Circuit Court for Baltimore County
Case No. 03-C-19-444

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1630

September Term, 2021

DAVID FURRER

v.

SIEGEL & ROUHANA, LLC, et al.

Wells, C.J.
Graeff,
Meredith, Timothy
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wells, C.J.

File: October 17, 2022

In these cross-appeals, we address questions arising under Md. Code (1974, 2014 Repl. Vol., 2021 Cum. Supp.), § 4A-606.1(b) of the Corporations & Associations Article ("CA"), concerning post-withdrawal compensation for the unredeemed economic interest of a former member of a limited liability company whose license to practice law has been indefinitely suspended. On January 9, 2017, attorney David Furrer, appellant and cross-appellee, withdrew from Siegel, Tully, Furrer, Rouhana & Tully, LLC. After the partners discovered that Furrer mishandled cases and clients, a dispute arose over the fair value of Furrer's economic interest in the limited liability company.

In the Circuit Court for Baltimore County, Furrer sued both the law firm, which had reorganized without dissolution as Siegel, Tully, Rouhana & Tully, LLC (collectively, the "LLC"), and its four remaining members (the "LLC Members"),[1] appellees, seeking compensation for his 26.5% interest in the LLC and an accounting. The LLC and LLC Members counterclaimed for breach of fiduciary duty, alleging damages caused by Furrer's mishandling of clients and cases.

Before trial, the circuit court granted judgment on the claims made by and against the individual LLC Members, dismissing them from Furrer's complaint and from the LLC's counterclaim. At the conclusion of a two-day bench trial, the trial court entered a

[1] The individual defendants, now appellees, are I. Steven Seigel, Stephen R. Tully, Paul N. Rouhana, and Robert J. Tully (the "LLC Members"). During this litigation, the LLC again reorganized, as Siegel & Rouhana, LLC, when Messrs. Tully withdrew and started their own firm. The case caption reflects the current name of the LLC.

judgment of $84,692.41 on Furrer's complaint and a judgment of $144,317.25 on the LLC's counterclaim. The court denied Furrer's request for an accounting.

Furrer and the LLC timely noted these cross-appeals. In his appeal, Furrer presents four questions.[2] In its cross-appeal, the LLC presents two.[3] We restate and consolidate these issues as they relate to the respective judgments, as follows:

1. Did the circuit court err in entering judgment in favor of the LLC Members on Furrer's complaint?

2. Did the trial court err in awarding Furrer $84,692.41 on his complaint, as compensation for his unredeemed economic interest, under CA § 4A-606.1(b)?

3. Did the trial court err or abuse its discretion in awarding the LLC $144,317.25 on its counterclaim for breach of fiduciary duty?

[2] Furrer's brief presents the following questions:

1. Did the lower Court err in its calculation of the award to Mr. Furrer?

2. Did the lower Court err in declaring that Mr. Furrer's economic interest in the LLC terminates upon the LLC paying Mr. Furrer $84,692.41?

3. Did the lower Court err in dismissing the individual Defendants?

4. Did the lower Court err in awarding damages to the law firm?

[3] In their brief, the LLC and LLC Members raise these questions:

1. Did the circuit court err in granting judgment in favor of Mr. Furrer on his declaratory judgment claim, where Mr. Furrer failed to meet his burden to establish fair value under Section 4A-606.1[?]

2. Did the circuit court err in calculating Mr. Furrer's economic interest, based upon the incorrect premise that Mr. Furrer's interest continued beyond his withdrawal from membership in the LLC?

We affirm the judgments in favor of the LLC Members on Furrer's complaint and the judgment in favor of the LLC on its counterclaim. On Furrer's complaint against the LLC, however, we conclude that the trial court erred in determining the value of Furrer's unredeemed economic interest. Based on its erroneous interpretation of the applicable statutory framework in the LLC Act, CA § 4A-11 *et seq*., the court awarded Furrer his pro rata share of the LLC's profits and distributions for the year after his withdrawal as a member that he was still licensed to practice law. Consequently, we shall vacate the judgment on Furrer's complaint and remand for reconsideration based on the existing trial record and this opinion.

BACKGROUND[4]

Furrer's Withdrawal and Suspension

Before withdrawing, Furrer was one of five attorneys who were members of the LLC. Furrer held a 26.5% interest.

The LLC did not have a written or oral operating agreement. It was undisputed that members, who each received $10,000 per month in "guaranteed payments," agreed that fees earned for legal services would be aggregated without regard to the amount of income generated by individual members, then distributed as quarterly profits according to each member's percentage interest in the LLC.

[4] We note that although Furrer contends that "[t]he operative facts are not in dispute[,]" he fails to include a single record citation to support his statement of facts, in violation of Md. Rule 8-504(a)(4) (requiring appellate brief to include "[a] clear concise statement of the facts material to a determination of the questions presented" and that "[r]eference shall be made to the pages of the record extract or appendix supporting the assertions.")

On January 9, 2017, after the LLC Members inquired about a $3,000 personal check that Furrer wrote to a client from his personal bank account, he withdrew as a member of the LLC. Initially, Furrer claimed that he had settled the case and was merely fronting the funds to the client until the settlement check arrived. But an adjuster eventually discovered that there was no known settlement in that case, and that the last activity had been noted in 2010.

When confronted with this information, Furrer admitted that he "self-settled" the case by using his own funds, because he was concerned the client would file a complaint alleging "delay in getting [the claim] resolved." Following the advice of malpractice counsel that Furrer had perpetrated "fraud . . . on the client[,]" the LLC Members asked Furrer to leave, and he withdrew from the LLC.

Furrer self-reported this matter to Bar Counsel. The LLC submitted its own statement regarding the matter. On January 18, 2018, the Court of Appeals entered a consent order indefinitely suspending Furrer from the practice of law.

The four remaining LLC Members did not dissolve the LLC. Instead, they continued to operate under a shortened name reflecting Furrer's withdrawal.

Meanwhile, they developed concerns about other cases handled by Furrer. According to LLC Members, they discovered a pattern of "repeated and sustained lack of professionalism, neglect, and almost total reliance o[n] paralegal[s] directing and controlling the direction of his caseload." In one case, their malpractice insurer settled a claim for $595,000, as detailed below. Eventually, Furrer admitted he engaged in conduct

"involving dishonesty, fraud, deceit, or misrepresentation," constituting "conduct prejudicial to the administration of justice."

Notably, following Furrer's withdrawal, the LLC did not purchase Furrer's interest. The LLC made distributions to the LLC Members for 2017, 2018, and 2019, without making any distributions to Furrer. In 2019, the LLC again was reorganized and renamed, as Siegel & Rouhana, LLC.

This Litigation

In January 2019, two years after his withdrawal, Furrer filed this action seeking compensation for his interest in the LLC. Citing CA § 4A-606.1(a), Furrer alleged that the "fair value" of his 26.5% interest was that percentage of the total value of the LLC's "current assets" on his "Withdrawal Date," "including cash, accounts receivable, fixtures, etc.[,]" minus its "current liabilities as of the Withdrawal Date[,]" with no discounts for "holding a minority interest" or "lack of marketability." *Cf. East Park Ltd. P'ship v. Larkin*, 167 Md. App. 599, 621 (2006) (construing "fair value" in context of limited partnerships).

Furrer expressly acknowledged that under CA § 4A-606.1(b), the LLC's decision not to liquidate his interest by paying its fair value after he had withdrawn from the LLC, and continuing to practice law without dissolution, would make him the assignee of that unredeemed economic interest. Nevertheless, he alleged that provision was "inapplicable here because" he was "no longer licensed to practice law[,]" and under Md. Rule 19-305.4(a) implementing Maryland Lawyers' Rules of Professional Conduct 5.4(a), "[a]n attorney or law firm shall not share legal fees with a non-attorney." Furrer posited that if he became "an assignee of the unredeemed economic interest in the LLC as of the

Withdrawal Date, the LLC, and all of the [LLC Members] would . . . be in violation of" that rule.

Furrer pleaded three separate counts. He requested "a declaratory judgment as to the fair value of his interest in the LLC as of the Withdrawal Date" (Count I); alternatively, "a declaratory judgment directing that the LLC be dissolved" (Count II); and a request for "an accounting to Furrer with respect to all of the information necessary to compute the fair value of [his]interest in the LLC as of the Withdrawal Date" (Count III).

In their answer, the LLC and LLC Members, invoking CA § 4A-606.1(b), stated that "the LLC has elected (with little or no alternative to do otherwise) since January 9, 2017 not to completely liquidate [Furrer's] interest, but rather to consider [Furrer] . . . as an interest holder in the LLC in the statutorily-permissible alternative capacity of his unredeemed (and to be determined when practicable by the parties) economic interest."

The LLC also filed a counterclaim, seeking both out-of-pocket expenses for the "$10,000 deductible paid to" its malpractice insurer, and any "[i]ncrease . . . in professional liability insurance premiums due to the cost to carrier of defending negligence claims pending" as a result of Furrer's "concealed failure" to "represent the LLC's clients with honest efforts and with the utmost ethical conduct." In addition, the LLC sought compensation for "[l]oss of contingency fees" on "cases handled by" Furrer that "were not properly handled" and "not completed" by him.

Before trial, Furrer moved for summary judgment, arguing, among other things, that the LLC Members lacked standing as individuals to assert counterclaims which alleged that "Furrer owed certain duties to the LLC and . . . breached those duties." At the hearing

on that motion, counsel for the LLC and LLC Members agreed that under CA § 4A-302, restricting personal liability of the individual LLC Members, they should not have been named as counter-plaintiffs.

Citing the same statute, counsel for the LLC Members then orally moved for judgment dismissing them as defendants in the complaint. Furrer opposed dismissal of these individual defendants, arguing that the LLC's post-withdrawal distributions to them may have been "fraudulent conveyance[s]" so that they should be "personally liable" and deemed to hold Furrer's unpaid share as "trustees." Granting the LLC Members' motion over Furrer's objection, the court entered summary judgments dismissing the LLC Members as individual defendants in the complaint and as individual counter-plaintiffs in the counterclaim.

Trial

A two-day bench trial focused on the disputes over Furrer's compensation claim under CA § 4A-606.1 and the LLC's offsetting counterclaim for Furrer's breach of fiduciary duties. At the outset, Furrer voluntarily dismissed his Count II claim seeking dissolution, leaving his claims for fair value and an accounting. The court heard testimony and reviewed related documents, from Furrer and the remaining four members of the LLC, as well as the LLC's valuation expert.

Furrer, who did not present expert testimony or evidence, calculated the fair value of his interest based on documents the LLC provided in discovery, showing income, debts, accounts, payments, and distributions made in 2016, 2017, 2018, and 2019. Instead of valuing his economic interest as of January 9, 2017, the date he withdrew, he claimed he

was entitled to a continuing, post-withdrawal share of profits and distributions from the LLC, according to his percentage interest, based on "the cases that were opened at the beginning of '17" when he withdrew. When he withdrew in January 2017, Furrer estimated, he "probably had about 250 open Social Security cases and approximately . . . 150 open PI cases in Baltimore and another 74 in Cumberland[,]" as well as some West Virginia cases that were not "handled out of [the] Cumberland office[.]"

For 2017, he claimed, through counsel, that his 26.5% interest should apply to "all" of the distributions, totaling $211,892.44. For 2018, he claimed "two-thirds of them were opened at the beginning of '17[,]" so his share would be $130,509.32. For 2019, he claimed "one-third" of the cases were opened when he withdrew, for a pro rata share of $56,749.32.

The LLC countered with expert testimony and a report from Bruce O'Heir, a CPA accredited in business valuation. He calculated Furrer's interest in the LLC "as of December 31, 2016," using different valuation methods. In O'Heir's income-based valuation of the business, he considered the LLC's historical profits and compensation structure, which featured a combination of monthly guaranteed payments to each member, with year-end distributions of remaining profits. Under this valuation, O'Heir's expert opinion was that Furrer's 26.5% interest on his withdrawal date had a "fair market value" of $29,150.

O'Heir alternatively calculated the indicated value of the business under the capitalization of earnings method. He concluded that once bank debt of $154,181 was subtracted from the LLC's income, the rounded equity value was $110,000.

On its counterclaim for breach of fiduciary duties, the LLC presented evidence of damages caused by Furrer's mishandling of the LLC's clients and cases. Relevant to this appeal, the court considered evidence regarding Furrer's representation of Kenneth Bing, a West Virginia resident who retained Furrer in 2008 for a personal injury claim arising from a workplace incident that resulted in amputation of a portion of his hand, including his thumb. After filing Bing's claim in West Virginia, where Furrer was admitted to practice, Furrer failed to conduct timely discovery, despite multiple motions to compel and for sanctions. After the West Virginia court denied summary judgment on the ground that unanswered requests for admission should be deemed admitted, "nearly eight years passed without activity[.]"

Eventually, Bing's case was dismissed with prejudice for failure to prosecute. The Supreme Court of West Virginia affirmed that decision, noting that Bing was "not without remedy as he may have a cause of action against Mr. Furrer for his failure to adequately represent" him. *See Bing v. Lumber and Things, Inc.*, No. 18-0691 (W. Va. Sept. 9, 2019). That court referred the case to the West Virginia Office of Disciplinary Counsel, stating that it believed Furrer's "conduct does not comport with the West Virginia Rules of Professional Responsibility."

Meanwhile, when Bing learned of Furrer's suspension, he obtained substitute representation. After failing to "revive" Bing's personal injury complaint after its dismissal, his new counsel asserted a $4 million malpractice claim against Furrer and the LLC. The LLC paid a $10,000 deductible to its malpractice carrier, who settled Bing's case for $595,000.

At trial, the Bing settlement agreement, to which Furrer and the LLC were parties, was admitted without objection. The LLC maintained that the reasonable value of Bing's viable personal injury claim was the amount of the settlement, so that if Furrer had not breached his fiduciary duty to the LLC by failing to diligently represent Bing, the LLC would have earned a one-third contingency fee in the case.

After the close of evidence on both the complaint and the counterclaim, Furrer's counsel argued that because the LLC did not dissolve and did not redeem his 26.5% interest within a reasonable period following his withdrawal, his economic interest continued, entitling him to recover a pro rata share of profit and distributions after he withdrew. Under this theory, instead of merely seeking the "fair value" of his interest on January 9, 2017, under CA § 4A-606.1(a), Furrer claimed that under subsection (b), he held a continuing right to receive distributions, so that the LLC "would have to pay him . . . the value of the right to receive the distributions" and "share in the profits[.]"

Additionally, counsel for Furrer argued that because his "unredeemed economic interest" extended "through today[,]" O'Heir's expert valuation of fair value at the time of withdrawal was "completely irrelevant[.]" He maintained that the LLC's valuation was comparable to telling the court "what an orange is worth" when "the statute says it's an apple." In addition, Furrer asked the court to reconsider its dismissal of the LLC Members, arguing that "as trustees" for the distributions owed to Furrer, they should be held "jointly and severally liable" after "they divvied up Dave Furrer's money."

Judgment on Furrer's Complaint

The trial court issued its rulings in open court. After making findings of fact, the court awarded money judgments on both Furrer's complaint and the LLC's counterclaim.

The court found that on January 9, 2017, the law "firm had no written operating agreement." Furrer had been a member of the LLC "for 20 plus years[.]" He held a 26.5% "interest in the profits of the firm[.]"

On that date, Furrer withdrew "from the firm following revelations concerning his settlement of a personal injury claim on behalf of the firm with funds from his own accounts[,]" in order "to avoid a potential claim for professional malpractice." The court "interpret[ed] this . . . as a cessation of membership interest by agreement pursuant to" CA § 4A-606. Furrer's "demand for payment of his interest . . . was declined by the law firm, on January 15th, 2019," prompting him to file suit against the LLC and LLC Members, "seek[ing] a declaratory judgment for the fair value of his unredeemed economic interest" and "an accounting of his interest in the firm[.]" At the summary judgment hearing, the court "granted the parties' respective motions to dismiss which had the effect of taking . . . the individual members of the LLC out of the litigation both as parties Defendant and as cross Plaintiffs." "During the course of the litigation in August of 2019, the LLC changed its composition, but continued its operation with two of the remaining partners, Mr. Seigel and Mr. Rouhana."

The court observed that "[m]uch of the testimony was devoted to the manner in which the law firm, including [Furrer], kept its records and the firm's ability, following litigation, to produce records and data in discovery." "[F]ind[ing] the testimony on this point of Mr. Robert Tully and Mr. Rouhana persuasive[,]" the court concluded that the

"case management program" used by the firm "had significant limitations in producing the kind of case-specific information sought by [Furrer] for purposes of trial" because that "system was completely . . . dependent on the quality of the information manually recorded into it."

For Furrer's cases, "the unrebutted testimony was that, aside from ongoing notes . . . placed on the files from paralegals[,]" the case management "system did not reflect in any comprehensive way fees received on the files . . . handled by Mr. Furrer." Consequently, "retrieving that data on open cases post 2017" would require a search "by hand on a case by case or check by check basis" for the "approximately 90,000 cases" in the system.

Nevertheless, "Mr. Tully, . . . with a lot of effort, . . . reduce[d] it down to a couple thousand cases, information of which was produced to [Furrer] during the course of the litigation." The court found "that the LLC's efforts to produce documents . . . in response to discovery was in good faith and does not serve as the basis for any evidentiary presumption or . . . other relief as to what might be contained in those records."

Addressing Furrer's claims, the court reviewed the alternative provisions in subsections (a) and (b) of CA § 4A-606.1 governing the aftermath of withdrawal. The court explained that under subsection (a), when a person's membership in an LLC ends, and "there is no dissolution of the LLC as a result, the LLC may elect to pay that member the . . . fair value of the person's economic interest in the LLC as of the date of withdraw[al] based upon that member's right to share in the distribution of the LLC[.]" "In this case," the court found, "the LLC, for reasons I am sure [are] important to it, did not elect to exercise the right to purchase Mr. Furrer's share following his withdraw[al]."

Subsection (b), the court continued, applies when the right to redeem the withdrawn member's interest is "not exercised[.]" It provides that the former "member is then possessed of what is described as an unredeemed economic interest in the LLC." Although "[t]he member no longer has rights to . . . have a voice in management[,]" he "still retains an economic interest in the firm going forward." Under CA § 4A-101(i), the court explained, such an interest is defined to "mean[] a member's share of the profits and losses . . . and the right to receive distributions from" the company.

The trial court considered but rejected each party's proposed valuation of Furrer's unredeemed economic interest using "a number of different" alternatives. First, Furrer "offered as . . . Exhibit Number 7 a breakdown of the partner distributions from the firm during the period 2016 through 2019, which were taken from other exhibits produced in discovery by the [LLC]." That valuation "was straight 26.5 percent of all of those distributions for all of those years." "Other methods that were suggested" by Furrer included taking "a percentage of the receipts into the firm's escrow account as Plaintiff's Exhibits 1 through 5[,]" which the court found was not "helpful" because "it didn't reflect all of the monies that would have come in as fees and may well reflect other information that is improperly included where a client may pay matters in." Likewise, the court found "not particularly helpful" another "calculation offered for identification as [Furrer's] Exhibit Number 15[,]" in which counsel for Furrer "made certain alterations to the methodology of the [LLC's] business valuation expert, Mr. O'Heir, altering some of the assumptions and coming up with a projected valuation."

Turning to the LLC's proposed valuations, the trial court recognized that O'Heir "testified to . . . having experience in valuing law firms" and employed "what he described as a standard valuation practice . . . . applying standard valuation criteria," as grounds for his conclusion "that the fair value of [Furrer's] interest in the LLC was $29,150." The court identified "the problem with" that valuation, explaining that "the income approach . . . . is a poor fit on trying to value a law firm whose income is generated by the personal services of the lawyers then in the firm." "For that reason," the court "was not persuaded that the approach chosen by Mr. O'Heir . . . is the correct methodology to value [Furrer's] economic interest in the firm."

Instead, the trial court found "that unless and until the firm acted to either dissolve or to re-allocate Furrer's interest in the firm, he was entitled to a 26.5 percent share of the profit of that firm." According to the court, what Furrer "had going in . . . was not changed" by his withdrawal, because even though he "no longer had management authority, . . . he still retained an economic interest."

Next, the court addressed the value of that economic interest and "what period of time" it continued. Recognizing that "what these profits represent in a law firm are the receipt of law firm fees over expenses" and that "these are fees generated by the practice of law[,]" the court found "[i]t was undisputed that Furrer ceased being an active member of the bar and was suspended from the practice of law by consent in January of 2018." "[O]n that date," the court ruled, Furrer "no longer was eligible to receive and share law firm fees from the firm. So that his interest in the distributions from the LLC can be

calculated during the period of 2017 when he remained an active practitioner through [January] 2018 when he no longer was."

Based on its conclusion that Furrer had an ongoing economic interest in the post-withdrawal profits, losses, and distributions, the court then conducted its own valuation, beginning with Furrer's "Exhibit Number 11, which shows that during 2017, there was an amount of $799,594 . . . . distributed to the partners of the LLC[,]" other than Furrer. The court cited testimony by Tully, Rouhana, and O'Heir that "those figures included what they termed guaranteed payments of $10,000 per month to the partners[,]" reflecting compensation to "individuals who are in the firm and working[.]" In the court's view, "[t]hese were not profit." Instead, as "with other similar practices in other firms[,]" these payments constituted "part of the expense of the firm in generating the profit[,]" so that those payments "must be viewed separately from profit." "[A]t each quarter they would divvy up any profit over those guaranteed payments and distribute them quarterly coinciding with the obligation to pay estimated taxes."

Based on these conclusions, the trial court ruled that Furrer "is entitled to 26.5 percent of the profits generated during 2017[.]" Because the reported income of $799,594 included "both profit and guaranteed payments[,]" however, the court subtracted from that amount "$480,000 which represents $10,000 per month times 12 months times the 4 remaining partners in the firm and represents the expense." "That leaves a total of $319,594." "Furrer's 26.5 percent of that number, creates a total of $84,692, which the Court finds based on the . . . LLC [A]ct and" evidence presented "is the value of Mr. Furrer's . . . unredeemed economic interest in the firm."

Under Count I of the complaint, the court "found that [Furrer] is entitled to distributive shares of [$]84,692." Under Count 3, the court "exercise[d] its discretion and decline[d] to order any further accounting in light of the valuation methodology that [it had] accepted and adopted and applied that further discovery would not be productive at this point."

Judgment on the LLC's Counterclaim

Turning to the LLC's counterclaim for breach of fiduciary duty, the trial court characterized it as "based on the argument that the professional negligence of [Furrer] was the proximate cause of economic loss to the law firm and act[s] as a set-off, if not a claim over, against" Furrer. Although "[t]here was testimony as to a number of cases," the court found that "it boiled down to really 3 cases" of Furrer's "professional negligence" that allegedly caused the law firm "to incur damages."

The Bratton case is what led to Furrer's withdrawal from the LLC and suspension from the practice of law. In that case, Furrer "self-settled, paying money out of his own pocket, $3,000 to settle a claim in an effort to avoid what he perceived to be a possible professional malpractice action or attorney discipline matter." The LLC claimed that "it was entitled to a fee of $1,500" based on its one-third contingent fee arrangement. The court was "not persuaded by that" because for "other similar claims, particularly involving Mr. Siegel[,]" the LLC did not "charge back to a partner for the loss of a small fee such as this."

In the Upole case, the LLC claimed it should be awarded $100,000 because after Furrer's departure, West Virginia counsel had to be retained to prosecute the case "given

the fact that . . . no other lawyer in the firm was barred in West Virginia." Instead of the LLC keeping the full $150,000 contingent fee, it had to split it, giving $100,000 to the firm in West Virginia. The trial court found that "whatever damage there was, was not proximately caused by any misconduct on the part of Mr. Furrer" because "there was no suggestion this case was improperly handled in any way[,]" so that if "Furrer left for any reason, the firm would still have had to hire a lawyer in West Virginia."

The third case involved Bing's "serious" injuries from "an accident in a lumber mill[,]" resulting in "a portion of his hand" being "severed[.]" [E.116] The trial court found that unbeknownst "to other members of the firm until after" his withdrawal, Furrer "at some point in time, effectively abandoned the case without notice to the client or proper closing of the case with the court." Furrer's "involvement" in this case was detailed in "a memorandum opinion" by the Supreme Court of West Virginia, which was admitted into evidence.[5] That "case ultimately was resolved following a claim by Mr. Bing against Mr. Furrer and the law firm for professional malpractice[,]" which "was settled by the malpractice carrier for an amount of $595,000." "The law firm paid a $10,000 deductible as part of that resolution."

[5] Although the trial court cited to "a memorandum opinion from a United States District Court," admitted as Defendant's Exhibit 25[,]" detailing Furrer's "involvement" in Bing's case, the cited document is a settlement sheet from the Upole case, showing a $500,000 settlement, with a $150,000 attorney's fee split between the West Virginia law firm ($100,000) and the LLC ($50,000). Based on the context of the court's remarks, we infer that the court was referring to the memorandum opinion by the Supreme Court of West Virginia in Bing.

The court again acknowledged the testimony "that there had been no prior back charge against a member of the LLC where a case was not properly handled and may have resulted in a less than satisfactory result." Yet "those cases, and any cases that were discussed in the testimony other than Bing were very small matters involving a few thousand dollars."

The court found "the Bing case" to be "a very different order of magnitude" because "[i]t involved significant exposure to the law firm" and "a considerable amount of its time in trying to work with the carrier to provide a defense[.]" Consequently, the court "viewed" this case "differently than any of the prior cases the firm has handled." Moreover, "had the case been competently handled with[in] the firm, the resulting fee would have been paid to the LLC, not to the law firm which eventually prosecuted the legal malpractice case."

The trial court then described how it calculated "what that fee may be and what that loss ultimately was to the law firm[.]" First, the court found "that the amount of the settlement -- $595[,000] -- is a fair standard on which to evaluate" because that is the amount the parties agreed "to be the value of the case for settlement." Rouhana testified that the firm's standard fee arrangement was "no lower than 33 and 1/3 percent of the amount of the recovery." The law firm "would have been entitled to $196,350. Of that sum, had Mr. Furrer been a member of the firm, he would have been entitled to his portion of that 26.[5] percent." After subtracting Furrer's pro rata amount of $52,032.75, the court found that "leaves an amount that would have been paid to the firm on such a settlement of $144,317.25." The court determined "that is the economic loss which was sustained by

the firm as a result of the professional negligence of [Furrer] in the failure to prosecute competently the Bing claim." On the LLC's counterclaim, the court awarded that sum.

The court subsequently "reduced this to a declaration of the rights of the parties[.]" In a Declaratory Judgment entered on December 15, 2021, and an Amended Declaratory Judgment entered on January 21, 2021, the court

> (1) ordered that "the value of [Furrer's] economic interest in the [LLC] is $84,692";
>
> (2) entered judgment in that amount in favor of Furrer against the LCC;
>
> (3) ordered that "upon satisfaction of this judgment against" the LLC, Furrer's "interest in the LLC shall terminate";
>
> (4) denied Furrer's "request for an accounting"; and
>
> (5) entered judgment in favor of the LLC on its counterclaim "in the amount of $144,317.25."

Furrer noted a timely appeal, and the LLC noted a timely cross-appeal. We will add material from the record in our discussion of the issues presented.

DISCUSSION

Although the parties cite no precedent directly addressing the valuation questions presented here, the rights and responsibilities at issue involve a law firm organized and practicing as a limited liability company. As the Court of Appeals has explained,

> [i]n Maryland, Limited Liability Companies are creatures of statute formed in accordance with the Limited Liability Company Act ("LLC Act"). *See* [CA] §§ 4A-101–1303[.] The LLC Act was enacted to "give the maximum effect to the principles of freedom of contract and to the enforceability of operating agreements." *Id*. § 4A-102(a). To form an LLC, parties must execute articles of organization and place them on file with the relevant Maryland department. *Id*. § 4A-202(a). In practice, LLCs are [typically] governed by an operating agreement adopted by the members that specifies, *inter alia*, how the LLC shall be "managed, controlled, and operated"; how

> profits and losses are to be shared; rights of assignment; procedures for admission and dissociation of members; and meeting and voting procedures. *Id*. § 4A-402(a)(1)-(8).
>
> The owners of an LLC are known as "members." *Id*. § 4A-101(m). Individuals can become members of an LLC only in the manner specified in the operating agreement or in [CA] § 4A-601. In general, LLCs are either "member-managed"—meaning that the members retain active management duties—or "manager-managed"—meaning that the members delegate management authority to a manager or group of managers who are employees of the LLC. Unlike a partnership, no LLC member "shall be personally liable for the obligations of the [LLC], whether arising in contract, tort or otherwise, solely by reason of being a member" of the LLC. *Id*. § 4A-301.

MAS Assocs., LLC v. Korotki, 465 Md. 457, 475-76 (2019).

In this instance, the LLC did not have an operating agreement governing the valuation of a membership interest upon withdrawal or the consequences of a member's breach of fiduciary duty to provide diligent representation. Applying the distinctive features of the statutory framework governing limited liability companies, we address the parties' challenges to the judgments on Furrer's claims against the LLC Members, his claims against the LLC, and the LLC's counterclaim against Furrer.

I. Judgment for Individual LLC Members on Furrer's Complaint

At the hearing on Furrer's motion for summary judgment, counsel for the LLC Members conceded that they should not be "involved" in bringing the counterclaim, because under CA § 4A-302, "[a] member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, solely by reason of being a member of the limited liability company[.]" Counsel for the LLC Members then asserted

that, "in like fashion they shouldn't be defendants as individuals either." He made "an oral motion" for judgment in favor of the LLC Members.

Addressing counsel for Furrer, the motion court noted that "[t]he right of action's against . . . the LLC in which [Furrer] had a member's interest." Counsel responded that, "if the individual defendants took the assets of the LLC," they could "be trustees" who could be held liable to Furrer under a "fraudulent conveyance" theory. The court nevertheless granted judgment on the individual claims by and against the four LLC Members, in both the complaint and counterclaim, finding that "only the LLC or its successor here is the proper party defendant and counter plaintiff."

Furrer contends that the circuit court "erred in dismissing the individual defendants from the case" because even if they lack standing to prosecute the LLC's counterclaim against him, they could have been held jointly and severally liable with the LLC. In his view, these four individuals "actively and jointly participated in acquiring the distributions which belonged to" him, so "this Court should reverse" and remand "with instructions" to enter judgment jointly and severally against the LLC and LLC Members, and to impose a constructive trust on their assets "in the amount necessary to return [his] share of the profits and distributions." The trial court "continued the error" during trial, Furrer argues, when it declined his motion to reconsider this ruling by reinstating the LLC Members as defendants.

The LLC Members respond that the court "was legally correct in dismissing" them, both as defendants and counterclaimants, because under CA § 4A-302, they "were not liable by reason of their being members of the LLC[.]" As for Furrer's theories that

dismissal was not appropriate because the LLC Members were unjustly enriched and "acted in concert with the LLC[,]" the LLC Members argue that Furrer did not assert either of those alternative bases for liability at the motion hearing. Although Furrer belatedly raised those arguments at trial—after the close of evidence, in the midst of closing argument—the LLC Members argue that the trial court did not err or abuse its discretion in refusing to reconsider its prior dismissal.

Furrer replies that "the undisputed fact that the individual [LLC Members] took money which clearly belonged to" him "was argued . . . both at the summary judgment hearing and . . . again in closing argument based on the evidence adduced at trial[.]" Because "[t]he record shows that the point was raised and argued below," Furrer's request for "a constructive trust upon" the LLC Members for intentionally taking his money was adequately preserved for this Court's review.

For reasons that follow, we hold the motion court did not err in entering judgment for the LLC Members and that the trial court did not abuse its discretion in denying Furrer's subsequent motion for reconsideration.

Standard of Review

We review the grant of summary judgment by independently evaluating the motion record "'to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.'" *CX Reinsurance Co. Ltd. v. Johnson*, No. 47, Sept. Term, 2021, 2022 WL 3714608, at *5 (Md.) (filed Aug. 29, 2022) (quoting *Rossello v. Zurich Am. Ins. Co.*, 468 Md. 92, 102-03 (2020) (internal quotation marks and citations omitted)). We consider that record in the light most

favorable to the nonmoving party, drawing any reasonable inferences against the moving party. *Id.* Whether judgment was warranted is a question of law we decide de novo, without deference. *Id.* Likewise, this Court reviews a decision to dismiss a claim against a particular party for legal correctness under the same standards. *See Reichs Ford Road Jt. Venture v. State Roads Comm'n*, 388 Md. 500, 509 (2005).

For issues raised via motion for reconsideration, we evaluate whether the court correctly interpreted and applied the pertinent law or otherwise abused its discretion in denying relief. *See Sydnor v. Hathaway*, 228 Md. App. 691, 708 (2016). In this context, "[a] circuit court abuses its discretion when no reasonable person would take the view adopted by the court, 'or when the court acts without reference to any guiding rules or principles.'" *Kona Props., LLC v. W.D.B. Corp., Inc.*, 224 Md. App. 517, 547 (2015) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

As for preserving issues for appellate review, this Court generally considers only claims and arguments that were timely raised in the circuit court proceedings. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue [than jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.").

Pre-Trial Dismissal of LLC Members

We agree with Furrer that he preserved the argument that LLC Members might be personally liable "as trustees" for Furrer's share of distributions, under a theory of "fraudulent conveyance." Although Furrer did not plead such a claim in his complaint, he

did oppose the LLC Members' motion for summary judgment on the ground that, "to the extent that the four individual defendants took assets of the LLC, part of which were Mr. Furrer's," he could recover directly from the LLC Members, on the theory they "would be liable" to him as "trustees if you will[.]" According to counsel, "under the fraudulent conveyance action the recipient is equally liable" with the LLC because "[y]ou can follow the assets." Ultimately, counsel argued, "the recipient of a fraudulent conveyance is a proper party in the action" who "will remain personally liable to the extent that they have assets that belong to David Furrer."

The General Assembly has expressly directed that members of limited liability companies, like shareholders in a corporation, may be not held personally liable for the debts and obligations of the business entity. *See* CA § 4A-302; *Colandrea v. Colandrea,* 42 Md. App. 421, 427-28 (1979). Only when necessary "'to prevent fraud or enforce a paramount equity'" could an exception be made to this essential feature of business organization. *Id.* at 428 (quoting *Bart Arconti & Sons, Inc. v. Ames-Ennis, Inc.*, 275 Md. 295, 311-12 (1975)).

Typically, to establish personal liability of the principal of a business entity, a litigant must 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.

Id. Nevertheless, courts have recognized that "fraudulent conveyance schemes . . . can be effected without a false representation[,]" such as when a transfer is "made to evade payment to creditors" or otherwise "hinder the collection of debt." *See Husky Intern. Electronics, Inc. v. Ritz*, 578 U.S. 356, 357, 360-62 (2016) (tracing development of personal liability for fraudulent transfer, from common law through bankruptcy code).

However, there are heightened standards for pleading and proving such fraud. "Maryland courts have long required parties to plead fraud with particularity[.]" *McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 527 (2014). "General or conclusory allegations of fraud are insufficient. A plaintiff must allege facts which indicate fraud or from which fraud is necessarily implied," *Antigua Condo. Ass'n v. Melba Investors Atl., Inc.*, 307 Md. 700, 735 (1986), proving all elements by clear and convincing evidence. *See Colandrea*, 42 Md. App. at 428.

Here, the trial court did not err in determining that Furrer failed to plead fraud warranting personal liability for the LLC Members with enough particularity to circumvent the clear language and policy directive in CA § 4A-302 that individual members of a limited liability company may not be sued for obligations of that company. Nothing in the motion pleadings or arguments satisfied the particularization requirement for a fraudulent transfer claim or a constructive trust remedy. At best, the record establishes that LLC Members received post-withdrawal profit distributions without paying Furrer his 26.5% share. Yet, as we explain in Part II below, we reject Furrer's claim that he had an ongoing economic interest in post-withdrawal profits and distributions. In any event, Furrer did not allege that LLC Members made such distributions with the intent to remove Furrer's

claimed share from his reach. Nor did Furrer allege that the LLC Members' receipt of post-withdrawal distributions will prevent him from collecting from the LLC on what he may be owed.

Limiting personal liability is, quite literally, the distinguishing feature of limited liability companies. *See* CA § 4A-302. Because Furrer failed to plead or proffer particularized facts that would circumvent this statutory restriction, we hold that the motion court did not err in granting summary judgment to the LLC Members on Furrer's complaint.

Motion to Reconsider

After the close of evidence at the end of the two-day trial, during closing argument, Furrer re-asserted his argument that, even though the LLC Members were not "bad guys[,] . . . they said they divvied up Dave Furrer's money," so "they hold it as trustees." Furrer's motion to reconsider is similarly unpersuasive.

The trial court did not abuse its discretion in denying Furrer's motion for reconsideration based on the aforementioned theories. *See generally Wilson-X v. Dep't of Hum. Res.*, 403 Md. 667, 674-75 (2008) (recognizing abuse of discretion standard applies to denial of motion to reconsider). Testimony by the individual LLC Members that they distributed LLC profits without paying Furrer does not, by itself, establish grounds for either fraud or a constructive trust, particularly where the LLC asserted an offsetting counterclaim against Furrer based on his breach of fiduciary duty to the LLC. Nor has there been any suggestion that distributions were made in a manner that rendered the LLC unable to pay Furrer once the fair value of his interest is established.

II. Complaint: Judgment for Furrer's Economic Interest

At the heart of this appeal is the valuation of a member's economic interest following his withdrawal from a limited liability company that has no operating agreement. Furrer and the LLC both challenge the trial court's judgment for $84,692.41 to compensate Furrer for his economic interest in the LLC. The court's calculation included what it deemed to be Furrer's pro rata share of post-withdrawal profits and distributions.

Furrer argues that the court should have awarded more, and erred "in cutting off payments after 2017." Further, Furrer claims the court erred by declaring that his "economic interest in the LLC will terminate upon the payment of" the judgment awarding him $84,692 for his economic interest. In Furrer's view, the court erred in the following respects:

> (1) limiting "the calculation to 2017" based on his indefinite suspension from practicing law in January 2018;
>
> (2) "wrongly deduct[ing] . . . the LLC's monthly $10,000 "guaranteed payments" to LLC Members, totaling $480,000/year, as "worker bee" compensation expenses, for the work performed to generate the profits shared by all members, rather treating them as "draws" by each member against the LLC's profits before distributions were made;
>
> (3) "neglect[ing] to award Furrer his 26.5% of the additional profit that had not been distributed[,]" which amounted to $34,363.74 left after making "$799,594 in distributions (according to Exhibit 11), for which "Furrer's share" should be $9,106.39"; and
>
> (4) determining that Furrer's economic interest in the LLC will terminate upon the payment of the $84,692 judgment[.]"

The LLC counters that the award is too high, because the trial court erred in not "cutting off" Furrer's economic interest in the LLC "as of the date that [he] ceased to be a

member of the LLC." Once Furrer withdrew, the LLC argues, he was no longer a member, but an assignee of his unredeemed economic interest with no right to post-withdrawal profits and distributions. The LLC contends that when valuing Furrer's interest, the court erred in ruling that, as "an assignee of the unredeemed economic interest under [CA §] 4A-606.1(b)," Furrer could continue to receive post-withdrawal profits and distributions for "the year between his withdrawal and the suspension of his law license." In the LLC's view, Furrer "cannot plausibly argue that he is entitled, as a non-member of the LLC, to a perpetual 'economic interest' in the LLC, where the definition of the term refers to a '*member's* share of the profits and losses . . . and the right to receive distributions[.]'"

In addressing the parties' contentions, we are mindful that "[w]hen an action has been tried without a jury, the appellate court will review the case on both the law and the evidence." Md. Rule 8-131(c). Although we "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[,]" *id*., we review the circuit court's legal conclusions without deference. *See Plank v. Cherneski*, 469 Md. 548, 569 (2020). "A trial court's findings are not clearly erroneous if 'any competent material evidence exists in support of the trial court's factual findings[.]'" *Id*. (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)).

When construing a statute, we begin by examining its text in light of "the statutory scheme to which it belongs[,]" seeking to discern and implement the legislature's intent. *Nationstar Mort. LLC v. Kemp*, 476 Md. 149, 169-70 (2021). We avoid constructions that add or delete language, or "'are illogical, unreasonable, or inconsistent with common

sense.'" *Moore v. RealPage Utility Mgmt., Inc.*, 476 Md. 501, 511 (2021) (quoting *United Bank v. Buckingham*, 472 Md. 407, 423-24 (2021)).

Because the LLC had no written operating agreement, nor any other agreement regarding the consequences of withdrawal, we turn to the LLC Act "to fill in" the terms governing Furrer's rights following his withdrawal. *See Thomas v. Bozick*, 217 Md. App. 332, 348 (2014) ("Without a provision in the Operating Agreement to supersede C.A. § 4A-606.1(b), the statutory requirements apply.") The court ruled that when the LLC did not exercise its right to redeem Furrer's economic interest by paying fair value within a reasonable time under CA § 4A-606.1(a), Furrer was entitled to an ongoing "26.5 percent share of the profit of that firm" under CA § 4A-606.1(b), because his economic interest "was not changed" by his withdrawal.

Although we find no precedent directly addressing the question, we agree with the LLC that the trial court erred in interpreting and applying CA § 4A-606.1(b) as grounds for extending Furrer's economic interest beyond the date of his withdrawal. As we interpret the statutory definitions and framework, withdrawing from the LLC changed Furrer from a *member* with an economic interest, *i.e.*, a current right to share in the LLC's profits, losses, and distributions, into an *assignee* of that economic interest, with the right to share only in the LLC's assets, liabilities, profits, losses, and distributions, as they existed at the time of his withdrawal.

The Statutory Framework

Under the plain language of the LLC Act, the right to share in the profits and distributions of a limited liability company is tied directly to membership. "Unless

otherwise agreed: (1) [t]he profits and losses of a limited liability company shall be allocated among the *members* in proportion to their respective capital contribution values; and (2) [d]istributions by the limited liability company shall be made to the *members* in proportion to their right to share in the profits of the limited liability company." CA § 4A-503 (emphasis added).

Consequently, we begin with the definition of a "member" as "a person who has been admitted as a member of a limited liability company under § 4A-601 . . . *and who has not ceased to be a member*." CA § 4A-101(n) (emphasis added). A "membership interest" is the "*member's* economic interest and noneconomic interest in a limited liability company." CA § 4A-101(o) (emphasis added). A "noneconomic interest" consists of "all of the rights of a *member* . . . other than the *member's* economic interest, including" the rights to "[i]nspect the books and records[,]" to "[p]articipate in the management of and vote on matters coming before" the company, and to "[a]ct as an agent" for the company, CA § 4A-101(o) (emphasis added). An "economic interest means a *member's* share of the profits and losses of" that company, plus "the right to receive distributions from" the company. CA § 4A-101(i) (emphasis added).

Absent a contrary agreement, "a person ceases to be a member of a limited liability company" when he or she "withdraws[.]" CA § 4A-606. *See* CA § 4A-603(d). What happens next is governed by CA § 4A-606.1, the provision debated by court and counsel in this litigation. Distinguishing the rights of persons who have withdrawn as members, from the rights of existing members, this statute provides:

Successors in interest

> (a) Unless otherwise agreed, *if a person ceases to be a member* of a limited liability company under § 4A-606 of this subtitle, and the limited liability company is not dissolved as a result, then, within a reasonable time after the person ceased to be a member, the limited liability company may elect to pay *the person or the person's successor in interest,* in complete liquidation of *the person's membership interest,* the fair value of *the person's economic interest* in the limited liability company *as of the date the person ceased to be a member*, based upon *the person's right to share in distributions* from the limited liability company.
>
> **Unredeemed economic interests**
>
> (b) *If a person ceases to be a member* of a limited liability company under § 4A-606 of this subtitle and the limited liability company elects not to completely liquidate the person's membership interest under subsection (a) of this section, *that person will be deemed to be an assignee of the unredeemed economic interest under §§ 4A-603* and 4A-604 of this subtitle.

CA § 4A-606.1 (emphasis added).

CA § 4A-603, governing assignable interests, likewise distinguishes between a member and a person who, after withdrawing, becomes an assignee of that economic interest under CA § 4A-606.1(b). This section of the LLC Act explicitly states that assignment of an economic interest does not entitle the assignee to "exercise any rights of a member," as follows:

> **Assignable interests**
>
> (a) Unless otherwise agreed:
>
> (1) Only *an economic interest in a limited liability company may be assigned*; and
>
> (2) An economic interest is wholly or partly assignable.
>
> **Effect of assignment**
>
> (b) *An assignment of an economic interest in a limited liability company does not:*

(1) Dissolve the limited liability company; or

(2) *Entitle the assignee to:*

(i) Become a member; or

(ii) Exercise any rights of a member, including the noneconomic interest of the assignor. . . .

Forfeiture

(d) *On assignment of all of a member's economic interest in a limited liability company, the member ceases to be a member of the limited liability company* and forfeits the member's noneconomic interest in the limited liability company.

CA § 4A-603 (emphasis added).[6]

Furrer's Right to Post-Withdrawal Compensation for His Unredeemed Economic Interest

In *Thomas v. Bozick*, 217 Md. App. 332 (2014), the only reported Maryland case interpreting CA § 4A-606.1(b), we were not called upon to interpret the post-withdrawal economic interest presented there. We held that under the terms of the company's operating agreement, retirement ended Thomas's membership in a company that owned a commercial building. *See id*. at 342-43. When the company declined to redeem his membership interest under the terms of its operating agreement, subsection 4A-606.1(b) applied because the operating agreement did not cover that situation. *See id*. at 343-44, 348. In turn, under that subsection, Thomas "became an assignee of the unredeemed economic interest" but no longer had the noneconomic interest necessary to "participate in

[6] Because CA § 4A-604 applies only when the assignee of a member's interest becomes a member, it is not relevant here.

the decision to sell the Property or decide on the Property's fair market value." *Id*. at 344-45, 348.

In contrast to the noneconomic interest at issue in *Thomas*, here the dispute involves Furrer's unredeemed economic interest. Applying the plain meaning of the statutory language cited above, we conclude that once Furrer withdrew from the LLC on January 9, 2017, he was no longer a member and had no membership interest in post-withdrawal profits, losses, and distributions of the LLC. *See* CA § 4A-101(n)-(o); CA § 4A-603(b); CA § 4A-606. Instead, at that point, Furrer, as assignee, had the right either to hold the interest or obtain compensation for his unredeemed economic interest, which he initially sought by filing this lawsuit requesting fair value as of his withdrawal date. *See* CA § 4A-606.1(b).

Our construction of the LLC Act preserves the distinction between members and persons who have ceased to be members upon withdrawal. In contrast, the trial court's construction of CA § 4A-606.1(b)—as creating a continuing claim to a pro rata share of the LLC's profits, losses, and distributions after Furrer had withdrawn—would require us to disregard the possessive noun "member's" in the statutory definition of "economic interest." Moreover, as the LLC points out, the trial court's interpretation of CA § 4A-606.1(b) leads to the illogical result of Furrer withdrawing, but then collecting "a perpetual share in the profits of a company to which he has since contributed nothing[,]" even though his professional misconduct resulted in indefinite suspension of his right to practice law and "civil claims against the law firm[.]"

For these reasons, we agree with the LLC that Furrer was not "entitled, as a non-member of the LLC, to a perpetual 'economic interest' in the LLC, where the definition of that term refers to a '*member's* share of profits and losses . . . and the right to receive distributions[.]'" The unredeemed economic interest that Furrer presumably still holds as an assignee is limited to his 26.5% share of the fair value of assets, profits, losses, and distributions to which he was entitled on January 9, 2017.

Indeed, despite what happened during trial, this is exactly what Furrer requested in his original complaint. And even then, Furrer recognized that ethical restrictions limited his claim to post-withdrawal profits and distributions, to the extent those represent fee-sharing with a non-attorney. *See* Md. Rule 19-305.4.

The parties' dueling rhetorical questions are not helpful in this analysis. Furrer questions "the point of a redemption under CA § 4A-606.1(a)," asking "why would anyone ever pay a withdrawn member for his interest when they could simply keep it for themselves for free by doing nothing?" as they claim the LLC has done here. The LLC, while pointing to the "incentive to redeem a withdrawing member's interest" in order to "avoid[] an ongoing liability to the withdrawing member, and . . . any possible lawsuit . . . as to the value of the withdrawing member's economic interest[,]" responds by asking why any withdrawing member would "accept a payment in liquidation of the fair value of the member's interest as of the date he or she ceased to be a member, if the former member could instead wait a few years to sue for the former member's share of profits to which he or she contributed nothing?"

We acknowledge such countervailing considerations are inherent in the statutory scheme, reflecting the circumstances leading to a member's withdrawal. Yet if members wish for more certainty or different rights and procedures than the "bare bones" set forth in the statutory terms governing withdrawal, they are free to adopt an operating agreement where more specific terms are delineated. *See generally* CA § 4A-102 ("[T]he policy of this title is to give the maximum effect to the principles of freedom of contract and to the enforceability of operating agreements."). Having failed to adopt an operating agreement, Furrer and the LLC cannot now complain about the consequences accompanying that decision.

In our view, this record shows that court and counsel conflated a member's ongoing economic interest in the limited liability company, with a non-member assignee's right to fair value for that interest on the date of withdrawal. As a result, the trial court erred in concluding that the LLC owed Furrer a share of post-withdrawal profits and distributions.

Our holding and reasoning resolve Furrer's other challenges concerning the effects of his post-withdrawal suspension from the practice of law, the deductions for guaranteed payments, and the termination of Furrer's interest upon payment of the judgment. Because Furrer's unredeemed economic interest must be valued as of his withdrawal date of January 9, 2017, his subsequent suspension in January 2018 did not impact that value. Nor did deductions for guaranteed payments to the remaining LLC Members in 2017 and beyond affect that value. And as we have explained, Furrer's membership interest in the LLC terminated when he withdrew, so that is not dependent on when payment of fair value for that interest is made.

Based on the error in interpreting and applying the LLC Act, we must vacate the trial court's judgment on Furrer's complaint and remand for reconsideration of the fair value of Furrer's economic interest. Additionally, we reject the LLC's contention that because Furrer did not satisfy his burden of proof on valuation, the trial court erred in declaring the value of Furrer's interest in the LLC, rather than simply denying relief. Doing that would have given the LLC an unwarranted windfall, which apparently has not accounted to Furrer for the economic interest he held at the time of his withdrawal. From the outset, this litigation has focused on the disputed value of Furrer's 26.5% interest in the LLC. In his complaint, Furrer sought a judicial declaration of that value as of his withdrawal date. After concluding that the trial court erred in interpreting and applying the pertinent statutory provisions triggered by Furrer's withdrawal, we are now remanding for that valuation, based on the existing trial record.

III. Counterclaim: Lost Income From the *Bing* Case

Furrer contends that the trial court's award to the LLC on its counterclaim for lost income from the Bing case "was wrong for several reasons." Specifically,

> (a) the [LLC] never agreed to hold any of the Members personally liable for lost fees based on a Member's alleged malpractice; (b) . . . the evidence, which was relied upon by the trial judge, established that the [LLC] specifically rejected Member liability for malpractice in its course of dealings; (c) the [LLC] did not prove it lost income via a trial within a trial; and (d) because in general, an employee is not liable to the employer for lost income in the negligent performance of his job[.]

The LLC, disputing these contentions, argues that the trial court did not err in finding that Furrer breached his fiduciary duty to the LLC, proximately causing the LLC to lose its contingency fee in this serious personal injury case that was settled for $595,000.

Nor did the court err in finding that settlement amount to be sufficient evidence from which to calculate the lost income damages caused by Furrer's breach.

We are not persuaded by Furrer's contention that the trial court erroneously imputed an indemnity or other agreement to the parties. Nothing in the trial court's ruling states that Furrer and other members of the LLC had a binding agreement that members could not be held responsible for their breach of fiduciary duty to provide diligent and honest representation. Nor do we find evidence of such an agreement.

Instead, the evidence is undisputed that the law firm conducted business as an LLC, without the benefit of a written operating agreement or indemnification agreement. Although the course of dealing concerning a prior malpractice claim against Siegel indicates that no indemnification or "back charge" for the LLC's out-of-pocket expenses, or loss of fee income occurred in that instance, the trial court made no finding regarding the nature of that malpractice claim or how it was resolved. Nor did the trial court find that one instance established a binding agreement to handle all future claims in the same manner. And there is no suggestion that there was any other agreement regarding lost income directly attributable to a member's breaches of his professional and fiduciary duties, resulting in the LLC's loss of representation in a viable case with a significant settlement or verdict value.

We also reject Furrer's arguments that the trial court erred in determining that Furrer committed legal malpractice without conducting a trial within a trial and imposing liability for negligent performance of employment. We conclude what is at issue is not a question

of professional malpractice or negligence but is instead whether Furrer committed a breach of his fiduciary duty.

The Court of Appeals has "recognize[d] an independent cause of action for breach of fiduciary duty" that exists "without limitation as to whether there is another viable cause of action to address the same conduct." *Plank v. Cherneski*, 469 Md. 548, 559 (2020). "To establish a breach of fiduciary duty, a plaintiff must demonstrate: (1) the existence of a fiduciary relationship; (2) breach of the duty owed by the fiduciary to the beneficiary; and (3) harm to the beneficiary." *Id*. Remedies for a breach of fiduciary duty are "dependent upon the type of fiduciary relationship, and the historical remedies provided by law for the specific type of fiduciary relationship and specific breach in question, and may arise under a statute, common law, or contract." *Id.* "A trial court's decision whether to award particular forms of equitable relief based on its fact findings and the applicable legal standards is reviewed for abuse of discretion." *Id.* at 568 (quoting *Bontempo v. Lare*, 444 Md. 344, 363 (2015)).

In its thorough examination of liability for breach of fiduciary duty as it applies to members of a limited liability company, the Court of Appeals in *Plank* recognized that "'[a] fiduciary duty is, in general, a duty to act for the benefit of another on matters within the scope of the parties' relationship.'" 469 Md at 601 (quoting *Third Restatement*, § 16 cmt. a.). "[F]iduciary relationships can be created by common law, by statute, or by contract[.]" *Id*. at 598. Among the "'[w]ell-known examples'" of "'habitual or categorical fiduciary relationships [are] those between trustees and beneficiaries, agents and principals, directors and corporations, lawyers and clients, and guardians and wards, as well as the

relationship among partners.'" *Id*. (quoting Deborah A. DeMott, *Relationships of Trust and Confidence in the Workplace*, 100 CORNELL L. REV. 1255, 1261 (2015)). The fiduciary relationships that "arise as a matter of law" are "the relation between attorney and client, between principal and agent, or between a trustee and the beneficiary of a trust." *Id*. at 601.

Although "there is no 'one-size fits all' breach of fiduciary tort that encompasses all types of relationships[,]" *id*. at 598, and the LLC Act is "silen[t] concerning fiduciary duties[,]" the Court of Appeals concluded that "[m]anaging members are clearly agents for the LLC and each of the members, which is a fiduciary position under common law." *Id*. at 572 (citations and internal quotation marks omitted). Consequently, "managing members of an LLC owe common law fiduciary duties to the LLC and to the other members based on principles of agency." *Id*.

Here, the trial court found that Furrer, as both an attorney and a member of this "member-managed" LLC, breached his fiduciary duty to the LLC when he was indefinitely suspended from practicing law after concealing his neglect of Bing's legal representation on his serious personal injury claim, which caused the LLC to lose the representation to another law firm, and thereby to suffer lost income damages. The record supports that determination.

Indeed, the supporting evidence was largely undisputed. Furrer does not contest that he owed the LLC a fiduciary duty to provide diligent and truthful legal representation to clients, including Bing in the personal injury lawsuit that Furrer filed on his behalf in West Virginia. The trial court found that Furrer breached this duty, citing his consent to

be indefinitely suspended from the practice of law following his self-reported violations of rules of professional responsibility and his adjudicated lack of diligence during his representation, as chronicled by the Supreme Court of West Virginia.

Likewise, there is no dispute regarding the resulting damage, given that Bing's lawsuit was dismissed with prejudice for failure to diligently prosecute the case. *See Bing v. Lumber and Things, Inc.*, No. 18-091, slip op. at 4 (W.Va. Sept. 9, 2019). As suggested by the West Virginia Supreme Court, Bing made a malpractice claim against Furrer. The LLC's insurance carrier accepted coverage, investigated, and ultimately settled with Bing. In the settlement agreement, which was admitted without objection at trial, Furrer and the LLC expressly agreed that this "legal malpractice claim arising from the handling of a claim on behalf of a client with a substantial bodily injury in an industrial accident was settled in 2019 for $595,000.00."

Based on this undisputed evidence, the trial court determined that Furrer breached his fiduciary duty to the LLC by failing to diligently represent Bing, proximately causing Bing's personal injury claim to be dismissed with prejudice and the LLC to lose a contingency fee of at least 33.3% of any judgment or settlement. In doing so, the court distinguished the Bing case from the Upole case, in which there was no evidence of "any misconduct on the part of Mr. Furrer[,]" so that "whatever damage there was, was not proximately caused by" Furrer. Then, drawing inferences from the evidence, the court found that Bing settled his malpractice claim for an amount that represented a "fair standard" for the viable personal injury claim that was dismissed because of Furrer's professional misconduct.

To be sure, there was evidence that members of the LLC did agree that individual attorneys would not be required to reimburse the LLC for its out-of-pocket expenses caused by that member's professional misconduct (i.e., payments made for malpractice insurance, deductibles, settlements, etc.). But that did not establish that the LLC members also reached an agreement that individual attorneys would not be required to compensate the LLC for lost income directly attributable to misconduct that amounted to an egregious breach of fiduciary duty to both clients and the LLC. Nor did the court effectively "write" a contrary agreement by holding Furrer liable. Instead, the trial judge, sitting as fact-finder, concluded that, absent any express agreement about such consequences of professional misconduct, a loss-of-income remedy for Furrer's breach of his duty to provide diligent representation was available and appropriate given "the type of fiduciary relationships" involved and the egregious nature of the specific breach. *See Plank*, 469 Md. at 625-26.

We discern no error of law or fact in that ruling. After finding that the members had no agreement regarding lost income caused by a member's professional misconduct, the court considered the undisputed facts material to this breach of fiduciary duty cause of action, including:

- the serious nature of Bing's workplace injuries;
- Furrer's lack of diligence in representing Bing over the course of eight years, as adjudicated by multiple courts;
- Furrer's suspension from the practice of law based on comparable neglect and misconduct in the Bratten case;
- Furrer's concealment of his neglect from other members of the LLC;

- the dismissal with prejudice of Bing's personal injury lawsuit for failure to prosecute;
- Bing's malpractice claim and resulting investigation and coverage provided by the malpractice carrier; and
- the settlement of Bing's claim with Furrer and the LLC for $595,000.

The court, as the fact finder, was entitled to credit such evidence as grounds for finding that Furrer breached his fiduciary duty to both Bing and the LLC, in a manner that directly (and therefore proximately) caused Bing to lose his case and the malpractice insurer to compensate Bing for that loss. Even though the amount of Bing's settlement for his malpractice claim is not *conclusive* evidence of the viability and value of his personal injury claim, nevertheless, the undisputed payment of $595,000 to compensate Bing for losing his personal injury claim was *highly relevant* evidence that the trial court was entitled to consider and credit. *Cf. Suder v. Whiteford, Taylor & Preston, LLP*, 413 Md. 230, 241 (2010) (recognizing that "[i]n a lawyer-negligence or fiduciary-breach action brought by one who was the plaintiff in a former and unsuccessful civil action, the plaintiff usually seeks to recover as damages the damages that would have been recovered in the previous action or the additional amount that would have been recovered but for the defendant's misconduct.'") (quoting *Restatement (Third) of the Law Governing Lawyers*, cmt. b).

Given this record of undisputed evidence and adjudicated facts, the trial court did not err in determining that Furrer's undisputed neglect in representing Bing constituted a breach of his fiduciary duties to both Bing and to the LLC, and proximately caused the LLC to lose its contingency fee. We are not persuaded that the court erred or abused its

discretion in failing to conduct a "trial within a trial" on the question of whether Furrer committed malpractice. *See generally Suder*, 413 Md. at 241, 243 (recognizing that "the triggering mechanism for the trial-within-a-trial doctrine is a dispute over proximate cause" and that such a proceeding "should be applied where there is no bright line malpractice.").

In turn, we conclude the trial court did not commit clear factual error, err as a matter of law, or otherwise abuse its discretion in entering judgment for $144,317.25 in favor of the LLC on its counterclaim.

CONCLUSION

We affirm the judgments in favor of the individual LLC Members on Furrer's complaint and the judgment in favor of the LLC on its counterclaim. We vacate the judgment against the LLC on Furrer's complaint and remand for further proceedings, including recalculation of the fair value of Furrer's economic interest in the LLC as of his withdrawal date, and reconsideration of his corollary claim for an accounting in light of that review.

JUDGMENTS IN FAVOR OF INDIVIDUAL APPELLEES SIEGEL, TULLY, ROUHANA, AND TULLY ON FURRER'S COMPLAINT AFFIRMED. JUDGMENT AGAINST APPELLEE SIEGEL & ROUHANA, LLC ON FURRER'S COMPLAINT VACATED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. JUDGMENT IN FAVOR OF SIEGEL & TULLY, LLC ON ITS COUNTERCLAIM AFFIRMED. APPELLANT/CROSS-APPELLEE FURRER TO PAY THE COSTS.