Circuit Court for Montgomery County
Case No. 73497FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2497

September Term, 2016

ROSHANAK HASSANPOUR

v.

ALI MOVAHED

Nazarian,
Reed,
Friedman,

JJ.

Opinion by Reed, J.
Concurring Opinion by Nazarian, J.
Dissenting Opinion by Friedman, J.

Filed: October 23, 2019

On January 9, 2017, the Circuit Court for Montgomery County granted Ali Movahed's ("Appellee") Motion to Enforce Settlement Agreement and denied a similar motion filed by his ex-wife, Roshanak Hassanpour ("Appellant"). The Settlement Agreement had been agreed upon by both parties on July 27, 2010. At the time of their divorce hearing, the only issue was the division of equity in the marital home. At the hearing, they both agreed – through the July 27th Settlement Agreement – that Appellee would purchase Appellant's interest in the home after an appraisal. Rather than pay Appellant the amount owed based on the appraisal, Appellee instead purchased Appellant a BMW X6 automobile. Appellant claims that the automobile, valued at $63,400.00, was a gift and that she contributed to its purchase. Appellee contends that the vehicle was purchased in order to secure his interest in the property. Subsequently, Appellee requested that Appellant honor the Settlement Agreement and deliver her interest in the marital home.

Following a motions' hearing in the Circuit Court for Montgomery County, the trial judge entered orders granting Appellee's Motion to Enforce Settlement Agreement and denying Appellant's Motion to Enforce Settlement Agreement. Following the motions' hearing, Appellant filed a Motion to Alter or Amend Judgement, which the court denied. It is from the order granting Appellee's Motion to Enforce Settlement Agreement that Appellant timely appeals. In doing so, she presents three questions for our review:

> I. Did the trial court, contrary to the admission exceptions of the Statute of Frauds, find a real estate agreement was modified by an alleged oral extra judicial admission made to a third person?

II. Did the trial court err by holding that the Appellee's purchase of a new car for the Appellant constituted sufficient part performance modifying a real estate agreement subject to the Statue of Frauds?

III. Did the trial court misapply the clean hands doctrine in denying the Appellant relief?

For the following reasons, we hold that the trial court erred in applying the admissions exception to Mr. Smith's testimony. Furthermore, we answer the second and third question affirmatively. However, based on the doctrine of unjust enrichment, we affirm the decision of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On October 14, 2008, Roshanak Hassanpour ("Appellant") and Ali Movahed ("Appellee") filed for absolute divorce. On July 27, 2010, a Settlement Agreement regarding the property rights of the party's marital home was reached and placed on the record. The Settlement Agreement stated the following:

> …the parties have agreed to begin with each attorney or party obtaining an appraisal for the martial home in Bethesda.
>
> ***
>
> One half [of the value of the property] is to be payable to the wife as a marital award.
>
> ***
>
> That amount is to be paid in six equally monthly installments if the wife's share is $25,000 or less. If the wife's share is more than $25,000, then it is to be paid in 12 equal, monthly

> installments…the deed is to be delivered upon receipt of the first payment by the husband.

While there was an intention to memorialize the Settlement Agreement in a formal written document, one was never created. Appellee filed a Motion to Overturn the Settlement Agreement, claiming that he was unsatisfied with its terms. It was denied. Shortly after the divorce had been finalized, Appellant had the property appraised for $850,000.000. Based on her appraisal, her share of the equity was either $58,000.00 or $58,750.00.[1] Rather than obtain a second appraisal, Appellee accepted Appellant's valuation.

Although granted an absolute divorce, the parties continued to live together in the house. At some point in their cohabitation, Appellant returned to her home country of Iran to care for her ailing mother. She would travel back and forth between Iran and the United States from 2011 to 2015. Upon returning to the United States permanently, she moved back in with Appellee and resided in the home without paying rent. In 2015, Appellee completed a refinance of a loan in his name only and secured a deed of trust on the house in both Appellee and Appellant's names. At that time, neither party made any action to execute the Settlement Agreement until 2016.

[1] The property was originally appraised for $850,000.00. Based on Appellant's appraisal, her share was $58,000.00; however, in her Response to Request for Admissions filed on December 21, 2016, Appellant admitted that based upon her appraisal, her share of the equity in the property was $58,750.00. We are unsure which valuation is correct.

In 2016, Appellee requested that Appellant pay him for her share of the household equity in a lump sum payment and not the agreed upon payment schedule. Appellee contends that Appellant requested that he purchase a vehicle for her of "equivalent value in lieu of making the cash payment(s) called for in the agreement." In fact, in her Admissions introduced into evidence in the Motion to Enforce the Settlement Agreement, Appellant admitted that following the completion of their divorce, she requested that Appellee purchase her a BMW X6 automobile, which he did. The vehicle was purchased using two cashier's checks from two of Appellee's bank accounts as well as the trade-in value for one of his own vehicles, the sum of which was $63,400.00. The vehicle was titled solely in Appellant's name and once the purchase was completed, Appellee requested that a deed be executed transferring him her interest in the property. This was not done.

During the hearing on the Motion to Enforce Settlement Agreement, Appellant claimed that the purchase of the vehicle was a gift and thus not a modification to the Settlement Agreement. To rebut this assertion, Appellee brought the parties' former auto detailer, Marcus Smith ("Mr. Smith"), to testify that it was impressed upon him by Appellant that the vehicle was "…not a gift, [but] part of [their] agreement…" The court determined that this testimony was credible evidence against Appellant. Moreover, because the court found that Appellant did not testify truthfully and intentionally provided false information at trial, she violated the unclean hands doctrine. Accordingly, the trial court

ruled in favor of Appellee and ordered Appellant to vacate the property and execute a deed transferring her interest in the property to Appellee because of her fraudulent, illegal, or inequitable conduct. It is from this order that Appellant timely appeals.

STANDARD OF REVIEW

When this Court reviews a denial of a motion to enforce a settlement agreement, we apply the same rules that apply to other contracts. *See Erie Ins. Exch. v. Estate of Resside*, 200 Md. App. 453, 460 (2011) ("Settlement agreements are enforceable as independent contracts, subject to the same general rules of construction that apply to other contracts."). Thus, so long as the basic requirements of contract formation are present, there is no reason to treat settlement agreements differently than other contracts. *See David v. Warwell*, 86 Md. App. 306, 310 (1991). Accordingly, we review this contract under de novo review. *See Maslow v. Vanguri*, 168 Md. App. 298, 317 (2006) ("the interpretation of a contract, including the determination of whether a contract is ambiguous, is a question of law, subject to *de novo* review by an appellate court."). (internal citation and quotation marks omitted).

For issues of whether the trial court erred in ruling that a party had unclean hands, we apply an abuse of discretion standard. *See Manowan v. Adams*, 89 Md. App. 503, 511 (1991) ("…we disturb a trial court's decision to invoke the doctrine only when the court abuses its discretion.").

DISCUSSION

I. Evidence of Modification to the Settlement Agreement

A. Parties' Contentions

Appellant contends that although the parties are subject to the Statute of Frauds, the trial judge erroneously held that "an out of court 'admission' made by Appellant to a third person satisfied the admission exception to the Statute of Frauds." She further argues that when the judge found, as a matter of law, that Appellant's statements to the auto detailer were admissions of a party under *Litzenberg v. Litzenberg*, 307 Md. 408 (1986), it erred. She maintains:

> the very purpose of the Statute of Frauds is to protect a party against perjured evidence, and the testimony of Appellee claiming an oral modification to the Settlement Agreement and Mr. Smith's testimony of an out of court statement by Appellant about some unknown 'agreement' were not sufficient to modify the express term of the Settlement Agreement under the Statue of Frauds.

Thus, she argues that the court erred when allowing a non-party to present out-of-court testimony regarding a modification to a Settlement Agreement.

Appellee argues that the court did not err because it discredited Appellant's in-court testimony that the vehicle was purchased as a gift instead of a modification to the Settlement Agreement. Moreover, Appellee states that "the court found, based upon documentary evidence and testimony[,] that the parties had agreed to and did modify the

terms of their Agreement." Thus, he believes "Appellant is using [the] Statute of Frauds [as a] defense, not as a shield to protect herself from fraud, but as a sword to commit fraud upon [Appellee]." We disagree.

B. Analysis

Statute of Frauds and Oral Settlement Agreements

In the instant case, Appellant and Appellee agreed upon the Settlement Agreement in open court during their divorce hearing. The court was correct in deciding that the open court admission satisfied the Statute of Frauds and served as a proper exception. The issue, however, is whether a modification to the Settlement Agreement was acceptable. We hold that it is not.

To render a contract enforceable under the Statute of Frauds, the memorandum must meet the following criteria: (1) a writing; (2) signed by the party to be charged, or by a representative; (3) naming each party to the contract with sufficient definiteness to identify them or their representative; (4) describe the property or land to which the contract pertains; and (5) set forth the terms and conditions of all of the promises constituting the contract made between the parties. *See Royal Investment Group, LLC v. Wang*, 183 Md. App. 406, 434 (2008); *See also* MD. CODE, REAL PROP. § 5-104.

The Statute of Frauds may also be satisfied when a party makes admissions in a judicial proceeding. *See Litzenberg v. Litzenberg*, 307 Md. 408, 415 (1986) ("the… Statute

of Frauds…[is] satisfied by admissions in the form of sworn testimony in court or on deposition, or in an answer to a complaint."). Therefore, when an oral settlement agreement is reached in open court, contemplated on the record, and pertains to property or land, it satisfies the Statute of Frauds. *See Barranco v. Barranco*, 91 Md. App. 415 (1992) (ruling that the oral agreement for the transfer of the interest in land, agreed upon under oath, between a husband and wife, satisfied the Statute of Frauds because it was given in open court).

Because this Court finds that the Settlement Agreement between Appellant and Appellee satisfies the requirements of the Statute of Frauds and is therefore a valid and binding contract, we must now apply the common law rules of contracts pertaining to modifications of written contracts in the context of interest in land and its transfer. Appellant argues that the trial court erred in finding that the contract had been orally modified. Moreover, she contends that that the facts adduced at trial and during discovery do not demonstrate that the parties orally modified the contract. However, the trial court concluded, after placing significant weight on Mr. Smith's testimony, that the parties orally modified the agreement. We disagree.

Parties to a contract may waive the requirements of the contract by an oral agreement or by their conduct. *See Hoffman v. Glock*, 20 Md. App. 284, 288 (1974) ("the parties by subsequent oral agreement and by their conduct may waive the requirements of

a written contract.") *See also, Taylor v. University Nat'l Bank*, 263 Md. 59, 63 (1971) ("…the conduct of parties to a contract may be evidence of a subsequent modification of their contract."); *Freeman v. Stanbern Const. Co.*, 205 Md. 71, 79 (1954) ("…subsequent oral modification of a written contract may be established by a preponderance of the evidence…"). Further, when analyzing whether there was a modification of a contract, it must be established by the preponderance of the evidence, to which the trier of fact decides based on the conduct of the parties. *See Richard F. Kline Inc. v. Shook Excavating & Hauling, Inc.* 165 Md. App. 262 (2005). *See also, Hoffman,* 20 Md. App. 284, 289 (1974) ("whether or not the subsequent conduct of the parties amounts to a waiver is a question of fact to be decided by the trier of fact."). A preponderance of the evidence means

> …to prove that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in your minds a belief that it is more likely true than not true.

Coleman v. Anne Arundel County Police Dept., 369 Md. 108, 127 n. 16 (2002).

Here, the trial court concluded that, based upon Mr. Smith's testimony, it was more likely than not that the purchase of the vehicle was based upon a pre-existing agreement. Mr. Smith testified that he knew Appellee because he's detailed vehicles for him since 1992. Moreover, he testified that "about six, seven years" ago, from the date of trial, he detailed the BMW X6 for the parties. Prior to then, he helped Appellee in his search for

the vehicle for Appellant and that once purchased, Appellant would bring the vehicle to him to be detailed. When she brought the vehicle, Mr. Smith remarked:

> You know, wow this, this is a really nice car and I said, I said, *well that's a hell of a gift you know? And she said, well, no, it's not a gift, that's part of our agreement, you know*? And she said just to let you know, Ali is going to pay for the detail as well.

(emphasis added). It was from that testimony the court relied upon to rule that Mr. Smith "had no dog in this fight" and was not "buddies" with Appellant. Therefore, the court concluded that his testimony was an "admission of a party…under *Litzenberg*…"

In *Litzenberg v. Litzenberg*, 307 Md. 408 (1986) the Court of Appeals of Maryland held that an Appellant's former attorney's statements to the court on her behalf were not considered admissions, and thus not an exception to the Statute of Frauds, because he was no longer her attorney or authorized agent. In its ruling, the court stated: "the party to be charged can satisfy the [Statute of Frauds] by making the admissions through an agent." *Id.* at 417.

In applying *Litzenberg* to the case at bar, it is clear that the trial court erred. Though Mr. Smith was the auto detailer for Appellee, and had agreed to do work on numerous times for Appellee, Mr. Smith was neither a party to the divorce action nor an agent of either party. Therefore, Mr. Smith's testimony may not act as an admission by a party necessary to satisfy the Statue of Frauds.

II. Purchasing the Vehicle as Part Performance Under the Modification of the Settlement Agreement

A. Parties' Contentions

Appellant contends that when the trial court held that the parties' original Settlement Agreement was modified under the partial performance exception to the Statute of Frauds, it erred. She further maintains that it would be impossible for the purchase of the vehicle by Appellee for Appellant to constitute sufficient part performance and modify the terms of the Settlement Agreement. Instead, she argues, that because "Appellee was always trying to get back together with [Appellant]," the purchase fails to demonstrate the existence of an agreement between the parties to modify the Settlement Agreement. Rather, it can be explained as an attempt to "win back Appellant's affection in the same manner as he allowed his ex-wife to live in the House rent free after the divorce."[2] Appellee makes no argument to the contrary or in agreement with Appellant. We agree with Appellant that the doctrine of part performance does not apply to the case at bar. However, we affirm the trial court, holding Appellant was unjustly enriched.

B. Analysis

[2] During trial, Appellant claims that Appellee purchased the car for her because he sold her previous vehicle in 2007 and never purchased her a car. During that time, she had been driving her brother's car, which had gotten into an accident requiring her to purchase a new car. Moreover, she claims that she never received the proceeds of the sale of her previous car. In connection with her purchase of the BMW, she stated that she gave Appellee money three or four times.

The Court of Appeals "has stated that part performance is adequate to remove the bar of the Statute of Frauds where there is 'full satisfactory evidence' of the terms of the agreement and the acts constitute part performance." *Beall v. Beall*, 291 Md. 224, 230 (1980). In particular, part performance "must furnish evidence of the identity of the contract and it is not enough that it is evidence of some agreement, but it must relate and be unequivocal evidence of the particular agreement." *Id.* (citing *Semmes v.* Worthington, 38 Md. 298, 326-27 (1873)); *see also Mann v. White Marsh Properties, Inc.*, 321 Md. 111, 117 (1990) (citing *Unitas v. Temple*, 314 Md. 689, 709 (1989) ("In order for the acts of one party to transcend the bar of the Statute of Frauds, those acts generally must be of such a character that 'the court shall, by reason of the act itself, without knowing whether there was an agreement or not, find the parties unequivocally in a position different from that, which according to their legal rights, they would be in if there were no contract.").

As such, part performance can only support a contract modification claim so long as the part performance relates *directly* to the terms of the original agreement. In this case, however, the part performance claimed by Appellee, the purchase of the vehicle, was not the subject of the original Settlement Agreement agreed to in court. To the contrary, the Settlement Agreement only details the transfer of Appellant's interest in the marital property for the appraisal price as determined by a third party. As the Agreement between the parties only discusses that Appellee pay Appellant for her interest in the property and

Appellant furnish a deed transferring her interest, we conclude that the purchase of a vehicle for Appellant by Appellee cannot be considered part performance of the Agreement. Therefore, we find that the trial court erred in finding that the Settlement Agreement was modified under the part performance exception to the Statute of Frauds.

Unjust Enrichment

What is not asserted by either party is that Appellant received a benefit from Appellee, a new vehicle, the amount of which was around five thousand dollars[3] more than Appellant's interest in the home. We cannot, however, determine whether the vehicle was purchased at the behest of Appellant in order to forgive the interest owed in the marital home, or to coax a better relationship between the two parties. What we do know is that Appellant purchased the vehicle using two cashier's checks from his own accounts as well as the trade-in value for one of his own vehicles. As we've discussed, this court does not sit as a mind reader, claiming to know Appellee's motivations for doing so, but the facts point to Appellant receiving a benefit, one that was unjustly earned. *See Chassels v. Krepps*, 235 Md. App. 1, 18 (2017) ("Unjust enrichment occurs when the plaintiff confers a benefit on the defendant, the benefit is known to the defendant, and retention of that

[3] As mentioned in *supra* note 1. There are two valuations for the house, $58,000.00 and $58,750.00. The vehicle was purchased for $63,400.00. Which can either be $5,400.00 (58,000 – 63,400) more or $4,650.00 (58,750 – 63,400) more than Appellant's interest in the home.

benefit by the defendant under those circumstances is equitable. The benefit need not be conferred affirmatively, but may be conferred 'by reason of an infringement of another person's interest or of loss suffered by the other.'").

We are unconvinced that Appellee purchased the vehicle through besotted eyes,[4] and the fact remains that once Appellant received the vehicle from Appellee, she was asked to deliver the deed. In furtherance of her claims, Appellant maintains that she aided in the purchase of the vehicle with funds she brought back from Iran and kept in the house and in a bank safe deposit box, but there is no proof to which this Court can point. Therefore, we

[4] Appellant ends her argument by stating that vehicle was purchased to win back her affections. In *Hamilton v. Thirston*, 93 Md. 213 (1901), the Court of Appeals examined a suit brought by a nephew against the personal representative of his uncle's estate. The nephew claimed that the uncle promised to leave the nephew a share of the uncle's estate in consideration of services rendered by the nephew. The Court of Appeals commented:

> [T]his Court has repeatedly said that such acts must be clear and definite and refer exclusively to the alleged agreement…the services appearing by the record to have been rendered by the [nephew] although considerable in amount and covering a period of some years *were such as might well have been rendered by a nephew to an aged uncle without the existence of any contract in reference to them.*

(emphasis added). It is indeed possible that the vehicle was purchased to win back the affections of Appellant instead of for interest in the property. In fact, at the time the vehicle was purchased, the parties were still living together in the marital home and Appellant was not paying rent. However, the fact remains, after the vehicle was purchased, Appellee requested a deed transferring her interest in the property. According to the facts, there was no delay in that request.

hold that although the Settlement Agreement was not modified through part performance, as asserted by Appellee, this Court finds that Appellant was unjustly enriched. As such, we agree with the trial court's decision requiring Appellant transfer her interest in the property to Appellee. We thus affirm the judgment of the trial court.

III. Unclean Hands Doctrine

A. Parties' Contentions

Appellant also contends that "the trial judge was unduly harsh in his criticism and acceptance of Appellant's testimony, especially regarding her testimony how she had obtained the funds to purchase the vehicle from money she brought periodically back to the United States from Iran."[5] Moreover, Appellant disputes the trial judge's application of the unclean hands doctrine to Appellant's testimony because she believes that it is not

[5] During her testimony, Appellant testified that each time she entered the United States from Iran she would bring in money gifted from her relatives. She testified that each trip she would bring upwards to nine thousand U.S. Dollars back with her that, in total, amounted to either fifty or sixty thousand dollars. When asked by the court whether she declared the money, or had copies of currency transaction reports, she stated "I believe, I'm not sure if I do. I mean I left my--." Further, when asked by the court where she kept the money when she brought it into the United States, she responded "… in my wallet, in my purse." It is clear that the court wanted to know where she kept the money once she had finally returned to the United States and not when she was traveling from Iran to the United States. It is further clear, that the question was confusing to Appellant, as she thought the court was asking where she kept the money while she was travelling. Later in her testimony, she admits that she kept the money in the "house safety deposit," when asked again, she said "I had the box at the bank."

applicable, but merely an "alternative basis for denying the Appellant relief." Finally, she argues that there exists no nexus of the unclean hands doctrine to the enforceability to the Settlement Agreement.

Appellee contends that because Appellant did not testify truthfully, as indicated by the court not being able to "…get a straight answer from her" it provided the nexus to the unclean hands doctrine. Thus, Appellee argues that the court was correct to deny Appellant's use of the Statute of Frauds defense as a bar to Appellant's equitable claims. We disagree.

B. Analysis

The unclean hands doctrine allows courts to refuse relief to those who are guilty of unlawful or inequitable conduct, as it pertains to the matter in which relief is sought. Its purpose is to protect the integrity of the court and the judicial process by denying relief to those whose presence before the court is the result of fraud and/or inequity. *See Hicks v. Glibert*, 135 Md. App. 394, 401 (2000) (citing *Manown v. Adams*, 89 Md. App. 503, 511 (1991) and *Adams v. Manown*, 328 Md. 464, 474-75 (1992)). What matters most when determining whether a party's hands are unclean is not "that the plaintiff's hands are dirty, but that he [or she] dirties them in acquiring the right [they] now assert." *Id.* at 476. Accordingly, there must be some nexus between the alleged misconduct and the transaction for which the parties appear. *See Schneider v. Schneider*, 96 Md. App. 296, 306 (1993) ("it

is only when the plaintiffs improper conduct is *the source, or part of the source,* of his [or her] equitable claim, that [they are] to be barred because of this conduct."). As mentioned in the standard of review, this claim asserted by the trial court will not be disturbed absent an abuse of discretion.

Here, in ruling that Appellant had unclean hands, the trial court stated:

> I must tell you that I find [Appellant] to be wholly incredible. I disbelieve her. Respectfully, her testimony is not worthy of belief. I couldn't get, respectfully, a straight answer, apparently, if my life depended on it, from [Appellant]. I just simply disbelieve her testimony in its entirety.
>
> That is not to say that [Appellee's] testimony was a model either of clarity, lack of confusion, and he, too is wanting in several material respects.
>
> ***
>
> I simply disbelieve [Appellant's] story about money in and out of Iran. She couldn't tell me where she kept it, whether it was in her purse, whether it was in her wallet. I do not believe you can put $50,000 in a purse or a wallet in U.S. Currency, even if it's in large bills. I'm not saying this to be mean. She did not testify truthfully, I find, but I have to make my findings.
>
> I find that the funds for the purchase of the BMW at issue were solely the funds of [Appellee]. They were partly cash. I am satisfied that they came out of bank accounts in the State of Maryland.
>
> ***
>
> [The trial court discusses the requirement of inequitable conduct as it applies to the unclean hands doctrine] Here, the inequitable conduct is, in my judgment, intentional false testimony under oath in a courtroom. That under [*Wells Fargo Home Mortg. Inc. v. Neal*, 398 Md. 705, 730 (2006)] qualifies unclean hands. So… even if it is determined later that the two pieces regarding the statute of frauds as an alternative,

> independent basis for my decision, equity would not render her aid because she has very, very unclean hands in this case.

Essentially, the trial court found that because it believed Appellant's testimony to be wholly uncreditable,[6] it served as an independent basis for denying her relief, apart from the Statute of Frauds issue.

As we have mentioned, there must be a nexus between the unclean hands of Appellant and the transaction at hand. In this instance, the transaction is the enforcement of the Settlement Agreement. We agree with Appellant that the doctrine of unclean hands does not apply in this case. There has been no indication gleamed from the record that Appellant testified fraudulently about the Settlement Agreement, which was agreed to in open court. Instead, Appellant simply claims that the original Agreement was modified by the parties orally and outside of the courtroom.

Regardless, this does not change the overall outcome in this case. Appellant received a benefit from Appellee. Even though she claims she paid for the vehicle, the evidence adduced at trial proves otherwise.

Accordingly, while we agree with Appellant that she did not act with unclean hands, we affirm the trial court on the basis of unjust enrichment.

[6] Although the court does not mention this in its ruling, it believes that the bank that financed the marital home did so "under false pretenses, probably."

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

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Concurring Opinion by Nazarian, J.

Filed: October 23, 2019

I join Part I of Judge Reed's opinion, and I agree that the circuit court erred in finding that Appellant's[7] statements to the auto detailer served as an extrajudicial admission (an error that the Appellee's counsel conceded, appropriately, at oral argument). I also agree with Judge Reed's ultimate resolution of the case, although I get there a different way. Even without the admission, the circuit court found that the parties agreed to modify their Settlement Agreement to have Appellee buy the vehicle for Appellant in lieu of paying her share of the value of the house and that Appellee's performance of his half of the bargain satisfied the Statute of Frauds. *Beall v. Beall,* 291 Md. 224, 230 (1980). This agreement is, in my view, more than adequately tied to the terms of the Settlement Agreement—it modified *how* Appellee satisfied the Agreement's marital award component, which allocated the parties' marital property, by substituting a vehicle of roughly equivalent (if not slightly higher) value for cash. And Appellee performed that agreement in full, by his reckoning, or at least in significant part, by Appellant's. For that reason, I would affirm the circuit court's decision on that basis, without reaching unjust enrichment (which was not briefed) or unclean hands.

I agree with Judge Friedman's overall concerns about the circuit court's reactions to Appellant's testimony. I don't believe, however, that the court's reactions undermine the validity of the conclusions it draws from the record or the ultimate outcome. I see this still

[7] I will use the same shorthands for the parties and players that Judge Reed used.

as a straightforward question of whether the parties intended to modify their unperformed Settlement Agreement, and I agree with the circuit court's conclusion that they did.

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The trial judge was faced with two equally-likely but mutually-contradictory stories. Either, as Mr. Mohaved claimed, he bought the car for Ms. Hassanpour to satisfy his debt to her. Or, as Ms. Hassanpour claimed, Mr. Movahed bought the car for her mostly with her own money but supplemented with approximately $5,000 of his money. As a result, she argues, the debt remained unpaid.

Ordinarily, faced with such a situation, a trial judge would find one of the parties to be more "credible." *In re Timothy F.*, 343 Md. 371, 379 (1996) (discussing credibility determinations as a matter best left to the discretion of the trier of fact). And, based on our standards of review, this Court would be required to defer to that determination. *Goss v. C.A.N. Wildlife Trust, Inc.*, 157 Md. App. 447, 455 (2004) (stating that deference is given to the trial court on credibility determinations of witnesses). Here, however, the trial judge based his credibility finding on one, very specific part of Ms. Hassanpour's testimony. How do I know that? Because the trial judge told us so:

> I must tell you that I find [Ms. Hassanpour] to be wholly incredible. I disbelieve her. Respectfully, her testimony is not worthy of belief. I couldn't get, respectfully, a straight answer, apparently, if my life depended on it, from [Ms. Hassanpour]. I just simply disbelieve her testimony in its entirety … **I simply disbelieve [Ms. Hassanpour's] story about [the] money in and out of Iran.** She couldn't tell me where she kept it, whether it was in her purse, whether it was in her wallet. And I don't believe that you can put $50,000 in a purse or a wallet in U.S. currency, even if it's in large bills. I'm not saying this to be mean. She did not testify truthfully.

(emphasis added)

And what was the testimony from which the trial judge determined that Ms. Hassanpour was not telling the truth? Here it is, in full:

> The Court: [E]xplain to me please, if you will, how, it went down with the car? You, you, you bring him a bag of cash?
>
> Hassanpour: I will say I brought the cash, I'm going to call my ---
>
> The Court: How much cash did you have?
>
> Hassanpour: -- country to, Your Honor --
>
> The Court: So --
>
> Hassanpour: -- a gift from my parents, from my relatives.
>
> The Court: So where is, trace me for how you brought all the cash into the United States.
>
> Hassanpour: It was in the, at one, one occasion. I was going once a year, twice a year. I was bringing my gift --
>
> The Court: Was this reported --
>
> Hassanpour: -- back here.
>
> The Court: -- to the U.S. Customs Service?
>
> Hassanpour: Yes, I did.
>
> The Court: Do you have copies of the currency transaction reports?
>
> Hassanpour: I believe, I'm not sure if I do. I mean I left my --

The Court: You accumulated --

Hassanpour: -- yes, Your Honor --

The Court: -- how much cash?

Hassanpour: No, I didn't bring it at once.

The Court: I understand, but after --

Hassanpour: I would bring it, seven, eight, 9,000 --

The Court: -- after a while it added up to how much?

Hassanpour: 50, 60,000.

The Court: How much?

Hassanpour: Like 50, 60,000 if you --

The Court: Well, there's a big difference between 50 and 60. You don't know how much cash you had?

Hassanpour: I was working [at] that time and then I was getting gifts from my parents and, Your Honor --

The Court: I'm trying to --

Hassanpour: -- but I did have cash --

The Court: -- let's, let's stay focused, ma'am, on --

Hassanpour: Yes.

The Court: -- you were telling me about bringing cash into the United States across the border. So how much did you bring in and how many trips did you make?

Hassanpour: I make trip every year, once --

The Court: And how much --

Hassanpour: -- once a year.

The Court: -- did you bring in each trip?

Hassanpour: Seven, $8,000.

The Court: Always under the $10,000 limit?

Hassanpour: No, maybe 5,000.

The Court: And when you brought the cash into the United States, where did you keep it?

Hassanpour: In my, in my wallet, in my purse.

The Court: I don't think anybody has a purse or a wallet big enough to hold 50 or $60,000.

Hassanpour: Your Honor, I have cash in my wallet right now, $800. Your Honor, we carry cash. I'm from Iran. I --

The Court: Okay.

Hassanpour: Okay.

The Court: Everybody could be from Mars. I want to know where you kept 50 to $60,000 in U.S. currency, where physically did you keep it, because it is too big to fit in your wallet, ma'am. I know how, how big it is.

Hassanpour: When I was bringing it in? When I was bringing it in? I'm sorry, I didn't understand your question. I'm sorry, Your Honor.

The Court: I think you know exactly what I'm asking you. Go ahead. I'm finished. Thank you.

This reads to me like there was a fundamental misunderstanding between the trial court and Ms. Hassanpour. The trial court thought she was lying because it did not believe that $60,000 could fit in her wallet. Ms. Hassanpour seems completely befuddled, having testified—correctly in my view—that $9,000 could fit in her purse.[8] None of this testimony was particularly relevant other than to explain why Ms. Hassanpour happened to have cash on hand for Mr. Movahed to use to purchase the car for her. Yet from this single misunderstanding, the trial court determined that none of Ms. Hassanpour's testimony was to be believed. I find the trial court's rejection of the witness's entire testimony and credibility over a single misunderstanding, that the court itself created, to be so far removed from the center mark that it constitutes an abuse of discretion. *North v. North*, 102 Md. App. 1, 13-14 (1994) (defining abuse of discretion standard).[9] I would reverse on this ground alone.

[8] The size of U.S. currency is standardized: 6.14 inches in length by 2.61 inches in width by .0043 inches in thickness. Ninety crisp, new $100 bills would make a stack that is .387 inches thick. Even if the stack was made up of 450 $20 bills, it would be less than 2 inches thick. Thus, it seems to me, entirely plausible that $9,000 could fit in a woman's purse.

[9] Although it is not necessary to my analysis, I also note that according to the transcript, Ms. Hassanpour, a non-native English speaker, wasn't allowed to finish a single answer without interruption. The trial court also specifically declined to ask a final question to dispel the misunderstanding, stating instead "I think you know exactly what I'm asking you." Moreover, reading the transcript gives the impression that the trial court felt there is something wrong or even illegal about importing U.S. currency. Its questioning was so sharp on this point that, later in the day, Ms. Hassanpour's counsel inquired whether he

Moreover, to my thinking, the trial court's credibility determination also forms the backdrop for understanding its three legal errors. In my view, each of the legal errors is, at least in part, traceable back to the trial court's untenable opinion of Ms. Hassanpour's credibility:

- *First*, I agree with Judge Reed's lead opinion that the circuit court erred as a matter of law in its application of *Litzenberg* to the facts of this case. Slip op. at 9. This simply does not fit within the exception to the statute of frauds. But, in addition to being a legal error, it also reflected the factual mistake. It is hard for me to believe that anyone fairly evaluating the evidence would believe the testimony of an auto detailer, 6 or 7 years after the fact, that he specifically remembered Ms. Hassanpour telling him that the car was "not a gift" but part of her agreement. But because the trial court rejected Ms. Hassanpour's credibility, it was led to believe the car detailer's frankly incredible testimony.

- *Second*, I agree with Judge Reed's lead opinion—and disagree with Judge Nazarian's concurrence—that the $5,000 from Mr. Movahed could not, as a matter of law, constitute part performance. Slip op. at 11. But additionally, it seems abundantly clear to me the factfinder could find the money constituted part performance only if the factfinder disbelieved Ms. Hassanpour about the money being a gift.

- *Third*, I agree with Judge Reed that it is error as a matter of law to find that Ms. Hassanpour has "unclean hands," thereby precluding her recovery in equity. Slip op. at 16. However, this too is a manifestation of the trial court's factual determination that Ms. Hassanpour is unworthy of belief.

should have advised his client to invoke her privilege against self-incrimination. In fact, there is no prohibition or limit on the import (or export) of U.S. currency, subject only to a reporting requirement. 31 U.S.C. §5316.

Thus, while I agree with and join Judge Reed's determinations that the trial court made three legal errors, I also note that each of these legal errors is, at least in part, attributable to the trial court's abuse of discretion in basing its entire credibility assessment on a misunderstanding.

Finally, I cannot join Judge Reed's conclusion that, despite all the circuit court's legal errors, there is still enough evidence that Ms. Hassanpour was unjustly enriched by Mr. Movahed buying the car for her. That evidence (and I am not clear exactly what that evidence is) is tainted by the fundamental abuse of discretion by the trial court in disbelieving Ms. Hassanpour over a misunderstanding. The "evidence adduced" at trial "proves otherwise," slip op. at 16, only because the circuit court disregarded the contrary evidence.

To be clear, I am not saying that Ms. Hassanpour must or even should be believed. But she is entitled to a hearing at which her credibility is judged on something other than a misunderstanding. I would vacate the findings and remand the case for a new trial before a different trial judge. Therefore, I dissent.