Circuit Court for Montgomery County
Case No. 405624V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 72

September Term, 2018

BARBARA A. GIBBS

v.

JEFFREY NADEL, *et al*.

Friedman,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 1, 2019

In March 2015, Jeffrey Nadel, Scott Nadel, Daniel Menchel, and John-Paul Douglas, appellees, acting as substitute trustees, filed an Order to Docket in the Circuit Court for Montgomery County, seeking to foreclose on real property owned by Barbara and Melvin Gibbs, appellants. The Gibbses filed a counterclaim against the substitute trustees, which was "severed for the purpose of litigation" but not converted into a new case. The Gibbses' home was ultimately sold at a foreclosure sale, the court ratified both the sale and the auditor's report, and the purchaser at the foreclosure sale was awarded a judgment of possession.

In June 2016, following the ratification of the sale and the auditor's report, the Gibbses filed an amended counter-claim, naming Bank of America, Nationstar Mortgage, Urban Settlement Services, Montgomery Village Foundation, Atlantic Law Group, and Maryland Attorney General Brian Frosh, appellees, as additional defendants. As to all defendants, the Gibbses raised claims of unjust enrichment, breach of contract, conspiracy, violating the Racketeer Influenced and Corrupt Organizations Act (RICO), and violating the Maryland Consumer Protection Act. The amended complaint was initially removed to federal court, but was later remanded back to the circuit court. Thereafter, the substitute trustees, Montgomery Village Foundation, and Attorney General Brian Frosh filed motions to dismiss the Gibbses' claims against them for failure to state a claim upon which relief could be granted. The remaining appellees did not file motions to dismiss, but filed motions to strike the complaint, claiming that: (1) the Gibbses' claims against them were third-party claims, not counter-claims; (2) third-party claims were not allowable in foreclosure actions; (3) even if allowable, the Gibbses' claims were not proper third-party

claims; and (4) even if they were proper third-party claims, they were untimely filed. In response, the Gibbses filed oppositions to appellees' motions; a motion for summary judgment; two more amended complaints, both of which raised substantially similar claims as their first amended complaint. Following a hearing, which the Gibbses did not attend, the court granted appellees' motions to dismiss and motions to strike and closed the case. The Gibbses now raise four issues on appeal: (1) whether the court erred in not dismissing the foreclosure action because, they claim, it was barred by the statute of limitations; (2) whether the court erred in granting appellees' motions to dismiss and motions to strike; (3) whether the court erred in closing the case without considering their third amended complaint; and (4) whether the court erred in not granting their motion for summary judgment. For the reasons that follow, we affirm.

The Gibbses first contend that the foreclosure action was barred by the statute of limitations. However, to the extent that this issue is properly before us, it lacks merit.[1] Unlike a claim for monetary damages based on a breach of the promissory note or the Deed of Trust, "there is no Statute of Limitations in Maryland applicable to [the] foreclosure of mortgages[.]" *Cunningham v. Davidoff*, 188 Md. 437, 444 (1947). Consequently, the fact that the Gibbses' last mortgage payment was made more than three years before the

[1] Normally, either the order ratifying the sale or the order ratifying the auditor's report constitutes the final judgment in a foreclosure action and, therefore, the Gibbses' failure to file a notice of appeal from either of those orders within thirty days would prevent them from raising this issue on appeal. However, because the Gibbses' counter-claim remained part of the foreclosure action and was not converted into a new case, we are persuaded the court's order disposing of the counter-claim constituted the final judgment in this case as it finally disposed of all the claims between the parties.

substitute trustees filed the Order to Docket did not require the court to dismiss the foreclosure action.

Next, the Gibbses claim that the court erred in granting appellees' motions to dismiss and motions to strike. Specifically, they assert that "Maryland's civil foreclosure statute cannot negate the federal [RICO Act], when Appellees' foreclosure is part and [parcel] of their criminal foreclosure enterprise." This is a true statement as far as it goes. However, when filing a complaint, it is incumbent upon the pleader to comply with all applicable procedural rules and to ensure that the facts alleged therein set forth claims upon which relief can be granted.

In the instant case, the trial court determined that the Gibbses' complaint against Bank of America, Nationstar, Urban Settlement Services, and Atlantic Law Group should be stricken because the claims against those parties were improper third-party claims under the Maryland Rules. But, on appeal, the Gibbses make no arguments, and cite no case law, demonstrating that the court erred in striking their complaint as to those appellees on that basis. Although we are mindful that the Gibbses are proceeding *pro se,* it is not this Court's responsibility to "attempt to fashion coherent legal theories to support [their] claims" of error. *See Konover Property Trust, Inc. v. WHE Assocs., Inc.*, 142 Md. App. 476, 494 (2002). Consequently, the issue of whether the Court erred in granting appellees' motions to strike is not properly before this Court. *See Diallo v. State*, 413 Md. 678, 692-93 (2010) (noting that arguments that are "not presented with particularity will not be considered on appeal" (citation omitted)).

With respect to the substitute trustees, Montgomery Village, and the Maryland Attorney General, the court did not strike the complaint but rather determined that the complaint failed to state a claim against them for which relief could be granted. Again, however, the Gibbses do not specifically address the merits of the court's decision. Instead, they simply reassert their claims that appellees violated RICO and state that the amended complaints "set forth with particularity – each and every facet of Appellees' criminal enterprise." Thus, this issue is also not properly before us.

However, even if this claim had been raised with particularity, we would find no error. When filing a complaint, the "pleader must set forth a cause of action with sufficient specificity – bald assertions and conclusory statements by the pleader will not suffice." *Davis v. Frostburg Facility Ops., LLC*, 457 Md. 275, 284-85 (2018) (internal quotation marks and citation omitted). Here, the sole allegation in the Gibbses' amended complaints regarding the substitute trustees and Montgomery Village was that Bank of America directed them to "file frivolous lawsuits." Similarly, the sole allegation against Attorney General Brian Frosh was that the Maryland Attorney General's Office had "turned a blind eye" to Bank of America's conduct after former Maryland Attorney General Doug Gansler entered into a settlement agreement with Bank of America to address mortgage loan servicing and foreclosure abuses.[2] Even construing the Gibbses' complaint liberally, these conclusory allegations were wholly insufficient to set forth a prima facie case of RICO violations, unjust enrichment, breach of contract, conspiracy, or Maryland Consumer

[2] The Gibbses allege that the settlement agreement was a bribe.

Protection Act violations against Montgomery Village, the substitute trustees, and the Maryland Attorney General. Consequently, the court did not err in granting those appellees' motions to dismiss.

The Gibbses further assert that the court erred by not addressing their third amended complaint in its final judgment. This claim is belied by the record, however, as the court specifically stated that its order granting the motions to dismiss and the motions to strike was applicable to both the original complaint and to "every successive complaint" that the Gibbses had filed thereafter. Moreover, the third amended complaint was not materially different, either substantively or procedurally, from the Gibbses' first and second amended complaints. Thus, for the same reasons previously set forth, the court did not err in granting appellees' motions to strike or dismiss that complaint.

Finally, the Gibbses contend that the court erred in not granting their motion for summary judgment. However, the court either struck or dismissed all the Gibbses' claims against appellees. Having granted those motions, there were no remaining claims upon which the court could have granted summary judgment. Consequently, the court did not err in denying the Gibbses' summary judgment motion.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.