Circuit Court for Howard County
Case No. C-13-CV-22-000006

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1198

September Term, 2023

EMISSIONS CONSULT, LLC

v.

MIDAMERICAN ENERGY SERVICES, LLC

Beachley,
Kehoe, S.,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: October 23, 2024

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

Appellant Emissions Consult, LLC ("Emissions") sued MidAmerican Energy Services, LLC ("MidAmerican") in the Circuit Court for Howard County, alleging breach of contract and unjust enrichment. After Emissions presented its case at trial, MidAmerican moved for judgment. The court granted the motion for judgment on the unjust enrichment claim and a portion of the breach of contract claim. At the end of trial, the court found in favor of MidAmerican on the remaining aspects of the breach of contract claim. Emissions noted this appeal, presenting the following questions for appellate review, which we have slightly rephrased:

1. Did the trial court err in finding for MidAmerican in its interpretation of the contracts?
2. Did the trial court err in granting MidAmerican's motion for judgment as to unjust enrichment?
3. Did the trial court err in granting MidAmerican's motion for judgment based on the statute of limitations as to certain commissions claimed by Emissions?

We hold that the court did not err, and therefore affirm.

FACTUAL AND PROCEDURAL HISTORY[1]

MidAmerican's business involves supplying electricity to consumers in deregulated energy markets, including Maryland. MidAmerican contracts with customers to supply electricity at a fixed rate through local distribution companies, such as Baltimore Gas & Electric Company. Emissions is a company that provides "energy consulting and advisory services" to various clients, which services include soliciting and comparing bids from

[1] In this introductory section, we recite certain facts as found by the trial court. We shall explicitly address each party's evidentiary presentation and legal contentions *infra*.

potential energy suppliers to secure the lowest price and best service for its clients. Normally, an energy advisor or broker would gather information from its clients concerning their energy needs and preferences, then reach out to energy suppliers to solicit bids for services. Even after the customer secures a contract with an energy supplier, the customer's main point of contact regarding energy services would continue to be the energy advisor/broker. As we shall see, the interaction between the parties in this case did not follow the normal course.

MidAmerican approached PNC Bank, N.A. ("PNC") in December 2012 about contracting to supply electricity to PNC locations in certain states. Over the next few months, MidAmerican received detailed information from PNC concerning their electricity needs and preferences. On June 10, 2013, PNC requested a formal bid from MidAmerican; PNC accepted MidAmerican's bid on June 18, 2013. When PNC notified MidAmerican that it had won the bid, PNC also announced for the first time that Emissions was working as its energy broker and requested that Emissions receive commissions on the energy MidAmerican would sell to PNC.[2] The head of energy management for PNC at this time was Dr. Nana Wilberforce, the brother-in-law of Emissions' owner and CEO, Akua Sampson.

[2] On February 13, 2014, Emissions signed an agreement with PNC to provide energy management services, including "provid[ing] technical support in solicitations of 3rd party supply opportunities." The contract provided that it was "effective as of May 1, 2013."

Because Emissions' commissions were to be added to MidAmerican's contract with PNC and therefore did not reduce MidAmerican's anticipated revenue or profit, MidAmerican agreed to pay commissions to Emissions as instructed by Dr. Wilberforce. Therefore, on June 20, 2013, two days after PNC accepted MidAmerican's bid, MidAmerican and Emissions entered into an Energy Referral Agreement ("ERA"). The initial commission rate was $0.001 per kWh used by PNC, and this rate was later increased to $0.0025 per kWh for most PNC locations.[3] Paragraph 1 of the ERA describes certain responsibilities of the parties to the contract, including the requirements that Emissions "[p]resent MidAmerican offers in their entirety," "[m]onitor all [Emissions] customer contracts/prices and actively promote MidAmerican's relationship with MidAmerican customers developed by [Emissions], throughout the term of customer's MidAmerican service." MidAmerican, in turn, was required to provide services to customers, provide Emissions with marketing materials, and pay Emissions "Earned Commission as described on the attached Exhibits A, B, and C." Paragraph 2 describes the term of the ERA:

> This Agreement shall be in force and effect for a term of one (1) year from the date hereof. This Agreement shall continue from year to year; however, both parties shall have the right to terminate this Agreement at any time by providing thirty days (30 days) written notice of its desire to terminate this Agreement for any reason. In the event this Agreement is terminated, [Emissions] shall be paid Earned Commission applicable to [Emissions'] designated customers with Customer Agreements in effect at the date of termination throughout the term of each Customer Agreement with MidAmerican. Term does not include any extensions of a Customer Agreement that begin after the termination of this Energy Referral Agreement. If the Agreement is terminated for any reason during either the

[3] The commission rate was not specified in the ERA, but the parties substantially agree that these rates are accurate.

> initial term of a customer contract or a renewal term resulting from an automatic 12 month renewal, [Emissions] will be paid Earned Commission for the remainder of the current term in which termination of Agreement is initiated.

Exhibit A, attached to the ERA, defines "Earned Commission":

> "Earned Commission" shall be:
>
> Based on the agreed upon commission fee per unit of measure . . . for all customer leads that subsequently develop into a Customer Agreement with MidAmerican . . . ; for which the local distribution company has acknowledged that MidAmerican is the new energy service supplier of record[;] and[] whereby such Customer Agreement with MidAmerican is directly attributable to [Emissions'] efforts.[4]

MidAmerican and PNC entered into a Retail Electric Supplier Agreement ("RESA") requiring MidAmerican to supply 100% of PNC's electric energy for specific properties listed in Schedules attached to the RESA.[5] It provided that the RESA, "together with any written supplements thereto and all Schedules shall form a single integrated agreement."

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[4] This definition is nearly identical to language used in one of the "whereas" clauses in the introductory section of the ERA:

> WHEREAS, it is the intention of the parties hereto that [Emissions] be compensated by MidAmerican for each customer lead that subsequently results in the customer entering into a fully executed Retail Natural Gas Supplier Agreement or Retail Electric Supplier Agreement ("Customer Agreement(s)") with MidAmerican and for which the local distribution company has acknowledged and confirmed that MidAmerican is the new natural gas or electric service supplier of record, and whereby such Customer Agreement with MidAmerican is directly attributable to [Emissions'] efforts.

[5] The RESA was signed by PNC on June 18, 2013 (two days prior to the ERA being signed). MidAmerican had to adjust its bid to account for the payment of commissions to Emissions as requested by PNC, thereby explaining MidAmerican's final execution of the RESA on July 8, 2013.

MidAmerican immediately began paying commissions to Emissions for the energy purchased by PNC, and continued to do so without issue until 2018. During this time, as Schedules expired (approximately every two to three years), PNC would solicit bids for energy suppliers and MidAmerican would frequently win the bids. MidAmerican and PNC would then enter into new Schedules without updating the RESA.

In March of 2018, after a management change at PNC, Dr. Wilberforce's new manager learned of the family connection between Dr. Wilberforce and Akua Sampson of Emissions. Upon being confronted with this information, Dr. Wilberforce immediately resigned. Shortly thereafter, PNC notified Emissions that it would no longer allow Emissions to solicit bids from energy suppliers on its behalf. In December 2018, MidAmerican and PNC entered into a new RESA, which reflected changes in their corporate designations, but which was otherwise not substantively different from the 2013 RESA.[6]

As MidAmerican and PNC created new Schedules in 2018, PNC informed MidAmerican that there would be no broker involved in the bidding process. Although MidAmerican continued to pay commissions related to Schedules in place as of March 2018, it stopped paying commissions to Emissions as the old Schedules expired and new Schedules were created. By June 2021, MidAmerican was no longer making any

[6] These changes were made in two successive RESAs, the first signed on December 4, 2018, which updated MidAmerican's corporate designation, and the second on December 11, 2018, which also updated PNC's designation. For simplicity, we will only refer to the second of these two RESAs.

commission payments to Emissions. Emissions filed suit against MidAmerican for breach of contract and unjust enrichment on January 5, 2022. In February 2022, MidAmerican provided Emissions written notice that it was terminating the ERA, effective March 7, 2022.

Trial – Emissions' Evidence

Trial commenced on June 26, 2023. Ms. Sampson testified for Emissions concerning the history of the dealings between Emissions, PNC, and MidAmerican. She testified that she first became aware of MidAmerican during her work for Emissions on behalf of PNC in 2012. According to her, Emissions contacted MidAmerican in May of 2013 regarding energy supply services for PNC. She testified that Emissions had been working with PNC on an "energy strategy" to include requesting bids from energy suppliers for "months" prior to her first contact with MidAmerican. Ms. Sampson stated that no one from MidAmerican informed her about any contact MidAmerican had with PNC prior to Emissions soliciting a bid from them. Emissions presented emails from Patrick Gray, a salesperson at MidAmerican, to Ms. Sampson in late May and early June 2013. The emails consisted of generic summaries of the current energy market; they were not specifically targeted to Emissions nor do they mention PNC. Ms. Sampson testified that Mr. Gray told her about MidAmerican's energy referral program sometime prior to PNC signing the RESA on June 18, 2013. She explained that the reason there were no emails between herself and Mr. Gray about PNC was because they conducted those discussions over the phone.

After PNC signed the RESA on June 18, 2013, MidAmerican sent Emissions a copy of a broker application form, which needed to be completed before the parties entered into an ERA. Ms. Sampson promptly submitted the application, and the parties signed the ERA on June 20, 2013. She testified that the amount of the commission was determined in a conversation between her and a representative of MidAmerican.

During Ms. Sampson's testimony, Emissions presented emails indicating that, in December 2013, Emissions was acting as a broker for PNC in negotiating Schedules for MidAmerican to supply energy to additional locations. However, in various emails from 2013 through 2015, Mr. Gray addresses both Ms. Sampson and Dr. Wilberforce directly. Mr. Gray also stated in an April 2015 email "we have included [$0.0025 per kWh] for Emissions Consult[']s commission per [Dr. Wilberforce's] request on all of the accounts." Ms. Sampson testified that she, not Dr. Wilberforce, negotiated the increased commission rate with MidAmerican.

Ms. Sampson testified that Dr. Wilberforce voluntarily resigned from PNC in March of 2018. At that time, PNC instructed Emissions not to solicit bids from energy suppliers, but did not terminate the contract. Ms. Sampson testified that, in 2018, Emissions' contract with PNC was "month-to-month." In January 2019, PNC terminated the service contract.

Motion for Judgment

At the close of Emissions' case-in-chief, MidAmerican moved for judgment on both the breach of contract claim and the unjust enrichment claim. The court granted judgment to MidAmerican as to the unjust enrichment claim, and granted judgment as to a portion

of the breach of contract claim. We shall discuss the parties' arguments and the court's ruling on the motion for judgment in more detail *infra*.

Trial – MidAmerican's Evidence

Randy Marzen, managing director of MidAmerican, testified concerning MidAmerican's business practices. At the time of the events related to this case, Mr. Marzen was MidAmerican's director of sales and marketing. He stated that MidAmerican has two divisions in the company for sales—direct and indirect. As the names suggest, the direct division has an internal sales team that works directly with the customer, and the indirect division works with outside brokers acting as intermediaries. While direct sales representatives work in the direct division, the indirect division uses agent managers to work with the brokers. As to brokers, Mr. Marzen testified that "the heart of what they do is they basically take over the function of direct sales." He explained that, "usually," an ERA is established with a broker prior to MidAmerican submitting any bids. The broker then meets with the customers, determines what services the customer wants, and provides advice concerning regulations and market conditions on an ongoing basis.

Mr. Marzen described the RESA as establishing "standard operating procedures," and noted that MidAmerican has "a lot of RESA[s] out there with national customers that we . . . haven't done business with yet." He stated that, when MidAmerican wins a bid, "the [S]chedule is really the heart of what we're all agreeing to." Thus, MidAmerican does not keep track of brokers whose efforts have resulted in a RESA with MidAmerican, but instead it determines commission payments based "only" on the Schedules. He testified

that the determination of which broker or direct sales agent will be credited with a successful bid is done prior to sending a customer a proposed bid because the commission is "actually built into the energy rate that we put in our bid."

Mr. Marzen then testified concerning how MidAmerican came to establish a RESA and Schedules with PNC. He testified that Mr. Gray, a direct sales representative, had a meeting with Dr. Wilberforce "sometime late 2012" to determine what type of services PNC was interested in purchasing. Mr. Marzen stated that it "[w]as pretty clear to me internally at that time we were going to have a direct sales representative run with it [because] he had good dialog[ue] going back and forth" with Dr. Wilberforce. A copy of MidAmerican's database entries related to PNC was admitted into evidence. It indicated that, in January 2013, MidAmerican transferred the PNC account from the indirect division to the direct division, assigning it to Mr. Gray.[7] Mr. Marzen, referencing the database, testified that over the next several months, Mr. Gray worked directly with PNC to gather the information needed to submit a bid. The database indicated that, when PNC informed MidAmerican that it had won the bid on June 18, 2013, PNC also informed MidAmerican that it wanted Emissions to receive a commission. However, Mr. Marzen was not aware of any contact between MidAmerican and Emissions prior to June 18. MidAmerican then contacted Emissions to establish an ERA and determine a commission rate. On June 24, 2013, MidAmerican re-submitted its bid to PNC, adjusting rates to account for the

[7] The database indicated that MidAmerican was in contact with another broker, E-Group, who was working with PNC in 2011, but no contracts resulted from those efforts.

commission. He testified that Ms. Sampson's version of events, wherein MidAmerican was in contact with Emissions but not aware of who the customer was until June 18, 2013, would be "[n]ot even close" to possible because of the amount of time and company-specific information needed to make a bid.

Mr. Marzen testified that the PNC account was not transferred back to indirect sales because Dr. Wilberforce continued to work directly with Mr. Gray. Initially, "nothing really changed" in the way business was conducted with PNC except that Emissions was now included in emails between PNC and MidAmerican. Mr. Marzen indicated that Emissions eventually became more involved, although Dr. Wilberforce continued to directly contact MidAmerican. Concerning the commission rate, Mr. Marzen testified that in a typical transaction, the rate is set by the broker and MidAmerican, and the broker then communicates the rate to the customer. However, in this case, Emissions and PNC determined the commission rate and communicated that rate to MidAmerican, to be included in the Schedules.

Michele Taylor, MidAmerican's manager of customer operations, was also called by MidAmerican to testify. Her work involves creating contract documents and entering information into MidAmerican's database. She testified that, when MidAmerican won the bid to provide services to PNC in June 2013, Emissions was not in MidAmerican's database. Consequently, when PNC asked that Emissions be paid commissions, Emissions was initially identified in the database as "test agent number one" until the ERA was created. According to Ms. Taylor, an ERA is established with any new broker, whether or

not commission will be paid, as part of the process of entering that broker into MidAmerican's database.

The Court's Ruling

On July 19, 2023, the court issued a written decision and memorandum opinion, ruling in favor of MidAmerican. The court found that the definition of "Customer Agreement" in the ERA was ambiguous, noting that MidAmerican's interpretation that "Customer Agreement" means both the RESA and its Schedules "is persuasive, but to accept this interpretation the [c]ourt would have to ignore language of the written agreement between the parties, particularly the language that refers to the Customer Agreement as the RESA."

Having found the contract language ambiguous, the court turned to extrinsic evidence to determine the parties' intent. The court found MidAmerican's "version of events more credible" with regard to how the relationship between MidAmerican and PNC was initiated and how the RESA and Schedules came to be. The court reviewed the evidence presented by both sides, noting that the testimony of MidAmerican's witnesses was corroborated by "documentation in its database of contacts with PNC predating [Emissions'] involvement[,]" and the lack of evidence indicating that Emissions initiated or facilitated the relationship between PNC and MidAmerican. The court also discussed the family connection between Ms. Sampson and Dr. Wilberforce, finding that Dr. Wilberforce's "sudden departure" "suggests an acknowledgment . . . that his choice to use a family member was not a decision made in the best interest of his employer."

The court then made the following findings:

> The facts above make it clear that [Emissions'] involvement as broker only came about as the result of Dr. Wilberforce's request for [MidAmerican] to pay commissions to [Emissions] after it had won the bid. [Emissions] never fully took on the role of broker, as evidenced by the fact that [MidAmerican] kept a member of its sales staff involved, rather than an agent manager as it would normally do in a broker relationship. Dr. Wilberforce continued communicating directly with [MidAmerican] instead of letting [Emissions] act as the middleman, as is the norm when brokers are used. Where normally a broker sets its own commissions, in this case Dr. Wilberforce informed [MidAmerican] of [Emissions'] commission.
>
> The [c]ourt does not find it credible that [Emissions] was responsible for referring [MidAmerican] to PNC. The [c]ourt credits Mr. Marzen's testimony that [MidAmerican] was actively courting PNC as a new customer before and after the bid request was issued, and that it was not until after [MidAmerican] won the bid that [Emissions] became involved. Therefore, the [c]ourt finds that the parties' intention in entering the ERA was to establish the ground rules for future dealings between [Emissions] and [MidAmerican], and not as a reward for a referral that did not occur.
>
> Having found the parties['] intention, the [c]ourt turns to the interpretation [of] terms of the ERA contract, particularly what is meant by "Customer Agreement." Since the RESA merely sets out the ground rules between the parties, it is illogical to conclude that the RESA alone is the "Customer Agreement" referred to in the ERA. The RESA combined with the schedules executed between [MidAmerican] and PNC from time to time make up the "Customer Agreement." It is necessary to have both in order to have the complete agreement between PNC and [MidAmerican]. Under this interpretation, all the terms of the contract make sense.
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> Under [Emissions'] interpretation, all [Emissions] was required to do was make the initial referral and thereafter it would be entitled to commissions so long as [MidAmerican] and PNC had a RESA between them. To accept [Emissions'] interpretation, the [c]ourt would have to ignore Paragraph 1 of the ERA in its entirety, since under [Emissions'] interpretation, it would have no obligation to act at all once a customer referral led to a RESA. Taken to its logical conclusion, [MidAmerican] would have to eventually abandon bidding on PNC contracts as the unearned broker commission would make it unlikely that their bids would be competitive. The [c]ourt finds no reason that the parties would include

> language in their written agreement that had no meaning, and for this and other reasons it does not adopt [Emissions'] interpretation of the agreement.

Concluding that MidAmerican had not breached the contract, the court entered judgment in favor of MidAmerican. Emissions noted this timely appeal.

DISCUSSION

I. Breach of Contract

Emissions argues that the trial court's interpretation of the ERA was incorrect as a matter of law. It further challenges certain findings of fact, including the court's finding that Emissions played no role in securing the RESA between MidAmerican and PNC. We shall address each of these arguments in turn.

"The interpretation of a contract, including the determination of whether a contract is ambiguous, is a question of law." *Impac Mortg. Holdings, Inc. v. Timm*, 474 Md. 495, 533 (2021) (citing *Spacesaver Sys., Inc. v. Adam*, 440 Md. 1, 7 (2014)). Emissions argues in its reply brief that we should also review the court's fact findings *de novo*. However, Rule 8-131(c) provides: "When an action has been tried without a jury," this Court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of witnesses." We are "bound by findings of fact in the lower court unless they are clearly erroneous." *Cunningham v. Feinberg*, 441 Md. 310, 322 (2015) (quoting *State Sec. Check Cashing, Inc. v. Am. Gen. Fin. Servs.*, 409 Md. 81, 110 (2009)). "'Under the clearly erroneous standard, [we do] not sit as a second trial court, reviewing all the facts to determine whether an appellant has adequately proven his [or her] case.' Our review is

limited to deciding whether the circuit court's factual findings were supported by 'substantial evidence' in the record." *Simms v. Md. Dept. of Health*, 240 Md. App. 294, 311 (2019) (alterations in original) (citation omitted) (quoting *Liberty Mut. Ins. Co. v. Md. Auto Ins. Fund*, 154 Md. App. 604, 609 (2004)), *aff'd* 467 Md. 238 (2020).

A. Interpretation of ERA

Emissions argues that the ERA language is unambiguous, and that the commission payments to Emissions should continue so long as there is any RESA in existence between PNC and MidAmerican. Emissions' plain language argument is succinctly summarized in its brief:

> Based on the introduction made by Emissions, PNC Bank (by [Dr.] Wilberforce) on June 18, 2013, requested an electric power proposal by MidAmerican for PNC's locations in the District of Columbia, Maryland and Texas. Thereafter, the 2013 RESA was executed by MidAmerican and PNC—*based on the introduction by Emissions*. Granted, another two 2018 RESAs were executed, but the purpose of the other two RESAs was purely technical, the terms of the 2018 RESAs and 2013 RESA were identical in all pertinent sections. And in accordance with those RESAs, by way of the ERA, the "earned commissions" to be paid to Emissions are calculated in reference to the RESAs. Thus, for as long as a customer of MidAmerican (in this instance PNC) continues to purchase electricity from MidAmerican under any RESA, it is obligated to pay commissions to Emissions. Period.

(Emphasis in original).[8]

MidAmerican agrees with Emissions that the applicable contracts are not ambiguous. MidAmerican asserts that "[a]s a condition precedent to receiving *any* commission under the ERA, Emissions was required to prove that the June 18, 2013 RESA

[8] At oral argument, Emissions confirmed that its claim was based exclusively on the terms of the RESAs, not the Schedules.

was 'directly attributable to [Emissions'] efforts.'" In MidAmerican's view, because the court found that Emissions was not "responsible for referring [MidAmerican] to PNC[,]" Emissions is not entitled to any commissions under the plain language of the contracts.

We agree with the parties' principal contention that the relevant contracts here are unambiguous.[9] Maryland courts use an "'objective' approach to the interpretation of contracts." *Impac Mortg. Holdings*, 474 Md. at 506. Under this approach, the intent of the parties is determined by the language of the contract. "[W]hen the contract language is plain and unambiguous, 'the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.'" *Id.* at 507 (quoting *Dennis v. Fire & Police Emps. Ret. Sys.*, 390 Md. 639, 656-57 (2006)). If the language is unambiguous, the work of interpreting the contract "is at an end[,]" and we "give effect to the plain meaning of the contract, read objectively, regardless of the parties' subjective intent at the time of contract formation." *Id.* (citing *Myers v. Kayhoe*, 391 Md. 188, 198 (2006)). "Ambiguity arises when a term of a contract, as viewed in the context of the entire contract and from the perspective of a reasonable person in the position of the parties, is susceptible of more than one meaning." *Id.* (citing *Ocean Petroleum Co., Inc. v. Yanek*, 416 Md. 74, 87 (2010)).

[9] Both parties present alternative arguments related to the circuit court's finding that the contract language is ambiguous. In light of our holding, we need not discuss these alternative arguments.

Paragraph 1 of the ERA provides that MidAmerican must "Pay [Emissions] Earned Commission as described on the attached Exhibits A, B, and C." Exhibit A defines "Earned Commission":

> "Earned Commission" shall be:
>
> Based on the agreed upon commission fee per unit of measure . . . *for all customer leads that subsequently develop into a Customer Agreement with MidAmerican* . . . ; for which the local distribution company has acknowledged that MidAmerican is the new energy service supplier of record[;] *and[] whereby such Customer Agreement with MidAmerican is directly attributable to [Emissions'] efforts*.

(Emphasis added). "Customer Agreement" is defined in one of the "Whereas" clauses in the introduction to the ERA and uses similar language:

> WHEREAS, it is the intention of the parties hereto that [Emissions] be compensated by MidAmerican for each customer lead that subsequently results in the customer entering into *a fully executed Retail Natural Gas Supplier Agreement or Retail Electric Supplier Agreement ("Customer Agreement(s)")* with MidAmerican and for which the local distribution company has acknowledged and confirmed that MidAmerican is the new natural gas or electric service supplier of record, *and whereby such Customer Agreement with MidAmerican is directly attributable to [Emissions'] efforts.*

(Emphasis added).

Neither party ostensibly claims that the italicized contractual provisions are ambiguous. As previously noted, Emissions' plain language argument asserts that "based on the introduction by Emissions," MidAmerican and PNC entered into the 2013 RESA. Similarly, MidAmerican contends that the express language of the contract is clear and unambiguous: Emissions' earned commissions are based on "customer leads that subsequently develop into a Customer Agreement with MidAmerican" *and* "whereby such Customer Agreement with MidAmerican is directly attributable to [Emissions'] efforts."

On this core issue, the court rejected Emissions' claim that it "was responsible for referring [MidAmerican] to PNC." This finding, which we conclude is not clearly erroneous, undermines Emissions' foundational argument that the RESA was created as a result of its "introduction" of MidAmerican to PNC.

Turning to the court's fact-findings, both parties argue that their own witnesses provided more reliable testimony. As we noted above, Emissions' entire argument concerning the application of the contract language to the facts of the case hinges on Emissions having been responsible for introducing MidAmerican and PNC in 2013 and facilitating the creation of the RESA. The only evidence supporting this theory is Ms. Sampson's testimony. In response to MidAmerican's argument that the court's findings are supported by the record, Emissions urges us in its reply brief to review the facts *de novo*. As discussed above, we review factual findings for clear error. We "will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Rule 8-131(c). Assessment of a witness's credibility "is quintessentially a job for the trial court," which we "may not reassess." *Cherry v. Mayor of Balt. City*, 475 Md. 565, 594 (2021) (quoting *Leavy v. Am. Fed. Sav. Bank*, 136 Md. App. 181, 199-200 (2000)).

Here, the court thoroughly reviewed the evidence presented at trial and found MidAmerican's "version of events more credible." The court noted that Ms. Sampson's testimony was not supported by the documentary evidence, and that the May 2013 emails she produced from Mr. Gray were "consistent with a marketing effort from [MidAmerican]

that went to a larger audience, not a personal communication with Ms. Sampson focused on PNC's particular needs." Finally, the court concluded:

> The [c]ourt does not find it credible that [Emissions] was responsible for referring [MidAmerican] to PNC. The [c]ourt credits Mr. Marzen's testimony that [MidAmerican] was actively courting PNC as a new customer before and after the bid request was issued, and that it was not until after [MidAmerican] won the bid that [Emissions] became involved.

Additionally, the court found that "shortly after Dr. Wilberforce's abrupt departure" from PNC in March 2018, "PNC prohibited [Emissions] from soliciting third party bids for electric supply. [Emissions] never resumed soliciting bids for PNC's energy needs." When Schedules needed to be renewed after March 2018, "PNC made it clear to [MidAmerican] that there would be no broker involved in the bid."

The court's findings are amply supported by the record. Ms. Sampson admitted that the May 2013 emails from Mr. Gray were sent to a large number of individuals, and nothing in them relates to PNC. Both Mr. Marzen's testimony and MidAmerican's database entries substantiate that MidAmerican was entirely unaware of Emissions until after MidAmerican won the initial PNC bid on June 18, 2013. The court was entitled to credit Mr. Marzen's testimony, and "[i]t is not our role to reassess the credibility of the witnesses who testify before the trial court." *Thornton Mellon, LLC v. Adrianne Dennis Exempt Tr.*, 250 Md. App. 302, 329 (2021), *aff'd* 478 Md. 280 (2022). Concerning the events after Dr. Wilberforce's departure, evidence from both parties indicated that Emissions did not provide energy consultant services for PNC after March 2018. Ms. Sampson testified that Emissions was told by PNC to "pause" its energy consulting work for PNC in March 2018,

and that, from that point on, Emissions had not solicited any energy rates or bids on behalf of PNC. Mr. Marzen testified that, shortly after Dr. Wilberforce left PNC, his contacts at PNC "made it very clear they want[ed] to work direct" rather than use a broker. Thus, the court's findings on this issue are not clearly erroneous.

In summary, the court's fact-findings vis-à-vis the ERA vitiate Emissions' claim for commissions. MidAmerican was only obligated to pay commissions where Emissions provided a "customer lead that subsequently result[ed] in the customer entering into a fully executed" Customer Agreement and only where the Customer Agreement "is directly attributable to [Emissions'] efforts." The court's findings clearly demonstrate that it was convinced that the 2013 RESA was not "directly attributable to [Emissions'] efforts." Indeed, the court found that it was not "credible that [Emissions] was responsible for referring [MidAmerican] to PNC." Furthermore, the 2018 RESA was formed after PNC directed Emissions to stop providing energy broker services; thus, that RESA also could not be "directly attributable" to Emissions' efforts. In light of these fully-supported findings, Emissions was not entitled to commissions under the plain language of the contract.[10]

[10] We are certainly aware that Emissions actually received substantial commissions based on MidAmerican's contracts with PNC. Whether those payments were made because of Ms. Sampson's relationship with Dr. Wilberforce is immaterial to our interpretation of the relevant contractual language.

II. Motion for Judgment

Emissions also challenges the court's decision to grant MidAmerican's motion for judgment. Specifically, Emissions argues that the court should not have granted judgment in favor of MidAmerican on the unjust enrichment claim and should not have ruled that the statute of limitations for breach of contract had expired with regard to a Schedule entered into in 2018. We discuss each of these issues in turn.

A. Unjust Enrichment

In its motion for judgment, MidAmerican argued that the court should enter judgment in its favor on the unjust enrichment claim because unjust enrichment is not available where there is an express contract between the parties. Counsel for MidAmerican stated: "I don't think there is a dispute there is a contract. I don't think there's a dispute that the contract covers the subject matter of this [lawsuit]. We just vehemently disagree as to how it is interpreted." MidAmerican also argued that Emissions had not presented any evidence of unjust enrichment. Emissions' counsel agreed with MidAmerican's first argument, stating: "I concur that if, in fact, there is an enforceable contract which it sounds like everyone's in agreement with, then we're only dealing with a breach of contract case." However, Emissions argued that a determination of that issue should wait until the end of trial, because MidAmerican might argue "that the contract was unenforceable for whatever reason." The court granted the motion for judgment on the unjust enrichment claim, stating: "I would agree that [Emissions] has presented a case for breach of contract but has not presented an unjust enrichment case."

Emissions argues on appeal that the unjust enrichment claim was valid because it relates to "the commissions that MidAmerican did not pay[] after the ERA was terminated[,]" as opposed to commissions that Emissions alleges should have been paid during the term of the ERA. MidAmerican responds, first, that Emissions' evidence did not support an unjust enrichment claim, and second, that unjust enrichment claims are not available where there is an express contract between the parties.

"[A] claim for unjust enrichment is not available when 'the subject matter of the claim is covered by an express contract between the parties.'" *Adcor Indus., Inc. v. Beretta U.S.A. Corp.*, 250 Md. App. 135, 155 (2021) (quoting *Cnty. Comm'rs of Caroline Cnty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 96 (2000)). "Parties entering into a contract assume certain risks with the expectation of a beneficial return; however, when such expectations are not realized, they may not turn to a quasi-contract theory for recovery." *J. Roland Dashiell*, 358 Md. at 101 (quoting *Batler, Capitel & Schwartz v. Tapanes*, 517 N.E.2d 1216, 1219 (Ill. App. Ct. 1987)).

As noted, counsel for Emissions agreed that the existence of a valid contract precluded an unjust enrichment claim, stating: "I concur that if, in fact, there is an enforceable contract which it sounds like everyone's in agreement with, then we're only dealing with a breach of contract case." Consistent with that statement, Emissions argues on appeal that the contract's terms are unambiguous and enforceable. Emissions' only argument before the trial court against granting judgment on its unjust enrichment claim was that judgment was premature at that stage because MidAmerican might attempt to

argue that the contract was not enforceable. But MidAmerican never argued that the contract was unenforceable; it merely argued that Emissions failed to satisfy a condition precedent in the contract related to the payment of commissions. In short, Emissions' trial presentation was based on the interpretation of the relevant contracts. Where the "subject matter of the claim is covered by an express contract between the parties[,]" an unjust enrichment claim cannot succeed. *See Adcor Indus.*, 250 Md. App. at 155 (quoting *J. Roland Dashiell*, 358 Md. at 96). The court did not err in granting judgment in favor of MidAmerican on the unjust enrichment claim.

B. Statute of Limitations

Finally, MidAmerican argued that the statute of limitations had expired as to Emissions' claims regarding commissions on the first Schedule to expire after PNC instructed Emissions to not solicit further bids (referred to by the parties as the "ComEd Schedule"). Shortly after Dr. Wilberforce left his position at PNC in March 2018, PNC directed Emissions to cease any involvement in obtaining bids from energy suppliers. The ComEd Schedule was entered into on April 23, 2018, with an effective start date in May of 2018. Emissions informed MidAmerican on September 7, 2018, that it considered the failure to pay commissions on the new ComEd Schedule to be a breach of contract. MidAmerican therefore argued that Emissions had three years from that time (that is, until September 7, 2021) to file a complaint, but did not file its complaint until January 2022, four months after the statute of limitations expired. The court agreed with MidAmerican

and therefore granted judgment in favor of MidAmerican on the breach of contract claim as it related to the ComEd Schedule.

Emissions argues that the court erred in granting judgment on its breach of contract claim as it related to the ComEd Schedule because "Emissions was not put on notice of *any* claims within the applicable statute of limitations." Specifically, Emissions claims that it was "not placed on notice of any breach of the ERA or the RESA[] until the ERA was terminated[,]" two months *after* Emissions filed suit. In its brief, Emissions cites two cases relating to the statute of limitations for breach of contract,[11] but does not otherwise provide further explanation of its argument.

To the extent the court may have erred in granting judgment to MidAmerican relating to ComEd commission payments, any error was harmless.[12] As discussed above, Emissions was not entitled to these commission payments, including any ComEd commissions, under the terms of the ERA because MidAmerican's RESA with PNC was not "directly attributable" to Emissions' efforts.

[11] *Singer Co., Link Simulation Sys. Div. v. Balt. Gas & Elec. Co.*, 79 Md. App. 461, 475 (1989) (holding that, "where a contract provides for continuing performance over a period of time, each successive breach of that obligation begins the running of the statute of limitations anew"); *Lane v. Nationwide Mut. Ins. Co.*, 321 Md. 165 (1990) (holding that statute of limitations does not begin to run before the alleged breach occurs).

[12] We are not suggesting that the circuit court erred in its statute of limitations analysis; we need not decide the issue in light of our principal holding that Emissions is not contractually entitled to these commission payments.

In conclusion, we hold that the court did not err in finding that MidAmerican did not breach the terms of the ERA, nor did it err in granting MidAmerican's motion for judgment. We therefore affirm.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLEE.