UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 890 and 389

September Term, 2016

CLUB HOUSE, LLC

v.

TODD CUSHMAN, ET AL.

Nazarian,
Arthur,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: June 7, 2017

Todd and Kristi Cushman, appellees, are residents of Wood Creek Golf Community ("Wood Creek"). Wood Creek was originally developed and operated by Club House, LLC, appellant. Pursuant to a Declaration Establishing Liens for Facilities Assessments, all residents of Wood Creek are charged yearly assessment fees in exchange for various services provided by Wood Creek. In 2015, appellant sent appellees a Notice of Intent to Record a Lien on their house under the Maryland Contract Lien Act ("MCLA"), codified at Md. Code (1974, 2015 Repl. Vol.), Real Property Article ("RP"), § 14-201 *et seq.* Appellant alleged that appellees failed to pay the assessment fees they owed for the years 2009 through 2012. Appellees responded by filing a Complaint in the Circuit Court for Wicomico County claiming that appellant's notice of the lien came after the statute of limitations had already expired under the MCLA. Appellant filed a four-count counterclaim. Appellees filed a motion for summary judgment on three of the four counts in appellant's counterclaim. After a hearing on appellees' motion, the court found that the statute of limitations had expired and summary judgment was granted in favor of appellees on three of the four counts in appellant's counterclaim. The court also awarded attorneys' fees to appellees. The case proceeded to trial on the remaining count. However, when the case was called for trial, appellant failed to appear and the final count of its counterclaim was dismissed with prejudice.

Appellant appealed, and now present two questions for our review:

1. Did the trial court err in ruling that appellant's declaration was subject to the Maryland Contract Lien Act as an exclusive

remedy thereby barring and estopping collection of assessment liens?

2. Did the trial court err in awarding attorney's fees to appellees under the Maryland Contract Lien Act?

For the following reasons, we do not address appellant's questions, because its failure to appear for trial led to a proper dismissal by the circuit court and extinguished appellant's underlying debt claim.

BACKGROUND

In 2002, appellant and Acorn Land, LLC began to develop Wood Creek in Wicomico County. On June 28, 2002, they established a Declaration Establishing Liens for Facilities Assessments, with the first phase encompassing lots for seventy-nine family homes. In October 2004, they drafted a Supplemental Declaration Establishing Liens for Facilities Operations Assessments for an additional 350 to 500 lots. The Declarations imposed annual Assessment Liens on the owners of each lot in Wood Creek. The assessments were intended to recoup the costs of building and operating sprinkler systems and swimming pool facilities. The initial assessment was $300 per year, although this amount was raised over time.

Lot 108 in Wood Creek was first conveyed to Anal Patel in 2005, subject to the annual Assessments. In July 2008, appellees took over title to Lot 108 after a foreclosure on Patel. Aside from a partial payment in 2009, appellees did not pay the assessments from 2009 through 2015.

The Declarations were assigned by appellant to Delmar Fairways, LLC ("Delmar") in 2012. On April 10, 2015, Delmar served appellees with a Notice of Intent to Lien under the MCLA, seeking repayment for the unpaid assessments from 2012 through 2015.[1] On April 24, 2015, appellees filed a Complaint for a Declaratory Judgment in the Circuit Court for Wicomico County challenging the Notice of Intent to Lien.

On June 12, 2015, appellant sent appellees a Notice of Intent to Record Lien, seeking to establish a lien against appellees' house under the MCLA. According to appellant's Notice, appellees owed $3,615 for unpaid assessments from 2009 through 2012. This amount included the unpaid balance along with interest and late fees. In July 2015, appellees filed an Amended Complaint adding appellant as a defendant and challenging appellant's right to collect assessments, because the Notice of Intent was sent more than two years after the assessments being claimed, and thus, could not form a basis for a lien against their property. On August 14, 2015, appellant filed an Answer, Counterclaim, and Motion for Summary Judgment. Appellant's counterclaim alleged these four counts:

> 1. For money found to be due and payable from [appellees] to [appellant] on accounts stated between them, for which demand has been made but [appellees] have refused to pay.

[1] The assessment fees owed to Delmar from 2012 through 2015 are not a part of this case. Delmar and appellees settled their dispute in a separate action.

2. For [ ] Assessment Liens owed to [appellant] by [appellees], for which demand has been made but [appellees] have refused to pay.

3. And for that [appellant] is the owner and holder of [ ] Assessment Liens on the real property owned by [appellees] known as 9256 Tournament Drive, Delmar, MD 21875, in Wood Creek Subdivision in Wicomico County.

4. Order to docket suit for foreclosure of Club House Assessment Lien on Residential Property.

Appellant's motion for summary judgment was denied on November 12, 2015. On December 30, 2015, appellees filed a Motion for Summary Judgment, arguing that appellant's lien was barred by the two-year statute of limitations as provided in Section 14-203 of the MCLA. Appellees' motion only asked for summary judgment on counts two, three, and four of appellant's counterclaim.[2] Appellees did not move for summary judgment on count one.[3] On February 24, 2016, appellees filed a motion for attorneys' fees.

On March 18, 2016, the court held a hearing on appellees' motions. Appellant argued that the Declaration could be enforced as a lien without resorting to the MCLA. The court disagreed and found that appellant had proceeded against appellees pursuant to the MCLA. Under the MCLA, notice of intent to lien must be provided within two years.

[2] The motion itself was titled "Motion for Summary Judgment as to Counts 2, 3, and 4 of Defendant Club House, LLC's Counterclaim."

[3] Appellees contend that they did not move for summary judgment on count one because there was a factual dispute over whether to apply a three or twelve year statute of limitations to the underlying debt claim.

RP § 14-203(a)(1). As a result, the court concluded that appellant was estopped from enforcing or seeking payment due to the late notice. The court granted summary judgment in favor of appellees, ruling that appellant was barred under the MCLA from pursing payment of the assessments. Summary judgment was granted on counts two, three, and four of appellant's counterclaim.[4] The court also awarded attorneys' fees to appellees.

On April 15, 2016, appellant filed its notice of appeal. On May 31, 2016, a trial was held on count one of appellant's counterclaims. Appellant did not appear at the trial. Appellees asked the court to dismiss count one of appellant's counterclaim for failure to appear. The court agreed and dismissed count one of appellant's counterclaim with prejudice. On that same day, appellees settled their case with Delmar, and it was dismissed by stipulation.

On June 17, 2016, appellant filed a renewed Notice of Appeal.

DISCUSSION

The MCLA provides a two-year statute of limitations within which a Notice of Intent to Create a Lien must be sent to property owners. RP § 14-203(a)(1). The unpaid assessment fees at issue in this case were from 2009 through 2012. Appellant sent its notice of Intent to Create a Lien to appellees in 2015, more than two years since the debt accrued. Thus, appellees argued to the circuit court that appellant's claims were barred

[4] The court also granted summary judgment in favor of appellees on count two of their amended complaint.

by the statute of limitations. The court agreed, stating:

> The basis for the Court's opinion is that [appellant] has proceeded against [appellees] pursuant to the Maryland Contract Lien Act found under Subtitle Two, title 14 of the Real Property Article of the Annotated Code of Maryland. 14-203(a)(1) of that legislation, RP § 14-203(a)(1) is clear with respect to the amount of notice required to be provided the property owner before any lien can be assessed or collected, or at least collected. The notice was given to [appellees] by [appellant], on June 12, 2015, therefore it's the court's opinion that **any lien prior to or any assessment prior to June of 2013 is barred and that [appellant] is estopped to enforce or seek payment of any of those unpaid assessments, specifically because RP, Real Property 14-201 and what follows is the exclusive remedy**. [Appellant] also made an affirmative election of remedies to pursue that particular statutory mechanism to collect it, they are barred by the language of the Statute with respect to notice on its face.

(Emphasis added).

Appellant contends that this Court's recent decision in *Select Portfolio Servicing, Inc. v. Saddlebrook W. Util. Co.*, LLC, 229 Md. App. 241, *cert. granted sub nom.*, 450 Md. 663 (2016), requires a reversal of the trial court's rulings. In *Select Portfolio*, we held that where "a Declaration recorded by the developer of a subdivision created a lien that secured payment of water and sewer charges; the lien could be enforced under the terms of the Declaration, without resort to the [MCLA]." *Id.* at 247. Appellant argues that under this ruling, the court in the instant case erred by finding that appellant's declaration was subject to the MCLA as an exclusive remedy, and therefore, was barred under the MCLA's statute of limitations.

Despite the holding in *Select Portfolio*, we decline to address the merits of appellant's argument, because its failure to appear at trial on May 31, 2016 and resultant

judgment extinguished the underlying debt at issue. Appellant contends that this appeal should still be allowed to proceed because the summary judgment granted to appellees prior to trial was the equivalent of a final judgment. Appellant argues that it was a final judgment because the ruling put appellant out of court and ended all of its claims. Appellant asserts that after summary judgment was granted, it had no further claims to pursue against appellees; therefore, it had no reason to appear for trial. We disagree.

When appellees filed their motion for summary judgment, they explicitly sought summary judgment on counts two, three, and four of appellant's counterclaim. At the hearing, counsel for appellees reiterated this, stating that their "motion was for counts two, three, and four of [appellant's] counterclaim against [appellees] because our reading of the counterclaim was counts two, three, and four all were attempts to create a lien against the property." Furthermore, at the conclusion of the hearing on their motion, the court expressly granted summary judgment on counts two, three, and four. The court even stated, "[j]ust so we're clear, summary judgment is granted in favor of [appellees] . . . as to count two of their amended complaint with respect to [appellant], and also as to counts 2, 3, and 4 of the counterclaim of [appellant], as to [appellees]." The court also asked counsel about what would happen to the trial if appellees were no longer involved as a result of this ruling. Counsel for Delmar told the court:

> [Appellee] still has a claim under the [MCLA] with respect to the claimed liens of Delmar Fairways, so that case is still in, and their defense is related to the, if I can speak for [appellees' counsel], related to the quality or lack thereof of the services provided for which the facility fees are claimed. There's that aspect of the case and then there's [appellant's counsel's] cross-

> claim on behalf of [appellant] against Delmar for claims for allocations of assessments as between Delmar and [appellant] based on assignment agreement between those parties.

Moreover, the ruling was accurately reflected in the docket entries for the case as only disposing of counts two, three, and four. Thus, appellant remained in the case and count one of appellant's counterclaim was set for trial on May 31, 2016.

Despite appellant's insistence that this was a final judgment, the Maryland Rules provide otherwise. The Rules state:

> **(a) Generally.** Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action:
>
> (1) is not a final judgment;
>
> (2) does not terminate the action as to any of the claims or any of the parties; and
>
> (3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.

Md. Rule 2-602(a). In the instant case, the court adjudicated fewer than all of the claims in the action, because count one had not been decided. The Rules do provide that "[i]f 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." Md. Rule 2-602(b). In this case, appellant specifically requested the court to enter a final judgment pursuant to Rule 2-602(b), but the court

denied the request. Accordingly, the rulings in the case remained interlocutory orders until the adjudication of the final count.

When it came time for the trial on count one of appellant's counterclaim, neither appellant nor appellant's counsel appeared. At appellees' request, the court dismissed the final count with prejudice. "[T]he Court of Appeals has acknowledged that a trial court may, without abusing its discretion, grant judgment in favor of a defendant when the plaintiff fails to appear for trial." *Zdravkovich v. Siegert*, 151 Md. App. 295, 306 (2003). "A dismissal with prejudice is a final adjudication[.]" *Byron Lasky & Assocs., Inc. v. Cameron-Brown Co.*, 33 Md. App. 231, 234 (1976).

Count one was "[f]or money found to be due and payable from [appellees] to [appellant] on accounts stated between them, for which demand has been made but [appellees] have refused to pay." In other words, count one was the underlying debt upon which counts two, three, and four were reliant for the liens. Given appellant's failure to appear, it was proper for the court to dismiss this count with prejudice. This dismissal acted as a final adjudication of the debt. As appellees assert, with no underlying debt, "it follows as a necessary consequence that no contract lien can be sought to secure or enforce payment of such non-existent debt."

In an effort to save this appeal, appellant also makes the argument that the circuit court no longer had jurisdiction over the case when it dismissed count one of the counterclaim. Specifically, appellant asserts that the court's dismissal of the three lien foreclosure claims on March 18, 2016 meant that the circuit court had no subject matter

jurisdiction over the count one debt claim, because exclusive jurisdiction for the $1,541.03 debt claim was in the District Court. As appellant points out "the District Court has exclusive original civil jurisdiction in . . . [a] matter of attachment before judgment, if the sum claimed does not exceed $30,000[.]" Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP"), § 4-401(3). However, this argument fails for reasons already discussed. The dismissal of counts two, three, and four did not constitute a final judgment because until count one was finally adjudicated, the case was in an interlocutory posture. Accordingly, jurisdiction over the case could not revert back to the district court even though the amount in controversy in count one was only $1,541.03. The circuit court retained subject matter jurisdiction, and properly exercised that jurisdiction when it dismissed count one.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.