

Circuit Court for Prince George's County
Case No. CAL19-29710

UNREPORTED*

IN THE APPELLATE COURT
OF MARYLAND

No. 2059

September Term, 2023

THERESA M. SIMMONDS

v.

DOROTHENE ARMSTRONG

Leahy,
Kehoe, S.
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by McDonald, J.

Filed: December 19, 2025

* Under Maryland Rule 1-104, an unreported opinion may not be cited as precedent as a matter of *stare decisis*. It may be cited for its persuasive value if the citation conforms to Rule 1-104(a)(2)(B).

- Unreported Opinion -

The trial of this case revealed competing versions of how a legally blind and disabled elderly woman (Appellee Dorothene Armstrong) was taken advantage of financially after she had received a substantial sum of money as compensation for a workplace injury. In one version, a younger woman of long acquaintance (Appellant Theresa Simmonds) embezzled the funds. In the other, the older woman's husband (Garth Renn) squandered the money.

A jury in the Circuit Court for Prince George's County apparently accepted the former version and awarded \$200,000 in "consequential damages" in favor of Ms. Armstrong against Ms. Simmonds. The question on appeal before us is whether the Circuit Court should have granted Ms. Simmonds' motion for a new trial on the ground that there was insufficient evidence admitted at trial to support the jury's verdict.

For the reasons set forth below, we affirm the judgment of the Circuit Court as to liability, but reverse and remand the case to that court for a new trial on the issue of damages.

I

Background

A. *The Prequel: Criminal Charges, an Alford Plea by Ms. Simmonds, and a Sentence including Restitution*

In what served as a prequel to this civil case, Ms. Simmonds was charged criminally on October 5, 2018, with embezzlement from Ms. Armstrong and related offenses in the Circuit Court for Charles County. *See State v. Simmonds-Greene*, Case No. C-08-CR-18-

000783. That case was resolved when Ms. Simmonds entered an *Alford* plea¹ on February 28, 2019, to the embezzlement charge. On May 21, 2019, she was sentenced to five years imprisonment, with all but 18 months suspended. As part of her sentence, Ms. Simmonds was ordered to pay restitution to Ms. Armstrong in the amount of \$66,958.53 at the rate of \$900 per month.²

B. The Civil Complaint and Pretrial Developments

1. The Complaint and Attached Exhibits

Several months later, in September 2019, Ms. Armstrong initiated this civil action against Ms. Simmonds. Her complaint consisted of six counts setting forth the following causes of action:

- conversion (Count I)
- breach of agreement (relating to a power of attorney (“POA”) that Ms. Armstrong had given Ms. Simmonds) (Count II)

¹ In an *Alford* plea, the defendant maintains his or her innocence, but acknowledges that the State’s evidence, if believed by the factfinder, would result in the defendant’s conviction. *See North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

² We take judicial notice from the official court records of the criminal case that Ms. Simmonds filed a timely motion for reconsideration of that sentence. The Circuit Court for Charles County deferred resolution of that motion, as well as the imprisonment portion of her sentence, and thereafter received periodic status reports concerning Ms. Simmonds’ progress in paying restitution. After holding periodic status conferences over a six-year period during which the probation office reported that Ms. Simmonds had been making restitution payments, the court granted the motion for reconsideration on June 4, 2025, and modified her sentence to five years incarceration, with all but one day suspended and with credit for the one day she had served in pretrial detention. Ms. Simmonds’ defense counsel filed an additional motion for reconsideration that same day. On September 15, 2025, the court held that motion in abeyance.

- breach of fiduciary duty (Count III)
- fraudulent misrepresentation (Count IV)
- intentional infliction of emotional distress (Count V)
- unjust enrichment (Count VI)

As to the amount of damages, Ms. Armstrong sought “an amount … no less than \$100,000.00 plus pre-judgment interest” with respect to the conversion and unjust enrichment counts. She sought the same amount in “compensatory and actual damages” with respect to the counts alleging breach of agreement and breach of fiduciary duty. With respect to the counts alleging fraudulent misrepresentation and intentional infliction of emotional distress, the complaint did not request specific amounts of damages for those causes of action; the complaint did allege that “exemplary damages” in an unspecified amount should be awarded with respect to the claim of fraudulent misrepresentation.³ The complaint also asked generally for an award of an unspecified amount of punitive damages “based upon Defendant’s fraudulent conduct and breaches of fiduciary duty.”

As to the nature of the damages suffered by Ms. Armstrong, four of the counts requested compensation for economic losses suffered by Ms. Armstrong or the economic benefit obtained by Ms. Simmonds: the conversion count referred to “significant economic damages”; the breach of agreement count sought “remuneration” of funds disbursed from a bank account belonging to Ms. Armstrong, plus interest; the fraudulent misrepresentation count referred to monetary amounts withdrawn or transferred by Ms. Simmonds from Ms.

³ “Exemplary damages” is another name for punitive damages. *See* Black’s Law Dictionary (9th ed. 2009) at p. 448 (“punitive damages”).

Armstrong's bank account as well as "exemplary damages" and the "costs of investigation"; the unjust enrichment count referred to the "benefit" derived by Ms. Simmonds as a result of her alleged misconduct. The count alleging breach of fiduciary duty simply stated that Ms. Armstrong "suffered damages" without further details, although an additional prayer for damages at the conclusion of the complaint requested "punitive damages" for the alleged breach of fiduciary duty. The count alleging intentional infliction of emotional distress appeared to seek non-economic damages for pain and suffering, as it alleged that Ms. Simmonds had "intentionally or recklessly caused [Ms. Armstrong] to suffer severe emotional distress", although it did not quantify the amount of those damages.

Attached to the complaint were five exhibits: bank statements for the period from July 2016 through September 2016 for a checking account in the name of Ms. Armstrong for which Ms. Simmonds was listed as having a power of attorney ("Armstrong POA checking account") (Exhibit A); court papers relating to an attempted eviction of Mr. Renn and Ms. Armstrong in January 2017 for failure to pay rent (Exhibit B); a document entitled "Revocation of Power of Attorney" dated December 22, 2016, signed by Ms. Armstrong and addressed to Ms. Simmonds (Exhibit C); a print-out of docket information concerning the criminal case against Ms. Simmonds together with letters from the State's Attorney for Charles County addressed to Ms. Armstrong reporting on Ms. Simmonds' sentence and forwarding one of Ms. Simmonds' restitution payments (Exhibit D); and an account statement for the Armstrong POA checking account for the period November 13, 2016

through December 13, 2016, showing a balance of \$3.76 at the end of that period (Exhibit E).⁴

2. The Answer

Ms. Simmonds was served with the complaint shortly after its filing. After some preliminary procedural skirmishing,⁵ Ms. Simmonds filed a *pro se* answer on February 6, 2020, that amounted to a general denial together with a promise that she would obtain counsel within 60 days. An attorney later entered an appearance on her behalf in April 2020.

Trial dates were scheduled and continued at least twice.

3. The Amended Complaint

Three years after Ms. Armstrong had filed her original complaint, on October 31, 2022, she filed an amended complaint that added Nathaniel Greene,⁶ Ms. Simmonds' husband, as a defendant and sought to hold him liable for the alleged damages "jointly and

⁴ None of these exhibits were introduced into evidence at trial, although the witnesses referred to some of the events set forth in these exhibits and the correspondence from the State's Attorney was read verbatim into the record.

⁵ Ms. Simmonds sought dismissal of the case on the theory that the restitution award in the criminal case fully resolved Ms. Armstrong's claims against her. In turn, Ms. Armstrong filed a motion for a default judgment and a motion to compel responses to her discovery requests. Neither party's efforts resulted in a quick disposition of the case.

⁶ Ms. Armstrong's amended complaint spells his last name as "Green." However, Ms. Simmonds is identified in the criminal case by the last name "Simmonds-Greene" and the trial transcript and certain exhibits in this case similarly spell his last name as "Greene." We will use "Greene."

severally” with his wife. In three new paragraphs, the amended complaint alleged that Mr. Greene had benefitted from his wife’s alleged fraud.⁷

Ms. Simmonds did not answer the amended complaint, perhaps because none of the amendments related to her. Nor did Mr. Greene answer the amended complaint; indeed, there is no indication in the record that it was ever served on him.

4. Pretrial Statements

Ms. Simmonds obtained a new counsel who entered his appearance in March 2023, and the pace of the litigation accelerated toward a trial a few months later. In a pretrial statement⁸ filed two months before the June 2023 trial date, Ms. Armstrong’s counsel contended that Ms. Simmonds “remain[ed] indebted” to Ms. Armstrong for \$100,000 – the amount by which Ms. Simmonds’ alleged embezzlement allegedly exceeded the restitution awarded in the criminal case.⁹ In that statement Ms. Armstrong’s counsel also reiterated

⁷ In her motion seeking leave to file the amended complaint, Ms. Armstrong clarified that Mr. Greene was added as a defendant only as to Counts V (intentional infliction of emotional distress) and VI (unjust enrichment).

⁸ Somewhat confusingly, Ms. Armstrong’s counsel titled this document as “*Defendant* Pretrial Statement” (emphasis added) and represented its positions and statements as those of the “Defendant.” However, given the context and the fact that the attorney filing the statement represented Ms. Armstrong, the document was clearly submitted on behalf of the plaintiff.

⁹ This appeared to be based on Ms. Armstrong’s allegation that Ms. Simmonds had converted a total amount of \$177,000, but that Ms. Simmonds had been ordered in the criminal case to make restitution of approximately \$67,000. Ms. Armstrong’s counsel was apparently acknowledging the credit against a civil verdict that a defendant is entitled to for restitution made in a related criminal case. *See* Maryland Code, Criminal Procedure Article (“CP”), §11-603(c)(2).

that Ms. Armstrong sought punitive damages but did not specify an amount. The pretrial statement did not refer to damages for pain and suffering as an issue in the case.

The pretrial statement filed by Ms. Simmonds' defense counsel simply denied that she had embezzled funds from Ms. Armstrong.

C. *The Trial of the Civil Action*

The case was tried before a jury on June 14 and 15, 2023.

1. Opening Statements

In his opening statement, Ms. Armstrong's counsel summarized the relief that Ms. Armstrong was seeking. After explaining that Ms. Armstrong had received a settlement of approximately \$170,000 as compensation for a work-related injury and that Ms. Simmonds had already been ordered to "pay restitution for \$66,000," he stated that Ms. Armstrong was seeking "actual damages of \$100,000 remaining of what [Ms. Simmonds] actually took, in addition to \$100,000 for the pain and suffering, the hardship, that Ms. Armstrong, along with her husband, had to suffer and endure as a result of [Ms. Simmonds] taking advantage of Ms. Armstrong." He thus suggested that the jury award Ms. Armstrong a total of \$200,000 in damages.

Defense counsel, in her opening statement, said that the defense would show that Ms. Armstrong's husband, Garth Renn, also had access to the bank account from which Ms. Armstrong's funds were allegedly stolen and that, in any event, the Charles County State's Attorney's Office had fully investigated the matter, so "that there is no additional amount of money that [Ms. Simmonds] is liable for."

2. The Evidence at Trial

Ms. Armstrong, Mr. Renn, and Ms. Simmonds each testified at trial. Three documentary exhibits – two bank statements and an admission made by the defense in a discovery filing – were introduced into evidence by Ms. Armstrong’s counsel. Correspondence from the Charles County State’s Attorney Victim Witness Assistance Unit describing the outcome of the criminal case against Ms. Simmonds was read into the record without objection, although not introduced as an exhibit. The documents relating to the Armstrong POA checking account that had been attached to Ms. Armstrong’s complaint were *not* introduced into evidence at trial.

To determine whether there was sufficient evidence to support the verdict of the jury, it is useful to separate out those facts that were undisputed from those that were contested by the parties at trial – *i.e.*, to identify the evidence on which the jury was called upon to exercise its judgment.

a. Undisputed Facts

Ms. Armstrong, Ms. Simmonds, and Ms. Armstrong’s Finances

Ms. Armstrong was employed for many years as a nurse until 2012, when she injured her back at work. In 2015 she also became legally blind as a result of diabetic neuropathy. In the spring of 2016, Ms. Armstrong received a settlement with respect to her back injury in the amount of \$177,000. That sum was deposited into a joint checking account in the names of Ms. Armstrong and Garth Renn, her husband. We shall refer to that bank account as the “Armstrong/Renn checking account.”

At the time, Ms. Armstrong had a close relationship with Ms. Simmonds, the mother of Ms. Armstrong's grandchild.¹⁰ Ms. Armstrong had known Ms. Simmonds for approximately 30 years and trusted her. She turned to Ms. Simmonds for assistance in managing her finances and, for that purpose, executed a POA in favor of Ms. Simmonds.

With the assistance of Ms. Simmonds, Ms. Armstrong opened a checking account in her own name alone with Ms. Simmonds as POA – the Armstrong POA checking account referred to earlier in this opinion. Ms. Armstrong transferred the settlement money out of the Armstrong/Renn checking account into the new Armstrong POA checking account. Funds were also transferred to a second certificate of deposit account at the same bank in the name of Ms. Armstrong, also with Ms. Simmonds as POA (“Armstrong POA CD account”).

Two plaintiff exhibits consisting of bank statements for the Armstrong/Renn checking account were admitted in evidence without objection. Those statements reflected the \$17,000 and \$100,000 transfers in July 2016 from that account to the Armstrong POA checking account and the Armstrong POA CD account, respectively.

No bank records related to either the Armstrong POA checking account or the Armstrong POA CD account to which Ms. Armstrong's funds were transferred were offered, or admitted, into evidence. However, the defense had conceded during discovery that some of the funds in the two POA accounts were later used to benefit Ms. Simmonds.

¹⁰ After the parties used this description to refer to the familial relationship between the two women, the Circuit Court suggested that Ms. Simmonds could simply be called Ms. Armstrong's daughter-in-law, but backed off that suggestion when told that Ms. Armstrong's son and Ms. Simmonds had never married.

Among the items purchased with Ms. Armstrong's funds for the benefit of Ms. Simmonds and her family were furniture for Ms. Simmonds' home (\$7,483.48), a cruise taken by Ms. Simmonds and her husband (\$5,467.50), and computers for Ms. Simmonds' two daughters, one of whom was Ms. Armstrong's granddaughter (\$3,500).

The Financial Straits of Ms. Armstrong and Mr. Renn and their Impact

Although the parties did not agree on the cause of the financial difficulties that Ms. Armstrong and Mr. Renn experienced during 2016-17, the impact of those difficulties on them was undisputed.

Ms. Armstrong and Mr. Renn both testified that a shortage of funds during that period meant that they could not pay rent and that they received at least four or five eviction notices. Ultimately, Mr. Renn's church provided rent money when their Social Security income did not cover it; they went to a food line for food; Ms. Armstrong had to borrow toilet paper from a neighbor.

Mr. Renn said that, as a result of losing access to Ms. Armstrong's money, they both suffered depression and anxiety. Ms. Armstrong saw a psychiatrist for about a year; Mr. Renn was seeing a psychiatrist at the Veterans Administration. He said that Ms. Armstrong was "upset, angry, frustrated" and felt betrayed by someone whom she had trusted.

Ms. Armstrong said that, as a result of her concerns about being able to pay her bills, she was "panicking," "nervous, depressed," and suffered "deep depression." She "had to go on medication" and "had to see a psychiatrist," with whom she had weekly sessions for a year to 15 months. At the time of the trial, she was still taking the medication. She testified that she still has nervous attacks, that she asks her husband every month whether

the rent has been paid, that she has depression and sleepless nights, so takes sleeping pills, that she has heart palpitations, and that she cannot trust people.

b. Disputed Facts

While there was general agreement at trial that Ms. Armstrong had initially assented to Ms. Simmonds' involvement in her financial affairs, the witnesses differed as to how that came about. Also in dispute were the disposition of most of the funds transferred to the two POA accounts, the extent to which funds were expended for the benefit of Ms. Simmonds and her family, and whether such expenditures were made with Ms. Armstrong's permission or approval.

How and Why Ms. Simmonds Became Involved in Ms. Armstrong's Finances

Armstrong/Renn versions

Ms. Armstrong testified that she had given Ms. Simmonds a POA *at Ms. Simmonds' suggestion*. According to Ms. Armstrong, Ms. Simmonds had told her that Mr. Renn was misusing Ms. Armstrong's funds and "spending it on other women," among other things. Ms. Armstrong said that she assented to a suggestion by Ms. Simmonds that she put Ms. Simmonds' name as POA on her new bank account so that Ms. Simmonds could ensure that Ms. Armstrong's rent and other bills were paid. At that time, Ms. Armstrong said, she had been recently hospitalized, was taking drugs that left her confused, and had agreed to Ms. Simmonds' suggestion.

Mr. Renn testified that *he* was the one who had asked Ms. Simmonds to take over management of the couple's finances. He said that, after Ms. Armstrong became legally

blind, he had attempted to manage her medical care and finances himself, but found that he “was getting overwhelmed.”

Simmonds version

Ms. Simmonds testified she had become involved in the couple’s finances *at Ms. Armstrong’s suggestion*. She said that, after she had assisted Ms. Armstrong in settling Ms. Armstrong’s workers compensation claim, Ms. Armstrong told her that Mr. Renn was never around, that she did not trust him, and that she was “really worried [and] scared.” According to Ms. Simmonds, it was around that time that Ms. Armstrong suggested that she give a POA to Ms. Simmonds.

Ms. Simmonds testified that Ms. Armstrong had asked for her help in picking up Ms. Armstrong’s settlement check from her lawyer’s office. Ms. Simmonds did so and then drove Ms. Armstrong and Mr. Renn to the bank, but did not go in with them. (Neither Ms. Armstrong nor Mr. Renn was able to drive as Ms. Armstrong was legally blind and Mr. Renn did not have a driver’s license).

Execution of the POA

Armstrong/Renn version

Ms. Armstrong testified that she executed the POA form at a bank, and that Ms. Simmonds physically guided her arm to make a signature for that purpose because of Ms. Armstrong’s blindness. Ms. Armstrong and Mr. Renn both denied that Mr. Renn was present when the power of attorney was executed.

Simmonds version

Ms. Simmonds testified that, at Ms. Armstrong's request, she drove Ms. Armstrong and Mr. Renn to a UPS store to obtain and execute a POA form. She said that Ms. Armstrong had initially retained the document in order to show it to her creditors and to explain to them why Ms. Simmonds would be talking to them about Ms. Armstrong's debts. However, according to Ms. Simmonds, Ms. Armstrong had never returned the document to Ms. Simmonds for that purpose.

What Happened to the Money from Ms. Armstrong's Settlement

Armstrong/Renn version

Ms. Armstrong testified that Ms. Simmonds, contrary to her promises, did not pay Ms. Armstrong's bills. Ms. Armstrong said she later learned that, after she signed the POA form, \$100,000 of the funds in the Armstrong/Renn checking account was transferred to the Armstrong POA CD account. At approximately the same time, \$17,000 was transferred from the Armstrong/Renn checking account to the Armstrong POA checking account.

Ms. Armstrong also testified that, during this period, there were "many ... times" when she needed to pay her bills and had no money to do so. She would ask Ms. Simmonds for money to do so without success. After she received several eviction notices, she called Ms. Simmonds and asked her for enough money to pay rent. Ms. Armstrong testified that Ms. Simmonds responded, "You've signed a power of attorney. You gave me the money."

Mr. Renn testified that he was attempting to pay the couple's rent in September 2016 and determined that "the [Armstrong/Renn checking account] was empty." He said that he contacted Ms. Simmonds and learned for the first time that his wife had previously

executed a POA in favor of Ms. Simmonds. According to Mr. Renn, he asked Ms. Simmonds for rent money, but she refused, saying that the couple needed to learn how to live on a budget.

Mr. Renn testified that much of the money taken from Armstrong/Renn checking account appeared to be for expenditures for the benefit of Ms. Simmonds and her husband – payments to a marina where they had a boat, groceries and clothing purchases, a Disney World trip, and a cruise. On cross-examination, he conceded that he had used some of the money deposited in the Armstrong/Renn checking account to pay bills and that he had not made a “ledger” that totaled the amount of funds that he believed that Ms. Simmonds had spent.

Ms. Armstrong said that she had not authorized Ms. Simmonds to spend money from the accounts on a cruise or to purchase gifts for Ms. Simmonds’ children or anybody else.

Simmonds version

Ms. Simmonds testified that, apart from the \$17,000 transfer to the Armstrong POA checking account, Ms. Armstrong herself had authorized Ms. Simmonds to transfer funds from the Armstrong/Renn joint checking account to other accounts or to pay bills. She said that the \$17,000 transfer was made so she “could get started on [Ms. Armstrong’s] finances.” She said that she did not get to do “everything” intended with the \$17,000 and said she did not know where the remainder of those funds were.

Ms. Simmonds disclaimed any knowledge of who opened the CD account in Ms. Armstrong’s name with Ms. Simmonds as POA. Asked by plaintiff’s counsel specifically

about the Armstrong POA CD account, Ms. Simmonds testified that she did not have access to that account, and that her own name appeared on that account as power of attorney, not as an account holder. She said that she also did not know who had transferred \$100,000 out of the Armstrong/Renn checking account into the Armstrong POA CD account. She said that she did not know where the money transferred from the Armstrong/Renn checking account to the Armstrong POA CD account had gone.

Ms. Simmonds said that she did not have access to the Armstrong/Renn joint checking account and did not make any transactions from that account. Ms. Simmonds testified that every expenditure or purchase that she made from the Armstrong POA bank accounts was with Ms. Armstrong's or Mr. Renn's authorization.

Ms. Simmonds stated that Ms. Armstrong had complained of not trusting Mr. Renn with her money and that Ms. Armstrong had given Ms. Simmonds and her husband the cruise in appreciation for her help with their finances. Ms. Simmonds said that, in addition to the cruise, Ms. Armstrong had authorized her to purchase furniture. Ms. Simmonds testified that Ms. Armstrong never asked her to give any money back.

Ms. Simmonds said that the only time that Mr. Renn asked her for money was when he wanted to buy a new truck, but that she had objected because he did not have a driver's license. Ms. Simmonds testified that Mr. Renn himself had access to the Armstrong/Renn checking account, that she had given him rides to stores, and that many of the transactions listed in the two exhibits of bank records from that account admitted in the plaintiff's case – cigars, books, and men's clothes – had likely been purchased by Mr. Renn. She opined

that, when she saw the suits he had purchased, she thought they were not his style and were likely intended for his son.

Renn rebuttal

When Mr. Renn returned to the stand briefly as the plaintiff's rebuttal case, he denied that he had made the clothing purchases for himself or his son. He also said that Ms. Simmonds had not apologized to him or Ms. Armstrong "for the pain that she's caused [them]."

Whether the Criminal Restitution Order Fully Compensated Ms. Armstrong

Armstrong/Renn version

With respect to the resolution of Ms. Simmonds' criminal case and the restitution award against her, Mr. Renn testified that he and Ms. Armstrong were not consulted when the Charles County State's Attorney agreed to a disposition involving an *Alford* plea, and that he did not believe that a full investigation had been conducted. The Prince George's County investigators who had initially investigated the matter had not asked about debit cards and CDs (certificates of deposit).¹¹ The Charles County State's Attorney's Office had not spoken to him and Ms. Armstrong before setting the amount of restitution.

Mr. Renn said that, after he learned of the amount of restitution ordered in the criminal case, he went to the bank and discovered the POA accounts. Ms. Armstrong said

¹¹ Mr. Renn had initially presented a complaint about Ms. Simmonds to the State's Attorney for Prince George's County. After conducting some initial investigation, that office referred the matter to the State's Attorney for Charles County.

that she did not know about the Armstrong POA CD account until she and Mr. Renn inquired of the bank about other accounts.

Simmonds version

Ms. Simmonds testified that, on the advice of her criminal defense counsel, she had entered an *Alford* plea in the criminal case, had refrained from saying anything “against the victim, Ms. Armstrong”, and “[kept] quiet.” She acknowledged the restitution award against her and said that she had never missed making the monthly \$900 payment. Ms. Simmonds stated that she did not know whether the State’s Attorney had been provided with the information about the Armstrong POA CD account.

3. Defense Motions to Limit Scope of Plaintiff’s Case

Defense Motion for Judgment at the Conclusion of Plaintiff’s Case in Chief

At the end of the presentation of the plaintiff’s evidence, the defense moved for judgment on Ms. Armstrong’s claims for breach of agreement and intentional infliction of emotional distress. The defense conceded that she had presented sufficient evidence to move forward on the other four counts. Defense counsel argued that “damages should be compensatory only, … not the pain and suffering and not the punitive.”

In its colloquy with counsel on the motion with respect to damages, the court observed that “I don’t see where [pain and suffering damages] come from [unless] intentional infliction of emotional distress comes in” Defense counsel agreed with the court’s statement that the plaintiff’s request for pain and suffering damages depended on whether the claim of intentional infliction of emotional distress remained in the case, noting that the complaint had not otherwise alleged such damages. Plaintiff’s counsel did not

disagree with that assessment, but instead argued that the plaintiff had made a sufficient showing on the claim of intentional infliction of emotional distress for the court to deny the motion to dismiss that count.

After hearing argument from counsel, the court dismissed the claim for intentional infliction of emotional distress “because [the plaintiff] didn’t produce any evidence which would show that there was a causal connection between the behavior and the condition.” The court also dismissed the count alleging breach of agreement because a copy of the “agreement” in question – the POA – had not been introduced into evidence.

Defense counsel then asked to clarify whether there was “a ruling of damages,” although it was not entirely clear as to what kind of damages he was referring to and as to which counts. The court’s response was no more enlightening. The court stated, “No, no, no, no.... Your strategy and tactics you do not have to share with me.” In any event, it appears from the discussion preceding the court’s dismissal of the count alleging intentional infliction of emotional distress that pain and suffering damages no longer were at issue in the case.¹² As indicated below, counsel for both parties also appear to have had that understanding when they made their closing arguments.

¹² Ms. Armstrong has not cross-appealed either the court’s dismissal of the two counts of her amended complaint or the related ruling concerning pain and suffering damages. As a result, the parties have not briefed the merits of those decisions and the Circuit Court’s rulings are not before us in this appeal. We express no opinion on the merits of those decisions.

The court then asked for the parties' proposed jury instructions, which counsel said they had filed through MDEC, and a proposed verdict form, which they undertook to discuss with each other.

Defense Motions at the Conclusion of all Evidence

At the close of the evidence, the court denied a defense motion to dismiss the remaining four counts.

Defense counsel then referred to his motion made at the close of the plaintiff's evidence the previous day to withdraw punitive damages from the jury's consideration. Plaintiff's counsel agreed that the motion with respect to punitive damages had not yet been resolved. The judge then ruled that "punitive damages are not in play in this case" and said that he would soon give the parties a proposed verdict sheet and instructions.

4. Jury Instructions and Verdict Form

The trial record relating to the court's instructions to the jury raises several questions, but ultimately leaves most of them unanswered.

With respect to the proposed instructions and a proposed verdict form, the record contains only the proposals submitted by plaintiff. Plaintiff's "Amended Jury Instructions" listed 16 numbered instructions from the Maryland Civil Pattern Jury Instructions. None of those instructions concerned damages for pain and suffering.

Plaintiff's counsel submitted a proposed verdict form that posed four questions, one for each of the remaining counts at issue in the case, and a separate section entitled "Total Damages" with one line for "consequential damages" and (inexplicably) two lines for "punitive damages."

The court apparently modified the plaintiff's proposed verdict form by making minor edits to the four liability questions and by converting the "Total Damages" section to a fifth question ("What damages, if any, do you award Plaintiff?") to be answered if the jury found in favor of the plaintiff on any count. There was only one line on the form for recording an amount of damages. That line was labeled "consequential damages," thus reflecting the court's ruling that punitive damages were no longer an issue in the case.

After resolving the defense motion concerning punitive damages, the court recessed for approximately 50 minutes. The record does not indicate whether counsel joined the court to discuss jury instructions during that recess. (During oral argument of this appeal, neither counsel could recall whether there had ever been a conference with the court concerning the instructions that the court would give.) In any event, shortly after that recess ended, the jury returned to the courtroom, and the court directly proceeded to give the jury its instructions on the law.

The court began with the usual general instructions, such as the role of the jury and how it was to conduct its deliberations, what constitutes evidence and the types of evidence, how to evaluate the testimony of witnesses, the preponderance standard for the burden of proof, and the need for the verdict to be unanimous and the method for recording it.

The court addressed damages only when it discussed particular causes of action. In particular, with respect to the claim of unjust enrichment, the court instructed the jury:

The measure of damages for unjust enrichment is the value of *the benefit conferred upon the defendant.*

(emphasis added). The court then gave an instruction on damages for breach of contract:¹³

In action for breach of contract, the plaintiff may recover those *damages that naturally arise from the breaking of the contract if the defendant had reason to foresee those damages at the time the contract was made.*

A party harmed by breach of contract by another party may recover *any expenses or losses incurred.* This amount should be reduced by any expenditures that the breaching party can show the wronged party would have incurred if the contract had been performed.

(emphasis added). The court then instructed on the elements of the false representation claim, but did not instruct on what damages could be awarded to a successful plaintiff.

As is evident, the instructions that the court gave on damages all related to economic damages – *i.e.*, the value of a benefit received and expenses or losses incurred (after being offset for expenditures that otherwise would have been made). No reference was made to any kind of non-economic damages, or how they would be evaluated or calculated. This appeared to be consistent with the court’s earlier statements that neither pain and suffering damages nor punitive damages remained at issue in the case.

The court did not define “conversion” for the jury, nor did it provide any instruction on the elements of such a claim or the damages that could be awarded. Similarly, it provided no instruction on the elements of the breach of fiduciary duty claim.

¹³ It is not clear why the court instructed the jury on breach of *contract* as it had previously dismissed the count alleging breach of agreement and there was no question on the verdict sheet concerning such a claim. Notably, the court instructed on damages for breach of contract, but not the elements of such a claim. It may be that the court intended to modify the pattern instruction on damages for breach of contract to apply it to another count of the complaint, such as breach of fiduciary duty, but neglected to edit the instruction appropriately.

At the conclusion of its instructions, the court asked counsel, “Any exceptions to the court’s instructions, aside from those raised previously?” Both counsel replied in the negative. The record does not specify what, if any, exceptions to the court’s instructions had been asserted previously. The record also does not reflect any objections to the verdict form.

5. Closing Arguments

In his closing argument, plaintiff’s counsel largely focused on liability. With respect to damages, he told the jury that there was “\$117,000 unaccounted for and she’s paying restitution for \$66,000.” Based on those two figures, he asked the jury to “make [Ms. Armstrong] whole again by awarding her \$51,000 and “anything additional that you think is (indiscernible).” Plaintiff’s counsel made no mention of damages for pain and suffering. This was in contrast to his opening statement the previous day in which he had calculated that Ms. Simmonds owed \$100,000 after credit for restitution made in the criminal case and had also asked the jury to award her an additional \$100,000 for pain, suffering, and hardship.

In her closing argument, defense counsel reiterated her position in opening statement that the State’s Attorney’s Office had fully investigated the case and that the criminal restitution order fully compensated Ms. Armstrong. She also pointed to the failure of the plaintiff to introduce into evidence any documentation from the POA accounts and suggested again that many expenditures were actually attributable to Mr. Renn.

6. Verdict

After approximately an hour of deliberation, the jury returned with a verdict finding Ms. Simmonds liable to Ms. Armstrong on all four counts and awarding damages in the amount of \$200,000 by filling in that sum on the line labeled “consequential damages.” A week later, the clerk entered a judgment against Ms. Simmonds in the amount of \$200,000. There is no indication of a credit for payments made by Ms. Simmonds under the criminal restitution order.

7. Post Trial Motions

On June 23, 2023, Ms. Simmonds’ counsel filed timely motions for a new trial pursuant to Maryland Rule 2-533 and for judgment notwithstanding the verdict pursuant to Maryland Rule 2-532. Counsel asked for a hearing on the motions. Ms. Armstrong’s counsel filed a detailed 33-page response to the motions.

No hearing was held on the motions. More than five months later, on December 1, 2023, the Circuit Court issued one-line orders denying each motion.

On December 21, 2023, Ms. Simmonds filed this timely appeal.

II

Discussion

In this appeal, Ms. Simmonds raises a single question – whether the Circuit Court abused its discretion when it denied her motion for a new trial under Maryland Rule 2-533 on the ground that the verdict was against the evidence.¹⁴ Although her post-trial motion

¹⁴ As noted above, Ms. Simmonds’ then-husband, Nathaniel Greene, was named as a defendant in the amended complaint, but none of the claims against him were resolved at

encompassed the verdict as to both liability and damages, on appeal she focuses on the jury's damages award.

A. *Standard of Review*

Both parties recognize that the Circuit Court's denial of a motion for a new trial is reviewed on appeal under an abuse-of-discretion standard. *See, e.g., Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 57-61 (1992). In *Buck*, the Supreme Court of Maryland, then known as the Court of Appeals, explained that the "breadth of a trial judge's discretion to grant or deny a new trial is not fixed or immutable; rather, it will expand or contract depending on the nature of the factors being considered, and the extent to which that discretion depends upon the opportunity of the trial judge to feel the pulse of the trial and to rely on his own impressions in determining questions of fairness and justice." 328 Md. at 58-59.¹⁵ Resolution of a claim that a verdict is against the evidence requires "a clinical analysis of the legal sufficiency of the evidence" – an analysis that an appellate

trial or otherwise. That potentially raises a question as to whether there is a final judgment necessary for appellate jurisdiction. However, it appears from the record that Mr. Greene was never served with the amended complaint. Accordingly, he is not considered a party for purposes of determining whether there is a final judgment supporting appellate jurisdiction of this appeal. *Turner v. Kight*, 406 Md. 167, 172 n.3 (2008).

¹⁵ In the course of reviewing the Court's somewhat conflicting past decisions on the reviewability and, if reviewable, standard of review of a trial court's grant or denial of a new trial motion, the Court quoted a statement in a prior decision that "we know of no case where this Court has ever disturbed the exercise of a lower court's discretion in denying a motion for a new trial because of the inadequacy or excessiveness of damages." 328 Md. at 58-59 (quoting *Kirkpatrick v. Zimmerman*, 257 Md. 215, 218 (1970)). As indicated in the text, the *Buck* decision made clear that a trial court's decision on a new trial motion is now reviewable subject to a nuanced standard of review. *See also Merritt v. State*, 367 Md. 17, 28-30 (2001).

court can apply. *Id.* at 60. The *Buck* Court distinguished such a claim from a claim that a verdict is “against the *weight* of the evidence” which “requires assessment of credibility and assignment of weight to evidence – a task for the trial judge.” *Id.* (emphasis added)

The Circuit Court did not explain the reasons why it denied the motion for new trial. As indicated above, despite Ms. Simmonds’ request for a hearing on the motion, the court did not hold one on the motion and, while it held the motion under advisement for nearly six months, it provided no written explanation of its one-line order denying the motion. Thus, the court did not elaborate, either orally or in writing, on the reasons underlying its exercise of discretion.

B. Whether the Jury’s Verdict was Against the Evidence

The verdict form was comprised of four questions on liability – one for each of the four remaining counts of the amended complaint. A fifth question asked the jury “what damages, if any” it awarded and was followed by a blank labeled “consequential damages.”¹⁶ The jury was instructed to answer the question on damages only if it answered “yes” to at least one of the first four questions on liability.

As indicated above, the jury answered “yes” to all four questions on liability and filled in the sum of \$200,000 on the line labeled “consequential damages.”

Although Ms. Simmonds contested whether the evidence supported the jury’s verdict generally in her motion for new trial, in her brief she does not address the sufficiency of the evidence on any of the four questions concerning liability and focuses

¹⁶ This was the first, and only, use of the phrase “consequential damages” during the trial. The court did not instruct the jury on the meaning of that phrase.

only on whether the amount of damages that the jury awarded was against the evidence at trial.

1. Liability

On the issue of liability, there was more than sufficient evidence to support the jury's determination of liability. The jury, of course, is the judge of the credibility of witnesses. If the jury found Ms. Armstrong and Mr. Renn credible and discounted Ms. Simmonds' testimony, it had more than sufficient evidence to find that Ms. Simmonds had made intentional misrepresentations to Ms. Armstrong, had obtained some portion of Ms. Armstrong's settlement funds based on those misrepresentations, and as a result had been unjustly enriched.¹⁷ Accordingly, we affirm the Circuit Court's denial of the motion for a new trial to the extent it concerned the jury's determination of liability.

2. Damages

The question of damages is a different matter. The amount of compensatory economic damages is less a matter of the "pulse of the trial" than of the evidence that supports quantification of damages suffered by the plaintiff. Even assuming the jury fully credited Ms. Armstrong's and Mr. Renn's testimony over that of Ms. Simmonds, nothing in the evidence before the jury supported a verdict of \$200,000 in damages – at least by the

¹⁷ There also appeared to be sufficient evidence for the jury to conclude that Ms. Simmonds had breached a fiduciary duty to Ms. Armstrong and had converted funds belonging to Ms. Armstrong. However, the jury was never instructed by the court – or even told by counsel – about the elements of those torts. In any event, we need not address that question as the jury was instructed on the other two counts and clearly could have found Ms. Simmonds liable for those torts based on those instructions and the evidence at trial.

measures of damages that the court gave the jury in its instructions. In any event, as indicated above, we have no insight on the Circuit Court's reasoning when it denied the motion for new trial.

The Measure of Damages

As outlined earlier, the Circuit Court provided the jury with two ways to measure damages. It advised that the measure of damages with respect to the unjust enrichment claim was the "value of the benefit" conferred on Ms. Simmonds. The other measure identified by the court in its instructions was "any expenses or losses incurred" by Ms. Armstrong, reduced by any expenditures that Ms. Armstrong would have otherwise incurred under her agreement with Ms. Simmonds.¹⁸ As best we can tell from the record, neither side objected to these instructions on the measure of damages. Nor did either side suggest any alternative measure of damages – other than plaintiff's unsuccessful attempt to include damages for pain and suffering and punitive damages as matters for the jury to decide.

Benefit to Ms. Simmonds

Although Ms. Armstrong and Mr. Renn both testified that Ms. Simmonds had used Ms. Armstrong's funds for her own benefit without Ms. Armstrong's permission, the trial record does not contain any testimony or documentation that quantifies the total value of that benefit to Ms. Simmonds. The seemingly most valuable items received by Ms.

¹⁸ As noted earlier, the court apparently derived this measure from a model jury instruction related to breach of contract, although that cause of action was not before the jury.

Simmonds at the expense of Ms. Armstrong's expense that appear in the record were furniture that ended up in Ms. Simmonds' home, a cruise taken by Ms. Simmonds and her husband, and computers purchased for Ms. Simmonds' daughters – together totaling a little less than \$15,000 according to the evidence. Ms. Simmonds conceded that she had obtained \$17,000 from the proceeds of Ms. Armstrong's settlement to pay Ms. Armstrong's bills, but had never used those funds for that purpose and the jury might well have inferred that that sum was used for Ms. Simmonds' benefit instead. There was also evidence that \$100,000 derived from Ms. Armstrong's settlement had been transferred from the Armstrong/Renn checking account to the Armstrong POA CD account, but there was no evidence as to what happened to those funds after that transfer. In any event, nothing in the record supported a finding that the total benefit to Ms. Simmonds was \$200,000. Nor did Ms. Armstrong contend – either in her complaint, her pretrial statement, her counsel's opening statement, or closing argument – that the benefit to Ms. Simmonds from her wrongdoing amounted to \$200,000.

Losses or Expenses of Ms. Armstrong

In terms of the losses or expenses incurred by Ms. Armstrong, the testimony and exhibits at trial, viewed in the light most favorable to Ms. Armstrong, indicated two transfers to the POA accounts, potentially accessible by Ms. Simmonds, in a total amount of \$117,000. That is the figure that Ms. Armstrong's counsel directed the jury's attention to in his closing argument, while also suggesting that the jury credit Ms. Simmonds with \$66,000 against that amount based on the criminal restitution order against her. In any

event, under this approach, Ms. Armstrong's losses and expenses fell well short of \$200,000.

Possible Source of \$200,000 Figure

It may be that, in settling on \$200,000, the jury adopted the suggested award that Ms. Armstrong's counsel proposed in his opening statement.¹⁹ As counsel articulated it, the \$200,000 figure consisted of \$100,000 in "actual damages" and \$100,000 in damages for pain and suffering. However, the Circuit Court subsequently excluded pain and suffering damages from the jury's consideration – a fact recognized by Ms. Armstrong's counsel in his closing argument when he abandoned any mention of pain and suffering damages and lowered his suggested damages award by more than \$100,000.

Analysis

Some of the key arguments made in Ms. Armstrong's brief to this Court in support of the \$200,000 verdict are unsupported or contradicted by the record of this case. For example, she speculates that the jury may have arrived at that figure by adding the amount stated in the criminal restitution order (\$66,958.83), the funds transferred from the

¹⁹ It is also conceivable that the jury could have simply calculated both measures of damages defined in the court's instructions and added them together. The court's instructions provided no guidance on how the two measures of damages related to one another and the verdict form, which referred only to "consequential damages," also did not provide a clue as to whether the jury's award was based on one or both measures described in the court's instructions. Addition of the two measures would not have been appropriate. "[A]lthough a plaintiff may *allege* causes of action for breach of contract and unjust enrichment concurrently when there is evidence of fraud or bad faith, a plaintiff may not *recover* under both for any claim covered by the contract." *AXE Properties & Management, LLC v. Merriman*, 261 Md. App. 1, 8 (2024) (emphasis in original; citation omitted).

Armstrong/Renn checking account to the two POA accounts (\$117,000), and the payments made for furniture, the cruise, computers, marina expenses and other items mentioned in testimony. Appellee Brief at 26-30. However, no information is offered on which expenses were encompassed within the criminal restitution order. Other information on which Ms. Armstrong's counsel relies indicates that marina expenses were paid from the \$17,000 transferred to the Armstrong POA checking account.²⁰ Moreover, addition of the criminal restitution amount to the amount of the transferred funds contravenes the position that Ms. Armstrong's counsel took in opening statement and closing argument to the jury at trial – that the jury should *subtract* that figure from what it otherwise determined to be the amount that Ms. Simmonds obtained.²¹

Ms. Armstrong's brief also suggests that Ms. Simmonds took Ms. Armstrong's Social Security and disability benefits as well as her workplace injury settlement. Appellee Brief at 32. While it may be a fair inference that Ms. Armstrong received such benefits,

²⁰ One of the several anomalies in the record of this case that bedevils Ms. Armstrong's effort to document evidence that supports the jury verdict is the inconsistent references to exhibits. Her brief to this Court relies on an "Exhibit 4" in the Record Extract concerning records of expenditures from the Armstrong POA checking account. See Record Extract at 294-308. Those records, which were attached in Exhibits A and E to her complaint, were *not* admitted into evidence at trial. The actual Exhibit 4, marked as admitted at trial, that appears in the Record itself consists of records of the Armstrong/Renn checking account, not the Armstrong POA checking account. See Volume 1 of Record at 220-40. The testimony concerning that exhibit at trial makes clear that Exhibit 4 related to the latter account while Exhibit 6, which was not admitted into evidence, related to the POA account. See Record Extract at 121-27.

²¹ If the jury had subtracted the amount in the criminal restitution order from the amount that it assessed as total consequential damages, as counsel for both sides urged at trial, that would mean that the jury had found total "consequential damages" in the amount of \$266,000 – a sum even less related to the evidence at trial.

the record contains no evidence concerning the amount of such benefits or their theft by Ms. Simmonds. It was not even argued by Ms. Armstrong's counsel at trial. This newfound appellate argument suggests speculation by the jury and is itself speculative.

In his oral argument before this Court, Ms. Armstrong's counsel primarily relied on the broad discretion possessed by a trial jury. It is certainly true that a jury, as the factfinder at trial, has broad discretion in carrying out its role. However, that discretion is not unlimited. The exercise of that discretion in finding facts is constrained by the testimony and exhibits admitted at trial. The jury's translation of the facts it finds into a damages award must be consistent with the law as explained to it by the court. A verdict that is completely untethered to the evidence presented at trial and to the law as instructed by the trial court does not satisfy that standard. The jury is not simply a black box for which the output need bear no conceivable relation to the input.

Accordingly, in this case, the amount of damages awarded by the jury was against the evidence. The Circuit Court abused its discretion in denying Ms. Simmonds' motion for a new trial with respect to the amount of damages. We shall remand for a new trial on that issue.

Remand for New Trial on Damages

As noted earlier, the trial court's rulings dismissing two counts of the complaint and excluding pain and suffering and punitive damages were not cross-appealed by Ms. Armstrong and will not be at issue on remand. The trial on remand will thus concern compensatory economic damages related to the four surviving counts of the complaint. However, at a new trial on damages, the court is not limited to the instructions on such

damages that it gave to the jury at the first trial. The parties may propose, and the court may give, any new or modified instructions concerning the computation of compensatory economic damages with respect to the four counts on which liability was found at the first trial, including the surviving counts of the complaint on which the court did not instruct the jury about damages at the first trial. Consideration should also be given to clarifying certain issues concerning those damages, as explained in the next section of this opinion.

Some Considerations for the Court’s Instructions and Verdict Sheet on Remand

The trial court, with the assistance of counsel, should consider clarifying three issues relating to the damages at issue at trial on remand.

First, as detailed above, the verdict sheet completed by the jury in the initial trial of this case labeled the damages at issue as “consequential damages.” That phrase has been characterized as “an elusive concept” that is “ambiguous and equivocal” which should be defined. B. A. Garner, Black’s Law Dictionary, *Damages* 12th ed. 2024) (defining consequential damages as “indirect damages”); *see also Maryland Indoor Play, LLC v. Snowden Investment, LLC*, 491 Md. 186, 203 (2025) (consequential damages as a measure for breach of contract “calculated as losses that may reasonably be supposed to have been in contemplation of both parties at the time of the making of the contract”) (citations and internal quotation marks omitted).

At the initial trial of this case, the phrase “consequential damages” was neither defined by the court in its instructions nor related to the two measures of damages that the court described in its instructions, and it was not otherwise explained to the jury. On remand, the trial court may want to consider dispensing with that characterization of the

damages at issue and instead relate the jury's finding to whatever specific measures of damages the court provides in its instructions.

Second, if, as in the initial trial, the court instructs on more than one alternative measure of damages, it may consider whether to include separate questions or lines on the verdict sheet for the jury to make separate findings on alternative measures of damages. In that way, the court may better discern the significance of the jury's finding on damages and avoid issues of potential duplication. See footnote 19 above.

Finally, while the criminal restitution order against Ms. Simmonds figured prominently in the testimony and arguments of counsel at the initial trial, the court's instructions did not provide any guidance to the jury on how it was to use that information. As a result, the amount of the jury's verdict on damages at trial, while a specific number, was ambiguous as to its relation to the criminal restitution order.

As indicated earlier, a Maryland statute provides that a civil jury verdict "*shall be reduced* by the amount *paid* under the criminal judgment of restitution." CP §11-603(c)(2) (emphasis added). Thus, the amount actually paid by a defendant pursuant to a restitution order in a criminal case is to be automatically credited against, or subtracted from, a damages verdict rendered by a jury in a parallel civil case.

This would appear to be a straightforward arithmetic calculation if the amount paid in criminal restitution is readily determinable – as is usually likely the case – and the civil jury is unaware of, or told to ignore, the restitution order, in computing total damages. In that case, one simply subtracts the amount the defendant has actually paid in restitution in the criminal case – not necessarily the amount awarded in the criminal restitution order –

from the amount of the civil verdict to arrive at the amount owed under the judgment in the civil case.

In this case, the relationship of the criminal restitution order to the damages verdict that the jury rendered in the civil trial is not clear. The record of this case does not include the total amount of criminal restitution paid by Ms. Simmonds that would be credited against a civil jury verdict.²² Moreover, both counsel suggested that the jury itself should credit Ms. Simmonds with the nominal *amount set forth in the restitution order* – not the *amount actually paid*.²³ As for the Circuit Court, its instructions to the jury were silent as

²² Earlier in this opinion we took judicial notice of the electronic case record of the criminal case, which appears to indicate that Ms. Simmonds has, as the testimony in this case also indicated, complied with the criminal restitution order by making regular monthly payments. See footnote 2. But it does not appear that Ms. Simmonds has completed payment of the total restitution amount assessed by the order and the precise total amount that she has paid to date is not clear.

²³ In his opening statement, Ms. Armstrong’s counsel told the jury that *the jury* should credit the *amount* of the criminal restitution order against actual damages. Using approximate numbers, he indicated to the jury that \$170,000 belonging to Ms. Armstrong had been taken by Ms. Simmonds, that Ms. Simmonds had been ordered to pay restitution of \$66,000, and that he was now asking the jury to award the “remaining” \$100,000 to compensate for her economic loss along with \$100,000 for pain and suffering.

Ms. Armstrong’s counsel suggested a similar computation in his closing argument, although he reduced the target numbers in light of the actual evidence at trial and the court’s elimination of pain and suffering damages from the jury’s consideration. In that argument he asserted that \$117,000 of Ms. Armstrong’s money was unaccounted for and that, after subtracting \$66,000 with respect to the criminal restitution order, the jury should award Ms. Armstrong at least \$51,000.

For its part, the defense similarly told the jury that it should account for the criminal restitution order in calculating its verdict. In her opening statement, defense counsel told the jury that the restitution order had fully compensated Ms. Armstrong and accordingly the jury need not award her any additional damages. Defense counsel repeated that statement in closing argument.

to whether and how the jury should include the restitution order in its assessment of damages. Thus, it is not clear what the jury believed it was to do with the information it received about the criminal restitution order.

At a new trial on damages on remand, assuming that existence of the criminal restitution order will again play a prominent role in the evidence at trial, the trial court might consider clarifying for the jury how that order should figure in the jury's calculation of damages. Assuming the *actual amount paid* by Ms. Simmonds in restitution – which is the amount to be credited under the statute – continues to be a moving target, the court might instruct the jury to simply calculate the full amount of compensatory economic damages with the understanding that the court will later apply any credits for criminal restitution in accordance with the statute.

III

Conclusion

For the reasons set forth above, we affirm Circuit Court's denial of Ms. Simmonds' motion for new trial as to liability, but reverse its decision and remand for a new trial on the issue of damages.

**JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY
AFFIRMED IN PART AND REVERSED IN PART. CASE REMANDED TO THAT
COURT FOR RETRIAL ON THE ISSUE OF DAMAGES. COSTS TO BE SPLIT
EVENLY BETWEEN THE PARTIES.**