

Circuit Court for Cecil County
Case No. C-07-CV-20-000218

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 841

September Term, 2021

CARL MICHAEL MATULEWICZ

v.

INDIAN ACRES CLUB OF CHESAPEAKE
BAY, INC.

Berger,
Arthur,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: May 12, 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.

This appeal arises from a dispute between Appellant, Carl Michael Matulewicz (“Mr. Matulewicz”), and Appellee, Indian Acres Club of Chesapeake Bay, Inc., (“IAC”). The underlying dispute concerns the assessment of membership dues and other charges which Mr. Matulewicz owed to IAC for his ownership of two campground parcels operated by IAC. The Circuit Court for Cecil County entered a default judgment against Mr. Matulewicz for his failure to plead and to assert a substantial and sufficient basis for an actual controversy to the merits of IAC’s action against him. Mr. Matulewicz appeals the circuit court’s denial of his Motion to Set Aside Default Order and also the circuit court’s subsequent Entry of Default Judgment which was entered without a hearing.

Mr. Matulewicz presents two questions for our review,¹ which we have rephrased, for clarity, as follows:

- I. Whether the circuit court abused its discretion in denying Mr. Matulewicz’s request to vacate the entry of the order of default.
- II. Whether the circuit court abused its discretion in granting a default judgment without conducting a prior hearing.

For the reasons explained herein, we shall affirm the judgment of the circuit court.

¹ Mr. Matulewicz’s original questions presented are as follows:

1. Did the trial Court err by failing to liberally exercise its broad discretion such that technically triumphed over justice when it denied the Appellant/Defendant’s motion to set aside a default order?
2. Did the trial Court err when it granted a default judgment without a hearing?

FACTS AND PROCEDURAL HISTORY

IAC is a nonstock corporation that manages a campground in Earlville, Maryland (the “Campground”). Mr. Matulewicz owns two parcels (known as “Funsteads”) within the Campground. He is also a member of IAC, which is a required prerequisite to take ownership of a Funstead. As member of IAC, and as an owner of two Funstead parcels, Mr. Matulewicz is subject to the terms and conditions of the governing restrictive covenant for the Campground, i.e., the Restated Declaration of Restrictions for Indian Acres of Chesapeake Bay (hereinafter “the Declaration”). The Declaration was enacted by the developer of the Campground (W.S.C., Inc. [“W.S.C.”], a non-party in this case) and contains the following relevant provisions:

W.S.C. expressly “reserves . . . the right to amend at any time all or any of [the Declaration] without affecting the legal rights or title of any prior Funstead owner”

Authorizes IAC “to levy against every member of the Club a uniform annual charge per Funstead or membership the amount of such charge to be determined by [IAC] . . .”

“Every person who shall become the owner of the title (legal or equitable) to any Funstead in the Subdivision is hereby notified that, by the act of acquiring such title, such person will be conclusively held to have covenanted to pay [IAC] all charges that [IAC] shall make pursuant to any paragraph or subparagraph of [this] [Declaration].”

“[IAC] shall have the authority to assess each member an additional charge per Funstead or membership to provide a fund for necessary improvements, replacements and construction of capital facilities within the Property.”

“If any such charge shall not be paid when due it shall bear interest from date of the delinquency at the highest legal rate at the time.”

Provides IAC with “the right to sue for such unpaid charges, interest costs, and reasonable attorney’s fees.”

Lastly, an amended provision that “[IAC] may assess a late payment fee of \$100.00 per month until such charge and any resulting late payment fees are paid in full. If the Club pursues legal action or institutes legal proceedings against a member for failure to pay such charges . . . the amount to be paid by the member shall increase by \$1,000 . . .”

Pursuant to the Declaration, IAC assessed annual dues and a special assessment on Mr. Matulewicz for each Funstead parcel. IAC then filed a complaint against Mr. Matulewicz for his failure to pay the total balance of the charges assessed against him, including the interest and late fees that accrued.

IAC filed its original Verified Complaint on June 18, 2020. The circuit court issued a summons to Mr. Matulewicz on June 18, 2020. Mr. Matulewicz received service of process with a writ of summons and IAC’s complaint at his residence on August 8, 2020. On or about October 14, 2020, Mr. Matulewicz filed an untimely answer to IAC’s complaint. Mr. Matulewicz’s original answer was rejected for failure to include a certificate of service as required by Maryland Rule 1-323. The circuit court purportedly advised Mr. Matulewicz that it was “returning the enclosed rejected filing to you . . . It has NOT been accepted for filing in the case. If you wish to re-submit your filing, please make the necessary correction(s) and re-submit.” Mr. Matulewicz maintains that he never received notification from the circuit court that his answer was rejected.

IAC filed and served its Verified Amended Complaint on February 1, 2021. Mr. Matulewicz failed to file an answer to IAC’s amended pleading, and IAC moved for an order of default. The circuit court entered an order of default on March 26, 2021. Mr. Matulewicz then obtained counsel and filed an untimely motion to vacate the entry of the order of default on May 7, 2021. Mr. Matulewicz argued -- amongst other things -- that IAC was not a proper party and lacked the capacity to bring suit. IAC filed a response in opposition, and the circuit court denied Mr. Matulewicz’s motion.

IAC moved for an entry of default judgment on June 14, 2021, and Mr. Matulewicz filed a response. IAC filed a reply, and on August 9, 2021, the circuit court rejected Mr. Matulewicz’s arguments, entered judgment by default, and awarded IAC \$13,297.58 in monetary damages in addition to \$2,023 in attorney's fees and costs. Mr. Matulewicz filed a timely appeal.

DISCUSSION

Standard of Review

The decision whether to vacate the entry of an order of default is “subject to broad general discretion of the court.” *Holly Hall Publications, Inc. v. Cty. Banking & Tr. Co.*, 147 Md. App. 251, 261 (2002). Similarly, because the circuit court is afforded “considerable discretion” in matters concerning default judgments, we will review the circuit court’s decision regarding a default judgment for an abuse of discretion. *Scully v. Tauber*, 138 Md. App. 423, 430–31 (2001); *see also Franklin Credit Mgmt. Corp. v. Nefflen*, 208 Md. App. 712, 725–29 (2012), *aff’d*, 436 Md. 300 (2013).

I. The circuit court did not abuse its discretion in denying Mr. Matulewicz’s motion to vacate the entry of the order of default.

For the reasons that follow, we hold that the circuit court did not abuse its discretion in denying Mr. Matulewicz’s request to vacate the entry of the order of default. We base our holding on two independent reasons. First, Mr. Matulewicz failed to offer a satisfactory explanation for his failure to timely plead, and has not offered any explanation for why he failed to file an answer to IAC’s Verified Amended Complaint. Second, Mr. Matulewicz has failed to present a substantial and sufficient basis for an actual controversy regarding IAC’s claim against him.

Pursuant to Md. Rule 2-613(d) a defendant may move to vacate the entry of an order of default and “shall state the reasons for the failure to plead and the legal and factual basis for the defense to the claim.” Md. Rule 2613(d). A trial court may consider whether the defendant has offered “a satisfactory explanation . . . why he failed to answer the initial complaint within the time allowed.” *Att’y Grievance Comm’n of Maryland v. Middleton*, 360 Md. 34, 45 (2000) (quoting *Director of Finance v. Harris*, 90 Md. App. 506, 515 (1992)).

Mr. Matulewicz explains that his failure to timely plead and refile an answer with a certificate of service was because: (1) he never received notification that his answer was rejected for lack of a certificate of service; and (2) general issues with mail delivery in Maryland and Pennsylvania. Notably, Mr. Matulewicz has offered no explanation, however, for why he failed to respond in any way to IAC’s Verified Amended Complaint.

In any event, because Mr. Matulewicz has offered *no explanation* for why he failed to respond to IAC’s subsequent Verified Amended Complaint, we hold that the circuit court did not abuse its discretion in denying his request to vacate the entry of the order of default. We have previously held that “[i]t is the responsibility of attorneys, and by extension *pro se* litigants, to monitor dockets for when pleadings and other documents are filed.” *Estime v. King*, 196 Md. App. 296, 304 (2010) (internal citations omitted). Mr. Matulewicz asserts in his brief that “he would periodically call the Court to find out when a trial date was set, as he hadn’t gotten notice of any.” In our view, Mr. Matulewicz’s averment that he would contact the circuit court to seek updates on the case does not excuse his failure to monitor the docket and file a response to IAC’s Verified Amended Complaint.

The next step of our inquiry arises from Md. Rule 2-613(e): “If 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). A motion to vacate the entry of an order of default that either “fail[s] to state the legal and factual basis for a defense on the merits, or [] states no more than conclusory allegations concerning a defense . . .” is inadequate, “because [it] affords the court no real information upon which to make its finding.” *Carter v. Harris*, 312 Md. 371, 376 (1988). Accordingly, we will review the circuit court’s decision to determine whether it abused its discretion in finding that Mr. Matulewicz’s arguments lacked a “substantial and sufficient basis for an actual controversy . . .” Md. Rule 2-613(e).

Mr. Matulewicz raises three arguments in support of why the circuit court abused its discretion in declining to vacate the entry of the order of default. We address each argument in turn, and hold that the circuit court did not abuse its discretion in denying Mr. Matulewicz’s request because none of his arguments state a “substantial and sufficient basis for an actual controversy . . .” Md. Rule 2-613(e).

First, Mr. Matulewicz argues that IAC “lacks the capacity to sue.” Mr. Matulewicz proffers a theory that IAC is in violation of unspecified provisions of the Maryland Homeowners Association Act (“MHAA”) requiring subdivision property owners to elect a board to authorize the assessment of dues and fees on its members. *See* Md. Code (1974, 2015 Repl. Vol.), § 11B-101, *et seq* of the Real Property Article (“RP”). Mr. Matulewicz asserts that the Campground and Funsteads are used for residential purposes and are therefore subject to the MHAA. Mr. Matulewicz points to the absence of a definition of “camping” in the Declaration and argues that “[t]here are no requirements that the fee simple lot owners must sleep in a sleeping bag or a tent or cook hot dogs or marshmallows over a fire.”

Outdoor enthusiasts may disagree over the necessary activities that make outdoor camping a true camping experience. There can be, however, no disagreement regarding the inapplicability of the MHAA to IAC and the Campground. The MHAA provides that it “does not apply to any property which is . . . [t]o be occupied and used for nonresidential purposes.” RP § 11B-102(e). The Declaration governing the IAC and the Campground provides that “[n]o Funstead shall be used as a residence.” Accordingly, the IAC, the

Campground, and the Funsteads within are not subject to the MHAA because IAC is not a homeowners' association and the Funsteads are not residences. We hold, therefore, that the circuit court did not abuse its discretion in finding that Mr. Matulewicz's argument regarding the MHAA's application to IAC and the Campground lacked a "substantial and sufficient basis for an actual controversy . . ." Md. Rule 2-613(e).

Mr. Matulewicz's next contention is that although "it is not contested that some charges were not paid . . .," that the charges assessed by IAC are not binding on him because these charges were based on amendments to the Declaration. We disagree. The Declaration expressly allows IAC to assess charges pursuant to both the original and amended provisions, specifically:

W.S.C. expressly "reserves . . . the right to amend at any time all or any of [the Declaration] without affecting the legal rights or title of any prior Funstead owner."

"Every person who shall become the owner of the title (legal or equitable) to any Funstead in the Subdivision is hereby notified that, by the act of acquiring such title, such person will be conclusively held to have covenanted to pay [IAC] all charges that [IAC] shall make pursuant to any paragraph or subparagraph of [this] [Declaration]."

Authorizes IAC "to levy against every member of the Club a uniform annual charge per Funstead [] the amount of such charge to be determined by the Club."

Authorizes IAC "to assess each member an additional charge per Funstead or membership to provide a fund for necessary improvements, replacements and construction of capital facilities within the Property."

“If any such charge shall not be paid when due it shall bear interest from date of the delinquency at the highest legal rate at the time.”

An amended provision of the Declaration provides that “the Club may assess a late payment fee of \$100.00 per month until each [] charge and any resulting late payment fees are paid in full. If the Club pursues legal action or institutes legal proceedings against a member for failure to pay such charges . . . the amount to be paid [] shall increase by \$1,000.”

In summary, the Declaration expressly permits amendments to the Declaration without changing the legal rights or ownership of Funstead owners, and more importantly, allows IAC to levy all of the fees, dues, and interest that Mr. Matulewicz is contesting. Accordingly, the circuit court did not abuse its discretion in denying Mr. Matulewicz’s request to vacate the entry of the order of default because he lacked a “substantial and sufficient basis for an actual controversy . . .” regarding the assessment of fees, dues, and interest for his membership with IAC and his ownership of the two Funstead parcels. Md. Rule 2-613(e).

Lastly, Mr. Matulewicz argues that he has been improperly denied “access to [his] property altogether.” We are unpersuaded. The Declaration expressly provides that when a Funstead owner owes unpaid dues that “[t]he use and enjoyment of the easements is subject to reasonable regulation . . . including the denial of all use of recreational facilities.” Further, the Amended Declaration provides that “[a] member's failure to pay any and/or all of the charges assessed to such member shall result in denial of access to Indian Acres . . .” These provisions of the Declaration taken together fully authorize IAC to suspend a Funstead owner’s access to the recreational facilities and easements within the

Campground, including the Campground itself. Mr. Matulewicz has not presented a substantial and sufficient basis for a controversy -- or any argument whatsoever -- regarding these provisions that permit IAC to bar him from entering the Campground. Accordingly, the circuit court did not abuse its discretion in denying Mr. Matulewicz's request to vacate the entry of the order of default because he failed to present a "substantial and sufficient basis for an actual controversy . . ." Md. Rule 2-613(e).

II. The circuit court did not abuse its discretion in entering a default judgment without a hearing.

Further, the circuit court did not abuse its discretion in entering a default judgment against Mr. Matulewicz without a hearing. Pursuant to Maryland Rule 2-613(f), a court may enter judgment by default with or without a hearing, and may rely on affidavits and authenticated evidence to determine the amount of damages.² IAC supported its claim for damages and attorneys' fees with affidavits from IAC's President and IAC's counsel regarding attorneys' fees.

Mr. Matulewicz's only argument regarding damages was that the billing statement sent to him by IAC was "unintelligible without testimony to explain it." Although Mr.

² Pursuant to Maryland Rule 2-613(f): "If a motion was not filed under section (d) of the Rule or was filed and denied, 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. If, in order to enable the court to enter judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court, may rely on affidavits, conduct hearings, or order references as appropriate and, if requested, shall preserve to the plaintiff the right to trial by jury." Md. Rule 2-613(f).

Matulewicz may dispute the intelligibility of the billing statement, the circuit court was not required to conduct a hearing to enter the monetary judgment when the damages were supported with verified pleadings, authenticated evidence, and affidavits. *See* Md. Rule 2-613(f).

Further, we fail to see how the circuit court abused its discretion in declining to conduct a hearing to enter default judgment under the circumstances of this case. Indeed, Mr. Matulewicz did not dispute actual amount that he was charged by IAC, nor the calculations of those amounts. To the extent that Mr. Matulewicz's argument regarding these charges is somehow preserved, we nevertheless hold that the circuit court acted appropriately in basing the monetary judgment and damages on the affidavits, authenticated statement of charges, and the verified pleadings in the record.

In sum, we hold that the circuit court did not abuse its discretion in denying Mr. Matulewicz's request to vacate the entry of the order of default because he failed to offer a satisfactory explanation for his failure to timely plead. Moreover, Mr. Matulewicz's contentions fail to present a substantial and sufficient basis for an actual controversy concerning IAC's claim against him. We further hold that the circuit court did not abuse its discretion in entering a default judgment without conducting a hearing because IAC established its entitlement to the monetary judgment with verified pleadings, authenticated evidence, and affidavits consistent with Maryland Rule 2-613(f).

**JUDGMENT OF THE CIRCUIT COURT
FOR CECIL COUNTY AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**