Circuit Court for St. Mary's County
Case No. 18-C-15-000820

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2359

September Term, 2016

DISTRICT TITLE, A CORPORATION,

v.

TIMOTHY DAY, *et. al.*

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

JJ.

Opinion by Friedman, J.

Filed: February 26, 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.

During a real estate transaction, Appellant District Title mistakenly wired $293,514 to the wrong person. The money ended up in the possession of Timothy Day, who declined to return it. At issue before this Court is one of several complaints District Title filed in attempt to recover those funds. Because District Title filed its notice of appeal prematurely, however, this Court lacks jurisdiction to address the merits of District Title's claims.

At the close of District Title's case-in-chief on December 15, 2016, the trial judge granted judgment for all but one defendant. As to that one remaining defendant, Day, who had absented himself from trial, the trial judge entered a default judgment as to liability, but deferred ascertaining damages. On January 13, 2017, District Title noted an appeal. That notice was, of course, premature, as it wasn't taken from a final judgment as to all parties. Md. Rule 2-602 (a)(1). On April 12, 2017, nearly three months later, the trial court entered an Order determining damages against the remaining defendant, Day. For the next 30 days, District Title did nothing and the time to appeal from the final judgment expired.

It is plain, arguments to the contrary notwithstanding, that District Title has failed to note a timely appeal, which is ordinarily fatal. Rule 8-602(e)(1) provides the only relevant exception.[1] That Rule requires a bit of play-acting: the appellate court must imagine what it would do if (1) it was in the place of the trial court; and (2) it was asked to

[1] The relevant text of Rule 8-602(e)(1) provides: "If the appellate court determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed but that the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602(b), the appellate court, as it finds appropriate, may … enter a final judgment on its own initiative."

rule on a motion to certify as final a portion of the judgment pursuant to Rule 2-602(b).[2] *McCormick v. Medtronic Inc.*, 219 Md. App. 485, 504 (2014). Thus, we are required to put ourselves in Judge Abrams' place and pretend that District Title asked us to certify that the judgment against the defendants other than Day was final. In making that determination, we are instructed to consider:

- whether the would-be appellant would suffer "a harsh economic effect" by being made to wait for the rest of the case to be resolved;
- the possibility that the same issues would be raised in a subsequent appeal;
- if resolution of the remainder of the case could render the appeal moot; and
- whether an appeal would require answers to questions still pending before the court.

Doe v. Sovereign Grace Ministries, Inc., 217 Md. App. 650, 666-67 (2014). The standard that we (in our role as Judge Abrams) are to apply is a high bar—these certifications are rarely granted because they are contrary to our policy against piecemeal appeals. Only in "the very infrequent harsh case" and if there is "no just reason for delay" can it be granted. *Waterkeeper Alliance, Inc. v. Maryland Dept. of Agric.*, 439 Md. 262, 288 (2014) (internal citation omitted); *Smith v. Lead Indus. Ass'n, Inc.*, 386 Md. 12, 26 (2005); *see also* KEVIN F. ARTHUR, FINALITY OF JUDGMENTS AND OTHER APPELLATE TRIGGER ISSUES 50 (2014).

[2] Rule 2-602(b)(1) provides: "If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment … as to one or more but fewer than all of the claims or parties."

District Title argues that their appeal should be certified so they can pursue a claim against the only defendants from whom they had any likelihood of meaningful recovery, and a delay would cause them financial harm in the form of the continued deterioration of the property they seek to recover. District Title has provided no explanation, however, about why it was necessary for this appeal to proceed separately without waiting for the final judgment against Day.

We hold that had such a motion been presented to Judge Abrams, she could not have granted it, both because there was no compelling reason that District Title could not have waited and because, on a practical level, there was nothing stopping her from ascertaining damages against Day and creating a final, appealable judgment as to all parties. The hardship in this case is self-created. Because she would have been required to deny the motion under 2-602(b), we must decline to exercise our power under Rule 8-602(e)(1). Therefore, the appeal in this case was not timely filed and we have no choice but to dismiss.[3]

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[3] Failure to note a timely appeal was a significant error by (or on behalf of) District Title. Despite that error, however, there has been no prejudice. Even had District Title's appeal been noted on time, and we had reached the merits, the outcome would still have been against District Title. District Title's lawsuit sought to avoid the consequences of a sale that put real property located at 12390 Lookout Point Road, Scotland, Maryland 20687 in St. Mary's County beyond the reach of garnishment by District Title as Day's creditor. Judge Abrams correctly understood and applied the law and made reasonable factual determinations that protect her judgment from reversal:

- Judge Abrams did not abuse her discretion in finding that equitable title to the property transferred from Day to Matthew Ashburn on September 25, 2014, when Day and Ashburn entered into a contract of sale. As a result, even if District Title's first lawsuit was a valid *lis pendens* (a problematic proposition to be sure), it was filed too late to put Ashburn on notice. *DeShields v. Broadwater*, 338 Md. 422, 433 (1995) ("Under the doctrine [of

APPEAL DISMISSED FOR LACK OF JURISDICTION.

lis pendens], an interest in property acquired while litigation affecting title to that property is pending is taken subject to the results of that pending litigation."); *Himmighoefer v. Medallion Indus., Inc.*, 302 Md. 270, 279 (1985) ("It is a general rule that the holder of an equitable title or interest in property, by virtue of an unrecorded contract of sale, has a claim superior to that of a creditor obtaining judgment subsequent to the execution of the contract.") (internal citation omitted).

- Judge Abrams did not abuse her discretion in finding insufficient evidence of the "badges" of fraud necessary to overcome the presumption of good faith and set aside the transfer as a fraudulent conveyance. *Wellcraft Marine Corp. v. Roeder*, 314 Md. 186, 189-91 (1988) ("[W]here there is a concurrence of several such badges of fraud an inference of fraud may be warranted, thereby shifting the burden of production to the grantee to justify the deed of trust.") (internal quotation omitted); *Berger v. Hi-Gear Tire & Auto Supply, Inc.*, 257 Md. 470, 475 (1970) ("Even if the grantor has a fraudulent intent, this will not vitiate or impair a conveyance unless the grantee participates in the fraudulent intent.… It is well established in this State that facts and circumstances may be such as to shift the burden to the grantee to establish the bona fides of the transaction.") (internal citations omitted). Moreover, it is hard to imagine a situation in which it will be an abuse of discretion for a trial judge *not* to be persuaded. *Byers v. State*, 184 Md. App. 499, 531 (2009).