Circuit Court for Prince George's County
Case No. CAL 15-31585

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 341

September Term, 2017

GINA ROBINSON

v.

CHRISTINE MULLER KEKEC

Nazarian,
Arthur,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: July 11, 2018

The parties in this appeal have not followed Henry Ross's father's admonition to "[c]herish the cabin."[1] Gina Robinson and Christine Kekec owned a property in New York State together (the "Property"), and had agreed to share equally the costs of the mortgage payments and upkeep. Sometime around June 2004, Ms. Robinson moved to California, and she and Ms. Kekec agreed orally that Ms. Kekec would pay the whole mortgage in exchange for Ms. Robinson's share of the rental proceeds. That, apparently, didn't happen: in December 2013, Ms. Kekec's attorney sent Ms. Robinson a letter claiming that Ms. Robinson owed $59,785.87 for her half of the expenses paid or forthcoming, including mortgage payments, repairs, and bills. Ms. Robinson responded by filing a complaint in the Circuit Court for Prince George's County alleging that the attorney's letter violated the Maryland Consumer Debt Collection Act.

The case followed a tortured procedural path, but the circuit court ultimately granted Ms. Kekec's motion to dismiss with prejudice. Ms. Robinson challenges that ruling and raises numerous other issues. We affirm.

I. BACKGROUND

Ms. Robinson moved to Maryland from California in August 2011. She traveled occasionally to New York and stayed overnight at the Property and, she alleges, had some communications with Ms. Kekec about the Property, but does not claim that she contributed to the Property's expenses.

[1] *Seinfeld: The Cheever Letters* (NBC television broadcast October 28, 1992), https://perma.cc/R6NY-UWAF.

Ms. Robinson alleges that in December 2013, she received a letter from Ms. Kekec's New York attorney asserting that Ms. Robinson owed $59,785.87 for her half of the expenditures on the Property.[2] The letter also identified repairs that had not yet been completed and asserted that Ms. Robinson owed 50% of the cost for that work too. The letter concluded by setting a deadline for payment:

> [Y]ou owe Christine $59,785.87 which can be paid directly to her in 30 days or you may contact me to discuss settlement details (removal from deed). Should you choose not to respond in 30 days our law firm will take further legal action.

No payment followed. So on October 16, 2015, over two years after receiving the letter, Ms. Robinson filed her complaint. Her suit didn't relate to the Property or the alleged expense arrangements, though. Instead, she alleged that by having her attorney send the letter demanding payment, Ms. Kekec—the only defendant—violated the Maryland Consumer Debt Collection Act ("MCDCA"), MD. CODE ANN., COMMERCIAL LAW ("CL") §§ 14-202(8)–(9).

On October 23, 2015, a summons issued, and an affidavit of service was eventually filed. The affidavit indicated that on November 19, 2015, a copy of the complaint had been delivered to a "suitable age person," identified as Joe Ferrandino, at an address in

[2] The letter itself was not attached to the complaint, but Ms. Robinson included it in her record extract and attached a draft to her brief opposing Ms. Kekec's motion to dismiss. Ms. Kekec does not deny that her attorney sent some form of the letter (the two versions are formatted differently but contain identical language) to Ms. Robinson.

Brooklyn, New York. No answer was filed, and on January 18, 2016, Ms. Robinson filed a motion for order of default.[3]

On February 23, 2016, Ms. Kekec's Maryland attorneys entered their appearance, and on February 28, the circuit court entered an order of default. The next day Ms. Kekec filed three motions: a motion to dismiss, or in the alternative for summary judgment; a motion to vacate the order of default; and a motion to extend time to respond to the complaint.

On March 3, 2016, the court signed an order vacating the order of default. On March 15, Ms. Robinson responded to Ms. Kekec's motions and moved for sanctions. Two days later, Ms. Robinson filed a motion for reconsideration of the March 3 order vacating the default, contending that, at the time the order was signed, she had not yet filed her response to the motion to vacate. On April 27, the court signed an order denying Ms. Robinson's motion for reconsideration and "confirm[ing]" the March 3 order vacating the default, reasoning that "the general preference [is] that matters be determined on their merits." The court denied Ms. Robinson's motion for sanctions on May 9.

On May 18, 2016, Ms. Robinson filed a "First Amended Complaint," two days before the hearing on Ms. Robinson's motion to dismiss. At the hearing, the court heard arguments from Ms. Robinson, who appeared *pro se*, and from Ms. Kekec's counsel.

[3] The motion indicated that Ms. Kekec had failed to file an answer within 60 days after service. *See* Md. Rule 2-321(b)(1) ("A defendant who is served with an original pleading outside of the State but within the United States shall file an answer within 60 days after being served.").

Ms. Kekec's counsel observed, and Ms. Robinson did not dispute, that the "First Amended Complaint" was filed after the deadline for amendments contained in the scheduling order. Counsel suggested that the document be treated as a "further response" to the motion to dismiss, the parties and the court agreed, and the argument proceeded on that basis.

At the end of the hearing, the court stated that it would prepare a written opinion: "I am going to have a written opinion so that you can have something in writing. For this one I think you need it in writing. . . . You'll get it next week because I pretty much know what I am going to say." But the court did not issue a written opinion or any order disposing the case at that time. The entries on the docket immediately after the hearing include additional motions by Ms. Robinson and other entries by the court not relevant to this appeal. Then, on August 3, 2016, the court (a different judge) entered an order stating that "this matter shall be held in abeyance" until a ruling on Ms. Kekec's motion to dismiss.

The next relevant docket entry was on January 17, 2017, when Ms. Robinson filed a "Motion to Cancel Trial Scheduled for February 1, 2017 and February 2, 2017." Attached to that motion was a copy of a purported October 12, 2016, order from a case pending in the Supreme Court for Ulster County, New York. That order apparently memorialized a settlement agreement reached by Ms. Robinson and Ms. Kekec after an August 30, 2016 mediation in New York state litigation with respect to the Property. The order stated that Ms. Robinson had agreed to dismiss the Maryland case (*i.e.*, this action) and Ms. Robinson

agreed to be removed from the deed to the Property, and that Ms. Kekec agreed to pay Ms. Robinson $35,500.00.[4]

On February 7, 2017, the circuit court (by yet another judge) entered a memorandum and order indicating it had held a telephone conference with Ms. Robinson and Ms. Kekec's attorney regarding the motion to cancel trial, and ordering that Ms. Kekec show proof that she deposited the settlement money from the New York case into an escrow account:

[4] The New York settlement agreement stated in relevant part:

> All parties in this matter appeared before this Court for mediation on August 30, 2016 and reached a settlement on that same date. Pursuant to the settlement that was placed on the record, it is:
>
> ORDERED, that defendant shall provide plaintiff with duly executed Release(s) and Stipulation(s) of Discontinuance/Dismissal regarding the instant matter and *Gina Robinson v. Tina Muller Kekec*, Case No. CAL 15-31585, filed in the Circuit Court for Prince George's County, Maryland;
>
> ORDERED, that defendant shall provide plaintiff with all information[] and fully executed documentation[] to effectuate the transfer of the [Property]; and defendant shall fully cooperate with plaintiff to effectuate such transfer;
>
> ORDERED, that until completion of the transfer of the title of said real property and receipt of duly executed Release(s) and Stipulation(s), counsel for plaintiff shall hold the settlement fund in the amount of $35,500.00 in escrow; such funds shall be released to defendant promptly upon the completion of the transfer of the title of said property and receipt of duly executed Release(s) and Stipulation(s); and,
>
> ORDERED, that this matter was settled and marked off the Court's calendar.

> After a telephone conference with [Ms. Kekec's attorney] and Ms. Gina Robinson on January 31, 2017 relative to the Motion to Cancel Trial, it is this 31st day of January, 2017 by the Circuit Court for Prince George's County, Maryland
>
> **ORDERED**, that the Defendant shall show proof of money deposited in an escrow account as ordered by New York Court within ten (10) days; documentation to be given to Ms. Robinson within ten (10) days; and it is further
>
> **ORDERED**, that a telephone conference shall be scheduled with Judge Green on February 15, 2017 @ 1:30 p.m.

But later the same day, a docket entry indicated that the judge had recused himself and that the case should be reset for a hearing on March 10, 2017, to cover all pending motions, before a different judge. The February 7 order directing Ms. Kekec to deposit the settlement proceeds in escrow was vacated in a docket entry dated February 15.

As ordered, a hearing on the motion to dismiss was held on March 10, 2017 before the original judge. The judge explained that after the first hearing on May 20, 2016, the case had apparently been sent back to the clerk's office before the court could rule.[5] The court heard arguments from Ms. Robinson and counsel for Ms. Kekec. At the end of the hearing, the court granted Ms. Kekec's motion to dismiss, with prejudice, on the record, and a written order reflecting that ruling was entered on the docket. This appeal timely followed. We supply additional facts as necessary below.

[5] The court did not know why that had happened:

> I'm going to be honest with you, I thought I had done this. Why I hadn't, I have no idea to be honest with you. This has not been in my chambers. I don't know if once I said taken under advisement, it stayed there and went back to the clerk's office and I never saw it again. But no problem. I sort of remember it, but I'm going to let you start. . . .

II. DISCUSSION

Ms. Robinson raises seven questions in her brief, and Ms. Kekec identifies eight.[6]

[6] Ms. Robinson states the Questions Presented as follows:

> 1. Is Appellee bound by the terms of a settlement agreement that she entered into disposing of the case at bar?
>
> 2. May a trial court set aside an[] order of default when there is no equitable reason for a defendant's failure to respond to the pleadings in a timely manner so long as there is [sic] quite clearly factual assertions and legal arguments that are in controversy?
>
> 3. May a trial court dismiss a case based on procedural matters that have been rendered moot?
>
> 4. May a trial court dismiss a case for insufficient service when there is evidence that a defendant is ducking service, and a plaintiff has requested that the Court permit alternative service?
>
> 5. Given that the State of Maryland created the Fair Debt Collection Practices Act in order to protect Maryland citizens/residents from abusive creditors and that it is well documented that abusive debt collection practices are increasingly an interstate problem, can the Long Arm Statute be interpreted to apply to claimed abusive debt collection practices that are limited to written communications?
>
> 6. Given the myriad of facts specific to the case at bar, did the Appellant properly serve Appellee?
>
> 7. Whether Appellee's behavior is so egregious that she should be estopped, under the doctrine of invited error, from raising the issue of whether she was properly served.

Ms. Kekec lists the following Questions Presented, which all mirror Ms. Robinson's questions except for the seventh:

> 1. Is dismissal of this appeal and affirmance of the trial court's dismissal of the action warranted because this matter was resolved by a binding settlement agreement requiring dismissal of this case?

Ultimately, though, they all boil down to a single question: Did the circuit court err in dismissing Ms. Kekec's complaint?

In making its ruling, the circuit court did not explicitly state the grounds underlying its decision. During the hearings, the court seemed focused on service of process and personal jurisdiction. But we may affirm a dismissal on any ground properly before the circuit court so long as the decision was legally correct. *Forster v. State, Office of Public Defender*, 426 Md. 565, 580–81 (2012) (citations omitted); *see also Robeson v. State*, 285 Md. 498, 502 (1979) ("[W]here the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties, [we] will affirm."); *accord Parks v.*

2. Did the trial court abuse its discretion in vacating the order of default?

3. Did the amended complaint moot the pending motion to dismiss where it was untimely, defective, and futile?

4. Did the trial court fail to permit alternative service where there was no motion for alternative service filed?

5. Was dismissal warranted where the defendant, a New York resident, was not subject to personal jurisdiction in the State of Maryland?

6. Was dismissal warranted where the plaintiff failed to serve the complaint and related papers in accordance with the Maryland Rules?

7. Did the complaint fail to state a claim under the Maryland Consumer Debt Collection Act?

8. Does the criminal jury trial rule of "invited error" have any bearing on this action?

Alpharma, Inc., 421 Md. 59, 65 n.4 (2011). We discern at least two independent reasons why the case was properly dismissed.

A. The Circuit Court Did Not Err In Dismissing The Complaint.

1. Service of process was insufficient.

First, we review a dismissal for failure of service for abuse of discretion, *Conwell Law LLC v. Tung*, 221 Md. App. 481 (2015) (citing *Hariri v. Dahne*, 412 Md. 674, 686 (2010)), and we agree that Ms. Kekec wasn't properly served.

Before the circuit court obtains jurisdiction over a defendant, the plaintiff must effectuate service of process in accordance with Maryland Rule 2-121(a). *See also Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 77 (2001) (due process rights under Fourtheenth Amendment to the United States Constitution and Article 24 of the Maryland Declaration of Rights entitle an individual to proper notice and opportunity for a hearing prior to being deprived of his property). That rule requires, in relevant part, that "a copy of the summons, complaint, and all other papers filed with it" either be delivered to the individual who is to be served or be left at the individual's "dwelling house or usual place of abode with a resident of suitable age and discretion." If, as here, the party to be served is an individual, service must be made on the individual herself or on "an agent authorized by appointment or by law to receive service of process for the individual." Md. Rule 2-124(b).

When proper service is not accomplished, the court has the discretion under Maryland Rule 2-322(a) and (c) to dismiss the case. *Conwell Law*, 221 Md. App. 481 at 506–07. Insufficiency of service of process is a mandatory defense that must be raised in a

motion to dismiss before answering. Md. Rule 2-322(a). And "[i]n disposing of the motion, the court may dismiss the action or grant such lesser or different relief as may be appropriate." *Id*., (c).

We see no abuse of discretion here. Indeed, Ms. Robinson admitted during the hearings on the motion to dismiss that she never accomplished personal service on Ms. Kekec. Instead, on November 19, 2015, the process server delivered the complaint and summons to Mr. Ferrandino, the owner of the butcher shop located in the same building as Ms. Kekec's residence. Ms. Robinson asserted that Mr. Ferrandino spoke with Ms. Kekec by phone, in the presence of the process server, and received authorization to accept service. But the circuit court concluded that this hearsay statement did not establish that Ms. Kekec in fact had authorized Mr. Ferrandino to accept service on her behalf under Rule 2-124(b). And in affidavits from herself and Mr. Ferrandino, Ms. Kekec denied that she authorized Mr. Ferrandino to accept service on her behalf. Even if we assume that Ms. Robinson created a factual dispute about whether Mr. Ferrandino had authority to accept service, the circuit court resolved that dispute against her and that finding was not clearly erroneous.[7]

[7] Ms. Robinson argues that Ms. Kekec was evading service and that the circuit court erred by not permitting her to provide "alternative service" before dismissing the complaint. But Ms. Robinson never filed an affidavit supporting her assertions of evasion (*see* Maryland Rule 2-121(b)), or an affidavit supporting that service by alternative means was warranted (*see* Maryland Rule 2-121(c)). We decline to consider that argument.

Ms. Robinson also argues that Ms. Kekec should be "estopped" from raising insufficiency of service of process as a defense based on the "invited error" doctrine. But she cites no case or other authority supporting that the "invited error" doctrine applies to an appeal from

2. The complaint did not state a claim.

Second, and even if Ms. Kekec *had* been served, the allegations in the complaint did not state a claim under the Maryland Debt Collection Practices Act. When reviewing a dismissal for failure to state a claim, "we must determine whether the complaint, on its face, discloses a legally sufficient cause of action." *Schisler v. State*, 177 Md. App. 731, 743 (2007) (citations omitted). In so doing, "we accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Converge Servs. Grp. v. Curran*, 383 Md. 462, 475 (2004).

Ms. Robinson seeks to state a claim *first* for a violation of CL § 14-202(8), which prohibits a debt collector from "[c]laim[ing], attempt[ing], or threaten[ing] to enforce a right *with knowledge* that the right *does not exist*" when collecting or attempting to collect a debt. (Emphasis added.) But the complaint alleges no facts that could support a finding that Ms. Kekec acted "with knowledge" that she had no right to collect the amount demanded. The complaint alleges that the amount demanded was "fictional" by virtue of the oral agreement she alleges she had with Ms. Kekec. But even if there were such an agreement, it wouldn't prevent Ms. Kekec from claiming a share of the Property's expenses. *See Peete-Bey v. Educ. Credit Mgmt. Corp.*, 131 F. Supp. 3d 422, 431–21

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the dismissal of a complaint for insufficiency of service of process, and we don't see how it differs from her claim that Ms. Kekec evaded service.

Finally, Ms. Kekec argues that the complaint was properly dismissed for lack of personal jurisdiction. Because we affirm on other independently sufficient grounds, we need not reach that issue.

(D. Md. 2015); *see also Kouabo v. Chevy Chase Bank, F.S.B.*, 336 F. Supp. 2d 471, 475 (2004). Ms. Robinson claims that "a joint tenant cannot demand payment from another joint tenant for the upkeep of mortgage payments, utility payments, or repairs to a property," but cites no law supporting that proposition or any facts on which a court could find that Ms. Kekec knew of such a restriction (if it existed).[8]

Second, Ms. Robinson also alleges a violation of CL § 14-202(9), which prohibits a debt collector from "[using] a communication which simulates legal or judicial process or gives the appearance of being authorized, issued, or approved by a government, governmental agency, or lawyer when it is not." But the lawyer's letter didn't "simulat[e] legal or judicial process" or pretend to come from a court or other governmental body. Nor does the complaint allege that the letter "g[ave] the appearance" of being authorized or issued by a government or a lawyer when it was not from a government or lawyer. Indeed,

[8] Ms. Robinson's First Amended Complaint—which was filed but not accepted because it was filed too late—implicitly acknowledges the insufficiency of the complaint's allegations. The claim corresponding to the CL § 14-202(8) claim in the First Amended Complaint adds allegations concerning Ms. Kekec's knowledge. But those allegations, even if accepted, would still fall short. Ms. Robinson alleges that Mr. Hrdlicka, an attorney, knew or should have known that "a joint tenant cannot collect debts arising from maintenance of real property from another joint tenant through the commercial debt collection process without first filing for a partition and being awarded damages." Even if those allegations were true, and assuming that the knowledge of Mr. Hrdlicka could be imputed to Ms. Kekec by virtue of an agent-principal relationship, they still don't allege Ms. Kekec's knowledge that a right to collect *did not exist*. At most, there could be a legal dispute over whether Ms. Robinson owed Ms. Kekec anything and the appropriate procedure for collecting it. But the purpose of the MCDCA is not to protect consumers against debts or legal disagreements—it protects consumers from unfair debt collection practices.

the allegations support the contrary—namely that Mr. Hrdlicka is indeed Ms. Kekec's lawyer.[9]

B. The Settlement Agreement In The New York Action Has No Bearing On This Case.

We are somewhat at a loss to know what to make of the parties' representations and arguments about the settlement agreement in the New York action. Ms. Kekec argues that this case should be dismissed because Ms. Robinson agreed to dismiss it in connection with that case. Ms. Robinson complains that she will not be paid the $35,000 that Ms. Kekec apparently agreed to pay her because the check was being held by Ms. Kekec's attorney rather than being placed "in escrow," as Ms. Robinson defines that term. And she argues that the circuit court should not have vacated the initial order directing Ms. Kekec to prove that the settlement proceeds had been placed in escrow.

This, of course, is an action alleging claims under the Maryland Debt Collection Practices Act, not an action to enforce the New York settlement or to resolve the merits of their disputes over the Property. But that aside, both parties' arguments fail for the same reason: they cite no authority supporting that the circuit court was required—or even had the authority to—enforce an order entered in another case by a different court in another state. Ms. Kekec cites *Kirby v. Kirby*, 129 Md. App. 212 (1999) for the proposition that courts may enforce consent degrees, although she also acknowledges that Maryland is not

[9] The First Amended Complaint does not attempt to correct this deficiency. Instead, it rehashes the allegations concerning the "fictional" nature of the debt based on the assertion that a joint tenant cannot claim contribution from another joint tenant without first filing a petition to partition.

the proper forum to challenge the settlement. So although the settlement agreement provides some context for the prolonged dispute between the parties, it has no bearing on the outcome of this case.[10]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.

[10] Ms. Robinson challenges the circuit court's order vacating its initial order of default. But she cites no law or rule supporting her position that an order vacating default is subject to appellate review once the case proceeds on the merits. And the circuit court's decision to vacate default appears to have been made in accordance with Maryland Rule 2-613(d) and (e), which allow for a party to file a motion to vacate the entry of default—the procedural precursor to entry of default *judgment* (*see* Maryland Rule 2-613(f))—within thirty days of entry. Ms. Kekec complied with that rule in filing her motion to vacate, and Ms. Robinson presents no reason why the circuit court abused its discretion in granting that motion and allowing the case to proceed.