Circuit Court for Anne Arundel County
Case No. 02-C-01-069418

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1298

September Term, 2017

HALLE DEVELOPMENT, INC., *et al.*,

v.

ANNE ARUNDEL COUNTY

Kehoe,
Leahy,
Reed.

JJ.

Opinion by Leahy, J.

Filed: March 22, 2019

The Appellants, Halle Development, Inc., *et al.*,[1] ("the Owners") are the representative plaintiffs in a class action for certain property owners in Anne Arundel County. The origin of this class action dispute dates back to February 2001, when the Owners filed an action in assumpsit seeking to recover development impact fees collected by the Appellee, Anne Arundel County ("the County"). For almost two decades, this case has occasioned interlocutory orders and intervening appeals to this Court and the Court of Appeals. Following a remand by the Court of Appeals in 2009, the Circuit Court for Anne Arundel County decided in favor of the Owners and later entered a final judgment on August 18, 2016 ("August 2016 Order"), requiring the County to pay refunds in the amount of $1,342,360.00 plus five percent simple interest per annum, and to pay attorney's fees, by November 7, 2016. The Owners did not appeal the August 2016 Order.

The County subsequently paid the ordered refund amount, including interest, by the court-ordered deadline. The Owners subsequently filed—more than nine months later—a petition to enforce the final judgment, along with a motion for summary judgment. On August 9, 2017, the circuit court denied both motions. The Owners appealed, again, and present one question for our review:

> "Did the circuit court err in granting summary judgment against the Class, when the County's records demonstrate the County received compound interest on impact fees deposited in special funds, yet only paid to the Class simple interest?"

[1] The other representative plaintiffs are Kevin and Robin Butler, and Anthony and Sandra Dale.

We discern no error in the trial court's denial of summary judgment. The August 2016 Order constituted a final judgment and the Owners subsequently failed to pursue a post-judgment motion under Maryland Rule 2-535. Even if we were to treat the Owners' motion for summary judgment as a post-judgment motion as they suggest, the Owners failed to demonstrate fraud, mistake or irregularity, as required by Rule 2-535(b). And, even if a proper motion had been timely filed in this case, the Owners' appeal would be barred by the law of the case doctrine because our 2008 opinion, *Anne Arundel Cty v. Halle Dev., Inc.*, No. 3552, Sept. Term, 2006 (filed Feb. 7, 2008), *on reconsideration*, (May 7, 2008) [hereinafter "*Halle I*"], squarely rejected their investment income argument, and, the Owners failed to raise this issue on appeal in both 2013 and 2017. As we explicated in *Halle Dev. Inc. v. Anne Arundel Cty*., No. 1299, Sept. Term, 2016 (filed Nov. 22, 2017) [hereinafter "*Halle III*"], the issue of the interest to which the Owners were entitled was barred by the law of the case. Unfortunately, this is not the first time we have decided that the Owners' arguments are barred by the law of the case. *See Dabbs v. Anne Arundel County*, 458 Md. 331, 361 (2017); *cert. denied sub nom, Dabbs v. Anne Arundel Cty., Md.*, 139 S. Ct. 230, 202 L. Ed. 2d 127 (2018).

For the foregoing reasons, we decline to reach the merits of this issue.

BACKGROUND

The facts of this longstanding litigation dispute have been set out in detail in the following appellate opinions: *Dabbs*, 458 Md. at 361; *Anne Arundel Cty v. Halle Dev., Inc.*, 408 Md. 539 (2009); *Halle III*, No. 1299, Sept. Term, 2016; *Dabbs v. Anne Arundel County*, 232 Md. App. 314 (2017)*; Halle Development Inc. v. Anne Arundel County*, No.

0956, Sept. Term, 2012 (filed July 29, 2013) [hereinafter "*Halle II*"]; *Halle I*, No. 2552, Sept. Term 2006, *aff'd*, 408 Md. 539 (2009); *Anne Arundel County v. Cambridge Commons*, 167 Md. App. 219 (2005); and *Cambridge Commons v. Anne Arundel County*, No. 1340, Sept. Term, 2001 (filed Aug. 21, 2002). We need not, therefore, offer a detailed recitation of the facts underlying this case. Instead, we will address only the most relevant procedural facts in order to resolve the issue on appeal.

A. Anne Arundel County's Impact Fee Ordinance

Judge Glenn Harrell, writing for the Court of Appeals, explained the relevant history:

> This is the latest installment of a litigation saga (although perhaps we are nearing its end) traveling two quite kindred paths over more than fifteen years, (*Halle, et al. v. Anne Arundel County* ("*Halle*") and *Dabbs, et al. v. Anne Arundel County* ("*Dabbs*")) in Maryland's courts. Pursuant to the power vested in the government of Anne Arundel County, Maryland ("the County") through 1986 Md. Laws, ch. 350, the County imposed road and school impact fees according to County districts beginning in 1987. These fees were paid usually by land developers and builders. Those who paid impact fees (like the *Dabbs* Class) might become eligible, under certain circumstances, for refunds of those fees. *See* Anne Arundel County Code § 17–11–210. Refunds were contingent upon the County's failure to utilize or encumber within a specified time the collected fees for present or future eligible capital improvements, i.e., projects for the "expansion of the capacity of public schools, roads, and public safety facilities and not for replacement, maintenance, or operations." § 17–11–209(a).

Dabbs, 458 Md. at 336–38.[2] (Internal footnotes omitted). The Impact Fee Ordinance required the County to deposit collected impact fees into the appropriate special fund "to

[2] The *Dabbs* Class' claims included a demand for refunds of an unspecified amount of impact fees collected by the County between fiscal years (FY) 1997–2003, while the Owners in the underlying action, otherwise referred to as the *Halle* class, demanded refunds for impact fees collected by the County during FY 1988-1996.

ensure that the fees and all interest accruing to the special fund are designated for improvements reasonably attributable to new development and are expended to reasonably benefit the new development." § 17-11-208.

Most relevant to this appeal was the ordinance's refund provision.[3] Generally,

> [s]ection 17-11-210(b) provides that, if the impact fees collected in a district are not expended or encumbered within six [fiscal years ("FYs")] following the FY of collection, the County Office of Finance must give notice to current property owners that impact fees are available for refund. Section 17-11-210(e), however, allows the PZO to "extend for up to three years the date at which the funds must be expended or encumbered." Such an extension may be made "only on a written finding that within a three-year period certain capital improvements are planned to be constructed that will be of direct benefit to the property against which the fees were charged.

Dabbs, 232 Md. App. at 320. Section 17-11-210(c) nevertheless requires an eligible property owner to file an application for a refund within 60 days of the notice. "On proper application and demonstration that the fee was paid, the Controller shall refund the fees to the property owner with *interest at the rate of 5% per year*." § 17-11-210(c) (emphasis added).

[3] In November 2008, the County Council adopted Bill No. 71-08 repealing prospectively on January 1, 2009, the impact fee refund provision within § 17-11-210. *Dabbs*, 458 Md. at 362. The County applied the law to bar all claims for refunds of fees collected after the 2002 fiscal year. *Id*. In *Dabbs*, the Court of Appeals held that the county properly barred all such claims under the principle that "'[a]bsent a contrary intent made manifest by the enacting authority, any change made by statute or court rule affecting a remedy only (and consequently not impinging on substantive rights) controls all court actions whether accrued, pending or future.'" *Id*. at 363 (quoting *Aviles v. Eshelman Elec. Corp.*, 281 Md. 529, 533 (1977)). Since the effective date of the repeal of the refund provision occurred well before any impact fees collected through 2003 became ripe for a refund claim, the Court reasoned that the *Dabbs* Class' rights to a refund—created entirely by § 17-11-210—had not vested before the repeal of the refund provision. *Id*. at 367-68.

B. The County's Withholding of Fees

Between fiscal years 1988 and 1996, the County collected millions of dollars in impact fees from property owners in Anne Arundel County. *See Halle*, 408 Md. at 546. The County attempted to extend the statutory time period for expending and encumbering the fees through interoffice memoranda, which the circuit court later found to be deficient for failure to properly identify the properties that would be directly benefitted by the planned improvements. *See id*. at 546-47, 549.

The County's actions led the Owners to file a class action suit in the Circuit Court for Anne Arundel County on February 21, 2001, against the County, on behalf of certain owners and developers of property in Anne Arundel County for the development impact fees collected between the fiscal years of 1988 and 1996. *Id*. at 547. The Owners sought declaratory and injunctive relief for the County's failure to issue refunds, under the Ordinance, owed to current property owners for properties as to which impact fees were paid, but not expended or encumbered within the statutorily required six years after the collection of the impact fees. *Id*. The Owners' complaint asserted three causes of action, alleging that the County:[4] (1) deprived the Owners of their legal rights to a refund under the Ordinance in violation of 42 U.S.C. § 1983; (2) deprived the Owners of their property in violation of Article 24 of the Maryland Declaration of Rights; and (3) withheld the

[4] On appeal to this Court in August 2002, we reversed the circuit court's dismissal and held, in an unreported opinion issued August 21, 2002, *inter alia*, that the Owners had an action in assumpsit for refunds of development impact fees paid to the County because the Code did not provide for administrative remedies. *Cambridge Commons v. Anne Arundel Cty.*, No. 1340, Sept. Term, 2001 (filed Aug. 21, 2002).

impact fees subject to refund, causing the County to become unjustly enriched in violation of the Ordinance, and thereby creating the basis for a constructive trust. *Id*.

1. The December 2006 Order

On December 15, 2006, the circuit court issued a decision on the merits ("December 2006 Order") intended to resolve all open issues and certified it as a final judgment pursuant to Maryland Rule 2-602. The circuit court found that the total amount of impact fees due to the fee-paying property owners for refunds was $4,719,359, subject to "5% interest per annum on the amount to be refunded. This interest for each current owner would run from the date each impact fee originally was paid." *Halle Dev. Inc. v. Anne Arundel Cty.*, Case No. 02-C-01-69418, slip op. at 11 (Cir. Ct. Anne Arundel Cty., Md., Dec. 15, 2006). The refund amount reflected fees collected, but not timely spent or encumbered, from 1988 through 1996.[5] The circuit court certified its order for immediate appeal, pursuant to Maryland Rule 2-602, and both parties timely appealed to this Court.

2. The 2008 COSA Opinion

On appeal to this Court, the County argued that (1) the case must be remanded to the Planning and Zoning Officer to make the required written findings for an effective extension under § 17-11-210(e); (2) the circuit court erred by refusing to permit the County to include encumbrances in calculating the refund; (3) the Owners' claims are barred by

[5] The court rejected the Owners' objection to the County's calculation of refunds by failing to account for accrued interest on the entire special impact fee fund, and not just interest on fees not spent or encumbered. *Halle Dev. Inc. v. Anne Arundel Cty.*, Case No. 02-C-01-69418, slip op. at 9 (Cir. Ct. Anne Arundel Cty., Md., Dec. 15, 2006). The court ruled that it "agrees with the County that [the Owners] err in assuming that interest should be added to the entire amount of impact fees held prior to disbursements." *Id.* at 9-10.

the statute of limitations; (4) the refund procedure pursuant to § 17-11-210 was superior to the class action procedure ordered by the circuit court; (5) the circuit court should have disqualified one of the attorneys for the Owners; and (6) the County did not waive its right to seek disqualification of the Owners' counsel. *Halle I*, slip op. at 7-8.

In their cross-appeal, the Owners complained, as relevant to the instant appeal, that they were entitled to the investment income earned on the impact fee special fund. *Id*. at 46-47. They argued, relying on *Phillips v. Wash. Legal Found.*, 524 U.S. 156 (1998), "that the right to interest is incident of the right to principal and that the former cannot be separated from the latter." *Id*. at 46. And that "for refund purposes, expenditures from an impact fee special fund cannot be considered to have consisted exclusively of principal; rather, expenditures must be recalculated to consist of a combination of principal and the investment income." *Id*. at 46-47. In *Halle I*, this Court rejected the Owners' argument, agreeing with the circuit court's decision that § 17-11-210(c) sets the return at five percent per annum. *Id*. at 47. Judge Rodowsky, writing for this Court, explained:

> In enacting the impact fee ordinance, the County Council recognized that, if the impact fees were not timely used for a permissible purpose, and a refund was to be made, Owners should be compensated for the loss of use of their money. The ordinance sets the return at five percent per annum. This is a much more manageable way of reimbursing Owners for the loss of use of their funds than the complex calculation for which Owners contend. If the County actually earned more than five percent on the funds, the County would retain the excess; but, if the County earned less than five percent on the funds, it will still be obliged to pay Owners five percent.

Id.

The County petitioned, and the Owners cross-petitioned, for review by the Court of Appeals. On August 1, 2008, the Court of Appeals granted certiorari as to the County's

petition and denied the Owners' cross-petition. *Anne Arundel Cty v. Halle Dev., Inc.*, 408 Md. 539 (2009). The Court of Appeals issued its opinion on May 6, 2009, affirming this Court's 2008 Opinion on all issues for which it granted certiorari. *Halle Dev.*, 408 Md. at 573. The Court of Appeals noted that it did not grant certiorari on the issue of determining the amount of fees that the County had timely encumbered and instructed the circuit court on remand to "determine whether and how much refund is owed, in total, after *considering all impact fee amounts that the County had timely encumbered for eligible capital improvements*, including payments or encumbrances for both transportation projects and school projects." *Id.* at 572 (emphasis added).

3. The March 2011 Opinion and Order

On remand, the circuit court issued an "Opinion of Remand of March 25, 2011" after a 14-day evidentiary hearing. The circuit court's task on remand was to determine the total refund amount by considering the amount of impact fees that the County had encumbered but not expended within the six years following their collection. *Halle Dev. Inc. v. Anne Arundel Cty.*, Case No. 02-C-01-69418, slip op. at 2 (Cir. Ct. Anne Arundel Cty., Md., Apr. 1, 2011). Indicating that it was bound by the law of the case doctrine, the circuit court accepted the County's calculation of fees as its findings on the amount of refunds due to the Owners. *Id*. at 4-11, 21. On this basis, the court determined ultimately "that impact fee refunds are due to the current owners of specified impact fee paying properties . . . in the amount of $1,342,360, subject to the addition of 5% interest per annum

to the amount of refunds date of each initial fee's payment[.]"[6] *Halle Dev. Inc. v. Anne Arundel Cty.*, Case No. 02-C-01-69418 (Cir. Ct. Anne Arundel Cty., Md., Order filed Apr. 1, 2011). The court stated, however, that the order was not a final judgment until resolution of the issue of the Owners' attorney's fees. *Id*.

On July 24, 2012, the circuit court entered its March 2011 Order as a final judgment, only as to the amount of impact fees to be available for refund. That same day, the Owners appealed that decision to this Court.

4. The 2013 CSA Opinion and Notice to Class Members

The Owners presented several questions for review on appeal, none of which included any challenge to the interest amount. *Halle II*, slip op. at 1-2. In an unreported opinion issued July 29, 2013, this Court affirmed the judgment of the circuit court with respect to all issues. *Id*. at 4, 11, 16, 20, 24.

The County moved for entry of an order requiring identification of and notice to the class members on July 2, 2015. Almost two weeks later, on July 14, 2015, the court ordered the County to identify the refund-eligible class members within 75 days of the order and to issue a notice by publication to class members of the availability of refunds for impact fees within 100 days of the order. As relevant to this appeal, the form of notice that the circuit court required the County to issue expressly stated that the total refund amount would be

[6] The circuit court also ordered the County to "compile the names and addresses of all current owners of refund-eligible properties within 90 days from the date of said final judgment herein and that the County must issue a notice to the current owner(s) of each refund-eligible property within 120 days[.]" *Halle Dev. Inc. v. Anne Arundel Cty.*, Case No. 02-C-01-69418 (Cir. Ct. Anne Arundel Cty., Md., Order filed Apr. 1, 2011).

$1,342,360 and that "[f]ive percent interest per annum from the date of payment through the date of refund also will be added to the amount of each refund, as provided by County law." The circuit court later revised this order on September 1, 2015 ("September 2015 Order"), specifying that the County's deadline for identifying class members and issuing notices was calculated from the date of the July 14, 2015 Order.

5. The August 2016 Order

The County filed a motion for entry of orders scheduling a hearing on the class notice responses and requiring the payment of the refunds and interest to the Owners. The circuit court granted the hearing and scheduled it for August 8, 2016.

Thereafter, the circuit court signed an order on August 8, 2016, ("August 2016 Order"), entered on August 18, 2016, granting the County's motion and requiring it to pay "the refund amount listed on Exhibit 1," which totaled $1,342,360.[7] The court set November 7, 2016, as the date of the refund. With respect to the interest, the order stated:

> (2) The County shall pay 5% simple interest on each refund to each class member from (a) the date the impact fee was paid on the property owned by the class members as of July 14, 2015, through (b) the date of the refund, November 7, 2016.

Halle Dev. Inc. v. Anne Arundel Cty., Case No. 02-C-01-69418 (Cir. Ct. Anne Arundel Cty., Md., Order filed Aug. 18, 2016). The court also ordered the County to deduct certain percentages from the total refund and interest due to each class member for purposes of

[7] At oral argument, counsel for the County explained that the circuit court never attached "Exhibit 1" to the August 2016 Order. Counsel clarified, however, that the amount reflected in "Exhibit 1" is the amount reflected in "Exhibit A" of the circuit court's September 2015 Order. We note, further, that "Exhibit A" is identical to the County's exhibit that the circuit court accepted in its March 2011 Order.

paying attorney's fees and IRS remittance payments. *Id.* The Owners did not appeal the August 2016 Order and the County subsequently issued the refunds in the amount ordered by the November 7 deadline. Certain named class members ("Class Members") did, however, appeal the August 2016 Order to this Court on September 1, 2016 ("2016 Appeal").

6. The 2017 CSA Opinion

On appeal, the Class Members challenged, among other issues, the circuit court's determination of impact fee refunds and interest and argued, *inter alia*, that they were entitled to post-judgment interest, in addition to the five percent interest provided by the Ordinance. *Halle III*, slip op. at 10.

This Court, in an unreported opinion issued November 22, 2017, rejected the argument by holding that it was barred by the law of the case doctrine because the issue "ha[d] been, or could have been, litigated and decided in a prior appeal."[8] *Id.* Specifically, we explained that the Class Members had the opportunity, and failed, to raise this issue on appeal to this Court in both 2008 and 2013. *Id.* at 21-22. Accordingly, we declined to reach the merits of their argument and affirmed the judgment of the circuit court. *Id.* at 11.

7. Petition to Enforce Judgment and Request for Summary Judgment in the Underlying Case

While the Class Members' appeal was pending review before this Court, on June 29, 2017—more than nine months after entry of the circuit court's final judgment—the

[8] We also affirmed the fifth issue on different grounds. *Halle III*, slip op. at 30-35.

Owners filed a petition to enforce judgment, damages and compliance with the circuit court's March 2011 order; a request for entry of summary judgment; and a request for a hearing. The Owners asserted that the County's refunds totaling $1,342,360 plus $457,249.40 in interest did not comply with the court's judgment because "the County admits that the interest of $457,249.30 it paid **did not** include interest accrued from the previous year when it determined interest." The amount of this accrued interest, according to the Owners, was already $2,694.715.30, and would continue to accrue.

The Owners also argued that the denial of this interest was a "*per se* taking of th[eir] property interest." They contended that it was undisputed that the County "1) held the impact fees paid in 1988 thr[ough] 1996, 2) that the County deposited those impact fees in a pooled interest bearing account, and 3) that all accrued interest was retained and/or expended by the County during the 28 years **prior to** November 4, 2016, when the County refunded impact fees paid from 1988 to 1996 **without** the incremental and accrued interest, while the County's records prove it added accrued interest on its deposit of impact fees to the previous year's fee each succeeding year." Therefore, as the "ultimate owners of the principal," they were entitled to the interest that accrued therefrom, beginning in 1988 through November 4, 2016—the date that the County paid the impact fee refunds.

The County responded to the Owners' motions on July 28, 2017, and argued that the Owners' claim for compound interest was barred by the August 2016 Order, which was a final judgment, because they did not pursue either a timely post-trial motion or an appeal. According to the County, only Mr. Scheibe, on behalf of certain named plaintiffs, appealed the 2016 Order to this Court. The County asserted, further, that the Owners were not

entitled to compound interest because Maryland law entitled them to only 5% simple interest. The County also noted that in September 2015, it filed the list of refund recipients and amounts, to which the Owners failed to object. Accordingly, the County maintained that it fully complied with the 2016 Order and paid the ordered amount on November 4, 2016, accounting for all payments and interest through November 7, 2016.

The circuit court entered an order on August 9, 2017, without an opinion, denying the Owners' petition. This timely appeal followed on September 7, 2017.

DISCUSSION

I.

Before this Court, the Owners argue that the circuit court erred in denying summary judgment. Their main contention is that the refund of the impact fees should include compound interest, not simple interest. The Owners assert that under Maryland case law, the County is chargeable with compound interest because it is undisputed that, as a trustee, the County earned accumulated investment income or compound interest on the impact fees collected between fiscal years 1988 through 2002 in the total amount of $6,659,077.72,[9] "exceed[ing] the $1,342,360 refund and simple interest of $457,249.40 combined" amount that the County paid on November 4, 2016.[10] According to the Owners,

[9] In their briefing, the Owners claim that the rate at which the compound interest accrued was approximately 26%. The Owners do not explain their calculation of the 26% interest rate.

[10] We note that the County attached to its Opposition to the Owners' Petition to Enforce Judgment and Request for Summary Judgment the affidavit of a Kurt Svendsen, the individual "responsible for preparing the six-fiscal year charts in this case for the purpose of determining the amount of impact fees available for refund." The affidavit

it is undisputed that by calculating the refunds based only on simple interest, the County received a profit off of the accumulated compound interest.

The Owners also advance a constitutional argument: as the "current property owners" of the impact fee refunds, they are entitled to the investment income earned on those impact fees under the rule that "interest follows principal." The County's exclusion of this compound interest, when the County's records "prove that it added accrued interest on its deposit of impact fees to the previous year's fee each succeeding year[,]" the Owners maintain, was unconstitutional under the Takings Clause of the Fifth Amendment to the United States Constitution.

The County responds by arguing that the Owners' arguments are not properly before this Court for two reasons. Pursuant to Maryland Rules 2-534 and 2-535, the Owners' claim is barred by "the final and enrolled judgment entered by the Circuit Court on August 18, 2016." Treating it as a post-judgment motion under Maryland Rules 2-534 and 2-535(b), the County maintains, the Owners had to demonstrate the existence of fraud, mistake, or irregularity because they filed their motion after the 30-day period during which the court retained revisory power and control over the judgment. Accordingly, the County argues, the Owners "have not—and cannot—allege that the [c]ircuit [c]ourt's ruling was the product of fraud, mistake or irregularity." The County also notes that it is unclear whether the Owners "seek 5% interest under § 17-11-210(c), . . . compounded, or whether [the Owners] seek the interest on 'investment income' attributable to each impact fee that

states that the County paid, on November 4, 2016, a principal amount of $1,248,695.94, plus $1,583,818.02 in interest.

accumulated in the applicable impact fee special fund from the date of collection to the date of refund."

The County argues, further, that the Owners' claim is barred by the law of the case doctrine because *Halle I* rejected their investment income argument and they subsequently failed to raise these arguments on appeal to this Court in 2013 and 2017. Even if the Owners' argument were properly before this Court, the County asserts, their argument is without merit because "§ 17-11-210(c) requires the payment of only 5% simple interest on impact refunds." With respect to the Owners' constitutional taking argument, the County argues that the Owners' argument is without merit because they "do not own taxes collected by the County."

A. Subject Matter Jurisdiction

Once a final judgment has been properly entered in a case, "[t]he authority of a circuit court to revise or modify a final judgment is limited[.]" *Kent Island, LLC v. DiNapoli*, 430 Md. 348, 366 (2013). "[A] final judgment entered by a circuit court may be reversed or vacated only on appeal or revised pursuant to Maryland Rule 2-535 or § 6-408 of the Courts and Judicial Proceedings Article." *Id.*; *see also Md. Bd. of Nursing v. Nechay*, 347 Md. 396, 408 (1997) (explaining that Rule 2-535 and § 6-408 of the Courts and Judicial Proceedings Article are intended to be "read together, complementing or supplementing each other."). Maryland Rule 2-535(a) states:

> On motion of any party filed *within 30 days after entry of judgment*, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. . . .

(Emphasis added).

Once the 30-day window following the entry of a final judgment has closed, Rule 2-535(b) limits the circuit court's authority to revise or modify a final judgment to "cases of fraud, mistake, or irregularity." As the Court in *Kent Island* explained:

> Maryland Rule 2-535 and § 6-408 of the Courts and Judicial Proceedings Article provide that, after thirty days have passed since the entry of a final judgment, a court may modify only its judgment upon motion of a party to the proceeding proving, to the satisfaction of the court, fraud, mistake, or irregularity.

430 Md. at 366.

To establish fraud warranting the revision of a judgment, "a movant must show extrinsic fraud, not intrinsic fraud." *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013) (internal quotations and citation omitted). "Fraud is extrinsic when it actually prevents an adversarial trial but is intrinsic when it is employed during the course of the hearing which provides the forum for the truth to appear, albeit, the truth was distorted by the complained of fraud." *Id*. at 290-91 (internal quotations and citation omitted). An irregularity concerns "the doing or not doing of that, in the conduct of a suit at law, which, conformable to the practice of the court, ought or ought not to be done." *Id*. at 290 (internal quotations and citation omitted). Lastly, mistake "is limited, however, to jurisdictional error, such as where the Court lacks the power to enter judgment." *Id*. at 291 (internal quotations and citation omitted).

In the instant case, the circuit court issued its March 2011 Order following a 14-day evidentiary hearing and entered a final judgment, pursuant to Rule 2-602(b), as to the amount of fees available for refunds. *See Silbersack v. ACandS, Inc.*, 402 Md. 673, 679

(2008) ("Rule 2-602(b) . . . allows the [c]ircuit [c]ourt to order the entry of a judgment as to fewer than all of the claims or parties if the court expressly determines in a written order that 'there is no just reason for delay.'"). The circuit court subsequently entered its final judgment in the underlying case on August 18, 2016, when it ordered the County to pay refunds, interest, and attorney's fees in accordance with the amounts specified in its order. *See id.* at 678-79 (explaining that a final judgment is one "that disposes of all claims against all parties").

The Owners did not file an appropriate post-judgment motion pursuant to Rule 2-535. Instead, the Owners waited more than nine months after the entry of the final judgment to improperly file, among other things, a motion for summary judgment. Accordingly, the case was not properly before the circuit court. *See Kent Island*, 430 Md. at 366 (holding, *inter alia*, that the circuit court did not have jurisdiction to revise or modify the final judgment because appellants, among other things, failed to pursue a post-judgment motion under Rule 2-535). Nor do we have subject matter jurisdiction over the final judgment in this case as the Owners did not appeal the August 2016 Order to this Court. [11]

[11] At oral argument, the Owners attempted to justify their failure to appeal the August 2016 Order or to file a post-judgment motion by arguing that they did not, and could not have known, the total amount of the accrued interest to which they were entitled until the County finally issued the refund in November 2016. Contrary to the Owners' position, however, the class notice that the circuit court ordered the County to issue expressly stated that the total refund amount would be $1,342,360 and that "[f]ive percent interest per annum from the date of payment through the date of refund also will be added to the amount of each refund, as provided by County law." It is undisputed that the County did, in fact, issue refunds in the amount reflected in the class notice. Accordingly, we reject the Owners' *post-hoc* justification as wholly unsupported by the record.

Id. at 366 (noting that a "final judgment entered by a circuit court may be reversed or vacated only on appeal or revised pursuant to Maryland Rule 2-535 or § 6-408 of the Courts and Judicial Proceedings Article.").

Even if we were to treat the Owners' motion for summary judgment as a post-judgment motion filed pursuant Rule 2-535(b), *see Pickett v. Noba, Inc.*, 122 Md. App. 566, 571 (1998) ("A motion may be treated as a motion to revise under Md. Rule 2-535 even if it is not labeled as such."), the Owners have utterly failed to make any showing of fraud, mistake or irregularity in the final judgment entered in August 2016.

For the foregoing reasons, we discern no error in the trial court's decision to deny the Owners' motion for summary judgment. Furthermore, we conclude the instant appeal is also barred by the law of the case doctrine.

B. The Law of the Case Doctrine

The law of the case doctrine is a "rule of practice" that operates to "prevent litigants from prosecuting successive appeals in a case that raises the same questions that were decided in a prior appeal." *Balt. Cty. v. Fraternal Order of Police, Balt. Cty. Lodge No. 4*, 449 Md. 713, 730 (2016) (citations omitted). The Court of Appeals recently explained the scope of the law of the case:

> Under that doctrine, once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case. It is the contrary cousin to the more ornately named doctrines of *res judicata*, collateral estoppel and *stare decisis*.

Id. at 729-30 (internal quotations omitted). The overarching purpose of the doctrine is to prevent "piecemeal litigation." *Id*. at 730. It is apparent, however, that the doctrine only

"concerns appellate conclusions as to questions of law, not pure questions of fact." *Reier v. State Dept. of Assessments & Taxation*, 397 Md. 2, 21 (2007) (citations omitted). But, "factual determinations undergirding or mixed with conclusions of law may become the law of the case[.]" *Id*. at 22. The applicability of the law of the case doctrine is a legal question that we review *de novo*. *Fraternal Order of Police*, 449 Md. at 731.

The Owners' investment income argument in the instant appeal is double barred by the law of the case within the law of the case. In *Halle I*, we addressed and squarely rejected this argument on appeal from the circuit court's December 2006 order. The Owners argued then, as they do now, that "[t]he refund should include the investment income realized by the County on the impact fee special funds[.]" *Id*. at 8. They based their argument on the principle that "the right to interest is an incident of the right to principal and that the former cannot be separated from the latter." *Id*. 46-47. We addressed that argument, as a question of law, and concluded as follows:

> The circuit court dispatched this argument by citing § 17-11-210(c), which provides: "[T]he Controller shall refund the fees to the property owner with interest at the rate of 5% per year." We agree. In enacting the impact fee ordinance, the County Council recognized that, if the impact fees were not timely used for a permissible purpose, and a refund was to be made, Owners should be compensated for the loss of use of their money. *The ordinance sets the return at five percent per annum.* This is a much more manageable way of reimbursing Owners for the loss of use of their funds than the complex calculation for which Owners contend. *If the County actually earned more than five percent on the funds, the County would retain the excess*; but if the County earned less than five percent on the funds, it will still be obliged to pay Owners five percent."

Id. at 47 (emphasis added). When the Court of Appeals subsequently denied the Owners' cross-petition for a writ of certiorari, our holding became the law in this case. *See Halle*,

408 Md. at 559 n.7 (explaining that when the Court of Appeals did not grant certiorari as to the issue of encumbrances, this Court's decision became the law of the case). Accordingly, our 2008 decision was a final determination that the Owners were entitled, as a matter of law, to only 5% interest per annum to the amount of refunds due, as dictated by § 17-11-210(c).

Moreover, when the case returned to us in both 2013 and in 2017, the Owners did not raise on appeal the circuit court's award of only five percent interest, underscoring once more that the issue of investment income is barred by the law of this case. *See Fraternal Order of Police*, 449 Md. at 730 ("[T]he doctrine extends to questions that could have been raised and argued in the prior appeal, but were not, so long as the ruling resolves them." (internal quotations omitted)). Despite the Owners' failure to raise the issue, in our 2017 decision, we again rejected the Owners' claim for post-judgment interest, reiterating that the law of the case foreclosed the issue of the Owners' entitlement to interest greater than the five percent provided by the ordinance because the Owners failed to raise the issue on appeal in 2008 and 2013. *Halle III*, slip op. at 22-24. The Owners' attempt to relitigate that issue in the instant appeal presents exactly the type of "piecemeal litigation" that the law of the case doctrine intends to prevent. *Fraternal Order of Police*, 449 Md. at 730. We decline to address the merits of the Owners' appeal.[12]

[12] At oral argument, the Owners contended that their sole argument on appeal was that the County's withholding of the investment income was a taking under the Takings Clause of the Fifth Amendment to the United State Constitution, and not that they were entitled to investment income. We find this framing to be unpersuasive as their constitutional takings argument appears to be a revitalized version of the investment income argument that they raised on appeal to this Court in 2008.

For the foregoing reasons, we affirm the judgment of the circuit court.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

Regardless, the takings argument is barred by the law of the case doctrine. Although this issue was not raised in the 2008 appeal, it nevertheless "could have been raised and argued in the prior appeal, but w[as] not." *Fraternal Order of Police*, 449 Md. at 730. In raising their investment income argument in the 2008 appeal, the Owners contended, citing *Phillips*, 524 U.S. at 156, that the they were entitled to investment income because the right to the interest is incident of the right to the underlying principal. Their takings argument in the instant appeal relies on the same case to advance a similar contention. In any event, our 2008 decision implicitly rejected any semblance of a constitutional takings argument on its merits by expressly holding that the County would be entitled *to retain* any investment income earned *in excess* of five percent on the impact fee funds. *Halle I*, slip op. at 47. Moreover, the Owners failed to raise this argument on appeal to this Court in both 2013 and 2017. They cannot raise it now.