Circuit Court for Baltimore City
Case No. 24-C-20-000106

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1992

September Term, 2021

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PAUL C. CLARK, SR.

v.

COUNCIL OF UNIT OWNERS OF THE 100 HARBORVIEW DRIVE CONDOMINIUM

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Nazarian,
Tang,
Albright,
JJ.

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Opinion by Tang, J.

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Filed: November 15, 2022

Paul C. Clark, Sr., appellant, appeals from an order entered by the Circuit Court for Baltimore City, striking his notice of appeal as untimely. On appeal, appellant challenges that order and the judgment on the merits of his underlying claim. For the reasons set forth below, we affirm the court's order striking appellant's untimely notice of appeal. We do not reach the other issues raised by appellant.

## BACKGROUND

This appeal is the latest chapter in a saga of protracted litigation between the parties. Appellant is a condominium unit owner and member of the Council of Unit Owners of the 100 Harborview Drive Condominium ("Harborview"). In 2009, appellant purchased a penthouse unit in the condominium. According to appellant, he has not been able to reside there due to leaks and other damage to the unit. This led to litigation that eventually made its way to the U.S. Bankruptcy Court for the District of Maryland.[1] In that matter, appellant asserted claims alleging that Harborview violated its governing documents by failing to maintain the unit, which rendered the unit uninhabitable. The bankruptcy court addressed the claims, and, in a final order entered on October 16, 2018, awarded appellant[2] damages in the amount of approximately $750,000.

Subsequently, the appointed plan officer asked the bankruptcy court to determine whether the bankruptcy court's decision had resolved appellant's obligation to pay

[1] Harborview filed for bankruptcy, and the parties litigated the claims in the matter of *In re the Council of Unit Owners of 100 Harborview Drive Condominium*, Case No. 16-13049.

[2] Appellant was one of the creditors who asserted claims in the bankruptcy case.

assessments he owed on his unit under Harborview's governing documents. In a May 2019 order, the bankruptcy court clarified,

> [N]othing in the [c]ourt's prior orders altered or eliminated [appellant's] responsibility for all assessments due for [his unit] under [Harborview's] governance documents. In fact, the Confirmation Order and the Plan specifically underscore the need for all unit owners, including [appellant], to make timely regular and special assessment payments.

Thereafter, Harborview pursued collection of unpaid condominium assessments and fees against appellant. On December 4, 2019, Harborview sent appellant, pursuant to the Maryland Contract Lien Act,[3] notice that it sought a lien against him for unpaid assessments in the amount of $34,662.23, which included late fees, interest, costs, and legal fees, for the period beginning July 2017. It informed appellant that he had the right to initiate a hearing to determine whether probable cause existed for the establishment of the lien pursuant to the Act.

Appellant availed himself of that right and filed a complaint, followed by an amended complaint, in the Circuit Court for Baltimore City, asking the court to determine that probable cause for such a lien did not exist. Specifically, appellant maintained that (1) Harborview's attempt to establish a lien was barred by *res judicata* and collateral estoppel,

[3] The Act provides that within two years of a breach of contract, a party can seek to create a lien by giving written notice to the party against whose property the lien is intended to be imposed. Md. Code Ann., Real Prop. ("RP") § 14-203(a)(1) (1974, 2015 Repl. Vol.). Under subsection (c), "[a] party to whom notice is given under subsection (a) may, within 30 days after the notice is served on the party, file a complaint in the circuit court for the county in which any part of the property is located to determine whether probable cause exists for the establishment of a lien." RP § 14-203(c)(1).

(2) its attempt to collect certain fees was barred by the statute of limitations, and (3) its assessment of fees contravened its governing documents.

Appellant filed a motion in limine and/or, alternatively, for summary judgment. At a hearing scheduled for August 26, 2021, appellant explained that, in the bankruptcy proceeding, Harborview sought a setoff against the damages award in the amount of unpaid assessments purportedly owed by appellant. Appellant argued that, because his obligation to pay assessments arose out of the same governing documents that Harborview breached, as determined by the bankruptcy court, Harborview's attempt to secure a lien for unpaid assessments was barred by *res judicata* and collateral estoppel.[4] He acknowledged, however, that the bankruptcy court declined to reduce the damages award and did not make any finding with respect to assessments owed by him.

At the conclusion of the hearing, the court ruled from the bench. It explained, on the record, its decision that neither *res judicata* nor collateral estoppel barred Harborview from placing a lien on appellant's unit for unpaid assessments and fees for the two-year period preceding the December 2019 notice. Because the court's ruling affected Harborview's initial calculation of the total assessments and fees owed by appellant, it directed Harborview to submit a "new ledger" with the "new calculation of the lien amount."

[4] Extrapolating from his *res judicata* and collateral estoppel arguments, appellant explained that the date of the bankruptcy court's final order (October 16, 2018) served as "a cutoff date," and Harborview would have been entitled to collect assessments and fees incurred after that date.

Thereafter, Harborview filed a modified statement of the account, reflecting an amount due of $23,397.23 and $7,313 in attorney's fees. Appellant filed an opposition, objecting to Harborview's calculations and its request for attorney's fees. He maintained, instead, that the amount of the lien should not exceed $21,569.62.

On September 29, 2021, the court issued a "Memorandum and Final Declaratory Judgment" ("Judgment") that "address[ed] only the issues raised by [appellant] with [respect to Harborview's] revised calculations." After making certain adjustments, the court signed the Judgment, which set forth the following:

> Accordingly, it is this 29th day of September 2021, by the Circuit Court for Baltimore City, Part 26, hereby **ORDERED, ADJUDGED, AND DECLARED** that probable cause does exist and [Harborview] is permitted to record a lien against [appellant]'s unit for assessments and fees in the following total amounts:
>
> | | |
> |---|---|
> | Assessments due | $16,617.56 |
> | Late fees | $2,084.66 |
> | Interest | $3,543.25 |
> | Attorney's fees | $5,484.75 |
> | TOTAL | $27,730.22 |
>
> It is further **ORDERED** that [appellant] shall pay the costs of this action.
>
> It is further **ORDERED** that the Clerk shall enter this judgment and then close the file.

On September 30, 2021, the clerk entered the Judgment, reflected in the CaseSearch entries on the Judiciary website, as follows:

Doc No./Seq No.: **21/0**
File Date: **09/30/2021** Entered Date: **09/30/2021** Decision: **Ruled**
Document Name: **Memorandum and Final Declaratory Judgment**

**ORDERED, ADJUDGED, and DECLARED that probable does exist and Defendant Council of Unit Owners of the 100 Harborview Drive Condominium is permitted to record a lien against Plaintiff Paul C. Clark, Sr.'s unit for assessments and fees:Assessment due $16,617.56Late fees $2,084.66Interest $3,543.25Attorney's fees $5,484.75Total $27,730.22It is further ORDERED that Plaintiff shall pay the costs of this action.Judge Fletcher-Hill.**

On October 18, 2021, the clerk indexed and recorded the Judgment, reflected in the CaseSearch entries, as follows:[5]

Doc No./Seq No.: **22/0**
File Date: **10/18/2021** Entered Date: **10/18/2021** Decision:
Document Name: **Judgment Indexed on 10/18/21**

Doc No./Seq No.: **23/0**
File Date: **10/18/2021** Entered Date: **10/18/2021** Decision:
Party Type: **Defendant** Party No.: **1**
Document Name: **Notice of Recorded Judgment**

On November 15, 2021, appellant filed a notice of appeal "of this Court's Judgment of September 30, 2021 and enrolled on October 18, 2021." Harborview filed a motion to strike appellant's notice of appeal as untimely. Appellant filed an opposition, arguing that the "date the Judgment is **entered, recorded, and indexed**, starts the [30-day] appeals clock." (Emphasis in original). Appellant filed his notice of appeal within 30 days of

[5] At oral argument, appellant argued that the Judgment essentially entitled Harborview to double recovery in the form of (1) a lien in the amount of $27,730.22, because of the language in the Judgment that permits Harborview to record the lien, and (2) a money judgment in the same amount, because of the Notice of Recorded Judgment issued by the clerk. In response, Harborview acknowledged that the language in the Judgment only entitles it to a lien in the amount of $27,730.22, and the clerk's subsequent issuance of the Notice of Recorded Judgment was in error. Harborview confirmed that it is only entitled to record a lien and therefore recover a total amount of $27,730.22.

October 18, 2021, and therefore, according to appellant, his November 15 notice of appeal was timely filed.

On February 1, 2022, the court granted the motion to strike, explaining in its order,

> The [c]ourt's final declaratory judgment was entered by the Clerk on September 30, 2021. (Docket Entry No. 21.) While the judgment was recorded and indexed by the Clerk at a later date, a notice of appeal is required to be filed within 30 days after the entry of judgment. Md. Rule 8-202(a). Since [appellant]'s appeal was noted more than 30 days after the entry of judgment on September 30, 2021, it is untimely.

Appellant timely noticed an appeal from the order striking the November 15, 2021 notice of appeal.[6]

## ISSUES PRESENTED

In his brief, appellant presents four questions for consideration by this Court:

1. Did the lower court err in striking [a]ppellant's originally filed [n]otice of [a]ppeal?

2. Did the lower court err in entering a [d]eclaratory [j]udgment in this case when this is not a remedy under Maryland Code Ann., Real Property, § 14-203(g)(1)?

3. Did the lower court err in finding probable cause for a lien in favor of the [a]ppellee in light of the October 16, 2018 judgment of the [b]ankruptcy [c]ourt under the doctrines of *res judicata* and collateral estoppel?

4. Did the lower court err in entering summary judgment in favor of the [a]ppellee?

We shall answer "no" to the first question. We do not reach the remaining questions.

[6] An order striking a notice of appeal is itself a final appealable order. *Cnty. Comm'rs of Carroll Cnty. v. Carroll Craft Retail, Inc.*, 384 Md. 23, 42 (2004).

## DISCUSSION

Maryland Rule 8-203 authorizes the circuit court to strike a notice of appeal that has not been filed within the time prescribed by Rule 8-202(a). Rule 8-202(a) provides that "the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." A "judgment" is "any order of court final in its nature entered pursuant to these rules." Md. Rule 1-202(o). "Entry" "occurs on the day when the clerk of the lower court enters a record on the docket of the electronic case management system used by that court." Md. Rule 8-202(f). If the appeal is not timely filed, "the appellate court acquires no jurisdiction and the appeal must be dismissed." *HIYAB, Inc. v. Ocean Petroleum, LLC*, 183 Md. App. 1, 8 (2008) (quoting *Houghton v. Cnty. Comm'rs of Kent Cnty.*, 305 Md. 407, 413 (1986)).

"Determination of a judgment's date of entry for purposes of Maryland Rule 8-202 is set forth in Maryland Rule 2-601." *Won Bok Lee v. Won Sun Lee*, 466 Md. 601, 621 (2020) (citing *Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466, 471 (2014)). Rule 2-601 provides:

> **(a) Separate Document--Prompt Entry.**
>
> (1) Each judgment shall be set forth on a separate document and should include a statement of an allowance of costs as determined in conformance with Rule 2-603.
>
> (2) Upon a verdict of a jury or a decision by the court allowing recovery only of costs or a specified amount of money or denying all relief, the clerk shall forthwith prepare, sign, and enter the judgment, unless the court orders otherwise.

(3) Upon a verdict of a jury or a decision by the court granting other relief, the court shall promptly review the form of the judgment presented and, if approved, sign it, and the clerk shall forthwith enter the judgment as approved and signed.

(4) A judgment is effective only when so set forth and when entered as provided in section (b) of this Rule.

(5) Unless the court orders otherwise, entry of the judgment shall not be delayed pending determination of the amount of costs.

**(b) Applicability--Method of Entry--Availability to the Public.**

(1) *Applicability.* Section (b) of this Rule applies to judgments entered on and after July 1, 2015.

(2) *Entry.* The clerk shall enter a judgment by making an entry of it on the docket of the electronic case management system used by that court along with such description of the judgment as the clerk deems appropriate.

(3) *Availability to the Public.* Unless shielding is required by law or court order, the docket entry and the date of the entry shall be available to the public through the CaseSearch feature on the Judiciary website and in accordance with Rules 16-903 and 16-904.

**(c) Recording and Indexing.** Promptly after entry, the clerk shall (1) record and index the judgment, except a judgment denying all relief without costs, in the judgment records of the court and (2) note on the docket the date the clerk sent copies of the judgment in accordance with Rule 1-324.

**(d) Date of Judgment** On and after July 1, 2015, regardless of the date a judgment was signed, the date of the judgment is the date that the clerk enters the judgment on the electronic case management system docket in accordance with section (b) of this Rule. The date of a judgment entered prior to July 1, 2015 is computed in accordance with the Rules in effect when the judgment was entered.

The parties disagree as to when the 30-day appeal clock began to run. Harborview maintains that the time to notice an appeal began when, pursuant to Rule 2-601**(b)**, the Judgment was entered on September 30, 2021. Appellant, on the other hand, contends that

the time to notice an appeal began to run when, pursuant to Rule 2-601**(c)**, the clerk recorded and indexed the Judgment on October 18, 2021. We disagree with appellant.

Under Rule 2-601(a)(4), a final judgment becomes "effective" once it is set forth on a "separate document," as required by Rule 2-601(a)(1) and is "entered" as provided in Rule 2-601(b). *Lee*, 466 Md. at 621. Recently, the Court of Appeals in *Won Bok Lee v. Won Sun Lee*, held that,

> to constitute an effective judgment under Maryland Rule 2-601 and start the thirty-day appeal period set forth in Maryland Rule 8-202(a), a judgment must satisfy Maryland Rule 2-601**(b)(2) and (b)(3)**. Simply put, Maryland Rule 2-601's plain language makes clear that a judgment must be entered in accordance with Maryland Rule 2-601(b) to be effective and thus trigger the thirty-day appeal period. Indeed, Maryland Rule 2-601(a)(4) clearly states that "[a] judgment is effective only when [ ] set forth [on a separate document] and **when entered as provided in section (b) of this Rule**." This means that a judgment must be entered as described in Maryland Rule 2-601**(b)(2) and (b)(3)**—namely, the clerk must enter the judgment on the docket of the [electronic case management system] that the circuit court uses "along with such description of the judgment as the clerk deems appropriate[,]" and, "[u]nless shielding is required ..., the docket entry and the date of the entry shall be available to the public through the case search feature on the Judiciary website[.]"

*Id.* at 629-30 (emphasis added). Nothing in the Rules or decisional law suggests that the 30-day appeal period is triggered by the date a judgment is recorded or indexed pursuant to Rule 2-601(c).[7] We next address appellant's sub-contentions.

[7] To be sure, "[n]either notice of the judgment under Rule 1-324 nor recordation and indexing are conditions precedent to the entry of judgment." Paul V. Niemeyer & Linda M. Schuett, Maryland Rules Commentary, Rule 2-601, 798 (5th ed. 2019). Recording and indexing a judgment serve a distinct purpose, which is "to provide a way to give notice to purchasers, mortgagors, lien holders and the like, of the prior conveyances of, or encumbrances on, the property of a particular person." *Greenpoint Mortg. Funding, Inc. v. Schlossberg,* 390 Md. 211, 230 (2005); *Lee*, 466 Md. 601 at 642 ("[R]ecording and indexing such a judgment creates a lien."). "Judgments and liens are created through

**a.**

Appellant maintains that the Notice of Recorded Judgment entered on October 18, 2021—not the Judgment entered on September 30, 2021—is the "separate document" contemplated under Rule 2-602(a)(1). Therefore, according to appellant, the 30-day appeal period began to run on October 18, 2021.

In *Hiob*, the Court of Appeals clarified the separate document requirement. There, the Court concluded that a stipulation of dismissal failed to "satisfy the separate document requirement and thus could not trigger the 30-day period for filing the notice of appeal . . . because it did not provide a clear indication that [a] judgment had been rendered, it did not comply with the plain language of Rule 2-601(a), and its accompanying docket entry did not satisfy Rule 2-601(b)." 440 Md. at 483-84. The Court explained,

> the separate document itself must now set forth the judgment by indicating that the issues have been fully adjudicated and that the court has reached a final decision. An important aspect of this function is to clearly indicate in the separate document which party has prevailed on which issues and what type of relief, if any, has been granted by the court. These features of the separate document ensure that the court issues "clear, precise, and complete judgments" that provide the public and the litigants with clarity as to when a judgment is rendered, which party prevailed, when the judgment becomes effective, and when an appeal must be filed.

*Id*. at 486 (footnote omitted). "[F]or a judgment to be final and start the time for an appeal, the clerk must make a proper record of the judgment in accordance with Maryland Rule 2-

different processes. A judgment is created through a rendition of the judgment by the court and entry of the judgment of the clerk" while "a lien of a money judgment is created by recording and indexing a previously rendered and entered money judgment." *Lee*, 466 Md. at 641-42 (cleaned up).

601, which includes setting forth the judgment on a separate document before it is entered by the clerk." *Lee*, 466 Md. at 628 (citing *Hiob*, 440 Md. at 489).

In the instant case, the Judgment satisfied the separate document requirement because it was an order the court approved and signed; it was separate from the court's oral ruling; it clearly indicated to the parties and the public that the court had adjudicated all the issues presented to it; it indicated the type of relief granted and that the court reached a final, unqualified decision; and it required appellant to "pay costs of this action." Further, the Judgment directed the clerk to "enter this judgment." The clerk treated the Judgment as a judgment and entered it on September 30, 2021 at Docket Entry No. 21.

**b.**

At oral argument, appellant highlighted case law expressly stating that a final, appealable judgment must have three attributes, the third of which requires that the judgment "must be set forth and **recorded** in accordance with Rule 2-601." (Emphasis added). Therefore, according to appellant, the 30-day appeal deadline began when the judgment was recorded and indexed under Rule 2-601(c).

While we recognize that this "recorded" language is used by appellate courts in various opinions, appellant misconstrues that language as requiring a judgment to be recorded and indexed under Rule 2-601(c). *Hiob* clarifies that the third requirement pertains to the "record of the judgment," meaning its memorialization on a separate document (not recording and indexing under Rule 2-601(c)). *Hiob*, 440 Md. at 489 ("The third requirement, that there be a proper record of the judgment in accordance with Rule 2-

601 must also be satisfied[.] Rule 2-601(a) now requires that the judgment be set forth on a separate document before it is entered by the clerk."). As explained *supra*, the Judgment—not the Notice of Recorded Judgment—is the separate document under Rule 2-601(a).

**c.**

At oral argument, appellant mentioned that the "Judgment Information" section on CaseSearch reflects a "Judgment Entered Date" of "10/18/21." He argues that this notation confirms that the judgment was entered on October 18, 2021. He appears to disregard, however, that the Notice of Recorded Judgment (at Docket Entry No. 23) and the judgment information section on the electronic printout of the case history, located in the original circuit court file, state that the "Judgment Entry Date" is "09/30/21" and the "Judgment Index" date is "10/18/21." That a certain field on CaseSearch inaccurately reflects a "Judgment Entered Date" of October 18, 2021 is not controlling; rather, the applicable law, summarized *supra,* controls. *See e.g., Lee*, 466 Md. at 644 ("That the clerk may have erroneously noted on the docket that 'judgment' was entered on June 1, 2004, does not transform the lien into a judgment. Indeed, the applicable Maryland statutes and Rules clearly provide that the 2004 filing created a lien, not a judgment. The clerk's inaccurate description in a docket entry does not change a lien into a judgment.").

**CONCLUSION**

The Judgment satisfied the separate document requirement under Rule 2-601(a), and it was entered on September 30, 2021 pursuant to Rule 2-601(b). Appellant did not

file a notice an appeal from the Judgment within 30 days after its entry. Accordingly, we affirm the February 1, 2022 order striking appellant's November 15, 2021 notice of appeal. We do not reach the remaining issues raised by appellant on appeal.

**ORDER STRIKING THE NOTICE OF APPEAL ENTERED ON FEBRUARY 1, 2022 BY THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. OTHER REMAINING ISSUES DISMISSED. COSTS TO BE PAID BY APPELLANT.**