

Circuit Court for Prince George's County
Case No. CAE18-36183

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 227

September Term, 2021

CORE INVESTMENTS, LLC, *et al.*

v.

WALNUT STREET FINANCE OF
MARYLAND, LLC

Graeff,
Friedman,
Ripken,

JJ.

Opinion by Graeff, J.

Filed: July 29, 2022

*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.

On October 4, 2018, Walnut Street Finance of Maryland, LLC a/k/a Walnut Street Finance, LLC (“Walnut Street”), appellee, initiated a lawsuit against Core Investments, LLC (“Core”), and Sonia Kochhar, appellants, in the Circuit Court for Prince George’s County.¹ Walnut Street sought a declaratory judgment that the Deed of Trust it had on property owned by Core was enforceable. The court issued orders of default, and neither appellant moved to vacate the orders.

On March 12, 2021, the court held a hearing. On March 25, 2021, it issued an order granting Walnut Street’s complaint for declaratory relief.

On appeal, appellants present the following questions for this Court’s review, which we have rephrased slightly:

1. Did the circuit court err in concluding that appellants were not permitted to present argument on their motion for summary judgment?
2. Did the circuit court err in granting Walnut Street’s complaint for declaratory relief when Walnut Street forfeited its registration as a foreign limited liability company during the pendency of the lawsuit?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Core is a Maryland limited liability company owned and managed by Baljit Kochhar. Walnut Street also is a limited liability company, formed in the State of Virginia, but registered to conduct business in Maryland.

¹ The lawsuit also listed Baljit Kochhar, Sonia Kochhar’s mother, as a defendant, but only Core and Sonia are parties on appeal.

Because the issues on appeal do not require a detailed discussion of the underlying transactions, we will set forth only a brief description. On or about February 7, 2017, a foreclosure sale was scheduled for a property owned by Core. The property was subject to a promissory note held by Goshen Mortgage (“Goshen”), and the note was secured by a Deed of Trust to the property (“Goshen Deed of Trust”). Goshen initiated the foreclosure sale following a default of payment on its note. The matter was resolved by a Settlement Agreement, signed by Sonia Kochhar, which provided that Core had “125 days to purchase the note from Goshen.”

To purchase the note, Core obtained a loan from Walnut Street in the amount of \$400,000. In exchange for the loan, Core issued a promissory note to Walnut Street in the loan amount, with the loan secured by a Deed of Trust (“Walnut Deed of Trust”). This new promissory note and Walnut Deed of Trust were executed by Baljit Kochhar as the “Sole Member and Managing Member of [Core].”

After a default on the loan, Walnut Street initiated a foreclosure action. Core alleged that Sonia Kochhar, not Baljit Kochhar, was the sole member of Core, and the Walnut Street Deed of Trust was “null and void.” Walnut Street then filed a complaint, seeking a declaratory judgment that the Walnut Deed of Trust was a valid and enforceable deed of trust against the property.

Core and Sonia filed answers to the complaint, but Sonia, Core’s resident agent, failed to appear for depositions and failed to respond to discovery requests. Walnut Street requested sanctions against Sonia.

On August 31, 2020, Walnut Street filed a request for an order of default against Core. It alleged that, in January 2020, Core’s counsel withdrew their appearance, and on March 17, 2020, the court issued a notice that failure to retain new counsel within 15 days would not be grounds for a continuance in the case. Core failed to obtain new counsel within the stipulated time. Walnut Street stated that, pursuant to Md. Code Ann., Bus. Occ. & Prof. Art. § 10-206(b)(4) (2018 Repl. Vol.), a corporation was not allowed to represent itself, and because Core failed to retain new counsel, an order of default was appropriate.

On September 18, 2020, the court issued an order of default against Core. Approximately one month later, on October 7, 2020, the court issued an order of default against Sonia, and it granted Walnut Street’s motion for sanctions against Sonia, precluding her from testifying or otherwise offering evidence to contest the allegations in the complaint. Appellants did not move to vacate the orders of default.

On November 24, 2020, the Maryland State Department of Assessments and Taxation (“SDAT”) forfeited Walnut Street’s right to do business in Maryland for failure to file a property return for 2020. On March 3, 2021, appellants filed a motion for summary judgment, arguing that, given Walnut Street’s forfeiture, it lacked standing to sue. That same day, however, Walnut Street revived its registration with SDAT.² Walnut Street re-registered with SDAT under a new name, Walnut Street Finance of Maryland, LLC. After

² We take judicial notice of Walnut Street’s filings on the SDAT website. *See Kona Properties, LLC v. W.D.B. Corp., Inc.*, 224 Md. App. 517, 524 n.14 (2015) (This Court may take judicial notice of public records on file with the SDAT.). *Accord Thomas v. Rowhouses, Inc.*, 206 Md. App. 72, 75 n.3 (2012).

its name change, Walnut Street filed a Substitution of Parties in this case, stating that “the Plaintiff, Walnut Street Finance, LLC, substitutes as the plaintiff in this matter Walnut Street Finance of Maryland, LLC a/k/a Walnut Street Finance, LLC.”

On March 10, 2021, Walnut Street filed an opposition to appellants’ motion for summary judgment. It acknowledged that it had forfeited its right to do business in this State on November 24, 2020, for failure to file a property return, but it stated:

Once Walnut Street learned that it was not in good standing, it took immediate action to correct the deficiency. When Walnut Street went to pay the penalty and revive its charter, it learned that, Baljit fraudulently registered an entity with a similar name (i.e. Walnut Street Finance, Limited Liability Company). As a result, Walnut Street was revived under a new name (i.e. Walnut Street Finance of Maryland, LLC a/k/a Walnut Street Finance, LLC).

Walnut Street advanced several arguments why the court should deny appellants’ motion for summary judgment. Relevant to this appeal, it argued that: (1) Core and Sonia lacked standing to present their motion because they failed to move to vacate the orders of default against them; (2) Core and Sonia already admitted Walnut Street’s legal existence and right to sue in their answers to the complaint, and they had not amended their answers;³ (3) pursuant to *A Guy Named Moe, LLC v. Chipotle Mexican Grill of Colorado, LLC*, 447 Md. 425, 447 (2016), it had successfully cured its non-compliance with the SDAT so that it was in good standing and able to maintain the lawsuit; (4) Walnut Street did not have to be registered to do business in Maryland for it to maintain a lawsuit on the validity of the

³ Walnut Street cited Md. Rule 2-323(f), stating: “when a party desires to raise an issue as to the legal existence of a party or the authority of a party to sue, the party shall do so by negative averment. ‘If not raised by negative averment, these matters are admitted for the purpose of the pending action.’”

deed of trust;⁴ and (5) even if Walnut Street had to be registered with SDAT to maintain its lawsuit, it had paid its monetary penalty and complied with SDAT's registration requirements.

On March 12, 2021, the circuit court held a hearing. At the beginning of the hearing, appellants' counsel tried to argue in support of their motion for summary judgment, but the court declined to hear argument, explaining that the orders of default and sanctions barred presentation of argument or defenses to the complaint. During the hearing, Walnut Street presented testimony and exhibits relating to the loan and Deed of Trust that formed the basis of the lawsuit. On March 15, 2021, the court issued an order granting Walnut Street's Complaint for Declaratory Relief and finding that the Walnut Street Deed of Trust was "a valid and enforceable first-priority deed of trust" against Core's property.

This appeal followed.

STANDARD OF REVIEW

In reviewing the court's decision in this case, the appropriate standard of review is as follows:

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

⁴ Walnut Street cited Md. Code Ann., Corps. & Ass'ns Art. ("CA") § 4A-1007(b) (2014 Repl. Vol.), which provides that "the failure of a foreign limited liability company to register in this State does not impair the validity of a contract or act of the foreign limited liability company." Walnut Street also cited CA § 4A-1007(b) for the proposition that maintaining a lawsuit does not constitute doing business in the State.

Md. Rule 8-131(c).

DISCUSSION

Appellants contend that the trial court erred in granting a declaratory judgment in favor of Walnut Street for two reasons. First, they argue that the court erred in precluding them from arguing their summary judgment motion at the hearing. Second, they argue that the court erred in granting judgment in Walnut Street's favor because Walnut Street had forfeited its corporate charter during the pendency of the suit, thereby losing its right to maintain the lawsuit.

Walnut Street contends that the trial court correctly determined "that appellants were not permitted to argue their summary judgment motion at the hearing." It argues that, pursuant to *Franklin Credit Management Corp. v. Neffler*, 436 Md. 300, 325 (2013), "a party against whom an order of default under Maryland Rule 2-613 is entered and who does not respond within [30] days is precluded from disputing liability either at the trial court or on appeal." Walnut Street asserts that, at the time of their motion, the court had entered orders of default against appellants, the 30 days to vacate the orders had passed, and therefore, appellants were precluded from disputing liability by way of their motion for summary judgment.

In any event, Walnut Street contends that any error in prohibiting argument was harmless because appellants' argument, that the court did not have jurisdiction to hear the case because Walnut Street had forfeited its registration as a foreign limited liability company, has no merit. It argues that, at the time of the hearing, Walnut Street's charter

had been revived, and its right to maintain the lawsuit was retroactively restored upon revival of its charter.

In *Franklin Credit*, 436 Md. at 311–18, the Court of Appeals explained that a default judgment involves a two-step process. The first step is an order of default, “which is ‘interlocutory in nature and can be revised by the court at any time up until the point a final judgment is entered.’” *Peay v. Barnett*, 236 Md. App. 306, 318 (2018) (quoting *Bliss v. Wiatrowski*, 125 Md. App. 258, 265, *cert. denied*, 354 Md. 571 (1999)). The defendant then can move to vacate the order of default within 30 days. *Franklin Credit*, 436 Md. at 312. *Accord* Md. Rule 2-613(d). If the order remains by reason of a defendant’s failure to move to vacate, or the trial court’s denial of the motion to vacate, the court moves to the second step, where it can assess damages and/or enter a default judgment. *Franklin Credit*, 436 Md. at 315. If the order of default remains, it is dispositive on liability. *Id.* at 317. A defendant who does not move to vacate an order of default does not preserve any issue of liability on appeal. *Id.* at 325.

Here, appellants did not move to vacate the order of default. Appellants, therefore, were not permitted to make any argument at the subsequent hearing regarding the validity of the deed of trust. Appellants contend, however, that Md. Rule 2-613(f) provides that a court may enter a default judgment only if “it has jurisdiction to enter the judgment.” They assert that they “were entitled to offer argument that the court did not have jurisdiction,” and the court erred in precluding them from doing so.

Even if we assume, *arguendo*, that the court should have permitted argument on this issue, any error in doing so is not reversible error. *See Flores v. Bell*, 398 Md. 27, 33 (2007) (The “complaining party” has the burden “to show prejudice as well as error,” and the appellate court “will not reverse a lower court judgment if the error is harmless.”). *Accord Shealer v. Straka*, 459 Md. 68, 102–03 (2018). Here, the lack of argument did not prejudice appellants because the public record and the law make clear that the court had jurisdiction to enter the declaratory judgment. Walnut Street does not dispute that its registration as a foreign limited liability company was forfeited on November 24, 2020, for failure to file a property tax return. Moreover, it agrees that, pursuant to Md. Code Ann., Corps. & Ass’ns Art. (“CA”) § 4A-1007(a) (2014 Repl. Vol.), a foreign limited liability company whose registration is forfeited is not able to “maintain suit in any court of this State.” Walnut Street argues, however, that this statute permits a foreign limited liability company to cure its ability to maintain a suit if it “shows to the satisfaction of the court” that it “has complied with the requirements of this title.” CA § 4A-1007(a). Once a foreign limited liability company has cured its failure to comply with the statute, it may maintain suit. *A Guy Named Moe*, 447 Md. at 447.

Public records of SDAT show that, as of the date of the court’s March 15, 2021 judgment, Walnut Street’s charter was revived.⁵ Walnut Street changed its name from

⁵ Maryland.gov, <https://egov.maryland.gov/BusinessExpress/EntitySearch> [<https://perma.cc/X4YS-SUDJ>] (last visited July 28, 2022) (choose “Department ID” from “Search by” toolbar; then enter “Z19081702” in text box; then click “search”; then click “Walnut Street Finance of Maryland, LLC a/k/a Walnut Street Finance, LLC” from results menu) (showing Walnut Street status “Revived”).

Walnut Street Finance, LLC, to Walnut Street Finance of Maryland, LLC, and it filed a Substitution of Parties in the case to reflect its name change. Accordingly, it is clear that, by the time of the hearing and the court's subsequent declaratory judgment, Walnut Street's right to maintain the lawsuit had been properly reinstated. The circuit court properly granted a default judgment in favor of Walnut Street, and any error in not allowing appellants to argue that Walnut Street did not have standing to maintain suit was harmless.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANTS.**