UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1873 and 2577

September Term, 2015

ROBERT HOROWITZ, *et ux*.

v.

ZIPIN LAW FIRM, LLC

Wright,
Berger,
Friedman,

JJ.

Opinion by Berger, J.

Filed: December 6, 2016

Appellants, Robert and Cathy Horowitz ("the Horowitzes"), appeal from the September 11, 2015 orders of the Circuit Court for Montgomery County granting the motion to dismiss and motion for summary judgment filed by appellee, the Zipin Law Firm ("ZLF") and denying the Horowitzes' motions for summary judgment on their declaratory judgment claims. The Hororwitzes also appeal the circuit court's order of January 8, 2016, denying the Horowitzes' motion to vacate the judgment entered against them. In their timely filed appeals, the Horowitzes raise four questions for our consideration, which we have rephrased as follows:

1. Did the Circuit Court err or abuse its discretion in granting plaintiff's motion for alternative service?

2. Did the Circuit Court err or abuse its discretion in denying defendants' motion to dismiss plaintiff's complaint?

3. Did the Circuit Court err or abuse its discretion in dismissing defendants' counterclaim for declaratory judgment and in not granting their cross-motion for summary judgment?

4. Did the Court err or abuse its discretion in granting plaintiff's motion for summary judgment and in not vacating that judgment?

Discerning neither error nor abuse of discretion, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL HISTORY

From April of 2010 to October of 2011, ZLF represented the Horowitzes in a lawsuit filed in the Circuit Court for Montgomery County against the McLean School of Maryland. Following the resolution of that case, in October of 2012, the Horowitzes filed suit against

ZLF and several of its attorney employees, alleging legal malpractice and other causes of action. ZLF countersued the Horowitzes for non-payment of their outstanding legal bills.

In November of 2013, the parties engaged in mediation and agreed to settle their disputes.[1] On November 26, 2013, the parties signed and executed a notarized settlement agreement, which stated, in pertinent part, that the Horowitzes were to receive $125,000 from ZLF's insurance company, CNA Insurance, in return for the dismissal of their malpractice claims against ZLF and its attorney employees. No later than fifteen business days after they received and deposited the payment from CNA, the Horowitzes agreed they would tender a check to ZLF for $62,500, in return for the dismissal of ZLF's claims for non-payment of legal fees. The parties executed a joint stipulation of dismissal with prejudice that was filed in the circuit court on December 9, 2013.

On or around December 16, 2013, the Horowitzes received a check from CNA in the amount of $125,000 and deposited it into their bank account. In accordance with the

[1] All parties were represented by counsel at the mediation. Regarding the claims of legal malpractice, ZLF was represented by Eccleston and Wolf, P.C. ("Eccleston"), who were engaged by ZLF's malpractice insurance carrier, CNA Insurance ("CNA"). ZLF represented itself in its cross-claim for collection of the legal fees owed by the Horowitzes for the firm's representation in the McLean case. The Horowitzes were represented by attorneys from Bregman Berbert Schwartz & Gilday, L.L.C. ("Bregman") and Selzer Gurvitch Rabin Wertheimer Polott & Obency, P.C. ("Selzer"). The mediation was facilitated by The Honorable Judge Irma S. Raker, a senior judge of this Court and the Court of Appeals of Maryland.

terms of the settlement agreement, payment from the Horowitzes to ZLF was due no later than January 8, 2014. The Horowitzes never made any payment to ZLF.[2]

The Horowitzes assert that after receiving the $125,000 payment from the insurance company, they "discovered" that paying ZLF $62,500 would have constituted a violation of the laws of Maryland. The Horowitzes contend that terms of the settlement agreement between the parties violated Md. Code (1997, 2011 Repl. Vol.) §27-212(c) of the Insurance Article ("Ins."), which prohibits insurance companies from providing rebates, discounts, special favors, etc. as inducement to insureds to retain insurance, and Md. Code (1973, 2013 Repl. Vol.) §11-504 of the Courts and Judicial Proceedings Article ("CJP"), which prohibits judgment creditors from collecting, *inter alia*, "money payable in the event of sickness, accident injury, or death…including…judgments, arbitrations, compromises, insurance, benefits, compensation, and relief" to satisfy a claim against a judgment debtor.

[2] In addition to their failure to pay ZLF, the Horowitzes also failed to make any payments to the attorneys who represented them during the mediation and settlement process, or to the mediator, Judge Raker. The Horowitzes' attorneys at Selzer later filed suit in the circuit court to collect the legal fees owed by the Horowitzes. The Horowitzes filed a counterclaim against Selzer and Bregman alleging that their attorneys committed legal malpractice, in part, by negotiating a settlement agreement that violated the laws of Maryland. Following a hearing on October 29, 2014, the circuit court granted the law firms' motions for summary judgment and denied the Horowitzes' motion for summary judgment concluding, in pertinent part, that by keeping the entire $125,000 payment from CNA, the Horowitzes waived any argument that the settlement was illegal, and further, that the settlement agreement did not violate the insurance laws, and was, therefore, valid and legal. The Horowitzes appealed the circuit court's determination to this Court, which affirmed the circuit court's determinations in an unpublished opinion. *Horowitz v. Selzer, Gurvitch, Rabin, Wertheimer, Polott & Obecny, P.C.*, Case No. 2459, September Term 2014 (filed Sept. 27, 2016).

The legality of the terms of the settlement agreement have been considered and addressed in several other actions in the State and Federal Courts[3] of Maryland and in an administrative action before the Maryland Insurance Administration ("MIA").[4]

On January 27, 2014, ZLF filed a motion to vacate the joint stipulation of dismissal and reopen the malpractice/collection case in order to enforce the terms of the settlement agreement. ZLF also filed a motion to seal the case record in order to maintain the confidentiality of the terms of the settlement agreement, which was granted. Following a hearing on June 13, 2014, the circuit court denied ZLF's motion to vacate the stipulation of dismissal and reopen the case.

[3] On November 25, 2014, the Horowitzes filed a complaint against CNA, Eccleston, Bregman, and Selzer, in the Federal District Court for Maryland, alleging that the defendants conspired to violate state and federal laws regarding debt collection and consumer protection. *Horowitz v. Continental Casualty Company, et al.*, No. DKC 14-3698 (unreported, filed Dec. 28, 2015) (*available at* 2015 WL 9460111). By opinion filed December 28, 2015, the federal district court dismissed all of the Horowitzes' claims against the defendants, holding, in pertinent part, that the Horowitzes were collaterally estopped from relitigating the circuit court's determination that their claims of illegality were waived and that the terms of the settlement agreement were legal. *Id*. slip op. at *1, *4, *5-*8. The Horowitzes subsequently filed a motion to alter or amend the district court's judgment, which was denied in an unpublished opinion issued on July 5, 2016. *Horowitz v. Continental Casualty Company, et al.*, No. DKC 14-3698, slip op. at *1-*4, (filed July 5, 2016) (*available at* 2016 WL 3597575). The Horowitzes have appealed the district court's denial of their motion for reconsideration to the Fourth Circuit Court of Appeals. *Horowitz v. Continental Casualty Company, et al.*, No. 16-1883 (filed August 4, 2016).

[4] On July 30, 2014, the Horowitzes filed a complaint against CNA with the Maryland Insurance Administration ("MIA"), challenging the legality of the settlement agreement under Maryland's insurance statutes. On October 28, 2014, the MIA issued a letter to the Horowitzes in which the investigator concluded that the settlement agreement did not violate any Maryland insurance laws.

On June 19, 2014, ZLF filed a complaint in the Circuit Court for Montgomery County asserting that the Horowitzes had materially breached the terms of the settlement agreement by refusing to pay ZLF the $62,500. Subsequently, ZLF filed a motion for summary judgment on July 1, 2014.

Process servers employed by ZLF attempted to serve the necessary documents on the Horowitzes on multiple occasions in July of 2014, but were unsuccessful. Asserting that the Horowitzes knew ZLF was trying to serve them but were purposely evading service, ZLF filed a motion to serve the Horowitzes by alternative means, which was granted by the circuit court on September 25, 2014. Consequently, the summons, complaint, and motion for summary judgment were served upon the Horowitzes by posting a copy of the documents on the front door of their home on October 3, 2014, and by mailing the documents to their home address by first-class mail, postmarked October 7, 2014.[5] After obtaining and serving several subpoenas for depositions *duces tecum* on October 8, 2014,[6] the Horowitzes responded to ZLF's complaint by filing a motion to dismiss on November 3, 2014 alleging multiple procedural and jurisdictional defects.

[5] The Horowitzes contend that they did not receive the mailed documents until October 20, 2014.

[6] On October 8, 2014, the Horowitzes requested and received non-attorney subpoenas to obtain documents from the Selzer and Bregman firms, neither of which were named as parties in the instant action. Selzer, and Bregman filed objections to the subpoenas and motions for protective orders asserting that the documents sought by the Horowitzes were not relevant to the breach of contract action that was before the court, but was an attempt by the Horowitzes to obtain evidence relevant in the other active state and federal actions brought by and against the Horowitzes. The protective (continued…)

The circuit court conducted a hearing on ZLF's motion for summary judgment on November 25, 2014. Finding no merit to the arguments raised by the Horowitzes, on December 1, 2014, the court filed an opinion and order granting ZLF's motion for summary judgment and an order entering judgment against the Horowitzes in the amount of $62,500 plus interest and costs. The court dismissed the Horowitzes' motion to dismiss as moot.

The Horowitzes then filed a motion to alter or amend the judgment asserting that the circuit court was required to consider the procedural and jurisdictional arguments asserted in their motion to dismiss before granting ZLF's motion for summary judgment on the merits of the case. Only after the court ruled on their preliminary motion to dismiss, the Horowitzes contended, would the clock begin to run on their deadline to file an answer to ZLF's complaint and a response to ZLF's motion for summary judgment. Following a hearing on April 3, 2015, in which the circuit court heard the parties' arguments on the Horowitzes' motion to alter or amend, the court entered an order vacating its rulings of December 1, 2014, and scheduling a hearing on the Horowitzes' motion to dismiss. After a hearing on June 26, 2015, the circuit court denied the Horowitzes' motion to dismiss in a written opinion and order filed on July 13, 2015.

On July 28, 2015, the Horowitzes filed an answer to ZLF's complaint, a counterclaim against ZLF seeking a declaratory judgment, and a response to ZLF's motion for summary judgment. ZLF moved to dismiss the Horowitzes' counterclaim. On August 17, 2015, the Horowitzes filed a motion for summary judgment on their

motions filed by Selzer and Bregman were dismissed as moot when the circuit court granted ZLF's motion for summary judgment.

counterclaim, to which ZLF responded on August 24, 2015. The circuit court conducted a hearing on all of the parties' outstanding motions on August 27, 2015.

On September 11, 2015, the circuit court filed orders granting ZLF's motion to dismiss the Horowitzes' counterclaim and ZLF's motion for summary judgment, and denying the Horowitzes' motion for summary judgment. On October 20, 2015, the court entered judgment against the Horowitzes in the amount of $62,500, plus interest. The Horowitzes filed notice of their appeal of the circuit court's judgment on October 27, 2015. On November 19, 2015, the Horowitzes filed a motion to vacate the circuit court's decision, which was denied by the court on January 8, 2016. On February 2, 2016, the Horowitzes filed notice of their appeal of the circuit court's denial of their motion to vacate. The Horowitzes' appeals were consolidated for the convenience of this Court.

DISCUSSION

I. Alternative Service and Personal Jurisdiction

The Horowitzes contend that the circuit court erred by granting ZLF's motion for alternative service because nothing in ZLF's affidavits established that service under Rule 2-121(b) would be "inapplicable or impracticable" as required by the plain language of Rule 2-121(c). The Horowitzes further assert that ZLF offered no proof that the Horowitzes were purposely evading service and point out that they, in fact, offered to accept service via email. The Horowitzes also challenge the sufficiency of the service because the pleadings that were served upon them included what they characterize as multiple irregularities or inaccuracies.

"'It is fundamental that before a court may impose upon a defendant a personal liability or obligation in favor of the plaintiff or may extinguish a personal right of the defendant it must have first obtained jurisdiction over the person of the defendant.'" *Flanagan v. Dep't of Human Res.*, 412 Md. 616, 623–24 (2010) (quoting *Lohman v. Lohman*, 331 Md. 113, 125 (1993)). A court obtains *in personam* jurisdiction over a defendant when that defendant is "'notified of the proceedings by proper summons.'" *Id.* at 624 (quoting *Lohman*, 331 Md. at 130). "[T]he court has no jurisdiction over [a defendant] until such service is properly accomplished," or until service "'is waived by a voluntary appearance by the defendant, either personally or through a duly authorized attorney.'" *Id.* A party's failure to comply with the Maryland Rules governing service of process "constitutes a jurisdictional defect that prevents a court from exercising personal jurisdiction over the defendant." *Id.* (citing *Lohman*, 331 Md. at 130).

Maryland Rule 2–121(a) authorizes service of process "by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it," or "by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail requesting: 'Restricted Delivery—show to whom, date, address of delivery.'" Md. Rule 2–121(a). In situations where "proof is made by affidavit that a defendant has acted to evade service," Rule 2–121(b) provides that "the court may order that service be made by mailing a copy of the summons, complaint, and all other papers filed with it to the defendant at the defendant's last known residence and delivering a copy of each to a person of suitable age and discretion at the place of business of the defendant." If "good faith efforts to serve the defendant . . . have not succeeded" and

service pursuant to 2-121(b) is "inapplicable or impracticable," "the court may order any other means of service that it deems appropriate in the circumstances and reasonably calculated to give actual notice." Md. Rule 2–121(c).

We utilize a *de novo* standard of review when considering a trial court's decision to allow alternative service under Md. Rule 2–121(c). *See Pickett v. Sears, Roebuck & Company*, 365 Md. 67, 77 (2001) (noting that questions of jurisdiction require the court to interpret and apply the applicable rules, and that the accuracy of the court's determinations in such cases are considered as questions of law (citing *Calomiris v. Woods*, 353 Md. 425, 434 (1999))).

In this case, private process servers unsuccessfully attempted to serve the Horowitzes at their home eleven times between July 4, 2014 and July 22, 2014, and once at a hearing in the Montgomery County Circuit Court on July 25, 2014. On every occasion when the process servers attempted to serve the Horowitzes at their home, there were multiple cars in the driveway. Most times, there were lights on in the house and a dog could be heard barking inside. On several occasions the process servers actually heard or saw people inside the house, but no one would answer the door. The process servers left notes including their contact information on the Horowitzes' front door on several attempts, which were always removed from the door before their next visit, but never received any calls or messages from the Horowitzes. The process servers also called the Horowitzes' home phone number and left messages requesting that the Horowitzes contact them, but again received no response.

Phillip Zippin of ZLF also personally contacted, John Lopatto III, the attorney who had represented the Horowitzes at the hearing before Judge Rubin on ZLF's motion to vacate the stipulation of dismissal and who was then actively representing the Horowitzes in their ongoing action against Bregman and Selzer, to see if he would accept service of this suit. Lopatto averred, however, that he had not been retained by the Horowitzes in relation to ZLF's action to collect what they were owed under the terms of the settlement agreement, and so he was not authorized to accept service of process on the Horowitzes' behalf.

In an email from Robert Horowitz to Phillip Zipin on July 8, 2014, Horowitz indicated he understood that ZLF was attempting to serve the Horowitzes in this action. Horowitz offered to accept service via email, but only if ZLF would agree and comply with several conditions, including that ZLF provide a complete, unredacted copy of their malpractice policy from CNA Insurance and a statement indicating ZLF's belief that the parties' settlement agreement was legal, including an explanation of the steps ZLF took to confirm the agreement's legality before and after receiving the Horowitzes' opposition to ZLF's motion to vacate the stipulation of dismissal in the underlying case.[7] Thus, the

[7] Previously, the Horowitzes had unsuccessfully attempted to obtain a copy of ZLF's malpractice insurance policy by serving subpoenas on both ZLF and CNA in the Horowitzes' case against Bregman and Selzer. The terms of the ZLF's insurance policy and the legality of the terms of the settlement agreement were material issues in the Horowitzes' ongoing litigation against Bregman, Selzer, and in an action the Horowitzes subsequently filed against Bregman, Selzer, Eccleston and CNA in the federal district court.

record demonstrates that the Horowitzes knew that ZLF was trying to serve them.[8]

On August 6, 2014, ZLF filed a motion for service by alternative means alleging that although the Horowitzes had knowledge that ZLF was trying to serve them, they had evaded service by refusing to answer their front door or to respond to phone and written messages requesting they call the process server. In light of ZLF's good faith efforts to serve the Horowitzes, the circuit court granted ZLF's motion for alternative service on September 25, 2014 ordering that the documents were to be served upon the Horowitzes by posting at their home and by mailing a copy of the documents to their home via first-class mail. Subsequently, the summons, complaint, and motion for summary judgment were served upon the Horowitzes by posting a copy of the documents on the front door of the Horowitzes' home on October 3, 2014. The documents were also mailed to the Horowitzes by first-class mail, postmarked October 7, 2014. Affidavits from ZLF's process server indicate that service was accomplished in accordance with the circuit court's order.

We are persuaded that the information contained in ZLF's motion for alternative service and the attached affidavits from the private process servers detailing their efforts to personally serve the Horowitzes in conjunction with ZLF's averments indicating that the Horowitzes knew that ZLF was trying to serve them were sufficient to support the circuit court's decision to allow ZLF to serve the Horowitzes by alternative means. We acknowledge that neither the process servers' affidavits or the circuit court's order

[8] While knowledge, standing alone, is not sufficient to prove evasion, it is at least evidence that a party was forewarned and, therefore, had an opportunity to evade.

expressly state that service by first-class mail and delivery to a person of suitable age and responsibility at the Horowitzes' respective places of business would be "inapplicable or impracticable," as provided in Md. Rule 2-121(b). We conclude, however, that a showing of impracticability was made in this case where the process servers made twelve good-faith efforts to personally serve the Horowitzes, who knew ZLF was trying to serve them, but who refused to accept service unless ZLF made certain concessions. *See Pickett*, 365 Md. at 72-73, 83-84 (affirming court's order granting motion for alternative service by "nail and mail" where five good faith efforts had been made to personally serve the defendant and there had also been two unsuccessful efforts at service by certified mail, restricted delivery).[9]

We further conclude that "nail and mail" service was a reasonable method of assuring that the Horowitzes were adequately informed of ZLF's claims against them in a timely manner. *See id*. at 85 (concluding that "nail and mail" service was constitutionally adequate method of providing notice of the filing of a lawsuit). Indeed, the Horowitzes do not dispute that they received the copies of the complaint, summons, and motion for

[9] We note that in *Pickett*, despite a very detailed recitation of the facts, there were no additional facts or discussion included in the opinion that demonstrated why the Court concluded that service in accordance with Md. Rule 3-121(b) would have been "inapplicable or impracticable." The Court merely states, "The record shows that Sears made good faith attempts to personally serve Pickett pursuant to the requirements of Rule 3-121(a) and offered proof of its efforts and of the impractical nature of attempting service under Rule 3-121(b) given the circumstances of this case." *Picket*, 365 Md. at 83.

summary judgment that were posted to the front door of their home on October 3, 2014.[10] Thus, the alternative service ordered by the circuit court was successful in informing the Horowitzes of the claims against them.

Discerning no error in the circuit court's decision to grant ZLF's motion for alternative service, we conclude that ZLF's service on the Horowitzes was valid and the circuit court obtained personal jurisdiction over the Horowitzes in this action.

II. The Denial of The Horowitzes' Motion to Dismiss ZLF's Complaint

After the Horowitzes failed to pay $65,000 to ZLF, ZLF first sought to enforce the terms of the settlement agreement by moving to vacate the stipulation of dismissal that had been entered by the parties and to reopen the underlying case. ZLF filed a motion to that effect on January 27, 2014.[11] Because the parties had signed a confidentiality agreement to protect their negotiations and the terms of their settlement agreement from the public,

[10] In the circuit court, the Horowitzes challenged the legitimacy of service based on the fact that the copy of the complaint that was posted to their home was not signed by ZLF's attorney. The circuit court discounted this allegation, noting that Md. Rule 1-311's requirement that pleadings be filed only applies to those pleadings filed with the court. In any event, the failure to sign pleadings does not render them null and void, as the failure to sign is an irregularity that can be easily remedied. *See Eastern Air Lines v. Phoenix*, 239 Md. 195, 206 (1965) ("the absence of a signature to a pleading does not make it void or a nullity but only irregular").

[11] At the time the Horowitzes' breach became patent, more than thirty days had passed since the parties' joint stipulation of dismissal had been filed by the court. Therefore, the dismissal had become an enrolled judgment and the circuit court's jurisdiction over the case had terminated. *See Claibourne v. Willis*, 347 Md. 684, 691 (1997) (confirming that voluntary dismissal with prejudice signed by both parties and entered onto the docket by the clerk of circuit court had the same effect as a final judgment entered by order of court, even though the court had not issued a final order (citing Md. Rules 2-506 and 2-535)).

ZLF filed a concurrent motion to seal portions of the record. ZLF's motion to seal the record was granted by the court on March 4, 2014. The circuit court conducted a hearing on ZLF's motion to reopen the proceedings to enforce the settlement agreement on June 13, 2014. Following the hearing, the court denied ZLF's motion. ZLF subsequently filed the instant breach of contract action to enforce the terms of the settlement agreement on June 19, 2014.

On appeal, the Horowitzes assert that the circuit court erred by denying their motion to dismiss ZLF's complaint. The Horowitzes suggest that ZLF's complaint in this case was barred by the doctrine of *res judicata*. The Horowitzes contend that ZLF previously petitioned the circuit court for the same relief in the underlying case, ***i.e.*** enforcement of the terms of the settlement agreement, and that relief was denied. ZLF is barred, the Horowitzes assert, from relitigating the same issues in this new case.

When we review a circuit court's denial of a motion to dismiss, we "must determine whether the court was 'legally correct.' We accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the nonmoving party." *Cochran v. Griffith Energy Servs., Inc.,* 426 Md. 134, 139 (2012) (internal citations omitted). Because the application of *res judicata* is a question of law, our review will be without deference to the circuit court's legal conclusions.

The doctrine of *res judicata* "prevents parties from re-litigating issues that have already been decided by the courts." *Boland v. Boland*, 423 Md. 296, 362 (2011). In Maryland, in order to demonstrate that a claim should be barred as *res judicata*, the following elements must be present:

> (1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and, (3) that there has been a final judgment on the merits.

Anne Arundel Cnty. Bd. of Educ. v. Norville, 390 Md. 93, 107 (2005). Because the record below was sealed, we are not able to determine whether the circuit court rendered a decision on the merits of ZLF's claims for relief.[12]

The only evidence before us is the docket entries in the underlying case, which indicate only that the court denied ZLF's motion to reopen the case to enforce the settlement agreement. A court's denial of a motion, particularly a motion to reopen that is filed more than thirty days after the case was dismissed, could have been based on several reasons unrelated to the merits of the case.[13] Because there is no evidence in the scant record before us that reflects the specific findings of the circuit court, this Court cannot conclude that ZLF's claims are barred by *res judicata*.

[12] Though the Horowitzes requested that the circuit court take notice of the record in the underlying case, they did not submit any motion to unseal the record until August 17, 2015, more than ten months after they were served in this case.

[13] For example, the court could have denied ZLF's motion to reopen because the court no longer had jurisdiction over the case and there was insufficient proof that the Horowitzes had acted fraudulently to induce ZLF to sign the settlement agreement and dismiss its claims. *See* Md. Code (1977, 2013 Repl. Vol.) CJP §6-408 (providing that after thirty days, "the court has revisory power and control over the judgment only in case of fraud, mistake, irregularity, or failure of an employee of the court or of the clerk's office to perform a duty required by statute or rule."); Md. Rule 2-535 (same).

III. The Dismissal of the Horowitzes' Counterclaim and The Denial of Their Motion for Summary Judgment

The Horowitzes contend that the circuit court erred in dismissing their counterclaim for declaratory judgment and denying their motion for summary judgment on those claims. The Horowitzes have consistently maintained that the payment provisions of the settlement agreement violate the laws of Maryland.

In an unpublished opinion filed on September 27, 2016, this Court considered the Horowitzes' claims regarding the legality of the settlement agreement. *Horowitz v. Selzer, Gurvitch, Rabin, Wertheimer, Polott & Obecny, P.C.*, Case No. 2459, September Term 2014, slip op. at *13 (filed Sept. 27, 2016). In that opinion, Judge Leahy, for this Court, opined:

> Regarding [the Horowitzes'] claims that the November 2013 Settlement Agreement was illegal, we agree with the circuit court. [The Horowitzes] cannot accept the full benefit of that agreement while simultaneously relying on its provisions (1) to fail to honor their own obligations under the agreement and (2) to justify non-payment of the legal fees incurred. Indeed, "if a party, knowing the facts, voluntarily accepts the benefits accruing to [it] under a judgment, order, or decree, such acceptance operates as a waiver of any errors in the judgment, order, or decree and estops that party from maintaining an appeal therefrom." *Fry v. Coyote Portfolio, LLC*, 128 Md. App. 607, 616 (1999). Because [the Horowitzes] have accepted the full benefit of the Settlement Agreement, they have recognized the validity of the agreement and waived their arguments based on alleged illegality.

Id. We agree that by retaining the $125,000 they received from ZLF's insurer, the Horowitzes have waived any argument premised upon the illegality of the settlement agreement. We conclude, therefore, that the circuit court did not err in dismissing the

Horowitzes' counterclaim or in denying the Horowitzes' motion for summary judgment. In light of our decision that the Horowitzes' illegality arguments are waived, we need not consider any further whether the terms of the settlement agreement between the parties violate the laws of Maryland.

IV. The Granting of ZLF's Motion for Summary Judgment and The Denial of The Horowitzes' Motion to Vacate

The parties do not dispute that they voluntarily signed the relevant settlement agreement on November 26, 2013. Paragraph 18 of the settlement agreement contains the disputed provision at issue in this case:

> 18. Payment. As consideration for the terms and conditions set forth in this Settlement Agreement, the PARTIES agree that ROBERT AND CATHY HOROWITZ will be paid $125,000.00 by check issued by CNA Insurance Co. on behalf of THE ZIPIN LAW FIRM, LLC; and that THE ZIPIN LAW FIRM, LLC will be paid $62,500.00 by ROBERT AND CATHY HOROWITZ, said payment to be made by check no later than 15 business days following receipt and deposit of CNA's $125,000.00 check by ROBERT AND CATHY HOROWITZ.

Further, the parties do not dispute that the Horowitzes received a check for $125,000 from ZLF's insurer and deposited it into their bank account on December 16, 2013, or that the Horowitzes, thereafter, failed to remit any payment to ZLF as required by the express language of their settlement agreement.

"Summary judgment is appropriate where 'there is no genuine dispute as to any material fact' and 'the party in whose favor judgment is entered is entitled to judgment as a matter of law.'" *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 294 (2007) (quoting Md. Rule 2-501(f)). The reviewing court is obliged to conduct an independent

review of the record to determine if there is a dispute of material fact. *Id*. (citing *Wells Fargo Home Mortgage, Inc. v. Neal*, 398 Md. 705, 714 (2007)) (additional citations omitted). Because the reviewing court "has the same information from the record and decides the same issues of law as the trial court, its review of an order granting summary judgment is *de novo*." *ABC Imaging of Wash., Inc. v. Travelers Indem. Co. of Am*., 150 Md. App. 390, 394 (2003) (internal quotation marks omitted) (citations omitted).

In the circuit court, the Horowitzes' motion for summary judgment was premised on the same claims of procedural insufficiency and illegality of the terms of the settlement agreement that we have already addressed above. Indeed, all questions of procedure and the legality of the agreement had been resolved. Accordingly, there remained no disputed issues of material fact at issue in this case. Because the Horowitzes breached the express terms of the settlement agreement, ZLF was entitled to judgment as a matter of law. We conclude, therefore, that the circuit court did not err in granting ZLF's motion for summary judgment.

Finally, we consider the circuit court's denial of the Horowitzes' motion to vacate the judgment entered against them. The Horowitzes' motion to vacate was based solely upon the fact that the circuit court had failed to expressly rule on their motion to unseal the record in the underlying case. The Horowitzes contend that granting ZLF's motion for summary judgment prior to adjudicating the Horowitzes' motion to unseal the records in the underlying case constituted an "irregularity" as that term is used in Md. Rule 2-535, which allows the court to exercise its revisory power over a judgment "[o]n motion of any party filed at any time . . . in case of fraud, mistake, or irregularity." "We review the circuit

court's decision to deny a request to revise its final judgment under the abuse of discretion standard." *Pelletier v. Burson*, 213 Md. App. 284, 289–90 (2013) (quoting *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008)).

The Horowitzes contend that they needed to access documents in the sealed record of the underlying action in order to prove their claims and defenses in this case.[14] The docket in this case indicates that the Horowitzes' motion to unseal records, filed on August 17, 2015, was part of a larger consolidated motion wherein the Horowitzes also sought leave to file a motion for summary judgment and to reduce the time for ZLF's response. Though it was not specifically addressed as such, the Horowitzes' motion to unseal records was denied by the circuit court on September 11, 2015, as part of the court's opinion and order denying the Horowitzes' motion for summary judgment. The Horowitzes' motion to vacate was not filed until more than two months later, on November 19, 2015.

Inasmuch as the circuit court had already determined that there is no merit to the Horowitzes' request for a declaratory judgment, we perceive no "irregularity" in the court denying the Horowitzes' motion to unseal the court records in an unrelated case. Their claims having been denied, there was no reason to allow additional discovery and further

[14] We note, however, that the Horowitzes' motion to unseal the records of the underlying case, was not filed until more than ten months after the Horowitzes were served in this case. Presumably, had these records been truly vital to the Horowitzes' claims or defenses, they could have been actively sought prior to the dispositive motions stage of the litigation.

proceedings. Therefore, we conclude that the circuit court did not err by denying the Horowitzes' motion to vacate.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.