UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Case Nos. 1718 & 2773
September Term, 2015

NILOS SAKELLARIOU

v.

PIONEER REALTY, INC., *ET AL*

NILOS SAKELLARIOU

v.

CAROL STRAUSS, et al.

Graeff,
Friedman,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: May 16, 2017

In these consolidated appeals from the Circuit Court for Anne Arundel, Nilos Sakellariou, appellant, asserts that the court erred in denying his motion for leave to file a second amended complaint.

Appellant filed, and later amended, a multi-count complaint against fifteen defendants, appellees, alleging, *inter alia*, breach of contract, fraud, and negligence. The genesis of the litigation was two loans he made in 2006 and 2007.

The various defendants' motions for dismissal were granted, excepting one count of breach of contract against three of the defendants.[1] During the pendency of the many motions, Sakellariou's motion for leave to amend the complaint a second time was denied.

From those orders, he appeals. We shall affirm.

BACKGROUND

On September 2, 2014, Sakellariou filed a complaint in the circuit court against the defendants, alleging breach of contract, fraud, and breach of fiduciary duty. The complaint alleged that Sakellariou engaged in "loan transactions" to and through one or more of the defendants, for $100,000 in 2006 and $50,000 in 2007, which – he had been promised by various defendants – were secured in part by a large parcel of land owned by some, but not all, of the defendants. Sakellariou alleged that he obtained promissory notes for both loans but, inexplicably, was never in possession of a copy of either. Sakellariou unsuccessfully demanded payment on both loans in August 2010. He later learned in October 2012: (1)

[1] Because the issue presented is purely procedural, we need not, at this juncture, name the many individual and corporate original defendants. To do so would further muddle an already complicated procedural history.

that a large portion of the property securing his loans had been sold in 2010 without his knowledge, and (2) in August 2014, that the defendants had never recorded a lien on the property in his favor. The complaint alleged that the defendants breached the loan contracts, that they defrauded Sakellariou by false representations of intent to repay, and that defendants violated a fiduciary duty owed him.

Rather than producing a narrative of the events of the litigation, we set out the relevant procedural stages of the proceedings as gleaned from the circuit court docket entries and reproduced in the record.

Sakellariou obtained service on approximately half of the defendants, setting off a robust motions practice:

- January 7, 2015: Defendants John J. Harrison, The Harrison Company, and John J. Harrison Companies, Inc. moved to dismiss. Opposition filed January 21, 2015.
- February 9, 2015: Defendants Pioneer Realty, Inc. and Dale Ross moved to dismiss. Opposition filed February 27, 2015.
- February 18, 2015: Defendants Carol Strauss and Pioneer Realty, LLC moved to dismiss. Opposition filed February 27, 2015.
- March 17, 2015: Hearing held on motions to dismiss.
- March 19, 2015: Scheduling order issued, requiring all amendments to pleadings to be filed by July 1, 2015.
- April 6, 2015: **Order** entered granting motions to dismiss – without leave to amend – only as to counts II and III, fraud and breach of fiduciary duty. Count I, breach of contract, remained.
- April 10, 2015: Sakellariou moved for reconsideration of the granting in part of the motions to dismiss, asking in the alternative for leave to amend the dismissed counts. Oppositions filed April 20 and 23, 2015; reply filed April 29, 2015.

- May 27, 2015: Defendants Pioneer Realty, Inc. and Dale Ross moved for summary judgment. Opposition and reply filed June 16, 2015 and June 18, 2015, respectively.

- June 3, 2015: **Order** entered denying Sakellariou's motion to reconsider.

- June 25, 2015: Sakellariou moved to modify the scheduling order on grounds that he was seeking new counsel who might need time to amend.

- June 26, 2015: Defendants Robert Sasscer and Tamara Sasscer answered Sakellariou's complaint.

- June 30, 2015: Defendants Carol Strauss and Pioneer Realty, LLC moved for summary judgment. Opposition and reply filed July 16, 2015, and August 3, 2015, respectively.

- July 1, 2015: Sakellariou filed the first amended complaint, restating the breach of contract count, specifying that it was against Defendants Robert Sasscer, Tamara Sasscer, and Rx Solutions. The complaint also repeated the fraud and breach of fiduciary duty counts that had been dismissed in the April 6, 2015, Order, and added two counts, one seeking a declaration that his loans were secured by an indemnity deed of trust, and the other alleging "breach of duty" against Defendants Carol Strauss and Pioneer Realty, LLC, for failing to manage the deed of trust in the best interests of its beneficiaries, including Sakellariou.

- July 8, 2015: Sakellariou's new counsel entered his appearance.

- July 9, 2015: Defendants Carol Strauss and Pioneer Realty, LLC moved to dismiss counts I and IV, breach of contract and declaratory judgment, of the first amended complaint and to strike counts II, III, and V, fraud, breach of fiduciary duty, and breach of duty. Opposition and reply filed July 29, 2015, and August 3, 2015, respectively.

- July 14, 2015: Defendants John J. Harrison, The Harrison Company, and John J. Harrison Companies, Inc. moved to dismiss counts I and IV and to strike counts II, III, and V of the first amended complaint. Opposition filed July 29, 2015.

- July 14, 2015: **Order** entered denying Sakellariou's motion to modify the scheduling order. This order contained a footnote stating, "Should a new counsel for Plaintiff enter his/her appearance, the Court may consider a request for modification at that time."

- July 21, 2015: Defendants Pioneer Realty, Inc. and Dale Ross moved to dismiss the first amended complaint in its entirety. Opposition filed August 7, 2015.

- July 29, 2015: Defendants Robert Sasscer and Tamara Sasscer moved to dismiss counts I and IV and to strike counts II, III, and V of the first amended complaint. Opposition filed August 7, 2015.

- July 29, 2015: Sakellariou moved for leave to amend the complaint a second time. The proposed complaint retained the breach of contract count against Defendants Robert Sasscer, Tamara Sasscer, and Rx Solutions; clarified that the fraud count was against Defendants John J. Harrison, The Harrison Company, John J. Harrison Companies, Inc., AIM Holdings, and Edward Kila; clarified that the breach of fiduciary duty was against Defendants John J. Harrison, The Harrison Company, John J. Harrison Companies, Inc., AIM Holdings, Carol Strauss, Pioneer Realty, LLC, and Edward Kila; dismissed the count seeking a declaratory judgment; changed the breach of duty count to constructive fraud against Defendants Carol Strauss and Pioneer Realty, LLC; and added four counts: (1) money had and received against Defendants John J. Harrison, The Harrison Company, John J. Harrison Companies, Inc., AIM Holdings, Carol Strauss, and Pioneer Realty, LLC, (2) aiding and abetting fraud against Defendants Dale Ross, John J. Harrison, the Harrison Company, John J. Harrison Companies, Inc., AIM Holdings, and Edward Kila for making false representations intended to discourage Sakellariou from protecting his investments, (3) negligence against Defendants John J. Harrison, The Harrison Company, John J. Harrison Companies, Inc., Carol Strauss, AIM Holdings, Pioneer Realty, LLC, and Edward Kila, and (4) securities acts violations against AIM Holdings and Edward Kila.

  Oppositions filed August 3, August 7, and August 13, 2015; reply filed August 27, 2015.

- August 3, 2015: **Order** entered granting motion to dismiss with prejudice first amended complaint against Defendants Pioneer Realty, Inc. and Dale Ross.

- September 4, 2015: Sakellariou moved to reset the scheduling order. Oppositions filed September 6, September 10, and September 15, 2015.

- September 17, 2015: **Order** entered denying, without explanation, Sakellariou's leave to amend the complaint a second time.

- September 21, 2015: **Order** entered denying Sakellariou's motion to reset the scheduling order.

- October 15, 2015**:** **Order** entered granting Defendants' motions to strike counts II, III, and V of the first amended complaint, and dismissing with prejudice counts I and IV against Defendants John J. Harrison, The Harrison Company, John J. Harrison Companies, Inc., Carol Strauss, and Pioneer Realty, LLC.

- October 22, 2015: **Order** entered granting Defendants Robert Sasscer and Tamara Sasscer's motion to strike counts II, III, and V of the first amended complaint, granting their motion to dismiss count IV, and denying their motion to dismiss count I.

On January 22, 2016, what remained of the case – one breach of contract count against the three remaining defendants – came on for trial. Sakellariou's attorney conceded that there was no contract between Sakellariou and any of the remaining defendants, and requested the court enter final judgment in favor of the defendants. The court did so, and the case was closed.

Previously, on October 16, 2015, Sakellariou had noted an appeal from the denial of his motion for leave to amend the complaint.[2] In a timely fashion after the entry of final judgment, on January 22, 2016, he noted a second appeal[3] in an effort to preserve his first appeal in the event it did not meet the requirements of the collateral appeal doctrine. The appeals were consolidated on May 12, 2016.

DISCUSSION

Despite appellant's insertion of extraneous questions, the only issue before us is whether the circuit court erred in denying his motion for leave to amend the complaint a second time. First, however, given the somewhat uncommon posture of this appeal, and

[2] No. 1718, September Term 2015.

[3] No. 2773, September Term 2015.

what appears to be an argument by appellees that Sakellariou waived his right to appeal, we review whether the case is properly before us.

I. Appealability

Sakellariou's first appeal was taken from an interlocutory order denying his motion for leave to amend. To be appealable, an interlocutory order 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. *In re Franke*, 207 Md. App. 679, 685 (2012). These elements are to be tightly construed and strictly applied. *Norman v. Sinai Hosp. of Balt., Inc.*, 225 Md. App. 390, 394 (2015) (quoting *Kurstin v. Bromberg Rosenthal, LLP*, 191 Md. App. 124, 144-46 (2010)). *See also In re Foley*, 373 Md. 627, 633-34 (2003).

Sakellariou's motion for leave to amend the complaint was denied, as was his subsequent motion to reset the scheduling order. Although the proposed second amendment may have determined the merits, the amendment itself is not an issue that is related to the merits. Nonetheless, a denial of a motion for leave to amend a complaint is reviewable on appeal from a final judgment. *See, e.g.*, *RRC Ne., LLC v. BBA Md., Inc.*, 413 Md. 638, 672-76 (2010) (reviewing the trial court's denial of motion for leave to amend complaint for abuse of discretion after the final judgment dismissing the case with prejudice); *Bord v. Balt. Cty.*, 220 Md. App. 529, 564-68 (2014) (reviewing the trial court's denial of motion for leave to amend following the dismissal of two defendants and entry of judgment for the last defendant based on governmental immunity).

Although we accepted Sakellariou's appeal from the final judgment, and ordered consolidation with his interlocutory appeal, the denial of his motion for leave to amend remains the sole issue on appeal. Because a denial of leave to amend is reviewable on appeal from a final judgment, we find no waiver.

II. Denial of Motion for Leave to Amend

Sakellariou, relying on Rule 2-341 – amendment of pleadings - argues that the trial court abused its discretion in the denial of his motion for leave to amend, because it did not follow established guidelines for allowing amendments. He correctly posits that the Maryland Rules and case law provide that amendments should be "freely allowed when justice so permits." *See* Rule 2-341(c). He maintains that it was an abuse of discretion for the court not to make any factual findings to support its decision, but provides us with no authority to support this assertion. In sum, he argues that his proposed amendment met the benchmarks for an amendment that should have been allowed.

Responding, appellees make several arguments, some relevant and some not. In direct response to Sakellariou's argument that the circuit court abused its discretion in denying his motion for leave to amend, they argue that the court's reason for denial was that the motion was not in compliance with the existing scheduling order.[4] Appellees point out that Sakellariou, after obtaining new counsel, opted to move for leave to amend rather than modification of the scheduling order. They further highlight Sakellariou's failure to move for reconsideration of the court's order of denial, or to request clarification. In an

[4] That assertion is clearly conclusory, for the trial court did not articulate any reason for denial of the motion.

alternative argument, appellees ask us to affirm the trial court's denial of the motion for leave to amend based on an assessment of the merits of their claims that Sakellariou's entire case is barred by the statute of limitations and the statute of frauds.[5]

As in all cases, we are bound by an established standard of review. "With respect to procedural issues, a trial court's rulings are given great deference. The determination to allow amendments to pleadings or to grant leave to amend pleadings is within the sound discretion of the trial judge." *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443-44 (2002). A circuit court's rulings on such motions will be overturned only upon a showing of a clear abuse of that discretion. *Id.* at 444.

Review for abuse of discretion is "a very high threshold." *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 677 (2008). An abuse of discretion is found where "no reasonable person would take the view adopted by the [trial] court," or where the decision is "violative of fact and logic." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)). "[T]he determination is case specific. The real question is whether justice has not been done, and our review of the

[5] The appellees present two other arguments. As discussed briefly above, they argue that Sakellariou waived his right to appeal because (1) he failed to appeal the order denying his motion to reconsider the dismissal of counts I and II from his original complaint, (2) because he conceded there was no contract with the Sasscer defendants, and (3) because he asked the trial court for a judgment in favor of 'all' the defendants in order to obtain a final judgment. Further, in an odd contradiction, appellees ask us to remand the case to the trial court to re-open proceedings, so they can continue to seek Rule 1-341 sanctions against Sakellariou and his counsel for pursuing this appeal in bad faith. However, appellees failed to preserve their sanctions claim for our review in these appeals when they failed to file a cross-appeal challenging the trial court's denial of their initial motion for sanctions below.

exercise of a court's discretion will be guided by that concept." *Wormwood v. Batching Sys., Inc.*, 124 Md. App. 695, 700 (1999).

Rule 2-341 governs the amendment of pleadings, deferring to the court's scheduling order where one exists. Rule 2-341(a)-(b) (a party must seek leave to amend a pleading after deadline set forth in scheduling order). The Rule also provides, "[a]mendments shall be freely allowed when justice so permits." Rule 2-341(c). In order to try cases on their merits, "rather than upon the niceties of pleading," amendments to complaints and other pleadings are generally liberally allowed. *Crowe v. Houseworth*, 272 Md. 481, 485 (1974). "Although . . . it is the rare situation in which a court should not grant leave to amend, an amendment should not be allowed if it would result in prejudice to the opposing party or undue delay, such as where amendment would be futile because the claim is flawed irreparably." *RRC Ne., LLC*, 413 Md. at 673-74 (internal citations omitted).

To be judged appropriate, an amendment must not plead new facts or add causes of action outside the statute of limitations of which a defendant would not be on notice. *Crowe*, 272 Md. at 489. "[S]o long as the operative factual situation remains essentially the same, no new cause of action is stated by a declaration framed on a new theory or invoking different legal principles." *Id.* at 485-86. However, new legal theories arising from the originally-pleaded facts are permissible amendments. *Youmans v. Douron, Inc.*, 211 Md. App. 274, 300-02 (2013) (clarifying a misstatement of the *Crowe* relation-back test and distinguishing legal theories from causes of action).

In *Crowe*, the trial court was held to have abused its discretion in refusing an amendment to add new plaintiffs, as their sharing in any award obtained would not

prejudice the defendant. 272 Md. at 489. On the other hand, in *Bord*, the motion for leave to amend was made during trial, more than two years after leave to do so was granted, and after the plaintiff had rested its case. 220 Md. App. at 567. The denial in *Bord* was not considered an abuse of discretion, as the proposed amendment adding a federal claim to a tort case would have resulted in both prejudice and undue delay. *Id.* at 567-68.

In *Blevins v. Mullan Contracting Co.*, 235 Md. 188 (1964), the Court of Appeals found that the trial court did not abuse its discretion in denying a fourth amendment to a complaint which appeared to fail to state a cause of action in any of its iterations. 235 Md. at 194. "[W]e think that the court was entitled to consider the slight likelihood of success in an ejectment action against the appellees, who appear to have come and gone and not to be in possession, as well as the fact that numerous amendments had already been granted, in deciding how it should exercise its discretion." *Id.*

Sakellariou maintains that the court abused its discretion in part because it failed to make factual findings. In support, he offers *Davis v. Mills*, 129 Md. App. 675 (2000), and *Torbit v. State*, 102 Md. App. 530 (1994). Those cases deal with the waiver of filing fees based on indigence. The rule governing waiver of fees requires the court to review the application and allows it to request more information if it cannot make the determination on the face of the application before it. Rule 1-325(e)(2);[6] *Torbit*, 102 Md. App. at 533-34. We found in *Torbit* that a simple order denying the application was insufficient to

[6] At the time of the *Torbit* and *Davis* opinions, the provision governing waiver of fees and costs was encompassed in Rule 1-325(a). The Rule was later rescinded, reorganized and readopted so that the provision in the previous subsection (a) is now currently found under subsection (e) of Rule 1-325.

determine whether the court had abused its discretion, because no reason was given for the denial, "and we cannot infer one based on the face of the order or on our review of the record." 102 Md. App. at 536. However, given the criteria established in the Rule at that time, we held that "the court's failure to explain its reasons for denying appellant's motion was, itself, an abuse of discretion. *Id.* Similarly in *Davis*, the order stated no findings in support of its denial of the fee waiver, so we were unable to determine whether the court had performed the review required by the rule. 129 Md. App. at 680. Nevertheless, we ultimately held that "the trial court's failure to explain its reasons for denying the motion constituted an abuse of discretion." *Id.*

Even considering *Davis* and *Torbit*, we cannot conclude that it is a *per se* abuse of discretion for a trial court to issue an order without making any findings, as those cases were premised on a rule that requires the court to undertake specific actions, as contrasted with Rule 2-341, which does not provide such requirement.

That said, in the instant matter, the court did not articulate a reason for the denial; hence, we are left to infer from the record as a whole whether the denial rose to the level of an abuse of discretion.

When Sakellariou's original counsel moved to modify the scheduling order, based largely on the fact that he was seeking new representation, the court denied the motion, noting that his new counsel would be free to move for a modification of the scheduling order. The request sought one extra month for filing amendments to pleadings, two extra weeks for completing discovery, and one extra week for filing pretrial dispositive motions. When Sakellariou did obtain new counsel, he chose to move first for leave to amend the

complaint a second time. Only more than one month later, did he move to "reset" the scheduling order. Both of these motions were opposed by three groups of defendants, raising salient concerns regarding Sakellariou's being on notice as to the procedural posture of the case, to the court's openness to a motion by his new counsel for a modification of the scheduling order, and to the court's previous denial of leave to amend the counts of the original complaint that were dismissed on April 6, 2015.

Assuming, *arguendo*, that Sakellariou is correct that his proposed amendments to the second amended complaint fit neatly into the category of permissible amendments, given that they relate back to the original complaint, do not plead new facts or causes of action, do not prejudice the defendants, and would not cause undue delay, he asks us to consider the trial court's denial in a vacuum. We can infer from the record, however, good reason for the court's denial, including the case time standards deadline of March 2016; the likelihood of further dispositive motions arising from a third iteration of the complaint; the previous denial of leave to amend the dismissed portions of the complaint; and the belated motion to reset the scheduling order, among others.

Although we might have allowed the amendment, given that it would not result in prejudice to the defendants or undue delay in the trial schedule, it is not for us to substitute our judgment for that of the trial court. We cannot hold that "no reasonable person would take the view adopted by the trial court," where Sakellariou sought leave to amend a second time just one month after the first amendment and one month past the deadline for doing so – with one month left in the discovery period when the motion would become ripe – rather than moving first for a modification to the scheduling order. *In re*

Adoption/Guardianship No. 3598, 347 Md. at 312 (quoting *North*, 102 Md. App. at 13). The circuit court was within its discretion in denying the request, given the number of defendants, the previous denial of the motion to modify the scheduling order, and Sakellariou's failure to accept in a timely manner the court's invitation to request a new scheduling order after obtaining new counsel.

III Appeal from the Final Judgment

The second of the consolidated appeals – No. 2773 – relates to the trial court's entry of final judgment following the hearing on January 22, 2016. As neither appellant's initial appeal, nor the second appeal, address the merits of the court's rulings and judgment, we need not consider it.

In conclusion, we find nothing in the record to support a conclusion that the trial court abused its discretion in denying appellant's motion for leave to amend.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED IN BOTH NO. 1718 AND NO. 2773; COSTS IN BOTH APPEALS ASSESSED TO APPELLANT.