Circuit Court for Calvert County
Case No. 04-C-16-000357

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1183

September Term, 2017

JAMES SEYMOUR ET AL.

v.

TIDEWATER INVESTMENT GROUP, LLC

Kehoe,
Berger,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: December 4, 2018

This appeal is from a declaratory judgment entered by the Circuit Court for Calvert County that decreed that Tidewater Investment Group, LLC, and not James Seymour and C&S Solomons Enterprises, Inc., owns an existing pier (the "Pier"), and the right to build additional piers (the "Additional Pier Rights") in a part of the Patuxent River near Solomons, Maryland. Seymour and C&S raise several issues, which we have reworded and consolidated into three for purposes of our analysis:

(1) Is Tidewater the owner of the Pier and the Additional Pier Rights?

(2) Do the doctrines of res judicata or collateral estoppel bar Tidewater's claims?

(3) Was Tidewater's action barred by the Statute of Limitations?

Because our answer is "yes" to the first question and "no" to the second and third, we will affirm the judgment of the circuit court.

Background

The core issue in this case is whether the Pier and the Additional Pier Rights are riparian rights appurtenant to a parcel of land in Solomons, Maryland (the "Property"), that was once owned by C&S but was later acquired by Tidewater through foreclosure. This is Tidewater's position. C&S and Seymour agree that the Pier and the Additional Pier Rights were at one time appurtenant to the Property but claim that those rights were severed from the Property and transferred to Seymour and C&S by actions taken by them when C&S owned the Property.

The Pier is located adjacent to a narrow neck of land connecting a portion of the town of Solomons to the mainland. This neck of land is bordered by the waters of Back Creek

on its easterly side and the Patuxent River to the west. Before the events described in this opinion occurred, the Property, as well as other parcels located on the neck, had water frontage and riparian rights on both Back Creek and the Patuxent River. Additionally, the Property and the other parcels were bisected by what was then State Route 2.

Our story begins in 1957, when the State Highway Administration ("SHA") sought to acquire the land lying between Route 2 and the Patuxent River for the construction of improvements to the highway. From what we can gather from the information in the record, the SHA intended to extend the existing shoreline out into the Patuxent through filling and to build a bulkhead to protect both the newly-added fast land and the highway from erosion. This project would necessarily involve demolition of any existing piers. The SHA entered into a number of option agreements with the then-owners of properties along the Patuxent in order to acquire the necessary property for the project. At that time, H. Leon Langley owned the Property, and so we limit our focus to the option agreement between him and the SHA. That agreement provided that Langley would remove any existing wood pier on the Patuxent so that the bulkhead could be constructed, but allowed him to retain:

> the right to construct, maintain or repair any pier structure they [sic] may desire to erect outside of the proposed bulkhead to be built by the Commission under this contract. The construction by the owners of such piers, however, to be subject to the approval of the War Department.

The SHA exercised its option a few months later. At that time, an official for the SHA delivered a document to Langley. Unfortunately, the only copy of this document in the record is largely indecipherable, but the parties do not dispute that it memorialized the

SHA's agreement with Langley as to his right to build new piers and further stated that this right inured to the benefit of Langley's "heirs, successors, and assigns." We will refer to this document as the "Pier Rights Agreement." The right to construct and maintain one or more piers adjacent to what had been the Property's frontage on the Patuxent River is what we mean by the phrase "Additional Pier Rights."

The SHA acquired the property, constructed the bulkhead, and filled the area between the bulkhead and the existing shoreline. At some point thereafter (the record doesn't indicate when), someone (the record doesn't indicate who) built the Pier, which extends from the bulkhead into the Patuxent River.

In 2003, C&S Enterprises, Inc., with Seymour as its president, acquired the Property, along with the Pier and the rights under the Pier Rights Agreement, from Select Products, Inc. by a deed ("the C&S Deed"). That deed conveyed the Property by metes and bounds description, and further stated that the Property was conveyed together with (emphasis added):

> the buildings and improvements thereupon erected . . . [and] the rights, alleys, ways, waters, privileges, appurtenances, and advantages, to the same belonging or anywise appertaining, and specifically *including the pier situate on Parcel 12*[.][1]

[1] Because "[t]he first step to wisdom is calling a thing by its right name," *Roulette v. City of Seattle*, 78 F.3d 1425, 1426 (9th Cir.1996.), we pause for an exercise in terminological exactitude. When we use the phrase "the Pier," we mean "the pier situate on Parcel 12."

At some point in the past, the Department of Assessments and Taxation assigned a tax map parcel number ("Parcel 12") to the location in the navigable waters of the Patuxent River on which the Pier is located. At times, the parties and the circuit court referred to the "the pier situate on Parcel 12" as "Parcel 12." Why they did this is unclear. Ownership of

On the same day, C&S executed a purchase money deed of trust to First Mariner Bank (the "First Mariner Deed of Trust"). The property conveyed by the deed of trust was described by a metes and bounds description, together with (emphasis added):

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the Pier *qua* structure is not the same thing as having legal title to the subaqueous bottom land beneath the Pier. We will briefly explain.

The record includes what the parties agree is a metes and bounds description of Parcel 12, and that description does not include any fast land. Moreover, as we noted in the main text, the deed conveying the Property to C&S did not convey "Parcel 12," but rather "the pier situate on Parcel 12." The scrivener recognized a distinction that is blurred by treating "the pier situate on Parcel 12" and "Parcel 12" as synonyms.

Building a pier does not mean that the owner of the pier acquires title to the soil beneath it. In fact, the opposite is more often the case. The State, as successor to the last Lord Proprietor, holds title to navigable waters located within the State's boundaries and the lands beneath them. *Board of Public Works v. Larmar Corp*., 262 Md. 24, 46 (1971) ("Navigable water and the land thereunder have always been a part of the public domain."); *Rayne v. Coulbourne*, 65 Md. App. 351, 359 (1985) ("[T]he State was and is deemed the owner of lands located under navigable waters.").

It is true that, in earlier times, "the State (and the proprietor or the colony) patented to individuals, subject to the public rights of navigation and fishery, fee simple title to land under water." *Wagner v. City of Baltimore*, 210 Md. 615, 622 (1956). This practice ended with the enactment of chapter 129 of the Acts of 1862. *Mayor & City Council of Baltimore v. Canton Co. of Baltimore*, 186 Md. 618, 630–31 (1946); *Sollers v. Sollers*, 77 Md. 148, 152 (1893). Part of Chapter 129 is now codified as Md. Code Real Property ("RP") Article § 13-101(h)(3), which excludes "any area covered by navigable water unless it was included in a patent issued before March 3, 1862" from the definition of "land" for purposes of Maryland's land patent law. Another part is found in Md. Code Environment Article ("EA") § 16-201(a), which states in pertinent part (emphasis added):

> [A]n owner of land bounding on navigable water. . . . may make improvements into the water in front of the land to preserve that person's access to the navigable water. . . . After an improvement has been constructed, *the improvement* is the property of the owner of the land to which the improvement is attached.

The issue before the trial court was who—as between Tidewater, Seymour, and C&S—owned the Pier and the Contract Pier Rights. Whether any of these claimants held legal title to "Parcel 12" is an entirely different matter.

> all rights, *appurtenances*, easements, privileges, remainders and reversions now or hereafter appertaining thereto, *including*, but not limited to, *riparian and littoral rights* . . . and all estate[s], rights, titles, interests, . . . easements, privileges, liberties, tenements, hereditaments . . . *in any way belonging, relating or appertaining to* [the Property] or any part hereof . . . whether now owned or hereafter acquired by the Grantor.

The First Mariner Deed of Trust also assigned all contracts to First Mariner Bank, providing (emphasis added)

> To further secure payment of the Note and the performance by the Grantor of its other obligations under the Loan Documents, the Grantor further *assigns all* insurance policies, *contracts*, permits, licenses, or plans now or hereafter pertaining to, affecting or concerning the Premises. . . .

In addition to the deed of trust, and as further security for repayment of the loan, C&S executed a security agreement in which C&S agreed that it would not convey or otherwise dispose of any part of the collateral securing repayment of the loan without First Mariner's prior approval. "Collateral" is a defined term in the security agreement and it includes the Property as well as all "estates, rights, titles, interest [sic], privileges, . . . and appurtenances belonging, relating, or appertaining" to the Property. Neither the First Mariner Deed of Trust nor the security agreement explicitly mention the Pier or the Additional Pier Rights.

In 2011, C&S defaulted on the loan. Shortly before First Mariner began foreclosure proceedings, C&S executed an "Assignment of Pier Rights," which purported to assign C&S's rights under the Pier Rights Agreement to Seymour. The assignment was dated September 21, 2011, but not immediately recorded in the land records.

First Mariner appointed substitute trustees and in October 2011, the substitute trustees filed an order to docket foreclosure in the circuit court. The notice of sale described the Property by a metes and bounds description and provided the recording information for the First Mariner Deed of Trust. The notice did not contain an explicit reference to the Pier or the Additional Pier Rights.[2]

Compass Properties, Inc. was the successful bidder at the auction and the sale was ratified by the circuit court in January 10, 2012. In July 2012, Compass substituted Tidewater as the purchaser, and, on July 25, 2012, the substitute trustees conveyed the Property, identified by SDAT tax parcel numbers and described by metes and bounds to Tidewater (the "Tidewater Deed"). The Tidewater Deed contained none of the "together with" language found in the deed to C&S or the First Mariner Deed of Trust. Nor did the Tidewater Deed refer to the Pier. On the same day, however, the substitute trustees signed another quitclaim deed conveying to Tidewater "all of the Grantor's right, title and interest" in the Pier. These deeds were recorded in the land records for Calvert County on August 3, 2012.

On November 29, 2012, C&S executed what purported to be a confirmatory deed conveying Parcel 12 from itself to itself. On the same day, which was months after the substitute trustees' deed had been recorded, C&S recorded both the confirmatory deed and the Assignment of Pier Rights to Seymour.

[2] The notice of sale further described the Property as being the same as that conveyed by two deeds recorded in the land records in 1987. Neither of these deeds is on the record.

Against this backdrop, a dispute over ownership of the Pier and the Additional Pier Rights arose between the parties, and on April 5, 2016, Tidewater filed an action in the Circuit Court for Calvert County against Seymour, C&S, and V. Charles Donnelly.[3] Tidewater sought a declaratory judgment that it was the owner of the "Parcel 12 Pier" and the Additional Pier Rights, as well as monetary damages.

Tidewater's legal theory was straightforward: the First Mariner Deed of Trust conveyed all rights that C&S had in the Property to First Mariner; those rights included the Pier and the Additional Pier Rights; and Tidewater acquired those rights through the foreclosure process. Tidewater asserted that the purported transfers of the Pier to C&S and the Additional Pier Rights to Seymour were ineffective, false, and constituted a fraud on C&S's creditors. Tidewater filed a motion for summary judgment that sought a declaratory judgment that: (i) it is the owner of the Pier and the Additional Pier Rights; and (ii) C&S's actions in purporting to convey the Pier to itself and the Assignment of Pier Rights to Seymour were void.

Seymour, in his own capacity and as trustee for C&S,[4] and Donnelly, individually, promptly filed a motion to dismiss, or, in the alternative, for summary judgment, alleging that Tidewater's claims are unfounded, and that, regardless, Tidewater's claims are barred by collateral estoppel, limitations, and laches. After a hearing was held on the motions, the

[3] Donnelly is a lawyer who represented C&S and Seymour. His role is described in Part 3 of this opinion. He is not a party to this appeal.

[4] C&S forfeited its corporate charter in October 2012.

circuit court, finding no dispute of material facts, entered an order granting Tidewater's motion for summary judgment on July 7, 2017. Specifically, the court found and declared that:

(1) the Property "is a beneficiary of a covenant which runs with the land formed in 1957" by agreement between Langley and the State Highway Administration that gave Langley and his successors-in-interest the right to "construct, maintain, or repair any pier structure [that] they desire on the proposed bulkhead" to be built on the Patuxent River;

(2) the Pier and the Additional Pier Rights were acquired by C&S when it purchased the Property;

(3) the First Mariner Deed of Trust encumbered "all of the subject property in this dispute including . . . Parcel 12"; [5]

(4) Tidewater acquired the Property, including the Pier and the Additional Pier Rights, when they were sold to Compass at foreclosure;

(5) Tidewater is the owner of Parcel 12 and the Additional Pier Rights; and

(6) The purported Assignment of Pier Rights from C&S to Seymour and the confirmatory deed from C&S to itself are "null, void, and invalid."

The court dismissed all of Tidewater's remaining claims as moot.

[5] *See* note 1, *supra.*

Standard of Review

We review a circuit court's grant of summary judgment *de novo*. *Dashiell v. Meeks*, 396 Md. 149 (2006). This is a two-step process. First, we decide whether there were disputes of material fact before the circuit court. *Koste v. Town of Oxford*, 431 Md. 14, 24-25 (2013). In the absence of such a dispute, we review questions of law. *Id*. at 25.

The parties agree that there is no material fact that is in dispute. Instead, the issues hinge the legal interpretation of the deeds, agreements, deeds of trust and other documents that we've described in the previous pages. Absent ambiguity, the construction of deeds and other documents affecting the title to land is a question of law for the court. *Conrad/Dommel, LLC v. West Development Co.*, 149 Md. App. 239, 264 (2003) (citing *Gregg Neck Yacht Club v. County Commissioners of Kent County*, 137 Md. App. 732, 759 (2001)). "In construing the language of a deed, the basic principles of contract interpretation apply." *Gregg Neck Yacht Club*, 137 Md. at 759. If a deed's language is clear and unambiguous on its face, "the plain meaning of the words used shall govern without the assistance of extrinsic evidence." *Drolsum v. Horne*, 114 Md. App. 704, 709 (1997). "[W]e must consider the deed as a whole, viewing its language in light of the facts and circumstances of the transaction at issue as well as the governing law at the time of conveyance." *Chevy Chase Land Co. v. United States*, 355 Md. 110, 1223 (1999). A deed is ambiguous "when read by a reasonable prudent person, it is susceptible of more than one meaning." *Calomiris v. Woods*, 353 Md. 425, 436 (1999). Whether a deed is ambiguous is

also a legal issue and a trial court's decision on the issue is subject to *de novo* review by an appellate court. *Id*. at 434.

1. Tidewater owns the Pier and the Additional Pier Rights.

Appellants characterize this case as having two distinct issues: ownership of the Pier itself and ownership of the Additional Pier Rights, which they contend are owned by C&S and Seymour, respectively. In support of their first contention, appellants indicate that the Pier is not specifically included in the First Mariner Deed of Trust nor the Notice of Sale, and so could not have been transferred to Tidewater in the foreclosure sale. As to their second, appellants argue that ownership of the Additional Pier Rights was transferred to Seymour by the Assignment of Pier Rights executed by C&S shortly before the foreclosure action was filed. We find no merit in either claim. We agree with the circuit court that Tidewater owns the Pier and the Additional Pier Rights because they are riparian rights and are appurtenant with the Property and were acquired by Tidewater when title to the Property passed to it.

Although but one stick in the bundle of property rights, riparian rights include, among others, the right to have access to the water and the right, subject to regulation by local, state, and the federal governments, to build a wharf or pier extending into the water. *People's Counsel for Baltimore County v. Maryland Marine Mfg. Co.*, 316 Md. 491 (1989). Riparian rights are presumptively transferred in a conveyance of land bordering on navigable water, unless (1) the rights have been severed from the land, or (2) there is language in the deed to reserve those rights. *Conrad/Dommel, LLC v. West Development*

Co., 149 Md. App. 239, 270 (2003); *see also Williams v. Skyline Development Corp*., 265 Md. 130, 162 (1972).

Reservations in deeds must be clear and explicit. Real Property Article ("RP") § 2-101 of the Maryland Code provides that "grant," when used in any deed, "passes to the grantee the *whole interest and estate* of the grantor in the land mentioned in the deed *unless a limitation or reservation shows*, by implication or otherwise, a different intent." (emphasis added). Moreover, courts have recognized that there is a "'distinction . . . between implied grants and implied reservations.' Whereas a grant may be implied, a reservation generally will not be implied." *Conrad/Dommel, LLC*, 149 Md. App. at 277 (quoting *Dalton v. Real Estate & Improvement Co*., 201 Md. 34, 47 (1952).

The Court's analysis in *Conrad/Dommel* is instructive. A developer, TLC, executed a deed of trust to Columbia Bank encumbering TLC's on the Susquehanna River. 149 Md. App. at 252. TLC then sold its riparian rights for the property, along with certain "expansion rights" to build along the water, to West Development Co., but later assigned those same rights to Columbia Bank. *Id*. at 257. The property was foreclosed upon by Columbia Bank and sold at auction to Conrad/Dommel. *Id*. When West Development attempted to exercise its purported riparian rights, Conrad/Dommel filed a declaratory judgment action seeking a declaration that Conrad/Dommel held legal title to those riparian rights. *Id*. at 261.

The Court of Special Appeals found that the riparian rights vested in Conrad/Dommel by virtue of the foreclosure. *Id*. at 278. We explained:

> Absent an express reservation, it is presumed as a matter of law that the riparian rights were conveyed in the deeds of trust. Nothing in the Columbia [Bank] deed of trust rebuts that presumption and persuades us that TLC reserved or intended to reserve the riparian rights.

Id. at 277. The Court based its conclusion upon the language of deed of trust, which, conveying the property in fee simple, did not contain any provision reserving the riparian rights. *Id*. at 277.

But we are not yet done with *Conrad/Dommel*. After concluding that TLC made no reservation for the riparian rights, the Court was left with Columbia's argument that it acquired the "expansion rights" for the property by virtue of either the deed of trust or the separate assignment of those rights. *Id*. at 281. The Court again looked to the language in the deed of trust, specifically the "together with" clause, which granted to Columbia "including without limitation…all contract rights" and all "contracts . . . located and whenever created, compiled, or made with respect to the Land or the improvements thereon." *Id*. at 283. In light of this language, the Court found that "[t]his language at least suggests that contract rights . . . were transferred to the trustees and subsequently to Conrad/Dommel by virtue of the foreclosure deed." *Id*.

When we apply this analysis to the facts of this case, we conclude:

First, the 1957 agreements between Langley and the State Highway Administration had the effect of reserving to Langley the Property's riparian rights to access the Patuxent River that otherwise would have passed to the State. *See Conrad/Dommel*, 149 Md. App. at 276 ("[A] conveyance of land bordering navigable water presumptively carries with it

the grantor's riparian rights" absent a provision reserving those rights for the grantor.) (quoting *Williams v. Skyline Development Corp.*, 265 Md. 130, 162 (1972)).

Second, the language in the 1957 documents, specifically, the reference to Langley's "heirs, successors and assigns," suggests that the Patuxent River riparian rights were intended to be appurtenant to the Property, and neither party argues otherwise. As appurtenances, these riparian rights passed to C&S when it acquired the Property.[6]

Third, because the First Mariner Deed of Trust did not contain express language reserving those rights to C&S, the Pier and the Additional Pier Rights were conveyed to the bank by the "all rights, appurtenances . . . now or hereafter appertaining" language in the granting clause of the deed of trust. Moreover, C&S's rights under the Pier Rights Agreement were assigned to First Mariner by the same instrument. The First Mariner Deed of Trust reads in pertinent part (emphasis added):

> To further secure payment of the Note and the performance by the Grantor of its other obligations under the Loan Documents, the Grantor further *assigns* all insurance policies, *contracts,* permits, licenses, or plans now or hereafter pertaining to, affecting or concerning the Premises[.]

Finally, when the substitute trustees advertised the Property for sale, and as a matter of law, they were offering the Property together with the Pier and the Additional Pier Rights, and Tidewater, as the substitute purchaser, acquired those rights by means of the substitute trustees' deed.

[6] The only basis for Seymour's claim that he owns the Contract Pier Rights is that C&S acquired them as part of the 2003 conveyance from Select Properties.

We are completely unconvinced by appellants' argument that C&S's Assignment of the Pier Rights Agreement to Seymour effectively severed the Additional Pier Rights from the Property. As we have explained, by executing the First Mariner Deed of Trust, C&S assigned the Additional Pier Rights to First Mariner. Although the Pier Rights Agreement was not specifically mentioned in the First Mariner Deed of Trust, the instrument did convey C&S's rights in any "contracts . . . affecting or concerning the Property." The security agreement between C&S and First Mariner expressly prohibited C&S from conveying any contract rights pertaining to the Property without First Mariner's permission, and C&S never sought, much less obtained, First Mariner's consent.

Moreover, Tidewater did not have any notice of the Assignment of Pier Rights when it was substituted as purchaser. Appellants argue that Tidewater should have been aware of the assignment to Seymour because the document evidencing that transaction was recorded in the land records for Calvert County but they ignore the fact that the assignment was recorded after Tidewater took title to the Property and that Tidewater had no knowledge of the C&S deed of the assignment at the time it acquitted the Property. Md. Code Real Property Article ("RP") § 3-201, states (emphasis added):

> Every deed, *when recorded*, takes effect from its effective date as against the grantor, his personal representatives, *every purchaser with notice of the deed*, and every creditor of the grantor with or without notice.

A good faith purchaser is one who "acquires property for valuable consideration, in good faith, and without notice of another's prior claim to the property." *Fishman v. Murphy*, 433 Md. 534, 546, (2013). All potential purchasers of real property are on

constructive notice of properly indexed information in the land and court records of the county in which the property is located. *See Greenpoint Mortgage Funding v. Schlossberg*, 390 Md. 211, 228–30 (2005). But the reverse is also true: absent actual knowledge on the purchaser's part, a good faith purchaser for value's title is not subject to an after-recorded conveyance. RP § 3-203;[7] *cf. Grayson v. Buffington*, 233 Md. 340, 343 (1964).

Tidewater was, without a doubt, a good faith purchaser of the Property. Seymour's recordation of the Assignment did not occur until November 29, 2012, months after Tidewater's own deeds had been recorded. The circuit court was correct in concluding that Tidewater owns the Pier and the Additional Pier Rights.

2. Res Judicata and Collateral Estoppel Do Not Bar Tidewater's Action.

Appellants assert that Tidewater's claim to the Pier and Pier Rights Agreement are barred by res judicata and collateral estoppel because this issue could have been litigated in the foreclosure action. In their brief, they state:

> Tidewater, as the Substitute Foreclosure Purchaser, had the opportunity to petition the Circuit Court to reopen the Foreclosure Case before acceptance of the Trustee's Deed to address any contention it had that Parcel 12 was

[7] The statute states:

> Every recorded deed or other instrument takes effect from its effective date as against the grantee of any deed executed and delivered subsequent to the effective date, unless the grantee of the subsequent deed has:
> (1) Accepted delivery of the deed or other instrument:
> (i) In good faith;
> (ii) Without constructive notice under § 3-202; and
> (iii) For a good and valuable consideration; and
> (2) Recorded the deed first.

> included in the Foreclosure Sale. Tidewater chose not to take this necessary action in connection with any claim it made related to Parcel 12 being included in the Foreclosure Sale as it has derived its claim of title to Parcel 12 through the Foreclosure Sale and the Substitute Trustee. The Foreclosure Sale that was finally ratified did not include Parcel 12 as evidenced by the specific omission of Parcel 12 from the Report of Sale and Trustee's Deed.

This contention is unpersuasive.

The doctrine of collateral estoppel, or issue preclusion, prevents a party in a second case from re-litigating a legal or factual issue "that was essential to a valid and final judgment against the same party in a prior action." *Electric General Corp. v. Labonte*, 454 Md. 113, 142 (2017) (quotation marks and citation omitted). In order for collateral estoppel to apply, "the issue of fact or law [must have been] actually litigated and determined by a valid and final judgment, and the determination [was] essential to the [prior] judgment[.]" *Murray International v. Graham*, 315 Md. 543, 547 (1989) (citation omitted). When this occurs, "the determination [in the first action] is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Id*.

In the present case, Tidewater argues that ownership of the Pier and the Additional Pier Rights passed to it by operation of law as a result of the foreclosure. The issues of who, as between Tidewater, Seymour, and C&S, owned the Pier and the Additional Pier Rights were never raised, litigated, or decided in the foreclosure proceeding. The doctrine of collateral estoppel is inapplicable.

Appellants' arguments as to the applicability of res judicata fare no better. The doctrine of res judicata, or claim preclusion, provides "that a judgment between the same parties . . .

is a final bar to any other suit upon the same cause of action, and 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." *Prince George's County v. Brent*, 414 Md. 334, 342 (2010) (citations and brackets omitted).

Appellants' argument begins with the premise that, although Tidewater was not a party to the foreclosure, it was in privity with Compass Properties, the original foreclosure purchaser, and thus bound by the judgment in that earlier case.

From this, appellants argue that Compass should have raised the issue of whether the sale included the Pier and the Pier Rights Agreement, and that its failure to do so in the foreclosure action bars Tidewater, who stands in privity with Compass, from asserting that those items were conveyed to it. To put it another way, appellants in effect assert that Compass and or Tidewater should have anticipated that Seymour and C&S would argue at some point in the future that the Pier and the Additional Pier Rights were not being conveyed through the foreclosure proceeding and were required to raise the issue with the foreclosure court. Having failed to do so, continue appellants, Tidewater is now barred from bringing this action. We do not agree.

Appellants' argument founders upon RP § 7-105(c), which provides that a sale pursuant to a foreclosure action "operates to pass all the title which the borrower had in the property at the time of the recording of the mortgage or deed of trust" if the sale was ratified by the court, a deed was delivered and the purchase money paid. It is for this reason that a foreclosure action "eliminate[s] the mortgagors' rights in the property[.]" *Svrcek v.*

Rosenberg, 203 Md. App. 705, 729 (2012). Tidewater was entitled to presume that it would receive all right, title, and interest in the Property, including the Pier and the Additional Pier Rights. Certainly, at the time of the foreclosure was pending, Tidewater was not on notice that C&S, secretly and in violation of the terms of its agreements with First Mariner, attempted to assign the Additional Pier Rights to Seymour.[8] Tidewater was not obligated to intervene in the foreclosure action to seek an adjudication of spurious issues about which it was unaware, and we decline to apply the doctrine of res judicata to this action.

3. Tidewater's claims are not time-barred.

Finally, appellants take the position that Tidewater's attempt to resolve the issue of the ownership of the Additional Pier Rights is barred by the three-year limitations period of Courts and Judicial Proceedings Article ("CJP"), § 5-101.[9] They assert that a November 27, 2012 letter from Donnelly to Philip H. Dorsey, III, Esquire, one of Tidewater's owners, placed Tidewater on notice that C&S and Seymour owned the Pier and the Additional Pier Rights. In pertinent part, the letter states (emphasis added):

> *[I]t appears* that the substitute trustee was without authority to convey Parcel 12 since Parcel 12 was not part of the Deed of Trust foreclosed upon.

[8] C&S's attempt to convey the Pier to itself occurred months after the foreclosure sale had been ratified and the Property conveyed to Tidewater.

[9] CJP § 5-101 states:

> 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.

The parties frame their statute of limitations arguments exclusively in the context of CJP § 5-101.

> Therefore, the substitute trustee had no authority to convey that parcel to you. *With that said, I am still investigating the foreclosure* and *will contact you once I have more information*.
>
> With regard to the commercial pier rights, as I explained, these are contract rights that arise from agreements between the State and former property owners in 1957. *This contract right should not be confused with riparian rights but is a separate covenant running with the land. These contract rights were assigned by [C&S] to [Seymour] before the foreclosure began*.
>
> At this point, *until [Seymour] has more information, he really cannot make any decisions regarding your requests*. *I hope to be able to get back to you shortly* and a meeting can be set up to discuss these issues.

Because this action was filed on April 5, 2016, C&S asserts that Tidewater's claims are time-barred.

For its part, Tidewater points to an affidavit of Philip H. Dorsey, III, Esquire, an owner of Tidewater, that it filed in response to appellants' cross-motion for summary judgment. Dorsey averred that: (1) he was not aware of C&S's purported assignment of the Additional Pier Rights to Seymour until an undisclosed date in 2014; (2) he learned of the confirmatory deed between C&S and itself at an undisclosed date in 2015; and (3) he learned in 2015 that Seymour was purporting to enforce in the Pier Rights Litigation[10] the Additional Pier

[10] A reference to a civil action filed by Seymour, Donnelly, and several other parties against the State of Maryland and the Board of County Commissioners of Calvert County, which was docketed as *V. Charles Donnelly, et al. v. State of Maryland, Case No. 04-C-12-001031*. In that action, Seymour asserted that he was the owner of the Contract Pier Rights appurtenant to the Property. The issue in the Pier Rights Litigation was whether the contract pier rights established in the 1957 agreements between the then-property owners and the State were still enforceable. The circuit court concluded that they were.

A panel of this Court affirmed the circuit court's judgment in *State of Maryland Department of the Environment, et al. v. V. Charles Donnelly, et al*, No. 1446, 2013 Term (filed April 20, 2015). That opinion was unreported and is therefore neither binding nor

Rights that were appurtenant to the Property. Based on Dorsey's affidavit, Tidewater argues that because this action was filed on April 5, 2016, its claims are not time-barred.

The Court of Appeals summarized the relevant principles in *Windesheim v. Larocca*, 443 Md. 312, 326–27 (2015):

> Maryland has adopted the discovery rule, which tolls the accrual of the limitations period until the time the plaintiff discovers, or through the exercise of due diligence, should have discovered, the injury. . . .
>
> Notice is critical to the discovery rule. Before an action can accrue under the discovery rule, a plaintiff must have *notice* of the nature and cause of his or her injury. There are two types of notice: *actual and constructive*. *Actual notice is either express or implied*. As the name suggests, express notice is established by direct evidence and embraces not only knowledge, but also that which is communicated by direct information. . . . Implied notice, also known as "inquiry notice," is notice 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. . . . Constructive notice is notice presumed as a matter of law. Unlike inquiry notice, *constructive notice does not trigger the running of the statute of limitations* under the discovery rule.

(Citations and quotation marks omitted; emphasis added.)

C&S and Seymour present two equally unpersuasive contentions as to why Dorsey was on actual notice of Seymour's claim to the Pier and Additional Pier Rights. The first is that Donnelly's November 27, 2012 letter placed him on actual notice of their claims.

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persuasive authority. *See* Md. Rule 8-104. With that said, our conclusions as to the legal effect of the 1957 agreement between Langley and the SHA are consistent with the *Donnelly* panel's analysis of similar agreements. There is nothing in the circuit court's written judgment or in the *Donnelly* panel's opinion that addresses Tidewater's rights vis à vis Seymour's in the Contract Pier Rights appurtenant to the Property.

We do not agree. Donnelly's letter mentions neither the Confirmatory Deed nor the Assignment of Pier Rights (even though they were recorded in the land records on the same day at the letter). The hodgepodge of equivocations contained in Donnelly's letter was not sufficient to put Dorsey on notice that C&S and/or Seymour were *at that time* asserting ownership of the Pier and Additional Pier Rights, which, as both Donnelly and Dorsey should have known, passed to Tidewater in the foreclosure proceeding as a matter of law for the reasons expressed earlier in this opinion.

The second argument is the Dorsey was on actual notice of their claim to the Additional Pier Rights on November 27, 2012 because the Assignment of Pier Rights was recorded in the land records on that day. But this is meritless. In his affidavit, Dorsey averred that he was not aware of the Assignment of Pier Rights until 2014, and appellants point to nothing in the record to controvert that statement. Dorsey may have been on constructive notice of documents filed in the land and court records but "constructive notice does not trigger the running of the statute of limitations under the discovery rule." *Windesheim*, 443 Md. at 327.

THE JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY IS AFFIRMED. APPELLANTS TO PAY COSTS.