

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0207

September Term, 2016

TREETOP CONDOMINIUM

v.

MERRY WILEY, et al.

Meredith,
Friedman,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: April 24, 2017

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.

In this case, the five appellees (Merry Wiley, Danielle Leflore, Ricky Ford, Nancy Ford, and Tina Dowdy-Nixon) are the owners of condominium units in the project known as Treetop Condominium (“Treetop”), the appellant. The appellees filed suits in the Circuit Court for Prince George’s County against the condominium association and Legacy Investment and Management, LLC (“Legacy,” a management company that had been engaged by the board of directors of Treetop), alleging that the association’s board of directors and Legacy had mismanaged the affairs of the association and caused the appellees to suffer damages.¹

The operative complaint that was tried, and is the subject of this appeal, was the Third Amended Complaint, filed on March 1, 2013. Although Legacy was named as a defendant, and was served, it did not participate in the trial. And no final judgment was ever entered on the claims asserted against Legacy. Appellant noted in its brief at footnote 7: “The Third Amended Complaint includes a claim of fraud against Legacy Management, LLC[;] however that party-defendant is not at issue in this appeal and the fraud claim is directed only to that party-defendant and not to Appellant.”

The parties and the trial court discussed Legacy at various times during the course of the trial, including on the first two days of trial (February 2 and 3, 2015), and during the

¹ There were different complaints filed against Treetop and Legacy, at various times, by various plaintiffs, regarding the events involved herein, including the special assessment and the liens. Several of the cases were consolidated, via order of March 12, 2012, under case number CAL11-33050, Wiley v. Treetop Condominium & Legacy Investment and Management, LLC, a/k/a Legacy Investment & Management, Inc., which is the case on appeal.

hearing at which the court announced its findings on the record. On February 2, 2015, appellees' trial counsel made an oral motion for default judgment against Legacy, noting that Legacy had failed to appear for trial, and had failed to answer any of the complaints, although it had been served and an attorney had filed a preliminary motion on its behalf. Appellees' trial counsel asked the court to enter a default judgment against Legacy on liability, and then hear appellees' damages evidence against Legacy during the course of trial. The judge responded that he would "take a look at that." The next morning, however, the judge initiated the following discussion:

[BY THE COURT]: By the way, I was thinking about the default versus Legacy. It's not necessary. We're here for trial, they're not here. At the end of the trial whatever judgment's appropriate [will] be entered. No need to wait for anything.

[BY APPELLEES' COUNSEL]: In a default ---

[THE COURT]: I'll let you think ---

[BY COUNSEL]: Yeah. I understand that ---

[THE COURT]: I'll let you think about it.

[BY COUNSEL]: ---Your Honor, but in a default proceeding the Court is to take the allegations in the complaint as true, so long as we are --- the complaint is --- third amended complaint is deemed true against Legacy then I have no problem with that.

[THE COURT]: Sure.

[BY COUNSEL]: And the --- and presumably we'd be entitled to supplement any damages by way of affidavit as it relates solely to Legacy --

[THE COURT]: Good.

[BY COUNSEL]: --- I would have no problem with that. I'd prefer having a judgment and a default judgment entered against them in that regard because unless the Court is willing to take the complaint admitted as true –

[THE COURT]: Yeah.

[BY COUNSEL]: --- against --- as pertains to Legacy.

[BY THE COURT]: Probably so, but we'll chew on it for a little bit. [*Addressing Treetop's Counsel:*] You've got no dog in that fight except for you're happy to have Legacy by default, I assume.

[BY TREETOP'S COUNSEL]: Yes, Your Honor. And if that is how we're going to proceed I would --- it wouldn't be appropriate to introduce damages evidence against Legacy in these proceedings since that would have to be done in an ex parte proceeding after the default is entered.

[BY THE COURT]: Yeah, this --- well, if it was a default. This is trial.

[TREETOP'S COUNSEL]: Correct.

[THE COURT]: If we do it for --- by default then by affidavit that would incorporate the sworn testimony in today's --- this trial, I assume, along with any other ex parte damages they may want to present. My point for your purposes is Legacy's not your problem. Is that ---

[TREETOP'S COUNSEL]: Correct. But if – and my only concern is if they're trying to introduce damages on a fraud claim against Legacy that would have no bearing on why we're here for this trial for a declaratory judgment and injunctive relief.

[THE COURT]: Well, except for they are a named defendant, this is the trial.

Following closing arguments on July 23, 2015, the court invited the parties to file post-trial briefs. Proposed findings of fact, conclusions of law, and proposed orders were filed by appellees and Treetop (on October 26, 2015, and October 30, 2015, respectively).

On January 21, 2016, the court announced its oral rulings in open court. Immediately after the court summed up its conclusions, the court and Treetop's counsel engaged in the following colloquy:

[BY THE COURT]: Given that, this is the difficult part, the problem was really created by Legacy, or much of it, and I'm going to decline to award attorney fees. And that should just about sum up the Court's findings.

Now, having said that, at some point we will take testimony with regard to Legacy. My only question is, and, [counsel], you tell me, is there a cross-claim against Legacy? I didn't look at that.

[BY TREETOP'S COUNSEL]: No, there is no claim of Treetop against any party.

[THE COURT]: Treetop would have a right of subrogation from Legacy, for what it's worth. I can't help you. I don't know.

[COUNSEL]: I understand.

[THE COURT]: But to the extent --- are they in bankruptcy?

[COUNSEL]: It's difficult to tell if they actually went through a formal bankruptcy process, but the effect is that of no assets, and anything that comes along will be part of the restitution package put together by the various law enforcement agencies prosecuting them.

[THE COURT]: Treetop would be entitled to their share of that, I assume?

[COUNSEL]: They would if they become part of the litigation, so to speak.

[THE COURT]: Because again, I'm happy to --- if we can --- **they are a party to this litigation.** They're in default. If there is something that we could point to that --- it may be ten cents on the dollar down the road, but ten cents is better than no cents. So I'm happy to deal with that.

(Emphasis added.)

On February 2, 2016, the court entered the written declaratory judgment and order that is the subject of this appeal. The second sentence of the court's order states: "The case versus the other Defendant, Legacy Investment and Management, LLC A/K/A Legacy Investment and Management, Inc. remains open for a hearing on ex parte proof." But the docket entries reflect that no further judgment was entered with respect to Legacy, either before or after Treetop noted this appeal. Consequently, the judgment entered on February 2, 2016, was not an appealable final judgment.

Maryland Rule 2-602(a) provides:

(a) Generally. Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action:

- (1) is not a final judgment;
 - (2) does not terminate the action as to any of the claims or any of the parties;
- and
- (3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.

(b) When Allowed. If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment:

- (1) as to one or more but fewer than all of the claims or parties; or
- (2) pursuant to Rule 2-501 (f)(3), for some but less than all of the amount requested in a claim seeking money relief only.

The Court of Appeals has applied Rule 2-602 in numerous cases, and has consistently held that, unless the circuit court can properly enter an order pursuant to Rule 2-602(b), only a judgment that disposes of all claims against all parties is appealable. *See, e.g., Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 241-42 (2010);

Silbersack v. AC and S, Inc., 402 Md. 673, 678 (2008); *County Commissioners for St. Mary's County v. Lacer*, 393 Md. 415, 424 (2006); *Medical Mutual v. Evander*, 331 Md. 301, 308-09 (1993); *Biro v. Schombert*, 285 Md. 290, 294-95 (1979); *Diener Enterprises, Inc. v. Miller*, 266 Md. 551, 556 (1972). Because the circuit court's order of February 2, 2016, did not dispose of all claims against all parties, Rule 2-602(a) compels us to conclude that it was not an appealable final judgment.

Moreover, as the Court of Appeals explained in *Lacer, supra*, because a "claim," for purposes of Rule 2-602, refers to a single set of operative facts rather than a single legal theory or cause of action, the causes of action appellees asserted against Legacy are part of the same "claim" (as that term is used in Rule 2-602) as the claim asserted by the appellees against Treetop. In *Lacer*, 393 Md. at 426, the Court summarized its previous holdings on this point:

"[O]ur cases have made it clear that the disposition of an entire count or the ruling on a particular legal theory does not mean, in and of itself, that an entire 'claim' has been disposed of." *Evander*, 331 Md. at 313, 628 A.2d at 176 (Citations omitted). "Different legal theories for the same recovery, based on the same facts or transaction, do not create separate 'claims' for purposes of the rule." *East v. Gilchrist*, 293 Md. 453, 459, 445 A.2d 343, 346 (1982) (Citations omitted); *see also Evander*, 331 Md. at 313, 628 A.2d at 176 ("What makes claims separate is *not* whether they are pled in separate counts or embody separate legal theories.") (Emphasis in original). "The existence of multiple claims ultimately depends upon whether the 'aggregate of the operative facts' presented states more than one claim which can be separately enforced." *Diener Enterprises*, 266 Md. at 556, 295 A.2d at 473 (Citations omitted). Furthermore, "an order which decides that there is liability, or which resolves some liability issues in favor of a party seeking damages, but fails to make a determination with regard to the amount of damages, does not dispose of an entire claim and cannot be made final and appealable under Rule [2-]602(b)." *Shenasky v. Gunter*, 339 Md. 636, 638, 664 A.2d 882, 883 (1995) (Citations omitted).

Consequently, this is not a case in which the circuit court could have properly exercised discretion to enter an order pursuant to Rule 2-602(b) declaring the judgment as to Treetop appealable notwithstanding the lack of a judgment disposing of the counts against Legacy. *See Evander, supra*, 331 Md. at 308-09; *Diener, supra*, 266 Md. at 554-55. The appeal must be dismissed.

But, in the interest of avoiding yet another remand of the this case, we are compelled to comment that we may not have been able to address the merits of this appeal even if we were not faced with the lack of a final judgment. Although both parties provided the trial court with detailed proposed findings of fact, the court did not ever indicate which, if any, of the proposed findings it accepted. Nor did the court otherwise identify the testimony and non-testimonial evidence it was relying upon to reach the conclusions announced in open court on January 21, 2016, and in its written judgment entered on February 2, 2016. Without knowing the findings of fact that supported each of the conclusions embodied in the trial court's declaratory decree, it would be extremely difficult for an appellate court to evaluate the validity of those conclusions and decide whether the court appropriately resolved the legal issues presented by the parties. In such a case, a remand pursuant to Maryland Rule 8-604(d) might be required.

**APPEAL DISMISSED. COSTS TO
BE PAID BY APPELLANT.**