Circuit Court for Anne Arundel County
Case No. C-02-CV-21-000890

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1234

September Term, 2023

THE RITZ LLC, *et al.*,

v.

BUDDY'S RIVER GRILL & OYSTER BAR LLC, *et al.*

Albright,
Kehoe, S.,
Getty, Joseph M.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Albright, J.

Filed: June 18, 2025

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

After a sixteen-day trial in the Circuit Court for Anne Arundel County, a jury found Appellants, Harvey Blonder and The Ritz, LLC (hereinafter, collectively "Mr. Blonder"),[1] liable for breach of contract, breach of fiduciary duty, and fraud. The case stemmed from Mr. Blonder's management of the restaurant he co-owned with the Appellees (hereinafter, collectively the "non-managing members"):[2] Genco Investments, LLC; Hetzel Investments, LLC; and Setec Astronomy, LLC. The jury awarded a total of $9,628,734.90, which included $3,090,000 in punitive damages against Mr. Blonder in his individual capacity. Appealing the jury's verdict, Mr. Blonder presents nine questions for our review, which we consolidate and re-state as follows:[3]

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[1] We refer to Appellants solely as "Mr. Blonder" throughout this opinion for clarity. Although Mr. Blonder and The Ritz, LLC, are separate, Mr. Blonder is the owner and only member of The Ritz, LLC.

[2] Appellees in this case are four separate LLCs, including: (1) the restaurant itself, Buddy's River Grill and Oyster Bar, LLC; (2) Genco Investments, LLC; (3) Hetzel Investments, LLC; and (4) Setec Astronomy, LLC. As the parties do, we refer to the restaurant as "Yellowfin," and the other three LLCs as the "non-managing members" for simplicity.

[3] Mr. Blonder states his questions presented as:

1. Whether the court erred in not granting Appellants' motions for judgment and JNOV motion on the fraud count where (1) the alleged explanation as to why dividends were not being declared was not false or actionable, (2) there was no evidence to prove any reliance or that any reliance on the explanation was justified, (3) there was no evidence to prove intent to deceive, (4) there was no evidence to prove that the damages awarded were proximately caused by any reliance

I. Did the circuit court abuse its discretion by allowing the non-managing members to amend their complaint during trial?

II. Did the circuit court abuse its discretion by denying a curative jury instruction regarding the basis of the fraud count?

III. Was legally sufficient evidence presented to support the jury's findings that (A) the non-managing members' claims were not time-barred and (B) Mr. Blonder committed fraud, and to support the jury's award of (C) compensatory and punitive damages?

IV. Did the circuit court abuse its discretion by denying remittitur?

We answer Questions I, II, and IV in the negative, and Question III in the affirmative.

Accordingly, we affirm the judgment of the circuit court.

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on the alleged explanation, and (5) where the alleged fraudulent statement was not made to appellee Yellowfin.

2. Whether the court erred in not granting Appellants' request to instruct the jury that the fraud count was based solely upon the 2009 or 2011 statement allegedly made by Blonder.
3. Whether the court erred in not granting Appellants' motions for judgment and JNOV motion based on the statute of limitations defense where, among other reasons, the appellees signed a 2013 verified TRO application stating that they suspected Blonder was using Yellowfin funds to further his other businesses.
4. Whether the jury verdict determining whether the statute of limitations accrued on or before July 1, 2018 was clearly erroneous.
5. Whether the jury verdict on the fraud count was clearly erroneous.
6. Whether the damages awarded were clearly erroneous.
7. Whether the court erred in not granting Appellants' request for a remittiter [sic] in Appellants' JNOV motion.
8. Whether the court erred in not granting Appellants' motions for judgment and JNOV motion.
9. Whether the court erred in granting leave for the filing of the amended complaint at trial.

FACTS AND PROCEEDINGS BELOW

A. The Founding of Yellowfin and F&W Landholdings

The subject of this appeal is Buddy's River Grill & Oyster Bar, LLC, which does business as Yellowfin Steak and Fish House ("Yellowfin"). Yellowfin has operated in Edgewater, Maryland, for over twenty years—since it was established in 2002 as a collaborative business venture by The Ritz, LLC ("Ritz"); Genco Investments, LLC ("Genco Investments"); Hetzel Investments, LLC ("Hetzel Investments"); and Setec Astronomy, LLC ("Setec"). Respectively, these limited liability companies are individually owned by Harvey Blonder, Michael Loprete, Paul Hetzel, and Jamie Kujawski.

Mr. Blonder initially purchased the property where Yellowfin is located around 2000, when the premises housed a restaurant known as "Fergie's." Mr. Blonder had been in the restaurant business for decades. The Yellowfin venture began in 2002, when Mr. Blonder approached his financial advisor, Mr. Kujawski, looking for additional financial support to operate the restaurant. Mr. Kujawski expressed interest in the investment opportunity and further connected Mr. Blonder with two of his other clients: Paul Hetzel and Michael Loprete. All four men agreed to open Yellowfin through their respective LLCs.

On November 21, 2002, Yellowfin adopted a forty-five-page operating agreement ("Operating Agreement") laying out the ownership shares, roles, and responsibilities of the four owners.[4] Under the Operating Agreement, Mr. Blonder acquired fifty percent of Yellowfin; the other three (through their own respective companies) each took a one-sixth ownership interest. In return for their ownership shares, the Operating Agreement specified that Mr. Blonder was to contribute capital of $700,[5] and the non-managing members were to contribute $249,900 each. Beyond these initial capital contributions, the Operating Agreement provided that no additional capital contributions would be required from any of the members.

The Operating Agreement named Mr. Blonder as the managing member of Yellowfin and provided him with considerable latitude in operating the restaurant. As the managing member, Mr. Blonder had "exclusive authority to manage the operations and affairs of [Yellowfin] and to make all decisions regarding the business of [Yellowfin]," subject to limited exceptions in the Operating Agreement. Included within the managing member's authority was, among other things, the power to manage all the restaurant's finances and to employ any personnel. Additionally, the managing member was

[4] Per the Operating Agreement, Yellowfin itself was created "on or about July 5, 2001." As we understand it, the Operating Agreement has not been modified since its ratification by Yellowfin's owners. Nonetheless, as our analysis focuses on the Operating Agreement as it applies to Mr. Blonder's tenure as managing member, we refer to the Operating Agreement's provisions in the past tense.

[5] We discuss Mr. Blonder's initial capital contribution in Yellowfin in greater detail below. In short, although the Operating Agreement itself provides that Mr. Blonder would only provide a $700 capital contribution, Mr. Blonder represented to the others that he would be contributing a pro rata amount of $750,000 according to his own share of ownership in Yellowfin, and his deposition testimony to the same effect was admitted at trial.

authorized to contract "with any Interest Holder or any firm or corporation in which an Interest Holder may have an interest or any affiliated corporation or entity of an Interest Holder, at reasonable and market competitive rates of compensation[.]"

The Operating Agreement also exculpated the managing member for any act or omission committed in good faith. In fact, under the Operating Agreement, no member could be liable to the others except in cases of "fraud, gross negligence, or an intentional breach of [the Operating] Agreement." Although the managing member was subject to removal, the written consent of members owning seventy-five percent of Yellowfin (after exclusion of the percentage held by the managing member) was required in addition to a showing of cause. Cause for removal, however, was limited under the Operating Agreement to gross negligence and willful or reckless neglect of duty.

Finally, a management fee of six percent of Yellowfin's annual gross sales was agreed upon by the owners as compensation for the managing member's services.[6] Although none of the members were entitled to receive their initial capital contributions back, the Operating Agreement authorized the managing member to pay out distributions to the members in proportion to their respective ownership shares. The timing and amount of any distributions was reserved to the managing member's discretion, though.

Yellowfin's four owners also created, and held the exact same ownership shares in, a second company called F&W Landholdings, LLC ("F&W"). F&W was created to

[6] The Operating Agreement itself does not specifically lay out the amount of the management fee, but there is no dispute among the parties that the agreed management fee was six percent of annual gross sales.

hold the property where Yellowfin operated. To that end, F&W made payments on a mortgage encumbering the property where Yellowfin is located. F&W also functioned as Yellowfin's landlord, collecting rent from Yellowfin (six percent of annual gross sales), making mortgage payments and paying property taxes. Mr. Blonder was also chosen to serve as the managing member of F&W.

Yellowfin opened its doors to customers on Halloween of 2002.[7] By all accounts, the restaurant was an instant success and became widely acclaimed in the community. Yellowfin's annual revenue quickly reached several million dollars, and it was profitable enough to pay distributions to the four owners. By 2010, these distributions approached the amount of the owners' initial capital contributions.[8]

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[7] The restaurant opened prior to the enactment of the Operating Agreement. As Mr. Kujawski testified, the four owners had already agreed to go into the restaurant business together, and they had each invested in the venture prior to the opening day to help with the "build out" of the restaurant. By the time the Operating Agreement was enacted, the restaurant was "100 percent done and open for business."

[8] Tax records for Yellowfin reflect that the members received distributions of the following amounts in the listed years:

2004: Ritz -- $100,000;
Genco Investments, Hetzel Investments, Setec -- $33,333

2006: Ritz -- $150,000
Genco Investments, Hetzel Investments, Setec -- $50,000

2007: Ritz -- $150,000
Genco Investments, Hetzel Investments, Setec -- $50,000

2010: Ritz -- $150,000
Genco Investments, Hetzel Investments, Setec -- $50,000

B. The End of Yellowfin's Distributions

Although Yellowfin continued to generate significant revenue, distributions to the owners did not continue flowing, and the non-managing members set out to discover why. In 2009 or 2011,[9] Mr. Hetzel and Mr. Kujawski met with Mr. Blonder to discuss why distributions from Yellowfin had dried up. According to Mr. Hetzel and Mr. Kujawski, Mr. Blonder relayed that Yellowfin was building up cash reserves in anticipation of future expenses related to the restaurant's failing septic system. To assuage their concerns about the lack of distributions, Mr. Blonder told them, in essence, that he was not receiving any money from Yellowfin while they were not receiving any money from Yellowfin, except for the management fee for operating Yellowfin.[10]

[9] Although there was no dispute that the meeting occurred, no one recalled exactly when the meeting between Mr. Blonder, Mr. Hetzel, and Mr. Kujawski happened. The tax returns show that the final distributions received by Yellowfin's owners were made in 2010, but distributions were not made in either 2008 or 2009.

[10] At trial, Mr. Hetzel and Mr. Kujawski offered slightly different versions of Mr. Blonder's explanation for why distributions had ceased. As Mr. Hetzel recalled, Mr. Blonder stated that "if Yellowfin doesn't pay [the non-managing members] a distribution . . . [Mr. Blonder] doesn't get any money either, other than the management fee." Mr. Kujawski testified to a similar statement from Mr. Blonder "that he was squirreling away some money for a potential problem with [the] septic system," and "if [the non-managing members] don't get any money in distributions, [Mr. Blonder does not] get any money in distributions. The only money [Mr. Blonder gets] is [his] management fee unless [they] all get money."

Satisfied with Mr. Blonder's explanation, Mr. Hetzel and Mr. Kujawski dropped their inquiry into the matter.[11]

C. The Non-Managing Members' Initial Litigation Against Mr. Blonder

In 2013, the non-managing members discovered that Mr. Blonder had opened another restaurant in the Annapolis area called "Yellowfin Downtown Annapolis," and they sought to remove Mr. Blonder as the managing member of Yellowfin (and F&W) as a result. The non-managing members were concerned that Mr. Blonder's new restaurant would detract from Yellowfin's business with the use of the same "Yellowfin" name, and "that funds belonging to [Yellowfin had] been used to further [Mr.] Blonder's independent business ventures[.]"[12] Based on these concerns, Yellowfin's non-managing members voted to remove Mr. Blonder as managing member and sued to enjoin Mr. Blonder from independently using the "Yellowfin" brand name. In the eyes of the

[11] To the extent the non-managing members were still involved in Yellowfin, it was to request financial records from the restaurant when they misplaced or lost their own copies. For example, Mr. Kujawski requested Yellowfin's tax returns and financial statements in 2012.

[12] According to each of the non-managing members, this language in their 2013 complaint referred solely to Mr. Blonder's appropriation of the Yellowfin business name and that Mr. Blonder's new restaurant benefitted from the money their collective restaurant had spent on advertising to promote the Yellowfin name.

non-managing members, however, the suit failed and the circuit court reinstated Mr. Blonder as Yellowfin's (and F&W's) managing member.[13]

A second lawsuit by Mr. Kujawski in 2014 again alleged mismanagement and misappropriation of Yellowfin's assets based on the same grounds. Mr. Kujawski sought a declaration that sufficient cause existed to remove Mr. Blonder as Yellowfin's (and F&W's) managing member and for Mr. Kujawski to be appointed instead. The second lawsuit was also unsuccessful.

For roughly the next four years, Yellowfin's non-managing members were largely uninvolved in the restaurant's operations.[14]

D. The Investigation Into Yellowfin and Removal of Mr. Blonder as Managing Member

In 2018, however, Mr. Kujawski was given reason to suspect further mismanagement of Yellowfin by Mr. Blonder. Distributions from Yellowfin remained stagnant, and after email correspondence and a conversation with Tara Stout (a previous employee at another of Mr. Blonder's businesses), Mr. Kujawski left with the impression that the non-managing members were never going to receive any more distributions from

[13] The record does not include court records from the previous litigation. At trial, though, Mr. Kujawski described the 2013 litigation as being resolved by the attorneys during *in camera* proceedings at the circuit court. After the court proceedings, Mr. Blonder continued as the managing member of Yellowfin and his other restaurant changed its name to "Yellowtail."

[14] The non-managing members did, at several points, request financial records, tax returns, and other information about Yellowfin's operations from Mr. Blonder and his employees involved in Yellowfin's management.

their investment. Determined to discover what was going on, Mr. Kujawski began interviewing Yellowfin employees and engaged an accountant to review Yellowfin's tax returns and financial records.

The investigation uncovered several irregularities in the way Mr. Blonder was managing Yellowfin. First, Mr. Kujawski discovered that Yellowfin was paying twenty percent of its banquet[15] revenue to Land & Sea, a business that Mr. Blonder owned in his individual capacity. Although Mr. Kujawski had previously known about Land & Sea, Mr. Blonder had represented to him that Land & Sea was merely a "naming right" that allowed Mr. Blonder to group multiple restaurants together to buy restaurant supplies in bulk for better deals. However, Mr. Kujawski was informed by a Yellowfin employee that Land & Sea was, in fact, involved in Yellowfin's banquet operations and was being paid a twenty percent commission on all of Yellowfin's banquet sales.

Second, Mr. Kujawski discovered that most of the repair and maintenance work Yellowfin required was conducted by another company Mr. Blonder individually owned, Liberty Marina. The Yellowfin managers informed Mr. Kujawski that they had no way of reviewing or approving Liberty Marina invoices, however. Instead, all the invoice approvals were done by another company independently owned by Mr. Blonder, H.B. Properties.

[15] Yellowfin's "banquet" services are described interchangeably with "catering" services.

Third, Mr. Kujawski discovered that Yellowfin's gift card records were incomplete. Previously, Yellowfin had issued the gift cards that were redeemable at the restaurant itself; now, they were issued by Land & Sea. After the switch, Yellowfin employees had no knowledge of how gift cards were issued by Land & Sea and where the money from gift card sales was going.

Mr. Kujawski alerted the other non-managing members to these irregularities, and they again voted to remove Mr. Blonder as managing member of Yellowfin (and F&W). In response, Mr. Blonder filed suit to retain his status as managing member. This time, though, the non-managing members were successful in the litigation and Mr. Blonder's removal was upheld. Mr. Kujawski was appointed as the managing member instead.

E. Mr. Kujawski Takes Over and the Non-Managing Members Sue

Under Mr. Kujawski's management, the non-managing members began to discover how much money Mr. Blonder had, in fact, received from Yellowfin through his other businesses. This was particularly clear as more information came to light about Yellowfin's relationship with Liberty Marina, Land & Sea, H.B. Properties, and Securities Fortress. All four were owned by Mr. Blonder in his individual capacity.

The non-managing members filed their complaint in this case on July 1, 2021. In it, they accused Mr. Blonder of mismanaging Yellowfin and siphoning Yellowfin's profits off to his other businesses rather than making profit distributions to all of Yellowfin's owners. The complaint alleged five counts against Mr. Blonder: (1) breach of contract; (2) breach of fiduciary duty; (3) gross negligence; (4) fraud/deceit; and

(5) conversion/misappropriation of distributions. Counts three and five were dropped by the non-managing members as the case progressed below.

The crux of the complaint was the fraud/deceit count.[16] The non-managing members averred that, between 2007 and 2018, Mr. Blonder had misrepresented to the non-managing members that he was receiving no other economic benefits from Yellowfin besides the management fees and the distributions equal to what the non-managing members had received. The non-managing members further alleged that Mr. Blonder knew these representations were false while making them because he was aware that he was profiting from Yellowfin's payments to his other businesses. Finally, the complaint alleged Mr. Blonder made these representations to induce the non-managing members to refrain from further investigating Yellowfin's lack of distributions and to allow Mr. Blonder to remain in exclusive control of Yellowfin. Counts one and two rested in large part on the same allegations as count four.[17]

Notably, Mr. Blonder did not file a motion for summary judgment before trial.

F. The Evidence of Mr. Blonder's Fraud at Trial

The jury trial began on May 1, 2023. In their case-in-chief, the non-managing members called as witnesses: Paul Hetzel (owner of Hetzel Investments); Jamie

[16] This count is also the crux of Mr. Blonder's appeal here. Accordingly, we focus primarily on this count.

[17] Mr. Blonder and Ritz each individually filed an answer in which they denied liability for all causes of action contained within the complaint. They also moved to dismiss the gross negligence count (count three). This motion was denied.

Kujawski (owner of Setec); Harvey Blonder (owner of Ritz); Diana Orendorf (head of Yellowfin's banquet sales); Paul Kerner (manager of Yellowfin); Tara Stout (previous employee of H.B. Properties); Mary Johnson (previous employee of H.B. Properties); Kris Kohlmann (previous chief financial officer of H.B. Properties); Jerry Wilcoxon (expert witness in accounting); and Marshall Asher (expert witness in accounting).

Consistent with their complaint, the non-managing members presented evidence that Mr. Blonder intentionally concealed numerous schemes designed to funnel profits out of Yellowfin and into his other businesses. In other words, that Mr. Blonder misled his business partners into believing he was acting in their best interests while he was actually siphoning Yellowfin's profits solely to himself. To this end, the non-managing members presented evidence that Mr. Blonder used his position as managing member of Yellowfin to conceal excessive payments he authorized to Liberty Marina, Land & Sea, H.B. Properties, and Securities Fortress.[18]

To begin with, Liberty Marina, for years, overcharged Yellowfin for the repairs and equipment it provided to the restaurant. Liberty Marina charged Yellowfin twice the rate it charged Mr. Blonder's other businesses, and some labor charges in the records

[18] In addition to the more easily quantifiable issues that the non-managing members focused on at trial and that we lay out, some general concerns with Yellowfin's practices under Mr. Blonder's management were presented at trial, including: (1) book transfers between Yellowfin and entities owned by Mr. Blonder that made it impossible to know what the transfers were for; (2) the same people making deposits and receiving money also being in charge of reconciling the bank statements; (3) checks repeatedly bouncing because insufficient funds were available; and (4) issuing or increasing the value—without payment—of existing gift cards that had been provided to Mr. Blonder.

appeared to be duplicative. Yellowfin's payment records also showed duplicate charges for used equipment (like hand dryers and icemakers, for example) that was purchased from Liberty Marina. Throughout Mr. Blonder's management of Yellowfin, only Mr. Blonder and Ms. Kohlmann could authorize payment invoices; no one else at Yellowfin could verify their legitimacy.

Next, despite taking a twenty percent commission from Yellowfin's banquet sales, Land & Sea was not adding value to Yellowfin. After Mr. Kujawski took over as managing member of Yellowfin, he terminated Yellowfin's association with Land & Sea, but Yellowfin experienced no drop in its banquet business. In fact, Ms. Orendorf continued providing the same banquet services with the same volume of business that Yellowfin had while associated with Land & Sea, and these services were the same ones she had provided before Land & Sea was brought in at all. Thus, with Land & Sea removed, Yellowfin conducted the same banquet business without paying a twenty percent commission that was roughly equivalent to the target profit margins for banquet sales.[19] Accounting records also showed that under Mr. Blonder's management of Yellowfin, Land & Sea had deposited a Coca-Cola rebate check into its own bank

[19] Ms. Orendorf testified at trial that profit margin targets for Yellowfin's banquet sales were in the range of twenty to thirty percent.

account, even though the check was supposed to be divided between several restaurants (including Yellowfin) based on the amount of Coca-Cola product they sold.[20]

H.B. Properties was receiving thousands of dollars in payroll processing fees from Yellowfin under Mr. Blonder's tenure, too. Although Yellowfin's management worked on payroll and Yellowfin also paid a third-party payroll processing service, an additional payroll processing fee was paid to H.B. Properties. At times, Yellowfin paid payroll processing fees to H.B. Properties between six and twenty times greater than those paid to the third-party processor.

Securities Fortress was another recipient of an illegitimate payment scheme from Yellowfin while it was under Mr. Blonder's management. Specifically, Yellowfin's records showed a check paid to Securities Fortress that exactly duplicated the amount Yellowfin had already paid to Mr. Blonder as reimbursement for his legal fees from the 2013 and 2014 litigation. The original payee of the second check was the law firm Mr. Blonder previously hired, but the payee was changed to Securities Fortress.

From Yellowfin's financial statements, further questions emerged about Mr. Blonder's management. The property where Yellowfin was located was initially subject to a mortgage held by Severn Bank. In December 2005, though, Yellowfin

[20] According to Mr. Blonder, an agreement with Coca-Cola provided a $200,000 rebate in exchange for twenty-one different establishments contracting to sell Coke products. Mr. Blonder further testified that, even though Yellowfin was one of the predominant purchasers of Coke under the contract, the entire $200,000 payment from Coca-Cola was deposited into a bank account owned by Land & Sea instead of being apportioned among the restaurants involved in the contract (including Yellowfin) based on their sales of Coca-Cola products.

borrowed nearly two million dollars from Patapsco Bank to refinance the initial mortgage. Roughly half of the loan proceeds—$929,565—were used to pay off the Severn Bank mortgage. Rather than Yellowfin (or F&W) receiving the remaining loan proceeds of $1,071,545 in cash, however, Yellowfin's tax returns reflected a cash increase of only $216,000.

During trial, Exhibit 235—additional financial records from 2003 provided for the first time by Mr. Blonder (more on that below)—showed that the remaining cash went to Securities Fortress, the company owned solely by Mr. Blonder. Exhibit 235 listed a debt of $1,238,697[21] owed by Yellowfin to Securities Fortress. The loan to Securities Fortress was repaid, in part, out of the 2005 Patapsco Bank loan proceeds. Mr. Kujawski and Mr. Wilcoxon both testified, though, that they had no idea the payee for the debt was Securities Fortress until they were shown Exhibit 235 at trial. Exhibit 235 also showed that Yellowfin had only received $750,400[22] in total capital from the four owners. According to Mr. Wilcoxon, if Mr. Blonder had contributed an equal amount of capital as the non-managing members, the total capital amount would have "reflect[ed] the amount of capital that [Mr. Blonder] would have put in." He also testified that he had never seen

[21] Of the $1,238,697 listed as a debt to Securities Fortress, $457,538 corresponded to operational losses that Yellowfin had sustained in its first few years.

[22] Although this number matched the capital contributions listed in the Operating Agreement ($249,900 for each of the three non-managing members and $700 for Mr. Blonder), it did not accord with the non-managing members' understanding (and Mr. Blonder's testimony) that Mr. Blonder was contributing an equal amount of capital as the others.

evidence of a loan agreement between Yellowfin and Securities Fortress. Mr. Wilcoxon then explained that by including the amount of money the non-managing members believed Mr. Blonder contributed as a capital contribution in the debt Yellowfin paid to Securities Fortress, Yellowfin paid nearly $750,000 to Mr. Blonder (through Securities Fortress) without making a commensurate distribution to the non-managing members.

Mr. Blonder was called as an adverse witness by the non-managing members, and he did not deny that Yellowfin had extensive economic relations with his other companies. For instance, he acknowledged that his company Land & Sea received fees from Yellowfin for banquet commissions and from Coca-Cola payments for rebate agreements of which Yellowfin was a part. He similarly acknowledged that Yellowfin paid maintenance and repair fees to Liberty Marina and payroll processing fees to H.B. Properties. The non-managing members introduced Exhibit 162, an email from Mr. Blonder to H.B. Properties' chief financial officer with a directive to "[g]ive [Mr. Blonder] all bank balances [he] can move. Give [him] all high bank balances. [He] need[s] to get three to four million right away." Finally, Mr. Blonder testified about the initial capital contribution, and how he was "pretty sure it was an equal amount," and that it "would have been the same way [the non-managing members] went in. It would not have been a loan. It would have been capital."

The financial records highlighted the numerical disparity in what Mr. Blonder received from Yellowfin compared to the non-managing members. From 2006 to 2017, Yellowfin received $48,862,475 in total revenue. From that, Mr. Blonder received over $4,900,000 from Yellowfin, but the non-managing members did not profit at all.[23]

At the close of the non-managing members case-in-chief, the circuit court denied Mr. Blonder's motion for judgment. Mr. Blonder had argued that there was insufficient evidence of breach of contract, breach of fiduciary duty, and fraud.[24] Even if there had been wrongdoing, Mr. Blonder also argued that the statute of limitations precluded the non-managing members' recovery because the applicable limitations period began in 2013 when the non-managing members first alleged wrongdoing related to Mr. Blonder's management of Yellowfin.

Mr. Blonder called Stuart Rosenberg and Fredric Rosenthal as financial expert witnesses. Mr. Rosenberg and Mr. Rosenthal both testified that the payments made by Yellowfin under Mr. Blonder's management were reasonable and necessary for the operation of the restaurant, and within his authority under the Operating Agreement. According to Mr. Rosenberg, Yellowfin's tax returns clearly and accurately reflected the capital contributions that the Operating Agreement called for, and it was impossible to tell if comparisons between Yellowfin's repair and maintenance costs under

[23] Although the non-managing members received distributions of nearly $200,000 during the first several years of Yellowfin's operation, they had each initially contributed $250,000, and thus did not receive a positive return on their investments.

[24] At the end of the non-managing members' case in chief, they withdrew count five in their complaint for conversion/misappropriation of distributions. The circuit court also granted Mr. Blonder's motion for judgment on the gross negligence count. However, the court denied Mr. Blonder's motion as to the counts of fraud/deceit, breach of contract, and breach of fiduciary duty.

Mr. Blonder's management and Mr. Kujawski's management were "apples to apples[.]" Mr. Rosenthal testified that a twenty percent commission on banquet sales is fair and reasonable when "enough additional volume to increase the bottom line of the restaurant" is generated in return. He also opined that the payroll processing fees paid to H.B. Properties and the hourly rates paid to Liberty Marina employees for repair and maintenance work were fair and reasonable—and he noted that maintenance costs for a restaurant could vary greatly from year to year.

At the close of evidence, Mr. Blonder moved for judgment on the same grounds he had raised before. The circuit court denied Mr. Blonder's motion again. The case was then submitted to the jury with a verdict form agreed to by both parties.

The jury returned a verdict against Mr. Blonder on May 16, 2023. First, the jury determined that Mr. Blonder had not proved, by a preponderance of evidence, that the non-managing members "knew, or by reasonably diligent investigation should have known, of the injury or damage by [Mr. Blonder] before July 1, 2018." Then, the jury awarded damages to the non-managing members of (1) $5,013,330 in compensatory damages from Mr. Blonder for breach of contract, breach of fiduciary duty, and fraud; (2) $3,090,000 in punitive damages against Mr. Blonder in his individual capacity; and (3) $1,525,404.50 against Mr. Blonder in prejudgment interest. The total verdict was $9,628,734.50.

Mr. Blonder moved for judgment notwithstanding the verdict ("JNOV"), a new trial, and remittitur on June 6, 2023. The motion was denied. Mr. Blonder then noted this timely appeal.

We supply additional facts in our discussion below as necessary.

DISCUSSION

I. The Circuit Court Did Not Abuse Its Discretion by Allowing the Non-Managing Members to Amend Their Complaint During Trial.

Mr. Blonder contends that it was an abuse of discretion for the circuit court to allow the non-managing members to amend their complaint mid-trial. To support his argument, Mr. Blonder focuses on the non-managing members' possession of Yellowfin's Operating Agreement and tax returns and claims that the documents (1) reflect Mr. Blonder's obligation to only make a $700 capital contribution; (2) show the outstanding loans owed by Yellowfin; and (3) were provided to the non-managing members well before the initial complaint was filed.[25] As a result, he claims that no new information at trial warranted the amendments. We disagree.

[25] Maryland Rule 8-504(a)(6) requires that a brief provide "[a]rgument in support of the party's position on each issue." This rule requires a party to engage in substantive argument, as "[a] single sentence is insufficient to satisfy [Rule 8-504(a)(6)]'s requirement." *Silver v. Greater Balt. Med. Ctr., Inc.*, 248 Md. App. 666, 688 n.5 (2020). Mr. Blonder's brief states this argument, in its entirety, as follows:

> Leave was granted to filed [sic] the Amended Complaint during the course of the trial even though the [non-managing members] had the Operating Agreement in 2002 and the Tax Returns when filed, each of which shows

In Maryland, a party may amend a pleading during trial with leave of the court. Md. Rule 2-341(b). Such leave "shall be freely [given] when justice so permits." Md. Rule 2-341(c). In other words:

> [T]he decision to grant leave to amend rests within the discretion of the trial court, which considers that leave to amend should be generously granted but not if the amendment would result in prejudice to the opposing party or undue delay. As long as the operative factual pattern remains essentially the same, and no new cause of action is stated invoking different legal principles, amendments to pleadings are to be allowed freely and liberally. It is a rare situation in which the granting of leave to amend is not warranted.

Asphalt & Concrete Servs., Inc. v. Perry, 221 Md. App. 235, 269 (2015), *aff'd*, 447 Md. 31 (2016) (cleaned up, holding that circuit court did not abuse its discretion by allowing an amendment to a complaint that did not "change the operative fact pattern or state a new cause of action."). Amendments to pleadings are allowed even after a trial has commenced. Md. Rule 2-341(b) Committee note. *See also Hoang v. Hewitt Ave. Assocs, LLC*, 177 Md. App. 562, 577–86 (2007) (discussing post-verdict amendment of *ad damnum* clauses).

Due to the discretionary nature of a circuit court's authority to allow amendments to pleadings, we review such decisions for abuse of discretion. *See, e.g.*, *Shabazz v. Dep't*

> that [Mr. Blonder's] capital contribution was in the amount of $700. The documents reflecting [Mr. Blonder's] capital contribution did not change since the filing of the initial Complaint.

Although Mr. Blonder fails to cite the legal standard or any legal authority to support his argument, we nonetheless exercise our discretion to address this issue.

of Pub. Safety, 261 Md. App. 355, 379 (2024). We have described this standard of review as follows:

> [A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.

North v. North, 102 Md. App. 1, 14 (1994).

The circuit court granted the non-managing members leave to amend their complaint in three different ways. First, they modified the dates of Mr. Blonder's alleged manipulation of profits, artificial suppression of profits for personal enrichment, misrepresentation of compensation, prevention of the non-managing members from discovering the wrongful actions, and reception of unearned management fees. Second, they amended the complaint to include Mr. Blonder's false classification of his initial capital contribution as a loan. Third, the non-managing members added the language "and more" in reference to alleged damages to reflect additional damages uncovered specifically by the newly discovered evidence.

Here, we see no abuse of discretion in the circuit court's allowing the non-managing members to amend their complaint because any prejudice caused by allowing the non-managing members to amend their complaint was brought on by Mr. Blonder's failure to timely produce evidence—and the circuit court found as much. During the cross examination of the non-managing members' expert witness, Mr. Wilcoxon, Mr. Blonder introduced for the first time Exhibit 235, a working trial balance[26] for Yellowfin from 2003. Mr. Wilcoxon testified that it was the first time he had seen the document—which listed $1,238,697 owed by Yellowfin to Securities Fortress. Although Mr. Wilcoxon knew that Yellowfin's tax returns reflected a debt owed by Yellowfin for improvements and operational losses, Securities Fortress's identity as the creditor on this debt was not evident until Exhibit 235 was provided.

According to Mr. Wilcoxon, the discovery that the money was paid from Yellowfin to Securities Fortress meant that Mr. Blonder either (a) never made an initial equity contribution of $750,000 in the first place as he told his partners he had,[27] or (b) had made an initial capital contribution of $750,000 but improperly classified the contribution as a loan in order to obscure a payment of Yellowfin's cash to himself without making proportional distributions to the non-managing members. In light of this new evidence, the circuit court allowed the non-managing members to amend their complaint because the amendments were "pursuant to exhibits that [Mr. Blonder]

[26] A "trial balance" is "a bookkeeping worksheet in which the balance of all ledgers are compiled into debit and credit account column totals that are equal." *See* Will Kenton, *Trial Balance: Definition, How it Works, Purpose, and Requirements*, INVESTOPEDIA (June 30, 2024), https://perma.cc/5WAZ-D7AU.

[27] Mr. Blonder argues that his obligation to make an initial capital contribution was limited to $700 as provided in the Operating Agreement. However, Mr. Hetzel and Mr. Kujawski testified that Mr. Blonder had represented to them that, despite the language of the Operating Agreement, he would still be making a $750,000 contribution. Indeed, Mr. Blonder's own testimony was introduced at trial confirming that his capital contribution was the same as the other members of Yellowfin.

produced that were in Mr. Blonder's possession as opposed to anything that [the non-managing members were] doing."

Allowing the non-managing members to amend their complaint did not prejudice Mr. Blonder because the "operative factual pattern" did not change, and no additional cause of action was added. *See Asphalt*, 221 Md. App. at 269. Indeed, the circuit court found that Mr. Blonder was already on notice of the non-managing members' suspicions regarding the loan proceeds because their original complaint included allegations of "other misappropriations of Yellowfin's revenues proven at trial," and that the "loan certainly fell under all of it." And the circuit court only allowed the non-managing members to expand their requested damages to include the $750,000 that the non-managing members discovered, at trial, that Yellowfin had paid to Securities Fortress.

Considering the new evidence introduced at trial and the limitations on additional damages from the amendments, we are satisfied that this was not the "rare situation" where granting leave to amend pleadings was unwarranted. *See Asphalt*, 221 Md. App. at 269. Accordingly, the circuit court did not abuse its discretion by allowing the amendment during trial.

II. Mr. Blonder Failed to Preserve His Argument About a Curative Instruction.

We decline to address Mr. Blonder's contention that the circuit court should have given a curative instruction regarding a statement made by opposing counsel during closing argument. This contention is not preserved.[28]

Rule 8-131 guides our scope of review on unpreserved issues:

> Ordinarily, an appellate court will not decide any [non-jurisdictional] 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.

Md. Rule 8-131(a). Although some degree of discretion remains for an appellate court to review unpreserved issues, it is discretion "that appellate courts should rarely exercise, as considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court." *Barber v. Catholic Health Initiatives, Inc.*, 180 Md. App. 409, 437 (2008) (quoting *Chaney v. State*, 397 Md. 460, 468 (2007)).

Further, an objection to the giving or failure to give a jury instruction must be prompt. Md. Rule 2-520(e) ("No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs

[28] Mr. Blonder, again, runs afoul of Maryland Rule 8-504 on this issue. Although he dedicates more than two pages of his brief to this argument, Mr. Blonder fails to cite any legal authority, as required by 8-504(a)(5), for the applicable standard of review as to the circuit court's denial of the proposed jury instruction. Mr. Blonder also fails to provide legal authority to support his argument that the failure to give the curative instruction was improper and an abuse of discretion.

the jury, stating distinctly the matter to which the party objects and the grounds of the objection."). Otherwise, the objection is waived. *Id. See also Bittinger v. CSX Transp. Inc.*, 176 Md. App. 262, 280 (2007) (noting that a failure to "fully comply with the requirements of [Rule 2-520(e)]" leaves nothing to consider on appeal).

Whether an improper remark or argument made during closing statements warrants a curative instruction is left to the discretion of the circuit court. *Bradley v. Bradley*, 208 Md. App. 249, 265 (2012) (analyzing for abuse of discretion the failure to give a curative instruction during a jury trial on tort claims). The proper "cure" for potential prejudice rests within a trial judge's discretion as the first-hand observer of the effects of the statement who thus has a "finger on the pulse of the trial[,]" so to speak. *Id.* at 266. As a result, we reverse a circuit court's decision to grant or deny a curative instruction "only in the exceptional case, the blatant case." *Id.* at 265.

Here, Mr. Blonder failed to preserve this issue both by failing to timely object and by failing to request a curative instruction from the circuit court. The alleged error Mr. Blonder (now) asserts occurred during closing arguments when, during the opening portion of their closing argument, the non-managing members' counsel said there were "two fraud claims" against Mr. Blonder, though there was only one:

> There are two fraud claims. One is Mr. Blonder said I am putting the same equity in as you and as it turned out, he pulled that money out, and Yellowfin has $750,000 less of cash because that happened. That is one of them. The second one was in that meeting in 2011, when Mr. Blonder said I don't get any money except for management fees unless you do.

Mr. Blonder did not object at the time this statement was made. Instead, Mr. Blonder's counsel waited until the close of the non-managing members' rebuttal to approach the bench and inform the circuit court that the non-managing members' counsel incorrectly "told the jury that [the non-managing members] have two fraud claims." The non-managing members' counsel suggested a curative instruction regarding the bases for the fraud. But Mr. Blonder did not move to strike the statement or ask for a curative instruction. To the contrary, when his opponent requested the curative instruction, Mr. Blonder's counsel assented to "what [the court] think[s] is right."[29] The circuit court denied the curative instruction, and Mr. Blonder—again—did not object.

Even if we were to take up Mr. Blonder's argument here, we see no abuse of discretion in the circuit court's decision not to give a curative instruction because we perceive no prejudice from the statement. The verdict form included a single count of fraud, removing any confusion about the number of fraud counts for which the jury could find Mr. Blonder liable. Moreover, both statements the non-managing members' counsel referred to related to the single fraud count, even if they were separate statements related to that count. Evidence that Mr. Blonder received $750,000 by misclassifying his capital contribution as a loan (the first statement) was an instance where Mr. Blonder benefited

[29] In his briefing, Mr. Blonder contends that "[Mr. Blonder's] counsel requested the court to instruct the jury that Count IV is based only upon one alleged misrepresentation concerning the statement allegedly made in 2009 or 2011 at the meeting between Blonder, Kujawski, and Hetzel." The record does not reflect any request made by Mr. Blonder to this effect, nor that he even supported the non-managing members' request for such an instruction. Mr. Blonder also did not note an objection to the circuit court's ultimate decision about the curative instruction after it was made.

economically from Yellowfin when the non-managing members did not, despite Mr. Blonder's representations to the contrary (the second statement). Thus, both of Mr. Blonder's statements that were alluded to in closing arguments were relevant to the single fraud claim, and, without any discernible prejudice from the remarks during closing arguments, this is not the "exceptional" or "blatant" case where the circuit court has abused its discretion by denying the curative instruction. *See Bradley*, 208 Md. App. at 265.

III. The Circuit Court Did Not Err by Denying Mr. Blonder's Motions for Judgment and JNOV.

Mr. Blonder challenges the denial of his motions for judgment and JNOV on three grounds. First, he asserts that it was error to deny the motions on limitations grounds. Second, Mr. Blonder asserts that the non-managing members introduced insufficient evidence of fraud. Third, Mr. Blonder attacks the damages awarded by the jury, asserting that the compensatory damages were unsupported by the evidence and that the punitive damages were improper.

A party to a civil suit 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." Md. Rule 2-519(a). Similarly, parties may "move for judgment notwithstanding the verdict," but "only if that party made a motion for judgment at the close of all the evidence and only on the grounds advanced in support of the earlier motion." Md. Rule 2-532(a). Under both rules, a circuit court should deny the motion if any amount of evidence was produced "from which reasonable jurors, *applying the* *appropriate standard of proof*, could find in favor of the plaintiff on the claims presented." *Hoffman v. Stamper*, 385 Md. 1, 16 (2005) (emphasis in original). *See also Webb v. Giant of Md., LLC*, 477 Md. 121, 136 (2021) ("When a defendant moves for judgment based on the legal insufficiency of the plaintiff's evidence, the trial judge must determine if there is any evidence, no matter how slight, that is legally sufficient to generate a jury question." (cleaned up)). When assessing motions under both rules, a circuit court must consider "the evidence and reasonable inferences drawn from the evidence in the light most favorable to the non-moving party." *Sugarman v. Liles*, 460 Md. 396, 413 (2018).

We apply the same standard of review to motions for judgment pursuant to Rule 2-519 and for JNOV under Rule 2-532. *Six Flags America, L.P. v. Gonzalez-Perdomo*, 248 Md. App. 569, 581 (2020) (citing *Univ. of Md. Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012)).[30] On review, we conduct the same analysis of the sufficiency of

[30] Although motions for judgment under Rule 2-519 and motions for JNOV under Rule 2-532 have the same standard of review, they may require separate appellate analyses in cases where the relevant evidence changes between the motions due to their different timing. In other words, evidence affecting the legal sufficiency of a claim might be introduced after an initial motion for judgment, thus creating a situation where a circuit court's determinations on these motions should properly be analyzed separately. Motions for judgment may be raised "at the close of the evidence offered by an opposing party" as well as "at the close of all the evidence." Md. Rule 2-519. Motions for JNOV, on the other hand, may be raised "within ten days after entry of judgment on the verdict[.]" Md. Rule 2-532.

Here, however, our analysis does not turn on evidence admitted between Mr. Blonder's motion for judgment at the close of the non-managing members' case-in-chief and at the end of trial. Thus, for simplicity, we condense our analysis of the circuit court's denial of Mr. Blonder's motions for judgment and for JNOV.

evidence that the circuit court does, but we do so without deference to the circuit court's ruling. *Webb*, 477 Md. at 136.

A. Statute of Limitations

Regarding the statute of limitations, Mr. Blonder argues that the circuit court erred by not concluding, as a matter of law, that the non-managing members' claims were time-barred. In Mr. Blonder's view, the non-managing members had express notice or were on inquiry notice of any wrongdoing at several points prior to July 1, 2018,[31] including: (1) in 2012 when Mr. Kujawski requested financial statements and tax returns for Yellowfin from Robin Bailey (a previous chief financial officer of H.B. Properties); (2) in 2013 when the non-managing members filed a complaint against Mr. Blonder; (3) in 2013 when non-managing members attempted to remove Mr. Blonder as managing member; (4) in 2014 when Mr. Kujawski filed a complaint for declaratory relief against Mr. Blonder;[32] (5) in 2017 when Mr. Kujawski sent a letter to Mr. Blonder requesting detailed financial information about Yellowfin from 2016–2017; and (6) in 2017 when Mr. Kujawski engaged in email communications with Ms. Stout about the state of Yellowfin and its business transactions. According to Mr. Blonder, even if the limitations question was properly submitted to the jury, insufficient evidence supports the jury's

[31] The present suit was filed on July 1, 2021. Therefore, July 1, 2018, is the operative date for the accrual analysis under the three-year statute of limitations that applies to the claims here.

[32] The 2014 complaint similarly alleged that Mr. Blonder was misusing authority, assets, and funds, and was engaged in gross negligence and willful mismanagement.

finding by a preponderance of the evidence that the non-managing members did not know, nor "by reasonably diligent investigation should have known, of the injury or damage by [Mr. Blonder] before July 1, 2018[.]" We disagree.

The non-managing members' claims are governed by a three-year limitations period. Md. Code, Courts and Judicial Proceedings ("CJP") § 5-101 ("A civil action at law shall be filed within three years from the date it accrues . . . ."). The "operative date" for when the three-year limitations period begins to run is the "date of accrual." *Moreland v. Aetna U.S. Healthcare, Inc.*, 152 Md. App. 288, 295 (2003). "[T]he question [of] when an action accrues is left to judicial determination." *Poffenberger v. Risser*, 290 Md. 631, 633 (1981).

Maryland courts apply the "discovery rule" to determine the date of accrual. *Caruso Builder Belle Oak, LLC v. Sullivan*, 489 Md. 346, 364 (2025). Under the discovery rule, a claim accrues "when the plaintiff '*knew or reasonably should have known* of the wrong.'" *Id.* (quoting *Cain v. Midland Funding, LLC*, 475 Md. 4, 35 (2021) (emphasis added in *Caruso*)). In other words, if a plaintiff has either express or inquiry notice of the harm, their claim accrues and the limitations period begins to run. *Id.* Once a plaintiff is on express or inquiry notice of a claim, the limitations period is not postponed while they investigate it. *Id.* (citing *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 445 (2000)).

"Notice is critical to the discovery rule." *Windesheim v. Larocca*, 443 Md. 312, 327 (2015). Notice can be "actual" or "constructive," but only actual notice triggers the limitations period. *Id.* Actual notice includes both express notice and implied (or inquiry) notice. *Id.* Express notice occurs when a plaintiff's knowledge of a claim "is established by direct evidence," whereas implied notice occurs when there is "circumstantial evidence from which notice may be inferred." *Id.*

Two additional doctrines apply to the determination of the accrual date in this case. First, an exception for fraud actions applies "[i]f the knowledge of a cause of action is kept from a party by the fraud of an adverse party[.]" CJP § 5-203. This fraud exception operates so that "the cause of action shall be deemed to accrue at the time when the party discovered, or by the exercise of ordinary diligence should have discovered the fraud." *Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A.*, 152 Md. App. 698, 715 (2003). Two conditions are required to meet the fraud exception: (1) the adverse party must have kept the plaintiff ignorant of their cause of action through fraud; and (2) the plaintiff "exercised usual or ordinary diligence for the discovery and protection" of their claim. *Windesheim*, 443 Md. at 334. A plaintiff must plead fraud with particularity to invoke the fraud exception. *Supik*, 152 Md. App. at 715.

The second exception is the "fiduciary rule." Under this exception, if a fiduciary relationship exists between the plaintiff and the adverse party, that relationship gives the plaintiff "the right to relax his or her vigilance to a certain extent and rely on both the good faith of the other party and that party's duty to disclose all material facts." *Windesheim*, 443 Md. at 338. A fiduciary relationship further excuses a plaintiff's "failure to discover the facts constituting fraud" if: (1) the fiduciary relationship is not repudiated; (2) the plaintiff was not put on inquiry notice; and (3) the plaintiff did not fail "to use due diligence in detecting the fraud." *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 99 (2000).

Here, there was sufficient evidence to support the jury's finding that the non-managing members neither "knew, or by reasonably diligent investigation should have known, of the injury or damage [caused] by [Mr. Blonder] before July 1, 2018." As Mr. Blonder notes, the non-managing members requested Yellowfin's financial records at various points in time before July 2018 and engaged in previous litigation against Mr. Blonder. The non-managing members explained, however, that they had requested the financial records to replace lost or misplaced copies of records they already possessed and to decide whether they should maintain their interests in Yellowfin for reasons unrelated to this case. They also testified they did not understand the complex financial records they had access to and had no reason to believe there was any impropriety in the records themselves.

From the prior litigation, to be sure, the non-managing members were on notice of *some* claim against Mr. Blonder, but each one of the non-managing members testified that the allegations from the prior litigation were strictly limited to Mr. Blonder's misuse of the Yellowfin trade name when he independently opened a new restaurant in Annapolis with the same name.[33] And they also testified that they followed up on their

[33] Mr. Loprete did not testify at trial in person. Instead, portions of his deposition were admitted into evidence.

suspicions of misconduct to the best of their ability—concluding with an unsuccessful lawsuit to remove Mr. Blonder from his position as managing member.

Emphasizing the previous lawsuits against him by the non-managing members, Mr. Blonder cites to *Doe v. Archdiocese of Washington*, 114 Md. App. 169, 189 (1997), for the proposition that "once on notice of one cause of action, a potential plaintiff is charged with responsibility for investigating, within the limitations period, all potential claims and all potential defendants with regard to the injury." In *Doe*, the plaintiff sued the archdiocese and two priests seventeen years after he reached the age of majority for sexual abuse that allegedly occurred when he was a minor. *Id.* at 172. This Court held the plaintiff's claims were time-barred as a matter of law. *Id.* at 190. Although the plaintiff had raised the fraud exception to justify his failure to pursue his claims, his complaint did not allege "specific facts to support a claim for fraud, nor any facts from which fraud can be implied." *Id.* at 189. In other words, the plaintiff failed to allege facts supporting that the defendants had done anything to obscure the harms he suffered. *Id.* Instead, we determined that "he was immediately on notice of potential claims against the priests as well as against the Archdiocese" when the priests had molested him. *Id.* at 188.

This case is not the same as *Doe*. Here, the fraud exception and the fiduciary rule applied to the determination of accrual for the non-managing members' causes of action.[34] They evidenced their fraud claim by proving that Mr. Blonder obscured the harms he caused them with his statement that he was not economically benefitting (beyond the management fee) if they were not. The non-managing members also established that Mr. Blonder was their fiduciary. As for the degree of diligence the non-managing members exercised to discover their claims, they explained that they filed suit against Mr. Blonder in 2013 and 2014 for misusing the "Yellowfin" trade name, and that they only terminated their investigation after losing the legal cases. Therefore, because the fraud exception and fiduciary rule applied, the circuit court did not err by leaving to the jury the questions of whether the non-managing members exercised adequate diligence, and whether the non-managing members had "the right to relax [their] vigilance[.]" *See Frederick Rd.*, 360 Md. at 98–99. *See also Green v. Pro Football, Inc.*, 31 F.Supp. 3d 714, 724 (D. Md. 2014) (where plaintiff alleged injury from being tackled in a football game, and further alleged that defendant concealed a "bounty program" that incentivized injuring opposing players, court denied dismissal on limitations grounds,

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[34] The jury was instructed on these exceptions, and Mr. Blonder does not challenge these instructions in this appeal. The instructions were given as follows:

> If the knowledge of a cause of action is kept from a party by the fraud of an adverse party, the cause of action shall be deemed to accrue at the time when the party discovered, or by the exercise of ordinary diligence should have discovered the fraud.
>
> A confidential relationship, by its very nature, gives the confiding party the right to relax his or her vigilance to a certain extent and rely on both the good faith of the other party and that party's duty to disclose all material facts and, as a result, the confiding party has no duty to make inquiries until something occurs to make him or her suspicious.

determining that it was a jury question "whether [the plaintiff's] investigation of his claims was or was not reasonably diligent at the time of the hit, particularly in light of [the defendant's] alleged concealment of the bounty program").

We conclude that legally sufficient evidence supported the jury's finding that the non-managing members did not know, nor should have known, of Mr. Blonder's wrongdoing before July 1, 2018. Consequently, we see no error in the circuit court's decision to deny Mr. Blonder's motions for judgment and JNOV on limitations grounds.

B. Fraud

We next turn to Mr. Blonder's contentions that the circuit court erred by denying his motions for judgment and JNOV based on insufficient evidence of fraud. Mr. Blonder attacks each element of fraud and contends that no evidence establishes any of the elements. He also claims that any misrepresentation he made was "forward-looking" and not actionable as fraud, that any damages from his fraudulent statement are too speculative, and that no fraudulent statement was made to Yellowfin, the named plaintiff on the fraud count. Mr. Blonder's arguments overlap to some extent, and we address several elements of fraud together. Ultimately, we disagree on all fronts.[35]

[35] Sprinkled throughout Mr. Blonder's arguments are citations to legal authority noting that fraud must be pleaded with particularity. Maryland does require particularity in pleadings of fraud, a standard that has been described as requiring a plaintiff to: (1) identify who made the false statement; (2) identify when and in what manner the statement was made; (3) explain why the statement was false; and (4) explain why a finder of fact can conclude that the defendant made the statement with the knowledge of

Five elements must be satisfied to prevail on a cause of action for fraudulent misrepresentation.[36] *Hoffman*, 385 Md. at 28. A plaintiff must establish, by clear and convincing evidence, that: (1) a false statement was made by the defendant to the plaintiff; (2) the defendant had knowledge of the falsity or acted with reckless indifference to the statement's truth; (3) the defendant purposefully sought to defraud the plaintiff through the statement; (4) the plaintiff justifiably relied on the false statement; and (5) the false statement caused a compensable injury to the plaintiff. *Id.* at 16, 28 (citing *Nails v. S & R, Inc.*, 334 Md. 398, 415 (1994); *VF Corp. v. Wrexham Aviation Corp.*, 350 Md. 693, 703 (1998); and *Env't Trust v. Gaynor*, 370 Md. 89, 97 (2002)).

1. False statement

Mr. Blonder argues that there was "simply no material misrepresentation of any fact likely to induce a reasonable person to manifest his assent or take action in reliance thereon." Additionally, he argues that any statement that could be considered a false

its falsity (or with reckless disregard to the truth) and with the intent to induce reliance of others. *See McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 528 (2014). However, Mr. Blonder did not challenge the particularity of the non-managing members' pleadings of fraud in any pre-trial dispositive motions, nor does he question the particularity of the fraud count, as pled, in this appeal. We therefore decline to exercise our discretion to address this contention on the merits. Md. Rule 8-131(a) ("Ordinarily, an appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

[36] "Fraud encompasses, among other things, theories of fraudulent misrepresentation, fraudulent concealment, and fraudulent inducement." *Sass v. Andrew*, 152 Md. App. 406, 432 (2003) (quoting *Iverson v. Johnson Gas Appliance Co.,* 172 F.3d 524, 529 (8th Cir. 1999)).

statement was "forward-looking," and thus cannot serve as a predicate for fraud. We disagree.

The first element of fraud is a "false statement that was made by the defendant to the plaintiff." *Hoffman*, 385 Md. at 28. "A 'false statement' is a statement, conduct or action that intentionally misrepresents a material fact." *Sass*, 152 Md. App. at 429. A fact is material if a reasonable person would rely on it in their decision-making. *Id.* at 430.

Mr. Blonder's fraudulent statement was that he was not, and would not be, benefitting economically from Yellowfin besides the management fee and distributions equal to those the non-managing members received. Although they could not recall the precise date, Mr. Blonder, Mr. Hetzel, and Mr. Kujawski each testified to the meeting where Mr. Blonder made this representation to Mr. Hetzel and Mr. Kujawski. The evidence of Yellowfin's payments to Mr. Blonder's independently owned businesses showed the opposite to be true, however. Mr. Blonder had received payments from Yellowfin outside the management fees and distributions when he reclassified his initial capital contribution as a loan and withdrew $750,000 from Yellowfin, as well as through payments from Yellowfin to his various other business entities—particularly for charges that were excessive and unnecessary. In short, despite his representation, Mr. Blonder received millions of dollars from Yellowfin without the non-managing members receiving matching distributions, and his statement was a false representation of material fact.

Moreover, we have long held that "Maryland recognizes an action for fraud based on fraudulent representations of future intentions." *Bagel Enter., Inc. v. Baskin & Sears*, 56 Md. App. 184, 203 (1983).[37] As we have explained:

> It is true that in a sense a promise to do some act or refrain from some act in the future may establish a merely contractual relation, but where it is made with a fraudulent design to induce the promisee to do something he would not otherwise have done, it is more than that, it is a misrepresentation of the promisor's state of mind, which may be, and in a case such as that before us is, a very material thing.

Sass, 152 Md. App. at 432 (quoting *Councill v. Sun Ins. Office*, 146 Md. 137, 150 (1924)).

Here, Mr. Blonder's misrepresentation was more than a mere promise to do (or not do) something in the future. To the extent that Mr. Blonder told the non-managing members he was not receiving money from Yellowfin other than management fees, that statement was not about a future intention. The evidence showed that Mr. Blonder had already siphoned money into his own businesses. Any suggestion that Mr. Blonder would

[37] To support his argument that a forward-looking statement cannot serve as a predicate for fraud, Mr. Blonder cites to *Delmarva Drilling Co., Inc. v. Tuckahoe Shopping Ctr., Inc.*, 268 Md. 417, 427 (1973), which states that "since one of the elements of fraud is the representation of a past or existing fact, it cannot ordinarily be predicated upon statements which are promissory in nature." *Delmarva*, however, did not involve making false statements with the intention of not performing on them. *See id.* Here, there was evidence that Mr. Blonder's reassurances to the non-managing members were not true because Mr. Blonder had already knowingly received payments from Yellowfin outside of management fees while the non-managing members had not.

Furthermore, *Delmarva* has been explicitly overruled in its holding that negligent misrepresentation is not a cause of action in Maryland, *Martens Chevrolet, Inc. v. Seney*, 292 Md. 328, 336 (1982), and *Delmarva*'s statement about forward-looking statements of a promissory nature not being sufficient for fraud have been limited. *See, e.g., Gross v. Sussex, Inc.*, 332 Md. 247, 261–64 (1993).

not be profiting from Yellowfin (besides the management fees) was forward-looking, but it was also a misrepresentation of Mr. Blonder's state of mind and a materially false representation. In fact, it was these misrepresentations that induced Mr. Kujawski and Mr. Hetzel not to investigate further.

2. Knowledge of falsity, intent to defraud, and reliance

As to the knowledge, intent, and reliance elements of fraud, Mr. Blonder asserts that there was no evidence introduced during trial to establish them. Again, we disagree.

The elements of fraud may be proven through circumstantial evidence. *See, e.g.*, *McClung-Logan Equip. Co. Inc. v. Thomas*, 266 Md. 136, 148 (1961) ("Malice, fraud, deceit and wrongful motive are oftenest inferred from acts and circumstantial evidence. They are seldom admitted and need not be proved by direct evidence."). An individual may only be liable for the tort of fraud or deceit if they knowingly make a false representation or if they act with reckless indifference to the truth. *Sass*, 152 Md. App. at 430. In addition, a fraudulent representation must be made with "deliberate intent to deceive." *Id.* In other words, fraudulent inducement requires proof that the defendant intended to mislead the plaintiff through the knowingly false representation. *Ellerin v. Fairfax Sav.*, 337 Md. 216, 232 (1995). Moreover, the plaintiff must prove they "relied on the misrepresentation and had the right to rely on it." *Sass*, 152 Md. App. at 441 (quoting *Nails*, 334 Md. at 415). Reliance is satisfied if the misrepresentation "substantially induced the plaintiff to act." *Id.*

The evidence produced at trial was sufficient for the jury to reasonably infer that Mr. Blonder knew that he was individually profiting from Yellowfin beyond management fees despite his misrepresentation to the contrary to non-managing members. Mr. Blonder was personally managing Yellowfin and all its financial details. He approved all the payments the restaurant made—including approving any distributions—and "he handled all the receipts." According to Ms. Kohlmann, Mr. Blonder directed her to make Yellowfin's payments (including to his other companies), and when she raised concerns about overcharges directly to Mr. Blonder, he ignored them. Ms. Kohlmann also noted that he dismissed her qualms about his instructions to deposit the entirety of the Coca-Cola check into Land & Sea's accounts. An email from Mr. Blonder instructed Ms. Bailey to "[g]ive [him] all bank balances he can move. Give [him] all high bank balances. [He] need[s] to get three million to four million right away." And it was Mr. Blonder's own companies that were directly receiving millions of dollars from Yellowfin. From this circumstantial evidence alone, the jury could infer that Mr. Blonder knew he was receiving money from Yellowfin outside of management fees and that his business partners were not receiving their proportionate share.

Mr. Blonder's knowledge of the falsity was further confirmed by his own testimony. Mr. Blonder admitted that his initial capital contribution would not have been made as a loan and that he would have contributed the same amount of capital to Yellowfin as his partners. He admitted to knowing that Yellowfin was paying fees to

Liberty Marina, H.B. Properties, and Land & Sea—all companies he acknowledged owning.

The evidence further supports that Mr. Blonder intended to deceive the non-managing members with his false statement. Notably, Mr. Blonder made the misrepresentation in response to the non-managing members' inquiry about the lack of Yellowfin's profit distributions. Put another way, when faced with concerns about his management of Yellowfin, Mr. Blonder responded by assuring the non-managing members that his incentives and management objectives were aligned with their own interests. Thus, given the evidence supporting Mr. Blonder's knowledge of Yellowfin's payments to his other businesses, the jury could reasonably infer that Mr. Blonder intentionally made the false statement to convince the non-managing members to refrain from further action regarding the lack of distributions.

Sufficient evidence was also adduced to establish the non-managing members' reliance on Mr. Blonder's misrepresentation. Both Mr. Hetzel and Mr. Kujawski testified that Mr. Blonder significantly influenced their decision-making through his false representation. As Mr. Hetzel put it, after Mr. Blonder had "explained" the situation about the lack of Yellowfin's continuing distributions, "that was pretty much the end of that." Mr. Kujawski also testified that, after Mr. Blonder's assurances, the non-managing members took no further steps to investigate.[38] Additionally, since Mr. Blonder was the experienced restaurateur amongst the owners and their business partner, they had the right to rely on him. *See, e.g., Crawford v. Mindel*, 57 Md. App. 111, 120–21 (1984) (determining that where a defendant was a fiduciary to his business partners, they were "justified in believing that [he would] not act in a manner adverse or inconsistent with [their] interest or welfare," and the defendant could be liable for constructive fraud).

3. Causation

As for the causation element of fraud, Mr. Blonder argues that even if his statement was false, any damages from the non-managing members' reliance on his statement were insufficiently proven. Mr. Blonder portrays the non-managing members' testimony about reliance as "general notions" that they "may have been more diligent in

[38] Mr. Blonder appears to argue that the reliance of the non-managing members is not actionable because they "had no right to force a distribution under the Operating Agreement or to remove the managing member for failing to do so." This argument misses the point of the fraud claim. The non-managing members relied on Mr. Blonder's representations as assurances that he was acting in the best interests of all the owners—even when Yellowfin was not making distributions or payments to them. Although Mr. Blonder is correct that the non-managing members did not have a right to force distributions or change the managing member due to a lack of distributions, the non-managing members did have the right to remove the managing member "for cause." The non-managing members' reliance centers on their trust in Mr. Blonder's statement that he was not receiving additional financial benefits outside of distributions and management fees and thus was safeguarding their investment—when he was in fact siphoning funds out to his various other businesses.

the investigation of [their] claims." Such generalities, he claims, "are speculative and totally insufficient" to establish causation.[39]

To be sure, the injury caused by a fraudulent statement must be sufficiently definite. *See Cent. Truck Ctr., Inc. v. Cent. GMC, Inc.*, 194 Md. App. 375, 394 (2010). In *Central Truck Center*, we determined that summary judgment on a fraud claim was proper where the evidence of an injury was "entirely speculative and thus totally insufficient to raise any genuine issue of fact." *Id.* The purchaser of a truck dealership alleged fraud in the seller's financial statements after generating less revenue in the first three months than the purchaser expected. *Id.* at 380–81. The purchaser theorized that the seller had intentionally inflated the value of the truck dealership by overbilling for parts

[39] Mr. Blonder's brief also argues the following:

> Upon filing of the 2013 TRO (as discussed below), the non-managing members believed that Blonder was using Yellowfin money to further his other business interests and attempted to remove Ritz as managing member for cause. Thus, in order for the Appellees to prove by clear and convincing evidence damages proximately caused by its justified reliance the alleged statement, it would have to introduce evidence of the compensatory damages suffered "but for" the making of the statement. First, such damages would be limited to damages proven between 2011 (or 2009) and 2013. Moreover, the damages could not be those incurred simply from breach of contract. No evidence was introduced as to the damages allegedly suffered "but for" the making of the 2009 or 2011 statement.

We first note that this argument contravenes Md. Rule 8-504, as it fails to provide any authority, thus falling short of the requisite particularity for an appellate argument. *See Klauenberg v. State*, 355 Md. 528, 552 (1999) (noting that Md. Rule 8-504 requires arguments to be made with particularity). To the extent that Mr. Blonder argues that "but for" causation is necessary, however, we disagree. *See Nails*, 334 Md. at 416 (noting that a "but for" analysis is not the exclusive test in fraud cases).

and service it provided in order to enhance the dealership's gross receipts prior to its sale. *Id.* As for its harm from the alleged scheme, the purchaser "allege[d] simply that it paid more for the goodwill of the business than it was worth, and that its sales figures . . . were less than expected, given the inflated past sales figures [the seller] had provided." *Id.* at 393. The nebulous nature of good will and the multitude of reasons for a decline in monthly sales made causation too speculative. *Id.* at 393–94.

Here, though, the jury did not have to speculate about the harm Mr. Blonder's false statement caused. The non-managing members testified that they relied on Mr. Blonder's fraudulent statement and determined not to investigate his management of the restaurant further. When they discovered the extent of Mr. Blonder's mismanagement, the non-managing members quickly acted to remove Mr. Blonder as managing member and Mr. Kujawski ended Yellowfin's relationships with Mr. Blonder's individual businesses. In short, the non-managing members left exclusive control of their investment in Mr. Blonder's hands because they believed his representations that he was acting fairly and prioritizing their collective interest. Then, at trial, the non-managing members introduced testimony, receipts, and other records showing the financial outlays from Yellowfin to Mr. Blonder's other companies during his tenure as managing member. Thus, non-speculative evidence showed that Yellowfin paid millions of dollars to Mr. Blonder's personal companies flowing from his false statement.

4. Recipient of the fraudulent statement

Pointing to the fact that Yellowfin was the plaintiff on the fraud count here, Mr. Blonder next argues that the evidence of reliance by Yellowfin, or harm to Yellowfin, was insufficient because Mr. Blonder's fraudulent statement was not made to the fraud plaintiff, Yellowfin. We decline to address this argument.

An appellate brief is required to contain "[a]rgument in support of the party's position on each issue." Md. Rule 8-504(a)(6). *See also Silver*, 248 Md. App. at 712 n.12 ("Where a party fails to cite any relevant law on an issue in its brief, appellate courts will not rummage in a dark cellar for coal that may or may not be there." (cleaned up)). If there is failure to comply with Rule 8-504(a)(6), this Court "may dismiss the appeal or make any other appropriate order with respect to the case." Md. Rule 8-504(c).

Here, Mr. Blonder cites no legal authority for the proposition that when fraudulent statements about a limited liability company are made to the limited liability company's members, those fraudulent statements are not made to the company itself. Nor are we aware of any such authority. Accordingly, we go no further.

C. Damages

Mr. Blonder next challenges the trial court's denial of his JNOV motion as it applied to the jury's award of compensatory and punitive damages. We see no error in the court's denial of this motion on these grounds either.

1. Compensatory damages.

Mr. Blonder argues that "[n]o competent evidence was adduced at trial" for the jury to appropriately award damages. He posits that the jury prescribed compensatory damages as follows: (1) $634,127 for excessive repair and maintenance fees; (2) $3,130,440.16 for management fees; (3) $224,171.66 in unnecessary banquet commissions; (4) $190,880.36 in unnecessary payroll processing fees; (5) $750,000 from the improperly booked loan repayment; (6) $28,031.67 in duplicate attorney fees; and (7) "failure to allocate the commission related to the Coke contract." With these assumptions as a backstop, Mr. Blonder attempts to challenge the jury's award by inviting us to reweigh the evidence. We decline to do so.

Compensatory damages "must be proved with reasonable certainty, and may not be based on speculation or conjecture[.]" *Carter v. Wallace & Gale Asbestos Settlement Tr.*, 439 Md. 333, 350 (2014) (quoting *Asibem Assocs., Ltd. v. Rill*, 264 Md. 272, 276 (1972)). Reasonable certainty, however, is not "mathematical certainty." *Brock Bridge Ltd. P'ship, Inc. v. Dev. Facilitators, Inc.*, 114 Md. App. 144, 157–58 (1997) (explaining that difficulties in ascertaining damages due to "errors in bookkeeping, duplicate billing, noncompetitive bidding, and other irregularities" should not preclude plaintiffs' recovery).

Here, the non-managing members proved their damages with reasonable certainty. Mr. Kujawski explained his calculations of $634,127 in unreasonable repair and maintenance expenses by comparing Yellowfin's costs under his management as opposed to Mr. Blonder's. [40] Yellowfin paid $3,130,440.16 in management fees to Mr. Blonder, and Mr. Kujawski testified that the six percent fee was agreed as fair compensation for Mr. Blonder managing Yellowfin for the benefit of all the members—not to enrich himself. Ms. Orendorff testified that Yellowfin paid twenty percent banquet commissions to Land & Sea and accounting records for Yellowfin's payments to Land & Sea were admitted at trial adding up to $224,171.66. Ms. Kohlmann told the jury that unnecessary payroll processing fees—at minimum, six times the rate paid to the third-party processor—were paid to H.B. Properties, and matching accounting records were submitted into evidence totaling $190,880.36. Exhibit 235 showed that Securities Fortress received over $750,000 as a loan repayment despite Mr. Blonder's own testimony that he contributed that amount as a capital contribution and not as a loan. Records showing duplicate fees of $28,031.67 for Mr. Blonder's law firm were also admitted—one of which was actually paid to Securities Fortress. Yellowfin's "Coca-Cola Exclusivity Disbursement" agreement was provided along with testimony and documentation showing that the entirety of the rebate money had been paid into Land &

[40] At trial, Mr. Kujawski explained his method on how the non-managing members reached the $634,127 amount they were requesting in damages. Specifically, Mr. Kujawski calculated an average expenditure of $76,000 on repair and maintenance expenses during two years of his time as managing member and subtracting that from the higher figures paid during Mr. Blonder's tenure as managing member. Mr. Kujawski also provided several reasons for why the average cost calculation of $76,000 was a conservative estimate, including the uptick in labor costs post-COVID and the advanced age of Yellowfin's equipment and facilities as compared to the majority of Mr. Blonder's time managing the restaurant. Further, he explained which years, and why, he chose from his time as managing member in order to calculate an average to compare with Mr. Blonder's tenure.

Sea's accounts, despite Yellowfin being entitled to $51,960 based on its sales of Coca-Cola products. Each of these numbers presented to the jury was based on calculations from the available financial records. The non-managing members also presented evidence of other damages where records were incomplete, including, for example, Mr. Blonder issuing thousands of dollars in Yellowfin gift cards without paying for them.

That the jury did not express its award within the categories Mr. Blonder identifies does not undermine the sufficiency of the non-managing members' evidence. For starters, neither party objected to the use of a general verdict form calling for an aggregated award of compensatory damages rather than a special verdict form with particularized compensatory damages awards. As a consequence, Mr. Blonder cannot assert error over the form of the verdict now. *See Edwards v. Gramling Eng'g Corp.*, 322 Md. 535, 550 (1991), *cert. denied*, 502 U.S. 915 (1991) (noting that a party cannot, for the first time on appeal, "bemoan the imprecise language" of a verdict form).

Nor was the jury required to weigh the evidence as Mr. Blonder proposes.[41] It is the jury's role to assign the proper weight to evidence and testimony—including that of expert witnesses. *See Steamfitters Local Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704, 737 (2020). That Mr. Blonder may have weighed the evidence differently does not mean that we disturb the jury's award in his favor.

[41] The jury awarded $5,013,030 in compensatory damages, while the damage calculations asserted by Mr. Blonder add up to $5,009,610.85.

2. Punitive damages.

Mr. Blonder[42] also challenges the jury's award of punitive damages on two grounds: (1) there was insufficient evidence to support a finding of actual malice; and (2) the amount awarded was excessive in light of the factors of deterrence and ability to pay that we laid out in *Bowden v. Caldor, Inc.*, 350 Md. 4 (1998). Again, we disagree.

For fraud, an award of punitive damages requires that there be "*actual* knowledge of falsity." *Hoffman*, 385 Md. at 42 (citing *Ellerin*, 337 Md. at 232) (emphasis in original). Where the fraud is "based on the alternative state of reckless disregard" for the truth or falsity of a statement, punitive damages are not available. *Id.* Essentially, "[w]hat is needed to support an award of punitive damages is conscious and deliberate wrongdoing." *Id.*

Here, there was sufficient evidence of actual malice. As discussed above, Mr. Blonder knew that Yellowfin's funds had been flowing to him through his other companies. This siphoning of funds from Yellowfin to Mr. Blonder was happening well before the non-managing members asked Mr. Blonder about the decrease in Yellowfin's distributions. Nonetheless, Mr. Blonder represented to the other owners that he would only profit in tandem with the non-managing members. In essence, Mr. Blonder knew that Yellowfin's funds were being paid to his other companies, represented to the non-managing members that he was not economically benefitting if they were not, and made

[42] Here, we refer to Mr. Blonder solely in his individual capacity, because the jury only awarded punitive damages against him and not against Ritz.

these representations in response to the non-managing members' concerns about the lack of distributions from Yellowfin. This is sufficient evidence for the jury to reasonably infer that Mr. Blonder's false statements were conscious and deliberate.

We are also unpersuaded by Mr. Blonder's contention that the size of the punitive damage award was excessive in light of the *Bowden* factors. In *Bowden v. Caldor, Inc.*, the Court laid out nine factors for courts to assess the propriety of punitive damage awards: (1) proportionality to the defendant's wrongdoing; (2) proportionality to the defendant's ability to pay; (3) deterrence value; (4) comparability to criminal fines; (5) comparability with other punitive awards; (6) the non-requirement of evidence of other punitive awards against the same defendant for the same conduct; (7) other available relief; (8) the plaintiff's reasonable costs and expenses; and (9) comparability to compensatory damages. 350 Md. at 27–41. However, these considerations "are not criteria that must be established but, rather, guideposts to assist a court in reviewing an award." *Darcars Motors of Silver Spring, Inc. v. Borzym*, 379 Md. 249, 275 (2004). Moreover, it is not the plaintiff's burden to establish a defendant's ability to pay a punitive damage award. *Id.*

Mr. Blonder only challenges the second and third factors as being unsupported by the evidence. Specifically, he argues that there was "no evidence" of his ability to pay the punitive award. As for deterrence value, Mr. Blonder argues that because there was no evidence that he operates other businesses with partners, there was no evidence of a "potential for similar conduct to be deterred."

The record belies these arguments. Mr. Blonder testified that he has ninety different companies and has different degrees of ownership among them. He charged each company he managed a six percent management fee; some of these fees eclipsed $100,000 in a month. His management fees from Yellowfin alone were over three million dollars. Therefore, considering the number of companies Mr. Blonder managed and the income he received from them, there was sufficient evidence for the jury to reasonably find that Mr. Blonder was able to pay the punitive award, and that the punitive award would serve as a deterrent against Mr. Blonder committing similar misconduct while managing other companies.

IV. The Circuit Court Did Not Abuse its Discretion by Denying Remittitur.

Mr. Blonder also argues that the circuit court should have granted remittitur. We see no abuse of the circuit court's discretion in its denial of this motion.

A circuit court has discretion that is "wide" and "virtually boundless" to determine whether damages are excessive and whether a motion for remittitur should be granted or denied. *John Crane, Inc. v. Puller*, 169 Md. App. 1, 52 (2006); *see also Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 449 (1992) ("The granting or denial of a motion for new trial based upon the excessiveness of damages or a motion for remittitur is within the discretion of the trial court."). Although circuit courts have a great deal of discretion, they also "must act in deference to the jury's verdict because the jury is sacrosanct and its importance is unquestioned." *Blitzer v. Breski*, 259 Md. App. 257, 281 (2023) (cleaned up). Our review of the circuit court's denial of remittitur defers to the jury's findings as well. *Id.* With the jury's role in mind, remittitur is reserved for cases where a verdict is "grossly excessive" or "shocks the conscience of the court." *Id.*

For well over a decade, Mr. Blonder siphoned Yellowfin's money to himself by directing that Yellowfin pay overstated and spurious fees to his independently owned companies. All the while, Yellowfin paid Mr. Blonder over three million dollars in management fees. Although the non-managing members were not able to trace every penny spent during Mr. Blonder's management, they presented records supporting damages, including interest, of $8,593,302.04. The jury awarded $6,538,734. Even with punitive damages pushing the total verdict to $9,628,734.90, we do not deem the denial of remittitur to be beyond the "virtually boundless" discretion of the circuit court. *John Crane, Inc.*, 169 Md. App. at 52. Indeed, we know of no Maryland appellate decision disturbing "the exercise of [a] lower court's discretion in denying a motion for [remittitur or a] new trial because of the inadequacy or excessiveness of [compensatory] damages." *See Banegura v. Taylor*, 312 Md. 609, 624 (1988).[43]

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.

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[43] Although in *Banegura* the Maryland Supreme Court vacated a circuit court's decision to deny a new trial on the ground that the verdict was excessive, it did so after finding that the circuit court failed to exercise any discretion at all. *Banegura*, 312 Md. at 625. For situations like the present case where the circuit court denied a motion for remittitur and/or a new trial after properly exercising its discretion, *Banegura*'s pronouncement still holds true today.