UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

CONSOLIDATED CASES

SEPTEMBER TERM, 2014

No. 0729
ROSEWOOD COMMONS LLC ET AL
v.
JEC, INC.

Nos. 0730 & 0731
MANSOOR SHAOOL ET AL
v.
JEC, INC.

Nos. 0732 & 0733
HIGHLANDS OF GREEN VILLAGE, LLC
v.
JEC, INC.

No. 0740
WASHCO DEVELOPMENT LLC
v.
JEC, INC.

Eyler, Deborah, S.,
Nazarian,
Friedman,
JJ.

Opinion by Eyler, Deborah, S., J.

Filed: September 18, 2015

This is a consolidation of twelve appeals arising out of six cases filed in the Circuit Court for Washington County. In all six cases, JEC, Inc. ("JEC"), formerly known as J. Edward Cochran & Co., Inc., the appellee, was the plaintiff. The appellants, 32 individuals and business entities, were defendants against whom summary judgment was granted in the six cases. We will identify them in our recitation of the facts.

As we shall explain, each appellant noted an appeal and then noted a second appeal. The appellants pose three questions for review, which we have reordered and reworded:

I. Did the circuit court abuse its discretion by denying a motion to alter or amend judgments?

II. Did the circuit court err by certifying for appeal the judgments, which did not resolve all claims against all defendants?

III. Did the circuit court err in granting summary judgment in favor of JEC and against the appellants?

For the following reasons, we shall dismiss each appellant's first appeal, vacate the circuit court's September 18, 2014 order denying the motion to alter or amend, and remand for further proceedings not inconsistent with this opinion.

FACTS AND PROCEEDINGS

On February 18, 2014, in the Circuit Court for Washington County, JEC filed complaints with accompanying motions for summary judgment in six separate cases. It appears from the complaints that JEC is an insurance broker. In each case, JEC sought to recover sums it claimed to have earned by brokering and servicing insurance contracts for the defendants. Each complaint stated counts for breach of contract, quantum meruit, and

unjust enrichment. The cases were filed at the same time and were assigned consecutive civil case numbers.

As to each case, the following information is pertinent:

Case No. 21-C-14-049757 ("Case 57"). The "Complaint for Payment of Insurance Premium (Shopping Centers Policy)" named seven defendants. Washco Centre at Antietam Creek, LLC, Washco Centre at Antietam Creek II, LLC, Foxshire Plaza Enterprises, LLC, and Mansoor Shaool were served on February 19, 2014, and had a March 21, 2014 deadline to file an answer or other responsive pleading ("answer date"). Rosewood Commons, LLC, Foxshire Plaza Enterprises II, LLC, and Washco Shippenburg Commons, LLC were served on February 20, 2014, and had a March 24, 2014 answer date. All seven defendants in Case 57 are appellants before this Court.

Case No. 21-C-14-049758 ("Case 58"). The "Complaint for Payment of Insurance Premium (West Virginia Residences Policy)" named six defendants. Mansoor Shaool was served on February 19, 2014 and had a March 21, 2014 answer date.[1] Sassan Shaool was served on February 20, 2014 and had a March 24, 2014 answer date. Janet Shaool and Adam Shaool were served on February 25, 2014 and had a March 27, 2014 answer date. Shasha Nourafchan, a resident of California, was served on February 24, 2014 (although there is no return of service for her), and had an answer date in April of 2014. Sarah Shaool, also a resident of California, was not served. Mansoor Shaool and Sassan Shaool are appellants before this Court. The other defendants in Case 58 are not.

Case No. 21-C-14-049759 ("Case 59"). The "Complaint for Payment of Insurance Premium (Commercial Auto Policy)" named four defendants. Washco Developments, Inc., Washco Construction, LLC, and Maxxam, LLC were served on February 20, 2014, and had a March 24, 2014 answer date. They are appellants before this Court. Washco Homes, LLC was served on February 25, 2014, and had a March 27, 2014 answer date. It is not an appellant.

[1] As can be seen, some of the defendants in one case also are defendants in another case or cases. The total number of defendants was 41, but some of these were duplicates.

Case No. 21-C-14-049760 ("Case 60"). The "Complaint for Payment of Insurance Premium (Workers Compensation Policy)" named one defendant, Washco Developments, LLC, which was served on February 20, 2014. It had a March 24, 2014 answer date. It is an appellant before this Court.

Case No. 21-C-14-049761 ("Case 61"). The "Complaint for Payment of Insurance Premium (Apartments Package Policy)" named four defendants: Highlands of Green Village, LLC, Highlands of Green Village HOA, Highlands Townhouses II, LLC, and Washco Avalon Townhomes, LLC. The defendants all were served on February 19, 2014, and had a March 21, 2014 answer date. The defendants in Case 61 all are appellants before this Court.

Case No. 21-C-14-049762 ("Case 62"). The "Complaint for Payment of Insurance Premium (Maryland-Pennsylvania Real Estate Policy)" named 19 defendants. Washco-Keystone Crossing, LLC, Washco-Orchard Ridge, LLC, Black Rock Estates, Section C, LLC, and Orchard Ridge, LLC were served on February 19, 2014, and had a March 21, 2014 answer date. Sassan Shaool, Mansoor Shaool, Washco Developments, Inc., Shaool Holdings, LLC d/b/a Henry Associates, LLC, Taylor Farm I, LLC, Taylor Farm, II, LLC, Taylor Farm III, LLC, Washco Arnett Farm, LLC, 2049 Day Road, LLC, 2019 Day Road, LLC, and Rosewood Village Phase II-B, LLC were served on February 20, 2014, and had a March 24, 2014 answer date. Those 15 defendants are appellants before this Court. Sasha Nourafchan who, as noted, is a resident of California, was served on March 24, 2014 (although no return of service was filed) and had an answer date in April of 2014. Adam Shaool and Janet Shaool were served on February 25, 2014, and had a March 27, 2014 answer date. Defendant Sarah Shaool was not served. These last four defendants are not appellants before this Court.

In summary, of the 41 defendants sued in the six cases, 39 were served. Of those 39 defendants, 32 were served on February 19 or 20, 2014, and therefore had answer dates of March 21 or March 24, 2014, respectively.

In all six cases, motions for summary judgment were filed with the complaints. The motions essentially were the same. They consisted of one brief paragraph stating

that JEC "moves for summary judgment in the above-captioned case on the ground that there is no genuine dispute as to any material fact and the Plaintiff is entitled to judgment as a matter of law"; and a "Statement of Grounds and Authorities" quoting Rule 2-501(f) and *Butler v. S&S Partnership*, 435 Md. 635 (2013). The motions all were supported by an affidavit by Edward W. Cochran, Jr., President of JEC, attesting that he is personally familiar with the facts concerning the claims made in the complaint, that the sum sought in the complaint (specified in each case) is due and owing by the named defendants, jointly and severally, together with pre-judgment and post-judgment interest, that he is competent to testify, and that the matters and facts set forth in his affidavit and in the complaint are true and correct.

As of Wednesday, March 26, 2014, none of the served defendants with answer dates of Friday, March 21 or Monday, March 24, 2014, had filed an answer or other responsive pleading or a response to the summary judgment motion. That day, in all six cases, JEC's lawyer filed two papers: 1) "Clerk's Certificate of No Response"; and 2) "Instructions to Clerk."

The "Clerk's Certificate of No Response" represented that "as of this date" the following defendants who were served with process, including the motion for summary judgment and supporting affidavit, had "failed to file any Response or other pleading in reply to said *Motion for Summary Judgment.*" The document then listed the names of the served defendants in the particular case and the dates on which they were served, followed by a signature line for the Clerk. The "Instructions to Clerk" in each case

directed the Clerk of Court to complete the "Clerk's Certificate of No Response" in the case and deliver it, the case file, and an attached proposed order granting motion for summary judgment to the motions judge. In the three cases in which not all the served defendants had been served on either February 19 or 20, 2014, the proposed orders stated:

> [P]ursuant to Rules 2-602(b) and 2-501(f) . . . notwithstanding that the judgment entered by this *Order* adjudicates the rights and liabilities of fewer than all of the parties herein, there is no just reason for delay in the entry of a final judgment as to the Defendants against whom judgment is hereinafter-entered.

Those orders further state that "said judgments are final judgments as to each of said Defendants."

That same day, the Clerk of Court signed the "Clerk's Certificate of No Response" in all six cases and delivered them, with the case files and proposed orders, to the motion judge, who signed the orders. Thus, on March 26, 2014, orders granting summary judgment were issued in favor of JEC and against the 32 defendants who had been served either on February 19 or 20, 2014.

The next day, March 27, 2014, all 39 of the served defendants in the six cases filed answers and oppositions to the summary judgment motions. They did this without knowing that orders granting summary judgment against some of them had been signed the day before. (The "Clerk's Certificate of No Response," "Instructions to Clerk," and proposed orders were not mailed or otherwise provided to any of the defendants in any of the six cases, and had yet to be entered on the docket.) For the defendants who had been served on February 19, 2014, their answers and summary judgment oppositions were

filed six days late. For those who had been served on February 20, 2014, their answers and summary judgment oppositions were filed three days late.

Then, on March 28, 2014, the summary judgment orders signed by the judge on March 26, 2014, in Cases 57, 58, and 59 were entered on the docket. On March 31, 2014, the summary judgment orders in Cases 60, 61, and 62 were entered on the docket. All the orders were as proposed by counsel for JEC, except that in the cases in which judgment was being entered against more than one defendant, the judge hand wrote on the second page of each order "jointly and severally" after the names of the defendants to whom the order pertained and before the amount of the judgment.

On April 4, 2014, the 32 defendants against whom summary judgment had been entered filed a joint motion to alter or amend and to stay execution ("motion to alter or amend"). JEC filed an opposition on April 21, 2014, and the defendants filed a reply on April 29, 2014.

On May 23, 2014, the court signed orders in each case denying the motion to alter or amend, but stating that it was doing so only on certain grounds and was reserving ruling on other grounds. Specifically, the court stated that it was denying the motion based on grounds argued in the defendants' April 4, 2014 motion to alter or amend but was leaving for consideration at a hearing scheduled for August 29, 2014, arguments made in the defendants' reply memorandum in support of that motion. (That hearing had been scheduled to address the stay of execution request.) The orders were entered that same day.

On June 20, 2014, the 32 defendants against whom judgments had been entered filed notices of appeal.

At the August 29, 2014 hearing, counsel for JEC objected to the court's ruling on the motion to alter or amend, arguing that because notices of appeal had been filed the court no longer had jurisdiction to do so, as that would interfere with this Court's decision-making on the issues before it.

The court ruled that it lacked jurisdiction. On September 16, 2014, it issued an order pertaining to all six cases that, as relevant, stated that it did not have jurisdiction to address "the portions of the Motion to Alter or Amend that were not specifically ruled on" in the May 23, 2014 order. The order was entered on September 18, 2014.

On September 24, 2014, the 32 defendants against whom judgments had been entered again filed notices of appeal in the six cases.

DISCUSSION

I.

The motion to alter or amend was filed pursuant to Rule 2-534 (Motion to Alter or Amend - Court Decision). It was filed within ten days of the entry of the summary judgment orders. As such, its filing rendered the summary judgments non-final. *See Nina & Nareg, Inc. v. Movahed*, 369 Md. 187, 199 (2002) (citations omitted); *see also* Rule 8-202(c) (when a Rule 2-534 motion to alter or amend is timely filed, the time for noting an appeal is suspended until 30 days after the motion is withdrawn or the court disposes of the motion).

On May 23, 2014, the court entered an order denying the motion to alter or amend on some grounds and reserving ruling on other grounds. Thus, the court denied the motion to alter or amend ***in part***. By its express language, the order postponed until on or after the scheduled August 29, 2014 hearing a final decision on all the grounds raised in the motion to alter or amend. Accordingly, the May 23, 2014 order was not a final disposition of the motion to alter or amend.

Nevertheless, and likely acting out of an abundance of caution, on June 20, 2014, the defendants against whom summary judgment had been granted filed notices of appeal. These notices of appeal were premature, as the court had not finally disposed of the timely filed motion to alter or amend. And, as Rule 8-202(c) clearly states: "A notice of appeal filed before the withdrawal or disposition of [a timely filed post-judgment motion] does not deprive the trial court of jurisdiction to dispose of the motion." (The motion to alter or amend never was withdrawn.) Thus, these first six notices of appeal were of no effect, and the circuit court continued to have jurisdiction to fully dispose of the motion to alter or amend. The court's ruling at the August 29, 2014 hearing, memorialized in its September 18, 2014 order, that it lacked jurisdiction to fully decide the issues raised by the appellants in support of their motion to alter or amend was legally incorrect.[2]

[2] JEC maintains that because the appellants advanced arguments in their reply memorandum in support of their motion to alter or amend that they did not advance in the motion, their reply memorandum was a new motion to alter or amend that was not filed

(Continued…)

The six prematurely filed appeals, noted on June 20, 2014, were taken from the May 23, 2014 order, which did not fully dispose of the motion to alter or amend. That order was not appealable, and therefore those six appeals must be dismissed. *See* Md. Rule 8-602(a)(1). The September 18, 2014 order denying the motion to alter or amend was based on a legally incorrect ruling that the court lacked jurisdiction to fully decide that motion on its merits. The standard of review for the denial of a motion to alter or amend is abuse of discretion. *Miller v. Mathias*, 428 Md. 419, 438 (2012). A legally incorrect ruling is an abuse of discretion. *U.S. Life Ins. Co. in City of N.Y. v. Wilson*, 198 Md. App. 452, 464 (2011). Accordingly, we shall vacate the September 18, 2014 order pertaining to all six cases that denied the motion to alter or amend, and remand the cases to the circuit court to address and decide that motion in full.

II. and III.

Our disposition of Issue I makes it unnecessary to address the other two issues the appellants raise on appeal. We shall comment briefly on them, however.

In Cases 57, 60, and 61, summary judgment was entered against every defendant. Therefore, the summary judgment orders were final judgments until the timely filed Rule

(…continued)
within ten days of the summary judgments, and did not toll the time for noting an appeal. There is no merit to this argument. A reply memorandum is just that; it is not a separate motion. If it wishes to, a court can exercise discretion not to consider arguments raised for the first time in a reply memorandum in support of a motion to alter or amend. The court is not prohibited from doing so, however, and, as stated, the reply memorandum does not morph into a new motion.

2-534 motion to alter or amend divested them of their finality. In Cases 58, 59, and 62, there never were true final judgments. In those cases, summary judgment was entered against some but not all of the defendants. The orders granting summary judgment in those cases only became "final" because the court's orders made them final under Rule 2-602(b). If the court properly certified the judgments as final, the judgments nevertheless were rendered non-final by the timely filing of the motion to alter or amend (just as discussed above). If the court did not act properly by certifying the judgments in those cases as final, the judgments were not appealable in any event.

The appellants in Cases 58, 59, and 62, in which summary judgment was entered against some but not all served defendants, contend the circuit court erred in entering final judgments under Rule 2-602(b). For the reasons just explained, whether the court erred in doing so is of no consequence at this juncture. It is worth noting, however, in case the issue should arise again, that the well-settled judicial policy of Maryland strongly disfavors piecemeal appeals, and Rule 2-602(b) is to be invoked rarely, in the "very infrequent harsh case." *Diener Enters. v. Miller*, 266 Md. 551, 556 (1972). It would seem particularly inapt to invoke Rule 2-602(b) in multiple related cases involving multiple defendants sued jointly and severally on multiple and alternatively pleaded claims.

Finally, because we are vacating the September 18, 2014 order denying the motion to alter or amend and remanding the case to the circuit court to rule completely on that motion, whether the court erred in granting summary judgment to begin with is not

properly before us at this juncture. If the court grants the motion to alter or amend and vacates the summary judgment orders, the cases will continue below. If the court denies the motion, the question whether the court acted properly in doing so *and* in granting summary judgment in favor of JEC against 32 of the defendants may be before this Court another day.

We will say this. The purpose of filing a complaint with an accompanying motion for summary judgment is not to make an end run around the protective procedures that govern default judgments. To be sure, Rule 2-501 allows a motion for summary judgment to be filed before the day on which the adverse party's initial pleading or motion is filed (in which case it must be supported by an affidavit). Md. Rule 2-501(a). The usual setting in which that is done is a very simple breach of contract action against a single defendant.

The six cases at bar are not of that ilk. They state alternative claims and, in all but one case, name a number of defendants. They do not appear to be straightforward either on liability or damages. And there was an evident rush to place the motions for summary judgment before a judge as quickly as possible after the answer dates passed. Indeed, the day after that rush resulted in the summary judgment orders being issued, and before any of the orders were entered on the docket, all the served defendants in all six cases filed answers and oppositions to the motions for summary judgment.

Finally, an affidavit filed in support of a motion for summary judgment must establish that there is no dispute of material fact and must present the facts on which the motion is based concretely, and not in theoretical, alternative terms.

APPEALS NOTED ON JUNE 20, 2014 DISMISSED. SEPTEMBER 18, 2014 ORDER DENYING MOTION TO ALTER OR AMEND IN ALL SIX CASES VACATED. CASES REMANDED TO THE CIRCUIT COURT FOR WASHINGTON COUNTY FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE APPELLEE.