Circuit Court for Prince George's County
Case No.: CAL19-06087

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0153

September Term, 2022

RONALDA SULLIVAN

v.

CARUSO BUILDERS BELLE OAK, LLC

Beachley,
Shaw,
Zic,

JJ.

Opinion by Zic, J.

Filed: January 31, 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 Md. Rule 1-104(a)(2)(B).

This appeal returns to us following the entry of an order dismissing as time-barred appellant Ronalda Sullivan's claim that appellee, Caruso Builder Belle Oak, LLC ("Caruso") violated Real Property ("RP") § 14-117(a)(3)(i), and Ms. Sullivan's attempt to recover damages for this violation pursuant to RP § 14-117(b)(2)(i). Section 14-117(a)(3)(i) requires that certain information regarding deferred water and sewer charges be included in contracts for the initial sale of residential property in Prince George's County.

In the first appeal, *Sullivan v. Caruso Builder Belle Oak, LLC*, 251 Md. App. 304 (2021) ("*Sullivan I*"), Ms. Sullivan appealed the Circuit Court for Prince George's County's Order granting Caruso's Renewed Motion to Dismiss Ms. Sullivan's First Amended Complaint for failure to state a claim under RP § 14-117(a)(3)(i)(7). In *Sullivan I*, we held that to satisfy the disclosure requirements of RP § 14-117(a)(3)(i)(7), "the estimate must reflect a good faith calculation of the advance payoff amount that would be due on the settlement date." *Sullivan I*, 251 Md. App. at 326. We reversed the circuit court's dismissal and remanded for further proceedings.

On remand, Caruso filed a second Motion to Dismiss Ms. Sullivan's First Amended Complaint as barred by the three-year statute of limitations of Courts and Judicial Proceedings ("CJP") § 5-101. In response, Ms. Sullivan filed a Second Amended Complaint, which Caruso again moved to dismiss. In the motion to dismiss, Caruso asserted that Ms. Sullivan's claim for damages accrued on the initial date of contract, July 17, 2015, when the alleged violation of RP § 14-117(a)(3)(i) occurred, and

because Ms. Sullivan filed her initial complaint on February 22, 2019, her claim for damages under RP § 14-117(b)(2)(i) should be dismissed as time-barred. In response, Ms. Sullivan argued that the earliest her claim for damages under RP § 14-117(b)(2)(i) could have accrued was on the date of settlement, February 24, 2016, when she became obligated to pay the deferred water and sewer charges. The circuit court granted Caruso's motion to dismiss, and Ms. Sullivan appealed.

As we explain below, we disagree with the circuit court's ruling that a claim for damages under RP § 14-117(b)(2)(i) for a violation of RP § 14-117(a)(3)(i) accrues on the initial date of contract and conclude that the circuit court erred in dismissing Ms. Sullivan's claim as time-barred. We therefore reverse the judgment of the circuit court and remand the case for further proceedings.

QUESTION PRESENTED

Ms. Sullivan presented one question for our review, which we have rephrased and recast as follows:[1]

> Whether the circuit court erred in dismissing Ms. Sullivan's complaint as time-barred for a disclosure violation under Real Property § 14-117(a)(3)(i).

[1] Ms. Sullivan phrased her question as follows:

> Whether the Circuit Court erred in granting Appellee's Motion to Alter or Amend/Motion to Dismiss on the basis that Appellant's claim for monetary damages under RP § 14-117(b)(2)(i) accrued on the effective date of the purchase agreement rather than the settlement date, and was thus barred by the three-year statute of limitations?

For the reasons that follow, we hold that the circuit court erred in granting Caruso's motion to dismiss. We therefore reverse the judgment of the circuit court and remand the case for further proceedings not inconsistent with this opinion.

BACKGROUND

Facts

On July 17, 2015, Ms. Sullivan entered into a purchase agreement with Caruso for the sale of residential property in Prince George's County. Located in the purchase agreement were two addenda related to the disclosure of information pertaining to deferred water and sewer charges.

The first addendum included the disclosures required under RP § 14-117(a)(3)(i). Both the estimated payoff amount and amount remaining on the assessment, including interest, were valued at $20,700. The second addendum included a notice to Ms. Sullivan of pending deferred water and sewer charges and a "Declaration of Deferred Water and Sewer Charges" ("Declaration"). The Declaration was recorded in the Prince George's County Land Records and served as a lien on Ms. Sullivan's property in case she failed to pay the annual deferred water and sewer charges. The Declaration, among other conditions, required Ms. Sullivan to pay an annual assessment of $900 for 23 years, totaling $20,700, to begin such payments on the date of conveyance, and that the annual assessments would terminate once the deferred water and sewer charges were paid in full.

On February 24, 2016, Ms. Sullivan settled on her house. Ms. Sullivan paid her first prorated annual deferred water and sewer assessment on this date and continued to

pay subsequent annual deferred water and sewer charges. Ms. Sullivan alleged that months after her settlement, upon receiving her annual deferred water and sewer assessment, she discovered that she could have paid an estimated payoff amount of $20,700 rather than paying annual installments of $900 for 23 years, totaling $20,700. "In other words, [the issue is that] if one of the disclosures includes interest but the other does not, then the two disclosures could not be the same value. Consequently, the 'estimated payoff amount' must be less than the 'amount remaining on the assessment, including interest.'" *Sullivan I*, 251 Md. App. at 334. Because the estimated payoff amount and amount remaining, including interest, were the same figure, Ms. Sullivan alleged that Caruso failed to provide an accurate estimated payoff amount of the deferred water and sewer assessment as required by RP § 14-117(a)(3)(i).

Procedural History

This is the second time that both parties have appeared before this Court. Ms. Sullivan first filed an action against Caruso in the circuit court, alleging that Caruso violated RP § 14-117(a)(3)(i)(7) by failing to disclose an accurate estimated payoff amount of deferred water and sewer charges, as required by statute, in its purchase agreement with Ms. Sullivan for the sale of residential property. Caruso moved to have Ms. Sullivan's First Amended Complaint dismissed for failure to state a claim under RP § 14-117(a)(3)(i)(7). The circuit court granted Caruso's motion, and Ms. Sullivan appealed. This Court reversed the circuit court's order, finding that Ms. Sullivan's

complaint adequately notified Caruso of the basis of her claims and requested relief. *Sullivan I*, 251 Md. App. at 334.

On remand, Caruso filed a second Motion to Dismiss and claimed that Ms. Sullivan's First Amended Complaint was barred by the three-year statute of limitations pursuant to CJP § 5-101. Ms. Sullivan then filed a Second Amended Complaint, and Caruso again asserted that Ms. Sullivan's claim was barred by the three-year statute of limitations. The circuit court denied Caruso's Motion to Dismiss, but upon Caruso's subsequent Motion to Alter or Amend, the circuit court ultimately dismissed Ms. Sullivan's Second Amended Complaint as time-barred under the three-year statute of limitations. Ms. Sullivan filed this appeal.

STANDARD OF REVIEW

When this Court reviews a circuit court's grant of a motion to dismiss, "we accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Converge Servs. Group, LLC v. Curran*, 383 Md. 462, 475 (2004). The motion to dismiss is then reviewed for legal correctness. *Parks v. Alpharma, Inc.*, 421 Md. 59, 72 (2011); *Lipitz v. Hurwitz*, 435 Md. 273, 293 (2013).

Additionally, this Court reviews *de novo* the circuit court's interpretation of legal standards, the Maryland Rules, statutory law, and case law. *Walter v. Gunter*, 367 Md. 386, 392 (2002) (stating that when the trial court's order "involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the

lower court's conclusions are legally correct under a *de novo* standard of review.") (quotations and citations omitted).

This Court has consistently held that "'the question of accrual in [CJP] § 5-101 is left to judicial determination,' unless the determination rests on the resolution of disputed facts regarding discovery of the wrong." *Poole v. Coakley & Williams Const., Inc.*, 423 Md. 91, 131 (2011) (quoting *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 95 (2000)). Therefore, "[w]hen there is no genuine issue as to a material fact relative to the accrual of a cause of action, the date of accrual may be determined as a matter of law." *Edwards v. Demedis*, 118 Md. App. 541, 553 (1997). As this Court reviews the legal conclusions of the circuit court *de novo*, *Reiter v. Pneumo Abex, LLC,* 417 Md. 57, 67 (2010), we shall determine as a matter of law the accrual date of Ms. Sullivan's claim under RP § 14-117(a)(3)(i).

DISCUSSION

I. PARTIES' CONTENTIONS

The parties dispute when Ms. Sullivan's cause of action began to accrue under RP § 14-117(a)(3)(i). Each party has offered arguments in support of two different dates where Ms. Sullivan's claim could have accrued: the date when the contract was signed, July 17, 2015, or the date of settlement, February 24, 2016. If Ms. Sullivan's cause of action accrued on the date when she executed her purchase agreement with Caruso, her claim is time barred under CJP § 5-101. If, however, Ms. Sullivan's cause of action did

not accrue until the date of settlement, her claim is not precluded by the three-year statute of limitations.

Ms. Sullivan provides four arguments for an accrual date at the time of settlement. First, she argues that a cause of action does not begin until all the elements of RP § 14-117(a)(3)(i) are met, including damages. Second, she argues that the plain language of RP § 14-117(a)(3)(i) demonstrates a legislative intent to provide homeowners with two post-settlement remedies, RP §§ 14-117(b)(2)(i)-(ii), and one pre-settlement remedy, RP § 14-117(b)(2)(iii). Third, Ms. Sullivan argues that the legislative history of RP § 14-117 confirms that a cause of action accrues on the date of settlement. Finally, she argues that the General Assembly intended RP § 14-117(a)(3)(i) to be remedial, and that an accrual date at the time of the contract would lead to absurd and illogical results.

In response, Caruso offers three arguments in favor of an accrual date at the time of contract. First, Caruso argues that the elements of a disclosure violation are met under RP § 14-117(a)(3)(i) once a party fails to adequately provide the statutory required disclosures in the initial contract for the sale of property, therefore, a remedy exists, and the claim begins to accrue. Once the contract is signed, Caruso argues, a homeowner has a choice between RP §§ 14-117(b)(2)(i)-(iii) as three separate and distinct remedies. Second, Caruso argues that Ms. Sullivan's interpretation of the statute leads to the existence of two accrual dates, at the date of the contract and at the date of settlement, which would be illogical. Finally, Caruso argues that the date of settlement finds no support in case law or legislative history.

II. THE CIRCUIT COURT ERRED IN DETERMINING THAT MS. SULLIVAN'S CLAIM UNDER REAL PROPERTY § 14-117(A)(3)(I) IS TIME-BARRED PURSUANT TO THE THREE-YEAR STATUTE OF LIMITATIONS.

Ms. Sullivan argues that the circuit court erred in dismissing her claim as time-barred after finding that her claim accrued on July 17, 2015, the date of the purchase agreement she executed with Caruso. As noted, Ms. Sullivan offers various arguments in support of the proposition that her claim did not accrue until February 24, 2016, the date of settlement. We agree, holding that a cause of action under RP § 14-117(a)(3)(i) accrues on the date of settlement, and Ms. Sullivan therefore timely filed her complaint under RP § 14-117(b)(2)(i) within the three-year statute of limitations.

A. A Cause of Action Does Not Accrue Until All Elements, Including Damages, Have Occurred.

A civil action must be filed within three years from the date it accrues unless another provision of the Code provides a different time in which the action must be commenced. Md. Code. Ann., Cts. & Jud. Proc. § 5-101. "Because the term 'accrue' is undefined by the [L]egislature, the question of accrual is left to judicial determination." *Hecht v. Resolution Trust Corp.*, 333 Md 324, 333 (1994). When the statute of limitations is at issue, "it is necessary to judicially determine when accrual occurred to trigger the operation of the statute." *Id*. at 333-34. "This determination may be based solely on law, solely on fact, or on a combination of law and fact, and is reached after careful consideration of the purpose of the statute and the facts to which it is applied." *Frederick Rd.*, 360 Md. at 95 (citing *Poffenberger v. Risser*, 290 Md. 631, 634 (1981)).

"A statute of limitations represents a 'policy judgment by the Legislature that serves the interest of a plaintiff in having adequate time to investigate a cause of action and file suit, the interest of a defendant in having certainty that there will not be a need to respond to a potential claim that has been unreasonably delayed, and the general interest of society in judicial economy.'" *Murphy v. Liberty Mutual Insurance Co.*, 478 Md. 333, 343 (2022) (quoting *Ceccone v. Carroll Home Services, LLC*, 454 Md. 680, 691 (2017)). Although Maryland courts have traditionally used the discovery rule in determining when a claim accrues, a court's analysis must be made "with reference to the rationale underlying statutes of limitation." *Pierce v. Johns-Manville Sales Corp.,* 296 Md. 656, 665 (1983) (citations omitted).

Historically, Maryland courts had held that a claim accrued, and the statute of limitations began to run on the date that an alleged wrong occurred, rather than when the wrong was ultimately discovered. *Poffenberger*, 290 Md. at 634 (citing *Leonhart v. Atkinson*, 265 Md. 219, 223 (1972). Over time, however, the Supreme Court of Maryland has tended towards applying the discovery rule to determine the accrual of a cause of action in civil cases. *Doe v. Archdiocese of Washington*, 114 Md. App. 169, 177 (1997) ("Recognizing the harshness of [the 'date of wrong'] rule, however, the [Supreme Court of Maryland] replaced the 'date of wrong' rule with the 'discovery rule' in civil cases, by which the action is deemed to accrue on the date when the plaintiff knew or, with due diligence, reasonably should have known of the wrong.") (citing *Doe v. Maskell*, 342 Md. 684, 690 (1996)). This rule change represents "a recognition that the

Legislature, in employing the word 'accrues' in [CJP] § 5-101 never intended to close our courts to plaintiffs inculpably unaware of their injuries." *Murphy v. Merzbacher*, 346 Md. 525, 532 (1997) (citations omitted).

Of note, however, the discovery rule necessitates that the plaintiff incurs an injury of some sort, and when the plaintiff discovers that injury is when the statute of limitations begins to run. Thus, a claim cannot accrue until the plaintiff has been injured. *Bacon v. Arey*, 203 Md. App. 606, 652 (2012) ("Nevertheless, the cause of action does not accrue until all elements are present, including damages, however trivial.") (quoting *Archdiocese of Washington*, 114 Md. App. at 177). The Supreme Court of Maryland has held that "in the context of the statute of limitations, [t]he law is concerned with accrual in the sense of testing whether all of the *elements* of a cause of action have occurred so that it is complete." *Shailendra Kumar, P.A. v. Dhanda*, 426 Md. 185, 195 (2012) (emphasis in original) (quotations and citations omitted). Therefore, the discovery rule is inapplicable if any element of a cause of action has not occurred. *Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A.*, 152 Md. App. 698, 717 (2003) ("Actions accrue when the wrong is discovered or when with due diligence it should have been discovered . . . assuming, of course, that all elements of the cause of action exist at that time.") (cleaned up) (citations omitted).

B. A Cause of Action Under Real Property § 14-117(b)(2)(i) Does Not Accrue Until the Date of Settlement.

To determine when Ms. Sullivan's claim that Caruso violated RP § 14-117(a)(3)(i) accrued, we must look to the remedial provision under which Ms. Sullivan seeks to

recover, RP § 14-117(b)(2)(i), and determine when each element of the cause of action occurred.

Ms. Sullivan claims that in failing to provide an accurate estimated payoff amount of the deferred water and sewer assessment, Caruso violated RP § 14-117(a)(3)(i). The statute states:

> In Prince George's County, a contract for the initial sale of residential real property for which there are deferred private water and sewer assessments recorded by a covenant or declaration deferring costs for water and sewer improvements for which the purchaser may be liable shall contain a disclosure that includes:
>
> 1. The existence of the deferred private water and sewer assessments;
> 2. The amount of the annual assessment;
> 3. The approximate number of payments remaining on the assessment;
> 4. The amount remaining on the assessment, including interest;
> 5. The name and address of the person or entity most recently responsible for collection of the assessment;
> 6. The interest rate on the assessment;
> 7. The estimated payoff amount of the assessment; and
> 8. A statement that payoff of the assessment is allowed without prepayment penalty.

Md. Code Ann., RP § 14-117(a)(3)(i). If a seller violates this section, the statute outlines three distinct remedies to which the purchaser may be entitled:

> (2) Violation of subsection (a)(3) of this section entitles the purchaser to:

> (i) Recover from the seller the total amount of deferred charges the purchaser will be obligated to pay following the sale;
>
> (ii) Recover from the seller any money actually paid by the purchaser on the deferred charge that was lost as a result of a violation of subsection (a)(3) of this section; or
>
> (iii) If the violation is discovered before settlement, rescind the real estate contract without penalty.

Md. Code Ann., RP § 14-117(b)(2)(i)-(iii). Ms. Sullivan seeks damages under RP § 14-117(b)(2)(i) for Caruso's violation of RP § 14-117(a)(3)(i). To determine whether Ms. Sullivan's claim is time-barred, we therefore must determine at what point each of the elements of the cause of action occurred and Ms. Sullivan's claim accrued.

We begin by reading the plain language of RP § 14-117(b)(2)(i). A cause of action under this section has two elements. The first element requires a violation of RP § 14-117(a)(3)(i), which occurs when a seller makes a deficient disclosure regarding the deferred water and sewer charges in the contract for the initial sale of residential property. RP § 14-117(b)(2)(i) continues, stating that a purchaser may "[r]ecover from the seller the total amount of deferred charges the purchaser will be obligated to pay *following the sale*." (emphasis added). Under a plain language reading of "following the sale," it necessitates that the sale of the home must be completed before the purchaser incurs any obligation to pay the deferred water and sewer charges. A purchaser only becomes obligated to pay water and sewer charges when they have taken possession of the property, which does not occur until the date of settlement. Therefore, the earliest

date that the purchaser incurs damages, meeting all elements of a cause of action under RP § 14-117(b)(2)(i), and commencing the statute of limitations, is the date of settlement.

Although Ms. Sullivan seeks to recover damages under RP § 14-117(b)(2)(i), we will additionally discuss the alternative remedies presented in section (ii) and (iii). RP § 14-117(b)(2)(ii) allows a purchaser to "[r]ecover from the seller any money actually paid by the purchaser on the deferred charge that was lost as a result of a violation of subsection (a)(3) of this section[.]" A claim under section (ii) therefore also accrues on the date of settlement, as a purchaser cannot pay the deferred water and sewer charges until they take possession of the property and incur the obligation to pay said charges.

Conversely, RP § 14-117(b)(2)(iii) presents a distinctively pre-settlement remedy, stating that "[i]f the violation is discovered before settlement, [the purchaser may] rescind the real estate contract without penalty." This provides an equitable remedy for the purchaser, allowing them to rescind the contract after discovering the violation of RP § 14-117(a)(3)(i). As the purchaser never settles on the home, they never incur the obligation to pay. Thus, to bring a cause of action under section (iii), the only required element is that the purchaser discover the violation of RP § 14-117(a)(3)(i). The date of accrual for a claim under RP § 14-117(b)(2)(iii), therefore, is the date that all elements of the claim have been met, i.e., discovery of the violation before settlement.

Caruso argues that only one element exists for a claim under RP § 14-117(a)(3)(i): the seller must violate RP § 14-117(a)(3)(i) by failing to make the appropriate statutory disclosures regarding deferred water and sewer assessments in the contract for the initial

sale of residential property. Under Caruso's interpretation, the violation is the only element required for a cause of action to accrue, and RP §§ 14-117(b)(2)(i)-(iii) then provides a remedy. This, however, ignores the necessary element of damages that must be present in order for a purchaser to recover under RP §§ 14-117(b)(2)(i) and (ii). A purchaser cannot incur damages until they are obligated to pay the deferred water and sewer charges, which does not occur until the purchaser has settled on the property.

Caruso further argues that by providing a statutory remedy that is available prior to settlement, this necessitates that all three statutory remedies provided must accrue on the same date, which they argue is at the time of contract rather than on the settlement date. Assuming Caruso's interpretation is correct, and the date of accrual is the date of contract, however, purchasers may be placed in situations where they are unable to collect damages. For example, a purchaser who has signed a contract for a home but not yet settled on the property would not be able to recover damages under RP §§ 14-117(b)(2)(i) and (ii), as the purchaser does not incur actual damages until the date of settlement when they become obligated to pay the deferred water and sewer charges. Additionally, there is the possibility that the purchaser signs a contract, and the subsequent construction of the home takes longer than the applicable statute of limitations, resulting in the purchaser settling on the home after the statute of limitations has run. In this situation, the purchaser would not be able to recover damages under RP §§ 14-117(b)(2)(i) and (ii). It would be nonsensical to provide remedies that are unavailable to a purchaser. Thus, after a violation of RP § 14-117(a)(3)(i) occurs, the

date of accrual for a cause of action under RP §§ 14-117(b)(2)(i) and (ii) is the date when the purchaser ultimately incurs the obligation to pay the deferred water and sewer charges.

Ms. Sullivan's interpretation of the date of accrual for a cause of action under RP § 14-117(b)(2)(i) is further supported by the legislative history of RP § 14-117(a)(3)(i). In *Sullivan I*, this Court explained the circumstances surrounding the adoption of RP § 14-117(a)(3)(i):

> In 2012, the General Assembly established the Task Force to Study Rates and Charges in the Washington Suburban Sanitary District in response to growing concerns from policymakers regarding deferred water and sewer connection fees assessed on new homeowners by private developers. *See* Washington Suburban Sanitary District Transparency and Rate Relief Act of 2012, 2012 Md. Laws ch. 685. The Task Force Report is indicative of the legislature's purpose because the Fiscal and Policy Note and the House Floor Report rely on and summarize the Task Force's key findings.

Sullivan I, 251 Md. App. at 327-28.

The Task Force was charged with making recommendations regarding standards for developers when charging property owners with deferred water and sewer payments and increasing transparency in the practice of charging property owners for these costs. *Id.* at 328. The Task Force issued 13 recommendations based on its findings, two of which are relevant:

> **Recommendation 7**: Require a contract for the sale of new residential real property in Prince George's County to contain a disclosure statement regarding the estimated cost of any deferred water and sewer charges for which the purchaser may become liable. The disclosure statement must include

> the amount of the annual assessment; the number of years of the assessment; *the amount of the full assessment, including interest*; the name and address of the person/entity responsible for collection of the assessment; the interest rate on the assessment; *the payoff amount of the assessment*; and a statement that payoff of the assessment is allowed without penalty.
>
> These recommendations should be considered for future action on resale property.
>
> **Recommendation 8**: If the information for the sale contract of residential real property is not included, the purchaser is entitled to recover from the seller the total amount of deferred charges the purchaser will be obligated to pay following the sale and any money actually paid by the purchaser on the deferred charge that was lost as a result of the violation. If the violation is discovered before settlement, the buyer may rescind the real estate contract without penalty.

Id. at 328-29 (emphasis in original). Recommendations 7 and 8 were codified "almost verbatim" by the General Assembly in House Bill 1043 as § 14-117(a)(3)(i) and § 14-117(b)(2), respectively. *Id*. at 331.

This Court held that the purpose of House Bill 1043 was to "provide purchasers with detailed information about water and sewer fees at the time of the initial sale and to provide a remedy when developers violate the disclosure requirements." *Id.* at 332. In light of the clear purpose of the Legislature to provide purchasers with a remedy, and the plain language reading of the statute, a cause of action under RP § 14-117(b)(2)(i) must accrue when the purchaser becomes obligated to pay at the time of settlement.

CONCLUSION

Ms. Sullivan entered into a Purchase Agreement with Caruso on July 17, 2015 and settled on her new home on February 24, 2016. Because the cause of action accrues on the date of settlement, Ms. Sullivan timely filed her complaint under RP § 14-117(b)(2)(i) within the three-year statute of limitations set forth in CJP § 5-101. Therefore, the circuit court erred in dismissing Ms. Sullivan's complaint as time barred.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED; CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.