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RECENT DEVELOPMENT

MACBRIDE V. PISHVAIAN: THE STATUTE OF LIMITATIONS ON TENANT'S ACTION AGAINST LANDLORD WILL NOT BE TOLLED UNLESS THERE IS A FIDUCIARY RELATIONSHIP BETWEEN THE PARTIES OR THERE ARE ONGOING VIOLATIONS OF A POTENTIAL PLAINTIFF'S RIGHTS.

By: Teresa Marino

In *MacBride v. Pishvaian*, the Court of Appeals of Maryland held that it will follow the strict application of the discovery rule to determine when a claim begins to accrue for purposes of the statute of limitations, unless there is a fiduciary relationship between the parties or there are ongoing violations of a potential plaintiff's rights. *MacBride v. Pishvaian*, 402 Md. 572, 937 A.2d 233 (2007). Under the strict discovery rule, the Court will toll the accrual of the limitations period until the time that the plaintiff discovers or should have discovered the injury through due diligence. *Id.* at 581, 937 A.2d at 238.

On October 28, 1998, Linda MacBride ("MacBride") began leasing an apartment at an apartment complex owned by Michael M. Pishvaian ("Pishvaian") in Frederick, Maryland. At the time MacBride signed the original lease, the apartment looked primarily neat and clean, except for noticeable water spots on the ceiling and a suspicious odor in the apartment. During the time MacBride lived in the apartment, water would soak the ceilings, walls, and carpet during periods of heavy rainfall. Further, MacBride noticed squirrels running between the walls and over the ceiling of her apartment. MacBride complained to management about the problems to no avail. After a mold problem developed on the premises, MacBride moved out of the apartment in November 2004. Shortly thereafter, a city inspector found mold, a squirrel's nest in the wall, and the front door and a refrigerator in need of repair. Subsequent tests confirmed that various molds were present in the apartment.

In December 2004, MacBride filed a complaint in the Circuit Court for Frederick County for damages stemming from the poor living conditions in the apartment that she rented from Pishvaian, and his allegedly inadequate response to those conditions. At trial, the jury found that Pishvaian engaged in unfair and deceptive trade practices and awarded MacBride \$100,000 in damages. By special verdict, the jury further found that MacBride knew or should have known of the unfair and deceptive trade practices on October 28, 1998, the day that she moved in and more than six years before MacBride filed suit. The circuit court entered a judgment notwithstanding the verdict on the grounds that the claim was barred by the statute of limitations. MacBride noted an appeal to the Court of Special Appeals of Maryland, after which Pishvaian filed a cross-appeal. Prior to any proceedings in the Court of Special Appeals of Maryland, the Court of Appeals of Maryland issued a writ of certiorari on its own initiative.

Under Maryland law, a civil action must be filed within three years from the date it accrues unless otherwise provided by the Maryland Code. *MacBride*, 402 Md. at 581-82, 937 A.2d at 239 (citing MD. CODE ANN., CTS. & JUD. PROC. § 5-101 (1973, 2006 Repl. Vol.)). To determine when a claim begins to accrue for purposes of the statute of limitations, the Court of Appeals of Maryland has adopted the discovery rule. *Id.* at 582, 937 A.2d at 239. Per the discovery rule, the accrual date of the action tolls until the potential plaintiff discovers, or should have discovered, her injury. *Id.* at 581, 937 A.2d at 238.

MacBride argued that the jury implicitly decided that her claim was not barred by the statute of limitations because it returned a verdict in her favor and awarded her damages for the unfair and deceptive trade practices claim. *Id.* at 579, 937 A.2d at 237. The Court determined that the award of damages and the jury's finding that MacBride knew or should have known of her potential claim on October 28, 1998, were not necessarily inconsistent. *Id.* at 580, 937 A.2d at 238. Because the jury was not asked to apply the statute of limitations, the Court interpreted the jury's decision under the assumption that the jury acted rationally and consistently. *Id.* at 580, 937 A.2d at 238.

MacBride urged the Court to apply several recognized exceptions to the discovery rule. *Id.* at 579, 937 A.2d at 237. First, the continuation of events theory tolls the statute of limitations during the existence of a fiduciary relationship between the parties. *Id.* at 582, 937 A.2d at 239. Courts only will apply the continuation of events theory when there are specific facts showing that there is a relationship

built on trust, where one party is able to rely on the good faith of the other party while the relationship exists. *Id.* at 583, 937 A.2d at 240.

The Court rejected MacBride's claim that the continuation of events theory should be applied to the instant case because there were no specific facts that would support the existence of a fiduciary relationship. *Id.* at 583, 937 A.2d at 240. The Court noted that absent specific circumstances showing the contrary, the landlord-tenant relationship is a contractual relationship, and not a fiduciary one. *Id.* at 583, 937 A.2d at 240. The Court stated that even if there was a fiduciary relationship between MacBride and Pishvaian, the continuation of events theory would not toll the statute of limitations because the jury determined that MacBride had knowledge of facts that would lead a reasonable person to undertake an investigation that would have revealed wrongdoing on the part of Pishvaian. *Id.* at 583, 937 A.2d at 240.

MacBride also asserted the continuing harm theory, which tolls the statute of limitations where there are continuous violations of a potential plaintiff's rights. *Id.* at 584, 937 A.2d at 240. Such continuing violations will not be barred by the statute of limitations simply because one or more violations occurred earlier in time. *Id.* at 584, 937 A.2d at 240. Continuous violations recognized under this theory are continuing unlawful acts, and not the continuing effects of a single earlier act. *Id.* at 584, 937 A.2d at 240.

The Court rejected MacBride's claim that the continuing harm theory applied in this case because her complaint was based on continuing ill effects from the original violation. *Id.* at 585, 937 A.2d at 241. The Court stated that MacBride's complaint did not describe a series of acts that would delay the accrual of a cause of action. *Id.* at 585, 937 A.2d at 240-41. The Court determined that even if the continuing harm theory had applied in this case, it would not toll the statute of limitations because the jury determined that MacBride knew or should have known of Pishvaian's unfair and deceptive trade practices on October 28, 1998. *Id.* at 585, 937 A.2d at 241.

By issuing a writ of certiorari on its own initiative, the Court of Appeals of Maryland is highlighting the importance of this decision for landlords and tenants in Maryland. The Court's holding establishes that the deteriorating conditions of a tenant's apartment are immaterial to the Court's analysis when the claim is barred by the statute of limitations. The conclusion in *MacBride* is particularly important to Maryland law because the relationship between landlords and tenants is strictly construed by the Court as a contractual relationship,

notwithstanding specific acts supporting the determination that the parties had a relationship based on trust and confidence. Similarly, the continuing effects of a single earlier act will not qualify as continuing violations.

With *MacBride*, the Court has indicated that it will use a strict interpretation of the discovery rule to determine when a civil claim begins to accrue. As a result, unless there is a clear fiduciary relationship between the parties or continuous violations by the landlord, the accrual of the limitations period will begin when the plaintiff discovers, or should have discovered through due diligence, the injury.