Circuit Court for Baltimore County
Case No. C-03-CV-21-000579

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 443

September Term, 2023

CARS PLUS, LLC, ET AL.

v.

SHAHID RAJA, ET AL.

Graeff,
Arthur,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: February 28, 2024

*This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be citated as persuasive authority only if the citation conforms to Md. Rule 1-104(a)(2)(B).

After a hearing at which the circuit court ordered the entry of default judgments and devised a formula for the computation of damages, the defendants moved for additional time to file affidavits of meritorious defenses and an answer. The circuit court denied the motion and entered the default judgments. Undeterred, the defendants filed an answer and counterclaim, which the circuit court struck.

The defendants appealed. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On February 21, 2021, plaintiffs Shahid Raja and Zia Warraich commenced this civil action against their erstwhile business partners, Abdoulaye Sene and Mohammad Ghazanfar, and Cars Plus LLC, an entity of which all four men were members. The plaintiffs' complaint purported to assert five counts: (1) a count for a preliminary (but not a permanent) injunction; (2) a count for breach of fiduciary duty; (3) a count for breach of contract; (4) a count alleging "statutory fraud"; and (5) a count requesting the judicial dissolution of the LLC, Cars Plus.

The plaintiffs effectuated service of process on the two individual defendants, Sene and Ghazanfar, but not on Cars Plus.

None of the defendants filed timely answers to the complaint. Consequently, on September 24, 2021, the plaintiffs moved for an order of default under Maryland Rule 2-613(b). On October 7, 2021, the circuit court issued orders of default against defendants Sene and Ghazanfar. The circuit court declined to issue an order of default against Cars Plus because it had not been properly served.

In accordance with Maryland Rule 2-613(c), the circuit court sent notices of the orders of default to defendants Sene and Ghazanfar. The notices informed Sene and Ghazanfar that the orders of default had been entered and that they could move to vacate the orders within 30 days after their entry.

On November 4, 2021, Sene, representing himself, filed a two-page, handwritten motion to vacate the order of default against him. On December 6, 2021, the circuit court denied Sene's motion to vacate the order of default because it did not state "any legal or factual basis for a dispute as to the merits of the case—only conclusions and allegations[.]" Ghazanfar did not file a motion, timely or otherwise, to vacate the order of default.

Meanwhile, on November 30, 2021, the plaintiffs moved for default judgments against Sene and Ghazanfar. On December 27, 2021, the circuit court denied the motion on the ground that it did not specify the relief requested. The court's order advised the plaintiffs that they could request a hearing on damages.

On October 25, 2022, plaintiff Raja moved again for a default judgment against Sene and Ghazanfar. On November 3, 2022, plaintiff Warraich moved again for a default judgment against Sene and Ghazanfar. Sene filed a written opposition to the entry of a default judgment against him. Ghazanfar filed nothing.

On November 17, 2022, the circuit court denied the motions for default judgment because of the insufficiency of the evidence as to damages. The court reiterated that the

plaintiffs could request a hearing on the issue of damages. On that same day, the court scheduled a hearing for February 17, 2023.

On February 14, 2023, Sene moved to postpone the hearing. The circuit court denied the motion on February 16, 2023. The hearing went forward as scheduled on the following day, February 17, 2023.

At the hearing, plaintiffs Raja and Warraich presented evidence of their damages. The court arrived at a formula for the computation of damages and directed the attorney for Raja and Warraich to prepare an order quantifying the damages in accordance with the formula. The court denied a request for "some type of an injunction."

After the court had announced its decision, someone—apparently Sene or Ghazanfar—interjected and requested a postponement. Although the court did not rule on the request on the record, the request appears to have been tacitly denied.

On February 22, 2023, after the court had announced the entry of the default judgments but before it had signed an order evidencing the ruling, Sene and Ghazanfar, through counsel, filed a motion requesting several forms of relief. First, they moved for additional time to file the affidavit of meritorious defenses that accompanies a motion to vacate an order of default. They also moved for additional time to file an answer and an opposition to the motion for a default judgment that the court had already granted. Finally, they moved for reconsideration of the rulings at the hearing on February 17, 2023. The court denied their motions on March 15, 2023.

A day earlier, on March 14, 2023, the circuit court had signed two orders of judgment. The first order entered a default judgment in favor of Raja and against Sene and Ghazanfar, jointly and severally, in the total amount of $138,706.84. The second order entered a default judgment in favor of Warraich and against Sene and Ghazanfar, jointly and severally, in the total amount of $18,985.30. The clerk did not enter the orders on the docket until April 19, 2023.

Although the court had denied their motion for additional time to file an answer, Sene and Ghazanfar proceeded to file an answer, and a counterclaim, on April 14, 2023. On April 19, 2023, the day on which the default judgments were entered on the docket, the clerk's office issued a scheduling order.

On May 5, 2023, Sene and Ghazanfar filed what they called a "protective" notice of appeal.

On May 15, 2023, the circuit court vacated the scheduling order. The court explained that it was "an error" to issue a scheduling order, because default judgments had been entered against Sene and Ghazanfar, and because Cars Plus had not answered and had not been defaulted. The order states that "a scheduling order will be issued when the case is at issue," presumably as to Cars Plus.

On May 22, 2023, the court granted a motion to strike the counterclaim; on May 23, 2023, the court granted a motion to strike the answer.

On June 21, 2023, Sene and Ghazanfar filed a second notice of appeal.

QUESTIONS PRESENTED

Sene and Ghazanfar raise five questions, which we quote:

1. Did the Circuit Court err in granting a motion to strike Appellants' Answer, where Appellees made no showing of prejudice, inter alia where the Circuit Court had recently entered a new scheduling order[?]

2. Did the Circuit Court err in granting a motion to strike Appellant's Counterclaim, where Appellees made no showing of prejudice, inter alia where the Circuit Court had recently entered a new scheduling order[?]

3. Did the Circuit Court err in denying Appellant['s] new counsel's motion for additional time to file, inter alia, an affidavit of meritorious defenses[?]

4. Did the Court err in not maintaining the April 19, 2023 Scheduling Order?

5. Is this appeal premature, inter alia where not all claims against Appellants have been resolved and where an order withdrawing the referenced scheduling order envisioned a new scheduling order "when this case is at issue"[?]

We reject Sene's and Ghazanfar's suggestion that their appeal is premature. On the merits, we conclude that the circuit court did not err in striking the answer and counterclaim, denying the motion for additional time to file an affidavit of meritorious defenses, and striking the scheduling order.

IS THE APPEAL PREMATURE?

Sene and Ghazanfar suggest that their own appeal is premature, in part, they say, because the court did not resolve all of the claims in the case. Even if Sene and Ghazanfar had not suggested that their appeal may be premature, we would have the right

to examine that issue on our own motion. *See*, *e.g.*, *Waterkeeper Alliance, Inc. v. Maryland Dep't of Agriculture*, 439 Md. 262, 276 n.11 (2014).

Our power to decide appeals is derived solely from statute—principally, section 12-301 of the Courts and Judicial Proceedings Article of the Maryland Code (1974, 2020 Repl. Vol.) ("CJP"). Under CJP section 12-301, "[A] party may appeal from a final judgment entered in a civil or criminal case by a circuit court." "In general, an order is not a final judgment unless it fully adjudicates all claims in the case by and against all parties to the case." *Huertas v. Ward*, 248 Md. App. 187, 200 (2020) (citing Md. Rule 2-602(a)). "An interlocutory order, i.e. any order that is not a final judgment, ordinarily is not appealable." *Id.* (citing *Baltimore Home Alliance, LLC v. Geesing*, 218 Md. App. 375, 383 (2014)).

In this case, the complaint contained five counts against three defendants, one of which (Cars Plus) was never served. "[A] 'named defendant who has not been served is not a party for the purpose of determining a final judgment[.]'" *Turner v. Kight*, 406 Md. 167, 172 n.3 (2008) (quoting *State Highway Admin. v. Kee*, 309 Md. 523, 529 (1987)). "A named defendant becomes a party to the action only when the defendant is properly served." *Higginbotham v. Pub. Serv. Comm'n of Maryland*, 171 Md. App. 254, 265 (2006) (citing *State Highway Admin. v. Kee*, 309 Md. at 529-30). Therefore, the court's failure to dispose of the claims against the unserved defendant, Cars Plus, does not deprive the judgment of finality.

Similarly, the unadjudicated count for the dissolution of Cars Plus does not deprive the judgment of finality. Cars Plus would certainly seem to have been a necessary party in any action for its own dissolution. *See* Md. Rule 2-211(a). Consequently, the court had no power to decide the issue of dissolution without hearing from Cars Plus. The court did everything that it could to dispose of the case in the absence of Cars Plus.

Nor does the unadjudicated "count" for a preliminary injunction deprive the judgment of finality. An injunction is not a cause of action or an affirmative claim for relief; it is remedy—a form of equitable relief—that a court may award after a plaintiff has proven liability on an underlying cause of action. *See* Paul Mark Sandler et al., *Pleading Causes of Action in Maryland* § 7.3 (6th ed. 2018) (stating that where "requests for injunctive relief relate to independent causes of action, such as nuisance, . . . counsel must take care to plead properly and fully the elements of a cause of action which support the request for injunctive relief"); *see also Fare Deals Ltd. v. World Choice Travel.Com, Inc.*, 180 F. Supp. 2d 678, 682 n.1 (D. Md. 2001) (stating that "a request for injunctive relief does not constitute an independent cause of action" but is "merely the remedy sought for the legal wrongs alleged"). Technically, therefore, a request for an injunction need not (and should not) "be set forth in a separately numbered count." *See* Md. Rule 2-303(a). The circuit court disposed of the request for injunctive relief when it denied the *remedy* of an injunction at the hearing at which it quantified the plaintiffs' damages.

Furthermore, in the motions for a default judgment, Raja and Warraich expressly requested an order that included a determination of liability "and all relief sought." By way of relief in the motions for a default judgment, Raja and Warraich sought damages and attorneys' fees alone, and no other form of relief. Implicitly, therefore, Raja and Warraich abandoned their request for dissolution of the LLC and for a preliminary injunction. By granting the default judgments, the court can be said to have implicitly denied all other relief, including the request for dissolution and a preliminary injunction, because the order by its nature includes "all relief sought." Md. Rule 2-613(f).

In these circumstances, we are satisfied that the circuit court entered a final, appealable judgment. Consequently, we shall proceed to the merits.

THE MERITS

In summary, Sene and Ghazanfar argue that the circuit court erred in denying their motion for additional time to prove that they had meritorious defenses, in striking their answer and counterclaim, and in striking a scheduling order. We see no error.

This Court recently summarized the general principles pertaining to orders of default and default judgments:

> Maryland Rule 2-613(b) states that "[i]f the time for pleading has expired and a defendant has failed to plead as provided by these rules, the court, on written request of the plaintiff, shall enter an order of default." "Promptly upon entry of an order of default, the clerk shall issue a notice informing the defendant that the order of default has been entered and that the defendant may move to vacate the order within 30 days after its entry." Md. Rule 2-613(c). If the defendant moves to vacate the order, the motion "shall state the reasons for the failure to plead and the legal and factual basis for the defense to the claim." Md. Rule 2-613(d). If, upon the filing of such a motion, "the court finds that there is a substantial and sufficient

> basis for an actual controversy as to the merits of the action and that it is equitable to excuse the failure to plead, the court shall vacate the order." Md. Rule 2-613(e). If, on the other hand, the defendant filed no motion or the court denied the defendant's motion, "the court, upon request, may enter a judgment by default that includes a determination as to the liability and all relief sought, if it is satisfied (1) that it has jurisdiction to enter the judgment, and (2) that the notice required by section (c) of this Rule was mailed." Md. Rule 2-613(f).

Pomroy v. Indian Acres Club of Chesapeake Bay, Inc., 254 Md. App. 109, 118 (2022).

In this case, the circuit court, on the request of Raja and Warraich, issued orders of default on October 7, 2021, and gave proper notice of the orders to Sene and Ghazanfar. Sene filed a timely motion to vacate the order of default, but the circuit court denied his motion because it failed to satisfy the requirements of Rule 2-613(d). Ghazanfar never moved to vacate the order of default.

In the fall of 2022, Raja and Warraich moved for the entry of a default judgment against Sene and Ghazanfar, as they were entitled to do because the court had denied Sene's motion to vacate, and Ghazanfar had never filed a motion to vacate. Sene filed an opposition to the motion for a default judgment; Ghazanfar filed nothing.

The court convened a hearing on the motion for a default judgment, because of the need to take evidence in support of the claim for money damages. Sene and Ghazanfar did not appear at the hearing—except, perhaps, to request a postponement after the court had already announced its ruling. Only after the court orally granted the *default judgments* did Sene and Ghazanfar move for additional time to file an affidavit of defenses (which accompany a motion to vacate an *order of default*), as well as an answer.

We review a circuit court's decision to grant or deny a motion for extension of time for abuse of discretion. *Md. Green Party v. State Bd. of Elections*, 165 Md. App. 113, 142 (2005). A court abuses its discretion when the decision under consideration is "'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Woodlin v. State*, 484 Md. 253, 277 (2023) (quoting *State v. Matthews*, 479 Md. 278, 305 (2022)).

The court did not abuse its discretion in denying the request for additional time to file an affidavit of defenses and an answer. Sene had already attempted to detail his defenses when he moved, unsuccessfully, to vacate the order of default more than a year earlier. Ghazanfar had never moved to vacate the order of default, and his deadline for doing so had passed more than a year earlier. The court was not required to give Sene and Ghazanfar a second chance to move to vacate the order of default, especially after it had orally granted a default judgment. And Sene and Ghazanfar were not entitled to file an answer unless the court vacated the order of default, which it effectively declined to do by denying their motion for an extension of time to file an affidavit of defenses.

We turn to the court's decision to strike the answer and counterclaim that Sene and Ghazanfar attempted to file after the court had denied their motion for an extension of time to file affidavits of meritorious defenses and an answer. A circuit court may grant a motion to strike "any pleading that is late or otherwise not in compliance with these rules . . . in its entirety." Md. Rule 2-322(e). "The decision whether to grant a motion to strike is within the sound discretion of the trial court[,]" but "'such a motion should be granted

only if the delay prejudices the'" other party. *First Wholesale Cleaners Inc. v. Donegal Mut. Ins. Co.*, 143 Md. App. 24, 41 (2002) (quoting *Garrett v. State*, 124 Md. App. 23, 27 (1998)).

When Sene and Ghazanfar filed their answer and counterclaim on April 14, 2023, the court had already denied their motion for an extension of time to file an answer. In fact, the court already signed the default judgments, though they hadn't yet made their way to the clerk's office. It is beyond any serious dispute that Raja and Warraich would have been prejudiced if the court allowed Sene and Ghazanfar to file an answer and counterclaim after it had orally granted default judgments, after it had signed the default judgments, and after it had refused to grant them more time to file an answer. In these circumstances, the court may well have abused its discretion had it *not* stricken the answer and counterclaim.

Finally, the court did not err or abuse its discretion in striking the scheduling order. The court recognized that the clerk's office had issued the scheduling order "in error" in a case in which the court had just entered default judgments. The court may have recognized that the clerk's office had issued the scheduling order as an automatic response to the filing of the answer that Sene and Ghazanfar had no right to file. When the court wrote that "a scheduling order will be issued when the case is at issue," the court was merely envisioning the possibility that the case might still come to issue as to the unserved defendant, Cars Plus.

In summary, the circuit court did not err or abuse its discretion in any of the actions that Sene and Ghazanfar have challenged.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.