**UNREPORTED**

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 012

September Term, 2015

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MICHELLE WILLIAMS F/K/A MICHELLE DARGAN

v.

LENDMARK FINANCIAL SERVICES, LLC

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Meredith,
Reed,
Thieme, Raymond G., Jr.
(Senior Judge, specially assigned),

JJ.

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Opinion by Meredith, J.

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Filed: July 3, 2017

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104

Michelle Williams, appellant, appeals the dismissal of a complaint filed in the Circuit Court for Baltimore City against Lendmark Financial Services, LLC, ("Lendmark"), appellee, alleging that Lendmark violated Maryland's Closed End Credit Grantor Provisions ("CLEC"), Maryland Code (1975, 2013 Repl. Vol.), Commercial Law Article ("CL") §§ 12-1001 *et seq*., and breached the parties' loan contract. Because the suit was based upon the same loan transaction that was the subject of a previously filed suit pending in the United States District Court for the District of Maryland, the circuit court granted appellee's motion to dismiss. Appellant noted this timely appeal.

## QUESTION PRESENTED

Appellant presents the following question for our review:

> Whether Maryland's claim-splitting doctrine bars Appellant from pursuing damages in a separate lawsuit caused by statutory violations and breaches of an installment contract all occurring after the filing of the Complaint in the prior litigation? [No.]

Perceiving no error, we affirm.

## FACTS AND PROCEDURAL HISTORY

### A. The First Complaint

This litigation arises out of a "Combination Statement of Transaction, Promissory Note & Security Agreement," (the "promissory note") executed by appellant on November 17, 2009. Pursuant to the terms of the promissory note, appellant obtained a loan from appellee in the amount of $2,620.72. Appellant agreed to make 36 monthly payments in the amount of $102.23. Appellant incurred numerous late charges as a result

of her failure to timely make several monthly payments.[1] On May 9, 2013, appellant filed a complaint (the "First Complaint") against appellee in the Circuit Court for Baltimore City, in which appellant asserted claims for: violation of CLEC, CL §§ 12-1001 *et seq*. (Count One); Breach of Contract (Count Two); violation of CL § 14-1315 (Count Three); violation of the Maryland Consumer Protection Act, CL §§ 13-101 *et seq*. (Count Four), and Negligent Misrepresentation (Count Five).

On June 14, 2013, appellee removed the First Complaint to the United States District Court for the District of Maryland pursuant to 28 U.S.C. § 1332(d) and the district court's diversity jurisdiction. On June 28, 2014, appellee filed in the district court a motion to dismiss for failure to state a claim upon which relief may be granted, or in the alternative, for summary judgment. In a memorandum opinion and order entered on March 25, 2014, the district court dismissed appellant's claims filed pursuant to CL § 13-1415 (Count Three), the Maryland Consumer Protection Act (Count Four), and for

[1] The "PROMISE TO PAY" section in the promissory note provided:

> I promise to pay you the principal amount of the loan, which consists of the Amount Financed plus the Loan Fee shown above, if any, with simple interest at the interest rate of 20.240% per year (the "Interest Rate"), on the unpaid principal balance, in monthly payments as shown above, beginning on the first payment due date and then on the same date of each following months until fully paid. **Each payment will be applied first to late charges, then to accrued interest and then to the principal, or in any other manner you determine**. If any portion of the balance remains unpaid after maturity of this note, whether as originally scheduled or accelerated, I will pay interest on the remaining balance until paid in full at the Interest Rate. If you get a judgment against me, the judgment shall bear interest at the highest rate allowed by law.

(Emphasis added.)

Negligent Misrepresentation (Count Five). Accordingly, the case proceeded on the claims filed pursuant to CLEC, CL § 12-1001 *et seq.*, for imposing late fees prior to the end of the five-day grace period (Count One), and for breach of contract (Count Two). On April 8, 2014, the district judge entered a scheduling order. By letter dated April 22, 2014, counsel for appellee proposed a modified scheduling order, setting May 23, 2014, as the deadline for "[m]oving for joinder of additional parties and amendment of pleadings." Appellant neither amended the First Complaint within 21 days after serving it pursuant to Fed. R. Civ. P. 15(a)(1)(A), nor sought leave to amend pursuant to Fed. R. Civ. P. 15(a)(1)(B).[2]

After the close of discovery, the district court entered summary judgment on appellant's claim that Lendmark improperly imposed late charges even though appellant made payments within the five-day grace period.

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[2] Fed. R. Civ. P. 15 provides, in pertinent part:

> **(a) Amendments Before Trial.**
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> **(1) Amending as a Matter of Course.** A party may amend its pleading once as a matter of course within:
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> **(A)** 21 days after serving it, or
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> **(B)** if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
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> **(2) Other Amendments.** In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.
>
> **(3) Time to Respond.** Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

Appellant then noted an appeal to the United States Court of Appeals for the Fourth Circuit. In a reported opinion filed on July 8, 2016, the court of appeals affirmed in part and reversed in part the judgment entered by the district court. *See Williams v. Lendmark Financial Services, Inc.*, 828 F.3d 309 (4th Cir. 2016). In that opinion, Judge Paul V. Niemeyer provided the following summary of the facts and procedural history of the litigation in federal court:

> In November 2009, Williams borrowed $2,620.72 from Lendmark, executing a promissory note in favor of Lendmark. The note required Williams to pay 36 monthly installments of $102.23 each, representing an annual interest rate of 20.24%. In the note, Williams agreed that if she did not pay a monthly installment by the first day of each month plus a five-day grace period, she would have to pay a late charge of 10% of the late installment or $25, whichever was the greater. **The note provided that all payments were to be applied first to late charges, then to accrued interest, and finally to principal**.
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> Williams had three methods by which to make payments: (1) by making the payments in person at Lendmark branch offices, which were open generally from 8:30 a.m. to 5:30 p.m.; (2) by making the payments over the telephone at Lendmark branch offices during business hours; and (3) by making the payments by mail. Thus, there were no means by which Lendmark could receive a payment on a given day after the close of business. Accordingly, in administering the loan, Lendmark posted late charges on its accounting records after the close of business on the fifth day of the five-day grace period.
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> For the first three months – January to March 2010 – Williams made timely monthly payments of $106. No explanation is given for why she paid $106 each month rather than the $102.23 specified in the note. In April 2010, Williams made her payment late and was charged a late fee of $25. From then until December 2010, she was charged a late fee of $25 three more times – in July, September, and October. **In December 2010, however, she made a payment of $106 within the grace period. Nonetheless, Lendmark charged her a $25 late fee because it applied that month's payment first to prior late fees and then to interest and principal, thereby, according to Lendmark, leaving her with only a partial payment of interest and principal**. **The same circumstances**

> **occurred for her February 2011 payment.** After March 2011, Williams' payments were mostly made in amounts less than the $102.23 specified in the note, and she incurred late fees on each of those occasions. Long after the maturity of the note, Williams finally paid off the entire loan, having been charged more than 40 late fees.
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> Williams commenced this action in the Circuit Court for Baltimore City, alleging that Lendmark "charged numerous late fees . . . in violation of CLEC," the note, and other state law obligations. Lendmark removed the case to federal court under diversity jurisdiction and thereafter filed a motion to dismiss the complaint. The district court granted the motion as to all claims except Williams' claim that Lendmark "assessed late fees . . . prior to the expiration of her 5 day grace period," in breach of the note's terms and of CLEC. After full discovery, however, the district court granted Lendmark summary judgment, dismissing this claim also.
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> From the district court's judgment dated July 27, 2015, Williams filed this appeal, raising three issues: (1) whether Lendmark's application of installments first to late fees, then to interest, and finally to principal violated CLEC and the note; **(2) whether Lendmark's imposition of late fees on installments made in December 2010 and February 2011, which were timely made, violated CLEC and the note;** and (3) whether Lendmark's posting of late fees on its books after the close of business on the fifth day of the five-day grace period violated CLEC and the note.

828 F.3d at 310-11.

With respect to the first and third issues raised by Williams, the court of appeals affirmed the district court's ruling in favor of Lendmark. The court of appeals concluded that "Lendmark's practice of applying payments first to late charges was legal, both under CLEC and under the terms of the note." *Id.* at 313. And the court "reject[ed Williams's] contention that Lendmark somehow violated the promissory note by 'assessing' late fees on its books after the close of business on the fifth day of the grace period." *Id.* at 315.

But the court held that Williams's claim that she had been charged multiple late fees for some of her late payments should not have been dismissed by the district court, explaining:

> We conclude that Lendmark's practice of charging late fees solely because payments were applied first to earlier late fees constitutes an improper collection of late fees, both because the note did not require monthly payments of amounts in excess of $102.23 and because the charging of late fees based on application of an otherwise conforming payment of prior late fees amounted to the collection of multiple late fees for a single installment, in violation of both CLEC and the note.
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> * * *
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> Nowhere in the note is the monthly payment defined to be more than $102.23. To be sure, if Williams had a past-due late charge, the payment for the next month would be applied first to that late charge. But that provision does not support a contention that the next month's payment of $102.23 was insufficient in amount.
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> * * *
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> While it is true, as we hold above, that Lendmark was entitled to apply each payment that Williams made "first to late charges, then to accrued interest and then to the principal" without contravening § 12-1008, when this practice resulted in more than one late charge being imposed for Williams' failure to make a scheduled payment, then it violated § 12-1008. The charges Lendmark imposed in December 2010 and February 2011, and perhaps in other months, despite Williams' having made those payments before the end of the grace period, certainly multiplied late charges, thus violating CLEC and the note.
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> * * *
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> Thus, we conclude that Lendmark was not entitled to charge a late fee in December 2010 or February 2011, or in any month in which Williams paid an installment timely and in full. The payments that Williams made in December 2010 and February 2011 of $106 exceeded the $102.23 amount specified in the note and each payment was timely made.
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> Because we hold that Williams' complaint alleging these facts states a plausible claim for relief, at least with respect to the December 2010 and

> February 2011 payments, we reverse the district court's dismissal of this claim and remand for further proceedings.

*Id*. at 313-15 (emphasis added).

**B. The Second Complaint**

In the meantime, appellant commenced a new action on September 5, 2014, by filing a complaint (the "Second Complaint") in the Circuit Court for Baltimore City. This appeal flows from that Second Complaint. In the Second Complaint, appellant again asserted a claim under CLEC, CL §§ 12-1001 *et seq*. (Count One), and for breach of contract (Count Two), all related to the same loan transaction that was the subject of the First Complaint.

In Count One of the Second Complaint, appellant alleged that Lendmark violated CLEC when it: (1) charged appellant late fees on December 6, 2013, January 6, 2014, and February 6, 2014, all of which were after the December 1, 2012, maturity date of the loan; and (2) imposed a total number of late fees (40) greater than the number of scheduled monthly payments owed by appellant (36). Appellant alleged that "Lendmark Financial routinely charges its CLEC customers late fees after the maturity date disclosed in the financing contract," and "routinely charges its CLEC customers more late fees than the total number of scheduled monthly payments in the financing contracts."

Appellant alleged that CLEC "restricts credit grantors such as Lendmark Financial from charging to consumers any fees, charges or interest not specifically provided for under a closed end credit contract as limited by the statute," and that "Lendmark charged numerous late fees to Named Plaintiff and the Class in violation of CLEC . . . . "

In Count Two, appellant asserted a claim for breach of contract. The gravamen of that claim was that appellee "elected CLEC as the controlling law in its credit contracts with Named Plaintiff and all Class Members and incorporated the CLEC statute into the credit contracts." Accordingly, appellant alleged that, "[w]hen Lendmark Financial violated CLEC as set forth herein, Lendmark Financial materially breached its contracts with Named Plaintiff and the Class."

In her prayer for relief in the Second Complaint, appellant requested that the circuit court enter a judgment against appellee in the amount of the statutory penalties allowed by CL § 12-1018; issue an order allowing appellee to collect only the principal amount of each loan; and enter a judgment in favor of appellant for three times the interest, costs, fees, and other charges that Lendmark collected in excess of that allowed by CLEC.

On November 24, 2014, Lendmark moved to dismiss the Second Complaint, arguing that appellant impermissibly split her legal claim against appellee when she filed this second action in the circuit court during the pendency of the litigation on the First Complaint in federal court. On January 26, 2015, the motions judge held a hearing on appellee's motion to dismiss the Second Complaint. At the close of that hearing, the motions judge took the matter under advisement, but stated: "I'm quite confident that this is improper claim-splitting and am inclined to dismiss this case on that basis." On February 2, 2012, an order dismissing the Second Complaint was entered.

Appellant filed a notice of appeal on March 2, 2015.

## STANDARD OF REVIEW

The parties dispute the appropriate standard of appellate review. Appellant contends that the motion to dismiss was granted as a matter of law; therefore, we must review that decision *de novo*. *E.g.*, *Pueschel v. United States*, 369 F.3d 345, 354 (4th Cir. 2004) ("We review *de novo* a district court's application of the principles of *res judicata*."). Appellee asserts that the circuit court's ruling is entitled to some deference because a trial court has authority to control its own docket, citing, *e.g.*, *Carpenter v. Kenneth Thompson Builder, Inc.*, 186 So.3d. 820, 824 (Miss. 2014) (reviewing dismissal of duplicative action for purposes of docket management under abuse of discretion standard); *Katz v. Gerardi*, 655 F.3d 1212, 1218 (10th Cir. 2011) (stating that claim splitting is reviewed for an abuse of discretion because "claim splitting is more concerned with the district court's comprehensive management of its docket, whereas res judicata focuses on protecting the finality of judgments.").

We conclude that the issue of whether a plaintiff has split a claim is a legal question we review *de novo*, though the trial court may have discretion with respect to its response to an instance of claim-splitting. Applying *de novo* review, we conclude that the circuit court did not err in dismissing the Second Complaint.

## DISCUSSION

In *Levin v. Friedman*, 271 Md. 438 (1974), the Court of Appeals, speaking through Judge Marvin Smith, said the following regarding claim-splitting:

> [T]he rule is that rights cannot be enforced in piecemeal fashion, that a single cause of action or an entire claim cannot be split up or divided and separate suits maintained for the various parts thereof. *Iula v. Grampa*, 257

> Md. 370, 373, 263 A.2d 548 (1970); *Ex parte Carlin*, 212 Md. 526, 129 A.2d 827 (1957), and cases there cited.

271 Md. at 445. *See also Jones v. House of Reformation*, 176 Md. 43, 54 (1939) ("[T]he policy of the law is to avoid a multiplicity of suits."). In *In re Carlin's Estate*, 212 Md. 526, 532-33 (1957), the Court of Appeals explained: "It is well established that a single cause of action or an entire claim cannot be split up or divided and separate suits maintained for the various parts thereof."

Appellant contends that she did not improperly split her claim by filing the Second Complaint. She argues that the facts giving rise to the claims asserted in the Second Complaint arose after the filing of the First Complaint. Appellant contends that she did not run afoul of the rule stated in *Levin* because each late fee she was charged under the promissory note gave rise to a separate, new claim, and that the violations of CLEC sued upon in the Second Complaint had not yet occurred when she filed the First Complaint. In support of her contention that each successive wrong gives rise to a new potential claim, appellant cites cases in which courts have held that a new cause of action accrues with each failure to pay an installment on an installment contract. *See, e.g.*, *Ahl v. Ahl*, 60 Md. 207 (1883) (a previous suit and judgment for a failure to pay an installment on a bond did not bar another suit after the final installment was not timely paid). Appellant contends that "an installment sale contract is a divisible contract creating divisible obligations - each breach of which is a separate cause of action . . . [f]or this reason, a cause of action for the assessment of excessive interest, fees or charges accrues each time a debtor is assessed or required to pay an excessive amount of interest, fees or charges."

Appellant further contends that "any late fees assessed to Appellant after the filing of the First Complaint are not barred from recovery under the Second Complaint because the breaches of contract alleged in the Second Complaint did not occur until after the filing of the First Complaint." Consequently, appellant asserts: "Since all parties agree and the record indicates that the First Complaint was filed on May 9, 2013, all the alleged installments [giving rise to the claims sued upon in the Second Complaint] occurred and all the alleged illegal late fees were assessed and collected after the date the First Complaint was filed." As a result, appellant contends, the Second Complaint asserts new and distinct claims that would not be barred by a final judgment entered on the claims included in the First Complaint.

We are not persuaded that Williams has multiple discrete claims. In the context of analyzing whether a judgment disposes of an entire claim under Maryland Rule 2-602, the appellate courts of Maryland have adopted a definition of "claim" that focuses upon the operative set of facts that give rise to legal remedies. In *Carl Messenger Service*, *Inc. v. Jones*, 72 Md. App. 1, 5 (1987), this Court explained:

> A "claim" is the facts giving rise to a judicial action, not the different items of damages or different remedies sought because of those facts, **and a single set of operative facts gives rise to only one claim.** This is true whether those facts are asserted by the plaintiff as giving grounds for several remedies or by several parties as giving grounds for one remedy apiece.

(Emphasis added; internal quotations omitted.)

For other examples of cases emphasizing the distinction between a count and a "claim" for purposes of Rule 2-602 analysis, *see Miller & Smith at Quercus, LLC v.*

*Casey PMN, LLC*, 412 Md. 230, 247-48 (2010); *County Commissioners for St. Mary's County v. Lacer*, 393 Md. 415, 426 (2006); *Medical Mutual v. Evander*, 331 Md. 301, 308-09 (1993); *East v. Gilchrist*, 293 Md. 453, 459-61 (1982); *Biro v. Schombert*, 285 Md. 290, 295 (1979); and *Diener Enterprises, Inc. v. Miller*, 266 Md. 551, 556 (1972).

Although those cases considered the definition of a "claim" for purposes of Rule 2-602, rather than the rule against claim-splitting, the primary purpose of Rule 2-602 is similar to, if not identical with, the primary purpose of the rule against claim-splitting: to avoid piecemeal litigation of disputes. *Russell v. Am. Sec. Bank, N.A.,* 65 Md. App. 199, 202 (1985). Here, the Second Complaint filed by Williams sought to raise in a second suit in a second court issues that could have been raised in the same suit and forum in which the First Complaint was already pending. Even if the Second Complaint sought additional damages that had been incurred since the date the First Complaint was filed, there was nothing preventing Williams from amending the First Complaint to cover the additional damages.

Under the circumstances, we conclude that the circuit court did not commit an error of law in ruling that the Second Complaint was an effort to split Williams's claim against Lendmark, and dismissal was not an abuse of discretion.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**