UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1972

September Term, 2015

NATASHIA WOODS

v.

SAUL E. KERPELMAN, ET AL.

Eyler, Deborah S.,
Graeff,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: December 1, 2016

In the Circuit Court for Baltimore City, Natashia Woods ("Natashia"), the appellant, sued Saul E. Kerpelman, Saul E. Kerpelman & Associates, P.A., and Brian Stuart Brown, Esq., an associate with the firm (collectively "Kerpelman"), the appellees, for legal malpractice arising out of Kerpelman's handling of two lead paint lawsuits. Kerpelman moved to dismiss on the ground that the action was time-barred. After hearing argument, the circuit court granted the motion.

On appeal, Natashia presents three questions for review, which we have combined and rephrased as two:

> I. Did the circuit court err by dismissing her first amended complaint on the ground that it was filed beyond the 3-year statute of limitations?
>
> II. If dismissal was appropriate, did the circuit court abuse its discretion by denying her leave to file a second amended complaint?

For the following reasons, we answer the first question in the affirmative and shall reverse the judgment of the circuit court and remand for further proceedings. Our disposition of the first question makes it unnecessary to address the second.

FACTS AND PROCEEDINGS

Because Natashia appeals from the grant of a motion to dismiss, we recite the facts as alleged in her first amended complaint. There were no factual findings below, and, of course, we do not make factual findings.

The 1986 Lead Paint Case

Natashia was born on July 22, 1982. In 1986, her mother, Annette Woods ("Annette"), hired Kerpelman to pursue a claim against Kenneth Mumaw, her former

landlord, for injuries Natashia sustained from exposure to lead paint at the rental property. On December 9, 1986, through Kerpelman, Annette, as next friend of Natashia, filed a lead paint premises liability suit against Mumaw, in the Circuit Court for Baltimore City ("1986 Lead Paint Case"). *Natashia Woods v. Kenneth B. Mumaw, et al.*, Case No. 24-C-86-343014.[1] In interrogatories Kerpelman propounded to Mumaw in that case, Mumaw was asked whether he had liability insurance for the alleged injuries. Mumaw did not respond to the interrogatories.

In 1988, Kerpelman advised Annette to settle Natashia's claim against Mumaw for $1,000. Annette followed this advice and, on November 1, 1988, entered into a settlement agreement on behalf of Natashia for that amount. The settlement agreement did not include a provision that would render it void upon the discovery of available insurance coverage or other undisclosed assets. As part of the settlement, judgment was entered in favor of Annette, on behalf of Natashia, against Mumaw, for $1,000. The judgment was satisfied in 1989.

The 2003 Lead Paint Case

In 2003, Natashia, then 20 years old, hired Kerpelman to sue Mumaw and other landlord defendants for injuries she had suffered as a result of ingesting lead-based paint at properties in which she had lived as a child in Baltimore City. The property owned by

[1] We may take judicial notice of the official docket entries. *See, e.g., Marks v. Criminal Injuries Compensation Bd.*, 196 Md. App. 37, 78 (2010) (explaining that this Court routinely takes judicial notice of official entries in a circuit court record and citing cases).

Mumaw was the same property at issue in the 1986 Lead Paint Case. Natashia had no knowledge of that case, however. By then, Kerpelman knew that Mumaw in fact had liability insurance coverage for the period of time relevant to Natashia's lead paint claim. Kerpelman did not tell Natashia about the 1986 Lead Paint Case or the settlement of that case.

On June 24, 2003, through Kerpelman, Natashia filed suit in the Circuit Court for Baltimore City against Mumaw and seven other individuals, estates, and entities, alleging that she had suffered injuries as a result of ingesting lead-based paint while residing at the properties they owned ("2003 Lead Paint Case"). *Natashia Woods v. Baltimore 132 P'Ship et al*, Case No. 24-C-03-004574. In September 2003, Mumaw filed an answer to the complaint. He did not raise the affirmative defense of *res judicata*. A May 3, 2005 trial date was scheduled.

On April 4, 2005, Mumaw filed a motion to dismiss Natashia's claim against him on the ground of *res judicata*, based on the judgment entered in the 1986 Lead Paint Case. At that point, "for the first time," Mr. Kerpelman told Natashia about that case and the $1,000 settlement that had been reached in 1988. He advised her that Mumaw's motion to dismiss would be denied because he had waived the defense of *res judicata* by failing to raise it in his answer. Kerpelman filed an opposition to the motion to dismiss on that basis.

Also on April 13, 2005, Kerpelman filed a motion to revise in the 1986 Lead Paint Case, under Rule 2-535(b), seeking to set aside the judgment for fraud, mistake, or

irregularity. In a supporting affidavit, Mr. Kerpelman attested that Mumaw had not responded to the interrogatories propounded to him; it had been his (Mr. Kerpelman's) practice "not to entertain settlement negotiations for any case until [he] was satisfied as to the existence, or lack thereof, of any insurance coverage which may be available to cover client's claims against a defendant"; he would "never [have] settle[d] a claim for the sum of $1,000, unless it had been represented to [him] that there was no insurance"; for that reason, he was "sure that [he] was told, either by [Mumaw or his counsel] that there was no insurance to cover [Natashia's claim]"; and he had since learned from Mumaw's current counsel that there "is insurance coverage for [Natashia's claim]." Kerpelman asserted that he had been "falsely induced" into settling the 1986 Lead Paint Case for "an amount far less than its actual value." On June 6, 2005, the circuit court entered an order denying the motion to revise. No appeal was taken from that order.

Meanwhile, in the 2003 Lead Paint Case, Kerpelman, Mumaw's counsel, and counsel for the other defendants jointly requested a postponement of the May 3, 2005 trial date. The court obliged, and the trial was postponed to September 21, 2005. On May 4, 2005, Mumaw filed an amended answer raising *res judicata* as an affirmative defense. *See* Md. Rule 2-341 (2004) (permitting parties to amend their pleadings without leave of court up to 15 days before the scheduled trial date). Kerpelman advised Natashia that it was too late for Mumaw to file an amended answer. Kerpelman filed a motion to strike the amended answer on that basis.

On May 20, 2005, the circuit court heard argument on Kerpelman's motion to strike Mumaw's amended answer and Mumaw's motion to dismiss. It held both motions *sub curia*. On August 30, 2005, the court entered an order denying Kerpelman's motion to strike the amended answer and granting Mumaw's motion to dismiss. Kerpelman advised Natashia that he would note an appeal from that order when there was a final judgment resolving all of the claims against all of the defendants, and that the court's grant of Mumaw's motion to dismiss would be "vacated on appeal."

A month after the court dismissed Natashia's claim against Mumaw, it sent a hearing notice for the September 21, 2005 trial date. Two days later, it issued an order approving a request for postponement of that trial date until February 7, 2006. Trial did not take place on that date. In May 2007, the court issued a notice of contemplated dismissal pursuant to Rule 2-507(c).[2] Kerpelman successfully moved to defer dismissal until December 31, 2008. In August 2008 and March 2009, the court again deferred dismissal of the case under Rule 2-507(c). Also at this time, Kerpelman was representing Natashia's younger brother in a lead paint case against Mumaw involving the same property during the same timeframe. In 2009, Kerpelman advised Natashia that her brother's lawsuit had been settled for $450,000 and that Mumaw's insurance carrier had paid the entire settlement.

[2] Rule 2-507(c) provides in pertinent part that "[a]n action is subject to dismissal for lack of prosecution at the expiration of one year from the last docket entry . . . ."

On April 13, 2010, there having been no activity in the 2003 Lead Paint Case for yet another 12 months, the court dismissed all of Natashia's remaining claims for lack of prosecution. During the almost five year period from the entry of the order dismissing Natashia's claim against Mumaw in the 2003 Lead Paint Case until the entry of the order dismissing her remaining clams in that case, Kerpelman had been telling Natashia that he was "diligently pursuing her claims against the remaining lead paint [defendants]."

Two days after all the remaining claims in the 2003 Lead Paint Case were dismissed, Natashia, through Kerpelman, noted an appeal to this Court. Kerpelman presented two issues for review: whether the circuit court erred in denying Natashia's motion to strike Mumaw's amended answer and whether the circuit court erred in granting Mumaw's motion to dismiss.

On November 1, 2012, this Court issued an unreported 9-page opinion answering both questions in the negative and affirming the judgment of the circuit court. *Woods v. Baltimore 132 P'Ship et al*., No. 252, Sept. Term 2010. We explained that Rule 2-341 permits parties in civil actions to amend their pleadings without leave of court up to 30 days before the trial date;[3] that under subsection (c) of that rule, an amendment may seek, *inter alia*, to "change the nature of the action or defense"; and that any decision to permit an amendment of the pleadings lies within the discretion of the court and is rarely subject to reversal on appeal. We held that there was no abuse of discretion by the trial court in

[3] As mentioned, at the time Mumaw filed his amended answer, Rule 2-341 permitted amendments without leave of court up to 15 days before the trial date. The Rule was amended in 2007 to make it 30 days before trial.

allowing Mumaw to amend his answer to add the defense of *res judicata*. We further held that the defense was a complete bar to Natashia's claim against Mumaw. Our mandate issued on December 3, 2012.[4]

The Legal Malpractice Case

On June 25, 2015, Natashia filed the instant malpractice suit against Kerpelman. In her first amended complaint, she alleged that Kerpelman breached the standard of care by settling the 1986 Lead Paint Case for $1,000 without first obtaining answers to interrogatories that would establish the availability or not of liability insurance or an affidavit from Mumaw identifying any available insurance or other assets that could be used to satisfy a judgment; and by not including provisions in the settlement agreement that would render it void in the event that it was discovered that Mumaw had liability insurance or other assets, and waiving limitations under those circumstances. She further alleged that Kerpelman breached the standard of care in his handling of the 2003 Lead Paint Case by, *inter alia*, failing to tell her until 2005 about the existence of the 1986 Lead Paint Case and the settlement of that case; joining in the request for a continuance of the May 3, 2005 trial date, thus giving Mumaw the opportunity to amend his answer to raise *res judiciata* as an affirmative defense; failing to advise her at any time that she had a potential legal malpractice claim against Kerpelman for mishandling the 1986 Lead

[4] We pointed out in the opinion that Mumaw had propounded interrogatories to Natashia asking whether she had ever made any civil claim against any person or entity for injury or damages and, if so, to furnish information about the claim (date, against whom, bases, court, result). Her interrogatory answer stated, "None."

Paint Case; and failing to prosecute her claims against the remaining defendants in the 2003 Lead Paint Case and/or to dismiss those claims so an appeal could be taken expeditiously.

In addition, Natashia alleged that she did not and could not have discovered the existence of her legal malpractice claim during her "continuous, uninterrupted attorney-client relationship with [Kerpelman] from 2003 . . . through December 3, 2012," because, during that time, Kerpelman affirmatively mislead her into believing that the cause of the inadequate settlement in the 1986 Lead Paint Case was a misrepresentation by Mumaw or his counsel. Moreover, Kerpelman purposely delayed the resolution of the 2003 Lead Paint Case in an attempt to run out the statute of limitations.

Kerpelman filed a motion to dismiss the first amended complaint on the ground that it was time-barred. He asserted that by 2009, at the latest, Natashia was on notice of the facts giving rise to her claim for legal malpractice. He emphasized that by 2005 she knew that the 1986 Lead Paint Case had been settled for $1,000 based on Kerpelman's mistaken belief that Mumaw did not have liability insurance coverage *and* that her claim against Mumaw in the 2003 Lead Paint Case had been dismissed by the circuit court as a result of that prior settlement. Kerpelman asserted that by 2009 Natashia also knew that her brother's lawsuit against Mumaw, involving the same property, had settled for $450,000. Kerpelman argued that to the extent Natashia was alleging that her cause of action had been concealed by fraud, she had failed to do so with the requisite particularity.

Natashia filed an opposition to the motion to dismiss, arguing, among other things, that her cause of action did not accrue until December 3, 2012, under the "continuation of events" doctrine, which we shall discuss below, and that she had adequately pleaded fraud.

On October 7, 2015, the circuit court held a hearing on the motion to dismiss. At the conclusion of argument, the court announced its ruling from the bench. It determined that the "great majority, if indeed not all of the facts [Natashia] uses and relies upon in support of her malpractice complaint, were known or with due diligence should have been known to her as early as the 2009 settlement of her brother[']s . . . case for $450,000[a]nd at the latest, the latest, emphasis supplied, the date of dismissal of [the 2003 Lead Paint Case] on April 13, 2010." Thus, the court ruled that Natashia had three years from April 13, 2010 (until April 13, 2013) to file suit within the limitations period. As her suit was filed two years and ten months after April 13, 2013, it was time-barred. The court entered an order dismissing the case on October 15, 2015. This timely appeal followed.

DISCUSSION

I.

"[A] motion to dismiss ordinarily should not be granted by a trial court based on the assertion that the cause of action is barred by the statute of limitations unless it is clear from the facts and allegations on the face of the complaint that the statute of limitations has run." *Litz v. Md. Dep't of the Env't*, 434 Md. 623, 641 (2013).

"Accordingly, our review is limited 'to the universe of the facts and allegations contained in [the first amended complaint]' and all reasonable inferences drawn in the light most favorable to [Natashia]." *Rounds v. Md.-Nat'l Capital Park & Planning Comm'n*, 441 Md. 621, 656 (2015) (quoting *Litz*, 434 Md. at 642). "We then determine whether the trial court was 'legally correct in its decision to dismiss.'" *Kendall v. Howard Cty.*, 431 Md. 590, 601-02 (2013) (quoting *Washington Suburban Sanitary Comm'n v. Phillips*, 413 Md. 606, 618 (2010)). Thus, our standard of review is *de novo*.

"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." Md. Code (1973, 2013 Repl. Vol.), § 5-101 of the Courts and Judicial Proceedings Article ("CJP") (emphasis added). Ordinarily, the accrual date is determined by the judicially developed discovery rule. *Poffenberger v. Risser*, 290 Md. 631, 636 (1981). That rule provides that a cause of action accrues when the plaintiff knows, or in the exercise of ordinary diligence should know, of the nature and cause of her injury. *See Mathews v. Cassidy Turley Md., Inc*., 435 Md. 584, 611 (2013); *Hecht v. Resolution Trust Corp*., 333 Md. 324, 334 (1994).

Beyond the discovery rule, there are other circumstances that may affect the accrual date of a cause of action, and therefore the time when the limitations period begins to run. Under the "continuation of events" doctrine, a plaintiff who was in a continuing confidential or fiduciary relationship with the adverse party is entitled to relax her guard and rely on the good faith of the fiduciary during the continuation of the

relationship. Until such time as she is placed on actual notice of facts that would cause an ordinary person to suspect an abuse of that relationship, her cause of action does not accrue and limitations does not begin to run. *Frederick Road Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 97–98 (2000). The "continuation of events" doctrine is founded upon the "equitable principle of detrimental reliance." *Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A.*, 152 Md. App. 698, 714 (2003).

In addition, under the statutory fraud exception, if a plaintiff is kept in ignorance of her cause of action "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*." CJP § 5-203 (emphasis added). "[A] plaintiff wishing to invoke [CJP § 5-203] must plead fraud with particularity." *Supik*, 152 Md. App. at 715.

On appeal, Natashia makes arguments based on the continuation of events doctrine and the fraud exception.[5] She maintains that the facts alleged in her first amended

[5] She also argues that she did not sustain any injury until December 3, 2012, when this Court issued its mandate. This argument has no merit. If Kerpelman breached the standard of care in 1988 by advising Annette to settle Natashia's lead paint claim against Mumaw for just $1,000 without determining that Mumaw had insurance to cover a much larger settlement or judgment, Natashia suffered "compensable damages that c[ould] be proven with reasonable certainty" then. *Supik*, 152 Md. App. at 719 (citation omitted). In addition, Natashia argues that she did not suffer any injury until our mandate was issued on December 3, 2012, because, under the terms of her contingency fee agreements with Kerpelman, she did not incur any attorneys' fees during the pendency of the 1986 or the 2003 Lead Paint Cases. She did not allege facts in her first amended complaint to support this assertion, and therefore, we decline to consider it. This also is the basis for Natashia's argument that she should have been granted leave to amend her complaint a (Continued…)

complaint created a question of fact as to whether, under the continuation of events doctrine, her cause of action did not accrue until after December 3, 2012, when her attorney-client relationship with Kerpelman terminated. In her view, a reasonable fact finder could find that until then she could not, in the exercise of ordinary diligence, have discovered that her injury (the grossly inadequate settlement of her lead paint claim in 1988) was caused by Kerpelman because Kerpelman affirmatively misled her into thinking that the cause of that settlement was a misrepresentation by Mumaw or his attorney, not any negligence by Kerpelman, *and* Kerpelman repeatedly assured her that her appellate challenge to the grant of Mumaw's motion to dismiss in the 2003 Lead Paint Case was meritorious. She primarily relies upon *Brown & Sturm* to support this argument. Natashia also argues that her allegations of fact created a jury question as to whether limitations was tolled by fraud under CJP section 5-203.

Kerpelman responds that the circuit court correctly determined, on the facts alleged, that by 2009 Natashia "had notice of all facts that could give rise to any asserted legal malpractice action as to her 1986 and 2003 lead paint cases[.]" He maintains that a cause of action for legal malpractice accrues upon the entry of an adverse judgment in the underlying case, not upon an appellate affirmance of that judgment, and, as such, Natashia's claim accrued no later than April 13, 2010, when the circuit court entered its

(…continued)
second time. As noted, our resolution of the first issue in this appeal obviates the need to address that argument.

final judgment in the 2003 Lead Paint Case. He argues, moreover, that the "continuation of events" doctrine has no application here, and that Natashia did not plead fraud with sufficient particularity.

Kerpelman relies primarily on *Watson v. Dorsey*, 265 Md. 509 (1972), and *Associated Realty Company v. Kimmelman*, 19 Md. App. 368 (1973), to support his argument that Natashia's cause of action accrued no later than April 13, 2010. In *Watson*, the Watsons alleged that their former attorney, Dorsey, had committed legal malpractice by failing to call certain witnesses and produce certain evidence at trial in an ejectment action, resulting in a judgment against them. More than three years after the entry of that judgment, but within three years after the judgment was affirmed on appeal, the Watsons sued Dorsey for legal malpractice. The court dismissed the suit on the ground that their action was time-barred.

The case reached the Court of Appeals, which affirmed. It explained that Maryland follows the discovery rule, not the broader "maturation of harm" rule that some states have adopted. The Court opined that the Watsons were

> charged with knowledge that they had been wronged *as soon as the ejectment case was decided against them*. They felt that certain witnesses could testify as to certain things (which they enumerated to the lawyer) that would be favorable to their cause. Their lawyer did not call those witnesses and they lost their case.
>
> *The connection between the failure to produce their witnesses and the loss of their case could not have failed to come into their consciousness immediately*. Whether in fact there was a connection would seem to be at least open to doubt; but they must at once have thought that the failure to produce the testimony they told the lawyer was so important was a cause, and the loss of the case an effect. Yet they did not sue their lawyer until 45 months had passed, and the law required them to sue within 36 months.

> The Watsons urge upon us that Dorsey continued to be their lawyer until after the ejectment case was affirmed by the Court of Appeals . . ., that there was a relationship of trust and confidence between clients and lawyer and that it is unreasonable in this situation to say that the clients should sue the lawyer until the last available court has spoken. *We agree that conceivably there may be situations of client and lawyer relationship where the client did not discover or could not reasonably have discovered during the continuation of the relationship that he had been wronged, but this case is not one of them.* The basic test of the discovery rule consistently is the "knew or should have known" test and the Watsons certainly should have realized the simple and obvious connection (if connection in fact there was) between the absent witnesses and the loss of the case.

Id. at 513 (emphasis added).[6]

Kimmelman, decided the year after *Watson*, did not involve the continuation of events doctrine. Rather, the issue was whether the facts adduced on the summary judgment record could support a reasonable finding that the cause of action was tolled by fraud, under the statutory predecessor to CJP section 5-203. Associated Realty, a real estate company, sued its former lawyers for malpractice, alleging negligence in the handling of their defense in an underlying civil action, both at trial and on appeal. The lawyers moved for summary judgment, arguing that the malpractice suit was time-barred because it was filed more than three years after judgment was entered against Associated Realty in the underlying case. Associated Realty opposed the motion and, in a supporting affidavit by its president, attested that the lawyers had "kept [Associated Realty] in ignorance of [its] cause of action by falsely asserting . . . that they would reverse said loss

[6] The Watsons did not allege that Dorsey had fraudulently concealed the existence of their cause of action against him.

in the Court of Appeals." 19 Md. App. at 370. The circuit court granted summary judgment in favor of the lawyers.

On appeal, Associated Realty acknowledged that ordinarily, under *Watson*, its cause of action for legal malpractice would have accrued when judgment was entered against it by the trial court in the underlying case. It argued, however, that the defendant lawyers misled them into thinking that the loss at trial would be reversed on appeal, and that constituted concealment of their cause of action by fraud, under the statutory exception. We rejected this argument, reasoning that the lawyers' assurances about the outcome of the appeal "would do nothing to conceal the cause of action," and might actually highlight its existence, particularly with respect to the "cost of the appeal." *Id*. at 372. Relying on *Leonhart v. Atkinson*, 265 Md. 219 (1972), we emphasized that to make a showing of fraudulent concealment of a malpractice claim, a plaintiff cannot simply allege that her lawyer continuously maintained that his strategic position was correct. Rather, the plaintiff must allege that her lawyer sought to affirmatively conceal his negligent acts or urged the client to forbear a lawsuit. No such facts had been alleged by Associated Realty. We affirmed the judgment.

As noted, Natashia relies upon *Brown & Sturm*, 360 Md. at 76, to support her position that, on the facts alleged, the continuation of events doctrine could be found to apply. In *Brown & Sturm*, Mr. and Mrs. King owned a large parcel of property in Montgomery County. In 1981, they retained an attorney and friend, R. Edwin Brown, at Brown & Sturm, to advise them about transferring the property to their children. They

also sought advice from their accountant and another attorney, G. Van Velsor Wolf, at Piper & Marbury. Brown and Wolf disagreed about the proper method to value the Kings' property. The Kings ultimately followed Brown's advice and transferred their property to their children for the amount recommended by him. Wolf wrote a letter to the Kings and Brown expressing his concerns about the future tax implications of the transfer and explaining the minimum appropriate value he would have assigned to the property. That value exceeded the one used by the Kings, upon Brown's advice, by $20 million.

After the Kings died in the mid-1980s, the IRS initiated an investigation into their transfer of the property to their children. It issued a deficiency assessment against the property for more than $68 million in taxes and penalties. Brown represented the King children in this dispute and continued to defend the legitimacy of the transfer price. The King children followed his advice to hire a more experienced tax lawyer to argue the case before the tax court and to hire four independent appraisers to retroactively value the property. Those appraisals all came in significantly higher than the transfer value, but significantly lower than the value recommended by Wolf.

Brown assured the King children that they would prevail in the tax court. He abruptly changed course upon learning, two weeks before the scheduled trial, that the IRS had a copy of Wolf's letter. He advised the King children to settle the dispute with the IRS for $20 million and to hire counsel to sue Wolf and Piper & Marbury for legal malpractice arising from a breach of attorney-client privilege. The King children took that advice and hired an attorney recommended by Brown. Brown was actively involved

in prosecuting the legal malpractice suit against Wolf on behalf of the King children. Ultimately, the circuit court entered summary judgment in favor of Wolf and Piper & Marbury on the malpractice claim. Thereafter, the King children discharged Brown as their attorney.

Less than three years later, but more than 7 years after they settled with the IRS, the King children sued Brown for legal malpractice. The circuit court granted summary judgment in favor of Brown on limitations. After a divided panel of this Court affirmed, *see Frederick Road Ltd. P'ship v. Brown & Sturm*, 121 Md. App. 384 (1998), the Court of Appeals took the case and reversed. It reasoned that the King children had a "continuous, confidential relationship" with Brown until their legal malpractice case against Wolf and his firm was dismissed, and that, in light of that relationship, they were "under no duty to make inquiries about the quality or bona fides of the services received [from Brown], unless and until something occur[ed] to make [them] suspicious." *Id*. at 98, 103.

The Court concluded that under the circumstances of the King children's transactions with Brown, there was a genuine dispute of material fact as to when they acquired knowledge that would cause a reasonable person to "undertake an additional, or more thorough investigation." *Id*. at 103. The Court emphasized that Brown and his firm had "dominated the property transaction, the tax litigation, and the malpractice litigation against Wolf and Piper & Marbury" and had given repeated "assurances that the property transaction . . . was legitimate and would be upheld by the IRS." *Id*. at 104. After the

settlement with the IRS, Brown had assured the King children that it was Wolf, not he or his firm, who was responsible for their having to settle the dispute with the IRS, and had urged them to sue Wolf and Piper & Marbury. The Court noted that at no time did Brown or any of the other attorneys involved in the tax court case or the malpractice suit against Wolf and Piper & Marbury advise the King children that they might have a cause of action against Brown for malpractice. The Court opined:

> [R]easonable minds could conclude that, to require the [King children] in this circumstance, while [Mr. Brown] continued to represent them, not only to be suspicious of their lawyers, but to ferret out, by seeking yet more legal advice than that being obtained from [the lawyers working on their case], every possibility that their lawyers may have provided negligent advice, or that they were being defrauded, would amount to the exercise of extraordinary diligence, rather than the usually required, usual or ordinary diligence.

Id. at 105-06.

The *Brown & Sturm* Court distinguished *Watson* on the ground that it did not involve any allegation of fraudulent or negligent concealment. Rather, the Watsons had asked the Court to hold, as a matter of law, that a cause of action for legal malpractice never can accrue during the continuation of a relationship of trust and confidence between the attorney and client. The *Watson* Court declined to do so. The Court in *Brown & Sturm* emphasized that the Watsons had not alleged that their attorney "negligently encouraged forbearance to sue by pursuing a baseless appeal or directing blame at a third party." *Id*. at 117.

We return to the case at bar. Kerpelman is incorrect that *Watson* compels the conclusion that Natashia's cause of action for legal malpractice necessarily accrued upon

the circuit court's entry of a final judgment in the 2003 Lead Paint Case. In fact, under that line of reasoning, the cause of action would have accrued when the $1,000 judgment was satisfied in 1988. As noted above, the *Watson* Court stated that it expected that there could be "situations of client and lawyer relationship where the client did not discover or could not reasonably have discovered during the continuation of the relationship that he had been wronged." *Id.* at 513. That expectation was borne out in *Brown & Sturm*. Thus, we must determine whether Natashia has alleged facts that, if proved, could support a reasonable finding that, under the continuation of events doctrine, Natashia's cause of action for legal malpractice against Kerpelman did not accrue before June 25, 2012. We conclude that she has.

To be sure, as the circuit court found, Natashia's allegations show that by April 13, 2010, when all the remaining claims in the 2003 Lead Paint Case were dismissed, she was on notice that Kerpelman had settled her claim against Mumaw in the 1986 Lead Paint Case for only $1,000; that Mumaw, in fact, had liability insurance that would have covered her claim against him for a substantially higher amount; that Mr. Kerpelman would not have settled the case for $1,000 if he had known that Mumaw had liability insurance; that her brother's lawsuit had settled for $450,000 and that that judgment had been satisfied by Mumaw's liability insurer; and that her claims against the other lead paint defendants in the 2003 Lead Paint Case also had been dismissed. These facts put her on notice that she had been harmed, *i.e.*, that her 1986 Lead Paint Case had been settled for a grossly inadequate sum. As the decision in *Brown & Sturm* makes plain,

however, during a "continuous, confidential relationship" between attorney and client, the client is under no duty to make inquiries unless and until she is on notice of facts that would make her suspicious *that the attorney has acted negligently*. 360 Md. at 100-01. Thus, Natashia's knowledge that she had been harmed by the settlement and entry of judgment in the 1986 Lead Paint Case did not necessarily afford her notice that any action (or inaction) by Kerpelman was the cause of her harm.

Moreover, evidence that a lawyer "direct[ed] blame at a third party" for the injury may be sufficient to create a question of fact as to the accrual date of the cause of action under the continuation of events doctrine. *Id.*, at 117. Natashia alleged facts to show that Kerpelman directed blame at Mumaw and his counsel for the inadequate settlement in the 1986 Lead Paint Case. In his affidavit in support of the motion to revise judgment in that case, Mr. Kerpelman specified that Mumaw, through his counsel, must have misrepresented that he did not have liability insurance and that this misrepresentation "falsely induced" Kerpelman to advise Annette to settle Natashia's claim for only $1,000. This attestation diverted attention away from Kerpelman's own misconduct in failing to obtain interrogatory answers about liability insurance.

On the facts alleged by Natashia, reasonable jurors could find that her cause of action against Kerpelman for legal malpractice did not accrue until the firm ceased representing her, on December 3, 2012, under the continuation of events doctrine. If introduced into evidence and credited by the jurors, these facts establish that Natashia reasonably relied on Kerpelman's representations between June 24, 2003, and December

3, 2012, that she had a viable claim against Mumaw, that *res judicata* was not a defense to that claim, that the 1988 settlement resulted from a fraud perpetrated by Mumaw and his counsel on Kerpelman and not from any wrongdoing by Kerpelman, that Kerpelman was vigorously pursuing her remaining legal claims against the other lead paint defendants, that her appeal from the dismissal of her claim against Mumaw was meritorious, and that that claim would be resurrected by this Court. *See Id.* at 101 ("A client is entitled to believe a lawyer who says 'I am your lawyer, why not trust me, I am a lawyer. I would not do anything that is wrong.'"). Reasonable jurors also could find that Natashia could not have discovered the existence of her claim by ordinary diligence because she relied on Kerpelman to advise her of "all information that is significant and material to the matter that is the subject of the relationship," including the existence of a potential malpractice claim for the handling of the 1986 Lead Paint Case. *Id.* at 103.

It is obvious that the circumstances alleged here are far afield from those in *Watson*, where, as the Court of Appeals explained, it had to have been evident to the Watsons by the close of trial in the underlying case that their lawyer had breached his duty of care and caused their injury. In this case, by contrast, the alleged actions were sufficient to make the date of the accrual of Natashia's legal malpractice case an issue of fact, under the continuation of events doctrine, so that it was legally incorrect to grant a motion to dismiss on limitations. *See Litz*, 434 Md. at 641 ("When it is necessary to make a factual determination to identify the date of accrual, . . . those factual

determinations are generally made by the trier of fact, and not decided by the court as a matter of law.").

We also conclude that on the facts alleged, if introduced into evidence and credited, reasonable jurors could find that Kerpelman fraudulently concealed Natashia's cause of action for legal malpractice and that Natashia did not discover the fraud until after December 3, 2012. According to the allegations, in 2003, when Natashia approached Kerpelman about representing her in a lead paint case against Mumaw and others, Kerpelman knew that the firm had represented her in the 1986 Lead Paint Case against Mumaw, which had been settled for $1,000. For two years, Kerpelman did not tell Natashia about the existence of the 1986 Lead Paint Case and the settlement of that case. Only after Mumaw filed a motion to dismiss on the ground of *res judicata*, making it impossible for Kerpelman to proceed with the case without revealing that information to Natashia, did Kerpelman do so. At the same time, he filed the motion to revise judgment in the 1986 Lead Paint Case with a supporting affidavit casting blame on Mumaw and his attorney for misrepresenting that Mumaw did not have liability insurance. Mr. Kerpelman did not reveal his own failure to obtain interrogatory answers on the issue of insurance, deflecting responsibility to Mumaw and his lawyer.

Natashia's allegation that Kerpelman advised her that the order dismissing her claim against Mumaw on the basis of *res judicata* would be vacated on appeal, further supports fraudulent concealment. While an allegation that a lawyer "continuously maintained" that his strategic position was correct may not always rise to the level of

fraudulent concealment, *see Kimmelman*, 19 Md. App. at 372, here, Natashia also alleged that Kerpelman did not have a good faith basis to note an appeal from the April 13, 2010 judgment. Rather, he did so only "to prevent and/or further delay [her] from discovering [his] malpractice"; he purposely delayed the entry of a final appealable judgment by declining to dismiss the remaining lead paint defendants while assuring her that he was diligently prosecuting those claims; *and*, contrary to his representations to her, he took no action in her case between the entry of the August 30, 2005 order dismissing her claim against Mumaw and the April 13, 2010 dismissal of the case (except to move to defer dismissal).

The facts alleged are specific enough to satisfy the fraud pleading requirement and are sufficient to support a reasonable finding that Kerpelman deceived Natashia about her cause of action for legal malpractice. For this reason also the court erred in dismissing Natashia's legal malpractice case on the ground of limitations.

JUDGMENT VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY THE APPELLEE.