

Circuit Court for Worcester County
Case No. C-23-CV-23-000206

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1840

September Term, 2024

CHESAPEAKE EMPLOYERS' INSURANCE
COMPANY

v.

SCD PREMIER STAFFING AGENCY, LLC,
et al.

Berger,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: January 6, 2026

*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).

This appeal stems from a Complaint, filed in the Circuit Court for Worcester County, by Chesapeake Employers' Insurance Company ("CEIC") against SCD Premier Staffing Agency, LLC ("SCD") and Suze Cadet (collectively the "Defendants"), alleging, among other things, fraud, intentional misrepresentation, negligent misrepresentation, and breach of contract, and seeking compensatory and punitive damages. After the Defendants failed to file a responsive pleading, the circuit court entered an order of default, and CEIC moved for a judgment by default on all counts pursuant to Maryland Rule 2-613. Following a hearing, the court entered a judgment by default on CEIC's breach of contract claim and awarded CEIC compensatory damages, but the court denied CEIC's requests for judgment on the remaining counts and for punitive damages. Thereafter, CEIC filed a motion to alter or amend, which the court denied.

In this appeal, CEIC presents two questions for our review. For clarity, we have rephrased those questions and consolidated them into a single question:¹

¹ CEIC phrased the questions as:

1. Did the circuit court commit reversible error by refusing to enter judgment by default against Appellee Ms. Cadet for negligent misrepresentation and against both Appellees for intentional misrepresentation and fraud, despite the fact that it had previously entered an Order of Default against Appellees on all claims advanced in the underlying complaint and Appellees did not timely or properly oppose or respond to the complaint or the order of default?
2. Did the circuit court commit reversible error by ignoring the admitted allegations advanced in the

Whether the Order of Default established the Defendants’ liability as a matter of law, such that CEIC was entitled to a judgment by default on the claims of fraud, intentional misrepresentation, and negligent misrepresentation.

For reasons to follow, we hold that, although the Order of Default established the Defendants’ liability on all claims, the circuit court was not required to enter a judgment by default on each claim because the decision to enter such a judgment is discretionary, not mandatory. We further hold that, even if the court had erred in failing to enter a judgment by default on the disputed claims, any error was harmless. Accordingly, we affirm.

BACKGROUND

SCD is or was a Maryland limited liability company owned by Suze Cadet. CEIC provides workers’ compensation insurance to employers in Maryland.

In December 2021, CEIC received a workers’ compensation application from SCD. The application represented that SCD had thirty employees and a total payroll of \$100,000.00. CEIC subsequently approved the application and assessed an annual premium of \$2,944.00.

In January 2023, CEIC conducted an audit of SCD’s 2021-2022 policy term and discovered that SCD had 53 employees and a total payroll of \$201,476.00. As a result of

underlying complaint and requiring Appellant to demonstrate by additional “clear and convincing evidence” that Appellees committed the alleged negligence, fraud and intentional misrepresentation?

that audit, CEIC assessed an additional \$127,106.00 in premiums for SCD's 2021-2022 policy term. SCD refused to pay the additional premiums, and CEIC cancelled the policy.

CEIC Files a Complaint Against SCD and Cadet

In September 2023, CEIC filed an action against SCD and Cadet. The lawsuit included a claim of breach of contract against SCD, a claim of negligent misrepresentation against Cadet, and claims of intentional misrepresentation and fraud against both SCD and Cadet.

For the breach of contract claim, CEIC alleged that SCD had agreed to compensate CEIC for providing workers' compensation insurance. CEIC alleged that SCD breached that agreement by failing to remit the \$127,106.00 CEIC had billed to SCD for the 2021-2022 policy term. CEIC requested \$127,106.00 in compensatory damages.

For the negligent misrepresentation claim, CEIC alleged that Cadet, as the owner and president of SCD, had knowingly made false representations regarding SCD's employment and payroll information for the purpose of lowering SCD's insurance premiums. CEIC claimed that Cadet had a duty to provide accurate information in obtaining insurance coverage; that she breached that duty in providing false employment and payroll information; that she intended for CEIC to act on that information; that she knew CEIC would rely on the statement; that CEIC relied on the statement in providing insurance to SCD; and that CEIC suffered damages as a result. CEIC requested \$127,106.00 in compensatory damages.

For the intentional misrepresentation and fraud claims, CEIC alleged that Defendants SCD and Cadet falsely and intentionally represented that SCD had fewer employees and a lower payroll in an effort to defraud CEIC so that SCD could obtain workers' compensation insurance for a lower premium. CEIC claimed that SCD intended for CEIC to rely on the misrepresentations; that CEIC did justifiably rely on those misrepresentations; and that CEIC suffered damages as a result. CEIC requested \$127,106.00 in compensatory damages and \$300,000.00 in punitive damages.

Order of Default

After SCD failed to file a responsive pleading, CEIC filed a Request for Entry of Order of Default pursuant to Maryland Rule 2-613(b).² The circuit court subsequently entered an order of default against both Defendants.

The Defendants later moved to vacate the order of default pursuant to Maryland Rule 2-613(d).³ The court ultimately denied that motion.

Default Judgment

CEIC thereafter filed, pursuant to Maryland Rule 2-613(f), a “Motion for Entry of Default Judgment Against Defendants.” That part of the Rule provides:

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 the liability and

² That part of the Rule states: “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.” Md. Rule 2-613(b).

³ That part of the Rule provides: “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.” Md. Rule 2-613(d).

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 to trial by jury.

Md. Rule 2-613(f).

In January 2024, the court held a hearing on CEIC’s request for a default judgment. At the outset of the hearing, the court noted that the matter had been set in for a hearing “as it relates to some of the averments of proof.” The court explained that, although CEIC had established a valid claim for breach of contract, CEIC still needed “to demonstrate that there’s a basis for the misrepresentation, the fraud, and then also the punitive damages.” CEIC did not object or otherwise argue that the Defendants’ liability had been established as a matter of law.

Margarete Snowden-Jones, an examiner employed by CEIC who was responsible for collections, testified that, at some point prior to December 2021, an application had been sent to Suze Cadet regarding workers’ compensation insurance coverage for SCD. According to Snowden-Jones, the application was completed and returned to CEIC, and, based on the information contained in the application, which included SCD’s employment and payroll data, CEIC issued a quote for insurance coverage for the policy term. That quote was subsequently paid by SCD, and CEIC thereafter provided workers’

compensation insurance coverage for the policy term, which ran from December 2021 to August 2022.

Snowden-Jones testified that, at the conclusion of the policy term, CEIC conducted an audit of SCD's policy. Snowden-Jones explained that such audits are conducted because, when a policy is originally written, CEIC is "using information that the insured has given us," which "may be an estimate." Snowden-Jones explained that "the purpose of the audit is to see what actually happened on the policy term period, what employees they had, what was the actual payroll for their policy term." Snowden-Jones added that "an audit can result in either increase in premium or decrease in premium, depending on the results of the audit."

According to Snowden-Jones, the audit of SCD's policy revealed significant discrepancies between the information provided on SCD's application and SCD's actual employment and payroll data. The audit showed that, in Maryland, SCD had more employees and a larger payroll than what was disclosed on the application. The audit also showed that SCD had over 1,000 additional employees in other states and a total payroll across all states of \$5,510,808.00. As a result of the audit, CEIC determined that SCD's premium for the policy term should have been \$130,094.00, with \$4,248.00 being allocated for coverage in Maryland and \$125,846.00 being allocated for out-of-state coverage. CEIC thereafter billed SCD for \$127,106.00, which represented the difference between what SCD had paid in premiums and what it should have paid. That amount was never paid, and CEIC cancelled the policy.

At the conclusion of the evidence, CEIC argued that the evidence demonstrated “significant misrepresentations” in support of the fraud claim. CEIC claimed that punitive damages were “warranted due to these significant misrepresentations.”

In the end, the court found that CEIC had established a valid breach of contract claim and that it was entitled to compensatory damages of \$127,106.00. As to the remaining claims, the court found that CEIC had not “met its burden of proof as it relates to punitive damages,” which “must be established by way of clear and convincing evidence.” The court explained that, although “the application compared to ... the audit gives rise to concern and, certainly, a colorable claim on the part of the Plaintiff,” the court was “not satisfied by clear and convincing evidence that ... evil motive, intent to injure or ill will has been established.”

The court thereafter entered an order granting a judgment by default in favor of CEIC against SCD on the breach of contract claim and awarding damages of \$127,106.00. Thereafter, the court denied CEIC’s request for judgment on the remaining claims.

Motion to Alter or Amend

Two days later, CEIC filed a motion to alter or amend the court’s judgment. CEIC argued that, because the Defendants failed to file a responsive pleading, liability was established as a matter of law. CEIC claimed, therefore, that the court should have entered a judgment by default on all counts.

The court ultimately denied CEIC’s motion. The court found that the Defendants’ failure to plead did not establish liability as a matter of law. The court noted that the entry

of a judgment by default under Rule 2-613 is discretionary and includes a determination of liability.

This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

CEIC's Contentions⁴

CEIC contends that the circuit court abused its discretion in failing to enter a judgment by default against the respective Defendants as to the claims of fraud, intentional misrepresentation, and negligent misrepresentation. CEIC argues that liability was conclusively established by the Defendants' failure to plead and the subsequent entry of the order of default, and CEIC contends that the court incorrectly concluded that Rule 2-613(f) grants a court unfettered discretion to make a determination of liability and to decline to enter a judgment by default. CEIC further contends that, even if the court had the discretion to make a liability determination following the entry of the unvacated order of default, the court nevertheless erred in refusing to find the Defendants liable based on the allegations contained in the Complaint, which were deemed admitted when the Defendants' failed to file a timely answer to the Complaint.

Standard of Review

A court's decision regarding entry of a judgment by default is ordinarily reviewed for abuse of discretion. *Flynn v. May*, 157 Md. App. 389, 403-04 (2004). The denial of a motion to alter or amend a judgment is likewise reviewed for abuse of discretion. *Central*

⁴ Neither SCD nor Cadet filed a responsive brief in this appeal.

Truck Center, Inc. v. Central GMC, Inc., 194 Md. App. 375, 397-98 (2010). Where, however, the court’s decision involves the interpretation of the law or the Maryland Rules, we review that decision *de novo*. *Morton v. Schlottzauer*, 449 Md. 217, 231-32 (2016); *Pinkney v. State*, 427 Md. 77, 88 (2012).

Analysis

We hold that the circuit court did not err or abuse its discretion in refusing to enter a judgment by default on CEIC’s claims for fraud, intentional misrepresentation, and negligent misrepresentation based on the unvacated Order of Default. To be sure, when an order of default has been entered pursuant to Maryland Rule 2-613 and the defaulting party fails to have the order vacated, the order is generally considered to be conclusive as to the issue of liability. *Franklin Credit Management Corp. v. Nefflen*, 208 Md. App. 712, 725-28 (2012). That is, a defaulting party who wishes to contest the legal viability of a claim must do so by way of a motion to vacate the order of default under Maryland Rule 2-613(d). *Id.* If such a motion is not filed, or is filed and denied, the defaulting party’s liability is established as a matter of law, and the court may then enter a judgment by default. *Id.* The court may do so even where a determination of liability cannot be made, such as where the underlying Complaint fails to set forth a viable cause of action. *Id.*

That said, even though an order of default establishes liability and enables a court to enter a judgment by default, a court is not required to enter a judgment by default following entry of an order of default. As noted, Maryland Rule 2-613(f) provides that, “[i]f 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[.]” Md. Rule 2-613(f) (emphasis added). The use of the word “may” clearly indicates that the decision to enter a judgment by default is discretionary. *See Bethesda African Cemetery Coalition v. Housing Opportunities Commission of Montgomery County*, 489 Md. 1, 62 (2024) (noting that the word “may” in a statute generally connotes permission or authorization, whereas the term “shall” indicates that the statute is mandatory); *see also Flynn*, 157 Md. App. at 403-04 (discussing the court’s discretionary authority under Rule 2-613(f)).

Furthermore, the Rule provides that, if a court is satisfied that it has jurisdiction and that proper notice was sent, the court “may enter a judgment by default *that includes a determination as to the liability and all relief sought*[.]” Md. Rule 2-613(f) (emphasis added). The Rule goes on to provide that, if necessary, the court may also conduct hearings and consider additional evidence “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*[.]” *Id.* (emphasis added). From that, it is clear that the court’s discretionary authority to enter a judgment by default includes investigating the truth of any averment and making a determination as to liability.

Thus, while Maryland Rule 2-613 permits a court to enter a judgment by default based solely on an unvacated order of default and without any investigation into the validity of the underlying claim, the Rule does not require it. To the contrary, the Rule expressly empowers a court to further investigate any matter and to make determinations regarding the validity of a claim prior to entering a judgment by default. We, therefore, reject CEIC’s

claim that the circuit court lacked the discretion to make a liability determination following entry of the unvacated order of default.

As noted, CEIC also contends that, even if the court had the discretion to make a determination of liability, the court still erred in refusing to find the Defendants liable because the allegations contained in the Complaint -- which were deemed admitted by the Defendants' failure to plead -- conclusively established all the elements of the underlying claims. We need not address that contention, however, because it was not raised below. During the damages hearing, the court made clear that it was not satisfied that the claims for fraud, intentional misrepresentation, and negligent misrepresentation had been established based on the pleadings. In our view, that ends the analysis. Critically, the court did not find that the elements of these causes of action had been proven.

Further, the court specifically found that the “misrepresentation claims” in the Complaint “are based on factual allegation of the underpinning that Ms. Cadet is the sole owner of the company. There’s been no independent evidence of that, other than the representation that’s been made in the application.”

At no point did CEIC object or otherwise argue that the Defendants' liability had been conclusively established by their failure to plead. When CEIC later raised that issue in moving to alter or amend the court's judgment, the sole argument presented was that the unvacated order of default had established the Defendants' liability as a matter of law. CEIC did not argue, as it does here, that liability was also established by the allegations set

forth in the Complaint. As such, CEIC’s alternate argument is not preserved for our review. Md. Rule 8-131(a).

Notably, all of CEIC’s claims arose from the same transaction, namely, the Defendants’ misrepresentation of their employment and salary information and CEIC’s subsequent reliance on that information in providing workers’ compensation insurance coverage. For each of those claims, CEIC prayed for \$127,106.00 in compensatory damages, which it ultimately received when the court entered a judgment by default on CEIC’s breach of contract claim.

Clearly, CEIC is not entitled to punitive damages in its breach of contract claim. To be sure, CEIC’s claims for intentional misrepresentation and fraud also included a prayer for punitive damages. Nonetheless, the court expressly found that CEIC had failed to show by clear and convincing evidence that an award for punitive damages was warranted. As such, even had the court granted a judgment by default on CEIC’s claims for intentional misrepresentation and fraud, it is clear that the court would not have awarded punitive damages.

To the extent that CEIC is claiming that the court’s decision regarding punitive damages was erroneous, we disagree. To be entitled to punitive damages, a plaintiff must demonstrate “actual malice, in the sense of conscious and deliberate wrongdoing, evil or wrongful motive, intent to injure, ill will, or fraud.” *Montgomery v. Wilson*, 339 Md. 701, 733 (1995). That showing must be made by clear and convincing evidence, and an award of punitive damages is generally reserved for tortious conduct that is particularly heinous,

egregious, and reprehensible. *Id.* at 733-34. Furthermore, “even where the evidence warrants punitive damages, it is within the sound discretion of the trier of fact to award or deny such damages.” *Phillip Morris Inc. v. Angeletti*, 358 Md. 689, 773-74 (2000). Thus, “a trial court sitting without a jury ‘has discretion to deny punitive damages even where the record otherwise would support their award.’” *Bontempo v. Lare*, 217 Md. App. 81, 133 (2014) (quoting *Adams v. Coates*, 331 Md. 1, 15 (1993)).

Aside from the bald allegations contained in the Complaint, CEIC presented no compelling evidence to suggest that either SCD or Cadet acted with the requisite malice to justify an award of punitive damages. As the court explained, although the discrepancies between SCD’s reported employment and salary figures and the results of CEIC’s subsequent audit certainly gave rise to a “colorable claim,” those discrepancies did not necessarily constitute clear and convincing evidence of fraud, evil motive, intent to injure, or ill will. Under the circumstances, we cannot say that the court abused its discretion in denying CEIC’s claim for punitive damages.

In sum, we hold that the court was not required to find the Defendants liable and to enter a judgment by default on CEIC’s claims for fraud, intentional misrepresentation, and negligent misrepresentation based on the unvacated order of default. Rather, Maryland Rule 2-613(f) granted the court the discretion to enter a judgment by default, and that discretion included the authority to make a determination regarding liability. We, therefore, affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**