UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 855

September Term, 2015

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IRON HORSE FARMS, INC.

v.

RAYLYN FARMS, INC.

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

JJ.

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Opinion by Reed, J.

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Filed: April 10, 2017

This is an appeal primarily concerning the Circuit Court for Frederick County's exercise of personal jurisdiction over Canadian-based Iron Horse Farms, Inc. ("Iron Horse") in a breach of contract suit filed by Frederick, Maryland-based Raylyn Farms, Inc. ("Raylyn"). In 2011, Iron Horse entered into an oral contract with Raylyn regarding the purchase—and subsequent boarding and care—of two show jumping horses that were imported from Europe. Ultimately disappointed with one of the horses, Iron Horse backed out of the deal and demanded a refund.

Two years after the deal fell through, a dispute arose regarding which party was financially responsible for the money Raylyn spent on boarding and care for the horses while looking for another buyer, and Raylyn subsequently filed suit to recoup that money. In response, Iron Horse filed a motion to dismiss for lack of personal jurisdiction and, alternatively, for *forum non conveniens*. After the trial court denied the motion, Iron Horse counterclaimed for breach of contract for the amount that Raylyn was paid for the horse by a third party. The case then went to a jury.

After a five-day trial, the jury returned a verdict in favor of both Raylyn's breach of contract claim and Iron Horse's breach of contract counterclaim. Iron Horse filed a post-trial motion, arguing lack of personal jurisdiction once again and, in the alternative, asking the trial court to reduce the judgment against it. Raylyn opposed, filing a conditional motion to revise the judgment in favor of Iron Horse. Ultimately, Iron Horse's post-trial motion was denied, and, therefore, Raylyn's conditional motion was never reached by the trial court.

Having noted a timely appeal, Iron Horse presents two questions for our review, which we rephrase as follows:[1]

1. Did the trial court err in exercising personal jurisdiction over Iron Horse?

2. Did the trial court err by submitting the issue of Raylyn's mitigation of damages to the jury?

In addition, Raylyn noted a timely cross-appeal. It presents a single question for our review, which we also rephrase:[2]

1. Did the trial court err by not reducing the jury's award to Iron Horse from $120,000 to $40,000?

Finding partial error with respect to Iron Horse's second question, we shall affirm in part and modify in part.

## FACTUAL AND PROCEDURAL BACKGROUND

Iron Horse is a horse farm and breeding operation based in Caledon, Ontario, Canada, and owned and operated by the Aziz family. Raylyn, also a horse farm, is based

[1] Iron Horse's questions were presented exactly as follows:

1. Whether the trial court erred in exercising personal jurisdiction over a foreign defendant?

2. Whether the trial court erred in failing to rule as a matter of law that a plaintiff had fully and completely mitigated its damages?

[2] Raylyn's question was presented exactly as follows:

1. Did Court err by not reducing the jury's award to Iron Horse Farms, Inc. from $120,000 to $40,000?

in Frederick, Maryland, owned and operated by the Little family, and incorporated under the laws of this State.

In August 2011, Karina Aziz, manager and purchaser for Iron Horse, reached out to Raylyn regarding the purchase of a "Baby Green" or "Pre-Green Fancy Hunter."[3] The next month, the parties entered into an oral contract for the purchase of a dark bay stallion named "Perfect"[4] and the boarding of another horse named "McCuan Mario" that was purchased around the same time. Because the horses were to be imported from Europe, Gregory Aziz, President of Iron Horse (and father of Karina), then contacted Raylyn for copies of Perfect's passport documents and to request other veterinary services to be arranged by Raylyn.

On September 9, 2011, Raylyn offered Perfect for sale to Iron Horse, F.O.B. Holland, for $263,800, and provided instructions to have the money wired to Raylyn Farms. Four days later, Iron Horse accepted the offer by completing a wire transfer of the purchase price to Raylyn's local branch of PNC Bank, in Frederick, Maryland.

On September 27, 2011, Perfect arrived at Rigbie Farm, Inc., in Darlington, Maryland, to be quarantined for 30 days, as required by law. According to Raylyn, Rigbie

[3] According to the United States Equestrian Federation, "A Pre-Green Hunter is a horse of any age in his first or second year of showing over fences set at 3'0" or 3'3" in height that has never competed over fences set at 3'6" in height or higher in Hunter or Hunter/Jumping Seat Equitation classes or sections held at a USEF or Equine Canada Licensed competition in North America." USEF RULEBOOK 847 (2016), available at https://www.usef.org/documents/ruleBook/2016/17-HU.pdf.

[4] At various times in the record, the horse is also referred to as "DeLaurier" and "Per Se," but for the purposes of this appeal, the horse will be referred to as "Perfect."

Farm was specifically chosen by Mr. Aziz so that Perfect could immediately begin training at Raylyn's facilities in Frederick. During the quarantine period, Perfect received veterinary care and inoculations and was subject to standard testing procedures regarding the importation of horses. Pursuant to law, the testing procedures were supervised by a veterinarian employed by the Maryland Department of Agriculture. In all, Iron Horse was billed $2,475 by Rigbie Farm and $1,200 by the Maryland Department of Agriculture for quarantine-related services. Both of these charges were subsequently paid in full.

At the end of the quarantine period, on October 27, 2011, Perfect was transported to Raylyn by a representative thereof, at Iron Horse's request. From that day until November 12, 2011, when Iron Horse requested that Raylyn transfer Perfect to Raylyn's Wellington, Florida facility, Perfect was fed, boarded, and cared for by Raylyn employees. Shortly after Perfect's transfer to Florida, Iron Horse demanded a refund because Natalie Aziz, Mr. Aziz's other daughter and Perfect's intended rider, rode Perfect several times and decided she did not want to compete with Perfect. Not wanting to disappoint an important client, Raylyn agreed to refund the purchase price, but requested time to market and sell Perfect first. It was at this point that the relationship between Iron Horse and Raylyn began to sour and their recollection of the facts diverge.

According to Raylyn, "[t]he parties agreed that Iron Horse would be responsible for all expenses incurred by Raylyn during the marketing campaign." According to Iron Horse, however, this agreement never happened. Iron Horse claims that "it never agreed to be responsible for the fees and expenses and for boarding Perfect[,] having always demanded a full refund of its purchase price." Either way, "[f]or a number of reasons," as Iron Horse

vaguely puts it, "Raylyn took significantly longer than had been anticipated to sell the horse." According to Raylyn, it received several offers to buy Perfect, but Mr. Aziz informed Raylyn that Iron Horse would not accept any offer to buy Perfect for less than $300,000. This would go on for almost two years, during which time Raylyn boarded and cared for not only Perfect, but also McCuan Mario, regularly invoicing Iron Horse for those services. Ultimately, Raylyn incurred a total of $165,655.34 in boarding- and care-related costs—$163,132.59 for Perfect and $2,522.75 for McCuan Mario—for which Iron Horse refused to pay.

In June 2013, Raylyn sued Iron Horse in the Circuit Court for Frederick County for breach of contract regarding the boarding and care of the two horses. Iron Horse answered the suit, seeking to have the case dismissed for lack of personal jurisdiction and, alternatively, based on the doctrine of *forum non conveniens*.

Several months later, Raylyn perfected a livestock lien, pursuant to Maryland law, in an attempt to recoup its losses from Perfect. Raylyn then sent Iron Horse a Notice of Lien and a letter informing it that if the outstanding bill was not paid after 30 days, Raylyn would sell Perfect at a public livestock auction on November 1, 2013. According to Raylyn, it also advertised the sale in a local newspaper and "emailed Mr. Aziz directly 'to be sure' that he had notice of the auction."

On November 1st, Raylyn did in fact take Perfect to a horse auction at Eyler Stables in Thurmont, Maryland. At the final call for bids, Raylyn bid $40,000 for the horse, which was ultimately the winning bid. Two months later, Raylyn sold Perfect to a third-party buyer, Ms. Stacy Schaefer, for $120,000. Iron Horse, for its part, claims that it was aware

that Perfect had been sold at the auction, but that Raylyn refused to provide any information regarding the auction or the buyer. According to Iron Horse, "[i]t was not until the eve of trial and following the trial court's grant of a motion to compel that Iron Horse learned that Raylyn bought perfect at the auction and immediately sold it to Stacy Schaefer."

After a hearing, the trial court denied Iron Horse's motion to dismiss on July 21, 2014. As a result, Iron Horse filed a counterclaim on August 14, 2014, alleging breach of contract and violation of the Maryland Consumer Protection Act ("MCPA"). When the case eventually went to trial, Raylyn sought the total fees and expenses incurred for the care of Perfect, less the $40,000 from the sale at the auction. Iron Horse, on the other hand, claimed that Raylyn failed to mitigate its damages because it did not credit Iron Horse with the $120,000 it received from the sale to Ms. Schaefer. The trial court disagreed with Iron Horse's argument and, thus, allowed the jury to consider the entire amount sought by Raylyn. After a five-day jury trial, the jury returned verdicts for both sides, awarding Raylyn $163,132.59 for the board and care of Perfect and $2,522.75 for the board and care of McCuan Mario, and awarding Iron Horse $120,000 for its breach of contract claim against Raylyn.

Iron Horse filed a post-trial motion reasserting its personal jurisdiction argument and, alternatively, asking the trial court to reduce the judgment entered against it to $3,132.59—the total cost of Perfect's care, less the $40,000 Raylyn paid at auction and the $120,000 Raylyn received from Ms. Schaefer. In response, Raylyn opposed the motion and filed a conditional motion to revise the $120,000 judgment in favor of Iron Horse. The trial

court denied Iron Horse's motion and, therefore, did not reach the conditional motion to revise. This appeal followed.

## DISCUSSION

### I. PERSONAL JURISDICTION

### A. Parties' Contentions

Iron Horse argues that, because it is a Canadian company, "the record is devoid of any facts sufficient to permit a Maryland court to properly exercise either specific or general personal jurisdiction over [it]." It further argues that the trial court's exercise of personal jurisdiction was constitutionally unreasonable because (1) "Maryland has no particular interest in exercising personal jurisdiction over Iron Horse in this case," (2) the exercise of personal jurisdiction "does not trigger any particularized Maryland legal issue," and (3) Raylyn could have brought the suit in either Canada or Florida.

Raylyn disagrees, and, after implicitly conceding that the trial court lacked general jurisdiction over Iron Horse in this case, argues that the events surrounding the disputed transaction establish the requisite "minimum contacts" to satisfy the "traditional notions of fair play and substantial justice" contemplated by Maryland's long-arm statute.

### B. Standard of Review

"The defense of lack of personal jurisdiction ordinarily is collateral to the merits and raises questions of law." *Bond v. Messerman*, 391 Md. 706, 718 (2006). Accordingly, "[a]n appellate court reviews *de novo* a trial court's legal conclusion as to whether or not the trial court may exercise personal jurisdiction over a defendant." *Dynacorp Ltd. v.*

*Aramtel Ltd.*, 208 Md. App. 403, 477 (2012) (citing *Himes Assocs., Ltd. v. Anderson*, 178 Md. App. 504, 526 (2008)).

**C. Analysis**

The Court of Appeals has explained the process of determining whether a foreign defendant is subject to personal jurisdiction under Maryland's long-arm statute—Md. Code (1974, 2013 Repl. Vol.), § 6-103 of the Courts and Judicial Proceedings Article ("CJP")—as follows:

> Determining whether a Maryland court may exercise jurisdiction over an out-of-state defendant entails dual considerations. First, we consider whether the requirements of Maryland's long-arm statute are satisfied. Second, we consider whether the exercise of personal jurisdiction comports with the requirements imposed by the Due Process Clause of the Fourteenth Amendment. Nevertheless, "[w]e have construed our long-arm statute to authorize the exercise of personal jurisdiction to the full extent allowable under the Due Process Clause."

*CSR, Ltd. v. Taylor*, 411 Md. 472-473 (2009) (citations and footnotes omitted). "Because [the Court of Appeals] ha[s] consistently held that the reach of the long arm statute is coextensive with the limits of personal jurisdiction delineated under the [D]ue [P]rocess [C]lause of the Federal Constitution, our statutory inquiry merges with our constitutional examination." *Beyond Systems, Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 18, 22 (2005).

There is no doubt that the first consideration is satisfied here. CJP § 6-103(b)(1) provides, "A court may exercise personal jurisdiction over a person, who directly or by an agent . . . [t]ransacts any business or performs any character of work or service in the

State[.]" (emphasis added). By contracting with Raylyn to purchase Perfect, Iron Horse—by anyone's definition—transacted business in the State. Accordingly, we move to the second consideration. As this Court has succinctly explained:

> In order to pass constitutional muster under the Due Process Clause, the defendant must have "minimum contacts" with Maryland such that our exercise of jurisdiction "does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945) (citation omitted). "[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities" within Maryland. *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958). While the "nature" of the defendant's contacts with Maryland are important, *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416–17, 104 S.Ct. 1868, 1872–73, 80 L.Ed.2d 404 (1984), we must additionally consider "the relationship among the defendant, the forum, and the litigation," *Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S.Ct. 2569, 2580, 53 L.Ed.2d 683 (1977), to determine whether the defendant "should reasonably anticipate being haled into court" in Maryland. *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980).
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> Generally, there are two types of jurisdiction: "specific" and "general." "If the defendant's contacts with [Maryland also] form the basis for the suit," then Maryland courts have specific jurisdiction. *Beyond Systems*, 388 Md. at 26, 878 A.2d 567. "If the defendant's contacts . . . are not the basis for the suit," then the defendant must have "continuous and systematic" contacts with Maryland such that we may exercise general jurisdiction. *Id.* at 22, 878 A.2d 567 (citations omitted).

*MaryCLE, LLC v. First Choice Internet, Inc.*, 166 Md. App. 481, 497-99 (2006) (footnotes omitted) (alterations in original).

Here, because Raylyn does not genuinely contend that the trial court had general jurisdiction over Iron Horse, we focus primarily on whether or not Iron Horse's contacts with the State subjected it to specific jurisdiction in Maryland. To determine whether a defendant's contacts sufficiently establish specific personal jurisdiction, the Court of Appeals has provided the following guidance:

> In determining whether specific jurisdiction exists, we consider (1) the extent to which the defendant has purposefully availed itself of the privilege of conducting activities in the State; (2) whether the plaintiffs' claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.

*Beyond Systems*, 388 Md. at 26.

With regard to the first factor, the U.S. Supreme Court explained, in the seminal case of *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), that

> [t]his "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts, or of the "unilateral activity of another party or a third person[.]" Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant *himself* that create a "substantial connection" with the forum State. Thus where the defendant "deliberately" has engaged in significant activities within a State, or has created "continuing obligations" between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits and protections" of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.
>
> Jurisdiction in these circumstances may not be avoided merely because the defendant did not *physically* enter the forum State. Although territorial presence frequently will enhance a potential defendant's affiliation with a State and

> reinforce the reasonable foreseeability of suit there, it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are "purposefully directed" toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.

*Burger King*, 471 U.S. at 475-76 (citations and footnotes omitted) (emphasis in original).

Turning to the facts of this case, we are satisfied that the first and second considerations are satisfied, and that Iron Horse purposefully availed itself of the privilege of conducting activities in the State. An examination of the record shows that (1) Iron Horse initiated the contact between the two companies and had dealt with Raylyn, a Maryland corporation, in at least three transactions, (2) Perfect and Mario McCuan were primarily boarded and cared for in Maryland, (3) Iron Horse was regularly sent invoices from Maryland and wired money to Raylyn's PNC Bank in Maryland, (4) Iron Horse chose to quarantine Perfect in Maryland, (5) Iron Horse paid the State of Maryland for State-licensed veterinarians during the quarantine period pursuant to state law, (6) Raylyn boarded and cared for Perfect while marketing the horse, and (7) Raylyn sent Iron Horse notice of the livestock lien on Perfect, perfected pursuant to Maryland law.

Iron Horse makes much of the fact that nobody from Iron Horse traveled to Maryland in connection with the purchase of Perfect and that much of the negotiations took place in Florida, but we are unpersuaded. The fact remains that it was Iron Horse that initiated the deal with Raylyn, a company incorporated in the State of Maryland that Iron Horse had transacted business with before, and it would strain reason to consider the deal

as the type of "'random,' 'fortuitous,' or 'attenuated' contacts" that would preclude jurisdiction.

As to the third consideration, constitutional reasonableness, our ultimate goal is "[t]o determine whether the exercise of personal jurisdiction would . . . offend traditional notions of fair play and substantial justice." *Himes*, 178 Md. App. at 532. "The relevant factors include: the burden on the defendant; the interests of the forum State; the plaintiff's interest in obtaining relief; the interstate judicial system's interest in obtaining the most efficient resolution of controversy; and the shared interest of the several states in furthering fundamental substantive social policies." *Camelback Ski Corp. v. Behning*, 312 Md. 330, 342 (1988).

Iron Horse argues that the factors we just outlined weigh against Maryland's exercise of personal jurisdiction. Primarily focusing on the second and fourth factors, Iron Horse asserts that "Maryland has no particular interest in exercising jurisdiction over Iron Horse in this case[,]" and that "[Raylyn's] interest could have been protected by bringing this action in another jurisdiction like . . . Florida," where both parties show and compete in the Winter Equestrian Final every year.[5] We are not persuaded by either of these arguments.

Contrary to Iron Horse's contention, Maryland indeed has an interest in this case, as the plaintiff, Raylyn, is based in Frederick. As we have explained, "Maryland has a significant interest in protecting the rights of its residents to receive payment under . . .

[5] Iron Horse describes the Winter Equestrian Festival as an annual competition that "takes place over a period of 12 weeks between January and April in Wellington, Florida."

contracts performed at least in part in Maryland." *Himes*, 178 Md. App. at 532. Moreover, Perfect was primarily boarded in Maryland, McCuan Mario was exclusively boarded in Maryland, and Iron Horse was billed from Maryland. Therefore, the second factor—the interests of the forum State—actually weighs *in favor* of Maryland's exercise of personal jurisdiction over Iron Horse, *not against* it.

Likewise, the fourth factor also weights in favor of Maryland's exercise of personal jurisdiction, as the vast majority of the relevant events took place in Maryland and Maryland is, geographically, more central to the two horse farms than Florida. In addition, Raylyn clearly has, as the third factor asks, a significant interest in obtaining relief for the costs it incurred after Iron Horse decided it no longer wanted Perfect. Finally, aside from simply asserting that it is a Canadian-based company, Iron Horse does not point to any relevant fact that touches upon how it is particularly burdened by Maryland's exercise of personal jurisdiction. Therefore, we see no reason why the first factor would weigh against jurisdiction in Maryland, either.

For the aforementioned reasons, the factors for constitutional reasonableness weigh against Iron Horse's position, thus satisfying the final element for personal jurisdiction in Maryland. Accordingly, we hold that the trial court did not err in exercising personal jurisdiction over Iron Horse in this case.

## II. MITIGATION OF DAMAGES

### A. Parties' Contentions

Iron Horse argues that the trial court erred in allowing the jury to consider whether Raylyn had mitigated its damages because that was a legal determination for the court to

make, not the jury. Iron Horse contends that the trial court, itself, should have determined mitigation in Iron Horse's favor because Raylyn did not credit Iron Horse with the additional $120,000 it received through the subsequent third-party sale, constituting a "text book case of double dipping."

Raylyn argues that the minimization of damages is not a defense to an action for breach of contract. Rather, Raylyn contends, the doctrine serves to reduce the amount of claimed damages that a plaintiff would have been entitled to if he failed to use "reasonable efforts to minimize a loss," which is an issue that is properly decided by a jury.

**B. Standard of Review**

"[W]hen it is determined that the doctrine [of mitigation of damages] applies, the question before the Court becomes whether the plaintiff took reasonable steps to minimize the amount or extent of his or her damages." *Schlossberg v. Epstein*, 73 Md. App. 415, 422 (1988). Thus, the issue of mitigation is "ordinarily a jury issue." *Id.* Nevertheless, in this case, Iron Horse made a motion for judgment as to mitigation, arguing before the trial court that, as a matter of law, between the $40,000 auction sale and the $120,000 sale to Ms. Schaefer, Raylyn had fully mitigated its approximately $160,000 in damages. The trial court denied that motion.

Contributory negligence is analogous here, because, like mitigation of damages, it is "[o]rdinarily . . . a question of fact for the jury to decide." *McQuay v. Schertle*, 126 Md. App. 556, 569 (1999). We have explained that "[o]nly when no reasonable person could find in favor of the [nonmoving party] on the issue of contributory negligence should the trial court take the issue from the jury." *Id.* Because mitigation is ordinarily a jury issue as

well, neither should it be taken from the jury unless no reasonable person could find for the nonmoving party. *See also Washington Metro. Area Transit Auth. v. Djan*, 187 Md. App. 487, 492 (2009) (explaining that, in a civil case, "[i]f there is even a slight amount of evidence that would support a finding by the trier of fact in favor of the [nonmoving party], the motion for judgment should be denied." (quoting *Waldt v. Univ. of Md. Medical System Corp.*, 181 Md. App. 2117, 270 (2008) (citation omitted))).

**C. Analysis**

In *Schlossberg, supra,* we provided a detailed explanation of the mitigation (a.k.a. "minimization") of damages doctrine:

> The doctrine of minimization of damages is not a defense to a plaintiff's cause of action, whether that cause of action be one based in negligence or contract; rather, it is a "disability on (or a 'no right' to) recovery of reasonably avoidable damages." 22 Am.Jur.2d Damages § 30. The doctrine serves to reduce the amount of damages to which a plaintiff might otherwise have been entitled had he or she used all reasonable efforts to minimize the loss he or she sustained as a result of a breach of duty by the defendant. *Sergeant Co. v. Pickett*, 285 Md. 186, 203, 401 A.2d 651 (1979); *M & R Builders, Inc. v. Michael*, 215 Md. 340, 354-55, 138 A.2d 350 (1958); *Garbis v. Apatoff,* 192 Md. 12, 20, 63 A.2d 307 (1949); *Groh v. South,* 119 Md. 297, 301, 86 A. 1036 (1913). Because it is aimed primarily at benefitting a defendant, the burden of proving that a loss could have been avoided by the exercise of reasonable effort on the part of the plaintiff is upon the defendant, whose breach of duty caused the damages suffered by the plaintiff. *Sergeant Co.*, 285 Md. at 203, 401 A.2d 651; *M & R Builders,* 215 Md. at 356, 138 A.2d 350. Thus, it is clear that the doctrine does not place any duty on a plaintiff or create an affirmative right in anyone. 22 Am.Jur.2d Damages § 30. *See* Restatement 2d Torts § 918, Avoidable Consequences, Comment a, where it is said:

> . . . It is not true that the injured person has a duty to act, nor that the conduct of the tortfeasor ceases to be a legal cause of the ultimate harm; but recovery for the harm is denied because it is in part the result of the injured person's lack of care, and public policy requires that persons should be discouraged from wasting their resources, both physical and economic.
>
> Thus, in order for the doctrine of minimization of damages to apply, there must first have been a breach of duty on the part of the defendant, *Sergeant Co.*, 285 Md. at 203, 401 A.2d 651, who then raises an issue as to the propriety of the losses or damages claimed by the plaintiff.

*Schlossberg*, 73 Md. App. at 421–22.

On June 6, 2013, Raylyn filed a Complaint against Iron Horse, alleging that "[Iron Horse] has breached the oral contract by refusing to pay for boarding, training, and veterinary costs [Raylyn] has incurred as a result of attempting to sell 'Perfect[ ]' . . . and car[ing] . . . for 'McCuan Mario' on behalf of and for the benefit of [Iron Horse]." In response, Iron Horse did, indeed, "raise[ ] an issue as to the propriety of the losses or damages claimed by" Raylyn. *Schlossberg*, 73 Md. App. at 422. Clearly, the procedural history and facts of this case are such that the doctrine of mitigation of damages applies.[6]

[6] We reject Raylyn's argument that the doctrine of mitigation of damages does not apply because "both parties ha[d] an equal opportunity to mitigate damages." *Wartzman v. Hightower Prods., Ltd.*, 53 Md. App. 656, 667 (1983). Cases like the present one, where a domestic seller is in exclusive physical possession of a good that has been rejected by a foreign buyer, do not present a situation where both parties have "[an] equal opportunity to reduce the damages by the same act." *Shea-S&M Ball v. Massman-Kiewit-Early*, 606 F.2d 1245, 1249 (D.C. Cir. 1979) (quoting *S. J. Groves & Sons Co. v. Warner Co.*, 576 F.2d 524, 530 (3d Cir. 1978)). *Compare Shea-S&M Ball, cited immediately heretofore* (D.C. Circuit held that the doctrine of mitigation of damages did not apply because both parties had the same opportunity to build a dike to prevent water from overflowing onto a construction site).

Therefore, the questions that remain are whether Raylyn actually mitigated some—or all—of its damages and, if it did not mitigate all of its damages, whether it took reasonable steps to do so.

In the case at bar, we hold that the requisite evidence existed for submission to the jury of the issue of mitigation of damages, generally. However, as a matter of law, the trial court erred where it denied Iron Horse's motion for judgment on the issue of whether the amount of damages claimed by Raylyn should be reduced by the $40,000 for which Perfect was sold at auction. The livestock lien statute provides that "[t]he proceeds of the [public] sale shall [first] be applied . . . to: (i) The expenses of the sale; and (ii) *The amount of the lien claim*." Md. Code Ann., Com. Law § 16-401(d)(1) (emphasis added). Thus, Iron Horse should have been credited with the $40,000 from the auction sale. The fact that Raylyn sold Perfect to itself at the auction is irrelevant.

Beyond that, *i.e.*, with regard to the trial court not ruling, upon Iron Horse's request, that Raylyn fully mitigated its remaining approximately $120,000 in damages by selling Perfect to Ms. Schaefer for exactly that amount, we find no error. Iron Horse does not challenge the validity or propriety of the auction. Therefore, Raylyn's duty to mitigate terminated once that sale became final, regardless of who the auction purchaser was. Thus, the only question that remains is whether Raylyn took reasonable steps to mitigate its damages in the two years leading up to the auction. To this, Raylyn introduced evidence that it tried to sell Perfect during those two years, even receiving one offer for $200,000, but that Iron Horse refused to allow Perfect to be sold for anything less than $300,000. This evidence was more than enough for a reasonable juror to find that Raylyn, despite making

reasonable efforts, was unable to mitigate its damages beyond $40,000, the amount for which Perfect was sold at auction.

For the foregoing reasons, we hold that the trial court erred as a matter of law in not ruling that the auction sale constituted a $40,000 mitigation of Raylyn's damages. Beyond that, however, we hold that the trial court properly declined Iron Horse's request to take the issue of mitigation with respect to the remaining $120,000 in damages out of the jury's hands.

## III. REDUCTION OF DAMAGES AWARDED BY JURY

### A. Parties' Contentions

This issue is the subject of not only Raylyn's cross-appeal, but also, as we are about to demonstrate, vastly different characterizations by the parties.

According to Raylyn, "[t]he jury awarded Iron Horse the $120,000 that Ms. Schaefer paid to Raylyn for the purchase of Perfect." Raylyn argues "there is no support for this award" because, "[o]nce Perfect was sold at auction, it belonged to the new owner, and any duty to mitigate damages was satisfied[, pursuant to § 16-401 of the Commercial Law Article of the Maryland Code,] by crediting the auction proceeds to the balance due on the board and care expenses." Therefore, Raylyn asserts that "this Court should reduce th[e] award to $40,000," which is the amount that Raylyn failed the pay Iron Horse for the sale of Perfect at auction. With respect to the $120,000 that Raylyn received from the subsequent sale of Perfect to Ms. Schaefer, that money, Raylyn contends, is Raylyn's alone.

Iron Horse responds that "Raylyn is . . . misrepresenting Iron Horse's breach of contract claim to th[is] Court." It argues that "[c]ontrary to [Raylyn's] assertions, . . . Iron Horse has never claimed that Raylyn was in breach of contract by failing to pay Iron Horse for the proceeds of the sale of Perfect." Instead, according to Iron Horse, its breach of contract claim against Raylyn stemmed solely from "Raylyn's failure to refund the $263,800 that Iron Horse paid for Perfect, as Raylyn agreed to do[.]" Therefore, Iron Horse asserts that "the livestock lien statute is entirely inapplicable and irrelevant to Iron Horse's breach of contract claim, as that claim arose before Raylyn provided custody and care to Perfect and invoked the protection of the statute." Accordingly, Iron Horse contends that the jury's award of $120,000 to Iron Horse should be upheld.

**B. Standard of Review**

"An appeal from the denial of a motion asking the court to exercise its revisory power is not necessarily the same as an appeal from the judgment itself. Rather, the standard of review is whether the trial court abused its discretion in declining to revise the judgment." *Bennett v. State Dept. of Assessments and Taxation*, 171 Md. App. 197, 203 (2006) (citation and internal quotation marks omitted). Furthermore,

> Although a trial court has some discretion to revise a jury verdict, that discretion is not boundless and if the trial court's actions are "clearly arbitrary or [have] no sound basis in law or in reason," revisory actions are subject to review. *Wormwood v. Batching Systems, Inc.*, 124 Md. App. 695, 700, 723 A.2d 568 (1999). We will not reverse unless there is grave reason to do so. *Id*. We explained in *Wormwood* that "[t]he real question is whether justice has not been done, and our review of the exercise of a court's discretion will be guided by that concept." *Id*.

*Kleban v. Eghrari-Sabet*, 174 Md. App. 60, 77 (2007) (alterations in original).

### C. Analysis

We agree with Iron Horse that Raylyn is misrepresenting Iron Horse's breach of contract counter-claim and, thus, the basis for the jury's award of $120,000 to Iron Horse as well. Iron Horse's counter-claim was for failure to refund the purchase price of Perfect. It had nothing to do with Raylyn's sale of Perfect to Ms. Schaefer. That the jury awarded Iron Horse the same amount for its counter-claim as Ms. Schaefer paid Raylyn for Perfect is merely extraneous. The issue is whether the trial court abused its discretion in denying Raylyn's request to completely erase the jury's award to Iron Horse. Given the conflicting versions of events and the oral nature of the parties' contracts, a reasonable jury could have reasonably reached a variety of conclusions as to what to award Iron Horse in order that justice be done in this admittedly confusing case. Therefore, we cannot say that the trial court abused its discretion in declining to revise the jury's award to Iron Horse.

## CONCLUSION

For the foregoing reasons, we hold: (1) that the trial court did not err where it exercised personal jurisdiction over Iron Horse; (2) that the $165,655.34 award in favor of Raylyn shall be reduced by $40,000, less the expenses of conducting the auction sale; and (3) that the trial court did not err in refusing to revise the amount that the jury awarded to Iron Horse.

**JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED IN PART AND MODIFIED IN PART. AWARD IN FAVOR OF APPELLEE REDUCED BY $40,000, LESS THE EXPENSES OF CONDUCTING THE**

**AUCTION SALE. COSTS TO BE PAID 1/3 BY APPELLANT AND 2/3 BY APPELLEE.**