Circuit Court for Prince George's County
Case No. CAE1834654

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0396

September Term, 2020

WINSTON MARTIN HOLDING GROUP, LLC, ET AL.

v.

FREDDIE L. WINSTON, JR., ET AL.

Berger,
Leahy,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 21, 2021

*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.

LaJuan Martin and Winston Martin Holding Group, LLC ("WMHG") (together "Appellants"), undertake a repeat performance not condoned by law. The origins of this Act III,[1] like the prior appeals, trace back to the epicized[2] dispute over a parcel of real property (the "Property") originally purchased by WMHG in 2006.

WMHG is a commercial development company originally formed in Washington D.C. by Martin and Freddie Winston in 2006. In 2008, after WMHG failed to make payment on a confessed judgment promissory note, WMHG's former CEO, Jason Fenwick, obtained a monetary judgment against WMGH and a lien on the Property (the "*Fenwick* Action"). Fenwick then initiated a foreclosure action and bought the Property at a Sherriff's sale. In 2012, this Court reversed ratification of the sale to Fenwick, set aside the deed to Fenwick, and remanded the case.

Meanwhile, in 2011, Inglewood Restaurant Park Association ("Inglewood") filed a foreclosure action on the same Property to recover a lien for $30,060.20 based on association assessments owed by both WMHG and Fenwick. Pursuant to Inglewood's lien, the Property was sold to Winston in his individual capacity at a foreclosure sale. Over

[1] We trace the direct lineage of the underlying litigation through two prior appeals to this Court, but note that Mr. Martin has filed other related appeals in this Court and related cases in the United States District Court for the District of Maryland, *Martin and WMHG v. Winston and 9620 Investments,* No. 8:16-cv-04140-PJM (D. Md. July 24, 2017), ECF No. 21 (discussed *infra*); and in the District of Columbia, including *Martin, et al v. Winston,* No. . 2015 CA 8843 (D.C. Super. Ct. Dec. 19, 2019) (litigation begun in 2015 also seeking to litigate ownership of the Property).

[2] Epicize is a recent term used to mean "to give greater meaning or to characterize by affectation of grandeur or otherwise absurd exaggeration." *Epicize*, Urban Dictionary, https://www.urbandictionary.com/define.php?term=epicize (last visited July 16, 2021).

Martin's exceptions, the Circuit Court for Prince George's County ratified the foreclosure sale to Winston in an order issued on January 16, 2014 (the "*Inglewood* Action"). Martin appealed the order, but his appeal was dismissed when he failed to post a supersedeas bond. Inglewood issued Winston the deed to the Property on May 14, 2014, and Winston recorded his fee simple deed in June 2014.

Martin instituted another action against Winston in the Circuit Court for Prince George's County on October 29, 2014 (the "*Martin* Litigation"). This time, Martin asserted that Winston breached duties owed by him as a member of WMHG. The court dismissed his claims as barred by res judicata, finding that Martin should have raised his complaints during the *Inglewood* Action. Martin appealed, and this Court reversed and remanded the judgment of the circuit court, explaining that Martin's personal claims against Winston could not have been brought during the *Inglewood* Action and were therefore not barred by res judicata. *Martin v. Winston*, No. 915, Sept. Term, 2015 (filed Aug. 11, 2016) (unreported) ("*Martin I*").

On remand, Martin filed a second amended complaint on behalf of himself and WMHG, but WMHG was dismissed from the action because the company was defunct and not represented by counsel. After a two-day hearing, the circuit court granted Winston's motion for judgment and awarded fees to Winston when it found that Martin lacked substantial justification to bring his claims. Martin appealed the judgment to this Court, and we affirmed the circuit court's judgment on all counts. *Martin v. Winston*, No. 2252, Sept. Term 2017; No. 319, Sept. Term 2018 (filed Oct. 8, 2019) (unreported) ("*Martin II*").

Meanwhile, on September 27, 2018, before our decision in *Martin II* was filed, Martin and WMHG lodged the underlying action in the Circuit Court for Prince George's County against Winston and 9620 Investments, LLC ("9620 Investments") (together, "Appellees"). In their complaint, Appellants alleged the following three counts: Count I: Ejectment; Count II: Trespass; and Count III: Declaratory Judgment. On January 16, 2020, in response to our decision in *Martin II,* the circuit court dismissed Appellants' complaint and closed the case statistically, determining that the "Court of Special Appeals decision is dispositive of the claims in this case." Martin filed a motion to alter and amend, and on March 9, 2020, the court responded with a second Opinion and Order denying the motion to alter and amend, dismissing the case with prejudice and ordering sanctions to be imposed on Martin and his attorney.

Appellants' appeal from that order and present five questions, which we have re-ordered and recast into four[3]:

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[3] Appellants presented their questions as follows:

> 1. "Whether the circuit court erred in dismissing Appellant's [sic] claims for lack of standing?"
> 2. "Whether the circuit court erred in dismissing Appellant's [sic] claims for being barred by res judicata?"
> 3. "Whether the circuit court erred in dismissing Appellant's [sic] claims for being barred by limitations?"
> 4. "Whether the circuit court erred in denying Appellant's [sic] motion for summary judgment on its declaratory claim that the judgment in *Inglewood v. WMHG and Fenwick, CAE11-02632* was against Jason Fenwick only and is void and unenforceable as against WMHG?"
> 5. "Whether the circuit court erred in finding that Appellant's [sic] claims were made without substantial justification and merited the imposition of attorney's fees?"

I. Did the circuit court err in dismissing Appellants' claims for lack of standing?

II. Did the circuit court err in dismissing Appellants' claims as barred by the statute of limitations?

III. Did the circuit court err in dismissing Appellants' claims as barred by res judicata?

IV. Did the circuit court err in finding that Appellants' claims were made without substantial justification and merited the imposition of attorney's fees?

Appellants' contentions on appeal are without merit. We affirm the circuit court's judgment on all counts.

BACKGROUND

The overarching theme of the underlying case—and all prior and related cases—is Martin's refusal to accept the 2014 order ratifying the Inglewood foreclosure sale. To set the scene, we begin with the exposition from *Martin I*:

> Martin and Winston were business partners and sole members with equal ownership of WMHG, a commercial development company organized under the laws of the District of Columbia. In June 2006, WMHG bought a parcel of land located at 9620 Lottsford Court (the "Property") in Prince George's County, Maryland, with plans to build a restaurant. The Property was purchased for $900,000 with the "intent and understanding of Martin and Winston that each would personally contribute to [WMHG] 50% of the purchase price to reflect their respective co-equal, 50% ownership interests in [WMHG]", as alleged by Martin in his Complaint in the present litigation. According to the circuit court, the purchase price of the Property was handled in the following manner:
>
>> The record in this case and the consolidated cases would show, [WMHG] acquired the subject property on or about June 22, 2006 for the sum of $900,000.00; $500,000.00 of this sum was borrowed from the Industrial Bank of Washington. While legal title to the property was in the name of the LLC, Martin personally negotiated and obtained the loan from Industrial Bank. As a result of an error, the Deed of Trust

> securing this loan was in the name of the individual Winston and not Winston–Martin Holding Group, LLC.

The titling error became the basis of a lawsuit, *Industrial Bank v. Winston–Martin Holding Group, LLC*, CAE 13–04739, brought in the circuit court in 2013 to correct the mistake. The case was settled purportedly by the litigants without further action by the court, other than its dismissal later in 2013. There was no apparent disclosure on the record of the terms of the settlement.

A. The *Fenwick* Action

Between 2006 and 2008, WMHG (with Martin handling its managerial duties) began to move on the development of the Property. Jason Fenwick was hired as CEO of WMHG to work on the restaurant concept. When WMHG decided to discontinue its pursuit of the restaurant and Fenwick's employment ended, Martin issued a confessed judgment promissory note for $75,000 to compensate Fenwick for the work he had completed. When payment under the note was not made, Fenwick obtained, in 2008, a monetary judgment against WMHG and a lien on the Property. A foreclosure action was initiated by Fenwick. He bought the Property at a Sheriff's sale. WMHG filed exceptions, which were denied, and, after ratification of the sale, WMHG appealed the decision. In deciding the appeal in *Fenwick*, this Court, in an unreported opinion filed 18 June 2012, reversed the circuit court's ratification of the sale to Fenwick (because it was determined that the Sheriff posted the wrong property for sale), set aside the deed to Fenwick, and remanded the case.

B. The *Inglewood* Action

Before the *Fenwick* appeal was decided, Inglewood Restaurant Park Association ("Inglewood")[4] filed in the circuit court an Order to Docket Foreclosure, requesting the right to auction and sell the Property to enforce a lien to recover assessments owed by WMHG and Fenwick. Fenwick filed a Motion to Release the Property from the purported Inglewood lien, levy and order to docket foreclosure. A hearing was held on 31 March 2011 to determine whether probable cause existed to establish Inglewood's lien. The circuit court issued an order on 23 June 2011, finding probable cause, declaring a lien in the amount of $30,060.20 against Fenwick, in favor of

[4] As a condition of purchasing the Property, WMHG became a member of the Inglewood Restaurant Park Association, an association of property owners in a part of the so-called "Inglewood Master Development" where the Property was located.

Inglewood (the "Inglewood Lien"). The then pending cases[[5]] involving the Property were consolidated, and on 18 July 2011, Inglewood amended its Order to Docket Foreclosure, again naming both Fenwick and WMHG as defendants, but alleging facts implicating only Fenwick. Pursuant to the Inglewood Lien, the Property was sold at an auction on 17 October 2011 to Winston (individually), with a winning bid of $250,000. Martin, in the name of WMHG, filed exceptions to the sale on 19 December 2011, alleging violations of the corporate loyalty doctrine. On 13 January 2012, Winston intervened and moved to [s]trike WMHG's Exceptions.

On 19 August 2013, Martin filed an intervenor motion (as an individual) to dismiss Inglewood's foreclosure action because he believed that the overdue assessments had been satisfied and, as a result, there was no longer a controversy related to the Inglewood foreclosure action. He included also a counter-claim for declaratory relief, damages and sanctions against Inglewood. Winston and Inglewood opposed Martin's Motion to Dismiss. A hearing was conducted on 7 October 2013 in regard to WMHG's Exceptions to the previous sale to Winston. At this hearing, evidence was presented that showed that money paid by Winston toward the auction purchase price was not in any part in satisfaction of the Inglewood lien, as Martin maintained. Winston testified also that he purchased the Property at the 17 October 2011 auction sale for his personal account.

After an exchange of additional legal memoranda, on 16 January 2014, the circuit court (Judge Thomas P. Smith presiding) issued a Memorandum Opinion and Order ratifying the sale of the Property to Winston. In discussing WMHG's exceptions, Judge Smith explained that:

> As the Court has noted on the record repeatedly, if there is a dispute between Freddie Winston and LaJuan Martin and Winston Martin Holding Group, LLC or any combination thereof, it is not resolvable in a foreclosure proceeding involving inter alia the rights of Inglewood Restaurant Park Association, Inc. These parties are certainly free to institute other litigation regarding these issues.

Martin filed additional motions to challenge the sale, requesting that the circuit court recognize this Court's intervening decision in the appeal of *Fenwick v. Winston Martin* and stay the judgment because Winston was not a bona fide purchaser. These motions were denied when the circuit court ratified the sale to Winston. On 14 May 2014, Winston and a trustee for

[5] On 6 June 2011, Case No. CAE11-10974*, Fenwick v. Inglewood Restaurant Park Association* and Case No. CAE11-02632*, Inglewood Restaurant Park Association, Inc. v. Winston Martin Holding Group* were consolidated. The other cases were consolidated later.

Inglewood executed a fee simple deed conveying title of the Property to Winston as the sole owner of the Property.

C. The [*Martin*] Litigation[6]

On 29 October 2014, Martin filed in the circuit court a Complaint and Motion for Ex Parte Interlocutory and Permanent Injunctive and Declaratory Relief against Winston [the "*Martin* Litigation"]. Martin's complaint alleged *in personam* claims, and sought to quiet WMHG's title to the Property, appoint Martin as the managing-member for the winding-down process for WMHG, disassociate Winston from WMHG, and an award of fees and costs. The suit was assigned to a judge other than Judge Smith.

After a hearing on 6 November 2014, the circuit court dismissed (without prejudice) on 10 November 2014 Martin's Complaint. Relying on the 16 January 2014 ratification of the foreclosure sale in the *Inglewood* action and the fact that Martin failed to post the required appeal bond for his appeal from the final judgment in that matter, the circuit court dismissed Martin's Complaint for lack of standing as it appeared that Martin "currently has no interest in the subject property."

Martin responded on 11 December 2014 with: (1) an Amended Complaint; (2) a Motion for Permanent Injunction and Declaratory Relief; and furthermore (3) a Motion to Alter or Amend Judgment, but in the *Inglewood* action. The Amended Complaint no longer contained a request to quiet title to the Property, but maintained the personal liability claims against Winston. In the Amended Complaint, Martin requested the following relief:

> 1. A Declaratory Judgment that Winston breached his fiduciary duty to Martin directly and to WMHG derivatively;
> 2. Appointment of Martin as managing member and trustee of WMHG;
> 3. To enjoin Winston from interfering with the winding-down of WMHG;
> 4. An order disassociating Winston from WMHG and reducing his ownership interest to that of a passive limited partner; and
> 5. [F]ees and courts costs.

On 31 December 2014, this Court dismissed the appeal in the *Inglewood* action because Martin failed to file the required appeal bond. On 16 January 2015, the circuit court denied Martin's Motion to Alter or Amend in the *Inglewood* action based on the ground that the filing of the Amended

[6] There remained at the time two other cases involving the Property, but those cases were either settled or dismissed (including the Industrial Bank action). The judgments in those two cases do not bear on our analysis here.

> Complaint in the present case rendered that motion moot. As for the Amended Complaint, the circuit court stated that it would "take no action on the Amended Complaint at this time as there is no return of service. Additionally, the dismissal of this case pending the outcome of an appeal in a companion case effectively closed the case. There has been no motion for leave to reopen the case."
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> On 26 January 2015, Winston filed a Motion to Dismiss Martin's Amended Complaint and Motion for Permanent Injunctive and Declaratory Relief, or in the Alternative, a Motion for Summary Judgment and Request for Hearing. Winston argued that Martin's Amended Complaint was barred by *res judicata* because Martin's claims were determined in the *Inglewood* action and thus further litigation was precluded.
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> On 5 February 2015, Martin filed an Opposition to Winston's Motion to Dismiss, in which he argued that, because neither he nor Winston were parties to the other consolidated cases, the claims in his Amended Complaint were not litigated actually there.
>
> The circuit court granted Winston's Motion to Dismiss on 17 April 2015, agreeing that Martin's claims were barred by res judicata. Martin filed another Motion to Alter or Amend the Judgment, which was denied summarily on 1 May 2015. Martin appealed timely to this Court.

Martin I, slip op. at 1-7 (some footnotes omitted; others renumbered). This Court reversed the circuit court's grant of the motion to dismiss, ruling as follows:

> As applied here, [*res judicata*] principles demonstrate that the factual inquiry required to be undertaken to decide Martin's present claims for breach of fiduciary duties by Winston is quite different from that required to determine the validity of the foreclosure sale pursuant to the Inglewood lien. The prior cases involved primarily the Property and who had a legal right to ownership under lien foreclosure procedures. Martin's claims in this proceeding focus on personal claims against Winston in regard to duties owed one-to–the–other and to their business entity, WMHG. The current interests asserted by Martin do not relate to the interests litigated in the *Inglewood* action, and thus, would not nullify necessarily the judgment in the former case.
>
> Precluding Martin's claims raised in his Amended Complaint was an improper application of Maryland's *res judicata* standards. Because we determine that Martin's claims do not represent, for purposes of *res judicata*, claims that could have been brought in the *Inglewood* action, we need not analyze further the other requirements of *res judicata* because the absence of even one of the requirements is fatal to the claim preclusion basis for the

> circuit court judgment. Therefore, we remand this case to the circuit court for further proceedings in regard to Martin's Amended Complaint.

Id. at 16-17.

Martin's Second Amended Complaint and the Trial on Remand

On remand, Martin filed a second amended complaint in the Circuit Court for Prince George's County on behalf of himself and WMHG. *Martin II,* slip op. at 7. As we explained in our 2019 opinion affirming the circuit court's judgment, Martin asserted five claims on behalf of himself and WMHG:

> (1) breach of duty of loyalty and care owed to WMHG; (2) breach of duty of loyalty and care owed to Martin, individually; (3) breach of good faith and fair dealing owed to Martin and WMHG; (4) fraud/misrepresentation; and (5) the disassociation of Winston from WMHG.

Id.

Martin moved for partial summary judgment, contending that Winston was liable for breach of his fiduciary duties imposed by the D.C. Code. *Id*. at 8. He argued that D.C. law governed the internal affairs of WMHG because that is where the company was formed. *Id.* Winston responded with his own motion for summary judgment, arguing that "WMHG lacked standing to pursue its claims and that Martin cited an unfamiliar provision of D.C. law in support of his claims rather than any Maryland law." *Id*. He also sought judgment on Count III, arguing that WMHG lacked a written operating agreement and that Maryland did not recognize an independent cause of action for breach of an implied contractual duty. *Id*.

On November 28, 2017, the parties attended a two-day trial, "Martin appearing pro se and Winston represented by counsel." *Id*. At the outset, the court denied Martin's motion for summary judgment and proceeded to argument on Winston's motion for summary judgment. *Id*. The court dismissed Count I after "determining that it related to WMHG rather than Martin individually and dismissed Count V after learning that Martin had the same claim pending in a separate action in the District of Columbia." *Id*. at 9. The Court also dismissed Count III after Martin admitted that there was no written contract, because Maryland did not recognize an implied contractual duty of good faith and fair dealing. *Id*.

The case proceeded to trial on Counts II and IV only. *Id*. at 10. At trial, Martin's testimony "focused largely on the Inglewood foreclosure and Judge Smith's eventual ratification of that sale over Martin's exceptions." *Id*. At the close of Martin's case, Winston moved for judgment on both counts. *Id*. Regarding Count II, after arguing that Winston's purchase of the Property was not a breach of loyalty, Winston's counsel responded to Martin's arguments about the Fenwick deed, saying:

> It's not even a red herring. It's a misrepresentation, if you will, to the court, [] because the bottom line is, once [] that sheriff's sale for Fenwick was vacated, Fenwick was done. He was never in the chain of title again after it was vacated, and so the property was always with [WMHG], against whom the liens were enforced at the October 17, 2011 foreclosure auction.
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> * * *
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> That's what Mr. Martin is trying to reargue and that's not an issue before this Court. He's alleging that because Mr. Winston bought this property from [WMHG], that's some breach of duty and because he submitted the Purchaser's Affidavit. That's also a breach of duty.
>
> So Count II fails on its face. There's no evidence to show that Mr. Winston did anything untoward or that caused the sale of this property. . . .

Id. at 10-11. In response to Count IV for fraud, Winston's counsel asserted that Winston's "purchaser's affidavit did not constitute fraud because he did not purchase the Property for a principal and there was no evidence suggesting that he discouraged other bidders;" that there was "no evidence to support Martin's assertion that Winston agreed secretly with Inglewood to purchase the Property before the foreclosure sale[;]" and that Martin "did not and could not show any damage to himself because he was not the owner of the Property prior to the foreclosure sale and had no claim to the Property, which belonged to WMHG." *Id*. at 11.

Martin responded by rehashing his objections to the ratified foreclosure that was not at issue:

> After once again presenting his reasons why he believed it "[wa]s impossible" for the court to have ratified the foreclosure sale, the court asked Martin to make an argument that related to Counts II and IV in his complaint, but Martin once again returned to the prior ratification of the foreclosure sale. Again, the court asked Martin how his evidence supported Counts II and IV, to which he responded that, had he known Winston would buy "the whole property, including my interest, I never would have entered into that contract to begin [with]." After another digression, the court admonished Martin for not specifying an amount of damages in his prayer for relief, before Martin once again returned to challenging the propriety of Judge Smith's prior order ratifying the foreclosure sale. The court advised Martin that he needed to live with the fact that the Property sale was finalized, but Martin disagreed, telling the court, "Your Honor, I just keeping going." The court warned:
>
>> Well, you know what the problem is there, is that if you keep going, I am about to assess costs against you because you can't keep going when you are in Court time after time after time and you know that you don't have a basis for a claim.
>>
>> * * *
>>
>> I've asked you two things. Arguments on loyalty and fraud. You refuse to do that for me.

> Finally, Martin asserted that Winston breached a duty of loyalty imposed on him by the D.C. Code to pay the Inglewood Association assessments/dues when Martin became financially unable to make the payments himself. The court read from the D.C. Code provisions that Martin had cited and informed him that those provision did not support his claim.

Id. at 11-12.

The court granted judgment in favor of Winston on both Counts II and IV. Regarding Count II, the court noted that "WMHG's failure to pay the association dues and loss of a property valued at $900,000 over a $30,000 lien was 'just poor business [by] both parties.'" *Id*. at 12. The court reasoned that "'It's not about loyalty. It's not about duty. He had the right to do what he did legally. It was ratified by Judge Smith.'" *Id*. As for Count IV, the court ruled that Martin "produced 'no proof whatsoever' in support of his claim" of fraud. *Id*. Finally, the court assessed attorney's fees against Martin in the amount of $22,862.50 "for maintaining an action without substantial justification." *Id*. at 13. Martin noted a timely appeal to this Court on April 4, 2018.

Appeal to the Court of Special Appeals

On appeal, we affirmed the circuit court's ruling on all counts.[7] *Id*. First, we held that, because Martin failed to prove the D.C. law on which he sought to rely, and because

[7] Martin presented the following five questions for our consideration: (1) "Whether the trial court erred in sustaining the objection of [Winston] that Appellants failed to satisfy the notice of a foreign law requirement under Judicial Proceedings Article § 10-504?"; (2) "Whether the trial court erred in ruling that Appellants, individually as trustee and member of WMHG, was precluded from asserting claims on behalf of WMHG?"; (3) "Whether the trial court erred in ruling that Appellants had not established fraud?"; (4) "Whether the trial court erred in sustaining the objection of Appellee that the amended order to docket

(Continued)

he was not prejudiced by the trial court's failure to take judicial notice of D.C. law, we did not need to "decide whether Martin citing to provisions of the D.C. Code in his second amended complaint and motion for summary judgment satisfied the notice requirement set out in the [Maryland Uniform Judicial Notice of Foreign Law Act ("Uniform Act"), CJP §§ 10-501 – 10-507][.]" *Id.* at 17-18.

Second, in affirming the trial court's ruling that Martin lacked standing to bring claims on behalf of WMHG, we stated that "[r]egardless of whether WMHG is or is not defunct, this Court has already ruled in a prior appeal that Martin is not legally permitted to pursue legal claims or appeals on behalf of WMHG." *Id.* at 21. We explained that

> In an order dated May 29, 2018, we dismissed another action that Martin filed against Winston on behalf of WMHG because "WMHG was not represented by counsel as required by Maryland Rule 2-131(a)(2) ("[A] person other than an individual may enter an appearance only by an attorney.")." The circuit court was correct to dismiss WMHG and those counts filed on its behalf.

Id.

Third, we held that the trial court did not err in ruling that Martin did not prove his allegation of fraud because (1) it was not clear what statement by Winston was allegedly false; (2) Martin "adduced no facts to prove that he knew of or relied on any allegedly fraudulent statement or that the statement was made to defraud him[;]" and (3) Martin "did not show that he suffered a compensable injury" related to the sale of the Property,

foreclosure in CAE11-02632 was not relevant to proving counts 2 and 3 of the complaint?" and (5) "Whether the trial court erred in finding Appellants' lawsuit frivolous and imposing attorney's fees in the amount of $22,862.50?" *Id.* at 2.

especially because he did not own the Property and it was already for sale in a foreclosure action when Winston purchased it. *Id.* at 23-24.

Fourth, we held that the trial court did not abuse its discretion in sustaining Winston's objection that the amended order to docket foreclosure in the Inglewood Action was not relevant, because the claims "before the court were whether Winston committed fraud or breached a duty owed to Martin by purchasing the Property at the Inglewood foreclosure sale." *Id.* at 28. The amended order, we explained, "would not tend to make it any more or less likely that Winston conspired with Inglewood to agree to the purchase prior to the foreclosure sale; nor would it tend to show the existence of a duty or breach thereof." *Id.* And, we pointed out, even though Martin clearly believed that Judge Smith's ratification of the Inglewood foreclosure sale was contrary to law, that "*judgment is final and irrelevant to the underlying case*." *Id.* (emphasis added). Accordingly, we held that the circuit court was correct to sustain Winston's objections to Martin's repeated attempts to admit the amended order to docket in the Inglewood foreclosure because it was not relevant and was not properly authenticated. *Id.* at 29.

Finally, we held that the trial court did not err by imposing attorney's fees upon finding Martin's lawsuit frivolous because Martin "offered no evidence that supported his causes of action." *Id.* at 32. "Instead, he repeatedly digressed to a continued attempt at relitigating Judge Smith's 2014 ratification of the foreclosure sale, which Martin maintains was 'impossible.'" *Id.* But, we reiterated,

> that judgment is final and not subject to re-litigation in this case or any other. Given the parties' litigation history and the trial judge's assessment on the

> record following Martin's presentation of his claims, we cannot say that she abused her discretion in assessing fees against him.

Id.

The Federal Litigation

While the *Martin* Litigation was in process, on December 30, 2016, Appellants, with WMHG represented by counsel, filed a complaint against Appellees in the United States District Court for the District of Maryland (the "Federal Litigation"). This time, Appellants alleged three causes of action: Count 1: Quiet title/Declaratory relief; Count II: Slander of Title; and, Count III: Tortious Interference with Economic Relations. Appellants asked the court to quiet title in their favor against Appellees, claiming that the *Inglewood* Action only secured Fenwick's interest in the property, arguing that when this Court set aside Fenwick's deed, Inglewood's deed was also set aside. Accordingly, Appellants again insisted that the Inglewood foreclosure was improper, and that WMHG held title to the Property. They also asked for damages for slander of title and tortious interference with economic relations, arguing both that Winston's claim to the Property was a "malicious communication" that prevented WMHG from obtaining financing to develop the property and that his claim to the land interfered with their ability to obtain financing.

On July 24, 2017, the District Court denied the motion for summary judgment filed by Appellants and granted Appellees' motion for summary judgment. After determining that the Court had subject matter jurisdiction over the action, and assuming that Martin had authority to represent WHMG in the action, the Court observed that, "[a]t the heart of this case is the question of who holds title to the Property." If, the District Court observed, the

Court "finds that [Appellees] have title to the Property, all of the [Appellants'] claims are extinguished."

The Court determined that issue preclusion prevented it from "reconsidering the state court's finding," because "*Judge Smith . . . squarely confronted and decided this issue in the [Inglewood Action], holding that Inglewood had a valid lien, and was entitled to foreclose, eventually awarding Winston legal title to the Property*." (Emphasis added). The Court explained that: (1) the issue of whether Inglewood was entitled to foreclose and who holds legal title to the Property "is identical to the issue decided in the foreclosure case;" (2) the foreclosure ratification in favor of Winston in the *Inglewood* Action represented a final judgment on the merits; (3) the parties were identical to or were in privity with the parties in the *Inglewood* Action; and (4) Appellants had "more than a fair opportunity—of which they most definitely availed themselves—to raise issues with respect to the ownership of the Property during the foreclosure case."

Accordingly, the Court explained, "this conclusion is fatal to all three of the causes of action in the present case." This, the Court explained, was because, in order to maintain a quiet title action, Appellants needed to prove both possession and legal title, which they could not do. Additionally, the Court explained that, because he was entitled to legal title to the Property, Winston's recordation of his deed and filings with the Maryland SDAT constituted publishing of true information, and not slander of title. Finally, the Court found that Appellants' claims for tortious interference failed because Winston's claim of and recordation of title to the Property was not independently wrongful or unlawful.

Appellants appealed this judgment to the United States Court of Appeals for the Fourth Circuit. In a brief unpublished opinion, the Fourth Circuit affirmed the District Court's grant of summary judgment. *Martin and WMHG v. Winston and 9620 Investments,* No. 17-2297 (4th.Cir. July 6, 2018), ECF No. 31-1.

The Underlying Litigation

On September 27, 2018, before our decision in *Martin II* was filed, Appellants lodged yet another complaint in the Circuit Court for Prince George's County against Appellees. This time, Martin "*Pro se*, as a member and as trustee on behalf of [WMHG]" alleged the following three counts: Count I: Ejectment; Count II: Trespass; and Count III: Declaratory Judgment in order to "recover possession of real property in Prince George's County, Maryland, and damages."

In support of their claim for ejectment, Appellants stated that, "[s]ince 2006, WMHG has continuously held fee simple legal record title to the Property," and that Appellees have asserted "possession by recording a deed issued pursuant to [the *Inglewood* Action] and filing a report with the [Maryland State Department of Assessments and Taxation ("SDAT")] falsely claiming that WMHG's interest and title was conveyed in [the *Inglewood* Action]." Appellants insisted that Appellees could not prove "title that would entitle it to prevail in an ejectment action against WMHG."

In support of their claim for trespass, Appellants argued that, by "recording the deed issued pursuant to [the *Inglewood* Action] and filing the report with the [Maryland] SDAT claiming that WMHG's title to and interest in the Property was conveyed in [the *Inglewood*

Action], [Appellees'] conduct constitutes an intentional or negligent intrusion to WMHG's possessory interest in the Property." Appellants also contended that, by "directing real estate professionals to enter the Property for purposes of listing the Property for sale, [Appellee's] conduct similarly constitutes an intentional or negligent intrusion upon WMHG's Property." Appellants averred that both actions were taken without their consent.

Finally, Appellants purported that Appellees had "falsely asserted that the foreclosure in [the *Inglewood* Action] was against, and conveyed, WMHG's title and interest in the Property." Appellants yet again alleged that it had been "established that the foreclosure in [the *Inglewood* Action] was against Jason Fenwick only," and asked that a declaratory judgment be made to "define the legal rights implicated and interests conveyed in [the *Inglewood* Action]."

Appellants concluded by requesting an expedited hearing to determine and adjudicate the rights of the parties with respect to the Property; a judgment in favor of Appellants on their ejectment claim declaring WMHG the sole and exclusive owner of the Property; a judgment in favor of Appellants on their trespass claim; a judgment declaring that the foreclosure in [the *Inglewood* Action] was solely against Jason Fenwick and not WMHG; and that "any and all interest claimed by Winston, his heirs, successors and assigns, including [9260 Investments], in the Property as evidenced by the deed issued pursuant to [the *Inglewood* Action] be set aside and declared void." Appellants also asked

that Appellees be found jointly and severally liable for compensatory and punitive damages in excess of $75,000.00.

The complaint was signed by an attorney, on behalf of WMHG, and Martin on his own behalf.

Appellees' Motion to Dismiss

Appellees responded on January 14, 2019 with a motion to dismiss, or, in the alternative, a motion for summary judgment. Appellees argued that Appellants' claim that the court only ratified the sale of Jason Fenwick's interest in the *Inglewood* Action was both disingenuous and a misrepresentation. They pointed out that Judge Smith made an explicit factual finding in his January 2014 Opinion and Order of the Court that both Mr. Fenwick and WMHG were parties before the court during the Inglewood foreclosure proceedings.

Appellees also argued that, because WMHG's charter had been forfeited in both the District of Columbia and Maryland, WMHG did not have standing in the instant case. Appellees purported that (1) a limited liability company whose charter has been forfeited cannot maintain an action in court against a party in Maryland, and (2) members of that company also cannot file derivative suits on its behalf. Therefore, Appellees purported, the action brought by or on behalf of WMHG could not be pursued, nor could the actions be brought by Martin "as a trustee on behalf of WMHG."

Appellees urged that Appellants' claims were barred by the statute of limitations because their action was not filed within three years of its accrual, as required by Maryland

Code (1974, 2020 Repl. Vol), Courts and Judicial Proceedings Article ("CJP") § 5-101. Appellants' claims accrued, according to Appellees, when Winston recorded the deed to the Property on May 14, 2014, and Appellants did not file their complaint until September 27, 2018.

Additionally, Appellees argued that Appellants' claims were barred by res judicata, because the causes of action alleged in their complaint were adjudicated in both the Federal Litigation and the *Martin* Litigation. Appellees pointed out that, first, the parties in this action were the same as the parties in the Federal Litigation and the *Martin* Litigation. Second, Appellees contended that in both of those prior cases, Appellants alleged similar causes of action based on the ratification of the sale of the Property to Winston, and that both ended in final judgments on the merits.

Finally, Appellees contended that Appellants' complaint was filed without substantial justification. Appellees pointed out that the circuit court already admonished Appellants and assessed attorney's fees and costs against Martin during the *Martin* litigation. According to Appellees, the claims were frivolous, harassing, mimicked complaints already made and dismissed with prejudice, and were intended to "run-up [] Winston's litigation costs."

On February 15, 2019, Appellants responded with their own motion for summary judgment and opposition to Appellees' motion, arguing, first, that they had capacity and standing to bring the instant action because, under D.C. law, an LLC whose charter has been administratively dissolved may prosecute or defend actions while winding up. Citing

Maryland Code (1975, 2014 Repl. Vol), Corporations and Associations Article ("C&A"), § 4A-1001(a), Appellants insisted that the "laws of the State under which a foreign limited liability company is organized govern its organization, internal affairs, and the liability of its members," and that, therefore, D.C. law governs the internal affairs of WMHG. Appellants also claimed that, under D.C. law, a member of a dissolved LLC may maintain an action against other members to enforce that member's rights.

Second, Appellants asserted that their claims were timely because the May 14, 2014 deed Winston recorded was defective, having "intentionally omit[ed] reference to chain of title." Appellants claimed that it was not until Martin was "forced to file a quiet title claim in the *Federal Litigation* that Winston formally and on the record first claimed that he was conveyed WMHG's title in the *Inglewood* [Action]." Therefore, argued Appellants, their claims did not ripen "into a justiciable controversy until Martin's appeal was exhausted on September 26, 2018."

Third, Appellants contended that their claims for declaratory relief and ejectment are equitable in nature, and that a declaration that a judgment is void would not be subject to a statute of limitations or laches. Despite the long history of judicial determinations to the contrary, they insisted that WMHG was entitled to declaratory relief establishing that WMHG was the fee simple owner of the Property, recycling many of their arguments from prior cases. In response to the allegation that the issue was res judicata, Appellants added the argument that the Inglewood foreclosure was void as against WMHG's title. Void judgments, they argued, are subject to collateral attack. Similar to their argument in

response to the statute of limitations defense, in a circumlocutory way, Appellants averred that neither the Federal Litigation nor the *Martin* Litigation have res judicata effect on the instant action, because it was not until "Winston asserted in the *Federal Litigation* that he acquired WMHG's title in the *Inglewood* [Action] that Martin believed a justiciable issue or controversy ripened to warrant declaratory relief."

Finally, Appellants argued that their claims for ejectment and trespass are triable issues of fact on which relief can be granted, and that there was no basis for attorney's fees, because their claims are "cognizable, credible, grounded in fact and law, and made in good faith." Therefore, they concluded, their motion for summary judgment should be granted, and Appellees' motion to dismiss or for summary judgment should be denied.

Court's Orders[8]

On January 16, 2020, the circuit court filed an order in response to our decision in *Martin II*. In its order, the court dismissed and closed the case statistically, determining that the "Court of Special Appeals decision is dispositive of the claims in this case." The court noted that all three claims alleged in Appellants' newest complaint "relate[d] to the alleged interest of WMHG in the [Property]," and that not a single claim was made "on behalf of Martin individually." The court explained that the "Court of Special Appeals found that [Martin] is not authorized to act for WHMG[,]" and that "[s]ince the claims in

[8] In an April 11, 2019 order entered on April 15, the circuit court stayed the instant action "pending a final resolution of [the *Martin* Litigation], including any appeals."

this case are allegedly those of WMHG, and Martin may not pursue claims on behalf of WMHG, this case must be dismissed."

Appellants filed a motion to alter and amend judgment on January 31, 2020. On March 9, 2020, the court responded with a second Opinion and Order denying the motion to alter and amend, dismissing the case with prejudice, and ordering sanctions to be imposed on Martin and WMHG's attorney. In its order, the court explained that, despite his claims to act as a trustee for WMHG under the District of Columbia's LLC laws, Martin is a 50% owner of WMHG with Winston and does not have authority to act as an agent of WMHG simply because he is a member. Rather, the court noted, Winston clearly "did not authorize Martin to sue him on behalf of WMHG." Further, the court found Martin's claim that he is seeking to wind up the affairs of WMHG five years after it was dissolved to be unbelievable; instead, the court found, Martin was "trying to use the entity to pursue his own personal interests."

Next, the court found that Appellants' claims were barred on the grounds of both res judicata and the statute of limitations. The court determined that res judicata barred the action because the case, "like its predecessors, centers on the question of who holds title to the [Property]." The "issue of title to the Property," explained the court, "has been conclusively determined in several prior judgments issued in litigation between these parties," including during the *Inglewood* Action and the Federal Litigation. The court rejected Appellants' arguments that the Inglewood foreclosure only foreclosed Mr. Fenwick's interest in the property, because Judge Smith clearly ruled that the "lien was

against the Property for assessment fees which were not paid by either WMHG or Fenwick and that both WMHG and Fenwick were joined as parties to the litigation." The court also dismissed Appellants' claims that the court in the Federal Litigation did not have jurisdiction to review the foreclosure in the Inglewood Action as "absurd."

Because the foreclosure sale was ratified on January 14, 2014, and the fee simple deed reflecting the sale was recorded on June 16, 2014, the court found that Appellants' claims were barred by the statute of limitations when the complaint was filed on September 27, 2018. A fee simple deed conveys every interest in the property, explained the court, and the recording of any instrument acts as constructive notice from the date of recording. Accordingly, Appellants had three years from the date the deed was recorded to file their complaint.

Finally, the court granted Appellees' request for sanctions, finding Appellants' claims to be "demonstrably frivolous" and noting that Martin was previously sanctioned for violating Maryland Rule 1-341 in litigation between the parties. The court found that both Martin and WMHG's attorney had "maintained this proceeding without substantial justification" and asked that Appellees' counsel submit a verified statement supporting his request for costs and expenses. After considering the verified statement, on June 24, 2020, the court entered a judgment for Winston's "reasonable legal fees and costs" in the amount of $11,953.50. The judgment was entered jointly and severally against Martin and WMHG's attorney.

On July 23, 2020, Appellants noted this appeal.

DISCUSSION

An appellate court's review of the circuit court's grant of a motion to dismiss is de novo. *Holzheid v. Comptroller of Treasury of Maryland*, 240 Md. App. 371, 387 (2019). "In the course of that review, 'we must determine whether the trial court's decision was legally correct[,]' . . . and 'accord no special deference to the Circuit Court's legal conclusions.'" *Id*. (citations omitted).

I.

Standing

A. Parties' Contentions

Appellants argue that the circuit court was wrong to conclude that WMHG did not have standing when it determined that (a) Winston did not authorize Martin to file the lawsuit and (b) the lawsuit was not part of an attempt to wind up WMHG's affairs. Appellants contend that Winston and Martin agreed to wind up the affairs of WMHG in 2010 and imply that the process is still ongoing. Appellants also insist that the issue of WMHG's standing to sue was adjudicated in both the *Fenwick* Action and the Federal Litigation. In the *Fenwick* Action, they contend, even though WMHG was administratively dissolved, its appeal was allowed when Winston and Martin informed the court that they were winding up WMHG's affairs pursuant to D.C. law[9], which allows administratively dissolved LLCs to prosecute and defend actions as part of a good faith effort to wind up

[9] D.C. Code § 29-807.02(b)(2)(B) provides the rights and obligations of an LLC upon winding up.

their affairs. In the Federal Litigation, claim Appellants, the court "ruled in favor of WHMG" when Winston raised the fact that Martin could not bring claims on behalf of WHMG. Accordingly, allege Appellants, "Winston is precluded from contesting the issue [of standing] and the circuit court's adoption of the defense constitutes legal error."

To the contrary, Appellees assert that because Martin and Winston are co-equal 50% owners of WMHG and there is no operating agreement, the trial court in the *Inglewood* Action found that neither Martin nor Winston had the authority to represent WMHG, and determined that a lawyer should be appointed to represent it. Although Martin and Winston agreed on a lawyer to represent WMHG in the *Inglewood* Action, Appellees posit that Winston did not agree to allow WMHG's attorney to represent WMHG in any subsequent actions. Accordingly, argue Appellees, WMHG's attorney had no authority to file a complaint on behalf of or represent WMHG.

Appellees further contend that WMHG is dissolved, and that, under Maryland law, (1) an LLC whose charter has been forfeited cannot maintain an action in court against a party, and (2) where a foreign LLC cannot bring suit because of a forfeited charter, its members also cannot file a derivative suit on its behalf or pursue an appeal of the dismissal of that action. Accordingly, Appellees conclude that neither Martin nor WMHG's attorney had authority to file the complaint on behalf of WMHG.

B. Analysis

We hold that the circuit court did not err in finding that Appellants' appeal should be dismissed for lack of standing because Martin has no authority to maintain a suit on

behalf of WMHG.[10] Although Appellants claim that "Mr. Martin has been acting as trustee under the [District of Columbia's] limited liability laws to wind up WMGH[,]" the record reveals that Appellants provided no evidence to support this contention.

The parties agree that Winston and Martin are "co-equal 50% owners of WMHG, and its only members." As noted, WMHG is an LLC organized under the laws of the District of Columbia. *Martin I* at 1. It has been established that there is no operating agreement for WMHG. *Martin II* at 18. When there is no operating agreement controlling

[10] Although we affirm the trial court's ruling on standing, we also point out that WMHG is no longer registered as a foreign limited liability company in Maryland—its certificate was forfeited in 2011. Maryland Code (1975, 2014 Repl. Vol), Corporations and Associations Article ("C&A") § 4A-1013(a) provides that "[t]he Department may forfeit the right of any foreign [LLC] to do business in this State if the [LLC] fails to file with the Department any report or fails to pay any late filing penalties required by law." Upon forfeiture of its right to do business in Maryland, "the foreign [LLC] is subject to the same rules, legal provisions, and sanctions as if it had never qualified or been licensed to do business in this State." C & A § 4A-1013(d). While C & A § 4A-1009(a) provides that doing business does not include "maintaining suit," C & A § 4A-1007(a) qualifies this exception. The Court of Appeals has explained that, according to C & A § 4A-1007(a), "'[u]nless the [foreign] [LLC] shows to the satisfaction of the court' that it has paid a penalty for noncompliance and complied with the registration requirements, it cannot 'maintain' suit." *A Guy Named Moe, LLC v. Chipotle Mexican Grill of Colorado*, LLC, 447 Md. 425, 435, 447 (2016) (internal quotations omitted) (holding that a foreign LLC with a forfeited certificate could theoretically maintain a suit against Chipotle, because, after filing suit, it cured its "failure to comply with registration requirements" and would be allowed to "continue its suit even though not registered at the time of filing suit.")

In this case, WMHG is a foreign LLC with a forfeited certificate in Maryland. To our knowledge, it has not attempted to renew its certificate. We also have no evidence that WMHG has paid or attempted to pay any penalties under C & A § 4A-1007(a) that would entitle it to maintain suit. Because neither of these requirements has been complied with, "the foreign [LLC] and any person claiming under it may not maintain suit in any court of this State." C & A § 4A-1007(a). Therefore, any suit brought on behalf of WMHG in Maryland, including one brought by an attorney in accordance with Maryland Rule 2-131(a)(2), cannot be maintained unless the requirements of C & A Title 4A are met.

an LLC organized in the District of Columbia, the provisions of Title 29 of the D.C. Code "govern the matter." D.C. Code § 29-801.07(b) (2013).[11] The statute provides that a "limited liability company shall be a member-managed limited liability company" unless the operating agreement provides otherwise. D.C. Code § 29-804.07(a). A member-managed LLC is subject to the following rules, amongst others:

> (1) Except as otherwise expressly provided in this chapter, the management and conduct of the company shall be vested in the members.
> (2) Each member shall have *equal rights in the management and conduct of the company's activities and affairs*.
> (3) A difference arising among members as to a matter in the ordinary course of the activities and affairs of the company may be decided by a majority of the members.

D.C. Code § 29-804.07(b)(1)-(3) (emphasis added). Furthermore, the "dissolution of a limited liability company shall not affect the applicability of [§ 29-804.07]." D.C. Code § 29-804.07(e). In other words, even when an LLC has dissolved and is winding up, unless an operating agreement provides otherwise, the foregoing provisions continue to apply.

In general, the D.C. Code provides that an LLC "shall have the capacity to sue and be sued in its own name and the power to do all things necessary to carry on its activities and affairs." D.C. Code § 29-801.05. The D.C. Code, however, does not permit a member of a member-managed LLC to act unilaterally on behalf of the LLC. An LLC member is not entitled to act as an agent of an LLC "solely by reason of being a member." D.C. Code

[11] Maryland Code (1975, 2014 Repl. Vol), Corporations and Associations Article ("C&A") § 4A-1001(a) provides that the "laws of the State under which a foreign limited liability company is organized govern its organization, internal affairs, and the liability of its members."

§ 29-803.01(a). Here, although Martin claims to be acting as trustee to wind up WMHG, he offered the court no evidence to support this claim. As Appellees have pointed out, our courts have already addressed Martin's ability to pursue legal claims on behalf of WMHG. In his January 16, 2014 order ratifying the sale of the Property to Winston, Judge Smith recounted that:

> in these and other consolidated proceedings, the [c]ourt conducted hearings to determine who had the authority to represent [WMHG]; after these hearings and taking testimony on the subject, the [c]ourt concluded that neither Winston nor Martin had proven they had the authority to direct and control the LLC and the [c]ourt indicated that it would appoint a lawyer to represent the LLC; Winston and Martin, out of the presence of the [c]ourt, jointly secured counsel they could both agree on to represent [WMHG][.]

As we have explained, unless otherwise specified, members of a member-managed LLC have equal rights to control the management and conduct of the activities and affairs of the LLC. D.C. Code § 29-804.07(b). The dissolution of an LLC does not affect the applicability of this rule, and, accordingly, Martin cannot maintain suits on behalf of WMHG without Winston's agreement, even during the winding up process.[12] D.C. Code

[12] We note that the D.C. Code permits the filing of a derivative suit, or an action in which a member "seeks to assert, on behalf of the [LLC], a claim belonging not to him but to the [LLC]." *Flocco v. State Farm Mut. Auto. Ins. Co*., 752 A.2d 147, 151 (D.C. 2000); *see also* D.C. Code § 29-808.02. To be entitled to maintain a derivative suit, however, a member must initially make a "demand on the other members in a member-managed limited liability company . . . requesting that they cause the company to bring an action to enforce the right, and the . . . other members do not bring the action within a reasonable time," or a demand would be futile. D.C. Code § 29-808.02. A member bringing a derivative suit is required to show "to the satisfaction of the court that he has exhausted all of the means within his reach to obtain within the [LLC] itself the redress of his grievances or action[,]" including that he has made a demand on the other members requesting that they seek the relief that he requests; or alleging facts showing that such a demand would (Continued)

§ 29-804.07(e). In the absence of any proof that Martin is capable of unilaterally acting for or maintaining a suit on behalf of WMHG, then, we hold that trial court did not err in dismissing Appellants' appeal for lack of standing.

This issue is dispositive of all remaining issues, save the attorney's fees. For the sake of completeness, however, we will briefly address the remaining grounds upon which the court dismissed the underlying action.

II.

Statute of Limitations

A. Parties' Contentions

Appellants argue that WMHG's claims are not barred by the statute of limitations. First, Appellants insist that, in Maryland, a declaration that a judgment is void is not subject to either limitations or laches; therefore, Appellants' request for a declaration that the Inglewood foreclosure is void and unenforceable is not barred. Alternatively, Appellants contend that, until early 2016, they did not become aware of Winston's "artifice to misappropriate WMHG's title," because Winston's deed is misleading and ambiguous in that it does not contain any reference to the property interest acquired, which is conventional to memorialize chain of title. In response, WMHG filed the Federal Litigation, in which, Appellants allege, Winston claimed for the first time that the

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be futile "because directors are not disinterested or did not validly exercise their business judgment." *Flocco*, 752 A.2d at 151 (citations omitted). The record does not show that Martin made a demand, or any arguments that such a demand would be futile.

Inglewood Action was an action to collect a debt against WMHG. Appellants aver that only after the Court's dismissal of these claims did WMHG's claims become ripe.

Appellees respond that Appellants cite inapposite authority for the proposition that a declaration that a judgment is void is not subject to either limitations or laches. Here, Appellees insist, the rights of the parties have been declared several times and need not be declared again.

B. Analysis

We hold that the circuit court did not err when it found that Appellants' claims were barred by the statute of limitations. The governing statute, Maryland Code (1974, 2020 Repl. Vol), Courts and Judicial Proceedings Article ("CJP") § 5-101 provides that "[a] civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced."

For purposes of the statute of limitations, "when a cause of action accrues in a civil case is determined by application of the 'discovery rule.'" *Bacon v. Arey*, 203 Md. App. 606, 652 (2012). The discovery rule states that the "'the action is deemed to accrue on the date when the plaintiff knew or, with due diligence, reasonably should have known of the wrong.'" *Id*. (quoting *Doe v. Archdiocese of Washington*, 114 Md. App. 169, 177 (1997)). Under the discovery rule, the statute of limitations is activated by actual knowledge only, meaning

> express cognition, or awareness implied from . . . knowledge of circumstances which ought to have put a person of ordinary prudence on

> inquiry thus, charging the individual with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued. In other words, a person cannot fail to investigate when the propriety of the investigation is naturally suggested by circumstances known to him; and if he neglects to make such inquiry, he will be held guilty of bad faith and must suffer from his neglect.

Id. (quoting *Bennett v. Baskin & Sears*, 77 Md. App. 56, 67 (1988)) (cleaned up). Accordingly, the statute of limitations starts to run when a plaintiff "gains knowledge sufficient to put [him] on inquiry. As of that date, [he] is charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation. The beginning of limitations is not postponed until the end of an additional period deemed reasonable for making the investigation." *Id*. at 652-53 (quoting *Bennett*, 77 Md. App. at 67).

Here, Appellants' claims of ejectment and trespass are rooted in Winston's recordation of a deed to the Property and his filing of a report with the Maryland SDAT stating that WMHG's interest and title was conveyed in the *Inglewood* Action. Although "[t]he recording of any instrument constitutes [only] constructive notice from the date of recording," Maryland Code, (1974, 2015 Repl. Vol.), Real Property Article ("RP") § 3-102, we agree with the circuit court that, for the purposes of the statute of limitations, Appellants' claims in this case accrued from the time Winston recorded his deed.

Appellant does not claim to have been unaware that Winston recorded this deed, but rather claims that Winston's deed does not memorialize chain of title, and is thus misleading and ambiguous, because Appellants claim they were somehow unaware until 2016 that the Inglewood foreclosure extinguished their rights to the Property. Whatever Appellants claim, however, they participated in and vehemently opposed proceedings in

the *Inglewood* Action, in which the sale of the Property to Winston was ratified in January 2014. *See Martin I* and *II*. WMHG was a party to the action and Appellants were clearly aware of the sale of the Property to Winston; they later appealed the judgment in the Inglewood foreclosure. *Martin I* at 5-6; *Martin II* at 5-6. A few months later, in June 2014, Winston recorded his fee simple deed reflecting the sale, describing the property, and listing its address.

Therefore, even if Appellants did not actually know that their title to the Property had been lost in the *Inglewood* Action, they "with due diligence, reasonably should have known" that this was the outcome of the ratification of the foreclosure sale. *See Bacon,* 203 Md. App. at 657-61 (holding that the statute of limitations for tort and constitutional claims began to run when appellant purchased his property, because at the time of purchase, he knew or reasonably should have known that his access to a road was lost, even though a plat affecting his access was not included in his chain of title). Because Winston recorded his deed on June 16, 2014, Appellants should have brought their actions for trespass and ejectment by June 16, 2017. By filing their complaint on September 27, 2018, they missed this deadline by more than a year, and their claims are thus barred by the statute of limitations.

We also hold that Appellants' declaratory judgment claims are barred by the statute of limitations. This Court has held that there is "no time bar at all" if all that Appellants seek is "the primary relief of a simple declaration." *Murray v. Midland Funding, LLC*, 233 Md. App. 254, 261 (2017). However, we explained that, "[t]o the extent that a declaratory

judgment action also seeks . . . 'remedies,' . . . that ancillary relief may be stale and therefore can be subject either to limitations or laches as the case may be." *Id*. at 262 (internal citations omitted); *see also Com. Union Ins. Co. v. Porter Hayden Co*., 116 Md. App. 605, 657-60 (1997) (explaining that the three-year statute of limitations started to run on an insured's declaratory judgment action when the breach of contract occurred). The "'determination of whether a declaratory judgment action is properly at law or in equity must be made by an examination of the nature of the claim asserted and the relief requested.'" *Id*. (quoting *LaSalle Bank, N.A. v. Reeves*, 173 Md. App. 392, 411 (2007)) (cleaned up). When a claim is for money damages, we explained such claims are "actions at law and, thus, subject to a statute of limitations." *Id*. at 259.

In their complaint, Appellants clearly ask for compensatory and punitive damages related to the wrongs perpetrated against them in the *Inglewood* Action. Accordingly, CJP § 5-101 applies to Appellants' declaratory judgment claim as well because the underlying complaint was filed more than three years after Winston recorded his deed.

III.

Res Judicata

A. Parties Contentions

Appellants challenge the circuit court's ruling that the issue of title to the Property—on which the underlying complaint is based—had been decided in both the *Inglewood* Action and the Federal Litigation. First, Appellants attack the *Inglewood* Action, which they claim ratified the sale of Mr. Fenwick's sheriff's deed to Winston and was a judgment

against Mr. Fenwick only, meaning that WMHG had no reason to appeal that decision. Appellants also claim that WMHG was not joined as a party to the *Inglewood* Action.

Additionally, Appellants appear to argue that Judge Smith's rulings on WMHG's exceptions in the *Inglewood* Action cannot reasonably be read as reversals of his prior rulings regarding Fenwick's sheriff's deed. Rather, after Fenwick's sheriff's deed was set aside and Winston's purchase of the Property was still ratified, the "only reasonable reading" that can be ascribed to Judge Smith's rulings on WMHG's exceptions is that the rulings were factual in nature and not rulings revisiting the status of Inglewood's lien; Fenwick's purchase was still reversed and the lien obtained by Inglewood was rendered void because of this. Therefore, Appellants assert, the *Inglewood* Action does have res judicata effect, but not against WMHG; instead, it precludes Winston and Fenwick from asserting that the judgment is against anyone other than them.

Appellants also argue that the *Inglewood* foreclosure is void and unconstitutional as applied to WMHG because the court never established competent jurisdiction over WMHG under the Maryland Contract Lien Act ("MCLA"). According to Appellants, the argument that Inglewood's lien attached to the Property regardless of who owned it is a violation of the MCLA and such a reading would "necessarily render the [foreclosure] judgment void and unenforceable." Void judgments, note Appellants, are subject to collateral attack. And, while Appellants concede that the issue of jurisdiction under the MCLA was raised and litigated in the *Inglewood* Action, they argue that this issue was litigated and determined against Fenwick only.

Second, Appellants insist that the Federal Litigation has no res judicata effect on the present litigation, because the Court in the Federal Litigation "expressly declined WMHG's request to review the validity of the [*Inglewood* Action]," due to the "limits of its jurisdiction." This, claims Appellants, was not a ruling that the property was sold legally to Winston in the *Inglewood* Action, but was instead "an instruction that any review of the [*Inglewood* Action] must be made in State Court." Accordingly, Appellants state, "neither case can be cited as a prior adjudication of whether the [*Inglewood* Action] was a judgment against WMHG," and both prove that "WMHG's claim for declaratory relief is cognizable and necessary to determine whether Winston acquired legal title to the Property, and if so, whether the judgment is valid as against WHMG."

Appellees respond succinctly that two decisions from the Court of Special Appeals have affirmed the ratification of the purchase of the Property by Winston. Appellees point out that, although Appellants continue to attempt to relitigate Judge Smith's 2014 ratification of the foreclosure sale, that judgment was final and is not subject to re-litigation.

B. Analysis

Res judicata bars the "relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation." *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. 93, 106-07 (2005).

In Maryland, the elements of res judicata are:

> (1) the parties in the current action must be 'the same or in privity with the parties to the earlier action'; (2) 'the claim in the current action [must be] identical to the one in the prior adjudication'; and (3) there must have been 'a final judgment on the merits in the previous action.'

Daughtry v. Nadel, 248 Md. App. 594, 629 (2020) (quoting *Bank of New York Mellon v. Georg*, 456 Md. 616, 625 (2017)). The Court of Appeals has also confirmed that res judicata

> precludes the same parties from relitigating any suit based upon the same cause of action because the second suit involves a judgment that 'is conclusive, not only as to all matters that have been decided in the original suit, *but as to all matters which with propriety could have been litigated in the first suit*.'

Powell v. Breslin, 430 Md. 52, 63 (2013) (quoting *Alvey v. Alvey*, 225 Md. 386, 390 (1961)) (emphasis added).

We hold that the circuit court did not err when it found that res judicata barred the current action and dismissed the case.[13] Although Appellees did not raise the doctrine of

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[13] Res judicata bars the current action. First, despite Appellants' claims to the contrary, the parties to this and the many previous actions in this long string of litigation are the same. Appellants' claim that they were not involved in the *Inglewood* Action and that the foreclosure was a judgment against Mr. Fenwick only has been debunked in numerous court and appellate proceedings. As we explained in both *Martin I* and *Martin II*, during the *Inglewood* Action, Inglewood amended its order to docket foreclosure to name *both* Fenwick and WMHG. *Martin I* at 3; *Martin II* at 4. WMHG, through Martin, subsequently participated throughout the entire *Inglewood* Action. *Martin I* at 4; *Martin II* at 4-5.

Second, the claims in the underlying complaint are either identical to those in the many prior adjudications or are matters which could have been litigated in the original suit. *See Powell*, 430 Md. at 63. As we have indicated, Appellants' request for a declaratory judgment regarding the "legal rights implicated and interests conveyed in [the *Inglewood*

(Continued)

law of the case—a close sister of the doctrine of res judicata[14]—we conclude that this

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Action]" has been addressed at least twice before. First, on January 16, 2014, Judge Smith in the *Inglewood* Action ratified the foreclosure sale to Winston. Although Martin appealed the judgment ratifying the foreclosure sale, he "failed to post the required appeal bond for his appeal from the final judgment in that matter," his appeal was dismissed with prejudice, and that judgment is now final. *Martin I* at 6; *Martin II* at 6. Second, legal title to the Property was addressed in the Federal Litigation. In its Memorandum Opinion, the District Court acknowledged that "[a]t the heart of this case is the question of who holds title to the Property," and determined that issue preclusion prevented it from reconsidering title to the Property, because "Judge Smith, for the Circuit Court of Prince George's County, squarely confronted and decided this issue in the [*Inglewood*] foreclosure case, holding that Inglewood had a valid lien, and was entitled to foreclose, eventually awarding Winston legal title to the Property." Accordingly, legal title to the Property has been addressed by multiple courts and decisions and our reconsideration of the issue is barred by res judicata.

Additionally, although Appellants have not raised the issues of ejectment or trespass in prior litigation, the doctrine of res judicata provides that a judgment "between the same parties and their privies is a final bar to any other suit upon the same cause of action and is conclusive, not only as to all matters decided in the original suit, *but also as to matters that could have been litigated in the original suit*." *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 392 (2000) (emphasis in original). A matter could have been brought in prior litigation if it "arises out of the same 'transaction' as the old one." *Daughtry*, 248 Md. App. at 629. "Thus, courts have interpreted this transaction test to require claims that are 'based upon the same set of facts[,] and [that] one would [ordinarily] expect . . . to be tried together,' to be brought in the first claim or else be barred." *Id*. at 630 (quoting *Gonsalves v. Bingel*, 194 Md. App. 695, 711 (2010)). Appellants' claims for ejectment and trespass arise out of the same set of facts as the matter addressed in the *Inglewood* Action. Both claims are premised on the contention that WMHG holds or has the right to hold legal title to the Property, and would be based on nearly identical facts to those raised and addressed in the *Inglewood* Action and foreclosure in which title and the right to possession of the Property was adjudicated.

Finally, there was clearly a final judgment on the merits regarding legal ownership of the property. As we have mentioned, although WMHG, through Martin, appealed the judgment ratifying the Inglewood foreclosure, Martin "failed to post the required appeal bond for his appeal from the final judgment in that matter." *Martin I* at 6; *Martin II* at 6. Accordingly, the judgment remains enrolled and final.

[14] This Court has acknowledged that res judicata and law of the case are "similar defenses aimed at preventing parties from re-litigating issues that have already been

(Continued)

doctrine is dispositive of the matter at hand. *See Holloway v. State*, 232 Md. App. 272, 282-83 (2017) (holding that the law of the case defense can be raised for the first time on appeal and acknowledging that the doctrine is similar to the doctrine of res judicata, which a court can raise and consider *sua sponte*). The Court of Appeals has explained that the law of the case doctrine is one of appellate procedure, and that, "[u]nder the doctrine, once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." *Scott v. State*, 379 Md. 170, 183 (2004). "Not only are lower courts bound by the law of the case, but '[d]ecisions rendered by a prior appellate panel will generally govern the second appeal' at the same appellate level as well, unless the previous decision is incorrect because it is out of keeping with controlling principles announced by a higher court and following the decision would result in manifest injustice." *Id.* (quoting *Hawes v. Liberty Homes*, 100 Md. App. 222, 231 (1994)). In Maryland, the law of the case doctrine "applies to both questions that were decided and questions that could have been raised and decided." *Holloway*, 232 Md. App. at 282.

Although this Court determined in *Martin I* that res judicata did not preclude Martin's *personal claims* against Winston, *Martin I* at 16-17, Judge Harrell, writing for this Court, stated unequivocally that "[t]he circuit court ruling was correct insofar as the

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decided in court. The law of the case doctrine acts as a corollary to *res judicata* keyed specifically to appellate decisions." *Holloway*, 232 Md. App. at 282. In other words, the doctrine of law of the case "'lies somewhere beyond *stare decisis* and short of *res judicata.*'" *Stokes v. Am. Airlines, Inc.*, 142 Md. App. 440, 446, (2002) (quoting *Tu v. State*, 336 Md. 406, 416 (2002)).

foreclosure judgment is a final judgment on the merits of whether the foreclosure sale was proper and binds the parties at least insofar as that goes." *Martin I* at 15. We further observed in *Martin II* that the Inglewood foreclosure represented a final judgment "not subject to re-litigation in this case or any other." *Martin II* at 32. Accordingly, it is law of the case that the Inglewood foreclosure sale is both proper and binding on the parties.

Because Appellants' claims in the present litigation seek to attack the binding nature of the Inglewood foreclosure sale, they are barred by law of the case. Appellants' request for a declaratory judgment regarding the "legal rights implicated and interests conveyed in [the *Inglewood* Action]" is clearly an attempt to relitigate the foreclosure judgment that this Court has already adjudicated to be valid.

The common law action of ejectment, upon which Appellants seem to base Count I of their complaint, seeks an "action to try the right of possession to the land in controversy." *Wood v. Grundy*, 3 H. & J. 13, 19 (1810). In other words, ejectment is an action to "facilitate the recovery of the possession of lands, of which the person having the right of possession has been dispossessed." *Martin v. Howard Cty.*, 349 Md. 469, 482 n. 9 (1998) (quoting John M'Henry, *The Ejectment Law of Maryland*, 52 (1822)). The right to possess a property is "a requisite for prevailing on an action for ejectment." *Laney v. State*, 379 Md. 522, 540 (2004). The Court of Appeals has long held that "ratification of [a] foreclosure sale divests the mortgagor of the right of possession," and "the right to possess the sold property lies with the purchaser, not the former mortgagor." *Id.* at 540-41. Accordingly, although this matter was not raised or decided in previous litigation, it relies

on the premise that WMHG has a right to legal title to the Property and is clearly another attempt to attack the validity of the binding foreclosure judgment.

Finally, Appellants appear to make two distinct trespass claims. Appellants first accuse Appellees of "intentional or negligent intrusion to WMHG's possessory interest in the Property" because they recorded "the deed issued pursuant to [the *Inglewood* Action] and [filed] the report with the [Maryland] SDAT claiming that WMHG's title to and interest in the Property was conveyed in [the *Inglewood* Action.]" This claim for trespass appears to be a claim of trespass *quare clausum fregit*, which is "available for the trial of title to real property." *Gore v. Jarrett*, 192 Md. 513, 517 (1949). In other words, where a

> plaintiff in an action of trespass to real property claims to have the title and by virtue thereof the possession, and the defendant likewise claims the title and the possession, the controversy will be decided in favor of the party who is found to have the title, since the possession in such a case is dependent upon the title.

Id.

Appellants further aver that by "directing real estate professionals to enter the Property for purposes of listing the Property for sale, [Appellees'] conduct similarly constitutes an intentional or negligent intrusion upon WMHG's Property." A "trespass is defined as an intentional or negligent intrusion upon or to the possessory interest in property of another," *Bittner v. Huth*, 162 Md. App. 745, 752 (2005), and can be committed when someone "causes a thing or a third person to [enter land in the possession of another]." *Rosenblatt v. Exxon Co., U.S.A.*, 335 Md. 58, 79 (1994) (citing Restatement (Second) of Torts § 161 (Am. Law Inst. 1965)). But, crucially, "[i]n order to prevail on a

cause of action for trespass, the plaintiff must establish . . . an interference with a possessory interest in his property[.]" *Mitchell v. Baltimore Sun Co.*, 164 Md. App. 497, 508 (2005). Again, all of Appellants' trespass claims concern legal title and possessory interests to the Property. In conclusion, we hold that because we have determined in at least two previous appeals that the circuit court was correct in finding the Inglewood foreclosure both proper and binding, all three counts in the underlying complaint are barred by law of the case. [15]

IV.

Attorney's Fees

Appellants contend that the court's decision to impose attorney's fees should be reversed and vacated because WMHG's claims were substantially justified and made in good faith.

[15] Appellants' claim that Judge Smith's judgment ratifying the foreclosure sale is void also lacks merit. Although void judgments may be collaterally attacked, the Court of Appeals has explained that only when a court lacks fundamental jurisdiction to enter a "judicial decree or judgment" is that judgment void. *LVNV Funding v. Finch*, 463 Md. 586, 608 (2019) (quoting *Cnty. Comm'rs of Carroll Cnty. v. Carroll Craft Retail, Inc.*, 384 Md. 23, 44 (2004)). Fundamental jurisdiction refers only to "'the *power* of the court to render a valid decree,'" and "'[i]t is only when the court lacks [this] kind of jurisdiction which [ ] this Court termed 'fundamental jurisdiction' that its judgment is void.'" *Id*. at 608-09.

Here, Maryland Rule 14-203(a) provides only that an "action to foreclose a lien shall be filed in the county in which all or any part of the property subject to the lien is located." Inglewood fulfilled this requirement; the Property is located in Prince George's County, and Inglewood filed their order to docket foreclosure in the Circuit Court for Prince George's County. Further, Maryland Rule 14-203(b) provides that "[t]he court's jurisdiction over the property subject to the lien attaches when an action to foreclose is filed," meaning that the circuit court obtained jurisdiction over the Property when Inglewood filed its action to foreclose. Thus, because the circuit court had fundamental jurisdiction over the Property, the judgment cannot be void.

Appellees counter that Judge Woodard had already imposed sanctions on Appellants in the *Martin* Litigation due to Appellants' violation of Maryland Rule 1-341. Here, they contend, Appellants' claims are demonstrably frivolous, which is sufficient to support the trial court's finding that their complaint was brought in bad faith.

Maryland Rule 1-341 grants courts the authority to award attorney's fees in actions brought in bad faith or without substantial justification:

> Rule 1-341. Bad faith – Unjustified proceeding.
>
> (a) Remedial Authority of the Court. In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party of the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it.

Any party requesting attorneys' fees must support its motion with "a verified statement that sets forth the information required in subsections (b)(2) or (b)(3) of this Rule, as applicable." Maryland Rule 1-341(b)(1).

The Court of Appeals has explained that "Rule 1-341 requires a court to make two separate findings, each with different, but related, standards of review." *Christian v. Maternal-Fetal Med. Assocs. of Maryland, LLC*, 459 Md. 1, 20 (2018). To impose sanctions, the judge

> must first find that the conduct of a party during a proceeding, in defending or maintaining the action, was without substantial justification or was done in bad faith. An appellate court reviews this finding for clear error or an erroneous application of the law. Upon review, the evidence is viewed 'in a light most favorable to the prevailing party.' The burden of demonstrating

> that a court committed clear error falls upon the appealing party. So long as "there is any competent material evidence to support the factual findings of the [ ] court, those findings cannot be held to be clearly erroneous."

Id. at 20-21. "Next, the judge must separately find that the acts committed in bad faith or without substantial justification warrant the assessment of attorney's fees." *Id*. at 21. We review this finding under an abuse of discretion standard, and "[s]o long as the hearing judge exercises his or her discretion reasonably, an appellate court will not reverse the judgment under review." *Id*.

For a claim to lack substantial justification, "a party must have no 'reasonable basis for believing that the claims would generate an issue of fact for the fact finder,' and the claim or litigation position must not be 'fairly debatable, must not be colorable, or must not be within the realm of legitimate advocacy.'" *Id.* at 22 (citations omitted) (cleaned up). "While avoiding the trap of utilizing hindsight, a court must conduct 'an examination of the merits' under the totality of the circumstances presented to the court when assessing whether a claim has substantial justification." *Id*. at 23.

In this case, the court found that both Martin and WMGH's attorney "have maintained this proceeding without substantial justification." In support of its finding, the court explained that "the claims made here are demonstrably frivolous," and noted that Martin "was previously sanctioned for violating Rule 1-341 in [the Martin] litigation[.]" Further, the court found that WMHG's attorney "represented [WMHG] in the prior federal litigation at which these same claims and arguments were rejected."

We hold that the trial court did not err in determining that Appellants maintained

the underlying proceeding without substantial justification. They have presented the court with three claims that were barred by law of the case, res judicata, and the statute of limitations. Accordingly, considering the parties' litigation history and the speciousness of the claims made in this most recent complaint, we hold that the court did not abuse its discretion in assessing fees against Appellants or WMHG's attorney.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.