Circuit Court for Montgomery County
Case No. 398729V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1240

September Term, 2016

ALVERA McMAHON, et al.,

v.

KATHLEEN BOUCHAL, et al.

Eyler, Deborah S.,
Kehoe,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: October 26, 2017

A title agent diverted the proceeds of a refinancing transaction to pay off other claims or potential claims against the borrowers. The agent did so at the express direction of a longtime employee of one of the borrowers, who was himself the owner of a title company.

The borrowers filed suit against the agent in the Circuit Court for Montgomery County, asserting claims for negligence, breach of contract, and conversion. The agent conceded that she had breached her obligations in contract and tort by diverting the funds, but asserted a counterclaim for unjust enrichment and conversion, contending that the borrowers had accepted and retained the benefits of the diversion.

After a bench trial, the circuit court entered judgment against the agent in the amount that she had wrongfully diverted, but entered offsetting judgments against the borrowers in the same amount.

The borrowers appealed. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Joseph P. McMahon was an attorney and the owner of Nations Title of Maryland, Inc., a title company. Appellant Alvera McMahon is Mr. McMahon's wife. Appellee Kathleen Bouchal was the owner of another title company, Olympia Title LLC. Ms. Bouchal had worked for Mr. McMahon's company, Nations Title, from 1975 through 1997.

Viewed in the light most favorable to Ms. Bouchal, the party who prevailed below (*L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005)), the pertinent facts are as follows:

Mr. McMahon closed Nations Title on June 30, 2014, but the company continued to wind up its business and to discharge its outstanding obligations for several months thereafter. Marge Franz, the company's longtime manager, vice president, and treasurer, continued to work for the company from her home even after Nations Title closed its doors. Although Ms. Franz claimed that her employment had been terminated in mid-October 2014, she continued to send and receive emails from a Nations Title email account until November 21, 2014.

While Ms. Bouchal had been employed by Nations Title, Mr. McMahon had delegated most of the management responsibilities to Ms. Franz. Unless Ms. Franz was absent or on vacation, Ms. Bouchal would bring problems to Ms. Franz, not to Mr. McMahon.

When Nations Title ceased operations, Ms. Franz arranged for Ms. Bouchal to take over the company's old files and its remaining open matters. Mr. McMahon told Ms. Bouchal to call Ms. Franz if she needed any assistance in the transition. According to Ms. Franz, Ms. Bouchal knew "that if Joe McMahon said something, that [sic] it was I who put the words into action."

Mr. McMahon did not know how to operate computers. When Ms. Franz sent correspondence on his behalf, she would conclude her signature with the words "for Joseph P. McMahon." Similarly, Mrs. McMahon would sometimes send business emails from a shared email account for her husband, "usually" indicating that she was signing on his behalf.

As Nations Title was preparing to cease its operations in mid-2014, a number of

customers appear to have complained that the company had closed refinancing transactions, but had not paid off the preexisting lenders. In May or June of 2014, Mr. George Tomatolis of Inspection Experts Inc. registered one such complaint with Ms. Franz. At some point after July 31, 2014, Mr. Arshad Rizvi registered another complaint with Ms. Franz. Nations Title apparently did not have sufficient funds in its escrow account to satisfy those obligations.

In September 2014 Mr. and Mrs. McMahon arranged to refinance the loans that were secured by two parcels of real estate that they, through their revocable trusts, owned as tenants in common. Ms. Bouchal handled the closing, which occurred on October 1, 2014. According to the HUD-1 Settlement Statement, the McMahons' preexisting loans were in the amounts of $257,591.85 and $192,437.18, respectively. The new loan, which was to be secured by the McMahons' interests in both parcels, was in the amount of $510,000.00. The loan proceeds went into the escrow account at Ms. Bouchal's title company. Ms. Bouchal was contractually obligated to use the loan proceeds to satisfy the preexisting loans.

Two days after the closing, on Friday, October 3, 2014, Mr. Rizvi personally informed Mr. McMahon that Nations Title had not paid off his preexisting mortgage. Mr. McMahon assured Mr. Rizvi that he would "take care of the loan." Mr. McMahon later testified that "we went out and immediately secured a loan, so that Risby [sic] could be satisfied." It "took about two weeks" to secure that loan, which was in the amount of about $310,000.00 – approximately $232,000.00 less than the amount of Mr. Rizvi's preexisting mortgage, which totaled around $542,000.00.

On the following Monday, October 6, 2014, Ms. Franz asked Ms. Bouchal to release some of the proceeds of the McMahons' refinancing transaction to correct a "bad payoff." Ms. Bouchal initially refused, but Ms. Franz persisted. She sent a letter "for" Mr. McMahon, on Nations Title stationery, in which she requested the disbursement of $328,177.36 from the escrow account at Ms. Bouchal's title company. The letter assured Ms. Bouchal that "we" would "wire the funds" back to her or "pay off" the preexisting loans on the McMahons' real estate. Ms. Bouchal complied with the request and wired the funds to Nations Title's escrow account.

On the same day, October 6, 2014, Ms. Franz sent two wire-transfers, in the total amount of $328,277.36, from the Nations Title escrow account to Mr. Tomatolis. The two transfers totaled exactly $100.00 more than the amount that Ms. Bouchal had just sent.

Over the next several days, Ms. Bouchal had several conversations with Ms. Franz about "returning the money so that it could be used to pay off" the liens on the McMahons' real estate. Ms. Franz assured Ms. Bouchal that she was "working on it" and that the funds would arrive soon.

On October 13, 2014, Ms. Franz sent another letter, on Nations Title stationery, asking Ms. Bouchal to hold off on paying off the liens on the McMahons' real estate. She represented that she had "a major problem" that she was "resolving," but that she "need[ed] back up in case" she did not resolve it. She added that she would "discuss" the matter with "Joseph McMahon" if she still had a problem. She represented that she would make the October payments on the McMahons' mortgage loans.

On the following day, October 14, 2014, Ms. Franz sent an email, from her account at Nations Title, to Ms. Bouchal. The email included this request: "PLEASE SEND AND WE WILL MAKE SURE YOU ARE OKAY." It appears that Ms. Franz was requesting that Ms. Bouchal send the remaining funds from the refinancing to Nations Title. Ms. Bouchal did not comply.

On the evening of October 22, 2014, Mrs. McMahon sent an email, on her husband's behalf, from her husband's business email account, to Marge Franz. The email asked Ms. Franz whether she had "heard from the bank."

The next day, October 23, 2014, Ms. Franz asked Ms. Bouchal to forward the balance of the funds from the refinancing to Nations Title. She represented that if Ms. Bouchal released those funds, which Ms. Franz said belonged to Mr. McMahon, "they" could "fix" a problem or "get" something "released." She assured Ms. Bouchal that "they," which Ms. Bouchal understood to mean Mr. and Mrs. McMahon, "were taking out a loan"[1] so that "all of this would be straight."

On the same day, Ms. Franz sent another a letter "for" Mr. McMahon, on Nations Title stationery. The letter requested the disbursement of the balance of the funds from the refinancing of the loans secured by the McMahons' real property. Like the earlier letter that Ms. Franz sent "for" Mr. McMahon on October 6, 2014, this letter assured Ms. Bouchal that "we" would "wire the funds" back to her or "pay off" the preexisting loans on the McMahons' real estate. Ms. Bouchal complied with the request and wired the

[1] In fact, the McMahons were in the process of taking out a loan – the approximately $310,000 loan that was used to pay off Mr. Rizvi. *See supra* p. 3.

balance of the funds, totaling $121,751.67, to Nations Title's escrow account.

At some point on October 23, 2014, after Ms. Bouchal had complied with Ms. Franz's request ("for" Mr. McMahon) that she wire the balance of the refinancing proceeds to Nations Title, Mrs. McMahon discovered that one of the McMahons' October mortgage payments had been made by telephone. She said that the discovery raised a red flag, because she did not make mortgage payments over the telephone, and because the mortgage was supposed to have been paid off with the proceeds of the refinancing.

Mrs. McMahon called Ms. Bouchal, who reacted with surprise, asking, "[Y]ou didn't know anything about this?" When Mrs. McMahon replied that she did not, Ms. Bouchal admitted that she "really screwed up." Ms. Bouchal briefly brought Ms. Franz into the conversation, but Mrs. McMahon terminated the conversation, saying that she would call back after she spoke with her husband. In a later conversation, as recounted by Mrs. McMahon, Ms. Bouchal told her and Mr. McMahon that she thought that they knew that the funds were supposed to be diverted.[2]

It is unclear what happened with the $121,751.67 in refinancing proceeds that Ms. Bouchal wired to Nations Title's escrow account on October 23, 2014. There is, however, no evidence that the McMahons took any action to reverse that transaction or to

[2] In one of his questions to Mrs. McMahon, her counsel seemed to posit that these events occurred just after Columbus Day weekend, which would have placed them considerably earlier in time – before the second and final disbursement of the proceeds from Ms. Bouchal's escrow account. Mrs. McMahon, however, was adamant that the events occurred more than a week later, on October 23, 2014.

recover the proceeds from Mr. McMahon's company or from any subsequent transferee.

On December 29, 2014, the McMahons filed suit against Ms. Bouchal and Olympia Title for breach of contract, conversion, and negligence. Ms. Bouchal and Olympia Title filed a counterclaim alleging fraud, unjust enrichment, conversion, and tortious interference, and a third-party complaint against Ms. Franz.

During a two-day bench trial, the circuit court heard live testimony from Mrs. McMahon, Ms. Bouchal, Ms. Franz, and Mr. Tomatolis, and Mr. Rizvi. The court also heard excerpts of deposition testimony from Mr. McMahon and Ms. Franz in a related case that a title insurer had brought the McMahons, Ms. Franz, and others. Mr. McMahon did not testify.

At the end of the trial, the parties withdrew the conversion claims that they had asserted against one another, evidently believing that the escrowed funds represented an intangible interest in property, which could not be converted. *But see Sage Title Grp., LLC v. Roman*, 455 Md. 188, 207 (2017).

The circuit court entered judgment in favor of the McMahons in the amount of $450,029.03 on their claims for breach of contract and negligence against Ms. Bouchal and Olympia Title. At the same time, the court entered an offsetting judgment in exactly the same amount against the McMahons on the counterclaim for unjust enrichment asserted by Ms. Bouchal and Olympia Title. On the third-party complaint, the judge entered judgment in favor of Ms. Franz, stating that her actions were "at the direction or for the benefit of Mr. McMahon." In rendering its decision in favor of Ms. Bouchal and Olympia Title, the court voiced its suspicion that the real purpose of the refinancing was

to raise funds to pay off Nations Title's creditors and to remedy the deficiencies in the company's escrow account.

The McMahons noted a timely appeal. Ms. Bouchal and Olympia Title did not cross-appeal.

QUESTIONS PRESENTED

The McMahons present six questions, which we have rephrased for clarity and concision:

1. Did the trial court err in finding that the McMahons were unjustly enriched?
2. Did the trial court err in finding that the McMahons were liable for conversion?[3]

[3] The McMahons presented their questions as follows:

1. Whether the trial court erred when finding that Alvera McMahon, Trustee, a party who holds no interest in Nations Title of Maryland, Inc., was unjustly enriched when Bouchal and Olympia Title (a) breached their contract with Alvera McMahon and (b) negligently released monies at the direction of persons other than Alvera McMahon, Trustee.

2. Whether the trial court erred when finding that Alvera McMahon, an individual who holds no interest in Nations Title of Maryland, Inc., was unjustly enriched when Bouchal and Olympia Title (a) breached their contract with Alvera McMahon and (b) negligently released monies at the direction of persons other than Alvera McMahon, Trustee.

3. Whether the trial court erred when finding that Alvera McMahon, Trustee, a party who holds no interest in Nations Title of Maryland, Inc., converted monies that never came within the Trustee's dominion or control.

4. Whether the trial court erred when finding that Alvera McMahon, individually, a party who holds no interest in Nations Title of Maryland, Inc., converted monies that never came within her dominion or control.

5. Whether based upon the admissions of Bouchal and Olympia Title that the agreement was the funds were to be used to a problem loan payoff Wells Fargo

We affirm the judgments for unjust enrichment. We need not address the second issue, because the court did not find the McMahons liable for conversion.

DISCUSSION

When a case has been tried by the court without a jury, the standard of review in this Court is governed by Rule 8-131(c):

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the 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.

"[T]his Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his [or her] case." *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996). "We review the circuit court's factfinding under the clearly-erroneous standard, under which the findings will not be overturned unless there is no competent and material evidence to support them." *Green v. McClintock*, 218 Md. App. 336, 368 (2014); *accord YIVO Inst. for Jewish Research v. Zaleski*, 386 Md. 654, 663 (2005) ("[i]f there is any competent material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous"). "[W]e assume the truth of all evidence and inferences fairly deducible therefrom that support the factual conclusions of the trial court[.]" *Homa v. Friendly Mobile Manor, Inc.*, 93 Md. App.

> [sic] and the funds were in fact so used, the trial court erred in finding there was unjust enrichment.

6. Whether based upon the admissions of Bouchal and Olympia Title that the funds were to be used to a problem loan payoff Wells Fargo [sic] and the funds were in fact so used, the trial court erred in finding there was conversion.

337, 346 (1992).

The circuit court's legal determinations, however, are not afforded deference on review. *Mercy Med. Ctr., Inc. v. United Healthcare of Mid-Atlantic, Inc.*, 149 Md. App. 336, 355 (2003). "The appropriate inquiry for such determinations is whether the circuit court was legally correct." *Edenbaum v. Schwarcz-Osztreicherne*, 165 Md. App. 233, 246 (2005) (citation and quotation marks omitted).

When determining whether the trial court was "legally correct," we apply a de novo standard of review. *Walter v. Gunter*, 367 Md. 386, 392 (2002).

I. UNJUST ENRICHMENT

In Maryland, unjust enrichment consists of 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); *accord Berry & Gould, P.A. v. Berry*, 360 Md. 142, 151 (2000); *County Comm'rs of Caroline County v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 95 n.7 (2000).

"Unjust enrichment is a claim, however, that may not be reduced neatly to a golden rule." *Hill v. Cross Country Settlements, LLC*, 402 Md. at 295. "A successful unjust enrichment claim serves to 'deprive the defendant of benefits that in equity and good conscience he [or she] ought not to keep, even though he [or she] may have received those benefits quite honestly in the first instance, and even though the plaintiff

may have suffered no demonstrable losses.'" *Id.* at 295-96 (quoting *Dep't of Hous. & Cmty. Dev. v. Mullen*, 165 Md. App. 624, 659 (2005)). "'The defendant who has received money from the plaintiff by mistake, even though the mistake is an honest one, may be compelled to make restitution of the money.'" *Id.* at 296 (quoting Dan B. Dobbs, *Handbook on the Law of Remedies* § 4.1 (1973).

"'A person who receives a benefit by reason of an infringement of another person's interest, or of loss suffered by the other, owes restitution to him in the manner and amount necessary to prevent unjust enrichment.'" *Berry & Gould, P.A. v. Berry*, 360 Md. at 151 (quoting Restatement (Second) of Restitution § 1 (Tentative Draft No. 1 (1983)). "The purpose of restitution . . . 'is to prevent the defendant's unjust enrichment by recapturing the gains the defendant secured in a transaction.'" *Bank of Am. Corp. v. Gibbons*, 173 Md. App. 261, 268 (2007) (quoting 1 Dan B. Dobbs, *Law of Remedies* § 4.1(1), at 552 (2d ed. 1993)). "The restitutionary remedies and unjust enrichment are simply flip sides of the same coin." *Alts. Unlimited, Inc. v. New Balt. City Bd. of Sch. Comm'rs*, 155 Md. App. 415, 454 (2004).

In this case, there is no serious question that the evidence against Mr. McMahon was sufficient to support a finding of unjust enrichment. Mr. McMahon benefitted from the misdirection of the proceeds from the refinancing, because they went to pay creditors of his business, who had claims or potential claims against him as well.[4] The record

[4] Even if Mr. McMahon himself had not misappropriated any funds from the escrow account and had not benefitted from any misappropriation, he faced potential liability for negligently supervising an employee (such as Ms. Franz) who may have

contains both direct and circumstantial evidence suggesting that Mr. McMahon knew of or appreciated the benefit that he had received, not least because his business's longtime employee repeatedly requested, on his behalf, that the proceeds be misdirected. Finally, the court could reasonably conclude that it would have been inequitable for Mr. McMahon to retain the benefits of the misdirected proceeds, because Ms. Bouchal merely did what he (through his agent, Ms. Franz) requested.

Based on the evidence at trial, the court could reasonably find that Mr. McMahon had actual knowledge of the deficiencies in his company's escrow account by no later than Friday, October 3, 2014, when he learned that Mr. Rizvi's preexisting lien had not been discharged. On the next business day, Monday, October 6, 2014, Marge Franz made a written request to Ms. Bouchal, asking, on Mr. McMahon's behalf, that she send $328,177.36 of the proceeds of the refinancing to Mr. McMahon's company, Nations Title. Ms. Bouchal complied.

Ms. Franz did not use those funds to discharge the Rizvi lien (which appears to have totaled almost of $542,000.00), but to rectify the consequences of yet another escrow shortfall. On October 6, 2014, the very day on which Ms. Bouchal complied with Mr. McMahon's request to send $328,177.36 of the refinance proceeds to his company, Ms. Franz sent the proceeds back out, in two installments, to Mr. Tomatolis of Inspection Experts Inc., another person with a six-figure claim relating to the overdrawn escrow account. Mr. Tomatolis had made several prior requests for payment, including a request

misappropriated or mishandled the funds. *See Fid. First Home Mortg. Co. v. Williams*, 208 Md. App. 180, 198-200 (2012).

to Ms. Franz on October 3, 2016, the same day that Mr. McMahon spoke to Mr. Rizvi about his claim. Because the evidence suggests that Mr. McMahon allowed Ms. Franz to act on his behalf in the title company's interactions with others, it supports a conclusion that she was his agent (*see, e.g.*, *Parker v. Junior Press Printing Serv., Inc.*, 266 Md. 721, 727-28 (1972)) and, hence, that her knowledge, including her knowledge of the Tomatolis deficiency, may be imputed to him. *See, e.g.*, *Duckworth v. Bernstein*, 55 Md. App. 710, 722 (1983).[5]

The evidence reflects that, during the time when Ms. Bouchal continued to hold some of the proceeds from the refinancing, Mr. McMahon continued to search for sources of money to defray the remaining escrow shortfall. In deposition testimony in other litigation, Mr. McMahon testified that "we went out and *immediately* secured a loan, so that he" – clearly referring to Mr. Rizvi – "could be satisfied." (Emphasis added.) In other words, "immediately" upon learning of the Rizvi deficiency on October 3, 2014, Mr. McMahon (and others, potentially including his wife) took steps to secure a loan to satisfy the claim.[6] Nonetheless, because the loan totaled only about $310,000 and

[5] Because Mr. Tomatolis testified that he raised the deficiency with Ms. Franz in May or June of 2014, months before the McMahons refinanced their loans, and because some of the proceeds of the refinancing immediately went to satisfy Mr. Tomatolis's claim, one could legitimately question (as the circuit court did) whether the real purpose of the refinancing was to raise funds to address the escrow deficiencies.

[6] The record does not identify the precise date on which the McMahons began to pursue that loan. It does, however, contain deposition testimony from another case, in which Mr. McMahon affirmed his wife's testimony that "it took only two weeks to get the loan." The record contains the deed of trust for that loan, which Mr. and Mrs. McMahon (as trustees for their revocable trusts) signed on October 30, 2014. Ms.

was not enough to discharge the Rizvi claim in its entirety, Mr. McMahon's deposition testimony implies that he resorted to the proceeds from the refinancing: after testifying about the ostensible reasons for refinancing his personal loans in the first place, Mr. McMahon abruptly changed course and announced, "So we got the money," meaning the proceeds of the refinancing, "and paid off Risby [sic]."[7]

In short, the evidence supports a finding that Mr. McMahon knew and even intended that the proceeds of the refinancing would be used to address the deficiencies in his title company's escrow account, and thus to eliminate or to reduce the claims or potential claims against him and the company. The payment of those claims constitutes a benefit conferred on him. *Hill v. Cross Country Settlements, LLC*, 402 Md. at 298. The court could reasonably find that he knew of or appreciated the benefit, because he was unquestionably aware of the claims before the first payment (if not earlier), because his longtime employee expressly requested both of the payments on his behalf, and because he was working assiduously to line up additional sources of funds to erase the additional escrow shortfall during this same period. In conducting its "fact-specific balancing of the equities" (*id.* at 301), the circuit court was not clearly erroneous in concluding that it would have been inequitable for Mr. McMahon to retain the benefit.

Bouchal's attorney, however, inexplicably failed to move for the admission of that document. Consequently, we do not rely on it in reaching our decision in this case.

[7] Tellingly, Mr. McMahon's attorney called for a break immediately after his client testified that "we" had used the proceeds of the refinancing to pay off Mr. Rizvi. When opposing counsel asked if Mr. McMahon would like to break for lunch, he volunteered that he was not hungry. At that point, Mr. McMahon's attorney repeated his call for a break.

The case against Mrs. McMahon was not as strong as the one against her husband, but it was still sufficient to support a finding of unjust enrichment.

Although Mrs. McMahon insisted that she did not learn of the diversion of the proceeds of the refinancing until after Ms. Bouchal had released all of the funds on October 23, 2014, the record contains information suggesting that she may have had some information about the diversion at an earlier date. For example, Mrs. McMahon's husband testified that after he learned of the Rizvi claim on October 3, 2014, "*we* went out and *immediately* secured a loan" to pay off the claim. (Emphasis added.) Because Mrs. McMahon somehow knew that "it took only two weeks to get the loan," the record supports an inference that Mr. McMahon was not just using the first person plural to refer to himself (i.e., that he was not using the "royal we" or the *pluralis majestatis*) when he said that "we immediately secured" the "loan" to pay off Mr. Rizvi. Rather, the record suggests that Mrs. McMahon was involved in obtaining that loan as well.

In a similar vein, Mr. McMahon testified that "*we* got the money and paid off Risby [sic]." (Emphasis added.) Because Mr. McMahon was discussing the alleged rationale for the refinancing in the sentences just before that testimony, his reference to "the money" that "we got" and used to pay off Rizvi can clearly be read as a reference to the proceeds of the refinancing. Like his testimony about securing a loan, therefore, Mr. McMahon's testimony about what "we" did with the refinancing proceeds suggests that he did not act alone in using them to pay off the Rizvi claim.

In addition, the record contains evidence suggesting that Mrs. McMahon had some knowledge of or involvement in her husband's title business. Mrs. McMahon testified

that her husband did not use email and that she sent business emails on his behalf from his email account at work. She also testified that when she sent emails on her husband's behalf from their shared email account, she would sign it with his initials, "usually" indicating that she was signing on his behalf. She was questioned about a cryptic email that was sent from her husband's email account at 6:10 p.m. on October 22, 2014, the day before Ms. Bouchal made the second of the two wrongful disbursements of the proceeds of the refinancing. According to the testimony at trial, the email reads: "Marge, I am home now. Did you hear from the bank yet? Call me, please." Although Mrs. McMahon testified that she could not recall the email, the circuit court would have been permitted to infer that the message evidenced a greater involvement in her husband's business affairs than she had allowed, including an involvement in his affairs at the crucial time when he was scrambling to address hundreds of thousands of dollars in escrow shortfalls.[8]

Even if Mrs. McMahon did not learn of the diversion of the proceeds until after it had occurred, she did not decline the benefit by demanding that Ms. Bouchal reverse the transactions or offering to cover the escrow shortfall using her own funds. *See Hill v. Cross Country Settlements, LLC*, 402 Md. at 299 ("[t]he essence of the requirement that the defendant have knowledge or appreciation of the benefit is that the defendant have an opportunity to decline the benefit"). Nor does she appear to have asserted her superior

[8] Ms. Bouchal's attorney inexplicably failed to move the email into evidence. But because Mrs. McMahon's attorney did not object to questions concerning the contents of a document that was not in evidence, she was allowed to answer questions about it.

right in the proceeds against the recipients, Mr. Tomatolis and Mr. Rizvi. *See Plitt v. Greenberg*, 242 Md. 359, 364 (1966) ("a plaintiff could recover money from even an innocent transferee who was without knowledge that he possessed the plaintiff's money"); *accord Hill v. Cross Country Settlements, LLC*, 402 Md. at 299. Instead, Mrs. McMahon appears to have accepted or retained the benefits of the transactions. It undoubtedly was in her interest to do so, because, like her husband, she would have been a likely defendant in any action to recover for the hundreds of thousands of dollars in deficiencies in the Nations Title escrow account. *See Bank of Am. Corp. v. Gibbons*, 173 Md. App. at 277 (collecting authorities for the proposition that "[m]any courts have held an innocent spouse accountable for a benefit conferred by the embezzling mate").[9]

In summary, viewing the facts and the reasonable inferences from them in the light most favorable to Ms. Bouchal and her company, the evidence supports a finding that, like her husband, Mrs. McMahon knew that the proceeds of the refinancing would be used to address the deficiencies in his title company's escrow account. Mrs. McMahon benefitted from the diversion of the proceeds of the refinancing, because the diversion extinguished or reduced a pair of claims or potential claims against her. The circuit court

[9] On page 16 of their brief, the McMahons assert, "When the benefit conferred is money, there is no requirement that a defendant necessarily have knowledge or appreciation of the benefit precisely at the time the benefit is conferred." That assertion (which comes verbatim from, but without citation to, *Hill v. Cross Country Settlements, LLC*, 402 Md. at 300) does not appear to be helpful to either of the McMahons. Indeed, it appears to be particularly unhelpful to Mrs. McMahon, who says that both of the disbursements had occurred before she became aware of them.

was not clearly erroneous in concluding that it would have been inequitable for Mrs. McMahon to retain the benefit.

II. CONVERSION

In closing argument, counsel for the McMahons expressly abandoned their conversion claim. In his closing argument, counsel for Ms. Bouchal and Olympia Title, also abandoned their conversion claim, stating, "Your Honor, the only thing I have is unjust enrichment." Nonetheless, the McMahons complain that the circuit court entered judgment against them on the conversion claim. They are mistaken.

The McMahons base their complaint on a document titled "Notice of Judgment," which states that the court found in favor of "the defendants," Ms. Bouchal and Olympia Title, and against "the plaintiffs," Mr. and Mrs. McMahon, "as to conversion." The "Notice of Judgment" does not award damages in any amount.

By its terms, the "Notice of Judgment" memorializes the entry of judgment against the McMahons on the conversion claim that they, as *plaintiff*s, asserted against Ms. Bouchal and Olympia Title, as *defendants*, before abandoning it at the end of trial. The "Notice of Judgment" does not memorialize a judgment against the McMahons, as *counter-defendants*, on the conversion claim that Ms. Bouchal and Olympia Title, as *counter-plaintiffs*, asserted, but also abandoned. Indeed, if the "Notice of Judgment" evidenced a judgment in favor of Ms. Bouchal and Olympia Title, as *counter-plaintiffs*, one would expect it to reflect a dollar amount for damages, which it does not.

In summary, the circuit court indisputably did not enter judgment against the McMahons on the conversion claim that Ms. Bouchal and Olympia Title asserted against

them. Because the court did not enter any such judgment, it certainly did not err in entering it.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.