Circuit Court for Anne Arundel County
Case No. C-02-CV-22-001928

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1045

September Term, 2024

TRACY SMITH, ET UX.

v.

PALMER DESIGN & CONSTRUCTION INC.

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: November 12, 2025

* This is an unreported opinion. The opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On November 18, 2022, appellants Tracy Smith and Hiromi Smith ("the Smiths") filed a six-count complaint against Palmer Design and Construction, Inc. ("Palmer"), alleging various defects and damages caused by Palmer's faulty construction of their home, including standing water and mold induced by Palmer's failure to grade the property in accordance with plans. Palmer moved for summary judgment on the ground that the Smiths' claims were barred by the applicable statute of limitations. The Circuit Court for Anne Arundel County granted Palmer's motion for summary judgment and subsequently denied the Smiths' motion to alter or amend the judgment.

The Smiths noted this timely appeal in which they present the following question: "Did the lower court err in granting summary judgment in favor of the Appellee[ ]?"

Because the evidence presented at the summary judgment hearing established that the Smiths had actual notice of Palmer's defective work outside the limitations period, we conclude that the court did not err in entering summary judgment for Palmer. Accordingly, we affirm.

BACKGROUND[1]

The Smiths' Complaint

The complaint filed by the Smiths on November 18, 2022, alleged six causes of action: Breach of Contract (Count I); Negligent Design and Construction (Count II); Gross

[1] We summarize the facts in the light most favorable to Palmer, the non-moving party, and construe any reasonable inferences to be drawn from the well-pled facts against the Smiths, the moving party. *See Fitzgerald v. Bell*, 246 Md. App. 69, 76 (2020).

Negligence (Count III); Fraudulent Misrepresentation (Count IV); Negligent Misrepresentation (Count V); and Breach of the Consumer Protection Act, codified at Maryland Code (1975, 2013 Repl. Vol.), Commercial Law Article ("CL"), § 13-101 *et seq.* (Count VI). The factual allegations included that the Smiths hired Palmer in July 2014 to build their home and, after moving into the house in August 2016, "without any clear cause, they began experiencing [a] large amount of standing water next to their home." The Smiths initially "contacted Palmer about this standing water" on May 26, 2017, but Palmer failed to fix the problem. The complaint alleged that the standing water became "a recurring experience" at the house. The Smiths also discovered many other defects inside the house, such as mold in the bedroom and the closet, a leaking shower, and an improperly finished wood floor.[2]

According to the allegtions in the complaint, in late 2019, construction on the home next door commenced, and when the Smiths noticed the way the property was being graded, they "realized that with the current position of the grading, their home would receive all

[2] Specifically, in their letter to Palmer on June 14, 2019, the Smiths identified the following defects inside the house: (1) concrete stain on the entire first floor of the house; (2) leaks in the master bath shower; (3) incongruent floor tiles in the master bath; (4) leaks in the dog wash; and (5) improper application of clear coat on the second floor. These interior defects were included in the Smiths' subsequent complaint with the Maryland Consumer Protection Division ("MCPD"), which remains pending. During the summary judgment hearing, the court inquired whether the Smiths' counsel would "agree or concede that . . . any claims to the interior of the property . . . are outside the statute of limitations[,]" and the counsel did not disagree. In the instant appeal, the Smiths do not challenge the grant of summary judgment regarding the interior defects and only challenge the trial court's ruling that their claims regarding Palmer's improper grading fall outside the statute of limitations.

the water run-off from the neighboring property." After speaking with a grading inspector, whom they later identified as Mark Wells, the Smiths "discovered that their grading was incorrect and did not abide by inspection and permit guidelines." Subsequently, Mr. Wells inspected the Smith's house on November 19, 2019, and "found numerous grading and other issues that needed to be addressed."[3] The Smiths claimed that all these defects would cost them "additional money that they did not anticipate spending nor would they need to spend had Palmer correctly performed the work initially." The Smiths further claimed that their house was now "forever devalued" because it would be impossible to correct the grading issue "without moving the [house]."[4]

Palmer Moves for Summary Judgment

On January 12, 2024, Palmer moved for summary judgment, claiming that "the statute of limitations precludes the prosecution of [the Smiths'] claims." Palmer

[3] Although the complaint references "County Inspection Report attached hereto[,]" the record shows no documents attached to the complaint. Instead, the Smiths' opposition to Palmer's motion for summary judgment includes an "Infrastructure and Environmental Programs Inspection Report" that was issued by Mr. Wells on November 19, 2019. We discuss Mr. Wells' November 19, 2019 report further below.

[4] In their responses to Palmer's interrogatories, the Smiths explained that the grading issue was difficult to address because:

> [t]he house foundation is approximately four (4) feet lower than required by the grading permit. The only possible way to correct the grading would be to lift the entire house four (4) feet and create a new foundation at the required height. The house foundation is constructed of a 4'' fiber-reinforced concrete slab with a perimeter concrete block and as such has no means to allow jacking up the foundation.

The responses were attached as Exhibit K to Palmer's motion for summary judgment.

acknowledged that it received an email from Tracy Smith on May 26, 2017, along with "a photograph showing standing water on [the Smiths'] lot." In the email, attached to the motion as Exhibit C, Mr. Smith wrote: "[i]t has to be fixed now. It's filled with thousands of mosquito larva. The drainage issues are so severe that it does not dry up." Mr. Smith wrote to Palmer again on July 5, 2017, and June 14, 2019, regarding various defects inside and outside the house. In relevant parts, the June 14, 2019 letter, attached to the motion for summary judgment as Exhibit E, stated:

> I am writing to formally notify you of my request that you complete the construction of my home in accordance with our contract. **At the present time, the following items remain incomplete:**
>
> * * *
>
> **6) The grading for the house was not done correctly, it is too low per the grading inspector Mark Wells.**
>
> Please contact me at the address or telephone number below to arrange mutually convenient time for you to inspect the premises and make the necessary repairs and/or complete construction as needed.

(emphasis added). Thus, Palmer claimed, the Smiths "were aware of every defect in June of 2019" and "this was more than three years before filing suit." Additionally, Palmer noted that the Smiths had reported the same issues to the Maryland Consumer Protection Division ("MCPD") by October 2018,[5] more than three years before the filing of the

[5] The record indicates that the Smiths had initially filed a claim for reimbursement from the Home Builder Guaranty Fund on or about August 23, 2018, and the MCPD scheduled a hearing for April 5, and 6, 2023. However, in 2023, after learning that the Smiths had filed the complaint in the circuit court, the MCPD stayed the Smiths' (Continued)

complaint.

The Smiths subsequently filed an opposition and a memorandum, arguing that Palmer's summary judgment motion should be denied "as more than one permissible inference may be drawn from the facts as alleged in the [c]omplaint[.]" In response to Palmer's statute-of-limitations argument, the Smiths claimed that they did not know Palmer had built their house "on improperly graded land and too low until . . . November 19, 2019[,]" at which time Wells inspected the house and issued the correction notice. The Smiths also claimed that they could not have known whether the defects were "actually caused by the improper construction by [Palmer] and not some environmental factors" until Mr. Wells's inspection, emphasizing that they were "not construction professionals and would have no reason to suspect the land was not graded properly[.]" Finally, the Smiths argued that "there is an exception to the statute of limitations for fraud" and, because they "alleged fraud in the [c]omplaint and the evidence discovered supports such a claim[,]" Palmer was precluded from raising the statute of limitations as a defense.

The sole exhibit attached to the Smiths' opposition was "Infrastructure and Environmental Programs Inspection Report" by Mr. Wells, dated November 19, 2019, showing that he issued a correction notice regarding the Smiths' home based on the following observations:

> 1. Need to provide grade certification for house and grades as required in the sequence of construction before going vertical.

reimbursement proceeding "until there is a final judgment in the [c]ircuit [c]ourt case and all rights to appeal are exhausted."

> 2. The stormwater management device was not installed in area as shown on the approved plans.
>
> 3. A formal revision must be submitted as to the existing conditions of site that has not been graded in compliance with the approved plans.
>
> 4. Site has drainage issues effecting house and standing water around house that does not properly draining as per approved plans.
>
> 5. House appears to have been constructed 3+/- feet lower than that of the approved plans.
>
> 6. The required fill does not appear to be done per approved plans.

Palmer filed a reply to the opposition, maintaining that the Smiths "were completely aware of the standing water and alleged grading issue long before November 19, 2019[.]" Palmer emphasized that the Smiths filed "no affidavit under oath . . . stating that until November 2019 they believed the standing water was due to excessive rain or high water table[.]" Instead, citing Tracy Smith's emails, Palmer argued that "the facts are indisputable that by as early as May 2017 and June 2019, [the Smiths] were fully aware that the grading of the lot was a potential cause of the standing water" and "they believed [Palmer] was responsible to do that fixing." Palmer further argued that the Smiths' fraud claim does not affect the application of the statute of limitations because "[f]raud only operates to toll the statute of limitations when a party is kept in ignorance of his cause of action by the adverse party's fraud[,]" and yet the Smiths "knew about the claimed improper grading, its impact on their property, and that [Palmer] declined to comply with their demands to fix it" more than three years before the filing of their complaint.

Palmer also submitted a supplemental exhibit in support of the motion for summary

judgment—a handwritten note dated November 15, 2019, signed by Mr. Smith. According to Palmer, this note was included in the Smiths' MCPD proceeding record. The note, filed as Exhibit L, provided:

> Claim # 301010, Palmer Design and Construction
>
> Enclosed is a copy of the notice to the builder along with a copy of the certified mail receipt.
>
> **Recent discoveries have indicated that the builder constructed the house on grading that is ~3 feet too low which has been causing flooding issues.** I'm meeting today with the Anne Arundel Grading Inspector Ed McNape to discuss what the path forward could be if any or if the house as constructed is simply too low for the water table/flooding potential.

(Emphasis added). Palmer argued that summary judgment should be entered on statute of limitations grounds because this handwritten note "firmly establish[ed], without any factual dispute, that [the Smiths] knew about the drainage issues and asserted that [Palmer's] failure to grade was the cause more than three years prior to their filing the lawsuit[.]"

The Circuit Court Grants Summary Judgment

The hearing on Palmer's motion for summary judgment was conducted on April 8, 2024. No witness testified, and no additional evidence was introduced at the hearing. For the most part, the parties argued the motion based on the exhibits submitted by Palmer.

Citing Mr. Smith's June 14, 2019 letter, Palmer's counsel argued that

> there is a specific statement, the grading for the house was not done correctly, it is too low per the grading inspector, Mark Wells. And so this reflects that by June 14 of 2019, the [Smiths] had already been in contact with the gradient inspector from the county, Mr. Wells, who is, of course, the person who authored the point, the report . . . six months -- five months later.
>
> And there was also the expressed understanding that this was an issue of the

> grading is too low and that that is the cause of what is going on in the exterior of their home.

In response, the Smiths' counsel urged that the statute of limitations had not run until Mr. Wilson inspected the Smiths' home and issued the November 19, 2019 report. Counsel emphasized that before receiving the report, the Smiths "didn't know that there was a problem that was caused by Palmer." The court then asked counsel:

> THE COURT: Known or should have known?
>
> [THE SMITHS' COUNSEL]: Well, Your Honor, [Tracy Smith] was relying on the fact that this had already passed all the inspections, including the grading inspection by the county.
>
> THE COURT: But –
>
> [THE SMITHS' COUNSEL]: My client was relying on that fact, so it wouldn't -- and he is a layperson.
>
> THE COURT: **But in June of 2019, he knew or should've known that there was a problem because he put it in his own email. He put it in his own communication to Palmer at that time.** It says: "I'm writing to formally notify you of my request that you complete the construction of my home in 20 accordance with our contract. At the present time the following items remain incomplete," and talks about a bunch of different things. **So on June 14th, . . . he knew the grading for the house was not done correctly, it is too low per the grading inspector, Mark Wells**. So he had had a conversation with the county guy. The county guy already told him what the problem was on June 14th, 2019. That puts the suit outside the statute.

(Emphasis added). Counsel explained that Mr. Smith's June 14, 2019 letter was referring to a shared driveway next door, but the court disagreed, stating, "That's not . . . what it says."

At the end of the hearing, the circuit court announced its ruling on the record, granting Palmer's motion for summary judgment. The court explained:

> [The Smiths'] own communication says Mark Wells is the person who is the end-all be-all on this and pursuant to Mark Wells' comment to him on -- in June of 2019, Palmer was at fault, so suit should've been filed within that. The [c]ourt's relying on several things: "The grading for the house was not done correctly, it's too low per the grading inspector, Mark Wells," from the communication dated June 14, 2019, tells me that the litigant in this case knew or should have known. Certainly had notice that -- his whole lawsuit is premised on the grading for the house wasn't done correctly, and as a result of the grading for the house not being done correctly, his notice date was June 14th, 2019.
>
> For that reason, the [c]ourt's gonna have to grant -- and I will say reluctantly grant the Motion for Summary Judgment filed by the Defendants in this case. And I do say reluctantly because I think they left these people with a mess. And because the suit was not articulated in time, it leaves them with a mess. It doesn't prevent him from continuing action in other matters, obviously, with the county to make the county force Palmer to do what Palmer should be doing in the first place, and hopefully, it'll happen that way. But as far as the litigation, it's clear -- that letter kills 'em.

On April 15, 2024, the circuit court entered a written order to the same effect.

The Smiths' Post-Summary Judgment Motion

On April 25, 2024, within 10 days after the entry of summary judgment, the Smiths filed a motion to alter or amend judgment under Maryland Rule 2-534, along with the following three exhibits: a picture of a construction site (Exhibit 1); a copy of an email, dated November 22, 2019, containing Mr. Wells' November 19, 2019 report (Exhibit 2); and the 2014 contract between the Smiths and Palmer (Exhibit 3). The Smiths also filed Tracy Smith's sworn affidavit, which, in relevant part, stated as follows:

> 3. The letter from June 14, 2019, relied upon by the Court in its decision, which included the comment about the grading being "too low" was from a chance conversation with Mark Wells when he was on site inspecting the neighboring property and I was inquiring on what was going on with the construction site. His comment was made based solely on his opinion since the neighbors grading plan did not include my house.

4. At the time I knew that my house itself had passed the grading inspection during construction and as a layperson I accepted it with a 100% confidence that it meant the grading for the house foundation was constructed within some margin of error of the grading requirements and his comment implied it was simply on the low side of the margin of error allowed. At the time I also did not understand that the grading inspection should have included the surrounding area and driveway. **At this point no reasonable person would have interpreted the comment of "too low" to mean over 3 feet of ground level since that would require a ridiculous amount of fill.**

5. The fact that my house passed the grading inspection far out weighed the off handed comment of someone who I had just happened to meet and had never actually inspected my house. **Thus it did not put me on notice that there was a real issue with the house grading caused by anyone because as a layperson I trusted the county grading inspection results.**

6. I ended up putting a comment about the grading being too low in a letter to Palmer which was relied upon by the Court in the hopes that it would encourage him to fix the drainage issues around the perimeter of the house since that is what I thought it was referring to. It did not mean that I had any knowledge or notice that Defendant had done anything wrong.

7. The various issues with standing water near the house was also not unexpected since the backside of the property is a designated wetlands. The attached photo shows the foundation being constructed shortly after the grading inspection had been passed. On the front left corner of the garage you can see the water accumulated around the concrete blocks so I was accustomed to seeing water on the site and thought that was normal since I had zero experience with grading. See Photograph at Exhibit 1.

8. The letter in Exhibit L relied upon by the Court in its decision was written after Mark Wells informed me of his suspicions over the phone when setting up the meeting with Ed McNape. At the time I was still assuming that there was some kind of misunderstanding. I don't recall exactly what happened but I never met with Ed McNape that day and ended up rescheduling with Mark Wells. That is why the notice is dated November 19, 2019 and the timestamp on the email of November 22, 2019 is when I received the notice. See Email and Notice at Exhibit 2.

> 9. After Mark Wells was able to compare the original grading permit to the site conditions he wrote up the notice detailing the issues. To be honest I have a hard time understanding Mr. Wells accent so the notice received on Nov 22, 2019 was the first time I was able to fully grasp that the issues were real. This was also the first time that the original grading inspection was officially countermanded and I learned of the existence of an actual wrong had occurred and that Defendant was the cause

(Emphasis added). The court denied the motion, and the Smiths timely noted this appeal.

DISCUSSION

A. Parties' Contentions

Before this Court, the Smiths contend that the circuit court erred in granting Palmer's motion for summary judgment because there were questions of material fact regarding when "the running of the statute of limitations was triggered[.]" According to the Smiths, there were no facts in the record "to demonstrate that [they] knew or should have known, prior to November 19, 2019, that the flooding issues on their property were caused by any actionable wrong of [Palmer]." The Smiths highlight that "[s]urface water . . . is not always an actionable injury[,]" and therefore, even though they were aware of the standing water near their house, they "could not have stated any claim . . . without knowing that the existence of surface water was the result of alleged tortious acts and omissions by [Palmer]." Therefore, the Smiths claim, the statute of limitations was not triggered until November 19, 2019, at which time "the cause of excessive surface water was identified as improper grading[.]"

The Smiths also contend that the grant of summary judgment was an error because the circuit court "improperly made factual conclusions based on conflicting evidence."

Specifically, the Smiths argue that although the circuit court "relied heavily" on Mr. Smith's June 14, 2019 letter, which referenced his conversation with Mr. Wells about improper grading, Mr. Smith's subsequent affidavit demonstrated that his statement was "more posturing about drainage issues in hopes of motivating a nonresponsive builder." The Smiths highlight that at the summary judgment hearing, their counsel "indicated that the issues relating to grading relayed in the June 2019 letter were related to the shared driveway with a neighboring parcel and were unrelated to the other grading concerns." Thus, according to the Smiths, "[t]he record reflects that there is a dispute about what the [June 14, 2019 letter] refers to," and therefore the case should have been submitted to the jury.

Palmer counters that the Smiths "had both constructive and actual knowledge of all of the elements of their claim more than three years before the date they filed their [c]omplaint." Palmer emphasizes that Mr. Smith's June 14, 2019 letter "expressly states that the grading was not done properly and was too low, bolstered by the support of a County inspector." According to Palmer, this email establishes that the Smiths, "[b]y their own inquiries[,] had identified that the standing water on their property was caused by the grading not being consistent with the County's grading permit[.]" Quoting *Poffenberger v. Risser*, 290 Md. 631, 637 (1981), Palmer asserts that this information would, at minimum, "put a person of ordinary prudence . . . with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued." Indeed, Palmer argues that the Smiths "were on notice as early as May 2017 that the lot's grading was not

completed properly or pursuant to the terms of the contract[,]" noting that their May 26, 2017 email contained "a demand to 'fix'" the standing water problem on their property.

B. Legal Framework

Standard of Review

The proper grant of summary judgment is governed by Maryland Rule 2-501(f), which provides, in relevant part:

> **Entry of judgment.** The court shall enter 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 matter of law.

Md. Rule 2-501(f). Accordingly, "[s]ummary judgment is appropriate where 'there is no genuine dispute as to any material fact and [ ] the [moving] party is entitled to judgment as a matter of law.'" *Oglesby v. Baltimore Sch. Assocs.*, 484 Md. 296, 327 (2023) (alterations in the original) (quoting Rule 2-501(a)). A fact is deemed material when it "somehow affect[s] the outcome of the case." *Adventist Healthcare, Inc. v. Behram*, 488 Md. 410, 431 (2024) (citations omitted). "At the trial court level, the party moving for summary judgment has the burden of demonstrating to the court the absence of any genuine issue of material fact and demonstrating that it is entitled to judgment as a matter of law." *Thomas v. Shear*, 247 Md. App. 430, 447 (2020) (internal citation omitted). "'Once the moving party provides the trial court with a *prima facie* basis in support of the motion for summary judgment, the non-moving party is obliged to produce sufficient facts admissible in evidence, if it can, demonstrating that a genuine dispute as to a material fact or facts exists.'" *Id.* (quoting *Thomas v. Bozick*, 217 Md. App. 332, 340 (2014).

We review a circuit court's grant of summary judgment *de novo*. *Jones v. Smith*, 265 Md. App. 248, 255 (2025) (citations omitted). In doing so, we independently determine "whether, reviewing the record in the light most favorable to the non-moving party and construing all reasonable inferences against the moving party, a genuine dispute of material fact exists and whether the moving party is entitled to judgment as a matter of law." *Adventist Healthcare*, 488 Md. at 431-32. "Our role in that undertaking is the same as the circuit court's, which is not to resolve the factual disputes but merely to determine whether those disputes 'exist and are sufficiently material to be tried.'" *Id.* at 432 (quoting *Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 297 (2022)). Furthermore, when reviewing a grant of summary judgment, we "examine[ ] the same information from the record and determines the same issues of law as the [circuit] court." *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 478-79 (2007).

Statute of Limitations and the "Discovery Rule"

A grant of summary judgment may be appropriate "where the statute of limitations governing the action at issue has expired." *Frederick Road Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 94 (2000). The Supreme Court of Maryland has explained:

> Statutes of limitation reflect legislative judgment of what is an adequate time for a person of ordinary diligence to bring an action. One of their purposes is to ensure fairness to defendants by encouraging promptness in bringing claims, thus avoiding problems that may stem from delay, such as loss of evidence, fading of memory, and disappearance of witnesses. Statutes of limitation are statutes of repose, allowing individuals the ability to plan for the future without the indefinite threat of potential liability. They serve society by promoting judicial economy. But their purpose also is to serve plaintiffs, by providing adequate time for a diligent plaintiff to bring an action.

> We have long maintained a rule of strict construction concerning the tolling of the statute of limitations. Absent legislative creation of an exception to the statute of limitations, we will not allow any implied and equitable exception to be engrafted upon it.

Hecht v. Resolution Trust Corp., 333 Md. 324, 333 (1994) (internal citations omitted).

Recently, in *Roman Catholic Archbishop of Washington v. Doe*, 489 Md. 514 (2025), the Supreme Court of Maryland once again highlighted that statutes of limitations "are designed to (1) provide adequate time for diligent plaintiff to file suit, (2) grant repose to defendants when plaintiffs have tarried for an unreaspnable period of time, and (3) serve society by promoting judicial economy." *Id.* at 530-31 (quoting *Pennwalt Corp. v. Nasios*, 314 Md. 433, 437-38 (1988)). In distinguighing statutes of limitation from statutes of repose, the Court explained that statutes of limitation "are remedial or procedural devices that do not create any substantive rights in a defendant to be free from liability, . . . [and] therefore, "are generally understood to extinguish the *remedy* for enforcing a right, not the right itself." *Id.* at 532 (internal quotations and citations omitted).

Section 5-101 of the Courts and Judicial Proceedings Article ("CJP") of the Maryland Code (1974, 2020 Repl. Vol.) 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." In the instant case, parties do not dispute that CJP § 5-101 is the applicable statute of limitations governing all of the Smiths' claims against Palmer.

As a general matter, a statute of limitations is triggered by the accrual of a claim,

"which is most often the occurrence or discovery of injury." *Archbishop of Washington*, 489 Md. at 533. In determining the date of accrual, Maryland courts have adopted the "discovery rule" and apply it "to all actions where limitations are governed by the three[-]year statute of limitations[.]" *Frederick Road*, 360 Md. at 95, 96. Under the discovery rule, the accrual of the limitations period is tolled until "the plaintiff discovers, or through the exercise of due diligence, should have discovered, the injury." *Windesheim v. Larocca*, 443 Md. 312, 326-27 (2015) (citations omitted). For example, in contract actions, "[t]he statute of limitations . . . runs from the time 'when a plaintiff knows or should have known of the breach [of the contract].'" *SG Maryland, LLC v. PMIG 1024, LLC*, 264 Md. App. 245, 260 (2024) (quoting *Fitzgerald*, 246 Md. at 88). Likewise, in negligence actions, a claim accrues "when . . . the [plaintiff] acquires knowledge sufficient to make inquiry, and a reasonable inquiry would have disclosed the existence of the allegedly negligent act and harm." *Edwards v. Demedis*, 118 Md. App. 541, 566 (1997). To be clear, however, "[i]t is the discovery of the injury, and not the discovery of all of the elements of a cause of action that starts the running of the clock for limitations purposes." *Estate of Adams v. Continental Ins. Co.*, 233 Md. App. 1, 32 (2017) (quoting *Lumsden v. Design Tech Builders*, 358 Md. 435, 450 (2000)).[6] In sum, "[b]efore an action can accrue

[6] There is "real, but subtle, difference between the date when a cause of action is said to 'arise' and the date when a cause of action is said to 'accrue.'" *Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A.*, 125 Md. App. 698, 716 (2003). "[A] cause of action 'arises' when all elements of a legal claim are present." *Id.* at 716 n.9. On the other hand, "[t]he 'accrual' date, and when the statute of limitation begins to run, is the date when a plaintiff knows, or with due care should have known, that the cause of action has arisen." (Continued)

under the discovery rule, 'a plaintiff must have notice of the nature and cause of his or her injury.'" *Windesheim*, 443 Md. at 327 (quoting *Frederick Road*, 360 Md. at 96).

Notice Requirement

Notice can be either "actual" or "constructive," but it is only actual notice that can trigger the limitations period. *Windesheim*, 443 Md. at 327. In turn, actual notice may be either express or implied. *Id*. Express notice "embraces not only knowledge, but also that which is communicated by direct information, either written or oral, from those who are cognizant of the fact communicated" and may be "established by direct evidence[.]" *Id.* (citations and internal quotation marks omitted). On the other hand, the implied notice—also known as "inquiry notice"—may be inferred from

> **knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry (thus, charging the individual) with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued.** In other words, a purchaser cannot fail to investigate when the propriety of the investigation is naturally suggested by circumstances known to him; and if he neglects to make such inquiry, he will be held guilty of bad faith and must suffer from his neglect.

Poffenberger, 290 Md. at 637 (emphasis added). In addition, "a plaintiff need not be on inquiry notice of all of the elements of his claim to be on inquiry notice of the wrong." *Estate of Adams*, 233 Md. App. at 32 (citing *Lumsden*, 358 Md. at 450). "Inquiry notice is triggered when the plaintiff recognizes, or reasonably should recognize, a harm—not when

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Id.; *see also James v. Weisheit*, 279 Md. 41, 45 n.4 (1977) ("[D]eceit actions accrue when the wrong is discovered or when with due diligence it should have been discovered . . . assuming, of course, that all elements of the cause of action exist at that time.") (citations omitted).

the plaintiff can successfully craft a legal argument and not when the plaintiff can draft an unassailable and comprehensive complaint." *Id.*

Generally, for purposes of the discovery rule, the question of notice "requires the balancing of factual issues and the assessment of the credibility or believability of the evidence[.]" *Frederick Road*, 360 Md. at 96. Thus, the Supreme Court of Maryland observed, "whether or not the plaintiff's failure to discover his cause of action was due to failure on his part to use due diligence . . . is ordinarily a question of fact for the jury." *Id.* (quoting *O'Hara v. Kovens*, 305 Md. 280, 294-95 (1986)). However, "[w]hen the material facts are not in genuine dispute and a reasonable factfinder could reach only one conclusion as to whether the claim accrued more than three years before the plaintiff filed suit, a court may properly resolve the question of accrual on a motion for summary judgment." *Jones*, 265 Md. App. at 256.

C. Analysis

After reviewing the record before the circuit court at the time of the summary judgment hearing, we conclude that the court did not err in granting Palmer's motion for summary judgment as to all claims.

We start our date-of-accrual analysis by counting backward three years from the date the complaint was filed. On this issue, the Supreme Court of Maryland instructed: "It is the general common law rule that when time is to be computed from a particular day, act or event, the designated first day is excluded and the last day of the period is included." *Equitable Life Assur. Soc'y of the United States v. Jalowsky*, 306 Md. 257, 262 (1986); *see*

also State v. Brooke, 262 Md. App. 207, 210 (2024) (holding that, in a criminal case, the date of the offense is not included when determining the limitations period). Likewise, Maryland Code (2014, 2018 Repl. Vol.) General Provisions Article ("GP") § 1-302(a), in relevant part, provides: "In computing a period of time described in a statute, the day of the act, event, or default after which the designated period of time begins to run may not be included." Because the Smiths filed the complaint against Palmer on November 18, 2022, any evidence that the Smiths had actual or inquiry notice of their claims prior to November 17, 2019, takes their claims outside the three-year statute of limitations.

The record contains undisputed evidence that the Smiths had the requisite notice of their claims more than three years before November 18, 2022. As noted, on June 14, 2019, the Smiths "formally notif[ied]" Palmer of several items that had not been completed "in accordance with [their] contract[,]" including "[t]he grading for the house was not done correctly, it is too low per the grading inspector Mark Wells." Additionally, Mr. Smith's handwritten note dated November 15, 2019 expressly stated that "[r]ecent discoveries have indicated that the builder constructed the house on grading that is ~3 feet too low which has been causing flooding issues." Indeed, the Smiths had begun complaining to Palmer about standing water, mold, and flooding, soon after they moved into their new home. On May 26, 2017, the Smiths emailed Palmer a picture of standing water near their house and urged, "It has to be fixed now." The evidence establishes that the Smiths knew the cause of the injuries by June 14, 2018—that the "grading for the house was . . . too low"—and that they knew that Palmer was responsible for the improper grading.

The Smiths cite to *Lumsden* in support of their contention that "in a construction defect case, the cause of action does not accrue to trigger limitations period until an aggrieved homeowner discovers, or should have discovered the facts to support each element of the cause of action." The Smiths misinterpret *Lumsden.* In that case, the homeowner plaintiffs discovered that "the surface of their driveways suffered from peeling and scaling" in March of 1994. *Lumsden*, 358 Md. at 437. Initially, the plaintiffs suspected that "the damages to the driveways had been caused by the application of de-icing chemicals by Cherry Valley Landscaping" in response to a snow storm in January 1994. *Id.* However, in August of 1994, the plaintiffs learned that "the damage actually may have been caused by problems with the poured concrete used to construct the driveways." *Id.* In April 1996—two years and one month after first noticing the damage to their driveways—the plaintiffs sued the builder for breach of an implied warranty against defects under sections 10-203 and 10-204 of the Real Property Article of the Maryland Code (1974, 1996 Repl. Vol., 1999 Cum Supp.). *Id.* at 438. The applicable statutes impose a two-year limitations period in which plaintiffs must file their claims for breach of warranty. *Id.* at 440-41. The circuit court entered summary judgment in favor of the builder, finding that the claims were time-barred. *Id.* The plaintiffs appealed, arguing that limitations did not begin to run until August 1994, when their investigation revealed what caused the harm to their driveways. *Id.*

The Supreme Court of Maryland rejected the plaintiffs' argument and affirmed the circuit court's holding that their claims were time-barred. The Court found that the

plaintiffs were on inquiry notice of their claims in March of 1994, reasoning that they "knew immediately upon seeing the damage done to their driveways that a defect existed for which someone was responsible" and that "the harm to [the plaintiffs] was . . . apparent, enough so that a reasonably prudent person would have begun investigating the cause of the harm." *Id.* at 448-49. Furthermore, after surveying decisional law from other jurisdictions, the Court instructed that:

> [I]t is the **discovery of the injury, and not the discovery of all of the elements of a cause of action** that starts the running of the clock for limitations purposes. Here, all that is required to commence the running of the limitations period is the discovery of an injury and its general cause, not the exact cause in fact and the specific parties responsible.

Id. at 450 (quoting *Bayou Bend Towers Council of Co-Owners v. Manhattan Const. Co.*, 866 S.W.2d 740, 743 (Tex. App. 1993)) (emphasis added); *see also Estate of Adams*, 233 Md. App. at 32.

The Smiths also rely on *Baysinger v. Schmid Products Company*, 307 Md. 361 (1986). In *Baysinger*, the plaintiff was diagnosed with an acute abdominal infection only months after having an intrauterine contraceptive device inserted in May 1979, but did not file suit against the manufacturer until 1984. *Id.* at 363, 64. When the manufacturer moved for summary judgment on statute of limitations grounds, the plaintiff filed an affidavit in opposition in which she stated that she did not have "some indication of possible causation" of her infection until January 1983. *Id.* at 364. The affidavit provided that, shortly after her diagnosis, the plaintiff was advised by a doctor that he had "no way of determining whether her infection was caused by the [intrauterine device] or by some other unrelated

occurrence or instrumentality." *Id.* The circuit court granted the motion for summary judgment, but the Supreme Court of Maryland reversed, noting that "while the record indicates that [the plaintiff] entertained various suspicions concerning the cause of her illness, there is no evidence that she then suspected, or reasonably should have suspected, wrongdoing on the part of anyone." *Id.* at 367.

Unlike the circumstances in *Baysinger*, the record in this case—including Tracy Smith's letter to Palmer dated June 14 and email dated November 15, 2019—establishes that the Smiths "suspected, or reasonably should have suspected" that Palmer was responsible for the improper grading of their house well before November 17, 2019. *Id.* at 367. Unlike the plaintiff in *Baysinger*, the Smiths failed to file any affidavit or other evidence at the summary judgment stage disputing this evidence. *See id.* at 364. Given the lack of a contrary showing by the Smiths, "the material facts are not in genuine dispute and a reasonable factfinder could reach only one conclusion"—the Smiths had discovered Palmer's improper grading more than three years before filing the complaint. *Jones*, 265 Md. App. at 256; *see also Lumsden*, 358 Md. at 450 ("[A]ll that is required to commence the running of the limitations period is the discovery of an injury and its general cause, not the exact cause in fact and the specific parties responsible.") (citations omitted).

The Smiths maintain that they generated a dispute of material facts by "assert[ing] in their opposition to summary judgment that they had no understanding of any potentially tortious behavior" until Mr. Wells' inspection on November 18, 2019. The Smiths also highlight their counsel's statement at the summary judgment hearing that the mention of

grading issues in the June 14, 2019 letter was "related to the shared driveway with a neighboring parcel" and not to the house. We find both arguments lacking in merit, as neither statements were sufficient to defeat Palmer's summary judgment motion.

We recently reaffirmed the rule that, "[t]o defeat a motion for summary judgment, 'the party opposing the motion must **produce some evidence** demonstrating that the parties *genuinely* dispute a *material fact*.'" *Lavine v. American Airlines, Inc.*, 266 Md. App. 549, 559 (2025) (quoting *Wankel v. A&B Contractors, Inc.*, 127 Md. App. 128, 156 (1999)) (bold added). "The party opposing the motion cannot simply make a 'bald statement that material facts [are] in dispute.'" *Id.* (quoting *Tri-State Properties, Inc. v. Middleman*, 238 Md. 41, 47 (1965)). Similarly, counsel's statement "is not evidence and generally has no binding force or effect." *Tibbs v. State*, 72 Md. App. 239, 250 (1987). Here, in light of the June 14, 2019 letter, in which the Smiths unambigiously expressed that "[t]he grading for the house was not done correctly" and demanded Palmer to fix the issue "in accordance with [their] contract[,]" there was sufficient evidence to find that the Smiths were on notice of Palmer's defective—and negligent—grading prior to November 17, 2019. The Smiths' bald assertions to the contrary do not create a genuine dispute on these material facts.

The Smiths' attempt to use Mr. Smith's affidavit to generate a dispute of material fact fails for similar reasons. First, we observe that the affidavit was submitted as part of the motion to alter or amend judgment, and had not been filed at the time of the summary judgment hearing. As explained, when reviewing a grant of summary judgment, this Court is obligated to "examine[ ] the same information from the record and determines the same

issues of law as the [circuit] court." *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 478-79 (2007). Moreover, when denying a motion to alter or amend judgment, the circuit court's discretion "is more than broad; it is virtually without limit." *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). The discretion is particularly broad "[w]hen a party requests that a court reconsider a ruling solely because of new arguments that the party could have raised before the court ruled[.]" *Schlotzhauer v. Morton*, 224 Md. App. 72, 85 (2015); *see also Steinhoff*, 144 Md. App. at 484 ("The trial judge has boundless discretion not to indulge this all-too-natural desire to raise issues after the fact that could have been raised earlier[.]").

Here, the affidavit did not present the court with any new facts. Moreover, the Smiths could not generate genuine disputes of material fact in the affidavit by expanding on their assertions that they did not mean what they unambigiously said in the June 14, 2019 letter and November 15, 2019 note. *See Lavine*, 266 Md. App. at 559 ("The party opposing the motion cannot simply make a 'bald statement that material facts [are] in dispute.'") (citations omitted); *see also Thomas v. Shear*, 247 Md. App. 430, 447 (2020) (noting that the party opposing summary judgment has an obligation "to produce sufficient facts admissible in evidence, if it can, demonstrating that a genuine dispute as to a material fact or facts exists.").

For the foregoing reasons, we hold that the circuit court did not err in entering summary judgment for Palmer for the reason that the Smiths failed to file their lawsuit

within three years as provided under CJP § 5-101.[7]

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.

[7] We must note that, even though their claims are time-barred, the Smiths are not necessarily left without any available remedy. As mentioned previously, the record indicates that the Smiths had filed a claim for reimbursement with the MCPD, and that claim is still pending, according to the MCPD, "until there is a final judgment in the [c]ircuit [c]ourt case and all rights to appeal are exhausted." Indeed, the circuit court made the similar observation at the summary judgment hearing, noting that the summary judgment "doesn't prevent [the Smiths] from continuing action in other matters, obviously, with the county to make . . . Palmer to do what Palmer should be doing in the first place[.]"