UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

(Corrected)

No. 2613

September Term, 2014

JEAN LEVASSEUR, ET AL.

v.

GEORGE EKUNO

Krauser, C.J.,
Berger,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: February 2, 2016

This appeal arises from a contract dispute between Jean and Josette Levasseur ("the Levasseurs"), plaintiffs-appellants, and George Ekuno ("Ekuno"), defendant-appellee. Ekuno filed a motion to dismiss, which was granted by the Circuit Court for Montgomery County. On appeal, the Levasseurs present a single issue for our review,[1] which we have rephrased slightly as follows:

> Whether the circuit court erred in granting Ekuno's motion to dismiss.

For the reasons set forth below, we shall affirm the judgment of the Circuit Court for Montgomery County.

FACTS AND PROCEEDINGS

On June 24, 2009, the Levasseurs entered into a contract with Ekuno's company, Global Construction ("Global"), to perform renovation work at their property located at 1121 N. Caroline Street, Baltimore, Maryland, 21230 ("the Property"). The contract provided that in exchange for services provided, the Levasseurs would pay $95,000 to Global. The Levasseurs paid Global $70,000.00 between June 24, 2009 and January 6, 2010. The parties discussed an additional payment of $15,000.00 due to a cost overrun. The Levasseurs paid the additional $15,000.00, but, on or about November 30, 2010, Global stopped working on the Property. The Levasseurs attempted to have Global resume the renovation work, but Global did not do so. Ultimately, the Levasseurs hired

[1] The issue, as presented by the Levasseurs, is:

> Whether The Trial Court Abused Its Discretion When It Granted the Appellee's Motion to Dismiss.

other contractors to finish the work that Global had failed to complete. The Levasseurs paid other contractors approximately $48,878.01 to complete the work.

The Levasseurs initially filed suit on June 12, 2012 against Global and Ekuno. The Levasseurs had difficulty serving the defendants and, on February 23, 2013, the clerk's office sent a notification of contemplated dismissal pursuant to Maryland Rule 2-507.[2] The circuit court granted the Levasseurs additional time to serve the defendants.

[2] Maryland Rule 2-507 provides:

> (a) This Rule applies to all actions except actions involving the military docket and continuing trusts or guardianships.
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> (b) An action against any defendant who has not been served or over whom the court has not otherwise acquired jurisdiction is subject to dismissal as to that defendant at the expiration of 120 days from the issuance of original process directed to that defendant.
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> (c) An action is subject to dismissal for lack of prosecution at the expiration of one year from the last docket entry, other than an entry made under this Rule, Rule 2-131, or Rule 2-132, except that an action for limited divorce or for permanent alimony is subject to dismissal under this section only after two years from the last such docket entry.
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> (d) When an action is subject to dismissal pursuant to this Rule, the clerk, upon written request of a party or upon the clerk's own initiative, shall serve a notice on all parties pursuant to Rule 1-321 that an order of dismissal for lack of jurisdiction or prosecution will be entered after the expiration of 30 days unless a motion is filed under section (e) of this Rule.

(continued...)

On July 8, 2013, the Levasseurs filed affidavits of service on all of the defendants. The court, however, had dismissed the case on June 27, 2013 pursuant to Maryland Rule 2-507.

Rather than filing a motion to vacate dismissal, the Levasseurs opted to file a second lawsuit against Ekuno and Global on September 4, 2013. The second lawsuit added defendant US Tile & Carpet.[3] On March 4, 2014, the defendants filed a motion to dismiss. A hearing on the motion to dismiss was held on April 9, 2014. Neither the Levasseurs nor their counsel appeared for the hearing. The circuit court granted the motion to dismiss on April 11, 2014.[4] The Levasseurs filed a motion to vacate the dismissal on April 29, 2014, which was denied by the circuit court on June 6, 2014.

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[2] (...continued)

> (e) On motion filed at any time before 30 days after service of the notice, the court for good cause shown may defer entry of the order of dismissal for the period and on the terms it deems proper.
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> (f) If a motion has not been filed under section (e) of this Rule, the clerk shall enter on the docket "Dismissed for lack of jurisdiction or prosecution without prejudice" 30 days after service of the notice. If a motion is filed and denied, the clerk shall make the entry promptly after the denial.

[3] Although the company the Levasseurs had hired to perform renovation work did business as Global, the Levasseurs had been instructed to make all payments under the contract to US Tile & Carpet.

[4] The record is silent as to the reason the Levasseurs' second lawsuit was dismissed.

On April 23, 2014, the Levasseurs filed a complaint in their third lawsuit against the defendants. The circuit court set a scheduling hearing for July 25, 2014. Again, neither the Levasseurs nor their counsel appeared.[5] The case was dismissed by July 25, 2014.

On August 27, 2014, the Levasseurs filed their fourth complaint against Global, US Tile & Carpet, and Ekuno. On November 14, 2014, the defendants moved to dismiss on the basis of, *inter alia*, a violation of the applicable statute of limitations.[6] Following a hearing on January 12, 2015, the circuit court dismissed the case with prejudice. This appeal followed.

STANDARD OF REVIEW

The Court of Appeals has set forth the applicable standard of review as follows:

> We recently reiterated the standard of review applicable to motions to dismiss in *Parks v. Alpharma, Inc.*, 421 Md. 59, 25 A.3d 200 (2011), stating:
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> > On appeal from a dismissal for failure to state a claim, we 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

[5] Counsel for the Levasseurs asserts that he did not receive notice of the hearing.

[6] Because, as we shall explain, we hold that the case was properly dismissed on the basis of a violation of the statute of limitations, we need not address the other possible grounds for dismissal raised in the defendants' motion to dismiss.

> inferences, if true, would not afford relief to the plaintiff, i.e., the allegations do not state a cause of action for which relief may be granted. We must confine our review of the universe of facts pertinent to the court's analysis of the motion to the four corners of the complaint and its incorporated supporting exhibits, if any.
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> *Parks*, 421 Md. at 72, 25 A.3d at 207 (internal quotations omitted). In the instant case, Respondent moved to dismiss based on the affirmative defense of limitations, asserting that Petitioner's claims regarding the underlying contractual disputes were time barred, as a matter of law. We have held consistently that "the question of accrual in § 5–101 is left to judicial determination." *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 95, 756 A.2d 963, 973 (2000). We review the grant of Respondent's motion in order to "determine whether the court was legally correct." *Parks*, 421 Md. at 72, 25 A.3d at 207 (quotation omitted), accord *Doe v. Roe*, 419 Md. 687, 693, 20 A.3d 787, 791 (2011) ("In reviewing the Circuit Court's grant of a motion to dismiss, our task is confined to determining whether the trial court was legally correct in its decision to dismiss." (quotations omitted)).

Shailendra Kumar, P.A. v. Dhanda, 426 Md. 185, 193 (2012).

DISCUSSION

Maryland's statute of limitations is codified at Md. Code (1974, 2013 Repl. Vol.), § 5-101 of the Courts and Judicial Proceedings Article ("CJP"), which provides:

> 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.

We have explained that, when considering the statute of limitations

> it is appropriate to take note of the fact that we are not dealing with a common law of limitations or with some judicial doctrine of limitations. We are dealing with the *Statute* of Limitations. As the noun "Statute" expressly states, we are dealing with a legislative policy determination to establish a definite and certain deadline for the filing of a civil lawsuit, notwithstanding the fact that an occasional injustice or hardship might sometimes result from such an arbitrary and definite legislative pronouncement.

Antar v. Mike Egan Ins. Agency, Inc., 209 Md. App. 336, 341 (2012) (emphasis in original). Furthermore, "statutes of limitations are to be strictly construed and courts will decline to apply strained construction that evades the effect." *Sheng Bi v. Gibson*, 205 Md. App. 263 (2012). Although there are "several well delineated exceptions to the three-year statute of limitations" including "fraud, disability of a plaintiff, [and] application of the 'discovery' rule," as we shall explain, no such exception is applicable to the present case. *Id.*

In the present case, the cause of action accrued on November 30, 2010, the date upon which the Levasseurs contend that Global stopped renovation work on the Property. Accordingly, absent the possibility of tolling, the statutory filing deadline was November 30, 2013. As we have explained, "[t]his is the norm from which analysis begins." *Antar*, *supra*, 209 Md. App. at 341.

The Levasseurs assert that the statute of limitations was tolled on June 12, 2012, when they filed their first lawsuit. The authority the Levasseurs cite to, however, does not support their assertion. The Levasseurs' brief reads as follows:

> The Appellants filed their first suit, against the Appellees, on June 12, 2012, **Case No: 364214 V.** When they filed that lawsuit, the statute of limitations was tolled **Bertonazzi v. Hillman**, 241 Md. 361, 216 A.2d 723 (1966) and it would expire in 567 days, unless tolled. That case was dismissed, without prejudice, on June 27, 2013, pursuant to **Rule 2-507**. When the dismissal took effect, the statute of limitations started to run, leaving the Appellants with 567 days, from June 27, 2013, remaining on the applicable statute of limitations, in which to sue the Appellees, unless tolled.

The Levasseurs further assert that the applicable statute of limitations was tolled each time the case was re-filed and that the statute of limitations only ran during the period of time prior to the filing of the initial suit as well as during the periods of time between when each case was dismissed and a new case was re-filed.

The Levasseurs do not explain how the *Bertonazzi* case supports their assertion that the statute of limitations is tolled each and every time a case is re-filed, nor do the Levasseurs provide a pincite to the portion of the case which they believe supports their assertion. As we shall explain, *Bertonazzi* does not support the Levasseurs' position.

We discussed *Bertonazzi* at length in *Antar*, *supra*, 209 Md. App. 344-55. We explained that *Bertonazzi* "carve[d] out a small and narrow exception to the mechanically harsh application" of the statue of limitations. *Id.* at 335. *Bertonazzi* did not involve the general three-year limitation period for civil claims, but rather the six-month limitation period following the qualification of a personal representative within which a tort claimant could bring a claim against the estate of a deceased tortfeasor. We commented,

however, that "[t]he general principles announced by the *Bertonazzi* opinion . . . would apply to the more general Statute of Limitations as well." *Id.*

In *Bertonazzi*, suit should have been brought against the deceased tortfeasor in Baltimore City but had been filed erroneously in Baltimore County. The decedent's residence was located very near the Baltimore City/Baltimore County line and the plaintiff's attorney acknowledged that he had looked at a map but had "read it wrong" when he concluded that the decedent's residence was located in Baltimore County. *Bertonazzi*, *supra*, 241 Md. at 363. The Baltimore County case was dismissed on the basis of improper venue and the plaintiff immediately re-filed the case in Baltimore City. The Baltimore City court subsequently dismissed the re-filed case because it was filed after the limitations period had run. The Court of Appeals reversed, holding that the limitations period had been tolled when the case was filed in the improper venue. *Id.* at 371.

The Court of Appeals has characterized *Bertonazzi* as a "narrow exception" and has explained that "*Bertonazzi* stands alone" and is "confined to the special circumstances which culminated in the filing of the suit in the wrong county." *Walko Corp. v. Burger Chef Sys.*, *Inc*., 281 Md. 207, 214 (1977). We have commented that "[b]ecause of the extreme accumulation of extenuating circumstances, *Bertonazzi* is essentially *sui generis*, if not actually aberrational." *Antar*, 209 Md. App. at 347. The

reasoning of *Bertonazzi* has never been extended to situations such as the case before us, and we shall not extend it in this case.

Furthermore, Maryland does not have a savings statute that would allow the Levasseurs to re-file their complaint within a certain amount of time following a dismissal. Indeed, many states have enacted such statutes. *See generally* C.S.W., Jr., Annotation, *Period within which new action may be commenced after nonsuit or judgment not on merits*, 83 A.L.R. 478 (1933) (collecting cases). While we recognize that other states have enacted such statutes, Maryland has not. As we have explained when addressing the related issue of "relation back" statutes, "[t]he enactment of such a statute [imposing an exception to the statute of limitations] is a matter of public policy left to the discretion of the General Assembly." *Sheng Bi*, *supra*, 205 Md. App. at 268. We will not establish such a policy judicially.[7]

The only other authority cited to by the Levasseurs in support of their assertion that their fourth lawsuit was timely filed is CJP § 5-119, which provides:

> (a)(1) This section does not apply to a voluntary dismissal of a civil action or claim by the party who commenced the action or claim.

[7] Furthermore, even in those states which have enacted savings statutes, the statutes generally do not operate to allow plaintiffs to continually file successive lawsuits. 83 A.L.R. 478 § VI ("It is generally held that the privilege conferred by an enabling provision in the Statute of Limitations may be exercised but once; that is, that such a provision does not give protection to an indefinite number of actions merely because each has been commenced before the period allowed by the saving clause has expired.").

> (2) This section applies only to a civil action or claim that is dismissed once for failure to file a report in accordance with § 3-2A-04(b)(3) of this article.
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> (b) If a civil action or claim is commenced by a party within the applicable period of limitations and is dismissed without prejudice, the party may commence a new civil action or claim for the same cause against the same party or parties on or before the later of:
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> (1) The expiration of the applicable period of limitations;
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> (2) 60 days from the date of the dismissal; or
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> (3) August 1, 2007, if the action or claim was dismissed on or after November 17, 2006, but before June 1, 2007.

CJP § 5-119(a)(2) clearly articulates that the statutes "applies *only to a civil action or claim that is dismissed for failure to file a report in accordance with § 3-2A-04(b)(3) of this article*." The report referred to in CJP § 5-119(a)(2) is a certificate of qualified expert, which is required to be filed in medical malpractice actions. CJP § 5-119 does permit refiling, but only in medical malpractice actions which have been dismissed for failure to file a certificate of qualified expert. Indeed, the Court of Appeals has commented that CJP § 5-119 is "[a] statute specific to medical malpractice actions" which "provides some relief from the statute of limitations when an initial complaint is dismissed for the particular defect that affected the plaintiff's complaint." *Wilcox v. Orellano*, 443 Md. 177, 180 (2015). In short, CJP § 5-119 is not a general savings statute which applies to all claims. The instant case involves a contract dispute, not

allegations of medical malpractice. Accordingly, the Levasseurs' reliance upon CJP § 5-119 is misplaced.

We hold, therefore, that neither *Bertonazzi* nor CJP § 5-119 provide the Levasseurs with the ability to avoid the bar of limitations when the complaint in the present case was

filed more than three years after the cause of action accrued. Accordingly, we shall affirm the judgment of the circuit court.

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