

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2045

September Term, 2014

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GARVICK'S FARMS, INC., ET AL.

v.

AGRICULTURAL COMMODITIES, INC.

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Meredith,  
Graeff,  
Arthur,

JJ.

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Opinion by Graeff, J.

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Filed: December 4, 2015

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

Garvick’s Farms, Inc. (“Garvick’s Farms”) and Nevin Garvick, appellants, appeal from an order issued by the Circuit Court for Carroll County granting the motion for confessed judgment filed by Agricultural Commodities (“AgCom”), appellee. The court ordered that appellants were liable to appellee in the amount of \$977,599.41.

On appeal, appellants raise several questions for our review,<sup>1</sup> which we have consolidated and rephrased as follows:

1. Did the circuit court err in concluding that the parties knowingly extended the maturity date and amounts covered under the terms of a promissory note (the “Note”), and that there was a balance due under the Note guaranteed by Mr. Garvick under a guaranty agreement (the “Guaranty”)?
2. Did the circuit court err in concluding that the four-year statute of limitations, applicable to contracts between merchants, did not bar AgCom’s suit because appellants acknowledged the debt within four years prior to the filing of suit?

For the reasons that follow, we answer these questions in the negative. Because the circuit court made an error calculating finance charges, however, we shall remand with

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<sup>1</sup> Appellants set forth the following questions presented in their brief:

1. Did the lower court err in finding that there was any balance due under the Note?
2. In light of the contradictory evidence offered by AgCom, did AgCom prove its alleged damages?
3. Did the lower court err in finding that Nevin Garvick personally guaranteed purchases beginning in 2003?
4. Was the action barred by the statute of limitations?

instructions to enter a revised judgment in the amount of \$939,065.27. Otherwise, we shall affirm the judgment of the circuit court.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Garvick's Farms, which is owned by Mr. Garvick, is a commercial farming operation that purchases agricultural commodities, such as fertilizer and feed, from AgCom. Garvick's Farms was one of AgCom's best customers until "things started going downhill" in 2000, when Garvick's Farms got behind on their account. In 2001, the parties put together a security package, which included a promissory note (the "Note"), a loan agreement, a guaranty signed by Mr. Garvick (the "Guaranty"), and a deed of trust.<sup>2</sup>

On October 11, 2012, AgCom filed a Complaint for Confession of Judgment against Garvick's Farms and Mr. Garvick. AgCom alleged that, as of the date of the filing of the complaint, the unpaid liquidated sum due and owing by Garvick's Farms and Mr. Garvick was \$866,823.86.

Attached to the complaint were the documents signed by the parties. The Loan Agreement provided the following background:

2.01 Garvick presently purchases goods and merchandise from AgCom on an open book trade credit account.

2.02 As of the date of this Agreement, Garvick is presently obligated to AgCom for purchases on Garvick's open book trade credit account.

2.03 AgCom desires to provide Garvick with additional open book trade credit which when combined with the present balance owed by Garvick to AgCom, including all finance charges on the existing amount owed on the open book trade credit account, does not exceed \$350,000.00.

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<sup>2</sup> All three documents were executed on September 25, 2001.

2.04 AgCom and Garvick desire to secure and to collateralize the amount presently owed by Garvick to AgCom on the open book trade credit account and the additional credit to be extended to Garvick as set forth in Paragraph 2.03 hereof.

The Loan Agreement further established, in section 3.01.1, that Garvick's Farms' open book trade credit account would be increased "by an amount which when combined with the existing amount owed by Garvick to AgCom on the open book trade credit account, plus interest, does not exceed \$350,000.00." Section 3.01.3 provided that, notwithstanding section 3.01.1, "all rights of Garvick to purchase goods and merchandise from AgCom on open book trade credit shall cease as of March 14, 2002." The Loan Agreement provided for legal fees to be paid in connection with its enforcement.

The Note provided that Garvick's Farms promised to pay to AgCom "the principal sum of Three Hundred and Fifty Thousand Dollars (\$350,000.00) together with interest." The interest rate on the Note was nine percent per annum. Paragraph 2 provided that the Note "shall mature on March 15, 2002," at which time "the entire unpaid principal balance hereof, together with accrued interest thereon, as well as any and all costs and expenses to which [AgCom] is entitled . . . shall become due and payable in full." Paragraph 6.2 provided that, upon default, Garvick's Farms would confess judgment in favor of AgCom, and appellants would be liable for "costs of suits and . . . reasonable attorneys['] fees." Paragraph 7(d) provided that: "This Note may not be amended, extended, modified or supplemented orally and may only be amended, modified or supplemented by a written agreement executed by a duly authorized officer of" AgCom. Paragraph 7(i) provided that the Note would be secured and collateralized by: (1) the Guaranty, the Loan Agreement;

(2) a Guaranty and Surety agreement executed by Nevin L. Garvick; and (3) a “Restricted and Limited Guaranty and Suretyship Agreement executed by Leroy J. Garvick,” Mr. Garvick’s father.

Pursuant to the Guaranty, Mr. Garvick guaranteed “the full and timely payment of the principal of, and interest on, and all costs and expenses incurred by AgCom and/or due AgCom arising out of and/or under [the Note] for \$350,000.00, executed by Garvick’s Farm, Inc. (“Borrower”), as obligor.” Paragraph 1.02 provided:

Guarantee Unconditional. The obligations of Guarantor hereunder are continuing, absolute and unconditional, irrespective of any circumstance, whatsoever which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety. No set-off, claim, reduction or diminution of any obligation, or any defense of any kind or nature which Borrower or Guarantor or any guarantor of the Guaranteed Obligations now has or hereafter may have against AgCom, shall be available hereunder to Guarantor or any guarantor against AgCom. This is a guaranty of payment and not merely of collection.

Paragraph 1.03 provided:

No Notice or Duty to Exhaust Remedies. Guarantor hereby waives diligence, presentment, demand, protest and all notices of any kind of, on behalf of, or by AgCom with regards to this Guaranty. Guarantor waives any requirement that AgCom exhaust any right, power, privilege or remedy, or proceeds first or at any time, against Borrower, any guarantor, Borrower’s assets, whether or not pledged to AgCom, or any security for the Guaranteed Obligations in whatever order, or collectively prior to AgCom proceeding against Guarantor under this Guaranty. This Guaranty constitutes an agreement of suretyship as well as of guaranty, and AgCom may pursue its rights and remedies under this Guaranty, under a Deed of Trust executed or to be executed by Leroy J. Garvick to secure the Guaranteed Obligations, under the Note and Loan and Security Agreement executed by Borrower or under any guaranty of the Note simultaneously and/or in any order. AgCom shall be entitled to payment and performance under this Guaranty notwithstanding the terms and provisions of the Note and Loan Security Agreement executed by Borrower, notwithstanding the terms and provisions of any guaranty, notwithstanding the terms and provisions of a Deed of Trust executed or to be executed by

Leroy J. Garvick to secure the Guaranteed Obligations, and notwithstanding any action taken by AgCom or inaction by AgCom to enforce any of its rights or remedies against Borrower or Borrower’s property, any guarantor or any property of any guarantor whatsoever, or any assets of Borrower pledged to AgCom.

Paragraph 2.02 provided that “This Guaranty cannot be amended, modified, waived, changed, discharged or terminated except by a writing executed by a duly authorized officer of AgCom.” The Guaranty also contained a confession of judgment provision, in paragraph 2.12, and a provision for attorneys’ fees, legal expenses, including costs for appeals, in paragraph 2.05.

AgCom also attached to the complaint an affidavit of Richard Sharrer, President of AgCom, stating that the amount due and owing to AgCom consisted of \$350,000 in principal and \$516,823.86 in interest, for a total of \$866,823.86. Mr. Sharrer computed interest at 9% per annum from March 15, 2002, through March 15, 2012, using “compound interest,” i.e., he computed the interest each year, added that interest to the principal balance, and then calculated the next year’s interest based on the sum of the principal plus interest from the preceding year.

On October 25, 2012, the court issued an order entering confessed judgment. On December 17, 2012, appellants filed a motion to vacate the confessed judgment pursuant to Md. Rule 2-611(d), asserting, *inter alia*, that the action was barred by limitations.<sup>3</sup> On February 14, 2013, the court granted the motion to vacate the confessed judgment.

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<sup>3</sup> Md. Rule 2-611(d) provides: “The defendant may move to . . . vacate the judgment within the time prescribed for answering . . . . The motion shall state the legal and factual basis for the defense to the claim.” A court may grant a motion to vacate under Md. Rule 2-611(e), which provides: “If the court finds that there is a substantial and (continued . . . )

On January 4, 2013, AgCom filed a First Amended Complaint, repeating its claims for confession of judgment and adding a count for breach of contract against both appellants. In the breach of contract count, AgCom alleged that, between 2009 and 2011, Garvick's Farms acknowledged the debt it owed to AgCom and entered into new agreements to pay to AgCom the "outstanding and future debt, on the same terms as the original" Note.

The First Amended Complaint alleged that, in an August 12, 2009, "Letter of Understanding," Garvick's Farms agreed to pay AgCom \$719,265.44, which was owed on two outstanding open accounts, on the same terms as the Note. This Letter of Understanding, which was attached to the First Amended Complaint, provided that the outstanding principal balance for unpaid purchases through December 31, 2008, was \$428,157, that Garvick's Farms would make quarterly payments of \$7,000, comprised of principal and interest at 5% per annum, beginning on January 1, 2010, with a final \$7,000 payment on January 1, 2013, at which time interest would revert to 9%. The Letter of Understanding was "not intended to alter the terms of the original" Note, and it provided that, if refinancing through the United States Department of Agriculture's Farm Service Agency ("FSA") failed, the Letter of Understanding would "be null and void."

The First Amended Complaint further alleged that, on October 13, 2010, when Garvick's Farm was in the process of applying for financing through the FSA, another

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(. . . continued) sufficient basis for an actual controversy as to the merits of the action, the court shall order the judgment by confession . . . vacated and permit the defendant to file a responsive pleading."

Letter of Understanding was prepared, providing that AgCom would assist Garvick's Farms by giving interest-free repayment terms on the \$748,399.92 Garvick's Farms owed to AgCom. It alleged that, on February 16, 2011, AgCom sent a confirmatory letter to Garvick's Farms, wherein Mr. Sharrer confirmed a conversation that he had with Mr. Garvick, in which Mr. Garvick acknowledged the debt and agreed to a payment plan. The First Amended Complaint alleged that these subsequent agreements constituted an acknowledgment of debt and "revived the statute of limitations." Thus, AgCom alleged, Garvick's Farms and Mr. Garvick owed AgCom \$831,890.60, which included "finance charges at nine percent (9%) per annum, simple interest with no compounding."

On the same date, January 4, 2013, AgCom filed a response to a motion for summary judgment that had been filed by appellants.<sup>4</sup> It asserted, as it did in its First Amended Complaint, that Garvick's Farms had acknowledged the debt it owed to AgCom and entered into new agreements to pay, which revived the statute of limitations. AgCom attached to its response an affidavit of Robert Simmons, AgCom's Controller and a certified public accountant ("CPA"), stating that the Note secured past balances and new purchases made by Garvick's Farms on its open trade credit account. Attached to the response was a printout, beginning on December 31, 2002, and showing the open trade credit account and finance charges, as well as purchases made in subsequent years pursuant to the Loan Agreement and Note.

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<sup>4</sup> We note that the motion for summary judgment was denied on February 14, 2013, the same day the motion to vacate confessed judgment was filed.



On October 11, 2013, AgCom filed a Second Amended Complaint. AgCom again attached exhibits, including Mr. Sharrer's original affidavit calculating the amount owed as \$350,000, plus compound interest, for a total of \$866,823.86. The Second Amended Complaint added two new counts: Count IV - Breach of Contract - Deed of Trust; and Court V - Breach of Contract - Guaranty.

On November 18, 2013, trial began. In opening statements, counsel for AgCom explained that Garvick's Farms had executed the Note, and Mr. Garvick had "individually signed a personal guarantee." Counsel stated that, as an accommodation to Garvick's Farms, AgCom had extended Garvick's Farms' credit beyond the March 15, 2002, maturity date on the Note, and beyond the \$350,000. Between 2001 and 2009, AgCom continued to extend credit to Garvick's Farms "largely based on the fact that they had a lien on the real estate and they had a personal guarantee of Mr. Garvick." Counsel stated that the "personal guarantee that Mr. Garvick signed and the deed of trust were both signed under seal" and "were both subject to a 12 year statute of limitations."

Counsel for Mr. Garvick and Garvick's Farms stated that the Note had been paid, and that the remaining documents, i.e., the guarantee and the deed of trust, were "tied to the" Note, and because "AgCom has acknowledged that there is no debt related to" the Note, Garvick's Farms was not liable. With respect to the Guaranty, counsel stated that it was "exclusively tied to the promissory note and Mr. Garvick's personal involvement in this, the guarantee agreement is exclusively to the promissory note." Counsel continued that, although the Guaranty "is under seal, say you get 12 years but [AgCom] has acknowledged that there is no debt related to that promissory note."

Mr. Sharrer then testified that AgCom is a fifth generation family agricultural company that processes grain, blends corn into feed, extrudes soy beans into meal, grinds wheat into flour, and sells fertilizer. AgCom deals with approximately 300 to 400 commercial farming organizations such as Garvick's Farms.

Mr. Sharrer testified that Garvick's Farms had been a customer of AgCom since the mid-1970's or early 1980's. Mr. Sharrer was familiar with Garvick's Farms farming operations, and he stated that, for most of the time Garvick's Farms was a customer, it farmed approximately 2,000 acres of various grains. AgCom would sell Garvick's Farms fertilizer, chemicals, herbicides, pesticides, and agronomics products for its diversified grains, and Garvick's Farms would then sell the grain, i.e., wheat, soy beans, and corn, back to AgCom. Garvick's Farms also raised and sold livestock. In the 1990's, Garvick's Farms was one of AgCom's best customers, and it paid for its fertilizer "inputs" on schedule.

In 2000, Garvick's Farms began having trouble paying its bills in full, due to a barn fire, a drought, a divorce, and the illness of Mr. Garvick's father, Leroy, and his need for care. AgCom wanted Garvick's Farms' accounts "cleaned up by that fall" so that the unpaid open balance would not continue into the next year. In 2001 to 2002, Garvick's Farms' accounts were falling behind, and Mr. Sharrer realized that the prior year's inputs were not going to be paid before Mr. Garvick needed inputs for the upcoming year. Because AgCom and Garvick's Farms had such a "long great relationship," AgCom told Garvick's Farms that it would move forward with inputs if they were able to "put a security package together." The security package consisted of the Note, which was signed by

Mr. Garvick as president; the Loan Agreement, also signed by Mr. Garvick as president; and the Guaranty and Surety Agreement, signed by Mr. Garvick individually. A Deed of Trust on two parcels of land in Carroll County, signed by Leroy J. Garvick and guaranteeing Garvick's Farms obligations to AgCom for \$350,000, also was part of the security package.

Mr. Sharrer identified a handwritten memo that he had recorded at a meeting with Mr. Garvick on March 21, 2002, a week after the stated maturity date in the security package documents. This memo indicated that Garvick's Farms had lost \$200,000 in 2001 due to drought, and it explained that, at that time, Garvick's Farms owed approximately \$375,000 to AgCom, and it needed approximately \$300,000 in fertilizer inputs for 2002. Mr. Sharrer testified that part of AgCom's "ongoing comfort with working with Garvick" was the "[c]ollateral position on the land and deed of trust was worth \$350,000." He specifically discussed with Mr. Garvick at that meeting that AgCom was continuing to extend credit because of the security package:

That was discussed and always part of the underlying security that [AgCom] needed to move forward as we were out of terms, out of the crop terms that we wanted to be in. So it was you know, always part of the security that enabled myself to talk to others in the office and say well, yes I believe we can go forward next year and give Garvick fertilizer inputs again.

Mr. Sharrer identified another handwritten memo dated March 25, 2003, which indicated that Garvick's Farms' debt carried forward totaled \$263,000, and that Garvick's Farms wanted to make purchases of approximately \$283,000 for the upcoming year, which would increase AgCom's exposure to \$546,000. Mr. Sharrer explained that AgCom was "becoming concerned," and the memo reflected that, in case of a problem, AgCom held a

second mortgage on “the home farm valued at \$400,000,” and it held the Guaranty, valued at approximately \$150,000. That security was the basis for AgCom “going forward and extending the future credit.”

Mr. Sharrer identified another memo he wrote to Mr. Garvick in March 2003, when “things were continuing to deteriorate.” At that point, Mr. Garvick had an operating loan with Fulton Bank, and Fulton Bank was asking for “one month clean up of every year.” Because Garvick’s Farms was not able to accomplish the “clean up,” Mr. Garvick approached AgCom, stating that, if AgCom loaned Garvick’s Farms \$200,000 to pay off the Fulton Bank loan, he would be able to pay AgCom a month or two thereafter to make AgCom “clear again.” Mr. Sharrer explained that the memo “sets forth the goal that we would help [Mr. Garvick] with the Fulton Bank issue and . . . subsequently then we would be cleared up with them.” AgCom advanced the money to Garvick’s Farms so they could pay the Fulton Bank loan.

Mr. Sharrer identified another memo, dated December 19, 2003, from Mr. Simmons, reflecting a December 17, 2003, meeting that AgCom had with Mr. Garvick and his accountant, to discuss the account. The memo reflects that Garvick’s Farms owed AgCom \$592,544, with balances prior to 2002 in the amount of \$277,000, and finance charges of \$34,735.

As indicated, on August 12, 2009, the parties signed a Letter of Understanding. Mr. Sharrer explained that Garvick’s Farms was trying to obtain financing from the FSA, and the FSA wanted to ensure that AgCom would not “upset the loan.” On August 7, 2009, prior to signing the letter of understanding, Charles Stoner, counsel for Garvick’s Farms,

requested a “complete itemization and breakdown of how” AgCom “reached the figure of \$719,265.44 being due and owing.” In response, Rob Simmons sent Mr. Stoner a Summary of Account. That document included a “Summary of Old Unpaid Inputs and Advances (Note Acct)” in the amount of \$700,232.22,<sup>5</sup> as well as a Summary of 2009 Inputs, Advances, and Payments, which included inputs for the year 2009, totaling \$19,033.22.

The letter that was signed by the parties stated that Garvick’s Farms had two outstanding open balance accounts with a combined balance of \$719,265.44. The letter set forth payment terms and explained that, “[i]n order to assist Garvick’s Farms Inc. in their refinancing efforts,” interest on the principal balance of \$428,157 would be reduced to 5% until January 1, 2013, at which time the interest would “revert back to an a.p.r. of 9%.” The agreement concluded by stating: “Limited to the refinancing through FSA, should this refinance fail this Letter of Understanding will be null and void.” Mr. Sharrer testified that this clause was included

because [AgCom] was going to get very little out of this refinancing, we were only really trying to accommodate Garvick Farms to throw them another lifeline and get rid of some of the high interest which was killing his cash flow because . . . we were getting very little out of it, we wanted to make sure that we weren’t making a – and we were accommodating a payment plan and if the financing didn’t happen, you know, we didn’t want to be giving anything up for something we weren’t getting anything for.

With regard to the clause that stated “[t]his agreement is not intended to alter the terms of the original note in any way,” Mr. Sharrer explained that the original note was the 2002 security package.

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<sup>5</sup> The summary documented “carryover” from fertilizer and feed from 2003-2007, as well as finance charges from 2002-2009.

Mr. Sharrer testified that Mr. Garvick subsequently sent him a letter stating that the FSA turned down the loan. Mr. Garvick's attorney drafted a letter for AgCom to sign, stating that Garvick's Farms had a principal balance of \$428,157. This letter was rejected by AgCom on September 11, 2009.

On September 27, 2010, Mr. Sharrer met with Mr. Garvick and his new accounting firm. Mr. Garvick advised that he was still trying to get financing from the FSA, and he asked AgCom to assist with this. Mr. Garvick specifically authorized and instructed Mr. Sharrer to meet with his banker at FSA. Prior to meeting with the FSA loan officer, Mr. Sharrer drafted another Letter of Understanding, dated October 13, 2010. Mr. Sharrer testified that the terms set forth in the letter, including that Garvick's Farms owed AgCom \$748,399.92 and AgCom would make concessions regarding interest due, had been discussed with Mr. Garvick.

On February 16, 2011, Mr. Sharrer sent Mr. Garvick a letter following up on a conversation they had that morning. The letter stated that the FSA loan package appeared to be moving forward, but Mr. Garvick should plan to make three \$15,000 payments to AgCom that year, on April 1, August 1, and December 1. When Mr. Sharrer told Mr. Garvick that he wanted him to make the payments, Mr. Garvick responded that he would have to "work through his cash flow with his accountant."

Mr. Sharrer testified that, in the "series of meetings and discussions with Mr. Garvick over ten years," he went over in detail the balances owed to AgCom. He stated that he, Garvick's Farms, and their respective accountants "were all [on] the same page about what the numbers were." The following colloquy then occurred:

[COUNSEL FOR AGCOM]: Okay. Did the fact that Mr. Garvick sign[ed] a personal guarantee have any impact on your decisions over all these years to continue to extend credit?

[MR. SHARRER]: It had you know it was the foundation as I said, we worked with an attorney . . . to put together a security package that would you know, move forward and subsequently as the years went on, you know starting back to where we started this testimony, Garvick Farms was a great customer of [AgCom] but through the years from 2000 to 2007, 2008, 2009, things just continued to deteriorate and unfortunately [AgCom] ended up as the bank started to back away, [AgCom] became the main financing vehicle for Garvick Farms because we were the only ones that could extend credit to him.

On cross-examination, Mr. Sharrer agreed that the Note stated that the entire unpaid principal balance and interest would be due when the Note matured on March 15, 2002, and the Guaranty that Mr. Garvick signed guaranteed the Note. He stated, however, that the exhibits offered into evidence discussed that the Note related to subsequent years, that Garvick’s Farms never paid the Note in full, and that Garvick’s Farms “always owed us at least \$350,000.”

Mr. Simmons then testified. His duties at AgCom were to “look[] over all of the financial activities of the company, the accounting records, taxes, the whole reporting of the company.” He was familiar with Garvick’s Farms’ accounts and had regular contact with Mr. Garvick concerning the delinquent accounts. On April 2, 2002, Mr. Simmons prepared a memo summarizing a prior meeting in March with Mr. Garvick. Mr. Garvick advised that they would apply for a FSA loan of \$200,000 to get money to pay AgCom on the balance owed. Because Garvick’s Farms needed additional inputs, and to keep the information separate, balances unpaid on the Note would be kept in one place and the new inputs in another place. He explained that “any time [Mr. Garvick] would have a year

when he was unable to clear all of the inputs, costs of that year, we moved that into a separate account and in our mind, we consider that was the backstop that was – that note and security package was the backstop that covered the unpaid balances.”

AgCom had meetings with Mr. Garvick and his accountants every year. At the meetings, which would last several hours, AgCom would review and discuss the outstanding balances owed by Garvick’s Farms, as well as the extension of additional credit. Mr. Garvick never disputed the balances.

On May 17, 2007, Mr. Simmons sent an email to Mr. Stoner explaining how Garvick’s Farms outstanding balances were calculated, as follows:

In our system, we have two Name IDs for Garvick Farms. GARVICKM&F and GARVICKNP. Most of the activity for Garvick Farms is related to fertilizer and related sales. Over the years we have extended quite a bit of credit to Nevin. Sometimes he has been able to pay all the invoices, and sometimes he hasn’t. We have tried different approaches to monitor Nevin’s balance, but have pretty much settled on to try and make sure that whatever inputs he purchases in one calendar year is paid for before starting to purchase items in the following year. To accomplish this we use the two name ids.

GARVICKM&F generally is the account that new yearly transactions are posted to.

GARVICKNP is an accumulation of older purchases that remain unpaid.

The finance charge interest rate charged to both accounts is 9%. It is based on a promissory note signed by Nevin to AgCom 9/25/01 which states interest at 9%. At that time we made a verbal agreement with Nevin to charge the same 9% on all of his accounts. Generally payments are applied first to the current year activity and then to the old activity. **The GARVICKNP account really is the detail of the note that Nevin signed.**

(Emphasis added.).



The e-mail stated that the total owed was \$700,806.68. This included \$530,145.76 in principal (\$260,971.77 in GARVICKM&F and \$269,173.99 in GARVICKNP), plus \$170,660.92 in finance charges (\$3,112.91 GARVICKM&F and \$167,548.01 GARVICKNP).

Mr. Simmons explained that:

[T]he Garvick MNF account was the account at the time that we considered to be the current year[']s input balances. The Garvick NP is the account that we considered the accumulated unpaid balances, in total it made up our total exposure and like I said, at all the time we felt that total exposure was the one that the security package provided some supply rule for.

He further explained that,

any time [Mr. Garvick] would have a year when he was unable to clear all of the inputs, costs of that year, we moved that into a separate account and in our mind, we consider that was the backstop that was – that note and security package was the backstop that covered that unpaid balance[].

On cross-examination, AgCom's counsel questioned Mr. Simmons extensively regarding the August 2009 Summary of Account, which indicated that \$719,265.44 was due as of July 30, 2009. Counsel noted that the numbers listed on the page, including carryover fertilizer and feed inputs from 2003-2009 and finance charges from 2002-2009, amounted to \$719,275.44. The following colloquy then occurred:

[APPELLANTS' COUNSEL]: Okay. So, when you prepared Exhibit 1, Defendant's Exhibit 1, it is a mathematical impossibility that there is any balance due on the \$350,000 note because we start at zero and we end at \$719,000 and you broke that down how we got there, correct?

[MR. SIMMONS]: Mathematically, that would be correct, yes.

Mr. Simmons explained, however, that "the error" in counsel's question was "that there never was a zero starting point."

On redirect examination, Mr. Simmons further explained that the summary was just an accounting document that had nothing to do with whether the Note had been paid. In this regard, the following colloquy ensued:

[APPELLEE’S COUNSEL]: And [appellant’s counsel] has suggested to you that as of – as of 2003 fertilizer that the account balance is zero, is that in fact correct?

[MR. SIMMONS]: That would be correct at the time, yes.

[APPELLEE’S COUNSEL]: Well, was the note in fact ever paid?

[MR. SIMMONS]: I don’t feel that the note was ever paid because starting in 2001 when the note was signed, you know, we were believing that the note and the security agreement was basically rolled forward and covered all future purchases also. So at no time prior to today has he ever had a zero balance.

[APPELLEE’S COUNSEL]: But what I am referring to is this Defendant’s Exhibit 1, this is just your accounting backing this, it doesn’t have anything to do with whether the [N]ote was paid or not paid, is that correct?

[MR. SIMMONS]: That would be correct, yes.

Mr. Simmons further testified that there was an agreement for the sale of property on Geeting Road, and AgCom was “operating under the . . . assumption . . . that . . . there was an agreement for sale of that property that we thought would – eventually pay everybody off,” but the developer walked away. AgCom then bought the property, which resulted in a loss because it paid the full balance of the \$730,000 loan to M&T Bank because it had guaranteed the loan.

At the conclusion of AgCom’s case, counsel for Garvick’s Farms and Mr. Garvick moved for summary judgment. Counsel argued that Mr. Simmons “made crystal clear [that] it is a mathematical impossibility for there to be a balance due under” the Note, as

“every penny of what” AgCom claimed it was owed “post dates the note and its maturity.” Counsel asserted that, because it was a “mathematical impossibility for anything to be owed” under this Note, and there “is no balance due,” “you cannot confess it.” Counsel continued that, because the entirety of the “security package” documents, including the Guaranty, were “specifically limited” to the Note, and there was a zero balance on the Note, “there is no” Guaranty. Accordingly, counsel argued, “counts 1 and 2 . . . are gone.” With respect to the breach of contract claim, as to Mr. Garvick, counsel argued that “Mr. Garvick agreed to guarantee one thing and one thing only, that note. So to sue Mr. Garvick on the purchases from 2003 forward, there is nothing in writing whereby Mr. Garvick agreed to be responsible for any debts of Garvick[’s] Farms . . . other than the note.”

AgCom’s counsel responded that, in arguing that it was a mathematical impossibility for anything to be due on the Note, counsel for appellants was “simply misreading an internal accounting document,” and the testimony from Mr. Simmons and Mr. Sharrer “was clear that this was a note that secured additional balances.” Counsel stated that appellants did not dispute the debt during yearly meetings with AgCom, and in fact, they acknowledged the debt.

The court denied the motion. It stated that there was “enough to go to the fact finder.”

Mr. Garvick testified that he did not know about the Note until his father passed away in 2010. He then testified that he thought the Note was settled in 2002. He further

testified that he thought that any balance due was settled after the farm on Geeting Road was sold in 2005.<sup>6</sup>

Mr. Garvick agreed that he met with Mr. Sharrer, Mr. Simmons, and his accountant every year to discuss Garvick’s Farms accounts. He acknowledged that he heard at the meetings each year that he owed approximately \$700,000. He denied that he acknowledged owing the amounts claimed by AgCom, despite his signature on the Letter of Understanding, in which he acknowledged owing \$719,000. He stated that he signed the document to “get financing to take care of bills that [he] had,” and he “had to put that on because that statement [he] got every month.”

On October 30, 2014, the court issued a memorandum opinion and order granting AgCom’s complaint for confessed judgment and ordering that Garvick’s Farms and Mr. Garvick were liable to AgCom in the amount of \$977,599.41, jointly and severally. In its memorandum opinion, the court discussed the security agreement as follows: “This loan and security agreement provided that the Note secured the original balance as well as future open trade book credits. The [Note] specified that it was for \$350,000.00 and would mature in March of 2002 which was the due date of the Note.” The court set forth the parties’ contentions as follows:

[AgCom] contends that the Note was expanded over the course of several years to accommodate yearly dealings with [Garvick’s Farms]. Ag[C]om leaders met with Mr. Garvick and the maturity date was extended. This was motivated by a personal guarantee of Mr. Garvick and a lien on the real estate. The parties worked together until 2009 and met regularly. Ag[C]om stopped extending credit in 2009.

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<sup>6</sup> Mr. Garvick did not dispute Mr. Sharrer’s testimony that AgCom took a “\$280,000 hit” on the sale of the Farm.

[Appellants] contend that the [Note] was paid and the only money owed to Ag[C]om was based on the feed, seed, and finance charges. Additionally, the [Guaranty and Loan Agreement], which are the only documents which involved Mr. Garvick individually, are exclusively tied to the Note. [They] further argue that the statute of limitations bars collecting on any of the documents.

It then extensively reviewed all of the testimony and exhibits, and the court found as follows:

The evidence demonstrates that the parties knowingly extended the Note, with Ag[C]om continuing to grant credit to [Garvick's Farms]. Because of these regular extensions and the continued dealings between the parties, especially regarding [Garvick's Farms] attempts to obtain refinancing through the FSA in 2009 and 2010 the applicable four year statute of limitations does not bar [AgCom's] suit.

[Mr. Garvick] testified that he attended regular meetings with Ag[C]om, discussing finances between the parties. [His] testimony regarding his belief that the sale of the [Geeting] Road property settled all his debts was not credible.

The court then noted that the "statute of limitations for contracts between merchants is four years" pursuant to Md. Code (1999 Supp.) § 2-725 of the Commercial Law Article ("CL"). In that regard, the court found as follows:

Because of the oral nature of the modifications, it is somewhat unclear when the breach took place. This point is moot; however, because [Garvick's Farms] acknowledged the debt within four years of the filing of the suit, thereby tolling the statute of limitations. The purpose of tolling is so that a plaintiff does not rely on promises to pay in waiting to file the suit, only to have the statute of limitation run out. Ag[C]om relied on their long standing relationship and Mr. Garvick's acknowledgment of the debt in waiting to file their suit and in frequently adjusting the contract to accommodate [Garvick's Farms].

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[AgCom's] Complaint for Confessed Judgment was filed on October 11<sup>th</sup>, 2012, and the Amended Complaint which alleged Breach of Contract was filed on January 4<sup>th</sup>, 2013.

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Mr. Garvick acknowledged the debt he owes Ag[C]om on multiple occasions. Most notable, the exchanges that occurred in 2009 and 2010 regarding Mr. Garvick attempting to obtain refinancing with the FSA, and his request for Ag[C]om's assistance. These acknowledgements occurred between January 2009, August 2009, and September 2009. Applying the four-year statute of limitations, the date [AgCom] needed to file by is around September 2013. Because [AgCom's] Complaint for Confessed Judgment was filed October 11<sup>th</sup>, 2012, and [its] Amended Complaint for Breach of Contract was filed on January 4<sup>th</sup>, 2013, neither is barred by the statute of limitations.

By not paying the balance of the note or the finance charges owed to Ag[C]om, [Garvick's Farms] has breached the contract. Pursuant to the terms of the note, a confessed judgment may be entered against [Garvick's Farms]. The note is secured and collateralized by the [Guaranty] executed by Mr. Garvick, the [Loan Agreement], and the Deed of Trust. Mr. Garvick is also personally liable pursuant to the terms of the note.

(Citations omitted.).

The court then considered the amount owed, stating:

The principal balance of \$428,157.18 is still due. [Garvick's Farms] owes the finance charges due until they make the payment, which includes \$403,733.42 for finance charges up until November 2012, in accordance with [AgCom's] Exhibit 27. Additionally, finance charges for December 1<sup>st</sup> 2012, to October 31<sup>st</sup>, 2013 are an additional \$73,856.92. This totals the amount [appellants] owe to \$905,747.52. From October 31, 2013 to October 31, 2014, an additional \$38,534.14 of simple interest at 9% is owed, amounting to \$944,281.66.

[Garvick's Farms] owes Ag[C]om \$33,317.75 in attorney's fees. [Garvick's Farms] and Mr. Garvick were aware that they owed the debt, and according to the promissory note under paragraph 6.2(a) under a confessed judgment they are liable for reasonable attorney's fees.

For the aforementioned reasons, the total amount due to Ag[C]om is \$977,599.41.

### STANDARD OF REVIEW

The standard of appellate review for an action tried without a jury is set forth in Maryland Rule 8-131(c), which provides as follows:

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

In reviewing the circuit court’s decision, this Court “‘must consider evidence produced at the trial in a light most favorable to the prevailing party.’” *Friedman v. Hannan*, 412 Md. 328, 335 (2010) (quoting *Ryan v. Thurston*, 276 Md. 390, 392 (1975)). “‘If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.’” *Id.* at 335-36 (quoting *Solomon v. Solomon*, 383 Md. 176, 202 (2004)). We have explained that, pursuant to our standard of review under Md. Rule 8-131:

“We do not evaluate conflicting evidence but assume the truth of all evidence, and inferences fairly deducible from it, tending to support the findings of the trial court and, on that basis, simply inquire whether there is any evidence legally sufficient to support those findings.”

*Rozen v. Greenberg*, 165 Md. App. 665, 676 (2005) (quoting *Mid South Bldg. Supply of Maryland, Inc. v. Guardian Door and Window, Inc.*, 156 Md. App. 445, 455 (2004)), *cert. denied*, 391 Md. 579 (2006).

The deference given to the trial court’s factual findings, however, does not apply to legal conclusions. *Clancy v. King*, 405 Md. 541, 554 (2008). Instead, we “‘must determine

whether the lower court’s conclusions are legally correct.” *White v. Pines Community Improvement Ass’n, Inc.*, 403 Md. 13, 31 (2008) (quoting *YIVO Institute for Jewish Research v. Zaleski*, 386 Md. 654, 662 (2005)).

## DISCUSSION

### I.

#### **Evidence that Money was Due Under the Note**

In seeking reversal of the circuit court’s ruling, appellants allege that the court “was clearly erroneous” in finding that there was a balance due under the Note or the Guaranty. They argue that “the evidence and testimony introduced by AgCom shows that it was impossible for there to have been a balance due under the Note,” asserting that the evidence offered by AgCom to show “how much Garvick’s Farms owed and for what” was “so contradictory as to be of no probative value.” Appellants further argue that “the only thing” that “[Mr.] Garvick guaranteed was the Note,” and “without any testimony or evidence being presented that Garvick agreed to guaranty the payment of products which AgCom allegedly sold to Garvick’s Farms after March 15, 2002, there is no basis in law to hold him personally liable for those purchases.”

AgCom contends that this Court should affirm the circuit court’s decision. It asserts that “ample legally sufficient evidence was admitted at trial to support the trial court’s finding the Note was never paid off and the parties extended the security package.”



**A.**

**Modification of the Note**

Appellants argue that the circuit court erred in holding that the Note was modified, asserting that there was no evidence to show an agreement by both parties regarding a modification. They further argue that, because Mr. Garvick “guaranteed nothing more than the Note,” the evidence “precluded any judgment against Mr. Garvick.” In that regard, they argue that the Guaranty “specifically limited its scope to a guaranty of the Note,” which would mature on a specific date and which “specifically stated that any modifications needed to be in writing.” Accordingly, they assert, because there was no testimony or evidence presented that Mr. Garvick agreed to “guaranty the payment of products which AgCom allegedly sold to Garvick’s Farms after March 15, 2002, there is no basis in law to hold him personally liable for those purchases.”

AgCom contends that there was “substantial evidence to support the trial court’s determination that the parties knowingly modified the terms of the Note by extending the maturity date and increasing the amount covered.” Although both the Note and the Guaranty stated that they could be modified only in writing, AgCom argues that such a provision may be waived, allowing a modification by oral agreement. It asserts that, after the Note’s stated maturity date, AgCom met with Mr. Garvick, and Mr. Sharrer discussed that AgCom would extend additional credit because of the existence of the security package, a “position that was regularly part of annual discussions.” “Implicit in these discussions,” AgCom asserts, was “that the stated maturity date was being extended.” Moreover, with respect to the Guaranty, AgCom asserts that it “clearly permits AgCom to

extend the terms of the Note, without in any way releasing Mr. Garvick from his Guarantor obligations.”

It is well-settled in Maryland that a written agreement “may be modified by a subsequent oral agreement.” *Chesapeake Supply & Equip. v. Manitowoc Eng’g Corp.*, 232 Md. 555, 566 (1963). Even if the contract provides that modifications must be in writing, the parties may, by subsequent oral agreement or conduct, modify that provision. *Richard F. Kline, Inc. v. Shook Excavating & Hauling, Inc.*, 165 Md. App. 262, 277-78 (2005), *cert. denied*, 391 Md. 115 (2006). To prove a subsequent oral modification of a written agreement, it must be shown, by a preponderance of the evidence, that the parties waived this provision, “by express agreement or by implication.” *Id.* The determination whether “the subsequent conduct of the parties amounts to a waiver is a question of fact to be decided by the trier of fact.” *Id.* at 278 (quoting *Hoffman v. Glock*, 20 Md. App. 284, 289 (1974)).

In *Freeman v. Stanbern Construction Co.*, 205 Md. 71 (1954), the Court explained:

[A] subsequent oral modification of a written contract may be established by a preponderance of the evidence. *Achenbach v. Stoddard*, 253 Pa. 338, 98 A. 604 [(1916)]; *United Steel Co. v. Casey*, 6 Cir., 262 F. 889, 891 [(1920)]. Of course, if the written contract provides that it shall not be varied except by an agreement in writing, it must appear that the parties understood that this clause was waived. However, such a clause may be waived by implication as well as by express agreement.

*Id.* at 79. More recently, the Court of Appeals commented: “*Freeman* clearly instructs us that Maryland and other courts will readily look past a non-modification clause, and focus on the actions of the parties.” *Hovnanian Land Inv. Group, LLC v. Annapolis Towne Centre at Parole*, 421 Md. 94, 115 (2011).

Here, the circuit court ruled that “the evidence demonstrates that the parties knowingly extended the Note, with Ag[C]om continuing to grant credit to [Garvick’s Farms].” There was competent evidence to support this conclusion. Mr. Garvick attended yearly meetings with AgCom to discuss finances and the outstanding balances owed by Garvick’s Farms. On March 21, 2002, less than a week *after* the Note’s stated maturity date, Mr. Sharrer and Mr. Simmons had such a meeting with Mr. Garvick to discuss his unpaid balance. Although Garvick’s Farms had been unable to pay off the Note, Mr. Garvick sought to persuade AgCom to continue Garvick’s Farms’ input purchases for the 2002 crop year. Mr. Sharrer’s notes from that meeting indicate that he specifically discussed with Mr. Garvick that AgCom would continue to extend credit because of the existence of the security package, which included both the Note and the Guaranty. Mr. Sharrer testified that AgCom continued to extend credit to Garvick’s Farms because of the security package, and correspondence between the parties indicates that the parties continued to rely on the security package as collateral for Garvick’s Farms’ liability. Mr. Garvick did not dispute that the yearly meetings were held, nor did he dispute that the parties discussed the monies owed. This evidence, viewed in a light most favorable to AgCom, supports the circuit court’s factual finding that the parties orally extended the terms of the Note.<sup>7</sup>

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<sup>7</sup> Mr. Garvick also contends on appeal that, even if the parties orally agreed to modify the Note, he could not be liable for the debts of Garvick’s Farms under the Guaranty because he did not agree in writing to such liability, as required by the statute of frauds. Md. Code (2015 Supp.) § 5-901 of the Courts and Judicial Proceedings Article (“CJP”). AgCom disagrees, arguing that the Guaranty “clearly permits AgCom to extend the terms of the Note, without in any way releasing Mr. Garvick from his Guarantor (continued . . .)

**B.**

**Evidence that Garvick’s Farms Did Not Satisfy its Obligations Under the Note**

Appellants argue that, even if there was an extension of the Note, AgCom’s evidence was “so contradictory” that the evidence that showed a balance due on the Note had “no probative value.” As AgCom points out, however, as long as there was competent evidence to support the circuit court’s decision, this Court will not hold that the findings are clearly erroneous. *See Friedman*, 412 Md. at 335-36.

Appellants contend that Mr. Simmons admitted at trial that it was a “mathematical impossibility” that any balance was due on the Note. This is not an accurate reflection of this testimony. What Mr. Simmons testified to was the breakdown of Defendant’s Exhibit 1. He agreed that, by just looking at the numbers on that document, it was a “mathematical impossibility” that there was a balance due on the Note. He explained, however, as the trial court recognized, that this document merely was an internal accounting mechanism, and he made clear that the Note was never paid off. He explained that,

any time [Mr. Garvick] would have a year when he was unable to clear all of the inputs, costs of that year, we moved that into a separate account and in our mind, we consider that was the backstop that was – that note and security package was the backstop that covered that unpaid balance[.]

Mr. Simmons testified, and an exhibit showing the specific calculations was introduced into evidence, that the amount due for principal and finance charges as of

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(. . . continued) obligations.” Although this is an interesting issue, it was not raised in the circuit court. Accordingly, we will not address it. *See* Md. Rule 8-131(a) (An appellate court ordinarily will not decide an issue “unless it plainly appears by the record to have been raised in or decided by the trial court.”).

October 31, 2013, was \$867,213.<sup>8</sup> To the extent that there were conflicting pretrial statements regarding the amount owed, due to calculation errors, that did not preclude the court from making a determination on the amount owed based on the evidence presented. *Cipriano v. Greenbelt Consumers Servs., Inc.*, 226 Md. 577, 579 (1961) (If the testimony “of one witness at the trial is legally sufficient, it matters not that this testimony may be . . . *in conflict with statements before the trial, or testimony in a previous trial or other legal proceeding, of the same witness.*”).

The evidence presented supports the circuit court’s findings that the parties extended the terms of the Note, and the balance on the Note was not paid. As indicated, Mr. Simmons testified, and the evidence supported that testimony, that \$867,213 was owed as of October 31, 2013, and that AgCom had incurred attorney’s fees in the amount of \$33,317.75, for a total of \$900,531.33.

In entering judgment in favor of AgCom in the amount of \$977,599.41, the court stated:

The principal balance of \$428,157.18 is still due. [Garvick’s Farms] owes the finance charges due until they make the payment, which includes \$403,733.42 for finance charges up until November 2012, in accordance with [AgCom’s] Exhibit 27. Additionally, finance charges for December 1<sup>st</sup> 2012, to October 31, 2013 are an additional \$73,856.92. This totals the amount [Garvick’s Farms] owe[s] to \$905,747.52. From October 31, 2013 to October 31, 2014, an additional \$38,534.14 of simple interest at 9% is owed, amounting to \$944,281.66[.]

[Garvick’s Farms] owes Ag[C]om \$33,317.75 in attorney’s fees. [Garvick’s Farms] and Mr. Garvick were aware that they owed the debt, and

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<sup>8</sup> This amount included a principal balance due and owing of \$428,157.18, finance charges through November 30, 2012, of \$403,733.42, and finance charges from December 1, 2012, until October 31, 2013, of \$35,322.98, for a total of \$867,213.58.

according to the [N]ote under paragraph 6.2(a) under a confessed judgment they are liable for reasonable attorney’s fees.

For the aforementioned reasons, the total amount due to Ag[C]om is \$977,599.41.

The circuit court’s finding that money was due on the Note was not clearly erroneous, and we shall affirm that ruling. As AgCom concedes, however, there was a calculation error by the court. AgCom explains:

The trial court made an error in its calculation when it stated that finance charges for December 1, 2012 to October 31, 2013 amounted to \$73,856.92. It seems that instead of calculating finance charges for 11 months, the trial court mistakenly calculated finance charges for 1 year and 11 months for that 11 month period. The correct amount of finance charges for December 1, 2012 to October 31, 2013 is \$35,322.98 and was correctly testified to by Mr. Simmons. The judgment entered should have, therefore, been in the amount of \$939,065.47.

We agree, and we shall remand for the circuit court to revise the amount of the judgment to \$939,065.47.<sup>9</sup>

## II.

### Statute of Limitations

Appellants next contend that the circuit court erred in finding that the suit was not barred by the statute of limitations. They assert that the court’s judgment was based on AgCom’s claims that there was a principal balance owed of \$425,157.18, plus interest, but this balance “emanate[d] from purchases which took place no later than 2007.” Thus, they

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<sup>9</sup> This figure is the sum of the amount of damages requested by AgCom, totaling \$900,531.33, plus additional interest from October 31, 2013, to October 31, 2014, as ordered by the court, in the amount of \$38,534.14. AgCom is free to seek in the circuit court attorney’s fees incurred in this appeal.

argue, by the time suit was first filed in October 2012, and the amended complaint adding breach of contract claims was filed in January 4, 2013, the suit was barred by limitations. Although appellants recognize that the statute of limitations can be tolled where the defendant acknowledges the debt, they assert that the circuit court erred in finding a tolling of the statute of limitations here because there was no unqualified acknowledgment of debt.

AgCom contends that there was “substantial evidence to support the trial court’s determination that AgCom’s claims were not barred by the applicable statute of limitations.” It asserts that the “evidence relied on by the court shows that in both his words and deeds Mr. Garvick unequivocally acknowledged and promised to pay the debt to AgCom on multiple occasions within the four (4) year[s] prior to filing suit.”<sup>10</sup>

As indicated, the circuit court found that, because the parties are merchants who buy and sell goods, the applicable statute of limitations is four years. CL §§ 2-104, -105, -725. Appellants do not dispute that the applicable statute of limitations is four years. They do dispute, however, that there was an acknowledgment of the debt that would toll limitations for any claim that arose before January 7, 2009, the date the First Amended Complaint was filed.

In *Jenkins v. Karlton*, 329 Md. 510 (1993), the Court of Appeals explained that the statute of limitations may be tolled where the defendant acknowledges the debt:

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<sup>10</sup> AgCom further contends that, even if the March 15, 2002, maturity date recited in the Note is the date that limitations began to run, AgCom would have had until March 14, 2014, to file suit on the Guaranty because it is a “specialty” subject to a twelve-year statute of limitations. Given our resolution of the statute of limitations issue, we need not address this claim.

The statute of limitations does not extinguish the debt; it bars the remedy only. Thus, Maryland law has long recognized that acknowledgment of a debt barred by limitations removes the bar to pursuing the remedy. An acknowledgment, sufficient to remove the bar of limitations, need not expressly admit the debt, it need only be consistent with the existence of the debt. Nor must it be an express promise to pay a debt; just as an express promise to pay a debt barred by limitations revives the remedy, “a mere acknowledgement of such a debt will remove the bar of the statute, because if the debtor acknowledges the debt it is implied that he promises to pay.” An acknowledgment of a debt can occur prior to the running of limitations, in which event, rather than removing the bar of limitations, it both tolls the running of limitations and establishes the date from which the statute will now run.

*Id.* at 531 (internal citations omitted). *Accord Potterton v. Ryland Group, Inc.*, 289 Md. 371, 375 (1981). An acknowledgement “sufficient to remove the bar of the statute of limitations requires an admission by the debtor, in word and/or deed, that the debt is still owed by the debtor.” *Columbia Ass’n, Inc. v. Poteet*, 199 Md. App. 537, 560 (2011).

In this regard, the circuit court found that Mr. Garvick acknowledged the debt he owed to AgCom on multiple occasions. After discussing multiple potential acknowledgments, the court stated:

Most notable, the exchanges that occurred in 2009 and 2010 regarding Mr. Garvick attempting to obtain financing with the FSA, and his request for Ad[C]om’s assistance. These acknowledgments occurred between January 2009 (See Plaintiff’s Exhibit 14), August 2009 (See Plaintiff’s Exhibit 15), and September 2009 (See Plaintiff’s Exhibit 16). Applying the four-year statute of limitations, the date Plaintiff needed to file by is around September 2013. Because Plaintiff’s Complaint for Confessed Judgment was filed October 11<sup>th</sup>, 2012, and Plaintiff’s Amended Complaint for Breach of Contract was filed on January 4<sup>th</sup>, 2013, neither is barred by the statute of limitations.

We agree. In particular, the August 12, 2009, Letter of Understanding, which stated that Garvick’s Farms owed \$719,265.44, and which Mr. Garvick signed, acknowledged



the debt. Although the Letter of Understanding contained language stating that it would become null and void if the refinancing failed, there was testimony that this provision was added by AgCom merely to protect its interests. This letter, by itself, constitutes an acknowledgment sufficient to toll the statute of limitations.

Moreover, the circuit court discussed two other points at which appellants acknowledged the debt:

On September 10<sup>th</sup>, 2009, Mr. Garvick faxed a handwritten message and draft letter [of] understanding to Mr. Sharrer. . . . In the draft letter, he acknowledges a debt to Ag[C]om, with a principal balance of \$428,157.00. Again, this acknowledges a debt owed to Ag[C]om. The proposal in the letter was rejected by Ag[C]om but that does not clear [Garvick's Farms] of the moral obligation to pay the underlying debt. The amount acknowledged essentially included an offer to repay less, which tolls the statute of limitations. . . .

[Additionally,] a meeting was held on September 27<sup>th</sup>, 2010, involving Mr. Garvick, [Garvick's Farms' accountant], and Ag[C]om regarding Ag[C]om assisting [Garvick's Farms] in their refinancing efforts. . . . According to [Mr. Sharrer's] notes, Mr. Garvick was asking for forgiveness of the interest he owed to Ag[C]om to assist him with getting the FSA loan. This affirms [Mr. Garvick's September 10, 2009 correspondence] as a request for Ag[C]om to accept less than they were owed and therefore an acknowledgment of the debt.

The evidence supports the circuit court's conclusion that Mr. Garvick unequivocally acknowledged the debt owed to AgCom on several occasions within the four-year period

prior to the filing of the First Amended Complaint on January 4, 2013. Accordingly, the circuit court properly determined that the suit was not barred by limitations.

**CASE REMANDED TO THE CIRCUIT COURT FOR CARROLL COUNTY TO CORRECT THE AMOUNT OF THE JUDGMENT DUE, CONSISTENT WITH THIS OPINION. JUDGMENT OTHERWISE AFFIRMED. COSTS TO BE PAID BY APPELLANTS.**