Circuit Court for Baltimore County
Case No. C-03-CV-19-002745

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2069

September Term, 2022

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16 WILLOW AVENUE, LLC

v.

BOZZUTO HOMES, INC., *et al.*

Leahy,
Albright,
Harrell, Glenn T.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Albright, J.

Filed: October 10, 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).

Appellant 16 Willow Avenue, LLC ("16 Willow") and the Towson Green residential development are essentially neighbors in Baltimore County. Before construction of Towson Green began, 16 Willow, represented by one of its owners and its manager, Andrew Jiranek, Esquire, negotiated the right to an ingress-egress easement over the entire width of an alley in the development ("Alley H"). The easement was memorialized in a written agreement that 16 Willow entered into in July 2010 with BA Towson Green LLC. BA Towson Green LLC is a subsidiary of Appellee Bozzuto Homes, Inc. ("BHI"), the development's builder. The written agreement was recorded in the land records of Baltimore County in May 2013, shortly after Alley H was completed.

In 2018, a dispute arose about the width of the Alley H easement. Towson Green's homeowners claimed that the recorded easement was narrower than what 16 Willow claimed. In August 2019, 16 Willow filed suit in the Circuit Court for Baltimore County against Towson Green's homeowners' association, Appellee Towson Green Community Association, Inc. ("Towson Green HOA" or "HOA"), as well as several individual homeowners who are also Appellees in this case (collectively, "Towson Green homeowners" or "homeowners"). 16 Willow sought a declaration that its easement covered the entire width of Alley H as constructed. At some point thereafter, 16 Willow had the recorded easement surveyed, realized that it did not in fact reach over the entire width of Alley H, and amended its complaint to add claims against BHI for fraud, breach of contract, and breach of fiduciary duty.

Following discovery, Appellees moved for summary judgment based on the

statute of limitations. The circuit court found that 16 Willow was on inquiry notice of its claims no later than May 2013. Consequently, it held that 16 Willow's claims were time-barred because they accrued more than three years before suit was filed in 2019. The circuit court granted summary judgment to all Appellees on all of 16 Willow's claims. 16 Willow timely noted this appeal.

16 Willow presents one question for our review: whether the circuit court erred in granting summary judgment by ruling Appellant's claims were barred by limitations. For the reasons below, we answer "no" and affirm the circuit court's judgment.

BACKGROUND

Towson Green Development and the First Letter Agreement

Appellee BHI undertook to build a residential real estate development in Towson on land owned by Stark Properties, LLC ("Stark"). The development would be known as "Towson Green." Appellant 16 Willow, which at all relevant times was an LLC with two members, husband and wife Andrew Jiranek and Elizabeth Jiranek, owned an office building located at 16 Willow Avenue on land adjoining the development. Mr. Jiranek, an attorney with experience in real estate and business law, was the founder and principal of Jiranek, P.A., a law firm operating out of the office building at 16 Willow Avenue.

In 2010, before construction of Towson Green began, 16 Willow began negotiating with Stark and BHI about securing access to its office building through development property and constructing a new shared parking area behind the office

building. In these negotiations, 16 Willow's counsel was Mr. Jiranek,[1] while BHI was represented by outside counsel from the law firm of Gallagher, Evelius, and Jones, LLP, primarily attorney Mark Keener.

16 Willow and BHI eventually reached an understanding that they memorialized in a letter agreement executed on July 21, 2010 ("First Letter Agreement"). In the First Letter Agreement, BHI promised that 16 Willow would get a non-exclusive, perpetual ingress-egress easement ("Alley H easement") permitting access to its office building via Alley H, a private alley that would run through the development. The First Letter Agreement did not create the Alley H easement itself, but instead specified that the Alley H easement would be "set forth in the Easement Agreement attached hereto[.]"

BHI and 16 Willow agreed to execute, witness, and notarize the Easement Agreement at the same time as the First Letter Agreement. However, the First Letter Agreement specified that BHI would only be required to record the Easement Agreement once construction of Alley H and the parking lot was complete.[2] Until recordation, BHI would maintain possession of the Easement Agreement.

[1] Mr. Jiranek was acting not only as 16 Willow's member and authorized representative, but also as its counsel. The circuit court found as much, and 16 Willow does not dispute that fact on appeal. For example, it refers in its appellate brief to "a December 19, 2012 email from BHI's attorney Keener to [16 Willow's] attorney and managing member Andrew Jiranek." Moreover, Mr. Jiranek represented 16 Willow at the beginning of this litigation, although the circuit court granted Towson Green HOA's motion to disqualify Mr. Jiranek as counsel on the basis that he would be a key fact witness.

[2] Under Maryland law, an express easement must be recorded to take effect. Md. Code Ann., Real Property § 3-101(a); *Nowohel v. Hall*, 218 Md. 160, 164–65 (1958).

The Easement Agreement contained the following operative language:

> [BHI] does hereby establish for the benefit of [16 Willow] and as an appurtenance to [16 Willow's property], a perpetual, non-exclusive easement over, along, and across **the portion of [Alley H] shown as the cross-hatched area on Exhibit C attached hereto** for purposes of ingress and egress to and from [16 Willow's property].

(Emphasis added.) The Easement Agreement did not provide a legal description of the Alley H easement; instead, the extent of the Alley H easement was defined solely by cross-hatching on a conceptual site plan of the Towson Green development.[3] The cross-hatched site plan was attached to the Easement Agreement as "Exhibit C." We refer to this version of Exhibit C as "2010 Exhibit C." Mr. Jiranek personally drew in the cross-hatching on 2010 Exhibit C. As the sole depiction of the Alley H easement, Exhibit C was, in Mr. Jiranek's words, the "centerpiece" of the Easement Agreement.

Changes to the Alley H Easement

The parties recognized that the Easement Agreement was an "evolving thing" that would require modification before it was recorded.[4] Consequently, as development of

[3] At deposition, Mr. Jiranek testified that he had drafted more than 50 easements and that, in his experience, easements are usually indicated visually using cross-hatching or similar techniques on plats and maps rather than through formal metes and bounds descriptions.

[4] BHI and 16 Willow were aware, for example, that the parties to the easement agreements might need to be modified as Towson Green property changed hands over the course of development. As construction proceeded, BHI purchased the development land from Stark in several stages (and with assistance from different lenders). When the Easement Agreement and Cross Easement Agreement were first executed, Stark still owned part of the development property. Thus, BHI and Stark (as well as a Stark subsidiary, Towson Properties, LLC) were parties to the versions of the easement agreements executed in 2010. By December 2012, BHI had finished acquiring the

Towson Green progressed, BHI and 16 Willow modified their arrangement and revised the as-yet-unrecorded Easement Agreement several times.

First, on December 30, 2010, Mr. Jiranek contacted BHI because he had noticed that the cross-hatching in 2010 Exhibit C did not cover the entire length of Alley H.[5] Specifically, a short stretch of Alley H near its intersection with a newly built road (later known as Meridian Lane) was not cross-hatched. Mr. Jiranek wrote:

> On the cross hatched section of the site plan, I wanted to make sure you were intending us to use all of [A]lley [H]. It runs between the new road [i.e., Meridian Lane] and Linden Terrace. I had interpreted your cross lines, and the language of the agreement, as including all of [A]lley [H], meaning we could enter [A]lley [H] from either the new road or Linden Terrace. But[] I wanted to make sure my understanding was consistent with yours. Is this the case? If so, I just want to make sure we continue the cross lines along [A]lley [H] to the new road so there is no confusion down the road.

BHI agreed to correct the error, and in January 2011, the parties exchanged (but BHI did not execute) a new version of the Easement Agreement that included an updated version of Exhibit C with the additional cross-hatching all the way down to Meridian Lane ("2011 Exhibit C").

Second, on January 31, 2011, the parties executed an additional letter agreement ("Second Letter Agreement") meant to "clarify and . . . amend certain of the provisions of

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relevant areas of the development property from Stark; it had also transferred the property to a subsidiary, BA Towson Green, LLC. Thus, the only two parties in the December 2012 revisions of the easement agreements were BA Towson Green, LLC and 16 Willow. Unless otherwise specified, for ease we refer to subsidiary BA Towson Green, LLC by the name of its parent, BHI.

[5] Mr. Jiranek testified that he drew the cross-hatching on 2010 Exhibit C, so the error seems to have been his, not BHI's.

the First Letter Agreement[,]" but not intended as a novation of it. The Second Letter Agreement went into greater detail about the parties' respective responsibilities for constructing and maintaining parking spaces behind 16 Willow's office building. It also added another easement agreement ("Cross Easement Agreement") that would allow the parking spaces to encroach on Towson Green HOA property and guarantee future residents of Towson Green the right to use the parking spaces on weekends. The parking easement was depicted in the Cross Easement Agreement using the same cross-hatched site plan used in 2010 Exhibit C.

Third, in December 2012, BHI sent 16 Willow revised versions of the Easement Agreement and Cross Easement Agreement ("2012 Easement Agreements" collectively). According to BHI, these revisions were necessary to update the parties to both easement agreements because the development property had changed hands since the relevant agreements were first executed. The 2012 Easement Agreements made several changes, including substituting the correct parties and simplifying the attached legal descriptions of the parties' properties.

Central to this appeal, the 2012 Easement Agreements included a new version of Exhibit C, which we refer to as "Revised Exhibit C." Unlike 2010 Exhibit C and 2011 Exhibit C, both of which had used the conceptual site plan for the Towson Green development, Revised Exhibit C purported to plot the Alley H easement on the now-available final subdivision plat, which had been recorded in Baltimore County land

records on August 10, 2012.[6] On 2010 Exhibit C and 2011 Exhibit C, cross-hatching covered the entire width—twenty-two feet—of Alley H. By contrast, the cross-hatching in Revised Exhibit C only covered the outer half—11 feet—of Alley H for most of the alley's length.[7] We reproduce 2011 Exhibit C and Revised Exhibit C below as Figures 1 and 2, respectively.

[6] The plat is titled "Final Plat- Phase Two Towson Manor" and can be found in Baltimore County land records in plat book 79, folio 258.

[7] Revised Exhibit C's cross-hatching expands to cover all twenty-two feet of Alley H for a short stretch near the alley's intersection with Meridian Lane. Additionally, the cross-hatching on all versions of Exhibit C, old and new, includes a small strip off the outside edge of Alley H. The parties do not dispute that this area is included in 16 Willow's easement.

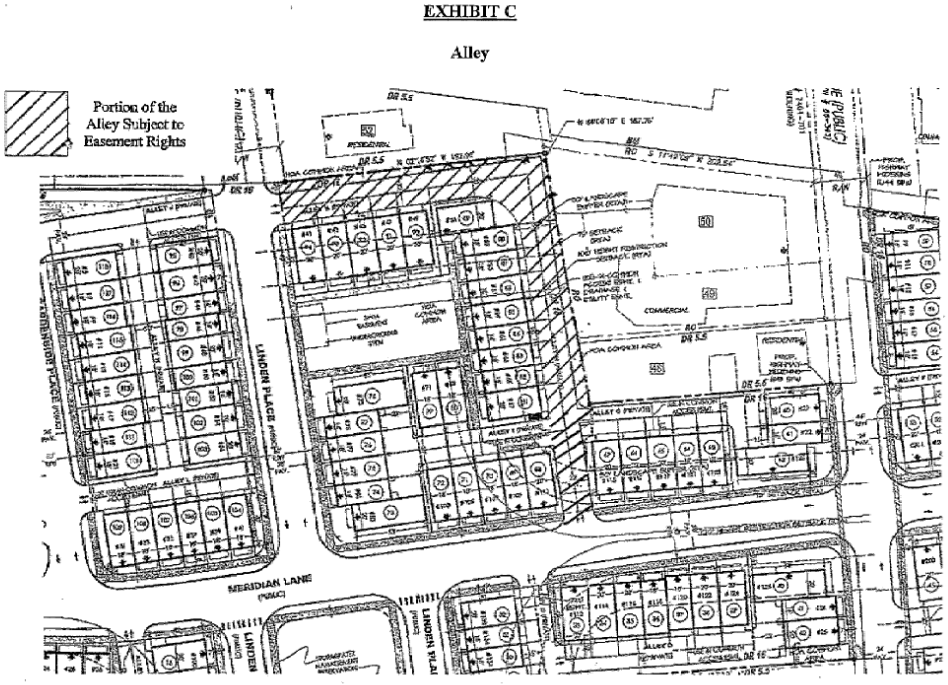
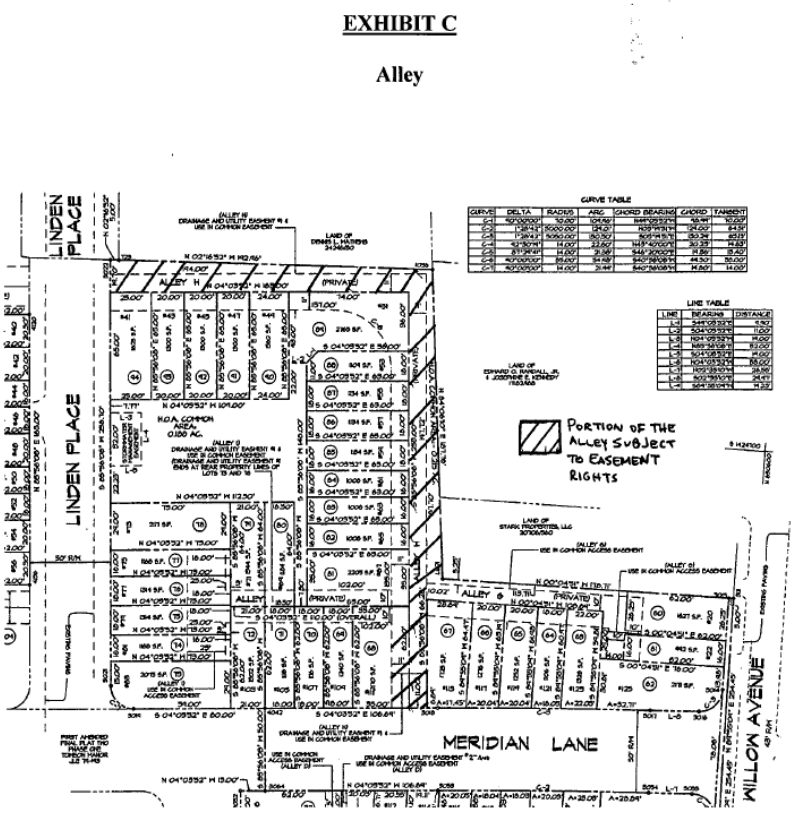


Figure 1 (above): 2011 Exhibit C; **Figure 2 (below)**: Revised Exhibit C



BHI sent 16 Willow both clean and redlined versions of the 2012 Easement Agreements. BHI flagged some changes to text and exhibits using redlines, but it did not redline the insertion of Revised Exhibit C. BHI also substituted a new map for the exhibit depicting the parking easement in the 2012 Cross Easement Agreement. That new map, the insertion of which BHI also failed to redline,[8] was a more detailed depiction of the parking spots that 16 Willow had agreed to build behind its office building.

In his email to Mr. Jiranek proposing the December 2012 revisions, Mr. Keener explained:

> [BHI] acquired the Phase II portion of Towson Manor [i.e., Towson Green] in late September and Alley H is scheduled to be completed in the next 2-4 weeks. As we discussed over email earlier this year, and as the [First Letter Agreement and Second Letter Agreement] between [BHI] and [16 Willow] dictate, the easement agreements are to be recorded at the time Alley H is completed. Looking ahead to that event, we have revised the agreements to reflect the current owner entity and current lender and to revise certain exhibits. Please review the attached clean and redlined versions of the Easement Agreement and Cross-Easement Agreement and be in touch regarding any comments or questions.

In response, Mr. Jiranek wrote:

> We have an agreement already. It has already been signed. […]
>
> I have not gone through these red lines. Are you proposing changes to the agreements of any substance? If you want to just clean up the agreements and re-execute them, I am ok with that. But[] I am not going to re-trade on them. (Not suggesting you are proposing this, just trying to make sure we are on the same page.)
>
> Are there substantive differences in these agreements? If so, please advise

[8] BHI also changed the title of the map from "Site Plan" to "Parking Plan[.]" Unlike the insertion of the new figure itself, that change did appear in BHI's redlines.

> of the changes that you would like. [. . .]
>
> I just want to make sure you are proposing to re-execute the documents to clean things up, rather than substantive changes to the agreement.

Mr. Keener replied:

> [T]he changes are simply clean-up—mainly to put in the correct Bozzuto entity that actually took title to the property [i.e., BHI subsidiary BA Towson Green, LLC] and [to] reflect the current lenders that need to join in. I think you will see that when you have a chance to review the blacklines[.]

Mr. Jiranek then reviewed the 2012 Easement Agreements and responded, "These easement agreements look fine to me." He spotted BHI's non-redlined insertion of the new map in the Cross Easement Agreement and proposed a modification, noting: "I made one small change to the Cross Easement because you swapped out the parking plan exhibit[.]" However, he made no comment about the changes to the Alley H easement indicated in Revised Exhibit C.

In an affidavit prepared for this litigation, Mr. Jiranek would later state that, in reliance on Mr. Keener's representations, his December 2012 review of the 2012 Easement Agreements focused on BHI's redlines. Consequently, he admitted that he only reviewed Revised Exhibit C, which was not redlined, in a "cursory" way, and explained that his "cursory observation was that the cross-hatched area on [Revised Exhibit C] was all of Alley H." Mr. Jiranek also admitted in deposition testimony that he did not compare Revised Exhibit C to 2010 Exhibit C or 2011 Exhibit C. Ms. Jiranek, also a member of 16 Willow, would later state in an affidavit that she, like her husband, relied on BHI's December 2012 representations that there were no substantive changes in the

easement agreement provided to Mr. Jiranek for review. She stated that it was in 2019 that she and her husband realized they had been wronged.

In April 2013, BHI sent Mr. Jiranek another version of the easement agreements ("2013 Easement Agreements" collectively) for review in advance of recordation. In an email to Mr. Jiranek, BHI employee Adam Block explained:

> Attached are the final Easement Agreement and Cross-Easement Agreement for Alley H [sic] at Towson Green. Please review one last time and advise of any questions, comments, or concerns. If there are none, please execute the originals and return originals to me via FedEx. Once I've received the executed originals back, I will have them recorded in the Land Records.

As with the December 2012 version of the Easement Agreement, this version included Revised Exhibit C. Mr. Jiranek reviewed the 2013 Easement Agreements. Along with several minor non-substantive changes, he proposed merging the Easement Agreement and the Cross Easement Agreement into a single agreement to reduce recording costs. However, he made no changes to, and did not comment on, Revised Exhibit C and its depiction of the Alley H easement.

BHI agreed to the merger of the easement agreements and to Mr. Jiranek's other proposed changes. BHI recorded the final merged easement agreement ("Recorded Easement Agreement"), executed by both parties, on May 21, 2013. The Recorded Easement Agreement contained Revised Exhibit C. BHI provided 16 Willow with a copy of the Recorded Easement Agreement.

Disputing the Alley H Easement

After construction finished, BHI transferred ownership of Towson Green to a

newly established homeowners association, Appellee Towson Green HOA. Units adjoining Alley H were sold to individual homeowners, several of whom are also Appellees here. Ownership of Alley H was divided down the middle: the outer half was common land owned by the HOA, while the inner half was owned by the individual owners of the adjoining homes. In turn, and by virtue of the HOA's Declaration of Covenants, Conditions, Easements and Restrictions, 16 Willow's easement over Alley H was also binding on all Towson Green homeowners.

In 2018, a dispute arose between 16 Willow, on one side, and the Towson Green homeowners and HOA on the other. 16 Willow objected to homeowners parking on the inner half of Alley H, which it claimed interfered with its easement rights across the entire width of Alley H. The homeowners and HOA disagreed and pointed to the 11-foot cross-hatching in Revised Exhibit C as incorporated in the Recorded Easement Agreement. On August 6, 2019, 16 Willow (again represented by Mr. Jiranek) filed this suit against the homeowners and HOA seeking judicial declaration and enforcement of its easement rights over the entire width of Alley H.

Shortly after filing suit, Mr. Jiranek emailed Mr. Keener, and reviewed his understanding of the easement negotiation that had occurred between 2010 and 2013. As to the December 2012 version of the Easement Agreement that Mr. Keener had sent for Mr. Jiranek's review, which included Revised Exhibit C, Mr. Jiranek admitted that he looked at Revised Exhibit C and realized it was "different." Mr. Jiranek said:

> Once that was all done (retitling, refinancing, construction), you sent over an agreement (attached) that you said "cleaned things up" in that it reflected the

> current owners and current lender. I asked if there were any substantive changes to the agreement, and you said ["]no["] and I trusted you. I did look at the exhibits which were different. You said you attached an [*sic*] as a different survey exhibit rather than the prior exhibit. I looked at what you attached and what was labelled "alley h on it" and that labelled alley was completely covered by cross hatches. Based on that reading, and with your representation that there were no substantive changes (i.e., narrowing on the easement area), I interpreted that as being consistent with the agreement we had entered into in July 2010. I signed it and you then recorded it.

At about the same time, Mr. Keener apparently stated his recollection that in negotiating with 16 Willow, BHI had intended for the Alley H easement to cover the entire width of the alley.

Circuit Court Proceedings

16 Willow's initial complaint only named the HOA and individual homeowners whose properties adjoined Alley H as defendants, but it subsequently amended its complaint to include breach of contract, fraud, and breach of fiduciary duty claims against BHI. 16 Willow alleged that BHI had fraudulently concealed the changes it made to Revised Exhibit C in December 2012 in order to induce 16 Willow's agreement. It maintained that the First Letter Agreement bound BHI to record the 2010 Easement Agreement. Additionally, 16 Willow alleged that under the First Letter Agreement, BHI was to hold the Easement Agreement in escrow until recordation. 16 Willow argued that by recording the materially different Recorded Easement Agreement, which included Revised Exhibit C instead, BHI had breached the terms of the First Letter Agreement and breached its fiduciary duty to 16 Willow. The final version of 16 Willow's complaint

comprised ten counts against the various defendants.[9]

At the close of discovery, BHI and Towson Green HOA each moved for summary judgment,[10] arguing that 16 Willow's claims were time-barred under Section 5-101 of the Courts and Judicial Proceedings Article ("CJP") of the Maryland Code, which provides a three-year limitations period for most civil matters.[11] Both BHI and Towson Green HOA argued that 16 Willow's claims had accrued on or before the recordation of the Recorded Easement Agreement—well more than three years before 16 Willow filed suit in 2019—because 16 Willow "knew or, with due diligence, reasonably should have known" in 2012–2013 that the easement indicated in Revised Exhibit C differed from that in 2010 Exhibit C and 2011 Exhibit C. *See Bacon v. Arey*, 203 Md. App. 606, 652 (2012). Specifically, Appellees argued that, as 16 Willow's counsel, Mr. Jiranek was obligated to exercise "due diligence" in reviewing the easement agreements, and if he had done so, he "would have identified any issues with the proposed location of the Easement." Appellee

[9] The ten counts of the fifth amended complaint—the final version of 16 Willow's complaint—were as follows: Count I: Express Easement; Count II: Easement by Estoppel; Count III: Easement by Implication; Count IV: Breach of Contract (against BHI); Count V: Fraud in the Inducement (against BHI); Count VI: Breach of Fiduciary Duty (against BHI); Count VII: Declaratory Judgment; Count VIII: Injunctive Relief; Count IX: Deed Reformation; Count X: Quiet Title.

[10] Towson Green HOA's motion was styled a "motion to dismiss or, in the alternative, motion for summary judgment." The circuit court treated it as a motion for summary judgment. The homeowners joined this motion. Towson Green HOA and the homeowners filed briefs arguing that the circuit court's grant of summary judgment should be affirmed.

[11] Both Appellees also moved for summary judgment on the merits. However, the circuit court did not reach those issues and they are not before us on appeal.

homeowners joined Towson Green HOA's summary judgment motion.

Following a hearing, the circuit court granted Appellees' motions for summary judgment. The circuit court explained:

> Exhibits which were attached to [BHI's] Motion for Summary Judgment make plain that on at least four occasions prior to the recordation of the Easement Agreement on May 31, 20[13], Plaintiff's counsel had the opportunity to review and did review what was substantially the final version of the Easement Agreement, including "Exhibit C" which showed the shading of 11 feet of easement.
>
> - On December 19, 2012, counsel for [BHI] emailed a version of the agreement to Plaintiff's counsel soliciting comment…; that same day, Plaintiff's counsel resubmitted the agreement to [BHI's] counsel with comments and stating, "Looks fine to me." (Exhibit 9)
>
> - On April 9, 2013, [BHI's] counsel emailed the agreement to multiple recipients including Plaintiff's counsel; the email referenced "final easement agreement and cross easement agreement. Please review one last time." Plaintiff's counsel returned the document to [BHI's] counsel later that day with only non-substantive changes. (Exhibit 12)
>
> - On May 21, 20[13], Plaintiff's counsel, in his capacity as "Member and Authorized Person," [i.e., Mr. Jiranek] executed the Easement Agreement on behalf of 16 Willow Avenue LLC[.] (Exhibit 13)
>
> - On May 23, 2013, [BHI's] counsel emailed Plaintiff's counsel a copy of a letter to the title company requesting the recordation of the signed Easement Agreement; a copy of the signed agreement was included with the email (Exhibit 14).
>
> There is no genuine dispute of material fact that each of these documents placed the Plaintiff at least on inquiry notice, if not actual notice,[[12]] that the Easement Agreement recorded on May 31, 2013[,] may have deviated from prior discussions. This deviation undergirds each of the 10 counts of the Plaintiff's Fifth Amended Complaint. The court finds that the statute of

[12] From the context, we assume that the circuit court was referring to express notice, a kind of actual notice. The other kind of actual notice, as we discuss below, is inquiry notice.

> limitations on each of the Plaintiff's claims began to run no later than May 23, 2013[,] when Plaintiff's counsel was provided with a copy of the signed Easement Agreement to be presented for recordation. The Plaintiff's lawsuit, first filed on August 6, 2019, is barred by the statute of limitations and all Defendants are entitled to judgment as a matter of law.
>
> The court has considered the Plaintiff's arguments that: 1) a breach did not occur until there was a demand for recordation in 2020; and 2) the Defendants are guilty of unclean hands which would preclude the operation of limitations. The court finds that neither of these arguments is persuasive.

Consequently, the circuit court issued two orders. The first granted summary judgment to BHI as to the three counts against it (Counts IV, V, and VI), while the second granted summary judgment to Towson Green HOA. 16 Willow moved for reconsideration, noting that the circuit court's orders did not indicate the status of its claims as to the Towson Green homeowners. The circuit court subsequently entered a new order that granted summary judgment as to all parties and as to all counts of 16 Willow's complaint. This timely appeal followed.

STANDARD OF REVIEW

Summary judgment is appropriate when a circuit court finds "that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). "A genuine dispute of material fact exists when there is evidence 'upon which the jury could reasonably find for the plaintiff.'" *Windesheim v. Larocca*, 443 Md. 312, 326 (2015) (quoting *Beatty v. Trailmaster Prods., Inc.,* 330 Md. 726, 739 (1993)). Once the moving party has met its burden of demonstrating that there is no genuine dispute of material fact, the burden shifts to the non-moving party to produce sufficient facts admissible in

evidence tending to show that a genuine dispute of material fact does in fact exist. *Thomas v. Shear*, 247 Md. App. 430, 447 (2020). To do so, the non-moving party "must do more than simply show there is some metaphysical doubt as to the material facts." *Beatty*, 330 Md. at 738 (quoting *Matsushita v. Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).

We review *de novo* a circuit court's grant of summary judgment. *Standard Fire Ins. Co. v. Berrett*, 395 Md. 439, 450 (2006). On appeal from a grant of summary judgment, "we conduct an independent review of the record to determine whether a genuine dispute of material fact exists and whether the moving party is entitled to judgment as a matter of law." *Md. Cas. Co. v. Blackstone Int'l Ltd.*, 442 Md. 685, 694 (2015). In so doing, we "examine[] the same information from the record and determine[] the same issues of law as the trial court." *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 478–79 (2007). We also "review[] the record in the light most favorable to the nonmoving party[] and construe[] any reasonable inferences that may be drawn from the facts against the moving party." *Oglesby v. Baltimore School Assoc.*, 484 Md. 296, 327 (2023) (internal quotations omitted).

16 WILLOW'S CONTENTIONS

16 Willow argues that summary judgment was inappropriate because there were genuine disputes of material fact about when it knew or should have known that Revised Exhibit C deviated from the easement agreement to which it and BHI had agreed. Essentially, 16 Willow makes two arguments. *First*, pointing to the Jiraneks' affidavits

and Mr. Jiranek's deposition testimony, 16 Willow argues that this evidence shows that 16 Willow was not subjectively aware of the easement's reduction in width until September 2019 when it became involved in the parking dispute with Towson Green HOA. 16 Willow contends that without subjective knowledge that "something was amiss" regarding Revised Exhibit C, there was nothing that would have put 16 Willow on inquiry notice of a problem when the easement was recorded in 2013. *Second*, 16 Willow admits that Mr. Jiranek gave Revised Exhibit C just a "cursory" review, but argues that doing so constituted reasonable reliance on Mr. Keener's December 2012 representations. Specifically, 16 Willow maintains that BHI's representations that the December 2012 revisions were "simply clean-up," the lack of redlining of Revised Exhibit C, and the longstanding professional and personal relationship between Mr. Keener and Mr. Jiranek create genuine disputes of material fact about what Mr. Jiranek should have known in 2012–2013, and therefore should have been submitted to a factfinder.[13]

DISCUSSION

Under Maryland law, a claim does not accrue for limitations purposes only when a

[13] 16 Willow relies on *Cador v. Yes Organic Mkt. Hyattsville Inc*., 253 Md. App. 628, 635 (2022), and argues that the circuit court failed to consider evidence that "directly and by inference" contradicted the circuit court's finding that 16 Willow was on actual and inquiry notice in 2013. *Cador* is distinguishable, however, because it pertained to what a plaintiff actually knew about the condition of the floor she slipped on, and whether that knowledge was the result of reasonable inferences that could have been drawn from predicate facts. *Cador*, 253 Md. App. at 643–44. Here, because inquiry notice is objective, we need not focus on what a plaintiff subjectively knew from predicate facts but rather on what a plaintiff objectively should have known from those facts.

plaintiff subjectively knows that he has suffered a wrong. Instead, under the discovery rule, applicable in all civil cases following the Maryland Supreme Court's decision in *Poffenberger v. Risser*, a claim accrues for limitations purposes when a plaintiff knows, or with reasonable diligence should have known, that he has suffered a wrong. 290 Md. 631, 636–37 (1981). *See also Estate of Adams v. Cont. Ins. Co.*, 233 Md. App. 1, 28 (2017) ("Limitations begin to run when a plaintiff reasonably knows or should know of facts that show he has been injured or harmed by a wrong." (cleaned up)).

When a plaintiff should have known he has suffered a wrong, he is held to be on inquiry notice.[14] Inquiry notice arises when a plaintiff has "knowledge of circumstances which would cause a reasonable person in the position of plaintiff to undertake an investigation which, if pursued with reasonable diligence, would have led to knowledge of the alleged cause of action." *Rounds, et al. v. Maryland-Nat'l Capital Park & Planning Comm'n*, 441 Md. 621, 655 (2015) (cleaned up). We impute knowledge of all facts that a reasonably diligent investigation would have uncovered to a person deemed to be on inquiry notice. *Id.*; *Lumsden v. Design Tech Builders*, 358 Md. 435, 452 (2000) ("[A] claimant will be charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation, regardless of whether the investigation has been

[14] Inquiry notice is also known as implied notice. Inquiry notice is distinct from express notice, which requires that a plaintiff have subjective knowledge of a fact or receive direct communication of that fact. *Poffenberger*, 290 Md. at 636–37. Together, inquiry notice and express notice make up actual notice. Under *Poffenberger*, only actual notice triggers the discovery rule, not constructive notice, or notice presumed as a matter of law. *Id.* at 637.

conducted or was successful.").

Determining whether a plaintiff is on inquiry notice—in other words, whether he should have known of having been wronged—entails an objective two-step analysis. The first question is whether the plaintiff knew or should have known of facts or circumstances that would cause a reasonable person in the position of the plaintiff to investigate. *Ga.-Pac. Corp. v. Benjamin*, 394 Md. 59, 89 (2006). If yes, the second question is whether an investigation pursued with reasonable diligence by a reasonable person in the position of the plaintiff would have discovered the alleged wrong. *Pennwalt Corp. v. Nasios*, 314 Md. 433, 448–49 (1988). If yes, the plaintiff is deemed to be on inquiry notice.

Returning to this case, we agree with the circuit court that 16 Willow's claims were time-barred as a matter of law. 16 Willow's claims accrued on or about May 23, 2013 because it was then (or at least by then) that 16 Willow had inquiry notice of, i.e., should have known, that the Easement Agreement that BHI was about to record in the land records was not the one to which 16 Willow and BHI had agreed. 16 Willow and BHI had agreed that 16 Willow would have a twenty-two-foot-wide easement over Alley H but the Easement Agreement reduced the width to eleven feet over most of Alley H. Because 16 Willow did not file suit within three years of May 23, 2013, its claims are barred as a matter of law.

The error in the width of the Alley H easement came about because of inaccurate cross-hatching on the final version of a map, Revised Exhibit C, that was attached to the

Easement Agreement. Revised Exhibit C, a subdivision plat, was not the original map that depicted the easement. The original map, identified above as 2010 Exhibit C and 2011 Exhibit C, was a site plan on which 16 Willow's counsel had himself cross-hatched the easement. 16 Willow's counsel did not cross-hatch Revised Exhibit C himself. He reviewed it, realized it was a different base map, but did not notice that the cross-hatching on it was at odds with the earlier exhibits.

Before the Easement Agreement was recorded, 16 Willow's counsel had several opportunities to notice the error in Revised Exhibit C. Specifically, on or about December 19, 2012, 16 Willow's counsel received from BHI's counsel a version of the Easement Agreement that included Revised Exhibit C. BHI's counsel told 16 Willow's counsel that BHI was going "to revise certain exhibit[s]" and solicited comment. After reviewing these items, and making comments, 16 Willow's counsel responded to BHI's counsel, "These easement agreements look fine to me."

16 Willow's second opportunity for review came about four months later when 16 Willow was invited to review the Easement Agreement "one last time" before its recordation. Specifically, on April 9, 2013, BHI's counsel sent 16 Willow's counsel the Easement Agreement, indicating that it was the "final easement agreement and cross easement agreement. Please review one last time." 16 Willow's counsel reviewed it later that day, and, as the circuit court found, responded only with non-substantive changes.

A third chance at notice came before the Easement Agreement was recorded. On May 23, 2013, BHI emailed 16 Willow a copy of the letter BHI sent to its title company

requesting that the easement agreement be recorded. As the circuit court recognized, "a copy of the signed agreement was included in the email." The Easement Agreement was recorded on May 31, 2013.

In an attempt to overcome the conclusion that it was on inquiry notice of the problem as of May 23, 2013, 16 Willow contends that summary judgment on this point was inappropriate because there was a material dispute of fact about when 16 Willow subjectively knew about the reduction in Alley H's width. 16 Willow argues that in 2013, Mr. Jiranek (and Ms. Jiranek) did not subjectively know that Revised Exhibit C was inaccurate because during his "cursory review" of Revised Exhibit C, which was not redlined, Mr. Jiranek relied on BHI's representations, and did not notice that the cross-hatching on it was inaccurate. Instead, 16 Willow points to the Jiraneks' testimony (Mr. Jiranek's deposition and the affidavits of Mr. and Mrs. Jiranek) in which they state that they did not know of the inaccuracy until 2019. Thus, without subjective knowledge that "something was amiss" until 2019, 16 Willow argues that it could not have been on inquiry notice of its claim in 2013.

As we understand its argument, 16 Willow is not asserting that the error on Revised Exhibit C was so hidden that a reasonably diligent review of the December 2012 or April 2013 correspondence from BHI would not have uncovered the error. Indeed, at oral argument, 16 Willow conceded that with "more than a cursory review" of Revised Exhibit C, it "could have realized" that the exhibit did not accurately depict the intended Alley H easement.

> [THE COURT]: Would you concede that if [Mr. Jiranek] had done more than a cursory review of [Revised Exhibit C] back in 2012 that he could have realized that the easement was diminished?
>
> [COUNSEL FOR 16 WILLOW]: You used the word **"could have" and the answer to that is yes. Would have, we don't know**. OK. But the point is . . . when he did look at it in the cursory fashion that he did, he did not notice that anything had changed, that there was anything amiss[.]

(Emphasis added.) Instead, 16 Willow argues that because there is at least a material dispute about whether its counsel subjectively knew that "something was amiss" in 2013, it was error to conclude as a matter of law that 16 Willow was inquiry notice then.

But inquiry notice does not arise exclusively because a plaintiff actually or subjectively notices that "something is amiss" or suspects wrongdoing. Such an approach would collapse the first and second steps of inquiry notice analysis; knowing that something is amiss or that there has been wrongdoing would be tantamount to discovering the wrong itself. Instead, inquiry notice is an objective inquiry, concerned with the reasonably diligent investigation of a reasonable person in the plaintiff's position. *Rounds, et al. v. Maryland-Nat'l Capital Park & Planning Comm'n*, 441 Md. 621, 655 (2015) (cleaned up). *See, e.g.*, *Bank of New York v. Sheff*, 382 Md. 235, 247 (2004) (same); *Estate of Adams*, 233 Md. App. at 42–43.

In *Bank of New York v. Sheff*, a case affirming summary judgment based on inquiry notice, there was no evidence that plaintiff actually noticed the omission of which it ultimately complained, i.e., that something was amiss. 382 Md. at 246–47. Plaintiff, a bank, was the trustee for bondholders and bond funds that held the bonds. Borrowers, who received proceeds of the bond sales, agreed to secure their repayment obligations by

the filing of liens in the District of Columbia ("D.C."), which was one of the several jurisdictions in which borrowers' assets were located. Defendant law firm, as counsel for the bond issuer, failed to prepare a financing statement for D.C., however. Of the bank's apparent failure to notice the omission of the financing statement from the Closing Binder of documents for the transaction, our Supreme Court said:

> Because a financing statement for filing in the District had not been prepared, no such document appeared in the Binder. Notwithstanding everyone's knowledge that some of the borrowers, including [Greater Southeast Community Hospital], were located in [D.C.], *no one complained about (or apparently noticed) the lack of a financing statement for filing in [D.C.]*, and no one filed such a statement.

Id. at 240 (emphasis added).

Nonetheless, and despite the lack of evidence that the bank actually noticed that the relevant financing statement was missing, our Supreme Court held that the bank should have noticed the problem.

> There is no dispute of material fact with respect to that issue. If, *arguendo,* [the defendant law firm] *did* have a duty to file the financing statement in [D.C.], the absence of such a statement from the Closing Binder should certainly have alerted the trustee to the real prospect that the firm had not performed that duty, especially when the Binder contained the statements filed with SDAT and the Clerk in Prince George's County. The omission of that document did, indeed, give the trustee reason to question whether [the law firm] had filed the statement.

Id. at 245.

In *Estate of Adams,* similarly, summary judgment was affirmed because even though plaintiffs took no "overt action" showing that they were on inquiry notice of their claims, we concluded that plaintiffs' attorneys should have known of plaintiffs' harm.

233 Md. App. at 35–36.

The *Estate of Adams* plaintiffs were asbestos claimants who had settled their claims based on the representation that the only insurance available to cover their claims was "products coverage." *Id.* at 8. Some years later, we reported an appellate opinion holding that if the asbestos-related exposure and injury occurred during the asbestos-installation process, additional insurance coverage, i.e., nonproducts or operations coverage, might have been available. *Id.* at 7, 13-15 (referencing *Commercial Union Ins. Co. v. Porter Hayden Co.*, 116 Md. App. 605 (1997), *cert. denied*, 348 Md. 205 (1997)). When plaintiffs complained of misrepresentation and fraud more than three years after our opinion, we held that their claims were time-barred because the publication of our opinion put "any attorney" doing asbestos and insurance litigation on "inquiry notice of the harm stemming from the settlement agreement." *Estate of Adams,* 233 Md. App. at 35–36. Thus, whether plaintiffs' counsel actually knew about our *Porter Hayden* opinion was not the issue. Instead, it was what plaintiffs' counsel should (and could) have known from the publication of that opinion that prompted our conclusion, as a matter of law, that plaintiffs were on inquiry notice.

> Unlike *O'Hara* [*v. Kovens*, 305 Md. 280 (1986)], the appellants here could independently verify two important facts after *Porter Hayden*: 1) whether they should have received additional coverage stemming from the insurance policies; and 2) whether the statements made in the affidavits and settlement agreement, that all applicable insurance coverage had been tendered, were false. The appellants knew they had not received proceeds under operations coverage, but learned that operations coverage was available when we published *Porter Hayden*. Appellants knew *or should have known almost immediately that something was amiss.*

Estate of Adams, 233 Md. App. at 39 (emphasis added).

Moreover, in determining whether a plaintiff is on inquiry notice, our objective standard considers not just a plaintiff's knowledge, but also their expertise. *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 105 (2000); *see Mattingly v. Hopkins*, 254 Md. 88, 94–95 (1969) (considering plaintiff's legal expertise in determining whether he was on inquiry notice); *Jones v. Sugar*, 18 Md. App. 99, 111 (1973) (permitting a trial court to consider a plaintiff's medical education, training, and knowledge as "the reasonableness of the understanding or appreciation that actionable harm has been done is different as to one skilled and experienced in the medical disciplines than it is as to a layman"); *Estate of Adams*, 233 Md. at 35–36 (using knowledge that "any Maryland attorney whose practice involved asbestos litigation" reasonably should have had in deciding first step of inquiry notice analysis for plaintiffs claiming asbestos injury who were represented by attorneys with experience in asbestos litigation). Consequently, for purposes of inquiry notice analysis, a plaintiff cannot fail to take the steps that a reasonable person with his knowledge and expertise would have taken.

Here, as in *Estate of Adams*, we cannot overlook that which "any attorney" (and derivatively, his client) should and could have known here. From an objective standpoint, an attorney in Mr. Jiranek's position should and could have known that Revised Exhibit C was not an accurate reflection of the agreement 16 Willow and BHI's had reached vis-à-vis the Alley H easement. For a Maryland lawyer, undertaking (and continuing with) representation means that the lawyer is aware of all that is "reasonably necessary" for the

representation: "Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Md. R. Attorneys, Rule 19-301.1. In other words, by undertaking to represent a client who wants an easement, an attorney should be thoroughly aware of what a map meant to outline that easement shows and does not show. Without that knowledge and thoroughness, an attorney cannot carry out the representation.[15] *Compare Attorney Grievance Comm'n of Maryland v. Zhang,* 440 Md. 128, 158 (2014)(attorney's misunderstanding of facts and cursory research (a Google search but no legal research) amounted to lack of competence).

Even if Maryland's competence rule would not alone have required that Mr. Jiranek notice the inaccuracy of Revised Exhibit C, the undisputed facts and circumstances here lead to the same result. A reasonable attorney in Mr. Jiranek's position would have diligently reviewed Revised Exhibit C because it was a different base drawing than what was used in prior versions of Exhibit C and because that exhibit (whether a site plan or a subdivision plat) was the only thing that described the contours of the Alley H easement (the "centerpiece" of the agreement). Mr. Jiranek realized that

[15] There is some irony in 16 Willow's position. If 16 Willow had been represented by outside counsel, we doubt that it would be taking the position that its attorney's cursory review of Revised Exhibit C was acceptable. And if 16 Willow had sued its hypothetical outside counsel for legal malpractice as a result of having failed to notice the inaccuracy of Revised Exhibit C before it was recorded, we doubt outside counsel would then agree that its client, as managed by an experienced real estate attorney, could have failed to notice the inaccuracy in Revised Exhibit C before signing the Easement Agreement.

Revised Exhibit C was different, admitting in his 2019 email to Mr. Keener that he [Mr. Jiranek] "did look at the exhibits which were different."[16] Moreover, Revised Exhibit C, while it had cross-hatching on it, was not the conceptual site plan that Mr. Jiranek had himself cross-hatched. Although Mr. Jiranek did not notice that the cross-hatching on Revised Exhibit C was different, he realized that Revised Exhibit C was a different exhibit.[17] With this realization, and knowing the importance of Revised Exhibit C, he should have subjected it to a diligent review.

[16] We disagree with 16 Willow's contention that because the circuit court did not rely on this exhibit in granting summary judgment, it is off limits for the purposes of appellate review. To be sure, "' . . . appellate courts will not ordinarily undertake to sustain [summary] judgment by ruling on another ground, not ruled upon by the trial court, *if the alternative ground is one as to which the trial court had a discretion to deny summary judgment.*'" *Maryland Cas. Co. v. Lorkovic*, 100 Md. App. 333, 357 (1994) (emphasis in original) (omitting citations). Here, however, we are reviewing the entire record on which summary judgment was granted (limitations based on inquiry notice), not sustaining summary judgment on an alternative ground over which the circuit court had discretion. The email that 16 Willow claims we should not review was indisputably one of the exhibits that BHI supplied in support of its summary judgment motion. Therefore, we must review it. *See Injured Workers' Ins. Fund v. Orient Exp. Delivery Serv., Inc.*, 190 Md. App. 438, 451 (2010) ("Because the reviewing court has the same information from the record and decides the same issues of law as the trial court, its review of an order granting summary judgment is de novo." (cleaned up)).

[17] At very least, 16 Willow's counsel was required to assess whether he was competent to determine if the documents achieved his client's objectives.

> Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. An attorney can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of an attorney of established competence in the field in question.

That Mr. Jiranek claims to have reasonably relied on Mr. Keener's December 2012 representations does not change the outcome here, either. [18] Even if Mr. Jiranek and Mr. Keener had a friendly professional relationship, their clients were adversaries for the purpose of the easement negotiation. Their professional relationship does not relieve Mr.

Md. R. Attorneys, Rule 19-301.1, Comment 2. If 16 Willow's counsel was not competent to determine whether the documents did what 16 Willow wanted, that counsel (if she or he wanted to continue with the representation) was obligated to have the documents reviewed by someone competent to do so. *See Attorney Grievance Commission v. Yi,* 470 Md. 464, 492 (2020) ("A competent attorney recognizes the limits of his or her expertise and does not put the client at risk in venturing beyond it.").

Here, ironically, 16 Willow did subject the exhibit that outlined BHI's parking easement to outside review. In December 2012, in reviewing the documents it received from BHI, 16 Willow realized (without the benefit of redlining) that BHI had supplied a different exhibit for the parking easement. Moreover, 16 Willow did have a surveyor and an engineer review the new parking easement exhibit. Apparently, the surveyor and engineer determined that the new parking easement exhibit did not "accurately reflect[] where the property line runs." Why that surveyor and engineer were not asked to review Revised Exhibit C for the Alley H easement is not clear.

[18] 16 Willow does not refer to any authority for the proposition that reliance on opposing counsel's representations, reasonable or not, can prevent inquiry notice and accrual under the discovery rule, or that we may make such a determination as a matter of law on appeal, but we assume as much for purposes of this argument. Maryland courts have considered the effect of reliance on limitations in the context of CJP Section 5-203, which permits tolling based on fraudulent concealment. The issue here, accrual under the discovery rule based on inquiry notice, differs slightly, but this court has noted that the test for Section 5-203 tolling "parallels" the test for inquiry notice, and that "cases under [Section 5-203] offer some guidance . . . for the direction which may be taken" in applying inquiry notice analysis. *Johnson v. Nadwodny*, 55 Md. App. 227, 232 (1983). Consequently, we refer to cases that apply Section 5-203 in considering whether reliance affected accrual of 16 Willow's claims. To be sure, there is no allegation of fraudulent concealment here, and so we do not directly consider the possibility of tolling under Section 5-203. *See Doe v. Archdiocese of Washington*, 114 Md. App. 169, 187 (1997) (noting that in order to invoke Section 5-203, a plaintiff "must properly plead fraud with particularity[,]" including "specific allegations of how the fraud kept the plaintiff in ignorance of a cause of action").

Jiranek of his obligation to his client. We explained in *Goldstein v. Miles* that "in determining whether the reliance was reasonable, the background and experience of the party that relied upon the representation is relevant." 159 Md. App. 403, 437 (2004). In general, lawyers are considered "sophisticated" parties who are less likely to be entitled to rely on the advice of opposing lawyers. *Id.*; *cf. McKenzie v. Comcast Cable Commc'ns, Inc.*, 393 F. Supp. 2d 362, 376–77 (D. Md. 2005) (distinguishing *Goldstein* because plaintiff in case at bar was not an attorney); *Dashiell v. Meeks*, 396 Md. 149, 169–70 (2006) (reversing grant of summary judgment and refusing to find, as a matter of law, that plaintiff's reliance was unreasonable where plaintiff, who was not an attorney, signed prenuptial agreement without reading in reliance on his counsel's representations that he could sign without reviewing).

It is true that a party may be entitled to rely on representations made by its counsel or someone else with whom they have a fiduciary or "confidential" relationship. *Herring v. Offutt*, 266 Md. 593, 600–01 (1972). But representations by an opposing party are a different story; a sophisticated party has a responsibility to diligently investigate whether it has been the victim of fraud even when there is no obvious reason to doubt an opposing party's assertions to the contrary. *Douglass v. NTI-TSS, Inc.*, 632 F. Supp. 2d 486, 493 (D. Md. 2009) (applying CJP Section 5-203 and holding that "[plaintiff's] suggestion that she and her attorney had no reason to doubt [defendant's] lawyer does not relieve her of her duty to exercise ordinary diligence in discovering the alleged fraud, particularly considering that the communication came from a potential adversary").

In any event, whether Mr. Jiranek reasonably relied on Mr. Keener's representations about the 2012 Easement Agreements in December 2012 is beside the point. In April 2013, nearly five months later, BHI sent Mr. Jiranek a new version of the agreements, the 2013 Easement Agreements, for review before recordation. Mr. Keener's December 2012 representations about the 2012 Easement Agreements did not absolve Mr. Jiranek of his separate, renewed responsibility to review the 2013 Easement Agreements in April 2013 before executing and having them recorded. BHI made it clear that the 2013 Easement Agreements would be recorded if Mr. Jiranek approved.

In sum, it is beyond dispute that 16 Willow should have discovered the reduction of the Alley H easement by May 2013. Its counsel realized that the Alley H Easement Agreement depended on the accuracy of an exhibit and that the exhibit that was to be recorded (Revised Exhibit C) was different than the one 16 Willow's counsel had prepared. Because a diligent review of Revised Exhibit C would have revealed that it improperly reduced the width of the Alley H easement, we conclude (as did the circuit court) that 16 Willow had inquiry notice of the harm it suffered on May 23, 2013 (if not sooner), a date more than three years before it filed suit on August 6, 2019. Accordingly, we agree that 16 Willow's claims were time-barred and affirm the circuit court's grant of summary judgment.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.