

Circuit Court for Montgomery County
Case No. 479685V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 65

September Term, 2021

PATRICK DESILVA

v.

TOP NOTCH PROPERTIES, LLC

Nazarian,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 6, 2022

*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.

Appellee Top Notch Properties, LLC, filed a complaint against Patrick DeSilva, appellant, and Carla McPhun raising claims of breach of contract, unjust enrichment, fraud, and conversion.¹ Mr. DeSilva did not file an answer. Therefore, appellee requested an Order of Default as to Mr. DeSilva, which the court granted. When Mr. DeSilva did not file a timely motion to vacate the Order of Default, appellee filed a Motion for Default Judgment. Mr. DeSilva did not file an opposition. Following an *ex parte* proof hearing, which Mr. DeSilva did not attend, the court entered judgment against Mr. DeSilva for breach of contract in the amount of \$170,000 and for unjust enrichment in the amount of \$100,000.

Twenty-nine days after that judgment was entered, Mr. DeSilva filed a “Motion to Stay/Vacate Judgment,” which was essentially a motion for reconsideration, the first pleading that he had filed in the case. In that motion, he generally denied liability, claiming that he “had no personal business interactions nor any business dealings” with appellee. He further claimed that he had been unable to attend the *ex parte* proof hearing because he resided in New York and could not travel because of “Anti-Covid 19 guidelines.” Additionally, he asserted that he was unable to participate in the hearing remotely because he had a “limited grasp on technology.” Notably, the motion did not offer any explanation for Mr. DeSilva’s failure to file an answer or to challenge the Order of Default. The court

¹ Based on our review of the record Ms. McPhun has not yet been served with a copy of the complaint. Consequently, even though appellee’s claims against her have not been fully adjudicated she is “not a party for the purpose of determining a final judgment.” *Turner v. Kight*, 406 Md. 167, 172 n.3 (2008) (noting that “if the judgment entered by the court disposes of all claims against all persons over whom the court has acquired jurisdiction, the judgment is final” for the purposes of appeal (citation omitted)).

denied appellant’s motion without a hearing. This appeal followed. On appeal, Mr. DeSilva raises four issues, which reduce to one: whether the court abused its discretion in denying his motion. For the reasons that follow, we shall affirm.

Following entry of judgment in a trial court, a litigant seeking to revise or modify the order may file one of two post-trial motions: (1) a motion to alter or amend the judgment pursuant to Maryland Rule 2-534; or (2) a motion for the court to exercise its revisory power pursuant to Maryland Rule 2-535. If a motion, however labeled, is filed more than ten days but less than thirty days after the entry of judgment, it will be treated as a motion under Maryland Rule 2-535. *Pickett v. Noba, Inc.*, 114 Md. App. 552, 557 (1997).

Where the circuit court denies a motion to revise under Rule 2-535 and the party appeals that denial more than thirty days after the entry of the underlying judgment, as occurred here, the propriety of the underlying judgment is not before this Court. *Id.* at 558-59. Rather, the only question before this Court is whether the denial of the motion to have that judgment revised was an abuse of discretion. *See Stuples v. Baltimore City Police Dept.*, 119 Md. App. 221, 240 (1998). An abuse of discretion is defined as “discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *In re Don Mc.*, 344 Md. 194, 201 (1996).

Although Mr. DeSilva generally denied his liability to appellee in the motion for reconsideration, he failed to explain why he had not filed a timely answer denying the allegations in appellee’s complaint, or why he had not filed a motion to vacate the Order of Default after it was entered. Moreover, although Mr. DeSilva claimed that the judgment did not “comply with Anti-Covid 19 guidelines,” because of unspecified restrictions on

interstate travel that had been imposed during the COVID-19 pandemic, he did not indicate why such restrictions had prevented him from filing any pleadings in the case. Finally, to the extent that he claimed that a combination of travel restrictions and his “limited grasp of technology” had prevented him from participating in the *ex parte* proof hearing, he did not explain why those issues could not have been brought to the court’s attention before the hearing took place. Consequently, we cannot say that the trial court abused its discretion in declining to exercise its revisory power under the circumstances.

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