Circuit Court for Baltimore County
Case No.: 03-C-05-009397

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 665

September Term, 2019

WILLIAM BURRIS, ET AL.,

v.

TED BAUER, ET AL.,

Nazarian,
Beachley,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: July 10, 2020

In 2007, Ted and Sally Bauer, Appellees, obtained a judgment against Richard Keith Ikle. To collect on their judgment, they served a "Writ of Garnishment of Property" and a "Writ of Garnishment of Wages" on William Burris and Keller Williams Select Realtors of Annapolis (Burris or Appellants collectively herein), with whom Ikle was associated as a realtor in Baltimore County.

Burris, thereafter, filed an answer alleging that Ikle was not his employee nor that he had any property or wages belonging to Ikle on or after the date of the garnishments' service; discovery ensued. A bench trial followed, after which the Honorable Andrew Battista of the Circuit Court for Baltimore County entered judgment for the Bauers against Burris in the amount of $246,366.78. Burris essentially asks that we vacate the judgment, contending that the Circuit Court erred in concluding that he held any property or wages belonging to Ikle between the time of the writs' service and the date on which judgment was rendered in the matter.[1]

[1] The questions posed included:

> 1. Whether the trial court erred in determining that team commissions were subject to a garnishment to collect a judgment against one member of the team.
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> 2. Whether the trial court erred in determining that commissions due on the Julia Williams contracts were subject to the garnishment against Ikle.
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> 3. Whether the trial court erred in determining that Lynnco would only own the team commissions when received.
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> 4. Whether the trial court erred in determining that the Amendment to the Independent Contractor Agreement was not a binding agreement.

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For the reasons that follow, we shall answer the questions in the negative and affirm.

LEGAL FRAMEWORK

"A writ of garnishment is a means of enforcing a judgment." *Parkville Fed. Sav. Bank v. Md. Nat. Bank*, 343 Md. 412, 418 (1996). It allows a judgment creditor to recover assets owned by the debtor but held by a third party. *Id.* In *Fico, Inc. v. Ghingher*, 287 Md. 150 (1980), the Court of Appeals further explained that:

> A garnishment proceeding is . . . an action by the judgment debtor for the benefit of the judgment creditor which is brought against a third party, the garnishee, who holds the assets of the judgment debtor. An attaching judgment creditor is subrogated to the rights of the judgment debtor and can recover only by the same right and to the same extent that the judgment debtor might recover. The judgment itself is conclusive proof of the judgment debtor's obligation to the judgment creditor. The sole purpose of the garnishment proceeding therefore is to determine whether the garnishee ha[s] any funds, property or credits which belong to the judgment debtor.

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> 5. Whether the trial court erred in creating a public policy public exception to Maryland garnishment law which would impose liability upon a garnishee if it engages in transactions with the judgment debtor which permit the judgment debtor to avoid the garnishment of assets to the financial benefit of the garnishee, and, if such exception is established, whether such exception was satisfied in this case.
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> 6. Whether the trial court erred by determining that commissions were the property of Appellants rather than the property of Select Realtors, LLC.

The Appellees raise the following question in a cross appeal: "Whether the co-conspirator hearsay statement made by Ikle, that Burris told Ikle to put Ikle's contracts in Julia Williams' name, was admissible evidence?" The Circuit Court determined that the statement was inadmissible. We need not address the question, however, because we shall affirm the judgment.

Id. at 159 (internal citations omitted). To collect a judgment, a judgment creditor may enforce a judgment by levying an attachment against a judgment debtor's wages and/or property held by a third party.

With respect to wages, Section 15-602(a) of the Commercial Law Article provides that, "[w]hen an attachment is levied against the wages of a judgment debtor, it shall constitute a lien on all attachable wages that are payable at the time the attachment is served or which becomes payable until the judgment, interest, and costs, as specified in the attachment, are satisfied." Maryland Code (1978, 2013 Repl. Vol.). Wages are defined as "all monetary remuneration paid to any employee for his employment." Maryland Code (1957, 2013 Repl. Vol.), Section 15-601(c) of the Commercial Law Article.

Following the attachment, "the employer/garnishee shall withhold all attachable wages payable to the judgment debtor and remit the amount withheld to the judgment creditor or his legal representative[.]" Maryland Code (1978, 2013 Repl. Vol.), Section 15-603(a) of the Commercial Law Article. Maryland Rule 2-646[2] governs the procedures

[2] Rule 2-646, Garnishment of Wages, provides:

> (a) Applicability. This Rule governs garnishment of wages under Code, Commercial Law Article, §§ 15-601 through 15-606.
> (b) Issuance of Writ. The judgment creditor may obtain issuance of a writ of garnishment by filing in the same action in which judgment was obtained a request that contains (1) the caption of the action, (2) the amount owed under the judgment, (3) the name and last known address of the judgment debtor, and (4) the name and address of the garnishee. Upon filing of the request, the clerk shall issue a writ of garnishment directed to the garnishee together with a blank answer form provided by the clerk.
> (c) Content. The writ of garnishment shall:
> (1) contain the information in the request, the name and address of the person
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requesting the writ, and the date of issue,

(2) notify the garnishee of the time within which the answer must be filed and that failure to do so may result in the garnishee being held in contempt,

(3) notify the judgment debtor and garnishee that federal and state exemptions may be available,

(4) notify the judgment debtor of the right to contest the garnishment of wages by filing a motion asserting a defense or objection.

(d) Service. The writ and answer shall be served on the garnishee in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction and may be served in or outside the county. Upon issuance of the writ, a copy of the writ shall be mailed to the debtor's last known address. Subsequent pleadings and papers shall be served on the creditor, debtor, and garnishee in the manner provided by Rule 1-321.

(e) Response of Garnishee and Debtor. The garnishee shall file an answer within the time provided by Rule 2-321. The answer shall state whether the debtor is an employee of the garnishee and, if so, the rate of pay and the existence of prior liens. The garnishee may assert any defense that the garnishee may have to the garnishment, as well as any defense that the debtor could assert. The debtor may file a motion at any time asserting a defense or objection.

(f) When no Answer Filed. If the garnishee fails to file a timely answer, the court on motion of the creditor may order the garnishee to show cause why the garnishee should not be held in contempt and required to pay reasonable attorney's fees and costs.

(g) When Answer Filed. If the answer denies employment, the Clerk shall dismiss the proceeding against the garnishee unless the creditor files a request for hearing within 15 days after service of the answer. If the answer asserts any other defense or if the debtor files a motion asserting a defense or objection, a hearing on the matter shall be scheduled promptly.

(h) Interrogatories to Garnishee. Interrogatories may be served on the garnishee by the creditor in accordance with Rule 2-645(h).

(i) Withholding and Remitting of Wages. While the garnishment is in effect, the garnishee shall withhold all garnishable wages payable to the debtor. If the garnishee has asserted a defense or is notified that the debtor has done so, the garnishee shall remit the withheld wages to the court. Otherwise, the garnishee shall remit them to the creditor or the creditor's attorney within 15 days after the close of the debtor's last pay period in each month. The garnishee shall notify the debtor of the amount withheld each pay period and the method used to determine the amount. If the garnishee is served with more than one writ for the same debtor, the writs shall be satisfied in the

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for garnishment of wages in the circuit courts. When someone is served with a writ of garnishment, they are required to file an answer stating whether the debtor is their employee and, if so, the rate of that employee's compensation. Rule 2-646(e). In the answer, the garnishee may assert any defense to the garnishment, as well as any defense the debtor may assert; the judgment debtor may also assert a defense or objection to the garnishment action. *Id.* If an answer is filed asserting any defense other than non-employment of the debtor, the matter is set for a hearing. Rule 2-646(g). The garnishee must begin withholding wages upon service of the writ and remit the withheld amounts to the judgment creditor, or the creditor's counsel; if, however, the garnishee has asserted a defense, he or she "shall remit the withheld wages to the court." Rule 2-646(i).

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> order in which served.
> (j) Duties of the Creditor.
> (1) Payments received by the creditor shall be credited first against accrued interest on the unpaid balance of the judgment, then against the principal amount of the judgment, and finally against attorney's fees and costs assessed against the debtor.
> (2) Within 15 days after the end of each month in which one or more payments are received from any source by the creditor for the account of the debtor, the creditor shall mail to the garnishee and to the debtor a statement disclosing the payments and the manner in which they were credited. The statement shall not be filed in court, but creditor shall retain a copy of each statement until 90 days after the termination of the garnishment proceeding and make it available for inspection upon request by any party or by the court.
> (3) If the creditor fails to comply with the provisions of this section, the court upon motion may dismiss the garnishment proceeding and order the creditor to pay reasonable attorney's fees and costs to the party filing the motion.
> (k) Termination of Garnishment. A garnishment of wages terminates 90 days after the cessation of employment unless the debtor is reemployed by the garnishee during that period.

A judgment creditor also may levy an attachment against "any property or credit, matured or unmatured, which belong to the debtor." Maryland Code (1957, 2013 Repl. Vol.), Section 3-305 of the Courts and Judicial Proceedings Article. Rule 2-645,[3] the Rule

[3] Rule 2-645, Garnishment of Property—Generally, provides:

> (a) Availability. Subject to the provisions of Rule 2-645.1, this Rule governs garnishment of any property of the judgment debtor, other than wages subject to Rule 2-646 and a partnership interest subject to a charging order, in the hands of a third person for the purpose of satisfying a money judgment. Property includes any debt owed to the judgment debtor, whether immediately payable or unmatured.
> (b) Issuance of Writ. The judgment creditor may obtain issuance of a writ of garnishment by filing in the same action in which the judgment was entered a request that contains (1) caption of the action, (2) the amount owed under the judgment, (3) the name and last known address of each judgment debtor with respect to whom a writ is requested, and (4) the name and address of the garnishee. Upon the filing of the request, the clerk shall issue a writ of garnishment directed to the garnishee.
> (c) Content. The writ of garnishment shall:
> (1) contain the information in the request, the name and address of the person requesting the writ, and the date of issue,
> (2) direct the garnishee to hold, subject to further proceedings or to termination of the writ, the property of each judgment debtor in the possession of the garnishee at the time of service of the writ and all property of each debtor that may come into the garnishee's possession after service of the writ,
> (3) notify the garnishee of the time within which the answer must be filed and that the failure to do so may result in judgment by default against the garnishee,
> (4) notify the judgment debtor and garnishee that federal and state exemptions may be available,
> (5) notify the judgment debtor of the right to contest the garnishment by filing a motion asserting a defense or objection, and
> (6) notify the judgment debtor that, if the garnishee files an answer pursuant to section (e) of this Rule and no further filings concerning the writ of garnishment are made with the court within 120 days following the filing of the answer, the garnishee may file a notice of intent to terminate the writ of garnishment pursuant to subsection (k)(2) of this Rule.

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> (d) Service. The writ shall be served on the garnishee in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction and may be served in or outside the county. Promptly after service upon the garnishee, the person making service shall mail a copy of the writ to the judgment debtor's last known address. Proof of service and mailing shall be filed as provided in Rule 2-126. Subsequent pleadings and papers shall be served on the creditor, debtor, and garnishee in the manner provided by Rule 1-321.
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> (e) Answer of Garnishee. The garnishee shall file an answer within the time provided by Rule 2-321. The answer shall admit or deny that the garnishee is indebted to the judgment debtor or has possession of property of the judgment debtor and shall specify the amount and nature of any debt and describe any property. The garnishee may assert any defense that the garnishee may have to the garnishment, as well as any defense that the judgment debtor could assert. After answering, the garnishee may pay any garnished indebtedness into court and may deliver to the sheriff any garnished property, which shall then be treated as if levied upon by the sheriff. A garnishee who has filed an answer admitting indebtedness to the judgment debtor or possession of property of the judgment debtor is not required to file an amended answer solely because of an increase in the garnishee's indebtedness to the judgment debtor or the garnishee's receipt of additional property of the debtor.
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> (f) When No Answer Filed. If the garnishee fails to file a timely answer, the judgment creditor may proceed pursuant to Rule 2-613 for a judgment by default against the garnishee.
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> (g) When Answer Filed. If the garnishee files a timely answer, the matters set forth in the answer shall be treated as established for the purpose of the garnishment proceeding unless the judgment creditor files a reply contesting the answer within 30 days after its service. If a timely reply is not filed, the court may enter judgment upon request of the judgment creditor, the judgment debtor, or the garnishee. If a timely reply is filed to the answer of the garnishee, the matter shall proceed as if it were an original action between the judgment creditor as plaintiff and the garnishee as defendant and shall be governed by the rules applicable to civil actions.
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> (h) Interrogatories to Garnishee. The judgment creditor may serve interrogatories directed to the garnishee pursuant to Rule 2-421. The interrogatories shall contain a notice to the garnishee that, unless answers are served within 30 days after service of the interrogatories or within the time for filing an answer to the writ, whichever is later, the garnishee may be held in contempt of court. The interrogatories shall also inform the garnishee that

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> the garnishee must file a notice with the court pursuant to Rule 2-401(d) at the time the answers are served. If the garnishee fails to serve timely answers to the interrogatories, the court, upon petition of the judgment creditor and proof of service of the interrogatories, may enter an order in compliance with Rule 15-206 treating the failure to answer as a contempt and may require the garnishee to pay reasonable attorney's fees and costs.
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> (i) Release of Property; Claim by Third Person. Before entry of judgment, the judgment debtor may seek release of the garnished property in accordance with Rule 2-643, except that a motion under Rule 2-643(d) shall be filed within 30 days after service of the writ of garnishment on the garnishee. Before entry of judgment, a third person claimant of the garnished property may proceed in accordance with Rule 2-643(e).
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> (j) Judgement. The judgment against the garnishee shall be for the amount admitted plus any amount that has come into the hands of the garnishee after the writ and before the judgment is entered, but not to exceed the amount owed under the creditor's judgment against the debtor and enforcement costs.
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> (k) Termination of Writ.
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> (1) Upon Entry of Judgment. Upon entry of judgment against the garnishee pursuant to section (j) of this Rule, the writ of garnishment and the lien created by the writ shall terminate and the garnishee shall be under no obligation to hold any additional property of the debtor that may come into its possession.
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> (2) By the Garnishee. If the garnishee has filed an answer and no further filing concerning the writ of garnishment is made within 120 days after the filing of the answer, the garnishee may file, at any time more than 120 days after the filing of the answer, a notice of intent to terminate the writ of garnishment. The notice shall (A) contain a statement that a party may object to termination of the writ by filing a response within 30 days after service of the notice and (B) be served on the judgment debtor and the judgment creditor. If no response is filed within 30 days after service of the notice, the garnishee may file a termination of the garnishment, which shall release the garnishee from any further obligation to hold any property of the debtor.
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> (l) Statement of Satisfaction. Upon satisfaction by the garnishee of a judgment entered against it pursuant to section (j) of this Rule, the judgment creditor shall file a statement of satisfaction setting forth the amount paid. If the judgment creditor fails to file the statement of satisfaction, the garnishee may proceed under Rule 2-626.

which governs the garnishment of property, defines property as "any property of the judgment debtor, other than the wages subject to Rule 2-646 and a partnership interest subject to a charging order, in the hands of a third person for the purpose of satisfying a money judgment." Rule 2-645(a). Property also "includes any debt owed to the judgment debtor, whether immediately payable or unmatured." *Id.*

As is with the procedure involving the garnishment of wages, a garnishee also is required to file an answer when served with a writ of garnishment of property. In addition to admitting or denying having possession of the debtor's property, the garnishee may also assert any defenses available to the garnishee or the debtor. Rule 2-645(e). In the context of a property garnishment, "the garnishee may pay any garnished indebtedness into the court and may deliver to the sheriff any garnished property[.]" *Id.* Where a timely reply is filed to the answer of the garnishee, as the Bauers did here, "the matter shall proceed as if it were an original action . . . and shall be governed by the rules applicable to civil actions." Rule 2-645(g).

Remittance of the wages and/or property to the creditor absolves the garnishee of liability. *See, e.g., Hunt Valley Masonry, Inc. v. Fred Maier Block, Inc.*, 108 Md. App. 100, 107 (1996). If, however, a garnishee ignores their obligations set forth in a writ, the court may impose personal liability on them. *See id.* Whether the writ involves wages or property, "[o]nce obtained and properly served on the garnishee, a writ of garnishment requires the garnishee to take positive action by holding the property until the entry of judgment in the garnishment action." *Parkville Fed. Sav. Bank*, 343 Md. at 419 (citing *Fico*, 287 Md. at 162).

If, however, the garnishee "surrenders the property [to the debtor] after service of the writ but prior to judgment," in clear violation of the writ's mandates, they are "liable to the judgment creditor for the value of the debtor's property released." *Id.* (citing *Int'l Bedding Co. v. Terminal Warehouse Co.*, 146 Md. 479 492 (1924) and *Flat Iron Mac Assocs. v. Foley*, 90 Md. App. 281, 292, *cert. denied*, 327 Md. 79 (1992)); *see also Hunt Valley Masonry, Inc.*, 108 Md. App. at 107 (applying the standard to where garnishee failed to comply with the requirements of a writ of garnishment of wages).

FACTUAL BACKGROUND

On March 5, 2007, Ted and Sally Bauer, Appellees, the judgment creditors herein, obtained a judgment against Richard Keith Hansen Ikle, the judgment debtor herein, in the amount of $464,458.00; as of April of 2019, the amount had increased, to exceed $900,000.00. Because their judgment had not been satisfied, the Bauers requested that the Circuit Court for Baltimore County issue writs of garnishment on "Bill Burris/Keller Williams Select Realtors of Annapolis," the "real estate business with which the Judgment Debtor is associated as a salesperson." In September of 2016, the Circuit Court issued writs of garnishment of property and wages against William Burris and Keller Williams Select Realtors of Annapolis.

Burris filed an Answer to the writs, stating that Ikle was not employed by him and that he did not possess any assets owed to Ikle "on or subsequent to the date of service of the writ of garnishment" and even if he did, he was not required to hold such assets. Burris alleged that, "as is common in the real estate industry, the Judgment Debtor is part of a real estate team under the name, Lynnco C.R.C., LLC," and as such, Lynnco C.R.C., LLC, as

a party to the independent contractor agreement with Burris, was due any commissions earned by the team, not Ikle individually. The Bauers filed a reply to the answer, as required by Rule 2-645(g), refuting the averments contained in the Answer and alleging that Burris possessed property of the judgment debtor in the form of real estate sales commissions.

Both parties then filed motions for summary judgment, which the Circuit Court denied, and a four-day bench trial ensued in February and March of 2019. At the bench trial, over which Judge Andrew Battista presided, the following individuals testified: William Burris, Julia Williams, several individuals who bought property from members of Lynnco C.R.C., LLC under the auspices of Keller Williams Select Realtors of Annapolis, and Leslie Ikle, the spouse of Ikle. The parties offered numerous documents, such as an Independent Contractor Agreement, an Amended Independent Contractor Agreement, a string of emails between Ikle and Burris, various property sales contracts, pay checks, and deposition transcripts of Burris, among others.

In a written Opinion and Order dated April 12, 2019, Judge Battista made various findings, none of which is being challenged as erroneous before us. The findings relevant to the period from the time Burris and Ikle entered a professional relationship in February of 2012, to the issuance of the writs of garnishment in September of 2016, and through the entry of judgment in April of 2019 are summarized and encapsulated below:

- Burris was a licensed real estate broker as defined in Section 17-101(i) of the Business Occupations and Professions Article, Maryland Code (1957, 2010 Repl. Vol.).[4]

- Ikle was a licensed real estate salesperson as defined in Section 17-101(o).[5]

- Burris and Ikle entered into an Independent Contractor Agreement in February of 2012, whereby Ikle would perform real estate sales services on behalf of Burris, pursuant to Section 17-301(a),[6] for which Burris would pay commissions to Ikle, once earned.

- Ikle, with the consent of Burris, formed Lynnco C.R.C., LLC to serve as the receiver of the commissions he earned from real estate sales.[7]

[4] Section 17-101(i) of the Business Occupations and Professions Article, Maryland Code (1957, 2010 Repl. Vol.) defined a "licensed real estate broker" as "a real estate broker who is licensed by the [Real Estate Commission ("Commission")] to provide real estate brokerage services." The 2010 version of the Business Occupations and Professions Article has since been replaced in 2018 and supplemented in 2019, albeit, without substantive changes to the sections relevant to the instant matter. Nonetheless, we refer to the 2010 version, which was in effect at the time of the events in issue.

[5] Section 17-101(o) of the Business Occupations and Professions Article, Maryland Code (1957, 2010 Repl. Vol.) defined "real estate salesperson" as "an individual who, while affiliated with and acting on behalf of a real estate broker, provides real estate brokerage services."

[6] Section 17-301(a) of the Business Occupations and Professions Article, Maryland Code (1957, 2010 Repl. Vol., 2015 Supp.) provided:

> (1) Except as otherwise provided in this title, an individual shall be licensed by the Commission as a real estate broker before the individual may provide real estate brokerage services in this State.
> (2) Except as otherwise provided in this title, an individual shall be licensed by the Commission as an associate real estate broker or a real estate salesperson before the individual, while acting on behalf of a real estate broker, may provide real estate brokerage services in the State.

[7] Although Judge Battista made no specific finding with respect to a real estate sales team, his written Opinion and Order references "Home Team of Maryland" which, we surmise from the record, was an association of real estate salespersons led by Ikle.

- In March of 2012, Burris and Ikle signed an Amended Independent Contractor Agreement which stated, in part, that "Keith Ikle has formed a real estate sales team and desires to have all commissions paid to Lynnco C.R.C., LLC," a business entity formed by Ikle.

- Following the effective date of the Amended Independent Contractor Agreement, Burris paid all commissions earned by Ikle to Lynnco C.R.C., LLC.

- Once Burris was served with the writs of garnishment in September of 2016, he held unpaid commissions earned by Ikle in the amount of $46,446.75.

- Burris, however, after the service of the writs, in November of 2016, about two weeks prior to his deposition in the instant matter, released the $46,446.75 to Ikle based upon Ikle's promise to "hold" him "harmless" from any losses caused by the release of the garnished funds; Ikle had also agreed to pay "an order against Burris as the garnishee for $1,000.00 for discovery issues," as well as Burris' attorney's fees.

- No sales contract listed Ikle as the agent of record after the date on which Burris paid him the $46,446.75.

- In March of 2018, Ikle ended his professional affiliation with Burris and no longer provided real estate sales services on his behalf.

- In August of 2014, Ikle hired Julia Williams as a real estate assistant with duties to include typing up sales contracts, completing applications, and other general administrative tasks.

- In July of 2016, Ms. Williams became a member of Lynnco, C.RC., LLC, but she did not know what being a member of an LLC involved nor had ever seen any documents pertaining to the LLC.

- In August of 2016, Ms. Williams became a licensed real estate salesperson, although she, generally, continued her duties as a real estate assistant for Ikle.

- Ms. Williams signed an Independent Contractor Agreement and Amended Independent Contractor Agreement in December of 2016

which mirrored that entered between Burris and Ikle and indicated that she desired any commissions of hers to be paid to Lynnco C.R.C., LLC.[8]

- Between November of 2016 and November of 2017, Ms. Williams' real estate sales license number was listed on several sales contracts upon which earned commissions were to be paid in the amount of $199,920.03.[9]

- Ms. Williams, however, did not receive any of the $199,920.03 but only received a payment of $315.00 in June of 2017 in connection with a property for which she had provided some real estate sales services unrelated to the above-mentioned sales contracts.

- The $199,920.03 in commissions attributable to Ms. Williams, instead, had been paid to Lynnco C.R.C., LLC.

- Some of Ms. Williams' paychecks while working for Lynnco C.R.C., LLC were issued by "Chesapeake Real Estate Group, Ltd." and "Delmarva Consulting Group," entities which were controlled by Ikle; Ms. Williams never received a paycheck from Lynnco C.R.C., LLC.

- Ms. Williams "never acted as a real estate salesperson" but, rather, she "was being used by Ikle to hide commissions he earned[.]"

- Ikle had, in fact, represented the clients Ms. Williams purportedly represented in real estate transactions following the date of the writs' service.

- Burris did not "even recognize Julia Williams" and had stated, "I don't know who she is."

- The $199,920.03 in commissions earned on the contracts which listed Ms. Williams as the agent of record did not belong to the real estate team, Lynnco C.R.C., LLC, or Ms. Williams; rather, they belonged to Ikle and were subject to the garnishment.

[8] It appears that neither Burris nor any other party signed the Independent Contractor Agreement or Amended Independent Contractor Agreement Ms. Williams had signed.

[9] Some of the sales contracts stated that "Home Team of Maryland" was the agent of record but listed the license number of Julia Williams.

- Burris, as the broker, had a duty to supervise and direct the actions of Ikle and Ms. Williams. The "Do's and Don'ts for Teams and Groups," a guide published by the Maryland Real Estate Commission, states that the broker "must supervise the team members" and that they "may not delegate" their supervising duties to the team leader.

- Burris knew, as a means to further avoid the garnishment, that Ms. Williams was listed as the agent of contract on sales contracts for which she did not actually render services.

- Burris was liable to the Bauers for a total of $246,377.78, the amount directly attributable to Ikle which had been released to him after Burris had been served with the writs plus the amount which had been purportedly earned by the real estate efforts of Ms. Williams which also had been released to Ikle after the service of the writs.

Judge Battista, in his written Opinion and Order, also derived various conclusions of law based upon his factual findings, which are summarized and encapsulated below:

- The Amended Independent Contractor Agreement was not a binding agreement because it merely reflected a "request" that commissions to be paid to Lynnco C.R.C., LLC, which was not a party to the amendment or initial agreement.

- The income Ikle earned from his real estate activities constituted his property until received by Lynnco C.R.C., LLC, who "was merely a designee of the salesperson who earned the commission."

Judge Battista concluded also that Burris was required to hold "any property" belonging to Ikle "until entry of the judgment" which was "entered in favor of the Plaintiffs against William Burris personally and doing business as Keller Williams" in the amount of $246,366.78. Although Burris did not "deliberately" assist Ikle in shielding his assets from the Bauers, Judge Battista determined that his actions "helped" Ikle avoid garnishment.

DISCUSSION

Pursuant to Rule 8-131(c), we apply the following standard of review:

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

Accordingly, we give "due regard to the trial court's role as fact-finder and will not set aside factual findings unless they are clearly erroneous." *Clickner v. Magothy River Ass'n, Inc.*, 424 Md. 253, 266 (2012) (citations omitted). A factual finding is clearly erroneous "if there is no competent and material evidence in the record to support it." *Hoang v. Hewitt Ave. Assocs., LLC*, 177 Md. App. 562, 576 (2007) (citing *YIVO Inst. for Jewish Research v. Zaleski*, 386 Md. 654, 663 (2005)). The trial court's legal determinations and conclusions, however, receive no deference and are reviewed de novo. *Rohrer v. Humane Soc'y of Wash. Cty.*, 454 Md. 1, 21–22 (2017) (citing *Cunningham v. Feinberg*, 441 Md. 310, 321–22 (2015)). When reviewing mixed questions of law and fact, "we will affirm the trial court's judgment when we cannot say that its evidentiary findings were clearly erroneous, and we find no error in that court's application of the law." *Fischbach v. Fischbach*, 187 Md. App. 61, 88 (2009) (quoting *Conrad v. Gamble*, 183 Md. App. 539, 551 (2008)).

Burris does not challenge the factual findings of the trial judge as clearly erroneous but, instead, contends that Judge Battista erred in determining that the commissions in issue were property of Ikle. Rather, he takes the position that the commission were the property belonging to the real estate team formed by Ikle. He asserts that, because the commissions were generated by the efforts of the team members, the commissions belonged to the team sheltered by Lynnco C.R.C., the limited liability company. As such, Burris avers, the

commissions earned by the team and payable to Lynnco C.R.C., LLC could not be subjected to a garnishment directed toward one member of the team. We disagree.

Sections 17-543 through 17-548 of the Business Occupations and Professions Article permit licensed real estate salespersons to form "teams" to provide services. Section 17-543, since 2010, has defined a "team" as:

> two or more licensed associate real estate brokers or licensed real estate salespersons, or any combination of licensed associate real estate brokers or licensed real estate salespersons, who:
> (1) work together on a regular basis to provide real estate brokerage services;
> (2) represent themselves to the public as being a part of one entity; and
> (3) designate themselves by a collective name such as team or group.

Maryland Code (2010). Pursuant to the statutory scheme, each real estate team is required to have a "team leader" who is required to supervise the real estate activities of the team members, subject, of course, to the supervision of the real estate broker with whom the

team is affiliated. *See* Sections 17-544[10] and 17-545.[11] Section 17-547 of the Business Occupations and Professions Article, Maryland Code (2010) also has permitted a team to advertise real estate sales services and governs the extent of such advertising.[12]

[10] Section 17-544 of the Business Occupations and Professions Article, Team leader; duties; lists, provided:

> (a) Team leader. – Each team shall designate a team leader who shall be:
> (1) a licensed associate real estate broker; or
> (2) a licensed real estate salesperson who has at least 3 years of experience providing real estate brokerage services.
> (b) Duties. – The team leader shall:
> (1) maintain a current list of all members and employees of the team; and
> (2) provide the list and any revisions of the list to the broker or the branch office manager of the brokerage with which the licensees are affiliated.
> (c) Lists. – The real estate broker or branch office manager of a real estate broker shall:
> (1) maintain copies of the lists; and
> (2) make the copies available to the Commission on request.

Md. Code (2010).

[11] Section 17-545 of the Business Occupations and Professions Article, Supervision; adherence to rules, practice, and procedures, provided:

> (a) Supervision. – The team leader shall exercise reasonable and adequate supervision over the provision of real estate brokerage services by members of the team.
> (b) Additional Responsibilities. – The responsibility of the team leader to supervise the associate real estate brokers and real estate salespersons on the team shall be in addition to the supervision responsibilities of the real estate broker and branch office manager of the real estate broker provided for in § 17-320 of this title.
> (c) Adherence to the rules, practices, and procedures. – The team leader and the members of the team shall adhere to all office rules, practices, and procedures established by the real estate broker and the branch office manager of the real estate broker.

Md. Code (2010).

Judge Battista appropriately concluded that the real estate sales team created by Ikle did not prevent the attribution of commissions earned by him, to him. The statutory scheme "permits" a group of real estate salespersons to associate and advertise collectively but does not otherwise create a separate legal entity; it only creates an affiliation of individuals within the brokerage. *See* Maryland Code (2010), Section 17-545(c) of the Business Occupations and Professions Article.

Burris, however, also contends that Judge Battista erred in determining that the commissions in issue were property of Ikle, rather than Lynnco C.R.C., LLC. Burris avers that the statutory scheme governing the real estate profession permits commissions earned by a real estate salesperson to become property of an LLC which shelters any payments earned by a member of an LLC from garnishment.

[12] Section 17-547 of the Business Occupations and Professions Article, Name; advertising; connection to name of brokerage, provided:

> (a) Name. – The name of the team may not contain the terms "real estate", "real estate brokerage", or any other term that would the public to believe that the team is offering real estate brokerage services independent of the real estate broker.
> (b) Advertising. – All advertising by the team must contain:
> (1) the name of the brokerage displayed in a meaningful and conspicuous way;
> (2) the name of at least one of the licensee members of the team; and
> (3) the telephone number of the real estate broker or branch office manager of the real estate broker.
> (c) Connection to name of brokerage. – The team name in the advertisement must be directly connected to the name of the brokerage.

Md. Code (2010, 2018 Repl. Vol.).

Only a licensed real estate broker, an associate real estate broker, or a real estate salesperson, generally, however, may be compensated "for the provision of real estate services[.]" Maryland Code (1957, 2010 Repl. Vol., 2015 Supp.), Section 17-604(a) of the Business Occupations and Professions Article. Section 17-512(c) of the Business Occupations and Professions Article, however, provided, and continues to do so, that a licensed real estate salesperson who is a member of a limited liability company "may direct that any commission due the salesperson . . . be paid to the . . . limited liability company[.]" Maryland Code (1957, 2010 Repl. Vol., 2015 Supp.) (underlining supplied).

"[D]ue the salesperson" is the key language upon which Judge Battista relied to determine that Ikle's request to have his limited liability company receive the commissions did not obviate that the commissions were payable to him. In discerning the meaning of "due the salesperson," the plain language of the statute governs. Where, as here, the meaning is not express, we consult the dictionary meaning. *Ali v. CIT Technology Financing Services, Inc.*, 416 Md. 249, 262 (2010) (citing *Chow v. State*, 393 Md. 431, 445 (2006)). We construe "due" according to its ordinary meaning. Black's Law Dictionary defines "due" as "[j]ust, proper, regular and reasonable"; "[i]mmediately enforceable"; and "[o]wing or payable; constituting a debt." *Due*, Black's Law Dictionary (11th ed. 2019). Section 17-512(c), with its language "due the salesperson," thereby recognizes that commissions are inherently "ow[ed] or payable" to the salesperson.

Burris, nonetheless, also argues that the Amended Independent Contractor Agreement between him and Ikle, under which the parties had operated since 2012 in which Ikle had requested that team commissions be paid to Lynnco C.R.C., LLC, was really

binding in nature so that the commissions earned by either Ikle or Ms. Williams belonged to the LLC. The Amended Independent Contractor Agreement, however, evinced a "desire" of Ikle to have commissions paid to Lynnco C.R.C., LLC. The use of the word "desires" in the Amended Independent Contractor Agreement, as determined by Judge Battista, does not a binding contract make because, according to Merriam-Webster's Dictionary, the word "desire" means "to long or hope for; exhibit or feel desire for" or "to request a wish for; request." *Desire*, https://www.merriam-webster.com/dictionary/desire [*archived at* https://perma.cc/7928-WPKH]. To be enforceable, a contract must exhibit an intent to be bound and employ terms that are definite in nature. *See Falls Garden Condo. Ass'n, Inc. v. Falls Homeowners Ass'n, Inc.*, 441 Md. 290, 302 (2015).

Burris further contends that Judge Battista erred in determining that the commissions due on the contracts which listed Ms. Williams as the agent of contract were subject to the Ikle garnishments. He argues that, pursuant to this Court's decision in *LVI Environmental Services, Inc. v. Academy of IRM*, 106 Md. App. 699 (1995), *aff'd*, 344 Md. 434 (1997), "[i]n a garnishment proceeding the test of the liability of the garnishee is whether he has funds, property or credits in his hands, the property of the debtor, for which the debtor would have the right to sue." *Id.* at 708–09 (quoting *Cocco v. Merchants Mortgage Co.*, 69 Md. App. 68, 74 (1986)). Burris avers that the commissions due on contracts attributable to Ms. Williams could not be garnished because Ikle would not have had the legal right to sue Burris for those commissions, had they been withheld. Quite simply, he argues, the commissions were earned by Ms. Williams.

In making his argument, Burris has failed to challenge the trial judge's factual findings that the commissions allegedly due Ms. Williams were really owed to Ikle, based upon evidence adduced at trial. Absent clear error, the judge's factual findings control, those being that, after becoming a licensed real estate salesperson, Ms. Williams continued her duties as a real estate assistant to Ikle; did not receive any portion of the $199,920.03 in commissions on sales erroneously attributed to her efforts; and, was "used by Ikle to hide commissions he earned."

Next, Burris contends that Judge Battista erred in determining that the Appellants, the garnishees, were liable personally and collectively to the Bauers for merely "helping" Ikle avoid the garnishment. Burris argues that the garnishees would be liable to the Bauers only if it had been proven that they intentionally assisted Ikle in defrauding his creditors, according to Maryland's statutes regarding fraudulent conveyances.[13] The Appellants contend that, absent any showing of an intent to "hinder, delay, or defraud" the judgment creditors, they cannot be liable under Maryland law for having assisted Ikle in avoiding the garnishment of assets, particularly where they released the commissions Burris held in exchange for Ikle's promise to hold Burris "harmless" and pay for Burris' litigation-related expenses, and attorneys' fees. In this, they are wrong—helping a judgment debtor avoid a garnishment may result in personal liability for the garnishee.

The purpose of a writ of garnishment "is to place the debtor's property 'on hold' until the court determines its proper disposition given the various legal claims to it." *Flat*

[13] *See* Md. Code (1957, 2013 Repl. Vol.), §§ 15-201 through 15-214 of the Commercial Law Article.

Iron, 90 Md. App. at 292. The writ, therefore, "serves the useful function of preventing the garnishee from prematurely disposing of any of the judgment debtor's assets." *Fico*, 287 Md. at 162. Once a writ of garnishment is received, a garnishee is required to hold the property until the entry of judgment in the garnishment action. *Id.* If, however, after service but prior to judgment, the garnishee releases the property to the debtor, the garnishee "is liable for the value of the debtor's property which came into her hands from the time she was served with the writ until the time of the hearing, and a judgment . . . will be rendered against the garnishee for any deficiency." *Flat Iron*, 90 Md. App. at 292 (citing *Int'l Bedding Co.*, 146 Md. at 492). If a garnishee fails to adhere to the mandates of a writ of garnishment, "it is perfectly appropriate for judgment to be entered against him." *Hunt Valley Masonry, Inc.*, 108 Md. App. at 107. To wit, where a garnishee erroneously interprets an ambiguous writ of garnishment as not covering a party that turns out to be covered by the writ and, therefore, does not hold the property of the judgment debtor, the garnishee may be liable to the judgment creditor. *See Int'l Bedding Co.*, 146 Md. at 492.

Although no Maryland case involves the liability of a garnishee when they intentionally release a judgment debtor's property to the debtor, a decision of a sister state holding that a garnishee may be liable when they "help" a judgment debtor avoid garnishment is instructive. In *Witco Corporation v. Herzog Brothers Trucking, Inc.*, 863 A.2d 443 (Pa. 2004), the Supreme Court of Pennsylvania held that a garnishee with notice of a judgment order is prohibited from engaging in transactions with the judgment debtor "that it knows or should know will facilitate the judgment debtor in attempts to avoid the lawful garnishment of its assets." *Id.* at 451.

In that case, a bank that had extensive dealings with a judgment debtor was served with a writ of garnishment related to him. *Id.* at 444. The bank, in response, froze the $1,379.52 it held in a checking account belonging to the judgment debtor. *Id.* Although they "froze" the account, they permitted the judgment debtor to avoid the garnishment by securing and spending money, in violation of their own internal policies. *Id.* at 444–445.

The relevant question presented to the Supreme Court of Pennsylvania, certified by the United States Court of Appeals for the Third Circuit, stated:

> [W]hether the public policy underlying Pennsylvania garnishment law requires a garnishee bank, on notice of a judgment order against a depositor by Writ of Execution and whose accounts are thereby held, to refrain from engaging in transactions with that judgment debtor which permit the judgment debtor to avoid the garnishment of its assets, and thereby the debtor's obligation to pay its judgment creditor, to the financial benefit of the garnishee bank.

Id. at 444. The Court determined that the bank should be held liable as it permitted the conduct and received a financial benefit by receiving payments as a result of the debtor's transactions, "making the bank a player in this activity, not an innocent bystander." *Id.* at 451. The Court further explained that, it was clear that the Bank and the debtor:

> engaged in an extended course of conduct that permitted [the judgment debtor] to avoid garnishment of its assets. Whether it was the Bank's and/or [the judgment debtor's] deliberate intent to subvert the writ of execution and subsequent garnishment obligation matters less than the fact that such was clearly the result.

Id.

The prescience of the Pennsylvania decision for the instant matter is obvious—the undermining of a legitimate garnishment was the result of Burris' actions for which he secured a harmless clause and the payment of attorneys' fees and litigation expenses, as

well as Ikle's real estate services. Burris argues, however, that, he, unlike the bank in *Witco*, did not ignore the internal policies of his business. Such a distinction, nevertheless, is without merit as Burris took affirmative steps to assist Ikle in avoiding the garnishment of his assets.

Burris, finally, contends that Judge Battista erred in determining that the commissions in issue ever truly belonged to Burris or Keller Williams Select Realtors of Annapolis rather to Select Realtors, LLC, a limited liability company. This argument, though, was not raised below, thus preventing the trial judge from developing any evidentiary findings or conclusions of law to enable our review. *See* Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"). Thus, we do not address Burris' final argument.

In conclusion, the trial judge's findings of fact were based on competent and material evidence contained in the record about which we do not discern error, and his legal conclusions were sound. In short, the record amply supports the conclusion that Burris, individually and doing business as Keller Williams Select Realtors of Annapolis, assisted Ikle in shielding commissions he earned through his efforts as a real estate salesperson from the Bauers, thereby undermining the efficacy of the writs of garnishments. We affirm.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.