UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1039

September Term, 2014

KEVIN C. BETSKOFF

v.

MARTIN GROFF CONSTRUCTION COMPANY, INC., ET AL.

Woodward,
Friedman,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: March 18, 2016

Kevin C. Betskoff, *pro se* appellant, filed a complaint on March 27, 2013, alleging various contract and tort claims against appellees, Martin Groff, individually, and Martin Groff Construction Company, Inc. (collectively, "the company"), in the Circuit Court for Carroll County. Betskoff's claims stemmed from a construction contract between the parties that was dated June 13, 2005, and terminated in November 2006. After the suit was transferred to Worcester County, the company filed a motion for summary judgment on the grounds of statute of limitations, res judicata, and collateral estoppel. The trial court granted the company's motion on statute of limitations and collateral estoppel grounds, and Betskoff noted an appeal on July 21, 2014. On August 5, 2014, the company filed a Maryland Rule 1-341 motion for attorneys' fees, which the court granted on October 21, 2014. Betskoff did not appeal the October 21, 2014 order.

On appeal to this Court, Betskoff raises three questions for our review, which we have consolidated and rephrased into two:[1]

[1] Betskoff's questions, as presented in his brief, are as follows:

> 1. Did the Circuit Court commit reversible error by abusing its discretion and granting a Motion for Summary Judgment when there was a dispute as to material facts alleged in the verified complaint?
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> 2. Should the Doctrine of Collateral Estoppel have been allowed as an ingredient to justify a summary judgment award?
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> 3. Did the Circuit Court commit reversible error in entering a monetary award against the Appellant for

(continued...)

1. Did the circuit court err in granting the company's motion for summary judgment?

2. Did the circuit court err in granting the company's motion for sanctions after Betskoff had appealed the court's grant of summary judgment?

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

BACKGROUND

Because neither party has cited to the record in support of its statement of facts, in contravention of Rule 8-504(a)(4), this Court has no choice but to rely on the trial court's summary of the background to this case as stated in its oral ruling at the hearing on the company's motion for summary judgment on June 27, 2014:

> [T]his matter came to this court on March the 27th of 2013. Mr. Betskoff filed his five count complaint against Martin Groff Construction Company and against Martin Groff individually. Mr. Betskoff is obviously not an attorney. He's self represented in this matter.
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> All of the five claims in this case are based on actions allegedly taken by one or both defendants in connection with the performance of a contract for demolition of a structure and construction of a house on a lot owned by [ ] Betskoff. The contract was between [ ] Betskoff and [the company]. It was entered into on June the 13th of 2005, and according to [ ] Betskoff was terminated on November the 10th of 2006.

[1](...continued)

bad faith litigation when it had no jurisdiction of the mater [sic] after it had been appealed?

Count No. 1 is labeled intentional destruction of private property and alleges that the defendant, and oddly enough each of the counts except one talks about the defendant in the singular and not in the plural. So it's not clear which defendant he's talking about. The Court will assume that he's talking about both defendants.

Again, Count No. 1 is labeled intentional destruction of private property and alleges that the defendant wrongfully removed and destroyed a boat pier on the property.

Count No. 2 is labeled breach of contract and alleges that the defendant breached the contract by removing the boat pier. The damages sought for that count are $40,000, what the plaintiff says is the cost of a new pier.

Count No. 3 is labeled breach of implied covenant of good faith and fair dealing and alleges that the defendant breached the contract. Now, oddly in that count [ ] Betskoff alleges in paragraph 34 that, quote, when plaintiff arbitrarily removed the boat dock, he disadvantaged Betskoff by devaluing his property, end quote. The Court will assume that this reference is simply a typographical error and the word defendant and not the word plaintiff was intended. In this count the plaintiff seeks compensatory damages of $40,000 and punitive damages.

Count 4 is labeled unjust enrichment and alleges that [ ] Betskoff paid the [company] for work the defendant did not perform and materials that were not provided. This count goes on to allege in paragraphs 40 and 41 that the [company] was unjustly enriched by payment for the work not performed and materials not provided.

Count 5 is labeled intentional infliction of emotional distress and mental anguish and alleges that the defendants', in that case plural, defendants' conduct described in the previous paragraphs had amounted to intentional infliction of emotional distress.

This Court granted defendant Martin Groff's motion to dismiss as to the claims against him in Counts 2, 3 and 4 as those counts alleged breach of contract or were claims for money paid under a

contract, a contract to which the defendant Martin Groff individually was not a party and to which there was no allegation that Martin Groff was a party.

Now, in a case filed in this court on August the 3rd of 2009, [the company] sued [ ] Betskoff for breach of the same contract upon which [ ] Betskoff now bases his claims. A bench trial was held on March the 30th of 2010, and [the company] recovered a judgment against [ ] Betskoff. [ ] Betskoff represented himself in that case and testified as a witness. He appealed the judgment of the trial court to the Court of Special Appeals. The appeal was denied in an unreported opinion.

He then filed petitions for writ of certiorari to the Court of Appeals and the United States Supreme Court. Those petitions were denied. [ ] Betskoff represented himself at each appellate level and authored the briefs and petitions directed to those courts.

The Court has just this morning taken judicial notice of the bill of complaint which was filed in case 01934. In that bill of complaint filed by [ ] Betskoff on November the 6th of 2009 against [the company], [ ] Betskoff says a number of things that are material to the issues before this Court on motion for summary judgment which I will discuss in a moment. This is a three count complaint.

The first count is, oddly enough, breach of contract referring to the same contract as it was referred to in the case now before this Court. The second count is malicious use of process, and third is actual fraud.

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This case was dismissed for failure to prosecute. That dismissal was appealed to the Court of Special Appeals, and the appeal was denied with no reported opinion.

At the hearing on June 27, 2014, the trial court granted the company's motion for summary judgment as to all counts in an oral ruling; it memorialized its ruling in a judgment entered on the same day. On July 21, 2014, Betskoff noted an appeal to this Court.

On August 5, 2014, the company filed a Motion for Sanctions and Claim of Bad Faith Litigation Under Maryland Rule 1-341. The trial court held a hearing on the company's Rule 1-341 motion on September 17, 2014. On October 21, 2014, the court issued a Memorandum and Order granting the company's motion and ordering Betskoff to pay the company $5,764.04 in attorney's fees. Betskoff did not appeal this order. Additional facts will be set forth below as necessary to resolve the questions presented.

DISCUSSION

I. Motion for Summary Judgment

A trial court may grant a motion for summary judgment if (1) no genuine dispute as to a material facts exists, and (2) the party seeking summary judgment is entitled to the judgment as a matter of law. *Tyler v. City of Coll. Park*, 415 Md. 475, 498 (2010). We perform an independent review of the record to determine whether there is a genuine dispute of material fact. *Id*. at 498-99. "A material fact is a fact the resolution of which will somehow affect the outcome of the case. . . .Where a dispute regarding a fact can have no impact on the outcome of the case, it is not a dispute of material fact such that it can prevent a grant of summary judgment." *Meese v. Meese*, 212 Md. App. 359, 367-68 (2013) (citations and internal quotation marks omitted). Whether a trial court's grant of summary judgment

was proper under Rule 2-501 is a question of law subject to *de novo* review. *Walk v. Hartford Cas. Ins. Co.*, 382 Md. 1, 14 (2004).

In the instant case, the trial court granted the company's motion for summary judgment on two grounds: statute of limitations and collateral estoppel. We need not decide the issue of collateral estoppel, because, as will be discussed *infra*, the statute of limitations bars all of Betskoff's claims. We shall explain.

Betskoff's contract and tort claims are governed by Md. Code (2006, 2013 Repl. Vol.), § 5-101 of the Courts and Judicial Proceedings (I) Article ("CJP"), which 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." Betskoff's unjust enrichment claim "is an equitable one but, because this cause of action is analogous to the legal remedies of breach of contract and conversion, the claim is barred if not brought within the applicable limitations period." *Llanten v. Cedar Ridge Counseling Ctrs., LLC*, 214 Md. App. 164, 171, *cert. denied*, 436 Md. 328 (2013).

The Court of Appeals has stated the following with regard to the "discovery rule" governing the statute of limitations period:

> Under Maryland's discovery rule, the statute of limitations does not begin to accrue on a claim until the plaintiff knows or should know of the potential claim. The discovery rule acts to balance principles of fairness and judicial economy in those situations in which a diligent plaintiff may be unaware of an injury or harm during the statutory period. This standard, however, does not require actual knowledge on the part of the plaintiff, but may be satisfied if the

> plaintiff is on "inquiry notice." A plaintiff is put on inquiry notice when he, she, or it possesses "facts sufficient to cause a reasonable person to investigate further, and . . . [that] a diligent investigation would have revealed that the plaintiffs were victims of . . . the alleged tort."

Dual Inc. v. Lockheed Martin Corp., 383 Md. 151, 167-68 (2004) (alterations in original) (citations omitted).

The trial court rendered the following opinion regarding the statute of limitations for Betskoff's claims:

> The Court has considered the motion, the affidavit, the supplement to the motion, the exhibits attached to the motion, the response and supporting memorandum exhibits and affidavits. The Court has considered in taking judicial notice of the contents of the case files in case 23-C-09-0127 which is the previous case between the parties, that is, the previous case in which [the company] sued Betskoff. The Court also takes notice of—judicial notice of the case—the contents of the case file in the case ending in 01934. The file of the case ending in I believe it's 0127 includes the transcript of the trial. The Court will consider [ ] Betskoff's brief in support of his appeal to the Court of Special Appeals and his multiple petitions for writs of certiorari.
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> ***
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> The defendant claims to be entitled to summary judgment on the defense of statute of limitations. The three year statute of limitations applies to each of [ ] Betskoff's claims. Maryland applies the discovery rule to determine the date from which the statute of limitations begins to run. Under the discovery rule, a cause of action accrues at the time that the defendant first knows or reasonably should have known of the alleged wrong. Expressed another way, the statute of limitations begins to run when the claimants gain knowledge sufficient to put them on inquiry notice generally when they know or should know that they have been injured or wronged. From that day

forward, a claimant will be charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation regardless of whether the investigation was conducted or was successful.

As to the defense of statute of limitations here, the issue is whether there is any genuine dispute as to material—as to the material fact of when [ ] Betskoff knew of the wrongs alleged in his complaint.

He claims that he first learned of these wrongs from information disclosed at the trial on March the 30th of 2010, and therefore, his complaint was timely filed within the three year statute of limitations. Specifically he says in his response to motion for summary judgment, and I'm quoting here, Betskoff paid [the company] to perform duties that he did not perform and he kept monies paid for work not contracted for. Once again, this was not known to Betskoff at that time and was only brought to light at the March 30th, 2010, trial, end quote.

This assertion however is specifically contradicted by numerous written statements made earlier by [ ] Betskoff. Those written statements are contained in his answers to interrogatories, as well as other pleadings signed by him. They're also contained in the bill of complaint which was filed back in 2009 in the case ending in 01934. Moreover, [ ] Betskoff's assertion is belied at least in part by his own affidavit attached to his answer to the motion for summary judgment.

Now, on November the 2nd of 2009, [ ] Betskoff filed with this court his answers to interrogatories in the case of Martin Groff Construction Company, Inc., versus Betskoff. In his answer to interrogatory No. 6, he said—and the interrogatory itself was, if you contend that the plaintiff did not meet its contractual obligations that are the subject of this lawsuit, state in detail all facts upon which you base your contention.

Answer, consistently and continually exceeded the bid. [The company] overcharged me for materials requiring me to pay him my own monies above and beyond the original bid that the bank had

based the construction loan amount on and the draw schedule on, therefore, making the costs of the house greater. Furthermore, when the inflated price became an issue of contention, [the company] resorted to inferior building materials, appliances, fixtures, et cetera, contrary to our agreement. Additionally, [the company] did not install the materials, items, et cetera, originally paid for and/or included in the contract for which he did get a bank draw prior to his termination from the job site. Also, [the company] pulled my boat dock out totally against my wishes, then charged me for it, not only resulting in additional costs to me but devalued my property. And again, that was filed with the court on November the 2nd of 2006.

[ ] Betskoff clearly admitted there that not later than November the 2nd—I said November the 2nd, 2006. It actually was November the 2nd of 2009. [ ] Betskoff clearly admitted there that not later than November the 2nd of 2009 he believed the defendant or defendants wrongfully pulled out his boat dock and caused him damage. He also clearly admitted that not later than November the 2nd of 2009 he believed that the defendant or defendants overcharged him for materials and failed to install materials for which payment had been made.

Now, in his answer to interrogatory No. 13 filed on the same date, he stated the documents and tangible evidence supporting his position include, quote, a list of items, slash, materials not installed and paid for, end quote, and a, quote, list of property destroyed, end quote.

On August the 21st, 2009, [ ] Betskoff filed his answer to the complaint filed in the previous case, that is, Martin Groff Construction Company, Inc., versus Betskoff. In his answer to paragraph six, he unequivocally claimed that [the company] breached its contract with him and specifically claimed that, quote, he refused to install the agreed appliances that I did pay for, end quote.

On page three of his brief to the Court of Special Appeals, [ ] Betskoff wrote, quote, on October the 26th, 2006, I examined the bid sheet and reinspected the property and found more than $27,000 had been charged to me and paid by me to [the company] for services and

materials not delivered or performed, end quote. By that statement [ ] Betskoff obviously told the Court of Special Appeals that he learned of those facts on October the 27th of 2006. Now, however, he asserts in paragraph 39 of his complaint dealing with unjust enrichment claims that he first learned of these facts on March the 30th of 2010.

On page 18 of that same brief, [ ] Betskoff also acknowledged that he knew from a meeting with [the company] on August the 26th of 2006 that [the company] had removed his dock out of, quote, unquote, pure malice.

Pages 20 and 21 of his brief, again referring to the meeting held on or about October the 27th of 2006, [ ] Betskoff explained how he learned that, quote, [the company] had charged for and received payments for many items not provided totaling many thousands of dollars, end quote, and that he made other discoveries of what he claimed were deceptive practices by [the company].

On page five and 14 of his . . . petition for writ of certiorari to the Court of Appeals, [ ] Betskoff repeated the same assertions he had made earlier to the Court of Special Appeals as to what he did and what he learned on October 27th, 2006, and his request on that date for an accounting from [the company] .

On page 11 of his petition for writ of certiorari, he again stated that on August the 26th of 2006, that his boat dock had been removed. He added that he immediately went to [the company]'s office to find out what had happened, and from this meeting was aware that [the company] had removed the boat dock out of in his words spite.

On page 12 he referred to another conversation with [the company] about the removal of the boat dock, failure to install an octagonal window, all of which clearly occurred before November the 10th of 2006, the date [ ] Betskoff claimed to have terminated the contract.

Lastly on the question of when he learned of the removal of the dock or the boat pier as it's sometimes called, [ ] Betskoff's affidavit of May the 30th of 2014 filed in opposition to the motion for summary

judgment is dispositive. In that affidavit he declared under penalty of perjury in paragraph six as follows, quote, defendant affidavit's assertion that—and this is an internal quote, I never complained about the dock, end of the internal quote, is utterly wrong. Plaintiff Betskoff had to fire [the company] from the construction project for this and many other transgressions listed in my complaint, end quote. [ ] Betskoff, to use his word, fired [the company] from the project on November the 10th of 2006, the date of that event is undisputed. It's alleged in the complaint and in many other documents filed by [ ] Betskoff.

Now, by stating in his affidavit that one of the reasons he fired [the company] was [the company]'s removal of the dock, he acknowledges that he knew about the dock on the date [the company] was fired or terminated, November the 10th of 2006. There is no genuine dispute as to the fact that [ ] Betskoff knew that the dock or boat pier was removed on or before November the 10th of 2006. The statute of limitations for any claim arising from that removal therefore expired before the filing of this action. Those claims would include Count 1, Count 2, Count 3, and Count 5 to the extent the emotional distress alleged there resulted from the removal of the dock.

There's also no genuine dispute of material fact that [ ]Betskoff believed that he had paid the defendants for work or services not performed and material not provided on or before November the 10th of 2006. Indeed, he has repeatedly in documents filed in this court and in the appellate courts of this state stated that he knew of that fact on October the 27th, 2006.

In his response to the defendants' motion for summary judgment, [ ] Betskoff acknowledges the authenticity of Exhibit K which is attached to the defendants' supplemental, the motion for summary judgment, and attaches his own exhibit—as his own exhibit a letter dated October the 9th of 2006 from [the company] to himself. Those letters make clear that [ ] Betskoff knew that the brick steps and octagonal window would not be installed. They confirm that [ ] Betskoff knew in October of 2006 that [the company] had not installed the items which [ ] Betskoff now alleges are bases for this lawsuit. [ ] Betskoff considers it legally significant that he did not hear

> an explanation for those acts or omissions until March the 30th—until the March 30th, 2010, trial, and because of that delay believes he is now entitled to assert those claims against the defendant. Clearly he's wrong. The statute of limitations bars him from doing so in this suit which is obviously filed more than six years after he became aware of those alleged breaches. The statute of limitations for any claim related to [the company]'s alleged failure to perform under the contract expired long before the filing of this action. Those claims . . . also include Counts 3, 4 and 5.
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> [ ] Betskoff seeks to avoid the bar of the statute of limitations by asserting in paragraph five of his complaint what he calls equitable tolling of the statute of limitations.
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> In paragraphs 17 and 18 he alleges unspecified clandestine actions by [the company] which resulted in the information which is the basis of his suit being unknown to him until March the 30th of 2010. That assertion is obviously belied by the documents—the statements and the documents to which the Court previously referred.
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> In his response to the defendants' motion to dismiss, he again asserts that he did not know there was a cause of action before March the 30th of 2010 because he was misled and deceived by [the company]. Separate and apart from the fact that those assertions are belied by the documents—statements and the documents previously referred to, those unsupported and conclusory statements do not allege facts that are sufficient to generate a dispute as to any material issue including his claim that the statute of limitations was equitably tolled.

To summarize, the trial court relied on five documents to find that Betskoff knew of his potential claims more than three years before he filed the complaint in the instant case: (1) his answers to interrogatories in *Martin Groff Construction Company, Inc., v. Betskoff*; (2) his answer in *Martin Groff Construction Company, Inc., v. Betskoff*; (3) his brief to this Court in *Martin Groff Construction Company, Inc., v. Betskoff*; (4) his petition for writ of

certiorari to the Court of Appeals in *Martin Groff Construction Company, Inc., v. Betskoff*; and (5) his opposition to the motion for summary judgment, along with the accompanying affidavit and exhibits, filed in the instant case. Betskoff has failed to include in the record before this Court either his answers to interrogatories or his answer in *Martin Groff Construction Company, Inc., v. Betskoff*. In his brief, however, he does not dispute the facts regarding these two documents as stated by the trial court.

Although the record does include the other three documents upon which the trial court relied, Betskoff fails to explain how the trial court erred or abused its discretion in finding that Betskoff's statements in these documents demonstrate that he discovered his cause of action more than three years before filing his complaint in the instant case. Instead, Betskoff focuses his argument on the alleged bias of the trial court judge against Betskoff, because that judge was presiding over another case regarding the Betskoff family. Betskoff, however, never raised the issue of bias in a motion or during a hearing before the trial court, and thus it is not preserved for our review. *See* Md. Rule 8-131(a).

Betskoff's only other argument regarding how the trial court erred or abused its discretion in granting summary judgment is as follows:

> Back to the day at hand the June 27, 2014 hearing on Summary Judgment, with no testimony or affidavits with regard to the wording of the contract between Betskoff and [the company] or all of the money [the company] stole from Betskoff which Betskoff documented or as to any of the counts made by Betskoff, the Court granted the Motion for Summary Judgment.

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> There is Overwhelming Evidence that [Betskoff] was harmed and suffered at the hand of [the company's] wrongdoing. Amazingly, the above statement has been proven by the defense counsel Erin McCormack in favor of [Betskoff] in his "Supplement to their Motion for Summary Judgment." The [company] adds exhibits in support of their motion, yet they support the very argument made by [Betskoff] in his complaint. [ ] Once again the trial court erred."

Betskoff does not, however, point to specific statements in the company's Supplement to their Motion for Summary Judgment or accompanying exhibits, nor does he explain how such statements "support the very argument made by" Betskoff. Nowhere does Betskoff dispute the facts relied upon by the trial court regarding when Betskoff became aware of his claims against the company.

Because Betskoff does not articulate how the trial court erred or abused its discretion in determining that his statements in the prior and instant litigation between the parties show that he became aware of his causes of action more than three years prior to the filing of the instant complaint, Betskoff fails to present any argument against the trial court's ruling for this Court to consider. *See* Md. Rule 8-504(a)(6); *Klauenberg v. State*, 355 Md. 528, 552 (1999) ("As the Court of Special Appeals has held, arguments not presented in a brief or not presented with particularity will not be considered on appeal."). As a result, we shall affirm the trial court's grant of summary judgment in favor of the company.

II. Motion for Sanctions

Next, Betskoff argues that the trial court erred in granting the company's Rule 1-341 motion on October 21, 2014, because that court no longer had jurisdiction once Betskoff filed his notice of appeal to this Court on July 21, 2014.

Maryland Rule 1-341, which governs the award of attorney's fees for unjustified actions or proceedings pursued in bad faith, provides:

> **(a) Remedial Authority of Court.** In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it.

In the instant case, on July 21, 2014, Betskoff filed a timely appeal from the trial court's grant of the company's motion for summary judgment. The company filed its motion for sanctions on August 5, 2014, and the court granted such motion on October 21, 2014. Betskoff did not file an appeal of the October 21, 2014 order. Because a motion for sanctions under Rule 1-341 is collateral to the underlying action between the parties, Betskoff was required to file a separate notice of appeal from the October 21, 2014 order. *See Johnson v. Wright*, 92 Md. App. 179, 182 (1992) ("We hold, therefore, that appellees' claim for attorneys' fees under Md. Rule 1-341 was collateral to the action between the parties."); Md. Rule 8-202(a) ("Except as otherwise provided in this Rule or by law, the

notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken."). Without a timely filed appeal of the grant of a motion for sanctions under Rule 1-341, we do not have jurisdiction to review that decision. *See Lovero v. Da Silva*, 200 Md. App. 433, 441-42 (2011) ("The plain language of Rule 8-202(a) requires that the notice of appeal be '*filed* within 30 days after entry of the judgment or order.' (Emphasis added). The Court of Appeals has stated repeatedly that this requirement of Rule 8-202(a) is jurisdictional.").

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.