Circuit Court for Anne Arundel County
Case No. C-02-CV-20-001882

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1361

September Term, 2023

FIVE ACE HOLDINGS LLC

v.

MASHRIQ & MAGHRIB FOODS CORPORATION, ET AL.

Wells, C.J.,
Nazarian,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: May 23, 2025

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

In April 2022, Five Ace Holdings LLC ("Five Ace") appeared to prevail in a breach of contract suit against Mashriq & Maghrib Foods Corporation ("M&M"), Saeed Essa, and Nafisa Mire in the Circuit Court for Anne Arundel County. Indeed, after a bench trial, the court entered judgment in favor of Five Ace and against M&M. The court also indicated it would enter judgment against Mr. Essa and Dr. Mire, but it never did. Months later, Five Ace asked the court, first through a line and then a formal motion, to enter judgments against Mr. Essa and Dr. Mire. The court, via two different judges, denied these requests and Five Ace has appealed. We dismiss the appeal because there is no final judgment and remand with instructions to determine whether Mr. Essa and Dr. Mire are liable, and if so, to what extent, and to enter judgment reflecting those determinations.

I. BACKGROUND

On August 7, 2020, Five Ace initiated a breach of contract suit against M&M and its two owners, Mr. Essa and Dr. Mire (collectively with M&M the "appellees"). Five Ace alleged that it entered into a commercial lease agreement with M&M on May 31, 2018, which Mr. Essa and Dr. Mire both guaranteed personally, and that M&M, Mr. Essa, and Dr. Mire owed Five Ace $95,928.43 in delinquent rent payments. The complaint contained one count for breach of contract against M&M as the obligor and one count for breach of contract against Mr. Essa and Dr. Mire as individual guarantors.

Two months later, on October 5, 2020, M&M filed a separate class action complaint against Five Ace and a property developer, CSHV Waugh Chapel LLC, alleging various contract- and tort-related claims. Mr. Essa and Dr. Mire were not parties in this suit. On

August 23, 2020, M&M filed a motion to consolidate the two cases, which Five Ace opposed. The circuit court granted the motion on September 28, 2021, and ordered the parties to file all future pleadings under the class action case number (C-02-CV-20-001882).

After months of discovery, postponements, and pre-trial motions, the court held a bench trial in April 2022. On the second day of trial, the court granted Five Ace's motion for summary judgment as to the class action lawsuit. As for Five Ace's breach of contract suit, on April 22, 2022, the court found a "mutual, implied termination of the lease" and awarded $69,497.62 (the amount of unpaid rent minus the security deposit) to Five Ace. The court then stated that it would enter judgment against "the Plaintiff including the individual capacity of the two Plaintiffs[1] in favor of" Five Ace. Five Ace's attorney asked the court to clarify that the judgment would be in the "amount we've all agreed to entered against M&M and then the individual guarantors Mr. Essa and Dr. Mire," to which the judge replied, "Correct." Despite this oral ruling, the hearing sheet from that day, which the judge signed as an official order, stated only that the court would enter judgment against M&M; it made no mention of Mr. Essa or Dr. Mire.

[1] Although Five Ace was the plaintiff in the breach of contract suit against the appellees, M&M was the plaintiff in the class action suit under which the court ordered the parties to file all pleadings once it consolidated the two cases. Mr. Essa and Dr. Mire were not plaintiffs in the class action suit, and it seems the court referred to them as "plaintiffs" by mistake, presumably due to their association with M&M as the owners and individual guarantors of the lease.

After ruling, the court confirmed that Five Ace was the "prevailing party," and Five Ace "reserve[d] the right as the prevailing party to present evidence on the legal fees at the appropriate time." The judge instructed the parties to attempt to reach an agreement on attorneys' fees and stated that the court would hold a hearing if they were unsuccessful.

On April 28, 2022, before the parties had resolved the question of attorneys' fees, the clerk of the court entered a judgment against M&M, but not Mr. Essa or Dr. Mire, in the amount of $69,497.62. Five Ace filed a motion to revise the judgment because it didn't include the attorneys' fees. On July 19, 2022, the court entered an order granting Five Ace's motion, vacating the April 28 judgment, and scheduling a hearing for July 26, 2022 "for the purpose of entering a new judgment in favor of Five Ace and against [M&M] in the amount of $69,497.62 plus the attorney's fees . . . ."

At the July 26 hearing, Five Ace submitted evidence of attorneys' fees totaling $108,904.81. They also introduced a copy of the parties' lease agreement, which contained a section that required payment of attorneys' fees to the "prevailing party" in any litigation regarding the lease. The appellees argued, unsuccessfully, that Five Ace was not the prevailing party and that the alleged attorneys' fees were unreasonable. The court granted Five Ace the full amount they requested, "for a total judgment against the Plaintiff of $178,402.43." The next day, the clerk entered a judgment against M&M in the amount of $178,402.43. The judgment did not mention Mr. Essa or Dr. Mire and no separate judgment was entered as to either.

Two months later, on September 26, 2022, Five Ace filed a line asking the court to enter additional judgments against Mr. Essa and Dr. Mire, claiming that they were "jointly and severally liable for the full amount of the $178,042.43 judgment entered against M&M." The appellees filed an opposition on October 18, 2022. They argued that Five Ace failed to request additional judgments in their previous, timely motion to revise the court's April 28 judgment and that this second "[m]otion, styled as a line," was untimely. The appellees argued as well that the court's ruling on attorneys' fees applied only to M&M and not to Mr. Essa or Dr. Mire. The court, via a different judge, treated Five Ace's line as a motion requesting additional judgments and, without a hearing, denied it "for good cause found" on October 28, 2022.

Eight months later, on June 26, 2023, Five Ace filed a formal motion asking the court to enter separate judgments against Mr. Essa and Dr. Mire. They argued, as they had in the line, that Mr. Essa and Dr. Mire also were liable for the entire $178,042.43 judgment and that the clerk should have entered judgments against them as individual guarantors. Five Ace claimed that the clerk's failure to do so constituted a "mistake" that, under Maryland Rule 2-535, the court could rectify at any time using its revisory power. The appellees filed an opposition the next day, arguing that because the court already had denied Five Ace's "motion, styled as a 'Line,'" which made the same request for additional judgments, it should deny Five Ace's new motion under the doctrine of collateral estoppel. The appellees argued further that because Five Ace didn't file either a Rule 2-535 motion or a notice of appeal within thirty days of entry of judgment, the court's judgment against

M&M and its "non-entry of any judgment against [Mr.] Essa and [Dr.] Mire" became final such that the court did not have jurisdiction to grant the requested relief. Finally, the appellees claimed that "there was no mistake" to be corrected in any event because "the Court never entered judgment against anyone other than M&M."

Five Ace filed a reply on July 6, 2023. Pointing to the court's April 22, 2022 oral ruling, they argued that the court had ruled against Mr. Essa and Dr. Mire individually and intended to enter separate judgments against them. Five Ace also reiterated that Rule 2-535 allows the court to correct a judgment due to fraud, mistake, irregularity, or clerical errors at any time. *See* Md. Rule 2-535(b), (d). The appellees filed a sur-reply on the same day. They referred to the court's July 19, 2022 order, which granted Five Ace's motion to vacate the April 28 judgment and set a hearing "for the purpose of entering a **new judgment in favor of Five Ace and against [M&M]** in the amount of $69,497.62 plus the attorneys' fees . . . ." The appellees contended that because the court signed the hearing sheet with this language and did not then instruct the clerk to enter separate judgments against Mr. Essa and Dr. Mire, the clerk made no mistake in not doing so. Finally, they restated their arguments that Five Ace's motion was barred by collateral estoppel and, because there was no mistake, was untimely.

The court, with a third judge presiding, held a hearing on August 8, 2023. The court acknowledged that the first judge had stated expressly in his April 22, 2022 ruling that he would enter judgments against M&M *and* Mr. Essa and Dr. Mire. Even so, the court took issue with the fact that Five Ace didn't request additional judgments when they filed their

first motion to revise the April 28 judgment. Five Ace explained that such a request would have been premature because they hadn't yet resolved the matter of attorneys' fees, and they relied on the court's oral ruling about its intention to issue separate judgments. The court then asked Five Ace to explain why the October 28 order was not the final word on the matter. Five Ace said they didn't consider that order to be final because their line was not a request to modify a judgment, as there was no judgment against Mr. Essa or Dr. Mire to modify, and their line was not a formal Rule 2-535 motion on which the court could rule.

The appellees argued in response that by vacating the April 28 judgment, the court nullified the judge's oral statement regarding judgments against M&M, Mr. Essa, and Dr. Mire. The appellees claimed that Five Ace's request for two additional judgments went "well above" a request to fix a "clerical error" under Rule 2-535(d), that Five Ace's motion was untimely, and that their motion was barred by the doctrines of collateral estoppel and *res judicata*.

The court reviewed case law on fraud, mistake, irregularity, and clerical mistakes under Rule 2-535(b) and (d) and found that no such errors had arisen in this case. The court ruled that it didn't have the authority to alter the judgment by adding two new judgments and denied Five Ace's motion. The court then allowed Five Ace to state a few points for the record. Five Ace noted that the Maryland Rules require the court to enter separate judgments against each liable party for the court's decision to constitute a final judgment from which the parties could note an appeal. *See* Md. Rule 2-601. As such, according to Five Ace, the court's failure to enter separate judgments against Mr. Essa and Dr. Mire was

a clerical mistake. The court responded that a single judgment against M&M as the only liable party, per the hearing sheet, was neither a mistake nor a violation of the separate document rule. The hearing sheet, signed and entered as an official order on August 10, 2023, memorialized these decisions:

> Per Maryland Rule 2-535, the Court finds no fraud mistake or irregularity . . . in the Order issued by [the court] on July 27, 2022. The Court finds no clerical mistake . . . as the Notice of Recorded Judgment accurately reflects the July 27, 2022 Order. Court no longer has the authority to revise the judgment entered on 7/27/2022 as the Motion was filed beyond 30 days and does not otherwise fall under the purview of Maryland Rule 2-535.

Five Ace filed a timely notice of appeal on September 7, 2023.

II. DISCUSSION

Five Ace presents a single question for our review: Did the circuit court err in denying their motion to enter judgments against Mr. Essa and Dr. Mire?[2] Five Ace argues that the court's failure to enter separate judgments against Mr. Essa and Dr. Mire was a clerical error under Rule 2-535(d) "because it failed to preserve the actual decision of the circuit court," namely, the court's oral ruling on April 22, 2022. They argue as well that

[2] Five Ace phrased their Question Presented as follows: "Did the circuit court err by failing to add judgments against Appellees Essa and Mire when the failure to enter these judgments was the result of an irregularity or clerical error under Maryland Rule 2-535(b) and (d)?" The Appellees rephrased the question in three parts:

> (1) Should the appeal be dismissed based on Collateral Estoppel and Res Judicata?
>
> (2) Should the appeal be dismissed as untimely filed?
>
> (3) Should the appeal be dismissed as there was no clerical error or irregularity under Maryland Rule 2-535(b) and (d)?

because Maryland Rule 2-601(a)(1) requires the court to enter each judgment on a separate document, the court's failure to enter judgments against Mr. Essa and Dr. Mire constituted an "irregularity" under Rule 2-535(b). Finally, Five Ace claims their motion to add judgments was not untimely because Rules 2-535(b) and (d) allow the court to fix a mistake or irregularity at any time.

The appellees respond that Five Ace's motion to add judgments was barred under the doctrines of collateral estoppel and *res judicata*. Citing *Pickett v. Noba, Inc.*, 122 Md. App. 566 (1998), they argue as well that Five Ace's appeal is untimely because the court's denial of a second motion to revise the judgment is not a final, appealable judgment. *Id.* at 573. Finally, the appellees claim there was no clerical error or irregularity in the court's judgment because it reflected the court's July 27, 2022 judgment against M&M accurately.

Five Ace filed a reply in which they reiterated their arguments about clerical mistake and the significance of the April 22, 2022 oral ruling. In response to the appellees' contention that this appeal is untimely, Five Ace claims that the August 10, 2023 order was the only appealable decision in this case. Citing Rule 2-602(a)(1), they argue that "[b]ecause the July 27, 2022 judgment did not adjudicate the 'rights and liabilities' of 'all the parties to the action,' it cannot be considered a final judgment from which an appeal should have been taken." Five Ace argues that the denial of their line also was not a final decision from which they could have noted an appeal because "it merely upheld the *status quo*" of the July 27, 2022 judgment. Finally, Five Ace contends that the doctrines of

collateral estoppel and *res judicata* don't apply here because there wasn't a second, separate lawsuit relitigating the issues decided in the first.

We cannot reach the merits of these arguments and instead must dismiss this appeal for lack of a final judgment as to all parties and all claims. We remand the case to the circuit court for further proceedings to determine whether Mr. Essa and Dr. Mire are in fact liable, and if so, to what extent, and to enter judgments reflecting that determination.

Apart from a few exceptions that don't apply here—interlocutory appeals permitted by statute, immediate appeals under Rule 2-602(b), and the collateral order doctrine, *see Maryland Bd. of Physicians v. Geier*, 451 Md. 526, 546 (2017)—our review of circuit court decisions is limited to their final judgments. *See Monarch Acad. Balt. Campus, Inc. v. Balt. City Bd. of Sch. Comm'rs*, 457 Md. 1, 41–42 (2017) ("[A] party may generally appeal only from 'a final judgment entered in a civil or criminal case by a circuit court.'" (*quoting* Md. Code (1974, Repl. Vol. 2013), § 12-301 of the Courts & Judicial Proceedings Article)). A judgment is final if: (1) the court intends it to be "an unqualified, final disposition of the matter in controversy"; (2) "it . . . adjudicate[s] or complete[s] the adjudication of all claims against all parties" (unless Rule 2-602(b) applies); and (3) the clerk records the judgment "in accordance with Maryland Rule 2-601." *Geier*, 451 Md. at 545 (cleaned up).

Importantly, for these purposes, a decision is not a final judgment if it doesn't adjudicate the rights and liabilities of *all the parties* in the action:

> Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that

> adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action:
>
> (1) is not a final judgment;
>
> (2) does not terminate the action as to any of the claims or any of the parties; and
>
> (3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.

Md. Rule 2-602(a)(1)–(3); *see also Waterkeeper All., Inc. v. Md. Dep't of Agric.*, 439 Md. 262, 278–79 (2014) ("[F]or an order to qualify as a final judgment, it must adjudicate each and every claim and be reflected in a docket entry."); Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary* 820 (6th ed. 2024) ("If the document that purports to embody the judgment does not reflect resolution of all claims among all parties, it is not a judgment even if the court calls it a judgment.").

Rule 2-601 requires each judgment to "be set forth on a separate document" and entered "on the docket of the electronic case management system used by that court . . . ." Md. Rule 2-601(a)(1), (b)(2). Generally, the "separate document" rule "'must be mechanically applied in determining whether an appeal is timely.'" *Maryland Bd. of Physicians v. Geier*, 241 Md. App. 429, 479 (2019) (*quoting Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466, 480 (2014)). A "mechanical application of the rule is necessary to fulfill its purpose of providing clear and precise judgments and to eliminate uncertainty as to when an appeal must be filed." *Hiob*, 440 Md. at 480. Although parties may waive the separate document requirement when strict compliance would create unnecessary delay or when "the trial court intended the docket entries made by the court clerk to be a final

judgment and . . . no party objected to the absence of a separate document after the appeal was noted," *Wireless One, Inc. v. Mayor & City Council of Balt.*, 465 Md. 588, 599–600 n.2 (2019) (cleaned up), they may do so only "when a party is not prejudiced by the waiver." *Hiob*, 440 Md. at 480.

Our Supreme Court addressed a situation similar to this in *Taha v. Southern Management Corp.*, 367 Md. 564 (2002). Mr. Taha initiated a malicious prosecution suit against his former employer, Southern Management Corporation ("Southern"), and two of its employees, Ms. Wylie-Forth and Mr. McGovern. *Id.* at 566. The jury returned a verdict in favor of Ms. Wylie-Forth and Mr. McGovern but found against Southern and awarded Mr. Taha $200,000 in damages. *Id.* The court's judgment order included the verdict against Southern but made no mention of the verdicts in favor of Ms. Wylie-Forth and Mr. McGovern. *Id.* Southern moved for judgment notwithstanding the verdict, which the circuit court denied. *Id.* at 567. We reversed the court's ruling on appeal because the verdicts were irreconcilable—the jury had exonerated the two individuals whose "conduct served as the factual basis for [Mr.] Taha's respondeat superior claim against [Southern]." *Id.*

The Supreme Court granted Mr. Taha's petition for writ of *certiorari* but didn't reach the merits of his claim. *Id.* Instead, citing the final judgment rule, the separate document rule, and the docketing requirement of Rule 2-601,[3] the Court held that the circuit

[3] Although the docketing requirement at the time of *Taha* did not include the current language about the court's electronic case management system, the rule's purpose (*i.e.*, "to address the need for clear, complete, and precise judgments," *Taha*, 367 Md. at 568 (cleaned up)) was the same. The requirement regarding the electronic case management system "applies to judgments entered on and after July 1, 2015." Md. Rule 2-601(b)(1).

court had not entered final, appealable judgments against Ms. Wylie-Forth and Mr. McGovern because there was no docket entry or separate document declaring final judgments in their favor. *Id.* at 567–71. Southern argued that the circuit court's oral statements at the post-trial motions hearing indicated its understanding that it had entered final judgments in favor of Ms. Wylie-Forth and Mr. McGovern:

> Even though not finding the individual employees responsible, which clearly they did by their verdict, that does not mean that the verdict was legally defective, although it may appear on the surface to be factually inconsistent.
>
> So for that reason I am not going to disturb the verdict. I do believe the J.N.O.V. should be denied.

Id. at 570. The Supreme Court, however, concluded that "an oral comment by the trial judge contained in the record is insufficient to create a final judgment." *Id.* Without separate documents or docket entries indicating the judgments in favor of Ms. Wylie-Forth and Mr. McGovern, the Court held that we did not have jurisdiction to address Southern's appeal. *Id.* at 571; *see also Estep v. Georgetown Leather Design*, 320 Md. 277, 279–80, 287 (1990) (there was no final judgment until court entered order disposing of third-party claim over one year after clerk entered partial judgment in favor of plaintiff).

Although the facts of this case are different, the errors are similar. After the trial, the court ruled in favor of Five Ace and indicated in its oral ruling that Mr. Essa and Dr. Mire also were liable for the $69,497.62 in unpaid rent:

> [THE COURT]: All right, I [will] come up with a judgment that the Plaintiff including the individual capacity of the two Plaintiffs in favor of — Five Aces Holding; is that correct?
>
> [COUNSEL FOR FIVE ACE]: Five Ace Holdings, LLC. Yes, Your Honor.

> [THE COURT]: I think my number's correct, 69,497.62.
>
> [COUNSEL FOR FIVE ACE]: That's our number as well.
>
> [COUNSEL FOR M&M]: I have the same amount.
>
> [THE COURT]: So that will be the judgment.
>
> * * *
>
> [COUNSEL FOR FIVE ACE]: [T]o be clear on my client's complaint, it'll be the judgment amount that we've all agreed to entered against M&M and then the individual guarantors Mr. Essa and Dr. Mire?
>
> [THE COURT]: Correct.

This oral ruling didn't constitute a final judgment. *See Taha*, 367 Md. at 570. It was incumbent on the clerk, based on the court's ruling and instructions, to enter judgments as to all three parties facing suit (M&M, Mr. Essa, and Dr. Mire) and to enter those judgments on the docket in the court's electronic case management system. *See* Md. Rule 2-601(a)(1), (b)(2). As in *Taha*, the court here entered a judgment against only one of three parties, M&M. And just as the circuit court in *Taha* failed to enter judgments absolving Ms. Wylie-Forth and Mr. McGovern of liability, 367 Md. at 566–67, the court in this case never entered judgments against two individuals who, based on the court's oral ruling, seem to be liable for at least part, if not all, of the monetary judgment. The absence of judgments one way or the other has created confusion and dispute among the parties about the liability of Mr. Essa and Dr. Mire and the finality of the judgment, a problem that Rule 2-601 is meant to prevent. *See id.* at 568 ("The purpose of Maryland Rule 2-601 was to address 'the need for clear, complete, and precise judgments' . . . ." (*quoting* Reporter's Note to Proposed Rule 2-601, 23 Md. Reg. 1667 (Nov. 22, 1996))); Paul V. Niemeyer & Linda M.

Schuett, *Maryland Rules Commentary* 816 (6th ed. 2024) (The separate document rule "provides clarity and precision about whether a judgment has in fact been entered . . . .").

The parties here have not waived the separate document requirement—indeed, the absence of judgments as to Mr. Essa and Dr. Mire is the very issue on appeal. *See Taha*, 367 Md. at 569 (court recognizes waiver of separate document rule for preservation purposes only when "none of the parties raised any objection" to the lack of a separate document). Rather than a mere formality, the entry of judgment establishing Mr. Essa's and Dr. Mire's liability (if any) may affect Five Ace's ability to recover damages and from whom it might seek to recover them. Dismissing the appeal with instructions to enter such judgments, then, would not constitute "unnecessary delay." *See Wireless One, Inc.*, 465 Md. at 599–600 n.2 ("[T]he separate document requirement is not jurisdictional, and strict compliance may be waived where a technical application of the separate document requirement would only result in unnecessary delay." (cleaned up)). Nor are we, on this record, in a position to enter judgment ourselves under Rule 8-602(g)(1)(C)—there is too much uncertainty about what the court meant to do, and it would be inappropriate on this posture for us to guess at it.

Because no court has entered judgment as to Five Ace's breach of contract claim against Mr. Essa and Dr. Mire, we do not have a final, appealable judgment in this case, and thus no authority to entertain this appeal. We dismiss this appeal and remand the case

with instructions to determine whether Mr. Essa and Dr. Mire are liable, if so, to what extent, and to enter judgments reflecting that determination.

APPEAL DISMISSED AND CASE REMANDED TO THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY WITH DIRECTIONS TO ENTER JUDGMENTS CONSISTENT WITH THIS OPINION. COSTS TO BE DIVIDED EVENLY.