UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 02269
September Term, 2014

And

No. 00388
September Term, 2015

EDWIN E. BELL, et al.

v.

DYCK O'NEAL, INC.

Eyler, Deborah S.,
Meredith,
Berger,

JJ.

Opinion by Meredith, J.

Filed: July 14, 2017

In Appeal No. 2269, September Term, 2014, Edwin Bell and Miranda Bell ("the Bells"), appellants, argue that we should reverse a judgment entered by the Circuit Court for Carroll County in favor of Dyck-O'Neal, Inc. ("Dyck"), appellee, for the enforcement of a promissory note ("the Note"). In appeal No. 388, September Term, 2015, the Bells seek to reverse the circuit court's order that denied their motion to accept alternate security in lieu of sureties on a supersedeas bond to stay enforcement of the judgment that had been entered in favor of Dyck.

QUESTIONS PRESENTED

The Bells' brief listed eight issues for our review, but we have distilled the issues into the following three dispositive questions:[1]

[1] The questions presented in the Bells' brief were as follows:

> 1. Did the trial court err when it granted the summary judgment where there were disputed issues of material facts, including prior payment, facial fraud, forgery, and licensing violations of the Maryland Collection Agency Licensing Act or MD Bus. Reg. § 7-101, et seq.?
>
> 2. Is prior payment in full, defined by MD Com. Law Art. § 3-602, asserted as an affirmative defense, a dispute of material fact which prohibits a summary judgment in favor of a debt collector?
>
> 3. In light of *Finch v. LVNV Funding LLC*, 212 Md. App. 748 (2013), *Bradshaw v. Hilco Receivables, LLC*, 765 F. Supp. 2d 719 (D. Md. 2010), and *Hauk v. LVNV Funding, LLC*, 749 F. Supp. 2d 358 (D. Md. 2010), is the present judgment in favor of an unlicensed collection agency in violation of the Maryland Collection Agency Licensing Act or MD Bus. Reg. § 7-101, et seq., a void judgment?

continued…

1. Whether the circuit court erred in granting summary judgment in favor of Dyck on its complaint to enforce the Note?

2. Whether the circuit court abused its discretion in denying the Bells' motion to stay the enforcement of the judgment in light of their offer to utilize a parcel of real property as alternate security for a supersedeas bond?

3. Whether the circuit court abused its discretion in awarding $175.00 to Dyck in counsel fees for having to respond to the Bells' motion to stay enforcement?

For the reasons that follow, we shall affirm the entry of summary judgment in favor of Dyck and the denial of the Bells' motion to stay the enforcement of Dyck's

continued…

4. Does the non-curable failure of Appellee to be properly licensed under the Maryland Collection Agency licensing act or Bus. Reg. § 7-101, et seq., result in a void judgment *ab initio*?

5. Did the trial court err in relying on MD Com. Law Art. § 3-305(c), to prohibit consumer defendants, alleged as obligors under a note, the use of all defenses, evidence, testimony, and expert witnesses, to challenge a default debt purchaser's holder status?

6. Are facial fraud and forgery, defined as criminal conduct under MD Criminal Law Code Ann. §§ 8-601 and 8-602, asserted as an affirmative defense, disputes of material fact which prohibited a judgment as a matter of law?

7. Did the trial court abuse its discretion when it denied Appellants a stay of enforcement by an alternate bond, pursuant to MD Rule § 1-402(e), using their real property subject to a judgment lien, pursuant to MD Rule § 2-621(a) and Md. Cts. and Jud. Proc. § 11-402(b)?

8. Absent a hearing and absent a finding of bad faith or a lack of substantial justification required by MD Rule § 1-341, did the trial court err and abuse its discretion when it awarded sanctions in the amount of $175.00 as a response to the Appellants' request for an appellate bond?

judgment. But we conclude that the trial judge erred in awarding $175.00 in counsel fees to Dyck, and we vacate that award.

FACTS AND PROCEDURAL BACKGROUND

On October 25, 2005, the Bells purchased a home at 1404 Ramblewood Drive in Emmitsburg, Maryland. They financed the purchase of the home with two purchase money loans from NVR Mortgage Finance, Inc., both of which were documented by promissory notes and secured by deeds of trust, creating a first lien in the amount of $427,020, and a second lien in the amount of $53,378.00.

The Bells made payments on the loans until August 2008, at which point, the loans fell into a default status. A foreclosure sale conducted pursuant to the first deed of trust produced revenues that were nearly sufficient to satisfy the first lien, but there was no surplus to reduce the balance due on the second lien (the deed of trust that provided security for the Note that is the subject of this litigation). The auditor's report on the foreclosure sale was ratified and confirmed by the Circuit Court for Frederick County on October 19, 2009.

The second promissory note (*i.e.*, the Note) was endorsed without recourse by NVR Mortgage Finance, Inc., to the order of Countrywide Bank, NA, which was subsequently acquired by and known as Bank of America N.A. The Note was endorsed without recourse a second time (by Vivian Simon, VP for "Countrywide Bank, NA n/k/a Bank of America N.A."), payable to the order of Dyck.

After making a demand upon the Bells pursuant to the Note, Dyck filed suit against the Bells in the Circuit Court for Carroll County on July 25, 2011, alleging that Dyck was "the current holder of the Note," and claiming the principal sum of $51,670.51, plus interest and attorneys' fees.

The Bells vigorously contested Dyck's claim. The defenses raised by the Bells included their denial that Dyck was a holder of the Note or otherwise in possession of the original, wet-ink Note; a claim that nothing was owed on the Note (based upon the existence of a document among the records of Bank of America reflecting a zero balance on the loan account); and their denial that Dyck was licensed in Maryland as a debt collection agency at the time this suit was filed to collect on the Note.

After extensive litigation and discovery, the circuit court heard cross-motions for summary judgment on December 12, 2014. At the conclusion of the hearing, the court said: "I will hold the matter *sub curia* and get a written order." By order dated December 16, 2014, docketed on December 18, 2014, the court ruled in favor of Dyck, and stated:

> Defendant [Edwin Bell] raises two arguments in support of his Motion for Summary Judgment: first, that there is no debt owed to Plaintiff [Dyck]; and second, that Plaintiff is not a licensed debt collector in Maryland. Both of these arguments are without merit.
>
> In support of its Motion for Summary Judgment, Plaintiff [Dyck] argues that the factual allegations supporting a breach of contract action are uncontested in this case. Defendants again contest Plaintiff's licensure to engage in debt collection, and insist there was somehow fraud in the formation of the Note. Although Defendants are persistent in their arguments, the Court finds no merit in their claims. Put simply, there is no genuine dispute as to material facts in this matter.

The court entered judgment in favor of Dyck against the Bells in the principal amount of $51,670.51, plus pre-judgment interest, attorney's fees, and court costs.

On December 29, 2014, the Bells filed their first notice of appeal (which initiated Appeal No. 0226, September Term, 2014, in this Court), and also filed a paper captioned "Joint Motion for Stay of Enforcement Pending Resolution of Appeal and Class-Action Lawsuit, Request for Waiver of Bond and Request for Hearing." In the motion, the Bells sought a waiver of the appeal bond requirement "out of necessity, undue burden, financial hardship, and as a matter of law." Dyck filed an opposition, and, on January 22, 2015, the circuit court ordered that the Bells' Request for Waiver of Bond be denied "because [the Bells] have failed to show that good cause exists for waiving the requirements of a supersedeas bond . . . ." The Bells then filed a similar motion in the Court of Special Appeals, and that motion was denied on February 3, 2015.

On March 13, 2015, the Bells filed a second motion to stay enforcement of Dyck's judgment in the circuit court. By order entered April 2, 2015, the court not only denied the second motion to stay, but also ordered that the Bells were "barred from filing in this action any further motions seeking a stay of the enforcement of the judgment and waiver of the bond," and the court also ordered that the Bells "shall tender $175.00 as reasonable attorney's fees to [Dyck] . . . within 10 calendar days." The Bells' motion to alter or amend this order was denied. On May 1, 2015, the Bells filed an additional notice of appeal (which initiated Appeal No. 388, September Term, 2015, in this Court), directed at the order that had been entered April 2, 2015 (denying the stay of enforcement). One of

the Bells' arguments in this appeal is that the circuit court abused its discretion when it entered the award of counsel fees.

After Dyck instituted action to enforce the judgment against real property owned by the Bells in Taneytown, the Bells filed a "Motion to Quash Writ of Execution for Real Property and Request for a Hearing," which Dyck opposed. On June 17, 2015, the circuit court ordered that the Bells' motion to quash writ of execution for real property was denied, but their motion to post a bond was granted, as follows: "Defendants may file a bond in the amount of $114,508.35 — which represents the sum of the final judgment, plus pre-judgment interest at the per diem rate of $11.8478, post-judgment interest at the rate of 10% per day, and costs awarded in the Final Judgment in the form of corporate surety . . . ." On June 26, 2015, the Bells filed a "Motion to Alter and Amend the Court's Order of June 17, 2015 and Request a Hearing," arguing, in part, that the Taneytown parcel of property was assessed for tax purposes at $127,800, and a Sheriff's appraisal of $127,000, which was adequate security for payment of the judgment that had been (erroneously) entered in favor of Dyck. The motion to alter or amend was opposed by Dyck, and was denied by the court on July 14, 2015. The Bells noted another appeal on July 23, 2015, which was docketed as No. 1165, September Term 2015. On August 4, 2015, the trial judge denied appellant's March 9, 2015 motion to vacate writs of garnishment and request for a hearing. On August 12, 2015, the Bells filed a third notice of appeal, and that appeal was addressed in Appeal No. 1165, September Term, 2015. On

May 17, 2016, this Court filed an unreported opinion affirming the circuit court's denial of the Bells' motion to quash writs of execution for real property. 2016 WL 2944107.

STANDARD OF REVIEW – SUMMARY JUDGMENT

We review a circuit court's grant of summary judgment *de novo. Standard Fire Ins. Co. v. Berrett*, 395 Md. 439, 450 (2006). Maryland Rule 2–501(a) provides: "Any party may make a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." Once the moving party files a motion that complies with Rule 2-501(a), the nonmoving party must file a response that identifies with particularity any fact in dispute, supported by evidence that controverts the factual assertions made in the motion. Rule 2-501(b). Mere conclusory denials are not legally sufficient to defeat a properly supported motion for summary judgment. To survive a motion for summary judgment, "the party opposing summary judgment 'must do more than simply show there is some metaphysical doubt as to the material facts,'" and instead must present "evidence upon which the jury could reasonably find [in his favor]." *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 738–39 (1993) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). "On a motion for summary judgment, the evidence, including all inferences therefrom, is viewed in the light most favorable to the nonmoving party." *Jones v. Mid-Atl. Funding Co.*, 362 Md. 661, 676 (2001) (citations omitted). But, if there is no genuine dispute of any material fact, Maryland Rule 2-501(f) provides:

> The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any

material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

DISCUSSION

The Bells contend that material facts remain in dispute, which made the circuit court's entry of summary judgment erroneous. With respect to the legitimacy of the debt represented by the Note, they focus on three primary areas of dispute. First, the Bells contend that the Note that is in the possession of Dyck is not the original wet ink instrument that they signed. Second, the Bells contend that the Note was paid in full as a consequence of the foreclosure sale of the real property known as 1404 Ramblewood Drive. Third, the Bells assert that Dyck was not licensed by the State of Maryland as a debt collection agency. We will address each of the alleged disputes in turn.

A. The Authenticity of the Bells' Signatures on the Note

In their brief, the Bells maintain that one or both of the Bells' signatures on the Note was forged. They argue: "Dyck's use of facial fraud and forgery would permit the Bells all defenses that would challenge a default debt purchaser's holder status as a matter of law." In support of this contention, Mr. Bell testified at his deposition that his signature on the Note was forged. He testified that the signature on the document Dyck possessed "is not my signature," and he asserted that Dyck is "not in possession of the original [Note] . . . . [T]hat's not our note." Mr. Bell also contends that Countrywide/Bank of America, as a "sub-servicer," did not have the legal right to assign the note. At the second hearing on cross-motions for summary judgment, trial counsel for Mr. Bell asserted: "[T]he Note that [Dyck-O'Neal] is attempting to present to this

Court as the basis for this alleged debt . . . is not a valid one. It is a forged document." The Bells filed (in support of their opposition to Dyck's motion for summary judgment) two copies of the allonge containing the endorsement, urging the court to note a difference in the appearance of the copies of the allonge. Mrs. Bell acknowledged at her deposition that the differences in the appearance of the two versions could possibly be explained by one version being the original and the other a copy, but the Bells contend that their assertion that their signatures on the Note were forged should have precluded summary judgment.

Although the Bells made conclusory allegations that the Note was a fraudulent document, the circuit court concluded that the dispute was not material to Dyck's claim.

At Miranda Bell's deposition, counsel for Dyck elicited the following testimony:

> Q. [BY COUNSEL FOR DYCK]: Could you identify that document, please?
>
> A. [BY MIRANDA BELL]: It's a document that looks similar to the balloon note.
>
> Q. Is what you have before you an original document?
>
> A. No.
>
> Q. Why do you say that?
>
> A. Because I know that's not my signature.
>
> Q. How do you know that's not your signature.
>
> A. I have an original to compare it to and it's not my signature.

Q. I'm going to refer you back to Plaintiff's Exhibit 2, page 3. Wouldn't you a[gree] that the signatures are substantially similar, if not identical, to one another?

A. I would say they're similar, but it's not mine.

Q. Okay. And how do you know it's not yours?

A. Because I know it's not mine.

Q. Okay. Going back to the front page of what is in front of you, the balloon note.

A. Um-hum.

Q. Do you contend that you did not take a second loan on the property?

A. No.

Q. Okay. And what amount do you – what amount did you borrow for the second loan, principal?

A. I don't know, and I don't have my copy. I'm trying to think. Do you have my documents that I submitted?

Q. Yes.

A. Okay.

Q. Here is the copy that you provided to me (handing).

A. It reads [$]53,378.

Q. And is that identical to what is on the first page of the balloon note that's in front of you that I acknowledge [sic] to be the original?

A. Yes, it looks similar. It's not the same.

Q. Similar or it's identical?

A. Not identical, similar.

Q. Why is it not identical?

A. Well, the fonts look different.

Q. Is that because yours is a copy and mine's an original?

A. Not sure, the fonts look different on other things.

Q. Where?

A. Slightly. The balloon note, the title looks different.

Q. One could argue that it's as a result of it being a copy, correct?

A. Right.

Q. Okay. All right. Did –

A. Did you want me to tell you why I know it's not an original?

Q. We already went through that, I believe.

A. Okay.

Q. But you're affirming that you did take a loan for 53,378?

A. We had a jumbo prime fixed note. It's not conforming, so it was a jumbo prime fixed.

Q. That was your first loan?

A. No, the jumbo prime fixed is a nonconforming mortgage. The jumbo prime fixed implies that you went over the conforming and there were two mortgages, two notes.

Q. There were two notes and the second note was for – was the second note for 53,378?

A. Yes.

Q. Okay. Was that second note amortized at the rate of interest of 8.375 percent?

A. Yes.

Q. Okay. And you're not contending that you did not sign a second note for that amount at that interest rate; is that correct?

A. Yes.

* * *

Q. Could you identify that document or review and identify the document, please?

A. (Looks through document). This is the Purchase Money Deed of Trust.

Q. For which loan?

A. For the junior of the jumbo prime fixed.

Q. Okay. And what amount was secured by that Deed of Trust?

A. [$]53,378.

Q. Okay. And are those your initials at the bottom of each page and then your signature on the final page?

A. Yes, they are my initials. Yes, my signature.

Q. Okay. And this was not – this Deed of Trust was not the subject of the foreclosure action, correct?

A. It's a jumbo prime fixed. It's all under trust together under the Trust GSR20067-2F.

Q. Which Deed of Trust was referenced in --

A. The senior.

Q. Okay. So the foreclosure was of the senior Deed of Trust?

A. Yes.

* * *

Q. And what was the date of last payment on the second balloon note and Deed of Trust?

A. Between August 1st and August 18th of 2008.

Mr. Bell testified similarly at his deposition, confirming that he and his wife had borrowed $53,378 and signed a promissory note in that amount, but denying that the document shown to him by Dyck's counsel was the original document he signed:

Q. [BY COUNSEL FOR DYCK] I'd like you to look at Exhibit Number 3, and identify this document for me, if you could.

A. [BY EDWIN BELL] Actually, this document is not familiar, and that (indicating) is not my signature because when we signed these loans, we both signed in blue, so that is not my signature at all. There's no way that's my signature. I signed in blue. We both signed in blue, so I don't know where that came from. That's not my signature.

Q. How do you –

A. It's a good copy, but it's not my signature.

Q. How do you remember that you both signed in blue, but can't remember who was there?

A. I remember the fact that she signed first with a blue pen – I signed first with a blue pen and handed it to her and she went through every document and then she signed secondly. We used the same pen, I remember that well.

Q. Okay.

A. I remember that well, we used the same pen at the same table because really – well, there's a long story to that.

Q. Well, can you first identify what this document is, if you could?

A. This document is – it looks like – it's similar to our second note. It's similar to our second note.

Q. Okay.

A. But that (indicating) is not my signature.

* * *

Q. Did you borrow $53,378 as a second loan on the Ramblewood property?

A. Yes.

Q. Okay. And was it at an interest rate of 8.375 percent?

A. Yes.

Q. Okay. And was that money disbursed to you at closing, or was it disbursed at closing –

A. It was disbursed.

Q. -- for the purchase of the property?

A. Yes, for the purchase of the property.

* * *

Q. But you're not disputing that you got this money?

A. Absolutely not.

As the deposition testimony reflects, the Bells do not dispute that they borrowed $53,378 to help finance the purchase of the Ramblewood property, that they obtained financing from NVR Mortgage Financing, Inc., and signed a promissory note in that amount in 2005, which fell into default in August 2008 when they ceased making the required monthly payments. They do not contend that the substantive content of the Note

proffered by Dyck is different from the content of the promissory note they signed in any respect except the appearance and color of their signatures and the addition of purported endorsements. Although the circuit court initially denied a motion filed by Dyck because of the dispute regarding the signatures, the court eventually concluded that the dispute did not bar summary judgment.

Between the dates when Dyck filed its motions for summary judgment, Dyck filed a motion in limine, asking the court to apply § 3-305(c) of Maryland Code (1975, 2013 Repl. Vol.), Commercial Law Article ("Comm."), to preclude the Bells from asserting that some party other than Dyck was the holder of the Note. Section 3-305(c) provides:

> (c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (§ 3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. . . .

In support of its motion in limine, Dyck argued that the Bells (who were the obligors under the pertinent instrument) could not assert that some other party had a superior right to claim possession of the Note unless the Bells joined that party in the litigation. Dyck noted that it had been over five years since the Bells had defaulted on the Note, and no other party had made a demand or claimed to be the holder of the original Note. And, at the hearing on Dyck's first motion for summary judgment on January 25, 2013, Dyck's counsel had produced in court, for examination by the judge, the document that Dyck contends is the original wet ink Note.

By order entered January 14, 2014, the circuit court granted Dyck's motion in limine, ruling: "Insofar as [Ms. Bell] seeks to challenge Dyck-O'Neal's Noteholder status, Defendant Bell is attempting to assert defenses or claims of other parties, which she cannot do without joining those parties to this action. Therefore, Defendants [Bell] shall be excluded from presenting any defenses, evidence, and testimony that challenge [Dyck's] noteholder status."

After the court granted the motion in limine, Dyck renewed its motion for summary judgment. Dyck argued that the dispute relative to the alleged blue pen signatures was not material because the court had resolved the controversy regarding Dyck's noteholder status. In further support of its motion for summary judgment, Dyck pointed out that Comm. § 3-308(a) requires a party denying the validity of a signature to specifically plead the denial. Section 3-308 provides:

> (a) **In an action with respect to an instrument**, the authenticity of, and authority to make, **each signature on the instrument is admitted unless specifically denied in the pleadings**. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under § 3-402(a).

(Emphasis added.)

See also Maryland Rule 2-323(f), which provides:

> (f) Negative Defenses. Whether proceeding under section (c) or section (d) of this Rule, **when a party desires to raise an issue as to** (1) the legal existence of a party, including a partnership or a corporation, (2) the capacity of a party to sue or be sued, (3) the authority of a party to sue or be sued in a representative capacity, (4) the averment of **the execution of a written instrument,** or (5) the averment of the ownership of a motor vehicle, **the party shall do so by negative averment**, which shall include such supporting particulars as are peculiarly within the pleader's knowledge. If not raised by negative averment, these matters are admitted for the purpose of the pending action. Notwithstanding an admission under this section, the court may require proof of any of these matters upon such terms and conditions, including continuance and allocation of costs, as the court deems proper.

(Emphasis added.)

Although the Bells made general references in their Answer to fraud and false representations, they did not include a negative averment specifically denying that the signatures on the Note proffered by Dyck were invalid. Nor did they include such a negative averment in their Amended Answer filed by counsel on February 19, 2013. No other paper filed by the Bells in this case falls within the categories of "pleadings" allowed under Maryland Rule 2-302.

In granting Dyck's renewed motion for summary judgment, the circuit court did not specify which of Dyck's arguments the court was accepting for the proposition that the dispute regarding signatures was not material to the outcome of the case. Because either Comm. § 3-308 or Comm. § 3-305(c) would have supported a conclusion that the signature dispute was not material, we will not disturb the court's ruling on this point.

B. The Bells' Assertion that Evidence Exists to Support a Claim that the Note had Been Paid

The Bells contend that there is a second genuine dispute of fact as to whether the Note has been paid in full. In support of this contention, the Bells offered a letter dated December 4, 2012, sent by Bank of America, N.A., to the Bells, which Edwin Bell attached as Exhibit A to his motion for summary judgment. The letter displays the following language at the bottom of the stationery: "This communication is from Bank of America, N.A., the servicer of your home loan," and states, in pertinent part:

IMPORTANT MESSAGE ABOUT YOUR LOAN

> We received the correspondence/documents you sent to us regarding a name/title change on the above referenced loan. Unfortunately, **since your loan is paid off and no longer active in our system**, we will be unable to complete the transaction you requested.

(Emphasis added.)

As Exhibit B to his motion for summary judgment, Mr. Bell attached another document from Bank of America, N.A., dated March 26, 2013, which stated:

> Enclosed is the loan history statement you requested that provides a detailed outline of transactions for the above-referenced loan number. This statement provides a history or information on payments we have received from you, servicing expenses we have paid to third parties, tax and insurance payments paid on your behalf, and any late charges assessed and paid.

The loan history statement reflects that it relates to a loan in the original principal amount of $53,344.82, that the first monthly payment was received by Bank of America on December 29, 2005, and the last "regular payment" was received by Bank of America

on August 18, 2008. The final line entry on the statement states: "08/04/2009 PRINCIPAL ADJUST. 51,670.51," reducing the principal balance to ".00."

On the basis of these documents received from Bank of America, N.A., the Bells contend that the Note was paid in full, and nothing more was owed on the Note. They cite, *inter alia*, Comm. § 3-602, which provides:

> **[A]n instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument.** To the extent of the payment, **the obligation of the party obliged to pay the instrument is discharged** even though payment is made with knowledge of a claim to the instrument under § 3-306 by another person.

(Emphasis added.)

But these documents do not create a *genuine* dispute of whether the Bells paid off the Note before it was transferred to Dyck.

At a point during the litigation when the Bells were proceeding *pro se*, Mr. Bell conducted a video-recorded *de bene esse* deposition of Vivian Simon, the Vice President of Asset Recovery and Property Preservation for Bank of America, N.A., who signed the allonge endorsing the Note to the order of Dyck. Ms. Simon described her function as "the handling of unsecured debt and selling it to third party vendors." During her *de bene esse* deposition, Ms. Simon provided the following testimony:

> Q. [BY MR. BELL]: Okay. Well, do you have knowledge that the defendants in December of 2012 received a paid-off letter from Bank of America about this very same loan with this same loan number with our names on it? Do you have knowledge of that?
>
> A. [BY VIVIAN SIMON]: Yes.

* * *

Q. [BY COUNSEL FOR DYCK]: Okay would the original Allonge that's supposed to be affixed to the original Balloon Note – to your knowledge, would that original Allonge be attached to it in some way, shape or form?

A. [BY VIVIAN SIMON]: It should be, yes.

Q. Okay. Was Bank of America in possession of both the original Balloon Note and the original Allonge to the Balloon Note at – prior to assignment to Dyck O'Neal?

A. No.

Q. Who was in possession of that note? The original.

A. The original mortgage Balloon Note was Bank of America –

Q. Oh.

A. – before it was assigned to Dyck O'Neal.

Q. Okay. Okay. And the, did Bank of America deliver all the original documentation to Dyck O'Neal?

A. Yes.

Q. Okay. And were the – does the – what does the Allonge represent?

A. It represents that Dyck O'Neal now holds the note. It no longer is held by Bank of America.

Q. Okay.

A. And the debt is owed to Dyck O'Neal.

Q. Okay. After assignment, are you aware if Bank of America has made any demands for payment from the Bells on this note?

A. I'm not aware.

Q. Okay. And do you know, to the best of your knowledge, if this note was assigned to Dyck-O'Neal after the default occurred by the Bells?

A. Yes.

Q. Yes it – you know or yes you can clarify? I'm sorry.

A. Yes, it was sold to Dyck-O'Neal after it was in default with Bank of America.

Q. Okay. Directing your attention to Exhibit A, and it's, I believe, page 5. Can you identify what documents 5, 6 and 7 are?

A. It's a loan history of – of items that posted to the account at the time that it was with Bank of America.

Q. And is this an accurate depiction of every debit and credit made against the account for the Bells?

A. Yes.

Q. I want to direct your attention to the final entry – or what I believe to be the final entry – on the last page. Could you identify what that is, please.

A. That's an internal accounting principal adjustment. In order to charge off the account off of this system, the accounting has to clear the balance; so it's just an internal accounting item.

Q. Does that represent a payment received by Bank of America on the note?

A. No.

Q. So would you contend that [$]51,670.01, according to this document, was still due in – on August 4th, 2009?

A. Yes.

The Bells presented no other evidence of prior payment. They produced no copies of checks, wire transfers, receipts, releases, or confirmations of payments made by them or on their behalf to Bank of America, N.A. Mr. Bell conceded during his deposition that there were no sale proceeds from the foreclosure sale that could be applied to the second deed of trust and note. Uncontroverted testimony from Ms. Simon established that the document showing a zero balance owed to Bank of America, N.A., simply reflected "an internal accounting principal adjustment" as a consequence of the Note being sold to Dyck. Ms. Simon's testimony left no doubt that the Note was not paid in full before it was assigned to Dyck:

> Q. [BY COUNSEL FOR DYCK] Did they [the Bells] ever make a full payoff of the loan?
>
> A. [BY VIVIAN SIMON] No.
>
> Q. Okay. And is your statement in your Affidavit correct in Paragraph 13 that there was a principal balance remaining due on that note?
>
> A. Yes.
>
> Q. You had read out loud [previously in the deposition] that it was 51,670.51; is that true?
>
> A. Yes.
>
> Q. Was that the amount that was due and owing at the time that you assigned this loan to Dyck O'Neal?
>
> A. Yes. Plus other interest fees and costs.

We conclude that there was no genuine dispute regarding whether the Bells paid the Note in full before it was assigned to Dyck by Bank of America, N.A.

C. The Bells' Contention that Dyck's Judgment was Void for Failure to Comply with Maryland Law Regulating Collection Agencies

The Bells contend that Dyck was not licensed in Maryland as a debt collection agency at the time it filed this suit, and therefore, the judgment entered in Dyck's favor is void, citing our holding in *Finch v. LVNV Funding, LLC*, 212 Md. App. 748, 764 (2013) (a "judgment entered in favor of an unlicensed debt collector constitutes a void judgment as a matter of law").

In this case, the Bells focus on the bonding requirements and the regulations governing the location at which a collection agency is licensed to engage in debt collection practices. The Bells maintain that, although Dyck had been issued a Maryland license on February 2, 2011, with an expiration date of January 27, 2013, to provide debt collection services from its offices located at 3214 W. Park Row, Arlington, Texas – which was the address shown on the face of Dyck's complaint in this case – the company had made a change in the address shown on its bond shortly before filing this suit on July 25, 2011, and no longer had a bond that expressly covered operations at 3124 West Park Row. The Bells argued that the mismatch between office addresses as shown on the license and the required bond had the legal effect of voiding Dyck's license, thereby causing Dyck to be unlicensed at the time it filed this debt collection action against them.

For that reason, the Bells contend that Dyck "did not possess a valid license supported by a requisite bond at the time it filed the debt collection complaint against the [the Bells]." They note that Maryland Code, (1992, 2014 Repl. Vol.), Business Regulation Article ("Bus. Reg."), § 7-304(a) requires an applicant for a debt collection

agency license to execute a surety bond, and Bus. Reg. § 7-305(a) states: "A license authorizes the licensee to do business as a collection agency at only 1 (one) place of business." The Bells contend that, because Dyck failed to comply with these requirements, the court could not enter any judgment against them, and therefore, under *Finch*, the judgment entered against the Bells in this case was void as a matter of law.[2]

[2] Bus. Reg. § 7-304 ("Issue of a license") sets forth a licensee's bonding requirement:

> (a) *Surety bond*. — (1) An applicant for a license shall execute a surety bond for the benefit of any member of the public who has a loss or other damage as a result of a violation of this title or the Maryland Consumer Debt Collection Act by the applicant or an agent or employee of the applicant.
>
> (2) The surety bond shall be:
>
> (i) in a form that the Board approves;
> (ii) with a surety that the Board approves; and
> (iii) in the amount of $5,000.
>
> (3) The total liability of a surety on a bond under this section may not exceed the amount of the bond, regardless of the number or amount of claims against the bond.
>
> (4) If the amount of claims against a bond exceeds the amount of the bond, the surety:
>
> (i) shall pay the amount of the bond to the Board for distribution to claimants; and
> (ii) then is relieved of liability under the bond.
>
> (b) *Issuance*. — The Board shall issue a license to each applicant who meets the requirements of this subtitle.

continued…

In their brief, the Bells argue: "Dyck was not properly licensed at West Park Row because Dyck previously transferred its bond, required for a valid license, to a different address." The Bells contend:

> Dyck's counsel never submitted evidence of a bond for West Park Row and without the requisite bond a license for the address is invalid. (E. 119) *Finch v. LVNV Funding LLC*, 212 Md. App. 748 (2013).
>
> Without a license for West Park Row required by the MD Licensing Act, Dyck lacked status as a claimant to file against the Appellant. Nonetheless, the trial court erroneously granted Dyck's Renewed Summary Judgment on December 18, 2014. (App. 1, E. 23, E. 119, E. 512) Appeal 02269, September 2014 ensued. (App.1, E.23) . . . . The trial court failed to address debt collectors Dyck and [Dyck's attorney's] lack of regulatory collection agency licensing which prohibited their use of the Maryland courts and resulted in a void judgment . . . . With disputes of material fact, to be resolve[d] in favor of the Bells, the trial court was prohibited from granting a judgment as a matter of law in favor of Dyck.[3]

---

continued…

Bus. Reg. § 7-305, entitled "Scope of license; multiple licenses authorized," provides:

> (a) *Scope of license*. — A license authorizes the licensee to do business as a collection agency at only 1 place of business.
>
> (b) *Multiple licenses authorized*. — A licensee may hold more than 1 license under this title.

[3] Dyck argues that this argument is not properly before us because the Bells had, at one point during the litigation, expressly abandoned the licensing argument. Dyck notes that, at the outset of the motion hearing held on January 9, 2014, counsel for each of the Bells conceded that Dyck was properly licensed at the time it filed suit. The following exchange occurred at that hearing:

> THE COURT: All right. We are here on motions. And I will first hear the motion for summary judgment filed by both Mr. and Ms. Bell. One of you wish to be heard?

continued…

But the Maryland Department of Labor, Licensing and Regulation did not support the Bells' assertion that Dyck's license became void as a result of the relocation of one of its branch offices. In response to the Bells' allegations that Dyck's license became void during July 2011, Dyck pointed to a letter from Gordon M. Cooley, the Deputy Commissioner of the Department of Labor, Licensing and Regulation, who rejected the Bells' voidness argument for reasons explained in the letter dated May 8, 2014:

> Dear Mr. and Mrs. Bell:
>
> You complain that Dyck-O'Neal, Inc. has violated The Maryland Collection Agency Licensing Act, Maryland Annotated Code, Business

---

continued…

> [COUNSEL FOR MRS. BELL]: Certainly, Your Honor. Since the filing of that motion, the Plaintiff has provided documentation indicating that the licensing that was required, that is required in order to act as a debt collector in Maryland was obtained. It appears to be the case that it was obtained.
>
> We have since attempted also to clarify that with the Department of Labor, Licensing and Regulation, which also seems to corroborate what has been stated by the Plaintiffs. So, respectfully, Your Honor, we would withdraw that motion at this time.
>
> THE COURT: And you concur with that, ma'am?
>
> [COUNSEL FOR MR. BELL]: Yes, Your Honor.
>
> THE COURT: All right, we will note the motion for summary judgment as withdrawn by both parties, Bell . . . .

Despite that concession on January 9, 2014, Mrs. Bell, arguing *pro se* at the hearing on Dyck's renewed motion for summary judgment on December 12, 2014, asserted again that Dyck was "not licensed at 3214 West Park Road."

> Regulation Article ("BR") §§ 7-101 through 7-502 because it did not hold a collection agency license nor required bonding for the physical address of 3214 West Park Row, Arlington, TX 76013 on September 27, 2011 and July 1, 2011, respectively.
>
> Our review of our records reveals:
>
> **Dyck O'Neal Inc. held a valid Maryland collection agency license for 3214 W. Park Row Dr., Arlington Texas 76013 from February 2, 2011 thru September 27, 2011**. On September 27, 2011, our office approved Dyck O'Neal's request for a change of address to 1301 S. Bowen Rd., Arlington, Texas. The then existing collection agency license continued at the new address.
>
> Dyck O'Neal also provided the requisite surety bond at the noted times. Our office has record of a rider issued by the bonding company to the initial surety bond which states 'the effective date of the bond rider wherein the "surety . . . gives its consent to change principal bond address to: 1301 South Bowen Rd." is July 1, 2011.' This coincides with timing of the request for the change in address but pre-dates our office's approval. Pursuant to BR § 7-304(a)(2) the surety bond shall be (i) "in a form that the Board approves; (ii) with a surety that the Board approves; (iii) in the amount of $5,000". The effective date of the rider versus our approval notice to Dyck O'Neal, Inc. was a timing issue.
>
> **Based on the above, our office has determined that Dyck O'Neal, Inc. held the requisite license for the address in question and also provided the requisite surety bond on the dates which are the subject of your complaint.**
>
> **Further, your broader complaint that Dyck O'Neal, Inc. "continues to file actions and obtain judgments against Maryland Consumers in violation of the Act" is not supported or substantiated by the materials provided in and with your complaint . . . .**

(Emphasis added.)

In light of the determination by the Deputy Commissioner of the Department of Labor, Licensing and Regulation that Dyck "held the requisite license for the address in question and also provided the requisite surety bond," we conclude that (a) there was no

genuine dispute as to any material fact relative to Dyck's licensure, and (b) the circuit court did not err in granting summary judgment in favor of Dyck in this case.

II. Appellant's Motions for a Stay of the Enforcement of the Judgment

In Appeal No. 388, the Bells contend that the circuit court abused its discretion in denying their motion for a stay of execution of the judgment. We are satisfied that the circuit court did not abuse its discretion in denying the motion.

STANDARD OF REVIEW – SUPERSEDEAS BOND

A court abuses its discretion "'where no reasonable person would take the view adopted by the [trial] [c]ourt . . . or when the court acts without reference to any guiding principles.'" *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 418 (2007) (quoting *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005) (alterations and ellipsis in *Wilson*).

DISCUSSION

A stay pending appeal is governed by Maryland Rules 8-422 through 8-424. Maryland Rule 8-422(a) provides, in pertinent part:

> **(a) Civil Proceedings.**
>
> > (1) *Generally.* Except as otherwise provided in the Code or Rule 2-632, **an appellant may stay the enforcement of any other civil judgment from which an appeal is taken by filing with the clerk of the lower court a supersedeas bond under Rule 8-423, alternative security as prescribed by Rule 1-402(e), or other security as provided in Rule 8-424.** The bond or other security may be filed at any time before satisfaction of the judgment, but enforcement shall be stayed only from the time the security is filed.

Maryland Rule 8-423 ("Supersedeas Bond") provides:

> **(a) Condition of Bond.** Subject to section (b) of this Rule, a supersedeas bond shall be conditioned upon the satisfaction in full of (1) the judgment from which the appeal is taken, together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, or (2) any modified judgment and costs, interest, and damages entered or awarded on appeal.
>
> **(b) Amount of Bond**. Unless the parties otherwise agree, the amount of the bond shall be as follows:
>
> > (1) Money Judgment Not Otherwise Secured. When the judgment is for the recovery of money not otherwise secured, **the amount of the bond shall be the sum that will cover the whole amount of the judgment remaining unsatisfied plus interest and costs**, **except that the court, after taking into consideration all relevant factors, may reduce the amount of the bond upon making specific findings justifying the amount.**

(Emphasis added.)

Under Maryland Rule 1-402(e), an appellant may offer other assets as security pending the outcome of the appeal:

> **(e) Security Instead of Surety**. Instead of a surety on a bond, **the court may accept other security for the performance of a bond, including** letters of credit, escrow agreements, certificates of deposit, marketable securities, **liens on real property**, and cash deposits. When other security is accepted, it may not be released except upon order of court entered after notice to all parties.

(Emphasis added.)

In *Baltrotsky v. Kugler*, 395 Md. 468, 476–77 (2006), the Court of Appeals explained:

> [T]he *supersedeas* bond is not the only means by which the stay of enforcement of a judgment may be achieved. Aside from the bond, Maryland Rule 8–422(a) identifies two additional methods of accomplishing a stay, provided that the proceeding does not involve an appeal of an interlocutory order or an injunction pending an appeal. A party

> may file an "alternative security as prescribed by Rule 1–402(e), or other security as provided in Rule 8–424." Rule 8–422(a).

(Footnotes omitted.)

Pursuant to Md. Rule 1-402(e), the Bells urged the court to approve as "alternative security" a lien against certain real property owned by the Bells on Church Lane in Frederick County. In their brief, the Bells argue that, "[b]y operation of law, [Dyck] had alternate security with Church Lane Properties effective December 2014. Without explanation, the trial court denied the [Bells'] proposed alternate bond." The Bells maintain that it was an abuse of discretion for the circuit court judge not to accept the judgment lien against Church Lane Properties as alternate security.

Dyck responds in its brief that, although its judgment, when indexed, provided a lien against the judgment debtors' real property pursuant to Maryland Code, (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article, § 11-402(b), the Bells were nevertheless "required to post a bond in the full amount of the judgment because the proposed security in the form of real property did not provide Appellee with any more security than what Appellee already holds."

In *O'Donnell v. McGann*, 310 Md. 342 (1987), the Court of Appeals explained that decisions regarding the appropriate security for an appeal bond are committed to the discretion of the court:

> The practice of requiring security for a stay of execution of a judgment at law during the pendency of an appeal is deeply rooted, and no doubt evolved from the consideration of security as a condition for the granting of a discretionary writ of error or appeal. We are persuaded that the latitude afforded trial judges in fixing security in discretionary appeal

> cases carried over to the determination of the amount and terms of security required for a stay of execution when the right of appeal became absolute. The United States Supreme Court has referred to "the inherent power of the appellate court to stay or supersede proceedings on appeal." *In re McKenzie*, 180 U.S. 536, 551 (1901).

In *McGann*, 310 Md. at 344–45, the Court of Appeals considered "the nature and extent of the discretionary authority of trial and appellate courts of this State to stay the execution of a money judgment, and more particularly the authority of those courts to approve a supersedeas bond in an amount less than the amount of the judgment." The Court held: "[T]he inherent power of trial and appellate courts to fix the terms and conditions for the stay of execution of judgments has not been circumscribed by rule or statute so as to limit the discretion of the court to modify the penalty of a supersedeas bond required for the stay of execution of a money judgment." *Id.* at 345.

We perceive no abuse of discretion in the judge's refusal to approve alternate security for the supersedeas bond.

III. Attorney's Fees

At the time the circuit court denied the Bells' second motion to stay enforcement of the money judgment in the circuit court, by order entered April 2, 2015, the court not only denied the second motion to stay, but also ordered that the Bells "shall tender $175.00 as reasonable attorney's fees to [Dyck] . . . within 10 calendar days." Although the court did not elaborate on the basis for the award of attorney's fees, we infer that the court was awarding a sanction pursuant to Maryland Rule 1-341 for the Bells having filed a repetitive motion that the court deemed non-meritorious.

Maryland Rule 1-341(a) provides:

> **(a) Remedial Authority of Court.** In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it.

In *DeLeon Enterprises, Inc. v. Zaino*, 92 Md. App. 399, 414–15 (1992), we reviewed the Court of Appeals's case law describing the two standards of appellate review applicable to a judgment entered under Rule 1-341:

> **Before meting out the extraordinary sanction of attorney's fees the judge must make two separate findings** that are subject to scrutiny under two related standards of appellate review. *Inlet Associates v. Harrison Inn*, 324 Md. 254, 268, 596 A.2d 1049 (1991). **The judge must find that the proceeding was maintained in bad faith or without substantial justification**, and that the bad faith or lack of substantial justification merits the imposition of attorney's fees. *Id.* at 267–68, 596 A.2d 1049. We must affirm a factual finding of bad faith unless the finding is clearly erroneous. *Id.* at 267, 596 A.2d 1049. The trial court's determination as to whether there was lack of substantial justification is a question of law, and must be affirmed unless legally erroneous. *Id.* That the action merits an award of attorneys fees is based on the abuse of discretion standard. *Id.* **The record must reflect explicitly the finding itself and the facts upon which that finding is based.** *Id.* at 269, 596 A.2d 1049 (quoting *Zdravkovich v. Bell Atlantic-Tricon Leasing Corp.*, 323 Md. 200, 210, 592 A.2d 498 (1991)).

Accord Major v. First Virginia Bank-Central Maryland, 97 Md. App. 520, 530 (1993) ("The trial judge must make explicit findings of fact that a proceeding was maintained or defended in bad faith and/or without substantial justification.").

When the circuit court entered the order requiring the payment of $175.00 in attorney's fees, the court failed to set forth a finding that the "conduct of [the Bells] in

maintaining or defending any proceeding was in bad faith or without substantial justification." In the absence of such a finding, we must vacate the award.

JUDGMENT ENTERED BY THE CIRCUIT COURT FOR CARROLL COUNTY ON APRIL 2, 2015, FOR ATTORNEY'S FEES IN THE AMOUNT OF $175.00 VACATED; IN ALL OTHER RESPECTS THE JUDGMENTS ENTERED IN FAVOR OF APPELLEE AGAINST APPELLANTS ARE AFFIRMED. COSTS TO BE PAID BY THE APPELLANTS.