Circuit Court for Baltimore City
Case No. 24-C-11-007101

CORRECTED

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1075

September Term, 2016

LVNV FUNDING, LLC

v.

LARRY FINCH, et al.

Berger,
Kehoe,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: December 14, 2017

This appeal is the second time the parties have reached this Court. Our previous ruling reversed the circuit court's decision dismissing this class action against appellant LVNV Funding, LLC ("LVNV"), which was brought by consumers whom LVNV sued as an assignee for debts that it purchased in the course of its business. Our emphasis there was on the licensing requirements of the Maryland Collection Agency Licensing Act ("MCALA"). In this case, the named appellees are Ronald Jackson ("Jackson") and Larry Finch ("Finch").[1] After a jury trial on the merits, the jury returned a verdict finding LVNV liable for (1) violating a provision of the Maryland Consumer Debt Collection Act ("MCDCA"), a protective statute designed to protect Maryland consumers; and (2) unjust enrichment as a result of its violation of the MCDCA. As restitution for LVNV's unjust enrichment, the jury returned a verdict of $38,630,344 for the members of the subclass ("the Subclass"),[2] which the circuit court carved out of the class of consumers whom LVNV sued in the district court without complying with Maryland's licensing requirements ("the Class").

On appeal, LVNV raises numerous questions and challenges to the proceedings below. We have summarized those issues in the following way:

1. Whether the circuit court erred in granting partial summary judgment in favor of the appellees in which the

[1] Kurt A. Dorsey ("Dorsey"), a class representative in *Finch I*, was also a plaintiff in the case *sub judice*.

[2] We refer collectively to the "named plaintiffs" and the members of the Subclass as "the appellees." Finch and Jackson are named plaintiffs and representatives of the Subclass.

court determined that LVNV is a "collection agency" subject to the requirements of the MCALA.

2. Whether the circuit court erred in declaring that all judgments obtained by LVNV in the district court during the period in which it was not licensed under the MCALA are void and unenforceable.

3. Whether there was insufficient evidence to support the jury's verdict of liability, such that the trial court erred in denying LVNV's motion for judgment and motion for judgment notwithstanding the verdict.

4. Whether the trial court erred by excluding evidence proffered by LVNV on the issues of its liability for violating the MCDCA and for unjust enrichment.

5. Whether the trial court erred in omitting any instruction to the jury on the proper method of determining a monetary award for unjust enrichment.

6. Whether the circuit court erred in certifying the Class and Subclass pursuant to Maryland Rule 2-231.

7. Whether the circuit court relied on the appropriate limitations period in defining the Class and the Subclass.

8. Whether the circuit court erred in granting a remittitur and reducing the jury's monetary award to $25,000,000.[3]

For the reasons discussed below, we affirm the trial court's entry of judgment against LVNV for violating the MCDCA and for unjust enrichment, but we vacate the jury's monetary award for the appellees. We further remand the case to the circuit court for a new trial on damages.

[3] Both parties appealed the circuit court's grant of remittitur, which reduced the jury's monetary award to $25,000,000. Because we vacate the jury's monetary award, we need not address whether the circuit court erred by reducing the jury's award of damages to $25,000,000.

FACTS AND PROCEEDINGS

In recent years, the debt collection industry has experienced a rise in debt buyers who purchase debt, rather than merely providing debt collection services. Typically, the debts are purchased for a small fraction of the amount owed on the original debt. LVNV is a debt buyer that purchases and holds title to debts as the assignee. After purchasing a debt, an affiliate of LVNV, Resurgent Capital Services, L.P. ("Resurgent"), typically files an action in court to recover the debts from the debtors. Both Resurgent and LVNV were named complainants on the relevant complaints filed to recover debts in the district court. These complaints were an effort to enforce LVNV's right to payment on the debts.

In order to protect Maryland consumers against abusive debt buyers, the Maryland General Assembly has enacted legislation requiring "collection agencies" to follow particular procedures for collecting debts within Maryland. Md. Code (1992, 2015 Repl. Vol.), Bus. Reg. Art. ("B.R."), § 7-301(a). In 2007, the General Assembly amended the definition of "collection agency" under the MCALA to extend state regulations to debt buyers. Fiscal and Policy Note, H.B. 1324, 2007 Sess. (Md. 2007). Although debt buyers like LVNV were already subject to federal regulations, the General Assembly sought "to include a person who collects a consumer claim that was in default when it was acquired, thereby subjecting approximately 40 known debt purchasers to State regulation." 90 Day Report, H.B. 1324, 2007 Sess. (Md. 2007).

Procedural History

In 2008, LVNV filed collection actions in the District Court of Baltimore City against Finch and Dorsey, whose credit card debts LVNV had purchased. The district court

entered a default judgment against Finch on July 31, 2009 in the amount of $3,621.67 and against Dorsey on April 8, 2009 in the amount of $5,838.95. On November 9, 2011, plaintiffs Finch and Dorsey filed a "Class Action Complaint and Request for Jury Trial" in the circuit court. *See Finch v. LVNV Funding, LLC*, 212 Md. App. 748 (2013) [hereinafter "*Finch I*"]. In *Finch I*, the plaintiffs alleged, first, that LVNV violated the MCALA by engaging in debt collection activities without the license required for collection agencies. Second, the plaintiffs claimed that LVNV violated the MCDCA, which provides that "in collecting or attempting to collect an alleged debt a collector may not . . ." claim, attempt, or threaten to enforce a right with knowledge that the right does not exist." Md. Code (1975, 2013 Repl. Vol.), Comm. Law Art. ("C.L."), §14-202(8). Further, the plaintiffs sought declaratory and injunctive relief "based on LVNV's unlawful activities as an unlicensed collection agency." *Finch I*, *supra*, 212 Md. App. at 753. Additionally, the plaintiffs alleged unjust enrichment and asserted damages under the MCDCA.

On January 12, 2012, LVNV filed a motion to dismiss in the circuit court arguing that the plaintiffs' action was an "impermissible collateral attack on the district court judgments." *See id.* at 752. The circuit court agreed and dismissed the complaint, explaining that if the plaintiffs wanted to reopen their cases, the proper venue would be the district court. The plaintiffs moved to alter, amend, or revise the order of dismissal, which the circuit court denied. The plaintiffs timely appealed to this Court.

We issued our decision in *Finch I* on June 28, 2013, holding that "judgments entered in favor of an unlicensed collection agency are void." *Id.* at 754. We reversed the circuit court's decision granting the motion to dismiss and remanded the case to the circuit court.

Id. at 769. LVNV filed a petition for a writ of *certiorari*, which the Court of Appeals denied on October 11, 2013.

On October 30, 2014, the appellees in the case *sub judice* filed an amended complaint in the circuit court, the operative complaint, adding Jackson as a named plaintiff and putative class representative. The appellees requested a declaration that the judgments obtained by LVNV against the appellees were "void and unenforceable" and that LVNV was liable for pre-judgment and post-judgment interest and costs. Further, the appellees included an unjust enrichment claim, a claim for "money had and received," and a claim under the MCDCA. The appellees and LVNV each filed motions for summary judgment. On September 30, 2014, the circuit court granted in part and denied in part LVNV's second motion to dismiss, which was treated as a motion for summary judgment. On May 5, 2015, the circuit court, in a memorandum opinion, determined that LVNV was a "collection agency."

On September 8, 2015, the circuit court denied LVNV's motion to dismiss the appellees' unjust enrichment claim as to "Finch and Jackson and as to any [S]ubclass member who made payments on the debts reduced to judgment by LVNV." The court granted partial summary judgment in favor of LVNV on the same counts for "the members of the [C]lass who did not pay any sums to LVNV but denied [summary judgment] in part as to members of the Subclass who paid sums to [LVNV]." The same day, the circuit court issued a ruling declaring the following:

> The Judgments obtained by LVNV Funding LLC against the Named Plaintiffs Larry Finch, Kurt Dorsey, and Ronald Jackson and the Class, defined to include those persons sued

> by LVNV in Maryland state courts from October 30, 2007 through February 17, 2010 for whom LVNV obtained a judgment for an alleged debt in its favor in an attempt to collect a consumer debt, are void and unenforceable.

The circuit court certified the Class as "[t]hose persons sued by LVNV in Maryland state courts from October 30, 2007 through February 17, 2010 for whom LVNV obtained a judgment for an alleged debt in its favor in an attempt to collect a consumer debt." The court defined the Subclass as "[a]ll members of the plaintiffs' class who paid any amounts to LVNV."

On November 12, 2015, the circuit court issued the following administrative order:[4]

> The claims of the Subclass Representatives shall be tried before a jury. In the event that an award of damages is entered in favor of any named Plaintiff, the trial court can then determine the method for the award of damages, if any, to the class.

The trial began on May 17, 2016. On May 19, 2016, during a motions hearing, the circuit court issued several decisions regarding the admission of evidence proffered by LVNV. One item of evidence concerned a consent judgment associated with the district court judgment against Jackson. In response to LVNV's attempt to admit the consent judgment into evidence, the following exchange occurred:

> [APPELLEES' COUNSEL]: Your Honor, what's the relevance[?] The Court has ruled that the judgments are void. It would only confuse the jury to have a document talking about a judgment after they've been told that there's -- that the judgment is --

[4] The purpose of the circuit court's administrative order was to "determin[e] [the] form, manner, and time of notice of the rights of the Subclass members."

> THE COURT: Well, did he not testify that—that there was a judgment?
>
> [APPELLEES' COUNSEL]: Yes.
>
> THE COURT: Did he not say that he began to pay? Didn't he say that?
>
> [APPELLEES' COUNSEL]: He said --
>
> THE COURT: Am I mixing it up?
>
> [APPELLEES' COUNSEL]: -- he was garnished. Yeah.
>
> THE COURT: He said he was garnished?
>
> [APPELLEES' COUNSEL]: I -- I -- yeah. I think he said he made some payments.
>
> THE COURT: I'm going to admit 11. And for whatever argument, argument is. ([LVNV's] Exhibit 11 was received into evidence).

Thereafter, the circuit court admitted LVNV's complaint in the district court proceeding against Jackson, as well as a "communication from Mr. Jackson to the law firm requesting information about his account balance."

On May 20, 2016, prior to closing arguments, the circuit court instructed the jury as follows: "The matters before you, ladies and gentlemen of the jury, will be submitted to you as questions on a verdict sheet: your verdict in this case will be your response to the questions submitted to you." The court then explained the verdict sheet, starting with the questions pertaining to Jackson.

The verdict sheet was divided into three sections. The first section contained four questions pertaining to Jackson; the second section contained the same

questions for Finch; and the third section included one question pertaining to the Class. Regarding the jury's monetary award, the court explained:

> What amount of damages, if any, do you award to plaintiff, Ronald Jackson; [a]nd you're to enter an amount. You see a line next to that as a question with a dollar sign; you're to indicate the amount, if any, that you award; whether it's $1 or up to the amount that you deem appropriate. Guide yourselves accordingly.

The court informed the jury that the attorneys for both LVNV and the appellees would go into more detail on the "pre-judgment interest" questions on the verdict sheet. Thereafter, the court explained that the jury would answer the same questions for Finch as they did for Jackson. Further, the court explained the questions on the verdict sheet pertaining to the Subclass,[5] and provided the following instruction:

> You are to indicate what sum of restitution, if any, do you find the Class, that is, of the 1,589, should recover from defendant LVNV Funding, LLC, for monies obtained or received by LVNV, from the Class; You'll find next to that after the question mark is a line and that line has the word in front of it, an amount, and it has a line with a dollar sign; You are to indicate what amount you award to the Class -- that is, of the 1,589 individuals -- total, that you award, and you're to indicate that amount. Whether that's $1, up to the amount that you deem to be appropriate. Guide yourselves accordingly.

Concluding its only explanation to the jury regarding the jury's determination of damages, the circuit court proceeded to instruct the jury on the elements of each of the appellees' claims. The court explained that the appellees alleged that LVNV violated the

[5] The circuit court referred to the group defined as the "Subclass" as the "Class" during trial.

MCDCA, which, the court noted, "prohibits a debt collector from making any 'claim, attempt, or threaten to enforce a right with knowledge that the right does not exist.'" The court further instructed the jury that for LVNV to be found liable under the MCDCA, "[the jury] must find that LVNV possessed actual knowledge that the right did not exist or acted in reckless disregard as to whether the right existed." The court provided the following instruction regarding the appellees' claims for unjust enrichment and money had and received:

> You're instructed that the plaintiff asserts a claim for unjust enrichment against [LVNV]. In order to prevail on a claim for unjust enrichment, the plaintiff must prove that he conferred a benefit upon . . . LVNV, and (2) that [LVNV] appreciated the benefit received, and (3) that under the circumstances, . . . LVNV[] is unjust to retain the benefit from that which he has received from the plaintiff.
>
> Again, you may hear argument for, by the plaintiffs that [LVNV] is liable for money had and received mirrors the claim for unjust enrichment as just given to you. The plaintiffs seek damages for their claims for unjust enrichment and under the Maryland Consumer Debt Collection Act.

After instructing the jury, the court requested to see counsel at the bench and asked if LVNV had any exceptions. Counsel for LVNV responded "I'm sorry. Yes. Your Honor, we would ask that the -- I don't have any exceptions. I have some requests that I would like to make." Counsel for LVNV requested an instruction "that any award of damages to the Plaintiff or the Class cannot exceed the amounts collected on the debts and cannot

exceed amounts paid prior to the judgment."[6] The court ruled that "[u]nder the circumstances, the Court notes your exception to the requested instruction not being given." Further, the court clarified,

> [T]he Court understands the request and understands the interpretation that may be given to the request. The Court believes that further discussion in doing so will confuse the jury as to the responsibility of [LVNV] as a debt collector seeking monies on a void debt.

The court continued, "so on the damages not exceed that is a matter than can also be dealt with post trial, post verdict [by LVNV]." Counsel for LVNV then asked for an instruction to the jury "that if they find that the judgments were entered against Mr. Jackson on either or both of the collection lawsuits prior to October 30, 2011, that they must enter judgment for [LVNV] because the claims are time-barred," which the court denied.

In response to the court's request for any exceptions, counsel for the appellees asked for a change to the instruction on the MCDCA claim, arguing that the court's instruction required incorrectly that the appellees to show "actual knowledge," although the statute "simply says knowledge," excepting "to the inclusion of the word 'actual.'" The court noted the exception. Counsel for the appellees then requested a spoliation instruction, which the court declined based on evidence received. Lastly, appellees' counsel asked the following:

> [T]hat the jury be told that the Court rulings as far as that the judgments are void, to avoid any confusion, and also that the

[6] Counsel for the appellees argued in response that "we have all along said that the damages include what they did, and what they benefitted from the money." The court sustained the appellees' objection.

> Court has ruled -- has directed a verdict in favor of the plaintiffs on the issue that they are -- the Class is entitled to a return of their money.

The court denied the request to instruct the jury that the court had directed a verdict in favor of the appellees and that the class was "entitled to the return of their money." Nevertheless, the trial court acknowledged that it was "a proper argument before them." The court did, however, agree to instruct the jury that the judgments were void.

After a break in the proceedings the jury returned and the court gave the following additional instructions:

> [Y]ou're instructed that there has been a finding by the Circuit Court for Baltimore City that the judgments executed upon by [LVNV] as to the individual and Class have been found void, and ruled upon as such. You're instructed ladies and gentlemen of the jury that you may not consider or even question the financial condition of . . . LVNV, in making your decision. You must be impartial in your determination and you must not consider such things in making your determination, pro or con. Guide yourselves accordingly.

In its written proposed jury instructions, LVNV requested, in various ways, that the jury be instructed not to award any amount over what the appellees actually paid to LVNV as a result of the district court judgments. Other instructions proposed instructing the jury not to award the return of any money paid if the named plaintiff or Subclass member in question owed the money to LVNV on a valid debt. The pertinent proposed instructions include the following:

> [LVNV]'s Specific Jury Instruction #5
>
> A debtor who pays money owed to a creditor may not seek a refund of the money paid if a judgment obtained by the creditor is void. Therefore, if you find that any Plaintiff owed the

underlying debt to the original creditor, then the Plaintiff is not entitled to a return of any monies for unjust enrichment or monies had and received from the Defendant.

* * *

[LVNV's] Specific Jury Instruction #7

A set-off, or offset, is a party's right to reduce the amount of a judgment or debt by the amount that is owed to that party. For example, if person A owes a debt of $100 to person B, and person B sues person A for $100, a set off would require a judgment of $0 to person B if person B wins on his or her claim.

Therefore, if you find that any Plaintiff is entitled to damages for any claim, you should offset that amount with any underlying debt that any Plaintiff owes to Defendant.

[LVNV]'s Specific Jury Instruction #8

The [appellees] seek damages for their claims for unjust enrichment and under the Maryland Consumer Debt Collection Act. If you find in favor of [LVNV] on both claims, you may not award any money to the plaintiff. If you find in favor of Plaintiff on one or both claims, your total award may not exceed the amount of money each Plaintiff paid to the Defendant.

[LVNV]'s Specific Jury Instruction #9

The 'voluntary payment doctrine' states that a person may not recover money voluntarily paid under a mistake of law. This doctrine bars any recovery by the [appellees] for monies they voluntarily paid to LVNV whether or not the [appellees] knew that the judgments obtained by LVNV was void. The payments were voluntary if the payments were made by the [appellees] in belief that they owed the debt to LVNV."
[LVNV]'s Specific Jury Instruction #10 (AMENDED)

[LVNV] has alleged that the [appellees] claims under the Maryland Consumer Debt Collection Act are barred by the

> statute of limitations. The statute of limitations for the Maryland Consumer Debt Collection Act is three years.
>
> If you find that the judgment was entered against [appellee] Ronald Jackson as to either or both of the debt collection lawsuits prior to October 30, 2011, you must enter judgment in favor of . . . LVNV Funding, LLC as to his Maryland Consumer Debt Collection Act Claim.
>
> * * *
>
> [LVNV]'s Specific Jury Instruction #15
>
> In the event you make any award of damages, [your award] cannot exceed the amounts collected on the debts.

On May 20, 2016, the jury returned its verdict. The verdict sheet reflects the following verdict:

> 1. Do you find by the preponderance of the evidence that plaintiff[s], Ronald Jackson [and Larry Finch], proved that LVNV Funding, LLC was [u]njustly [e]nriched (Money Had and Received) by its collection of monies from him?
>
>   Yes…
>
>   *Proceed to Question 2*.
>
> 2. Do you find by the preponderance of the evidence that plaintiff[s], Ronald Jackson [and Larry Finch], proved that LVNV Funding, LLC violated the Maryland Consumer Debt Collection Act?
>
>   Yes…
>
>   If your answer is Yes to Question 1 or 2, proceed to Question 3 . . . .
>
> 3. What amount of damages, if any, do you award the plaintiff[s] , Ronald Jackson [and Larry Finch]?"
>
>   Amount? [Ronald Jackson] $74,420.74 . . . [Larry Finch $36,251.45].
>
>   *Proceed to Question 4*.

> 4. Do you find by the preponderance of the evidence that plaintiff[s], Ronald Jackson [and Larry Finch], [are] entitled to pre-judgment interest? . . .
>
> …No
>
> * * *
>
> III. What sum of restitution, if any, do you find the Class should recover from LVNV Funding, LLC for monies obtained or received from the Class?"
>
> Amount? $38,630,344.00

On July 15, 2016, the circuit court denied LVNV's motion for judgment notwithstanding the verdict, and for a new trial, but granted LVNV's motion for remittitur and reduced the jury award to $25,000,000. The court gave the following explanation regarding its decision to grant a remittur:

> The court, in terms of the review of the facts and circumstances, while under the circumstances this court, if it were the trier of fact, would not have reached the amount of $38 million. The court on the other hand, cannot say that the jury was wrong in its calculation. However, upon review of all the facts and evidence before the court, the court does grant Motion for Remittitur. The amount is reduced to $25 million. So ordered. Counsel, we thank you very much.

Both parties timely filed cross-appeals on the issue relating to the remittitur. We include additional facts within our analysis as they become relevant.

DISCUSSION

I. Standards of Review

LVNV's appeal to this Court involves multiple issues to which we apply varying standards of review of the circuit court's determinations, as well as the jury's verdicts on LVNV's liability and the monetary award. We incorporate our specific standards of review

within our analysis of each issue. More generally, we review the circuit court's decisions on matters of law *de novo*. *Khalifa v. Shannon*, 404 Md. 107, 115 (2008). A trial court's evidentiary rulings and its instructions to the jury involve both a legal and a discretionary determination, and in turn, two standards for our review. *See Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 619 (2011). If there is any error, we will determine whether the error is harmless. *Barksdale v. Wilkowsky*, 419 Md. 649, 660-61 (2011).

II. The "Law of the Case" Doctrine & the Correctness of the Circuit Court's Preliminary Rulings.

The MCDCA is a remedial statute, protecting Maryland consumers from "coercive or abusive methods of enforcing a debt." C.L. §14-202(8); *Fontell v. Hasset*, 870 F. Supp. 2d 395, 405 (D. Md. 2012); *see also Spencer v. Hendersen-Webb, Inc.*, 81 F. Supp. 2d 582, 594-95 (D. Md. 1999) (discussing the remedial aim of the MCDCA). The statute provides that "[i]n collecting or attempting to collect an alleged debt a collector may not: "[c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist." C.L. §14-202(8). A barrier to one's right to sue for collection on a debt in Maryland is the failure to comply with the licensing requirements of the MCALA. *See* B.R. § 7-301(a). Pursuant to the MCALA, "a person must have a license whenever the person does business as a collection agency in the State." B.R. § 7-301(a).

The MCALA defines a "collection agency" as follows:

> (d) 'Collection agency' means a person who engages directly or indirectly in the business of:
>
> (1)(i) collecting for, or soliciting from another, a consumer claim; or

> (ii) collecting a consumer claim the person owns, if the claim was in default when the person acquired it;
>
> (2) collecting a consumer claim the person owns, using a name or other artifice that indicates that another party is attempting to collect the consumer claim;
>
> (3) giving, selling, attempting to give or sell to another, or using, for collection of a consumer claim, a series or system of forms or letters that indicates directly or indirectly that a person other than the owner is asserting the consumer claim; or
>
> (4) employing the services of an individual or business to solicit or sell a collection system to be used for collection of a consumer claim.

B.R. § 7-101(d). Virtually every issue in this case and in *Finch I* is derived from LVNV's failure to become licensed pursuant to the MCALA prior to pursuing debt collection actions in the district court.

A. The Implications of *Finch I*

In *Finch I*, the appellees appealed the circuit court's grant of LVNV's motion to dismiss, which was based on the argument that the appellees' complaint "constituted an impermissible collateral attack on the existing district court judgments." *Finch I*, *supra*, 212 Md. App. at 753. The question we addressed in *Finch I* was an issue of first impression. *Id.* at 759. Our task was to decide whether a district court judgment in a debt collection action is subject to collateral attack when the party asserting the right to collect before the district court had not complied with the licensure requirements of the MCALA at the time the party pursued the action. Specifically, we held that, as a matter of law, "judgments entered in favor of an unlicensed collection agency are void" and "that the collateral attack doctrine does not apply to void judgments." *Id.* at 754. In reaching our

decision, we explained that the MCALA licensure requirement in B.R. § 7-301(a) is intended to "eliminate a perceived harm" and imposes penalties for unlicensed collection agencies. *Id.* at 762-3. We concluded, therefore, that the circuit court erred in dismissing the action and we remanded the case to the circuit court for further proceedings.

As this class action reemerges before this Court after a favorable jury verdict for the appellees, LVNV asks that we revisit our holding in *Finch I*, although recognizing that we are not bound to do so. LVNV's arguments regarding the circuit court's rulings during the proceedings below are based on its assessment that our holding in *Finch I* should not apply to LVNV in this case, because, as it argues, it is not a "collection agency."

"The doctrine of the law of the case is well settled in this State." *Turner v. Housing Auth. of Baltimore Cty.*, 364 Md. 24, 31 (2001). Under this doctrine, "once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." *Baltimore Cnty. v. Fraternal Order of Police, Baltimore Cnty. Lodge No. 4*, 449 Md. 713, 729 (2016) [hereinafter "*Fraternal Order of Police 2016*"] (quoting *Scott v. State*, 379 Md. 170, 183 (2004)); *see also Turner*, *supra*, 364 Md. at 31. Indeed, the necessary implication of our holding in *Finch I* is that, assuming LVNV is a "collection agency" subject to the licensure requirements of the MCALA, the judgments obtained by LVNV without a license are void.[7] *Finch I*, *supra*, 212 Md. at 754.

[7] We did not hold, however, that where a district court judgment is deemed void under these circumstances, the *debts* on which the district court judgments were based are also void.

LVNV argues that this Court should revisit our decision in *Finch I*, basing its assertion on our reliance, in part, on the rationale of an Illinois appellate court's opinion on a similar issue as persuasive authority -- a decision that was later overruled by the Illinois Supreme Court.[8] *See LVNV Funding, LLC v. Trice*, 952 N.E.2d. 1232 (Ill. App. Ct. 2011), *overruled by LVNV Funding, LLC v. Trice*, 32 N.E.2d. 245 (Ill. 2015); *see also Finch I*, *supra*, 212 Md. at 759-62. LVNV contends that, because "the law is identical in Maryland," "a judgment is void only where the court lacks 'general authority over the class of cases to which the case in question belongs,'" citing *Brethren Mut. Ins. v. Suchoza*, 212 Md. App. 43, 67 (2013). LVNV avers that this Court must "correct its misapplication of controlling precedent and failure to consider the broader implications of permitting its constitutional jurisdiction to be implicitly limited by state legislative enactment."

We decline to revisit our rationale in *Finch I* and note that our holding was based on the tenets of Maryland law. One of the few courts that had, at that time, faced a similar issue, provided a persuasive rationale, to the extent that Illinois law was consistent with Maryland law. *See Finch I*, *supra*, 212 Md. App. at 759-64. We emphasized, however, that "[t]he Maryland cases addressing an unlicensed party's 'status as a claimant' in Maryland courts also bolster our analysis," and that our holding was based on Maryland law, as well as a variety of other persuasive authorities. We provided the following in

[8] As a matter of first impression, we were persuaded by the rationale of an Illinois appellate decision analyzing the same issue. *Finch I*, *supra*, 212 Md. App. at 759-61. The Illinois Supreme Court subsequently reversed that decision, holding that "the judgments LVNV obtained were not void." *LVNV Funding, LLC v. Trice*, 32 N.E.3d 553, 563 (Ill. 2015).

Finch I, based on our application of Maryland precedent to the statutory law and facts at issue:

> Our holding in *Turkey Point* supports this rationale. *See* [*Turkey Point Prop. Owners' Ass'n, Inc.*, 106 Md. App. 748, 719 (2013)] (holding that the "drastic remedy" of deeming a judgment void because it was obtained by a nonlawyer was called for by "[t]he totality of the circumstances, including the long history of rules and legislation aimed at preventing the practice of law by nonlawyers [.]"). Likewise, here, the "drastic remedy" of deeming a judgment void if it was obtained by an unlicensed collection agency is warranted in light of the legislation aimed at preventing such practices. *See*, *e.g.*, [*Bradshaw v. Hilco Receivables*, LLC 765 F. Supp. 2d 719, 728-32 (D. Md. 2011).] (discussing the long-standing consumer protection statutes in force in Maryland, including the MCDCA and MCPA, as well as the implication of the licensure requirements); MCALA § 7–205(c)(4) (amount of penalty imposed for unlicensed collection activities is determined based upon factors including "the deleterious effect of the violation on the public and the collection industry . . . ."); MCALA § 7-401(b) (imposing criminal penalties for parties that engage in unlicensed collection activities). Our conclusion is further supported by [*Bradshaw*], which held that filing a collection action without the requisite license under the MCALA constitutes an "action that cannot legally be taken." [*Bradshaw, supra*, 765 F. Supp.2d at 728.]

Id. at 761-62. On appeal, LVNV provides no response to the other sources of authority that guided our opinion in *Finch I*.

Additionally, we reject LVNV's suggestion that we "fail[ed] to consider the broader implications" of our holding. Our decision in *Finch I* was grounded in our understanding that the MCALA licensure requirement is designed to protect consumers from misconduct

on behalf of debt collection agencies and "is intended to eliminate a perceived harm."[9] *Finch I*, *supra*, 212 Md. App at 762. We explained that judgments "are void as a matter of law in various circumstances" and that "the 'drastic remedy' of deeming a judgment void if it was obtained by an unlicensed collection agency is warranted in light of the legislation aimed at preventing such practices." *Id.* (citing *Bradshaw*, *supra*, F. Supp. 2d at 728-32). Moreover, as LVNV acknowledges, the Illinois Supreme Court's decision places us under no obligation to reverse our prior decision. We, therefore, decline to do so.

B. The Circuit Court's Preliminary Decisions in the Case *Sub Judice*.

The "law of the case" doctrine has particular implications regarding the circuit court's various rulings in this case. *See Fraternal Order of Police 2016*, *supra*, 449 Md. at 729 ("[O]nce an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling . . . .") (citations omitted). LVNV challenges two preliminary decisions issued by the circuit court that our holding in *Finch I* required: (1) the circuit court's determination that LVNV was a "collection agency" under the MCALA, and therefore, subject to the licensing requirement; and (2) the circuit court's declaration that the judgments obtained by LVNV against the appellees in district court are "void and unenforceable." As we discuss below, we hold that the circuit court did not err in issuing either ruling.

[9] Notably, even after we issued our holding in *Finch I*, LVNV or its affiliates continued its collection activities related to the district court judgments until approximately one week before the start of the trial in this case.

On September 25, 2014 the circuit court granted in part, and denied in part, LVNV's second motion to dismiss, which was treated as a motion for summary judgment. On remand, the circuit court found that, as a matter of law, LVNV is, indeed, a "collection agency" under the MCALA. *See* B.R.. § 7-101(d). In its memorandum opinion, filed on September 30, 2014, the circuit court explained its reasoning for finding that LVNV was a "collection agency" under the amended definition of the MCALA. The circuit court explained that "[t]he MCALA was amended in 2007 to broaden the definition of entities covered by the Act as 'collection agencies.'" *See* B.R. 7-101(d) (defining "collection agency"). Further, the circuit court aptly explained,

> [A] person is a 'collection agency' whether it engages in this activity 'directly or indirectly.'. . . At most, the hiring of a licensed person to act for the debt buyer would make the business the indirect collection of a debt. That activity still leaves the debt buyer within the scope of the definition and therefore subject to licensing.

(Citations Omitted). The circuit court continued: "LVNV does not dispute [] that at least part of its business consists of buying claims against consumers that are in default from the creditors who originated the claims and then undertaking its own collection efforts, either directly or through others."

We review a circuit court's grant of summary judgment *de novo*. *Injured Workers' Ins. Fund v. Orient Exp. Delivery Serv., Inc.*, 190 Md. App. 438, 451 (2010). A circuit court may grant summary judgment when "there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." Md. Rule § 2-501(f); *Injured Workers' Ins. Fund, supra*, 190 Md. App. at 450. LVNV argues that the circuit

court erred in deeming LVNV a "collection agency" under the MCALA when there was a "genuine dispute" on the issue.

LVNV contends that it was not "operating 'business' and did not itself engage in any collection activities." As the circuit court explained, however, the definition of a "collection agency" was broadened to include debt buyers like LVNV that, at the very least, "indirectly" engage in debt collection activities. B.R. § 7-101(d). LVNV does not dispute that it was unlicensed at the time it obtained district court judgments against the appellees and subsequently began to collect on those judgments. Even though LVNV disagrees with the circuit court's ultimate conclusion, there was no dispute of material fact relevant to whether LVNV was a "collection agency" under the MCALA. The appellees were entitled to judgment as a matter of law on the issue of whether LVNV was a "collection agency," as the circuit court interpreted correctly the statute and applied those principles to the undisputed facts relevant to LVNV. Accordingly, the circuit did not err as a matter of law in finding that LVNV is a "collection agency" under B.R. § 7-101(d).

On August 31, 2015, the circuit court issued an order, which declared that:

> The judgments obtained by . . . LVNV Funding, LLC against the Named [Appellees] Larry Finch, Kurt Dorsey, and Ronald Jackson and the Class, defined to include those persons sued by LVNV in Maryland state courts from October 30, 2007 through February 17, 2010 for whom LVNV obtained a judgment for an alleged debt in its favor in an attempt to collect a consumer debt, are void and unenforceable.

The circuit court correctly interpreted our holding in *Finch I* and concluded that the district court judgments obtained by LVNV are void and unenforceable.[10] *Finch I, supra*, 212 Md. App. at 754. The court correctly found that, because LVNV was a "collection agency," and "there was no factual dispute that [LVNV] was unlicensed when it filed the actions or that it resulted in judgments in favor of [LVNV]," any judgment obtained by LVNV in the district court while unlicensed is void. The circuit court, therefore, did not err, either in granting summary judgment finding LVNV to be a "collection agency" required to be licensed under the MCALA or its subsequent order declaring that the district court judgments against the Subclass members were void.

III. Sufficient Evidence Existed to Support the Jury's Determination of LVNV's Liability Under the MCDCA and for Unjust Enrichment.

At the close of proceedings on May 19, 2016, LVNV renewed its motion for judgment, which the circuit court denied. On July 15, 2016, LVNV filed a motion for judgment notwithstanding the verdict or a new trial, which was subsequently denied. LVNV argues that there was insufficient evidence for the jury to find that LVNV violated the MCDCA or that it was unjustly enriched. "We review the trial court's grant or denial of a motion for judgment notwithstanding the verdict to determine whether it was legally correct." *Exxon Mobil Corp v. Albright*, 433 Md. 303 (2013) (citing *Scapa Dyer Fabrics, Inc. v. Saville*, 418 Md. 496, 503 (2011)). "If there is any competent evidence 'however slight, from which a rational mind could infer a fact in issue,' then denial of a motion for

[10] We review a circuit court's declaration of law *de novo*. *Catalyst Health Solutions, Inc. v. Magill*, 414 Md. 457, 471 (2011).

judgment notwithstanding the verdict is appropriate." *Albright*, *supra*, 433 Md. at 303 (citing *Impala Platinum v. Impala Sales*, 238 Md. 296, 328 (1978)). Further, we review all evidence in favor of the non-moving party -- here, the appellees. *Id.* at 333.

We hold that the circuit court did not err in allowing the jury to consider LVNV's liability under the MCDCA and the appellees' unjust enrichment claim. In this case, "a rational mind could infer" that LVNV violated the MCDCA and was unjustly enriched based on the quantum of evidence presented in this case. *Albright*, *supra*, 433 Md. at 303. As this Court has stated, "the quantum of legally sufficient evidence needed to create a jury question is slight." *Brooks v. Jenkins*, 220 Md. App. 444, 458 (2014) (citing *Univ. of Md. Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012).

A. The Circuit Court Did Not Err in Submitting to the Jury the Issue of Liability for Violating B.R. § 7-301(a) under the MCDCA.

To succeed on a claim that LVNV violated the MCDCA, under C.L. § 14-202(8), the appellees must demonstrate sufficient evidence that LVNV "claim[ed], attempt[ed], or threaten[ed] to enforce a right with knowledge that the right does not exist." C.L. § 14-202(8). LVNV argues that the right, however, did exist, and that LVNV lacked the requisite "knowledge" required under the MCDCA. *See* C.L. § 14-202(8).

Here, there was sufficient evidence for the jury to find that LVNV "attempted" or "claimed" to "enforce a right." C.L. § 14-202(8). LVNV filed judgments against the appellees in district court and collected on those judgments. The jury was presented with evidence by several witnesses that LVNV had enforced a right to file and collect on the district court judgments against the appellees. An LVNV representative testified that

LVNV was named as a plaintiff on the district court complaints. LVNV's representative admitted that LVNV had claimed that it had a right to file lawsuits against the appellees, and the right to collect on those judgments. Further, the jury heard testimony that LVNV garnished Jackson's and Finch's wages. Based on the quantum of evidence provided to the jury, a "rational mind could infer," *Albright*, *supra*, 433 Md. at 349, that LVNV "claim[ed], attempt[ed], or threaten[ed] to enforce a right" against the appellees. C.L. § 14-202(8).

Secondly, LVNV contends that it had the right to collect payment on the underlying debts. The jury heard evidence, however, that the judgments were void and unenforceable and that LVNV lacked a license required to sue the appellees in district court. LVNV's representative testified that LVNV sued more than 2,800 people during the period that LVNV was not licensed at the time, and that those judgments were declared void. This evidence, therefore, is sufficient for a reasonable juror to conclude that the right that LVNV claimed in suing the appellees did not exist.

Alternatively, LVNV argues that, even if it the right to sue the appellees in district court did not exist, LVNV did not have "knowledge" that the right did not exist. *See id.* The jury heard testimony from LVNV's representative, however, that LVNV knew it was not licensed when it sued the appellees in the district court. Indeed, LVNV did not dispute that it knew that it was unlicensed when it sued the appellees and obtained the void judgments. LVNV's argument on this point is centered, instead, on the circuit court's exclusion of LVNV's evidence of its lack of knowledge, which we set forth in further detail below.

Viewing this evidence in the light most favorable to the non-moving party, the appellees, a reasonable juror could conclude that LVNV attempted to enforce a right that did not exist with knowledge that the right did not exist. *See Albright*, *supra*, 433 Md. at 349 ("If there is any competent evidence, 'however slight, from which a rational mind could infer a fact in issue,' then denial of a motion for judgment notwithstanding the verdict is appropriate") (quoting *Impala Platinum*, *supra*, 283 Md. at 328). The trial court, therefore, did not err in excluding evidence that LVNV held a mistaken belief that the law did not require it to be licensed prior to engaging in collections activity.

B. The Circuit Court Did Not Err in Submitting to the Jury the Appellees' Claim for Unjust Enrichment.

LVNV claims that the appellees did not present sufficient evidence to support a jury's finding of unjust enrichment and maintains that it was "not unjust to retain the [appellees'] payments." In order to support a claim of unjust enrichment, the Court of Appeals has explained that a plaintiff must prove three elements:

> (1) A benefit conferred upon the defendant by the plaintiff;
>
> (2) An appreciation or knowledge by the defendant of the benefit; and
>
> (3) The acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.

Hill v. Cross Country Settlements, LLC, 402 Md. 281, 295 (2007). "A person confers a benefit upon another if he gives to the other possession of or some other interest in money." *Jackson v. 2109 Brandywine, LLC*, 180 Md. App. 535, 327 (2008) (citing Restatement of Restitution § 1 cmt. a).

Here, the appellees established -- and LVNV does not dispute -- that the appellees paid money to LVNV based on the district court judgments in question. LVNV's representative testified that LVNV collected approximately 3.5 million dollars[11] from the appellees, including prejudgment interest. Further, the representative from LVNV, when asked about the amount collected from Finch, confirmed that LVNV "benefitted from that amount." This evidence is more than sufficient for a rational juror to find that the appellees conferred a benefit upon LVNV.

The second element of an unjust enrichment claim is whether LVNV appreciated the benefit. This element is particularly significant when "the recipient of the benefit in fact retains a choice of keeping or returning it . . . ." *Hill*, *supra*, 402 Md. at 300 (internal quotation marks omitted). The jury was presented with testimony that LVNV knew how much it retained from the appellees as a result of collecting on the district court judgments. Further, the jury heard testimony that LVNV did not return any of the funds it took from the appellees. The evidence, therefore, was more than sufficient for a juror to conclude that LVNV appreciated the benefit in this case.

The primary dispute is whether LVNV unjustly retained the funds it collected from the appellees, or "whether the enrichment is unjust." *Hill*, *supra*, 402 Md. at 301 (citing John W. Wade, *Restitution for Benefits Conferred Without Request*, 19 Vand. L. Rev. 1183, 1185 (1996)). As we provided in *First Nat. Bank of Md. v. Shpritz*:

[11] The total amount of funds taken from the named appellees and the entire subclass ultimately totaled approximately 3.7 million dollars.

> The mere fact that a person benefits another is not of itself sufficient to require the other to make restitution. Restatement, Restitution, § 1, comment c. (1937). For example, "[a] person who officiously confers a benefit upon another is not entitled to restitution therefor." Restatement, Restitution, § 2. Similarly, except under circumstances not here applicable, "[a] person who without mistake, coercion or request has unconditionally conferred a benefit upon another is not entitled to restitution...." Restatement, supra, § 112. It is therefore clear that, while "a person is enriched if he has received a benefit," the law does not consider him unjustly enriched unless "the circumstances of the receipt of the benefit are such as between the two that to retain it would be unjust." *Hamilton v. Board of Education*, 233 Md. 196, 201 . . . (1963).

63 Md. App. 623, 640-41 (1985).

The appellees introduced testimony that LVNV sued Jackson twice and garnished his wages. In addition, the appellees adduced testimony that LVNV garnished Finch's electronic banking account. The jury was also presented with testimony from several witnesses that LVNV did not have the required license to collect judgments from the appellees when it engaged in those actions, and that the judgments LVNV collected were declared void and unenforceable. Indeed, the jury heard testimony that an agent of LVNV continued to collect on the void judgments, or at least, that the agent had not been notified by LVNV to stop its collection activities until about a week before trial. Considering the evidence as a whole, a rational juror could conclude that LVNV's retention of funds that it obtained from the appellees while it was unlicensed as a result of void judgments was "unjust."

The evidence was more than legally sufficient on each element for a rational juror to conclude that LVNV violated the MCDCA, as well as to find that LVNV was unjustly

enriched as a result of collecting money from the appellees on the void judgments. We, therefore, affirm the circuit court's decision to allow those factual issues to be decided by the jury as well as to deny LVNV's motion for judgment notwithstanding the verdict.

C. LVNV's Evidentiary Challenges Pertaining to the Jury's Determination of Liability on Both Counts.

Most of LVNV's evidentiary challenges emanate from the trial court's decisions to preclude LVNV from introducing certain evidence. Regarding LVNV's liability under the MCDCA, LVNV contends that the circuit court's evidentiary rulings resulted in prejudicial error because the court prevented LVNV from presenting evidence of LVNV's *lack* of "knowledge." LVNV further asserts that the circuit court erred in granting appellees' motion *in limine*, which precluded LVNV from "argu[ing] to the jury that it was not unjust to retain the payments made by [appellees] because those payments satisfied legally valid debts."

The Court of Appeals has explained that "[i]t is frequently stated that the issue of whether a particular item of evidence should be admitted or excluded 'is committed to the considerable and sound discretion of the trial court.'" *Ruffin Hotel Corp. of Md.*, *supra*, 418 Md. at 619 (2011) (citations omitted). Pursuant to Maryland Rule 5-402, however, "the trial court does not have discretion to admit irrelevant evidence." *Id.* at 620. Further, we will not reverse a trial court based on an erroneous admission or exclusion of evidence, unless the error prejudiced the complaining party. *See* Md. Rule 5–103(a). A trial court's evidentiary rulings, therefore, involve both a legal and a discretionary determination, and in turn, two standards for our review. First, we apply a *de novo* standard to the court's

legal conclusions as to whether the evidence is relevant; second, we apply an abuse of discretion standard to whether the probative value of evidence is outweighed by substantial prejudice. *See State v. Simms*, 420 Md. 705, 725 (2011).

"To be admissible, [evidence] must be both relevant and material." *Anderson v. Litzenberg*, 115 Md. App. 549, 571 (1997) (quoting *Kelly Catering v. Holman*, 96 Md. App. 256, 271, *aff'd*, 334 Md. 480 (1994)). Relevant evidence is evidence that makes "the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. In other words, "relevant evidence is evidence that tends to prove a proposition that is properly provable." *Anderson*, *supra*, 115 Md. App. at 571.

The materiality of evidence, on the other hand, is determined by the applicable substantive law. We explained the following in *Anderson*:

> Evidence is material if it establishes facts to which the applicable substantive law assigns legal consequences in the case. Stated differently, evidence is material when a link exists between the factual proposition that the evidence tends to prove and the substantive law. The substantive law sets the periphery of those facts that have legal consequences and are, therefore, material. This restriction fosters rational fact-finding, i.e., it prevents evidence that is not pertinent from being misused by the factfinder. G. Lilley, *An Introduction to the Law of Evidence* 23-24 (2d ed. 1987). Evidence is, therefore, material "whenever it tends to establish the existence or nonexistence of an element (of a charge, claim, or defense) that is derived from the controlling substantive law." *Id.* at 25.

Id. at 571–72.

Nevertheless, even when evidence is material and legally relevant,

> evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Md. Rule 5-403. Unlike our review of the relevance of evidence, if the trial court excludes evidence for any of these other reasons, we will not reverse the court's decision without a "clear showing of abuse of discretion." *Malik v. State*, 152 Md. App. 305, 324 (2003).

We have previously held that a trial court abused its discretion "when no reasonable person would share the view taken by the trial judge." *Consol. Waste Indus. v. Std. Equip. Co.*, 421 Md. 210, 219 (2011) (quoting *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009)); *see also Pantazes v. State*, 376 Md. 661, 681 (2003) (quoting *King v. State*, 407 Md. 682, 711 (2009)) ("[A]n abuse of discretion occurs when a decision is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'"). Even when a trial court's decision to admit or exclude evidence is erroneous, "it has long been the settled policy of this [C]ourt not to reverse for harmless error." *Consol. Waste Indus.*, *supra*, 421 Md. at 219 (quoting *Brown*, *supra*, 409 Md. at 613)); *Barksdale*, *supra*, 419 Md. at 657 (citing *Flores v. Bell*, 398 Md. 27, 33 (2007)). An error is not harmless, and thus prejudicial, if it is "likely to have affected the verdict." *See Consol. Waste Indus.*, *supra*, 421 Md. at 220 (citing *Crane v. Dunn*, *supra*, 382 Md. 83, 91 (2004)).

1. The Circuit Court Did Not Err in Excluding Evidence of LVNV's Subjective Belief that it was Not Required to be Licensed Under the MCALA.

LVNV argues that the circuit court erred by excluding evidence that would have tended to show that LVNV did not know that the law required it to be licensed. The first item of excluded evidence that LVNV raises on appeal is a letter authored in 2007 by a representative of the Commissioner of Financial Regulation's office addressed to a trade association for debt buyers. LVNV argued before the circuit court that it had relied on the letter in concluding that LVNV was not required to be licensed under the MCALA, because the letter indicated "a debt buyer . . . not directly engaged in the collection of . . . purchased debts, is not required to obtain a collection agency license provided that all collection activity performed on behalf of such debt buyer is done by a properly licensed collection agency." Further, LVNV sought to introduce evidence that LVNV had contracted with Resurgent, a licensed collection agency, to collect the debts that LVNV had purchased.

"[T]he 'knowledge' requirement of the MCDCA "has been held to mean that a party may not attempt to enforce a right with actual knowledge or with reckless disregard as to the falsity of the existence of the right." *Bradshaw*, *supra*, 765 F. Supp. 2d at 732 (citing *Kouabo v. Chevy Chase Bank, F.S.B.*, 336 F. Supp. 2d 471, 475 (D. Md. 2004)). We agree with the well-reasoned analysis by the District Court in *Spencer v. Henderson-Webb, Inc.*, which held that "[p]rofessional debt collectors and their attorneys . . . must be held to be aware of laws affecting the validity of their collection efforts." 81 F. Supp. 2d 582, 594-95 (D. Md. 1999); *see also Bradshaw*, *supra*, 765 F. Supp. 2d at 732 (quoting *Spencer*, *supra*, 81 F. Supp. 2d at 594) ("[I]t does not seem unfair to require that one who deliberately

goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line."). The *Spencer* Court provided the rationale:

> [c]onsidering the remedial aim of the MCDCA and the dilution of the statute that would result from a contrary interpretation, the Court holds that the term "knowledge" in the Act does not immunize debt collectors from liability for mistakes of law. This interpretation bears in mind the age-old maxim that ignorance of the law will not excuse its violation. *See Hopkins v. State*, 193 Md. 489, 498 (1949).

81 F. Supp. 2d at 594.

In this case, the MCDCA required the appellees to prove that LVNV acted with either "actual knowledge" or "reckless disregard" as to the falsity of the existence of the right. *Bradshaw*, *supra*, 765 F. Supp. 2d at 732 (citing *Kouabo*, *supra*, 336 F. Supp. 2d at 475); *see also* C.L. § 14-202(8). Notably, the letter proffered by LVNV did not address whether filing a collection action in the district court constituted a "collection activity," and other documents issued by the same office clarified the licensing requirements. More importantly, as the circuit court had previously determined that LVNV was a "collection agency" subject to the licensing requirements of the MCALA, the circuit court did not err in precluding LVNV from arguing that it was unaware that it was required to be licensed.

Indeed, evidence of LVNV's mistaken belief could have caused confusion of the issues the jury was tasked with deciding. *See* Md. Rule 5-403. We will not reverse a trial court's decision to exclude evidence on the basis that the evidence could be misleading for the jury without a "clear showing of abuse of discretion." *Malik*, *supra*, 152 Md. App. at 324. In short, the trial court did not abuse its discretion by excluding evidence that could have led the jury to believe that a mistake of law could account for LVNV's lack of

"knowledge" or "reckless disregard" that it was not entitled to sue the appellees or to enforce the judgments it obtained without a license.

2. Any Error in Excluding Evidence of the Underlying Debts was Harmless as to the Jury's Finding that LVNV was Unjustly Enriched.

In precluding LVNV from arguing that its retention of funds was justified because the underlying debts were valid, the circuit court provided the following reasons:

> It is this Court's finding that the underlying liability became void and nonexistent. Therefore, the debt itself became void. Therefore, the argument of legal possession as to the debt, which can be challenged if improper and void, can be in fact challenged at any point in time.
>
> The motion in limine is to bar the argument for justification based on [the debt] which existed . . . . the Court grants the motion in limine because the Court concludes, based on the totality of the facts and the rulings, . . . that the underlying liability became void.
>
> Therefore, it would mislead the jury to put before it justification of the collections being made on a debt that no longer exists based on it being voided.

LVNV asserts that the court erred in holding that the underlying debts were void, and such error "allow[ed] the [j]ury to assume that [appellees] did not legally owe the underlying debts." LVNV argues that the trial court's error directly relates to LVNV's liability for unjust enrichment. We agree with LVNV in one limited respect. Notably, our holding in *Finch I* did not render void the underlying liability for the debts; we held only that, to the extent that a collection agency is not properly licensed under the MCALA, any judgments entered in favor of the collection agency are void. *See Finch I*, *supra*, 212 Md. App. at 754.

Nevertheless, our determination on this limited issue does not require that we reverse the jury's determination that LVNV violated the MCDCA and was unjustly enriched. Even if the court's decision on this limited issue was erroneous, we will not reverse if the error was harmless. *See* Md. Rule 5–103(a). In our view, the trial court erred when it found that the underlying debts were void. The mere fact that the underlying debts may have been valid does not mean that LVNV was not unjustly enriched. Indeed, the record is sufficient to support the jury's determination that LVNV was unjustly enriched because, as the jury found, it knowingly engaged in unlawful activities to collect the debts.

Nonetheless, because the underlying debts may have been valid, the amount of the appellees' recovery may have been affected. Accordingly, we hold that LVNV should have been permitted to argue to the jury that any recovery should be reduced by the amount of the underlying debts. Because we are reversing the damages owed for other reasons, we need not consider whether the trial court's ruling unfairly prejudiced LVNV.

As we have already explained, LVNV had the burden of showing that the trial court's ruling was erroneous, and that the likelihood of prejudice as a result was "substantial" or "likely." *See Barksdale*, *supra*, 419 Md. at 662. We have previously held that an error was harmless where similar evidence of the same fact was admitted. *See id.* at 663 (citations omitted) ("In some cases, the harmlessness of the error is readily apparent. For example, an error in evidence is harmless if identical evidence is properly admitted."); *see, e.g.*, *Angelakis v. Teimourian*, 150 Md. App. 507, 526 (2003) (holding that any error by the trial court in excluding a letter explaining potential risks of a medical procedure was harmless, because the doctor who authored the letter testified as to the substance of the

statements in the letter); *Marlow v. Davis*, 227 Md. 204, 208 (1961) (holding that even if "it was improper to exclude [testimony of "the existence of a school zone sign in the vicinity of the accident"], the error was certainly not prejudicial inasmuch as evidence of the existence of the sign had already been offered and received").

Assuming *arguendo* that evidence of the validity of the debts was relevant to the jury's determination of liability for unjust enrichment, other evidence of the underlying debts was introduced at trial. The court admitted the district court complaint against Jackson, as well as a consent judgment between LVNV as an assignee of Sears, which was signed by Jackson. In the consent judgment, Jackson agreed to pay a monthly payment toward a debt of $3,397.41, plus interest of $533.34, and court costs. Further, LVNV introduced a letter from Jackson to the law firm handling the account requesting information about the balance of his account. Numerous other instances throughout the trial suggested that the appellees, themselves, understood the debts to be owed. Indeed, counsel for LVNV argued the following during closing argument:

> So what you've got here are these lawsuit papers, and they're going to be your exhibits . . . to show -- and by the way, all this reference to a class action, it's important to remember that these two gentlemen represent the whole class.
>
> Their situations are common and identical, so every single person in the class got a similar lawsuit that said they owed the money on an account. And every single person in the Class didn't show up, didn't challenge it, didn't dispute it. So what you have here is the [appellees] asking you to get their money back. [. . .]
>
> Remember, the judge talked about common sense, everyday experience? It's sort of like you have to pay for what you

> bought. I mean we learn that at some point in time. I think really early on.
>
> So under the circumstances, what the [appellees] are asking you, is to get the money back that they charged on their accounts and to keep the merchandise that they purchased.

In short, although we agree that the jury should have been permitted to consider the validity of the underlying debts, it is not clear what would have led the jury to believe that the debts were not validly owed. The jury was told that the underlying judgments were void, and that LVNV collected from the appellees based on those void judgments. Although the validity of the underlying debts was relevant, other evidence presented at trial indicated that the appellees did not dispute that they owed the value of the underlying debt. Therefore, the trial court's error in granting the motion *in limine* was not prejudicial to LVNV in connection with its liability for unjust enrichment.

IV. The Circuit Court Did Not Err in Allowing the Jury to Determine the Damages, But Did Err in Refusing to Instruct the Jury on the Method of Calculating the Monetary Award Under the Theory of Unjust Enrichment.

LVNV argues that the trial court erred by "enabl[ing] an uninformed jury to return a windfall verdict unsupported by law or fact." More specifically, LVNV avers, "the circuit court improperly allowed the question of class damages to go to the jury and then abrogated its obligation to instruct the jury on damages." Additionally, LVNV contends that the jury should not have been permitted to consider the disgorgement of profits nor the disgorgement of "profits on profits," because the law does not permit the disgorgement of profits under these circumstances and because the appellees did not plead disgorgement in the operative complaint. Had the appellees characterized their unjust enrichment claim as

including the disgorgement of profits, LVNV argues, the appellees could not have presented this claim to a jury because of its equitable nature. We hold that the circuit court did not err by allowing the jury to determine the amount of the monetary award under the theory of unjust enrichment. We agree with LVNV, however, that the circuit court erred in its decision not to instruct the jury on the appropriate method of calculating a monetary award under the theory of unjust enrichment. Accordingly, we reverse the circuit court's entry of money damages and restitution.

A. The Circuit Court Did Not Err in its Decision to Permit the Jury to Determine the Amount of the Monetary Award.

LVNV's contends that the circuit court erred by "improperly allow[ing] the question of class damages to go to the jury." LVNV bases its assertion on two separate contentions. LVNV's first argument pertains to a preliminary administrative order issued by the circuit court. The order, issued on November 10, 2015, provided the following:

> IT IS SO ORDERED that trial in this action shall proceed on a representative basis for the Subclass excluding any person who timely elected to opt out of the class. The claims to be tried are claims for violation of the Maryland Consumer Debt Collection Act, Money Had and Received and Unjust Enrichment. The claims of the Subclass Representatives shall be tried before a jury. *In the event that an award of damages is entered in favor of any named Plaintiff, the trial court can then determine the method for the award of damages, if any, to the class.*

LVNV argues that the statement "the trial court can then determine the method for the award of damages, if any, to the class" required the trial court to determine the amount of damages, and precluded the circuit court from allowing the jury to determine the amount of a monetary award. We disagree.

LVNV's contention is specious and we expressly reject it. Although the court's preliminary administrative order did not clearly assign the task of calculating a monetary award to the jury, the court's order provided that the circuit court would "determine the *method* for the award of damages," not the monetary award itself. Notwithstanding LVNV's continued assertion of the effect of the administrative order, LVNV fails to address the express language of the order. Indeed, the circuit court ultimately has the responsibility post-trial to determine how the monetary award would be allocated. The administrative order, however, did not restrict the court from permitting the jury to determine the amount of the monetary award. We hold, therefore, that the circuit court did not err in permitting the jury to determine the amount of the monetary award.

B. The Jury was Permitted to Consider Disgorgement of Funds Collected and Profits Earned Directly on Those Funds, But "Profits on Profits" are Too Remote.

LVNV argues that the appellees were not entitled to, and the jury should not have been permitted to award, the disgorgement of LVNV's profits. First, LVNV argues the appellees were not entitled to the return of their funds under the theory of unjust enrichment, even if LVNV was unjustly enriched, because the debts were valid. Second, LVNV contends that the appellees were not entitled to have a jury consider the disgorgement of profits, because the appellees did not "characterize[] their unjust enrichment claim as seeking disgorgement of profits," and had they done so, their claims would sound in equity, and therefore, inappropriate for determination by a jury. Even so, LVNV asserts that "there is no law that would permit a disgorgement of profits remedy," where unjust enrichment results from payment on a void judgment." Third, LVNV

contends that the appellees failed to present sufficient evidence that LVNV earned any profits from the funds collected from the Subclass, nor did the appellees prove the precise amount of profits that LVNV likely earned. Finally, LVNV argues that the jury must have considered in its calculation of the monetary award LVNV's potential profits from the profits it made from the receipt of funds from the Subclass, and such an award is not supported by law and is "impermissibly punitive."

We hold that, with the proper instructions under these circumstances, the jury may be permitted to consider the return of funds collected on the void judgments, as well as the immediate profits generated from the funds it improperly collected. The jury, however, should not have been permitted to consider any proceeds beyond those earned as a direct result of LVNV's collection of money from the Subclass.

1. The Jury was Permitted to Determine Whether the Appellees were Entitled to the Repayment of Funds Collected.

The purpose of restitutionary relief is "the avoidance of unjust enrichment on the part of the defendant.'" *Consumer Prot. Div. v. Morgan*, 387 Md. 125, 169 (2005) (quoting *Consumer Prot. Div. v. Consumer Pub.* Co., 304 Md. 731, 776 (1985)). Further, "[t]he restitutionary remedies and unjust enrichment are simply flip sides of the same coin." *Jackson*, *supra*, 180 Md. App. at 575 (citing *Alternatives Unlimited, Inc. v. New Baltimore Cty. Bd. of School Comm'rs*, 155 Md. App. 415, 454 (2004)). Indeed, the jury was instructed generally on the elements of an unjust enrichment claim in a way that was consistent with the underlying purpose of restitution. The trial court provided that, to find unjust enrichment, the jury must find "that under the circumstances, the [appellant],

LVNV, is unjust to retain the benefit from that which he has received from the [appellees]." Under these circumstances, the appropriate remedy for LVNV's unjust enrichment was restitution. The jury was permitted to determine whether it would be unjust for LVNV to retain the money it collected from the appellees as a result of suing the appellees in the district court without a license.

2. The Jury was Permitted to Consider the Disgorgement of Profits Earned Directly From Funds Collected From the Appellees' in the Jury's Determination of Restitution.

Preliminarily, we address LVNV's contention that because "disgorgement of profits [is a] relief in equity, [the appellees] could not have presented this claim to a jury." As support, LVNV refers us to a sentence from our holding in *Meritt v. Craig*, where we noted that "where any prayer for a legal remedy is inexorably intertwined with the equitable nature of the claim made and the relief sought, the litigants are not entitled to a jury trial." 130 Md. App. 350, 363 (2000). Similarly, LVNV argues that the appellees "should not be permitted *post hoc* to justify the Jury's verdict on the constructive trust basis because such a claim would not have been triable by a jury." In that context, LVNV cites an excerpt from our holding in *Benjamin v. Erk* [12] that "[a] jury has no authority to . . . award restitutionary damages." 138 Md. App. 459, 471 (2001).

[12] LVNV ignores that in *Benjamin*, by the time the claims reached the jury, the appellees had elected "equitable relief in the form of rescission," which we determined to "mean[] that [the appellees] were constrained to try their fraud claims against appellants to the trial judge sitting as a court of equity." *Benjamin, supra*, 138 Md. App. at 476–77.

LVNV misconstrues our holding in *Meritt* and *Benjamin* and fails to recognize Maryland's well-established policy of examining the form of relief sought to determine whether a plaintiff's "traditionally equitable" claim sounds in law. *See Ver Brycke v. Ver Brycke*, 379 Md. 669, 694 (2004) (citation omitted) ("Maryland, like the majority of courts, characterizes most of its equitable claims according to the remedies sought by the parties."). In *Ver Brycke*, which involved the issue of a "conditional gift," the Court of Appeals explained that, "[a]lthough the [plaintiffs] relied on unjust enrichment and promissory estoppel, two 'traditionally equitable' doctrines, and requested the remedy of restitution, an equitable remedy, their claims sound in law because they seek the repayment of money." 379 Md. at 696. Indeed, we provided the following guidance in *Meritt*:

> It is only where the ultimate relief sought is equitable and there are collateral legal issues or a plaintiff is entitled to equitable relief which is compatible with and recoverable in addition to legal relief that the trial court must narrowly exercise its discretion, preserving the right to jury trial wherever possible "unless the jury trial will in some way obstruct a satisfactory disposition of the equitable claim."

379 Md. at 365 (quoting *Mattingly v. Mattingly*, 92 Md. App. 248, 256 (1992).

The appellees' request for the disgorgement of LVNV's profits from its unjust enrichment was not a separate claim, but a mechanism of restitution. Further, the request for relief in the form of restitution typically sounds in law. *See Bennett Heating & Air Cond., Inc. v. NationsBank of Md.*, 342 Md. 169, 180 (1996) (citation omitted) (recognizing that "[r]estitution claims for money are usually claims 'at law.'"). Here, the appellees sought damages and restitution for their claim that LVNV violated the MCDCA in its collection activities and under the theory of unjust enrichment in the form of a monetary

award. Specifically, the appellees sought the repayment of money they paid to LVNV, as well as the "growth" of those funds that LVNV unjustly retained. Accordingly, the jury was permitted to determine the amount of the monetary award, including the amount of restitution and the disgorgement of profits generated from the funds that LVNV collected from the Subclass.

LVNV's primary contention, however, is that the appellees were not entitled to the disgorgement of the profits made from LVNV's collection of funds from the Subclass members, because the appellees "did not introduce any evidence regarding the profits LVNV *actually made*," and the [appellees] failed to demonstrate that LVNV had money "that rightfully belong[ed] to [the appellees]." LVNV argues, therefore, that the jury based its damages verdict "merely on speculation that [LVNV] *might* have made a return by reinvesting those funds." According to LVNV, "the limited testimony [appellees] did obtain failed to support the conclusion that LVNV made *any* profit on money collected from [appellees]."

LVNV, however, overstates the threshold that must be reached to permit the jury's consideration of a particular issue. When a reasonable trier of fact could make an inference as to the material facts, as the reviewing court, we should "let them do so, as the question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence." *Clark v. State*, 188 Md. App. 110, 117 (2009) (citation omitted).

Without deciding whether the evidence in the trial below was sufficient to support the amount the jury awarded to the appellees, we note that the appellees did present

evidence to the jury of LVNV's typical cost of purchasing a debt relative to the debt's value, and the average proportion of the value of the debt purchased that LVNV typically recovered from debtors. Indeed, as LVNV concedes, in a footnote, the jury heard testimony from LVNV's representative that LVNV purchased the debts of the named appellees for between 4.25 and 11.88 cents on the dollar. The representative testified that, after purchasing Jackson's debt, LVNV sued Jackson for "[t]he full face value of the debt," which Jackson ultimately paid to LVNV in full. Finally, the representative confirmed that LVNV follows this practice in its ordinary business, and that he "[had] no reason to believe that it used [money collected from the appellees] any differently than it would generally in its business practices." Further, the jury was presented with testimony that, on average, LVNV recovers approximately 15 percent of the debt purchased.

Contrary to LVNV's assertions, the issue is not whether the jury was presented with documentary evidence of LVNV's precise profits from each collection. As the Court of Appeals explained in *Luskin's, Inc. v. Consumer Prot. Div.*, "mathematical precision is not required; reasonable approximations suffice." 353 Md. 335, 385–86 (1999) (citing *M & R Contractors & Builders, Inc. v. Michael*, 215 Md. 340, 349 (1958)). Indeed, the jury was permitted to infer that LVNV used the funds collected from the Appellees in its ordinary course of business, *see Clark*, *supra*, 188 Md. App. at 117 -- i.e. to purchase more debts for a similar fraction of the debts' total value and then recover proportions of the value of those debts.

To be sure, "[d]amages must be proven with reasonable certainty, or some degree of specificity, and may not be based on mere speculation or conjecture." *Zachair, Ltd. v.*

Driggs, 135 Md. App. 403, 427 (2000). The level of certainty in this case, however, is tempered by LVNV's exclusive possession of the evidence that would provide more definitive proof regarding the amount of profits LVNV generated as a direct result of its recovery of monies from the Subclass.[13] Although we certainly do not imply that the evidence adduced at trial was sufficient to justify a monetary award encompassing profits on profits, the jury did hear testimony from which a reasonable juror could reach an estimation of LVNV's immediate profits earned on the funds it received from the appellees.

Notably, LVNV was free to rebut those estimates by introducing its own records to establish that LVNV earned no profits or fewer profits from the funds recovered from the appellees than the testimony of its representative indicated. On remand, we instruct that the appellees are entitled to LVNV's records pertaining to money collected directly from the appellees and other evidence of profits generated directly from those funds. Such evidence would provide the jury greater certainty should it decide to award the disgorgement of profits from any funds that were unjustly retained.

Lastly, LVNV argues that they jury should not have been permitted to award the disgorgement of profits because the law does not permit such a remedy under the doctrine of unjust enrichment. We disagree. Nevertheless, as we explain below, we agree that the

[13] Indeed, LVNV's representative was asked to be prepared to answer questions about the appellees' accounts, but at trial he could not answer several questions relating to LVNV's costs or what LVNV did with the money it had received from the named appellees.

trial court did not properly instruct the jury on the method or guidelines the jury should have relied on in determining an appropriate monetary award.

We reiterated in *Mogavero v. Silverstein* that "the classic measurement of unjust enrichment damages is the 'gain to the defendant, not the loss by the plaintiff.'" 142 Md. App. 259, 276 (2002) (citing *Cnty. Comm'rs of Caroline Cnty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 94-95 (2000)). Restitutionary relief is aimed "at forcing the defendant to disgorge benefits that it would be unjust for [the defendant] to keep." *Mass Transit Admin. v. Granite Const. Co.*, 57 Md. App. 766, 775 (1984) (citation omitted); We have explained that "[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." *Jackson*, *supra*, 180 Md. App. at 575 (citing *Berry & Gould v. Berry*, 360 Md. 142, 151 (2000)).

Moreover, the Court of Appeals has held that the disgorgement of profits was appropriate in numerous instances of unjust enrichment. *See e.g.*, *Morgan*, *supra*, 387 Md. at 169 ("In this case, the unjust enrichment is [the defendant's] additional profit from his deception. As [the defendant] flipped the properties, selling them very soon after he purchased them, his increased profit will mirror his actual profit from the sales."); *Luskin's, supra*, 353 Md. at 384-85 (holding that restitution for a company's deceptive free airline ticket promotion should be measured by the additional net profit from selling more of its inventory).

LVNV relies on Restatement (Third) of Restitution and Unjust Enrichment § 18 (2011), which provides: "A transfer or taking of property, in compliance with or otherwise

in consequence of a judgment that is subsequently reversed or avoided, gives the disadvantaged party a claim in restitution as necessary to avoid unjust enrichment." Specifically, LVNV cites illustration 6 under comment e:

> A sues B to enforce a $5000 debt, obtaining a judgment that B satisfies. The judgment is subsequently determined to be void for want of jurisdiction. Before another court having jurisdiction over the parties, B seeks restitution of $5000; A establishes that the underlying $5000 debt was and remains legal, valid, and enforceable. B is not entitled to restitution.

Restatement (Third) of Restitution and Unjust Enrichment § 18 cmt. e (2011).

The circumstances of the illustration, however, assume that a judgment becomes void and unenforceable as a result of the court's lack of subject matter jurisdiction, rather than as a result of the misconduct of the judgment creditor.[14] Where the filing of the collection action itself, without complying with licensing requirements that are designed to protect consumers from the misconduct of debt collectors -- is the source of the invalidity of the judgment, the level of injustice in the collection of money as a result of the void judgment is vastly different. Under the same comment, the Restatement provides the following: "The need to remedy this misapplication of legal process—so that the law not stultify itself by requiring what it has declared may not be required—constitutes an important reason for restitution that is independent of the individualized equities of the parties." Restatement (Third) of Restitution and Unjust Enrichment § 18 cmt e. (2011).

[14] LVNV cites to *Jason*, *supra*, 227 Md. App. at 525 n. 4, for the proposition that "there is no law that would permit a disgorgement of profits remedy in such cases . . . ." We merely noted, without ruling on the issue, the same illustration from the Restatement.

Additionally, we note that LVNV should not have been prevented from seeking to introduce evidence related to the specific costs it absorbed in collecting from the appellees and in generating subsequent profits from those funds, if LVNV's immediate profits from the appellees' funds are awarded. *See, e.g.*, *Morgan*, *supra*, 387 Md. at 169 (holding that the defendant's costs should be deducted from the disgorgement of his profits as a result of the unjust enrichment). **"**In so ruling, we do not condone the unlawful transactions, but instead apply the rules for restitution rather than impose civil or criminal penalties." *Id*. at 170. As LVNV argues on appeal, the costs associated with a defendant's receipt of the benefit is a permissible consideration in determining the amount of a monetary award under the theory of unjust enrichment. Accordingly, upon remand, LVNV should be permitted to introduce evidence relevant to the costs LVNV incurred in collecting money from the Subclass and, to the extent LVNV's profits from the appellees' funds are awarded, the associated profits it made as a result of those funds.[15]

3. The Jury Should Not Have Been Permitted to Include "Profits on Profits" in its Determination of the Monetary Award.

As we explained *supra*, damages must be proved "with reasonable certainty, or some degree of specificity." *Driggs*, *supra*, 135 Md. App. at 427. We apply the same principles to an award of restitution. Although the award of the disgorgement of LVNV's immediate profits generated directly from the funds collected from the void judgments is

[15] On remand, the appellees may seek business records that can assist the finder of fact in determining a more precise calculation of the profits generated by LVNV.

permissible, the jury is not permitted to estimate successive waves of profits or speculate as to how many times LVNV reinvested the appellees' money.

Our prior cases dealing with the disgorgement of profits assume that those profits may be ascertained from evidence related to the events leading to the unjust enrichment. *See Luskin's*, *supra*, 353 Md. at 384-85 (basing the disgorgement of profits on additional net profits from selling additional inventory during a designated time period); *Morgan*, *supra*, 387 Md. at 169 (determining the measure of disgorgement of profits to be based on the profit made from each house the defendant "flipped"). Moreover, under these circumstances, it is unclear whether the appellees could establish, by a preponderance of the evidence, LVNV's "profits on profits" with any reasonable certainty given that LVNV reinvests the profits it earns back into its operations.

As we explained *supra*, the disgorgement of profits is a permissible consideration in determining restitution for unjust enrichment. *See Morgan*, *supra*, 387 Md. at 169; *Mogavero*, *supra*, 142 Md. App. at 276 (citation omitted) (internal quotation marks omitted) ("[T]he classic measurement of unjust enrichment damages is the gain to the defendant, not the loss by the plaintiff."). Because the appellees sought the recovery of money received by LVNV as a result of the judgments it obtained without a license and the associated profits, the determination of both liability and the monetary award was properly submitted to the jury. Specifically, the jury was permitted to consider the disgorgement of profits that LVNV generated as a result of its collection of debts from the appellees. In doing so, however, it is appropriate for the finder of fact to consider LVNV's costs of collecting money from the Subclass and generating profits from those funds.

C. The Circuit Court Erred in Not Providing Instructions to the Jury on the Method of Calculating a Monetary Award Under the Theory of Unjust Enrichment.

The instructions the circuit court provided to the jury did not address the jury's method of calculating a monetary award in the event the jury found that the Subclass was entitled to an award under the theory of unjust enrichment. Although we will not find error in denying a party's proposed instructions where those instructions are inconsistent with the law, *Goldberg v. Boone*, 396 Md. 94, 122 (2006), the trial court in this case denied LVNV's proposed instructions addressing the jury's method of calculating a monetary award without replacing the instruction with an instruction to guide the jury's consideration of damages in this case.

Maryland Rule of Civil Procedure 2–520 governs the circuit court's instructions to the jury, and provides in pertinent part:

> (a) **When given.** The court shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and may supplement them at a later time when appropriate. In its discretion, the court may also give opening and interim instructions.
>
> (b) **Written requests.** The parties may file written requests for instructions at or before the close of the evidence and shall do so at any time fixed by the court.
>
> (c) **How given.** The court may instruct the jury, orally or in writing or both, by granting requested instructions, by giving instructions of its own, or by combining any of these methods. The court need not grant a requested instruction if the matter is fairly covered by instructions actually given.

Md. Rule 2–520.

Our standard of appellate review of a trial court's instructions to the jury "is that so long as the law is fairly covered by the jury instructions, reviewing courts should not disturb them." *Exxon Mobil Corp. v. Ford*, 433 Md. 426, 465 (2013), *reconsid. denied*, 433 Md. 493 (2013) (quoting *Univ. of Md. Med. Sys. Corp. v. Malory*, 143 Md. App. 327, 337 (2001)). Our examination, therefore, considers the court's instructions to the jury on the appropriate methods for determining any recovery awarded. *See id.* at 465.

1. The Circuit Court Did Not Err by Denying LVNV's Proposed Instructions to the Extent the Requested Instructions were Inconsistent with Relevant Law.

LVNV argues that the circuit court erred by denying its proposed instructions to the jury on the issue of damages. On appeal, LVNV raises two of its requested instructions[16] relevant to the jury's calculation of damages. The first concluded with the instruction, "If you find in favor of [appellees] on one or both claims, your total award may not exceed the amount of money each [appellee] paid to [LVNV]." The second proposed instruction was similar and provided the following: "In the event you make any award of damages, [your award] cannot exceed the amounts collected on the debts."

We review the circuit court's decision to deny proposed instructions for the jury under an abuse of discretion standard. *Keller v. Serio*, 437 Md. 277, 283 (2014) (citation

[16] The appellees argue that LVNV waived its objection to the court's decision not to instruct the jury on the proper method of calculating damages. *See* Md. Rule 2-520(e). LVNV proposed instructions that addressed the jury's calculation of the monetary award, however, and the court denied those instructions. LVNV, therefore, did not waive for appeal its objection to the circuit court's failure to properly instruct the jury on the method of calculating a monetary award.

omitted). In *Keller*, the Court of Appeals explained that, to decide whether a trial court abused its discretion by denying proposed instructions, we apply the following factors: "(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given." *Id.* at 283 (quoting *Stabb v. State*, 423 Md. 454, 465 (2011)) (internal quotation marks omitted); *see also Zografos v. Mayor & Cty. Council of Baltimore*, 165 Md. App. 80, 109 (2005) (citing *Burdette v. Rockville Crane Rental, Inc.*, 130 Md. App. 193, 212 (2000) (recognizing the same considerations in an appellate court's inquiry).

As a result, in determining whether the circuit court erred by denying LVNV's requested instructions, our inquiry begins with whether those instructions were consistent with relevant law. *See Goldberg v. Boone*, 396 Md. 94, 122 (2006) (quoting *Landon v. Zorn*, 389 Md. 206, 225 (2005)) (citations omitted) ("We have recognized that a litigant is entitled to have his instruction submitted to the jury if the instruction 'is a correct exposition of the law . . . .'").

The instructions offered by LVNV excluded from the jury's consideration the disgorgement of profits made from the funds recovered from the appellees as a result of the void district court judgments. We explained *supra* that, not only was the jury permitted to consider whether the appellees were entitled to the return of the money they paid to LVNV, but they were also entitled to have the jury consider whether they were entitled to the disgorgement of LVNV's immediate profits from those funds. The disgorgement of profits is an appropriate consideration in calculating restitution under the theory of unjust

enrichment. *See Mogavero*, *supra*, 142 Md. App. at 276 (explaining that our focus is on what the defendant gained). Contrary to LVNV's assertions, therefore, the circuit court was not obligated to give the jury LVNV's proposed instructions where the requested instructions did not constitute "a correct exposition of the law." *See Goldberg*, *supra*, 396 Md. at 122.

2. The Circuit Court Erred by Failing to Fairly Cover the Law Regarding the Method for Determining Damages and Restitution.

We agree with LVNV's contention that the trial court's instructions omitted necessary principles of law, which should have guided the jury in its calculation of a monetary award. The circuit court's only instruction pertaining to the jury determination of the amount of any recovery was impermissibly silent on the method by which the jury could have calculated that award.

As we have previously explained, "the trial court has the responsibility to guide the jury with respect to the law relevant to the issues and evidence presented at trial . . . ." *Malory*, *supra*, 143 Md. App. at 338; *see also Poteet v. Sauter*, 136 Md. App. 383, 415-16 (2001) (citing *Benik v. Hatcher*, 358 Md. 507, 519 (2000)) (explaining the court's duty to instruct the jury on the parties' factually and legally supported theories of the case); *see, e.g.*, *Mallard v. Earl*, 106 Md. App. 449, 469 (1995) (holding that the court erred by denying a party's requested instructions where the trial court's instructions as given did not cover a necessary principles of law). Further, "[t]he purpose of jury instructions is to aid the jury in clearly understanding the case and . . . to provide guidance for the jury's deliberations by directing [its] attention to the legal principles that apply . . . so that it can

arrive at a fair and just verdict." *Malory, supra*, 143 Md. App. at 337 (quoting *Molock v. Dorchester Cnty. Family YMCA*, 139 Md. App. 664, 672 (2001)) (alterations in original).

Our deeply established principles of law establish that it is the trial court, and not the jury, that must determine the appropriate measure of damages:

> The rule by which damages are to be estimated is, as a general principle, a question of law to be decided by the [c]ourt; that is to say, the [c]ourt must decide, and instruct the jury, in respect to what elements, and within what limits, damages may be estimated in the particular action.

Kaplan v. Bach, 36 Md. App. 152, 159 (1977) (quoting *Baltimore & Ohio R.R. Co. v. Carr*, 71 Md. 135, 143 (1889)); *see also Malory, supra*, 143 Md. App. at 338 (explaining the trial court's responsibility to guide the jury on the law relevant to the issues and evidence presented). The trial court's duty to instruct the jury on the law relevant to the parties' claims, therefore, has long encompassed the duty to advise the jury of the limits on the method for determining a monetary award. *See Russell v. Stoops*, 106 Md. 138, 144 (1907) (reversing jury's verdict where the trial judge "failed to instruct the jury as to the true measure of damages"). Moreover, the trial court's guidance on the law should not be so broad as to render itself unhelpful to the jury in reaching a verdict consistent with the law. *See i.d.* at 146 (quoting *Lynn v. Baltimore & Ohio R.R. Co.*, 60 Md. 404, 417 (1883)) ("Courts ought not to give mere legal abstractions as instructions to juries, but should state the law applicable to the pleadings and facts of each case.").

On appeal, our "inquiry into whether a jury instruction was appropriately given requires that we determine whether the instruction correctly stated the law, and if so, whether the law was applicable in light of the evidence before the jury." *Goldberg, supra*,

396 Md. at 122; *accord Gales v. Sunoco, Inc.*, 440 Md. 358, 366 (2014) (quoting *Sergeant Co. v. Pickett*, 285 Md. 186, 194 (1979)). Moreover, "[w]hen the jury instruction given 'clearly set[s] forth the applicable law, there is no reversible error.'" *Goldberg*, *supra*, 396 Md. at 122 (quoting *Benik*, *supra*, 358 Md. at 519 (2000); *see also Malory*, *supra*, 143 Md. App. at 337 (quoting *Farley v. Allstate Ins. Co.*, 355 Md. 34, 46 (1999)) ("[S]o long as the law is fairly covered by the jury instructions, reviewing courts should not disturb them.").

Similar to our examination of a trial court's decision to admit or exclude evidence, our review of the circuit court's instructions to the jury follows two straightforward paths of inquiry. First, we determine whether the trial court's instruction was erroneous; second, if the court's instruction was erroneous, we determine whether the error prejudiced the appellant. *Barksdale*, *supra*, 419 Md. at 657. Moreover, "[i]t has long been the policy in this State that this Court will not reverse a lower court if the error is harmless." *Id.* (citations omitted); *see also Brown*, *supra*, 409 Md. at 584 (citing *Crane*, *supra*, 382 Md. 83, 91–92 (2004)) ("[E]ven if 'manifestly wrong,' we will not disturb an evidentiary ruling by a trial court if the error was harmless.").

The principle that the complaining party has the burden on appeal to show both error and that the error resulted in prejudice is well-established. *See Ford*, *supra*, 433 Md. at 465; *Gillespie v. Gillespie*, 206 Md. App. 146, 169 (2012); *Barksdale*, *supra*, 419 Md. at 660 (citing *Flores*, *supra*, 398 Md. at 33). In doing so, the complaining party must show more than the mere possibility of prejudice; instead, our inquiry in this context focuses squarely on the *probability* of prejudice. *See Barksdale*, *supra*, 419 Md. at 662. In other words, we must find that prejudice was "'likely' or 'substantial.'" *Id.* (citing *Crane*, *supra*,

382 Md. at 91). We make this determination based on our assessment of the facts on a case-by-case basis. *See*, *e.g.*, *id.* at 669 (quoting *Nat'l Med. Transp. Network v. Deloitte & Touche*, 72 Cal. Rptr.2d 720, 731 (1998)) (providing that, in determining prejudice, it may be helpful to a reviewing Court to consider factors such as "whether [the] respondent's argument to the jury may have contributed to the instruction's misleading effect").

In this case, the trial court provided only a description of the claims and of the questions on the verdict sheet. The court instructed the jury on what it must find for the appellees to prevail on their claim for unjust enrichment, including that "under the circumstances , . . . LVNV, is unjust to retain the benefit from that which [it] has received from the [appellees]." The court informed the jury that "[t]he [appellees] seek damages for their claims for unjust enrichment under the Maryland Consumer Debt Collection Act." Although the trial court provided the jury with the elements of unjust enrichment, it stopped short of providing the proper measure of restitution upon a finding of unjust enrichment.

Regarding the jury's determination of the monetary award, the court advised the jury only that it was "to indicate what sum of restitution, if any, [the jury] find[s] the Class, that is, of the 1,589, should recover from [LVNV] . . . for monies obtained or received by LVNV, from the Class." The court added only a general instruction "to indicate what amount you award . . . total, that you award . . . . Whether that's $1, up to the amount that you deem appropriate. Guide yourselves accordingly." The broad discretion given to the jury in devising its own methods for calculating the "sum of restitution . . ." between "one dollar up to any amount," was vague and unclear.

The verdict sheet, itself, provided no more assistance to the jury than the trial court's limited instructions on the award of damages and restitution. For each named plaintiff, the jury was asked, simply, "What amount of damages, if any, do you award . . . ?" For the Class, which applied only to the Subclass, the jury was asked, "What sum of restitution, if any, do you find the Class should recover from LVNV Funding, LLC for monies obtained or received from the Class?"

During closing arguments, appellees' counsel asked the jury to recall the testimony of LVNV's representative, pointing out the fraction that LVNV typically paid for the debts it purchased and the proportion of the debt's value that it recovered on average. Appellees' counsel explained, "I've done some calculations and I did them in advance . . . ." Thereafter, appellees' counsel suggested "the formula" the jury should use to calculate the amount of profits that LVNV made from purchasing debt, providing several examples. He concluded, "It's up to you to decide what that amount is. I just want to give you some tools to be able to figure it out . . . . Once you have the formulas, you can go, you can change it. If you want to say everything was at twelve cents, so be it." Although appellees' counsel appropriately requested that the jury render an award favorable to his clients, the void created by the trial court's silence on the proper method of calculating damages and restitution left the jury to speculate as to an award of damages under these circumstances.

Having found that LVNV violated the MCDCA and that it was unjustly enriched by the funds paid by the appellees, the jury was without any proper standard for determining an appropriate recovery. Armed only with a general estimation of LVNV's costs in purchasing debt relative to its value, as well as the average proportion it recovered, the jury

was left to its own devices to craft its own method of determining a fair monetary award in a complex class action case involving close to 1,600 members of the Subclass. Because the court failed to provide specific guidance to the jury, and the verdict sheet provides no useful insights, it is impossible for us, or anyone else who was not on the jury, to discern the logical and factual bases for the award. This makes it impossible for us to assess LVNV's arguments that the award was excessive in any meaningful fashion.

The trial court's instructions did not provide an appropriate guide in determining LVNV's profits, and they permitted the jury to "speculate about inapplicable legal principles" of law. *See Barksdale*, *supra*, 419 Md. at 669. The absence of any guidance for calculating an appropriate monetary award, particularly under these circumstances, resulted in an award that was inconsistent with the tenets of unjust enrichment. The trial court's error, therefore, was clearly prejudicial to LVNV.

Accordingly, we hold that the circuit court's instruction on the method of determining the award of damages was erroneous and warrants reversal of the jury's verdict regarding the damages awarded to the appellees. We, therefore, vacate the trial court's entry of the award of damages for both the named appellees and the Subclass and remand for a new trial on damages. Because we vacate the trial court's entry of the jury's verdict on the amount of the award of damages, we need not address the trial court's decision to grant remittitur and reduction of the jury's award to twenty-five million dollars.

In light of our vacating the damages awarded by the jury, we need not determine the sufficiency of the evidence to support the jury's damages verdict in this case. We note, however, that no conceivable measure of restitution consistent with Maryland law could

justify such an award based on the limited evidence adduced at trial. A proper instruction to the jury in calculating restitution after a finding of unjust enrichment would have limited the amount of the verdict, at most, to the return of monies improperly taken from the appellees by LVNV or its affiliates, and the profits generated directly from, or the pre-judgment interest earned on, those sums.

V. The Circuit Did Not Err in Certifying the Class, But Erred in Defining the Scope of the Class Beyond the Applicable Statute of Limitations.

LVNV asserts that two errors were present in the circuit court's certification of the Class and Subclass. First, LVNV argues that the appellees did not meet the prerequisites to class certification under Md. Rule 2-231. Specifically, LVNV emphasizes that the appellees' claims lack "commonality" and "typicality." Second, LVNV raises the circuit court's failure to adhere to the appropriate statute of limitations period by defining the Class in a way that extended the limitations period beyond three years prior to the date that the appellees filed their claims. We hold that the circuit court did not err in determining that the prerequisites to class certification were satisfied. We further hold that under the circumstances of this case, the circuit court erred in its application of an incorrect limitations period to the scope of the Class.

A. The Circuit Court Did Not Err by Granting Class Certification.

LVNV argues that the circuit court should not have certified the class where "individual equitable questions should have predominated and by failing to decertify the class." According to LVNV, three issues distinguish the Subclass members from one another: (1) the circumstances of each Subclass member's payments to LVNV; (2) when

the Subclass member's claim in relation to that payment accrued; and (3) whether the underlying debt for which the payment was made was valid.

Maryland Rule 2-231 provides the following prerequisites to class certification:

> (a) One or more members of a class may sue . . . as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the claims of the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

The circuit court certified the Class in this case pursuant to Rule 2-231(b)(3), which provides:

> Unless justice requires otherwise, an action may be maintained as a class action if the prerequisites of section (a) are satisfied, and in addition:
>
> [. . .]
>
> (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions, (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class, (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum, (D) the difficulties likely to be encountered in the management of a class action.

In its order of August 31, 2015, the circuit court provided its reasoning for certifying the class under Rule 2-231(b)(3), finding that "[t]he predominant issue before the Court concern[ed] the legality of resulting judgments and the collection activities taken upon

those judgments." In the same order, the circuit court defined the Class to include "[t]hose persons sued by LVNV in Maryland state courts from October 30, 2007 through February 17, 2010 for whom LVNV obtained a judgment for an alleged debt in its favor in an attempt to collect a consumer debt." The court narrowed further the Subclass to include "[a]ll members of the [appellees'] class who paid any amounts to LVNV."

Further, on the same day, the circuit court granted partial summary judgment in favor of LVNV on the appellees' claims for unjust enrichment and money had and received "as to the members of the Class who did not pay any sums to [LVNV]." The trial, therefore, went forward on the claims for unjust enrichment and money had and received only for "any [S]ubclass member who made payments on the debts reduced to judgment by LVNV," which the court had already determined, based on our holding in *Finch I*, were void judgments.

LVNV takes issue with the appellees' ability to demonstrate the "commonality" requirement under Maryland Rule 2-231(a)(2). The Court of Appeals provided the following discussion of the commonality requirement in *Philip Morris Inc. v. Angeletti*:

> The threshold of commonality is not a high one and is easily met in most cases. *See Jenkins v. Raymark Industries, Inc.*, 782 F.2d 468, 472 (5th Cir.1986); [1 NEWBERG, *supra*, § 3.10, at 3-50]. It "does not require that all, or even most issues be common, nor that common issues predominate, but only that common issues exist." *Central Wesleyan College v. W.R. Grace & Co.*, 143 F.R.D. 628, 636 (D.S.C. 1992), *aff'd*, 6 F.3d 177 (4th Cir. 1993); *see also Baby Neal v. Casey*, 43 F.3d 48, 56 (3rd Cir. 1994) (requiring only that the named [appellees] share at least one question of fact or law with the grievances of the prospective class).

358 Md. 689, 734 (2000).

To establish a *prima facie* case for the common law action of unjust enrichment, a plaintiff must demonstrate three primary elements:

> (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.

Benson v. State, 389 Md. 615, 651–52 (2005) (citing *Dashiell*, *supra*, 358 Md. at 95 n. 7).

The claims to be tried before the jury included whether LVNV violated the MCDCA and whether LVNV was unjustly enriched. LVNV fails to provide any basis for asserting that the answer to any of the three questions it posed would have any legal impact on any substantive issue related to the appellees' claims. Distinguishing the "circumstances of each Subclass member's payments to LVNV" is immaterial in this case; all Subclass members paid money to LVNV or its affiliates as the result of the district court judgment that LVNV obtained by asserting a right to collect when it was not licensed in compliance with the MCALA. LVNV avers adamantly that all of the underlying debts for which it obtained void district court judgments were valid. LVNV fails to explain how this question would disrupt the commonality across the Subclass.

Specific to the issue of commonality, LVNV's arguments fail to acknowledge that the commonality requirement "does not require that all, or even most issues be common." *Angeletti*, *supra*, 358 Md. at 734. Instead, LVNV argues only that unjust enrichment is a highly fact-specific claim, and therefore is "essentially never appropriate for class-wide adjudication," citing an Eleventh Circuit Court of Appeals decision, *Vega v. T-Mobile USA*,

Inc., 564 F.3d 1256, 1274 (11th Cir. 2009). In *Vega*, which involved a number of employees' unpaid wages and unjust enrichment claims, each individual case depended on "what each employee was told and understood about the commission structure and when and how commissions were 'earned.'" 564 F.3d at 1275. In that case, unlike here, different answers to the same question were determinative of each individual plaintiff's claim.[17] The Eleventh Circuit's suggestion in *dicta*, moreover, that "common questions will rarely, if ever, predominate an unjust enrichment claim," does not impact our holding that the circuit court did not err in its determination that substantive questions of law were common to the class in this case.

Here, all Subclass members made payments to LVNV for judgments that were void and unenforceable. The jury's determination of whether LVNV violated the MCDCA affected all putative class members in the same way. Based on the parameters of the Subclass, the jury's determination of liability for one member of the Subclass was determinative of LVNV's liability for the claims of all other members. Indeed, for each Subclass member to demonstrate that LVNV violated the MCDCA licensing law would be unduly cumulative. In other words, if the jury determined that LVNV violated the MCDCA by suing one Subclass member in a Maryland state court to collect a debt without the required license, the jury must also find that LVNV is liable for its actions to collect from other Subclass members in the same way. To demonstrate commonality, the

[17] The employees who were fully aware of the employers' policy ahead of time could not claim to have suffered an injustice. *Id.* at 1275.

appellees needed to show only that they "share[d] at least one question of fact or law with the grievances of the prospective class." *See Baby Neal, supra*, 43 F.3d at 56. That prerequisite was clearly satisfied in this case. The circuit court did not err in determining that the appellees satisfied this standard in this case.

As the circuit court provided in its order granting class certification, "The predominant issue before the Court concerns the legality of resulting judgments and the collection activities taken upon those judgments." In other words, the predominating question across all cases involves whether LVNV's collection actions violated the MCDCA and, therefore, resulted in LVNV's unjust enrichment. As the circuit court narrowed the Subclass to include only those individuals who made payments to LVNV as a result of the void district court judgments, the "questions of law or fact common to the members of the class predominate over any questions" that would affect individual members of the class. *See* Md. Rule 2-231(a)(2).

Additionally, LVNV appears to base its argument that the appellees failed to demonstrate "typicality" under Md. Rule 2-231(a)(3) on reasoning similar to its commonality argument -- that the same individual questions should have precluded class certification. The prerequisite of "typicality" requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Md. Rule 2-231(a)(3). Mere "factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory." *Baby Neal, supra*, 43 F.3d at 58 (citations omitted).

The Court of Appeals has explained that for the requirement of typicality to be present,

> [r]epresentative claims need not be identical to those of the rest of the class; instead, there must be similar legal and remedial theories underlying the representative claims and the claims of the class. *See Jenkins v. Raymark Industries*, 782 F.2d 468, 472 (5th Cir.1986); *see also Baby Neal*, 43 F.3d at 58 (stating that "even relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories").

Angeletti, *supra*, 358 Md. at 738.

The named appellees' and the Subclass members' essential factual claims are substantially the same, namely that LVNV engaged in collection activities without the required license when it obtained judgments against the appellees, and that each individual appellee or Subclass member paid money to LVNV as a result of a void district court judgment. All of the appellees in this case seek the same relief and their cases rely on the same legal arguments. The named appellees' cases, therefore, are typical of those of the Subclass they represent, and the appellees have demonstrated adequately the common issues of law or fact across all of the Subclass members' claims.

Based on the parameters of the Subclass defined by the circuit court, none of the questions that LVNV poses on appeal differentiate the Subclass members from one another, extinguish the presence of typicality, or bear any import on the common questions

of fact or law in this case.[18] The circuit court, therefore, did not err in its determination that the Subclass met all of the prerequisites to class certification. As we explain below, however, we hold that the circuit court erred in its definition of the class by applying an incorrect limitations period.

B. The Circuit Court Applied an Incorrect Limitations Period in Defining the Scope of the Class.

On September 8, 2015, the circuit court granted the appellees' motion to certify the class. The circuit court limited the Class to "those persons sued by LVNV in Maryland state courts from October 30, 2007 through February 17, 2010 for whom LVNV obtained a judgment for an alleged debt in its favor in an attempt to collect a consumer debt."[19]

LVNV filed a motion to dismiss, arguing that some members of the class should be excluded based on the three-year statute of limitations pursuant to Md. Code (2006, 2013 Repl. Vol.) § 5-101 of the Courts and Judicial Proceedings Article (C.J.P.). The circuit court denied LVNV's motion to dismiss, providing the following reasoning:

> I'm basing that decision on the understanding that the Court of Special Appeals has determined that these are void judgments, and this court believes that a—a void judgment is capable of being challenged or attacked at any time.

[18] We note, however, that the circuit court erred in its application of an incorrect time period for which individuals would be included in the class. We explain the circuit court's error, and how the error will be remedied on remand, in detail below.

[19] The Subclass was limited to "all members of the [appellees'] class who paid any amounts to LVNV."

Indeed, we recently provided in *Cassandra Murray v. Midland Funding, LLC*, "a simple declaration that a judgment is void[] is subject neither to a statute of limitations nor laches." ____ Md. App. ____, ____, No. 2280, Sept. Term 2015, Slip Op. at 6 (Ct. of Spec. App. June 29, 2017). We continued, however, that,

> when additional relief is sought ancillary to a declaratory judgment action, the court will look to the remedy sought to see if that relief is at law or at equity. If it is at law, the court will analyze whether that ancillary relief is barred by the statute of limitations . . . .

Id. at 7. Moreover, "[a]ll claims for monetary damages are actions at law and, thus, subject to a statute of limitations." *Id.* at 3. A claim of unjust enrichment that seeks restitution is subject to a three-year statute of limitations.[20] C.J.P. § 5-101; *see also Jason v. Nat'l Loan Recoveries, LLC*, 227 Md. App. 516, 528-29 (2016) (explaining that the twelve-year statute of limitations does not apply to a claim of unjust enrichment; therefore, the three-year statute of limitations in C.J.P § 5-101 applies). Here, the appellees' claims fall under the MCDCA and unjust enrichment for which they sought monetary relief. Their claims, therefore, are subject to a three-year statute of limitations. *See Jason*, *supra*, 227 Md. App. at 528-29.

A claim of unjust enrichment accrues when one party confers the benefit at issue upon the other. *See id.* at 533. In *Jason*, we held that the limitations period did not begin

[20] Subsection 5-101 of the Courts and Judicial Proceedings Article of the Maryland Code provides the following: "A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced."

until the defendant "actually took possession of [the plaintiff's] funds." *Id.* With respect to the appellees' unjust enrichment claim, the benefit was not conferred upon LVNV until LVNV took possession of the funds from the members of the Subclass. *Id.* The limitations period for each Subclass member's claim of unjust enrichment did not begin until LVNV received funds from the putative class member as a result of a void district court judgment. Additionally, claims under the MCDCA are subject to the same three-year limitations period, pursuant to C.J.P. § 5-101. *Ayres v. Ocwen Loan Servicing, LLC*, 129 F. Supp. 3d 249, 272 (D. Md. 2015). Claims subject to C.J.P. § 5-101 accrue when a plaintiff "knows or reasonably should have known of the wrong." *Brown v. Neuberger, Quinn, Gielen, Rubin & Gibber, P.A.*, 731 F. Supp. 2d 443, 449 (D. Md. 2010). In this case, therefore, the appellees' claims under the MCDCA accrued the date on which they were each served.

The circuit court's class certification order in this case defined the scope of the Subclass based on a limitations period that extended beyond the three years prior to the appellees' filing date in this case. Upon remand, the circuit court should utilize the three-year statute of limitations period preceding the date the action was filed. The appellees' claims for unjust enrichment would accrue upon LVNV's receipt of funds taken from the putative class members as a result of the void district court judgments.

Additionally, the appellees argue that the statute of limitations was tolled based on the date that a separate, but related, class action was filed.[21] Although the circuit court provided that it had not based its denial of LVNV's motion to dismiss on the doctrine of

[21] The case was later removed to federal court.

tolling, the dates the circuit court incorporated into its definition of the Class appear to coincide with the filing date of the prior, separate class action. As we provided in *Hecht v. Resolution Trust Corp.*, "[w]e have long maintained a rule of strict construction concerning the tolling of the statute of limitations. Absent legislative creation of an exception to the statute of limitations, we will not allow any 'implied and equitable exception to be engrafted upon it.'" 333 Md. 324, 333 (1994) (some citations omitted) (quoting *Booth Glass Co. v. Huntingfield Corp.*, 304 Md. 615, 623 (1985)).

We, therefore, decline to rely on the doctrine of tolling to extend the statute of limitations in this case. Accordingly, the circuit court erred when it defined the Class beyond three years prior to November 9, 2011,[22] the date upon which the complaint was filed in *Finch I*. The appropriate limitations period in this case began on November 9, 2008. On remand the circuit court should redefine the scope of the class consistent with this opinion.

For all of these reasons, we affirm the trial court's entry of the jury's verdict in favor of the appellees as to LVNV's liability for violating the MCDCA and for unjust enrichment. We vacate the trial court's entry of the jury's verdict on damages and restitution, and we remand to the circuit court for a new trial on damages consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED ON LIABILITY AS TO BOTH CLAIMS UNDER THE

[22] The time period included in the circuit court's definition of the Class was from October 30, 2007 to February 17, 2010.

MARYLAND CONSUMER DEBT COLLECTION ACT AND FOR UNJUST ENRICHMENT. THE DAMAGES AWARDED BELOW ARE HEREBY VACATED. CASE REMANDED TO THE CIRCUIT COURT WITH INSTRUCTIONS TO CONDUCT A NEW TRIAL ON DAMAGES AND DEFINE THE SUBCLASS CONSISTENT WITH THIS OPINION. COSTS TO BE DIVIDED THREE-QUARTERS BY APPELLANT AND ONE-QUARTER BY APPELLEES.