Circuit Court for Baltimore County
Case No. 03-C-12-006975 CN

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1464

September Term, 2016

MICHAEL D. COHEN, M.D. *et al.*

v.

DAWN RICHARDSON

Reed,
Beachley,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: April 22, 2019

On May 19, 2016, a jury in the Circuit Court for Baltimore County, returned a verdict against Shari Cohen, and Dr. Michael D. Cohen, M.D., P.A., (hereinafter "Appellants") awarding Dawn Richardson (hereinafter "Appellee") $1,275,000 on unjust enrichment and *quantum meruit* claims. Subsequently, Appellants filed a Motion to Strike the Verdict on the grounds that: 1) the verdict was inconsistent with, and a collateral attack on, the Receivership Action; 2) there was no evidence that Appellants had been unjustly enriched by $1,275,000, and; 3) the jury's findings of a contract between Appellants and Appellee required that the quasi-contractual claims be struck. The circuit court denied Appellants' motion. It is from this denial that Appellants file this timely appeal. In doing so, Appellants bring the following questions for our review, which we have rephrased for clarity[1]:

1. Did the circuit court err in permitting expert testimony regarding the going concern value of Skin, Inc.?

[1] Appellants present the following questions:

1. Whether the court erred in permitting Rosenthal to testify regarding the going concern value of Skin?

2. Whether the court erred in permitting Richardson to introduce evidence regarding Evalla, LLC and/or Belcara Health operations?

3. Whether the court erred in denying Appellants' motion to strike the judgment on the grounds that it represented an impermissible collateral attack on the Receivership Action, that it permitted quasi-contract claims in a case where an actual contract was found to exist, and where there was no evidence offered against Appellants?

4. Whether the court erred in refusing to provide a curative jury instruction?

2. Did the circuit court err in permitting Appellee to introduce evidence regarding Evalla, LLC and/or Belcara Health operations?

3. Did the circuit court err in denying Appellants' Motion to Strike the Verdict?

4. Did the circuit court err in refusing to provide a curative jury instruction?

For the reasons stated below, we answer these questions in the negative and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In October of 2004 Appellants called Appellee at her Florida home about a business opportunity.[2] Appellants told Appellee that they were looking to expand their practice and build a med-spa[3] within it. Appellee testified that Appellants offered her part ownership and profit sharing, both at 50%, to develop the business and informed Appellee that she would not need to contribute any capital to begin in this venture due to low startup costs. Appellants explained that Appellee's experience, knowledge, and growth efforts would be considered "sweat equity" to develop the business. Subsequently, Appellee traveled to Maryland to accept the oral offer. No agreement was signed at that time, but there is no dispute that Appellee requested that the parties enter into a written agreement.

A written agreement was drafted by Appellants' attorney listing Appellee[4] as Vice President of the spa with 50% profit sharing rights. But the agreement was never signed by

[2] Specifically, Appellee testified that Shari Cohen called her at her Florida home about the business venture.

[3] A med-spa provides skin care products and services.

[4] Appellee's maiden name, Dawn Jones, is listed on the agreement.

either of the parties until Appellee moved to Maryland to grow the business.[5] On December 3, 2004, Appellants filed Articles of Incorporation on behalf of the company, naming it Skin, Inc. ("Skin"), and listing Appellants as its directors. At trial, Appellee testified that she had no knowledge of this until several years later. Appellee testified that Skin's revenue increased throughout the years but that Appellants repeatedly told her that the company had not been profitable. Upon Appellee probing Appellants about the revenue increases, Appellants paid Appellee an estimated 50% of the profits that year.[6] In an email exchange between Appellee and Appellants, Appellants wrote "we should be able to sit down, all three of us as business and co-business owners and discuss the plans for moving forward and who should make the ultimate decisions." Appellee testified that she continued to voice her concerns about the way Appellants' business finances from their other businesses were affecting Skin's finances, causing the med-spa to appear unprofitable. Shortly thereafter, in May 2011, Appellee went on maternity leave. Appellee testified that during her leave, she and Appellants had discussions about her ownership interests which grew contentious, and upon her return to the office, she realized the company's locks were changed. Appellants allege that they understood Appellee's email responses to constitute a resignation. Appellants' understanding that Appellee had resigned was coupled with testimony that Appellee failed to return to work after her maternity leave ended.

[5] Appellee testified that these visits lasted one week each month.

[6] The med-spa made $82,000 in profits that year; Appellee received $41,300.

Subsequently, Appellee filed suit against Appellants on July 6, 2012, asserting, *inter alia*, breach of contract, unjust enrichment, promissory estoppel, *quantum meruit*, and fraud. Appellants denied all claims. In 2013, Appellants decided to dissolve Skin, and develop a new med-spa named Belcara Health, trading as Evalla, LLC. On April 14, 2014, Appellants filed a Voluntary Petition for Appointment of Receiver which was granted by the Circuit Court for Baltimore County. The Receiver filed a Report of Private Sale of Assets of Skin with the Circuit Court for Baltimore County on June 4, 2014, and proposed to sell all of Skin's assets to Evalla, LLC.[7] This notice was sent to Appellee and advised that any exception to the sale must be filed in writing with the clerk of the court and submitted within 30 days. Within that timeframe, Appellee filed a written claim against Appellants, claiming that she was owed 50% of the company and 50% of its net profits**.** In Appellee's third amended complaint she attached a valuation report created by her expert witness, Christopher Rosenthal, detailing the amount owed to her. Rosenthal's expert report evaluated Skin's finances as a "going concern" and concluded that Appellee was owed $1,275,000. This was contrary to the Receiver's conclusion that Skin had no going concern and that the best outcome was to liquidate the company's assets. On April 7, 2016, the circuit court entered an order discharging the Receiver and closing the estate.

The Jury Trial

Prior to trial, each side presented motions *in limine.* Appellants moved to exclude Rosenthal's testimony and report, and to prohibit Appellee from referencing Evalla, LLC.

[7] Evalla, LLC was set up by Appellants.

The circuit court allowed Rosenthal's testimony to come in and allowed Appellee to introduce evidence referencing Evalla, LLC so long as the name "Evalla" was not used. At the conclusion of trial, the jury returned a verdict in favor of Appellee awarding her $1,275,000 against Appellants on unjust enrichment and *quantum meruit* grounds. Appellants moved to strike the verdict, arguing that: 1) the verdict was inconsistent with the collateral attack on the Receivership Action; 2) there was no evidence that Appellants were unjustly enriched; and 3) the jury's finding that Appellants breached a contract required that the quasi-contractual claims be stricken**.** The court denied Appellants' Motion to Strike the Verdict. Appellants then filed this timely appeal.

DISCUSSION

i. Rosenthal's Testimony

A. Parties' Contentions

Appellants argue that the circuit court erred in allowing Appellee's expert witness, Christopher Rosenthal, to testify. Appellants rely on three reasons why Rosenthal's testimony should have been excluded: 1. Rosenthal's testimony violated the collateral attack doctrine and undermined Maryland's established corporate law; 2. Rosenthal's testimony was based on hypothetical alternative facts; and 3. Pursuant to Maryland law, a party claiming ownership of stock may only be awarded the stock itself, not a jury-determined valuation of the same. Specifically, Appellants disagreed with Rosenthal's $2,550,000 valuation of Skin if it were sold. Appellants maintain that this hypothetical valuation was contrary to the actual value determined and obtained by the Receiver and

approved by the circuit court in the Receivership Action. As such, the circuit court allowing Rosenthal's testimony was an improper collateral attack on the Receivership Action. Moreover, Maryland courts have long precluded any action that collaterally attacks a prior action.

Appellants assert that the circuit court erred in permitting Rosenthal to testify on the assumption that Appellants were subject to a non-compete agreement. Appellants contend that Rosenthal's testimony was based on the hypothetical proposition that Appellants either had, or would execute, a non-compete agreement with Skin to serve as its medical director and to forego competing with Skin. Specifically, Appellants maintain that at trial, Rosenthal was allowed to testify upon the assumption that the fair value of a 50% equity interest in Skin was $1,275,000. Appellants argue that Rosenthal's testimony was offered almost two years after the court ratified the sale of Skin's assets on the basis that Skin had no going concern value. Appellants also maintain that Rosenthal's testimony was inadmissible because pursuant to Maryland law a jury may only award ownership interest in stock, not its value. Specifically, Appellants assert Maryland law provides an exclusive remedy for a shareholder to demand and receive payment of the fair value of stock. According to Appellants, Maryland law "provides that stockholder may demand and receive fair value of the stock only under certain conditions, none of which were alleged or proven by [Appellee]."

Appellee argues that the circuit court did not err in permitting Rosenthal to testify. Specifically Appellee maintains that the Third Amended Complaint made clear that Appellee's claims were for ownership interest and profit sharing rights in a med-spa

business, not in the entity Skin, Inc. Appellee contends that the conversations, which formed the alleged agreement between Appellants and Appellee, occurred in October of 2004. Appellee asserts that Skin, Inc. was not formed with the State Department of Assessment and Taxation until December 3, 2004. As such, Appellee maintains that the agreement with Appellants was to grow and operate the med-spa in exchange for 50% ownership interest in the med-spa and 50% of the profit incurred before Skin was incorporated. Moreover, Appellee alleges that it is a legal impossibility that Appellee's claims could be limited to 50% of the value and profit of Skin alone because Skin was not formed when she entered into the agreement with Appellants. Appellee asserts that her action was not a challenge on the proposed sale of Skin's assets and value in the Receivership Action, but that her action was based on the value of the med-spa business.

Appellee further argues that Rosenthal's testimony declaring Skin an entity with a going concern is accurate. Specifically, Appellee contends that her claims were for the value of 50% ownership interest and 50% of the profits of the med-spa business that she started and spent years building. Moreover, Appellee asserts an award of stock was not an exclusive remedy "because under [] Appellants' own theory of the case it was controverted that Appellee was not a shareholder." Appellee argues that she was never a shareholder of Skin because Appellants created Skin without her knowledge. As such, the proper remedy was not an award of stock. We agree.

B. Standard of Review

> "[T]he admissibility of expert testimony is a matter largely within the discretion of the trial court." Thus, we review a trial court's decision to admit or exclude expert testimony only for

> an abuse of discretion. "Such a ruling, however, may be reversed on appeal if it is founded on an error of law or some serious mistake, or if the trial court clearly abused its discretion." Additionally, we will not affirm a decision within the discretion of the trial court if the judge acts in an "arbitrary or capricious manner" or "beyond the letter or reason of the law."

Rochkind v. Stevenson, 454 Md. 277, 285 (2017) (internal citations omitted).

C. Analysis

Rosenthal's Going Concern Testimony

We first consider whether the circuit court erred in permitting Rosenthal to testify regarding the going concern value of Skin. Maryland Rule 5-702 governs expert testimony. This rule provides that "[e]xpert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." The test to determine whether an expert's testimony will assist the trier of fact consists of the following: (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony. *See* Md. Rule 5-702 (2002); *see also Giant Food, Inc. v. Booker,* 152 Md. App. 166, 181-82 (2003). Additionally, an expert's testimony may derive from:

> [A] number of sources, such as facts obtained from the expert's first-hand knowledge, facts obtained from the testimony of others, and facts related to an expert through the use of hypothetical questions . . . . If the materials the expert relies upon are 'of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject,' they do not need to be admissible in evidence. In addition to drawing from an

> adequate supply of data, an expert must use a reliable methodology to reach her conclusions…by provid[ing] a sound reasoning process for inducing its conclusion from the factual data and must have an adequate theory or rational explanation of how the factual data led to the expert's conclusion.

Rochkind v. Stevenson, 454 Md. 277, 286-87 (2017) (internal citations omitted).

In preparing his valuation report in this case, Appellee's expert, Christopher Rosenthal, relied on Skin's tax returns, financial reports, general ledgers, internal financial documents, as well as interrogatories, depositions, transcripts, and draft agreements. Additionally, Rosenthal's colleague conducted a management interview with Appellants and the Certified Public Accountant for the med-spa. Rosenthal also reviewed a valuation report completed by Appellants' expert in 2009. After a review of the material, Rosenthal concluded that based on the going concern of the med-spa company, Appellee was owed $1,275,000. Appellants maintain that because the Receiver concluded that the company was not a going concern and valued at $80,000, the circuit court erred in allowing Rosenthal to testify and explain his hypothetical going concern report.

Whether evidence is admissible is largely within the discretion of a trial court that is more suited to determine whether expert testimony will help the trier of fact. Moreover, an expert's opinion may derive from hypothetical questions. Appellants' contention that Rosenthal's testimony was solely based on a hypothetical is insufficient to find an abuse of discretion. Specifically, Rosenthal's report and testimony were based on the company's financial documents which thoroughly explained the financial history and projections of the company. Moreover, Rosenthal considered the tax depreciation, loss and revenue, as well as interests shared by others involved in the company. The record shows that

Rosenthal's conclusions were based on his experience and the financial documents before the circuit court. As such, this Court finds that Rosenthal relied on a sufficient factual basis to support his testimony. Accordingly, we find no serious error in the circuit court's decision to allow Rosenthal's testimony and find no abuse of discretion.

Collateral Attack on the Receivership Action

Next, we consider whether Rosenthal's testimony was an improper collateral attack on the Receivership Action. Section 3–411 of the Corporations and Associations Article of the Maryland Code (1975, 2007 Repl. Vol.), empowers a circuit court to appoint a receiver when a corporation voluntarily dissolves. *Spivery-Jones v. Receivership Estate of Trans Healthcare, Inc*., 438 Md. 330, 339 (2014). A "receivership" is a mechanism by which a court orders that property be placed in the control of a "receiver," or a "[a] disinterested person appointed by a court ... for the protection of the property." *Id.* 333 (2014) (citing Black's Law Dictionary (9th ed. 2009)). Appellants argue that Maryland law precludes collateral attacks of a prior action, like the Receivership Action in the case at bar. *Clark v. Southern Can Co.*, 116 Md. 85, 93 (1911) (internal citations omitted).

> A collateral attack is 'an attempt to impeach the judgment by matters dehors the record, before a court other than the one in which it was rendered, in an action other than that in which it was rendered; an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it . . . .' 'In other words, if the action or proceeding has an independent purpose and contemplates some other relief or result, although the overturning of the judgment may be important or even necessary to its success, then the attack on the judgment is collateral.'

Klein v. Whitehead, 40 Md. App. 1, 20 (1978) (internal citations omitted) (citing 49 C.J.S. Judgments§ 408).[8] "Even if [a] judgment or decree is erroneous or voidable, matters which *might* have been raised as a defense in the original action cannot be made the basis of a collateral attack." *Board of County Com'rs for Prince George's County v. Baden Volunteer Fire Dept., Inc.*, 257 Md. 666, 670-71 (1970) (emphasis added) (internal citations omitted). The "rule of inhibition" protects existing judgments against collateral attacks. This rule states that a "judgment[ ] of a legally organized judicial tribunal, proceeding within the scope of its allotted [sic] powers, and possessing the requisite jurisdiction over the subject matter of the suit and the parties thereto, whether correct or erroneous, cannot be called in question by the parties or privies in any collateral action or proceeding." *Klein,* 40 Md. App. 1, 20 (1978) (internal citations omitted). However, "[t]he reality of a receivership in Maryland . . . is that under our Rules, [one] will have an opportunity to challenge the appropriateness of any complete or partial distribution plan and have that decision reviewed on appeal." *Spivery-Jones,* 438 Md. at 361.

We find that the Appellee's challenge to the Receivership Action was not a collateral attack because the issues asserted by Appellee in the circuit court were also presented in the Receivership Action. The Appellants argue that "any challenge that [Appellee] wished to raise regarding the proposed sale of Skin's assets and the value placed upon Skin in the Receivership Action must have been timely raised in the Receivership

[8] *See also Finch v. LVNV Funding,* LLC, 212 Md. App. 748, 768-89 (2013) (stating that "a 'collateral attack' is a tactic whereby a party seeks to circumvent an earlier ruling of one court by filing a subsequent action in another court") (internal citations omitted).

Action or it was waived as a matter of law." Appellants allege that Appellee did not file an exception to the Receiver's proposed liquidation sale of Skin, nor to the Receiver's disagreement with Rosenthal's opinion. This resulted in the court ratifying the Receiver's order in July 2014. Considering this, Appellants proffer that the circuit court thus erred in permitting Rosenthal to testify that Skin had a value of $2,550,000[9] when the Ratification Order in the Receivership Action listed the final amount as $80,000. However, Appellee filed her first complaint in this case asserting her entitlement to 50% of the company and its profits in July 2012, approximately two years before Appellants' voluntary Petition for Appointment of a Receiver on April 14, 2014 for Skin. After the circuit court appointed the Receiver in April 2014, a notice reporting the private sale of Skin's assets was filed by the Receiver and then sent to Appellee on June 4, 2014. This notice stated that any exception to the sale must be filed in writing with the clerk of the court and submitted within 30 days. Less than a week later, Appellee filed a written claim against Appellants, claiming that she was owed 50% of the company and 50% of its net profits. Attached to Appellee's claim was her third amended complaint and a valuation report created by her expert, Christopher Rosenthal, detailing the amount she was owed.

Accordingly, we disagree with Appellants that Appellee did not raise her concerns in the Receivership Action. Appellee's filing of her third complaint along with Rosenthal's valuation report provided the parties in the Receivership Action notice of Appellee's issues

[9] Per Rosenthal's opinion and testimony, the appellee was entitled to one half of this amount, totaling $1,275,000.

in this case. To argue that Appellee did not express her concerns would go against the record.

Ownership Interest in Stock

We briefly address Appellants' argument that Rosenthal's testimony was inadmissible because a jury is limited to only awarding an ownership interest in stock, not its value. Appellants cite case law[10] and Title 3, Subtitle 202 and 413 of the Corporations & Associations Article to emphasize that it is solely within the province of the court and not the jury to determine a shareholder's equitable remedy. Nowhere in the cited case law does the court say that a jury is precluded from making such a determination. However, assuming *arguendo* that that was the court's intention, the circuit court in the case at bar denied Appellants' Motion to Strike the Verdict. Thus, the circuit court made a determination when it affirmed the jury's verdict. Appellate courts are reluctant to usurp the role of the jury and overturn jury decisions. The Court of Appeals has established that "the verdict of a jury on a question of fact is conclusive on appeal. The jury alone have the right and power to judge the weight of the evidence." *Fowler v. Benton*, 245 Md. 540, 545 (1967). Thus, this Court will not disrupt the jury's determination.

Additionally, Appellants list Title 3, Subtitle 202 and 413 of the Corporations & Associations Article to make a blanket assertion that "a stockholder may demand and receive fair value of the stock only under certain conditions, none of which were alleged

[10] *Boland v. Boland*, 423 Md. 296, 372 (2011).

or proven by Richardson." Appellants provide no argument supporting how Appellee fails to meet the conditions. We cannot predict the argument Appellants wish to make.

Accordingly, we hold that the circuit court did not abuse its discretion when it admitted Rosenthal's testimony.

DISCUSSION

i. Evidence Referencing Evalla, LLC and/or Belcara Health

A. Parties' Contentions

Appellants contend that the circuit court erred in permitting Appellee to offer evidence regarding Evalla, LLC. Specifically, Appellants maintain that at trial Appellee misrepresented to the jury that Evalla, LLC was a continuation of Skin. Appellants argue that although the circuit court did not allow Appellee to use the word "Evalla," Appellants' counsel objected to various attempts by Appellee to introduce prejudicial and misleading evidence about Evalla, LLC. Appellants contend that the circuit court's decision to admit the evidence constitutes reversible error. Moreover, Appellants argue that as a general rule a corporation that acquires the assets of another corporation is not liable for the debts and liabilities of the predecessor corporation. However, as an exception to the general rule if the purchasing corporation is a continuation of the selling corporation the purchasing corporation does assume liabilities of the selling corporation, Appellants argue this is not the case here. Appellants contend that Appellee failed to contest the sale of Skin at the Receivership Action and should not have been allowed to attack the sale at trial.

Appellee responds that the circuit court did not err in admitting evidence regarding Appellants' continuation of the med-spa business. Specifically, Appellee maintains that Appellants failed to object to the circuit court allowing this evidence to be admitted. For instance, Appellee claims that Appellants did not object when the circuit court granted Appellee's counsel to mention that Appellants continued the med-spa business without mentioning the name "Evalla." As such, Appellee claims that Appellants "waived their right to appeal" this claim. We agree.

B. Standard of Review

> "Generally, whether a particular item of evidence should be admitted or excluded is committed to the considerable and sound discretion of the trial court and reviewed under an abuse of discretion standard. However, we determine whether evidence is relevant as a matter of law. The *de novo* standard of review applies when the trial judge's ruling involves a legal question. Although trial judges have wide discretion in weighing relevancy in light of unfairness or efficiency considerations, trial judges do not have discretion to admit irrelevant evidence. Even where there is error, this Court will not reverse a lower court's judgment for harmless error. Rather, the complaining party must demonstrate that the error was prejudicial, or in other words, the error was likely to have affected the verdict below. Courts are reluctant to set aside verdicts for errors in the admission or exclusion of evidence unless they cause substantial injustice. In these circumstances, we have consistently stated that the appellate inquiry focuses on not the possibility, but the probability, of prejudice."

Perry v. Asphalt & Concrete Services, Inc., 447 Md. 31, 48-49 (2016) (internal citations omitted).

C. Analysis

Under Maryland Rule 5-401, "[r]elevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Maryland Rule 5-402 provides that all relevant evidence is admissible and evidence that is not relevant is not admissible. However, Maryland Rule 5-403 establishes that relevant evidence may be excluded if, *inter alia*, its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury. Appellants maintain that Appellee's introduction of Appellants' other med-spa businesses, Evalla, was an attempt to prove that those businesses were merely a continuation of Skin and was an improper collateral attack on the Receivership Action. We disagree.

Appellee's introduction of Evalla pertained to her claims of fraud and unjust enrichment as it related to the med-spa business. Additionally, although Appellants argued their motion *in limine* to exclude any evidence concerning Evalla,[11] Appellants later stated that they had no objection to the name Evalla not being mentioned during the trial. Moreover, on direct examination of the Receiver, Mr. Greenblatt, Appellants had the opportunity to question him about the sale of Skin to Evalla but failed to do so.

Accordingly, this Court finds that the evidence pertaining to Evalla was not a collateral attack, but was relevant to Appellee's claims to show that Appellants were still

[11] The circuit court permitted Appellee to introduce evidence of Evalla to support her claim of unjust enrichment so long as Appellee did not say the name Evalla. E.542-43.

operating the med-spa business. Thus, we find that the circuit court did not err when it allowed Appellee to prove that Evalla was a mere continuation of Skin.

DISCUSSION

i. Motion to Strike the Verdict

A. Parties' Contentions

Appellants contend that the circuit erred in refusing to strike the verdict. Appellants argue the basis for the verdict was based on the impermissible collateral attack on the Receivership Action. In *arguendo*, Appellants maintain that the judgment against Appellants was based on a quasi-contract and should have been stricken because the jury found an expressed contract.

Appellee maintains that the circuit court did not err in refusing to strike the verdict. Specifically, Appellee asserts that the "judgment is not the result of an impermissible collateral attack on the Receivership Action because [Appellee's] claims were not limited to the value retained by Appellants in Skin." Additionally, Appellee contends that Appellants' argument that the jury was incorrect in awarding Appellee $1,275,000 for unjust enrichment and *quantum meruit* has no merit. We agree.

B. Standard of Review

> "In general, the denial of a motion to alter or amend a judgment or for reconsideration is reviewed by appellate courts for abuse of discretion." *Miller v. Mathias*, 428 Md. 419, 438 (2012) (internal citations omitted). "There is an abuse of discretion where no reasonable person would take the view adopted by the [trial] court," or when the court acts "without reference to any guiding rules or principles.

In re Adoption/Guardianship No. 3598, 347 Md. 295, 312 (1997)(internal citations omitted).

C. Analysis

Appellants argue that the jury verdicts should be stricken down because they are "fundamentally incompatible." They assert that because Appellee's claims for unjust enrichment and *quantum meruit* were premised on the same subject matter as the alleged contract, the jury could not find for quasi-contractual claims where a contract existed. Appellants are correct.

> The general rule is that no quasi-contractual claim can arise when a contract exists between the parties concerning the same subject matter on which the quasi-contractual claim rests. The reason for this rule is not difficult to discern. When parties enter into a contract they assume certain risks with an expectation of a return. Sometimes, their expectations are not realized, but they discover that under the contract they have assumed the risk of having those expectations defeated. As a result, they have no remedy under the contract for restoring their expectations. In desperation, they turn to quasi-contract for recovery. This the law will not allow.

County Com'rs of Caroline County v. J. Roland Dashiell & Sons, Inc., 358 Md. 83, 96 (2000).

However, Appellee's quasi-contractual claims of unjust enrichment and *quantum meruit*, provide remedies "when an enforceable contract does not exist but fairness dictates that the plaintiff receive compensation for services provided." *Id.* at 96-97. *"Quantum meruit* refers to either an implied-in-fact contractual duty or an implied in law (quasi-contractual) duty requiring compensation for services rendered." *Mogavero v. Silverstein,*

142 Md. App. 259, 276 (2002). Additionally, although courts are hesitant to deviate from the general rule, the Court of Appeals has allowed unjust enrichment claims "only when there is evidence of fraud or bad faith, there has been a breach of contract or a mutual rescission of the contract. *County Com'rs*, 358 Md. at 100.

In the present case, the jury found that a contract existed and that Appellants breached that contract, but awarded no damages to Appellee for her breach of contract claims. The jury also found that Appellants were unjustly enriched and found against Appellants for *quantum meruit*. For both claims, the jury awarded Appellee $1,275,000. In addition, the jury found that Appellants engaged in deceit or fraud. The jury's inconsistent verdicts do not render the verdicts void. Although the jury found in favor of Appellee's breach of contract claim, it awarded no damages; but awarded damages for Appellee's quasi-contractual claims. Perhaps it is a verdict sheet error for lack of clarification of whether an express or implied contract was formed—still, it is clear that the jury found Appellants liable to Appellee. It can also logically be inferred that even with the inconsistency, the jury found that if there was a contract, it was unenforceable and thus, Appellee should prevail on her quasi-contractual claims in the interest of fairness. The jury's finding of fraud and breach of a contract met the exceptions articulated in *County Com'rs.* This Court will not disturb a reconcilable jury verdict.

Briefly addressing Appellants' argument that the jury verdict should be struck down because Appellee failed to prove her case, the extensive record provided in this case tells a different story. In a jury trial, judging the weight of the evidence is the province of the jury only. *See Fowler v. Benton,* 245 Md. 540, 545 (1967)("[t]he jury alone have the right

and power to judge the weight of the evidence."). Thus, this Court will not eliminate the power of the jury.

DISCUSSION

i. Curative Jury Instruction

A. Parties' Contentions

Appellants argue that the circuit court erred in refusing to provide a curative jury instruction despite Appellee's persistent collateral attack on the Receivership Action. Appellants maintain that "at the close of the evidence, counsel for Appellants requested that either the applicable Maryland Code and Rule sections regarding receiverships be provided to the jury, or that the court provide a curative instruction, explaining the process of a receivership and correct the misimpression --- created by [Appellee]." Appellee responds that the circuit court did not err in refusing to provide a curative instruction as no such instruction was warranted. We agree with Appellee's proposition.

B. Standard of Review

Appellate courts "apply the abuse of discretion standard of review when considering a trial judge's denial of a proposed jury instruction. Where the decision ... of the trial court is a matter of discretion it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. A trial judge exercises discretion by assessing whether the evidence produced at trial warrants a particular instruction on legal principles applicable to that evidence and to the theories of the parties. Therefore, the onus is on the

trial judge to discern and ensure that the jury instructions encompass the substantive law applicable to the case. While we defer to the trial judge's ruling, an improper exercise of discretion may cause prejudice to a party and result in reversible error…The burden is upon the complaining party to show both the probability of prejudice and error that is both "manifestly wrong and substantially injurious." *Collins v. National R.R. Passenger Corp*., 417 Md. 217, 228-29 (2010).

C. Analysis

Appellants argue that the circuit court erred in its failure to provide a curative jury instruction despite Appellee's persistent collateral attack on the Receivership action. This Court finds that the circuit court's failure to provide Appellants' jury instruction was not substantially injurious. Information regarding the Receivership Action was discussed throughout the trial. As concluded by the circuit court judge, the legality of the Receivership Action was not in dispute, nor was it an issue the jury was charged with deciding. The jury considered that information and still concluded that Appellants were liable to Appellee for multiple claims. Appellants may be dissatisfied with Appellee's argument that Appellants initiated the Receivership Action with bad intentions but the action itself was not at issue. Appellants provide no support for the argument that providing an instruction on the Receivership Action would have changed the jury's verdict, or that a failure to provide the instruction substantially injured them. Accordingly, we hold that the circuit court committed no reversible error here.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.