Circuit Court for Baltimore City
Case No. 24-C-22-003436

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 12

September Term, 2023

NICHOLAS JANVIER, ET AL.

v.

GREYHOUND LINES, INC.

Reed,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: November 27, 2023

*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).

Appellants are several individuals who were passengers on a Greyhound bus when it crashed in May 2019. They filed a negligence suit against Greyhound Lines, Inc. ("Greyhound" or "GLI") in the Circuit Court for Baltimore City on August 5, 2022. Greyhound moved to dismiss the complaint on the ground that it was filed after the expiration of the three-year statute of limitations. Appellants argued that Greyhound should be equitably estopped from asserting a statute of limitations defense due to certain communications between Greyhound and appellants prior to the filing of the complaint. After a hearing, the circuit court granted Greyhound's motion to dismiss. Appellants filed a motion for reconsideration, which the court denied. Appellants then filed a notice of appeal. As we discuss below, the notice of appeal was timely only as to the denial of the motion for reconsideration.[1]

Appellants present the following two questions for our review, which we have rephrased:[2]

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[1] Although appellants present no argument in their brief related to the denial of the motion for reconsideration, because the appeal is timely only as to that decision, we shall exercise our discretion to consider it.

[2] These questions were presented in appellants' brief as:

> Did the [c]ircuit [c]ourt err when it granted dismissal despite well-pled facts supporting all of the elements of equitable estoppel: representation, reliance, and detriment, and the reasonableness of that reliance was a question for the trier of fact, not one appropriate for dismissal?
>
> Whether the [c]ircuit [c]ourt further erred when it miscalculated the date that the statute of limitations would have tolled, in light of the then-Court of Appeals Administrative Order on Emergency Tolling or Suspension of Statute of Limitations and Statutory and Rules Deadlines Related to the

(continued)

1) Did the court err in dismissing the complaint based on limitations, despite the allegations of equitable estoppel in the complaint?

2) Did the court miscalculate the statute of limitations deadline in light of the Supreme Court's Administrative Order tolling statutes of limitations during the COVID-19 pandemic?

We answer the first question in the negative, and hold that the second question is not preserved for appellate review. We shall therefore affirm the trial court's denial of the motion for reconsideration.

FACTUAL AND PROCEDURAL BACKGROUND[3]

Appellants were passengers on a Greyhound bus on May 23, 2019, when the bus crashed, injuring appellants. On March 25, 2022, appellants sent an arbitration notice to Greyhound, incorrectly believing that Greyhound required arbitration of claims against it. The parties agreed to engage in settlement negotiations, and Greyhound requested medical records from appellants. On July 29, 2022, Greyhound informed appellants that it would no longer negotiate because the statute of limitations had expired without appellants filing a complaint.

Appellants filed their complaint on August 5, 2022. Greyhound moved to dismiss the complaint based on limitations. Greyhound attached to its motion the March 25, 2022 arbitration notice and several emails between counsel for the parties.

Initiation of Matters and Certain Statutory and Rules Deadlines in Pending Matters (April 3, 2020)?

[3] Because this appeal stems from the granting of a motion to dismiss, our factual recitation assumes the truth of the allegations in the complaint.

In their opposition to the motion to dismiss, appellants argued that Greyhound should be equitably estopped from asserting a limitations defense. Appellants argued, as they do on appeal, that the complaint contained allegations supporting all the elements of equitable estoppel. Appellants claimed that they did not file a complaint before the statute of limitations expired because they detrimentally relied on Greyhound's "misrepresentation by omission" that their claims were not actually subject to arbitration. Appellants further argued that Greyhound's request for medical records was "affirmative conduct" justifying estoppel.

The motion to dismiss was heard on October 19, 2022. Counsel for Greyhound discussed numerous facts that were not mentioned in the complaint, focusing specifically on appellants' March 25, 2022 arbitration notice. The court asked Greyhound's counsel if it was appropriate to consider the arbitration notice on a motion to dismiss. Greyhound's counsel responded that the court could appropriately consider the arbitration notice because it was referenced in appellants' complaint, and therefore incorporated into the complaint.

The court granted Greyhound's motion to dismiss, providing the following ruling from the bench:

> All right. So pending before the [c]ourt this morning is a motion to dismiss and request for sanctions filed by Defendant, Greyhound Lines, Incorporated.
>
> The [c]ourt has considered the written submissions of the parties as well as their arguments this morning.
>
> With respect to a motion to dismiss, the [c]ourt must assume the truth of the factual allegations made in the complaint and draw all reasonable inferences from those allegations in favor of Plaintiff. Dismissal is proper

> only if the complaint would fail to provide Plaintiffs with a judicial remedy.
>
> With respect to statute of limitations, it is well settled that a motion to dismiss ordinarily should not be granted by a trial court based on an assertion that the cause of action is barred by the statute of limitations unless it is clear from the facts and allegations on the face of the complaint that the statute of limitations has run.
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> For any statute of limitations, the operative date is the date that a claim accrues. Generally, a claim accrues when the Plaintiff suffer[s] actionable harm.
>
> In this case, again, assuming the truth of the facts alleged in the complaint, there was a motor vehicle accident that occurred on May 23rd, 2019. That is the date of the harm. The statute of limitations would have ran [sic] on May 23rd of 2022. This complaint was not filed until I believe August 5th of 2022.
>
> Based on the face of the complaint, these claims will be barred by the applicable three-year statute of limitations.
>
> It's complicated a bit by allegation in paragraph 17 that Plaintiffs sent an arbitration notice to Greyhound but just sending an arbitration notice is -- would not toll the statute of limitations. Certain[ly] based on the face of the complaint, and even assuming the truth of all of those allegations, there is nothing for this [c]ourt to be able to conclude that there'd be any type of tolling of the statute of limitations here.
>
> For all of those reasons, the motion to dismiss will be granted based on a finding that is clear from the facts and allegations that the statute of limitations would have ran [sic] in May of 2022.

The court's written order of dismissal was entered on October 26, 2022.

On November 17, 2022, appellants filed a motion for reconsideration. The motion repeated appellants' prior arguments, and additionally argued that the court improperly considered matters outside the complaint and made factual determinations rather than accepting the allegations in the complaint as true. The court denied the motion for reconsideration on February 8, 2023. Appellants noted this appeal on March 2, 2023.

DISCUSSION

Although the parties do not raise this issue, we must first identify the judgment or order that appellants have timely appealed. Under Maryland Rule 8-202(a), a party must usually submit its notice of appeal "within 30 days after entry of the judgment or order from which the appeal is taken." However, when a party files a motion for reconsideration within ten days of the entry of judgment, the motion extends the time for noting an appeal of the judgment to 30 days after the motion for reconsideration is either decided or withdrawn. Rule 8-202(c); *see also Estate of Vess*, 234 Md. App. 173, 194 (2017) ("Rule 8-202(c) also extends the time period for noting an appeal to this Court when a party files a revisory motion under Rule 2-535 within 10 days after entry of judgment." (emphasis omitted)). "When a revisory motion is filed beyond the ten-day period, but within thirty days, an appeal noted within thirty days after the court resolves the revisory motion addresses only the issues generated by the revisory motion." *Furda v. State*, 193 Md. App. 371, 377 n.1 (2010).

The court granted the motion to dismiss on October 26, 2022. Appellants filed their Motion for Reconsideration on November 17, 2022—more than ten days after the dismissal. The court denied the Motion for Reconsideration on February 8, 2023, and appellants filed their notice of appeal 22 days later, on March 2, 2023. Because the motion for reconsideration was filed more than ten days after entry of the order of dismissal, the time for noting an appeal of the dismissal was not extended. *See Johnson v. Francis*, 239 Md. App. 530, 541 (2018) (If a motion for reconsideration "is filed more than ten days

after judgment, it does not stay the time for filing the appeal." (quoting *Pickett v. Noba, Inc.*, 114 Md. App. 552, 557 (1997))). Our review, therefore, is limited to the court's denial of the motion to reconsider.

"A trial court's decision to deny a motion for reconsideration is reviewed for abuse of discretion." *Sydnor v. Hathaway*, 228 Md. App. 691, 708 (2016) (citing *U.S. Life Ins. Co. v. Wilson*, 198 Md. App. 452, 464 (2011)). "[I]n appeals from the denial of a post-judgment motion, reversal is warranted in cases where there is both an error and a compelling reason to reconsider the underlying ruling." *Id.* (quoting *Schlotzhauer v. Morton*, 224 Md. App. 72, 85 (2015), *aff'd* 449 Md. 217 (2016)). In other words, although a court abuses its discretion when its discretionary decision is based on a legal error, *Tallant v. State*, 254 Md. App. 665, 681 (2022), where a party challenges the denial of a motion for reconsideration, it must also show that the denial "was *so far wrong*—to wit, *so egregiously wrong*—as to constitute a clear abuse of discretion." *Stuples v. Balt. City Police Dept.*, 119 Md. App. 221, 232 (1998). "It is hard to imagine a more deferential standard than this one." *Vess*, 234 Md. App. at 205.

Appellants presented three arguments in their Motion for Reconsideration: 1) that appellants' complaint established all the elements of equitable estoppel; 2) that the reasonableness of appellants' reliance on Greyhound's representations was a fact question not appropriately considered in a motion to dismiss; and 3) that the trial court improperly "made a final determination of the facts," in part because Greyhound presented factual arguments at the hearing on the motion. Appellants repeat these arguments on appeal, and

raise a new argument not presented to the circuit court—that the Supreme Court's Administrative Orders tolling the statute of limitations for certain matters during the Covid-19 pandemic extended the statute of limitations beyond the date when appellants' complaint was filed.[4]

Greyhound argues that none of appellants' arguments have been preserved for review on appeal.[5] Alternatively, Greyhound avers that appellants' arguments fail on their merits.

Preliminarily, we hold that appellants' argument concerning the effect of the

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[4] The Supreme Court of Maryland recently summarized the orders at issue:

> During the early phases of the State of Maryland's response to the COVID-19 pandemic, former Chief Judge Mary Ellen Barbera issued an administrative tolling order on April 3, 2020. The order tolled deadlines related to the initiation of matters effective March 16, 2020, the date on which court clerks' offices had closed due to the pandemic. Chief Judge Barbera later issued a revised administrative order that terminated the tolling period effective as of the date the clerks' offices reopened on July 20, 2020. The revised order also extended the filing deadlines to initiate matters by an additional fifteen days.

Matter of Hosein, 484 Md. 559, 561–62 (2023) (footnote omitted).

[5] Although we agree with Greyhound that appellants' argument concerning the Administrative Orders was not preserved, we do not agree that the equitable estoppel arguments were waived. Greyhound first argues that appellants' equitable estoppel argument was waived because appellants admitted that the statute of limitations had expired before they filed their complaint. We do not understand why such an admission would waive equitable estoppel, when equitable estoppel is only relevant where the defendant has an otherwise valid statute of limitations defense. In its brief, Greyhound argued in the alternative that appellants waived equitable estoppel because "the four corners of Appellants' complaint neither reference arbitration nor equitable estoppel." At oral argument, Greyhound expressly abandoned this alternative argument.

Supreme Court's Administrative Orders has not been preserved for our review. This argument was never raised before the trial court. Indeed, at the motion hearing, counsel for appellants conceded that the complaint was filed after limitations had expired, stating, "had we not pled that there was . . . estoppel and the facts to outline estoppel, then [counsel for Greyhound] would be completely correct that this matter should be dismissed at this stage." In any event, "the trial court could not have abused its discretion by denying the motion for reconsideration based on arguments that were not made to it." *Sydnor*, 228 Md. App. at 709.[6]

Before we turn to appellants' principal argument based on the doctrine of equitable estoppel, we reject any suggestion that the circuit court improperly "made a final determination of the facts of the case." The record demonstrates that the court correctly understood and articulated its role: "With respect to a motion to dismiss, the [c]ourt must assume the truth of the factual allegations made in the complaint and draw all reasonable inferences from those allegations in favor of Plaintiff. Dismissal is proper only if the complaint would fail to provide Plaintiffs with a judicial remedy." We see no evidence

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[6] We note that the Administrative Orders applied only to "those matters for which the statute of limitations and other deadlines related to initiation *would have expired* between March 16, 2020, through the termination date of COVID-19 emergency operations in the Judiciary." *Hosein*, 484 Md. at 568 (emphasis added). Covid-19 emergency operations terminated on April 4, 2022. *Id.* at 569. Here, the statute of limitations expired on May 23, 2022. Although we need not decide this issue, we fail to see how the Administrative Orders would have extended the statute of limitations in this case.

that the court made improper factual determinations or strayed outside the allegations in the complaint when it granted Greyhound's motion to dismiss.

We now turn to consider appellants' argument that the court erred in dismissing their action because the factual allegations in their complaint sufficed to establish all the elements of equitable estoppel. In their complaint, appellants pleaded the following facts relevant to their equitable estoppel argument:

> 17. On March 25th, 2022, Plaintiffs sent an arbitration notice to GLI at their address of record, via certified mail.
>
> 18. GLI responded through counsel, and the Parties agreed to engage in settlement negotiations to see if the matter could be resolved at an early stage with minimal expense to either party, since Plaintiffs, mere passengers in the bus, were certainly not at fault for the accident.
>
> 19. Plaintiffs['] understanding was that the claims were tolled and/or stayed pending pre-formal filing of arbitration by the negotiations, which would inure to the benefit of all Parties by minimizing expenses for all Parties and legal fees for Defendants.
>
> 20. Plaintiffs' counsel began gathering relevant documentation to speed the resolution of the claims.
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> 21. GLI responded through counsel and requested information from Plaintiffs, to wit, medical records.
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> 22. At all times, Plaintiffs, consistent with their claim notice to GLI, believed that arbitration was required.
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> 23. As notice had been properly given, Plaintiffs therefore believed that a proceeding (e.g., the negotiating period prior to formal arbitration) had been initiated, and that no Circuit Court filing was necessary.
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> 24. At no time did GLI inform Plaintiffs that arbitration was not required.

25. After the three (3) year statute had tolled,[7] GLI informed Plaintiffs that it would no longer negotiate the matter and that their claims were lapsed.

26. Having relied on Defendant's non-disclosure, Plaintiffs were surprised.

27. They are therefore filing this suit and will assert equitable arguments against any defense of statute of limitations.

The review standards applicable to a motion to dismiss are well-established. "In ruling on such a motion, the court must assume the truth of all well-pled facts in the complaint as well as the reasonable inferences that may be drawn from those relevant and material facts." *Porterfield v. Mascari II, Inc.*, 374 Md. 402, 414 (2003) (citing *Bd. of Educ. v. Browning*, 333 Md. 281, 286 (1994)). Furthermore, "consideration of the universe of 'facts' pertinent to the court's analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any." *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004). The circuit court may dismiss the case only if the facts as stated in the complaint and any reasonable inferences therefrom, viewed in a light most favorable to the plaintiff, fail to establish a legally sufficient cause of action. *Porterfield*, 374 Md. at 414 (citing *Berman v. Karvounis*, 308 Md. 259, 264–65 (1987)).

Thus, to survive the motion to dismiss, appellants needed to allege facts that, if true, would be legally sufficient to estop Greyhound from asserting a statute of limitations defense. The Supreme Court of Maryland has defined equitable estoppel:

> Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract,

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[7] We presume that appellants meant to use the word "expired" rather than "tolled."

> or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.

Cunninghame v. Cunninghame, 364 Md. 266, 289 (2001) (quoting *Knill v. Knill*, 306 Md. 527, 534 (1986)). The three elements of equitable estoppel are: "'voluntary conduct' or representation, reliance, and detriment." *Id.* at 289–90 (quoting *Knill*, 306 Md. at 535).

The doctrine of equitable estoppel as it relates to statutes of limitations is somewhat limited. In most circumstances, "statutes of limitations are to be strictly construed, and absent a legislative creation of an exception, we 'will not allow any implied or equitable exception to be engrafted upon it.'" *Murphy v. Merzbacher*, 346 Md. 525, 532–33 (1997) (quoting *Garay v. Overholtzer*, 332 Md. 339, 359 (1993)). However, a party may be equitably estopped from asserting a statute of limitations defense if the defendant "held out any inducements not to file suit or indicated that limitations would not be pleaded[.]" *Id.* at 535 (quoting *Booth Glass Co., Inc. v. Huntingfield Corp.*, 304 Md. 615, 624 (1985)). The "'voluntary conduct or representation'" that constitutes an inducement not to file suit must be an "affirmative act or affirmative statement." *Olde Severna Park Improvement Ass'n, Inc. v. Barry*, 188 Md. App. 582, 597 (2009) (quoting *Cunninghame*, 364 Md. at 289–90). "[S]ilence will not raise an estoppel where there is no duty to speak or act." *Id.* at 597 (alteration in original) (quoting *Dahl v. Brunswick Corp.*, 277 Md. 471, 488 (1976)).

Our Supreme Court's decision in *Leonhart v. Atkinson*, 265 Md. 219 (1972), *abrogated on other grounds by Poffenberger v. Risser*, 290 Md. 631 (1981), is instructive. In *Leonhart*, appellants sued their accountant for professional malpractice, alleging that the

accountant's negligence in preparing tax returns resulted in the imposition of a substantial tax assessment by the Internal Revenue Service. *Id.* at 221–22. After the accountant asserted that the action was barred by limitations, appellants argued that the accountant should be estopped from pleading limitations because he "continually reassured them that the I.R.S. position was incorrect." *Id.* at 222. The appellants further alleged that the accountant's "statements were deliberately misleading and made for the express purpose of lulling them into a false sense of security so as to delay the start of litigation . . . until limitations had run." *Id.*

In affirming the grant of summary judgment in favor of the accountant, the Court stated:

> We do not think appellants have alleged facts from which waiver or estoppel could be found. All they have shown is that after appellee erroneously advised them, he continually maintained his position and recommended that the matter be pursued in the tax court. It was not alleged that the accountant at any time asked the Leonharts to forbear bringing suit against him. It was also not alleged that [the accountant] indicated he would waive the defense of limitations should the appellants later make a claim, or that he induced them not to file suit by giving assurances that he would settle any claim they might make.

Id. at 228. The Court held that appellants could not invoke the doctrine of equitable estoppel in the absence of allegations of "constructive fraud" or "'any unconscionable, inequitable or fraudulent act of commission or omission upon which [another] relied and has been misled to his injury.'" *Id.* at 227–28 (alteration in original) (quoting *Jordan v. Morgan*, 252 Md. 122, 132 (1969)); *see also Murphy v. Merzbacher*, 346 Md. 525, 535 (1997) ("Stated succinctly, 'equitable estoppel will not toll the running of limitations absent

a showing that the defendant held out any inducements not to file suit or indicated the limitations would not be pleaded.'" (internal quotations omitted) (quoting *Booth Glass*, 304 Md. at 624)).

In our view, the facts in the instant case present a weaker case for equitable estoppel than those in *Leonhart*. Here, appellants allege that they sent an arbitration notice to Greyhound and that *appellants* believed that arbitration was required. Notably absent is any allegation that Greyhound represented that the claim was subject to arbitration. Although appellants allege that Greyhound "agreed to engage in settlement negotiations" and that Greyhound requested medical records, there is no allegation that Greyhound made any affirmative representation that appellants did not need to file their complaint within limitations. *See Cunninghame*, 364 Md. at 290 (Failure to respond to a letter was not an "affirmative representation that petitioner could have reasonably relied upon for the belief that petitioner did not need to file a claim."). Greyhound's silence as to appellants' "understanding [] that the claims were tolled and/or stayed pending pre-formal filing of arbitration by the negotiations" is simply not a basis for the application of equitable estoppel. *See Nyitrai v. Bonis*, 266 Md. 295, 300 (1972) ("Settlement negotiations alone, however, do not raise an estoppel, especially where there is no showing . . . that the appellee or his counsel held out any inducements not to file suit or indicated that limitations would not be pleaded." (citations omitted)); *see also Cornett v. Sandblower*, 235 Md. 339, 342–43 (1964). Likewise, appellants' allegation that they "relied on [Greyhound's] non-disclosure" concerning arbitration is insufficient for equitable estoppel. Because there is

no allegation that Greyhound induced appellants not to file suit or indicated that it would not plead limitations, the court did not err by declining to apply the doctrine of equitable estoppel to Greyhound's plea of limitations. Moreover, the court's denial of appellants' motion for reconsideration was not "so egregiously wrong" as to constitute a clear abuse of discretion. *Stuples*, 119 Md. App. at 232.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.