Circuit Court for Montgomery County
Case No. C-15-CV-22-002286

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1897

September Term, 2023

JOSE LUIS CRUZ

v.

CALIFORNIA PROPERTIES, INC., *et al.*

Graeff,
Leahy,
Kenney III, James A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 14, 2025

***** This is an unreported opinion. The opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Jose Luis Cruz ("Cruz"), appeals an order issued by the Circuit Court for Montgomery County granting summary judgment in favor of appellee, California Properties, Inc. ("California Properties"). The circuit court ruled that a promissory note evidencing the terms of a $425,000 loan made to Cruz by California Properties (the "Note") was enforceable and entered judgment in favor of California Properties in the amount of $430,576. Under the terms of the Note, Cruz is obligated to pay $2,000 to California Properties on the first day of each month, with any failure by Cruz to make payment constituting a default. California Properties is entitled to accelerate Cruz's obligations upon default and treat all remaining principal as due and payable. If Cruz remains in default longer than 15 days, he incurs 12% interest on the outstanding balance due.

On June 17, 2022, California Properties sued Cruz in the circuit court, alleging that Cruz had "defaulted on the Note," and that all outstanding principal had become "due and payable" to California Properties. On August 31, 2023, California Properties moved for summary judgment on its claim, before the close of discovery, arguing that there was "no genuine issue as to any material fact" because it was undisputed that California Properties had "advanced money to [Cruz] and [Cruz] ha[d] failed to pay the full amount due" under the Note. Along with its motion, California Properties submitted a document purporting to show Cruz's payment history on the Note, and a notice of default dated January 28, 2021 indicating that California Properties had elected to treat the remaining balance as due and payable.

On November 8, 2023, the circuit court issued an order granting the motion for summary judgment and ordering Cruz to pay damages in the amount of $430,576, without further explanation. Cruz timely noted an appeal, and presents two questions for our review, which we consolidate into the following question[1]:

I. Did the circuit court err in granting summary judgment against Cruz and in favor of California Properties?

We hold that the circuit court erred in granting summary judgment against Cruz where there were outstanding disputes of fact material concerning the question of Cruz's indebtedness under the Note. Specifically, Cruz stated in a sworn affidavit that Mr. and Mrs. Alberto Harth, the co-owners of California Properties, promised to automatically forgive any outstanding payment still owed on the Note on the maturity date of April 1, 2023. This allegation, together with other assertions in Cruz's affidavit, may support a fraudulent inducement defense to enforcement of the Note. Additionally, the court failed to explain how it arrived at the amount of the judgment where the two documents relied on

[1] The questions presented in Cruz's brief are as follows:

I. Did the trial court err by relying in part on unauthenticated evidence of an email falsely attributed to Appellant, as well as documents purporting to be a payment schedule, in support of its decision to grant Appellees' Motion for Summary Judgment?

II. Did the trial court err in failing to afford Appellant the opportunity to present testimonial evidence at trial to permit a finder of fact to determine witness credibility in support of the veracity of his claims and defenses surrounding the withdrawal and potential conversion by his now ex-wife of a portion of the funds initially provided by her parents' (Appellee California Properties, Inc.) Bahamian corporate entity, for her own purposes?

by the court—the payment history document and the Notice of Default—show different amounts due under the Note on January 28, 2021.

Ana Cecilia Harth ("Ana"),[2] Cruz's ex-wife and the daughter of Mr. and Mrs. Jorge Alberto Harth, also filed a brief asking this Court to affirm the circuit court's dismissal of a third-party complaint filed against her by Cruz seeking indemnification for the amounts allegedly owed by Cruz under the Note. Cruz's notice of appeal states that he is appealing the dismissal of the third-party complaint; however, he makes no argument on the issue in his brief. Accordingly, the issue is waived. As the Supreme Court has instructed, "arguments not presented in a brief or not presented with particularity will not be considered on appeal." *Klauenberg v. State*, 355 Md. 528, 552 (1999); *see also* Md. Rule 8-504(a)(6) (brief must contain "[a]rgument in support of the party's position on each issue").

We shall, therefore, affirm the circuit court's judgment dismissing Cruz's third-party complaint against Ana, and reverse the circuit court's grant of summary judgment in favor of California Properties. We remand the case for further proceedings consistent with this opinion.

BACKGROUND

As Cruz describes it in his affidavit submitted in response to the motion for summary judgment, the parties entered into the Note as part of an effort to resolve "financial issues

[2] We will refer to Ana Harth by her first name to avoid any confusion with our references to her parents who share the same last name.

that involved taxes" he owed. In 2017, Cruz was "approached by Mr. and Mrs. Alberto Harth," the parents of Ana,[3] because the Harths "were very concerned about the tax issues because it did not reflect well on the family[.]" Cruz was initially "reluctant" to sign the Note, preferring to resolve his tax problem on his own, but was convinced by the Harths to accept $425,000 from California Properties to pay his debts. He stated that he did not draft the Note, and that the Note "calls for 0% interest because it was always represented to [him] that it was a gift." Cruz averred that the Harths told him "after five (5) years the 'loan' disguised as a 'gift' would be forgiven by California Properties, (i.e. the balloon payment)[.]" According to Cruz, Ana was "in charge of the finances" when he entered into the Note and "was responsible for making monthly payments[.]" Cruz asserted that the monthly Note payments were made purely to "have a 'track record' for the appearance of the validity" of the Note "for Internal Revenue purpose[s]."

Cruz and California Properties entered into the Note on April 1, 2018. Under the terms of the Note, Cruz promised to pay California Properties $425,000 "without interest (except in the event of a default)." The Note also contains the following provisions relevant to this appeal:

> In addition, commencing upon the 1st day of May, 2018 and continuing on the 1st day of each month thereafter, [Cruz] shall pay [California Properties] the amount of Two Thousand and 00/100 U.S. Dollars

[3] Cruz represents in his affidavit that he was then married to Ana but that later, at the time the complaint was filed, they were involved in a "contested divorce case." The Circuit Court for Montgomery County granted Ana an absolute divorce from Cruz on October 25, 2023. Judgment of Absolute Divorce at 1, Harth v. Cruz, No. C-15-FM-22-005586 (Oct. 25, 2023). Final judgment in this divorce case was entered on October 27, 2023. *See* Order at 1, Harth v. Cruz, No. C-15-FM-22-005586 (Oct. 27, 2013).

> (U.S. $2,000). These payments shall reduce the amount of principal due under this Promissory Note (the "Note"). Subject to the Note being called on demand, the remaining principal balance of this Note, shall be due and payable on April 1, 2023 (the "Maturity Date").
>
> ***
>
> Upon the occurrence of any of the following events, all the obligations of [Cruz] under this Note (including the payment of all outstanding principal) shall, at the election of the holder of this Note, become immediately due and payable, without notice or demand:
>
> (a) Breach by [Cruz] in the performance of any of [Cruz's] payment or other obligations hereunder[.]
>
> ***
>
> In addition, during any period of default hereunder which shall last beyond fifteen (15) days, any amounts due and payable shall bear interest at twelve percent (12%) during the period of default.

The Note makes no mention of any forgiveness of the principal balance, and lists Cruz as the sole "Payor." The Note also includes a choice of law provision stating that it is to be "construed and administered, and its validity determined, pursuant to the laws of the State of Florida."

On January 28, 2021, counsel for California Properties sent Cruz a "Notice of Default" claiming that up to that date, California Properties had received approximately $36,000 "in payments due under the Note," but had not received any payments since July 1, 2020. The Notice of Default informed Cruz that he owed approximately $414,194.41 in principal and interest, and that this amount "must be paid immediately to avoid further action" to collect the debt.

The Complaint

On June 17, 2022, California Properties filed a complaint in the Circuit Court for Montgomery County, Cruz's domicile, alleging that Cruz had breached the Note by failing to make timely payments (the "Complaint"). California Properties alleged that it had advanced $425,000 to Cruz "[o]n or about April 1, 2018," and that Cruz had signed the Note on that same date. The Complaint alleged that under the Note, Cruz was required to pay California Properties $2,000 on the first of every month beginning May 1, 2018, and that the Note provided for acceleration of Cruz's repayment obligation in the event that he failed to make timely payment. The Complaint highlighted language in the Note stating that during any period of default lasting longer than 15 days, "any amounts due and payable shall bear interest" at 12%.

The Complaint alleged that between May 1, 2018 and May 1, 2022, Cruz had paid only $58,500 of the $96,000 he "was obligated to pay[,]" which resulted in a shortfall of $37,500. Upon that default, "the Principal Amount bec[a]me immediately due and payable" to California Properties. Furthermore, the Complaint alleged that Cruz began owing 12% interest on the outstanding principal in April of 2019, "when the first default occurred[,]"[4] bringing the balance owed at the time the Complaint was filed to $436,979.

Cruz filed his answer to the Complaint on November 20, 2022, asserting that he was "not indebted as alleged" by California Properties (the "Answer"). He stated that Ana "was

[4] Despite this assertion, a purported history of Cruz's payments included with California Properties' subsequent motion for summary judgment indicates that Cruz's first failure to make a $2,000 monthly payment occurred in December 2018.

responsible for making the monthly loan payments" and that she had a "Power of Attorney for [] California Properties" that authorized her to accept the monthly payments on behalf of the company. He alleged that she had chosen "to terminate making those payments without the knowledge or the authority of" Cruz. In fact, Cruz said, Ana had "fraudulently misrepresented" to him "that the monthly loan payments were being made." Cruz asserted that he did not receive any notice that he was in default under the Note "until he was served with the Complaint[.]" Finally, Cruz asserted the affirmative defenses of "estoppel, fraud, payment and waiver."

Motion for Summary Judgment

On August 31, 2023, California Properties moved for summary judgment on all claims made in the Complaint, arguing that it had "advanced money" to Cruz, and that Cruz had "failed to pay the full amount due" under the Note. California Properties sought judgment "for the full amount, all accrued interest and attorneys' fees and costs of collection." It asserted there was "no evidence supporting" Cruz's argument that the Note was a gift, and that "in fact, all the documentation surrounding the Note and the Loan completely contradict this position." In support of its argument, California Properties attached an email purportedly sent by Cruz that "acknowledge[d] the money will be provided as a loan and state[d] his intention to pay off the loan[.]" Also attached to the motion was an advisory letter from an attorney, titled "Interest Free Loan from California Properties Inc., a Bahamas Company[,] To Jose Luis Cruz," which California Properties claimed was provided to Cruz before he executed the Note. Based on these documents,

the fact that "over $70,000.00 in payments were made on this loan[,]" and the absence of any proof of "donative intent[,]" California Properties asserted that the Note was "valid and legitimate" and that there were "simply no factual disputes" with respect to its claim against Cruz.

In opposing the motion for summary judgment, Cruz argued that there was "evidence that the parties intended for this to be a gift transaction, rather than a true loan." He attached an affidavit to his motion, in which he attested that the Harths represented that the loan from California Properties was a gift. The fact that there was no interest on the Note except in the event of default, he claimed, proved his point. Cruz argued that California Properties' decision to seek tax counsel on the transaction "highlights that this was not a normal loan transaction, but instead a disguised gift."[5]

[5] Cruz also argued that the Note was unenforceable under Florida law because there was no indication that the "mandatory documentary excise tax" for promissory notes was ever paid. Cruz posited that California Properties could not enforce the Note because "Florida courts have consistently held for a number of years that promissory notes cannot be enforced in Florida courts in the absence of the appropriate indication that the document tax has been paid[,]" and California Properties did not provide evidence that such tax had been paid. In reply, California Properties asserted that Cruz had never before raised the argument that "there is a mandatory documentary excise tax required" to enforce the Note. California Properties pointed out that the defense was not raised in his Answer, and that it was inconsistent with statements he made in his answers to prior interrogatories. Specifically, Cruz stated that the "sole basis for lack of indebtedness is [that] the loan was to be a gift" and he was unaware of any "conditions that must be met by [California Properties] in order for the loan payments to be due[.]" Furthermore, California Properties argued that even if the defense had been raised, it did not apply because "the tax is due **only** for notes executed in" Florida, and Cruz had made "no claim the Note was signed, delivered or executed in Florida."

In reply, California Properties emphasized that Cruz "willingly executed [the] Note, borrowed money from [California Properties] and now, when asked to repay it, simply d[id] not want to do so." California Properties asserted that Cruz had not provided any factual evidence demonstrating "when and how the gift was made, what amount the gift would be or any other facts on which a [c]ourt could identify and validate a gift." On the other hand, California Properties argued that it had identified "many facts" supporting its contention that the Note was *not* a gift, including the email allegedly sent by Cruz on March 10, 2018, that acknowledged "an obligation to fully repay the Note[.]" According to California Properties, this email disproves Cruz's theory, mentioned for the first time in his affidavit in support of his opposition to summary judgment, that "he was under duress, coercion and forced to his detriment to sign the Note."

Motions Hearing and Circuit Court Ruling

The circuit court subsequently held a hearing on the motion for summary judgment.[6] Counsel for California Properties again emphasized that Cruz did not "dispute that the [N]ote was signed[,]" that he "received the money" and "payments were made[,]" or that the Note had "matured" as of the date of the hearing. California Properties' counsel reiterated that Cruz's "only defense" was the "assertion" that the Harths had told him the loan was really a gift that he would not have to repay. Counsel described Cruz's argument that the Note was unenforceable because of unpaid Florida excise tax as a "complete red

[6] The court heard Ana Cecilia Harth's motion to dismiss Cruz's third-party complaint against her at the same proceeding.

herring," because there was "no evidence" that the Note was signed or the money was delivered in Florida.

Cruz, through his counsel, responded that the Internal Revenue Service ("IRS") had previously ruled that "if a note has zero percent interest, they can impute income because they understand it's generally between family members and they're trying to make it a gift" instead of a "valid promissory note[.]" Cruz's counsel opined that it was unlikely Cruz ever read the Note, and merely signed it "for tax purposes." Cruz's counsel reiterated that there was an understanding between the parties "that the monies would never have to be paid back[,]" and that California Properties only decided to enforce the Note once Ana and Cruz entered divorce proceedings. The court suggested that Cruz's counsel's arguments were an attempt to "vary the terms" of the Note with extrinsic evidence, but counsel replied that the arguments were intended to show "that the [N]ote was a fiction" that would "ultimately be forgiven" by California Properties.

Counsel for California Properties retorted that Cruz's understanding of the Harths' true intent and failure to read the Note made no difference, because Cruz had "used the money," "signed the [N]ote," and made payments. Counsel referred the court to the January 28, 2021 Notice of Default, which it sent to Cruz after he had "stopped paying for a few months[.]" Though Cruz denied receiving the Notice of Default, counsel pointed out that after it was issued, California Properties began receiving some payments. While the Notice of Default was not required, counsel suggested that it nevertheless "worked" to convince Cruz to restart payments.

At the conclusion of the parties' arguments, the court announced its ruling on the record. The court concluded that the Note was "not ambiguous." The court then ruled that Cruz's argument that the Note was a "pretext" relied on inadmissible "parol[] evidence to vary the terms of a written agreement." Moreover, the court found no "evidence of donative intent" to support the defense that the money Cruz received was a gift, and reasoned that it made no difference whether Cruz or another person had made the Note payments.[7] Accordingly, the court granted the motion to dismiss the third-party defendant, with prejudice, granted the motion for summary judgment, and entered judgment in favor of California Properties for $430,576. The amount of the award represented the amount of outstanding principal on the Note plus interest that counsel for California Properties told the court had accumulated during Cruz's default. The court entered a written order reflecting its decision the following day. This appeal timely followed.

DISCUSSION

Parties' Contentions

Cruz argues that the circuit court erred in granting California Properties' motion for summary judgment because there was a "genuine issue of material fact regarding the authenticity of the evidence[.]" Cruz asserts that the court "relied on incompetent evidence, did not verify the authenticity of the evidence presented," and failed to present him with an "opportunity to contest the evidence presented prior to the granting of the motion for

[7] Earlier in the proceedings, the court had "disposed of the Florida jurisdiction argument" based on the mandatory excise tax. Cruz does not challenge this ruling on appeal.

summary judgment." Specifically, Cruz contests the authenticity of an email included in California Properties' motion, purportedly sent by him, acknowledging that he was obligated to repay the Note in full. He also asserts that the entries in the "purported 'Payment History,'" that California Properties attached to its motion and that the court relied on in its ruling, "are listed in no particular chronological order" and contradict each other in several places. Cruz claimed he provided metadata of that document showing that it was "solely authored" by his ex-wife Ana.

Cruz argues that his affidavit, submitted as part of his opposition to the motion, "set forth . . at all times his understanding of the original financial arrangements underpinning" the offer to pay his tax debt. Cruz alleges that the Harths "structured a complex arrangement designed to appear as a loan" to "cure the embarrassment and strain" on the Harths, and that he "buckled under the enormous pressure, and against his better judgment" to the scheme. He asserts that the "proceeds as contemplated under the original transaction went directly into [Ana's] bank account, to which [his] name was only later added[,]" and that, as she "handled all of the family's finances," he remains "unaware of the identities of all of the Payees, including [California Properties], to whom these funds may have been remitted."

Cruz contends that there is a dispute as to whether California Properties intended "to forgive any amounts which had not been paid" when the outstanding balance on the Note became due. He urges that prior to his divorce, California Properties intended to forgive any such amounts "prior to the [] balloon payment" coming due, because "[a]ll

parties were aware that [he] was not financially able at the time, nor would he have the ability even five years hence, to repay any of the contemplated balloon payments." (Emphasis removed).

California Properties counters that there "was no genuine issue as to any material fact" when the circuit court granted its motion for summary judgment. Specifically, California Properties asserts that there "is no dispute that [Cruz] did not make all monthly required payments" and that the Note was not paid "in full when it matured on April 1, 2023." Therefore, California Properties contends, Cruz was in default under the Note, pursuant to which California Properties was entitled it to make "demand for full payment" and sue to "obtain a judgment and collect all sums due[.]"

California Properties maintains there is no evidence the Note was a gift. It points to the same email Cruz argues he did not write, and alleges that Cruz "acknowledged the money w[ould] be provided as a loan" and "stated his intention to pay off the loan over 17 years[,]" as well as the fact that Cruz made "over $70,000" in payments on the Note and received a letter from counsel for California Properties "confirming that the monies advanced could not be a gift but must be a loan." Finally, California Properties insists that Cruz signed the Note "freely and without any duress or coercion[.]"

Legal Framework

Summary Judgment

On appeal, "[w]e review the circuit court's grant of summary judgment *de novo*." *Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 297 (2022). As summary judgment is proper when "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). We undertake an independent review of the record to determine whether any such dispute exists, and "[w]e do not endeavor to resolve factual disputes, but merely determine whether they exist and are sufficiently material to be tried." *Gambrill*, 481 Md. at 297. Our review of the circuit court's decision to grant summary judgment "is limited ordinarily to the legal grounds relied upon explicitly in its disposition." *Baker v. Montgomery County*, 427 Md. 691, 706 (2012).

We review "the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Myers v. Kayhoe*, 391 Md. 188, 203 (2006). However, the party opposing a motion for summary judgment must "show disputed material facts with precision in order to prevent the entry of summary judgment." *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 315 (2019) (citation omitted). "[M]ere general allegations which do not show facts in detail and with precision are insufficient to prevent summary judgment." *O'Connor v. Balt. Cnty.*, 382 Md. 102, 111 (2004) (citation omitted). "The party opposing the motion for summary judgment must demonstrate the existence of a genuine dispute as to a material

fact 'by producing factual assertions, under oath, based on the personal knowledge of the one swearing out an affidavit, giving a deposition, or answering interrogatories.'" *Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 179 (2015) (quoting *Reiter v. ACandS, Inc.*, 179 Md. App. 645, 660 (2008), *aff'd sub nom. Reiter v. Pneumo Abex, LLC*, 417 Md. 57 (2010)) (emphasis removed). "A material fact is one that, 'depending on how it is decided by the trier of fact, will affect the outcome of the case.'" *Macias*, 243 Md. App. at 315 (quoting *Warsham v. James Muscatello, Inc.*, 189 Md. App. 620, 634 (2009)).

Choice of Law

Ordinarily, in Maryland, "when determining the construction, validity, enforceability, or interpretation of a contract, we apply the law of the jurisdiction where the contract was made." *Cunningham v. Feinberg*, 441 Md. 310, 326 (2015). However, where a contract contains a provision specifying that another jurisdiction's law should apply, "we apply generally the law of the specified jurisdiction." *Id.*; *see also National Glass, Inc. v. J.C. Penney Properties, Inc.*, 336 Md. 606, 610 (1994) (observing that "it is 'generally accepted that the parties to a contract may agree as to the law which will govern their transaction, even as to issues going to the validity of the contract.'" (quoting *Kronovet v. Lipchin*, 288 Md. 30, 43 (1980))). Though the record reflects that the Note was executed in Maryland, the Note contains a choice of law provision stating that it "shall be construed and administered, and its validity determined, pursuant to the laws of the State of Florida."

We shall therefore interpret the Note under Florida law.[8] [9]

Florida Contract Law

We interpret a contract, including whether it is ambiguous, without deference to the trial court. *Sy-Lene of Washington, Inc. v. Starwood Urban Retail II, LLC*, 376 Md. 157, 163 (2003); *HESS Constr. + Eng'g Servs., Inc. v. Francis O. Day Co.*, 264 Md. App. 567, 593 (2025). In this case, we must interpret the Note under Florida law, where, as in Maryland, "an objective test is used to determine whether a contract is enforceable." *Robbie v. City of Miami*, 469 So.2d 1384, 1385 (Fla. 1985). The enforceability of a contract

[8] Neither party contests the applicability of the choice of law provision in the Note, and the transcript from the hearing does not indicate that the circuit court made a ruling on this issue. However, counsel for California Properties asserted at the motions hearing that the note was "subject to Florida law," and Cruz's counsel asserted that Florida tax law barred enforcement of the Note. The court never contradicted the parties' arguments that Florida law applied. We note that there are two exceptions to the general principle that the "law of the state chosen by the parties to govern their contractual rights and duties will be applied[.]" Restatement (Second) of Conflict of Laws § 187(2) (Am. L. Inst. 1988); *see also Gen. Ins. Co. of Am. v. Interstate Serv. Co.*, 118 Md. App. 126, 137 (1997) (recognizing that this "general principle, however, is subject to the limitations set forth in" § 187). First, if the "chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice," then the chosen state's law will not be applied. § 187(2)(a). The second exception arises where "application of the law of the chosen state would be contrary to a fundamental policy of a state" that has a "materially greater interest" in determining the particular issue raised and would be the state selected if there was no choice of law provision in the contract. § 187(2)(b). We see no "fundamental policy" of Maryland law that would be violated by the application of Florida law in this case.

[9] In the Florida court system, the intermediate appellate courts – known as the District Courts of Appeal – are split into geographical districts. "The decisions of the district courts of appeal represent the law of Florida unless and until they are overruled" by the Supreme Court of Florida. *Stanfill v. State*, 384 So.2d 141, 143 (Fla. 1980). Furthermore, "in the absence of interdistrict conflict, district court decisions bind all Florida trial courts." *Pardo v. State*, 596 So.2d 665, 666 (Fla. 1992).

hinges "not on the parties having meant the same thing but on their having said the same thing." *Blackhawk Heating & Plumbing Co. v. Data Lease Financial Corp.*, 302 So.2d 404, 407 (Fla. 1974) (citation omitted). "[W]here the terms of a contract are unambiguous, the parties' intent must be determined from within the four corners of the document." *Barakat v. Broward Cnty. Hous. Auth.*, 771 So.2d 1193, 1194 (Fla. Dist. Ct. App. 2000). "Generally, parol evidence is admissible only to clarify the terms of an ambiguous contract." *O'Neill v. Scher*, 997 So.2d 1205, 1206 (Fla. Dist. Ct. App. 2008).

However, even where a contract is unambiguous, parol evidence "may be introduced to show that the written agreement was procured by fraudulent means." *Pena v. Tampa Federal Savings and Loan Ass'n*, 363 So.2d 815, 817 (Fla. Dist. Ct. App. 1978). *See also Tinker v. De Maria Porsche Audi, Inc.*, 459 So.2d 487, 491 (Fla. Dist. Ct. App. 1984) ("[W]hen fraud enters into a transaction to the extent of inducing a written contract, the parol evidence rule is not applicable."); *Nagelbush v. United Postal Sav. Ass'n*, 504 So.2d 782, 783 (1987) (per curiam) (holding that where record contained evidence of "an alleged oral understanding between" noteholder and payor that noteholder would solely seek repayment from another payor, parol evidence rule did not preclude consideration of that evidence).

To make out a fraudulent inducement claim under Florida law, a party must establish "(1) a false statement concerning a material fact; (2) the representor's knowledge that the representation is false; (3) an intention that the representation induce another to act on it; and (4) consequent injury by the party acting in reliance on the representation."

Butler v. Yusem, 44 So.3d 102, 105 (Fla. 2010) (quoting *Johnson v. Davis*, 480 So.2d 625, 627 (Fla. 1985)). A "future promise to perform" made "with no intent of doing so" constitutes a fraudulent statement. *Gemini Investors III, L.P. v. Nunez*, 78 So.3d 94, 97 (Fla. Dist. Ct. App. 2012). "[A] recipient may rely on the truth" of such a promise, "even though its falsity could have been ascertained had he made an investigation, unless he knows the representation to be false or its falsity is obvious to him." *Besett v. Basnett*, 389 So.2d 995, 998 (Fla. 1980).

Nevertheless, "[a] party cannot recover in fraud for alleged oral misrepresentations that are adequately covered or expressly contradicted in a later written contract." *Hillcrest Pacific Corp. v. Yamamura*, 727 So.2d 1053, 1056 (Fla. Dist. Ct. App. 1999). In *Yamamura*, a real estate development company sought to purchase a golf course in South Florida. *Id.* at 1054. Yamamura and two other individuals prepared a document on behalf of the golf course's owner that listed the "Proposed Sales Price" for the golf course as $9.6 million, and gave the prospective buyer a tour, during which they reiterated that the sales price was $9.6 million. *Id.* Unbeknownst to the prospective buyer, Yamamura and his colleagues had already negotiated a deal with the course's owner under which they would receive "any amount received from [the prospective buyer] in excess of $6.2 million as 'finder's fees, agency fees, or commissions.'" *Id.* The prospective buyer ultimately purchased the property for $9.3 million pursuant to a "Purchase and Sale Agreement." *Id.* at 1054-55. This Purchase and Sale Agreement stated that the owner of the golf course had

used the services of consultants and was "solely responsible" for any consultation fees due to those consultants. *Id.* at 1055.

After purchasing the golf course, the buyer sued Yamamura and his colleagues, alleging that they had engaged in a "scheme to share in a secret profit from the transaction[,]" and that it "would never have purchased the [p]roperty for $9.3 million had it known" the golf course owner "would have accepted a lesser amount of approximately $6 million." *Id.* The buyer alleged that Yamamura and his colleagues "made a material misrepresentation when they quoted the 'Proposed Sale Price' as $9,600,000, knowing the falsity of that statement," intended to induce the buyer to rely on this "inflated price," and caused the buyer to suffer damage as a result. *Id.* The trial court dismissed the buyer's complaint in its entirety, concluding that it failed to state a cause of action, and the buyer appealed. *Id.* The District Court of Appeal of Florida affirmed, holding that the Purchase and Sale Agreement "plainly contradicts the allegations of the complaint" and was inconsistent with a claim of fraudulent inducement. *Id.* at 1056. The court observed that the Purchase and Sale Agreement explicitly contradicted the buyer's theory that Yamamura and his colleagues had engaged in a secret profit-sharing scheme, as it stated that the owner would pay consultancy fees to individuals who had consulted on the transaction, including Yamamura and his colleagues. *Id.* There was no "confidential relation" between the owner and Yamamura and his colleagues – rather, the Purchase and Sale Agreement clearly informed the buyer that Yamamura and his colleagues would be compensated for their efforts. *Id.* (citation omitted).

Accordingly, the court concluded that the buyer had insufficiently pleaded the elements of a fraudulent inducement claim under Florida law. The court noted that the buyer was a "sophisticated developer in the business of investing millions of dollars in commercial property" and had sufficient time to inspect the course, compare it to other similar courses, and make an informed decision about whether to purchase the property. *Id.* at 1057 *Id.* Furthermore, the court concluded that the "express language of the [Purchase and Sale Agreement] . . . demonstrate[d]" that the buyer "did not reasonably rely upon" any misrepresentations made by Yamamura and his colleagues, because it could have "ascertained the value of the property" itself and was not under any obligation to go through with the transaction. *Id.* at 1058.

Analysis

As we ordinarily will only affirm a trial court's grant of summary judgment on "the legal grounds relied upon explicitly in its disposition[,]" we must first determine the basis upon which the court granted summary judgment in favor of California Properties. *Baker*, 427 Md. at 706; *see Asmussen v. CSX Transp., Inc.*, 247 Md. App. 529, 558-59 (2020) ("[W]e ordinarily are limited to considering the grounds relied upon by the circuit court in granting summary judgment"). The transcript from the summary judgment hearing contains the following oral ruling of the circuit court:

> THE COURT: The Court has before it a motion for summary judgment based on a, what's entitled as a non-negotiable promissory note in the original sum of $425,000 dated April 1, 2018. The motion of [California Properties] also shows a, under Exhibit B, a payment history which as of June '22, June 2022, shows a payment of $425,943 due, still due.

> The Court has examined the promissory note, finds it is not ambiguous. It's very business-like in its terms and conditions. Accordingly, the argument that's made quite eloquently by [Cruz's counsel] that the note is a pretext and it was never intended and the like is essentially parol[] evidence to vary the terms of a written agreement and in the absence of an ambiguity becomes inadmissible. And the other arguments that have been made by plaintiff are equally persuasive and that is payments were made upon the note, whether or not they were made directly by Mr. Cruz or not doesn't really make any difference; and that it, the argument that somehow the amount of money was a gift, other than lacking the evidence of donative intent, and the other trappings of a gift there are payments . . . made on the sum that is demanded as due and owing.

We will only affirm the circuit court's grant of summary judgment if we determine that this ruling was legally correct.[10]

Before we address the circuit court's legal determinations, "we must make the threshold determination as to whether a genuine dispute of material fact" existed when summary judgment was granted. *Remsburg*, 376 Md. at 579. The parties do not dispute that Cruz signed the Note, which required him to pay California Properties $2,000 a month, nor do they dispute that at least some of these monthly payments were missed. However, we observe that the affidavit of Alberto Harth, submitted by California Properties in support of its motion for summary judgment, and the affidavit of Cruz, submitted in opposition, contain different accounts of the underlying transaction evidenced by the Note.

[10] We note here that in his brief, Cruz appears to misunderstand the scope of our review. He cites Maryland Rule 8-131(c), which pertains to appellate review of an action tried without a jury, and *Fuge v. Fuge*, 146 Md. App. 142 (2002), a family law case in which this Court reversed certain factual findings of the trial court as clearly erroneous. *Id.* at 180, 182. Our review of a grant of summary judgment is *de novo*, and our investigation of the facts is limited to identifying material disputes – not resolving them. *See Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 297 (2022). Accordingly, Rule 8-131(c) and *Fuge* are inapposite.

Alberto Harth stated that Cruz "acknowledged the money would be provided as a loan by his email to me and my wife dated March 10, 2018" and that "[a]t no time did any one on behalf of [California Properties] indicate the funds provided were a current or future gift." By contrast, Cruz stated that "at all times the $425,000 was a gift to my wife and me to help us with our tax problems." He attested that Ana and the Harths "expressed and stated" to him "that the 'fake' loan would be forgiven in five (5) years." Cruz further related that Ana was "in charge of the finances at all times" and that he "believed that she was making all of the payments[,]" but "[m]any payments were missed."

In granting summary judgment in favor of California Properties, the circuit court declined to consider Cruz's assertion that the Note was a "pretext," opining that in order to prove that the Note was really a fiction designed to disguise a gift, Cruz would have to introduce "parol[] evidence to vary the terms of a written agreement[,]" which he could not do because the Note was "not ambiguous." The circuit court correctly identified that under Florida law, "in the absence of an ambiguity" parol evidence generally "becomes inadmissible." *See O'Neill*, 997 So.2d at 1206 ("Generally, parol evidence is admissible only to clarify the terms of an ambiguous contract.").

However, Cruz argues that California Properties "misle[d]" him "by assuring him that any amounts yet unpaid" at maturity "would be forgiven," and attested in his affidavit that he signed the Note "under duress, coercion, and to [his] detriment based upon misrepresentations" made by California Properties and the Harths. Cruz essentially

attested that he was fraudulently induced into signing the Note.[11] Parol evidence "may be introduced to show that [a] written agreement was procured by fraudulent means" regardless of whether the agreement is ambiguous. *Pena v. Tampa Federal Savings and Loan Ass'n*, 363 So.2d 815, 817 (Fla. Dist. Ct. App. 1978). Cruz presented detailed facts supporting his contention that he was fraudulently induced into signing the Note in an affidavit made under oath and based on personal knowledge as required by Maryland Rule 2-501(c). *See O'Connor v. Balt. Cnty.*, 382 Md. 102, 111 (2004) ("To properly oppose a motion for summary judgment, the facts presented must not only be detailed but also admissible in evidence."); *see also Delia v. Berkey*, 41 Md. App. 47, 51 (1978) ("[E]ven if it is found unlikely that the party opposing the motion will prevail at trial, this is insufficient to authorize a summary judgment against him.").

Reviewing the summary judgment record, it appears that Cruz has made factual allegations from which each element of a fraudulent inducement defense to contract formation can be inferred. Cruz alleged that the Harths made "a false statement concerning a material fact," *Butler v. Yusem*, 44 So.3d 102, 105 (Fla. 2010), when he asserted in his affidavit that they promised to forgive any outstanding principal when the Note matured

[11] Cruz asserted "fraud" as an affirmative defense in his Answer, but did not assert "duress." As affirmative defenses are "waived if not asserted in the initial answer in civil actions[,]" we will not consider Cruz's duress argument. *Att'y Grievance Comm'n of Md. v. Siskind*, 401 Md. 41, 65 (2007); *see also* Md. Rule 2-323(g) ("a party shall set forth by separate defenses: . . . (6) duress"). We will consider any fraud theories put forth by Cruz as an affirmative defense to enforcement of the Note.

on April 1, 2023. This "future promise to perform" would be fraudulent if the Harths made it with no intent to follow through. *Nunez*, 78 So.3d at 97.

Cruz also showed "an intention that the representation induce another to act on it" *Butler*, 44 So.3d at 105, where he asserted in his affidavit that the Harths assured him he "should not worry" about the terms of the Note because they would ensure the balance would be forgiven at maturity. He said that the Harths "convinced" him to sign the Note with these assurances because "[a]t no time" did he have "the ability to repay a $425,000 loan." Construed in the light most favorable to Cruz, these assertions establish that the Harths intended to induce Cruz to sign the Note with their promise to forgive the outstanding balance at maturity, and that Cruz signed the Note "in reliance on" that promise. *Id.* (emphasis removed).

Finally, Cruz has clearly suffered injury as a result of his reliance – he signed the Note, which by its terms subjects him to liability for the full outstanding balance, plus interest. *See id.* (party asserting fraudulent inducement must demonstrate "consequent injury" as a result of reliance). Thus, taken together, the allegations in Cruz's sworn affidavit may, if true, support a fraudulent inducement defense to enforcement of the Note. If Cruz was fraudulently induced into signing the Note, that would undoubtedly "affect the outcome of the case" and bar a grant of summary judgment. *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 315 (2019) (citation omitted).

We observe further that the allegations underpinning Cruz's fraudulent inducement claim are not "expressly contradicted" or "adequately covered" by the terms of the Note.

Yamamura, 727 So.2d at 1056. In *Yamamura*, a company claimed that it had been misled about the price of the golf course it was purchasing, and that there was a secret scheme in the background inflating the price. *Id.* However, both the alleged profit-sharing scheme of Yamamura and his colleagues, as well as the price of the golf course were "adequately covered" by the Purchase and Sale Agreement because it clearly stated the price and expressly disclosed that Yamamura and his colleagues would be compensated for their efforts by the seller. *See id.* The Note, by contrast, does not mention a promise to forgive the remaining principal at maturity at all. Indeed, under the scheme that Cruz alleges the Harths devised to avoid paying gift taxes, the Note was supposed to "disguise[]" the fact that California Properties would never actually require Cruz to pay the $307,000 "balloon payment" due at maturity.

For its part, California Properties denies that the Harths ever made any promise to Cruz that they would forgive the balance on the Note at maturity. As previously mentioned, Alberto Harth stated in his affidavit that "[a]t no time did any one [sic] on behalf of Plaintiff indicate the funds provided were a current or future gift." California Properties also attached an email to its motion for summary judgment, purportedly from Cruz, which states that Cruz will "make any additional payment before the expiration of the 17 years" to repay the $425,000 given to him by California Properties, and a letter from a law firm consulted on the tax implications of "a loan . . . to be made by California Properties . . . to . . . Jose Luis Cruz[,]" which it asserts was provided to Cruz before he signed the Note. California Properties argues that this additional evidence in the summary judgment record

"overwhelming[ly]" shows "that the Note was valid and legitimate[.]" There is, therefore, a dispute as to whether Cruz was ever promised that he would not have to repay the remaining principal on the Note at maturity.

We do not draw conclusions about which party's account of events is better supported by the summary judgment record, because our role in reviewing a grant of summary judgment is not to "resolve factual disputes, but merely [to] determine whether they exist and are sufficiently material to be tried." *Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 297 (2022). We have determined that a material factual dispute did exist in the summary judgment record – whether Cruz was ever fraudulently induced to sign the Note based on a promise that he would not have to repay the "balloon payment" of $307,000 that would come due under the Note at maturity. We recognize that Cruz did not identify the legal term "fraudulent inducement" in his affidavit, and has not fully addressed the elements of that defense in his brief. Nevertheless, he raised fraud as an affirmative defense in his answer and made sufficient factual allegations in his affidavit, and argument in the circuit court, to establish that he was fraudulently induced into signing the Note.[12] The circuit court erred in treating these statements as inadmissible parol

[12] We note that there are additional material facts in dispute that will need to be resolved in order for Cruz to sustain a fraudulent inducement defense. For example, the record does not establish exactly when Cruz discovered that the Harths' alleged promise was fraudulent because there is contradictory evidence in the record on this point. When Cruz discovered the promise was fraudulent is a material fact critical to his defense because, "[c]onsistent with the majority view, Florida law provides for an election of remedies in fraudulent inducement cases: rescission, whereby the party repudiates the transaction, or damages, whereby the party ratifies the contract." *Mazzoni Farms, Inc. v. E.I. DuPont De Nemours & Co.*, 761 So. 2d 306, 313 (Fla. 2000). "[A] party's right to

evidence and granting summary judgment in favor of California Properties.[13]

We also conclude that the record does not appear to support the amount Cruz was adjudged owing California Properties under the Note. A party seeking to recover compensatory damages must prove the amount of such damages "with reasonable certainty" and may not base their damages calculation on "speculation or conjecture." *Brock Bridge Ltd. P'ship, Inc. v. Dev. Facilitators, Inc.*, 114 Md. App. 144, 157 (1997).

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rescind is subject to waiver if he retains the benefits of a contract after discovering the grounds for rescission." *Id*

In his affidavit, Cruz asserted that he was not notified that the Note was in default until this lawsuit was filed, and his brief suggests that he was unaware of the falsity of the Harths' alleged promise to forgive any outstanding payments at maturity until California Properties sued him. However, the "Notice of Default" California Properties sent Cruz on January 28, 2021 stated that he "immediately" owed approximately $414,194.41 in principal and interest, suggesting that California Properties intended to collect the full outstanding balance on the Note. Cruz claimed that he did not receive the Notice of Default.

Furthermore, Florida law provides that, "[g]enerally, a contract will not be rescinded even for fraud when it is not possible for the opposing party to be put back into his pre-agreement status." *Mazzoni Farms*, 761 So. 2d at 313 (quoting *Bass v. Farish*, 616 So. 2d 1146, 1147 (Fla. Dist. Ct. App. 1993)). "The general rule is subject to an exception when the inability of one party to restore is caused by the very fraud perpetrated by the other party." *Bass*, 616 So. 2d at 1147. Accordingly, whether Cruz can restore California Properties to its pre-agreement status, and whether any inability to restore was caused by fraud perpetrated by California Properties, are also material facts that must be resolved.

[13] As mentioned above, Cruz contends that the authenticity of the email attached to the motion for summary judgment, which states that Cruz will "make any additional payment before the expiration of the 17 years" to repay the Note, is also a material fact in dispute. However, Cruz did not contest the authenticity of the email in his opposition to the motion, nor did his counsel make any mention of the email at the motions hearing. Moreover, when reviewing a motion for summary judgment, "we ordinarily are limited to considering the grounds relied upon by the circuit court in granting summary judgment[,]" *Asmussen v. CSX Transp., Inc.*, 247 Md. App. 529, 558-59 (2020), and the court's oral ruling makes no mention of the email as a basis for its decision.

"If the loss is of such a kind that its amount can, in the ordinary course of things, be proved with reasonable certainty, substantial damages will be refused unless such evidence is given." *Id.* at 158 (quoting 5 Corbin on Contracts § 1021 at 133-34 (1964)) (emphasis removed). Upon examination of the summary judgment record, we are not convinced that California Properties proved its damages with reasonable certainty.

During its brief ruling at the conclusion of the hearing on the motion for summary judgment, the court noted that "[t]he motion of [California Properties] also shows a, under Exhibit B, a payment history which as of June 22, June 2022, shows a payment of $425,943 due, still due." The transcript then includes the following exchange:

> THE COURT: Accordingly, the Court will grant, first, the motion to dismiss of the third party with prejudice; and, secondly, grant a motion for summary judgment in favor of the plaintiffs against the, or I guess it's a plaintiff, it's California Properties, against the defendant Jose Luis Cruz. And the only problem I have . . . is the amount.
>
> [COUNSEL FOR CALIFORNIA PROPERTIES]: I believe the –
>
> THE COURT: If you, if you want to go forward on [$]425,943 –
>
> [COUNSEL FOR CALIFORNIA PROPERTIES]: No, I, I think you were missing your second page, so –
>
> THE COURT: Oh, well, maybe I did.
>
> [COUNSEL FOR CALIFORNIA PROPERTIES]: Yes. If I may, if I may approach, I can provide you a copy.
>
> THE COURT: Oh, here it is.
>
> [COUNSEL FOR CALIFORNIA PROPERTIES]: Do you see it? Yeah.
>
> THE COURT: Okay. So, it –

[COUNSEL FOR CALIFORNIA PROPERTIES]: It's as of June 1, 2023, the amount due was $410,073 and then it would continue to accrue interest per the terms of the note at 12 percent from June 1 forward until payment.

THE COURT: Well, I had to enter an amount as of today.

[COUNSEL FOR CALIFORNIA PROPERTIES]: I would have to make a calculation. I can do that on my phone very quickly if Your Honor desires?

THE COURT: Please do.

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[COUNSEL FOR CALIFORNIA PROPERTIES]: I just did it, Your Honor, and the –

[CRUZ'S COUNSEL]: For the record, I would object to that.

THE COURT: Okay. That's okay. It always reminds me of Judge Worman did –

[COUNSEL FOR CALIFORNIA PROPERTIES]: The amount of the judgment should be $430,576, Your Honor.

The $410,073 figure appears to have been calculated based on "Exhibit B," attached to the motion for summary judgment, which purports to show the amount Cruz paid each month from May 2018 to May 2023, along with monthly interest accrued (presumably during periods in which Cruz was in default for longer than 15 consecutive days).[14] This

[14] In its Memorandum of Points and Authorities in Support of Plaintiff's Motion for Summary Judgment**,** California Properties asserted that it "sustained damage and injury in the amount of $410,073.00, interest at twelve percent (12%) per annum from June 1, 2023 until paid, plus court costs and reasonable attorneys' fees" Although Alberto Harth represented that this was the true amount of damages, based on personal knowledge, in his affidavit, that does not resolve the core problem that there is insufficient evidence to explain or support the $410,073 figure.

document contains numerous irregularities and the amounts shown as due do not match other evidence in the summary judgment record.

For instance, California Properties sent Cruz a Notice of Default on January 28, 2021, which stated that "[a]s of the date hereof, approximately . . . (U.S. $414,194.41) remains due and payable under the Note[.]" However, Exhibit B reflects that the amount due in January 2021 was $427,813.00, and the amount due in February 2021, after Cruz purportedly made a $2,100 payment, was $425,713.00. California Properties has never offered an explanation for this discrepancy. Exhibit B also asserts that earlier, in July 2020, Cruz owed $422,050.00, accrued additional interest of $4,182.00, and made zero payment on the Note. Exhibit B then shows in August 2020, the following month, Cruz owed $413,140.00. Again, no explanation was ever offered as to how Cruz could have possibly owed less money on the Note following a month in which he apparently made no payments and accrued additional interest.

Furthermore, the accrued interest calculations in Exhibit B are inconsistent with the language of the Note. The Note provides that "during any period of default hereunder which shall last beyond fifteen (15) days, any amounts due and payable shall bear interest at twelve percent (12%) during the period of default." This provision does not specify whether it intends interest of 12% per year, 12% per month, or some other period, and the figures in Exhibit B provide no guidance.[15] This lack of clarity concerning the interest

[15] At oral argument, counsel for California Properties told this Court that the parties agreed to 12% interest per year, which was broken down as 1% per month on Exhibit B. Although Exhibit B, authored by California Properties, reflects this calculation, nothing in

calculation was expanded when the circuit court accepted the determination of the interest accrued from June 1, 2023 until November 8, 2023, made during the hearing by counsel for California Properties on his phone. Simply put, California Properties has not estimated the amount due under the Note "with reasonable certainty." *Brock Bridge*, 114 Md. App. at 157.

Conclusion

In summary, we hold that the circuit court correctly granted the motion to dismiss the third-party complaint against Ana, but erred in granting summary judgment in favor of California Properties. Cruz offered evidence in his affidavit that he was fraudulently induced into signing the Note by an alleged promise that the balance would be forgiven at the time the balloon payment became due, and the record supports his contention that all parties knew that he would otherwise not be able to pay the Note upon maturity. California Properties, in turn, produced Alberto Harth's affidavit in which he attested that he did not fraudulently induce Cruz into signing the Note. We conclude, therefore, that a material factual dispute did exist in the summary judgment record—whether Cruz was ever fraudulently induced to sign the Note based on a promise that he would not have to repay

Note supports using this calculation, and nothing in the record suggest there was any agreement on this. We note that 1% interest per month is a greater amount of interest than 12% per year because interest normally compounds. For instance, if 12% annual interest is owed on of $100, then the amount owed after one year, assuming no payments are made, will be $112. If instead 1% monthly interest is owed on the same $100, the amount owed after one year will be $112.68. *See* U.S. Sec. & Exch. Comm'n, *Compound Interest Calculator*, https://www.investor.gov/financial-tools-calculators/calculators/compound-interest-calculator (last visited July 10, 2025).

the "balloon payment" of $307,000 that would come due under the Note at maturity. Our decision should not be construed to suggest that summary judgment is never appropriate on the issue of fraudulent inducement; however, in this case, the court erred in failing to even consider whether Cruz submitted sufficient evidence on fraudulent inducement before deciding the legal question of Cruz's indebtedness under the Note. Furthermore, even if the trial court had not erred in determining that Cruz breached the Note by defaulting under its terms without considering Cruz's fraudulent inducement claim, the record does not show how the court, with reasonable certainty, arrived at the amount of the judgment in favor of California Properties. Accordingly, we affirm the court's dismissal of Cruz's third-party complaint, reverse the court's grant of summary judgment, and remand for further proceedings.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND REVERSED IN PART; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEE.