

Circuit Court for Prince George's County
Case No.: CAE12-17716

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1955

September Term, 2016

EMERICK PEACE, *et al.*

v.

LCS FINANCIAL CORP.

Leahy,
Shaw Geter,
Kenney, James A., III
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw Geter, J.

Filed: December 18, 2017

*This is an unreported opinion, and 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.

INTRODUCTION

This case arises from the foreclosure and subsequent sale of the Beltsville, Maryland home of appellants Emerick and Robin Peace. Federal Home Loan Mortgage Corporation purchased the property at a foreclosure auction in December 2012 and later assigned its rights in the property, which included a deficiency balance, to appellee LCS Financial Services Corporation. In October 2015, appellee filed a Motion for Deficiency Judgment in the Circuit Court for Prince George’s County against appellants as the former homeowners. The court scheduled a hearing on March 17, 2016; appellee appeared, but appellants and their counsel failed to appear. The court then granted appellee’s motion and entered a deficiency judgment in the amount of \$145,333.29. On April 29, 2016, appellants filed a Motion to Vacate Judgment, arguing they did not receive notice of the hearing and that Federal Home Loan Mortgage Corporation never possessed deficiency rights in the property. The court denied appellants’ motion, holding that they failed to provide legal grounds or meritorious reasons for the granting of a motion to vacate judgment. Appellants filed this timely appeal and present us with the following questions, which we have rephrased¹ and reordered:

1. Did the court err in denying Appellants’ Motion to Vacate the Deficiency Judgment?

¹ Appellants originally presented us with the following questions: 1) “The Court erred in granting Appellee’s Motion for Deficiency Judgment on bases of Appellants failure to appear at hearing on Motion for Deficiency Judgment”; and 2) “The Court erred in denying Appellants’ Motion to Vacate Deficiency Judgment and Supplement thereto without a finding that there was no issue of material fact and whether Appellee was entitled to a Deficiency Judgment.”

2. Did the court err in granting Appellees' Motion for a Deficiency Judgment?

For reasons to follow, we answer the first question in the negative and, therefore, decline to answer the second question.

BACKGROUND

Emerick Peace and Robin Peace, appellants, executed an Adjustable Rate Note (“Note”) and Deed of Trust with Suntrust Mortgage, Inc. on January 31, 2007, for real property located at 4617 Quimby Drive in Beltsville, Maryland. On June 7, 2012, foreclosure proceedings were instituted because of their payment delinquency. The house was sold at auction on December 18, 2012, to Federal Home Loan Mortgage Corporation (Freddie Mac) for \$215,000.00, with a total outstanding debt on the property of \$360,333.29. After the application of credits and debits, a deficiency balance of \$145,333.29 remained. The Circuit Court for Prince George’s County ratified the Auditor’s Report on June 26, 2013, and the case was closed thereafter. Appellants took no exceptions to the sale or Auditor’s Report.

On January 3, 2014, Freddie Mac assigned its deficiency rights in the property to appellee LCS Financial Services Corporation. Appellee then filed a Motion for Deficiency Judgment in the circuit court on October 2, 2015. Appellants noted their opposition and requested a hearing on the matter. The clerk’s office mailed notifications to counsel for both parties, on February 22, 2016, advising them of the March 17, 2016 scheduled hearing date.

Appellee was present on the hearing date. After observing that neither appellants nor their counsel were in the courtroom, the judge delayed the proceedings approximately twenty minutes. Upon returning to the courtroom, the judge reviewed the file; found that notice was sent to appellants' counsel at the address listed in his response; granted the Motion for Deficiency Judgment; and signed an Order in favor of appellee in the amount of \$145,333.29. The order was entered on March 29.

Appellants filed a Motion to Vacate Judgment on April 29, 2016, asserting they did not receive notice of the hearing and only became aware of the judgment after receipt of a letter from appellee's counsel on April 27. They further contended Freddie Mac, the auction purchaser, did not have the right to pursue the deficiency because the mortgage lacked a covenant conferring to the mortgagor the right to maintain an action seeking a deficiency judgment. Appellants also filed a Motion for Leave to Late File Motion to Vacate Judgment on the same date. It is undisputed that the Motion to Vacate Judgment was not filed within 30 days of the entry of the judgment.

Appellee filed responses to appellants' motions on May 11, 2016, arguing they received notice and further, appellee's counsel left two messages and one voicemail with appellants' counsel to discuss the upcoming hearing, but did not receive any return calls. Moreover, appellee contended the motion should be denied because the filing was untimely and appellants had not, as required, established that the judgment was entered as a result of fraud, mistake, or irregularity, nor had they shown that they acted with due diligence to set aside the judgment or had a meritorious defense to appellee's claim. On May 19, appellants filed a Supplement to Defendant's Motion for Leave to Late File Motion to

Vacate Judgment and Motion to Vacate Judgment, alleging the judgment was a result of fraud, mistake, or irregularity and that they possessed a meritorious defense.

The circuit court denied the Motion to Vacate Judgment on October 25, 2016, stating, “Upon review of the filings, it is apparent to this Court that Defendants have failed to provide this Court with any legal grounds or meritorious reasons that might persuade it to grant the motion. Additionally, Defendants’ Motion to Vacate was untimely filed.” The Motion for Leave to Late File Motion to Vacate Judgment was denied as moot. Appellants filed this timely appeal.

1. Did the court err in denying Appellants’ Motion to Vacate the Deficiency Judgment?

Appellants assert the trial court erred by denying their motion to vacate prior to finding that no material fact was in dispute or whether appellee was entitled to the judgment. They argue the judgment was a result of fraud, mistake, or irregularity and claim it was a mistake for the court to enter the judgment because they did not receive notice of the proceeding. They further allege that appellee lacked deficiency rights in the property, pointing to Paragraph 22 of the Deed of Trust.

The determination of whether a judgment, within 30 days following its entry, should or should not be vacated in whole or in part, is within the sound discretion of the trial court. *Cromwell v. Ripley*, 11 Md. App. 173, 176 (1971). It is discretion that “must be exercised liberally lest technicality triumph over justice.” *Eshelman Motors Corp. v. Scheftel*, 231 Md. 300, 301 (1962). However, when a motion to vacate is filed more than 30 days after the entry of judgment, “a court has no authority to revise [the] judgment unless it

determines, in response to a Motion under Rule 2-535(b), that [it] was entered as a result of fraud, mistake, or irregularity.” *Thacker v. Hale*, 146, Md. App 203, 216–17 (2002). “[O]ne seeking to set aside an enrolled judgment must establish also that he is acting in good faith and with ordinary diligence, and that he has a meritorious defense “in the original action.” *Owl Club, Inc. of Baltimore v. Gotham Hotels, Ltd.*, 270 Md. 94, 100 (1973). We “review the circuit court’s determination of whether there was fraud, mistake, or irregularity for clear error and legal correctness.” *Davis v. Attorney General*, 187 Md. App. 110, 124 (2009).

The grounds of fraud, mistake or irregularity are narrowly defined and are to be strictly applied. *Early v. Early*, 338 Md. 639 (1995). To establish fraud, a “movant must show extrinsic fraud...” *Jones*, 178 Md. App. at 72. Fraud is extrinsic when “it actually prevents an adversarial trial but is intrinsic when it is employed during the course of the hearing...[whereby]...the truth was distorted by the complained of fraud.” *Manigan v. Burson*, 160 Md. App. 114, 121 (2004) (internal citations omitted). In *Pellegrino v. Maloof*, this Court held there was sufficient evidence to show extrinsic fraud, where an unsuccessful party was prevented from fully exhibiting his case because of a fraud or deception practiced on him by his opponent, which actually kept him away from court. 56 Md. App 338, 348 (1983) (finding evidence, in a case involving a last will and testament, that the personal representative drew an ambiguous will, “reassured the sons of the decedent about the subject matter of the ambiguous provision,” and declined to respond to their correspondence seeking clarity). In the present case, there is no allegation of extrinsic fraud.

A “mistake,” under Rule 2-535(b), is limited to a “jurisdictional error, such as where the Court lacks the power to enter judgment.” *Claibourne v. Willis*, 347 Md. 684, 692 (1997) (internal citations omitted.) Mistakes in this circumstance occur when a judgment has been entered in the absence of valid service of process and the court never obtains personal jurisdiction over a party. *Chapman v. Kamara*, 356 Md. 426, 436 (1999). Appellants make no such accusations.

A Motion to Vacate Judgment may also be predicated on a showing of an irregularity, which is defined as “a nonconformity of process or procedure.” *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013). An irregularity “usually occurs in the context of a failure to provide required notice to a party[.]” *Mercy Medical Center, Inc. v. United Healthcare of the Mid-Atlantic, Inc.*, 149 Md. App. 336, 376–77 (2003). For example, we determined in *Dypski v. Bethlehem Steel Corp.* that a clerk neglecting to send a copy of an order of dismissal was an irregularity. 74 Md. App. 692, 699 (1988). In *Gruss v. Gruss*, we held an irregularity existed where the court clerk mailed an order of dismissal to an incorrect address. 123 Md. App. 311, 320 (1998). However, an irregularity is “not an error, which in legal parlance, generally connotes a departure from truth or accuracy of which a [party] had notice and could have challenged.” 187 Md. at 125. An “irregularity” is “the doing or not doing of that, in the conduct of a suit at law, which conformable to the practice of the court, ought or ought not to be done.” *Autobahn Motors, Inc. v. Mayor and City Council*, 321 Md. 558, 562 (1991) (quoting *Weitz v. MacKenzie*, 273 Md. 628, 631 (1975)).

Appellants here have alleged broadly that the judgment was a result of fraud, mistake, or irregularity. However, they have provided no detail or support for any of their contentions and made no factual arguments in their favor. They did not aver extrinsic fraud, nor did they claim there was a jurisdictional mistake. While appellants denied receiving notice of the hearing, they did not provide any evidence of a nonconformity with court processes or procedures. As a result, the court's decision to deny the motion to vacate judgment was not error.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANTS.**