Circuit Court for Prince George's County
Case No. CAE12-25242

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 00792

September Term, 2016

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MICHAEL YOUNG, ET AL.

v.

EMKAY TITLE SOLUTIONS, LLC

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Meredith,
Friedman,
Pierson, W. Michel (Specially Assigned),

JJ.

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Opinion by Pierson, W. Michel, J.
Concurring Opinion by Friedman, J.

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Filed: February 21, 2018

In this appeal from the Circuit Court for Prince George's County, appellants Michael Young and Brenda Young challenge the denial of their motion to vacate an order granting a voluntary dismissal in a foreclosure proceeding initiated by Thomas Dore, et al., Substitute Trustees. The Youngs contend that third-party claims asserted by them against Emkay Title Solutions, LLC should have remained pending notwithstanding the voluntary dismissal. We perceive no error, and affirm the action of the circuit court.

## PROCEDURAL AND FACTUAL BACKGROUND

The proceeding below was initiated by an Order to Docket filed by the Substitute Trustees on August 17, 2012, naming as defendants Brenda J. Young and Michael A. Young. The relief sought was the foreclosure of a Deed of Trust dated November 30, 2007 encumbering 12804 Quail Lane, Brandywine, Maryland 20613. The mortgage lender under the Deed of Trust was Wells Fargo Bank, N.A. The original note principal was $902,000; a Loan Modification Agreement was executed on May 6, 2010, with a new principal balance of $970,722.11. The Statement of Mortgage Debt filed with the Order to Docket recited an outstanding balance (including interest and disbursements) of $999,604.21. The Deed of Trust contained an assent to decree and power of sale in accordance with Title 14, chapter 200 of the Maryland Rules.

On December 7, 2012, Michael Young and Brenda Young each filed a separate pleading styled as a counterclaim, each of which named Wells Fargo Bank, N.A. and Emkay Title Solutions, LLC as counterclaim defendants. The factual allegations of the two counterclaims were essentially identical. Both alleged that in 2006 Brenda Young conveyed her interest in 12804 Quail Lane to Michael Young, and that she was not a

borrower or co-signer on the loan that was extended to Michael Young in 2007 and secured by the Deed of Trust. They further alleged that on June 16, 2011 the Deed of Trust was amended to include a forged signature of Brenda Young, and that the amended Deed of Trust was recorded in the Land Records of Prince George's County. They asserted that Emkay performed loan origination, processing and recording services on behalf of Wells Fargo in connection with the loan, and that Wells Fargo instructed Emkay to illegally add Ms. Young's name to the Deed of Trust. Based on the forgery, Ms. Young was wrongfully named as a defendant in the foreclosure proceeding.

Mr. Young's counterclaim contained nine counts: Counts I and II charged Wells Fargo with mortgage fraud, in violation of Md. Code, Real Prop. Art. § 7-401; Count III charged Emkay with mortgage fraud; Count IV alleged that Wells Fargo and Emkay conspired to commit mortgage fraud; Count V alleged that Wells Fargo violated the Consumer Debt Collection Act (Md. Code, Comm. Law Art. § 14-202); Count VI alleged that Wells Fargo violated the Consumer Protection Act (Md. Code, Comm. Law Art. § 13-301); Count VII alleged that Emkay violated the Consumer Protection Act; Count VIII asserted a claim against Emkay for Slander of Title of Real Property; and Count IX a claim against Wells Fargo for Slander of Title. The prayer for relief asked for damages of $999,604.21, "non-economic damages such as emotional distress" of $725,000, punitive damages of $1,000,000, and attorneys' fees.

Ms. Young's counterclaim contained eight counts: Counts I and II charged Wells Fargo with mortgage fraud; Count III charged Emkay with mortgage fraud; Count IV

charged Wells Fargo and Emkay with conspiracy to commit mortgage fraud; Count V alleged that Wells Fargo violated the Consumer Debt Collection Act; Count VI alleged that Emkay violated the Consumer Debt Collection Act; Count VII asserted a claim against Wells Fargo under the Consumer Protection Act; and Count VIII a claim against Emkay under the Consumer Protection Act. This counterclaim sought $999,604.21 in compensatory damages, non-economic damages of $725,000, and attorneys' fees.

Wells Fargo filed a separate Answer to each counterclaim on January 10, 2013. Emkay filed Answers on January 24, 2013, each of which was styled as an "Answer to Third-Party Claim"; in a footnote in each Answer, Emkay stated that the Youngs' pleadings were third-party claims, not counterclaims. Thereafter, (with a few exceptions) the claims against Wells Fargo and Emkay were referred to as third-party claims by all of the parties throughout the remainder of the proceedings. Emkay also filed a Fourth-Party Claim against Kelli C. Baxter.[1]

Discovery ensued. Wells Fargo filed a motion for summary judgment, which was denied on August 6, 2014. On October 30, 2014, Wells Fargo and Emkay jointly filed a motion to sever the third-party and fourth-party claims, which the Youngs opposed. On May 24, 2015, the circuit court passed an order granting the motion to sever in part. The order stated that the issues raised by the third-party claims should be resolved before a foreclosure sale occurred, but that the court was not persuaded that the claims should be

[1] Ms. Baxter's name appears as notary and witness to Ms. Young's signature on the amended Deed of Trust.

severed. The order directed the stay of the sale pending adjudication of the "remaining issues" and the entry of a scheduling order. A scheduling order was entered, which provided deadlines for discovery and set a pretrial conference.

On August 26, 2015, Wells Fargo filed a renewed motion for summary judgment on the third-party claims against it. After a hearing, that motion was granted on November 15, 2015. The Youngs filed a motion for partial summary judgment on October 15, 2015, which Emkay opposed, and Emkay filed a motion for summary judgment on December 12, 2015, which the Youngs opposed, requesting a hearing.

On January 7, 2016, the Substitute Trustees filed a Notice of Voluntary Dismissal. On February 12, 2016, the court issued an order, which provided that "Plaintiff's Notice of Dismissal is granted, . . . that all pending motions are denied as moot," and that the case should be "closed statistically." On March 7, 2016, the Youngs filed a Motion to Vacate Order of the Court Dismissing the Case or In the Alternative, [for] Clarification of the Order of Court. They asserted that: "It appears the Court mistakenly dismissed the 'entire case' and did not recognize the 'Notice of Dismissal' filed by Plaintiff Thomas Dore served to dismiss the foreclosure action only." Emkay filed an opposition to the motion to vacate on May 12, 2016. An order denying the motion to vacate was filed on June 14, 2016.

## DISCUSSION

The Youngs argue that the circuit court erroneously dismissed the action without giving consideration to whether they should be allowed to continue to pursue their claims

against Emkay.[2] They assert that after they filed the third-party complaints the Substitute Trustees no longer had the right to dismiss the proceeding as of course, and that they were prejudiced because the court was required to protect their interest in "sustaining their Independent Actions against the Third party Defendants." They state that the third-party claim was an affirmative right that survived the dismissal of the foreclosure action.

**Motion to Dismiss Appeal**

Emkay included in its brief a motion to dismiss the appeal pursuant to Maryland Rule 8-603(c). The motion is based on the Youngs' "failure to join a necessary party" to the appeal – the Substitute Trustees, who were the plaintiffs in the circuit court. It asserts that after the court's order of February 12, 2016 the Youngs served only Emkay with their filings, including the notice of appeal and subsequent filings in this court. The failure to serve filings upon other parties, it states, violates Rule 1-321, and deprived the Substitute Trustees of the opportunity to respond to the appeal. Emkay contends that the Substitute Trustees are entitled to participate in the appeal inasmuch as the relief sought is the vacating of the order of dismissal.

Emkay correctly observes that Rule 1-321 required service of all filings upon all parties, including the Substitute Trustees (and, for that matter, Wells Fargo and Ms. Baxter). However, we do not believe that dismissal of this appeal is required. First, we question Emkay's standing to assert this argument on behalf of the Substitute Trustees. Emkay does

[2] They do not challenge the grant of summary judgment on the third-party claims against Wells Fargo.

not assert that the failure to serve the Substitute Trustees resulted in any prejudice to it. Furthermore, it does not appear that the resolution of this appeal would result in any prejudice to the Substitute Trustees. Although the Youngs argue that the order permitting the Substitute Trustees to dismiss the foreclosure action was erroneous, the true nature of the relief they seek is the right to continue to pursue their third-party claim notwithstanding the dismissal of the foreclosure action. Granting them that relief would not require that the order of dismissal be vacated.

Therefore the motion to dismiss the appeal will be denied. Needless to say, we do not approve of the Youngs' failure to follow these rules, as well as the rules relating to preparation of the record extract.

**Merits of the Appeal**

The Youngs assert that the filing of third-party complaints created an "affirmative right" on their part to pursue their claims, which required that the third-party complaints remain pending for adjudication after the dismissal of the foreclosure action. As authority for this contention, they cite two cases, *Camden Sewer Co. v. Mayor & Council of Salisbury*, 157 Md. 175 (1929) and *Potomac Edison Co. v. Public Service Comm.*, 165 Md. 458 (1933), from which they quote extensively. The principle that they derive from these cases is that a plaintiff no longer has a right to dismiss as of course once an opposing party has become a claimant or acquired an affirmative right to relief. As their reliance on this authority is the primary basis for their argument, we first examine that authority and then consider it in the context of changes in procedure relating to voluntary dismissal subsequent to those

decisions.

The genesis of the *Camden Sewer* litigation was an ordinance under which the plaintiff Mayor and Council had the right to purchase underground pipes installed by the defendant sewer company upon payment of the company's costs of installation. The plaintiff filed a complaint seeking access to the defendant's records to ascertain the cost of the pipes. After the case was at issue, the parties agreed to an order referring the case to an auditor to state an account. Upon the filing of the audit, the plaintiff filed an order (the equivalent of a notice) to the clerk to mark the case dismissed. The circuit court sustained the dismissal.

On appeal, the Court of Appeals observed that a plaintiff normally has the right to dismiss the complaint upon the payment of costs but that this rule was not without exceptions. After a discussion of authority, it continued:

> It appears, therefore, to be well settled that when equity proceedings have progressed to such a point as to entitle the defendant to affirmative relief, or where, as stated by Chancellor Bland, he becomes virtually clothed with the rights of an actor, the right of the complainant to dismiss as a matter of course ceases. We are of the opinion that ordinarily and as a general rule the complainant is master of his own litigation and has the right to dismiss his proceedings at any time up to a final determination of the case, by following the approved practice of making application to the court for leave so to do; but that when at any point of the proceedings the defendants become entitled to affirmative relief which it is proper for them to enforce in the proceedings then pending, the complainant no longer, as of course, has the right to dismiss. . .

157 Md. at 184. Applying those principles to the case before it, the court held that the defendant had acquired no right by the institution of the suit that it would lose by its

dismissal.[3] In *Potomac Edison*, where the court overturned an order denying the plaintiff's motion to dismiss the case before a demurrer was sustained, the court again summarized these principles: "The general rule is that a plaintiff has the right to dismiss his bill of complaint at any time, upon application to the court, provided that there has not been in the cause any proceedings which has given the defendant a right against the plaintiff, or that the dismissal would prejudice interests which have been acquired in consequence of the institution of the suit." 165 Md. at 461.

Neither *Camden Sewer* nor *Potomac Edison* catalogues the circumstances that would amount to a right to affirmative relief that would preclude voluntary dismissal of a complaint. Appellants say that a third-party claim is such a right. Our review of the current rule that governs voluntary dismissals, and its background, convinces us that this is not so, regardless of whether this authority continues to be viable.

The authority on which the Youngs rely is from a time when law and equity were subject to separate procedural schemes. Prior to the unification of law and equity in 1984, Maryland Rule 582a, which governed proceedings in equity, provided: "A party may dismiss his action, claim, counterclaim, cross-claim or third-party claim only with leave of court. . . . Notice of an opportunity to object to the dismissal shall be given to any other

[3] The sewer company asserted that the City's conduct amounted to an exercise of its option to purchase, which could be enforced in the proceedings. The Court of Appeals held that dismissal would not deprive the sewer company of any rights because it could seek to enforce the option by filing a complaint for specific performance. The sewer company did just that, and the Court of Appeals subsequently held that its complaint stated a cause of action. *Camden Sewer Co. v. Mayor & Council of Salisbury*, 162 Md. 454 (1932).

party who has separately appeared." This provision was declaratory of existing Maryland equity practice. *See Byron Lasky & Assoc. v. Cameron-Brown Co.*, 33 Md. App. 231 (1976). Voluntary dismissal of actions at law, on the other hand, was governed by Rule 541. That rule provided that a party might dismiss his action by filing a notice of dismissal "at any time before the introduction of any evidence at the trial or hearing."

The current rule that governs voluntary dismissal is Rule 2-506, which was promulgated as part of the new Maryland Rules adopted in 1984. Rule 2-506(a) provides:

> Except as otherwise provided in these rules or by statute, a party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss all or part of the claim without leave of court by filing (1) a notice of dismissal at any time before the adverse party files an answer or (2) a stipulation of dismissal signed by all parties to the claim being dismissed.[4]

Rule 2-506(c) provides:

> Except as provided in section (a) of this Rule, a party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss the claim only by order of court and upon such terms and conditions as the court deems proper. If a counterclaim has been filed before the filing of a plaintiff's motion for voluntary dismissal, the action shall not be dismissed over the objection of the party who filed the counterclaim unless the counterclaim can remain pending for independent adjudication by the court.

[4] There is no provision for the filing of answers in mortgage foreclosure proceedings. The somewhat uneasy fit between the literal terms of Rule 2-506 and foreclosure procedure is perhaps one of the "innumerable practical difficulties" that arise from permitting the assertion of counterclaims and third-party claims in foreclosure actions. *Fairfax Savings F.S.B. v. Kris Jen Ltd.*, 338 Md. 1 (1995) at, 22 n. 9 (holding that counterclaims could be asserted in such proceedings). Because our holding turns on whether the Youngs' right to press their third-party claims survived notwithstanding the dismissal, not on whether or not an answer was filed, we do not consider the effect of the fact that no answer had been filed upon the right of the Substitute Trustees to dismiss their action without a court order.

The history of the terms of Rule 2-506 is reviewed in Paul V. Niemeyer and Linda M. Schuett, MARYLAND RULES COMMENTARY. According to the authors,

> This rule, adopted in 1984, significantly changed the former practice for voluntary dismissals by limiting a party's ability to dismiss an action unilaterally. Under former Rule 541, the plaintiff in a law action could dismiss an action voluntarily and unilaterally at any time before introduction of evidence at trial. This often resulted in abuse, giving the plaintiff control over the court's trial docket and over the judge and jury before whom the case was to be tried. If the plaintiff was dissatisfied with the appearance of the jury panel or the judge to whom the case was assigned, the plaintiff simply filed a notice of dismissal without prejudice. The lawsuit could then be filed again shortly thereafter, commencing the case once again from the beginning. This obviously operated to the prejudice of the parties, the court, and judicial resources in general. Under former Rule 582, the plaintiff in an equity action could dismiss an action only upon order of court.
>
> Section (a) of this rule provides a compromise between former law and equity practice. Sections (a) and (c) are derived from Fed. R.Civ. P. 41(a)(1) and 41(a)(2), respectively.

MARYLAND RULES COMMENTARY (4th ed.) at 498-499. *See also New Jersey ex rel. Lennon v. Strazzella*, 331 Md. 270, 275-76 (1993).

While Rule 2-506 requires leave of court to dismiss a claim voluntarily after an answer is filed, the text of the rule does not prescribe the basis on which a court should decide whether to grant or deny such leave. The Court of Appeals has stated the standard as follows: "Courts will generally grant a motion for voluntary dismissal unless the defendant(s) will suffer some 'plain legal prejudice' if the dismissal is granted." *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 419 (2007). The prejudice identified in that case revolved around the defendant's interest in not having to be faced with defending the same

claim in a future action. It may well be that plain legal prejudice also would include a "right to affirmative relief," especially in the context of historically equitable causes with their emphasis on flexibility in fashioning remedies to suit the justice of the case.[5] But it is clear that whatever may be encompassed within a right to affirmative relief, it does not include the right to assert a third-party claim.

Rule 2-506(c) expressly provides that a counterclaim is protected against dismissal when the original claim is dismissed. The rule makes no such provision for third-party claims. The reason for this difference is inherent in the nature of third-party claims. A third-party claim is a claim asserted by a defendant against "a person not previously a party to the action who is or may be liable to the defendant for all or part of a plaintiff's claim against the defendant." Md. Rule 2-332. This language makes clear that "a third party claim is contingent upon and originates from the plaintiff's claim." *Moreland v. Aetna U.S. Healthcare, Inc.*, 152 Md. App. 288, 302 (2003). For this reason, "a third-party claim for indemnity under Md. Rule 2–332(a) cannot stand when the plaintiff's original claim has been dismissed. The third-party claim necessarily depends upon the existence of the original claim because it is a claim for recovery of sums the defendant/third-party plaintiff may be

[5] In. *Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230 (2010), the Court stated that Rule 2-506 was a codification of the longstanding practice referred to in *Camden Sewer*, opining that Rule 582 was incorporated into Rule 2-506. 412 Md. at 248 n.13. Interestingly, the first and second editions of MARYLAND RULES COMMENTARY contained the statement that "after a defendant or other party acquires an affirmative right in an equitable action, voluntary dismissal is subject to approval by the court." MARYLAND RULES COMMENTARY (1st ed.) at 270. That passage was eliminated in the third edition and does not appear in the fourth edition.

adjudged liable to pay the plaintiff on the original claim." *Id*. at 303.

This distinction is explained by Niemeyer and Schuett in their discussion of the terms of Rule 2-506(c):

> Voluntary dismissal of a complaint does not result in dismissal of a pending counterclaim. If a counterclaim cannot remain pending for independent adjudication and the defendant objects to the dismissal, the action will not be dismissed. On the other hand, if the counterclaim can be independently adjudicated by the court, the court may permit dismissal of the complaint. Cross-claims and third-party claims are not treated in the same fashion as counterclaims. Cross-claims must arise out of the same transaction or occurrence sued upon in the original action, and third-party claims are wholly derivative in nature. *See* the Commentary under Rules 2-331 and Rule 2-332. Dismissal of the claims against defendants results in dismissal of claims dependent upon or derivative from them.

MARYLAND RULES COMMENTARY at 500-501 (4th ed.).

Therefore, even if we accept appellants' formulation, which they base on the authority concerning the former equity practice, the assertion of a third-party claim cannot constitute an affirmative right to relief, regardless of what ultimately might be included within the ambit of that standard. A defendant against whom a claim is no longer asserted cannot claim prejudice through the loss of the opportunity to assert a third-party claim, because a defendant who is no longer subject to the prospect of liability has no basis to seek indemnification, and *a priori* no longer has a claim. In this case, the affirmative right to relief posited by the Youngs is the right to assert their third-party claim against Emkay. That claim was dependent on the underlying foreclosure action, and once that action was terminated, they no longer had a basis for their claim.

There is a limited scope within which a third-party plaintiff may claim a right to maintain its claims notwithstanding the dismissal of the principal claim. A third-party plaintiff who asserts a proper third-party claim may join with it other claims that it has against the third-party defendant. *Roebuck v. Steuart*, 76 Md. App. 298 (1988). In *Roebuck*, the third-party plaintiff sought indemnification against the third-party defendant on the basis that his conduct caused her to be liable for the claims asserted against her in the underlying action. Her third-party complaint also included counts alleging that his conduct caused her to be subjected to other liabilities as well. The third-party defendant challenged the action of the lower court allowing her to include those claims. On appeal, this Court agreed that a third-party claim must be based on the original plaintiff's claim against the third-party plaintiff, and that only the claims based on the original suit were appropriate third-party claims. Nonetheless, it stated that there are no provisions in the Maryland Rules that prohibit the joinder of other claims, and observed that all of the claims asserted by the third-party plaintiff involved common questions of law and fact and common subject matter. Noting that joinder of the independent claims with the true third-party claims would be expressly authorized by Fed. R. Civ. P. 18, the court opined that the objective of the Maryland Rules, "to facilitate the attainment of a just, speedy and inexpensive determination of all disputes between the same parties," is the same as that of the Federal Rules. 76 Md. App. at 321. It held that there was no abuse of discretion in permitting the joinder of the other claims.

In *Moreland v. Aetna U.S. Healthcare, Inc.*, *supra*, this Court considered the question

of whether independent third-party claims that were joined with true third-party claims under the authority of *Roebuck* could be retained for adjudication notwithstanding the dismissal of the primary claim. In that case, primary claims against defendant Aetna, which had filed a third-party complaint, were dismissed based on limitations. Aetna agreed that its third-party claims seeking indemnification were subject to dismissal, but asserted that some of its third-party claims should not be dismissed because those claims were independent, or ancillary, claims. This Court was required to consider the question of whether the dismissal of the primary claim required the dismissal of these third-party claims.

Resolution of this question began with the proposition that third-party claims seeking indemnification from the primary claim cannot survive the dismissal of that claim. However, the court noted the holding in *Roebuck* that a defendant who asserts a proper third-party claim may also join with that claim "other independent but related claims (i.e., ancillary claims) against the third party defendant." 152 Md. App. at 302. While a third-party claim for indemnification cannot stand once the primary claim has been dismissed, the court held, relying on federal authority relating to Fed. R. Civ. P. 18, that when the plaintiff's claim is dismissed, the trial court has discretion to retain jurisdiction over ancillary claims joined with a proper third-party claim. *Id.* at 304. The Court cited *First Golden Bancorporation v. Weiszmann*, 942 F.2d 726 (10th Cir.1991) as articulating the test for the exercise of that discretion: In the *First Golden* case, the court stated: "Although there may ordinarily be a reluctance to retain such ancillary claims once the primary

indemnity claim is gone, there may be special circumstances that would persuade the district court to exercise its discretion to retain jurisdiction over the ancillary claims including, for example, if the district court has invested substantial time in preparing those claims for trial or if there would be statute of limitation problems if such claims are dismissed." 942 F.2d at 731. The *Moreland* court held that Aetna did not furnish any special circumstances to warrant retaining jurisdiction over the claims.[6]

In this case, the Youngs did not argue in the circuit court that any of the claims asserted in their third-party complaints were ancillary claims, nor did they make such an argument in their brief in this court. Apparently cued by Emkay's reference to *Moreland* in its brief on appeal, they advanced the contention, during oral argument before us, that their claims were ancillary claims. This belated suggestion is unavailing for multiple reasons.

First, this argument was never made in the court below. Beyond an invocation of Rule 2-535, the motion to vacate or for clarification advanced no explanation for its grounds, let alone an assertion that special circumstances existed that warranted retaining the third-party claims. The failure to advance this theory suggests that we should not consider it for the first time on appeal. *See* Md. Rule 8-131(a). Furthermore, the Youngs never explained to us any basis to conclude that special circumstances exist.

Second, accepting this argument would require us to determine whether any of the

[6] The Court also rejected Aetna's characterization of these claims as ancillary, holding that like Aetna's other claims "they originated from and were entirely contingent upon" the primary claims against it. 152 Md. App. at 305.

claims asserted by the Youngs should be regarded as ancillary. No argument was advanced on this subject, and the answer is by no means self-apparent. The counts in the third-party complaints asserted different theories of liability based on the same alleged conduct – the affixing of a false signature of Ms. Young to the Deed of Trust. Despite the assertion of different theories of liability in separate counts, the third-party complaints contained a single set of demands for relief. It is clear that all of the claims stood on the same footing.

That fact suggests a fatal inconsistency in the Youngs' argument. The assertion made at oral argument was that *all* of the claims asserted against Emkay were ancillary claims. However, the circuit court had the authority to entertain ancillary claims only if they were joined with proper third-party claims, i.e., indemnification claims. Because all of the third-party claims stood on the same footing, they were either all indemnification claims or all ancillary claims. If they were all indemnification claims, they did not survive the dismissal of the foreclosure action. If they were all ancillary claims, there were no proper third-party claims to which they could be joined, and they could not be entertained in the first place. Accordingly, we reject this argument.

For these reasons, the decision of the circuit court will be affirmed.

**JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.**

Circuit Court for Prince George's County
Case No. CAE12-25242

UNREPORTED

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Meredith,
Friedman,
Pierson, W. Michel
(Specially Assigned),

JJ.

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Concurring Opinion by Friedman, J.

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Filed: February 21, 2018

I concur with the majority's fine opinion in both its result and reasoning. I write separately to address two issues concerning third-party practice.

I.

Let me begin by stating what is not in question. *First*, in *Roebuck v. Steuart*, 76 Md. App. 298 (1988), this Court held that a third-party plaintiff may bring two types of third party actions: (1) true third-party actions, which are contingent on the primary claim; and (2) ancillary third-party actions, which are related to the primary claim but not contingent on it. *Id.* at 320-21. *Roebuck* is a reported decision of this Court, and it has not been reversed or modified by this Court sitting *en banc* or by the Court of Appeals, and it is therefore a mandatory precedent that we are obligated to follow. *State v. Johnson*, 228 Md. App. 489, 517-20 (2016) (Friedman, J., dissenting) (discussing the application of *stare decisis* in the Court of Special Appeals). *Second*, in *Moreland v. Aetna U.S. Healthcare*, 152 Md. App. 288 (2003), this Court held that if the primary claim is dismissed or otherwise resolved, any true third-party actions must also be dismissed because they are contingent on the primary claim. *Id.* at 303. *Moreland* also held that after the dismissal of the primary claims the decision of whether to maintain or dismiss any ancillary third-party claims is discretionary to the trial court. *Id.* at 304. *Moreland*, like *Roebuck*, has neither been reversed nor modified, and is therefore a mandatory precedent.

II.

*Roebuck* is, this year, celebrating its thirtieth anniversary. It seems to me self-evident that thirty years is too long for a rule not to be a Rule. That is, the Maryland Rules exist so that bench, bar, and—as in this case—self-represented litigants can determine how

they are to proceed in our courts. The Rules do not tell us, however, whether ancillary third-party claims are permitted in Maryland courts. I therefore urge the Court of Appeals Standing Committee on Rules of Practice and Procedure (the Rules Committee) to consider the holding in *Roebuck*, determine whether the Rules *should* permit the joinder of ancillary third-party claims. Either way it ought to consider proposing a Rule so that everyone can know and easily find the answer.

III.

I am slightly more critical of *Moreland*. While I have no quarrel with the first part of *Moreland*'s holding—that true third-party claims, ***i.e.***, those that are contingent on the primary claim, must be dismissed on the dismissal of the primary claim, *id.* at 303—I am less sanguine about the second. *Moreland* based its second holding—that dismissal of ancillary state law third-party claims is discretionary, *id.* at 304—on federal precedent that, because of jurisdictional differences, I think should not have been persuasive.[1] *Id.* at 303 (citing *First Golden Bancorporation v. Weiszmann*, 942 F.2d 726 (10th Cir. 1991)). Federal courts are courts of limited jurisdiction; they may only hear those cases identified in the U.S. Constitution, principally those cases "arising under" the Constitution, law, and treaties of the United States, and those arising under the courts' diversity jurisdiction. *See* U.S.

[1] I note, also, that Professors Lynch and Bourne appear to have some trepidation about the rule of *Moreland*. While the case is cited for the proposition that dismissal of ancillary state law third-party claims is discretionary after the dismissal of the primary claim in the second edition of Modern Maryland Civil Procedure, this paragraph and citation are excised from the third edition. *Compare* Lynch & Bourne, MODERN MARYLAND CIVIL PROCEDURE § 4.5 (2d ed. 2015 supp.), *with* Lynch & Bourne, MODERN MARYLAND CIVIL PROCEDURE § 4.5 (3d ed. 2016)

Const. art. III § 2 cl. 1; 28 U.S.C. § 1330 *et seq.* (granting jurisdiction to the U.S. District Courts). Federal courts are sometimes permitted to exercise jurisdiction over state law claims that they would otherwise not be permitted to hear if those state law claims are "supplemental" to existing federal claims. 28 U.S.C. § 1367; Wright & Miller, 13D Fed. Prac. & P. Juris. § 3567.3 (3d ed. 2017). The federal statute specifically makes the continuation of these supplemental state law claims after the dismissal of the principal claim discretionary. 28 U.S.C. § 1367(c)(3); Wright & Miller, § 3567.3.

But the reason for that discretion is the availability of state courts of general jurisdiction to hear those state law claims. *See United Mine Workers v. Gibbs*, 383 U.S. 715, 726-27 (1966) (noting that federal courts ought to exercise discretion when asserting supplemental jurisdiction because such cases could appropriately be "left for resolution to state tribunals"). The same logic does not apply here. There is no other court system in which these ancillary state law claims may subsequently be refiled. There is only the state court. What could possibly be the sense of allowing a trial judge the discretion to dismiss ancillary state law claims only to permit them to be refiled in the same court? While I concede that this panel is obligated to follow *Moreland*, and the majority does, I note my dissatisfaction with its second holding.[2]

[2] In the truly analogous situation, in which a federal court is asked to dismiss a non-contingent third-party claim for which there was an independent—*i.e.*, not supplemental—source of federal jurisdiction, courts have generally held that those third-party claims may *not* be dismissed. *Baker v. Kingsley*, 387 F.3d 649, 656 (7th Cir. 2004) ("Accordingly, the authority to remand [to state court] pursuant to § 1367 extends only to claims that are not within the district court's original jurisdiction."); *Battle v. Seibels Bruce Ins. Co.*, 288 F.3d 596, 606 (4th Cir. 2002); *In re City of Mobile*, 75 F.3d 605, 607 (11th Cir. 1996) ("Section 1367(c) cannot be fairly read as bestowing on district courts the discretion to remand to a

None of these issues were raised below or briefed to this Court. This case cannot be the vehicle for consideration of these issues. But they should not go unremarked-upon. Therefore, I urge the Rules committee to take up these issues. Alternatively, should a more appropriate case arise in which these issues are properly preserved and briefed, I urge the Court of Appeals to provide guidance.[3]

state court a case that includes a properly removed federal claim."); *Borough of West Mifflin v. Lancaster*, 45 F.3d 780, 787 (3d Cir. 1995).

[3] I make one other observation. I have, until this point, discussed third-party practice in the abstract, as it is practiced in every type of civil litigation. I note also that foreclosure is a special and exotic species of civil proceeding subject to special legislation—Title 7, Subtitle 3 of the Real Property Article—and its own special rules—Title 14, Chapter 200 of the Maryland Rules. The majority has pointed out how poorly foreclosure practice fits with Rule 2-506, slip op. at 13-15, and I concur. I am also not clear what types of claims can truly be contingent third-party claims to a foreclosure, nor am I certain what are permissible ancillary claims, nor am I sure what claims are part of the same case or controversy as the primary claim of a foreclosure. Guidance with this, too, would be appreciated.