

Circuit Court for Baltimore City
Case No. 24-C-19-002369

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1174

September Term, 2020

CHARLENE McCORMICK

v.

BALTIMORE DEPARTMENT OF HOUSING

Kehoe,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 4, 2021

*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 this appeal from a civil action in the Circuit Court for Baltimore City, Charlene McCormick, appellant, challenges the court’s failure to enter an order of default against the Housing Authority of Baltimore City (“HABC”), and the court’s granting of HABC’s motion to dismiss. For the reasons that follow, we shall vacate the dismissal and remand for further proceedings. We shall otherwise affirm the court’s judgment.

On April 16, 2019, Ms. McCormick filed a complaint in which she contended that in August 1985, she leased from HABC a residence located at 6202 Copore Way, in a housing complex known as O’Donnell Heights. Ms. McCormick stated that “[w]ithin about months of living in the dwelling unit,” she “notice[d] rusty/discolored water coming out [of] her tub faucet and that the tub was turning rusty.” Ms. McCormick further stated:

Over the [next 31] years, toxins such as[] mold and scaly mineral deposits were airborne and started to grow on [Ms. McCormick’s] tub, walls, bathroom floor tile, window, mirrors, fixtures[,] and even on Ms. McCormick over those 31 years of pain and suffering. She began to have “daily toxins attacks” throughout her body, causing multiple illnesses. And the daily, long term use of the rusty water had its own separate effects on [her] health and unit

Ms. McCormick also alleged that she had suffered “severe health problems” from “mosquito attacks,” “pipe corrosion,” “soil erosion,” “faulty repairs and inspections,” and “expired appliances,” and that the problems continued “until she relocated in 2017 and after that.” Ms. McCormick raised a variety of state and federal causes of action against HABC and requested a minimum of \$6,169,720 in damages.

Ms. McCormick attached to her complaint, among other documents, a letter from HABC dated August 25, 2016, in which HABC stated:

[HABC] has discovered that severe soil erosion is causing water penetration into the units on the north side of O'Donnell Heights in the area where your apartment is located. Because of the severe soil erosion affecting this part of the development, HABC is not able to make any reasonable repairs to your unit to address this situation. In accordance with Section 7 of your lease, HABC will need to transfer you and the family members on your lease.

In August 2019, the case was removed, at the request of counsel for HABC, to the United States District Court for the District of Maryland. In July 2020, the federal court remanded the case to the circuit court. In August 2020, Ms. McCormick filed a request for an order of default. HABC subsequently filed an opposition to the request, and a motion to dismiss on the ground, among others, that Ms. McCormick's "claims are barred by the applicable statute of limitations."

On November 18, 2020, the court held a hearing on Ms. McCormick's request for an order of default and HABC's motion to dismiss. During the hearing, HABC contended, among other arguments, "that the operative date for purposes of [the] statute of limitations is April 16th, 2016," and "if [Ms. McCormick] is alleging that [HABC] failed to act or acted improperly during the first 20 something years of her tenancy, and that the character of that action or inaction did not change[,] then her allegations with respect to events that occurred after April 16th, 2016 are not recoverable." Ms. McCormick countered, among other arguments, that "nobody knew that the development was soil er[ro]ded" until HABC sent its letter of August 25, 2016.

Following the hearing, the court issued an order in which it stated:

Assuming the truth of all well pleaded facts as well as all reasonable inferences that can be drawn from those facts, Ms. McCormick's complaint reveals that she was on notice of her claims as early as 1985. . . . She alleges that she relocated in 2016. Yet, she did not file her complaint until

April 16, 2019. She fails to allege any wrongful acts against HABC within the three year window of the applicable limitations period. For these reasons, her claims are barred.

Accordingly, the court declined to enter an order of default against HABC, and dismissed Ms. McCormick’s complaint.

Ms. McCormick first contends that the court erred in declining to enter an order of default against HABC, because at the November 18, 2020 hearing, HABC admitted to filing its motion to dismiss in an untimely manner, and Ms. McCormick suffered prejudice from being “force[d] to relive decades of pain and suffering[,] hardships, los[t] wages, anxieties, distress[,] and[] embarrassment.” But, Ms. McCormick does not cite any authority that requires a court to enter an order of default under such circumstances. On the contrary, Rule 2-613(e) requires a court to vacate an order of default “[i]f the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action,” and we have held “that the statute of limitations defense, for purposes of a motion to vacate an order of default, is a meritorious defense[.]” *Burriss v. Richards*, 79 Md. App. 554, 563 (1989) (quotations omitted). Hence, the court was not required to enter an order of default against HABC.

Ms. McCormick next contends that the period of limitations did not begin to run until October 1, 2016, after HABC “disclosed [that] severe, harmful soil erosion was penetrating in [Ms. McCormick’s] water system [and] unit” and Ms. McCormick’s “research proved [that her] long term harm was caused by HABC negligence and fraud,” and hence, the court erred in granting the motion to dismiss. We agree with the court that Ms. McCormick is barred from recovery for any allegedly wrongful acts by HABC prior

to April 16, 2016, because Md. Code (1974, 2020 Repl. Vol.), § 5-101 of the Courts and Judicial Proceedings Article, states that a “civil action at law shall be filed within three years from the date it accrues,” and the Court of Appeals has long held that “[u]nder the discovery rule, a claim accrues when the plaintiff ‘knew or reasonably should have known of the wrong.’” *Cain v. Midland Funding, LLC*, ___ Md. ___, 2021 WL 3400552 at *11 (2021) (quoting *Poffenberger v. Risser*, 290 Md. 631, 636 (1981)). But, we disagree with the court’s conclusion that Ms. McCormick “fail[ed] to allege any wrongful acts against HABC within the three year window of the . . . limitations period,” because Ms. McCormick produced evidence that she was not notified of the “severe soil erosion” around, and related “water penetration” of, her residence until she received HABC’s letter of August 25, 2016. We are also unsure as to why the court concluded that Ms. McCormick “relocated in 2016,” when she stated in her complaint that she relocated in 2017, and at the hearing on the motion to dismiss, the parties did not produce any evidence to the contrary. Accordingly, we vacate the dismissal of Ms. McCormick’s complaint, and remand with instructions to address any allegedly wrongful acts by HABC that accrued subsequent to April 16, 2016.¹

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED IN
PART AND VACATED IN PART. CASE
REMANDED TO THAT COURT FOR**

¹In her reply brief, Ms. McCormick moves to “strike/disregard” HABC’s brief on the grounds that “[m]ost of it is not true” and “[n]o one should lie to the Court or fabricate the truth,” or “add or leave out pertinent facts that den[y] and violate the [a]ppellant’s State Constitutional Rights to be heard or redress[ed].” Although HABC disagrees with Ms. McCormick’s legal assertions, we do not observe in its brief any intentional or consequential misstatement of fact, and hence, we deny the motion.

FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY ONE-HALF BY APPELLANT AND ONE-HALF BY MAYOR AND CITY COUNCIL OF BALTIMORE.