Circuit Court for Montgomery County
Case No. 482900-V

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1071

September Term, 2021

COVANTA MONTGOMERY, INC.

v.

NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY

Arthur,
Friedman,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: January 4, 2023

*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.

This case involves a contract concerning the operation of a facility at which solid waste is burned to create energy. Under the contract, the facility's operator must pay a penalty to the facility's owner in any year in which the amount of ash residue from the waste exceeds a certain target, after "salvageable items" have been "recovered." Conversely, the operator must receive a credit from the owner in any year in which the amount of ash residue is less than the target, after "salvageable items" have been "recovered."

The principal question in the case is whether the computation of the penalty or credit should account only for the "salvageable items recovered" by the operator itself, or whether the computation must include the "salvageable items recovered" by another entity after the operator has salvaged all that it can. If the computation must account for the "salvageable items recovered" by the other entity, then the amount of the penalty paid by the operator will decline in years when the amount of ash residue exceeds the target, and the amount of the credit paid to the operator will increase in years when the amount of ash residue is less than the target.

In a lawsuit between the owner and the operator concerning the correct computation of the penalty and the credit, the Circuit Court for Montgomery County held that the contractual language was ambiguous, but that the parties' consistent course of conduct demonstrated that the computation relates solely to the "salvageable items recovered" by the operator itself. On the basis of that conclusion, the court entered summary judgment against the operator and in favor of the owner. We affirm.

FACTUAL BACKGROUND

Appellant Covanta Montgomery, Inc. ("Covanta"), is the subsidiary of a publicly traded company that manages waste-to-energy facilities and operates landfills. Appellee Northeast Maryland Waste Disposal Authority ("the Authority") is a State agency that owns a waste-to-energy facility (the "Facility") in Montgomery County.

On November 16, 1990, Covanta's predecessor entered into a contract with the Authority. The contract required Covanta's predecessor to design, engineer, construct, and operate the Facility.

Under the contract, Covanta agreed to receive solid waste and to "Process" it by burning it in furnaces at the Facility. In exchange, the Authority pays Covanta a service fee.

Burning or "Process[ing]" the waste results in what the contract refers to as "Ash." Ash contains ferrous metals (i.e., metals containing iron, including steel) and non-ferrous metals (e.g., copper or aluminum). The metals can be recovered from the Ash. Both ferrous and non-ferrous metals have economic value and can be resold.

In the contract, the materials recovered from the Ash are called "Recovered Materials." The contract defines "Recovered Materials" to mean "any salvageable items recovered from the material that remains after waste has been Processed." The contract does not expressly address when, where, or by whom the recovery of the Recovered Materials is to be done.

After the removal of the Recovered Materials from the Ash, the end product is called "Residue." The contract defines "Residue" to mean "the material (including, but

not limited to, fly ash, bottom ash and siftings) that remains after waste has been Processed and any Recovered Materials have been removed." The Residue is disposed of in a landfill. At present, the Authority bears the cost of hauling and disposing of the Residue.

In December 2011, the Authority and Covanta executed Change Order No. 115 to the contract. The change order includes an "Ash Reduction Initiative," which is aimed at decreasing "the Facility's historic ash production levels." The change order recites that Covanta "intends to decrease the Facility's historic ash production levels by installing new ash reduction systems."

The change order includes an annual "Ash Reduction Target" of "0.278 tons of Residue (excluding Recovered Materials) per ton of waste Processed," with adjustments for the use of chemical additives in the processing. The change order enables the Authority to impose an "Ash Reduction Target Shortfall Fee" (the "Shortfall Fee") in any fiscal year in which Covanta fails to meet the Ash Reduction Target. Conversely, the change order obligates the Authority to pay Covanta an "Ash Reduction Incentive" in any fiscal year in which Covanta beats the Ash Reduction Target.

From fiscal year 2013 through fiscal year 2018, Covanta created spreadsheets (in consultation with the Authority and Montgomery County) to document the computation of the Shortfall Fee and the Ash Reduction Incentive. Covanta was required to pay a Shortfall Fee in five of the six years; it received a small Ash Reduction Incentive credit in one.

Covanta uses a system of conveyors and magnets to recover some of the ferrous materials from the Ash at the Facility. Covanta sells the ferrous metals that it recovers and splits the proceeds with the Authority. After Covanta has removed some of the ferrous metals from the Ash, the Residue (Ash minus Recovered Materials) is deposited into numbered rail containers, weighed, placed onto railcars, and shipped from the Facility to a landfill operated by a subsidiary of Republic Services ("Republic").

Although Covanta's affiliates are able to recover both ferrous and non-ferrous metals at other waste-to-energy facilities, Covanta does not recover non-ferrous metals from the Ash at the Facility. Nor does Covanta recover smaller pieces of ferrous metals at the Facility.

By fiscal year 2013, Montgomery County, which was apparently responsible for disposing of the Residue at the time, had engaged Republic, the landfill operator, to remove non-ferrous metals and smaller pieces of ferrous metals from the Residue after it had been shipped to the landfill. In the spreadsheets by which Covanta documented the accounting of the Shortfall Fee and the Ash Reduction Incentive for fiscal years 2013 through 2016, Covanta recorded a "metal credit," which was based on the amount of ferrous and non-ferrous metals that Republic removed from the Residue after it was shipped to Republic's landfill. The metal credit reduced the amount of the Shortfall Fee that Covanta was required to pay.[1]

[1] The record does not clearly disclose why Covanta received the metal credit from 2013 through 2016. Nor does the record clearly disclose why Covanta did not receive the credit after 2016. The demise of the credit may have been related to the inception of a contract between the Authority and Republic in February 2017.

In approximately 2015, the Authority sent out a request for proposals or "RFP" for the transportation and recycling of ash residue from the Facility. The RFP envisioned that the successful bidder would extract additional metals, including non-ferrous metals, from the Residue. Covanta submitted a proposal, which the Authority rejected. Instead, the Authority accepted a competing proposal submitted by Republic. Covanta knew that the Authority had accepted Republic's proposal.

Under the contract between the Authority and Republic, the Authority ships Residue (defined in that contract as "Ash Residue") to a Republic facility. Republic removes ferrous and non-ferrous metals from the Residue before disposing of it in a landfill. Republic sells the metals that it recovers. The Authority pays Republic a service fee for each ton of Residue that is accepted, transported, recycled or beneficially reused, or disposed of in accordance with the contract. Covanta knew that Republic had a metal recovery system that would extract additional metals from the material that Republic received.

Meanwhile, every year from at least 2013 through 2019, Covanta and the Authority would engage in a reconciliation process to ensure that the parties had correctly calculated the Shortfall Fee and the Ash Reduction Incentive. In connection with the reconciliation process, Covanta prepared the spreadsheets (mentioned above). From fiscal year 2013 through at least fiscal year 2016, the spreadsheets clearly show that Covanta performed these calculations using the volume of material that was shipped from the Facility after Covanta had recovered some of the ferrous metals, and not the volume remaining after Republic had removed additional metals. Mark Freedman, Covanta's

manager at the Facility from 2001 until the spring of 2017, testified that the reconciliations were completed to his satisfaction.

The subsequent spreadsheets are more opaque than those from 2013 through 2016. Nonetheless, it is undisputed that until 2019 the parties performed the calculations using the volume of material that was shipped from the Facility after Covanta had recovered some of the ferrous metals, not the volume remaining after Republic had removed additional metals.

On October 31, 2019, Covanta first asserted that, in computing the Shortfall Fee and the Ash Reduction Incentive, the parties were required to account for the additional materials that Republic removed from the Residue after it had been shipped to Republic's landfill. In support of its assertion, Covanta cited the contractual language that states that the Shortfall Fee becomes due if Covanta fails to meet the Ash Reduction Target of "0.278 tons of Residue (excluding *Recovered Materials*) per ton of waste Processed," with adjustments for the use of chemical additives in the processing. (Emphasis added.) Covanta argued that the term "Recovered Materials" was not limited to the ferrous metals that Covanta itself removed, but that it included the additional materials that Republic removed after the Residue had been shipped from the Facility to Republic's landfill. Because the previous reconciliations had not accounted for the materials recovered by Republic, Covanta contended that it had been overcharged by more than $1.7 million between fiscal year 2015 and fiscal year 2019.

Covanta demanded a refund. The Authority rejected Covanta's contentions and refused to pay.

PROCEDURAL BACKGROUND

On July 22, 2020, Covanta filed a two-count complaint against the Authority in the Circuit Court for Montgomery County. Count I alleged that the Authority breached the contract by calculating the Shortfall Fee and the Ash Reduction Incentive without accounting for the materials recovered by Republic. Count II alleged that the Authority made negligent misrepresentations when the Authority informed Covanta of annual fees or credits that did not account for the materials recovered by Republic.

The Authority answered the complaint and asserted a counterclaim. The counterclaim cited language in Change Order 115, in which Covanta stated that it "intends to decrease the Facility's historic ash production levels by installing new ash reduction systems . . . at its sole cost and expense." On the basis of that language, the Authority alleged Covanta had agreed to install new ash-reduction systems at the Facility. The Authority asserted claims for breach of contract and unjust enrichment because of Covanta's alleged failure to install those systems.

After an adequate opportunity for discovery, the Authority moved for summary judgment on the claims in Covanta's complaint. Covanta moved for summary judgment on the Authority's counterclaim and for partial summary judgment as to the Authority's liability on the claims in the complaint.

At a hearing on August 18, 2021, the circuit court granted the Authority's motion for summary judgment on the claims in Covanta's complaint, denied Covanta's cross-motion for partial summary judgment on the claims in its complaint, and granted Covanta's motion for summary judgment as to the Authority's counterclaim. In essence,

the court decided that the Authority had no liability to Covanta and that Covanta had no liability to the Authority.

In an oral opinion delivered from the bench, the circuit court focused on the term "Recovered Materials," a key component in computing the Shortfall Fee and the Ash Reduction Incentive. The court reasoned that the definition of "Recovered Materials" ("any salvageable items recovered from the material that remains after waste has been Processed") had been unambiguous when Covanta alone had been recovering materials from the Ash. The court, however, observed that the contractual definition of "Recovered Materials" did not specifically state that "Recovered Materials" consists solely of the materials recovered by Covanta at the Facility. Thus, the court concluded that the language became ambiguous once Republic began to remove additional ferrous and non-ferrous metals from the Ash.

The court resolved the ambiguity by looking at the undisputed evidence of the parties' course of conduct in interpreting their agreement before any dispute arose. The court stated that Covanta "had to know" that Republic was removing additional material even if Covanta did not exactly how much Republic was removing. Covanta, the court added, knew that the Shortfall Fee was being calculated based on the amount of Residue that it shipped from the Facility, but (at least until 2019) did not assert that the fee should be calculated on the basis of some other number. Thus, the court concluded that "Covanta is bound by how [it] interpreted the contract then."

"For years," the court said, Covanta "accepted" a computation that was based on the amount of Residue that it shipped from the Facility. Covanta thereby "agreed to use

that number." The court reiterated that "Covanta is bound by the interpretation that the raw numbers being shipped is the proper definition [of 'Recovered Materials'] for purposes of calculating" the Shortfall Fee and the Ash Reduction Incentive.

The court did not expressly address Covanta's negligent misrepresentation claim. It appears, however, to have tacitly concluded the Authority correctly calculated the Shortfall Fee and the Ash Reduction Incentive and, thus, did not misrepresent the amount of the fee or the credit.

The court granted Covanta's motion for summary judgment on the Authority's counterclaim. The Authority had based the counterclaim on language in Change Order 115 stating that "Covanta intends to decrease the Facility's historic ash production levels by installing new ash reduction systems . . . at its sole cost and expense." On the basis of this language, the Authority argued that Covanta had an obligation to build multiple "pugmill systems" at the Facility.[2] The court rejected that contention, reasoning that the contractual language is "too vague" to be enforceable. According to the court, all the contract says is that "we are going to really try to reduce the ash."

The court embodied its rulings in two separate documents, which were entered on the docket on August 25, 2021. Covanta filed a timely notice of appeal on September 16, 2021. The Authority filed a timely cross-appeal on September 22, 2021.

[2] The parties do not explain what a "pugmill system" does, but it appears to have some use in stabilizing fly ash. https://en.wikipedia.org/wiki/Pugmill (last viewed December 21, 2022).

QUESTIONS PRESENTED

Covanta raises three contentions, which we have rephrased as questions:

1. Did the circuit court err in enter[ing] judgment for the Authority because the plain language of the Contract required the Authority to exclude Recovered Materials from its calculation of the Ash Reduction Fees, which the Authority admitted it failed to do?

2. Did the circuit court err in holding that the Contract was ambiguous, and that Covanta was bound by the Authority's erroneous calculation of the Ash Reduction Fee based on the parties' course of conduct?

3. Did the circuit court err in entering judgment for the Authority on Covanta's negligent misrepresentation claim where Covanta justifiably relied upon the Authority's misstatements regarding the amount of residue actually disposed of to Covanta's detriment?[3]

In its cross-appeal, the Authority raises one question, which we quote: "Whether the Circuit Court erred when it held that Change Order No. 115 did not require [Covanta] to install pugmill systems at the Facility and entered judgment in favor of [Covanta] on the Authority's Counterclaim?"

[3] Covanta expressed its "Questions Presented" as assertions rather than questions:

1. The Circuit Court erred in enter judgment for the Authority because the plain language of the Contract required the Authority to exclude Recovered Materials from its calculation of the Ash Reduction Fees, which the Authority admitted it failed to do.

2. The Circuit Court erred in holding that the Contract was ambiguous, and that Covanta was bound by the Authority's erroneous calculation of the Ash Reduction Fee based on the parties' course of conduct.

3. The Circuit Court erred in entering judgment for the Authority on Covanta's negligent misrepresentation claim where Covanta justifiably relied upon the Authority's misstatements regarding the amount of residue actually disposed of to Covanta's detriment.

For the reasons stated below, we shall affirm the judgment.

STANDARD OF REVIEW

When a party moves for summary judgment, the court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). The issue of whether a trial court properly granted summary judgment is a question of law. *See, e.g.*, *Butler v. S & S P'ship*, 435 Md. 635, 665 (2013) (citation omitted). In an appeal from the grant of summary judgment, this Court conducts a de novo review to determine whether the circuit court's conclusions were legally correct. *See, e.g., D'Aoust v. Diamond*, 424 Md. 549, 574 (2012). The relevant inquiry is well known:

> When reviewing a grant of summary judgment, we determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. This Court considers the record in the light most favorable to the nonmoving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party. A plaintiff's claim must be supported by more than a scintilla of evidence[,] as there must be evidence upon which [a] jury could reasonably find for the plaintiff.

Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 107-08 (2014) (citations and quotation marks omitted).

DISCUSSION

I. Covanta's Breach of Contract Claim

This case turns largely on the meaning of the contractual term "Recovered Materials," which is defined to mean "any salvageable items recovered from the material

that remains after waste has been Processed." Are the "Recovered Materials" limited to those "recovered" by Covanta at the Facility? Or do they include the additional materials recovered by Republic after the Residue has left the Facility? If the term "Recovered Materials" includes the materials recovered by Republic, the Authority overcharged Covanta for the Shortfall Fee in five years and short-changed Covanta on the Ash Reduction Incentive in the one year in which Covanta earned an incentive. On the other hand, if the term "Recovered Materials" does not include the materials recovered by Republic and refers only to the materials recovered by Covanta, the Authority correctly calculated the fees and the incentive.

Both Covanta and the Authority argue that the term "Recovered Materials" is unambiguous, but they disagree about what it unambiguously means. Seizing on the use of the passive voice in the definition ("items recovered"), Covanta argues that "Recovered Materials" include "salvageable items recovered" by anyone at any place or time, including the materials recovered by Republic after the Residue has left the Facility. The Authority counters that the definition refers solely to the salvageable items recovered by Covanta before the Residue has left the Facility. The circuit court disagreed with the parties that the language was unambiguous, but concluded that the Authority's interpretation was correct as a matter of law because of the extrinsic evidence of the parties' course of conduct in interpreting the agreement before a dispute arose.

"Courts in Maryland apply the law of objective contract interpretation, which provides that '[t]he written language embodying the terms of an agreement will govern the rights and liabilities of the parties, irrespective of the intent of the parties at the time

they entered into the contract, unless the written language is not susceptible of a clear and definite understanding.'" *Dumbarton Improvement Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 51 (2013) (quoting *Slice v. Carozza Props., Inc.*, 215 Md. 357, 368 (1958)); *accord Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. 405, 417 (2014). "[T]he determination of ambiguity is one of law, not fact, and that determination is subject to *de novo* review by the appellate court." *Calomiris v. Woods*, 353 Md. 425, 434 (1999). "[A] written contract is ambiguous if, when read by a reasonably prudent person, it is susceptible of more than one meaning." *Id.* at 436; *accord Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. at 418.

To determine whether the words of a contract are ambiguous, a court looks to the context in which they are used. *W.F. Gebhardt & Co. v. American European Ins. Co.*, 250 Md. App. 652, 672 (2021). "Language can be regarded as ambiguous in two different respects: (1) it may be intrinsically unclear, in the sense that a person reading it without the benefit of some extrinsic knowledge simply cannot determine what it means; or (2) its intrinsic meaning may be fairly clear, but its application to a particular object or circumstance may be uncertain." *Town & Country Mgmt. Corp. v. Comcast Cablevision*, 70 Md. App. 272, 280 (1987); *accord W.F. Gebhardt & Co. v. American European Ins. Co.*, 250 Md. App. at 672; *Bernhardt v. Hartford Fire Ins.*, 102 Md. App. 45, 54-55 (1994).

We agree with the circuit court that, in the context of this dispute, the term "Recovered Materials" is ambiguous. The definition of "Recovered Materials" ("any salvageable items recovered") is an example of one of the dangers associated with the use

of the passive voice – the ambiguity that may ensue when the drafter fails to identify the actor.

As the circuit court recognized, the passive formulation did not pose a problem as long as only one actor – Covanta – was recovering salvageable material from the Ash. But once Republic was engaged to recover additional material (first by Montgomery County and later by the Authority), the term became ambiguous. On one hand, the term "any salvageable items recovered," read literally, could reasonably be interpreted to mean "any salvageable items recovered" by anyone, including Republic. On the other hand, it is a bit counterintuitive to say that Covanta should benefit contractually (through an increase in the amount of Recovered Materials and thus a reduction of the Shortfall Fee or an enhancement of the incentive) from the additional work done by Republic to recover the ferrous and non-ferrous metals that Covanta itself was unable to recover. This counterintuitive result casts doubt on Covanta's proposed interpretation of the contractual term. *See SD 214, LLC v. London Towne Prop. Owners Ass'n*, 395 Md. 424, 434 (2006) (stating that "contractual provisions . . . should be interpreted reasonably and should not be given interpretations leading to unreasonable results"); *Middlebrook Tech, LLC v. Moore*, 157 Md. App. 40, 66 (2004) (stating that "[t]he court's interpretation should not permit an absurd or unreasonable result"). Thus, the contractual language, as applied to the circumstances of this case, became ambiguous when a second actor, Republic, began to recover salvageable items.

"If an agreement is ambiguous, a court may look to extrinsic evidence to resolve the ambiguity. *Cochran v. Norkunas*, 398 Md. 1, 16 n.8 (2007) (quoting *Washington*

Metro. Area Transit Auth. v. Potomac Investment Props., Inc., 476 F.3d 231, 235 (4th Cir. 2007)). "'[W]hen an ambiguity can be definitively resolved by reference to extrinsic evidence[,]'" a court may interpret the agreement as a matter of law and dispose of the case on summary judgment. *Id.* (quoting *Washington Metro. Area Transit Auth. v. Potomac Investment Props., Inc.*, 476 F.3d at 235).

In interpreting an ambiguous contract, one source of extrinsic evidence upon which a court may rely is "[t]he construction placed upon the ambiguous language before any controversy has arisen[.]" *Tackney v. U.S. Naval Acad. Alumni Ass'n*, 408 Md. 700, 717 (2009). Here, the circuit court correctly saw that the undisputed evidence of the parties' conduct established that the term "Recovered Materials" means the materials recovered by Covanta before the Residue was shipped to the landfill. On six separate occasions, from 2013 through 2018, the parties performed the computations on the basis of the amount of materials recovered by Covanta alone. On three of those occasions (from 2013 through 2016), Covanta's internal spreadsheets clearly show that Covanta itself performed the computations on the basis of the volume of materials that it shipped from the Facility to the landfill, not on the volume remaining after Republic had removed additional materials at the landfill. Indeed, Covanta's manager, Mark Freedman, testified that each of those computations were completed to his satisfaction.

Furthermore, on each occasion from 2013 through 2018, Covanta had notice that Republic was removing additional materials from the Residue: from 2013 through 2016, Covanta received a "metal credit" because of the additional materials that Republic had removed, and Covanta knew that in 2017 Republic had won a new contract with the

Authority to remove additional materials. Yet, Covanta did not assert that the contract required the parties to account for the additional materials removed by Republic until after it had employed and acquiesced in the contrary interpretation for the better part of six years.

On these undisputed facts, the circuit court did not err in concluding, as a matter of law, that the term "Recovered Materials" refers only to the materials recovered by Covanta at the Facility and that the term does not include the additional materials removed by Republic once the Residue has left the Facility. Thus, the circuit court did not err in granting the Authority's motion for summary judgment on Covanta's breach of contract claim and in denying Covanta's cross-motion on that claim.[4]

II. Covanta's Claim for Negligent Misrepresentation

Count II of Covanta's complaint asserted a claim for negligent misrepresentation. As the central premise for that claim, Covanta alleged that the Authority falsely represented the amount of the Shortfall Fee and the Ash Reduction Incentive, because the Authority counted only the materials removed by Covanta and failed to count the additional materials removed by Republic.

[4] In its effort to uphold the circuit court's decision, the Authority argues that the contract states, unambiguously, that the term "Recovered Materials" refers only to the materials recovered by Covanta at the Facility and does not include materials recovered elsewhere by someone else, such as Republic. The Authority also argues that Covanta's recovery is barred by the so-called "voluntary payment rule" and by principles of estoppel, waiver, and laches. Because the circuit court did not base the grant of summary judgment on any of those grounds, we cannot rely on them to uphold the circuit court's decision. *See, e.g., Ashton v. Brown*, 339 Md. 70, 80 (1995) (stating that "an appellate court ordinarily may uphold the grant of a summary judgment only on the grounds relied on by the trial court").

The undisputed facts in the record establish that the Authority did not falsely represent the amount of the fee or the incentive. To the contrary, the Authority accurately represented the amounts, because the Authority computed the fee in accordance with the contract by looking to the volume of salvageable materials recovered by Covanta alone. Consequently, the court did not err in granting the Authority's motion for summary judgment on the negligent misrepresentation claim.

III. The Authority's Counterclaim

In its counterclaim, the Authority relied on the language from Change Order 115 that states that Covanta "intends to decrease the Facility's historic ash production levels by installing new ash reduction systems (the 'Ash Systems') at its sole cost and expense." On the basis of this language, the Authority discerns a contractual obligation to install what the Authority calls "a complete ash reduction system," which appears to include "pugmills" at each of the Facility's three boilers. The Authority argues that Covanta breached that putative obligation. In the alternative, the Authority argues that Covanta has been unjustly enriched because "it has the benefit of operating the Facility," but "does not maintain proper repair, maintenance, and cleanliness of the Facility."

The circuit court concluded that the applicable language was too vague to form the basis of a contractual obligation. We agree.

"[A]n enforceable contract must express with definiteness and certainty the nature and extent of the parties' obligations." *County Comm'rs for Carroll Cnty. v. Forty West Builders, Inc.*, 178 Md. App. 328, 377 (2008). "'A court cannot enforce a contract unless it can determine what it is.'" *First Nat'l Bank of Md. v. Burton, Parsons & Co., Inc.*, 57

Md. App. 437, 450 (1984) (quoting 1 *Corbin on Contracts* § 95); *accord County Comm'rs for Carroll Cnty. v. Forty West Builders, Inc.*, 178 Md. App. at 378. "'Vagueness of expression, indefiniteness and uncertainty as to any of the essential terms of an agreement have often been held to prevent the creation of an enforceable contract.'" *County Comm'rs for Carroll Cnty. v. Forty West Builders, Inc.*, 178 Md. App. at 378 (quoting Joseph M. Perillo, 1 *Corbin on Contracts* § 4.1, at 525 (rev. ed. 1993)).

Here, the contractual language consists of a vague expression of an intention to "install[] new ash reduction systems" at some point in the future. The language does not say when Covanta must install the systems. Nor does the language say what the systems must consist of. The contract certainly does not say anything about a "complete ash reduction system," whatever that might be, or about pugmills. The circuit court did not err in concluding that this language was too vague to impose an enforceable contractual obligation on Covanta.

Finally, "'[i]t is settled law in Maryland, and elsewhere, that a claim for unjust enrichment may not be brought where the subject matter of the claim is covered by an express contract between the parties.'" *County Comm'rs of Caroline Cnty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 96 (2000) (quoting *FLF, Inc. v. World Publ'ns, Inc.*, 999 F. Supp. 640, 642 (D. Md. 1998)); *accord AAC HP Realty, LLC v. Bubba Gump Shrimp Co. Rests., Inc.*, 243 Md. App. 62, 72 (2019). Here, an express contract – the change order – covers the subject matter of Covanta's asserted obligation to "install[] new ash reduction systems." The Authority sought relief under the contract. The Authority has "'turn[ed] to quasi-contract for recovery'" only because it failed to

demonstrate its right to a contractual remedy. *Mass Transit Admin. v. Granite Constr. Co.*, 57 Md. App. 766, 776 (1984) (quoting *Indus. Lift Truck Serv. Corp. v. Mitsubishi Int'l Corp.*, 432 N.E.2d 999, 1002 (Ill. App. Ct. 1982)).

In these circumstances, no unjust enrichment claim will lie. Therefore, the circuit court did not err in entering summary judgment against the Authority on that claim.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; TWO-THIRDS OF THE COSTS TO BE PAID BY APPELLANT; ONE-THIRD OF THE COSTS TO BE PAID BY APPELLEE.

The correction notice(s) for this opinion(s) can be found here:

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