

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0103

September Term, 2015

ROLANDO ALBARRAN, ET AL.

v.

AMBA II, INC. T/A MEL'S LIQUORS

Nazarian,
Reed,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: February 19, 2016

*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.

The biggest challenge in this appeal lies in framing the issues that are (and aren't) properly before us. Amba II, Inc. t/a Mel's Liquors ("Amba"), the appellee, is a liquor store and check cashing business. Mr. Guillermo and Mrs. Guadalupe Albarran and their sons, Ruben and Rolando Albarran,¹ owned a cleaning company, R. Cleaning Impact, Inc. ("RCI"), and delivered employee paychecks to Amba for cashing. After establishing a regular relationship of check-cashing, and as their company grew, the Albarrans asked Amba to cash the checks immediately, but wait to redeem the checks with their bank. The Albarrans' bank refused payment, and Neresh Kumar, owner and operator of Amba, learned that the checks had been written to fictitious payees with fictitious addresses or for amounts far greater than the employees' actual pay.

Amba brought suit in the Circuit Court for Baltimore County against the Parents, the Sons, and RCI. In the course of the litigation, the Defendants failed to respond to discovery requests, and as a sanction, the circuit court entered judgment as to liability against each Defendant. After a damages hearing, during which the parties agreed on the total damages owed, the court entered final judgment against the Defendants jointly and severally. The Defendants moved to vacate the damages award, and the court granted the motion with respect to the Parents, who had filed a (second) petition for protection under federal bankruptcy law, but denied the motion as to the Sons and RCI. The Sons purport

¹ We will call Mr. and Mrs. Albarran the "Parents" and Ruben and Rolando the "Sons." References to the "Albarrans" encompass all four of them, and the term "Defendants" includes the Parents, the Sons, and RCI.

to appeal the judgment, but have properly raised only the denial of the motion to vacate, a decision we now affirm.

I. BACKGROUND

Beginning in 2008, the Albarrans regularly cashed RCI's (which then had fewer than ten employees) employee payroll checks at Amba. Sometimes checks bounced; when that happened, Mr. Kumar called Mr. or Mrs. Albarran, and one of them would bring Mr. Kumar the money within a couple of days.

In June 2010, the Parents met with Mr. Kumar and explained that RCI was expanding to forty to fifty employees. They asked Mr. Kumar to continue cashing employee payroll checks upon presentment (many of the employees had not established banking relationships), but to wait to redeem the checks with their bank so RCI could receive payment from its client; the Parents said they would notify Mr. Kumar once the funds were available in their bank account. Mr. Kumar testified that the manner of check cashing differed each visit: sometimes an employee cashed his own check, but most of the time one of the Albarrans delivered a stack of signed payroll checks—up to fifty at a time—and left them with Mr. Kumar. Mr. Kumar would then put cash in the amount of the check, less a 1% fee, in an envelope bearing the payee's name, and one of the Albarrans (not necessarily the same person who delivered the checks) would pick up the envelopes.

Mr. Kumar believed that the Albarrans were delivering the envelopes of cash to their employees, but later discovered—after cashing numerous checks between November 2010 and June 2011—that many of the checks were written for fictitious payees at fictitious addresses or were for amounts far greater than the amount RCI intended to pay the

employees. Soon thereafter, and without notifying Amba, RCI became insolvent and closed its bank accounts, leaving Amba with numerous unpaid checks.

Mr. Kumar, on behalf of Amba, filed suit against the Parents, the Sons, and RCI on June 27, 2012, and first served each defendant with interrogatories and requests for production on November 30, 2012. No one responded to the discovery requests, nor to the letters Amba's counsel sent in an effort to resolve their non-compliance. Amba then moved for sanctions and to compel discovery.

In February 2013, the circuit court ordered Defendants to comply with the discovery requests, but after no action, Amba again moved for sanctions. In the meantime, the Parents filed for Chapter 13 bankruptcy protection. Amba then filed an amended complaint. The Sons answered and moved for summary judgment. Mr. Kumar opposed summary judgment and renewed his request that the court enter judgment as a sanction for the Defendants' discovery failures.

On August 6, 2014, the court granted the Plaintiff's Motion for Sanctions, entered "judgment by default as to liability" against each defendant, and precluded Defendants from opposing or presenting any defenses or introducing evidence in connection with damages. The circuit court then scheduled and held a damages hearing on October 27, 2014, and on December 10, 2014, entered judgment as to damages against all Defendants, jointly and severally, in the stipulated amount of \$130,184.28, plus \$1,567.50 in attorney's fees.

Twenty-one days later,² Defendants filed a Motion to Vacate or Set-Aside Order Dated December 10, 2014 (the “Motion to Vacate”). On March 9, 2014, the court vacated the judgments against the Parents, citing the fact that an automatic stay arising from their (second) bankruptcy filing was in place at the time the court entered judgment, but denied the motion with respect to the Sons and RCI. On March 24, 2015—within thirty days of the order denying the Motion to Vacate, but well more than thirty days after the judgment—the Sons filed a Notice of Appeal, and Amba moved to dismiss that appeal as untimely. On June 25, 2025, we denied the motion to dismiss, but limited the appeal “to the denial of the ‘Motion to Vacate Order Dated 12/10/14[.]’”

II. DISCUSSION

Our first task lies in sorting out what is properly before us. The Sons purport to raise five questions in their brief,³ but because the deadline for their notice of appeal was

² In its Order, the trial judge noted the untimeliness of the Motion to Vacate as a motion under Maryland Rule 2-534, which must be filed within ten days of judgment, but opted to exercise its revisory power under Rule 2-535.

³ They stated the appellate issues as follows:

- I. Whether the [circuit court] violated the Appellants, Rolando Albarran and Ruben Albarran, civil rights’ under Article 24 of the Maryland Declaration of Rights by denying their participation in the trial for damages after failing to provide adequate discovery to the Appellees?
- II. Whether the [circuit court] erred by violating the Appellants, Rolando Albarran and Ruben Albarran civil rights’ under Article 16 and Article 25 by preventing their the participation in a civil trial as punishment for

not tolled by their post-judgment motion, *see* Md. Rule 8-202(c), our Order on Amba's motion to dismiss narrowed the appeal to only those issues arising from the circuit court's denial of their Motion to Vacate.⁴ This leaves three questions: *first*, whether the trial judge

failing to provide all requested discovery to the Appellees?

- III. Whether the [circuit court] abused his discretion by denying the Appellant's right to a jury trial on the issues of damages due to failure to provide all discovery to the Appellees?
- IV. Whether the testimony of Naresh Kumar was sufficient to establish whether Rueben Albarran, who was a minor at the time and was not employed by R. Cleaning, Inc., was responsible for damages, which pursuant to Maryland Rules 2-433 and 2-613, the Plaintiff must still establish a relationship and prove the truthfulness of his averments against his Defendant based on the preponderance of the evidence?
- V. Whether the trial court erred by awarding a judgment when the testimony by the Plaintiff was insufficient to support an allegation of fraud, breach of contract or unjust enrichment by these two defendants, Ruben Albarran and Rolando Albarran[?]

⁴ The Motion to Vacate phrased the arguments as follows:

- A) Order violates automatic stay granted in bankruptcy for two of the defendants,
- B) Fact pattern reflects default judgment due to failure to submit discovery and not default judgment as an admission due to failure to plead as stated in this Order,
- C) Order implies default judgment is final order of guilt or liability, when defendants has legal right to mitigate damages, therefore, defendant was denied the right to participate and testify,

wrongfully inhibited their participation in the damages hearing; *second*, whether the Sons can be jointly and severally liable for damages arising from a contract dispute; and *third*, whether Ruben’s status as a minor during part of the timeline relevant to this case affects his liability.

On appeal from a trial court’s denial of a motion to vacate, we look only at whether the court abused its discretion in reaching that decision, *i.e.*, whether the action the trial court took is one that no reasonable person would take or that is “without reference to any guiding rules or principles.” *Miller v. Mathias*, 428 Md. 419, 454 (2012) (citations and internal quotations omitted); *North v. North*, 102 Md. App. 1, 14 (1994) (“The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.”). This is a high threshold, *see, e.g., Sumpter v. Sumpter*, 436 Md. 74, 82 (2013), especially where liability was imposed in the first place as a sanction for discovery abuses, and we find no abuse of discretion.

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- D) Order imposes \$130,000 + judgment on an individual who was a minor at the time of contract and did not ratify after the age of majority, and
 - E) The Order relies upon the Maryland Uniform Contribution Among Joint Tort-Feasors Act is not applicable based on the pleadings, testimony and facts of this case.

A. The Limitations Imposed In The Damages Hearing Were Proper.

The Sons complain that the trial court wrongly precluded them from participating in the damages hearing. Remember, though, that this question arises only because Defendants failed (or refused) altogether to respond to discovery, even after an order compelling them to do so. And the decision to impose sanctions in the first place is not before us—the Sons’ notice of appeal was filed too late. On this posture, then, the question is whether the circuit court abused its discretion in declining to vacate the judgment against the Sons on this basis.

Although they were prevented from introducing evidence or testimony on their own, the Sons, through counsel, participated fully in the damages hearing. Indeed, counsel for the Sons⁵ tested the limits of the liability judgment. For example, counsel attempted to argue a motion for summary judgment in favor of Ruben on the grounds that he was a minor at the time of the alleged transactions and thus could not be liable, an argument for liability that the court declined to entertain.⁶ Counsel also contested the amount of the damages Amba was claiming, leading the judge to comment (before the parties stipulated to the final amount) that there “certainly is an argument as to damages.” If anything, the

⁵ As the damages hearing began, all Defendants were still parties to the litigation. As it progressed, the focus shifted more to the Sons, presumably because RCI was defunct and because counsel for the Sons knew that the Parents had filed a new petition for bankruptcy protection (information that was presented abruptly during the hearing). And since the same attorney represented all Defendants during the entire life of this litigation, there was no slippage of information among them.

⁶ The Sons previously had raised this argument as grounds for a motion for summary judgment that was denied.

court's willingness to allow them to "engage by way of cross examination or by way of direct testimony with regard to the proper amounts owed . . ." allowed them to participate more fully than the judgment order originally had contemplated.

On direct examination, Mr. Kumar testified about the business relationship between the parties and explained each of the family member's roles in the check cashing process. He identified the checks that he cashed but for which he never received payment, and concluded by testifying to a total amount of damages. The Sons had an unfettered opportunity to cross-examine him, and repeatedly sought to introduce testimony (and apparently physical evidence, although a proffer as to that evidence was never offered) that they never made a contract with Mr. Kumar, and that this lack of contracting should negate their liability. Their counsel went through each disputed check and asked Mr. Kumar to identify which of the Albarrans signed each check. During a lengthy and confusing line of questioning, counsel continually attempted to show that the Sons did not usually sign the checks, stating "[i]f you're going to hold four people responsible and only one person wrote the check—." When Mr. Kumar explained that the Sons dropped off the disputed checks for cashing or picked up envelopes of cash, counsel attempted to undermine the contractual relationship by suggesting that the Sons never had conversations with Mr. Kumar. Over numerous objections, the trial court allowed counsel for the Sons to continue lines of questioning that sometimes blurred the line between damages and liability, and the court admitted four defense exhibits into evidence.

Eventually, counsel for the Sons produced a Suggestion of Bankruptcy for the Parents, and the judge put a halt to the proceedings. Prior to that moment, neither the court

nor opposing counsel knew that the Parents had filed again, and had conducted the hearing—as planned—as if all original Defendants remained in the proceedings. The judge contemplated whether the case could even proceed in light of the Parents’ bankruptcy status, and even so, questioned whether the judgment could or should be applied jointly and severally. The parties then stipulated to a damages award of \$130,184.28, but the parties disagreed as to whether the award should apply to all Defendants. Erring on the side of caution, the judge offered the parties the opportunity to proceed, but they instead reached another agreement:

THE COURT: I will allow you [counsel for Sons] to put on whatever testimony you want to, with the understanding that I may find at the end of the day that [Sons are] responsible because they have a default judgment against them. I, but right now, I don’t know the answer to the question. And unless one of you two have case law for me.

[COUNSEL FOR THE SONS]: Let me ask you a question, Your Honor. Would you hold off the judgment allowing us to put our closing arguments on paper with transcripts and the information and at least you’ll be able to address it all instead of having to rush to judgment, would you allow that?

THE COURT: Oh, . . . I’m almost leaning towards that.

[COUNSEL FOR THE SONS]: Okay, good. That sounds like a winner.

* * *

THE COURT: I’m more interested . . . whether or not a default judgment entered as to all of the Defendants precludes one or more of the Defendants from proving a case that he or she does not owe anything pursuant to the default judgment.

The judge then permitted counsel for the Sons to call Ruben Albarran to the stand, to which counsel for Amba objected:

[COUNSEL FOR AMBA]: Your Honor, I object to this witness being called, to there being any testimony. We've tried to get discovery for four years so we could prepare for trial of this matter in a reasonable manner. Interrogatories were served, request for productions were served, never been responded to. Now, [Ruben] is going to testify as to facts as to why he shouldn't be liable, which is—

THE COURT: [U]ltimately the question is whether or not [Ruben and Rolando] . . . are going to be jointly and severally liable in the amount of \$130, 184.28. Now, we could do it another way. Send me your briefs and if I decide he is allowed to argue why he doesn't have to pay it under some theory, then we can come back and hear that tried.

* * *

And I'm going to let you make your case by way of a written submission because I am not inclined to allow the brothers to testify as to any of the facts, especially when we have a default judgment, because all the facts still lead to a liability determination. So I want to see a memo as to why they can be held liable pursuant to a default judgment and not owe the amount that's due.

* * *

And if necessary, if after I read everything, I still want to hear from these two fine gentlemen, I'll hear from them, all right?

As the record demonstrates, the Sons were given ample opportunity to cross-examine Mr. Kumar and to offer documents into evidence. The judge was unsure as to the effect of the Suggestion of Bankruptcy—which was presented part-way through the hearing without being filed—and unsure as to the relationship between default judgment and joint and several liability. But the court erred on the side of caution and did not

preclude the Sons from testifying; rather, he took counsel for the Sons up on her offer to cease proceedings and instead brief arguments about the effect of the automatic stay and whether defendants can be jointly and severally liable. And, as we explain next, the court reached the correct decision in that regard as well.

B. The Trial Court Did Not Err In Imposing Joint And Several Liability.

Second, the Sons complain that the court misapplied the Maryland Uniform Contribution Among Tort-Feasors Act (“MUCATFA”) to what they characterize as a “common law contracts” case. In their words, “[t]his Order relies upon fraud as a tort, however, the [Sons] argue that fraud in this fact pattern is not a tort and the [MUCATFA] is not applicable. This case involves surrounding common law contracts and contracts under the [U]niform [C]ommercial [C]ode. The Maryland Code under Criminal Law provides the definition of fraud as it relates to bad checks . . .”; and, “[t]he [circuit court] relied upon the [MUCATFA] even though the claims were ‘Contractual’ based on not ‘Tort’ claims.” But a tort claim such as fraud may, in fact, arise in the context of a contractual relationship, *see, e.g., Cent. Truck Ctr., Inc. v. Cent. GMC, Inc.*, 194 Md. App. 375, 388-96 (2010), and in any event, Amba’s complaint alleged claims for unjust enrichment and promissory estoppel in addition to the breach of contract claim.

The Sons attempt to fight off joint and several liability by arguing that they were not responsible for the harm, that they didn’t do anything wrong and, therefore, should not have to pay any of the damages. But the liability ship sailed in August, when the court entered judgment against Defendants, including the Sons, as a discovery sanction, a

decision that they never appealed. *See Pacific Mortg. & Inv. Grp., Ltd. v. Horn*, 100 Md. App. 311, 332 (1994) (“A judgment by default constitutes an admission by the defaulting party of its liability for the causes of action set out in the complaint.”). And as the circuit court noted, “default judgment is sufficient to establish [an individual] as a joint tort-feasor under the [MUCATFA]” (quoting *Porter Hayden Co. v. Bullinger*, 350 Md. 452, 472 (1998)).

When judgment is entered against multiple tortfeasors, the question arises as to whether a specific amount of the total damages award may be assigned to a particular tortfeasor. “The question is primarily not one of the fact of causation, but of the feasibility and practical convenience of splitting up the total harm into separate parts which may be attributed to each of two or more causes.” *Carter v. Wallace & Gale Asbestos Settlement Tr.*, 439 Md. 333, 351 (2014) (quoting W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 52, at 345 (5th ed. 1984)). The predicate for concurrent tortfeasors’ joint and several liability is the indivisibility of the harm:

“[w]e have long recognized that when tortfeasors act independently and their acts combine to cause a single harm, the tortfeasors are jointly and severally liable [T]he necessary condition for concurrent tortfeasors to be held jointly and severally liable is that they caused a single injury incapable of apportionment.”

Carter, 439 Md. at 352-53 (quoting *Consumer Prot. Div. v. Morgan*, 387 Md. 125, 181-82 (2005)). And whether the injury caused by the tortfeasors is reasonably capable of apportionment is a matter of law. *Carter*, 439 Md. at 351, 354-55 (citations omitted).

In this case, the circuit court found that the injury was indivisible,⁷ and imposed joint and several liability on all four Defendants. Mr. Kumar testified that sometimes Mr. or Mrs. Albarran brought the checks to his store, but sometimes Ruben or Rolando did too, and either son or either parent would come at the end of the day to retrieve the money. Mr. Kumar further testified that he could not recall which Albarran dropped off a specific check or which Albarran came to retrieve any particular envelope of money. In light of this testimony, it was not unreasonable for the trial court to impose joint and several liability. *See Montgomery Cty. v. Soleimanzadeh*, 436 Md. 377, 393 (2013) (rejecting a jury's selection of an arbitrary assignment of damages unsupported by the evidence). And we see no abuse of discretion in the court's decision not to reverse itself on this point.

C. Ruben Was Properly Subject To The Judgment For Damages.

Finally, Ruben claims that because he was a minor at the time of the disputed transactions, he can neither be liable for any wrongdoing nor responsible for paying any damages. According to Ruben, the circuit court abused its discretion by maintaining a judgment against him when he was too young to legally contract, and then never ratified any contract after reaching the age of majority. This argument fails for several reasons.

First, at the risk of over-repetition, liability is no longer at issue and was not at issue in the motion to vacate. *Second*, upon application of joint and several liability, a single defendant has no right to mitigate his damages since each is equally responsible for

⁷ If the trial judge *had* found the harm to be *divisible*, then Amba would first have the burden to prove liability, and then the burden would have shifted to the Albarrans to prove that the apportionment of damages was appropriate. *See Carter*, 439 Md. at 355. However, that is not what happened.

payment. *See Morgan*, 387 Md. at 181-82. As the court noted, a defendant may pursue a contribution claim against the other tortfeasors, *see* Md. Code (2006, 2013 Repl. Vol.), § 3-1402(b) of the Courts & Judicial Proceedings Article, but that is a separate claim.

Third, and most importantly, this argument fails factually. Ruben was a minor—seventeen years old—in 2008 when the Albarrans began cashing checks at Amba. But at the time of the damages hearing on October 27, 2014, Ruben stated that he was then twenty-three years old, and thus reached the age of majority in 2008 or 2009, so he was not a minor at the time of the disputed transactions, which began in late 2010. And because he was an adult when the fraud occurred, Ruben raises no genuine issue regarding his age, and the circuit court did not abuse its discretion in denying relief based on his age.

**JUDGMENTS OF THE CIRCUIT
COURT FOR BALTIMORE
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANTS.**