UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1060

September Term, 2015

EFFIE DOLAN

v.

CHRISTOPHER MCQUAIDE

Wright,
Friedman,
Shaw Geter,
JJ.

Opinion by Shaw Geter, J.

Filed: December 14, 2016

Effie Dolan appeals from a judgment of the Circuit Court for Cecil County in favor of Christopher McQuaide, relating to a purported agreement to assist him in developing a business. The case was heard by a jury on June 15, 2015 and at the close of instructions, the trial judge submitted a verdict sheet to the jury which asked whether Dolan provided services that benefitted McQuaide after October 14, 2005. The court determined that if the jurors answered no, the case was barred by the statute of limitations. Following deliberations, the jury did, in fact, find that Dolan did not provide any such beneficial services to McQuaide after October 14th. As such, judgment was entered for McQuaide. Dolan timely noted this appeal.

She presents the following two questions for our review, which we have rephrased:

1) Did the trial court err in determining that the accrual date for the statute of limitations period for unjust enrichment began when no further services were provided by appellant and thus, question one of the Amended Verdict sheet was improper?

2) Did the jury's actions based upon question one on the Verdict Sheet prejudice the [a]ppellant?

We answer question one in the negative, which obviates the need for us to address question two. We affirm the judgment of the circuit court.

BACKGROUND

In 1997, Effie Dolan and Christopher McQuaide began a romantic relationship and were engaged to be married in 2002. During the relationship, Dolan alleged that she and McQuaide entered into an oral contract wherein they agreed to jointly build and operate the "Diamond Car Wash." Between 2002 and 2005, Dolan claims to have provided

McQuaide various services, including developing a business plan, drafting contracts, and designing a website and logo.

The car wash officially opened on October 6, 2005. However, several months prior to the start of the business, the parties' personal relationship began to sour. They ceased living together as a couple in April 2005 and their communication became sporadic. According to Dolan, McQuaide refused to give her access to their former residence in order to retrieve her personal belongings and was "upset because [she] was pressuring him to pay [her]." On October 14, 2005, she went to the car wash, asked McQuaide for her property and when he declined her request, she refused to leave. Law enforcement officials were called and they subsequently escorted her from the premises. Thereafter, she broke into their former residence, retrieved her belongings and destroyed some of McQuaide's personal property. She was later arrested and charged with 4th degree breaking and entering. According to Dolan, their personal and professional relationship ended on that date.

In the years following her arrest and conviction, Dolan alleges that McQuaide continued to benefit from the use of her work product and failed to compensate her. As a result, on November 17, 2008, she filed suit against him in the Circuit Court for Cecil County. The Complaint alleged ten causes of action: (1) replevin, (2) conversion, (3) breach of contract, (4) accounting, (5) breach of fiduciary relationship, (6) unjust enrichment, (7) promissory estoppel, (8) conspiracy, (9) aiding and abetting, and (10) intentional infliction of emotional distress. McQuaide moved for summary judgment and the trial court granted the motion on the first seven counts, finding that they were barred

by the applicable statute of limitations. A panel of this Court, in an unreported opinion, affirmed the circuit court's grant of six of the ten counts. With respect to counts 3, 6 and 7, breach of contract, unjust enrichment, and promissory estoppel, we held that the question of whether and when the alleged breach of contract occurred was an issue of material fact, and therefore, summary judgment was inappropriate.

On remand, McQuaide again moved for summary judgment on all remaining counts. The circuit court granted his motion as to all counts except unjust enrichment. Dolan then moved to revise the judgment on March 15, 2012; however, her motion was struck as untimely. Thereafter, McQuaide filed a motion to alter or amend the judgment, which the circuit court granted, thereby disposing of all claims. Dolan timely noted her appeal. Ultimately, on February 6, 2012, a panel of this Court affirmed the circuit court's grant of summary judgment on all counts except unjust enrichment.

The matter proceeded to trial on Dolan's sole claim on June 15, 2015. Following instructions and closing arguments, the jury was sent out to deliberate. Of pertinence to this appeal, is the first question on the verdict sheet that asked, "Do you find that the Plaintiff provided any services after October 14, 2005 that benefitted the Defendant?" The trial court submitted this question to the jury under the theory that if the jury answered the question in the negative, then Dolan's complaint, which was not filed until November 17, 2008, was time-barred by the applicable statute of limitations.

The jury unanimously answered this question in the negative and judgment was entered in favor of McQuaide. Dolan noted this timely appeal.

We shall recite additional facts as necessary to our discussion of the issues.

STANDARD OF REVIEW

The question of when an unjust enrichment claim begins to accrue is a legal question involving the interpretation of Maryland case law. Therefore, we will review the issue under a *de novo* standard of review. *See Schisler v. State*, 394 Md. 519, 535 (2006) ("[W]here an order involves an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine whether the trial court's conclusions are legally correct under a *de novo* standard of review.") (internal quotations omitted).

DISCUSSION

The crux of this appeal is Dolan's claim that she entered into an agreement with McQuaide to build and operate a car wash and she was never paid for the business services she rendered. Because the parties did not execute a written agreement expressing their intentions, nor was there evidence of implied communication of definite terms, Dolan's sole claim lies in restitution or unjust enrichment, a derivative of the quasi contract legal principle. *See Mogavero v. Silverstein*, 142 Md.App. 259, 276 (2002). A quasi contact, commonly referred to as a contract implied in law,

> involves no assent between the parties, no meeting of the minds. Instead the law implies a promise on the part of the defendant to pay a particular debt. Thus, the implied in law contract [or quasi contract] is indeed no contract at all, it is simply a rule of law that requires restitution to the plaintiff of something that came into defendant's hands but belongs to the plaintiff in some sense.

Id. at 275 (citations omitted). The classic measurement of unjust enrichment damages is *quantum meruit*—the value of the benefit received. *Id.* at 274 ("*Quantum meruit* refers

to…an implied in law (quasi-contractual) duty requiring compensation for services rendered.").

To sustain her claim, Dolan was required to establish that: (1) she conferred a benefit upon McQuaide; (2) he had knowledge or an appreciation of the benefit; and (3) he accepted or retained the benefit under such circumstances as to make it inequitable for him to retain the benefit without payment of its value. *See Jason v. Nat'l Loan Recoveries, LLC*, 227 Md.App. 516, 533 (2016). Such a claim is an action "at law," subject to the statutory limits of Section 5-101 of the Courts and Judicial Proceedings Article, which 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.

MD. CODE, Cts. & Jud. Proc. § 5-101 (2016); *see Ver Brycke v. Ver Brycke*, 379 Md. 669, 698 (2004). As such, the limitations period for Dolan's unjust enrichment claim ran three years after it accrued. On appeal, we must determine when the statute of limitations began to run.

I. The accrual date for the statute of limitations was October 14, 2005.

Dolan argues that the circuit court erred when it determined that the three-year limitations period began to run on October 14, 2005. She contends that the limitations period accrued when there was a breach of the agreement between the parties. She asserts that, according to their agreement, she was not to receive compensation for her services until "the carwash generated sufficient funds." Thus, the statute of limitations did not begin to run until McQuaide refused to make payment once the carwash became

profitable. According to her, that timeframe was after October 14, 2005. McQuaide, on the other hand, argues that Dolan's claim is one of unjust enrichment, not contract. Therefore, a breach of an alleged agreement cannot form the basis of the accrual period. He contends that Dolan's unjust enrichment claim began to accrue when she ceased performing services and knew that she had not received compensation. That date was October 14, 2005.

This court considered the statute of limitations issue for an unjust enrichment claim in *Baltimore City Bd. of Sch. Comm'rs v. Koba Inst., Inc*., 194 Md.App. 400, 419-21 (2010). We referenced the Court of Appeals 1891 decision in *Dempsey v. McNabb*, 73 Md. 433 (1891), wherein, the Court held that the statute of limitations on a claim for services accrues from the time services are performed. "This last rendition of services test appears to be the law in most jurisdictions." *Id.* at 420. We acknowledged, however, that in some jurisdictions a period of demand and refusal is tacked on to the point when services were last rendered. *See Koba*, 194 Md.App. at 420; *See also News World Communications, Inc. v. Thompsen,* 878 A.2d 1218, 1225 (D.C.2003) (citing *Zic v. Italian Gov't. Travel Office,* 149 F.Supp.2d 473, 476 (N.D.Ill.2001) ("[T]he essence of a quantum merit claim…is not the plaintiff's expectancy of payment, but the unjust enrichment of the defendant and…the defendant was unjustly enriched when the services were rendered and when payment was refused.").

We discussed *Rohter v. Passarella,* 246 Ill.App.3d 860 (1993), wherein an Illinois court rejected as untimely a tax accountant's quantum merit claims when he waited more than 5 years to file suit after rendering services. *See generally Rohter*, 246 Ill.App. at

861-70. The *Rohter* court concluded that limitations began to run "as soon as the services were rendered," not "upon presentment and subsequent rejection of a bill for services" because the accountant "could have billed defendants as soon as he rendered his services to them." *Koba*, 194 Md.App. at 420 (quoting *Rohter*, 246 Ill.App.3d at 869). The "statute of limitations begins to run when the party to be barred has the right to invoke the aid of the court and to enforce his remedy." *Rohter*, 246 Ill.App.3d at 869 (citations omitted).

Of further import, we noted the Court of Appeals decision in another unjust enrichment case, *Henry's Drive-In, Inc. v. Pappas*, 264 Md. 422 (1972), wherein they stated:

> The modern view is that when the maturity of the cause of action is dependent upon the performance of an act within the control of the plaintiff, limitations will run from the time the plaintiff could have acted, without a demand being made. If this were not so, the plaintiff could indefinitely postpone the statutory bar.

Id. at 428.

In the present case, we find merit in the argument that the last rendition of services test is applicable. *Dempsey* remains vital precedent and its holding directly addresses the statute of limitations issue before us. The appellant in *Dempsey* brought suit as the administrator of her sister, Bridget Dempsey's, estate, against McNabb, the executor of Miles Crow's will, for wages alleged to have been owed to the sister at the time of her death. *Id.* During her life-time, Dempsey lived with her cousin—Crow—and performed valuable services—cooking and taking care of his household affairs—until she became sick and unable to work, several months prior to her death in August, 1885. *Id.* There

was no evidence regarding the terms upon which Dempsey rendered services to Crow. *Id*. The complaint "simply stated that she lived in the family and rendered valuable service." *Id.*

The trial court entered judgment for McNabb, finding that the claim was barred by the statute of limitations. *Id.* The Court of Appeals was also in accord. *Id.* They determined that the statute of limitations began to run when Dempsey performed the services. *Id.* Chief Judge Alvey, writing for the Court, stated:

> If the claim for services be founded simply upon an implied obligation to pay for services rendered, that obligation accrued as the services were performed…and therefore due in the life-time of the plaintiff's interstate; and consequently the statute of limitations commenced to run against such claim from the time the right of action accrued.

Id.

In the case at bar, Dolan argues that the statute of limitations is tied to an alleged breach of the agreement. However, there was no agreement, as determined by a previous panel of this court. Dolan's sole claim is one in unjust enrichment for services rendered. We find, therefore, that the *Dempsey* case is applicable. The facts and circumstances in the present case and *Dempsey* are parallel. Both involve the provision of services where no express or implied in fact contract existed. Furthermore, in both cases, there was no payment or resolution of payment at the last rendition of services.

Dolan claimed to have provided McQuaide various services during the course of their relationship, which aided in the establishment of the car wash including: conducting research, drafting a business plan, preparing financial records, and working with attorneys, accountants, as well as the Small Business Administration. According to her

own admission, October 14, 2005 was the last day she performed a beneficial service for the appellee. She explained that their "[p]ersonal relationship…ended October, 2005…[and their] business and fiduciary relationship…ended on or about October 14, 2005" when she was escorted from the business by law enforcement officials and subsequently arrested. The record also shows that Dolan made several demands for payment for various supplies and items related to her work on behalf of the car wash prior to October 14th without success. She testified that she knew on that date that she had not been paid.

Dolan, additionally, presented evidence at trial, that she performed some services in December of 2005. In response to the offered evidence, the trial judge submitted the question to the jury, as the fact-finder, regarding whether she provided services after October 14, 2005 that benefitted McQuaide. The jury, following deliberations, answered no, thus rejecting Dolan's assertion that she rendered further services. *See Vinci v. Allied Research Associates, Inc.*, 51 Md.App. 517, 523 (1982) ("The jury's function…is…to weigh conflicting evidence and make findings of fact on the issues presented to it; and, as in any civil case, the jury's findings of fact, if based on legally sufficient evidence, are final and are not reviewable on further appeal.").

Accordingly, we hold that Dolan's claim began to accrue on the last day she performed a service that benefitted McQuaide which was October 14, 2005. As such, we find no basis to disturb the jury's fact-finding or the judge's determinations thereafter. The jury, as the fact-finder, was in the best position to assess the witnesses' credibility and determine the weight and legal effect of the evidence. *See* Maryland Criminal

Pattern Jury Instruction 2:00 and Commentary (MSBA 2d ed., 2012, 2013 supp.). The judge's determination, as a result of the jury's verdict, that her complaint was filed more than three years after the statute of limitations period commenced was fully supported by the facts and the law.

II. This Court's previous opinion is not binding in the present case.

Dolan contends that this Court's previous opinion stemming from her first appeal prevents our above stated conclusion. She argues that we unequivocally held that October 14, 2005 is not the appropriate accrual date. This argument, however, is premised upon a flawed reading of the opinion.

Dolan noted her first appeal after the circuit court granted summary judgment in McQuaide's favor on all ten counts of her complaint. The circuit court concluded that the statute of limitations had run on counts 3, 6, and 7, breach of contract, unjust enrichment, and promissory estoppel, respectively. On appeal, this Court, tasked with determining whether an issue of material fact existed that would preclude the entry of summary judgment, held in favor of Dolan. We stated:

> [W]e agree with Dolan, that, *in as much as these causes of action relate to the generation of profits pursuant to the alleged contract*, October 14, 2005 is the inappropriate date to set the accrual of the action and the lower court erred by doing so.
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> As such, a breach of the contract, let alone its discovery, could not have occurred unless it could be determined that the carwash began to generate profits. That determination required either an accounting which, according to Dolan, had heretofore been refused or a date to be developed during

> discovery. Accordingly, whether and when McQuaide breached the contact is a question of material fact.

(emphasis added). Based on this language, Dolan argues the October date is not dispositive. A full reading of the opinion, however, clearly shows that our holding was specific as to the issue of whether there was an "alleged contract" and whether and when the breach occurred. Dolan's claim for unjust enrichment emanates from conduct that lacked contractual definition.

In Dolan's subsequent appeal from a grant of summary judgment, this Court found that there was no evidence from "which a fact-finder could infer a definite set of promises that gave rise to an oral contract between the parties." As such, we held that the trial court did not err when it entered summary judgment in favor of McQuaide on Dolan's claims for breach of contract. This court's previous opinion was specific as to the claims and facts that existed prior to the present appeal. Thus, it is not binding as to this issue.

In sum, we hold that the trial court's determination that the statute of limitations in appellant's unjust enrichment action commenced on October 14, 2005 was grounded in the law and thus, was legally correct. Accordingly, the judgment of the circuit court is affirmed.

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