UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 886

September Term, 2016

HENRI JEAN-BAPTISTE

v.

SAXON MORTGAGE SERVICES, INC., ET AL.

Wright,
Graeff,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: May 17, 2017

Henri Jean-Baptiste, appellant, appeals from the ruling of the Circuit Court for Prince George's County, dismissing his amended complaint against Saxon Mortgage Services, Inc. and Meritech Mortgage Services, Inc. (collectively "Saxon"), and Deutsche Bank Trust Company Americas ("Deutsche Bank"), appellees.[1] Although Mr. Jean-Baptiste listed several questions presented in his brief,[2] we have consolidated the questions into the following issue:

> Did the circuit court err in dismissing Mr. Jean-Baptiste's Amended Complaint?

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

FACTUAL AND PROCEDURAL BACKGROUND

According to the Amended Complaint, Mr. Jean-Baptiste purchased real property located at 6443 Brightlea Drive in Lanham, Maryland (the "Property") on January 15, 1998, with a mortgage loan from Option One. On September 23, 2005, he refinanced the loan through Saxon (the "2005 Loan"), with Saxon Mortgage, Inc. ("SMI") as lender and Saxon as loan servicer. The 2005 loan was for $311,200.

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[1] Saxon was formerly Meritech Mortgage Services, Inc. ("Meritech"). On April 9, 2002, Meritech changed its name to Saxon Mortgage Services, Inc. They are the same entity, and Mr. Jean-Baptiste makes no allegations specific to Meritech in his brief.

[2] The questions raised by Mr. Jean-Baptiste are as follows:

> 1. Did the [c]ircuit [c]ourt err in dismissing the [Amended] Complaint based on [the] statute of limitations?
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> 2. Did the [c]ircuit [c]ourt err in dismissing the case based on *res judicata*?
>
> 3. Did the circuit court err in holding that there is no cause of action for wrongful foreclosure?

In August 2006, Mr. Jean-Baptiste contacted Saxon to refinance again (the "2006 Loan"). Saxon provided Mr. Jean-Baptiste with a "Truth in Lending Disclosure Statement," which stated that the applicable interest rate would be 8.050%. The refinance was to include a cash payment of $31,694.86 to Mr. Jean-Baptiste.

At closing, Mr. Jean-Baptiste learned that he was going to be charged interest at the rate of 9%, not 8.050%. He alleged in his Amended Complaint that he "signed the paperwork anyway under the assurances from the settlement attorney that he could rescind the refinance within three days without cost if he thought better of it on review."

Mr. Jean-Baptiste alleged that, on August 23, 2006, two days after the closing, he called Saxon and spoke to an account manager about canceling the 2006 refinance. The account manager referred him to another employee, who told him to fax his Notice of Rescission. After faxing the Notice of Rescission, Mr. Jean-Baptiste called and spoke to Tina Griffin, who stated that "the fax machine was in a different room and that she would go look for it."

Although he was supposed to return to the settlement company on August 25, 2006, to receive his cash payment, he did not go to pick up the check because he believed that he had rescinded the refinance. Mr. Jean-Baptiste alleged that he "continued to make payments on the 2005 Loan for the months of August, September, October, and November of 2006, and those payments were accepted by Saxon."

In November 2006, Mr. Jean-Baptiste received a phone call from Saxon, notifying him that he was late on his payments for the 2006 Loan. He alleged that this phone call was "the first time he learned that Saxon had failed to cancel the loan." Mr. Jean-Baptiste

told Saxon that he believed that the 2006 Loan had been rescinded, and he was current on his payments on the 2005 Loan. In December 2006, Saxon sent him a letter, stating that they "had received his request for information, that his loan history was being researched, and that he could expect to receive a full written response to his dispute" in a few weeks. In January 2007, Mr. Jean-Baptiste received a Certificate of Satisfaction from Deutsche Bank, the owner of the note, indicating that the 2005 Loan had been paid in full.

In July 2007, Deutsche Bank initiated foreclosure proceedings in the circuit court. An initial foreclosure sale of the Property was scheduled for March 7, 2008, but the sale was postponed due to Mr. Jean-Baptiste's filing of bankruptcy petitions. After Deutsche Bank received relief from the automatic stay in Mr. Jean-Baptiste's second bankruptcy proceeding, foreclosure proceedings were reinstituted. The property was sold on July 10, 2009; Deutsche Bank purchased the Property for $291,550.

On August 21, 2009, the circuit court issued a post-sale order *nisi* providing that the foreclosure sale would be ratified unless exceptions were filed on or before September 21, 2009. On December 19, 2009, nearly two months after the deadline in the order, Mr. Jean-Baptiste filed a motion challenging ownership of the Property. The circuit court treated the motion as exceptions to the foreclosure sale. At a subsequent hearing, the court denied the exceptions, finding "no legal nor equitable reason why it should sustain the exceptions," and the foreclosure sale was ratified.

Mr. Jean-Baptiste appealed that decision to this Court. On April 2, 2012, we affirmed the circuit court's decision to overrule Mr. Jean-Baptiste's exceptions and to ratify

the sale, noting that Mr. Jean-Baptiste "never legally rescinded the" 2006 Loan. *Jean-Baptiste v. Burson*, No. 2940 Sept. Term, 2009, slip op. (filed Apr, 2, 2012).

Mr. Jean-Baptiste filed suit against, *inter alia*, Saxon and Deutsche Bank on February 15, 2013. He subsequently filed an Amended Complaint, including five counts: (1) "Violation of the Truth in Lending Act [("TILA")] Right of Rescission," because Saxon "chose to ignore" his faxed Notice of Rescission and foreclosed on the Property ; (2) "Unfair and Deceptive Practices Act," violation of Md. Code (2005 Repl. Vol.) § 13-101 *et seq.* of the Commercial Law Article (II) ("Maryland Consumer Protection Act"), because Saxon made false representations and he "never received nor was credited for the cash from the refinance" ; (3) "Wrongful Foreclosure/conversion, because Saxon "foreclosed on [his] house without authority or permission"; (4) "Mortgage Servicing Abuse Under [the Real Estate Settlement Procedures Act ('RESPA')]," because if the 2006 Loan was not cancelled, then Saxon should have paid $31,694.86 in cash ; and (5) "Settlement Company/Saxon Failure to Perform Fiduciary Duty w Payoff," because Saxon, the title company's principal, knew that Mr. Jean-Baptiste had not picked up the cash-out check or signed the Certificate of Confirmation.

On September 25, 2013, Deutsche Bank removed this action to the United States District Court for the District of Maryland. Deutsche Bank and Saxon filed motions to dismiss, raising the *Rooker-Feldman* doctrine as a bar to Mr. Jean-Baptiste's claims.[3] On

[3] The *Rooker-Feldman* doctrine precludes federal appellate jurisdiction over state court judgments. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983) ("[A] United States District Court has no authority to review final judgments of a state court in judicial proceedings. (continued . . .)

January 13, 2015, the District Court issued a Memorandum Opinion, finding that Mr. Jean-Baptiste's TILA and RESPA claims were barred by the *Rooker-Feldman* doctrine because the claims in the Amended Complaint had already been litigated to conclusion in this Court. Because the District Court lacked subject matter jurisdiction, it remanded the state law claims to the circuit court.

On remand, Deutsche Bank and Saxon filed motions to dismiss the Amended Complaint. They argued that the Amended Complaint should be dismissed under the doctrine of *res judicata*, on the ground that the claims were barred by the applicable statute of limitations, and because the Amended Complaint failed to state a claim for which relief could be granted.

On July 16, 2015, the circuit court held a hearing on the motions. The court granted the motions to dismiss, with prejudice, stating as follows:

> All right. Well, I do – I'm going to grant the motions to dismiss, that there is a failure to state a claim as to some of these. There is no recognized tort or other claim of wrongful foreclosure in Maryland, nor a breach of fiduciary duty. Even if it's somehow interpreted as negligence, the plaintiff has failed to state a claim for such a cause of action.
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> Even if there were and as to the remaining ones that are generally recognized in Maryland, they are barred by doctrines of res judicata and collateral estoppel, and they weren't timely brought, they're barred by limitations.

On June 22, 2013, orders granting the motions to dismiss were entered.

(. . . continued) Review of such judgments may be had only in [the United States Supreme] Court.").

On August 4, 2015, Mr. Jean-Baptiste filed a Notice of Appeal of the June 2015 orders. The appeal was dismissed on December 23, 2015, pursuant to the grant of a motion to dismiss.[4] On August 6, 2015, Mr. Jean-Baptiste filed an Amended Motion to Reconsider the June 22, 2105 orders, as well as a Second Amended Complaint against the remaining defendants, John Burson, Christine Brown, Jason Murphy, and Gregory Britto. The court denied the motion on November 12, 2015. On April 25, 2016, the remaining defendants filed a motion to dismiss the second amended complaint, which Mr. Jean-Baptiste did not oppose. That motion was granted on June 6, 2016, and on June 30, 2016, this appeal was filed.

STANDARD OF REVIEW

This Court has set forth the standard of review of a circuit court's grant of a motion to dismiss, as follows:

> "A trial court may grant a motion to dismiss if, when assuming the truth of all well-pled facts and allegations in the complaint and any inferences that may be drawn, and viewing those facts in the light most favorable to the non-moving party, 'the allegations do not state a cause of action for which relief may be granted.'" *Latty v. St. Joseph's Soc'y of the Sacred Heart, Inc.*, 198 Md. App. 254, 262-63 (2011) (quoting *RRC Northeast, LLC v. BAA Md., Inc.*, 413 Md. 638, 643 (2010)). The facts set forth in the complaint must be "pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *RRC*, 413 Md. at 644.
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> "'We review the grant of a motion to dismiss de novo.'" *Unger v. Berger*, 214 Md. App. 426, 432 (2013) (quoting *Reichs Ford Road Joint Venture v. State Roads Comm'n*, 388 Md. 500, 509 (2005)). *Accord Kumar v. Dhanda*, 198 Md. App. 337, 342 (2011) ("We review the court's decision to grant the motion to dismiss for legal correctness."), *aff'd*, 426 Md. 185 (2012). We will affirm the circuit court's judgment "'on any ground

[4] The appeal was dismissed because the lawsuit was still pending against other defendants.

> adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.'" *Monarc Constr., Inc. v. Aris Corp.*, 188 Md. App. 377, 385 (2009) (quoting *Pope v. Bd. of Sch. Comm'rs*, 106 Md. App. 578, 591 (1995)).

Advance Telecom Process, LLC v. DSFederal, Inc., 224 Md. App. 164, 173-74 (2015).

DISCUSSION

We begin by narrowing the scope of this appeal. Although Mr. Jean-Baptiste's brief appeared to challenge the dismissal of each count in his Amended Complaint, counsel for Mr. Jean-Baptiste clarified at oral argument that he was challenging only the dismissal of Count Four, alleging "Mortgage Servicing Abuse Under RESPA," and Count Five, alleging "Settlement Company/Saxon Failure to Perform Fiduciary Duty w Payoff."[5] Counsel for Mr. Jean-Baptiste also conceded that Counts Four and Five did not involve Deutsche Bank, and therefore, Mr. Jean-Baptiste was not pursuing his appeal with respect to that appellee.

With respect to the claims at issue, Saxon contends that the circuit court properly dismissed Counts Four and Five of the Amended Complaint, listing several reasons. We will begin and end our analysis with the contention that these claims were not filed within the applicable statute of limitations.

In Maryland, "[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 (2005 Supp.) § 5-101 of the Courts and

[5] Counsel conceded that Counts One, Two, and Three involved claims that already had been resolved by this Court in the determination that Mr. Jean-Baptiste "never legally rescinded the" 2006 Loan.

Judicial Proceedings Article. Here, there is no dispute that the applicable statute of limitations was three years. The dispute is when the cause of action accrued. A cause of action "is deemed to accrue on the date when the plaintiff knew or, with due diligence, reasonably should have known of the wrong.'" *Bacon v. Arey*, 203 Md. App. 606, 652 (quoting *Doe v. Archdiocese of Washington*, 114 Md. App. 169, 177 (1997)), *cert. denied*, 427 Md. 607 (2012). "'Nevertheless, the cause of action does not accrue until all elements are present, including damages, however trivial.'" *Id.* (quoting *Doe*, 114 Md. App. at 177).

Mr. Jean-Baptiste contends that his cause of action did not accrue until this Court determined, "on April 2, 2012 that [he] had not rescinded the 2006 Loan because it was not until this time that he was damaged by the failure to either pay him the $31,694.86 'cash out' or credit him with these monies." We disagree.

As noted above, the relevant issue is when Mr. Baptiste knew, or should have known, that the 2006 Loan was not rescinded and that he had not received a cash payment. The Amended Complaint alleges that, in November 2006, Saxon notified Mr. Jean-Baptiste that he was behind on the 2006 Loan payments. The Amended Complaint states that "[t]his was the first time that he learned that Saxon had failed to cancel the loan." In January 2007, Mr. Jean-Baptiste received a Certificate of Satisfaction indicating that the 2005 Loan had been paid in full. Thus, based on his own assertions, Mr. Jean-Baptiste had knowledge that the 2006 Loan had not been rescinded, at the very latest, in January 2007, when he obtained knowledge that the 2005 Loan had been satisfied. And certainly, the initiation of foreclosure proceedings in July 2007 alerted Mr. Jean-Baptiste that the 2006 Loan had not been rescinded. Therefore, the statute of limitations for Counts Four and Five had expired

long before this action was filed on February 15, 2013. The circuit court properly dismissed the Second Amended Complaint.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.