

Circuit Court for Montgomery County
Case No. 432889V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 898

September Term, 2018

ROBERT J. MULLEN, JR.

v.

CAPITAL HOLDINGS 200, LLC., ET AL.

Arthur,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: August 20, 2020

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Appellant Robert S. Mullen, Jr. appeals the decision of the Circuit Court for Montgomery County dismissing his breach of contract and fraud claims and other counts in his complaint against the appellees.¹ Ruling on summary judgment, the court held that Mullen’s action was barred by a release and the statute of limitations. For reasons set forth below, we affirm on the limitations ground.

BACKGROUND AND PROCEDURAL HISTORY

The origin of this litigation is a dispute between business partners in a pizza parlour in Bethesda.² Slicing through the complicated pieces of this disagreement, the parties, on March 31, 2014, initially settled their contentions via a “Settlement Agreement and General Mutual Release.” The settlement was an integral part of Mullen’s repurchase³ of the pizza business from Capital Holdings, which was labeled an “Agreement of Sale of Membership Interests” and dated March 27, 2014. This sales agreement stated that the parties shall execute “mutual general releases, excepting only obligations arising under this [a]greement.”⁴

¹ The appellees are Capital Holdings 200, LLC.; Logan Price, LLC; Michael Wheeler; Paul Logan; and Daniel Price. We will refer to all of the appellees as “Capital Holdings.”

² The business was known by the legal name of Knead Dough, LLC.

³ Mullen had previously owned the pizzeria from 2012 to 2013.

⁴ The sales agreement also contained the following language:

Seller makes no warranties or representations about the condition of the Business, or any other state of affairs affecting Knead Dough, LLC or LPW, LLC. The Purchaser has conducted such investigation as it deems

(Continued...)

The settlement/release agreement⁵ was much more specific in its terms. It said that the parties agreed that the repurchase “shall result in an unconditional release of the parties to this [a]greement.” Under the settlement, Mullen would release and discharge Capital Holdings “from any and all matters, debts, dues, sums of money, accounts, covenants, contracts, controversies, agreements, promises, obligations, damages, losses, expenses, costs, liabilities, claims, judgments, demands, and causes of actions, of whatever kind in law or in equity, whether known or unknown, that it and each of the Mullen Group members now have or may have in the future.” The settlement went on to state that the “Mullen Group” and its members “hereby further specifically acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected or facts in addition to or different from those which they now know or believe to be true, with respect to the matters released herein, including any and all claims that may be asserted under any local, state, or federal ordinance, regulation, statute, or law, excepting, however, claims of any party against the others for breach of this Agreement. It is nevertheless their intention to fully, finally and forever settle and release all such matters, as well as claims, which are presently known to exist, or which may become known to exist.”⁶

necessary and is satisfied with the condition of Knead Dough, LLC, its assets, and the Business, and is purchasing the Interests “as is, where is.”

⁵ Throughout this opinion, we will refer to this document as “the settlement.”

⁶ Similar language released Mullen from claims by Capital Holdings.

Peace did not last long. On May 16, 2017, Mullen filed suit in the circuit court alleging that Capital Holdings breached the sales agreement and engaged in fraud and misrepresentation. After the initial complaint was dismissed, on January 11, 2018, Mullen filed an amended complaint with more details, and also added counts for conversion and “Piercing the Corporate Veil.” Specific allegations of the complaint focused on disputes over April 2014 rent payments, certain April 2014 credit card payments, a pre-March 2014 contract with an entity for customer discounts, an April 2014 payment for inventory, pre-2013 taxes, payment to a food vendor, and failure to discharge a judgment.⁷ Capital Holdings filed a motion to dismiss and/or for summary judgment,⁸ arguing that Mullen’s claims were barred by the three-year statute of limitations and by the March 31, 2014 release. They also contended that Mullen lacked standing as an individual to sue for alleged damages to Knead Dough, LLC. Mullen filed an affidavit in response to the motion.

On April 9, 2018, the circuit court heard arguments and granted the motion stating:

I am granting summary judgment as to each count based upon the release. I think the whole purpose of the release was to allow people to move on with their lives, and say, look, we’re done with this, put this issue behind us.

While the agreement and the contract may have referred to what we wanted the release to say, the release did not say that, it spoke in very

⁷ Attached to the complaint were eight exhibits, mostly financial documents.

⁸ Attached to the memorandum in support of the motion were various exhibits and an affidavit of Michael Wheeler.

general terms. And I'm thinking, as I read it, they wanted to release everything from behind us from here on back, and I think that's what happened, you know. And, so, I do grant summary judgment.

As to the statute of limitations, I would grant it also on that ground for each count, except I'm not so sure about the tax issue, because I'm not a businessman either. And, although Defense counsel's statement about what – and this is not an unsophisticated purchaser; he owned the business before, he is a CPA. It does ring very true to me what Defense counsel said about that was something you would do before you purchased a business check on those taxes. So, I am going to grant summary judgment for those two grounds.

I don't think I have to get into the standing issue at this point.

After an order granting summary judgment was entered, this appeal followed.⁹

QUESTIONS PRESENTED

Mullen casts the issues in the following fashion:

1. Was the trial court's granting of Motion to Dismiss and Summary Judgment legally correct as to the Settlement Agreement and General Mutual Release and Agreement of Sale of Membership Interests entered into by the parties to the action on March 31, 2014?
2. Was the trial court's granting of Motion to Dismiss and Summary Judgment legally correct as to Statute of Limitations claims related to issues that arose prior to the execution of the Release and Contract on March 31, 2014?
3. Was the trial court's granting of Motion to Dismiss and Summary Judgment legally correct as to Statute of Limitations claims related to issues that arose after the execution of the Agreement on March 31, 2014?

STANDARD OF REVIEW

“A trial court ‘shall enter [summary] judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a

⁹ More facts will be discussed later in this opinion.

matter of law.’ Md. Rule 2-501(f). We apply a *de novo* standard of review in determining whether the trial court correctly entered summary judgment.” *Torbit v. Balt. City Police Dept.*, 231 Md. App. 573, 586 (2017) (Citation omitted). “The standard of appellate review of a summary judgment is whether it is legally correct.” *Piney Orchard Comm. Ass’n, Inc. v. Piney Pad A, LLC*, 221 Md. App. 196, 206 (2015) (Quotation marks omitted).

DISCUSSION

MULLEN’S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

One of the grounds for the dismissal of Mullen’s action was the three-year statute of limitations found at Md. Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article, § 5-101.

The sales agreement was dated March 31, 2014. Mullen filed suit on May 16, 2017. So many of the transactions which Mullen focuses on in his complaint occurred before May 16, 2014 that he has to resort to the discovery rule in an attempt to make his action timely.¹⁰

The Court of Appeals has said:

¹⁰ At the hearing in the circuit court, one of Mullen’s lawyers conceded:

It is possible, Your Honor, that at the end of the day it’s possible that there are some claims that could be barred by the statute, that is a possibility. I won’t swear that every single claim is protected, but I know for certain[] that some of the data he simply didn’t discover until later. And, again, whether the statute carries the day or not—whether the discovery rule protects him in that sense or not, I don’t know, Your Honor.

The discovery rule is an exception to the general rule that limitations against a right or cause of action begin to run from the date of the alleged wrong and not from the time the wrong is discovered . . . It permits a plaintiff to sue when the plaintiff ascertains, or through the exercise of reasonable care and diligence should have ascertained, the nature and cause of [the] injury.”

SVF Riva Annapolis LLC v. Gilroy, 459 Md. 632, 649 n. 8 (2018) (Quotation marks, citations, and ellipses omitted). The “should have ascertained” component of the discovery rule is particularly applicable in this case because in the sales agreement Mullen acknowledged that he had conducted an investigation of Knead Dough, LLC, its condition, assets, and business. Also factored into the equation is Mullen’s familiarity with the business as a prior owner and his financial expertise as a CPA.

Focusing on the transactions described in Mullen’s brief, we note that the following alleged misdeeds clearly occurred before May 16, 2014: 1) the dispute over the April 2014 rent payment; 2) the April 2014 conversion of credit card receipts; 3) the failure to disclose a pre-March 27, 2014 contract with Living Social for discounts on the restaurant’s goods; 4) an April 2014 payment for inventory which did not clear the bank and which Mullen had knowledge of before May 16, 2014; 5) the nondisclosure of federal and state taxes which had accrued prior to January 1, 2013;¹¹ and 6) the

¹¹ In the sales agreement, Capital Holdings represented and warrantied that all taxes had been paid “between February 1, 2013 and the closing date.” According to the Wheeler affidavit, these taxes were paid. The sales agreement also recited that Knead Dough, LLC “still owes federal withholding and employment taxes and Maryland sales taxes, which accrued prior to January 1, 2013.”

nondisclosure of various obligations when the March 31, 2014 sales agreement was signed.

As to the alleged fraudulent nondisclosure and Mullen's alleged belated discovery of some of those transactions, we believe the record makes it clear that these items could have reasonably been uncovered by a person with Mullen's financial expertise and prior knowledge of the business during the period in which Mullen represented that he had conducted an investigation of the pizza business and its condition and assets.

For these reasons, we believe the circuit court did not err in granting Capital Holdings's motion for summary judgment on the ground of limitations.¹²

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

¹² Because we uphold the circuit court decision on limitations grounds, we need not reach the contentions of Capital Holdings that Mullen lacked standing to pursue his claims or that the March 31, 2014 release barred his claims.