UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0062

September Term, 2015

MID STATES OIL REFINING, LLC

v.

LORCO, INC., ET AL.

Graeff,
Kehoe,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: February 23, 2016

On June 13, 2013, Mid States Oil Refining, LLC ("Mid States"), appellant, filed a Complaint in the Circuit Court for Baltimore City against Russell Darnell Lott ("Mr. Lott" a.k.a. "Darnell"), as well as LORCO of Maryland, Inc. ("LORCO"), appellee.[1] The Complaint alleged conversion, fraudulent concealment, unjust enrichment, civil conspiracy to commit conversion, and civil conspiracy to commit fraudulent concealment.[2] Mid States subsequently filed an Amended Complaint, adding FCC Environmental, LLC ("FCC"), also an appellee, as a defendant. Both LORCO and FCC filed motions for summary judgment, which the court granted with respect to the fraudulent concealment claim, but otherwise denied.

A five-day court trial ensued in November 2014. On December 1, 2014, the court issued an oral ruling. With respect to Mr. Lott, the court found him liable for conversion and unjust enrichment, and it granted judgment in favor of Mid States in the amount of $587,905.92, which included $100,000 in punitive damages. With respect to LORCO and FCC, the court found in their favor, and it dismissed the case against these two defendants.[3]

On December 11, 2014, Mid States filed a Motion to Alter or Amend the Judgment or, Alternatively, for New Trial, challenging the dismissals of LORCO and FCC. On

[1] Mid States initially sued both Lorco of Maryland, Inc. and Lorco, Inc., but during trial it was agreed that the proper party was LORCO of Maryland, Inc., and "LORCO, Inc." did not exist. Mid States prevailed in its claim against Russell Lott, and he is not a party on appeal.

[2] The claim for conversion was asserted only against Mr. Lott.

[3] By agreement of the parties, the circuit court also dismissed the cross-claims that LORCO and Mr. Lott had filed against one another.

December 23, 2014, Mid States filed a motion for leave to file a Second Amended Complaint, in which it sought to plead the conversion count, which it previously had asserted only against Mr. Lott, against LORCO and FCC. On February 24, 2015, the circuit court denied the motions.

On appeal, Mid States presents three questions for our review,[4] which we have rephrased, as follows:

1. Did the circuit court err in dismissing the unjust enrichment claims against LORCO and FCC?

2. Did the circuit court abuse its discretion in denying Mid States' motion for leave to file a second amended complaint?

3. Did the circuit court err in dismissing the conspiracy to commit conversion claim against LORCO?

[4] Mid States presents the following three questions:

1. Did the Circuit Court commit legal error in dismissing the unjust enrichment claims against LORCO and FCC in the Amended Complaint after finding that both LORCO and FCC were wholesale purchasers of stolen Mid States oil, at least to the extent that LORCO and FCC sold the stolen oil for profit on the retail market?

2. Did the Circuit Court abuse its discretion in denying Mid States' motion to alter or amend or for a new trial and its associated motion for leave to file the Second Amended Complaint where the proposed amendment was merely a technical one to conform to the Circuit Court's finding of fact at the conclusion of the trial that LORCO and FCC were purchasers of stolen Mid States oil and therefore are liable on Count I of the Amended Complaint alleging conversion?

3. Did the Circuit Court commit legal error in dismissing the civil conspiracy to convert claim against LORCO at the conclusion of the trial in light of the Circuit Court's own express findings of fact regarding LORCO's deliberate disregard of the unlawful enterprise through which LORCO purchased stolen Mid States oil?

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

FACTUAL BACKGROUND

In its amended complaint, the operative complaint, Mid States asserted that it collects used and unused petroleum products for recycling and resale. Mr. Lott was employed as a terminal manager at Mid States for approximately ten years prior to his termination on May 24, 2013. LORCO and FCC also recycle and resell petroleum products and are competitors of Mid States.

On May 24, 2013, Mid States discovered that Mr. Lott, and at least one other former Mid States employee, had been diverting Mid States' tank trucks filled with recycled oil and then selling the stolen Mid States oil to LORCO and FCC for personal profit.[5] Mr. Lott and the Mid States truck driver who assisted him with the scheme would arrange for a Mid States tank truck, which should have been empty, to leave Mid States terminals in Curtis Bay with a full load of oil. Because it was presumed that the tank truck was empty, Mr. Lott was able to bypass Mid States truck scales, which would have revealed otherwise. Mr. Lott and the truck driver would then take the full Mid States truck to one of several locations, i.e., a parcel of land on Pennington Avenue, an industrial park in Baltimore City, or an area near 4th Avenue, where Mr. Lott had leased property and kept a tank trailer that he had purchased in furtherance of the scheme. Mr. Lott and the truck driver would then unload the stolen Mid States oil from the Mid States tank truck into Mr. Lott's tank trailer.

[5] The other employee involved was not a party in the circuit court or on appeal.

After the stolen oil was unloaded into Mr. Lott's tank trailer, LORCO and FCC would pump the oil from Mr. Lott's tank trailer into their own tank trucks and then take the oil to their own facilities. LORCO and FCC would then transmit payment for the oil to an entity known as ABC's of Used Oil Collection ("ABC"), which was owned and/or controlled by Vernese Hilton.[6] Ms. Hilton would then pay Mr. Lott. Mid States was never paid for the oil.

Mid States alleged in the amended complaint that the circumstances surrounding these transactions "were such that a reasonable person familiar with the oil recycling business would have known or should have known that the transactions were not legitimate purchase-and-sale transactions." It alleged that the "point of sale and the manner of payment, among other things," would have indicated to LORCO and FCC that Mr. Lott was not authorized to sell the product. Moreover, Mid States alleged, the LORCO and FCC drivers who collected the oil from the tank trailer in the industrial park either knew or should have known that Mr. Lott was employed at Mid States, and knew or should have known "based on the location and manner of the stolen Mid States oil purchases" that this "was not a legitimate business transaction." And the LORCO and FCC officers and employees who authorized payments for the purchases of the stolen oil knew or should have known based on the method of payment that "these were not legitimate business transactions."

[6] Ms. Hilton was not a party in the circuit court or on appeal. Maryland Department of Assessments & Taxation records indicated that "Vernese Hilton" registered the trade name "ABC's of Used Oil Collection."

Mid States asserted that Mr. Lott was able to conceal his scheme from Mid States due to his position as Terminal Manager because that position charged him with recording Mid States' oil inventory. Mr. Lott's scheme allowed him to steal more than 200,000 gallons of oil, valued at more than $400,000, from Mid States. On May 24, 2013, Mr. Lott and his partner were arrested in connection with the illegal enterprise.

Count I of the amended complaint asserted a claim for conversion against Mr. Lott. Counts II, III, and IV asserted claims of fraudulent concealment against Mr. Lott, LORCO, and FCC, respectively. Count V asserted a claim for unjust enrichment against Mr. Lott, LORCO, and FCC. Counts VI and VII asserted claims for civil conspiracy to commit conversion and civil conspiracy to commit fraudulent concealment against Mr. Lott, LORCO, and FCC.

In LORCO's motion for summary judgment, it asserted that Mid States failed to produce any evidence: (1) that anyone at LORCO knew Mr. Lott or that the oil LORCO purchased was stolen from Mid States; (2) disputing the testimony of LORCO's deposition witnesses, Michael O'Hara and Donald Hammond, that LORCO paid fair market value for any oil it purchased from ABC; or (3) that the oil it purchased was stolen. Furthermore, it asserted, Mid States presented no evidence to establish that anyone at LORCO conspired with Mr. Lott in a plan to steal oil from Mid States or to conceal the misappropriation and subsequent purchase by LORCO of its oil.

In FCC's motion for summary judgment, it asserted that FCC had no "connection to or responsibility for any allegedly wrongful or unauthorized sale of oil by [Mr.] Lott," and it was, "at most, an innocent participant in transactions which it had no reason to

believe were unlawful or illegitimate in any way." FCC argued that it was entitled to summary judgment because Mid States could not establish a *prima facie* case for any of its claims, asserting that Mid States had produced no evidence that: (1) "FCC fraudulently concealed any facts which it had knowledge of or had a duty to disclose to Mid States"; (2) "FCC held Mid States' property and that it would be unconscionable for it to retain that property"; (3) FCC entered into any agreement to commit an illegal act; or (4) the actual oil purchased by FCC from ABC had been stolen from Mid States. Instead, asserted FCC, the evidence showed that, from October 2012 to May 2013, FCC purchased "an inconsequential amount of used oil from ABC[]," and FCC had "no reason to suspect that ABC[] or its employees had any connection to Mid States." Moreover, FCC "paid fair market value for the oil it purchased" and "documented each transaction with ABC[] as it would with any other vendor."

The court granted LORCO's and FCC's motions as to Count III, fraudulent concealment, but it denied the motions as to all other counts. On August 15, 2014, prior to trial, Mid States filed a pretrial statement, in which it noted that it was "not aware of any required amendments" to any pleadings "at this time."

At the start of trial on November 12, 2014, Mid States stated that the "conspiracy developed . . . when the Defendants willingly provided a market for this apparently stolen oil," and "[a]t any point the Defendants could have ended the conspiracy simply by saying, you know what, we're going to walk away. This doesn't seem like a legitimate business arrangement to us. But they continued." Counsel asserted that the oil was "good quality oil because it was oil that was capable of being resold to another customer," and "[a]s long

as it was good oil, they didn't care where it came from." Counsel stated that the evidence would show that the purchases were not made in good faith, and LORCO and FCC were not paying the actual value of the oil, which was $2.00 per gallon, but rather, they were paying $1.40 per gallon, which was a 20-30% discount.

LORCO's counsel stated that all LORCO did was "purchase oil from somebody who contacted" them, which was standard practice in the industry. The amount of oil involved was a "small percentage" of LORCO's business, and LORCO had no reason to know that they were "involved in anything . . . nefarious." Counsel asserted that LORCO was not unjustly enriched because it paid "a negotiated fair market value price for that oil."

FCC's counsel stated that FCC "went through the same procedures with [ABC] that they would with any other potential seller," and it had no reason to know that the oil it purchased was stolen from Mid States. Moreover, FCC would not have conspired to purchase stolen oil so that it could "pay fair market value for it."

Allen Bock, President of Mid States, testified that Mid States is in the business of picking up used oil from automotive shops and vehicle service centers and then testing the oil and reselling it. After collecting the oil, Mid States brings it to its facility in Curtis Bay, where it determines the quality of the oil and whether it needs to "process it" or not. After it tests the oil to determine whether it meets federal specifications for used oil, the oil is placed into large tanks and sold in bulk quantities of one to two million gallons at a time. Mr. Bock explained that, when the oil is tested, it is segregated into tanks; some tanks contain "wet oil," meaning oil that contains a high amount of water, and the other oil is "dry" and does not need processing. After oil samples are analyzed and deemed "safe and

saleable," Mid States takes the "processed oil that's been tested or the non-processed oil that's been tested," and it places the oil into a tank to ship the oil. Mid States' customers either blend the oil to their own specifications and then sell it as utility fuel, or they burn the oil for fuel. FCC and LORCO are two of Mid States' competitors. Mr. Bock agreed that the value of "good oil," i.e., marketable oil that meets the specification for used fuel oil, is substantially different from the value of "bad oil."[7]

Mr. Bock testified that theft is not a common problem for Mid States because it's required by federal guidelines to have guards and controlled access of the facility. He explained, however, that it is not possible to tell whether a truck passing through the facilities gates contains oil or not. Trucks are supposed to be weighed as they leave the facility, but "that's the responsibility of the drivers and operations folks." The guards would not know whether the trucks contain oil. Mr. Bock stated that Mid States could not "tell whether . . . oil . . . going out the gate [was] to be sold to a customer or put in the tank down the street." Furthermore, the quantity of oil in a truck cannot be determined unless the truck is weighed, or the oil is unloaded.

Mr. Lott worked as Operations Manager for Mid States for approximately ten years. He was in charge of loading and unloading trucks, testing the oil, processing the oil, blending the oil, taking samples of the oil for independent testing, and reporting inventories. His job duties did not require him to leave Mid States' site, and he did not drive a truck. Mr. Lott was a trusted employee.

[7] If the oil is contaminated or has a high water content, it is "bad oil."

On May 24, 2013, Mr. Bock learned that there had been an oil spill on 4th Street involving one of Mid States' trucks. The location was less than a five minute drive from Mid States' facility. Upon arriving at the location, Mr. Bock saw a Mid States' trailer and tractor with hoses that appeared to be pumping oil into a trailer. Mid States did not normally do business at that location, nor did it have any customers at that location. Mr. Bock learned that Mr. Lott and another Mid States' employee had been arrested for stealing oil.

During the ensuing investigation, Mid States learned of a company named ABC's of Used Oil Collection. The investigation revealed that Mr. Lott set up ABC. Mid States elected to clean up the oil spill because it thought it was Mid States' oil. Although Mr. Bock drove by the tank on the 4th Avenue location once or twice per day, he never thought that "anybody would put any product in that tanker." Mr. Lott never admitted to stealing oil from Mid States.

Mr. Bock knew that Mr. Lott had "been in trouble" before, but he was not aware that Mr. Lott had prior charges of burglary and theft. Mr. Lott had been implicated in a previous incident where an unauthorized truckload of oil was sent to the Eastern Shore, but Mid States concluded that he was not involved. In that incident, a driver took a truck out of Mid States' gates at 4:00 a.m. The guard thought that the driver was going out for a collection, but the truck had not been unloaded the previous night, and the driver took the loaded truck to a fish farm that bought used oil "from just anybody that came by with it." Mr. Bock stated that the guard who let the driver through the gate was not responsible for weighing trucks, and that Mid States had "never had a problem with a truck of oil leaving,"

so he was "sure the guard thought that the truck was empty and was going out with a driver to go pick up oil." Mr. Bock explained that trucks typically are weighed after they are loaded, and weighing the trucks was Mr. Lott's responsibility. Trucks could go past the guards "empty" or "full," and the guards would not know the difference. Following the incident, Mid States did not adjust its security procedures because the incident was "pretty rare," and Mid States had "never had that happen."

Mr. Lott had been reprimanded multiple times for being on site when he should not have been. Mr. Bock "saw it as him taking his responsibility seriously and showing up to get the job done," despite that Mr. Lott was not supposed to be on site outside of normal hours.

After the incident in which Mr. Lott was accused of being involved, Mid States examined its surveillance cameras and found that some of them were not working. The cameras were only used to "replay" if there was an incident in the facility; they otherwise were not watched. Mid States did have GPS on its trucks, but the GPS was used to locate the trucks during business hours. No one was in charge of reviewing GPS data. Mid States did not begin checking the trucks' GPS routinely after the incident in which Mr. Lott was implicated. Mr. Bock agreed that several other employees had been suspected of stealing and had either been fired or quit.

Virgil Patterson worked as a waste oil driver for LORCO during the relevant time period. He testified that a typical day for a waste oil driver could involve multiple stops to pick up oil, or it "could be one stop if you've got a bulk stop." Mr. Patterson was paid commission at LORCO of seven cents per gallon; if he filled up his tanker each day he

would make a "couple hundred dollars in commission." Mr. Patterson learned of ABC through his boss, Mr. Hammond. Mr. Hammond told Mr. Patterson that he had "gotten a huge customer that's generating all this oil that we're going to start going and picking up." The following day, Mr. Patterson and two other LORCO truck drivers were dispatched to ABC, which was on Pennington Avenue and located adjacent to Mid States. The LORCO drivers then began pumping oil simultaneously from the tanker on the lot into their three trucks, which was not a practice with which Mr. Patterson was familiar. The tanker did not have any identifying markings on it, and Mr. Patterson did not see any signs for "ABC's of Used Oil." While he was standing on top of his truck pumping oil, Mr. Patterson could see Mid States, which caused him concern because he did not understand why LORCO would be called from an hour away to pick up the oil, when Mid States could come from "right down the street" to get it. Mr. Patterson expressed his concern to Mr. Hammond, who "seemed like he didn't care."

At some point, what appeared to be the same tanker that had been on Pennington Avenue moved to 4th Avenue, approximately a five minute drive. Mr. Patterson collected oil from ABC five or ten times over a period of a few months. Mr. Patterson testified that he, and other LORCO drivers, thought ABC's business was "shady." Each time the drivers went to ABC, they had a conversation about the "shady" operation, and Mr. Patterson discussed his concerns with Mr. Hammond "at least three times." Mr. Hammond did not respond or "look[] into it." After the tanker moved to 4th Avenue, Mr. Patterson started "meeting Darnell," i.e., Mr. Lott.

On March 28, 2014, Mr. Patterson was terminated from LORCO after backing into a company's garage door. Shortly after his termination, he called Mid States and volunteered his concerns to them. Mr. Patterson did not think he should have been terminated by LORCO, or from his prior employment with FCC.

Mr. O'Hara, vice-president of Mid States, testified that Mid States goes through "many steps" to test the quality of the oil:

> Preliminary [sic], it's more of a water test to show the wetness, look for chlorides, filter through the nuts, the bolts, the plastic gloves, the cigarette butts, all the things that come out of a customer's waste oil tank. Then we try to group it in a couple of groups. Then we separate [] as much as we can. Take a test in a lab that does a few more than the actual rack does. Move it up to another tank. Then we send it out to an outside laboratory for analysis. We look for metals. We look for . . . anything that doesn't met our perimeters [sic]. . . . the goal is to get it to a sellable product at the end.

When Mr. O'Hara responded to 4th Avenue on May 24, 2013, Mr. Lott was not there, but a Mid States' tanker was on the property. Mr. Lott and the driver of the tanker, Elmando Gross, were arrested for taking Mid States' tractor trailer and delivering oil to a non-customer. During the subsequent investigation, Mr. O'Hara discovered that the Mid States tanker was being off-loaded into another tanker that was supposed to be empty. Mid States began looking back through GPS records, timesheets, and security logs, and it looked at "all drivers and trucks." As a result of the investigation, Mid States learned that one of its tractor trailers had "pinged" to a location on 4th Avenue on more than one occasion. The GPS data corresponded to times when Mr. Lott and Mr. Gross entered and left Mid States' facility. Mr. O'Hara identified documentation that showed that Mr. Lott and Mr. Gross entered through Mid States' gate and remained there for hours, but they did

not punch in on the timeclock, which was against company policy. On one occasion, GPS showed Mr. Gross' trailer leaving the facility and traveling five minutes to 4th Avenue, where it stayed for one hour and 35 minutes before returning to Mid States. On another occasion, Mr. Gross's trailer left the facility and traveled six minutes to 4th Avenue, where it remained for an hour and three minutes.

Mr. O'Hara explained that Mid States and other similar businesses such as LORCO and FCC, are all in the business of reselling oil, as opposed to being "end buyers." When they pick up oil, they pay wholesale price, test and process the oil, and then resell for a higher, retail price. Mid States' profit is the difference between the wholesale and the retail price, minus any operating expenses. Mr. O'Hara opined that $2.00 per gallon was the retail price of "saleable" oil.

He explained that Mid States has a "couple dozen tanks," and they hold "varying qualities of oil" or "specs." The quality of the oil, or "specs," is one of the factors that determines the price that Mid States can sell the oil, and he agreed that he would not be able to identify from which tank the misappropriated oil came from. He stated that the oil was "stolen," so he could not have matched it to the tank from which it was stolen.

Mr. Lott was the person in charge of making sure that the tanks were always locked, and he had been reprimanded several times for leaving them unlocked when they were supposed to be locked. When the tanks are locked, oil cannot be removed from them. Mr. O'Hara spoke to Mr. Lott several times about being on Mid States' property very early in the morning when he was not supposed to be there. Mr. Lott would have been in a position to disable video cameras. Mr. O'Hara stated that, although Mid States had security

cameras around the facility, nobody looked at the security footage "unless there's an incident." Although Mr. Lott was not at Mid States on the day of the Eastern Shore incident, Mr. O'Hara discovered that there was no surveillance recording for that day. When Mr. O'Hara looked at the video after the 4th Avenue oil spill, he saw Mr. Lott loading a tanker that he should not have been loading, and he saw Mr. Gross "tearing the dashboard out" and "ripping out the wires behind it." Mr. O'Hara agreed that, despite the "red flags" regarding prior theft of oil, unlocked tanks, and having to reprimand Mr. Lott for being on Mid States' property when he was not supposed to be, nothing was done to increase supervision of Mr. Lott.

After the incident in which a driver attempted to sell stolen oil on the Eastern Shore, the only change made to "keep a closer eye" on what was happening at Mid States was to have the GPS company alert Mid States if a truck left the facility on the weekend. Mr. O'Hara was not aware that Mr. Lott had prior burglary charges against him, but he explained that most of his employees have some sort of record because Mid States is a "second chance company." Mr. O'Hara agreed that there are scales at Mid States' gate, and trucks are supposed to be weighed before they go out, but often they were not. He also agreed that, in 2013, oil was unaccounted for, but he stated that he did not do an inventory because it was "not normal practice" for Mid States "to look for that quantity of theft." Mr. O'Hara was not aware of any other incidents in the industry where a company allowed trucks that were supposed to be empty to drive past a security guard, full of oil, and then have tens of thousands of gallons of oil sold in broad daylight.

Mr. Hammond, Jr., LORCO's Facility Operations Manager, explained that LORCO drivers collect oil and bring it back to LORCO's facility in Elkton. Each driver has an assigned territory, typically goes out for an eight to ten hour shift, and then returns to LORCO's facility with a full truckload of oil. "Most of the time it takes a shift to fill a truck" unless the driver has a "large call-in" of more than 1,000 gallons. In the latter case, it is possible to obtain a truckload of oil in a shorter shift.

A "call-in" refers to a situation where someone calls LORCO and states that they have "X amount of gallons that need to be picked up at my facility." If it is a new customer, LORCO will obtain the name and address and go to pick up the oil. When the driver gets to the location, if there is a concern about the quality of the oil, i.e., "there's something that's not right," the driver will "take a sample of it and bring it back to the lab to be tested." Mr. Hammond stated that the source of the oil is not important "at all." As long as the oil is "petroleum-based," or "good oil," LORCO will collect it. After LORCO collects the oil, it is taken to another LORCO facility in New Jersey. LORCO has "house accounts," or larger accounts from which drivers pick up oil more frequently, such as Water Depot, Petroleum Management, Amtrak and, at one time, ABC. LORCO drivers make both salary and commission; they are paid based on the number of gallons of oil that they collect and bring back to LORCO's facility, regardless of the source.

Mr. Hammond did not know what business ABC was involved in, but he thought maybe it was an oil collection business. He asked Darnell where the oil came from, and Darnell told him that he was getting shipments in, without saying from where. Mr. Hammond inquired further, but he explained that "[i]t's like a trade secret. They're

not going to tell you where it's coming from because they would be afraid to cut out the middleman." If a supplier was to tell others where the oil was coming from, competitors would try to outbid the supplier. Mr. Hammond reiterated that, as "long as the oil was good," he did not care where it was coming from." Mr. Hammond described "good oil" as oil that was "non-PCB, low water, very low water and low halogens."[8] LORCO wanted its drivers to pick up two percent water or less. Although the LORCO's drivers' manifests typically showed that all of their pick-ups had two percent water content, Mr. Hammond stated that was "very unlikely," and the drivers just wrote down estimates of what was on their truck each day. The water content of the oil that drivers picked up was not a result of lab testing. Although the drivers did a preliminary test, the oil then would be submitted to LORCO's internal lab to determine the water content of the oil. Only after the lab determined the water content, and whether the oil contained other contaminants, would LORCO be able to determine the price at which it would sell the oil.

The first time Mr. Hammond heard of ABC was when Darnell called LORCO's office and told Mr. Hammond that he had 7,000 gallons of used oil that he wanted picked up. That was a lot of oil, requiring at least three trucks to pick it up. Mr. Hammond investigated ABC by looking it up online. ABC did not have a website, but it had an address. Mr. Hammond and LORCO did not, as a matter of course, verify the legitimacy of a new customer calling to sell oil or visit the customer's site. It was the normal course of business for a seller to contact LORCO via phone. Darnell told Mr. Hammond that FCC

[8] PCBs are carcinogenic polychlorinated biphenyls.

and Spirit also picked up oil from ABC, and Mr. Hammond had to competitively bid for the oil, which was normal in the industry. Mr. Hammond never thought that he was purchasing stolen oil.

Mr. Hammond sent a driver to ABC to get a sample of the oil for testing. The driver returned with the sample, and laboratory personnel confirmed that the oil was good. Mr. Hammond then sent "a lot of drivers" over the course of six or seven months to ABC to collect oil. Mr. Hammond learned that ABC was operating out of a smaller fenced yard in Curtis Bay, with a tanker on the property, but he stated that LORCO had other customers that operated similarly, and it did not raise any alarms. Mr. Hammond also became aware that FCC and others were picking up oil from ABC, but he stated that was not abnormal, as they were "looking for the best deal."

LORCO made approximately 120 pick-ups from ABC. None of the drivers expressed to Mr. Hammond that there was anything "weird" about ABC. Mr. Hammond never had any conversations with Mr. Patterson other than to tell him to pick up oil from ABC. Mr. Patterson was "happy" to pick up oil from ABC and "would try to get more pick-ups there."

ABC became one of LORCO's biggest accounts. LORCO's drivers referred to ABC as "one and done," or "honeypot," because they could make one trip for the day to fill up their trucks.

Mr. Hammond negotiated the price for the oil that LORCO purchased from ABC. On at least one occasion, Mr. Hammond's boss, John Myers, told Mr. Hammond that he should try to drop the price down five or ten cents because the price he has been paying

"was at the top of our tier." Mr. Hammond negotiated the price with Darnell over the phone, and Darnell said he would have to talk to his boss. Mr. Myers was aware of the volume of business that LORCO was doing with ABC, as well as the general price LORCO was paying per gallon. Mr. Hammond stated that LORCO had to return five truckloads of oil to ABC because the oil tested positive for PCBs.

At some point, in approximately May 2013, Darnell stopped calling Mr. Hammond. Mr. Hammond tried contacting him to find out what had happened, and Darnell told him that he had not had any shipments lately. Mr. Hammond never heard from Darnell again.

Stephen Gold, a LORCO truck driver, testified that, in December 2012, Mr. Hammond told him that LORCO had a new customer. Mr. Gold did not know anything about ABC other than its address and the amount of oil he was to pick up. Mr. Gold never asked Darnell where the oil came from because he "was just doing [his] job." Mr. Gold never discussed ABC with any other LORCO drivers.

Sam Dennis, a LORCO driver, testified that he collected oil from ABC in November 2012 at Mr. Hammond's direction. He did not see any ABC signs, nor did he see any markings on the trailer indicating that it was ABC's. Mr. Dennis's truck, and the other trucks, had "LORCO" written on them. He would arrive at ABC between 6:00 and 7:00 a.m. and anyone driving down Pennington Avenue would be able to see, and hear, the LORCO trucks pumping oil. Drivers had to pass Mid States to get to ABC.

Mr. Dennis never had "very much conversation" with Darnell; he just "wanted a signature and [he] wanted to go home." He did not care where the oil that he picked up came from, noting that he "never know[s]" where the oil that he picks up comes from.

Sean Wyatt, a LORCO driver, testified that, after he collects oil, he returns to LORCO's facility in Elkton where samples are taken and then provided to a chemist who runs tests on the oil. After the tests are run, the truck is unloaded. Mr. Wyatt was directed to pick up oil at ABC on occasion, and he never noticed anything unusual about ABC's property or its location. He agreed that, normally, a customer's business name would be posted somewhere, and ABC's was not, but he "never gave it much thought." When asked where he thought the oil came from, Mr. Wyatt responded that he "never gave it much thought. I just filled up my truck and went about my own business." He stated that, when "you get a nice hit like that, you fill your truck up and go back because then you're done for the day." Mr. Wyatt stated that he and other drivers had returned oil to ABC after it tested "bad."

Richard Paul testified that he picks up oil for FCC, and he is paid salary plus commission of three cents per gallon of oil picked up. ABC was one of Mr. Paul's customers. Mr. Paul did not recall seeing any ABC signs or logos on the property. Mr. Paul did not think it was unusual to pick up oil from an unmarked tank because he had seen other business operate out of similar facilities, i.e., a tanker in a lot. ABC's tanker held approximately 7,000 gallons of oil, but Mr. Paul could pick up only 4,000 gallons at a time, so he had to make more than one trip. Mr. Paul did not think it was unusual to have a new customer that he would have to make two trips to pick up oil from. He did not "know the circumstances," but he got "paid to pick up used oil, so he was happy to get it." His other largest customer was Curtis Engine, and a typical pick-up from there would be between 800 and 1,500 gallons.

James Costley, Jr., a sales representative with FCC, testified that he learned of ABC when Darnell called him and asked if FCC could pick up 6,000 gallons of waste oil. Mr. Costley did not investigate ABC or Darnell before he agreed to do business with ABC. He did ask whether Darnell had relationships with other large recyclable oil purchasers, and Darnell told him that he had a relationship with Mid States, but he had problems with them and was seeking another buyer.

Mr. Costley went to ABC to collect a sample of oil. He asked Darnell where ABC was collecting the oil. Darnell told him that ABC had a truck on the street collecting oil, and ABC would have future loads of oil available for purchase. Mr. Costley stated that his concern about purchasing oil "is not so much where it comes from," but rather, from "where it's generated." He understood that ABC's oil came from "small generators, automotive shops, [and] small businesses where a collection truck would go and pump, five, four, 300 gallons at a time." Mr. Costley was not concerned about how ABC obtained the oil, but rather, he was concerned about the quality of the oil.

Mr. Costley identified a service agreement between FCC and ABC in which the parties agreed upon a price of $1.27 per gallon. Mr. Costley determined the purchase price "based on the volume and the market price at that time." Mr. Costley did not know whether FCC then sold the oil to third-parties for more than $1.27 per gallon because he did not determine the sales price. He stated that FCC's intention, however, would be to sell the oil for more than $1.27 per gallon.

Steven Grebow, a manager at Mid States, was involved in selling Mid States' oil to end users. He explained that Mid States, and others in the market, "compete for the same

customers," which has "been a shrinking pool of burners or users of" used oil. Mid States negotiates the price that it sells oil to its end-user customers using an index price that is published daily. During the relevant time period, the lowest price that Mid States sold oil to an end-user was $1.96 per gallon.[9] Mid States' sales invoices did not state the quality of the oil, i.e., whether there were any contaminants in it or the percentage of water, but he asserted that Mid States sells only "shippable" oil, or oil that is "on spec." Mr. Grebow agreed that it is standard in the industry not to reveal a company's customers.

Mr. Lott did not appear at trial, despite being served with a subpoena.[10] Neither LORCO nor FCC called any witnesses.

The parties agreed that ABC's bank records showed that checks worth more than $260,000 were written to Mr. Lott. A series of deposits were made into ABC's account from checks written to ABC by FCC and LORCO and endorsed by Ms. Hilton. The parties stipulated that LORCO made a total of 119 pick-ups of oil from ABC, totaling 266,918 gallons of oil. The average price per gallon was $1.41, for a total of $376,917.04 that LORCO paid to ABC.[11] FCC picked up 63,744 gallons of oil from ABC at an average price of $1.57, for a total of $99,988.92. The parties also stipulated that ABC's of Used Oil did business under a registered trade name.

[9] Mr. Grebow stated that LORCO and FCC used the same index price when negotiating a sales price to their customers.

[10] In a pre-trial deposition, Mr. Lott invoked his Fifth Amendment privilege against self-incrimination and refused to answer any substantive questions.

[11] Counsel explained that LORCO should have paid $376,911.54 based on the negotiated price, but that it made a slight overpayment of six dollars.

In closing arguments, counsel for Mid States stated that its claim for conversion was against Mr. Lott, and its claims against LORCO and FCC were for conspiracy and unjust enrichment. Counsel argued that the conspiracy "in this case started with [Mr.] Lott," but that LORCO and FCC "kept it going" because, by deciding to do business with ABC, LORCO and FCC "provided a market for a product that is otherwise essentially unmarketable." Counsel asserted that all Mid States needed to prove was that Mr. Lott stole oil and that LORCO and FCC agreed to purchase the stolen oil, "knowing or should have known, that it was stolen oil." In response to the court's question regarding how LORCO and FCC should have known that this was stolen oil, given that a theft of this type was "extraordinarily difficult to pull off," counsel responded that LORCO and FCC made "deliberate decision[s]" not to "look into it any further because . . . it was good oil," and he asserted that LORCO's and FCC's denials that there was anything wrong were not "plausible" under "all of the surrounding circumstances," stating that "it's not enough for them to say, because we didn't ask questions, we can't be held liable."

With respect to unjust enrichment, counsel briefly set forth the elements of the claim. He then argued that the evidence "quite clearly shows" that LORCO and FCC "received a benefit, unjustly so, and retained it."

With respect to damages, counsel requested $675,000 for the value of the stolen oil, using a price of $2.00 per gallon. He also requested $11,000 for the clean-up cost of the spill and two million dollars in punitive damages.

Counsel for LORCO noted that Mr. Hammond questioned Mr. Lott regarding the source of the oil, but it was not customary in the industry to reveal the source, and the

"nature of the business" is to find a "big source of oil." In response to the court's question whether, despite trade secrets and customer lists, LORCO would have wondered, at some point, whether the deal they were getting from ABC was "too good to be true," counsel responded that the only employees that picked up oil from ABC were the truck drivers, and aside from Mr. Patterson, who "ha[d] a grudge," it was "beyond anybody's imagination to believe that somehow this entity got set up and was stealing literally truckloads of oil right out of [Mid States] front yard." Counsel stated that LORCO was not "acting as if they were involved in some sort of clandestine conspiracy." Rather, drivers were using LORCO emblazoned trucks, in the middle of the day, to pump the oil. Counsel stated that neither LORCO nor FCC would have bought the oil if they knew it was stolen, but there was no evidence that they did know. The court agreed that there was no evidence that LORCO knew that the oil was stolen.

The court asked LORCO's counsel whether, at some point, someone at LORCO would have been curious as to how ABC "c[a]me from nowhere to being a major player," supplying LORCO with "this huge quantity of material . . . that [LORCO had] no idea what the source is." Counsel responded that the "bottom-line" was that there was "no evidence of a conspiracy here," and, in fact, what Mr. Lott "was doing is what happens in the industry. He was going back and forth among the different companies and saying . . . give me a price and if your price is better than the other price I'll sell it to you." Thus, as business proceeded in the usual course, there was no reason for LORCO to have known that Mr. Lott was stealing the oil from Mid States. Counsel asserted that, for Mid States to show that LORCO committed either a "conspiracy to fraud these people or a conspiracy to

convert their property," Mid States had to "show that we should have known that we were buying oil being stolen from Mid States Oil and I just don't see how you can make that leap of faith. It's just a huge leap of faith. The evidence just doesn't support that kind of leap."

LORCO's counsel asserted that the "other problem," was that, contrary to Mid States' argument that the oil was "shippable," there was no evidence presented as to the quality of the oil or whether it "had to be treated." Nor was there any evidence to indicate that the quality of the oil was the basis for the price.

With respect to unjust enrichment, counsel asserted that there was no evidence that LORCO had received a benefit, had knowledge that it was getting a benefit, or that LORCO paid the value of the oil. The court agreed that there was "clearly not an unjust enrichment because you're paying basically fair market value or maybe a touch above it."[12] The court asked, however, whether LORCO received a benefit because the "transaction cost" was lower, i.e., because the drivers were just sent to one location to pump the oil, as opposed to sending drivers out to look for oil, and making several trips. Counsel responded that there was no evidence presented that LORCO "didn't do anything that [it] normally wouldn't do," and because the drivers were paid their normal wages and commission, LORCO "didn't save a whole lot on picking it up." Rather, the only benefit was to the drivers, not the company.

[12] Counsel stated that Mr. Hammond explained that LORCO paid above-market value "because he does that with his large customers."

Counsel for FCC argued that there was no evidence presented that "the standard in the industry is to investigate the legal legitimacy of a source of oil, or the legal legitimacy of the customer." In fact, he asserted, the standard in the industry is not to ask where the oil came from because "[n]obody will tell you what their source is." Counsel stated that there was no evidence of any agreement, other than that FCC agreed to "pick up oil at this place for this amount," and there was "no evidence of any benefit" to FCC because: (1) the undisputed evidence showed that FCC was paying the "appropriate price for" the wholesale market; and (2) there was no evidence that the oil did not have to be processed after FCC received it.

The court then delivered its oral ruling from the bench. With respect to Mr. Lott, the court found that he held a position of responsibility at Mid States that gave him access to the security systems, as well as the trucks, storage containers, and tanks that held the oil collected by Mid States.[13] The court noted that Mr. Lott was seen at the site of oil being syphoned, that there were suspicious circumstances relating to him being at Mid States at odd hours, that Mr. Lott had received a check from ABC in the amount of $260,000, that the primary source of income for ABC was checks paid by LORCO and FCC, and that ABC was a sham company used as "a vehicle for the resale of stolen oil." The court concluded that Mr. Lott "was engaged in the practice of conversion," and he was "liable for unjust enrichment as well, because he had no right to the oil that was taken, and clearly, he received a substantial degree of compensation for it."

[13] The court noted that Mid States' security measures "were inadequate and sloppy," but stated "that's a different story."

The court next turned to the "more difficult question of the two parties who purchased the oil," LORCO and FCC. With respect to FCC, the court found that it picked up "20 tankers worth full of oil, a substantial amount of oil. . . . over a relatively short period of time." It noted that there was a consensus that the industry standard is not to inquire as to the source of oil, and FCC's employees did not raise any concerns regarding the procedure here. The court ultimately concluded:

> So in the case of FCC, what we see is that they paid what appears to be a fair market value for the oil that they purchased, that their actions were consistent with industry practice in that they were not inquiring. Additionally, an important point, the quantities that they picked up were not such as to raise a red flag as to whether or not there was something shady or improper or illegal or inappropriate, about the pickup of the particular quantities of oil.
>
> For all these reasons, I don't think that there has been established with respect to FCC, either a conspiracy to convert or unjust enrichment. And again, I mentioned that they paid what appears to be fair market value.

Accordingly, the court concluded that FCC was not liable, and Mid State's case against FCC failed.

The court then turned to what it considered "the most difficult of the three Defendants," LORCO. The court found that LORCO had not knowingly taken stolen goods. It was "troubled," however, on the issue whether it "should have known" that this oil was stolen. It noted that a former driver, who the court found credible, thought that the circumstances of the pickups were suspicious and that he brought this to the attention of the dispatcher. The court further noted that LORCO "received 119 tank loads of oil, full tank loads of oil, from a . . . prior non-existent entity," which "had vaulted to being their number one customer."

The court stated, however, that the situation was complicated by a couple of facts. It explained:

> First of all, they paid fair market value. If they in fact thought, knew or should have known, that there was something fishy about this, you would expect that there would have been what I would call a "risk discount" for the oil.
>
> So as an example, when other kinds of valuables are stolen, as an example, when jewelry is stolen, it is quite typical for the thief to get pennies on the dollar in terms of what he takes because there's the knowledge that the goods are illegal, that there is no enforceability of the contract in a court of law, that there is the risk that either party may be arrested, and there's no indication of that in this case. In fact, it does appear that somewhat more was paid than ordinary fair market value, partly because of . . . maybe the quality of the oil, but most particularly the testimony was that the discount occurred because of the large volume of oil that was picked up.

The court next addressed "the industry practice of not inquiring as to source." Although it expressed its thought that this was "a wrong practice," which allows "stolen products to enter . . . the regular stream of commerce without being identified," the court stated that it could "understand how that practice could develop, particularly in a very competitive industry where customers and sources may very well be valuable entities and you want to keep trade secrets." Indeed, it noted that Mid States, "by its own conduct, emphasizes that because they were unwilling to produce materials indicating their sources and their customers in the course of the discovery process." The court found that this industry practice of not asking for the source of the oil weighed against a finding that LORCO was acting with deliberate ignorance that the oil was stolen, stating that the failure to inquire reflected "a very competitive industry," as opposed to "deliberate ignorance."

The court further noted "that theft in this scale is unusual. In fact, Mid States' own witnesses said that . . . they were unaware of any theft on this scale ever taking place." That factor weighed in favor of LORCO because "they would not be aware of any theft of that dimension as well, which may perhaps mean that they should not have been on notice." Moreover, the court stated that, even if LORCO was "on inquiry notice," it was not clear that "is the same thing as committing conspiracy," noting that conspiracy requires a meeting of the minds. The court stated:

> But in this particular case, I don't think that the circumstantial evidence, despite the fact that I think a reasonable party in [LORCO's] circumstances should have known that there was something odd about this transaction. But I don't believe that the evidence amounts to proof of an actual conspiracy. I think what we have is a highly competitive industry in which perhaps there are deals made on the margins and that people are aware perhaps that they are on the margins. But where again, the tradition and custom seems to be not to inquire, and this is a custom that Mid States itself seems to be part of. And again, I am not convinced that it amounts to a conspiracy.

With respect to the claim for unjust enrichment, the court stated that, because they paid fair market value, as opposed to receiving the oil for a discounted value, there was no unjust enrichment. The court concluded by stating that it was a "very close question," but it found that LORCO was not liable.

The court then discussed damages against Mr. Lott, finding that the evidence was "pretty clear" that the oil came from Mid States, that there was no "alternative source of oil," and the oil was stolen from Mid States. The court found, pursuant to the parties' stipulation, that the total amount of stolen oil was 330,662 gallons: 266,918 gallons were sold to LORCO, and 63,744 gallons were sold to FCC. Finding that the amount paid for

the oil was the fair market value of the oil on the wholesale market, the court awarded damages of $476,905.92. The court also included $11,000 for cleanup of the oil spill, for a total measure of damages of $487,905.92. The court also awarded $100,000 in punitive damages against Mr. Lott, noting that conversion was an intentional tort and that violation of trust and fraud were involved.

Accordingly, the court's final judgment against Mr. Lott was $587,905.92. The court dismissed the case as to LORCO and FCC, and it dismissed LORCO's and Mr. Lott's cross-claims.

Within ten days of the court's judgment, Mid States filed a motion to alter or amend or, alternatively, for new trial. In the motion, Mid States asserted that the court, in its decision, found that all of the oil that LORCO and FCC purchased from Mr. Lott was oil that was stolen from Mid States. It asserted that the evidence was "uncontroverted that both LORCO and FCC purchased the stolen Mid States oil intending to – and, in fact, they did – sell it to industrial end users," and therefore, as purchasers of stolen oil, LORCO and FCC were liable jointly with Mr. Lott for conversion, as well as conspiracy to commit conversion. Mid States noted in a footnote that it had not pled conversion against LORCO or FCC, and that it would move for leave to file a second amended complaint to add this count.

LORCO filed a response, stating that the evidence supported the court's finding that it was not liable for conspiracy because the evidence "clearly established that none of the employees of [LORCO] knew the true identity of [Mr.] Lott, knew that he was an employee of [Mid States], or knew that he was involved in any scheme to sell stolen oil," and that

there was no "meeting of the minds" between LORCO and Mr. Lott. LORCO asserted that Mid States had not sued it for conversion, and it would be unfair to allow Mid States to amend its complaint to add this count post-judgment. Moreover, it asserted that, even if the court did allow a conversion claim to proceed, the evidence would not support such a claim because LORCO and FCC were bona fide purchasers for value and Mid States never proved the right to possession and ownership of the oil purchased by LORCO and FCC.

FCC also filed a response to the request to alter or amend the judgment. It argued that a post-judgment amendment of a complaint was prohibited, and Mid States cited no authority for "its novel request for a 'do over.'" FCC argued that allowing a further amendment to the complaint would "cause substantial prejudice" to FCC because, had FCC known that Mid States was seeking a conversion claim against it, it would have defended itself differently. Specifically, it would have brought a cross-claim for indemnification against Mr. Lott and ABC, presented different legal theories, more vigorously attacked Mid States' contention that there was no alternate source for the oil, and it would not have stipulated to certain evidence.

In its subsequent motion for leave to file a second amended complaint, Mid States requested that it be allowed to file a second amended complaint to "assert the existing Count I against all three defendants." It argued that the proposed amendment "does not add any new parties, claims or facts to this case," and the "factual allegations Mid States seeks leave of the [c]ourt to add to Count I against LORCO and FCC merely conform to the evidence presented at the trial and the [c]ourt's finding that all the oil that LORCO and FCC purchased from . . . [Mr.] Lott . . . through his sham company ABC's of Used Oil

Collection . . . was oil that [he] stole from Mid States." Mid States reiterated its position that LORCO and FCC were liable for both conversion and conspiracy to commit conversion based on the evidence and the court's findings. Moreover, it asserted, the factual basis for amending Count I of the amended complaint "was clearly and heavily litigated at trial."

In response, LORCO asserted that Mid States "failed to produce any justification for its failure to include [them] in a conversion count" in either its complaint or amended complaint. LORCO argued that it would be unfair and prejudicial to allow Mid States to proceed against them under a new cause of action, stating that it had "endured a significant disruption of their business and incurred substantial costs in the defense of Plaintiff's action . . . through discovery and a lengthy trial," and it would be unfair to require them to defend new proceedings. LORCO stated that, if it had initially been sued under a claim for conversion, it could have filed claims against Ms. Hilton, as well as the "ultimate purchasers" of the oil. LORCO could have collected records "and information gained that may well now be lost due to the nature of the industry and the difficulty of tracing the oil so long after the purchases were made." Furthermore, LORCO may have significantly changed their trial strategy and "may have concentrated upon learning who had authority at Mid States Oil to sell inventory." Accordingly, LORCO asserted, it would "be extremely unfair to require [them] to start over again defending a whole new claim."

On February 19, 2015, the court issued a written order denying Mid States' motions. The court stated:

> [H]aving concluded that, under the factual circumstances of this case, allowing the Plaintiff to amend the complaint after the entry of judgment, to name these two defendants in connection with the first count, for conversion, which was previously brought solely against Defendant Russell Lott, would cause unfair prejudice to the Defendants Lorco and FCC.

In its notice of appeal, Mid States noted that it was seeking review of the court's December 1, 2014, order dismissing its case against LORCO and FCC, as well as the court's February 19, 2015, order denying its motion to alter or amend, or for new trial, and denying its motion for leave to file a second amended complaint.

DISCUSSION

I.

Unjust Enrichment

Mid States' first argument is that the court erred in dismissing the unjust enrichment claim against LORCO and FCC because the evidence showed that they purchased the marketable, stolen oil from Mid States at "an approximately 30% discount to actual resale value," and then sold the oil at a "higher, end-user purchase price." Accordingly, it asserts, LORCO and FCC were unjustly enriched by: (1) receiving stolen oil; and (2) "profiting from the resale of that oil and not disgorging their ill-gained profits to Mid States." Mid States argues that, because a purchase of stolen goods does not take valid possessory rights to the goods, it would be inequitable for LORCO and FCC to "retain the profits from the resale of the stolen Mid States oil." Mid States asserts that the circuit court, in its unjust enrichment analysis, "failed to account for unjust profits that LORCO and FCC received – profits to which Mid States was legally entitled – from the resale of the stolen Mid States oil, which profits the law requires LORCO and FCC to disgorge."

LORCO contends that the circuit court "made a rational and reasonable decision based on the evidence to not hold LORCO or FCC liable for unjust enrichment." It stated that the court found that it paid fair market value for the used oil purchased and that "ordering them to pay for the oil a second time would be a hardship." It asserts that Mid States "failed to establish what benefit was conferred," that LORCO "had an appreciation or knowledge of the benefit," or that the retention by LORCO "of any benefit conferred under the circumstances would be inequitable." FCC similarly argues that Mid States "presented absolutely no evidence from which the trial court could have found in its favor" on any element of unjust enrichment.

The standard of review for this Court in reviewing an action that has been tried without a jury, is as follows:

> An appellate court reviews a trial court's factual findings for clear error, and reviews the trial court's legal conclusions *de novo*. *See* Md. R. 8-131(c) (An appellate court "will not set aside the judgment of [a] trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses."); *Ramlall v. MobilePro Corp.*, 202 Md. App. 20 (2011) ("The clearly erroneous standard does not apply to [a trial] court's legal conclusions, however, to which [an appellate court] accord[s] no deference and which [the appellate court] review[s] to determine whether [or not] they are legally correct."). The appellate court views the evidence in the light most favorable to the prevailing party, *City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 676 (2007), and resolves all evidentiary conflicts in the prevailing party's favor. *First Union Nat'l Bank v. Steele Software Sys. Corp.*, 154 Md. App. 97, 107 n.1 (2003), *cert. denied*, 380 Md. 619 (2004).

Brault Graham, LLC v. Law Offices of Peter G. Angelos, P.C., 211 Md. App. 638, 659-60 (quoting *Dynacorp Ltd. v. Aramtel Ltd.*, 208 Md. App. 403, 451 (2012)), *cert. denied*, 434 Md. 312 (2013).

In reviewing a claim for unjust enrichment, it is important to keep in mind that we do not address "'enrichment *per se*,'" but rather, the requirement that a defendant make restitution arises only if there has been "'**UNJUST** enrichment.'" *Royal Investment Group, LLC v. Wang*, 183 Md. App. 406, 439-40 (2008) (quoting *Alternatives Unlimited, Inc. v. New Baltimore City Bd. of School Comm'rs*, 155 Md. App. 415, 500 (2004)), *cert. dis'd*, 409 Md. 413 (2009). A claim of unjust enrichment consists of the following three elements:

1. A benefit conferred upon the defendant by the plaintiff;
2. An appreciation or knowledge by the defendant of the benefit; and
3. The acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.

Hill v. Cross Country Settlements, LLC, 402 Md. 281, 295 (2007) (citation and quotations omitted). It is the plaintiff's burden to "establish that the defendant holds plaintiff's money and that it would be unconscionable for him to retain it." *Plitt v. Greenberg*, 242 Md. 359, 364 (1966).

Here, Mid States failed to establish the first element, that a benefit was conferred upon LORCO and FCC. The circuit court properly rejected the argument that LORCO and FCC were enriched by receiving the wholesale used oil for which they paid fair market value.[14]

[14] The evidence was that appellees purchased the oil for approximately $1.41 a gallon. There was evidence that Mid States had paid 80 to 90 cents per gallon to purchase the oil, and that LORCO had paid more than fair market value given the reduced transportation costs involved in obtaining the oil for ABC.

On appeal, Mid States does not appear to challenge that ruling. Rather, it argues that appellees re-sold the oil for a profit, and the circuit court failed to account for these "unjust profits." This alleged failure by the circuit court likely was due to the failure of Mid States to make this argument below. Counsel's argument below, as demonstrated by the damages requested, in the amount of the total value of the oil that was stolen, not the profits that LORCO and FCC received, show that the current claim is appellate afterthought. Because the argument raised on appeal was not raised below, it is not preserved for this Court's review. *Robinson v. State*, 404 Md. 208, 216 (2008) ("An appellate court ordinarily will not consider any point or question unless it plainly appears by the record to have been raised in or decided by the trial court.") (citation and quotation omitted). *Accord Nalls v. State*, 437 Md. 674, 691 (2014) ("[I]f a party fails to raise a particular issue in the trial court . . . the general rule is that he or she waives that issue on appeal."). *See also Weatherly v. Great Coastal Express Co.*, 164 Md. App. 354, 386 (2005) ("[Appellant] may not be heard to complain now about a ruling the court was never asked to make.").

Even if the issue was properly before us, we would find it to be without merit. As LORCO and FCC note, there was no evidence of any profit for resale of the oil. Although Mid States presented evidence that it had sold processed oil to end-users at $1.96 per gallon, there was no evidence presented regarding the quality of the oil stolen or the usual operational, testing, and processing costs incurred in re-selling used oil.[15]

[15] Although Mid States asserted that all of the used oil stolen by Mr. Lott was "shippable" or "on spec" oil, despite testimony that the quality of oil could (continued…)

Mid State's failure to prove the first element of unjust enrichment, if the issue was preserved, is sufficient to reject a claim of unjust enrichment. The circuit court properly found in favor of LORCO and FCC on this claim.

II.

Motion to File Amended Complaint

Mid States next contends that the circuit court abused its discretion in denying its post-trial motion for leave to file a Second Amended Complaint.[16] It asserts that the court's findings that all of the oil LORCO and FCC purchased from Mr. Lott was stolen from Mid States was "tantamount to a finding that LORCO and FCC committed conversion," and therefore, Mid States sought a "technical amendment" to assert the conversion claim, which initially was alleged against only Mr. Lott, against LORCO and FCC. It asserts that allowing it to file the Second Amended Complaint would not have caused unfair prejudice because the requested amendment did not add any new facts, claims, or parties, and because LORCO and FCC did not call any witnesses or present a defense other than an "attack on Mid States' evidence," there is "no legitimate basis to believe that they would have

not be known, the evidence showed that five truckloads of oil purchased from ABC were returned because they were contaminated.

[16] Although Mid States presents its question as whether the court abused its discretion in denying its "motion to alter or amend or for a new trial and its associated motion for leave to file the Second Amended Complaint," its entire argument relates to whether the court abused its discretion in denying its motion for leave to file a Second Amended Complaint. Implicitly, it recognizes that there was no basis to grant the motion to alter or amend or for a new trial if leave to file an amended complaint was not granted. Thus, we confine our analysis to the ruling on the motion for leave to file a Second Amended Complaint.

defended the trial any differently" had the conversion claim initially been pled against them. Moreover, it asserts that the requested Second Amended Complaint merely sought "to restructure Mid States' previous allegations of conversion against LORCO and FCC contained in its Conspiracy to Commit Conversion Count against both LORCO and FCC in the earlier Amended Complaint." It concludes: "Given the purely technical and non-prejudicial nature of Mid States' proposed post-trial amendment in this particular case, the [court's] denial of leave to amend based solely on the fact that Mid States sought leave to amend after the conclusion of the trial was an abuse of discretion" and "amounted to preclusive punishment for what was, at worst, a 'formal slip' in pleading."

LORCO contends that the circuit court properly exercised its discretion when it denied Mid States' motion to file its Second Amended Complaint after judgment had been rendered. LORCO asserts that it would have "altered [its] defense strategy completely" if it had known it was going to be sued in conversion, noting that a defense of contributory negligence or assumption of the risk could have been explored, and that Mid States has not given any excuse for not amending its complaint earlier.

FCC similarly argues that the circuit court's denial of Mid States' motion to amend its complaint was not an abuse of discretion, stating that the Maryland Rules "do not sanction post-trial amendments to add an unpled cause[] of action" after judgment has been entered. It asserts that permitting Mid States to add a count after judgment was rendered would have been "highly prejudicial" to FCC, noting that if a conversion claim had been alleged against it prior to trial, it would have done things differently. In that regard it asserts that it "would certainly have taken a different strategy with respect to discovery

related to Mid States' ability to verify that the oil purchased by FCC in fact belonged to Mid States," noting that it would have "more vigorously pursued discovery on the source of ABC's oil" and "attacked Mid States' contention that there was no alternate source for the oil."

Maryland Rule 2-341(b) addresses amendments filed later than 30 days before trial. It provides as follows:

> **With leave of court.** A party may file an amendment to a pleading after the dates set forth in section (a) of this Rule only with leave of court. If the amendment introduces new facts or varies the case in a material respect, the new facts or allegations shall be treated as having been denied by the adverse party. The court shall not grant a continuance or mistrial unless the ends of justice so require.

Md. Rule 2-341(b).

The determination whether to grant leave to amend pleadings rests within the sound discretion of the trial court. *Bord v. Baltimore Cnty.*, 220 Md. App. 529, 565 (2015); *Hartford Accident & Indem. Co. v. Scarlett Harbor Assoc. Ltd. P'ship*, 109 Md. App. 217, 248 (1996), *aff'd on other grounds*, 346 Md. 122 (1997). "'There is an abuse of discretion where no reasonable person would take the view adopted by the [circuit] court, or when the court acts without reference to any guiding rules or principles.'" *Bord*, 220 Md. App. at 566 (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

Mid States does not cite, nor are we aware of, any Maryland authority that supports its contention that a court abuses its discretion in refusing to allow an amended complaint to be filed after judgment has been rendered. Indeed, the only precedent we found suggests to the contrary. *See Falcinelli v. Cardascia*, 339 Md. 414, 429-30 (1995) (assuming that

"Rule 2-341 does not provide for the grant of leave to amend after a verdict has been returned").

In any event, it is clear that amendments that result in prejudice to the opponent should not be allowed. *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673 (2010); *Staub v. Staub*, 31 Md. App. 478, 480, *cert. denied*, 278 Md. 735 (1996); *E.G. Rock, Inc. v. Danly*, 98 Md. App. 411, 429 (1993). *Accord Bord*, 220 Md. App. at 566 (no abuse of discretion in denying motion for leave to amend where allowing new constitutional claim would result in undue delay and prejudice).

Here, the court found that granting leave to amend, in the form of adding an unpled count, after judgment had been entered, would have been highly prejudicial. Given that LORCO and FCC were deprived of the opportunity to adjust their discovery and trial strategies based on a conversion claim, we are hard-pressed to find that decision to be erroneous. We perceive no abuse of discretion by the circuit court in denying the motion for leave to file a second amended complaint.

III.

Civil Conspiracy to Commit Conversion

Mid States next argues that the circuit court erred in dismissing the conspiracy to commit conversion claim against LORCO. It asserts that the court "misapplied its own findings of fact . . . to Maryland law imputing knowledge based on deliberate disregard of facts." Mid States asserts that an agreement to engage in a transaction that carries an unlawful purpose constitutes a civil conspiracy, and knowledge of the unlawful purpose can be shown by "actual knowledge" of the purpose or a "willful refusal to know." It

contends that, although the court "correctly identified the appropriate 'deliberate indifference' legal principle," it "committed legal error in applying the relevant factual findings to the law." In support, it relies on the court's finding that Mr. Patterson's testimony was credible, i.e., that he believed that ABC was "shady," and although he expressed his suspicions to his supervisor, LORCO ignored his concerns and continued purchasing oil from ABC.

LORCO contends that the circuit court properly dismissed the conspiracy to commit conversion claim against it. It asserts that the circuit court properly found that it was not "'deliberately ignorant' of the fact that the oil was allegedly stolen," stating that the evidence showed that, "in virtually every aspect, the business [it] conducted with ABC was normal" for LORCO. Under these circumstances, and where there was "absolutely no evidence to indicate that anyone at [LORCO] believed they were purchasing oil stolen from Mid States," or that there was "any meeting of the minds between" LORCO and Mr. Lott, the court properly dismissed Mid States' conspiracy to commit conversion claim.

Recently, the Court of Appeals explained:

> Civil conspiracy requires proof of three elements: "1) A confederation of two or more persons by agreement or understanding; 2) [S]ome unlawful or tortious act done in furtherance of the conspiracy or use of unlawful or tortious means to accomplish an act not in itself illegal; and 3) Actual legal damage resulting to the plaintiff." *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 154 (2007) (citation and internal quotation marks omitted). Civil conspiracy may be proved by circumstantial evidence because "in most cases it would be practically impossible to prove a conspiracy by means of direct evidence alone." *Hoffman v. Stamper*, 385 Md. 1, 25 (2005) (citation and internal quotation marks omitted). More specifically, a civil conspiracy
>
> > may be established by inference from the nature of the acts complained of, the individual and collective interest of the

> alleged conspirators, the situation and relation of the parties at the time of the commission of the acts, the motives which produced them, and all the surrounding circumstances preceding and attending the culmination of the common design.

Windesheim v. Larocca, 443 Md. 312, 347 (2015) (quoting *Hoffman*, 385 Md. at 25-26). A critical element to a conspiracy claim is establishing "'a unity of purpose or a common design and understanding, or a meeting of the minds in an unlawful arrangement.'" *Cavalier Mobile Homes, Inc. v. Liberty Homes, Inc.*, 53 Md. App. 379, 386 (quoting *American Tobacco Co. v. United States*, 328 U.S. 781, 810 (1946)), *cert. denied*, 295 Md. 736 (1983). Although a case may be entirely circumstantial, "'the court must be especially vigilant to insure that liberal modes of proof do not become the pretext for unfounded speculation.'" *Id.* at 387 (quoting *Overseas Motors, Inc. v. Import Motors Ltd., Inc.*, 375 F. Supp. 499 (E.D. Mich. 1974)).

Mid States contends that, because the court found credible Mr. Patterson's testimony that he expressed his concerns to LORCO about ABC's "shady" operation, and because LORCO continued to do business with ABC, LORCO was deliberately ignorant that the oil was stolen, and therefore, it was liable for civil conspiracy to commit conversion. It asserts that the court's reliance on industry practice and the lack of theft of this type in the industry was irrelevant to the issue of deliberate ignorance.

Initially, we note that Mid States has not cited any Maryland case specifically holding that "deliberate ignorance" of an unlawful purpose is sufficient to show a civil

conspiracy.[17] In any event, even if it is sufficient we are not persuaded by the argument that the court's finding that Mr. Patterson was credible required it to find that LORCO was deliberately ignorant of the fact that the oil was stolen when there was significant evidence to the contrary, i.e., that the industry standard was not to be aware of the source of the oil and that theft of this scale was unheard of in the industry.

Here, the evidence established that ABC was operating in the Curtis Bay area, near Mid States and Petroleum Management. The oil was picked up by marked "LORCO" trucks, during daylight hours. It was not unusual for LORCO to have clients who provided tank loads of oil. Mr. Hammond found ABC listed on the internet, and it followed LORCO's usual procedure of testing the oil before agreeing to purchase from ABC. Darnell, i.e., Mr. Lott, contacted LORCO by telephone to sell the oil, which was a normal procedure in the industry. Mr. Hammond did not visit customers. Mr. Hammond had to competitively bid for the oil, which was usual practice in the industry. Mr. Hammond stated that it is normal in the industry for a supplier not to divulge the source of its oil for fear of being underbid. Aside from Mr. Patterson, none of the other drivers thought the ABC pick-ups were abnormal. Both Mr. Bock and Mr. O'Hara testified that theft of this type was unheard of.

Under these circumstances, and given the industry practice not to disclose the source of oil, and that LORCO paid fair market value for the oil, the court properly found

[17] The cases cited by Mid States, *Ellerin v. Fairfax Sav., F.S.B.*, 337 Md. 216, 232-33 (1995), for the proposition that reckless indifference is sufficient to hold a person liable, dealt with fraud, not civil conspiracy, and *Owens-Illinois v. Zenobia*, 325 Md. 420, 462 (1992), punitive damages in a products liability case.

that there was no evidence of a "meeting of the minds" between LORCO and Mr. Lott to steal oil, a necessary element for a civil conspiracy claim. Accordingly, the court did not err in concluding that LORCO was not liable for civil conspiracy.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.