Circuit Court for Prince George's County
Case No. C-16-CV-22-001047

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 585

September Term, 2023

WILLIAM WHITTMAN

v.

CHARLEAN C. IVEY

Wells, C.J.,
Graeff,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: July 5, 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 appeal stems from an order granting Ms. Charlean C. Ivey's ("Appellee")[1] motion to dismiss based on Mr. William Whittman's ("Appellant") failure to comply with the applicable statute of limitations in the Circuit Court for Prince George's County. Representing himself on appeal in this Court, Appellant presents five questions[2] for our review, which we have rephrased and condensed as follows:

[1] Appellee did not file a brief in this Court. Appellee was represented by counsel in circuit court. Appellant represented himself in circuit court.

[2] Appellant's questions presented, as originally phrased, were:

1. Did the Judge, misuse *Article C.J. § 5-102(a)* and *Wellington v. Shakiba*, 952 A. 2d 328, 180 Md. App. 576 (Md. App. 2008) allowing the defendant by such law misuse to strip plaintiff out of the property ownership.

2. Does Trial Court's Ruling, (if not reversed) set a dangerous precedent that in Maryland *Property Owners*, lending money to anyone, in good faith in Maryland, will be panelized [sic] by MD Courts of loosing [sic] title to their properties, if they do not enforce the Note payment within 12 years of statute of limitation?

3. Did the Judge err, dismissing instead of directing plaintiff to amend the complain[t] on count of fraud once it became evident for the court that the defendant could have not only defrauded plaintiff and the lending institution to procure a loan under plaintiff's name to bay with plaintiff's loan the plaintiff's property in 2007 and for which reason she could not record the Deed in her name alone since the loan was in the plaintiff's name, and the lending institution would have discovered this fraud and call off the loan, bud [sic] defrauded also the County Land Records and the Court by recording a Deed she could not record for more than 15 years, because it constituted fraud and the lending institution would have discovered it and call off the loan.

4. Did the Judge violate plaintiff's *Constitutional Rights* as to *Due Process & Equal Justice Under Law*, permitting attorney, who is an officer of the court, to present and admit evidence that is inadmissible

(continued…)

1. Did the circuit court err in granting Appellee's motion to dismiss?

2. Did the circuit court err in denying Appellant's motion for reconsideration?

For the reasons to follow, we shall affirm the judgment of the circuit court.

BACKGROUND

On March 3, 2005, Appellee entered into a land installment contract with Appellant to purchase property located at 104 Cross Foxes Drive in Fort Washington (the "property") for $650,000. According to Appellee, "under the land installment contract, Defendant was to make a total down payment of Seventy-Five Thousand Dollars ($75,000.00), leaving a balance owed to Plaintiff of Five Hundred Seventy-Five Thousand Dollars ($575,000.00)[.]"

On April 11, 2007, the parties went to closing, and the deed signed at closing was erroneously prepared because it transferred title to both Appellant and Appellee "as sole owner, in fee simple." Appellee signed a promissory note to pay Appellant $34,877.22. That monetary amount was referred to in the note as the "principal." According to the

---

and despite proper and timely objection from plaintiff, but categorically refusing the pro se plaintiff to present any evidence, that proves that she is not the sole owner of the property, and that the Deed she produced constitute fraud even upon the court in that hearing.

5. Did the judge err in denying plaintiff's motion for reconsideration in which plaintiff made it known once more to the circuit court that the judge misused the statute of limitation, and abused her discretion by excusable neglect or intent, and that the judge could have corrected her reversibly erroneous decision with a stroke of a pen, in the interest of justice and save everyone involved parties time and money, imposing the task to correct this to the Appellate Court?

promissory note, the principal was due "by April 19, 2008[,]" and if Appellee did not pay the principal by that date, Appellant was able to charge late fees of "[$]5,000.00" per year. On April 19, 2007, a corrected deed was signed, transferring the property to Appellee "as sole owner, in fee simple[.]"

Over 15 years later, on December 9, 2022, Appellant filed a complaint in the circuit court against Appellee for failure to pay the promissory note and for "partition of the real estate property[.]" Appellant's complaint stated as follows:

> [Appellant] owned this property as the sole owner, and had rented it to [Appellee] under a rent to buy contract.
>
> * * *
>
> [Appellee] asked [Appellant] to allow her to live in the property and not remove her . . . for failure to pay rent and failure to buy, because her lender was approving her for a loan.
>
> Eventually [Appellee] obtained the loan and on or about June 28, 2004 was able to close.
>
> [Appellee] had not been able however to obtain the full purchase price amount and she and her title company, as stated in the DEED asked [Appellant], to loan her the difference which [Appellant] did[.]
>
> * * *
>
> As stated on the Deed, [Appellee's] Title Company drafted a note, The Instal[l]ment Land Contract, with a principal amount of 34,877.22.
>
> * * *
>
> [Appellant] agreed that [Appellee] will pay no principal and no interest until 4.19.2008.
>
> Based on the note agreement if by 4. 19. 2008 the loan was not paid, [Appellee] agreed to pay the entire owed balance on 4. 19. 2008 in full[.]

* * *

> Since [Appellee] has purchased this property to this day, [Appellee] has failed and has refused to pay the agreed loan, and since April of 2008 till the day this action is commenced 15 years of unpaid interest and balance have amounted to $109,877.22.

(Numbering and internal references omitted.) Appellant's complaint sought Appellee's "payment of $109,877.22 plus all expenses occurred in prosecuting this action or a[n] order of sale to satisfy [Appellant's] interest in this property."

Appellee moved to dismiss the complaint based on Appellant's failure to comply with the statute of limitations codified in Md. Code, CTS. & JUD. PROC. ("CJP") § 5-102(a), which requires actions involving "[p]romissory note[s] or other instrument[s] under seal" to be "filed within 12 years after the cause of action accrues[.]" CJP § 5-102(a)(1). At the hearing on Appellee's motion to dismiss, Appellee's counsel argued as follows:

> Your Honor, one week after the settlement took place, the title company attempted to rectify the error on the Deed by preparing a new Deed, transferring title from [Appellant] to [Appellee], as the sole owner[.]
>
> * * *
>
> Upon checking before the hearing today, last night, Counsel checked the Land Records and discovered that the Deed has successfully been recorded into the [Appellee's] name as sole owner, and I'd like to turn that in, the recorded instrument, as [Appellee's] Exhibit 6.

The court granted Appellee's motion to dismiss based on Appellant's failure to comply with the statute of limitations in CJP § 5-102(a).

Additional facts will be included as they become relevant to the issues.

DISCUSSION

I.

In essence, Appellant claims that the court erred in granting Appellee's motion to dismiss. We review for legal correctness a trial court's decision to grant a motion to dismiss for failure to state a claim. *Rounds v. Md.-Nat'l Cap. Park & Plan. Comm'n*, 441 Md. 621, 635-36 (2015). We assume the truth of all well-pleaded facts and allegations in the complaint, as well as all inferences that may be reasonably drawn from them, in the light most favorable to the non-moving party. *Id*. at 636.

CJP § 5-102(a) provides as follows: "An action on one of the following specialties shall be filed within 12 years after the cause of action accrues, or within 12 years from the date of the death of the last to die of the principal debtor or creditor, whichever is sooner: (1) Promissory note or other instrument under seal[.]" Appellee signed the promissory note next to the descriptor: "(Seal)[.]" Appellant's complaint conceded that Appellee's full payment on the promissory note was due by April 19, 2008. Appellant's complaint, which sought compensation for Appellee's alleged default on the promissory note, was filed on December 9, 2022, more than 14 years after Appellee's full payment was due. Thus, Appellant's claim was time-barred under CJP § 5-102(a).

For all these reasons, the court did not err in granting the motion to dismiss.[3]

[3] To the extent that Appellant argues the court erred in dismissing his claim to partition the property, we note that Appellant was unable to force a partition of the property because the corrected deed transferred the property to Appellee as the sole owner in fee simple.

II.

Next, Appellant claims that the court erred in denying his motion for reconsideration. To vacate or modify a judgment under Md. Rule 2-535(b), a movant must establish the existence of fraud, mistake, or irregularity. These jurisdictional predicates are "narrowly defined and strictly applied" because of the strong countervailing interest in judicial finality. *Leadroot v. Leadroot*, 147 Md. App. 672, 683 (2002) (cleaned up). "The burden of proof in establishing fraud, mistake, or irregularity is clear and convincing evidence." *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008). We "review the trial court's decision regarding the existence of fraud, mistake, or irregularity without deference." *Facey v. Facey*, 249 Md. App. 584, 601 (2021).

Appellant's motion for reconsideration alleged fraud. Under Md. Rule 2-535(b), fraud entails extrinsic fraud committed on the court that "prevents the adversarial system from working at all." *Das v. Das*, 133 Md. App. 1, 18-19 (2000). Here, Appellant's complaint conceded that "[Appellee's] Title Company has recorded this property on both [Appellant's] and [Appellee's] name for reason [sic] unclear to [Appellant]." Later, in Appellant's motion for reconsideration, however, Appellant alleged that fraud occurred: "[Appellee] and the title agent told [Appellant] not to worry about [the remaining $34,877.22 of the purchase price reflected in the promissory note] because they were keeping him on the deed, as the co-owner and whenever [Appellee] pays what she could not pay that day, only then would he be remove[d] from the Deed." The record shows that

Appellant signed a deed transferring the property to Appellant as sole owner in fee simple.[4] Despite Appellant's arguments, Appellee's counsel laid a proper foundation for the corrected deed, and the court did not err in considering the corrected deed during the hearing on Appellee's motion to dismiss. Under these circumstances, Appellant's conclusory allegations fail to demonstrate fraud under Rule 2-535(b).

Accordingly, we reject Appellant's contention that the circuit court erred in denying his motion for reconsideration.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[4] To the extent that Appellant requested leave to amend his complaint after it had been dismissed, we find no error in the court's denial of that request. We review a circuit court's ruling on a motion for leave to amend for abuse of discretion. *Higginbotham v. Pub. Serv. Comm'n of Md.*, 171 Md. App. 254, 275-76 (2006). As noted, Appellant's attempt to seek compensation on the promissory note was time-barred under CJP § 5-102(a). In addition, Appellee's counsel presented the court with a corrected deed showing that Appellant transferred the property to Appellee as sole owner in fee simple. Appellant's conclusory allegations of fraud as to the creation of that deed are insufficient to warrant reversal under these circumstances. The court did not abuse its discretion by denying Appellant's request for leave to amend his complaint.