Circuit Court for Prince George's County
Case Nos. CAL20-01111, CAL20-12412

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0648

September Term, 2021

Clucksters, LLC, et al.

v.

D&L Urban Holdings, LLC, et al.

Reed,
Albright,
Salmon, James P.**
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: March 6, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms with Md. Rule 1-104(a)(2)(B).

** Salmon, J., participated in the hearing of the case, and in the conference regarding the Court's decision, but he was no longer a member of the Court prior to the adoption of the opinion. The remaining judges sitting on the panel constitute a quorum. Because they agree as to the reasoning and outcomes of the appeal, there is a "concurrence of a majority of [the] panel." Md. Code Ann., Cts. & Jud. Proc., § 1-403(b) (2020 Supp.); *see also Jackson v. State*, 408 Md. 231, 239–40 (2009).

D&L Urban Holdings, LLC ("D&L"), L&L Urban Holdings, LLC ("L&L"), and Friend's Choice Investments, LLC ("Friend's Choice"), (collectively "Appellees") were the combined 100% owners of the membership interest in Urban Bar-B-Que Systems, LLC ("UBQS"), the franchisor for ten Urban Bar-B-Que restaurants in Maryland and Virginia. James Beall was the managing member of UBQS up until July 19, 2019. Mr. Jean-Pierre Haddad ("Mr. Haddad") was the managing member of Clucksters, LLC ("Clucksters"), Clucksters International, LLC, ("Clucksters International") CUC Marketing, and president of Cluck-U, Corp. ("Cluck-U"), (collectively, "Appellants" or "Haddad Entities").

Mr. Haddad was interested in purchasing UBQS. After Mr. Haddad conducted due diligence, he noted that some of UBQS franchise locations were risky investments, and thus Appellees reduced the purchase price. Appellees and Appellants entered into a membership purchase agreement ("Purchase Agreement"), for the sale of the Appellees' collective 100% membership interest in UBQS, backdated for July 1, 2019.[1] The Purchase Agreement included an indemnification clause and the purchase price of $472,500. The Purchase Agreement stated that Appellants shall pay $150,000 at closing and make two installments of $161,250 on September 19, 2019, and December 19, 2019. If Appellants failed to make the installment payments, the Purchase Agreement stated that interest shall accrue on the principal balance at an annual rate of twelve percent and increase to fifteen percent upon default. At closing Appellants signed a Promissory Note, backdated to July 1, 2019, for $322,500.

[1] The Purchase Agreement was executed on July 17, 2019 but backdated for July 1, 2019. Appellants' brief asserts that the purchase price was $525,000.

Appellants failed to make the September payment. However, Appellees offered to modify the Note, as evidenced by the proposed modification dated September 13, 2019, to reduce the amount owed to $262,500, provided that Appellants agreed to release Appellees and its members from any and all claims known or unknown. The modification provided for payments on September 19, 2019 in the amount of $100,000, October 14, 2019 in the amount of $61,000, and a final payment on December 19, 2019 in the amount of $101,000. Appellants conditioned their acceptance on Appellants not paying any fees associated with preparing the modification, on "Lender acknowledg[ing] that this purchase price reduction and note drop are in consideration for the closing of a few Urban locations and Lender will make further consideration if [...] more Urban units close upon final payment is made[,]" and on not agreeing to any waivers. Appellees did not agree, and thus a modification did not occur. However, Appellants paid $161,000 in total in September and October of 2019 and Appellees accepted the payment.

Appellants did not pay the payment due on December 19, 2019, and Appellees declared default. Appellees obtained a Confessed Judgment from the Circuit Court of Prince George's County in the amount of $110,844.91 against the Appellants on February 4, 2020, which reflected the adjusted Promissory Note and interest. Appellants filed a motion to vacate the Confessed Judgment and reopen the case. On August 5, 2020, the circuit court granted the motion and ordered the confessed judgment be reopened. Appellees believed the judgment was not vacated, so they continued to try to collect judgment.

Appellants filed a separate complaint alleging fraud, misrepresentation, breach of contract, and violations of the Maryland Business Opportunities Act. On October 22, 2020, the circuit court consolidated the reopened Confessed Judgment with Appellants' separate complaint.

On June 14, 2021, following a bench trial, the circuit court granted judgment in favor of Defendant James B. Beall as to the Amended Complaint Count I (Intentional Misrepresentations and Concealment); granted judgment in favor of Defendants D&L Urban Holdings, LLC, L&L Urban Holdings, LLC, and Friend's Choice Investments, LLC as to the Amended Complaint Count VII (Intentional Misrepresentations and Concealment) and as to the Amended Complaint Count X (Violation of Maryland Business Opportunities Act); granted judgment in favor of Counter-Plaintiffs as to the Amended Complaint Count IV (Fraudulent Conveyance); granted judgment in favor of the Counter-Plaintiffs and that the Buyers shall refund all monies taken by them in connection with the Assignment of Income Rights as to the Amended Complaint Count V (Declaration of Rights); granted judgment in favor of Counter-Plaintiffs as to the Amended Complaint Counterclaim Count VI (Conversion); granted judgment in favor of the Counter-Defendants as to the Amended Counterclaim Count VIII (Civil Conspiracy); granted judgment in favor of Counter Defendants as to the Amended Counterclaim Count X (Receivership); granted judgment in favor of Counter-Defendants as to the Amended Counterclaim Count XI (Receivership); granted judgment in favor of the Counter-Defendants as to the Amended Counterclaim Count XII (Involuntary Dissolution and Receivership); and granted judgment in favor of

the Counter-Plaintiffs[2] as to the Amended Counterclaim Count XIII (Breach of Contract) in the amount of Sixty Thousand ($60,000.000) dollars plus interest and costs.

The circuit court's June 2021 Order provided that Sellers prevailed on eight counts across both the relevant portion of the Amended Complaint and the Amended Counterclaim. Additionally, Sellers prevailed on all eleven counts of the Amended Complaint. Three counts of the Amended Complaint went to trial (Count I, Count VII, Count X), and Sellers prevailed on the other counts before trial. Additionally, Sellers won five counts of the Amended Counterclaim (Count IV, V, VI, IX, XIII).

On August 19, 2021,[3] the court awarded Appellees $553,575.01, including the $60,000 judgment in their favor, $480,775.01 in attorneys' fees, and $12,8000 in prejudgment interest. In bringing this appeal, Appellants present five questions for appellate review, which we rephrase for clarity:[4]

[2] In this case, Counter-Plaintiffs includes D&L Urban Holdings, LLC, L&L Urban Holdings, LLC, and Friend's Choice Investments, LLC. (E. 3596). Judgment on this Count was granted for Counter-Plaintiffs and against Plaintiffs Clucksters, LLC, Urban Bar-B-Que Systems, LLC, Clucksters International, LLC, and Cluck-U-Corp. (E. 3596).

[3] Notably, in this Order, the court erroneously listed Amended Counterclaim Count VII, which is actually Amended Counterclaim Count VI. Amended Counterclaim Count VI is the proper count for conversion.

[4] In their brief, Appellants present the following questions for appellate review:

1. Whether Appellees satisfied their burden of production and the trial court erred and/or abused its discretion in denying Appellants' Motion for Judgment and finding Appellants liable for fraudulent conveyance?

1. Was the circuit court's finding of fraudulent conveyance clearly erroneous?
2. Was the circuit court's entry of declaratory relief appropriate?
3. Was the circuit court's entry of judgment for conversion clearly erroneous?
4. Was the circuit court's entry of judgment for indemnification clearly erroneous?
5. Did the circuit court err in entering a total judgment of $553,575.01 in favor of Appellees?

For the following reasons, we conclude that the Circuit Court for Prince George's County was clearly erroneous in granting ancillary relief after having failed to enter a declaratory judgment; in its entry of judgment for conversion; and in entering a total judgment of $553,575.01 in favor of Appellees. However, the circuit court was not clearly erroneous in its finding of fraudulent conveyances and was not clearly erroneous in its entry of judgment for indemnification.

FACTUAL & PROCEDURAL BACKGROUND

2. Whether Appellees satisfied their burden of production and trial court erred in denying Appellants' Motion for Judgment and entering declaratory relief?

3. Whether Appellees satisfied their burden of production and the trial court erred in denying Appellants' Motion for Judgment and finding Appellants liable for conversion?

4. Whether Appellees satisfied their burden of production and the trial court erred in denying Appellants' Motion for Judgment and finding Appellants liable for indemnification?

5. Whether the trial court erred and/or abused its discretion in entering a total judgment of $553,575 against Appellants where the parties' conduct evidenced mutual assent to modification of the Purchase Agreement, the award of attorney's fees was unreasonable, and Appellees were not entitled to an award of prejudgment?

Appellees were the combined 100% owners of the membership interest in UBQS, the franchisor for Urban Bar-B-Que restaurants in Maryland and Virginia. UBQS entered into separate franchise agreements ("Franchise Agreements") with each individual franchisee ("UBQS Franchisees"). At the time of purchase, there were ten franchises: in Ashburn, Bowie, Baltimore-Washington International Airport, Chapman Avenue, Forestville, Hanover, Hillendale, Linthicum, Norbeck, and Wilkens Avenue. The Franchise Agreements provided UBQS with the exclusive right to payment of monthly royalty fees from each of the UBQS Franchisees ("Royalty Payments"). Appellees initially proposed a sale price of $599,000.

Due Diligence and Negotiations

Mr. Haddad conducted due diligence and visited all ten locations, reviewed all leases, account payables and receivables, and all franchise agreements. On July 1, 2019, Mr. Haddad stated in an e-mail that he was not backing out of the sale, but deemed the Chapman Avenue, Hillendale, and Norbeck locations as risky investments because of the reduced amount of royalties the three UBQS Franchisees would generate. Mr. Haddad also stated in his renegotiations that "the only venue that is worth something to me is BWI." He recognized "the [two] Rockville units and New Hampshire are just temporarily pass thru income." Mr. Haddad stated that UBQS "is on its last breath." Appellees reduced the purchase price by $60,000, reflected in the overall purchase price in the Purchase Agreement.

Separate from the sale of UBQS, Mr. Haddad also negotiated a side deal with D&L regarding the Norbeck and Chapman Avenue UBQS Franchisees. In exchange for lower

Royalty Payments, D&L agreed to keep Chapman Avenue until August 2020 and Norbeck open until November 2021.

Purchase Agreement, Proposed Modification, Payments, and Default

The parties entered into a Purchase Agreement for the sale of Appellees' collective 100% membership interest in UBQS. The Purchase Agreement was executed on July 17, 2019, but backdated to July 1, 2019. The Purchase Agreement included an indemnification clause and the purchase price of $472,500. Following the sale, Mr. Haddad was also the managing member for UBQS.

The Purchase Agreement incorporated all the following sale documents ("Sale Documents"): (1) A promissory note ("Note"); (2) A guaranty agreement ("Guaranty") between Appellants and UBQS; (3) A security agreement between the parties stating all assets ("collateral"), including Royalty Payments, were to be held as security for the benefit of Appellees ("Security Agreement"); (4) pledge agreement from Appellants to Appellees that provided a security interest to Appellees in the UBQS membership interest conveyed by the Purchase Agreement ("Pledge Agreement").

The Purchase Agreement stated Appellants shall pay $150,000 at closing. The Note outlined the payments of the sale of UBQS for the principal sum of $322,500 in two installments of $161,250 each on September 19, 2019 and December 19, 2019. The interest rate accrued on the principal balance at a rate of twelve percent and increased to fifteen percent on default.

Appellants failed to make the September 2019 payment. However, that same month, Appellants and Appellees discussed an amendment to the Note whereby the amount due

would be reduced by $60,500 (from $322,500 to $262,000) and provided for payments on September 19, 2019 in the amount of $100,000, October 14, 2019 in the amount of $61,000, and a final payment on December 19, 2019 in the amount of $101,000. The Modification to the Note is dated September 13, 2019. Appellees sent the signed modification proposal to Mr. Haddad, who did not agree to the proposal and asserted that he inserted handwritten changes into the document and sent it to Friend's Choice. However, at trial, Mr. Haddad stated that his email did not attach the version of the proposal with his handwritten notes and could not produce any evidence that he sent the marked-up proposal to anyone. Ultimately, the circuit court concluded that there was no "meeting of the minds" regarding the modification. However, the circuit court concluded that "[n]otwithstanding the fact that the Promissory Note was not modified [...] the Buyers paid the reduced second installment payment and the Sellers accepted it as the second payment."[5]

On December 19, 2019, Appellants failed to make the scheduled Note payment and defaulted under the Sale Documents. The following day, Appellees sent a notice to Appellants informing them about the default.

UBQS Franchise Location Closures

Following the purchase transaction, four of the ten UBQS locations closed. Immediately after the sale transaction closed, the Ashburn franchisees notified Mr. Haddad that they had received notice to vacate their store. In October of 2019, the franchise owner

[5] The circuit court records reflect numerous payments from Appellants and to Appellees from August 1, 2019 through February 17, 2021, that totaled $116,162.29 and were accepted by Appellees.

of the Bowie location notified Mr. Haddad that his landlord wanted him out of the premises by December 1, 2019 and vacated the location at the end of November of 2019. The Hillendale location closed in January of 2020. The Chapman Avenue location closed earlier than anticipated in February/March of 2020, instead of in August of 2020, as agreed to with D&L.

Confessed Judgment

On January 9, 2020, Appellees filed a complaint in the Circuit Court for Prince George's County for a confessed judgment against Appellants. The circuit court issued an order on January 30, 2020, which entered[6] a judgment by confession in favor of Appellees and against Appellants, jointly and severally, in the total amount of $110,844.91, to be apportioned as follows: 1) $101,000.00 in principal; 2) $5,678.91 in accrued interest from July 1, 2019 through December 19, 2019 at a rate of $33.21 per day; 3) $175.00 in court costs; 4) $200.00 in service costs; 5) $3,042.50 in attorneys' fees. Between February 18, 2020, and March 11, 2020, twenty-five writs of garnishment[7] under the confessed judgment were issued to the Appellants' various banking institutions and to the individual UBQS franchisees for royalties payable to UBQS.

[6] Although the circuit court's order was dated January 30, 2020, it was entered on February 4, 2020.

[7] Six writs of garnishment ("WOG") were issued on February 18, 2020. Two WOGS were issued on February 19, 2020. Thirteen WOGS were issued on March 11, 2020. Four WOGS were issued on March 11, 2020.

On March 3, 2020, Appellants filed a motion to vacate or open the confessed judgment.

Cluck-U Demand Promissory Note and UBQS Assignment of Income

Mr. Haddad executed a $750,000 Demand Promissory Note prepared by Mr. Haddad on June 2, 2017, but back-dated to August 30, 2007 ("Cluck-U Demand Promissory Note") against Cluck-U payable to himself and his spouse, Ms. Roula Zoghby ("Ms. Zoghby"). No evidence of consideration was provided for the 2017 Cluck-U Demand Promissory Note.

On March 19, 2020, Mr. Haddad and Ms. Zoghby, filed a complaint for a confessed judgment in a separate proceeding in the Circuit Court for Baltimore County,[8] against Cluck-U, based on the purported 2017 Cluck-U Demand Promissory Note. The Circuit Court for Baltimore County entered a confessed judgment in favor of Mr. Haddad and Ms. Zoghby against Cluck-U on the 2017 Cluck-U Demand Promissory Note in the amount of $787,580.26 ("Cluck-U Confessed Judgment").

On May 12, 2020, Mr. Haddad executed an Assignment of Income Rights ("Income Assignment") assigning all UBQS's income to Cluck-U. Throughout the trial, Mr. Haddad testified that he owned and controlled Haddad Entities and UBQS and he was free to make written and oral agreements between the entities, and therefore, could assign or remove assets and obligations between them at his sole discretion.

Fraud, Misrepresentation, Breach of Contract, and

[8] *Jean-Pierre Haddad, et al. v. Cluck-U, Corp.*, No. C-03-CV-20-001252 (Balto. Cir. Ct. March 19, 2020).

Violations of Maryland Business Opportunities Act

On June 5, 2020, Appellants filed a separate complaint against Appellees for fraud, misrepresentation, breach of contract and violations of the Maryland Business Opportunities Act related to the Purchase Agreement. On August 5, 2020, the circuit court granted Appellants' motion and ordered the Confessed Judgment be reopened. The circuit court did not vacate the earlier Judgment and Appellees continued to try to collect judgment. The cases regarding Appellees' reopened Confessed Judgment and Appellants' complaint against Appellees for fraud, misrepresentation, breach of contract and violations of the Maryland Business Opportunities Act related to the Purchase Agreement were consolidated for trial on October 22, 2020.

Between October 22, 2020 and March 29, 2021, both parties filed an array of motions that required appearances before the circuit court on November 23, 2020, December 17, 2020, and January 21, 2021. On January 21, 2021, Appellees filed their Amended Counterclaim in the consolidated cases.

On February 2, 2021, Appellants satisfied the outstanding judgment, and Appellees filed a Notice of Satisfaction of Judgment on February 12, 2021. The circuit court closed the case on April 1, 2021.

On February 5, 2021, Appellants filed a Notice of Demand for Jury Trial, which was denied by the circuit court on April 1, 2021. A bench trial ensued. The bench trial for this case on appeal spanned from April 12 through April 21, 2021. Three counts from Buyers' Amended Complaint were also tried to the bench. At the conclusion of Appellees' case, Appellants and Guarantors moved for judgment ("Motion for Judgment"). The circuit

court entered judgment on four counterclaims and reserved on the remaining counterclaims.

The Circuit Court's June 14, 2021 Opinion and Order

The circuit court issued its Opinion and Order in the bench trial on June 14, 2021. In its Order and Opinion, the circuit court found in favor of Appellees on fraudulent conveyance, conversion, indemnification, and breach of contract from Appellees' Amended Counterclaim. Additionally, the circuit court granted ancillary relief to Appellees on their declaratory judgment claim, but did not actually issue a declaratory judgment. The circuit court stated that based on Mr. Haddad's position as a sophisticated party, his due diligence prior to the sales, his side negotiations with the Norbeck and Chapman Avenue UBQS Franchisees for lowered Royalty Payments, and his statements regarding the six franchise locations prior to closing, "he knew he could not count on these locations for royalty payments over the long term and certainly could not successfully plea that he was unaware of their likely closures."

The circuit court also deemed Mr. Haddad's Cluck-U Demand Promissory Note:

> as a means to redirect Cluck-U Corp's revenue. The Court finds the redirecting of Cluck-U Corp's revenue as a clear violation of the Seller's Financing Documents. Additionally, the Court notes Cluck-U Corp did not recognize the Demand Promissory Note as a liability on its accounting records . . . The Court finds the Cluck-U Corp $750,000 Demand Note and Confessed Judgment actions were Mr. Haddad's fraudulent efforts to avoid paying the Appellees' Confessed Judgment against the Appellants.

Appellees were awarded $60,000[9] in damages, plus attorneys' fees (later determined to be $480,775.01) and pre-judgment interest of $12,800. Finally, Appellants' Income Assignment was declared void, on declaratory judgment, the court granted ancillary relief, stating, "[b]uyers shall refund all monies taken by them in connection with the Assignment of Rights (any amount refunded is to be deducted from the judgment amount as to Counterclaim XIII)". The circuit court stated that Mr. Haddad's understanding of his ability to freely make written and oral agreement between the Haddad Entities and UBQS "is in direct conflict with the Financing Documents executed by him."

The circuit court held a hearing and issued on Order regarding attorneys' fees on August 19, 2021.

Appellants timely appealed. More facts are detailed as they become relevant below.

STANDARD OF REVIEW

Under Maryland Rule 8-131,

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

Md. Rule 8-131(c). Accordingly, "we give deference to the factual findings of the trial judge and will reverse only for clear factual error. A factual finding is clearly erroneous if there is no competent and material evidence in the record to support it. The legal

[9] Appellees acknowledge that the figures between the original modification reduction of $60,500 and the remaining amount that the circuit court stated remained due ($60,000). Appellees make no claim to the extra $500.

conclusions reached by the circuit court are not accorded deference on appeal, however, and instead are reviewed de novo." *Hoang v. Hewitt Ave. Associates, LLC*, 177 Md. App. 562, 576 (2007) (citations omitted).

DISCUSSION

I. Fraudulent Conveyance

A. Parties' Contentions

Appellants argue that the circuit court erred in holding that the Baltimore County Confessed Judgment was a fraudulent conveyance, alleging that: (1) Appellees did not seek to set aside the Baltimore County Confessed Judgment, and the Circuit Court for Prince George's County's holding constituted a violation of due process; (2) the circuit court exceeded its scope of authority because it cannot review opinions of other circuit courts; and (3) the record is "devoid of any evidence to support such conclusion." Additionally, Appellants argue that the trial court erred in holding that the Cluck-U Demand Promissory Note was a fraudulent conveyance, and that the Assignment of Income Rights was a fraudulent conveyance. Moreover, Appellants argue that Appellees failed to establish that they were current or prospective creditors on June 2, 2017, the date the Cluck-U Note was executed, citing CL § 15-204. However, notably, the statute does not state, nor do Appellants cite any case law, that states that the creditor must be "current or prospective."

Appellees argue that "even if the finding of fraudulent conveyance was error (which it was not), it was harmless and should not be disturbed." Appellees devote thirteen (13) pages to attempting to show that the Baltimore County Confessed Judgment, the 2017 Cluck-U Demand Promissory Note from Cluck-U to Mr. Haddad and his wife, and the

Assignment of Income Rights from Urban Systems to Cluck-U were all fraudulent conveyances under the Maryland Uniform Fraudulent Conveyance Act codified in section 15-201 et. seq. (the "MUFCA"). Appellees stress that the trial judge found that the aforementioned conveyances violated sections 15-204, 15-206, 15-207, and 15-209 of the MUFCA because the conveyances were designed to defraud, hinder, and delay the collection efforts of Appellees.

B. Analysis

This appeal requires this Court to consider if the circuit court erred in its determination that the Cluck-U Demand Promissory Note and the Assignment of Income Rights constituted a fraudulent conveyance, as a single integrated fraudulent mechanism.

The circuit court held that Mr. Haddad and Ms. Zoughby:

> created a fraudulent mechanism to divert funds and assets of [UBQS] to Clucksters[,] Cluck-U Corp, Mr. Haddad and Ms. Zoghby. Here, they filed for and received a questionable confessed judgment and diverted all of [UBQS]'s royalties to [Appellants'] entities. By directing [UBQS]'s royalties to themselves, Mr. Haddad and Ms. Zoghby rendered [UBQS] insolvent.

The circuit court also stated that there was not fair consideration between Cluck-U to Mr. Haddad and Ms. Zoghby to make the conveyance. The circuit court found that no believable evidence was presented to support the assertion that Cluck-U owed Mr. Haddad or Ms. Zoghby any money. The circuit court also provided that Ms. Zoghby testified that she had not lent funds or sold anything of value to Cluck-U. The circuit court stated that after filing the Confessed Judgment against Cluck-U, Mr. Haddad created an Assignment of Income Rights directing all royalties and income out of the reach of Appellee-creditors.

This Court first turns to the legal framework in which fraudulent conveyances are contoured. As defined by Md. Code Ann., Com Law ("CL") §15-201,

> (c) **"Conveyance"** includes every payment of money, assignment, release, transfer, lease, mortgage, or pledge of tangible or intangible property, and also the creation of any lien or incumbrance.
> (d) **"Creditor"** means a person who has any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent.
> (e) **"Debt"** includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent.

Under the Maryland Uniform Fraudulent Conveyance Act (MUFCA), a conveyance is fraudulent as to creditors if it is made by a person who is insolvent or who will be rendered insolvent by it, "without regard to his actual intent[.]" CL § 15–204; *Meese v. Meese*, 212 Md. App. 359, 369 (2013) (quoting *Molovinsky v. The Fair Employment Council of Greater Washington*, 154 Md. App. 262, 278 (2003)). A debtor is prohibited from transferring assets without fair consideration if the conveyance will render the debtor insolvent, or if the debtor intends or believes that the conveyance will cause the debtor to incur debts beyond their ability to pay as they mature. *See* CL §§ 15-204; 15-206. Specifically, as defined under CL § 15-202, "[a] person is insolvent if the present fair market value of his assets is less than the amount required to pay his probable liability on his existing debts as they become absolute and matured."

Under CL § 15-207, "[e]very conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud present or future creditors, is fraudulent as to both present and future creditors." In any absence of proof of actual intent by an insolvent debtor to hinder, delay, or defraud future creditors by conveying property, the debtor will be presumed to act with that intent, unless

"for a fairly equivalent consideration, whether presently arising or being in satisfaction of an antecedent debt, [he] transfer[s] in good faith all or part of his property to one of his creditors." *Cruickshank-Wallace v. County Banking and Trust Co.*, 165 Md. App. 300, 320 (2005) (quoting *Long v. Dixon*, 201 Md. 321, 323 (1953)) (abrogated on different grounds by *Wal Mart Stores, Inc. v. Holmes*, 416 Md. 346 (2010)).

Furthermore, under CL § 15-209,

> (a) If a conveyance or obligation is fraudulent as to a creditor whose claim has matured, the creditor, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase or one who has derived title immediately or immediately from such a purchaser, may:
> (1) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy the claim; or
> (2) Levy on or garnish the property conveyed as if the conveyance were not made.
> (b) In an action to have a conveyance set aside or an obligation annulled, it is not necessary as a condition to the granting of relief that the creditor first obtain judgment on the claim.
> (c) A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation may retain the property or obligation as security for repayment.
>
> CL § 15-209.

Notably, Sellers specifically grounded their fraudulent conveyance claim on CL § 15-207.

With the statutory framework set forth, the relevant chronology in this case must be established. On February 4, 2020, the Circuit Court for Prince George's County entered its Confessed Judgment in this case. Then, on March 20, 2020, the Circuit Court for Baltimore County entered its Confessed Judgment in that case. On May 12, 2020, Mr. Haddad signed the aforementioned Assignment of Income Rights. On August 5, 2020, the Circuit Court

for Prince George's County reopened its Confessed Judgment.

Here, Appellees had a right to collect on the Prince George's County Confessed Judgment from February 4, 2020, when the Confessed Judgment was entered, until August 5, 2020, when the Confessed Judgment was reopened. However, the Assignment of Income Rights on May 12, 2020, which the circuit court concluded constituted Appellant's intent "to hinder, delay, or defraud present or future creditors," hindered Appellees' right to collect on the Confessed Judgment. *See* CL §§ 15-207; 15-209. This finding is consistent with the fraudulent conveyance theory Sellers' pled, § 15-207.[10] We give due regard to the circuit court's role as the finder of fact and thus, the circuit court's conclusion that Appellants "created a fraudulent mechanism to divert funds and assets of [UBQS] to Clucksters[,] Cluck-U Corp, Mr. Haddad and Ms. Zoghby" was not clearly erroneous.

Here, the circuit court was not erroneous in considering Appellees to be creditors because following the sale of the UBQS, with documents supporting that a valid contract was formed with the understanding that an agreed upon sale price would be paid from the Appellants-Buyers to the Appellees-Sellers, Appellants defaulted on the agreed upon payments and became a debtor.[11] Appellees filed a Confessed Judgment and as a creditor,

[10] Notably, the circuit court also concluded that "[b]y directing UBQS's royalties to themselves, Mr. Haddad and Ms. Zoghby rendered UBQS insolvent[,]" which is grounded in CL § 15-204. However, Sellers did not plead fraudulent conveyance based on CL § 15-204. Thus, this Court does not affirm based on CL § 15-204, but rather the fraudulent conveyance theory Sellers pled, which is CL § 15-207.

[11] By legal definition, a debtor is [o]ne who owes a debt; he who may be compelled to pay a claim or demand." Debtor, BLACK'S LAW DICTIONARY, https://thelawdictionary.org/deb

was owed a debt.

The circuit court noted that Mr. Haddad knew of Appellees' efforts to collect on the Confessed Judgement and subsequently "began the legal process to file the 2017 Demand Promissory Note and Confessed Judgment against [Cluck-U]" in the amount of $750,000. Notably, Cluck-U was a guarantor. Cluck-U, as previously mentioned, is owned by Mr. Haddad and he is the sole member. As the sole member, Mr. Haddad transferred money from Cluck-U directly to himself and Ms. Zoghby under the Cluck-U Confessed Judgment.

The circuit court was not clearly erroneous in its conclusion that the Assignment of Income Rights signaled Appellants' intent to hinder or delay Appellee-creditors' efforts to collect on their Confessed Judgment. During trial, Mr. Haddad acknowledged that the creation of the Assignment of Income Rights was to preserve his and Ms. Zoghby's income. He did not indicate why or prove that Cluck-U owed them $750,000. As such, the circuit court did not err in concluding that Mr. Haddad acted with the intent to fraudulently convey property away from Appellee-creditors in demanding and obtaining a confessed judgment from Cluck-U to himself and Ms. Zoghby.

However, Appellants also argue that the circuit court erred in holding that the Baltimore County judgment was a fraudulent conveyance. Appellants assert that the circuit court characterized the Baltimore County Judgment as "questionable," but failed to provide any support for that assertion. Appellants specifically argue that "[t]he court erred in at least three ways."

tor/#:~:text=One%20who%20owes%20a%20debt,pay%20a%20claim%20or%20demand (last visited April 1, 2023).

> First, due process requires a party to receive notice and have an opportunity to be heard on issues to be decided in a proceeding. *Blue Cross of Maryland, Inc. v. Franklin Square Hosp*., 277 Md. 93, 101 (1976). An issue decided by the court must be either raised in the pleading or the party must otherwise have adequate notice that such issue might be decided by the court. *Id.* Appellees did not seek to set aside the Baltimore County Judgment as an alleged fraudulent conveyance, and, expressly stated they were not challenging the validity of such Judgment during the trial. The court's holding constitutes a violation of due process and must be vacated.

However, this argument has no merit because the circuit court did not actually hold that the Baltimore County judgment itself was a fraudulent conveyance. In fact, the trial judge believed that the Baltimore County Confessed Judgment, coupled with Mr. Haddad's May 12, 2020 Assignment Income Rights, assigning Urban System's right to franchise fees to Cluck-U, had the potential to affect Appellees' rights under their Confessed Judgment in Prince George's County. The judge was not clearly erroneous in finding that this was a clear violation of the security agreement executed for the benefit of Appellees.

In *Schlossberg v. Citizens Bank of Maryland*, 341 Md. 650 (1996), which is cited by both parties, the Court held that "opening a confessed judgment does not affect the judgment lien." However, it does prevent the plaintiff in the confessed judgment action from executing on that lien until after there can be a decision by the court on the merits as to whether the confessed judgment should be vacated. *Id.* at 658 (stating that "opened means that the judgment continues to exist and is not destroyed; rather it is set aside to allow the judgment to be examined"). In *Schlossberg,* the Court explained the distinction between the continuing validity of a lien obtained pursuant to a confessed judgment versus the finality of the judgment once it is opened. Based on *Schlossberg*, we believe that a judgment loses its finality once it is opened and is exempt from enforcement pending a

determination on the merits. *Id*. at 658.

As mentioned, once the Confessed Judgment was opened, Appellees had no right to collect under the Confessed Judgment until there was a hearing and a decision on whether the challenge was valid. However, as it turned out, there was no need for a hearing on that issue because in February 2021, the Confessed Judgment action was dismissed by Appellees as satisfied.

For the fraudulent conveyance count, Appellees asked for $1 million dollars in damages but claimed that there was no requirement to demonstrate actual damages under the MUFCA. We agree. Appellees also argued that the circuit court judge did not award Appellees any damages on the fraudulent conveyances count and therefore, even if the finding of two fraudulent conveyances[12] was an error, the error was harmless.

Appellants argue in their reply brief that CL § 15-212 provides that the MUFCA "shall be interpreted and construed to effectuate the general purposes to make uniform the law of the states which enacted it." *See Blitz v. Beth Issac Adas Israel Congregation*, 352 Md. 31, 36-37 (1998) (citations omitted) (providing that many cases have underscored the notion that when uniform laws are adopted across many states, the interpretation of the statute in the jurisdiction that first adopted it shall be given great weight). Appellants cite numerous cases from other jurisdictions applying the Uniform Fraudulent Conveyance Act

[12] Appellees argue that "[b]oth the Haddad/Zoghby Confessed Judgment and the Income Assignment constituted 'conveyances' under MUFCA Section 15-201(c)." However, the circuit court actually held that there was one fraudulent conveyance. Specifically, the court determined that the Cluck-U Demand Promissory Note and the Assignment of Income Rights were sequential steps in a singular fraudulent conveyance, rather than two separate conveyances.

("UFCA") that they allege stand for the proposition that a creditor must establish injury to prevail on a fraudulent conveyance claim. *See e.g. Webb v. Webb*, 260 Ala. 426, 432 (1954); *Haskins v. Certified Escrow & Mortg. Co*., 96 Cal. App. 2d 688, 691 (1950); *Holthaus v. Parsons*, 238 Neb. 223, 224 (1991).

It is true that no damages were awarded for the fraudulent conveyance count here. However, CL § 15-212 does not overcome the plain language of CL §§ 15-204; 15-206; 15-207; 15-209, all of which make no mention of damages as a statutory requirement for finding a fraudulent conveyance occurred. Specifically, under CL § 15-209, damages are not listed as a remedy for a fraudulent conveyance, but rather the creditor can have the conveyance set aside, levy on, or garnish the fraudulently conveyed property. While Appellees did request damages for their fraudulent conveyance claim, Appellees also requested the circuit court set aside, levy, or issue garnishments. Thus, given that the statute does not list damages as a remedy and that Appellees requested other relief, which is provided for in the statute, the circuit court was not clearly erroneous in rejecting Appellant's argument that the fraudulent conveyance claim fails due to lack of damages.

The trial judge's Opinion, in discussing whether Mr. Haddad and his wife violated the MUFCA, concludes with the following sentence:

> This court finds that the Buyers violated the MUFCA by converting Urban Systems' royalty payments to themselves by hindering and delaying Sellers' efforts to collect on their confessed judgment.
>
> (Emphasis added).

The circuit court based this conclusion on its own credibility determinations. We give due regard to the trial court judge's opportunity to determine the credibility of the

witnesses. *See* Md. Rule 8-131. Therefore, we cannot say the circuit court was clearly erroneous in this finding because it properly based this finding on Mr. Haddad's testimony, the Assignment of Income Rights, and the Demand Promissory Note. CL § 15-207.

For all the above reasons, we conclude that the trial court was not clearly erroneous in denying Appellants' motion for judgment and finding Appellants liable for fraudulent conveyance.

II. Declaratory Relief

A. Parties' Contentions

Appellants argue that "Appellees failed to satisfy their burden of production" and "the circuit court erred in denying the motion for judgment and in entering declaratory relief in favor of Appellees." Appellants argue that in entering a declaratory judgment, the circuit court held the Assignment was "precluded by the Security Agreement, Guarantee (sic) Agreement, and Pledge Agreement, and as a result, the Assignment was 'null and void.'" Appellants argue that: 1) the declaratory judgment should have been entered in favor of Appellants because the MUFCA dictates such remedy; 2) if the right to collect royalties was an asset of UBQS, the court erred in finding that the Assignment was "null and void" because the security agreement states that the transfer between Appellants and Mr. Haddad was an inter-guarantor transfer; and 3) a breach of the security agreement would not render the assignment void under CL § 9-401.

Appellees argue that they were entitled to a declaration of their rights under the Income Assignment under the MD. CODE ANN., COURTS AND JUDICIAL PROCEEDINGS ("CJP") §3-406 and §3-409. Appellees also highlight that the circuit court "declared the

Income Assignment void as a direct violation of Sections 4.5(a)[…] and 5.9 of the Security Agreement," and that this finding was supported by competent evidence. As we will explain below the income assignment was not declared void by the court.

B. Analysis

The circuit court concluded that "[u]nder the plain terms of the contract, the Buyers cannot assign any asset of [UBQS] to a third party." Thus, it held that "the Buyers' Assignment of Income Rights is null and void." The circuit court ordered that as to the Declaration of Rights Count, "judgment is granted in favor of the Counter-Plaintiffs [Appellees] and that the Buyers [Appellants] shall refund all monies taken by them in connection with the Assignment of Income Rights (any amount refunded is to be deducted from the judgment amount as to Counterclaim XIII)[.]" The court did not execute a declaratory judgment in this case.

A declaratory judgment is a written "judicial determination as to the existence and nature of a relationship between [the plaintiff] and the defendant." *Aleti v. Metro. Baltimore, LLC*, 251 Md. App. 482, 519-20 (2021) (citations omitted), *aff'd*, 479 Md. 696 (2022); Md. Code, CJP § 3-406.

Under § 3-406, a person interested under a written contract or whose rights are affected by a written contract "may have determined any question of construction or validity arising under the [contract] and obtain a declaration of rights, status, or other legal relations under it." Md. Code, CJP § 3-406. Under § 3-409(a), a court may grant a declaratory judgment "if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if: (a) [a]n actual controversy exists between contending parties;

(2) [a]ntagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or (3) [a] party asserts a legal relation, status, right or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it." Md. Code, CJP § 3-409.

Here, Appellees plead both theories, § 3-406 and § 3-409, as a basis for a declaratory judgment in their favor as to the Assignment of Income Rights. The "special remedy" limitation that applies to § 3-409 does not apply to § 3-406. Md. Code, CJP §§ 3-409(a); 3-406. Here, we cannot say it was an error for the circuit court to entertain Appellees' request for a declaratory judgment. However, the circuit court never validly entered a declaratory judgment. The court provided a declaration in the facts, but it did not provide a declaratory judgment in the order itself.

Thus, because the circuit court did not enter a valid declaratory judgment, this Court must vacate the Order as to Count V because it grants ancillary relief without entering a declaratory judgment and remand for the circuit court to enter a proper declaratory judgment under § 3-406.

III. Conversion

A. Parties' Contentions

Appellants contend that nothing in the record supports that "Appellants converted a document embodying [UBQS]'s purported accounts receivable" or "establish[es] the collectability of the accounts receivable." Further, Appellants argue that "the court did not even determine that Appellees were damaged by the alleged conversion[,]" and that "Appellees failed to fulfill their burden of production, and the court erred in finding

Appellants liable for conversion." Specifically, regarding the burden of production, Appellants argue that to establish a claim for conversion, "the claimant must establish that the defendant committed a physical act of ownership over the claimant's property inconsistent with the claimant's ownership rights and the defendant intended to do so," citing *Darcars Motors of Silver Spring, Inc. v. Borzym*, 379 Md. 249, 261-62 (2004), which Appellants allege Appellees failed to do.

Appellees assert that the Security Agreement provided Appellees with the right to immediate possession of the Royalty Payments without demand or legal process when Appellants defaulted on payments. However, Appellees state that Appellants wrongfully deposited the Royalty Payments into one of the Haddad Entities' bank accounts, then funneled the money to himself and Ms. Zoghby to try to frustrate Appellees' collection efforts and to ensure the Royalty Payments were directed away from UBQS.

B. Analysis

The circuit court was clearly erroneous in its finding that Appellants converted UBQS's assets for their own personal use through the "fraudulent Assignment of Income Rights[.]"[13]

The tort of conversion is generally defined as "the wrongful exercise of dominion by one person over the personal property of another." *Kalb v. Vega*, 56 Md. App. 653, 665

[13] As noted in footnote 3, the proper count for conversion is Amended Counterclaim Count VI. Notably, in the court's August 19, 2021 Order, which awarded attorneys' fees in this matter, the court erroneously listed Amended Counterclaim Count VII. The court should have listed this as Amended Counterclaim Count VI, which is the count for conversion.

(1983) (citation omitted). Whether a conversion has occurred is not necessarily determined by the manner in which the defendant acquires the property, but rather his wrongful exercise of dominion over the property. *Id.* at 666 (citations omitted). In determining the seriousness of the interference with one's property rights, this Court considers the following factors:

> (1) the extent and duration of the defendant's exercise and control; (2) the defendant's intent to assert a right which is inconsistent with the plaintiff's right of control; (3) the defendant's good faith or bad intentions; (4) the extent and duration of the resulting interference with the plaintiff's right of control; (5) the harm done to the chattel; and (6) the expense and inconvenience caused to the plaintiff.

Medi-Cen Corp. of Maryland v. Birschbach, 123 Md. App. 765, 772 (1998) (citations omitted).

Furthermore, this Court has found that:

> Although conversion may involve nothing more than the improper withholding of property from the owner, it may occur "when the person in possession destroys, modifies, or sells the property, those acts being inconsistent with the owner's rights in the property and, at least implicitly, a clear denial of those rights." *Kalb*, 56 Md. App. at 666 (citations omitted).

Medi-Cen Corp. of Maryland, 123 Md. App. at 772.

Notably, an "account receivable" is a "balance due from a debtor on an open account, usually for services rendered or goods provided. Such a debt arises in the normal course of business dealings." *Id*. If the documentation requirements are met, an account receivable "may be property subject to conversion[.]" *Id.* at 778. The plaintiff, here Appellees, bears the burden of establishing the collectability of the accounts receivable. *Id.* at 783.

The measure of damages relating to a conversion is determined by the value of the property at the time of the conversion, plus interest. *Id.* at 772. The plaintiff, here Appellees, bears the burden of proof for establishing damages. *Id.* at 772, 783 (concluding that because the burden of proof rested on the plaintiff and he did not present evidence that the accounts receivable were collectible, the trial court had no basis to award him the outstanding accounts receivable as damages for conversion).

Here, the payments Appellants owed to Appellees fell within the definition of an "account receivable" because they were a "balance due from a debtor on an open account," and this debt "ar[ose] in the normal course of business dealings." *Id*. Additionally, the Security Agreement provided that Appellees had the right to "collect, enforce, or satisfy any Obligations then owing, whether by acceleration or otherwise[,]" and to "[t]ake possession of any Collateral if not already in its possession without demand or legal process" when Appellants defaulted on payments. The Security Agreement adopted Maryland Uniform Commercial Code Article 9's definition of collateral. However, the circuit court summarily concluded Mr. Haddad converted UBQS's assets to his other entities without evaluating whether Appellees met their burden of proof to establish the collectability of the account, or the damages owed. Therefore, the court's finding of conversion was clearly erroneous.

IV. Indemnification

A. Parties' Contentions

Appellants stated that the circuit court erred in finding them liable for indemnification because:

> Appellees and the court erroneously interpreted the indemnification provision as providing for a cause of action duplicative of a standard, common law breach of contract claim between the parties. Appellees also failed to present any evidence to establish that the condition precedent [was] satisfied. Thus, the court erred in finding that Appellants were liable for indemnification.

Appellees assert that the circuit court did not err in finding liability for indemnification because Appellants failed to pay the full purchase price and were notified of the default on December 20, 2019, triggering the indemnification clause under Article Five of the Purchase Agreement.

B. Analysis

The circuit court held that Appellees were indemnified against Appellants because the plain language of the Membership Purchase Agreement "indicate[d] the [Appellants] agreed to indemnify the [Appellees] if the [Appellants] did not satisfy the contract." Section 5.1.2 of the signed Purchase Agreement states:

> **5.1.2. Indemnification by Purchaser.** Subject to the terms and conditions hereof, **Purchaser shall, jointly and severally, indemnify and hold Seller harmless against and in respect of, and shall reimburse Seller for, any and all Losses suffered or incurred by Seller arising out of, resulting from or relating to:**
>
> **(i) the non-fulfillment of any covenant, condition, obligation or agreement of the Purchaser in this Agreement,**
>
> (ii) any breach of one or more of the Purchaser' representations and warranties, without regard to any scheduled exceptions thereto, without regard to any materiality qualifications therein, without regard to the Purchaser' knowledge concerning the truth or accuracy of the representation when made or later affirmed or in any Exhibit, Schedule, written statement or certificate furnished by the Purchaser pursuant to this Agreement, and without regard to any waiver of any such breach which is or was granted by the Seller in order to allow Closing to occur, except to the extent that such waiver expressly provides to the contrary . . .

(emphasis added). Notably, the Membership Purchase Agreement defines "Loss" as:

> any claim, liability, loss, cost, damage, or expense (including reasonable attorneys' fees, court costs and reasonable costs incurred or in the process of being incurred in investigating, defending against or settling any such claim, liability, loss, cost, damage or expense, or any amounts paid in settlement thereof).

The circuit court reasoned that since Appellees have not been fully paid and have expended thousands of dollars in attorneys' fees, as a result Appellants are liable for indemnification to Appellees. This Court finds no error in the circuit court's conclusion because Appellants were obligated to pay Appellees according to the outlined payment plan and defaulted on the payment, which resulted in the non-fulfillment of Appellants' payment obligation under the Purchase Agreement. Thus, the indemnification clause was triggered, and the circuit court's holding was not clearly erroneous.

Appellants claim that this count is duplicative of the breach of contract claim. This may be true, but Appellants were not in any way harmed. Appellants also assert that Appellees also failed to prove certain "conditions precedents" to the right to be indemnified. Appellants did not assert which conditions precedents were not proved. This violates Maryland Rule 8-504(a)(6), which provides that a brief shall contain "argument in support of the party's position on each issue." *See also Beck v. Mangels*, 100 Md. App. 144, 149 (1994).

Therefore, the circuit court's holding that Appellees were indemnified against Appellants was not clearly erroneous.

V. Judgment in Appellees' Favor

A. Parties' Contentions

Appellants argue that the Circuit Court for Prince George's County erred and/or abused its discretion in entering a total judgment of $553,575 for Appellees.

Specifically, Appellants first contend that the circuit court erred in finding that Appellants breached the Purchase Agreement contract, reflected in the Promissory Note, with Appellees. Appellants state that the parties' assented to the modification of the Promissory Note, as evidenced by their conduct, and thus Appellants' conduct was not a breach of their contract. Appellees counter this argument by asserting that there was no "meeting of the minds for the modification."

Next, Appellants argue that the award of attorneys' fees was unreasonable because Appellees were not entitled to continue to enforce the Confessed Judgment after the court re-opened the judgment and such actions to try to collect resulted in unnecessary and unreasonable attorneys' fees and costs. Further, Appellants assert that "Appellees' counterclaims were based on hyperbole and misstatement, rather than evidence and sound legal analysis." Appellees, however, assert that the award of attorneys' fees was proper and not an abuse of discretion.

Finally, Appellants argue that Appellees were not entitled to prejudgment interest because it was not demanded, and Appellants were not informed that it was due.

Appellees argue that the circuit court did not err in entering a total judgment of $553,575 for Appellees because the Promissory Note was not modified, the payment was due, and as outlined in the Purchase Agreement, interest was to accrue at twelve percent after the default notice was sent demanding payment of the balance of the purchase price.

B. Analysis

The circuit court held that Appellants breached the Purchase Agreement by failing to pay the purchase price and breached the Security Agreement by impairing the pledged security. This Court explains that in such circumstances,

> [g]enerally, a breach of contract is defined as a "failure, without legal excuse, to perform any promise that forms the whole or part of a contract." *Weaver v. ZeniMax Media, Inc.*, 175 Md. App. 16, 51 (2007) (citing Richard A. Lord, WILLISTON ON CONTRACTS § 63:1 (4th ed., Supp. 2006)). A promise, as referred to in that definition, is "a manifestation of intention to act . . . in a specified way, so made as to justify a promise in understanding that a commitment has been made." *Weaver*, 175 Md. App. at 51 (citing Restatement (2d) of Contracts § 2(1) (1981)). The term "default" is used interchangeably with "breach." *See Nylen v. Geeraert*, 246 Md. 4, 10 (1967) ("When [the term "default" is] used in respect of an obligation created by contract, the ordinary meaning is failure of performance[.]"). When "default" is used with respect to a debt, "it means simply nonpayment." *Id.* (citation omitted).

Kunda v. Morse, 229 Md. App. 295, 304 (2016).

i. Modification

In this case, there is no question whether a valid contract was formed. Rather, Appellants assert that a modification of the contract regarding the timing of the payments occurred. Thus, Appellants assert that the payments to Appellees were not late, and Appellants did not default. Appellees maintain that no such modification of the contract occurred. The circuit court also concluded that no such contract modification occurred.

"A 'modification' of a contract is a change in one or more respects which introduces new elements into the details of the contract, or cancels some of them, but leaves the general purpose and effect undisturbed." MD-ENC CONTRACTS § 120. "In order to make or modify a contract there must be mutual assent for where there is a conditional acceptance

or a counteroffer a contract is not made." *L & L Corp. v. Ammendale Normal Inst.*, 248 Md. 380, 384 (1968) (citations omitted). In other words, the parties to the contract must mutually assent to modify certain terms of a contract for a valid modification to occur. *See Id.* Mutual assent includes two issues: "(1) intent to be bound, and (2) definiteness of terms." *Braude v. Robb*, 255 Md. App. 383, 400 (2022) (citing *Cochran v. Norkunas*, 398 Md. 1, 14 (2007) (citation omitted)).

Appellants argue that the court erred by failing to find that the parties' conduct showed a modification to the Promissory Note occurred. We disagree and conclude that the trial court was not clearly erroneous in this regard.

Appellants failed to pay Appellee the originally scheduled September 2019 payment, but in that same month, Appellants and Appellees subsequently discussed a potential modification to the Promissory Note where the amount due and payment schedule would be amended. According to Appellants, under this proposed modification, the purchase price would have been reduced by $60,500 (from $322,500 to $262,000). Next, the proposed modification provided for a revised payment schedule, with payments on September 19, 2019 in the amount of $100,000, October 14, 2019 in the amount of $61,000, and a final payment on December 19, 2019 in the amount of $101,000.

However, the court's conclusion that the parties never reached an agreement to modify the Promissory Note was not clearly erroneous. Appellees sent the signed modification proposal to Mr. Haddad, who did not agree to the proposal and asserted that he inserted handwritten changes into the document and sent his "notation" to Friend's Choice. In declining to accept the Appellees' signed modification proposal, Mr. Haddad

declined the modification to the Promissory Note and thus, the court's conclusion that there was "no meeting of the minds" to constitute a valid modification was not clearly erroneous.

Appellees also stated that they never received Mr. Haddad's marked up proposal or his signature page. At trial, Mr. Haddad stated that his email did not attach the version of the proposal with his handwritten notes and could not produce any evidence that he sent the marked-up proposal to anyone. Mr. Haddad also argued that, had Appellees received his handwritten notations on the modification to the Promissory Note, his modification would have also constituted a counteroffer to modify the Promissory Note to Appellees, to which Appellees could have responded by accepting or rejecting the counteroffer. Appellees did neither because they did not receive Mr. Haddad's proposal.

The circuit court was not clearly erroneous in its finding that Appellants failed to make installment payments in accordance with the original Purchase Agreement in September and December 2019. Additionally, the circuit court was not clearly erroneous in its assertion that "[d]espite numerous demands, [Appellants] failed to remedy the material breaches. As a result, [Appellees] are entitled to the full payment of the purchase price, interest and reasonable attorneys' fees, court costs and costs to investigate."

The circuit court cited the Purchase Agreement, which states that Appellants shall pay $150,000 at closing and shall make two installment payments of $161,250 on September 19, 2019 and December 19, 2019. If Appellants fail to make the installment payments, the Purchase Agreement states that interest shall accrue at a rate of twelve percent (12%). At closing, Appellants signed a Promissory Note, backdated to July 1, 2019 for $322,500. Appellants failed to make the first installment payment on September 19,

2019. However, Appellants paid the reduced second installment payment, which Appellees accepted. Appellants did not pay the third installment due on December 19, 2019, and Appellees properly declared default.

Notably, Appellants argue that the court "ignored the parties' conduct in assessing whether the parties agreed to a reduction of the Purchase Price." Specifically, Appellants argue that Clucksters' payment of the "amount due in September and October [was] based upon the validity of the Modification." Appellants additionally argue that Appellees' "notice of default, which identified the 'Promissory Note dated July 1, 2019, as amended[,]'" Appellees' recognition of the Modification in the Confessed Judgment Action, the court's entry of the Confessed Judgment based upon the validity of the modification, and Appellants' payment of the Confessed Judgment all support the validity of the Modification of the Purchase Price.

However, the circuit court was not clearly erroneous in rejecting this line of thinking, and instead concluding, based on the evidence set forth above, that this conduct was not sufficient to establish mutual assent to the modification. To be clear, Appellants did pay Appellees $116,162.29, which Appellees accepted. Yet, this Court concludes that the circuit court was not clearly erroneous in its conclusion that this conduct fell short of establishing mutual assent to modify the contract. The circuit court's conclusion was specifically based on the fact that the alleged modification was "unsigned" by Mr. Haddad and that the parties "never agreed to the respective changed conditions."

We agree with Appellees that the circuit court was not clearly erroneous and properly found that Appellants had breached the original contract and that there was no "meeting of the minds" for a subsequent modification of the contract.

ii. Authority to Award Damages After Satisfaction of Confessed Judgment

Before addressing the specific damages awarded, we must address a threshold question: whether the circuit court retained authority to award Appellees $60,000 in damages for breach of contract after Appellants satisfied the Confessed Judgment in February 2021.

Appellants cannot credibly argue that the circuit court lacked authority to consider Appellees' breach of contract claims simply because the Confessed Judgment was satisfied. The satisfaction of the Confessed Judgment did not divest the circuit court of jurisdiction to adjudicate Appellees' remaining claims for two independent reasons.

First, when the circuit court granted Appellants' motion to reopen the Confessed Judgment on August 5, 2020, the reopening rendered the judgment non-final. *Schlossberg v. Citizens Bank of Maryland*, 341 Md. 650, 658 (1996) (holding that "opened means that the judgment continues to exist and is not destroyed; rather it is set aside to allow the judgment to be examined"). A reopened judgment loses its finality and remains subject to the court's continuing jurisdiction pending resolution of the underlying merits. *Id.* The subsequent satisfaction of that reopened judgment in February 2021 did not restore finality or terminate the court's authority over the consolidated cases.

Second, even if the Confessed Judgment had somehow retained finality after reopening, Maryland Rule 2-535(a) independently authorized the circuit court to exercise

revisory power over the matter. Rule 2-535(a) provides: "On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534."

Here, Appellees' Amended Counterclaim asserted multiple claims arising from Appellants' breach of the Purchase Agreement and Security Agreement—claims that existed independently of, and were not fully resolved by, the Confessed Judgment. These included claims for breach of contract (Count XIII), indemnification, fraudulent conveyance, conversion, and declaratory relief. The Confessed Judgment addressed only the amount due under the Promissory Note as of the date of default; it did not adjudicate the full scope of Appellants' contractual breaches or Appellees' entitlement to additional relief under the Purchase Agreement's indemnification and attorneys' fees provisions.

Notably, the Buyers moves for consolidation below, and thus, they can hardly be heard now to complain that the circuit court exercised its discretion to consolidate in their favor. Further, the circuit court's consideration of these claims fell squarely within its discretion. The consolidated cases presented interrelated contractual disputes requiring comprehensive resolution. Judge Davey's decision to adjudicate all pending claims—rather than piecemeal enforcement of a satisfied confessed judgment while leaving other contractual breaches unresolved—was a proper exercise of judicial economy.

Therefore, the circuit court properly exercised jurisdiction to award $60,000 in damages for breach of contract, plus interest and costs, notwithstanding the earlier satisfaction of the Confessed Judgment. Additionally, Appellant's payment of $60,000 on confessed

judgment should be applied to this damage award for breach of contract. In other words, Appellees do not receive $60,000 twice. We now turn to whether that award, and the other monetary judgments entered, were clearly erroneous.

iii. Award of Prejudgment Interest

The court's Order and Opinion requested an accounting of the prejudgment interest to be charged. The court made reference to Section 2.2 of the Purchase Agreement that required a payment in the amount of $161,250 on September 19, 2019 and another $161,250 on December 19, 2019. *See* Joint Trial Exhibit I. Section 2.2 further stated that "interest shall accrue a[t] the rate of Twelve percent (12%) per annum but shall not be due unless Purchaser shall fail to pay an installment due under the Note within five (5) days of the due date thereof." *Id.* The court found that the Buyer failed and refused to make the full first payment, which was due on September 19, 2019. The court found that the Buyer did not pay $60,500.00, which was the reduced amount in the proposed modification to the Note. At trial, Mr. Haddad testified that he did not agree to the terms of the proposed modification. The court calculated that the interest on $60,500 from September 19, 2019 to June 24, 2021 is $12,809.16. *See* Interest Worksheet, Exhibit 6. It was also ordered that interest continues to accrue at $19.89 per day.

Appellant asserts that Appellees were not entitled to an award of pre-judgment interest in the amount of $12,800.00, which was allegedly due for the balance of the purchase price on September 19, 2019. They assert that the record is devoid of any evidence that Appellees demanded the balance of the purchase price, which was allegedly due on September 19, 2019. They claim that a default notice was never sent and that none of the

citations provided by Appellees support such a statement. They assert that the default letter dated December 20, 2019, demands the balance due under the Promissory Note, "**as amended**," [Emphasis added] Therefore, Appellants contend that Appellees never demanded payment of $60,500, and Appellants were unaware of the alleged debt until the trial commenced. Therefore, Appellants conclude that the court erred and should not have awarded pre-judgment interest.

Appellees claim that the award of prejudgment interest was proper. They assert that the trial court correctly found that the Note was not modified, and that therefore a payment was due. They contend that Section 2.2 of the Purchase Agreement states that interest shall accrue at twelve percent (12%) per annum. They further assert there were no errors in the math used to calculate the prejudgment interest nor were any errors claimed. They assert that a demand was made in three different ways. A default notice was sent demanding payment of the balance of the purchase price, Paragraph 157 of the Amended Counterclaim demanded the payment of the purchase price, and Paragraph B of the ad damnum clause of the Amended Counterclaim demanded interest. They concluded that Appellants have offered no valid excuse to avoid the application of interest. We agree with Appellees and disagree with Appellants. In *Bennett v. Ashcraft & Gerel, LLP*, 259 Md. App. 403 (2023), this Court defined prejudgment interest as interest that "compensates judgment creditors for their inability to use the funds that should have been in their hands before the entry of judgment." *Id.* at 461. (citations omitted). The Court further provided that prejudgment interest falls into one of two categories, "that which is discretionary and that which is awarded as of right." *Id.* A party's entitlement to prejudgment interest is left to the

discretion of the factfinder, with a few "well-established exceptions" that the court will award prejudgment interest as a matter of right, including for debts that are "certain, definite, and liquidated by a specific date prior to judgment." *Id.* (quoting *Buxton v. Buxton*, 363 Md. 634, 656 (2001)). "A debt or amount is 'liquidated' if it is 'settled or determined, especially by agreement.'" *Id.* (citing *Baltimore County v. Aecom Servs., Inc.*, 200 Md. App. 380, 430 N.19 (2011) (citations omitted)). This exception arises "under written contracts to pay money on a day certain, such as bills of exchange or promissory notes, in actions on bonds or under contracts providing for the payment of interest, in cases where the money claims has actually been used by the other party, and in sums payable under leases as rent ... as well [as] in conversion cases where the value of the chattel converted is readily accessible." *Id.* at 461-62 (citing *Nationwide Prop. & Cas. Ins. Co. v. Selective Way Ins. Co.*, 473 Md. 178, 189 (2021) (citations omitted)).

This Court reviews a circuit court's "decision to award prejudgment interest under a de novo standard of review to determine whether it is legally correct." *Id.* at 462 (citing *Nationwide Prop. & Cas. Ins. Co.*, 473 Md. at189).

Here, neither Appellants nor Appellees cite any law in their arguments on the circuit court's award of prejudgment interest. Regardless, under *Bennett*, the circuit court's award of prejudgment interest to Appellees was legally correct. *Bennett*, 259 Md. App. at 461. The debt was "certain, definite, and liquidated by a specific date prior to judgment[,]" *Id.* (quoting *Buxton*, 363 Md. at 656), because it was "settled or determined" by the contract. *Id.* (citing *Baltimore County*, 200 Md. App. at 430 n.19 (citations omitted)). Specifically, Section 2.2 of the Purchase Agreement explicitly states that interest shall accrue at twelve

percent (12%) per annum. Appellees were entitled to the prejudgment interest as a matter of right, and the circuit court was not clearly erroneous in its award of prejudgment interest to Appellees. *Id.*

Appellants challenged this entitlement to prejudgment interest by right by asserting that proper notice of default on the loan was not provided by the Appellees. Appellees point to three documents that were introduced into evidence or testified to during the trial. During the trial there were attempts to introduce evidence of a breach of the agreement, but it was difficult for Appellees to admit testimony against Appellants proving the breach through the testifying witness. Through Seller's Exhibit 57 it was proven that the Buyer (Mr. Haddad) was not going to pay the final installment of the purchase price.

As we have already stated in this opinion, Section 2.2 of the Purchase Agreement required payment of $161,250 on September 2019 and another of $161,250 on December 19, 2019. Section 2.2 of the Purchase Agreement stated that interest shall accrue at a rate of 12% but shall not be due unless Purchaser shall fail to pay an installment due under the Note within 5 days of the due date thereof.

The circuit court found the Buyer did not pay the full first payment and failed to pay the proposed reduced amount (proposed by the alleged modification). We hold that the circuit court was not clearly erroneous in its finding that there was clearly default notice.

Appellants paid Appellees a total of $116,162.29 from 8/1/2019 through 2/17/2021. Specifically, below is a list of the payments that were made before the September 2019 due date, before the December 19, 2019 due date, and before the December 20, 2019 Notice. In total, the payments listed below add up to $71,547.82. These payments obviously do not

add up to the total amount owed under the original agreement. While the total payments made eventually come close to adding up to the required amount required for **one** of the payments ($161,250 vs. $116,162.29), (a) it did not fulfill their obligation; (b) it was NOT within 5 days as required, but rather years; and (c) it only comes close to amounting to the total required for only **one** of the payments that were due. These are the payments made as we can discern from the record:

- 8/1/2019 - $7,541.92
- 8/15/2019 - $7,519.70
- 8/4/2019 - $700
- 9/4/2019 - $6,909.26
- 9/15/2019 - $6,489.72
- 9/30/2019 - $6,388.99
- 10/4/2019 - $6388.99
- 10/14/2019 - $6,399.80
- 11/1/2019 - $5,944.63
- 11/12/2019 - $6,401.22
- 12/2/2019 - $6,399.96
- 12/12/2019 - $4,463.63

More payments came after this letter and continued to be paid until 2/17/2021.

We find it significant that during the trial Mr. Beall was called as a witness to address the breach of the contract by the buyer. During that colloquy the counsel for the buyer asserted that breach is a legal conclusion. This served as a basis for the circuit court

sustaining the objections to many of the questions that were asked of Mr. Beall, who was a witness representing Friends Choice Investments, L.L.C.. During this colloquy, counsel asserted that the documents "speak for themselves". The circuit court was not clearly erroneously in not challenging this assertion and sustaining the objections.

Overall, the circuit court did not err in awarding Appellees an award of pre-judgment interest.

iv. Attorneys' Fees

When reviewing a circuit court's award of attorneys' fees this Court applies an abuse of discretion standard of review. *Steele v. Diamond Farm Homes Corp.*, 464 Md. 364, 375-76 (citing *Monmouth Meadows Homeowner's Ass'n v. Hamilton*, 416 Md. 325, 322 (2010)).

The court's Opinion and Order stated, "[t]he mass filings, responses, and court appearances have amounted to a high volume of attorney's fees for both sides. All parties are now seeking reimbursement for their attorney's fees[.]" The court ordered that the Counter-Plaintiffs "shall submit an accounting of interest (an interest worksheet) and request for attorney's fees and costs with an affidavit in support that the fees are fair and reasonable for the work performed."

Appellants contend that the attorneys' fees should be split between the two firms that were involved in representing Appellees in this case, the McNamee Hosea Law Firm and the Greene Law Firm. McNamee Hosea represented Appellees in the Confessed Judgment action and defended Appellants' claims. McNamee Hosea billed Appellees $377,046.28, including $354,595.30 in attorneys' fees, $19,848.83 in costs, and $2,602.15

in interest. The Greene Law Firm represented Appellees on the counterclaims. The Greene Law Firm billed Appellees $128,329.85, including $127,170 in attorneys' fees and $159.85 in expenses. On August 19, 2021, the circuit court issued an Order regarding attorneys' fees, which awarded Appellees $480,775.01 in attorneys' fees.[14] Appellants assert that the criterion for determining attorneys' fees are contained in Rule 1.5 of the Rules of Professional Conduct and Md. Rule 19-301.5. (citing *Blaylock v. John's Hopkins Federal Credit Union*, 152 Md. App. 338, 361-362 (2003)). As to the McNamee Hosea Law Firm, Appellants contend that the attorneys' fees should be reassessed by the court on remand for their reasonableness. They assert this request is based on their request to vacate the judgment for fraudulent conveyance, declaratory judgment, conversion, indemnification, and the money judgments of $60,000 and $12,800 for pre-judgment interest for breach of contract.

Appellants also assert that the circuit court erred in attributing Appellees' attorneys' fees to Clucksters' and Guarantors' claims. Appellants contend that the fees are attributable to three sources: a) prosecution of the Confessed Judgment action; b) defense of the claims filed by Clucksters and Guarantors; and c) prosecution of Appellees' amended Counterclaim. Appellants assert that, as to the Confessed Judgment, Appellees were not entitled to continue to enforce the Confessed Judgment after the Court opened the judgment. Further, Appellees cite to *Van Der Vlugt v. Scarborough*, 51 Md. App. 134, 140

[14] The court arrived at this figure because, at the hearing on attorneys' fees, Appellees provided that they incurred $505,376.13 in attorneys' fees and costs and that a $24,601 discount was awarded. Thus, Appellees asked the court for an award of $480,757.01 in attorneys' fees, which is $505,376.13 minus the $24,601 discount.

(1992), to support the contention that the Sellers issued nearly three dozen writs of garnishment after the Confessed Judgment opened, and that this conduct implicates due process because such conduct permits a party to enforce a judgment prior to adjudication on the merits.

Appellants assert that "[s]ince the court entered judgment against Appellees for eight of the thirteen claims and erred in entering judgment for Appellees on the remaining claims, Appellees were not entitled to attorney's fees associated with the prosecution of the Amended Counterclaim." Thus, Appellants request remand for reconsideration of attorneys' fees and costs, specifically a reduction in McNamee Hosea's fees and costs and that the attorneys' fees and costs be reduced by at least $127,170.

Appellees' assert that the trial court did not abuse its discretion in awarding $480,775.01 in attorneys' fees to Appellees. Appellees allege that the right to attorneys' fees is provided in the Purchase Agreement. Appellees contend that the failure to pay the purchase price was a default invoking the right to the attorneys' fees. Appellees also contend that the failure to pay attorneys' fees and the court granting the Income Assignment were also both a default. Appellees argue that the Haddad Entities executed the Security Agreement "jointly and severally[,]" and thus, "they were each liable for the failures of one another."

Further, Appellees state that Appellants provide two erroneous reasons to support their claim that the attorneys' fees were unreasonable: 1) because Appellees were not entitled to enforce the Confessed Judgment after it was opened; and 2) the amount involved versus the results obtained. However, Appellees assert the trial courts should consider the

factors contained in Maryland Rule 2-703(f) when applicable, citing to *Steele*, 464 Md. 364, and that here, the court properly considered each of the factors and thus there was no abuse of discretion. Appellants and Appellees rely on different rules for their arguments on determining the reasonableness of the attorneys' fees that the circuit court awarded. Appellees urge this Court to rely upon Maryland Rule 2-703, while Appellants urge this Court to rely upon Rule 1.5 of the Rules of Professional Conduct and Md. Rule 19-301.5. (citing *Blaylock*, 152 Md. App. at 361-362). However, the factors set forth in Rule 1.5 of the Maryland Lawyers' Rules of Professional Conduct have since been incorporated into what is now Rule 2-703, and thus each of these rules provide the same criteria for determining the reasonableness of attorneys' fees. *See Monmouth Meadows Homeowner's Ass'n*, 416 Md. at 333-34; *see also* Md. Rule 2-703 Comm. Note.

Here, the circuit court relied on Maryland Rule 2-704, which circuit courts look to "when determining attorneys' fees allowed by a contract as an element of damages for breach of that contract[,]" and Maryland Rule 2-703. Specifically, the circuit court provided that Rule 2-704(e)(2) dictates that "when determining the amount of award, if the underlying cause of action was tried by the court, 'the court shall apply the standards set forth in Rule 2-703(f)(3).'" The circuit court considered each of the factors set forth in Rule 2-703(f)(3).

Using this factor analysis, this Court must determine whether the circuit court abused its discretion in ordering the payment of attorneys' fees. *Steele*, 464 Md. at 375-76 (citing *Monmouth Meadows Homeowner's Ass'n*, 416 Md. at 322). In *Steele*, the Supreme Court of Maryland provided that "[t]he cornerstone for awarding attorney's fees is

reasonableness." *See Steele*, 464 Md. at 383 (citations omitted). Additionally, in *Steele*, the Court notes that "[e]vidence in support of or in opposition to a claim for attorneys' fees under the Rule shall be presented in the Party's case in chief and shall focus on the standards set forth in the Rule 2-703(f)(3) or subsection (e)(4) of this Rule, as applicable." *Steele*, 464 Md. at 384-85 (quoting Rule 2-704(d)). The factors set forth in Rule 2-703(f)(3) include:

> (A) the time and labor required;
> (B) the novelty and difficulty of the questions;
> (C) the skill required to perform the legal service properly;
> (D) whether acceptance of the case precluded other employment by the attorney;
> (E) the customary fee for similar legal services;
> (F) whether the fee is fixed or contingent;
> (G) any time limitations imposed by the client or the circumstances;
> (H) the amount involved and the results obtained;
> (I) the experience, reputation, and ability of the attorneys;
> (J) the undesirability of the case;
> (K) the nature and length of the professional relationship with the client; and
> (L) awards in similar cases.
>
> *Steele*, 464 Md. at 385 (citing Md. Rule 2-703(f)(3)).

At trial in *Steele*, "the only *explicit* evidence regarding whether the fees were reasonable was through Well's testimony about her interaction with attorneys and her thoughts about whether the fees were reasonable." The Court provided that "[i]n considering Wells's testimony as evidence for reasonable fees, the circuit court properly

maintained that Maryland Rule 7-112(d)(2)[15] applied[,]" and thus it "was appropriate to consider Wells's testimony as partial evidence of reasonableness. *Steele*, 464 Md. at 385.

In making its reasonableness determination regarding attorneys' fees, the court in *Steele* considered both the factors set forth in Rule 2-703 and this Court's holding in *Monmouth Meadows Homeowner's Ass'n*, 416 Md. 325 (2010), in which the court concluded we should use the factors set forth in Model Rule 1.5 when determining the reasonableness of attorneys' fees "when the court awards fees based on a contract entered by the parties authorizing an award of fees." *Id.* at 385-86 (citations omitted). As provided above, the factors set forth in Rule 1.5 of the Maryland Lawyers' Rules of Professional Conduct have since been incorporated into what is now Rule 2-703. *See Monmouth Meadows Homeowner's Ass'n*, 416 Md. at 333-34; *see also* Md. Rule 2-703 Comm. Note

Ultimately, the Court in *Steele* concluded that the circuit court did not abuse its discretion in its decision to decrease the amount of attorneys' fees awarded because the "circuit court provided a thoughtful analysis to derive its determination of a reasonable fee." *Id.* at 386. Specifically, in its consideration of the Rule 2-703 factors, the court concluded that "attorney's fees in contract cases can be or even exceed, the amount in controversy;" that "Steele was represented by counsel—requiring the Association to mount 'vigorous' opposition;" that the issues were not particularly novel or unusual; and the fees requested were "18 and a half times the amount at issue, and that 'under the circumstances,

[15] Maryland Rule 7-112 "only applies to appeals heard de novo in the circuit court." Md. Rule 7-112(a). Thus, this specific Rule is not relevant to the instant case.

given the amount in controversy, the ... upper level of fees would be no more than three times the fees of the amount in controversy[.]'" *Id.*

Green Law's fees are affirmed in full because Buyers, Appellants here, never challenged specific Green Law charges below. Thus, under Md. Rule 8-131(a), Green Law's attorneys' fees are not properly before this Court on appeal.

In *Ochse v. Henry*, 216 Md. App. 439 (2014), this Court established that when fees are based on a contract and there is a partial victory, the common core of facts doctrine can expand the court's discretion when analyzing "the amount involved and the results obtained" reasonableness factor under Rule 2-703(f)(3)(H). This Court stated:

> Although the common core of facts doctrine may be applied to both contractual and statutory fee-shifting,[] in the court's discretion, it does not rule out the proportionate award the circuit court fashioned in this case. The doctrine is merely one part of one factor a court should consider (the results obtained) when determining the reasonableness of a fee award, as part of the totality of the circumstances, when a prevailing party prevails on less than all of the asserted claims for relief. It enlarges (rather than reduces) the wide discretion courts enjoy in fashioning reasonable fee awards pursuant to contractual fee shifting provisions.

Id. at 460.

In the circuit court, Buyers never disputed "any legal charge or fees of the work performed" by Green Law. Additionally, as to Green Law's fees, Buyers never mentioned the common core of facts doctrine or made any arguments as to why the common core of facts doctrine would not apply to allow the circuit court to award Green Law all its fees. Accordingly, Buyers never argued that only a proportionate award was warranted as to Green Law's fees under *Ochse*.

Therefore, Buyers' attempt to raise a proportionality argument as to Green Law's fess on appeal fails because it is unpreserved under Md. Rule 8-131(a) and is inadequately briefed under Md. Rules 8-504(a)(4); 8-504(a)(6). Specifically, their brief states:

> The courts also consider the amount involved and the result obtained. Here, Appellees pursued thirteen claims against Appellants and had judgment entered against them on eight of the thirteen claims. As discussed herein, with exception of the request for attorneys' fees, **the court erred in entering judgment on the remaining claims because Appellees utterly failed to fulfill their burden of proof**. Appellees' counterclaims were based upon hyperbole and misstatement, rather than evidence and sound legal analysis.
>
> […]
>
> Since the court entered judgment against Appellees for eight of the thirteen claims and erred in entering judgment for Appellees on the remaining claims, **Appellees were not entitled to attorney's fees associated with the prosecution of the Amended Counterclaims**. Accordingly, in addition to a reduction in McNamee Hosea, P.A.'s fees and costs, the attorney's fees and costs must be reduced by at least $127,170. Thus, Appellants request remand for reconsideration of attorney's fees and costs.

This argument improperly lumps Green Law and McNamee Hosea's fees together without distinguishing them. Specifically, Appellants' argument in the first bolded sentence fails because it is neither preserved under Rule 8-131(a), nor is it accompanied by record citations, as required under Rule 8-504(a)(4). Appellants' argument in the second bolded sentence fails because it is not accompanied by a legal citation, as required under Rule 8-504(a)(6), nor could it be because it is not legally correct. Appellants fail to cite any law on the common core of facts doctrine.

In other words, Sellers, Appellees here, were potentially entitled to the fees associated with their Amended Counterclaim because, under the common core of facts doctrine, the circuit court could have awarded Sellers all the Green Law fees. Appellants

cannot challenge this on appeal because they failed to do so below and thus this argument is not preserved for appellate review. Md. Rule 8-131(a). Further, Appellants cannot challenge this on appeal because they failed to supply any law to support such a challenge.

Green Law's attorneys' fee award is affirmed in full. Therefore, we now turn to our analysis of McNamee Hosea's attorneys' fees award. Unlike Green Law's fees, under Md. Rule 8-131(a), Buyers, Appellants here, said enough in the circuit court proceedings to preserve the argument they are making on appeal, which is that McNamee Hosea's fees should have been reduced by a proportionate amount because McNamee Hosea enforced the Confessed Judgment after it was vacated. Specifically, Buyers raised arguments about the post-reopening enforcement activity in the circuit court, which effectively preserved this issue for appellate review. Md. Rule 8-131(a).

On February 14, 2020, Appellees caused writs of garnishment to be issued and served before the confessed judgment was opened on August 5, 2020. Some of the garnishments were vacated. Those served on Cluck-U franchisees were quashed. A total of $50,642 was tallied for the confessed assets. Bank of America confessed holding $37,338.32 for Clucksters. Bank of America confessed holding $7,603.72 for Cluck-U. Truist Bank confessed holding $900 for Clucksters. Truist Bank confessed holding $1900 for Cluck-U. The trial court found these garnishments valid. Notably, Appellees never received any of the garnished monies. The second set of garnishments were directed to the franchisees of Cluck-U.

Here, the circuit court's methodology for its attorneys' fees analysis for the McNamee Hosea Law Firm was not an abuse of discretion because the circuit court

provided a thoughtful analysis of each of the factors set forth in Rule 2-703. However, the trial court's factor (H) analysis rested on a legally incorrect premise, that the garnishment activity after August 5, 2020, was permissible, which in turn requires reassessment of that specific factor on remand.

For factor (H), the amount involved and the results obtained, the court rejected Buyers' argument that Sellers' total fees were "not commensurate with the amount in controversy." The court emphasized "the fact that Buyers chose to sue Sellers, creating Sellers' need to defend the suit, and, prior to February 12, 2021, Buyers utilized the court to challenge the Confessed Judgment and Sellers' efforts to collect the Confessed Judgment." The court noted the following evidence: the total litigation costs incurred by Sellers with McNamee Hosea was $377,046.28, consisting of $354,595.30 in attorneys' fees, $19,848.83 in costs, and $2,602.15 in interest; and the total litigation costs incurred by the Sellers with Green Law was $128,329.85, consisting of $127,170.00 in attorneys' fees and $159.85 in costs. The court reiterated that in its Order and Opinion, it ruled that Buyers breached the Membership Purchase Agreement and Security Agreement and thus ordered judgment in favor of Sellers for $60,000.00 plus interests and costs. Additionally, the court stated that Sellers were entitled to attorneys' fees which, "[a]t the August 2, 2021 hearing, **after various adjustments**,[16] the Sellers' attorney [had] requested $480,775.01 in attorneys' fees and $12,800.00 in prejudgment interest.

[16] The fact that the circuit court stated that the amount of $480,775.01 was reached "after various adjustments" is critical to the evaluation of attorneys' fees on remand. Notably, the circuit court will need to evaluate the pre-adjustment invoice records, not

Here, Appellants maintain that the attorneys' fees awarded were not reasonable because the garnishments requested (and issued by the court), were improper because the Confessed Judgment was opened. We agree. Under *Schlossberg v. Citizens Bank of Maryland*, 341 Md. 650 (1996), Appellees were not entitled to continue to enforce the Confessed Judgment after the Court opened the judgment on August 5, 2020, not February 12, 2021. *Schlossberg*, 341 Md. at 658.

Appellees and Appellants disagree on their interpretations of *Schlossberg*, 341 Md. 650 While Appellees correctly state that "an opened judgment continues as valid unless vacated[,]" citing *Id.* at 659-60, Appellees misconstrue the main holding of *Schlossberg*.

In *Schlossberg*, the Court held that "opening a confessed judgment does not affect the judgement lien." *Id.* at 653. However, it does prevent the plaintiff in the Confessed Judgment action from executing on that lien until after there can be a decision by the court on the merits as to whether the Confessed Judgment should be vacated. *Id.* at 658 (stating that "opened means that the judgment continues to exist and is not destroyed; rather it is set aside to allow the judgment to be examined"). In *Schlossberg* the Court explained the distinction between the continuing validity of a lien obtained pursuant to a Confessed Judgment versus the finality of the judgment once it is opened. *See generally, id.* at 657-60. Based on *Schlossberg*, we believe that a judgment loses its finality once it is opened and is exempt from enforcement pending a determination on the merits. *Id.* at 658. We

simply rely on this figure without determining exactly what "various adjustments" were made. This is addressed in further detail below.

agree with Appellants that the trial judge erred by indicating that Appellees were entitled to collect on the Confessed Judgment prior to a hearing on the

This Court affirms the lower court's attorneys' fees award for Green Law and remands the lower court's attorneys' fees award for McNamee Hosea for fees arising out of Sellers' pursuit and enforcement of the Prince George's County Confessed Judgment. Md. Rule 8-604(a)(6); Md. Rule 8-604(b). McNamee Hosea's fees from defending the Amended Complaint are affirmed. Under Md. Rule 8-604(d)(1), the following instructions shall control the circuit court's reassessment of the attorneys' fees for McNamee Hosea on remand. First, the circuit court shall consider August 5, 2020, as the controlling cutoff date for permissible garnishment-related fees, not February 12, 2021. Additionally, the circuit court should work from pre-adjustment invoices, not the already adjusted $480,775.01 figure, because the nature of the "various adjustments" made at the August 2, 2021 hearing are not established in the record before this Court. Further, the 25% discount ruling stands and is not open on remand, as it was a factual finding that was not challenged on appeal. The accord and satisfaction defense was disposed of below and is not before this Court, and thus it is not open on remand. The prejudgment interest award of $12,800 and the $60,000 breach of contract judgment are affirmed and are not subject to reassessment. Nothing herein is intended to require that the circuit court vary the ancillary relief it ordered in the event that it enters a proper declaratory judgment. The circuit court has discretion to take additional evidence on fees generated during the appeal and in connection with remanded issues. The contractual entitlement to fees under Paragraph 9.3 of the Security Agreement is affirmed, and only the amount is being reconsidered. We reiterate that the

Green Law attorneys' fees are affirmed in full, and thus not to be evaluated on remand. Md. Rule 8-604(a)(6).

CONCLUSION

Accordingly, for the foregoing reasons, we conclude that the Circuit Court for Prince George's County was clearly erroneous in its failure to enter a declaratory judgment; in its entry of judgment for conversion; and in entering a total judgment of $553,575.01 in favor of Appellees. However, the circuit court was not clearly erroneous in its finding of fraudulent conveyances, or in its entry of judgment for indemnification.

Count V of Amended Counterclaim (declaratory judgment), vacated and remanded for further proceedings not inconsistent with this opinion; Count VI (conversion), reversed; Judgment for attorneys' fees affirmed in part and vacated in part and remanded for further proceedings not inconsistent with this opinion; All other judgments affirmed.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED IN PART, REVERSED IN PART, AND VACATED AND REMANDED IN PART, AS FOLLOWS.

AS TO BUYERS' AMENDED COMPLAINT, THE JUDGMENT IS AFFIRMED.

AS TO COUNT V OF SELLERS' AMENDED COUNTERCLAIM (DECLARATORY JUDGMENT), THE JUDGMENT IS VACATED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

AS TO COUNT VI OF SELLERS' AMENDED COUNTERCLAIM (CONVERSION), THE JUDGMENT IS REVERSED.

THE JUDGMENT AS TO SELLERS' AMENDED COUNTERCLAIM IS AFFIRMED IN ALL OTHER RESPECTS.

AS TO LEGAL FEES AND COSTS AWARDED TO SELLERS IN CONJUNCTION WITH MCNAMEE HOSEA'S PURSUIT AND ENFORCEMENT OF THE PRINCE GEORGE'S COUNTY CONFESSED JUDGMENT, THE JUDGMENT IS VACATED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

THE JUDGMENT AS TO LEGAL FEES AND COSTS AWARDED TO SELLERS IS AFFIRMED IN ALL OTHER RESPECTS.

THE JUDGMENT AS TO PREJUDGMENT INTEREST AWARDED TO SELLERS IS AFFIRMED IN ALL RESPECTS.

COSTS TO BE DIVIDED EQUALLY, WITH BUYERS COLLECTIVELY RESPONSIBLE FOR ONE-HALF, AND SELLERS COLLECTIVELY RESPONSIBLE FOR ONE-HALF.