

Circuit Court for Montgomery County
Case No.: 479548V

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 369

September Term, 2022

INYENE NTA, ET AL.

v.

NATALIE MIDDLETON

Leahy,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: February 16, 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).

This case concerns ownership of valuable residential property located in Potomac, Maryland. The deed recorded at the time the property was purchased on October 26, 2009, reflects that the property was titled in the names of Mr. Ime Umanah and Ms. Natalie Middleton as joint tenants with right of survivorship. When Mr. Umanah died more than five years later, on May 25, 2015, title passed to Ms. Middleton (who is the appellee in this appeal) as the surviving joint tenant, and she recorded a confirmatory deed to herself on February 26, 2016.

Several years after that, on February 14, 2020, two of Mr. Umanah’s adult children—daughter Inyene Godspower Nta (“Ms. Nta”) and son Ikana Ime Umanah (“Ikana”), appellants—filed suit against Ms. Middleton in the Circuit Court for Montgomery County, alleging that Ms. Middleton had fraudulently acquired her interest in the Potomac property. After the complaint was amended more than once, and discovery closed, Ms. Middleton filed a motion for summary judgment. The court initially denied the motion to permit additional discovery, but the court granted the renewed motion. The court concluded that appellants had not shown the court that they could offer sufficient evidence that could prove that Mr. Umanah had not intended that the property be titled as a joint tenancy with Ms. Middleton. And further, because the court saw insufficient evidence that could prove that Ms. Middleton had fraudulently concealed from their father the basis for him to file a claim against her, the court concluded that the statute of limitations for filing this suit expired before it was filed on February 14, 2020.

Ms. Nta noted a timely appeal challenging the circuit court’s entry of summary judgment against her. Although Ms. Nta’s brother Ikana is not named in the notice of

appeal, the brief filed on her behalf refers to both of Mr. Umanah’s children as “appellants.”

For simplicity, we shall do likewise.

In the brief of appellants, the question presented is framed as follows:

Did the lower court err in granting summary judgment to the defendant [Natalie Middleton, appellee] where the record reveals that there exist[s] sufficient controverted material facts requiring trial on the merits?

For the reasons set forth in this opinion, we shall affirm the judgment of the circuit court.

FACTUAL BACKGROUND

This case had its genesis in Ime Umanah’s purchase of real property located at 9808 Bent Cross Drive in Montgomery County (“the subject property”) on October 26, 2009.¹ Mr. Umanah—whom appellants assert was “domiciled in Nigeria”—died on or about May 25, 2015. Appellants are two of Mr. Ime Umanah’s children, all of whom resided in Nigeria.² On February 14, 2020, purporting to act as “Administrator[s]” of Mr. Umanah’s estate, they filed a complaint in the Circuit Court for Montgomery County against Natalie Middleton, as well as Equity Trust Company, Custodian for the benefit of David A. Shames IRA (“Equity Trust”), and David A. Shames, trustee of the David A. Shames 401-K #65962

¹ The parties and many of the documents in this case describe the property’s street address as “Bent Cross Drive,” but the USPS website spells the street address as “Bentcross Drive.”

² For clarity, all further references herein to “Mr. Umanah” shall be references to Mr. Ime Umanah and not one of the four sons who survived him.

(“Shames”), appellees.³ We shall refer to Equity Trust and Shames collectively as “the Lenders.”⁴

Appellants alleged that Ms. Middleton was Mr. Umanah’s real estate agent, and that she also had an intimate relationship with him. Ms. Middleton acknowledged that she had a personal relationship with Mr. Umanah, and she claimed that, at some point in time after the purchase of the subject property, they were married and held themselves out as being married, even though they did not have a marriage license. In 2009, Ms. Middleton assisted Mr. Umanah in purchasing the subject property for \$5,300,000, and received a commission of approximately \$100,000 on the transaction. On October 20, 2009, prior to closing on the property, Mr. Umanah executed a “Specific Power of Attorney” which authorized Ms. Middleton to “execute and deliver all documents necessary to purchase, finance and obtain title to” the subject property.

On October 26, 2009, Ms. Middleton alone attended the closing on behalf of Mr. Umanah, and completed the purchase of the subject property for a purchase price of \$5,300,000. The deed provides, in pertinent part, that the property was granted to Ms. Middleton and Mr. Umanah as “Grantees, as joint tenants unto the survivor of them,” and

³ Appellants alleged in their complaint that they were administrators of Mr. Umanah’s estate. In later court filings, they asserted that Mr. Umanah’s estate was opened in Nigeria, where he had “lived and was domiciled[.]”

⁴ As the Lenders note in the brief they filed in this appeal as appellees, appellants included no argument in their brief addressing any basis for liability on the part of the Lenders. We agree that appellants made no argument that would support reversing the judgment entered in favor of the Lenders. For that reason, we shall affirm the judgment as to those two appellees without further discussion.

they were to have and to hold the property “as joint tenants unto the survivor of them, their heirs and assigns.”

Appellants alleged in their complaint that Ms. Middleton had represented to Mr. Umanah that she would act as a real estate agent and would use a power of attorney to help him acquire the real property for his sole benefit. They further alleged that, without the knowledge or consent of Mr. Umanah, Ms. Middleton fraudulently secured for herself an ownership interest in the property by having the deed drawn to include her name as a grantee along with Mr. Umanah, as joint tenants with rights of survivorship. This allegation is one of the material facts as to which the circuit court found appellants’ evidence to be lacking.

Among the arguments Ms. Middleton made in support of her motion for summary judgment, she asserted that appellants’ allegations were based upon speculation and not supported by any facts admissible in evidence. She represented that she and Mr. Umanah had jointly occupied the property for over five years before his death and there was no evidence to support his children’s claim that he did not intend for her to be a joint owner.⁵

⁵ Maryland Rule 2-501(b) requires parties who oppose a motion for summary judgment to assert the basis of their opposition “with particularity.” The rule states:

A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

(continued...)

There was evidence that, in conjunction with the purchase of the subject property, Ms. Middleton—acting both as attorney-in-fact for Mr. Umanah and individually—executed “under oath and penalties of perjury” an “Affidavit of Grantees as First-Time Maryland Home Buyers,” which provided that both Ms. Middleton and Mr. Umanah were grantees of the subject property, that they were first-time buyers of residential real property, and that they would occupy the subject property as their principal residence. Ms. Middleton also signed as attorney-in-fact and individually an “Owner Occupancy Affidavit” certifying, under penalty of perjury, that she and Mr. Umanah would occupy the property.

Ms. Middleton and Mr. Umanah borrowed \$510,000 from the Lenders and entered into a Purchase Money Deed of Trust that was signed by Ms. Middleton individually and as attorney-in-fact for Mr. Umanah. The Deed of Trust identified both Mr. Umanah and Ms. Middleton as the borrowers. Appellants alleged that Ms. Middleton received the \$510,000 herself, but it appears to have been reflected on the settlement sheet as a purchase money loan.

After closing on the purchase, Ms. Middleton lived in the property at least part of the time, and Mr. Umanah stayed there with her when he traveled to Maryland. As noted, he died on or about May 25, 2015, in Nigeria.

And Rule 2-501(c) requires that the affidavit be based upon “personal knowledge” and “set forth such facts as would be admissible in evidence”:

An affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

On February 26, 2016, Ms. Middleton, “as surviving joint tenant of Ime S. Umanah,” recorded a confirmatory “no consideration” deed for the subject property naming herself as the sole owner in fee simple.

On February 14, 2020, appellants filed the initial complaint in the present case against Ms. Middleton and the Lenders, asserting claims for quiet title, breach of fiduciary duty, constructive fraud, negligent misrepresentation, unjust enrichment, intentional misrepresentation, and promissory estoppel. In addition, appellants sought declaratory relief.

The Lenders filed a motion to dismiss or, in the alternative, motion for summary judgment. After a hearing, the court granted their motion and dismissed the case with prejudice as to both Lenders. As noted above, appellants have raised no issue in the instant appeal pertaining to that decision.

Ms. Middleton also filed a motion to dismiss or, in the alternative, motion for summary judgment. After a hearing on July 7, 2021, the court dismissed with prejudice appellants’ claims against Ms. Middleton for quiet title, unjust enrichment, and the requests for declaratory relief. The court also dismissed, with leave to amend within thirty days, the claims for breach of fiduciary duty, constructive fraud, negligent misrepresentation, intentional misrepresentation, and promissory estoppel.

Appellants filed an amended complaint against Ms. Middleton. They again asserted claims for breach of fiduciary duty, constructive fraud, negligent and intentional misrepresentation, and promissory estoppel, and they alleged that Ms. Middleton acted with actual malice. They alleged that, in order to keep her ownership interest in the subject

property hidden, Ms. Middleton “expressly omitted her ownership” in a Property Management Agreement that she drafted and sent to Mr. Umanah. The Property Management Agreement, which was dated October 2, 2009 (a few weeks before the date of the deed), identified Mr. Umanah as the “Owner” of the subject property. Ms. Middleton signed the Property Management Agreement as the agent and property manager on behalf of her solely-owned business “FX Companies.” Paragraph 14 of the Property Management Agreement, titled “Additional Provisions,” contained the following language (that does not appear to be part of the standard form):

The purpose of this management agreement is for payment of purchase and acquisition costs, county permit fees, hoa, and expenses, oversight of construction and repairs on behalf of absentee owner. The property shall not be offered for lease to tenants.

(Underlining in original.)

Appellants place great emphasis on this document, and, although the document appears to predate the closing on the subject property, appellants alleged:

Defendant Middleton knew that she had already inserted her name on the deed to the subject property as a co-owner, yet she represented to the Decedent that he was the “absentee owner” and omitted her own name from the ownership identifying clauses of the Agreement to instill a false confidence to the Decedent that he was the exclusive owner of the property, all while she continue[d] to receive money from the Decedent as the property manager.

Appellants also alleged that Ms. Middleton falsely claimed to be Mr. Umanah’s wife and fraudulently opened an estate for him in Prince George’s County after his death, knowing that he had been “domiciled in Nigeria” and had “never resided in the United States.” According to appellants, Mr. Umanah was married to Nene Umanah, the mother

of his seven children, and his “last place of abode” was in Lagos, Nigeria. They asserted that, in a petition Ms. Middleton filed in the Orphan’s Court for Prince George’s County, she falsely listed the last known address “of every other interested person[.]” as the address of the subject property in Potomac, Maryland, although she knew “full well that the property was vacant and had never been occupied by any of the” interested persons.

Ms. Middleton filed a motion to dismiss or, in the alternative, motion for summary judgment. She argued that appellants had failed to plead with particularity any misrepresentation to support their claims of fraud, that the action was barred by the three-year statute of limitations, and that no argument had been made that would support an extension of the limitations period under § 5-203 of the Maryland Code, Courts and Judicial Proceedings Article (“CJP”), because, she argued, the deed was always a matter of public record.⁶

A hearing was held to consider Ms. Middleton’s motion on September 13, 2021. At the conclusion of that hearing, the judge stated:

I believe in reviewing this case that it is entirely speculation. It is incredible to the Court that the purchaser would not have known, or should have known, about the supposed fraud within three years of the transaction that was reflected on a deed that would clearly reflect joint ownership.

I find that there, frankly, is a lot of dancing around with terminology, conclusions, boot strapping. And the failure to, frankly, the Court’s

⁶ Section 5-203 of the Maryland Code (1974, 2020 Repl. Vol.), Courts and Judicial Proceedings Article, provides:

If the knowledge of a cause of action is kept from a party by the fraud of an adverse party, the cause of action shall be deemed to accrue at the time when the party discovered, or by the exercise of ordinary diligence should have discovered the fraud.

estimation, despite all the paper, all the pages that were filed on the amended complaint, the opposition, the exhibits, I failed to see it.

However, and with my apologies to [counsel for Ms. Middleton] and his client, as a, personally what I believe is a stretch, at best, speculation built upon speculation upon speculation. I believe, considering how much leeway is given to a pleading and to the pleader in a motion to dismiss, that it is a better exercise of the Court's judgment to maintain the plaintiff[s] in a posture, they can attempt to prove their conclusions and their speculation that the statute of limitations does not apply. I would be stunned if the outcome were an ability to do that, and I believe that the burden because of such facial breach of the statute of limitations, the burden shifts to the defender of the plausibility of her case, despite the statute of limitations.

I recognize that that comes with more cost on the part of the defendant, more energy and effort. I think it is more prudent by a hair's breadth to give every consideration to the plaintiff[s'] positions to try to attempt to prove that this case is viable procedurally if I learn that there is evidence to support the supposed fraudulent concealment, which seemed to be, just even as a practical matter, virtually impossible to prove when the concealment alleged is from the decedent, not from the decedent, but cause [sic] to the decedent.

The court denied Ms. Middleton's motion "with great reservations[,] " but ordered Ms. Middleton to provide "substantial answers to the interrogatories[,] " and to make herself available to be deposed.

Ms. Middleton was deposed on September 22, 2021. Thereafter, she was granted leave of court to file another motion for summary judgment, which she did.

In opposition to the renewed motion for summary judgment, appellants filed a number of documents, including the complete transcript of Ms. Middleton's deposition and her answers to interrogatories. The documents filed in opposition to the motion for

summary judgment also included: (a) an affidavit of appellant Inyene Godspower Nta;⁷ (b) copies of some e-mails dated September 17, 2014, and November 13, 2014; (c) a copy of the contract of sale for the property known as 9808 Bent Cross Drive, indicating that it had been faxed on August 21, 2009; (d) the power of attorney dated October 20, 2009, appointing Ms. Middleton to act as attorney in fact for Mr. Umanah; (e) an affidavit of Ms. Middleton dated October 26, 2009, confirming that Mr. Umanah signed the power of attorney dated October 20, 2009; (f) a form contract dated October 2, 2009, captioned “Property Management and Exclusive Rental Agreement,” identifying Mr. Umanah as the “Owner” and “FX Companies” as the “Agent”; (g) a confirmatory deed dated February 26, 2016, from Ms. Middleton to herself, reflecting that Mr. Umanah had died on or about May 25, 2015; (h) a “List of Interested Persons” form Ms. Middleton filed in an estate she opened in Prince George’s County (and described in more detail herein); (i) an e-mail dated February 18, 2017, from appellants to Ms. Middleton; and (j) Letters of Administration dated October 18, 2018, issued in Nigeria to appellants, indicating that Mr. Umanah had died on May 25, 2015, and was intestate.

In appellants’ opposition to the motion for summary judgment, the long-standing intimate relationship between Mr. Umanah and Ms. Middleton was noted, but appellants

⁷ The affidavit included the following oath of Ms. Nta: “I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing Affidavit are true to the best of our knowledge, information, and belief.” But, as noted above, Rule 2-501(c) requires: “An affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.”

argued that, rather than supporting a donative motivation for Mr. Umanah to include Ms. Middleton as a co-owner, the personal relationship enabled Ms. Middleton to “use[] her influence over the Decedent to negotiate his purchase of the \$5.3 million Bent Cross property and deceitfully add[] herself on the title as a joint tenant with right of survivorship.” Appellants further asserted, without indicating how this fact would be proved: “In reality, the Decedent never intended for the Bent Cross property to be their marital home. . . . He did not know that Defendant Middleton had abused the authority of the Specific Power of Attorney to add her own name as a grantee on the deed.” Appellants asserted: “The Decedent’s valid contract of sale is evidence that he alone was to be the sole purchaser of the property[.]” “Decedent . . . entered into the contract of sale as the sole buyer of the property with Defendant Middleton acting only as his real estate agent. Her name was not included as a co-buyer because she was never intended to be a co-buyer.”

Appellants asserted that Mr. Umanah’s intent to be the sole owner was proved by the existence of other documents that “also list the Decedent as the sole buyer and owner.” Appellants argued in their opposition to the motion for summary judgment that the Property Management Agreement “provides the best example of Defendant Middleton’s fraudulent concealment because when she sent the property management agreement to the Decedent, she was already a joint owner of the property.” Even though the management agreement is dated prior to the date of closing, appellants assert that it was sent to Mr. Umanah months after the closing, and they contend: “She [Ms. Middleton] did not list her name on the property management agreement in order to fraudulently conceal her joint ownership in the Bent Cross property from the Decedent.” Appellants asserted in the opposition that the

Property Management Agreement was discovered by the family among Mr. Umanah’s business records after his death. They asserted that it was the only document they found among his papers mentioning the Bent Cross property, and it caused them to assume that Ms. Middleton was managing that property for their benefit.

Appellants also pointed to one clear incident of misrepresentation on the part of Ms. Middleton after Mr. Umanah’s death. In July of 2016, Ms. Middleton filed documents to open an estate for Mr. Umanah in Prince George’s County. She indicated during her deposition that she had been told she needed to do this to gain access to one bank account that had a balance of approximately \$23,000. On July 1, 2016, Ms. Middleton filed an estate form that requires personal representatives to submit a “List of Interested Persons.” On that form, she listed herself and seven of Mr. Umanah’s surviving sons and daughters. For the “Last Known Address” for each of the surviving children, Ms. Middleton filled in the address of the house that is the subject of this suit: “9808 BENTCROSS DRIVE[,] POTOMAC, MD 20874.” That was never the address of any of Mr. Umanah’s surviving children. When questioned during her deposition, she claimed that was “the only address I had. None of Ime’s children contacted me to even say that he passed away.”

A hearing on Ms. Middleton’s renewed motion for summary judgment was held on March 29, 2022. The motion judge indicated that the determinative issue before the court was whether the plaintiffs could present sufficient evidence of fraudulent concealment for a finder of fact to consider the claims of fraud. The court further recognized that the purpose of allowing for additional discovery was to see if appellants “could come forth with evidence regarding concealment with respect to the issue of the statute of limitations at

issue in this case.” The court noted that the deed was a public record, and the court observed that it appeared that there was no witness who could testify that Mr. Umanah did not intend to title the property as it was titled. After pressing appellants’ attorney to point to evidence of fraud that could be introduced at a trial, the court observed that the allegations and arguments presented by appellants were “really speculative.”

At the conclusion of the hearing, the court ruled that there was insufficient evidence of fraudulent concealment, and, in any event, the claims presented in the amended complaint were barred by the three-year statute of limitations. The court explained in an oral ruling:

I understand that there [are] some documents that the plaintiffs point to, which they say suggest that the decedent was unaware, one, of the situation, and that it was being concealed from him purposefully by the defendant. I’ve looked at those documents. What I can tell you is that there is a line that’s drawn between what you can easily infer from something, to what you could speculate about something, and here[,] when I think about it, there is really – there [are] two circumstances you could think of. There is, he knew about it, and he did it because he was in a relationship with the defendant, and that was his intent and purpose; and the other is that, you could say, well, he didn’t have any idea about it, that’s – and being defrauded by the defendant in this case.

The reality of it is that the evidence in the case is really speculative. I mean, it is based upon an assumption, or a premise upon a premise upon a premise. There is no evidence that I can see that I can conclude, one, that the . . . decedent in this case, didn’t intend to title the property the way that it was titled, and that there is documents that are pre-closing, but oftentimes[,] documents before there is a closing, and before the title is done, but have only the one person’s name on it, and I don’t get from that fact alone that there is then some fraudulent concealment down the line. So, what happened the years after? What did he do? What did he know about the deed? The deed is a public record. Did he look, did he not look, and those would all be things that would be important for the Court to understand.

Based on the record here, I just don't find that there is sufficient evidence of fraudulent concealment, or that – nor to show that the application of the discovery rule would be appropriate here, and that regardless of the underlying claims, that any of the claims would be barred by the three-year statute of limitations. Therefore, I will grant summary judgment, in this case in favor of the defendant, and enter judgment in her favor.

In a written order entered on April 4, 2022, the circuit court granted summary judgment in favor of Ms. Middleton on all counts of the amended complaint. As noted above, Ms. Nta filed a timely notice of appeal.

STANDARD OF REVIEW

Appellants contend that the circuit court erred in granting summary judgment in favor of Ms. Middleton.

Summary judgment is appropriate when the material facts in a case are not subject to genuine dispute and the moving party is entitled to judgment as a matter of law. Md. Rule 2-501(f). We review the grant of a motion for summary judgment *de novo*, without deference to the circuit court. *CX Reinsurance Co. Ltd. v. Johnson*, 481 Md. 472, 484 (2022). The facts must be viewed in the light most favorable to the non-movant, and “all inferences are resolved against the moving party.” *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 478 (2007) (quotation marks and citation omitted). Further, “when reviewing the grant of a motion for summary judgment, ordinarily, [our review] is limited to the grounds relied upon by the [trial] court.” *La Belle Epoque, LLC v. Old Europe Antique Manor, LLC*, 406 Md. 194, 208-09 (2008) (quoting *Deering Woods v. Spoon*, 377 Md. 250, 263 (2003)).

As quoted above, Rule 2-501 places a burden on the party opposing a motion for summary judgment to identify “with particularity” each disputed material fact, and “as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute.” Md. Rule 2-501(b). A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath. And statements offered to demonstrate a material dispute shall be made based upon personal knowledge, and shall set forth, under oath, facts that would be admissible in evidence. *Impac Mortg. Holdings, Inc. v. Timm*, 474 Md. 495, 533-34 (2021) (“If a party asserts that there are material facts in dispute that preclude an award of summary judgment, the party must support such an assertion with an affidavit that ‘shall set forth such facts as would be admissible in evidence.’” (quoting Md. Rule 2-501(c))); *Butler v. S&S P’ship*, 435 Md. 635, 665-66 (2013) (“To establish a genuine issue of material fact, a ‘party opposing summary judgment must do more than simply show there is some metaphysical doubt as to the material facts. In other words, the mere existence of a scintilla of evidence in support of the plaintiff’s claim is insufficient to preclude the grant of summary judgment; there must be evidence upon which the jury could reasonably find for the plaintiff.’” (quoting *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 738-39 (1993))).

The Supreme Court of Maryland observed in *Hamilton v. Kirson*, 439 Md. 501, 522-23 (2014):

That our appellate review is premised on assumptions favoring the non-moving party does not mean that the party opposing the motion for summary judgment prevails necessarily. Rather,

in order to defeat a motion for summary judgment, the opposing party must show that there is a genuine dispute as to a material fact by proffering facts which would be admissible in evidence. Consequently, mere general allegations which do not show facts in detail and with precision are insufficient to prevent summary judgment.

[* * *]

[T]he mere existence of a scintilla of evidence in support of the plaintiffs’ claim is insufficient to preclude the grant of summary judgment; there must be evidence upon which the jury could reasonably find for the plaintiff. *Anderson [v. Liberty Lobby, Inc.]* 477 U.S. [242,] 252 (1986)]. We recognized in *Clea v. City of Baltimore*, 312 Md. 662, 678 (1988), that while a court must resolve all inferences in favor of the party opposing summary judgment, “[t]hose inferences . . . must be *reasonable* ones.” (Emphasis in original.) In that case, we quoted Professor Wright, as follows:

“It is frequently said that summary judgment should not be granted if there is the ‘slightest doubt’ as to the facts. Such statements are a rather misleading gloss on a rule that speaks in terms of ‘genuine issue as to any material fact,’ and would, if taken literally, mean that there could hardly ever be a summary judgment, for at least a slight doubt can be developed as to practically all things human. A better formulation would be that the party opposing the motion is to be given the benefit of all reasonable doubts in determining whether a genuine issue exists.”

312 Md. at 678, quoting C. Wright, *The Law of Federal Courts* § 99, at 666-667 (1983).

Beatty, 330 Md. at 737-39 (some internal citations omitted).

DISCUSSION

Appellants contend that the “proper inquiry” with respect to the statute of limitations issue “ought to have been when the plaintiffs discovered [Ms. Middleton’s] fraud against the plaintiffs and not when the decedent discovered [Ms. Middleton’s] fraud.” But the flaw in appellants’ logic is that they would have no cause of action to pursue unless their decedent had grounds to assert a claim of fraud prior to his demise. So, unless they can persuade us that the statute of limitations had not expired for Mr. Umanah to file an action to reform the deed to exclude Ms. Middleton’s ownership, their own delay in pursuing this case only compounds their problems. Moreover, as the motions judge indicated, although appellants have understandable suspicions, they are missing evidence they need to support their theory of the case.

To prove a prima facie case of fraud, appellants need to prove more than suspicious circumstances. And they did not demonstrate with particularity, by proffering facts that would be admissible in evidence, that they can prove Mr. Umanah was defrauded by Ms. Middleton.

In Maryland, a party attempting to prove a claim of fraud must do more than show that it more likely than not occurred. The pertinent pattern jury instruction states:

The (insert the party) has asserted the claim of fraud in this case. A party who contends fraud on the part of another has the burden of proving the claim by clear and convincing evidence. This burden of proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt.

To be clear and convincing, evidence should be “clear” in the sense that it is certain, plain to the understanding, and unambiguous and

“convincing” in the sense that it is so reasonable and persuasive as to cause you to believe it.

Maryland Civil Pattern Jury Instructions (“MPJI-Cv”) 1:15 (5th ed., 2023 Supp.).

To prove a claim of fraudulent misrepresentation by concealment, a party must prove by clear and convincing evidence the elements set forth in MPJI-Cv 11:2, namely:

To recover damages for deceit by nondisclosure or concealment, it must be shown:

- (1) that defendant intentionally concealed a material fact that he or she had a duty to disclose;
- (2) with the intent to induce the plaintiff to act differently from how the plaintiff would have acted had he or she known the true facts;
- (3) that because of the concealment the plaintiff acted in a manner different from how he or she would have acted had the plaintiff known the true facts; and
- (4) plaintiff suffered damages as a result of that reliance.

A plaintiff must plead fraud with particularity; bald assertions and conclusory statements will not suffice. *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 497 (2014) (citing *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643-44 (2010)). This “ordinarily means that a plaintiff must identify who made what false statement, when, and in what manner (*i.e.*, orally, in writing, etc.); why the statement is false; and why a finder of fact would have reason to conclude that the defendant acted with scienter (*i.e.*, that the defendant either knew that the statement was false or acted with reckless disregard for its truth) and with the intention to persuade others to rely on the false statement.” *McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 527-28 (2014).

In *Thomas v. Nadel*, 427 Md. 441 (2012), a case in which a debtor claimed that a deed of trust was the product of a fraud, the Supreme Court observed: “‘It is the settled rule that [one] seeking any relief on the ground of fraud must distinctly state the particular facts and circumstances constituting the fraud and the facts so stated must be sufficient in themselves to show that the conduct complained of was fraudulent. General charges of fraud or that acts were fraudulently committed are of no avail[.]’” *Id.* at 453 (quoting *Spangler v. Sprosty Bag Co.*, 183 Md. 166, 173 (1944)). The Court held in *Thomas* “that a general allegation of ‘fraud’ does not suffice.” *Id.* at 454.

Appellants are not saved by CJP § 5-203, which extends the time limit for filing suit when two conditions are satisfied, namely: “(1) the plaintiff has been kept in ignorance of the cause of action by the fraud of the adverse party, and (2) the plaintiff has exercised usual or ordinary diligence for the discovery and protection of his or her rights.” *Frederick Rd. Ltd. P’ship v. Brown & Sturm*, 360 Md. 76, 98-99 (2000). For CJP § 5-203 to apply and extend the applicable statute of limitations, a plaintiff must be able to prove fraudulent concealment with particularity *in addition to* being able to prove the elements of the underlying claim of fraud. *See Doe v. Archdiocese of Washington*, 114 Md. App. 169, 187 (1997).

From our review of the facts in this record that would be admissible in evidence, even when viewed in a light most favorable to appellants, we conclude that appellants showed the court no clear and convincing evidence that would enable a rational jury to reasonably conclude that Mr. Umanah acted in a manner different from how he would have acted if he had known the deed conveyed the property to him and Ms. Middleton as joint

tenants with right of survivorship. Indeed, appellants’ brief concedes: “There is no reasonable way to answer the question as to when the decedent discovered the defendant’s fraud or whether he discovered it at all. The decedent is not before the court as the plaintiff[] and is not available to be deposed during a deposition or to answer interrogatories or depose to an affidavit.” We agree that this record provides no reasonable way for a jury to find by clear and convincing evidence (1) what Mr. Umanah knew regarding the deed that was recorded, (2) when he gained that knowledge, and (3) what were his thoughts about entering into a joint tenancy with Ms. Middleton. We go one step further and point out that there is no reasonable way to answer the question of whether he had any objection to taking title to the property as joint tenants with right of survivorship. At most, the evidence marshalled by appellants raises the possibility that he may not have known of, and may not have consented to or acquiesced in, the joint tenancy. But we see nothing that would permit a clear finding that he would have rejected the concept of taking title as a joint tenancy.

In this case, the circuit court concluded that appellants’ arguments in opposition to the motion for summary judgment consisted of conclusory allegations of fraud based upon supposition, lacking evidentiary support that would be admissible in evidence. The court observed that appellants’ claim was “based upon an assumption,” but there was “no evidence” that the decedent did not intend “to title the property the way that it was titled[.]”

Here, appellants filed the underlying action in their capacities as administrators of their father’s Nigerian estate. Appellants relied on the 2009 power of attorney and the property management agreement, both signed by Mr. Umanah, to support their allegation of fraud. But appellants did not dispute that Mr. Umanah was a sophisticated international

businessman who had purchased other properties. And there was no dispute that Mr. Umanah had signed the power of attorney. As for the property management agreement, appellants maintain that it evidenced fraud because it identified only Mr. Umanah, not Ms. Middleton, as the owner of the subject property. But that document is dated prior to the closing, and states on its face that its purpose was to allow for Ms. Middleton’s company to make certain payments and oversee construction and repairs on behalf of Mr. Umanah, who traveled extensively.

We perceive nothing in the record beyond appellants’ suspicions and speculation to prove that Ms. Middleton provided Mr. Umanah with a false version of the deed or prevented him from obtaining a copy of the publicly recorded deed. Appellants’ own brief includes this description of the law governing summary judgment: “Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. *Matsushita Elec. Industrial Co v. Zenith Radio Corp.*, 475 U.S. 574, 586-587 (1986).” Here, the circuit court did not err in granting summary judgment in favor of Ms. Middleton.

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