UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

No. 0906
September Term, 2014

121 ASSOCIATES LIMITED PARTNERSHIP, ET AL.
v.

TOWER OAKS BOULEVARD, LLC.

No. 1454
September Term, 2014

RONALD COHEN INVESTMENTS, INC., ET AL.
v.

TOWER OAKS BOULEVARD, LLC.

Wright,
Hotten,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: November 12, 2015

This consolidated appeal arises from judgments entered by the Circuit Court of Montgomery County finding in favor of appellees: Tower Oaks Boulevard, LLC ("Tower Oaks"); TOB, Inc. ("TOB"); Oak Plaza, LLC; John D. Buckingham, Sr.;[1] Richard D. Buckingham; and Susan E. Buckingham (collectively, "appellees"). On September 10, 2012, appellees filed a complaint against appellants, Ronald Cohen Investments, Inc. ("RCI") and Ronald Cohen Management Company ("RCM") (collectively, "Tenants"),[2] alleging tortious interference with contractual relations, civil conspiracy, breach of contract, conversion, and breach of indemnification agreement, stemming primarily from Tenants' failure to pay rent.[3]

Following a jury trial on January 21-24, 2014 and January 27, 2014, the jury found in favor of appellees on their breach of contract claim and awarded $1,630,268.96 for unpaid rent and resulting damages.[4] The jury also found that Tenants interfered with appellees' contractual relations with their lender, CW Capital, LLC ("Lender"), and

[1] David T. Buckingham acted as the legal guardian of John D. Buckingham, Sr.

[2] The complaint named additional defendants that are not parties to this appeal, including CW Capital, LLC; CW Capital Asset Management, LLC; and US Bank National Association. At no point was Ronald Cohen included, individually, as a party to the suit.

[3] These were the charges against Tenants as included in appellees' amended complaint, which was filed on March 25, 2013.

[4] This value included $947,379.58 for unpaid rent for the period of December 1, 2011 to November 31, 2012, and $682,889.38 for loss caused to Tower Oaks as a result of nonpayment from April 2009 to September 2009, and February 2011 through November 2011. The court later amended this value to include additional unpaid rent and prejudgment interest. As a result, the damages for this count would total $2,266,018.04.

awarded $2,300,000.00 in compensatory damages on that count. Lastly, the jury found that Tenants' conduct forced Tower Oaks into litigation with Lender and that punitive damages should be awarded against Tenants. The parties, however, agreed that the issues of attorney fees and the amount of punitive damages would be decided by the trial judge. After hearing argument on those matters, the circuit court ordered each Tenant to pay appellees $1,500,000.00 in punitive damages, and awarded appellees' $690,572.49 for attorneys' fees and expenses. Judgments reflecting those awards were entered on May 23, 2014, and on June 12, 2014, Tenants filed a motion to stay their enforcement. The circuit court denied that motion on July 2, 2014, and Tenants noted their appeal on July 8, 2014 ("Case No. 1454").

Meanwhile, on June 3, 2014, after the judgments against Tenants were entered, Tower Oaks filed requests for writs of execution against four real property parcels ("Subject Properties"), asserting that they were owned by RCM. On June 12, 2014, appellants, 121 Associates Limited Partnership; 1570 Associates Limited Partnership; and Congressional Village Associates, LLC (collectively, "Property Owners"), filed a motion to release and/or quash the writs of execution, stating that they have been the title owners of the Subject Properties for several decades. The circuit court denied that motion on July 2, 2014, and Property Owners noted an appeal from that decision on July 7, 2014 ("Case No. 906").

On July 16, 2014, Property Owners filed a motion to release from levy the Subject Properties ("Motion to Release"), which the circuit court denied on August 25, 2014. On

August 27, 2014, Property Owners filed another appeal, which they amended on September 12, 2014, and which we subsequently consolidated with Case No. 906. Then, on or about June 3, 2015, we consolidated Case No. 1454 and Case No. 906 on our own motion for the purpose of appeal.

Questions Presented

Tenants and Property Owners present the following twelve questions for our review:

I. Did the Circuit Court err or abuse its discretion in denying [Tenants] summary judgment on Lessor's tortious interference with contract claim?

II. Did the Circuit Court err in allowing the tortious interference claim to go the jury in light of the absence of legally sufficient evidence?

III. Did the Circuit Court err in allowing the punitive damages claim to go the jury in light of the lack of clear and convincing evidence of actual malice?

IV. Did the Circuit Court err or abuse its discretion in allowing evidence of RCI's 2009 nonpayment of rent to prove [Tenants'] alleged 2011 tortious interference when such evidence was irrelevant and despite uncontroverted evidence that the 2009 breach was cured in 2009?

V. Did the Circuit Court err or abuse its discretion in excluding evidence establishing why [Tenants] withheld the February 2011 rent when intent is an element of tortious interference and actual malice?

VI. Did the Circuit Court erroneously instruct the jury on the elements of tortious interference when it failed to instruct them that breach of contract by the Lender and independent wrongful or unlawful conduct by [Tenants] was required and further when it instructed them on joint liability for such interference?

VII. Did the Circuit Court err by awarding non-recoverable damages?

VIII. Did the Circuit Court err by failing to subtract from the Judgment a recoupment/offset in favor of [Tenants]?

IX. Did the Circuit Court err by relying on irrelevant, unrelated evidence to support an excessive punitive damages award?

X. Did the Circuit Court err in awarding collateral litigation fees?

XI. Did the Circuit Court err or abuse its discretion in denying the Property Owners' Motion to Release and piercing the corporate veils of, or applying the alter ego doctrine to, the Property Owners without an action against them, thereby denying them due process?

XII. Did the Circuit Court err or abuse its discretion in denying the Property Owners' Motion to Release and piercing the corporate veils of, or applying the alter ego doctrine to, the Property Owners when there was a total lack of evidence supporting its findings and conclusions as to them?

For the reasons that follow, we hold that the circuit court erred by failing to grant judgment in favor of Tenants on the tortious interference claim, and accordingly, by awarding punitive damages to appellees. Furthermore, we hold that the court erred in denying Property Owners' Motion to Release. As a result, we reverse the circuit court's judgments that relate to those issues.

With regard to Tenants' claims for "non-recoverable damages" and for recoupment, we affirm the circuit court's judgments. As to the court's award of collateral litigation fees, however, we vacate the judgment and remand for further proceedings, so that the circuit court can recalculate the proper amount, consistent with this opinion.

Facts

In 2002, RCI entered into a 10-year lease ("Lease") with Tower Oaks for commercial office space in Suite 200 ("Leased Premises") of the property located at 2701 Tower Oaks Boulevard, Rockville, Maryland ("Property"). Subsequently, the Lease was assigned to RCM, a company which at that time "had employees that basically ran accounting for other limited liability companies that owned real estate properties." According to Tenants, "RCI assigned the Lease to RCM for purposes of a loan and . . . build out," and "[u]pon completion of the build out, RCM re-assigned the Lease to RCI."

Five years later, on or about March 19, 2007, TOB executed a Promissory Note ("Note") for $9,100,000.00 with Lender. In conjunction with that transaction, Tower Oaks executed an Indemnity Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing securing the Note against the Property. John D. Buckingham, Sr., a principal in Tower Oaks, also executed a Guaranty on the Note.

By letter dated April 1, 2009, Ronald Cohen ("Cohen"), on behalf of RCI, sought a two-year rent concession from Tower Oaks, alleging that it was "necessary to require many across-the-board reductions in . . . operating costs." Specifically, Cohen requested "effective immediately, a rent reduction from $56,224 to [$]37,300 per month . . . lasting 24 months."

By letter dated April 10, 2009, the property manager for the Leased Premises notified Cohen that "[t]here is an outstanding balance due on your account in the amount of $56,223.75 for April's Rent . . . ." Then, by letter dated April 30, 2009, Tower Oaks

informed Cohen that it had no obligation to modify the Lease, but was willing to consider Cohen's request subject to payment of all rent due through May 1, 2009, as well as the creation of a written lease modification agreement executed by all parties. Tower Oaks added that their Lender's approval to such modification would be required and that the Lender would request "satisfactory financial statements . . . as well as the copies of all subleases affecting any portion of the [Leased Premises]." Finally, Tower Oaks stated that if Tenants "fail[] to pay the amounts now due and owing under the Lease on or before May 1, 2009," it would "immediately discontinue consideration of the request . . . for a rent reduction and will pursue its rights and remedies under the Lease or otherwise available at law or in equity."

Correspondence between Tenants and Tower Oaks continued through May 2009. On May 4, 2009, Tower Oaks reminded Tenants that rent was due for April and May 2009, and that interest would continue to accrue on a daily basis. By letter dated May 6, 2009, Cohen expressed understanding that Tower Oaks intended "to pursue their remedies aggressively." Then, on May 15, 2009, Cohen sent the following to counsel for Tower Oaks:

> It has been a number of days since we spoke, and we have yet to get a response to our suggestion that we have a meeting with the principals to try to resolve this matter. We assume, therefore, that you [sic] intent is to follow up on the course of action you have stated, that is, to sue the tenant for rents claimed to be due and owing and to seek eviction.
>
> We still find it hard to believe that, in the current market, your client is willing to undergo the expenses of replacing us as tenants, rather than negotiate a reasonable reduction, but that is an economic decision that they will have to face with their lender.

Unable to obtain a rent concession, Tenants did not pay the July 2009 rent. On or about July 24, 2009, Tower Oaks filed a rent action against RCI in the District Court for Montgomery County. By consent judgment entered in August 2009, RCI was ordered to pay $172,851.67 for rent due and $1,200.00 in attorney's fees. RCI appealed the judgment to circuit court, and on August 26, 2009, the district court set a rent bond to cover future rent of $343,000.00.

Subsequently, RCI dismissed the appeal and paid Tower Oaks the sum of $457,599.14, representing all amounts due under the Lease through September 30, 2009. On or about October 15, 2009, RCI filed a motion in district court requesting release of the $343,000.00 bond. On or about November 1, 2009, Tower Oaks filed a motion in response, arguing that it was entitled to keep from the bond $202,628.20 for "financial damages suffered . . . as a result of [RCI] filing a frivolous appeal" and "for attorneys' fees incurred in prosecuting the appeal." The district court agreed with Tower Oaks, and RCI appealed to circuit court.

After hearing the matter on August 10, 2010, the circuit court reversed the district court's judgment in part and concluded that "the damages sustained as a result of the appeal may be collected; however damages alleged as a result of the breach of contract may not be collected." On January 28, 2011, the circuit court clarified its order, stating that RCI was entitled to judgment in the amount of $202,628.00 plus interest at the rate of 6% per annum from November 4, 2009.

Tenants continued to pay all rent due through January 2011, but did not pay the rent for February 2011. In their brief, Tenants allege that they instructed Tower Oaks "to apply to rent the amount awarded" by the circuit court. By letter dated February 3, 2011, Tower Oaks informed Tenants that rent for February 2011 in the amount of $62,930.12 was overdue. Tower Oaks added that "unless the February Rent is paid within five days . . . non-payment shall constitute a 'Default.'" On February 8, 2011, Tower Oaks filed a bankruptcy petition in the United States Bankruptcy Court, and Tenants did not pay rent thereafter.

On May 25, 2011, Lender moved the bankruptcy court to lift the automatic stay so that it could exercise its rights to foreclose on the Property. On September 15, 2011, the bankruptcy court granted the relief sought by Lender and allowed it to "obtain the immediate appointment of a receiver . . . with the powers to collect rent, enforce leases and manage the mortgaged property." Later that month, Lender began foreclosure proceedings.

On September 10, 2012, appellees filed the complaint in the underlying case in circuit court. On March 25, 2013, they amended it to include the following claims against Tenants: tortious interference with contractual relations, civil conspiracy, breach of contract, conversion, and breach of indemnification agreement. On December 27, 2013, Tenants moved for summary judgment on all counts. Following a hearing on January 17, 2014, the circuit court granted Tenants' motion only as to breach of indemnification agreement.

The jury trial began on January 21, 2014. On that day, Tenants made a motion in limine to exclude evidence about the Tenants' lifestyles and "about events that occurred 17 months before February of 2011." According to Tenants, the correspondence between the parties in the first half of 2009 "is totally irrelevant" because "[i]t's uncontested that [as of] October 1, 2009, Cohen was current in its rent." Tenants explained that "the only thing [appellees were] relying upon that happened in 2009 was their basic connection to the lender, what [Tenants] did in reference to lender, is that [Tenants] made a statement not to the lender, but to the landlord, that said the realities of it, if we can't work something out, this may be bad for all of us." Although the circuit court granted Tenants' motion in limine to exclude evidence of the Tenants' individual lifestyles, it denied the motion "with respect to the timing," stating that excluding such evidence would "basically gut the [appellees'] case."

On January 23, 2014, after the close of appellees' testimony, Tenants made an oral motion for judgment, which the circuit court denied. During the presentation of Tenants' case, they introduced the testimony of Eric Siegel, who had overseen leasing operations for Tenants. Siegel explained that in 2009, RCI "filed a bond before district court" and approximately $202,000.00 of that amount was improperly released to Tower Oaks. Siegel also testified that RCI eventually obtained a judgment against Tower Oaks for approximately $202,000.00, and he "wanted to see what [Tenants'] rights were with respect to judgment." Tenants then attempted to have Siegel testify that "he made a good faith determination based on his research that he could withhold rent," but the circuit

court did not allow it. Citing *Ragland v. State*, 385 Md. 706 (2005), the court ruled that the statement was irrelevant and would constitute improper expert testimony.

On January 27, 2014, the jury found in favor of appellees on their breach of contract claim and awarded unpaid rent and resulting damages. The jury also found that Tenants interfered with appellees' contractual relations with Lender and awarded $2,300,000.00 in compensatory damages on that count. Lastly, the jury found that Tenants' conduct forced Tower Oaks into litigation with Lender and that punitive damages should be awarded against Tenants.

After the jury was released, counsel for Tower Oaks noted that the Tenants "allegedly have no assets." As such, Tower Oaks requested discovery on the issue of "[c]orporate veil . . . as it relates to the punitive[] damages." Counsel for Tenants expressed some concern as to "piercing the corporate veil of [the] property," substantively, but agreed, procedurally, to allow 10 interrogatories and 10 document requests.

In May 2014, the circuit court heard argument on the issues of punitive damages and attorney's fees, at which time, it stated:

> Let me also say what this hearing is not about. For clarity. It is not about successorship. I'm not ruling on whether or not anybody is or isn't a successor. That wasn't presented and I'm not deciding it.

On May 23, 2014, the circuit court entered the following order:

> **ORDERED**, that with respect to Count 1 of the Amended Complaint, judgment is entered in favor of [appellees] against [Tenants] for rent from February 1, 2011 to November 30, 2011 in the amount of $599,508.57 and from December 1, 2011 to November 30, 2012 in the

> amount of $947,379.58; and for additional damages in the amount of $682,889.38; and for additional prejudgment interest from January 22, 2014 to May 23, 2014 in the amount of $36,240.51; and it is further
>
> **ORDERED**, that with respect to Count 2 of the Amended Complaint, judgment is entered in favor of [appellees] against [Tenants] in the amount of $2.3 million in compensatory damages, and punitive damages are awarded in favor of [appellees] against [RCI] in the amount of $1.5 million, and punitive damages are awarded in favor of [appellees] against [RCM] in the amount of $1.5 million, and it is further
>
> **ORDERED** that [appellees are] awarded $690,572.49 for attorneys' fees and expenses.

(Emphasis in original).

On June 3, 2014, Tower Oaks filed requests for writs of execution against the Subject Properties, attaching the interest of RCM. On June 12, 2014, the Property Owners filed a motion to release and/or quash the writs of execution, stating that they have been the title owners of the Subject Properties for several decades. The circuit court denied that motion on July 2, 2014.

On July 16, 2014, Property Owners filed its Motion to Release. The circuit court heard the matter on August 18, 2014, at which time Tower Oaks sought to introduce additional documents to support their contention that RCM ultimately owned the Subject Properties. Property Owners noted an objection to an evidentiary hearing, arguing that a claim against nonparties and real property titled in nonparty names had to be brought as a separate cause of action. The circuit court, however, disagreed with Property Owners and proceeded with the hearing.

Through an oral ruling on August 19, 2014, the circuit court denied the Motion to Release, explaining, in pertinent part:

> In addition to the reasons I've stated, this jury found and I agree that the two judgment debtors through their agents, [Siegel] and Cohen, intentionally interfered with [Tower Oaks's] contract with the bank. They did it to bust the lease. The jury is right. And they did it with actual malice. I watched them testify. And I observed their, not only listened to their words, but watched their demeanor, the body language, the tone. This is beyond sharp elbowed business practices. This borders on unlawful in my judgment, which [Tower Oaks] doesn't have to prove in this case. But they did prove actual malice by clear and convincing evidence in my judgment.
>
> I find [Property Management Accounting Services, LLC ("PMAS")] by any definition is a successor entity to [RCM]. It's just . . . a hand off. When, you know, the agents are chasing suspect A, he hands it off to suspect B who takes the bag of money and goes out the back door. That's what happened here. As harsh as that may sound, unfortunately, those are the facts in this case.
>
> It is certainly true and notably 100 percent of the stock of [RCM] and 100 percent of the stock of [RCI] was owned by Mr. Cohen personally. And I find that the hand off to PMAS was a sham simply to avoid the coming judgments. And he gave it away to his family members so it wouldn't be - - so the car wouldn't be in his garage when the collection agent came. He gave them the car. And they gave them the keys to the car.
>
> This is nothing more than Ronald Cohen's instrumentality to do his business. And this is how he does it. It's operated I find at such a level with the intent to deprive others of lawful funds that goes beyond mere, and anybody who knows me knows I respect corporate entities with the best of them. I find that the applicants who have made applications here in this case are the instrumentalities of Ronald Cohen. Piercing through [RCM]. Frankly, it's easy. He is the wizard behind the curtain I find. There's no question about it in my mind.
>
> * * *
>
> So while I understand that to date the Court of Special Appeals and the Court of Appeals probably have not found a case that falls within the, assuming there is one, and until they abolish it, I'm going to assume there is one because I believe frankly there is one, a paramount equity framework

> of analysis that's [apart] from the pure fraud analysis . . . . At the end of the day, I find that this case meets the nonfraud exception, however one describes it to enable the disregarding which in other circumstances I wouldn't disregard entities into - - to be blunt - - to blow through the shells.
>
> So for those reasons, the requests by the [Property Owners] to lift the levies and to release properties that were subject of the writs of execution, are denied . . . .

Additional facts will be included as they become relevant to our discussion, below.

Discussion

I. Tortious Interference & Punitive Damages

Tenants primarily argue that the circuit court erred or abused its discretion in denying their motion for summary judgment on appellees' tortious interference claim. Alternatively, Tenants contend that the court erred in allowing that claim to go to the jury, and furthermore, that the circuit court erred in its jury instructions for that count. Relatedly, Tenants argue that the court erred in allowing the punitive damages claim to go to the jury, and ultimately, in awarding "excessive punitive damages." With regard to the trial judge's handling of the trial, Tenants aver that the court erred or abused its discretion when it allowed evidence of Tenants' nonpayment of rent in 2009 and excluded evidence of Tenants' reason for withholding rent in February 2011.

After reviewing the record, we hold that the circuit court erred in denying Tenants' motion for judgment with regard to the tortious interference claim.[5] Accordingly, we

[5] As to Tenants' argument that the circuit court erred in denying its motion for summary judgment, we note that the court had "discretion affirmatively to deny, a summary judgment request in favor of a full hearing on the merits; and this discretion exists even though the technical requirements for the entry of such a (continued…)

need not determine whether the court abused its discretion in allowing the 2009 evidence and excluding the 2011 evidence or whether it erred in instructing the jury on tortious interference. As our reversal of the court's judgment on this issue disposes of appellees' only tort claim, we likewise reverse the court's award of punitive damages in favor of appellees and against Tenants. *See Miller Bldg. Supply, Inc. v. Rosen*, 61 Md. App. 187, 194 (1985) ("The law is clear that while punitive damages may be recovered in any pure tort action upon a showing of malice, punitive damages are not awarded for a mere breach of contract." (citing *American Laundry Mach. Indus. v. Horan*, 45 Md. App. 97, 115 (1980))), *aff'd*, 305 Md. 341 (1986); s*ee also VF Corp. v. Wrexham Aviation Corp.*, 350 Md. 693, 703 n.2 (1998) ("Since, under Maryland law, punitive damages are allowable only in a tort action and only when there is an award of compensatory damages based on that tort, our reversal of the judgment for compensatory damages under the tort count in this case will automatically require a reversal of the punitive damages award." (Citations omitted)).

The standard of review when assessing a motion for judgment is "whether the trial court was legally correct." *Houghton v. Forrest*, 183 Md. App. 15, 26 (2008) (citing

judgment have been met." *Metro. Mortgage Fund, Inc. v. Basiliko*, 288 Md. 25, 28 (1980) (citations omitted). "[A] denial . . . of a summary judgment motion, as well as foregoing the ruling on such a motion either temporarily until later in the proceedings or for resolution by trial of the general issue, involves not only pure legal questions but also an exercise of discretion as to whether the decision should be postponed until it can be supported by a complete factual record[.]" *Id.* at 29. "[O]n appeal, absent clear abuse (not present in this case), the manner in which this discretion is exercised will not be disturbed." *Id.*

Shabazz v. Bob Evans Farms, Inc., 163 Md. App. 602, 643 (2005)), *vacated in part on other grounds*, 412 Md. 578 (2010). "When we review a trial court's denial of a party's motion for judgment in a jury trial, we conduct the same analysis as the trial court." *Univ. of Balt. v. Iz*, 123 Md. App. 135, 149 (1998) (citations omitted). In other words, "[w]e consider all of the evidence, including the inferences reasonably and logically drawn therefrom, in a light most favorable to the non-moving party." *Id.* (citations omitted). "'[W]here the evidence is not such as to generate a jury question, *i.e.*, permits but one conclusion, the question is one of law and the motion must be granted.'" *Id.* (quoting *James v. Gen. Motors Corp.*, 74 Md. App. 479, 484 (1988)).

In this case, following the close of appellees' testimony, Tenants made an oral motion for judgment. At that time, appellees had failed to present sufficient evidence of tortious interference with contractual relations even when viewed in the light most favorable to them. The Court of Appeals has previously explained:

> Tortious interference with business relationships arises only out of the relationships between three parties, the parties to a contract or other economic relationship (P and T) and the interferer (D). We have said that "the two general types of tort actions for interference with business relationships are inducing the breach of an existing contract and, more broadly, maliciously or wrongfully interfering with economic relationships in the absence of a breach of contract." *Natural Design, Inc. v. Rouse Co.*, 302 Md. 47, 69, 485 A.2d 663, 674 (1984) . . . .
>
> Restatement (Second) of Torts (1979) (Restatement), by dividing into two parts the branch of the tort dealing with existing contracts, concludes that the tort may be committed in three ways. In the two Restatement sections dealing with existing contracts, D is subject to liability to P if D "intentionally and improperly interferes with the performance of a contract" between P and T, where P may be either the promisor or promisee of the performance . . . . Under § 766A, where P is

> the promisor, D commits the tort "by preventing [P] from performing the contract or causing [P's] performance to be more expensive or burdensome . . . ."
>
> A two party situation is entirely different. If D interferes with D's own contract with P, D does not, on that ground alone, commit tortious interference, and P's remedy is for breach of the contract between P and D. This Court has "never permitted recovery for the tort of intentional interference with a contract when both the defendant and the plaintiff were parties to the contract." *Wilmington Trust Co. v. Clark*, 289 Md. 313, 329, 424 A.2d 744, 754 (1981). *See also Continental Casualty Co. v. Mirabile*, 52 Md. App. 387, 402, 449 A.2d 1176, 1185, *cert. denied*, 294 Md. 652 (1982). *Wilmington Trust* cited numerous federal and state court decisions in support of its holding that "there is no cause of action for interference with a contract when suit is brought against a party to the contract." 289 Md. at 329, 424 A.2d at 754. *See also* W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on The Law of Torts* 990 (5th ed. 1984) ("The defendant's breach of his own contract with the plaintiff is of course not a basis for the tort".)

K & K Mgmt., Inc. v. Lee, 316 Md. 137, 154-56 (1989) (emphasis added).

Like the plaintiffs in *K&K Mgmt., Inc.*, appellees in this case sought to "skirt the settled rule described above[6] by contending that this is a case of tortious interference by D with business relations between P and T," where T is Lender. *Id.* at 156. To successfully state a claim for tortious interference with an existing contract, appellees must show five elements: "(1) existence of a contract between plaintiff and a third party; (2) defendant's knowledge of that contract; (3) defendant's intentional interference with that contract; (4) breach of that contract by the third party; and (5) resulting damages to

[6] Had appellees' allegation been that Tenants violated the Lease, and thus interfered with their own contract with appellees, then appellees had no cause of action for interference with a contract but only a claim for breach of the Lease.

the plaintiff." *Fowler v. Printers II, Inc.*, 89 Md. App. 448, 466 (1991) (citations omitted).

Here, appellees failed to present a persuasive argument regarding the third factor, they failed to show an intentional interference on Tenants' part. *See* Restatement § 766A cmt. e (1979); *K & K Mgmt., Inc.*, 316 Md. at 159-61. "Pertinent to this case is the rule that breach of a contract between the plaintiff and the defendant is not a basis for the interference tort, if the interference is simply incidental to the breach." *Berry & Gould, P.A. v. Berry*, 360 Md. 142, 155 (2000). Stated differently, even if Tenants breached their Lease with appellees, that alone is not proof of tortious interference with contractual relations.

Moreover, there was no evidence of breach by Lender to satisfy the fourth factor, which requires the third party to breach the contract between it and Tenant. As Tenants point out, appellees failed to present any evidence that Lender breached the Note or otherwise made performance of that Note impossible. Instead, it is undisputed that Lender legally enforced and subsequently foreclosed on the Note.

Finally, we agree with Tenants that appellees failed to prove that Tenants' "wrongful or unlawful conduct proximately caused the injury alleged." *Lyon v. Campbell*, 120 Md. App. 412, 431 (1998) (citations omitted). "In any tort action, the plaintiff must establish that the defendant's tortious conduct was a cause in fact of the injury for which compensation is sought." *Med. Mut. Soc. of Md. v. B. Dixon Evander & Assocs., Inc.*, 339 Md. 41, 54 (citations omitted). "[T]he burden is on the plaintiff to

prove by a preponderance of the evidence that it is more probable than not that defendant's act caused his injury." *Id.* (citation omitted). "[W]here plaintiff by his own evidence shows two or more equally likely causes of the injury, for only one of which defendant is responsible, plaintiff cannot recover." *Peterson v. Underwood*, 258 Md. 9, 17 (1970) (citations omitted). A plaintiff may then only recover where "he excludes the independent cause as the efficient and proximate cause of the injury." *Langville v. Glen Burnie Coach Lines, Inc.*, 233 Md. 181, 185 (1963) (citations omitted). Likewise, "causation evidence that is wholly speculative is not sufficient." *Lyon*, 120 Md. App. at 437 (citations omitted).

In this case, there was evidence in the record to show that appellees were already in default since 2007, and again in 2009, 2010, and 2011. The record also reflects that, after settling the 2009 rent dispute, Tenants continued to pay all rent due through January 2011. Thus, we cannot say that Tenants' failure to pay rent for the month of February 2011 proximately caused Lender's termination and foreclosure of its loan in 2011, particularly where appellees' default was triggered by its filing for bankruptcy prior to the end of the grace period it previously provided to Tenants.

II. Non-Recoverable Damages

Tenants contend that the circuit court erred by allowing what they characterize as "non-recoverable damages."[7] Specifically, Tenants aver that the jury's award of

[7] Not all of an innocent party's expenses are recoverable. Many types of expenses, though related to the breach of contract, are non-recoverable damages. *See Winslow Elevator & Mach. Co. v. Hoffman*, 107 Md. 621, 635 (1908) (continued…)

$682,889.38 to appellees was improper because it "represent[ed] default interest under the [Note] which is prohibited under Maryland law as a consequential damage." In addition, Tenants assert that appellees are not entitled to any damages for breach of contract based on the court's jury instruction. This argument is too little too late.

First, as to Tenants' claim regarding the $682,889.38 award,[8] appellees correctly state that Tenants "may not assign as error the trial court's submission of the damages claims to the jury because they failed on multiple occasions to challenge on the record." As appellees point out, Tenants failed to object to the presentation of default interest evidence, failed to move for judgment on the default interest damages claim, and failed to object with specificity to the special verdict form. *See* Md. Rule 5-103(a)(1) ("Error may not be predicated upon a ruling that admits . . . evidence unless the party is prejudiced by the ruling, and . . . a timely objection or motion to strike appears of record"); Md. Rule 2-519(a) ("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

("When two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, *i.e.*, according to the usual course of things from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probably result of the breach of it.").

[8] This is assuming that the jury's $682,889.38 award represented the default interest that appellees had to pay Lender. Because the jury was not required to itemize its award, there is nothing in the record to support Tenants' characterization.

should be granted."); Md. Rule 2-522 (b)(5) ("No party may assign as error the submission of issues to the jury . . . unless the party objects on the record before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection."). Accordingly, we need not address this claim.

Second, we reject Tenants' claim that appellees were not entitled to any contract damages because the jury was required to reduce its award by deducting appellees' "costs that it had to spend to perform under the Lease." As an initial matter, we note that Tenants cite no authority for this argument. *See Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 201 (2008) (finding a violation of Md. Rule 8-504(a) where appellant failed to provide any legal authority for her contentions). Even if we reach the merits, however, Tenants' argument fails.

At issue is the following jury instruction:

> I instruct you, as to claim one, that the plaintiff is entitled to be placed in the same situation as if the contract had not been broken. The damages, therefore, are the monies the plaintiff would have received had the contract been performed. These damages are to be arrived at after deducting the amount it might have cost the plaintiff to have the contract performed.

According to Tenants, a proper application of the third sentence in this instruction would excuse them from paying rent because appellees used Tenants' rent money to pay the mortgage on the property and, thus, the mortgage payment was a performance expense. This argument is nonsensical. Applying Tenants' interpretation would certainly not place appellees "in the same situation as if the contract had not been broken" and would not reflect "the monies the plaintiff would have received had the contract been performed."

Instead, Tenants' interpretation would permit a tenant to evade contractually required rent payments only if the landlord used the rent payments to pay part of its mortgage obligation on the demised premises.

For these reasons, we affirm the circuit court's judgment "with respect to Count 1 of the Amended Complaint" awarding appellees $599,508.57 for rent from February 1, 2011 to November 30, 2011; $947,379.58 for rent from December 1, 2011 to November 30, 2012; $682,889.38 for additional damages; and $36,240.51 for additional prejudgment interest from January 22, 2014 to May 23, 2014.

III. Recoupment

Next, Tenants argue that they are entitled to a credit for:

> 1) the $202,628 Judgment against Tower Oaks for the rent bond improperly held by [appellees], plus interest at 6% from November 4, 2009 through January 25, 2011 (approximately $12,000) and 10% from January 25, 2011; 2) $236,878.76 for "Additional Rent," which the jury improperly included in its contract damages award because [Tenants] were not obligated to pay "Additional Rent" because [appellees] failed to spend its required "Base Costs" for 2011 and 2012; 3) $102,309.42 for recoupment of "Base Cost" obligations of [appellees] paid by RCI in 2011; and 4) $62,930.12 in rent paid into Court was not credited against the rent owed.

In response, appellees contend that the circuit court did not err with respect to Tenants' recoupment defense. First, they note that Tenants did not except to the court's recoupment instruction, and that the jury rejected Tenants' defense in its entirety. Second, appellees aver that Tenants erroneously read the relevant lease provision as requiring Tenants to pay the additional rent only when appellees' operating expenses payments exceeded the Base Costs. Third, appellees assert that Tenants fail to

demonstrate why the court erred in denying their motion notwithstanding the verdict regarding recoupment of Base Cost obligations. Lastly, appellees argue that Tenants fail to provide a legal basis for requesting rent credits.

In this case, the circuit court instructed the jury regarding recoupment, and Tenants did not except to the court's instruction. Pursuant to Md. Rule 2-520(e), no party may raise a claim of instructional error on appeal unless a prompt objection was made after the jury was instructed. "This rule requires parties to be precise in stating objections to jury instructions at trial." *Butler-Tulio v. Scroggins*, 139 Md. App. 122, 151 (2001) (citation omitted). The Special Verdict Form included questions regarding Tenants' right to set-offs or credits, but the jury did not find that Tenants were entitled to recoupment, nor did the jury apply any offset.[9]

As to the claims for "Additional Rent," recoupment of "Base Cost" obligations, and rent credit, Tenants failed to provide any legal authority to support their contentions, and we are not persuaded by the one page of argument advanced in their brief. It is unclear whether they are appealing from the circuit court's admission of evidence, giving of a jury instruction, denial of a motion for judgment, or denial of a motion for judgment notwithstanding the verdict. As such, we refuse to address these issues. *See Klauenberg v. State*, 355 Md. 528, 552 (1999) (stating that an appellate court need not consider "arguments not presented in a brief or not presented with particularity"); *Rollins*, 181 Md. App. at 201.

[9] Of course, the jury finding could not set aside an open and unpaid judgment.

IV. Collateral Litigation Fees

Tenants' final contention is that "the circuit court erred by awarding fees incurred in the foreclosure and receivership actions as collateral litigation fees." According to Tenants, if this Court finds that the tortious interference and punitive damages portions of the May 23, 2014 judgment should be reversed, then the portion of the judgment awarding collateral litigation fees and costs should also be reversed.

We understand Tenants' two-sentence argument in its brief to be a challenge to the circuit court's award of $690,572.49 in favor of appellees for attorneys' fees and expenses. Although we agree with Tenants that the court's judgment as to tortious interference and punitive damages should not stand, we shall not reverse the court's judgment awarding attorney's fees in total.

Section 27(d) of the Lease provides, in pertinent part:

> [W]ithout regard to whether this Lease has been terminated, Tenant shall pay to Landlord [appellees] all costs incurred by Landlord, including reasonable attorney's fees, with respect to any lawsuit or action instituted or taken by Landlord to enforce the provisions of this Lease.

Accordingly, we vacate this portion of the court's award and remand so that the circuit court can recalculate the amount of attorney's fees incurred by appellees with respect to the lawsuit brought upon as a result of Tenants' nonpayment of rent. The court, however, should not include fees incurred in pursuing any action collateral to the breach of the lease.

V. Denial of Motion to Release

For the last issue before us on appeal, Property Owners argue that the circuit court erred or abused its discretion in denying their Motion to Release and by "piercing the corporate veil of, or making a determination of alter ego or sham against, the Property Owners." They point out that appellees "never filed a complaint seeking equitable relief against any party in order to pierce the corporate veil or obtain a judgment of alter ego, sham or successor liability." In response, appellees imply that there was no error on the court's part because the Subject Properties were owned by Tenants' successor entities.[10]

In *LVI Envtl. Servs., Inc. v. Acad. of IRM* ("*LVI*"), we clarified that "the 'debts and liabilities of the predecessor corporation are imposed on the successor corporation when (1) there is an expressed or implied assumption of liability; (2) the transaction amounts to a consolidation or merger; (3) the purchasing corporation is a mere continuation of the selling corporation; or (4) the transaction is entered into fraudulently to escape liability for debts.'" 106 Md. App. 699, 709 (1995) (quoting *Baltimore Luggage Corp. v. Holtzman*, 80 Md. App. 282, 290 (1989)), *aff'd*, 344 Md. 434 (1997). We added,

[10] As Ronald Cohen was never named a party, individually, to the suit, he was never a judgment debtor and therefore, the doctrine of piercing the corporate veil never applied. BLACK'S LAW DICTIONARY 1332 (10th ed. 2014) (defining "piercing the corporate veil" as "[t]he judicial act of imposing personal liability on otherwise immune corporate officers, directors, or shareholders for the corporation's wrongful acts"). *See also* Md. Rule 2-641(a); *Phoenix Life Ins. Co. v. Wachovia Bank, N.A.*, 199 Md. App. 259, 268 (2011) (stating that a writ must "clearly and unambiguously identify any and all judgment debtors whose property is to be garnished") (citation and emphasis omitted).

however, that a judgment creditor cannot "transform [a] garnishment proceeding into a direct cause of action against a [successor entity] and proceed on a theory of successor corporation liability." *Id.* at 709-10 (citations omitted). In such cases, the successor entity would not be subject to garnishment by the judgment creditor, even though the judgment creditor may have had a direct cause of action against the successor. *Id.* *LVI* is dispositive here.

During the jury and bench trials in this case, appellees consistently stated – and the circuit court confirmed – that veil-piercing and alter ego claims were not being pursued. Then, after the judgments were entered against Tenants, appellees filed their requests for writs of execution and attempted to transform the proceeding into a direct cause of action against Property Owners. Even if appellees may have had a valid claim against Property Owners (should they have been able to prove at least one of the four *LVI* factors), they are not permitted to proceed in this transformative manner. Accordingly, we reverse the circuit court's denial of Property Owners' Motion to Release.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART, REVERSED IN PART, AND VACATED IN PART. CASE REMANDED TO THAT COURT FOR PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID AS FOLLOWS: 60% BY APPELLEES AND 40% BY APPELLANTS RONALD COHEN INVESTMENTS, INC. & RONALD COHEN MANAGEMENT COMPANY.