UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2719

September Term, 2015

BIEJAN ARVON

v.

PUYA SHAKIBA, ET AL.

Nazarian,
Arthur,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: May 1, 2017

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In July 2011, Biejan Arvon, appellant, was involved in a car accident with Alireza Gol and Hamed Khodaparasti Dehboneh, appellees. Shortly after the accident, appellant was contacted by Liberty Mutual, an insurance company. Liberty Mutual informed appellant that it was contacting him on behalf of one of its clients, Puya Shakiba, appellee. Shakiba was a roommate of Gol and Dehboneh at the time of the accident. However, despite Liberty Mutual's claim to represent Shakiba in connection with the accident, he was not involved in the collision in any way. From there on, appellant's counsel communicated back and forth with Liberty Mutual about settling the claim between appellant and Shakiba. When the parties were not able to settle before the three-year statute of limitations ran out, appellant filed suit against Shakiba in the Circuit Court for Baltimore County. It was not until after this lawsuit was filed that appellant learned that the true parties at fault were Gol and Dehboneh. Appellant filed an amended complaint adding them as defendants; however, by that time the statute of limitations had expired. Accordingly, the circuit court granted summary judgment in favor of all three appellees.

Appellant appealed, and now presents one question for our review:

> Did the court err in granting summary judgment after misrepresentations from appellees' insurer caused appellant to file suit against the wrong party?[1]

[1] In his brief, appellant stated his question as follows:

> Are parties at fault excused from liability when their insurer, functioning as their agent and the real party in interest, knowingly misrepresents or conceals their identity and a misnomer action is filed as a result?

(Continued . . .)

For the following reasons, we answer no and affirm the judgment of the circuit court.

BACKGROUND

At the time of the events of this case, Shakiba, Gol, and Dehboneh were living together in Parkville in Baltimore County. All three appellees had car insurance through Liberty Mutual. Because Dehboneh had an immigration problem, Shakiba agreed to stand in as a co-insured in order for him to receive coverage from Liberty Mutual. On July 8, 2011, Gol and Dehboneh decided to drive to a Best Buy in Baltimore County in Dehboneh's car. Dehboneh was sick at the time, so he asked Gol to drive the car. On their way to the Best Buy, Gol rear-ended a car driven by appellant. Shakiba was not in the car at the time of the accident. Due to injuries he sustained from the crash, appellant was taken from the scene by ambulance.[2] An accident report was completed by a police officer at the scene. The report lists Gol as the driver and Dehboneh as the owner of the car.

Following the accident, Liberty Mutual contacted appellant about the accident and identified Shakiba as the insured party. Liberty Mutual maintained communication with appellant and appellant's counsel, and made several requests for his medical records for settlement purposes. During their subsequent communications, Liberty Mutual

(. . . continued)

[2] In his brief, appellant claims that he never interacted with appellees after the accident. In his deposition, Gol stated that he did speak to appellant after the accident and ran to get him some water. Gol also stated that they never exchanged paperwork.

acknowledged liability and expressed a desire to resolve appellant's claim against Shakiba. At some point during this period, Liberty Mutual paid for appellant's property damage claims under Shakiba's policy.[3]

On June 2, 2014, appellant's counsel sent a letter to Liberty Mutual disclosing appellant's relevant medical records. In this letter, appellant's counsel acknowledged that the statute of limitations was quickly approaching and that appellant would need to file suit if the matter was not resolved soon. On June 23, 2014, appellant filed suit against Shakiba in the Circuit Court for Baltimore County. On June 27, 2014, appellant's counsel emailed Liberty Mutual informing them of the lawsuit, but stated that appellant would prefer to resolve the case promptly. On July 2, 2014, counsel sent another email to Liberty Mutual notifying the insurer that Shakiba was going to be served. Liberty Mutual responded by telling appellant's counsel that it had not had time to review his demand package, but was "working hard to get to the file and [would] be in contact with [appellant] soon." On July 28, 2014, appellant's counsel sent another email seeking to settle the claim out of court. On July 29, 2014, Shakiba filed his Answer to the Complaint, denying liability for the accident. It was at this time that in-house counsel for

[3] At oral argument, counsel for appellees told the Court that he did not know why Liberty Mutual had paid for the property damage claims under Shakiba's policy despite his lack of involvement in the accident.

Liberty Mutual disclosed to appellant that the actual driver was Gol and the owner was Dehboneh.[4]

On August 4, 2014, appellant filed an amended complaint naming Gol and Dehboneh as defendants. On August 29, 2014, the additional parties filed motions to dismiss on the ground that the three-year statute of limitations had expired. On September 2, 2014, Shakiba filed a motion to dismiss asserting that he was not liable. The motions to dismiss were denied on May 1, 2015.

On June 12, 2015, all three appellees moved for summary judgment on all claims. After a hearing on January 11, 2016, the court granted summary judgment in their favor. The court found that Gol and Dehboneh had not been sued within the statute of limitations and Shakiba had no involvement in the accident. On January 20, 2016, the court entered an order consistent with these findings. Appellant noted his appeal on February 10, 2016.

STANDARD OF REVIEW

Under Maryland Rule 2-501(e), the circuit court may enter summary judgment for the moving party if it determines there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. "Because the decision to grant summary judgment is purely legal, we review it *de novo,* determining for ourselves whether the record on summary judgment presented a genuine dispute of material fact,

[4] It is unclear from the briefs and the record exactly when this information was disclosed.

and if not, whether the moving party was entitled to summary judgment as a matter of law." *Dett v. State*, 161 Md. App. 429, 441 (2005), *aff'd*, 391 Md. 81 (2006). "The facts and inferences that can reasonably be drawn from those facts must be viewed in the light most favorable to the non-moving party." *Deboy v. City of Crisfield*, 167 Md. App. 548, 554 (2006).

DISCUSSION

The circuit court granted summary judgment to appellees on two distinct grounds; therefore, we will discuss them separately.

I. The Grant of Summary Judgment in Favor of Shakiba

The court granted summary judgment in favor of Shakiba because he was not involved in the accident in any way. He was not driving the car, nor was he the owner of the car. Moreover, he was not in the car or present at the scene of the accident.

Appellant does not dispute Shakiba's non-participation in the accident. Shakiba's involvement in the case stems exclusively from the fact that his insurer, Liberty Mutual, mistakenly identified him as the party at fault. Although appellant was misled by this misrepresentation from Liberty Mutual, the fact remains that Shakiba was not involved in the accident. In his complaint, appellant alleged that Shakiba negligently caused the accident. A negligence claim requires a plaintiff to show, among other things, that the defendant breached a duty to protect the plaintiff from injury. *Hamilton v. Kirson*, 439 Md. 501, 523-24 (2014). Given that he was not involved in the accident, there is no evidence that Shakiba breached any duty to appellant. Thus, there is no cognizable claim

for negligence that can be pursued against Shakiba. Accordingly, the court was correct in granting summary judgment in his favor.

II. The Grant of Summary Judgment in Favor of Gol and Dehboneh

The court granted summary judgment in favor of Gol and Dehboneh because the statute of limitations had expired. "A civil action at law shall be filed within three years from the date it accrues[.]" Md. Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), § 5-101. The accident in this case occurred on July 8, 2011. Appellant filed his original complaint against Shakiba on June 23, 2014, within the statute of limitations. Appellant's amended complaint naming Gol and Dehboneh, however, was filed on August 4, 2014, more than three years from the date of the accident.

Appellant argues that the doctrine of relation back should apply to his amended complaint. The doctrine of relation back provides that:

> If the factual situation remains essentially the same after the amendment as it was before it, the doctrine of relation back applies and the amended cause of action is not barred by limitations. In other words, ordinarily, limitations on a claim stated in an amended complaint is measured from the date of the accrual of the cause of action to the date of the filing of the amended complaint. When the claim "relates back" to the date of filing of the original complaint, however, limitations is measured from the date of the accrual of the cause of action to the date of filing of the original complaint.

Walls v. Bank of Glen Burnie, 135 Md. App. 229, 237-38 (2000) (Citations and internal quotation marks omitted). Despite appellant's contentions to the contrary, it is well settled that "[i]f an amended complaint corrects the name of an original party, it relates

back; if a new party is added, it does not relate back." *Harvey v. N. Ins. Co. of N.Y.*, 153 Md. App. 436, 445 (2003). In the instant case, two new parties were added. Appellant filed his amended complaint naming Gol and Dehboneh as the proper defendants more than three weeks after the three-year limitations period provided by statute. Because the complaint was filed too late, the court properly granted summary judgment in favor of appellees.

Appellant also makes the argument that Liberty Mutual wilfully misled him into believing that Shakiba was the responsible party in an effort to delay him from filing suit until the statute of limitations expired. Appellant further claims that appellees were not prejudiced by the amended pleading, because they were always aware of the possibility of a lawsuit. Appellees counter that appellant had enough information at his disposal to correctly file suit against the appropriate parties within the applicable statute of limitations.

Although not characterized as such, appellant's claim is tantamount to an equitable tolling argument. "[E]quitable tolling seeks to excuse *untimely* filing by an individual plaintiff and is generally applicable where the plaintiff has been induced or tricked by the defendant's conduct into allowing the filing deadline to pass." *Adedje v. Westat, Inc.*, 214 Md. App. 1, 13 (2013) (Citation omitted) (italics in original). "Furthermore, equitable tolling applies only when a litigant's failure to meet a legally-mandated deadline unavoidably arose from circumstances beyond that litigant's control." *Id.* (quoting *Stransky v. HealthONE of Denver, Inc.*, 868 F. Supp. 2d 1178, 1181 (D. Colo.

2012)). "The purpose of equitable tolling 'is to toll the statute of limitations in favor of a plaintiff who acted in good faith where the defendant is not prejudiced by having to defend against a second action.'" *Id.* (quoting *Hatfield v. Halifax PLC*, 564 F.3d 1177, 1188 (9th Cir. 2009)). Equitable tolling "halts the running of the limitations period so long as the plaintiff uses *reasonable care and diligence* in attempting to learn the facts that would disclose the defendant's fraud or other misconduct." *Elat v. Ngoubene*, 993 F. Supp. 2d 497, 538 (D. Md. 2014) (Emphasis added) (Citation omitted). "We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights." *Nixon v. State*, 96 Md. App. 485, 502 (1993) (quoting *Polsby v. Chase*, 970 F.2d 1360, 1363 (4th Cir. 1992)). Equitable tolling is applied "sparingly because the certainty and repose the procedural provisions confer will be lost if their application is up for grabs in every case." *Elat*, 993 F. Supp. 2d at 536 (Citation and internal quotation marks omitted). Although appellant in the instant case was induced by Liberty Mutual's misrepresentations, he still failed to exercise the due diligence required for equitable tolling to be applied. A police report was completed identifying Gol and Khodaparasti as the responsible parties. Despite the existence and availability of the report, appellant made no effort to review it and to sue the correct parties prior to the expiration of the statute of limitations.

Appellant makes a sympathetic argument on the basis of Liberty Mutual's misrepresentations. Whether it was done deliberately or by mistake, the communications between appellant's counsel and Liberty Mutual constantly referenced Shakiba as the

party at fault, and appellant relied on this to his detriment. Nevertheless, appellant's argument is undercut by the fact that the necessary information to correctly file suit was available at appellant's disposal for the entirety of the period prior to the expiration of the statute of limitations.

Specifically, an accident report was completed by a police officer on the day of the accident. This report was public and available to appellant for review at any time. The report lists Gol as the driver of the vehicle and Dehboneh as the owner of the vehicle. Shakiba's name does not appear anywhere on the police report. Although misrepresentations were apparently made by Liberty Mutual, appellant still had this report available to him for three years before filing his lawsuit. Nevertheless, appellant and counsel apparently never looked at the police report. As appellees assert, "nothing that Liberty Mutual said or did prevented appellant's counsel from simply reading the police report and filing suit against the appropriate parties." Moreover, appellees themselves were under no duty to tell appellant whom to sue. A review of the report at any point during the three-year period would have alerted appellant as to the correct party to sue. Although appellant unfortunately relied upon Liberty Mutual's misrepresentations, this error was still avoidable. Accordingly, summary judgment was properly granted in favor of appellees.

As appellees have argued, appellant "wants to hold the parties in this case responsible for alleged misrepresentations made by their auto insurance company." No allegations have been made that appellees provided any misleading or incorrect

information to appellant. Furthermore, the accident report shows that appellees provided the correct information to the police on day of accident. Appellant's claims regarding misrepresentations and bad faith may be more properly aimed at Liberty Mutual in another forum.[5] Therefore, the judgment of the circuit court in this case is affirmed.

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

[5] Title 27 of the Insurance Article provides an administrative remedy for "unfair claim settlement practices." Specifically, Section 27-303 provides that "it is an unfair claim settlement practice" for an insurer to:

> (1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;
>
> (2) refuse to pay a claim for an arbitrary or capricious reason based on all available information[.]

Md. Code (1995, 2011 Repl. Vol.), Insurance Article, § 27-303.