IN THE COURT OF APPEALS OF MARYLAND

No. 5
September Term, 2019

ANDREWS & LAWRENCE PROFESSIONAL SERVICES, LLC,
and
GALYN MANOR HOMEOWNERS ASSOCIATION, INC.,

Petitioners,

v.

DAVID O. MILLS, et ux.,

Respondents.

On Appeal from the Circuit Court for Frederick County
(The Honorable William R. Nicklas Jr. and the Honorable Scott L. Rolle)
Pursuant to a Writ of Certiorari to the Court of Special Appeals

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BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

Respondents David and Tammy Mills brought an action against Petitioner, Galyn Manor Homeowners Association, Inc. ("Galyn Manor"), for its arbitrary and unsubstantiated charging of fines and fees to the Millses' homeowner's association account in violation of Galyn Manor's governing documents. This appeal arises out of the Circuit Court for Frederick County's grant of summary judgment in favor of Galyn Manor and Petitioner Andrews & Lawrence Professional Services, LLC (Andrews) on Respondents' claim under the Maryland Consumer Protection Act (CPA), Md. Code Ann., Com. Law §13-101, *et seq.* The circuit court ruled that the CPA does not apply to Andrews under any circumstances because of the professional services exemption in the Act. E.31–32. It also entered summary judgment in Petitioners' favor on Respondents' claim under the Consumer Debt Collection Act (CDCA), Md. Code Ann., Com. Law §14-202(8), because it concluded that Respondents only challenged the validity of the underlying debt. E.30–31.

At trial, the circuit court entered judgment in Petitioner's favor on the breach of contract and conversion claims. E.38. Respondents filed a motion to alter or amend the summary judgment order, which the court denied. E.17. The Millses filed a timely appeal to the Court of Special Appeals challenging the circuit court's decisions related to their claims under the CPA and CDCA, as well as their conversion and breach of contract claims. E.19.

The Court of Special Appeals reversed the circuit court's summary judgment on the CPA claim. It also reversed the circuit court's summary judgment on the CDCA

claim, holding that Respondents challenged a method of debt collection by challenging Petitioners' right to file liens for debts that were time-barred. It affirmed the trial court's decisions related to the conversion and breach of contract claims. Petitioners sought a writ of certiorari on the intermediate court's reversal of the trial court's decision related to the CPA claim only. They did not seek certiorari on the part of that decision related to the CDCA claim. Thus, the case will return to the circuit court irrespective of this Court's decision on Respondents' CPA claim.[1, 2]

QUESTION PRESENTED

When an attorney's conduct on behalf of a client against another violates the Maryland Consumer Protection Act, does the Act's exemption for the "professional services" of an attorney shield the attorney's client from liability under that Act?

STATEMENT OF FACTS

In August 2004, Respondents David and Tammy Mills bought property located at 12 Fiona Way, Brunswick, Maryland. E.42. This address is within a covenant community governed by Galyn Manor through its contract entitled Declaration of Covenants, Conditions, Restrictions and Easements ("Declaration"), E.118–143, and its

[1] The circuit court had also granted summary judgment in Petitioners' favor on Respondents' breach of contract, malicious use of process, fraud, and defamation claims and granted summary judgment in part on their conversion claim. E.22–23. Before this Court, Respondents do not challenge the lower courts' decisions related to these claims.

[2] Andrews is a party to this action based on a claim of indemnity by Galyn Manor. E.03, 117. Given that the only surviving claims are statutory, i.e., under the CPA and CDCA, and neither statute authorizes indemnification claims like those asserted by Galyn Manor, it is not clear that Andrews is a proper party for purposes of Galyn Manor's violations of the operative statutes. *Hartford Acc. & Indem. Co.*, 109 Md. App. 217, 277–79 (1997).

Bylaws, E.144-163. The Declaration governs the relationship between the Millses and Petitioner Galyn Manor. It is recorded in the land records of Frederick County. E.119.

The Declaration states that each owner agrees to pay an annual assessment to Galyn Manor. E.135. Galyn Manor may also levy special assessments. E.136. Under the Declaration, annual assessments and special assessments, combined with interest, late charges, costs, and attorneys' fees constitute a continuing lien upon the property and a personal obligation of the property's owner. E.135. If an owner violated a provision of the Declaration, the owner agrees to reimburse Galyn Manor within thirty days of its written demand for "costs and expenses" incurred because of the violation. E.141.

Through discovery, the Millses established that Galyn Manor charged them a myriad of fines and fees in 2007, 2008, and 2011, which they disputed, denying the underlying allegations. E.40–41, 47, 50–52, 318–24, 325, 352–53, 356–58, 379–80, 381–85. They also disputed the fines and fees because neither the Declaration nor any other rules or regulations authorized the fines. The charges included $600 in fines from 2007, a $1,500 fine in 2008, E.325, and $375 to $775 per fine for violations Galyn Manor asserted involving trash on the Millses' property, totaling $6,450 in 2011. E.381–85. The Millses also showed that Galyn Manor pursued legal costs and attorneys' fees along with the fines and fees, even possibly including legal costs and attorneys' fees as fines themselves. E.53–58, 331, 335–37. In addition, they demonstrated that Galyn Manor merged the disputed fines and fees with the Declaration's standard annual assessments and then claimed the entire balance was overdue assessments. E.314-16; *see also* E.325, 331, 335–37, 352–53, 356–58, 359–360, 365–67, 369–372, 373–376, 394–97, 405, 408–

09, 411. Galyn Manor, therefore, took all the payments the Millses submitted and applied them to the entire disputed balance, rather than to their undisputed annual assessments. This created a never-ending spiral of debt.

In December 2007, Galyn Manor retained Andrews to collect the fines and fees it had charged and those it had instructed Andrews to add to the Millses' account. E.354, 379–80, 381-85. Delinquent accounts went to Andrews for collection. E.270–71. Galyn Manor President James Buchanan testified that to ensure the accuracy of the fines Galyn Manor was charging the Millses, he did not look at every discrete collection letter. E.251. Instead, he simply assumed that if Galyn Manor fined them $50.00 a day for ten years, those fees would be more than $6,450. E.251. Mr. Buchanan was not able to explain the legitimacy of the fines nor was he able to clearly state that Galyn Manor or its management agent had sent required notices to the Millses prior to charging fines to their account. E.154, 220–21. He did, however, clearly state that he wanted Andrews to go after this disputed debt: "[w]e have a legal and binding agreement with [Andrews] . . . they fulfill certain roles for us and it includes going after debt, in any way, shape or form necessary." E.221. "We request enforcement." E.244.

Andrews, between 2008 and 2015, recorded four separate liens against the Millses property based on those charges, signing the lien statements as attorney and agent for Galyn Manor. E.328, 338, 368, 425. Andrews consulted with Mr. Buchanan and received his approval before filing the liens. E.235, 237–39. The liens, however, contained disputed charges, some of which were duplicative and time-barred. E.90, 335–

38, 364–68. Andrews also filed requests for garnishments on behalf of Galyn Manor, successfully garnishing over $3,000 from the Millses' bank account in 2015. E.415–17.

During that period, in July 2011, Andrews drafted a promissory note after it had filed a writ of garnishment on behalf of Galyn Manor that froze the Millses' only bank account. E.340–43, 346–50. The Millses were required to sign the note, which was executed under seal, in exchange for release of the garnishment. E.344, 348, 586–87. Among other things, the promissory note stated that if violations of the Declaration were "not addressed immediately," Galyn Manor would pursue garnishment of the entire sum it believed it was owed. E.177–78, 345. The sum included amounts that were time-barred and that the Millses had disputed. E.178. The note also waived some of the Millses' rights under Maryland law and contained a confessed judgment provision. E.347–48. They made payments on the note in 2011, 2012, and 2013, but Galyn Manor applied those payments to the disputed claims, rather than to the Declaration's annual assessments. E.353, 357–58, 363–363-A, 366-67, 371–72, 375–76.

In March 2012, Thomas Van Pelt, a manager with Galyn Manor's property management company, The Management Group Associates, Inc. (TMGA), instructed Andrews to proceed with all enforcement because Galyn Manor's board concluded that the Millses had violated the promissory note. E.354. After Mr. Van Pelt's letter, Andrews sent the Millses a collection letter for debt including disputed fines dating all the way back to January 2008 and other charges that Galyn Manor had already removed from their account. *Compare* E.351–53 *to* E.355–58.

The Millses' account was already with Andrews when TMGA became the management company for Galyn Manor in 2011. E.265, 274. Mr. Van Pelt testified that if homeowners disputed Andrews's actions or accounting, he would refer them back to the attorney because "their collection is with the attorney." E.271. TMGA did annual checks with Andrews to confirm that the accounts for collection in TMGA's system were with Andrews's office. E.275. TMGA did no other verification, and there was no review of individual accounts by TMGA or Galyn Manor. E.275. Yet Mr. Van Pelt and Mr. Buchanan both testified that part of their problem with their prior management company was record-keeping. E.229, 270. Nor did Mr. Buchanan know whether Galyn Manor or its management agent sent notices to the Millses of their right to a hearing, prior to charging fines to their account, E.220–21, as the Bylaws require. E.154.

In January 2014, Andrews sent an updated fee agreement to Mr. Van Pelt. E.386–93. The agreement stated that attorneys will supervise servicing and collection of fines and other charges "as directed by the client," i.e., Galyn Manor. E.387. The agreement also required Galyn Manor to adopt the fee schedule and collection policies of the law firm as long as the policies are not unlawful and do not violate the Declaration or Bylaws. E.387. Finally, the agreement provided a priority for crediting payments received on a delinquent account: attorneys' fees had the highest priority, while assessments were only fifth most important. E.388. And the agreement stated that payments were applied to the oldest incurred debt first. E.388.[3]

[3] Along with the CPA violations the Millses established during discovery, at trial, they proved that Andrews pursued different amounts of money from them depending on

SUMMARY OF ARGUMENT

The General Assembly enacted the CPA to remedy a significant increase in deceptive practices in consumer transactions and thus maintain "the health and welfare" of Maryland residents. Md. Code Ann. Com. Law § 13-102(b)(3). In doing so, it explicitly stated that the CPA shall be construed and applied liberally to promote its purpose of protecting consumers. *See* § 13-105, 13-102(3).[4] Petitioners, however, offer a breathtakingly broad interpretation of the CPA's professional services exemption that could eviscerate the entire CPA. They interpret the exemption so broadly that a creditor like Galyn Manor would be immune for *all* its CPA violations as long as law firms like Andrews carried them out—simply because Andrews is a law firm, and even if it was performing simple debt collection activities that any debt collection agency could perform. Followed to its logical conclusion, debt collection agencies could hire a single licensed attorney, hang out a shingle, and enjoy immunity from any CPA liability under

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whether Andrews was attempting to collect the money through a collection letter, a lien, or a lawsuit. E.635–36. There was testimony that Andrews only tried collecting two-years' worth of alleged debt using liens, three-years' worth of alleged debt using lawsuits because of the three-year statute of limitations, but when using collection letters, Andrews claimed all the alleged debt going back to 2008. E.635–37. At trial, Andrews also admitted that it applied all of the Millses' payments to old debt. E.642. Their annual assessments, therefore, could be "paid in full" yet not credited because their payments would be applied to alleged old debt instead, including disputed fines and time-barred claims. E.642, 645–46. Andrews admitted, moreover, that it did not track whether it applied a payment to a specific debt, and the account statements the Millses received did not indicate how their payments were being applied. E.645–46. Because these facts came out at trial, however, they were not before the trial court when it granted the motion for summary judgment that is the subject of this appeal.

[4] All citations to the Maryland Code are to the Consumer Protection Act, Md. Code Ann., Commercial Law article, unless otherwise indicated.

the professional services exemption. And because CDCA violations are per se CPA violations, Petitioners' interpretation of the exemption threatens to eviscerate the CDCA, too, even though there is no corresponding exemption under the CDCA. *See* § 13-301(14)(iii). An interpretation of the CPA exemption with such sweeping, self-defeating consequences cannot be what the General Assembly intended.

To support this extreme interpretation of the exemption, Galyn Manor and Andrews argue that the exemption is not a statutory immunity, contrary to this Court's decisions expressly holding otherwise—one reason why the lower court rejected Galyn Manor's attempt to enjoy any statutory exemption Andrews may have. Because exemptions like the professional services exemption are the same as statutory immunities, principals like Galyn Manor are not entitled to enjoy any immunity its agents like Andrews may have unless it has an independent basis to do so. Petitioners assert that their relationship, as attorney and client, is an independent contractor-principal relationship. But exemptions or immunities do not transfer to the principal regardless of whether the agent is a servant or an independent contractor.

Petitioners also contend that because their agent-principal relationship is an independent contractor-principal one, vicarious liability is inapplicable, and Galyn Manor cannot be vicariously liable for Andrews' violations of the CPA. But even if the attorney-client relationship is an independent contractor-principal one, that does not preclude a client's vicarious liability for an attorney's CPA violations. A principal is still liable to third parties in a civil suit under vicarious liability for fraud, deceit, and misrepresentation, the types of wrongdoing that the CPA prohibits. And likewise, it is

the very kind of misconduct the Millses pled Andrews had committed against them on behalf of Galyn Manor when Andrews was collecting and attempting to collect the Millses' alleged debt. Galyn Manor, therefore, may be held vicariously liable for Andrews's alleged CPA violations.

Finally, Petitioners warn of a host of problems arising for attorneys from holding Galyn Manor and other creditors liable for the CPA violations of the attorneys they hire to collect their debts. But Petitioners' arguments are unpreserved. Even if the Court considers their arguments, Petitioners fare no better. They overlook that they created the very problems they now warn the Court about by pressing an extreme interpretation of the professional services exemption. If this Court construes the exemption narrowly, as its prior holdings require, it resolves the problems about which Petitioners complain.

STANDARD OF REVIEW

Whether a trial court's grant of summary judgment was proper is a question of law, subject to non-deferential review on appeal. *Tyler v. College Park*, 415 Md. 475, 498 (2010) (citing *Conaway v. Deane*, 401 Md. 219, 243 (2007)); *Charles Cty. Comm'rs v. Johnson*, 393 Md. 248, 263 (2006); *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737 (1993). When reviewing a grant of summary judgment, courts "independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." *Livesay v. Baltimore*, 384 Md. 1, 9 (2004).

Appellate courts also review the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the well-

pled facts against the moving party. *Conaway*, 401 Md. at 243. To the extent a case involves interpretation and application of statutory construction, appellate courts review the trial court's legal conclusions de novo. *Burson v. Capps*, 440 Md. 328, 341–43 (2014), *reconsideration denied*, (Nov. 19, 2014) (citations omitted). The goal of statutory construction is to discern and carry out the intent of the legislature. *Blue v. Prince George's Cnty.*, 434 Md. 681, 689 (2013).

ARGUMENT

I. THE GENERAL ASSEMBLY ENACTED THE CONSUMER PROTECTION ACT AS A REMEDY FOR DECEPTIVE PRACTICES.

The General Assembly enacted the CPA in 1973 to remedy a significant increase in deceptive practices by sellers of "merchandise, real property, and services and the extension of credit." § 13-102(a)(l). It found that existing laws were inadequate, poorly coordinated, and not widely known or adequately enforced. § 13-102(a)(2). It concluded, therefore, that it should investigate unlawful consumer practices, assist the public in obtaining relief from them, and prevent them to "maintain the health and welfare" of Maryland residents. § 13-102(b)(3). Because the General Assembly's purpose for enacting the CPA is to "provide remedies not available at common law," the CPA is a remedial statute. *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 421 (2016) (quoting *Neal v. Fisher*, 312 Md. 685, 693 (1988)).

The General Assembly explicitly stated that the CPA shall be construed and applied liberally to promote its purpose of protecting consumers. *See* § 13-105, 13-102(3), *see also Scull v. Groover, Christie & Merritt, PC*, 435 Md. 112, 125 (2013).

Assuredly, because the Act is a remedial statute, "it 'must be liberally construed . . . in order to effectuate the [Act's] broad remedial purpose.'" *Pak v. Hoang*, 378 Md. 315, 326 (2003) (quoting *Caffrey v. Dep't of Liquor Control for Montgomery Cty.*, 370 Md. 272, 306 (2002)). This Court has warned against construing remedial statutes like the CPA with a "narrow or grudging process" that "exemplif[ies] and perpetuate[s] the very evils to be remedied." *Id.* at 326 (quoting *Neal*, 312 Md. at 693–94).

As Petitioners correctly pointed out, this Court has also observed that the CPA has "no definition of 'professional services' . . . [n]or is there any legislative history available pertaining to the 1974 enactment of what is now CL § 13-104(1)," the CPA's professional services exemption. *Scull*, 435 Md. at 126–27. Indeed, *Scull* is the only case in which either Maryland appellate court has addressed the exemption. But because the CPA is a remedial statute, its exemptions, such as the professional services exemption, must be "narrowly construed." *Lockett*, 446 Md. at 424 (quoting *State Admin. Bd. of Election Laws v. Billhimer*, 314 Md. 46, 64 (1988)); *see also Saunders v. Unemployment Comp. Bd.*, 188 Md. 677, 683 (1947) (agreeing that "exclusions in remedial statutes should be strictly construed").

II. GALYN MANOR CANNOT ENJOY ANY STATUTORY EXEMPTION ANDREWS MAY HAVE UNDER THE CPA.

A. Statutory Exemptions, Like the Professional Services Exemption, Are the Same As Statutory Immunities.

Petitioners contend that statutory exemptions "should" be construed not as statutory immunities, but as "simply '. . . not apply[ing]' to the individuals in the group."

Petitioners' Br. 20. Petitioners identify no supporting cases for their interpretation. In fact, this Court has expressly held otherwise.

The intermediate court rejected Petitioners' interpretation of statutory exemptions, observing that this Court "has treated 'immunity' and 'exemption' as synonyms." Slip op. at 13 n.4. As the lower court pointed out, this Court has defined exemption as "[f]reedom from a general duty or service; *immunity* from a general burden." *Lockett*, 446 Md. at 424; *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 576 (1998) (quotation omitted) (emphasis added). *Loveman* also highlighted a second definition of exemption: "the act of exempting," "the state of being exempted; *immunity*." 349 Md. at 575 (quotation omitted) (emphasis added).

Indeed, the statutory exemption that *Loveman* discussed is a particularly apt guide for interpreting the CPA's professional services exemption. *Loveman* dealt with a statute that generally required health care facilities to obtain a certificate of need. *Id.* at 564. The statute also contained an exemption for facilities that already existed when the statute was enacted. *Id.* Just like the CPA's professional services exemption, the exemption at issue in *Loveman* was constructed by saying "this section does not apply to" and then listing categories. *Compare id. with* § 13-104(1) ("This title does not apply to: (1) The professional services of a . . . lawyer . . . ."). This Court did not treat that exemption as simply not applying to already existing health care facilities, which is how Petitioners would have the Court construe statutory exemptions. Rather, this Court treated the exemption as granting statutory immunity in a section of the decision entitled, "Exemption Clause as a Privilege." *Loveman*, 349 Md. at 575–79.

Instead of supporting their interpretation of statutory exemptions with any cases, Petitioners offer numerous hypothetical examples of statutes they have rewritten for the purpose, such as the requirement to drive with a driver's license or practice medicine with a medical license. *See* Petitioners' Br. 19–20. The statutes they chose are not, they admit, "written in the precise format of a general prohibition and a modifying exception." *Id.* at 19. Still, they hypothetically rewrite the statutes in that format to argue that a statute that "prohibits conduct by a certain group" and one that "prohibits the conduct generally, but exempts a specific group," have "the same" effect: the absence of wrongful conduct by the identified group, attempting to distinguish those two instances from when there is immunity for the group from a tort. *Id.* at 20.

Beyond its logical flaws, this is a distinction without a difference. Petitioners offer no authority whatever for why an exemption from a general statutory prohibition and an immunity from tort liability are not equivalents. Nor do Petitioners offer any support, or even any explanation, for why this Court should ignore that the CPA is written as a general prohibition with an exemption—instead focusing only on the effect of that exemption. Conversely, what matters is this Court's holdings that both exemptions and immunities grant "[f]reedom from a general duty or service; immunity from a general burden," whether that duty comes from a general duty towards others (tort law) or a statute. *Loveman*, 349 Md. at 576 (quotation omitted). Thus, statutory exemptions are the same as statutory immunities. Given the lack of legal support of any kind for Petitioners' argument, the purpose of the CPA cannot countenance adopting it.

B. Any Statutory Exemption Andrews May Have Does Not Transfer to Galyn Manor.

1. Under Maryland Law, Exemptions or Immunities Do Not Transfer from an Agent to a Principal.

As the intermediate court recognized, this Court has held that "unless there is an independent source of immunity" for the principal, "a cause of action premised on vicarious liability can be brought" irrespective of whether the agent "is entitled to immunity." Slip op. at 12 (quoting *D'Aoust v. Diamond*, 424 Md. 549, 607 (2012)); *see also James v. Prince George's Cnty.*, 288 Md. 315, 332 (1980). Put differently, a principal "is not entitled to receive immunity simply because the agent is entitled to receive immunity." *D'Aoust*, 424 Md. at 605–06. The burden falls on the principal to "establish an independent basis to receive the benefit of an immunity shield." *Id.*

As the Court of Special Appeals further pointed out, this Court later reaffirmed this principle in *TransCare Md., Inc. v. Murray*, 431 Md. 225 (2013). Slip op. at 12. Without exception, this Court in *TransCare* stated that "the principal must establish an independent basis to receive the benefit of an immunity shield." 431 Md. at 242 (quoting *D'Aoust*, 424 Md. at 605–07). And this Court explained that its holding "applied to the concept of immunity generally as it relates to causes of action based on vicarious liability," instead of being premised on a particular kind of immunity. *Id.*

Finally, the professional services exemption explicitly exempts professional services but does not include those who hired the professionals. Because the General Assembly chose not to include them in the exemption, it expressed a clear intent to subject them to CPA liability. *See Dutta v. State Farm Ins. Co.*, 363 Md. 540, 553 (2001)

("It is not our proper function to add to the statute another class of exemptions. That is a legislative function."). Rejecting Petitioners' proffered unwritten extension of the exemption's language is virtually mandated by this Court's requirement that an exemption in a remedial statute be narrowly construed. *Lockett*, 446 Md. at 424 (quoting *Billhimer*, 314 Md. at 64). Thus, the lower court properly rejected Petitioners' argument that any immunity Andrews may have for its alleged CPA violations flowed to Galyn Manor. Slip op. at 12–13. This Court should do the same.

2. Exemptions or Immunities Do Not Transfer from Agents to Principals in Either Servant-Master or Independent Contractor-Principal Relationships.

Petitioners attempt to evade this well-established line of cases by seizing on language in *D'Aoust* and *TransCare* describing its application to servant-master relationships. Similarly, they characterize the intermediate court's decision as holding that "the relationship of attorney to client was one of master-servant." Petitioners' Br. 23. They assert that the attorney-client relationship is an independent contractor-principal one instead. The distinction is of no moment. Even if true, any statutory immunity Andrews may have still does not transfer to Galyn Manor.

Under Maryland's law of agency, i.e., the law of agent-principal relationships, there are two kinds: the servant-master relationship and the independent contractor-principal relationship. *Brady v. Ralph Parsons Co.*, 308 Md. 486, 510 (1987) (citing Restatement (Second) of Agency §§ 2 comment b, 14N comment a).

At the outset, nowhere in the Court of Special Appeals's decision did the court hold that the attorney-client relationship is a servant-master one. Further, though its

decision relied on this Court's holdings in *D'Aoust* and *TransCare*, those holdings were not limited to servant-master relationships. The Court in *TransCare* highlighted that *D'Aoust* "specifically noted that its conclusion applied 'to the concept of immunity generally as it relates to causes of action based on vicarious liability,'" with no qualifications based on the nature of the principal-agent relationship. 431 Md. at 242 (quoting *D'Aoust*, 424 Md. at 607). Indeed, the language of *TransCare* went out of its way to include all kinds of principal-agent relationships, even if it mentioned more specific relationships as examples:

> The principal in an agency relationship is not entitled to receive immunity simply because the agent is entitled to receive immunity; the principal must establish an independent basis to receive the benefit of an immunity shield. . . . [U]nless there is an independent source of immunity for the employer *or principal*, the cause of action premised on vicarious liability can be brought even if the employee *or agent* is entitled to immunity.

Id. (alteration in original) (quoting *D'Aoust*, 424 Md. at 605–07) (emphasis added). Petitioners highlight this Court's mention of employee-employer relationships, while overlooking the Court's broader language repeatedly identifying principal-agent relationships more generally.

This Court's analysis in *D'Aoust* was based on its decision in *James*, which addressed public official immunity. 424 Md. at 608. Nevertheless, the Court explicitly stated that although *James* and other cases it discussed dealt with public official immunity, "the agency principles stated therein are broad and apply to the concept of immunity generally." *Id.* *James* also discussed the transfer of immunity in broad and general terms, without limiting its analysis to servant-master relationships. In *James*, the

Court stated that the "doctrine of respondeat superior should not, except possibly in the limited circumstances to be mentioned presently, permit a principal to assert the immunity of the agent in a suit founded on the agents' [sic] conduct," without specifying a particular type or subset of agent-principal relationship. 288 Md. at 332. The Court went on to generally define respondeat superior, only adding in passing that the doctrine "*most often* arises in the context of suits against masters for the torts of their servants." *Id.* (emphasis added). The Court certainly did not by this language limit its analysis to servant-master relationships. *See id.*

The lower court, therefore, correctly held that any statutory immunity Andrews may have for its CPA violations does not transfer to Galyn Manor. *See* slip op. at 11–13; *see also Puffinberger v. Commercion, LLC,* No. SAG-13-1237, 2014 U.S. Dist. LEXIS 3577, at *28 (summarily rejecting as "unavailing" the defendant collection agency's argument that it is not liable for alleged CPA violations because the other defendant, the agency's law firm, was immune under the professional services exemption). Interpreting the professional services exemption to cover the professional's client is inconsistent with the purpose of the CPA and the requirement to narrowly construe its exemptions.

III. GALYN MANOR CAN BE VICARIOUSLY LIABLE FOR CPA VIOLATIONS COMMITED BY ANDREWS.

Petitioners contend that because the attorney-client relationship is an independent contractor-principal one, Galyn Manor cannot be vicariously liable for Andrews' violations of the CPA. Even if the attorney-client relationship is an independent

contractor-principal one, that does not preclude a client's vicarious liability for an attorney's CPA violations.

A principal may be vicariously liable for an independent contractor's conduct "even where the agent is *not* a servant, where the act was *not* done in the manner authorized or directed by the principal, and where the result was *not* authorized or intended by the principal." *Sanders v. Rowan*, 61 Md. App. 40, 52 (1984). In *Sanders*, a jury found a third party, horse trainer King T. Leatherbury, liable for negligence when he entered the wrong horse in two races at Pimlico Race Course. *Id.* at 46–47. The jury also found that Mr. Leatherbury was "acting as an agent" for the Petitioner, Mr. Sanders, the breeder and owner of the horse. *Id.* at 44, 47. On appeal, Mr. Sanders argued that Mr. Leatherbury, as a horse trainer for Mr. Sanders, was only acting as an independent contractor. *Id.* at 48–49. Thus, Mr. Sanders asserted, he could not be liable for Mr. Leatherbury's negligence despite the jury's verdict implicating Mr. Sanders. *Id.*

The Court of Special Appeals rejected Mr. Sanders's argument. The court explained that even if Mr. Leatherbury was acting as an independent contractor, a principal is "liable to third persons in a civil suit" under vicarious liability "for the frauds, deceits, concealments, misrepresentations, torts, negligences, and other malfeasances, or misfeasances, and omissions of duty, of his agent," even when that agent is an independent contractor. *Id.* at 54 (quoting *Tome v. Parkersburg R.R. Co.*, 39 Md. 36, 70–71 (1873)). Vicarious liability still attaches for those kinds of claims for public policy reasons, because otherwise there would be no "safety to third persons in their dealings" with either the principal or its independent contractors. *Id.* (quoting *Tome*, 39 Md. at 70–

71). While such vicarious liability has "been narrowed over the years," liability for "fraud, deceit, and misrepresentation . . . has remained more or less intact." *Id.* The trial court, therefore, did not err by entering judgment against Mr. Sanders for Mr. Leatherbury misrepresenting the horse he entered in the races, thereby "defraud[ing] the track and the public." *Id.* at 59.

Fraud, deceit, and misrepresentation are among the very types of wrongdoing that the CPA prohibits. It prohibits "unfair, abusive, or deceptive trade practices." § 13-303.[5] It defines those practices in several ways, including: "[f]alse, falsely disparaging, or misleading" statements that have the "capacity, tendency, or effect of deceiving or misleading consumers;" deceptively failing to "state a material fact," which would "deceive[ ] or tend[ ] to deceive;" false advertising; and various other kinds of false statements or misrepresentations. § 13-301. Likewise, it is the very kind of misconduct that the Millses showed Andrews had committed against them on behalf of Galyn Manor when Andrews was attempting to collect the Millses' alleged debt. They demonstrated that Andrews was attempting to collect from them countless fines and fees that Galyn Manor had charged them without authorization in the Declaration and without any other legal basis. E.40–41, 47, 50–52, 318–24, 325, 352–53, 356–58, 379–80, 381–85. And when the Millses submitted payments to pay the Declaration's standard annual assessments, Andrews applied the payments to time-barred and disputed fines and fees

[5] This definition is from the current CPA, which altered the previous definition of "unfair and deceptive" to also include abusive trade practices. Financial Consumer Protection Act of 2018, 2018 Md. Laws Ch. 731 (H.B. 1634).

instead, only to falsely claim that the regular assessments remained unpaid and overdue. E.314–16.

Moreover, a principal may be vicariously liable for an independent contractor's negligent work when the injury was directly caused by the "thing contracted to be done," in contrast to a collateral act by the contractor. *Rowley v. Baltimore*, 60 Md. App. 680, 687 (1984). Here, Andrews and Galyn Manor were both parties to a fee agreement that set out terms for Andrews to collect debt on behalf of Galyn Manor. E.386–87. Mr. Buchanan even testified that under the agreement, Andrews "fulfill[ed] certain roles for us, and it include[d] going after debt, in any way, shape or form necessary." E.221. Under the agreement, Andrews and Galyn Manor had joint responsibility for all duties and agreed to coordinate with each other. E.390. For instance, in March 2012, Galyn Manor instructed Andrews to reassert all previous charges against the Millses, which included unauthorized fees and time-barred claims from several years prior. E.354. The balance due according to Galyn Manor substantially increased as a result. E.351, 355.[6]

[6] According to Petitioners, the Millses asserted that because Galyn Manor often consulted with, instructed, or directed Andrews, Petitioners' relationship "transformed into a master-servant relationship." Petitioners' Br. 26. They then make various arguments for why their frequent contact is not indicative of a servant-master relationship. Petitioners' Br. 26–32. As a preliminary matter, Petitioners' argument that their relationship with Andrews is not a servant-master relationship is unpreserved because they did not make it before the Court of Special Appeals. *See* Md. Rule 8-131. Further, Petitioners misconstrue the Millses' argument. They were not arguing that Petitioners had a servant-master relationship; in fact, they were discussing liability when "the agent is *not* a servant." Resp'ts' Answer Pet. 4–5 (quoting *Sanders*, 61 Md. App. at 53). They only highlighted Galyn Manor frequently instructing or directing Andrews as additional support for Galyn Manor's liability, even when "authoriz[ing] or direct[ing]" the agent is not required. *Id.* (quoting *Sanders*, 61 Md. App. at 53).

Thus, vicarious liability attaches to independent contractor-principal relationships, like the one between Andrews and Galyn Manor, for CPA violations akin to fraud, misrepresentation, and deceit, and for contracting to collect fines unauthorized by the Declaration.

IV. THE COURT SHOULD REJECT PETITIONERS' INTERPRETATION OF THE PROFESSIONAL SERVICES EXEMPTION BECAUSE IT IS UNPRESERVED AND BECAUSE IT IS OVERBROAD.

In their brief, Petitioners sound the alarm about the consequences of holding Galyn Manor and other creditors liable for the CPA violations of the attorneys they hire to collect their debts. But Petitioners did not make any of these arguments below, leaving them unpreserved for review by this Court. Even if this Court considers their arguments, as already referenced, Petitioners' extreme interpretation of the professional services exemption flouts this Court's repeated instruction to construe exemptions in remedial statutes narrowly. *Lockett*, 446 Md. at 424 (quoting *Billhimer*, 314 Md. at 64); *see also Saunders*, 188 Md. at 683. What is more, Petitioners' sweeping, self-defeating interpretation is anathema to the General Assembly's intent to construe the CPA liberally to promote its purpose of protecting consumers. *See* § 13-105, 13-102(3). And it is inconsistent with the only other Maryland appellate decision interpreting the professional services exemption. Properly interpreted, the professional services exemption fails to ring the same alarm bells.

A. Petitioners' Arguments About the Consequences of Holding Creditors Liable for the CPA Violations of Attorneys They Hire Are Unpreserved.

Under Petitioners' extremely broad interpretation of the professional services exemption, they submit that there would be a host of consequences for attorneys like Andrews representing creditors like Galyn Manor. On the one hand, Petitioners maintain that to avoid CPA liability for an attorney's client, sometimes the attorney would have to violate the Maryland Attorneys' Rules of Professional Conduct. *See* Petitioners' Br. 11–14. Petitioners assert on the other hand that attorneys would have to abide by the CPA, defeating the purpose of having an exemption for attorneys. *See id.* at 14–16. And, Petitioners argue, clients would be exposed to criminal liability and would have to micromanage their attorneys whenever CPA liability was possible. *See id.* at 20–23. Relying on authority outside of Maryland, Petitioners assert that the exemption's purpose is to maintain the judiciary's authority to regulate the legal profession and the legal profession's need for independence. *See id.* at 8–11.

Galyn Manor made none of these arguments before the Court of Special Appeals or the trial court. *See* 3d Party Petitioner Br. 9–12. Nor did Andrews. *See* 3d Party Respondent Br. 10–15. Under Rule 8-131(b)(1), this Court will not ordinarily consider any arguments that a party does not make in its petition for certiorari or that "has not been preserved for review by the Court of Appeals." This Court also will not ordinarily consider any arguments that had not "been raised in or decided by the trial court." Md. Rule 8-131(a). This Court, therefore, should decline to consider any of the arguments described above.

B. Even If the Court Considers Petitioners' Arguments, the Professional Services Exemption Only Shields Attorneys for the "Actual Rendering" of Legal Representation.

If Petitioners' argument serves any purpose at all, it is to demonstrate that the CPA's professional services exemption cannot logically be construed as broadly as they claim. As mentioned above, this Court has observed that the CPA has "no definition of 'professional services' . . . [n]or is there any legislative history available pertaining to the 1974 enactment" of the professional services exemption. *Scull*, 435 Md. at 126–27. *Scull* is the only case in which either this Court or the Court of Special Appeals has addressed the exemption, and curiously, Petitioners only mention the decision in passing. *See* Petitioners' Br. 8, 9. Perhaps that is because *Scull* contains a much narrower interpretation of the professional services exemption than the one Petitioners offer: the exemption only shields professional services from CPA liability because they involve the exercise of "specialized training, experience, and demonstrated competence." *Scull*, 435 Md. at 129. Likewise, *Scull*'s more narrow interpretation of the exemption is consistent with this Court's repeated instructions that exemptions to remedial statutes must be "narrowly construed" to effectuate the broader statute's purpose. *Lockett*, 446 Md. at 424 (quoting *Billhimer*, 314 Md. at 64).

At issue in *Scull* was, in pertinent part, whether the professional services exemption shielded the Respondent, a radiology office, from liability for its billing practices that the Petitioner, David Scull, had alleged violated the CPA. *Id.* at 115–16, 124–25. This Court held that even though the radiology office was a "medical practitioner" under the exemption, the CPA still applied. *Id.* at 132. The office's billing

practices did not fall within the professional services exemption. *Id.* The Court began by noting that there was no legislative history of the professional services exemption. *Id.* at 126. The Court then examined the legislative history of a related exemption and the General Assembly's creation of the Health Education and Advocacy Unit within the Consumer Protection Division, which shed light on the meaning of "professional services" in the exemption. *Id.* at 126–28. Both distinguished between the "quality of care" medical practitioners provide and "commercial or entrepreneurial services" such as "billing, reimbursement, or advertising and marketing." *Id.* at 127.

Even more relevant to this case, this Court then discussed at length the meaning of "professional services" in other contexts. The Court observed that Maryland statutes establish licensing schemes for professionals and that they receive licenses "on the basis of specialized training, experience, and demonstrated competence." *Id.* at 129. They are "generally held to a higher standard of care in rendering" their profession's services. *Id.* (citing *Heavenly Days Crematorium, LLC v. Harris, Smariga and Associates, Inc.*, 433 Md. 558, 575 (2013)). Specialized boards generally regulate those services, and lawsuits for negligence against such professionals often have additional threshold requirements. *Id.*

The Court also pointed out that because of those characteristics of professions and the services professionals provide, "not everything that a licensed professional does is a 'professional service.'" *Id.* Put differently, the Court stated that the CPA's professional services exemption "does not erect a special fence around licensed professionals" that shields them from CPA liability simply for being a professional. *Id.* at 129–30 (quoting

Heavenly Days, 433 Md. at 577). Instead, for both medical services and professional services "in other contexts," professional services consist of the "actual rendering" of specialized services. *Id.* at 130.

Accordingly, this Court did not hold the radiology office exempt simply by virtue of being a medical practitioner. On the contrary, the Court distinguished between the "actual rendering" of medical care and other activity in which the office participated, such as the "commercial and entrepreneurial aspects" of the medical office's practice. *Id.* The Court then analyzed the conduct that allegedly violated the CPA—the manner of the office's medical billing—and concluded that it did not "involve the 'rendering or failure to render health care.'" *Id.* (quoting *Swam v. Upper Chesapeake Med. Ctr.*, 397 Md. 528, 535–36 (2007)). The exemption, therefore, did not apply. *Id.*

Here, Petitioners assert that a parade of horribles would occur if Galyn Manor was vicariously liable for the alleged CPA violations of Andrews. But the underlying premise for Petitioners' concerns is that the CPA's professional services exemption encompasses *everything* attorneys do during their representation, simply by virtue of their status as attorneys. Petitioners' extremely broad interpretation of the exemption is completely at odds with *Scull*. Under *Scull*, not everything that Andrews did was a "professional service," because the exemption is not a "special fence" that shields it from CPA liability just for being a law firm. *See id.* at 129–30 (quoting *Heavenly Days*, 433 Md. at 577). It is an exemption for professional services, not an exemption for professionals.

In contrast to Petitioners' extremely broad interpretation of the exemption, under *Scull* the professional services of attorneys *only* consist of the "actual rendering" of legal

representation. *See id.* at 130. Like the medical billing in *Scull*, simple acts of debt collection do not "involve the 'rendering'" of legal representation and can be performed by law offices and debt collection agencies alike. *Id.* (quoting *Swam*, 397 Md. at 535–36). As a result, allaying Petitioners' concerns, attorneys who collect debt can abide by the CPA and the Rules of Professional Conduct. Those rules only govern the attorney's practice of law but not the simple acts of debt collection that could be performed by a non-attorney, including any collection agency. Similarly, the exemption is not effectively read out of the statute because it clearly, and only, exempts an attorney's practice of law. Nor would clients have to micromanage their attorneys to avoid CPA liability, because attorneys are still free to exercise their professional judgment when practicing law, without clients fearing CPA liability.

To be sure, a small portion of Andrews' conduct at issue may have constituted "rendering" legal representation, such as filing debt collection lawsuits in Maryland courts. *See id.* But the record is also replete with Andrews—over the course of several years attempting to collect alleged debt from the Millses—violating the CPA when it was not "rendering" legal representation. *See id.* Instead, it was performing simple debt collection activities that any collection agency could perform. During discovery, the Millses established that Andrews sent them collection, or dunning, letters, claiming debt back to 2008 of $11,652, E.314, and sometimes as high as $15,000—amounts unauthorized by the Declaration. E.369, 635–37. The Millses demonstrated that Galyn Manor sometimes "helped" Andrews "craft" the dunning letters, E.217, showing that drafting the letters did not require any specialized legal training.

Similarly, Andrews's paralegal—rather than an Andrews attorney—participated in multiple email discussions with the Millses about unauthorized amounts they owed and how they could settle their account with Galyn Manor. E.398–411. For example, in September 2014 a paralegal informed Ms. Mills that the total balance due on the Millses' account was $9,249.14 "for assessments from January 2008," E.411, even though a month earlier, Galyn Manor had sued the Millses for only $2,697.53, E.412.

To collect debt, Andrews utilized methods to collect amounts for itself, like old attorneys' fees and costs and interest paid, before collecting for Galyn Manor—further casting doubt that Andrews was "rendering" legal representation for Galyn Manor. Andrews admitted that it applied all the Millses' payments to attorneys' fees and costs first, then management fees, interest and late fees. E.575–76. Homeowner assessments were fifth priority. E.387–88, 575. As a result, because of the order in which Andrews applied the Millses' payments, money would not make it to Galyn Manor's coffers. E.388.

The fee agreement between Galyn Manor and Andrews also reveals that Andrews agreed to carry out simple debt collection activities for Galyn Manor that any collection agency could perform. The fee agreement stated that attorneys would supervise servicing and collection of fines and other charges "as directed by" Galyn Manor. E.387. The agreement also required Galyn Manor to adopt Andrews' fee schedule and collection policies, including the priority order of application of payments. E.387. In short, as Mr. Buchanan testified, it was Andrews's job to go "after the debt, in any way, shape, or form necessary." E.220–21.

As the responsibilities to which Andrews agreed and which it carried out for Galyn Manor show, nearly all the alleged CPA violations took place while it was carrying out such simple debt collection activities for Galyn Manor. For those activities, it was not "rendering" legal representation. *Scull*, 435 Md. at 130 (quoting *Swam*, 397 Md. at 535–36). Even if Andrews was engaging in some small amount of legal representation on certain occasions, that representation cannot—consistent with the purposes of the CPA—cloak all of the CPA violations that took place during the simple debt collection activities.

Petitioners only briefly address *Scull*'s distinction between "rendering" legal representation and other activities that fall outside of the professional services exemption. They rely solely on *Doyle v. Frederick J. Hanna & Associates*, a decision issued by the Georgia Supreme Court. In *Doyle*, which is of course not controlling authority, the court held that the Respondent law firm was exempt from Georgia's Fair Business Practices Act (FBPA) under the Act's learned profession exemption. 287 Ga. 289, 292 (2010) (quoting *Cripe v. Leiter*, 184 Ill. 2d 185 (1998)). The FBPA's exemption included the "actual practice of law." *Id.* The *Doyle* court was very narrowly split, however, 4-3. Though the majority had held that the learned profession exemption included law firms that collect debt on behalf of a client, three of the court's members colorfully observed that:

> Under the majority's analysis, however, *any* illegal commercial activity taken by a lawyer "on behalf of a client" would not be subject to investigation by any State entity other than the State Bar. . . . Such an analysis would be untenable in the context of criminal statutes, and is equally untenable here. For example, as the majority would surely have to

> concede, a lawyer who punches another person in the face "on behalf of a client" would not be shielded from investigation for criminal battery by claiming that punching people in the face was simply part of the way that he practiced law on behalf of clients. Similarly, an attorney cannot abuse members of the public by engaging in unfair and unlawful debt collection practices and then shield himself from investigation under the FBPA because he was engaging in such unfair practices "on behalf of a client." A lawyer can, and must, practice law without punching people in the face. And a lawyer can, and must, practice law without violating the FBPA by abusing members of the public. The fact that one is practicing law does not place one above it.

Id. at 297 (Melton, J., dissenting) (citation omitted). The Millses submit that the dissent's interpretation of the FBPA's learned profession exemption far better effectuates the General Assembly's purpose for enacting the CPA: to prevent unlawful consumer practices and assist the public in obtaining relief from them to "maintain the health and welfare" of Maryland residents. § 13-102(b)(3). In the same way, adopting the dissent's rationale would construe the CPA's professional services exemption narrowly, *Lockett*, 446 Md. at 424 (quoting *Billhimer*, 314 Md. at 64), and thus interpret the CPA liberally, *Pak*, 378 Md. at 326 (quoting *Caffrey*, 370 Md. at 306).

The professional services exemption, then, only shields the "actual rendering" of professional services. *Scull*, 435 Md. at 130. Because Andrews engaged in simple acts of debt collection on behalf of Galyn Manor when it allegedly violated the CPA, it was not engaged in the "actual rendering" of legal representation. So the exemption does not apply to those acts. The interpretation of the exemption that Petitioners offer would categorically exempt attorneys from the CPA for *all* of their conduct—allowing creditors like Galyn Manor to simply hire an attorney to perform acts that the CPA prohibits Galyn

Manor from doing on its own. Such an extreme, self-defeating interpretation goes against this Court's decision in *Scull* and the clear purpose of the CPA.[7]

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court affirm the ruling of the Court of Special Appeals to the extent that it held that Galyn Manor Homeowners Association, Inc. could be held liable for damages under the Consumer Protection Act for the actions of Andrews & Lawrence Professional Services, LLC, and remand the case to the circuit court for further proceedings.

[7] There are some decisions issued by the United States District Court for the District of Maryland summarily dismissing CPA claims on the basis of the professional services exemption because they were brought against attorneys. But as this Court recognized in *Scull*, "[t]o the extent that they discuss the professional services exemption in the Maryland Consumer Protection Act, they contain virtually no reasoning and are therefore of little assistance in resolving the question before us." *Id.* at 132. And one unreported decision issued by the United States Court of Appeals for the Fourth Circuit dismissed a CPA claim on the basis of the exemption because it was brought against attorneys, relying on the Court of Special Appeals's opinion in *Scull*. *See Lembach v. Bierman*, 528 F. App'x 297, 304 (4th Cir. 2013). But this Court has reversed that opinion's holding that the exemption *did* apply to medical billing. *Scull*, 435 Md. at 133. Unfortunately, some federal court decisions continue to rely on *Lembach*'s obsolete reasoning. *See, e.g., Hawkins v. Robert N. Kilberg, P.A.*, 165 F. Supp. 3d 386, 390 (D. Md. 2016); *Puffinberger v. Commercion, LLC*, No. SAG-13-1237, 2014 U.S. Dist. LEXIS 3577, at *27–28 (D. Md. Jan. 10, 2014). The Court should disregard these cases. *See, e.g., Peters v. Early Healthcare Giver, Inc.*, 439 Md. 646, 653–54 (2014).

Respectfully Submitted,

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CITATION AND TEXT OF PERTINENT STATUTES & RULES

STATUTES

Md. Code Ann., Com. Law § 13-104

Exemptions.

This title does not apply to:

(1) The professional services of a certified public accountant, architect, clergyman, professional engineer, lawyer, veterinarian, insurance company authorized to do business in the State, insurance producer licensed by the State, Christian Science practitioner, land surveyor, property line surveyor, chiropractor, optometrist, physical therapist, podiatrist, real estate broker, associate real estate broker, or real estate salesperson, or medical or dental practitioner;

(2) A public service company, to the extent that the company's services and operations are regulated by the Public Service Commission; or

(3) A television or radio broadcasting station or a publisher or printer of a newspaper, magazine, or other form of printed advertising who broadcasts, publishes, or prints an advertisement which violates this title, unless the station, publisher, or printer engages in an unfair or deceptive trade practice in the sale of its own goods or services or has knowledge that the advertising is in violation of this title.

Md. Code Ann., Com. Law § 13-105

Construction.

This title shall be construed and applied liberally to promote its purpose. It is the intent of the General Assembly that in construing the term "unfair or deceptive trade practices", due consideration and weight be given to the interpretations of § 5(a)(1) of the Federal Trade Commission Act by the Federal Trade Commission and the federal courts.

Md. Code Ann., Com. Law § 14-202

Certain acts prohibited.

In collecting or attempting to collect an alleged debt a collector may not:

(1) Use or threaten force or violence;

(2) Threaten criminal prosecution, unless the transaction involved the violation of a criminal statute;

(3) Disclose or threaten to disclose information which affects the debtor's reputation for credit worthiness with knowledge that the information is false;

(4) Except as permitted by statute, contact a person's employer with respect to a delinquent indebtedness before obtaining final judgment against the debtor;

(5) Except as permitted by statute, disclose or threaten to disclose to a person other than the debtor or his spouse or, if the debtor is a minor, his parent, information which affects the debtor's reputation, whether or not for credit worthiness, with knowledge that the other person does not have a legitimate business need for the information;

(6) Communicate with the debtor or a person related to him with the frequency, at the unusual hours, or in any other manner as reasonably can be expected to abuse or harass the debtor;

(7) Use obscene or grossly abusive language in communicating with the debtor or a person related to him;

(8) Claim, attempt, or threaten to enforce a right with knowledge that the right does not exist;

(9) Use a communication which simulates legal or judicial process or gives the appearance of being authorized, issued, or approved by a government, governmental agency, or lawyer when it is not;

(10) Engage in unlicensed debt collection activity in violation of the Maryland Collection Agency Licensing Act; or

(11) Engage in any conduct that violates §§ 804 through 812 of the federal Fair Debt Collection Practices Act.

RULES

Md. Rule 8-131

Scope of Review.

(a) Generally. The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court. Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, 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.

(b) In Court of Appeals -- Additional limitations.

(1) Prior appellate decision. Unless otherwise provided by the order granting the writ of certiorari, in reviewing a decision rendered by the Court of Special Appeals or by a circuit court acting in an appellate capacity, the Court of Appeals ordinarily will consider only an issue that has been raised in

the petition for certiorari or any cross-petition and that has been preserved for review by the Court of Appeals. Whenever an issue raised in a petition for certiorari or a cross-petition involves, either expressly or implicitly, the assertion that the trial court committed error, the Court of Appeals may consider whether the error was harmless or non-prejudicial even though the matter of harm or prejudice was not raised in the petition or in a cross-petition.

Committee note. --

The last sentence of subsection (b)(1) amends the holding of *Coleman v. State*, 281 Md. 538 (1977), and its progeny.

(2) No prior appellate decision. Except as otherwise provided in Rule 8-304(c), when the Court of Appeals issues a writ of certiorari to review a case pending in the Court of Special Appeals before a decision has been rendered by that Court, the Court of Appeals will consider those issues that would have been cognizable by the Court of Special Appeals.

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

Cross references. -- Rule 2-519.

(d) Interlocutory order. On an appeal from a final judgment, an interlocutory order previously entered in the action is open to review by the Court unless an appeal has previously been taken from that order and decided on the merits by the Court.

(e) Order denying motion to dismiss. An order denying a motion to dismiss for failure to state a claim upon which relief can be granted is reviewable only on appeal from the judgment.

CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 8,488 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June, 2019, I mailed first class, postage prepaid, two copies of the foregoing Brief of Respondents to:

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