should have considered the terms of the lease when it calculated the back rent, which it did not do. The circuit court vacated the District Court's judgment and remanded for that court to consider the lease in light of the circuit court's ruling on Catonsville Eye's lawsuit.

As for that lawsuit, with regard to Count I, alleging fraud, the court found that the Kalarestaghis did not tell Dr. Gray that the lease he signed was not the last version he had received on March 24, that the [Kalarestaghis] knew that this was the case, but persuaded Dr. Gray to sign the lease with promises that any "problems" he had with the lease would be remedied. The court believed that Dr. Gray justifiably relied on those promises and signed the lease. But the court found that Dr. Gray had not proven damages, based solely on the declaratory judgment the court issued. As will be noted, the court changed the lease's starting date from May to November 2017. Thus, in the court's view, Catonsville Eye's obligation to pay the May through September rent was now erased, so, in the court's opinion, Catonsville Eye had no damages.

Regarding Count II, Ali's alleged legal malpractice, the court determined that Catonsville Eye failed to prove damages associated with

> Ali's representation. Thus, the court ruled that Count II failed for lack of proof.
>
> Finally, the court issued Catonsville Eye a declaratory judgment, finding that the Kalarestaghis fraudulently induced Dr. Gray to sign the lease. The court then rewrote the lease by, essentially, changing it to the March 24 version that Dr. Gray said he thought he was signing. As noted, the most significant change was that the court changed the starting date of the lease from May to November 2017. The court also gave Catonsville Eye a $4,000 rent credit.[] The court denied joint requests for counsel fees.

Catonsville Eye I, at *2-5 (footnotes omitted).

On the previous appeal in this Court, we concluded that the circuit court erred in reforming the lease: "Despite finding that the lease was induced by fraud, the court was unable to exercise its equitable powers to rewrite the lease absent a demand for such relief." *Id*. at *1.[2] As a result, we vacated the declaratory judgment and the $4,000 rent credit to Catonsville Eye. *Id*. at *2. We remanded the case to the circuit court "so that the court may reassess the proof presented **only** on the fraud count[.]" *Id*.

After a hearing on remand, the circuit court issued a written opinion. The court determined that Catonsville Eye had proven all five elements of fraud and granted a judgment for Catonsville Eye in the amount of $18,000 (representing the full cost of the security deposit) against MAH Mountain. The court denied Catonsville Eye's request to impose punitive damages. Catonsville Eye moved to amend the judgment to enter judgment against the individual defendants: Ali and K. The court denied that motion.

We shall supply additional facts, as may be relevant, in our analysis.

[2] In addition, we held that the court properly found that Ali had not committed legal malpractice. *Catonsville Eye I*, at *1.

STANDARD OF REVIEW

Maryland Rule 8-131(c) provides as follows:

> 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 the witnesses.

When "an order involves an interpretation and application of Maryland constitutional, statutory or case law, [we] must determine whether the trial court's conclusions are 'legally correct' under a *de novo* standard of review." *Schisler v. State*, 394 Md. 519, 535 (2006) (citations omitted).

DISCUSSION

I.

The Court's Damages Award

Catonsville Eye contends that the circuit court erred in failing to award Catonsville Eye damages for the improvements that it made to the premises. In our previous opinion, we provided the following guidance for the proceedings on remand:

> We remand to the circuit court to determine whether the lease was induced by fraud. On remand, if the court finds by clear and convincing evidence that Catonsville Eye has proven the five elements of fraud, then Catonsville Eye should either: repudiate the lease or ratify it. In the case of repudiation, Catonsville Eye may seek damages to restore it to its position before signing the lease. In the case of ratification, they may pursue damages they claim were inflicted as a result of the fraud.

Catonsville Eye I, at *11.

On remand, Catonsville Eye elected to repudiate the lease. At the remand hearing in October 2021, Catonsville Eye's counsel referred to the evidence produced at trial reflecting the expenses that Catonsville Eye had incurred in building out the premises for use as an optometry office. Catonsville Eye's counsel stated "[w]e reject the lease and are seeking damages" for the buildout costs — totaling $132,892.85 — and for the $18,000 security deposit. In its written opinion following the remand hearing, the court declined to award Catonsville Eye's buildout costs:

> Catonsville Eye argues it has damages of $132,892.85 representing the costs of improvements to the leasehold premises, as well as a security deposit of $18,000.00 pursuant to the lease and rent paid in accordance with the District Court judgment for $34,782.17.
>
> The Court of Special Appeals stated "in the case of repudiation, Catonsville Eye may seek damages to restore it to its position before signing the lease." [*Catonsville Eye I*, at *11]
>
> Under any set of circumstances, the fraud found herein (the misrepresentation as to the lease by MAH) occurred and was discovered by Plaintiffs in 2017. Catonsville Eye has been a tenant in the building since then, and at the time of the most recent hearing four years later, was still a rent paying tenant of MAH.
>
> * * *
>
> By repudiating the lease, the Court must "restore" Catonsville Eye as to its position as if it did not sign the lease. This court will not award damages for the build out costs of $132,892.35. Catonsville Eye has used the premises for almost four years. It could not have used the premises without the build out. There is no way to apportion these costs. Catonsville Eye believed it was signing a least that would provide for an initial five-year term. At this point, it has almost made it to the end of that term.
>
> The security deposit of $18,000.00 would not have been paid if the lease was not signed. This is a proper amount of damages and will be

> awarded. While security deposits are common, they are not required, and this would not have been paid absent the lease.

The circuit court's opinion confirmed that the District Court judgment had been vacated and the money paid to secure that judgment had been returned to Catonsville Eye:

> The District Court judgment of $34,782.17 will not be awarded as damages. As a direct result of this Court's opinion of September 20, 2019, the District Court judgment was vacated, and all sums paid to secure that judgment have been returned to [Catonsville Eye]. [Catonsville Eye], as of now, has no damages in that regard.

On this second appeal in this Court, Catonsville Eye acknowledges: "No Maryland case has held that, in the case of recission as a result of fraud, the defrauded party must give a credit back to the defrauding party for the time in which it had the use of the premises as a result of the expense of improving the property." As a result, Catonsville Eye attempts to rely on cases from other jurisdictions to support its position.

Catonsville Eye's reliance on *Flagship W. LLC v. Excel Realty Partners LP*, 534 Fed. App'x. 659 (9th Cir. 2013), is unavailing. In *Flagship W. LLC*, the United States Court of Appeals for the Ninth Circuit upheld an award to a commercial tenant of its improvement costs (without an offset) when the tenant rescinded the lease because of the landlord's breach. *Id*. at 662. The Ninth Circuit noted that its review was limited to whether the trial court "'acted reasonably and equitably'" when awarding damages in the rescission context. 534 Fed. App'x at 662 (quoting *Runyan v. Pac. Air Indus., Inc.*, 466 P.2d 682, 692 (1970)) (citing Cal. Civ. Code § 1692). In like manner, we hold here that the amount of circuit court's damages award to Catonsville Eye was reasonable and equitable under Maryland law. The court properly considered the circumstances

surrounding Catonsville Eye's use of the premises leading up to Catonsville Eye's election to repudiate the lease after about four years of occupancy.

We are similarly unpersuaded by Catonsville Eye's reliance on *Utemark v. Samuel*, 118 Cal.App.2d 313 (1953). *Utemark* held that when a land buyer makes improvements on the land and the seller refuses to convey, upon rescission, the buyer may recover "the cost of permanent improvements which he has placed upon the land in good faith." 118 Cal.App.2d at 316. Unlike the seller's refusal to convey a deed to the buyer in *Utemark*, Catonsville Eye occupied the premises as a commercial tenant for about four years. Moreover, at the remand hearing, Catonsville Eye's counsel, in essence, conceded that buildout costs would have been incurred regardless of the fraudulent inducement:

> THE COURT: If [your client] had signed the old contract, the one he thought he was signing, he would have had some build out to do, would he not?
>
> [CATONSVILLE EYE'S COUNSEL]: Sure.
>
> THE COURT: Okay and I'm assuming it's the same build out, and he's, and beyond that, he's been there using it for four years, plus or minus.
>
> [CATONSVILLE EYE'S COUNSEL]: True.
>
> THE COURT: So, in your proposal for damages, you suggest a dollar-for-dollar refund, basically.
>
> [CATONSVILLE EYE'S COUNSEL]: Correct.

Catonsville Eye thus conceded that it would have incurred the buildout costs regardless of the fraudulent inducement and it occupied the premises for about four years of an initial five-year lease term.

Catonsville Eye also cites *Chesney v. Stevens*, 435 Pa. Super. 71 (1994). In *Chesney*, the Superior Court of Pennsylvania upheld an unjust enrichment award to residential tenants who made substantial improvements to a property when the landlord allegedly promised them "that they could live on the leased premises for as long as they continued to pay rent." *Id*. at 79. [3]More to the point, the Superior Court of Pennsylvania in *Chesney* held as follows: "we conclude that appellees-tenants made substantial and obvious improvements with a reasonable and good faith expectation of long-term occupancy; and that appellant-landlord had knowledge of these improvements, and *consented to them by his passive receipt of the benefit conferred upon him*[.]" *Id*. (Emphasis added.) In contrast, Catonsville Eye's counsel conceded at the remand hearing that the buildout was Catonsville Eye's contemplated obligation under the lease:

> THE COURT: Back to you, [counsel]. The build out is not contemplated within the lease, is that fair to say?
>
> [CATONSVILLE EYE'S COUNSEL]: Well, it was contemplated.
>
> THE COURT: Okay.
>
> [CATONSVILLE EYE'S COUNSEL]: It was the tenant's obligation.

Unlike the landlord in *Chesney* who passively received the benefit conferred by the tenants' improvements, Catonsville Eye was responsible for the buildout costs under a contemplated term of the lease.

[3] On page 28 of its brief, MAH Mountain erroneously attempts to distinguish *Chesney* by arguing that *Chesney* involved a breach of the implied warranty of habitability. That is incorrect. The appellate court in *Chesney* expressly stated that case did not involve the implied warranty of habitability, but, instead, unjust enrichment. *Chesney*, 435 Pa. Super. at 76.

Catonsville Eye contends that the court should have apportioned the buildout costs in accordance with the percentage of the lease term, including the periods contemplated by its option to renew. According to Catonsville Eye, that apportionment would result in the following:

$$\frac{15\ years\ remaining}{20\ year\ term} * \$132{,}000 = \$99{,}000$$

This formula-based argument misses the mark because Catonsville Eye concedes that it retained the option to renew the lease for three additional five-year terms. Instead, it chose to repudiate the lease — as it was entitled to do, pursuant to our previous opinion — after about four years of occupancy. Repudiation of the lease, however, does not entitle Catonsville Eye to a windfall in the form of its buildout costs. *Cf*. *Chesney*, 435 Pa. Super. at 79 (awarding tenants, who had a good-faith expectation of long-term occupancy, the costs of their improvements to the property after the landlord gave them fifteen days' notice to vacate).

For all these reasons, the court did not err in declining to include Catonsville Eye's buildout costs as damages.

II.

The Court's Refusal to Award Punitive Damages

Next, Catonsville Eye argues that the court erred in failing to award punitive damages. According to Catonsville Eye, "[t]he trial court made no attempt to determine whether . . . Defendants' conduct amounted to knowing and deliberate wrongdoing." The

appellees argue that Catonsville Eye failed to prove actual malice and that, at any rate, the trial court properly exercised its discretion in denying Catonsville Eye's request for punitive damages.

In *Catonsville Eye I*, we stated as follows: "if Catonsville Eye proves all of the elements of fraud, the trier of fact may consider whether punitive damages are appropriate upon clear and convincing evidence that MAH also acted with 'actual malice.'" *Catonsville Eye I*, at *11 (quoting *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 460 (1992)). Following the remand hearing, the circuit court issued its written opinion and denied Catonsville Eye's request for punitive damages:

> The Lease that Plaintiffs are now repudiating is dated April 4, 2017. Catonsville Eye moved into the premises in January of 2018. By then Catonsville Eye was aware that the Lease signed on April 4, 2016 was different than the Lease provided previously in March of 2016. Catonsville Eye chose to move in and conduct business at that location.
>
> "The trier of fact has discretion to deny punitive damages even where the record otherwise would support their award." Adams v. Coates, 331[] Md. 1, 15 (1993). This Court will not award punitive damages in this case. Catonsville Eye could have repudiated the contract upon the finding of the changed terms. It chose not to. This Court does not believe that an award would deter the Defendant and others from such conduct. Four years of litigation and attorney fees should have accomplished that task.

"[T]he defendant's actual knowledge of falsity, coupled with his intent to deceive the plaintiff by means of the false statement, constitutes the actual malice required to support an award of punitive damages." *Ellerin v. Fairfax Sav., F.S.B.*, 337 Md. 216, 234 (1995). However, as the circuit court correctly noted, "the trier of fact has discretion to deny punitive damages even where the record otherwise would support their award."

Adams, 331 Md. at 15. *See also* MPJI-Cv 10:14 (instructing as follows: "If you find for the plaintiff and award damages to compensate for the injuries or losses suffered, *you may* go on to consider whether to make an award for punitive damages."). (Emphasis added).

The purpose of punitive damages is not to recompense the victim, but rather "'to punish the wrongdoer and to deter such conduct by the wrongdoer or others in the future.'" *Shabazz v. Bob Evans Farms, Inc.*, 163 Md. App. 602, 638-39 (2005) (quoting *Caldor, Inc. v. Bowden*, 330 Md. 632, 661 (1993)). Here, the court examined the facts of this case, applied the law governing punitive damages, and explained that a punitive damages award would not serve as an effective deterrent under these circumstances. The court's conclusion properly "rest[ed] on the facts of this case measured against the law of punitive damages." *Frazier v. Castle Ford, Ltd.*, 430 Md. 144, 163 (2013). We find no error in the court's decision to deny Catonsville Eye's request for punitive damages.

III.

The Court's Decision to Deny Entry of Judgment Against the Individual Defendants

Lastly, Catonsville Eye argues that the trial court erred in failing to enter judgment against the individual defendants: Ali and K. In our previous opinion, we instructed the circuit court on remand to reassess the proof presented on the fraud count (which was brought against all three defendants). On remand, the court found all five elements of fraud were present and entered judgment against MAH Mountain. Catonsville Eye then moved to amend the judgment to enter judgments on the fraud count against the individual defendants as well. In that motion, Catonsville Eye argued, in part, as follows:

> MAH Mountain LLC is a fictitious entity that can only act through human beings. Those human beings, both of whom were direct participants in the fraud, were Medhi Kalarestaghi and Ali Kalarestaghi. Plaintiff's fraud count was brought against all three defendants, and judgment should be entered against all three.

Without explanation, the court denied Catonsville Eye's motion:

> UPON CONSIDERATION of Plaintiff's Motion to Modify or Amend Judgment, the opposition thereto and Plaintiff's reply, it is on this 2 day of March, 2022, by the Circuit Court for Baltimore County,
>
> ORDERED, that Plaintiff's Motion to Modify or Amend Judgment be and is hereby DENIED.

For liability purposes, an LLC is treated like a corporation. *Allen v. Dackman*, 413 Md. 132, 153 (2010). Under Md. Code, Corporations & Associations § 4A–301, a member of an LLC is not "personally liable for the obligations of the limited liability company, whether arising in contract, tort or otherwise, solely by reason of being a member of the limited liability company." Only when necessary "'to prevent fraud or enforce a paramount equity'" could an exception be made to this essential feature of business organization. *Colandrea v. Colandrea*, 42 Md. App. 421, 428 (1979) (quoting *Bart Arconti & Sons, Inc. v. Ames-Ennis, Inc.*, 275 Md. 295, 311-12 (1975)). Moreover, the LLC's veil of liability protection will be pierced when the LLC "'is used *as a mere shield for the perpetration of a fraud*[.]'" *Qun Lin v. Cruz*, 247 Md. App. 606, 640 (2020) (quoting *Hildreth v. Tidewater Equip. Co., Inc.*, 378 Md. 724, 734 (2003)). *Compare Colandrea*, 42 Md. App. at 428 (reversing the trial court, disregarding the corporate entity, and imposing liability on an individual defendant, whose "dealings, through the corporation, with [the plaintiff], [could] be termed nothing short of fraudulent") *with Serio v. Baystate*

Properties, LLC, 209 Md. App. 545, 566 (2013) (recognizing that "the corporate veil will not be pierced to redress the breach of a contractual obligation in the absence of fraud").

As a threshold issue, the appellees argue that Catonsville Eye did not timely object to the circuit court's failure to enter judgment against the individual defendants after the circuit court's judgment following the trial. At that time, however, the court erroneously issued a declaratory judgment that rewrote the lease, and that error resulted in a lack of a monetary judgment. Then, on remand after the first appeal in this Court, the circuit court issued a monetary judgment for damages sustained by Catonsville Eye, and Catonsville Eye is now seeking to collect that judgment. About four days after the circuit court's decision on remand, Catonsville Eye moved to alter or amend the judgment, seeking to hold the individual defendants personally liable for the monetary judgment. Catonsville Eye thus timely objected to the circuit court's failure to enter the monetary judgment against the individual defendants.

We now turn to the merits of Catonsville Eye's argument on this issue. The circuit court found, in essence, that MAH Mountain's liability was based on the fraudulent actions of its members: K and Ali. Nonetheless, without explanation, the court denied Catonsville Eye's request to enter judgment against K and Ali as individual defendants. Under these circumstances, the court erred in failing to explain its rationale for that decision. Further findings need to be made by the circuit court with respect to the Kalarestaghis' personal liability exposure for the fraud committed. Accordingly, we vacate the judgment of the circuit court as to the denial of entry of judgment against the individual defendants and

remand for the circuit court to either make the necessary factual determinations regarding the individual defendants' liability or determine whether the judgment has been satisfied, thus rendering the issue moot.

Lastly, we note that appellees argue that this appeal is moot because the judgment represents Catonsville Eye's security deposit, the five-year lease has expired, and Catonsville Eye "is entitled to its deposit." Notably, however, the appellees do not proffer that MAH Mountain has satisfied the judgment. Thus, we deny the appellees' mootness argument at this juncture.[4]

[4] In the appellees' brief filed in this Court, they ask us to reverse the judgment of the circuit court and award them attorney's fees and expenses. Their brief states as follows:

> As Catonsville Eye has no damages, and as its repudiation was not timely elected, this Court should find that the April 4 Lease is valid and enforceable, reverse the judgment of the Circuit Court for Baltimore County, enter judgment in favor in the Appellees on all claims, and remand this case to the Circuit Court for Baltimore County only for it to assess and award Appellant MAH Mountain, LLC, attorney's fees and expenses pursuant to the terms of the April 4 Lease Catonsville Eye executed on April 4, 2017.

"[O]ne who seeks to attack, modify, reverse, or amend a judgment (as opposed to seeking to affirm it on a ground different from that relied on by the trial court) is required to appeal or cross appeal from that judgment." *MAS Associates, LLC v. Korotki*, 475 Md. 325, 358 (2021) (quoting *Paolino v. McCormick & Co.*, 314 Md. 575, 579, 552 A.2d 868, 870 (1989)). The appellees seek to attack and reverse the circuit court's judgment in favor of Catonsville Eye following the remand. The appellees, however, neither appealed nor cross-appealed from the circuit court's judgment following the remand. As a result, the appellees' arguments for reversal, attorney's fees, and expenses are not properly before this Court.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED IN PART AND VACATED IN PART.

THE JUDGMENT IS VACATED AS TO THE CIRCUIT COURT'S DENIAL OF ENTRY OF JUDGMENT AGAINST THE INDIVIDUAL DEFENDANTS. THE JUDGMENT IS OTHERWISE AFFIRMED. THE CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. THE COSTS ARE TO BE PAID TWO-THIRDS BY APPELLANT AND ONE-THIRD BY APPELLEES.