

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1682

September Term, 2023

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CICADA INVESTMENTS, LLC

v.

GORSUCH GROUP, LLC, et al.

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Berger,  
Nazarian,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: October 31, 2024

This appeal arises out of tax sale foreclosure proceedings in the Circuit Court for Baltimore City. Within 30 days after the entry of a judgment foreclosing all rights of redemption, the delinquent property owner, appellee Gorsuch Group, LLC (“Gorsuch”), moved to vacate the judgment. The circuit court granted the motion. The holder of the tax sale certificate, appellant Cicada Investments, LLC (“Cicada”) noted this appeal, and presents one question for our consideration, which we have separated into two and rephrased to reflect the substantive arguments in Cicada’s brief:<sup>1</sup>

- I. Whether the motion to vacate the judgment of foreclosure was null when filed because Gorsuch was then a forfeited entity.
- II. Whether the court erred in vacating the judgment of foreclosure.

For the reasons explained herein, we shall affirm.

### **FACTS AND PROCEEDINGS**

On April 19, 2022, Cicada filed a Complaint to Foreclose the Equity of Redemption of real property owned by Gorsuch and identified as 1600 Gorsuch Avenue in Baltimore City (“the Property”). The complaint alleged that the Property had been sold at a tax sale on May 17, 2021 to Caret Bay, LLC, which then assigned the certificate of sale to Cicada. The amount necessary to redeem the Property, according to the complaint, was \$1,417.83, plus interest from the date of the tax sale to the date of redemption, plus costs and expenses incurred.

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<sup>1</sup> The question presented in Cicada’s brief is “Did the [c]ircuit [c]ourt err in reopening the case and vacating the Judgment Foreclosing Rights of Redemption.”

Gorsuch was served with the action for foreclosure on July 6, 2022, but did not redeem the Property or otherwise contest the proceeding.<sup>2</sup> On April 10, 2023, the court entered a judgment foreclosing Gorsuch’s right to redemption.

On May 10, 2023, Gorsuch filed a motion to vacate the judgment of foreclosure, pursuant to Maryland Rule 2-535. In support of the motion, Gorsuch alleged that, during the pendency of the action, its resident agent, who was also a member of the LLC, had “medical issues which significantly impacted her ability to manage the [company’s] affairs.” Gorsuch claimed that it would suffer a “substantial and inequitable loss” of a “primary asset” if the court denied the requested relief.

Contemporaneously with the filing of the motion, Gorsuch deposited \$5,257.90 into the registry of the court, which, it represented, was the amount necessary to redeem the property.<sup>3</sup> Gorsuch agreed to pay any additional interest or taxes incurred from the date

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<sup>2</sup> Gorsuch was served pursuant to Maryland Rule 2-124(o), which provides, in pertinent part, that a summons and complaint may be served upon a limited liability company (or other entity required to have a resident agent) if “two good faith attempts on separate days to serve the resident agent have failed.” Md. Rule 2-124(o)(iii).

<sup>3</sup> “[I]n order to challenge the foreclosure of the equity of redemption in a tax sale, the taxes and other relevant charges acknowledged to be due, either prior to the challenge or simultaneously with it, must, as a condition precedent, be paid.” *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 396 (2006). The redemption amount was calculated by Gorsuch as follows:

Lien Amount	\$1,417.83
Interest at 18% (from May 17, 2021, to May 30, 2023)	519.51
Fees and Expenses (estimate provided by counsel for Cicada)	2,894.75
Subsequent Taxes	300.68
Additional Interest	<u>125.13</u>
	\$5,257.90

the motion was filed to the date the redemption funds already deposited with the court are distributed.

Cicada moved to strike the motion to vacate on grounds that Gorsuch was a forfeited entity and, as such, any “affirmative litigation” by Gorsuch was a nullity. Alternatively, Cicada asserted that, pursuant to § 14-845 of the Tax Property Article (“TP”), the judgment could not be reopened except on the ground of lack of jurisdiction or fraud, neither of which had been alleged.<sup>4</sup>

On September 20, 2023, the court issued a written order granting the motion to vacate. The order directed that the redemption funds deposited with the court be disbursed to counsel for Gorsuch, and Gorsuch was given 60 days from the date of the order to redeem the property. Cicada filed this timely appeal.

Additional facts will be included in the discussion as necessary.

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<sup>4</sup> Section § 14-845(a) of the Tax Property Article (“TP”) (Md. Code 1986, Repl. Vol. 2019) provides:

A court in the State may not reopen a judgment rendered in a tax sale foreclosure proceeding except on the ground of lack of jurisdiction or fraud in the conduct of the proceedings to foreclose; however, no reopening of any judgment on the ground of constructive fraud in the conduct of the proceedings to foreclose shall be entertained by any court unless an application to reopen a judgment rendered is filed within 1 year from the date of the judgment.

Significant to the case before us, TP § 14-845(a) “is applicable to enrolled judgments of foreclosure of the right of redemption, but is inapplicable to such unenrolled judgments.” *Haskell v. Carey*, 294 Md. 550, 559-60 (1982) (addressing former Art. 81, §113, the predecessor to TP § 14-845).

## STANDARD OF REVIEW

Maryland Rule 2-535(a) provides: “On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment[.]” “A court has broad discretion in modifying a judgment pursuant to Maryland Rule 2-535(a).” *Brower v. Ward*, 256 Md. App. 61, 68 (2022) (quoting *S. Mgmt. Corp. v. Taha*, 378 Md. 461, 494 (2003)), *cert. denied*, 482 Md. 735 (2023). “Accordingly, we review the grant or denial of a motion to revise a judgment for an abuse of discretion.” *Id.* (citing *Barrett v. Barrett*, 240 Md. App. 581, 591 (2019)). “An abuse of discretion occurs when ‘the discretion was manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons, or when no reasonable person would take the view adopted by the [trial] court.’” *Comptroller of Maryland v. Myers*, 251 Md. App. 213, 242 (2021) (quoting *Wilson-X v. Dep’t of Hum. Res.*, 403 Md. 667, 677 (2008) (additional citation and some internal quotation marks omitted)).

“Although we review the circuit court’s exercise of revisory powers under an abuse of discretion standard, we recognize that discretion is ‘always tempered by the requirement that the court correctly apply the law applicable to the case.’” *Brower*, 256 Md. App. at 68 (quoting *Barrett*, 240 Md. App. at 591) (additional citation omitted). When evaluating whether a circuit court’s decision was legally correct, “we give no deference to the trial court findings and review the decision under a *de novo* standard of review.” *Lamson v. Montgomery Cnty.*, 460 Md. 349, 360 (2018).

## DISCUSSION

### I.

Pursuant to the Maryland Limited Liability Company Act (“LLC Act”),<sup>5</sup> a limited liability company that fails to comply with certain statutory requirements, including the payment of taxes, forfeits (1) its right to do business in Maryland and (2) the right to use its name. Md. Code (1975, Repl. Vol. 2014), Corporations & Associations Article (“C&A”) § 4A-911(d). It is undisputed that, throughout the proceedings in the circuit court, Gorsuch was a forfeited entity.

“[T]ax-failure forfeiture by an LLC, while resulting in the loss of important rights, does not make the LLC a legal non-entity[,]” however. *Price v. Upper Chesapeake Health Ventures*, 192 Md. App. 695, 704 (2010). The power of a forfeited LLC is “[m]ost directly address[ed]” by C&A § 4A-920. *Id.* at 707. In pertinent part, that provision states that “[t]he forfeiture of the right to do business in Maryland and the right to use the name of the limited liability company under this title does not . . . prevent the limited liability company from *defending* any action, suit, or proceeding in a court of this State.” C&A § 4A-920 (emphasis added). “The negative implication of such language, and the sweep of the ‘doing business’ and name ‘using’ prohibition is that the company may not *file or maintain* a lawsuit after its rights have been forfeited.” *Price*, 192 Md. App. at 708 (emphasis in original, footnote omitted). In other words, “an LLC that has forfeited its right to do business may not pursue *affirmative litigation*, including an appeal, during the period of

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<sup>5</sup> The LLC act is codified at Md. Code (1975, Repl. Vol. 2014), Corporations & Associations Article (“C&A”), § 4A-101 to § 4A-1303.

forfeiture.” *7222 Ambassador Road*, 470 Md. 66, 80 (2020) (emphasis added) (citing generally *Price, supra*).

Here, the court rejected Cicada’s argument that Gorsuch’s status as a forfeited entity company precluded it from filing a motion to vacate the judgment of foreclosure. The court reasoned that the motion was permitted under C&A § 4A-920 because Gorsuch was “seeking to defend itself against the foreclosure of the [P]roperty that [Cicada] is currently prosecuting.”

Cicada contends that the court’s ruling was erroneous because, according to Cicada, the LLC Act “has been interpreted to explicitly prohibit appeals” by a forfeited company.<sup>6</sup> Cicada posits that a motion to revise a final judgment is “akin to an appeal[,]” and should “similarly be prohibited for a forfeited entity.” Gorsuch maintains that the motion to vacate was not an appeal, nor can it be considered “affirmative litigation” because it sought no remedy other than to restore its right of redemption. We agree with Gorsuch.

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<sup>6</sup> The case Cicada relies on in support of its assertion that a forfeited entity may not file an appeal, *7222 Ambassador Road*, 470 Md. 66 (2020), is distinguishable in that the appealing party in that case was the *plaintiff* in the underlying litigation. *Id.* at 69. The Court held that, because the plaintiff LLC became a forfeited entity after judgment was entered, “it lacked the authority to pursue an appeal *of the action it had initiated*[.]” *Id.* (emphasis added). Similarly, in *Price, supra*, the Court held members of a forfeited LLC could not file suit on behalf of the LLC or pursue an appeal of the dismissal of that action. *Price*, 192 Md. App. at 710.

Cicada cites no authority and presents no legal argument for the proposition that a forfeited LLC’s right to defend its interests pursuant to C&A § 4A-290 does not include the right to seek appellate review of an adverse judgment or ruling in that action. Because we conclude that the court did not err in concluding that the motion to vacate was a defense to the action for foreclosure, however, we find it unnecessary to render a decision on the issue.

To defend its interest in the Property in the action filed by Cicada, Gorsuch had the right to redeem the property at any time until judgment was entered. TP § 14-827. It evidently failed to do so because of health issues affecting its resident agent and managing member. Within 30-days after entry of the judgment of foreclosure, during which time the court retained broad discretion to revise the judgment, Gorsuch, in its capacity as a defendant in the same action, asked the court to vacate the judgment and restore its right of redemption. The court did not err in concluding that the motion to vacate was a defense to the action for foreclosure.

## II.

On appeal, Cicada contends that the court’s discretionary authority to revise a judgment pursuant to Rule 2-535(a) does not apply to a judgment foreclosing rights of redemption in property. We disagree.

“[T]he public policy in favor of finality of judgment does not pertain to an unenrolled judgment[,]” including an unenrolled judgment of foreclosure of the right to redemption of property.<sup>7</sup> *Haskell v. Carey*, 294 Md. 550, 559 (1982). “The rationale underlying this conclusion is that the 30-day period in which a trial court has broad discretionary power to revise an unenrolled judgment is concurrent with the 30-day period in which an appeal may be filed . . . and, therefore, is a period during which the parties themselves would not change their position or rely upon the judgment to their detriment.”

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<sup>7</sup> A judgment becomes “enrolled” 30 days after it is entered. *Facey v. Facey*, 249 Md. App. 584, 606 (2021).



*Id.* “The purpose of authorizing a trial court to exercise broad discretion to revise unenrolled judgments is to insure that technicality does not triumph over justice.” *Id.* at 558 (citing *International-Industrial Developers, Ltd. v. Berg*, 269 Md. 250, 251 (1973); *Hamilton v. Hamilton*, 242 Md. 240, 243 (1966)).<sup>8</sup>

It is well-settled that, within 30 days of the entry of a judgment of foreclosure (or upon a motion filed within that period), the court may reopen the judgment “by means of its general revisory power” pursuant to Rule 2-535(a) and § 6-408 of the Courts and Judicial Proceedings Article (“CJP”).<sup>9</sup> *Seidel v. Panella*, 81 Md. App. 124, 131 (1989), *cert. denied sub nom.*, 319 Md. 72 (1990). *See also Scheve v. McPherson*, 44 Md. App. 398, 416 (1979) (the circuit court “possess[es] the power to strike or revise *any* judgment or decree entered by them upon motion filed within 30 days[,]” including “a decree of foreclosure” entered in a tax sale case); *Mayor & City Council of Baltimore v. Thornton Mellon, LLC*, 249 Md. App. 231, 240 (2021) (“A final order foreclosing the right of redemption may be reopened by the [circuit] court by means of its general revisory power.” (citing *Seidel, supra*)), *aff’d*, 478 Md. 396 (2022).

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<sup>8</sup> After 30 days, and up to a year after a judgment of foreclosure is entered, the judgment can be reopened for fraud (including constructive fraud) or lack of jurisdiction. *Smith v. Lawler*, 93 Md. App. 540, 551 (1992). After one year, a judgment of foreclosure can be reopened only for actual fraud or lack of jurisdiction. *Id.*

<sup>9</sup> In pertinent part, Courts and Judicial Proceedings Article (“CJP”), § 6-408 (Md. Code (1973, Repl. Vol. 2013)) provides: “[f]or a period of 30 days after the entry of a judgment, or thereafter pursuant to motion filed within that period, the court has revisory power and control over the judgment.” CJP § 6-408 “codified” former Maryland Rule 625 a, the predecessor of Rule 2-535(a). *Scheve v. McPherson*, 44 Md. App. 398, 414 (1979).

Gorsuch filed the motion to vacate on the 30th day after entry of the judgment of foreclosure. Hence, the court retained discretionary authority to revise the judgment accordingly.<sup>10</sup>

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**

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<sup>10</sup> Cicada does not contend that the court abused its discretion in vacating the judgment of foreclosure and restoring Gorsuch’s right to redemption, nor do we perceive any abuse of discretion.