

Circuit Court for Anne Arundel County
Case No. C-02-CV-18-001050

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1570

September Term, 2019

BRADLEY W. MCINTYRE, ET AL.

v.

CLIFFORD W. CUNIFF

Graeff,
Wells,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 27, 2021

*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.

Clifford W. Cuniff, appellee, brought suit in the Circuit Court for Anne Arundel County against appellants, Brandi and Bradley McIntyre, for unjust enrichment, civil conspiracy, and RICO¹ violations. The complaint alleged that the McIntyres had benefitted from and were complicit in a theft scheme orchestrated by DaVonne Evans, Mrs. McIntyre’s mother and Mr. Cuniff’s bookkeeper for nearly 27 years.² After a three-day trial, a jury found the McIntyres liable for unjust enrichment and RICO violations, and it awarded Mr. Cuniff \$112,000 and \$13,065.41, respectively.

Mr. Cuniff filed a post-trial motion seeking either additur or a new trial with respect to the jury’s RICO award. He argued that he was entitled to an additional \$60,000 for RICO violations. The circuit court denied his request for additur but granted his request for a new trial on RICO damages.

Mr. Cuniff then filed a motion for summary judgment regarding the remaining RICO claim, arguing that there were no material facts in dispute, and he was entitled to the additional \$60,000 as a matter of law. The circuit court granted Mr. Cuniff’s motion for summary judgment and awarded Mr. Cuniff the additional \$60,000. The court trebled the

¹ See Racketeer Influenced and Corrupt Organization Act (“RICO”), 18 U.S.C. §§ 1961–1968.

² Mr. Cuniff originally filed suit against Mrs. Evans and her husband, William Evans. He subsequently filed an amended complaint adding the McIntyres as defendants. Because Mr. and Mrs. Evans filed for bankruptcy, proceedings against them were stayed, and trial proceeded only against the McIntyres. Accordingly, Mr. and Mrs. Evans are not parties to this appeal.

RICO awards, awarded costs and attorneys' fees, and entered a total judgment against the McIntyres, jointly and severally, in the amount of \$383,188.48.

On appeal, the McIntyres present two questions for this Court's review,³ which we have rephrased as follows:

1. Was the evidence sufficient to support the jury's verdict relating to unjust enrichment?
2. Was the evidence sufficient to support the jury's verdict that the McIntyres had violated RICO?

For the reasons set forth below, we shall affirm the judgments of the circuit court.⁴

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Cuniff has practiced law in Maryland since 1981, specializing in asbestos litigation. For 27 years, from 1989 until 2016, Mrs. Evans worked for Mr. Cuniff as his secretary and bookkeeper. On November 5, 2016, a Saturday, Mr. Cuniff opened a bank statement and discovered a check made out to Mrs. Evans as payee, with his forged

³ The McIntyres' original questions presented to this Court are as follows:

1. Whether funds gifted to Appellants by DaVonne V. Evans shown in the trail [sic] exhibit could be claimed by the Appellee has [sic] unjust enrichment
2. Whether the Appellants violated the RICO act of 1970 with "predicate offenses" to warrant a civil RICO action.

⁴ The McIntyres appeal *pro se*, but they were represented by counsel at all times during the proceedings in the circuit court. We note that no different standard applies to represented or *pro se* parties regarding procedural, evidentiary, and appellate rules. *Gantt v. State*, 241 Md. App. 276, 302 (quoting *Tretick v. Layman*, 95 Md. App. 62, 86 (1993)), *cert. denied*, 466 Md. 200 (2019).

signature, drawn on his attorney trust account.⁵ Shocked, and wondering how many unauthorized checks she had drawn, he went to the bank the following Monday and requested copies of all checks made payable to Mrs. Evans in 2016 from that account. He received 15 additional, similarly unauthorized, checks totaling \$82,932.

On November 9, 2016, Mr. Cuniff asked Mrs. Evans to come to the office, and he confronted her about the unauthorized checks he had discovered. She consented to being videotaped and apologized for stealing from him. Initially, she told him that she had “maybe” cashed a total of three checks, but when confronted with the additional checks Mr. Cuniff had discovered, she confessed to stealing from him beginning in 2014. Mrs. Evans was adamant that she did not steal from clients, and she asserted that she only took from Mr. Cuniff’s fee. Mrs. Evans also asserted that neither her husband, Mr. Evans, nor her daughter, Mrs. McIntyre, were aware of the theft.

At the conclusion of the meeting, Mrs. Evans agreed to bring Mr. Cuniff the following: (1) a check for \$9,867, which represented the last unauthorized check she had forged; (2) her bank statements going back five years; and (3) a written statement explaining how she had defrauded the firm, so he could determine whether any money was taken from his clients. Mrs. Evans’ husband, William Evans, arrived at some point, and according to Mr. Cuniff, he expressed no surprise to the theft when told and promised to “pay it all back.”

⁵ An attorney’s trust account is known as an IOLTA (Interest on Lawyer Trust Account).

The following morning, Mrs. Evans met Mr. Cuniff at his law office and gave him a check for \$9,867. Mrs. Evans wrote “restitution for theft” in the memo line. She failed to bring the bank statements, and she provided only a brief written statement about how she had engaged in the theft, which did not address whether she stole from any of Mr. Cuniff’s clients. Mrs. Evans left the office and promised to return with the bank statements.

Mr. Cuniff became concerned when he did not hear from her for several hours, and he feared that Mrs. Evans might harm herself. He contacted his son, Justin Cuniff (“Justin”), also an attorney, and they decided to contact Mrs. McIntyre to see if she could reach her mother. Justin testified that, when he reached Mrs. McIntyre by telephone, she asked him to “tell me what’s going on,” and he told her that her mother had stolen “a huge amount of money from the firm.” He testified that Mrs. McIntyre registered no surprise or objection, stating: “We’ll pay you back. We’ll sell the house.”

As they had feared, Mrs. Evans had attempted to commit suicide, but she was discovered by Mr. Evans and admitted to a hospital that afternoon. Mr. Cuniff went to the hospital, and he heard Mr. Evans tell the gathered family, which included Mrs. McIntyre and her husband, Bradley McIntyre, that Mrs. Evans had stolen at least \$400,000 from Mr. Cuniff.

At some point, Mr. McIntyre called Mr. Cuniff and requested a meeting the following day. He advised that he would be the “spokesman for the whole family.”

The next day, November 11, 2016, the McIntyres met Mr. Cuniff at his law office to discuss the theft. According to Mr. Cuniff, they “acknowledge[ed] the debt on behalf

of the . . . family” and assured Mr. Cuniff “complete restitution.” They agreed to bring to a subsequent meeting on November 16, 2016: (1) a check for \$73,065, which was the then-balance of the known amount stolen in 2016; (2) Mrs. Evans’ bank statements for the last five years; and (3) Mrs. Evans’ full written statement about how she had executed the theft scheme.

On November 16, 2016, Mrs. McIntyre dropped Mr. McIntyre off at Mr. Cuniff’s law office, and he went inside alone. When Mr. Cuniff asked Mr. McIntyre for the three items he had agreed to bring, i.e., the check, bank statements, and written statement of Mrs. Evans, Mr. McIntyre stated that he had the items but would give them to Mr. Cuniff only if he agreed to “not continu[e] with this investigation,” “to release the entire family” from any civil or criminal remedies, and to accept the \$73,065 check “as complete and total restitution.” Mr. Cuniff advised that he could not do that because the extent of the theft was not yet known, and Mr. McIntyre became “agitated,” “abusive,” and “accusatory.” Mr. McIntyre stated that Mr. Cuniff was responsible for the “entire mess” and was “part of the embezzlement scheme.” Mr. McIntyre stated that, if Mr. Cuniff did not accept the terms being offered, Mr. McIntyre would go to the Bar Association and have Mr. Cuniff’s license to practice law revoked, and he would publicly reveal other “unethical and illegal activities.” Mr. Cuniff said, “that’s extortion,” and he told Mr. McIntyre to leave.

Mr. McIntyre left, and he then gave the checks he had brought to Mr. Cuniff’s office to Mrs. Evans, who emailed Mr. Cuniff stating that she understood that the meeting with Mr. McIntyre had not gone well. She attached images of two cashier’s checks that Mr.

McIntyre had with him “to take care of 2016.” Both cashier’s checks were issued by PNC Bank. The first cashier’s check, paid for by Mr. Evans, was for \$13,065.41, and it had Mr. Evans’ name on the remitter line.⁶ The second cashier’s check, paid for by Mrs. Evans’ mother, Florence Caviness, was for \$60,000, and it had Mrs. Evans’ name on the remitter line.

Mr. Cuniff contacted the Attorney Grievance Commission the next day. They completed a full investigation and cleared Mr. Cuniff of any wrongdoing. Mr. Cuniff also contacted the Anne Arundel County State’s Attorney’s Office. Following a full investigation, Mr. Cuniff was cleared of any criminal wrongdoing.

On April 12, 2018, Mr. Cuniff filed suit against Mr. and Mrs. Evans. On August 24, 2018, Mr. Cuniff amended his complaint and added the McIntyres as defendants. On November 8, 2018, Mr. Cuniff filed a second amended complaint, substituting the extortion count with a new count alleging RICO violations. Mr. Cuniff’s second amended complaint asserted that the McIntyres were liable for unjust enrichment, civil conspiracy, and RICO violations. The unjust enrichment claim alleged that the McIntyres had received stolen funds from Mrs. Evans. The civil conspiracy claim alleged that the McIntyres were complicit with Mrs. Evans’ theft. The alleged RICO violations were based on Mr.

⁶ A remitter is “[s]omeone who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.” *Remitter*, Black’s Law Dictionary (11th ed. 2019). As an example, “a customer might buy a cashier’s check from a bank but direct that it be made payable to someone else. The customer’s name may appear on the check as remitter to identify who bought it.” *Id.*

McIntyre's actions, as the self-proclaimed family spokesperson, threatening and extorting Mr. Cuniff.

Trial began on April 23, 2019, and it continued until April 25, 2019. Neither Mrs. Evans nor Mr. Evans were present at trial because proceedings against them were stayed due to their filing for bankruptcy. Mr. Cuniff, his son, Helen Pryal, an investigator with the Anne Arundel County State's Attorney's Office, and Mary Fallon, Mr. Cuniff's new secretary, testified on behalf of Mr. Cuniff.

Mr. Cuniff testified regarding what occurred, stating that Mrs. Evans stole money from 167 of his clients, whom he personally reimbursed from his retirement assets. He testified that Mrs. Evans had admitted to the truthfulness of the State's Attorney's report when she entered her guilty plea.⁷ That report, which was admitted into evidence at trial, detailed the theft and amounts she stole as evidenced by available bank records. This amount was \$1,170,035.18. The report only included funds stolen between 2009 and 2016 because banks are required to hold onto records for only a limited number of years, but Mr. Cuniff testified that he had "reconstructed every check in [his] office from 2004 on . . . and determined that the actual theft began in June 2007." Accordingly, he testified that the amount of the theft was greater than the amount reflected in the State's Attorney's report.

⁷ On April 16, 2018, Mrs. Evans pleaded guilty in the Circuit Court for Anne Arundel County to two counts of a theft scheme involving property valued at more than \$100,000 and two counts of forgery. As part of Mrs. Evans' guilty plea, the court awarded restitution to Mr. Cuniff in the amount of \$1,170,035.18.

Ms. Pryal testified that the theft occurred over a seven year period, from 2009 to 2016.⁸ All of the money Mrs. Evans stole was transferred into two PNC bank accounts, one account was in Mrs. Evans' name, and the other account was in her and her husband's name. During those seven years, Mrs. Evans transferred \$108,692.72 from the two PNC accounts to a bank account she and Mrs. McIntyre jointly owned.⁹ Records showed that Mrs. McIntyre was the only person drawing on the account and her mother was the only one funding the account.

During the seven-year period, Mrs. Evans also wrote checks totaling \$8,725 to the McIntyres from the two PNC accounts, paid for several trips for the McIntyres, including airfare, rental cars, and hotels, and bought high-end clothing, accessories, and jewelry for Mrs. McIntyre. Mrs. McIntyre admitted that her mother frequented Dover Downs, and in 2010, Mrs. Evans took her, along with several other family members, to stay at Dover Downs and provided gambling money.

The report totaled the legitimate income Mrs. Evans and her husband would have earned from 2009 to 2016, a sum of \$560,440.30. The legitimate income would not have covered their personal living expenses in addition to the money and in-kind transfers they

⁸ As mentioned, *supra*, Mr. Cuniff testified that theft had actually started in 2007, but because the bank only maintained bank records going back seven years, the State's Attorney could only investigate the theft for the years 2009 to 2016.

⁹ According to the State's Attorney's report, Mrs. Evans transferred \$40,513.50 to Mrs. McIntyre from a PNC account ending in 3243, and \$68,179.22 from a PNC account ending in 3247. The total amount Mrs. Evans transferred to her immediate family was at least \$349,243.12.

made to the McIntyres. Following the investigation, the State's Attorney's Office decided to prosecute Mrs. Evans, but, in its prosecutorial discretion, it declined to prosecute the McIntyres.¹⁰

Ms. Pryal also testified that Mrs. Caviness visited Mrs. Evans in prison, and their conversation was intercepted and recorded. Mrs. Caviness questioned Mrs. Evans about what had happened to the \$60,000 cashier's check she had given to her, and Mrs. Evans told her mother that she had cashed the check, given Mr. Cuniff \$40,000 for restitution, and used the remaining \$20,000 to pay her defense attorney. Contrary to Mrs. Evans' statement, Mr. Cuniff never received \$40,000.

Finally, Ms. Pryal testified that, prior to Mrs. McIntyre's deposition, Mrs. Evans, who was incarcerated, called her daughter. Ms. Pryal characterized the conversation as Mrs. Evans "coaching" Mrs. McIntyre about her upcoming deposition in Mr. Cuniff's civil suit, specifically telling her "what to say about her knowledge of where the money came from."

Mary Fallon also testified on Mr. Cuniff's behalf. She began working for Mr. Cuniff on November 14, 2016, a few days after Mr. Cuniff discovered the theft. Once hired, Ms. Fallon transcribed the videotaped interview of Mrs. Evans that Mr. Cuniff and Justin had conducted when they first confronted Mrs. Evans on November 9, 2016. Ms. Fallon also

¹⁰ During Mrs. Evans' guilty plea hearing, a transcript of which was admitted at trial, the State's Attorney for Anne Arundel County explained that he did not prosecute the McIntyres because Mrs. Evans received approximately \$150,000 when a profit-sharing account was dissolved, and therefore, there was an "alternative source of the hundreds of thousands of dollars that would drift down into her children's accounts."

was present during the November 16, 2016 meeting between Mr. Cuniff and Mr. McIntyre. Ms. Fallon described Mr. McIntyre as being cordial at first, but once he “realized that Mr. Cuniff was not going to stop asking for money from the family,” he became agitated. Ms. Fallon overheard Mr. McIntyre tell Mr. Cuniff that the family could not afford to pay back the entire amount of the theft, but Mr. Cuniff refused to accept the amount Mr. McIntyre was offering, noting that he did not know how much had been stolen. At that point, Mr. McIntyre told Mr. Cuniff that he would “call the Bar Association and report” him, and Mr. Cuniff would lose his law license.

Justin was the last witness to testify on Mr. Cuniff’s behalf. He testified that he and his father became concerned for Mrs. Evans’ wellbeing after she failed to return from the bank on November 10, 2016, and Mr. Cuniff asked him to call Mrs. McIntyre. When Justin reached Mrs. McIntyre by telephone, he said that he and his father were concerned about her mother, and he urged her to get in touch with Mrs. Evans. When Mrs. McIntyre said, “tell me what’s going on,” Justin told her that Mrs. Evans had stolen a large sum of money from the law firm and had now gone missing. According to Justin, Mrs. McIntyre “registered no surprise; registered no objection.” He characterized Mrs. McIntyre’s reaction as indicating her awareness that “this is the end of the run. We – we’ve taken the money, but now people have discovered what’s going on.”

After Mr. Cuniff rested his case, the McIntyres moved to “strike count 8, the RICO violation.” The McIntyres asserted that Mr. Cuniff had “failed to show the required elements of a civil claim on the RICO” violations because there was no evidence of any

“predicate acts.” Instead, they argued that Mr. McIntyre was demanding a settlement agreement with Mr. Cuniff on November 16, 2016, and he did not attempt to extort Mr. Cuniff that day.

Mr. Cuniff argued that the McIntyres’ motion had “already been heard and decided” in a previous motion to dismiss, and because the court previously rejected that argument, it was the “law of the case.” Mr. Cuniff also argued that the RICO claim was supported by two or more predicate acts: (1) the extortion; and (2) the theft of Mrs. Caviness’ cashier’s check, which was intended to go to Mr. Cuniff for restitution. The court denied the McIntyres’ motion.

The McIntyres also moved to “dismiss the civil conspiracy claim,” as it was “not properly pled.” They argued that Mr. Cuniff had failed to “show any overt action” and did not prove the existence of any conspiracy agreement. The court denied that motion as well.

In the defense case, Mrs. McIntyre testified that, when Justin called her on November 10, 2016, she was “extremely shocked” to learn that her mother had embezzled money from Mr. Cuniff’s law firm, and she explained that her lack of emotion was due to her receiving the call while she was at work in a professional setting and wanting to get off the phone to “try and figure out what was going on.” She testified that, by the time she received Mr. Cuniff’s call, she had learned that her mother had tried to commit suicide, and contrary to Mr. Cuniff’s testimony, she was “in tears” and was “hysterical.”

Mrs. McIntyre testified that she had “no idea” that her mother had embezzled money from Mr. Cuniff’s law firm until after her mother’s attempted suicide. She explained that

her mother transferred money to an account they owned jointly on a monthly basis for her granddaughter's daycare expenses. She admitted that she and her mother opened up and maintained the joint bank account during the time of the theft, from 2009 until 2016, but she explained that both of her parents were employed, and she believed that the money in the joint account came from their salaries, although she did not know how much they earned. She admitted that she spent the money in the joint account on herself, her husband, and their daughter.

Mr. McIntyre's testimony largely mirrored his wife's testimony. He testified that he had no knowledge of Mrs. Evans' embezzlement before she attempted suicide, and Mrs. McIntyre was hysterical when he spoke to her while she was on her way to the hospital. At the first meeting with Mr. Cuniff, he saw Mr. Cuniff as a "bully," and he wanted to protect Mrs. Evans and the family at the meeting between Mr. Cuniff and himself a few days later. He testified that he did not threaten Mr. Cuniff, asserting that he had "no position nor h[e]ld any power to threaten him with anything." He agreed that he was responsible for making the decision to withhold the cashier's checks from Mr. Cuniff, and he acknowledged that neither Mr. Evans nor Mrs. Caviness placed any conditions on giving the cashier's checks to Mr. Cuniff. He also testified that his wife's PNC account was opened before they were married, and he never had access to that account nor had reason to ask her about it.

Mrs. Caviness testified that she obtained the \$60,000 cashier's check, drawn on her home-equity line of credit, to help Mrs. Evans repay Mr. Cuniff. Mr. Cuniff was the listed

payee, and although Mrs. Caviness financed the check, Mrs. Evans had asked to be listed as the remitter. She testified that her intent at the time she obtained the cashier's check was that it be given to Mr. Cuniff as restitution. She testified, however, that she did not care how Mrs. Evans used the check, and she would not pursue a claim against Mrs. Evans for the money.

At the close of all the evidence, Mr. Cuniff made a motion for judgment regarding his unjust enrichment claim. He asserted that an unjust enrichment claim was comprised of three elements:

One, is that a benefit was conferred; two, that the defense had knowledge of the receipt of the benefit -- not that they had any knowledge of the fact that it was stolen, but that they acknowledge the benefit; and, third, that it would be unjust under those circumstances to allow the defense to retain it.

He argued that there had been no evidence "to counteract any of those three parts."

The McIntyres argued that the first element was not satisfied because Mr. Cuniff did not show that any of the stolen funds were given to the McIntyres. Mr. Cuniff responded by noting that "there's admissions and an admitted statement of claim that says that they were the -- they agreed that they were the recipient of stolen funds." The court held Mr. Cuniff's motion *sub curia*.¹¹ The McIntyres did not renew their earlier motion for judgment or make any new motion.

¹¹ The record does not reflect an explicit ruling on this motion. By allowing the case to go to the jury, the court implicitly denied the motion. *See* Md. Rule 2-519(d) ("In a jury trial, if a motion for judgment is made at the close of all the evidence, the court may submit the case to the jury and reserve its decision on the motion until after the verdict or discharge

The jury found in favor of the McIntyres on the claim of civil conspiracy. It found the McIntyres liable, however, on the claims of unjust enrichment and RICO violations. The jury awarded Mr. Cuniff \$112,000 on the unjust enrichment claim.¹² With respect to the RICO violations claim, Mr. Cuniff requested \$73,065.41, the combined amount of the \$60,000 cashier's check from Mrs. Caviness and the \$13,065.41 cashier's check from Mr. Evans. He asserted that he would have received this amount if the McIntyres had not threatened to keep the money unless he agreed to stop all proceedings. The jury awarded \$13,065.41 on this claim, the exact amount of the cashier's check paid for by Mr. Evans. The jury did not award damages relating to the amount of the \$60,000 cashier's check obtained by Mrs. Caviness, which listed Mrs. Evans as remitter.

Following the jury's verdict, both parties filed numerous post-trial motions. On May 1, 2019, the McIntyres filed a Motion for Judgment Notwithstanding the Verdict, a Motion for Remitter, and a Motion for New Trial.

In their Motion for Judgment Notwithstanding the Verdict, the McIntyres requested the vacatur and dismissal of the jury's RICO verdict, arguing that the "jury came to a contradictory judgment" in finding the McIntyres not liable for civil conspiracy but liable

of the jury. For the purpose of appeal, *the reservation constitutes a denial of the motion unless a judgment notwithstanding the verdict has been entered.*" (emphasis added)).

¹² The State's Attorney's report showed that Mrs. Evans transferred \$108,692.72 into a joint account she shared with Mrs. McIntyre. Mr. Cuniff's counsel noted during closing argument that Mrs. Evans also gave the McIntyres luxury goods and paid for vacations. Counsel requested that the jury return a verdict of \$130,000 for the unjust enrichment claim. The jury arrived at a verdict less than that request.

for RICO violations. In their Motion for Remittitur, the McIntyres requested clarification with respect to the damages awarded so as to prohibit Mr. Cuniff from collecting the total judgment twice, once from each of the McIntyres. In their Motion for New Trial, the McIntyres asserted that the court erred in admitting statements of Mr. and Mrs. Evans as party opponents despite the case against them being stayed due to their filing for bankruptcy.

On May 3, 2019, Mr. Cuniff filed a Motion for Additur, or in the Alternative, for Partial New Trial on Damages, in which he argued that he was entitled to an additional \$60,000 RICO award because both the \$13,065.41 cashier's check and the \$60,000 cashier's check were stolen from him at the same time, place, and manner, and the jury could not award one without awarding the other. Mr. Cuniff also filed a motion seeking to treble the RICO verdict and award costs and attorney's fees.

On June 21, 2019, the court held a hearing and decided the outstanding motions. The court denied the McIntyres' motions. It also denied Mr. Cuniff's request for additur, but it granted Mr. Cuniff's request for new trial on damages with respect to the \$60,000 RICO claim. The court also granted the motion to treble the verdict of \$13,065.41 and awarded costs and attorneys' fees in the amount of \$51,992.25.

Prior to scheduling a new trial on the RICO damages, Mr. Cuniff filed a Motion for Summary Judgment, arguing, among other things, that he was entitled to an additional \$60,000 RICO award as a matter of law. Mr. Cuniff argued that, because the jury had awarded him the \$13,065.41 cashier's check, and those facts were identical to his claim for

the \$60,000 cashier's check, the court should grant summary judgment. He argued that, because the UCC permitted constructive delivery, the fact that Mr. McIntyre did not physically hand him the cashier's check was irrelevant, and he had a claim to the cashier's check as soon as Mrs. Caviness gave the check to Mr. McIntyre to be delivered to Mr. Cuniff. He also argued that any difference between the two checks, i.e., the named remitter, and who obtained the checks, was irrelevant, as "[p]utting one's name as the remitter on the instrument is the same as filling out the personal memo line on a personal check."

The McIntyres opposed Mr. Cuniff's Motion for Summary Judgment. They argued that Mr. McIntyre rightfully returned the \$60,000 cashier's check to Mrs. Evans, as she was the named remitter. Moreover, the McIntyres argued that the \$60,000 check could not be stolen from Mr. Cuniff if it was never his to begin with, Mr. Cuniff failed to show that he had "any interest" in the check during the jury trial, and Mr. Cuniff did not have an interest in the check by virtue of being listed as the payee.

At the subsequent summary judgment hearing, the parties focused on whether Mr. McIntyre committed theft by leaving the meeting with the \$60,000 cashier's check. Counsel for Mr. Cuniff argued that there was constructive delivery of the cashier's check when Mrs. Caviness gave the cashier's check to Mr. McIntyre with the understanding that it would be delivered to him, the intended payee. Rather than deliver it, Mr. McIntyre engaged in extortion and withheld the two cashier's checks. Counsel asserted that the cashier's check was akin to cash and created an "instant debtor/creditor relationship

between Mr. Cuniff and PNC Bank,” and therefore, Mr. Cuniff was entitled to the \$60,000 cashier’s check.

Counsel for the McIntyres argued that, “[w]hen a cashier’s check is not delivered, it’s returned back to the remitter,” and because Mrs. Evans was the listed remitter, it was rightfully returned to her. Counsel argued that, although Mr. Cuniff was listed as the payee, he had no interest in the check until it was physically delivered. Counsel also argued that, by listing Mrs. Evans as the remitter, the cashier’s check was “constructively” her money.

The court granted Mr. Cuniff’s Motion for Summary Judgment. The court reasoned:

The one question in my mind that could be a disputed material fact would be who the remitter is. But, the testimony is absolutely clear in the trial that the remitter is [Mrs. Caviness]. It’s her account from which this \$60,000 is drawn. The fact that [Mrs. Evans’] name is on the remitter line . . . legally means nothing because it was not her money.

And if it would have been her money it would have required a two step transaction, [Mrs. Caviness] would have had to write a check or a cashier’s check to Ms. Evans. And then [Mrs. Evans] would have had to write another cashier’s check to Mr. Cuniff. Now maybe that is what [they] should have done. But that’s not what they did do. What they did do was [Mrs. Caviness] writes a check, cashier’s check pay to the order of Clifford W. Cuniff, Esquire \$60,000. She writes [Mrs.] Evans.

[Counsel for Mr. Cuniff] convinces me with legal argument that that line has the same effect as the memo line when I write a check to BG&E and put my bill is too darn high, or whatever, it means almost nothing. And I, I think I have no option but to say that which might be a material fact in dispute is no longer in dispute because it’s not a factual question it’s a legal question.

And I find that given the fact that there is no genuine dispute as to material fact and given the fact that Mr. Cuniff is the victim of the theft by [Mrs.] Evans and the victim of the misdeeds that included the McIntyres and is the victim of the theft of the \$60,000 which adding insult to injury, [Mrs.]

Evans takes from Mr. Cuniff even though it would have been only the smallest fraction of restitution to him, she takes that as well and uses it for her own purposes. [All] I know is what others say she used it for, I don't know what she says she used it for.

But given all that and finding no material fact that is in dispute and I believe in every way Mr. Cuniff is entitled to judgment as a matter of law, I will grant the Summary Judgment Motion that [counsel] has filed.

After granting summary judgment and awarding the amount of the \$60,000 cashier's check, the court noted that it would also treble that award. The judgment on that claim, therefore, was \$180,000, and the total judgment entered in favor of Mr. Cuniff and against the McIntyres was \$383,188.48.

This appeal followed.

DISCUSSION

The McIntyres raise two contentions on appeal: (1) the evidence was insufficient to sustain the jury's verdict with respect to unjust enrichment; and (2) the evidence was insufficient to sustain the jury's verdict with respect to RICO violations. We will address each of those contentions, in turn.

I.

Unjust Enrichment

The McIntyres contend that Mr. Cuniff failed to establish that they requested or received any benefit from the trust accounts or from Mr. Cuniff. Therefore, they assert, there was insufficient evidence to support the jury's verdict on unjust enrichment.

Mr. Cuniff contends that this contention is unpreserved for this Court's review. In any event, he argues that the jury's verdict on unjust enrichment was supported by the

evidence, asserting that Maryland law does not require the unjust enrichment recipient to request the benefit, and Mr. Cuniff was not required to “‘earmark’ each dollar transferred as ‘stolen’ rather than ‘legitimate’ income.”

Prior to addressing the merits of the McIntyres’ contention in this regard, we shall address whether the contention is preserved for appeal. Md. Rule 2-519 provides, in pertinent part, as follows:

A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence. The moving party shall state with particularity all reasons why the motion should be granted.

Md. Rule 2-519(a). The Rule further provides: “A party who moves for judgment at the close of the evidence offered by an opposing party may offer evidence in the event the motion is not granted[.] . . . In doing so, the party withdraws the motion.” Md. Rule 2-519(c). *Accord Gen. Motors Corp. v. Seay*, 388 Md. 341, 351 (2005) (“In Maryland, a motion for judgment, made at the close of an opponent’s case and thereafter denied, is withdrawn when the party making the motion offers evidence in its own case-in-chief. But, after offering evidence, the motion may be re-offered or renewed.”). To preserve an argument raising the sufficiency of the evidence in this circumstance, the party claiming that the evidence was insufficient must have made a motion for judgment at the conclusion of the evidence. *See Gittin v. Haught-Bingham*, 123 Md. App. 44, 48 (1998) (“In order to preserve for appellate review the evidentiary sufficiency issues he now raises, appellant was required specifically to make a motion for judgment pursuant to Md. Rule 2-519 at the close of all evidence.”). *Accord Baltimore County v. Quinlan*, 466 Md. 1, 15 (2019) (“The

consequence of failing to make a motion for judgment is that the party claiming insufficiency of evidence fails to preserve that issue for appeal.”).

Here, at the close of Mr. Cuniff’s case, the McIntyres moved for judgment on the RICO violations claim and civil conspiracy claim at trial. They did not move for judgment on the unjust enrichment claim. They then presented evidence, which resulted in them withdrawing that motion. Rule 2-519(c). At the close of the evidence, the McIntyres did not make or renew any motion for judgment.¹³ Because the McIntyres did not move for judgment as required by Md. Rule 2-519, they have not preserved their sufficiency challenge with respect to unjust enrichment. *See Quinlan*, 466 Md. at 15. Accordingly, we decline to address this issue.

II.

RICO

The McIntyres next challenge the verdict regarding the RICO claim. They contend that they were not arrested for, or convicted of, a crime, and therefore, there were no “predicate acts” to support a RICO claim.¹⁴

¹³ Mr. Cuniff moved for judgment in his favor on this claim. The McIntyres opposed this motion but did not make a motion for judgment on their behalf.

¹⁴ In addition to criminal liability, RICO “provides a private civil action to recover treble damages for injury ‘by reason of a violation of’ its substantive provisions.” *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 481 (1985) (quoting 18 U.S.C. § 1964(c)). Because, as discussed, *infra*, we determine that the McIntyres’ challenge to the RICO violation is not preserved for review, we will not address the substantive elements of such a claim

Mr. Cuniff contends that this contention is not preserved for review. He further argues that “the jury’s verdict on RICO violations, as modified by the court on post-judgment motion to include the other (Caviness) check for \$60,000, was supported by uncontroverted, legally sufficient evidence.” He argues that “there is no requirement that a private RICO action can proceed only if the defendant has been convicted of a criminal predicate act.”¹⁵

We address first Mr. Cuniff’s contention that the sufficiency challenge is not preserved for this Court’s review. We note that, of the \$73,065.41 awarded for RICO violations prior to the court’s trebling of the award, \$13,065.41 was awarded by the jury following a full trial, and \$60,000 was awarded by the court after granting Mr. Cuniff’s motion for a new trial on the \$60,000 cashier’s check and then granting summary judgment in favor of Mr. Cuniff for these damages. We will address each of these verdicts, in turn.

1.

\$13,065.41

As stated, *supra*, Md. Rule 2-519 requires a party challenging the sufficiency of the evidence on appeal to have moved for judgment at trial, and a failure to do so waives review of the sufficiency of the evidence on appeal. *Gittin*, 123 Md. App. at 48. Moreover, Md.

¹⁵ He further notes that there was no inconsistency in the verdict because the not-guilty finding on the conspiracy charges to steal from the law firm “was a different conspiracy than the RICO conspiracy among the McIntyres and Evans to extort and steal the restitution checks from [Mr.] Cuniff.” We agree.

Rule 8-131(a) provides that “the appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court.”

Here, the McIntyres moved for judgment on the RICO violations claim at the conclusion of Mr. Cuniff’s case, arguing that Mr. Cuniff had failed to prove any predicate acts, particularly extortion. The court denied the motion, and several witnesses then testified for the defense. When the defense rested at the close of all the evidence, however, the McIntyres failed to renew their motion for judgment. As explained *supra*, under these circumstances, the McIntyres have failed to preserve their challenge to the sufficiency of the evidence with respect to the \$13,065.41. *Quinlan*, 466 Md. at 15 (“The consequence of failing to make a motion for judgment is that the party claiming insufficiency of evidence fails to preserve that issue for appeal.”).¹⁶ Accordingly, we shall not address the merits of the claim relating to the verdict of \$13,065.41.

2.

\$60,000

The procedural posture of the \$60,000 award is different. That award was made by the court after granting a new trial with respect to that claim and then granting summary judgment in Mr. Cuniff’s favor.

¹⁶ The McIntyres did file a motion for judgment notwithstanding the verdict, but that could not cure the failure to file a motion for judgment at the close of all the evidence. *See* Md. Rule 2-532(a) (“In a jury trial, a party may move for judgment notwithstanding the verdict only if that party made a motion for judgment at the close of all the evidence[.]”); *Gen. Motors Corp. v. Seay*, 388 Md. 341, 352 (2005) (“A motion for judgment *must* be made at the close of all the evidence before a motion for JNOV can be properly made and ruled on by the court.” (emphasis added)).

In the context of summary judgment, however, preservation principles still apply. A party who fails to raise an issue in the course of summary judgment proceedings waives appellate review of that issue. *Baltimore County v. Aecom Servs, Inc.*, 200 Md. App. 380, 421 (Contention not raised in opposition to motion for summary judgment is not preserved for appellate review.), *cert. denied*, 424 Md. 55 (2011). *Accord Heineman v. Bright*, 140 Md. App. 658, 671–72 (2001) (Issue not raised in summary judgment proceeding is not preserved for appellate review.), *cert. denied*, 367 Md. 723 (2002).

Here, in response to Mr. Cuniff’s motion for summary judgment, the McIntyres argued that summary judgment was improper because: (1) Mr. Cuniff did not have an ownership interest in the \$60,000 cashier’s check; and (2) there was a factual dispute with respect to Mrs. Caviness’ intention regarding how the \$60,000 check was to be used. The McIntyres did not argue, and the court did not address at that proceeding, whether the evidence was insufficient to support a finding in favor of Mr. Cuniff because there was no evidence of “predicate acts.” The court, in granting Mr. Cuniff’s motion for summary judgment, explained that it was granting the motion because the name on the remitter line of the \$60,000 cashier’s check was immaterial, and therefore, there was no material fact in dispute.

On appeal, the McIntyres' insufficient evidence claim with respect to RICO focuses solely on whether evidence of a criminal conviction under RICO was required. Because the McIntyres failed to raise this argument during the summary judgment proceedings, the issue is not preserved for this Court's review.¹⁷ Accordingly, we will not address it. *See Aecom Servs.*, 200 Md. App. at 421.

**JUDGMENTS OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANTS.**

¹⁷ Moreover, we note that “[a]rguments not presented in a brief or not presented with particularity will not be considered on appeal.” *Anne Arundel County v. Harwood Civic Ass’n, Inc.*, 442 Md. 595, 614 (2015). The McIntyres do not address their claim in the context of challenging the propriety of the grant of summary judgment, and they do not provide any support as to that issue.