Circuit Court for Prince George's County
Case No. CAL19-00541

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2284

September Term, 2023

CORENIC CONSTRUCTION GROUP LLC, ET AL.

v.

SINGLE POINT CONSTRUCTION, LLC

Leahy,
Friedman,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: December 5, 2025

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

The underlying lawsuit for breach of contract and unjust enrichment was filed in the Circuit Court for Prince George's County against Corenic Construction Group, LLC, and its owner, Mr. Brunson Cooper, (together, "Corenic" or "Appellants")[1] by Single Point Construction, LLC ("Single Point"). Just over two years before the suit was filed, Corenic was retained by Advanced Recovery Systems, LLC ("ARS") as the general contractor on a project to construct a Prince George's County firefighter rehabilitation center (the "Project"). Corenic hired Single Point as a subcontractor to perform concrete and masonry work for the Project.

Following a bench trial in May 2022, the circuit court entered judgment in the amount of $252,418.88 against Corenic on Single Point's unjust enrichment claim. The court found that there was no "meeting of the minds" between Single Point and Corenic when they entered into the subcontract, and denied all Single Point's other claims as "contract[-]base[d] counts." On motion to alter or amend filed by Corenic, the court vacated the judgment amount and ordered a new damages hearing. A different judge conducted the damages hearing, and then on December 12, 2023, re-entered the $252,418.88 judgment, along with post-judgment interest.

Corenic timely appealed and presents three questions which, as summarized, reduce to this two-part question:[2] Did Single Point establish that it performed extra work for which

[1] During the proceedings below, Corenic and Cooper were represented by the same counsel and filed their pleadings jointly.

[2] Corenic presents the questions in its brief as follows:

(Continued)

it was not compensated and was Single Point's unjust enrichment claim barred by Article 4 of the subcontract? The answer to both parts of the question is "yes." We hold that the trial court erred in finding the parties' subcontract does not expressly cover the subject matter of Single Point's claims against Corenic and by awarding Single Point damages under the quasi-contract doctrine of unjust enrichment. Single Point is not vanquished by this ruling, however, because we also hold that the record and the trial court's factual findings establish that Corenic failed to pay Single Point for extra work covered by the terms of the subcontract. Because the circuit court reached the right result for the wrong reason, we affirm the court's judgment on liability in favor of Single Point, and remand the case to that court for further proceedings to determine the proper amount of damages on Single Point's claim for breach of the subcontract.

Single Point cross-appealed and presents one additional question, which we rephrase: Did the circuit court err or abuse its discretion by not awarding attorneys' fees to Single Point under the Maryland Prompt Payment Act? For the reasons explained in this opinion, we answer "no."

I. Whether the unjust enrichment claim was barred by a valid contract with terms addressing change orders and additional work.

II. Whether Corenic should be required to pay Single Point more than it received from the [ARS] for Single Point's work.

III. Whether Single Point established by a preponderance of the evidence that it performed extra work and was not [ ] paid for that work.

BACKGROUND

Contract Documents

The Prime Contract

A former Nike missile site in Upper Marlboro, Maryland, was purchased by ARS with plans to convert the site into "a residential treatment facility." Corenic submitted an itemized bid to ARS for work as the general contractor on the project. The bid listed line items and their associated prices based on drawings prepared for ARS by Arel Architects, Inc.

On or around June 1, 2016, ARS and Corenic entered into the Prime Contract utilizing the AIA standard form A102™–2007 "Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price."[3] The Prime Contract set a substantial completion deadline of September 15, 2016, with liquidated damages of $500.00 per day for delays. It also established a Guaranteed Maximum Price of $2,623,030, "subject to additions and deductions by Change Order." Article 7.3 provided that the "Cost of the Work" included "Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts." Under Article 7.7.3, the "Cost of the Work" also included "[c]osts of repairing or correcting damaged or nonconforming Work executed by Contractor,

[3] The Supreme Court of Maryland recognized that "the standard form contracts published by the AIA are the most widely used and generally accepted standard contract forms in use within the construction industry." *Gables Construction, Inc. v. Red Coats, Inc.*, 468 Md. 632, 652 (2020).

Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor[.]" Thus, absent additions by change order, the Prime Contract obligated Corenic to absorb any costs exceeding the Guaranteed Maximum Price without reimbursement. Additionally, according to trial testimony of Corenic's general manager, James Morrow III, "Corenic was responsible for proposing a change to the owner, substantiating that change, and getting ownership approval so that it could proceed with the work."

Corenic did not provide any labor or materials for the ARS project but rather hired multiple subcontractors to complete the work under the Prime Contract. Morrow testified at trial that Corenic, as the general contractor, was responsible for onsite supervision of the project and "mak[ing] sure that the pricing that was offered or agreed upon with th[e] subcontractors stayed within the overall ARS budget[.]" As part of the hiring process, Corenic identified qualified subcontractor candidates, and then sent out a "set of drawings" to the candidates to bid on the project. Morrow explained that these drawings "tell you kind of the details of the work, the specifications of the work, what's involved in the work[,]" and they "define[ ] how the project is to be constructed." After comparing their bids, Corenic would award the subcontracts to the most qualified and cost-effective candidates. Single Point was one of the subcontractors selected.

The Subcontract

Jim Douglas Sr., Single Point's estimator, described Single Point at trial as a company that "does multiple trades; concrete, masonry, . . . steel, [and] carpentry work."

"We do demo. We do our own dumpsters . . . [i]t's a one-stop shop for a general contractor[,]" Douglas Sr. explained. Corenic contacted Douglas Sr. about the ARS Project and asked him to provide pricing for it. Douglas Sr. emailed a proposal to Corenic on October 17, 2016, for labor, equipment and materials in the amount of $59,600 for a scope of work that included demolition, concrete, and masonry work for the project. Two days later, Corenic's senior project manager, Bill Benson, delivered a subcontract for the ARS Project to the owner of Single Point, James Douglas, Jr. Without negotiation or modification, Corenic and Single Point executed the Subcontract.

Based on Single Point's proposal, the Subcontract established a fixed price of $59,600 for the following scope of work (the "Work") to be performed by Single Point:

Demolition:

- Remove existing concrete slab at the flag pole
- Remove existing brick masonry wall

Concrete:

- Furnish and install filter fabric, stone base and concrete slab on grade per plan for the following:
    - (4) 12'x12' Seating Pavilions
    - (1) Renewal plaza
    - (1) 18'x18' Seating Pavilion
    - (16) Trash Receptacles
    - (1) 10'x10' Generator Pad
    - (1) Entrance sign
    - (1) Generator pad CMU[4] footing
    - (1) Entrance ceremonial plaza
    - (1) 5'x15' pad

[4] Kirby McAdoo, Single Point's Project Manager, explained at trial that "CMU" stands for "concrete masonry unit."

- (1) BBQ pad
- (23) Bench Pads
- (1) Patio at building D with HC ramp

- Furnish and install curb and gutter at removed flag pole location
- Furnish and install generator CMU
- Furnish and install entrance monument sign CMU
- Furnish and install Masonry at ceremonial plaza

Under the Subcontract, payments were to be made on a progress payment basis, less a 10% retainage, "for [w]ork satisfactorily performed no later than five (5) business days after" Corenic received payment from ARS for Single Point's work. Final payment of any remaining balance to Single Point was also due within "[f]ive (5) days" of Corenic's receipt of final payment from ARS for Single Point's work, "subject to receipt of such lien waivers, affidavits, warranties, and guarantees required by the Contract Documents or [Corenic]." The Subcontract also emphasized that "time is of the essence with respect to [Corenic's] completing the Project" and "[t]ime, therefore, is of the essence in this Subcontract."[5]

Consonant with the Prime Contract, the Subcontract allowed adjustments to the scope of the Work and the contract price with Corenic's authorization. Article 4 of the subcontract provided guidelines for handling such adjustments:

> (a) Contractor may authorize changes to or deductions from the Work, said authorization to be effective and binding only when written (hereinafter referred to as "extra work").

[5] In *Grandados v. Nadel*, 220 Md. App. 482, 488 n.5 (2014), we explained:

> "Time is of the essence" is a term of art in contract law requiring strict adherence to the time designated for performance. When "time is of the essence" is included in a contract, time is such a material matter that strict compliance by performance within the specified periods of time is a prerequisite to the right to require performance by the other party.

> (b) Whenever extra work is requested by Contractor and the scope and nature of same is reasonably susceptible to lump sum quotation, Subcontractor shall provide such quotation within two (2) days of a request for same.
>
> (c) Any claim for compensation for extra work, whether lump sum or otherwise, must be presented to Contractor within two (2) days of authorization of the extra work. Claims for extra work received thereafter will not be considered. Proper claims for extra work shall be paid in accordance with this Subcontract Agreement.
>
> (d) Duly authorized extra work is hereinafter deemed included in the "Work." No dispute as to adjustments in the Contract Amount for extra work shall excuse Subcontractor from proceeding with the Work.
>
> (e) Contractor, without nullifying the Agreement, may direct Subcontractor to make changes to Subcontractor's Work. Adjustment, if any, in the contract price or contract time resulting from such changes shall be set forth in a Subcontractor's Change Order pursuant to the Contract Documents.

At trial, Brunson Cooper testified that Corenic utilizes the same standard subcontract agreement for all its subcontractors. Article 13, an integration clause, provided:

> This [Subcontract] constitutes the entire agreement between the parties hereto. No oral representations or other agreements have been made by Contractor except as stated in the [Subcontract.] This [Subcontract] may not be changed in any way except as herein provided, and no term or provision hereof may be waived by Contractor except in writing signed by its duly authorized officer or agent. The marginal descriptions of any terms or provisions of this [Subcontract] are for convenience only and shall not be deemed to limit, restrict or alter the content, meaning or effect thereof.

Events Leading to the Lawsuit

Single Point is Directed to Perform Extra Work

Single Point began work on October 24, 2016. Kirby McAdoo, Single Point's project manager, was the primary point of contact for managing field crews and ordering

materials. On Corenic's side, Benson and two on-site superintendents—Mitch Huneke and Don Swain[6]—were primarily responsible for subcontractor management and oversight.

Shortly after Single Point's work began, two significant events required ARS to change the scope of work outlined in the Prime Contract. First, Corenic discovered significant errors in the "as-built" drawings that had formed the basis of its contractor bid. Upon confirming inaccuracies in the drawings, ARS terminated its architect, Arel Architect, in the fall of 2016. Another architect issued revised drawings in October 2016 (after the Subcontract was executed), significantly altering the scope of work for Corenic and Single Point.

Second, the International Association of Fire Fighters ("IAFF") selected the Project to be the "IAFF Center of Excellence for Behavioral Health Treatment and Recovery." This designation required new features for the Project, including a memorial pavilion, flagpole stands, and entry walls. Huneke and Swain instructed Single Point's foremen and crew members to perform extra work outside the original scope of the Subcontract.

Single Point proceeded with the extra work on a time and material (T&M) basis. At trial, McAdoo explained that T&M based-pricing is commonly used in the construction industry, stating:

> [I]n the construction world[,] things are ever evolving fast paced. There are unforeseen conditions that arise. There are changes in scope of work. There are . . . additional items, not outside of a subcontractors contract agreement. So you perform the work because contractually you're obligated to not delay

[6] Although the transcripts show his name as "Don Schwane," other records, including his own email, spell it "Don Swain."

> the project and continue with work onsite at the direction of the general contractor, in this case Corenic[ ]. So we send them our rate and we are to track it.

While proceeding on the T&M basis, Single Point used various methods to track labor, equipment, and materials in the field. Each day, on-site foremen reported their hours and the names of crew members they worked with to Single Point's office. Single Point also installed GPS devices on its company vehicles, which were checked daily to confirm that workers remained on site during the reported hours. In addition, McAdoo maintained a "daily log" throughout the course of the ARS Project, summarizing general tasks performed by Single Point each day. On the other hand, Corenic tracked labor through morning and evening roll calls. Douglas Jr. testified that Corenic's superintendent would simply "go around and count the number of heads" on site, claiming that such a method was susceptible to inaccuracies. For example, he stated, "a lot of times we have to do noisy work like early in the morning before an office building opens. So we'll have a crew work maybe from 5:00 until 7:00 a.m." He also stated that it was "very possible" for workers to show up after the morning roll call. Morrow agreed that Corenic relied on headcounts and that "[t]here could've been a mistake" in Corenic's tracking.

On December 8, 2016, Benson sent an email to Corenic's subcontractors on the ARS Project, reminding them that they must "provide detailed work tickets at the end of each day to verify time." Thereafter, on each ticket, Single Point's foremen recorded the labor hours, described the extra work performed, and listed the materials and equipment that they used. For example, a ticket dated December 23, 2016, described the extra work

as "Install Concrete on Building 'D' and . . . transh [sic] for plumbing[] – Prepare opening w/ plywood," listing 8 labor hours for a foreman and 8 hours for a four-person crew. It also listed materials such as "30 bags concrete mix" and "2 rapid set." Huneke signed the ticket on December 29, 2016, certifying "that the use of the labor, equipment and material specified above was authorized and ***that it satisfactorily completed work not included in the scope of subcontract or purchase order issued to Single Point***[.]"[7] (Emphasis added). Between December 23, 2016, and March 20, 2017, Single Point issued at least 26 such tickets, all signed by Huneke.

Single Point's Extra Work is Not Compensated

On January 11, 2017, McAdoo emailed Benson, noting that Single Point had completed significant extra work but had not received any requests for pricing. The email stated:

> **Single Point has no problem doing additional work on time and materials as long as they are signed daily and your office is aware of our rates (listed below).** Single Point has done a significant amount of extra concrete work already which will have to be discussed as well. Some of the other additional items include, flagstone, pavers, manhole covers, benches, additional sidewalks, etc. Please send me anything regarding non-scope items Corenic would like Single Point's assistance with so I can make sure to get submittals, lead time and pricing when requested.

[7] At trial, McAdoo confirmed that it is typically "the site superintendent from the general contractor," like Huneke, who signs the form after validating the labor hours, material, and equipment and verifying the extra work.

(Emphasis added). At the bottom of the email, McAdoo outlined Single Point's T&M rates: $65/hour for foremen and $55/hour for crew members, with a 20% premium for off-hours and a 20% markup on equipment and materials.[8]

Later that day, Benson replied to McAdoo's email, stating:

> We do understand that [Corenic] has requested that Single Point complete some additional work. Can we schedule an onsite meeting early next week to review the scope of work and extra work requested by our field representatives? Please let me know at your earliest opportunity.

The next day, Benson sent Single Point a proposed change order dated January 12, 2017, which itemized compensation for Single Point's extra work as follows:

Building C - Demolition of the existing homosote subfloor	$ 5,000.00
Building D - Framing	$ 2,900.00
Excavate for new propane tank	$ 1,975.00
Furnish and set formwork as required. F&I chamfer perimeter of formwork	
Furnish and install gravel base for new slab	
Furnish and install weld wire fabric	
Furnish, place and finish concrete slab with turndown	
Remove formwork and backfill perimeter	
Total Amount of Change	$ 9,875.00

Through acceptance of this Change Order includes compensation to the Provider for any and all effects, delays, inefficiencies or similar demands associated with this Project and the Provider recognizes that there is no basis for any such claim in the future.

The language below the "Total Amount of Change" chart reads as follows:

> Through [sic] acceptance of this Change Order includes compensation to the Provider for any and all effects, delays, inefficiencies or similar demands associated with this Project and the Provider recognizes that there is no basis

[8] In his deposition testimony, Morrow acknowledged these rates as reasonable.

for any such claim in the future.

This version of change order No. 1 was never fully executed.

About one month later, on February 7, 2017, Benson sent an email to Single Point, expressing concerns that the parties were still "fall[ing] dangerously behind with the paperwork." He stated that Corenic had no "[i]nvoice . . . in [its] system as of yet" even though Single Point had "completed a lot of work."[9] Benson also requested several documents regarding Single Point's extra work, including a "schedule of values[,]" tickets for authorized extra work, an invoice for completed work, "[p]rice breakdown for the main entry . . . concrete/ masonry/ cultured stone/ flagstone cap[,]" and "[p]rice for the added entry canopy at Bld'g D concrete, brick pavers[.]"[10]

Single Point Completes Its Work

On March 22, 2017, Single Point completed its Work and the extra work on the ARS Project. At trial, McAdoo gave a detailed account of the uncompensated extra work performed by Single Point, linking each item of extra work to an associated invoice.[11]

[9] At trial, Douglas Jr. claimed that this was a "false statement," pointing to a payment application dated December 30, 2016, which lists "[I]nvoice number 10247." Douglas Jr., however, acknowledged that this invoice was not part of Single Point's claim in this case.

[10] From this email, it appears that Benson may not have had copies of the Additional Work Authorizations signed by Corenic's superintendent, Huneke.

[11] Douglas Jr. also testified at trial that the invoices were based on Single Point's payroll reports which are "reported by the foreman to [Single Point's] office and then [are] validated with GPS tracking." He also explained that some of the work "doesn't lend itself to tickets because it's not its own unique separate thing."

According to McAdoo's testimony, Corenic never paid Single Point for the following extra work:

1. General Conditions (Invoice 10482) $6,920.00

   This included site maintenance work, such as providing bathrooms and dumpsters or cleaning up the site.

2. Pavilions (Invoice 10475) $114,253.98

   At Huneke's direction, Single Point excavated for "turn-downs," and installed "red brick pavers" and "stone veneer."

3. Sidewalk (Invoice 10479) $5,556.50

   McAdoo explained that Single Point installed a "50 linear foot by five foot wide sidewalk [that] ran towards the upper parking lot."

4. Entry Wall (Invoice 10476) $42,057.12

   For this work, Single Point performed modifications not in the original scope of work, which required "more excavation, more concrete."

5. Work on Building B (Invoice 10478) $2,999.00

   Regarding this work, McAdoo testified that Single Point was directed to perform "some . . . masonry unit block in-fill at Building B."

6. Trashcan Modification (Invoice 10480) $7,950.00

   Corenic directed Single Point to modify the footings of certain trash cans because the original footings did not fit the trashcans delivered to the site. According to McAdoo, the modification was not part of Single Point's work under the Subcontract.

7. Generator Pads (Invoice 10477) $9,552.75

   Single Point was initially instructed "to form and reinforce and pour concrete to extend the generator pad[,]" yet subsequently "demolish[ed] the . . . generator pad . . . because [Corenic] needed to rework it to install some conduit."

8. Stone Veneer at Grill (Invoice 10483) $2,292.89

McAdoo stated that Single Point installed "stone veneer surrounding the grill" and "flagstone as the countertops" as extra work.

9. Grease Interceptor (Invoice 10481) $1,400.00

McAdoo testified that Single Point "had to excavate for the grease interceptor" and "pour the concrete back" after the grease interceptor was installed, even though there was "no grease interceptor" in the Subcontract.

10. Unidentified Work (Invoice 10390) $59,445.64

McAdoo only stated that Huneke directed Single Point to perform this work without identifying the specific tasks performed.

Invoice 10390 was dated May 4, 2017, and all the others were dated June 29, 2017.

On May 16, 2017, Benson informed Douglas Jr. that Corenic had approved $53,640.00, reflecting the original contract value of $59,600.00 minus 10% retainage, for "work completed under the original subcontract agreements."

That same day, Douglas Jr. signed and returned the January 12, 2017, proposed Change Order No.1, which increased the total contract price to $69,475.00, including $9,875.00 for additional work. He also informed Benson that his father, Douglas Sr., was "finalizing the pricing on all the additional work[.]" Later at trial, Douglas Jr. explained that "[i]t's pretty routine to receive . . . multiple change orders on a project[,]" and that the January 12, 2017, proposed change order "represented change order number one. . . . It represented some of the extras we had completed through [that] point." Although Single Point received the $53,640.00 payment in June 2017, Corenic never executed the January 12, 2017, proposed Change Order No. 1.

Corenic Receives Payment from ARS

Throughout the course of the ARS Project, Corenic submitted progress payment applications to ARS. Each payment application was certified as follows:

> [T]o the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that **all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner**, and that current payment shown herein is now due.

(Emphasis added). Each payment application contained a lien waiver, whereby Corenic warranted that "all costs incurred and bills owed . . . to others for materials supplied or labor performed . . . have been fully paid and satisfied." Jay Fertig, the primary point of contact for ARS, testified that he was never aware of any payment dispute between Single Point and Corenic.

Corenic's payment applications also included Continuation Sheets, which enumerated work performed by various subcontractors. The Continuation Sheets categorized some work under "Change Orders." The list of work under the "Change Orders" category grew significantly over time. For example, the payment application continuation sheet dated on August 31, 2016, listed work items performed under 19 change orders, and the final payment application continuation sheet dated on July 25, 2017, listed

105. The July application included line item number 55, labeled "General Site Work," with a value of $198,908.00.[12]

Through June 30, 2017, Corenic received payment from ARS in the total amount of $3,768,243.65. Change orders accounted for $1,294,606.00, which is approximately 50% of the $2,623,030 Guaranteed Maximum Price in the Prime Contract. The change orders show that ARS spent approximately $700,000 on upgrades for the IAFF's requirements, such as the memorial pavilion and flagpole stands. ARS also paid Corenic for other changes, such as enlarging a generator pad and reworking conduit.

Corenic and Single Point Execute a Change Order

Although Corenic received payment from ARS in late June of 2017, by August, Corenic had not yet paid Single Point for its extra work. On August 15, 2017, Benson emailed Douglas Jr., stating, "Back in early January we forwarded our change order no. 1 to you for review and signature, [but] this document was never return [sic]." Benson also stated that even though "there was work added to [Single Point's] scope[,]" Single Point never submitted revised pricing proposals and therefore cannot "rebid" the ARS Project on the T&M basis.

Douglas Jr. responded, reminding Benson that he had already signed and returned

[12] Corenic produced the continuation sheet showing a line item for change order No. 55, "General Site Work" in the amount of $198,908, but was never able to produce the actual change order. The trial court later observed in its Findings of Fact and Conclusions of Law: "the lack of production of this exhibit which remained in the possession of [Corenic] negatively impacts the Court's assessment of the credibility of [Corenic's] witnesses."

the January 12, 2017, proposed change order. Nevertheless, Douglas Jr. signed a revised Change Order No. 1, dated August 15, 2017, and returned it to Benson, who then executed it on August 22, 2017. The August 15, 2017, revised Change Order No. 1 added $2,000 for "Building A – Remove Glass Block at Exterior[,]" thus increasing the contract price to $12,275, but was otherwise identical to the January 12, 2017, proposed Change Order No. 1. Corenic did not pay the $12,275 until after Single Point filed the underlying suit five months later.

Parties Disagree on Single Point's Extra Work Costs

Following the execution of revised Change Order No. 1 on August 15, Single Point and Corenic continued to negotiate compensation for Single Point's remaining extra work. In October 2017, Douglas Jr. sent Benson Single Point's "matrix" detailing each worker's hours and daily tasks performed. In return, Benson provided Corenic's daily construction reports from October 24, 2016, to March 28, 2017, which detailed each subcontractor's work, the type and number of workers, and total labor hours, along with a breakdown of Single Point's labor hours, showing 385 extra hours for supervisors, 2,529 extra hours for mechanics, and **a total of 5,403 labor hours** for the Work and the extra work.

On February 12, 2018, Benson sent an email, stating that after reviewing "each and every ticket and proposal again[,]" he found "multiple duplications" and "inconsistencies[.]" Benson attached a worksheet to the email breaking down the additional work into categories that conformed to the invoices originally submitted by Single Point. In total, Benson's attachment showed requests from Single Point for extra

work in the amount of $172,515.89 (which was less than what Single Point invoiced).[13] Benson only approved $4,401.00 in additional work on that worksheet, and in the columns next to the remaining work, he noted either "not approved" or "resubmit."

Douglas Jr. disagreed with Benson's assessment. On February 15, 2018, he wrote to Benson:

> Thanks for taking the time to go through this but there are no duplications or overlap between the tickets and proposals. I emailed you a document on 10/5/17 that should make that clear. Additionally, it makes perfect sense that you would have multiple tickets for the same day because you had multiple crews on site and each foreman makes their own ticket.
>
> I do agree that the hours on some of our tickets don't match your daily reports but I'm not sure what you can determine from that considering that Corenic signs the tickets and Corenic makes the daily reports.
>
> You want our cost on stuff, **l've given it to you, it's $277,507.23.**

(Emphasis added).

Douglas Jr. also pointed out that Corenic's own daily construction reports refuted Benson's numbers:

> The real issue here is Corenic had Single Point perform all this changed and added work that you priced to [ARS] for $135k without consulting us. And now you guys have a bust.
>
> You must see that even using the man-hours from your own daily reports **(5,403), you guys are in the hole here**.
>
> According to our payroll records, backed-up by gps-vehicle tracking, we had 7000 man-hours on this job. With zero mark-up, we spent $60k on materials/equipment (not including pulled yard stock and owned machinery).

[13] At trial, Morrow, Corenic's General Manager, acknowledged that he was "not sure which payment applications [Benson] sent comments back on specifically[.]"

> We have $277k in this job. We did everything you asked of us out there and you need to pay us.
>
> Our current billing stands at $324k. We like you guys and want to continue working together, make us real offer. If we can't agree to something by the end of the month, I suggest we go to binding arbitration.

(Emphasis added).

Benson did not respond to this email. Instead, in October 2018, Benson re-sent his review of documents to Single Point. Frustrated by the lack of resolution following additional email exchanges with Benson, Douglas Jr. directly emailed Cooper on November 12, 2018:

> Brunson, Let's deal with this thing. From the base bid, Corenic directed Single Point to perform major changes requested by ARS. Those changes included significant adds to the pavilions, the entry walls, modifications for the generator pad, stone veneers, sidewalks, block work, grease interceptor, pad for the propane tank and more. . . .
>
> Then there were a bunch of odds and ends that Corenic directed us to do that were out of our original scope like supplying and installing volleyball equipment, horseshoe pits and setting trash cans to name a few.
>
> Our original contract value was $60k but due to all this added work we have 7,000 man-hours out there with our cost on the project at $277k and total billing of $324k.
>
> Bill said Corenic priced the extra work at $135k. That, added to our base contract of $60, should put you guys at $195k for our scope of work.
>
> Splitting it down the middle would give us a final contract amount of $260k and a loss for Single Point. Can you agree to that so we can put this behind us?

Two weeks later, on November 27, 2018, Douglas Jr. sent another email, warning that the failure to resolve the dispute would lead to litigation: "then we get lawyers, answer interrogatories, . . . and then a trial."

Single Point Files Suit

On January 9, 2019, Single Point filed the underlying lawsuit. In Count I of the Complaint, Single Point asserted that it had "performed in full" its contractual obligations, but "Corenic materially breached the parties' agreement by failing to pay Single Point." In Count II, Single Point asserted a claim for "Quantum Meruit/Unjust Enrichment," arguing that even if no express contract covered all the work performed, Corenic had retained the benefit of its labor and materials without compensation, also valued at $270,653.88. In Count III, Single Point argued that Corenic's failure to promptly pay after receiving funds from ARS was unjustified and constituted a violation of the Prompt Payment Act ("PPA"), Maryland Code (1974, 2023 Repl. Vol.), Real Property Article ("RP") § 9-301, *et seq*. Finally, in Count IV, Single Point contended that Corenic violated its obligations under the Trust Fund Act, RP § 9-201, *et seq*., by withholding payments received from ARS that should have been held in trust for subcontractors like Single Point.

Two days later, on January 11, Corenic made a payment of $18,235.00 to Single Point, covering the value of the work approved in revised Change Order No.1 and the 10% retainage of the original Subcontract price.[14]

[14] At trial, Cooper testified that Corenic made the payment "[j]ust in good faith[,]" claiming that Single Point did not properly "bill" for the amount. When asked what he (Continued)

The First Trial

Witness Testimony

The case was tried to the court over three days beginning on May 3, 2021. Single Point presented three witnesses—Douglas Sr., McAdoo, and Douglas Jr.—and deposition testimony of three adverse party witnesses—Morrow, Cooper, Fertig. The defense presented the testimony of Morrow and Cooper who—as compared to Benson and the two on-site superintendents, Huneke and Swain—did not have direct involvement in the Project. During the trial, the witnesses offered conflicting testimony on several issues regarding Single Point's extra work.

First, there was a dispute as to whether Single Point was authorized to charge for the extra work on T&M basis. McAdoo testified that Single Point was "directed to proceed in the field on time and material" because "[t]he landscape plans were never provided to Single Point personnel in the office to provide pricing." As previously noted, McAdoo gave a detailed account of the uncompensated extra work performed by Single Point, linking each item of extra work to an associated invoice, and explained why the extra work performed fell outside the original scope of the Subcontract. For example, she explained,

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meant by "bill," Cooper replied:

> So an invoice needs to be given from the subcontractor to the general contractor stating the work that is completed and then it gets approved by the general contractor and then a check is written because we take those bills -- we take those invoices and we compile them against the invoice we do to the owner. So I can't bill the -- I can't invoice the owner for work not done.

> The entrance sign and walls changed drastically. They extended in linear foot. They added, which means more excavation, more concrete. . . . There was stone veneer added. There was columns added . . . . [T]here was precast caps on the columns that were, I believe 2x2 with a big precast ball. So there was a significant amount of material and labor to perform this additional task[.]

In another example, Single Point was obligated under the Subcontract to construct one 10x10 concrete generator pad, but McAdoo explained that after Single Point completed that work,

> [w]e were then instructed onsite by Mitch Heineki [sic] to perform a generator pad extension, which meant that we had to form and reinforce and pour concrete to extend the generator pad. Then they had to come back and we had to then demolish per the instruction of Mitch Heineki [sic], we had to demolish the generator [pad] that we just . . . extended because they needed to rework it to install some conduit, so once they installed the conduit, we then came back, formed it, again reinforced it, and poured some more concrete.

McAdoo also detailed how Single Point was instructed to construct a "50 linear foot by 5 foot wide" sidewalk that was "not shown anywhere on" the plans given to Single Point on which it based its proposal for the Project. McAdoo testified that Single Pont was "just directed in the field to proceed without delaying the project[.]"

Morrow, on the other hand, testified that "[a] revised set of drawings"[15] was sent to Single Point in or around December 2016, and he denied that Corenic ever agreed to compensating Single Point on T&M basis for its extra work.

> [W]e solicit proposals from subcontractors, firm fixed price, to perform a scope of work, base contract or a change order. We request those proposals

[15] It is unclear whether this "revised set of drawings" included the "landscape plans" that, according to McAdoo, were necessary for Single Point's pricing.

> so that we don't get subjected to . . . time and materials pricing. It's kind of open-ended if things are being performed time and materials. So that's why we solicit the proposals for change orders.

The witnesses also gave conflicting testimony on the process for issuing change orders. Morrow, in his deposition testimony, stated that it was the responsibility of subcontractors—such as Single Point—to propose pricing for extra work and to "have that reviewed by a general contractor who is experienced in managing subcontractors[.]" According to Morrow, general contractors like Corenic "don't typically create change orders for subcontractors." Morrow further stated that if the general contractor disagrees with the subcontractor's pricing for the extra work, "[t]he alternative would typically be to find alternative pricing and see if somebody can perform that for what you have in your budget." Douglas Jr., on the other hand, stated, "Change orders are always drafted by the general contractor[,]" highlighting that Corenic, the general contractor, drafted both the January 12, 2017, proposed change order and the August 1, 2017, revised Change Order No. 1. Douglas Jr. further explained that Single Point could not bill for extra work unless Corenic issued a change order.

The witnesses disagreed on the scope of the August 15, 2017, revised Change Order No. 1. In Morrow's view, that change order reflected all the extra work that Single Point was able to "substantiate." Cooper, in his deposition testimony, agreed that the amount of $71,875 shown on that change order represented the "total compensation[,]" to which Single Point was entitled for its work on the ARS project, "based on the approved contract." Conversely, McAdoo and Douglas Jr. testified that the August 15, 2017, revised change

order "represents that specific scope listed on th[e] document[,]" originally submitted in January 2017, and only covers "some additional work . . . not all."

Unsurprisingly, the witnesses expressed very different interpretations of the Subcontract. For example, Douglas Jr. claimed that Single Point effectively complied with Article 4(c) of the Subcontract, which required all claims for extra work to be submitted within two days, because Corenic was "well aware that [Single Point] want[ed] to get paid." On the other hand, Morrow said that Article 4(c) authorized Corenic to disregard Single Point's claims submitted outside the two-day window. Morrow also maintained that a "proper claim" under Article 4(c) means "something . . . you can back [ ] up with an invoice, an agreed upon change and an invoice." When asked what he meant by "agreed upon change," Morrow answered, "[c]hange orders . . . agreed upon in writing, written change orders executed by both parties."

Another contested issue was line item number 55 on Corenic's final payment application to ARS that reflected a value of $198,908. During his deposition, Morrow acknowledged that he does not have "a good recollection of what's in that number." At trial, Morrow testified that Corenic was unable to find a change order associated with this line item, and although a document in Corenic's accounting system "actually ha[d] the number 55 on it[,]" that document did not match line item 55 in the final payment application. Fertig vaguely recalled that Benson sent ARS "email documentation" saying "that he had additional costs of $198,000," but such documentation was never introduced into evidence.

Following close of evidence, the trial judge asked, and the counsel for both parties agreed, to submit proposed findings of fact. On July 2, 2021, Corenic and Single Point submitted their respective proposed findings of fact.

Trial Court's Ruling on Single Point's Claims

On May 12, 2022, the trial court issued "Findings of Fact and Conclusions of Law." At the threshold, the trial judge determined that no enforceable contract existed between Single Point and Corenic governing Single Point's additional work.

The court found that the breach of contract claim turned on Article 4 of the Subcontract, and then noted that Article 4 was "silent as to any process[es]" regarding change orders. The court determined that "there could not have been a meeting of the minds as to the terms and requirements of the [c]hange [o]rder processed." In support of this finding, the court highlighted that the parties' witnesses offered contradicting testimony on how they were supposed to process change orders:

> [Corenic's] witnesses testified as to the proper procedure to process Change Orders. That is, [Single Point] would put the Change Order in writing and sign it. Furthermore, the Change Order is to include the scope of work and costs. Thereafter [Corenic] reviews the Change Order and can approve it as is or send it back to the Defendant [sic] with changes, i.e., reducing the costs, with a signature. If there are changes, then [Single Point] is to submit a signed amended Change Order with the changes, ex. reducing labor/material costs. Upon receipt, [Corenic] would sign off on the amended Change Order and payment to be made. [Corenic's] process is evidenced by how the parties' interaction occurred on August 22, 2017.
>
> * * *
>
> On August 22, 2017, [Single Point and Corenic] executed a written Change Order. Said Change Order included additional work and the parties agreed that [Single Point] should be paid $12,275 for that work. It's important to

> note that the parties did not execute the written Change Order until months after [Single Point]'s work had been completed on the Project. However, although an executed written Change Order was completed, [Corenic] did not make payment until a lengthy period had passed. Their reasoning was, after the executed Change Order, [Single Point] had a duty to submit a new invoice to contain the work and costs agreed to in the agreed upon Change Order. [Single Point] maintains that was not a requirement nor were they made aware of such. In contrast, [Single Point's] witnesses[] testified that the above is not how Change Orders worked under this contract nor is that the common practice. Their witnesses testified[ ] that an authorized employee of [Corenic] would make a request to perform additional work. Once the work was completed [Single Point] would submit an invoice for payment. They denied that the contract called for any requirement of a back-and-forth process before a Change Order was approved.

The trial judge also found that Article 4 "fail[ed] to establish the material elements of an agreement[,]" noting:

> For instance, as to the procedure to follow for Change Orders. That is, who was to initiate the written Change Order, what sufficed to satisfy a written Change Order (is it a form, a writing on blank piece of paper?), what was the proper procedure to have a Change Order approved? **The Court finds Article 4 has no language regarding the process nor the responsibilities, the rights, and the duties of the parties as to how complete a Change Order.**

(Emphasis added).

Although the judge concluded that "Article 4 was so vague as to not constitute an agreement[,]" he found that there was "little dispute that [Single Point] performed labor that was beyond the base contract." The court expounded:

> This labor included masonry work and building structures and/or objects. This work did not occur instantaneously but over the course of time. . . . **In fact, the Court finds, there is ample evidence to find that [Corenic] billed [ARS] for this work. [Single Point] alleges and evidence supported that they billed [Corenic] for almost three times the base contract price. The amount of labor, time and materials is significant. It's difficult to believe that [Corenic] was not aware <u>nor authorized this substantial amount</u>**. It

> is noteworthy that [Corenic] also was paid a significant amount beyond their original contract with the Owner. Said amount correlates to the amount [Single Point] requested.

(Emphasis added). The court highlighted Corenic's failure to produce a change order that corresponds to line item 55 on its final payment application to ARS, stating that this omission "negatively impact[ed] the [c]ourt's assessment of [Corenic's] credibility[.]"

Accordingly, although the court found in favor of Corenic on Single Point's breach of contract claim, as well as the Prompt Payment Act and Trust Fund Act claims (reasoning that they are "express contract base counts"), the court entered judgment in favor of Single Point on Count II of the complaint for unjust enrichment. The court found that Corenic had received the benefit of Single Point's additional work without proper compensation. Single Point was awarded $252,418.88 in damages for unjust enrichment, along with $60,122.77 in pre-judgment interest, $57,956.78 in attorneys' fees and costs, and post-judgment interest.[16]

The Second Trial

Trial Court Vacates the Judgment Amount

Following the circuit court's ruling, both parties filed several motions. On May 20, 2022, Corenic filed a motion to alter or amend judgment under Maryland Rule 2-534, arguing, among other things: (1) that the award under the theory of unjust enrichment was precluded by the existence of a valid, enforceable contract; and (2) that the trial judge did

[16] The circuit court did not explain the basis for the award of attorneys' fees.

not make the requisite findings of bad faith for his award of attorneys' fees. On May 26, 2022, Single Point filed an opposition to Corenic's motion and a cross-motion to alter or amend judgment, claiming that the award of attorneys' fees was appropriate under the "highly remedial" Prompt Payment Act. On August 5, 2022, after hearing both parties' arguments on all pending motions, the trial court directed them to submit supplemental briefings.

Taking advantage of this opportunity, Corenic filed a "Supplement" to its motion to alter or amend on August 19, 2022. In this Supplement, Corenic explained that it had in fact produced a "document saved as PCO 55" during discovery, but that document turned out to be different from line item 55 on Corenic's payment application. Corenic argued that the discrepancy between the document produced and line item 55 was simply due to a "clerical misfiling" and did not "warrant a finding of spoliation."

On September 22, 2022, from the bench, the judge granted Corenic's motion in part, vacated the judgment as to the amount of damages, and ordered a new damages hearing. He agreed with Corenic that the absence of Change Order 55—*i.e.* the change order associated with line item 55—was simply due to misfiling, not an act of spoliation. The court explained:

> At the last hearing, one of the exhibits was, I believe, Change Order 55. . . . During the trial and in the Court's findings, there was reference that [Corenic] failed to provide this change order, that the change order in question was not provided, as well as in my findings, the Court found that and as well found that because of their failure to provide the change order that that was considered with regard to assessing their credibility or at least in the sense that it impacted their credibility or lessened their credibility.

> After that hearing, the Court understands now that the Court made a factual mistake in that it's not that the change order was never provided. It was that the change order was not . . . the correct change order or the language in the change order was not correct[.]
>
> It can be argued that they didn't provide the correct change order. They could give the argument as to the reasons or motive as to why they didn't provide, you know, the correct change order or, again, the details in the order was not provided, but it's not factually correct to say that they just didn't provide the change order at all which was, again, which was my understanding. And the reason why that's important is because I found that there was no contract, then there was no written contract that would detail, you know, the work or the payment, etc., so I had to assess the credibility of the witnesses on both sides to come up with the award of damages. And so the credibility of the witnesses on both sides was crucial to that finding and because the Court made that finding, the Court believes that I made an error with regard to the damages, issue of damages, and that error was not harmless. So with regard to the issue of damages, the Court in part is going to grant [Corenic's] motion to alter, amend, set aside the damages and set the issue of damages in for a new trial on damages only.

Single Point filed a motion for reconsideration, but the motion was denied. Before the new damages hearing, the trial judge recused himself from the case.

The New Damages Hearing

The new damages hearing was held on August 16, 2023, before a different judge. At the damages hearing, Corenic called Morrow as the sole witness, and Single Point did not call any witness.

Morrow testified that following the initial trial, Corenic made additional efforts to locate the missing change order (which supposedly corresponds to line item 55) but could not find it. Instead, according to Morrow, Corenic found a "spreadsheet" of "what would have constituted [line item] 55" from Benson's personal files. Morrow was then presented with that spreadsheet (which was not admitted into evidence), which listed subcontractors,

their work, and the costs of work. With his recollection refreshed, Morrow stated that he believes Single Point should have been paid "$52,410[,] [a]nd then . . . a couple of other amounts, small amounts[,]" under line item 55. Morrow claimed that this sum was paid as part of Single Point's original compensation under the Subcontract, and, that all of the rest of money under the line item 55 went to other subcontractors.

On cross-examination, Morrow acknowledged that he did not create the spreadsheet. He also acknowledged that prior to the damages hearing, he was not able to testify as to any amounts paid to other subcontractors. Morrow also agreed that, whereas the numbers in the spreadsheet represent "values of work" performed by each subcontractor, he has no evidence of any amount actually paid to subcontractors. He further acknowledged that Corenic did not produce any accounting of the $1,294,606 that it had received from ARS for additional work.

Submission of the Second Proposed Findings of Fact

Following the hearing, the court gave Single Point another opportunity to submit a proposed findings of fact, and allowed Corenic to respond. Single Point filed its second proposed findings of fact and conclusions of law on September 13, 2023, and Corenic responded with its own proposed findings of fact and conclusions of law regarding damages on September 27, 2023. In relevant part, Single Point's second proposed findings of fact provided:

> 30. Corenic billed ARS for the additional work, Payment Application Item No. 55 for "general site work" in the amount of $198,908.00 and ARS paid that amount.

* * *

31. Despite numerous discovery Motions granted in part by this Court ordering Corenic to provide documents to as [sic] additional work, Corenic failed to produce any documentation as to Item No. 55. Corenic did not provide any correspondence with ARS (which should include communications as to Item No. 55) or accounting for Item No. 55.

32. This Court's May 12, 2022 Order expressly found that "No. 55 was submitted for $198,908.00, however the Defendant could not produce the actual Change Order No. 55," and that "[t]he lack of production of this exhibit which remained in the possession of the Defendant negatively impacts the Court's assessment of the credibility of Defendant's witnesses."

33. Corenic admitted that Single Point performed the "General Site Work." While the documents show that Corenic was paid the $198,908.00 by the Owner, Corenic has not produced any evidence showing **ONE** payment to another contractor performing "General Site Work."

34. During the August 16, 2023 hearing, Morrow could not testify with any certainty or specificity as to the amounts that Corenic paid any other subcontractors that were included in Line Item No. 55, only admitting that some portion of Line Item No. 55 included payment for some of the labor and materials Single Point supplied to the Project.

* * *

36. Single Point's work was included in Change Order No. 55.

37. Corenic produced the change orders that corresponded with the other line items in Corenic's payment applications to ARS, except Item No. 55.

38. Overall, ARS paid Corenic about $700,000.00 in upgrades for the IAFF-related changes.

39. ARS paid Corenic $1,294,606.00 for additional work, including Item No. 55.

40. ARS paid Corenic a total of $2,775.208.62, with the final payment on September 20, 2017.

(Emphasis in original) (citations to the internal records omitted).

Second Order of Judgment

On December 12, 2023, the circuit court entered a one-page judgment, titled "Opinion & Order" that stated the following:

> The Court received this case following the granting of a motion for the recusal of the Honorable Lawrence Hill. After reviewing the trial transcripts and proposed finding of fact submissions by both parties, **this Court hereby adopts the proposed Findings of Facts contained in Single Point Construction's second proposed findings of fact dated September 13, 2023.** Based on those findings it is hereby ordered that **judgment is entered against Defendant Corenic Construction Group LLC in favor of Plaintiff Single Point Construction LLC in the principal amount of $252,418.88, costs, and post judgment interest at the legal rate.**

(Emphasis added). Corenic filed another motion to alter or amend the judgment, but the motion was denied on January 29, 2024. Following the denial of its motion to alter judgment, Corenic filed a timely notice of appeal on January 30, 2024. Single Point also timely cross-appealed.

STANDARD OF REVIEW

Our review is governed by Maryland Rule 8-131(c) which states:

> When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Md. Rule 8-131(c). Accordingly, we apply the "clearly erroneous" standard to the trial court's factual findings. *Clickner v. Magothy River Assoc. Inc.*, 424 Md. 253, 266 (2012). Under this standard, "[o]ur task is limited to deciding whether the [trial] court's factual

findings were supported by substantial evidence in the record[,]" when viewed in a light most favorable to the appellee. *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005). "[I]f substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed." *GMC v. Schmitz*, 362 Md. 229, 234 (2001).

However, "[t]he clearly erroneous standard does not apply to the [trial] court's legal conclusions[.]" *Cattail Assocs. Inc. v. Sass*, 170 Md. App. 474, 486 (2006) (citation omitted). Instead, "[w]hen a trial court decides legal questions or makes legal conclusions based on its factual findings, we review these determinations without deference to the trial court." *MAS Assocs., LLC v. Korotki*, 465 Md. 457, 475 (2019). "Where a case involves both issues of fact and questions of law, [we] will apply the appropriate standard to each issue." *Estate of Zimmerman v. Blatter*, 458 Md. 698, 718 (2018) (citations omitted).

Finally, "for the purposes of this case, it is important to note that . . . an appellate court can affirm when 'the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties.'" *Yaffe v. Scarlett Place Residential Condo., Inc.*, 205 Md. App. 429, 440 (2012) (quoting *Robeson v. State*, 285 Md. 498, 502 (1979)). This is because "[c]onsiderations of judicial economy justify the policy of upholding a trial court decision which was correct although on a different ground than relied upon." *Id.* (citations omitted). Thus, even if the trial judge's basis for the judgment may be incorrect, we may still review the record "to determine if the court reached the right result . . . albeit for the

wrong reason." *Faulkner v. Am. Cas. Co.*, 85 Md. App. 595, 629 (1991); *see also Yaffe*, 285 Md. at 440 ("[W]e can affirm when the trial court's decision was right for the wrong reasons.").

DISCUSSION

I.

BREACH OF CONTRACT OR UNJUST ENRICHMENT

Parties' Contentions

Before this Court, Corenic contends that the circuit court's judgment, "which is solely premised in Single Point's unjust enrichment claim, must be vacated" because the Subcontract and the August 15, 2017, revised change order each independently serve as "a bar to Single Point's unjust enrichment claim." Specifically, Corenic notes that "[t]he trial court's award of damages under an unjust enrichment theory where a valid contract exists [i]s clear legal error" and that the court is not authorized "to relieve parties of business decisions, even if improvident, when doing so is against the express items in a contract."

Corenic further argues that Single Point is not entitled to compensation for its extra work under the Subcontract because it "did not present any evidence at trial which demonstrated that it complied with the relevant provisions by submitting a claim for extra work within two (2) days of authorization[,] . . . and thus was barred from compensation for extra work under the express terms of the subcontract." Alternatively, Corenic argues that the August 15, 2017 revised change order, which was "executed several months ***after*** Single Point completed its work[,]" expressly provided that no further claims for

compensation would be paid, thus precluding Single Point's recovery. (Emphasis in the original).

Single Point counters that the Subcontract does not preclude its unjust enrichment claim. Although Single Point recognizes that a quasi-contractual claim cannot exist when a contract exists between the parties concerning the same subject matter, Single Point fails to explain how the extra work was not covered by the Subcontract. Single Point appears to assert that the trial court properly awarded damages based on an implied-in-fact contract, again, without explaining how that theory applies in this case.

Alternatively, Single Point does present arguments that support its breach of contract claim. Single Point highlights that Corenic's on-site superintendents directed Single Point to perform extra work pursuant to Section 4(e) of the Subcontract, which states in relevant part: "Contractor, without nullifying the [Subcontract], may direct Subcontractor to make changes to Subcontractor's Work." And because the Subcontract provided that "time is of essence," Single Point says it "was required to comply with Corenic's directives or risk default." Single Point further urges that the parties modified the Subcontract's two-day claim submission requirement by their actions because Corenic not only directed additional work on site, but Corenic's on-site superintendent, Huneke, executed the "Additional Work Authorizations" confirming Single Point's extra labor and materials.

Regarding Corenic's claim that revised Change Order No. 1 extinguished all other claims for extra work, Single Point notes that Corenic continued to review its payment

requests "because Corenic clearly understood Single Point had a claim for additional work that remained pending[.]" In support of its contention, Single Point notes that immediately before and immediately after revised Change Order No. 1 was executed in August, 2017, the parties exchanged various emails that concerned Single Point's extra work that was not reflected on revised Change Order No. 1. Thus, according to Single Point, the evidence establishes that "Single Point did not intend and Corenic did not understand Single Point to have waived any claims for additional work not included" in revised Change Order No. 1.

In reply, Corenic rejects Single Point's "newly asserted 'implied contract' argument[,]" and says we should not consider it as Single Point failed to raise it below. And if we do consider the argument, Corenic claims that it is barred by the integration clause of the Subcontract, which, according to Corenic, states unambiguously that "a term or provision could only be waived by a writing executed by a duly authorized officer or agent of Corenic." Corenic acknowledges that it waived, in writing, the requirement that Single Point present its claim for additional work within two days of authorization when it "validated" revised Change Order No. 1.

Legal Framework

Unjust Enrichment, Implied Contract, and Express Contract

Appellate courts in Maryland have recognized that "unjust enrichment is notoriously difficult to define." *AAC HP Realty, LLC v. Bubba Gump Shrimp Co. Rests., Inc.*, 243 Md. App. 62, 69-70 (2019) (quoting *Hill v. Cross Country Settlements, LLC*, 402

Md. 281, 295 (2007)). Imprecise use of related but distinct terms—such as "quantum meruit," "implied contract," and "quasi-contract,"—has basted some confusion into this area of law. *See Dolan v. McQuaide*, 215 Md. App. 24, 35 (2013) (explaining the need for clarifying the meaning of such terms). We begin our analysis, therefore, by "mapping out the various terms involved in the pleadings and in our discussion." *Id.*

First, "quantum meruit" is a measure of recovery that applies to "either an implied-in-fact contractual duty or an implied[-]in[-]law (quasi-contractual) duty requiring compensation for services rendered." *Mogavero v. Silverstein*, 142 Md. App. 259, 274 (2002) (citations omitted). In *Alts. Unlimited, Inc. v. New Balt. City Bd. of Sch. Comm'rs*, 155 Md. App. 415 (2004), we offered a description of quantum meruit and how it applies both in cases of implied-in-fact contract and in cases of implied-in-law contract (or quasi-contract):

> *'[Q]uantum meruit [is] a count used where the plaintiff has performed services for the defendant.* As in many common count cases, the *services may be performed at the defendant's request, so that an implied in fact contract might be found.* However, *services might be performed without the request of the defendant, but which nevertheless benefitted him in some way. If recovery is allowed* for such unrequested services, it is clear that *the recovery is the quasi-contract sort,* that is, based upon the principle against unjust enrichment and not on contract[.]'

Id. at 477 (Quoting 1 Dan B. Dobbs, *Law of Remedies* (2d ed. 1993)). Although quantum meruit may apply to both implied-in-fact contracts and implied-in-law contracts (or quasi-contracts), "[t]he distinction between these two forms of *quantum meruit* is important, as the two claims require distinct remedies." *Mogavero*, 142 Md. App. at 275. Accordingly, we have explained that "*quantum meruit* is not truly a cause of action but a *measure of*

recovery" in certain types of cases. *Dolan*, 215 Md. App. at 37-38; *see also Caruso Builder Belle Oak, LLC v. Sullivan*, 489 Md. 346, 363 (2025) ("A cause of action and a corresponding remedy are not interchangeable terms.").

We now turn to the distinctions between an express contract, a contract implied-in-fact, and a contract implied-in-law. An express contract is "an actual agreement of the parties, the terms of which are openly uttered or declared at the time of making it, being stated in distinct and explicit language, either orally or in writing." *Comm'rs of Caroline Cnty. v. J. Roland Dashiell & Sons, Inc.* 358 Md. 83, 94 (2000) (internal quotation omitted). An implied-in-fact contract "is an actual contract." *Clark Office Bldg., LLC v. MCM Cap. Partners, LLLP*, 249 Md. App. 307, 314 (2021). But unlike an express contract, which "speaks for itself and leaves no place for implications," an implied-in-fact contract must be inferred from the circumstances or acts of the parties. *Klebe v. United States*, 263 U.S. 188, 192 (1923); *see also Md. Cas. Co. v. Blackstone Int'l Ltd.*, 442 Md. 685, 706 (2015) (defining an implied-in-fact contract as "an agreement which legitimately can be inferred from intention of the parties as evidenced by the circumstances and the ordinary course of dealing and the common understanding of men."). Nonetheless, just like an express contract, an implied-in-fact contract is "dependent on mutual agreement or consent, and on the intention of the parties[,] and a meeting of the minds is required." *Mogavero*, 142 Md. App. at 275 (quoting 17 C.J.S. Contracts § 6(b) at 422). In other words, an implied-in-fact contract "does not describe a legal relationship which differs from an express contract: only the mode of proof is different." *Id.* at 277 (citation omitted).

On the other hand, "what is confusingly called a contract implied in law is *actually no contract at all*." *Slick v. Reinecker*, 154 Md. App. 312, 318 (2003) (emphasis added). A contract implied-in-law, "also known as 'quasi-contract' or unjust enrichment, is a '[l]egal fiction invented . . . to permit recovery by contractual remedy in cases where, in fact, there is no contract. . . , but where circumstances are such that justice warrants a recovery as though there had been a promise.'" *Kantsevoy v. LumenR LLC*, 301 F. Supp. 3d 577, 599 (D. Md. 2018) (quoting *Md. Cas. Co.*, 442 Md. at 707). Therefore, unlike express or implied-in-fact contracts, "quasi-contracts are not based on the apparent intention of the parties to undertake the performances in question, nor are they promises." *Mohiuddin v. Drs. Billing & Mgmt. Sols., Inc.*, 196 Md. App. 439, 449 (2010) (quoting Restatement (Second) of Contracts, § 4 (1981)).

Because a quasi-contract is not a contract at all, a plaintiff cannot recover damages for *both* breach of contract and unjust enrichment for any claims covered by a valid, enforceable contract. *AXE Props. & Mgmt., LLC v. Merriman*, 261 Md. App. 1, 41 (2024). A breach of contract claim and an unjust enrichment claim are "so inconsistent that a party could not logically follow one without renouncing the other" because "one remedy is founded upon the affirmance of a contract . . . and the other rests upon its disaffirmance or recission." *Id.* at 30, n.15 (quoting Am. Jur. 2d Election of Remedies § 13, Westlaw (database updated Feb. 2024)). Consequently, "[i]t is settled law in Maryland, and elsewhere, that a claim for unjust enrichment may not be brought where the subject matter of the claim is covered by an express contract between the parties." *Cnty. Dashiell*, 358

Md. at 96 (quoting *FLF, Inc. v. World Publ'ns, Inc.*, 999 F. Supp. 640, 642 (D. Md. 1998)). Accordingly, a party claiming unjust enrichment is entitled to relief only in the absence of a valid, enforceable contract.

Enforceability of a Contract

A contract, whether oral or written, "is not enforceable unless it expresses with definiteness and certainty the nature and extent of the parties' obligations and the essential terms of the agreement." *Maslow v. Vanguri*, 168 Md. App. 298, 321 (2006). Under Maryland law, "'[t]he interpretation of a contract, including the determination of whether the language of a contract is ambiguous, is a question of law, subject to *de novo* review by an appellate court.'" *Hess Constr. + Eng'g Servs., Inc. v. Francis O. Day Co., Inc.*, 264 Md. App. 567, 596 (2025) (quoting *Sy-Lene of Wash., Inc. v. Starwood Urb. Retail II, LLC*, 376 Md. 157, 163 (2003)). Courts in Maryland follow the objective theory of contract interpretation, by which we interpret a contract's language "'based on what a reasonable person in the position of the parties would have understood the language to mean[.]'" *Lithko Contracting, LLC v. XL Ins. Am., Inc.*, 487 Md. 385, 401 (2024) (internal quotations omitted). Accordingly, "the written language embodying the terms of an agreement will govern the rights and liabilities of the parties, irrespective of the intent of the parties at the time they entered into the contract." *W.F. Gebhardt & Co., Inc. v. Am. Eur. Ins. Co.*, 250 Md. App. 652, 666 (2021) (citations omitted).

When interpreting a contract provision, we endeavor to give effect "to each clause so that a court will not find an interpretation which casts out or disregards a meaningful

part of the language of the writing unless no other course can be sensibly and reasonably followed." *Cochran v. Norkunas*, 398 Md. 1, 17 (2007) (quoting *Sagner v. Glenangus Farms*, 234 Md. 156, 167 (1964)). We focus primarily on the "'customary, ordinary, and accepted meaning' of the language used." *Walton v. Mariner Health of Md., Inc.*, 391 Md. 643, 660 (2006) (quoting *Atl. Contracting & Material Co., Inc. v. Ulico Cas. Co.*, 380 Md. 285, 301 (2004)). And we interpret each term of the contract in the context of the contract as a whole. *See Atl. Contracting*, 380 Md. at 301 ("The terms of the contract must be interpreted in context, and given their ordinary and usual meaning."). "Only '[w]here a court determines contractual language to be ambiguous'" will it "'consider extrinsic or parol evidence to ascertain the parties' intentions.'" *W.F. Gebhardt*, 250 Md. App. at 666 (quoting *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 394 (2019)).

The Supreme Court of Maryland recently explained why context is so critical in understanding contract terms:

> We do not interpret contractual language in a vacuum. Instead, we interpret that language "in context, which includes not only the text of the entire contract but also the contract's character, purpose, and the facts and circumstances of the parties at the time of execution." *Credible Behav. Health*, 466 Md. at 394 (internal quotation marks omitted) (quoting *Ocean Petroleum, Co. v. Yanek*, 416 Md. 74, 88 [] (2010)). Although providing relevant context may necessarily require consultation of evidence beyond the "four corners" of the contract itself,[] it does not extend to extrinsic or parol evidence of the parties' subjective intent, such as evidence of the parties' negotiations. *Impac Mortg. Holdings, Inc.* [*v. Timm*, 474 Md. 495, 534 n.32 (2021)]. Such evidence may be considered only after a court first determines that the relevant contract language is ambiguous, which occurs when, viewing the plain language in its full context, "a reasonably prudent person could ascribe more than one reasonable meaning to it." *Credible Behav.*

Health, 466 Md. at 394[.]

Lithko Contracting, 487 Md. at 401-03 (footnote omitted). When considering the circumstances of the parties, we bear in mind that "Maryland contract law generally implies an obligation to act in good faith and deal fairly with the other party or parties to a contract." *Questar Builders, Inc. v. CB Flooring, LLC*, 410 Md. 241, 273 (2009).

Many years ago, in an appeal from the trial court's dismissal of a breach of contract action, the Supreme Court considered appellees' contention on appeal and below that the contract was "so vague and ambiguous as to be incapable of 'being understood without the insertion of countless omissions.'" *Rocklin v. Eanet*, 200 Md. 351, 353, 357 (1952) (internal quotations omitted). At issue was a contract for the sale of Rocklin's grocery and package liquor store. *Id.* at 354. The Court reversed and remanded after determining that the contract "covers the essential terms and is not so lacking in certainty as to prevent an action at law for its breach." *Id.* at 359. To the extent that appellees identified certain omissions from the contract, the Court determined that they could be "resolved by construction[,]" or may be shown by extrinsic evidence. *Id.* at 358. The Court expounded:

> It is true that if a contract omits essential terms or is so vague or uncertain that the court cannot identify the subject matter or determine its quality, quantity or price, it may be unenforceable, for the courts cannot make a contract for the parties or supply missing terms. [] On the other hand, a contract is not rendered unenforceable merely because the parties do not supply every conceivable detail or anticipate every contingency that may arise. To some extent at least, ambiguities may be resolved by construction. [] The failure to deal with potential difficulties in remote contingencies may only mean that the parties are willing to leave their determination to chance or the operation of general legal principles. The law does not favor, but leans against, the annulment of contracts on the ground of uncertainty.

Id. at 357 (internal quotations and citations omitted).

In *Hess Constr.*, we recently reaffirmed the principle that "[t]he law does not favor, but leans against the destruction of contracts because of uncertainty[.]" 264 Md. App. at 596 (internal quotation omitted). We explained that "[t]he fact that the parties offer differing interpretations of a contract provision does not, in and of itself, render that provision unenforceable." *Id.* Instead, we emphasized that a proper inquiry into whether the parties have mutually assented "will focus not on the question of whether the subjective minds of the parties have met, but on whether their outward expression of assent is sufficient to form a contract." *Id.* at 595 (quoting Williston on Contracts, § 4:1 (4th ed. 2024)). We further observed that when interpreting a contract, "the court's task is to take the 'outward expression of the parties and ask *what meaning the words should have conveyed to a reasonable person* cognizant of the relationship between the parties and all of the antecedent and surrounding facts and circumstances.'" *Id.* at 596 (emphasis added) (quoting Williston, *supra*, § 4:1).

Analysis

With the foregoing principles in mind, we turn to consider whether the circuit court erred by entering judgment on Single Point's unjust enrichment claim after determining that Article 4 of the Subcontract "fail[ed] to establish the material elements of an agreement" between the parties regarding change orders for additional work. Corenic claims that the unjust enrichment theory is inapplicable because Article 4 of the Subcontract "explicitly dictate[s] how Single Point must submit claims to be paid for extra

work[,]" and Single Point failed to follow the contractual requirements. We agree with Corenic that the Subcontract precludes Single Point's unjust enrichment claim, but we conclude that Single Point was entitled to recovery under its breach of contract claim.

We begin our analysis with Article 4 of the Subcontract and conclude that it is not so ambiguous as to be unenforceable. Rather, as we read it, Article 4 of the Subcontract "expresses with definiteness and certainty the nature and extent of the parties' obligations and the essential terms of the agreement" covering Single Point's extra work and compensation for such work. *Maslow*, 168 Md. App. at 321. Article 4(a) of the Subcontract defines "extra work" and provides that all authorization for extra work must be in writing in order to "be effective and binding." Article 4(b) details Single Point's obligation to provide a "lump sum quotation" for the extra work authorized by Corenic, to the extent that "the scope and nature of [the extra work] is reasonably susceptible to" such quotation.

Next, Article 4(c) outlines Corenic's obligation to pay Single Point for the extra work, and states:

> **Any claim for compensation for extra work, whether lump sum or otherwise, must be presented to Contractor within two (2) days of authorization of the extra work. Claims** for extra work received thereafter will not be considered. Proper **claims** for extra work shall be paid in accordance with this Subcontract Agreement.

(Emphasis added). The plain language of Article 4(c) does not specify that "[a]ny claim for compensation for extra work" be in the form of a change order. Accordingly, an invoice for compensation for extra work performed, or a draft change order showing the same, may

qualify as a "claim." Plainly, Article 4(c) only requires that Single Point "present" Corenic with "[a]ny" **claim** regarding compensation for extra work "within two (2) days of authorization of the extra work."

Article 4(d) then specifies that, so long as the extra work is "[d]uly authorized[,]" it is "deemed included in the 'Work'" and Corenic must, as instructed in Article 4(c), compensate Single Point's "[p]roper claims for extra work" in accordance with the Subcontract. However, in concert with the Subcontract's "time is of the essence" clause, and in anticipation of potential disputes over claims for compensation, Article 4(d) cautions that "[n]o dispute as to adjustments in the Contract Amount for extra work shall excuse Subcontractor from proceeding with the Work[.]"

The final paragraph of Article 4 discusses adjustments in the contract price using the term "Subcontractor's Change Order":

> (e) Contractor, without nullifying the Agreement, may direct Subcontractor to make changes to Subcontractor's Work. **Adjustment, if any, in the contract price or contract time resulting from such changes shall be set forth in a Subcontractor's Change Order pursuant to the Contract Documents**.

Art. 4(e) (emphasis added).

In sum, Article 4 requires any "claim" for compensation for extra work be presented to Corenic within two days of authorization of the extra work. Extra work that is "duly authorized" is "deemed included in the 'Work.'" Art. 4(d). Any adjustment to the contract price based on a claim for extra work must ultimately be reflected in a "Subcontractor's Change Order." Art. 4(e). Anticipating that the parties may dispute certain claims before

final change orders are executed between the parties, the Subcontract instructs Single Point that it is not excused from proceeding with the Work during any such disputes. Art. 4(d). In other words, adjustments to the contract price are not made with each claim (which may be disputed and changed), but rather with each "Subcontractor's Change Order pursuant to the Contract Documents." Art. 4 (e). We cannot say that the omission of more detailed instructions regarding change orders renders Article 4 "so vague or uncertain that the court cannot identify the subject matter" of the parties' agreement. *Rocklin*, 200 Md. at 357.

In finding Article 4 to be "so vague as to not constitute an agreement[,]" the circuit court stated that Article 4 was "silent as to any process" regarding change orders and therefore did not "evidence a material meeting of the minds as to the rights, duties, and responsibilities of the parties with respect to change orders." The judge also listed questions that he believed the Subcontract failed to answer, including, "who was to initiate the written Change Order, what sufficed to satisfy written Change Order (is it a form, a writing on blank piece of paper?), what was the proper procedure to have Change Order approved?" However, as the Supreme Court has instructed, "a contract is not rendered unenforceable merely because the parties do not supply every conceivable detail or anticipate every contingency that may arise. To some extent at least, ambiguities may be resolved by construction." *Rocklin*, 200 Md. at 353. Nor does "[t]he fact that the parties offer differing interpretations of a contract provision . . . render that provision unenforceable." *Hess Constr.*, 264 Md. App. at 596 (citations omitted).

To appraise the context and proper construction of the parties' agreement in this

case, we widen our lens beyond Article 4 and review the entire text of the Subcontract as well as any documents incorporated into the Subcontract by its terms, such as the Prime Contract. *See Atl. Contracting*, 380 Md. at 301 (requiring that a contract's terms "must be interpreted in context"). Section 10.3 of the Prime Contract states that subcontracts shall "conform to the applicable payment provisions of this Agreement." Article 6 of the Prime Contract, titled "CHANGES IN THE WORK," states that any adjustment to the Guaranteed Maximum Price must follow "any of the methods listed in Section 7.3.3 of AIA Document A201-2007." Notably, Section 7.3 of the Model AIA A201-2007 Document allows a change in the work by means of a "Construction Change Directive." The process is defined as follows:

> A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

Model AIA § 7.3.1. Section 7.3.3 authorizes an adjustment to the Contract Sum based on several different methods, including, "*[m]utual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation*[.]" Model AIA § 7.3.3.1 (emphasis added). Section 7.3.6 states that "[a] Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum . . . [s]uch agreement shall be effective immediately and shall be recorded as a Change Order." We view Article 4 of the Subcontract governing

submission of a "claim" to be consistent with Model AIA § 7.3.3. Under Article 4, the "claims" —in this case, the invoices and accompanying Additional Work Authorizations— are similar to "Construction Change Directives" in that the requests for compensation are based on orders "directing a change in the Work prior to agreement on adjustment, if any, in the Contract sum or Contract Time" (AIA § 7.3.1).

As noted above, nothing in the Subcontract specifies that a "[p]roper claim" for compensation under Article 4(c) be presented in the form of "a Subcontractor's Change Order[.]" It is undisputed that Single Point performed extra work and presented Corenic with invoices for the extra work in May and June of 2017, prior to Corenic's July application to ARS that included line item number 55, labeled "General Site Work," with a value of $198,908. Single Point's invoices were backed by "Additional Work Authorization" tickets, on which Single Point's foremen recorded labor hours, descriptions of the extra work performed, and the list of materials and equipment that they used. Corenic's superintendent signed each ticket on the dates on which the extra work was performed by Single Point, certifying "that the use of the labor, equipment and material specified above was authorized and *that it satisfactorily completed work not included in the scope of subcontract or purchase order issued to Single Point*[.]" Later, Douglas Jr. (Single Point) sent Benson (Corenic) Single Point's daily reports and payroll records backed up by GPS-vehicle tracking, showing Single Point had 7,000 man-hours on the job.

The parties' own course of conduct demonstrates that they did not understand or intend Article 4 (c) to require that Single Point submit a "Subcontractor's Change Order"

for the submission of a "proper claim." *See Pacific Indem. Co. v. Interstate Fire & Cas. Co.*, 302 Md. 383, 389 (1985) ("Construction of the contract by the parties to it before the controversy arises is an important aid to interpretation of uncertain terms."). Benson and Douglas Jr. exchanged numerous documents—tickets, invoices, and daily reports—to assess compensation for Single Point's extra work, and Benson never demanded a formal change order from Single Point. In fact, Corenic sent both the initial and the revised Change Order No. 1 to Single point on Corenic's letterhead. After the August 15, 2017, revised Change Order No. 1 was executed, Benson continued to exchange emails with Douglas Jr. over Single Point's extra work claims. In doing so, he did not demand that Single Point produce a change order, but instead stated that he was reviewing "each and every ticket and proposal" submitted by Single Point.[17]

[17] Corenic posits that revised Change Order No. 1, dated August 15, 2017, extinguished Single Point's claims regarding Corenic's failure to pay for extra work. Specifically, Corenic relies on the following language that appears on the change order form: "Through [sic] acceptance of this Change Order includes compensation to the Provider for any and all effects, delays, inefficiencies or similar demands associated with this Project and the Provider recognizes that there is no basis for any such claim in the future." We disagree. As we repeatedly emphasize throughout this opinion, contract terms must be interpreted in context, not in isolation. *See Atl. Contracting*, 380 Md. at 301. Here, the disclaimer appears immediately below an itemized list of specific tasks and a calculated "total amount of change." We note that this same language appears on all draft change orders in the record. When read in conjunction with the line items, the waiver is clearly limited in scope to the work items detailed within Change Order No. 1. The disclaimer precludes Single Point from seeking further compensation for the effects or delays resulting from *those specific items*, but it does not reasonably manifest the parties' intent to extinguish claims for extra work or breaches that falls outside Change Order No. 1. *See Lithko Contracting, LLC v. XL Ins. Am., Inc.*, 487 Md. 385, 401 (2024) (requiring interpretation of a contract "based on what a reasonable person in the position of the parties would have understood the language to mean") (citation and internal quotations omitted).

Based on the plain language of the Article 4, and considering its provisions in the context of the Subcontract as a whole as well as the parties' course of conduct, we hold that: (1) the trial court erred in its determination that "Article 4 was so vague as to not constitute an agreement"; (2) Corenic authorized Single Point to perform extra work under Article 4(a) when Corenic's on-site superintendent signed Single Point's tickets for 26 separate "Additional Work Authorization[s]"; (3) Single Point's invoices submitted to Corenic in May and June of 2017 constituted proper claims for compensation under Article 4 (c) of the Subcontract; and (4) Corenic's failure to compensate Single Point for duly authorized extra work following presentment of Single Point's "proper claims for extra work" constituted a breach of the Subcontract. There is no dispute that Corenic waived Article 4 (c)'s requirement that a proper claim be presented within two-days.[18] Corenic

[18] In its reply brief, Corenic concedes that the parties waived the two-day claim submission requirement, stating that such waiver is "evident from the undisputed facts[.]" Referencing the Subcontract's integration clause, Corenic claims that "a term or provision could only be waived by a writing executed by a duly authorized officer or agent of Corenic" and that the waiver of the two-day requirement was "validated" by the fully executed revised Change Order No. 1. While we agree that the two-day requirement was waived by both parties when they executed revised Change Order No. 1, we note that an integration clause does not necessarily prohibit subsequent modification of a contract provision in the absence of a separate written agreement. Rather, "[p]arties to a contract may waive the requirements of the contract by subsequent oral agreement or conduct, notwithstanding any provision in the contract that modifications must be in writing." *Richard F. Kline, Inc. v. Shook Excavating & Hauling, Inc.*, 165 Md. App. 262, 277 (2005).

More recently, the Supreme Court of Maryland reiterated this principle, stating:

> [A] provision that an express condition of a promise or promises in the contract cannot be eliminated by waiver, or by conduct constituting an estoppel, is wholly ineffective. The promisor still has the power to waive the

(Continued)

had a clear contractual obligation to compensate Single Point for the extra work it directed on site but failed to comply with its obligations. Corenic cannot take advantage of the Subcontract's "time is of the essence" clause and other provisions requiring that Single Point perform extra work on site when directed, and then unilaterally decide not to negotiate in good faith Single Point's invoices and corresponding Additional Work Authorizations signed by Corenic's on-site superintendents.

Because Article 4 of the Subcontract expressly governs the specific subject matter that forms the basis of Single Point's unjust enrichment claim, we must also hold that the trial court erred in entering judgment for Single Point on Count II. As explained above, the terms "unjust enrichment," "contract implied-in-law," and "quasi-contract" all refer to the "'[l]egal fiction invented by common law courts . . . in cases where, in fact, *there is no contract*, but where circumstances are such that justice warrants a recovery as though there had been a promise.'" *Kantsevoy v. LumenR LLC*, 301 F. Supp. 3d 577, 599 (D. Md. 2018) (citations omitted) (emphasis added); *see also Cnty. Comm'rs of Caroline Cnty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 96 (2000) ("[A] claim for unjust enrichment may not be brought where the subject matter of the claim is covered by an express contract between the parties[.]").

> condition, or be estopped by conduct from insisting upon it, to the same extent that he would have had this power without that provision.

Hovnanian Land Inv. Group, LLC v. Annapolis Towne Ctr. at Parole, LLC, 421 Md. 94, 118-19 (2011) (quoting 8–40 Corbin, *Contracts*, § 40.13 (2011)).

Although we conclude that the circuit court erred in awarding Single Point damages under the quasi-contract theory of unjust enrichment, we may affirm the court's entry of judgment in favor of Single Point for damages based on breach of contract because the court's conclusion "was right for wrong reasons." *Yaffe v. Scarlett Place Residential Condo., Inc.*, 205 Md. App. 429, 440 (2012). While the trial judge concluded that "Article 4 was so vague as to not constitute an agreement[,]" he found that there was "little dispute that [Single Point] performed labor that was beyond the base contract." He expounded:

> there is ample evidence to find that [Corenic] billed [ARS] for this work. [Single Point] alleges and evidence supported that they billed [Corenic] for almost three times the base contract price. The amount of labor, time and materials is significant. It's difficult to believe that [Corenic] was not aware nor authorized this substantial amount. It is noteworthy that [Corenic] also was paid a significant amount beyond their original contract with the Owner. Said amount correlates to the amount [Single Point] requested.

(Emphasis added). The trial court properly held Corenic liable for failing to compensate Single Point for extra work; however, as we explain next, we must remand the case for a third hearing on the question of damages.

On Remand

To recap what is currently before us on appeal, during the second damages hearing, the court awarded Single Point $252,418.88 in damages for unjust enrichment (same amount awarded with the initial judgment), but vacated the prior awards for pre-judgment interest, attorneys' fees, and costs. We vacate the damages award and remand this case to the circuit court because the computation of damages based on breach of contract is different from the assessment of damages based on unjust enrichment. We recently

reaffirmed that "[d]amages for breach of contract 'seek to vindicate the promisee's expectation interest.'" *AXE Props. & Mgmt. LLC v. Merriman*, 261 Md. App. 1, 44 (2024) (quoting *Hall v. Lovell Regency Homes Ltd. P'ship*, 121 Md. App. 1, 13 (1998)). Accordingly, "[t]he amount of damages recoverable for breach of contract is that which will place the injured party in the monetary position he would have occupied if the contract had been properly performed." *Hall*, 121 Md. App. at 12. These damages encompass "both losses incurred and gains prevented." *B&P Enters. v. Overland Equip. Co.*, 133 Md. App. 583, 618 (2000) (quoting *Beard v. S/E Joint Venture*, 321 Md. 126, 133 (1990)) (internal quotation marks omitted). On the other hand, "the classic measurement of unjust enrichment damages is the gain to the defendant, not the loss by the plaintiff[.]" *Mogavero v. Silverstein*, 142 Md. App. 259, 276 (2002). Because the computation of damages for unjust enrichment and for breach of contract involves two disparate methods of calculation, and because the circuit court erred in relying on the theory of unjust enrichment to enter judgment for Single Point, we remand the case so that the circuit court may examine the evidence already in the record and enter a proper damage award for breach of contract. We leave the court with remedial flexibility to determine whether additional briefing or an additional hearing is necessary.

II.

ATTORNEYS' FEES

Parties' Contentions

Single Point, as cross-appellant, claims that the circuit court "erred in not awarding attorneys' fees under the PPA[.]" Single Point argues that Corenic continued to withhold the balance of revised Change Order No. 1 "absolutely in bad faith[,]" even after Single Point had made "multiple attempts to close out" its work on the ARS Project and sent "multiple communications" via counsel.

Corenic counters that the PPA does not apply in this case, noting that the statute "requires only payment of ***undisputed amounts***" and that "payment to Single Point was in dispute from when Single Point executed the Subcontract in December 2016 through the date of trial." (Emphasis in the original). Additionally, Corenic argues that neither trial judge made any findings of bad faith as required to recover attorneys' fees under the PPA.

Analysis

We review a trial court's award of attorneys' fees, or denial of such award, under an abuse of discretion standard. *Monmouth Meadows Homeowners Ass'n., Inc. v. Hamilton*, 416 Md. 325, 332-33 (2010). Generally, "[i]n the absence of statute, rule, or contract expressly allowing recovery of attorneys' fees, a prevailing party in a lawsuit may not ordinarily recover attorneys' fees." *Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 660 (2003).

One exception to this rule is found in the PPA, which provides that a contractor

"shall pay undisputed amounts owed" to its subcontractor within seven days after receiving a payment for the subcontractor's work or materials. RP § 9-302(b)(3). Under the PPA, a "contract" is defined "an agreement of any kind or nature, *express or implied*, for doing work or furnishing materials, or both, for or about a building." RP § 9-301 (emphasis added). The PPA's statutory obligation, however, is triggered when the amount owed by a contractor to its subcontractor is "undisputed[.]" RP § 9-302(b)(3); *see Gray Constr., Inc. v. Medline Indus., Inc.*, SAG-19-03405, 2023 WL 2333218, *17 (D. Md. Mar. 1, 2023).

An award of attorneys' fees under the PPA requires more than finding the non-payment of an undisputed amount; it requires a finding of bad faith. Section 9-303(c) expressly provides: "If a court determines that an owner, **contractor**, or subcontractor *has acted in bad faith by failing to pay any undisputed amounts owed as required . . .* , the court *may* award to the prevailing party reasonable attorney's fees." (Emphasis added).

We hold that the circuit court did not abuse its discretion in declining to award attorneys' fees to Single Point. We agree with the circuit court that Single Point failed to bear its burden to show the amount owed by Corenic to Single Point was "undisputed." RP § 9-302(b)(3). The record clearly demonstrates the parties' longstanding dispute over the amount of compensation Corenic owed Single Point for extra work. For well over a year before the underlying complaint was filed, Corenic and Single Point exchanged various documents and emails expressing disagreement as to the amount of compensation due to Single Point for extra work performed on the Project. At trial, witnesses for both

parties presented varying interpretations of the Subcontract and the process for submitting extra work claims.

Even assuming there was no dispute as to the amount of compensation Corenic owed Single Point, the circuit court never made the requisite finding under Section 9-303(c) that Corenic's failure to pay was in bad faith. Indeed, the record contains ample evidence for the court to find that Corenic did *not* act in bad faith. Corenic's owner, Cooper, explained in his deposition testimony that the payment "was just caught in between" and that Corenic would not "intentionally hold[ ] anyone's payment." Cooper offered similar testimony at trial, expressing his belief that even if the parties had agreed upon a payment amount, "you have to bill it also." Even though Cooper's belief may have been misguided, we cannot say that the circuit court was clearly erroneous in failing to find that Corenic acted in bad faith. *See Ryan v. Thurston*, 276 Md. 390, 392 (1975) ("It is . . . plain that the appellate court should not substitute its judgment for that of the trial court on its findings of fact[.]"). Accordingly, we discern no abuse of discretion in the circuit court's denial of Single Point's request for attorneys' fees under the PPA.

Conclusion

For the foregoing reasons, we affirm the circuit court's determination that Corenic is liable to Single Point for having received the benefit of Single Point's extra work without proper compensation. Although we hold that the circuit court erroneously held Corenic liable based on the quasi-contract doctrine of unjust enrichment, we affirm the court's liability judgment on Single Point's claim for breach of contract because the record and the

court's factual findings establish that Corenic failed to pay Single Point for extra work under the terms of the Subcontract. Therefore, we affirm the court's judgment on liability but vacate the court's award of damages and remand the case for further proceedings consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED ON APPELLANTS'/CROSS-APPELLEES' LIABILITY; AWARD OF DAMAGES FOR UNJUST ENRICHMENT REVERSED; JUDGMENT AFFIRMED IN ALL OTHER RESPECTS. CASE REMANDED TO THE CIRCUIT COURT WITH INSTRUCTIONS TO CONDUCT FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION TO DETERMINE BREACH OF CONTRACT DAMAGES; COSTS TO BE DIVIDED EVENLY BETWEEN THE PARTIES.