Circuit Court for Anne Arundel County
Case No. C-02-CV-21-001203

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 80

September Term, 2023

TAX LIEN LAW GROUP, LLC, ET AL

v.

EAGLEBANK

Graeff,
Arthur,
Wright, Alexander, Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 26, 2024

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

Appellants, Tax Lien Law Group, LLC, et al., challenge the February 7, 2023 decision by the Circuit Court for Anne Arundel County dismissing the complaint they filed against EagleBank, appellee, on the ground that the complaint was barred by res judicata and collateral estoppel. The complaint involved confessed judgments issued in the Circuit Court for Montgomery County in January 2020, which were challenged and upheld by this Court in an unreported opinion, *Tax Lien Law Grp., LLC v. EagleBank*, Nos. 1129 & 1130, 2021 WL 3360972, *cert. denied*, 476 Md. 429 (2021) ("*Eaglebank I"*).

On appeal, appellants present several questions for this Court's review,[1] which we have consolidated and rephrased, as follows:

[1] Appellants presented the following questions on appeal:

1. Whether the 2108 [sic] REO Guaranty upon which EagleBank confessed judgment is either valid or enforceable in Maryland as a matter of law in the absence of any "new money" advanced by the Bank on the REO line in reliance upon it?

    a. Whether transfer of an [sic] pre-existing antecedent debt from one line of credit to another is "new money" consideration sufficient to support and accept a fresh offer of cognovit guaranty in Maryland?

    b. Whether EagleBank's own fees and costs is [sic] "new money" consideration?

    c. Whether any "new money" was advanced on Guarantors' offer of the 2018 Cognovit REO Guaranty at issue?,

    d. Whether the Judgment Against Guarantors Can Be Sustained As Valid and Enforceable in Maryland, in the absence of any evidence of "new money" consideration on the facts of this case?

e. Whether the Eagle Bank, the judgment creditor committed extrinsic fraud" [sic] promising REO advances it never made?

f. Whether the Judgment Against Guarantors on the 2018 Cognovit Guaranty can be permitted to stand on these facts, when it runs inapposite to nearly 200 years of well-settled, black letter law in Maryland on this issue? *Malik v. Malik*, 99 Md. App. 521, 534, 638 A.2d 1184 (1994); *Telnikoff v. Matusevitch*, 347 Md. 561, 578, 702 A.3d 230 (1997)

g. Whether the Judgment Against Guarantors on the 2018 Cognovit Guaranty is "clearly wrong and contrary to established principles"? *Wallace v. State*, 452 Md. 558, 582, 158 A.3d 521 (2017); *Lawrence v. State*, 475 Md. 384, 416, 257 A.3d 588 (2021)?

2. Whether these issues were ever "fully and fairly litigated and finally decided" below after being raised by Guarantors be [sic] affidavit and objective record evidence but summarily denied without a hearing, after one was requested, such that they are now "res judicata" and prevent Guarantors from seeking relief on their claims as set forth in their Complaint at Law in this case, also supported by the same Affidavit and Evidence as presented originally below? (Ex. C), and lastly

3. Whether these issues were addressed and decided by the Court of Special Appeals in its Opinion, and if not, how these matters could possibly be "res judicata" here, now, on the facts in this case? (Ex. A)

4. Whether by holding affirming [sic] the confessed judgments against Guarantors and Borrowers, in a consolidated appeal, and treating them as exactly alike when the cognovit judgments it sustained pertained to two entirely different agreements. (One, a Note; the other, a Guaranty), the Maryland Court of Special appeals [sic] intended to abrogate and intentionally overturn nearly 200 years of prior legal precedent in regarding such cognovit guaranties --- and that by doing so its opinion, "new money" would no longer be required to sustain an offer of guaranty in Maryland, and that the repapering of an antecedent debt with fees and

Did the circuit court err in dismissing appellants' complaint on the ground that it was barred by *res judicata*?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

EagleBank I

In *EagleBank I*, we addressed the background and procedural history of the subject matter at issue on appeal. We reproduce the relevant facts set forth in our prior unreported opinion, as follows:

THE PARTIES' LOAN HISTORY

The REO Loan

In August 2013, Sulion, LLC ("Sulion") entered into a Guidance Line of Credit Loan Agreement with EagleBank under which Sulion could borrow up to two million dollars for the acquisition of distressed real estate (the "REO Loan"). The REO Loan was secured by a Guaranty Agreement executed by Dr. Mark A. Schwartz and Axis Investment Holdings Trust ("Axis Investment").

By 2017, the lending limit on the REO Loan had been increased to four million dollars, and ALTASSA, LLC ("Altassa") was added as a borrower. Also, by 2017, two additional parties—Axis Capital, Inc. ("Axis Capital") and Tax Lien Law Group, LLP ("Tax Lien LLP")—were added as guarantors.

On August 28, 2017, Sulion and Altassa executed an Amended and Restated Guidance Line of Credit Revolving Promissory Note that extended the maturity date of the REO Loan and reduced its credit limit to three million dollars. At the same time, Dr. Schwartz, Tax Lien Law Group LLC ("Tax Lien LLC"), and Axis Investment became the guarantors under a Second

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costs for the lender, not borrower, is sufficient to accept a fresh offer of unlimited cognovit guaranty on a loan and note with no prior balance?

Amended and Restated Guaranty of Payment Agreement,[ ] which, in section 1.9 stated:

> Upon the occurrence of an event of default, and if such event of default shall continue beyond any applicable notice and cure period, the guarantor hereby authorizes any attorney designated by the lender or any clerk of any court of record to appear for the guarantor in any court of record and confess judgment against the guarantor without prior hearing, in favor of the lender for, and in the amounts of, the balance then due under any one or more of the promissory notes evidencing all or any part of obligations, all accrued and unpaid interest thereon, all other amounts payable by the guarantor to the lender under the terms of this agreement, costs of suit, and attorneys' fees of five percent (5%) of the unpaid principal sum. The guarantor hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which the guarantor may otherwise be entitled under the laws of the United States of America or of any state or possession of the United States of America now in force and which may hereafter be enacted. The authority and power to appear for and enter judgment against the guarantor shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more occasions or from time to time in the same or different jurisdictions as often as the lender shall deem necessary and desirable, for all of which this agreement shall be a sufficient warrant.

The Tax Lien Loan

In May 2015, Sulion entered into a separate Financing and Security Agreement (the "Financing Agreement") with EagleBank permitting Sulion to borrow up to eight million dollars, with a one year maturity, to fund its business of purchasing tax certificates (the "Tax Lien Loan"). The credit limit was later increased to fifteen million dollars. The Tax Lien Loan was secured by a Guaranty of Payment Agreement executed by Dr. Schwartz, Axis Investment, Axis Capital, and Tax Lien LLP.

By late August 2017, Altassa was added as an additional borrower and other changes to the terms and conditions of the loan were made, including a decrease in the lending limit and an extension of the maturity date. In addition, Dr. Schwartz, Tax Lien LLC, and Axis Investment became the guarantors under an Amended and Restated Guaranty of Payment Agreement.

2018 Amendments

By the time the two loans came up for renewal a year later in 2018, the principal balance on the REO Loan was zero, and the Tax Lien Loan balance was $3,847,793.50.

Dr. Schwartz and EagleBank negotiated to renew the REO Loan for another nine months pursuant to an Eighth Amendment to Guidance Line of Credit Loan Agreement dated November 30, 2018 (the "2018 Loan Agreement"). The borrowers under the 2018 Loan Agreement were Sulion, Altassa, and a newly added entity named Reovest, LLC ("Reovest"). Under this renewal, the credit limit was increased to six million dollars. The guarantors—Dr. Schwartz, Tax Lien LLC, and Axis Investment—executed an aptly-named Reaffirmation of Guaranty to reaffirm their obligations under the Second Amended and Restated Guaranty of Payment Agreement (together, the "2018 Guaranty"), which included the confessed judgment provision.

The six-million-dollar credit limit was evidenced and governed by a Second Amended Guidance Line of Credit Revolving Promissory Note effective as of October 27, 2018 (the "2018 Note"). Section 4.6 of the 2018 Note states:

> Upon the occurrence of an Event of Default, Borrower hereby authorizes any attorney designated by Lender or any clerk of any court of record to appear for Borrower in any court of record and confess judgment without prior hearing against Borrower in favor of Lender for and in the amount of the outstanding principal, all interest accrued and unpaid thereon, all other amounts payable by Borrower to Lender under the terms of this Note or any other Loan Documents, costs of suit, and attorneys' fees of fifteen percent (15%) of the unpaid principal amount of the Note and interest then due hereunder. By its acceptance of this Note, Lender agrees that in the event Lender exercises at any time its right to confess judgment under this Note, Lender shall use its best efforts to obtain legal counsel who will charge Lender for its services on an hourly

> basis, at its customary hourly rates and only for the time and reasonable expenses incurred. In no event shall Lender enforce the legal fees portion of a confessed judgment award for an amount in excess of the fees and expenses actually charged to Lender for services rendered by its counsel in connection with such confession of judgment and/or the collection of sums owed to Lender. In the event Lender receives, through execution upon a confessed judgment, payments on account of attorneys' fees in excess of such actual attorneys' fees and expenses incurred by Lender, then, after full repayment and satisfaction of all of the obligations under and in connection with this Note, the Loan Agreement and all of the other Loan Documents, Lender shall refund such excess amount to Borrower. Borrower hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which Borrower may otherwise be entitled under the laws of the United States of America or of any state or possession of the United States of America now in force or which may hereafter be enacted. The authority and power to appear for and enter judgment against Borrower shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more occasions or from time to time in the same or different jurisdictions as often as Lender shall deem necessary or desirable, for all of which this Note shall be a sufficient warrant.

Of the six-million-dollar credit limit, $3,847,793.50 was immediately used to pay the balance of the Tax Lien Loan as well as to fund the closing costs of $52,660.[ ] This drawdown left $2,099,546.50 of available credit, and was evidenced by a separate promissory note—referred to in the 2018 Note as a "Sub-Note" (the "2018 Sub-Note," and together with the 2018 Loan Agreement, 2018 Guaranty, and 2018 Note, the "2018 Loan Documents")—in that amount, dated November 30, 2018.

Section 3.15 of the 2018 Sub-Note states:

> Upon the occurrence of an Event of Default, and if such event of default shall continue beyond any applicable notice and cure period, Borrower hereby authorizes any attorney designated by

> Lender or any clerk of any court of record to appear for Borrower in any court of record and confess judgment without [a] prior hearing against Borrower in favor of Lender for and in the amount of the outstanding principal, all interest accrued and unpaid thereon, all other amounts payable by Borrower to Lender under the terms of this Note, costs of suit, and attorneys' fees of fifteen percent (15%) of the unpaid principal amount of the Note and interest then due hereunder. By its acceptance of this Note, Lender agrees that in the event Lender exercises at any time its right to confess judgment under this Note, Lender shall use its best efforts to obtain legal counsel who will charge Lender for its services on an hourly basis, at its customary hourly rates and only for the time and reasonable expenses incurred. In no event shall Lender enforce the legal fees portion of a confessed judgment award for an amount in excess of the fees and expenses actually charged to Lender for services rendered by its counsel in connection with such confession of judgment and/or the collection of sums owed to Lender. In the event Lender receives, through execution upon a confessed judgment, payments on account of attorneys' fees in excess of such actual attorneys' fees and expenses incurred by Lender, then, after full repayment and satisfaction of all of the obligations under and in connection with this Note, the Loan Agreement and all of the other Loan Documents, Lender shall refund such excess amount to Borrower. Borrower hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which Borrower may otherwise be entitled under the laws of the United States of America or of any state or possession of the United States of America now in force or which may hereafter be enacted. The authority and power to appear for and enter judgment against Borrower shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more occasions or from time to time in the same or different jurisdictions as often as Lender shall deem necessary or desirable, for all of which this Note shall be a sufficient warrant.

EagleBank I, at *1–3 (footnotes (2) and (3) omitted).

With respect to the confessed judgments entered by the Montgomery County Circuit Court, we stated:

> On January 22, 2020, EagleBank simultaneously filed two complaints for confessed judgments in the Circuit Court for Montgomery County: one against borrowers Altassa, Sulion, and Reovest (hereinafter, "Borrowers"), and the other against Tax Lien, LLC, Dr. Schwartz, and Axis Investment (hereinafter, "Guarantors"). The complaints alleged that Borrowers had defaulted on the 2018 Note, and that Guarantors failed to honor their obligations under the 2018 Guaranty. As such, EagleBank requested confessed judgments against Borrowers and Guarantors pursuant to the applicable provisions of the 2018 Note and 2018 Guaranty, respectively. EagleBank supported its complaints with copies of the 2018 Note and 2018 Guaranty, an affidavit by an EagleBank representative testifying to the default, and a transaction detail showing all payments, interest rates, and the running balance.
>
> On January 30 and 31, confessed judgments were entered against Guarantors and Borrowers, respectively, for $3,534,029.08, plus attorneys' fees and pre- and post-judgment interest (the "Confessed Judgments"). The court issued notice of the judgments to Borrowers and Guarantors that same day.
>
> THE MOTIONS TO VACATE
>
> Because EagleBank filed one action against the Borrowers and a separate action against Guarantors, out of necessity, Borrowers and Guarantors filed separate motions to vacate the Confessed Judgments.[ ] Soon after, they filed a motion to consolidate their two cases.
>
> In their motions to vacate, Guarantors and Borrowers argued, among other things, that they were not provided with adequate notice or service of the judgments, that the 2018 Note and 2018 Guaranty were unenforceable and void *ab initio* due to lack of consideration, that there was no event of default other than the one manufactured by EagleBank, and that EagleBank breached its contract with Borrowers and committed fraud by charging $52,000 for the loan renewal and credit increase when it "had no intention of lending anything to Borrowers."
>
> On November 13, Guarantors and Borrowers each filed a "Request for Hearing or Proceeding" on their motions to vacate. On November 25, the court, without a hearing, denied the motion to consolidate and the motions to

> vacate. Borrowers and Guarantors . . . timely noted their appeals, which we have consolidated.

Id. at *3–4 (footnote omitted).

As indicated, on August 3, 2021, this Court affirmed the circuit court's ruling on appeal. We noted that, "[i]n this consolidated appeal, the borrowers and guarantors under a commercial loan agreement claim error in the trial court's entry of confessed judgments against them and its denial of their subsequent motions to vacate the same." *Id.* at *1. We set forth the questions raised for review, as follows:

> 1. Whether the Guaranty upon which [EagleBank] took judgment was unenforceable as a matter of law for lack of consideration.[ ]
>
> 2. Whether appellants raised substantial and sufficient grounds of an actual controversy on the merits which required the Court to vacate the confessed judgments; [and]
>
> 3. Whether the Court was required to hold a hearing on Appellants' Motion[s] to Vacate?

Id. (footnote omitted).[2]

With respect to appellants' first issue, we noted that "Guarantors . . . alleg[ed] that the 2018 Guaranty is not enforceable because no 'new' money was advanced to Borrowers during the 2018-19 loan term." *Id.* at *6. Addressing appellants' argument, we stated:

> [This argument is] premised on the verifiably incorrect assertion that EagleBank failed to provide any funding under the 2018 Loan Documents.[ ]

[2] We take judicial notice of the appellants' brief filed in CSA-REG-1129-2020. *See MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condo., Inc.*, 253 Md. App. 279, 302 (2021) ("[C]ourts may take judicial notice of 'public records such as court documents.'") (quoting *Abrishamian v. Wash. Med. Grp., P.C.*, 216 Md. App. 386, 413 (2014)). Appellants' arguments raised in the first appeal are the same as those raised in this appeal.

> At the time the REO and Tax Lien Loans came up for renewal in 2018, EagleBank could have required full payment of the approximately 3.8 million dollars still owed to them under the Tax Lien Loan; conversely, Borrowers could have paid the entire balance due on the Tax Lien Loan. Instead, the parties entered into the 2018 Loan Agreement, whereby Borrowers' credit limit under the REO Loan was increased to six million dollars. Borrowers immediately used a portion of that credit to pay off the balance due on the Tax Lien Loan plus the $52,660 in closing costs, leaving approximately 2.1 million dollars in available credit under the 2018 Loan Agreement. Thus, EagleBank did provide funding under the 2018 Loan Agreement, which, in addition to the remaining credit made available to Borrowers and other mutual promises, was the consideration upon which the 2018 Loan Documents were premised. That those funds did not flow through Borrowers but were instead used to directly repay Borrowers' other debts to EagleBank, does not change that fact. Nor does the fact that Borrowers did not choose to make use of the remaining credit.[ ]

Id. (footnotes (7) and (8) omitted).

In addressing whether appellants raised substantial and sufficient grounds of an actual controversy, we stated:

> We also note that none of the foregoing defenses are meritorious defenses to the Confessed Judgments. As explained above, a 'meritorious defense' to a confessed judgment is one that challenges either the execution of the instrument that permitted the confessed judgment itself or challenges the amount of judgment. [*NILS, LLC v. Antezana*, 171 Md. App. 717, 728 (2006)]. A meritorious defense does not challenge any "antecedent transactions and proceedings that may have eventuated in the execution of the promissory note." *Id.* at 730. None of the foregoing defenses meet that test.

Id. at *6 n.7.

Finally, with respect to appellants' argument that the circuit court was required to hold a hearing on its motion to vacate, we held that "[t]he circuit court . . . was not required to hold a hearing before denying [a]ppellants' motions." *Id.* at *10. We reasoned that a request for a hearing must be included in a motion or response, either in the body of the

motion, or in the title of the motion or response. *Id.* "Appellants' motions to vacate complied with neither requirement." *Id.* We denied appellants' motion for reconsideration, and the Supreme Court of Maryland denied appellants' petition for a writ of *certiorari*. *See Tax Lien Law Grp. v. EagleBank*, 476 Md. 429 (2021).

II.

EagleBank II

On September 2, 2021, appellants filed another complaint in a different jurisdiction, i.e., the Circuit Court for Anne Arundel County (the "Anne Arundel Complaint"). Appellants sought to invalidate the 2018 REO Guaranty and asked the court to "declare [ ] the 2018 REO Line of Credit Guaranty invalid and unenforceable against the Guarantors." Appellants alleged four counts in their complaint. In Count I (Recission of Invalid Guaranty), appellants sought to invalidate the 2018 Loan Agreement "for lack of 'new money' consideration." In Count II (Recission of Invalid Note), appellants sought to invalidate the "Borrowers' 2018 REO Line of Credit and 2108 [sic] Line of Credit Promissory Notes." Additionally, appellants asked the court to declare that "the Bank's claim of Default was without merit." In Count III (Breach of Contract), appellants claimed "Eagle Bank Breached [sic] its contract with [appellants]," asking the circuit court in Arundel County to "vacate the Confessed Judgments" issued by the circuit court in Montgomery County and award it "$1.2M each as damages for breach of contract." Finally, in Count IV (Fraud in the Inducement), appellants alleged that EagleBank misrepresented its intention to be bound by the terms of the 2018 agreements.

On November 2, 2021, appellee filed a motion to dismiss the complaint or, in the alternative, for summary judgment. It alleged that the litigation pursued in *EagleBank I* effectively operated as a bar to appellants' claims under the doctrines of res judicata or collateral estoppel.

On February 6, 2023, the court heard argument. It ultimately found as follows:

> The Court finds that this case involves the same parties and claims which were litigated, or should have been litigated, within case numbers 478002V, 478003V of the Circuit Court of Montgomery County in which those issues that were raised and those claims that were made were found in favor of EagleBank. Regarding, in essence, you know contracts by way of loans and guarantees that existed in those matters, it is the same issues that were resolved by the Montgomery County Circuit Court and then were upheld on appeal and cert was denied.
>
> Therefore, the -- EagleBank's motion to dismiss is hereby granted based upon *res judicata* as to the claims raised and based upon collateral estoppel regarding the issues raised.

On February 18, 2023, appellants filed a motion to reconsider, which the court denied.

This appeal followed.

DISCUSSION

Appellants list as questions presented whether the issues raised in the Anne Arundel Complaint were "fully and fairly litigated and finally decided" in *EagleBank I*, and if not, how the matters could be "res judicata" in this case. Appellants do not, however, in the argument section of their brief, address the validity of the circuit court's ruling dismissing the case on the grounds of res judicata and collateral estoppel. Instead, appellants' brief recites, almost verbatim, the arguments brought to this Court in *EagleBank I*.

Appellee contends that the circuit court properly dismissed the complaint because the adjudication of *EagleBank I* "operates as *res judicata* and/or collateral estoppel with respect to the claims and issues raised in appellant's complaint." It asserts that "the claims and issues advanced by [a]ppellants have already been extensively litigated," and we should affirm the dismissal of this complaint.

At the outset we note that the Maryland Rules require an appellate brief to include "[a]rgument in support of the party's position on each issue." Md. R. 8-504(a)(6). In cases where a party fails to provide argument in support of a question presented, "this Court has declined to consider the merits of the question so presented but not argued." *Fed. Land Bank of Baltimore, Inc. v. Esham*, 43 Md. App. 446, 457–58 (1979). *Accord Assateague Coastkeeper v. Md. Dept. of Env't*, 200 Md. App. 665, 670 n.4 (2011), *cert. denied*, 424 MD. 291 (2012).

As indicated, in appellants' initial brief, they did not present any argument addressing the circuit court's ruling on res judicata or collateral estoppel. In their reply brief, appellants continue their failure to address the issue other than stating that this Court did not address "the enforceability of Guarantors 2018 Offer of Guaranty" in the prior appeal. Based on appellants' failure to provide case law and argument on the issue of res judicata, we could decline to address it. Nevertheless, we will exercise our discretion to consider whether the circuit court properly granted appellee's motion to dismiss the appellants' complaint on the grounds of res judicata and collateral estoppel.

We generally "review the grant of a motion to dismiss de novo." *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 173 (2015) (quoting *Unger v. Berger*, 214 Md. App. 426, 432 (2013)). Whether res judicata bars a particular action is a question of law, which we review *de novo*. *See Davidson v. Seneca Crossing Section II Homeowner's Ass'n, Inc.*, 187 Md. App. 601, 633 (2009).

"Res judicata, also known as claim preclusion or direct estoppel, means 'a thing adjudicated.'" *Anne Arundel Cnty. Bd. of Ed. v. Norville*, 390 Md. 93, 106 (2005) (quoting *Lizzi v. Washington Metro. Area Transit Auth.*, 384 Md. 199, 206 (2004)). It is "an affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been—but was not—raised in the first suit." *Id.* (quoting *Res Judicata*, *Black's Law Dictionary* (8th ed. 2004)).

Res judicata protects the courts and the parties from the "burdens of relitigation." *Id.* at 107. It "restrains a party from litigating the same claim repeatedly and ensures that courts do not waste time adjudicating matters which have been decided or could have been decided fully and fairly." *Id.* As the Supreme Court has explained, a claim is barred by res judicata when: (1) "the parties in the present litigation are the same or in privity with the parties to the earlier dispute"; (2) "the claim presented in the current action is identical to the one determined in the prior adjudication"; and (3) "there was a final judgment on the merits." *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 392 (2000).

We begin by assessing the circuit court's determination that the suit was barred by res judicata. With respect to the first requirement, that the parties to the suit are the same or in privity, the parties to the first complaint included the Tax Lien Law Group, LLP, Axis Investment Holdings Trust, Mark Schwartz, Sulion, LLC, Altassa LLC, Reovest, LLC, and EagleBank. *EagleBank I* at *1. The parties to the present case are Tax Lien Law Group, LLP Axis Investment Holdings Trust, Mark Schwartz, Sulion, LLC, Altassa LLC, and Reovest, LLC and EagleBank. Clearly, appellants and appellee were named parties in both cases, and therefore, the first requirement is satisfied.

With respect to the second requirement, whether "the claim presented in the current action is identical to the one determined in the prior adjudication," we note that the argument section of the brief in this case is identical to the one in the prior case, raising the same issues resolved in the prior appeal. To the extent that appellants contend that an issue was not resolved in the prior appeal, we note that this Court has explained the analysis as follows:

> When an earlier court has entered final judgment and actually ruled on the matter sought to be litigated in a second court, the "'same claim'" analysis usually is straightforward. *Colandrea*, 361 Md. at 389 (quoting *FWB Bank v. Richman*, 354 Md. 472, 492 (1999)). It is more difficult, however, when the "earlier court has *not* directly ruled upon the matter." *FWB Bank*, 354 Md. at 493. In that case, "the second court must determine whether the matter currently before it was fairly included within the claim or action that was before the earlier court and *could* have been resolved in that court." *Id.* To make that determination, Maryland courts have adopted the transactional test, i.e., "if the two claims or theories are based upon the same set of facts and one would expect them to be tried together ordinarily, then a party must bring them simultaneously." *Anne Arundel County Bd. of Ed. v. Norville*, 390 Md. 93, 109 (2005). "Legal theories may not be divided and presented in piecemeal fashion in order to advance them in separate actions." *Id.* Thus,

> *res judicata* applies "'even though the subsequent suit takes a different form or is based on a different cause of action.'" *Blades v. Woods*, 338 Md. 475, 478–79 (1995) (citation omitted).

Heit v. Stansbury, 215 Md. App. 550, 566 (2013) (cleaned up).

Here, both complaints relate to a commercial loan agreement, the REO Loan, originally entered into in August 2013 and amended in 2018. *See EagleBank I*, at *1. Appellants argue that the 2018 REO Guaranty, upon which EagleBank's confessed judgment is based, is invalid because no "new money" was "advanced by the Bank on the REO line in reliance upon it." Specifically, appellants argue that "[t]he cognovit guaranty upon which EagleBank obtained judgment against Guarantor's [sic] is invalid and unenforceable as a matter of law for lack of consideration." Appellants made the same argument in their prior appeal. *Id.* at *6. As indicated, *supra*, this Court rejected this claim, stating that it was

> premised on the verifiably incorrect assertion that EagleBank failed to provide any funding under the 2018 Loan Documents. . . .[3] EagleBank did provide funding under the 2018 Loan Agreement which, in addition to the remaining credit made available to Borrowers and other mutual promises, was the consideration upon which the 2018 Loan Documents were premised. That those funds did not flow through Borrowers but were instead used to directly repay Borrowers' other debts to EagleBank, does not change that fact. Nor does the fact that Borrowers did not choose to make use of the remaining credit.

[3] The 2018 Loan Documents included: (1) the 2018 Note and 2018 Sub-Note; (2) the 2018 Loan Agreement; and (3) the 2018 Guaranty, that this Court collectively referred to as "the 2018 Loan Documents." *Tax Lien Law Grp., LLC v. EagleBank*, Nos. 1129 & 1130, 2021 WL 3360972, at *3, *cert. denied*, 476 Md. 429 (2021).

Id. at *6. The claim raised in this case is identical to that determined in the prior adjudication.

With respect to the last requirement for the doctrine of res judicata to apply, there was a final judgment on the merits. There was a judgment in the circuit court, which was affirmed by this Court. Appellants' petitions for a writ of certiorari were denied by the Supreme Court of Maryland and the United States Supreme Court.

The doctrine of res judicata bars appellants' current contention, and the circuit court did not err in dismissing appellants' complaint.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.