Circuit Court for Carroll County
Case No. 06-C-09-055005

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 50

September Term, 2019

EBRAHIM RADBOD

v.

CACH, LLC

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 14, 2020

*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.

Ebrahim Radbod, appellant, had a credit card account with Bank of America, N.A. that was charged off for non-payment. Cach, LLC, appellant, bought the debt and is the current holder of the account. In 2009, Cach, LLC filed a breach of contract action in the District Court for Carroll County seeking to recover payment on the debt. Mr. Radbod requested a jury trial, and the case was transferred to the Circuit Court. However, after the case was transferred Mr. Radbod never filed an answer to the complaint. Cach, LLC then filed a motion for summary judgment, which the circuit court granted after Mr. Radbod failed to file an opposition. On January 29, 2010, the court entered a judgment against Mr. Radbod in the amount of $14,562.73. Mr. Radbod filed a motion to vacate the judgment on February 16, 2010, wherein he challenged the validity of the debt and indicated that he had not received the motion for summary judgment because he had been out of the country and then had been ill when he returned. The court denied the motion to vacate and Mr. Radbod did not file a notice of appeal.

To satisfy the 2010 judgment, Cach, LLC filed a "Request for Writ of Garnishment Other than Wages" in 2018, seeking to garnish funds from Mr. Radbod's Navy Federal Credit Union bank accounts. Mr. Radbod filed an answer, asserting that Cach, LLC did not have a right to seek a writ of garnishment because he had settled the debt with Bank of America in 2008. Navy Federal also filed an answer indicating that there were no funds in either of Mr. Radbod's bank accounts available for attachment. The court treated Mr. Radbod's answer as a motion to vacate the 2010 judgment. On January 23, 2019, the court entered an order denying the motion. In that order, the court specifically found that Mr. Radbod had been properly served with the motion for summary judgment, and that, because

he had returned to the country before summary judgment had been entered, he could have filed a response to that motion challenging the validity of the debt. The court also found that Mr. Radbod's bank accounts had zero funds and entered a judgment on the garnishment claim in favor of Navy Federal Credit Union.

On January 22, 2019, Mr. Radbod filed a "Motion to Stop Cach, LLC from Over-Collecting" wherein he again claimed that he had settled his debt with Bank of America in 2008. That motion was denied on February 14, 2019. Mr. Radbod filed a notice of appeal on March 14, 2019. On appeal, Mr. Radbod raises a single issue: whether the court "erred in not finding that the debt in this case . . . was already paid and settled." For the reasons that follow, we shall affirm.

As an initial matter, we note that the only order entered by the court within 30 days of Mr. Radbod filing his notice of appeal was the February 14 order denying his "Motion to Stop Cach, LLC from Over-Collecting." Consequently, that is the only order that is properly before us in this appeal. *See* Rule 8-202(a) (requiring notice of appeal to be filed within thirty days of the judgment from which the appeal is taken).[1]

Because Mr. Radbod's "Motion to Stop Cach, LLC from Over-Collecting" challenged the validity of the 2010 judgment, we construe it as a motion to vacate the judgment pursuant to Maryland Rule 2-535(b), as that is the only possible avenue under which he could have obtained relief from that judgment. *See Kent Island, LLC v. DiNapoli*, 430 Md. 348, 366 (2013) (noting that after 30 days have passed after the entry of a final

[1] Thus, we do not consider the merits of the January 23, 2019, order, as it was entered 50 days before the notice of appeal was filed.

judgment, a court may only modify its judgment upon a motion filed pursuant to Rule 2-535(b)). To vacate or modify an enrolled judgment pursuant to Rule 2-535(b), a movant must establish the existence of either fraud, mistake, or irregularity. These jurisdictional predicates are "narrowly defined and strictly applied" due to the strong countervailing interest in judicial finality. *Leadroot v. Leadroot*, 147 Md. App. 672, 682-83 (2002). For the purposes of Rule 2-535(b), mistake constitutes a "jurisdictional error, such as where the [c]ourt lacks the power to enter judgment," and has no bearing in this case. *Green v. Ford Motor Credit Co.*, 152 Md. App. 32, 51 (2003). Irregularity refers to "a nonconformity of process or procedure," and not a mere departure from truth or accuracy that could have been challenged by the defendant at trial. *Davis v. Attorney Gen.*, 187 Md. App. 110, 125 (2009). And fraud entails extrinsic fraud committed on the court that "prevents the adversarial system from working at all," rather than intrinsic fraud that occurred during the trial. *Das v. Das*, 133 Md. App. 1, 18-19 (2000).

In his motion, Mr. Radbod's sole claim was that he had satisfied his debt to Bank of America prior to Cach, LLC purchasing the debt and filing the breach of contract action. But, even if true, that does not establish the existence of fraud, mistake, or irregularity within the meaning of Rule 2-535(b), such that the court could have vacated its enrolled judgment. Rather, this was a defense to the breach of contract action that Mr. Radbod should have raised in the original lawsuit.

Mr. Radbod nevertheless asserts that he did not receive Cach, LLC's motion for summary judgment, and therefore that he did not have an opportunity to challenge the validity of the debt. However, he made the same claim in his February 16, 2010, motion

to vacate the judgment. That motion was denied, and he did not appeal. Consequently, that claim is barred by the doctrine of res judicata. *See Anne Arundel County Bd. Of Educ. v. Norville*, 390 Md. 93, 106 (2005) (noting that res judicata "bar[s] the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions that could have been . . . raised in the first suit").

But even if Mr. Radbod did not receive the summary judgment motion, that would not excuse his failure to respond to the motion or constitute an "irregularity" in the judgment that would require the judgment to be vacated pursuant to Rule 2-535(b). Mr. Radbod has never contended that the method of service used by Cach, LLC was improper. And the record reflects that Cach, LLC sent the motion to Mr. Radbod via first-class mail, as was required under the Maryland Rules. Moreover, by his own admission, Mr. Radbod returned to the United States on January 5, 2010, 13 days after Cach, LLC had served him with the motion for summary judgment and it was entered on the docket, and 24 days before that motion was granted. Therefore, he was on notice that the motion had been filed regardless of whether he actually received it. *See Arundel Corp. v. Halter*, 223 Md. 247, 250 (1960) (noting that parties are "charged with notice of what actually is in the court records as to the case, without regard to [ ] actual knowledge, so that the docket entries are constructive notice to the parties and their counsel").

In short, the circuit court may not vacate an enrolled judgment more than 30 days after it has been entered absent a showing of fraud, mistake or irregularity. Because Mr. Radbod's "Motion to Stop Cach, LLC from Over-Collecting" failed to allege the existence of fraud, mistake, or irregularity within the meaning of that Rule, it was properly denied.

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