Circuit Court for Prince George's County
Case No. CAL14-22596

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2340

September Term, 2016

GLADYS A. ANOKAM, ET AL.

v.

DYCK-O'NEAL, INC.

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 9, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2007, Gladys Anokam and Fidelis Anokam, appellants, executed a promissory note ("note") secured by a deed of trust encumbering real property at 3202 Varnum Street, Mount Rainier, Maryland 20712 ("the property"), promising to repay Bank of America, N.A. ("BoA") $230,137. The Anokams subsequently defaulted on the note, and the property was sold at a public foreclosure auction, which sale was ratified by order of the Circuit Court for Prince George's County on July 12, 2011. The Anokams did not note an appeal or challenge the foreclosure proceedings.

The sale of the property left a deficiency owing on the note in the amount of $95,075.13. On August 22, 2014, Dyck-O'Neal, Inc. ("DOI" or appellee), the successor-in-interest to BoA, filed a complaint for breach of contract, alleging that the Anokams owed them the deficiency amount. Following a hearing on July 31, 2015, the circuit court granted DOI's motion for summary judgment and entered judgment in the amount of the deficiency against the Anokams. The Anokams did not appeal this order.

On November 15, 2016, however, the Anokams filed a "Motion to Vacate Judgment based on the Statute of Limitations and Lack of Jurisdiction and Request for Hearing," ("motion to vacate"), which the court treated as a motion pursuant to Rule 2-535(b).[1] On December 16, 2016, the court denied the Anokams' motion, and they appealed. In their brief, the Anokams present six questions for review, from which we discern one: did the

[1] This rule provides: "On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity."

court abuse its discretion in denying the motion to vacate? For the reasons stated below, we affirm.

We review a court's decision as to the exercise of its revisory powers for abuse of discretion. *See Pelletier v. Burson*, 213 Md. App. 284, 289 (2013). A court abuses its discretion where the decision "'is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Smith v. State*, 232 Md. App. 583, 599 (2017) (quoting *Norwood v. State*, 222 Md. App. 620, 643 (2015)). Stated another way, an abuse of discretion occurs "'where no reasonable person would take the view adopted by the [trial] court[] . . . or when the court acts without reference to any guiding rules or principles.'" *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 418 (2007) (quoting *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005)).

A court will only exercise its revisory powers pursuant to Rule 2-535(b) in cases of fraud, mistake, or irregularity. *See Thacker v. Hale*, 146 Md. App. 203, 216-17 (2002). This Court has noted that in order to demonstrate fraud pursuant to Rule 2-535(b), a moving party must show extrinsic fraud, rather than intrinsic fraud. *See Pelletier*, 213 Md. App. at 290. "'Fraud is extrinsic when it actually prevents an adversarial trial but is intrinsic when it is employed during the course of the hearing which provides the forum for the truth to appear, albeit, the truth was distorted by the complained of fraud.'" *Id.* at 290-91 (quoting *Jones v. Rosenberg*, 178 Md. App. 54, 73 (2008)). A mistake "'is limited to a jurisdictional mistake.'" *Mercy Med. Ctr., Inc. v. United Healthcare of the Mid-Atl., Inc.*, 149 Md. App. 336, 375 (2003) (quoting *Chapman v. Kamara*, 356 Md. 426, 436 (1999)). Lastly, an "'irregularity is the doing or not doing of that, in the conduct of a suit at law, which,

conformable to the practice of the court, ought or ought not to be done.'" *Pelletier*, 213 Md. App. at 290 (quoting *Davis v. Attorney Gen.*, 187 Md. App. 110, 125 (2009)). Stated differently, "'if the judgment under attack was entered in conformity with the practices and procedures commonly used by the court that entered it, there is no irregularity justifying the exercise of revisory powers[.]'" *Id.* (quoting *De Arriz v. Klingler-De Arriz*, 179 Md. App. 458, 469 (2008)).

The Anokams allege that there was fraud, mistake, and irregularity in the entering of the July 31, 2015 judgment. They contend that DOI's breach of contract suit was barred by the three-year statute of limitations prescribed for deficiency decrees in Rule 14-216(b).[2] Accordingly, they maintain that the circuit court lacked jurisdiction to enter the judgment, meaning that there was a mistake sufficient for the court to exercise its revisory powers. Furthermore, they allege, DOI committed fraud because their breach of contract suit was, in reality, a motion for a deficiency decree. Lastly, the Anokams contend that the court committed an irregularity by entertaining a case that had "expired."

We perceive no abuse of discretion in the court's denial of the Anokams' motion to vacate. The Anokams' overarching argument is that DOI was limited to Rule 14-216(b)'s three-year statute of limitations because they sought a judgment equal to the deficiency owed following the foreclosure sale. Assuming *arguendo* that the Anokams can now assert

[2] This rule provides, in part: "At any time within three years after the final ratification of the auditor's report, a secured party or any appropriate party in interest **may** file a motion for a deficiency judgment if the proceeds of the sale, after deducting all costs and expenses allowed by the court, are insufficient to satisfy the debt and accrued interest." (Emphasis added).

the defense of statute of limitations when they failed to do so in the original lawsuit, the Anokams are incorrect. This Court has held that creditors may elect to seek a deficiency judgment pursuant to an equitable theory of recovery, may file a breach of contract action, or may do both. *Wellington Co., Inc. Profit Sharing Plan & Trust v. Shakiba*, 180 Md. App. 576, 591-94 (2008). In interpreting the predecessor rule to Rule 14-216(b), we held that the rule "did not abrogate common law remedies that already existed, such as the power of the obligee of a debt instrument to bring an action at law against the obligor to recover money damages." *Id.* at 597. Rather, the deficiency decree in a suit at equity "merely placed another weapon in a creditor's arsenal[.]" *Id.* DOI could, therefore, pursue a deficiency decree or file a suit at law for a breach of contract.

Accordingly, DOI was not limited to seeking a deficiency decree at equity, and we perceive no fraud, mistake, or irregularity in the court's July 31, 2015 judgment in favor of DOI.[3]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

[3] The Anokams insist that the twelve-year statute of limitations applicable to promissory notes under seal, contracts under seal, and specialties does not apply to DOI's suit because they should be limited to Rule 14-216(b)'s three-year statute of limitations. See Maryland Code (1973, 2013 Repl. Vol., 2017 Suppl.), Courts & Judicial Proceedings Article ("CJP"), § 5-102(a). As we have explained, the Anokams are incorrect.