

Circuit Court for Montgomery County
Case No: 436150V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 819

September Term, 2019

TIEMOKO COULIBALY

v.

CARRIE WARD, *et al.*

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

JJ.

PER CURIAM

Filed: August 5, 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 August of 2017, the substitute trustees for JPMorgan Chase Bank, N.A., appellees,¹ filed an Order to Docket in the Circuit Court for Montgomery County, seeking to foreclose on real property owned by Tiemoko Coulibaly, appellant. A foreclosure sale proceeded accordingly. At the sale, Siavash Asgari, appellee, tendered the winning bid of \$365,000.00 and paid to the substitute trustees a \$42,000.00 deposit.

Prior to ratification of the sale by the circuit court, Mr. Asgari filed a motion for possession of the property which was, at the time, still inhabited by Mr. Coulibaly. In the motion, Mr. Asgari asserted that “immediate possession” was warranted because “waste [was] being committed on the [p]roperty” and “the express terms of the deed of trust entitle[d] [him] to possession of the [p]roperty.” No opposition was filed by Mr. Coulibaly or the substitute trustees, and on June 1, 2018, the circuit court entered an order granting Mr. Asgari’s motion for possession. Mr. Asgari promptly requested the issuance of a writ of possession and Mr. Coulibaly was, thereafter, evicted from the property. On June 6, 2018, an order ratifying the foreclosure sale was entered by the circuit court.

Mr. Coulibaly noted an appeal challenging the orders granting possession of the property to Mr. Asgari and ratifying the foreclosure sale. This Court upheld the entry of both orders by the circuit court. *See Coulibaly v. Ward, et al.*, No. 809, Sept. Term 2018 (filed: June 25, 2019).

¹ The substitute trustees include Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Pratima Lele, Joshua Coleman, Richard R. Goldsmith, Jr., Ludeen McCartney-Green, Elizabeth C. Jones, Nicholas Derdock, Andrew J. Brenner, Angela Dawkins, and Wayne Anthony Holman.

On February 2, 2019, the substitute trustees filed a “Motion to Resell Property,” contending that Mr. Asgari had breached the terms of the sale “by failing to go to settlement and tender the balance of the purchase price” following ratification of the sale. Though Mr. Coulibaly filed an opposition, he did not therein state any basis for the denial of the substitute trustees’ motion, instead focusing on the legality of the foreclosure sale, Mr. Asgari’s possession of the property, and Mr. Coulibaly’s subsequent eviction. Mr. Asgari filed a response in opposition to the motion to resell, contending that the substitute trustees were “unable to deliver marketable title at [that] time due to constructive lis pendens created by Defendant Tiemoko Coulibaly.” On April 19, 2019, the court denied the substitute trustees’ motion to resell. On June 5, 2019, the court denied a motion to reconsider filed by the substitute trustees.

On April 29, 2019, Mr. Coulibaly filed a motion² (the “Restitution Motion”) which, in pertinent part, contended that Mr. Asgari was “never the legal owner of the property” due to his failure to tender its purchase price and, therefore, that Mr. Coulibaly’s eviction from the property was illegal. The Restitution Motion additionally sought the removal of Mr. Asgari from the property, the reinstatement of Mr. Coulibaly’s possession of the property, and compensation for any damages stemming from his eviction. On May 30, 2019, the court denied Mr. Coulibaly’s motion.

² The motion was entitled: “Emergency Motion Requesting an Order Directing the Sheriff’s Office to Evict Immediately the So-Called Purchaser Mr. Siavash Asgari From His Property Since Plaintiff Substitute Trustee Now Finally Clearly Admitted in their April 24, 2009 Motion for Reconsideration Conspiracies, Criminal Activities and Mortgage Fraud Foreclosure Against Defendant.”

On appeal of the May 30, 2019 order, Mr. Coulibaly requests that this Court consider whether the circuit court erred in denying his Restitution Motion despite Mr. Asgari’s refusal to tender the purchase price for the property.³ For the following reasons, we shall affirm the judgment of the circuit court.

DISCUSSION

MOTION TO DISMISS APPEAL

Mr. Asgari asserts that the present appeal “should be summarily dismissed” because Mr. Coulibaly failed to serve him with copies of his brief and record extract. Indeed, the certificate of service accompanying Mr. Coulibaly’s brief reflects that he only served the substitute trustees with a copy of his brief. Pursuant to Maryland Rule 8-502(c), Mr. Coulibaly was required to serve each party with “two copies of each brief and record extract” as prescribed in Maryland Rule 1-321.

In Mr. Asgari’s brief filed on January 13, 2020, he claims that he only “found out about this [appeal] through service of a responsive brief filed by the [s]ubstitute [t]rustees” on January 10, 2020. This admission, however, discloses that Mr. Asgari was aware of the

³ Though Mr. Coulibaly addresses the assertions contained in the substitute trustees’ motion to resell, his brief does not raise any argument as to the entry of the circuit court’s June 5, 2019 order denying the motion. Even had he done so, by failing to raise any objection to the substitute trustees’ motion to resell in the circuit court, he failed to preserve any challenge for appeal. Therefore, to the extent that his brief can be interpreted to advance any specious challenge to the June 5, 2019 order, we will not consider any such issue here on appeal. *See Zellinger v. CRC Dev. Corp.*, 281 Md. 614, 620 (1977) (“A contention not raised below either in the pleadings or in the evidence and not directly passed upon by the trial court is not preserved for appellate review.”). Further, this opinion does not pass on the future appealability, if any, of the June 5, 2019 order should any of the parties wish to note such an appeal in the future.

present appeal months in advance of the May 2020 session in which the appeal was scheduled. The record does not disclose any attempt by Mr. Asgari in these months to obtain Mr. Coulibaly’s brief, nor to obtain additional time to respond to Mr. Coulibaly’s brief. Because Mr. Asgari failed to take steps to ameliorate any potential prejudice caused by Mr. Coulibaly’s failure to serve, we decline to attribute any prejudice to Mr. Coulibaly’s failure. As we have previously stated, where there is no evidence of prejudice attributable to a deficient certificate of service, “it is the practice of this Court to decide appeals on the merits rather than on technicalities.” *State v. Andrews*, 227 Md. App. 350, 370 (2016). For the foregoing reasons, we decline to dismiss the present appeal for Mr. Coulibaly’s failure to comply with Maryland Rule 8-502(c).

CHALLENGES TO MR. ASGARI’S POSSESSION OF THE PROPERTY

With regard to the Restitution Motion challenging, in pertinent part, Mr. Asgari’s right to possession of the property, we hold that the circuit court did not err in denying the motion. Firstly, Mr. Asgari was barred from mounting such a challenge under the law of the case doctrine which “prevents trial courts from dismissing appellate judgment and re-litigating matters already resolved by the appellate court.” *Andrulonis v. Andrulonis*, 193 Md. App. 601, 614 (2010) (citations omitted). “[O]nce an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case.” *Scott v. State*, 379 Md. 170, 183 (2004). Because the order granting possession of the property to Mr. Asgari was previously upheld by this Court, the law of the case doctrine prevented the circuit court from considering any

arguments asserted by Mr. Coulibaly that possession was granted to Mr. Asgari in error. *See Coulibaly v. Ward, et al.*, No. 809, Sept. Term 2018 (filed: June 25, 2019).

Secondly, notwithstanding our prior decision, because the foreclosure sale had been ratified by the circuit court, Mr. Coulibaly lacked standing to challenge Mr. Asgari's possession of the property when he filed his Restitution Motion. Upon completion of the foreclosure sale, Mr. Asgari, as purchaser, acquired an inchoate, equitable title to the property. *Merryman v. Bremmer*, 250 Md. 1, 8 (1968). Upon ratification of the foreclosure sale by the circuit court, his "inchoate equitable title, acquired at the time of the acceptance of his offer by the trustee, [became] complete." *Id.* Indeed, Mr. Asgari did not acquire full legal title upon the ratification because a "purchaser obtains full legal title only after the purchase price is paid and the deed delivered to him or her." *Empire Properties, LLC v. Hardy*, 386 Md. 628, 650 (2005). Nonetheless, he acquired an inchoate equitable title to the property by virtue of the circuit court's ratification of the foreclosure sale.

More importantly, upon ratification of the foreclosure sale by the circuit court, Mr. Coulibaly was "divested of the equitable right of redemption" which would have enabled him to "reacquire clear title to the property mortgaged to secure a debt, upon repayment of the debt." *Greenbriar Condo., Phase 1 Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683, 735 (2005). Not only did the "[f]oreclosure, sale, and ratification operate to cut off the [Mr. Coulibaly's] right of redemption," it also "terminate[d] [his] interest in the property" and his "right of possession in the property." *Laney v. State*, 379 Md. 522, 539 (2004). Therefore, at the time Mr. Coulibaly filed the Restitution Motion, he had been divested of any interest he once held in the property and no longer held any right to possess

it. Even had the circuit court permitted resale of the property by the substitute trustees, pursuant to §7.105.10 of the Real Property Article, such an order would not have affected “the prior ratification of the sale” and would not have restored to Mr. Coulibaly “any right or remedy that was extinguished by the prior sale and its ratification.” His interest in the property extinguished, Mr. Coulibaly lacked standing to challenge Mr. Asgari’s possession of the property and the legality of his prior eviction. *See Adams v. Manown*, 328 Md. 463, 480 (1992) (Standing “rests on a legal interest such as one of property” and “a litigant must have standing to invoke the judicial process in a particular instance.”). For the foregoing reasons, the court did not err in denying the Restitution Motion.

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