Circuit Court for Baltimore County
03-C-09-014311

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 299

September Term, 2015

KIMBERLY PINSKY AND
ELIZABETH ANN BURMAN

v.

PIKESVILLE RECREATION
COUNCIL, ET AL.

Woodward, C.J.,
Eyler, Deborah S.,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, C.J.

Filed: August 4, 2017

Pikesville Recreation Council ("PRC") terminated and stopped paying appellants, Kimberly Pinsky and Elizabeth Ann Burman, who were two teachers in one of PRC's pre-schools. Appellants filed a breach of contract action to recover their lost wages against PRC and its individual officers and board members—appellee and cross-appellant Steven Engorn, as well as David Kleiman, Stuart Abell, and Harry Veditz ("the absent appellees")—in the Circuit Court for Baltimore County. After a three-day bench trial, the court entered judgment for appellants and against PRC, but entered judgment in favor of the individual officers and board members. Appellants appealed to this Court, which issued a reported opinion affirming in part and reversing in part. *See Pinsky v. Pikesville Recreation Council*, 214 Md. App. 550, 591 (2013) ("*Pinsky I*"). In *Pinsky I*, we held that the individual officers could be held personally liable for PRC's breach of contract if they "authorized, assented to, or ratified the contract[,]" and we remanded the case for further fact-finding on this issue. *Id*. at 585-87. We also held that the individual officers and board members did not qualify as employers under the Maryland Wage Payment and Collection Act, and thus appellants were not eligible to receive treble damages under that statute. *Id*. at 589.

On remand, the trial court held a hearing at which Engorn appeared, but the absent appellees did not appear, despite the fact that all of the officers and board members had been subpoenaed by appellants' counsel. Appellants requested that judgment be entered against each officer and board member who did not appear, which the court denied. Instead, the court entered judgment in favor of the absent appellees and continued the case

against Engorn. At a subsequent hearing, the court entered judgment in favor of appellants and against Engorn.

As stated in their brief, appellants present three questions for our review:

1. Was it reversible error for the Lower Court to dismiss individual Appellees from the case when they did not appear for trial, though subpoenaed to appear through their attorney, pursuant to Md. Rule 2-510(d), when a proffer was made that had they appeared and testified they would have established that they had authorized, assented to or ratified contracts with the Appellants and/or were "employers" of the Appellants?

2. Should the Lower Court have considered whether the individual Appellees were employers of the Appellants, when testimony on the issue needed to be taken in order to decide the question?

3. Should the case on remand be referred to another judge where the Lower Court Judge demonstrated bias?

Engorn filed a separate cross-appeal, presenting two questions for our review, as stated in his brief:

1. Does the statutory law govern the rights of the parties?

2. Did Steve Engorn ratify the contract between Pikesville Recreation Council and the Appellants?

For reasons set forth herein, we affirm the judgment of the circuit court.

BACKGROUND

The background for this case is set forth in *Pinsky I*:

> PRC was an unincorporated nonprofit association that, until 2009, oversaw recreation programs in the Pikesville area. It was governed by an elected Board of Directors ("Board") and operated under a Constitution, Bylaws, and a Policy Manual. PRC conducted various sports and education programs and received most of its funds from registration fees for the programs. Some programs had their own

checkbooks, while others used the general PRC bank account. PRC had as many as fifteen checking accounts and took in gross revenues of "$750[,000] to close to a million dollars" a year from the mid-1990s to 2008. Among its many programs, PRC operated a number of pre-schools. In July 2008, PRC hired Pinsky and Burman as a teacher and an assistant teacher, respectively, for its pre-school at the Fort Garrison Elementary School for the 2008-2009 school year. The contracts specified that Pinsky and Burman would be employed from August 18, 2008 to June 22, 2009. Pinsky would receive a gross salary of $24,993.50, while Burman would receive $16,887.75. Payments would be made "at regular payroll periods through out [*sic*] the twelve month period beginning August 18th, 2008 and terminating on August 17th, 2009." Both contracts could be terminated by PRC for "just cause" and with written notice. The signature line on both contracts states "Pikesville Recreation Council." Michel Snitzer, then the president of PRC, signed Burman's contract, while his wife, Sandy Snitzer, signed Pinsky's contract.

Around the time Pinsky and Burman were hired, PRC was facing financial and organizational difficulties. In fact, the Baltimore County Department of Recreation and Parks was considering decertifying PRC in 2008. PRC continued to operate its programs throughout 2008, but in January 2009, a successor entity called the Greater Pikesville Recreation Council ("GPRC") was certified by the County and took over the recreation activities for the Pikesville area. Certification was described at trial as a process that "gave . . . the Greater Pikesville Rec Council [the right to] access to all fields, all schools, everything that [Baltimore] County runs programs on." Once decertified, PRC was "no longer allowed to run any programs on any field or within any school." All program registration fees that came in after January 2009 went to GPRC rather than PRC, as did all of PRC's equipment and records. As a result, by the spring of 2009, PRC did not have "enough cash flow in to write checks to cover all the programs [and] expenses for the preschool."

Pinsky and Burman received identical letters, dated May 22, 2009, from PRC informing them that they would be terminated effective June 12, 2009. The letters were written on PRC letterhead and were signed by Steven Engorn, PRC's treasurer. The stated reason for the termination was that the "Department of Recreation

and Parks of Baltimore County has informed [PRC that it] will no longer be able to run any of [its] day care centers after the end of the current school year as they have turned the operation of these centers over to another organization." In a follow-up letter to Burman dated May 29, Engorn wrote that "[a]s a result of this employment termination, your income from our organization will cease as of that date. . . . [W]ith this employment termination, your income will be $3,518.27 less than you were expecting to earn from 9/1/2008 thru [*sic*] 8/31/2009." Both Pinsky and Burman received their last paychecks from PRC at the end of May 2009. They continued working through the end of the school year, until June 12, 2009.

Pinsky and Burman filed a complaint against PRC and nine individual Board members on November 25, 2009. They alleged that PRC and the officers breached their employment contracts and sought unpaid wages, as well as treble damages, reasonable counsel fees, and costs under the Maryland Wage Payment and Collection Act, Md. Code (1991, 2008 Repl. Vol.), Labor & Employment Article ("LE"), § 3–507.1. Pinsky and Burman thus sought $16,745.97, plus interest, and $11,985.33, plus interest, respectively, in addition to counsel fees of $9,577.10 and costs.

The litigation proceeded to discovery, albeit with some difficulty. The deposition of Engorn, PRC's former treasurer, did not take place as scheduled in October 2010 because Engorn's counsel allegedly failed to inform his client of the deposition. Appellants moved for sanctions, but the circuit court never ruled on the motion. In another instance, counsel for the defendants failed to appear for a court-ordered settlement conference. Appellants again moved for sanctions, and that motion was denied.

A bench trial began on May 31, 2011 and continued on November 7 and November 14. Appellants' theory of the case focused on allegations of financial mismanagement by various PRC Board members. Pinsky and Burman testified about their employment with PRC and the amount of their legal fees. The seven individual defendants testified about their own involvement in PRC, and, to the extent that they were knowledgeable, PRC's operations and finances. . . .

* * *

At the end of the third day of the trial, the judge made findings of fact:

> There's no dispute that each of the [appellants] had an employment agreement, those employment agreements were dated August 18th of 2008. They provided that each of the [appellants] would be paid through August 17th of 2009. Ms. Burman's contract was for a total of $16,887.75. Ms. Pinsky's contract was for $24,993.50. Either of those agreements could be terminated at any time with just cause. The contracts were terminated by a letter from PRC dated, letters, dated May 22nd, 2009 terminating them effective June 12th of 2009. I think there was good cause to terminate them in the sense that there was, the program was not going to be continued but the evidence is sufficient that the [appellants] had already performed work for which they had not been paid at the time of their termination and that they were owed money by Pikesville Recreation Council. PRC has breached their contract, their contracts, both contracts, and judgment will be entered in favor of the [appellants] against Pikesville Recreation Council. Judgment in the amount of $5,581.99 for Ms. Pinsky and $3,893.29 for Ms. Burman.

The judge next considered the request for treble damages and awarded them:

> The [appellants] have asked that I triple those amounts on behalf of each of them because of bad faith shown by PRC in not making payments to them. [Appellants] have contended that since there was no bona fide dispute as to what was owed, the damages should be tripled. On this record it seems to me that Pikesville Recreation Council did not have a bona fide dispute so much as PRC believed that it could terminate the contracts and not pay them. There's been no evidence that they, that was, that conclusion was reached by PRC based on legal advice. I don't know why they thought that they did not have to pay the [appellants] for work which was performed. They haven't shown good cause for not having paid for the work that was already performed. I think it is

> appropriate in this case to triple the damages. So I will award a total of $16,745.97 to Ms. Pinsky for, against PRC and a total of $11,679.87 for Ms. Burman against PRC.

The judge then considered the claims against the six individual [officers and board members]:

> There's no evidence on this record that any of the individual board members entered into a contract with the [appellants]. The case is dismissed as to all of the individual [officers and board members]. Mr. Engorn's situation is certainly the most troubling because, especially to the sense, in the sense that he was writing checks for debts that were not PRC's obligation, specifically payments to Mr. Powell. While that situation is troubling, and I don't find any justification for it on this record, I also don't find any legal theory under which to hold Mr. Engorn liable, none that has been pled in this Complaint anyway or is before the Court. I think that the case was a simple breach of contract case, maybe the [appellees] verbally raised some charitable immunity defense. It seems like a lot of discovery and effort was spent on that. I don't think it was ever properly before the Court.

Finally, the judge summarized the award of damages and costs:

> I think that tripling the damages is sufficient compensation to the [appellants] for what they have undergone in this case. I don't think that a substantial award of attorney's fees is merited on this record and so I'm not awarding any attorney's fees. [Appellants] are entitled to their costs. Those costs would be typical court costs such as filing the case, whatever cost they can prove. I think that that does resolve all of the issues that were before the Court.

* * *

> Those are the costs that I'm awarding. Just the costs of the suit, as contemplated by the Maryland rules and statutes.
>
> Appellants filed a timely motion to alter or amend the judgment, which the court granted in part and denied in part in an order filed March 1, 2012. The court first denied appellants' request to hold the individual Board members liable. It observed that "[n]o Maryland law and no Maryland case is cited which makes members of a voluntary membership organization who serve as officers or Board members personally liable for payment of contracts executed in the name of the organization," and it "decline[d] to adopt new law in this case."
>
> The court also summarized the evidence before it showing "sloppy management of PRC," including that "[s]ome of the individual defendants testified that they did not understand their participation on the Board to mean financial oversight of PRC." It remained troubled by the payments made by Engorn, the former PRC treasurer, from PRC's accounts to counsel for the individual defendants, as "[t]here was no evidence Mr. Engorn was ever authorized by PRC to pay legal expenses for himself and the other individual defendants from PRC funds." The court concluded, however, that "[t]he mismanagement of PRC's finances in this case did not amount to fraud," and, in any event, that the complaint "alleged neither fraud nor bad faith."
>
> Finally, the court granted the request for an award of attorney's fees and awarded $2,000 for "drafting a Complaint and proceeding to judgment against PRC."

214 Md. App. at 555-58, 563-66 (footnotes omitted).

On October 30, 2013, this Court issued *Pinsky I*, affirming in part and reversing in part, and remanding the case to the Circuit Court for Baltimore County for further fact-finding on the individual officers' potential liability for PRC's breach of contract. *Id.* at 585, 591. This Court concluded that an individual officer could be personally liable for PRC's breach of contract if that officer authorized, assented to, or ratified the contract with

appellants. *Id.* at 580, 585. Because the circuit court did not address such potential personal liability, this Court remanded the case for further proceedings. *Id*. at 585-86, 591. This Court also held that appellees did not qualify as employers under the Maryland Wage Payment and Collection Act, and thus were not subject to an award of treble damages under the Act. *Id*. at 589.

On February 4, 2014, the circuit court received the mandate from this Court. On December 17, 2014, appellants filed a Motion for Liability of Individual Defendants, and for Treble Damages, Counsel Fees and Other Costs.

On January 6, 2015, Counsel for Engorn, Kleiman, Abell, and Veditz ("appellees' counsel") filed a Request for Postponement to postpone the trial scheduled for January 13, 2015, because his wife was scheduled for surgery on January 12, 2015. On January 8, 2015, appellants' counsel filed an opposition to the request of appellees' counsel. That same day, the circuit court issued an order denying the Request for Postponement.

On January 13, 2015, the circuit court held a hearing at which the absent appellees did not appear. Appellees' counsel did not appear either; but Engorn was present. The court granted judgment in favor of the absent appellees and against appellants for costs. The court continued the case against Engorn so that Engorn could be represented by counsel.

On January 23, 2015, appellants filed a Motion to Reconsider Rulings. On January 28, 2015, the circuit court issued an order denying appellants' motion. On February 11, 2015, appellants filed a Motion to Reconsider Rulings on Motion to Reconsider Rulings.

On February 20, 2015, the circuit court held a hearing on appellants' claims against Engorn. The court found in favor of appellants and entered judgment on behalf of Pinsky and against Engorn in the amount of $5,581.99, plus interest and costs, and on behalf of Burman and against Engorn in the amount of $3,995.11, plus interest and costs. The court also considered and denied appellants' second reconsideration motion.

On February 26, 2015, Engorn filed a Motion to Alter, Amend, or Revise Judgment. On March 13, 2015, appellants filed a response to Engorn's motion. On March 18, 2015, Engorn filed a rebuttal to appellants' response.

On March 26, 2015, the circuit court denied Engorn's motion. On April 17, 2015, appellants filed a notice of appeal. On April 27, 2015, Engorn filed a notice of cross-appeal.

Additional facts will be set forth as necessary to the resolution of the instant appeal.

STANDARD OF REVIEW

The same standard of review that governed *Pinsky I* governs the instant case: "Non-jury trials are reviewed on both the law and the evidence. Legal conclusions, such as those reached in the interpretation of a contract, are reviewed *de novo*." 214 Md. App. at 567 (citations omitted). We "view[ ] evidence in the light most favorable to the prevailing party, and resolve[ ] all evidentiary conflicts in the prevailing party's favor." *Dynacorp Ltd. v. Aramtel Ltd.*, 208 Md. App. 403, 451 (2012) (citations omitted), *cert. denied*, 430 Md. 645 (2013). A trial court's findings of fact will not be disturbed on appeal unless clearly erroneous. *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343

(2005), *cert. denied*, 391 Md. 579 (2006).

DISCUSSION

Appeal

I. Judgment in Favor of Absent Appellees

First, appellants argue that "[i]t was reversible error to grant judgments to the [absent] appellees who disobeyed properly served subpoenas and did not appear or testify at the trial." According to appellants, they properly served the absent appellees by attaching the subpoenas to a letter to their counsel, which is permitted by Maryland Rule 2-510.[1] Appellants argue that they made a proper proffer "that had [the absent appellees] appeared in Court and testified, as the Subpoenas required them to do, they would have testified that they authorized, consented to or ratified the contracts with [ ] [a]ppellants[.]" According to appellants, the court's decision to grant judgment in favor of the absent appellees rewarded them for disobeying a subpoena and "suggest[ed] that they are more successful and do best when they are neither represented by counsel nor present in Court to testify on their behalves."

[1] Appellants also contend that the circuit court erred in stating in its January 28, 2015 order that the absent appellees were not served subpoenas. We shall assume, however, that the absent appellees were properly served. In its January 28, 2015 order, the circuit court stated: "[A]s to the defendants who were served, Plaintiffs failed to request any relief from the Court to remedy the failure of these defendants to appear." (Emphasis in original). Although the court did not specify which "defendants" to which it was referring, logic dictates that it is the absent appellees, because appellants' counsel served them via their counsel, and the court appeared to accept such service as proper at the January 13, 2015 hearing.

Maryland Rule 2-510, entitled "Subpoenas," provides the following remedy for failure to obey a subpoena:

> (j) **Attachment. A witness served with a subpoena under this Rule is liable to body attachment and fine for failure to obey the subpoena without sufficient excuse.** The writ of attachment may be executed by the sheriff or peace officer of any county and shall be returned to the court issuing it. **The witness attached shall be taken immediately before the court if then in session.** If the court is not in session, the witness shall be taken before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the witness' appearance at the next session of the court that issued the attachment.

Md. Rule 2-510(j) (emphasis added).

Maryland case law makes clear that issuing a body attachment is the appropriate remedy for failure to obey a subpoena, while a default judgment is not. *See Evans v. Howard*, 256 Md. 155, 159 (1969) ("The sanction for the failure, without sufficient excuse, to obey a summons served under [Md. Rule 2-510] is that the witness shall be liable to attachment and fine. . . . We do not believe that . . . a judgment by default shall be rendered upon failure to obey a summons issued under their provisions." (footnote omitted) (citation omitted)); *A. V. Laurins & Co., Inc. v. Prince George's Cty.*, 46 Md. App. 548, 565 (1980) ("The proper procedure for the Circuit Court's enforcement of the subpoenas would have involved attachment and fine . . . . Bench warrants could have been issued for the absent parties." (citation omitted)).

In the case *sub judice*, the following occurred at the January 13, 2015 hearing:

> THE COURT: This is the case of Pinsky versus Pikesville Recreation Council, Case C-09-14311. All right.

[APPELLANTS' COUNSEL]: [Appellants' counsel] on behalf of the [appellants], good morning.

* * *

MR. ENGORN: Your Honor, I'm Steve Engorn. And on behalf of [appellees' counsel], his wife is in the hospital, which is where he is right now, and I didn't know - - so he's not here obviously, and I don't know what, what - - I just came, because I was afraid not to show up. He told us all not to show - - he told us all not to come that the hearing - -

THE COURT: When you say he, [appellees' counsel] told you not to come?

MR. ENGORN: Yes, he did. Yeah, he said it was being postponed so we all made other arrangements. I just ran here from work just to make sure I got here on time.

THE COURT: All right, well, [appellees' counsel] sent the Court a - - I think last week he sent in a piece of paper which he called a Request for a Postponement, although I have many times advised [appellees' counsel] that he is to follow the Court's - - the Maryland Rules of Procedure. He's not followed the Maryland Rules in filing that particular request. He did not speak with - - at least he did not say in his request that he had spoken to [appellants' counsel], as he is required to do.

Let me see what the exact language of that request was.

* * *

THE COURT: Well, there's the order denying it.

* * *

MR. ENGORN: So what am I - - so what are we supposed to do? I mean, he's not here to represent us.

THE COURT: Well, I think that would be a matter, Mr. Engorn, between you and [appellees' counsel].

MR. ENGORN: Okay.

> THE COURT: I can't give you LEGAL advice, sir.
>
> MR. ENGORN: Well, I can't act as my own attorney obviously; I'm not qualified. The rest of the group isn't here, because we were told - - they were told not to be here, as I was, and I just was afraid not to show up once I heard that it wasn't being - - I found out this morning that it wasn't being postponed. So I'm not sure what - -
>
> THE COURT: As I said, I cannot give you legal advice, sir.
>
> * * *
>
> THE COURT: All right. Well, [appellants' counsel], I mean, certainly it's within your purview to agree to reschedule this at this time.
>
> Certainly, if you wish to agree, I think that would control the day.
>
> [APPELLANTS' COUNSEL]: I'm not going to, Your Honor. As you've stated, this case is over five years old. There have been some fits and starts. It has a torturous past, and it's time for it to be concluded.
>
> [Appellees' counsel's] noncommunication and lack of details in his request for postponement that might justify a postponement and that's where we all stand at this point. I think that I have to oppose the postponement and maintain that position.
>
> THE COURT: All right. Then let us proceed with what we have before us.

Appellants' counsel then called Engorn to the stand; after his examination concluded, appellants' counsel called Marc Horwitz, who was a former president of the Board of Directors of PRC. At the conclusion of Horwitz's testimony, the following occurred:

> [APPELLANTS' COUNSEL]: Your Honor, I'm going to call each of the [absent appellees] who are not here today - -

THE COURT: All right.

[APPELLANTS' COUNSEL]: - - and point out to the Court that they've all been subpoenaed. Returns of Service are - - should be in the file.

* * *

THE COURT: All right, why don't we just go one at a time since everybody's situation might be different. All right, as to the first person you mentioned, Harry Veditz?

[APPELLANTS' COUNSEL]: Right.

THE COURT: All right, So you did serve him with a subpoena?

[APPELLANTS' COUNSEL]: Well, all of the attorneys - -

THE COURT: I'm just going to talk about Mr. Veditz. Mr. Veditz was served?

[APPELLANTS' COUNSEL]: I sent it also to [appellees' counsel].

THE COURT: Okay. So as a consequence of having served Mr. Veditz, what are you asking the Court, if anything? He's not here.

[APPELLANTS' COUNSEL]: I am - - I'm going to make a proffer to the Court that I would ask each of these [absent appellees] questions with respect to the making of the contract with [appellants], their authorizations of that contract, their ratification, and whether they disavowed that contract. And without their appearance before the Court, having been subpoenaed, I'm going to ask the Court to render judgments against each of [the absent appellees] for the full amount of the damages sought in the Complaint.

THE COURT: I don't know of a rule or a law that permits the Court to enter judgment as to Mr. Veditz because he was served with a subpoena and did not appear.

Is there some authority for that you wish to direct the Court?

* * *

[APPELLANTS' COUNSEL]: I don't have any authority with me here today. Depending upon how the Court is disposed, I may ask permission to submit a memorandum to you within a reasonable time on that issue, but I do believe that the Court is entitled to draw a presumption that because of [the absent appellees'] absence, their responses to those questions would not be favorable to them, and the Court can reach a conclusion that they are liable under their individual liability as expressed by the Court of Special Appeals.

THE COURT: All right. Well, the Court of Special Appeals has not expressed any opinion about whether or not any individual is liable under this breach of contract theory. They have said that, you know, these individuals are not liable under the statutory claims, but there's been no finding with respect to the breach of contract.

I don't know of a statute or case law that would entitle the Court to draw the presumption that you have mentioned. I don't know what that authority is.

[APPELLANTS' COUNSEL]: Well - -

THE COURT: I mean, based on what Mr. Engorn said, we - - the only presumption I would make is that [the absent appellees] were told not to be here by [appellees' counsel], and that they have relied on the advice of counsel in not attending today's proceedings. That's the only presumption I would make, that they have relied on their attorney's advice not to be here, but I don't see where that presumption gets us either.

[APPELLANTS' COUNSEL]: Well, I'm, I'm going to call each of them - -

* * *

THE COURT: All right.

Mr. Abell was not served.

Mr. Kleiman was not served. . . .

[APPELLANTS' COUNSEL]: You know, Your Honor, that's not correct.
THE COURT: All right, maybe you have a Return of Service. We just related what is in the court file, so maybe you subsequently got them served and you have a Return of Service?

[APPELLANTS' COUNSEL]: Well, two, two things. I have the Returns of Service.

THE COURT: All right, do the Returns of Service show they were served?

[APPELLANTS' COUNSEL]: I'm checking now. . . .

I show Stewart Abell nonserved.

And I show David Kleiman nonserved.

THE COURT: All right, your record is consistent with what is in the court then.

[APPELLANTS' COUNSEL]: That sounds right, but it's of no consequence, because the Rule provides that counsel can accept the subpoenas on behalf of their clients, and I did send the subpoenas to each of the attorneys. Received no objection to them. And I contend that they have been served as a result thereof.

THE COURT: How were the subpoenas served on [appellees' counsel]?

[APPELLANTS' COUNSEL]: They were served by letter from me to [appellees' counsel] and with the subpoenas enclosed with that letter.
THE COURT: All right. Your next witness.

[APPELLANTS' COUNSEL]: Mr. David Kleiman, who does not respond.

Mr. Stewart Abell, who does not respond. . . .

THE COURT: **All right, the Court's ruling as to Mr. Abell, Mr. Kleiman is the same, I'm not aware of any authority on which I**

> **could enter judgment against those gentlemen at this time on this record.**
>
> [APPELLANTS' COUNSEL]: Okay.

(Emphasis added).

Next, appellants' counsel called Pinsky to the stand. Following her testimony, appellants' counsel offered his closing argument. After a recess, the court orally ruled in favor of the absent appellees, explaining that appellants "have not met their burden of proof as to those three [absent appellees]."

As previously indicated, appellants filed a Motion to Reconsider Rulings on January 23, 2015, arguing that the trial court should not have denied liability as to the absent appellees. The circuit court denied appellants' motion, stating in its order that appellants

> failed to request any relief from the Court to remedy the failure of [the absent appellees] to appear. [Appellants] had the burden of putting on their case and therefore the burden of presenting witnesses. [Appellants] cannot now complain that they were prejudiced by their own failure to secure the witnesses they believe were necessary for trial.

(Emphasis in original).

The circuit court held another hearing on February 20, 2015. Appellants' counsel informed the court that he had sent another round of subpoenas to the absent appellees via their counsel and again, the absent appellees failed to appear. At the hearing, the following colloquy occurred:

> [APPELLANTS' COUNSEL]: So the point is [appellants] are severely prejudiced in this case not having the opportunity to examine [the absent appellees], and **I hate for there to be another hearing, but I don't know any alternative.**

* * *

THE COURT: So this is a relief you're requesting due to the subpoenas for [the absent appellees] right; is that right? One, two, three, four.

[APPELLANTS' COUNSEL]: Let me make sure we have all of them.

You do. That's correct.

THE COURT: **All right, and let's see, each subpoena requests the individuals be present at court on Friday, February 20th, 2015, at 11 o'clock a.m. It is that date and that time, and none of [the absent appellees] are here.**

All right, so what are you asking the Court to do with respect to that fact?

[APPELLANTS' COUNSEL]: **Your Honor, we need to get their testimony.** I don't see any way around it. And we can proceed as far as we can today, but **I think there's going to have to be a rescheduling when they obey the subpoenas, hopefully.**

THE COURT: **All right, so you're not asking the Court to do anything about the fact that these subpoenas were served and they haven't appeared, other than reschedule this date?**

[APPELLANTS' COUNSEL]: I've asked for sanctions in this case several times, and generally they've not been granted. I, I think that sanctions are appropriate however. We're all here - - I think under the circumstances unnecessarily. And **another hearing has to be held and, therefore, I think the sanctions should include costs incurred by [appellants], their lost wages for the day, and my fee for having to be here today.**

The preparation time would be applicable to a future hearing, so I wouldn't, I wouldn't ask for you to grant any fees for that. And any other relief that the Court thinks might be appropriate.

* * *

THE COURT: . . . I guess the same issue arises when the subpoena issue came before me before. **I don't know of anything that happens when someone fails to obey a subpoena, other than the issuance of a body attachment. You didn't ask for that in January; you're not asking for that today. So far as I know that's the only sanction.**

So with respect to the subpoena issue, it's just not clear to me that there is a purpose in continuing this proceeding again with respect to the [absent appellees] . . . .

* * *

I was concerned on January 13th that [ ] Engorn's counsel was not present, and that is why I continued the case today before rendering judgment as to [ ] Engorn. So I do think that we need to proceed on that basis.

[APPELLANTS' COUNSEL]: **May I be heard?**

THE COURT: All right.

[APPELLANTS' COUNSEL]: I did file a motion to reconsider your rulings. I hope that's in the file.

* * *

THE COURT: All right, so that is in the Court file, but I had not seen it.

Motion to Reconsider on the Motion to Reconsider.

[APPELLANTS' COUNSEL]: Would you like for us just to take a few moments while you look at that?

THE COURT: All right, yes.

* * *

All right, so the Court ruled on this issue, the January - - you wanted to examine [the absent appellees]. You didn't ask the Court for a body attachment. It's the only sanction I know of

> **when people don't appear in response to a subpoena. You could have asked the Court for a body attachment. The sheriffs will go out and pick them up and bring them in.**
>
> **I asked you several times on the record about that. It's not, of course, my position to suggest what to do, it's up to you to ask. And that wasn't done. That's the end of it. I don't think there are endless opportunities to pursue that relief.**

(Emphasis added).

The quoted language above makes clear that appellants did not ask for a body attachment at either the January 13, 2015 or February 20, 2015 hearings. Appellants also failed to ask for a body attachment in their Motion to Reconsider Rulings, as well as in their Motion to Reconsider Rulings on Motion to Reconsider Rulings. In the instant appeal, appellants persist in seeking what is essentially a default judgment in their favor as the appropriate remedy, but do not cite any authority that such remedy is available for failure to obey a subpoena.[2] Nothing in the Maryland rules or case law permit such default judgment; the law makes clear that the proper remedy for failure to obey a subpoena is the issuance of a body attachment. *See Evans*, 256 Md. at 159; *A. V. Laurins & Co., Inc.*, 46 Md. App. at 565.

[2] At oral argument before this Court, appellants cited for support to *Decker v. State*, 408 Md. 631 (2009) and *Southern Management Corp. v. Mariner*, 144 Md. App. 188 (2002). Neither case concerns the appropriate remedy for failure to obey a subpoena, and thus neither case is relevant for our purposes in this appeal. *Decker* is a criminal case in which the Court of Appeals affirmed the trial court's jury instruction regarding consciousness of guilt evidence per Md. Rule 5-403. *See* 408 Md. at 648-49. In *Mariner*, this Court held that the appellant was not entitled to a "missing witness" jury instruction. *See* 144 Md. App. at 199-201.

Furthermore, appellants continue to proffer that the absent appellees "would have testified that they authorized, consented to or ratified the contracts with [ ] [a]ppellants . . . ." Such proffer is a legal conclusion, not a proper proffer of facts. Indeed, appellants fail to proffer any facts to which the absent appellees would have testified had they complied with the subpoenas. Moreover, at both hearings, appellants did not adduce any evidence to support their claim that the absent appellees were liable for breach of contract under the teachings of *Pinsky I*. We agree with the trial court that appellants "ha[ve] the burden of putting on their case and therefore the burden of presenting witnesses[,]" and appellants "cannot now complain that they were prejudiced by their own failure to secure the witnesses they believe were necessary for trial." Accordingly, the trial court's decision on this issue was not erroneous.

II. Whether Appellees were Employers

Appellants argue that the circuit court should have considered whether Engorn and the absent appellees were appellants' employers and thus subject to the Maryland Wage Payment and Collection Act's treble damages, attorney's fees, and costs. According to appellants, because this issue "never came up at the trial" in 2011, "was not raised in the [b]riefs, and was not discussed at the oral argument before this Court" in *Pinsky I*, "this issue has not been litigated or fully developed," and should be litigated at a remand hearing.

This Court has explained the law of the case doctrine as follows:

> The law of the case doctrine, specifically a subset of the doctrine known as the mandate rule, prevents trial courts from dismissing appellate judgment and re-litigating matters already resolved by the appellate court. **Under that doctrine, a trial court is bound by the**

> **decision of an appellate court in the case before it . . . unless [the ruling is] changed or modified after reargument, and neither the questions decided nor the ones that could have been raised and decided are available to be raised in a subsequent appeal.** The doctrine, however, is a judicial creation borne of procedure and convenience, rather than an inflexible rule of law. [W]hile the doctrine binds a Maryland trial court to a prior decision of this Court in the same case, **this Court may, but need not, invoke the doctrine**; in other words, we are not precluded from opening up and reconsidering an issue we decided earlier, in the same case, when exceptional circumstances so warrant. **Thus, decisions rendered by a prior appellate panel [of the Court of Special Appeals] will generally govern the second appeal**, **unless (1) the previous decision [was] patently inconsistent with controlling principles announced by a higher court and is therefore clearly incorrect, *and* (2) following the previous decision would create manifest injustice.**

Andrulonis v. Andrulonis, 193 Md. App. 601, 614-15 (alterations in original) (bold emphasis added) (citations and internal quotation marks omitted), *cert. denied*, 415 Md. 608 (2010).

The Court of Appeals has explained the purpose behind the law of the case doctrine:

> **It is the well-established law of this state that litigants cannot try their cases piecemeal. They cannot prosecute successive appeals in a case that raises the same questions that have been previously decided by this Court in a former appeal of that same case**; and, furthermore, they cannot, on the subsequent appeal of the same case raise any question that could have been presented in the previous appeal on the then state of the record, as it existed in the court of original jurisdiction. If this were not so, any party to a suit could institute as many successive appeals as the fiction of his imagination could produce new reasons to assign as to why his side of the case should prevail, and the litigation would never terminate. **Once this Court has ruled upon a question properly presented on an appeal**, or, if the ruling be contrary to a question that could have been raised and argued in that appeal on the then state of the record, as aforesaid, **such a ruling becomes the "law of the case" and is binding on the litigants and courts alike, unless changed**

> **or modified after reargument, and neither the questions decided nor the ones that could have been raised and decided are available to be raised in a subsequent appeal.**

Fid.-Balt. Nat'l Bank & Tr. Co. v. John Hancock Mut. Life Ins. Co., 217 Md. 367, 371-72 (1958) (emphasis added); *accord Schisler v. State*, 177 Md. App. 731, 743-44 (2007).

In *Pinsky I*, we addressed the issue of whether appellees were employers:

> Appellants obtained a judgment against PRC for treble damages, attorney's fees, and costs under the Maryland Wage Payment and Collection Act ("Payment and Collection Act"), LE § 3-507.1(b) (now LE § 3-507.2(b)). On appeal, they seek additional attorney's fees and costs, as well as the award of treble damages against the individual appellees. However, in relying on LE § 3-507.2(b), the circuit court considered its application only as against PRC, not the individual defendants. **Because the question of whether a defendant is an "employer" under LE § 3-507.2(b) is a condition precedent to an action for treble damages, attorney's fees, and litigation costs under the statute, we must first consider whether the individual officers and directors could be subjected to such liability.**
>
> An "employer" is defined as "any person who employs an individual in the State or a successor of the person." LE § 3-501(b). Whether or not a given person or entity is an employer under the Payment and Collection Act is governed by the "economic reality" test. *Campusano v. Lusitano Const. LLC*, 208 Md. App. 29, 38, 56 A.3d 303 (2012). The economic reality test for an alleged employer's "control" over an employee examines "whether the alleged employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records." *Id.* at 39-40, 56 A.3d 303 (quoting *Newell v. Runnels*, 407 Md. 578, 651, 967 A.2d 729 (2009)).
>
> In their complaint, appellants alleged that PRC "entered into separate Employment Agreements with each of the Plaintiffs." Their allegations regarding the individual defendants were limited to: (1) naming them as members of the Board of Directors and (2)

> stating that the defendants "wrongfully and materially breach[ed] the aforesaid Employment Agreements by failing and refusing to pay the Plaintiffs their compensation in full." **At trial, appellants did not present any evidence showing that the officers met any of the factors of the "economic reality" test, such as supervisory power over the pre-school teachers or power to determine the rate and method of payment. Because we find that appellees do not qualify as employers under the Payment and Collection Act, the statute's damages provisions do not apply to them.**
>
> Appellants also seek the imposition of additional attorney's fees and costs. The court awarded $2,000 in attorney's fees for "drafting a Complaint and proceeding to judgment against PRC" and "$200.00 in reasonable and necessary costs." LE § 3-507.2 is a fee-shifting statute which "permit[s] a trial court, in its discretion, to award attorneys' fees, and such discretion, consistent with the intent of the General Assembly, is to be exercised liberally in favor of awarding fees, at least in appropriate cases." *Friolo v. Frankel*, 403 Md. 443, 456-57, 942 A.2d 1242 (2008) (Quotations omitted). **Because the individual appellees are not "employers" under the Payment and Collection Act, they are not subject to the award of attorney's fees and costs. We therefore find no abuse of discretion in the court's modest award of fees and costs for a wage collection action and default judgment against PRC alone.**

214 Md. App. at 588-89 (emphasis added) (footnotes omitted).

Because we already decided that Engorn and the absent appellees were *not* appellants' employers, the circuit court correctly determined that this issue was settled law and was not to be disturbed on remand. *See Andrulonis*, 193 Md. App. at 614-15. If appellants disagreed with our decision in *Pinsky I*, either on the merits or because the issue "ha[d] not been litigated or fully developed," the appropriate course of action would have been to file a motion for reconsideration with this Court, *see* Md. Rule 8-605(a), or to file a petition for writ of certiorari with the Court of Appeals, *see* Md. Rule 8-302(a), after *Pinsky I* was issued. Having not done either, appellants were not permitted to have the

issue reopened at the prior remand hearing. Finally, because our decision on this issue in *Pinsky I* was not "patently inconsistent with controlling principles announced by [the Court of Appeals,]" and "would [not] create [a] manifest injustice[,]" appellants are not entitled to litigate the issue on yet another remand. *See Andrulonis*, 193 Md. App. at 614. Accordingly, appellants' claim of error on the issue of whether the individual appellees were appellants' employers fails.

III. Circuit Court's Alleged Bias

Lastly, appellants argue that, "[i]f the case is remanded back to the circuit court, it should be reassigned to another judge as the lower court judge demonstrated bias." According to appellants, the circuit court judge "injected her own philosophy and personal point of view into the case, likely resulting in misguided judgments[.]"

In light of our decision to affirm the judgment of the circuit court, and thus to not order a remand of the case, appellants' issue is moot. Furthermore, even if the issue was not moot, we would not reach it, because appellants never raised the issue of the circuit court's alleged bias in any hearing or in a written motion filed in the record of the instant case. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . .").

CROSS-APPEAL

I. Individual Liability for Association Officers

First, Engorn argues that this Court, in *Pinsky I*, "has legislated in the face of the

statute by creating liability for which and when [ ] the statute ([Md. Code (1974, 2013 Repl. Vol.), §] 11-105 [of the Courts and Judicial Proceedings Article ("CJP")]) makes no such provision." According to Engorn, the plain language of the statute makes clear that the legislature did not intend to make individual members of an unincorporated association liable for the association's contracts even if the members assented to the contract. Appellants respond that *Pinsky I* is binding law, and that Engorn is attempting to reverse *Pinsky I* through an improper appeal of the trial court's ruling on remand.

We agree with appellants that this issue is essentially a second appeal of this Court's decision in *Pinsky I*, which is not appropriate, because *Pinsky I* is the binding law of this state until it is overruled by the Court of Appeals or abrogated via legislation passed by the General Assembly and signed into law by the Governor. *See Archers Glen Partners, Inc. v. Garner*, 176 Md. App. 292, 325 (2007) ("[A] reported decision [of the Court of Special Appeals] constitutes binding precedent . . . ."), *aff'd*, 405 Md. 43 (2008); *see also Andrulonis*, 193 Md. App. at 614 ("Thus, decisions rendered by a prior appellate panel [of the Court of Special Appeals] will generally govern the second appeal[.]" (internal quotation marks and citation omitted)). Again, if Engorn disagreed with *Pinsky I*, the appropriate course of action would have been to file a motion for reconsideration with this Court, *see* Md. Rule 8-605(a), or to file a petition for writ of certiorari with the Court of Appeals, *see* Md. Rule 8-302(a). Accordingly, we reject Engorn's argument.

II. Whether Engorn assented to the contract between PRC and appellants

Next, Engorn argues that the trial court erred in finding that he authorized, assented

to, or ratified the employment contracts between PRC and appellants based on the single fact that he signed appellants' paychecks. According to Engorn, letting the judgment stand against him is unsound public policy, because it will discourage community members from serving as volunteer officers for an unincorporated entity like PRC. Appellants counter that there was abundant evidence to support the circuit court's ruling that Engorn assented to the employment contracts, namely that Engorn (1) signed appellants' paychecks, (2) "knew that [appellants'] contracts were renewed[,]" (3) "never spoke out against [such] renewal[,]" (4) "decided to ultimately terminate [appellants,]" (5) "wrote the letters of termination[,]" and (6) was involved in the day to day operation of the schools including, deciding to consolidate schools, informing parents of such consolidation, receiving calls about problems with the schools, making calls to the County to resolve such problems, firing the Supervisor of the schools, receiving and depositing tuition checks, and being the "'point' person" for appellants regarding school issues.

As this Court stated in *Pinsky I*, an officer of an unincorporated association can be held personally liable for the association's breach of contract when the officer is shown to have "authorized, assented to, or ratified the contract in question[.]" 214 Md. App. at 580 (internal quotation marks omitted). In reaching that holding, we discussed several cases involving such potential liability, "[b]ecause ratification, authorization, and assent can take many forms[.]" *Id.*

> For example, the **Fifth Circuit considered officer liability in the context of a contract dispute between an unincorporated political campaign committee and a company that provided direct mail fundraising services for the campaign.** *Karl Rove &*

Co., 39 F.3d at 1276. After the candidate lost the election, his campaign committee failed to pay the company some of the money owed to it under the contract, and the company sued the committee, the candidate, and the treasurer for breach of contract. *Id.* Applying Pennsylvania and Texas law, the Fifth Circuit found that although the candidate was not named in the contract and did not sign it, he was capable of incurring personal liability for the committee's debts under the contract. *Id.* at 1291. **The court next determined that the candidate was in fact liable because he assented to the contract: he knew that his campaign committee "would and did contract for direct mail fundraising services and [thus] approved, at least tacitly, the [c]ommittee's decision to enter into" the contract.** *Id.* at 1295.

In *Victory Committee v. Genesis Convention Center of City of Gary,* 597 N.E.2d at 363, a convention center brought a breach of contract action against a political candidate's reelection committee, the candidate, and the committee's treasurer, after the committee failed to pay the center after holding a fundraiser there. The contract was between the committee and the center and was signed by the committee's treasurer "in her capacity as treasurer." *Id.* In affirming the trial court's grant of summary judgment in favor of the convention center, **the Court of Appeals of Indiana held that the candidate and the committee treasurer were personally liable because they approved the contract, in different ways: the treasurer negotiated the contract and signed it for the committee, while the candidate failed to assert, in his affidavit, any facts showing that the committee "was not authorized to enter into the agreement, or that he disavowed this particular contract, or that he did not indeed reap the benefits of the fundraiser held to support his re-election campaign."** *Id.* at 365.

An individual's ratification of the contract typically amounts to liability, absent contract terms to the contrary. In *Shortlidge v. Gutoski,* 125 N.H. 510, 484 A.2d 1083, 1085 (1984), the New Hampshire Supreme Court considered whether the vice president of an unincorporated taxpayers association was personally liable for the association's failure to pay for legal services. The vice president had, on behalf of the association, contracted with the plaintiff, who sued only the vice president when he failed to receive full payment for his services. *Id.* Observing that this was an issue of first impression in New Hampshire, the court applied the common law

principle of liability for "members ... who have authorized, assented to, or ratified the underlying transaction and thereby have become liable for the association's debts." *Id.* at 1086. The court remanded the case for further fact-finding on the exact terms of the contract, which was apparently an oral agreement. *Id.* at 1086. **The court observed**, however, **that absent any evidence that the plaintiff agreed "to look exclusively to the funds expected to be raised by the taxpayers association for his compensation and not to the personal funds of the defendant or any other member of the association," it "would find the defendant personally liable" because he "assented to and ratified the plaintiff's employment contract."** *Id.* at 1086–87 (Internal quotations omitted).

If an officer clearly disapproves of the contract, liability will not attach. For example, in *Will v. View Place Civic Ass'n,* 61 Ohio Misc.2d 476, 580 N.E.2d 87, 92 (Ohio Ct.Com.Pl.1989), the trial court declined to enforce a contract against two members of an unincorporated association. The court determined that the members were not officers, and **they had manifested an intent not to be bound by the contract, including writing letters and renouncing their membership in the association.** *Id.* **However, the decision to not ratify an action must be clear.** In *Fed. Deposit Ins. Corp. v. Tyree,* 698 S.W.2d 353, 354 (Tenn.Ct.App.1985), the chairman of the nonprofit campaign committee "Tennesseans for Tyree" signed two promissory notes on behalf of the committee. The Federal Deposit Insurance Corporation ("FDIC") later sought to collect on the notes and sued the candidate and the committee chairman, among others. *Id.* The Court of Appeals of Tennessee reversed the grant of summary judgment to the candidate and chairman because there were disputed issues of material fact as to whether the candidate and the chairman had authorized the promissory note transactions and ratified the subsequent loans. *Id.* at 357.

* * *

Finally, *Stone v. Guth,* 232 Mo.App. 217, 102 S.W.2d 738 (1937), provides a good example of the rule we apply today, *viz.,* officers of nonprofit unincorporated associations are personally liable if they ratify the contract. Members of the Associated Electrical Contractors, Inc., which "purported to be a corporation, but was never incorporated," employed the plaintiff as a business manager for the association's publication. *Id.* at 739. The plaintiff sued the

members, most of whom were not officers or directors, for $1,050 in unpaid wages, and the trial court dismissed the case against the defendants. *Id.* The Missouri Court of Appeals affirmed. *Id.* at 742. The court reached this decision by first considering whether the association was a for-profit or nonprofit organization and concluding that it was a nonprofit. *Id.* at 740–41. **It also focused on whether the defendant members "participated in or authorized the transaction upon which liability is predicated."** *Id.* at 741. The court determined that the defendants did not participate in the decision to hire the plaintiff, and because they were not involved, they were not liable. *Id.* Indeed, in the court's view, one defendant was "a mere nonparticipating member of the association" and "had nothing to do with the employment of the plaintiff." *Id.* at 742. **Even the president of the association was not liable because "it [was] not shown that he participated in any way in the management or supervision of the affairs of the association, or that he had anything to do with the employment of the plaintiff or the publication."** *Id.* The court concluded:

> It is not the law that a mere non-participating member of an unincorporated association, not organized for the purpose of engaging in business for profit, is individually liable for whatever debts may be incurred in the name of
>
> the association. If such were the law, no person of any financial responsibility would want to take the risk of becoming a member of such an association.

Id.

Id. at 580-85 (emphasis added) (footnotes omitted).

In the case *sub judice*, the trial court issued the following oral ruling at the conclusion of the hearing on February 20, 2015:

> [T]he Court must decide what the majority has directed, and that is whether [ ] Engorn, as an officer, authorized, assented to, or ratified [appellants'] contracts. There is no testimony at all that [ ] Engorn authorized [appellants'] contracts. The contracts on their face obviously are not signed by [ ] Engorn. There's no proof before

> the Court that he voted on them or in any way acted to authorize them.
>
> Footnote 40 of the Court of Special Appeals' opinion discusses this concept of ratification on which the Court of Special Appeals relied at [sic] the [R]estatement [S]econd of [J]udgments. With respect to that, they suggest that ratification could be inferred from PRC's Articles of Organization. No one is making the argument that this Court should make that inference, and I don't think the Articles of Organization would permit it.
>
> Further, we don't have [ ] Engorn accepting any benefit of [appellants'] contracts. This case is not like any of the out-of-state cases relied upon by the Court of [Special] Appeals in with respect to political campaigns where a political candidate is getting some benefit. There is no - - there are no facts under which [ ] Engorn has received any kind of personal benefit from [appellants'] contracts in working at the school. **So that leaves only the issue of assent.**
>
> N**either side has really cited any law to the Court on this issue of assent, but I think that [appellants] had the better of this argument that [ ] Engorn signed the contract - - or signed the paychecks for [appellants'] contracts. I mean, it's very thin.** It certainly wouldn't be my decision that that's the way this case should go, but it appears that two members of the Court of Special Appeals would think that that's enough. I mean, I don't see it, but **I think signing checks is appropriately construed as assenting to the contracts at issue.**
>
> As a result, I will award [ ] Pinsky judgment of $5,581.99 against [ ] Engorn, and I will award [ ] Burman 3,000 - - judgment in the amount of $3,995.11 against [ ] Engorn.

Engorn argues that, because the trial court mentioned only a single fact—that Engorn signed appellants' paychecks—as sufficient evidence to support its ruling that Engorn assented to the contracts, this Court is similarly bound to consider only that fact. Engorn is mistaken.

As stated above, on appeal this Court "views the evidence in the light most favorable to the prevailing party, and resolves all evidentiary conflicts in the prevailing party's favor." *Dynacorp*, 208 Md. App. at 451 (citations omitted). Furthermore, this Court has stated that we can affirm a decision even if the sole basis given by the trial court for that decision was erroneous. *See Montgomery Cty. v. Meany*, 34 Md. App. 647, 653 ("[W]e note that this was not the sole basis for the court's decision. *Even if it had been, a trial court can be right for the wrong reason.*" (emphasis added) (citation omitted)), *aff'd*, 281 Md. 206 (1977); *see also Robeson v. State*, 285 Md. 498, 502 (1979) ("In other words, a trial court's decision may be correct although for a different reason than relied on by that court. Considerations of judicial economy justify the policy of upholding a trial court decision which was correct although on a different ground than relied upon." (citations omitted)). In *Starke v. Starke*, 134 Md. App. 663 (2000), this Court, speaking through Judge Charles E. Moylan, Jr., stated:

> Civil trial and criminal trial alike, jury trial and non-jury trial alike, the test for the legal sufficiency of the evidence is precisely the same:
>
> > **Is there some evidence in the case, including all inferences that may permissibly be drawn therefrom, that, if believed and if given maximum weight, could logically establish all of the elements necessary to prove that the defendant committed the crime, that the tortfeasor committed the tort, that the defendant breached the contract, etc.**

Id. at 669, 678-79 (emphasis in original). In sum, despite the trial court's apparent reliance only on the fact that Engorn signed appellants' paychecks as evidence of his assent to their

employment contracts with PRC, we must consider all of the evidence presented, in the light most favorable to appellants, in determining whether Engorn assented to those contracts.

Engorn's own testimony at the January 13, 2015 remand hearing showed that he (1) signed appellants' paychecks, (2) served as appellants' "point person" for school-related issues, including receiving calls from appellants regarding problems about their school and making calls to resolve such problems, (3) decided, along with the President of the Board, to terminate appellants, and (4) signed the letters of termination. Thus Engorn assisted and represented PRC in the performance of its contracts with appellants, including, significantly, his participation in and authorization of "the transaction upon which liability is predicated." *See id.* at 584 (internal quotation marks and citation omitted). Engorn also knew that appellants' contracts were renewed, but did not "clearly disapprove[ ] of the contract" or disavow such renewal. *See id.* at 582.

Furthermore, Engorn "participated . . . in the management or supervision of the affairs of the association" relating to appellants' employment. *See id.* 585 (internal quotation marks and citation omitted). Engorn was involved in the decision to combine students from two locations into one and informed the parents of such consolidation. He received and deposited tuition checks. He kept records of the salary payments to the teachers, the tuition payments that he collected, and the tuition deposits. Finally, Engorn testified that he fired Sandy Snitzer, who was the Supervisor of the schools. He said, "She did not resign, I terminated her."

We hold that the above evidence was sufficient to support the trial court's conclusion that Engorn assented to appellants' employment contracts, and thus was personally liable for PRC's breach thereof. Accordingly, the trial court did not err in entering judgment in favor of appellants and against Engorn for damages sustained by appellants as a result of PRC's breach of the employment contracts.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID 50% BY APPELLANTS AND 50% BY APPELLEE ENGORN.