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RECENT DEVELOPMENT

SMITH v. WAKEFIELD: IN BACK RENT ACTIONS, RESIDENTIAL LEASE AGREEMENTS CANNOT BE CONVERTED TO A CONTRACT UNDER SEAL TO EXTEND STATUTE OF LIMITATIONS OF THREE YEARS TO A LIMITATION OF TWELVE YEARS.

By: Daniel W. Pei

The Court of Appeals of Maryland held that in actions for back rent, landlords are not permitted to convert a residential lease, typically subject to a statute of limitation of three years, to a contract under seal with a provision in the agreement which applied a longer limitation of twelve years. *Smith v. Wakefield*, 462 Md. 713, 715 202 A.3d 1240, 1241-42 (2019). The court found that such an application would be contrary to the fundamental principles of the State's landlord-tenant laws. *Id.*

In 2007, tenant Gregory Smith (hereinafter "Smith"), entered into a month-to-month lease agreement with landlord Wakefield L.P. (hereinafter "Wakefield"), for an apartment in Baltimore City. In 2008, Smith was evicted for failure to pay rent. In 2015, seven years after Smith was evicted, Wakefield filed suit to recover unpaid rent from Smith. Although actions of failure to pay rent are typically subject to a three-year statute of limitations, Wakefield relied on the argument that the lease was a "contract under seal," which has a statute of limitations of twelve years.

The District Court for Baltimore City ruled in favor of Wakefield. After Smith filed a *de novo* appeal, the Circuit Court for Baltimore City upheld the district court's ruling. The Court of Appeals of Maryland then granted Smith's petition for writ of certiorari and reversed and remanded the case to the circuit court for dismissal of the complaint.

The Court of Appeals began by identifying the two statutes that could determine the limitation period of the case in question. *Smith*, 462 Md. at 717, 202 A.3d at 1242. Md. Code Ann., Cts. & Jud. Proc. § 5-101 provides a three-year limitation and Md. Code Ann., Cts. & Jud. Proc. § 5-102 provides a 12-year limitation for "specialties," with the relevant specialty found in § 5-102(5), a "contract under seal." *Id.* In determining which statute applies in matters of recovering back rent, the court examined *Tipton v. Partner's Management Co.* See *Smith* at 717, 202 A.3d at 1243 (citing *Tipton*, 364 Md. 419, 773 A.2d 488 (2001)). In *Tipton*, the court found that CJ § 5-101's limitation of three-years governs actions for back rent and that although the limitation can be waived, a contract under seal is not a sufficient waiver, and

refused to recognize it as such without the General Assembly's legislative intent to change the three-year period. *Id.*

The court specifically pointed to a line of dicta in *Tipton* that Wakefield relied upon in their argument. *Smith* at 720, 202 A.3d at 1244. *Tipton* stated that both parties of a residential lease with a seal that was affixed may agree upon a twelve-year limitation period. *Id.* Wakefield argues based on *Tipton* that, because the rental agreement in question had a seal affixed to it, the extension of the statute of limitations is valid. The court was faced with the question of whether a rental agreement can be affixed with a seal for the purpose of extending the statute of limitations. *Smith* at 721, 202 A.3d at 1242.

The court first examined the history of the issue, and found that lease agreements for real property have traditionally been executed "under seal." *Smith*, 462 Md. at 724, 202 A.3d at 1246-47. However, despite the practice of executing leases under seal, Maryland has set the statute of limitations for all actions regarding debt and arrears of rent at three years since 1715. *Id.* The court pointed out that in an opinion from 1972, the court observed that a lease executed under seal does not qualify as an "other specialty" with a longer limitations period. *Id.*

The court then concluded that since these observations 50 years ago, there had been nothing to indicate any changes in the law. *Smith*, 462 Md. at 726, 202 A.3d at 1248. The court examined the revision of the statutes and explained that the purpose of such actions is done without the intent of altering the law. *Id.* Although the revision has made a few substantive changes, the director of the Code Revision Commission did not include allowing back rent to be subject to a ten-year period within these changes. *Id.* The court found that although a tenant may agree to waive certain rights and remedies through the lease agreement, the nature of the landlord/tenant relationship and protections offered to tenants has increased over time, including the prohibition of waiver of rights and remedies under applicable law. *Smith*, 462 Md. at 734-35, 202 A.3d at 1252-53.

Lastly, the court referenced the inconsistencies between the outcome and the dicta of *Tipton*, which Wakefield relied upon in his argument. *Smith*, 462 Md. at 734, 202 A.3d at 1252. Although Wakefield argued that *Tipton* might have left the door open for the possibility of modifying the statute of limitations through a lease agreement, *Tipton* was only attempting to uphold the three-year statute of limitations. *Id.* The court explained that the outcome of *Tipton*, the legislative intent, and history of the law regarding this issue, the specific line relied upon by Wakefield and the lower courts, was merely dicta. *Id.*

As a result, the court found that the three-year statute of limitations is not a waivable "right" by contract under Md. Real Property § 8-208(d). *Smith*,

462 Md. at 735, 202 A.3d at 1253. The court emphasized that tenants have a right to be free from litigation and that the three-year limitation period is provided by law to protect that right. *Id.* The court also analyzed whether the statute of limitations is modifiable under factors outlined in *Ceccone v. Carroll Home Services, LLC*. *Smith*, at 735, 202 A.3d at 1253 (citing *Ceccone*, 454 Md. 680, 165 A.3d 475 (2017)). *Ceccone* suggested four factors to consider whether an agreement can waive or modify the three-year limit to a longer limitation period. *Id.* The court found that the length of the modified period of limitation to twelve years compared to the three-year limitation period, the imbalance in bargaining powers between landlords and tenants, and the subject matter of the contract, a lease agreement, were not favorable to modification. *Id.* at 736, 202 A.3d at 1253 (citing *Ceccone*, 454 Md. 680, 165 A.3d 475). The court determined that the three-year statute of limitations is not modifiable under the *Ceccone* factors. *Id.*

The dissenting opinion argues that the Maryland General Assembly does not specifically prohibit the application of a specialty statute of limitations to residential lease agreements, as it is not exempt from being considered as such. *Smith*, at 742, 202 A.3d at 1256-57. Furthermore, the dissenting opinion points to the lack of clarity of the General Assembly's decisions regarding this issue. *Id.* The dissent would rather defer to the General Assembly, as they have the ultimate authority regarding the statute of limitations. *Smith*, at 742, 202 A.3d at 1256-57. Lastly, the dissent argues that the application of the statute of limitations as a right or remedy stated in RP § 8-208 was erroneous. *Id.* at 745-47, 202 A.3d at 1258-60.

In *Smith*, the Court of Appeals held that a residential lease agreement could not be applied with a specialty seal in order to extend the statute of limitations for cases arising from back rent. By issuing this opinion, the Court of Appeals of Maryland declined to allow landlords to use the fact that a lease agreement is contracted “under seal” to extend the statute of limitations for back rent suits from three years to twelve. The outcome of this decision will create additional protections for tenants and offer more equitable outcomes in the historically landlord-favored rent court cases.

The decision of *Smith* continues to expand the protections offered to tenants in the context of back rent and offer some additional protections to a historically landlord-favored area of law. Practically speaking, *Smith* allows future tenants to more easily raise the statute of limitations as a defense from being sued by landlords for back rent.