Circuit Court for Calvert County
Case No. C-04-CV-17-000001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2192

September Term, 2017

MR. LUCKY, LLC, ET AL.

v.

CALVERT COUNTY PLANNING COMMISSION, ET AL.

Kehoe,
Berger,
Reed,

JJ.

Opinion by Berger, J.

Filed: March 13, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case arises out of an eight-year zoning dispute between appellants, Mr. Lucky, LLC and PT Tiki, Inc. (collectively referred to as "Mr. Lucky") and appellees, the Board of County Commissioners of Calvert County and the Calvert County Planning Commission (collectively referred to as the "County"). On June 11, 2014, this Court, in an unreported opinion, resolved the zoning controversy in Mr. Lucky's favor.[1] On June 9, 2017, Mr. Lucky filed suit in the Circuit Court for Calvert County, alleging that the County used its land use authority in an arbitrary and capricious manner. As amended in August 2017, Mr. Lucky alleged a violation of its substantive due process rights under Article 24 of the Maryland Declaration of Rights. Thereafter, the County filed a motion to dismiss, arguing that Mr. Lucky's claim was barred by the statute of limitations.

After the circuit court granted the County's motion to dismiss, Mr. Lucky filed this appeal. On appeal, Mr. Lucky poses four questions, which we consolidate and rephrase as follows[2]:

> Whether the circuit court erred in granting the County's motion to dismiss.

[1] *Ross v. Mr. Lucky, LLC*, No. 302, Sept. Term 2009; No. 2058, Sept. Term 2011; No. 1351, Sept. Term, 2012 (filed June 11, 2014) (referred to as "*Ross v. Mr. Lucky*").

[2] The issues, as framed by Mr. Lucky, are as follows:

> 1. Did the Circuit Court err in granting a motion to dismiss in favor of Appellees Board of Commissioners for Calvert County and the Calvert County Planning Commission when it declared that Appellant Mr. Lucky's, LLC and PT Tiki, Inc.[']s claims against Appellees for violations of Appellants' substantive due process rights under the Maryland Declaration of Rights, Article 24, are barred by a three year statute of limitations?

For the reasons explained herein, we affirm.

FACTS AND PROCEEDINGS

This dispute concerns an open-air tavern in Solomons, Maryland known as the "Tiki Bar." The Tiki Bar is a seasonal operation, open to patrons between the months of April and October. Primarily known for its annual grand-openings, the Tiki Bar draws thousands of visitors from Maryland and other states. We draw from our previous opinion to outline the relevant history of the Tiki Bar property.

> The Tiki Bar property developed, or one might better say evolved, as follows. The motel opened in 1960, long before there was a Tiki Bar. (Before the motel was built, a hotel was located at the same site.) The restaurant opened in 1966. At that time, and long before, this part of Solomons was devoted largely to the fishing and marine trades. It was

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2. Did the Circuit Court err when it rejected Appellants claim that a substantive due process claim does not accrue -- is not ripe -- until a final decision is made after completion of the available administrative and judicial appeals, which occurred in this case with the CSA's decision of June 11, 2014?

3. Did the Circuit Court err in finding that Appellee Planning Commission's decision in 2008 to stay consideration of Appellant Mr. Lucky's Site Plan filed in 2006 until all appeals to the Circuit Court and Court of Special Appeals were decided, was of no consequence in tolling the three year statute of limitations period until the Court of Special Appeals made a final decision?

4. Did the Circuit Court's failure to understand the zoning process in Calvert County, the separate roles of the Planning Commission and the Board of Appeals and the appeal process for obtaining a "final administrative" decision constitute error requiring a reversal of the Circuit Court's decision based on substantive and due process errors?

frequented mainly by fisherman and was home to marine-oriented businesses, such as a yacht sales office.

* * *

The Tiki Bar came into existence soon after September 14, 1979, as an outdoor open air tavern. Bunky Hipple, then-owner of the Tiki Bar property, obtained a permit to remodel the porch, patio, and two walls of the northernmost section of the motel (then called the "Solomons Motel"), adjacent to Charles Street. The remodeled area became the 800-square-foot Tiki Bar. On November 24, 1980, a permit was issued for the addition of 10 seats to the Tiki Bar. As a result of that change, the Tiki Bar had 30 seats and the restaurant seated 80. The driveway entrance to the paved area was to be kept at 25 feet wide.

The Tiki Bar was again expanded under a permit obtained on December 2, 1982. That expansion allowed for an extended roof overhang, partly made of thatch. It appears from the application that by then the maximum seating at the Tiki Bar had been raised to 40. The expansion resulted in a 576-square-foot addition to the Tiki Bar.

Calvert County adopted a comprehensive zoning ordinance in 1967 ("the CCZO"). (From 1964 until 1967, the county had a temporary zoning law.) In 1986, the CCZO was amended to create the Solomons Town Center Zoning Ordinance ("SZO"). Before the SZO, the Tiki Bar property had been located in the C3 - Marine Commercial district of the CCZO. The newly enacted SZO prohibited (and still prohibits) outdoor taverns in the B area of Solomons, in which the Tiki Bar is located.

In early 1986, Robert Garner, who with his wife owned the Tiki Bar property, applied for and received a permit to convert a garage behind the motel into office space. The application reveals that by then the Tiki Bar was 1,338 square feet, the motel consisted of 11 regular units and one efficiency unit, there was a 1,800 square foot storage structure on the Tiki Bar property, and the restaurant was 1,144 square feet.

* * *

By early 1989, Solomons Cove had purchased the Tiki Bar property. On February 6, 1989, Solomons Cove submitted to the Calvert County Department of Planning and Zoning a site plan application seeking to convert storage space attached to the rear of the restaurant into two office areas totaling 952 square feet ("1989 site plan").

A plat attached to the 1989 site plan application shows the Tiki Bar and its office and storage area, and the one-story motel (12 rooms) on the eastern side of the property; and the one-story restaurant (then known as The Castaways) and four small buildings on the western side of the property. The paved area between the eastern and western facing buildings is drawn to show 24 designated parking spaces for the motel, seven designated parking spaces for the four small buildings, and two additional handicap parking spaces on each side. However, the site plan also designates the large grassy and partly paved area comprising the southern part of the Tiki Bar property as an "open area for general parking." (The designation is handwritten on the plat.) The restaurant, small buildings, and motel building shown on the plat submitted with the 1989 site plan application do not meet the 50-foot setback requirement of the SZO.

On March 3, 1989, a building permit application for the changes requested by Solomons Cove was received and approved.

* * *

By early 2006, ownership of the Tiki Bar property had changed hands to Mr. Lucky, which was in the process of being purchased by P.T. The motel on the property had closed in 2005. At that time, Mr. Lucky made changes to the property without seeking prior approval. In the paved area between the western and eastern facing buildings, Mr. Lucky erected two thatch-covered kiosk bars. It spread sand over the paved area in some locations and erected Tiki statues and potted palm trees in the paved area. It also placed a few tables and chairs there. In addition, Mr. Lucky changed the access route to the Tiki Bar property so that vehicles no longer would enter the paved area from Charles Street. Instead, vehicular access to the Tiki Bar property was by means of a driveway off Charles Street that traversed property owned by Harbor Island Marina, Inc. ("Harbor Island"). Harbor Island's property is adjacent to and

> immediately east of the Tiki Bar property, behind the former motel building. The driveway ends at the large grassy and partially paved area in the southern part of the Tiki Bar property that the 1989 site plan designates for parking. Thus, the new driveway access to the property, accomplished by means of a lease, started at Charles Street and ended at the parking area on the south side of the Tiki Bar property, bypassing the paved area between the buildings on the property.
>
> These changes, made unilaterally, resulted in the issuance of stop work orders and violation notices. Ultimately, a consent injunction was entered by the Circuit Court for Calvert County prohibiting any additional changes to the property, requiring the kiosk bars to be closed, eliminating access to the property from the driveway owned by Harbor Island, and requiring that any changes to the Tiki Bar property be made only upon approval by the Planning Commission of a modified site plan or by court order. In accordance with the terms of the injunction, Mr. Lucky removed the kiosk bars, statues, palm trees, tables, and most of the sand, except in a small area in front of the restaurant and the retail and outbuildings, and a triangular patch in front of the Tiki Bar.

Ross v. Mr. Lucky, LLC, No. 302, Sept. Term 2009; No. 2058, Sept. Term 2011; No. 1351, Sept. Term, 2012, slip op. at 5-9 (filed June 11, 2014) (referred to as "*Ross v. Mr. Lucky*").

This consent injunction sparked a contentious battle between Mr. Lucky and the County. Between 2006 and 2012, the County repeatedly denied Mr. Lucky's site plan requests, concluding that Mr. Lucky's use of the Tiki Bar violated zoning ordinances. Mr. Lucky appealed many of the County's determinations. Ultimately -- in a series of four separate cases -- the Calvert County Board of Appeals (the "Board of Appeals") resolved the dispute in favor of Mr. Lucky. Thereafter, the County appealed each of the Board of Appeals' decisions. On June 11, 2014, in an unreported opinion, we affirmed the Board of

Appeals' decisions and remanded on a limited matter, which is not at issue in this appeal. *See Ross v. Mr. Lucky*, *supra*.

On June 9, 2017, Mr. Lucky commenced this suit in the Circuit Court for Calvert County. In August 2017, Mr. Lucky filed an amended complaint alleging that the County took its various zoning-related actions against Mr. Lucky to put the Tiki Bar out of business. As such, Mr. Lucky claimed that the County violated its substantive due process rights under Article 24 of the Maryland Declaration of Rights.[3]

In a memorandum opinion, the Circuit Court for Calvert County dismissed Mr. Lucky's substantive due process claim, ruling that it was not filed within the statute of limitations. This timely appeal followed.

STANDARD OF REVIEW

Mr. Lucky challenges the circuit court's dismissal of its substantive due process claim. In an appeal from the grant of a motion to dismiss, we conduct a *de novo* review to determine whether the circuit court's conclusions were legally correct. *Monarc Constr., Inc. v. Aris Corp.*, 188 Md. App. 377, 384 (2009) (citing *Gasper v. Ruffin Hotel Corp. of Md.*, 183 Md. App. 211, 226 (2008)). We consider whether the complaint, on its face, states a legally sufficient cause of action. *Pulliam v. Motor Vehicle Admin.*, 181 Md. App. 144, 153 (2008).

[3] Mr. Lucky also a sought declaratory judgment in its amended complaint. The circuit court dismissed that claim. Mr. Lucky does not appeal the disposition of its declaratory judgment claim.

DISCUSSION

Mr. Lucky contends that the circuit court erred in ruling that its substantive due process claim was time-barred. Conversely, the County argues that Mr. Lucky's claim was clearly filed outside the three-year limitations period because the County's last action taken against Mr. Lucky was in 2012 and Mr. Lucky filed its complaint in 2017. In the alternative, the County urges us to affirm on three other grounds. The County asserts: (1) that Mr. Lucky failed to state a sufficient due process claim; (2) that Mr. Lucky did not comply with the Local Government Tort Claims Act's notice requirements; and (3) that Mr. Lucky's claim is barred by *res judicata*. For the reasons that follow, we conclude that Mr. Lucky's claim was not filed within the limitations period, and we, therefore, affirm the circuit court's dismissal of the amended complaint.

The circuit court dismissed Mr. Lucky's complaint and held that Mr. Lucky's substantive due process claim was barred by the statute of limitations. The Maryland Code dictates the time period in which a substantive due process claim must be filed:

> A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time with which an action shall be commenced.

Md. Code (1973, 2013 Repl. Vol.), § 5-101 of the Courts and Judicial Proceedings Article ("CJ"). *See Electro-Nucleonics, Inc. v. Wash. Suburban Sanitary Comm'n*, 315 Md. 361, 374 (1989).

Mr. Lucky had three years from the date its cause of action accrued to file a timely complaint. CJ § 5-101. A due process claim "accrues when the [plaintiff] knew or should

have known of the unlawful action and its probable effect." *Duke St. Ltd. P'ship v. Bd. of Cty. Comm'rs of Calvert Cty.*, 112 Md. App. 37, 49 (1996). While the statute of limitations does not begin until the plaintiff discovers her claim, "[t]his does not mean that the [plaintiff] need know all relevant facts, including the precise nature and amount of the economic impact." *Id.*

Mr. Lucky argues that the County violated Mr. Lucky's due process rights when it, among other things, enacted bills that adversely affected Mr. Lucky's business, alleged various zoning violations, repeatedly rejected Mr. Lucky's site plans, and disregarded orders from the Board of Appeals and the circuit court. In short, Mr. Lucky takes issue with the County's course of conduct, which began in 2006. Mr. Lucky discovered the County's allegedly unlawful conduct no later than September 21, 2012, when the County appealed the Board of Appeals' final decision. There are no allegations in Mr. Lucky's amended complaint that the County took any action after September 21, 2012. In our view, the statute of limitations on the substantive due process claim clearly began to run in 2012.

In its attempt to revive the substantive due process claim, Mr. Lucky urges us to conclude that its claim was not yet ripe. In doing so, Mr. Lucky contends that it did not have a cognizable claim until June 11, 2014, *i.e.*, the date we affirmed the Board of Appeals' decisions in *Ross v. Mr. Lucky*. We disagree.

A constitutional claim against a government entity "is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." *Williamson Cty. Reg'l Planning*

Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 186 (1985).[4] "Finality … occurs in the administrative sense when 'the order or decision [disposes] of the case by deciding all question[s] of law and fact and leave[s] nothing further for the administrative body to decide.'" *Shaarei Tfiloh Congregation v. Mayor & City Council of Balt.*, 237 Md. App. 102, 128 (2018) (quoting *Willis v. Montgomery Cty.*, 415 Md. 523, 535 (2010)). Nevertheless, a plaintiff need not "obtain a final decision from the circuit court on judicial review before the administrative decision it reviewed can be considered a final administrative determination." *Arroyo v. Bd. of Educ. of Howard Cty.*, 381 Md. 646, 672 (2004).

The Court of Appeals was presented with a similar ripeness contention in *Arroyo*, *supra*, 381 Md. 646. In *Arroyo*, a Howard County employee was terminated and he challenged his termination through administrative procedures. *Id.* at 652-53. After the Maryland State Board of Education upheld the employee's termination, the employee sought judicial review. *Id.* at 653. In 1999, the Circuit Court for Howard County affirmed the State Board's decision, and in 2000, we affirmed. *Id.* In 2002, the employee brought a civil suit against Howard County, alleging wrongful termination. *Id.* Recognizing that he filed his complaint more than three years after the State Board upheld his termination, the employee maintained that he did not have a cognizable claim until judicial review was

[4] In addition to relying on the United States Supreme Court's decision in *Williamson*, Mr. Lucky lists, numerically and without any analysis, fourteen cases that are neither relevant nor binding on us. As discussed, *infra*, the Court of Appeals' decision in *Arroyo v. Bd. of Educ. of Howard Cty.*, 381 Md. 646 (2004), as it applies to the rule of finality, is dispositive of this case. Consequently, we need not consider outside authority that is not binding in Maryland.

exhausted. *Id.* at 664-65. The Court disagreed, holding that the employee's claim accrued when the State Board made its final decision, and not at the time when judicial review of that final decision was completed. *Id.* at 671-72. Thus, the employee's wrongful termination claim was ripe *before* the government's final decision was judicially reviewed. *Id. See also Watson v. Dorey*, 265 Md. 509 (1972) (holding that a legal malpractice claim accrued when the plaintiffs lost their case at trial, and not at the point in time when the trial court's decision was later affirmed on appeal).

Mr. Lucky's claim accrued and was, therefore, ripe on September 21, 2012, *i.e.*, the date of the County's most recent action. Indeed, Mr. Lucky concedes in its amended complaint that the County took no action between September 21, 2012 -- when it appealed the Board of Appeals' final decision -- and June 11, 2014 -- when we filed our opinion in *Ross v. Mr. Lucky*. Moreover, at the circuit court hearing on the County's motion to dismiss, counsel for Mr. Lucky acknowledged that each of the County's alleged actions occurred more than three years before Mr. Lucky filed its complaint.[5] As the Court of Appeals made

[5] At the hearing, the circuit court and counsel for Mr. Lucky had the following exchange:

> [The Court]: So you would all agree that if the Court finds that finality is not the period of when the Court of Special Appeals rendered their decision that Plaintiff is beyond the statute of limitations and the claim must fail. And conversely, if the Court finds that that was within the time period, then the Court would make a second analysis as to substantive due process.

clear in *Arroyo*, for limitations purposes, an administrative decision is deemed final when the administrative decision is made, and not when judicial review of that final administrative decision is completed. The circuit court, therefore, did not err in dismissing Mr. Lucky's claim.[6]

Mr. Lucky further relies on the Court of Appeals' opinion in *City of Bowie v. Prince George's Cty.*, 384 Md. 413 (2004) for the proposition that its claim was tolled while *Ross v. Mr. Lucky* was pending in this Court. In doing so, Mr. Lucky maintains that the County voted in October 2008 to stay "any final decision on the Tiki Bar site plan and refused to issue a final site plan until the Court of Special Appeals issued its decision." We disagree. Indeed, the County voted to defer Mr. Lucky's site plan until the litigation that was then

> [Counsel for Mr. Lucky]: I think that's right, Your Honor. I think we filed within three years of the Court of Special Appeals. If, Your Honor, concludes that some decision, prior to the Court of Special Appeals[']decision constituted the final decision, then we would be outside the statute of limitations. I would agree with that.

[6] Furthermore, it is noteworthy that the Court of Appeals has indirectly quelled any concerns that its holding in *Arroyo* could lead to cases where a claim does not become ripe until after the statute of limitations has passed. *Monarch Academy Balt. Campus, Inc. v. Balt. City Bd. of Sch. Comm'rs*, 457 Md. 1, 13 (2017) (holding that when an administrative agency has primary jurisdiction over a claim but that claim is nevertheless filed in court, "the appropriate action for a trial court … [is] to stay … the judicial complaint until the party can obtain a final administrative determination[.]").

pending in the circuit court was resolved.[7] On April 17, 2009, the circuit court resolved the litigation, remanding the case to the Board of Appeals "with instructions to further remand it to the [County] to approve [Mr. Lucky's site plan]." *Ross v. Mr. Lucky*, at 25. Nevertheless, instead of approving the site plan, the County appealed the circuit court's order. Consequently, Mr. Lucky's reliance on *City of Bowie* is misplaced.

In *City of Bowie*, the Court held that "when a developer cannot proceed administratively because of litigation or when the administrative entity declines to permit him to proceed while matters are being litigated, the time period within which an applicant for subdivision must take further action after receiving preliminary plat of subdivision approval is to be tolled during the time that litigation is pending in the circuit court." 384 Md. at 438-39. Here, the County declined to approve Mr. Lucky's site plan until the circuit court issued a ruling in a pending case. Thus, to the extent that the Court of Appeals' "narrowly tailored" holding in *City of Bowie* is even applicable, Mr. Lucky's claim was tolled only "during the time that [the] litigation [was] pending in the circuit court." *Id.*

Moreover, we are not persuaded by Mr. Lucky's contention because Mr. Lucky is not actually challenging the merits of the County's decision. Rather, Mr. Lucky argues that the County deferred taking any action on the site plan "for the purpose of destroying

[7] As demonstrated in the record, the County's motion to defer was clarified in the following exchange:

> [BOARD MEMBER #1]: So it's my understanding, the proposal is to defer until this thing is resolved in the Circuit Court, the outcome of the case?
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> [BOARD MEMBER #2]: Correct.

the Tiki Bar's business[.]" According to Mr. Lucky, the County's deferral "effectively imposed a [six-year] moratorium over any development of the Tiki Bar property." In our view, it would be improper for Mr. Lucky to take the position that the County's deferral violated Mr. Lucky's due process rights, but also maintain that the County's deferral tolled the limitations period on that same due process claim. Put simply, Mr. Lucky "cannot have his proverbial cake and eat it, too." *Priester v. Balt. Cty.*, 232 Md. App. 178, 200 (2017), *cert. denied*, 454 Md. 670 (2017).[8]

Finally, Mr. Lucky urges us to apply the "continuing violation doctrine." This doctrine tolls the statute of limitations in cases where there are continuing violations. *Litz v. Md. Dep't of Env't*, 434 Md. 623, 646 (2013). "To apply the continuing [violation] doctrine, the breach itself -- rather than the damages -- must be continuing in nature." *Mills v. Galyn Manor Homeowner's Ass'n, Inc.*, 239 Md. App. 663, 681 (2018). "If the allegation is more properly understood as the continuing effects of a single earlier act then the limitations period is not tolled." *Id.* (internal citation and quotations omitted). Further, "[b]are assertions that there is a continued course of conduct … [are] not enough to toll the statute of limitations." *Id.* (internal citation and quotations omitted).

[8] We further observe that this is not the only instance where Mr. Lucky has made contradicting arguments. During previous administrative proceedings, V. Charles Donnelly, counsel for Mr. Lucky, expressly advised the County that if the County deferred, Mr. Lucky would be entitled "to file a Writ of Mandamus, which is a request of the court to say, look, an official has the statutory duty and they're not doing it; order them to do it. And it's going to be a complaint for damages because this costs my clients money to do so." In this appeal, Mr. Lucky argues the opposite: that it was not permitted to file a claim for damages at that time.

In arguing that the continuing violation doctrine applies, Mr. Lucky alleges that from 2006 to 2014, the County continuously used its land use authority to put the Tiki Bar out of business. Mr. Lucky contends that the statute of limitations should have been reset each time the County allegedly committed a violation. While this is an accurate summary of Maryland law, as discussed, *supra* and *infra*, Mr. Lucky does not allege that the County took any action after September 21, 2012. Rather, Mr. Lucky asserts in ¶ 67 of its amended complaint that "[d]uring the 2008 through 2014 period," the County "refused requests for review and approval of the Site Plan, alleging that its actions were stayed because the decisions were on further appeal[.]"

As discussed, *supra*, in 2008, the County voted to defer deciding upon Mr. Lucky's site plan proposal until litigation in the circuit court ceased. While the County's deferral may have caused Mr. Lucky continuous damage, "it is insufficient to claim that damages continue to flow from" a prior violation. *Mills*, *supra*, 239 Md. App. at 683. In short, the County's inaction between 2012 -- the date it filed its notice of appeal -- and 2014 -- the date we filed *Ross v. Mr. Lucky* -- constitutes the "continuing effects of a single earlier act[,]" which is insufficient to toll the limitations period. *Id.* (citation omitted).

Moreover, we are not persuaded by Mr. Lucky's reliance on *DePaola v. Clarke*, 884 F.3d 481 (4th Cir. 2018), *Parish v. City of Elkhart*, 614 F.3d 677 (7th Cir. 2010), and *Prince George's Cty. v. Longtin*, 419 Md. 450 (2011). In *DePaola*, the United States Court of Appeals for the Fourth Circuit held that a prison inmate sufficiently alleged that the continuing violation doctrine tolled the limitations on his 42 U.S.C. § 1983 claim. 884 F.3d at 487-88. Specifically, the inmate claimed that the prison staff continuously

exercised "deliberate indifference to his serious mental illnesses … by failing to provide any treatment or access to a [doctor]." *Id.* at 487. The court held that the inmate's claim was not time-barred because he alleged that the continuous violations occurred "within the relevant statutory period." *Id.* at 488.

Similarly, in *Parish*, after a criminal defendant's conviction was overturned, the criminal defendant brought an intentional infliction of emotional distress suit against the arresting officers. 614 F.3d at 678-79. The criminal defendant alleged that his claim was based on events that occurred throughout his imprisonment. *Id.* at 683. As such, the United States Court of Appeals for the Seventh Circuit held that his emotional distress claim "was not complete prior to the time of conviction because the conviction was the crux of the claim." *Id.* at 684.

Finally, in *Longtin*, a case with similar facts to those in *Parish,* a criminal defendant argued that "his emotional distress was the result of continuing actions by the police department to keep him wrongfully imprisoned." 419 Md. at 481. Thus, the Court of Appeals held that under the Local Government Tort Claims Act, the criminal defendant's claim did not accrue until he was released from prison because his "continued wrongful imprisonment was the 'crux of his claim.'" *Id.*

In our view, Mr. Lucky's reliance on *DePaola*, *Parish*, and *Longtin* is misplaced. Unlike in those cases -- where the criminal defendants each alleged that they were subjected to continuous violations while imprisoned -- Mr. Lucky's contentions relate to the continuing effects of the County's alleged unlawful acts that occurred outside the statutory period. Indeed, the most recent act occurred on September 21, 2012, when the County

appealed the Board of Appeals' final decision. Accordingly, Mr. Lucky's due process claim accrued, at the latest, in 2012 and is time-barred. We, therefore, hold that the circuit court did not err in dismissing Mr. Lucky's claim.[9]

JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[9] In light of our holding that the circuit court correctly dismissed Mr. Lucky's claim because it was not filed within the statute of limitations, we need not consider the County's alternative arguments for affirming the dismissal of the amended complaint.