Circuit Court for Montgomery County
Case No.: C-15-CV-23-000664

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1411

September Term, 2023

IN THE MATTER OF STANDARD CONSTRUCTION & COATINGS, LLC ET AL.

Berger,
Leahy,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: October 15, 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).

Standard Construction & Coatings, LLC, and Chung Yi (together the "appellants") appeal from an order of the Maryland Home Improvement Commission (the "MHIC") that appellants had abandoned a home construction project and the claimant homeowner had suffered damages. Appellants sought judicial review of the MHIC order in the Circuit Court for Montgomery County, which affirmed. On appeal to our Court, appellants ask one question: Did the MHIC err in ruling that the statute of limitations did not bar the homeowner's claim? For the reasons that follow, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 11, 2018, Oleksandr Dyadyura, (the "homeowner") contracted with Standard Construction & Coatings, LLC ("SCC"), which is owned and operated by Mr. Chung Yi, for a home improvement – construction of a third-floor addition and rooftop deck to his home in Baltimore City. The contract did not provide a start date but said that completion would occur within 160 days of when SCC started work at the home, an event that never occurred. The contract stated that SCC was to obtain any required building permits. The contract also contained a "cure" provision requiring the homeowner to provide SCC with ten days written notice and an opportunity to cure any deficient performance before terminating the contract.[1] The homeowner paid SCC a deposit of $4,590.72.

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[1] The "cure" provision in the contract provided:

> FAILURE TO ADEQUATELY PERFORM. Upon written notification from [homeowner] that [SSC]'s performance is in any respect unsatisfactory, needs correction, or that [SCC] has failed to comply fully with the terms of

(continued…)

On November 14, 2018, roughly two months after signing the contract, the homeowner, through counsel, sent an email to SCC stating that he was terminating the contract because SCC has not obtained any permits and the plans and drawings filed with the permit office were inadequate, as they were not signed or sealed by an architect or engineer as required. The homeowner demanded return of his deposit. Mr. Yi responded back by email that day and advised the homeowner (falsely) that SCC had in fact submitted to the permit office plans signed and sealed by an engineer. Mr. Yi also called the homeowner that day and told him that he would not refund the deposit. The next day, on November 15, 2018, SCC submitted additional filings to the permit office in support of the application.

On January 8, 2019, the homeowner inquired of the permit office whether SCC had submitted the required documentation for issuance of a permit. Ten days later, the permit office responded that SCC had still not addressed the deficiencies in its permit application because the plans were not signed or sealed by an architect or engineer. Later that day, the homeowner texted Mr. Yi and asked him to return his deposit. Mr. Yi responded that all project plans were finished and properly signed, and he would give the drawings to the homeowner but retain the deposit as payment for work done.

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this Agreement, [homeowner] may after ten (10) business days written notification and failure of [SCC] to correct the matter described in the notification, terminate the Contract and [homeowner] shall have all the rights and remedies provided at law or in equity, including those specified [further in the Contract].

On November 17, 2021, the homeowner filed a claim with the MHIC seeking reimbursement from the Maryland Home Improvement Guaranty Fund (the "Fund") for the amount of the deposit. An administrative law judge ("ALJ") of the Office of Administrative Hearings held an evidentiary hearing at which the homeowner, a Baltimore City permitting officer, SCC's assigned engineer, and Mr. Yi testified.

The ALJ subsequently issued a written proposed decision. The judge preliminarily found the homeowner's claim timely, reasoning that the applicable three-year statute of limitation began on January 18, 2019, when the homeowner learned from the permit office that the permit application was still deficient, because it was then that the homeowner "knew" or "ha[d] reason to know" that SCC had abandoned the project. The judge found that until that time the homeowner reasonably concluded (and testified that he believed) that the project was moving forward, as evidenced by Mr. Yi's assertions to the homeowner during their telephone conversation on November 14, 2018, and SCC's actions the next day in submitting additional filings to the permit office. In conclusion, the ALJ found SCC's performance on the project incomplete and determined the homeowner's actual loss at $1,967.09.[2] The ALJ recommended the Fund award the homeowner $1,967.09 and SCC be ineligible for a Maryland Home Improvement license until it reimbursed the Fund for the amount of loss. *See* Md. Code, Business Regulation ("Bus. Reg.") § 8-411(a).

[2] This was less than the security deposit because the ALJ found that the homeowner eventually hired another contractor to complete some of the same work SCC was hired to do.

The MHIC subsequently issued a written proposed decision, affirming the proposed decision of the ALJ. Both SCC and the homeowner filed exceptions to the MHIC's proposed decision. SCC in its exceptions, argued, among other things, that the ALJ erred in finding the homeowner's claim timely filed.

On January 5, 2023, the MHIC held a hearing on the parties' exceptions, after which it issued a final order. The MHIC agreed that the homeowner's claim was timely filed but determined that the statute of limitation began on November 24, 2018, not January 18, 2019. The MHIC reasoned that although the homeowner had "actual" knowledge that SCC had abandoned the contract on January 18, 2019, the homeowner "should have" discovered that SCC had abandoned the contract on November 24, 2018, which was ten days after the homeowner's attorney advised SCC that it was in breach of the contract, as the contract allowed SCC ten days to cure. Because the homeowner filed his claim on November 17, 2021, the claim was timely filed. The MHIC's final order adopted its proposed order in all other respects.

SCC filed a petition for judicial review of the MHIC's final order in the Circuit Court for Montgomery County. After a hearing, the circuit court issued a written order affirming the MHIC's order.

DISCUSSION

Appellants argue on appeal that the MHIC erred in finding the homeowner's claim timely filed. According to appellants, the statute of limitations on the homeowner's claim began to run on November 14, 2018, when the homeowner, through his attorney, notified SCC that it was terminating the contract and wanted a full refund of the deposit. According

to appellants, the "loss" for which the homeowner sought recovery was the deposit and discovery of the loss occurred "when the demand for the refund was expressly refused." Because the homeowner did not file its claim until November 17, 2021, the claim fell outside the applicable three-year statute of limitation. Appellants cite *Booth Glass Co., Inc. v. Huntingfield Corp.*, 304 Md. 615 (1985), to support their argument. The MHIC argues that its ruling that the statute of limitations began to run on November 24, 2018, was supported by substantial evidence and was legally correct.

Standard of Review

When reviewing a decision by an administrative agency, our Court "look[s] through" the decision of the circuit court and reviews the agency's decision. *Brandywine Senior Living at Potomac LLC v. Paul*, 237 Md. App. 195, 210 (cleaned up), *cert. denied*, 460 Md. 21 (2018). Our review is "limited to evaluating whether there is substantial evidence in the record as a whole to support the agency's findings and conclusions and to determining whether the administrative decision is premised upon an erroneous conclusion of law." *Id.*

"With respect to the agency's conclusions of law, a certain amount of deference may be afforded when the agency is interpreting or applying the statute the agency itself administers. We are under no constraint, however, to affirm an agency decision premised solely upon an erroneous conclusion of law." *Emps.' Ret. Sys. of City of Baltimore v. Dorsey*, 430 Md. 100, 111 (2013) (internal quotation marks and citations omitted). We review legal questions under a *de novo* standard of review. *Harford Cnty. v. Maryland Reclamation Assocs., Inc.*, 242 Md. App. 123, 142 (2019), *aff'd*, 468 Md. 339 (2020).

Law on the Fund,
Statute of Limitations, and Contracts

Bus. Reg. § 8-405(a) states that a homeowner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor[.]" "Actual loss" is defined as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401. A claim for compensation from the Fund must be brought "within 3 years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage." Bus. Reg. § 8-405(g).

"[T]he purposes of statutes of limitation are to provide adequate time for a diligent plaintiff to bring suit as well as to ensure fairness to defendants by encouraging prompt filing of claims." *Hecht v. Resol. Tr. Corp.*, 333 Md. 324, 338 (1994). "[S]tatutes of limitation are designed to balance the competing interests of each of the potential parties as well as the societal interests involved." *Id.* (quotation marks and citation omitted). "[W]hen limitations are at issue, it is necessary to judicially determine when accrual occurred to trigger the operation of the statute" and this "determination may be based solely on law, solely on fact, or on a combination of law and fact." *Id.* at 333-34.

Ordinarily, a breach of contract claim begins for limitation purposes when the contract is breached. *See Cath. Univ. of Am. v. Bragunier Masonry Contractors, Inc.*, 139 Md. App. 277, 297 (2001), *aff'd*, 368 Md. 608 (2002). Maryland, however, recognizes the "discovery" rule in contract actions so that the limitations period for a contract action begins "on the date when the plaintiff knew or, with due diligence, reasonably should have

known of the wrong." *Doe v. Archdiocese of Washington*, 114 Md. App. 169, 177 (1997). *See also Shailendra Kumar, P.A. v. Dhanda*, 426 Md. 185, 196 n.4 (2012) (stating that a breach of contract claim begins when the party knows or should have known the facts giving rise to its claim). "Reasonableness" means when a claimant has "knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry . . . with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued." *Poffenberger v. Risser*, 290 Md. 631, 637 (1981) (quotation marks and citation omitted).

The problem with appellants' argument is that they define the homeowner's loss as the "refusal to refund the deposit" to avoid the cure provision in the contract. Under the terms of the contract, SCC was required to obtain building permits to begin construction. When the homeowner advised SCC that it had breached the contract because permits had still not been obtained, SCC had, under the terms of the contract, ten days from *that date* to rectify the breach. Ten days after the initial breach advisement, the homeowner could have called the permitting office and discovered that SCC had falsely stated that the proper filings had been submitted and then terminated the contract. However, the homeowner could not terminate the contract before that time. Therefore, we agree with the MHIC that the statute of limitations began to run ten days after November 14, 2018, which is November 24, 2018. Because the homeowner filed his claim with the MHIC on November

17, 2021, within the applicable three-year statute of limitation, the statute of limitations does not bar his claim.[3]

SCC attempts to avoid the "cure provision" in the contract by citing cases that hold that a statute of limitations is not delayed by a reasonable additional period to perform a "follow-up investigation," *see Pennwalt Corp. v. Nasios*, 314 Md. 433, 447-48 (1988); a court will not allow an implied or equitable exception to be engrafted on a statute of limitation, *see Booth Glass Co.*, 304 Md. at 623; and a statute of limitation may be extended only where a promise to repair by a contractor induced a party from filing suit or where there was fraudulent conduct, *see Stevens v. Rite-Aid Corp.*, 102 Md. App. 636, 646 (1994). However, none of these cases are applicable here because none dealt with a *cure provision*

[3] SCC argues that the homeowner had notice on November 14, 2018, that SCC intended to abandon the contract. To support this argument, SCC cites to the *homeowner's* "timeline" that was prepared and entered into evidence at the ALJ hearing which relates that, during the November 14, 2018, conversation between Mr. Yi and the homeowner, Mr. Yi stated that SCC had not filed signed and sealed drawings.

Homeowner disagrees with SCC's argument, as do we. First, the timeline on which SCC relies was not prepared by the homeowner, but by *Mr. Yi*. Second, the evidence in the record contradicts Mr. Yi's self-serving timeline and indicates that the homeowner did not know that the drawings were not signed and sealed by SCC's engineer until January 18, 2019. Specifically, SCC told the homeowner in its November 14, 2018, email that its engineer has already sent signed and sealed drawings to the permit office; Mr. Yi testified at the ALJ hearing that, during the November 14th conversation with the homeowner, he believed that the engineer had submitted signed and sealed plans to the permitting office, and he believed this because the engineer told him "he took care of it" and had cashed the check; even though the permit office later sent Mr. Yi a message in November 2018, that the drawings and plans were still inadequate because they were not signed and sealed by an engineer, Mr. Yi testified that he did not believe this because in Baltimore City sometimes "the right hand doesn't talk to the left hand"; and lastly, the homeowner testified at the ALJ hearing that he understood from SCC's response on November 14th and 15th, that SCC had addressed the permit application deficiencies, and the permits would be issued and construction would soon start.

in a contract. Under the cure provision here, the homeowner could only terminate the contract for deficient performance ten days after providing SCC written notice of a defect in its performance.

We find instructive *Antigua Condominium Association v. Melba Investors Atlantic, Inc.*, 307 Md. 700 (1986), which involved a suit by condominium unit owners and against a condominium developer, among others, over various defects in their units. One of the claims in *Antigua* was whether the condo owners' claims for breach of repair were barred by statute of limitations. The contracts of sale for the condominiums contained a promise by the developer to make any repairs needed for certain defects, if notice of the defects was given within one year of settlement. *Id.* at 708. The condominium owners sued four years after the developer was notified of the defects, alleging that the developer, after receiving timely notice of the defects, tried unsuccessfully for three years to resolve the defects before refusing to take further remedial action. The circuit court dismissed the breach of repair claims on limitation grounds, and we affirmed. *Id.* at 710.

On appeal, the Maryland Supreme Court reversed on this issue. The *Antigua* Court cited to cases holding that a statute of limitations begins when a contractor abandons his efforts to cure, not when the breach was discovered. *Id.* at 714-15. The Maryland Supreme Court then stated:

> We do not interpret the Repair Clause as simply a warranty of the condition of a unit or of the common elements as of the time of closing with a Unit Owner. Had [the condominium developer] simply guaranteed the condition of the property as of the date of closing with a Unit Owner, any breach of that guarantee would necessarily occur at closing and, absent a special statute, the cause of action would accrue for limitations purposes when the breach was discovered. Here, however, [the developer]

> additionally promised to repair if notified timely. The breach of that covenant to repair does not occur at closing or necessarily when notice is given. Conceptually, the ways in which one who has contracted to repair could breach that contract include repudiating the obligation before any notice is given, or, after being on notice of the defect, failing to undertake the repairs within a reasonable time, expressly refusing to repair, or, after undertaking to repair, abandoning the work before completion.

Id. at 715 (internal citation omitted).

The *Antigua* Court contrasted its reasoning to its decision in *Booth*, *supra*. In *Booth*, the owner of a newly constructed building claimed that a subcontractor had negligently installed glass in the structure, which caused leaks. The owner knew for more than three years prior to suit that the glass might have been negligently installed. In *Booth*, the Maryland Supreme Court held the statute of limitations had run on the claim and had not been tolled by the subcontractor's efforts to repair the defects. The Court was careful to point out that "'the suit [was in no] way predicated upon a contract created by [the contractor's] promise to [the owner] to repair the leaks.'" *Antigua*, 307 Md. at 716 (quoting *Booth*, 304 Md. at 621-22).

After the above discussion of *Booth*, the Court in *Antigua* concluded:

> Under our interpretation of the Repair Clause, limitations do not begin running at the time a defect is discovered. As a consequence, even though giving notice of a defect presupposes discovery of the defect, it does not follow that limitations cannot begin to run later than the date on which notice of a defect was given.

Id. at 717.

The *Antigua* Court's analysis applies here. As in *Antigua*, the breach did not occur until after the cure provision in the contract passed. *Booth* is distinguishable for the same reason that it was distinguished in *Antigua* – in *Booth*, there was no cure provision in the

contract. Here, the cause of action was a breach of contract, and the promise that was breached was the promise to cure. Under the terms of the contract, a cause of action for breach of the cure provision occurs ten days after notice of a failure of performance. This occurred on November 24, 2018, which was ten days after the homeowner notified SCC of the breach and the homeowner could have discovered that SCC had done nothing to cure the breach. For the above reasons, we shall affirm the MHIC's final order.

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