Circuit Court for Montgomery County
Case No. 478605V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 352

September Term, 2021

CHANDER KANT, *ET AL.*

v.

WELLS FARGO BANK NATIONAL ASSOCIATION

Graeff,
Nazarian,
Reed,

JJ.

Opinion by Nazarian, J.

Filed: August 2, 2022

On November 14, 2002, Chander and Ashima Kant borrowed $115,000 from Wells Fargo Bank, N.A. (the "Bank") through a home equity line of credit (the "HELOC" or "Loan"). The Kants signed a Prime Equity Line of Credit Agreement & Disclosure Statement (the "Agreement") in which they promised to make minimum monthly payments on any accrued interest plus applicable fees. At the same time, among the large pile of papers borrowers sign at closings, the Kants also executed an Open-End Deed of Trust (the "Deed") that granted the Bank a security interest in property at 13110 Mica Lane in Silver Spring, Maryland (the "Property"). The Deed was subordinate to a first priority lien held on the Property.

It turns out, however, that the Property had already been sold by the sheriff at a public auction for $6,200 on October 25, 2001, in connection with another unpaid debt not relevant here. Four days after the Agreement and the Loan were executed in November 2002, the Circuit Court for Montgomery County issued a final order ratifying the sale of the Property on November 18, and the Sheriff's Deed was recorded in Montgomery County on May 14, 2003. None of the sale proceeds were applied toward repayment of the Kants' Loan, and the sale terminated the Bank's lien on the Property.

After sale of the Property was ratified, the Bank continued to bill the Kants, who made minimum interest-only payments each month for fourteen years, through August 2017. On January 30, 2020, the Kants sued the Bank in the Circuit Court for Montgomery County, demanding reimbursement of all their post-sale payments ($149,423), plus $500,000 in punitive damages, on claims for unjust enrichment, fraud, breach of contract, and debt. Their claims proceed from the theory that when the Property was sold, they

"ceased owing [the Bank] money" and no longer were obliged to make payments against the HELOC debt. In their view, the Bank no longer had the "right to collect post-sale monthly interest payments" on the Loan once the Bank's junior lien under the Deed was extinguished. The circuit court disagreed, finding that the foreclosure sale did not extinguish the debt, and granted summary judgment in favor of the Bank on all counts. The Kants appeal and we affirm.

I. BACKGROUND

A. The HELOC Loan.

The Agreement established a draw period of twenty years beginning November 14, 2002, payable on "a monthly billing cycle." The Agreement provided that "[a] Finance Charge computed on a monthly periodic rate will be imposed, if at the end of any day of the billing cycle, there is a balance owing on [the Kants'] Account." The Finance Charge was calculated at a variable rate with an initial Annual Percentage Rate ("APR") of 4.750% and a maximum APR of 18%. The Kants' monthly "Finance Charge" included only interest and no other costs.

With respect to the "Payment Schedule[,]" the Kants agreed that "[d]uring the Draw Period," they would "pay . . . a minimum monthly payment equal to the greater of the Finance Charge on the outstanding Advances plus accrued but unpaid Fees or $50.00." At the end of the draw period, the Kants agreed to "make a minimum monthly payment of the greater of 2% of the Outstanding Balance shown on [their] Statement or $50[.]00 until the entire Outstanding Balance is paid in full."

With respect to the Bank's security interest in the Property, the Agreement, which refers to the Kants collectively as "I" and "me" and to the Bank as "you," acknowledges that there is a separate security agreement that defines what happens if the Kants didn't pay:

> **Agreement Secured by Security Instrument.** In addition to the protections given to you under this Agreement, a Security Instrument on real property (the "Property") described in the Security Instrument and dated the same date as this Agreement, protects you from possible losses which might result if I do not keep the promises which I make in this Agreement. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Agreement.

In the Deed, the Agreement provides specific notice that the Security Instrument remains in force until the draw period expires and the debt is paid in full:

> **Removal of Security Interest.** At any time when the Outstanding Balance secured by the Security Instrument is zero, [the Bank] shall, at my written request, execute a Satisfaction and provide me with a recorded copy. Absent my request, the Security Instrument will remain in full force and effect until the Draw Period has expired and the Outstanding Balance is paid in full.

That "Security Instrument" was the Deed, which the Kants executed the same day. The Deed "secure[d] payment" of the Kants' obligation under the Agreement (referred in the Deed as a "Note") "according to its terms, which [were] incorporated [] by reference." Among other things, the Deed provides specifically that the Kants remained liable for the debt even if the secured premises were sold:

> **9. Borrower Not Released; Forbearance By Lender Not a Waiver.** Borrower shall remain liable for full payment of the principal and interest on the Note (or any advancement or

> obligation) secured hereby, notwithstanding . . . (a) the sale of all or a part of the premises; . . . (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Borrower or a subsequent owner of the Property; and (d) the release of all or any part of the premises securing said obligations . . . . None of the foregoing shall in any way affect the full force and effect of the lien of this Deed of Trust or impair Lender's right to a deficiency judgment (in the event of foreclosure) against Borrower . . . . Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

B. The Sheriff's Sale.

Before the Kants executed the Agreement and Deed, on October 25, 2001,[1] the sheriff sold the Property at a public auction for a bid of $6,200.[2] The Circuit Court for Montgomery County issued a final order ratifying the sale on November 18, 2002, and the sheriff's deed was recorded on May 14, 2003. None of the sale proceeds were applied toward repayment of the Loan. The Bank admitted that the 2003 foreclosure sale

[1] The sheriff's deed incorrectly lists the date of the auction as October 25, 2002—it took place on October 25, 2001. On February 14, 2001, an affidavit judgment was entered against the Kants in a separate proceeding in the District Court for Montgomery County—*Bregman, Berbert & Schwartz v. Chander Kant and Ashima Kant*, Case No. 06-01-0026869-2000. To enforce the judgment, the plaintiff filed a lien on the Property. The Kants appealed this judgment on March 15, 2001 to the circuit court and filed a motion on June 26, 2001 to release the Property from levy. The circuit court denied the motion and the sheriff's auction proceeded on October 25, 2001.

[2] The Bank doesn't explain how or why it entered into the Deed on November 14, 2002 *after* the Property was sold at a sheriff's auction on October 25, 2001. In its answer filed below, the Bank claimed that it was first "notified about the sale [of the Property] on or about February 1, 2018 by counsel for [the Kants]." The Kants, in their briefing on appeal, claim that they informed the Bank of the sheriff's sale.

terminated its "lien on the [P]roperty—i.e. its right to liquidate the property to pay the debt . . . ."

For fourteen years following the sheriff's sale of the Property, until August 1, 2017, the Bank continued to bill the Kants monthly, and the Kants continued to make those monthly payments. During that time, on December 21, 2004, the Property was sold again.

After the Kants stopped making payments, the Kants and the Bank corresponded about the Loan. Relevant to this litigation, the Bank determined that after the sale of the Property, the Kants should not have been required to pay for insurance on the home. The Bank then credited the Kants' account in the amount of $3,281.88 for those mistaken insurance charges. The Bank rejected the Kants' contention that, after the Property was sold, their obligation to make monthly payments terminated.

C. The Litigation.

In January 2020, the Kants filed suit against the Bank, alleging that after the sheriff's sale, the Bank should have stopped collecting payments because "[a]ny agreement . . . was void and terminated after the Sheriff's sale in May, 2003."[3] In their view, once the Loan became unsecured, the Bank's billing and collection was wrongful under the terms of the

[3] We note that the Kants make no mention of the sheriff's auction on October 25, 2001 in the complaint filed below. Instead, the complaint alleges in paragraph 7 that "[i]n May, 2003, the [P]roperty was sold at a Sheriff's sale." In paragraph 18, the complaint alleges further that "[f]rom May, 2003 until September, 2017, [the Bank] knew or should have known that the [P]roperty was sold at a Sheriff's sale, but it continued to fraudulently continue to bill [the Kants] . . . ."

Agreement. They sought reimbursement of payments made plus punitive damages and asserted causes of action for unjust enrichment, fraud, breach of contract, and debt.

The Bank moved to dismiss the complaint on two primary grounds. *First*, the Bank argued that the Kants' claims were predicated "on the erroneous legal theory that a 2003 foreclosure of the first lien mortgage on their real property extinguished not only the second mortgage ***lien*** held by [the Bank] but also the second mortgage ***debt*** **to** [the Bank] from a home equity loan." *Second*, the Bank contended that the claims were "substantially time barred" by the three-year statute of limitations in Maryland Code (1973, 2020 Repl. Vol.), section 5-101 of the Courts and Judicial Proceedings Article ("CJ"). The court denied the Bank's motion without a hearing, as well as the Bank's ensuing motion for reconsideration, explaining that it could not determine the parties' rights and responsibilities because "[n]either party provided . . . a copy of the documents containing . . . the relevant controlling contractual language . . . ."

On June 1, 2020, the Bank filed an answer to the Kants' complaint. Among other affirmative defenses, the Bank reasserted that the Kants' complaint failed to state a claim on which relief may be granted because its claims were "based on an incorrect legal theory that the foreclosure on a superior lien extinguished the debt they owed." Instead, it contended that "[u]nder black letter law, the 2003 foreclosure sale did not extinguish" the Kants' debt or the Bank's right under the Agreement to collect monthly interest payments on the outstanding balance.

The Kants then served document requests and interrogatories. With some objections, the Bank produced documents and answers.

Meanwhile, on October 13, 2020, the Bank moved for summary judgment on all claims. In support of its motion, the Bank attached the Agreement and Deed along with account information and correspondence between the Kants and the Bank. The Bank pointed to undisputed evidence that the Kants stopped making monthly payments after August 2017 and argued, again, that the 2003 sale of the Property did not extinguish the Bank's right under the Agreement to collect monthly payments on the Kants' outstanding debt. The Bank argued as well that the Kants' claims relating to payments made more than three years before they filed suit were time-barred.

Days later, on October 19, counsel for the Kants filed a motion to withdraw his appearance. He explained that he planned to retire from practicing law on October 31 and had informed the Kants of this decision. Counsel also requested an extension of time for the Kants to respond to the summary judgment motion, asserting that opposing counsel did not oppose the request. The court granted counsel's motion to withdraw on November 12, 2020.

Two months later, on December 17, the Bank asked the court to rule on its motion for summary judgment, or, in the alternative, to set a deadline for the Kants to respond. In motions filed on December 29, 2020 and January 15, 2021, the Kants, proceeding *pro se*, requested an extension of time to respond to the summary judgment motion, as well as a

three-month extension of the January 2021 discovery deadline, to find new counsel and complete discovery.

The Kants also sent a discovery letter that asserted various deficiencies in the Bank's responses, demanded additional discovery responses, subpoenaed additional records, and sought to depose three current and former Bank employees involved in the Loan (either at its initiation or when the Kants raised concerns about their account).

The Bank objected to the depositions on numerous grounds, among them that the "depositions are not proper under the Maryland Rules, the facts and claims presented in th[e] case, and the procedural status of the litigation." The Bank represented that "[n]one of these witnesses will have any recollection or direct, percipient knowledge beyond the documents produced . . . , and the documents themselves are best evidence of the statements contained therein." According to the Bank, the Kants did "not follow[] the proper procedure and have not specifically identified any additional information needed to create a dispute of fact" to defeat the Bank's motion for summary judgment.

On January 15, 2021, the Bank moved for a "protective order precluding the depositions of the three noticed individuals and any further deposition or other discovery until such time as [the Kants] respond to the pending summary judgment motion and identify any genuine dispute of material fact." On January 19, the Bank filed a pretrial statement as well as written opposition to the Kants' motion to extend deadlines for discovery and scheduling.

On January 22, the Bank supplemented its interrogatories and document production to include certain pages of the Kants' HELOC applications that were not included in the Bank's prior production. The Bank asserted that it had "produced all responsive, non-privileged material" about the HELOC and had "not withheld any documents based on objections." Nevertheless, on February 2, 2021, the Kants sent another discovery letter reasserting alleged discovery deficiencies.

On February 11, 2021, the circuit court scheduled a hearing for April 14 on all pending motions, including the Bank's motion for summary judgment. On March 17, 2021, the Kants moved to compel additional responses to their interrogatories and document requests. On April 5, 2021, the Bank opposed the motion to compel, citing procedural and substantive flaws.

On April 13, the day before the scheduled motions hearing, the Kants filed their summary judgment opposition and statement of unavailable facts necessary to respond to the motion. The Kants argued that the Bank was not entitled to judgment as a matter of law on their contract claim because "there is a genuine dispute that on the date [the] sheriff sold the Property, [the] HELOC Agreement requiring monthly interest [] became legally unenforceable [and] ended[.]" The Kants claimed that "[u]nder the terms of the [] Agreement, the lender's only right to collect on any unpaid debt was to sell the property, i.e., the lender could not collect the debt from the [Kants] after the property was sold." The Kants asserted that the Bank was not entitled to summary judgment on the unjust enrichment or debt claims because "[t]here is a genuine dispute whether the [] Agreement

by itself or the [] Agreement combined with the Deed [] controls the terms" of the Kants' obligations. Finally, the Kants averred that claims prior to January 2017 were not time barred due to the Bank's "trickery and fraud[.]"

D. The Discovery And Summary Judgment Decisions.

At the conclusion of the April 14 hearing, at which Mr. Kant appeared *pro se*, the circuit court denied the motion to extend discovery and the Kants' other discovery requests, granted the Bank's motion for a protective order, and rescheduled the summary judgment hearing for April 30, 2021 to consider the Kants' belated opposition. The Kants have not supplied a transcript of this hearing.

On April 30, 2021, the court heard argument on the Bank's motion for summary judgment. Counsel for the Bank noted that the Kants "still have not paid off their HELOC loan," for which there was "a considerable balance . . . which will come due in full next year, as 20 years after the loan." Counsel argued that the Kants "have pointed to no authority [] in the actual loan documents or at law or equity, to suggest that they would be . . . excused from their repayment obligation." The foreclosure of a lien by a sheriff's sale, counsel underscored, "merely converts a debt from a secured to an unsecured loan." Furthermore, counsel asserted, because "the contract really controlled the terms here," unjust enrichment and debt owed were not viable claims. Regarding the fraud claim, counsel pointed out that the Kants "still owed money and collecting on a debt that is owed cannot possibly be fraud." Counsel also pressed that any claims that arose before January 2017 are time-barred. With respect to discovery disputes, the Bank proffered that its

"records only go back so far to 2005 based on a retention of parties and applicable regulations . . . ."

In opposition, Mr. Kant acknowledged that the Kants "chose the option of making only monthly interest for the first 20 years . . . ." Mr. Kant continued to argue that "[t]here is no provision for collection of monthly interest after the property is sold[,]" so that the Bank did not have the right under the Agreement and Deed "to collect from us" except "by selling the property."

Responding to the Kants' contention that the Bank's right to monthly payments was extinguished by sale of the Property, the court questioned Mr. Kant about language in the Agreement stating that "borrowers shall remain liable for the full payment of principal and interest on the note secured by [sic], notwithstanding, (a) the sale of all or part of the premises." When Mr. Kant pointed to the Bank's post-sale requirement of property insurance as evidence of fraud, the court confirmed that the Bank then "gave [the Kants] credit against the loan balance for all of those premiums[.]" The court then offered Mr. Kant an opportunity to present any further argument. Mr. Kant summarized, "Basically, there's no provision for the interest to be paid after the property is sold."

The court granted summary judgment in favor of the Bank on all claims. In its ruling from the bench, the court explained that "[t]his case is . . . a very simple one if Maryland law is applied[,]" and found that neither the Agreement, nor the Deed "says that it is limited, and only limited, to the foreclosure remedy and to any value coming out of the property" sale.

The court concluded that "there is no breach of contract [] because the lender is only doing what it should do, and in fact, if there were no interest payments [made by the Kants], then [the Bank] could have sued earlier." Likewise, there was no unjust enrichment because that claim "presumes that there is no valid contract and there is one here." Nor was there a "valid claim for debt and no fraud has been established by affidavit or otherwise." Moreover, the court determined that the statute of limitations barred recovery for any payments made before the applicable three-year period given that Mr. Kant "knew what he was doing getting into the loan" and "knew after the foreclosure that he was still making payments for . . . 14 years on the loan, to the point where [the Bank] doesn't even have some documents from its original records."

After the court entered final judgment in favor of the Bank, the Kants noted this timely appeal.

II. DISCUSSION

On appeal, the Kants raise two claims.[4] They argue *first* that the circuit court erred in granting the Bank's motion for summary judgment and, *second*, that the court abused its

[4] The Kants phrased their Questions Presented as follows:

> 1. Did the trial court err when it granted Appellee's motion for summary judgment?
>
> 2. Did the trial court abuse its discretion when it denied Appellants' motion to extend discovery deadlines and granted Appellee's motion for protective order?

The Bank phrased its Questions Presented as follows:

discretion when it denied their motion to extend discovery and granted protective orders preventing them from deposing current and former Bank employees. We disagree with both claims.

A. The Bank Was Entitled To Summary Judgment On All Of The Kants' Claims.

The Kants "are seeking to recover monthly interest payments" that they claim were "improperly collected . . . after the Sheriff's sale . . . ." In their view, there is no authority for the Bank's position "that the senior sale of real property (that was the security for a junior contract) keeps that junior contract valid with the borrowers' continued liability for making the usual monthly interest payments on it."

In support of their position that the sale extinguished their obligation to make monthly interest payments, the Kants point to an April 4, 2018 letter from a Wells Fargo representative that they characterize as "admitting that the debt became 'uncollectable post the senior sale'" while simultaneously asserting "a right to collect monthly interest after the senior sale." In addition, the Kants emphasize that even though they "have not made the monthly interest payments (or, any other payment) to [the Bank] since August of 2017[,]" the Bank has not attempted "to collect monthly interest payments." This

> 1. Did the Circuit Court err in granting summary judgment on Appellants' claims based on the premise that a 2003 Sheriff's Sale did not terminate their obligation to repay their HELOC?
>
> 2. Did the Circuit Court abuse its discretion in denying Appellants' motion to compel and entering a protective order as to three individual depositions of Appellee's former employees?

"inaction[,]" they say, constitutes the Bank's admission that under "the HELOC Agreement[,]" their obligation to make "monthly interest payments . . . terminated with the Sheriff's sale."

The Bank counters that the Kants' claims fail because, under the express terms of the Agreement and Deed, the Kants' obligation to make monthly payments of interest on the outstanding balance of the Loan survived the sale of the Property securing their debt. As the Bank puts it, the Kants mistakenly "conflate a junior ***lien*** with a ***debt***, two distinct legal concepts well-established under Maryland law." Quoting *Mizen v. Thomas*, 156 Md. 313, 318 (1929), the Bank states that "[i]t is settled in this state that, where property is conveyed by mortgage to secure the payment of a debt, that the debt is the principal incident of the transaction, and that the conveyance is no more than security for its payment, and accessory and appurtenant to it." By misconstruing the Agreement and the Deed, documents that "serve two distinct purposes," the Bank characterizes the Kants' argument as a "novel" but mistaken legal "theory that a foreclosure terminates the remaining outstanding debts of borrowers as to other creditors." And because the Kants "personally owed a debt [] to repay the funds, and there are no provisions in either the Agreement or the [] Deed that state it is a non-recourse loan or precludes recovery of the debt[,]" the motion court correctly concluded that the Kants have no "legal basis to support the termination of the debt obligation . . . ."

Moreover, the Bank continues, the court ruled correctly that the Kants' claims "are substantially barred by the statute of limitations . . . ." Because the Kants "knew of the facts

giving rise to their claims" while making monthly payments for fourteen years after the sheriff's sale, the court did not err in concluding that "all claims for relief arising from payments made or received before January 30, 2017, three years prior to the date of filing of the Complaint, were correctly dismissed as time barred."

Any party to a civil action may seek summary judgment "on the ground that 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(a). We review a motion court's grant of summary judgment without deference. *Hector v. Bank of N.Y. Mellon*, 473 Md. 535, 551 (2021), *reconsideration denied*, (July 9, 2021). "'[A]bsent exceptional circumstances, Maryland appellate courts will only consider the grounds upon which the lower court granted summary judgment.'" *Id.* at 556 n.6 (*quoting State v. Rovin*, 472 Md. 317, 373 (2021)).

Based on our independent review of the record, which we consider in the light most favorable to the nonmoving party, we "'determine whether the parties properly generated a dispute of material fact, and, if not, whether the moving party is entitled to judgment as a matter of law.'" *Kennedy Krieger Inst., Inc. v. Partlow*, 460 Md. 607, 632 (2018) (*quoting Chateau Foghorn LP v. Hosford*, 455 Md. 462, 482 (2017)). And "where the record indicates there was no such genuine dispute as to any material fact necessary to resolve the controversy as a matter of law, and it is shown that the movant is entitled to judgment, the entry of summary judgment is proper." *Baltimore Action Legal Team v. Off. of State's Att'y of Balt. City*, 253 Md. App. 360, 378 (2021) (cleaned up).

Maryland courts "subscribe to the objective theory of contract interpretation. Under this approach, the primary goal of contract interpretation is to ascertain the intent of the parties in entering the agreement and to interpret the contract in a manner consistent with that intent." *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 393 (2019) (cleaned up). This inquiry is based on "what a reasonable person in the position of the parties would have understood the language to mean." *Id.* "We will not displace an objective reading of the contract with one party's subjective understanding." *Pinnacle Grp., LLC v. Kelly*, 235 Md. App. 436, 456 (2018) (*citing Auction & Est. Representatives, Inc. v. Ashton*, 354 Md. 333, 341 (1999)). Where the language of the contract is unambiguous, we must "give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used." *John L. Mattingly Constr. Co. v. Hartford Underwriters Ins.*, 415 Md. 313, 326 (2010) (cleaned up).

We agree with the circuit court that the Kants' claims are predicated on a factually and legally incorrect theory that the sheriff's sale not only extinguished the Bank's security for the Loan, but also eliminated or deferred the Kants' obligation to pay the outstanding balance. Because the sale of the Property didn't terminate the Kants' obligation to pay the outstanding balance of the Loan, the court ruled correctly that the Bank's continued collection of monthly interest payments for the first twenty years was neither a breach of contract nor a wrongful act giving rise to fraud, unjust enrichment, or debt causes of action.

The Agreement expressly and unambiguously required the Kants to make monthly interest-only payments during the twenty-year draw period so long as there is any

outstanding balance on the Loan. When they executed the Agreement, the Kants agreed to "a monthly billing cycle" and that "[a] Finance Charge computed on a monthly periodic rate will be imposed, if at the end of any day of the billing cycle, there is a balance owing on [their] Account." The "Payment Schedule" during the "Draw Period" requires them to "pay the . . . minimum monthly payment equal to the greater of the Finance Charge on the outstanding Advances plus accrued but unpaid Fees or $50.00." And nothing about the Kants' monthly interest-only payment obligation changed after the Property was sold. To the contrary, the HELOC Agreement expressly provides that the Bank's security interest, as embodied in the Deed, continues in effect until the Loan is paid in full:

> **Removal of Security Interest.** At any time when the Outstanding Balance secured by the Security Instrument is zero, [the Bank] shall, at my written request, execute a Satisfaction and provide me with a recorded copy. Absent my request, *the Security Instrument will remain in full force and effect until the Draw Period has expired and the Outstanding Balance is paid in full.*

(Italicized emphasis added; underlined emphasis in original.)

In turn, the Deed provides expressly that neither a sale of the Property nor the Bank's failure to declare default (or otherwise pursue remedies for nonpayment) alters the Kants' obligation to repay the Loan:

> **9. Borrower Not Released; Forbearance By Lender Not a Waiver.** *Borrower shall remain liable for full payment of the principal and interest on the Note (or any advancement or obligation) secured hereby, notwithstanding . . . (a) the sale of all or a part of the premises*; . . . (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Borrower or a subsequent owner of the Property; and (d) the release of all or

> any part of the premises securing said obligations . . . . None of the foregoing shall in any way affect the full force and effect of the lien of this Deed of Trust or impair Lender's right to a deficiency judgment (in the event of foreclosure) against Borrower . . . . *Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy*.

(Emphasis added.)

Under the undisputed terms of the Agreement and Deed, then, the Kants agreed to the following:

- In exchange for a $115,000 HELOC, with the principal balance on that account due by the end of a twenty-year draw period, the Kants agreed to make monthly payments of interest on any outstanding balance, at the variable rate specified in the Agreement.

- If they failed to make those monthly interest payments, or to repay the principal balance when due, the Kants agreed that the Bank had the right to foreclose on the Property, in accordance with the Deed.

- The Kants agreed that their monthly interest payment obligation would continue even if the Property was sold and that the payment terms of the Agreement and Deed would otherwise remain in effect until the outstanding balance on the Loan is paid in full.

We hold that the circuit court properly rejected the Kants' argument that after the sale of the Property, the Bank no longer had the right to collect monthly interest payments. That interpretation of the Bank's rights contradicts the unambiguous language of the Agreement and Deed.

We disagree as well that the Bank agreed that a sale of the Property eliminated the Finance Charges due under the Agreement and precluded the Bank from charging or collecting the monthly "Finance Charge" on the outstanding balance of the Loan. Nor does that reading make any sense—the sale may have disengaged the debt from the Bank's security interest in the Property, but it didn't forgo the Bank's right to recover the $115,000 it lent the Kants or the interest they owed under the terms of the Agreement. This objective interpretation of the Agreement and Deed is consistent with principles of lending and foreclosure law established long ago in Maryland. Indeed, the Court of Appeals confirmed almost a hundred years ago that "[i]t is settled in this state that, where property is conveyed by mortgage to secure the payment of a debt, the debt is the principal incident of the transaction, and that the conveyance is no more than security for its payment, and accessory, and appurtenant to it." *Mizen*, 156 Md. at 318 (citations omitted). We reaffirmed that tenet again in *Rollins v. Bravos*, recognizing that "the mere foreclosure on a deed of trust and even sale of the property pursuant to the foreclosure proceedings, does not 'extinguish' the debt." 80 Md. App. 617, 626 (1989) (citations omitted).

We agree with the circuit court that the Kants were obligated to continue making monthly interest payments on the outstanding balance of the Loan, as they did without complaint for fourteen years. Because the Bank wasn't required to refund those post-sale payments, the Bank didn't breach the contract by continuing to bill and accept those funds. Because there is a valid and binding agreement, the Kants' quasi-contractual claims cannot lie. *See County Comm'rs of Caroline Cnty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83,

101 (2000) ("[G]enerally, quasi-contract claims such as quantum meruit and unjust enrichment cannot be asserted when an express contract defining the rights and remedies of the parties exists."). And finally, the Kants' claim for fraud fails because the Kants *did* owe payments to the Bank pursuant to the Agreement.

In light of our resolution of this dispositive question, we need not examine the Kants' remaining arguments. For what it's worth, though, we agree with the circuit court's conclusion that the Kants' claims were subject to the three-year statute of limitations under CJ § 5-101 and, beyond that time period, dismissed properly, and we agree that the Kants suffered no financial loss from being required to pay for insurance on the Property after it was sold because the Bank issued credits to reimburse them.

B. The Circuit Court Did Not Abuse Its Discretion In Its Discovery Ruling.

Second, the Kants contend that the circuit court abused its discretion in restricting their right to discovery by (1) granting the Bank's motion for a protective order preventing depositions of three individual employees involved in servicing the Loan, (2) denying the Kants' motion to extend discovery for three months, and (3) treating the Kants' motion to compel production of documents and interrogatory responses as mooted by the grant of summary judgment.

The Bank counters that the Kants' assignments of error are predicated "on innuendo and hyperbolic mischaracterizations of discovery" rather than on "any deficiencies" in the discovery record. It makes three arguments. *First*, with respect to document production, the Bank contends that the "entire file related to this 20-year old HELOC" was produced

"[a]fter an exhaustive search," and that the Kants were provided with detailed answers "to more than 30 separate interrogatories." The Bank says that "due to the age of the file—nearly 20 years—their records were limited[,]" and claims that it produced all relevant information in its possession. *Second*, the Bank argues that testimony from "[t]he noticed depositions of three individuals, customer service personnel who responded to [the Kants'] complaints in 2018 and who have no recollection" of such complaints, would "have no bearing on the claims at issue . . . ." The Bank contends that the Kants do not "identify anything in the purportedly incomplete discovery that would impact their claims or alter the grant of summary judgment, let alone establish an abuse of discretion." *Third*, the Bank argues that "any purported error" in denying the Kants' motion to compel discovery "was harmless because [their] claims are fundamentally legally flawed and without merit[,]" given "the legal infirmity" of the Kants' position that they were not obligated under the Agreement and Deed to make monthly payments after the Property was sold.

We agree with the circuit court that the Kants have failed to demonstrate how further discovery could have provided information necessary to generate a genuine dispute as to any material fact or precluded the Bank's entitlement to judgment as a matter of law on all counts. Md. Rule 2-501(a). A party opposing summary judgment "must show disputed material facts with precision in order to prevent the entry of summary judgment." *Warsham v. James Muscatello, Inc.*, 189 Md. App. 620, 634 (2009) (citation omitted). "Bare allegations" or a "mere scintilla of evidence" are insufficient. *Id.* (cleaned up). "[W]hen a movant has carried its burden, the party opposing summary judgment 'must do more than

simply show there is some metaphysical doubt as to the material facts.'" *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 738 (1993) (*quoting Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). The Kants have failed to demonstrate how further discovery would have yielded evidence to alter the objective meaning of the Agreement and Deed, nor do they proffer any fact or theory as to how additional discovery could have saved their claims from being barred by the three-year statute of limitations.

Not only do the Kants fail to explain how further discovery could have yielded information bearing on the dispositive legal issues presented on summary judgment, they have not provided the transcript necessary to support their contention that the circuit court abused its discretion in granting the Bank's protective order and denying the Kant's motion to extend discovery and motion to compel discovery. We review each of these contentions for abuse of discretion. *See Yacko v. Mitchell*, 249 Md. App. 640, 690 (2021) (noting this Court "reviews the denial of discovery under an abuse of discretion standard"), *cert. denied*, 474 Md. 737 (2021); *Lowery v. Smithsburg Emergency Med. Serv.*, 173 Md. App. 662, 678 (2007) (*citing Hirsch v. Yaker*, 226 Md. 580, 584 (1961)) (circuit court's determination of "when discovery should be concluded ordinarily rests in the exercise of its sound discretion"). A court abuses its discretion only 'where no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court or when the ruling is violative of fact and

logic." *Bel Air Carpet, Inc. v. Korey Homes Bldg. Grp., LLC*, 249 Md. App. 109, 125 (2021) (cleaned up).

Our ability to review the Kants' claims is constrained because they didn't supply this Court with the transcript of the April 14, 2021 civil motions hearing. *See* Md. Rule 8-411(a)(2) (requiring appellant to provide this Court with "a transcription of any portion of any proceeding relevant to the appeal"). The Maryland Rules require an appellant to ensure that the record on appeal contains the "docket entries," "transcript," and "original papers" necessary for this Court to render a decision. Md. Rule 8-413(a) (listing the required contents of the record on appeal); Md. Rule 8-602(c)(4) (granting this Court and the Court of Appeals the discretion to dismiss an appeal when the record does not comply with Rule 8-413). The Kants bore the burden "to put before this Court every part of the proceedings below which were material to a decision in [their] favor." *Lynch v. R. E. Tull & Sons, Inc.*, 251 Md. 260, 262 (1968). And on this issue, they didn't.

We explained in *Kovacs v. Kovacs* that the party asserting error has the burden to show "by the record" that an error occurred. 98 Md. App. 289, 303 (1993). "Mere allegations and arguments . . . , unsubstantiated by the record, are insufficient to meet that burden." *Id.* Hence, "[t]he failure to provide the court with a transcript warrants summary rejection of the claim of error." *Id.* Accordingly, we find no merit in the Kants' contention that the circuit court abused its discretion because they failed to provide a transcript of the motions hearing in accordance with Rule 8-411. And although we could stop there, *id.*, we

reiterate that the Kants also failed to proffer the evidence that further discovery might have revealed that could possibly have defeated summary judgment.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.