

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND\*\*

No. 0712

September Term, 2021

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MANDANA MIRGHAHARI

v.

OVRANG SOHRABI

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Arthur,  
Ripken,  
Wilner, Alan M.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Ripken, J.

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Filed: March 23, 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.

\*\* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant Mandana Mirghahari (“Mirghahari”) appeals the Circuit Court for Montgomery County’s ruling on the admission of Defense Exhibits 1 through 4 over Mirghahari’s objection. Mirghahari contends the circuit court abused its discretion when it admitted the proffered evidence despite Appellee Ovrang Sohrabi (“Sohrabi”)’s numerous discovery violations. Additionally, Mirghahari appeals the circuit court’s finding that there was no enforceable contract between the parties. Mirghahari further challenges the finding that, in the alternative, Mirghahari failed to prove that Sohrabi was unjustly enriched. For the reasons to follow, we shall affirm.

### **ISSUES PRESENTED FOR REVIEW**

Mirghahari presents three issues for our review:<sup>1</sup>

- I. Whether the circuit court abused its discretion by admitting Sohrabi’s proffered evidence despite Sohrabi’s discovery violations.
- II. Whether the circuit court erred in finding that Mirghahari failed to establish that Sohrabi was liable for breach of an enforceable contract.
- III. Whether the circuit court erred in finding that Mirghahari failed to establish that Sohrabi was liable for damages under the doctrine of unjust enrichment.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### **A. Facts**

Sohrabi moved from Iran to the United States in 1979. Over many years, Sohrabi

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<sup>1</sup> Revised from:

- I. Did the trial court abuse its discretion in allowing Appellee to introduce at trial evidence not produced in discovery and the subject of a previous directive requiring production by an extended discovery deadline?
- II. Did the trial court err in holding that an interest-free loan transaction required mutuality of consideration?

established a real estate business in which he purchased, developed, sold, and rented 50 to 70 properties throughout Montgomery County and Prince George’s County. Sohrabi was living in Potomac, Maryland, and Mirghahari was living in California when they met in 2009 and began a personal relationship. In 2013, Mirghahari moved into Sohrabi’s Potomac residence, and she continued to live there until the relationship ended in 2019.

Throughout the relationship, Mirghahari assisted Sohrabi in managing his properties by providing administrative, clerical, and accounting support.<sup>2</sup> Sohrabi’s business accounts were held at Revere Bank (now Sandy Spring Bank) and TD Bank. Sohrabi gave Mirghahari check-signing authority, and Mirghahari ensured expenses were covered each month by depositing rental income and paying the ordinary expenses associated with rental units, such as mortgages, insurance, taxes, condominium fees, repairs, and other costs.

At times, Mirghahari wrote checks from her personal accounts totaling thousands of dollars, which she contends were to assist in covering business expenses. Many, but not all, of said checks were designated as “loans” on the checks’ memo lines. Mirghahari would endorse the checks by signing Sohrabi’s name and depositing them into his business accounts. Mirghahari would periodically write checks from Sohrabi’s accounts, made payable to herself, which she contends were to repay these “loans.” Often, Mirghahari designated said checks as “repayment of loan” on the checks’ memo lines.<sup>3</sup>

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<sup>2</sup> After Sohrabi’s son tragically passed away in 2006, Sohrabi suffered continuing severe emotional and mental hardship, which led to Mirghahari assisting with the business.

<sup>3</sup> According to Mirghahari, such “loan” payments totaled \$224,000 in 2017, \$190,800 in 2018, and \$127,000 in 2019, and the “repayment” checks totaled \$38,400 in 2017,

Mirghahari and Sohrabi's personal and professional relationship ended in July of 2019. The parties signed a handwritten document in which they agreed to refrain from contacting each other and to adhere to certain contractual obligations. The parties agreed to resolve their ownership dispute over certain Persian rugs in Sohrabi's possession, and, because Mirghahari was vacating the Potomac residence they previously shared, the parties agreed that Sohrabi would reimburse Mirghahari for up to one month's worth of hotel stays, up to \$150 per day.

Subsequently, Mirghahari was unable to retrieve from Sohrabi's residence all the Persian rugs over which she alleged ownership.<sup>4</sup> In addition, Sohrabi failed to reimburse Mirghahari for Mirghahari's hotel stays between July 22 and August 20, as the parties had agreed.

Additional facts are introduced as they become relevant in the Procedural History and Discussion sections, *infra*.

## **B. Procedural History**

### *1. Pre-trial*

Mirghahari filed a complaint in the Circuit Court for Montgomery County on October 17, 2019, which contained five counts against Sohrabi: (I) breach of contract as to monies borrowed, totaling \$298,539; (II) breach of contract as to reimbursement for hotel expenses, totaling \$3,569; (III) unjust enrichment (in alternative to Count I) totaling

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\$116,858 in 2018, and \$87,380.00 in 2019. These amounts are disputed and addressed in greater detail *infra*.

<sup>4</sup> Mirghahari estimated that the rugs' fair market value was \$90,000.00.

\$298,539; (IV) detainee for several Persian rugs; and (V) assault, for which she requested an amount greater than \$75,000 in compensatory and punitive damages, with interests and costs. Sohrabi filed an omnibus answer on July 14, 2020, asserting defenses and denials, including, in pertinent part, that Mirghahari's claims were "barred by the doctrine of recoupment." Sohrabi filed a counterclaim on July 29, 2020, seeking compensatory and punitive damages for defamation, in addition to equitable relief.<sup>5</sup> Mirghahari denied all allegations pled in Sohrabi's counterclaim in an answer filed on September 16, 2020.

Discovery transpired on the following timeline:

- July 23, 2020: Mirghahari sent Sohrabi first set of interrogatories
- July 23: Mirghahari sent Sohrabi first request for production of documents
- July 28: Sohrabi sent Mirghahari first set of interrogatories
- July 28: Sohrabi sent Mirghahari first request for production of documents
- September 2: Mirghahari sent Sohrabi good faith letter to compel answers to first set of interrogatories and request for production of documents
- September 4: Sohrabi responded to Mirghahari's good faith letter with his own good faith letter to compel discovery
- September 16: Mirghahari sent Sohrabi first request for admissions
- September 21: Mirghahari, Counter-Defendant, sent Sohrabi, Counter-Plaintiff, first set of interrogatories and first request for production of documents
- October 7: Sohrabi sent Mirghahari answers to first requests for admission
- October 21: Mirghahari sent Sohrabi answers to first set of interrogatories and

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<sup>5</sup> Although the counterclaim did not expressly plea defamation, it claimed that Mirghahari had "published false, malicious, defamatory, and materially misleading" statements concerning Sohrabi.

first set of requests for production of documents

- November 4: Mirghahari sent Sohrabi second good faith letter to compel answers to interrogatories and request for production of documents
- November 18: Mirghahari moved for sanctions against Sohrabi for discovery violations and requested that the court dismiss Sohrabi's counterclaim
- December 4: Sohrabi answered Mirghahari's first set of interrogatories
- December 8: Sohrabi, Counter-Plaintiff, answered Mirghahari's, Counter-Defendant, motion for sanctions and request to dismiss counterclaim
- December 9: Sohrabi answered Mirghahari's first request for production of documents
- December 15: Sohrabi, Counter-Plaintiff, answered Mirghahari's, Counter-Defendant, first set of interrogatories and requests for production of documents

On February 17, 2021, the circuit court held a hearing on Mirghahari's motion seeking sanctions for Sohrabi's discovery violations and to dismiss Sohrabi's counterclaim. The court set a new discovery deadline and granted the motion for sanctions in part, awarding Mirghahari attorney's fees for Sohrabi's failure to provide duly compelled deposition testimony,<sup>6</sup> and denied the motion in part, as to all other forms of relief requested. Discovery proceeded:

- March 9, 2021: Sohrabi, Counter-Plaintiff, provided supplemental answers to Mirghahari's, Counter-Defendant, first set of interrogatories
- March 12: Mirghahari filed a supplement to her original motion for sanctions, detailing proposed award of attorney's fees
- March 16: Mirghahari deposed Sohrabi

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<sup>6</sup> The circuit court granted Mirghahari's motion for sanctions as to an award of attorney's fees but specified that it would take the amount of such award "under advisement upon submission" of affidavits in which Mirghahari's counsel set forth the basis for their fees.

- March 30: Sohrabi provided an answer to Mirghahari’s supplement to the motion for sanctions/attorney’s fees request
- March 31: Sohrabi deposed Mirghahari

Between June 22 and June 25, 2021, Sohrabi emailed Mirghahari summaries of the evidence he intended to present at trial,<sup>7</sup> pursuant to Maryland Rule 5-1006.<sup>8</sup> The 5-1006 summaries contained lists of checks Mirghahari had drawn from Sohrabi’s Revere/Sandy Spring Bank and TD Bank accounts between 2017 and 2019 “for [Mirghahari’s] benefit.” The summaries included the check numbers, dates, individual amounts, and the sum of the checks, itemized by year. In his notice to Mirghahari, Sohrabi indicated that “[a]ll of the checks [were] contained in the documents [Mirghahari] subpoenaed from Revere/Sandy Spring Bank and TD Bank.” Sohrabi did not attach additional copies of the specific checks at that time.

## 2. Trial

Beginning on June 28, the circuit court held a three-day bench trial. On the first day of trial, both parties filed written motions *in limine* that they argued before the court. Sohrabi moved to preclude Mirghahari from introducing her 5-1006 summary in which she indicated her intention to introduce checks evincing loans Mirghahari made to Sohrabi in

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<sup>7</sup> On June 22, Sohrabi sent the initial email to Mirghahari indicating his intent to enter the checks listed in the 5-1006 summaries into evidence. On June 24 and 25, Sohrabi emailed Mirghahari revised check summaries that contained minor changes from the summaries sent on June 22.

<sup>8</sup> Rule 5-1006 grants parties the ability to submit summaries of evidence in lieu of “voluminous writings, recordings, or photographs” so long as “[t]he party intending to use such a summary [gives] timely notice” and makes the summary contents “available for inspection . . . at a reasonable time and place.” Md. Rule 5-1006.

2019. According to Sohrabi, many of the 2019 checks listed in that summary, which had been provided only three days before trial, had not been included in Mirghahari's initial complaint, pre-trial statement, or answers to interrogatories. Similarly, Mirghahari moved to preclude Sohrabi from introducing the 5-1006 summaries of checks he had provided June 22 and revised on June 24 and 25, in addition to any testimony relating to those checks, because they had not been provided during discovery. The court did not rule *in limine* on either party's motion; instead, the court reserved in favor of assessing the evidence as it was offered should the opposing party object at that point.

During direct examination of Mirghahari, Sohrabi objected to the admission of certain 2019 checks and any related testimony, consistent with his motion *in limine* filed at the start of trial. In response, Mirghahari asserted that there was no unfair surprise because all the checks in question had been provided in discovery and any inconsistency in the checks' total amount was due to clerical error. The court admitted the evidence over Sohrabi's objection because it found that the late 5-1006 summary disclosure had not prejudiced Sohrabi.

During cross examination of Mirghahari, Sohrabi questioned Mirghahari as to checks she had written to herself and to her friends from Sohrabi's business accounts between 2017 and 2019. Mirghahari objected, consistent with her motion *in limine* at the start of trial. Mirghahari insisted that Sohrabi had not raised a setoff defense or the checks at issue in answers to interrogatories, depositions, or responses to requests for documents. Mirghahari had subpoenaed and obtained bank records from Sohrabi's accounts, which included the disputed checks; however, Mirghahari argued that there were thousands of



checks produced in the records and that Sohrabi was required to disclose the checks he intended to present at trial. Sohrabi countered that he had not had access to the records until he returned from Iran on June 9, 2021, shortly before the start of trial. The following colloquy ensued:

THE COURT: How many documents did you actually provide to the other side in discovery in this case from beginning to end? . . . Is it more or less than 100.

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[SOHRABI]: I would say 80, Your Honor.

THE COURT: Okay. How many copies of checks do you think you provided to them among those 80 or so?

[SOHRABI]: I don't know if I have provided any copies of checks, Your Honor.

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[SOHRABI]: But they had all the checks.

THE COURT: I understand but the discovery rules don't carve out an exception for documents that the other side you believe already has. The discovery rules are designed to prevent surprise so that we don't have a trial by ambush. And I'm not suggesting that this is an ambush but they are coming in and they have asked proper discovery requests. Give them the documents that you are relying on for your defenses in this case. Right?

Not just unless if we already have it don't produce it but . . . what they're saying is we want to know what your defenses are and what documents you have to support them. I don't see anything overly broad about that. I don't think that the objections that are interposed are meritorious. Things should have been produced. The fact that he was in Iran is not really a defense to this because people can communicate overseas. It happens all the time.

Despite the court's dissatisfaction with the manner which both parties had engaged in discovery, the court ultimately decided to admit Defense Exhibits 1 through 4, reasoning that, as the finder of fact, the court "need[ed] more evidence rather than less" to determine

the truth.<sup>9</sup> Furthermore, the court noted that it was “taking into consideration the fact that [J]udge Schweitzer [had] already heard the motion for sanctions and ordered that attorney’s fees be awarded” and, accordingly, the court would be making a ruling as to that amount at the close of trial. In deciding to admit the exhibits, the court stated:

[B]alancing all of these considerations[,] . . . [admission] is the appropriate way rather than precluding documents in evidence. Again, this [was] not the ideal way to engage in discovery. . . . But because I am the finder of fact in this case – it is not a jury trial – I would like to have more evidence so that I can actually find out what the truth is between these two parties.

After the conclusion of evidence, the court ruled in Sohrabi’s favor on Count I, breach of contract, Count III, unjust enrichment; Count IV, detinue; and Count V, assault; and in Mirghahari’s favor on Count II, breach of contract concerning hotel reimbursement. Additionally, the court ruled in Sohrabi’s favor as to his counterclaim of defamation against Mirghahari and awarded Sohrabi \$5,000 in compensatory damages and \$25,000 in punitive damages, totaling \$30,000. Finally, the court revisited Judge Schweitzer’s order imposing sanctions for Sohrabi’s discovery violations and awarded Mirghahari \$3392.50 in attorney’s fees. Mirghahari filed this timely appeal.<sup>10</sup>

### **STANDARD OF REVIEW**

This Court is “reluctant to second-guess” a trial judge’s resolution of a discovery

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<sup>9</sup> The court stated, “[I]f there were a textbook . . . for how parties should not engage in discovery, this would be the model case.”

<sup>10</sup> Although noted in Mirghahari’s Notice of Appeal to this Court, the circuit court’s rulings in Sohrabi’s favor as to Counts IV, V, and as to his counterclaim regarding defamation were not raised in Mirghahari’s briefs.

dispute. *See Klupt v. Krongard*, 126 Md. App. 179, 193 (1999) (“[A] trial court has broad discretion to fashion a remedy based on a party’s failure to abide by the rules of discovery.” (quoting *Warehime v. Dell*, 124 Md. App. 31, 43 (1998))). As such, our review of a trial court’s decision to impose or, as in this case, to refrain from imposing, discovery sanctions is “quite narrow,” and the trial court’s decision will not be disturbed absent a clear showing of an abuse of discretion. *Id.* (quoting *Warehime*, 124 Md. App. at 43); *see also Dackman v. Robinson*, 464 Md. 189, 231 (2019) (“An appellate court reviews for abuse of discretion a trial court’s decision to impose, or not impose, a sanction for a discovery violation.”).

The second and third issues raised on appeal challenge the trial court’s findings of fact concerning contract formation, breach of contract, and unjust enrichment. While “[t]he interpretation of a contract . . . is a question of law, subject to *de novo* review[,]” *Towson Univ. v. Conte*, 384 Md. 68, 78 (2004), whether a contract exists and, if so, whether a party breached that contract, are factual inquiries subject to a clearly erroneous standard of review. *See Bontempo v. Lare*, 217 Md. App. 81, 136 (2014) (citing *Eisenberg v. Air Conditioning, Inc.*, 225 Md. 324, 331 (1961)). “If any competent material evidence exists in support of the trial court’s factual findings, those findings cannot be held to be clearly erroneous.” *Figgins v. Cochrane*, 403 Md. 392, 409 (2008) (quoting *Schade v. Md. State Bd. of Elections*, 401 Md. 1, 33 (2007)).

## DISCUSSION

### I. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION BY ADMITTING SOHRABI’S PROFFERED EVIDENCE OVER MIRGHAHARI’S OBJECTIONS.

Mirghahari argues that the circuit court abused its discretion by denying

Mirghahari’s motion *in limine* and admitting Defense Exhibits 1 through 4 into evidence.<sup>11</sup> Mirghahari emphasizes that the court’s admittance of the proffered evidence undermined the purpose of the discovery rules: “to protect a party from surprise, or to prevent trial by ambush.” In support, Mirghahari cites *Bartholomee v. Casey*, 103 Md. App. 34 (1994), in which the Appellate Court of Maryland (at the time named the Court of Special Appeals of Maryland)<sup>12</sup> held that the trial court abused its discretion by allowing testimony to be admitted at trial that was consistent with a “newly advanced theory of liability.” Mirghahari contends that Sohrabi’s introduction of the checks identified in Defense Exhibits 1 through 4 directly contradicted Sohrabi’s prior discovery responses. For example, when Sohrabi was asked to identify specific records or financial documents relevant to “any monies paid to or received by” Mirghahari, Sohrabi responded, “None.”<sup>13</sup> Furthermore, Mirghahari

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<sup>11</sup> Defense Exhibit 1 contained scanned checks Mirghahari drew from Sohrabi’s Revere/Sandy Spring Bank account between 2017 and 2019. Defense Exhibit 2 was the 5-1006 summary of the checks included in Defense Exhibit 1. Defense Exhibit 3 contained scanned checks Mirghahari drew from Sohrabi’s TD Bank account between 2017 and 2019. Defense Exhibit 4 was the 5-1006 summary of the checks included in Defense Exhibit 3.

<sup>12</sup> 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.

<sup>13</sup> Mirghahari’s first request for production of documents included the following:

32. All documents evidencing monies received by Plaintiff from January 1, 2017 to the present.

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39. Any records, financial statements or documentations of any type prepared by you or on your behalf of any monies received or paid to Plaintiff.

*See* Pl.’s First Req. for Prod. of Docs. to Def. at 6, *Mirghahari v. Sohrabi*, No. 474155-V (Md. Cir. Ct. Mont. Cnty. July 23, 2020). Sohrabi responded “None.” to both requests. *See*

asserts that the trial court abused its discretion by failing to perform the analysis outlined in *Taliaferro v. State*, 295 Md. 376, 390–91 (1983),<sup>14</sup> as it pertains to the substantive nature of Sohrabi’s discovery violations, the late timing of the disclosures and resulting inability to properly prepare, the inadequate reasons for the violations, and the prejudice Mirghahari incurred due to lost credibility with the trial court.

In response, Sohrabi maintains that the circuit court did not abuse its broad discretion by admitting Defense Exhibits 1 through 4. As Sohrabi argues, aside from Sohrabi’s inability to access his records due to unanticipated delays,<sup>15</sup> Mirghahari was on notice of Sohrabi’s defenses well in advance of trial, Mirghahari failed to file a supplemental motion to compel discovery in accordance with Maryland Rule 2-432, and Mirghahari incurred no prejudice because she was already in possession of the disputed evidence.

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Def.’s Resp. to First Req. for Prod. of Docs. at 5–6, *Mirghahari v. Sohrabi*, No. 474155-V (Md. Cir. Ct. Mont. Cnty. Dec. 9, 2020).

<sup>14</sup> The *Taliaferro* factors include:

- (1) whether the disclosure violation was technical or substantial;
- (2) the timing of the ultimate disclosure;
- (3) the reason, if any, for the violation;
- (4) the degree of prejudice to the parties respectively offering and opposing the evidence;
- (5) whether any resulting prejudice might be cured by a postponement, and, if so, the overall desirability of a continuance.

*Valentine-Bowers v. Retina Grp. of Washington, P.C.*, 217 Md. App. 366, 380 (2014) (citing *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 725–26 (2002) (citing *Taliaferro*, 295 Md. at 390–91)).

<sup>15</sup> Sohrabi argues that he could not travel back to the United States from Iran between February of 2020 through June of 2021 due to the COVID-19 pandemic.

We find that the circuit court did not abuse its discretion in admitting Defense Exhibits 1 through 4 over Mirghahari’s objection. Maryland Rule 2-433 states that, “[u]pon a motion filed under Rule 2-432 (a), the court, if it finds a failure of discovery, *may* enter such orders in regard to the failure as are just[.]” Md. Rule 2-433(a) (emphasis added).<sup>16</sup> Rule 2-433 does not instruct that a trial court *must* impose a discovery sanction. Rather, as this Court has stated, “in imposing sanctions, a trial court has considerable latitude.” *Warehime v. Dell*, 124 Md. App. 31, 44 (1998) (internal quotations omitted).

Mirghahari argues that the trial court did not adequately assess the *Taliaferro* factors; however, the facts in *Taliaferro* are distinguishable from those present here. *Taliaferro* was a criminal case in which the Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)<sup>17</sup> affirmed a trial court’s exclusion of alibi witness testimony where the defense had committed a “gross violation” of discovery rules. 295 Md. at 391–92 (finding “no attempt at compliance” with discovery rules where the defendant failed to disclose a potential alibi witness until the close of all the evidence, without justification).

In this case, as the trial court observed, Sohrabi put Mirghahari on notice that he

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<sup>16</sup> At the motions hearing, the court instructed the parties to “file a motion to compel with regards to the interrogatories” if they remained dissatisfied with discovery responses and to “take a supplemental deposition” if they required additional information. However, as Sohrabi argues, following the February motions hearing, Mirghahari filed no further motions to compel or for sanctions in accordance with Maryland Rule 2-432.

<sup>17</sup> 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.

intended to assert a “recoupment” defense in his answer to Mirghahari’s complaint, which he filed nearly a year in advance of trial. Additionally, in Sohrabi’s answer to Mirghahari’s first set of interrogatories, which he filed approximately six months before trial, Sohrabi claimed that Mirghahari “forged [his] name on multiple checks, paying herself and her friends substantial sums of money far exceeding any claimed amount” and that he “[does] not owe [Mirghahari] any monies.” As such, despite Sohrabi’s discovery violations, Mirghahari could not have been unfairly surprised by Sohrabi’s intention to present checks or summaries thereof in support of his defense. Furthermore, had Mirghahari truly been surprised by Sohrabi’s recoupment defense as raised by the checks included in his 5-1006 summaries, she could have requested a postponement or continuance. She did not.

As this Court made clear in *Muffoletto v. Towers*, 244 Md. App. 510 (2020), when circuit courts use their discretion to impose sanctions for discovery violations, “it is not necessary for the court to go through a checklist and note its consideration for each [Taliaferro] factor.” *Id.* at 542; *see also Dackman*, 464 Md. at 212 (affirming that a trial court had not abused its discretion despite the court concluding that “no action was taken to resolve the discovery problem[,] and no action was taken to suggest that they were doing everything [they] could to go forward on this issue”). “We do not look at each incident in isolation, but rather at the entire history and context of the case.” *Valentine-Bowers v. Retina Grp. of Washington, P.C.*, 217 Md. App. 366, 380 (2014) (evaluating a trial court’s decision to dismiss a case as sanction for repeated discovery violations).

*Bartholomee*’s facts similarly do not support Mirghahari’s argument. In *Bartholomee*, this Court reviewed a trial court’s admission of two pieces of evidence that

had not been disclosed in discovery. 103 Md. App. at 47. In assessing the trial court’s admission of the first piece of evidence, this Court found no abuse of discretion because the defendant “could hardly claim to have been surprised by plaintiff’s desire to place that evidence before the jury,” and the defendant “[had] not demonstrated that she has been so prejudiced as to support a finding that the trial court abused its discretion.” *Id.* at 49. However, this Court held that the trial court *had* abused its discretion by admitting the second piece of evidence: testimony supporting a theory of liability that “flatly contradicted” the plaintiff’s answers to interrogatories. *Id.* at 50. This Court concluded that “[p]resentation of such evidence . . . constituted the kind of unfair surprise that careful adherence to the discovery process was intended to avoid.” *Id.*

Here, Sohrabi’s introduction of Defense Exhibits 1 through 4 into evidence was not an attempt to support a new theory of liability. Additionally, unlike the second piece of evidence in *Bartholomee*, the checks Sohrabi included in the proffered exhibits did not contradict any theory or statement Sohrabi had previously expressed in discovery documents. Mirghahari, herself, testified that she deposited and withdrew money from Sohrabi’s business accounts as part of business practice. Therefore, introduction of these documents as evidence did not prejudice the court, as fact-finder, in the same way the erroneous admission of evidence prejudiced the jury in *Bartholomee*.

The record shows that the trial court used its discretion in deciding to admit Defense Exhibits 1 through 4. After examining the entire course of discovery, questioning both parties as to what they had requested from and provided to the opposing party, and assessing the credibility of the witnesses, the court stated,



This is just not the way discovery should be done. At some point, however, I've got to get to the truth of this matter which is going to be challenging . . . based on the little bit that I have heard in evidence so far. So I've got already questions about both the complaint and the counterclaim but I've got to sort it out somehow and I need more evidence rather than less evidence to do that.

I'm also taking into consideration the fact that [J]udge Schweitzer has already heard the motion for sanctions and ordered that attorney's fees be awarded leaving up to another day what the amount of the attorney's fees would be. That another day has come and, as part of this trial, I'm going to make a ruling on what the amount of the sanctions will be. . . .

And I think balancing all of these considerations that . . . is the appropriate way rather than precluding documents in evidence. . . . I have spent a good part of the last day and now in today sorting out discovery issues. And there is a greater degree of fault from one side than the other . . . . But because I am the finder of fact in this case . . . I would like to have more evidence so that I can actually find out what the truth is between these two parties.

We conclude it was well within the court's discretion to decide that it "need[ed] more evidence rather than less" to make necessary factual determinations. We find no abuse.

## **II. THE CIRCUIT COURT DID NOT ERR IN FINDING THAT MIRGHAHARI FAILED TO ESTABLISH THAT SOHRABI BREACHED AN ENFORCEABLE CONTRACT.**

Mirghahari argues that the trial court erred in holding that the "interest-free advances" she provided to Sohrabi required mutuality of consideration to form an enforceable contract. Mirghahari contends that the deposits into Sohrabi's accounts formed a unilateral contract, which did not require mutuality of consideration because Sohrabi accepted the benefit of the transactions: use of the funds. According to Mirghahari, it "strains credulity to believe that [Sohrabi] never knew that [Mirghahari] was making substantial advances to his account over a number of years[.]" As such, Mirghahari maintains that Sohrabi was impliedly bound to repay the money she deposited into his accounts.

Conversely, Sohrabi maintains that there was no enforceable contract between the parties. Sohrabi argues that Mirghahari’s deposits into the business accounts do not constitute an enforceable contract because Mirghahari made the deposits without Sohrabi’s knowledge or authorization and Sohrabi never promised to repay the funds. Sohrabi notes further that the trial court gave a detailed explanation of the elements of a binding contract before ultimately concluding that Mirghahari failed to put forth sufficient evidence to prove any of said elements.

We find that the trial court conducted a thorough examination of the evidence, assessed the witnesses’ credibility, and arrived at the sound conclusion that there was no enforceable contract between the parties. It bears repeating that this Court reviews the trial court’s finding on whether parties entered a binding contract and, if so, whether a party breached that contract for clear error. *See Bontempo*, 217 Md. App at 136. We will not disturb a trial court’s factual findings “[i]f any competent material evidence exists in support” of said findings. *Figgins*, 403 Md. at 409. As this Court has made clear, “[a]lthough it is not uncommon for a fact-finding judge to be clearly erroneous when he is affirmatively **PERSUADED** of something, it is, as in this case, almost impossible for a judge to be clearly erroneous when he is simply **NOT PERSUADED** of something.” *Bontempo*, 217 Md. App. at 137 (alteration in original) (quoting *Omayaka v. Omayaka*, 417 Md. 643, 658–59 (2011)).

Here, the court was not persuaded that the parties entered a binding contract. In the court’s final ruling, the elements of an enforceable contract—offer, acceptance, and consideration—were discussed in detail. In finding that Mirghahari failed to prove the

existence of an enforceable contract, the court stated,

A contract requires a number of facts to be proven in order to recover for a breach. Most elementary and basic to that is a meeting of the minds and some bargained-for consideration. In this case, there was no evidence presented that there was any consideration for this money that was allegedly loaned to [Sohrabi].

It's clear what, under a breach of contract theory, [Sohrabi] would have received as a benefit, and that is the use of that money for a period of time. But there's nothing that I can tell from this evidence that [Mirghahari] would have gained as a benefit from loaning [Sohrabi] that money, at least nothing that was established in this courtroom in evidence.

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There's also really no evidence of a meeting of the minds. There is nothing that's been presented to show that there was an offer and acceptance, and that's what's required to form a contract. . . .

There was no discussion that's been offered that the plaintiff would loan this money to him. There was no discussion about repayment of the money, when it would be repaid, how it would be repaid, and what form that repayment would take, whether it would be by an actual cash payment, whether it would be by the, some other benefit with a monetary value going back to [Mirghahari], whether it would be by [Mirghahari] simply taking money from [Sohrabi]'s account, which appears to be what happened here, but there was no agreement between the parties that this would happen.

And so there was no offer, there was no acceptance, there's no meeting of the minds, and there's no contract. . . . And if no contract was formed, it's pretty apparent that there cannot be a breach of a contract.

Without providing relevant legal support, Mirghahari contends that the trial court erred in its assessment of the facts because it “strains credulity” to believe that Sohrabi did not know Mirghahari was making payments to his accounts when “he authorized her to manage his finances.” However, “it is the trial judge’s role in a bench trial to determine whether the weight of the credible evidence presented was *sufficient*” to support the existence of a binding agreement between the parties. *Bontempo*, 217 Md. App. at 137. In reviewing for clear error, it is this Court’s role to assess whether “any competent material evidence exists in support of the trial court’s factual findings[.]” *Collins/Snoops Assocs.*,

*Inc. v. CJF, LLC*, 190 Md. App. 146, 160 (2010) (quoting *Figgins*, 403 Md. at 409).

Here, the trial court was not persuaded that Mirghahari met her burden of proving that a meeting of the minds sufficient to form an enforceable contract had occurred between the parties. Furthermore, the record contains competent material evidence to support the trial court’s finding that no contract was formed. Sohrabi testified that, while he had granted Mirghahari “limited” check writing authority, he was unaware that Mirghahari was depositing personal funds into his business accounts and withdrawing thousands of dollars for personal repayments. We find no error in this conclusion.

**III. THE CIRCUIT COURT DID NOT ERR IN FINDING THAT MIRGHAHARI WAS NOT ENTITLED TO RESTITUTION UNDER AN UNJUST ENRICHMENT THEORY.**

Mirghahari alternatively argues that, should this Court find that the trial court did not err in finding the lack of a contract, principles of equity compel an award of damages under an unjust enrichment or quasi-contract theory of liability. Mirghahari relies upon the Supreme Court of Maryland’s definition of quasi-contract as stated in *County Commissioners of Caroline County v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83 (2000):

It is not based on intention or consent of the parties, but is founded on considerations of justice and equity, and on doctrine of unjust enrichment. It is not in fact a contract, but an obligation which the law creates in absence of any agreement, when and because the acts of the parties or others have placed in the possession of one person money, or its equivalent, under such circumstances that in equity and good conscience he ought not to retain it.

*Cnty. Comm’rs of Caroline Cnty.*, 358 Md. at 94–95 (quoting *Quasi contract*, Black’s Law Dictionary 324 (6th ed. 1990)). In response, Sohrabi contends that the trial court did not err in ruling that Mirghahari failed to prove the elements of an unjust enrichment claim “after an extensive analysis of the law and facts[.]” We agree.

By Mirghahari’s own admission, “[t]he concept of unjust enrichment is notoriously difficult to define.” *Berry & Gould, P.A. v. Berry*, 360 Md. 142, 152 (2000). Nevertheless, the absence of a concrete test does not remove the plaintiff’s burden of proving, by a preponderance of the evidence, that unjust enrichment occurred. *See Jackson v. 2109 Brandywine, LLC*, 180 Md. App. 535, 574 (2008) (“In an action for unjust enrichment the burden is on the plaintiff to establish that the defendant holds plaintiff’s money and that it would be unconscionable for him to retain it.” (internal quotations omitted)). The Supreme Court of Maryland has described unjust enrichment as comprising three elements:

1. A benefit conferred upon the defendant by the plaintiff;
2. An appreciation or knowledge by the defendant of the benefit; and
3. The 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.

*Berry*, 360 Md. at 151–52 (internal quotations omitted).

Here, Mirghahari provides minimal support for her unjust enrichment claim. Mirghahari speculates that the evidence presented in Defense Exhibits 1 through 4 “tipped the scales in the Court’s eyes to defeat [Mirghahari’s] claims for unjust enrichment[.]” However, the trial court’s reference to the evidence presented in Defense Exhibits 1 through 4 in its ruling, without more, does not prove that the court would have undoubtedly ruled in Mirghahari’s favor had the exhibits been excluded. To the contrary, the court relied on additional evidence in its ruling, such as the thousands of dollars in “cash that came in every month,” the parties’ inability to provide a “good explanation for where this cash went,” and that it was unclear which party was the ultimate recipient of said cash. There was no ledger for the court to assess. The court emphasized that “[t]he evidence in this case

[was] confusing with respect to what was going on between these parties,” and that the court was

unable to discern the extent to which these were simply funds that were loaned to the benefit of the defendant for the operation of the business, or whether this was just part of an ongoing business relationship, and this [was] the way things were being done when things were going well between these parties in their personal lives; that is, their personal lives together.

Ultimately, the court simply did not find “many parts of [Mirghahari]’s testimony” credible and “found [Sohrabi]’s testimony more credible than [Mirghahari]’s, or more persuasive.”

“[C]onferral of a benefit and a right to restitution are far from equivalent concepts.” *Berry*, 360 Md. at 157. Although the evidence shows that Mirghahari deposited checks into Sohrabi’s business accounts, the trial court found that Mirghahari failed to present sufficient evidence from which the court could determine that an actual benefit was conferred upon Sohrabi. We find no fault with the trial court’s conclusion that it is “impossible[,] . . . on this record, to determine what monies were being taken back by [Mirghahari] to recoup what she says that she was putting into the business[.]” Because Mirghahari held the burden of proof, we find no error in the trial court’s decision to find in Sohrabi’s favor as to the unjust enrichment claim.

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