Circuit Court for Harford County
Case No. C-12-CV-20-000532

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 324

September Term, 2022

MARIO CURIALE, ET AL.

V.

MARY A. SCAMPTON

Berger,
Shaw,
McDonald, Robert N.
(Senior Judge,
Specially Assigned),
JJ.

Opinion by McDonald, J.

Filed: December 8, 2023

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

This is a fraught and complicated case for the parties, both personally and procedurally. We need not untangle all of the factual or legal complexities that confronted the Circuit Court for Harford County in the various stages of the case in that venue. The legal issue left for us to decide in this appeal is narrow. Appellant Mario Curiale asserts that the Circuit Court erred when it granted what was effectively a motion for summary judgment by Appellee Mary A. Scampton on a count of his Counter-Complaint against her that sought damages under a theory of *quantum meruit*. We disagree with that assertion and accordingly affirm the Circuit Court.

I

Background

The key events that led up to this case appear to be largely undisputed, although the legal consequences of those events resulted in conflicting legal claims.

A. The Parties and Their Transactions

1. Ms. Scampton and Mr. Curiale Meet and Enter into a Relationship

Beginning in the early 2000s, Ms. Scampton lived on a 52-acre horse farm in Harford County ("the Property") that had been partitioned from a larger 180-acre farm previously acquired by her family. In 2002, she and her then-husband recorded a conservation easement on the Property that restricted its development.

Beginning in May 2015, Ms. Scampton and her husband commenced divorce proceedings. Ms. Scampton sought to buy her husband's interest in the Property as part of the resolution of that litigation. During a trip to Florida in the spring of 2016, she met Mr.

Curiale, then in his late 60s, at a bar he owned there. Mr. Curiale also worked as a general contractor and owned a building supply business. Shortly after they met, Ms. Scampton and Mr. Curiale began a long-distance romantic relationship. They travelled together, including trips to Italy and Scotland. Mr. Curiale began to spend substantial time with Ms. Scampton at her home in Harford County.

2. The Loan and Related Documents

Mr. Curiale offered to lend Ms. Scampton $300,000 to buy out her husband; a mortgage on the property served as security for the loan. An attorney who had handled legal matters for Ms. Scampton's family in the past drew up four documents in connection with the loan. While the documents appeared to be inter-related, they bore various dates in March 2017 and did not all involve the same parties. Ms. Scampton and Curiale were the parties to one of those documents. Ms. Scampton and CNM Enterprises, LLC ("CNM"), a Florida limited liability company owned by Mr. Curiale,[1] – not Mr. Curiale himself – were the parties to the other three documents. There are other anomalies and inconsistencies among the documents that make the transaction(s) between Ms. Scampton and Mr. Curiale and his LLC a challenge to describe precisely. The documents were as follows:

[1] CNM was not registered to do business in Maryland either during the transactions and events that resulted in this litigation or during the proceedings in the Circuit Court. According to the online database of the Maryland State Department of Assessments and Taxation, CNM first registered to do business in Maryland in October 2022 while this appeal was pending.

1. **"Agreement."** A one-page document dated March 3, 2017 that identified itself as an agreement between Ms. Scampton and Mr. Curiale. It recited that Ms. Scampton owned the Property, that CNM held a mortgage of the Property,[2] and that Mr. Curiale and Ms. Scampton had "previously" entered into an agreement concerning the future sale of the Property.[3] The "Agreement" provided that Ms. Scampton would execute a deed in lieu of foreclosure to CNM to be used in the event of a future default on the mortgage, "acknowledged" that Mr. Curiale was making improvements on the Property, and provided for the net proceeds of a future sale of the property to be divided equally between Ms. Scampton and Mr. Curiale.
2. **Deed in Lieu of Foreclosure**. In this document, also dated March 3, 2017, Ms. Scampton ("Grantor") conveyed the Property to CNM ("Grantee") in lieu of foreclosure of a mortgage lien. The document referred to a mortgage of the same date[4] from Ms. Scampton to CNM securing a loan with a "remaining balance" of $300,000. The

[2] This document was dated 10 days *before* the date of the mortgage.

[3] Although it is not entirely clear from the record of this case, this may refer to the Addendum – an agreement between Ms. Scampton and *CNM* that was dated two days *after* this document and that alluded to a future sale.

[4] Contrary to the reference in the document, the Deed in Lieu of Foreclosure appears to pre-date the mortgage on the Property, which, as noted below, was dated two weeks later.

document recited that the mortgage was in default. This appears to be the deed in lieu of foreclosure mentioned in the "Agreement."

3. **"Addendum."** A one-page document entitled "Addendum" dated March 5, 2017 – two days after the Agreement and the Deed in Lieu of Foreclosure – identified itself as an "agreement" between Ms. Scampton and CNM. It referred to a mortgage with a seven-year term that required monthly "interest-only" payments until the mortgage "matured" in March 2024.[5] The Addendum provided that, if the Property was sold under certain circumstances, there would be a "50/50 split" of certain proceeds between Ms. Scampton and CNM "or agent." It provided that Ms. Scampton and her children would have a "first right of refusal" to purchase the Property at the end of the seven-year term.[6] Mr. Curiale was not explicitly mentioned in the document, although he apparently signed it as the agent of CNM.

4. **Mortgage.** This six-page instrument indicated that it was executed by Ms. Scampton as mortgagor in favor of CNM as mortgagee on March 13, 2017, to secure the debt with a principal sum of $300,000

[5] There is no indication in the record that a mortgage actually existed at the time the Addendum was executed. The mortgage to CNM that appears in the record was made more than a week after the Addendum and has a term of five years rather than the seven-year term mentioned in the Addendum.

[6] If the mortgage were paid off at the end of the seven-year term, it is not clear from the Addendum – or related documents – why Ms. Scampton, the owner of the Property, would need to purchase it from herself.

> and a 6% interest rate, that was to be paid in monthly interest-only installments, with the principal and any unpaid interest due to be paid in five years (March 2022).[7] The Mortgage contained no reference to any of the three earlier-dated documents described above.

The mortgage was recorded in the land records of Harford County a few weeks later on April 5, 2017. The other documents were not recorded at that time.

3. Ms. Scampton Ceases to Pay and Mr. Curiale Takes Sole Possession

Ms. Scampton made payments on the loan for approximately one year. In the meantime, Mr. Curiale made various improvements to the home and other structures on the Property. In 2019, tensions arose between Ms. Scampton and Mr. Curiale. On October 30, 2019, Mr. Curiale's attorney recorded the Deed in Lieu of Foreclosure in the Harford County land records. Mr. Curiale then required Ms. Scampton and her daughters to vacate the Property.

B. Litigation in the Circuit Court

1. Complaint of Ms. Scampton and Preliminary Court Order

On July 30, 2020, Ms. Scampton initiated the case that resulted in this appeal by filing a 14-count Complaint in the Circuit Court for Harford County against Mr. Curiale and CNM. Among other things, the Complaint alleged that the defendants had defrauded Ms. Scampton, asked the court to award her possession of the Property, sought an accounting of payments made by her, and requested declaratory and injunctive relief

[7] As noted earlier, the five-year term mentioned in the mortgage is inconsistent with a seven-year term mentioned in the Addendum.

invalidating the transactions between her and the defendants and providing her with title to the Property cleared of any lien to the defendants.[8]

After Mr. Curiale filed initial answers to the Complaint *pro se* and requested a postponement to obtain counsel,[9] the Circuit Court held a pretrial conference on October 1, 2020. The court then issued an order granting the defendants an extension of time to file answers. In that order, it also prohibited Mr. Curiale and CNM from taking any action to sell or encumber the property or to impair its value. Among other things, the order specifically directed them not to "effect any change to the property [and to] keep the Property … at status quo as of the date of this Order." It directed the defendants to apply to the court for permission to take action "[t]o the extent repairs are needed to the Property or improvements."

2. Counter-Complaint of Mr. Curiale and CNM

[8] The Complaint alleged the following causes of action: Count I (Action for Possession of Property); Count II (Mortgage Fraud in Violation of Maryland Code, Real Property Article §7-401); Count III (Violation of Commercial Law Article §12-125); Count IV (Accounting); Count V (Declaratory Judgment); Count VI (Common Law Fraud); Count VII (Negligent Misrepresentation); Count VIII (Detrimental Reliance); Count IX (Constructive Fraud); Count X (Breach of Contract); Count XI (Violation of Consumer Protection Act); Count XII (Constructive Trust); Count XIII (Malicious Prosecution). All of those causes of action were asserted against both Mr. Curiale and CNM, except for Count X (Breach of Contract), which was asserted only against CNM. The final count of the Complaint – Count XIV (Notice of Lis Pendens) did not assert a cause of action, but rather asserted, as a matter of procedure, that the filing of the Complaint functioned as a notice for purposes of the doctrine of lis pendens under Maryland Rule 12-102 with respect to the Property.

[9] Ms. Scampton filed a motion to dismiss the answer filed on behalf of CNM, which the court denied after the pretrial conference.

On February 17, 2021, Mr. Curiale and CNM filed counterclaims against Ms. Scampton in a four-count Counter-Complaint.[10] We describe the Counter-Complaint in some detail, as this appeal primarily relates to the Circuit Court's disposition of one of those counts.[11] The four counterclaims were as follows:

Count I (Concealment or Non-Disclosure). Mr. Curiale alleged that he not only had loaned Ms. Scampton $300,000 to buy out her husband's interest in the Property, but also had spent several hundred thousand dollars renovating the Property. He further alleged that, when Ms. Scampton provided the mortgage and Deed in Lieu of Foreclosure to secure Mr. Curiale's expenditures, she had already entered into the 2002 conservation easement, and had sold the merchantable timber on the Property. Those two actions, Mr. Curiale alleged, had the effect of "strip[ping] the value" of the Property. Mr. Curiale alleged that she had failed to disclose the easement and timber sale at the time she executed the

[10] While the Maryland Rules do not specifically refer to a pleading denominated as a "Counter-Complaint", they do authorize a defendant in a civil case to file one or more counterclaims against a plaintiff within 30 days after the deadline for filing an answer to the plaintiff's complaint. Maryland Rule 2-331.

[11] The Counter-Complaint initially identified two "Counter-Plaintiffs" – Mr. Curiale and CNM. However, each count referred to a "Counter-Plaintiff" in the singular and a verification under penalties of perjury at the conclusion of the document is executed by Mr. Curiale, apparently only in his personal capacity. Although not entirely clear from the pleading itself, this may be related to CNM's legal status in Maryland. It appears to be undisputed that CNM is a foreign LLC that was not registered to do business in Maryland at that time. See footnote 1 above. Accordingly, CNM would be ineligible to prosecute a lawsuit in a Maryland court. *See* Maryland Code, Corporations & Associations Article, §4A-1007(a). In describing the allegations of the Counter-Complaint, we refer to Mr. Curiale as the party making the allegations. In the end, however, CNM's Maryland registration status is not determinative of any issue presented to us in this appeal.

mortgage and Deed in Lieu of Foreclosure and that those two events were material facts that she had a duty to disclose to him.

Count II (Constructive Fraud). Mr. Curiale alleged that the Agreement and Addendum essentially created a partnership between Ms. Scampton and Mr. Curiale.[12] Therefore, Mr. Curiale alleged, Ms. Scampton had a fiduciary duty to disclose the easement and timber sale at the time the Agreement and Addendum were entered into and had violated that fiduciary duty by failing to do so.

Count III (Quantum Meruit). Mr. Curiale alleged that Ms. Scampton had a "duty of care … to recognize" that he had spent hundreds of thousands of dollars on the Property in addition to the $300,000 loan, that she had made "erroneous, negligent assertions and guarantees" concerning the value of the Property, and that he was "relying on the value of" the Property to secure the amounts he had paid in addition to the $300,000 loan. He alleged that he had suffered damages as a result of her negligence.

Count IV (Quiet Title). Mr. Curiale alleged that the Property was completely surrounded by a larger parcel of land owned by Ms. Scampton's family and that Ms. Scampton had erected barriers at the property line that impeded Mr. Curiale's use of an easement for ingress and egress with respect to the Property.

As to Counts I through III, Mr. Curiale sought $1 million in compensatory damages. As to Count IV, he sought a court order declaring him to be "the absolute owner" of the

[12] The Counter-Complaint alleges somewhat ambiguously that "the *parties* were essentially partners," perhaps because, as noted earlier, the Agreement was between Ms. Scampton and *Mr. Curiale* while the Addendum was between Ms. Scampton and *CNM*.

easement providing access to the Property and enjoining Ms. Scampton from asserting any claim "relating to the use, occupancy or possession of the easement."

3. Partial Summary Judgment in Ms. Scampton's Favor

On February 26, 2021, Ms. Scampton filed a motion for partial summary judgment as to six counts of her Complaint. That motion did not concern the other eight counts of the Complaint; nor did it address the Counter-Complaint.[13] The Circuit Court conducted a remote hearing on that motion on January 25, 2022.

On March 4, 2022, the court issued a memorandum and order in which it granted Ms. Scampton's motion as to four counts of her complaint (possession of property, accounting, declaratory judgment, and constructive trust – Counts I, IV, V, and XII, respectively). The court's decision rested primarily on its conclusion that, under Maryland law, a deed in lieu of foreclosure executed at the time of origination of the loan was ineffective when no foreclosure proceeding had been instituted that would preserve the debtor's right of redemption. The court specifically ordered that title to the Property revert to Ms. Scampton and that she was entitled to immediate possession of the Property. Moreover, the court barred Mr. Curiale and CNM "from collecting any interest, costs, finder's fees, broker fees, or other charges with respect to the mortgage." Finally, the court charged them with a constructive trust of the property.

At the same time, the court denied Ms. Scampton's motion for summary judgment as to two counts of the Complaint alleging violation of Maryland Code, Commercial Law

[13] On March 1, 2021, Ms. Scampton also filed a motion to strike the Counter-Complaint as untimely. The Circuit Court denied that motion on March 10, 2021.

Article, §12-125 (Count II) and breach of contract (Count X). Also unresolved were at least seven substantive counts of Ms. Scampton's Complaint on which she had not moved for summary judgment.[14]

4. Motion *in Limine*

Trial was scheduled for a few weeks later, on March 29-31, 2022. At the outset of the proceedings at that time, Ms. Scampton's counsel indicated that, in light of the court's ruling on summary judgment, "the plaintiff has no further case to put on" – *i.e.*, that she was not pursuing the remaining nine substantive counts of her complaint and that the only additional relief that she was seeking was an award of attorney's fees.[15] As a result, the trial would concern only the Counter-Complaint.

The court then addressed a motion *in limine* that had been filed by Ms. Scampton. In that motion she asked the court to preclude Mr. Curiale from introducing certain evidence at trial. Among other things, she asked the court to bar Mr. Curiale from introducing any evidence as to Counts I, II, and IV of the Counter-Complaint, which alleged causes of action for Concealment or Non-Disclosure, Constructive Fraud, and Quiet Title, respectively. She also asked the court to preclude introduction of evidence of the appreciation of the value of the Property and the value of improvements made to the Property by Mr. Curiale – evidence relating to the relief requested in Count III (Quantum

[14] As noted above, the final count of the Complaint simply served as a notice of the litigation for purposes of the doctrine of *lis pendens* and thus was more procedural than substantive in nature. See footnote 8 above.

[15] Ms. Scampton never pursued a claim for attorney's fees.

Meruit), the remaining count of the four-count Counter-Complaint. A ruling in favor of Ms. Scampton on the motion *in limine* would effectively gut the Counter-Complaint.[16]

At the hearing on the first day of trial, Mr. Curiale conceded that Count IV (Quiet Title) was moot in light of the court's ruling in favor of Ms. Scampton on the partial summary judgment motion. Following an extensive legal argument by counsel, the Circuit Court concluded that Mr. Curiale was precluded from pursuing Count III (Quantum Meruit) because there was a valid agreement between him and Ms. Scampton and he had not alleged breach of that contract. The court also ruled that Mr. Curiale could not present evidence on Count II (Constructive Fraud) because the provisions of the documents on which it was based – the Agreement and the Addendum – related to a sale of the Property, which had not yet occurred. Because Count I (Concealment or Non-Disclosure) was not premised on a sale of the Property, the court did not preclude Mr. Curiale from presenting evidence on that count. However, it held that expert testimony on the current value of the Property would not be relevant unless it linked the alleged appreciation in value to the improvements that Mr. Curiale said he had made.[17] The court granted the motion *in limine* with respect to Count I to the extent it sought to exclude expert testimony that addressed

[16] At the hearing on the motion, Ms. Scampton's counsel noted that the Maryland Rules contemplated that a motion *in limine* could set the stage for a trial court to grant a motion for judgment or a directed verdict under Rule 2-519. *See* Maryland Rule 2-501(a), Committee Note.

[17] In the Circuit Court, Ms. Scampton conceded that she was indebted to Mr. Curiale as a result of the loan he had made to her and that the principal amount of that loan was $300,000. She did not concede indebtedness to him for the value of the improvements.

only appraisals of the overall value of the Property without quantifying the impact of the alleged improvements on the value.

5. Trial

On March 30, 2022, the Circuit Court commenced a jury trial solely as to Count I (Concealment or Non-Disclosure) of the Counter-Complaint. Mr. Curiale testified at some length on his own behalf and also presented brief testimony of a person who boarded horses on the Property to corroborate that Mr. Curiale had undertaken construction of various improvements on the Property beginning in 2017.

On March 31, 2022, at the conclusion of Mr. Curiale's case, the Circuit Court granted Ms. Scampton's motion for a directed verdict on Count I (Concealment or Non-Disclosure) of the Counter-Complaint – the sole count at issue in the trial – and dismissed the jury.[18]

The court issued a written order that same day resolving all of Mr. Curiale's counterclaims, based on the court's directed verdict and its earlier ruling on the motion *in limine*.[19] That order also entered judgment on the claims resolved in Ms. Scampton's favor in the earlier partial summary judgment motion. Finally, it continued the court's October

[18] The court gave two reasons for its directed verdict: (1) CNM, as the actual mortgagee under the mortgage, was the proper party to assert the claim but was ineligible to do so (see footnote 11 above); and (2) Mr. Curiale had not established that there was a confidential relationship between himself and Ms. Scampton that would have imposed on her a duty to disclose the conservation easement and other matters that were the subject of the alleged concealment. That ruling is not at issue in this appeal.

[19] On motion of Mr. Curiale, the court later amended that order to allow him 45 days to remove personal property from the real property.

2020 order prohibiting Mr. Curiale from taking various actions with respect to the Property. Neither that order, nor any other order of the Circuit Court, resolved the nine remaining substantive counts of Ms. Scampton's Complaint that the summary judgment order had not resolved.

Mr. Curiale filed a timely notice of appeal.[20]

II

Discussion

In this appeal, Mr. Curiale challenges only the Circuit Court's decisions as they relate to Count III of his Counter-Complaint, which sought damages under a theory of *quantum meruit*. He does not challenge either the Circuit Court's ruling granting partial summary judgment on four counts of Ms. Scampton's Complaint or the court's rulings on the other counts of his Counter-Complaint. Indeed, his objection to the court's ruling on his *quantum meruit* claim is premised on the correctness of the court's ruling on the summary judgment motion. In particular, he argues that, in granting partial summary judgment, the court essentially eliminated any consideration from any agreement between himself and Ms. Scampton and thus nullified any contract claim on his part. In his view, the court's ruling at trial that he could not pursue a *quantum meruit* claim because he had a contract claim against Ms. Scampton was wrong in light of that earlier ruling.[21] He asks

[20] Although CNM is named in the notice of appeal, it has not challenged the ruling that prohibited it from introducing evidence based on its status as a foreign LLC.

[21] In his appellate brief, Mr. Curiale divides this argument into the following questions as the basis of this appeal:

that we reverse the Circuit Court's ruling based on the March 3, 2017 "Agreement" and remand the case for a retrial on his *quantum meruit* claim.

A. A Preliminary Hurdle

A technical glitch threatens to interrupt the resolution of this appeal. As a general rule, appellate jurisdiction extends only to cases in which the trial court has rendered a "final judgment." *See* Maryland Code, Courts & Judicial Proceedings Article ("CJ"), §12-301. A final judgment is one which is, among other things, "an unqualified final disposition of the matter in controversy." *Metro Maintenance Systems South, Inc. v. Milburn*, 442 Md. 289, 298 (2015) (citations omitted). A grant of a motion for partial summary judgment is not by itself a final judgment. *Porter Hayden Co. v. Commercial Union Ins. Co*., 339 Md. 150, 162 (1995).

A perceptive reader may have noticed from the description of the proceedings in the prior section of this opinion that many – in fact, most – of the claims asserted in the Circuit Court were never formally resolved by that court. The Circuit Court ruled in favor of Ms. Scampton and against Mr. Curiale on four of the 14 counts of her Complaint, and against Mr. Curiale and in favor of Ms. Scampton on all four counts of the Mr. Curiale's Counter-Complaint. However, the court denied summary judgment on two counts of Ms. Scampton's Complaint and never addressed the remaining substantive counts of the

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1 – Whether the failure to include two antecedent agreements in a final contract constitutes an abandonment of the antecedent agreements.

2 – If an agreement contains offensive language, then the court should excise the offensive language, and read the remaining language in the agreement to see if the remaining language constitutes a valid contract.

Complaint. At oral argument before us, Ms. Scampton's counsel asserted that she had "waived" those claims. However, she took no formal action in the Circuit Court to dismiss those counts, and the Circuit Court never formally resolved them. Bottom line: We do not have a final judgment in the Circuit Court that disposes of all claims as to all parties.

Under the general rule, we would be required to dismiss this appeal and remand to the Circuit Court to resolve the open claims until we could have jurisdiction of the appeal. However, in certain circumstances, pursuant to statute and common law, an appellate court may accept jurisdiction of an appeal of a ruling that is not a final judgment. *See* CJ §12-303 (permitting appeals from certain interlocutory orders); *In re O.P.*, 470 Md. 225, 250-53 (2020) (discussing the common law collateral order doctrine). Moreover, under Maryland Rule 2-602(b), a circuit court may direct the entry of a final judgment "as to one or more but fewer than all of the claims or parties" if that court "expressly determines in a written order that there is no just reason for delay."

Pertinent to this case, if an appellate court "determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed" but that the circuit court had discretion to enter a final judgment under Rule 2-602(b), the appellate court may enter a final judgment on its own initiative.[22] Maryland Rule 8-602(g)(1)(C); *see* Kevin F. Arthur, Finality of Judgments and Other Appellate Trigger Issues (3d ed.

[22] An appellate court may not certify a judgment as final if the circuit court declined to exercise its discretion under Rule 2-602(b) to do so. *Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 263-64 (2009). However, no one asked the Circuit Court to do so in this case. Therefore, a circuit court declination is not an impediment here.

2018) at 37-38. In such a case, the notice of appeal is treated as if filed on the date of entry of that judgment and thus remains timely. Maryland Rule 8-602(g)(3).

In this case, neither party seeks any further adjudication of the unresolved counts of the Complaint. As noted above, at the outset of the trial in the Circuit Court, Ms. Scampton's counsel disclaimed any interest in pursuing those claims, though neither Ms. Scampton nor the Circuit Court took any action to dismiss them. At oral argument in this appeal, Ms. Scampton's counsel reiterated that Ms. Scampton was content with obtaining a judgment on the counts on which she had prevailed and that she had "waived" the unresolved claims. Presumably, Mr. Curiale has no interest in short-circuiting his appeal and possibly reviving various claims that sought damages against him.

Both parties seek the appellate resolution of the issues raised by Mr. Curiale.[23] To dismiss this appeal and remand the case for formal entry of an order by the Circuit Court concerning the counts of the Complaint "waived" by Ms. Scampton in order to allow Mr. Curiale to refile the appeal that has already been fully briefed would be to "spin [wheels] for no practical purpose." *Hiob v. Progressive American Ins. Co.*, 440 Md. 466, 484-85 n.17 (2014) (internal quotation marks and citation omitted). Under the circumstances, we find that there is "no just reason for delay" and "no practical purpose" in failing to take jurisdiction of this appeal at this time. Accordingly, pursuant to Maryland Rule 8-602(g), we shall enter a final judgment on the Circuit Court's ruling on Mr. Curiale's Counter-

[23] Parties may not confer jurisdiction upon an appellate court by consent. *See, e.g.*, *King v. State Roads Comm'n*, 294 Md. 236, 241 (1982). However, the positions of the parties may be pertinent as to whether an appellate court should make the findings required by Maryland Rule 8-602.

Complaint from which he has appealed. Upon disposing of that appeal, we shall remand the case to the Circuit Court so that it may dismiss the unresolved and "waived" counts of the Complaint.

B. Whether the Circuit Court Erred in its Ruling on the Quantum Meruit Claim

1. Standard of Review

The Circuit Court disposed of Count III (Quantum Meruit) of the Counter-Complaint as part of its ruling on Ms. Scampton's motion *in limine*. As noted earlier, that ruling was effectively a grant of a motion for judgment on that claim. In deciding such a motion, a circuit court is to "consider all evidence and inferences in the light most favorable to the party against whom the motion is made." Maryland Rule 2-519(b). If the evidence is insufficient to raise a jury question, the court is to grant the motion and enter judgment in favor of the movant.

An appellate court reviews a circuit court's decision to grant a motion for judgment under the same standard that the circuit court applies. *Tyson Farms, Inc. v. Uninsured Employers' Fund*, 471 Md. 386, 406 (2020). Because that decision poses a question of law, the appellate court does so under a *de novo* standard of review. *Thomas v. Panco Management of Maryland, LLC*, 423 Md. 387, 393-94 (2011).

2. Merits

Mr. Curiale correctly observes that Maryland courts apply an "objective" approach to the interpretation of contracts. *Impac Mortgage Holdings, Inc. v. Timm*, 474 Md. 495, 506 (2021). He asserts that, viewed objectively, the various anomalies and inconsistencies in the four documents reflecting the transactions between himself and Ms. Scampton – and

the Circuit Court's ruling invalidating the Deed in Lieu of Foreclosure – effectively left him without a contract claim against Ms. Scampton due to a lack of consideration.[24] To illustrate that argument graphically, he invokes the "blue pencil test"[25] in his brief to cross out various provisions of those documents and to conclude that the resulting agreement lacks consideration. We need not reach this argument; as Mr. Curiale conceded at oral argument, he did not raise it in the Circuit Court and thus did not preserve it for appeal.

Regardless of whether it had been raised in the Circuit Court, Mr. Curiale's "blue pencil" argument would not have availed him in the context of this case. In the final analysis, he could not prove all of the elements of the *quantum meruit* claim he alleged in Count III of his Counter-Complaint. One of the other issues that the court addressed when it ruled on the motion *in limine* concerned the evidence of damages that Mr. Curiale proposed to offer at trial. As made clear by that ruling, the damages evidence that he proposed to present was deficient, as a matter of law, to support an award of damages under a *quantum meruit* theory.

As noted earlier, Count III of Mr. Curiale's Counter-Complaint, entitled "Quantum Meruit," alleged that Ms. Scampton had made "erroneous, negligent assertions and

[24] Although it is not entirely clear, Mr. Curiale also appears to argue that the documents should be construed against Ms. Scampton because the attorney who drafted them had previously worked for her family. In any event, resolution of this appeal does not turn on whether the documents are construed against one party or the other.

[25] Black's Law Dictionary defines this concept as "[a] judicial standard for deciding whether to invalidate the whole contract or only the offending words. Under this standard, only the offending words are invalidated if it would be possible to delete them simply by running a blue pencil through them, as opposed to changing, adding, or rearranging words." Black's Law Dictionary (11th ed. 2019).

guarantees" and sought damages "proximately caused" by those assertions and guarantees related to the improvements he had made on the Property.[26] Such a cause of action does not sound in either contract or tort. Rather, it seeks restitution for unjust enrichment based on the doctrine of quasi-contract (also known as implied-in-law contract) – a concept that, as this Court has noted, "overlap[s] the edges of both contract and tort but also fill[s] some empty space between the two." *Alternatives Unlimited, Inc. v. New Baltimore City Board of School Commissioners*, 155 Md. App. 415, 452 (2004). It thus falls in its own category.

The measure of damages in such a case is the "gain to the defendant, not the loss by the plaintiff." *Mogavero v. Silverstein*, 142 Md. App. 259, 276 (2002) (citations and internal punctuation omitted); *see also Mass Transit Administration v. Granite Construction Co.*, 57 Md. App. 766, 773-776 (1984). Thus, damages under the *quantum meruit* count of the Counter-Complaint would be calculated by the amount that the alleged improvements to the Property had enhanced its value.

At the trial, Mr. Curiale planned to present testimony of an expert appraiser and of appraisals of the total value of the Property at different times. However, that expert admittedly had not assessed the value of any improvements attributable to Mr. Curiale or the extent to which those improvements had contributed to an increase in the value of the Property. The Circuit Court ruled that the testimony on the current total value of the

[26] In some circumstances, the phrase *quantum meruit* may also relate to the distinct concept of an implied-in-fact contractual duty. *See Mogavero v. Silverstein*, 142 Md. App. 259, 274-82 (2002) (discussing distinction between "implied-in-fact" contracts and "implied-in-law" contracts); *Clark Office Building, LLC v. MCM Capital Partners, LLLP*, 249 Md. App. 307, 314 (2021) (same).

Property without any attribution of that value to the alleged improvements was irrelevant and not admissible. Mr. Curiale did not proffer any other evidence that would have demonstrated how those improvements conferred a monetary benefit on Ms. Scampton. In sum, he did not proffer admissible evidence of the damages element of his *quantum meruit* claim.

III

Conclusion

For the reasons explained above, we enter a final judgment pursuant to Maryland Rule 8-602(g) on the Circuit Court's orders granting summary judgment to Ms. Scampton on Counts I, IV, V, and XII of her Complaint and resolving all of the counts of the Counter-Complaint in her favor. Having done so and considering the briefs and arguments of the parties on the merits of Mr. Curiale's appeal, we conclude that the Circuit Court did not err when it granted judgment in favor of Ms. Scampton on the count of the Counter-Complaint based on the doctrine of *quantum meruit*. We therefore affirm that judgment. We shall remand the case to the Circuit Court for the limited purpose of dismissing the 10 unresolved counts of Ms. Scampton's Complaint.

JUDGMENT ENTERED AND AFFIRMED AS TO THE ORDER OF THE CIRCUIT COURT FOR HARFORD COUNTY AWARDING JUDGMENT IN FAVOR OF APPELLEE. CASE REMANDED TO THE CIRCUIT COURT OF HARFORD COUNTY FOR THE PURPOSE OF DISMISSING COUNTS II, III, VI THROUGH XI, XIII, AND XIV OF THE COMPLAINT. COSTS TO BE PAID BY APPELLANT.