

Conversion.¹ (Id.).

The trial of this matter commenced on February 3, 2003 and concluded on February 19, 2003. The jury returned a verdict in favor of the Defendants regarding Still's claims that survived trial. (See Verdict Form). As for Regulus' counterclaims that reached jury deliberation, the jury found that Still breached his Key Executive Agreements, but the breach did not cause any harm to Regulus. (Id.). Regarding Regulus' Unjust Enrichment counterclaim, the jury found that Still unjustly retained money or property to the loss of Regulus, but the only restitution awarded to Regulus was \$ 1.00. (Id.). On March 10, 2003, Still filed his Post-Trial Motions. (See Pl.'s Post-Trial Mots.).

II. DISCUSSION

Still's Post-Trial Motions consist of the following five arguments: (1) a new trial should be granted because of errors in the Special Verdict form; (2) a new trial should be granted because of the failure to notify counsel of the jury's question about the Special Verdict form and failure to consult counsel about the response given to the jury; (3) the judgment on the counterclaim for Unjust Enrichment should be vacated because the jury's special verdicts are inconsistent and contrary to law; (4) the Court should grant partial judgment as a matter of law that the cancellation of Still's shares was not a commercially reasonable disposition; and (5) in the alternative, the Court should grant a new trial. The Court will address each argument in turn.

¹ In their Answer to Still's Second Amended Complaint, the Defendants claimed numerous affirmative defenses. (See Defs.' Answer to Pl.'s Second Am. Compl.). In addition, Regulus asserted the following counterclaims against Still: Breach of Fiduciary Duty; Breach of Contract; Unjust Enrichment; and Conversion. (Id.).

A. Still's Motion for a New Trial

1. Legal Standard

Federal Rule of Civil Procedure 59(a) governs a motion for a new trial.

According to Rule 59(a), a court may grant a new trial “for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States.” FED. R. CIV. P. 59(a)(1). “A new trial may be granted where ‘the verdict is contrary to the great weight of the evidence.’” Wilson v. Phila. Det. Ctr., 986 F. Supp. 282, 287 (E.D. Pa. 1997)(quoting Roebuck v. Drexel Univ., 852 F.2d 715, 735 (3d Cir.1988)). Also, “[a] new trial . . . is appropriate if the trial court erred on a matter of law.” Id. (citing Klein v. Hollings, 992 F.2d 1285, 1289-90 (3d Cir. 1993)). Other commonly raised grounds for new trial motions include the following: “the verdict is too large or too small; that there is newly discovered evidence; that conduct of counsel or the court has tainted the verdict; or that there has been misconduct affecting the jury.” Kiss v. K-mart Corp., No. CIV.A. 97-7090, 2001 WL 568974, at *1 (E.D. Pa. May 22, 2001)(citation omitted).

When ruling on a motion for a new trial, the standard that a district court applies differs with the grounds asserted in support of the motion. Id. (citation omitted). When, the asserted basis for a new trial is trial error, “[i]t is well-settled that . . . the Court ‘must first determine whether an error was made in the course of trial and then must determine whether that error was so prejudicial that refusal to grant a new trial would be inconsistent with substantial justice.’” Corrigan v. Methodist Hosp., 234 F. Supp.2d 494, 502 (E.D. Pa. 2002)(quoting Montgomery County v. Microvote, 152 F. Supp.2d 784, 795 (E.D. Pa. 2001)). “Absent a showing of substantial injustice or prejudicial error, a new trial is not warranted and it is the

court's duty to respect a plausible jury verdict." Corrigan, 234 F. Supp.2d at 498 (citing Microvote, 152 F. Supp.2d at 794-95). Where the asserted ground for a new trial is that the verdict is against the weight of the evidence, the district court's discretion is much narrower, and a new trial should be granted "only when the record shows that the jury's verdict resulted in a miscarriage of justice or where the verdict, on the record, cries out to be overturned or shocks our conscience." Williamson v. Consol. Rail Corp., 926 F.2d 1344, 1353 (3d Cir. 1991); see also Klein, 992 F.2d at 1290. Although different standards may apply, "[t]he decision to grant or deny a motion for a new trial 'is confided almost entirely to the discretion of the district court.'" Wilson, 986 F. Supp. at 287 (quoting Blancha v. Raymark Indus., 972 F.2d 507, 512 (3d Cir. 1992)).

2. Still's Claim

Still argues that he is entitled to a new trial on his claims for Conversion and Wrongful Seizure of his shares set forth in Counts XX and XXII of the Second Amended Complaint. (Pl.'s Post-Trial Mem. Law at 4). Still's argument is based upon the premise that the form and substance of the Special Verdict form, particularly Question Number 8 and its companion direction, prohibited the jury from deciding the factual issues of the commercial reasonableness regarding the cancellation of Still's shares and the manifest unreasonableness of the standards in the valuation formula in the Escrow Agreement.² Still argues that by prohibiting

² The relevant section of the Special Verdict form is the following:

CLAIMS ASSERTED BY MR. STILL AGAINST DEFENDANTS

WRONGFUL SEIZURE OF MR. STILL'S SHARES

Question 8: Do you find that Regulus was lawfully justified in its calling of the Demand Note and retention of Mr. Still's shares because of agreements signed by Mr. Still and Regulus?

the jury from deciding the issues of commercial reasonableness and manifest unreasonableness, Question Number 8 and its attendant direction are in direct contradiction to the jury instructions.

In 1998, Still borrowed \$ 300,000 from Regulus and signed a Promissory Note (“Note”) as evidence of the debt. As collateral for the loan plus interest, Still pledged to Regulus all of his Class B, C and D Interests of Regulus. By letter dated August 3, 2000, Regulus demanded repayment of the loan in the amount of \$ 300,000, plus \$ 41,643.84 in interest. When demand was made on the Note, Still did not make payment of the principal and interest claimed due on the Note. In the event of a default by Still, the parties had entered into an Escrow

Yes X No _____

If you answer “Yes” to Question #8, you should not answer any further questions in this section and should proceed to Question #13 [concerning Regulus’ Breach of Contract counterclaim]. If you answer “No” to Question #8, proceed to Question #9.

Question 9: Do you find that the formula contained in the Escrow Agreement for the valuing of Mr. Still’s shares in Regulus was **manifestly unreasonable**?

Yes _____ No _____

If you answer “Yes,” then you should proceed to Question #10. If you answer “No,” go to Question #13.

Question 10: Do you find that the disposition of Mr. Still’s shares in Regulus was **commercially reasonable** under the circumstances at the time?

Yes _____ No _____

If you answer “Yes,” then you should proceed to Question #13. If you answer “No,” go to Question #11.

Question 11: Do you find that the amount that would have been received if the shares were disposed of in a **commercially reasonable** manner exceeds the amount owed by Mr. Still?

Yes _____ No _____

If you answer “Yes,” then you should proceed to Question #12. If you answer “No,” go to Question #13.

Question 12: What amount do you find would compensate Mr. Still for the value of his cancelled shares?

\$ _____

(Verdict Form at 3)(emphasis added).

Agreement which provides, in pertinent part, as follows:

4.3 Sale of Shares upon Default by Still. (1) Upon the Company receiving the Escrow Documents pursuant to Section 4.1 hereof, the Shares shall be valued at their Fair Market Value (as defined below). Upon determining the Fair Market Value of the Shares, to the extent that the total principal and accrued interest then due under the Note is less than the Fair Market value of the Shares, the Company shall retain the number of Shares representing the Fair Market Value of the total principal and accrued interest then due under the Note and remit to Still the remaining numbers of Shares. To the extent that the total principal and accrued interest then due under the Note exceeds the Fair Market Value of the Shares, the Company shall retain all of the Shares and Still acknowledges his continued liability and obligation for the repayment of such shortfall.

(Def.'s Opp'n to Pl.'s Post-Trial Mot., Ex. B). After Still's failure to repay Regulus, Regulus declared a default under the Escrow Agreement.

The parties agree that the Pennsylvania Uniform Commercial Code ("UCC"), which is Pennsylvania's version of the Uniform Commercial Code, governs their Escrow Agreement.³ According to 13 PA. CONST. STAT. ANN. § 9601, "[a]fter default, a secured party has the rights provided in this chapter and, except as otherwise provided in section 9602 (relating to waiver and variance of rights and duties), those provided by agreement of the parties." 13 PA. CONST. STAT. ANN. § 9601(a). 13 PA. CONST. STAT. ANN. § 9603, pertaining to agreement on standards concerning rights and duties, provides "[t]he parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured

³ By Act of June 8, 2001, P.L. 123, No. 18, § 16, certain sections of Article 9 of the UCC were revised effective on July 1, 2001. The Court's citations are to the current sections of the UCC Code which became effective after the events in question. The right to a commercially reasonable disposition of collateral is recognized in both the former and current versions of the UCC.

party under a rule stated in section 9602 (relating to waiver and variance of rights and duties) if the standards are not *manifestly unreasonable*.” 13 PA. CONST. STAT. ANN. § 9603(a)(emphasis added). Regarding waiver and variance of rights and duties, 13 PA. CONST. STAT. ANN. § 9602 states “[e]xcept as otherwise provided in section 9624 (relating to waiver), to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary” his rights to, among other things, *commercially reasonable* disposition, as well as notification before disposition of collateral.⁴ 13 PA. CONST. STAT. ANN. §§ 9602, 9607(c); 9610(b); 9611 (emphasis added).

After the default, Regulus retained Still’s shares as satisfaction of his \$ 341,643.84 debt.⁵ The Court instructed the jury that since Regulus did not obtain Still’s consent to retain his shares as satisfaction of the debt after default, “Regulus was required to dispose of the collateral in a commercially reasonable manner.” (N.T. 2/19/03, p. 118, lines 8-12). The

⁴ 13 PA. CONST. STAT. ANN. § 9610(b), entitled “Disposition of collateral after default,” provides as follows:

Commercially reasonable disposition.--Every aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels and at any time and place and on any terms.

13 PA. CONST. STAT. ANN. § 9610(b).

⁵ Still’s attorney acknowledged that Still received the proceeds from the loan in the amount of \$ 300,000. (N.T. 2/14/03, p. 127-28). Still pledged his shares as collateral for the loan and, due to his default, Regulus acquired his shares as satisfaction for the loan. (*Id.*). Since Regulus acquired Still’s shares as satisfaction of the loan, Still essentially received \$ 300,000 plus interest in the amount of \$ 41,643.84 from Regulus for his shares. (*Id.*). Consequently, Still’s argument does not center on whether he received nothing in exchange for his shares as collateral, but whether his shares had a value in *excess* of the approximated \$ 300,000 that he received. (*Id.*).

Court went on to instruct that “the test to determine commercial reasonableness is whether the sales, every aspect is characterized by good faith, avoidance of loss, and effective realization.” (Id., p. 118, lines 13-16). The Court also instructed that “Regulus, as a secured creditor, is required to make some critical evaluation of the information it receives, and has an obligation to maximize the sales proceeds.” (Id., p. 118, lines 17-20). The Court directed that “[i]f you find that Regulus merely cancelled the shares, and made no effort to maximize the sales proceeds, then you must find that the disposition was not commercially reasonable.” (Id., p. 118, lines 21-24). Regarding the issue of whether the standards set forth in the valuation formula in the Escrow Agreement were manifestly unreasonable, the Court instructed that parties to an escrow agreement may agree upon a valuation formula, “so long as the standards are not manifestly unreasonable.” (Id., p. 104, lines 18-19). The Court explained that the jury could consider Regulus’ valuation of Still’s claims at negative 257 million, along with the experts’ opinions, “in determining whether the valuation formula in the escrow agreement was manifestly unreasonable.” (Id., p. 104, lines 24-25).

Still seeks a new trial on the claims for Conversion and Wrongful Seizure of his Regulus shares based upon the argument that the formulation and substance of Question Number 8 of the Special Verdict form, including its attendant direction, did not fairly and adequately present the issues in the case to the jury.⁶ Still argues that the accompanying direction following

⁶ Still’s Motion for a New Trial is based, in part, upon the premise that the language and structure of Question Number 8 was misleading and caused jury confusion. The Court has examined the language and structure of Question Number 8. Upon examination of Question Number 8, the Court finds that its language and structure were not misleading and did not cause jury confusion. Thus, there was no prejudicial error in relation to Question Number 8 nor the jury’s finding thereupon. Accordingly, the jury’s decision that Regulus was lawfully justified in its calling of the Demand Note and retention of Mr. Still’s shares is upheld. As a result, Still’s

Question Number 8 was erroneous because it prevented the jury from deciding the commercial reasonableness of the disposition of his shares, contrary to the Court's explicit instruction that "Regulus was required to dispose of the collateral in a commercially reasonable manner." (N.T. 2/19/03, p. 118, lines 10-12). Additionally, Still contends that the direction was improper because it prevented the jury from deciding whether the standards in the valuation formula in the Escrow Agreement were manifestly unreasonable, contrary to the Court instruction which set forth some considerations for the jury to contemplate in "determining whether the valuation formula in the escrow account was manifestly unreasonable." (Id., p. 104-105).

3. Court's Analysis⁷

Review of Still's claim reveals that a new trial is warranted on the UCC issues of commercial reasonableness and manifest unreasonableness relating to his claims of Conversion

argument for a new trial based upon the language and structure of Question Number 8 is denied. The remainder of this Opinion solely addresses Still's claim for a new trial as it relates to the accompanying direction following Question Number 8.

⁷ As a threshold matter, the Court notes that Still did not specifically object to the companion direction following Question Number 8 prior to the jury retiring to consider its verdict. According to Federal Rule of Civil Procedure 51, "[n]o party may assign as error the giving or failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection." FED. R. CIV. P. 51. "[W]here a defendant fails to object to the form and language of special verdict forms or to the jury charges, before closing arguments or at the close of charging before the jury retires to deliberations, and the form has been submitted to counsel, objections are waived." Neely v. Club Med Mgmt. Servs., Inc. 63 F.3d 166, 200 (3d Cir. 1995)(citations omitted). Nevertheless, even if Still's failure to specifically object resulted in a waiver, he is entitled to the judicially created exception to the waiver rule known as the plain error doctrine. The plain error doctrine "permits a court to review instructions to which no timely objection was raised where, *inter alia*, the error is fundamental and highly prejudicial and the failure to consider the error would result in a miscarriage of justice." Cont'l Life Ins. Co. v. Shearson Lehman Hutton, Inc., No. CIV.A.88-9279, 1992 WL 6750, at *2 (E.D. Pa. Jan. 14, 1992), *aff'd*, 975 F.2d 1549 (3d Cir. 1992) (quotation and internal quotation marks omitted); see also Billet Promotions, Inc. v. IMI Cornelius, Inc., 1998 WL 721081, at *14 n.5 (E.D. Pa. Oct. 14, 1998).

and Wrongful Seizure of his shares. Examination of the accompanying direction to Question Number 8 of the Special Verdict form, in conjunction with the applicable jury instructions given by the Court, shows that plain error was committed during the course of trial. The Court finds that the accompanying direction following Question Number 8 prohibited the jury from deciding issues pertaining to the disposition and valuation of Still's shares, in direct contradiction to the jury instructions. Specifically, the jury was prevented from considering the commercial reasonableness of the disposition of Still's shares and the manifest unreasonableness of the standards in the valuation formula in the Escrow Agreement.

Question Number 8 dealt with the issue of whether Regulus' calling of the Demand Note and acquiring possession of Still's shares as satisfaction for his \$ 341,643.84 debt was proper. (Verdict Form at 3). Specifically, Question Number 8 and its attendant direction states as follows:

Question 8: Do you find that Regulus was lawfully justified in its calling of the Demand Note and retention of Mr. Still's shares because of agreements signed by Mr. Still and Regulus?

Yes X No _____

If you answer "Yes" to Question #8, you should not answer any further questions in this section and should proceed to Question #13 [concerning Regulus' Breach of Contract counterclaim]. If you answer "No" to Question #8, proceed to Question #9 [concerning manifest unreasonableness regarding the formula contained in the Escrow Agreement].

(Verdict Form at 3)(emphasis added). According to the direction immediately following Question Number 8, if the jury responded "yes," then they should skip Question Numbers 9 through 12 (questions addressing the UCC issues of commercial reasonableness and manifest unreasonableness regarding the disposition and valuation of Still's shares) and proceed to

Question Number 13 (question addressing the entirely separate counterclaim of Breach of Contract). In light of the jury's "yes" response to Question Number 8, the accompanying direction following Question Number 8 foreclosed the jury from considering the companion issues of commercial reasonableness and manifest unreasonableness. Such a result is plain error.

During the jury charge, the Court gave instructions regarding the requirement of commercial reasonableness in relation to Regulus' disposition of Still's shares, as well as explained to the jury that the agreed upon standards utilized in the Escrow Agreement valuation formula could not be manifestly unreasonable. (N.T. 2/19/03, p. 104, 118). Thus, the jury charge instructed the jury that they would be determining the issues of commercial reasonableness and manifest unreasonableness regarding the disposition of Still's shares. In contradiction to the jury instructions, the direction following Question Number 8 foreclosed such determinations by the jury. As a result, examination of the Court's jury charge in conjunction with the accompanying direction following Question Number 8 reveals that the jury was prevented from deciding the issues of commercial reasonableness and manifest unreasonableness in direct contravention to the jury instructions. Consequently, the issues of commercial reasonableness and manifest unreasonableness regarding the disposition and valuation of Still's shares were left undetermined. The Court is unable to reconcile such a result in light of the jury instructions which explicitly directed the jury to determine the issues of commercial reasonableness and manifest unreasonableness.

Due to the aforementioned, an error occurred during trial which so prejudiced Still's rights as to warrant a new trial regarding the UCC issues of commercial reasonableness in relation to the disposition of Still's shares and the manifest unreasonableness of the standards in

the valuation formula in the Escrow Agreement. By preventing the jury from deciding the issues of commercial reasonableness and manifest unreasonableness in contradiction to the jury instructions, the Special Verdict form prohibited the determination of issues upon which the jury was instructed to resolve. Such a result prejudiced Still and refusal to grant a new trial would be inconsistent with substantial justice. Corrigan, 234 F. Supp.2d at 502. Accordingly, Still is entitled to a new trial on the UCC issues of commercial reasonableness and manifest unreasonableness with respect to his claims for Conversion and Wrongful Seizure set forth in Counts XX and XXII of the Second Amended Complaint.⁸

B. Still's Motion to Vacate the Judgment on Regulus' Counterclaim for Unjust Enrichment

1. Legal Standard

Still brings his motion to vacate judgment under Federal Rule of Civil Procedure 59(e).⁹ “Rule 59(e) allows a court to vacate a judgment and enter judgment in favor of the

⁸ Still seeks a new trial on his claims of Conversion and Wrongful Seizure of his shares on the additional ground that counsel were not notified of a jury question regarding the companion direction to Question Number 8. (Pl.'s Post-Trial Mem. Law at 9). Still argues that the jury was confused by the direction following Question Number 8, but was directed to follow the instructions on the form. Since Still has already been granted a new trial on the basis that the companion direction to Question Number 8 was prejudicially erroneous, the Court will deny Still's Motion as it concerns the issue of notification of a jury question regarding the companion direction to Question Number 8.

⁹ Still moves to vacate judgment on the counterclaim pursuant to Federal Rules of Civil Procedure 49(a) and 59(d) and (e). (Pl.'s Post-Trial Mem. Law at 15). Although Still states that he moves under these federal rules, he provides no other guidance or reference to these rules or their applicable standards. Thus, Still fails to provide any legal standard or any analysis in conjunction with the proper legal standard regarding his Motion to Vacate Judgment. Review of Rule 49(a) shows that it governs special verdicts and does not address alteration of judgment. As for Rule 59(d), it applies only to the court's *sua sponte* grant of a new trial. Since neither Rule 49(a) nor Rule 59(d) applies to the instant case, the Court will address Still's Motion to Vacate Judgment pursuant to Federal Rule of Civil Procedure 59(e), which deals with the alteration or

moving party.” Jones v. Dalton, No. CIV.A.95-7940, 1998 WL 476219, at *2 (E.D. Pa. Aug. 12, 1998), *aff’d*, 202 F.3d 254 (3d Cir. 1999). “The purpose of a motion to alter or amend a judgment under Fed. R. Civ. P. 59(e) is to ‘correct manifest errors of law or fact or to present newly discovered evidence.’” Id. (quoting Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985)). According to Rule 59(e), a “motion to alter or amend a judgment shall be filed no later than 10 days after entry of judgment.” FED. R. CIV. P. 59(e). “The rule does not specify grounds for altering or amending a judgment, but the motion must involve ‘reconsideration of matters properly encompassed in a decision on the merits.’” Jones, 1998 WL 476219, at *2 (citations omitted). Thus, “[a] Rule 59(e) motion is appropriate ‘if the court in the original judgment failed to give relief on a certain claim on which it has found that the party is entitled to relief.’”

Hartman Plastics, Inc. v. Star Intern. LTD-USA, No. CIV.A.97-2679, 1998 WL 643864, at *1 (E.D. Pa. Sept. 18, 1998)(quoting 11 CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 2810.1 (1995)). “However, [t]he Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to entry of judgment.” Id. (quotation and internal quotation marks omitted). “A motion to alter or amend a judgment must be based on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence not available previously; or (3) the need to correct clear error of law or prevent manifest injustice.” Id. (citing N. River Ins. Co. v. Cigna Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir.1995)). “The grant of a Rule 59(e) motion rests within the sound discretion of the trial court.” Id. (citing Kiewit E. Co., Inc. v. L & R Const. Co., Inc., 44 F.3d 1194, 1204 (3d Cir. 1995)). “Motions under Rule 59(e) should be granted sparingly

amendment of judgment.

because of the interests in finality and conservation of scarce judicial resources.” Jones, 1998 WL 476219, at *2.

2. Still’s Claim

Still argues that the judgment entered in favor of Defendant Regulus on its counterclaim for Unjust Enrichment should be vacated because the jury’s answers to Question Numbers 13 and 16 are inconsistent.¹⁰ (Pl.’s Post-Trial Mem. Law at 15). Regarding Question Numbers 13 and 14, the jury found that Still breached his Key Executive Agreements with Regulus, but did not award any damages to Regulus for such breach(es). (Verdict Form at 4). As for the unjust enrichment claim, the jury answered Question Number 16 in the affirmative,

¹⁰ The pertinent questions of the Special Verdict form are the following:

CLAIMS ASSERTED BY DEFENDANTS AGAINST PLAINTIFF
BREACH OF KEY EXECUTIVE/EMPLOYMENT CONTRACTS

Question No. 13: Did Mr. Still breach his Key Executive Agreements with Regulus?

Yes X No

If you answer Question #13 “No,” Regulus cannot recover and you should proceed to the section titled “Unjust Enrichment”. If you answer Question #13 “Yes”, you should proceed to Question #14.

Question No. 14: Did Mr. Still breach(es) of his Key Executive Agreements cause Regulus any harm?

Yes No X

If you answer Question #14 “No,” Regulus cannot recover and you should proceed to the section titled “Unjust Enrichment”. If you answer Question #14 “Yes”, you should proceed to Question #15.

UNJUST ENRICHMENT

Question No 16: Do you find that Mr. Still unjustly retained money or property to the loss of Regulus?

Yes X No

If you answer Question #16 “No,” Regulus cannot recover and you should inform the Deputy Clerk that you are finished deliberating. If you answer Question #16 “Yes”, you should proceed to Question #17.

Question No. 17: What is the amount you feel Mr. Still benefitted from the unjust retention of property or money of Regulus? The dollar amount awarded below, is the amount that will be awarded to Regulus as restitution.

\$ 1.00

(Verdict Form at 4-5).

finding that Still unjustly retained money or property to the loss of Regulus. (Id. at 5). As restitution for Still's unjust enrichment, the jury awarded Regulus \$ 1.00. (Id.). In light of foregoing, Still argues that the jury found that there was an express employment contract, that he breached the contract, but the jury did not award any damages to Regulus for breach of contract; instead, the jury erroneously awarded nominal damages in the amount of \$ 1.00 for unjust enrichment, which cannot be maintained if there is an express contract. (Pl.'s Post-Trial Mem. Law at 17-18). Upon review of Still's claim, it appears that he does not seek to vacate judgment based upon a change in law or the discovery of new evidence. As a result, although Still does not specify, the Court presumes that Still's Motion asserts a clear error of law or manifest injustice as the grounds for vacating the judgment.

a. Unjust Enrichment

Unjust enrichment is essentially an equitable doctrine. Mitchell v. Moore, 729 A.2d 1200, 1203 (Pa. Super. 1999)(citation omitted). "Where unjust enrichment is found, the law implies a contract, which requires the defendant to pay to the plaintiff the value of the benefit conferred." Id. (citation omitted). In order to prove unjust enrichment, the necessary elements are: "(1) benefits conferred on defendant by plaintiff; (2) appreciation of such benefits by defendant; and (3) acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value." Id. (citations omitted). "The application of the doctrine depends on the particular factual circumstances of the case at issue." Id. at 1203-04. "In determining if the doctrine applies, our focus is not on the intention of the parties, but rather on whether the defendant has been unjustly enriched." Id. (citations omitted).

According to Pennsylvania law, “the quasi-contractual doctrine of unjust enrichment is inapplicable when the relationship between the parties is founded on a written agreement or express contract.” Hershey Foods Corp. v. Ralph Chapek, Inc., 828 F.2d 989, 999 (3d Cir. 1987)(quotation and internal quotation marks omitted). Thus, “[w]here an express contract governs the relationship of the parties, a party’s recovery is limited to the measure provided in the express contract; and where the contract fixes the value of the services involved, there can be no recovery under a *quantum meruit* theory.” Id. (quotation and internal quotation marks omitted). However, even though “unjust enrichment is inapplicable when the relationship between the parties is founded on a written agreement or express contract, an unjust enrichment claim may go forward when one party performs services wholly outside the scope of the contract.” Drysdale v. Woerth, 153 F. Supp.2d 678, 687 (E.D. Pa. 2001), *aff’d without opinion*, 2002 WL 31927681 (3d Cir. Dec. 24, 2002), see also, United Artists Theatre Circuit, Inc. v. Monarch, Inc., No. CIV.A.94-2155, 1996 WL 711483, at * 7 (E.D. Pa. Dec. 9, 1996)(stating that “an unjust enrichment claim may go forward when one party performs services wholly outside of the scope of the contract”); Combustion Sys. Servs., Inc. v. Schuylkill Energy Res., Inc., No. CIV.A.92-4228, 1993 WL 523713, at *5 (E.D Pa. Dec. 15, 1993)(same).

3. Court’s Analysis

In the instant case, the jury’s verdict regarding Defendant Regulus’ Unjust Enrichment claim was not inconsistent with its verdict pertaining to the breach of contract claim. “In reviewing the propriety of a jury verdict, [this Court’s] obligation is to uphold the jury’s award if there exists a reasonable basis to do so.” Nissim v. McNeil Consumer Prods. Co., Inc., 957 F. Supp. 600, 601 (E.D. Pa. 1997), *aff’d without opinion*, 135 F.3d 765 (3d Cir.

1997)(quotation and internal quotation marks omitted). Accordingly, the trial court “must search the record for any evidence which could have reasonably led the jury to reach its verdict, drawing all reasonable inference in favor of the verdict winner.” Id. (citations omitted). In relation to the jury’s answers to special interrogatories, the Court of Appeals for the Third Circuit (“Third Circuit”) has held “that ‘a verdict must be molded consistently with a jury’s answers to special interrogatories when there is any view of the case which reconciles the various answers.’” McAdam v. Dean Witter Reynolds, Inc., 896 F.2d 750, 763 (3d Cir. 1990)(quoting Bradford-White Corp. v. Ernst & Whinney, 872 F.2d 1153, 1159 (3d Cir. 1980)). As a result, “a trial court is under a constitutional mandate to search for a view of the case that makes the jury’s answers consistent.” Id. (quotation and internal quotation marks omitted). Based upon the evidence presented to the jury and the Court’s instructions, the two verdicts can be reconciled.

First, the Court instructed the jury on oral contracts with respect to the payments that Still received through Cornerstone Capital Advisors LLC (“Cornerstone Capital”), a company owned and controlled by Still.¹¹ (N.T. 3/19/03 at 98-101; Defs.’s Answer Pl.’s Compl., ¶ 5). During the jury charge, pertaining to Regulus’ Unjust Enrichment claim, the Court instructed, “Regulus contends that Mr. Still misappropriated funds of Regulus for his personal benefit and use in the forms of Cornerstone payments” (Id. at 106, lines 9-11). Also during the jury charge, the Court informed the jury that “Mr. Still concedes that the Cornerstone payment is not contained in the Key Executive Agreement, but claims that it was a side, verbal

¹¹ According to Still, Regulus was required to pay Cornerstone approximately \$ 35,000 on an annual basis due to an oral agreement. (N.T. 2/19/03, p. 98). Still contends that Regulus failed to make the payments for 2000 and 2001. (Id.). Regulus argues that Still received approximately \$ 120,000 that he was not entitled to as a result of taking Cornerstone payment money. (N.T. 2/3/03, p. 33; N.T. 2/19/03, p. 60-61, 80-81).

agreement requiring its payment . . . Regulus disputes that.”¹² (Id. at p. 98, lines 6-7). In light of the aforementioned, including the evidence proffered to the jury regarding the Cornerstone payments, the jury may have concluded that there was no valid oral contract between Still and Regulus regarding the Cornerstone Capital payments. By finding that there was no valid oral contract, the jury could not have found against Still pertaining to Regulus’ Breach of Contract counterclaim. Instead, the jury could have concluded that Still was unjustly enriched as a result of the Cornerstone Capital payments that he received. As such, there is a view of the case which reconciles the jury’s various answers to the special interrogatories pertaining to the Breach of Contract and Unjust Enrichment counterclaims. Consequently, there exists a reasonable basis to uphold the jury’s award and, therefore, the Court is obligated to uphold the jury’s verdict. Nissim, 957 F. Supp. at 601.

Second, there was evidence and testimony presented during trial concerning the ways in which Still was unjustly enriched outside the scope of his Key Executive Agreement. Primarily, the evidence and testimony focused on Still traveling with his family at the expense of Regulus. Still’s wife, Sheridan Still, testified that she traveled with Still on his business trips. (N.T. 3/3/03, p. 52). In relation to traveling with her husband, Sheridan Still stated that she traveled to Florida and California, as well as traveled to New York on twelve to fourteen separate occasions. (Id.). There was also testimony that Still’s daughter traveled with him and his wife to New York and Boston while Still was on business. (N.T. 3/4/03, p.11- 15). Additionally, the Defendants presented evidence that Mrs. Still and her family made several trips to and from New

¹² Still’s attorney, Lynanne B. Wescott, Esq., affirmed that the Cornerstone payments were not made pursuant to Still’s Key Executive Agreement by stating that “Cornerstone is a separate entity from the employment contract.” (N.T. 2/14/03, p. 146, lines 3-4).

York in town cars in relation to her daughter's wedding at Regulus' expense. (N.T. 2/4/03, p. 18-20). The evidence presented revealed that Mrs. Still and her family members had door-to-door service to and from their home in Rosemont, Pennsylvania to the St. Regis Hotel in New York City on the following dates: February 17, 1999; February 18, 1999; February 19, 1999; and February 21, 1999. (*Id.*, p. 20). In her testimony, Mrs. Still stated, "I am sure that there was no corporate purpose of [the town car service]. . . . It was the wedding." (*Id.*, p. 20, lines 19-21). Other evidence proffered by the Defendants consisted of hotel invoices for trips where Mrs. Still and/or her daughter were present, including charges for Mrs. Still's room service and salon service.

In light of the aforementioned, the jury could have decided that Still was unjustly enriched outside the scope of his employment contract. The jury could have found that Still was unjustly enriched, beyond the scope of the Key Executive Agreement, by having his family travel with him at the expense of Regulus. Thus, the jury's verdict regarding Regulus' Unjust Enrichment counterclaim can be reconciled with both Regulus' Breach of Contract claim and the evidence and testimony adduced at trial. Consequently, the Court is obligated to uphold the jury's verdict since there exists a reasonable basis to uphold the jury's award. *Nissim*, 957 F. Supp. at 601.

C. Still's Renewed Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial

1. Legal Standard

"Upon renewed motion for judgment as a matter of law, the Federal Rules of Civil Procedure permit the court to: '(A) allow the judgment to stand, (B) order a new trial, or (C)

direct entry of judgment as a matter of law.’”¹³ Wilson, 986 F. Supp. at 286 (quoting FED. R. CIV. P. 50(b)(1))(footnote omitted). “Judgment as a matter of law may be granted only if ‘there is no legally sufficient evidentiary basis for a reasonable jury’ to find in favor of the non-moving party.” Id. (quoting FED. R. CIV. P. 50(a)). Thus, “[t]he question is not whether there is literally no evidence supporting the party against whom the motion is directed but whether there is evidence upon which the jury could properly find for that party.” Id. (quoting Walter v. Holiday Inns, Inc., 985 F.2d 1232, 1238 (3d Cir. 1993))(quotation and internal quotation marks omitted). “A jury verdict can be displaced by judgment as a matter of law only if the record is critically deficient of the minimum quantum of evidence from which the jury might reasonably afford relief.” Id. (quotations and internal quotation marks omitted). When determining a motion for judgment as a matter of law, “[t]he court must view the evidence in the light most favorable to the non-moving party, and every fair and reasonable inference must be drawn in that party’s favor.” Id. (quotations and internal quotation marks omitted).

¹³ Federal Rule of Civil Procedure 50(b)(1) provides in pertinent part:

[i]f, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court’s later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment--and may alternatively request a new trial or join a motion for a new trial under Rule 59. In ruling on a renewed motion, the court may: (1) if a verdict was returned: (A) allow the judgment to stand, (B) order a new trial, or (C) direct entry of judgment as a matter of law.

...

FED. R. CIV. P. 50(b)(1).

A party making a renewed motion for judgment as a matter of law may, in the alternative, move for a new trial. FED. R. CIV. P. 50(b). “Accordingly, the moving party may seek a new trial on any grounds that would justify a new trial under Rule 59.” Willmore v. Willmore, No. CIV.A.95-0803, 1996 WL 229375, at *3 n.8 (E.D. Pa. May 2, 1996)(citation omitted). Rule 59(a) provides that a court may grant “[a] new trial . . . for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States.” FED. R. CIV. P. 59(a). As discussed earlier in Part II.A.1., some common grounds that are raised for new trial motions include prejudicial error of law, that the verdict is against the weight of the evidence, that the verdict is too small or too large, that there is newly ascertained evidence, that the behavior of counsel or the court has tainted the verdict, or that there has been misconduct impacting the jury. See supra Part II.A.1. “A new trial may be appropriate even where judgment as a matter of law is not.” Valentin v. Crozer-Chester Med. Ctr., 986 F. Supp. 292, 302 n.7 (E.D. Pa. 1997)(citations omitted). “A court analyzing a motion for a new trial need not view the evidence in the light most favorable to the verdict winner.” Id. (citation omitted).

2. Still’s Claim

Still argues that he is entitled to partial judgment as a matter of law as to Regulus’ liability for failure to dispose of his shares in a commercially reasonable manner.¹⁴ As previously

¹⁴ Still’s initial Motion for Partial Judgment as a Matter of Law, which was based upon the same argument as the instant Motion, was denied by this Court and the action was submitted to the jury. (Doc. No. 173). As such, Still properly renews this motion pursuant to Federal Rule of Civil Procedure 50(b). See Wilson v. Phila. Det. Ctr., 986 F. Supp. at 289 (stating that “[t]he Rule 50(b) motion may consider only specific grounds asserted in the motion for directed verdict”).

mentioned, in relation to the Escrow Agreement, the UCC provides that “[t]he parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in section 9602 (relating to waiver and variance of rights and duties) if the standards are not *manifestly unreasonable*.” 13 PA. CONST. STAT. ANN. § 9603(a)(emphasis added). Also, as has been stated, 13 PA. CONST. STAT. ANN. § 9602 declares that “[e]xcept as otherwise provided in section 9624 (relating to waiver), to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary” his rights to, among other things, *commercially reasonable* disposition, as well as notification before disposition of collateral. 13 PA. CONST. STAT. ANN. §§ 9602, 9607(c); 9610; 9611 (emphasis added).

The Third Circuit has stated that “the test to determine ‘commercial reasonableness’ should be whether the sale’s every aspect is characterized by: (1) good faith, (2) avoidance of loss, and (3) an effective realization.” Solfanelli v. Corestates Bank, Inc., 203 F.3d 197, 200 (3d Cir. 2000). “Commercial reasonableness” should be evaluated under the “totality of the circumstances.” Id. at 200-01 (citation omitted). “An [a]greement provision attempting to expunge a commercial reasonableness requirement is per se ‘manifestly unreasonable.’” Id.

After the default, Regulus retained Still’s shares as satisfaction of his \$ 341,643.84 debt. Since Regulus did not obtain Still’s consent to retain his shares as satisfaction of the debt, the Court instructed the jury that “Regulus was required to dispose of the collateral in a commercially reasonable manner. . . . the test to determine commercial reasonableness is whether the sales, every aspect is characterized by good faith, avoidance of loss, and effective realization.” (N.T. 2/19/03, p. 118, lines 8-16). The Court also instructed that “Regulus, as a

secured creditor, is required to make some critical evaluation of the information it receives, and has an obligation to maximize the sales proceeds” and directed that “[i]f you find that Regulus merely cancelled the shares, and made no effort to maximize the sales proceeds, then you must find that the disposition was not commercially reasonable.” (Id., p. 118, lines 17-24). In addition to instructing the jury regarding commercial reasonableness, the Court also explained that the agreed upon standards in the valuation formula in the Escrow Agreement may not be manifestly unreasonable. (Id., p. 104, lines 15-20). The Court also set forth some considerations for the jury to contemplate in “determining whether the valuation formula in the escrow account was manifestly unreasonable.” (Id., p. 104, line 15; p. 105, line 2).

Still argues that the formula provided in the Escrow Agreement was “manifestly unreasonable” as a matter of law because it attempted to eliminate his right to a commercially reasonable disposition of his shares after default. (Pl.’s Post-Trial Mem. Law at 24). According to Still, the key component of the aforementioned provision of the Escrow Agreement is that the formula prescribed the only method to be used for determining the value of his shares. (Id.). Thus, Still argues, this provision is necessarily a waiver of his rights to ensure that his collateral is disposed of in a commercially reasonable manner because the provision sets forth that it “shall” be the sole means of determining the value of his shares. (Id.). Moreover, Still argues that no reasonable jury could conclude that the formula was not “manifestly unreasonable” in application. (Id. at 25). Still contends that Regulus’ application of the Escrow Agreement formula resulted in a valuation of Still’s equity interests at negative \$ 257 million dollars. (Id.). According to Still, “no reasonable jury could conclude that Mr. Still’s shares were worth less than zero dollars” (Id.). Finally, Still argues that Regulus failed to obtain his consent to

cancel his equity interests as satisfaction of his debt after default. (Id.). Still contends that “[h]aving failed to receive plaintiff’s consent to retain his collateral as satisfaction of his debt after default, Regulus was required to dispose of his collateral in a commercially reasonable manner.” (Id.)(citing 13 PA. CONST. STAT. ANN. § 9610).

3. Court’s Analysis

Viewing the evidence in the light most favorable to the Defendants, and drawing every fair and reasonable inference in their favor, the Court cannot find that “there is no legally sufficient evidentiary basis for a reasonable jury” to have found in the Defendants’ favor. FED. R. CIV. P. 50(a). Examination of the evidence and trial testimony shows that the record is not critically deficient of the minimum quantum of evidence from which the jury might reasonably afford relief to the Defendants. Significantly, Still’s expert, Gilbert Matthews (“Matthews”), never expressed the opinion that the Escrow Agreement formula was manifestly unreasonable.¹⁵ (N.T. 2/14/03, p. 125-26). In fact, during cross-examination, Matthews admitted that there are circumstances where the formula may be commercially reasonable. (N.T. 3/10/03, p. 213-16). Matthews stated that the formula could have been favorable and equitable if the company had made its numbers. (Id., p. 215, lines 4-9). Matthews agreed that if the company had made its projections, then the value of the formula would have been positive. (Id., p. 214, lines 1-9). Regarding Regulus’ projections, Matthews admitted that they were consistently underachieved

¹⁵ During cross-examination, Matthews stated that he was not an expert on the UCC and he had never testified about commercial reasonableness before the trial. (N.T. 2/10/03, p. 217). When asked by defense counsel, “Are you an expert on the Uniform Commercial Code?,” Matthews responded, “No, I am not.” (Id., p. 217, lines 9-10). When questioned about testifying about commercial reasonableness, Matthews responded, “I’ve never been asked the question before.” (Id., p.217, lines 18-23).

when Still was in charge of Regulus. (N.T. 3/10/03, p. 177, lines 19-22; p. 178, lines 6-24). During trial, the Defendants argued that the reason Regulus did not make its projections was because Still was spending large amounts of money and got in the way of getting the company back on track. (N.T. 3/19/03, p. 70). In light of the aforementioned, particularly Matthews' admittance that the formula could have been favorable and equitable if Regulus had made its projections, a reasonable jury could have found that the Escrow Agreement formula was reasonable.

When questioned about whether Matthews knew what the words "commercially reasonable" meant under the UCC, he responded by stating that "basically it's similar to a fair market value standard." (N.T. 3/10/03, p. 218, lines 2-6). This testimony by Still's expert is especially meaningful because of the Escrow Agreement's utilization of the provision "fair market value." In fact, the formula contained in the Escrow Agreement is premised entirely upon the fair market valuation of Still's shares. Regarding the 5.5 multiple utilized in the formula, Matthews conceded that the 5.5 multiple is appropriate when comparing Regulus, a closely held company that is not publically traded, to public companies traded on the New York, American or NASDAQ stock exchanges. (*Id.*, p. 211-12).

Moreover, the Defendants' expert, Howard Mergelkamp ("Mergelkamp"), testified that the formula in question was routinely used in the industry and was the industry standard. (N.T. 2/13/03, p. 90-93). Mergelkamp stated that he is familiar with the formula because it is an industry benchmark. (*Id.*). Along these same lines, Still's expert, Matthews, opined that it was acceptable to uphold a contractual valuation formula where it was the generally accepted practice within the industry. (N.T. 2/10/03, p. 200-02). Thus, the jury could

have found that the Escrow Agreement formula was reasonable and that disposition of Still's shares was an accepted method in the industry.

Mr. Matthews also testified that, at the time that Still signed the Escrow Agreement, his shares had no value. (Id., p. 213). At the date of the signing, although the shares did not have any value, it was expected that the shares would have prospective value based upon projections for the future of Regulus. (Id., p. 213-15). The Defendants presented evidence that Regulus' shares were consistently valued at approximately \$ 0.17/share and consistently cancelled. (N.T. 2/6/03, p. 60; 2/7/03, p. 144-45; 2/12/02, p. 46). The Defendants also presented evidence that if Still's shares had been valued at the historical value of \$ 0.17, they would have been worth approximately \$ 129,000, which is less than Still's debt of \$ 300,000 plus interest. (N.T. 2/12/03, p. 49). In addition, the Defendants proffered evidence regarding expressions of interest for the entire company of Regulus which showed that, after taking the company's debt of approximately \$ 300 million dollars into consideration, the shareholders would have been left with virtually nothing. (N.T. 2/4/03, p. 182-84).

Regarding the sale of his shares, Still never presented any evidence of actual buyers interested in his shares or a sale in which the proceeds would exceed the amount of his debt. Still's own expert testified that he was not offering an opinion that Still could have sold his shares to a willing buyer for any particular amount of money. (N.T. 2/10/03, p. 182). In addition, Still failed to present evidence of any available transactions pursuant to which there could have been proceeds that exceeded the amount of the debt. Since Still's claim centers on whether his shares had a value in *excess* of the approximately \$ 300,000 that he received from the loan by Regulus, the jury could have taken the aforementioned into consideration when deciding

whether the Escrow Agreement, including the formula, were manifestly unreasonable as a matter of law and if the disposal of Sill's shares was a commercially reasonable disposition.

In light of the above, there is evidence upon which the jury could properly find for the Defendants. Viewing the evidence in the light most favorable to the Defendants, and drawing every fair and reasonable inference in their favor, a reasonable jury could have determined that the Escrow Agreement, including the formula, were not manifestly unreasonable as a matter of law and did not attempt to eliminate Still's right to a commercially reasonable disposition of his shares after default. Also, a reasonable jury could have determined that the disposal of Sill's shares was a commercially reasonable disposition. As a result, there is a legally sufficient evidentiary basis for the jury to find in favor of the Defendants and, therefore, Still's Renewed Motion for Partial Judgment as a Matter of Law must be denied.

In the alternative to his Renewed Motion for Judgment as a Matter of Law, Still moves for a new trial on the issue of whether cancellation by Regulus of his shares was a commercially reasonable disposition pursuant to the Pennsylvania Uniform Commercial Code, 13 PA. CONST. STAT. ANN. § 9602. (Pl.'s Post-Trial Mem. Law at 20). In Part II.A., the Court has granted Still a new trial regarding the UCC issue of commercial reasonableness relating to Still's claims for Conversion and Wrongful Seizure of his shares. Thus, the new trial will necessarily encompass the issue of whether cancellation by Regulus of his shares was a commercially reasonable disposition pursuant to the Pennsylvania Uniform Commercial Code, 13 PA. CONST. STAT. ANN. § 9602. As a result, the Court denies Still's Alternative Motion for a New Trial as moot.

An appropriate Order follows.

4. Plaintiff's Motion to Vacate Judgment on the counterclaim for Unjust Enrichment because the jury's special verdicts are inconsistent and contrary to law is DENIED;
5. Plaintiff's Motion for Judgment as a Matter of Law that the cancellation of Still's shares was not a commercially reasonable disposition is DENIED;
and
6. Plaintiff's Alternative Motion for a New Trial is DENIED as moot.

BY THE COURT:

Robert F. Kelly,

Sr. J.