UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2272

September Term, 2013

DAVID G. WILLEMAIN

v.

TOYOTA MOTOR SALES USA, INC., ET AL.

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Graeff, J.

Filed: September 4, 2015

On August 5, 2013, David G. Willemain, appellant, filed a Complaint in the Circuit Court for Howard County against Toyota Motor Sales, USA, Inc., d/b/a Lexus, A Division of Toyota Motor Sales USA, Inc. ("Toyota"), Len Stoler, Inc., d/b/a Lexus of Towson ("Len Stoler"), and Darcars Motors of Silver Spring, Inc., d/b/a Lexus of Silver Spring ("Darcars"), appellees, alleging various breaches of warranty and misrepresentations made by appellees with respect to a new vehicle purchased by his wife, Donora Lynn Dingman.[1] Each appellee filed a motion to dismiss. After a hearing, the court dismissed all counts of the complaint, with prejudice, as to each appellee.

On appeal, Mr. Willemain, an unrepresented litigant, presents several questions for this Court's review,[2] which we have consolidated and rephrased as follows:

1. Did the circuit court err in dismissing the Complaint on the ground that it was barred by the statute of limitations?

2. Did the circuit court err in finding that Len Stoler and Darcars were not agents of Toyota?

[1] At the motions hearing, Mr. Willemain argued that he filed the Complaint on July 25, 2013. The docket entries, however, reflect that the complaint was filed on August 5, 2013.

[2] Mr. Willemain's initial brief set forth seven questions presented. In his reply briefs, he changed the questions presented to the following:

1. Is the service, repair or replacement cont[r]act an auxiliary contract to the contract of sale? Or a collateral contract?

2. Did the [c]ourt below properly dismiss the matter as barred by the four-year limitation of [Md. Code (2013 Repl. Vol.) § 2-725 of the Commercial Law Article ("CL")]??

3. Did the [c]ourt correctly find that Darcars and Len Stoler were not agents of [Toyota Motor Sales]?

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

FACTUAL AND PROCEDURAL BACKGROUND

Because this case involves the propriety of a motion to dismiss, we set forth the facts alleged in the Complaint, as follows. Ms. Dingman, accompanied by Mr. Willemain, purchased a new 2007 Lexus IS250 from Len Stoler dealership. In his Amended and Restated Complaint filed November 25, 2013, Mr. Willemain alleged that, "[a]s part of the purchase," the Lexus "came with a written warrant[y] which provided coverage" for repairs for four years or 40,000 miles. Ms. Dingman died on March 19, 2010, and Mr. Willemain was appointed Personal Representative of her estate and acquired title to the Lexus.

On July 30, 2010, Mr. Willemain began a long road trip from his home in Howard County to Ithaca, New York. During the trip, the Lexus began to malfunction and developed various problems: with water accumulation inside the vehicle; a battery issue; and electrical problems. When Mr. Willemain returned home, he had the car towed to Len Stoler.

Len Stoler left the vehicle on a lot, in the sun, with the windows closed for several days, resulting in mold growth from the water. The manager at Len Stoler then told Mr. Willemain that Len Stoler would not examine the vehicle until the mold was remediated. After Mr. Willemain remediated the mold, the service manager told him that Len Stoler would not service the vehicle until Mr. Willemain provided certification that the car was free of mold. Mr. Willemain was also told that the car was "totaled," and he should file a claim under his insurance policy. Mr. Willemain contacted another certified Lexus dealer, Darcars, and had the vehicle towed there. Darcars told him that the electrical system was

corroded, but because of the vehicle's history, it "refused to honor" the warranty. Mr. Willemain then contacted another vehicle repair shop, not affiliated with Lexus, and was advised that the drain for the air conditioning condensation was a "frequent problem" with the IS250 model and "could be easily corrected." When the problem arose, the vehicle had less than 40,000 miles, and it was less than four years since Ms. Dingman purchased it.

Count I of the complaint alleged that Toyota, Len Stoler, and Darcars "violated the standard express written warrant[y] by refusing to fix" the Lexus. Count II alleged that the two Len Stoler employees with whom Ms. Dingman negotiated the purchase made express representations about the "extraordinary service offered" and "guaranteed 100% satisfaction," representations that Ms. Dingman relied upon and which subsequently were breached. Count III alleged that Toyota was legally obligated to report the "well documented issue of the easily clogged and kinked condensation drain" to the National Transportation Safety Board ("NTSB"), but that it "failed and refused to do so." Count IV alleged that the "refusals to honor the warrant[ies] are gross violations of the Magnuson-Moss Warranty Act."[3]

Toyota, Len Stoler, and Darcars each filed a motion to dismiss. On December 5, 2013, the court held a hearing on the motions. Counsel for Toyota argued that the breach of warranty claim in Count I appeared to be based on the new vehicle limited warranty, i.e., "a four year/40,000 manufacturer's warranty," which was "time barred by the statute of limitations." Counsel stated that the vehicle was purchased on March 14, 2007, and

[3] Magnuson-Moss Warranty Act (Lemon Law), 15 U.S.C. § 2301 *et seq.* (2015). *See* CL § 2-314 (Maryland Uniform Commercial Code).

pursuant to Maryland Code (2013 Repl. Vol.) § 2-725 of the Commercial Law Article ("CL"), the statute of limitations expired on March 14, 2011, four years after the delivery of the vehicle.[4] Mr. Willemain's complaint, however, was not filed until August 25, 2013, well beyond the four-year limitations period. Counsel requested that Count II be dismissed because employees at the dealership were not agents of Toyota and Count III be dismissed because Mr. Willemain was trying to enforce a nonexistent duty on Toyota.

Counsel for Len Stoler adopted Toyota's arguments. It further asserted that there was no manufacturer's warranty from Len Stoler. With respect to the alleged statements by the sales people, it asserted that statements of extraordinary service were puffery and not actionable. Moreover, they were made to Ms. Dingman, and because she was deceased, there could not be any evidence that she relied on these statements. Counsel also asserted that Count IV should be dismissed as not timely filed under the statute of limitations, for the reasons already stated.

Counsel for Darcars adopted the above arguments. She further argued that there was no contract between Mr. Willemain and Darcars.

The court granted the motions to dismiss. With respect to Counts I, III, and IV, it found that limitations expired on March 14, 2011. It further found that, with respect to Darcars, there was no dispute that Darcars was not part of the sales contract, and therefore, there "would be no warranty that would attach to Darcars . . . and that they would have no duty to repair" the vehicle. With respect to Count II, the court found that the employees of

[4] The sections of the Commercial Law Statute cited herein have remained substantively unchanged from 2007, when the 2007 Lexus IS250 was purchased.

Len Stoler were not agents of Toyota, and therefore, Toyota was not liable for any alleged misrepresentations. In any event, it agreed with counsel for Len Stoler that the statements alleged in the complaint constituted "puffery." On December 6, 2013, the court issued its order dismissing the complaint against all the defendants, with prejudice.

STANDARD OF REVIEW

This Court has explained the standard of review of a trial court's order granting a motion to dismiss for failure to state a claim upon which relief could be granted:

> Pursuant to Maryland Rule 2–322(b)(2), "a party may seek dismissal of a complaint if the complaint fails to state a claim upon which relief can be granted." *Id*. "The standard for reviewing the grant of a motion to dismiss is whether the circuit court was legally correct." *Norman v. Borison*, 192 Md. App. 405, 419, 994 A.2d 1019 (2010) (citing *Sprenger v. Pub. Serv. Comm'n of Md.*, 400 Md. 1, 21, 926 A.2d 238 (2007) (citations omitted)). Upon review of the grant of a motion to dismiss, appellate courts "must determine whether the [c]omplaint, on its face, discloses a legally sufficient cause of action." *Pittway Corp. v. Collins*, 409 Md. 218, 234, 973 A.2d 771 (2009) (emphasis in original). We "presume [ ] the truth of all well-pleaded facts in the [c]omplaint, along with any reasonable inferences derived therefrom in a light most favorable to plaintiffs." *Id.* (citation omitted). Additionally, "[i]t is well established in Maryland that, in an appeal from a final judgment, the appellate court may affirm the court's decision on any ground adequately shown by the record." *Norman*, 192 Md. App. at 419, 994 A.2d 1019 (citations omitted). Therefore, "dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff." *Litz v. Maryland Dept. of Env't*, 434 Md. 623, 639, 76 A.3d 1076 (2013) (quoting *Arfaa v. Martino*, 404 Md. 364, 380-81, 946 A.2d 995 (2008) (citations omitted)).

Holden v. Univ. Sys. of Md., 222 Md. App. 360, 366 (2015). "'The well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice.'" *Parks v. Alpharma, Inc.*, 421

Md. 59, 72 (2011) (quoting *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 644 (2010)).

DISCUSSION

Mr. Willemain argues on appeal that the court erred in dismissing his complaint for two reasons: (1) the four-year statute of limitations in CL § 2-725 did not bar his complaint; and (2) Len Stoler and Darcars are agents of Toyota for purposes of the express or implied warranty made at the time of the sale. Although the complaint alleged four counts, we construe the arguments in the brief to be directed solely to Count I, breach of warranty.

We begin by addressing the statute of limitations issue. CL § 2-725 provides, in pertinent part, as follows:

> (1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.
>
> (2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. *A breach of warranty occurs when tender of delivery is made*, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(Emphasis added).

Mr. Willemain argues that the four-year statute of limitations does not bar his claim for two reasons. First, he asserts that the terms of the warranty "are clearly collateral and ancillary to the underlying contract of sale, and therefore, it is not subject to the limitations

period."[5] As Toyota notes, however, this argument was not raised in the circuit court. Accordingly, we will not consider it. Md. Rule 8-131(a) (An appellate court ordinarily will not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court.").

Second, Mr. Willemain contends that the court erred in finding that his complaint was time-barred because, he asserts, the statute of limitations began to run from the date of discovery of the defect, as opposed to the date of delivery of the vehicle. He cites no case law in support of his argument in this regard.

Indeed, the case law supports the circuit court's decision that the complaint, filed more than six years after delivery of the vehicle, was time-barred. "[T]he very purpose of § 2-725 . . . is to provide a finite period in time when the seller knows that he is relieved from liability for a possible breach of contract for sale or breach of warranty." *Washington Freightliner, Inc. v. Shantytown Pier, Inc.*, 351 Md. 616, 626 (1998). CL § 2-725 "means just what it says: a warranty action must be brought within four years of the tender of the goods forming the basis of the warranty." *Mills v. Int'l Harvester Co.*, 554 F. Supp. 611, 612 (D. Md. 1982). "In other words, there is no discovery rule under § 2-725." *Washington Freightliner*, 351 Md. at 623.

In *Washington Freightliner*, 351 Md. 616, the Court of Appeals held that a breach of warranty occurs when tender of delivery is made, regardless of the aggrieved party's

[5] Mr. Willemain's argument in support of this claim consists of a citation to CL § 2-701, which provides that "[r]emedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this title."

lack of knowledge of the breach. *Id.* at 637. Courts applying Maryland law repeatedly have held that the statute of limitations under CL § 2-725 begins to accrue upon delivery. *See, e.g., Lloyd v. Gen'l Motors Corp.*, 575 F.Supp. 2d 714, 721 (D. Md. 2008) (implied warranty claims brought by automobile buyers against manufacturers stemming from allegedly defective seating systems accrued when vehicles were put into service); *Miller v. Bristol-Myers Squibb Co.*, 121 F. Supp. 2d 831, 838-39 (D. Md. 2000) (breast implant recipient's claim against implant manufacturer alleging breach of express and implied warranties accrued when recipient received implants).

Here, although not stated in the complaint, there appears to be no dispute that Ms. Dingman purchased the vehicle on March 14, 2007. Accordingly, the limitations period expired on March 14, 2011, four years after tender of delivery was made. Mr. Willemain did not institute his action until August 5, 2013, more than six years after the date of the original purchase, and more than two years after the limitations period expired. Thus, Mr. Willemain's claim for breach of warranty was barred by the statute of limitations.[6] The circuit court properly granted the motions to dismiss.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[6] Based on our resolution of this issue, we need not address Mr. Willemain's claim that Len Stoler or Darcars were agents of Toyota required to provide warranty service. Even if they were subject to the warranty, which we are not holding, any claim under this breach of warranty claim was properly dismissed as untimely.