Circuit Court for Prince George's County
Case No. C-16-CV-23-004480

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 716

September Term, 2024

SUN CONCIERGE AND STAFFING, INC.

v.

EJF REAL ESTATE SERVICES, INC.

Reed,
Zic,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: March 25, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

EJF Real Estate Services, Inc. ("EJF"), appellee, sued Sun Concierge and Staffing, Inc. ("Sun Concierge"), appellant, in the Circuit Court for Prince George's County. When Sun Concierge failed to timely answer its complaint, EJF filed a motion for an order of default, which the court granted. The Clerk of Court subsequently mailed a "Notice of Default Order" to Sun Concierge's resident agent, Northwest Registered Agent Services, Inc. ("Northwest"). Sun Concierge did not, however, file a timely motion to vacate the order of default. After the time for filing such a motion had passed, the court entered a default judgment in favor of EJF.

Sun Concierge filed a motion to vacate the default judgment, which the circuit court summarily denied. On appeal from that denial, Sun Concierge presents two questions for our review, which we have reordered and rephrased as follows[1]:

1. Did the circuit court abuse its discretion by declining to vacate the default judgment based on defective service of process?

2. Did the circuit court abuse its discretion in declining to vacate the default judgment on the ground that the notice of order of default was not mailed to Sun Concierge's last known address as mandated by Maryland Rule 2-613(c)[.]

[1] Sun Concierge phrased its questions presented as follows:

1. Whether the Final Judgment should be vacated because the Court's Order Entering Default was defective pursuant to Maryland Rule of Civil Procedure Circuit Court 2-613(c)[.]

2. Whether service of process was proper where Northwest Registered Agent Service, Inc. is the registered agent for Sun Concierge and service was not made upon the correct agent of the corporation[.]

For the reasons that follow, we shall vacate the order denying Sun Concierge's revisory motion and remand the case for further proceedings.

BACKGROUND[2]

Sun Concierge is a Maryland close corporation. On September 29, 2023, EJF filed a complaint against Sun Concierge, asserting claims for indemnification, unjust enrichment, and intentional interference with prospective economic advantage. EJF sought compensatory damages in the aggregate amount of $53,679.49, plus attorneys' fees, litigation costs, pre- and post-judgment interest, and "punitive damages in an amount to be proven at trial." That same day, the circuit court issued a writ of summons for Sun Concierge, to be served on Northwest as its resident agent.

On October 20, 2023, Patty Gindlesberger accepted service of process on behalf of Northwest. In an affidavit of service filed three days later, the process server declared under penalty of perjury that at 11:23 a.m. on October 20, 2023, Ms. Gindlesberger received service of process "for Northwest . . . as registered agent for Sun Concierge" at "5000 Thayer Center Suite C, Oakland, MD 21550[.]" (Some capitalization omitted). The process server further attested: "Patty Gindlesberger identified herself by name and stated that[,] in her capacity as an agent employed by Northwest . . .[,] she [was] authorized to accept service of process on behalf of Northwest . . . as [resident] agent for Sun Concierge[.]" (Some capitalization omitted). Sun Concierge did not file an answer or other responsive

[2] As the underlying allegations are irrelevant to the resolution of this appeal, we proceed directly to the procedural history on which our holdings rest.

pleading within thirty days of service, as required by Maryland Rule 2-321(a).[3] Accordingly, on November 30th, EJF moved for an order of default under Maryland Rule 2-613(b).[4] In that motion, EJF listed Sun Concierge's last known address as "16701 Melford Boulevard, Suite 400, Bowie, MD 20715."[5]

On December 28, 2023, the circuit court entered an order of default against Sun Concierge. In a "Notice of Default Order" issued that same day, the clerk of court advised Sun Concierge that it could move to vacate the order of default within thirty days of its entry. *See* Md. Rule 2-613(c). Although EJF's motion for a default order correctly identified Sun Concierge's last known address, the notice of default order was instead

[3] Rule 2-321(a) states: "A party shall file an answer to an original complaint, counterclaim, cross-claim, or third-party claim within 30 days after being served, except as provided by sections (b) and (c) of this Rule."

[4] Rule 2-613(b) provides: "If the time for pleading has expired and a defendant has failed to plead as provided by these rules, the court, on written request of the plaintiff, shall enter an order of default. The request shall state the last known address of the defendant."

[5] EJF's motion was accompanied by a proposed order of default, which provided, in pertinent part:

> **ORDERED**, that the clerk shall issue a notice informing Sun Concierge . . . that an order of default has been entered against it, and that it may move to vacate the order within 30 days after its entry, with such notice being sent to:
>
> Sun Concierge and Staffing, Inc.
> 16701 Melford Boulevard
> Suite 400
> Bowie, MD 20715

mailed to Northwest at "5000 Thayer Center, Suite C[,] Oakland[,] MD 21550[.]" The court subsequently scheduled an *ex parte* hearing on damages for February 27, 2024. As with the default order, notice of that hearing was sent to Northwest rather than directly to Sun Concierge.

Sun Concierge did not move to vacate the order of default within the thirty-day period provided by Maryland Rule 2-613(d).[6] Nor did it attend the damages hearing on February 27, 2024. Following that hearing, which proceeded in Sun Concierge's absence, the circuit court entered a default judgment in favor of EJF for $82,300.88.[7]

Sun Concierge filed a "Motion to Vacate Default Judgment and to Quash Service of Process" with accompanying exhibits on April 29, 2024—approximately two months after the default judgment had been entered. In that motion, Sun Concierge claimed that the clerk had violated Maryland Rule 2-613(c) by mailing the notice of default order to Northwest rather than to Sun Concierge's last known address, as identified in EJF's request for order of default. Sun Concierge also asserted that the default judgment was void for lack of personal jurisdiction due to improper service of process. Although Sun Concierge acknowledged that Northwest was its resident agent, it argued that EJF "was not authorized to serve" Ms. Gindlesberger, as she was merely a Northwest employee and not its "resident

[6] Rule 2-613(d) provides: "The defendant may move to vacate the order of default within 30 days after its entry. The motion shall state the reasons for the failure to plead and the legal and factual basis for the defense to the claim."

[7] The court awarded EJF $53,679.49 in compensatory damages, $26,839.75 in punitive damages, and $1,781.64 in prejudgment interest, with additional "interest accruing from the date of this [j]udgment."

agent, president, secretary or treasurer." Finally, Sun Concierge presented arguments in support of "three . . . meritorious defenses to liability: (i) absence of successor liability; (ii) statute of limitations; and (iii) Doctrine of Account Stated."

The exhibits attached to Sun Concierge's motion included an affidavit executed by George Anderson, the close corporation's sole director. In that affidavit, Mr. Anderson averred, in part:

> 4. Upon the commencement of this litigation, Sun Concierge was not informed by its [resident] [a]gent about the service of process. As the director of Sun Concierge . . . , I did not receive the service of process documents that were sent to Sun Concierge's [resident] [a]gent. . . . .
>
> 5. Service of process was not forwarded to any other employee or agent of Sun Concierge.
>
> 6. Further, Sun Concierge did not receive the Notice of Order of Default issued on December 28th, 2023.
>
> 7. On April 21, 2024, I discovered for the first time the lawsuit through the levy issued on Sun Concierge's bank accounts and I took immediate action to investigate the matter further . . . . However, no documentation or evidence of the purported notice has been provided to us.

On April 29, 2024, the clerk of court issued a notice advising Sun Concierge that its filings were deficient under Maryland Rule 20-201(e) and directing it to "resubmit the filings as separate submissions in the same envelope."[8] Sun Concierge evidently corrected the deficiency and refiled its motion to vacate, with the same exhibits attached, on May 1. Two days later, Sun Concierge filed an amended motion to vacate the default judgment.

[8] Rule 20-201(e) requires that "[a]ll submissions related to a particular action that are filed together at one time shall be included in a single electronic folder, sometimes referred to as an envelope."

That motion, however, was identical to the original, save for the inclusion of an additional affidavit.

On May 16, 2024, EJF filed an opposition to Sun Concierge's motion to vacate. In that opposition, EJF argued, *inter alia*, that serving an employee of Northwest—Sun Concierge's resident agent—effected service upon Northwest and, by extension, upon Sun Concierge. EJF further asserted that sending the notice of default order to Northwest likewise constituted valid service on Sun Concierge. The circuit court denied Sun Concierge's motion—without a hearing or explanation—in an order entered on May 20. This appeal followed.

We include additional facts as necessary in our discussion of the issues presented.

STANDARD OF REVIEW

In its motion to vacate the default judgment, Sun Concierge invoked the circuit court's general revisory power pursuant to Maryland Rule 2-535(a). Because Sun Concierge's motion to vacate was filed more than thirty days after the default judgment was entered, however, we construe it as having been filed under Rule 2-535(b). *See In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475 (1997) ("The motion to vacate was filed more than 30 days after the judgment was entered and is therefore deemed to have been filed under Md. Rule 2-535(b)."). That 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." Md. Rule 2-535(b). Accordingly, "[o]nce the circuit court enters its default judgment in compliance with Rule 2-613 . . . , that judgment

'may be stricken or revised only upon a showing of fraud, mistake, or irregularity[.]'" *Peay v. Barnett*, 236 Md. App. 306, 320 (2018) (quoting *Dir. of Fin. of Baltimore City v. Harris*, 90 Md. App. 506, 511 (1992)).

"The existence of a factual predicate of fraud, mistake, or irregularity, necessary to support vacating a judgment under Rule 2-535(b), is a question of law[,]" which we review *de novo*.[9] *Wells v. Wells*, 168 Md. App. 382, 394 (2006). *See also Montgomery Cnty. v. Jamsa*, 153 Md. App. 346, 352 (2003) ("Pure questions of law are reviewed de novo."). If the factual predicate exists, "the court's decision on the motion is reviewed for abuse of discretion." *Wells*, 168 Md. App. at 394. *Accord Peay*, 236 Md. App. at 316. "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." *Powell v. Breslin*, 430 Md. 52, 62 (2013) (cleaned up). The Supreme Court of Maryland has further explained:

> We will find an abuse of discretion when the ruling is clearly against the logic and effect of facts and inferences before the court, when the decision is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice.

Id. (cleaned up).

[9] "The terms 'fraud, mistake, or irregularity' as used in Rule 2-535(b) . . . are narrowly defined and are to be strictly applied." *Early v. Early*, 338 Md. 639, 652 (1995) (citation omitted).

Although we ordinarily review the denial of a Rule 2-535(b) revisory motion for abuse of discretion, the Supreme Court of Maryland has consistently cautioned that "courts 'do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature.'" *Morton v. Schlotzhauer*, 449 Md. 217, 231 (2016) (quoting *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 674-75 (2008)); *see also Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 433 (2007) ("[W]here the record so reveals, a failure to consider the proper legal standard in reaching a decision constitutes an abuse of discretion."). Thus, on appeal from the denial of a Rule 2-535(b) motion to vacate, "the only issue before the appellate court is whether the trial court erred as a matter of law or abused its discretion in denying the motion." *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. at 475.

DISCUSSION

I.

Sun Concierge contends that "the default judgment [is] void" because service of process against it was defective. In support of that contention, Sun Concierge argues that because Northwest—its resident agent—is itself a corporation, service upon Northwest was required to conform to Maryland Rule 2-124(d), which requires that service be made upon a corporation "by serving its resident agent, president, secretary, or treasurer." Alternatively, the Rule permits service of process on any individual authorized to receive service of process, but only if "the corporation . . . has no resident agent or if a good faith attempt to serve the resident agent, president, secretary, or treasurer has failed[.]" Md. Rule

2-124(d). Sun Concierge asserts that EJF departed from this Rule by serving process on Ms. Gindlesberger—a Northwest employee purportedly authorized to accept such service—without first attempting to serve a designated corporate officer. Because Ms. Gindlesberger was not an officer of either Sun Concierge or Northwest and no prior good faith attempt had been made to serve one, Sun Concierge maintains that service of process was defective. Absent proper service, Sun Concierge concludes that "the circuit court lacked personal jurisdiction over [Sun Concierge], and any judgment rendered against it is a nullity."

In responding to Sun Concierge's contention, EJF does not claim that Ms. Gindlesberger was the president, secretary, or treasurer of either Northwest or Sun Concierge. Nor does EJF assert that Ms. Gindlesberger was served with process only after prior good faith attempts to serve such designated corporate officers had failed. Rather, EJF relies on the affidavit of service, in which its process server "attest[ed] under oath that Ms. Gindlesberger [had] identified herself as an agent and employee of Northwest . . . , which was Sun Concierge's designated resident agent." EJF thus appears to argue that service of process was proper simply because Ms. Gindlesberger was a Northwest employee authorized to accept service on its behalf.

As noted above, a trial court may exercise its revisory power over an enrolled judgment pursuant to Maryland Rule 2-535(b) if a movant establishes the existence of a "mistake." For purposes of Rule 2-535(b), "mistake" "means jurisdictional mistake, such as where the court lacks the power to enter the judgment because it does not have

jurisdiction over the person or jurisdiction over the subject matter." *Facey v. Facey*, 249 Md. App. 584, 639, *cert. denied*, 475 Md. 680 (2021). "'The typical kind of mistake occurs when a judgment has been entered in the absence of valid service of process; hence, the court never obtains personal jurisdiction over a party.'" *Id.* (quoting *Claibourne v. Willis*, 347 Md. 684, 692 (1997)) (further citations omitted).

As the parties' contentions pertain to the proper interpretation of Maryland Rule 2-124, we begin by reviewing the applicable principles of construction. "When interpreting the Maryland Rules, we apply the same principles used in statutory construction." *Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 78 (2001). Accordingly, we first examine the Rule's plain language. *See Williams v. State*, 457 Md. 551, 568 (2018) ("It is well established that when we interpret the Maryland Rules, we first examine the plain language."). "Where the language of the rule is clear and unambiguous, our analysis ends." *Burson v. Simard*, 424 Md. 318, 324 (2012) (quotation marks and citation omitted). When reading a rule, we will not add or delete words "in order to give it a meaning not otherwise evident by the words actually used." *Williams*, 457 Md. at 568 (quotation marks and citation omitted). "Only when the language of the rule is ambiguous is it necessary that we look elsewhere to ascertain legislative intent." *Alarcon-Ozoria v. State*, 477 Md. 75, 96 (2021) (quotation marks and citation omitted).

Consistent with these principles, we begin by looking to the plain language of Maryland Rule 2-124(d), which provides, in pertinent part:

> (d) **Corporation. —** *Service is made upon a corporation . . . by serving its resident agent, president, secretary, or treasurer*. If the

> corporation . . . has no resident agent or *if a good faith attempt to serve the resident agent, president, secretary, or treasurer has failed, service may be made by serving* the manager, any director, vice president, assistant secretary, assistant treasurer, or *other person expressly or impliedly authorized to receive service of process*.

(emphasis added). By its terms, Rule 2-124(d) sets forth the persons who may be served with process when effecting service upon "a corporation." The Rule draws no distinction between a corporation named as a defendant, on the one hand, and a corporation designated as a party's resident agent, on the other. Rather, the plain language of Rule 2-124(d) indicates that it applies whenever service of process is to be effected upon a corporation—whether the entity is itself a party to the proceeding or is serving as the resident agent of one.[10] Accordingly, we construe Rule 2-124(d)'s requirements as applying with equal force to resident-agent corporations and corporate defendants.

The question remains whether Sun Concierge met its burden of proving that serving Ms. Gindlesberger with process did not satisfy the requirements of Rule 2-124(d). In resolving this issue, we look to the representations made in the affidavit of service, which we take as true absent evidence to the contrary. *Cf. Weinreich v. Walker*, 236 Md. 290, 296 (1964) ("[A] proper official return of service is presumed to be true and accurate until the presumption is overcome by proof[.]"). In that affidavit, EJF's private process server attested that he made a "[s]uccessful [a]ttempt" at effecting service on Northwest—as Sun Concierge's resident agent—by serving Ms. Gindlesberger with process on October 20,

[10] A contrary interpretation would require us to read into Rule 2-124(d) words the Supreme Court of Maryland declined to include. *See Williams*, 457 Md. at 568.

2023. The process server further recounted that Ms. Gindlesberger advised him that "in her capacity as an agent employed by Northwest[,]" she was "authorized to accept service of process on [its] behalf[.]" The affidavit of service was silent, however, as to whether this had been the first attempt at service or whether the process server had made a prior good faith attempt at serving Northwest's president, secretary, or treasurer.

To prevail on its Rule 2-535(b) motion to vacate the default judgment based on a jurisdictional mistake, Sun Concierge bore the burden of proving defective service of process by clear and convincing evidence. *See Das v. Das*, 133 Md. App. 1, 18 (2000) ("To prevail on a motion to set aside an enrolled judgment, the moving party must show . . . mistake . . . by clear and convincing evidence."). We need not decide whether the affidavit of service sufficiently established that Ms. Gindlesberger was "expressly or impliedly authorized to receive service of process." Md. Rule 2-124(d). Authorization alone would not have satisfied Rule 2-124(d) absent either (i) a prior good faith attempt to serve Northwest's "resident agent, president, secretary, or treasurer" or (ii) a showing that Northwest had no resident agent.[11] *Id.* As the affidavit of service was silent in this regard, and Sun Concierge did not provide alternative evidence to either effect, the circuit court could have reasonably concluded that it failed to establish—by clear and convincing

[11] Although not included in the record, Northwest's Articles of Incorporation are available on the SDAT website and do, in fact, name a resident agent. *See Matter of Carpenter*, 264 Md. App. 138, 175 n.20 (2024) ("Because this record is publicly available on the SDAT website, both the circuit court and this Court may take judicial notice of it."), *cert. denied*, 490 Md. 290 (2025).

evidence—that service of process was defective under Rule 2-124(d). Accordingly, we conclude that the court did not abuse its discretion by denying Sun Concierge's Rule 2-535(b) motion based on a jurisdictional mistake.

II.

Sun Concierge also challenges the validity of the default judgment on the ground that the clerk violated Maryland Rule 2-613(c), which requires that the notice of default order be mailed to the defendant's last known address as identified in the plaintiff's request for an order of default. According to Sun Concierge, this "procedural deficiency . . . deprive[d] [it] of the opportunity to respond to the default order and participate in the proceedings."

EJF responds that Sun Concierge's contention is without merit because it had actual notice of the order of default. Specifically, EJF argues that service of the notice on Northwest, as Sun Concierge's resident agent, imputed "actual notice" of the default order to Sun Concierge. EJF therefore concludes that "Sun Concierge, through its resident agent, was sent and received the Notice of Order of Default and had actual notice of the Order of Default."

Maryland Rule 2-613 governs default judgments and provides, in pertinent part:

> (b) **Order of Default. —** If the time for pleading has expired and a defendant has failed to plead as provided by these rules, the court, on written request of the plaintiff, shall enter an order of default. *The request shall state the last known address of the defendant.*
>
> (c) **Notice. —** Promptly upon entry of an order of default, the clerk shall issue a notice informing the defendant that the order of default has been entered and that the defendant may move to vacate the order within 30 days

> after its entry. *The notice shall be mailed to the defendant at the address stated in the request* and to the defendant's attorney of record, if any. The court may provide for additional notice to the defendant.
>
> * * *
>
> (f) **Entry of Judgment. —** If a motion was not filed under section (d) of this Rule or was filed and denied, the court, upon request, may enter a judgment by default that includes a determination as to the liability and all relief sought, *if it is satisfied* (1) that it has jurisdiction to enter the judgment and (2) *that the notice required by section (c) of this Rule was mailed*.

(emphasis added). As is evident from its plain language, Rule 2-613(c) "requires that the notice be mailed to the defaulting defendant's last known address, as stated in the request for order of default." *Armiger Volunteer Fire Co., Inc. v. Woomer*, 123 Md. App. 580, 590 (1998), *cert. denied*, 352 Md. 619 (1999). Before entering a default judgment pursuant to Rule 2-613(f), therefore, a trial court "must assure itself that the notice [of order of default] was mailed to the defendant's last known address." *Id.*

In Maryland, "[s]ervice *of process* on the resident agent of a corporation . . . constitutes effective service of process . . . on the corporation" itself. Md. Code Ann., Corps. & Ass'ns § 1-401(a) (emphasis added). Neither Rule 2-613 nor our case law, however, indicates that the same holds true with respect to a notice of default order. To the contrary, in *Armiger Volunteer Fire Co., Inc* ("*Armiger*"), *supra*, this Court expressly rejected an analogous proposition. We explain.

Mr. and Mrs. Woomer ("the Woomers") filed a negligence action against the Armiger Volunteer Fire Company, Inc. ("Armiger"). 123 Md. App. at 583. Because Armiger lacked a resident agent, the Woomers effected service of process through

substituted service on the State Department of Assessments and Taxation ("SDAT") under what is now Maryland Rule 2-124(o).[12] *Id.* Although SDAT attempted to forward the summons and complaint to Armiger by certified mail, the return receipt was marked "Unclaimed." *Id.* at 584. When Armiger failed to timely answer their complaint, the Woomers filed a request for an order of default, which listed Armiger's last known address.[13] *Id.* The court granted the request, entered an order of default, and issued a notice of default order. *Id.* at 585. The notice, however, bore only "the address of . . . SDAT, under Armiger's name." *Id.* at 592. The clerk's office later issued a notice of a damages hearing, which again named "Armiger on the proof of service form" but listed SDAT's address. *Id.* at 586. After that hearing, which Armiger did not attend, the court entered a default judgment in favor of the Woomers. *Id.*

On appeal, Armiger contended that the circuit court "erred by granting judgment by default in violation of Md. Rule 2-613(f)." *Id.* at 587. In support of that contention, Armiger

[12] Rule 2-124(o) provides:

> (o) **Substituted service upon State Department of Assessments and Taxation. —** Service may be made upon a corporation, limited partnership, limited liability partnership, limited liability company, or other entity required by statute of this State to have a resident agent by serving two copies of the summons, complaint, and all other papers filed with it, together with the requisite fee, upon the State Department of Assessments and Taxation if (i) the entity has no resident agent; (ii) the resident agent is dead or is no longer at the address for service of process maintained with the State Department of Assessments and Taxation; or (iii) two good faith attempts on separate days to serve the resident agent have failed.

[13] The address set forth in that request was the same as the address to which SDAT had forwarded the summons and complaint.

argued that the court had taken "no action to satisfy itself that the clerk's office [had] mailed the notice of order of default to its last known address, as required by Md. Rule 2-613(c)[.]" *Id.* In fact, Armiger asserted that there was "nothing in the case file . . . from which the court *could have concluded* that the mailing was made to its last known address[.]" *Id.* (emphasis added). The Woomers responded that the clerk's office had complied with Rule 2-613(c). *Id.* at 596. They reasoned that "because original service on Armiger had been effected upon . . . SDAT, subsequent mailing of the notice of order of default to . . . SDAT was proper because it was calculated to give Armiger fair notice." *Id.* Thus, the Woomers maintained that, based on an examination of the case file, the court "could be satisfied that the mailing requirement of Md. Rule 2-613(c) had been met." *Id.*

This Court rejected the Woomers' premise that Rule 2-613(c)'s mailing requirement is satisfied by sending a notice of default order to the address at which service of process was initially effected, rather than to the defendant's last known address as identified in the request for an order of default. *Id.* at 597-98. We reasoned that such a construction is not only contrary to the plain language of the Rule, but is also "disproven" by its history. *Id.* at 598. We observed that "[a]s originally drafted, Md. Rule 2-613 provided that the notice of order of default be mailed to the defaulting defendant at the address provided for him in the complaint without regard for whether he might have a more current mailing address." *Id.* at 590-91. In 1983, however, the Supreme Court of Maryland proposed amending the Rule to modify that requirement. *Id.* In discussing that amendment, we recounted:

In responding to a suggestion by the Court, Judge McAuliffe wrote:

> *Rule 2-613 Default Judgment* — The [Comment Review Subcommittee] concurs with the Court's recommendation that this Rule be amended to take account of the fact that at the time of requesting an order of default the plaintiff may have a more recent or accurate address for the defendant than was provided in the complaint. The subcommittee suggests adding at the end of [present section (b)] the following sentence: "The request shall state the last known address of the defendant." Consistent with the proposed change in [present section (b)], the subcommittee suggests amending the penultimate sentence in [present section (c)] by substituting the phrase "stated in the request" for "specified in the pleading" and deleting the phrase "if any" following "address."
>
> Ultimately, these recommendations were adopted, thus eliminating the possibility that a notice of order of default would be mailed to a defaulting defendant at an outdated address provided in the complaint and maximizing the likelihood that the defaulting defendant indeed would be afforded the opportunity to challenge the entry of the default order.

Id. at 591 (internal citation and footnote omitted). We concluded that the foregoing rulemaking history refuted "the proposition that the address at which a defendant is served with original process is an acceptable mailing address for a notice of order of default[.]" *Id.* at 598. As a final matter, we rejected the Woomers' assertion that mailing the notice of default order to SDAT sufficed to give Armiger fair notice, noting, *inter alia*, that SDAT's statutory duty to forward papers to a corporate defendant extended only to the summons and complaint. *Id.*

In strictly construing Rule 2-613(c), *Armiger* makes clear that a notice of default order must be mailed directly to the defaulting defendant at its last known address, as specified in the plaintiff's request for an order of default. Sending the notice to another individual or entity—even one properly served with process on the defendant's behalf—

does not suffice. As *Armiger*'s discussion of the 1983 amendments illustrates, this requirement was adopted to ensure that the defendant receives timely notice of the default order and is thus afforded a fair opportunity to challenge it before liability is conclusively established. *See Att'y Grievance Comm'n v. Thomas*, 440 Md. 523, 549 (2014) ("[A]n order of default determines liability conclusively, and such a determination may be set aside only if the defendant moves successfully to vacate the order."). The amendments therefore reflect a determination by the Rules Committee that serving a notice of default upon an intermediary is insufficient to promote that end.

EJF nevertheless seeks to distinguish *Armiger* on the ground that the notice of default order in this case "was not mailed to SDAT, but instead to Sun Concierge's designated resident agent." It argues that "service of the notice on Sun Concierge's resident agent constituted actual notice" to Sun Concierge itself. We agree that a defaulting party's actual knowledge of an order of default may satisfy the requirements of Rule 2-613, notwithstanding the clerk's failure to mail the notice of default order to the party's last known address or the court's failure to confirm that the notice was so mailed. On this record, however, we are not persuaded that mailing the notice to Northwest conveyed such knowledge to Sun Concierge.

Smith-Myers Corp. v. Sherill, provides an instructive contrast to the present case. 209 Md. App. 494, 504, *cert. denied*, 431 Md. 447 (2013). There, the appellees filed suit against Smith-Myers Corp. ("Smith-Myers"). *Id*. at 499. Although the complaint misstated its address as "9700 Basil Court," rather than "9200 Basil Court," Smith-Myers was

personally served with process. *Id.* at 500-01. The appellees subsequently filed a request for an order of default, again listing 9700 Basil Court as Smith-Myers's last known address. *Id.* at 502. The court granted the appellees' request and entered an order of default, mailing notice both to that address and to Smith-Myers's former attorney. *Id.* at 503. Although counsel advised it of the default order, Smith-Myers did not move to vacate within thirty days. *Id.* Accordingly, the court entered a default judgment against it. *Id.* Smith-Myers later moved to vacate the judgment for lack of notice, a motion the court denied. *Id.* at 503-04.

On appeal, Smith-Myers claimed that the court erred in entering the default judgment "without having discovered that the notice required by Rule 2-613(c) was sent to the wrong address." *Id.* at 505. Although Smith-Myers did not dispute that the notice of default order was mailed to the same address listed in the appellees' request, it maintained that the court was required "to satisfy itself that the last known address designated in [that] request . . . is, in fact, the defaulting party's correct mailing address." *Id.* at 508. We rejected that contention. *Id.* at 508-09. Based on the language of the Rule and its history as set forth in *Armiger, supra*, we held: "Rule 2-613(f)'s requirement that the court satisfy itself that the appropriate notice has been mailed to the defaulting party's last known address is met when the record is clear that the notice was mailed to the address indicated in the request for an order of default." *Id.* at 510 (cleaned up). We further determined that mailing the notice to 9700 Basil Court did not amount to error.[14] *Id.* at 512.

[14] The reasoning underlying that determination is not relevant to this appeal.

As is relevant here, we alternatively held that "Smith-Myers had sufficient notice so as to satisfy the notice requirements of Rule 2-613[,]" reasoning:

> [E]ven though the order of default may have been mailed to the wrong address . . . , Smith-Myers concedes that it still had actual notice through [its former attorney] of the order of default and the hearing on damages. Despite this actual notice, Smith-Myers did not move to vacate the order of default, and did not attend the hearing. In our view, actual knowledge of the order of default and, moreover, the hearing on damages, satisfies the underlying purposes of the notice requirements of Rule 2-613—to inform the defendant that the notice of default had been entered and allow the defendant an opportunity to defend itself in the proceeding.

Id. at 516-17 (emphasis and footnote omitted). Because it had actual notice of the default order, we concluded that Smith-Myers could "ignore developments in the suit against it only at its peril." *Id.* at 517.

Our determination in *Smith-Myers* that the notice requirements of Rule 2-613 were satisfied—even though the order of default may have been mailed to an incorrect address—was predicated upon the defendant having received actual notice in fact of the order. In that case, Smith-Myers conceded that it had been so advised by its former attorney, who affirmatively "informed the company that an order of default had been issued against it." *Id.* at 503 (footnote omitted). By contrast, the record here does not reflect that Northwest apprised Sun Concierge of the default order or that Sun Concierge otherwise learned of the order within thirty days of its entry. To the contrary, in an affidavit accompanying its motion to vacate the default judgment, Mr. Anderson, Sun Concierge's sole director, attested that the corporation had not received the notice of default order. He further averred that Northwest had not forwarded process either to him or "to any other employee or agent

of Sun Concierge." In fact, according to that affidavit, Mr. Anderson did not learn of the litigation until April 21, 2024—nearly two months after the default judgment had been entered.[15] Thus, while we recognized in *Smith-Myers* that actual notice in fact may, in some instances, satisfy the requirements of Rule 2-613 notwithstanding a mailing defect, the record here reflects no such notice on the part of Sun Concierge.

In summation, *Armiger* and *Smith-Myers* establish two distinct but complementary principles. For its part, *Armiger* instructs that Rule 2-613(c) should be strictly construed and applied, such that a notice of default order must be mailed to the defendant's last known address as identified in the plaintiff's request for order of default. *See also Gen. Motors Corp. v. Seay*, 388 Md. 341, 344 (2005) ("[T]he Maryland Rules are 'precise rubrics' which are to be strictly followed."). Sending the notice to some other recipient—even one authorized to receive service of process—does not suffice. *Smith-Meyers*, on the other hand, recognizes that a mailing defect may be excused where the defendant nevertheless receives *actual notice in fact* of the default order and has an opportunity to challenge it. In this case, however, the record reflects neither strict compliance with Rule 2-613(c)'s mailing requirement nor actual notice in fact to Sun Concierge.

On the record before us, we conclude that the clerk violated Maryland Rule 2-613(c) by failing to mail the notice of default order to Sun Concierge's last known address, as identified in EJF's request for an order of default. As a matter of law, that failure constitutes

[15] That assertion is supported by the fact that Sun Concierge's attorney entered his appearance the following Tuesday, April 23, 2024.

an "irregularity" within the meaning of Rule 2-535(b). *See Henderson v. Jackson*, 77 Md. App. 393, 398 (1988) ("Normally, the failure of the clerk to send the required notice of the order of default judgment under [R]ule 2-613 is held to be an irregularity within the meaning of Rule 2-535."); *see also Thacker v. Hale*, 146 Md. App. 203, 219-20 ("Irregularities . . . result[ing] from a failure of process or procedure by the clerk of a court[] includ[e] . . . failures . . . to mail a notice to the proper address[.]"), *cert. denied*, 372 Md. 132 (2002). That determination, however, does not conclude the matter. To prevail on a Rule 2-535(b) revisory motion, the moving party must not only establish the existence of an irregularity, but also show that it "act[ed] with ordinary diligence and in good faith upon a meritorious cause of action or defense." *Thacker*, 146 Md. App. at 217 (quoting *Platt v. Platt*, 302 Md. 9, 13 (1984)). For its part, "once an irregularity has been shown to exist, a trial court must consider whether the moving party" has satisfied this additional burden. *Gruss v. Gruss*, 123 Md. App. 311, 320 (1998).

"Ordinary diligence includes moving to vacate a judgment 'as soon as' a party learns of the judgment and investigates the facts." *Bland v. Hammond*, 177 Md. App. 340, 357 (2007) (quoting *Fleisher v. Fleisher Co.*, 60 Md. App. 565, 573 (1984)). Thus, "the nature and extent of [a movant's] *actual knowledge* is relevant to the issue of whether [that movant] acted with ordinary diligence in pursuing its motion[] to vacate." *City of College Park v. Jenkins*, 150 Md. App. 254, 274 (2003) (emphasis added), *vacated on other grounds*, 379 Md. 142 (2003).

As noted above, Sun Concierge filed its initial motion to vacate the default judgment on April 29, 2024—approximately two months after judgment was entered. In an affidavit accompanying that motion, however, Mr. Anderson attested that he first learned of the suit on April 21st—only eight days before the revisory motion was filed. In its opposition to Sun Concierge's motion, EJF did not dispute that assertion. Rather, it cited Mr. Anderson's acknowledgment in that same affidavit that he had received a demand letter from EJF's counsel on or around August 28, 2023, raising the allegations underlying the claim. EJF argued that Sun Concierge's lack of ordinary diligence and good faith was evident from Mr. Anderson's failure either to respond to that demand letter or to monitor the court's docket notwithstanding EJF's express threat of litigation. Finally, EJF did not address the three "meritorious defenses" advanced in Sun Concierge's motion to vacate, asserting that because "[t]he time for arguing the merits has passed . . . , the [c]ourt cannot and should not consider [them]."

Although on balance these facts would seem to weigh in Sun Concierge's favor, whether a movant has acted with due diligence and in good faith is a factual determination, which falls "outside the scope of our review." *Estime v. King*, 196 Md. App. 296, 308 (2010). *See also Gruss*, 123 Md. App. at 321 ("We, as an appellate court, will not make factual determinations properly left to the trial court" regarding whether the appellant acted in good faith and with ordinary diligence). It is, however, unclear from the order denying Sun Concierge's motion to vacate whether the court's consideration extended beyond whether an irregularity existed. Accordingly, we vacate the judgment of the circuit court

and remand for further proceedings.[16] *See Henderson*, 77 Md. App. at 401 (vacating the denial of a Rule 2-535(b) motion and remanding with instructions that the circuit court determine whether appellant "was acting in good faith with ordinary diligence and has a meritorious defense[,]" where the court failed to make such findings below).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.

[16] On remand, the court may, in its discretion, permit the parties to present additional evidence and argument.