Circuit Court for Montgomery County
Civil Case No. 410558

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1409

September Term, 2016

BERHANE BETSUAMLAK

v.

GHERBREZGHI SHIMHALAL

Berger,
Nazarian,
Arthur,

JJ.

Opinion by Berger, J.

Filed: November 9, 2017

This appeal arises from a dispute between Ghebrezghi Shimhalal (Shimhalal) and his ex-brother-in-law, Berhane Betsuamlak. In 2008, Betsuamlak emigrated to the United States. Prior to and during his travel, Shimhalal and his wife (Betsuamlak's sister) transferred thousands of dollars to him to cover Betsuamlak's expenses. Shimhalal claims the money transferred to Betsuamlak was a loan that was to be repaid, and Betsuamlak claims the money was merely a gift from family.

Betsuamlak, as appellant, and Shimhalal, as cross-appellant, ask us to review primarily four issues, which we have rephrased as follows:

1. Whether the circuit court erred by denying Betsuamlak's motion to dismiss based on the statute of limitations.

2. Whether the circuit court erred by allowing a certified business record to remain in evidence, where appellee's counsel failed to send appellant a signed certified copy of the record at least ten days before trial.

3. Whether the circuit court's ruling was supported by sufficient evidence.

4. Whether the circuit court erred in its finding that the putative debt was "marital property" and entering a judgment against Betsuamlak and in favor of Shimhalal for half of the total amount the court found to be owed.

For the reasons explained below, we affirm the circuit court's ruling as to Betsuamlak's liability for money transferred to him by Shimhalal. Nevertheless, we vacate the award of damages and remand with instructions to enter an award of $16,033 in favor of Shimhalal and against Betsuamlak.

FACTS AND PROCEDURAL HISTORY

In 2008, Betsuamlak traveled alongside Shimhalal's sister, from Eritrea, Africa to the United States. The journey was apparently an expensive one as they required the assistance of an escort to travel from Sudan to South America before ultimately arriving in the United States and reuniting with Shimhalal and Yergalem Betsuamlak -- Shimhalal's then-wife and Betsuamlak's sister -- in Virginia. The Shimhalals transferred thousands of dollars to Betsuamlak throughout his travel to the United States. At the same time, Betsuamlak and Shimhalal communicated via email, the record of which was translated into English and entered into evidence in the court below.

On August 4, 2008, Shimhalal wrote to Betsuamlak, "Let me know after you reach an agreement with the guy who will be escorting you about how much money you need for yourself and [Shimhalal's sister]." The exchange of e-mail between Betsuamlak and Shimhalal is pertinent to the dispute between the parties. Between August 4, 2008 and August 31, 2008, Betsuamlak and Shimhalal exchanged the following messages in pertinent part:

> From: Berhane Betsuamlak
> To: Ghebrezghi Shimhalal
> Date: August 4, 2008
>
> [W]e have discussed with the guy and he told us like this: " because the time is high season now, the ticket has increased to $4,000." At any rate, he also told us that he would be giving us some discount. Therefore, if you include "show money," as well as the cost from Honduras to Mexico and from Mexico to the border, overall I estimate it to be as much as $7,000. This is for one person. Send from there $14,000 total. We urge you to send us this money. Meanwhile, it is our hope that God will help us to send you the news when we get to America. Now,

the traffic is very good. People, who went on Friday morning, arrived in Mexico on Monday. If you send us the money quickly now, we will depart on Friday. I mean, this weekend. So, do not make any spelling mistake when you are sending though:

Fikadu Shimhalal Tikue

Berhane Betsuamlak Andetsion.

Meanwhile, may God help us to pay you back this money after we get there safely. Peace be with you all. Bye.

From: Ghebrezghi Shimhalal
To: Berhane Betsuamlak
Date: August 5, 2008

Are you now in San Paulo? I just wanted to be sure. You will be receiving money by Western Union.

From: Ghebrezghi Shimhalal
To: Berhane Betsuamlak
Date: August 5, 2008

You told me that you would depart on Friday, am I right? How is it possible before the arrival of your passport? Clarify it for me.

From: Berhane Betsuamlak
To: Ghebrezghi Shimhalal
Date: August 5, 2008

Our passports came on Saturday evening from the South. Since it came through and by the name of Solomon, he received them on Sunday. Therefore, he does not need to give it to us; meaning he starts his work where he is. So for now, what's left is only how to get the money.

We are in San Paulo, near the area where Samuel was staying. In fact, it has now been ten days since we got to San Paulo. For now, stay well for the rest of the week. Write me if you need any other information.

From: Ghebrezghi Shimhalal
To: Berhane Betsuamlak
Date: August 6, 2008

In regards to the matter that you informed me, please accept the following message:

1. Refer to the following reference numbers to get the money from Western Union in your name:

217-721-6092 $2,950 (U.S. Dollar)
015-715-1201 $2,950 (U.S. Dollar)

[. . .]

In addition, we will send you the remaining amount tomorrow. However, call me when you receive this.

From: Berhane Betsuamlak
To: Ghebrezghi Shimhalal
Date: August 6, 2008

[]It is okay. I will tell you when I receive the money. So, good luck. I will call you soon. Bye for now.[]

From: Berhane Betsuamlak
To: Ghebrezghi Shimhalal
Date: August 6, 2008

How are you doing? Hope you are doing well. We just received all the money you sent; so do the same for the rest just

like the previous one. We are done on Friday. So, take care and be well.

From: Ghebrezghi Shimhalal
To: Berhane Betsuamlak
Date: August 7, 2008

Today, we will be sending $1,000 for you and $1,000 for [Shimhalal's sister]. You will be receiving it today sometime between 1:00 PM and 2:00 PM of your time zone. I will be calling you. So, stay around.

From: Berhane Betsuamlak
To: Ghebrezghi Shimhalal
Date: August 7, 2008

They have already given us the money. We are just done for now. The appointment is for Friday and we will call you when we are ready to depart. Meantime, have a peaceful rest of the week.

From: Ghebrezghi Shimhalal
To: Berhane Betsuamlak
Date: August 8, 2008

Good luck!

From: Berhane Betsuamlak
To: Ghebrezghi Shimhalal
Date: August 10, 2008

[W]e are doing just fine. Nevertheless, we still did not depart. Now he told us for Tuesday. In any case, the flight is on every Friday and Saturday. For now, it looks like we will be

departing the following Friday. In the meantime, if there is anything new, I will call you.

From: Ghebrezghi Shimhalal
To: Berhane Betsuamlak
Date: August 11, 2008

Let us know when you are ready to depart.

From: Berhane Betsuamlak
To: Ghebrezghi Shimhalal
Date: August 16, 2008

We have now safely reached Honduras. Right now, meaning Saturday at noontime, we will also be departing for Guatemala. Therefore, if I have the time I will call you while I am in Guatemala; otherwise, I will call you from Mexico.

From: Ghebrezghi Shimhalal
To: Berhane Betsuamlak
Date: August 18, 2008

Have a nice trip!

From: Berhane Betsuamlak
To: Ghebrezghi Shimhalal
Date: August 25, 2008

The telephone number of our hotel, Algarcas Hotel, is 626881. You will need to add the area code yourself.

From: Ghebrezghi Shimhalal
To: Berhane Betsuamlak
Date: August 26, 2008

So, let me know if you are planning to stay at this hotel so that I may call you. Also, include your room number.

From: Ghebrezghi Shimhalal
To: Berhane Betsuamlak
Date: August 28, 2008

Okay, good. A guy who goes by the name of Yonas has given me $500. On the other hand, regarding the other $500 Philemon informs me that another girl will give me from where he is. However, as of now, I have not received it yet. How much did you give the girl? Let me know when you get into your hotel.

From: Berhane Betsuamlak
To: Ghebrezghi Shimhalal
Date: August 28, 2008

So, I just gave $500 to the girl and $500 to the guy. We gave them a total of $1,000. So you will get back the $1,000. For anything else, leave it up to us. We will start out without making any payment. For if we pay beforehand, it is possible they may abandon us along the way. We will not be paying, here. For now, I will let you know our hotel number.

From: Ghebrezghi Shimhalal
To: Berhane Betsuamlak
Date: August 28, 2008

Good, okay! As I informed you, the guy who is called Philemon has still not given me the money. Therefore, you need to tell the guy/girl to give it to me. Be well!

From: Berhane Betsuamlak
To: Ghebrezghi Shimhalal
Date: August 28, 2008

Okay, I will tell him. The address we are in is in Ray Hotel . . . . We are in room number 401.

From: Ghebrezghi Shimhalal
To: Berhane Betsuamlak
Date: August 28, 2008

The form that I am sending you is an Asylum Application for you and [Shimhalal's sister]. Just print it out and I will call you to let you know how to complete it.

From: Berhane Betsuamlak
To: Ghebrezghi Shimhalal
Date: August 30, 2008

I have already printed out the form. In addition, we have moved to another hotel to Nuevo Leon.

From: Berhane Betsuamlak
To: Ghebrezghi Shimhalal
Date: August 30, 2008

We have "already" acquainted ourselves with the form. Now, we will be contacting the smuggler.[1] [. . .] Meanwhile, our address is in Nuevo Hotel and the telephone number is . . .

[1] This term, translated to English for the purposes of entering the email into evidence, may have different connotations in Tigrinya.

A bench trial was held on August 3, 2016, during which Shimhalal, Betsuamlak, and Yergalem Betsuamlak testified regarding the existence of a loan agreement. According to Shimhalal's testimony, he or his wife, Yergalem, transferred various sums of money to Betsuamlak prior to his departure for South America and then via Western Union while Betsuamlak and Shimhalal's sister traveled through Brazil, Mexico, and Texas. Shimhalal testified that he gave Betsuamlak an additional $2,250 in cash after he arrived at the Shimhalals' house in Virginia to cover Betsuamlak's expenses during his trip from Texas to Virginia.

Shimhalal presented evidence of several wire transfers in 2008, which were sent to by either Shimhalal himself or Yergalem Betsuamlak, including the following[2]:

(1) Wire Transfer of $13,000.00 on May 15, 2008 to Dahabshil, Inc.;

(2) Western Union receipt for $2,978.00 sent on August 5, 2008 to Berhane Betsuamlak;

(3) Western Union receipt for $2,978.00 sent on August 5, 2008 to Fukadu Shimhalal;

(4) Western Union receipt for $2,985.00 sent on August 6, 2008 to Berhane Betsuamlak;

(5) Western Union receipt for $2,985.00 sent on August 6, 2008 to Fukadu Shimhalal;

(6) Western Union receipt for $1,020.00 sent on August 7, 2008 to Berhane Betsuamlak;

(7) Western Union receipt for $1,020.00 sent on August 7, 2008 to Fukadu Shimhalal;

[2] The amounts listed include any additional fees charged by the servicer of the wire transfer.

(8) Western Union receipt for $1,919.99 sent on September 8, 2008 to Mayra Lucio.

Shimhalal claimed that the money transferred to the third party, Mayra Lucio, was intended for and received by Betsuamlak. Further, he asserted that Betsuamlak owed $500.00 to him, because Shimhalal's sister had loaned Betsuamlak $500.00 from some of the money transferred to her by Shimhalal. Shimhalal did not present a receipt for the $2,250.00 he claimed to have given Betsuamlak in cash once Betsuamlak and Shimhalal's sister arrived in Virginia.

Shimhalal recalled that he did not immediately ask Betsuamlak to begin making payments on the total amount he had given him in order to allow Betsuamlak to "get on his feet." Shimhalal stated that in 2010 he asked Betsuamlak to begin making payments, but he did not start to pay immediately after their conversation. According to Shimhalal, thereafter, he and Betsuamlak came to an agreement regarding how Betsuamlak would repay the money, with monthly payments to begin in 2012. Shimhalal entered into evidence an unsigned document, titled "Loan Repayment Schedule" as evidence of their agreement. He testified that he drafted the document himself in January of 2012 and that it represented the parties' oral agreement. The document included the statement, "Note: Once payment has started, it is agreed that all balance dues must be brought to zero." The document indicated that the "Balance Owed" prior to any payments being made was $25,000, with an annual percentage rate of "7.00%." No amount was listed beside "Payment Per Month or Percent of Balance."

The Loan Repayment Schedule included a spreadsheet below these terms, which contained a row for each month of the years 2012, 2013, 2014, and 2015. The spreadsheet provided the amount of interest charged on the remaining principal balance per month, the amount applied towards the principal balance, and the new balance after each payment. Beneath "Monthly Payment," seven payments were noted for various months, starting in 2012. The monthly payments recorded included the following amounts in 2012: $1,800, $500, $300, $400, $400, and $400. Another payment for $400 was recorded for 2013, for a total amount of $4,300. Additionally, Shimhalal presented four cancelled checks from Betsuamlak made out to "Yergalem Betsuamlak" in 2012 and 2013 for sums corresponding to all of the payments recorded in the Loan Repayment Schedule except the first $1,800. All four checks were deposited into Shimhalal's and his Yergalem's joint checking account. The date of the last check was March 19, 2013 for $400.00.

At trial, Betsuamlak testified that the sums of money transferred to him were not part of a loan, but rather, "family assistance," which was not expected to be repaid. He claimed that there was no oral agreement, and only acknowledged receipt of some of the money transfers, totaling approximately $6,000. Regarding the checks made out to Betsuamlak's sister and Shimhalal's then-wife, Yergalem Betsuamlak, Betsuamlak claimed that the money was for support to a family member during her separation from her marriage, rather than payments repaying Betsuamlak for a loan.

During her testimony, Yergalem Betsuamlak agreed that there was no loan agreement and that she and Shimhalal were merely helping family without the expectation of repayment. She went on to discuss the reason for her and Shimhalal's separation, which

included some allegations of abuse during the marriage, and that she separated from Shimhalal at the end of July 2013. Further, she agreed that the checks made out to her were for support for her, her children, and "the family."

At the conclusion of the bench trial, the trial court awarded to Shimhalal $8,016.50 plus court costs and interest from the date of judgment at the legal rate of interest. Additional facts are provided below as they become relevant. The court arrived at the amount of its award based on its finding that sufficient evidence supported Shimhalal's claim that the money transferred to Betsuamlak was a loan, and that Shimhalal had provided sufficient documentation of money transfers to Betsuamlak for transfers totaling $20,333.00. After finding that Betsuamlak had repaid $4,300 of the money owed, the court found that $16,033.00 remained unpaid. The court then divided that amount by two, because Shimhalal and Yergalem had separated and subsequently divorced after the money transfers and Betsuamlak's initial payments on the loan, and therefore, only half should be repaid to Shimhalal.

DISCUSSION

I. Standards of Review

In our review of a circuit court's judgment in the absence of a jury, we apply primarily two standards of review based on the nature of the court's conclusions. Maryland Rule 8-131(c) provides the following:

> **Action tried without a jury.** 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 witness.

First, our review of a trial court's conclusions of law is *de novo*. *See Meyr v. Meyr*, 195 Md. App. 524, 545 (2010). We accord no deference to the trial court for its legal conclusions. *See Corbett v. Mulligan*, 198 Md. App. 38, 51 (2011), *vacated on other grounds*, 426 Md. 670 (2012). Instead, "[w]here a case involves the application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are 'legally correct.'" *Meyr*, *supra*, 195 Md. App. at 545 (quoting *Clancy v. King,* 405 Md. 541, 554, 954 A.2d 1092 (2008)) (internal quotation marks omitted).

For the trial court's factual conclusions, however, we determine whether the court's findings were clearly erroneous. *See Cunningham v. Feinberg*, 441 Md. 310, 322 (2015) (explaining that we accept the trial court's findings of fact unless clearly erroneous). "If there is any competent evidence to support the factual findings below," those factual findings are not clearly erroneous. *Friedman v. Hannan*, 412 Md. 328, 335–36 (2010). We review the record below to determine "whether substantial evidence exists in the record to support the trial court's finding." *Mills v. Mills*, 178 Md. App. 728, 734 (2008). "Thus, we must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed." *Id.* at 734-35 (citations omitted).

Finally, in most cases, we review the trial court's evidentiary decisions for abuse of discretion; however, "the trial court does not have discretion to admit irrelevant evidence."

See Ruffin Hotel Corp. of Md. v. Gasper, 418 Md. 594, 620 (2011) (citing Md. Rule 5-402). The Court of Appeals provided the following explanation:

> While the "clearly erroneous" standard of review is applicable to the trial judge's factual finding that an item of evidence does or does not have "probative value," the "de novo" standard of review is applicable to the trial judge's conclusion of law that the evidence at issue is or is not "of consequence to the determination of the action."

Id. (quoting *Parker v. State*, 408 Md. 428, 437 (2009)). Indeed, we review *de novo* a trial court's conclusions of law regarding whether or not evidence is relevant. *See State v. Simms*, 420 Md. 705, 725 (2011). Pursuant to Md. Rule 5-401, evidence is relevant where it would cause "the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. Even assuming the trial court's evidentiary ruling is erroneous, however, we will not reverse for harmless error. *See* Md. Rule 5-103(a); *Consol. Waste Indus. v. Standard Equip. Co.*, 421 Md. 210, 219 (quoting *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009)) ("[I]t has long been the settled policy of this [C]ourt not to reverse for harmless error."). An error is not harmless and "[p]rejudice exists when the particular error is determined likely to have affected the verdict . . . ." *Id.* at 219-20.

II. Statute of Limitations

Betsuamlak argues that, even if he breached the contract to pay back a sum of money given to him in 2008 for his trip to the United States, the statute of limitations barred Shimhalal's claim. He contends that, because the transfers and alleged agreement to repay the money occurred in 2008, the applicable statute of limitations would have expired in

2011, as Shimhalal provided no evidence that Betsuamlak made any payments on the loan between 2008 and 2011.

Pursuant to Md. Code (2006, Repl. Vol. 2013), Cts. & Jud. Proc. Art. I (C.J.P.), § 5-101, "A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced." In a breach of contract case, such as the one *sub judice*, the claim accrues once the contract is breached and the injured party discovers or should have discovered the breach. *See Lewis v. Baltimore Convention Ctr.*, 231 Md. App. 144, 153 (2016) (citations omitted) ("A breach of contract claim accrues when the party knows or should have known the facts giving rise to its claim."). We, therefore, examine the circumstances of each case, as "determining when a breach of contract occurs usually depends on the nature of the promises made in the contract and the times for performing those promises." *Jones v. Hyatt Ins. Agency, Inc.*, 356 Md. 639, 649 (1999).

In this case, Shimhalal claimed that he and Betsuamlak entered into an agreement for Betsuamlak to repay Shimhalal the money that Shimhalal transferred to Betsuamlak in 2008. Shimhalal acknowledged that he and Betsuamlak did not decide a particular date upon which the money would be repaid until 2012, when they created a schedule for repayment. Shimhalal asserted that, initially, the parties had no formal schedule for repayment and that he did not demand repayment immediately after Betsuamlak arrived in the U.S. in order to allow Betsuamlak to "get on his feet." Shimhalal, therefore, did not allege that Betsuamlak breached the agreement until he failed to make any monthly payment after March of 2013.

We agree that the alleged breach in this case occurred in April of 2013 when Betsuamlak failed to make a monthly payment. Shimhalal filed his complaint against Betsuamlak in October 13, 2015; therefore, Shimhalal initiated this case approximately two years and five months after the date the claim accrued -- within three years from the date of the breach. Accordingly, the circuit court did not err in denying Betsuamlak's motion to dismiss based on the applicable statute of limitations.

III. Sufficiency of the Evidence

In making its final determination, the circuit court provided the following rationale:

> I think as I said earlier, it's clear that this was a family matter, and that it was implicitly understood that the money was being loaned, and that there would be a repayment at some point.
>
> [. . .] I found the plaintiff to be more credible than the defendant. And the defendant's sister, who is the ex-wife of the plaintiff, testified that they had a joint account. The plaintiff testified that they had one account, that payments were made from that account. The defendant corroborated a lot of the plaintiff's testimony in regard to the payments that were made through [Dahabshil], payment of 5/13/08, 5/17/08.
>
> While the defendant denied that he knew anything about those payments, and . . . he said that he didn't know if that was his telephone number [on the Dahabshil receipt], I didn't find that to be particularly credible. I disagree with plaintiff's assertion that you're not going to remember your telephone number from 2008.
>
> I think it's clear that just based on my review of the e-mails, that there was money that was being sent to help the defendant come to the United States. [. . .]
>
> So at this point then, . . . I do find that the $13,350 was sent to the defendant. The defendant acknowledged receipt of exhibits, of monies referenced in Exhibits 2, 3, and 4, which [were in the amounts of] $2,978 for Exhibit 2, 2,985 for Exhibit

> 3, and $1,020 for Exhibit 4. That comes out to a total of $6,983.
>
> The e-mails . . . which are dated August 6th of 2008, . . . it clearly sets out that there was money that was sent out, and [Betsuamlak] acknowledges receipt of that money on August 6th. [. . .] [S]o certainly I think that there is sufficient corroboration throughout the e-mails of the plaintiff's position.
>
> [. . .] [S]o, certainly I'm going along with the 7,200, the 6,150, and the $6,983. Exhibit 5 references some money that was sent to a third party. I find that there was insufficient documentation of that, so I am not putting that into the total.
>
> I come out with a total of $20,333, which would have been payments made to the defendant, and minus the 4,300, and I do find that those payments were made, as he said, to compensate, which was to pay back the loan. [. . .]
>
> However, because the payment, the loan was made as a marital entity, the payment should be coming back to both. So because then, as I said, it's $20,333, minus the $4,300 payments, it comes out to 16,033. It's clear that at the time that the payments were made, both parties, both the ex-wife as well as the plaintiff, received those monies, because . . . the plaintiff gave the defendant credit for that. So it comes out to 16,033, divided by two would be 8,016.50. So that is the amount that I'm going to award to the plaintiff, and enter judgment against the defendant in that amount.

Betsuamlak argues that the evidence was insufficient for the trial court to find that a contract existed because (1) the trial court relied on evidence that should not have been admitted; (2) "the trial court relied on self-serving testimony of the Appellee/Cross Appellant that was not [corroborated] by any other witness" such as the Loan Repayment Schedule; (3) "there was no proof that the alleged $1800 money order came from the Appellant/Cross Appellant, and the Appellant/Cross Appellee denied making any such [payment]." Additionally, Betsuamlak adds that his sister "testified that the money was

sent to her for family assistance and for [a] favor and not as a payment for any loan," and Betsuamlak denied "ever making any payment to [Shimhalal] on the loan" and denied that he ever "agreed to pay for the loan in 2012."

In each of Betsuamlak's arguments on this issue, however, he overlooks the focus of our review of a trial court's factual findings. As we have already provided, we will not disturb the trial court's factual findings "[i]f there is any competent evidence to support the factual findings below." *See Friedman*, *supra*, 412 Md. App. at 734. Our review of the record in this case reveals more than enough evidence to support the trial court's findings of fact -- specifically, that Betsuamlak and Shimhalal entered into a verbal loan agreement, that Betsuamlak made payments on the loan pursuant to that agreement, and that Betsuamlak breached that agreement when he stopped making payments on the loan in 2013. More than sufficient evidence existed in the record below to support the trial court's findings.

The court, in explaining its rationale for finding in favor of Shimhalal, noted that it relied on several items of evidence corroborating the plaintiff's testimony. First, the court pointed to the email communications between Betsuamlak and Shimhalal in which they discussed the money transfers, and the purpose for the transaction. The court found that those emails indicated that both Betsuamlak and Shimhalal intended that the money would be repaid. The court explained, "I think it's clear that just based on my review of the e-mails, that there was money that was being sent to help the defendant come to the United States." Thereafter, the court stated, "The e-mails . . . which are dated August 6th of 2008, . . . clearly set[] out that there was money that was sent out, and [Betsuamlak]

acknowledges receipt of that money on August 6th." The court concluded, based on the email communications, therefore, that "there is sufficient corroboration throughout the e-mails of the [appellee's] position." We agree.

Indeed, after Shimhalal wrote to Betsuamlak asking him how much money he and Shimhalal's sister would each require to travel to the United States, Betsuamlak responded with the following:

> [O]verall I estimate it to be as much as $7,000. This is for one person. Send from there $14,000 total. We urge you to send us this money. [. . .] If you send us the money quickly now, we will depart on Friday. . . . So do not make any spelling mistake when you are sending though . . . . Meanwhile, may God help us to pay you back this money after we get there safely.

To be sure, the emails were written in a foreign language, and certain words could have different connotations when translated into English. The court, however, had the opportunity to hear the testimony of both Shimhalal and Betsuamlak and evaluate the credibility of each witness regarding the meanings they intended in their communications -- both written and via telephone. Additionally, the court found Shimhalal's account of the facts to be more credible than Betsuamlak and that his testimony of their agreement benefitted from greater corroboration.

Further, Betsuamlak's argument regarding the insufficiency of the Loan Repayment Schedule, which was unsigned and created by Shimhalal, assumes the court relied on the document as evidence that an agreement existed. The court relied on many items of evidence in reaching that conclusion; however, the court does not reference the Loan Repayment Schedule in making this determination. Instead, the Loan Repayment Schedule

served only to give Betsuamlak credit for certain payments already made to Shimhalal. The payments, themselves, were evidenced by cancelled checks corresponding to the same approximate dates and times listed on the document. Additionally, Shimhalal testified that Betsuamlak asked Shimhalal to loan him the money in early 2008, prior to their communications via email in May of 2008.

Notably, the court did not accept the Loan Repayment Schedule as a written contract between Betsuamlak and Shimhalal. The court did not attribute the entire $25,000 listed on the repayment schedule to the original debt owed by Betsuamlak, nor did the court hold Betsuamlak liable for the 7.0 percent interest included on the document. Instead, the court examined individual items of evidence that corroborated Shimhalal's claim that the two had entered into an oral agreement for Betsuamlak to repay the money sent to him during his travel to the United States at some point after arriving, that Betsuamlak and Shimhalal set up a monthly payment schedule to begin in 2012, and that Betsuamlak had begun making payments accordingly.

"We must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed." *Mills*, *supra*, 178 Md. App. at 734-35. Viewing the evidence in the light most favorable to Shimhalal, the circuit court's factual findings were clearly supported by the evidence. We, therefore, will not disturb the trial court's findings, including the court's assessment of the credibility of the witnesses and other corroborating documentary evidence.

IV. Evidentiary Rulings

Betsuamlak argues on appeal that we should reverse the trial court's ruling because the court admitted a business record at trial for which Shimhalal had not fully complied with all aspects of the notice requirements under Md. Rule 5-902. For a document to be properly admissible at trial, the Rules require that a party either establish a proper foundation through witness verification of the document or follow the procedure outlined in Md. Rule 5-902. Maryland Rule 5-902(b) provides, in pertinent part, the following:

> Testimony of authenticity as a condition precedent to admissibility is not required as to the original or a duplicate of a record of regularly conducted business activity, within the scope of Rule 5-803 (b)(6) that has been certified pursuant to subsection (b)(2) of this Rule, provided that at least ten days prior to the commencement of the proceeding in which the record will be offered into evidence, (A) the proponent (i) notifies the adverse party of the proponent's intention to authenticate the record under this subsection and (ii) makes a copy of the certificate and record available to the adverse party and (B) the adverse party has not filed within five days after service of the proponent's notice written objection on the ground that the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

Md. Rule 5-902.

At trial, Shimhalal offered into evidence signed copies of certificate of custodian records from Dahabshil, Inc. and Western Union. Despite being asked by the court, Betsuamlak's counsel did not object to the entry of the records when the records were presented. Thereafter, during redirect examination, the following exchange occurred:

> THE COURT: There is a, you're saying that you don't have that, or you're, I mean because I asked you if you were objecting to it coming in, and you indicated no, so it's been received.

[BETSUAMLAK'S COUNSEL]: Yes, but I, it's just occurred to me that they were, I haven't seen if those were actually certified receipts.

THE COURT: Well, there's a certification of custodian of records for [Dahabshil] Incorporated, which [Shimhalal's Counsel] indicated that he had sent to you. [Shimhalal's Counsel], you indicated that you had --

[SHIMHALAL'S COUNSEL]: I think the rule is at least 10 days, and I believe it was about 11 or 12 days ago.

THE COURT: Well, I don't see how that's possible, because it's dated July 29th, 2016.

[SHIMHALAL'S COUNSEL]: The one that was sent unfortunately was unsigned at that point. I didn't get the signed copy until Friday.

THE COURT: Okay, so [BETSUAMLAK'S COUNSEL], are you objecting at this point?

[BETSUAMLAK'S COUNSEL]: Unless they can be, unless they are certified, yes.

THE COURT: So the copy that you received over 10 days ago was not signed, so it could not have been certified, is what you're saying. So is that what you're saying?

[BETSUAMLAK'S COUNSEL]: The copy of the transfer or the check?

THE COURT: Ok. [SHIMHALAL'S COUNSEL] was relying on the documents that he sent to you, saying that they were provided to you 10 days prior to the court date. Today is August 3rd, and so since this is dated July 29th, obviously whatever you received I guess was not certified. So are you objecting? I mean you had already, are you now asking me to reconsider the admission of Exhibit No. 1, since it was not certified?

After a short recess to provide Betsuamlak's counsel an opportunity to review the exhibits, the proceedings resumed.

> [BETSUAMLAK'S COUNSEL]: Our issue with the exhibit, particularly to some of the statements made on the exhibit, that they weren't certified, and my client disagrees with them, so I'm opposing it.
>
> THE COURT: Okay. So you're saying it was not, you did not get a signed copy, 10 days prior to today?
>
> [BETSUAMLAK'S COUNSEL]: Yes, I didn't get anything that's certified regarding his company, [Dahabshil]. And anything that, the only thing I actually received was Western Union. [. . .] I'm not sure if I never received this. It might have been among some other documents.
>
> [SHIMHALAL'S COUNSEL]: My e-mail was on July 21 s t, Your Honor. [. . .] It was attached as a PDF entitled certified --
>
> [BETSUAMLAK'S COUNSEL]: Okay.
>
> THE COURT: But it wasn't signed.
>
> [SHIMHALAL'S COUNSEL]: Correct, Your Honor. At that point I was not, I had not been able to obtain the signed copy. I wasn't able to obtain the signed copy until the 29th. The rule does say that the opposing party should make their written objection within five days prior to trial. That didn't happen . . . .
>
> THE COURT: Okay. Well, the rule very clearly says makes a copy of the certificate and record available. And there was no certificate, because it hadn't been signed. [. . .] I think there's error . . . on both sides. But it was admitted without objection, so [it] will just remain.

Betsuamlak now complains that the court's decision to allow the document to stay in evidence, rather than sustain Betsuamlak's late objection to its entry, is cause for

reversal. We will not find that a trial court abused its discretion in its evidentiary determinations except where "no reasonable person would share the view taken by the trial judge," *Consol. Waste Indus. v. Std. Equip. Co.*, 421 Md. 210, 219 (2011) (quoting *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009)), or where "a decision is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Pantazes v. State,* 376 Md. 661, 681 (2003) (citations omitted).

Critically, Shimhalal's counsel's failure was that he did not send a signed certificate with the copy of the record to Betsuamlak's counsel more than ten days before trial. Betsuamlak's counsel never made a written objection to the unsigned version, however, which was sent more than ten days before trial, and then failed to object a second time when the record and the signed certificate were presented in court. Betsuamlak's counsel, therefore, had notice of the record to be presented at trial, an opportunity to investigate it, and an opportunity to object on the grounds of untrustworthiness, and did not raise any concerns until after the record was admitted with a proper certificate. At the very latest, Betsuamlak's counsel should have objected when it was presented in court. Although counsel on both sides erred with regard to this record, the trial court found, in its sound discretion, that the record was sufficiently trustworthy.

In addition to other evidence corroborating the Dahabshil transaction, the circuit court noted that Betsuamlak's testimony "corroborated a lot of the plaintiff's testimony in regard to the payments that were made through Dahabshil, payment of 5/13/08, 5/17/08." Further, the circuit court found that Betsuamlak's testimony, particularly his denial of

having any knowledge of the Dahabshil transactions, was not credible. Notably, the certificate of the record was properly signed when it was presented in court.

Even if Betsuamlak could show that the circuit court abused its discretion in denying a late objection to a properly certified business record, the circuit court's decision did not prejudice Betsuamlak. An error must be "likely to have affected the verdict" to be prejudicial, reversible error. *See Consol. Waste Indus.*, *supra*, 421 Md. at 220 (citing *Crane v. Dunn*, *supra*, 382 Md. 83, 91 (2004)). Additionally, "an error in evidence is harmless if identical evidence is properly admitted." *See Barksdale v. Wilkowsky*, 419 Md. 649, 663 (2011); *see also, e.g.*, *Angelakis v. Teimourian*, 150 Md. App. 507, 526 (2003) (holding that even if the trial court erred in excluding a certain letter from evidence, the error was harmless because the author of the letter testified as to the content of the letter). Even if the Dahabshil record had been excluded from evidence, as we have already explained, the trial court relied on many pieces of evidence in reaching its determination regarding the amount and purpose of the Dahabshil transaction.

V. Reduction of the Total Amount by One-Half

As we discussed *supra*, the circuit court found that the total amount owed by Betsuamlak was $16,033. Because the court found that the loan was made as a marital entity by both Shimhalal and Yergalem, the court entered a judgment in favor of Shimhalal for half of the total, or $8,016.50. Shimhalal asserts that it was improper for the court to reduce the total amount by half, and we agree with Shimhalal.

On appeal, Shimhalal does not dispute that the judgment could be properly categorized as a marital asset, in light of the fact that the loan was made by both Shimhalal

and Yergalem during their marriage. First, we emphasize that the circuit court had no evidence before it to determine the appropriate disposition of any marital asset. Furthermore, Shimhalal and Yergalem were divorced in the State of Virginia, and the laws of Virginia govern the disposition of Shimhalal and Yergalem's marital property.[3] Under Virginia law, "[e]quitable distribution does not mean equal distribution." *Budnick v. Budnick*, 595 S.E.2d 50, 57 (2004) ("In Virginia, there is no presumption that marital property should be equally divided."). In our view, it was inappropriate for a Maryland circuit court to assume, with no evidence before it, and considering none of the factors governing equitable distribution under Virginia law, that it was appropriate to reduce the judgment due Shimhalal by fifty percent. Under Virginia law, the court considers various factors when determining the appropriate distribution of marital property, including "[t]he contributions, monetary and nonmonetary, of each party in the acquisition and care and maintenance of such marital property of the parties." Virginia Code, § 20-107.3(E).

The circuit court found that Betsuamlak owed $16,033.00 to Shimhalal. Whether Yergalem might have a claim for some portion of the amount owed was outside of the scope of the proceeding before the circuit court, and, therefore, was an inappropriate basis for the reduction of the judgment in favor of Shimhalal. We, therefore, remand for the

[3] Section 20-107.3(A) of the Virginia Code provides that "[t]he court, on the motion of either party, may retain jurisdiction in the final decree of divorce to adjudicate" property distribution. In Shimhalal and Yergalem's divorce decree, which was attached as an exhibit to Shimhalal's motion to alter or amend judgment (which was denied by the circuit court), the Virginia court did not expressly retain jurisdiction to adjudicate equitable distribution of marital property pursuant to Virginia Code Section 20–107.3A.

entry of a judgment in the amount of $16,033.00 in favor of Shimhalal and against Betsuamlak.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND REVERSED IN PART. JUDGMENT AS TO LIABILITY FOR BREACH OF CONTRACT AFFIRMED. THE DAMAGES AWARDED BELOW ARE HEREBY VACATED. CASE REMANDED WITH INSTRUCTIONS TO ENTER AN AWARD OF $16,033.00 IN FAVOR OF SHIMHALAL AND AGAINST BETSUAMLAK. COSTS TO BE PAID BY APPELLANT.