Circuit Court for Montgomery County
Case No. 484472V

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 278

September Term, 2022

HOMESPIRE MORTGAGE CORPORATION

v.

FOUAD (FOBBY) H. NAGHMI

Graeff,
Reed,
Friedman,

JJ.

Opinion by Graeff, J.

Filed: July 25, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Homespire Mortgage Corporation ("Homespire"), appellant, sued its former employee, Fouad "Fobby" H. Naghmi, appellee, for reimbursement of $120,000 that Homespire paid as a signing bonus conditioned on Mr. Naghmi's agreement to refund the money if he did not remain an employee for one year. The Circuit Court for Montgomery County granted Mr. Naghmi's motions to dismiss Homespire's claims, with prejudice.

On appeal, Homespire presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court err in dismissing Homespire's claim for breach of contract?

2. Did the circuit court err in dismissing Homespire's claims for unjust enrichment and promissory estoppel?

For the reasons set forth below, we shall reverse the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Homespire is a mortgage lender in Montgomery County, Maryland. In 2019, the parties negotiated terms related to Mr. Naghmi's employment as Homespire's National Director of Strategy and Growth. Homespire offered to employ Mr. Naghmi on certain terms and conditions. Mr. Naghmi signed three documents on November 22, 2019.

An Offer Letter set forth the details of the offer, including that Mr. Naghmi would receive a salary of $175,000 annually, as well as a bonus, as follows:

> $30,000/month for the first six (6) months; bonus shall be deemed earned on the first anniversary of the start date of your employment provided you have remained a full-time employee of Homespire during the year. If you cease to be employed by the company, for any reason, within the first year of employment, then the bonus shall be refunded to Homespire.

The first paragraph of the Offer Letter provided that, "[u]pon your signing and returning this offer letter, your acceptance of this position with Homespire will be confirmed. It is important to note that we must receive this signed document back within 7 business days of receipt or this offer will be automatically rescinded." The letter then stated that "Homespire's payroll cycle is on a bi-weekly schedule. . . . Regular wages and commissions are paid during these scheduled bi-weekly payrolls. All bonuses, when applicable, are calculated and paid on the second payroll of the month following the month in which they are earned." It further stated:

> This letter is not an employment contract and should not be construed as such. It is an offer letter for employment only. All employment with Homespire Mortgage is "at will" and you, or the Company, may terminate employment with, or without, cause or notice at any time and for any reason.

The Compensation Agreement was a one-page document with provisions for "Salary," "Management Bonus," and "Bonus Eligible Loans."[1] It provided that Homespire would pay Mr. Naghmi a salary in the amount of $175,000 annually for the first year and $225,000 annually after the first year.

The Employment Agreement was a ten-page document. Regarding compensation, Section 1 of the agreement provided that, "in connection with Employee's employment with Employer, and in consideration of this Agreement, Employee will receive substantial consideration, including, but not limited to Commissions and or Salary, training, confidential and proprietary information and trade secrets." Section 4 provided the terms

[1] The "Management Bonus" and "Bonus Eligible Loans" provisions were unrelated to the bonus term in the Offer Letter.

for "Compensation: Hourly, Salary and Commissions," including that, "[i]n exchange for Employee's services, Employer shall pay Employee such compensations set forth on the attached Exhibit A which is incorporated by reference herein." There was, however, no document marked or attached to the Employment Agreement as Exhibit A.[2] Section 10 of the agreement, entitled "Termination of Employment," provided that "[t]he Employee shall not be entitled to any bonuses which are paid after Employee's last day of employment. Employee acknowledges that bonuses do not accrue until the date the Employer pays the bonus."

Mr. Naghmi began his employment with Homespire on December 3, 2019. He terminated his employment on approximately March 20, 2020. Between December 2019 and March 2020, Homespire paid Mr. Naghmi more than $57,000 in salary payments, as well as four monthly bonus installments of $30,000, totaling $120,000.

On January 13, 2021, Homespire filed a complaint in the Circuit Court for Montgomery County, alleging breach of contract and unjust enrichment. In Count I, breach of contract, Homespire alleged that Mr. Naghmi breached his agreement with Homespire by not refunding the $120,000 bonus payments, and it sought damages in the amount of $120,000, interest, and costs incurred in enforcing the agreement. In Count II, unjust enrichment, Homespire alleged, in the alternative, that it had "conferred a benefit" to Mr.

[2] At the June 2021 motions hearing, in response to the court's question about Exhibit A, counsel for Homespire stated that "there may be a question as to whether there was an Exhibit A attached at the time Mr. Naghmi signed the contract," and whether Exhibit A was "the compensation agreement or an offer letter or both."

Naghmi by providing him the bonus payments because "all parties knew, understood and agreed" that the money would be refunded if Mr. Naghmi did not remain employed by Homespire for one year. Homespire attached the Offer Letter and Employment Agreement to the complaint as Exhibits 1 and 2.

On March 22, 2021, Mr. Naghmi filed a motion to dismiss Homespire's complaint, with prejudice. Mr. Naghmi argued that there was no breach of contract because Mr. Naghmi earned the bonus payments, which constituted protected wages under the Maryland Wage Payment and Collection Law ("MWPCL") that Homespire could not recoup following his termination. He also argued that unjust enrichment did not apply because bonuses are wages, and therefore, Homespire owed Mr. Naghmi the bonus payments in exchange for work performed.

On April 15, 2021, Homespire filed an opposition to the motion to dismiss and a First Amended Complaint, with a redlined copy of the amended complaint. The amended complaint included supplemental language stating the exact monetary sums paid to Mr. Naghmi during his employment. Unlike in the original complaint, Homespire attached the Compensation Agreement to the First Amended Complaint as Exhibit 3, along with the Offer Letter and Employment Agreement.

On April 29, 2021, Mr. Naghmi filed a motion to dismiss Homespire's First Amended Complaint, with prejudice. Mr. Naghmi argued that the Employment Agreement was the controlling contract, and it stated that bonuses were paid when earned. He asserted that there was no breach of contract because the Offer Letter was not incorporated into the

Employment Agreement, and the Offer Letter disclaimed contractual intent. Mr. Naghmi also argued that the breach of contract claim failed because the bonus payments constituted protected wages under the MWPCL, and Homespire could not recoup them following his termination. Finally, he argued that unjust enrichment did not apply because the bonuses payment were wages, and therefore, Homespire owed Mr. Naghmi the bonus payments in exchange for work performed.

On June 7, 2021, the circuit court heard argument on the motion to dismiss. Counsel for Mr. Naghmi argued that the Offer Letter was not a contract, so the court "must dismiss the case." He contended that there was no contract to repay the bonus payments because the Offer Letter, by stating that it was "not an employment contract," expressly disclaimed any contractual intent. Even if it was a contract, the bonuses constituted wages under the MWPCL, and an employer cannot avoid payment of an earned bonus by stating that it is earned only after a fixed period of time.

Homespire argued that it was disingenuous for Mr. Naghmi to argue that the Offer Letter was not a contract because the Offer Letter was the basis upon which Homespire made the bonus payments. Counsel stated that there was "no possible way to read . . . this offer letter as some sort of unenforceable agreement and still let Mr. Naghmi keep $120,000 that was paid only and exclusively pursuant to the terms of that document." Counsel argued that the motion should be denied and the parties should proceed to discovery to determine whether the reference to Exhibit A in the Employment Agreement was intended to incorporate the Offer Letter. Even if the Offer Letter was not incorporated

as Exhibit A, the Offer Letter was still included in "a group of documents that form one contract." Alternatively, even if it was not part of the employment contract, it was still a contract in and of itself.

On June 18, 2021, Homespire filed an Amendment by Interlineation to the First Amended Complaint. This pleading added promissory estoppel as a third count to the amended complaint. On June 23, 2021, Mr. Naghmi filed a motion to dismiss the Amendment by Interlineation.

On July 22, 2021, the court issued its opinion and order dismissing, with prejudice, Counts I and II of the First Amended Complaint. With respect to the breach of contract claim, the court agreed with Mr. Naghmi that the Employment Agreement was the controlling contract, and it found that the Offer Letter expressly disclaimed contractual intent. The court dismissed the breach of contract claim because the Offer Letter was not a contract, and therefore, there was no contract requiring Mr. Naghmi to reimburse the $120,000 bonus.

Regarding the unjust enrichment claim, the court rejected Homespire's assertion that the $120,000 represented a benefit conditioned on Mr. Naghmi remaining employed for one year. It rejected Homespire's contention that "all parties knew, understood, and agreed" that Mr. Naghmi would refund the money if he did not remain employed for one year. The court found that, because the Offer Letter disclaimed contractual intent, it could not be considered as a contract or controlling agreement over the Employment and Compensation Agreements. The issue raised by the Offer Letter concerned Mr. Naghmi's

compensation, and since the other two documents were contracts between the parties that addressed "annual salary and other components of compensation," they precluded Homespire from bringing a quasi-contractual claim on that same subject matter. The court also found that, even if unjust enrichment principles applied, the claim would fail because the $120,000 would constitute either earned wages, protected by the MWPCL, or a non-revocable gift. Accordingly, the court granted Mr. Naghmi's motion and dismissed Counts I and II of Homespire's First Amended Complaint, with prejudice.

Homespire subsequently filed a motion to alter, amend, and/or revise the court's order for dismissal. On November 23, 2021, the court summarily denied this motion, without explanation.

On March 29, 2022, the circuit court held a hearing on Mr. Naghmi's motion to dismiss Homespire's Amendment by Interlineation. Mr. Naghmi argued that Homespire failed to establish the four elements of promissory estoppel because: (1) there was no clear and definite promise in the Offer Letter; (2) there could be no reasonable expectation that the Offer Letter would induce action because, by its terms, Homespire could have terminated Mr. Naghmi's employment one day before his first year of employment in order to avoid paying out the bonus payments, which would be an unreasonable, "absurd" outcome; (3) there was no reasonable expectation of inducement, and therefore, Mr. Naghmi did not induce Homespire's reliance on the Offer Letter; and (4) Homespire incurred no detriment because the bonus payments it gave Mr. Naghmi were wages provided in exchange for work performed.

The court found that, for the same reason that the unjust enrichment claim was dismissed, i.e., "that quasi-contract relief [was] not available [where there was] a contract on the subject matter," it was granting the motion to dismiss on the claim of promissory estoppel. Alternatively, the court dismissed the promissory estoppel claim under Maryland Rule 2-322(e) because "there was not a red-line copy of the amendment filed."[3] On April 5, 2022, the court issued an order granting Mr. Naghmi's motion to dismiss with prejudice.

This appeal followed.

STANDARD OF REVIEW

The standard of review on a motion to dismiss is *de novo*. *Elsberry v. Stanley Martin Cos., LLC*, 482 Md. 159, 178 (2022). It is the task of the reviewing court to determine whether the trial court was legally correct in ruling on a motion to dismiss. *O'Brien & Gere Eng'rs, Inc. v. City of Salisbury*, 447 Md. 394, 403 (2016).

> Our review of the pleading may extend to "its incorporated supporting exhibits, if any." . . . As we stated in *Allied Investment Corp. v. Jasen*, when a trial or appellate court reviews a motion to dismiss for failure to state a claim, it is necessary to "assume the truth of all well-pleaded, relevant, and material facts in the complaint and any reasonable inferences that can be drawn therefrom. 'Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff.'" 354 Md. 547, 555, 731 A.2d 957 (1999).

Id. at 403–04.

[3] Under Maryland Rule 2-341(e), "a party filing an amended pleading also shall file at the same time a comparison copy of the amended pleading showing by lining through or enclosing in brackets material that has been stricken and by underlining or setting forth in bold-faced type new material." Maryland Rule 2-322(e) allows the court to "order any insufficient . . . or any improper . . . matter stricken from any pleading or may order any pleading that is late or otherwise not in compliance with these rules stricken in its entirety."

DISCUSSION

I.

Breach of Contract Claim

A breach of contract claim requires a plaintiff to "allege the existence of a contractual obligation owed by the defendant to the plaintiff, and a material breach of that obligation by the defendant." *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 658 (2010). The circuit court dismissed Homespire's breach of contract claim on the grounds that the Offer Letter was not incorporated into the parties' Employment Agreement, and it disclaimed all contractual intent. The court concluded, therefore, that Mr. Naghmi owed no contractual obligation to Homespire to reimburse the $120,000 bonus.

Homespire contends that the circuit court erred in concluding that the Offer Letter containing the terms of the conditional bonus was not an enforceable contract. It contends that the court misapplied the law in finding that the terms of the Offer Letter, Employment Agreement, and Compensation Agreement should not be read together to form one contract. Moreover, it argues that, even if the Offer Letter is read alone, there was contractual intent regarding the bonus. It asserts that the letter stated that it was not an employment contract, but once the employment agreement was signed, the employment relationship was formed, and the parties' rights regarding the conditional bonus vested. At the very least, it argues, because it was not clear whether Exhibit A, which was incorporated into the Employment Agreement, was the Offer Letter, there was "an ambiguity that must be resolved by a trier of fact."

Mr. Naghmi contends that the circuit court properly dismissed Homespire's claim for breach of contract. He asserts that the court properly determined that the Offer Letter was not a contract because it expressly disavowed contractual intent. He further asserts that the court correctly concluded that the Offer Letter should not be construed as a part of a single contract including the Employment or Compensation Agreements. Mr. Naghmi also argues that Homespire's breach of contract claim fails because the bonus payments were wages, and an employer cannot avoid payment of an earned bonus "by including language that conditions that bonus on remaining with the employer for a fixed period of time."

We review questions of contract interpretation *de novo*. *Ocean Petroleum, Co. v. Yanek*, 416 Md. 74, 86 (2010); *Clancy v. King*, 405 Md. 541, 554 (2008). "Where the language of a contract is clear and unambiguous, there is no room for construction and we 'must presume that the parties meant what they expressed.'" *Shapiro v. Massengill*, 105 Md. App. 743, 754 (quoting *Gen'l Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261–62 (1985)), *cert. denied*, 341 Md. 28 (1995).

As the Supreme Court of Maryland has explained:

> That, as a general rule, the **construction or interpretation** of all written instruments **is a question of law** for the court is a principle of law that does not admit of doubt. . . . However before the court can construe a contract, there must **exist** a contract; and, if it be claimed that an instrument of writing, although in form a complete agreement, was not intended by the parties to be binding upon them, the question as to whether or not **the instrument was so intended is one for the jury.**

Gordy v. Ocean Park, Inc., 218 Md. 52, 60 (1958) (emphasis added).[4] *Accord Haselrig v. Pub. Storage, Inc.*, 86 Md. App. 116, 132 (1991) (holding that the question of whether an employment handbook was part of the parties' contract "is, at least, one for resolution by the finder of fact").

We begin with Homespire's argument that the Offer Letter, the Employment Agreement, and the Compensation Agreement should be read together to form one contract. Mr. Naghmi disagrees, asserting that the documents should not be construed as a single contract because they did not include provisions integrating the documents into one another, and the Offer Letter disclaimed contractual intent.

There is authority for the proposition that, "[w]here several instruments are made a part of a single transaction they will all be read and construed together as evidencing the intention of the parties in regard to the single transaction." *Rocks v. Brosius*, 241 Md. 612, 637 (1966). *Accord Sullivan v. Microsoft Corp.*, 618 S.W.3d 926, 931 (Tex. App. 2021) ("[U]nder the appropriate factual circumstances, 'a court may determine, as a matter of law,' that when parties enter into multiple separate contracts, documents, and agreements, they intended for them to be considered as 'part of a single, unified instrument.'"); *Gilchrist Tractor Co. v. Stribling*, 192 So. 2d 409, 417 (Miss. 1966) ("[I]n the absence of anything to indicate a contrary intention, instruments executed at the same time, by the same contracting parties, for the same purpose, and in the course of the same transaction will be

[4] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

considered and construed together, since they are, in the eyes of the law, one contract or instrument.").

Here, the Offer Letter, Employment Agreement, and Compensation Agreement, attached as exhibits to the First Amended Complaint, all related to Mr. Naghmi's employment with Homespire, he signed all three documents on the same day, and he returned them at the same time. The documents do not reference one another, but the Court clarified in *Rocks* that such cross-references are not necessary to form a single contract. *Rocks*, 241 Md. at 637.

The circuit court agreed "that contracts executed at the same time would generally be construed together." It stated, however, that, in this case, "one of the documents includes an express disclaimer of any contractual intent." It noted that "Homespire disclaimed any intent to, by the Offer Letter, enter into an Employment Contract." Accordingly, the court stated that it could not consider the Offer Letter a contract, and therefore, there was no contractual requirement that Mr. Naghmi reimburse the $120,000 paid to him.

In finding that the Offer Letter disclaimed contractual intent, the court cited the following portion of the Offer Letter:

> This letter is not an employment contract and should not be construed as such. It is an offer letter for employment only. All employment with Homespire Mortgage is "at will" and you, or the Company, may terminate employment with, or without, cause or notice at any time and for any reason.

Mr. Naghmi argues that the court properly found that the Offer Letter expressly disclaimed contractual intent, citing to the language that it "is not an employment contract and should not be construed as such."

Homespire contends that we should consider all of the language qualifying the Offer Letter's effect, as follows:

> Homespire Mortgage is pleased to offer you the position of EVP, National Director of Strategy and Growth. Upon your signing and returning this offer letter, your acceptance of the position with Homespire Mortgage will be confirmed.
>
> This offer of employment is contingent upon the successful completion of our pre-employment process which will include [. . .]
>
> This letter is not an employment contract and should not be construed as such. It is an offer letter for employment only. All employment with Homespire Mortgage is "at will" and you, or the Company, may terminate employment with, or without, cause or notice at any time and for any reason.

Homespire asserts that the Offer Letter disclaimed only that it was an employment contract, and it did "not disclaim *all* contractual intent." It argues that the letter was an offer to employ Mr. Naghmi, and once he signed the agreement and was hired, "the parties' intentions to contract, and their rights, vis-à-vis the Offer Letter's Conditional Bonus vested."

As indicated, when there is a dispute whether a writing is intended to be a contract between the parties, "the question as to whether or not the instrument was so intended is one for the jury." *Gordy*, 218 Md. at 60. *Accord Karns v. Jalapeno Tree Holdings, L.L.C.*, 459 S.W.3d 683, 690 (Tex. App. 2015) ("[I]f the parties' intentions [to be bound] as

expressed in the document are indefinite and unclear, ambiguity exists, and the issues of contract formation and intent to be bound become questions of fact.").

Here, there clearly is a dispute whether the parties intended the terms of the Offer Letter regarding the bonus payments to constitute a contract itself, be a part of a larger contract, or neither. This is particularly true given that the Offer Letter may (or may not) contain an essential element of a larger contractual arrangement and that the Employment Agreement stated that another document, Exhibit A, was incorporated into the agreement, and it is unknown whether that exhibit was the Offer Letter. The court erred in finding that the Offer Letter was not a contract as a matter of law and dismissing the breach of contract claim.

II.

Equitable Relief Claims

A.

Unjust Enrichment

Homespire contends that the court erred in dismissing its alternative claim for unjust enrichment. It asserts that, if the Offer Letter was not an enforceable contract, then a cause of action for unjust enrichment is available.

Mr. Naghmi disagrees. He contends that "the Employment and Compensation Agreements are both express contracts that govern the terms of [his] employment. As there is an express contract that governs the terms of [his] compensation, there can be no claim of unjust enrichment."

In dismissing the unjust enrichment count, the circuit court stated that the claim failed because the parties had an express contract addressing the terms of compensation. It continued:

> The Employment Agreement and Compensation Agreement are express contracts between the parties relating to [Mr. Naghmi's] employment and compensation. They speak for themselves. Generally, a quasi-contractual claim will not arise when an express contract exists between the parties concerning the same subject matter—in this case, [Mr. Naghmi's] compensation.

The court then found that, even if it considered Homespire's unjust enrichment claim, Mr. Naghmi was not unjustly enriched because, if the $120,000 constituted wages, then it was protected by the MWPCL as wages due for "work that the employee performed before the termination of employment." If the $120,000 was not wages protected by the MWPCL, it was a gratuity. Accordingly, the court found that Homespire "failed to state a claim upon which relief could be granted."

The elements of a claim for unjust enrichment are as follows: (1) "[a] benefit conferred upon the defendant by the plaintiff;" (2) "[a]n appreciation or knowledge by the defendant of the benefit;" and (3) "[t]he acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value." *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 295 (2007). The third element requires "a fact-specific balancing of the equities. 'The task is to determine whether the enrichment is unjust.'" *Id.* at 301 (quoting John W. Wade, *Restitution for Benefits Conferred Without Request*, 19 VAND. L. REV. 1183, 1185 (1996)).

Here, the circuit court was correct that unjust enrichment is a quasi-contractual claim, and quasi-contractual remedies apply only if there is no contract. *See Cnty. Comm'rs of Caroline Cnty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 96 (2000) ("The general rule is that no quasi-contractual claim can arise when a contract exists between the parties concerning the same subject matter on which the quasi-contractual claim rests."). The Employment and Compensation Agreements, however, do not address the conditional bonus payments. If the Offer Letter ultimately is found not to be an enforceable contract, then unjust enrichment is an available claim to Homespire. The court's ruling to the contrary was erroneous.

As noted, however, the court went on to find that there was no unjust enrichment claim because the $120,000 constituted either wages, protected by the MWPCL, or a gift. The MWPCL, codified at Md. Code Ann., Lab. & Empl. Art. ("LE") § 3-501 to 3-509 (2016 Repl. Vol.), provides that "each employer shall pay an employee or the authorized representative of an employee all wages due for work . . . performed before the termination of employment, on or before the day on which the employee would have been paid the wages if the employment had not been terminated." LE § 3-505(a). Under LE § 3-501(c), a "wage" includes: "(i) a bonus; (ii) a commission; (iii) a fringe benefit; (iv) overtime wages; or (v) any other remuneration promised for service."

Homespire contends that the conditional bonus payments were not earned. Accordingly, they are not protected wages.

The Supreme Court has held that "wages" under the MWPCL refers to a payment "promised to the employee as compensation for work performed." *Whiting-Turner Contracting Co. v. Fitzpatrick*, 366 Md. 295, 303 (2001). "Where the payments are dependent upon conditions other than the employee's efforts, they lie outside of the definition" of wages. *Medex v. McCabe*, 372 Md. 28, 36 (2002).

In *Whiting-Turner*, 366 Md. at 305, the parties agreed that the employee would be paid a salary, and after two years of employment, he would receive a profit-sharing bonus if the financial conditional of the company justified it. After one year, the employee stated that he was considering leaving the company, and his employer told him that he would get a profit-sharing check if he stayed. *Id.* at 299–300. The employee resigned, and his employer refused to pay the bonus. *Id.* at 300. The Supreme Court held that:

> **Had the respondent been with the petitioner for two years when the decision was made to offer him a bonus . . . there would be no doubt of the respondent's entitlement**, that he would have earned the distribution in this case. That is so because sharing in the profits of the company after two years was promised as part of the respondent's compensation package. Here, however, the petitioner decided to give the respondent a bonus before he had been employed for two years. Where such remuneration is not a part of the compensation package promised, it is merely a gift, a gratuity, revocable at any time before delivery.

Id. at 305–06 (emphasis added).

Here, as in *Whiting-Turner*, the bonus payments were agreed upon at the time of hiring, but they were conditioned on Mr. Naghmi remaining with Homespire for a fixed time. Pursuant to the reasoning in *Whiting-Turner*, the bonus was not earned here because Mr. Naghmi did not remain an employee for one year, which was a condition to entitlement

to the bonus payments. An employee's "right to compensation vests when the employee does everything required to earn the wages." *Medex*, 372 Md. at 32. Accordingly, the bonus payments were not earned and did not constitute wages.[5]

We turn next to the court's finding, and Mr. Naghmi's argument, that if the bonus payments were not wages, they constituted a gratuity. Homespire argues that the bonus payments were not a gift or a gratuity, noting that there was no evidence of donative intent. Moreover, Homespire asserts that this "issue is for the trier of fact."

To establish a gift, there must be a showing by clear and convincing evidence of (1) donative intent, (2) actual delivery by the donor, and (3) acceptance by the donee. *Dorsey v. Dorsey*, 302 Md. 312, 318 (1985); *Pomerantz v. Pomerantz*, 179 Md. 436, 440 (1941) ("The evidence of every element necessary should be clear and convincing."). Donative intent means that "the donor clearly and unmistakably intended to permanently relinquish all interest in, and control over the gift," and there generally is no donative intent unless the gift is irrevocable. *Dorsey*, 302 Md. at 318. *See Ver Brycke v. Ver Brycke*, 379 Md. 669, 691 (2004) ("[G]enerally, *inter vivos* gifts are absolute and, in order to be valid, they must be irrevocable.").

Here, the Offer Letter conditioned the entitlement to the bonus payments on Mr. Naghmi remaining an employee for one year, which indicates a lack of donative intent.

[5] Mr. Naghmi argues that, under *Medex v. McCabe*, 372 Md. 28, 39 (2002), "[a]n employer cannot avoid payment of an earned bonus that is part of a compensation plan by including language that conditions that bonus on remaining with the employer for a fixed period of time." Here, as indicated, the bonus payments were not earned, and therefore, they do not constitute wages.

Indeed, the Offer Letter expressly reserved the right to reclaim the bonus payments if Mr. Naghmi did not remain an employee for one year.[6] The circuit court erred in finding as a matter of law that the payments constituted a gratuity, and it erred in dismissing the unjust enrichment claim.

B.

Promissory Estoppel

Homespire contends that the circuit court erred in dismissing its claim for promissory estoppel. The court, in granting the motion to dismiss this count, stated that, for the same reason that the claim for unjust enrichment was unavailable, because there were contracts of employment and compensation, the claim for promissory estoppel was also unavailable. We have explained, *supra*, that the court's ruling in this regard with respect to unjust enrichment was erroneous, and for the same reasons, the court's dismissal of the claim for promissory estoppel based on the existence of a contract was erroneous.

The court issued an alternative basis for dismissing the claim, stating that it was going to exercise its discretion to dismiss Homespire's First Amended Complaint as an insufficient pleading pursuant to Maryland Rule 2-322(e), which states:

> On motion made by a party before responding to a pleading or, if no responsive pleading is required by these rules, on motion made by a party within 15 days after the service of the pleading or on the court's own

[6] Moreover, even if the money was a gift, Maryland law recognizes conditional gifts, allowing the donor to "limit a gift to a particular purpose, and render it so conditioned and dependent upon an expected state of facts that, failing that state of facts, the gift should fail with it." *Ver Brycke v. Ver Brycke*, 379 Md. 669, 691 (2004). Here, the $120,000 carried the express condition of one year of employment, and Mr. Naghmi failed to satisfy this because he left Homespire after four months.

> initiative at any time, the court may order . . . any pleading that is late or otherwise not in compliance with these rules stricken in its entirety.

Maryland Rule 2-341(e) provides that "a party filing an amended pleading also shall file at the same time a comparison copy of the amended pleading showing by lining through or enclosing in brackets material that has been stricken and by underlining or setting forth in bold-faced type new material." The court in this case stated that dismissal was proper under Maryland Rule 2-322(e) "due to the fact that there was not a red-line copy of the amendment filed."

It is clear that the circuit court had discretion to dismiss Homespire's Amendment to the Complaint adding a count for promissory estoppel, on the court's own initiative. The court properly found noncompliance with Maryland Rule 2-322(e) based on Homespire's failure to submit the comparison copy required by Maryland Rule 2-341(e) with its First Amended Complaint. Nevertheless, we will, as requested by Homespire, reverse the order dismissing the amendment with prejudice, giving Homespire leave to file an amended complaint in compliance with Maryland Rule 2-322.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED; CASE IS REMANDED FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY APPELLEE.