UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1783

September Term, 2014

MARQUITTA RUSSELL, ET AL.

v.

PESSIN KATZ LAW, P.A., F/K/A
HODES, PESSIN & KATZ, P.A.

Meredith,
Hotten,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: October 30, 2015

Pessin Katz Law, P.A., formerly known as Hodes, Pessin & Katz, P.A. ("PKL"), obtained a judgment in the Circuit Court for Baltimore City against Marquitta Russell and her mother Juanita Russell (collectively, the "Russells"; we will refer to them by first name to avoid confusion), after Marquitta failed to pay legal fees she owed to PKL. PKL also sought, successfully, to have the court set aside as fraudulent Marquitta's attempt to convey a Baltimore rowhouse to Juanita. The Russells appeal the judgment entered in favor of PKL, and we affirm.

I. BACKGROUND

PKL represented Marquitta from 2007 to 2010 in connection with her challenge to the validity of a will left by her aunt, Viney Henderson. Ms. Henderson's estate also challenged the validity of a deed Marquitta had prepared for Ms. Henderson, in which Ms. Henderson conveyed to Marquitta property located at 1826 Madison Avenue in Baltimore City (the "Property"). The litigation was complex, and ultimately involved Marquitta's challenge of the will in probate court, litigation by the estate over title to the Property, Marquitta's claim for services to her aunt, sanctions motions, a jury trial in circuit court, and two rounds of appeals to this Court.

Sometime in late 2010 or the beginning of 2011, PKL withdrew its representation of Marquitta "with very substantial fees [remaining] unpaid," and ultimately filed a complaint on January 17, 2012 against her to recover an outstanding balance of over $100,000. PKL also filed a separate action against Marquitta and Juanita to set aside Marquitta's conveyance of the Property to Juanita in the fall of 2011. PKL contended that the transfer was an effort by Marquitta to protect the Property from later collection efforts

by PKL. (The Deed to the Property stated that the consideration for the conveyance was forgiveness of a $50,000 debt owed by Marquitta to Juanita.) The two cases were ultimately consolidated.

On May 23, 2013, PKL served discovery, including interrogatories and requests for production of documents. Marquitta never responded. PKL filed a Motion for Sanctions on February 3, 2014, and on April 11, 2014, the court granted the Motion in part. (We will refer to that Order as the "Sanctions Order.") The court ordered the Russells to provide PKL with the requested discovery, and warned that failure to comply would prevent them from introducing into evidence at trial any facts or documents that would have been responsive to PKL's requests. Although the Russells filed a request for extension that was granted, which gave them until May 5, 2014 to respond, they never filed any responses in compliance with the Sanctions Order. (They also never filed a Pre-Trial Statement, as the circuit court's scheduling order required, in advance of the trial date of September 17, 2014.) Prior to trial, PKL filed a motion *in limine* to prevent certain information from being introduced at trial based on the Russells' failure to respond to discovery, or, in the alternative, for a postponement.

On September 16, 2014—the day before the scheduled trial—Marquitta sought a postponement of the trial, claiming that she had suffered an injury that prevented her from being able to attend and participate. The postponement court denied her request, but when she appeared in court the next day for trial she asked again. The court denied her request, noting that the document she provided to the court as evidence of her injury did not justify a postponement:

> [T]here's no signature and there is absolutely no indication of the trustworthiness of this document. And even if I thought that it was credible enough to refer it immediately back to the postponement court, it's already been addressed . . . and considered by the postponement court. . . . We're going forward.

In the absence of a Pre-Trial Statement, the court also asked Marquitta to provide a brief statement of facts. In the course of that colloquy, Marquitta objected to the joinder of Juanita and claimed that the conveyance of the Property had nothing to do with PKL's claim for legal fees. Marquitta also explained why she did not produce any documents in discovery: "I was not aware that anybody who transferred their own property had to prove it to someone else as to what they transferred it for." When pressed to explain why she defied the court order to produce documents, Marquitta reiterated her position that she did not owe that information to PKL:

> I responded to the request for documents and my response was that this information is personal and confidential and I do not understand why anyone has to provide documentation as to a transfer of money between two personal parties. There's nothing wrong with the transfer of the property at all. I didn't even, we didn't have to charge anything at all. But it was a transfer if the Court so wants to see that information. That's confidential information. I can give it to you. I do have it. But today I have to go to the emergency room.

Marquitta conceded that she provided no responsive documents relating to the Property other than the Deed, and that while she *had* other documents relating to the claims for unpaid attorneys' fees, she did not have them in court that day. As a result, the trial court ruled that Marquitta would be "barred from introducing into evidence any document that would have been or should have been discovered pursuant to [PKL's] request for

production of documents with the single exception of the deed." Marquitta again requested a postponement—this time on the basis that she wanted to secure counsel and/or to demand a jury trial—but the court denied her request and she left the courtroom.

PKL called three witnesses: Thomas Gisriel, the PKL attorney who represented Marquitta (and who identified the retainer letter that Marquitta signed when she first hired the firm to represent her), Carl Spaeth, PKL's Chief Financial Officer (who testified about the legal fees PKL incurred in the course of the representation and produced documents supporting the claim), and Ronald Benfield, a real estate appraiser who estimated the fair market value of the Property at approximately $50,000 to $100,000. PKL concluded by arguing that its attorneys had provided competent representation to Marquitta over the course of highly complex proceedings, that she had paid some small part of the fair and reasonable bills, and that it sought judgment of $111,839.91. PKL also pointed to what it characterized as the "very suspicious circumstances" under which Marquitta conveyed the Property to Juanita—low consideration, conveyance to an out-of-state resident, and the Russells' refusal to provide any documentation "to support any explanation for the transfer"—and argued that these indicia of fraud shifted the burden to the Russells to prove solvency and fair consideration, the absence of which would lead the court to conclude that the conveyance was fraudulent.

The trial court issued a written order on September 24, 2014, in which it made the following findings of fact (omitting footnotes):

> 1. [PKL] and [Marquitta] had an agreement for her legal representation on certain matters, for which she promised to pay reasonable fees and expenses. The engagement letter was

dated April 30, 2007 and bears [Marquitta's] signature. Between May 2007 and December 2010, Thomas Gisriel and other attorneys and employees of the firm ably provided legal services, competent and successful legal representation to [Marquitta] in the Orphans Court of Baltimore City, through a jury trial in the Circuit Court for Baltimore City, and on appeals before the Court of Special Appeals on two occasions. Periodic invoices and statements provided line-by-line accounting of all the fees necessarily generated to pursue [Marquitta's] claims and defenses. Considering the entire and difficult circumstances of the representation, [PKL's] fees were reasonable. Examining the invoices and circumstances, against the factors and criteria set out in Rule 1.5(a) of the Maryland Rules of Professional Conduct, and accounting for [Marquitta]'s interim payments totaling $21,920, [PKL] has proven its claim to charge and collect fees and expenses of $111,839.91.

2. The critical consequence of her legal victories was that [Marquitta] gained fee simple ownership of the [Property], valued on tax assessment at $260,000. [Marquitta] conveyed fee simple title to that property to [Juanita], by a Quitclaim Deed dated September 17, 2011 and recorded on November 28, 2011. Stated consideration was $50,000. [Marquitta] has maintained her residential address at the property, [and] pays the real property taxes on the property. The [Property] is fairly and currently appraised at a fair market value exceeding $50,000, between $50,000 and $100,000.

3. [Marquitta's] efforts to transfer ownership and record the deed occurred contemporaneously with the parties' communications regarding [PKL's] letters demanding payment of sums owed, offering a consent judgment and the firm's commitment not to take any action to sell the property for three months, and urging efforts to work out an arrangement. [Marquitta] had made limited, sporadic payments against her fees owed, including a credit card payment in 2011. [Marquitta] did not disclose the transfer of the property. As apparent during the representation (until the firm withdrew in December 2010), and during monthly calls by firm representatives, especially Thomas Gisriel, to [Marquitta], her only or principal asset was the subject property. [Marquitta]

> conveyed the property to [Juanita], without fair consideration for that conveyance.
>
> 4. Upon consideration of Maryland Commercial Code, Section 15-204, and the requirements of Maryland's Uniform Fraudulent Conveyance Act, numerous indicia of [Marquitta's] fraudulent transfer of the Property appear in the fact of her indebtedness to [PKL], the lack of consideration for the transfer to [Juanita], the threat of litigation and [PKL's] committed forbearance from immediately selling the property, [Marquitta's] concealment of the transfer notwithstanding her contemporaneous communications with [PKL], and [Marquitta's] continued possession of the premises while her mother maintained a Virginia residence and acknowledged that any and all control of the Property was with [Marquitta].
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> 5. In these circumstances and indicia of her fraudulent transfer of the property, [Marquitta] bears but has not satisfied the burden to prove that the transfer was bona fide, that she transferred the Property in exchange for satisfaction of a bona fide antecedent debt to [Juanita]. [Marquitta] also bears but has not satisfied the burden to prove that she maintains solvency, with sufficient means to pay her debts notwithstanding the transfer of the property. [Marquitta] has failed to bear her burden of proof in any respect, the conveyance will be set aside, and [PKL] will be permitted to levy on the property as if the conveyance had not been made.

The court entered judgment in favor of PKL in the amount of $111,839.91, set aside the 2011 transfer of the Property by Marquitta to Juanita, and ordered that PKL could levy on the Property. On October 24, 2014, Marquitta and Juanita filed a Notice of Appeal.

II. DISCUSSION

The operative facts of this case are simple. Marquitta hired PKL to represent her, the firm represented her, and she did not pay the firm's bill. We assume for present purposes that she represented her pre-trial back injury truthfully and that she held good faith beliefs about her obligation (or lack thereof) to respond to PKL's discovery.

Ultimately, neither matters. She defied a court order to provide discovery, did not seek a postponement until, almost literally, the eleventh hour, and then (whether for good cause or not) left the courtroom as the case went to trial, after the court warned her of the consequences. Under those circumstances, the trial court acted appropriately when it heard PKL's case and rendered judgment based on the evidence. Marquitta challenges the judgment on a number of levels (we address them in a different order),[1] but we find no error in the trial court's findings of fact or application of the law.

[1] Marquitta listed twelve questions in her brief:

> 1. Was there prejudicial bias by the trial court in disallowing a postponement for [Marquitta's] medical condition evidenced by a bona fide medical practitioner?
>
> 2. Did the trial court err by changing the verbiage to justify reversing the Order on a motion made by [PKL] for sanctions which denied [the Russells] the ability to provide evidence of any kind during the trial?
>
> 3. Was there prejudicial bias by the trial court to allow [PKL's] request without properly filing a formal written motion to withdraw a motion for a postponement already served to the court and the appellants?
>
> 4. Did the trial court err by allowing testimony of witnesses that were not disclosed to [Russells] in accordance with the [circuit court's] Pretrial Scheduling Order?
>
> 5. Was there prejudicial bias by the trial court in determining the fairness, legitimacy, quality of performance, agreed upon services, and accuracy of the attorney fees and expenses?
>
> 6. Did the lawsuit have any merit to levy an interest in [Marquitta's] primary residence?

(continued…)

Maryland Rule 8-131(c) states the standard of review for a case tried without a jury:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Id.; *see also Colandrea v. Wilde Lake Comm. Ass'n, Inc.*, 361 Md. 371, 394 (2000) ("[W]e must consider the evidence in the light most favorable to the prevailing party, and decide not whether the trial judge's conclusions of fact were correct, but only whether they were supported by a preponderance of the evidence." (citing *Urban Site Venture II Limited P'ship v. Levering Associates Limited P'ship*, 340 Md. 223, 229-30 (1995) (citations omitted))). With respect to legal conclusions (such as the applicability of the Fraudulent

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7. In the [September 24, 2014 Order], were several misstatements of significant trial issues used as justification for the determination?

8. Did the court err by transferring the burden of proof to the [Russells]?

9. Did [PKL] provide the court any evidence or occurrences to constitute fraud by the appellants?

10. Did the court consider that the property is the primary residence for [Marquitta]?

11. Did the court consider unethical practices by [PKL] with intent to defraud [Marquitta] when determining judgment in the case?

12. Did the court err by not dismissing any charges against [Juanita, who] had no relationship or obligation to [PKL]?

Conveyance Act to the transfer of the Property), we do not defer to the trial judge, but review those decisions *de novo. Griffin v. Bierman*, 403 Md. 186, 195 (2008) ("The deference shown to the trial court's factual findings under the clearly erroneous standard does not, of course, apply to legal conclusions.") (quoting *Nesbit v. Gov't Employees Ins. Co*., 382 Md. 65, 72 (2004)).

A. The Trial Court Correctly Ruled On Pre-Trial Matters.

Marquitta attacks several decisions the trial court made the morning of trial, before it took evidence. *First*, she claims that the court abused its discretion (or as she put it, exhibited "prejudicial bias") when it denied her request for postponement. *Second*, she claims that the court "reversed the Order on [PKL's] motion for sanctions," thus depriving the Russells of the opportunity to put on evidence. And *third*, she claims that the court abused its discretion when it allowed PKL to withdraw *its* Motion for Postponement. We disagree.

1. The trial court properly denied the request for postponement.

The decision to grant or deny a postponement lies squarely with the trial court. "There can be no doubt that whether to grant a continuance is in the sound discretion of the trial court, and unless he acts arbitrarily in the exercise of that discretion, his action will not be reviewed on appeal." *Thanos v. Mitchell*, 220 Md. 389, 392 (1959).

It is fair to say that Marquitta and the court viewed the merits of her postponement request differently, and the court resolved the disagreement in favor of proceeding. The court explained to Marquitta that it had spoken with the postponement judge and that the

request for postponement the day before trial had *not* been granted. The court also expressed serious reservations about the credibility of Marquitta's story, in that she had produced only an unauthenticated doctor's note to corroborate her claim of injury. The trial judge's skepticism does not appear to be unwarranted—for example, Marquitta told the postponement judge she was injured so badly she couldn't drive, but then later couldn't write down information being given to her by the court over the phone because she said she was driving. In *Thanos v. Mitchell*, 220 Md. 389 (1959), in contrast, the Court of Appeals reversed the trial court's dismissal of a plaintiff's case where she had submitted statements from two doctors, one of which specifically stated not only that she was "'quite confused, agitated, withdrawn, belligerent and resistive,' and that she was 'quite incapable of giving evidence, standing trial or being cross-questioned,' but that she should be ready to stand trial in one month." *Id.* at 391. The other doctor stated that Mrs. Thanos was mentally ill, could not be reliable, and that appearing in court could exacerbate her condition. *Id.*

We assume that Marquitta's back injury was real, but that, by itself, was not enough to compel a postponement. And other considerations supported the trial court's decision to proceed as well. The postponement request came on the eve of trial. *See Dart Drug Corp. v. Hechinger Co.*, 272 Md. 15, 28 (1974) ("It would be hard to find an abuse of discretion when an eleventh hour request for a continuance is denied in a case which has been pending for 26 months."). And the court readily could have viewed Marquitta's track record of uncooperative conduct during discovery, especially after she lost the Sanctions Motion, to discourage further postponement.

2. The trial court correctly interpreted the Sanctions Order.

Trial courts have broad discretion under Maryland Rule 2–433(a)(3) to impose sanctions for discovery violations, which can range from striking out pleadings to dismissal. *Valentine-Bowers v. Retina Group of Washington, P.C.*, 217 Md. App. 366, 378 (2014); *see also Mason v. Wolfing*, 265 Md. 234, 236 (1972) ("Even when the ultimate penalty of dismissing the case or entering a default judgment is invoked, it cannot be disturbed on appeal without a clear showing that [the trial judge's] discretion was abused."). Marquitta argues that the trial court "alter[ed] and add[ed] to the words clearly stated in" the Sanctions Order. Although Marquitta claims that she had the "right to decisioning [sic] on the issues which may be readdressed during trial," the court had the authority to restrict her from introducing evidence after she failed to comply with the Sanctions Order.

Marquitta refused to supply *any* documentation regarding the transfer of the Property or, for that matter, any other issues in the case. She maintained this position throughout discovery and again in front of the trial judge, in spite of the fact that the Sanctions Order explained precisely what would happen if she did not produce the documents PKL had requested:

> Failure to comply with [the Sanctions] Order, pursuant [to] Maryland Rule 2-433(a), *shall result* in the following sanctions: (1) matters sought to be discovered being taken as established, (2) [the Russells] shall be barred from introducing any facts into evidence which would have been discovered in [the Russells] responses to [PKL's] Interrogatories, (3) [the Russells] shall be barred from introducing into evidence any document that would have been discovered pursuant to Plaintiff's Request for Production of Documents, and (4) [the

> Russells] shall be barred from introducing any evidence which contradict[s] statements made in [PKL's] Request for Admissions of Fact and Genuineness."

(Emphasis added.) Given that the Sanctions Order provided an appropriate sanction, and the Russells failed to comply, the trial court acted within its discretion in enforcing it.

3. The trial court correctly allowed PKL to withdraw its (alternative) Motion for Postponement.

Marquitta argues that because PKL had filed its own Motion for Postponement, the trial judge unfairly allowed it to withdraw that motion. That is, she suggests that PKL should be held to its motion to postpone the case—from which she obviously would have benefitted too. But she misconstrues the nature of the Postponement Motion, which PKL made as an *alternative* to a *motion in limine* to bar the Russells from offer into evidence documents not produced in discovery. That is a different motion: PKL's Postponement Motion protected it in the event, for example, that the Russells showed up at trial with documents that purported to justify the transfer and the trial judge permitted them to introduce them, notwithstanding the Sanctions Order. If that had been the case, PKL understandably would have wanted a postponement to figure out what those documents were, and possibly to conduct follow-up discovery.

Of course, that hypothetical didn't happen. When, instead, the judge enforced the Sanctions Order, PKL had no further need to postpone the trial and it (appropriately) withdrew the Postponement Motion. That motion was PKL's to withdraw, and the court did not err in allowing PKL to withdraw it.

B. The Trial Court Did Not Err In Finding That The Fees Were Fair And Reasonable.

Marquitta raises a number of issues based on the order of events at trial and the trial judge's ultimate finding of fact that PKL's fees were fair and reasonable. *First,* she claims the trial court abused its discretion in allowing the testimony of witnesses that, according to Marquitta, were not disclosed in accordance with the Pretrial Scheduling Order. *Second*, she claims that the trial judge exhibited "prejudicial bias . . . in determining the fairness, legitimacy, quality of performance, agreed upon services, and accuracy of [PKL's] attorney fees and expenses." *Third*, she claims that the trial court unfairly transferred the burden of proof to her. *Fourth*, she attacks PKL's practices as unethical, and claims the court should have factored that into its decision. We see no basis for reversal on any of these claims.

1. The trial judge properly permitted PKL's witnesses to testify.

Although Marquitta claims (in a single-sentence argument) that the Pretrial Scheduling Order prohibited the testimony of witnesses that weren't disclosed to her, she cites no part of the record for the proposition that any particular witness called at trial was required to be named ahead and was not. PKL points out that it did identify its expert witnesses—Mr. Gisriel (who provided primary representation to Marquitta) and Mr. Benfield (the appraiser). Nor does it appear that Marquitta propounded any discovery asking for names of witnesses ahead of the Pre-Trial Statement.

2. The trial judge's findings of fact were supported by the evidence.

Marquitta complains that the court "prejudicially" accepted PKL's testimony about attorneys' fees, and that "no evidence was presented to the court that would substantiate [PKL's] position." This is not true. Marquitta raises what she claims are "inconsistencies" in the fees, and attacks certain aspects of the engagement letter from PKL and her attempts to pay the fees, but offered no evidence to this effect at trial, and waived her opportunity to do so when she left. In Paragraph 1 of the September 24, 2014 Order (reproduced in the "Background" section above), the trial judge walked through with ample explanation the basis for her finding that PKL's fees were fair and reasonable. Had Marquitta remained for the trial, she might have been in a position to rebut some of these points, but her departure made that impossible.

3. The trial court did not inappropriately transfer any burden of proof.

Marquitta also seems to claim that PKL failed to prove its case:

> [PKL] did not prove anything, had no evidence and performed no effort to negotiate, but threatened litigation because of [Mr. Gisriel's] delay until after the property was transferred. At the onset of the bench trial [the Russells] instead of [PKL] was questioned to prove and provide the evidence. But the court ordered that no documents were allowed to be submitted as evidence.

It isn't altogether clear whether Marquitta complains primarily about the trial judge not taking evidence as to fees, or that the court erred in requiring that the Russells demonstrate that the transfer of the Property was *not* fraudulent. Either way, the argument fails. With respect to the fees, as we explained above, she was prohibited from introducing

evidence because she failed to respond to properly served discovery. As to the transfer, the trial judge found (based on the evidence, which again was produced only by PKL) that the transfer of property bore indicia of fraud. *See A.V. Laurins & Co. v. Prince George's Cty.*, 46 Md. App. 548, 556 (1980) (burden of proof may shift to defendant in fraudulent conveyance action, once "suspicious circumstances" about the transaction are found to exist). At that point, the burden shifted to Marquitta to rebut PKL's case, and she didn't.

4. Marquitta's claim of "unethical practices" by PKL was not supported by the evidence.

Marquitta argues that the trial court should have considered what she characterizes as "unethical practices" by PKL, *i.e.*, that (she alleges) the appraisal for the Property was not properly made in the underlying will caveat case. As with several of her other arguments, though, Marquitta gave up the chance to raise it because she failed to remain in court for the trial.

Maryland Rule 8-131 defines the universe of issues we can review on appeal:

> Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

Id.; *see also Gittin v. Haught-Bingham*, 123 Md. App. 44, 48 (1998) ("The decision of when to review an issue not raised at trial . . . is within the discretion of the appellate court."). Marquitta's absence at trial made it impossible for her to raise this (or any other) issue at in the circuit court, and we do not unilaterally resolve issues at the appellate level that she could have raised below. And importantly, she asks us not simply to review *legal*

issues that she failed to protest at trial, but really to preside over a retrial of the *facts* that she could have presented to the trial court below, which does not present the type of "extraordinary circumstances" that would justify our intervention now. *Id.* at 51.

C. The Trial Court Correctly Interpreted The Fraudulent Conveyance Act To Require That The Transfer Of The Property From Marquitta To Juanita Be Set Aside.

Marquitta's last series of arguments challenges the trial judge's decision to set aside the transfer of the Property from Marquitta to Juanita. *First*, she claims that PKL was not entitled to levy on the Property. *Second*, she claims that PKL failed to produce evidence to support a finding of fraud, and that the court erred in finding that Marquitta transferred the Property to Juanita in an effort to avoid collection of the debt. (Marquitta points to the fact that the Property served as her primary residence to support this claim, but we explain below why that shouldn't have mattered, and didn't matter, to the trial judge.) *Finally*, Juanita argues that the court should have dismissed the Complaint against her because she lacked any relationship with PKL.

1. PKL was a proper judgment creditor.

Marquitta appears to argue that PKL improperly waited until the Property was transferred to obtain payment from Marquitta, which suggests that it knew she couldn't make payments and took advantage of her only after the transfer had taken place. She cites Md. Code (1974, 2013 Repl. Vol.), § 11-504 of the Courts & Judicial Proceedings Article, which exempts certain items from execution on judgment, but it does not appear that Marquitta ever sought to exempt the Property from any collection efforts, either before or at trial. (This assumes, of course, that the Property would be covered by the statute in the

first place; we need not address that issue since it was never properly raised, although PKL offers numerous reasons why it would not be covered.) Again, Maryland Rule 8-131(a) provides that an "appellate court will not decide any . . . issue [other than jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court . . . ." *Id.*; *see Pulte Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 761 (2007), *aff'd*, 403 Md. 367 (2008).

2. The trial court had sufficient evidence to conclude that the transfer was fraudulent.

Marquitta claims that she and Juanita "were denied due process and a fair trial before judgment," and that the court failed to account for her evidence, specifically Juanita's statement that Marquitta gave her the Property in satisfaction of a debt. She claims that there was no evidence of fraud and that the court's decision "was based on [PKL's] statement that the transfer of the property occurred during [PKL's] effort to negotiate."

The trial judge justifiably was required to draw inferences based on the evidence before her, which included no evidence from Marquitta—not only because she left on the day of trial, but also because she produced no evidence in the course of discovery (other than the Deed to the Property) that the judge could look to in her absence. Badges of fraud can include insolvency of the transferor, lack of consideration, a relationship between the parties, the pendency (or threat) of litigation, and retention by a debtor of possession.[2]

[2] This meant, too, that Marquitta never actually presented any testimony under oath about whether the Property served as her primary residence. Even if she had, this was one piece of information that the trial judge was free to accept or reject, and the record contained information that supported a decision to reject it.

Berger v. Hi-Gear Tire & Auto Supply, Inc., 257 Md. 470, 476-77 (1970). These inferences were there for the court to draw, and Marquitta gave up her opportunity to respond to the evidence presented by PKL by declining to participate in the trial.

3. Juanita was properly joined in the case and the court did not err in entering judgment against her.

Marquitta also contends (on behalf of Juanita) that Juanita should have been dismissed from the litigation. We agree with PKL, however, that it was necessary to join Juanita under Maryland Rule 2-211, which requires joinder of a party under two circumstances:

> …if in the person's absence
>
> (1) complete relief cannot be accorded among those already parties, or
>
> (2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.

Id. Juanita was a necessary party because she was the named grantee of the Property. Moreover, the note that Juanita asked Marquitta to provide to the trial court was not in the nature of a Motion to Dismiss, so there was no motion properly before the trial judge.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.