

Circuit Court for Anne Arundel County  
Case No. C-02-CV-14-000104

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 377

September Term, 2015

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MT HOLDING CORP. I, ET AL.

v.

PNC BANK, NATIONAL ASSOCIATION

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Woodward, C.J.,  
Graeff,  
Thieme, Raymond G., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Woodward, C.J.

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Filed: August 20, 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.

On December 29, 2014, the Circuit Court for Anne Arundel County entered confessed judgments against appellants, MT Holding Corp. I, MT Holding Corp. II (collectively “Holding Corps”), Montgomery Therapy, LLC (“Montgomery”), Paul M. Whittaker, and Jill A. Pellicoro for overdue loans due to appellee, PNC Bank, National Association (“PNC Bank”). At the time that PNC Bank filed its Complaint for Confessed Judgment, Holding Corps and Montgomery were forfeited entities. Appellants filed a Motion to Vacate the Confessed Judgment, which was denied by the trial court as untimely.

On appeal, appellants present three questions for our review, which we have rephrased as follows:<sup>1</sup>

1. Did the trial court err by denying appellants’ motion to vacate the confessed judgments where the court ruled that the motion was not timely filed pursuant to Maryland Rules?
2. Did PNC Bank waive its argument that appellants lacked standing to file the instant appeal by failing to raise it in the circuit court?

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<sup>1</sup> Appellants’ questions presented in their brief are as follows:

1. Did the circuit court commit legal error in ruling that the [a]ppellants had not filed their motion to vacate the confessed judgments timely pursuant to Maryland Rules 2-611(d) and 2-321?
2. Did the [a]ppellee waive its argument that the [a]ppellants lacked standing to file the instant appeal by failing to raise it in the circuit court?
3. If the Court decides to entertain the issue of standing under Rule 8-131(a), did [a]ppellant Paul M. Whittaker have standing as a director-trustee of the corporations to defend this litigation and seek to file a counter-claim under Corporations and Associations Article, Section 3-515(c), as well as on behalf of the LLC under Corporations and Associations Article, Section 4A-920?

3. Do appellants have standing to file the instant appeal?

We answer yes to questions one and three, and as a result, question two is moot. Therefore, for the reasons set forth below, we reverse the judgment of the circuit court and remand the case for further proceedings.

### **BACKGROUND**

Montgomery was formed as a limited liability company under the laws of Maryland on June 28, 2001. Shortly thereafter on July 16, 2001, Holding Corps were formed as separate Maryland corporations. Whittaker was the sole shareholder and sole director of Holding Corps and the sole member of Montgomery. In 2007, Holding Corps entered into two commercial loan transactions with Mercantile Potomac Bank, a Division of Mercantile-Safe Deposit and Trust Company (“Mercantile Potomac”) whereby Holding Corps borrowed \$550,000 (“Loan One”) and later borrowed \$75,000 (“Loan Two”). Holding Corps executed a U.S. Small Business Administration Note in the amount of \$550,000 (“Note One”) and a Promissory Note in the amount of \$75,000 (“Note Two”), both payable to Mercantile Potomac. Montgomery, Whittaker, and Pellicoro each guaranteed Note One, and Whittaker and Pellicoro guaranteed Note Two.

On October 1, 2012, Holding Corps’ charters and Montgomery’s articles of organization were forfeited because of the use of a bad check to pay the 2010 personal property filing fee. On December 6, 2012, PNC Bank, successor in interest to Mercantile Potomac, sent a notice to Holding Corps, with copies to Montgomery, Whittaker, and Pellicoro, that declared a default, accelerated Loan One and Loan Two, and demanded immediate payment. On March 26, 2014, PNC Bank sent a renewed notice of default,

acceleration of the loans, and demand for immediate payment to Holding Corps, with copies to Montgomery, Whittaker, and Pellicoro.

On October 21, 2014, PNC Bank filed a Complaint for Confessed Judgment against (1) “MT HOLDING CORP. I A Forfeited Maryland Corporation[,]” “*Serve*: Paul M. Whittaker, President and Trustee for the Assets of MT Holding Corp. I[;]” (2) “MT HOLDING CORP. II A Forfeited Maryland Corporation[,]” “*Serve*: Paul M. Whittaker, President and Trustee for the Assets of MT Holding Corp. II[;]” (3) Montgomery “A Forfeited Maryland Limited Liability Company[,]” “*Serve*: MT Holding Corp. I and MT Holding Corp. II, Members c/o Paul M. Whittaker, Trustee for the Assets of MT Holding Corp. I and II[;]” (4) Whittaker; and (5) Pellicoro. Count I, regarding Loan One, sought judgments by confession against Holding Corps, Montgomery, Whittaker, and Pellicoro, jointly and severally, in the total amount of \$227,927.98. Count II, regarding Loan Two, sought judgments by confession against Holding Corps, Whittaker, and Pellicoro, jointly and severally, in the total amount of \$25,979.83.

On December 29, 2014, the circuit court entered a Confessed Judgment Order against appellants, and a Notice of Confessed Judgment was issued by the clerk of the court the same day. The court entered judgment for Counts I and II combined against Holding Corps, Whittaker, and Pellicoro, “jointly and severally, in the total amount of \$251,033.06.” The court entered judgment for Count I against Montgomery in “the total amount of \$227,927.98.” Appellants were personally served on February 16, 2015.

On March 18, 2015, “Whittaker, individually and as president and trustee of forfeited entities [Holding Corps], and Montgomery [ ], and [ ] Pellicoro” filed a Motion

to Vacate Confessed Judgment, as well as a Request for Hearing on the motion. PNC Bank filed an opposition to the motion to vacate on April 2, 2015. The circuit court did not hold a hearing on the motion to vacate. Instead, in an order entered on April 8, 2015, the court denied the motion to vacate, because appellants “did not file a timely Motion pursuant to Md. Rules 2-611(d) and 2-321.”

On May 7, 2015, appellants filed a timely notice of appeal to this Court.

## **DISCUSSION**

### **I. Order Denying Motion to Vacate Confessed Judgment**

It is undisputed that appellants were all served with the Notice of Confessed Judgment and related papers on February 16, 2015, and appellants filed the Motion to Vacate Confessed Judgment on March 18, 2015.

Appellants contend that the circuit court erred when it denied the motion to vacate without a hearing on the ground that the motion was untimely. Appellants claim that the court improperly calculated the time period within which the motion was required to be filed. PNC Bank did not respond to appellants’ argument in its brief and conceded at oral argument before this Court that appellants timely filed the motion to vacate. Upon our own review of the record, we agree that appellants’ motion to vacate was timely filed.

The determination of whether appellants’ motion to vacate was timely filed is an issue of law, reviewed *de novo* on appeal. *Griffin v. Lindsey*, 444 Md. 278, 285 (2015). “[W]here the order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court’s conclusions are ‘legally correct’ under a *de novo* standard of review.” *Walter v. Gunter*, 367 Md. 386, 392 (2002).

Under Maryland Rule 2-611(d), a “defendant may move to open, modify, or vacate the [confessed] judgment within the time prescribed for answering by sections (a) and (b) of Rule 2-231.” Rule 2-321(a) states that “[a] party shall file an answer to an original complaint, counterclaim, cross-claim, or third-party claim within 30 days after being served[.]” Timing under the Maryland Rules is governed by Rule 1-203(a) and provides the formula for computing the time after an act, event or default as follows:

In computing any period of time prescribed by these rules, by rule or order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. If the period of time allowed is more than seven days, intermediate Saturdays, Sundays, and holidays are counted . . . . The last day of the period so computed is included[.]

Applying these principles to appellants’ motion to vacate, the circuit court erred in concluding that the motion was untimely. Appellants had thirty days to file the motion to vacate pursuant to Rules 2-611 and 2-321. Appellants were served with the Notice of Confessed Judgment on February 16, 2015. Rule 1-203(a) dictates that appellants’ time to respond did not begin until the next day, February 17, 2015. Consequently, appellants had thirty-days to respond to the Notice, beginning on February 17, 2015. That year, the month of February had twenty-eight days. The number of days counting from February 17, 2015 to March 18, 2015 is exactly thirty. Because appellants filed their motion to vacate on March 18, 2015, the motion was timely. Therefore, the circuit court improperly denied appellants’ motion to vacate as untimely filed.

Additionally, appellants properly requested a hearing under Maryland Rule 2-311(f)

on the Motion to Vacate Confessed Judgment.<sup>2</sup> This Court has held that Rule 2-311(f) requires the circuit court to grant a request for a hearing on a motion to vacate a confessed judgment. *See EMI Excavation, Inc. v. Citizens Bank*, 91 Md. App. 340, 346 (“Rule 2-311(f) requires the court to grant a request for a hearing on a motion to vacate a confessed judgment.”), *cert. denied*, 327 Md. 523 (1992). Accordingly, the circuit court erred by denying appellants’ motion to vacate without holding a hearing.

## II. Standing

In the instant appeal, PNC filed a Motion to Dismiss Appeal, arguing that Holding Corps and Montgomery lack standing to appeal.<sup>3</sup> The parties also raised the issue of Holding Corps’ and Montgomery’s standing in their respective briefs. At oral argument before this Court, PNC Bank conceded that Whittaker and Pellicoro, as individual

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<sup>2</sup> Maryland Rule 2-311(f) states:

Hearing — Other motions. A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading “Request for Hearing.” The title of the motion or response shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but **the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.**

(Emphasis added).

<sup>3</sup> PNC Bank also moved to dismiss the appeal of all appellants because of their failure to timely file the Civil Appeal Information Report. We exercise our discretion and deny that motion to dismiss. *See* Md. Rule 8-602(c)(2).

judgment debtors, have standing to pursue the instant appeal. Therefore, the issue of standing involves only Holding Corps and Montgomery.

*A. Holding Corps*

PNC Bank argues that Holding Corps lacked standing to appeal the confessed judgments entered against them, because their charters had been forfeited. Specifically, PNC Bank claims that a forfeited corporation loses its power to sue, which includes the power to prosecute an appeal of a circuit court judgment against it. Holding Corps respond that Whittaker, as director-trustee of Holding Corps, had the authority to pursue the instant appeal under § 3-515 of the Corporations and Associations Article of the Maryland Code. Md. Code (1975, 2014 Repl. Vol.), § 3-515 of the Corporations and Associations Article (“CA”), *amended by* Acts of 2017, ch. 674, § 2 (effective Oct. 1, 2017). We agree with Holding Corps and shall explain.

In Maryland, a properly formed corporation enjoys a multitude of powers, including the power to “[s]ue, be sued, complain, and defend in all courts.” CA § 2-103(2). In addition to powers a corporation is granted upon proper formation, it also has various obligations including, paying all pertinent taxes and filing an annual report. *See* CA § 3-503. A corporation’s failure to pay applicable taxes, pay unemployment insurance, pay unemployment reimbursement, or file an annual report, CA § 3-503(a)-(c), will cause its charter to be “repealed, annulled, and forfeited, and the powers conferred by law on the corporations are inoperative, null, and void as of the date of the proclamation[.]” CA § 3-503(d). One of the powers a corporation loses upon forfeiture is the power to sue. *See Stein v. Smith*, 358 Md. 670, 675 (1999). A lawsuit filed by a forfeited corporation is a



nullity because the corporation is a nonentity. *See id.* at 674.

Prior to the amendments enacted in 2017,<sup>4</sup> CA § 3-515, provided that, “[w]hen the charter of a Maryland corporation has been forfeited, until a court appoints a receiver, the directors of the corporation become the trustees of its assets for purposes of liquidation.” CA § 3-515(a). Section 3-515 went on to set forth the powers of a director-trustee upon the forfeiture of a corporation’s charter:

(b) *General powers.* — The director-trustees are vested in their capacity as trustees with full title to all the assets of the corporation. They shall:

(1) Collect and distribute the assets, applying them to the payment, satisfaction, and discharge of existing debts and obligations of the corporation, including necessary expenses of liquidation; and

(2) Distribute the remaining assets among the stockholders.

(c) *Specific powers.* — The director-trustees may:

(1) Carry out the contracts of the corporation;

(2) Sell all or any part of the assets of the corporation at public or private sale;

**(3) Sue or be sued in their own names as trustees or in the name of the corporation; and**

(4) Do all other acts consistent with law and the charter of the corporation necessary or proper to liquidate the corporation and wind up its affairs.

(Emphasis added). Based on the plain language of the statute, once a corporation’s charter is forfeited, “for purposes of liquidation[,]” the director-trustee may sue or be sued in the corporation’s name, or the director-trustee may sue or be sued in the trustee’s name. *See* CA § 3-515(c)(3).

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<sup>4</sup> The 2017 amendments to CA § 3-515 dealt primarily with clarifying the standard of conduct for directors of corporations with forfeited charters. Md. Code (1975, 2016 Repl. Vol., 2017 Supp.), CA § 3-515. As a result, the amendments, if applicable to the case *sub judice*, would not change our analysis.

We agree with PNC bank that, as a general rule, upon forfeiture of its charter, a corporation becomes a legal nonentity, and “all powers granted to [a corporation] by law, including the power to sue or be sued, [are] extinguished generally as of and during the forfeiture period.” *Dual Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 163 (2004). PNC Bank, however, overlooks the import of CA § 3-515 to the instant case.

It is undisputed that PNC Bank filed the complaint for confessed judgment when the charters of Holding Corps were forfeited, and thus Holding Corps could not be sued. *See Dual*, 383 Md. at 163. Apparently recognizing such principle of law, PNC Bank sued Holding Corps as forfeited entities *and* effected service on Whittaker as “President and Trustee.”<sup>5</sup> In other words, PNC Bank invoked the provisions of CA § 3-515 in order to sue Holding Corps as forfeited corporations. *See* CA § 3-515(c)(3). Whittaker, as director-trustee, had the power under § 3-515 to “sue or be sued[,]” which included the power to defend against the lawsuit brought by PNC Bank. Whittaker did just that when he filed the Motion to Vacate Confessed Judgment on behalf of Holding Corps as forfeited entities. In its brief to this Court, PNC Bank conceded that “even as forfeited entities, [Holding Corps and Montgomery] were not precluded from moving to vacate the confessed judgment[s].”

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<sup>5</sup> Although Whittaker was served as “President and Trustee” of Holding Corps, he was also the sole director of Holding Corps. *See* State Department of Assessments & Taxation, D06387658, Articles of Amendment (filed on Dec. 10, 2007), <https://egov.maryland.gov/BusinessExpress/EntitySearch/BusinessInformation/D06387658>; State Department of Assessments & Taxation, D06387666, Articles of Amendment (filed on Dec. 10, 2007), <https://egov.maryland.gov/BusinessExpress/EntitySearch/BusinessInformation/D06387666>. We take judicial notice of these State Department of Assessments and Taxation filings. *See Thomas v. Rowhouses, Inc.*, 206 Md. App. 72, 75 n.3 (2012).

. . .” In addition, we agree with Holding Corps that “the power to defend litigation necessarily encompasses the right to seek review by the appellate courts” where a judgment or appealable order adverse to the forfeited corporation has been entered in the trial court. Without the right to appeal from an adverse judgment or appealable order, a director-trustee’s power to defend litigation on behalf of a forfeited corporation would be arbitrarily limited to the trial court. Such limitation could lead to a manifestly unjust result where, as in the case *sub judice*, a clearly erroneous ruling by the trial court would go unreviewed and unrectified by this Court.

PNC Bank, however, cites *Hill Construction v. Sunrise Beach, LLC* in support of its position that Holding Corps had no right to appeal the denial of the Motion to Vacate Confessed Judgment. 180 Md. App. 626 (2007), *cert. denied*, 406 Md. 192 (2008). *Hill* does not support PNC Bank’s position. In that case, Hill Construction, Inc. (“Hill Construction”) sued Sunrise Beach, LLC (“Sunrise Beach”) for breach of contract and breach of fiduciary duty, among other causes of action. *Id.* at 629. During the litigation, Hill Construction’s charter was forfeited for nonpayment of personal property taxes. *Id.* at 630. The circuit court granted Sunrise Beach’s motion to dismiss, holding that Hill Construction’s charter had been forfeited and as a result, Hill Construction lacked standing to maintain the suit. *Id.* at 629. On appeal, this Court affirmed the circuit court, holding that Hill Construction’s notice of appeal had no legal effect. *Id.* at 636. We rejected Hill Construction’s argument that it could maintain an action through the director under CA § 3-515 for liquidation purposes, because Hill Construction failed to amend the complaint and substitute the director-trustee as the plaintiff. *Id.* at 635. Moreover, we explained that,

although a director-trustee may sue or be sued for purposes of liquidation and winding up a corporation, the record in the case demonstrated that Hill Construction was still conducting business. *Id.* at 635-36. Accordingly, we concluded that Hill Construction’s notice of appeal, filed by a forfeited corporation, was a nullity and should be dismissed. *Id.* at 636.

The facts in *Hill* are distinguishable from the case *sub judice* because in *Hill*, the suit was *brought* by a valid corporation that lost its charter during litigation and never substituted the proper party as plaintiff, whereas here, the suit was being *defended* by Whittaker in his role as director-trustee of the forfeited corporations. In pleadings before the trial court and before this Court, Whittaker consistently referred to himself as “President and Trustee” of Holding Corps, as forfeited corporations. By contrast, Hill Construction prosecuted the litigation against Sunrise Beach, including the notice of appeal, as a corporation after the forfeiture of its charter. Because PNC Bank sued Holding Corps as forfeited corporations and Whittaker defended against that lawsuit as director-trustee of the forfeited corporations, we hold that under CA § 3-515 Whittaker had standing to note an appeal on behalf of Holding Corps from the confessed judgments entered against Holding Corps in the circuit court.

Nevertheless, PNC Bank claims that Whittaker does not come within the ambit of CA § 3-515 because Whittaker did not exercise the power granted to him as director-trustee by that section to liquidate and wind-up the affairs of Holding Corps. To the contrary, PNC Bank contends that the record demonstrates that Whittaker was still conducting business

on behalf of Holding Corps.<sup>6</sup> Because there is no evidence that Holding Corps were winding up, PNC Bank concludes that Whittaker cannot be considered a director-trustee under CA § 3-515 and thus lacked standing to file an appeal. We disagree.

As previously stated, because Holding Corps, as forfeited corporations, could not be sued, PNC Bank invoked the provisions of CA § 3-515 to sue Holding Corps. As a director-trustee under CA § 3-515, Whittaker could be sued in the name of Holding Corps and thus defend against PNC Bank’s lawsuit. The issue of whether a director-trustee is exercising the powers granted under CA § 3-515 to liquidate a forfeited corporation and wind-up its affairs can come into play, but not in the manner contemplated by PNC Bank. The case of *Djourabchi v. Self*, 240 F.R.D. 5 (D.D.C. 2006) is instructive. In *Djourabchi*, the plaintiffs sued Harry J. Self, Jr., and Self Construction, Inc. (“Self Construction”), a Maryland corporation, for breach of contract and related claims concerning certain home improvement work performed at the plaintiffs’ residence. *Id.* at 8. The defendants filed a motion to dismiss seeking to release Self from the litigation in his individual capacity. *Id.* at 9. The defendants argued that, because Self was “operating a corporation duly organized under the laws of the State of Maryland[,]” he was protected against personal liability by the laws governing corporations in Maryland and the District of Columbia. *Id.* The plaintiffs responded that Self was not protected from personal liability, because Self Construction had its charter forfeited about seven years earlier. *Id.*

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<sup>6</sup> PNC Bank points to Whittaker’s affidavit, filed in support of appellants’ Motion to Vacate Confessed Judgment, wherein, according to PNC Bank, Whittaker “swore under oath that he [was] looking to ‘strengthen’ and ‘expand’ their businesses – not liquidate assets.”

The District Court denied the motion to dismiss. *Id.* at 10. Applying Maryland law, the court said:

Upon forfeiture, the corporation’s directors act as trustees, Md. Code Ann., Corps. & Ass’n § 3-515(a) (2006), and may “[s]ue or be sued in their own names as trustees or in the name of the corporation[.]” However, trustees are only vested with such powers as are “necessary or proper to liquidate the corporation and wind up its affairs.” A trustee may be a party to a suit under § 3-515(c)(3) only “if there is a ‘rational relationship’ between the suit and a legitimate ‘winding up’ activity of the corporation.”

*Id.* at 9 (citations omitted).

The District Court went on to apply the above principles of law to the facts of the case:

As trustee of Self Construction, Mr. Self may only sue or be sued in his own name on its behalf if the suit is rationally related to winding up Self Construction’s affairs. The pleadings indicate that Mr. Self has not “wound up” Self Construction’s affairs. Rather, he continues to conduct business in the name of his defunct corporation by taking on new business more than five years after the forfeiture of his corporation’s charter.

*Id.* at 10 (citations omitted).

The District Court concluded that Self “lack[ed] capacity as trustee of Self Construction to maintain this suit[.]” and thus could only proceed as a defendant in his individual capacity. *Id.* Accordingly, the court denied the defendants’ motion to dismiss Self as a party in his individual capacity. *Id.* More importantly, the court, *sua sponte*, dismissed Self Construction as a defendant, because “Self Construction does not legally exist.” *Id.* In other words, the court determined that the plaintiffs could not obtain any relief against Self Construction as a forfeited corporation. *Id.*

Returning to the instant case, it is clear that under *Djourabchi*, if Whittaker was not winding-up the affairs of Holding Corps, as claimed by PNC Bank, PNC Bank could not obtain confessed judgments against Holding Corps, because Holding Corps “d[id] not legally exist.” *Id.* Here, PNC Bank (1) filed its confessed judgment lawsuit against Holding Corps, as forfeited corporations, (2) agreed that Holding Corps could defend against its lawsuit, (3) obtained confessed judgments against Holding Corps,<sup>7</sup> and (4) seeks to retain those judgments by opposing Holding Corps’ appeal. Under *Djourabchi*, PNC Bank could only proceed in such manner by conceding that Whittaker, as director-trustee, was winding up the affairs of Holding Corps. Accordingly, we conclude that PNC Bank waived its right to claim that Whittaker was not acting as a director-trustee “for the purposes of liquidation” under CA § 3-515(a).

For the foregoing reasons, we hold that Holding Corps, through its director-trustee Whittaker, had standing to note an appeal to this Court from the denial of the Motion to Vacate Confessed Judgment.

### *B. Montgomery*

PNC Bank also argues that Montgomery lacked standing to appeal the confessed judgment entered against it, because its articles of organization were forfeited. According to PNC Bank, the forfeiture of an “LLC’s charter strips it of its right to do business in the state and of all affirmative litigation benefitting the LLC, including the right to pursue an

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<sup>7</sup> The Confessed Judgment Order, dated December 1, 2014, states, in relevant part, that “judgment by confession is hereby entered in favor of PNC Bank . . . and against Defendants, MT Holding Corp. I, MT Holding Corp. II . . . in the total amount of \$251,033.06.”

appeal.” Montgomery responds that forfeited LLCs have the right to defend “any action, suit, or proceeding in a court[,]” under CA § 4A-920. Montgomery argues that such right to defend includes as an ancillary power, the right to seek review by the appellate courts of any adverse judgment or appealable order. We agree with Montgomery.

Like corporations, Limited Liability Companies (“LLCs”) are separate and distinct legal entities and offer protection against personal liability. *See Robinson v. Glynn*, 349 F.3d 166, 174 (4th Cir. 2003). This Court has stated that there is no reason to treat an LLC differently from a corporation with respect to the right to file or maintain a suit, when its right to do business has been forfeited. *See A Guy Named Moe, LLC v. Chipotle Mexican Grill of Colo., LLC*, 223 Md. App. 240, 250 (2015) (“[W]e cannot conceive of any reason to treat an LLC differently from a corporation with respect to the right to file or maintain a suit, when its respective right to do business has been forfeited.”), *aff’d*, 447 Md. 425 (2016).

Unlike corporations, however, an LLC continues to exist as a legal entity upon forfeiture of its articles of organization. In enacting CA § 4A-920, the General Assembly explained that like corporations, an LLC’s failure to comply with its obligations, such as paying taxes, paying unemployment contributions, or filing personal property returns, takes away the entity’s ability to do business in the state. *See House Economic Matters Committee Floor Report on H.B. 871*, at 2 (1995). The General Assembly went on to explain, however, that “[t]he penalties [for an LLC] are not as strict as for a corporation which loses its charter under current law. For [LLCs], their status as an entity remains, they just can’t do business in Maryland.” *See id.* Thus, when a corporate charter is



forfeited, the corporation ceases to exist as a legal entity, but when an LLC's articles of organization are forfeited, the LLC still exists as an entity. *See Price v. Upper Chesapeake Health Ventures, Inc.*, 192 Md. App. 695, 706-07, *cert. denied*, 415 Md. 609 (2010).

CA § 4A-911 states that upon an LLC's failure to pay tax, unemployment insurance contribution, or file an annual report, "the right to do business in Maryland and the right to the use of the name for each limited liability company is forfeited." CA § 4A-911. CA § 4A-920 provides a "savings clause" that states:

**The forfeiture of the right to do business in Maryland and the right to the use of the name of the limited liability company under this title *does not* impair the validity of a contract or act of the limited liability company entered into or done either before or after the forfeiture, or *prevent the limited liability company from defending any action, suit, or proceeding in a court of this State.***

CA § 4A-920(d) (emphasis added). Under the plain language of the statute, a forfeited LLC has the ability to defend an action "in a court of this State." CA § 4A-920.

Here, Montgomery was defending against PNC Bank's confessed judgment lawsuit in circuit court as CA § 4A-920 permits it to do. PNC Bank acknowledges Montgomery's authority to defend the lawsuit in the circuit court, but claims that under *Price*, Montgomery cannot prosecute an appeal from the confessed judgment entered against it. We disagree.

In *Price*, two members of an LLC, filed a derivative lawsuit on behalf of the LLC against members of the LLC's management committee, who had decided to sell substantially all of the LLC's assets, and against fellow members of the LLC, who had ratified the sale. 192 Md. App. at 697-99. The suit, however, was brought almost a year

after the LLC's right to do business had been forfeited. *Id.* at 699. The circuit court dismissed the action, holding that the plaintiffs could not bring a derivative suit because the LLC had ceased to legally exist and the plaintiffs were no longer members of the forfeited LLC. *Id.* at 701-02. On appeal, this Court affirmed, but on different grounds. *Id.* at 710. We noted that, although the forfeited LLC may still legally exist under CA § 4A-920, it can only defend an action in court, not prosecute one. *Id.* at 708-09. We reasoned that, because

the LLC could not bring suit, it follows that members of the LLC could not file a derivative suit on [the LLC's] behalf or pursue an appeal of the dismissal of that action. This is so because any recovery in a derivative action could go only to the LLC . . . and because the LLC would still be the real party in interest in whose name the suit would be prosecuted.

*Id.* at 710.

*Price* is distinguishable from the instant case. In *Price*, the derivative lawsuit was initiated by members of a forfeited LLC and those members attempted to appeal the dismissal of the lawsuit. *Id.* at 697-98. This Court held that members of a forfeited LLC could not file a derivative suit nor prosecute the dismissal of the same in the appellate courts. *Id.* at 710. Here, by contrast, PNC Bank filed suit against Montgomery as a forfeited LLC, and therefore Montgomery was the defendant in such action. Under CA § 4A-920, Montgomery had the statutory authority to defend against the lawsuit brought by PNC Bank in the circuit court. Montgomery did just that by joining the other defendants in filing a Motion to Vacate the Confessed Judgment. As stated *supra* regarding Holding Corps, the right to defend any action in court necessarily includes the right to seek appellate

review of an adverse judgment or ruling in that action.<sup>8</sup> Therefore, we hold that Montgomery had standing to note an appeal to this Court from the confessed judgment entered against it.

### **CONCLUSION**

For the reasons stated above, we hold that the circuit court erred when it denied appellants' Motion to Vacate Confessed Judgment without a hearing and on the grounds that the motion was untimely filed. Furthermore, we conclude that both Holding Corps and Montgomery had standing to appeal the confessed judgments entered against them under CA § 3-515 and CA § 4A-920, respectively. Accordingly, we reverse the judgments of the circuit court and remand for a hearing on appellants' Motion to Vacate Confessed Judgment.

**APPELLEE'S MOTION TO DISMISS DENIED. APPELLANTS' MOTION TO REMAND CASE DENIED AS MOOT. JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.**

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<sup>8</sup> We recognize that in *Price* we said that “the taking of an appeal is comparable to the act of filing suit.” *Id.* at 709. We believe that the precedential import of that statement should be confined to the facts of *Price*, wherein the action was a derivative suit on behalf of a forfeited LLC, and the appeal was from the dismissal of that suit. The members of the forfeited LLC were clearly prosecuting an action in the trial court, which they could not do, and thus the appeal of the dismissal of their suit was a continuation of that prosecution. Here, Montgomery was defending against PNC Bank's confessed judgment suit in the trial court, which it was expressly entitled to do under CA § 4A-920, and then sought to continue that defense by appealing the court's denial of its motion to vacate the confessed judgment.