

Circuit Court for Baltimore County
Case No. C-03-CV-20-004573

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 775

September Term, 2021

PLAZA HAND CAR WASH, INC., *ET AL.*

v.

KERRY ANDERSON

Berger,
Nazarian,
Albright,

JJ.

Opinion by Nazarian, J.

Filed: January 23, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

** 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.

Like the unconsummated document that lies at its substantive heart, we find ourselves in this appeal with an unresolved question that, unfortunately, might prevent us from hearing it at this juncture. The dispute itself stems from negotiations between Lewie Anderson and Plaza Hand Car Wash (“PHCW”) for the sale of a car wash business. Mr. Anderson, the prospective purchaser, made an earnest money deposit for the transaction, but no writing memorializing the transaction, or any part of it, was ever finalized or signed. And shortly before the parties planned on finalizing the sale, Mr. Anderson passed away.

Mr. Anderson’s death left behind a dispute between his estate (represented here by his widow and personal representative, Kerry Anderson) and PHCW over who was entitled to the earnest money deposit. The dispute ripened into a declaratory judgment action that the estate filed in the Circuit Court for Baltimore County. The estate filed a motion for summary judgment and, in the weeks that followed, PHCW attempted to file a counterclaim against the estate for breach of contract and promissory estoppel. We say “attempted” because PHCW’s first two attempts were stricken for deficient filing and its third—the one potentially at issue at this point—was stamped as “stricken” but was never actually stricken from the MDEC docket, nor was a deficiency notice filed.

This leaves us unable to determine whether the counterclaim was filed and became part of this case. That matters because the circuit court later granted the estate’s motion for summary judgment (the order from which PHCW appeals) but didn’t address the possibly-but-not-discernibly-stricken counterclaim. If the counterclaim wasn’t stricken, there was no final judgment and we lack jurisdiction to hear this appeal; if it was stricken, we’re fine.

And because we cannot answer the question with sufficient confidence on this record, we remand this case to the circuit court, without affirming or reversing, to determine whether the counterclaim was stricken and, if not, for further proceedings to resolve it.

I. BACKGROUND

On or around July 1, 2020, Mr. Anderson entered negotiations with PHCW to purchase its car wash business. Mr. Anderson made an earnest money deposit of \$49,500 to a business broker, who was to release the money to PHCW once the deal closed. PHCW alleged that during this time, Mr. Anderson was trained in the car wash's operations and asked PHCW to purchase equipment and perform repairs on the car wash before finalizing the purchase of the business. Before any contracts were signed or the sale was finalized, though, Mr. Anderson passed away. Ms. Anderson, Mr. Anderson's widow and the personal representative of his estate, asked PHCW to authorize the return of the earnest money deposit since the deal never closed. But PHCW refused, and it contends that it is entitled to the money to pay for the improvements it made to the car wash during negotiations.

On December 29, 2020, Ms. Anderson filed a complaint for declaratory judgment that asked the court to find that all rights and interests in the earnest money deposit lie with the estate. She filed a motion for summary judgment on January 13, 2021 that PHCW opposed. PHCW also filed an answer to Ms. Anderson's complaint.

During February and March 2021, both parties filed various motions and responses, and on February 12, 2021, PHCW filed a two-count counterclaim, claiming damages from

the estate for breach of contract and promissory estoppel. That counterclaim was stricken. PHCW filed the counterclaim again on February 16, 2021, but that too was the subject of a deficiency notice and stricken for the same reason. PHCW then filed the counterclaim for a third time on March 10, 2021. The third counterclaim was stamped with the notice “Stricken per Rule 20-203(c). Not a valid pleading or paper,” but the court did not give any form of notice that the counterclaim had been stricken, and the counterclaim was not in fact stricken from the MDEC docket.

A hearing on the summary judgment motion was held on July 21, 2021, during which the parties mentioned the counterclaim but never discussed it in depth. After the hearing, the court issued an order granting the estate’s motion for summary judgment and entering judgment “against all remaining Defendants in the amount of \$49,500.00, and for costs.” The court didn’t rule on the counterclaim. Because the court entered a monetary judgment rather than a declaratory judgment, Ms. Anderson filed a motion to correct the mistake, and the court ultimately re-entered its order on October 18, 2021, and PHCW appealed.

II. DISCUSSION

Under Maryland Rule 8-604(d), we may remand a case to the circuit court if we find that the “the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings.” We must “state the purpose for the remand,” and the court “shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of

the appellate court.” Md. Rule 8-604(d). In this instance, we are constrained to remand this case, without affirming or reversing, for further proceedings to determine whether the PHCW’s third attempt to file a counterclaim was stricken and, if it wasn’t, for any proceedings necessary to resolve the counterclaim.

The record and the docket sheet send mixed signals that we cannot resolve from this distance. Although the counterclaim filing itself is stamped with a notice that says that it has been stricken, the filing appears in the MDEC docket, and no deficiency notice was issued, unlike the two previous times. The ambiguity leaves us unable to determine whether all claims in the case were resolved in the circuit court and, therefore, whether the court’s order granting summary judgment constitutes a final judgment. *Southern v. State*, 371 Md. 93, 111 (2002) (finding that the Court may remand the case where the Court is “otherwise . . . unable to decide the case because of an absence of findings of fact”) (citation omitted)). If the court finds that the counterclaim was not stricken, the counterclaim remains undecided, and the court must resolve it before there is an appealable final judgment that we can review. Md. Code (1973, 2020 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article; *see McLaughlin v. Ward*, 240 Md. App. 76, 82 (2019) (“Generally, parties may appeal only upon the entry of a final judgment. One of the necessary elements of a final judgment is that the order must adjudicate or complete the adjudication of all claims against all parties.” (cleaned up)). On the other hand, if the court,

after making findings, concludes that the counterclaim was stricken, we will know that its judgment is final and we stand ready to proceed to the merits of the appeal.

CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE COUNTY, WITHOUT AFFIRMING OR REVERSING, FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLANT AND APPELLEE TO SHARE COSTS EQUALLY.