Circuit Court for Prince George's County
Case No. CAL17-12248

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1487

September Term, 2019

JAMES T. WALKER et al.,

v.

CHASE MANHATTAN MORTGAGE CORP.

Graeff,
Leahy,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: June 2, 2021

In 2003, James T. Walker and Olivia A. Walker, appellants and self-represented litigants, received $145,000 in "platinum endorsement" insurance proceeds as part of a settlement agreement to assist in the cost to rebuild their home after it was destroyed by a tornado in La Plata, Maryland in 2002. That money was placed in a restricted escrow account managed by their mortgage company, JP Morgan Chase Bank, N.A. ("JP Morgan"), appellee.[1] In 2013, the Walkers' insurance company requested that JP Morgan return the unused $145,000, and JP Morgan complied. In 2017, the Walkers filed a complaint against JP Morgan in the Circuit Court for Prince George's County, requesting damages related to various tort and contract claims relating to this transfer.

In 2019, JP Morgan filed a motion for summary judgment, alleging that the statute of limitations had run. It also filed a motion for dismissal for failure to comply with discovery requests. The circuit court issued an order granting summary judgment in favor of JP Morgan and dismissing the Walkers' amended complaint with prejudice.

The Walkers present the following questions for our review, which we have consolidated and rephrased as follows:[2]

1. Did the circuit court err in granting summary judgment in favor of JP

[1] As discussed in further detail *infra*, the mortgage company was initially named "Chase Manhattan Mortgage Company," but it changed its name in 2001 to "JPMorgan Chase Bank," and again in 2004 to "JPMorgan Chase Bank, NA." Although the name changes occurred during some of the pertinent events in this case, we shall refer to the appellee in this case as "JP Morgan" for clarity and ease of reference.

[2] The Walkers presented the following questions:

Morgan on the basis that the Walkers' amended complaint was barred by Maryland's three-year statute of limitations?

2. Did the circuit court err in granting JP Morgan's motion to dismiss as a discovery sanction?

3. Did the circuit court abuse its discretion in dismissing the Walkers' motions for orders of default and default judgment against JP Morgan?

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

I. Was the Circuit Court's Decision Sufficient for a Meaningful Appellate Review?

II. Is the Circuit Court's August 21, 2019 Decision[] Favoring JP Morgan Chase Bank, NA, a Non-Party to this Lawsuit, Invalid?

III. Did the Circuit Court Err When it Dismissed Appellants' Amended Complaint with Prejudice As a Discovery Sanction?

IV. Did the Circuit Court Err and Abuse Its Discretion in Dismissing Appellants' Motions for Order of Default and Default Judgment Against Chase Manhattan Mortgage Corporation, the Defendant to this Lawsuit?

V. Did [the] Circuit Court err in Finding that there are Claims in Appellants' Amended Complaint Against JP Morgan Chase Bank, NA that are Barred by Maryland's Three-Year Statute of Limitations?

VI. Did the Circuit Court Err in Considering and Granting Summary Judgment in Favor of JP Morgan Chase Bank, NA, a Non-Party to this Lawsuit[?]

FACTUAL AND PROCEDURAL BACKGROUND

I.

Factual History

The Walkers owned a home located in La Plata, Maryland. They obtained a mortgage loan from First Union Mortgage Corporation, which subsequently was purchased by Chase Manhattan Mortgage Company, a.k.a., JP Morgan, as explained *infra*.

The Walkers' home was insured by a policy underwritten by Centre Insurance Company ("CIC") for up to $290,000. The policy also included a "platinum endorsement" rider, which obligated CIC to pay up to an additional $145,000 ("endorsement proceeds") in the event that the replacement cost of the property exceeded the coverage limit of $290,000.

On April 28, 2002, the Walkers' home was destroyed by a tornado. Although CIC paid the dwelling coverage limit of $290,000 to the Walkers, a dispute subsequently arose between the Walkers and CIC relating to the endorsement proceeds coverage of $145,000.

On October 22, 2002, the Walkers filed a complaint against CIC with the Maryland Insurance Administration, alleging various violations of Maryland insurance law. The parties reached a settlement agreement in June 2003. Pursuant to that agreement, CIC agreed to pay $145,000 into a restricted escrow account managed by JP Morgan, acting as an "escrow agent" for the Walkers.

The settlement agreement stated, in pertinent part, as follows:

> [CIC] will pay to [JP Morgan], as escrow agent for the [Walkers], pursuant to the [Walkers'] mortgage, the remaining sum of $145,000.00 for coverage of the Dwelling ($290,000.00 having previously been paid.). . . . These

> payments are intended to resolve all claims as to Dwelling, Separate Structures and Personal Property. . . . The [Walkers] waive and release [CIC] and all agents and assigns from all but the specifically excluded sums referred to on page 4 of the Settlement Agreement and withdraw their appeal in the Office of Administrative Hearings, OAH Case No. MIA-INS-33-200300078. [CIC] will make all of the agreed upon payments to the [Walkers] and [JP Morgan] within thirty days of the date of this Agreement, except the hold back amounts on the personal property loss, which payment is due on receipt of evidence of replacement.
>
> Along with the settlement proceeds, CIC sent JP Morgan a letter that stated:
>
> Pursuant to the terms of the Settlement Agreement . . . the proceeds of this check are to be disbursed upon the presentation of bills in excess of $290,000.00 for the construction of a new residence at 136 Quail Lane, La Plata, Maryland 20646. Upon the presentation of documentation evidencing that the construction bills incurred by the Walkers for the reconstruction of the La Plata, Maryland residence are received, [JP Morgan] is permitted to disburse the $145,000.00 either incrementally or all at once, up to the amount of construction invoices submitted until the funds are exhausted.

Mr. Walker subsequently filed numerous unsuccessful complaints against CIC with the Maryland Insurance Administration.[3] This Court held that CIC "satisfied the settlement agreement when it sent the $145,000 endorsement proceeds directly to [JP Morgan], and that any claims arguing otherwise were barred by accord and satisfaction." *Walker v. Centre Insur. Co.*, No. 1036, Sept. Term, 2018 (filed Nov. 14, 2019) (citing *Walker v. Centre Insur. Co.*, No. 352 Sept. Term, 2006 (filed October 3, 2007)).

On January 9, 2013, counsel for CIC sent a letter to JP Morgan requesting the return of the $145,000. It explained that the $145,000 was a recoverable holdback, and a condition precedent for distribution of this recoverable holdback was that construction of

[3] Mr. Walker has appeared before this Court in numerous appeals related to this litigation.

a new residence exceeded the $290,000 paid pursuant to the dwelling coverage limit. Counsel asserted that the Walkers never constructed a new residence at the property address, and therefore, CIC was requesting a return of the funds. On March 6, 2013, JP Morgan transferred the $145,000 held in escrow back to CIC.

On March 26, 2013, Mr. Walker sent a letter to JP Morgan stating that his March 14, 2013 mortgage loan statement indicated that "$145,000 was taken from [his] restricted escrow account and a disbursement paid."[4] He further stated that he did not authorize this disbursement and requested further information from JP Morgan about the transfer.

On March 29, 2013, JP Morgan sent a reply letter to Mr. Walker stating as follows:[5]

> [JP Morgan] was contacted by the law office of Godwin, Erlandson, MacLaughlin, Vernon & Darcy, LLC representing ZC Sterling Insurance Agency, Inc[.] as Program Manager for [CIC].
>
> The correspondence indicated that the check received in the amount of $145,000.00 was issued for recoverable holdback. Your access to these funds was contingent upon our receipt of construction bills and invoices once the $290,000.00 policy limit was exceeded.
>
> As these requirements were not met, [CIC] formally requested the return of the recoverable holdback in the amount of $145,000, which was approved by [JP Morgan] to be issued payable to [CIC] and mailed to the law office of Godwin, Erlandson, MacLaughlin, Vernon & Darcy, LLC.
>
> Our records indicate that you were notified of this disbursement as you were copied on the March 8, 2013 disbursement letter of these funds.

[4] Despite the date of this letter, the Walkers proffered in their amended complaint that they became aware that the money had been sent back to CIC "on or about April 20, 2013."

[5] The letterhead stated that it was from "JP Morgan Chase Bank, NA." The payor of the $145,000 check made out to CIC similarly was "JP Morgan Chase Bank, NA."

During the following year, Mr. Walker sought, unsuccessfully, to have the funds returned from CIC. In May 2014, he sent a letter to JP Morgan requesting that the funds be returned. JP Morgan responded that it could not honor his "request for compensation." The Walkers allege that, on October 6, 2014, Mr. Walker suffered a stroke that caused visual loss in his right visual field and restricted his "ability to see, read and use his computer" until the fall of 2015.

II.

Procedural History

On May 12, 2017, Mr. Walker filed a *pro se* complaint in the Circuit Court for Prince George's County against "Chase Manhattan Mortgage Corporation," alleging: (1) breach of the escrow agreement; (2) breach of the implied covenant of good faith and fair dealing; (3) tortious breach of the implied covenant of good faith and fair dealing; (4) severe negligence; and (5) intentional infliction of emotional distress ("IIED"). Mr. Walker stated that he "discovered that the $145,000 was sent back to CIC" on April 20, 2013, "after reading [the] mortgage statement."

On July 25, 2017, JP Morgan filed a motion to extend its time to file an answer. In that motion, the company noted that it had been "incorrectly sued" as "Chase Manhattan Mortgage Corporation," rather than "JP Morgan Chase Bank, N.A."[6] On July 31, 2017, Mr. Walker filed a motion for an order of default and default judgment on the basis that

[6] This motion was granted by the court on August 24, 2017, extending the time to file its answer to August 30, 2017.

the "Chase Manhattan Mortgage Corporation" had failed to file its answer within 60 days. The circuit court denied that motion.[7]

On August 28, 2017, JP Morgan filed a motion to dismiss the complaint. It argued that dismissal was appropriate because, among other things, Mr. Walker's claims were barred by the three-year statute of limitations. It asserted that the alleged injury, i.e., the transfer of the $145,000 back to CIC, occurred on March 4, 2013, and the complaint filed on May 12, 2017, more than four years later, exceeded the limitations period.

In a response motion filed on September 12, 2017, Mr. Walker argued that none of his claims were time-barred because, although he had "knowledge of the harm" on April 20, 2013, the statute of limitations was tolled as a result of his incapacity following his stroke on October 6, 2014. He asserted that his disability was removed on December 21, 2015, and therefore, he had until June 21, 2017, to file, thereby making his May 12, 2017, complaint timely. The court denied the motion to dismiss.

On November 13, 2017, JP Morgan filed its answer, asserting numerous affirmative defenses, including limitations. It did not deny that it had issued a check to CIC in the amount of $145,000 on March 6, 2013. JP Morgan reiterated that it had been misidentified in the caption of this case as "Chase Manhattan Mortgage Corporation."

On January 8, 2018, Mr. Walker filed a request for "legal justification" from JP Morgan "to support its assertion that JP Morgan Chase Bank, NA was misidentified in the

[7] On December 11, 2017, Mr. Walker filed a second motion for an order of default and default judgment as to Chase Manhattan because the court had not yet responded to his first motion. Both motions were denied, on December 14, 2017, and February 5, 2018, respectively.

pleadings as Chase Manhattan Mortgage Corporation." On January 26, 2018, the circuit court denied this request.

On March 8, 2018, JP Morgan served Mr. Walker with discovery requests, including a request for production of certain documents, interrogatories, and requests for admissions. On May 3, 2018, the Walkers provided a response, which contained only objections to JP Morgan's requests and was not signed.

That same day, Mr. Walker filed an amended complaint to add Mrs. Walker as a plaintiff. The court granted this request on May 9, 2018.

On September 17, 2018, JP Morgan filed a motion to compel discovery. It requested the court to, among other things, compel the Walkers to produce "basic information" regarding prior litigation with CIC involving the same insurance funds, any documents to be used at trial, and medical documentation supporting Mr. Walker's claims of incapacity following his stroke. It noted that, in response to these requests, the Walkers had "simply respond[ed]" that such documents were already in JP Morgan's possession or stated that the requests "relating to the basis of his claims" were "unduly vague or burdensome."

On October 17, 2018, the circuit court ordered the Walkers to provide answers to interrogatories and documents to JP Morgan on or before November 14, 2018. On November 14, 2018, the Walkers faxed two documents, totaling eight pages, to JP Morgan. The first document was titled "Radiology Data" and detailed the results of two MRIs taken in October 2014 at Medstar Washington Hospital Center. This report noted that the MRI exam showed that Mr. Walker had a stroke and suffered "[v]ision loss." The second document was from the "Lions Vision Center at the Wilmer Eye Institute" at Johns

Hopkins and showed two charts of Mr. Walker's eyes. Mr. Walker did not include any affidavits or other documentation explaining these items.

At a hearing on November 15, 2018, counsel for JP Morgan argued that the eight pages of documents it received from the Walkers were inadequate, and the Walkers had failed to comply with the court's discovery order. The Walkers were not present for this hearing.

On November 20, 2018, the court issued a written order granting JP Morgan's motion to compel discovery. It ordered the Walkers to provide, within 20 days of the order, "complete and signed substantive responses" to certain interrogatories, to comply with JP Morgan's requests for production of certain documents, and to provide "signed medical release authorizations so that [JP Morgan] may obtain discovery relating to the medical condition and damages identified" by the Walkers.[8] The order further stated that if the

[8] More specifically, the Walkers were ordered to provide responses to JP Morgan's "Interrogatory Nos. 1, 3-4, 6-13, and 17-18," as well as documents responsive to its "Requests for Production Nos. 1-6, 10-13, and 15-23."

With respect to the documents, Request Nos. 1-6 contained basic requests for any documents that the Walkers intended to introduce at trial, those relied upon by them in preparing the complaint or answering interrogatories, a list of expert witnesses they intended to call, and any other documents in their possession relating to their claims. Request Nos. 10-13 pertained to documents about the prior litigation with CIC and financial documents evidencing any efforts made to rebuild the property. Request No. 15-23 concerned electronic discovery related to these same matters and any medical documentation supporting Mr. Walker's disability or his IIED claim.

The interrogatories that the court ordered the Walkers to answer also were basic in nature, including requests to identify experts and any person with knowledge or information regarding the claims, and to provide information regarding prior proceedings and other facts relevant to the merits of their claims.

Walkers failed to comply, they would be "precluded from introducing documents, information or evidence concerning such subjects at trial to avoid prejudice" to JP Morgan.

On December 9, 2018, the Walkers provided amended written responses to JP Morgan's document requests, but they did not produce any additional documents. The amended responses continued to object to the production of documents on various grounds, including on the basis that JP Morgan was not the proper defendant. Mr. Walker also refused to sign JP Morgan's medical records release forms, asserting that JP Morgan was not a proper defendant, and he did not understand how the form was related to his stroke. The Walkers also provided amended responses to JP Morgan's interrogatories, but those also contained only objections on various grounds. Neither amended response provided the materials or information the court had ordered the Walkers to produce.

On March 22, 2019, JP Morgan filed a motion for summary judgment, or in the alternative, for dismissal as a discovery sanction. JP Morgan argued that it was entitled to summary judgment because the Walkers had filed their complaint after the statute of limitations had expired, and they had failed to establish tolling. Moreover, it argued that the Walkers' substantive claims had been previously resolved in prior litigation with CIC, who was in privity with JP Morgan.

On the merits, JP Morgan asserted that the Walkers were not entitled to have the endorsement proceeds returned to them because they had not provided documentation showing that their rebuilding costs had exceeded $290,000, i.e., a condition precedent for accessing the endorsement proceeds. Alternatively, JP Morgan argued that the complaint should be dismissed with prejudice because the Walkers had willfully failed to comply

with their discovery requests, despite court orders requiring them to produce certain documents.

On April 11, 2019, the Walkers filed their opposition motion.[9] They asserted that there were numerous disputes of material fact, including "what the Defendant's name is," whether the funds at issue should be called "Platinum Endorsement" proceeds or "Supplemental Coverage Amounts," who was the owner of the funds in the escrow account, whether their claims were "justiciable," and whether CIC was in privity with the defendant. They asserted that their claims were not barred by the statute of limitations because limitations were tolled due to Mr. Walker's incapacity following his stroke, and because JP Morgan had attempted "to conceal or misrepresent" its role in the transfer of the endorsement proceeds. In response to the motion to dismiss as a discovery sanction, the Walkers argued that dismissal was inappropriate because they "could not properly respond to Counsel's requests for documentation and interrogatories without knowing who the defendant is/was in this case."

On August 2 and 21, 2019, the circuit court held a hearing on JP Morgan's motions for summary judgment and dismissal as a discovery sanction. JP Morgan argued that summary judgment was proper because (1) the statute of limitations had expired by the time the Walkers filed their claim; (2) their claims were barred by res judicata or collateral estoppel as a result of prior decisions by the Maryland Insurance Agency, which were

[9] The Walkers also filed an amended version of this motion on April 18, 2019, to correct certain errors and to include the exhibits erroneously not attached to the original motion.

upheld on appeal; and (3) on the merits, the Walkers had failed to show that they satisfied the condition precedent necessary to access the $145,000 endorsement, i.e., documents showing that they had spent the original $290,000 provided to rebuild the house. Moreover, it argued dismissal as a discovery sanction was warranted because the Walkers had failed to comply with multiple discovery requests and orders despite receiving an extension from the court to do so.

In response, the Walkers argued, as they did in their opposition motion, that there were genuine disputes of fact regarding who the defendant was in the case, what the $145,000 should be called (i.e., "supplemental coverage amount" or "platinum endorsement"), and whether these funds belonged to the Walkers or CIC when they were removed from the escrow account. With regard to the assertion that their claims were barred by collateral estoppel, Mr. Walker argued that present claims concerned breach of the escrow agreement, whereas his prior filings had dealt with insurance law claims.

With respect to JP Morgan's statute of limitations argument, the following exchange occurred:

> MR. WALKER: There is a dispute as to whether my claims are barred by the statute of limitations. Now, I assert that the statute of limitations was tolled by Maryland Rule, by Section 5-201. And according to that, it says, "When the cause of action is subject to a limitation under the article occurs in favor of a minor or mental incompetent, that person shall file his action within the applicable period of limitations after the date of disability is removed," after the date the disability is removed.
>
> THE COURT: What proof did you submit to the Court, sir, regarding any disability that you would have had and when the disability was removed?
>
> MR. WALKER: Ma'am, I submitted a letter from – in fact, I submitted – you may have a letter from Dr. Goldstein.

THE COURT: That says what, sir? Do you have a copy of it you would like to show me what specifically it says that shows that you had a disability from a certain date to another date?

MR. WALKER: Ma'am, I need to find that, but in fact –

THE COURT: Did you receive a letter from him, Ms. Diemer, with regard to a Dr. Goldstein?

MR. WALKER: I'd also – in a letter from Dr. Benson, he's the neurologist –

THE COURT: And those letters were given to Ms. Diemer in discovery when she was requesting that? Did you give that information to her? It was seven pages.

MR. WALKER: I thought I had sent –

THE COURT: You gave her, I believe, eight pages. In the eight pages that you gave her, did that contain one of those things?

MR. WALKER: Those eight pages that I sent her should have contained a letter – it should have – when Dr. Goldstein, when I went to – what's the name of that university?

MS. WALKER: John Hopkins.

MR. WALKER: – John Hopkins, they did a test and –

THE COURT: I don't want to know what tests you had, sir, I want to know –

MR. WALKER: Ma'am, I'm not –

THE COURT: – if there's – if you would give me –

MR. WALKER: Ma'am, I'm not telling you the test. They did a test and they – and when I asked her for information, Dr. Goldstein sent me all that information. She also sent me a letter.

THE COURT: Did you send it to Ms. Diemer is what I'm asking you.

MR. WALKER: And she also – first, I'm explaining what – and she also sent me a letter, and I sent that to Ms. Diemer.

THE COURT: That's what I'm asking you. When did you send –

MR. WALKER: And also I sent her a copy –

THE COURT: Sir, excuse me –

MR. WALKER: – of a letter from Dr. Benson.

THE COURT: Sir, when did you send her this information?

MR. WALKER: Ma'am, I don't know the exact date. Also, Dr. Benson, who's –

THE COURT: Was it after I ordered you to give to her?

MR. WALKER: Ma'am, that information was sent to her before you gave that order.

THE COURT: I don't believe she has that. She's indicated she's –

MR. WALKER: And I also sent a letter from Dr. Benson, who's the neurologist.

THE COURT: She's indicating she's only received eight pages of discovery from you.

MR. WALKER: Well, I sent her –

THE COURT: Show me what you sent her, sir. Find –

MR. WALKER: I don't have that information here.

With regard to supporting medical documentation, the court noted that the Walkers had attached a letter dated February 20, 2015, from Dr. Judith Goldstein, at Johns Hopkin's Wilmer Ophthalmological Institute, to their motion to extend the date for the present hearing. Dr. Goldstein's letter stated that she had treated Mr. Walker in December 2014

and January 2015 for "complete right homonymous hemianopia" as a result of his stroke. The letter also provided that, although Mr. Walker likely had suffered permanent vision loss, he was "fortunate" in that his vision loss "has had limited impact on functional ability." Dr. Goldstein noted that Mr. Walker's primary work-related concern was his ability to read, so she recommended various "environmental modifications" that might "help minimize the impacts of the visual field loss on reading ability, accuracy, and visual efficiency." Upon review of this letter at the hearing, the court noted that it did not contain a diagnosis saying that Mr. Walker was "incapacitated and unable to do something."

The Walkers also submitted, for the first time, a letter dated May 12, 2017, from Dr. Richard Benson, Mr. Walker's neurologist at MedStar Washington Hospital's Stroke Center. The letter, prepared for the purposes of determining Mr. Walker's ability to work, stated as follows:

> Dr. Walker had a stroke and had damage to his left visual lobe and now has visual loss in his right visual field. Based on the visual loss, it is my impression that Dr. Walker has had more difficulty completing his duties due to his visual deficit. Because of the vision loss, Dr. Walker has become more stressed at work. He describes night terrors and difficulty sleeping at night. Even more concerning, Dr. Walker and his wife described to me episodes of [staring] spells, alterations in his mental status, and an episode of urinary incontinence on one occasion.
>
> Based on Dr. Walker[']s history of a cortical (left PCA territory) infarct, I am concerned about subclinical seizures. Also, I am concerned about cognitive impairment related to the stroke. Based on this medical history, I have ordered an EEG to rule-out subclinical seizures. If this is negative, I may consider an ambulatory or longer term EEG monitoring. Additionally, I may consider getting neurocognitive testing if the EEG is unrevealing. My other concern is that the stroke, vision loss, and stress from his job, is impacting Dr. Walker's neurocognitive state.

Dr. Benson further stated: "Until his work-up is complete, I am unable to say when Dr. Walker can return to work in the same capacity that he did in the past."

After reviewing this letter, the court first noted that it was not provided to opposing counsel prior to the hearing that day. It also highlighted that, similar to the letter from Dr. Goldstein, it did not "list any type of incapacity." The court observed that the letter contemplated the possibility of cognitive impairment and that more testing was needed, but the Walkers had not provided any additional evidence regarding the results of those tests.

Mr. Walker acknowledged that he did not have any additional documentation to support his medical issues, but he proffered that, in addition to his vision loss, his stroke also had affected his memory, his ability to read and write, and his sleep schedule. As a result, he argued that he was incapacitated, and the statute of limitations should have tolled.[10]

With respect to the discovery requests, Mr. Walker argued that dismissal as a sanction was inappropriate because he had sent "three full responses" and amended responses, including his response to JP Morgan's request to authorize it to access his medical records. Although he acknowledged that he did not send any additional documents to JP Morgan, he proffered that he was unable to respond to those requests because the "wrong defendant" and wrong funds were listed on the requests, and any response would have prejudiced him. He also stated that he did not understand the requests.

[10] The Walkers also asserted that, although they discovered the money was gone from the escrow account in 2013, they did not know it was a breach of the escrow agreement until a later, unspecified date.

Mr. Walker reiterated his argument that JP Morgan had failed to provide documentation to support its contention that JP Morgan was a proper defendant. In closing, counsel for JP Morgan briefly addressed this issue, stating as follows:

> Now, of course, JP Morgan Chase received this Complaint. Defended this case. Has never disputed the wrong party was sued. It has never disputed that the money was returned to [CIC]. So, I'm not exactly sure what we are arguing here about anymore. And Your Honor entered an Order denying their request that we provide some legal explanation of who we were.
>
> You have already entered that. It is already in the case. We can't just keep re-litigating these matters that have already been decided.

At the conclusion of the hearing, the court made its oral ruling. The court found that the statute of limitations expired on April 20, 2016, and that Mr. Walker had failed to provide sufficient evidence to show that he was cognitively impaired during the limitations period in order to establishing tolling. Accordingly, it granted summary judgment in JP Morgan's favor.

With respect to JP Morgan's motion to dismiss as a discovery sanction, the court stated that it had given the Walkers ample opportunity to respond to the discovery requests and to speak with an attorney to get their questions answered. It noted that, in the nine months since the court's order to compel, the only discovery materials provided to JP Morgan, other than the amended interrogatories, were the eight-page fax containing "unclear medical documents" and the 2017 letter from Dr. Benson that was presented to the court that day. As a result, it found that the Walkers had failed to comply with its November 20, 2018 order to compel specific discovery materials. The court found that "such non-compliance would put [JP Morgan] at a severe prejudice in this case" and would

leave it unable to defend against the Walkers' claims. Accordingly, the court granted JP Morgan's motion to dismiss as a discovery sanction pursuant to Md. Rule 2-433(a).[11]

On August 29, 2019, the court issued a written order memorializing its findings. The order stated that the Walkers' claims were barred by Maryland's three-year statute of limitations, and that they had failed to establish tolling. The order further provided that the Walkers had "failed to provide discovery to [JP Morgan], after a Court held a hearing and entered Orders compelling them to provide discovery," and therefore, dismissal was a proper sanction. Accordingly, the court entered summary judgment in favor of JP Morgan and dismissed the Walkers' amended complaint with prejudice.

This appeal followed.

DISCUSSION

Before addressing the individual rulings of the circuit court challenged on appeal, we will address the Walkers' underlying argument that the circuit court's decision was "invalid" because Chase Manhattan, not JP Morgan, was the proper defendant in their lawsuit. They first assert that the circuit court never resolved this factual issue. As indicated, however, prior to the summary judgment hearing, the Walkers filed a request for "legal justification" from JP Morgan "to support its assertion that JP Morgan Chase Bank, NA was misidentified in the pleadings as Chase Manhattan Mortgage Corporation." The court denied this request.

[11] The court found that the res judicata and collateral estoppel issues asserted by JP Morgan were moot in light of these holdings.

On appeal, JP Morgan proffers the following at the outset of its brief: "The Chase Manhattan Bank changed its name to JPMorgan Chase Bank, on November 10, 2001, which later again changed its name to JPMorgan Chase Bank, NA on November 13, 2004." JP Morgan also included in its Appendix a copy of the Federal Deposit Insurance Corporation's ("FDIC") records, which show the name change.

This Court may take judicial notice of this name change as part of a public record. *See Evans v. Cty. Council of Prince George's Sitting as District Council*, 185 Md. App. 251, 255 n.2 (2009) (An appellate court "can take judicial notice of our own opinions and public record documents presented to this Court."). The FDIC records make clear that Chase Manhattan Bank and JP Morgan are the same entity, and therefore, JP Morgan was a proper defendant in this case. *See Bruno v. Bozzuto's, Inc*., 850 F.Supp.2d 462, 466 (M.D. Pa. 2012) ("Though a corporation changes its name, its identity does not change.").

Nomenclature aside, the conclusion that JP Morgan was a proper defendant is further supported by the fact that the actual transfer constituting the alleged injury in this case was made by "JP Morgan Chase Bank, N.A.," as evidenced by the payor's name on the endorsement proceeds check to CIC and the March 29, 2013 letter to the Walkers explaining that the transfer had been made at CIC's request. Indeed, JP Morgan was served with and answered the Walkers' complaint, and it admitted that it was the entity that released the $145,000 in escrow funds to CIC, thereby answering for the allegations made against Chase Manhattan in this case.

We now turn to the Walkers' arguments regarding the various motions.

I.

Motion for Summary Judgment

The Walkers contend that the circuit court erred in granting summary judgment in favor of JP Morgan on the ground that their claims were barred by Maryland's three-year statute of limitations. They argue that the court erred in finding that the statute of limitations was not tolled by Mr. Walker's incapacity following his stroke in October 2014. Although they acknowledge that they were on notice of the transfer by April 20, 2013, they argue that the limitations period was tolled from October 6, 2014, i.e., the date of his stroke, until December 21, 2015, when, they assert, his incapacity was lifted based on his doctors' determination that he could resume "some life activities and go back to work." Accordingly, they assert that they had until May 15, 2018, to file their claims, and because the complaint was filed on May 12, 2017, it was timely.

Alternatively, the Walkers contend that the statute of limitations period did not begin until May 2014 because JP Morgan "fraudulently concealed and misrepresented its role in causing [their] injuries," as evidenced by JP Morgan's responses to Mr. Walker's inquiry on May 14, 2014, in which the bank declined to interfere with an on-going civil matter. As a result of this "concealment and misrepresentation," the statute of limitations period expired on May 14, 2017, making their May 12, 2017 filing timely.[12]

[12] The Walkers also contend at the outset of their brief that the "circuit court's decision was insufficient for meaningful appellate review" because "the only source for discerning the basis for that decision" was the court's August 29, 2019 written order, which did not provide a "factual nor legal basis to evaluate the grounds for its decision." The Walkers neglect to mention, however, that the court provided an oral ruling at the conclusion of the August 21, 2019 hearing, stating, in detail, the basis for its decisions. The record contains ample information regarding the basis for the trial court's decisions to allow this Court to engage in meaningful appellate review.

JP Morgan contends that the court properly granted summary judgment in its favor because the Walkers' claims were barred by the three-year statute of limitations. With respect to the Walkers' tolling argument, they assert: (1) the Walkers failed to meet their burden to show incapacity, and (2) a disability occurring after the statute of limitations has already begun to run does not interrupt the limitations period. With respect to the claim that the limitations period began in 2014 due to "fraudulent concealment," JP Morgan argues that this claim was contradicted by the Walkers' evidence showing that Mr. Walker reached out to the bank in the spring of 2013.

A.

Standard of Review

A motion for summary judgment shall be granted "if the motion and response show that there is no genuine dispute as to any material fact" and the moving party "is entitled to judgment as a matter of law." Md. Rule 2-501(f). "An appellate court reviews without deference a trial court's grant of summary judgment," and "review[s] the record in the light most favorable to the non-moving party[,] . . . and construe[s] any reasonable inferences that may be drawn from the facts against the moving party." *Balt. City Police Dep't. v. Potts*, 468 Md. 265, 282 (2020) (quoting *Kennedy Krieger Inst., Inc. v. Partlow*, 460 Md. 607, 632–33 (2018)).

Generally, we will consider "only the grounds upon which the trial court relied in granting summary judgment." *River Walk Apts., LLC v. Twigg*, 396 Md. 527, 541–42 (2007) (quoting *Standard Fire Ins. Co. v. Berrett*, 395 Md. 439, 450 (2006)). A trial court's decision granting a motion for summary judgment will be affirmed if the record indicates

that the court's decision is supported by at least one of the grounds asserted by the moving party. *Krause Marine Towing Corp. v. Ass'n of Md. Pilots*, 205 Md. App. 194, 207–08 (2012); *see also Smigelski v. Potomac Ins. Co.*, 403 Md. 55, 61 (2008) (Although the trial court did not specify the reasons for granting summary judgment, the trial court's decision was legally correct.).

B.

Analysis

Md. Code Ann., Courts & Jud. Pro. Article ("CJP") § 5-101 (2013 Repl. Vol.), provides that "[a] civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced." The primary purpose of statutes of limitation is "to provide adequate time for a diligent plaintiff to bring suit as well as to ensure fairness to defendants by encouraging prompt filing of claims." *Hecht v. Resolution Trust Corp.*, 333 Md. 324, 338 (1994). As a result, "[s]tatutes of limitation are to be strictly construed." *Decker v. Fink*, 47 Md. App. 202, 206 (1980), *cert. denied*, 289 Md. 735 (1981).

"Under Maryland's 'discovery rule,' the three-year statute of limitations period begins to toll when the 'plaintiff discovers, or through the exercise of due diligence, should have discovered, the injury.'" *Ver Brycke v. Ver Brycke*, 379 Md. 669, 699 (2004) (quoting *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 95–96 (2000)). *Accord Doe v. Maskell*, 342 Md. 684, 690 (1996) (Under the discovery rule, "a cause of action 'accrues' when plaintiff knew or should have known that actionable harm has been done to him."), *cert. denied*, 519 U.S. 1093 (1997). "[T]he party raising the defense of the statute of

limitations has the burden of showing that the defense has merit." *Ver Brycke*, 379 Md. at 699.

Here, as indicated, the circuit court granted summary judgment in favor of JP Morgan on the basis that the Walkers' claims were filed outside of the limitations period. The court found, and the record reflects, that the Walkers discovered the transfer of the endorsement proceeds by April 20, 2013, at the latest. *See Windesheim v. Larocca*, 443 Md. 312, 334 (2015) (Plaintiffs were on notice of their claim when they signed loan documents containing information they were presumed to have read and understood.); *Bank of New York v. Sheff*, 382 Md. 235, 246 (2004) (Plaintiffs were on notice upon receiving multiple sets of documents indicating problems with an anticipated bond transaction.); *Lumsden v. Design Tech Builders, Inc*., 358 Md. 435, 447 (2000) ("[A] cause of action accrues when the plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action.") (quoting *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951, 955 (4th Cir. 1995)).

Thus, absent a tolling event, the Walkers had to file their complaint no later than three years from April 20, 2013, i.e., by April 20, 2016. The Walkers' complaint, filed on May 12, 2017, exceeded that limitations period.

The Walkers, however, contend that there was a tolling event, and the three-year limitations period was tolled on October 6, 2014, when Mr. Walker suffered a stroke, until December 21, 2015, when his doctors cleared him to return to work. The circuit court disagreed, and so do we.

CJP § 5-201(a) provides that, "[w]hen a cause of action subject to a limitation . . . 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." The party asserting the disability as a defense to the statute of limitations has the burden to show incapacity. *McDonald v. Boslow*, 363 F.Supp. 493, 495 (D. Md. 1973) (For the purposes of tolling in Maryland, "an individual is presumed sane until the contrary is shown by the party suggesting incapacity.").

Here, the circuit court found that the limitations period was not tolled because the evidence produced by the Walkers did not establish that he was mentally incompetent as a result of his stroke. Our review of the record supports this finding.

Mr. Walker testified that, following the stroke, his memory and vision were impaired, and he was unable to see or use his computer. With regard to supporting documentation, however, he produced only radiology reports and two letters from his doctors, one from Dr. Benson and another from Dr. Goldstein, both of whom stated that he had suffered vision loss as a result of the stroke. The court correctly observed, however, that the letters did not address whether Mr. Walker had suffered from any form of mental incapacity during the limitations period. The letter from Dr. Benson, which the court noted was dated after the asserted tolling period, stated that the doctor "was concerned about cognitive impairments," and that he was ordering additional tests as a result, but Mr.

Walker did not provide any follow up information regarding the outcome of those tests. Accordingly, we agree that the Walkers did not meet their burden to show incapacity.[13]

We address next the Walkers' claims that the statute of limitations did not accrue until May 2014 based on JP Morgan's "fraudulent conduct" when Mr. Walker reached out to the bank's representatives for more information regarding the transfer. *See* CJP § 5-203 ("If the knowledge of a cause of action is kept from a party by the fraud of an adverse party, the cause of action shall be deemed to accrue at the time when the party discovered, or by the exercise of ordinary diligence should have discovered the fraud."). Here, the Walkers failed to sufficiently plead fraud in their amended complaint. *See Geisz v. Greater Balt. Med. Ctr.*, 313 Md. 301, 325–27 (1988) (Allegations of fraud pursuant to CJP § 5-203 must be sufficiently plead). Moreover, although they argued fraudulent concealment in their opposition to summary judgment motion, they failed to explain how the May 2014 letter and phone call with JP Morgan's representative amounted to fraud committed by the bank. *See Brack v. Evans*, 230 Md. 548, 553 (1963) (Although the appellant "used the words

[13] Moreover, even if the Walkers had been able to show that Mr. Walker was sufficiently incapacitated, the statute would not be tolled because his stroke on October 6, 2014, occurred after the claim had already accrued on April 30, 2013. "Generally, a disability that occurs after the statute has started to run will not toll the statute." *Kluckhuhn v. Ivy Hill Ass'n, Inc.*, 55 Md. App. 41, 48 (1983), *aff'd*, 298 Md. 695 (1984). *Accord Kratz ex rel. Kratz-Spera v. MedSource Cmty. Servs., Inc.*, 228 Md. App. 476, 484 (2016) ("[O]nce the limitations period begins to run, an intervening disability will not interrupt it."). This is because the purpose of the disability tolling exception is to "protect those who lack the mental capacity" to "understand that he or she has a cause of action and to take the necessary steps to file the action" to "safeguard their legal rights." *Id.* at 484–85 (quoting *Buxton v. Buxton*, 363 Md. 634, 647–48 (2001)). Consequently, any disability arising from his stroke would not toll the limitations period. *See Kluckhuhn*, 55 Md. App. at 48 (Statute was not tolled because it began to run before the appointment of the receiver, which is akin to a disability.)

'fraudulently misrepresented' several times," he did not plead any "facts from which the existence of fraud could be inferred."); *see Antigua Condo. Ass'n v. Melba Inv'rs Atl., Inc*., 307 Md. 700, 735 (1986) ("General or conclusory allegations of fraud are insufficient. A plaintiff must allege facts which indicate fraud or from which fraud is necessarily implied."). The Walkers did not sufficiently plead or produce evidence to support a claim of fraud.

Accordingly, we perceive no error in the circuit court's determination that the statute of limitations applicable to the Walkers' claims expired on April 20, 2016, and therefore, their complaint filed on May 20, 2017, was time-barred. As a result, JP Morgan was entitled to judgment as a matter of law and summary judgment in its favor was proper. See *Frederick Rd. Ltd. P'ship*, 360 Md. at 94 ("A grant of summary judgment is appropriate where the statute of limitations governing the action at issue has expired.").

II.

Motion to Dismiss

The Walkers contend that the circuit court erred in dismissing their complaint as a discovery sanction. They assert that, despite their age and Mr. Walker's medical issues, they "diligently tried to respond to and produce discovery and comply with the circuit court's orders."[14] In particular, they assert that they never refused to provide discovery.

[14] The Walkers further assert that, because JP Morgan was not a party to the lawsuit, they were unable to respond to the discovery requests and that JP Morgan could not compel discovery without a subpoena. As indicated, we have rejected the Walkers' argument that JP Morgan is not a proper defendant, and therefore, we do not need to address the Walkers' contentions in this regard.

JP Morgan contends that the trial court properly exercised its discretion to manage discovery and sanction the Walkers for their failure to comply with the court's order compelling them to respond to discovery.

Based on our affirmance of the court's ruling granting summary judgment in favor of JP Morgan, we need not address this claim. Nevertheless, we will address it briefly.

Md. Rule 2-433(a)(3) provides that a trial court may enter an order dismissing the action as a result of a party's failure to comply with discovery. Trial courts have broad discretion to impose sanctions for violations of discovery rules, including the "ultimate sanction" of dismissal. *Valentine-Bowers v. Retina Group of Washington, P.C.*, 217 Md. App. 366, 378 (2014); *Gallagher Evelius & Jones, LLP v. Joppa Drive-Thru, Inc.*, 195 Md. App. 583, 596 (2010) (A trial court has "considerable latitude" in imposing sanctions for discovery failures.). "Once a trial court resolves a discovery dispute, our review of that resolution is 'quite narrow; appellate courts are reluctant to second-guess the decision of a trial judge to impose sanctions for a failure of discovery. Accordingly, we may not reverse unless we find an abuse of discretion.'" *Id.* at 597 (quoting *Warehime v. Dell*, 124 Md. App. 31, 44 (1998)).

A trial court should consider the following factors before imposing discovery sanctions pursuant to Md. Rule 2-433:

> (1) whether the disclosure violation was technical or substantial; (2) the timing of the ultimate disclosure; (3) the reason, if any, for the violation; (4) the degree of prejudice to the parties respectively offering and opposing the evidence; and (5) whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance.

Hossainkhail v. Gebrehiwot, 143 Md. App. 716, 725–26 (2002). Disregard of "basic discovery" requests and deadlines "constitutes a 'substantial violation' because the plaintiff, as the party initiating suit, has an affirmative duty to move [the] case toward trial." *Valentine-Bowers*, 217 Md. App. at 380–82. The willful failure to comply with the court's order "need not be affirmative conduct—neglect or failure to act can be just as 'willful' as affirmative 'contumacious' conduct." *Id.* at 383. *Accord Hossainkhail*, 143 Md. App. at 725 ("The power to impose sanctions is not dependent on a finding that the defaulting party acted willfully or contumaciously."). Moreover, this Court does "not look at each incident in isolation, but rather at the entire history and context of the case in reviewing the trial court's decision to dismiss." *Valentine-Bowers*, 217 Md. App. at 380.

Here, the circuit court ordered the Walkers, on several occasions, to provide interrogatory answers and certain requested documents to JP Morgan, but the Walkers provided only an eight-page fax containing radiology data and other unclear medical documentation. At the summary judgment hearing, Mr. Walker conceded that he did not provide any documents that he intended to introduce at trial in order to prove his case because he did not understand the requests.[15] The circuit court found that, in comparison to the 700-pages of discovery materials given to the Walkers by JP Morgan, the Walkers produced only an eight-page fax of "unclear medical documents" and Dr. Benson's letter, the latter of which was not produced until the summary judgment hearing.

[15] Although the Walkers were self-represented litigants, the court stated at the summary judgment hearing that it had provided numerous opportunities and resources for them to attempt to find representation.

The stated reason for the Walkers' unwillingness to comply with the document requests largely stemmed from their unfounded notion that JP Morgan was not a defendant in their case. The circuit court, however, had already rejected their request to require JP Morgan to explain its role in the litigation at the time the Walkers provided their amended responses to JP Morgan's document requests. Aside from this objection, the Walkers also asserted in their amended responses that even basic requests for documents supporting their claims were "unclear, overly broad and unduly burdensome," or protected by the work-product doctrine. *See 100 Harborview Dr. Condo. Council of Unit Owners v. Clark*, 224 Md. App. 13, 55 (2015) ("[T]he burden of substantiating non-discoverability . . . cannot be met by conclusory allegations or mere assertions.") (quoting *Catler v. Arent Fox, LLP*, 212 Md. App. 685, 703 (2013)).

As a result, the court found that JP Morgan would have been severely prejudiced and "unable to defend" against the Walkers' claims if the matter proceeded to trial. We perceive no abuse of discretion in the court's dismissal of the Walkers' complaint under the circumstances here. *See Hossainkhail*, 143 Md. App. at 726 (Dismissal was appropriate discovery sanction because the appellant's delay in producing requested materials was "in direct violation of the rules governing discovery, and . . . the court's express order compelling discovery.").

III.

Motion for Default Judgment

The Walkers also argue that the circuit court abused its discretion in denying their motions for orders of default and default judgments. They contend they were entitled to judgment on these motions because "Chase Manhattan" never responded to their complaint. Because we have already rejected, *supra*, the argument that Chase Manhattan and JP Morgan are not the same entity, and JP Morgan answered their complaint on an extended timeline as authorized by the court and noted the misidentification, the circuit court did not abuse its discretion in denying these motions.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.