UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2123

September Term, 2014

JEROME J. PARKS, *et al.*

v.

MILES & STOCKBRIDGE, P.C., *et al.*

Nazarian,
Leahy,
Reed,

JJ.

Opinion by Leahy, J.

Filed: November 10, 2016

More likely than not, the Great Recession caused the provisions of the 2002 and 2005 loan documents entered into between Key Bank ("K Bank") and Appellants to finally receive the attention they deserved. At present they are the cynosure of the underlying legal malpractice action brought by real estate developer, Mr. Jerome J. Parks, and two of his companies, BCR, LLC, and Tantallon Preserves, LLC (collectively "Appellants"), against their transactional attorney, Mr. Timothy Casgar, Esq., and his firm Miles & Stockbridge, P.C. ("Miles," collectively with Mr. Casgar as "Appellees").

Rather than obtain a new loan for $5.4 million for the acquisition and development of thirty-five undeveloped residential lots in Prince George's County ("Tantallon"), Mr. Parks, with Mr. Casgar's assistance and advice, opted in 2005 to modify a 2002-already-satisfied loan with K Bank.[1] The parties believed that modifying the 2002 loan rather than entering into a new loan would save $80,000.00 in county taxes. The consequence of this decision, however, was uncertainty as to the extent that Mr. Parks and his companies guaranteed the loan. This uncertainty derived, in part, from provisions contained in the 2002 and 2005 loan guaranties that were not in the 2005 commitment letter, and the parties' failure to understand the precise obligations created under the 2002 loan documents that were carried forward under the 2005 modification.

A significant feature of the loan documents was the Business Asset Limitation ("BAL") guaranty, by which Mr. Parks (and companies) guaranteed the loan, but K Bank's

[1] During the course of the disputed transaction, Key Bank changed its trade name to K-Bank and eventually merged into M&T Bank.

recourse was limited to Mr. Parks's business assets explicitly listed in the loan documents. The same BAL guaranty appears in the 2002 loan documents and the 2005 commitment letter that Appellants' agents negotiated and Mr. Parks signed prior to closing. Mr. Parks maintains that he told his agents and attorney alike that he would not "personally guarantee" the 2005 loan.

Before Appellants could sell the residences they built, the subprime crisis broke and the real estate market collapsed. In 2008, Appellants defaulted on the Tantallon loans with $2.7 million still outstanding. Mr. Parks took the position that he could just walk away from the project because, "based on Casgar's statements and advice, . . . the Parks business assets were not pledged to the K Bank loan and any monetary losses would be limited to cash actually invested and expended." K Bank threatened legal action, relying primarily on the BAL guaranty in the 2002 loan documents. Eventually, K Bank agreed to forbear on the loan in exchange for a $1 million guaranty from one of Parks Companies and a $2 million personal guaranty by Mr. Parks—the very thing Mr. Parks had hoped to avoid from the beginning.

Appellants brought this action for legal malpractice against Miles and Mr. Casgar in the Circuit Court for Anne Arundel County on July 26, 2012. Appellees filed a counterclaim for unpaid legal fees. Appellants' core allegations were that Appellees breached their fiduciary and professional duties by, *inter alia*, negligently permitting Mr. Parks to grant a "personal guaranty" to K Bank, and by failing to review the loan documents to determine the impact and effect of prior guaranties and pledges.

The circuit court held a bench trial and found Appellees negligent for not adequately reviewing the 2002 loan guaranty documents in order to advise Appellants of the potential impact of these documents, which were incorporated by reference under the 2005 modification. The court found that Appellees' lack of follow-up—especially regarding obligations included among the closing documents that Mr. Casgar believed were not part of the agreement—fell below the standard of reasonable care for a transactional attorney under the circumstances. Chief among these additional obligations was a collateral pledge and security agreement. However, Mr. Parks only signed the 2005 commitment letter, and—counsel's lack of adequate warning notwithstanding—never signed the collateral pledge and security agreement or the 2005 guaranty.

Ultimately, the court held that Miles and Mr. Casgar's negligence was not the proximate cause of Appellants' damages. Instead, the court found that any damages incurred by Appellants were caused by a combination of Mr. Parks's own knowing acceptance of the BAL guaranty on the Tantallon loans and the 2008 economic recession. The circuit court entered a written opinion and order in favor of Appellees on the complaint and counterclaim.

Appellants timely filed the instant appeal after the circuit court denied their Motion to Alter or Amend Judgment. They argue that Appellees' negligence was, in fact, the proximate cause of their damages, that Mr. Parks was not contributorily negligent, and that the trial judge improperly considered the economic conditions. Appellants also assign error to the trial court's decisions concerning expert testimony, its determination on proof of damages, and its denial of their motion for a new trial.[2] We have rewritten and consolidated Appellants' questions on appeal as follows:

1) Did the circuit court err in finding that Appellees were not liable as the sole proximate cause of Appellants' harm?
2) Did the circuit court err in its decisions regarding what expert testimony to admit?
3) Did the trial court err in finding that Appellants failed to prove their damages?
4) Did the circuit court err in denying Appellants' Motion to Alter or Amend its judgment?

First, we hold that the circuit court did not err in finding that Appellees' negligence was not the proximate cause of Appellants' harm; that Appellants' negligence contributorily caused their own harm; and that the economic recession's effect on the real

[2] Appellants' brief lists seven questions for this Court on appeal:

I. "Did the trial court err in its determination that Parks was contributorily negligent by knowingly accepting a portion of liability on the BAL Guaranty?"
II. "Did the trial court err in determining that Casgar's negligence was not the proximate cause of Parks' injury?"
III. "Did the trial court err in not properly applying the methodology to determine whether the negligence of Casgar was a proximate cause of Parks' damages?"
IV. "Did the trial court err in not admitting testimony from the expert witnesses for the plaintiff?"
V. "Did the trial court err in admitting the testimony of defendant's expert witness Barry Greenberg?"
VI. "Did the trial court err in finding that Parks did not prove his damages?"
VII. "Did the trial court err in denying Appellant's Motion to Alter and/or For a New Trial?"

estate market, unforeseen by both parties, was an intervening, superseding cause of Appellants' harm. Accordingly, we affirm the circuit court's principal judgments.

Second, we hold that Appellants failed to demonstrate clear error in the circuit court's denial of their Motion to Alter or Amend Judgment. We also affirm that decision.

Finally, because we find for Appellees on the first two issues, we do not need to reach Appellants' remaining questions on damages and expert testimony.

BACKGROUND

A. The Parties' Relationship

The attorney-client relationship between Mr. Parks and Mr. Casgar is obviously central in the analysis of this legal malpractice case. They first met on a social occasion in 1995, and then in a professional setting in 1996 when Mr. Casgar represented a lender at the closing of a real estate transaction. Impressed by Mr. Casgar's work at the closing, Mr. Parks retained Mr. Casgar and his firm, Miles, to represent various limited liability companies and S-corporations owned by Parks under the umbrella of the Jerome J. Parks Companies, Inc. ("Parks Companies"), in certain real estate transactions.

Mr. Parks began his career in the real estate development business in the 1950s. He was the President of multiple businesses within the industry and oversaw the development of many large commercial projects, marinas, and residential subdivisions. Mr. Casgar, a graduate of Harvard University and Stanford Law School, began his career at Miles in 1967, where he represented both real estate developers and lenders. By 1996, both parties were successful and sophisticated players in the commercial real estate industry.

Despite the length of the attorney-client relationship and size of the transactions on which Appellees advised Parks Companies, the parties never formalized any written agreement defining or limiting the scope of legal representation. The circuit court noted: "Considering that a transactional lawyer's primary functions are the writing, revising & interpretation of written agreements, this situation constitutes a modern analog to the old adage as to the 'cobbler's children going barefoot.'"

Not surprisingly, the parties maintained divergent concepts of their relationship—as evidenced by Mr. Parks's and Mr. Casgar's trial testimony. A self-described "dirt man," Mr. Parks claimed to understand construction, not construction contracts. He testified that he considered Mr. Casgar to be like his general counsel, friend, and mentor who "knew everything that was going on." He "relied on Mr. Casgar to take and review all of these [loans with different banks with varying, intertwined guaranties] to make sure that [Mr. Parks] stayed the straight and narrow and [did] not cross[] the line so that [he] would be in default on anything."

Mr. Casgar framed the relationship differently—he would provide feedback only when asked, while Parks Companies's high-ranking employees handled the bulk of contract negotiations between Parks and the lender on a project. Mr. Casgar testified that he "certainly was not a business consultant," but a "lawyer used in certain circumstances."

B. Business Asset Limitation

The alleged malpractice in this action surrounds Mr. Parks's "personal liability" as guarantor of a loan between K Bank and Tantallon Preserves, LLC, to fund the Tantallon project. The core of Appellants' claim is that Mr. Parks was clear with Mr. Casgar, as well as his own employees, that he would not personally guarantee the loan funding this project. The parties dispute whether Mr. Parks actually told this to Mr. Casgar, and there is reason to believe that Appellants' own lead negotiator on the Tantallon loans misunderstood the instruction of "no personal guaranty" to allow for a BAL.[3]

At trial, various witnesses explained that a BAL restricts the bank's recourse when a borrower defaults. A BAL groups together a predetermined set of the guarantor's business assets and treats those assets as if they belonged to a single corporate entity—

[3] Mr. Parks's use of the term "personal guaranty" appears to be a source of misunderstanding. The record reveals that the term is sometimes used to refer to only Mr. Parks's personal assets (beyond his business assets), and at other times, the term is used to include Mr. Parks's business assets identified under the BAL. For example, Mr. Parks's own accounting of the instructions he gave his employees regarding his willingness to guarantee the Tantallon loan seems to invite confusion as to whether the term "personal guaranty" included or excluded his business assets. He testified that he told Mr. Reigert, his lead negotiator on Tantallon, that he would not sign "personal guarantees for [Tantallon] project *or* use [his] business assets" to secure the loan. (Emphasis added). According to testimony from multiple individuals involved with the transaction, Mr. Riegert seems to have misunderstood what Mr. Parks's use of the term "personal guaranty." Mr. Stephen Levin, Parks Companies's CFO during the Tantallon negotiations, testified that he believed Mr. Riegert understood Mr. Parks's prohibition on a personal guaranty to still allow for a business asset guaranty. Mr. Levin recalled a conversation between himself, Mr. Parks, and Mr. Riegert during which it became apparent that Mr. Riegert did not "quite g[e]t it," when Mr. Parks said "no personal guarantees." Mr. Levin said he took Mr. Riegert into his office and explained "that what Mr. Parks meant by personal guarantees was, for example, his personal house, his marinas, his office building, everything except for the project itself." Additionally, both Mr. Casgar and Appellants' subsequent counsel, Mr. Baldwin, testified that Mr. Riegert told them each separately that Mr. Riegert did not understand where Mr. Parks got the idea that he did not guarantee the loan.

keeping separate and protecting the guarantor's personal assets (*e.g.*, his home, stocks, vehicles), while exposing to liability that group of business assets.

The BAL that Parks Companies typically used created a corporate shield to protect Mr. Parks's personal assets. Mr. Parks carefully structured his network of business entities to make the BAL guaranties a good fit for both Mr. Parks and his lenders.[4] These entities, all legally distinct from Jerome J. Parks Companies, spread risk and responsibility across various wholly-owned entities, making any single entity a poor candidate to secure a large bank loan. But in the aggregate, Mr. Parks had enough business capital to secure loans while insulating his personal assets from liability. The BAL struck a compromise; it protected Mr. Parks's personal assets, but allowed the bank to secure a guaranty from more than just a newly-formed entity of limited worth.

Parks Companies's practice of using BALs predated Mr. Casgar's tenure as counsel. Mr. Casgar testified that these limited guaranties were "generally unique to the Parks Compan[ies] . . . it was not typical for developers of his size to be able to develop – to avoid a full guarantee, which would include personal assets." Despite his lack of expertise in contract law, Mr. Parks's testimony at trial demonstrated that he understood a BAL's function and utility:

[4] As Mr. Casgar testified at trial, Mr. Parks would create multiple LLCs to complete a single construction project: "Entity A [would] own[] the land and put[] in . . . improvements . . . to get a finished lot; Entity B is the building entity . . . and it is B's liability for completing the house[.]" In the case of Brock Woods, "Key Bank loaned $3.323 [million] to three ['A'] entities[,]" one of which the loan documents simply listed as "New LLC to be formed." The A entities then fund a B entity—Brock Hills Builder LLC—to complete construction.

> The way that the business asset was structured was we were -- I was constantly trying to reach some level of having none [sic] recourse on the loans that I was involved with, that I was involved in and would become involved with. And the banks finally agreed that okay we will take and exculpt from any pledge that you make, any personal assets that are not listed on your financial statement.
>
> But the reality of it was the financial statement simply expressed and it was a combination of estimated values that we created or that appraisers created for properties and it was to show that the financial statement was really to show that we had the financial wherewithal to carry out an operation that we are going to be in, that we would have enough money, not necessarily the bank's money but showing that we had enough money.
>
> But [those business assets subject to the guaranty] were not encumbered so that we could use those and they were fluid. That we could use those same assets for other loan[s.]

Although the Tantallon loan originated in 2005, the transactional history relevant to this case begins with a 2002 loan funding Parks Companies's Brock Woods Project ("Brock Woods Loan"). We address each in turn.

C. The Deal

i. The 2002 Brock Woods Loan

Brock Woods was a residential real estate development that Parks Companies began developing in 2002. Mr. Kenneth Riegert, Parks Companies Vice President of Construction and an employee of 25 years, was in charge of the project.[5] Mr. Riegert's duties included facilitating both of the project's two main transactions—finding and obtaining property for development and negotiating the project's financing with lenders.

The Parks Companies involved Mr. Casgar in the first phase of the Brocks Woods project in early January 2002. At this time, Mr. Casgar's work was limited to drafting

[5] Mr. Riegert died prior to trial.

documents to facilitate Parks Companies's purchase of the necessary property. Meanwhile, Mr. Riegert and Ms. Christine Leister, Parks Companies's then-CFO, handled negotiations with K Bank to secure financing. At Parks Companies's behest, K Bank included a BAL to limit Mr. Parks's personal exposure. Mr. James Orazi, K Bank's Vice President of Construction Lending at the time, testified that he never worked with Mr. Casgar or anyone at Miles during negotiations on the Brock Woods Loan.

On February 25, 2002, K Bank sent Parks Companies a commitment letter for the Brock Woods Loan, which explained that Parks Companies would secure the loan by granting K Bank a collateral interest in the Brock Woods properties, and "[i]n addition to the collateral security indicated, the Bank will rely for re-payment of this loan . . . [on] Jerome J. Parks business assets as outlined in the next paragraph." The next paragraph was the BAL guaranty that Parks Companies proposed.

Mr. Parks executed the commitment letter on February 28, 2002. He testified that he knew the commitment letter and loan documents included a BAL, but that he did not actually read the documents. Instead, he testified that Ms. Leister would have read those documents on his behalf—"Only for financial purposes. The legal – the legal purposes it would be Mr. Casgar." On cross-examination, Mr. Parks avoided giving a firm answer as to whether he ever sent the Brock Woods Commitment Letter to Mr. Casgar for review, stating "possibly not."

The record reflects that Parks Companies did not send Miles any relevant Brock Woods documents until March 12, 2002, when they faxed the loan application and commitment letter for review. Mr. Casgar testified that he did not personally receive the loan documents until April 9, 2002, the day before closing.

The Brock Woods Loan's closing occurred on April 10, 2002, without any Miles attorneys in attendance. Ms. Leister and Mr. Parks executed the Guaranty Agreement, which included the following BAL:

> **2. *Business Assets Limitation.*** The Lender agrees that its recourse under this Guaranty Agreement shall be limited to [Mr. Parks's] assets as disclosed in this financial statement attached hereto and as Exhibit "A" and made part hereof. Guarantor represents and warrants that the assets so indicated are owned solely by the Guarantor in the percentages of ownership interest indicated, and that he has the authority to pledge these assets. Further the Guarantor agrees not to sell, transfer, dissolve of or otherwise encumber or dilute his ownership interest in these assets, without the prior written approval of the Lender, except where the sale of individual residential lots and development projects are conveyed in the normal course of business to third party purchasers. It being understood and agreed that the total overall value of these assets shall be maintained at the level indicated in Exhibit "A"[6]; throughout the term of the loan. Any such violation of this agreement will create an event of default in the loan to **Brock Woods Estates, LLC,** a Maryland limited liability company, **Meredith Creek Development, LLC,** a Maryland Limited liability company and **Largo Development, LLC,** a Maryland limited liability company.

It also included the following confessed judgment provision:

> **16. *CONFESSION OF JUDGMENT.*** The Guarantor hereby authorizes any attorney at law to appear for the Guarantor before any court having jurisdiction and after one or more declarations file confess judgment against the Guarantor, as of any time after any of the Obligations are due (whether by demand, normal maturity, upon acceleration or otherwise) for the unpaid balance of the obligations declared due, together with interest, court costs and attorney's fees of fifteen percent (15%) of the Obligations declared due[.]

[6] Exhibit A, referenced throughout, included a list of certain business assets owned by Mr. Parks.

By all accounts, the Brocks Woods project was a success and Parks Companies repaid the loan in full.

ii. The 2005 Tantallon Loan

In late 2004, Mr. Riegert began setting up a deal to acquire land for another residential development. At Mr. Casgar's suggestion, Parks Companies purchased the entire entity that owned the land, BCR, LLC, rather than just the land that BCR, LLC owned—a maneuver designed to save Appellants money on taxes. This land would become the site of the Tantallon project.

Initially at least, the Tantallon project proceeded much like Brock Woods. Mr. Riegert took the lead in negotiating the purchase of land and negotiating financing from K Bank. Mr. Steven Levin, who replaced Ms. Leister as Parks Companies CFO in 2004, worked alongside Mr. Riegert during these negotiations. He communicated with Parks Companies's attorneys, reviewed documents, and consulted with Mr. Parks regarding the financing terms and contents of the finance transaction documents. Mr. Levin testified at trial that Mr. Riegert "was authorized to negotiate [the financing terms] subject to Mr. Parks' approval," while Mr. Levin acted as liaison between the negotiators and Mr. Parks. This was the "method of operation . . . at Parks Companies" "[i]f things were going smoothly."

On January 7, 2005, Parks Companies first involved Mr. Casgar in the Tantallon project, sending him a draft letter of intent for the purchase of BCR, LLC and its property, and informing him that Mr. Riegert would be his contact person on the project. So, as was the case with Brock Woods, Mr. Casgar's initial work on Tantallon dealt with Parks Companies's purchase of the properties for development, but Mr. Parks did not involve Mr. Casgar or Miles in the initial negotiations with the lender to secure the project's funding. Mr. Casgar testified that this was consistent with Parks Companies's "modus operandi." Mr. Parks claimed he told Mr. Casgar that he would not personally guarantee the Tantallon project. Mr. Casgar denied that any such conversation took place.

On June 30, 2005, Mr. Orazi faxed Mr. Riegert a letter following up on their discussions about K Bank financing the Tantallon Project. In that message he "recommend[ed] a modification of the existing loan for Brock [Woods] in order to save the County recordation fees of the loan (probably 2%, $80,000+)[,]" and noted that he would need Mr. Parks's updated financials before submitting the request to the loan committee. The Parks Companies followed K Bank's recommendation to modify the existing Brock Woods Loan.

Then months after initiating negotiations, on September 8, 2005, Parks Companies first sent Mr. Casgar K Bank's proposed commitment letters—one for the $500,000 construction loan and one for a $5,400,000 expandable revolving acquisition loan.[7] As was the case with Brock Woods, the commitment letter indicated that Parks Companies would secure the loan by granting K Bank a security interest in the Tantallon Project's

[7] The guaranty and commitment letter at issue in this appeal only applied to the $5,400,000 expandable revolving acquisition loan.

properties.[8] Then, using language identical to the Brock Woods Loan commitment letter, the Tantallon letter stated that "[i]n addition to the collateral security indicated, the Bank will rely for re-payment of this loan . . . [on] Jerome J. Parks business assets as outlined in the next paragraph[,]" followed by Parks Companies's standard BAL. The letter also included a signature line listing Mr. Parks as "Co-Maker/Guarantor."

Mr. Casgar sent back comments the next day, but the closest his comments approached the issue of liability was to propose a second signature line for the entity Tantallon Preserves, LLC. He did not reference K Bank's inclusion of the terms "collateral security" or point out the signature line's designation of Mr. Parks as a guarantor.

On September 30, 2005, however, Mr. Casgar emailed Mr. Parks and Mr. Riegert to advise them on "[t]he issue is the scope of [Mr. Parks'] guaranty":

> $500,000 Loan: Para[graph] 14 of the commitment calls for [Mr. Parks'] guaranty, but limited to the list of business assets that he has given to K Bank. I assume this is the same type of deal he has with Mercantile.
>
> $5,400,000 Loan: This commitment is "modification" of the prior $3,343,080 loan that ran to Brock Woods. There is no mention of a guaranty other than the commitment that has Jerry signing as "co-maker/guarantor." The collateral for this loan includes both the Tantallon lots and the 10 Brock Woods lots. *I would guess that on the prior $3.3m loan [Mr. Parks] was a guarantor up to his business assets. You should check that. If [Mr. Parks] is to be something less on this loan*, we need to revise. *And even if the [guaranty] is up to the business assets, we should clarify that in this commitment.*

(Emphasis added).

8 The 2002 commitment letter also referred to a collateral pledge and security agreement that, like the 2005 version, was never signed by Mr. Parks.

Three days later, on October 3, 2005, Mr. Riegert faxed K Bank a revised copy of the commitment letter in which Mr. Parks struck the BAL guaranty and the signature line denoting Mr. Parks as the guarantor. Parks Companies did not send Mr. Casgar a copy and failed to inform Mr. Casgar that they proposed changes to K Bank or even that Mr. Parks had proposals he wanted changed before he would complete the transaction. Mr. Casgar first saw the version in which Mr. Parks struck the liability language during the discovery process in the underlying this action.

K Bank returned revised commitment letters on October 12, 2005. The updated letters still included the BAL guaranty and the original signature lines, but now also included signature lines for Tantallon Preserves, LLC. Despite K Bank's implicit refusal to accept his proposed changes, Mr. Parks signed the commitment letters on behalf of Brock Woods Estate, LLC; Tantallon Preserves, LLC; and himself, as Co-Maker/Guarantor.

There is some dispute as to whether or not Mr. Parks actually read the commitment letter before signing. He testified that he was "sure [he'd] read it[,]"but his own confidential memorandum written years later stated that he "did not read [the Commitment Letter] and assumed [it was] okay after talking to Casgar." When asked at trial why he would execute commitment letters that included terms with which he did not agree, Mr. Parks explained: "They were commitment letters, and as far as I was concerned they had no – no binding effect." He testified further that he would execute commitment letters without an attorney's review because a commitment letter "states the terms of the deal and if the deal isn't going to work out for whatever reason you can always just, you can stop it. You don't have to go through with it." Despite this, however, he admitted concern that signing the commitment letter "could be misconstrued" to make it seem that he had agreed to the guaranties. "And that really was not the fact. I talked to Tim, he said I'll take care of it. I'll take care of it and I'm your attorney, don't worry about it. I'll take care of it." When confronted with this claim during his own testimony, Mr. Casgar said the conversation never happened. He testified instead that he has never advised a client to sign an agreement with which he did not intended to comply because "that would be silly. . . . You simply don't execute documents that you don't intend to pursue whatever the document requires. It simply makes no sense."

On November 8, 2005, counsel for K Bank sent Mr. Casgar two guaranties for Mr. Parks to sign on his return, which Mr. Casgar immediately forwarded to Mr. Parks. The first guaranty (for $500,000) was virtually identical to the Brock Woods Loan guaranty—it included nearly verbatim versions of the 2002 BAL guaranty and confessed judgment provision. The second guaranty (for $5.4 Million), however, included a collateral pledge that purported to grant K Bank a security interest in the properties that Mr. Parks included in his BAL guaranty. Mr. Casgar testified that this was the first time he saw the collateral pledge and it had never been discussed so he assumed its inclusion among the loan documents must have been a mistake.

Mr. Parks was out of town for the closing on the next day, November 9, 2005. In his absence, Mr. Parks authorized his son, Jeremy Parks, to sign the closing documents on his behalf. Mr. Casgar attended the closing with Jeremy Parks. He did not alert Jeremy Parks at closing nor did he call or email Mr. Parks or anyone else from Parks Companies to alert them to his concerns regarding the collateral pledge. At trial, Mr. Casgar testified that he felt comfortable going forward with the closing because it was his legal judgment that Mr. Parks would not be legally obligated to sign or be bound by a term that was not negotiated. But on cross-examination, Appellants' counsel had Mr. Casgar read his deposition testimony in which he admitted that if Mr. Parks had called him questioning this issue, he would have advised that the collateral pledge appeared to be an error because "it had not been part of the prior transaction," and that Mr. Parks should not sign the collateral pledge because it arguably "would have created a lien against the assets, the stock he owned, which would have been . . . contrary to the representations [Mr. Parks made in another of his business ventures.]"

As for the inclusion of a BAL in the 2005 guaranty, Mr. Casgar testified that he did not discuss the issue with anyone at Parks Companies, because the companies negotiated that language as they had in various forms for years. "They knew that it was an advantage to be limited to business assets[,] and the fact that it had two limitations, I assume, they took into consideration."

A few days *after closing*, on November 14, 2005, Mr. Casgar followed up with Parks Companies, emailing the loan documents to Mr. Parks, Mr. Riegert, and Mr. Levin, noting:

> [Paragraph] 2 of each guaranty requires attachment of Ex[hibit] A which is a list of assets to which the guaranty is limited. This should be attached and

> I need a copy so I know the recourse assets. The collateral pledge is new to me, but K Bank counsel says you executed such a pledge for the prior loans for the Brock Woods project. The pledge is limited to the business assets (Ex[hibit] A), but it does create a security interest in those assets. Pl[ease] review carefully para[graph] 2 as to maintenance of value. Call me to discuss.

Mr. Casgar testified that he thought this email was sufficient warning of the collateral pledge's existence and effect: "I thought it was clear. If they did not call me, they did not call me."

When Mr. Parks returned to town, he emailed Mr. Levin in reference to the guaranties and Mr. Casgar's corresponding email, asking: "What happened with this guarantee? I thought that the asset that we were giving them were [sic] the lots? If not what had we agreed to?" Mr. Levin answered Mr. Parks, "This is the guarantee that is limited to your business assets. I don't have the collateral pledge for Brock Woods so [Mr. Casgar] is getting me a copy." Mr. Casgar concluded that there was no collateral pledge in the Brook Woods loan.

At trial, the parties presented conflicting testimony and call and email records, disputing what Mr. Parks did next. Mr. Parks testified that he called Mr. Casgar to seek legal advice after he received Mr. Levin's emailed response. But there is no record of an outgoing call from Mr. Parks to Mr. Casgar. Nor is there any record that Mr. Parks contacted K Bank to clarify the propriety of the guaranties, or directed any of his employees to do so. Mr. Parks testified that Mr. Casgar advised him that the guaranties would not become a part of the loan if he did not sign them. Mr. Casgar denied that he ever told Mr. Parks not to sign and claimed that Mr. Parks never even asked. Whether acting on the advice of counsel or on his own, Mr. Parks chose not to sign the guaranties. No one from K Bank followed up about the unexecuted guaranties, and the bank released the funds. Neither client nor counsel again mentioned the guaranties until February 2006 when Mr. Levin emailed Mr. Casgar, asking for tax purposes if Mr. Parks had ever signed the guaranties. Mr. Casgar replied to Mr. Levin's email, stating that Mr. Parks "[n]ever signed the [guaranties]."

Despite the unsigned guaranties, K Bank made available the Tantallon loans and Appellants drew on those funds. By November 2005, the Tantallon properties had already increased in value to more than their purchase price and Appellants sold two homes in 2006 before even completing construction on the model home. And that appears to have been the real estate bubble's broadest breadth before it burst. In 2007, Appellants managed to sell "maybe one more house," and had to invest an additional $2.7 million in capital to cover construction costs in compensation for the lack of sales. Mr. Parks explained, "[O]ur company did at Tantallon every single thing that we could come up with [to sell the properties]. We even tried to auction off lots, which we had never done in our life. We paid a company for that and it yielded nothing for us." Rather than the great success Parks Companies had with Brock Woods, the companies were stuck with immovable products. When asked at trial whether the recession and economy "entirely" caused the project's slowdown, Mr. Parks testified, "[t]hat is correct."

Parks Companies was unable to repay the Tantallon loan when it came due in April 2008. Still operating under the mistaken belief that K Bank's recourse on the Tantallon loan was limited to the properties involved, Mr. Parks decided to turn the properties over to the bank. He testified that if the bank did not accept the real property rights and allow Parks Companies to continue managing the Tantallon project "we would just say to them, we don't have any personal guarantee, so here are your keys and you can have the property back." Mr. Parks contacted Mr. Casgar prior to notifying K Bank, and on April 11, 2008, Mr. Casgar responded: "I have reviewed my file regarding the guarantee/no guarantee issue. I believe there is no personal guarantee, but the four of us must sit down to review the facts." Mr. Levin followed up with Mr. Casgar, who vaguely warned that there may be an "issue of proof."

Shortly thereafter, Miles discovered that a conflict existed with K Bank and withdrew as Parks Companies's counsel on the matter, referring them to Rignal Baldwin, Esq., who had previously represented Mr. Parks in negotiations with K Bank. Mr. Baldwin's first contact at Parks Companies was Mr. Riegert. After meeting with both Mr. Riegert and Mr. Parks, Mr. Baldwin understood that his job was to get Mr. Parks "off the hook" for the guaranties of the Tantallon loans.

Mr. Baldwin began negotiating with K Bank on Parks Companies's behalf, asserting that Mr. Parks's failure to sign the guaranties relieved him of personal liability. K Bank countered that the Tantallon transaction was a modification of the Brock Woods Loan, meaning that the guaranties for the first loan carried over to the second. At trial, K Bank's counsel testified that, absent a settlement, the loans' confessed judgment provision would have allowed the bank to prevail in court within "[s]everal days" or "a week at most."

Appellants and K Bank eventually settled on a forbearance agreement, recognizing that Appellants were bound by the 2002 BAL guaranty. The forbearance agreement revoked the Brock Woods guaranty and replaced it with a new \$3 million guaranty—\$1 million by one of Parks Companies and \$2 million by Mr. Parks, personally. After nearly eight years and four amendments to the initial forbearance, Appellants finally paid off the debt to K Bank.

Although Parks Companies initially continued its retention of Appellees on other matters after Mr. Baldwin took over the Tantallon project, Mr. Parks terminated Miles' service in March 2009, for the first time citing his dissatisfaction with Mr. Casgar's work on the note to BCR, LLC, for the purchase of the Tantallon properties, as well as Mr. Casgar's alleged lack of aggressiveness on a separate transaction.

D. Pretrial Proceedings

On July 26, 2012, Appellants filed a legal malpractice complaint against Appellees. Then on October 24, 2012, Appellants filed a first amended complaint. Appellees answered and filed a counterclaim for breach of contract and quantum meruit, seeking approximately \$17,000.00 in unpaid legal fees.[9] Following more than a year of discovery, Appellants filed a second amended complaint (with 368 pages of exhibits), alleging in Count I:

> Without disclosing his conflict of interest or securing waiver of the same, Casgar gave advice to [Appellants] in Spring of 2008 as to how to abandon

[9] Appellees also filed a third-party complaint against Parks Companies for the same fees.

> the [Tantallon] project, even though [Appellees] had known of the conflict with K Bank as early as 2007.
>
> 72. To the knowledge and belief of the [Appellants], this conflict of interest existed throughout the [Appellants'] course of dealings with K Bank and the advice and recommendations given to the [Appellants] is tainted by this breach of fidelity and loyalty.
>
> 73. As a direct and proximate result of [Appellees'] breach of duty, the [Appellants] suffered damages that they were denied competent and loyal representation as the [Appellees] placed their interest above those of the [Appellants].

Count II alleged legal malpractice through Appellees' failure to "reasonably exercise a degree of care and diligence used by attorneys engaged in representing clients acquiring land for development, receiving assignments of LLC interests, construction, and dealing with financial institutions on land acquisitions and development loans." [10] In particular, the complaint alleged that Mr. Casgar breached the standard of care by:

> (1) Failing to explain the full import and obligations associated with the 2002 Guaranty; (2) Failing to explain the full import and obligations associated with modifying the 2002 loan documents and using them for the 2005 transaction; (3) Committing his client to personally guarantee the 2005 transactions without his client's knowledge or consent; (4) Failing to notify his client as to new documents (i.e., the Amended and Restated Collateral Pledge Agreement) associated with the 2005 transaction; and (5) Proceeding to settlement without securing his client's informed consent to do so.

[10] The trial court treated counts one and two as components of the same claim, noting that they involved a series of interrelated transactions and were argued by both sides without distinguishing one count from the other.

Count III alleged that Appellees were negligent for failing to record a $500,000.00 construction mortgage resulting in Appellants' inability to utilize the revolving construction loan for a model home in the Tantallon project.

On March 10, 2014, the circuit court granted Appellees' Motion for Partial Summary Judgment in two regards. First, the court entered judgment in favor of Appellees on Appellants' claims to the extent those claims relied "on allegations that the 2002 guaranty by Jerome Parks [n]or any other agreement with K Bank constitute[d] a pledge or security agreement encumbering or restricting the activity of the entities listed in the financial statement attached to the guaranty." Second, the court entered judgment in favor of Appellees to the extent that Appellants' claims relied on allegations of Appellees' conflict of interest because the court found that Mr. Casgar had not known about this conflict and it could not have proximately caused Appellants' damages. Appellants petitioned the court to reconsider its ruling, but the court denied that motion.[11]

Before the court granted Appellees' partial summary judgment, Appellants had alleged (and continue to allege) that Appellees' negligence effectively granted K Bank a security interest in Appellants' properties listed in the BAL guaranty. Appellants argued that this security interest placed Mr. Parks in violation of the terms to guaranties he made on other, unrelated development projects, subjecting him to great financial risk. So the court's finding that, as a matter of law, this harm did not occur, limited the scope of

[11] Appellants do not assign error to the circuit court's holdings on these two issues nor do they argue with particularity in their briefs on appeal that either decision was erroneous.

Appellants' alleged injury to the Tantallon loans and K Bank's recourse for Appellants' default on that loan (i.e., the forbearance agreement).

E. The Trial and Judgment

The circuit court presided over a bench trial from August 4-19, 2014, during which the parties elicited testimony from sixteen witnesses, including multiple experts, as well as most of the individuals introduced in the preceding facts, including Mr. Casgar, Mr. Parks, Mr. Levin, Ms. Leister, Mr. Baldwin, Jeremy Parks, Mr. Orazi, and K Bank's counsel, Mr. Michael Gallerizzo. At the close of Appellants' case, the court granted Appellees' motion for judgment with respect to Count III, Appellee's alleged negligent failure to record a mortgage. The court issued a memorandum opinion and order on October 10, 2014, and entered judgment in favor of Appellees as to count I and II in Appellants' second amended complaint, and entered judgment in the amount of $17,839.00, plus costs, in favor of Appellees on their counterclaim.

With regard to the parties' attorney-client relationship, the circuit court found "an implied-in-fact agreement that the scope of Casgar's service often was greater than just matching up the terms of loan commitments and loan documents and vetting the latter for 'legal sufficiency.'" "Taking the parties' custom as an implied agreement[,]" the court found that:

> Casgar's professional duties also included examination of any legal documents submitted to him by Parks for 'issues' such as the extent and terms of possible personal liability. This was true particularly if the terms were 'new'—that is, substantively or quantitatively different in some way from known provisions in the client's past similar transactions.

The court "factually . . . rejected Casgar's defense that, as a merely transaction attorney, he had no . . . duty to provide advice on these issues once the documents were transmitted to him."

To determine the existence and extent of Appellees' negligence, the circuit court considered expert testimony, "[a]ssess[ed] the accuracy of the parties' testimony," weighed various inconsistencies in testimony, the individual parties' age, health, and faulty memories, and "considere[d] the most persuasive testimony . . . as that with circumstantial support in documents." With that in mind, the court made three major findings: (1) Mr. Casgar was responsible for advising Mr. Parks on modifying the paid-off Brock Woods Loan, which he then neglected to review; (2) Mr. Casgar negligently failed to warn Mr. Parks of the collateral pledge and security agreement among the 2005 closing documents that would have granted the bank a security interest in his business assets and potentially exposed Mr. Parks to personal liability; and (3) Mr. Casgar was not negligent in permitting the Tantallon loan to include a BAL guaranty because Mr. Parks knowingly executed that provision and understood its impact.

The circuit court found Mr. Casgar was responsible for advising Parks Companies as to the consequences of modifying the Brock Woods Loan. "The plan to revive and continue the terms of the 2002 loan from Casgar's point of view might save the client some legal fees involved in writing new documents; from K-Bank's point of view, it also would add another layer of loan security." The Court found Mr. Casgar negligent, and agreed with Plaintiff's expert Troy Swanson, Esq., that, "under these circumstances, it violated the standard of care for a Maryland transactional attorney not to review and to advise the client as to the potential impact of the earlier loan documents incorporated by reference."

The court decided Mr. Casgar's handling of the collateral pledge—sending a single, passive email four days after closing stating simply, "call me to discuss[,]" the guaranty "does create a security interest in those assets"—fell below the standard of care. The circuit court announced that it

> agrees with Plaintiff's expert witness' testimony on [the legal standard for malpractice in a settlement recommendation] and finds that Casgar's lack of follow-up as to the issues presented by the Tantallon guaranty and collateral pledge provisions fell below the reasonable standard of care for a transactional attorney under these circumstances. The Court does not accept that, prior to Parks' much later default, 'it was clear' that Parks recognized this new loan requirement for a collateral pledge (whether properly designated as a 'security interest' or not) could endanger his much larger investment in [Parks' other] project. The Court found completely credible Parks' explanation of his sketchy understanding of his financial constraints under the BAL guaranty at the time[.]
>
> * * *
>
> Absent a more clear warning than 'call me,' . . . the attorney's warning as to the risks to the client as to the collateral pledge and negative covenants was [not] sufficient.

The court rejected Mr. Casgar's two defenses to allowing his client to close on a loan that included provisions he did not think were part of the agreement: (1) that the effect of the additional guaranty was a purely legal question about which Mr. Casgar had no duty to consult his client, and (2) that Mr. Riegert had conveyed to him the authority to bind Mr. Parks. As to the first defense, the court held that this was not simply a legal question. Mr. Casgar had a duty to allow his client to make informed decisions, and "[a] client is not 'informed' of the consequences of a transaction if there is no explanation at all by the attorney."

As to the second defense, the court noted that "not all the communications and advice between Parks and Casgar took place directly. . . . [Mr. Parks] sometimes arranged for various employees including a his series of [CFOs], his personal assistants, and his 'right hand' man / construction supervisor / vice-president Ken Riegert to communicate with Casgar or other firm attorneys." But, it held that Mr. Riegert could not have conveyed Mr. Parks' acceptances of the guaranties because Mr. Riegert only had corporate authority. The court explained:

> While Parks' past use of [the] BAL provision supported [Mr. Riegert's] apparent authority [to agree to the BAL guaranty], . . . it would not support Parks' knowing acceptance of the potential for greater personal liability beyond his BAL limit or for use of a collateral guaranty for the first time[.]
>
> Upon review of all th[e] evidence, this Court does not accept by a preponderance of evidence that [a phone call in which Mr. Riegert told Mr. Casgar on Mr. Parks's behalf that Ms. Parks agreed to guaranty Tantallon "up to his business assets"] occurred as Casgar testified. Moreover, even if it did occur, the Court [would] not find that Riegert legitimately can be found to have had either actual or apparent authority to commit Parks as an individual to personal liability beyond the BAL provision.

The circuit court found that "without more communications from Parks," it was unreasonable for Mr. Casgar to rely on any corporate agents' representations that Mr. Parks agreed to personally guarantee the Tantallon loans

> —with one exception. The Court does accept that, by his customary practice, Casgar reasonably could assume that Parks personally authorized the repeat use of his BAL guaranty. But, this would not have been sufficient precedent for him to accept the collateral pledge—previously rejected by [Mr. Parks]— or any other provision that might open him to unlimited personal liability.

This last point was the key distinction upon which the circuit court relied. It found that Appellants were solely responsible for the BAL guaranty's inclusion:

> Parks crossed out the personal guaranty paragraphs and signature blocks on the 9/15/05 commitment letters, demonstrating his personal awareness and understanding of this contract issue.
>
> But, as negotiations with K-Bank continued and despite being alerted to this issue by Casgar's 9/30/05 email, Parks eventually relented and signed a loan commitment letter dated 10/12/05, agreeing to be a personal guarantor with a BAL guaranty[.]
>
> On 11/21/05 then reviewing the collateral pledge and two guaranties that Casgar sent for signature, Parks emailed his then-CFO Levin and inquired: "What happened with this guarantee? I thought that the asset we were giving them was the lots? If not, what had we agreed to?"
>
> The [court] finds that, with his reference to 'lots,' Parks effectively was demonstrating his spotty memory more than a lack of understanding the loan term as to his BAL guaranties. *Significantly, Parks' then-CFO Levin was confident in his contemporaneous email responding to Parks that he had agreed to a BAL guaranty to secure the K-Bank line of credit: answering Parks' email question- "what had we agreed to?", Levin stated "This is the guarantee that is limited to your business assets." And, quite importantly, despite his assertion that he would have bailed out of the entire transaction if he had known of potential personal liability, Parks took no such action in November 2005 when the BAL guaranties thus were brought to his attention*. There are no other contemporary email responses disputing, contradicting, or complaining about Levin's reminder that Parks had agreed to a BAL guaranty for Tantallon.
>
> Based on this and related evidence, this Court [found] that Parks in fact accepted BAL guaranty provisions for the 2005 Tantallon loans, although as noted above the Court [did] not find knowing acceptance of collateral pledge, negative covenant, or unlimited guaranty provisions.

(Emphasis added) (circuit court's joint exhibit citations omitted).

And finally, as to proximate cause, the circuit court made the following factual findings:

"[D]ocumentary evidence contradicts Parks' testimony" that he was "'absolutely stunned' to discover that he might have any personal liability in 2008," because he had "knowingly . . . signed commitment letters in October to permit another usage of his BAL guaranty for the Tantallon project." In assessing Appellants' "evidence as to causation and damages," the circuit court "considered the evidence as to the greater economic context of Parks' business enterprises:"

> Parks' initial Tantallon plans involved developing the project via home buyers' financing. But, in cross-examination and in his deposition, Parks acknowledged that there was an unanticipated softening of sales over the next few years. The result was that Tantallon's K-Bank revolving loans were drawn upon with a balance of approximately $2.7 million by April 2008 when the 30 month term of the loans matured.

Relying on Mr. Parks' testimony that tax burdens and cost overruns on other projects caused him significant financial stress in 2008, the court found that it was that stress that caused Mr. Parks, along with Mr. Casgar and his in-house-advisors "in April 2008 to let the . . . Tantallon loans default, to withdraw from the Tantallon project and to consent for the bank to take title of the Tantallon properties." The court found that Mr. Parks decided this "[d]espite a warning from Casgar that a legal 'firestorm' could result.

The Court further observed that Parks Companies's refinancing with K Bank "may have been required in any event due to diminution of Parks' other assets value[.]"[12] Based on these factual findings, the circuit court held:

> [T]he major slowdown in the real estate market culminating in 2008 was an intervening event not anticipated by Parks, Casgar, or any other party to this case. Parks knew or should have known that he had pledged all his business holdings in the BAL guaranty: this limited guaranty did not derive from any

[12] The circuit court noted in its opinion that factors unrelated to the Tantallon loan or the collateral pledge had caused a $6.5 million depletion of Mr. Parks's business asset portfolio, and that this loss in value alone would have been enough for K Bank to ask for the additional collateral that the forbearance agreement required.

> negligence by Casgar. Parks['s] explanation for his acceptance of the forbearance agreement does not relate directly to the legal quandary of the collateral pledge, its negative covenants, nor to the immediacy of the surviving 2002 confessed judgment provisions. Rather his causation is focused squarely on the dilemma of possibly accepting implementation of the BAL guaranty. . . .
>
> Effectively, this Court finds that Parks' financial damages resulted proximately from the BAL guaranty accepted by him and by the economic conditions that were unforeseen by him: Parks, clearly, was contributorily negligent.

Because the court found that Appellants' negligence claims failed on the ground of causation, the court did not review the details of Appellants' damages calculation, except to state:

> Casgar's advice could have no impact on the difficulties of completely developing and selling Tantallon lots within the 30 month loan period—by spring 2008—as Parks had hoped. When that economic crunch developed and full payment of the loan balance was due, refinancing would have been required regardless of good or bad legal advice on the K-Bank loan. When Parks' business assets portfolio was depleted by $4 million in taxes and $2.5 million "cram down," this alone would have been enough basis for K-Bank to ask for a $1M personal guaranty and $2.5 million additional collateral.
>
> The legal work by Baldwin and the threat of public financial disgrace to Parks, as well, could have resulted even with faultless legal advice from Casgar.

In sum, the court held: (1) Appellees were not fully negligent and their actions or omissions that were negligent did not cause Appellants' injuries; (2) Appellants' own negligence contributed to their injuries; and (3) the economic downturn was a superseding cause of those injuries. The court entered judgment in favor of Appellees on both of Appellants' professional negligence claims, and awarded Appellees $17,839.00 in damages for Appellants' outstanding bill for legal services.

On November 3, 2014, Appellants filed a Motion to Alter or Amend the circuit court's judgment based on the circuit court's determinations as to whom it would allow to testify as an expert witness on the legal standard of care. The circuit court recorded its judgment on November 8, 2015, and denied Appellants' Motion to Alter or Amend on December 8, 2015. One week later, on December 15, 2015, Appellants filed their timely appeal with this Court.

DISCUSSION

I.

Causation

Before this Court, Appellants advance three causation arguments corresponding to the circuit court's findings. First, they argue that a "but for" test is the proper measure of proximate cause and that Mr. Casgar's negligent legal representation was the "but for" cause of their injuries. Second, they argue that Mr. Parks was not contributorily negligent because his decisions were the product of his attorneys' negligent advice and those decisions were not contemporaneous to Appellees' negligence. Third, they contend that there was no factual basis in the record for the circuit court's finding that the economic downturn was an intervening cause.

In riposte, Appellees first argue that there was ample record evidence to support the circuit court's finding that Appellees played no role in negotiating the BAL's inclusion in the commitment letter, the existence of which was the determinant factor in Appellants' decision to forbear on the Tantallon loan. Second, they argue that substantial evidence supports the circuit court's finding that Appellants knowingly accepted the BAL guaranty and that this knowing acceptance was the eventual cause of Appellants' harm. Finally, Appellees argue that the circuit court's conclusion that the unforeseen economic downturn caused Appellants' damages is supported by overwhelming evidence and was dispositive of the case.

The alleged negligence by Appellees is only relevant in this malpractice action to the extent that it actually caused Appellants some loss. *Flaherty v. Weinberg*, 303 Md. 116, 128 (1985). At the summary judgment stage, the circuit court found as a matter of law that neither the 2002 loan documents nor the 2005 loan documents effected a pledge or security agreement encumbering or restricting the activity of the entities listed in the financial statement attached to the BAL guaranty. Appellants have not assigned error to this decision or urged this Court to review the circuit court's conclusion on this point. Rather, Appellants' contention that the collateral pledge caused them harm by encumbering Mr. Parks's business assets is merely lumped in with their other arguments. The Court of Appeals has interpreted Maryland Rule 8-504(a)(6) as limiting an appellate court's scope of appeal to arguments presented with particularity in a party's brief. *See Anne Arundel Cnty. v. Harwood Civic Ass'n, Inc.*, 442 Md. 595, 614 (2015). When a party simply lumps one point into another broader argument, we will not speculate as to whether the party intended to raise that point as a separate issue on appeal. *Klauenberg v. State,* 355 Md. 528, 552 (1999) (refusing to consider an argument when one statement to that effect was "lumped in" with another argument). Because Appellants have failed to raise this issue with particularity, our analysis is limited—as was the circuit court's at trial below—to Appellants' need to forbear on the Tantallon loans and any corollary consequences thereof.

Standard of Review

When considering a party's appeal of an action tried without a jury, we review the circuit court's legal determinations *de novo* and its factual findings for clear error. Md. Rule 8-131(c); *Medi-Cen Corp. of Maryland v. Birschbach*, 123 Md. App. 765, 770 (1998). "If any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous." *Schade v. Maryland State Bd. of Elections,* 401 Md. 1, 33 (2007). To the extent the circuit court's determinations of proximate cause involve mixed questions of law and fact, "we will affirm the trial court's judgment when we cannot say that its evidentiary findings were clearly erroneous, and we find no error in that court's application of the law." *Storetrax.com, Inc. v. Gurland,* 168 Md. App. 50, 81 (2006), *aff'd*, 397 Md. 37 (2007) (citations omitted).

We are directed under Md. Rule 8-131(c) to "give due regard to the opportunity of the trial court to judge the credibility of witnesses." And we recognize that the ability to determine the credibility of witnesses, in turn, allows the trial judge to determine how to weigh competing evidence. *Loyola Fed. Sav. Bank v. Hill*, 114 Md. App. 289, 307 (1997). "[T]he trial judge may believe or disbelieve, credit or disregard, any evidence introduced, and a reviewing court may not decide on appeal how much weight must be given as a minimum to each item of evidence." *Id.* (citations omitted).

All three of the circuit court's causation findings are mutually exclusive and dispositive of the case. Appellants, therefore, must successfully challenge each in order to prevail on appeal. In this case, for example, if we were to determine that the trial court erred in regard to its decisions concerning contributory negligence and the superseding cause of the economic recession, Appellants would still need to demonstrate that the circuit court erred when it found that Mr. Casgar's negligence did not proximately cause any damage to Appellants. *Cf. Fischbach v. Fischbach*, 187 Md. App. 61, 88–89, (2009) (citations and quotations omitted) ("When reviewing an action tried without a jury, "an appellate court may affirm a trial court's decision on any ground adequately shown by the record even though the ground was not relied upon by the trial court or the parties.").

A. Appellees' Conduct

To prevail on their legal malpractice claim at trial, it was Appellant's burden to prove: "(1) the attorney's employment, (2) his neglect of a reasonable duty, and (3) loss to the client proximately caused by that neglect of duty." *Flaherty*, 303 Md. at 128. The first element is not at issue on appeal.

As discussed *supra*, the circuit court treated Appellees' conduct with respect to inclusion of the BAL guaranty in the Tantallon commitment letters as distinct from Appellees' conduct with respect to the confessed judgment provision and the collateral pledge that were absent from the commitment letters. The circuit court found that the BAL guaranty proximately caused Appellants' harm, but that Appellants had not demonstrated that inclusion of that provision in the 2002 loan documents or the 2005 commitment letter resulted from Appellees' neglect of a reasonable duty. And, although the court found that counsel failed to adequately advise Parks on the effect of the proposed confessed judgment provision and the collateral pledge, the court found that this negligence did not proximately cause Appellants any harm. So to prevail on the issue of whether Appellees' negligence proximately caused their harm, Appellants must demonstrate that the circuit court erred in finding no negligence by Appellants with respect to the BAL guaranty and no proximate causation with respect to the confessed judgment provision and the collateral pledge.

i. The BAL Guaranty

Appellants maintain throughout their briefs, as they did at trial, that Mr. Parks told his attorney and his agents that he would not accept personal liability on the Tantallon project so Appellees were negligent in allowing the loan to include a BAL guaranty. Appellees maintain, however, that they could not be negligent because they had nothing to do with negotiating the commitment letters: "[Mr. Parks] and his employees negotiated [the commitment letters] without the assistance of counsel, and Parks testified that he understood them." They contend that the "evidence makes it clear that everyone involved in the negotiations of the Tantallon loans understood that Parks would guarantee them, subject to the [BAL]." And further, when Mr. Parks struck the guarantor language from the commitment letters, "[n]o copies of the altered documents were sent to Casgar, who was unaware of Parks's chicanery." For these reasons, Appellees argue, the court simply "did not believe Parks' story[,]" and "[took] his testimony 'with a proverbial grain of salt.'"

Negligence is a mixed question of fact and law. *See Pulliam v. Motor Vehicle Admin.*, 181 Md. App. 144, 153–54 (2008). The existence of a duty and whether or not there was sufficient "evidence from which negligence may be reasonably inferred[,]" are questions of law, which we review *de novo*. *Baltimore Refrigerating & Heating Co. v. Kreiner*, 109 Md. 361, 71 A. 1066, 1071 (1909); *Pulliam*, 181 Md. App. at 153–54. But whether or not "negligence ought to be inferred" from those facts, is a question of fact, reviewed for clear error. *Kreiner*, 109 Md. 361, 71 A. at 1071. "In an action against a professional man for malpractice, the plaintiff bears the burden of overcoming the presumption that due skill and care were used." *Crockett v. Crothers*, 264 Md. 222, 224 (1972) (citations omitted). Unless the attorney's improper actions were so obvious, courts generally rely on expert testimony to determine whether the skill and care exhibited by the attorney was that "ordinarily exercised by a professional man of the kind involved in the geographical area involved." *Id.* at 224-25.

Maryland courts do not hold attorneys liable for their clients' business judgments. *Catler v. Arent Fox, LLP*, 212 Md. App. 685, 714 (2013). This Court's decision in *Catler* is instructive on this point. There, we explained that when dealing with malpractice claims against a transactional attorneys in particular, the court must draw a line between where a transactional attorney's legal responsibilities end and the business's corporate decisions begin:

> [T]he decision to 'enter into a complex set of financial transactions' is a *business* decision that only secondarily relies on *legal* advice. How to finance the companies, and any construction that they initiate, is a *business* decision. Legal advice may be sought or received about how to implement

> the decision (*e.g.*, how to incorporate investment vehicles, or what the tax consequences of the deals may be) but the decision to loan money from external sources or to transfer funds internally remains a business decision committed to the discretion of the companies themselves. . . . 'Courts are properly cautious about making attorneys guarantors of their clients' faulty business judgment.' *Viner v. Sweet*, 30 Cal. 4th 1232, 1241 (2003). We have uncovered no Maryland case foisting onto counsel the duty to indemnify its clients for its clients' own business judgments. We shall not impose that duty here.

Id. at 714 (emphasis in original).

As in the case now before us, *Catler* involved a highly successful real estate developer and his companies in a malpractice action brought by them against their counsel based on a series of decisions to finance new property developments that defaulted during the recession. *See id.* at 695-97. *Catler* held that "appellants' decision on how to raise capital was the product of their own business judgment and not insularly caused by appellees' legal advice."[13] *Catler*, 212 Md. App. at 726.

Here, the circuit court found reasonable Mr. Casgar's deference to Appellants' decision to include the BAL guaranty in the Tantallon loan—a decision that Park Companies had made routinely, pre-dating its retention of Appellees as outside counsel. Mr. Parks and his employees testified that in normal practice, Parks Companies Vice President would negotiate the terms, Parks Companies CFO would review the documents, communicate with counsel, and liaise with Mr. Parks, who "would make the final

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[13] *Catler* is on point in other ways. As relevant *infra*, *Catler* also found that the plaintiffs' were contributorily negligent, and that "our nation's largest recession since the Great Depression" was a "significant, intervening event," and that the plaintiffs' contributory negligence foreclosed their argument concerning the judge's discretion whether or not to allow expert testimony. *Id.* at 725, 733.

decision." Mr. Levin testified this was the "method of operation . . . at Parks Companies" "[i]f things were going smoothly."

The Tantallon project started smoothly and negotiations proceeded just as they had for the Brock Woods Loan. Mr. Riegert found a piece of property to purchase for development and a lender to finance the project. He contacted Mr. Casgar to draft documents pertaining only to the land acquisition while he negotiated financing with the lender. Not until the figurative (and literal) eve of closing did Appellants send Mr. Casgar the financing documents for his review. Just as before, the Tantallon loans included a BAL guaranty—a provision with which Mr. Parks demonstrated much familiarity, and one that was more favorable to the borrower than is typical for firms the size of Parks Companies. Mr. Parks then signed numerous versions of commitment letters that included a BAL guaranty and listed him as guarantor.

Although Appellants presented testimony at trial that Mr. Parks and Mr. Levin told Mr. Casgar that the Tantallon loans could not include a personal guaranty, there is nothing in the record to demonstrate that Mr. Parks communicated to Appellees that he equated the BAL with a personal guaranty. Indeed, at trial both Appellees' and Appellants' own witnesses contradicted these claims. Mr. Riegert was Mr. Casgar's lead contact on the Tantallon loan, as well as Parks Companies's lead negotiator with K Bank, and it seems clear that even he believed that Mr. Parks's prohibition against a personal guaranty still allowed for a BAL.

We agree with the circuit court's conclusion that Mr. Casgar reasonably relied on Parks Companies's customary practice to include the BAL guaranty in loan documents—underscored by the fact that Mr. Parks signed the 2005 commitment letters that included a BAL before he ever sought Miles' counsel. Mr. Casgar was dealing with a sophisticated client; his legal duty did not include a responsibility to interject himself into business decisions any more than it required him to predict the state of future real estate markets better than an experienced developer. *See Catler*, 212 Md. App. at 726. And Appellants point to no facts to convince us that, as a matter of law, a reasonable attorney in Mr. Casgar's position would have interjected himself into Parks Companies's business decision to negotiate for and execute its customary BAL guaranty in the Tantallon loan. Despite Mr. Parks's insistence that he intended to borrow $5.4 million dollars without exposing himself or his business assets to liability, it is altogether unclear how a real estate developer with his experience believed this was actually possible.

We hold that it was not clear error for the circuit court to find that Parks Companies's inclusion of a BAL guaranty in the Tantallon loan's commitment letters did not result from Mr. Casgar's neglect of a reasonable duty owed to Appellants.

ii. The Collateral Pledge

Appellants maintain that the trial court erred by first recognizing that Casgar was negligent in failing to review and advise them on the consequences of the 2002 confessed judgment provision and collateral pledge, and then deciding that Mr. Casgar's negligence was not the proximate cause of their harm. Appellants maintain that "but for" Appellees' negligent failure to inform them on the potential impact of these provisions, they would have exercised their option to "walk away" from the deal. Appellants seem to argue that Mr. Casgar's negligence at closing was the legal cause of the harm because he "co-opt[ed]" Mr. Parks's right to make a business decision.

Appellees persist that the circuit court rightly found that Mr. Casgar's negligence was not the cause of Appellant's harm. They aver that the court relied on overwhelming evidence to find that the unforeseen economic conditions caused the Tantallon project to fail, and that it was Mr. Parks's intentional decision to sign a BAL guaranty for the Tantallon loans that provided K Bank the leverage that caused Appellants to enter forbearance. Further, Appellees point to the trial testimony of Mr. Baldwin, Appellants' counsel in negotiations with K Bank, in which he stated that his major concern was not the collateral pledge, but the fact that Mr. Parks signed commitment letters that included a BAL guaranty.

The circuit court's legal error, Appellants contend, was in applying the wrong "methodology" in determining proximate cause. Rather than employ the "but for" test, the court evaluated proximate cause under the substantial factor test. In addition to a law review article and an opinion from the California Court of Appeals, (*Viner v. Sweet*, 117 Cal.App.4th 1218 (2004)), Appellants rely principally on the Court of Appeals' decision in *Pittway v. Collins*, 409 Md. 218, 224 (2009) to support their view that the "but for" test applies in transactional legal malpractice actions.

Negligence alone "is not actionable unless it is a proximate cause of the harm alleged." *Stone v. Chicago Title Ins.*, 330 Md. 329, 337 (1993) (citations omitted). Whether or not an actor's negligence proximately caused a plaintiff's harm is a question of fact. *Pittway*, 409 Md. at 253. Finding proximate cause is a conclusion "that someone will be held legally responsible for the consequences of an act or omission." *Peterson v. Underwood*, 258 Md. 9, 16 (1970). The proximate cause determination is two steps: "the negligence must be 1) a cause in fact, and 2) a legally cognizable cause." *Harford Ins. Co. v. Manor Inn*, 335 Md. 135, 156-57 (1994) (citation omitted). "The first step . . . is an examination of causation-in-fact to determine who or what caused an action." *Pittway*, 409 Md. at 244. The Court of Appeals explained in *Pittway* that there are two tests "to determine if causation-in-fact exists, the but for test and the substantial factor test." *Id.* While the "but for" test applies "where only one negligent act is at issue," "the substantial factor test controls" where, (as in *Pittway*), "two or more independently negligent acts bring about an injury." *See id.* Applying the test, the Court explained that "[c]ausation-in-fact may be found if it is 'more likely than not' that the defendant's conduct was a substantial factor in producing the plaintiff's injuries."

Appellants' argument misstates Maryland law. As recited above, *Pittway* makes clear that we apply a "substantial factor" test where, as here, there are multiple negligent acts. 409 Md. at 224. We glean absolutely nothing in *Pittway*— an action against a builder and manufacturer of a smoke detector brought by the parents of children who tragically perished in a home fire—that mandates application of the "but for" test in transactional legal malpractice actions. *Id*. 223-24. Moreover, this Court applied the substantial factor test in *Catler*, *supra*, the most analogous reported case in Maryland. 212 Md. App. at 732-33.

For guidance in applying the substantial factor test, the Court of Appeals has adopted the considerations listed in the Restatement (Second) of Torts, which instruct us to consider the following by "themselves or in combination with one another[:]"

> (a) the number of other factors which contribute in producing the harm and the extent of the effect which they have in producing it;
>
> (b) whether the actor's conduct has created a force or series of forces which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces of which the actor is not responsible;
>
> (c) lapse of time.

Pittway, 409 Md. at 244-45 (quoting Restatement (Second) of Torts § 433).

Here, the circuit court found that the collateral pledge contained in the 2005 closing documents and Mr. Casgar's failure to review the Brock Woods Loan guaranty were not the cause-in-fact of Appellants' harm. The circuit court based this finding largely on Mr. Parks's admissions during his trial testimony, from which the court surmised that it was not the collateral pledge or its alleged impact on his other business ventures that pressured him to forbear the Tantallon loans, but the public embarrassment of a trial and how that may affect future willingness of banks to lend him capital. The circuit court's opinion analyzed Mr. Parks's statements on a point-by-point basis**:**

> When Parks testifies '*I could be wiped out,*' this Court understands him as referring to his full portfolio of business assets. When Parks testifies '*It*

> *becomes public record, for all the other banks*,' this Court understands him to be concerned about any public litigation in his capacity as a developer which could impede his future financing. This also would be a normal risk of limited liability to the BAL guaranty. When Parks testifies "*My concern was about this going viral, going public, if we end up in a lawsuit, there was no way to contain it*," this Court understands Parks to have been extremely sensitive about his business reputation, desiring not to be a defendant on the losing end of any embarrassing litigation. Such embarrassment also would derive from K-Bank's enforcement of the BAL guaranty.

(Italics in original).

Based on these factual findings, the circuit court found:

> Parks['s] explanation for his acceptance of the forbearance agreement does <u>not</u> relate directly to the legal quandary of the collateral pledge, its negative covenants, nor to the immediacy of the surviving 2002 confessed judgment provisions. Rather his causation is focused squarely on the dilemma of possibly accepting implementation of the BAL guaranty[.]

(Underlining in original).

We spot no error in these findings and Appellants point to none.

Further, for reasons that will become clear *infra*, even if the collateral pledge *were* a proximate cause of Appellants' harm, it was only one of multiple causes. *Cf. Kassama v. Magat*, 136 Md. App. 637, 659 (2001) ("There can, of course, be more than one proximate cause of an injury. In fact, the concept of contributory negligence is founded upon that principle.") (internal citations omitted). Two other factors—Appellants' own negligence and the unforeseen collapse of the real estate market—were the substantial factors that proximately caused Appellants' harm and intervened to relieve Appellees of any liability based on the collateral pledge.

B. Appellants' Contributory Negligence

Appellants dedicate the bulk of their argument on appeal to the contention that the trial court erred in finding Mr. Parks contributorily negligent. They advance three main points: (1) Mr. Parks could not be negligent because Mr. Casgar's legal advice fell below the standard of care; (2) Mr. Parks's negligence was not concurrent to Appellees' negligence, as Maryland law requires for a finding of contributory negligence; and, (3) Mr. Parks could not be negligent in entering the loan into forbearance because he did so on the advice of counsel.

Contributory negligence bars a plaintiff's recovery in Maryland. *Coleman v. Soccer Ass'n of Columbia*, 432 Md. 679 (2013). In *Catler*, *supra*, we recently explained the proper standard for reviewing conflicting evidence that underlies a claim of contributory negligence:

> The question of contributory negligence must be considered in the light of all the inferences favorable to the plaintiff's case that may be fairly deduced from the evidence. *Patapsco & B. R. R. Co. v. Bowers*, 213 Md. 78, 88 (1957) (citation omitted).
>
> "Where there is a conflict of evidence as to material facts relied upon to establish contributory negligence, or the act is of such a nature that reasonable minds, after considering all the circumstances surrounding the accident, may draw different conclusions as to whether it constituted contributory negligence, it is not for the court to determine as a matter of law, but it is for the [fact finder] to pass upon it." *Schwier v. Gray*, 277 Md. 631, 635 (1976).

Catler, *supra*, 212 Md. App. at 728.

Here, the circuit court considered conflicting accounts and made a factual determination that Appellants' negligence—Mr. Parks's knowing decision to enter the

BAL guaranty—caused Appellants' injuries. We cannot disturb that decision unless we find it clearly erroneous. *Erdman v. Johnson Bros. Radio & Television Co.*, 260 Md. 190, 203-04 (1970).

In support of their first argument, Appellants state that the court's finding that Mr. Parks knowingly accepted the BAL guaranty directly conflicts with its finding that Mr. Casgar was also negligent. Appellants misunderstand the circuit court's findings. As discussed *supra*, the circuit court distinguished Mr. Casgar's failure to review the 2002 loan documents and inform his client on their potential impact, as well as the potential impact of provisions (*i.e.*, the confessed judgment clause and a collateral pledge) that Mr. Casgar believed were not previously negotiated, from Appellants' negotiation and execution of commitment letters that included a BAL guaranty (a provision fashioned specially for the Parks Companies).

It is well-established in the record that Parks Companies negotiated the BAL guaranty into the commitment letters that Mr. Parks then signed. At the outset of the Tantallon loans negotiations, Mr. Parks authorized Parks Companies to send K Bank a copy of his business assets. When Mr. Parks determined that he no longer wanted a BAL guaranty, he struck that provision from the draft commitment letters without notifying his attorney or sending him a revised copy. Then, when K Bank implicitly rejected Mr. Parks's revision and retained the BAL guaranty in the next version of the commitment letters, Mr. Parks executed the letters without objection. Even still after the loan's closing, Mr. Parks did not raise an issue with the bank or his counsel when Parks Companies CFO informed him that the Tantallon loan was guaranteed by a BAL. Mr. Parks testified at trial that he was not concerned by commitment letters because, "[t]hey were commitment letters, and as far as I was concerned they had no – no binding effect."

Although Mr. Parks testified that he would have stopped the transaction if he knew that he would be liable, the circuit court found that "documentary evidence contradict[ed] Parks' testimony." The court concluded that "Parks knowingly . . . signed commitment letters in October to permit another usage of his BAL guaranty for the Tantallon project." The factual record contains ample support for the court's finding that "Parks knew the risks he undertook by accepting the business asset guaranty for Tantallon, and those were the risks that ultimately led to his alleged losses."

The record is likewise clear that the unsigned collateral pledge and the confessed judgment had no bearing on what happened next. When Parks defaulted on the Tantallon loans in 2008, K Bank relied primarily on the BAL guaranty contained in the 2002 loan documents and the commitment letter during forbearance negotiations in order to leverage additional guaranties of $3 million from Mr. Parks and Parks Companies. Mr. Parks testified: "It was like having a gun to your head. I didn't have a choice. I had to sign [the forbearance agreement.]" Appellants offer no convincing reason for why the circuit court clearly erred in concluding, in reliance on these facts, that Mr. Parks was contributorily negligent.

On their second point, Appellants argue that Mr. Parks's negligence, whatever that may be, should not bar relief because his negligence occurred subsequent—not concurrent—to Mr. Casgar's negligence. Appellants read the decision of the United States District Court for the District of Maryland decision in *Royal Ins. Co. of America v. Miles & Stockbridge, P.C.*, 133 F. Supp. 2d 747 (D. Md. 2001), as pronouncing a rule that Maryland law requires a plaintiff's contributory negligence to occur at the same time as the defendant's negligence. In response, Appellees argue that the test for contributory negligence is not whether the plaintiff's negligent actions were simultaneous to defendant's, "but whether plaintiff's dereliction significantly contributed to the injury."

Appellees are correct. The test for contributory negligence "is not simultaneity but whether the plaintiff's dereliction has significantly contributed to the injury for which he or she sues." *Chudson v. Ratra*, 76 Md. App. 753, 774 (1988). As we explained in *Chudson*: "Where, as so often is the case, the injury does not occur immediately upon the defendant's negligence but arises later, it is entirely possible for the plaintiff, by his or her own negligent act or omission, to contribute to the actual creation of the injury." *Id.*

Appellants' argument to the contrary misstates both the facts and the law. As a preliminary matter, we do not read the District of Maryland's statement of the rule in *Royal Insurance* as rigidly as Appellants suggest. The federal district court's decision is only persuasive authority and, under Appellants' framing, would be contrary to this Court's own statement of the law. *Royal Insurance* is readily distinguishable from the case *sub judice*. There, the plaintiff's negligence "occurred well after Miles's negligence," so the court found that Miles's argument was limited to the plaintiff's negligent failure to mitigate damages. *Royal Insurance*, 133 F. Supp. 2d at 755-56. But here, Mr. Parks's knowing execution of the commitment letter containing the BAL guaranty provision, which he later claimed he did not intend to be bound by, occurred in relative proximity to Mr. Casgar's negligence.

In an attempt to square this case with *Royal Insurance*, Appellants stretch the facts beyond reason. Appellants claim that Mr. Casgar's negligence began in 2002 because the circuit court found him negligent for not reviewing the Brock Woods Loan. This diverges sharply from their position at trial, where "[t]he parties also agreed that the Brock Woods development, in 2002, was very profitable—'a home run.' No difficulty with loan payments was anticipated or encountered." While the circuit court did find that Mr. Casgar was negligent for failing to review the Brock Woods Loan, the court (and Appellants' own brief) referred to Mr. Casgar's failure to do so *in 2005* while Parks Companies were negotiating a modification of that prior agreement. This was simultaneous to the point in time when Mr. Parks signed commitment letters as guarantor despite lacking any intention of guaranteeing them, and sending his revisions to the bank without informing his attorney.

Applying *Catler*'s statement of the law to the actual facts of this case, it is clear that any concurrence test is met easily. Parks Companies's Vice President began negotiating a BAL guaranty before Appellants consulted Mr. Casgar. Then, while Mr. Casgar was involved, Mr. Parks chose not to send his attorney the only version of the commitment letter on which he struck the BAL guaranty. And finally, subsequent to closing and any negligence by his attorney, Parks Companies's CFO informed him that the Tantallon loans included a BAL guaranty, and Mr. Parks did nothing but go forward with the transaction.

In response to Appellants' third argument—that Mr. Parks was not negligent in entering forbearance because Mr. Baldwin, his new counsel, advised him to do so—Appellees point out that the circuit court did not find that Mr. Parks was negligent in deciding to enter the Tantallon loans into forbearance. Appellants' third argument relies, again, on a misconstruction of the circuit court's decision. The circuit court found "Parks, clearly, was contributorily negligent[,]" because "financial damages resulted from the BAL guaranty accepted by him[.]" At no point did the court find Mr. Parks negligent for forbearing his loans to avoid litigation.

We hold that Appellants have failed to demonstrate that the circuit court's finding of contributory negligence was clearly erroneous.

C. Superseding Cause

Finally, Appellants must overcome the circuit court's finding that the intervening economic recession, which Mr. Parks failed to anticipate, was a superseding cause of Appellants' injury.[14] Appellants' only real argument to the contrary is that the circuit court's consideration of the economy was altogether improper.

As an initial matter, we reject Appellants' contention that the circuit court improperly considered evidence of the economic conditions. The circuit court relied on economic evidence only through specific reference to Mr. Parks's own testimony about how the recession impacted the real estate market and pressured him into forbearing the

[14] While the circuit court finds the two prongs of superseding cause are met, barring Appellants' recovery, the court only refers to intervening cause. We interpret the court's decision as finding superseding cause.

Tantallon loans. Consideration of trial testimony and plaintiffs' own admissions is well within the circuit court's discretion. *Loyola Fed. Savings Bank*, *supra*, 114 Md. App. at 307.

We now turn to whether the circuit court erred in finding that the unanticipated recession superseded Appellee's negligence as the legal cause of Appellants' harm. This is a question of fact, which we review for clear error. *Caroline v. Reicher*, 269 Md. 125, 131 (1973).

> "Where it appears to the court in retrospect that it is highly extraordinary that an intervening cause has come into operation, the court may declare such a force to be a superseding cause. . . . Strictly, the problem before the court is one of determining whether the duty imposed on the actor was designed to protect the one harmed from the risk of harm from hazard in question."

Pittway, 409 Md. at 247 (quoting Restatement (Second) of Torts § 435(2), cmt. c). Appellees' "[l]iability is avoided only if the intervening negligent act or omission at issue is considered a superseding cause" of Appellants' harm. *Pittway*, 409 Md. at 248.

Maryland courts have used a range of language for determining when an intervening act or event becomes a superseding cause, barring a plaintiff's relief. *See Pittway*, 409 Md. at 248-53. Put simply, the inquiry is two-part: 1) whether or not an ordinary person—here, an ordinarily skilled transactional attorney—could have reasonably foreseen both the intervening act's occurrence and the plaintiff's consequent harm; and 2) whether that intervening act proximately caused the plaintiff's harm. *See id.* If the act and harm were not reasonably foreseeable, and the act proximately caused Appellants' harm, then we consider that intervening act's occurrence to supersede Appellees' negligence. *Id.*

i. Reasonable Foreseeability

Here, the circuit court found on both factors announced in *Pittway* to establish superseding cause, stating that "Parks' financial damages resulted proximately from . . . the economic conditions that were unforeseen by him." The court explained:

> Casgar's advice could have no impact on the difficulties of completely developing and selling Tantallon lots within the 30 month loan period—by spring 2008--as Parks had hoped. When that economic crunch developed and full payment of the loan balance was due, refinancing would have been required regardless of good or bad legal advice on the [Tantallon] loan. When Parks' business assets portfolio was depleted by $4 million in taxes and $ 2.5 million "cram down" [payment on another debt], this alone would have been enough basis for K-Bank to ask for a $1M personal guaranty and $2.5 million additional collateral.
>
> The legal work by Baldwin and the threat of public financial disgrace to Parks, as well, could have resulted even with faultless legal advice from Casgar.

The circuit court recognized correctly that *Catler* controls this case. When presented with similar facts in *Catler*, we held that "[A]ppellees could not have foreseen that this [development] project would coincide with our nation's largest recession since the Great Depression. That significant, intervening event is absent from [A]ppellants' version of the facts." 212 Md. App. at 733. Also similar to the situation in *Catler*, is that "any explanation as to how" Parks Companies' risk of loss on its other projects "would have been stemmed or eliminated had the [Tantallon] loan transactions not occurred" is missing from Appellants' complaint. *Id.*

In this particular instance, it was not clear error for the circuit court to discern from the parties' testimony that Appellees' scope of representation did not include predicting real estate market forces or asserting their own business judgment in place of Appellants.'

Mr. Parks testified that he "relied on Mr. Casgar to take and review all of [his loans with different banks with varying, intertwined guaranties] to make sure that [Mr. Parks] stayed the straight and narrow and [did] not cross[] the line so that [he] would be in default on anything." Mr. Parks employed Mr. Casgar as a transactional attorney, not a market analyst or consultant tasked with making business judgments on the appropriate means to collateralize a loan. *See Catler*, 212 Md. App. at 714. There is no clear error in finding that an ordinarily skilled transactional attorney in Mr. Casgar's position was not reasonably expected to foresee the economic collapse that culminated in 2008. *See Pittway*, 409 Md. at 248-53.

ii. Proximate Cause

The trial court was not clearly erroneous if the record supports a factual finding that the intervening recession was: "1) a cause in fact, and 2) a legally cognizable cause[]" of Appellants' harm. *Harford Ins. Co.*, *supra*, 335 Md. at 156-57. Since more than one factor contributed to Appellants' harm, "the substantial factor test controls" our analysis, *Pittway*, *supra*, 409 Md. at 244, meaning that causation-in-fact exists if it is "'more likely than not'" that the event caused the plaintiff's injuries. *Id.* (*Reed v. Campagnolo*, 332 Md. 226, 240 (1993)).

Causation-in-fact, here, is relatively straight forward. Appellants essentially conceded at trial that the unprecedented stagnation of the real estate market would have doomed the Tantallon project regardless of Mr. Casgar's lawyering. When asked whether the recession and economy "entirely" caused the project's slowdown, Mr. Parks testified, "[t]hat is correct." One of the Tantallon loans was a revolving line of credit, the sustainability of which depended on Appellants selling the Tantallon properties as they constructed them. Mr. Parks explained in detail the extraordinary yet wholly unsuccessful steps that Parks Companies took to sell the Tantallon properties before the loans became due. So when the economy failed, the Tantallon project failed along with it—causing Appellants to default on the Tantallon loans. By Appellants' own admission, the recession was a substantial factor in their ultimate injury.

Next, we turn to whether the recession was a legally cognizable cause, which usually involves "a legal analysis to determine who should pay for the harmful consequences of such an action," based on "whether the actual harm to a litigant falls within a general field of danger that the actor should have anticipated or expected." *Pittway*, 409 Md. at 244-46. We must, however, shift our analysis slightly in a case like this, where the intervening actor was not an actor at all, but an event that is incapable of paying for Appellants' harm. A finding that the recession superseded a defendant's negligence as the legal cause of a plaintiff's injuries equates to a determination that the plaintiff—even a faultless one—should pay for its own damages. But this ability to exercise normative judgment and assign cost is precisely the reason why "'[c]ourts have developed the legal doctrine of proximate cause[.]'" *Pittway*, 409 Md. at 246.

In a case where the intervening act is not a negligent third-party, legal cause exists so long as there is a sufficient nexus exists between the intervening act and a plaintiff's harm. *See Henley v. Prince George's Cnty.*, 305 Md. 320, 334 (1986) ("[T]he test of foreseeability . . . is simply intended to reflect current societal standards with respect to an acceptable nexus between the . . . act and the ensuing harm[.]"). Thus, unlike the first prong of the superseding cause analysis that focuses on whether the parties foresaw the intervening event's occurrence, the second prong focuses on the foreseeability of the nexus between that event and the resulting harm. *See Pittway*, 409 Md. at 251-52 (concluding that this Court rightly recognized that superseding cause requires both "foreseeability of the harm suffered . . . as well as the foreseeability of the intervening acts that took place[.]"). In other words, Appellants' injury must be the type that one would expect a recession to cause.

This, too, is a straight-forward analysis. While the recession certainly did not supersede all negligent acts by real estate transitional attorneys proceeding the housing collapse, we find that the circuit court's reasoning was sound and grounded on the facts presented in this case. It was not clear error for the circuit court to determine that a stagnation of real estate sales is type of harm foreseeably caused by the housing collapse that occurred during the recession. The record demonstrates that Appellants' ability to repay the Tantallon loans and avoid liability was inseparable from their ability to sell houses. Mr. Parks admitted as much at trial, acknowledging that the Tantallon project's slowdown was "entirely" caused by the recession and economy. The nexus between the intervening recession and Appellants' injury is clear.

In sum, there is ample record support for the circuit court's factual finding that the recession was superseding cause of Appellants' harm, barring their recovery. That decision was not clearly erroneous.

II.

Motion to Alter or Amend

Appellants argue that the circuit court erred in denying their motion to alter or amend the judgment because the court based its opinion "on reasons not advanced at trial, i.e., economic conditions and acceptance of partial liability, or properly supported by testimony or expert testimony." As Appellants acknowledge, Maryland Rule 2-534 provides the circuit court discretion to grant or denial such a post-trial motion. We review a trial court's "denial of a motion to alter or amend a judgment . . . for abuse of discretion." *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 673 (2010).

The three sentences Appellants dedicated to this argument fail to demonstrate that the circuit court abused its discretion. As stated *supra*, it was well within the circuit court's discretion to consider Mr. Parks's own testimony as to how the recession impacted his businesses and the Tantallon loans, in particular. We affirm the circuit court's denial of Appellants' Motion to Alter or Amend.

III.

Appellants' Remaining Claims

A. Expert Testimony

Appellants argue that the circuit court erred by not permitting their experts, Professor Michael Frisch and Mr. Troy Swanson, to testify as to the standard of care, and that the court impermissibly put itself in the position of a legal expert. On the very next page, Appellants argue that the circuit court erred in admitting Appellees' expert, Mr. Barry Greenberg, *as a standard of care expert* despite Mr. Greenberg's failure to qualify as an expert or lay a foundation for his opinion.

As Appellants acknowledge, the decision to admit or exclude expert testimony is within the discretion of the trial judge. *Franch v. Ankney*, 341 Md. 350, 364 (1996). We will only reverse the trial judge's discretionary decision for abuse of that discretion, a serious mistake, or an error of law. *Ross v. Housing Auth. Of Baltimore Cty.*, 430 Md. 648, 663-64 (2013).

We find Appellants' argument on this issue contradictory, meritless, and that if the court erred at all, such error was harmless. First, Appellants complain about the circuit court's choice of which standard of care expert to admit while simultaneously claiming the trial judge acted as his own standard of care expert. This argument is self-defeating. Second, it is factually incorrect. The circuit court's memorandum opinion makes clear that the court relied on "Plaintiff's expert witness' testimony on [the legal standard for malpractice in a settlement recommendation]." Third, the circuit court found that Mr.

Casgar *did* breach his standard of care, before determining that his breach did not proximately cause Appellants' harm. The testimony of a different standard of care expert would not have affected the circuit court's causation analysis. Fourth, and finally, Appellants' contributory negligence independently bars their recovery. As we explained in *Catler*, "the error was harmless because, assuming the benefit of their expert testimony, appellants' potential recovery remains barred by the doctrine of contributory negligence." 212 Md. App. at 725. For all four reasons, we reject Appellants' arguments with respect to the trial court's decisions regarding which expert witnesses to admit and consider.

B. Damages

Appellants assert in one paragraph of their brief that the circuit court erred when, in footnote 29 of its Opinion, it stated that based on the testimony of Appellees' expert, the correct damages calculation would be zero, if the court had found for Appellants. Appellees do not address this argument. We observe that the circuit court did not actually reach the question of Appellants' damages because Appellants' "claim fail[ed] on the ground of causation[.]" The court merely suggested in a footnote that it found Appellees' damages expert to be persuasive. Accordingly, we do not need to reach the question of Appellants' damages because we find that the court did not err in its holding that Appellants' claim failed on the ground of causation.

JUDGMENTS AFFIRMED.
COSTS PAID BY APPELLANTS.