UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2001

September Term, 2013

LEE ROSE

v.

W. AARON JAMES

Graeff,
Kehoe,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: August 6, 2015

Lee Rose appeals a judgment entered against him in the amount of $241,781.51 in the Circuit Court for Anne Arundel County. Rose presents the following four questions for our review:

> 1. Did the court err in entering an order of default against a party that had not entered any formal appearance or filed any answer, where there was no written motion requesting an order of default?
>
> 2. Did the court err in failing to send any notice to [Rose] that an order of default had been entered against him?
>
> 3. Did the court err in failing to send [Rose] any notice of the *ex parte* hearing on damages?
>
> 4. Did the court err in entering Judgment against [Rose] in the amount of $241,781.00 when the amount sought in the *ad damnum* was $150,000.00 and when there was no evidence offered at the hearing on *ex parte* damages that Rose owed that amount (as opposed to his co-defendant Osprey Bay), and where the court appears to have failed to distinguish claims made against solely against the corporate entity and those made against [Rose]?

We will affirm the judgment of the circuit court.

This case arises out of the former business relationship between Lee Rose and W. Aaron James. We discuss this relationship to the extent necessary to provide context to the procedural matter before us.

In 2010, Rose was the Managing Member of Osprey Bay Building and Development, LLC. In August 2010, James purchased a membership interest in Osprey Bay, and also entered into an employment agreement pursuant to which he was to become the President of Operations. In October 2011, James terminated his employment with Osprey Bay.

James filed suit against Rose and Osprey Bay in the Circuit Court for Anne Arundel County on June 21, 2012. The complaint was comprised of five counts arising out of James's purchase of a membership interest in Osprey Bay as well as his employment as the President of Operations. Count I of the complaint alleged misrepresentation by Rose for false statements and omissions that he made regarding Osprey Bay's financial status, and upon which James relied in purchasing the membership interest and entering into the employment agreement. Count II alleged misrepresentation against Rose and Osprey Bay jointly and severally. The remaining counts identified causes of action against Osprey Bay only.

On July 27, 2012, a summons and other suit papers were served on Rose, both personally and as the resident agent of managing member of Osprey Bay. Service was effected in Millersville, Maryland at Osprey Bay's principal place of business. The complaint also asserted that Rose was a resident of Maryland. Rose, acting through counsel, removed the case to the United States District Court for the District of Maryland. Rose's counsel filed a notice of removal with the circuit court. This was Rose's only contact with the circuit court. The case was ultimately remanded to the circuit court on October 17, 2012.

Upon return of the case to the circuit court, James filed a motion to amend the scheduling order, requesting an extension of the deadlines provided in the initial scheduling order. The motion was granted, and the first pre-trial conference occurred on July 25, 2012. Rose failed to appear at the pre-trial conference, and a follow-up pre-trial conference and

show-cause hearing were scheduled for August 28, 2013. Acting pursuant to its contempt powers, under Md. Rule 15-206, on August 2, 2013, the court issued a show cause order requiring Rose to "show cause why [he] should not be found in default for failure to appear" and why judgment should not be entered against him. The pre-trial order and the show cause order were mailed to the address James provided for Rose in the complaint, but were returned to the court.

Rose, again, failed to appear at the show-cause hearing on August 28, 2013, and a default judgment was entered against him. After a hearing on damages on October 3, 2013, judgment was entered in favor of James, in the amount of $241,781.51.

Rose contends that the circuit court erred by failing to follow the procedure set out in Md. Rule 2-613 for entry of a default judgment. In support of this contention, he points out that: (1) appellee did not file a written request for an order of default, as is required by Rule 2-613(b); and (2) the clerk of the court failed to send him written notice that an order of default had been entered. Appellant misperceives the basis of the court's authority to enter the default judgment.

The circuit court's authority to require parties or their representatives to attend scheduling conferences derives from Md. Rules 2-504, 2-504.1, and 2-504.2, which set out mechanisms by which courts "expedite and control the orderly flow of civil litigation[.]" *Tobin v. Marriott Hotels*, 111 Md. App. 566, 572 (1996). Although these rules do not contain express provisions authorizing courts to sanction parties that do not comply with

them, such authority is inherent in the rules themselves and, at this point in the development of Maryland law on the subject, is clearly established. *See Station Maintenance v. Two Farms*, 209 Md. App. 464, 476–85 (2013) (collecting and analyzing cases and concluding that a "circuit court most certainly has authority to sanction parties for violating scheduling orders"). The circuit court, in its discretion, decides upon an appropriate sanction. *Id.* at 485. Sanctions can include contempt proceedings and entry of a judgment by default if notice is given to the parties.

Appellant also asserts that the circuit court erred in entering the judgment because:

> The court acted "as if" it had a party before [it] that was misbehaving in such fashion that it could impose discipline by issuing an order to show cause and then entering judgment for failure to comply. But, in reality, in this matter there was no Defendant before it. Neither Defendant entered an appearance. Neither defendant filed a responsive pleading. This was *exactly* and precisely the circumstance for which the rules regarding Default were written.

(Emphasis in original.)

Appellant's premise is incorrect on two scores. First, Rose was, indeed, "misbehaving," because he did not attend scheduling conferences even though ordered to do so by the circuit court. Second, it is not necessary for a defendant to file a responsive pleading or an entry of appearance to "be before the court." Rose was served with process on July 27, 2012, both in his personal capacity and as the resident agent for Osprey Bay. At that point, both defendants were "before the court," that is, they were subject to the jurisdiction of the court. Because they were subject to the jurisdiction of the court, they were required to comply with the court's scheduling orders. Further, because they were subject

to the jurisdiction of the court, the court had the authority to hold them in contempt for failure to obey its orders. The court's authority to hold them in contempt for the failure to do so is not dependent on their filing an answer or an entry of appearance.

Appellant's assertion that the circuit court failed to provide him notice of the show cause hearing and the *ex parte* hearing on damages is unpersuasive. When a court sends a notice to a party not represented by counsel, it is obligated to direct that notice to the party's last known address. *Smith-Myers v. Sherill*, 209 Md. App. 494, 509 (2013). A party to a civil action in Maryland "'has a continuing obligation to furnish the court with [its] most recent address.'" *Id.* at 512 (quoting *Estime v. King*, 196 Md. App. 296, 306 (2010)). Appellant has only himself to blame if the notices from the court were not mailed to his current address. In his brief, appellant contends that (underlined emphasis added):

> It is apparent that in the midst of losing his entire fortune as Osprey Bay failed, the Appellant lost track of the fact that this litigation was pending against him in the Circuit Court and failed to respond to the Complaint. But, that is *exactly* why the Rules are written with a process and a procedure in the case of default orders.
>
> * * * *
>
> But, he didn't have a chance at that under the circumstances, because the court entered a default order, never sent him notice that it was entered, and then held a damages hearing also without notice.
>
> The Court should not have entered an order of default under these circumstances.
>
> Moreover, once a default order was entered, the matter should not have proceeded to an *ex parte* hearing and entry of judgment without satisfying the requirement of Rule 2-613(f). That rule states that the court can only enter the

> judgment if it is satisfied that the proper notice of the default order has been sent to the Defendant pursuant to Rule 2-613(c). Here the record is clear that notice was never sent and entry of judgment was improper.

The flaw in Roses's argument is that the procedural safeguards set out in Rule 2-613 for a judgment by default and the procedural safeguards undertaken by the court in the present case in its contempt proceeding are, for all practical purposes, the same.

Rule 2-613(b) requires the clerk to mail a notice of the order of default to the defaulting party "at the address stated in the request" for an order of default. In the present case, the circuit court mailed a copy of the show cause order to appellant at his last known address in the court records. Rule 2-613(b) requires the notice to be mailed—the rule does not, contrary to appellant's assertion, require that the notice be actually received by the defaulting party. *See Smith-Myers,* 209 Md. App. at 507 (citing *Carter v. Harris*, 312 Md. 371, 374 (1978)).

Rule 2-613(f) governs the entry of a default judgment, as opposed to a default order. Before a court can enter a judgment, it must satisfy itself that the notice of order of default was mailed—contrary to appellant's assertion, the rule does not require a court to determine whether the notice was actually received. Nor does the rule require notice to a defaulting party of the time and place of any evidentiary hearing necessary for the court to determine the amount of damages or other relief. When the circuit court in the present case scheduled a hearing on damages without providing notice to appellant, it afforded appellant exactly the same degree of notice that appellant would have received had the plaintiff proceeded under

Rule 2-613. In other words, assuming *arguendo sed dubitante*, that the circuit court erred by failing to proceed under Rule 2-613, any error was harmless.

Appellant asserts that he failed to receive notice of the show cause order because it was mailed to his address in Maryland and, by that time, he had returned to Illinois. As we have explained previously, appellant was obligated to keep the court informed of his current address and he neglected to do so.

Finally, appellant asserts that the circuit court erred because the damage award, $241,758.51, was improper because it exceeded the *ad damnum* clause of Count I of the complaint, which he asserts was the only count that sought damages against him personally. He correctly points out that, at the time the complaint was filed, and judgment entered, the law of Maryland was that a court could not award damages in excess of the amount claimed. Unfortunately for appellant, Count II of the complaint sought damages against appellant and Osprey jointly and severally in the amount of $150,000. Thus, at the time the judgment was entered, the circuit court could award a judgment of up to $300,000.

THE JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.