

Circuit Court for Baltimore County
Case No. 03-C-15-007934

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2205

September Term, 2016

ST. JOHN PROPERTIES, INC.

v.

CHRISTOPHER CAMERON T/A STATCARE
ACQUISITIONS, LLC

Friedman,
Shaw Geter,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: April 10, 2018

*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.

St. John Properties, a property management company, entered into a lease agreement with “Statcare Acquisitions, LLC.” Christopher Cameron, who held himself out as the president of Statcare Acquisitions, signed the lease. But Statcare Acquisitions doesn’t really exist, because nobody has ever filed to make it a corporate entity. Md. Code Corps. & Assns. § 4a-202. Cameron occupied the leased premises for a time but left and stopped paying rent. St. John brought an action against Cameron in the Circuit Court for Baltimore County seeking over \$75,000 in unpaid rent and other expenses on the theory that Cameron was personally liable for signing the lease on behalf of Statcare Acquisitions.

Cameron did not answer the complaint, and the circuit court issued an order of default. Cameron then moved to vacate the order of default. It is here that the trouble begins. We will proceed by discussing the history of this case chronologically, and discuss the errors as we reach them.

ANALYSIS

I. THE MOTION TO VACATE THE ORDER OF DEFAULT

Rule 2-613 governs default proceedings. It consists of several steps: (1) the plaintiff files a complaint; (2) the defendant fails to answer within the specified period; (3) the plaintiff moves for an order of default; (4) the circuit court grants the order of default, Md. Rule 2-613(b); (5) the clerk issues a notice of default and informs the defendant that he or she has 30 days to request that the court vacate the order of default, which must contain *first*, an excuse for the defendant’s failure to answer; *second*, defendant’s legal defense to the initial complaint; and *third*, defendant’s factual defense to plaintiff’s initial complaint, Md. Rule 2-613(d); and (6) the trial court then decides whether to vacate the order of

default or enter a judgment by default. Md. Rule 2-613(e)-(f); *see Peay v. Barnett*, __ Md. App. __, No. 1726, Sept. Term 2016, slip op. at 6-13 (March 29, 2018) (discussing default judgments).

As noted above, St. John filed a complaint and Cameron failed to answer. The court issued an order of default and the clerk issued a notice of the order of default. Cameron then filed a motion to vacate the order of default against him, in which he asserted a defense of misnomer—that “SC Acquisitions, LLC” was the proper defendant, not him. Cameron’s motion to vacate, however, was procedurally defective for either of two reasons: it had to be supported by an affidavit, Md. Rule 2-311(d), *or* it had to request a hearing at which the court could take testimony to support the allegations. Md. Rule 2-311(f). Without either an affidavit or a request for a hearing, however, there was no basis in the record on which the court could vacate the order of default.

The motions judge of his own volition, perhaps in a charitable mood, nevertheless issued an order scheduling an evidentiary hearing at which he proposed to take testimony supporting Cameron’s motion. The motions court wrote:

None of the facts set forth in the motion [to vacate the order of default] ... are under affidavit as is required by Rule 2-311(d) and therefore testimony will have to be taken before a Judge can make a decision as to the merits of the motion filed.

Twenty-five days later, but before the scheduled hearing, the motions judge returned to Cameron’s motion to vacate and found that Cameron had failed to support his motion with an affidavit or testimony and, as a result, he could not demonstrate that he had a valid

defense to the initial complaint. The motions court, therefore, denied Cameron's motion to vacate.

The decision to deny Cameron's motion to vacate the order of default was legally and factually correct *had it been made in the first instance*. Once the motions court had scheduled an evidentiary hearing, however, even though such a hearing was not required, it was error to cancel that hearing. A court cannot promise a party the opportunity to give evidence, allow it to rely upon that promise, and then retract that opportunity.

Cameron could not immediately appeal from the denial of the hearing, however, and so the case continued. The circuit court conducted a separate damages trial, and entered judgment for St. John and against Cameron in the amount of \$62,347.12, plus attorney's fees of \$6,800. Cameron then filed notice of *in banc* review in the circuit court.

II. THE *IN BANC* PANEL

An *in banc* panel of the Circuit Court for Baltimore County was convened, held a hearing, and reversed the motions judge, finding that the record revealed an actual controversy about Cameron's defenses:

[W]e believe that the documents that are in the record, in fact, were filed by the plaintiff, including the lease, itself, do generate an actual controversy, and therefore, an affidavit wasn't required because the facts are contained in the record.

While we would be inclined to disagree with that determination of the *in banc* panel (because we find no facts in the record supporting Cameron's defense of misnomer), we may not reach the merits of its decision. That is because Cameron had no right to an *in banc* review in the first place. There are, again, two defects: *first*, *in banc* review is

available only after a trial; and *second, in banc* review can only be taken from an exception made at that trial. MD. CONST. art. IV, § 22 (*in banc* review is only available when a party appeals from a “*trial* ... conducted by less than three Circuit Judges, upon the decision or determination of any point or question, by the Court”) (emphasis added). As the Court of Appeals has made clear, this right is limited to situations where there is an actual trial and an exception is made “during the sitting [of the court] at which the decision [is] made.” *State v. Phillips*, __ Md. __, No. 49, Sept. Term 2017, slip op. at 33 (Feb. 20, 2018); *see also Berg v. Berg*, 228 Md. App. 266, 282-83 (2015) (discussing the trial requirement for *in banc* review). The decision from which Cameron appealed was not part of a trial, and he did not raise an exception to the ruling during the sitting of the court.¹ *See Phillips*, __ Md. at __, slip op. at 33-35 (discussing cases interpreting the “sitting” language to require an exception to be taken before that court adjourned for the day). Cameron thus had no right to *in banc* review and the panel erred in hearing his appeal.

After the *in banc* panel reversed the ruling of the motions judge, St. John noted this timely appeal.

CONCLUSION

Although it was erroneous for the *in banc* panel to hear the case, we hold that the original error was, as described in Part I, that the motions court scheduled and then

¹ Generally speaking, issues are preserved for *in banc* review in the same manner in which issues are preserved for any other appeal. Md. Rule 2-551(a). Cameron was not required to object to the ruling to preserve the issue for review in this Court under Md. Rule 2-517(d), however, the Constitution requires that *some* exception be taken to exercise *in banc* review. MD. CONST. art. IV, § 22; *see Phillips*, __ Md. at __, slip op. at 33-35.

cancelled the evidentiary hearing. On remand, Cameron has at least three choices. He may, in a timely fashion, (1) provide an affidavit or affidavits as contemplated by Rules 2-311 and 2-613(d); (2) request an evidentiary hearing pursuant to Rule 2-311(f) to provide evidence of his defenses as is required by Rule 2-613(d); or (3) do nothing. The circuit court may then proceed to rule on Cameron's motion to vacate.²

JUDGMENT OF THE *IN BANC* PANEL OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED. JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED AND THE CASE IS REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. PARTIES TO PAY THEIR OWN COSTS.

² Finally, this Court received a document captioned "Notice of Satisfaction of Judgment" from Cameron on November 19, 2017. This Court issued an Order requiring Cameron to show cause why the Notice of Satisfaction should not be struck as it was filed in the wrong court (it should have been filed with the clerk of the court in which the judgment was entered, in this case, the Circuit Court for Baltimore County) and by the wrong party (it should have been filed by the judgment creditor, not the debtor). Md. Rule 2-626. Cameron, however, did not respond. We, therefore, strike the notice.