UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1531

September Term, 2014

AMERICAN BANK

v.

BAY BANK, F.S.B.

Zarnoch,
Berger,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: July 14, 2015

This appeal involves a commercial real estate loan that, like many in the latter part of the last decade did, went into default. The lead lender, Carrollton Bank ("Carrollton"), first took a deed in lieu of foreclosure, then tried to sell the project. When these approaches didn't work, Carrollton found a joint venture partner and six of the seven other participating banks (the "Participants") eventually agreed to sell the project to a new entity and to give each Participant a chance to invest their share in the venture. The seventh Participant, American Bank ("American") sued Carrollton in the Circuit Court for Montgomery County, alleging that Carrollton breached its implied duty of good faith and fair dealing. The circuit court granted summary judgment in Carrollton's favor and struck American's late-filed amended complaint, and American appeals. We affirm.

I. BACKGROUND

Carrollton agreed to fund two commercial loans (the "Loans"), ultimately totaling $8,550,000, to Largo Metro Development, LLC ("Largo Metro") and Washington Management & Development Co., Inc. ("Washington") (collectively, the "Borrowers") to acquire and develop a project known as the Largo Town Center (the "Property") in Prince George's County. The development plan for the Property envisioned six hundred residential units and 30,000 square feet of commercial space. These were large loans for Carrollton, so it recruited other banks to "participate" in the Loans, *i.e.*, to share in the risks and profits. Seven banks agreed to participate, and Carrollton executed with each a substantively identical Participation Agreement. American executed its agreement (the "Agreement") with Carrollton on March 24, 2005 and took a 12.0885380% interest in the Loans.

The terms of the Agreement lie at the heart of this case, particularly as they defined Carrollton's role and responsibilities vis-à-vis of the Participants. At the outset, Carrollton was the lender, and each Participant purchased a "Participation Percentage… in each advance under the Line of Credit made by the Lender to the Borrower under the Loan Documents." This relationship was not structured as a democracy among Carrollton and the Participants, but more as a benevolent despotism—the Agreement specifically recognizes Carrollton's ultimate and sole authority to make and implement all decisions regarding the handling and collection of the Loans, with liability only for gross negligence or willful misconduct:

> The Lender will handle all transactions under the Loan Documents in the ordinary course of business in accordance with its usual practices and will be responsible for collecting payments and shall hold the Loan Documents, any security for the [Loans], the escrows from the Borrower (if any), and the hazard insurance policy in its name but for the benefit of both the Lender and the Participant to the extent of their respective interests (except that the Participant shall receive no interest on any Borrower's funds so held in escrow). In connection therewith, (but subject to the provisions of Paragraph 5 hereof, which paragraph shall control in the event of a conflict), *the Lender may, in its sole discretion, give or withhold waivers, consents, extensions, or compromises in connection with the Loan Documents, amend or refuse to amend the Loan Documents, and take or refrain from taking action in connection with the making, handling, collecting, realizing upon, or enforcing the [Loans], any collateral, and/or the Loan Documents*. . . . The Lender makes no representations or warranties, expressed or implied, and assumes no liability or responsibility to the Participant with respect to (a) the financial condition of the Borrower or any other party to the Loan Documents, (b) the value, collectability, genuineness, and/or validity of any collateral, (c) the value, collectability, genuineness, validity, and/or the due execution of the Loan Documents, or any certificate, report, or other document or

> instrument used under or in connection with the Loan Documents, and (d) the Borrower or any other party or the recovery or realization of the [Loans] and interest thereon under the provisions of the Loan Documents. *Neither the Lender nor any of its officers, directors, employees, or agents shall be liable to the Participant for any action lawfully taken or any failure to act by it or them or any error in judgment with respect to any transactions relating to the [Loans], and/or the Loan Documents, except for its or their gross negligence or willful misconduct*.

(Emphases added.)

The Agreement specifically defined Carrollton and American's relationship: the parties agreed that they were "not partners or joint venturers, and [that Carrollton] is not to act as agent for [American], but is to act in all loan administration and servicing matters . . . as an independent contractor." In the event of default, the Agreement provided that Carrollton would "consult with [American] and make a good faith effort to agree upon an appropriate course of action," but if the parties could not come to an agreement within five business days, Carrollton's "chosen course of action, if made in good faith, [would] be binding upon" American.

In parallel with the Loans at issue here, Carrollton also made two separate commercial loans (the "Thrift Manor Loans") to PTM, LLC ("PTM") and Washington to finance the acquisition and development of a thirty-five lot subdivision in Prince George's County known as Thrift Manor. PTM and Washington were both controlled by John C. Pyles, III, who also controlled the Borrowers. In early 2008, the Thrift Manor Loans went into default. According to American, Mr. Pyles was a guarantor for both the Thrift Manor Loans and the Loans, and the Thrift Manor default constituted a default on the Loans. In response to the Thrift Manor default, Carrollton entered into a forbearance agreement with PTM and Washington and, on March 13, 2008, filed a deed of trust against the Property (the "Deed of Trust") to obtain additional security for the Thrift Manor loans. However, and circling back to this case, American eventually alleged that Carrollton did not notify American of the *Thrift Manor* default, consult with American about the appropriate course of action to take in response to *that* default, or notify American, which had no interest in the Thrift Manor Loans, or the other Participants about the new Deed of Trust.

The Loans matured in September 2009, and the Borrowers were unable to repay them. After consulting with the Participants (there is no dispute that this happened), Carrollton instituted foreclosure proceedings against the Property. The foreclosure was stayed temporarily by the filing of a bankruptcy petition. After the stay was lifted, Carrollton, in consultation with the Participants, reached an agreement with the Borrowers to accept a deed to the Property in lieu of foreclosure. The Property was subsequently transferred to Carrollton's wholly-owned subsidiary, Mulberry Street, LLC ("Mulberry"). American alleges that Carrollton "*advocated against* foreclosure, even though [it] understood that this option would provide the Participants with a full recovery, because the . . . Deed of Trust would [have been] extinguished by a foreclosure sale." (Emphasis in original.) American claims as well that during this same period, Carrollton rejected offers to sell the Property at par value, which would have provided the Participants with a full recovery, and that Carrollton did not disclose its true motivation for advocating the deed-in-lieu-of-foreclosure strategy over the alternatives.

After acquiring title to the Property, Carrollton sought to find a buyer. The best offer Carrollton received came from Federal Capital Partners ("FCP"), which offered to purchase the Property for $5,000,000, but only after it had secured approval for a revised development plan and only if Carrollton agreed to loan FCP $3,000,000 to finance the acquisition. After consulting with the Participants, Carrollton agreed to accept FCP's offer in November 2010. But FCP experienced difficulty in obtaining approval for its development plan, and after several extensions, FCP advised Carrollton in February 2012 (fifteen months after the contract was executed) that it would likely need an additional two years. FCP also informed Carrollton that it would be willing to purchase the Property "as is" without any approvals for $3,000,000.

At the time FCP tendered its offer to purchase the Property for $3,000,000, the most recent appraisal valued the Property at $4,850,000. So, to determine whether the $3,000,000 price was reasonable, Alvin Lapidus, the Chairman of the Board of Directors of Hopkins Federal Savings Bank ("Hopkins"), another Participant, suggested that the group contact The Michael Companies, Inc. ("Michael"), a prominent developer in the area, and have Michael value the Property from a developer's perspective. So they did, and in May 2012, Michael informed the group that the Property's existing development plan was not economically feasible. Michael estimated that it would cost at least $1,343,000 and take at least a year to secure approval of the revised development plan. Michael opined as well that the Property was not even worth $3,000,000 "as is" under its current development plan, but projected that the Property ultimately could be sold for much more if a new plan were approved.

On June 19, 2012, representatives of Carrollton and each of the Participants met with representatives of Michael. Michael offered to match FCP's offer and purchase the Property "as is" for $3,000,000 and offered the Participants the right to invest their proportionate share of the $3,000,000 purchase price into a joint venture with Michael to develop the Property under Michael's proposed development plan. Under Michael's proposal, any Participant that elected to join the joint venture would be required to advance its proportionate share of the $1,343,000 needed to develop the Property, but would potentially realize a profit if the new plan was approved.

Carrollton and the Participants reviewed Michael's proposal and agreed to pursue it, and four of the Participants, including American, expressed an interest in joining the new joint venture. For the next several months, these Participants negotiated the terms of the joint venture with Michael, and also attempted to determine whether the joint venture would be permissible under applicable banking regulations. The remaining three Participants and Carrollton were not interested in participating in the joint venture and did not participate in these negotiations.

On December 6, 2012, Mulberry signed a Letter of Intent with Michael to sell the Property for $3,000,000 to Largo Crescents, LLC ("Largo"), an entity created as the vehicle for the new joint venture. The Letter of Intent identified American as one of the four Participants that would acquire an interest in Largo and participate in the new structure. After the Letter of Intent was executed, American and the other Participants continued to negotiate the details of their proposed investment in Largo.

The closing on the sale of the Property was eventually scheduled for February 20, 2013. But on the morning of the closing, a representative of American sent the following email to all of the parties:

> I apologize for the late hour of this email. However, American [] has determined not to proceed with this transaction for a number of reasons. Namely, American [] believes that the price being paid for this property by [Michael] is well below market and, therefore, [American] is not prepared to accept the discounted sum in exchange for its agreement to terminate the participation agreement and release Carrollton []. The participation agreement does not require [American] to deliver any such release. On the other hand, American [] believes that the joint venture with [Michael] is on terms that are not acceptable, and American [] is not willing to proceed with the proposed joint venture. Again, I apologize that this notice is coming so close to the proposed settlement.

The other Participants elected to postpone the closing to see if an agreement could be reached to gain American's approval of the sale. It couldn't, and on March 11, 2013, Carrollton and the other Participants agreed to proceed to closing without American's approval, and the sale closed on March 14, 2013. Carrollton and four of the Participants, including American, who elected not to join the proposed joint venture, received their *pro rata* share of the net sale proceeds. The remaining three Participants invested their shares in Largo. Carrollton then released the Deed of Trust.

A month later, American filed suit against Carrollton, alleging that Carrollton breached the Agreement and the implied duty of good faith in selling the Property to Largo for below market value. Bay Bank, F.S.B. ("Bay") filed a Notice of Substitution of Party, in which it disclosed that it had become Carrollton's successor in interest after merging with Carrollton. Bay moved to dismiss and, in response, American filed an Amended

Complaint that removed the good faith and fair dealing claim and asserted a single claim for breach of contract.[1] Bay moved for summary judgment, and two days before a scheduled hearing on the motion, American filed a Second Amended Complaint that included new allegations relating to Carrollton's purported failure to notify the Participants about the Thrift Manor default and refusal to foreclose on the Property to protect the Deed of Trust. Bay filed a motion to strike the Second Amended Complaint as untimely and prejudicial, and the court went forward with the hearing on Bay's motion for summary judgment.

On August 19, 2014, the circuit court issued a memorandum opinion that granted Bay's motion for summary judgment with respect to the allegations carried over from the first Amended Complaint and Bay's motion to strike the allegations raised for the first time in the Second Amended Complaint.[2] The court ruled that Carrollton was not required "to sell the Property for a particular price or take any of the steps that American contends [it] should have taken in order to try to chase a higher price. As a consequence, American is

[1] Although American agreed to dismiss its claim for breach of the implied duty of good faith, American continued to maintain its claim for breach of contract based on, among other theories for recovery, Carrollton's breach of the duty of good faith implied in the Agreement.

[2] A week before the circuit court issued its memorandum opinion, American filed a Third Amended Complaint, which sought to add two additional claims. During a pre-trial conference on August 14, 2014, the parties agreed that Bay's motion for summary judgment would apply to the allegations in the Third Amended Complaint that carried over from the Amended Complaint and that Bay's motion to strike would apply to the allegations carried over from the Second Amended Complaint. After the circuit court issued its memorandum opinion, American voluntarily dismissed the two new claims it had added to the Third Amended Complaint.

bound by Carrollton's decision to sell, even though American disagreed with it." The court also struck the new allegations contained in the Second Amended Complaint as untimely and unduly prejudicial to Carrollton. American noted a timely appeal.

II. DISCUSSION

American contends that Carrollton breached the implied duty of good faith in selling the Property to Michael for below market value because Carrollton failed to take active steps to market the Property. In addition, American asserts that the terms of the sale to Michael unfairly discriminated against American because, under federal law, American could not participate in the joint venture as other Participants could. American also argues that the circuit court abused its discretion in striking its amended complaint because it "allege[d] the same cause of action and [was] based on essentially the same set of operative facts."[3]

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[3] American phrased the questions in its brief as follows:

> 1. Whether the Circuit Court erred in granting summary judgment in favor of Bay when Carrollton failed to act with reasonableness, due diligence and care under a Participation Agreement as required by (a) an express Provision of the Participation Agreement that specifically obligated Carrollton to act in good faith, and (b) the duty of good faith and fair dealing implied in every contract.
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> 2. Whether the Circuit Court erred in granting summary judgment in favor of Bay when the good faith and reasonableness issues in this case presented genuine disputes of material fact not suitable for disposition on summary judgment.

(continued…)

A. The Circuit Court Did Not Err In Granting Bay's Motion For Summary Judgment.

Our task in reviewing the grant of a motion for summary judgment is to determine "whether the trial court's grant of the motion was legally correct." *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 152-53 (2008) (citations omitted). A motion for summary judgment is granted properly if "there is no genuine dispute as to any material fact and [] the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). When "the facts are susceptible to more than one inference, the court must view the inferences in the light most favorable to the non-moving party." *Laing*, 180 Md. App. at 153 (citations omitted).

American contends that the Agreement gave Carrollton "the contractual duty to manage the [Loans] and, after the [B]orrowers' default, the Property." American acknowledges that the Agreement "is silent concerning the specific steps Carrollton was required to take" in the exercise of its management obligations, but claims that Carrollton was required to exercise its discretionary authority under the Agreement in a manner consistent with the implied duty of good faith and fair dealing. Because, in its view,

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(…continued)

> 3. Whether the Circuit Court erred in granting summary judgment in favor of Bay when it concluded that guidance issued by applicable federal banking regulators was immaterial to determining whether Carrollton had breached its duties to American Bank.
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> 4. Whether the Circuit Court erred in striking Count I of American's Third Amended Complaint.

Carrollton failed to market the Property adequately prior to selling it, sold the Property for below its market value, and entered into a transaction with Michael that discriminated against its interests, American asserts that Carrollton failed to exercise its discretionary authority reasonably and, thus, breached the Agreement. We disagree.

American's challenge turns on the terms of the Agreement and what, if anything, it required of Carrollton once the Loans went into default. This is a straightforward matter of contract interpretation. We ascertain first whether the Agreement's contents are ambiguous, *i.e.*, susceptible to more than one interpretation by a reasonable person. *Dumbarton Imp. Ass'n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 53 (2013). The Agreement "must be construed in its entirety and, if reasonably possible, effect must be given to each clause so that [we] will not find an interpretation which casts out or disregards a meaningful part of the language of the writing unless no other course can be sensibly and reasonably followed." *Id.* at 52 (citations omitted). If we find the Agreement unambiguous, we will "simply give effect to that language," and the "unambiguous language will not give way to what the parties thought [it] meant or intended it to mean at the time of execution." *Id.* at 51-53 (citations omitted). On the other hand, if we determine that the Agreement is ambiguous, we look to extrinsic evidence to divine its purpose and the intent of the parties. *Id.* at 54.

We see no ambiguity here. American acquired a 12.0885380% interest in the Loans, but yielded to Carrollton exclusive responsibility and discretion for the management of the Loans and the authority to "handle all transactions under the Loan Documents in the ordinary course of business in accordance with its usual practices." The Agreement gave

Carrollton a wide berth to carry out these duties, and absolved Carrollton for "any error in judgment with respect to any transactions relating to the [Loans], any collateral for the [Loans], and/or the Loan Documents, except for its or their gross negligence or willful misconduct." The Agreement specifically avoided forming any special relationship between the parties—to the contrary, the Agreement defined Carrollton as an independent contractor of American's and provided that it was *not* acting as American's agent in administering the Loans. In the event of default, the Agreement provided that Carrollton would "consult with [American] and make a good faith effort to agree upon an appropriate course of action." But if the parties could not come to an agreement within five business days, Carrollton's "chosen course of action, if made in good faith, [would] be binding upon" American.

The Agreement did not, therefore, require Carrollton to take any particular steps upon the occurrence of a default in the Loans, beyond "mak[ing] a good faith effort" to *reach an agreement* with American on how to proceed. And American does not appear to dispute that Carrollton tried to reach an agreement with American on how to proceed with the sale of the Property: indeed, Carrollton and the other Participants postponed the closing for nearly a month based on American's eleventh-hour objection, even though the sale was approved by all of the other Participants and the Agreement did not require American's consent for the sale to go through. American also acknowledges in its brief that the Agreement was silent as to "the step-by-step actions Carrollton was to take in the exercise of its management obligations" and did not specify any actions that Carrollton must take upon the Borrowers' default on the Loans. Of particular relevance here, the Agreement did not address whether Carrollton was required to retain a broker to market the Property before selling the Property, nor did it require Carrollton to sell the Property for market value, or even to maximize the value at the time of the sale. The only obligation the Agreement imposed on Carrollton in disposing of the Property was a duty to remit to American its *pro rata* share of the proceeds of the sale of the Property.

American contends that because Carrollton had the discretion to manage the sale of the Property, Carrollton was required, by virtue of the implied duty of good faith and fair dealing, to exercise this discretion reasonably. And much as a party opposing summary judgment in a negligence case, American argues that its disagreement about the reasonableness of the ultimate disposition of the Property created a dispute that precluded summary judgment on this point. But good faith and reasonableness aren't always congruent concepts, especially in the context of a contract that limited Carrollton's liability to gross negligence or willful misconduct.

We agree, as American asserts, that an implied duty of good faith and fair dealing is implied in contracts generally, and in this Agreement in particular. *See Clancy v. King*, 405 Md. 541, 565-66 (2008). But this duty relates to how the parties deal with *each other* in the course of performing the contract, and doesn't create new relationships or substantive obligations:

> [T]he covenant of good faith and fair dealing "does not obligate a [party] to take affirmative actions that the [party] is clearly not required to take under [the contract]." *Parker v. Columbia Bank*, 91 Md. App. 346 (1992) (addressing duty of good faith and fair dealing in contracts between lender and borrower). Rather, the duty "simply prohibits one party to a contract from acting in such a manner as to prevent the other party from

> performing his obligations under the contract." *Id.* . . . In short, while the implied duty of good faith and fair dealing recognized in Maryland requires that one party to a contract not frustrate the other party's performance, it is not understood to interpose new obligations about which the contract is silent, even if inclusion of the obligation is thought to be logical and wise. An implied duty is simply a recognition of conditions inherent in expressed promises.

Blondell v. Littlepage, 413 Md. 96, 114 (2010) (quoting *Eastern Shore Markets, Inc. v. J.D. Associates, Ltd.*, 213 F.3d 175, 182-84 (4th Cir. 2000) (alterations in original)).

American's challenges to the circuit court's summary judgment ruling all relate to the substance of Carrollton's decisions, and not to failures to perform its contractual obligations in good faith. American does not claim that Carrollton failed to consult with American in deciding what to do after the Borrowers defaulted—it contends that Carrollton failed to act reasonably in selling the Property by (1) failing to adequately market the Property; (2) selling the Property for far below market value; and (3) permitting the sale to go forward even though American, unlike some of the other Participants, was unable to participate in the joint venture proposed by Michael. Put another way, American might, had it been the lead lender, have marketed the Property differently, sought out other potential partners, or structured the ultimate joint venture in a different way.

But saying that American would have done a better job as lead lender is not the same as saying that Carrollton breached its obligations to American, especially when Carrollton indisputably performed its written obligations and American points only to an implied duty. American cannot get around the fact that the Agreement delegated to Carrollton the authority and sole discretion to administer and manage the Loans, both before and after default. Nor can American avoid the fact that the Agreement did not require Carrollton to take any particular steps in administering the Loans beyond a good faith effort to *consult* with American, and did not specify any actions Carrollton was required to take in disposing of the Property in the event of default. American does not dispute that, upon the sale of the Property, Carrollton paid American its proportionate share of the proceeds, thus satisfying Carrollton's obligations under the Agreement. And although, for example, American contends that Carrollton failed to follow, and the circuit court to consider, guidance from the Federal Reserve recommending that banks have procedures in place to ensure that the sale of real estate property obtains the optimum price, the Agreement did not require Carrollton to maximize the liquidation price, even if its regulators would have recommended procedures for doing so.[4] Importing the notion of substantive or outcome reasonableness American advocates here would require us, inappropriately given the context of this Agreement and these facts, to "interpose new obligations about which the contract is silent." *See Blondell*, 413 Md. at 114; *see also Parker*, 91 Md. App. at 365-67 (holding that where the borrowers of a construction loan claimed that their lender breached the implied duty of good faith "'by advancing the builder

[4] Although American asserts in its brief that it is "not seriously disputed" that American could not participate in the joint venture with Michael under applicable banking regulations, we are inclined to agree with Carrollton that "[b]ecause American never attempted to obtain regulatory approval, there is no way to know whether or not regulatory approval could actually have been obtained." Even so, each Participant had the same opportunity to negotiate the terms of the joint venture, and the extended negotiations (which American's actions prolonged unexpectedly) more than satisfied any obligation Carrollton had to consult with the Participants before proceeding.

funds for work not done, failing to disclose to [them] the true financial condition of the project and by actively misleading' [them] as to its condition," the lender did not violate the implied duty of good faith because "[the lender] had no contractual obligation to do any of the things that the [borrowers] alleged it should have done"); *Polek v. J.P. Morgan Chase Bank, N.A.*, 424 Md. 333, 363 (2012) ("Absent special circumstances, however, no new obligations on the parties are imposed, where the contract is silent, by the implied covenant of good faith and fair dealing." (citation omitted)).[5]

B. The Circuit Court Did Not Abuse Its Discretion In Granting Bay's Motion To Strike American's Amended Complaint.

American *next* argues that the circuit court abused its discretion in striking its third amended complaint. Amendments of pleadings are governed by Rule 2-341, which provides, in pertinent part:

> A party may file an amendment to a pleading without leave of court by the date set forth in a scheduling order or, if there is no scheduling order, no later than 30 days before a scheduled trial date. Within 15 days after service of an amendment, any other party to the action may file a motion to strike setting forth reasons why the court should not allow the amendment. If an amendment introduces new facts or varies the case in a material respect, an adverse party who wishes to contest new facts or allegations shall file a new or additional answer to the amendment within the time remaining to answer the original pleading or within 15 days after service of the amendment,

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[5] In its brief, American claims that if Carrollton's sale of the Property did not violate the implied duty of good faith because the Agreement was "silent concerning the specific steps Carrollton was required to take when doing so," then "Carrollton could have sold the Property for $10 and American would have no recourse at law." We decline to chart the outer limits of Carrollton's authority in an evidentiary vacuum, but note that the Agreement expressly provided that Carrollton would be liable for its "gross negligence or willful misconduct" in managing the Loans.

> whichever is later. If no new or additional answer is filed within the time allowed, the answer previously filed shall be treated as the answer to the amendment.

Md. Rule 2-341(a). "Amendments shall be freely allowed when justice so permits," Md. Rule 2-341(c), "but not 'if the amendment would result in prejudice to the opposing party or undue delay.'" *Asphalt & Concrete Servs., Inc. v. Perry*, 221 Md. App. 235, 269 (2015) (citation omitted). "As long 'as the operative factual pattern remains essentially the same, and no new cause of action is stated invoking different legal principles,' amendments to pleadings are to be allowed freely and liberally." *Id.* (citation omitted). And, importantly for present purposes, "[w]e review for abuse of discretion a court's decision to allow or disallow amendments to pleadings or to grant or deny leave to amend pleadings." *Hendrix v. Burns*, 205 Md. App. 1, 45 (2012) (citing *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443-44 (2002)).

American filed the Second Amended Complaint, which set forth for the first time allegations related to Carrollton's purported failure to notify the Participants about the 2008 default of the Thrift Manor Loans and alleged refusal to foreclose on the Property to protect the Deed of Trust, three months after the completion of discovery and less than six weeks before the scheduled trial date. Because the Second Amended Complaint was filed more than thirty days before the scheduled trial date and the circuit court's scheduling order did not impose a deadline for the filing of amendments, American was permitted to file the Second Amended Complaint without leave. Md. Rule 2-341(a). Bay moved to strike the Second Amended Complaint on the grounds that it was untimely, prejudicial, and would cause undue delay, *see* Md. Rule 2-341(a), and the circuit court granted the motion to strike it on that basis.

American claims that the circuit court abused its discretion in striking its amended complaint because it "allege[d] the same cause of action and [was] based on essentially the same set of operative facts – all related to Carrollton's mismanagement of the [Loans] and the Property's sale." We disagree. The Second Amended Complaint, and the portion of the Third Amendment Complaint carried forward from it, sought to assert entirely new and different bases for American's breach of contract claim. As discussed above, the original allegations, and those in play at summary judgment, related to (1) Carrollton's role in facilitating the sale of the Property to Largo in a manner that discriminated against American; (2) Carrollton's failure to sell the Property for an adequate price; and (3) Carrollton's failure to market the Property in a manner that achieved the optimum price. By comparison, the Second Amended Complaint sought to allege the Carrollton breached the Agreement by (4) failing to notify American that the Thrift Manor Loans went into default in 2008, which American claimed constituted a default on the Loans due to a cross-default clause; (5) accepting a deed to the Property in lieu of foreclosure to protect its interest in the Deed of Trust at the expense of the Participants; (6) failing to disclose that the Deed of Trust was not released until after the Property was sold; (7) refusing to sell the Property after receiving offers that would have provided the Participants a full recovery; and (8) deciding to transfer ownership of the Property to Mulberry, which was solely owned and controlled by Carrollton, instead of an entity owned by all of the Participants.

These might well have been viable theories of breach and recovery. But the timing and circumstances of American's new theories amply supported the conclusion that this late amendment[6] "would [have] unduly prejudice[d] Carrollton, who was entitled to rely on the allegations in the Amended Complaint in conducting discovery, preparing a dispositive motion, and preparing for trial" and "would [have] necessitate[d] more discovery and trial preparation beyond September 15, 2014, already the second trial date." American does not dispute that nearly all of the new allegations flowed from facts known to American before it filed suit and more than a year before the Second Amended Complaint was filed,[7] or that it waited until after discovery had closed to try and bring them into the case. We find no abuse of discretion in the circuit court's finding that the late-breaking amendments asserted an entirely different theory of recovery for American's

[6] Lest the parties' agreements and representations at the time of summary judgment leave any confusion, our holding applies to these allegations as they appeared both in the Second Amended Complaint and the Third Amended Complaint.

[7] The only allegation set forth in the Second Amended Complaint that American contends was newly discovered was the allegation that Carrollton did not release the Deed of Trust until after the Property was sold, even though it informed the Participants that it had released it in 2010. Although American claims it did not learn of this until shortly before it filed its brief in opposition to Bay's motion for summary judgment, it does not provide any reason, beyond its own oversight, for why it could not have discovered this information sooner. The Deed of Trust was released contemporaneously with the sale of the Property on March 14, 2013 and the release was filed in the public land records of Prince George's County. In any event, although American asserts that "[h]ad the [Deed of Trust] actually been released in 2010 as Carrollton advised the Participants . . . there would have been no basis for American to allege that Carrollton's actions were motivated by its desire to protect its recovery on the Thrift Manor Loans," it is far from clear that the date the Deed of Trust was released after the Property was sold has any relevance, since it is undisputed that Carrollton did not obtain any recovery on the Deed of Trust from the sale of the Property.

breach of contract claim or its decision to strike the amendments. *Prudential Sec. Inc. v. E-Net, Inc.*, 140 Md. App. 194, 231-32 (2001) (noting that amendments to pleadings "should be allowed 'so long as the *operative factual pattern remains essentially the same*, and no new cause of action is stated invoking different legal principles'" (emphasis added and citation omitted)).

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.