UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0658

September Term, 2015

RICHARD E. HAGERTY,
SUBSTITUTE TRUSTEE

v.

V. CHARLES DONNELLY

Eyler, Deborah S.,
Wright,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: July 15, 2016

*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.

This interlocutory appeal arises from the Circuit Court for Calvert County's grant of a Motion for Court to Appoint Counsel in a foreclosure proceeding. The lawsuit began when the appellant, LSCG Fund 11, LLC ("LSCG"), holder of a Promissory Note ("Note") on a piece of real property ("Property"), sued the appellees, Solomons Two, LLC, ("Solomons Two"), which executed the Note, and V. Charles Donnelly, ("Donnelly"), a member of Solomons Two who guaranteed the Note. LSCG sued Solomons Two and Donnelly because the real property taxes on the Property went unpaid. Donnelly was the member of Solomons Two who allegedly failed to pay real property taxes on the Property.

Donnelly requested the circuit court's aid in obtaining counsel for Solomons Two, as there was a deadlock between its members and pending litigation by filing a Motion to Appoint Counsel to Represent the Interests of Solomons Two ("Motion to Appoint Counsel"). The court granted this motion and ordered LSCG and Donnelly to each deposit $2,500.00 into the Registry of the Court. The funds were to be used to hire counsel for Solomons Two. Counsel had not yet been selected or appointed at that time. LSCG appealed the court's decision, alleging that its action was unprecedented, presenting the following questions on appeal:

> 1. May the appellant immediately appeal the circuit court's action although it is not a final judgment using the collateral order doctrine or section 13-303 of the Maryland Code of Courts and Judicial Proceedings?
>
> 2. If so, does the circuit court have the power to require parties to a suit to pay for and provide counsel for an LLC involved in the same civil matter?

For the reasons discussed below, we affirm the judgment of the circuit court.

FACTS

This action arises out of a foreclosure proceeding of the Property, as a result of Solomons Two failing to pay property taxes. LSCG presently holds the Note on the Property dated July 27, 2006. The Note was executed by Solomons Two and guaranteed by four of Solomons Two members, including Donnelly. On March 10, 2015, LSCG filed a Motion to Terminate Stay of Foreclosure Sale or Condition Stay on Payment of Taxes in response to Donnelly's failure to pay the real property taxes on the Property. Donnelly opposed this motion on March 23, 2015, and simultaneously filed a Motion for Court to Appoint Counsel.

Donnelly argued in his Motion for Court to Appoint Counsel that Solomons Two had been without counsel since 2013. He further averred that because the Solomons Two members were deadlocked and involved in pending litigation against each other, Solomons Two needed the circuit court to appoint counsel in the proceeding. Two of the members, who collectively hold 50% of the interest, had opposed appointment of counsel. Finally, Donnelly advised that "[w]ithout counsel, Solomons Two, LLC, is unable to protect its interests in this foreclosure proceeding."

On April 1, 2015, LSCG filed an opposition to Donnelly's Motion for Court to Appoint Counsel arguing that there was no legal basis upon which the circuit court could appoint counsel to represent Solomons Two. LSCG further argued that blaming the failure to obtain counsel on the other 50% interest holder members was backhanded in

light of the fact that Donnelly failed to prosecute a receivership case against these members in 2013, which was subsequently dismissed by the court. *See Donnelly v. Solomons Two, LLC*, No. 04-C-13-000778 (June 6, 2013).

The circuit court heard arguments on the Motion to Appoint Counsel on April 17, 2015. On May 22, 2015, the court entered an Order granting Donnelly's Motion for Court to Appoint Counsel ("May 22 Order"). The court allowed the parties until May 26, 2015, to submit an agreed upon counsel for Solomons Two, and it ordered that LSCG and Donnelly each deposit $2,500.00 into the Registry of the Court to be used as needed to pay the cost of counsel "as directed from time to time from the Court."

Subsequently, LSCG filed a Motion to Extend Time to Comply with the May 22 Order. The circuit court granted this motion and extended the time of compliance until June 2, 2015. On May 29, 2015, LSCG filed a Motion to Stay Operation and Enforcement of the Order from May 22, 2015, pending appeal, which Donnelly responded to in opposition on June 15, 2015. The court denied LSCG's motion and entered an order appointing Daniel LaPlaca as counsel for Solomons Two, advising that the court would "entertain a Motion to Strike any claims or defenses of either party that has not deposited the required $2,500.00 into the Registry of the Court . . . ."

On July 28, 2015, this Court affirmed the denial of LSCG's Motion to Stay Operation and Enforcement of the May 22 Order. Donnelly paid his $2,500.00 into the Registry of the Court on May 28, 2015, and LSCG followed with its payment on May 31, 2015.

On appeal, LSCG argues first that the circuit court's order to appoint counsel for Solomons Two is an immediately appealable matter. Second, LSCG argues that the court erred as a matter of law, or, in the alternative, abused its discretion, by ordering that counsel be appointed for Solomons Two, as well as mandating that LSCG pay costs. LSCG further contends that there are no statutes or precedent authorizing the right to counsel in civil matters for an LLC, especially where incarceration is not a possible penalty.

Donnelly responds that this matter is not immediately appealable because there was no final judgment rendered and none of the exceptions for an interlocutory appeal apply. Additionally, Donnelly avers that LSCG only appealed the May 22 Order and not the July 6, 2015 Order. Donnelly further argues that by preventing the circuit court from providing counsel to Solomons Two, Solomons Two's fundamental due process rights are violated.

DISCUSSION

I. LSCG has a right to an interlocutory appeal in this case.

Parties have a right of appeal to the appellate court for final judgments of the trial court. Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP") § 12-301. Additionally, Md. Rule 2-602(a) clarifies:

> an order or other form of decision, however designated, 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 parties to the action: (1) is not a final judgment . . . .

The purpose of limiting the appeals to final judgments is "to prevent piecemeal appellate review of trial court decisions which do not terminate the litigation." *Harris v. David S. Harris, P.A.*, 310 Md. 310, 314-15 (1987). If parties were allowed to appeal at any step during the course of litigation, it would undoubtedly interrupt the court's proceedings. *Id*. at 315. Two exceptions to this general rule exist. *See infra*.

i. The collateral order doctrine is not applicable.

The collateral order doctrine provides a narrow exception to the general rule that appeals may only be made on final judgments. *Kurstin v. Brombers Rosenthal, LLP.*, 191 Md. App. 124, 144 (2010) (citation omitted). An order appealable under the collateral order doctrine must "(1) conclusively determine the disputed question, (2) resolve an important issue, (3) be completely separate from the merits of the action, and (4) be effectively unreviewable on appeal from a final judgment." *State v. Jett*, 316 Md. 248, 251 (1989) (citations omitted). "The four elements of the test are conjunctive in nature and in order for a prejudgment order to be appealable and to fall within this exception to the ordinary operation of the final judgment requirement, each of the four elements must be met." *In re Franklin P.*, 366 Md. 306, 327 (2001). Additionally, each element must be "very strictly applied" to the facts due to the narrow nature of the exception. *In re Foley*, 373 Md. 627, 634 (2003) (citations omitted).

LSCG's argument fails the first prong of the collateral order doctrine test, as the appealed order does not conclusively determine the disputed question. LSCG appealed the May 22 Order, which required Donnelly and LSCG to pay for and decide on counsel for Solomons Two. It was not until July 6, 2015, that the circuit court selected the

attorney. The May 22 Order required the parties to perform a task. Once the task was completed, then it became necessary for the court to make a further decision; specifically, it needed to enter the order appointing the mutually agreed upon attorney. At the very minimum, the matter of appointing counsel had not been conclusively determined.

LSCG conjoins the May 22 Order and July 6, 2015 Order and argues that, collectively, the Orders create a conclusive determination of the disputed question. While, if taken together, these orders may well constitute a conclusively definitive resolution on the disputed matter, this is not what LSCG chose to appeal. Had LSCG waited to appeal after the July 6, 2015 Order, perhaps there would be a different result, but because LSCG appealed the May 22 Order alone, the first prong is not satisfied, and LSCG cannot appeal under the collateral order doctrine.

ii. The circuit court's action in ordering the payment of money gives LSCG the right to appeal.

CJP § 12-303 delineates exceptions to the general rule that appeals must be of final judgments:

> A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case:
>
> (v) For the sale, conveyance, or delivery of real or personal property or the payment of money, or the refusal to rescind or discharge such an order, unless the delivery or payment is directed to be made to a receiver appointed by the court . . . .

CJP § 12-303 (3)(v) (emphasis added).

The legislature intended for this exception "to allow interlocutory appeals only from those orders for the 'payment of money' which had traditionally been rendered in

equity." *Anthony Plumbing of Md., Inc. v. Attn'y Gen. of Md.*, 298 Md. 11, 20 (1983). CJP § 13-303 was created to address the issues posed by gradual entry of equitable remedies available in the arsenal of the court at law. *Id.* This statutory exception is construed narrowly, however, and will only be found to be an appealable order if "it falls within those sections specifically enumerated in [CJP] § 12-303." *Breur v. Flynn*, 64 Md. App. 409, 414 (1985). With the legislative intent in mind, we must examine whether the May 22 Order was equitable in nature to determine whether the CJP § 12-303 (3)(v) exception applies.

The case upon which LSCG relies, *Allfirst Bank v. Dep't of Health & Mental Hygine*, 140 Md. App. 334 (2001), is instructive. In *Allfirst*, we held that when the issue involves a "payment of money," and the order requires a "specific sum of money which proceeds directly to the person and for which the individual is directly and personally answerable to the court in the event of noncompliance," the order falls within the purview of § 12-303(3)(v). *Allfirst*, 140 Md. App. at 360 (citation and emphasis omitted). In that case, because the order required one party to pay the other, an order equitable in nature, it was immediately appealable. *Id.*

In *Allfirst*, the circuit court ordered that money be paid directly to one of the parties. *Id.* at 345. Here, while the money was not paid directly to Solomons Two, it was to be paid into the Court Registry for Solomons Two's benefit. As the money paid into the court by the parties is the result of an order involving a "specific sum of money which proceeds directly to the person and for which the individual is directly and personally answerable to the court in the event of noncompliance," the equitable exception as

provided in CJP § 12-303 (3)(v) applies. LSCG thus has the right to an interlocutory appeal in this case on this basis.

II. The May 22 Order was well within the powers of the circuit court.

Turning to the merits, we hold that the circuit court did not exceed its power when it issued the May 22 Order. The court has the authority to appoint counsel for Solomons Two and to compel the parties to pay costs. We explain.

The number of remedies a circuit court may give has expanded over time with the merge of the courts of equity and the courts of law. *Anthony Plumbing*, 298 Md. at 19. "[The] [o]bject of equity jurisprudence is to so deal with forensic controversies as to do full adequate and complete justice between the parties . . . [without] formalism . . . which limits the power of law courts." *Webster v. Archer*, 176 Md. 245, 251 (1939). To serve its purpose of completing justice between parties, the equity principles are "broad and comprehensive." *McDougal v. Huntingdon & Broad Top Mountain RR & Coal Co.*, 143 A. 574, 577 (Pa. 1928).

LSCG failed to cite any authority that would prohibit the court from using its equitable power to require the parties to share equally in the cost of retaining counsel to represent Solomons Two. However, because of the large scope of relief available to judges for the resolution of equitable issues, "[m]ere absence of precedent does not preclude equity court from granting relief required by circumstances." *Wells v. Price*, 183 Md. 443, 452 (1944) (citations omitted). "This is in accordance with the maxim that 'equity suffers no right to be without a remedy,' and is supported by the authorities generally." *Id*. (citations omitted).

We conclude that the circuit court's decision was not in error. A corporation is subject to "numerous statutory limitations, obligations, and requirements." *Renbaum v. Custom Holding, Inc.*, 386 Md. 28, 48 (2005). "The statutes [that govern the corporations] . . . oversee the administration and organization of the corporation." *Id*. Because Solomons Two, a corporation, is subject to statutory limitations, the circuit court was justified in appointing counsel. Furthermore, as Solomons Two's members were deadlocked, the May 22 Order addressed the impasse, and was an appropriate remedy for the deadlock. *See id.* at 62 ("Because of the board's inability to select counsel for these proceedings, the Circuit Court did not err in appointing counsel for [the corporation]."). While the circuit court "lack[s] the authority to appoint counsel in the absence of deadlock," where the board of directors has an opportunity to select counsel to represent the corporation but does not reach an agreement, it is within the circuit court's capacity to make such appointments. *Id.* (citing *Tydings v. Berk Enterprises*, 80 Md. App. 634, 645 (1989)). Accordingly, we hold that the court's May 22 Order was well within the court's authority.

JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.