Circuit Court for Queen Anne's County
Case No: C-17-CV-19-000311

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1836

September Term, 2021

BIG PIG MD, LLC, ET AL.

v.

GARY R. HASH, ET AL.

Reed,
Albright,
Getty, Joseph M.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: April 10, 2024

*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).

On November 8, 2021, Gary R. Hash and JPG Foods, LLC, appellees, filed in the Circuit Court for Queen Anne's County a motion for the appointment of a receiver for JPG Foods, LLC. After a hearing on December 28, 2021, the court granted the motion and entered an order appointing a receiver. Big Pig, LLC and Roger L'Heureux, appellants, noted timely appeals. Appellees noted timely cross-appeals.[1]

QUESTIONS PRESENTED

Appellants present the following three questions for our consideration, all of which challenge the circuit court's decision to appoint a receiver for JPG Foods, LLC:

> I. Where the circuit court did not comply with the procedural requirements and the statutory requirements incorporated into Title 13 of the Maryland Rules, did the lower court commit reversible error by entering the receivership order without a proper legal basis?
>
> II. Where the circuit court exceeded the scope of the lawsuit and the relief sought, did the lower court commit reversible error by entering the receivership order without a proper legal basis?
>
> III. Where the circuit court ignored the record and did not have an evidentiary hearing to establish the facts necessary to support the receivership order, did the lower court commit reversible error by entering the receivership order without the requisite factual basis?

For the reasons set forth below, we shall dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

This case has its origins in a business relationship and subsequent litigation between Joshua Shonts, Dr. Gary R. Hash, a veterinarian working in Kent County, Maryland, and

[1] Appellees did not file a brief or raise any argument in support of their cross-appeals. As a result, we shall dismiss them.

others. To place the instant appeal in context, we shall review the business relationship and underlying litigation in some detail.

The Barbecue Food Business

In March 2016, Dr. Hash, Mr. Shonts, and Dr. Hash's son, Patrick Hash, formed JPG Foods, LLC ("JPG"), a Maryland limited liability company, for the purpose of operating a barbeque food business. Articles of organization were filed with the Maryland State Department of Assessments and Taxation ("SDAT"), but no operating agreement was ever adopted. JPG opened a bank account for which Dr. Hash and Shonts were signatories. Shonts executed a tradename application, filed it with the SDAT, and registered "Smoke Rattle & Roll" as the limited liability company's tradename. Initially, JPG operated a food truck, which Shonts managed. In July 2016, JPG entered into a commercial lease agreement, executed by Dr. Hash and Shonts, for a restaurant in Queen Anne's County ("JPG's restaurant"). The restaurant opened for business in December 2016 and JPG continued to operate Food Truck No. 1. Both the restaurant and Food Truck No. 1 operated under the tradename Smoke Rattle & Roll. In early 2017, by an amendment filed with SDAT, Patrick Hash was removed as a member of JPG, leaving Dr. Hash and Shonts as the only members of the limited liability company.

The Underlying Litigation

On October 21, 2019, Dr. Hash and JPG filed a complaint, and later a second amended complaint, in the Circuit Court for Queen Anne's County. The defendants named in the second amended complaint were Shonts, Roger L'Heureux, Big Pig MD, LLC ("Big Pig"), Smoke Rattle & Roll Chestertown, LLC ("SRR Chestertown"), Zachary Gibbs,

Joshua's Centreville, LLC ("Joshua's"), Bay Breeze Accounting and Tax Services, LLC ("Bay Breeze"), and Sheri L. Hamburger.[2] Dr. Hash and JPG alleged that none of the original members of JPG provided initial monetary capital contributions. Instead, shortly after JPG was formed, Dr. Hash loaned JPG $20,000 which was deposited in JPG's bank account. That money was used for the purchase of Food Truck No. 1. Dr. Hash also loaned JPG $12,000 in cash which he obtained from a cash advance on his personal credit card. In addition, JPG obtained a credit card from Bankers Healthcare Group, Inc. ("BHG") that was used by Shonts to purchase about $12,000 worth of equipment and other goods needed for JPG's operations. JPG also secured a $100,000 line of credit from BHG to be used for additional working capital. Dr. Hash personally guaranteed the repayment by JPG of both the credit card advance and the loan. According to Dr. Hash, he and Shonts agreed that JPG would repay Dr. Hash for the personal loan he made to the business.

In February 2017, Mr. Shonts approached Roger L'Heureux about certain back-office tasks. Eventually, Mr. L'Heureux became an employee of JPG and he and Shonts began discussing plans to expand the barbecue business. Because Dr. Hash was not in a financial position to expand the business, Shonts and L'Heureux sought other funding. Eventually, Zachary Gibbs provided $100,000. Shonts and L'Heureux formed two Maryland limited liability companies, Big Pig and SRR Chestertown. According to Dr. Hash, without his knowledge or consent, Big Pig and SRR Chestertown purchased and

[2] Dr. Hash and JPG alleged that Shonts, L'Heureux, Gibbs, and Hamburger were members of Big Pig, SRR Chestertown, and Joshua's. Hamburger, an accountant, was also a member of Bay Breeze.

began operating another food truck and a new restaurant in Chestertown using the tradename Smoke Rattle & Roll.

Sheri L. Hamburger was a certified public accountant and a member of Bay Breeze. She and Bay Breeze provided accounting services to JPG. Dr. Hash alleged that, without informing him and obtaining his consent, Shonts, L'Heureux, Gibbs, and Hamburger caused Big Pig and SRR Chestertown to use JPG's tradename, logo, and social media marketing platforms for advertisement purposes. Later, without the knowledge or consent of Dr. Hash or JPG, a second unauthorized Smoke Rattle & Roll restaurant was opened in Centreville. Dr. Hash and JPG alleged that the defendants routinely used JPG's restaurant and equipment to stock and supply Food Truck No. 2 and the Chestertown and Centreville restaurants, but all sales proceeds were retained by the defendants. They also averred that the defendants co-mingled JPG revenue with the unsanctioned Smoke Rattle & Roll operations by linking customer credit card payments made at all Smoke Rattle & Roll locations to a single account.

Dr. Hash first became aware that the defendants were operating Smoke Rattle & Roll locations in which he and JPG had no interest in November 2017. Negotiations to resolve the matter were not successful. Thereafter, without Dr. Hash's knowledge or consent, Shonts took steps to dissolve JPG. In addition, although Hamburger and Bay Breeze had full knowledge that Dr. Hash was a member of JPG, Hamburger prepared and filed a tax return for JPG asserting that JPG was dissolved and had ceased operations as of November 30, 2017.

On May 21, 2018, Shonts, in coordination with the other defendants, but without the knowledge or consent of Dr. Hash and JPG, filed with the SDAT articles of cancellation for JPG. In doing so, Shonts designated himself as the member of JPG responsible for winding up the affairs of the company. According to Dr. Hash and JPG, at the time Shonts filed the articles of cancellation, "JPG had numerous outstanding liabilities, including $43,000 in loans to [Dr.] Hash, $73,000 on the [bank] loan, and $13,000 on the [credit] card[,]" as well as the lease for the restaurant. Nevertheless, in the articles of cancellation, Shonts certified that JPG had "no known creditors."

Despite Shonts's actions, he did not wind up JPG's affairs. The defendants continued to operate JPG's restaurant until the end of its lease in July 2019. Then, without the knowledge or consent of Dr. Hash or JPG, they took JPG's equipment to use in support of their other Smoke Rattle & Roll operations. They also continued to operate Food Truck No. 1. Dr. Hash and JPG alleged that JPG did not receive any of the revenue generated by JPG's restaurant from December 1, 2017 through July 2019 and did not receive any revenue generated by Food Truck No. 1 after December 1, 2017. Nor did JPG receive any funds for Food Truck No. 1 and the equipment that was taken after JPG's termination.

The second amended complaint included eight counts. Counts I and II set forth claims for conversion and unfair competition, logo, and tradename infringement against Shonts, L'Heureux, Hamburger, Gibbs, Big Pig, and SRR Chestertown; Counts III, IV, and VII set forth claims against all the defendants for intentional misrepresentation, civil conspiracy to commit conversion, and negligent misrepresentation; Count V set forth a claim of constructive fraud against Shonts, Hamburger, and Bay Breeze; Count VI set

forth a claim against Shonts for usurpation of corporate opportunities; and, Count VIII set forth a claim against Hamburger and Bay Breeze for negligence. During the course of the case, the claims against Bay Breeze and Hamburger were dismissed.

A default judgment was entered against Zachary Gibbs, subject to damages being proved at trial or a hearing for *ex parte* proof. The record does not indicate that such a hearing was held.

An order of default was entered against Joshua's. It filed a motion to strike service and vacate the order of default. Initially, the court denied the motion but later it granted a motion to reconsider. On August 26, 2020, the court granted the motion to strike service and vacate the order of default.

A bench trial was held on April 14 and 15, 2021. On July 30, 2021, the court entered a memorandum opinion and order. Nineteen days later, counsel for defendants filed a motion to clarify the order by specifying the specific plaintiff for which judgment was entered on each count. On August 24, 2021, the circuit court entered a revised judgment specifying the particular plaintiff to recover under each count as follows: on Count I for conversion, JPG shall recover from Shonts $109,044; on Count I for conversion, Dr. Hash shall recover from Shonts $40,706.68; on Count II for tradename infringement, JPG shall recover from Shonts, L'Heureux, and Big Pig $103,665; on Count IV for conspiracy to commit conversion, JPG shall recover from L'Heureux and Big Pig $109,044; on Count V for constructive fraud, Dr. Hash shall recover from Shonts $88,952.84; and, on Count VI for usurpation of corporate opportunities JPG shall recover from Shonts $178,593. Neither the initial judgment nor the revised judgment addressed the claims against SRR

Chestertown, Gibbs, or Joshua's. On August 25, 2021, Shonts, L'Heureux, and Big Pig noted appeals.

Request for the Appointment of a Receiver for JPG

On November 8, 2021, Dr. Hash and JPG filed a request for the appointment of a receiver for JPG and a request for a hearing.[3] In support of the request for a receiver, they argued that the court had determined that Dr. Hash and Shonts were each fifty percent owners and members of JPG. They attached to their motion a letter dated October 21, 2021 from L'Heureux to Shonts. In that letter, L'Heureux wrote that per a prior phone conversation, he was offering "to settle the judgment between" him, Big Pig, and JPG. L'Heureux wrote:

> As I had made you aware I was going to be taking the following action against JPG Foods LLC
>
> - Filing an appeal to the Judgment from August 2021
> - File a complaint with the labor board in Maryland for back wages owed to me by JPG Foods for $78,000. Additionally file suit for the back wages as well.
> - JPG Foods owes Big Pig MD $87,534 (2018 - $31,047 & 2019 - $56,487) in losses that were covered by my company. Filing a suit to be reimbursed for that amount.
>
> M & L Truck Services of Federalsburg MD is bringing suit against JPG Foods for the repairs and storage on the Isuzu Food Truck. Estimated repairs and storage is $9,000.
>
> JPG Foods LLC agrees to settle the matter of the judgments against me and Big Pig MD LLC in exchange I will:

[3] In November 2021, both parties filed motions relating to a writ of attachment, the proceeds from the sale of Shonts's home, certain funds held in escrow, and a request for release of escrow payments in lieu of bond. Those motions were heard by the court on December 28, 2021, the same day as the request for the appointment of a receiver.

> - Drop the appeal
> - Not file suit or complaint for back wages
> -Not file suit for losses my company covered for JPG Foods
>
> We also agree that I will take possession of the Isuzu Food truck and settle the pending suit with M & L Truck services.
>
> We also agreed that the assorted equipment in the storage locker in Queenstown I can disposed [sic] of as JPG Foods LLC is not interested in taking possession of those items.

In their request for a court-appointed receiver for JPG, Dr. Hash and JPG recognized that Shonts, L'Heureux, and Big Pig had noted appeals. They asserted that Shonts "has and continues to work purportedly on behalf of" JPG and in coordination with L'Heureux to "settle" the judgments without Dr. Hash or JPG's knowledge or consent "and despite the hundreds of thousands of dollars in Judgments against Defendant Shonts and in favor of Plaintiffs." Dr. Hash and JPG argued that the appointment of a receiver was "appropriate and necessary" to ensure that any recovery on the circuit court's revised judgments was appropriately held and distributed. In support of their request for the appointment of a receiver for JPG, they cited § 24-201(a) of the Commercial Law Article of the Maryland Code ("CL"), which provided, in relevant part, that a court may appoint a receiver after a judgment to carry the judgment into effect or to preserve nonexempt property pending appeal. None of the defendants filed an opposition to the request for a court-appointed receiver.

The day after Dr. Hash and JPG filed their request for the appointment of a receiver, Shonts filed in the circuit court a letter and a "Notice of Satisfaction" of the judgments against L'Heureux and in favor of JPG. In the letter, Shonts identified himself as the

"Managing Partner" of JPG. He wrote that on November 8, 2021, L'Heureux and Big Pig had satisfied the judgments entered in favor of JPG on Count II, for trademark infringement, in the amount of $103,665 and on Count IV, for conspiracy to commit conversion, in the amount of $109,044.

The "Notice of Satisfaction" identified the "Plaintiff/Judgement [sic] Creditor" as JPG and the "Defendant/Judgment Debtor" as "LHeureux [sic]." The "Notice of Satisfaction" provided that "[t]he Judgment in this case has been satisfied. I request that the clerk enter the judgment as 'Satisfied' upon payment of any open court costs associated with this case." The notice was signed by Shonts as managing partner of JPG. The "Notice of Satisfaction" provided:

> Copies of this order have been included to be filed with the District Court of Maryland, Queen Anne's County 120 Broadway, Centreville MD 21617 and the Debtor, Roger Lheureux [sic] . . . .

The "Notice of Satisfaction" also included a certification signed by "Roger LHeureux" stating, "I certify that I am serving a copy of this notice of satisfaction" via first-class mail on counsel for Dr. Hash and JPG.

On November 11, 2021, counsel for the defendants, on behalf of "Joshua E. Shonts; *et al*., Appellants/Defendants," filed in the circuit court a Line of Dismissal with Prejudice requesting that their appeal be withdrawn. The following day, the Clerk of the Court for the Circuit Court for Queen Anne's County wrote a memorandum to the Administrative Judge advising her of the "Notice of Satisfaction," noting that the case was then on appeal, and requesting guidance. The Clerk of the Court attached a copy of Shonts' letter, the "Notice of Satisfaction," the circuit court's original judgment, the order clarifying the

judgment, and the revised judgment. The court responded to the Clerk of the Court's inquiry with an Order Regarding Motions that provided: "All Motions being held for further ruling[.] No action to be taken-case on appeal."

Dr. Hash and JPG filed a Line in response to the Clerk of the Court's Memorandum. They stated that they "were entirely unaware of the November 9, 2021 Notice of Satisfaction of the Judgments in Plaintiffs' favor that was filed" by Shonts and L'Heureux until the court's Order Regarding Motions was entered. They claimed that no defendant had made any payment to JPG and that none of the judgments had been satisfied in part or in full. They denied entering any agreement with the defendants in satisfaction of the judgments entered on Counts II and IV and noted that in its memorandum opinion, the circuit court "unambiguously found that Defendant Shonts does not have any authority to unilaterally act on behalf of" JPG. They also advised that the defendants had dismissed their appeal with prejudice.

On December 22, 2021, L'Heureux filed in the circuit court a copy of a letter he wrote to counsel for Dr. Hash and JPG. The letter was signed by L'Heureux. Under his signature, he identified himself as Roger L'Heureux, Partner, Big Pig MD LLC, SRR Holdings LLC. L'Heureux confirmed that he had received a "garnishment concerning the wages and company ownership of Mr. L'Heureux," but asserted that an enclosed notice of satisfaction made the garnishment moot. Attached to the letter was a copy of the November 9, 2021 letter from Shonts to the circuit court stating that, on November 8, 2021, L'Heureux and Big Pig had satisfied the judgments against them as to Counts II and IV.

The Motions Hearing

On December 28, 2021, the court held a motions hearing, at which it considered motions relating to certain funds held in escrow by defendants' counsel and the motion to appoint a receiver for JPG. Initially, counsel for the defendants advised the court that he had $45,000 in his escrow account and he requested assistance in how to distribute those funds. Counsel suggested that the "easiest," "quickest," and "fairest" option would be for him to write a check to JPG and Dr. Hash "in the percentage interest that they have per the whole judgment." Counsel argued:

> So I guess I'm being kind of selfish, I just don't want the money in my escrow account and I don't think a receivership helps the Court at all. I mean, that's throwing in a stop sign, a stop light, and adding more – I guess, more people into a case, makes it more complicated. I think the Court is probably better suited to just resolve it quickly and easily, without getting more people involved, which is going to be more expensive and time consuming and certainly less efficient. That's where we stand.

The court then questioned defense counsel about where he would send a check for JPG and counsel stated:

> That's up to JPG Foods to figure out. It's a corporation. It has its own interests, I believe. I think that counsel can't make the decision because there will be a conflict of interest, so – and a receiver can do exactly what the Court can do, but if I can just send a check to JPG Foods, then they can figure it out and I'm out and they can figure it out. Without a receivership, or maybe they hire counsel to do it, I don't know how they wish to do it, but I think that's JPG Foods' obligation, as a corporate entity, to deal with that how they see fit.

In response to the court's questioning, counsel acknowledged that JPG listed Shonts as the managing partner and that Shonts had filed correspondence about satisfying some judgments.

Counsel for Dr. Hash and JPG argued that Shonts was not, and never had been, the managing member of JPG, that there was never an operating agreement, that neither member had authority over the other, that the court recognized that fact in its memorandum and order issued after trial, and that the reason there are judgments against Shonts is because he did not have authority to act on behalf of JPG. Plaintiffs' counsel argued that "[i]f money is going to go to JPG, then there needs to be a receivership in order to determine what rights and liabilities that each of these two members have with respect to any funds from that entity." Plaintiffs' counsel argued, in part:

> JPG has judgments against Mr. Shonts to the tune of almost 400 and something thousand dollars. Dr. Hash has judgments against Mr. Shonts to the tune of $130,000. We say it's actually more fair and appropriate and cleaner for this money to be dispersed out of escrow directly to Dr. Hash. A, because he has $130,000 in judgments against Mr. Shonts, whose money is being held in escrow. B, because Dr. Hash personally, out of his own pocket, not only funded the litigation, but, also, supplied the Court with the escrow funds as security to obtain the writ of attachment; that came out of his pocket; that wasn't JPG's corporate money. JPG doesn't have any corporate money. So Dr. Hash has personally funded this litigation, personally provided the security with the Court in order to obtain the writ of attachment that put these funds into [defendants' counsel's] escrow in the first place.
>
> So it seems to me that the cleanest and the most fair way would actually be for Dr. Hash to recover that money, given that it was his personal funds that were used to secure it in the first place. If the Court disagrees and we definitely think a receiver is necessary here because of the interest involved and, you know, we would ask for the Court's discretion on that.

Defense counsel took issue with the suggestion that Shonts was not a managing partner of JPG and stated that the court "never found anything of the sort[.]" He pointed to tax records admitted in evidence that indicated Shonts "was the tax matters partner" and that Dr. Hash was "just simply a silent partner, so to speak – limited partner, excuse me, or

limited owner, for purposes of what I believe the Court showed was for investment purposes." Defense counsel further argued:

> With regard to giving money to Gary Hash, that's just – I don't even know how counsel could make that suggestion. It was a complete conflict of interest between JPG Foods, which is a corporate entity, and under the law considered a person. They're saying, hey, I know I represented JPG Foods, but don't give it [to] them, give it to my other client. It's just – I don't even know if it's legal to do that.
>
> But nonetheless, if the Court says a receivership is the way to go, I can write the check to a receivership. I'm fine with that. I just thought it was easier to go with a percentage, based on the – and they can figure it out by themselves without the Court's involvement. If they want to get counsel to represent JPG Foods, they can do that. But nonetheless, I think that's the cleanest way to do it.

Immediately following defense counsel's argument, the court stated:

> Unfortunately – and Mr. Shonts is not here today. His filing of this satisfaction, of course, calls great concern with the Court because I believe I found in the record that the Court determined that Hash and Shonts were 50 percent owners of JPG Foods and I'm not sure this filing is accurate, put it that way. I'm going to review the file again. I will issue an order. [Counsel,] before Thursday or before the close of business on Thursday because that way, [defense counsel], you can decide what you want to do about getting that money out of your account before the end of the year and then how you all plan to proceed. But this case needs to get wrapped up and move on. But I will look at everything that is now pending and give you an order in the next two days. All right.

One day after the hearing, the court entered an order appointing a receiver for JPG. In that order, the court stated:

> This matter came before the Court on December 28, 2021 for a motions hearing related to several post-trial (post-appeal) motions regarding outstanding judgments and collections thereof, as determined by the Court's Memorandum Opinion and Order, dated July 30, 2021 and Revised Judgment dated August 24, 2021. The Court determined that JPG Foods, LLC is owned 50/50 by Gary Hash and Joshua Shonts and that Mr. Shonts has taken actions pertaining to the LLC without the knowledge and consent

> of Mr. Hash. Most recently, it appears that Mr. Shonts has negotiated the Satisfaction of Judgments of JPG Foods, LLC with another Defendant, Roger L'Heureux, at the exclusion of Mr. Hash and filed such notice with the Clerk of Court on November 9, 2021 and again on December 22, 2021.

The court then ordered that no action shall be taken on the satisfaction of judgments filed by Shonts and L'Heureux, and that Patrick Palmer, Esquire, shall be appointed receiver of JPG "with all rights, powers and duties set forth in Title 13 of the Maryland Rules" including, but not limited to, "the seizure, exclusive authority over and liquidation of any corporate assets that are properly the subject of judgments in favor of Plaintiff, as contained in the Revised Judgment dated August 22, 2021[.]" Among other things, the court's order vested the receiver "with full title to all of the assets of the corporation and full powers to enforce obligations and liabilities in its favor[,]" ordered the escrow funds held by defendants' counsel to be paid to the receiver "for determination of the appropriate distribution[,]" and ordered the receiver to "liquidate the assets of the Corporation and wind up its affairs under the supervision of the Court[.]" The order also provided:

> that the Receiver shall have the same powers of a Trustee in Bankruptcy with respect to setting aside any preference, payment or transfer made by the Corporation which would be void, voidable or fraudulent transfers, including, but not limited to the Satisfactions of Judgments filed by Joshua Shonts and Roger L'Heureux[.]

On January 24, 2022, Big Pig and L'Heureux filed a notice of appeal from the order appointing a receiver for JPG. [4]

[4] At some point after the circuit court's revised order of August 24, 2021 was entered, L'Heureux filed in the United States Bankruptcy Court a petition for bankruptcy protection. As to L'Heureux, but not Big Pig, the instant appeal was subject to the automatic stay (continued)

DISCUSSION

A. Final Judgments and Interlocutory Orders

We begin by examining the procedural posture of the case and clarifying the rulings that have been presented properly for our consideration. A party's right to appeal an order of a circuit court is defined by statute. *In re C.E.*, 456 Md. 209, 220 (2017). Appellate review generally is authorized only from a final judgment of the trial court. Md. Code Ann., Cts. & Jud. Proc. Art. ("CJP") § 12-301. *Accord URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 65 (2017) ("As a general rule, under Maryland law, litigants may appeal only from what is known as a 'final judgment.'"). A final judgment is one that is "'so final as to determine and conclude rights involved, or deny the appellant means of further prosecuting or defending his rights and interests in the subject matter of the proceeding.'" *Peat, Marwick, Mitchell & Co. v. Los Angeles Rams Football Co.*, 284 Md. 86, 91 (1978) (quoting *United States Fire Ins. Co. v. Schwartz*, 280 Md. 518, 521 (1977)). *See also Md. Bd. Of Physicians v. Geier*, 451 Md. 526, 545 (2017)("To constitute a final judgment, a trial court's ruling 'must either decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests in the subject matter of the proceeding.'")(quoting *Harris v. State*, 420 Md. 300, 312 (2011)). A final order must "leave nothing more to be done in order to effectuate the court's disposition of the matter." *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989).

pursuant to 11 U.S.C. § 362(a). On July 19, 2022, the Bankruptcy Court entered an order of discharge under 11 U.S.C. § 727 as to L'Heureux.

Conversely, an order that "adjudicates fewer than all of the claims in an action …, or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action … is not a final judgment[.]" Md. Rule 2-602(a). "In considering whether a particular court order or ruling constitutes an appealable judgment, we assess whether any further order was to be issued or whether any further action was to be taken in the case." *In re Samone H.*, 385 Md. 282, 298 (2005). If "'appellate jurisdiction is lacking, the appellate court will dismiss the appeal on its own motion.'" *Schuele v. Case Handyman & Remodeling Servs.*, 412 Md. 555, 565 (2010) (quoting *Gruber v. Gruber*, 369 Md. 540, 546 (2002)).[5]

There are three exceptions to the finality requirement of CJP § 12-301: "appeals from interlocutory orders specifically allowed by statute; immediate appeals permitted under Maryland Rule 2-602; and appeals from interlocutory rulings allowed under the common law collateral order doctrine." *Salvagno v. Frew*, 388 Md. 605, 615 (2005). The rule that only final orders and some interlocutory orders are appealable "aims to 'promote judicial economy and efficiency' by preventing piecemeal appeals after every order or decision by a trial court." *In re C.E.*, 456 Md. at 221 (quoting *Sigma Reprod. Health Ctr. v. State*, 297 Md. 660, 665 (1983)).

Notwithstanding the memorandum opinion and order issued on July 30, 2021, and the subsequent revised judgment entered on August 24, 2021, no final judgment has yet

[5] Maryland Rule 2-601 governs the entry of judgment. Among other things, it requires that the clerk of the court "shall enter a judgment by making an entry of it on the docket of the electronic case management system used by that court along with such description of the judgment as the clerk deems appropriate." Md. Rule 2-601(b)(2).

been entered by the circuit court. Our review of the record reveals no docket entry or order indicating that a final judgment was entered as to Gibbs, Joshua's, or SSR Chestertown. As we have already noted, the record shows that default judgments were entered against Gibbs and Joshua's. As to Gibbs, the default judgment was subject to damages being proved at trial or a hearing for *ex parte* proof. Joshua's initial motion to strike service and vacate the default judgment entered against it was denied, but after a motion to reconsider, the motion to strike service and vacate the default judgment was granted on August 26, 2020. Neither the court's memorandum opinion and order nor the revised judgment concluded the rights of Gibbs, Joshua's, or SRR Chestertown.

The issue before us, however, arises from an interlocutory order, specifically the circuit court's decision to appoint a receiver for JPG. CJP § 12-303(3)(iv) provides that a party[6] may appeal from an interlocutory order entered by a circuit court in a civil case "[a]ppointing a receiver but only if the appellant has first filed his answer in the cause[.]"

[6] Both L'Heureux and Big Pig were parties in the underlying litigation. With respect to the issue of appointing a receiver for JPG, L'Heureux and Big Pig were, at most, judgment debtors or potentially debtors whose debt had been satisfied. Neither was a member or creditor of JPG. That raises a question as to whether either L'Heureux or Big Pig have standing to challenge the appointment of a receiver for JPG. "Under Maryland common law, standing to bring a judicial action generally depends on whether one is aggrieved, which means whether a plaintiff has an interest such that he or she is personally and specifically affected in a way different from the public generally." *Kendall v. Howard Co.*, 431 Md. 590, 603 (2013). It is not clear how L'Heureux or Big Pig were aggrieved by the appointment of a receiver for JPG. Maryland Rule 13-104(b)(2) provides that a petition to appoint a receiver "may be filed by any person with statutory or common law standing. If the receivership is sought in a pending action, the motion may be filed by any party to that action." For purposes of our analysis, we shall assume without deciding the issue, that L'Heureux and Big Pig have standing to appeal the interlocutory order appointing a receiver based on their status as parties to the underlying litigation.

It is unclear if the words "in the cause" refer to the action instituted by Dr. Hash and JPG or if they refer to the request for the appointment of a receiver for JPG. L'Heureux and Big Pig answered the complaint filed by Dr. Hash and JPG, but neither of them filed an opposition to the request for the appointment of a receiver. We need not resolve the meaning of the phrase "in the cause" here because even assuming that it refers to the answers filed by L'Heureux and Big Pig in response to Dr. Hash's and JPG's initial complaint, their challenge to the appointment of the receiver must be dismissed based on the doctrine of acquiescence.

B. Acquiescence and Waiver

It is well established that this Court will not review a contention of error "unless it plainly appears by the record to have been raised in or decided by the trial court" except where "necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a). Rule 8-131(a) derives "from the principle that '[w]hen a party has the option either to object or not to object, his failure to exercise the option while it is still within the power of the trial court to correct the error is regarded as a waiver of it estopping him from obtaining a review of the point or question on appeal.'" *Halloran v. Montgomery Cnty. Dep't of Public Works*, 185 Md. App. 171, 201 (2009) (quoting *Basoff v. State*, 208 Md. 643, 650 (1956)). Relatedly, Maryland Rule 2-517 provides that, "[f]or purposes of review by the trial court or on appeal" of a ruling or order other than an objection to the admission of evidence, "it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court." Md. Rule 2-

517(c). A party's right to challenge a judgment may be waived by affirmatively consenting to the court's ruling. *See Parker v. State*, 402 Md. 372, 405 (2007) (explaining that "a party may not obtain appellate review of a judgment to which the party consented."); *Franzen v. Dubinok*, 290 Md. 65, 69 (1981) ("[A] voluntary act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review."); *In re M.H.*, 252 Md. App. 29, 45-46 (2021) ("'[T]he right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal.'" (quoting *In re Nicole B.*, 410 Md. 33, 64 (2010) (in turn quoting *Osztreicher v. Juanteguy*, 338 Md. 528, 534 (1995)))); *VEI Catonsville, LLC v. Einbinder Props., LLC*, 212 Md. App. 286, 293-94 (2011) (right to appeal may be lost by acquiescence or waiver, that is a voluntary act of a party which is inconsistent with the assignment of errors on appeal).

As we set forth in detail, *supra*, at the December 28, 2021 hearing, the circuit court considered a number of issues including the distribution of money held in defense counsel's escrow account and the request for the appointment of a receiver. Defense counsel argued that a receivership would not help the court with regard to the distribution of the funds held in escrow and would make the case more complicated. According to counsel, it would be quicker, easier, less expensive, more efficient, and less time consuming not to have a receiver. When asked who would receive his check on behalf of JPG, defense counsel stated, "[t]hat's up to JPG Foods to figure out." Later, in response to argument by plaintiff's counsel, defense counsel stated, "if the Court says a receivership is the way to

go, I can write the check to a receivership [sic]. I'm fine with that." Clearly, defense counsel acquiesced to the court's decision to appoint a receiver for JPG. For that reason, this interlocutory appeal must be dismissed.[7]

APPEAL DISMISSED; COSTS TO BE SHARED EQUALLY BY APPELLANTS.

[7] Even if we were to reach the issues presented, appellants would fare no better. Appellants argue that, in granting the request to appoint a receiver for JPG, the circuit court failed to comply with the procedural requirements of Title 13 of the Maryland Rules and § 24-201 of the Commercial Law Article and failed to take certain evidence at the hearing. Our review of the record, including the transcript of the December 28, 2021 hearing, reveals that appellants, who were represented by counsel, failed to raise those issues in the circuit court. They never advised the court of any failure with respect to the procedures set forth in the Maryland Rules or the Commercial Law Article. Nor did they request to present the testimony of L'Heureux, who was present at the hearing, or any other witness. Moreover, counsel did not request a continuance to allow for the testimony of Shonts or any other witness. As a result, the issues of whether the circuit court failed to comply with certain procedural requirements and failed to take evidence at the hearing were not preserved properly for our consideration. Md. Rule 8-131(a).