

Circuit Court for Prince George's County
Case No: CAL17-08266

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1022

September Term, 2018

WILLIAM L. SMITH, et ux.

v.

CITIZENS FINANCIAL GROUP, INC.

Nazarian,
Leahy,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 13, 2019

*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.

In 2004, William L. Smith and Selena J. Smith, appellants, executed a deed of trust, refinancing the mortgage that encumbered their Greenbelt, Maryland home. The deed of trust served as security against a promissory note in which the Smiths promised to repay Charter One Bank, N.A., the lender, the sum of \$360,000.00. In 2017, following an alleged default on the mortgage, the Smiths received a notice of intent to foreclose from Citizens Financial Group, Inc. (“Citizens”), appellee.¹ In response, the Smiths filed a complaint in the Circuit Court for Prince George’s County against Citizens, alleging 1) breach of contract, 2) violation of federal and state debt collection laws, 3) usury and 4) violation of the Real Estate Settlement Procedures Act. The Smiths also sought an equitable accounting from Citizens and quiet title to their home.^{2,3} On May 18, 2018, the court entered summary judgment against the Smiths, disposing of the case in its entirety. On appeal, the Smiths contend that the court 1) abused its discretion in denying their motion to compel discovery and 2) erred in granting Citizens’ motion for summary judgement. We disagree and shall affirm.

I. Motion to Compel Discovery

After filing their complaint, the Smiths served Citizens with written interrogatories, requests for admissions of fact, and requests to produce documents pursuant to Maryland

¹ The Smiths allege in their complaint that “at some point in time . . . Charter One Bank, N.A., was acquired by [Citizens].”

² The Smiths also sought injunctive relief to prevent a foreclosure sale of their home, but the count was dismissed by “agreement of the parties” on May 18, 2018.

³ The count for quiet title was added in the Smith’s amended complaint.

Rule 2-401. Upon receipt of Citizens’ discovery responses, the Smiths believed that Citizens had acted in “bad faith” by providing nonresponsive answers to their requests. Following a letter advising Citizens of the alleged discovery deficiencies, the Smiths filed a motion to compel discovery. The motion was denied by the court.

“Trial courts are vested with a reasonable, sound discretion in applying [the discovery rules], which discretion will not be disturbed in the absence of a showing of its abuse.” *Falik v. Hornage*, 413 Md. 163, 182 (2010) (internal quotation marks and citation omitted). “When, however, the ruling involves an interpretation and application of Maryland statutory and case law, we must determine whether the trial court’s conclusions are legally correct under a de novo standard of review.” *Floyd v. Baltimore City Council*, 241 Md. App. 199, 208 (2019) (internal quotations omitted).

The Smiths contend that the court abused its discretion in denying their motion to compel. However, Maryland Rule 2-432(b)(2) required the Smiths to set forth in their motion to compel the following: 1) “the question, interrogatory, or request,” 2) “the answer or objection,” and 3) “the reasons why discovery should be compelled.” The Smiths’ motion complied with the third requirement, as they attached the deficiency letter that they sent to Citizens which listed, by number only, the reasons they believed the responses were deficient. However, the Smiths omitted from the motion the text of their specific questions and requests to Citizens, and the text of the answers and objections provided by Citizens in response. Without knowing the specific questions or requests at issue, the court could not determine the discoverability of the requests, i.e., whether the requests called for non-privileged, relevant information pursuant to Maryland Rule 2-402. And without Citizens’

answers, the court was not equipped to decide whether they were non-responsive as alleged. Because the Smiths’ motion to compel discovery did not comply with Maryland Rule 2-432(b)(2), we hold that the court did not err in denying their motion.

II. Motion for Summary Judgment

Prior to trial, Citizens moved for summary judgment as to each count of the Smiths’ complaint, contending that there were no issues of material fact and that Citizens was entitled to judgment as a matter of law. Following a motions hearing, the circuit court granted summary judgment, dismissing the case in its entirety.

A. Standard of Review

“When we review a grant of summary judgment we first determine whether there is a genuine dispute of material fact.” *Duffy v. CBS Corp.*, 458 Md. 206, 217 (2018). “If there is no genuine dispute of material fact, then we review the grant of summary judgment de novo to determine if the hearing judge’s legal conclusions were correct.” *Id.* In doing so, we view the evidence, and all inferences therefrom, in the light most favorable to the nonmoving party. *See Jones v. Mid-Atl. Funding Co.*, 362 Md. 661, 676 (2001).

“To satisfy the requirement that there be no genuine dispute as to any material fact, the moving party must include in the motion the facts necessary to obtain judgment and a showing that there is no dispute as to any of those facts.” *Bond v. Nibco, Inc.*, 96 Md. App. 127, 136 (1993). Upon doing so, “the party opposing the motion must show with some precision that there is a genuine dispute as to a material fact, and place before the trial court facts that would be admissible in evidence.” *Id.* at 135 (internal quotation marks and citation omitted).

B. Deemed Admissions

In their brief, the Smiths advance a single argument to support their contention that the court erred in granting summary judgment. Specifically, they contend that deemed admissions, resulting from their failure to timely respond to requests for admission of fact, had been “previously withdrawn” by the court, and, therefore, could not be used to show that there were no disputes of material fact between the parties. Without the deemed admissions, which they argue were the “sole basis” of Citizens’ motion, the Smiths contend that it was error for the court to grant summary judgment.

There is no dispute that Citizens served requests for admissions on the Smiths pursuant to Maryland Rule 2-424, and that the Smiths failed to respond to the admissions “within 30 days after service of the request.” Pursuant to Maryland Rule 2-424(b), the Smiths’ failure to file a timely response to the admissions required the court to deem the factual matters contained therein as admitted. Additionally, the record reveals that the Smiths filed a “Motion to Withdraw or Amend Deemed Admissions” pursuant to Maryland Rule 2-424(d) well in advance of the court’s ruling on summary judgment.

However, upon close inspection of the record, we do not find any order by the court ruling on the Smiths’ motion to withdraw or amend, nor do we find any order withdrawing or permitting amendment to the deemed admissions. And the Smiths have not directed the Court to any such order.⁴ On the contrary, during the motions hearing, Citizens’ counsel advised the court of several motions “still open” for the court’s decision, including the

⁴ “Appellate courts are not obliged to go through the record to find where a point was actually ruled upon, if it was.” *Schaefer v. Cusack*, 124 Md. App. 288, 300 (1998).

Smiths’ motion to withdraw or amend. Despite being so advised, the court did not hear any argument on the motion and did not address it.

Detrimentally, the Smiths did not argue in their brief that the court should have ruled on their motion to withdraw or amend, nor did they argue that the motion should have been granted in their favor. These issues have not been raised for our review pursuant to Maryland Rule 8-504(a)(6) and, therefore, we will not consider them. *See Jacober v. High Hill Realty, Inc.*, 22 Md. App. 115 (1974). Accordingly, as the deemed admissions were never withdrawn, they were properly relied upon by the court in granting summary judgment.

C. No Other Argument Advanced

The Smiths do not raise any other argument in their brief pertinent to our review of summary judgment. As to each count, with or without deemed admissions of fact, they fail to identify any material facts in dispute. Moreover, they failed to raise and, therefore, preserve any such argument against summary judgment in the circuit court. “A contention not raised below . . . and not directly passed upon by the trial court is not preserved for appellate review.” *Baltimore Cty., Maryland v. Aecom Servs., Inc.*, 200 Md. App. 380, 421 (2011) (internal quotations omitted). We will not, therefore, consider any grounds for reversal of summary judgment not preserved by the Smiths in the circuit court for appellate

review and not raised in argument pursuant to Maryland Rule 8-504(a)(6) for this court's consideration.

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