

Circuit Court for Baltimore County
Case No. C-03-CV-20-001164

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0729

September Term, 2020

MICHAEL C. WORSHAM

v.

ORIENTAL TRADING COMPANY, INC.

Arthur,
Leahy,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: June 28, 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.

Appellant, Michael Worsham, who is self-represented, sued appellee, Oriental Trading Company, Incorporated (OTCI), for alleged violations of Maryland’s anti-spam statute on March 16, 2020, in the Circuit Court for Baltimore County. That court granted OTCI’s Motion to Dismiss for lack of personal jurisdiction and failure to state a claim.

On appeal, Mr. Worsham presents four questions, which we have slightly reworded and reordered:

- I. Whether the circuit court erred in issuing a deficiency notice for his Motion to Alter or Amend and Motion for Leave to Amend.
- II. Whether the circuit court erred in denying his Motion for Leave to Amend Complaint.
- III. Whether the circuit court erred in granting appellee Oriental Trading’s Motion to Dismiss for lack of personal jurisdiction.
- IV. Whether the circuit court erred in granting appellee Oriental Trading’s Motion to Dismiss for failure to state a claim.

In our first opinion, issued on March 24, 2022, we affirmed the dismissal of the complaint for lack of personal jurisdiction and vacated the dismissal of the complaint for failure to state a claim. Mr. Worsham filed a Motion for Reconsideration, which we have granted in part, and therefore, we have withdrawn that opinion and now issue this one, remanding the case back to the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Worsham is a Maryland resident who has resided in his current Maryland home since 1993. OTCI is a Nebraska corporation with its headquarters in Omaha. On November 23, 2019, Mr. Worsham placed an online order with OTCI. That same day,

OTCI sent an order confirmation to his email address. The requested product was delivered to his residence on November 29, 2019.

OTCI requires all of its customers to agree to receive promotional emails when they provide their email address to OTCI, but they can unsubscribe any time thereafter. Almost immediately, OTCI began sending promotional emails. Mr. Worsham alleged in his complaint, and OTCI admitted in its response to Mr. Worsham’s request for admissions, that OTCI sent him 34 promotional emails.

Mr. Worsham included in his complaint the subject lines of each of the 34 emails he received. But he focuses on the following three sets of emails to support his contention that the subject lines were false or misleading and created a false sense of urgency about an expiring special offer:

- An email sent on December 11, 2019, with the subject line *“Today Only! Free Shipping, Any Order + \$10 eGift Card | Chic Tables Start Here!”* which was followed by another email sent on December 12, 2019, with a subject line *“Holiday Lightning Deals Extended, Free Shipping on ANY Order & \$10 eGift Card!”*
- An email on January 14, 2020, had the subject line *“Last Day for FREE Shipping on Any Order!”* which was followed by an email on January 15, 2020, with the subject line *“FREE Shipping, Any Order + Up to 60% off Wedding Supplies.”*
- An email sent on March 5, 2020, with the subject line *“Hurry! Final Day for FREE Shipping, ANY Order!”* followed by an email the next day with the subject line *“Looking for Inspiration? Get Started with Free Shipping.”*

According to Mr. Worsham, the free shipping offer never expired but the subject lines of these emails misled consumers into believing that it would.

Mr. Worsham alleged in his complaint that the emails from OTCI violated the Maryland Consumer Electronic Mail Act (MCEMA). Md. Code Ann. Com. Law § 14-3001–3003. More specifically, he asserts that their subject lines contained false and misleading information; that they were unsolicited; that OTCI initiated email transmissions to an electronic address it should have known was held by a Maryland resident; and, citing Maryland Commercial Law Article § 14-3002(c),¹ that OTCI is presumed to know that the person receiving the email is a Maryland resident if the information is available on request from the registrant of the Internet domain name contained in the recipient’s email address.

On May 22, 2020, OTCI filed a Motion to Dismiss for lack of personal jurisdiction and for failure to state a claim, and, on June 15, 2020, a Motion to Stay Discovery. In its motion to stay, OTCI asked the circuit court to address that motion first and, if that motion was denied, to allow OTCI at least thirty days after filing its answer to respond to Mr. Worsham’s discovery requests. Mr. Worsham filed an opposition to OTCI’s motion to dismiss on June 8, 2020, and, on June 22, 2020, he filed an opposition to OTCI’s Motion to Stay Discovery. He argued that the discovery and admission requests were not burdensome; that OTCI failed to comply with Rule 2–432(b)(2) by failing to attach the discovery at issue; and that OTCI would have to disclose jurisdictional discovery no matter

¹ Section 14-3002(c) provides: “A person is presumed to know that the intended recipient of commercial electronic mail is a resident of the State if the information is available on request from the registrant of the Internet domain name contained in the recipient’s electronic email address.”

what. On June 29, 2020, OTCI filed notice that it had served responses to Mr. Worsham’s request for admissions.

Mr. Worsham filed a Motion to Compel Discovery on July 8, 2020. He requested responses to his May 29, 2020, interrogatories and requests for production of documents and admissions. On July 10, 2020, the circuit court granted in part the Motion to Stay Discovery by permitting discovery only on the issues presented in the Motion to Dismiss. OTCI responded to Mr. Worsham’s Motion to Compel on July 22, 2020. It argued that it had already responded to the requests related to jurisdiction and the other requests centered on the merits of the case. On July 27, 2020, Mr. Worsham responded that OTCI had not answered all of the jurisdictional requests, citing the interrogatories and requests he believed were jurisdictional or pertained to the Motion to Dismiss.

On July 30, 2020, the court denied Mr. Worsham’s Motion to Compel because it was “unable to determine whether, since the court’s July 10th Order, [OTCI] has failed to provide discovery that may be relevant to the Motion to Dismiss.” It permitted Mr. Worsham to file a new Motion to Compel if he believed that OTCI’s “failure to respond to discovery ultimately falls short of what is required by the Court’s July 10th Order.” Mr. Worsham filed a renewed Motion to Compel on August 12, 2020, which was denied at the August 20, 2020, hearing on OTCI’s Motion to Dismiss.

In its answers to interrogatories and admissions that were received by Mr. Worsham on August 9, 2020, OTCI admitted to sending, in the previous two years: 10,000 emails to customers who had purchased items that were shipped or billed to Maryland; a portion of

the 4.5 million catalogs into Maryland that it sent throughout the country; and over 160,000 orders to customers who had purchased items that were billed to a Maryland address. It claimed, however, that it did not have sufficient information to know the actual locations of the purchasers.

At the August 20, 2020, hearing, the circuit court heard argument on both the motion to compel and the motion to dismiss on jurisdictional grounds and for failure to state a claim. The circuit court, before ruling on the Motion to Dismiss, explained that it was “ruling on the motion based on Mr. Worsham’s complaint, and Mr. Worsham’s complaint alone,” and was considering only “the well-pleaded facts as opposed to the more general bald assertions that may or may not be supported by well-pled facts.”² In its determination, the court did not consider the information regarding OTCI’s activities involving Maryland provided in its admissions or interrogatory answers when granting the motion because Mr. Worsham failed to file an affidavit as required by Maryland Rule 2-311(d) supporting the

² The jurisdictional assertions made in Mr. Worsham’s complaint included the following:

28. Defendant regularly advertises into Maryland, not just to Plaintiff.
29. Defendant regularly transacts business in Maryland, and in this County.
30. Defendant regularly contracts to supply goods or services in Maryland.
31. Defendant regularly causes tortious injury, such as invasion of privacy, in Maryland by acts or omissions in Maryland, including through computers and telephone or cable lines.
32. Defendant causes tortious injury in Maryland or outside Maryland by acts or omissions outside Maryland by regularly soliciting business and engaging in persistent conduct (including emailing) in Maryland, and derives substantial revenue from goods or services used or consumed in Maryland.

new information in his supplements to his response to the motion to dismiss.³ Importantly, OTCI’s attorney was the only signatory on the admissions and the interrogatory answers.

In regard to general personal jurisdiction, the court stated “there would have to be facts that support the notion that the defendant is specifically targeting the citizens of Maryland, more than a bald allegation.” According to the court, the complaint did not “provide the necessary factual support that illustrates that the defendant has a continuous and systematic presence here in the State of Maryland that would be required for jurisdiction,” and it failed to “allege specific facts that the defendant has a physical presence here or specifically targets the citizens of Maryland.” It concluded that the complaint did not rise “to the level that would permit [it] to consider there to be general personal jurisdiction. . . .”

As to specific personal jurisdiction, the trial court identified several factors “[i]t need[ed] to consider.” The first was the extent to which a defendant had purposefully availed for itself the privileges of conducting activities in Maryland. It explained that factor is satisfied when “it knows that its solicitation would go to a Maryland resident and its solicitation was specifically and deliberately designed to convince the recipient to engage in its services and promote its product.” The second factor was whether the “claims arise out of those activities directed to the State” and those “contacts with the [State] are related

³ Rule 2-311(d) states that “[a] motion or a response to a motion that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based.”

to the operable facts of the controversy.” The third factor was whether the exercise of personal jurisdiction would be constitutionally reasonable.

In ruling on specific personal jurisdiction, the court found that OTCI’s email interactions with Mr. Worsham were initiated by him and that the interactions detailed in his complaint followed his purchase of an item from OTCI. In discussing purposeful availment, the court stated that OTCI did not “initiate[] the relationship” with Mr. Worsham and “did not send [him] uninvited advertisements at the outset.” And there were no “specific facts alleged to that effect, perhaps bald assertions but not facts.” In addition, it stated that the “emails alleged to have been sent in the case are not [OTCI’s] ‘product’ [but] a means of advertising.”

The court granted the motion to dismiss, with prejudice, based on both the lack of personal jurisdiction and the failure to state a claim.⁴

Following the entry of the order dismissing the action with prejudice on August 21, 2020, Mr. Worsham filed, on August 31, 2020, a “Motion to Alter or Amend Order

⁴ When the trial court granted the motion to dismiss for failure to state a claim, Mr. Worsham questioned whether, the court, having granted the motion for lack of jurisdiction, could “go any further than that.” The court responded: “Well, the way – that’s a good question. Um, if I’m wrong on jurisdiction, to save you the time of having the Court remand it to me for further consideration of whether the complaint fails to state a claim, then the appellate court knows what I’m thinking. If the appellate court takes up the failure to state a claim first and finds that I erroneously concluded from what you said and the reasonable inferences from what you’ve said, I erroneously concluded that it didn’t trigger the statute, then the Court should know that I additionally found that there was no jurisdiction. If I’m 0 for 2, well, hopefully, you’ll feel welcome when you come back, because that’s what I’ve tried to make you feel today, as well as defense counsel. So, that’s the reason for my ruling on both grounds.”

Dismissing Complaint with Prejudice and Motion for Leave to Amend the Complaint and Request for Hearing” (the “Post-trial Motion”). That filing was deemed deficient under Rule 20-201(e) on September 1, 2020.⁵ Mr. Worsham filed his request to withdraw the deficiency notice on September 3, 2020. The Post-trial Motion was struck on September 21, 2020, and the request to withdraw the deficiency was denied on September 29, 2020.⁶ The stamped denial explained that it was denied because “motions addressing different legal principles or issues should be separately filed, pursuant to MDEC rules and guidance issued by the State Court Administrator.” Other facts may be provided in the discussion of the questions presented.

I. Deficiency Notice

Standard of Review

Rule interpretations are questions of law reviewed de novo “to determine if the trial court was legally correct.” *Williams v. State*, 457 Md. 551, 562 (2018); *Davis v. Slater*, 383 Md. 599, 604 (2004). A circuit court’s decision to deny a motion for leave to amend is reviewed under an abuse of discretion standard. *Halstad v. Halstad*, 244 Md. App. 342 (2020); *Walls v. Bank of Glen Burnie*, 135 Md. App. 229, 236 (2000) (quoting *Hartford*

⁵ Rule 20-201(e) states: “All submission related to a particular MDEC action that are filed together at one time shall be included in a single electronic folder, sometimes referred to as an envelope.”

⁶ In his motion asking for the court to withdraw the deficiency notice, Mr. Worsham alleged calling the Clerk’s office and asking why his filing was marked as deficient. He was told that it was because the title of his Post-trial Motion contained the word “motion” two times.

Accident & Indem. Co. v. Scarlett Harbor Assocs. Ltd. Partnership, 109 Md. App. 217, 248 (1996)). A discretionary decision premised upon legal error, however, is an abuse of discretion because a “court’s discretion is always tempered by the requirement that the court correctly apply the law applicable to the case.” *Arrington v. State*, 411 Md. 524, 552 (2009).

Contentions

Mr. Worsham contends that the issuance of the deficiency notice and the striking of his Post-trial Motion was error. He argues that striking it was inconsistent with the acceptance of OTCI’s Consolidated Motion to Dismiss for Lack of Jurisdiction over the Person and for Failure to State a Claim upon Which Relief Can Be Granted, and asserts receiving inconsistent advice in his efforts to cure the alleged deficiency. The deficiency notice instructed him to resubmit the filings as separate submissions within the “same envelope,” but in response to his request to have the deficiency notice withdrawn, the circuit court instructed that “motions addressing different legal principles or issues should be separately filed, pursuant to MDEC rules and guidance issued by the State Court Administrator.”

OTCI contends that the circuit court’s decision not to withdraw a deficiency notice is reviewed under an abuse of discretion standard and that not withdrawing the deficiency notice was not an abuse of discretion.

Analysis

Mr. Worsham indicates his concern about having to note his appeal within thirty days of the entry of the order dismissing the complaint prior to the disposition of his Post-trial Motion. Presumably, that concern was generated by the fact that the Post-trial Motion was ultimately disposed of under Rule 20-203(d)(2) because of a Rule 20-201(e) violation.⁷ Under the plain language of Rule 8-202(c), which was enacted prior to the adoption of Title 20 and the MDEC rules in May 2013, that concern was warranted. Rule 8-202(c) states that:

In a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, 2-534, or 11-218, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532, 2-534, or 11-218. A notice of appeal filed before the withdrawal or disposition of any of these motions does not deprive the trial court of jurisdiction to dispose of the motion.

The filing of a ten-day post-trial motion under Rule 8-202(c) causes a judgment to lose its finality for purposes of appeal. *See Estate of Vess*, 234 Md. App. 173, 194 (2017) (citing *Blake v. Blake*, 341 Md. 326, 331 (1996); *Picket v. Noba, Inc.*, 122 Md. App. 566, 570 (1998)). Although Mr. Worsham’s Post-trial Motion was eventually struck from the record for being deficient, it was timely filed. Ordinarily, the judgment would not be final

⁷ The Post-trial Motion was struck pursuant to Rule 20-203(d)(2) because of a Rule 20-201(e) violation that was not cured within 14 days. Rule 20-203(d)(2) states: “The filer may file a request that the administrative judge, or a judge designated by the administrative judge, direct the clerk to withdraw the deficiency notice. Unless (A) the judge issues such an order, or (B) the deficiency is otherwise resolved within 14 days after the notice was sent, upon notification by the clerk, the court shall strike the submission.”

under Rule 8-202(c) until that motion was withdrawn or denied under Rules 2-532, 2-533, 2-534, or 11-218. See *Continental Cas. Co. v. Kemper Ins. Co.*, 173 Md. App. 542, 545-546 & n.1 (2007) (“Although appellant’s notice of appeal was premature, we have held that a notice of appeal filed prior to the withdrawal or disposition of a timely filed motion under Rule 2-532, 2-533, or 2-534, is effective. Processing of that appeal is delayed until the withdrawal or disposition of the motion.” (internal quotation marks omitted)); *Waters v. Whiting*, 113 Md. App. 464, 471 (1997) (“The filing of post-trial motions deprives an otherwise final judgment of its appealability until such motions of appealability have been resolved.”); *Edsall v. Anne Arundel County*, 332 Md. 502, 508 (“[A] notice of appeal filed prior to the withdrawal or disposition of a timely filed motion under Rule 2-532, 2-533, or 2-534, is effective. Processing of that appeal is delayed until the withdrawal or disposition of the motion.”). Here, however, the court disposed of the Post-trial Motion when it struck it for its failure to comply with the MDEC rules. At that point, there was effectively no motion before the court, and, in our view, there was then a final judgment for the purposes of appellate review.

In *Waters v. Whiting*, one defendant moved for judgment notwithstanding the verdict and a second defendant noted an appeal. There, the post-trial motion deprived the judgment of its finality, but the appeal was still effective; its processing was delayed until the post-trial motion was dealt with. The facts here, of course, are different than in *Waters*,

but we find guidance in its discussion of the “intersection of the principles of Rule 2-602⁸ and the rules governing post-judgment motions under 2-532, 2-533, and 2-534.” *Waters*, 113 Md. App. at 473. The Court concluded that “the rules can and should be read to effectuate the intent of the Court of Appeals to avoid piecemeal appeals.” *Id.*

We are persuaded that the filing of a timely post-trial motion incorporating a request for relief covered by Rule 8-202(c) should, in principle, extend the deprivation of finality to a post-trial motion that is disposed of under Rule 20-201(e) and struck according to Rule 20-203(d)(2). There is “a strong presumption against piecemeal appeals because, ‘beyond being inefficient and costly, they can create significant delays, hardship, and procedural problems.’” *Miller Metal Fabrication, Inc. v. Wall*, 415 Md. 210, 227 (2010) (quoting *Silbersack v. ACandS, Inc.*, 402 Md. 673, 679 (2008)). And to hold otherwise would require a litigant to file a second appeal after the request to withdraw the deficiency is denied.

Therefore, we will address the merits of the deficiency notice ruling and the denial of the request to the court to withdraw it. Rule 20-201(c) provides that in the event of an inconsistency between the MDEC rules and the other Maryland Rules, the MDEC rules

⁸ Rule 2-602(a) states: “Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the right and liabilities of fewer than all the parties to the action: (1) is not a final judgment; (2) does not terminate the action as to any of the claims or any of the parties; and (3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.” Subsection (b) is not implicated in this case.

“prevail.” The denial in this case states that “motions addressing different legal principles or issues should be separately filed pursuant to MDEC rules and guidance issued by the State Court Administrator.” Rule 20-201(c) requires compliance with all published policies and procedures adopted by the State Court Administrator under Rule 20-103.

The Post-trial Motion was ruled deficient because it did not comply with Maryland Rule 20-201(e), which states that “[a]ll submissions related to a particular MDEC action that are filed together at one time shall be included in a single electronic folder, sometimes referred to as an envelope.” The Committee notes for that section indicate by way of example: “an answer to a complaint, a counter-claim, a cross-claim, and a motion for summary judgment, all filed at the same time in the same action, must be filed *as separate pleadings or papers but in a single electronic folder.*” Md. Rule 20-201(e) (emphasis added). In other words, pleadings or papers may be filed at the same time but as separate pleadings or papers.

Mr. Worsham’s Post-trial Motion included a motion to alter or amend the order dismissing the complaint with prejudice and a motion to amend the complaint in one combined filing. These motions involve “different legal principles or issues.” Rather than attempting to cure the deficiency, Mr. Worsham moved to have it withdrawn. That motion was denied and the Post-trial Motion was struck under Rule 20-203(d)(2). In short, his filing did not conform to the requirements of Maryland Rule 20-201(e). Therefore, it was

not error to reject it as deficient and it was not an abuse of discretion to deny his request to remove the deficiency.⁹

II. Leave to Amend

Mr. Worsham’s argument on this issue assumes that a request for leave to amend was before the court. It was not. His request to amend the complaint was part of his Post-trial Motion, and, as explained above, that motion was appropriately struck from the record. As a result, there was no motion to amend before the circuit court for consideration and therefore no decision or action by the court for us to review.

III. Dismissal for Lack of Personal Jurisdiction

As stated above, Mr. Worsham argued “facts” not considered by the trial court at the motions hearing and incorporates them in his argument on appeal. The trial court did not consider them because they were not supported by affidavit under Rule 2-311. In its opposition motion to Mr. Worsham’s Motion for Reconsideration, OTCI argued that the issue was not properly preserved according to Rule 8-504 because Mr. Worsham’s brief did not contain “[a]rgument in support of the party’s position on each issue.” Although we initially stated that the issue had not been sufficiently preserved and that we perceived no

⁹ Mr. Worsham argues that the clerk should not have accepted OTCI’s consolidated motion to dismiss his complaint on different grounds, but that issue is not before us. Mr. Worsham also posits that the information he received regarding the deficiency was inconsistent with the stamped denial of the Post-trial Motion and the verbal advice that he had used the word “motion” twice in the caption. The verbal advice appears to be a simplistic, but not inaccurate, way of explaining that the filing addressed two “different legal issues or principles.”

error in the application of Rule 2-311, we are now persuaded that Mr. Worsham’s arguments at trial and in his brief were sufficient to preserve the issue for our review.

Standard of Review

Rule interpretations are questions of law that we review de novo “to determine if the trial court was legally correct.” *Williams v. State*, 457 Md. 551, 562 (2018); *Davis v. Slater*, 383 Md. 599, 604 (2004).

Analysis

At the August 20, 2020, hearing, the circuit court did not consider OTCI’s admissions or interrogatory answers provided to Mr. Worsham in discovery because he had not supported the included facts by affidavit under Rule 2-311(d). It ruled on OTCI’s motion to dismiss “based on Mr. Worsham’s complaint, and Mr. Worsham’s complaint alone.” The provisions of the following rules are at play in our analysis.

Rule 2-311(c) and (d) state:

- (c) Statement of Ground and Authorities; Exhibits.—A written motion and a response to a motion shall state with particularity the grounds and authorities in support of each ground. A party shall attach as an exhibit to a written motion or response any document that the party wished the court to consider in ruling on the motion or response unless the document is adopted by reference as permitted by Rule 2-303(d) or set forth as permitted by Rule 2-432(b).
- (d) Affidavit.—A motion or a response to a motion that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based.

Rule 2-421(b) states:

The party to whom the interrogatories are directed shall serve a response within 30 days after service of the interrogatories or within 15 days after the

date on which that party’s initial pleading or motion is required, whichever is later. The response shall answer each interrogatory separately and fully in writing under oath, or shall state fully the grounds for refusal to answer any interrogatory. The response shall set forth each interrogatory followed by its answer. An answer shall include all information available to the party directly or through agents, representatives, or attorneys. The response *shall be signed by the party making it.*

(Emphasis added). Subsection (d) of Rule 2-424 states:

Effect of Admission. Any matter admitted under this Rule is conclusively established unless the court on motion permits withdrawal or amendment. The court may permit withdrawal or amendment if the court finds that it would assist the presentation of the merits of the action and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission for any other purpose, nor may it be used against that party in any other proceeding.

Mr. Worsham included both OTCI’s admissions and its answers to interrogatories in his exhibits opposing OTCI’s Motion to Dismiss. Rule 2-311(d) requires an affidavit supporting new facts not contained in the record.

It has been recognized that answers to interrogatories made under oath by a party is a proper means to plead facts before a court in summary judgment proceedings. *See Vanhook v. Merchants Mut. Ins. Co.*, 22 Md. App. 22, 27 (1974) (stating that “answers [to interrogatories], made under oath by a party, are a proper means of placing before the court facts to be considered in ruling on a motion for summary judgment”); *Washington Mutual Bank v. Homan*, 186 Md. App. 372, 391 (2009) (holding that a verified complaint with documents signed by the parties that the statements were true to the best of their knowledge, information, and belief, and offered under the penalties of perjury was sufficient to satisfy

the affidavit requirement for summary judgment); *Zilichikhis v. Montgomery County*, 223 Md. App. 158, 179 (2015) (holding that for answers to interrogatories to create a dispute of material fact, they must be “under oath, based on the personal knowledge” of the person answering the interrogatories).

Rule 2-421(b) provides that the responses to interrogatories “shall be signed by the party making [them].” Here, it appears that only OTCI’s attorney signed the responses to the interrogatories and that they were not under oath or based on personal knowledge. Therefore, it was not error for the court not to consider the information provided in the answers to interrogatories.

On the other hand, admissions are different. Rule 2-424(b) states that admissions can be signed by either “the party or the party’s attorney.” And, in the absence of the court permitting a withdrawal or amendment of the admissions, the admitted facts are “conclusively established” through an admission and do not require an affidavit under Rule 2-311(d). *Vanhook*, 22 Md. App. at 27 (holding that facts admitted under the admissions rule are “properly before the court”). In this case, OTCI’s attorney signed the admissions.

Failure to consider those admissions in the personal jurisdiction analysis was error. Therefore, we vacate the ruling on personal jurisdiction and remand to the circuit court for it to reconsider its ruling on personal jurisdiction.

IV. *Failure to State a Claim*

“Jurisdiction refers to two quite distinct concepts: (i) the power of a court to render a valid decree, and (ii) the propriety of granting the relief sought.” *Moore v. McAllister*,

216 Md. 497, 507 (1958). Jurisdiction must be acquired over a person “in order for a court to impose a personal liability or obligation upon a defendant in favor of a plaintiff.” *Allen v. Allen*, 105 Md. App. 359, 367 (1995). When there is no jurisdiction over the defendant and the parties are not properly “before the court,” the court is without power to “render a valid decree.” *Bereska v. State*, 194 Md. App. 664, 686 (2010) (quoting *First Federated Commodity Trust Corp. v. Maryland Comm’r of Securities*, 272 Md. 329, 334 (1974)).

Here, the circuit court’s grant of the motion to dismiss the complaint for lack of personal jurisdiction effectively disposed of the case because OTCI was not properly “before the court.” For that reason, any subsequent ruling by the court in regard to the complaint was, at most, dicta, and, by the court’s own statement, simply an indication of what it was “thinking.” See *Houghton v. County Comm’rs of Kent County*, 307 Md. 216, 221 (1986).

Vacating actions of a court acting without jurisdiction “is consistent with the treatment of the more general category of ‘void’ actions undertaken without jurisdiction.” *Bereska*, 194 Md. App. at 685-86; *U.S. v. \$95,945.18, U.S. Currency*, 913 F.2d 1106, 1107 (4th Cir. 1990) (“Not only does logic compel initial consideration of the issue of jurisdiction over the defendant—a court without such jurisdiction lacks power to dismiss a complaint for failure to state a claim—but the functional difference that flows from the ground selected for dismissal likewise compels considering jurisdictional . . . questions first.”). Therefore, we vacate that part of the circuit court’s order dismissing the complaint for failure to state a claim. If, on reconsideration, the circuit court finds that it has personal

jurisdiction over the defendant, the court may then consider the failure to state a claim motion.

THE DECISION OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED IN PART, REVERSED IN PART, AND VACATED IN PART. THE CASE IS REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THIS OPINION. COSTS TO BE PAID ONE-HALF BY APPELLANT AND ONE-HALF BY APPELLEE.