Circuit Court for Montgomery County
Case No.: C-15-CV-22-001044

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 3

September Term, 2023

DAVID H. MILLER

v.

LINDA (LYNN) DIANE WALLIS, ET AL.

Wells, C.J.,
Berger,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: February 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

David H. Miller, appellant, sued Linda (Lynn) Diane Wallis, Daniel Caplan, Clark L. Goldstein, and Stewart Title, Inc., appellees, in the Circuit Court for Montgomery County alleging various conspiracies and fraudulent acts. The court found that Miller's claims against Caplan, Goldstein, and Stewart Title were barred by the statute of limitations, and so granted them summary judgment. When Miller and Wallis later twice failed to appear at hearings, the court dismissed the rest of the case without prejudice. Miller appealed and asks us to consider three questions,[1] which we combine and rephrase:

1. Did the circuit court err in granting Caplan, Goldstein, and Stewart Title's motions for summary judgment?

2. Did the circuit court err in dismissing Miller's complaint against Wallis?

Finding neither error nor abuse of discretion, we shall affirm.

[1] Miller phrased his questions as:

1. Did the trial court err in finding no issue of material fact and granting summary judgment when appellant's contrary affidavit and supporting evidence substantiate the existence of genuine issues of material fact that should have been resolved by the fact finder and not by the court in a summary judgment proceeding?

2. Did the trial court err when it failed to consider appellant's argument that Maryland's doctrine of continuing harm extended the statute of limitations given the continued breach of appellee's fiduciary and statutory duty to disclose the fraud?

3. Did the trial court err in dismissing appellant's complaint and his notice of appeal on the basis of a failure to pay an appellate filing fee when appellant's failure was due to inaccurate information provided by the clerk and not due to appellant's neglect?

BACKGROUND[2]

Miller purchased his Virginia home in 2000. He married Wallis five years later. In May 2007, Wallis applied for a loan with Clark Financial Services, a "hard money lender" owned by Caplan and Goldstein. Despite having no ownership interest in the property, Wallis offered Miller's home as security for the loan. Stewart Title provided title and mortgage insurance for the loan.

According to Miller, Wallis applied for the loan without his knowledge or consent. Miller further alleged that Caplan, Goldstein, and Stewart Title "negligently [or] deliberately disregarded the due diligence and normal verification practices of the real estate and mortgage lending industry" by allowing Wallis to obtain the loan without first obtaining Miller's consent.

Miller ultimately "sold his home under duress and at a loss of over $400,000" in May 2016. As reflected on the HUD-1, which Miller signed as part of the sale, a portion of the sale proceeds paid the balance of the loan. Miller claimed he had "no reason to suspect" the loan existed because (1) Wallis "had the family responsibility for paying the family bills[,]" and (2) the monthly payment amount aligned with the original purchase money mortgage Miller obtained when buying the house. Miller alleged he first learned of the 2007 loan in August 2019, when he was reviewing the Government's exhibits while

[2] Because the circuit court here considered matters outside the pleadings, it treated Caplan, Goldstein, and Stewart Title's motions as seeking summary judgment rather than dismissal. *See* Md. Rule 2-322(c). Accordingly, the facts presented here are in the light most favorable to Miller. *See Fitzgerald v. Bell*, 246 Md. App. 69, 84 (2020).

preparing for a pending criminal trial against him in the United States District Court for the Eastern District of Virginia.

On March 1, 2022, Miller filed an eight-count complaint against Wallis, Caplan, Goldstein, and Stewart Title alleging, generally, fraud, conspiracy, and negligence and seeking compensatory and punitive damages.[3] Caplan, Goldstein, and Stewart Title each, individually, moved to dismiss Miller's complaint or for summary judgment, all arguing that Miller's claims were time-barred by the statute of limitations. Wallis also moved for dismissal or summary judgment, but she did not contend Miller's claims were time-barred.

Caplan, Goldstein, and Stewart Title each attached affidavits and exhibits to their motions that, they contended, showed Miller knew or reasonably should have known about the 2007 loan earlier than he claimed. Many of these exhibits were filings from an ancillary forfeiture proceeding in a criminal case against Wallis in the United States District Court for the Eastern District of Virginia. As part of that case, on September 13, 2016, the Government moved for entry of stipulations. Attached to that filing were written stipulations signed by Miller regarding the authenticity of the 2007 loan documents as records of regularly conducted business activity and explicitly acknowledging the existence of the 2007 loan.

Later in that same case, on February 3, 2017, Miller filed a "Brief in Support of His Challenge to the Government's Effort to Satisfy a Defendant's Money Judgment by Forfeiting Property it Concedes the Defendant Does Not Own." Not only did that brief

[3] Miller's complaint named several other defendants as well, but he never served them, and they are not parties to this appeal.

include the same language used in his prior stipulation, but Miller attached copies of the 2007 loan application and settlement statement as exhibits.

The circuit court held a hearing on Caplan, Goldstein, and Stewart Title's motions limited solely to the question of whether Miller's complaint was time-barred. The court first found that Miller had actual notice of his claims "no later than May 11, 2016 when the HUD-1 was signed paying off the [2007] loan." It further found that, by virtue of his filings and stipulations in Wallis's criminal case, Miller had actual notice of his claims "no later than February 3, 2017." The court "also conclude[d] as an alternative, independent basis for [its] ruling[,]" that a reasonable person in Miller's position would have been on inquiry notice by those same dates. Finally, the court found no basis in the record for any accepted principles of tolling the statute of limitations. Accordingly, it granted summary judgment to Caplan, Goldstein, and Stewart Title.

The court did not rule on Wallis's motion at the hearing because it was not yet ripe, but it ultimately denied her motion without explanation. Even so, Miller filed an interlocutory appeal from the court's grant of summary judgment to Caplan, Goldstein, and Stewart Title. The court struck his notice of appeal, however, when he failed to pay the required fee.

In the meantime, the court scheduled a pre-trial conference for December 15, 2022, but neither Miller nor Wallis appeared. When both did not appear again for trial the next day, the court dismissed the case without prejudice. This appeal followed.

DISCUSSION

I. The court did not err in granting Caplan, Goldstein, and Stewart Title's motions for summary judgment.

On appeal, Miller contends that genuine disputes of material facts precluded summary judgment. In the alternative, he contends that the doctrine of continuing harm should have tolled the statute of limitations. We disagree.

A. Standard of Review

Summary judgment is proper when the circuit court determines that there is no genuine dispute of any material fact and that the moving party is entitled to judgment as a matter of law. *See* Md. Rule 2-501. We review the grant of summary judgment for legal correctness. *Fitzgerald v. Bell*, 246 Md. App. 69, 84 (2020). In doing so, "we review the record independently to determine whether the parties generated a dispute of material fact and, if not, whether the moving party was entitled to judgment as a matter of law." *Id.* (cleaned up). Further, we view the record '"in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the facts against the moving party."' *Id.* (quoting *Charles Cnty. Comm'rs v. Johnson*, 393 Md. 248, 263 (2006)).

B. Analysis

"A grant of summary judgment is appropriate where the statute of limitations governing the action at issue has expired." *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 94 (2000). With limited exception not relevant here, "[a] civil action at law shall be filed within three years from the date it accrues[.]" Md. Code Ann., Cts. & Jud. Proc. § 5-101.

When a cause of action "accrues" is a question "left to judicial determination" by application of the "discovery rule." *Cain v. Midland Funding, LLC*, 475 Md. 4, 35 (2021). "Under the discovery rule, a claim accrues when the plaintiff knew or reasonably should have known of the wrong." *Id.* (cleaned up). Our Supreme Court has held that the statute of limitations is activated by:

> [A]ctual knowledge—that is express cognition, or awareness implied from knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry thus, charging the individual with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued. In other words, a [person] cannot fail to investigate when the propriety of the investigation is naturally suggested by circumstances known to him; and if he neglects to make such inquiry, he will be held guilty of bad faith and must suffer from his neglect.

Poffenberger v. Risser, 290 Md. 631, 637–38 (1981) (cleaned up).

Put differently, the statute of limitations begins to run when:

> "[A] claimant gains knowledge sufficient to put [them] on inquiry. As of that date, [they are] charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation. The beginning of limitations is not postponed until the end of an additional period deemed reasonable for making the investigation."

Bacon v. Arey, 203 Md. App. 606, 652–53 (2012) (first alteration in *Bacon*) (quoting *Bennett v. Baskin & Sears*, 77 Md. App. 56, 67 (1988)).

Here, Miller's claims against Caplan, Goldstein, and Stewart Title accrued—*i.e.*, the statute of limitations started running—no later than February 3, 2017. On that day, Miller, through counsel, filed the 2007 loan application and settlement statement as exhibits to his brief. Both documents bore his forged signature and initials throughout. Logically, having possession of documents bearing one's forged signature "ought to have

put a person of ordinary prudence on inquiry[.]" *Poffenberger*, 290 Md. at 637 (cleaned up). Had Miller investigated those forgeries, he would have likely discovered the facts supporting his claims against Caplan, Goldstein, and Stewart Title. He was, therefore, "charged with knowledge" of them on February 3, 2017, and the three-year limitations clock started running.

Miller seeks to avoid this conclusion by arguing that the Government had possession of the forged loan documents even earlier than he but did not question their legitimacy until 2019. We are not persuaded. Put simply: Miller knew what his own signature looked like and whether he signed the documents in his possession; the Government did not.

Miller's alternative reliance on the continuing harm theory of tolling the statute of limitations is just as unpersuasive. Under this theory, "violations that are continuing in nature are not barred by the statute of limitations merely because one or more of them occurred earlier in time." *Bacon*, 203 Md. App. at 655 (cleaned up). Examples of continuing violations include claims for nuisance and trespass. *Cain*, 475 Md. at 49. Here, the wrongful conduct supporting Miller's claims are the payments he made on the fraudulent loan. The harm Miller suffered from that wrongful conduct—by its nature—could not have continued past May 2016 when he sold his home and paid off the loan. Still, in his brief, Miller suggests that, under the Maryland Mortgage Fraud Protection Act, Caplan owed him "an ongoing and continuous duty" to disclose the fraud. Even if true, the Act covers actions only "during the mortgage lending process," so any statutory duty would have been extinguished by the payoff as well. *See* Md. Code Ann., Real Prop. § 7-401(d). Accordingly, the continuing harm theory does not apply.

In sum, we conclude that Miller had actual knowledge, or, at a bare minimum, inquiry notice of his claims after receiving copies of the 2007 loan documents bearing his forged signature and initials. To be sure, as Miller argues, there are myriad disputed facts related to the merits of his underlying claims. None of the facts Miller points to, however, are material to the threshold issue of timeliness because, even if true, they do not affect when the statute of limitations expired. *See Piscatelli v. Smith*, 197 Md. App. 23, 36 (2011) ("An issue of fact is material if its resolution will affect the outcome of the case in some way.").

Here, Miller had possession of the forged documents, at the latest, when he filed them in federal court on February 3, 2017. He therefore had until February 3, 2020, to file suit. He did not do so until March 1, 2022—more than two years too late. Accordingly, the circuit court did not err in finding that Miller's claims were time-barred and granting the summary judgment motion of Caplan, Goldstein, and Stewart Title.[4]

II. The court did not err in dismissing Miller's complaint against Wallis.

As for his claims against Wallis, based on his brief, Miller seems to believe the dismissal of his complaint was linked to his failure to pay the required fee for his interlocutory appeal. Not so. First, to the extent Miller argues that the circuit court erred in striking his prior notice of appeal for his failure to pay the required fee, the issue is moot

[4] Given our reasoning here, we need not determine whether the HUD-1 or the statements in Miller's 2016 stipulation were enough to put him on inquiry of his claims earlier.

because we have addressed the merits of the arguments in this appeal.[5] But in any event, the record reflects that the circuit court's dismissal of Miller's complaint against Wallis was not based on his failure to pay an appellate fee, but because neither he nor Wallis appeared for the scheduled pre-trial conference or trial on December 15 and 16, 2022. Miller offers no argument that this reasoning was erroneous. We also note that the dismissal was without prejudice, meaning Miller may refile his complaint against Wallis. *See In re Darryl D.*, 308 Md. 475, 484–85 (1987) (collecting cases and observing that, "[g]enerally, although not universally, cases in which reviewing courts upheld dismissals based upon tardiness or failure to appear have involved more than a single dereliction or the dismissal was without prejudice"). Consequently, the circuit court did not abuse its discretion by dismissing the case.

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

[5] We also note that, had the circuit court not struck his notice of appeal, this Court likely would have dismissed Miller's prior appeal as not allowed by law under Maryland Rule 8-602(b)(1) because the orders granting Caplan, Goldstein, and Stewart Title summary judgment were not immediately appealable. *See Lowman v. Consol. Rail Corp.*, 68 Md. App. 64, 76 (1986) ("In cases involving multiple parties or multiple claims or both, a ruling which disposes of fewer than all claims *and* all parties is not a final judgment." (emphasis in original)).