

Circuit Court for Montgomery County
Case No. 431672-V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1593

September Term, 2017

LEWIS J. RUBIN

v.

UNITED THERAPEUTICS CORP. & LUNG
BIOTECHNOLOGY PBC

Fader, C.J.,
Beachley,
Shaw Geter,

JJ.

Opinion by Beachley, J.

Filed: January 4, 2019

*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.

On April 3, 2017, appellant Dr. Lewis Rubin filed a complaint in the Circuit Court for Montgomery County against appellees United Therapeutics Corporation (“UTC”) and Lung Biotechnology, Inc.¹ The complaint alleged: constructive fraud, negligent misrepresentation, reformation of contract/mutual mistake, reformation of contract/unilateral mistake, and breach of contract. On June 14, 2017, appellees filed a motion to dismiss, or in the alternative, for summary judgment. Following Dr. Rubin’s opposition to appellees’ motion, the court held a hearing on August 29, 2017. In an order dated September 13, 2017, the circuit court granted appellees’ motion to dismiss, and dismissed Dr. Rubin’s claims with prejudice. Dr. Rubin timely appealed, and presents the following question for our review: Did the circuit court err in granting [appellees’] motion to dismiss for failure to state a claim and dismissing all of Dr. Rubin’s claims with prejudice?

We perceive no error, and affirm the judgment of the circuit court.

¹ According to appellees’ motion to dismiss, in March 2015, Lung Biotechnology, Inc. “was converted to a Delaware public benefit corporation (now known as ‘Lung Biotechnology PBC’), and Lung Biotechnology, Inc. ceased to exist.”

(continued)

FACTS AND PROCEEDINGS²

According to Dr. Rubin’s complaint, in or about 1995, Martine Rothblatt, a co-founder of appellees, organized a non-profit organization called the PPH (“Primary Pulmonary Hypertension”) Cure Foundation, to promote research treatments for PAH (“Pulmonary Arterial Hypertension”). Dr. Rubin, who specializes in pulmonary circulation, along with a colleague, submitted a grant proposal to the PPH Cure Foundation to further research in PAH.³ Because of his involvement with the PPH Cure Foundation, Dr. Rubin and Ms. Rothblatt developed both a business association and a more than twenty-year friendship.

In June 1996, Ms. Rothblatt, along with several research scientists, founded UTC to develop treatment for PAH. UTC and Ms. Rothblatt invited Dr. Rubin to assume the role of “principal researcher” for the development of treprostinil, a drug designed to treat PAH. Dr. Rubin accepted this consultancy position, and on May 21, 2002, the FDA approved of treprostinil by subcutaneous delivery as a treatment for PAH. Dr. Rubin then briefly concluded his consultancy work with UTC in order to pursue other projects.

² Because Dr. Rubin appeals the circuit court’s granting of UTC’s motion to dismiss, we are required to “presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom.” *Higginbotham v. Pub. Serv. Comm’n of Md.*, 171 Md. App. 254, 264 (2006) (quoting *Britton v. Meier*, 148 Md. App. 419, 425 (2002)). Accordingly, our factual recitation presumes the truth of the facts alleged in Dr. Rubin’s complaint.

³ The complaint does not state when Dr. Rubin and his colleague submitted the grant proposal.

The 2003 Services Agreement

In mid-September 2003, Ms. Rothblatt contacted Dr. Rubin to meet for a social luncheon. There, Dr. Rubin mentioned that he envisioned using inhalation as a new delivery method for treprostinil. During the luncheon, which lasted more than four hours, Dr. Rubin outlined a program to develop his new treatment. At the conclusion of the luncheon, Ms. Rothblatt expressed UTC's commitment to work with Dr. Rubin to develop this new delivery method, designated as the TRIUMPH (Treprostinil Inhalation Use for the Management of Pulmonary Arterial Hypertension) development program.

On or about September 23, 2003, Ms. Rothblatt provided Dr. Rubin with a Services Agreement (the "2003 Agreement") to delineate both his and UTC's rights in the inventions related to the TRIUMPH development program. Specifically, the 2003 Agreement states that

Dr. Rubin agrees to promptly disclose, grant and assign to [UTC] all right, title and interest in and to any patentable or unpatentable inventions, discoveries, and ideas which are made or conceived in whole or in part by or on behalf of Dr. Rubin in the course of or as a result of the services performed under this Agreement, or that relate directly to, or involve the use of Confidential Information. Dr. Rubin agrees to assist [UTC] in the filing and prosecution of patent applications covering such inventions, discoveries or ideas; [UTC] agrees to reimburse Dr. Rubin for any out-of-pocket expenses associated with such assistance.

Additionally, the 2003 Agreement provided that UTC would pay Dr. Rubin \$10,000 a month in exchange for his services.

According to the complaint, pursuant to the 2003 Agreement, Dr. Rubin retained joint ownership with UTC over the inhalation inventions. Dr. Rubin signed the 2003

Agreement on September 24, 2003, and Ms. Rothblatt signed the 2003 Agreement on September 30, 2003.

Assignment of Patent Rights

On May 15, 2006, UTC filed a Provisional Patent Application, No. 60/800,016, (the “Provisional Application”) in the United States Patent and Trademark Office (“USPTO”). The Provisional Application is titled: “Treprostinil Administration By Inhalation” and provides research data Dr. Rubin developed in the TRIUMPH development program. According to the complaint, UTC did not provide Dr. Rubin with a copy of the Provisional Application before submitting it to the USPTO.

After filing the Provisional Application, UTC provided Dr. Rubin with an assignment form titled “ASSIGNMENT - WORLDWIDE” (the “2006 Provisional Assignment”). The Provisional Assignment provides:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each undersigned inventor (hereinafter referred to singly and collectively as “ASSIGNOR”) has sold, assigned, and transferred, and by these presents hereby sells, assigns, and transfers, unto

[UTC]

(hereinafter referred to as “ASSIGNEE”) its successors and assigns, the full and exclusive right, title and interest for the United States, its territories and possessions, and all foreign countries in and to this invention relating to

METERED DOSE INHALER TREPROSTINIL TREATMENT
FOR PULMONARY HYPERTENSION

as set forth in the Provisional Application. Dr. Rubin executed the Provisional Assignment on July 24, 2006.

Issuance of the Patents

On May 14, 2007, UTC filed U.S. Patent Application No. 11/748,205, (the “205 Application”) with a claim of priority derived from the Provisional Application. The 205 Application “incorporate[d] the specification of the Provisional Application, and include[d] additional disclosures concerning studies related to the TRIUMPH development program.” Apparently, UTC did not provide Dr. Rubin with a copy of the 205 Application, nor did it consult with him before filing the application in the USPTO.

On June 11, 2007, Dr. Rubin attended a conference at UTC’s corporate offices to prepare for a presentation to the Food and Drug Administration. At the conclusion of the conference, UTC provided Dr. Rubin with two documents: a “Declaration of Invention” and an “Assignment” (the “2007 Assignment”). In the Declaration of Invention, Dr. Rubin declared that he was an “original, first, and joint inventor . . . of the subject matter which is claimed and for which a patent is sought on the invention entitled ‘TREPROSTINIL ADMINISTRATION USING A METERED DOSE INHALER.’” The Declaration of Invention states that the specification for this invention “is attached hereto” and references the May 14, 2007 205 Application. Additionally, the Declaration of Invention provides that the undersigned (Dr. Rubin and his fellow inventors) “reviewed and [understood] the contents of the above-identified specification” and that the undersigned (Dr. Rubin and his fellow inventors) “believe[d] that the above-identified specification contain[ed] a written description of the invention, and of the manner and process of making and using it[.]” Dr. Rubin signed the Declaration of Invention on June 11, 2007.

That same day, Dr. Rubin executed the 2007 Assignment. Similar to the 2006 Provisional Assignment, the 2007 Assignment provides:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each undersigned inventor (hereinafter referred to singly and collectively as “ASSIGNOR”) has sold, assigned, and transferred, and by these presents hereby sells, assigns, and transfers, unto

[UTC]

(hereinafter referred to as “ASSIGNEE”) its successors and assigns, the full and exclusive right, title and interest for the United States, its territories and possessions, and all foreign countries in and to this invention relating to

TREPROSTINIL ADMINISTRATION USING A METERED DOSE
INHALER

as set forth in the 205 Application filed May 14, 2007.

Nine years later, on February 1, 2016, UTC informed Dr. Rubin that it was filing a new application with the USPTO which would claim priority over the 205 Application. Accordingly, UTC requested that Dr. Rubin execute a new Declaration of Invention for the new application. The next day, Dr. Rubin inquired into the status of the applications UTC filed regarding the TRIUMPH development program. According to the complaint, it was on this date that Dr. Rubin learned, for the first time, that UTC had asserted exclusive ownership of all rights in all patent filings, and that the patent filings and assignments reflected an assignment of Dr. Rubin’s “pre-2003 Agreement” inventions to UTC. The 205 Application would eventually issue as U.S. Patent Nos. 9,339,507 and 9,358,240.

Complaint and Dismissal

On April 3, 2017, Dr. Rubin filed a complaint in the Circuit Court for Montgomery County. In his complaint, Dr. Rubin claimed that the 2006 Provisional Assignment “was overbroad insofar as it assigned Dr. Rubin’s pre-[2003 Agreement] Inventions to UTC as well as developments jointly made under the [2003 Agreement].” Dr. Rubin further alleged that both the Declaration of Invention and the 2007 Assignment were supposed to match the terms of the 2003 Agreement, because he intended to retain his joint interest in the invention. As stated above, the complaint sought relief for: constructive fraud, negligent misrepresentation, reformation/mutual mistake, reformation/unilateral mistake, and breach of contract. On June 14, 2017, UTC moved to dismiss the complaint. Following a hearing on August 29, 2017, the circuit court took the matter under advisement. In an opinion filed September 13, 2017, the circuit court ruled that Dr. Rubin’s claims were time-barred, and granted UTC’s motion to dismiss with prejudice.⁴ Dr. Rubin timely appealed.

STANDARD OF REVIEW

“This Court conducts a *de novo* review of the circuit court’s granting of a motion to dismiss, applying the same standard as the circuit court and determining whether that decision was legally correct.” *Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 713 (2015) (citations omitted).

⁴ Additionally, the circuit court ruled in the alternative that Dr. Rubin failed to state any claims upon which relief could be granted.

DISCUSSION

We hold that the circuit court correctly dismissed Dr. Rubin’s complaint because his claims were time-barred. As we shall explain, the signature doctrine applies in this case, and the statute of limitations on Dr. Rubin’s legal claims began to run as early as 2006 when he signed the 2006 Provisional Assignment, and no later than in 2007 when he signed the 2007 Assignment. Furthermore, Dr. Rubin’s equitable claims are time-barred under the doctrine of laches.

INQUIRY NOTICE OF LEGAL CLAIMS

At the outset, we note that Dr. Rubin’s claims for fraud, misrepresentation, and breach of contract constitute claims at law, whereas the two claims for reformation constitute equitable claims. We shall first address the claims at law.

The circuit court correctly granted UTC’s motion to dismiss the legal claims as time-barred. Maryland Code (1973, 2013 Repl. Vol.) § 5-101 of the Courts and Judicial Proceedings Article (“CJP”) provides: “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.” Regarding the accrual of a cause of action, the Court of Appeals “adopted what is known as the discovery rule, which . . . applies generally in all civil actions, and which provides that a cause of action accrues when a plaintiff in fact knows or reasonably should know of the wrong.” *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 444 (2000) (quoting *Hecht v. Resolution Tr. Corp.*, 333 Md. 324, 334 (1994)). A claimant should know of the wrong “if the claimant

has ‘knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry [thus, charging the individual] with notice of all facts which an investigation would in all probability have disclosed if it had been properly pursued.’” *Id.* at 445 (quoting *Poffenberger v. Risser*, 290 Md. 631, 637 (1981)). Here, Dr. Rubin was on inquiry notice of his legal claims as early as 2006 when he signed the 2006 Provisional Assignment, and no later than in 2007, when he signed the 2007 Assignment.

The Signature Doctrine

The Court of Appeals’s opinion in *Windesheim v. Larocca*, 443 Md. 312 (2015), directly supports our conclusion that Dr. Rubin was on inquiry notice of his legal claims, at the latest, in 2007 when he signed the 2007 Assignment. In *Windesheim*, the plaintiffs were homeowners who obtained home equity lines of credit (“HELOCs”) from the defendants in order to participate in a “buy-first-sell-later” plan to buy new homes prior to selling their current homes. *Id.* at 320. The plaintiffs signed applications in 2006 and 2007 that defendants had created in furtherance of that plan. *Id.* Allegedly unbeknownst to the plaintiffs, the defendants falsely represented on these applications that the plaintiffs were receiving income from their primary residences so that the plaintiffs could qualify for the loans needed to buy their new homes. *Id.* at 322-23. In 2010 and 2011, plaintiffs allegedly learned for the first time that the applications they had signed in 2006 and 2007 reported this false rental income, and filed suit alleging fraud. *Id.* at 323. The circuit court granted the defendants’ motion to dismiss the claims as time-barred. *Id.* at 324.

On appeal, the plaintiffs argued that because they disputed that they had actually read the applications, inquiry notice could not be established as a matter of law. *Id.* at 327-28. The Court of Appeals disagreed, stating, “[u]nder long-settled law, if there is no dispute that [the plaintiffs] signed the Applications, they are presumed to have read and understood those documents as a matter of law.” *Id.* at 328. The Court referred to that rule as the “signature doctrine.” *Id.* at 329. The mere fact that the plaintiffs had signed the applications did not, however, end the inquiry, as the Court recognized that “presumptions of law do not trigger the discovery rule[.]” *Id.* at 330. Instead, the Court reviewed the applications to determine whether their contents would have sufficiently placed the plaintiffs on inquiry notice of their fraud claims. *Id.*

In reviewing the applications, the Court noted that the contents of the applications themselves revealed information that the plaintiffs knew to be false. *Id.* at 333. Relying on the signature doctrine and the fact that the applications would have revealed facts sufficient to place the plaintiffs on inquiry notice of their fraud claims, the Court concluded,

[plaintiffs’] knowledge of the contents of the Applications was sufficient to place them on inquiry notice of their claims against [defendants] when [plaintiffs] closed their HELOCs and primary residential mortgages in 2006 and 2007. Because [plaintiffs] signed the Applications at the closings, they are presumed to have read and understood their contents. With knowledge of facts about which they claim they were deceived and that suggested that their loan transactions were not proceeding as they expected, [plaintiffs] had information that “would cause a reasonable person in the position of [plaintiffs] to undertake an investigation which, if pursued with reasonable diligence, would have led to knowledge of the alleged [fraud].”

Id. at 334 (citing *Pennwalt Corp. v. Nasios*, 314 Md. 433, 448-49 (1988)). In other words, the Court held that because the plaintiffs had signed the applications and were therefore

presumed to have read and understood them, and because the applications revealed the defendants' alleged misrepresentations, the plaintiffs were on inquiry notice of their fraud claims upon signing the applications in 2006 and 2007.

Here, Dr. Rubin signed the 2006 Provisional Assignment and the 2007 Assignment more than three years before he filed his complaint in 2017, and the Assignments both clearly stated that the assignor (Dr. Rubin) was assigning all of his rights and interests in the treprostinil inhalation inventions to UTC. Like the plaintiffs in *Windesheim*, Dr. Rubin is presumed to have read and understood the Assignments that he signed, and because the Assignments informed Dr. Rubin that he was signing away his allegedly joint interests in the inventions, he was on inquiry notice of his claims. Accordingly, the statute of limitations began to run, at the latest, in 2007.

Fraudulent Concealment

Dr. Rubin insists that he was not on inquiry notice of his claims in 2006 and 2007 pursuant to the signature doctrine because “the *Windesheim* signature doctrine is premised on there being no claim of ‘fraud, duress or mutual mistake.’” Dr. Rubin claims that “[u]nder settled Maryland law, the presumption of having read and understood a signed document does not apply in the case of fraud or mutual mistake[,]” and cites, without any exposition to support his proposition, our decision in *Dynacorp Ltd. v. Aramtel Ltd.*, 208 Md. App. 403, 483 (2012) (citing *Dashiell v. Meeks*, 396 Md. 149, 167 (2006)). Dr. Rubin's reliance on *Dynacorp Ltd.* and *Dashiell* is misplaced.

We acknowledge that *Dynacorp Ltd.*, provides: “[a]bsent fraud, duress, or mutual mistake, ‘a party who signs a contract is presumed to have read and understood its terms and [] the party will be bound by them when that document is executed.’” *Id.* (quoting *Dashiell*, 396 Md. at 167). This language, however, does not mean that the signature doctrine can never apply in a claim for fraud—indeed, *Windesheim* involved claims for fraud. Instead, the context of *Dashiell* makes clear that the signature doctrine may not apply when the fraud inheres in the signing of the document itself.

Dashiell involved an attorney malpractice claim wherein the plaintiff, Meeks, hired Dashiell, an attorney, to draft a prenuptial agreement. 396 Md. at 156-57. Meeks claimed that the draft he reviewed with Dashiell contained a waiver of alimony provision, but that the version he ultimately signed in 1989 did not. *Id.* at 157. Meeks did not learn of this discrepancy until 2001, when he separated from his wife. *Id.* When Meeks attempted to sue Dashiell in 2003, the trial court dismissed Meeks’s claim as time-barred. *Id.*

On appeal, the Court of Appeals acknowledged the signature doctrine, stating “Generally, it is the rule under Maryland contract law that, as between the parties to an agreement, a party who signs a contract is presumed to have read and understood its terms and that the party will be bound by them when that document is executed.” *Id.* at 167 (citing *Holloman v. Circuit City Stores*, 391 Md. 580, 595 (2006)). The Court went on to state, “[T]he usual rule is that if there is no fraud, duress or mutual mistake, one who has the capacity to understand a written document who reads and signs it, or without reading it

or having it read to him, signs it, is bound by his signature as to all of its terms.” *Id.* (quoting *Binder v. Benson*, 225 Md. 456, 461 (1961)).

Despite acknowledging the signature doctrine and the fact that Meeks signed the agreement, the Court nevertheless concluded that there was a genuine dispute of material fact regarding limitations. *Id.* at 170. In holding that limitations was an issue for the fact-finder, the Court noted that Meeks claimed Dashiell made changes to the agreement without informing him, and that Dashiell advised Meeks to sign the agreement without reading it. *Id.* at 170. The Court concluded that if Dashiell had indeed changed the agreement and then advised Meeks not to review it, such concealment would have tolled limitations until Meeks actually discovered that the waiver of alimony provision was missing. *Id.*

In *Windesheim*, the Court of Appeals underscored the principle from *Dashiell* that, “when a party conceals the contents of a document by discouraging another from reading it, the statute of limitations does not begin to run when the document is signed.” 443 Md. at 336. There, the Court considered whether the defendants’ alleged concealment of the fraud would toll limitations irrespective of the signature doctrine. *Id.* at 335. In concluding that the signature doctrine still controlled, the Court noted that, “unlike in *Dashiell*, there [was] no evidence Defendants concealed the contents of the Applications by discouraging [the plaintiffs] from reading them.” *Id.* at 337. In fact, the Court applied the signature doctrine despite evidence that one of the defendant loan officers, during her deposition, had asserted her Fifth Amendment privilege against self-incrimination when asked whether

she had informed the plaintiffs “that the closing documents that were used in their settlement contained the information that they had submitted.” *Id.* The Court of Appeals recognized that it could draw adverse inferences from the defendant’s assertion of her Fifth Amendment privilege, but concluded that

The only reasonable inference from [the defendant’s] refusal to answer . . . questions, however, is that [the plaintiffs] did not know before closing their primary residential mortgages that the [Applications] included rental income. That fact does not justify the inference by any reasonable juror that [the defendant] also told [the plaintiffs] at closing not to read the Applications.

Id.

Here, Dr. Rubin’s complaint does not allege that UTC concealed the contents of the two assignments, or told him not to read the assignments. Instead, the complaint simply alleges

Dr. Rubin executed the [2006 Provisional Assignment] based on the misrepresentation by UTC that the [2006 Provisional Assignment] and the Provisional Application (which UTC did not provide to Dr. Rubin for review) were in proper form and consistent with the parties’ [2003 Agreement]. Based upon his long-standing personal relationship with Rothblatt and other UTC colleagues, Dr. Rubin justifiably relied on UTC and Rothblatt to provide him with a Provisional Assignment in accord with the parties’ [2003 Agreement].

Dr. Rubin does not allege that UTC affirmatively concealed the contents of the Assignments as contemplated by *Dashiell*. He merely claims that UTC misrepresented the Assignments to be “in proper form and consistent with the parties’ [2003 Agreement].” In our view, this allegation is analogous to the circumstances presented in *Windesheim*. Accordingly, we hold that the signature doctrine applies in this case to place Dr. Rubin on inquiry notice of his legal claims upon signing the Assignments.

Confidential Relationship

Buried in two sentences in his reply brief, Dr. Rubin states: “Because [his] special relationship with Rothblatt continued until 2016, he had no reason to make inquiry about the Assignments. Dr. Rubin reasonably relied upon his ‘confidential relationship’ with Rothblatt and assurances that the patent paperwork was in good order.” This language seems to invoke the concept that the existence of a special relationship can potentially toll the statute of limitations even if the signature doctrine places a potential plaintiff on inquiry notice. *Windesheim*, 433 Md. at 338 n.20 (citing *Frederick Rd. Ltd. P’Ship v. Brown & Sturm*, 360 Md. 76, 99 (2000)). The Court of Appeals fully explained this principle as follows:

where a confidential relationship exists between the parties, failure to discover the facts constituting fraud may toll the statute of limitations, if: (1) the relationship continues unrepudiated, (2) there is nothing to put the injured party on inquiry, and (3) the injured party cannot be said to have failed to use due diligence in detecting the fraud. . . . The result is different, however, if the confiding party acquires actual knowledge during the existence of the confidential relationship that the confidential relationship has been abused, or comes into possession of facts which put him or her upon inquiry notice, which, if pursued, would have disclosed the abuse. In that event, the applicable statute of limitations runs from the time the confiding party receives actual knowledge or the facts which placed him or her upon inquiry notice.

Frederick Rd., 360 Md. at 99-100.

Unfortunately for Dr. Rubin, at no point in the proceedings below did he articulate or preserve the argument that limitations could be tolled by the existence of the alleged confidential relationship. A careful review of [Dr. Rubin’s] Memorandum of Law in Opposition to [UTC’s] Motion to Dismiss or, in the Alternative, for Summary Judgment

reveals no reference to this principle. Similarly, at the hearing on the motion to dismiss on August 29, 2017, Dr. Rubin never contended that limitations could be tolled by the existence of a confidential relationship.⁵ Additionally, and understandably, the circuit court did not address whether the existence of a confidential relationship tolled the running of the statute of limitations. In its written opinion, the circuit court simply held that, pursuant to *Windesheim* and the signature doctrine, Dr. Rubin was on inquiry notice of his legal claims upon signing the assignments. Moreover, it is doubtful that Dr. Rubin articulated this principle—even inartfully—in our Court.

Maryland Rule 8-131(a) states that, “Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.”⁶ “Thus, under the Rule, an appellate court has discretion to excuse a waiver or procedural default and to consider

⁵ At most, Dr. Rubin simply maintained that the existence of the confidential relationship explained why he signed the assignments without reading them. For example, at the hearing, Dr. Rubin’s counsel argued,

the reason why the relationship between Rothblatt and Dr. Rubin is important is because this gentleman, he’s a brilliant scientist, but the only thing he can be accused of is being improvident in relying upon advice of a good friend with respect to personal and business matters. . . . That I think is not the basis for him to forfeit his rights, and that’s why there is extreme injustice in the way this has unfolded.

⁶ Even assuming Dr. Rubin raised the issue in his reply brief, “an appellate court ordinarily will not consider an issue raised for the first time in a reply brief.” *Jones v. State*, 379 Md. 704, 713 (2004) (citing *Fearnow v. Chesapeake & Potomac Tel.*, 342 Md. 363, 384 (1996)).

an issue even though it was not properly raised or preserved by a party.” *Jones v. State*, 379 Md. 704, 713 (2004). In *Jones*, the Court of Appeals stated that when considering whether to exercise this discretion, an appellate court should make two determinations: (1) whether the exercise of discretion would work unfair prejudice to either of the parties, and (2) whether the exercise of that discretion would promote the orderly administration of justice. *Id.* at 714-15.

Regarding unfair prejudice, the Court of Appeals has stated that “unfair prejudice may result if counsel fails to bring the position of [his] client to the attention of the lower court so that that court can pass upon and correct any errors in its own proceedings.” *Id.* at 714. Here, Dr. Rubin failed to present this argument to the circuit court, depriving the court from deciding the issue and precluding UTC from addressing it.

Regarding the promotion of the orderly administration of justice, the Court of Appeals has stated that “[t]his simply means that the Rule seeks to prevent the trial of cases in a piecemeal fashion, thereby saving time and expense and accelerating termination of litigation.” *Id.* at 715. The Court further elaborated that this policy “[implies] that an appellate court should feel less constrained by the ordinary course of issue preservation when its decision to raise an unpreserved issue will not [a]ffect but will improve the efficiency of judicial administration.” *Id.* We fail to see how exercising our discretion to allow a party to raise an unpreserved issue would promote or improve judicial efficiency where, as here, the court properly granted the motion to dismiss based upon the arguments presented.

Because Dr. Rubin failed to argue that limitations could be tolled by the existence of his confidential relationship, either in the circuit court or before us, we hold that he has failed to preserve the argument. Accordingly, we decline to consider it.

LACHES

Finally, having established that the signature doctrine applied to place Dr. Rubin on inquiry notice of his legal claims upon signing the 2006 Provisional Assignment and the 2007 Assignment, rendering them untimely, we conclude that Dr. Rubin's equitable claims are similarly untimely.

Dr. Rubin's claims for reformation of contract/mutual mistake, and reformation of contract/unilateral mistake, are equitable claims. *LaSalle Bank, N.A. v. Reeves*, 173 Md. App. 392, 408 n.9 (2007) ("Reformation of contract is a purely equitable action."). Unlike legal claims, equitable claims are governed by the doctrine of laches. *Id.* at 405. "Laches 'is a defense in equity against stale claims, and is based upon grounds of sound public policy by discouraging fusty demands for the peace of society.'" *Id.* (quoting *Ross v. Bd. of Elections*, 387 Md. 649, 668 (2005)).

Notably, "When a case involves concurrent legal and equitable remedies, 'the applicable statute of limitations for the legal remedy is equally applicable to the equitable one.'" *Frederick Rd.*, 360 Md. at 117 (quoting *Schaeffer v. Anne Arundel Cty.*, 338 Md. 75, 81 (1995)). Furthermore, "Generally, '[o]nce on notice of one cause of action, a potential plaintiff is charged with responsibility for investigating, within the limitations period, all potential claims and all potential defendants with regard to the injury.'" *Estate*

of Adams v. Cont'l Ins. Co., 233 Md. App 1, 26 (2017) (quoting *Doe v. Archdiocese of Washington*, 114 Md. App. 169, 188 (1997)), *cert. denied*, 456 Md. 62 (2017). Here, Dr. Rubin's legal and equitable claims all arose from the same events—his signing of the 2006 Provisional Assignment and the 2007 Assignment—which assigned all of his alleged interests in the treprostinil inhalation inventions to UTC. Accordingly, the doctrine of laches precludes him from raising his equitable claims.

**JUDGMENT OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**