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Maryland Statutes of Limitations - McMahon v. Dorchester Fert.Co.

MARYLAND STATUTES OF LIMITATIONS

McMahon v. Dorchester Fert. Co.[1]

Action was brought on a sealed promissory note for $370.92 dated December 1, 1930 and payable June 1, 1931. Payments on the principal were made on July 15, 1931 and September 15, 1931. The suit on the note was entered on July 3, 1943, more than twelve years after the note became due and payable but within twelve years from the payments on principal, and the Statute of Limitations was pleaded. The lower court rendered judgment for the plaintiff, but the Court of Appeals reversed, holding that the instrument was barred by the Statute of Limitations.

The history of the Maryland statute of limitations here involved is an extremely interesting one. The Maryland statute fixing the period of limitations for specialties was enacted in 1715 and provided

> "That no bill, bond, judgment, recognizance, statute merchant, or of the staple, or other specialty whatsoever, except such as shall be taken in the name or for the use of our sovereign Lord the king, his heirs and successors, shall be good and pleadable, or admitted in evidence against any person or persons of this province, after the principal debtor and creditor have been both dead twelve years, or the debt or thing in action above twelve years standing; saving to all persons that shall be under the afore-mentioned impediments of infancy, coverture, insanity of mind, imprisonment, or being beyond the seas, the full benefit of all such bills, bonds, judgments, recognizances, statutes merchant, or of the staple, or other specialties, for the space of five years after such impediment removed, anything in this act before mentioned to the contrary notwithstanding."[2]

No change of major importance for the purposes of this note was made in the wording of the statute[3] until the year

[1] 184 Md. 155, 40 A. 2d 313 (1944).

[2] Md. Laws 1715, Ch. 23, Sec. 6.

[3] In 1729 actions on administrative and testamentary bonds were declared to be subject to the twelve year period of limitations (Md. Laws 1729, Ch. 24); in 1818 it was provided that absence beyond the seas should no longer operate as a disability (Md. Laws 1818, Ch. 216); in 1860 the period during which an action might be brought after the removal of a disability was stated to be six years (Md. Code Pub. Gen. L. 1860, Art. 57, Sec. 3); in 1890 the disability in favor of a married woman was dropped (Md. Laws 1890, Ch. 548); and in 1894 it was provided that imprisonment should no longer be a disability (Md. Laws 1894, Ch. 661).

1904 when an exception was made in the case of payments of interest.[4] This legislative change followed closely upon the heels of the case of *Trustees of St. Mark's Evangelical Lutheran Church v. Miller*[5] and apparently was the result of that case. In it Miller executed a sealed promissory note in 1882 payable to certain church trustees one year after date with interest. Miller made payments of interest annually until his death in 1902. In 1901 he told the officers of the church that he knew the note and interest were due and that he wanted to sell a farm and pay off the debt, and at another time he said that he would pay the note so as to prevent any trouble. After his death a claim was filed; Miller's heirs pleaded the Statute of Limitations. The lower court held that the plea was good but this was reversed on appeal, the appellate court being of the opinion that the evidence was sufficient to show an express promise to pay after the claim had been barred. Of this case the Court of Appeals in the *McMahon* case had the following to say: ". . . the Court of Appeals reversed the decree and remanded the cause on technical grounds; but it is believed that the glaring injustice threatened in the case induced the Legislature, which was then in session, to amend the section pertaining to specialties, by inserting the proviso that every payment of interest shall suspend the operation of this section for three years after the date of such payment."[6]

Thus at the time when the principal case was tried, payments of interest suspended the operation of the limitations statute for three years. But the payments here made were admittedly on principal and were not of interest. The immediate question before the Court, therefore, was whether the exception as to part payment could be construed to include payments on principal. The Court held

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[4] The statute was amended to read as follows: "No bill, testamentary, administration or other bond (except sheriffs and constables' bonds), judgment, recognizance, statute merchant, or of the staple or other specialty whatsoever, except such as shall be taken for the use of the State, shall be good and pleadable, or admitted in evidence against any person in this State after the principal debtor and creditor have been both dead twelve years, or the debt or thing in action is above twelve years' standing; provided, however, that every payment of interest upon any single bill or other specialty shall suspend the operation of this section as to such bill or specialty for three years after the date of such payment; saving to all persons who shall be under the aforementioned impediments of infancy or insanity of mind the full benefit of all such bills, bonds, judgments, recognizances, statutes merchant, or of the staple or other specialties, for the period of six years after the removal of such disability." Md. Laws 1904, Ch. 414.

[5] 99 Md. 23, 57 A. 544 (1904).

[6] 184 Md. 155, 158; 40 A. 2d 313, 315 (1944).

that whether or not such payments came within the spirit of the exception, they clearly did not come within its wording; and that "where the Legislature has not made an exception in express words in the Statute of Limitations, the Court cannot allow any implied and equitable exception to be engrafted upon the statute merely on the ground that such exception would be within the spirit or reason of the statute."[7]

At this point, it seems that history repeated itself. The *McMahon* case was decided on December 20, 1944 and on March 29, 1945, House Bill 253 was approved. This bill, which became Chapter 467 of the Laws of Maryland, 1945, provided that payments on principal, as well as payments of interest, shall suspend the operation of the statute of limitations.[8]

It is interesting to note here the differences between limitations in the case of specialties and limitations in the case of simple contract actions. At common law there was no limitation on the time within which one might bring suit upon a claim.[9] Then in 1623 there was passed the earliest English statute limiting contractual actions[10] and this statute is the foundation of all American as well as English statutes of limitation. It provided that ". . . all actions of account and upon the case, other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract without

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[7] 184 Md. 155, 160, 40 A. 2d 313, 316 (1944), citing Bedell v. Janney, 4 Gillman, Ill., 193; Doxier v. Ellis, 28 Miss. 730; Black, Interpretation of Laws, 332.

[8] The statute now reads: "No bill, testamentary, administration or other bond (except sheriffs and constables' bonds), judgment, recognizance, statute merchant, or of the staple or other specialty whatsoever, except such as shall be taken for the use of the State, shall be good and pleadable, or admitted in evidence against any person in this State after the principal debtor and creditor have been both dead twelve years, or the debt or thing in action is above twelve years' standing; provided, however, that every payment of interest and every payment on the principal upon any single bill or other specialty shall suspend the operation of this section as to such bill or specialty for three years after the date of such payment; saving to all persons who shall be under the aforementioned impediments of infancy or insanity of mind the full benefit of all such bills, bonds, judgments, recognizances, statutes merchant, or of the staple or other specialties, for the period of six years after the removal of such disability." Md. Laws 1945, Ch. 467, amending Md. Code (1939) Art. 57, Sec. 3.

[9] Pleas of limitations were allowed, however, before statutes of limitation were enacted. They were admitted on the theory of a fiction to the effect that after the lapse of a long period of time without a personal demand by the claimant, the presumption was that the obligation had been paid or discharged. See 34 AM. JUR. Limitation of Actions, Sec. 2; Mix, *Statutes of Limitation* (1931) 3 Rocky Mt. L. Rev. 106.

[10] 21 Jac. 1, c. 16; 10 Stat. Eng. 429 (1929).

specialty, all actions of debt for arrearages of rent . . . which shall be sued or brought at any time after the end of this present session of Parliament shall be commenced and sued . . . within three years next after the end of this present session of Parliament, or within six years next after the cause of such action or suit, and not after . . ."

Although the act made no exception to the operation of the statute, the English courts early engrafted an exception thereupon in the case of a new promise or part payment. The courts held that, in such cases, there was a revival of the cause of action and the statute commenced running anew.[11]

The Maryland statute setting limitations on actions on simple contracts was originally passed in 1715. It was different from the English statute only in the period of time fixed, three years being set in the Maryland act.[12]

The Maryland cases have been in accord with the law relating to the running of limitations on simple contract claims as generally developed in this country, with one notable exception. Under the weight of authority, a new promise or bare acknowledgment made either before or after the statute has completely run extends the period of limitations for the statutory period,[13] and partial payment is regarded as equivalent to an acknowledgment of indebtedness and therefore a new promise is implied therefrom.[14] But as to an acknowledgment accompanied by a refusal to pay, the general rule followed in this country is that no new promise to pay can be implied in such case.[15] However, the Maryland cases take what appears to be a unique position in holding that an acknowledgment of in-

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[11] Lord Tenterden's Act, 9 George IV, c. 14 (1833) required that new promises and acknowledgments be in writing but expressly provided that the act did not affect the rule as to payments of principal or interest. Most of the states in the United States enacted similar statutes, but Maryland is among those that did not.

[12] The original Maryland statute read as follows: ". . . all actions of account, contract, debt, book, or upon the case, other than such accounts as concern the trade or merchandise between merchant and merchant, their factors and servants which are not residents within this province, all actions of debt for lending, or contract without specialty, all actions of debt for arrearages of rent, . . . [which] shall be sued or brought by any person or persons within this province, at any time after the end of this present session of assembly, shall be commenced or sued . . . within three years ensuing the cause of such action, and not after . . ." Md. Laws 1715, Ch. 23, Sec. 2.

[13] 1 WILLISTON, CONTRACTS (Rev. ed. 1938) Sec. 163; RESTATEMENT CONTRACTS (1932) Sec. 86(1).

[14] 1 WILLISTON, CONTRACTS (Rev. ed. 1938) Sec. 174; RESTATEMENT CONTRACTS (1932) Sec. 86(2)(b).

[15] 1 WILLISTON, CONTRACTS (Rev. ed. 1938) Sec. 168; RESTATEMENT CONTRACTS (1932) Sec. 86, Ill. 7.

debtedness coupled with a refusal to pay is sufficient to toll the statute, unless the refusal is based upon an excuse of such a nature as exempts the debtor from any moral obligation to discharge the debt. This doctrine, which Williston characterizes as "peculiar"[16] was established in the case of *Oliver v. Gray*,[17] and was reiterated in *Knight v. Knight*[18] where it was held that an acknowledgment that a debt is owing and unpaid is sufficient to remove the bar of the statute, although the debtor asserts that the debt is barred and he intends to stand on the bar, as that is not such a qualification or excuse as exempts him from a moral obligation to discharge it.

Such then is the law in regard to limitations as to simple contract claims. As to specialties, the rule in Maryland is that after a claim has become barred, a promise to pay does not revive the obligation. However, an action may be brought on the new promise and the specialty may then be introduced in evidence to show the consideration for the promise. And until the amendments of 1904 and 1945, no promise or acknowledgment or partial payment made before the period of limitations had run could operate to extend the time during which an action could be brought. The Maryland law on these points was in accord with the great weight of authority. Wood in his work on Limitations states that:

> "The present theory relative to acknowledgments, part payments, etc., is not applicable to specialties; and where such debts are within the statute, an acknowledgment, new promise, or part payment cannot operate either to suspend the operation of the statute or to remove the bar when it has once attached. Upon such obligations the action is not, and in the nature of things cannot be, grounded upon a promise, but must be either in debt or covenant, or actions in effect the same; and if the obligation is in anywise changed or altered by parol or a writing not under seal, it is instantly reduced to a simple contract, but a promise to pay, or an admission of liability thereon, does not produce this effect. The action still remains a specialty action and it is difficult to understand how to a plea of the statute a new promise can be replied . . . The same rule applies to all specialty debts, or debts which cannot be recovered in assumpsit. Thus, it has been

[16] See 1 WILLISTON, CONTRACTS (Rev. ed. 1938) Sec. 167.
[17] 1 H. & G. 204 (1827).
[18] 155 Md. 243, 141 A. 706 (1928).

held (and we think correctly), that the replication to a plea of the statute of a new promise is not good in an action upon a judgment of a court of record, such replication being held only applicable in actions upon promises . . ."[19]

The Maryland court has recognized the differences in the rules as to limitations under the two statutes. In the case of *Brooks v. Preston*[20] a judgment creditor died two years after he had obtained a judgment. Administration of his estate was not granted until eleven years later. Thereupon the administrator was substituted as plaintiff and a writ of scire facias was issued to revive the judgment. A plea of limitations was held good for the reason that the operation of the statute was not suspended between the time of the judgment creditor's death and the granting of administration on his estate. The Court had the following to say:

"In *Mann v. McDonald, admr.*, 22 Wash. (D. C.), L. R. 98, which was an action to revive a judgment by *sci. fa.* and of debt on a judgment, CHIEF JUDGE ALVEY, after holding that our Statute of Limitations . . . was applicable to the District of Columbia, said: 'Unlike the construction that has been placed upon the terms of the statute employed by the second section, in regard to simple contract debts, the construction uniformly placed on the terms employed in the sixth section in regard to judgments, recognizances and specialties of various kinds, owing to the peculiar nature of the language employed in the latter section, has been different and unyielding to circumstances that would remove the bar of the statute as applied to simple contract debts; hence it has been uniformly held that a new acknowledgment of the debt due on judgment or even an express promise to pay same, will not arrest the running of the statute, or remove the bar, as against the judgment or specialty mentioned in the Act.' And this Court by Judge Alvey declares that 'nothing less than an *express promise* to pay the amount due thereon, made after the statute has become a bar to the remedy on the bond itself will suffice to maintain an action of *assumpsit* to recover the amount due.'

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[19] 1 WOOD, LIMITATIONS (4th ed.) Sec. 66.
[20] 106 Md. 693, 68 A. 294 (1907).

> "In such case the bond, although the remedy thereon be barred by the statute, may be given in evidence, as the inducement to, or explanatory of and as furnishing the legal basis of the express promise to pay the amount remaining due on the bond. *Leonard, admr. v. Hughlett,* 41 Md. 380; *St. Mark's Church v. Miller,* 99 Md. 26."[21]

Thus it is that the two statutes have been treated differently by the courts. As to simple contracts, judicial construction of the limitation statutes has been less strict than in the case of specialties. The reason therefor can be found by comparing the wording of the statutes in each case, for while the statute as to simple contracts merely states that "all actions . . . shall be commenced or sued . . . within three years", the statute relating to specialties provides that "No . . . specialty . . . shall be good and pleadable . . . after . . . the thing in action [is] above twelve years standing". As a result the Courts have long considered themselves free to engraft exceptions upon the limitation statute pertaining to simple contracts where justice so requires while no such freedom is exercised in the case of specialties. As to the latter, the Maryland judiciary has left the task of removing an injustice, actual or threatened, to the legislative branch of the government. And the State's legislative history makes it apparent that the legislature has been quick to act in such case.

[21] 106 Md. 693, 706, 68 A. 294, 296 (1907).