STATE OF MICHIGAN

COURT OF APPEALS

MATTHEW J. CREHAN, Plaintiff-Appellant,	UNPUBLISHED June 14, 2016
v	No. 326836 Oceana Circuit Court
GREAT LAKES ENERGY, Defendant-Appellee.	LC No. 14-010621-CH

Before: STEPHENS, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

Plaintiff Matthew Crehan filed a trespass action against defendant Great Lakes Energy based on defendant's removal of trees from plaintiff's investment property. The circuit court summarily dismissed this claim, finding the existence of a valid powerline easement. The circuit court need not have reached the substance of plaintiff's claim, however, as plaintiff filed his claim beyond the statute of limitations. We affirm the circuit court's order on this alternate, preserved ground.

I. BACKGROUND

In 1947, defendant's predecessor-in-interest secured an easement over a 3.4-acre parcel of wooded land on 136th Avenue in Oceana County, permitting the power company "to construct, operate, replace, repair, and maintain" poles and lines, "including the right to cut and trim trees to the extent necessary to keep them clear of the electric line by at least ten feet." Neither defendant nor its predecessor recorded the easement.

Plaintiff dabbles in real estate. In 1987, he purchased the subject parcel at a tax foreclosure sale. Before purchasing the parcel, plaintiff drove past it to determine if there were any structures. He then "took a quick walk up and just a quick, little halfway or three-quarters of the way down" tour of the parcel and conducted "just a quick perusal of a piece of the property" to ensure that the land "wasn't a swamp or anything." Plaintiff claims that he noticed no electrical poles or power lines at that time. Plaintiff did not resell the property and barely visited it thereafter.

Sometime before September 2012, plaintiff walked the parcel for the first time in five years. He immediately noticed that many trees had been removed, which "dramatically changed the character of the property." The power poles and lines were then clearly visible and the tree

removal followed the lines' trail. On September 4, 2012, plaintiff contacted defendant and spoke to defendant's then vice president of engineering, operations, and planning, Mike Roberge. Plaintiff asserts that Roberge informed him that the tree removal occurred in the spring of 2012.

Roberge denied making any such claim. He conducted an internal investigation to determine when defendant removed the trees from plaintiff's property. Defendant's records indicated that the work was performed by Nelson Tree Service on defendant's behalf in November 2009.

On August 11, 2014, plaintiff filed suit for trespass. When defendant raised a statute-of-limitations defense in its answer, plaintiff retorted that the limitations period should be tolled because defendant fraudulently informed him that the tree removal occurred in the spring of 2012, allowing plaintiff until the spring of 2015 to file suit. Following discovery, defendant sought summary disposition on statute-of-limitation grounds, as well as asserting that the unrecorded easement was valid and binding because it was easily discoverable by inspecting the land. The circuit court found no question of fact regarding the validity and existence of defendant's easement, negating plaintiff's trespass challenge. The court therefore dismissed plaintiff's claim. We affirm that dismissal, albeit on statute-of-limitation grounds.

II. ANALYSIS

We review de novo a circuit court's ruling on a summary disposition motion. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). Summary disposition is appropriate under MCR 2.116(C)(7) where the applicable statute of limitations bars a claim. "When considering a motion brought under MCR 2.116(C)(7), it is proper for this Court to review all the material submitted in support of, and in opposition to, the plaintiff's claim." *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 222; 779 NW2d 304 (2009), amended 489 Mich 925 (2011) (citations omitted). "In determining whether a party is entitled to judgment as a matter of law" under this court rule, "a court must accept as true a plaintiff's well-pleaded factual allegations, affidavits, or other documentary evidence and construe them in the plaintiff's favor." *Id.* at 222-223 (citations omitted). "Unlike a motion under subsection (C)(10), a movant under MCR 2.116(C)(7) is not required to file supportive material, and the opposing party need not reply with supportive material. The contents of the complaint are accepted as true *unless contradicted by documentation submitted by the movant*." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999) (emphasis added).

Here, plaintiff alleged that Roberge informed him that defendant removed trees and other foliage from the subject parcel in the spring of 2012. Roberge denied that allegation and if a trial were proper in this matter, the trier of fact would have been required to resolve that credibility contest. However, defendant presented documentary evidence that the lines were in place and reasonably discoverable long before plaintiff's 1987 purchase and that the tree removal occurred in 2009, placing the complaint outside the statutory limitations period.

MCL 600.5805(10) provides a three-year statute of limitations for actions sounding in injury to property, including trespass. The statutory limitations period "runs from the time the claim accrues," and accrual occurs "at the time the wrong upon which the claim is based was done regardless of the time when damage results." MCL 600.5827. MCL 600.5827 provides for

a static claim accrual date unless a specific provision in MCL 600.5829 through MCL 600.5838 applies. None do in this case. The alleged wrong—the removal of the trees from plaintiff's property—occurred in November 2009 based upon the uncontradicted documentary evidence presented by defendant. The three-year statute of limitations therefore ran in November 2012.

Plaintiff complains that that statutory limitations period should have been tolled because defendant's agent informed him that the alleged trespass occurred in the spring of 2012. MCL 600.5855 provides for a two-year tolling period in certain circumstances:

> If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

Even if Roberge mistakenly indicated that the tree removal occurred in 2012, MCL 600.5855 would not apply to extend the statutory limitations period. Roberge's incorrect statement did not "conceal[] the existence of the claim or the identity of any person who is liable for the claim." At most, the statement concealed the date on which the claim may have accrued.

Plaintiff contends that under the common law he would be entitled to file suit within three years of learning about the trespass, or at least from the date on which Roberge informed him that the trespass had occurred. Under this theory, the statute of limitations would have tolled in spring or August 2015. In this regard, the United States Supreme Court has noted its history of accepting equitable tolling of claims "where the plaintiff has refrained from commencing suit during the period of limitation because of inducement by the defendant or because of fraudulent concealment." *American Pipe & Constr Co v Utah*, 414 US 538, 559; 94 S Ct 756; 38 L Ed 2d 713 (1974). However, as noted, the misinformation about when the tree removal occurred did not conceal the fact that a potential claim existed. And the alleged misinformation in no way induced plaintiff to wait almost two years to file his complaint. Plaintiff did not lose his right to seek recompense because of any act, omission or statement by defendant; he lost the right because he abandoned his property for five years and then waited two additional years to file a relatively simple trespass complaint.

Plaintiff also contends that this Court is precluded from considering the statute of limitations issue because defendant "waived the issue by not correctly pleading any of its affirmative defenses." In this regard, plaintiff relies on MCR 2.111(F)(3). This subsection provides that affirmative defenses such as a statute of limitations "must be stated in a party's responsive pleading." Affirmative defenses must be recited "[u]nder a separate and distinct heading" and the party "must state the facts constituting" the defense. *Id.* Consistent with this rule, the statement of a defendant's affirmative defense must "reasonably apprise[]" the plaintiff "of the nature . . . of the defense." *Ewing v Heathcott*, 348 Mich 250, 255; 83 NW2d 210 (1957). The court rule requires a defendant to make its answer "sufficiently specific so that a plaintiff will be able to adequately prepare his case." *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 318; 503 NW2d 758 (1993). To meet its burden, "the defendant must plead something

more specific than 'I deny I'm liable.' " *Id.* Defendant met its burden here. In a separate section entitled "affirmative defenses," defendant asserted, "Plaintiff's claim for property damage are [sic] barred by the applicable statute of limitations." The court rule did not require more detail. See *id.* at 311, 318 (finding sufficient a cursory statement that the plaintiff was not an insured and insurance coverage was not available). The statement was sufficient to place plaintiff on notice to ask relevant questions during discovery.

Accordingly, the circuit court properly dismissed plaintiff's suit, but should have done so on statutory limitation grounds. Given our resolution of this issue, we need not consider the remainder of plaintiff's appellate challenges.

We affirm. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Cynthia Diane Stephens
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher