

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2294

September Term, 2015

JANICE JACKSON, *et al.*

v.

JOHN E. DRISCOLL, III *et al.*
SUBSTITUTE TRUSTEES

Woodward, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 6, 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. Md. Rule 1-104.

The Federal Home Mortgage Loan Corporation (FHMLC), appellee, purchased a home belonging to Janice and Mandel Jackson, appellants, at a foreclosure sale by way of a credit bid. The Circuit Court for Prince George’s County ratified the sale and appellants’ subsequent appeal from the ratification order was dismissed as moot.

Following the ratification of the sale, FHMLC filed a motion for judgment awarding possession of the property asserting: (1) that they had obtained equitable title to the property following the foreclosure sale; (2) that, as the foreclosing lender, they were entitled to possession of the property through the contractual terms of the deed of trust; (3) that appellants had refused to deliver possession of the property; and (4) that, based on an inquiry into the occupancy status of the property, the persons in possession of the property were not bona fide tenants. Two days later, appellants filed a pleading entitled “Notice of Affidavit and Defendant’s Objection for Judgment Awarding Possession,” claiming that the underlying foreclosure proceedings were invalid because their mortgage debt had been discharged during a prior bankruptcy proceeding. The circuit court found no merit to appellants’ claim and issued a possession order. Appellant filed this appeal and raises three issues that are reducible to one: whether the court abused its discretion in issuing the possession order. For the reasons that follow, we affirm.

On appeal, appellants essentially contend that the circuit court abused its discretion in issuing the possession order because: (1) the foreclosing lender lacked standing to initiate the foreclosure proceedings because it was not the holder of the note; (2) the Maryland foreclosure statutes are unconstitutional; and (3) the lien on their home should

have been released because their underlying mortgage debt had been discharged in a prior bankruptcy proceeding.

But, the scope of an appeal of an order granting or denying possession is quite limited. *See Manigan v. Burson*, 160 Md. App. 114, 119 (2004). “The appeal must pertain to the issue of possession . . . and may not be an attempt to re-litigate issues that were finally resolved in a prior proceeding.” *Id.* Moreover, a party may not raise issues in an appeal of an order granting possession which could have been properly raised in a motion to stay or dismiss a foreclosure or in timely filed exceptions. *Id.* In the instant case, all of appellants’ claims relate to the propriety of the underlying foreclosure, and were either raised or could have been raised prior to the ratification of the foreclosure sale. Consequently, we do not consider them on appeal.¹

In any event, the trial court did not abuse its discretion in granting FMHLC’s motion. Pursuant to Maryland Rule 14–102(a), “[i]f the purchaser of an interest in real property at a sale conducted pursuant to the Rules in this Title is entitled to possession and the person in actual possession fails or refuses to deliver possession, the purchaser or a successor in interest who claims the right of immediate possession may file a motion for

¹ In any event, appellants would not be entitled to relief. Because the only claim raised by appellants’ in their “Notice of Affidavit and Defendant’s Objection for Judgment Awarding Possession,” was that their home could not be foreclosed because the underlying mortgage debt had been discharged in bankruptcy, that is the only claim that was preserved for appeal. *See* Maryland Rule 8-131. And, that claim lacks merit, as “valid liens that have not been disallowed or avoided survive the bankruptcy discharge of the underlying debt.” *See Hernandez v. Suburban Hosp. Ass’n.*, 319 Md. 226, 237 (1990). Thus, the discharge of appellants’ mortgage debt did not prevent the mortgage lender from foreclosing on the property.

judgment awarding possession of the property.” “To invoke [Rule 14–102], the purchaser must show that (1) the property was purchased at a foreclosure sale, (2) the purchaser is entitled to possession, and (3) the person in possession fails or refuses to relinquish possession.” *G.E. Capital Mortgage Servs., Inc.*, 144 Md. App. 449, 457 (2002). “[G]enerally, a purchaser of property at a foreclosure sale may be entitled to seek possession of that property when the sale is ratified by the Circuit Court.” *Empire Properties v. Hardy, LLC*, 386 Md. 628, 651 (2005). In the instant case, FHMLC purchased the property at the foreclosure sale through a credit bid and the circuit court ratified that sale. Also, there is no evidence in the record indicating that the property was being occupied by bona fide tenants. Consequently, FHMLC had the right to seek immediate possession of the property under Maryland Rule 14-102.

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