UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1091

September Term, 2014

DOUGLAS C. MYERS

v.

RONALD B. KATZ,
SUBSTITUTE TRUSTEE

Woodward,
*Zarnoch,
Friedman,

JJ.

Opinion by Woodward, J.

Filed: October 19, 2015

*Zarnoch, Robert A., J., participated in the conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

On February 23, 2011, appellee, Ronald B. Katz, as substitute trustee, sold at a foreclosure sale properties owned by appellant, Douglas C. Myers. The Circuit Court for Baltimore County ratified the foreclosure sale on June 27, 2011, and this Court affirmed the ratification on June 4, 2013, in an unreported opinion. Our opinion also affirmed the circuit court's denial of Myers's motion to vacate under Maryland Rule 2-535(b). Ten months after the filing of our opinion, on April 7, 2014, Myers filed a second motion to vacate the ratification of the foreclosure sale under Rule 2-535(b), as well as a motion to alter or amend the court's order overruling Myers's exceptions to the auditor's account and ratifying said account. The circuit court denied Myers's motions on July 8, 2014.

On appeal, Myers presents six questions for our review. Myers's questions, as originally set forth in his brief, are as follows:

1. Did the Circuit Court err by denying the Rule 2-535(b) Motion to Vacate, based on Law of the Case?

2. Did execution of the Modification Agreements render the foreclosure not actionable as a matter of law?

3. In recognition of Md. Rule 14-204, did the Substitute Trustee have the authority to sell the property?

4. Did the Circuit Court have the jurisdictional power to ratify the foreclosure sale?

5. Should the enrolled judgments be vitiated due to fraud, mistake, and irregularity?

6. Does the Auditor have the right to include the increased provisions per the Amended Note, in the Auditor's Report?

For the reasons set forth below, we affirm the judgment of the circuit court.

BACKGROUND

The background for this case is set forth in our unreported opinion from the previous appeal in the same case:

> Myers owns real property at 5734 Emory Road and 5800 Emory Road, both in Upperco, Maryland ("Properties"). On May 17, 2006, he executed a Deed of Trust ("DOT") and Promissory Note providing AmericasBank (now known as CFG Community Bank) ("Lender") a secured interest in the properties ("Loan"). Lender appointed Katz as substitute trustee.
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> The DOT was recorded in the Land Records of Baltimore County. The Promissory Note stated a maturity date of December 1, 2007, with a principal amount of $800,000.00. At the time the Loan was taken out, the property at 5734 Emory Road was subject to a first lien held by Wilshire Credit Corp. ("Wilshire") and the property at 5800 Emory Road was subject to a first lien held by Royal Financial Services ("Royal").
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> Subsequently, Myers defaulted on the Loan and, on January 30, 2008, Katz filed an order to docket in the circuit court seeking to exercise a power of sale. Katz submitted a statement of debt totaling $853,820.59.
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> In order to avoid a foreclosure sale by Royal, which had been scheduled for December 8, 2008, Lender paid Royal $61,801.63 for assignment of its note from Myers. In order to avoid a foreclosure sale by Wilshire, which had been scheduled for February 6, 2009, Lender paid Wilshire $78,854.60.
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> On March 4, 2009, Myers entered into a Loan Modification Agreement and Deed of Trust Modification Agreement with a principal amount of $1,004,263.33. Myers subsequently defaulted on the modified loan, and Katz scheduled a foreclosure sale of the properties for February 23, 2011. Katz sent notice of the sale by certified mail to Myers at the 5734 Emory Road address, where Myers's neighbor signed for the mail. In addition, Katz advertised the sale in *The Jeffersonian*, a local newspaper.
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> On February 23, 2011, Myers's Properties were sold at a public auction conducted by Katz for $225,000.00. On March 18,

> 2011, Myers filed Exceptions to Sale as well as a Motion to Quash Service of Process and a Motion to Set Aside Foreclosure Sale (collectively, "Motions"), wherein he claimed insufficient service of process by delivery and publication. Myers subsequently amended his Motions, both of which were denied by the circuit court on June 13, 2011. Accordingly, on June 27, 2011, the circuit court ratified the sale.
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> On July 1, 2011, Myers filed a Motion to Reconsider the denial of the Motions. On July 12, 2011, Myers filed an Amended Motion to Reconsider along with a Motion to Alter or Amend the Ratification of Sale. On July 14, 2011, before the circuit court could rule on those motions, Myers filed his appeal in Case No. 1058. The circuit court later denied Myers's outstanding motions.
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> On October 18, 2011, Myers filed a Motion to Vacate Foreclosure Sale and Dismiss Action, which the circuit court denied on December 28, 2011. Thereafter, Myers filed his appeal in Case No. 2637.

(Footnotes omitted).

We affirmed the circuit court's orders in both cases, holding that the court did not err in (1) ratifying the foreclosure sale, and (2) denying Myers's motion to vacate under Rule 2-535(b).

After this Court's mandate was issued, C. Larry Hofmeister, Jr., the Court Auditor, filed his Auditor's Report and Account with the circuit court on March 12, 2014. Myers filed Exceptions to Audito[r]'s Account or Report on March 21, 2014. Katz filed an opposition to Myer's exceptions on March 28, 2014. The trial court issued an order overruling Myers's exceptions and ratifying the auditor's account on April 28, 2014, which was entered on May 7, 2014.

On April 7, 2014, Myers filed a Motion to Vacate Judgment, Motion to Dismiss Action and Motion to Vacate Void Deed ("second motion to vacate"); he amended this

motion on April 22, 2014, and filed a Supplemental Motion to Vacate Judgment, Dismiss Action and Void Deed on May 23, 2014. Katz filed a motion to strike the second motion to vacate on April 11, 2014.

On May 19, 2014, Myers also filed a Motion to Alter or Amend Judgment, which related to the Auditor's Report and Account ("motion to alter or amend"), as well as a Suppl[e]mental Motion to Alter or Amend Judgment on May 23, 2014. Katz filed an opposition to the motion to alter or amend on May 23, 2014.

In an order dated July 8, 2014, the circuit court (1) denied Myers's second motion to vacate; (2) declared Katz's motion to strike the second motion to vacate moot; (3) denied Myers's motion to alter or amend; and (4) struck, *sua sponte*, Myers's Suppl[e]mental Motion to Alter or Amend Judgment.[1] In that order, the court stated: "Probably more important than anything else in deciding these motions is the fact that the ruling by the Court of Special Appeals is the Law of the Case, and as a trial Judge I have no authority to change." The court also noted that both motions were "fraught with a rambling dissertation of bald allegations and conclusory statement[s] not indicative of any fact support." On July 25, 2014, Myers filed a motion to alter or amend the July 8, 2014 order; the court denied such motion in an order dated September 3, 2014.

On July 29, 2014, Myers filed his notice of appeal to this Court.[2]

[1] Myers's amended and supplemental motions to vacate were in effect denied by the court when it denied Myers's second motion to vacate.

[2] In his brief, Katz filed a motion to dismiss Myers's appeal on the grounds that (1) "the appeal involves questions that could have been raised in the prior appeal but (continued . . .)

LAW OF THE CASE DOCTRINE

This Court has explained the law of the case doctrine:

> The law of the case doctrine, specifically a subset of the doctrine known as the mandate rule, prevents trial courts from dismissing appellate judgment and re-litigating matters already resolved by the appellate court. **Under that doctrine, a trial court is bound by the decision of an appellate court in the case before it . . . unless [the ruling is] changed or modified after reargument, and neither the questions decided nor the ones that could have been raised and decided are available to be raised in a subsequent appeal.** The doctrine, however, is a judicial creation borne of procedure and convenience, rather than an inflexible rule of law. [W]hile the doctrine binds a Maryland trial court to a prior decision of this Court in the same case, this Court may, but need not, invoke the doctrine; in other words, we are not precluded from opening up and reconsidering an issue we decided earlier, in the same case, when exceptional circumstances so warrant. **Thus, decisions rendered by a prior appellate panel [of the Court of Special Appeals] will generally govern the second appeal**, unless (1) the previous decision [was] patently inconsistent with controlling principles announced by a higher court and is therefore clearly incorrect, *and* (2) following the previous decision would create manifest injustice.

Andrulonis v. Andrulonis, 193 Md. App. 601, 614-15 (bold emphasis added) (alterations in original) (citations and internal quotation marks omitted), *cert. denied*, 415 Md. 608 (2010).

The Court of Appeals has explained the purpose behind the doctrine:

> **It is the well-established law of this state that litigants cannot try their cases piecemeal.** They cannot prosecute successive appeals in a case that raises the same questions that have been previously decided by this Court in a former appeal of that same case; and, furthermore, **they cannot, on the subsequent**

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were not raised," and (2) Myers's brief did not comply with the Maryland Rules. In the exercise of our discretion, we shall deny Katz's motion to dismiss.

> **appeal of the same case raise any question that could have been presented in the previous appeal on the then state of the record, as it existed in the court of original jurisdiction. If this were not so, any party to a suit could institute as many successive appeals as the fiction of his imagination could produce new reasons to assign as to why his side of the case should prevail, and the litigation would never terminate.** Once this Court has ruled upon a question properly presented on an appeal, or, if the ruling be contrary to a question that could have been raised and argued in that appeal on the then state of the record, as aforesaid, such a ruling becomes the "law of the case" and is binding on the litigants and courts alike, unless changed or modified after reargument, and neither the questions decided nor the ones that could have been raised and decided are available to be raised in a subsequent appeal.

Fid.-Balt. Nat'l Bank & Trust Co. v. John Hancock Mut. Life Ins. Co., 217 Md. 367, 371-72 (1958) (emphasis added); *accord Schisler v. State*, 177 Md. App. 731, 743-44 (2007).

DISCUSSION

I. Second Motion to Vacate

Myers's first five questions in the instant appeal relate to the circuit court's denial of his second motion to vacate. As previously stated, they are:

1. Did the Circuit Court err by denying the Rule 2-535(b) Motion to Vacate, based on Law of the Case?

2. Did execution of the Modification Agreements render the foreclosure not actionable as a matter of law?

3. In recognition of Md. Rule 14-204, did the Substitute Trustee have the authority to sell the property?
4. Did the Circuit Court have the jurisdictional power to ratify the foreclosure sale?

5. Should the enrolled judgments be vitiated due to fraud, mistake, and irregularity?

The argument section of Myers's brief contains thirteen arguments, twelve of which are related to the second motion to vacate (I-XI and XIII). These twelve arguments, however, are not linked in any cogent way to the issues raised. They are:

I. It was a mistake to Deny the Exceptions to Sale, and, Ratify the Sale without holding a hearing, when a hearing was required by Md. Rule 2-311(f).

II. The Appellee did not provide notice of the foreclosure sale in accordance with Md Rule 14-210(b) and the Fourteenth Amendment to the Constitution of the United States.

III. Inadequate Notice is Extrinsic Fraud[.]

IV. At the time Appellee filed the Order to Docket Foreclosure, there were foreclosure actions pending on both properties, by parties having a bona fide interest, and in priority position, of which the Circuit Court had complete general jurisdiction.

V. The advertisement was in direct contravention of the law.

VI. The foreclosure was in conflict with Md. Rule 14-204.

VII. Based on legal doctrine, the foreclosure was "not actionable as a matter of law," and, the Court lacked the jurisdictional power to ratify the sale.

VIII. A false promise of a compromise is Extrinsic Fraud[.]

IX. The Notice of Sale and two advertisements were void ab initio[.]

X. The Modification Agreements rendered the Foreclosure not actionable as a matter of law.

XI. The Circuit Court's Denial of the Motion to Vacate Foreclosure Sale and Dismiss Action, without holding a hearing, when the ruling was dispositive of the Case, was a mistake within the confines of Rule 2-311(f) and Rule 2-535(b).

XIII. Following the previous decision would create "manifest injustice[.]"

Each argument challenges the validity of the February 23, 2011 foreclosure sale of the Properties. Myers acknowledges that his second motion to vacate was filed more than thirty days after the final ratification of the foreclosure sale, and recognizes that, to overturn an enrolled judgment under Rule 2-535(b), he must show fraud, mistake, or irregularity. Thus, in virtually every argument, Myers asserts that the defect in the foreclosure sale is a "fraud, mistake, or irregularity." For example, he argues that it was a "mistake" for the circuit court to deny Myers's exceptions to the foreclosure sale without holding a hearing, and contends that the inadequate notice that he received regarding the foreclosure sale constituted an "irregularity."

Myers also acknowledges that this Court's prior opinion affirmed the ratification of the foreclosure sale. He then argues that the law of the case should not apply, "because the initial action was not fully and fairly litigated."

What Myers overlooks and never addresses is why all of the arguments that he raised in support of his second motion to vacate could not have been raised when he filed his first motion to vacate the ratification of the foreclosure sale under Rule 2-535(b) on October 18, 2011, and then again when the denial of that motion was reviewed by this Court in the first appeal.[3] The law of the case doctrine requires all claims that could be raised in an appeal must be raised in that appeal. *Schisler*, 177 Md. App. at 743-44. If not raised, such claims cannot be raised in any subsequent appeal. *Id*.

[3] In fact, some of his arguments, such as those regarding the modification agreements and the notice of foreclosure sale, were actually raised and decided by this Court in the first appeal, and thus clearly cannot be re-litigated.

The instant appeal is a prime example of a litigant trying his case piecemeal, which the law of the case doctrine is designed to prevent. When Myers filed his first motion to vacate on October 18, 2011, he could have raised every fraud, mistake, or irregularity argument under Rule 2-535(b) that he raises in the instant appeal. The record before the circuit court regarding the loan transaction affecting the Properties and the foreclosure sale procedure was the same in 2014 as it was in 2011. To address any of his arguments on the merits now, even to deny them, would have the effect of permitting Myers to "institute as many successive appeals as the fiction of his imagination could produce new reasons to assign as to why his side of the case should prevail, and the litigation would never terminate." *Fid/-Balt. Nat'l Bank*, 217 Md. at 372. This we will not do.

II. Motion to Alter or Amend

In argument XII, which is the only argument that relates to his question 6, Myers contends that the trial court erred in ratifying the auditor's account, because the court's order "totally ignore[d] the provisions of the additional security, by [Myers], through the IDOT [indemnity deed of trust] and Limited Guarant[y] from Mt. Oak [Estates, LLC], and also ignores the basic doctrines of Maryland law." We disagree.

Myers never mentioned the additional security, the indemnity deed of trust, or the limited guaranty in his original or supplemental motion to alter or amend. In his motion to alter or amend, Myers argued that "the Note, as modified by the Modification Agreements, dated March 4, 2009, superseded the terms of the original Note. [Katz] has no cause of action as to the original Note, and, the Statement of Debt per the original

Note is a nullity." Myers clarifies this argument in his Suppl[e]mental Motion to Alter or Amend by arguing that "[t]he terms that were modified by the Agreement, and therefore, lost their effect and enforceability included, but are not limited, to the following: a. the principal of the loan, b. the maturity, c. the interest, and d. the default provisions." Because Myers did not raise any issue regarding the additional security, the indemnity deed of trust, or the limited guaranty in the proceedings below, such issues are not preserved for our review. *See* Md. Rule 8-131(a).

CONCLUSION

For the foregoing reasons, the law of the case doctrine precludes further litigation of the issues that could have been raised in Myers's first appeal. If Myers continues to attack a judgment that is clearly valid and final by imagining new reasons why he should win,[4] Myers runs the risk of incurring sanctions in the form of attorneys' fees pursuant to

[4] In his second motion to vacate, Myers argued that the ratification of the foreclosure sale was a "void judgment," (1) because Katz did not have standing to sell the Properties, and thus the ratification was "rendered without jurisdiction," (2) because"there was no default in the performance of any obligations secured by the deed of trust," and (3) "due to [e]quitable [e]stoppel and [Katz's] relinquishment of the right to foreclose." As an initial matter, we note that Myers did not raise these arguments in his brief, and thus they are waived. *See* Md. Rule 8-504. Furthermore, we disagree with Myers on the merits. As this Court stated in *Karabetis v. Mayor & City Council of Baltimore*,

> [T]he Court of Appeals said that juridically, jurisdiction refers to two quite distinct concepts: (i) the *power* of a court to render a valid final judgment, and (ii) the *propriety* of granting the relief sought. **Only when a court lacks the fundamental jurisdiction to render the judgment is there an absence of authority so as to render the judgment a nullity.** The power of a court to hear and determine disputes is derived from applicable constitutional and

(continued . . .)

Rule 1-341. *See* Md. Rule 1-341(a) (allowing for the court, upon an adverse party's motion, to require a party that maintains or defends a proceeding in bad faith or without substantial justification to pay costs and reasonable expenses, including attorneys' fees).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; APPELLANT TO PAY COSTS.

> statutory provisions. **If**, by that law which defines the authority of the court, **a judicial body is given the *power* to render a judgment over the class of cases within which a particular one falls, then its action cannot be assailed for want of subject matter jurisdiction.**

72 Md. App. 407, 418-19 (1987) (italics in original) (bold emphasis added) (citations and internal quotation marks omitted). Although Myers is correct that a void judgment may be attacked either directly by appeal or collaterally, the ratification of the foreclosure sale in the instant case is not a void judgment, because the court had valid subject matter jurisdiction when it ratified the sale. *See Finch v. LVNV Funding, LLC*, 212 Md. App. 748, 755 (2013), *cert. denied*, 435 Md. 266 (2013); Md. Rule 14-203(a) ("An action to foreclose a lien shall be filed in the county in which all or any part of the property subject to the lien is located."). Myers's arguments regarding why the ratification of sale was void do not concern the court's power to decide the case, but rather "whether it was appropriate to grant the relief"; such arguments "merge[] into the final decree and cannot thereafter be successfully assailed for that reason once enrolled." *Preissman v. Mayor & City Council of Balt.*, 64 Md. App. 552, 559 (1985), *cert. denied*, 305 Md. 175 (1986).