Circuit Court for Carroll County
Case No. 06-C-17-073448

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0870

September Term, 2018

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LISA JEAN HOFFMAN

v.

GENE HOFFMAN, JR. ET AL

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Wright,
Gould,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Harrell, J.

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Filed: November 5, 2019

Appellant, Lisa Hoffman ("Ms. Hoffman"), complains principally that the Circuit Court for Carroll County erred in determining that Ms. Hoffman was enriched unjustly, to the detriment of Appellee, Gene Hoffman Jr. ("Hoffman, Jr."), her brother. The court found that Ms. Hoffman received an insurance check as the result of a fire that destroyed the residence of the parties' deceased father, Gene Hoffman Sr. ("Hoffman, Sr."), in which Hoffman, Jr. resided, and the personal property of Hoffman, Jr. in the home. The court concluded, therefore, that a large portion of the proceeds of the check belonged rightfully to Hoffman, Jr. As Ms. Hoffman failed to disburse the proceeds to "the person who was most directly affected by the loss," the circuit court determined she was enriched unjustly and awarded damages to Hoffman, Jr. in the amount of $90,587.24. This timely appeal followed. We shall affirm the judgment of the circuit court.

## FACTUAL BACKGROUND

Hoffman, Sr. owned and resided in a house at 6320 Barnes Avenue in Westminster, Maryland, from 1987 until his death on 14 February 2016. Hoffman, Sr.'s recorded last will and testament named Ms. Hoffman as his estate's personal representative and bequeathed her the whole of his personalty and residuary estate. Prior to the death of Hoffman Sr., his son, Hoffman Jr., resided at the Barnes Avenue address, as did Hoffman Jr.'s girlfriend, Jacqueline Whitcomb ("Whitcomb"), and Hoffman Jr.'s son and grandson,

Devon Hoffman, and Kaden Shreiner.[1] Ms. Hoffman did not live at the Barnes Avenue residence in the latter years of Hoffman Sr.'s life, but was a regular visitor to the home.

A fire occurred on 16 June 2016, destroying the Barnes Avenue home and most of its contents, leaving Hoffman, Jr. and his family with little more than "the clothes on their backs." Under an insurance policy engaged by Hoffman, Sr., a claim was made by Ms. Hoffman to State Farm for the dwelling and its contents. Unfortunately, in what should have been a straightforward process, the determination of the amount State Farm would pay under the insurance policy for real property losses was fraught with confusion and misdirection. Working with Ms. Hoffman, an independent claims adjuster she engaged, Goodman-Gable-Gould ("GGG"), compiled a list and valuation of the personalty lost in the fire and sent the list to State Farm. At the request of Hoffman, Jr., GGG provided him also a set of blank and filled-out inventory sheets to review.[2] Rather than reviewing the filled-out inventory and returning corrected supplemental versions to GGG, Hoffman, Jr. created a "new" inventory list of the damaged personalty that he claimed belonged to him and his family and sent directly his list to State Farm, without copying GGG or Ms. Hoffman. State Farm attempted apparently to meld the two lists. Its final determination of a list and valuations included several duplicated items from the parties' competing lists, resulting in a higher pay-out than anticipated by Ms. Hoffman or GGG. State Farm issued a final check to Ms. Hoffman for $111,255.99 on 31 March 2017 to cover the destroyed

[1] This domestic unit will be referred to henceforth as Hoffman, Jr.'s "family."

[2] We are unable to discern from this record whether the filled-out sheets sent by GGG to Hoffman, Jr. were derived from the information supplied to GGG by Ms. Hoffman. It appears that that was presumed to have been the case.

personal property.

State Farm made the check payable to three parties: (1) Ms. Hoffman, (2) The Estate of Hoffman, Sr., and (3) GGG. Upon learning of the issuance of the check, Hoffman, Jr. claimed to have contacted Ms. Hoffman via text message and telephone. Whatever the numerosity of the attempts at contacting her, Ms. Hoffman failed to respond. On 11 April 2017, Hoffman, Jr.'s counsel sent a letter to Ms. Hoffman requesting disbursement to him of the proceeds of the State Farm check. Hoffman, Jr. sent a similar letter five days later, on 16 April 2017. Ms. Hoffman acknowledged at trial receiving both letters and failing to respond to either missive.

During this period, Ms. Hoffman claims that she was attempting to get State Farm to issue a new check removing "The Estate of Gene Hoffman, Sr." as a payee, or to issue separate checks to each individual payee.[3] On 2 May 2017, Ms. Hoffman opened an estate for Hoffman, Sr. with the Register of Wills. She claimed that half of the amount of the check belonged to the estate. Accordingly, Ms. Hoffman deposited the entire State Farm check into the estate bank account and then transferred approximately half the funds into her personal account.[4] The circuit court determined that there were no attempts made by Ms. Hoffman to reimburse Hoffman, Jr. and his family for their lost personalty using the funds left on deposit in the estate account or deposited in Ms. Hoffman's personal account.

The day prior to Ms. Hoffman's opening of the estate account, 1 May 2017,

[3] These efforts were unsuccessful.

[4] Ms. Hoffman deposited $55,628.99 into her own account, leaving $55,627.00 in the estate account.

Hoffman, Jr. and Whitcomb filed a complaint in the circuit court claiming that Ms. Hoffman was enriched unjustly by her retention and control of the whole of the proceeds from the State Farm check. Ms. Hoffman filed a timely answer denying this claim. At trial, Whitcomb's claim was withdrawn voluntarily from consideration, leaving Hoffman, Jr. and Ms. Hoffman as the lone plaintiff and defendant, respectively.

At the one-day bench trial on 30 May 2018, the parties testified to the above facts. The facts were generally not disputed, although there were a few minor scuffles as to the timeline of events, e.g., when Hoffman, Jr. first contacted Ms. Hoffman regarding disbursement of the funds. Ms. Hoffman testified that she was not contacted by her brother prior to receiving the demand letter from his counsel, and that she told the Register of Wills that she was unable to contact directly Hoffman, Jr.;[5] however, Ms. Hoffman admitted that she was in possession of his cell phone number and had received the contact information for his counsel from his earlier letter. Apparently, the trial judge favored Hoffman, Jr.'s version of events.

The trial judge, on 5 June 2018, announced his decision that Ms. Hoffman was enriched unjustly by retaining the whole of the proceeds of the State Farm check and failing to disburse that part of the money owed to Hoffman, Jr. Finding that the "alliance share of those proceeds"[6] from the State Farm check "were for property that was not an estate or

[5] Ms. Hoffman claims the address she possessed for Hoffman, Jr. was that of a temporary residence and that it was her understanding that he was scheduled to relocate before she opened the estate with the Register of Wills.

[6] The phrase "alliance share" appearing in the transcript makes no sense in this context. We assume the transcription should have said "lion's share" instead.

probate asset" and that Ms. Hoffman had failed to disburse the funds properly, the court determined all the elements of unjust enrichment had been satisfied. The court awarded Hoffman, Jr. the "lion's share" of the insurance money, ordering that Ms. Hoffman pay him $90,587.24. This timely appeal by Ms. Hoffman followed.

## QUESTION PRESENTED

Appellant presents the following questions for our consideration, which we have rephrased more simply as follows:[7]

I. Did the Trial Judge err in finding that Appellant was unjustly enriched?
II. Did the Trial Judge err in failing to reduce his judgment based on a pro rata reduction paid by Appellant to GGG?
III. Did the Trial Judge abuse his discretion in refusing to impose sanctions on Appellees under Md. Rule 1-341?

## STANDARD OF REVIEW

[7] Appellant's Questions in her brief were:

1. Whether the trial Judge erred as a matter of fact and law that appellee had proven an unjust enrichment claim where his judgment awarded plaintiff 80% of the 100% walkaway settlement GGG attained for its insurable property inventory submission to State Farm but his judgment erroneously included $60,000 in duplications plaintiff submitted to State Farm of phantom non-insurable property solely caused by plaintiff's direct inventory filing with State Farm?
2. Did the Trial Judge erroneously fail to assess plaintiff with a pro rata 8% reduction in his judgment for GGG adjuster fees paid solely by defendant Lisa Hoffman who hired GGG; after GGG exclusively achieved 100% of the attainable settlement plus State Farm waiver of applicable replacement cost provisions to the benefit of all parties?
3. Did the Trial Judge abuse his discretion in denying defendant's motion for sanctions without making findings of the plaintiffs' conduct in both bringing and maintaining their claims in bad faith and without substantial justification under Md. Rule 1-341?

We review challenges to factual findings in an action tried without a jury according to the clearly erroneous standard. Md. Rule 8-131(c). This Court will not set aside the judgment on the evidence unless clearly erroneous, with due regard given to the trial court's opportunity to judge the credibility of the witness and other evidence. *Id.* A determination of whether a party acted without substantial justification is a factual question and reviewed under this standard also. *Kelly v. Dowell*, 81 Md. App. 338, 342 (1990).

We subject legal conclusions made by the lower court to a non-deferential standard of review. *Jackson v. 2109 Brandywine, LLC*, 180 Md. App. 535, 567 (2008). Under Maryland law, unjust enrichment is treated as a question of law because it is a claim "seeking the remedy of restitution for money." *Ver Brycke v. Ver Brycke*, 379 Md. 669, 698 (2004).

## DISCUSSION

### I. Unjust enrichment.

Appellant maintains that she did not receive a benefit to the detriment of Appellee. Rather, the funds were deposited in the estate account and her personal bank account as part of the process by which she would distribute the funds ultimately. When she learned of her brother's lawsuit, she believed that her ability to transfer the money to him became inhibited. Therefore, there was no benefit conferred on her individually as she merely received the check, as the personal representative of the estate, and was not holding it for her monetary gain, but rather for the purposes of estate management. Even if there were a benefit accruing to her, Appellant claims it would not be unjust for her to retain the money

as the lawsuit filed by Appellee was filed in bad faith and that "[a] wolf in sheep's clothing could be no more malign than [] Gene Hoffman, Jr."

In retort, Appellee claims the elements of unjust enrichment are met on this record. A significant portion of the State Farm check—sent as reimbursement for the damage caused by the fire that destroyed Hoffman, Jr.'s personal property—belonged to Hoffman, Jr.; yet, Appellant failed to disburse funds in the amount owed. Appellee further notes that Appellant was aware that a benefit had been conferred upon her as she received and deposited the check (partially in her personal account) and ignored the requests for payment made by Hoffman, Jr. and his attorney.

In Maryland, a claim of unjust enrichment may succeed when: "(1) The plaintiff confers a benefit upon the defendant; (2) the defendant knows or appreciates the benefit; and (3) the defendant's acceptance or retention of the benefit under circumstances is such that it would be inequitable to allow the defendant to retain the benefit without the paying of value in return." *Benson v. State*, 389 Md. 615, 651-52 (2005). "A person who receives a benefit by reason of an infringement of another person's interest, or of loss suffered by the other, owes restitution to him in the manner and amount necessary to prevent unjust enrichment." *Berry & Gould, P.A. v. Berry*, 360 Md. 142, 151 (2000).

Appellant's contention that no benefit was conferred on her belies the evidence in this record. A benefit need not be conferred directly by a plaintiff to a defendant as "it is immaterial how the money may have come into the defendant's hands, and the fact that it was received from a third person will not affect his liability, if, in equity and good conscience, he is not entitled to hold it against the true owner.'" *Plitt v. Greenberg*, 242

Md. 352, 363-64 (quoting *Empire Oil Co. v. Lynch*, 106 Ga. App. 42 (1963)). Put simply, State Farm delivered a personal property insurance claim check to Ms. Hoffman, including her brother's losses from the fire. Regardless of whether his name was on the check provided by State Farm, Hoffman, Jr. was owed money under the insurance policy; money that Ms. Hoffman failed to disburse properly and timely or pay into court pending the outcome of the present litigation. Instead, she retained possession and control over the proceeds.

Regarding the second element of unjust enrichment, "[t]he essence of the requirement that the defendant have knowledge or appreciation of the benefit is that the defendant have an opportunity to decline the benefit." *Hill v. Cross Country Settlements LLC*, 402 Md. 281, 299 (2007). Appellant claims that she was unable to decline the benefit as State Farm refused to reissue a check with "updated" payees, which would have made depositing such checks more properly an easier task to complete. Ignoring the questionable merits of this argument, however, we perceive that this contention misses the point regarding this element of the cause of action. By accepting the check and split-depositing it in the pair of bank accounts, Ms. Hoffman foreclosed the opportunity to decline the benefit and elected instead to retain the funds in her control.

Ms. Hoffman acknowledged that Hoffman, Jr. was owed some portion of the funds that were placed in the bank, but the trial court determined that she made no effort to transfer any part of the proceeds to her brother. Ms. Hoffman received a letter from both him and his counsel—which she acknowledges receiving—requesting payment, both of which were ignored. In her defense, Ms. Hoffman claims that she was merely in the

process of calculating the value of the property her brother lost. She relied on GGG and State Farm, both of which determined that a large portion of the funds were intended to replace the property lost by Hoffman, Jr., with smaller portions due to the estate and Ms. Hoffman.

Analysis of the final element "is a fact-based specific balancing of the equities. 'The task is to determine whether the enrichment is unjust.'" *Hill*, 402 Md. at 302 (quoting John W. Wade, *Restitution for Benefits Conferred Without Request*, 19 Vand. L. Rev., 1183, 1185 (1996)). "'[T]he balancing of equities and hardships looks at the conduct of both parties and the potential hardships that might result from a judicial decision either way.'" *Royal Investment v. Wang*, 183 Md. App. 406, 440 (2008) (quoting 1 DAN B. DOBBS, LAW OF REMEDIES § 2.4(5) (2d ed. 1993)). "In reviewing the trial court's balancing of the equities in a particular case, we review the balancing for an abuse of discretion." *Id.* Appellant's argument as to this element boils down to a characterization that Hoffman, Jr. ignored the instructions to respond to GGG regarding her/its inventory list, thus risking the policy being voided by State Farm for non-cooperation by an insured, and attempted, by filing a premature lawsuit, to stifle any attempts by Ms. Hoffman to disburse the insurance money. Ms. Hoffman proclaims that "he who comes into equity must come with clean hands." *Thomas v. Klemm*, 185 Md. 136. 142 (1945).

We strain to follow the logic of the path that Appellant stakes out or to find these arguments persuasive. To argue that Hoffman, Jr.'s ultimate goal in filing suit was to frustrate the orderly disbursement of funds to him is unsubstantiated by the record. Rather, the direct purpose of the suit was for him to receive payment for the property he lost. The

court accepted that he sent letters to Ms. Hoffman, he called her, he texted her, all to seek the funds he was owed, but was met by silence. Although Hoffman, Jr. failed to adhere to the request of GGG to respond to it regarding his reaction to its proposed inventory list, thus perhaps contributing to confusion and duplications in the final State Farm inventory down the line, the record does not support he did so with the intention of profiting improperly thereby. Hoffman, Jr. compiled his list of the property that he claimed belonged to him and sent the list to the insurance carrier, the final arbiter of the beneficiary and value owed for the lost property under the policy. Reviewing the trial court's balancing of the equities involved in this case, we conclude it was not abuse of discretion to find in Hoffman Jr.'s favor. It is clear to us that, even pondering the facts in the light most favorable to Ms. Hoffman, the elements of unjust enrichment were fulfilled.

## II. Damage calculations.

Appellant contends that the trial judge erred by failing to reduce the damages awarded to Hoffman, Jr. by 8 percent of the amount recovered by Hoffman, Jr., representing a proration of a fee to compensate GGG for the services it provided to both parties in its performance as an independent adjuster. Appellant's brief fails to reference any legal basis for why the judge was compelled to take this 8 percent service charge into account when calculating damages, claiming only the injustice of the charge being laid solely at the feet of Ms. Hoffman. In response, Appellee claims that he never received any benefit from GGG's services. Further, he notes that he was not a party to any agreement with GGG and, as a result, was not bound to bear any part of the GGG fee from the funds

owed him by State Farm. Thus, this part of the appeal calls also into question the fact-finding and damage determination by the trial judge.

According to Md. Rule 8-131(c), we "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 witness." The trial court's fact-finding will be affirmed on appeal unless clearly erroneous. *Gosman v. Gosman*, 19 Md. App. 66 (1973). "It is thus plain that the appellate court should not substitute its judgment for that of the trial court on its findings of fact but only will determine whether those findings are clearly erroneous in light of the total evidence." *Ryan v. Thurston*, 276 Md. 390, 392 (1975) (citing *Boettcher v. Van Lill*, 263 Md. 113 (1971)); *see also Colburn v. Colburn*, 15 Md. App. 503 (1972).

We hold that the trial judge in this case was not clearly erroneous in his determination of damages. There was ample evidence to support a finding that Hoffman, Jr. was owed a significant portion of the funds paid by State Farm. Both parties testified that he and his family were living at the Barnes Avenue residence at the time of the fire; Ms. Hoffman was not. The parties further agree that a large percentage of the personalty destroyed in the fire belonged to Hoffman, Jr. and family, a fact that is corroborated further by the State Farm inventory sheets. Regarding the requested 8 percent reduction representing the majority of the claimed compensation owed to GGG for its services, the trial judge acknowledged during closing arguments the potential for such a reduction. Upon explaining his final judgment, however, the trial judge elected not to include it, for reasons not elaborated with specificity. Whether we, were we sitting in his place, would

have elected to reduce the award is of no consequence. "[T]rial judges are not obliged to spell out in words every thought and step of logic," in reaching a decision. *Beales v. State*, 329 Md. 263, 273 (1993); *see also Zorich v. Zorich*, 63 Md. App. 710, 717 (1985) (holding that "[b]ecause trial judges are presumed to know the law, not every step in their thought process needs to be explicitly spelled out"). The trial judge confessed that he "muddle[d] [his] way through all the exhibits . . . to determine the appropriate amount,"; unless clearly erroneous, we will leave untouched the damage award. Appellant has not persuaded us how the judge was wrong. Our review of the record does not reveal how he was clearly erroneous.

### III. Rule 1-341 Sanctions.

Appellant argues that the trial judge was clearly erroneous in deciding not to impose sanctions under Md. Rule 1-341 against both Hoffman, Jr. and Whitcomb for filing frivolous and meritless claims in their complaint. She claims both parties acted in bad faith or without substantial justification in filing the lawsuit. Remarkably, she contends that the suit was a ploy to tie up the funds that Appellant received from State Farm. Further, as to Whitcomb's claim, bad faith was evident in that Whitcomb had no recourse to any part of the proceeds from the State Farm check because she was not a covered insured under the policy, knew of this, and therefore had no recourse against Ms. Hoffman.

In response, Appellee argues that the final decision in his favor means his claim was not brought in bad faith. Although the parties acknowledge that Whitcomb was not an insured, or as covered otherwise, under the State Farm policy and that Ms. Hoffman could

not have been enriched unjustly, vis-a-vis Whitcomb's claimed losses, Appellee points out that Whitcomb was unaware of the terms of the policy upon filing the suit. Upon learning of the lack of coverage for her losses, she withdrew her portion of the complaint at the inception of the trial.

Md. Rule 1-341 requires that, if a court finds that the maintenance or defense of any proceeding was conducted in bad faith or without substantial justification, the court may require the offending party to pay adverse costs of the proceeding. It is well accepted in Maryland that this rule is to be "used sparingly because granting an award of attorney's fees under it is an extraordinary remedy." *RTKL Assocs. Inc. v. Baltimore County*, 147 Md. App. 647, 658 (2002).

In determining whether this high bar has been met, Maryland courts will apply a two-step analysis, as may be necessary. We focus exclusively here on the first step, as the trial court did not reach the second. The court will determine whether the "party or attorney maintained or defended the action in bad faith or without substantial justification." *Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 677 (2003) (citing *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999)). A Maryland court may find that a party acts in bad faith with regard to Rule 1-341 "when a party litigates with the purpose of intentional harassment or unreasonable delay." *Barnes* at 105-06. Further, a court will review the action that is being scrutinized based on facts at the time said action was taken, "not from judicial hindsight." *Garcia*, 155 Md. App., at 676-77; *see also Kelley v. Dowell*, 81 Md. App., 388 (1990) (noting that "[w]here the filing of a pleading or motion is at issue, the appropriate point of inquiry for the evidentiary finding is whether the party initiated the

action in bad faith or without substantial justification"). Substantial justification is a much easier barrier to clear, as the "litigant's position must be fairly debatable and within the realm of legitimate advocacy." *Inlet Associates v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991).

As for Hoffman Jr.'s claim, it is rare in the extreme for a claim to have been filed in violation of Rule 1-341 when the claim proves successful ultimately.[8] The letters sent by Hoffman, Jr. and his counsel to Ms. Hoffman (prior to filing the lawsuit) demonstrate a desire to be reimbursed for his losses as a result of the fire that destroyed his personal property, debunking the notion that the claim was filed merely to frustrate and delay the process of disbursing the proceeds of the State Farm check. Had Ms. Hoffman responded forthrightly to the letters, perhaps there would have been no lawsuits required, or, at least, if one became necessary it would have proceeded with greater clarity than the case did here.

Regarding Whitcomb's claim, the facts are more muddled, but, again, we are not persuaded that the judge erred in finding that a violation of Md. Rule 1-341 was not proven. Although, viewed objectively, Whitcomb had no claim for recovery under the State Farm policy, she (and the court) discovered this only in hindsight, i.e., after suit had been filed. At the time of filing, Whitcomb was under the impression that she was due compensation under the State Farm policy as a result of the fire, which destroyed her personal property

[8] The opposite is not true necessarily. "[S]imply because a party does not prevail at trial does not necessitate a finding that a claim was brought in bad faith or without substantial justification. Otherwise, every losing party could be subject to sanctions under Md. Rule 1-341." *Garcia* 155 Md. App. at 684.

located in the insured home where she resided. Whitcomb's complaint was advanced on no different factual predicate than Hoffman Jr.'s, and she claims that it was not until later in the proceeding that the lack of coverage as to her was discovered. Perhaps, had Whitcomb pursued her claim at trial nonetheless, there would have been a more compelling record that her motive was to frustrate and harass Ms. Hoffman. In withdrawing her claim at the inception of the trial, however, there was no evidentiary basis requiring the trial judge to impute bad faith on her part. Accordingly, the court did not err in failing to impose sanctions under Md. Rule 1-341 on Hoffman, Jr. or Whitcomb.

**JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**