Circuit Court for Montgomery County
Case No. 430511-V

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 914

September Term, 2021

QUN LIN

v.

JOSE ANGEL REYES CRUZ, ET AL.

Arthur,
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Leahy, J.

Filed: January 11, 2023

Qun Lin ("Appellant") appeals from the ruling by the Circuit Court for Montgomery County that he was liable as an employer for unpaid wages owed to Jose Angel Reyes Cruz, Jose Emanuel Sanchez Vazquez, and Clemente Garcia Martinez ("Appellees" or "Employees").

Appellant returns to this Court after we vacated the prior judgments against him and "order[ed] a limited remand" for the trial court, "based on the evidentiary record already before" it, to "conduct further proceedings and render further factual findings under the appropriate theories of liability discussed in [our] opinion." *Qun Lin v. Cruz*, 247 Md. App. 606, 642 (2020) ("*Qun Lin I*"). Specifically, we directed the court to review the record and determine whether Appellant was liable for payment of the wages as an employer based on: his operation of the restaurant business as a sole proprietorship; on piercing the corporate veil of co-defendant Teppanyaki Grill & Supreme Buffet, Inc. ("Teppanyaki Grill"); or, on the "economic reality test" ("ERT") implementing the "broad remedial purposes" of the Fair Labor Standards Act ("FLSA"), the Maryland Wage and Hour Law ("MWHL"), and the Maryland Wage Payment and Collection Law ("MWPCL"). *See id.* at 632-42.

Applying the ERT factors and the broad remedial purposes of the FLSA and corollary Maryland statutes, the trial court determined that Appellant was liable as an employer and entered judgment against him for Employees' unpaid wages. The court again rejected Appellant's claim that he merely signed the commercial lease for the premises as a favor to 22-year-old co-defendant Wei-Guang Chen ("Mr. Chen"), whom Appellant has insisted was the owner and operator of the restaurant. Instead, the court credited

countervailing evidence, finding that Mr. Chen was only the restaurant manager, that Appellant was in the restaurant business and put himself at significant financial risk, and that Appellant consistently held himself out as the owner and operator of Teppanyaki Grill.

Appellant challenges the trial court's judgment holding him liable as an employer and awarding attorneys' fees against him. Appellant presents three questions and corresponding sub-issues for our review,[1] which we have consolidated and reworded as follows:

I. Did the trial court err in finding Appellant liable for unpaid wages owed to the Employees?

II. Did the trial court err or abuse its discretion in awarding attorneys' fees to the Employees?

Discerning no error or abuse of discretion, we affirm the judgment.

[1] In his brief, Appellant frames the issues as follows:

1. "Did the trial court err in finding Appellant was an owner and operator of Co-Defendant Teppanyaki Grill & Supreme Buffet, Inc.?
   A. Reliance solely upon the Lease, without any other indicia of ownership, was plain error.
   B. Court's analysis of Appellant Lin being a [] sole proprietor was plain error.

2. Did the trial court err in finding Appellant was an employer pursuant to the Economic Realities Test?
   A. No Evidence that Appellant Hired, Fired or Paid Wages

3. Did the trial court err in awarding attorneys['] fees?
   A. The trial court's award of attorneys' fees on evidence that Appellant Qun Lin was an employer and in control of the corporation was erroneous."

BACKGROUND

Vacated Judgments: Proceedings Before Remand

In *Qun Lin I*, we set out the procedural history that preceded trial in the underlying case:

> The complaint for unpaid wages, filed in the Circuit Court for Montgomery County on February 27, 2017, alleged that the Employees worked at Teppanyaki Grill and that Weiguang Chen owned and/or operated Teppanyaki Grill at all relevant times during their employment. It also alleged that Mr. Chen had the authority to "hire, fire, suspend, and otherwise discipline" the Employees. The complaint set forth the time periods that the Employees worked at Teppanyaki and alleged that, during the time that they worked there, Mr. Chen failed to pay them minimum wage or overtime pay in violation of federal (FLSA), state (MWHL, MWPCL), and county (MCMWA) law.
>
> Six weeks later, an amended complaint added three other employees as plaintiffs. Finally, on June 16, 2017, a second amended complaint added, as defendants, [Appellant] and "Li Lin." It alleged that Appellant and Li Lin were *also* employers during the time that all of the employees worked at Teppanyaki Grill.
>
> * * *
>
> Appellant and Li Lin filed their answers on September 18, 2017, as well as oppositions to the order of default that had been entered against them four days earlier. In his opposition, Appellant asserted that he was not the owner of Teppanyaki Grill and, thus, the suit against him failed to state a claim. In support of this contention, he submitted records from the State Department of Assessments and Taxation ("SDAT") that named Mr. Chen as the business owner. He also noted that he lived in Flushing, New York, and alleged that he had no regular contact with either Rockville, Maryland, or Teppanyaki Grill. Li Lin's opposition was virtually identical.

247 Md. App. at 615–17 (footnotes omitted) (emphasis in original).

We also described the lease agreement, and two amendments thereto, for the commercial restaurant space:

> The lease agreement is a 29-page-document, plus exhibits, that sets forth the terms of the lease. The first page confirms that it is an agreement between "Washington Real Estate Investment Trust ('Landlord')" and "Qun Lin, an

> individual ('Tenant'), d/b/a Flaming Grill Buffet." Appellant signed the lease on September 30, 2013. The term of the lease was 10 years and six months, and the parties anticipated it would commence on January 1, 2014.
>
> The fixed minimum rent was $23,375.00 per month and the lease contained an escalation clause that increased the rent by 1.5% each year. By signing the lease, Appellant agreed to send a statement of gross sales to the landlord each month. He also agreed to pay 7.27% of the real estate taxes on the property. Under "Permitted Use" the lease provides: "Tenant will use and occupy the Premises solely for the following express use(s) and purpose(s) and for no other use or purposes: sit down Asian buffet restaurant serving items generally consistent with the menu items attached hereto as Exhibit 'E', and for no other purpose[.]" Section 5.3 of the Lease, entitled "Operation of Business" states, in part, that "Tenant agrees (1) except as herein otherwise provided, to continuously and uninterruptedly occupy and use the entire Premises during the entire Term and any Renewal Term(s) for the uses herein specified (without consideration of the profitability of the business) and to conduct Tenant's business therein in a reputable manner[.]" Article IX of the Lease sets forth detailed provisions governing assignment and subletting, beginning with the specification that "Tenant shall not assign this Lease or any of Tenant's rights or obligations hereunder, or sublet or permit anyone to occupy the Premises or any part thereof, without the prior written consent of Landlord which shall not be unreasonably withheld, conditioned or delayed."
>
> The First Amendment to the lease was signed by Appellant on April 23, 2014. The amendment changed Tenant's trade name from "Flaming Grill Buffet" to "Teppanyaki Grill and Supreme Buffet." It also amended other provisions of the lease not relevant to this appeal, including the date by which the landlord was required to deliver the Premises.
>
> The second amendment to the lease was also an assignment of the lease. It was signed by Appellant on July 25, 2017. It assigned the lease from "Qun Lin, an individual dba Teppanyaki Grill and Supreme Buffet" to "Rock Hot Pot & BBQ, Inc., a Maryland corporation, dba Kpot Hot Pot & BBQ." Appellant signed as the assignor and on behalf of the assignee.

Qun Lin I, 247 Md. App. at 618–20.

The case was tried to the court over two days, beginning on June 5, 2018. *Id.* at 620. Mr. Chen did not appear for trial, having apparently advised counsel for the

Employees that he was in an undisclosed location in Florida and that he did not intend to return. *Id.* The Employees' counsel requested that the court find Mr. Chen in contempt and issue a warrant for his arrest, or, in the alternative, allow counsel to read Mr. Chen's deposition testimony into evidence. *Id.* Ultimately, in lieu of issuing the warrant, the court accepted Mr. Chen's deposition testimony upon the agreement of the parties present, and trial proceeded against the remaining defendants—Appellant and his son, Li Lin.[2] *Id.* The Employees testified to the details of their employment at Teppanyaki Grill:

> They all identified the manager as a man named Ray, and none were able to identify Appellant or Li Lin. They each claimed they were hired, fired, and paid by the man named Ray. Each Employee testified to the hours he worked and wage he was paid. For example, Mr. Cruz testified that he worked at Teppanyaki Grill from June 17, 2015 until October 12, 2016. During that time, he worked 12 hours per day, six days per week. He was paid in cash every 15 days and was never paid overtime. His starting pay was $1,700 per pay period but was eventually increased to $1,750 and then $1,800. Mr. Vasquez similarly testified that he worked 73 hours per week during his time as an employee of Teppanyaki Grill. He was paid between $1,600 and $2,000 per month in cash and was never paid overtime. Lastly, Mr. Martinez testified that he worked at Teppanyaki Grill for almost four years and was never paid overtime wages. He worked 74 hours per week during his time there and was paid $1,800 per month to start and made $2,000 per month by the time he was let go.

Id. at 620-21.

Robert Goldman, Esq., also testified as part of the Employees' case-in-chief. Mr. Goldman explained that he represented Teppanyaki Grill in 2017 "in negotiating or trying to renegotiate its lease with Washington Real Estate Investment Trust" to assign the lease from Teppanyaki Grill to a new entity, Rock Hot Pot & BBQ, Inc. *Qun Lin I*, 247 Md.

[2] A default order was entered against the Teppanyaki Grill on September 18, 2017.

App. at 621. Mr. Goldman testified that he initially thought that Mr. Chen was the owner, but that when he began representing Mr. Chen in the instant case, Mr. Chen executed interrogatories indicating that the Lins were the owners. *Id.* On cross-examination, however, Mr. Goldman observed that he had never seen any proof that Li Lin was the owner of Teppanyaki Grill or that Li Lin had held himself out as such. *Id.* Mr. Goldman also noted that the documents filed with SDAT list Mr. Chen as the owner of Teppanyaki Grill. *Id.*

Appellant, who does not speak, read, or write English, testified next with the help of an interpreter. As we recounted in *Qun Lin I*, Appellant's testimony reflected the following:

> He acknowledged that he was the tenant on the lease for Teppanyaki Grill. He stated that, although his signature was on the amendment to the lease, he did not execute the amendment. He said that it was all done by lawyers, and he was not clear whether there was a subsequent amendment either. He also testified that he did not recall assigning the lease to [Rock] Hot Pot & BBQ and that he was not the owner of that restaurant either.

Qun Lin I, 247 Md. App. at 621-23 (cleaned up).

Li Lin testified next and flatly denied having any ownership interest in the restaurant. *Id.* at 623. He said that his father helped Mr. Chen by leasing the space because of familial and geographic ties between their respective families. *Id*. Li Lin explained that he provided $20,000 to pay the rent for Teppanyaki Grill because he was worried that, if he did not, it would harm his father's reputation. *Id*. He also admitted that he incorporated Rock Hot Pot & BBQ, Inc., but explained that he initially transferred the business to his father and then his father transferred it to a man named John Ling. Li Lin steadfastly

maintained that there were no agreements between himself and Mr. Chen and that he had no ownership interest in Teppanyaki Grill. *Id.* at 623-24.

Finally, the defense recalled the Employees, each of whom identified Mr. Chen from his driver's license photo and testified that Mr. Chen was the manager of Teppanyaki Grill who hired them, paid them, and eventually fired them. *Id.* at 624. They all similarly testified that they had never met the Lins. *Id.*

At the conclusion of the trial, the circuit court explained its decision to enter the judgments against Appellant and Teppanyaki Grill, jointly. The trial court found that each of the individual Employees "worked at the premises" for specified time frames, hours, and wages that Appellant did not dispute. The court described the connection between Mr. Chen and Li Lin:

> I find that Weiguang Chen, also known as Ray Chen, based upon the testimony of the [Employees], worked at the premises as well. I will find that relying upon a driver's license issued by the state of Maryland, Mr. Chen was born December 12, 1990 so he is currently 28 years of age. At the time [the] lease was entered into by [Appellant] and Washington Real Estate Investment Trust on September 30, 2013, Mr. Chen was 22 years of age, soon to be 23.
>
> From the testimony I also find that Li Lin, in this case, the younger Mr. Lin and Mr. Weiguang Chen were related through the younger Mr. Lin's wife. Mr. Lin's wife and Mr. Chen were from the same village in China.

The judge next highlighted the "facts I really relied upon with regards to making the decision I'm making":

> The conclusions I draw from this is that by signing the lease which included the language, the following language specifically, the tenant will use and occupy the premises. And in signing the first amendment . . . [Appellant] represented to the landlord that he would use and occupy the premises to run

> an Asian sit-down buffet. I'm sorry[,] that was based upon the language in the first original lease.
>
> Then by signing the first amendment on April 23, 2014 [Appellant], as tenant and the Washington Real Estate Investment Trust as landlord signed the document which stated, and I'm quoting, tenant will conduct business in the premises in the trade name of Teppanyaki Grill & Supreme Buffet. The sentence goes on but that's exactly what appears in the first amendment.
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> Then in the second amendment, which was also the assignment signed on July 25, 2017 [Appellant] represented to his landlord and the assignee that he, alias, Yun Lin, was an individual doing business as Teppanyaki Grill & Supreme Buffet. So, from this evidence, I believe that [Employees] have met that burden that [Appellant] was the owner of the business during the time period the [Employees worked], meaning the three who appeared in court and testified, worked at the Teppanyaki Grill & Supreme Buffet.
>
> [Appellant] wants me to accept the argument that he signed the lease to help Mr. Chen out. And it was his testimony that Mr. Chen was the owner of the business. I simply do not find it plausible that someone would risk the financial exposure created in the lease to help out someone who was just 22 years of age. That simply doesn't make sense to me.
>
> [Appellant] held himself out to be the owner of the business at the premises to the landlord, and I believe he was the owner. And he held himself out both in the original lease, the amendment and then also in the second amendment and the assignment that was dated in 2017.
>
> If he was just a guarantor on the lease on behalf of Mr. Chen, as he argued, then the documents regarding that type of arrangement, could have been made and prepared.

With respect to the three former employees who did not appear at trial, the court found they failed to meet their burdens of proving when and how much they worked, as well as "how much they were paid." As for "the younger Mr. Lin[,]" the court found the evidence insufficient to prove that he "was an owner of the property[,]" noting that "[t]o do so would require me to accept the deposition testimony of Mr. Chen[,]" who "did not appear" at trial so that the court "was not able to adequately a[ss]ess his credibility." With

respect to "Mr. Chen's exposure in this matter," the court "did not believe that it has been shown that he had the [wherewithal] and authority to hire and fire." Finding "no evidence presented by" either the Employees or the Lins to show that Mr. Chen had such authority, the court explained that, "there's no evidence in front of me that he could hire and fire employees and without that then I can't hold him as an owner and find him liable for the damages."

The trial court then found that "no [bona fide] dispute existed regarding the wages an employee was owed for the work performed" and trebled the amount of wages due to each of the remaining employees. After deciding to enter judgment against Appellant and Teppanyaki Grill, jointly, the court authorized the parties to present additional evidence regarding attorneys' fees. By written Opinion and Final Order entered on November 2, 2018, the trial court cited the findings of fact and conclusions of law made on the record on July 27, 2018. The court entered judgments for back wages in the amounts set forth previously, against both Appellant and Teppanyaki Grill, as "owners of the restaurant." Specifically, Mr. Martinez was awarded $173,844.15; Mr. Vazquez was awarded $146,587.58; and Mr. Cruz was awarded $66,939.60.

With respect to attorneys' fees, the trial court noted that it had "reserved its decision" following its bench ruling on liability. After the trial court's bench ruling, on July 27, 2018, the Employees filed a "Motion for Award of Statutory Attorney's Fees and Costs (DE#110)," and Appellant filed his opposition. The trial court issued its written decision on attorneys' fees, citing provisions in the MWHL and MWPCL that allow the liberal exercise of discretion in awarding fees and costs to ensure "'that the law is obeyed.'"

After reviewing applicable legal standards, the parties' arguments, and the mandatory factors governing its decision regarding attorneys' fees, pursuant to Maryland Rule 2-703(f)(3), the court concluded that "[t]his is an appropriate case to award attorney's fees against" Appellant and that "there is no bona fide dispute" as to whether Appellant owed the wages. As we will review below in Part II, the court made itemized findings with respect to each of the twelve factors identified in Rule 2-703. Ultimately, the court awarded $47,186.50 as "the appropriate initial lodestar amount for fees[,]" with "no adjustment downward or upward[,] . . . to be equally divided between" the three Employees, plus "the costs of $3,939.35 . . . to be equally divided[.]"

First Appeal

On appeal, this Court vacated the judgments and remanded the case to the trial court. *See Qun Lin I*, 247 Md. App. at 642. After reviewing the possible theories for holding Appellant liable as an owner and employer, we explained:

> It is unclear from the trial judge's opinion whether he found, as the Employees urge, that Appellant was operating the business as a sole proprietor. Although the Employees advance an argument for piercing the corporate veil, the judge's ruling is inconclusive as to whether he intended to disregard Teppanyaki Grill's corporate form and, if so, on what basis. The waters are further muddied by the fact that Teppanyaki Grill was set up as a corporation in Mr. Chen's name. Based on the SDAT documents, Mr. Chen was the sole owner and shareholder of Teppanyaki Grill.
>
> On the other hand, the court may have intended to find that Appellant was an employer under the economic reality test to effectuate the FLSA's broad remedial purposes and hold Appellant accountable for the Employees' wages. If that is the case, then the circuit court must apply the control factors of the economic reality test and explain its ruling under that theory of liability.

> Accordingly, we vacate the judgment and order a limited remand so that the circuit court can, based on the evidentiary record already before the court, conduct further proceedings and render further factual findings under the appropriate theories of liability discussed in this opinion. *See Funes v. State*, 469 Md. 438, 475 (2020) ("A limited remand is proper where the purposes of 'justice will be served by permitting further proceedings[.]'"(quoting Maryland Rule 8-604(d)(1))). We do not pass any judgment on the outcome of an appeal following the court's clarification of its reasoning.

Id. at 641-42.

Post-Remand Proceedings

On remand, the trial court received briefing and oral argument on the liability question. At a hearing on June 23, 2021, the court determined that the facts surrounding each individual employee's claims for minimum and overtime wages were "undisputed[.]" The court identified the only contested question as "who is legally responsible for the failure to pay the wages that the [Employees] were legally entitled" to receive. Acknowledging this Court's mandate to "explain the legal theory" that it was relying on to support the entry of the judgments against Appellant, the court recognized "the possible theories of liability which may apply" as "personal liability because of a piercing of a corporate veil, personal liability of a sole proprietor and personal liability under the Federal and Maryland Wage and Hour laws."

In a bench ruling extending over 14 pages of transcript, the court detailed why it was holding Appellant personally liable for the unpaid wages under the economic reality test of the FLSA and corollary Maryland wage payment statutes. After making predicate findings regarding the employment history and claims by the Employees, the court then

credited the undisputed evidence regarding Appellant's restaurant background and his role as tenant under a long-term commercial lease for the restaurant:

> It is . . . undisputed that [Appellant] was in the restaurant business. On September 30, 2013 [Appellant] executed a commercial lease with Washington Real Estate Investment Trust for the operation of a business known as Flaming Grill Buffet, a sit-down Asian buffet restaurant located at the premises located at 5550 Randolph Road. [Appellant] signed the lease in his individual capacity. The term was for a period of 10 years and six months. The anticipated delivery date of the premises was January 1, 2014.
>
> Initially the annual rent totaled $280,500 and was subject to one-and-a-half percent per year escalation clause. Under the lease, [Appellant] assumed financial liability of at least $2,945,000 during the full term of the lease. It is also undisputed that on April 23, 2014 [Appellant] again signing in his individual capacity signed a first amendment to the lease with the landlord with [Appellant] in his individual capacity being identified as the tenant. The amendment changed the anticipated delivery date to May 1, 2014 and changed the trade name by which [Appellant] would operate the restaurant from Flaming Grill Buffet to Teppanyaki Grill & Supreme Buffet. Specifically the first amendment stated tenant will conduct business on the premises in the trade name Teppanyaki Grill & Supreme Buffet. Tenant shall not change or modify such trade name or use any other trade name without prior written approval of [Landlord].
>
> Then on July 25, 2017 [Appellant] signed a second amendment to the lease, an assignment of lease as the assignor. I'm going to have a little bit more to stay about the second amendment in a few moments but by these documents he [as]signed the lease to Rock Hot Pot & BBQ, Inc. doing business as K-Pot Hot Pot & BBQ. Prior to signing the second amendment, [Appellant] signed a guarantee dated June 28, 2017 by which he personally guaranteed the lease that was being assigned to the Rock Hot Pot corporation. The guarantee was appended to the second amendment.

The court then acknowledged the legal standards governing its determination of the employer issue under the economic reality test, drawing from our decision in *Qun Lin I* and outlining the four ERT factors. With respect to "the first factor, the power to hire and

fire[,]" the court acknowledged the evidence was conflicting but accepted the Employees' testimony that Mr. Chen had such authority:

> [Appellant] notes and I find that the [Employees] were unable to recognize [Appellant] at trial and testified that they have never seen [Appellant] before. The first factor focuses on who has the capacity to hire or fire someone. In the Pinnacle Group case the Court noted that what should be determined is who has the power to hire and fire as opposed to exercising that power.
>
> The [Employees] testified and I find that each of them worked in the kitchen of the restaurant often referred to as the back of the house. They also testified that Mr. Chen hired and fired them. This testimony directly conflicted with Mr. Chen's deposition testimony which was admitted at trial. Mr. Chen stated that he did not fire or hire anyone in the back of the house. At his deposition Mr. Chen testified that regarding those he could hire and fire he was not permitted to do so without obtaining approval from either [Appellant] or his son.
>
> I accept [the Employees'] testimony and find that Mr. Chen hired them and fired them. Each of the [Employees] were able to identify Mr. Chen through his photograph. And their credibility with me was bolstered because they clearly stated that [Appellant] did not hire or fire them. And in a way that was against their interest. But again, I'm looking at who had the authority and power to hire and fire, not the person who exercised the power.

Moving on to the second factor, "the supervision and control of the employees' work schedule or their employment conditions[,]" the court found there was scant evidence as to who set the Employees' schedules and work duties:

> Although the [Employees] testified to what their schedules were, there was little or no testimony as to who set the schedules other than Mr. Chen testifying that the kitchen manager made the schedule for the back of the house employees. [Employees] did not testify to who set the schedule. Mr. Chen also testified that the owners[,] meaning in his mind both [Appellant] and his son[,] made the schedule.
>
> Mr. Chen claimed he had nothing to do with schedules. And even if I were to accept Mr. Chen's version regarding the setting of schedules, I have no testimony showing that [Appellant] either directly or through the kitchen manager set the schedule for the [Employees]. This is not a final

> determinative factor regarding [Appellant's] liability but it is a factor that I have considered.

Regarding the third factor in the ERT, "the rate and method of payment[,]" the trial court reviewed the conflicting evidence concerning salaries and paydays:

> Mr. Chen testified that [Appellant] through his son told him the amount of salary to pay to employees. As for the method of payment, all three [Employees] testified they were paid in cash by Mr. Chen. Mr. Chen contradicted this testimony by saying that though he paid the front staff, he did not pay the back of the house staff. He further testified that he did not control the cash at the end of the day. He said the kitchen manager would take control of the cash.
>
> I find the [Employees] were paid in cash handed to them by Mr. Chen. On this point I did find the [Employees] credible and I do not accept Mr. Chen stating that he had no control. At one point he said he had no control over the cash but then later he said he paid the front of the house staff with cash. So I've taken all of this into consideration in making my determination.

For the fourth factor, the trial court considered the lack of wage and payment records:

> Now the next is the maintenance of employment records and the one difficulty of this case is the total lack of any written records relating to the [Employees'] employment so I've taken that into consideration.

Finally, the trial court turned to an examination of business records bearing on ownership of the restaurant, including corporate organization documents and lease documents that Appellant executed over the course of several years:

> The next is ownership interest. An individual's ownership interest in the business may be relevant indicia of the control and responsibility sought by the economic reality test as was stated in the Pinnacle Group case.
>
> While [Appellant] raised Mr. Chen's status as sole shareholder of Teppanyaki Grill and supported by his apparent signature on the SDAT documents from 2014, I note that Mr. Chen disputed having any ownership interest in the restaurant as well as ever having signed his name to those documents. I would again point out that during his deposition Mr. Chen who is a young man with no prior ownership interest and also had trouble when

> asked questions about a bookkeeper. So he had no experience and I think that's an indication that he didn't have any ownership in the Teppanyaki restaurant. Courts are not to apply the factors of the economic reality test mechanistically. . . . And other relevant situational factors are to be given due regard.
>
> So I want to point [out] and talk about findings I'm making with regard to the lease and the lease amendments signed which [Appellant] signed representing himself to be the owner of the business. Again when considering the totality of the circumstances the pertinent issue of the lease and subsequent amendments thereto all signed by [Appellant] in my mind clearly show control. The lease serves as a relevant indicia of ownership [because] by signing the lease and the subsequent amendments thereto [Appellant] assumed sole financial responsibility of over two point [nine] million dollars of potential liability.
>
> I continue to find [Appellant's] justification of taking such a burden [not credible]. And again his explanation is he was helping a very young man, 22 or 23-years-old at the time, a distant relative to his son's wife. I just don't find that credible. The only plausible conclusion I can draw for [Appellant] taking on this substantial risk is the anticipated proceeds of a business that he wanted to receive.
>
> As sole tenant of the first amended lease [Appellant] represented that he would personally operate and conduct the business on the premises [sic] [in] the trade name of Teppanyaki Grill & Supreme Buffet. Within the lease terms was a provision forbidding the assignment [of] any rights or obligations of the signatory to anyone without the prior written consent of the landlord. The significance of this lease contributes to the totality of the circumstances which I am to consider when making this decision and I do give it weight.

Ultimately, the trial court found that Appellant was an employer within the scope of the FLSA and Maryland wage payment statutes, based on his history in the restaurant business, his statements contained within the lease documents that he owned and operated Teppanyaki Grill, his undertaking of significant financial risk and responsibility for the restaurant business, his son's payment of overdue rent, his reassignment of the lease to a

successor restaurant business that he alone controlled, and his personal guarantee of lease payments owed by that successor. The court stressed that:

> Additional evidence of control by [Appellant] which manifested itself in the decision and the manner in which the Teppanyaki business was closed. It's uncontrovertible and the documented evidence shows in this case that in that second amended lease[,] the lease was signed by [Appellant] in an individual capacity as [assignor]. But then he signed as president of Rock Hot Pot & BBQ, Inc., [assignee]. Now [Appellant] testified at trial that he did not have an ownership interest in the Rock Hot Pot business but he did form it. Initially his son was listed as the registered agent for Rock Hot [Pot] but then [Appellant] changed the resident agent and he identified his signature on the form that was sent to SDAT changing the name of the resident agent from his son to him. And I also state that he signed that as secretary or assistant secretary or general partner or authorized person.
>
> In short, the amendment, second amendment is signed by [Appellant] individually as the [as]signor and signed by him as president of the Rock Hot Pot corporation. The extent of ultimate control and responsibility is thus transferring the ownership of the business to a separate business [and] is sufficient to contribute to the showing that [Appellant] and not Mr. Chen was the responsible party in this case. I will also note that what was attached to this second amendment was a guarantee that [Appellant] signed individually. I find that significant because if he was just helping out Mr. Chen when the initial lease was signed . . . he could've signed as the guarantor there and recognize[d] that the business was going to be run by Mr. Chen.

After reviewing this evidence in light of all the ERT factors, the court found Appellant liable for violating the FLSA, MWHL, and MWPCL:

> So considering the totality of circumstances and guided by the economic reality test I am going back to the recognized purpose of the Federal and State laws in that certain [protections] must be in place for those who provide their time and skills to another so that other person may profit. I believe that [Appellant] stood to profit from the labor of the [Employees] and they were not [paid] the minimum wages and overtime [sic] for which they were entitled under the law. As a result I am going to reinstate the previous judgements entered in favor of the [Employees] against [Appellant]. And as for the attorney's fees I adopt the findings and the conclusions of law stated in the opinion at docket entry 113 and I direct that the award of attorney's fees be reinstated as well.

The court entered a written order, "intending [it] to be a final judgment," ordering Appellant liable to each employee, respectively, for $66,939.60; $146,587.58; and $173,844.15, plus an additional $17,041.95 to each employee for attorneys' fees. Appellant noted this timely appeal.

DISCUSSION

I.

Employer Liability

Standard of Review

In this appeal, we apply the same standards that governed our review of the vacated judgments:

> On appeal of a non-jury action, we review the trial court's legal conclusions de novo and its evidentiary findings for clear error, giving "due regard to the opportunity of the trial court to judge the character of the witnesses." Md. Rule 8-131(c); *Cunningham v. Feinberg*, 441 Md. 310, 322 (2015). "The determination of whether a defendant qualifies as an employer presents a mixed question of law and fact." *Pinnacle Grp., LLC v. Kelly*, 235 Md. App. 436, 471-72 (2018), *cert. denied sub nom. Pinnacle Grp. v. Kelly*, 459 Md. 188 (2018). "Although the ultimate conclusion is a question of law on which we grant the circuit court no deference, the analysis includes several factual determinations on which we must defer to the circuit court's findings unless clearly erroneous." *Id*. We "must consider evidence that [wa]s produced at the trial in a light most favorable to the prevailing party, and, if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous, and cannot be disturbed." *Pettiford v. Next Generation Tr. Serv.*, 467 Md. 624, 639 (2020).

Qun Lin I, 247 Md. App. at 627.

A. Parties' Contentions

Appellant contends that the trial court "abused its discretion" in finding that he was liable for unpaid wages as an owner and operator of Teppanyaki Grill. In Appellant's view,

the trial court's reliance "solely upon the Lease" and its "analysis of Appellant Lin being a sole proprietor" constituted "plain error."[3] According to Appellant, the trial court's focus on the lease was misplaced because every ERT factor weighed against a determination that he was an employer liable for the Employees' unpaid wages.

The Employees respond that the trial court did not err in finding that Appellant is an employer under the "economic reality test (ERT)" governing liability under the FLSA and corresponding Maryland wage payment statutes. They posit that the trial court correctly found that Appellant was liable as an employer based on his ownership and control of the restaurant. We agree.

For reasons that follow, we hold that the trial court did not err in applying the statutory standards governing employer liability because of Appellant's overriding ownership interest in, and operational control over, the restaurant business.

B. Statutory Liability Under the FLSA, MWHL, and MWPCL

As we recognized in *Qun Lin I*, the remedial purposes of the FLSA and Maryland's corollary wage protection statutes merit broad construction to achieve the goal of ensuring

[3] We note that our review of the post-remand liability judgments is not governed by the "plain error" and "abuse of discretion" standards, as Appellant contends. Plain error review, which is entirely discretionary and deliberately rare, applies only when an appellant challenges a judgment on a ground that he or she failed to raise in the trial court. *See generally* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal."). That did not happen here. And, although abuse of discretion applies to our review of the amount of attorneys' fees as discussed in Part II, on the question of liability as an employer, we only defer to the court's factual findings and review the court's legal conclusions without deference. *See Qun Lin I*, 247 Md. App. 606, 627 (2020).

that employees are fully compensated for their labor. *Qun Lin I*, 247 Md. App. at 631. Indeed, the FLSA is "'remedial and humanitarian in purpose'" and was enacted by Congress to protect "'the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others.'" *Id.* (quoting *Ross v. Wolf Fire Prot., Inc.*, 799 F. Supp. 2d 518, 522-23 (D. Md. 2011)). Likewise, Maryland provides employees with a mechanism "to recover wages withheld unlawfully from them by their employers under two statutes: the Maryland Wage Payment and Collection Law ('MWPCL') and the Maryland Wage and Hour Law ('MWHL')." *Cunningham v. Feinberg*, 441 Md. 310, 322 (2015) (citing *Peters v. Early Healthcare Giver, Inc.*, 439 Md. 646, 652-53 (2014)). The MWHL is the state equivalent of the FLSA and, like the FLSA, requires that employers "'pay an overtime wage of at least 1.5 times the usual hourly wage for each hour over 40 that an employee works during one workweek.'" *Newell v. Runnells*, 407 Md. 578, 649 (2009) (quoting *Friolo v. Frankel*, 373 Md. 501, 513 (2004)); Maryland Code (1991, 2016 Repl Vol.), Labor & Empl. Art. ("LE"), § 3-415(a).

Employer liability for unpaid wages, in the context of these statutes, "is not limited by the common law concept of 'employer[.]'" *Newell*, 407 Md. at 649-50 (quotation omitted). Rather, an employee may have multiple employers at any given time because, at least under the FLSA, "a company's owners, officers, or other supervisory personnel may be held individually liable for FLSA violations, regardless of whether they have chosen to do business in the corporate form." *Qun Lin I*, 247 Md. App. at 633 (footnote omitted). Similarly, on two prior occasions, this Court has affirmed the imposition of employer liability against individuals for violations of Maryland's wage and hour laws, even though

the individuals had sought to limit their exposure by forming limited liability companies. *See Pinnacle Grp., LLC v. Kelly*, 235 Md. App. 436, 448, 473-75 (2018) (concluding that the trial court properly applied the economic reality test in determining that the sole owner of Pinnacle Group, LLC, an umbrella company which owned LifeMatters, was Kelly's employer and liable for, *inter alia*, failing to pay Kelly overtime wages); *Campusano v. Lusitano Construction LLC*, 208 Md. App. 29, 34, 39-41 (2012) (holding that the trial court did not err in finding that the sole owner of Lusitano Construction, LLC was Campusano's employer and liable for violating the FLSA).

In determining whether a person qualifies as an employer, we apply the economic reality test, which utilizes "four factors to determine an individual's level of 'control' over an employee." *Pinnacle Grp.*, 235 Md. App. at 472-73 (footnote omitted). Those factors include whether the employer "(1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records." *Campusano*, 208 Md. App. at 39-40 (quotation omitted). Ultimately, the economic reality test is flexible in nature and is not "to be applied mechanistically" because the 'general purpose must be understood as ultimately assigning *responsibility* under the law.'" *Pinnacle Grp.*, 235 Md. App. at 473 (quoting *Campusano*, 208 Md. App. at 40) (emphasis in original). Accordingly, it is "the totality of the circumstances, and not any one factor, which determines whether a worker is the employee of a particular alleged employer." *Id.* at 474 (quotation omitted).

The four-factor ERT test, moreover, does not end the inquiry as other "relevant indicia" may also exist, such as, "an individual's operational control of the business and an individual's ownership interest in the business." *Campusano*, 208 Md. App. at 40 (quotation omitted). While we have not had occasion to discuss at length the concept of "operational control," our sister courts have delineated guiding principles which inform our analysis. In *Irizarry v. Castimatidis*, the United States Court of Appeals for the Second Circuit observed that an individual "exercises operational control over employees if his or her role within the company, and the decisions it entails, directly affect the nature or conditions of the employees' employment." 722 F.3d 99, 110 (2d Cir. 2013). That level of control, however, does not require intimate familiarity with "managing plaintiff employees—or, indeed, that he or she must have directly come into contact with the plaintiffs, their workplaces, or their schedules." *Id.* In fact, operational control "does not require continuous monitoring of employees, looking over their shoulders at all times, or any sort of absolute control." *Herman v. RSR Sec. Servs. Ltd.*, 172 F.3d 132, 139 (2d Cir. 1999). Rather, a level of latent control "may be restricted, or exercised only occasionally, without removing the employment relationship from the protections of the FLSA[.]" *Id.* What matters is that the purported employer exercised significant control over the functioning of the business "in a manner that relates to a plaintiff's employment" rather than simply making "corporate decisions that have nothing to do with an employee's function." *Irizarry*, 722 F.3d at 109; *accord Donovan v. Agnew*, 712 F.3d 1509, 1514 (1st Cir. 1983) ("We review the liability of corporate officers with a significant ownership interest who had operational control over significant aspects of the corporation's day to

day functions, including compensation of employees, and who personally made decisions to continue operations despite financial adversity during the period of nonpayment.").

With respect to ownership, we have previously found that the ownership interest of a purported employer is an important factor in the totality of the circumstances analysis. *Campusano*, 208 Md. App. at 40-41. In *Campusano*, we held that the lack of an ownership interest in the business can preclude a finding of employer liability even where an individual exercises significant supervisory authority. *Id.* We concluded that a project supervisor did not qualify as an employer because while he "supervised and controlled appellants' work schedules and conditions of employment . . . these supervisory tasks are not sufficient to make him personally liable for appellants' wages, particularly where he had no ownership, control, or investment in the LLC that was appellants' formal employer." *Id.* at 40. To hold otherwise, we observed, "would set the precedent that any manager who has some direction in hiring, wages, and other conditions of employment is *personally liable* for wages that the manager's own employer is unable or unwilling to pay." *Id.* at 41 (emphasis in original).

At the same time, we have also reiterated that "being the sole owner of [a company] does not alone subject one to personal liability" absent at least some participation in the company's business affairs. *Pinnacle Grp.*, 235 Md. App. at 473. Nonetheless, in *Pinnacle Group*, we concluded that the sole owner of an LLC qualified as an employer for purposes of the MWHL and MWPCL because he maintained final authority over all personnel decisions. *Id.* at 474-75. Although the owner steadfastly maintained that he had subordinate managers handle the hiring, firing, scheduling, and payroll of employees, we

emphasized that the "delegation of such supervisory tasks [was] insufficient to shed his legal liability." *Id.* Instead, we concluded that the owner remained an employer because he retained "the *capacity* to hire or fire someone" as well as "'total control' over the [employees'] rate and method of payment." *Id.* (emphasis in original).

With these principles in mind, we return to the case at hand. As we have set forth in detail, the trial court reviewed the full evidentiary record in light of each ERT factor, resolving conflicts in the evidence, making credibility findings, and clarifying the statutory basis for its judgment holding Appellant liable for unpaid wages as an employer. Concluding that Appellant owned Teppanyaki Grill and otherwise had the capacity to exercise control over restaurant operations, the court held Appellant liable for undercompensating the Employees in violation of the federal and state wage payment statutes. As we explain, we discern no error in the trial court's application of the ERT factors and the broad remedial purposes of the FLSA, MWHL and MWPCL to the circumstances presented on this record.

C. Appellant's Ownership Interest

In this case, the trial court found that Appellant had an ownership interest in Teppanyaki Grill primarily based on the guaranties and the lease and amendments thereto which Appellant signed in his individual capacity, culminating in Appellant's assignment of Teppanyaki Grill's "right, title and interest in and to the Lease for the Premises" to a separate business that he owned. Appellant, however, claims that the Court based its decision entirely on a lease that showed, at best, that he was merely a tenant and had "a right of possession in the commercial space." Appellant urges that "[w]ithout further

indicia of ownership or control of the Corporation, reliance upon this piece of evidence, alone, is reversible error." We disagree.

Although a tenant does enjoy a right of occupancy by virtue of a leasehold interest, it is undisputed that Appellant also made material representations about his ownership and operation of the restaurant in order to obtain the lease. In the original lease dated September 30, 2013, Appellant represented to the landlord that he was "an Individual ('Tenant'), d/b/a Flaming Grill Buffet" and that he would not "permit anyone to occupy the Premises" without the landlord's consent. Likewise, in the first amended lease, dated April 23, 2014, Appellant again identified himself as the "tenant" who "desires to change its trade name from 'Flaming Grill Buffet' to 'Teppanyaki Grill and Supreme Buffet[.]'" Appellant also stated that he "will conduct business in the Premises in the trade name of Teppanyaki Grill and Supreme Buffet" and "shall not change or modify such trade name or use any other trade name without the prior written approval of Landlord." Finally, in the second amendment to the lease, dated July 25, 2017, Appellant again identified himself as "an individual, dba Teppanyaki Grill and Supreme Buffet," before assigning the lease to "Rock Hot Pot & BBQ, Inc., a Maryland corporation" that identified Appellant as a shareholder and registered agent. By guaranty executed three days later, Appellant "unconditionally and irrevocably guarantee[d]" payment by the assignee corporation, as "an inducement to Landlord to enter into the Assignment[.]"

By this language, Appellant took individual responsibility for the leased premises and the payment of rent, taxes, and utilities on the business premises, repeating that claim of ownership across four separate documents executed over three years. As the trial court

recognized, that undisputed fact served as a significant indicium of ownership because Appellant "assumed sole financial responsibility of over two point [nine] million dollars of potential liability." Moreover, the court explicitly weighed and rejected Appellant's "justification" for undertaking "such a burden[,]" because "his explanation" that "he was helping a very young man, 22 or 23-years-old at the time, a distant relative to his son's wife" was not "credible." Instead, the court found "[t]he only plausible conclusion" from Appellant "taking on this substantial risk is the anticipated proceeds of a business that he wanted to receive." While it was true that Mr. Chen was listed as sole shareholder of Teppanyaki Grill on the documents filed with the SDAT, the court "note[d] that Mr. Chen disputed having any ownership interest in the restaurant as well as ever having signed his name to those documents." Pointing out that "Mr. Chen . . . is a young man with no prior ownership interest" or "experience[,]" who otherwise "had trouble when asked questions about a bookkeeper[,]" the court found "that's an indication that he didn't have any ownership interest in Teppanyaki restaurant."

Under these circumstances, we hold that the trial court properly weighed the conflicting evidence and arrived at a reasoned conclusion that that Appellant had an ownership interest in Teppanyaki Grill. Of course, as we made clear in *Pinnacle Group*, "being the sole owner of [a company] does not alone subject one to personal liability" under the MWHL and MWPCL. *Pinnacle Grp.*, 235 Md. App. at 473. While Appellant's ownership interest in the restaurant is an important factor, it is not determinative and we must therefore consider the four ERT factors and whether Appellant exercised operational

control of the restaurant sufficient to find that he was an employer under the wage payment statutes.

D. Operational Control and ERT Factors

Although ostensibly separate concepts, it is clear that an individual's operational control over a business overlaps significantly with the four ERT factors. After all, the ERT factors are meant to "to determine an individual's level of 'control' over an employee." *Pinnacle Grp.*, 235 Md. App. at 472-73. Similarly, operational control reflects whether, at a higher level, an individual's "role within the company, and the decisions it entails, directly affect the nature or conditions of the employees' employment." *Irizarry v. Castimatidis*, 722 F.3d 99, 110 (2d Cir. 2013). In that sense, persons with operational control, although removed from day-to-day interaction with employees, nevertheless exercise significant authority over the business's operations.

In *Pinnacle Group*, we recognized exactly that point in applying the ERT factors. There, the owner of the LLC—Mr. D'Antonio—plainly stated that he retained final authority over all aspects of the business. *Pinnacle Grp.*, 235 Md. at 474. At the same time, Mr. D'Antonio stressed that he had two employees who essentially ran the day-to-day aspects of the business. *Id.* We found this "delegation of such supervisory tasks [was] insufficient to shed his legal liability." *Id.* at 475. For example, although the managerial employees dealt with the actual hiring and firing of employees, Mr. D'Antonio was the "only person at the Pinnacle Group, LLC with the authority to 'officially hire' or 'officially fire' its employees" and thus retained "the *capacity* to hire or fire." *Id.* at 474 (emphasis in original). Moreover, Mr. D'Antonio admitted he had "'the final say regarding

employees' work schedules'"; "'final authority to oversee the daily operations' of the business"; and that he personally approved "a summary of each employee's hours 'before each payroll process is finalized[.]'" *Id.* at 474-75. Given those admissions, we reached the "inevitable conclusion" that Mr. D'Antonio was liable for unpaid wages as an employer. *Id.* at 475.

There is certainly evidence in this case that Appellant maintained high-level operational control over Teppanyaki Grill. For example, as previously noted, Appellant executed a series of leases in which he took personal responsibility for the operation of the restaurant and the timely payment of rent. Likewise, Appellant exercised "[t]he extent of ultimate control and responsibility" over the restaurant's business in "transferring the ownership of the business to a separate business" also ostensibly controlled by Appellant. Yet, those actions—while sufficient to show Appellant's high-level financial control—did not necessarily establish his participation in the business's daily operations. Unlike in *Pinnacle Group*, there was no evidence presented that Appellant had any responsibility for scheduling employees or approving their hours before each payroll period. In fact, the Employees "were unable to recognize [Appellant] at trial and testified that they have never seen [Appellant] before." This case presents a closer call than *Pinnacle Group* where key elements were supported by undisputed evidence. Nonetheless, we must defer to the trial court's determinations on matters such as whether or not to credit Mr. Chen's testimony that Appellant had ultimate control of the business.

Here, as in *Pinnacle Group*, application of the ERT factors demonstrates that Appellant maintained residual oversight over the affairs of Teppanyaki Grill. First, the

trial court found that, while the Employees were hired and fired by Mr. Chen, Appellant retained that power as the sole owner of the business. As the trial court correctly identified, "what should be determined is who has *the power* to hire and fire as opposed to exercising that power." (Emphasis added). Second, the trial court emphasized that "Mr. Chen testified that [Appellant] through his son told him the amount of salary to pay to employees." Thus, even if Mr. Chen actually paid the Employees, their wages were pre-determined by Appellant. It is true of course that, with respect to the second and fourth factors, the trial court found that there was "no testimony showing that [Appellant] either directly or through the kitchen manager set the schedule for the [Employees]" and a **"**total lack of any written records relating to the [Employees'] employment." Even still, under the totality of the circumstances, the court found that Appellant "stood to profit from the labor of the" Employees, whom he caused to be undercompensated by his authoritative oversight of their wages. We discern no error in that conclusion because the delegation of supervisory tasks such as scheduling and maintenance of records did not vitiate Appellant's liability as an employer.

We conclude that there was substantial evidence supporting the trial court's findings that Appellant had both an ownership interest in the restaurant and high-level operational control over it. That, taken in conjunction with Appellant's *capacity* to hire and fire as well as his oversight of the Employees' wages, was sufficient to find Appellant liable to the Employees as their employer. Moreover, contrary to Appellant's contention, while the trial court credited the lease-related evidence in establishing Appellant's ownership interest, the detailed bench ruling makes clear that the court considered the entire

evidentiary record and weighed each ERT factor, finding that at least two factors weighed in favor of finding Appellant to be the Employees' employer. Consequently, the trial court did not err in holding Appellant liable as an employer who violated the wage payment provisions in the FLSA, MWHL, and MWPCL.

II.

Attorneys' Fees

Standard of Review

"We review a trial court's decision to award attorneys' fees and costs under the MWHL and FLSA for abuse of discretion." *Pinnacle Grp., LLC v. Kelly*, 235 Md. App. 436,476 (2018) (citations omitted). A trial court abuses its discretion "when it disregards established principles or adopts a position that no reasonable person would accept." *Pinnacle Grp.*, 235 Md. App. at 476 (citing *Letke Sec. Contractors, Inc. v. U.S. Sur. Co.*, 191 Md. App. 462, 474 (2010)). As a general matter, that discretion should "be exercised liberally in favor of awarding fees." *Friolo v. Frankel*, 373 Md. 501, 515 (2003) ("*Friolo I*"). Likewise, we apply the same standards to review the court's determination of how much to award in attorneys' fees for an MWPCL claim. *Pinnacle Grp.*, 235 Md. App. at 480 (citing *Frankel v. Friolo*, 170 Md. App. 441, 448 (2006)) ("*Friolo II*").

A. Parties' Contentions

Appellant contends that "absent a finding that no [bona fide] dispute existed[,]" the trial court erred in awarding attorneys' fees. In his view, the trial court "cannot simply rely upon the old findings, post-remand, to award fees." Appellant stresses that he had "a [bona

fide] defense, that he was not the owner, [and] hence had no responsibility for unpaid wages."

The Employees counter that the court did not err or abuse its discretion in awarding fees for the following reasons:

> (1) [I]t is mandatory for the trial court to award attorney's fees and costs to prevailing plaintiffs under the FLSA and the MWHL, (2) a finding that no *bona fide* dispute exists is not necessary to award attorney's fees under the FLSA or the MWHL, 29 U.S.C. § 216(b); Md. Code Ann., Lab. & Empl. § 3-427(d)(1), (3) the trial court originally found that no *bona fide* dispute existed, and (4) the trial court was not required to establish new factual findings with respect to Attorney's fees.

Citing the FLSA and the MWHL, the Employees also request an additional award for fees incurred "since the filing of both of Appellant's appeals."

B. Statutory Fee-Shifting Framework

The MWHL provides that "[i]f a court determines that an employee is entitled to recovery in an action under this section, the court *shall* award to the employee . . . reasonable counsel fees and other costs." LE § 3-427(d)(1)(iii) (emphasis added). Similarly, the FLSA states: "The court in such action *shall*, in addition to any judgment awarded to the . . . plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." 29 U.S.C. § 216(b) (emphasis added). By contrast, the MWPCL provides that when "a court finds that an employer withheld the wage of an employee in violation of this subtitle and not as a result of a bona fide dispute, the court *may* award the employee an amount not exceeding 3 times the wage, and reasonable counsel fees and other costs." LE § 3-507(b)(1) (emphasis added).

With respect to the amount of the fee award, "the Court of Appeals has approved the lodestar method, considered in light of the *Johnson* [*v. Ga. Highway Express, Inc.*, 488 F.2d 714, 718 (5th Cir. 1974)] factors, as the presumptively appropriate method for determining whether to award attorney's fees" under the Maryland wage payment statutes. *Pinnacle Grp.*, 235 Md. App. at 478; *Friolo I*, 373 Md. at 529. Those factors are:

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

See Pinnacle Grp., 235 Md. App. at 477; *Johnson*, 417 F.2d at 1122; Md. Rule 2-703(f)(2)-(3).

Due to "the need for specificity, 'it is necessarily incumbent upon the trial judge to give a clear explanation of the factors he or she employed in arriving at the end result.'" *Id*. at 480-81 (quoting *Friolo II*, 170 Md. App. 441, 449 (2006)). "Therefore, a trial court

must clearly articulate the factors and reasoning used to calculate the overall figure so that an appellate court can adequately discern the soundness of the trial court's conclusion." *Pinnacle Grp.*, 235 Md. App. at 481 (citing *Friolo I*, 373 Md. at 529).

C. Authority for Awarding Fees

We agree with the Employees that neither the FLSA nor the MWHL requires a predicate finding that there was no *bona fide* dispute before attorneys' fees may be awarded. Indeed, the MWHL was specifically amended in 2014 to *require* that attorney fees be provided to prevailing plaintiffs, a decision which was discretionary under the prior iteration of the statute. *See* 2014 Md. Laws Ch. 262 (H.B. 295) (striking prior language that a court "may allow against an employer" and adding "shall award to the employee . . . reasonable counsel's fees and costs"). That amendment, of course, was in keeping with the purpose of the wage payment statutes to shift the costs incurred by employees who successfully recover unpaid wages from an employer who violated those statutory wage payment requirements. The mandatory nature of such awards implements the policy favoring providing "'a vehicle for employees to collect, and an incentive for employers to pay, back wages.'" *Pinnacle Grp.*, 235 Md. App. at 477 (quoting *Medex v. McCabe*, 372 Md. 28, 39 (2002)). Accordingly, regardless of whether any *bona fide* dispute existed, the Employees were authorized to recover attorneys' fees under the MWHL and the FLSA upon the trial court's finding that they were entitled to recovery for unpaid wages. As a result, the circuit court did not err in awarding fees under the MWHL and FLSA because it was required to do so.

That being the case, we consider it unnecessary to reach Appellant's arguments regarding the existence of a *bona fide* dispute under the MWPCL (which *does* require a predicate finding of no *bona fide* dispute).[4] As we have discussed, the Employees' claims under all three of the wage payment statutes were each governed by the same theory of liability: the economic reality test. *See Campusano*, 208 Md. App. at 37-38 (discussing the ERT factors as the governing inquiry under both the MWHL and MWPCL). Thus, it is not as if there were some discrete, identifiable portion of labor or fees which necessarily would have been isolated solely to the Employees' claim under the MWPCL. Each of the claims were essentially interchangeable, and any of the three interrelated statutes would have therefore provided a sufficient vehicle for awarding fees to the extent permitted or, as here, mandated by statute. Accordingly, because an award was required under the FLSA and MWHL, we need not determine the existence of a bona fide dispute under the MWPCL.

In sum, the trial court correctly awarded attorneys' fees to the Employees, who filed suit under all three of the relevant wage payment statutes. Under the FLSA and the MWHL, the award of attorneys' fees was unmistakably required upon a finding of the Employees' entitlement to unpaid wages. Thus, because the trial court's authority to award

[4] We note that Appellant does not challenge the trial court's award of treble wages and limits his challenge under the MWPCL, grounded in the alleged lack of a bona fide dispute, to the trial court's award of attorneys' fees. The MWPCL provides that when "a court finds that an employer withheld the wage of an employee in violation of this subtitle and not as a result of a bona fide dispute, the court may award the employee an amount not exceeding 3 times the wage, and reasonable counsel fees and other costs." LE § 3-507(b)(1). We decline to address this inconsistency because we need not reach the issue of the court's award of attorneys' fees under the MWPCL, or, correspondingly, the existence of a bona fide dispute.

fees was not only clear, but entirely non-discretionary, we discern no error on the part of the trial court and affirm its attorneys' fees award.

D. Amount of the Award

To perform our appellate function, this Court relies on the trial court to "articulate the factors and reasoning used to calculate the overall figure" so we "can adequately discern the soundness of the trial court's conclusion" as to the amount of a fee award. *Pinnacle Grp., LLC v. Kelly*, 289 Md. App. 436, 481 (2018). Invoking this particularity requirement, Appellant argues that the trial court "cannot simply rely upon the old findings, post-remand, to award fees" and that "[t]he failure of the [trial court] to spread [sic] on the record its reasoning for its determination brings into question the validity of the fee award on appeal." The Employees respond that because "the trial court adopted" the previous "findings and conclusions of law stated in" the order filed on November 2, 2018, and "reinstated" that award of attorneys' fees, "no additional findings on the part of the trial court were required for this award." We again agree with the Employees.

To start, Appellant's contention that the trial court could not "simply rely upon the old findings, post-remand, to award fees" veers considerably wide of the mark. In the first appeal in this case, our order made explicitly clear that the trial court was to act "*based on the evidentiary record already before* [*it*,]" to determine whether Appellant was personally liable to the Employees for unpaid wages as an employer. *Qun Lin I*, 247 Md. App. 606, 642 (2020)(emphasis added). As we explain above, once that finding was made, an award of attorneys' fees was mandated and no new evidentiary findings were needed. We did not reach the issue of attorneys' fees in *Qun Lin I.* Thus, in its post-remand ruling, the trial

court properly "adopt[ed] the findings and the conclusions of law stated in the opinion at docket entry 113" in reinstating the award of attorneys' fees to the Employees. We therefore consider whether that opinion and order, entered November 2, 2018, adequately considered the *Johnson* factors and explained the basis for the amount of the fee award under the lodestar method.

We hold that the Court adequately considered the *Johnson* factors, with particularity to spare. Over eight pages, most of them single-spaced, the trial court set out the legal standards governing a fee award under the statutory fee-shifting provisions, the parties' arguments, the court's conclusion that an award was appropriate in this case, the lodestar method of calculating fees, and the Rule 2-703(f)(3) factors for assessing reasonableness. The trial court analyzed the Employees' fee request in light of each *Johnson* factor, making detailed findings for each separate one, as follows:

1. *"The time and labor required":* Beginning with the lodestar amount claimed by the Employees, as shown by an exhibit itemizing their fees and costs, and authenticated by an attorney affidavit, the court determined that "the number of hours expended" was "appropriate considering the number of Plaintiffs and Defendants, the issues in the case, and the difficulty with identifying and obtaining necessary records relevant to the case." The records were "sufficiently detailed to allow the Court" to determine time expended for the three successful Employees to prevail, and to adjust downward to reflect discovery, mediation, conferences, paralegal services, settlement negotiations, etc.

2. *"The novelty and difficulty of the questions"*: The trial court found that, although "legal issues in this matter were straightforward[,]" there was "difficulty" in "determining who were the owners of the restaurant" so Appellant's "attorneys understandably needed to expend a great deal of time sorting out this issue."

3. *"The skill required to perform the legal service properly"*: The court found that Employees' counsel "demonstrated the required skills to successfully identify,

locate and present the evidence needed to support a decision against Defendants" but Employees did "not seek any upward adjustment for this factor."

4. *"Whether acceptance of the case precluded other employment by the attorney"*: The court observed that Employees did "not seek any upward or downward adjustment based on this factor."

5. *"The customary fee for similar legal services"*: The court found that Employees' counsel "took this matter on a contingency basis[,]" which is "often" the case because "[m]any claimants do not have the financial ability to retain and pay attorneys for such representations." In addition, the court found "the hourly rates charged by the attorneys and legal assistants to be fair and reasonable."

6. *"Whether the fee is fixed or contingent"*: The court lacked "sufficient information to properly consider any effect of" the contingency arrangement but the Employees did not seek an upward adjustment based on this factor.

7. *"Any time limitation imposed by the client or the circumstances"*: The court found that "there were no unusual time limitations in this matter."

8. *"The amount involved, and the results obtained"*: The court recognized the "significant" amounts involved and the success against Appellant and the corporation.

9. *"The experience, reputation, and ability of the attorneys"*: The court noted that no upward adjustment was sought on this factor.

10. *"The undesirability of the case"*: The court found that counsel "took on a case with clients who could not afford their normal hourly rates" on a contingency basis that was "fair and reasonable."

11. *"The nature and length of the professional relationship with the client"*: The court noted that counsel represented the Employees only for this matter.

12. *"Awards in similar cases"*: The court found that Employees "identified other cases" but without a discussion of "the specific facts," the court could not "determine how comparable those cases were[,]" so the court made no adjustment upward or downward.

Ultimately, the trial court awarded an "initial lodestar amount" of $47,186.50, making "no adjustment downward or upward after consideration of the . . . factors in Rule

2-703(f)(3), plus $3,939.35 in costs, with those amounts equally divided between the three Employees. Because the trial court "gave a clear explanation of the factors . . . employed in arriving at the" award and followed the established guidelines for evaluating whether a fee award is appropriate and for calculating the amount of that award using the adjusted lodestar method, we hold that the court did not abuse its discretion and affirm its award in this case. *See Pinnacle Grp.*, 235 Md. App. at 477, 478, 480-81.

E. Request for Additional Fees

The Employees' request an additional award of attorneys' fees for expenses incurred "since the filing of both . . . appeals." They contend that these "additional fees were spent in, among other things, preparing a response to the present appeal and the former appeal, as well as drafting collateral motions and other papers associated with the instant matter."

We shall not order any award of fees on appeal because the Employees' request is not properly before this Court. Maryland Rule 2-706 provides that a party "who seeks an award of attorneys' fees incurred in connection with an appeal . . . shall file a motion for such fees in the circuit court that entered the judgment or order that is the subject of the appellate litigation . . . within 30 days after entry of the last mandate or order disposing of the appeal[.]" Md. Rule 2-706. Moreover, the proceedings on that motion "*shall be in the circuit court* and shall be consistent with the standards and procedures set forth in Rule 2-703 or Rule 2-705, as applicable." Md. Rule 2-706 (emphasis added).

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.