

Circuit Court for Montgomery County  
Case No. 387432-V

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 239

September Term, 2020

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PAYPAL, INC.,

v.

YOUHONG ZHANG

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

JJ.

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Opinion by Friedman, J.

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Filed: September 10, 2021

\*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 we are asked to determine whether the trial court had discretion to vacate an order of default when the motion to do so was untimely filed, or if the court was required to enter the default judgment because the motion was untimely. As we explain below, the rule on default judgments gives the trial court discretion to vacate an order of default despite an untimely motion. Because it is unclear whether the trial court knew it had that discretion when it ruled on PayPal’s motion, we remand for the trial court to exercise its discretion.

### **BACKGROUND**

Appellant Youhong Zhang obtained money judgments in 2016 against two judgment debtors in a separate case. To enforce these judgments, Zhang obtained two writs of garnishment for any accounts that those judgment debtors had with Appellee PayPal, Inc. Zhang served the writs of garnishment on PayPal’s resident agent. In response, PayPal filed an answer with the trial court and sent a letter to Zhang’s counsel. PayPal’s answer stated that PayPal did not have an account for “the Defendant.” The letter to Zhang’s counsel stated that PayPal was unable to locate any records in its system related to Zhang’s case against the judgment debtors.

Zhang, unsatisfied and believing that PayPal’s answer had referenced only one of the judgment debtors,<sup>1</sup> filed for an order of default against PayPal, which the trial court granted on June 21, 2019. PayPal did not respond to the order of default, and over a month

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<sup>1</sup> We take no position on the reasonableness of Zhang’s position that PayPal’s answer applied or was intended to apply to only one judgment debtor. That determination must be made by the trial court in its consideration of the equities.

later Zhang filed a motion for entry of default judgment. PayPal then became aware of the order of default and filed a motion to vacate it. In support of its motion to vacate, PayPal argued that it did not hold any assets of either of the judgment debtors and that its answer had intended to convey that.

The trial court denied PayPal's motion to vacate and granted Zhang's motion for a default judgment, stating:

I have considered the arguments of both parties in this regard and, ultimately, I think that [Zhang's counsel] is correct. Rule 2-613, subsection (d), envisions that, or requires that a motion to vacate be filed within 30 days. That was not done here. The motion to vacate that was filed was untimely and I do not, I am not persuaded that there is an equitable basis or some avenue in that regard to ignore the time requirement that is [plain] on the face of the applicable rule.

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So, I will deny that motion to vacate and I will proceed to enter judgment under subsection (f). My review of the file suggests that entry of default judgment is appropriate. Certainly the Court has jurisdiction. The appropriate notices have been mailed. There [are] appropriate affidavits in the file that [Zhang's counsel] has provided that support the amounts that [Zhang's counsel] claims. Those affidavits are clear cut. They are un rebutted in essence, and so, I will grant the request for default judgment as to the garnishee.<sup>2</sup>

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<sup>2</sup> We will hold, below, that we are unable to determine whether the trial court understood that it had discretion whether or not to vacate the order of default and, as a result, we remand the matter for the trial court to exercise that discretion. If, in the exercise of its discretion, the trial court decides not to vacate the order of default, but instead to enter a default judgment, we observe that the trial court was mistaken when it found that the amount of the default judgment was "clear cut" and should be in the amount Zhang requested. The trial court had before it two affidavits. PayPal's affidavit stated that it did not hold any assets of the judgment debtors. Zhang's affidavit was silent as to whether PayPal held any assets of the judgment debtors. The evidence on the record as it existed was, therefore, undisputed that PayPal did not hold any assets of the judgment debtors.

The trial court entered judgment against PayPal for \$260,902.00, with costs and attorneys' fees of \$19,222.50. PayPal filed a motion for reconsideration, which was denied. PayPal then filed a timely appeal.

### DISCUSSION

The parties dispute whether the trial court had the discretion to grant PayPal's untimely motion to vacate the order of default.

After a trial court enters an order of default,

The [garnishee] may move to vacate the order of default within 30 days after its entry. The motion shall state the reasons for the failure to plead and the legal and factual basis for the defense to the claim.

MD. R. 2-613(d). An order of default is considered to be an interlocutory order, however, and trial judges have very broad discretion to modify interlocutory orders when doing so is in the interest of justice. *Banegura v. Taylor*, 312 Md. 609, 619 (1988); MD. R. 2-602. Thus, even when a garnishee misses the 30-day deadline to file a motion to revise or vacate an order of default, the trial court has discretion to revise or vacate that order because it is an interlocutory order. *Peay v. Barnett*, 236 Md. App. 306, 318 (2018).

We generally presume that judges know the law and apply it correctly. *Harris v. State*, 458 Md. 370, 412 (2018). This presumption does not apply, however, when the

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Assuming there is no change in the record, the trial court should not enter a default judgment in excess of the value of the assets held by the garnishee plus costs. MD. R. 2-645(j); PAUL V. NIEMEYER & LINDA M. SCHUETT, MARYLAND RULES COMMENTARY 907 (5th ed. 2019).

record shows that the trial court made a misstatement of law or did not act consistently with the law. *Medley v. State*, 386 Md. 3, 7-8 (2005). In this case, the record is unclear.

It is possible to interpret the trial court's ruling in at least two ways. The trial court could be understood to have said that it considered the facts of the case and, in its discretion, decided that equity did not weigh in favor of vacating the order of default. Or alternatively, the trial court could be understood to have said that it had no discretion to ignore the 30-day deadline, and thus could not vacate the order of default. Because the trial court did have such discretion, and because we think the latter reading is a reasonable one, we remand for the trial court to exercise its discretion.<sup>3</sup>

**REMANDED TO THE CIRCUIT  
COURT FOR MONTGOMERY  
COUNTY FOR FURTHER  
PROCEEDINGS NOT  
INCONSISTENT WITH THIS  
OPINION. PARTIES TO PAY ONE-  
HALF OF COSTS EACH.**

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<sup>3</sup> The parties make other arguments, but we do not reach those because of the way in which we resolve the case.