

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1139

September Term, 2014

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AMERICAN POOL, LLC

v.

BRUCE HOLMES, ET AL.

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Wright,  
Reed,  
Alpert, Paul E.  
(Retired, Specially Assigned),

JJ.

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Opinion by Wright, J.

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Filed: June 4, 2015

\*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.

Appellant, American Pool, LLC (“American Pool”), employed appellee, Bruce Holmes, as a regional manager of its commercial and residential pool construction, repair, servicing, and maintenance business. American Pool and Holmes entered into a written employment agreement in 2008 but, by September of 2011, American Pool had terminated Holmes. Holmes subsequently started his own business, Aqua Pure Pool, LLC, which was a direct competitor with American Pool. On June 5, 2013, American Pool sued appellees, Holmes and his business, (collectively, “Holmes”) in the Circuit Court for Anne Arundel County alleging, *inter alia*, breach of contract and misappropriation of trade secrets. The court entered an order of default (“Order of Default”) against Holmes on December 30, 2013.

On May 22, 2014, Holmes filed a motion to strike or vacate judgment. On June 11, 2014, during a hearing, the circuit court deemed Holmes’s motion as unripe, and a final judgment (“Default Judgment”) was entered against Holmes on June 16, 2014. Holmes filed a motion to alter or amend judgment on June 26, 2014, which the court granted on July 9, 2014. American Pool timely appealed and presents the following question for our review:

Did the circuit court err in vacating the Default Judgment against Holmes?

We answer “no.” Accordingly, we affirm the order of the circuit court and, in addition, remand the case for further proceedings not inconsistent with this opinion.

## Facts

Holmes worked for American Pool as a regional manager for about three years before he was terminated. American Pool alleged that, upon Holmes's termination, he took American Pool's customer list and pricing information to start his own business, and he solicited American Pool's customers. On June 5, 2013, American Pool sued Holmes for his actions alleging, *inter alia*, breach of contract and misappropriation of trade secrets.

American Pool, after attempting to serve Holmes about 11 times, requested service by an alternative method, which the circuit court granted on October 11, 2013. Pursuant to the order, American Pool served Holmes on October 14, 2013, by first-class mail, at his last known address. Holmes did not respond to the complaint and, on December 17, 2013, American Pool filed a motion for an order of default pursuant to Md. Rule 2-613<sup>1</sup> citing

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### <sup>1</sup> Md. Rule 2-613. Default Judgment.

**(a) Parties to Whom Applicable.** In this Rule, the term “plaintiff” includes counter-plaintiffs, cross-plaintiffs, and third-party plaintiffs, and the term “defendant” includes counter-defendants, cross-defendants, and third-party defendants.

**(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.

(continued...)

Holmes's failure to respond. The circuit court granted the Order of Default on December 30, 2013.

On May 22, 2014, American Pool filed a motion for Default Judgment. That same day, Holmes filed a motion to strike or vacate the Order of Default due to fraud, mistake, or irregularity, pursuant to Md. Rule 3-535(b), citing his failure to receive notice of any of the proceedings as grounds. This was a motion by Holmes pursuant to Md. Rule 2-613(d) containing the reason for the failure to plead and the legal and factual basis for the defense to the claims.

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(...continued)

**(d) Motion by Defendant.** 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.

**(e) Disposition of Motion.** If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action and that it is equitable to excuse the failure to plead, the court shall vacate the order.

**(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 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. If, in order to enable the court to enter judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court may rely on affidavits, conduct hearings, or order references as appropriate, and, if requested, shall preserve to the plaintiff the right of trial by jury.

**(g) Finality.** A default judgment entered in compliance with this Rule is not subject to the revisory power under Rule 2-535(a) except as to the relief granted.

On June 11, 2014, the circuit court held a motions hearing on the final default judgment. Holmes failed to appear. The court discussed Holmes's motion to strike or vacate the Order of Default, but it denied his motion because it was not yet ripe.<sup>2</sup> At the conclusion of the hearing, the court granted Default Judgment against Holmes in the amount of \$399,010.06, and it enjoined Holmes from misappropriation of trade secrets. The Default Judgment was entered on June 16, 2014.

On June 19, 2014, American Pool filed an opposition to Holmes's previous motion to strike or vacate the Order of Default and, on July 3, 2014, Holmes filed a second memorandum in support of his motion to strike or vacate the Order of Default.

On June 26, 2014, Holmes filed a motion to alter or amend judgment [Default Judgment] pursuant to Md. Rule 2-534.<sup>3</sup> On July 9, 2014, the circuit court ruled as follows:

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<sup>2</sup> The court noted that Holmes's motion was filed pursuant to Md. Rule 3-535(b), but also that Md. Rule 3-535 is the district court companion to the circuit court rule found at Md. Rule 2-535. Through his second memorandum to his motion, Holmes would correct the cited law to Md. Rule 2-535.

<sup>3</sup> **Md. Rule 2-534. Motion to alter or amend a judgment – Court decision.**

In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its finding or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be jointed with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

Defendant’s Motion to Vacate and Strike the Judgment in this case having been granted, it is this 7 day of July ~~May~~, 2014 by the Circuit Court for Anne Arundel County

ORDERED that the Judgment entered in favor of American Pool, LLC be and it is hereby stricken and vacated.

American Pool timely appealed that order on August 8, 2014.<sup>4</sup>

### **Standard of Review**

American Pool appeals the circuit court’s order vacating the Default Judgment. Typically, we would review an order granting striking or vacating judgment under an abuse of discretion standard. *See Miller v. Mathias*, 428 Md. 419, 438 (2012); *Prince George’s Cnty. v. Hartley*, 150 Md. App. 581, 586 (2003). American Pool, however, urges us to review this case for “clear error and legal correctness” because the circuit court “vacated its judgment against Appellees . . . on the basis that there was ‘fraud, mistake, or irregularity’ with respect to the default proceedings against Appellees.” In this case, however, the court did not state its reasons for vacating and striking the judgment against Holmes. For that reason, “we should affirm the judgment if our review of the record discloses that the court was legally correct.” *Briscoe v. City of Balt.*, 100 Md. App. 124, 128 (1994).

### **Discussion**

American Pool contends that the circuit court erred “as a matter of law when the court vacated a default judgment that had been entered against Appellees in Appellant’s favor[.]” In support of that argument, American Pool makes five allegations: (1) the

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<sup>4</sup> Holmes did not participate in this appeal.

“motion to vacate was based on law that did not apply to the circuit court proceedings;” (2) Holmes “failed to challenge the validity of the court’s order for alternative service of process;” (3) Holmes “conceded that Aqua Pure Pool’s listing of its address with the Maryland State Department of Assessments and Taxation rendered Appellant’s service on that address appropriate;” (4) Holmes “had actual knowledge of the order of default, yet waited forty-three days to file a motion to vacate and failed to attend the default hearing without good cause;” and (5) the “court granted Appellees’ motion without providing Appellant the opportunity to respond.” American Pool asserts that the court “err[ed] as a matter of law when the court vacated a default judgment that had been entered against [Holmes] in [American Pool]’s favor . . . for the above-described reasons.”

We first must determine what is on appeal in this case. American Pool suggests by its arguments that the court wrongly vacated the Order of Default, not the Default Judgment. Our review of the record reveals that the Order of Default has not been vacated and remains intact. The arguments that are directed to reversing the circuit court’s Order of Default entered on December 30, 2013, are misplaced.<sup>5</sup> Instead, we review the court’s order vacating the Default Judgment on June 16, 2014.

In the hearing on June 11, 2014, the circuit court addressed Holmes’s motion to strike or vacate the Order of Default that was submitted to the court on May 22, 2014, ruling that the motion was “not yet ripe for a response[.]” The court then proceeded to hold an *ex parte* proof of damages hearing and entered a Default Judgment in favor of

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<sup>5</sup> Some confusion may have been caused by the imprecise language used by Holmes by referring to the Order of Default as a default judgment in his motion.

American Pool for \$399,010.06 and enjoined Holmes from misappropriation of trade secrets. A Default Judgment was entered on June 16, 2014. On June 26, 2014, Holmes filed a motion to alter or amend the Default Judgment pursuant to Md. Rule 2-534. The fact that a Default Judgment had been entered did not stop the parties from continuing to litigate the underlying Order of Default, entered some six months previously, by way of American Pool's opposition to the motion to strike or vacate and Holmes's subsequent second memorandum in support of his motion to strike or vacate.

As to the motion to alter or amend the Default Judgment, the circuit court ruled as follows:

Defendant's Motion to Vacate and Strike the Judgment in this case having been granted, it is this 7 day of July ~~May~~, 2014 by the Circuit Court for Anne Arundel County

ORDERED that the Judgment entered in favor of American Pool, LLC be and it is hereby stricken and vacated.

We can only assume that the circuit court ruled as it did for the reasons laid out in Holmes's motion which are as follows:<sup>6</sup>

Plaintiff's attorneys knew and understood that there should be a ruling on Defendants' Motion to Strike or Vacate Judgment in this case before proceeding with Ex-parte proof of damages as shown by their entering a Joint Motion with Defendants' attorney to postpone the Default Hearing. This Honorable Court ordered the Defendants to file a formal Answer within 10 days, before it would consider the Motion to Strike or Vacate Judgment.

Defendants complied with the foregoing Court Order, however instead of ruling upon the Motion to Strike or Vacate Judgment, the Court

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<sup>6</sup> “[W]e assume that the circuit court carefully considered all of the asserted grounds and determined that all or at least enough of them merited the decision ultimately implemented.” *Smith-Myers Corp. v. Sherill*, 209 Md. App. 494, 504 (2013).

denied the Motion to Continue the Default Hearing and proceeded with that Hearing the following day.

Based on this record, and by tracking the numerous motions filed by the parties, we find no abuse of discretion or error of law in the circuit court's granting of the motion to alter or amend judgment. It was Holmes's understanding that the motion to strike or vacate the Order of Default would be disposed of prior to a hearing on the Default Judgment that would include a determination of liability and all relief sought. Md. Rule 2-613(f). There was no suggestion that counsel "acted willfully or contumaciously" in failing to attend the hearing on June 11, 2014. *See Holly Hall Publ'ns, Inc. v. County Banking & Trust Co.*, 147 Md. App. 251, 267 (2002). We, therefore, affirm the order of the circuit court vacating the Default Judgment. Because the underlying Order of Default remains, the parties may proceed in accordance with Md. Rule 2-613(f).

**JUDGMENT OF THE CIRCUIT COURT  
FOR ANNE ARUNDEL COUNTY  
AFFIRMED. CASE REMANDED FOR  
FURTHER PROCEEDINGS NOT  
INCONSISTENT WITH THIS OPINION.  
COSTS TO BE PAID BY APPELLANT.**