UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1011

September Term, 2014

COLEMAN M. HOLLEY, SR., ET AL.

v.

BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS, ET AL.

Wright,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: June 24, 2015

This appeal arises from the Circuit Court for Baltimore City's dismissal of a complaint filed by appellant, Coleman M. Holley, Sr., against appellee, Baltimore City Board of School Commissioners ("Board"). Holley filed his initial complaint on August 9, 2013. After a hearing on November 20, 2013, Holley filed an amended complaint alleging trespass. On April 4, 2014, the Board moved to dismiss the complaint arguing, in pertinent part, that Holley failed to state a claim upon which relief could be granted because the statute of limitations had run. On June 24, 2014, following a hearing on the Board's motion, the court entered an order granting the Board's motion. On July 21, 2014, Holley filed this timely appeal.

We are asked to determine whether the circuit court erred in granting the Board's motion to dismiss. For the following reasons, we affirm the circuit court's judgment.

Facts

Holley is the licensed operator and owner of Best Properties, LLC, a limited liability company, that owns property in Baltimore City. One particular building owned by Holley, through his LLC, was located in the 300 block of East North Avenue. At some time before March 12, 2003, the City of Baltimore ("City") demolished several buildings located at 300 East North Avenue, including the building owned by Holley. In 2003, the land, on which those buildings were located, was paved over to be used as a parking lot for the general public with no restrictions or cost. The City failed to acquire rights to the property still owned by Holley before the demolition or the paving.

Some four years prior to the demolition and paving, a Memorandum of Understanding ("MOU") was entered into in 1989 between the City & Mayor of Baltimore,

and the Board. It established that the City retained ownership of several properties, but that the Board would be allowed to maintain and control the land. The Board was unaware of Holley's ownership interest in a portion of that land, until around March 12, 2003, at which point the Board offered to pay Holley $10,000.00 for clear title to his interest in fee simple. Holley did not accept the Board's offer.

On August 9, 2013, Holley filed a complaint in the circuit court alleging that Baltimore City Public Schools and several defendants, each named in their individual capacity, were both negligent and in violation of the tax code. On September 16, 2013, the Board[1] filed a motion to dismiss. On November 13, 2013, Judge Julie Rubin granted the Board's motion in part, ordering Holley to file an amended complaint. Judge Rubin ruled that the complaint, purported to be a claim of negligence, was actually a claim of trespass; that Baltimore City Public Schools is not a legal entity that can be sued; and that the tax code violations and allegations against the individual defendants were dismissed with prejudice.

On December 4, 2013, Holley filed an amended complaint consistent with Judge Rubin's ruling. The amended complaint alleged that the Board "did intentionally, willfully and wantonly or unwittingly and without consent or privilege illegally enter and interfere with the possession of Plaintiff's conversionary, proprietary, leasehold and absolute property interest." The amended complaint alleged further that "[the Board] controlled,

[1] Baltimore City Public Schools is not a legal entity that may be sued. Md. Code (1978, 2008 Repl. Vol.), Education Article § 4-303 created the Board which is a legal entity. Therefore, the Board, acting on behalf of Baltimore City Public Schools, filed all appropriate motions and responses.

operated, and/or managed, either individually or by the use of agents, servants, and/or employees, the Plaintiff's . . . parking facility," for the purpose of providing:

> [P]arking to City School [sic] staff, students, visitors, civilians, and/or other personnel during 2003 to Present, for a fee or other consideration paid by the Parker or by another on the Parker's behalf indirectly and/or directly, for or in connection with that parking without compensation to the Plaintiff, thus aggravating the continuing damages [sic] of trespassing.

The amended complaint also alleged violations of the tax code which are not addressed in this appeal as Judge Rubin dismissed those allegations with prejudice.

On April 4, 2014, the Board filed a motion to dismiss the amended complaint. The Board's motion included three grounds for dismissal:

1. The Amended Complaint is barred by the statute of limitations.
2. The Amended Complaint fails to state a claim upon which relief can be granted.
3. The Amended Complaint is defective as it lacks a specific demand and therefore jurisdiction is not established.

The Board argued that "[t]he [s]tatute of [l]imitations has clearly expired in this matter" because "[t]he one time paving of the lot is not sufficient [to toll the statute of limitations]." Therefore, pursuant to Md. Rule 5-101, the three-year period during which Holley could be granted relief began in 2003, when the lot was paved, and ended in 2006.

On June 4, 2014, Judge Pamela White held a hearing on the Board's motion to dismiss and granted the motion because the statute of limitations had run. During the hearing, the Board cited *Litz v. Maryland Dep't of Env't*, 434 Md. 623 (2013), and *Bacon v. Arey*, 203 Md. App. 606 (2012), arguing that the tortious act took place when the City demolished the buildings and paved the lot, and that the Board's control of portions of the lot were not sufficient to toll the statute of limitations. Further, the Board averred that

because "[t]here's no access denied to any person on [the] parking lot," Holley's access to his portion remained unfettered. Therefore, according to the Board, there is no "continuing tort" and "[a]t the very most there's a continuing damage" which is "not sufficient to [toll the statute of limitations]."

In response, Holley maintained that the "Board continues to trespass on his property, even to this day." Holley argued that "[b]y occupying [and] controlling the property" the Board "trespassed . . . from 2003 to today." Further, Holley stated that "the tort is the trespass and [the Board] continue[s] to trespass." However, Judge White granted the Board's motion to dismiss the amended complaint, concluding that "[she] could not find that there is any allegation of continuing harm of the sort that the published case authorities [say] might prevent dismissal." In pertinent part, Judge White explained:

> [Holley] had a number of issues back in 2003 about how and why the City demolished the house on [his] lot, along with all the other ten houses on that block. [Holley] had a number of issues back in 2003 about paving the lot. At some point [Holley] decided that [he] should be entitled to get a license to charge people for using the parking spaces on that lot. And it sounds like [Holley] had a number of disputes with the permit authorities and the parking authorities.
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> It seems to me that [Holley has] . . . every right to charge people, to restrict use, to charge people for using the spaces that sit on [his] lot. And I'm not making any decisions that will affect that right. What I am saying is that I haven't seen, I don't see anything on the face of [his] complaint that reflected trespass by the [Board], interfering with, affecting, continuing to alter or affect or interfere or impact [his] use of [his] spaces.
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> This appeal followed.

Standard of Review

An appeal of a dismissal for failure to state a claim is reviewed under a non-deferential standard. *See Parks v. Alpharma, Inc.*, 421 Md. 59, 72 (2011); *see also Lloyd*

v. Gen. Motors Corp., 397 Md. 108, 121-22 (2007). This Court must "assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff." *Id.* (quoting *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643 (2010)). This court is confined to "the universe of 'facts' pertinent to the court's analysis of the motion" by "the four corners of the complaint and its incorporated supporting exhibits, if any." *Id.* (citation omitted).

"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" to dismiss. *Doe v. Archdiocese of Washington*, 114 Md. App. 169, 175 (1997) (citing *G & H Clearing and Landscaping v. Whitworth*, 66 Md. App. 348 (1986) & *Antigua Condominium Ass'n v. Melba Investors Atlantic, Inc.*, 307 Md. 700, 711 n.5 (1986)).

Discussion

Holley failed to state a claim upon which relief can be granted as there were no facts alleged on the face of Holley's complaint that would suggest that the Board is now acting in any way to trespass on Holley's property. A "trespass" is a tort involving "an intentional or negligent intrusion upon or to the possessory interest in [the] property of another." *Mitchell v. Baltimore Sun Co.*, 164 Md. App. 497, 508 (2005) (citation omitted). "In order to prevail on a cause of action for trespass, the plaintiff must establish: (1) an interference

with a possessory interest in his property; (2) through the defendant's physical act or force against that property; (3) which was executed without his consent." *Id.* (citation omitted).

There is nothing in the complaint alleging that the Board continues to interfere with Holley's property interest. Holley's allegation is that he is prevented by the City from taking over the lot and establishing a parking facility. Holley's concern seems to be that he is prevented from getting a permit to take over the entire lot.

In addition, Holley's complaint was filed after the statute of limitations had run. In a complaint for trespass, the Maryland Code dictates the time period in which a claim may be filed:

> 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 with which an action shall be commenced.

Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article § 5-101.

Holley had three years, beginning from the date of accrual, to file a timely complaint. The date of accrual begins "on the date when the plaintiff knew or, with due diligence, reasonably should have known of the wrong." *Bacon*, *supra*, 203 Md. App. at 652 (citation omitted). The record reflects that Holley knew that a tortious interference of the enjoyment of his property took place in 2003 when the City demolished his building and paved over the land. When asked whether he had seen that the lot had been paved over in 2003, Holley said, "[y]es I did." Clearly, the statute of limitations clock began to run in 2003.

However, the "continuing harm doctrine" or "continuing violation doctrine" is an exception to the three-year time restriction. A "continuing harm" or a "continuing

violation" can toll the statute of limitations in cases where there are continuing violations. *See Litz*, *supra*, 434 Md. at 646. When a claimant alleges trespass, "we apply the same principle as with a temporary nuisance claim where every repetition of the wrong creates further liability and creates a new cause of action, and a new statute of limitations begins to run after each wrong perpetuated." *Id.* (citation omitted). In *Litz*, the Court of Appeals held that continuously dumping contaminated water into the plaintiff's privately owned lake was sufficient to toll the statute of limitations, notwithstanding the fact that the plaintiff was informed of the dumping in 1996, but did not file a complaint until 2010. *Id.* at 649.

To apply the continuing harm doctrine, the tort itself must be continuing in nature, not merely the damages. If the alleged harm is more properly understood as the "continuing effects of a single earlier act" then the limitation period is not tolled. *Bacon*, 203 Md. App. at 662 (quoting *MacBride v. Pishvaian*, 402 Md. 572, 584 (2007) (continuing violations that qualify under this theory are continuing unlawful acts, for example, monthly over-charge of rent, not merely the continuing effects of a single earlier act)), *abrogated* by *Litz*, 434 Md. 623, *on other grounds*. Further, "[b]are assertions that there is a continued course of conduct . . . [are] not enough to toll the statute of limitations."

In *Bacon*, the plaintiff claimed that his means of ingress and egress to his property were blocked by the defendant, thereby depriving him access to his property. *Id.* at 619. The plaintiff had reason to know of this blockage in 2002, but did not investigate it and ultimately file a complaint until 2006. *Id.* at 663. We ruled that the continuing harm doctrine did not apply in *Bacon* because the tort took place when the defendant initially

blocked the plaintiff's access and what resulted thereafter was a continuing "effect" which did not toll the statute of limitations. *Id.* at 662.

In the instant case, viewing all well-pleaded facts in the light most favorable to Holley, it is clear that Holley's action is barred by the statute of limitations because the "continuing harm doctrine" or "continuing violation doctrine" does not apply. There is no continuing duty of the sort explained in the *Litz* case that might prevent dismissal. In *Litz*, the claim was that the defendant "had" a duty to control the discharge of contaminated ground and surface water and Litz could assert an ongoing duty of the defendant and that there was a continuous beach of that duty. *Litz*, 434 Md. at 648. The Board's limited control or management over the parking lot is merely the "continued effect" of the property being paved over in 2003, and not acts on the part of the Board that were ongoing and continuing to occur during the three years prior to the time Holley filed his claim.

If there was a trespass, it occurred in 2003 when Holley's building was demolished and paved over. As explained above, the statute of limitations began to run in 2003 when the building was demolished and the lot paved. From that point, Holley had until 2006 to file a complaint. Holley failed to file a complaint until 2013, at which point the statute of limitations had run, thereby depriving Holley's complaint of a cognizable claim. By failing to initiate this complaint in a timely manner, Holley has prejudiced the Board's ability to adequately defend and has violated the rules mandated by the legislature and upheld by the courts.

For the foregoing reasons, we affirm the circuit court's judgment.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.