Circuit Court for Baltimore City
Case No. 24-C-16-004204

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1889

September Term, 2016

BRIAN SHULMAN, et al.

v.

BENJAMIN ROSENBERG, et al.

Graeff,
Kehoe,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: January 4, 2018

Brian Shulman, Bryan Holden, and David Repko (appellants/plaintiffs) appeal two rulings by the Circuit Court for Baltimore City: a denial of their motion to remove to another jurisdiction their 19-count complaint against Benjamin Rosenberg, North Shore at Canton, Inc., and North Shore Waterfront, L.L.C., (appellees/defendants), and the grant of appellees' motion to dismiss the complaint because it had been filed outside the statute of limitations. Appellants raises two questions on appeal, which we have slightly reworded:

I. Did the trial court err when it denied appellants' motion for removal?

II. Did the trial court err when it granted appellees' motion to dismiss because the question of whether the complaint was barred by the statute of limitations was for a jury to decide, not the court as a matter of law?

We shall affirm the circuit court's rulings.

FACTS

In 2002, the condominium community known as North Shore at Canton, located near the inner harbor and downtown Baltimore, was developed by 2301 Boston Street, LLC. (**Complaint PP11-12**) In 2003, the three plaintiffs and Rosenberg each purchased a condominium unit in the community. (**Complaint PP20-22**) Other than Holden, who sold his unit in 2009, the other plaintiffs and Rosenberg still own their units. (**Complaint P23**)

The marketing material for the condominium community showed a marina as part of the community. (**Complaint P27**) The Condominium Declaration and by-laws for the condominium community, dated October 2002 and filed by the developer in the Baltimore City Land Records, also stated that a "Marina Unit" shall be a part of the development plan and assigned 12 parking spaces in the community to it. (**Complaint PP15-18**) A plat of the community, dated March 25, 2004 and filed in the Baltimore City Land Records,

designated the Marina Unit as Unit H. (**Complaint P26**) Shulman alleged that he was an "avid boater" and only purchased his condominium because he believed that a marina would be built. (**Complaint P29**)

Plaintiffs alleged that on at least two occasions Shulman inquired about the construction of the marina to the "on-site construction/project manager" of the construction company owned by the developer. (**Complaint PP30-31**) Shulman alleged that at first the project manager gave no answer but then told Shulman that the marina would not be built because Baltimore City had denied the required building permits as there was inadequate parking. (**Complaint P31**) Plaintiffs alleged that the project manager's statement was false and was made either negligently or with the intent to mislead at the behest of the developer, who at the time was allegedly one of Rosenberg's clients. (**Complaint PP32-33**) Rosenberg is a Baltimore City attorney and founder of the law firm, Rosenberg Martin Greenberg, LLP ("RMG").

Although the plaintiffs do not state when or give much detail about how the above conversations occurred, those allegations are placed in their complaint before March 26, 2004, when the developer sold the Marina Unit to North Shore Marina, LLC, who plaintiffs allege was also a client of Rosenberg or his law firm. (**Complaint PP34, 36; RE 129**) In 2005, Rosenberg became president of the community association and continues to hold that position. (**Complaint P25**) On November 7, 2005, the Marina Unit was sold to North Shore Waterfront, LLC ("North Shore Waterfront"), a company, plantiffs alleged, that is owned by Rosenberg and several other condominium owners. (**Complaint P37; RE 137**) Plaintiffs alleged that Rosenberg secretly solicited several condominium owners to

purchase the Marina Unit because Rosenberg, like those owners, owned condominiums whose views of the Patapsco River could have been obstructed if the marina was developed. (**Complaint P37**)

Roughly a year later, on November 21, 2006, North Shore Waterfront entered into a "Deed of Conservation Easement" with the Baltimore Harbor Watershed Association, giving the association a perpetual conservation easement over the Marina Unit. (**Complaint P49; RE 45**) Plaintiffs baldly alleged that, on or about September 22, 2013, they obtained "information leading to their discovery of [the defendants'] misconduct related to the acquisition of the Marina Unit" in 2004. (**Complaint P53**)

On July 25, 2016, ten years after the conservation easement was filed and 13 years after they had purchased their condominiums, plaintiffs filed a 19-count complaint against the defendants alleging that the defendants negligently or intentionally breached their duty to the community by not informing the community members of the opportunity to purchase and develop the marina, and fraudulently stopping the building of the marina. (**Complaint P59**) The causes of action were in constructive fraud, intentional misrepresentation, negligent misrepresentation, unfair competition, negligence, and civil conspiracy. (**Complaint PP64-189**) The plaintiffs sought declaratory relief, compensatory and punitive damages, and specific performance requiring the defendants to immediately, and at their expense, construct and maintain a marina. (**Complaint P39, 190-207**)

On the same day as the complaint was filed, the plaintiffs filed a motion seeking to remove their case from the Circuit Court for Baltimore City to another circuit. (**RE 43**) The court denied the motion. (**RE 54**) The defendants filed a motion to dismiss arguing, among

other things, that the complaint was barred by the statute of limitations. (**RE 56, 58**) The court held a hearing and, after hearing the parties' arguments, granted the defendants' motion. (**RE 188-235**) It is from these two rulings that appellants appeal.

We shall provide additional facts where necessary below.

DISCUSSION

I.

Appellants argue that the lower court erred when it denied their motion to remove their case from the Circuit Court for Baltimore City to another jurisdiction. They allege, as they did below, that they could not receive a fair trial because appellees had made contributions to a political action committee that supported the reelection of many of the judges sitting on the Baltimore City Circuit Court. (**ANTBr. at 17**) Appellees respond that the trial court properly denied appellants' motion for removal. We agree with appellees.

The Maryland Constitution (Md. Const.), Art. IV, § 8(c) guarantees the citizens of Maryland the right of removal of a case to another jurisdiction, and states in part:

> [I]n all suits or actions at law . . . pending in any of the courts of law in this State which have jurisdiction over the cause or case, in addition to the suggestion in writing of either of the parties to the cause or case that the party cannot have a fair and impartial trial in the court in which the cause or case may be pending, it shall be necessary for the party making the suggestion to make it satisfactorily appear to the court that the suggestion is true, or that there is reasonable ground for the same; and thereupon the court shall order and direct the record of the proceedings in the cause or case to be transmitted to some other court, having jurisdiction in the cause or case, for trial. The right of removal also shall exist on suggestion in a cause or case in which all the judges of the court may be disqualified under the provisions of this Constitution to sit. . . . The General Assembly shall modify the existing law as may be necessary to regulate and give force to this provision.

Md. Rule 2-505(a) implements the two grounds provided for removal by the constitution:

> (1) Prejudice. In any action that is subject to removal . . . any party may file a motion for removal accompanied by an affidavit alleging that the party cannot receive a fair and impartial trial in the county in which the action is pending. If the court finds that there is reasonable ground to believe that the allegation is correct, it shall order that the action be removed for trial to a court of another county.
>
> (2) Disqualification of all judges. In any action in which all the judges of the court of any county are disqualified to sit by the provisions of the Maryland Constitution, any party, upon motion, shall have the right of removal of the action to a court of another county or, if the action is not removable, the right to have a judge of a court of another county preside in the action.

The purpose of removal is "to get rid of the influence of local prejudice in the community from which the jury to try the case was to come, and thus, as far as practicable, to secure a fair and impartial trial by jury." *Redman v. State*, 363 Md. 298, 323, *cert. denied*, 534 U.S. 860 (2001) (quotation marks and citations omitted).

As to the first ground for removal set forth in Md. Rule 2-505(a)(1), our review of a circuit court's discretionary decision whether there are reasonable grounds for removal is a mixed question of law and fact that we review *de novo*. *Hoffman v. Stamper*, 155 Md. App. 247, 284 (2004), *aff'd in part, rev'd in part and* remanded, 385 Md. 1 (2005) (citations omitted). As to the second ground for removal set forth in Md. Rule 2-505(a)(2), in the rare case where all the sitting circuit court judges in a county are disqualified, the Rule provides that an out of county judge may be assigned to the case rather than requiring the case to be transferred to another county, essentially vitiating the right of removal created in the constitution for these situations. *See* John A. Lynch, Jr., & Richard W. Bourne, *Modern Maryland Civil Procedure* 2-136-37 § 2.5(f)(3), n.172 (2d ed. 2004). Under either ground for removal, the party arguing that they cannot have a fair and impartial trial in the

court in which the action is brought bears the burden of setting forth reasonable grounds for that belief. *See* Md. Const., Art. IV, §8(c) and *Boyd v. State*, 321 Md. 69, 80-81 (1990). Notwithstanding the right of removal, we are mindful that the Maryland General Assembly has indicated a preference for civil actions to be brought in "'a county where the defendant resides[.]'" *Smith v. Pearre*, 96 Md. App. 376, 386 (quoting Md. Code Ann., Cts. & Jud. Proc. § 6-201), cert. denied, 332 Md. 454 (1993). Moreover, "[a] judge is presumed to be impartial[.]" *Boyd*, 321 Md. at 80 (quotation marks and citation omitted).

In support of their motion to remove, appellants alleged that Rosenberg made two contributions through his law firm RMG to the Baltimore City Sitting Judges Committee ("BSJC"), a political action group that supports the reelection of certain sitting judges. (**RE 43 PP2-5**) Specifically, RMG made a contribution of $250 to BSJC in 2007, and a contribution of $450 in 2010, which contributed to the reelection of 18 of the sitting Baltimore City Circuit Court judges and one retired judge. (**RE45 PP6-8; RE46**) To further support their argument for removal, appellants point out that at a recent hearing on a separate matter involving Shulman and Rosenberg/RMG, Judge Avery of the Baltimore City Circuit Court recused herself because "she had personal interaction with RMG as part of the [BSJC]." (**RE44 PP2; RE51 P4**) Appellants argued that based on the above information, it is clear that they cannot receive a fair trial. Judge Nance denied appellants' motion for removal, noting that even if the BSJC was responsible for the reelection of 18 judges and one retired judge, there are a total of 33 sitting judges on the Circuit Court for Baltimore City and numerous retired judges. (**RE 54**)

To the extent that appellants argue that they are entitled to discretionary removal of their case to another jurisdiction under Md. Rule 2-505(a)(1), appellants' argument is without merit. As stated above, the standard for removal is a particularized one: the party seeking removal must allege personal prejudice as to why they cannot receive a fair and impartial trial. Two contributions totaling less than $1,000 to the BSJC over a ten year period of time, without more, is insufficient to show reasonable ground to believe that any judge sitting on the Circuit Court for Baltimore City is partial to the appellees. We note that appellants have not alleged that Judge Nance, the circuit court judge who denied their motion for removal, had any kind of relationship with Rosenberg/RMG affecting the judge's ability to be fair and impartial over the case. Just because Judge Avery believed it was appropriate for her to recuse herself from participating in a different case involving Rosenberg/RMG based on the particular circumstances of her situation, it does not follow that appellants would not be treated fairly and impartially by the other judges sitting on the Circuit Court for Baltimore City.

To the extent that appellants argue that they are entitled to the right of removal under Md. Rule 2-505(a)(2) because *all* the sitting circuit court judges in Baltimore City are disqualified, appellants' argument likewise fails. Appellants fail to meet their burden of proof of partiality but rather rely on vague, conclusory statements, such as "the idea that the judge hearing the case may owe their very job to the efforts of [a]ppellees [i]s extremely troubling and raise[s] a heavy cloud of impartiality and impropriety." (**APPBr. at 19**) As the motions court aptly pointed out, even if appellant had sufficiently argued that 19 of the sitting judges may be partial because they had received funds from a political action

committee that RMG/appellee supported, there are still 33 judges on the bench and numerous retired judges.

In sum, appellants' assertions and offers of proof clearly fall short of the standard required for removal, and we therefore find no error by the lower court in denying appellants' motion to remove.

II.

Appellants argue that the lower court erred in granting appellees' motion to dismiss the complaint because it was barred by the statute of limitations. Appellants argue that dismissal was improper because several theories that toll the three-year statute of limitation in this case may have applied and the determination of when they were on inquiry notice of their injury to start accrual of the statute of limitations was a question for a jury, not the court to decide as a matter of law. Appellees argue that the lower court correctly held that the complaint was time-barred by the statute of limitations. We agree with appellees.

Standard of review

Pursuant to Md. Rule 2–322(b)(2), a trial court may grant a motion to dismiss if a complaint fails to state a claim upon which relief may be granted. *See Schisler v. State*, 177 Md. App. 731, 742 (2007). The Court of Appeals has described the standard of review by which we review a motion to dismiss as follows:

> In our review of the grant of a motion for dismissal . . . we accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party. Typically, the object of the motion is to argue that as a matter of law relief cannot be granted on the facts alleged. Thus, consideration of the universe of "facts" pertinent to the court's analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.

Litz v. Maryland Department of the Environment, 434 Md. 623, 639 (2013) (some quotation marks and citations omitted) (ellipses in original). The standard of review "is whether the trial court was legally correct." *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 71 (1998) (citations omitted). *See also American Civil Liberties Union Foundation of Maryland v. Leopold*, 223 Md. App. 97, 110 (2015). Although we assume "the truth of the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn from those allegations[,]" *Leopold*, 223 Md. App. at 110 (citation omitted), "[b]ald assertions and conclusory statements" shall not suffice. *Adamson v. Correctional Med. Svcs., Inc*., 359 Md. 238, 246 (2000) (quotation marks and citation omitted).

Before we address the merits of appellants' argument, we shall briefly discuss the effect of two documents appellees' attached to their motion to dismiss: the 2005 deed evidencing the sale of the Marina Unit from the developer to a company owned in part by Rosenberg, and a 2006 deed evidencing the sale of a conservation easement over the Marina Unit. Both deeds were filed in the Baltimore City Land Records. (**RE 195, 199-200**) The complaint referenced the recording of those deeds in the land record, and the appellees' attached the deeds to their motion and relied in part on those documents to argue that the plaintiffs were on inquiry notice that a marina would not be built as early as 2005 or 2006. The lower court referred to the deeds in making its ruling but never explicitly stated that it was relying upon them, relying instead on the 13 year passage of time in finding that the complaint was barred by the statute of limitations. On appeal, appellants' argue that we should not take judicial notice of the deeds in deciding the motion to dismiss

because the deeds were extrinsic to their complaint, although they did not dispute that the deeds were properly recorded. (**RE-220**)

Md. Rule 5-201 governs judicial notice. A court may take judicial notice of a fact "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Md. Rule 5-201(b). A court is required to take judicial notice, "if requested by a party and supplied with the necessary information." Md. Rule 5-201(d). "Judicial notice may be taken at any stage of the proceeding." Md. Rule 5-201(f). Land records are the quintessential kind of documents of which we make take judicial notice.

Ordinarily, when a circuit court takes notice of extrinsic facts by accepting documents outside the four-corners of the complaint, the court converts a motion to dismiss into one for summary judgment. *Hrehorovich v. Harbor Hosp. Ctr., Inc.*, 93 Md. App. 772, 782-83 (1992), *cert. denied*, 330 Md. 319 (1993). *See also Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 175 (2015)("[A]s a general proposition . . . where matters outside of the allegations in the complaint and any exhibits incorporated in it are considered by the trial court, a motion to dismiss generally will be treated as one for summary judgment.") (citation omitted). However, we may take judicial notice of the deeds without converting the motion to dismiss into a motion for summary judgment, particularly where the deeds were referenced in the complaint, appellants' do not dispute the accuracy of the deeds, and in oral argument both parties explicitly stated that judicial notice of the deeds would not convert the motion to dismiss into a motion for summary judgment. *Cf. Faya v. Almaraz*, 329 Md. 435, 443–44 (1993) (stating that in reviewing on appeal a lower court's grant on a motion to dismiss, we may take judicial notice of

additional facts that are either matters of common knowledge or capable of certain verification).[1]

Statute of limitations

With exceptions not relevant here, the statute of limitations for a civil action is three years "from the date it accrues[.]" Md. Code Ann., Cts. & Jud. Proc. § 5-101. "[A]s a general rule, a cause of action accrues on the date of the alleged wrong." *College of Notre Dame of Maryland, Inc. v. Morabito Consultants, Inc.*, 132 Md. App. 158, 170 (2000) (citations omitted). Several theories, however, toll the statute of limitations in certain circumstances. We are mindful that even though the Court has taken a less than strict view of the accrual of a cause of action in some circumstances, the Court has said:

> In adopting these common law rules to determine the question of accrual, we recognized that such a determination is "properly made with reference to the rationale underlying statutes of limitations." *Goldstein* [*v. Potomac Elec. Power Co.*], 285 Md. [673] at 684 [(1979)]; *Harig* [*v. Johns-Manville Products Corp.*], 284 Md. [70] at 75 [(1978)]. As we have stated, the purposes of statutes of limitation are to provide adequate time for a diligent plaintiff to bring suit as well as to ensure fairness to defendants by encouraging prompt filing of claims. We said in *Pierce* [*v. Johns-Manville Sales Corp.*, 296 Md. 656 (1983)], "statutes of limitation are designed to balance the competing interests of each of the potential parties as well as the societal interests involved." 296 Md. at 665. Therefore, in determining the application of the statute to particular actions, we do so with awareness of the policy considerations unique to each situation.

Hecht v. Resolution Trust Corp., 333 Md. 324, 338 (1994) (secondary citations omitted).[2]

[1] Both appellants and appellees stated in oral arguments that the reference of the deeds did not convert appellees' motion to dismiss into one for summary judgment.

[2] The determination of the date of accrual is generally made by the trier of fact and not by the court as a matter of law. *Litz*, 434 Md. at 641 (citation omitted). The *Litz* Court has stated:

The discovery rule tolling the statute of limitations

The "discovery rule" tolls the accrual of an action until "the plaintiff knows or should have known of the injury giving rise to his or her claim." *Litz*, 434 Md. at 640–41 (citations omitted). Thus, the statute of limitation begins when the plaintiff has either

(continued)

> The question of when a cause of action accrues is ordinarily "left to judicial determination." *Frederick Road Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 95 (2000). . . . When it is necessary to make a factual determination to identify the date of accrual, however, those factual determinations are generally made by the trier of fact, and not decided by the court as a matter of law. . . . Therefore, 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. *See Desser v. Woods*, 266 Md. 696, 703–04 (1972)("It is well settled that the defense[ ] of the bar of the statute of limitations ... may only be availed of by demurrer to a bill of complaint when [it] appear[s] on the face of the bill of complaint, itself, and other matters not so appearing cannot be considered in determining whether or not these defenses are a bar to the alleged cause of action."); *see also Doe v. Archdiocese of Washington*, 114 Md. App. 169, 175 (1997)("If it is apparent from the face of the complaint that the action is barred by the statute of limitations, the complaint fails to state a claim upon which relief can be granted and the statute of limitations can be the grounds for a motion to dismiss.")[.]

Litz, 434 Md. at 641 (some internal and secondary citations omitted).

In *Frederick Road v. Brown & Sturm*, 360 Md. 76, 94 (2000), the Court of Appeals noted that although "[a] grant of summary judgment is appropriate where the statute of limitations governing the action at issue has expired[,]" the Court emphasized that the discovery rule generally requires resolution of factual determinations that are inappropriate in a motion for summary judgment. The Court stated: "whether or not the plaintiff's failure to discover his cause of action was due to failure on his part to use due diligence, or to the fact that defendant so concealed the wrong that plaintiff was unable to discover it by the exercise of due diligence, is ordinarily a question of fact for the jury." *Frederick Road*, 360 Md. at 96 (quotation marks and citations omitted).

actual or inquiry notice of the injury. The Court of Appeals has explained inquiry notice as:

> 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 such an investigation would in all probability have disclosed if it had been properly pursued. In other words, a purchaser cannot fail to investigate when the propriety of the investigation is naturally suggested by circumstances known to him; and if he neglects to make such inquiry, he will be held guilty of bad faith and must suffer from his neglect.

Poffenberger v. Risser, 290 Md. 631, 637-38 (1981) (citations and quotation marks omitted). *See also Bank of New York v. Sheff*, 382 Md. 235, 247 (2004)(holding that the statute of limitations did not start running when the firm actually discovered that no financing statement had been filed but when "the firm was on inquiry notice that financing statements may not have been filed, triggering a duty on its part to make an investigation[.]"). "[W]hen a plaintiff has knowledge of circumstances indicating that he may have been harmed, the law imposes a duty on that plaintiff to investigate whether in fact he has been harmed." *Russo v. Ascher*, 76 Md. App. 465, 470 (1988). "[I]t is the discovery of the injury, and not the discovery of all of the elements of a cause of action that starts the running of the clock for limitations purposes." *Lumsden v. Design Tech Builders*, *Inc.*, 358 Md. 435, 450 (2000) (quotation marks and citation omitted).

The continuation of events rule tolling the statute of limitations

Another theory that permits departure from the strict "date of wrong" rule of accrual is the "continuation of events" rule. This theory has been applied where a continuous relationship for services exists between the parties. *Frederick Road*, 360 Md. at 97 (2000) (citing *W., B. & A. Elec. R.R. Co. v. Moss*, 130 Md. 198, 204-05 (1917)).

The theory was first applied in *Vincent v. Palmer*, 179 Md. 365 (1941), where an employee sued his employer based on an agreement to share profits. The agreement was entered into in 1932, but the employer testified that his office gave the employee notice in 1933 that the company was cancelling its profit sharing agreement. The employee alleged that he had no notice of the cancellation and on several occasions had requested his share but each time the employer "promised to figure it up and settle later on." *Id*. at 368-69. The Court held that the employee's claim for profits from 1932 until 1939 was not barred by the statute of limitations, reasoning that the employee's claim was based on "continuous employment" because the contract did not mention the period of employment and the employer did not specify when he would pay the employee his share. *Id*. at 374. The Court concluded that the limitations did not begin to run until the employer made an accounting of the services rendered, which the employer had not yet done. *Id*. at 375. Similarly, in *Waldman v. Rohrbaugh*, 241 Md. 137 (1966), where a patient in a continuing course of treatment with a physician sued the physician. The Court held that in a physician and patient relationship where "the facts show continuing medical or surgical treatment for a particular illness or condition in the course of which there is malpractice producing or aggravating harm, the cause of action of the patient accrues at the end of the treatment for that particular illness, injury or condition, unless the patient sooner knew or reasonably should have known of the injury or harm[.]" *Waldman*, 241 Md. at 142.

The Court has explained that in each of the above cases:

> The reasoning underlying [] these cases is that a relationship which is built on trust and confidence generally gives the confiding party the right to relax his or her guard and rely on the good faith of the other party so long as the

> relationship continues to exist. The confiding party, in other words, is under no duty to make inquiries about the quality or bona fides of the services received, unless and until something occurs to make him or her suspicious.

Frederick Road, 360 Md. at 97–98.

Fraud tolling the statute of limitations

A fraud perpetrated by an adverse party may also toll the accrual date of a cause of action. Md. Code Ann., § 5-203, Cts. & Jud. Proc. Art., provides: "If the knowledge of a cause of action is kept from a party by the fraud of an adverse party, the cause of action shall be deemed to accrue at the time when the party discovered, or by the exercise of ordinary diligence should have discovered the fraud." This section applies where two conditions are met: "(1) the plaintiff has been kept in ignorance of the cause of action by the fraud of the adverse party, and (2) the plaintiff has exercised usual or ordinary diligence for the discovery and protection of his or her rights." *Frederick Road*, 360 Md. at 98-99 (citations omitted). As to the latter condition, the Court has stated:

> Notice is not limited to actual knowledge of the fraud. Nor does it mean discovery of proof which, if believed, would, in the opinion of counsel, take the case to the jury on the merits. It is not limited to admissible evidence....
>
> [B]eing "on notice" means having knowledge of circumstances which would cause a reasonable person in the position of the plaintiffs to undertake an investigation which, if pursued with reasonable diligence, would have led to knowledge of the alleged fraud.

Id. at 99 (some quotation marks and citation omitted).

The Court has made clear that "whether the plaintiff's failure to discover the cause of action was due to a failure to exercise due diligence or to the defendant's concealment of his or her wrongdoing, ordinarily is a question for the jury." *Id*. at 100 (citation omitted).

However, a plaintiff wishing to invoke fraud under "C.J. § 5-203 must plead fraud with particularity." *Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A*, 152 Md. App. 698, 715 (2003) (citation omitted), *cert. denied*, 379 Md. 225 (2004). "'It is the settled rule that [one] seeking any relief on the ground of fraud must distinctly state the particular facts and circumstances constituting the fraud and the facts so stated must be sufficient in themselves to show that the conduct complained of was fraudulent. General charges of fraud or that acts were fraudulently committed are of no avail[.]'" *Thomas v. Nadel*, 427 Md. 441, 453 (2012) (quoting *Spangler v. Sprosty Bag Co.,* 183 Md. 166, 173 (1944)).

The instant case

Appellants argue that the lower court erred in ruling that their complaint was barred by the statute of limitations on grounds that the absence of a constructed marina for 13 years, from the date they purchased their condominiums to when they filed their complaint, was evidence of implied knowledge of circumstances sufficient to put a reasonable person on inquiry notice. Appellants direct us to *Poffenberger v. Risser*, 290 Md. 631 (1981), for the proposition that "the mere existence of a recorded restrictive easement is not sufficient to establish knowledge of a cause of action, as a matter of law." (**ANTBr. at 28**) We find *Poffenberger* distinguishable and agree with the lower court's reasoning.

In *Poffenberger*, the plaintiff purchased land in a planned community and contracted with the defendant to build a house on the property in compliance with all restrictions. The house was built in 1972. The plaintiff discovered that his house did not meet the 15 foot side setback requirement when, in 1976, a parcel of property adjoining the plaintiff's property was surveyed. The plaintiff sued the builder for breach of contract and negligence,

and the defendant responded by arguing that the action was barred by the three-year statute of limitations. The defendant conceded that the plaintiff did not have express knowledge of the wrong when the house was built, but argued that plaintiff had constructive knowledge because the plats and deeds showing the boundary lines were on record. The Court of Appeals rejected this argument, ruling that actual knowledge, whether expressed or implied, was necessary. The Court of Appeals held that the plaintiff lacked express knowledge until the adjoining lot was surveyed, but because there was a factual dispute regarding whether the plaintiff possessed implied knowledge prior to that survey, the Court reversed the grant of summary judgment and remanded. *Id*. at 638.

Here, the lower court ruled:

> [The primary issue] is whether [the statute of] limitations has run on this matter inasmuch as it's now – since 2003 through 2016, 13 years have transpired, 10 years between the time of the occupancy of the Plaintiffs of the condominium and the time they apparently got notice of some malfeasance, whether as a matter of law, those facts that I've enunciated give rise to implied notice, such that this matter would be barred by the . . . relevant statute of limitations[.]
>
> And to my mind, if I'm a reasonable condominium owner and . . . five years have passed, eight years have passed, and nothing has happened, I think the reasonable, diligent property owner would have made inquiry during that time span as to why . . . there was no delivery on the promise, and as such, I find as a matter of law there was inquiry notice at a time prior to the 2013 date when the Plaintiffs claim they were put on notice of some malfeasance.
>
> As a matter of law . . . the beginning date everybody would agree would be 2003, pick 2011, a span of eight years. If I were or any reasonable person were in the condominium owners' shoes, they would have made inquiry such that would have discerned the existence of any impediment to this happening[.]

(**RE 222-23**)

We agree with the lower court's reasoning and find *Poffenberger* distinguishable. Even assuming appellees concealed their actions from appellants in purchasing the marina and placing a restrictive conservation easement on it, they did not conceal the failure of the marina to be built. If the harm was the failure to build the marina, as appellants claim, appellants did not act reasonably in delaying 13 years from the date of purchasing their condos before filing suit. The facts of inquiry notice here are distinguishable from *Poffenberg* because here there was an obvious event that was to occur (the building of the marina) that did not, whereas in *Poffenberg* there was no obvious event that was to occur putting them on notice of their injury.

Moreover, appellants cannot rely on tolling the statute of limitations under the continuous event or fraudulent concealment because they did not make reasonable or diligent inquiry. A bald allegation of inquiry to a project manager of the construction company owned by the original developer was not sufficient due diligence under the circumstances, nor is this allegation of fraud sufficiently particularized. This is not a situation where the appellees had so concealed the alleged wrong that appellants were unable to discover it by the exercise of due diligence. If appellants had reasonably investigated why a marina had not been built, they would have found in the land records that the property had a conservation easement. This they did not do.

Because appellants did not act reasonably under the circumstances in not inquiring into why the marina was not being constructed, and the continuous event theory and allegation of fraud did not toll the statute of limitations, under the unique facts of this case,

the lower court did not err in granting appellees' motion to dismiss on grounds that the complaint was barred by the statute of limitations.

JUDGMENTS AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.