Circuit Court for Montgomery County
Case No. C-15-CV-23-003345

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 258

September Term, 2025

MOUY CHIEV, ET AL.

v.

NARITH CHIEV, ET AL.

Berger,
Ripken,
Lazerow, Alan C.
(Specially Assigned),

JJ.

Opinion by Lazerow, J.

Filed: May 27, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal stems from a judgment of the Circuit Court for Montgomery County involving the sale of a convenience store between family members.[1] Following a jury trial that was later converted to a bench trial, the trial court rescinded the parties' interim sale agreement and awarded restitution to Narith Chiev and Lida Chiev ("Appellees") totaling $135,500, plus prejudgment interest. In doing so, the trial court denied Mouy Chiev and Boiling Brook Parkway Foods, Inc. (together, "Appellant") any offset for what they alleged were substantial business profits that Appellees earned and retained during their seven-month operation of the store. This appeal followed.

QUESTIONS PRESENTED

Appellant presents two questions for our review, which we have recast as follows:[2]

I. Did the trial court err by entering judgment for Appellees on their rescission claim?

II. Did the trial court err in determining there were no net profits to offset against the amounts Appellant failed to repay Appellees?

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[1] Appellant Mouy Chiev is Appellee Narith Chiev's aunt. Appellees Narith and Lida Chiev are husband and wife.

[2] Appellant phrased the questions as follows:

I. Did the trial Court err in entering judgment in favor of Plaintiffs on their rescission claim?

II. Assuming *arguendo* that Plaintiffs promptly and properly rescinded the agreement, or that Defendants consented to same, did the trial Court commit reversible error in determining that the Defendants were not entitled to a setoff for the Plaintiffs' profits from operating the store?

We answer both questions in the negative and, therefore, affirm.

BACKGROUND

I. FACTUAL BACKGROUND

Appellant owned and operated Food Stop Mini Mart,[3] a convenience store in Rockville, Maryland, for over twenty-five years. The store derived much of its profit from beer, wine, packaged foods, lottery sales commissions, and monthly income from Bitcoin and ATM machines.

In 2022, Appellant agreed to sell the convenience store to Appellees for $500,000, inclusive of all inventory, equipment, and licenses. On December 21, 2022, the parties executed the Interim Business Agreement (the "Agreement"), under which Appellant agreed to transfer operational control to Appellees while negotiating and before the execution of an asset purchase agreement. The Agreement required Appellees to satisfy the $500,000 purchase price through: (i) transfer of Appellees' Minnesota real property, with an agreed equity of $202,634; (ii) a $100,000 deposit, with $20,000 due on December 16, 2022 and the remaining $80,000 due by March 31, 2023; and (iii) a promissory note for the remaining $197,366, to be paid in monthly installments.[4] The parties also agreed that Appellees would "be in charge of the daily management and assume financial responsibilities and liabilities related to operating the business starting December 21,

[3] Food Stop Mini Mart's registered business name is Boiling Brook Parkway Foods, Inc.

[4] The Agreement did not list the amount to be paid monthly. The trial court ultimately found that Appellees paid Appellant $5,000 per month.

2022." Lastly, the parties agreed "to prepare any legal documentation that may be required to transfer ownership and/or management of the business …."

From December 21, 2022, to July 26, 2023, Appellees operated the convenience store. During this time, Appellees timely paid Appellant as required by the Agreement: they transferred their Minnesota property to Appellant (which Appellant subsequently rented out) and paid the $100,000 deposit by March 31, 2023. Appellees also paid Appellant $5,000 monthly, and Appellant withdrew $5,500 from the store's business accounts, for a total of $35,500 in additional payments.

Appellees complained of ongoing problems with Appellant while operating the convenience store. Appellees alleged that Appellant (i) removed business expense records from the store, (ii) asserted she would not sell the store, and (iii) failed to provide the income from the ATM and Bitcoin machines. Appellant, on the other hand, alleged that Appellees siphoned proceeds from the business accounts for personal expenses.[5] It is undisputed that, on July 21, 2023, Appellant removed Appellee Narith's signatory authority from the business bank accounts.

On July 26, 2023, Appellees left an envelope containing keys and a letter titled "Notice of Rescission of Interim Business Agreement for sale of Food Stop Mini Mart" at Appellant's daughter's home. The rescission letter, prepared by counsel, asserted that Appellees were rescinding the Agreement based on Appellant's "misrepresentations and material breach of the Agreement." After detailing the alleged misrepresentations and

[5] Appellant contends, among other things, that in July 2023, she noted a significant amount of lottery cash proceeds missing from business accounts.

breach, the letter demanded return of the Minnesota property and a refund of the money paid under the Agreement "[t]o restore the parties to their original position." Thereafter, Appellant swiftly returned the Minnesota property to Appellees, provided Appellees with the property rental income, and resumed operation of the convenience store. Appellant did not, however, return the $100,000 deposit or the additional $35,500 in payments.

II. PROCEDURAL BACKGROUND

In September 2023, Appellees filed a complaint against Appellant, alleging breach of contract and intentional misrepresentation.[6] In October 2023, Appellant counterclaimed, asserting breach of contract, unjust enrichment, constructive fraud, intentional misrepresentation, embezzlement, and civil conspiracy claims. After the parties amended their claims against each other,[7] in December 2024, the trial court began what was to be a four-day jury trial on the parties' respective claims of breach of contract, unjust enrichment, constructive fraud, intentional misrepresentation, conversion, and civil conspiracy. After Appellant withdrew certain claims midtrial,[8] the trial court dismissed the jury because the

[6] On September 25, 2023, Appellees filed an amended complaint, which retained the two original counts but edited the factual allegations.

[7] In April 2024, Appellees added new claims, including unjust enrichment and violations of Maryland Wage and Hour Law and Maryland Wage Payment and Collections Law. That same month, Appellant amended her counterclaim, changing embezzlement to conversion. In June 2024, Appellees again amended their complaint, removing the previously added wage violations and adding a claim for rescission. Appellees retained the unjust enrichment and intentional misrepresentation claims. The very next day, Appellant again amended her counterclaim, retaining the existing counts but editing the factual allegations.

[8] Appellant voluntarily withdrew breach of contract, fraud in the inducement, conversion, and civil conspiracy claims.

remaining counts—rescission (by Appellees) and unjust enrichment (by Appellant)—were equitable in nature.

In its February 2025 ruling, the trial court concluded that the Agreement was an enforceable contract[9] and found that Appellant materially breached the Agreement by removing Appellees from the business bank accounts, removing documents from the convenience store, and stating that she no longer intended to transfer the store to Appellees. The trial court found that Appellees timely tendered rescission after the material breach, and that Appellant accepted the rescission.[10]

The trial court found that there were no net profits to offset against amounts due back to Appellees from the purchase price. The record contains conflicting testimony and submissions—discussed more fully below—regarding the business's revenue, cost of goods, and operating expenses. The trial court made explicit credibility findings, noting that the revenue figures Appellant provided were "wildly inaccurate" and a "significant gross exaggeration" of convenience store receipts. These discrepancies "diminished the credibility of the [Appellant] in the Court's mind." In contrast, the trial court found

[9] Although Appellant challenged the enforceability of the Agreement below, Appellant did not renew that challenge on appeal. Thus, we do not address whether the Agreement was enforceable. *See* Md. Rule 8-504(a)(5) and (6); *Klauenberg v. State*, 355 Md. 528, 552 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.").

[10] The trial court also found that Appellees did not breach the Agreement when they failed to place all funds earned into the business accounts because (i) nothing in the Agreement provided that Appellees had to do so, and (ii) Appellant "sold … her rights under the [Agreement]" to challenge the operation of the business. Similarly, the trial court found that Appellees did not breach the Agreement when they failed to have the leases transferred because the Agreement is silent on the time required for such transfers.

Appellees' explanations regarding revenue, cost of goods, and operating expenses to be credible. The trial court determined that the business's income, after operating expenses, was $113,820, and that the reasonable expense for Appellees' labor exceeded that amount. Accordingly, the trial court concluded that no net profits were available for offset. The trial court also concluded that, under the "direct product rule,"[11] Appellant was not entitled to a setoff of any profit (had there been any), finding that any profits were the direct product of Appellees' independent operation of the store, and not from the transfer of the business itself.

STANDARD OF REVIEW

Under Maryland Rule 8-131(c), where an action has been tried without a jury, as was here, we "review the case on both the law and the evidence." In doing so, we "will

[11] The "direct product rule" is included in the Restatement (First) of Restitution § 157. The rule "was formulated to prevent unjust enrichment when one party has used or converted the property of another party." *Boardakan Rest. LLC v. Atl. Pier Assocs., LLC*, 33 F. Supp. 3d 543, 550 (E.D. Pa. 2014). The rule provides:

> (1) A person under a duty to another to make restitution of property received by him or of its value is under a duty
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> (a) to account for the direct product of the subject matter received while in his possession, and
>
> (b) to pay such additional amount as compensation for the use of the subject matter as will be just to both parties in view of the fault, if any, of either or both of them.
>
> (2) The rule stated in Subsection (1) is applicable to an action brought solely to recover the income or value of the use of the subject matter, or interest upon the amount of its value.

Restatement (First) of Restitution § 157. Comment (b) explains that "'direct product' means that which is derived from the ownership or possession of the property without the intervention of an independent transaction by the possessor." *Id.*, cmt. b.

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." Md. Rule 8-131(c). "While the judgment of the trial court based on factual findings may only be set aside when 'clearly erroneous,' the review on matters of law differ." *Elderkin v. Carroll*, 403 Md. 343, 353 (2008). "The 'clearly erroneous' portion of Md. Rule 8-131(c) does not apply to a trial court's determinations of legal questions or conclusions of law based upon findings of fact." *S. Mgmt. Corp. v. Kevin Willes Const. Co., Inc.*, 382 Md. 524, 539 (2004). When a trial court's ruling requires the interpretation and application of caselaw, we accord no deference to its conclusions of law. *See White v. Pines Cmty. Improvement Ass'n*, 403 Md. 13, 31 (2008).

Under the clearly erroneous standard, "[o]ur task is limited to deciding whether the circuit court's factual findings were supported by substantial evidence in the record …." *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005). That is to say, we do not "sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case," *Liberty Mut. Ins. Co. v. Md. Auto. Ins. Fund*, 154 Md. App. 604, 609 (2004), nor do we "weigh conflicting evidence or the credibility of witnesses …." *Homa v. Friendly Mobile Manor, Inc.*, 93 Md. App. 337, 346 (1992). Instead, "we assume the truth of all evidence and inferences fairly deducible therefrom that support the factual conclusions of the trial court, and we simply inquire whether there is any evidence legally sufficient to support those findings." *Id.* And, in doing so, we "'consider the evidence in the light most favorable to the prevailing party ….'" *Swinton Home Care, LLC v. Tayman*, 264 Md. App. 487, 495 (2025) (quoting *Cherry v. Mayor & City Council of Balt. City*, 475

Md. 565, 594 (2021)). Accordingly, "[i]f there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous." *Della Ratta v. Dyas*, 414 Md. 556, 565 (2010) (quoting *Solomon v. Solomon*, 383 Md. 176, 202 (2004)).

DISCUSSION

I. RESCISSION GENERALLY

Our Supreme Court has held that

> [w]hen a contracting party is displeased with the other's performance he may follow either of two alternative courses of action, if under the facts they are open to him: (1) he can reaffirm the existence of the contract and seek specific performance when appropriate or claim damages for its breach, or (2) he can repudiate the contract altogether and request rescission.

Lazorcak v. Feuerstein, 273 Md. 69, 74-75 (1974); *see Kemp v. Weber*, 180 Md. 362, 365-66 (1942). As the Court explained in *Kemp*:

> The contract cannot be in effect, and at the same time rescinded. If in effect, he can get damages; if rescinded, he must return his benefits, and receive his expenditures. He cannot, of course, retain the benefits and get back his expenditures. He would then be receiving a free gift of whatever he got under the contract. He, therefore, has a choice.

Kemp, 180 Md. at 365-66.

In other words, "'[r]escission of a contract is the abrogation or unmaking of the agreement and the placing of the parties to it in *statu quo*.'" *Swinton Home Care, LLC*, 264 Md. App. at 497 (quoting *Ryan v. Brady*, 34 Md. App. 41, 49 (1976)). "[A] contract may be mutually rescinded either by express agreement or by any act or course of conduct of the parties which clearly indicates their mutual understanding that the contract is abrogated." *Talbert v. Seek*, 210 Md. 34, 44 (1956) (quoting *Great United Realty Co. v. Lewis*, 203 Md. 442, 450 (1954)). Rescission without consent is allowed only if a court

finds material breach, unconscionability, fraud, duress, or undue influence. *See Vincent v. Palmer*, 179 Md. 365, 371-72 (1941).

Even where rescission is warranted, the party "seeking rescission must demonstrate that he acted promptly after discovery of the ground for rescission." *Finch v. Hughes Aircraft Co.*, 57 Md. App. 190, 244 (1984) (first citing *Baumel v. Rosen*, 412 F.2d 571, 574 (4th Cir. 1969); and then citing *Lazorcak*, 273 Md. at 75-77). In doing so, the rescinding party "must also show that he tendered to [the other party] all consideration and benefits received under the contract immediately after notice of the ground for rescission." *Finch*, 57 Md. App. at 244.

If a party elects rescission—returning the benefits received and recovering its own expenditures—restitution becomes the appropriate remedy. *See, e.g.*, *Silverman v. Md. Deposit Ins. Fund Corp.*, 317 Md. 306, 330 (1989) (holding that if a party "insist[s] on rescission," then there "would be a restitutionary remedy"). "Restitution is 'a party's unilateral unmaking of a contract for a legally sufficient reason,' and it in effect 'restores the parties to their pre-contractual position.'" *Benjamin v. Erk*, 138 Md. App. 459, 471 (2001) (quoting *Merritt v. Craig*, 130 Md. App. 350, 366 (2000)).

Applying these principles here, we conclude that the trial court did not err when it concluded that rescission was proper where (i) Appellant materially breached the Agreement and Appellees timely rescinded the Agreement after that breach, or, alternatively (ii) Appellant accepted Appellees' offer of rescission. We also conclude that the trial court did not err in its finding that there were no net profits to offset against the amounts Appellant owed Appellees in restitution.

II. THE TRIAL COURT'S CONCLUSION THAT APPELLEES WERE ENTITLED TO RESCISSION WAS NOT CLEARLY ERRONEOUS

Appellant contends that the trial court "erred in holding that Appellees successfully effectuated a rescission of the Interim Business Agreement" because "(1) the rescission attempt by Appellees was untimely and Appellees admitted that they did not return all the benefits of the business; and (2) Appellees' returning of the store and [Appellant]'s accepting of the keys is not assent to the rescission." Appellant is wrong on both fronts.

A. THE TRIAL COURT DID NOT ERR IN DETERMINING THAT APPELLANT MATERIALLY BREACHED THE AGREEMENT, OR THAT APPELLEES TIMELY ELECTED TO RESCIND THE AGREEMENT

i. The Trial Court Did Not Err in Determining that Appellant Materially Breached the Agreement

Appellant argues that the removal of signatory authority on the checking accounts was not a material breach of the Agreement. Appellees respond that Appellant takes an overly narrow view of the breach—focusing solely on the removal of the bank accounts—whereas the trial court relied on a series of cumulative acts to find a material breach. Accordingly, Appellees contend that "the [trial] court's findings of fact regarding the [A]ppellant's conduct are not clearly erroneous[,]" and are "supported [by] the record."

"In general, where there has been a material breach of a contract by one party, the other party has a right to rescind it." *Maslow v. Vanguri*, 168 Md. App. 298, 323 (2006) (quoting *Wash. Homes, Inc. v. Interstate Land Dev. Co., Inc.*, 281 Md. 712, 728 (1978) (cleaned up)). "A breach is material when it is such that further performance of the contract would be different in substance from that which was contracted for." *Barufaldi v. Ocean City Chamber of Com., Inc.*, 196 Md. App. 1, 23 (2010), *aff'd*, 434 Md. 381 (2013) (cleaned

up); *Sachs v. Regal Sav. Bank*, 119 Md. App. 276, 283 (1998), *aff'd*, 352 Md. 356 (1999) ("The law is clear that a breach of contract will be deemed material if it affects the purpose of the contract in an important or vital way."). That is to say, "rescission is permitted when the act failed to be performed goes to the root of the contract or renders the performance of the rest of the contract a thing different in substance from that which was contracted for." *Maslow*, 168 Md. App. at 324 (quoting *Traylor v. Grafton*, 273 Md. 649, 687 (1975) (cleaned up)).

Moreover, when a party to a contract "definitely and specifically refuses to do something which he is obligated to do, so that it amounts to a refusal to go on with the contract, it may be treated as a breach by anticipation …." *Weiss v. Sheet Metal Fabricators, Inc.*, 206 Md. 195, 203-04 (1955). Such "refusal to perform must be positive and unconditional." *Id.* at 204. An anticipatory breach requires "a definite, specific, positive, and unconditional repudiation of the contract by one of the parties to the contract." *C. W. Blomquist & Co., Inc. v. Cap. Area Realty Invs. Corp.*, 270 Md. 486, 494 (1973).

"Ordinarily, whether a given breach is material is a question of fact …."[12] *Barufaldi*, 196 Md. App. at 23 (quoting *Speed v. Bailey*, 153 Md. 655, 661-62 (1927)

[12] Maryland courts have recognized that when the facts are undisputed, "it is for the [reviewing] court to decide whether those facts constitute a breach of the contract" because "the interpretation of a written contract is a question of law for the court to resolve." *Weaver v. ZeniMax Media, Inc.*, 175 Md. App. 16, 49-50 (2007) (applying the de novo standard of review for the trial court's "interpretation of the employment contract and its determination that [the appellant's] admitted conduct constituted a breach of the terms of that contract"). Here, however, the record is replete with disputes as to certain facts on which the trial court relied in concluding that Appellant materially breached the Agreement.

(cleaned up)); *see Weichart v. Faust*, 419 Md. 306, 316 n.1 (2011) ("The materiality of a breach of contract is a factual inquiry."); *Weaver v. ZeniMax Media, Inc*., 175 Md. App. 16, 52 (2007) ("[M]ateriality is generally a question of fact."). This is because "it is for the fact finder to decide between conflicting evidence regarding the party's conduct with respect to the contract." *Weaver*, 175 Md. App. at 49; *see also White*, 403 Md. at 30 ("Since the jury is free to believe only a portion of the evidence of each side the synthesis apparently accomplished by the jury is simply a manifestation of its obvious function is no less true when a judge is the trier of facts.") (cleaned up). Because whether a breach of contract is material is a question of fact, we will affirm the trial court's finding on that question unless it is clearly erroneous.

Here, we conclude that the trial court's factual finding of a material breach was not clearly erroneous. In reaching its decision, the trial court found that Appellant materially breached the Agreement when she (i) removed business documents from the convenience store, (ii) stated that she would refuse to sell the business to Appellees, and (iii) "removed [Appellees] from the company bank account[s.]" The record supports each finding.

First, the record supports that Appellant removed business documents from the store. Appellee Lida testified that, on July 12, 2023, Appellant came to the store and collected the bags of business receipts and papers on which Appellee Lida had recorded expenses. Appellee Narith and Nary—Narith's sister and a certified public accountant, who assisted Appellee Lida with bookkeeping and accounting—similarly testified that Appellant removed receipts from the store.

Second, the record supports the finding that Appellant stated she would refuse to sell the business to Appellees. Appellee Lida testified that, on July 4, 2023, Appellant came to the store and asserted that Appellee Lida "could not get the store." Appellee Lida further explained that Appellant stated that Appellees were to return the store to her, in exchange for which Appellant would return the Minnesota real property and Appellees' payments.

Third, the record supports the finding that Appellant removed Appellee Narith from the business bank accounts, which the trial court found were the "lifeblood of the business." Appellee Narith testified that in July 2023, after United Bank refused to share bank account information with him, he consulted with his wife and sister, and, soon after, his lawyer. Only a few days later, on July 26, 2023, Appellee Narith testified that he provided[13] Appellant a letter of rescission prepared by counsel and the keys to the store. Indeed, Appellees admitted both Appellant's July 21, 2023 letter to United Bank requesting the removal and Appellees' July 26, 2023 "Notice of Rescission of Interim Business Agreement for sale of Food Stop Mini Mart" letter.

Appellant does not dispute that she removed Appellee Narith from the business bank accounts—she testified to as much, and her July 21, 2023 letter to United Bank was

[13] Appellee Narith testified that his wife tried to provide the letter personally to Appellant, but she would not meet with them. Appellee Narith went to Appellant's daughter's home and showed her daughter the letter. Appellant's daughter would not accept the letter and asked Appellee Narith to leave. Thereafter, Appellee Narith testified that he left the letter and the keys at the front door of Appellant's daughter's home and sent Appellant a photograph showing as much.

admitted in evidence. Faced with that record, Appellant instead argues that the removal was not a material breach for four reasons:

> (i) appellees had use of the store's debit card[,] (ii) appellees operated the business for five days after learning of removal, (iii) the appellees had other options: they had the ability to open a new bank account or sue for the small balances of the account, and (iv) the two principal accounts were substantially depleted, making the change in signatory authority irrelevant to the company's financial condition.

Appellant also contends that, contrary to the trial court's conclusion, the record shows that the reason for rescission was Appellees' "getting caught stealing"—an argument the trial court considered at the time of judgment and rejected, explicitly finding that "there's nothing in the Agreement that provides that they [place all business funds into the business bank accounts]"—rather than Appellant's removal of Appellee Narith from the bank accounts.

These arguments miss the mark. We do not determine whether we would reach the same conclusion as the trial judge; we only consider, in the light most favorable to Appellees (as the prevailing party), *see Della Ratta*, 414 Md. at 565, whether the trial court's factual findings were supported by competent evidence. *See Swinton Home Care*, 264 Md. App. at 497; *Cherry*, 475 Md. at 594. We cannot assess witness credibility, resolve conflicting evidence, or make any independent factual findings. *See Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020) ("It is not our role, as an appellate court, to second-guess the trial judge's assessment of a witness's credibility."); *Hartford Fire Ins. Co. v. Est. of Sanders*, 232 Md. App. 24, 39 (2017) ("Appellate courts do not make factual findings or substitute the factual findings they would rather the trial court have made for

the non-clearly erroneous factual findings that were made."). Here, the trial court considered the conflicting testimony and ultimately concluded that Appellant materially breached the Agreement.[14]

In viewing the evidence in a light most favorable to Appellees, there is competent evidence to support the trial court's factual finding that Appellant materially breached the Agreement, and the trial court's findings in this regard were thus not clearly erroneous.

ii. The Trial Court Did Not Err in Determining that (i) Appellees Timely Rescinded the Agreement after Appellant's Material Breach and (ii) Appellees Took Steps to Restore the Parties to Their Pre-Agreement Positions

Appellant argues that "Appellees failed to promptly (immediately) rescind the agreement upon discovery of the facts warranting the rescission, thereby waiving their ability to elect rescission." Specifically, Appellant argues that Appellees were "on notice of nearly all the circumstances they claim warrant rescission *for months*." Appellees assert this argument lacks merit, and that "the [trial] court's factual finding that rescission was … timely is supported by substantial evidence." We agree with Appellees.

[14] As discussed above, "[a] breach is material when it is such that further performance of the contract would be different in substance from that which was contracted for." *Barufaldi v. Ocean City Chamber of Com., Inc.*, 196 Md. App. 1, 23 (2010), *aff'd*, 434 Md. 381 (2013) (cleaned up). Under the Agreement, Appellees were to assume operation of the store. Appellant's actions in interfering with Appellees' financial responsibilities by removing business receipts from the store, demanding funds be placed into the business bank accounts, removing Appellee Narith from the business bank accounts, and telling Appellees she would not go through with the sale, "render the performance of the rest of the contract a thing different in substance from that which was contracted for.'" *Maslow v. Vanguri*, 168 Md. App. 298, 323 (2006) (quoting *Traylor v. Grafton*, 273 Md. 649, 687 (1975)).

As discussed above, the party "seeking rescission must demonstrate that he acted promptly after discovery of the ground for rescission," and "must also show that he tendered to [the other party] all consideration and benefits received under the contract immediately after notice of the ground for rescission." *Finch*, 57 Md. App. at 244. "[I]f a party who knows the facts which would justify rescission, does any act which recognizes the continued validity of the contract or indicates that he still feels bound under it, he will be held to have waived his right to rescind." *Id.* (quoting *Lazorcak*, 273 Md. at 76); *see Ellerin v. Fairfax Sav. Ass'n*, 78 Md. App. 92, 109 (1989) (similar).

Further, "[t]he right to rescission ... must be exercised within a reasonable time, which is determined, in large part, by whether the period has been long enough to result in prejudice." *Benjamin*, 138 Md. App. at 483 (quoting *Cutler v. Sugarman Org., Ltd.*, 88 Md. App. 567, 578 (1991)). In *Benjamin*, for example, we found that rescission was not waived when appellees demanded rescission within days of discovering the information that triggered rescission. *Id.*; *contra Finch*, 57 Md. App. at 244-45 (finding that the plaintiffs did not promptly rescind the contracts when they had notice of facts warranting rescission for at least two years).

As for timely rescission, we conclude that the trial court did not err in finding that rescission was timely. The trial court found that Appellees tendered their rescission, via the July 26, 2023 letter, merely five days after the discovery of the material breach.[15] The

[15] The trial court identified Appellees' exhibit 17—a copy of the July 26, 2023 rescission letter—as the measuring stick against which it calculated Appellees' timeliness. The court was clear that its finding of material breach was based on several actions, not on

trial court also found that sufficient steps were taken to restore the parties to their pre-contract positions. The record supports these findings.

As discussed above, Appellee Lida testified that, in early to mid-July 2023, Appellant removed business expense records from the convenience store and conveyed that she would not sell the business to Appellees. Appellee Narith and Nary also testified that Appellant removed the receipts from the store. Appellant testified that she removed Appellee Narith from the store's bank accounts, and the July 21, 2023, United Bank letter was admitted in evidence to the same effect. As Appellee Narith testified, due to Appellant's ongoing interference and statement that she would not sell the store, he delivered the business keys and a counsel-prepared rescission letter to Appellant five days later, on July 26, 2023. Because the record supports that rescission was tendered merely five days after Appellees learned Appellant removed them from the store's bank accounts, the trial court's finding of timely rescission was not clearly erroneous. *See Benjamin*, 138 Md. App. at 483 (upholding rescission when rescinding party demanded rescission within days of learning of information warranting rescission).

As for returning "all consideration and benefits received under the contract immediately after notice of the ground for rescission," *Finch*, 57 Md. App. at 244, Appellant argues that Appellees did not do "their part in restoring [her] to the *status quo*

the removal of Appellee Narith from the bank accounts alone. To that end, all relevant actions contributing to the material breach occurred within the same calendar month of the tendered rescission.

ante" because they retained cash proceeds of the business. We conclude that the trial court was not clearly erroneous in finding that Appellees tendered the store's return to Appellant.

Both Appellees Narith and Lida testified that, on July 26, 2023, they delivered the rescission letter and the store keys to Appellant. The rescission letter stated unambiguously: "As of this afternoon, we will no longer be operating the Food Stop Mini Mart. Enclosed are the keys to the store and company debit card for United Bank." Appellant's own testimony corroborates this, acknowledging Appellees stopped operating the store on July 26, 2023. Appellee Lida further testified that, upon vacating, she left the expense notebook in the store for Appellant's use.

Because the trial court's findings of restoration to the status quo are supported by the record, they are not clearly erroneous.

B. THE TRIAL COURT DID NOT ERR IN DETERMINING THAT APPELLANT ACCEPTED APPELLEES' RESCISSION

Appellant contends the trial court erred in concluding that her acceptance of the store keys constituted assent to rescission. Appellees respond that the trial court's factual findings are supported by substantial evidence, where Appellant not only accepted the keys, but also accepted the letter of rescission, returned the Minnesota property, and accepted the business—all without objection.

As discussed above, our Supreme Court has held that "[a] contract may be mutually rescinded either by express agreement or by any act or course of conduct of the parties which clearly indicates their mutual understanding that the contract is abrogated." *Talbert*, 210 Md. at 44 (quoting *Great United Realty Co.*, 203 Md. at 450); *Lemlich v. Bd. of Trs.*

of Harford Cmty. Coll., 282 Md. 495, 501-02 (1978) ("[A] contract may be rescinded by mutual agreement of the parties."). "[T]he validity of such an understanding to rescind is controlled by the same rules as in the case of other contracts." *Lemlich*, 282 Md. at 502. Which is to say, rescission by mutual assent requires an "offer by one party and an unconditional acceptance of that precise offer by the other, prior to withdrawal by the offeror, before a binding agreement is born." *Id.*

As the Court explained in *Vincent*,

> It has frequently been held that the mutual assent requisite to rescind a contract need not be express; it may be inferred from the conduct of the parties in the light of the [surrounding] circumstances. If either party expresses an intention to abandon the performance of a contract, and the other party fails to object, there may be circumstances justifying the inference that the other party has assented thereto. … To establish the rescission of a contract by implication, the acts relied upon must be unequivocal and inconsistent with the existence of the contract, and the evidence must be clear and [convincing]. Therefore, conduct which is not necessarily inconsistent with the continuation of a contract will not be regarded as showing an implied agreement to discharge it, although such conduct might be consistent with an agreement to discharge it.

Vincent, 179 Md. at 372-73 (cleaned up). As with rescission generally, "where there is a mutual rescission of a contract, the parties are entitled to be placed *in statu quo* as far as possible." *Talbert*, 210 Md. at 44 (quoting *Great United Realty Co.*, 203 Md. at 450). Because rescission is a question of fact, we will affirm the trial court's finding on that question unless it is clearly erroneous. *See Glen Alden Corp. v. Duvall*, 240 Md. 405, 431 (1965) (explaining that "whether [a party's conduct] amounted to a rescission in the correct legal sense of that word" is "a question of fact for the trial court").

We conclude that the trial court was not clearly erroneous in finding mutual rescission. The trial court found that Appellant accepted rescission when she (i) accepted the keys to the store, (ii) accepted the rescission letter, (iii) returned the Minnesota property to Appellees, and (iv) accepted the business back.[16] There is competent evidence to support these things.

For one, the rescission letter stated:

> To restore the parties to their original position, you must refund all the money we paid under the Agreement and execute a deed transferring back the Minnesota property. We will provide the deed for your signature. We ask that this be completed by close of business on Friday, August 4, 2023.

Appellant testified that she did not respond in writing to contest the rescission letter. Instead, Appellant agreed—and the deed confirmed—that she returned the Minnesota real property to Appellees, as the rescission letter directed. Appellant also testified (and evidence confirmed) that she provided Appellees with the rental income she received from the Minnesota tenants.

Appellant concedes that she began operating the store again, but asserts that the trial court "mistakes [her] mitigation of damages for acceptance of recission." Specifically, Appellant claims that "[f]ailure to accept the return of the store could have resulted in her

[16] At oral argument, Appellant argued that because she did not return the $135,500, she could not have accepted Appellees' offer of rescission because the parties were not returned to their pre-contractual positions. But if Appellant was correct that mutual assent requires the parties to be returned *perfectly* to their pre-contract positions, there would never be suits for rescission and restitution based on mutual assent. Appellant is wrong. The point is that Appellant took various steps to return Appellees to their pre-Agreement position, but did not do everything, *i.e.*, repay the $135,500, to return Appellees to their pre-Agreement position.

own civil and criminal liability and would foreseeably result in further financial loss and harm to the business and her personally." Even putting aside that the trial court did not find that Appellant's efforts in this regard were a mere mitigation-of-damages, Appellant is tellingly silent as to why she returned the Minnesota property and the corresponding rental income (for which there could be no conceivable mitigation-of-damages argument). In any event, Appellant again misconstrues the scope of our review. Our task is limited to determining whether the record contains competent evidence supporting the factual findings. *See Della Ratta*, 414 Md. at 565. Here, it does.

Because the record supports the facts underpinning the trial court's finding of mutual rescission, the court's findings were not clearly erroneous.

III. THE TRIAL COURT'S FINDING THAT THE STORE EARNED NO NET PROFITS WAS NOT CLEARLY ERRONEOUS

Appellant argues that the trial court erred in concluding there were no net profits by allowing Appellees to credit implied wage expenses for the time they invested in the business as owners.[17] Appellees argue that "[i]t is the height of Chutzpa[18] for the

[17] In her reply brief, Appellant argues that "Appellees ignore the requirement for reciprocal offset" for the reasonable rental value or use value of the premises for seven months. Appellant contends that "[i]f Appellees are entitled to credit for the value of their labor in determining net profits, Appellant[] must receive credit for the value of assets Appellees used to generate those profits." Appellant did not raise this argument in her opening brief, and thus we do not address this issue. *See Gazunis v. Foster*, 400 Md. 541, 554 (2007) ("[A]ppellate courts ordinarily do not consider issues that are raised for the first time in a party's reply brief.").

[18] As we have explained:

appellants to claim that the appellees were obligated to clean up her cat-feces infested store, repair its damaged walls and equipment, paint the store, work for more than 15 hours a day, seven days a week, and return the store to her as a result of her breach in better condition than they received it and not receive a dime of consideration for their labor."

The trial court, for its part, found "that after reducing any such profits by the reasonable value of the [Appellees]' services, ... there would not be any net profits to offset against amounts due back from the purchase price."

The trial court first determined the convenience store's net income before considering labor costs. On this point, the trial court was presented with conflicting evidence. It found Appellant's revenue statement "wildly inaccurate" instead relying on Appellees' exhibits. The trial court explained that, given Appellant's familiarity with the business's operations, the inaccuracies should have been evident to her on their face. In explaining its credibility assessment and determination, the trial court first highlighted that Appellees' exhibit, which depicted a cash flow reconciliation comparing Appellant's summary with Appellees' summary, "demonstrates [Appellant's] significant gross exaggeration of the receipts because the daily receipts were generally off; any mistakes

> "Chutzpah" is defined in *The Joys of Yiddish* as: "[g]all, brazen nerve, effrontery, incredible 'guts,' presumption-plus-arrogance such as no other word, and no other language, can do justice to." LEO ROSTEN, THE JOYS OF YIDDISH 93 (McGraw–Hill 1968). Rosten goes on to give a classic example: "Chutzpah is a quality enshrined in a man who, having killed his mother and father, throws himself on the mercy of the court because he is an orphan."

Corapcioglu v. Roosevelt, 170 Md. App. 572, 611 n.15 (2006).

that were made at the register were offset." The trial court then identified several daily revenues that "would just not jive with what we would reasonably expect." The inaccuracies "greatly … diminished the credibility of [Appellant] in the Court's mind."

On that basis, the trial court accepted Appellees' reconciliation exhibit to calculate net income (before labor costs), ultimately finding that "the net income of the business, after operating expenses as well as the cost of goods, was $113,820.25."[19]

Moving next to the cost of Appellees' labor, the trial court found that it would be significantly higher than the business's income. In reaching its conclusion, the court noted that the convenience store was open fifteen hours a day and that Appellees worked not only during this time, but also before opening, after closing, and on holidays. Indeed, the trial court stated that it "believe[d] that the amount of $113,820.25, if anything, is under representative of the value of their time and effort that they put into the business" given "the time that was expended in conjunction with the risk that they were taking with respect to a risk of loss or earning nothing at a business that they … were just taking over." Consequently, the trial court concluded that "there is no net profit that would be subject to a set-off if a set-off [were] indeed allowable under the … rescission."

The record supports the trial court's factual finding that the store earned no net profit. First, we consider the record regarding the store's profit before accounting for labor costs. Appellee Lida testified that she contemporaneously recorded expenses in a

[19] The trial court noted that Appellant produced no evidence regarding how she maintained her books and records, specifically referencing that Appellant did not offer into evidence any of the store's tax returns.

notebook. She further testified that, after the store closed, she would print the cash register receipts, correct them as necessary, scan and print the lottery barcodes, and record the expenses in both the notebook and the daily register. Appellee Lida then stapled all the documents together and put them into a bag. Lida testified that, at the end of each month, she provided the monthly expense totals to Nary over the phone. Nary testified that she would then type the expenses into an Excel spreadsheet.

Appellant and Nary also provided information about the cash register. Appellant testified that each sale is recorded and retained as a transaction record. Appellant and Nary testified that, to ensure accuracy, when an item is rung up incorrectly or a customer cancels a purchase—situations which were not uncommon—the receipt must be voided, set aside, and corrected at the end of the day.

Discrepancies between cash register records and daily reports were exposed in Appellant's spreadsheets. Appellant first admitted a spreadsheet detailing sales from December 2022 through July 2023 that did not include any deductions for the voided transactions. Only after being questioned about the lack of voided transactions did Appellant admit a spreadsheet including such information for that same period. Nary and Appellant's daughter, Sakhouy Lay, provided conflicting testimony about whether the discrepancies could or could not be attributed to third-party payments, such as Venmo transactions. Appellee Narith testified that the convenience store rarely accepted these kinds of payment methods.

Nary testified that the expense spreadsheet she prepared based on monthly phone calls was later compared to the 661 pages of daily end reports. She determined that the

spreadsheet accurately reflected the cash flow found in the daily reports. Nary also prepared a cash flow activity report, which Appellees admitted in evidence and Nary testified to at length. The activity report includes, among other things, the operating, personal, rental, and sales tax expenses, as well as cash withdrawals. Nary testified that she reviewed Appellant's profit summaries and, as a result, prepared a reconciliation to identify the differences between the two. Nary explained, and simultaneously provided examples to the trial court, that Appellant's summaries did not account for cash register mistakes that needed to be corrected.[20] Nary further testified that the cost of goods was $603,650.37 and the operating costs were $130,531.83.

The foregoing reflects that the record more than supports the trial court's finding that the business's income (before labor costs) was $113,820.25, and thus the finding was not clearly erroneous.

Turning to the trial court's calculation of labor, we cannot say that the trial court erred in considering Appellees' would-be labor costs. Lay (again, Appellant's daughter) testified that the store was open from 8:00 a.m. until 11:00 p.m. each day. Appellee Lida testified that she and her husband worked at the store from approximately 8:00 a.m. until approximately midnight, sometimes as late as 1:00 a.m. The trial court concluded that "the amount of $113,820.25, if anything, is under representative of the value of their time and effort that they put into the business." Although Appellant contends that considering

[20] Lay's testimony confirmed as much. Nary testified that the convenience store revenue was approximately $795,000, not approximately $897,000 (as Appellant contended). Nary testified that she reviewed the register tapes to identify the errors that led to the $102,000 discrepancy.

Appellees' would-be labor costs is inappropriate, the fact is that if Appellees had not been manning the store, they would have had to hire help at a substantial cost.

The record supports the trial court's factual finding that, when considering Appellees' would-be labor costs, the store earned no net profits.[21] The trial court's conclusions were thus not clearly erroneous, and the trial court therefore correctly denied Appellant's requests to setoff profits against the $135,500 she failed to return to Appellees.

CONCLUSION

Perceiving no error in the trial court's determinations that (i) Appellees were entitled to rescission (justified either by a material breach or mutual assent), and (ii) the store earned no net profits while Appellees were in control that would operate as a setoff against the sums Appellant failed to repay Appellees, we affirm.

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

[21] As discussed above, the trial court also found that under the direct product rule, even if the store had earned any profit, Appellant was not entitled to any profits with respect to the business. That is, the trial court concluded that "any business profits that were earned by the [Appellees] here … would not be the direct product of the transfer of the business." Instead, the trial court found that the profits were a result of (i) Appellees' long hours of work, and (ii) the purchase of various products for sale in the business and cleaning supplies. As such, the trial court found that any profits derived were from Appellees' independent actions, and not the sale of the business itself. Because we conclude that the trial court's finding that the store earned no net profits was not clearly erroneous, we need not—and do not—consider whether it properly interpreted and applied the direct product rule. This is particularly so because our appellate courts have not previously applied—let alone adopted—the rule.