

Circuit Court for Montgomery County
Case No. 242822
Circuit Court for Prince George's County
Case No. CAL 03-10985

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 1590 and 2174

September Term, 2015

NABIL ASTERBADI

v.

WELLS FARGO
EQUIPMENT FINANCE, INC.

Meredith,
Kehoe,
Zarnoch,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: February 21, 2017

*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. *See* Md. Rule 1-104

Nabil J. Asterbadi has appealed from orders of the Circuit Courts for Montgomery and Prince George’s Counties that denied his motions to strike notices to renew a judgment filed by Wells Fargo Equipment Finance, Inc.¹ He presents two issues, which we have reworded and reordered:

1. Did Wells Fargo have standing to renew the judgment?
2. Were Wells Fargo’s notices to renew the judgment timely filed?

Because we answer “no” to the first question, it is unnecessary for us to consider the second. We will reverse the orders of the circuit courts and remand these cases with instructions to grant the motions to strike.

Background

In 1993, CIT Group/Equipment Financing, Inc. (“CIT”) obtained a judgment against Asterbadi in the United States District Court for the Eastern District of Virginia in the amount of \$2,286,009.97. Pursuant to the Maryland Uniform Enforcement of Foreign Judgments Act² and Md. Rule 2-623(a),³ CIT recorded a notice of the judgment in the

¹ These appeals were consolidated by order of this Court dated February 19, 2016.

² A judgment of a foreign court is enforceable in Maryland under the Uniform Enforcement of Foreign Judgments Act if a notice of the judgment is filed with a Maryland court. Md. Code Ann., §§ 11-801 to 11-807 of the Courts & Judicial Proceedings Article (“CJP”). Upon filing, the judgment is treated as if it were issued by a Maryland court. CJP § 11-802(b) (“A filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying as a judgment of the court in which it is filed.”).

³ Md. Rule 2-623(a) reads:

Circuit Courts for Montgomery and Prince George’s Counties on May 28, 2003.

On June 29, 2007, CIT conveyed a portfolio of assets, including its interest in the judgment against Asterbadi, to Wells Fargo. On April 1, 2015, CIT, acting through its counsel of record, filed the following paper in the Circuit Courts for Montgomery and Prince George’s Counties:

NOTICE IS HEREBY GIVEN, pursuant to Maryland Rule 2-624, that the judgment in the above captioned case [No. CAL-03-10985 in Prince George’s County; No. 242822 in Montgomery County] in favor of plaintiff/judgment creditor The CIT Group/Equipment Financing, Inc. and against defendant/judgment debtor Nabil J. Asterbadi in the amount of \$2,286,009.97, plus interest from May 31, 1993, on the sum of \$2,184,950.00 at the rate of 1.5% per month, and attorney’s fees of \$347,742.50 (collectively, the “Judgment”), has been assigned to Wells Fargo Equipment Finance, Inc.

CIT did not file a copy of the actual assignment of the judgment with either court at that time.

On May 28, 2015, and pursuant to Md. Rule 2-625,⁴ Wells Fargo filed a notice of

Upon receiving a copy of a judgment of another court, certified or authenticated in accordance with these rules or statutes of this State, or of the United States, the clerk shall record and index the judgment if it was entered by (1) the Court of Appeals, (2) the Court of Special Appeals, (3) another circuit court of this State, (4) a court of the United States, or (5) any other court whose judgments are entitled to full faith and credit in this State. Upon recording a judgment received from a person other than the clerk of the court of entry, the receiving clerk shall notify the clerk of the court of entry.

⁴ Rule 2-625 states:

A money judgment expires 12 years from the date of entry or most recent renewal. At any time before expiration of the judgment, the judgment holder may file a notice of renewal and the clerk shall enter the judgment renewed.

renewal of judgment in each circuit court. Finally, on June 23, 2015, Wells Fargo filed what it called “Supplemental Notices of Assignment” of the Asterbadi judgment in both courts. This supplemental notice included a copy of the 2007 assignment agreement between CIT and Wells Fargo.

On June 23, 2015, Asterbadi moved to strike the notices of renewal of judgment in both Montgomery County and Prince George’s County Circuit Courts. Wells Fargo filed written oppositions. The Circuit Court for Montgomery County held a hearing on Asterbadi’s motion; the Circuit Court for Prince George's County did not. Each court denied the motion before it without explanation.

Analysis

Asterbadi presents two contentions as to why the notices of renewal should be stricken: (1) Wells Fargo did not have standing to renew the judgments; and (2) the notices of renewal weren’t timely filed. Whether Asterbadi is correct turns on the interpretation of Maryland Rules pertaining to the recordation, renewal, and assignment of judgments. These are questions of law which we review *de novo*. *Lisy Corp. v. McCormick & Co.*, 445 Md. 213, 221–22 (2015); *Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 77 (2001).

As to his first contention, Asterbadi points out that CIT’s notice of assignment failed to include a copy of the actual assignment from CIT to Wells Fargo. He asserts that the failure to include the actual assignment violated Maryland Rule 2-624 and that, as a

result, Wells Fargo lacked standing to enforce or renew the judgment.⁵ In response, Wells Fargo presents several reasons why the circuit courts did not err in denying the motions to strike.

I.

Wells Fargo asserts that the notices of assignment that CIT filed complied with Rule 2-624. Wells Fargo’s contention founders on the plain language of Rule 2-624.

Maryland Rule 2-624 provides for the assignment of judgments. The rule states (emphasis added):

When a judgment has been assigned in writing by the judgment holder, *the assignment may be filed in the court* where the judgment was entered and in any court where it has been recorded. *When an assignment is filed*, the judgment may thereafter be enforced in the name of the assignee to the extent of the assigned interest.

Courts interpret the Maryland Rules according to the “well-established canons of construction that we use when interpreting statutes.” *Perez v. State*, 420 Md. 57, 63 (2011) (quoting *Dove v. State*, 415 Md. 727, 738 (2010)) (quotation marks omitted).

⁵ In *Wells Fargo Equip. Fin., Inc. v. Asterbadi*, 841 F.3d 237 (4th Cir. 2016), the United States Fourth Circuit Court of Appeals addressed the enforceability of the judgment against Asterbadi in United States District Court for the District of Maryland. Whether the judgment had been timely renewed was not an issue in the federal litigation because the 12 year statute of limitations began to run on August 27, 2003, which was the date that the judgment was registered in the United States District Court, and both the assignment and a notice to renew that judgment were filed prior to the expiration date.

Writing for the Court, Judge Niemeyer observed that “[w]hether a ‘notice’ of assignment is sufficient to satisfy the filing of ‘the assignment,’ as provided in [Md.] Rule 2–624, is not a question that we need to resolve here.” *Id.* 243.

“[T]he chief objective of statutory construction is to discover and effectuate the actual intent of the legislature in enacting the statute.” *Id.* To determine the legislative intent, we first consider the plain language of the Maryland Rule, giving the words in question their ordinarily understood meanings. To put it another way, “[a]ny effort at statutory interpretation begins with the text of the statute.” *Comm’r of Fin. Regulation v. Brown, Brown, & Brown, P.C.*, 449 Md. 345, 360 (2016) (citing *Lockshin v. Semsker*, 412 Md. 257, 275 (2010)).

“Assignment” is a protean word which has no fewer than seven distinct meanings in Black’s Law Dictionary. The only definitions that are even arguably relevant are:

1. The transfer of rights or property[.]
2. The rights or property so transferred. . . .
3. The instrument of transfer[.]

BLACK’S LAW DICTIONARY 143–44 (10th ed. 2009).

In our view, the term “assignment” in Rule 2-624 can only be interpreted as referring to the legal instrument that transfers the right to enforce the judgment. No other meaning makes sense and we avoid interpretations of statutes and rules that yield illogical or unreasonable results. *See Town of Oxford v. Koste*, 204 Md. App. 578, 585–86 (2012), *aff’d*, 431 Md. 14 (2013) (citing *Kaczorowski v. City of Baltimore*, 309 Md. 505, 516 (1987)). The leading commentators on the Maryland Rules of Civil Procedure posit a similar interpretation of Rule 2-624 (emphasis added):

The person to whom a judgment has been assigned or sold, in order to stand in the shoes of the original judgment creditor for purposes of enforcing the judgment, *must file a copy of the assignment with the court* where the judgment is to be enforced, whether that be in the court where the judgment was entered or in a court where the judgment is recorded[.]

Paul V. Niemeyer *et al.*, MARYLAND RULES COMMENTARY 683–84 (4th ed., 2014).

Rule 2-625 also provides that a money judgment expires twelve years after the date of entry and that a money judgment can be renewed “[a]t any time before expiration.”

The Asterbadi judgment was recorded in the two circuit courts on May 28, 2003.

Therefore, the judgment expired, at the latest, on May 28, 2015.⁶

We conclude that the notice of assignment filed by CIT in April 2015 did not satisfy the requirements of Rule 2-624 because CIT did not file the original or a copy of the actual assignment. Therefore, the notice of assignment did not transfer to Wells Fargo the right to enforce the judgment against Asterbadi. If Wells Fargo did not have the right to enforce the judgments on May 28th—and it didn’t—then its attempt to renew the judgments on that day was ineffective because a judgment can be renewed only by the judgment holder. Md. Rule 2-625. Wells Fargo’s belated filing of the assignment from CIT on June 23, 2015 did not breathe life back into the expired judgment because a judgment cannot be renewed after it expires. *Kroop & Kurland, P.A. v. Lambros*, 118

⁶ Wells Fargo asserts that the judgment expired on May 28th; Asterbadi contends that the last date for renewal of the judgment was May 27th. We need not resolve the question, but Asterbadi’s position appears to be inconsistent with the provisions of Maryland Rule 1-203(a), which states (emphasis added):

In computing any period of time prescribed by *these rules*, by rule or order of court, or by any applicable statute, *the day of the act, event, or default after which the designated period of time begins to run is not included.*

For our purposes, the important point is that neither Wells Fargo nor Asterbadi suggests that the expiration date was after May 28th.

Md. App. 651, 665 (1998); Maryland Rules Commentary at 685.⁷

II.

Wells Fargo asserts that Asterbadi’s motions to strike were procedurally inapt. As we understand its argument, Wells Fargo asserts that Asterbadi’s proper remedy would have been to file motions pursuant to Md. Rule 2-534 or Rule 2-535 to alter or amend the notices of assignment. Because he failed to do so, continues Wells Fargo, Asterbadi waived his right to challenge the renewals of the judgment. As a result, Asterbadi’s motions to strike were, in Wells Fargo’s words, a “belated attempt to mount a collateral challenge to the Notices of Assignment after his opportunity to do so directly [had] passed[.]” These contentions are unpersuasive for several reasons.

First, Rules 2-534 and 2-535 permit parties to alter or amend judgments. The “notices of assignment” filed by CIT were not judgments but were (ineffective) attempts to assign the right to enforce the judgments. That inefficacy caused Wells Fargo’s subsequent attempt to renew the judgments to be fruitless. But Wells Fargo could have cured the problem by filing a copy of the assignment at any time prior to the date that the judgments expired. Subsequent events did not convert the notices of assignment into judgments.

⁷ Wells Fargo also asserts that Asterbadi “offered no authorities that dictate what form an assignment of a judgment must take” and that his cited authorities, *Powell v. Palisades Acquisition XVI, LLC*, 782 F.3d 119 (4th Cir. 2014) and *County Comm’rs of Charles County v. St. Charles Assocs. Ltd. P’ship*, 366 Md. 426 (2001), have little bearing on the issue. These observations are correct but the plain language of Rule 2-624 requires that the instrument assigning the judgment must be filed.

Second, there was nothing collateral about Asterbadi's challenge to the effectiveness of the notices of renewal because his motions to strike were filed in the same actions. *See, e.g., Klein v. Whitehead*, 40 Md. App. 1, 20 (1978).

Third, there was nothing untimely about Asterbadi's motions to strike the notices of renewal. His motions were filed within 30 days of the filing of the notices to renew the judgments and, in any event, a void judgment is subject at attack at any time. *See, e.g., Cook v. Alexandria Nat. Bank*, 263 Md. 147, 153 (1971); *Finch v. LVNV Funding, LLC*, 212 Md. App. 748, 769 (2013). It seems reasonable to us that the same principle should apply to a judgment which has expired as a matter of law.

Conclusion

For the reasons discussed above, we hold that the Circuit Court for Prince George's County and the Circuit Court for Montgomery County erred when they denied Asterbadi's motions to strike the renewal of judgments filed by Wells Fargo. We reverse the court's orders and remand these cases so that the respective courts can enter orders consistent with this opinion.

APPEAL NO. 1590, SEPTEMBER TERM, 2015:

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS REVERSED AND THIS CASE IS REMANDED TO IT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

APPEAL NO. 2174, SEPTEMBER TERM, 2015:

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS REVERSED AND THIS CASE IS

**REMANDED TO IT FOR FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION.**

APPELLEE TO PAY COSTS.