Circuit Court for Prince George's County
Case No. CAL16-31208

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3029

September Term, 2018

WILLIAM YOUNGBLOOD

v.

FRANCIS CRAWFORD, *et al.*

Arthur,
Leahy,
Gould,

JJ.

Opinion by Gould, J.

Filed: May 15, 2020

In this case, we are asked to decide whether a defendant against whom a default has been entered as a discovery sanction has the right to cross-examine witnesses at the subsequent hearing on damages.

Francis Crawford, Teresa Crawford, and Crawford Technical Services (collectively, "plaintiffs" or the "Crawfords") sued William Youngblood, Colette Youngblood, Stepping Stones Development, LLC, Addison Station, LLC ("Addison"), B&B Distribution, LLC, and ARBA Partners, LLC (collectively, "defendants" or the "Youngbloods")[1] for failing to repay a series of loans. The Crawfords served discovery on Mr. Youngblood, who failed to respond. On the Crawfords' motion for immediate sanctions, the court ordered Mr. Youngblood to respond; he still refused. The Crawfords renewed their motion for sanctions, requesting a default judgment on both liability and the relief sought. Mr. Youngblood responded that he did "not oppose Plaintiffs' motion requesting a judgment against him." The court scheduled a hearing on damages.

At this point, the Crawfords had the Youngbloods on the ropes. All that remained was to provide the court with evidence of their damages, which consisted of the principal and interest due on the loans. Such a hearing should have been smooth sailing. After all, it was just math. In that case, what was the downside in having their calculations tested through cross-examination of their lone witness? Yet when the Youngbloods' counsel stood up to begin his cross-examination, the Crawfords' counsel objected, claiming that the Youngbloods should be barred from participating in the damages hearing. And even

[1] Mr. Youngblood was the only party that noted an appeal. For simplicity's sake, we will refer to his arguments on appeal as those of the other Youngblood parties as well.

though the court initially acknowledged the Youngbloods' right to cross-examine the witness, it relented under pressure from the Crawfords and barred defense counsel from doing so. The multi-million dollar judgment that followed was promptly appealed.

The Youngbloods contend that the trial court erred in barring their counsel's participation at the damages hearing. We agree, and therefore we vacate the judgment against the Youngbloods and remand for further proceedings.

BACKGROUND

This action arises out of a series of five failed loans made between 2004 and 2007, in the total principal amount of $1,525,000. Each loan was intended for commercial purposes. Three loans were intended to finance the construction and development of separate real estate projects while one of the loans was intended to finance the acquisition of a company.

Each loan was evidenced by one or more promissory notes and/or addenda. The details of each note—the identities of the lender and borrower, repayment terms, interest rate, etc.—are not relevant to the issues on appeal. It is enough to say that the anticipated return on the notes resembled an equity participation in the underlying businesses or real estate projects more so than a loan transaction. For example, several of the loans carried an annual interest rate of 50 percent.[2] Another note was supposed to have been converted into a ten percent equity stake in a real estate venture.

[2] That's *our* calculation. The notes to which we refer did not state an interest rate; the interest was instead stated in dollar amounts. For each dollar borrowed, three dollars (continued)

The loans were not repaid in full, ultimately prompting Mr. and Mrs. Crawford to file this action.[3]

The complaint contained three counts: (1) breach of promissory notes, for which the Crawfords sought joint and several liability against the Youngbloods in the amount of $8,155,590.59, plus prejudgment interest; (2) fraud as to the promissory notes, for which the Crawfords sought joint and several liability against the Youngbloods in the amount of $5,000,000, plus an unspecified amount of punitive damages; and (3) violation of the Maryland Securities Act, for which the Crawfords sought joint and several liability against the Youngbloods in the amount of $8,155,590.59, plus prejudgment interest.

The Crawfords served Mr. Youngblood with a set of interrogatories and a set of requests for production of documents.[4] Mr. Youngblood failed to respond to both requests. The Crawfords filed a motion for immediate sanctions under Maryland Rules 2-432(a) and 2-433(a), seeking a default as to both liability and the requested relief. Mr. Youngblood

were due four years later. Thus, two dollars of interest was ultimately due on a four-year loan—hence, an annual interest rate of 50 percent.

[3] Each note identified a specific entity as the borrower, but the judgment entered was against each defendant, except Ms. Youngblood, jointly and severally. In addition, the lender on each note was an irrevocable trust established by the Crawfords, but the suit was brought not by the trustees, but rather by the Crawfords in their individual capacities and by one corporate entity. Because none of these discrepancies have been made an issue on appeal, for the sake of simplicity, we will not differentiate among the various entities and the corresponding notes.

[4] In both the circuit court and on appeal, the Crawfords incorrectly state that the discovery requests were propounded to each defendant.

responded by moving for a protective order. Ms. Youngblood filed for bankruptcy, thus staying the action against her.

The court denied Mr. Youngblood's motion for a protective order, held the request for sanctions in abeyance, and gave Mr. Youngblood an additional 30 days to respond to the discovery.

Mr. Youngblood again failed to respond to the discovery, prompting the Crawfords to renew their request for sanctions. In their renewed request, the Crawfords again sought a default as to both liability and their requested relief, but their motion did not specify the relief they were seeking. Moreover, they failed to attach to their motion any affidavits or spreadsheets calculating the amounts due on the defaulted notes.

In response to the renewed sanctions motion, Mr. Youngblood filed a document styled "Defendant's Response to Plaintiffs' Motion for Judgment," in which he stated that he did "not oppose Plaintiffs' motion requesting a judgment against him." This prompted the court to convene an "unrecorded phone conference" with counsel, the results of which were set forth in a memorandum and order of the court entered on August 28, 2018. Among other things, the order purported to enter judgment against Mr. Youngblood in the Crawfords' favor (without specifying an amount), cancel the upcoming three-day trial, schedule a two-hour hearing on damages, and schedule a pre-hearing phone conference "to confirm the process" for the damages hearing.[5]

[5] The use of the word "judgment" was a misnomer because the order did not include any relief. See Paul V. Niemeyer and Linda M. Schuett, Maryland Rules Commentary, at 566 (5th ed. 2020). Also, the record does not explain why the trial was canceled, why the (continued)

At the damages hearing, Mrs. Crawford walked the court through her damages calculations, using as a guide an affidavit and supporting spreadsheets that she produced for the first time at the hearing. In her affidavit, Mrs. Crawford calculated the total amount owed under the notes to be $6,307,625, the amount ultimately awarded. Mrs. Crawford also testified to, among other things, the promises made by the Youngbloods as to the intended use of the loaned funds, the failure by the Youngbloods to use the funds for their intended purpose, and the financial devastation that befell the Crawfords as a result of the failed loans and broken promises.

At the end of Mrs. Crawford's direct examination, the Crawfords' counsel moved for admission of the affidavit and its supporting exhibits into evidence. Defense counsel stated that he had no objection to the admission, "although I would have questions about specifics of them. In other words, just agreeing to their admission doesn't mean I'm agreeing to everything in them." To which the court responded, "Sure. It's admitted." The Crawfords' counsel then formally concluded Mrs. Crawford's direct examination.

The court stated: "I believe [Mr. Youngblood's counsel] does have the right to ask some questions." At that point, the Crawfords' counsel asked to be heard, and proceeded to argue that Mr. Youngblood should not be permitted to cross-examine Mrs. Crawford because he had consented to judgment without "distinguishing whether it's a judgment on liability or a judgment on damages." A lengthy argument and discussion among counsel and the court then ensued.

Youngbloods were not sanctioned, or why the non-defaulted defendants were subject to joint and several liability in the final judgment.

The Crawfords' counsel argued that, as a discovery sanction under Rules 2-432 and 2-433, Mr. Youngblood should be precluded from disputing or challenging the damages calculations provided by Mrs. Crawford. In particular, the Crawfords' counsel pointed to the language in Rule 2-433(a)(3) that allows the court to both enter a default and award the "relief sought" by the plaintiffs. Later in the hearing, the Crawfords' counsel invoked Rule 2-433(a)(2)—"refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence"—as the basis for their request to prohibit cross-examination of Mrs. Crawford. Counsel argued that "liability as well as assessment of damages should be taken as proven because of the failure to provide discovery."

The Youngbloods' attorney proffered that he intended to ask about "the specifics of the spreadsheets that had been submitted and about the testimony with respect to the consequential damages claim." He emphasized that Mr. Youngblood consented to a judgment, but he did not "consent to specific numbers," and he pointed out that the motion for sanctions did not ask for a specific amount of damages.

The trial court indicated several times that the better approach would be to allow the cross-examination. For example, the Court stated:

> Well, you know, I may have said this in this case but I say it all the time: I'm a great fan of the carpenter's adage measure twice, cut once; meaning I'd rather preserve a record now than to do it again with all due respect to you and everybody else.

Ultimately, the court left the decision up to the Crawfords, who seized the opportunity to prevent the requested cross-examination:

> [THE COURT]: Now, so my question is . . . there's two ways to doing this. Again, I go back to my old adage with the carpenter. I don't have great mechanical skills. Everybody will tell you that and I will tell you that, but I do think they have it right that you create your record. That way, you know where you're at with it.
>
> I know it creates some heartburn. My term, probably not the right one for the plaintiff.
>
> What do you want me to do? Do you want me to take the hard rule or do you want me to take the record rule, the record way?
>
> ***
>
> [CRAWFORDS' COUNSEL]: Yes, Your Honor. Your Honor, after conferring with my clients, we have determined to ask the Court to strictly apply the enforcement of the rules that were cited in support of the sanctions that were requested in this case and to preclude Mr. Youngblood's participation at this trial and hearing.

The court then ruled:

> So the Court will—the Court does find that the defendant Youngblood under 2-433 is precluded from making any further questions—or determinations in this regard as to the presentations by Mrs. Crawford, so the Court moves from here.

The Court entered judgment consistent with Mrs. Crawford's testimony: $6,307,625 in compensatory damages and $5,000,000 in punitive damages. The judgment was entered jointly and severally against all the defendants except Ms. Youngblood.

DISCUSSION

THE EFFECT OF THE NON-FINAL JUDGMENT

We must first determine whether the Youngbloods took an appeal from a final judgment. "For an appellate court to have subject matter jurisdiction, an appeal must generally be taken from a final judgment or an appealable interlocutory order." Bessette v. Weitz, 148 Md. App. 215, 232 (2002) (citing Md. Code Ann., Cts. & Jud. Proc. §§ 12-301, 12-303 (1974, 2002 Repl. Vol.)). Under Md. Rule 2-602(a), a decision that

"adjudicates the rights and liabilities of fewer than all the parties to the action . . . is not a final judgment."

If one defendant has declared bankruptcy and remains subject to the automatic stay at the time the judgment against the other defendants is entered, the judgment is not final. See Gindes v. Khan, 346 Md. 143, 150 (1997); Bessette, 148 Md. App. at 233. Because the action against Ms. Youngblood was still in effect when the judgment was entered, the judgment against the Youngbloods was not final.

In these circumstances, if the circuit court had found no just reason for a delay, it could have exercised its discretion under Maryland Rule 2-602(b) to direct the entry of a final judgment.[6] The parties, however, made no such request.

Therefore, our choices for proceeding are set forth in Rule 8-602(g)(1), which 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 (A) dismiss the appeal, (B) remand the case for the lower court to decide whether to direct the entry of a final judgment, (C) enter a final judgment on its own initiative or (D) if a final judgment was entered by the lower court after the notice of

[6] Maryland Rule 2-602(b) 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:
>
> (1) as to one or more but fewer than all of the claims or parties; or
>
> (2) pursuant to Rule 2-501 (f)(3), for some but less than all of the amount requested in a claim seeking money relief only.

> appeal was filed, treat the notice of appeal as if filed on the same day as, but after, the entry of the judgment.

We conclude that it would have been well within the trial court's discretion under Rule 2-602 to have directed the entry of a final judgment. That being the case, even though there was no final judgment, we perceive no benefit to either party by requiring the parties and the circuit court to jump through additional procedural hoops just to put the same issues before us once again. The issues have been briefed and at oral argument, both sides expressed a preference that we resolve this appeal on the merits. The interests of judicial economy are clearly served by resolving the issues on their merits.

THE COURT'S SANCTION: PRECLUDING CROSS-EXAMINATION

The Youngbloods contend that the circuit court erred by precluding them from cross-examining Mrs. Crawford on the issue of damages. For the reasons explained below, we agree and shall remand for further proceedings.

Standard of Review

Maryland Rule 2-433 gives a circuit court broad discretion to resolve discovery disputes. Rose v. Rose, 236 Md. App. 117, 131 (2018). Consequently, "[o]ur review of the trial court's resolution of a discovery dispute is quite narrow; appellate courts are reluctant to second-guess the decision of a trial judge to impose sanctions for a failure of discovery." Id. (quotation omitted). Nevertheless, we "will reverse a decision that is committed to the sound discretion of a trial judge if we are unable to discern from the record that there was an analysis of the relevant facts and circumstances that resulted in the

exercise of discretion." Maddox v. Stone, 174 Md. App. 489, 502 (2007) (emphasis in original).

The Youngbloods' Right to Cross-Examination

The court appears to have operated under the assumption that defendants are not typically entitled to participate at damages hearing after liability has been determined as a discovery sanction. We base this observation on the following colloquy between the court and the Youngbloods' counsel:

> [THE COURT:] Why should you, having provided no discovery to the plaintiffs, have any say at this stage in the proceedings?
>
> [YOUNGBLOODS' COUNSEL:] Because under all of the judgment rules that we just went through, there's always an opportunity for the other side to be heard.
>
> THE COURT: Not always. Under 2-433, which is what we were under, that is where you get foreclosed upon because it's a neat—if you think about it in strategic terms, and for a second let me think about it in strategic terms, again, I have no say one way or another, but if you think about it in just a straight-out leaving this case aside, that means the defendant could say I do nothing, absolutely nothing in the case and then at the last moment come in and say I submit the judgment. But then I want to be heard on the amount of the judgment without the plaintiffs being able to hear anything about what you're going to do.
>
> [YOUNGBLOODS' COUNSEL:] But your hypothetical would qualify for the default judgment purely.
>
> [THE COURT:] But we're not under default, we're under Rule 2-433.

The understanding expressed by the court is contrary to Maryland precedent. For example, in Greer v. Inman, 79 Md. App. 350, 351 (1989), the circuit court, pursuant to Md. Rule 2-433, entered a default judgment against the defendant after she failed to comply with an order compelling discovery. The court precluded the defendant from participating

at the hearing on damages because "she was in default." Id. at 353. On appeal, the defendant contended that "she should have been permitted to cross examine witnesses and present evidence in mitigation of damages" at the damages hearing. Id. at 356. We agreed, noting that:

> It is beyond cavil that the entry of a judgment by default in a claim for unliquidated damages merely establishes the non-defaulting party's right to recover. The general rule, therefore, is that, "although the defaulting party may not introduce evidence to defeat his opponents' right to recover at the hearing to establish damages, he is entitled to present evidence in mitigation of damages and cross examine witnesses."

Id. at 356-57 (internal citations omitted). We therefore remanded for a new hearing on damages.[7] Id.

In Fisher v. McCrary Crescent City, LLC, 186 Md. App. 86, 134-35 (2009), we cited to Greer in holding that the circuit court had abused its discretion in prohibiting, as either a discovery or contempt sanction, several parties from participating in a damages hearing. We "question[ed] whether totally precluding a party from participating in a

[7] The Crawfords argue on appeal that Greer does not apply because this is not a case regarding a "default judgment." Rather, they contend that "Appellant consented to judgment against him." Based on our review of the events that prompted the hearing on damages, we disagree with the Crawfords' attempt to distinguish Greer. Consent judgments are governed by Rule 2-612, which allows entry of a judgment by consent of the parties "if the judgment (a) is for a specified amount of money or for costs or denies all relief and (b) adjudicates all of the claims for relief presented in the action . . . ." This rule does not apply here because Mr. Youngblood did not consent to the amount of the judgment. The court's entry of a "judgment" against Mr. Youngblood in its August 28, 2018 order was in fact, although not in name, a default on liability. This default was prompted by the Crawfords' renewed motion for sanctions pursuant to Rules 2-432(a) and 2-433(a), and Mr. Youngblood's response that he did not "oppose Plaintiffs' motion requesting a judgment against him." The authority under which the court was permitted to enter a finding of liability against Mr. Youngblood was Rule 2-433, not 2-612. Thus, we view both the default on liability and the damages hearing through the lens of Rule 2-433.

hearing is a sanction permitted by either the civil contempt rules or the discovery sanction rules," noting in relevant part:

> Default or dismissal are the greatest sanctions under Rule 2-433(a). All of the other sanctions—taking facts as established, prohibiting a party from introducing certain evidence, striking out parts of pleadings—are measures that could lead to default or dismissal. The rules do not expressly permit completely precluding a defaulting party from participating in a damages hearing. Rule 2-433(a)(3) contemplates that further proceedings may be necessary to extend a determination as to liability to a judgment.

Id. at 132-34 (internal footnote and citations omitted).

Applying Greer and Fischer here, we hold that the circuit court abused its discretion in precluding Mr. Youngblood's counsel from cross-examining Mrs. Crawford. We arrive at this decision for two principal reasons.

First, when a decision rests within the discretion of the court, the court must in fact exercise its discretion. Maddox, 174 Md. App. at 502. Here, the court clearly believed that the cross examination should be allowed, yet effectively left it up to the Crawfords to choose the remedy. The court, therefore, failed to exercise discretion.

Second, it would be unreasonable and unfair to interpret Mr. Youngblood's response to the motion for sanctions as acquiescing to whatever damages the Crawfords would later present to the court. The Crawfords' initial and renewed motions for sanctions were not supported by affidavits or other documents showing their damages calculations, as required

by Maryland Rule 2-311.[8] Although Rule 2-433(a) gives the court discretion to enter a default on liability and grant the relief requested, such discretion is given under the assumption that the party against whom sanctions are sought will have, at the very least, one opportunity to contest the relief requested. When he filed his response, Mr. Youngblood could not challenge the calculations because the sanctions motion did not include any calculations or a request for a specific amount of damages. That left the damages hearing as the sole opportunity for Mr. Youngblood to both learn of, and contest, the Crawfords' calculations. Under these circumstances, it was an abuse of discretion to deprive Mr. Youngblood's counsel of the opportunity to cross-examine Mrs. Crawford.

PUNITIVE DAMAGES

The Youngbloods also argue that the court erred in its award of punitive damages. Because we are vacating the judgment and remanding for further proceedings, we need not resolve this issue. For purposes of providing guidance to the court on remand, we do note that in Bowden v. Caldor, Inc., 350 Md. 4, 25 (1998), the Court of Appeals held that procedural due process requires a court to independently review an award of punitive damages to determine whether it is excessive. The relevant factors for the court to consider

[8] Md. Rule 2-311(c) states:

> A written motion and a response to a motion shall state with particularity the grounds and the authorities in support of each ground. A party shall attach as an exhibit to a written motion or response any document that the party wishes the court to consider in ruling on the motion or response unless the document is adopted by reference as permitted by Rule 2-303(d) or set forth as permitted by Rule 2-432(b).

are: 1) the proportionality between the damages awarded and the heinousness of the defendant's conduct; 2) the defendant's ability to pay the award; 3) the deterrence value of the amount awarded; 4) fines for similar conduct; 5) punitive damage awards against other defendants in the jurisdiction; 6) punitive damage awards against the same defendant; 7) whether the actions arose from a single occurrence; 8) the plaintiff's unreimbursed costs and expenses; and 9) the proportionality between the award of compensatory damages and punitive damages. Id. at 27-41. We leave it to the trial court to determine a fair process for determining whether, and if so, what amount of, punitive damages should be assessed.

CONCLUSION

We hold that the general rule stated in Greer applies here: the Youngbloods have the right, at a hearing on damages, to present evidence in mitigation of damages and to cross-examine witnesses. Greer, 79 Md. App. at 356-57. In doing so, we are not saying that the Youngbloods have carte blanche to introduce any evidence in mitigation, as the court still has the discretion under Rule 2-433 to exclude evidence that should have been produced during discovery. Such discretion should be exercised in conformance with the principles set forth in Taliaferro v. State, 295 Md. 376, 390-91 (1983).

JUDGMENT VACATED AND REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEES.