UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 29

September Term, 2016

JENNIFER ADAMS

v.

F. DALE KELLEY, *et al.*

Eyler, Deborah S.,
Woodward,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: March 10, 2017

This appeal arises from claims Jennifer Adams brought against F. Dale Kelley and Rona Kelley, the owners of Seasonal Distributors, Inc. ("Seasonal Distributors"), her former employer. After working at Seasonal Distributors for several years, Ms. Adams alleged that she received a job offer from another company and, after telling Mrs. Kelley, the two agreed that Ms. Adams would continue to work at Seasonal Distributors under terms detailed in a "Management Proposal" document that Ms. Adams drafted. She alleged that Mr. Kelley provided his input, and that a second Management Proposal incorporating some of Mr. Kelley's input was prepared. After both of the Management Proposals expired, Ms. Adams resigned from Seasonal Distributors and the Kelleys sold the company's assets to a third party. Ms. Adams sought a share of the proceeds of the sale pursuant to terms contained in the second Management Proposal, and the Kelleys refused.

Ms. Adams brought suit in the Circuit Court for Charles County. During discovery, she requested various financial documents that, she contended, Seasonal Distributors never produced, and she filed a Motion to Compel that the court never resolved. After Ms. Adams presented her case-in-chief, the Kelleys moved for judgment on all counts and the court granted the motion. Ms. Adams challenges the court's failure to rule on her Motion to Compel and its decision to grant the Kelleys' motion for judgment, and we affirm.

I. BACKGROUND

Ms. Adams began working for the Kelleys in 1999 and was responsible for managing the inventory at Tri-County Hearth and Patio ("Tri-County"), a hearth and patio retail store. At Tri-County, Mrs. Kelley handled the day-to-day operations of the business.

Ms. Adams left Tri-County in 2001 to work for other employers, but returned in 2007 to work for the Kelleys. At that time, her duties included scheduling the technicians servicing Tri-County's products, and her position eventually evolved into Office Manager and bookkeeper. Then, in late 2008, Ms. Adams began to serve as bookkeeper for the Kelleys' separate business, Seasonal Distributors, which was the distribution company for the hearth and barbecue products. The Kelleys each had a fifty percent interest in Seasonal Distributors.

While working for Seasonal Distributors, Ms. Adams grew close to Mrs. Kelley. In 2009, however, she considered leaving Seasonal Distributors because around this time Seasonal Distributors "wasn't in great shape and there had been discussions about closing and/or selling the business." Ms. Adams received an offer from another employer and accepted it. Ms. Adams gave Mrs. Kelley her two weeks' notice, and about a week later, Mrs. Kelley approached Ms. Adams with an idea to keep her at Seasonal Distributors. According to Ms. Adams, "the whole intent was to create a package that was going to be, you know, a long-term investment and a desirable package for [her] to stay[ ]versus leaving."[1] Ms. Adams testified that as part of this agreement, she believed she would

[1] Ms. Adams testified during her initial case-in-chief on April 14, 2015 (but not during the second phase of the trial that commenced on December 1, 2015) that she and Mrs. Kelley "discussed [her] roles in the company as far as getting it back on a healthy track, reducing inventory, increasing sales, you know, just overall management. And, [they] discussed [Ms. Adams's] compensation and…and their roles and the whole position." In addition, she testified, Ms. Adams and Mrs. Kelley discussed the possibility of Ms. Adams becoming invested in Seasonal Distributors as a "partner or part-owner or partnership in the business." According to Ms. Adams, as part of her "compensation package," Seasonal Distributors "was going to pay [Mr. Kelley] a thousand in an investment towards [her]

obtain an interest in Seasonal Distributors through payments by Seasonal Distributors to Mr. Kelley.

Based on her discussion with Mrs. Kelley, Ms. Adams typed up a two-page document entitled "Management Proposal." The Management Proposal detailed Ms. Adams's responsibilities as the General Manager of Seasonal Distributors and stated that "Seasonal Distributors will pay Dale Kelley $1000.00 per month. This monthly payment would be used toward Jennifer Adams' future ownership/partnership of Seasonal Distributors." The Management Proposal further listed "[l]ong term business relationship resulting in partnership/ownership of Seasonal Distributors" as one of Ms. Adams's "Personal Goals to Work Toward." The proposal also stated that "Jennifer Adams and Seasonal Distributors would be contractually bound for a minimum of 2 years" and "Seasonal Distributor would cease pursuing sale of the business immediately."

Ms. Adams emailed the Management Proposal to Mrs. Kelley and printed a copy for Mr. Kelley on August 27, 2010. Ms. Adams and the Kelleys met to discuss the Management Proposal over lunch, and Mr. Kelley wanted to think about it and get back to Ms. Adams at a later date. On August 31, 2010, Mr. Kelley emailed Ms. Adams, stating that he "accept[ed her] proposal with certain provisions":

> 1. If Tom Tarratin comes back and makes me an offer that's out of this world that I cannot afford to turn down then I am going to accept it. . . .
>
> . . . .

ownership and partnership of the company," but she and Mrs. Kelley did not discuss the details.

> 6. There is over 1,000,000 dollars in inventory some of it is dated and I understand that. How long do you think it will take me to recuperate my investment at $1000 a month guess I will have to live to be 150 yrs. old. I may want a raise at some point in time if I live that long.
>
> 7. If that golden egg[2] does fall out of the sky you will not be out of a job. [Mrs. Kelley] and I will see that you are compensated for your efforts and you will continue to be employed by Tri-County Energy Sys. Inc. I would also expect that you should probably relocate back to Md. so you wouldn't have the strain of commuting every day.
>
> 8. I hope these terms are acceptable to you.

It is not clear who drafted the second Management Proposal.[3] The terms in the second Management Proposal relevant to this appeal include two modifications under the "With the agreement of this proposal" subtitle: *first*, the addition of "This amount may be negotiated at a later date," after the terms detailing the $1000.00 per month payments by Seasonal Distributors to Mr. Kelley; and *second*, a new term stating that "Seasonal Distributors will complete the negotiation of sale of the business with Tarritan Tank. If the business sells, Jennifer will be guaranteed a comparable position with Tri County Hearth and Patio." The second Management Proposal also included an additional term stating that

[2] According to Ms. Adams's testimony on April 14, 2015, "that golden egg" refers to the sale of Seasonal Distributors to a company called Tarantin Tanks.

[3] During her case-in-chief on April 14, 2015, Ms. Adams testified that Mrs. Kelley emailed a second Management Proposal to her and that she printed a copy on January 12, 2011. When trial resumed on December 1, 2015, however, Ms. Adams testified that she did not remember who made the changes to the second Management Proposal; she thought that it could have been her, Mrs. Kelley, or both of them. Mrs. Kelley testified that she "did not create this document, nor did [she] ever see it" and that the first Management Proposal was the written agreement that she entered into with Ms. Adams.

"[i]f the company comes to sale during, or after the terms of this contract, Jennifer will receive her shares of the profit of sale." And the second Management Proposal contained a new section detailing Ms. Adams's compensation, which included $65,000 in annual salary, a one percent commission from sales, and a $500 monthly automobile allowance. According to her trial testimony, Ms. Adams thought that Seasonal Distributors would pay money to Mr. Kelley on her behalf "for partnership/ownership of the business" and that she "would basically get [her] interest out of the company when it sold."

From 2010 to 2012, Ms. Adams received an annual salary of $55,000,[4] a one percent commission, and a $500 monthly car allowance. Seasonal Distributors also paid Mr. Kelley $1,000 each month until, at some point, Mrs. Kelley directed that Seasonal Distributors pay her $1,000 each month instead. Ms. Adams performed the responsibilities outlined in both versions of the Management Proposal, but never formally purchased any stock in the company.

Rather than selling the company to Tarantin Tanks, the Kelleys eventually decided to sell Seasonal Distributors's assets to Timothy and Shannon Jarek, their son-in-law and

[4] Including commissions, Ms. Adams made $74,855.37 in 2011 and $79,412.53 in 2012. During her direct examination, Ms. Adams testified that her salary was $65,000, but the court determined that her salary was $55,000, which was supported by Ms. Adams's deposition testimony, Ms. Adams's EEOC questionnaire from after August 31, 2012, and Mrs. Kelley's trial testimony.

daughter. On February 24, 2011,[5] Ms. Adams emailed Mrs. Kelley to discuss the Management Proposal:

> At lunch tomorrow, I want to discuss our agreement as General Manager of Seasonal Distributors with regards to my employment, compensation package and the way forward with the sale of the business to [Mr. Jarek]. My goal is make sure everyone is on the same page moving forward.

Mrs. Kelley responded that Mr. Jarek should be at the lunch, and in another email later that day, she expressed her opinion that "it is very premature to have this discussion, until we know [Mr. Jarek] has a loan." No discussion took place.

On June 5, 2012, Ms. Adams sent an email to Mrs. Kelley about Ms. Adams's share of the profits from the sale of Seasonal Distributors. According to Ms. Adams's testimony, there had been "multiple emails and conversations about coming to a resol[ution]" regarding what she would get for her shares of the investment she had made over the two-year term of the Management Proposal, but at the time that she sent this email to Mrs. Kelley, Mrs. Kelley had "stopped communicating with [her] entirely."

Sometime before July 2012, the Kelleys decided to stop Ms. Adams's car allowance. Ms. Adams had a lawyer contact the Kelleys about this, and in response, the Kelleys sent Ms. Adams a letter dated July 24, 2012 that reinstated the car allowance but stated that their agreement was expiring:

> Dear Jennifer Adams,
>
> Regarding: Car Allowance

[5] At the April 14, 2015 trial, Ms. Adams testified that she sent her email after she learned that Mr. Jarek might purchase Seasonal Distributors's assets.

> Your car allowance will be reinstated effective immediately, and will be paid retroactively with the next payroll through the end of the agreement period which ends 8/31/12.[6]
>
> This is to notify you that the terms of our agreement will expire on 8/31/12 (2 years) and will not be renewed.
>
> A new agreement will need to [be] completed regarding compensation between the end of this agreement and the sale date of the business estimated to be the end of Sept.[7]

Only Mr. Kelley signed the letter, although both of the Kelleys' names appeared in the signature block. Although it is not clear which Management Proposal served as the "agreement" in this letter, Ms. Adams testified that she thought Mr. Kelley was referring to the second Management Proposal.

In late August 2012, Mrs. Kelley gave Ms. Adams a printed email containing terms for a new agreement between Ms. Adams and Seasonal Distributors that included an annual salary of $66,000 and an end to Ms. Adams's commissions and car allowance. Ms. Adams sent Mrs. Kelley an email objecting to the new terms, but she nonetheless continued working for Seasonal Distributors pursuant to those terms after August 31, 2012.

Ms. Adams resigned from Seasonal Distributors on January 4, 2013. On February 27, 2013, Seasonal Distributors sold substantially all of its assets to the Jareks and retained accounts receivable worth $675,000. As part of the sale, the parties executed an Asset Sales Agreement, a Business Bill of Sale, a Standby Creditor's Agreement, an Installment

[6] This date marked the two-year anniversary of Mr. Kelley's August 31, 2010 email to Ms. Adams.

[7] September 2012 was the anticipated date for the sale of the business assets to Mr. Jarek.

Promissory Note, and a Consulting Agreement for the Kelleys worth $100,000. Proceeds from the asset sale were used to pay off $390,397.04 of Seasonal Distributors's debts. In March 2013, Ms. Adams began working for Seasonal Firestyles, Inc., the Jareks' new business, as the Chief Operating Officer.

Ms. Adams filed her complaint on November 25, 2013, alleging that the Kelleys breached their contract with her by refusing to pay her any proceeds from the sale of Seasonal Distributors. The Kelleys filed an answer on March 28, 2014. Ms. Adams amended her complaint on October 23, 2014, adding claims for unjust enrichment, detrimental reliance, and fraud. On November 10, 2014, the Kelleys filed an Answer to First Amended Complaint and a Motion to Strike Plaintiff's First Amended Complaint. Ms. Adams opposed the Kelleys' Motion to Strike, and the circuit court denied the motion on December 10, 2014.

The parties then undertook discovery. On January 14, 2015, Ms. Adams filed a Motion to Compel Full Responses to Plaintiff's First and Second Interrogatories and Requests for Production of Documents to Defendant ("Motion to Compel"). The motion sought answers to interrogatories regarding the tax returns and financial documents of Seasonal Distributors and the documents responsive to her requests for the production of those same materials. As a sanction, Ms. Adams requested reimbursement for her reasonable attorney fees and costs. The Kelleys opposed the motion.

The Kelleys filed a Motion for Summary Judgment on March 30, 2015. On April 10, 2015, Ms. Adams filed an Opposition to Defendant's Motion for Summary Judgment

and a Statement of Material Facts in Opposition to Defendants' Motion for Summary Judgment.

The parties appeared in court for the first time on April 14, 2015. After hearing arguments on Ms. Adams's Motion to Compel, the court took no action and proceeded to consider the Kelleys' Motion for Summary Judgment. Ms. Adams's counsel voluntarily withdrew the breach of contract count, and the court dismissed it with prejudice. After hearing the parties' arguments on the other counts, the court reserved ruling on the motion. Ms. Adams began presenting her case-in-chief, but was not able to conclude the case that day.

The parties reconvened for a second day of trial on June 17, 2015. Ms. Adams's counsel opened with a Motion for Recusal. After discussions in chambers with counsel, the judge recused herself, stating that "[a]ny arguments that were previously made on the Motion for Summary Judgment would be made at the Motion for Judgment at the end of the case. So, there's not going to be a new Motions argument." The Kelleys' counsel objected to the recusal.

The case was reassigned to a different judge who instructed the parties not to reargue the Motion for Summary Judgment, but to start the trial anew. The Kelleys argued that they were being prejudiced because Ms. Adams would get to testify twice, and instead suggested that the new judge "review the transcript of the initial proceeding so essentially [he] c[ould] put [him]self in the position where [the first judge] was and [the parties] c[ould] pick it up." When the new judge declined to proceed in this manner, the Kelleys'

counsel asked that the judge rehear arguments for the Motion for Summary Judgment. In response, Ms. Adams's counsel advised the court that she had filed a Motion to Compel, and when asked whether she wanted to go forward, responded that she was willing to do whatever the judge needed to hear the case. The court decided to allow the parties to reargue their motions and set a new schedule.

On December 1, 2015,[8] the court sought to start the proceeding with arguments on the Kelleys' Motion for Summary Judgment, but Ms. Adams's counsel reminded the court that her Motion to Compel was also pending and requested that, in the absence of the requested documents, Ms. Adams be able to present her case based on what she knew and was able to put together. The court did not rule on the Motion to Compel, but did state that it would "handle it as . . . those things come up."

After the court heard arguments on the Kelleys' Motion for Summary Judgment and reserved on that motion, Ms. Adams began—for the second time—presenting her case-in-chief. During the first day, Ms. Adams testified and the Kelleys' counsel began cross-examining her. On the second day of trial, the Kelleys' counsel finished cross-examining Ms. Adams, including questions about Seasonal Distributors's finances. Ms. Adams's counsel objected, asking that the court disregard information about the company's finances introduced during cross-examination in light of her Motion to Compel and to determine the value of the company from the records Ms. Adams had, which included the Business

[8] The trial was scheduled to resume on November 24, 2015, but a trial for an unrelated case conflicted.

Bill of Sale, Standby Creditor's Agreement, Installment Promissory Note, Consulting Agreement, and a Financial Statement from June 30, 2012. The court overruled the objection, and Ms. Adams testified that she believed that Seasonal Distributors was purchased for $775,000, $525,000 of which was paid in cash.

When the Kelleys' counsel sought to ask Ms. Adams about the payment of the Promissory Note, Ms. Adams's counsel objected because her "discovery Requests would have asked for all of the information, including financial records which shows what has been paid on the Note." Ms. Adams's counsel also objected to financial information contained on the 2012 tax return because "this doesn't show us what the company's position was at the date of the sale, which is what we repeatedly asked for" and "all of this evidence is going to come in and I…I have no documents or records to show what the truth is." Over counsel's objections, the court did not preclude the 2012 tax return because it had been produced during discovery. Ms. Adams's counsel then stated:

> [I]f the Court is going to overrule that objection[ ]and allow the[Kelleys] to present[ ]their side of information[ ]without producing the complete picture in discovery[ ]and putting [Ms. Adams] at a disadvantage in that way because of an abuse of the discovery Rules, then we might as well go forward.

The court responded "Okay. We might as well go forward."

Ms. Adams next called Mrs. Kelley. She testified that the second Management Proposal ultimately reflected her agreement with Ms. Adams, except for the amount of Ms. Adams's compensation, which was $55,000 rather than $65,000, and the statement that "[i]f the company comes to sale during, or after the terms of this contract, Jennifer will

receive her shares of the profit of sale." Mrs. Kelley also testified that the payments from Seasonal Distributors to Mr. Kelley were a credit toward Ms. Adams's purchase price if she bought the company, although at the time, the Kelleys were contemplating selling the company to someone else. During her brief cross-examination, Mrs. Kelley testified that she would have been willing to sell Seasonal Distributors to Ms. Adams if she had the money to buy it. Ms. Adams's counsel then rested.

The Kelleys' counsel moved for judgment, arguing, among other things, that the alleged contract terms were unenforceable because Seasonal Distributors was never sold, that Ms. Adams's alleged share of the profits of the assets sale was undefined, that there was no profit from the sale of the company's assets, and that Ms. Adams had failed to present sufficient evidence to support any of her claims. After hearing Ms. Adams's arguments opposing the motion for judgment and on her cross-motion for judgment, the court orally granted the motion for judgment in favor of the Kelleys on all counts. The court entered judgment on February 10, 2016. Ms. Adams filed a timely notice of appeal.

We will discuss additional facts below as necessary.

II. DISCUSSION

Ms. Adams raises two issues on appeal.[9] She contends *first* that the court abused its discretion by not ruling on her Motion to Compel the Kelleys to turn over allegedly

[9] Ms. Adams phrased her Questions Presented as follows:

> 1. Whether the evidence presented in Appellant's case-in-chief and reasonable inferences to be drawn therefrom was sufficient to support Adams' promissory estoppel, unjust

unproduced financial information and *second* that the circuit court erred in granting the Kelleys' motion for judgment at the end of her case-in-chief. We disagree with both arguments.

A. The Circuit Court Did Not Abuse Its Discretion By Proceeding To Trial Without Ruling On Ms. Adams's Motion To Compel.

Ms. Adams contends that the circuit "court abused its discretion in declining to consider [her] timely motion to compel and declining to compel the Kelleys to produce relevant evidence" and that "[i]t further erred in negatively construing the Kelleys' unaddressed discovery abuses against [Ms.] Adams" by "not[ing] that [its] decision, was

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> enrichment and detrimental reliance claims and preclude Appellees' motion for judgment.
>
> 2. Whether the trial court abused its discretion in declining to consider Appellant's timely filed motion to compel and declining to compel Appellees to produce financial records and other relevant financial information.

Ms. Adams's first question appears to try and separate her single Detrimental Reliance/Promissory Estoppel claim into two while leaving out her claim for fraud. But promissory estoppel and detrimental reliance encompass essentially the same contractual theory, and a separate discussion of each would be redundant. *See Pavel Enters., Inc. v. A.S. Johnson Co.*, 342 Md. 143, 146 n.1 (1996) ("We prefer to use the phrase detrimental reliance, rather than the traditional nomenclature of 'promissory estoppel,' because we believe it more clearly expresses the concept intended."); *Nationwide Mut. Ins. Co. v. Regency Furniture, Inc.*, 183 Md. App. 710, 732 n.8 (2009) ("We . . . note in passing that promissory estoppel (itself an equitable doctrine) likewise is based on detrimental reliance." (citing *Citiroof Corp. v. Tech Contracting Co.*, 159 Md. App. 578, 589 n.8 (2004))). Furthermore, each of the parties' briefs addressed the merits of the motion for judgment as it pertained to the fraud claim, and there is no indication from either party that we were not meant to consider the circuit court's decision regarding all three of Ms. Adams's claims. Accordingly, the issue is raised, *see* Maryland Rule 8-504(a), and we will consider Ms. Adams's fraud claim.

in part, based on the fact that it could not ascertain the value of [Ms.] Adams' interest in the business or what she would have been entitled to upon the sale." Although we are an appellate court, she asks us to "compel [the Kelleys] to provide full and complete responses to [her] written discovery and specifically the financial information." The Kelleys respond that this "issue is entirely moot" because Ms. Adams's Motion to Compel "was withdrawn by [Ms. Adams] from the Court's consideration," that "the Kelleys did not offer into evidence any documents that were not produced in discovery," and the production "of the documents Ms. Adams desired, even if they existed, would not have altered the outcome of the case." We don't agree with the Kelleys that the issue is moot,[10] but we do agree that Ms. Adams agreed to proceed to trial without a ruling on her motion.

"We review the denial of discovery under the abuse of discretion standard." *Bacon v. Arey*, 203 Md. App. 606, 671 (2012) (quoting *Beyond Sys., Inc. v. Realtime Gaming Holding Co.*, 388 Md. 1, 28 (2005)). An abuse of discretion occurs where (1) no reasonable person would take the view adopted by the trial court; (2) the trial court acts without reference to any rules or principles; or (3) acts clearly against the logic and facts. *Falik v. Hornage*, 413 Md. 163, 182 (2010). In *Gallagher Evelius & Jones, LLP v. Joppa Drive-Thru, Inc.*, 195 Md. App. 583, 596 (2010) (alteration in original) (citation omitted), we

[10] "A question is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide." *Falik v. Hornage*, 413 Md. 163, 186 (2010) (quoting *Attorney Gen. v. Anne Arundel Cty. Sch. Bus Contractors Ass'n*, 286 Md. 324, 327 (1979)). Here, the issue is not moot because a controversy still exists—if we were to find that the court abused its discretion by failing to rule on Ms. Adams's Motion to Compel, we could vacate the judgment and remand for a new trial.

observed that "the circuit court . . . has the inherent power to control and supervise discovery as it sees fit." As such, "[w]hen there is a claim of failure of discovery, the circuit court has broad discretion to fashion a remedy based on a party's failure to abide by the rules of discovery." *Id.* (citation omitted). In situations where

> there is no hard and fast rule governing the situation . . . the trial judge must exercise his or her judicial discretion. The decision he or she makes, in turn, is reviewed for the soundness and reasonableness with which the discretion was exercised. In making that evaluation, the reviewing court must defer to the trial court. The necessity for doing so is inherent in the very nature of judicial discretion. The exercise of judicial discretion ordinarily involves making a series of judgment calls, not simply the ultimate one, but also those on which the ultimate one depends.

Id. at 596–97 (quoting *N. River Ins. Co. v. Mayor of Balt.*, 343 Md. 34, 87 (1996)).

We discern no abuse of discretion in the circuit court's decision to proceed to trial without ruling on Ms. Adams's Motion to Compel. Here, Ms. Adams's counsel reminded the circuit court on multiple occasions that the Motion to Compel was pending, yet agreed to proceed to trial without a ruling on the documents that allegedly had not been produced. After the case was reassigned on June 17, 2015,[11] Ms. Adams's counsel informed the new judge that she had a pending Motion to Compel:

[11] Ms. Adams's counsel also raised the status of the Motion to Compel with the first trial judge. On April 14, 2015, counsel argued that the Kelleys had not fully addressed all of the "requests designed to get the information about the business's equity, their cash-on-hand and their assets from a monthly view and from a quarterly view," which would help Ms. Adams determine her equity stake in Seasonal Distributors and what happened to the proceeds from the sale of the business's assets. Rather than requesting that the court order the Kelleys to provide the information, counsel asked the court to exclude anything that was requested but not produced:

> [COUNSEL FOR MS. ADAMS]: The only thing I wanted the Court to know[ ]is that there was also a Motion to Compel that I filed months before the trial date that was still pending at the time of trial.
>
> THE COURT: Well, this sheet…this docket entry says Court takes no action on the Plaintiff's Motion to Compel.
>
> [COUNSEL FOR MS. ADAMS]: And, the reason that the Court did that[ ]was because we were about to move forward with the trial. And, so our position was in order to get things moving that we would let go of the Motion to Compel because the issue we were seeking was that the Defendants had not produced viable and important information about their financial status, which is an issue in the case. But, it was going to be an issue of omission, meaning that they would no longer be able to argue something different. Ms….Ms. Adams worked closely with the Defendants. She was their right hand. She knows[ ]all of their financial documents. So, if they aren't going to produce or provide documents, then we have to stand on Ms. Adams's testimony and they won't be able to oppose it. That's the reason we let go of the Motion to Compel. If

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> But essentially, what we'd ask for today is we've kind of created what we could from what we had, and so we would just like to go forward based on what we had and...and ask the Court to exclude any of the information or evidence that we asked for that was not produced with respect to showing what the value of her interest would have been in the company, and what she would have been entitled to after the sale of the assets of the business.

In response, the Kelleys argued that either the requested documents were produced or the Kelleys had produced what they had. Ms. Adams disagreed, stating that "Ms. Adams [wa]s at a bit of a disadvantage in the sense that she's not able to formulate a dollar amount[ ]the value amount[ ]because she doesn't have the information," and again requested that "if the Court [wa]s willing to let us move forward on . . . what the business sold for, . . . what she put into it and do some simple division, which technically wouldn't be the way it works, but if…if that's where we are, we're fine with going forward with that." The Kelleys argued that they were not Seasonal Distributors and couldn't produce the requested documents. The court took no action on Ms. Adams's Motion to Compel and the proceedings continued.

> we're going back to Summary Judgment and we're only looking at what's in the record, then, of course, I would need the opportunity to provide clearly information in the record[ ]and we'd have to revise the Motion to Compel.

The Kelleys replied that the Motion to Compel sat unresolved for several months and that it was Ms. Adams's burden to request a ruling. When asked whether she wanted to go forward, Ms. Adams stated that she was willing to do whatever the judge needed to hear the case. The court decided to allow the parties to reargue their motions—Ms. Adams's Motion to Compel and the Kelleys' Motion for Summary Judgment—before proceeding with the trial.

On December 1, 2015, the court sought to start the proceeding with arguments on the Kelleys' Motion for Summary Judgment, but Ms. Adams reminded the court that her Motion to Compel was still pending:

> [COUNSEL FOR MS. ADAMS]: …never ruled on [the Motion to Compel]. What we decided was that the Defendants…we would…we had decided to move on at that time[ ]thinking that we could get through the trial[ ]back in April. And, what we had decided was that we would object to the presentation of any evidence that had not been previously produced or provided or defenses, etc. And, so I just wanted to raise that the Court[ ]because I think they'll be times during the hearing that I'll be bringing it the Court's attention that there are things that had not been provided and that we had moved to compel,[ ]but that Motion had not been ruled…
>
> THE COURT: What…what exactly are we talking about?
>
> [COUNSEL FOR MS. ADAMS]: There...
>
> THE COURT: Do you know?

> [COUNSEL FOR MS. ADAMS]: Yeah, there…there are a number of…of things. We had actually moved to compel financial statements[ ]and documents. We had asked for their financial records per quarter showing their at[ ]cash equity position, liabilities, etc. [ ]And, that will become an issue with respect to the damages [ ]that we need to prove. They provided some documents. It was basically the picture that they wanted to show,[ ]but not the complete response to those documents. [ ]So, as an example, the last profit and loss statement[ ]that they provided for us was as of June of 2012. The business sold in February of 2013. So, we…we really don't know what the position of the business was at the time of the sale in 2013. So, we have to go by Ms. Adams's knowledge.[ ]She was the bookkeeper and…and she does know, as well as the last document that was provided.[ ]They may try to put in evidence to suggest what their position was at the time of sale, but we would argue that that should be precluded because it wasn't produced to us.

Counsel for the Kelleys responded that "it was [his] understanding that the Motion to Compel had been withdrawn by opposing counsel . . . . We arrived for the hearing in April and it was my understanding that the Motion was withdrawn." Ms. Adams explained that the Motion to Compel was not withdrawn, but that the parties "could move on because the…the general Rules of Discovery are that if they don't produce it and it was asked for, they can't later use it at trial." She also requested that, in the absence of the requested documents, Ms. Adams be able to present her case based on what she knew and was able to put together. The court did not rule on the Motion to Compel, but did state that it would "handle it as…as those things come up."

Ms. Adams drew the court's attention repeatedly to the Motion to Compel, but ultimately agreed to proceed to trial without a ruling. Where a party who files a motion to compel communicates to the court that the court can proceed without resolving it, it is not

unreasonable for the court to do just that and start the trial. Furthermore, Ms. Adams's requested sanctions—that any unproduced evidence related to damages which the Kelleys might seek to introduce be excluded—could never have been triggered in this case because the Kelleys never sought to introduce financial documents they hadn't produced. Accordingly, we disagree "that the trial court's decision in the present case is beyond the decision that a reasonable person would [have made]" under similar circumstances. *Beyond Sys., Inc.*, 388 Md. at 28.

B. The Circuit Court Did Not Err In Granting The Kelleys' Motion for Judgment.

Ms. Adams *next* argues that the circuit court erred in entering judgment at the close of her case because, she says, she "presented competent, uncontroverted evidence in support of her claim[s]." She asks that we "reverse the trial court's erroneous grant of [the Kelleys'] motion for judgment and remand the matter for a full trial on the merits."[12] We disagree.

[12] Ms. Adams challenges the impartiality of the circuit court on several occasions, arguing that the Kelleys' "motion for judgment cannot be fairly accomplished outside of the context of the questionable and disturbing conduct by the judges of the trial court" and that "[t]he evidence is so straightforward that it is not possible for a transparent and impartial court to find she had not established any of her claims." (Emphasis in original.) Ms. Adams requests that "a Judge from another county preside over the [new] trial to dispel any further appearances of impropriety." Although Ms. Adams requested that the first judge assigned to the case recuse herself—which she did, although the grounds and reasoning are not apparent from the record—no similar request was made of the second judge, the one who actually ruled on the Kelleys' motion for judgment. To the contrary, on December 1, 2015, the first day of trial, Ms. Adams's counsel actually said to the judge, "Your Honor…I get…I'm in a lot of courtrooms and you're actually very pleasant, so that's why I'm…I'm smiling" and "[t]hank you for your demeanor."

After hearing the parties' arguments, the circuit court explained its reasoning for granting the Kelleys' motion for judgment:

> [B]oth [Management Proposals] talk about the one thousand dollars per month payment, but it basically says at the end that if the company is sold that Ms. Adams would receive her share of the profits. I think it's undisputed that it says that. And, it also says that the payments, the one thousand dollars per month, are towards her future ownership. So, that's really where the case…the case really rises and falls on that statement or that promise or those promises about shares of future profit and what she's entitled to and is she entitled to anything. . . .
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> . . . .
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> But, really it comes down to just a few things. There are three claims. We'll take them in order. The first one is…I believe it's the fraud. . . . And, I reviewed the cases that Ms. [Adam's counsel] gave to me. I appreciate that. Certainly I went through the elements that one must prove to prove a fraud. And, at this stage of the game, because the case isn't over, I don't think I have to require Ms. Adams to prove these elements by a clear and convincing standard. So, I can just use a much lower standard. In fact, if she made essentially a prima facie case of fraud, I'd let the case continue, but I don't think such case has been made. There's really a…a few elements of fraud, but I can't find, nor has it been shown, what the false misrepresentation is. You know, what exactly is fraud? And, certainly there is no proof that the Defendants intended and…let me just say this…there's no evidence as it related to Mr. Kelley at all. He's never had a communication with Ms. Adams that was testified to in this courtroom. But, there was no…no testimony, no evidence…I can't even infer that the Defendant intended that they would act in reliance on some fraudulent statements. And, further, which we'll get into a little…little bit later because it's going to go to all the claims, I can't determine, and it would require me to speculate to levels that I can't speculate to, what her damages would be. Certainly we could argue she was damaged, but this is a case where the…as…as is presented to the Court, the investment doesn't come from Ms. Adams. It comes from the company. Now, maybe she would have left and gone to another job, but there's no evidence as to what that job is or what it would have paid

her. So the Plaintiff…I'm sorry…the Defendant is entitled to judgment as to the fraud claim.

* * *

Alright. So, then there's an unjust enrichment claim. A benefit conferred upon the Defendant by the Plaintiff…that's element one. An appreciation or knowledge by the Defendant of the benefit and the acceptance or retention of the benefit under such circumstances as to make it inequitable, as Ms. [Adams's counsel] pointed out…pointed out, for the Defendant to retain the benefit without payment of its value. There's a couple things. I…I don't see anything…there's not…there's nothing inequitable here. It's clear to me from looking at the writings, whether or not you believe Ms. Kelley saw this second writing or not, that the payments are towards some sort of future ownership that's undefined. It's too vague. It would require me to speculate. I'm not sure exactly how it would be unfair for him to retain a benefit because there's been no evidence that he retained a benefit. Maybe the…the benefit is that Ms. Adams continued to work [for] him. And, I'm sure she did a great job and was of value, but there's no proof as to what the value is. So, I believe the Defendant is entitled to judgment on the unjust enrichment claim.

There leaves us with the promissory estoppel or the detrimental reliance claim. And, really, number one, not only is number one what this particular claim is about, it's what the whole case is about. Number one requires a clear and definite promise. And, if I can't, after the close of the Plaintiff's case, tell you what the promise is, the promise can't be clear or definite. I'm not going to go into the rest of the elements because it…it fails there. There's no evidence as to what…there's evidence that there was a promise, but the terms and conditions of it are vague. In terms of damages…this goes to all of them…no one knows what the cost of a share was, is, what it was sold for, the value of the company. Whether or not expert testimony would have been required, I don't know. It would have been helpful for sure. Maybe, as Ms. [Adams's counsel] is thinking, if they had complied with discovery…discovery, she could make that determination. I still don't think the case would prevail then because even if she could determine the value of this corporation, you really have

> to determine what the bargain was for. And, if you'll just…just for the sake of argument, let's say it's her twenty-four thousand dollars. What did she buy and for how much, and no one can tell me. So, in this case, judgment is going to be for the Defendant.

We review *de novo* a circuit court's decision to grant a motion for judgment:

> We "review, without deference, the trial court's grant of a motion for judgment in a civil case." *District of Columbia v. Singleton*, 425 Md. 398, 406[ ](2012) (citing *Thomas v. Panco Mgmt. of Md., LLC*, 423 Md. 387, 393–94[ ](2011)). Because "[w]e conduct the same analysis that a trial court should make when considering the motion for judgment," we determine whether the evidence presented to the Circuit Court was sufficient to allow permissible inferences of the proof of the elements of the relevant claims. *Singleton*, 425 Md. at 406–07[]. The appellate court considers "the evidence and reasonable inferences drawn from the evidence in the light most favorable to the non-moving party." *Thomas*, 423 Md. at 393[].

Beall v. Holloway-Johnson, 446 Md. 48, 63 (2016). "[I]f there is any evidence adduced, however slight, from which reasonable jurors [applying the appropriate standard of proof] could find in favor of the plaintiff on the claims presented, the trial court should deny the defendant's motion for judgment at the close of evidence." *Hoffman v. Stamper*, 385 Md. 1, 16 (2005) (citation omitted). Accordingly, we are concerned only with whether Ms. Adams adduced enough evidence on each element of the causes of action, viewed in the light most favorable to her.

1. The circuit court correctly found that Ms. Adams failed to provide sufficient evidence to support her detrimental reliance/promissory estoppel claim.

First, Ms. Adams contends that "[t]here [wa]s no doubt or ambiguity concerning the evidence of a clear and definite promise" that "if [she] stayed on with Seasonal Distributors, portions of her compensation - $1,000 per month - would be paid towards [her] ownership of Seasonal Distributors for a period of two years," and that she adduced competent evidence to satisfy the remaining elements of promissory estoppel through Mrs. Kelley's testimony at the trial. The Kelleys disagree—they contend that "Ms. Adams, by her own admission, does not know what the shares [of the profit of sale] are," making them "undefined and indefinable," and that she did not provide any evidence "as to the loss, if any, sustained . . . on account of not taking the other job."

Claims for promissory estoppel or detrimental reliance require a plaintiff to prove four elements:

> 1. [A] clear and definite promise; 2. where the promisor has a reasonable expectation that the offer will induce action or forbearance on the part of the promisee; 3. which does induce actual and reasonable action or forbearance by the promisee; and 4. causes a detriment which can only be avoided by the enforcement of the promise.

Pavel Enters., Inc. v. A.S. Johnson Co., 342 Md. 143, 166 (1996). To satisfy the first element, Ms. Adams must establish that the Kelleys made her "a real promise—mere expressions of expectation, opinion, or assumption are insufficient." *Oliveira v. Sugarman*, ___ Md. ___, No. 17, Sept. Term 2016 (filed Jan. 20, 2017), slip op at 26–27 (quoting *Territory of U.S. V.I. v. Goldman, Sachs & Co.*, 937 A.2d 760, 804 (Del. Ch. 2007), *aff'd*,

956 A.2d 32 (Del. 2008)); *see also Konover Prop. Tr., Inc. v. WHE Assocs., Inc.*, 142 Md. App. 476, 484 (2002) ("[A]n implied understanding or an implied agreement . . . is quite dissimilar from a clear and definite promise."); *Mogavero v. Silverstein*, 142 Md. App. 259, 273 (2002) (An alleged agreement that appellant would help the appellee "with the construction end of the project" was too vague to be a clear and definite promise.). There is no clear or definite promise where the parties only speak in general terms. *See Dolan v. McQuaide*, 215 Md. App. 24, 34 (2013) (A promise "to help in 'planning' [starting a business], without further detail," was too vague to bind the parties.). "If we are to bind the parties in contract, the express terms must be as definite as a reasonable conversation between parties who fully intend to carry out a major undertaking, like starting the business in [the *Dolan*] case." *Id.* Although starting a business probably represents more of an undertaking than purchasing a partnership interest in a closely-held corporation, these cases demonstrate that parties to potential business transactions must agree to express terms before being held to an alleged promise.

Here, there was no evidence from which a fact-finder could infer a definite set of promises that estops the Kelleys. Ms. Adams points to the second Management Proposal as the parties' final agreement, but, even if that were the final agreement, she presented no evidence to support what the parties meant by "[i]f the company comes to sale during, or after the terms of this contract, [Mrs. Adams] will receive her shares of the profit of sale." Ms. Adams testified at trial that she thought that Seasonal Distributors would pay money to Mr. Kelley on her behalf "for partnership/ownership of the business" and that she "would

basically get [her] interest out of the company when it sold." She never testified, however, as to what that interest would be, and the language she offered was not clear or definite enough to establish what ownership interest, if any, she would be entitled to at the time of a sale. Mrs. Kelley, on the other hand, testified that the payments from Seasonal Distributors to Mr. Kelley would be a credit toward Ms. Adams's purchase price if she were ever to buy the company (although at the time, the Kelleys were contemplating selling the company to someone else). Ms. Adams and Mrs. Kelley failed to discuss the details of their arrangement, and we will not read into the Management Proposal obligations that the parties did not agree to themselves. *See id.* at 31–32 (citations omitted).

Furthermore, Ms. Adams suggests that her ownership interest equals about five percent of the company, which she determined by dividing the twenty-four thousand dollars Seasonal Distributors paid to Mr. Kelley by $467,822, the alleged amount of Seasonal Distributors's equity. There was no indication at trial, however, that this is how the parties intended for her ownership interest to be determined. We agree with the circuit court that the alleged agreement was too vague, and as a result, Ms. Adams's alleged ownership interest was indeterminate. The circuit court did not err in granting the Kelleys' motion for judgment on Ms. Adams's promissory estoppel claim.

2. The circuit court correctly found that Ms. Adams's unjust enrichment claim was not supported.

Ms. Adams argues *next* that the circuit court erred in granting the Kelleys' motion for judgment because, she says, she offered sufficient evidence to support her unjust enrichment claim. In particular, Ms. Adams contends that it is inequitable for the Kelleys

to retain the benefit of her work—the increased value of Seasonal Distributors before the sale—without paying her a portion of the sale proceeds. The Kelleys counter with several arguments, including that Ms. Adams did not connect her work to the increase in the value of the company, that the asset sale did not net a profit; that Seasonal Distributors was the proper defendant, and that Ms. Adams did not "suggest[] that an unconscionable or inequitable situation occurred." We agree with the Kelleys that Ms. Adams failed to present evidence sufficient to support her claim for unjust enrichment.

Under Maryland law, an unjust enrichment claim

> is established when: (1) the plaintiff confers a benefit upon the defendant; (2) the defendant knows or appreciates the benefit; and (3) the defendant's acceptance or retention of the benefit under the circumstances is such that it would be inequitable to allow the defendant to retain the benefit without the paying of value in return.

Jackson v. 2109 Brandywine, LLC, 180 Md. App. 535, 574 (2008) (citing *Benson v. State*, 389 Md. 615, 651–52 (2005)). "A person who receives a benefit by reason of an infringement of another person's interest, or of loss suffered by the other, owes restitution to him in the manner and amount necessary to prevent unjust enrichment." *Id.* at 575 (quoting *Berry & Gould v. Berry*, 360 Md. 142, 151 (2000)). "The third element of an unjust enrichment claim, whether it is inequitable or unjust for the beneficiary to retain the benefit without the payment of its value, is 'a fact-specific balancing of the equities. '" *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 440 (2008) (quoting *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 301 (2007)). "[T]he balancing of equities and

hardships looks at the conduct of both parties and the potential hardships that might result from a judicial decision either way." *Id.* (citation omitted).

Even when viewed in the light most favorable to her, Ms. Adams did not present evidence sufficient to establish the elements of her unjust enrichment claim. Ms. Adams did not prove that the Kelleys received a benefit through her continued employment because she did not show that her work as the General Manager enriched the Kelleys. There was no evidence to suggest that the business increased in value as a result of her work, nor any way that the court could measure the alleged increase or find the extent of any alleged benefit to the Kelleys. Moreover, Ms. Adams was paid for her work, so this is not a situation where the Kelleys received a benefit without paying altogether. We discern no error in the circuit court's conclusion that Ms. Adams had failed to establish that the Kelleys were unjustly enriched.

3. The circuit court did not err in finding that Ms. Adams did not present evidence sufficient to sustain her fraud claim.

Finally, Ms. Adams argues that she presented sufficient evidence to establish "[a] reasonable inference . . . that both [of the Kelleys] intended to defraud [her] by inducing her to increase their sales and thereby their profit" (*i.e.*, that "the Kelleys had no intention of keeping the promise in 2010 and only to trick [Ms.] Adams into staying on to help the business sell") and that the lack of evidence regarding her damages "was as a result of the Kelleys['] refusal to comply with the discovery rules." The Kelleys respond that the court should take any "'reasonable inferences' in favor of Ms. Adams since the Court was ruling in a bench trial on a motion for judgment." For these reasons, the Kelleys contend that

"there was no 'deliberate intent to deceive[,]' [a]nd the Circuit Court was fully entitled to so find based upon the record evidence presented." We agree with the Kelleys that the evidence presented does not establish that the Kelleys intended to defraud Ms. Adams.

Fraud is a difficult cause of action to prove. A misunderstanding is not enough—a plaintiff must prove, by clear and convincing evidence, a false representation made knowingly and for the purpose of inducing reliance:

> To prevail on a claim for fraud, a plaintiff must prove by clear and convincing evidence that '(1) the defendant made a false representation to the plaintiff, (2) the falsity of the representation was either known to the defendant or the representation was made with reckless indifference to its truth, (3) the misrepresentation was made for the purpose of defrauding the plaintiff, (4) the plaintiff relied on the misrepresentation and had the right to rely on it, and (5) the plaintiff suffered compensable injury as a result of the misrepresentation.'

White v. Kennedy Krieger Inst., Inc., 221 Md. App. 601, 635 (2015) (emphasis omitted) (quoting *Hoffman*, 385 Md. at 29). On appeal, "[w]e do not evaluate conflicting evidence but assume the truth of all evidence, and inferences fairly deducible from it, tending to support the findings of the trial court, and, on that basis, simply inquire whether there is any evidence legally sufficient to support those findings." *Mid S. Bldg. Supply of Md., Inc. v. Guardian Door & Window, Inc.*, 156 Md. App. 445, 455 (2004). "A plaintiff satisfies the elements of false representation and knowledge of falsity where circumstantial evidence establishes that a defendant makes a promise without intending to perform." *Dynacorp Ltd. v. Arametel Ltd.*, 208 Md. App. 403, 458 (2012) (quoting *First Union Nat'l Bank v. Steele Software Sys. Corp.*, 154 Md. App. 94, 159 (2003) ("[F]raudulent intent can

be inferred from circumstantial evidence.")). Accordingly, there will be sufficient evidence to sustain the fact-finder's finding of the requisite intent "so long as the evidence is unambiguous and plain to the understanding and it is reasonable and persuasive enough to convince the [fact-finder]." *Mathis v. Hargrove*, 166 Md. App. 286, 316 (2005). But a reasonable inference that the Kelleys never intended to perform the agreement must be based on more than mere "surmise and conjecture." *Sass v. Andrew*, 152 Md. App. 406, 437 (2003). Moreover, the fact that the Kelleys stood to benefit by denying Ms. Adams an ownership interest in Seasonal Distributors is, by itself, insufficient to prove fraudulent intent. *First Union Nat'l Bank*, 154 Md. App. at 148 ("A possible motive for committing a fraud . . . does not prove fraudulent intent.").

The circuit court concluded that Ms. Adams had failed to prove that the Kelleys had made a fraudulent or false statement to Ms. Adams. But although it's true that the Kelleys never recognized an ownership interest by Ms. Adams and stood to benefit from denying such an interest, those facts alone cannot establish the requisite intent for fraud. Ms. Adams provided no evidence from which the court could have found or inferred that the Kelleys never intended to perform under the Management Agreement. And to the extent that Ms. Adams reads the second Management Agreement to entitle her to an undefined portion of the sale of the business, it didn't (as discussed above) create a clear and definite agreement to that effect and thus created no agreement from which the Kelleys could have defrauded her. We agree with the circuit court that Ms. Adams did not produce sufficient evidence

from which a fact-finder could infer reasonably that the Kelleys intended to commit fraud when they negotiated with Ms. Adams for her continued employment.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. APPELLANT TO PAY COSTS.