Circuit Court for Prince George's County
Case No. CAL21-11731

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0885

September Term, 2024

EDWARD T. LAIOS, *et al.*

v.

MTM BUILDER DEVELOPER INC., *et al.*

Ripken,
Kehoe, S.,
Kenney, James A., III.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: December 17, 2025

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

This appeal arises from a complaint filed by Edward T. Laios ("Mr. Laios") in his individual capacity and on behalf of Beachside Associates, LLC ("Beachside") (collectively referred to as "Appellants"), against Dean F. Morehouse ("Mr. Morehouse"), MTM Builder/Developer, Inc. ("MTM") (collectively referred to as "Appellees"), and Morehouse Real Estate Investments, LLC ("MREI"), for breach of contract, breach of fiduciary duty, and conversion in the Circuit Court for Prince George's County.[1] A jury trial commenced on June 3, 2024 and consumed three days.

During the pretrial phase of litigation, Appellants filed two motions to compel for Appellees' refusal to provide substantive responses to Appellants' interrogatories and failure to provide requested documents. The circuit court denied Appellants' request for discovery related to the internal finances and operations of MREI and MTM, and the business dealings of MTM unrelated to Beachside. During trial, Appellants attempted to introduce evidence of prior litigation between the parties involving different real estate ventures to show bad faith and motive in this case. The circuit court sustained Appellees' objection and excluded such evidence as "more prejudicial than probative." Additionally, the circuit court excluded a certified public accountant ("CPA") that Appellants had offered as an expert witness from testifying as an expert in the field of forensic accounting, finding that the witness did not possess the necessary education, training, or experience to be qualified as a forensic accountant.

[1] After presenting their case in the circuit court, Appellants voluntarily dismissed the conversion count, which was the only claim against MREI. Therefore, neither MREI nor the conversion count are subject to this appeal.

At the close of Appellants' case, Appellees moved for judgment, which the circuit court granted for all remaining counts. A judgment was entered in favor of Appellees, with costs to be assessed against Appellants. Appellants filed a timely appeal.

I. QUESTIONS PRESENTED

Appellants present the following questions for our review, which we have rephrased for clarity:[2]

[2] Appellants presented the questions on appeal as follows:

> 1) Whether the trial court erred in denying Plaintiffs certain non-Beachside-specific discovery regarding Defendants' respective sets of finances and regarding Defendants' potential use of Beachside funds for their own purposes where, *inter alia*, Defendants had requested and obtained millions of dollars in contributions from Mr. Laios while allowing virtually no contributions, were awarding MTM suspiciously exorbitant fees and "expense reimbursements" while refusing to permit distributions for over fifteen years, ignoring Mr. Laios's requests for documentation showing and supporting the monies taken, and engaging in multiple simultaneous non-Beachside projects in the U.S.V.I. while one or more of them was in financial distress?
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> 2) Whether the trial court erred by excluding evidence relating to the parties' involvement together with entities other than Beachside where, *inter alia,* (i) Plaintiffs had the burden of proving Defendants' bad faith in the instant case; (ii) the parties tended to work on multiple ventures simultaneously; (iii) evidence regarding the other ventures suggested Defendants' knowledge of their own impropriety; (iv) Defendants' contention that Mr. Laios orally consented to increasing MTM's monthly management fee was belied by the existence at that time of two separate lawsuits through which Mr. Laios was accusing MTM and Mr. Morehouse of taking unauthorized fees from other entities; and (v) Plaintiffs were attempting to show common methodology/similar scheme?
>
> [3)] Whether the trial court erred by excluding Plaintiffs' forensic accounting expert as unqualified where, *inter alia*, the expert had a bachelor's degree in accounting, was a certified public accountant and certified valuation analyst, had more than twenty years of professional experience concentrated in the

1) Whether the trial court erred in denying Appellants' discovery requests related to the internal finances and operations of MTM, and its business dealings unrelated to Beachside?
2) Whether the trial court erred by excluding evidence of prior disputes between Appellants and Appellees involving different business ventures to show bad faith and motive in this case?
3) Whether the trial court erred by excluding Appellants' proposed expert witness from testifying as an expert in the field of forensic accounting?
4) Whether the trial court erred in granting Appellees' motion for judgment?

For the reasons discussed below, we shall affirm the judgments of the Circuit Court for Prince George's County.

II. FACTUAL & PROCEDURAL BACKGROUND

A. The Operating Agreement of Beachside Associates, LLC

Beachside is a limited liability company ("LLC"), with a principal place of business in the United States ("U.S.") Virgin Islands, created to acquire, construct, maintain, sell, and lease resort property in the U.S. Virgin Islands. The Operating Agreement of Beachside was executed in April of 2003 by Beachside's original members: MTM, Mr. Morehouse, and Mr. Laios. The Operating Agreement is governed by the laws of the U.S. Virgin Islands.

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real estate industry, had experience providing assurance and internal control consulting service, and had been qualified in other legal proceedings as an expert witness in accounting?

[4)] Whether the trial court erred in granting Defendants motion for directed verdict where the evidence and inferences therefrom, taken in the light most favorable to Plaintiffs, supported findings that MTM had purposely violated the Operating Agreement and that MTM and Mr. Morehouse, in bad faith, breached fiduciary duties to Plaintiffs?

Mr. Laios is a real estate investor. Mr. Morehouse is a real estate purchaser, builder, and developer. Mr. Morehouse is also the principal shareholder and officer of MTM, which is a management company. Under the Operating Agreement, MTM is designated as the manager of Beachside, and shall "direct, manage, and control the business of [Beachside] to the best of their ability." The Operating Agreement further provides that "[e]xcept as expressly provided herein, all decisions regarding the nature, method or scope of the foregoing activities shall be made by consent of the Manager(s)," and that the Manager(s) "shall have full and complete authority, power, and discretion to manage and control the business, affairs, and properties of [Beachside], to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of [Beachside's] business."

In addition to the aforementioned responsibilities, the Manager "shall maintain and preserve . . . all accounts, books, and other relevant [Beachside] documents[,]" and each Member has the right "to inspect and copy those [Beachside] documents." The Manager is responsible for maintaining "[s]uch Reserves as the Manager[] deem[s] reasonably necessary to the proper operation of [Beachside's] business." As such, "all distributions of cash or other property shall be made to the Member[s] . . . at such time as determined by the Manager."

However, per the Operating Agreement, "[a] Manager shall not be liable to [Beachside] or to any Member for any loss or damage sustained by [Beachside] or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross

negligence, willful misconduct, or a wrongful taking by the Manager." Additionally, "[t]he Manager(s) shall incur no liability to [Beachside] or to any of the Members as a result of engaging in any other business or venture."

The limitations of the Manager include requiring "prior consent and approval of Members and Member-Managers owning at least seventy-five percent (75%) of the Membership Interests of [Beachside]" before the following actions: 1) incurring debt in excess of $10,000; 2) pledging assets on Beachside; or 3) additional capital contributions. A Manager may be removed "at any time, with or without cause, by the affirmative vote of Members holding Seventy-Five Percent (75%) of the Membership Interests."

Managers are "elected by the affirmative vote of Members holding at least a Majority Interest." The Operating Agreement defines "Majority Interest" as "one or more Interests of Members which taken together exceed 50 percent of the aggregate of all Membership Interests." In addition, "[t]he salaries and other compensation of the Managers shall be fixed from time to time by an affirmative vote of the Members holding at least a Majority Interest, and no Manager shall be prevented from receiving that salary because the Manager is also a Member of [Beachside]."

When the Operating Agreement was initially executed in 2003, Mr. Morehouse and Mr. Laios each held 49.50% membership interest in Beachside and MTM owned the remaining 1%. However, in 2009, Mr. Morehouse transferred his 49.50% interest in Beachside to MREI. Mr. Morehouse is the Trustee of his wife's living trust, Linda W. Morehouse Living Trust, which is the principal member of MREI. Considering Mr.

Morehouse effectively controls both MTM and MREI, he essentially holds 50.50% membership interest in Beachside.

B. Litigation

On October 7, 2021, Appellants filed a Complaint against Appellees in the Circuit Court for Prince George's County. On April 20, 2023, Appellants filed an Amended Complaint alleging that: MTM committed Breach of Contract (Count I); MTM and Mr. Morehouse committed Breach of Fiduciary Duty (Count II); and Mr. Morehouse, MTM, and MREI committed Conversion (Count III). In regard to the Breach of Contract claim, Appellants allege in their Complaint that:

> MTM's actions and inactions . . . have included but are not limited to (i) causing [Beachside] to pay fees and expenses not authorized by the Operating Agreement; (ii) refusing to provide information and documentation requested by Mr. Laios; (iii) failing to direct, manage, and control [Beachside's] business to the best of its ability; (iv) failing to perform its duties in good faith; (v) failing to perform its duties in a manner that it reasonably believed to be in [Beachside's] best interests; and (vi) failing to act with such care as an ordinarily prudent person in a like position would use under similar circumstances.

For the Breach of Fiduciary Duty claim, Appellants highlight that MTM is the managing agent for Beachside and that Mr. Morehouse controls MTM. Appellants further emphasize that Mr. Morehouse controls MREI, the other member of Beachside. Appellants' Complaint alleges that:

> In their respective capacities, MTM and Mr. Morehouse each owed fiduciary duties to [Beachside] and Mr. Laios. Pursuant to those duties, each of those Defendants was [sic] prohibited from dealing with [Beachside] as, or on behalf of, a party having an interest adverse to [Beachside].
>
> By their actions and inactions . . . MTM and Mr. Morehouse breached and continue to breach their fiduciary duties by, *inter alia*, (i) disbursing to

> MTM [Beachside] monies to which MTM was not entitled; and (ii) refusing Mr. Laios's reasonable requests for information and documentation regarding [Beachside's] activities and expenditures.

Appellants demanded trial by jury and sought the following relief in their Complaint:

> compensatory and incidental damages an amount to be determined at trial, but not less than $75,000; . . . an Order requiring Defendants, jointly and severally, to repay to [Beachside] all funds wrongfully diverted from [Beachside] accounts[;] . . . punitive damages, in an amount to be determined at trial, for Defendants' malicious and outrageous conduct; . . . an Order [] permitting Mr. Laios, himself or through one or more agents, to fully inspect [Beachside's] books and records . . . ; [g]rant such further relief as the Court deems necessary and proper; and [a]ward Mr. Laios attorneys' fees and costs incurred by him in initiating and maintaining this action.

Appellees filed an Answer to the Amended Complaint on May 6, 2023 denying the allegations and asserting defenses.

1. Discovery Dispute

During the pre-trial discovery phase of litigation, Appellants served Appellees with interrogatories and requests for documents on May 6, 2022. Appellees responded to Appellants' request on June 17, 2022, however, Appellants, unsatisfied with such response, filed a motion to compel more specific discovery responses on September 12, 2022. Appellants, in their memorandum in support of their motion, allege that Appellees' responses "consist largely of (i) refusals, based on boilerplate, sometimes nonsensical objections, to provide substantive answers or produce responsive documents; and (ii) attempts to arbitrarily narrow the temporal scope of production to the time period beginning

exactly three (3)-years prior to the filing of the Complaint in this case." The interrogatories specifically at issue were as follows:

1) [To MTM and MREI:] Identify each person, other than a person intended to be called as an expert witness at trial, having discoverable information that tends to support a position that you have taken or intend to take in this action and state the person's name and address and the subject matter of the information possessed by that person.
2) [To MTM:] Identify each and every one of your past and present principals, and for each person, state (i) the date on which he/she/it became a principal; (ii) the percentage owned by him/her/it at all particular times; (iii) the percentage voting interest possessed by him/her/it at all particular times; (iv) the date, circumstances, and details of any transfer of his/her/its membership interest (or any portion thereof); and (v) his/her/its last known mailing address.
3) [To MTM and MREI:] Describe in detail each and every any [sic] formal or informal allegation or claim, including but not limited to those that involved governmental investigations, administrative actions, and other court proceedings, made within the last ten (10) years that you committed acts or omissions that breached any contractual obligation or amounted to fraud, constructive fraud, or breach of fiduciary duty.
4) [To MTM and MREI:] If you contend that Mr. Laios has made any admissions, describe each such admission in detail, including but not limited to the identity of the specific person(s) making the statement, any witness(es), the person(s) to whom such statement was made, whether the statement was made in writing or orally, whether the statement was made in-person or over the telephone, and the date on which such statement was made.
5) [To MTM and MREI:] Describe in detail each and every communication between Mr. Laios, his agents, and/or representatives on the one hand and you on the other concerning any issues or matters raised in the Complaint and/or Answer, including the date and location thereof, the participants, the witnesses to the communication, the means of communication, whether the communication occurred "in person" or over the telephone, and the subject matter of the communication(s).
6) [To MREI:] Describe in detail any maintenance costs that you or any other defendant paid or advanced for the [Beachside] Property, including but not limited to types, amounts, and payment dates.
7) [To MTM:] Describe in detail all legal fees and costs that you caused Beachside to pay, including but not limited to the identities of the

attorneys and other payees, the payment dates, and reasons for paying them.

8) [To MTM:] Describe in detail your operating costs from 2015 to the present.
9) [To MTM and MREI:] Describe in detail all interests in Beachside, the Project, or revenues therefrom that you pledged or otherwise directly or indirectly promised or provided to a third party, including, for each such interest, the reason, the third party's identity, the date of and circumstances underlying the pledge/promise/provision, the date of payment, the nature of payment, the amount of payment, the method of calculation, and any and all communications between you and other members of Beachside regarding such disbursement.

Appellees objected to these interrogatories claiming that they were either "vague, overbroad and unduly burdensome, designed to harass [Appellees], and request[] information which is attorney-client privileged, and irrelevant and not designed to lead to discoverable information" and/or "request[] information which is attorney work product and trial strategy and not otherwise discoverable."

Appellants allege that Appellees' response to their request for documents was deficient in that Appellees limited the production of certain documents only dating back three years. Moreover, Appellees objected, for similar reasons as those given for the interrogatories, to the following document requests from Appellants:

1) [To MTM and MREI:] All documents that constitute, evidence, reflect or record any and all communications between you and any person not a party to this case concerning any issues related in any way to this case.
2) [To MTM and MREI:] All documents relating to any formal or informal allegation or claim, including but not limited to those that involved governmental investigations, administrative actions, and other court proceedings, made within the last ten (10) years that you committed acts or omissions that breached any contractual obligation or amounted to fraud.
3) [To MREI:] All financial documents relating to you, including but not limited to income statements, balance sheets, ledgers, invoices, receipts,

canceled checks, bank statements, Forms K-1 and amendments thereto, and tax returns for the years 2014 through the present.

4) [To MTM and MREI:] Documents sufficient to establish your net worth and income, including but not limited to your federal tax returns for the past five (5) years.
5) [To MTM:] Any and all financial schedules showing details of distributions to members.
6) [To MTM:] All legal service invoices from Dudley Newman Feuerzeig LLP and/or Dudley, Topper and Feuerzeig LLP to Beachside.
7) [To MTM:] All other documents not previously requested herein evidencing, relating to, referencing, or otherwise concerning any allegation or defense contained in the Complaint or Answer.

Appellants requested a hearing on this matter and that the court compel Appellees to provide substantive responses to the interrogatories in question and to produce the documents request without temporal limitations, in addition to awarding Mr. Laios fees and costs for the discovery dispute.

A hearing was held on the motion to compel on January 10, 2023. The circuit court granted in part and denied in part Appellants' motion. First, the circuit court agreed with Appellants that the timeframe of the interrogatories and documents should date back to 2015 rather than just three years. However, the circuit court ruled that Appellants were "denied as to interrogatories and requests for production of documents as to MTM and MREI" but were allowed "everything you can get" related to Beachside. The court explained, "[a]nything to MTM and MREI[,] I don't think is relevant at this point. But I am not saying that as a hard and fast forever. If you find something[,] then you [] are going to have to make more of a connection."

On May 9, 2023, Appellants filed a motion to enforce the court order from the January 10, 2023 hearing, compelling discovery and for sanctions against Appellee

claiming that financial documents relating to Beachside were still missing. Appellees filed an objection on May 24, 2023. In addition, Appellants filed a second motion to compel discovery on July 6, 2023 for Appellees' failure to adequately respond to additional interrogatories and document requests submitted on May 2, 2023.

In the memorandum in support of their motion, Appellants allege that Appellees refused to produce the following requested documents:

1) [To MTM:] Any and all documents describing the scope of work that MTM performs as a manager, including but not limited to written contracts between MTM and Beachside.
2) [To MTM:] All records and other tangible evidence of Beachside member meetings, including but not limited to announcements, minutes, notes, and audio recordings.
3) [To MTM:] All "business entity"-related documents relating to Beachside, including but not limited to governmental filings pertaining directly to it, to any subsidiary, and to any other entity in which Beachside holds an interest.
4) [To MTM:] Any and all documents, including but not limited to notes, memoranda, emails, written agreements, and audio recordings evidencing Mr. Laios's alleged consent to Beachside's payment to MTM of a $10,000-per-month management fee.
5) [To MTM:] Beachside's electronic accounting records, in native format, from 2015 to the present.

Appellees objected to these requests for documents claiming that they were "overbroad, vague, unduly burdensome, request[] information that has already been provided in discovery in this action, [ ] asked merely to harass [Appellees], and request[] documents that are in the possession of Mr. Laios[,]" or "is not otherwise discoverable and is not properly limited as to time period."

Appellants also allege that Appellees failed to substantially answer one interrogatory posed to Mr. Morehouse asking him to "[i]dentify each third party contractor

that has performed services for or on both (i) Beachside's real property, and (ii) any U.S. Virgin Islands-based real property owned by you or MREI." Appellees objected, noting similar reasons as before and adding that "the Court has already ruled and expressly limited discovery in connection with my personal business or the business of MREI and this interrogatory is in direct violation of the Court's prior ruling."

A hearing on Appellants' motion to enforce the January 10 court order compelling discovery and requesting sanctions against Appellees, as well as on Appellants' second motion to compel discovery, was held on August 29, 2023. First, the circuit court found that Appellees were not in violation of the court's discovery order and denied Appellants' motion for sanctions. Then the circuit court denied Appellants' second motion to compel discovery, finding that Appellants did not meet their burden. The court was convinced by Appellees' assertion that they had already produced the requested documents pursuant to prior discovery requests. The court recommended that Appellees specify when and where the document was produced in the future to avoid further discovery disputes.

Regarding the one interrogatory at issue, asking Mr. Morehouse to "[i]dentify each third party contractor that has performed services for or on both (i) Beachside's real property, and (ii) any U.S. Virgin Islands-based real property owned by you or MREI[,]" the court found that Appellees were not in violation of the court's order and denied Appellants' motion to compel. The court recalled that discovery was limited to Beachside and explained that Appellants had to "find that [information unrelated to Beachside] independently, and you haven't. You can't do it by fishing and then backdoor it in."

2. Exclusion of Evidence

During motions in limine on the first day of trial, June 3, 2024, Appellees requested the court to exclude evidence it expected Appellants to introduce during trial, arguing:

> [W]hat I expect the Plaintiffs to do here is to bring up the other relationships between Mr. Morehouse and Mr. Laios which involve two other entities that have nothing to do with this case, involved other litigation, and should be excluded 100 percent in this case because the entire purpose of it is to prejudice and, essentially, defame Mr. Morehouse in connection with other businesses that are not the subject of what this jury will be deciding.

Appellants argued that such evidence proved bad faith, which was required to recover damages under the Operating Agreement[3] and for punitive damages. The evidence referenced litigation involving two other business ventures that Mr. Laios and Mr. Morehouse were involved in together, Presidential Investment and Brightseat Investment. Appellants alleged that in prior litigation there was a jury verdict in which "Mr. Morehouse was found liable for having converted monies[,] [a]nd MTM was found liable for converting monies belonging to Mr. Laios." Appellants hoped to prove that Appellees continued such behavior in the present case.

[3] Per section 5.04 of the Operating Agreement:

> The Managers shall perform their managerial duties in good faith, in a manner they reasonably believe to be in the best interests of [Beachside], and with such case as an ordinarily prudent person in a like position would use under similar circumstances. A Manager who so performs the duties of Manager shall not have any liability by reason of being or having been a Manager of [Beachside]. A Manager shall not be liable to [Beachside] or to any Member for any loss or damage sustained by [Beachside] or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, or a wrongful taking by the Manager.

Appellees pointed out that the verdict in which Appellants referred was vacated pursuant to a settlement agreement, and thus more prejudicial than probative. The court deferred on its ruling until such evidence was presented at trial. However, the court warned Appellants, "you might want to be very careful about implying that what he did before is exactly [] what he is doing now. . . . I don't want to mistry this case." The court continued, "[y]ou have to show your intent and evil motive in the case that you are in." Lastly, the court noted that it would "have to balance the probative value [] versus any prejudicial impact[]."

Later that day, during the direct examination of James Loots, Esq. ("Mr. Loots"), Appellants' attorney during the previous litigation with Mr. Morehouse, Appellants asked Mr. Loots if he was familiar with Mr. Morehouse and to provide context as to their interactions. Appellees objected, and a bench conference ensued. The parties' arguments were similar to those argued during motions in limine before trial started. The court ultimately sustained Appellees' objection, ruling that:

> You can't go into the other deals that they had to show that he [] had bad faith or motive in this case. Within this deal you can show that he had bad faith and motive, how he was acting. But to bring in other deals would be more prejudicial than probative and cause the jury to think, well, since he did it in those deal[s], he is probably doing it in this deal.
> [. . .]
> [Y]ou can talk generally about deals, but you can't go into how [] they acted in some other. You can talk generally that they did deals together. Then you can narrow it and specifically go to this particular deal, but you can't talk about what they did in the other deals.

3. Expert Disqualified

On the last day of trial, June 5, 2024, Appellants called Tristan Spence, CPA ("Mr. Spence") as a witness with the intent of offering him as an expert witness in the field of forensic accounting. Appellees had previously filed a motion in limine to exclude Mr. Spence as an expert witness for discovery violations of Maryland Rule 2-402(g)(1)[4] that the court had not ruled on yet. Appellees made their argument before the court in this regard and Appellants responded. Ultimately, the court denied Appellees' motion in limine, noting that Appellees were "just going to have to object if [the testimony] is objectionable and then [the court] will rule on the objections."

When Mr. Spence took the stand, Appellants began voir dire in order to qualify him as a forensic accounting expert. After Appellees' voir dire of Mr. Spence, Appellees objected to him being accepted as an expert in forensic accounting. Appellees argued that the cases in which Mr. Spence was previously accepted as an expert witness involved valuation services, not forensic accounting. In addition, Mr. Spence's area of expertise, as testified to and as stated in his résumé, does not include forensic accounting. Moreover,

[4] Maryland Rule 2-402(g)(1) reads, in pertinent part:

> [A] party by interrogatories may require any other party to identify each person, other than a party, whom the other party expects to call as an expert witness at trial; to state the subject matter on which the expert is expected to testify; to state the substance of the findings and the opinions to which the expert is expected to testify and a summary of the grounds for each opinion; and to produce any written report made by the expert concerning those findings and opinions. A party also may take the deposition of the expert.

Md. Rule 2-402(g)(1)(a).

Mr. Spence does not hold any advanced degrees or certifications in forensic accounting, nor does he belong to any trade organizations related to forensic accounting. Appellees conceded that Mr. Spence is a CPA and a certified valuation analyst, but nothing more. Appellants countered that Mr. Spence testified that he has provided forensic accounting services before. Appellants further argued, regarding Mr. Spence's lack of prior acceptance as a "forensic" accounting expert, that "every expert witness testified for the first time at some point with regard to the subject matter."

The court ruled that it could not "admit [Mr. Spence] as an expert in forensic accounting, which is a very specified field[,]" finding that Mr. Spence failed to possess "the necessary education, training or experience to be qualified as a forensic accountant based upon his testimony and his [curriculum vitae]." The court further explained:

> [Mr. Spence's] testimony is that he basically does valuations for divorce cases to determine whether a person can either do the division of marital property or streams of income [] to determine maybe possibly a marital award.
>
> . . . I agree with defense counsel that [Mr. Spence] may look at the accounting records, but being a forensic accountant is something totally different than what he is doing. . . . [Appellants'] argument is that [] everybody starts somewhere, but it doesn't show that [Mr. Spence] had a background in doing this type of work. He is doing another type of work, but he doesn't do this type of work, and he has never been qualified in this type of work.
>
> And even if [Mr. Spence] hadn't been qualified, [] and the Court listening to his testimony, if he had done a lot of forensic accounting work and that was the bulk of what he is doing, then, yes, he could qualify. But [Mr. Spence] is basically a CPA who works on family cases primarily, [] to assist the Court in determining the division of marital property and possible streams of income to determining [] whether to use it for a marital award or alimony or things of that nature.

> I didn't hear any testimony outside of his conclusory statement that [Mr. Spence] has done forensic accounting or that his firm provides those services. But his testimony didn't bear that out.
> [. . .]
> What I got was [Mr. Spence] said the magic words, but he doesn't have any evidence to back it up.

Considering Mr. Spence was now excluded as an expert, was not a fact witness, and was intended to be Appellants' last witness, Appellants rested their case.

4. Motion for Judgment

Upon resting their case, Appellants voluntarily dismissed the conversion count, which was the only claim against MREI. Appellees moved for judgment on the remaining two counts. First, Appellees argued that there was no evidence presented of malice or willfulness that would permit an award for punitive damages "in connection with a breach of fiduciary duty claim, and obviously you don't get punitive damages on a straight breach of contract." Next, Appellees summarized the "heart of this case" per the Complaint as being the alleged "unauthorized or improper management fees that were paid to MTM and [] improper reimbursements to MTM."

In regard to management fees, Appellees pointed out that the Operating Agreement authorizes the payment of management fees to MTM, however, that it is silent on the amount. Appellees referred to the provision of the Operating Agreement, which requires prior approval of 75 percent of the membership interest of Beachside to incur debt in excess of $10,000, notwithstanding section 5.03, which lists certain powers of the manager. Appellees argued this provision does not apply to the day-to-day operations and expenses, such as management fees. The management fees, or salary of the manager, fall under a

different section of the Operating Agreement, which "shall be fixed from time to time by an affirmative vote of members holding at least a majority interest[.]" Appellees asserted that whether a formal vote was held makes no difference, as MTM and MREI hold 50.5 percent member interest and thus set the management fee. There was no evidence presented that the $10,000 per month management fee was unreasonable, according to Appellees.

As for the reimbursements to MTM, the Operating Agreement entitles MTM to be reimbursed for expenses it pays or advances made on behalf of Beachside. Appellees argued that there was no testimony to indicate what reimbursements were improper and why. Moreover, Appellees argued "if a vote is required, MTM and MREI, as the 50.5 percent members, they control the vote." Lastly, there was no expert testimony to show, by a preponderance of the evidence, that the management fees or reimbursements to MTM were improper.

For the Breach of Contract claim against MTM, Appellees emphasized that the Operating Agreement stated that managers "shall perform their managerial duties in good faith[,]" and "shall not have any liability . . . unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct or wrongful taking[.]" As such, MTM is "entirely insulated from liability" unless there is evidence of fraud, willful misconduct, and the like, of which, Appellees argued, there was none presented here.

The breach of Fiduciary Duty claim was against Mr. Morehouse and MTM. Appellees argued that there was no evidence that Mr. Morehouse, individually and independently, owed a duty to Beachside or Mr. Laios because Mr. Morehouse is not a

member of Beachside. Mr. Morehouse is an officer of MTM and member of MREI, and "the law concerning corporate entities and LLCs does not allow for [] a piercing of the corporate veil."[5]

As for the Breach of Fiduciary Duty claim against MTM, Appellees conceded that MTM owes a fiduciary duty under the Operating Agreement and under the laws of the U.S. Virgin Islands. However, Appellees argued that there was no evidence presented that MTM breached this duty. "[T]here is no evidence of bad faith. And you can't have a breach of fiduciary duty without a lack of good faith." Moreover, Appellees alleged that "[t]here has been no evidence that there was a tort duty that was violated. So in terms of a breach of fiduciary duty, it actually merges into Count 1 because that duty arises out of [the contract]."

Lastly Appellees argued that there was no evidence of damages. While Appellees conceded distributions were not made, there is no evidence of harm or damages to Mr. Laios or Beachside as a result of the lack of distributions.

Appellants countered that a Breach of Fiduciary Duty can be asserted separately from a breach of contract and an individual can be held liable for breach of fiduciary duty without having been a party to a contract. As such, Mr. Morehouse, who controls MTM and its relationship with Beachside, has a fiduciary duty to Beachside that can be breached.

[5] "The judicial imposition of personal liability on otherwise immune corporate officers, directors, or shareholders for the corporation's wrongful acts." *Piercing the Corporate Veil*, BLACK'S LAW DICTIONARY (12th ed. 2024).

Appellants recalled that the court already rejected Appellees' argument (that one must be a member of Beachside to owe a fiduciary duty) at motion to dismiss.

With regard to Appellees' "majority free reign" argument, Appellants contended that the Operating Agreement still requires "good faith," and the law still requires fiduciary duties be upheld. "The fact that [Appellees] have a majority is not sufficient. There is a requirement of them to act in good faith as fiduciaries." In relation to the management fees, good faith and fiduciary duty was not exercised. There was no vote conducted to increase the management fees to $10,000 as required by the Operating Agreement. Appellants argued that as a fiduciary, the Manager must, in good faith, select a management fee that is reasonable and in the best interest of Beachside, and $10,000 per month for management fees is simply not reasonable.

Appellants asserted that the payments to MTM – bookkeeping fees and development fees – were not in the best interests of Beachside and that they were done solely to enrich MTM. There was testimony that this was not "really" a development project, thus negating the need for "development fees." In addition, according to Appellants, records showed that Mr. Laios contributed $3,002,000 from 2003 to the present, and only received a distribution of $200,000 in 2018, while MTM continued to pay itself when proceeds came in. Beachside had been in operation for twenty years and was still not profitable, as members were not receiving distributions.

Appellants argued that MTM's bad faith is further evidenced by its failure to provide ledgers, checking account statements, and other financial records, as requested by Mr.

Laios, and per its responsibilities in the Operating Agreement, for years. Appellants summarized: "[Appellees] took bookkeeping fees. They took development fees. They took everything in addition to management fees. They incurred these types of expenses while shielding it from [Appellants], who requested over and over and over again to see the books. That is bad faith." In sum, there were questions of fact as to good faith that could have been presented to the jury and the motion for judgment should have been denied, according to Appellants.

i. Circuit Court's Ruling

When Appellants argued that MTM was taking fees for improper purposes, the court interjected to ask, "[w]here is the evidence that [Appellees] were just taking [fees] for improper purposes?" Appellants answered that the "books are in evidence." The court replied, "[b]ut there is no testimony. So for example, if you take money from one place and take it to another place, you have to have someone to testify to say that that was improper. And there is no evidence. You have an allegation, but you don't have evidence." In response, Appellants stated that Mr. Loots testified that there was not a vote held to approve the fees.

After Appellees' rebuttal argument, the court granted Appellees' motion for judgment and found in favor of MTM on Count 1, the Breach of Contract claim, and Count 2, the Breach of Fiduciary Duty claim, in favor of MTM and Mr. Morehouse. The court articulated its ruling as follows:

> I think this case had a lot of issues [] that weren't necessarily attributable to some of the parties as far as [] witnesses that needed to []

> testify, but for various reasons were not able to testify. [] I have to look at the evidence in the light most favorable to the nonmoving party in this case, and [] there is a lot of smoke, but the Court doesn't see any fire.
>
> What really does control in this case, and I agree with defense [c]ounsel, is the operating agreement. And I don't know who drafted the operating [] agreement, but it is favorable [] to the majority holders in it. [] I see a lot of allegations, but the Court didn't hear sufficient evidence that MTM breached the contract in any way or that there was a breach of fiduciary [duty] on the part of Mr. Morehouse or MTM.
>
> The Court has read the operating agreement, and it is clear and [un]ambiguous []. Like I said, I think that unfortunately because of [] circumstances, [Appellants] didn't have the necessary witnesses it [needed] to provide evidence to support those allegations.
>
> So[,] I agree with the defense argument. I incorporate his arguments into the Court's decision[.]

Judgment was entered on June 21, 2024 and Appellants filed their notice of appeal on July 2, 2024.

Additional facts will be included in the discussion as they become relevant.

III. DISCUSSION

The circuit court did not abuse its discretion in denying Appellants' discovery requests related to the internal finances and operations of MTM, and its business dealings unrelated to Beachside, because Appellants failed to prove how these discovery requests would be "relevant to the subject matter involved in the action" or "reasonably calculated to lead to the discovery of admissible evidence." *See* Md. Rule 2-402(a).

Nor did the circuit court abuse its discretion in excluding Appellants' evidence of prior disputes between Appellants and Appellees involving different business ventures to prove bad faith and motive, because of the danger of unfair prejudice substantively outweighing the evidence's probative value.

The circuit court did not abuse its discretion by excluding Appellants' proposed expert witness from testifying as an expert in the field of forensic accounting because the witness failed to possess the necessary education, training, and experience to be qualified as a forensic accountant as evidenced by his testimony and resume.

The circuit court did not err in granting Appellees' motion for judgment as to the Breach of Contract claim against MTM, because Appellants failed to present testimony explaining why MTM's actions were in improper and thus in breach of the Operating Agreement. Moreover, because the fiduciary duty arises from the Operating Agreement and we conclude that the circuit court did not err in granting the motion for judgment as to the Breach of Contract claim, we also conclude that the court did not err in granting the motion for judgment as to the Breach of Fiduciary Duty claim.

A. Scope of Discovery: Md. Rule 2-402

"Discovery" is "[t]he act or process of finding or learning something that was previously unknown" but also refers to "[t]he pretrial phase of a lawsuit during which depositions, interrogatories, and other forms of discovery are conducted." *Discovery*, BLACK'S LAW DICTIONARY (12th ed. 2024). The rules of discovery are governed by Maryland Rules Title 2, Chapter 400. *Gallagher Evelius & Jones, LLP v. Joppa Drive-Thru, Inc.*, 195 Md. App. 583, 595 (2010). Maryland Rule 2-402, which delineates the permitted scope of discovery, reads:

> Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

> (a) Generally. A party may obtain discovery regarding any matter that is not privileged, including the existence, description, nature, custody, condition, and location of any documents, electronically stored information, and tangible things and the identity and location of persons having knowledge of any discoverable matter, *if the matter sought is relevant to the subject matter involved in the action*, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. It is not ground for objection that the information sought is already known to or otherwise obtainable by the party seeking discovery or that the information will be inadmissible at the trial if the information sought appears *reasonably calculated to lead to the discovery of admissible evidence*. An interrogatory or deposition question otherwise proper is not objectionable merely because the response involves an opinion or contention that relates to fact or the application of law to fact.

Md. Rule 2-402(a) (emphasis added).

In sum, to be discoverable the matter sought must be "relevant to the subject matter involved in the action" or "reasonably calculated to lead to the discovery of admissible evidence." *Id.* "[A]ll relevant evidence is admissible[,] and "[e]vidence that is not relevant is not admissible."[6] Md. Rule 5-402. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401.

In addition, the discovery rules allow for the parties to "obtain discovery regarding any matter that is not privileged . . . if the matter sought is relevant to the subject matter involved in the action[.]" *Gallagher Evelius & Jones, LLP*, 195 Md. App. at 595 (quoting *Falik v. Hornage*, 413 Md. 163, 182 (2010)). The trial court is responsible for protecting the parties from being required to divulge privileged information or work-product

[6] "Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rule[.]" Md. Rule 5-402.

materials. *Baltimore Transit Co. v. Mezzanotti*, 227 Md. 8, 17 (1961). Our Supreme Court reiterated that the purpose of discovery "was to find pertinent and material evidence, not privileged. No matter discovered in this process would be evidence unless it was pertinent and material and not privileged." *Id.* at 20 (quoting *Hallman v. Gross*, 190 Md. 563, 577 (1948)). Trial courts may limit the scope of discovery "in order to prevent its employment in an abusive fashion." *Drolsum v. Horne*, 114 Md. App. 704, 712–13 (1997).

Trial courts have been "granted specific powers under the discovery rules" in addition to the "inherent power to control and supervise discovery as [they see] fit." *Gallagher Evelius & Jones, LLP*, 195 Md. App. at 596. As such, we review a trial court's denial of discovery under the abuse of discretion standard, finding abuse only when "no reasonable person would take the view adopted by the court . . . or when the court acts without reference to any guiding principles[.]" *Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 28 (2005) (citations and internal quotation marks omitted). "Once a trial court resolves a discovery dispute, our review of that resolution is 'quite narrow; appellate courts are reluctant to second-guess the decision of a trial judge[. . . .] Accordingly, we may not reverse unless we find an abuse of discretion.'" *Gallagher Evelius & Jones, LLP*, 195 Md. App. at 597 (quoting *Warehime v. Dell*, 124 Md. App. 31, 44 (1998)).

1. Analysis

Appellants argue that the circuit court abused its discretion in denying the motion to compel Appellees to provide answers to the interrogatories and responses to the requests

for production of documents regarding the internal finances and operations of MTM, and its business dealings unrelated to Beachside. Appellants argue that they needed the information on MTM finances to prove that 1) MTM was in debt to third party creditors, 2) pledging its Beachside distribution interests to those creditors, but 3) choosing, instead, to pay itself management fees and reimbursements over distributions to evade creditors. In support of its argument, Appellants cite Md. Rule 2-402(a), which states that "[i]t is not ground for objection . . . that the information will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Md. Rule 2-402(a).

Appellees counter that the circuit court did not abuse its discretion in denying Appellants' "improper fishing expedition into the finances of MREI and the business dealings of MTM unrelated to Beachside[.]" The Breach of Contract and the Breach of Fiduciary Duty claims related to MTM's management of Beachside have "nothing to do with MTM's internal finances," or "internal operations related to any other businesses[.] Appellees cite our opinion in *Burgoyne v. Brooks*, which held that the trial court did not abuse its discretion "by refusing to permit the appellants to conduct a fishing expedition through the utilization of discovery proceedings." 76 Md. App. 222, 227 (1988). We further noted in that case, "[w]hat appellants seemingly proposed to do was conduct discovery in order to explore whether they had a cause of action. That use of discovery is imaginative but impermissible." *Id.*

We agree with Appellees. Trial courts have "considerable discretion in controlling the discovery process." *Gallagher Evelius & Jones, LLP*, 195 Md. App. at 598. They may restrict the scope of discovery to matters that are "relevant to the subject matter involved in the action," and "reasonably calculated to lead to the discovery of admissible evidence." Md. Rule 2-402(a). The issues here involved a claim of Breach of Contract against MTM as it related to its role in Beachside and claims against MTM and Mr. Morehouse for Breach of Fiduciary Duty arising out of the Beachside Operating Agreement. The underlying allegations related to these claims, according to Appellants' Complaint, are primarily based on: 1) MTM's receiving fees and expenses from Beachside that are not authorized by the Operating Agreement; and 2) the refusal to provide information and documentation of Beachside's activities and expenditures, as requested by Mr. Laios. Appellants sought discovery of MTM's internal finances, and its operations related to businesses other than Beachside.

The circuit court found that MTM's internal operations unrelated to Beachside were not relevant and that Appellants needed to "make more of a connection" on how they were relevant to the claims in the Complaint. Ultimately Appellants could not make that connection, and discovery was limited to Beachside. The court reiterated that Appellants had to "find [information unrelated to Beachside] independently, and [they] haven't. [Appellants] can't do it by fishing and then backdoor it in." We also fail to see how the discovery sought is relevant to the allegations complained of or how the discovery would lead to admissible evidence.

This Court held similarly in *Corinaldi v. Columbia Courtyard, Inc.*, 162 Md. App. 207 (2005). In that case, the parents of a victim fatally shot at a party in a hotel room brought a negligence action against the hotel owners for the death. *Id.* at 207. The parents sought discovery from the Howard County Police Department of "records regarding all violent crimes committed" in the two years prior to the murder "within a five-mile radius of the hotel." *Id.* at 216. The trial court granted a motion to quash the discovery request. *Id.* We affirmed, holding that: "it was within the discretion of the circuit court to conclude that discovery of crimes that occurred off premises and within 3 or 5 miles around the hotel was not reasonably calculated to lead to admissible evidence." *Id.* at 229–30. In our conclusion, we further explained that the parents based the hotel owners' liability on their "knowledge of events that occurred on the night of the incident in the hotel, leading up to the incident[,]" and as such, "the parents were not entitled to discovery regarding general criminal activity in the area." *Id.* 230, 207.

Just as the records of violent crimes committed within a five-mile radius outside of the hotel from the last two years prior to the murder in *Corinaldi* were not reasonably calculated to lead to admissible evidence, so too are the records of MTM's internal finances and operations unrelated to Beachside here. As such, we conclude that the circuit court here did not abuse its discretion in denying Appellants' discovery requests related to the internal finances and operations of MTM, and its business dealings unrelated to Beachside, as Appellants failed to prove how such discovery would be "relevant to the subject matter

involved in the action" or "reasonably calculated to lead to the discovery of admissible evidence." Md. Rule 2-402(a).

The circuit court granted, in part, Appellants' first motion to compel discovery. There had been evident foot dragging by the Appellees in responding to discovery at that point. After Appellants had received the discovery that the circuit court ordered to be provided, Appellants could not articulate a basis for expanded discovery based on the information that had been provided, beyond alleging that it might lead to more evidence. When pressed on these matters, Appellants spoke in generalities rather than pointing to specifics. The circuit court did not abuse its discretion in limiting discovery in this way.

B. Relevant Evidence: Md. Rule 5-402, *et al.*

Title 5, Chapter 400 of the Maryland Rules govern the admissibility of evidence. Generally, relevant evidence is admissible and irrelevant evidence is inadmissible.[7] Md. Rule 5-402. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401.

While relevant evidence is generally admissible, it "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403. Evidence is prejudicial "when it

[7] "Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules[.]" Md. Rule 5-402.

tends to have some adverse effect . . . beyond tending to prove the fact or issue that justified its admission. . .” *Consolidated Waste Indus., Inc. v. Standard Equipment Co.*, 421 Md. 210, 220 (2011) (quoting *Hannah v. State*, 420 Md. 339, 347 (2011)).

The standard of review that we use when evaluating a trial court’s evidence ruling involves a two-step analysis:

> First, we consider whether the evidence is legally relevant, a conclusion of law which we review *de novo*. [. . .] If we conclude that the challenged evidence meets this definition, we then determine whether the court nonetheless abused its discretion by admitting relevant evidence which should have been excluded because its probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns as outlined in Maryland Rule 5-403.

Washington Metropolitan Area Transit Authority v. Washington, 210 Md. App. 439, 451 (2013) (internal citations and quotation marks omitted). In sum, trial courts have “wide discretion” as it relates to relevant evidence, however, they do not have any discretion to admit irrelevant evidence. *Id.* (citing *State v. Simms*, 420 Md. 705, 724 (2011)).

1. Analysis

Appellants argue that the circuit court abused its discretion in excluding evidence of prior disputes between Appellants and Appellees involving different business ventures to show bad faith and motive in this case. Such evidence—particularly the prior jury verdict against Appellees and “Mr. Morehouse’s admission in another case regarding his tendency to take authorized fees from his ventures”—was extremely probative of Appellees’ “bad faith” or motive, which Appellants were required to prove to obtain relief. According to

Appellants, the danger of unfair prejudice would not have outweighed the probative value of this evidence, and the circuit court misapplied the balancing test here.

Appellees contend that the circuit court did not abuse its discretion in excluding a prior jury verdict and alleged admission by Mr. Morehouse because such evidence was irrelevant, or alternatively, was unfairly prejudicial. First, the verdict that Appellants reference was vacated and thus irrelevant and inadmissible. Regarding any admissions by Mr. Morehouse, Appellees argue that no such admissions were "offered into evidence in this case so the issue was not preserved and cannot be raised for the first time on appeal." Moreover, the circuit court correctly determined that the danger of prejudice substantially outweighed any probative value of such evidence.

We give deference to a trial court's ruling involving the "weighing of both the probative value of a particular item of evidence, and of the danger of unfair prejudice that would result from the admission of that evidence[.]" *Ruffin Hotel Corp. of Maryland v. Gasper*, 418 Md. 594, 620 (2011) (quoting *J.L. Matthews, Inc. v. Md.-Nat'l Capital Park & Planning Comm'n*, 368 Md. 71, 92 (2002). The circuit court found that "to bring in other deals would be more prejudicial than probative and cause the jury to think, well, since he did it in those deal[s], he is probably doing it in this deal." Since the court proceeded to the second step of admissibility—balancing unfair prejudice and probative value—the court found the evidence to be relevant. *See* Md. Rule 5-403.

Similarly, in *Consolidated Waste Industries, Inc. v. Standard Equipment Co.*, the owner of a waste hauling truck, Consolidated Waste Industries, Inc. ("Consolidated

Waste"), filed a breach of contract and negligence action against the truck dealer, Standard Equipment Co. ("Standard Equipment"), for failure to perform a second set of repairs in a workmanlike and timely manner. 421 Md. 210 (2011). Consolidated Waste attempted to admit evidence of subsequent repairs completed by a separate company, Carter Machinery, which would be probative of proper industry standards for such repair. *Id.* at 221. In addition, "the fact that subsequent repairs were necessary indicated in and of itself that Standard Equipment's assertedly deficient workmanship constituted negligence and a breach of contract." *Id.*

While the trial court in *Consolidated Waste Industries, Inc.* found probative value in the evidence offered, it weighed the potential prejudice and limited the admission of the subsequent repairs. *Id.* at 221–222. The trial court took into consideration that the truck's issues and the repairs completed by Carter Machinery occurred twenty months and over 4400 hours of operating time after it was repaired by Standard Equipment for the second time—the repair that was the subject of litigation. *Id.* at 222. Our Supreme Court affirmed the trial court's ruling,[8] holding that:

> A reasonable person could conclude, as the trial judge did, that evidence of the subsequent repairs could confuse or mislead the jury into concluding erroneously that Standard Equipment breached the contract or acted negligently simply because subsequent and similar repairs were made by Carter Machinery. Such evidence, in other words, could endanger the fair consideration of whether Standard Equipment was liable.
> [. . .]

[8] "On 10 June 2010, Consolidated Waste noted timely an appeal to the Court of Special Appeals. On 18 March 2011, on our initiative and before the intermediate appellate court could decide the appeal, a writ of certiorari was issued." *Consolidated Waste Indus., Inc.*, 421 Md. at 218.

> A reasonable trial judge could have determined that—given the potential for confusion and the predicted submission of other evidence that tended to prove the same point—the danger of prejudice outweighed substantially any probative value.

Id.

We hold similarly here and conclude that the circuit court did not abuse its discretion in excluding evidence of prior disputes between Appellants and Appellees involving different business ventures, due to the danger of unfair prejudice substantively outweighing its probative value.

C. Expert Testimony: Md. Rule 5-702

"Expert testimony is required only when the subject of the inference . . . is so particularly related to some science or profession that is beyond the ken of the average layman; it is not required on matters of which the jurors would be aware by virtue of common knowledge." *Johnson v. State*, 457 Md. 513, 530 (2018) (citations and internal quotation marks omitted). The admissibility of expert testimony is governed by Maryland Rule 5-702, which reads:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine
>
> (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,
>
> (2) the appropriateness of the expert testimony on the particular subject, and
>
> (3) whether a sufficient factual basis exists to support the expert testimony.

Md. Rule 5-702. In sum, to qualify as an expert, a witness must possess "special knowledge" on a topic so that the expert may assist the jury in "solving a problem for which [its] [] average knowledge is inadequate." *Samsun Corp. v. Bennett*, 154 Md. App. 59, 67–68 (2003) (quoting *Baltimore Gas & Electric Co. v. Flippo*, 112 Md. App. 75, 98 (1996)).

We review a trial court's decision to admit or exclude expert testimony under an abuse of discretion standard. *Rochkind v. Stevenson*, 471 Md. 1, 10 (2020). "[T]he admissibility of expert testimony is a matter largely within the discretion of the trial court, and its action in admitting or excluding such testimony will seldom constitute ground for reversal." *Id.* (quoting *Roy v. Dackman*, 445 Md. 23, 38–39 (2015)); *see also Giant Food, Inc. v. Booker*, 152 Md. App. 166, 182 n. 9 (2003) ("The decision to admit or exclude 'expert' testimony is within the broad discretion of the trial court and that decision will be sustained on appeal unless it is shown to be manifestly erroneous.") (citation and internal quotation marks omitted).

1. Analysis

Appellants argue that the circuit court abused its discretion in excluding Appellants' witness from testifying as an expert in the field of forensic accounting. According to Appellants, the proffered expert was qualified "by education, training, and experience to testify on issues of accounting as they related to the business books and records maintained by [Appellees]." Appellants further argue that the trial court incorrectly required the expert witness to have a specialized concentration or prior expert designation to be qualified. The disqualification of the expert deprived the jury and court of testimony that would have

explained the "the fact, nature, and scope of [Appellee's] violations of generally accepted accounting principles and the incomplete, deceptive nature of [Appellees'] accounting practices[,]" and led to the directed verdict in Appellees' favor.

Appellees counter that the circuit court did not abuse its discretion in excluding Appellants' witness from testifying as an expert, because the witness was not qualified as a forensic accounting expert. The witness had never been qualified as an expert in forensic accounting, did not hold any certifications or specialized credentials in forensic accounting, nor did his resume or testimony indicate any experience in forensic accounting. Moreover, Appellees allege that Appellants failed to provide an expert opinion or the bases for that opinion as required by Maryland Rule 2-402(g). The letter "report" produced by the witness in discovery, "and purportedly the basis of an expert opinion[,] actually contain[ed] no opinion to a reasonable degree of forensic accounting certainty and contain[ed] no admissible opinion at all[,]" but "instead provided nothing more than a general 'suspicion' of [the witness]."

We have previously held that "deference is to be accorded the trial court in determining whether an expert with general knowledge is sufficiently conversant with the subject matter to render an opinion as to a specialized area of study." *Samsun Corp.*, 154 Md. App. at 62. The circuit court here noted that forensic accounting is "a very specified field" and found that Appellants' witness failed to possess "the necessary education, training or experience to be qualified as a forensic accountant based upon his testimony and his [curriculum vitae]." The court explained that while Appellants' witness would be

qualified as a CPA, he was not qualified in forensic accounting, and these areas of accounting are "totally different[.]"

We concluded similarly in *CR-RSC Tower I, LLC v. RSC Tower I, LLC*:

> The circuit court found that [defendant's expert witness,] Mr. [Larry] Johnson[,] was mainly being offered to attack the assumptions relied upon by Mr. [Wiley] Wright, an accountant. The assumptions Mr. Wright relied upon consisted of the testimony by Mr. [Gregory] Leisch, the plaintiff's real estate expert. Mr. Johnson had no expertise, training, or education in real estate or in making real estate projections. The circuit court stated that Mr. Johnson's testimony would be admissible if he attacked Mr. Wright's methodology of computing the various numbers and assumptions to come to a conclusion as to damages, but instead found that Mr. Johnson would be impermissibly attacking the underlying assumptions that accountants regularly rely upon but that are created by experts in other fields. The circuit court also stated that the defense could have brought in a real estate expert to attack Mr. Leisch's testimony, but that Mr. Johnson, as a forensic accountant, was unqualified to do so. The circuit court did not abuse its discretion in barring the testimony of Mr. Johnson regarding facts and information upon which he had no expertise.

202 Md. App. 307, 359–60 (2011), *aff'd*, 429 Md. 387 (2012). While Mr. Johnson was an expert in forensic accounting, he was not qualified in the subject matter in question, real estate projections, and the trial court did not abuse its discretion in finding so. *Id.*

We conclude that the circuit court did not abuse its discretion by excluding Appellants' witness from testifying as an expert in the field of forensic accounting, as the witness failed to possess the necessary education, training, and experience to be qualified as a forensic accountant based upon his testimony.

D. Motion for Judgment: Md. Rule 2-519

Also known as a motion for judgment as a matter of law or motion for directed verdict, a motion for judgment is "[a] party's request that the court enter a judgment in its

favor before the case is submitted to the jury, [. . .] because there is no legally sufficient evidentiary basis on which a jury could find for the other party." *Motion for Judgment as a Matter of Law*, BLACK'S LAW DICTIONARY (12th ed. 2024). "A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence. The moving party shall state with particularity all reasons why the motion should be granted." Md. Rule 2-519(a).

A trial court's grant of a motion for judgment in a civil case is reviewed de novo, without deference. *District of Columbia v. Singleton*, 425 Md. 398, 406 (2012). The reviewing court conducts "the same analysis that a trial court should make when considering the motion for judgment." *Id.* at 407.

> We assume the truth of all credible evidence on the issue, and all fairly deducible inferences therefrom, in the light most favorable to the party against whom the motion is made. Consequently, if there is any evidence, no matter how slight, that is legally sufficient to generate a jury question, the case must be submitted to the jury for its consideration.

Mayor & City Council of Baltimore v. Stokes, 217 Md. App. 471, 491 (2014) (citation omitted). However, "legally sufficient" evidence is imperative; "a party who has the burden of proof . . . cannot sustain this burden by offering a mere scintilla of evidence, amounting to no more than surmise, possibility, or conjecture. . ." *Elste v. ISG Sparrow Point, LLC*, 188 Md. App. 634, 647 (2009) (citation and internal brackets omitted).

1. Breach of Contract in the U.S. Virgin Islands

The parties agreed that the "Operating Agreement, and the application of interpretation hereof, shall be governed exclusively by its terms and by the laws of the U.S.

Virgin Islands, and specifically the U.S.V.I. Act." As such, we apply the laws of the U.S. Virgin Islands to the breach of contract claim in the case before us. *See Jackson v. Pasadena Receivables, Inc.*, 398 Md. 611, 617 (2007) (Maryland courts recognize "the ability of contracting parties to specify in their contracts that the laws of a particular State will apply in any dispute over the validity, construction, or enforceability of the contract, and thereby trump the conflict of law rules that otherwise would be applied by the court."). A breach of contract claim requires four elements: 1) an agreement; 2) a duty created by that agreement; 3) a breach of that duty; and 4) damages. *Molloy v. Government*, 64 V.I. 284, 293 (V.I. Super. Ct. 2016).

i. Analysis

Appellants argue that there was enough evidence to support a judgment against MTM for Breach of Contract, citing to Beachside's Operating Agreement and alleging that the record shows breaches of Sections 5.01, 5.04, 5.13, and 6.05[9] by:

> (i) MTM's refusal to provide Mr. Laios access to financial records and underlying documentation; (ii) its refusal, in the course of twenty years, to

[9] Section 5.01, in pertinent part reads, "The Manager(s) shall direct, manage, and control the business of [Beachside] to the best of their ability." Section 5.04 reads, in pertinent part, "The Manager(s) shall perform their managerial duties in good faith, in a manner they reasonably believe to be in the best interests of [Beachside], and with such care as an ordinarily prudent person in a like position would use under similar circumstances." In its entirety, Section 5.13 reads, "Notwithstanding the provisions of Section 5.03 above, the prior consent and approval of Members and Member-Managers owning at least seventy-five percent (75%) of the Membership Interest of [Beachside] shall be required for the following actions: a. Incurring debt in excess of $10,000[;] b. Pledging Assets on [Beachside; and] c. Additional capital contributions." Section 6.05, in pertinent part reads, "Upon reasonable request and prior notice, each Member and Economic Interest Owner shall have the right, during ordinary business hours, to inspect and copy those [Beachside] documents at the requesting Member's and Economic Owner's expense."

> provide virtually any return on Mr. Laios's $3.2 million investment while paying itself seven-figure monies in fees; (iii) its repeated circumvention of the contractual requirement to obtain approval before incurring debts exceeding $10,000; (iv) its unilateral, and initially secret, award of fees to itself; and (v) its unilateral increase of an agreed-upon fee without a [Beachside] vote.

Appellants claim they proved damages from these unauthorized disbursements and general mismanagement of Beachside.

Appellees contend that the circuit court was correct in granting the motion for judgment in Appellees favor because the Operating Agreement was unambiguous as to management fees, reimbursement of expenses advanced to Beachside, and liability of MTM to Beachside or its members. Appellees further argue their actions were in compliance with the Operating Agreement, citing to Sections 5.11, 5.07, 5.03(b), 5.03(j), 5.04, and 5.05.[10] Moreover, Appellants failed to prove that the management fees were

[10] Section 5.11 reads, in its entirety, "The salaries and other compensation of the Managers shall be fixed from time to time by an affirmative vote of Members holding at least a Majority Interest, and no Manager shall be prevented from receiving that salary because the Manager is also a Member of [Beachside]." Appellees point out that MTM and MREI combined own 50.50% of the Membership Interest in Beachside. Section 5.07, in pertinent part, reads "[Beachside] shall indemnify the Manager(s) and make advances for expenses." Section 5.03 reads, in pertinent part, "Without limiting the generality of section 5.01 above, the Managers shall have power and authority, on behalf of [Beachside]: [. . .] b. To borrow money for [Beachside] from [. . .] the Managers [. . .] and grant security interests in the assets of [Beachside] to secure repayment of the borrowed sums. . . . j. To do and perform all other acts as may be necessary or appropriate to the conduct of [Beachside's] business." Section 5.04, in pertinent part, reads "A Manager who so performs the duties of Manager shall not have any liability by reason of being or having been a Manager of [Beachside]. A Manager shall not be liable to [Beachside] or to any Member for any loss or damage sustained by [Beachside] or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, or a wrongful taking by the Manager." Section 5.05 reads, in pertinent part, Managers "may

unreasonable, failed to prove that the payroll expenses complained of were not incurred for Beachside and therefore failed to prove that MTM improperly received reimbursement for advancing expenses for said payroll, and failed to prove "fraud, deceit, gross negligence, willful misconduct, or a wrongful taking by the Manager."

The circuit court agreed with Appellees and found that the Operating Agreement controlled the case, was clear, unambiguous, and favored the majority holders—Appellees. The court further explained, "I see a lot of allegations, but the Court didn't hear sufficient evidence that MTM breached the contract in any way . . . I think that unfortunately because of [] circumstances, [Appellants] didn't have the necessary witnesses it [needed] to provide evidence to support those allegations."

We agree with the circuit court here in that Appellants' case needed an expert, like a forensic accountant, to explain why MTM's financial actions were in improper. However, because Appellants' CPA witness was disqualified from testifying as an expert in forensic accounting, Appellants failed to prove that MTM's actions were fraudulent, deceitful, grossly negligent, or a result of willful misconduct or wrongful takings, and thus in breach of the Operating Agreement. We highlight the court's questioning of Appellants' counsel during closing argument: "[w]here is the evidence that [Appellees] were just taking [fees] for improper purposes?" Appellants answered that the "books are in evidence." The court replied, "[b]ut there is no testimony. So for example, if you take money from one place and

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have other business interests and may engage in other activities in addition to those relating to [Beachside]. . . . The Managers shall incur no liability to [Beachside] or to any of the Members as a result of engaging in any other business or venture."

take it to another place, you have to have someone to testify to say that that was improper. And there is no evidence. You have an allegation, but you don't have evidence."

As such, we conclude that the circuit court did not err in granting Appellees' motion for judgment as to the Breach of Contract claim against MTM, because Appellants failed to present the necessary expert testimony explaining why MTM's actions were in improper and thus in breach of the Operating Agreement.

2. Breach of Fiduciary Duty

A fiduciary duty is "a duty of utmost good faith, trust, confidence, and candor owed by a fiduciary (such as an agent[, corporate officer,] or a trustee) to the beneficiary (such as the agent's principal[, a shareholder,] or the beneficiaries of the trust). . . ." *Fiduciary Duty*, BLACK'S LAW DICTIONARY (12th ed. 2024). Maryland courts recognize a breach of fiduciary duty as an independent cause of action, in which a plaintiff must establish: 1) the existence of a fiduciary relationship; 2) breach of the duty owed by the fiduciary to the beneficiary; and 3) harm to the beneficiary. *Plank v. Charneski*, 469 Md. 548, 599 (2020). A breach of fiduciary duty under the laws of the U.S. Virgin Islands requires the same elements. *See Guardian Insurance Company v. Hani Khalil*, 63 V.I. 3, 18 (V.I. Super. Ct. 2012) (citation omitted) ("[T]o establish a claim for breach of fiduciary duty: (1) there must be a fiduciary relationship, (2) the fiduciary must have breached its duty imposed by such relationship, (3) the plaintiff must have been harmed, and (4) the fiduciary's breach must be a proximate cause of the plaintiffs harm."). "The remedy for the breach is dependent upon the type of fiduciary relationship, and the historical remedies provided by law for the

specific type of fiduciary relationship and specific breach in question, and may arise under a statute, common law, or contract." *Plank*, 469 Md. at 625.

i. Analysis

Appellants argue that there was enough evidence to support a judgment against MTM and Mr. Morehouse for Breach of Fiduciary Duty. Appellants allege that because MTM was the manager of Beachside and Mr. Morehouse controlled MTM, both MTM and Mr. Morehouse owed a fiduciary duty to Beachside and its members, which included Mr. Laios. Appellants rely on the same actions and arguments related to the Breach of Contract claim to prove that Appellees also breached their fiduciary duties.

Appellees counter that there is no fiduciary duty owed by Mr. Morehouse individually to Mr. Laios, and that there is no evidence of a Breach of Fiduciary Duty by MTM or, if a duty existed, by Mr. Morehouse. The fiduciary duty arises from the Operating Agreement, of which Mr. Morehouse is not a party, and thus he owes no duty, individually, to Beachside or its members. Moreover, Appellants cannot "pierce the corporate veil" of MTM to create liability on behalf of Mr. Morehouse for the actions of MTM in relation to the management of Beachside. Again, the fiduciary duty arises from the Operating Agreement, despite Appellants' argument that a separate tort claim exists, which Appellees argue is barred by a two-year statute of limitations under the laws of the U.S. Virgin Islands. Lastly, the claims for Breach of Fiduciary Duty are identical to those for Breach of Contract and thus should fail for the same reasons, according to Appellees.

We agree with Appellee, the claims and arguments for Breach of Fiduciary Duty are the same as those for Breach of Contract. The circuit court found similarly that there was not "sufficient evidence . . . that there was a breach of fiduciary [duty] on the part of Mr. Morehouse or MTM[,]" and for the same rationale. Because the fiduciary duty arises from the Operating Agreement and we previously concluded that the circuit court did not err in granting the motion for judgment as to the Breach of Contract claim, we also conclude that the circuit court did not err in granting the motion for judgment as the Breach of Fiduciary Duty claim.

IV. CONCLUSION

In conclusion, the circuit court did not abuse its discretion in denying Appellants' discovery requests of MTM's operations unrelated to Beachside, because Appellants failed to prove how such discovery was relevant to the action. Additionally, the circuit court did not abuse its discretion in excluding Appellants' evidence of prior disputes between the parties involving different business ventures, because of the danger of unfair prejudice substantively outweighing the evidence's probative value.

Furthermore, the circuit court did not abuse its discretion by excluding Appellants' proposed expert witness from testifying as an expert in the field of forensic accounting because the witness failed to possess the necessary education, training, and experience to be qualified as a forensic accountant as evidenced by his testimony. Due to the disqualification of Appellants' expert witness, Appellants failed to present testimony explaining how MTM's and Mr. Morehouse's actions were improper, and therefore in

Breach of Contract and Fiduciary Duty. As a result, the circuit court did not err in granting Appellees' motion for judgment.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY ARE AFFIRMED. COSTS TO BE PAID BY APPELLANTS.