Circuit Court for Harford County
Case No. 12-C-15-003636

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1813

September Term, 2017

DEBORAH McALLISTER

v.

BEL AIR SOUTH COMMUNITY ASSOCIATION, INC., et. al.

Berger,
Friedman,
Beachley,

JJ.

Opinion by Friedman, J.

Filed: June 14, 2019

Despite efforts to make this more complicated, it is, in reality, a standard discovery rule case. Deborah McAllister alleges that the appellees failed to provide her notice that her new home was subject not only to a homeowners' association, but also to an additional stormwater management association. Although McAllister was certainly entitled to that notice, and although the appellees all but concede that they failed to provide that notice, McAllister waited too long to bring her lawsuit. She was required to bring that lawsuit within three years of when she knew or through the reasonable exercise of diligence could have known of the appellees' failure to provide the notice. Because she did not, we affirm the grant of summary judgment awarded by the Circuit Court for Harford County.

BACKGROUND

McAllister purchased a townhouse in the Bel Air South Community on June 27, 2008. The townhouse and its neighbors are subject to a homeowners' association (Bel Air South Community Association, Inc. or BASCA for short) and to a "related development" that maintains stormwater facilities for Bel Air South and two other developments (the Bel Air South Stormwater Management Association, Inc.). Prior to sale, McAllister received a resale packet as is required by § 11B-106(b) of the Real Property ("RP") Article of the Maryland Code. Although there may remain some dispute about what exactly she received, for purposes of this appeal, we assume that what McAllister says is true—that she did not receive any disclosure that would notify her that her home was subject to the Stormwater Association. *Rogers v. Home Equity USA, Inc.*, 453 Md. 251, 263 (2017) (cleaned up) ("We evaluate the record in the light most favorable to the non-moving party and construe any

reasonable inferences that may be drawn from the well-plead facts against the moving party.").

In the summer of 2012, however, McAllister and a neighbor, Robert Bagley, compared their respective resale packets and learned that they were different. According to McAllister, Bagley's packet was "big," while her own was "relatively small." McAllister made a copy of Bagley's packet. We can think of no reason for McAllister to want to copy Bagley's packet other than to compare contents. And, of course, a comparison would have revealed that Bagley had received the Stormwater Management Association disclosure, while McAllister had not.

In August of 2012, McAllister consulted with Craig DeRan, a local attorney. McAllister testified that she asked DeRan about, among other topics, the "stormwater management documents." DeRan sent a letter to BASCA asking about a variety of topics but omitting to mention McAllister's concerns about the stormwater management documents. McAllister, apparently dissatisfied with DeRan's letter to BASCA, emailed DeRan on September 27, 2012, complaining that his letter "did not mention anything about the stormwater management facility and if this was included in our homeowner documents (I did not receive any information at the [purchase] of my home)."

On November 21, 2012, McAllister emailed BASCA asking its staff to "pull for me the documentation pertaining to the stormwater management facility that new owners should receive."

On November 26, 2012, BASCA responded that the "information [about the stormwater facility] is included with the resale packet and all homeowners received [it] at

the time of settlement." On November 29, 2012, BASCA sent a follow-up email explaining the calculation of shares of an upcoming repair in the stormwater facility.[1] McAllister responded on December 5, 2012, that she "realize[s] [that BASCA] is splitting the cost [of the repairs] with [the two other neighborhoods, Ward Properties and Calvert's Walk], but again I received no documentation from the seller of my home. So, again, I am still waiting and I am happy to come by the [BASCA] offices at any time if I can just take a look."

Three years and two weeks later, on December 18, 2015, McAllister filed suit alleging misrepresentation, fraud, and violations of the consumer protection act. In response, BASCA filed a motion for summary judgment, which the circuit court granted. Before us now, McAllister appeals the grant of summary judgment.

DISCUSSION

We review a grant of summary judgment to determine whether the trial court was legally correct. *Rogers*, 453 Md. at 263. Although we generally confine our review to the grounds relied upon by the motions court, we can affirm on alternative grounds if we are convinced that the motions court had no discretion to deny the motion. *Warsham v. James Muscatello, Inc.*, 189 Md. App. 620, 635 (2009).[2]

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[1] Although it has no bearing on the resolution of this appeal, it is worth mentioning that the repair would cost $44,600, of which Bel Air South was expected to pay 40.8% or $18,196.80. Divided amongst the 180 members of BASCA, this repair would cost, as counsel conceded at oral argument, about $100 per homeowner.

[2] The motions court provided a careful and detailed analysis, for which we are grateful. It is clear that the motions court decided this case because it found that the plaintiff knew or should have known of her claim more than three years prior to filing suit. And we will affirm on that basis. We disagree with the motions court, however, on the specific date on which McAllister received inquiry notice. The motions court found that McAllister was

It is clear that the statute of limitations applicable to McAllister's claims is three years, pursuant to § 5-101 of the Courts and Judicial Proceedings Article. Moreover, McAllister's claim is subject to the "discovery rule," meaning that the statute of limitations doesn't begin to run until "the plaintiff recognizes, or reasonably should recognize, a harm." *Estate of Adams v. Cont'l Ins.*, 233 Md. App. 1, 32 (2017).

While McAllister might have been on inquiry notice earlier, it is absolutely clear that by no later than December 5, 2012, she was on inquiry notice as a matter of law.[3] By that date, she wrote that she knew that she should have received documentation about the Stormwater Management Association, she knew that she had not received that documentation, while her neighbors had, and even knew that, as a result of her membership in the Stormwater Management Association, she would be apportioned a portion of the repair costs.[4] Thus, because McAllister did not file suit within three years of December 5,

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on inquiry notice as of the date of purchase, holding in effect, that McAllister, as a purchaser of real estate, had an immediate obligation to look at the land records to see the condition of title she was purchasing. We think that imposing such an obligation on purchasers is inconsistent with the legislature's intent in imposing the requirement on sellers in the first instance. RP § 11B-106(b). Moreover, for the reasons described above, we think it is unnecessary to peg the date on which inquiry notice began as any point earlier than December 5, 2012.

[3] While the determination of the date from which a party is on inquiry notice is ordinarily a question of fact for the jury, *DeGroft v. Lancaster Silo*, 72 Md. App. 154, 175 (1987), sometimes it is so clear it can be decided as a question of law. *Estate of Adams v. Cont'l Ins. Co.*, 233 Md. App. 1, 40 (2017). Here, we hold that it is crystal clear that by no later than December 5, 2012, McAllister was on inquiry notice.

[4] McAllister was also on inquiry notice by that date in a way that made her fiduciary relationship with BASCA no longer relevant as it relates to the statute of limitations. The parties agree that they were in a fiduciary relationship and that said relationship tolled the statute of limitations for civil suits against BASCA until an action of BASCA put

2012, her claims are barred by the statute of limitations and we need not reach any other issues raised on appeal.

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

McAllister on inquiry notice that the fiduciary relationship had been abused. *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 99-100 (2000). The parties further agree that when McAllister obtained inquiry notice, the tolling ended and the statute of limitations clock began to run. As explained above, by no later than December 5, 2012, McAllister was on inquiry notice that she had not received the proper documentation about the Stormwater Management Association, meaning that at that time, the tolling of the statute of limitations based on the fiduciary relationship ended and McAllister had to file her civil suit within three years—a task she failed to complete.