Circuit Court for Baltimore City
Case No. 24-C-20-000425

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 673

September Term, 2020

HELENA HICKS

v.

ABACUS CORPORATION

Kehoe,
Berger,
Ripken,

JJ.

Opinion by Kehoe, J.

Filed: September 15, 2021

This is an appeal from a judgment of the Circuit Court for Baltimore City that dismissed Helena Hicks's civil action against Abacus Corporation. Ms. Hicks raises one issue which we have slightly reworded:

> Did the circuit court err when it granted Abacus's motion to dismiss Ms. Hicks's complaint with prejudice based on the court's application of the statute of limitations?[1]

For the reasons set forth below, we will affirm the judgment of the circuit court.

BACKGROUND

Ms. Hicks filed a civil action against Abacus in the Circuit Court for Baltimore City on January 23, 2020. Our rendition of the facts is drawn from two sources. The first consists of relevant allegations in her complaint, the second is written material submitted to the circuit court in support of her response to Abacus's motion to dismiss.

Allegations in the complaint

On July 27, 2016, Ms. Hicks went to the War Memorial Building in Baltimore City to attend a public meeting regarding tensions between the Baltimore City Police Department and the residents of Baltimore in the wake of the death of Freddie Gray. Ms. Hicks was denied entry to the meeting room by a hired security guard employed by Abacus. The

[1] Ms. Hicks articulates the issue as follows:

> Did the circuit court err, or was it not legally correct, when it granted Appellee's motion to dismiss and dismissed Appellant's complaint, with prejudice, due to the court's application of the statute of limitations?

security guard negligently pushed the doors of the meeting room into Ms. Hicks, causing her to fall backwards down a set of stairs. As a result of this fall, Ms. Hicks suffered severe injuries including head trauma, which resulted in memory loss. Significantly, the complaint does not allege that her memory loss impaired her ability to identify potential defendants.

Information presented to the circuit court

As a result of this injury, Ms. Hicks obtained counsel who sent a letter to the State Treasurer on January 23, 2017, alerting her that Ms. Hicks would be filing an action against the State. At this time, she was unaware that the security guard at the War Memorial Building worked for a privately-owned company, and not the State or the City. However, two days later, on January 25, 2017, Ms. Hicks' present counsel sent a letter to Abacus, notifying it that Ms. Hicks intended to pursue a cause of action against it.

After this first letter went unanswered, counsel for Ms. Hicks sent a similar letter on June 16, 2017, which was answered by the Abacus's general liability carrier on June 26, 2017. The carrier notified Ms. Hicks that it was conducting its own investigation into the incident and requested any documentation of the incident or Ms. Hicks's medical bills, as well as Ms. Hicks's theory of liability.[2]

[2] There is nothing in the record indicating that Ms. Hicks responded to this request. At the circuit court hearing, her counsel asserted that she did. It is not necessary for us to resolve this matter.

The motion to dismiss

As we have related, Ms. Hicks filed the present action in Baltimore Circuit Court on January 23, 2020. This date was more than three years after Ms. Hicks fell down the steps but within three years of the date that Ms. Hicks's counsel first contacted Abacus. Abacus filed a motion to dismiss the case because it was not filed within the limitations period. Ms. Hicks filed a response to the motion, which included copies of the correspondence described in the previous paragraph as exhibits. After a hearing, the circuit court granted the motion and dismissed the case with prejudice. The court explained its reasoning in an opinion issued from the bench. Relevant to the issues raised on appeal, the court stated:

> I find this case is clearly barred by a Statute of Limitations under Courts and Judicial [Proceedings] 5-101, which provides a three-year Statute of Limitations from the time the cause of action accrues.
>
> This cause of action did accrue on the date that Ms. Hicks fell down the stairs at the War Memorial Building, which was July 27, 2016. . . .
>
> Further, I do not agree that the cause of action accrues upon discovering the identity of this particular defendant, Abacus. Clearly within the three-year period from the date of injury Abacus was known and identified. . . . [E]ven if I agreed that somehow there was some relevance to the discovery of the name Abacus Corporation, sometime at some unknown date before this letter was sent, that wouldn't change the Court's position that the cause of action accrued on the date of the injury.
>
> The Court disagrees with Plaintiff's interpretation of the discovery rule, that is not what that rule is meant for. So in sum, having concluded the case cause of action accrued July 27, 2016 and the case was not filed until January 23, 2020, the Court finds that the Court is clearly outside of limitations. The Court is going to grant the motion. The case will be dismissed with prejudice.

THE PARTIES' APPELLATE CONTENTIONS

The parties agree that the applicable statute of limitations for this case is found in Md. Code, Cts. and Jud. Proc. § 5-101, which provides that a civil action must be filed "within three years from the date it accrues[.]" They also agree that Ms. Hicks's claim against Abacus accrued "when the claimant in fact knew or reasonably should have known of the wrong." *Poffenberger v. Risser*, 290 Md. 631, 636 (1981). At this point, they part company:

Ms. Hicks contends that her complaint was filed with three years of the date that she actually knew that the security guard who was responsible for her injuries was an employee of Abacus. In support of her position, Ms. Hicks contends that the statute of limitations began to run on January 25, 2017, the date on which she identified Abacus as the proper defendant and first notified it of her intention to bring suit. She argues that she was unable to conduct a reasonably diligent inquiry into the identities of the security guard that allegedly harmed her, or that guard's employer. Second, Ms. Hicks asserts that the duty to conduct a reasonably diligent inquiry can go in both directions and that Abacus breached its duty. From this date, three years had not passed before Ms. Hicks filed her complaint with the circuit court.

In response, Abacus argues that the three-year limitations period began to run on the date that she should have known that someone caused her to fall down the steps in the War Memorial Building. According to Abacus, this date was July 27, 2016, when the incident occurred.

THE STANDARD OF REVIEW

> The proper standard for reviewing the grant of a motion to dismiss is whether the trial court was legally correct. In reviewing the grant of a motion to dismiss, we must determine whether the complaint, on its face, discloses a legally sufficient cause of action. In reviewing the complaint, we must presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom. Dismissal is proper only if the facts and allegations, so viewed, would nevertheless fail to afford plaintiff relief if proven.

Britton v. Meier, 148 Md. App. 419, 425 (2002) (cleaned up) (citing *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 71–72 (1998); *Faya v. Almaraz*, 329 Md. 435, 443 (1993)).[3]

ANALYSIS

Civil actions, such as Ms. Hicks's, must generally be filed within three years of the accrual date. Md. Code, Courts & Jud. Proc. § 5-101. As discussed previously, the running

[3] In reviewing a motion to dismiss, a court is typically limited to the four corners of the complaint, as well as any supporting exhibits therein. *D'Aoust v. Diamond*, 424 Md. 549, 572 (2012). If a court looks to materials outside of the complaint, then the court must convert the motion to dismiss into a motion for summary judgment. Md. Rule 2-322(c); *D'Oust*, 424 Md. at 572-73.

In the present case, Ms. Hicks presented documents—namely, the correspondence between her lawyers and possible defendants, including Abacus—to the circuit court to support her contention that her complaint was timely filed. The court reviewed the documents in order to determine whether they were relevant to the issue before it, which was when Ms. Hicks's claim against Abacus accrued. The court concluded that they were not relevant and did not rely on them to support of its ruling. Therefore, our standard of review for this case is that of a motion to dismiss.

of limitations can be tolled by the discovery rule exception until the date the claimant knew or reasonably should have known of the injury. If the claimant knows or reasonably should know of the injury on the same day that the injury occurs, the discovery rule is satisfied. *Bragunier Masonry Contractors, Inc. v. Catholic Univ. of Am.*, 368 Md. 608, 628 (2002).

Ms. Hicks's first argument is that she was incapable of conducting a reasonably diligent inquiry into her potential tortfeasors. The discovery rule is satisfied and limitations begin to run when the claimant is made aware of circumstances sufficient to put them on inquiry notice. *O'Hara v. Kovens*, 305 Md. 280, 289 (1986). At that point, the claimant is charged with uncovering any additional facts that could be discovered by a reasonably diligent inquiry, such as the identities of any potential tortfeasors, within the applicable limitations period. *Id.* (citing *Pierce v. Johns-Manville Sales Corp.*, 296 Md. 656, 668 (1983)).

Ms. Hicks contends that her brain trauma caused by her fall rendered her incapable of conducting a reasonably diligent inquiry into the identity of the security guard and his employer. One of the problems with this argument is that Ms. Hicks failed to allege in her complaint that her injuries limited her ability to conduct a reasonably diligent inquiry.[4] On review of a motion to dismiss, we are limited in our analysis to the four corners of the complaint and any incorporated supporting exhibits. *D'Aoust*, 424 Md. at 572.

[4] Moreover, the documents presented in her response to the motion to dismiss contain no support for her assertion that her memory loss affected her ability to identify the potential defendants.

Were we to consider this argument, we would find Ms. Hicks's argument unpersuasive. Loss or impairment of memory, by itself, is not sufficient to toll the statute of limitations. *Cf. Doe v. Maskell*, 342 Md. 684, 692 (1996).[5]

Ms. Hicks does not argue that she was unaware of the harm inflicted upon her, but rather alleges that she was incapable of identifying the perpetrators of that harm. In Maryland, "the statute of limitations begins to run when a plaintiff has knowledge of circumstances which would cause a reasonable person in the position of the plaintiff to undertake an investigation which, if pursued with reasonable diligence, would have led to knowledge of the alleged cause of action." *Lumsden v. Design Tech Builders*, 358 Md. 435, 445 (2000) (cleaned up) (quoting *O'Hara v. Kovens*, 305 Md. 280, 302 (1986)). It is indisputable that Ms. Hicks knew that she had been injured on the date that she fell down the steps at the War Memorial Building. It is equally clear that her counsel had identified Abacus as the employer of the security guard who caused her injuries on or before January

[5] While memory loss or impairment does not toll limitations, disability does. *See* Courts & Jud. Proc. § 5-201 (providing that "[w]hen a cause of action. . . accrues in favor of a minor or mental incompetent, that person shall file his action within the lesser of three years or the applicable period of limitations after the date the disability is removed."). In this context, someone is disabled when they "have been adjudicated by a court to be unable to manage their property and for whom a guardian of the property has been appointed." *James B. Nutter & Co. v. Black*, 225 Md. App. 1, 4-5 (2015) (citing Md. Code, Est. & Trusts § 13-101(e)). Ms. Hicks does not assert that she was "disabled."

25, 2017, which was approximately two and a half years before limitations expired in this case.

Ms. Hicks's second argument is that the duty for a reasonably diligent inquiry goes in both directions and that Abacus breached this duty. Ms. Hicks contends she should be allowed to file her action within three years of the date that she first initiated correspondence with Abacus. She relies on the fact that Abacus's insurance carrier notified her that it was conducting its own investigation into the incident, but failed to notify her of its findings.

This argument is unpersuasive. Maryland law provides no support for Ms. Hicks's assertion that the discovery rule imposes a duty upon potential defendants to assist potential plaintiffs. Instead, the focus is on the plaintiff. *See Poffenberger*, 290 Md. at 636 ("[A] cause of action accrues when the *claimant* in fact knew or reasonably should have known of the wrong.") (emphasis added); *Windesheim v. Larocca*, 443 Md. 312, 326-27 (2015) ("Maryland has adopted the 'discovery rule,' which 'tolls the accrual of the limitations period until the time the *plaintiff* discovers, or through the exercise of due diligence, should have discovered, the injury.'") (emphasis added) (quoting *Frederick Road Limited Partnership v. Brown & Sturm*, 360 Md. 76, 95–96 (2000)). Whether or not Abacus or Abacus's insurance carrier conducted a reasonably diligent investigation is thus irrelevant to this matter.

In conclusion, Ms. Hicks had three years from the time of her injury to conduct a reasonably diligent inquiry into the identities of potential tortfeasors and to file suit. Her

lawyer identified Abacus as a potential defendant about two and a half years prior to the expiration of the limitations period but, for some reason not apparent to us from the record, did not file suit until after limitations had expired. Although we sympathize with Ms. Hicks, we must affirm the judgment of the circuit court.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED. APPELLANT TO PAY COSTS.