Circuit Court for Charles County
Case No. 08-C-17-000990

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 262

September Term, 2019

JERMAINE T. BOLDEN, *et ux*.

v.

RICHARD A. LASH, *et al*.

Nazarian,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 6, 2020

*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

In 2017, appellees, acting as substitute trustees,[1] filed an Order to Docket, in the Circuit Court for Charles County, seeking to foreclose on real property owned by Jermaine and Leonie Bolden, appellants. The Boldens filed a motion to stay or dismiss the foreclosure action, which was denied, and their home was ultimately sold at a foreclosure auction. The foreclosure sale was ratified on September 5, 2018 and the case was referred to an auditor. Following the ratification of the auditor's report, the Boldens filed a "Motion to Dismiss/Motion to Vacate Final Judgment/Motion to Stay" which was denied on January 10, 2019. They did not file a timely appeal from the order ratifying the foreclosure sale, the order ratifying the auditor's report, or the order denying their "Motion to Dismiss/Motion to Vacate Final Judgment/Motion to Stay."

On January 16, 2019, the Boldens filed a "Motion to Revise Order," wherein they sought to vacate the order ratifying the foreclosure sale pursuant to Maryland Rule 2-535(b) based on "fraud." Specifically, they claimed that: (1) as of December 2017, Aurora Financial Group, Inc. (Aurora), the holder of the Note securing the Deed of Trust, did not have a license to conduct business in Maryland; (2) Aurora did not have a license to act as a debt collection agency in Maryland, as required by the Maryland Collection Agency Licensing Act (MCALA), and thus, did not have a right to initiate the foreclosure action or conduct the foreclosure sale; and (3) that it was unclear whether Aurora had standing to

[1] Appellees are Richard A. Lash, Robert E. Kelly, David A. Rosen, and Douglas W. Callabresi.

foreclose because there was no assignment of the Note from their lender to Aurora recorded in the Charles County land records. On January 28, 2019, the Boldens also filed a "Motion to Strike" all pleadings that had been filed by appellees, again claiming that they were not proper parties because they did not have a business license or a license to act as a debt collection agency. The circuit court denied both motions without a hearing. On appeal, the Boldens raise three issues, which reduce to two: (1) whether the court erred in denying their "Motion to Revise Order," and (2) whether the court erred in denying their "Motion to Strike." For the reasons that follow, we shall affirm.[2]

Here, the September 5, 2018 order ratifying the foreclosure sale constituted the final judgment on the merits as to the validity of the foreclosure sale. *See Hughes v. Beltway Homes, Inc.*, 276 Md. 382, 384 (1975) ("An order ratifying a sale is a judgment . . . because it is an order of the court final in its nature." (internal quotation marks omitted)); *Ed Jacobsen, Jr., Inc. v. Barrick*, 252 Md. 507, 511 (1969) ("[T]he law is firmly established in Maryland that the final ratification of the sale of property in foreclosure proceedings is res judicata as to the validity of such sale, except in the case of fraud or illegality, and hence its regularity cannot be attacked in collateral proceedings." (citations omitted)). Because the Boldens' "Motion to Revise Order" and "Motion to Strike" were both filed more than 30 days after the ratification order was entered, the only basis for the circuit court to have

[2] In their brief, appellees contend that we should dismiss the appeal because appellants failed to include all the necessary documents in their record extract, as required by Maryland Rule 8-501(c). We agree that the record extract does not comply with Rule 8-501 and we certainly do not condone the incomplete record. However, because we are able to address the issues raised on appeal after reviewing the record from the circuit court, we shall deny the motion to dismiss.

granted either motion would have been if they demonstrated the possible existence of fraud, mistake, or irregularity in the judgment. *See* Maryland Rule 2-535(b).

The Boldens' claims that appellees lacked standing to foreclose because there was no record of the assignment of the Note and that Aurora was "required to have a business license in Maryland in order to pursue foreclosure," even if true, do not demonstrate the existence of fraud, mistake or irregularity, as those terms are used in Rule 2–535(b). *See generally Thacker v. Hale*, 146 Md. App. 203, 217 (2002) ("Maryland courts have narrowly defined and strictly applied the terms fraud, mistake, [and] irregularity, in order to ensure finality of judgments."). To be sure, the Boldens generally contend that appellees engaged in "fraud." But "to establish fraud under Rule 2-535(b), a movant must show extrinsic fraud, not intrinsic fraud." *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013) (internal citations omitted). "Fraud is extrinsic when it actually prevents an adversarial trial but is intrinsic when it is employed during the course of the hearing which provides the forum for the truth to appear, albeit, the truth was distorted by the complained of fraud." *Id*. at 290-91. Here, appellees alleged lack of standing and Aurora's alleged lack of a business license would not constitute extrinsic fraud because it had no bearing on the Boldens' ability to fully present their case. In other words, they had every opportunity to raise these challenges prior to the foreclosure sale being ratified, yet they did not do so.[3]

[3] In any event, we note that the Boldens' claim that Aurora was required to have a business license to pursue foreclosure proceedings lacks merit. Although § 4A-1002(a) of the Corporations & Associations Article requires foreign corporations to register with the State Department of Assessments and Taxation before "doing any interstate, intrastate, or (continued)

The Boldens also claimed in their motions that Aurora was acting as a collection agency when it pursued the foreclosure action and therefore, that the MCALA required it to have a debt collection license, which it did not have. Unlike the Boldens' other contentions, this claim, if true, could result in the foreclosure action being rendered "void." Thus, it could be raised at any time. *See Finch v. LVNV*, 212 Md. App. 78, 768 (2013) (holding that a judgment obtained by an unlicensed debt collector was void and could be challenged at any time). Although this claim was cognizable in a Rule 2-535(b) motion, it lacks merit. In *Blackstone v. Sharma*, 461 Md. 87 (2018), the Court of Appeals examined the 2007 amendments to the MCALA and held that they did not "expand the scope of the MCALA to include mortgage industry players seeking foreclosure actions." *Id*. at 95 n.3. Consequently, appellees and Aurora were not subject to the requirements of MCALA and did not require a debt collector's license before pursuing the foreclosure action.

Because the claims raised in the Boldens' "Motion to Revise Order" and "Motion to Strike" were either not cognizable under Rule 2-535, lacking in merit, or both, the court did not err in denying the motions without a hearing.

JUDGMENTS OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

foreign business in the state," § 7-104 of that Article specifically excludes the act of foreclosing mortgages and deeds of trust on property in Maryland from that requirement.