**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

SOLOMON S. PILZ, and his wife;
MARIE ANN LANDGREBE PILZ,
Plaintiffs-Appellants,

v.

No. 96-2243

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for
Perpetual Savings Bank, F.S.B.;
SENTINEL TITLE CORPORATION,
Defendants-Appellees.

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
Marvin J. Garbis, District Judge.
(CA-95-3808-MJG)

Argued: June 2, 1997

Decided: July 1, 1997

Before RUSSELL and HAMILTON, Circuit Judges, and
HOWARD, United States District Judge for the
Eastern District of North Carolina,
sitting by designation.

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Vacated and remanded by unpublished per curiam opinion.

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**COUNSEL**

**ARGUED:** Thomas Joseph Dolina, BODIE, NAGLE, DOLINA,
SMITH & HOBBS, P.A., Towson, Maryland, for Appellants. Law-

rence Hipson Richmond, FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C., for Appellees. **ON BRIEF:** Kelly A. Kormer, BODIE, NAGLE, DOLINA, SMITH & HOBBS, P.A., Towson, Maryland, for Appellants. Ann S. DuRoss, Assistant General Counsel, Colleen B. Bombardier, Senior Counsel, Marta W. Berkley, FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C., for Appellee FDIC; Deborah M. Whelihan, JORDAN, COYNE & SAVITS, Washington, D.C., for Appellee Sentinel Title.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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**OPINION**

PER CURIAM:

Plaintiffs Solomon and Marie Pilz appeal the district court's Fed. R. Civ. P. 12(b)(6) dismissal of their claims against the defendants, the Federal Deposit Insurance Corporation (FDIC) (which had been substituted for Perpetual Savings Bank, F.S.B. (Perpetual))**1** and Sentinel Title Corporation (Sentinel). The sole issue presented by this appeal is whether the Pilzes' claims against the FDIC and Sentinel, as alleged in their complaint, are barred by Maryland's general three-year statute of limitations. See Md. Code Ann., Cts. & Jud. P. § 5-101. The district court held that the claims were barred because the Pilzes had "actual notice" of their claims against the FDIC and Senti-

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**1** Because Perpetual was in receivership at the time the Pilzes filed their complaint in Maryland state court, the Resolution Trust Company (RTC) was substituted for Perpetual as a defendant pursuant to the Financial Institution Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, 103 Stat. 183 (codified as amended in scattered sections of 12 and 18 U.S.C.). Accordingly, the RTC removed the action to the United States District Court for the District of Maryland pursuant to 12 U.S.C. § 1819(b)(2)(A) and 28 U.S.C. § 1441(b). After the RTC was dissolved, the FDIC was substituted as the defendant in Perpetual's

place. See 12 U.S.C. § 1441a(m)(2).

nel more than three years before filing suit and thus, the district court dismissed the complaint pursuant to Fed. R. Civ. P. 12(b)(6). Because the district court erred when it determined that, as a matter of law, the Pilzes had actual notice of their claims against the FDIC and Sentinel more than three years before they filed their complaint in state court, we vacate the district court's dismissal of the Pilzes' claims and remand the case to the district court for further proceedings consistent with this opinion.

I.

In their complaint, the Pilzes alleged that in early January 1992 they met with a representative of Perpetual in order to refinance their house, which is located at 6415 Dry Barley Lane, Columbia, Maryland (the Property). During that meeting, the Pilzes gave Perpetual's representatives an unrecorded deed to the Property dated November 7, 1991, which would have transferred ownership in the Property from Solomon Pilz, Marie Pilz, and Charles Osterwald as joint tenants to Solomon Pilz and Marie Pilz as joint tenants. At the meeting, Perpetual told the Pilzes that they would be able to refinance the Property and assured them that, since they were married, a new deed would be prepared by Sentinel which would title the Property in them as "husband and wife" or tenants by the entireties. See (J.A. 7).

During the month of January 1992, the Pilzes received several documents in preparation for the loan closing which was scheduled for February 3, 1992. These documents included a title insurance binder, dated January 29, 1992, wherein Sentinel represented to Perpetual that the Property was to be titled in the Pilzes as"husband and wife."**2**
See id.

At the February 3, 1992 closing, the Pilzes received the usual loan closing documents relevant to the refinancing of their mortgage. The Pilzes also executed the deed, as prepared by Sentinel, which vested title to the Property in them as joint tenants and not as tenants by the

**2** It is not clear from the complaint whether the Pilzes were given access to the title insurance binder at or before the February 3, 1992 closing. However, under normal circumstances the title insurance binder would have been available to them at closing.

entireties. However, in their complaint, the Pilzes assert that they believed the deed prepared by Sentinel and executed on February 3, 1992 conveyed the Property to them as "husband and wife" or tenants by the entireties, consistent with Perpetual and Sentinel's assurances. They also assert that none of the above-mentioned documents gave them any reason to suspect otherwise. Further, the Pilzes claim they did not know the legal distinctions between a husband and wife owning property as joint tenants as opposed to their owning property as tenants by the entireties.

Subsequently, in 1994, Solomon Pilz had a judgment recorded against him for $63,000. As a result of the fact that the Property was deeded to the Pilzes as joint tenants, rather than as tenants by the entireties, the judgment creditor allegedly threatened to enforce his judgment against Solomon Pilz by attaching his one-half interest in the Property. In order to keep the judgment creditor from securing a lien on Solomon Pilz's one-half interest in the Property, the Pilzes secured a loan from relatives to satisfy the $63,000 judgment. Due to various other costs, including interest and attorneys' fees necessitated by the loan from relatives, the Pilzes claim they have suffered $81,044 in damages allegedly due to Perpetual and Sentinel's professional negligence, negligent misrepresentation and breach of an express warranty. In sum, the Pilzes claim that they did not know until the $63,000 judgment was entered against Solomon Pilz that Perpetual and Sentinel had not performed as promised and thus, they did not know until some point in 1994 that the Property was deeded to them with the legal significance of a joint tenancy, rather than a tenancy by the entireties.

On the basis of the facts alleged above, the Pilzes filed a complaint against Perpetual and Sentinel in the Circuit Court for Baltimore County, Maryland on November 15, 1995. In that complaint, the Pilzes raised various claims, including professional negligence, negligent misrepresentation, and breach of an express warranty, all of which revolve around Perpetual and Sentinel's alleged failure to furnish a deed conveying the Property to the Pilzes as tenants by the entireties or "husband and wife." After the matter had been removed

to federal district court and the FDIC was substituted for Perpetual, the FDIC, without answering the complaint, filed a motion to dismiss the Pilzes' complaint asserting that: (1) the district court lacked juris-

diction over the Pilzes' claims because they failed to exhaust their administrative remedies as required by 12 U.S.C. § 1821(d), and (2) the claims stated in the complaint were barred by Maryland's general three-year statute of limitations, see Md. Code Ann., Cts. & Jud. P. § 5-101.**3** Thereafter, the district court stayed the matter so the Pilzes could pursue their administrative remedies against the FDIC. Once the Pilzes had exhausted their claims as required by 12 U.S.C. § 1821(d)(5), and the district court had lifted the stay, the district court reviewed the Pilzes' claims de novo, see Brady Dev. Co., Inc. v. Resolution Trust Co., 14 F.3d 998, 1003 (4th Cir. 1994).

After reviewing the merits of the Pilzes' complaint, the district court dismissed the Pilzes' claims against both the FDIC and Sentinel pursuant to Fed. R. Civ. P. 12(b)(6), concluding that the Pilzes knew or should have known they had claims against the FDIC and Sentinel which arose more than three years before November 15, 1995. **4** Specifically, the district court reasoned that because: (1) the Pilzes knew that the November 7, 1991 unrecorded deed provided for the conveyance of the Property to them as joint tenants rather than tenants by the entireties, and (2) the February 3, 1992 deed actually titled the Property to them as joint tenants, they should have been put on at least "inquiry notice" of the manner in which the Property was actually titled in them.

II.

We review de novo whether the FDIC and Sentinel are entitled to a dismissal of the Pilzes' complaint for failure to state a claim upon which relief could be granted. See Schatz v. Rosenberg, 943 F.2d 485, 489 (4th Cir. 1991), cert. denied, 503 U.S. 936 (1992). When review-

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**3** Md. Code Ann., Cts. & Jud. P.§ 5-101 states that unless otherwise provided, "[a] civil action at law shall be filed within three years from the date it accrues . . . ."

**4** Although Sentinel never filed a motion to dismiss, the district court concluded that because the Pilzes' claims against both defendants

arose
on the same day (the loan closing held on February 3, 1992) and because
that day was more than three years prior to the date they filed their suit
in Maryland state court (November 15, 1995), their suit was time barred
as to both the FDIC and Sentinel.

ing a motion to dismiss for failure to state a claim, factual allegations must be construed liberally in favor of the plaintiffs. See Battlefield Builders, Inc. v. Swango, 743 F.2d 1060, 1061-62 (4th Cir. 1984). We will affirm a dismissal pursuant to Rule 12(b)(6) only when it appears beyond doubt that the plaintiffs can prove no set of facts in support of their claims which would entitle them to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

III.

The parties do not dispute that Maryland's three-year statute of limitations applies to this case. Nor is there any dispute that the statute of limitations issue with regard to notice is dispositive of the FDIC and Sentinel's entitlement to a dismissal of the Pilzes' claims under Rule 12(b)(6). Pursuant to Maryland's general three-year statute of limitations, the Pilzes' claims against the FDIC and Sentinel are time barred if the district court was correct in determining that the Pilzes should have been aware that the Property was not conveyed to them as tenants by the entireties or "husband and wife" on February 3, 1992. However, the Pilzes' claims are not time barred if they only received actual notice of their claims when the $63,000 judgment was entered against Solomon Pilz. Thus, this appeal boils down to the single question of when the Pilzes knew, or reasonably should have known, under Maryland law, that the deed they executed on February 3, 1992 did not title the Property in them as tenants by the entireties or "husband and wife."

According to Maryland's discovery rule, the Pilzes' claims against the FDIC and Sentinel accrued when the Pilzes knew or reasonably should have known that Perpetual and Sentinel did not abide by their obligation to convey the Property to them as tenants by the entireties or "husband and wife" (i.e., when the Pilzes had actual notice of their claims). See Poffenberger v. Risser, 431 A.2d 677, 680-81 (Md. 1981). Constructive notice is not sufficient according to Maryland's

discovery rule and therefore, the mere existence of the "joint tenant" language in the Pilzes' deed is not sufficient by itself to start the limitations clock running on the Pilzes' claims. See id. Instead, there must have been some "fact or circumstance" which should have led the Pilzes, through the exercise of due diligence, to engage in a further inquiry and thereby discover the defect in the deed. See id. at 680.

Poffenberger, the seminal case on Maryland's "discovery rule," itself involved a defect in the plaintiff's chain of title about which the Maryland Court of Special Appeals determined that Poffenberger should have had constructive notice. See Poffenberger v. Risser, 421 A.2d 90, 92 (Md. Ct. Spec. App. 1980), rev'd, 431 A.2d 677 (Md. 1981).**5** However, the Maryland Court of Appeals rejected the lower court's constructive notice theory and concluded that there was a genuine issue of fact regarding whether Poffenberger had actual notice of Risser's negligence in not centering the house on his lot. See Poffenberger, 431 A.2d at 679-81. Specifically, the Maryland Court of Appeals reasoned that despite the records in his chain of title, Poffenberger was not necessarily put on "actual notice" that his house violated the side-lot restriction. See id. at 681. The Maryland Court of Appeals did not even find that Poffenberger should have been put on "inquiry notice" by what the lower court termed "the obviously off-center" house coupled with the restriction contained in his chain of title. See id. In short, the Maryland Court of Appeals concluded that the reasonableness of Poffenberger's reliance on Risser's expertise as a builder and his trust in Risser's ability to center the house on his property was a question of fact that a jury must resolve. See id. at 680-81.

Following the Poffenberger decision, Maryland courts have applied the "discovery rule" in such a manner that makes it difficult for a defendant to secure judgment as a matter of law on the issue of notice as it pertains to the statute of limitations. See generally, O'Hara v. Kovens, 503 A.2d 1313, 1320 (Md. 1986) ("Whether or not the plain-

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**5** In that case, the Poffenbergers purchased a lot in an undeveloped sub-division from a developer in August 1972. The subdivision was subject to a residential setback restriction of fifteen feet from side-lot lines. See 431 A.2d at 678. That restriction was clearly set forth on the recorded sub-division plat to which the Poffenbergers had ready access. See id. The Poffenbergers then contracted with Risser to build a house for them which was to be "centered" on the lot so as not to run afoul of the

fifteen
foot side-lot restriction. See id. In March 1976, the neighboring lot was
surveyed prior to a house being constructed on that site and Mr. Poffen-
berger allegedly discovered, for the first time, that his house was built
less than eight feet from the neighboring property line, in violation of the
side-lot restriction. See id.

tiff's failure to discover his cause of action was due to failure on his part to use due diligence, or to the fact that defendant so concealed the wrong that plaintiff was unable to discover it .. . is ordinarily a question of fact for the jury." (quoting Faust v. Hosford, 93 N.W. 58, 59 (Iowa, 1903)). Even when plaintiffs have some reason to suspect they may have a claim, Maryland courts have been unwilling to resolve the notice issue as a matter of law, especially when a plaintiff has relied on the defendant's or some other skilled person's assurances that there was no problem. See Baysinger v. Schmid Prod. Co., 514 A.2d 1, 4 (Md. 1986) (Because a doctor told the plaintiff that an intrauterine device was most likely not causing her abdominal pain, "[w]hether a reasonably prudent person should then have undertaken a further investigation is a matter about which reasonable minds could differ . . . ."); DeGroft v. Lancaster Silo Co., Inc., 527 A.2d 1316, 1325-26 (Md. Ct. Spec. App. 1987).

The DeGroft case is particularly instructive on the difficulty a defendant has, under Maryland law, to secure judgment as a matter of law against a plaintiff on a notice based statute of limitations issue. In DeGroft, the trial court concluded that the plaintiff was put on inquiry notice in 1977 when his neighbors told him that the silo the defendant had built for him was leaning. See id. at 1318. With that in mind, the trial court determined that reasonable minds could not differ on the notice issue because DeGroft himself called the defendant to complain about the leaning, thereby demonstrating his "actual knowledge" of the problem. See id.

The Maryland Court of Special Appeals disagreed. See id. at 1325. Specifically, the Maryland Court of Special Appeals concluded that a reasonable jury could conclude that DeGroft was entitled to rely on Lancaster's assurances that the silo was properly constructed, thereby putting his suspicions to rest:

> It may be that an ordinary and prudent person . . . would have disregarded [Lancaster's] assurances . . . [a]nd it may be that the . . . extent of the leaning . . . was so marked that an ordinary and prudent person would have concluded that some fault on the part of [Lancaster] might have been the

cause of the leaning.

> But these were matters for the trier of fact to determine on a record more ample than that before the court . . . .

Id. at 1326.

After considering Poffenberger, Baysinger, and DeGroft, and the manner in which Maryland courts have applied the "discovery rule," it becomes clear that the district court erred when it resolved the notice issue against the Pilzes as a matter of law at this stage of the proceedings. It is true that the Pilzes knew the November 7, 1991 unrecorded deed would have transferred the Property to them as "joint tenants," and that the Pilzes at least should have known that the February 3, 1992 deed also used the term "joint tenants." However, based on the assurances allegedly given by Perpetual and Sentinel, the Pilzes have alleged facts which entitle them to avoid a dismissal of their claims pursuant to Rule 12(b)(6). The Pilzes' knowledge of the underlying events was no more pronounced than Poffenberger's knowledge that his house was not centered on his property, or DeGroft's "actual knowledge" that his silo was poorly constructed, even after his neighbors told him that it was leaning. Specifically, the Pilzes could possibly establish that they were relying on Perpetual and Sentinel's expertise to draft a deed in accordance with Perpetual and Sentinel's own assurances.

In sum, this was not one of the small number of cases that was ripe for dismissal pursuant to Rule 12(b)(6). See Rogers v. Jefferson-Pilot Life Ins. Co., 883 F.2d 324, 325 (4th Cir. 1989) ("In our view, . . . a Rule 12(b)(6) motion should be granted only in very limited circumstances."). We are not passing on the overall merits of the Pilzes' claims, nor forecasting their possible success at the summary judgment stage, or before a jury, should the case proceed that far. Instead, we simply conclude that the Pilzes are entitled to go forward with their case because the complaint sets forth sufficient facts such that it survives a motion to dismiss.

IV.

For the reasons stated herein, we vacate the district court's dismissal of the Pilzes' claims pursuant to Fed. R. Civ. P. 12(b)(6)

and

remand the case to the district court for further proceedings consistent
with this opinion.

VACATED AND REMANDED