Circuit Court for Dorchester County
Case No. C-09-CV-24-000145

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1615

September Term, 2024

DEMOCRACY CAPITAL CORP.

v.

BAYVANGUARD BANK, ET AL.

Arthur,
Ripken,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: May 29, 2026

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

The parties to this appeal are the successors-in-interest to a bank that made an $8.4 million loan and a bank that owned a 50% participation interest in the loan. The original lending bank assigned its interest to appellant Democracy Capital Corporation. Through a series of transactions, appellee BayVanguard Bank acquired the remaining interest, as well as the rights to service the loan.

In a prior action, BayVanguard's predecessor obtained a declaratory judgment establishing that it had the exclusive authority to pursue a foreclosure or other remedies for a default on the loan. This Court upheld the declaratory judgment on appeal. *Democracy Capital Corp. v. Maryland Financial Bank*, No. 813, Sept. Term 2018, 2020 WL 551095 (Feb. 3, 2020) (unreported).

Acting as the loan servicer, BayVanguard pursued foreclosure proceedings on the properties securing the loan. A subsidiary of BayVanguard acquired the properties through a foreclosure sale that took place in November 2019 and was ratified in July 2021. The subsidiary subsequently sold the properties to other third parties.

In April 2024, Democracy Capital initiated the present action in the Circuit Court for Dorchester County. Democracy Capital claimed that BayVanguard breached the loan participation agreement when it allowed its subsidiary to acquire the properties through the foreclosure sale and to sell the properties to third parties. Democracy Capital also claimed that the subsidiary interfered with Democracy Capital's contractual rights under the loan participation agreement.

The circuit court dismissed the action primarily on two grounds: collateral estoppel and the three-year statute of limitations. The court concluded that the judgment

in the prior litigation conclusively determined that Democracy Capital has no rights under the loan participation agreement. The court also concluded that the action was untimely because Democracy Capital filed suit more than three years after it received notice of the first alleged breach of contract.

Democracy Capital has appealed. For the reasons stated in this opinion, we will reverse the judgment and remand the case for further proceedings.

BACKGROUND

A. Interests in the Sojourner-Douglass College Loan

In September 2007, American Bank made a loan in the amount of $8.4 million to refinance the debts of Sojourner-Douglass College, a private college in Baltimore City. The loan was secured by two properties: the College's main academic building on North Central Avenue and its administrative office building on North Caroline Street.

On the same day that it made the loan, American Bank entered into the "Participation Agreement" with Maryland Financial Bank. For the price of $4.2 million, Maryland Financial Bank purchased a 50% participation interest in the loan. American Bank retained a 50% interest and agreed to service the loan for the benefit of both parties. The Participation Agreement designated American Bank as the "Lender" and designated Maryland Financial Bank as the "Participant." The Participation Agreement included various provisions restricting the rights of either party to assign or transfer their interests to third parties.

In a separate transaction, Maryland Financial Bank entered into a sub-participation agreement through which it sold 82.14% of its participation interest to a company that

later became 1880 Bank.

During 2015, American Bank declared the loan in default after Sojourner-Douglass College lost its accreditation and ceased operations. The two properties were left vacant.

American Bank merged into Congressional Bank effective January 1, 2016. As a condition of the merger, Congressional Bank requested that American Bank divest itself of certain non-performing assets, including the defaulted Sojourner-Douglass College loan. On December 31, 2015, American Bank entered into the "Assignment and Servicing Agreement" with a newly-formed subsidiary named Democracy Capital Corporation. In that agreement, American Bank agreed to transfer all of its interest in the loan and the properties securing the loan to Democracy Capital. American Bank also agreed to service the loan subject to provisions granting Democracy Capital extensive control over loan servicing decisions.

As a result of the merger, Congressional Bank succeeded to American Bank's rights and obligations under the Participation Agreement and under the Assignment and Servicing Agreement.

B. The *Maryland Financial Bank* Litigation

During 2016, a dispute arose among the companies holding various interests in the Sojourner-Douglass College loan. The dispute primarily concerned whether Congressional Bank, as the loan servicer, should pursue foreclosure proceedings on the two properties. Maryland Financial Bank favored a foreclosure, but Congressional Bank, after consulting with Democracy Capital, declined to pursue one.

Litigation ensued, with a litany of claims and counterclaims raised among four parties. *Maryland Financial Bank v. Congressional Bank, et al.*, No. 429795V in the Circuit Court for Montgomery County. Three parties to the action (Maryland Financial Bank, 1880 Bank, and Congressional Bank) agreed to settle their respective claims against one another. As part of their settlement agreement, Congressional Bank agreed to assign the loan to 1880 Bank. The settling parties agreed that 1880 Bank would assume the role of Lender under the Participation Agreement, along with the rights and obligations to service the loan.

The fourth party to the action, Democracy Capital, objected to the assignment to 1880 Bank. Democracy Capital invoked provisions of the Assignment and Servicing Agreement, which purported to prohibit the assignor (and thus Congressional Bank, as the successor by merger to American Bank) from assigning the loan or resigning as loan servicer without the consent of Democracy Capital.

In the aftermath of the settlement, Democracy Capital and 1880 Bank made opposing requests for declaratory relief. On May 17, 2018, the Circuit Court for Montgomery County ruled against Democracy Capital and in favor of 1880 Bank. *Maryland Financial Bank v. Congressional Bank, et al.*, No. 429795V, 2018 WL 11354910 (May 17, 2018). The court determined that certain provisions of the Assignment and Servicing Agreement were invalid and unenforceable because those provisions violated anti-assignment clauses of the Participation Agreement. The court concluded that Democracy Capital had no right to use the Assignment and Servicing Agreement to prohibit the assignment to 1880 Bank as part of the settlement.

The circuit court issued a declaratory judgment stating that the Assignment and Servicing Agreement is "unenforceable" to the extent that it purports to empower Democracy Capital "to withhold consent" to the lender's assignment of its servicing obligations, "to terminate the servicer" of the loan, and "to possess and hold" the original loan documents. The court further declared that 1880 Bank "is the lawful Lender under the Participation Agreement, with full authority to act as loan servicer" under the terms of the Participation Agreement, "including the right to exercise any and all Lender remedies available in the event of a loan default[.]"

Democracy Capital appealed to this Court. In an unreported opinion, this Court affirmed the judgment. *Democracy Capital Corp. v. Maryland Financial Bank*, No. 813, Sept. Term 2018, 2020 WL 551095 (Feb. 3, 2020). This Court agreed with the circuit court's determination that several provisions of the Assignment and Servicing Agreement violated the anti-assignment clauses of the Participation Agreement. This Court upheld the conclusion that the Assignment and Servicing Agreement is unenforceable to the extent that it purports to empower Democracy Capital to hold the loan documents and to control loan servicing decisions.

C. Foreclosure Proceedings

Meanwhile, 1880 Bank pursued foreclosure proceedings for the two properties securing the Sojourner-Douglass College loan. During those proceedings, 1880 Bank merged into BayVanguard Bank. In the interest of brevity, this opinion will refer to both companies as BayVanguard.

On November 22, 2019, a substitute trustee sold the two properties at a foreclosure

auction for the price of $7.2 million. The successful bidder was Idlewild Properties, LLC, a wholly owned subsidiary of BayVanguard. During the months following the foreclosure auction, BayVanguard informed Democracy Capital of negotiations to sell the properties to third-party real estate developers.

The Circuit Court for Baltimore City ratified the foreclosure sale on July 27, 2021. Sometime after acquiring title, Idlewild sold the properties to third-party developers for an aggregate amount of $4.26 million. BayVanguard offered to pay Democracy Capital a 50% share of the net proceeds from those sales, after deducting a pro rata share of expenses incurred in servicing the loan.

In communications concerning the loan, BayVanguard repeatedly stated that the Participation Agreement governed its relationship with Democracy Capital. In a letter dated October 14, 2022, BayVanguard's attorney stated: "Democracy Capital Corporation ('DCC') and BayVanguard are the successors in interests, as the case may be, under the Participation Agreement. . . . Accordingly, BayVanguard and DCC each own a fifty percent (50%) undivided interest in the Loan." In a letter dated May 10, 2023, BayVanguard's attorney stated: "BayVanguard possesses all rights as 'Lender' under the Participation Agreement, and DCC possesses the rights and liabilities as 'Participant' thereunder." BayVanguard demanded that Democracy Capital pay a share of expenses under Section 11 of the Participation Agreement, which requires the Participant to pay a pro rata share of loan servicing expenses incurred by the Lender.

D. Complaint Against BayVanguard and Idlewild

On April 28, 2024, Democracy Capital filed a complaint in the Circuit Court for

Dorchester County against BayVanguard and Idlewild.

As the foundation of its claims, Democracy Capital alleged that it "occupies the role of Participant" and that BayVanguard "purports to occupy the role of the Lender" under the Participation Agreement. Democracy Capital invoked a provision that requires the Lender to obtain consent from the Participant before making or consenting to any sale of the properties. Democracy Capital invoked provisions that require the Lender to consult with the Participant and to make good faith efforts to mutually agree on a course of action before exercising remedies for a loan default, as well as during the process of acquiring title to the properties in the event of a foreclosure.

The complaint asserted that Idlewild became the owner of the properties after purchasing the properties at a foreclosure sale for $7.2 million and that Idlewild ultimately sold the properties for the total price of $4.26 million. The complaint alleged that BayVanguard failed to consult with Democracy Capital before these transactions and that Democracy Capital did not consent to either transaction. The complaint also alleged that Idlewild "was not a proper owner" of the properties and was not "an acceptable assignee" of BayVanguard's obligations.

Count I of the complaint raised a claim against BayVanguard for breach of the Participation Agreement. This count stated that "BayVanguard's breaches of the Participation Agreement include, but are not limited to, permitting its affiliated entity, Idlewild, to 'buy in' on its behalf and become the record owner" of the properties. It further stated: "BayVanguard's breaches also include the sale of each [p]roperty by Idlewild without consulting with Democracy Capital or making any good faith effort to

reach agreement on the proper disposition of the [p]roperties."

Count II of the complaint raised a claim against Idlewild for tortious interference with a contractual relationship. This count alleged that, "[a]s BayVanguard's subsidiary," Idlewild had "actual knowledge" of the terms of the Participation Agreement. This count alleged that Idlewild intentionally interfered with Democracy Capital's rights under the Participation Agreement "by acquiring title, as BayVanguard's subsidiary, and then selling each of the [p]roperties" securing the loan.

Count III of the complaint raised claims against both BayVanguard and Idlewild for conversion. This count alleged that the defendants wrongfully converted the loan, the loan documents, the properties securing the loan, and Democracy Capital's interests in the Participation Agreement.

Count IV raised claims against both defendants for aiding and abetting the allegedly unlawful acts set forth in the complaint. Finally, Count V raised claims against both defendants for engaging in a conspiracy to commit the allegedly unlawful acts set forth in the complaint.

In each count, Democracy Capital alleged that it sustained damages, including the loss of proceeds from the sale of the properties securing the loan. The complaint also alleged that, "[a]t a minimum," the foreclosure sale for the price of $7.2 million "triggered BayVanguard's obligation under the Participation Agreement to pay Democracy Capital its 50% share of the proceeds without deducting" expenses incurred after Idlewild acquired the properties.

E. Motion for Dismissal or for Summary Judgment

Before filing an answer, BayVanguard and Idlewild moved to dismiss the complaint or, in the alternative, for summary judgment on all claims. As the primary ground for their motion, the defendants contended that the claims were untimely because Democracy Capital had notice of the first alleged breach of contract more than three years before filing the complaint.

In support of their motion, the defendants provided an affidavit from Gregory Olinde, an executive of BayVanguard. Mr. Olinde asserted that, throughout the foreclosure proceedings, he supervised communications between BayVanguard and Democracy Capital about the loan. Mr. Olinde provided copies of emails between representatives of BayVanguard and the CEO of Democracy Capital.

In an email sent one day before the foreclosure auction on November 22, 2019, BayVanguard stated that it intended to "credit bid the amount of $7.2 million" for both properties.[1] According to Mr. Olinde, BayVanguard "used its wholly owned subsidiary, Idlewild . . . to successfully credit bid a purchase price of $7,200,000" at the foreclosure sale.[2] Through a series of emails during the months after the foreclosure sale,

[1] Under the practice known as a credit bid, "a mortgagee may purchase the mortgaged property at a foreclosure sale by applying the mortgage debt to the purchase price, rather than by paying with cash or a certified check." *Citibank Fed. Savings Bank v. New Plan Realty Trust*, 131 Md. App. 44, 52 (2000); *see also Weismiller v. Bush*, 56 Md. App. 593, 598 (1983).

[2] According to Mr. Olinde, BayVanguard uses Idlewild "as a vehicle to hold title to certain foreclosed upon real estate to insulate [BayVanguard] from liability" and because of "other regulatory issues" that affect BayVanguard as a financial institution.

BayVanguard informed Democracy Capital of proposed transactions under which BayVanguard "or its affiliate" would sell the properties to a real estate developer, which had offered to pay as much as $5.9 million. Replying to those emails, the CEO of Democracy Capital asked to discuss, by phone, strategies for securing a higher price.

In an email dated February 24, 2020, BayVanguard disclosed the draft of a proposed agreement for a different real estate developer to purchase the properties for $7.0 million. The proposed agreement identified the seller as "Idlewild Properties, LLC," and stated that Idlewild "was the successful bidder" at the foreclosure auction. The email also included the draft of a motion to substitute the developer as the foreclosure purchaser in the foreclosure proceedings. The proposed motion stated that Idlewild "was the successful bidder at [the] foreclosure auction[.]" Ultimately, the developer did not purchase the properties from Idlewild as contemplated by that proposal.

Based on the affidavit and supporting exhibits, BayVanguard and Idlewild argued that Democracy Capital "was on notice by, at the very latest, February 24, 2020[,]" that Idlewild was the successful bidder at the foreclosure sale and that BayVanguard "owned and controlled" Idlewild. BayVanguard and Idlewild asserted that, according to the complaint, the "first breach occurred when BayVanguard permitted Idlewild to buy-in for BayVanguard at the foreclosure sale." They argued that, because Democracy Capital had "actual notice" of this conduct "by no later than" February 24, 2020, the three-year limitations period for the breach-of-contract claim started on that date. The defendants

BayVanguard asserts that it is "consistent with industry custom and practice" to "use a wholly owned and controlled subsidiary as [a] vehicle" to acquire properties.

concluded, therefore, that the limitations period had expired more than a year before Democracy Capital filed its complaint on April 28, 2024. The defendants further argued that all other counts were based on the same alleged conduct and, therefore, that the three-year statute of limitations barred those claims as well.[3]

In addition to arguing that all claims were untimely, BayVanguard and Idlewild argued that Count II failed to state a valid claim for tortious interference with contract because it included no allegation that Idlewild performed "any act that induced" BayVanguard to breach the Participation Agreement. BayVanguard and Idlewild also argued that Count III failed to state a valid claim for conversion because it included no allegation that the defendants wrongfully exercised dominion over any identifiable personal property. Finally, they argued that the counts for aiding and abetting and for conspiracy should be dismissed because those claims required a viable underlying tort claim.

Opposing the defendants' motion, Democracy Capital argued that all of its claims were timely and that all counts stated valid claims for relief. Democracy Capital disputed the contention that its claims accrued on February 24, 2020, the date of email communications that identified Idlewild as the foreclosure purchaser. Democracy Capital argued that the initial breach of contract could not have occurred until the Baltimore City circuit court ratified the foreclosure sale on July 27, 2021, thereby allowing Idlewild to

[3] In their motion, the defendants relied on the evidence of notice solely to support their arguments about the statute of limitations. The motion did not address other potential defenses, such as estoppel or waiver.

acquire title to the properties. On that basis, Democracy Capital argued that the three-year limitations period had not expired when it filed its complaint on April 28, 2024.

With respect to the breach-of-contract count, Democracy Capital asserted that the Participation Agreement was a contract under seal. Democracy Capital contended that its claim for breach of contract was not subject to the general, three-year statute of limitations but instead was governed by the 12-year statute of limitations for actions on a contract under seal. *See* Md. Code (1974, 2020 Repl. Vol.), § 5-102(a)(5) of the Courts and Judicial Proceedings Article. Democracy Capital argued, therefore, that its claim for breach of the Participation Agreement would still be timely even if the limitations period started on February 24, 2020.

In a reply in support of their motion, BayVanguard and Idlewild introduced a new potential ground for judgment in their favor. BayVanguard and Idlewild asked the court to take judicial notice of various documents from the *Maryland Financial Bank* litigation. BayVanguard and Idlewild asserted that, in the prior appellate opinion, this Court had "determined" that Democracy Capital "has no rights under the Participation Agreement." On that basis, they argued that Democracy Capital should be precluded from asserting that it has any rights under the Participation Agreement.

F. Judgment of the Circuit Court

On August 21, 2024, the circuit court heard arguments on the motion to dismiss, or in the alternative, for summary judgment. At the end of the hearing, the circuit court announced that it would grant the motion as to all counts.

In its oral ruling, the court first addressed the issue of collateral estoppel. The

court concluded that the appellate judgment from the *Maryland Financial Bank* action precluded Democracy Capital from claiming that it has any contractual rights under the Participation Agreement. The court reasoned that the appellate opinion "actual[ly] determined" that Democracy Capital "has no rights" under the Participation Agreement and that this determination "was a critical and necessary part of the decision." The court stated: "I do believe that is exactly what [the opinion] says."

The court next addressed the issue of timeliness. The court stated that the action "essentially" was subject to the "three year statute of limitations in ordinary civil cases." The court reasoned that the alleged "buy-in" by Idlewild at the foreclosure auction on November 22, 2019, was the "first alleged breach" of contract. The court reasoned that the subsequent ratification and property sales resulted from "a continuation of" that "initial breach[.]" The court determined that the cause of action for the alleged breach of contract accrued "at the very latest" on February 24, 2020, the date when Democracy Capital received email communications that identified Idlewild as the successful bidder.

The court reasoned that the Participation Agreement "certainly" was a contract under seal for the purposes of the 12-year statute of limitations. The court nevertheless stated that the 12-year statute of limitations "d[id] not apply" to the breach-of-contract claim because Democracy Capital "was not a signatory" to the Participation Agreement.

The court next addressed the claim against Idlewild for tortious interference with contract. The court stated that this claim "essentially relies on [Democracy Capital] being a participant in the [P]articipation [A]greement, which is not the case." The court stated that the complaint failed to allege that Idlewild committed any "improper act" that

"rises to the level of an act that would be tortious interference with a contract." The court also found that this claim was untimely under the three-year statute of limitations.

The court determined that the complaint failed to state a claim for conversion because it did not allege any interference with property rights. Finally, the court concluded that the counts for aiding and abetting and for civil conspiracy must fail because those counts depended on the torts alleged in the other counts of the complaint.

On August 22, 2024, the circuit court entered an order granting "the Defendants' Motion to Dismiss" and dismissing with prejudice all counts of the complaint.

G. Post-Judgment Motions

On September 3, 2024, Democracy Capital filed a timely motion to alter or amend the judgment. On the same date, Democracy Capital filed a separate motion requesting leave to amend its complaint, along with a proposed amended complaint.

The proposed amended complaint changed Count I from a claim for breach of the Participation Agreement into a claim for breach of an "implied-in-fact contract" to protect Democracy Capital's economic interest in the properties securing the loan. The amended complaint omitted any allegations that BayVanguard breached a contractual obligation when it permitted Idlewild to acquire the properties through the foreclosure sale. According to the amended complaint, the breach of the implied-in-fact contract occurred when BayVanguard refused to pay Democracy Capital 50% of the proceeds from the foreclosure sale.

The proposed amended complaint changed the count against Idlewild for tortious interference with contractual relationship into a claim for tortious interference with

prospective advantage. The amended complaint added a new count against BayVanguard for unjust enrichment, removed the conversion count, and revised certain language in the counts for aiding and abetting and for civil conspiracy.

In the memorandum in support of its motions, Democracy Capital asked the court to reconsider its judgment "for the limited purpose" of permitting Democracy Capital to amend its pleadings "to state claims consistent with" the court's rulings on collateral estoppel and limitations. Democracy Capital argued that, because the amended complaint no longer alleged any breach of the Participation Agreement, its claims could not be precluded by a prior determination of rights under that contract. Democracy Capital argued that, because it filed the original complaint within three years of "BayVanguard's failure to pay Democracy Capital 50% of the proceeds from Idlewild's foreclosure sale purchase[,]" the claims could not be barred by the statute of limitations.

On September 30, 2024, the circuit court denied Democracy Capital's motion to alter or amend the judgment, stating that the motion was "untimely." In a separate order, the court denied Democracy Capital's motion for leave to amend its complaint. The order stated: "No new material facts or any material differences."

Democracy Capital moved for reconsideration of the order denying its motion to alter or amend the judgment. As Democracy Capital observed, Maryland Rule 2-534 allows a party to move to alter or amend a judgment within 10 days of the entry of judgment. Democracy Capital correctly observed that, because the tenth day after the entry of judgment fell on Sunday, September 1, 2024, the filing period continued to run until the end of the next day that was not a Saturday, Sunday, or holiday under Md. Rule

1-203(a)(1). Because the following Monday was the Labor Day holiday, the motion filed on Tuesday, September 3, 2024, fell within the applicable filing period.[4]

On October 11, 2024, the circuit court denied the motion for reconsideration. The order stated: "Even if the [motion to alter or amend the judgment] was timely, there were no new material facts or material differences presented."

Democracy Capital filed a notice of appeal on October 16, 2024. Because Democracy Capital noted its appeal within 30 days after the circuit court denied the timely motion to alter or amend the judgment, the appeal was timely under Md. Rule 8-202(c).

DISCUSSION

In this appeal, Democracy Capital seeks reversal of the order granting the defendants' motion to dismiss or, in the alternative, for summary judgment. Conditionally, in the event that this Court does not reverse that order, Democracy Capital seeks reversal of the orders denying its motion to alter or amend the judgment and its motion for leave to amend the complaint.[5]

[4] Even if Democracy Capital had filed its motion after the 10-day filing period, untimeliness would not have been a proper basis to deny that motion. Maryland Rule 2-535(a) authorizes the court to revise a judgment on a motion filed within 30 days after entry of judgment. A motion asking the court to reconsider its judgment, if filed more than 10 days but less than 30 days of the entry of judgment, "must be treated as a thirty day motion to revise filed pursuant to Maryland Rule 2-535." *Blake v. Blake*, 341 Md. 326, 331 (1996); *see also Miller v. Mathias*, 428 Md. 419, 441 (2012); *Gluckstern v. Sutton*, 319 Md. 634, 650-51 (1990).

[5] Democracy Capital concedes that the counts for conversion, aiding and abetting, and civil conspiracy "are not at issue" in this appeal.

In its appellate brief, Democracy Capital presents the following questions:

> 1. Did the circuit court err in determining that [Democracy Capital] is collaterally estopped from asserting any claims under the participation agreement?
>
> 2. Did the circuit court err when it dismissed [Democracy Capital's] complaint on the basis of the statute of limitations?
>
> [3.] Did the circuit court err in dismissing [Democracy Capital's] complaint for failure to state a claim for tortious interference with contractual relations?
>
> [4.] Did the circuit commit clear error in denying [Democracy Capital's] motions to alter or amend the judgment pursuant to Md. Rule 2-534?
>
> [5.] Did the circuit commit clear error in denying [Democracy Capital's] motion for leave to amend its complaint?

Although the circuit court characterized its ruling as the grant of a motion to dismiss, the record shows that the court made its ruling based on matters outside the complaint. Maryland Rule 2-322(c) provides: "If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment[.]"

The defendants' motion relied on several documents not incorporated in or mentioned in the complaint. Their statute-of-limitations arguments depended on the assertion that Democracy Capital received notice of the alleged wrongful conduct by February 24, 2020. That assertion was based on the affidavit from Mr. Olinde and email communications between BayVanguard and Democracy Capital. The defendants' collateral-estoppel arguments depended on the assertion that this Court previously

determined that Democracy Capital had no contractual rights under the Participation Agreement. That assertion was based on documents from the *Maryland Financial Bank* case, including the appellate opinion and Democracy Capital's pleadings.

When the circuit court ruled on the defendants' motion, the court did not exclude any of these extrinsic materials. Rather, the court directly relied on those materials to conclude that Democracy Capital had notice of the alleged breach of contract by February 24, 2020, and that the *Maryland Financial Bank* opinion previously determined that Democracy Capital has no rights in the Participation Agreement. Consequently, the court's decision must be treated as the grant of summary judgment. *See, e.g.*, *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 91 (2013).

This Court reviews a trial court's grant of summary judgment, without deference, to determine whether the ruling was legally correct. *See D'Aoust v. Diamond*, 424 Md. 549, 574 (2012). Summary judgment may be properly granted if there are no genuine disputes of material fact and the moving party is entitled to judgment as a matter of law. *See* Md. Rule 2-501(f). In this case, the parties identified no factual disputes that might affect the court's determinations on the issues raised.[6] Accordingly, the focus of appellate review is whether, in light of the undisputed facts, the defendants were entitled to judgment as a matter of law. *See Youmans v. Douron, Inc.*, 211 Md. App. 274, 279 (2013); *Worsham v. Ehrlich*, 181 Md. App. 711, 724 (2008). In conducting this review,

[6] Democracy Capital has not contested the assertion that the email dated February 24, 2020, provided actual notice that a subsidiary of BayVanguard was the successful bidder at the foreclosure auction.

"we consider 'only the grounds upon which the trial court relied in granting summary judgment.'" *D'Aoust v. Diamond*, 424 Md. at 575 (quoting *River Walk Apartments, LLC v. Twigg*, 396 Md. 572, 541-42 (2007)); *see also Worsham v. Ehrlich*, 181 Md. App. at 721 n.7.

I. Collateral Estoppel

In this appeal, Democracy Capital contends that the circuit court erred when it determined that Democracy Capital is collaterally estopped from asserting that it has any contractual rights under the Participation Agreement. The question of whether collateral estoppel precludes a party from litigating an issue is a question of law. *See Garrity v. Md. State Bd. of Plumbing*, 447 Md. 359, 368 (2016).

The doctrine of collateral estoppel, also known as issue preclusion, "looks to issues of fact or law that were actually decided in an earlier action[.]" *R & D 2001, LLC v. Rice*, 402 Md. 648, 663 (2008). Where applicable, collateral estoppel may preclude a party from litigating, in a second action, an issue that was actually determined in a prior action and necessary to the outcome of the prior action. *See Thacker v. City of Hyattsville*, 135 Md. App. 268, 288 (2000). Under this doctrine: "'When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.'" *Bank of New York Mellon v. Georg*, 456 Md. 616, 625-26 (2017) (quoting *Colandrea v. Wild Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 387 (2000)). Collateral estoppel will preclude the litigation of an issue only if: "(1) the issue decided in the prior adjudication is identical

with the one presented in the action in question; (2) there is a final judgment on the merits; (3) the party against whom the doctrine is asserted is a party or in privity with a party to the prior adjudication; and (4) the party against whom the doctrine is asserted was given a fair opportunity to be heard on the issue." *Hripunovs v. Maximova*, 263 Md. App. 244, 267 (2024) (citing *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. at 369).

Democracy Capital contends that the circuit court erred in evaluating the first element of this four-part test. According to Democracy Capital, the issues raised in the present action are "not identical" to any issue determined in the *Maryland Financial Bank* action. Democracy Capital argues that, in the prior action, the courts never decided "the precise issue" of whether Democracy Capital has rights under the Participation Agreement. Democracy Capital argues that, although the appellate opinion "discussed an argument" concerning certain provisions of the Participation Agreement, the courts never addressed Democracy Capital's "rights under the [P]articipation [A]greement as a whole" in the prior case. Democracy Capital further argues that, even if this Court did decide that issue, the determination was not "essential" or "necessary" to the judgment.

We agree that the circuit court erred when it concluded that the *Maryland Financial Bank* opinion "actual[ly] determined" that Democracy Capital "has no rights" under the Participation Agreement. In fact, the appellate opinion resolved questions concerning Democracy Capital's rights under a different contract, the Assignment and Servicing Agreement. The court did not actually decide whether Democracy Capital may have rights under the Participation Agreement.

Through its counterclaim in the *Maryland Financial Bank* action,[7] Democracy Capital sought to enforce rights under the Assignment and Servicing Agreement, made between American Bank and Democracy Capital on December 31, 2015. The counterclaim relied on Section 5.1.5 of that document, which stated that the assignor could not sell, transfer, or assign the loan without consent from Democracy Capital, and on Section 11, which stated that the assignor could not resign or withdraw as servicer of the loan without consent from Democracy Capital. Democracy Capital claimed that Congressional Bank, the successor to American Bank, violated these provisions when it agreed, without Democracy Capital's consent, to assign the loan and servicing obligations to 1880 Bank as part of the settlement reached in 2017. Attempting to enforce those contractual provisions, Democracy Capital requested a declaration invalidating the assignment to 1880 Bank.

Ruling on cross-motions for summary judgment, the Circuit Court for Montgomery County rejected the claims based on "Sections 5.1.5 and 11 of the Assignment and Servicing Agreement[.]" The court reasoned that, "by entering into the Assignment and Servicing Agreement, [American Bank] attempted to assign to [Democracy Capital] several of the key obligations [American Bank] undertook in the Participation Agreement." The court reasoned: "Because these assignments violated

[7] BayVanguard provided a copy of Democracy Capital's counterclaim from the *Maryland Financial Bank* case in support of its motion to dismiss. "'In determining whether an issue has been actually litigated, courts may look beyond the judgment to examine the pleadings and evidence presented in the prior case.'" *John Crane, Inc. v. Puller*, 169 Md. App. 1, 37 (2006) (emphasis omitted) (quoting *United Book Press, Inc. v. Maryland Composition Co., Inc.*, 141 Md. App. 460, 479 (2001)).

explicit anti-assignment clauses in the Participation Agreement, the attempted assignments are themselves invalid and unenforceable." Specifically, the court determined that "Sections 5.1.5 and 11[,]" the provisions that Democracy Capital had tried to enforce to prohibit the assignment to 1880 Bank, "are themselves invalid." The court concluded: "Thus, although [Democracy Capital] objected to the assignment to [1880 Bank], [Democracy Capital] had no right to do so, and its objection is no barrier."

In accordance with its ruling, the court declared that the Assignment and Servicing Agreement is unenforceable to the extent that it purportedly affords Democracy Capital the right to withhold consent to the Lender's assignment of its servicing obligations to another party. The court also declared that the Assignment and Servicing Agreement is unenforceable to the extent that it purportedly permits Democracy Capital to terminate the servicer of the loan and purportedly permits Democracy Capital to possess and hold the loan documents. The decision did not, however, invalidate the entire Assignment and Servicing Agreement.

Moreover, the decision did not address Democracy Capital's rights, if any, under the Participation Agreement. Although the declaratory judgment mentioned the Participation Agreement, it addressed only the rights of 1880 Bank. The declaratory judgment stated that 1880 Bank "is the lawful Lender under the Participation Agreement, with full authority to act as loan servicer" under the terms of the Participation Agreement. The declaratory judgment did not specify what party occupies the role of Participant under the Participation Agreement. Consequently, the contention that Democracy Capital occupies the role of Participant is not inconsistent with the declaratory judgment.

On appeal, this Court affirmed the declaratory judgment in its entirety. The Court determined that certain terms of the Assignment and Servicing Agreement violated the anti-assignment clauses of the Participation Agreement. This Court held: "The circuit court did not err in concluding that the [Assignment and Servicing Agreement] purported to make the types of transfers that the Participation Agreement prohibited." This Court concluded: "By entering into the [Assignment and Servicing Agreement], American Bank purported to do what it had promised not to do without prior written consent from Maryland Financial Bank: make or consent to an assignment of the loan documents; and assign or otherwise relinquish its loan servicing obligations."

In the present case, BayVanguard has relied on an inaccurate interpretation of the claims that Democracy Capital raised in the *Maryland Financial Bank* action. In support of its motion to dismiss, BayVanguard asserted that Democracy Capital had attempted to invalidate the assignment to 1880 Bank "based on, among other things, Section 13(b) of the Participation Agreement[.]" That provision states, in part, that the Lender may not assign or relinquish its obligations as loan servicer without the prior written consent of the Participant. At the hearing on the motion to dismiss, BayVanguard again asserted that Democracy Capital had attempted to invalidate the assignment to 1880 Bank by invoking rights under the Participation Agreement. In this appeal, BayVanguard continues to assert that, in the *Maryland Financial Bank* case, Democracy Capital "claimed that its consent was required under the Participation Agreement" for the assignment to 1880 Bank to be valid.

The foundational premise of BayVanguard's argument is incorrect. In the

Maryland Financial Bank case, Democracy Capital did not attempt to enforce contractual rights under the Participation Agreement; Democracy Capital attempted to enforce contractual rights under the Assignment and Servicing Agreement. Specifically, Democracy Capital attempted to enforce Section 11, which stated that the assignor could not resign or withdraw as servicer without consent from Democracy Capital, and Section 5.1.5, which stated that the assignor could not sell, transfer, or assign the loan without consent from Democracy Capital. Neither the circuit court opinion nor the appellate opinion states that Democracy Capital attempted to enforce contractual rights under the Participation Agreement.

BayVanguard nevertheless asserts that a "material component" of Democracy Capital's counterclaim in the *Maryland Financial Bank* case was an argument that the assignment to 1880 Bank required Democracy Capital's consent "pursuant to its alleged rights under Sections 6(b), 8 and 13 of the Participation Agreement." In support of that assertion, BayVanguard quotes language from an introductory section of the counterclaim, titled "Similarities between Participation Agreement and Assignment Agreement." That section includes a chart "summariz[ing]" the "similarities" between certain clauses from the Participation Agreement and the Assignment and Servicing Agreement. The stated purpose of citing provisions of the Participation Agreement was to illustrate the purported "similarities[,]" not to invoke any rights under the Participation Agreement. None of the counts of the counterclaim invoked contractual rights under the Participation Agreement; all counts invoked provisions of the Assignment and Servicing Agreement.

BayVanguard asserts that, in the *Maryland Financial Bank* opinion, this Court "unambiguously rejected" Democracy Capital's "argument that it possessed *any rights* under the Participation Agreement[.]" (Emphasis added.) In support of that assertion, BayVanguard quotes excerpts from a section of the opinion in which this Court rejected an argument about certain language from the Participation Agreement. BayVanguard's interpretation of this section of the opinion is erroneous. To understand what this Court actually decided, it is necessary to understand the arguments that Democracy Capital actually made.

In the *Maryland Financial Bank* case, Democracy Capital sought to refute its adversaries' claim that the Assignment and Servicing Agreement violated the Participation Agreement. To that end, Democracy Capital made certain arguments about provisions of the Participation Agreement. Democracy Capital pointed to Section 13(a) of the Participation Agreement, which stated that the Lender "reserve[d] the right to sell additional participations in the Loan . . . by a separate participation agreement on terms other than those contained in" the Participation Agreement, "provided that involvement of other participants will not adversely affect the rights or obligations of Participant hereunder." Democracy Capital theorized that the Assignment and Servicing Agreement was a permissible exercise of the Lender's right to sell additional loan participation interests under Section 13(a).

Rejecting Democracy Capital's theory, the circuit court wrote: "[Democracy Capital] says it got a participation interest from [American Bank], and that Section 13(a) of the Participation Agreement allows [American Bank] to sell participation interests on

terms other than those afforded [Maryland Financial Bank]." The court reasoned: "The difficulty with th[at] argument lies in the last clause of . . . Section 13(a), which prohibits the 'involvement' of other participants that '. . . adversely affect the rights or obligations of [Maryland Financial Bank].'" The court concluded that "[Maryland Financial Bank's] rights and obligations were 'adversely affected' by the dispersal of [American Bank's] obligations between itself and [Democracy Capital][.]"

On appeal, this Court also rejected Democracy Capital's "attempt[] to characterize" the Assignment and Servicing Agreement "as the sale of an additional participation interest in the loan, and thus as a transaction that the lender could undertake without consent" from the Participant. As this Court explained, Democracy Capital also sought to rely on a sentence in Section 13(b), which states: "Upon the making of an assignment, the assignee shall have all the rights, and be subject to all obligations of the Participant under this Agreement to the extent of its interest in the Loan and Property." Democracy Capital theorized that Section 13(b) "should operate so that any purported assignee of the lender is 'automatically deemed a participant, with the same rights and obligations'" as the Participant. "Under this theory," the Court explained, "when an attempted assignment is ineffective, the rights and obligations of the assignee by 'default[]'" would become the same rights as the Participant. Rejecting that theory, this Court wrote:

> . . . The [Assignment and Servicing Agreement] does not state that American Bank and Democracy Capital ever agreed that, if their purported assignment turned out to be invalid, they would mutually bind themselves to a different set of terms identical to those stated in the Participation Agreement. . . .

> Quite simply, even if Maryland Financial Bank understood that the lender could bring in new participants under a document substantially identical to the Participation Agreement, the lender and Democracy Capital never executed such a document. Permitting the involvement of Democracy Capital under the terms actually set forth in the [Assignment and Servicing Agreement] would adversely affect the rights of Maryland Financial Bank under the Participation Agreement. . . .

Citing the language quoted above, BayVanguard argues that this Court determined that Democracy Capital "never acquired any rights under the Participation Agreement." BayVanguard's interpretation far exceeds the scope of the appellate opinion. In fact, this Court rejected a specific, narrow theory about whether the Assignment and Servicing Agreement was permissible under the Participation Agreement. At most, the opinion rejected *one* potential basis under which Democracy Capital might be said to have acquired a participation interest with rights equivalent to certain rights granted under the Participation Agreement. This Court did not determine, nor was it necessary to determine, what rights, if any, Democracy Capital might have under the Participation Agreement.

In the context of an appeal from a declaratory judgment, it would have been unnecessary and inappropriate for us to make sweeping determinations outside the scope of the circuit court's decision. The appellate opinion expressly recognized the limited scope of the declaratory judgment. This Court noted that the declaratory judgment "invalidated only parts of" the Assignment and Servicing Agreement. This Court noted that "all appellees s[ought] only to uphold the court's judgment, which did not invalidate the entire" Assignment and Servicing Agreement. This Court further noted that 1880

Bank (the predecessor to BayVanguard) acknowledged that the Assignment and Servicing Agreement "'effectively conveyed an economic interest' to Democracy Capital 'as well as those rights that were not invalidated' by the court."

As Democracy Capital notes, after the *Maryland Financial Bank* case, BayVanguard "continued to act for years as if the [P]articipation [A]greement governed its rights and obligations" with respect to Democracy Capital. Democracy Capital cites a letter dated October 14, 2022, in which BayVanguard's attorney stated that Democracy Capital and BayVanguard "are the successors in interests, as the case may be, under the Participation Agreement[,]" and that "each own a fifty percent (50%) undivided interest in the Loan." Democracy Capital also cites a letter dated May 10, 2023, in which BayVanguard's attorney stated: "BayVanguard possesses all rights as 'Lender' under the Participation Agreement, and [Democracy Capital] possesses the rights and liabilities as 'Participant' thereunder." This stated position—that Democracy Capital occupied the role of Participant under the Participation Agreement—was not inconsistent with the declaratory judgment or the prior court opinions.

In the present case, the circuit court erred when it determined that the appellate opinion in the *Maryland Financial Bank* case determined that Democracy Capital has no rights under the Participation Agreement. The judgment must be reversed to the extent that it was based on collateral estoppel. BayVanguard was not entitled to judgment on the breach-of-contract count on the ground of collateral estoppel.

The collateral estoppel determination also affected the resolution of the claim against Idlewild for tortious interference with contract. This type of claim generally

"requires that the defendant know of an existing contract and engage in improper conduct to induce a third party's breach of that contract." *Mixter v. Farmer*, 215 Md. App. 536, 548 (2013) (citing *Ofranos v. Athenian, Inc.*, 66 Md. App. 507, 520-21 (1986)). When addressing the tortious interference count, the court stated: "This claim essentially relies on being a participant in the participation agreement, which is not the case." In other words, the court concluded that the claim for tortious interference with contract was not viable because, the court had determined, Democracy Capital had no contractual rights in the Participation Agreement. Because the court's rationale relied on the erroneous collateral estoppel ruling, the court's conclusion was also erroneous. Idlewild was not entitled to judgment on the tortious interference count on the ground of collateral estoppel.

II. Statute-of-Limitations Issues

The statute-of-limitations issues raised in this appeal implicate several questions. First, what is the applicable limitations period for the claim for breach of the Participation Agreement? Second, when did the first alleged breach of the Participation Agreement occur? Third, if the complaint alleged other breaches of the Participation Agreement, when did those alleged breaches occur? We will consider each question in turn.

Limitations Period for Breach of Participation Agreement

Democracy Capital contends that the circuit court applied an incorrect statute of limitations to the claim for breach of the Participation Agreement. Democracy Capital argues that the court incorrectly concluded that this claim was not subject to a 12-year statute of limitations because the Participation Agreement was "not executed under seal."

Under Maryland law, most civil claims are subject to a three-year period of limitations. The general statute of limitations states that a "civil action at law" must be filed "within three years from the date it accrues" unless another statute provides a different period. Maryland Code (1974, 2020 Repl. Vol.), § 5-101 of the Courts and Judicial Proceedings Article. A separate provision establishes a 12-year limitations period for filing an action on certain "specialties[,]" including a "[c]ontract under seal[.]" *Id.* § 5-102(a)(5).

A contract is not necessarily one under seal merely because a party affixes a corporate seal to the document. *See Rouse-Teachers Props., Inc. v. Maryland Cas. Co.*, 358 Md. 575, 585-86 (2000). On the other hand, "[i]f there is a recital in the body of the agreement stating explicitly that the agreement is one under seal, that is conclusive evidence of an intent to create a sealed instrument." *Id.* at 587. For example, in *Gildenhorn v. Columbia Real Estate Title Insurance Co.*, 271 Md. 387, 406 (1974), the Court held that certain insurance policies were specialties for the purposes of the 12-year statute of limitations. The insurer printed its corporate seal under a "testimonium clause" reciting that the insurer had "'caused its corporate name and seal to be hereunto affixed by its duly authorized officers.'" *Id.* at 390. Where the policies at issue "made specific reference to corporate seals in the bodies of the agreements[,]" those agreements qualified as contracts under seal. *Rouse-Teachers Props., Inc. v. Maryland Cas. Co.*, 358 Md. at 588 (analyzing *Gildenhorn*).

In the present case, Democracy Capital observes that the Participation Agreement includes a testimonium clause similar to the one examined in *Gildenhorn*. The

testimonium clause of the Participation Agreement states: "IN WITNESS WHEREOF, Lender and Participant have caused this Agreement to be duly executed by their duly authorized officers and their respective corporate seals to be affixed as of the date first above written." Beneath that clause, officers of American Bank and Maryland Financial Bank placed their signatures next to the word "SEAL."

During the hearing on the motion to dismiss, counsel for BayVanguard conceded that the Participation Agreement was a contract under seal. Counsel stated: "I would acknowledge that the [P]articipation [A]greement is signed under seal and therefore that [the limitations period] would be 12 years." The circuit court accepted this concession, stating that "the [P]articipation [A]greement certainly is under seal." Thus, Democracy Capital is incorrect to assert that the court decided that the Participation Agreement was not a contract under seal.

After acknowledging that the Participation Agreement was a contract under seal, however, the court went on to say: "But *again*, [Democracy Capital] was not a signatory of that agreement, so I do believe this is a three year statute of limitations case and that the . . . 12 year [limitations period] . . . does not apply." (Emphasis added.) Moments before that statement, the court had decided, based on the preclusive effect of the prior judgment, that Democracy Capital "has no rights" under the Participation Agreement.

As we understand the ruling, when the court stated that Democracy Capital "was not a signatory" to the Participation Agreement, the court was referring back to its decision on the issue of collateral estoppel. The court reasoned that, although a claim for breach of the Participation Agreement *would be* subject to the 12-year statute of

limitations for contracts under seal, that statute could not apply because the court had determined that Democracy Capital had no rights under the Participation Agreement.[8]

Any conclusion that the three-year statute of limitations barred the claim for breach of the Participation Agreement was flawed. Under the court's rationale, the claim for breach of the Participation Agreement was timely. The basis for the ruling was not untimeliness, but the separate decision that Democracy Capital had no rights under the Participation Agreement.

In its brief, BayVanguard concedes that, if Democracy Capital "is not collaterally estopped from asserting rights under the Participation Agreement," then the applicable limitations period for a claim for breach of the Participation Agreement is 12 years. As explained in Part I above, the circuit court erred when it determined that collateral estoppel precludes Democracy Capital from asserting that it has rights under the Participation Agreement. The court further erred to the extent that it concluded that the three-year statute of limitations barred the claim for breach of the Participation Agreement.[9]

[8] The court's conclusion echoes an argument made during the hearing. Counsel for BayVanguard argued that the statute of limitations "wouldn't matter" for the breach-of-contract claim if the court concluded that Democracy Capital "has no rights under the [P]articipation [A]greement."

[9] Although BayVanguard acknowledged that the Participation Agreement was under seal, BayVanguard contended that the 12-year statute of limitations should not apply because the subsequent agreement assigning Lender rights to 1880 Bank was not also under seal. BayVanguard's contention lacks merit. As Democracy Capital has explained, "assignees are 'bound to the same limitations period as their assignor.'" *Univ. Sys. of Maryland v. Mooney*, 407 Md. 390, 411 (2009) (quoting *Jones v. Hyatt Ins. Agency, Inc.*, 356 Md. 639, 653 n.8 (1999)).

Timing of First Breach of Participation Agreement

In this appeal, Democracy Capital contends that the circuit court erred when it determined that the claim for breach of the Participation Agreement accrued on February 24, 2020.

In its oral ruling, the court stated that the "initial breach" of contract occurred when Idlewild made a successful bid at the foreclosure auction on November 22, 2019. The court determined that Democracy Capital knew or should have known of that alleged breach "at the very latest" by February 24, 2020, when Democracy Capital received email attachments that identified Idlewild as the successful bidder. Later, when discussing the count for tortious interference with contract, the court noted that the applicable limitations period was three years. The court determined that the three-year statute of limitations barred the count for breach of the Participation Agreement, as well as the count for tortious interference with contract.

As explained above, the claim for breach of the Participation Agreement is subject to the 12-year statute of limitations for an action on a contract under seal. Thus, the claim in Count I of the original complaint was timely. The claim for tortious interference with contract in Count II, however, is subject to the three-year statute of limitations. *See Dual Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 169 (2004).

Generally, a claim for tortious interference with contract, based on an allegation that the defendant induced a breach of contract, accrues at the same time as the claim for

breach of contract. *See id.* at 168-69.[10] Accordingly, the accrual date of the claim for breach of the Participation Agreement remains a material issue, at least for the purpose of assessing the timeliness of the tortious interference claim.

The determination of when a cause of action accrues ordinarily is left to judicial determination, unless the determination depends on disputed facts concerning the discovery of the injury. *Patriot Constr., LLC v. VK Elec. Servs., LLC*, 257 Md. App. 245, 264-65 (2023). For civil claims, Maryland courts have "adopted the 'discovery rule,' which 'tolls the accrual of the limitations period until the time the plaintiff discovers, or through the exercise of due diligence, should have discovered, the injury.'" *Windesheim v. Larocca*, 443 Md. 312, 326-27 (2015) (quoting *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 95-96 (2000)). Once a plaintiff gains knowledge sufficient to apprise an ordinarily prudent person of the need to inquire about the injury, the plaintiff is said to be on "inquiry notice" and is charged with knowledge of facts that would be discovered through a reasonably diligent investigation. *See Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 445-47 (2000).

"Generally, a cause of action for breach of a contract accrues, and the statute of limitations begins to run, when the plaintiff knows or should have known of the breach." *Vigilant Ins. Co. v. Luppino*, 352 Md. 481, 489 (2000) (citing *Poffenberger v. Risser*, 290 Md. 631 (1981)). In other words, "a cause of action for breach of contract accrues when

[10] In its brief, Democracy Capital states that "the statute of limitations for a tortious interference claim begins to accrue on the date that the interference induced a breach of the underlying contract."

the contract is breached, and when 'the breach was or should have been discovered.'" *Boyd v. Bowen*, 145 Md. App. 635, 669 (2002) (quoting *Jones v. Hyatt Ins. Agency, Inc.*, 356 Md. 639, 648 (1999)).

To determine when a cause of action accrued, one must ascertain "when the complaining party suffered the actionable harm and could have first maintained its action to a successful result." *SG Maryland, LLC v. PMIG 1024, LLC*, 264 Md. App. 245, 260 (2024). This test evaluates "'whether all of the elements of a cause of action have occurred so that it is complete.'" *Shailendra Kumar, P.A. v. Dhanda*, 426 Md. 185, 195 (2012) (emphasis omitted) (quoting *St. Paul Travelers v. Millstone*, 412 Md. 424, 432 (2010)).

A cause of action for breach of contract does not exist until all required elements are present: a contractual obligation, breach of the obligation, and resulting damages. *See SG Maryland, LLC v. PMIG 1024, LLC*, 264 Md. App. at 260 (citing *Kumar v. Dhanda*, 198 Md. App. 337, 345 (2011), *aff'd*, 426 Md. 185 (2012)). To bring a successful claim for breach of contract under Maryland law, it is not necessary to prove the amount of damages, because a plaintiff may recover nominal damages even if the plaintiff fails to prove the amount of actual damages. *See Taylor v. NationsBank, N.A.*, 365 Md. 166, 175 (2001). "Although damages must be present, accrual still occurs even when the precise amount of damages is not known so long as some evidence of legal harm has been shown[.]" *SG Maryland, LLC v. PMIG 1024, LLC*, 264 Md. App. at 261. "[E]ven if the plaintiff has suffered only 'trivial injuries,'" the period of limitations begins "when the plaintiff was put on notice that [the plaintiff] may *have been injured*." *Supik v. Bodie,*

Nagle, Dolina, Smith & Hobbs, P.A., 152 Md. App. 698, 716 (2003) (emphasis in original) (citations omitted).[11]

"The determination of when a breach of contract occurs usually depends on the nature of the promises made in the contract and the times for performing those promises." *Jones v. Hyatt Ins. Agency, Inc.*, 356 Md. at 649. To determine when an alleged breach of the Participation Agreement first occurred, we will examine the promises that BayVanguard allegedly breached.

The original complaint alleged that BayVanguard violated provisions "including but not necessarily limited to Paragraphs 6, 7, 10, and 13" of the Participation Agreement. Paragraph 6 states that, without prior written consent of the Participant, the Lender shall not "make or consent to any sale, pledge, assignment, release, substitution or exchange of any of the Loan documents, or any collateral or security held for the Loan[.]" Paragraph 7 states that, "[p]rior to the exercise of any of the Lender's remedies" for a loan default, the Lender must "consult with Participant" and "make a good faith effort to mutually agree upon a course of action." Paragraph 10 states that the Lender has the right to maintain and sell the property "in the event of a default and acquisition of title by purchase at foreclosure[.]" It further states: "During this period of title acquisition, Lender shall consult with Participant from time to time and shall make a good faith effort

[11] Maryland courts have rejected the so-called "maturation of harm" rule, under which a cause of action does not accrue until damages have fully occurred. *See Feldman v. Granger*, 255 Md. 288, 296 (1969) (holding that malpractice action against accountants accrued when taxpayers received tax deficiency assessment, even though taxpayers did not know exact amount of damages until Tax Court upheld the deficiency).

to agree upon an appropriate course of action[.]" Finally, Paragraph 13(b) states that the Lender "may not assign or otherwise relinquish [its] obligations and duties as servicer" without prior written consent from the Participant.

The alleged breaches of the Participation Agreement largely concern BayVanguard's alleged failures to consult with Democracy Capital before Idlewild purchased the properties for $7.2 million at the foreclosure auction and before Idlewild ultimately sold the properties to other parties for $4.26 million. The complaint alleged that BayVanguard failed to consult with Democracy Capital or to obtain its consent "prior to" or "[d]uring the process of Idlewild's acquisition of title" and during the process of "negotiating and securing the sales of each [p]roperty from Idlewild to a third party." Count I stated that "BayVanguard's breaches of the Participation Agreement include, but are not limited to, permitting its affiliated entity, Idlewild, to 'buy in' on its behalf and become the record owner" of the properties. It further stated: "BayVanguard's breaches also include the sale of each [p]roperty by Idlewild without consulting Democracy Capital or making any good faith effort to reach agreement on the proper disposition of the [p]roperties."

As mentioned previously, the foreclosure sale took place on November 22, 2019. Democracy Capital has not disputed that the email communications dated February 24, 2020, notified Democracy Capital that Idlewild was the successful bidder at the foreclosure auction. The circuit court concluded that the claim for breach of the Participation Agreement accrued "at the very latest" on February 24, 2020. The court reasoned that Idlewild's "buy-in" at the foreclosure auction was "the first alleged breach"

of the Participation Agreement. The court reasoned that the "sales and the ratification that resulted therefrom" were "a continuation of . . . the initial breach[.]"

We see no error in the conclusion that the first alleged breach of the Participation Agreement occurred at the time of the foreclosure sale. This conclusion follows from the language of Count I, which states that one of BayVanguard's breaches was "permitting" Idlewild "to 'buy in' on its behalf" at the foreclosure sale. At a minimum, this alleged act implicates the Lender's duties under Paragraph 7 to consult with the Participant "[p]rior to the exercise of any of the Lender's remedies" for a default on the loan. This alleged act also implicates Paragraph 6, in which the Lender promised not to "make or consent to any sale" of the property without consent of the Participant. When BayVanguard allegedly "permitt[ed]" Idlewild to bid on its behalf at the foreclosure auction, BayVanguard was simultaneously "exercis[ing]" one remedy for a loan default and "consent[ing]" to a sale of the properties. If BayVanguard had a contractual obligation to consult with Democracy Capital before those actions, then BayVanguard violated that obligation no later than the date of the foreclosure sale.

In this appeal, Democracy Capital largely ignores its own allegation that BayVanguard breached the Participation Agreement by "permitting its affiliated entity, Idlewild, to 'buy in' on its behalf[.]" Democracy Capital instead emphasizes the language in Count I stating that the breaches of contract include "permitting" Idlewild to "become the record owner" of the properties. Democracy Capital argues that the first alleged breach was "the conveyance of title" of the properties to Idlewild. On that basis, Democracy Capital contends that the initial breach of the Participation Agreement could

not have occurred until the court ratified the foreclosure sale on July 27, 2021.

To some degree, Democracy Capital's arguments reflect a mischaracterization of the foreclosure process. Democracy Capital incorrectly asserts that "BayVanguard conveyed legal title to Idlewild" and that "BayVanguard . . . transferred the properties to Idlewild" at the time that the court ratified the foreclosure sale. In a foreclosure sale, "'the court itself is the vendor[,]'" acting through a trustee who serves "as an agent of the court." *Wonder City, LLC v. Dipietro*, 268 Md. App. 218, 229 (2025) (quoting *Merryman v. Bremmer*, 250 Md. 1, 8 (1968)). Ratification of sale is an act performed by the court. *See* Md. Rule 14-305(f). Conveyance of title is an act performed by a trustee under the supervision of the court. *See* Md. Rule 14-215(c). As BayVanguard points out, it makes little sense to characterize the ratification of sale or the conveyance of title as an act of breach, because BayVanguard did not perform or control those acts.

It is true that "[c]omplete title does not immediately pass to the purchaser" at the time of a foreclosure sale. *Laney v. State*, 379 Md. 522, 538 (2004). Following a foreclosure sale, the trustee must submit a report of sale to the court (Md. Rule 14-305(a)), parties may file exceptions (Md. Rule 14-305(e)), and the court must decide whether to ratify the sale (Md. Rule 14-305(f)). At the time of a foreclosure sale, "an inchoate equitable title to the property" vests in the purchaser. *Empire Props., LLC v. Hardy*, 386 Md. 628, 646 (2005). "This inchoate equitable title becomes a complete equitable title when the foreclosure sale is ratified by the court." *Id.* (citing *Simard v. White*, 383 Md. 257, 313 (2004)). "The legal title to the property is not conveyed . . . until the purchase price is paid and other terms of sale, if any, are met and a deed of

conveyance delivered." *Empire Props., LLC v. Hardy*, 386 Md. at 650.

Although complete title to the properties did not pass to Idlewild at the time of the foreclosure sale, we see no reason to conclude that conveyance of title was essential to the alleged breaches of the Participation Agreement. The relevant contractual promises describe a broader category of actions than transfers of title. Paragraph 6 states that the Lender promised not to "make or consent to any sale" of the properties without consent of the Participant. Even if the BayVanguard did not "make" a sale of the properties at the time of the foreclosure sale, BayVanguard at least "consent[ed] to" a sale at that time. Paragraph 7 requires consultation "[p]rior to the exercise of any . . . remedies" for a loan default. At the time of the foreclosure sale, BayVanguard certainly "exercise[ed]" a remedy for the loan default, even if additional events still needed to occur for the purchaser to acquire complete title. In addition, Paragraph 10 of the Participation Agreement creates a duty to consult with the Participant "[d]uring [a] period of title acquisition" by purchase at foreclosure, not simply before the conveyance of title.

Consulting with the Participant after a foreclosure sale would be too late to fulfill these contractual obligations. Generally, a lender has no right to cancel a foreclosure sale after it has occurred. Rather, the purchaser is entitled to ratification of the foreclosure sale if there are no timely exceptions, or if the court overrules any exceptions, and if the court is satisfied that the sale was properly made. *See* Md. Rule 14-305(f). The lender might ask the court not to ratify the sale, but the lender cannot prevent ratification simply by changing its mind. *See Bates v. Cohn*, 417 Md. 309, 327 (2010) (explaining that post-sale exceptions are "not an open portal through which any and all" objections may be

raised, but ordinarily may "'challenge only procedural irregularities at the sale or . . . the statement of indebtedness'") (quoting *Greenbriar Condo., Phase I Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683, 688 (2005)). It follows that, if the Lender had an obligation under the Participation Agreement to consult with the Participant or to obtain its consent for a foreclosure sale to a particular party, the Lender needed to fulfill that obligation *before* the foreclosure sale occurred.

In its appellate brief, Democracy Capital attempts to minimize the significance of the foreclosure sale. Democracy Capital observes that, after the foreclosure sale, BayVanguard pursued negotiations to sell the properties to a developer for $7 million. Democracy Capital notes that this proposal contemplated that Idlewild would make a motion in the foreclosure proceedings to substitute a third party as the purchaser. Democracy Capital argues that the foreclosure sale to Idlewild was "irrelevant" because "the parties expected Idlewild to assign its bid" to a different party before ratification.

To the contrary, the facts cited by Democracy Capital underscore the significance of the rights that Idlewild acquired at the time of the foreclosure sale. As the foreclosure purchaser, vested with inchoate equitable title, Idlewild had acquired certain rights in the property and was free to dispose of those rights as it saw fit. Thus, Idlewild (not BayVanguard) was in direct control of proposed transactions concerning a voluntary transfer of the rights that Idlewild acquired at the time of the foreclosure sale. If Idlewild was not a proper foreclosure purchaser, as Democracy Capital claims, then Democracy Capital suffered injury and impairment of its rights at the time of the foreclosure sale.

We conclude that, for the purpose of any claim that BayVanguard breached the

Participation Agreement by permitting Idlewild to be the foreclosure purchaser, that breach occurred at the time of the foreclosure sale on November 22, 2019. The subsequent ratification of the foreclosure sale by the court and conveyance of title by the trustee are not acts of breach; those events are results of the alleged breach.

To the extent that Democracy Capital's claims are based on BayVanguard's alleged conduct of permitting Idlewild to be the foreclosure purchaser, those claims accrued on February 24, 2020, when Democracy Capital received notice that Idlewild was the foreclosure purchaser. This accrual date applies not only to a claim against BayVanguard for breach of the Participation Agreement, but also to a claim against Idlewild for interfering with contractual rights by inducing that alleged breach. *See Dual Inc. v. Lockheed Martin Corp.*, 383 Md. at 168-69.

Other Alleged Breaches of Participation Agreement

Although the first alleged breach of the Participation Agreement occurred at the time of the foreclosure sale, the complaint expressly alleged more than one breach.

The complaint alleged that BayVanguard "also failed to consult with Democracy Capital or obtain its consent prior to negotiating and securing the sales of each [p]roperty from Idlewild to a third party" for a total price of $4.26 million. According to the complaint, the defendants "decided to sell the [p]roperties for bargain-basement prices . . . without any meaningful consultation or good faith effort" to agree on a course of action. Count I alleged that BayVanguard breached the Participation Agreement through "the sale of each [p]roperty by Idlewild without consulting Democracy Capital or making a good faith effort to reach agreement on the proper disposition of the [p]roperties." Count

II alleges that Idlewild interfered with contractual rights under the Participation Agreement when it sold the properties. Both counts alleged that, "[a]t a minimum," Idlewild's foreclosure purchase of the properties for the price of $7.2 million "triggered BayVanguard's obligation under the Participation Agreement to pay its 50% share of the proceeds[.]"

In short, the complaint, read liberally, alleged that additional breaches of the Participation Agreement occurred when Idlewild sold the properties to a third party and when BayVanguard failed to pay a 50% share of the proceeds from the foreclosure sale. These alleged breaches occurred through transactions that necessarily took place sometime *after* the foreclosure sale.

Democracy Capital argues that, even though it received notice that Idlewild was the foreclosure purchaser on February 24, 2020, Democracy Capital could not have known "that BayVanguard would later ignore Democracy Capital's right to 50% of the sale proceeds." Democracy Capital argues that a breach of the Participation Agreement occurred when BayVanguard "subsequently refused to compensate Democracy Capital for 50% of the proceeds from the $7,200,000 sale to Idlewild."

In their brief, BayVanguard and Idlewild argue that a claim for breach of contract "accrues on the first breach," and not at the time of "successive breaches" of the contract. This argument lacks support in Maryland law. The timing of a breach of contract "depends on the nature of the promises made in the contract and the times for performing those promises." *Jones v. Hyatt Ins. Agency, Inc.*, 356 Md. 639, 649 (1999). Where there are "multiple breaches" of a contract, the failure to raise a timely claim for an

earlier breach of contract does not bar a timely claim for a subsequent, "distinct breach" of the same contract. *See Commercial Union Ins. Co. v. Porter Hayden Co.*, 116 Md. App. 605, 656 (1997). Moreover, "'where a contract provides for continuing performance over a period of time, each successive breach of that obligation begins the running of the statute of limitations anew[.]'" *Id.* at 657 (emphasis omitted) (quoting *Singer Co., Link Simulation Sys. Div. v. Baltimore Gas & Elec. Co.*, 79 Md. App. 461, 475 (1989)).

Idlewild's eventual sales of the properties to other parties for $4.26 million are separate and distinct from Idlewild's foreclosure purchase for $7.2 million. To the extent that Democracy Capital's claims are based on Idlewild's eventual sales of the properties, its claims did not accrue until those sales occurred. Although the record does not establish exactly when each sale occurred, there is no basis to conclude that those sales occurred before Idlewild acquired title to the properties.

Under the Participation Agreement, the Lender's obligation to pay a share of proceeds to the Participant is separate and distinct from any contractual obligation to consult with the Participant prior to a sale of the property. Generally, a claim that a party breached an obligation to make a payment under a contract does not accrue until the payment is due and the party fails or refuses to pay. *See Himelfarb v. American Express Co.*, 301 Md. 698, 703 (1984); *HESS Constr. + Eng'g Servs., Inc. v. Francis O. Day Co., Inc.*, 264 Md. App. 567, 606-07 (2025). To the extent that Democracy Capital's claims are based on BayVanguard's alleged failure to pay a share of foreclosure proceeds, its claims did not accrue until BayVanguard failed or refused to pay proceeds that it

allegedly owed. There is no basis to conclude that those events occurred before Idlewild acquired the properties.[12]

Timeliness of Counts I and II

As discussed above, the applicable limitations period for a claim for breach of the Participation Agreement is 12 years, because the Participation Agreement is a contract under seal. The claim for breach of the Participation Agreement, therefore, was not barred by limitations.

The original complaint alleged multiple breaches of the Participation Agreement, which occurred at different times. The first alleged breach, BayVanguard's act of permitting Idlewild to be the foreclosure purchaser, occurred at the time of the foreclosure sale on November 22, 2019. Democracy Capital was on inquiry notice of that breach through the email communications dated February 24, 2020. For statute-of-limitations purposes, any claims predicated on that breach (including claims for tortious interference) accrued on February 24, 2020.

BayVanguard's other alleged breaches of the Participation Agreement—allegedly failing to consult with Democracy Capital before Idlewild's subsequent sales of the properties to third parties, and allegedly failing to pay a share of proceeds from the foreclosure sale—occurred sometime after the foreclosure sale. The record does not establish that those breaches occurred before Idlewild acquired title to the properties.

[12] Generally, a foreclosure purchaser does not pay the purchase price until the time of settlement, which take places after ratification of the sale. *See AMT Homes, LLC v. Fishman*, 228 Md. App. 302, 306 (2016).

Consequently, the record fails to show that claims based on those breaches accrued more than three years before Democracy Capital filed its original complaint.

BayVanguard and Idlewild were not entitled to judgment in their favor on Counts I and II of the original complaint on limitations grounds. At most, Idlewild was entitled to partial summary judgment on Count II. Any claim that Idlewild interfered with contractual rights when Idlewild purchased the properties at the foreclosure sale was time-barred.[13] Otherwise, both counts were timely.

III. Elements of Tortious Interference with Contract

Democracy Capital contends that the circuit court erred when it concluded that the original complaint failed to state a valid claim for tortious interference with contract because it failed to allege any "improper conduct" by Idlewild.

In the reply in support of its motion to dismiss, BayVanguard argued that the actions allegedly committed by Idlewild "d[id] not qualify as the type of wrongful or unlawful acts" required to support a claim for tortious interference with contract. Citing *Alexander & Alexander Inc. v. B. Dixon Evander & Assocs., Inc.*, 336 Md. 635, 657 (1994), BayVanguard argued that the types of "'wrongful or unlawful acts'" required to support this claim "'include common law torts and violence or intimidation, defamation, injurious falsehood or other fraud, violation of criminal law, and the institution or threat of groundless civil suits or criminal prosecutions in bad faith.'"

At the motions hearing, BayVanguard reiterated its argument that a claim for

[13] Democracy Capital has made no arguments about tolling of the statute of limitations.

tortious interference with contract "requires a truly 'improper act,'" such as the acts mentioned in the *Alexander & Alexander* opinion. BayVanguard argued that the allegations that Idlewild "acted instead of BayVanguard to bid on a property at a foreclosure sale" did not "meet the threshold" for the type of act required to support a claim for tortious interference with contract. The circuit court agreed with this argument, stating that there was no allegation of any "improper act as contemplated in case law." The court stated: "Certainly nothing alleged rises to the level of an act that would be tortious interference with a contract."

The premise of BayVanguard's argument was faulty. The proposition cited by BayVanguard does not concern a claim for tortious interference with an existing contract. Rather, the proposition concerns a different variety of tort, known as "wrongful or malicious interference with economic relations." *Alexander & Alexander Inc. v. B. Dixon Evander & Assocs., Inc.*, 336 Md. at 657; *see also Bagwell v. Peninsula Regional Med. Ctr.*, 106 Md. App. 470, 504 (1995) (recognizing that the "tort, commonly called either 'intentional interference with prospective advantage' or 'intentional interference with business relationships,' lies where the wrongful conduct of the defendant interferes with the plaintiff's existing or anticipated economic relationships, notwithstanding the absence of a breach of contract").

Maryland courts recognize "'two general types of tort actions for interference with business relationships[:] . . . inducing the breach of an existing contract and, more broadly, maliciously or wrongfully interfering with economic relationships in the absence of a breach of contract.'" *Blondell v. Littlepage*, 413 Md. 96, 125 (2010) (quoting *Kaser*

v. Fin. Prot. Mktg., Inc., 376 Md. 621, 628 (2003)). The two types of actions are related, but not identical. *Compare* Maryland Civil Pattern Jury Instruction 7:1 *with* Maryland Civil Pattern Jury Instruction 7:2. "The two types of actions differ in the limits on the right to interfere" in the business or economic relationships of others. *Natural Design, Inc. v. Rouse Co.*, 302 Md. 47, 69 (1984). A third party has a "broader right to interfere" if there is no existing contract or if the existing contract is terminable at will. *Id.* at 69-70. "[W]here a contract between two parties exists, the circumstances in which a third party has a right to interfere with the performance of that contract" are "narrowly restricted." *Id.* at 69.

In general, "interference with another's contract or business relations in the name of competition is improper only if the means used are, in themselves, improper." *Macklin v. Robert Logan Assocs.*, 334 Md. 287, 302 (1994). "[W]rongful or malicious interference with economic relations is interference by conduct that is independently wrongful or unlawful, quite apart from its effect on the plaintiff's business relationships." *Alexander & Alexander Inc. v. B. Dixon Evander & Assocs., Inc.*, 336 Md. at 657. These types of "[w]rongful or unlawful acts include common law torts and 'violence or intimidation, defamation, injurious falsehood or other fraud, violation of criminal law, and the institution or threat of groundless civil suits or criminal prosecutions in bad faith.'" *Id.* (quoting *K & K Mgmt., Inc. v. Lee*, 316 Md. 137, 166 (1989)).

However, "[w]hen the existing contract is not terminable at will, inducing its breach, even for competitive purposes, is itself improper and, consequently, not 'just cause' for damaging another in his or her business." *Macklin v. Robert Logan Assocs.*,

334 Md. at 303 (citations omitted). "[W]here there is an existing contract, not terminable at will, between a plaintiff and [another] party, acts by a defendant to induce the [other party] to breach that contract are, themselves, improper and wrongful." *Id.* at 304. "The situation is entirely different" where there is no existing contract or where "the existing contract is one terminable at will" and, consequently, parties have "a broader right to interfere[.]" *Id.*

The original complaint here raised a claim for tortious interference with an existing contract, the Participation Agreement, which is not terminable at will. This claim for interfering with rights under an existing contract did not require proof of the type of conduct required to support a claim for tortious interference with economic relationship. Because inducing the breach of an existing contract, not terminable at will, "is itself improper" (*Macklin v. Robert Logan Assocs.*, 334 Md. at 303), this claim does not require an allegation that Idlewild committed the type of "independently wrongful or unlawful" conduct described in *Alexander & Alexander Inc. v. B. Dixon Evander & Assocs., Inc.*, 336 Md. at 657. The court erred when it evaluated Democracy Capital's claim under standards for tortious interference with an economic or business relationship in the absence of an existing contract.

In support of their motion, the defendants alluded to an alternative ground for judgment on the tortious interference count. The defendants argued that the complaint "fail[ed] to allege any act by Idlewild that induced BayVanguard to do anything, much less breach the Participation Agreement." The defendants argued that the allegations necessarily meant that BayVanguard "was directing Idlewild, not being induced by it."

Because the circuit court did not base its judgment on that ground, we will not consider that ground as a potential basis to uphold the judgment on the count for tortious interference. *See D'Aoust v. Diamond*, 424 Md. 549, 575 (2012).[14]

IV. Amendments to Complaint

As the final issue in this appeal, Democracy Capital contends that the circuit court erred when it denied the "motion to alter or amend the judgment to reopen the case in order to permit [Democracy Capital] to amend the complaint[.]" Democracy Capital argues that, "if this Court does not reverse [the judgment] on other grounds[,]" then this Court should reverse the denial of the post-judgment motions and direct the court to allow Democracy Capital to amend its complaint.

For the reasons discussed above, we are setting aside the rulings on collateral estoppel and limitations. Consequently, we are reversing the grant of judgment on the count for breach of the Participation Agreement and vacating the grant of judgment on the count for tortious interference with contractual relationship. Democracy Capital has

[14] Generally, tortious interference with contract "contemplates the interference of two parties' contractual relations by a third party." *Continental Cas. Co. v. Mirabile*, 52 Md. App. 387, 402 (1982). "As a matter of law, a party to a contract cannot tortiously 'interfere' with [the party's] own contract; the party can, at most, breach it." *Bagwell v. Peninsula Regional Med. Ctr.*, 106 Md. App. 470, 503 (1995). "Neither can an agent of the party to a contract, acting within the scope of the agency, 'interfere' with the contract." *Id.* Accordingly, Idlewild cannot be held liable for interference with a contractual or business relationship between BayVanguard and Democracy Capital based on actions that Idlewild performed as an agent of BayVanguard. *See Pope v. Bd. of Sch. Comm'rs of Baltimore City*, 106 Md. App. 578, 591-92 (1995); *Bagwell v. Peninsula Regional Med. Ctr.*, 106 Md. App. at 503; *Bleich v. Florence Crittenton Servs. of Baltimore, Inc.*, 98 Md. App. 123, 147 (1993); *Continental Cas. Co. v. Mirabile*, 52 Md. App. at 402.

not challenged the judgment in favor of the defendants on to the other three counts of the original complaint.

Under the circumstances, it is unnecessary for this Court to review the rulings on the post-judgment motions. Because we are reinstating the first two counts of the original complaint, there is no longer any need for Democracy Capital to seek the court's permission to amend its pleadings. If Democracy Capital chooses to amend its pleadings, it may do so in accordance with the Maryland Rules. *See* Md. Rule 2-341(a) (providing that a party "may file an amendment to a pleading without leave of court by the date set forth in a scheduling order or, if there is no scheduling order, no later than 30 days before a scheduled trial date").

In their appellate brief, the defendants take issue with the timeliness of the amended complaint. The defendants observe that Democracy Capital "filed its proposed First Amended Complaint on September 3, 2024, more than three years from ratification" of the foreclosure sale. In reply, Democracy Capital argues that the claims in its amended complaint should relate back to the date of filing of the original complaint. Democracy Capital seeks to rely on the principle that, as long as the operative factual situation remains essentially the same as alleged in the earlier pleading, an amendment that merely sets forth a new theory or different legal principles will relate back to the prior pleading. *See, e.g.*, *Youmans v. Douron, Inc.*, 211 Md. App. 274, 291 (2013).

As mentioned previously, the purpose of the proposed amendment was to respond to the circuit court's determinations on collateral estoppel and the statute of limitations. We have rejected the court's collateral estoppel determination and partially rejected the

court's determination of when the claims accrued. We are unable to predict whether Democracy Capital will choose to proceed on the claims raised in the original complaint, the proposed amended complaint, or a different amended complaint. It would be impractical for this Court to attempt to decide which potential amendments might relate back to the filing of the original complaint. If Democracy Capital amends its complaint, and if the defendants challenge any amendments, the circuit court should pass upon those challenges in the first instance.

In their appellate brief, the defendants raise additional challenges to the substance of Democracy Capital's claims. The defendants argue that any claim that Democracy Capital is entitled to 50% of the $7.2 million purchase price is "preposterous" because, they say, Idlewild made a "credit bid" rather than a monetary payment. Democracy Capital disagrees, arguing that there is no reason to treat Idlewild and BayVanguard as a single entity or to treat a credit bid differently from a monetary payment. Because these issues were neither raised in nor decided by the circuit court, we will not decide the issues in this appeal. *See Thacker v. City of Hyattsville*, 135 Md. App. 268, 309-10 (2000) (applying Md. Rule 8-131(a)).

CONCLUSION

For the reasons set forth in this opinion, we conclude that the circuit court erred when it granted judgment in favor of BayVanguard on the claim for breach of the Participation Agreement (Count I) and when it granted judgment in favor of Idlewild on the claim for tortious interference with contractual relationship (Count II).

The circuit court erred when it concluded that the appellate opinion in the

Maryland Financial Bank case determined that Democracy Capital has no rights under the Participation Agreement. Although the opinion rejected one proposed theory under which Democracy Capital might have acquired participation rights, the opinion did not categorically decide whether Democracy Capital does or does not have rights in the Participation Agreement under other potential theories. The doctrine of collateral estoppel does not preclude Democracy Capital from raising a claim for breach of the Participation Agreement or its claim for tortious interference with contractual relationship.

Because the Participation Agreement is a contract under seal, a claim for breach of that contract is subject to the 12-year statute of limitations. A claim for tortious interference with contractual relationship is subject to the three-year statute of limitations.

To the extent that Democracy Capital's claims are based on the allegation that BayVanguard breached the Participation Agreement by allowing Idlewild to be the foreclosure purchaser, those claims accrued on February 24, 2020. Idlewild is entitled to partial summary judgment on Count II, to the extent that this count is predicated on an allegation that Idlewild induced that alleged breach of the Participation Agreement.

To the extent that Democracy Capital's claims are based on the allegation that BayVanguard failed to consult with Democracy Capital before Idlewild sold the properties to a third party, those claims did not accrue at least until the sales occurred. To the extent that Democracy Capital's claims are based on the allegation that BayVanguard failed to pay its required share of proceeds from the foreclosure sale, those claims did not accrue at least until payment became due and BayVanguard failed or refused to pay.

The claim for tortious interference with the Participation Agreement does not require proof that Idlewild committed conduct that is independently wrongful to induce a breach of the Participation Agreement.

Finally, Democracy Capital may amend its complaint without leave from the court in accordance with Rule 2-341(a).

JUDGMENT OF THE CIRCUIT COURT FOR DORCHESTER COUNTY REVERSED IN PART, VACATED IN PART, AND AFFIRMED IN PART. JUDGMENT IN FAVOR OF BAYVANGUARD BANK ON COUNT I REVERSED. JUDGMENT IN FAVOR OF IDLEWILD PROPERTIES, LLC, ON COUNT II VACATED; CIRCUIT COURT SHALL ENTER PARTIAL SUMMARY JUDGMENT ONLY ON COUNT II. JUDGMENT OTHERWISE AFFIRMED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 25% BY APPELLANT AND 75% BY APPELLEES.

The correction notice(s) for this opinion(s) can be found here:

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