Circuit Court for Anne Arundel County
Case No. C-02-CV-15-2988

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1939

September Term, 2016

TASHA GAMBRELL

v.

MIDLAND FUNDING, LLC

Kehoe,
Reed,
Salmon,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: July 30, 2020

This is an appeal from a judgment of the Circuit Court for Anne Arundel County, the Honorable William C. Mulford, II, presiding, that dismissed Tasha Gambrell's proposed class-action complaint against Midland Funding, LLC. Ms. Gambrell has appealed and presents us with four issues, which we have rephrased and reordered as follows:

1. Did the circuit court err in ruling that Gambrell's unjust-enrichment and statutory claims for damages were barred by the statute of limitations?

2. Did the circuit court err in ruling that Gambrell's claims for declaratory relief could only be filed in the District Court of Maryland, sitting in Montgomery County, or in the Circuit Court for Montgomery County?

3. Did the circuit court properly disregard Midland's arguments that previous decisions of this Court should be overturned or do not apply?

4. Is Midland estopped from arguing that it was not required to be a licensed collection agency by virtue of its settlement agreement with the Maryland Collection Agency Licensing Board?

As we will explain, the circuit court did not err in ruling that Gambrell's claims for damages are time-barred. The decision of the Court of Appeals in *LVNV Funding LLC v. Finch* (*Finch III*), 463 Md. 586 (2019),[1] is dispositive of the other contentions. We will affirm the judgment of the circuit court.

[1] To distinguish the Court of Appeals' decision from *Finch v. LVNV Funding, LLC* (*Finch I*), 212 Md. App. 748, *cert. denied*, 435 Md. 226 (2013), and *LVNV Funding LLC v. Finch* (*Finch II*), No. 1075, 2017 WL 6388959 (Md. Ct. Spec. App. 2017), *vacated*, 463 Md. 586 (2019).

Background

The Collection Action

Midland is a consumer-debt buyer, that is, it purchases bulk portfolios of past-due consumer debt from lenders for purposes of collection. *See Finch III*, 463 Md. at 593–94 (describing the debt-buying industry). At some point (the exact date is unclear), Midland acquired the right to enforce the unpaid balance on a credit card account owed by Tasha Gambrell, a resident of Montgomery County. On July 14, 2008, Midland filed a collection action against her in the District Court of Maryland, sitting in Montgomery County. Gambrell was served with the complaint, but she did not file a notice of intention to defend. As a result, affidavit judgment was entered in Midland's favor on October 8, 2008, in the amount of $2,420.97, plus costs and interest. On November 20, 2009, Midland received a $251.32 payment towards the judgment. Thereafter, Gambrell voluntarily paid the full principal amount of the judgment. Midland collected the post-judgment interest through a writ of garnishment, entered on April 26, 2011. An order of satisfaction was filed on November 28, 2011.

Midland's Licensing Status

The Maryland Collection Agency Licensing Act ("MCALA")[2] requires debt collection agencies to obtain licenses from the Maryland Collection Agency Licensing Board. *Finch*

[2] Md. Code, §§ 7-101 to -502 of the Business Regulation Article ("Bus. Reg.").

III, 463 Md. at 595. The Licensing Board took the position that debt buyers like Midland were required to obtain Maryland licensure before attempting to collect debts in Maryland. Midland disagreed, asserting that it was not required to obtain a Maryland license because it did not directly engage in debt-collection activities in Maryland but instead hired lawyers and collections agencies to do so.[3] On September 16, 2009, the Board entered an administrative order requiring Midland and a number of its affiliates to cease and desist collection activities in Maryland.

On December 17, 2009, Midland and the Board entered into a settlement agreement to "resolve all administrative, judicial, or other legal actions between the Parties, as well as any such action which either Party could have brought prior to the execution of this Agreement." Pursuant to this agreement, Midland agreed to stay all of its active collection-related actions in Maryland and not to file any new collection-related actions in Maryland until it was issued a license by the Licensing Board.

The agreement also provided that, after it obtained the proper license, Midland could "file appropriate motions with the Maryland State courts or take other appropriate actions in order to have the voluntary stay referenced above lifted by the courts." Midland also

[3] In this regard, Midland was wrong. *See Finch III*, 463 Md. at 606 (holding that on and after October 1, 2007, "debt buyers who engaged directly or indirectly in the business of collecting consumer debt that they owned and that was in default when they acquired it needed to be licensed" (footnote omitted)).

agreed to pay a $998,000 penalty.[4] On January 15, 2010, the Licensing Board issued Midland a collection-agency license.

To summarize, Midland obtained its judgment against Gambrell and received at least one payment from her before it was licensed to do so.

The Present Action

Gambrell filed the present action on September 28, 2015. In 2016, she filed an amended complaint, which is the operative complaint. In it, she set out claims for unjust enrichment (count one), a claim for disgorgement of all funds collected by Midland through its efforts to enforce its judgment against her because those efforts were in violation of the Maryland Consumer Debt Collection Act[5] and the Maryland Consumer Protection Act[6] (count two), a similar claim based on Midland's alleged violations of the Maryland Collection Agency Licensing Act ("MCALA")[7] and the common-law action of money had and received (count three), a declaratory judgment that Midland's judgment against her was void and unenforceable together with an injunction against Midland's attempts to enforce the judgments in the future (count four), and declaratory and injunctive relief

[4] The agreement also provided that the Board dismissed its charges against Midland's affiliates.

[5] Md. Code, §§ 14-201 to -204 of the Commercial Law Article ("Com. Law").

[6] Com. Law §§ 13-101 to -501.

[7] Bus. Reg. §§ 7-101 to -502.

against Midland's attempting to collect pre- and post-judgment interest and costs (count five). As to each count, Gambrell also sought class certification to encompass:

> Those persons sued by Midland in Maryland state courts from October 30, 2007 [against] whom Midland obtained a judgment for an alleged debt, interest or costs, including attorney's fees . . . .]

Gambrell also sought a subclass certification consisting of "those members of the [c]lass from whom Midland collected . . . any sum on the judgment."

Midland filed a motion to dismiss Gambrell's amended complaint, arguing, pertinently, that all counts are time-barred and fail to state claims upon which relief can be granted, that Gambrell could not attack the District Court's judgment in a different court, that Gambrell's claims are not justiciable, and that its post-licensure collection activities were authorized by the State of Maryland through the Licensing Board. Gambrell filed an opposition to Midland's motion.

A hearing on the motion was held on September 19, 2016. At the conclusion of the hearing, the court issued an opinion from the bench. As to Gambrell's unjust-enrichment, statutory, and disgorgement claims (counts one, two, and three), the court concluded that in *Jason v. National Loan Recoveries*, 227 Md. App. 516, 531 (2016), this Court held that the three-year statute of limitations applied to those claims. According to the court, those claims accrued "when the defendant filed the collection action against the plaintiff as the defendant's unlicensed status was a matter of public record and [the Licensing Board] had issued an advisory notice requiring collection agents to be licensed two years prior to the commencement of the action," and that the limitations period had run in 2011. The court

made no distinction, as to the accrual date, between Gambrell's unjust-enrichment, statutory, or disgorgement claims.

Next, the court moved onto Gambrell's request for declaratory judgment and injunctive relief. First, the court addressed Midland's argument that the court lacked the authority to enter a declaratory judgment as to void judgments (discussed in some more detail below). Again relying on *Jason*, the court concluded that it had the authority to declare that judgments obtained by unlicensed debt collectors are void. Then, the court addressed *whether it should* grant the declaratory relief Gambrell sought. The court agreed with Gambrell that only a circuit court, and not the District Court, could grant declaratory relief. However, the court concluded that it—"it" being the Circuit Court for *Anne Arundel* County—could not declare a judgment entered by the District Court, sitting in *Montgomery County*, void. Rather, the court reasoned that if Gambrell wished to challenge the District Court's judgment, she must do so pursuant to that Court's revisory power under Md. Rule 3-535 and, if that fails, seek declaratory relief in the Circuit Court for Montgomery County. Thus, the circuit court granted Midland's motion to dismiss. It found that Gambrell's unjust-enrichment, statutory, and disgorgement claims were time-barred, and dismissed those claims with prejudice. Then, it denied Gambrell's claims for declaratory and injunctive relief, and dismissed those claims without prejudice.[8] Gambrell appealed.

[8] A written order evidencing the court's rulings was filed on October 6, 2016.

Proceedings on Appeal

Gambrell's notice of appeal was docketed on November 18, 2016. The case was briefed in the normal course and we held oral argument on December 7, 2017. On February 13, 2018, Gambrell filed what she called a "Notice of Additional Authority," drawing our attention to *Artis v. District of Columbia*, ___ U.S. ___, 138 S. Ct. 594 (2018), which was filed after oral argument. Midland objected to this but, on the principle that turnabout is fair play, asked us to consider the Supreme Court's opinion in *China Agritech, Inc. v. Resh*, ___ U.S. ___, 138 S. Ct. 1800, 1811 (2018), which was also filed after oral argument. On January 2, 2019, this Court entered an order staying further proceedings until the Court of Appeals filed its opinion in *Finch III.* After *Finch III* was filed, we lifted the stay and gave the parties permission to submit supplemental briefs in light of the Court of Appeals' decision. The parties did so, and those briefs addressed *Artis* and *China Agritech*. We held supplemental oral argument in this case on November 7, 2019. After oral argument, Midland filed a request for us to take judicial notice of the filing of an order of satisfaction in its collection case against Gambrell.

To clear up the record, we will deny the parties' motions for us to accept additional authority and will grant Midland's request that we take judicial notice.

The Standard of Review

Pursuant to Md. Rule 2-322(b)(2), a defendant may seek dismissal of a complaint if the complaint "fail[s] to state a claim upon which relief can be granted." When a circuit court reviews a motion to dismiss for failure to state a claim, the court "must assume the

truth of all well-pled facts in the complaint as well as the reasonable inferences that may be drawn from those relevant and material facts." *Ricketts v. Ricketts*, 393 Md. 479, 491–92 (2006) (quoting *Porterfield v. Mascari II, Inc*., 374 Md. 402, 414 (2003)). "Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff." *Id.* at 492. On appeal, we review whether a trial court's grant of a motion to dismiss was legally correct. *Higgenbotham v. Public Service Commission of Maryland*, 171 Md. App. 254, 264 (2006).

Analysis

1. Gambrell's Claims for Damages

In granting Midland's motion to dismiss, the circuit court concluded that the three-year statute of limitations found in Md. Code, § 5-101 of the Courts Article ("Cts. & Jud. Proc."), applied to Gambrell's claims for damages. Gambrell presents several reasons why we should hold that the court erred. Her contentions revolve around three issues: when her claims accrued, which limitations period applied to those claims, and whether the running of the statute(s) of limitations was tolled.

A. Accrual

The circuit court decided that Gambrell's claims accrued on July 14, 2008, which is the date on which Midland filed its collection action against her. Gambrell argues that this was in error in light of *Finch I*, 212 Md. App. 748, and *Jason*, 227 Md. App. 516. She is incorrect. *Finch I* stands for several relevant propositions. The first is that a judgment in a

collection action obtained by an unlicensed collection agency is void. *Id.* at 764[9]. The second is that void judgments may be collaterally attacked at any time. *Id.* at 765. Although the point is never expressly articulated in her brief, Gambrell appears to be arguing that the statute of limitations on any action pertaining to a void judgment does not begin to run until there is a judicial declaration that the judgment is void. This argument falls apart in the face of the Court of Appeals' holding in *Finch III* that judgments, including judgments obtained by unlicensed collection agencies, are not subject to "collateral attack on any ground other than the lack of fundamental jurisdiction to render those judgments." 463 Md. at 611. Gambrell also cites *Jason* for the principle that a void judgment can be attacked at any time. 227 Md. App. at 524–25. However, in that opinion, we were careful to note that the "passage of time could limit the *remedies* available to the judgment debtor who is the subject of a void judgment." *Id.* at 525 (emphasis in original).

The second holding in *Jason* that is relevant to the parties' contentions concerned when her causes of action for money damages accrued. We held that under Maryland's discovery rule, an action for damages accrues when the plaintiff "knew or reasonably should have known of the wrong." *Id.* at 531 (quoting *Poffenberger v. Risser*, 290 Md. 631, 636 (1981)). We also noted that the discovery rule applies to all civil actions. *Id.* Finally, we held that an action for unjust enrichment did not accrue until the defendant "actually took possession

[9] As we will explain. the Court of Appeals rejected this proposition in *LVNV Funding LLC v. Finch*, 463 Md. 586 (2019).

of [the judgment creditor's] funds." *Id.* at 533. This means that Gambrell's cause of action for unjust enrichment and her other claims for monetary relief accrued on the date that Gambrell first conferred a benefit upon Midland, which was November 20, 2009, when Midland received a $251.32 payment from Gambrell's account. Gambrell filed her action against Midland on September 28, 2015, almost six years after the accrual date.

Finally, Gambrel argues that the continuing-harm doctrine applies to her unjust-enrichment claim since multiple payments were made to Midland over a period of time. The continuing-harm doctrine permits recovery by an injured party caused by a tortfeasor's sequential breaches of an ongoing duty by imposing a new limitations period for each breach. *See Litz v. Maryland Dep't of Env't*, 434 Md. 623, 649 (2013).

The continuing-harm doctrine permits recovery by an injured party caused by a tortfeasor's sequential breaches of an ongoing duty by imposing a new limitations period for each breach. *See Litz v. Maryland Department of the Environment*, 434 Md. 623, 649 (2013). The doctrine is usually applied in nuisance, trespass and other tort cases. *Id.* at 646; *Walton v. Network Solutions*, 221 Md. App. 676–77 (2015). This Court explained that there is a distinction between cases in which the continuing harm theory applies and those in which the damages claimed are "simply the continuing ill effects of prior tortious acts." *Bacon v. Arey*, 203 Md. Ap. 606, 656 (2012). In *Walton*, we held that the continuing-harm doctrine did not apply in a case involving a violation of the Maryland Consumer Protection Act:

> the current case does not involve a trespass or nuisance claim, but instead involves an MCPA deceptive practice claim. There has been no intrusion by way of trespass or nuisance onto appellant's property, justifying the application of the continuing harm doctrine. Here, appellee's actions of sending numerous e-mails did not delay the accrual of appellant's MCPA action to a further date.

221 Md. App. at 667.

We believe that the same reasoning is applicable with regard to Gambrell's claims: Midland's actions did not involve a trespass or nuisance. Gambrell's statutory causes of action accrued when he was placed on inquiry notice of Midland's wrong-doing. At the very latest, this occurred when Midland received its first payment on the judgment.

B. The Appropriate Limitations Period

Gambrell asserts that Cts. & Jud. Proc. § 5-101[10] does not apply to her unjust-enrichment and other claims for damages arising out of Midland's violations of statutory claims. Instead, she asserts, the twelve-year limitations period set out in Cts. & Jud. Proc.§ 5-102[11] applies. These contentions were addressed in detail in *Jason v. National*

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[10] Cts. & Jud. Proc. § 5-101 states:

> 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.

[11] Cts. & Jud. Proc. § 5-102 states in pertinent part:

> (a) An action on one of the following specialties shall be filed within 12 years after the cause of action accrues. . . :
>
> * * *
>
> (3) Judgment[.]

Loan Recoveries, LLC, 227 Md. App. 516, 527–34 (2016). In that case, and among other things, we held that Courts & Jud. Proc. § 5-102(a)(3) applied neither to claims for unjust enrichment nor to claims for damages arising out of alleged violations of Maryland statutes. We reiterated these holdings in *Murray v. Midland Funding*, 233 Md. App. 254, 259–60 (2017).

C. Class Action Tolling?

Gambrell asserts that the running of the statute of limitations on her claims for money damages was tolled by the pendency of two would-be class-action cases pending against Midland in Maryland state courts: *Cain v. Midland Funding, LLC*, No. 24-C-13-004869, filed in the Circuit Court for Baltimore City on July 30, 2013, and *Murray v. Midland Funding, LLC*, No. 02-C-14-187207, filed in the Circuit Court for Anne Arundel County on April 24, 2014. We do not agree.

As we explained, the three-year statute of limitations found in Courts & Jud. Proc. § 5-101 applies to all of Gambrell's claims for money damages. Gambrell's causes of action for damages accrued on November 20, 2009, which was the date that Gambrell first conferred a benefit upon Midland. This means that limitations expired on her claims for damages on November 21, 2012. *Cain* was filed on July 30, 2013 and *Murray* was filed on April 24, 2014. The circuit court did not err when it concluded that Gambrell's claims for monetary damages were time-barred.

2. Gambrell's Other Contentions

Gambrell raises three other arguments. All are resolved by the Court of Appeals' opinion in *Finch III*. Her contention that the circuit court erred in ruling that it did not have the authority to declare that the judgment entered against her was void cannot stand in light of the Court's holding that judgments such as the one obtained against Finch by LVNV or against Gambrell by Midland are not subject to collateral attack absent a failure of fundamental jurisdiction. *Finch III*, 463 Md. at 611. Gambrell does not assert that the District Court did not have personal jurisdiction over her or that it did not have subject-matter jurisdiction over Midland's claims. Her argument that the court erred by declining to vacate Midland's judgment against Gambrell suffers a similar fate because *Finch III* makes it clear that the circuit court did not have the authority to do so in the first place. In other words, Judge Mulford read the tea leaves correctly. Finally, *Finch III* makes it clear that Midland's contention that its lack of proper licensure was irrelevant collapses in light of the Court's holding that those who flout Maryland's licensing laws are liable for damages caused by their violations of the law. *Id.* at 612. Unfortunately for Gambrell, however, her claims are time-barred.

THE JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.