

Circuit Court for Anne Arundel County  
Case No. C-02-CV-19-000084

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1209

September Term, 2021

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ROBERT G. TOM, *et al.*

v.

GREGORY N. BRITTO, *et al.*

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Berger,  
Nazarian,  
Albright,

JJ.

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Opinion by Albright, J.

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Filed: October 19, 2022

\*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 2007, Robert and Susan Tom (the “Toms”) defaulted on a mortgage secured by their primary residence (the “Property”). In 2014, the Toms received a Notice of Intent to Foreclose (“NOI”) from their loan servicer, Nationstar Mortgage, LLC (“Nationstar”). The following year, Nationstar, through a trustee, commenced a foreclosure action in the Circuit Court for Anne Arundel County. The foreclosure action was “closed” in 2016 and remained so when the trustee’s 2018 attempt to re-open it failed. Thus, the Toms remained in possession of their residence.

Thereafter, Gregory N. Britto, substituted in as trustees for Nationstar (collectively “Substitute Trustee”), and, in 2019, filed a second foreclosure action. The Substitute Trustee did not send another NOI to the Toms; rather, the Substitute Trustee attached to their filing a copy of the NOI that was sent in 2014 (the “2014 NOI”). At least three times, Mr. Tom moved to dismiss or stay the second foreclosure action, but these motions failed, and the Property was sold at auction. One of the arguments Mr. Tom pressed was that the Substitute Trustee’s failure to send a new NOI before filing the second action, coupled with the failure to include a new NOI with the filing, deprived the circuit court of jurisdiction to foreclose. Mr. Tom filed exceptions to the sale, but, before ruling on those exceptions, the court issued an order ratifying the sale. The court subsequently denied Mr. Tom’s exceptions. Mr. Tom noted this appeal.<sup>1</sup>

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<sup>1</sup> Ms. Tom, whose last name has now changed, is not a party to this appeal. She; however, joined Mr. Tom on several motions filed in the circuit court during the second foreclosure action. Because the case is still captioned in Ms. Tom’s former last name, we will refer to her as such.

Here, Mr. Tom presents four questions, which we have rephrased, reordered, and consolidated into two questions.<sup>2</sup> They are:

1. Did the Substitute Trustee’s failure to send a new NOI prior to initiating the second foreclosure action deprive the circuit court of jurisdiction over the matter?
2. Did the circuit court err in allowing the second foreclosure action to proceed, and in subsequently ratifying the foreclosure sale, even though the Substitute Trustee failed to send a new NOI prior to initiating the action?

For the reasons that follow, we hold that the circuit court properly exercised jurisdiction over the matter. We also hold that the court did not err in allowing the foreclosure action to proceed or in ratifying the foreclosure sale. We therefore affirm the circuit court’s judgment.

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<sup>2</sup> Mr. Tom phrased the questions as:

1. Did the lower court err by issuing its final order ratifying and confirming the foreclosure sale conducted by Appellees?
2. Did the failure of the foreclosing parties to provide me or the co-mortgagor with the required valid Notice of Intent to Foreclose (“NOI”) in this action, as required by Maryland Real Property Article, Section 7-105.1(c), render the foreclosure sale invalid?
3. In the absence of a valid NOI filed in this action, did the lower court have jurisdiction to issue a final order ratifying and confirming the foreclosure sale conducted by Appellees?
4. In the absence of a valid NOI filed in this action, did Appellees’ Order to Docket the foreclosure fail to state a cause of action upon which the lower court could grant relief?

## **BACKGROUND**

In February 2007, the Toms obtained a mortgage secured by the Property. In the event of default, the lender had the power of sale and the Toms' assent to a decree of sale, among other things. The Toms defaulted on the mortgage in July 2007, and they remained in default from that point forward.

### ***First Foreclosure Action Initiated***

No party disputes that the 2014 NOI complied with § 7-105.1(c) of the Real Property Article (“RP”) of the Maryland Annotated Code. In November 2014, Nationstar, as the servicer of the mortgage, sent the Toms the NOI pursuant to this statute. The statute requires that a foreclosing party send an NOI at least 45 days before the filing of a foreclosure action, and the NOI must include the following information:

1. The name and telephone number of:
  - A. The secured party;
  - B. The mortgage servicer, if applicable; and
  - C. An agent of the secured party who is authorized to modify the terms of the mortgage loan;
2. The name and license number of the Maryland mortgage lender and mortgage originator, if applicable;
3. The amount required to cure the default and reinstate the loan, including all past due payments, penalties, and fees;
4. A statement recommending that the mortgagor or grantor seek housing counseling services;
5. The telephone number and the Internet address of nonprofit and government resources available to assist mortgagors and grantors facing foreclosure, as identified by the Commissioner of Financial Regulation;
6. An explanation of the Maryland foreclosure process and time line, as prescribed by the Commissioner of Financial Regulation; and
7. Any other information that the Commissioner of Financial Regulation requires by regulation.

RP § 7-105.1(c)(1) (eff. Apr. 14, 2014); RP § 7-105.1(c)(4) (eff. Apr. 14, 2014).

The 2014 NOI contained the requisite information: (1) “Wilmington Trust, National Association, as Trustee for Structured Asset Mortgage Investments II Trust 2007-AR3, Mortgage Pass-Through, Series 2007-AR3” as the secured party with a phone number (2) Nationstar as the mortgage/loan servicer with a phone number, (3) “COUNTRYWIDE BANK, N.A.” as mortgage lender, (4) \$320,640.10 was the amount needed to cure the default as of November 3, 2014 (the date of the 2014 NOI), (5) a document detailing the availability of free housing counseling services, (6) multiple documents providing a phone number and web address to Maryland Hope, a state resource to assist homeowners in mortgage foreclosures, and (7) a document entitled “THE MARYLAND FORECLOSURE PROCESS AND TIME LINE [sic]” describing the future steps in the foreclosure proceeding. Because the 2014 NOI contained all the necessary information required by RP § 7-105.1(c)(1), the 2014 NOI was valid.

In February 2015, the then-acting trustees initiated the first foreclosure action in the circuit court. At some point around 2016, before the entry of a final order of ratification, the circuit court “closed” the case. The circuit court appeared to treat Ms. Tom’s bankruptcy discharge as a dismissal of the foreclosure case. In any event, on learning of the closure, the trustee moved to re-open the case, a request that was denied on November 16, 2018.

### ***Second Foreclosure Action Initiated***

On January 3, 2019, the Substitute Trustee initiated a second foreclosure action by filing an Order to Docket in the circuit court. The Substitute Trustee included in that filing

a copy of the 2014 NOI. It does not appear from the record that the Substitute Trustee sent a new NOI, or resent the 2014 NOI, to the Toms prior to initiating the second foreclosure action. The Substitute Trustee, however, sent a copy of the second Order to Docket, with the 2014 NOI and other attachments, to the Toms shortly after filing.

***Motion to Stay Sale of Property and Dismiss Foreclosure Action***

On February 19, 2019, the Toms filed a “Motion to Stay Sale of Property and Motion to Dismiss Foreclosure Action.” In that motion, the Toms alleged that the Substitute Trustee was barred from bringing the second foreclosure action by *res judicata*, collateral estoppel, and statute of limitations. The Toms’ primary argument was that, because the first foreclosure action and the second foreclosure action involved the same parties and the same claims, the second foreclosure action was barred. At no point did the Toms mention the Substitute Trustee’s failure to send a new NOI prior to initiating the second foreclosure action or otherwise challenge the Order to Docket for including the 2014 NOI. On May 7, 2019, after a hearing, the circuit court denied the motion.

***Request for In Banc Review***

On May 10, 2019, Mr. Tom filed a notice of *in banc* review, in which he challenged the circuit court’s decision to deny his February 19, 2019 motion. Mr. Tom raised the same arguments he raised before the circuit court.

***Request for Foreclosure Mediation***

That same day, the Toms filed a “Request for Foreclosure Mediation” in the circuit court. They asked the court to authorize foreclosure mediation between them and the

Substitute Trustee to see if they qualified for loan modification or other alternatives to foreclosure.

***The Screening Order***

On May 15, 2019, the circuit court notified the parties, via form order, that the Order to Docket was incomplete. What was missing was a report of what occurred in prefile mediation or, alternatively, a statement that the parties had elected not to participate in prefile mediation. The parties were instructed to correct this deficiency within 30 days or the “case may be dismissed without prejudice.” The form also instructed that a sale could not proceed until the deficiencies were “resolved and confirmed by the Court.” Regarding the NOI, no deficiencies were noted. Eight days later, in a Residential Property Statement and No Pre-File Mediation Statement, the Substitute Trustee notified the circuit court that “[t]he parties did not elect to participate in pre-file mediation.”<sup>3</sup>

***Motion to Strike Residential Property Statement and  
No Pre-File Mediation Statement***

On June 10, 2019, Mr. Tom moved to strike the Substitute Trustee’s Residential Property Statement and No Pre-File Mediation Statement. In that motion, Mr. Tom noted, for the first time, that while he had received the 2014 NOI before the first foreclosure action was filed, the Substitute Trustee had failed to send him a new NOI prior to filing the Order to Docket in the second foreclosure action. Based on that failure, and with the further allegation that “[c]ircumstances with respect to the subject Deed of Trust had changed since

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<sup>3</sup> The circuit court confirmed that this Statement corrected the deficiency on June 3, 2019.

2014[,]” Mr. Tom asked the circuit court to strike the Substitute Trustee’s Residential Property Statement and No Pre-File Mediation Statement. Mr. Tom did not specify any circumstances that had changed, nor what new information should have been included in a new NOI. The circuit court ultimately denied Mr. Tom’s motion on July 16, 2019.

***Foreclosure Mediation***

Meanwhile, on June 24, 2019, the parties participated in postfile foreclosure mediation.<sup>4</sup> On July 9, 2019, the foreclosure mediator filed a notification stating that no agreement had been reached. On July 16, 2019, the circuit court entered an order reflecting the parties’ failure to reach an agreement and authorizing the Substitute Trustee to schedule and advertise a foreclosure sale of the Property.

***Motion for Temporary Stay***

On July 29, 2019, Mr. Tom filed a “Motion for Temporary Stay of Foreclosure Sale.” In that motion, Mr. Tom argued that, because the circuit court had yet to hold an *in banc* hearing to review the denial of his February 19, 2019 motion, the Substitute Trustee should not be permitted to proceed with a foreclosure sale. Again, Mr. Tom did not

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<sup>4</sup> Foreclosure mediation is:

[A] conference at which the parties in a foreclosure action, their attorneys, additional representatives of the parties, or a combination of those persons appear before an impartial individual to discuss the positions of the parties in an attempt to reach agreement on a loss mitigation program for the mortgagor or grantor.

RP § 7-105.1(a)(4). Prefile mediation occurs “*before* the date on which the order to docket or complaint to foreclose is filed.” § 7-105.1(a)(10) (emphasis added). Postfile mediation occurs *after* the filing of an order to docket or complaint. § 7-105.1(a)(9).



challenge the Substitute Trustee’s failure to send a new NOI prior to initiating the second foreclosure action or otherwise challenge the Order to Docket for including the 2014 NOI. On August 7, 2019, the circuit court denied the motion.

***Motion to Dismiss Foreclosure Action for Lack of Jurisdiction***

On August 2, 2019, Mr. Tom filed a “Motion to Dismiss Foreclosure Action for Lack of Jurisdiction.” In that motion, Mr. Tom again noted that the Substitute Trustee had failed to mail a new NOI prior to filing the second foreclosure action. Mr. Tom argued that this failure deprived the circuit court of jurisdiction and required dismissal of the foreclosure action. On September 4, 2019, the court denied Mr. Tom’s motion. Mr. Tom thereafter filed a motion for reconsideration, which was denied on January 24, 2020.

***Exceptions to Foreclosure Sale***

One month later, on February 11, 2020, the Property was sold. On March 20, 2020, Mr. Tom filed exceptions to the foreclosure sale. As part of those exceptions, Mr. Tom argued that the circuit court should set aside the sale based on Substitute Trustee’s failure to have sent a new NOI prior to filing the second foreclosure action.

***In Banc Review***

On April 21, 2021, after a hearing, the *in banc* panel affirmed the circuit court’s denial of Mr. Tom’s February 19, 2019 motion. The panel found that *res judicata* and collateral estoppel did not bar the second foreclosure action because there was no final judgment or resolution of the issues in the first foreclosure action. The panel also found that the statute of limitations cited by Mr. Tom was inapplicable in a foreclosure action.

The panel further concluded that the court did not abuse its discretion in denying Mr. Tom’s motion. The panel noted that Mr. Tom did not contest the validity of the lien or the lien instrument, nor did he claim that the Substitute Trustee lacked the right to foreclose.

### ***Foreclosure Sale Ratified***

On September 13, 2021, the circuit court ratified the foreclosure sale. Mr. Tom filed a motion to alter or amend the court’s judgment based on the circuit court’s failure to rule on his exceptions and the Substitute Trustee’s failure to send a new NOI before filing the second Order to Docket. The court denied the motion and, at the same time, denied Mr. Tom’s exceptions. This timely appeal followed.

### **DISCUSSION**

We start by explaining the scope of our review. A litigant who opts for *in banc* review by the circuit court is not entitled to a second appeal of right.<sup>5</sup> See Md. Rule 2-551(h) (“Any party who seeks and obtains review under this Rule has no further right of appeal.”) Here, Mr. Tom sought and secured *in banc* review of the circuit court’s denial of his February 19, 2019 motion. Sitting *in banc*, the circuit court affirmed the circuit court’s denial of Mr. Tom’s motion, and Mr. Tom did not seek further discretionary review. Accordingly, we do not review the circuit court’s denial of Mr. Tom’s February 19, 2019 motion.<sup>6</sup>

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<sup>5</sup> But an opponent’s pursuit of *in banc* review does not foreclose appeal to this court. Md. Rule 2-551(h) (“The decision of the panel does not preclude an appeal to the Court of Special Appeals by an opposing party who is otherwise entitled to appeal.”).

<sup>6</sup> As discussed earlier, in his February 19, 2019 motion, Mr. Tom did not include any arguments concerning the 2014 NOI (or failure to send a new NOI), so those arguments were not part of the *in banc* review. Here, the Substitute Trustee looks to the *in banc* review

Before outlining Mr. Tom’s arguments, we emphasize three arguments he does not make. Mr. Tom does *not* contend that since 2014, when Nationstar sent him the NOI, that RP § 7-105.1(c) has changed what a lender must include in an NOI in order to initiate a foreclosure action correctly. Nor does he say that the 2014 NOI attached to the second Order to Docket did not comply with the RP § 7-105.1(c) as it existed in 2019. And he does not contend that the actual information in the 2014 NOI was erroneous in 2019.<sup>7</sup>

Regarding the arguments Mr. Tom does make, all three focus on the Substitute Trustee’s failure to send a new NOI to him prior to filing the second foreclosure action and

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and argues that because Mr. Tom opted for that mode of review as his appeal of right, many, if not all, of Mr. Tom’s instant arguments are barred by *res judicata*. Specifically, the Substitute Trustee contends that because Mr. Tom could have raised his instant challenge about the NOI in his February 19, 2019 motion, his failure to do so precludes him from raising that argument in this subsequent appeal. Given our conclusion here, we do not reach this issue.

Nor do we review the circuit court’s denial of Mr. Tom’s July 29, 2019 Motion for Temporary Stay of Foreclosure Sale either, as he has presented no issue about that denial here. Md. Rule 8-504(a)(6).

<sup>7</sup> From our review of the record, it appears that the information in the 2014 NOI remained accurate in 2019. With the filing of the second Order to Docket on January 3, 2019, the Substitute Trustee filed a “COMBINED AFFIDAVIT IN COMPLIANCE WITH MD RULE 14-207(b)(2) – Right to Foreclose and Amount of Debt, MD RULE 14-207(b)(3) – Ownership of and Accuracy of Copy of Debt Instrument Section 7-105.1(e)(1)(ii)(1) and (2), RP Article – Date of Default, Nature of Default, Compliance and Requirement to Send NOI, and Accuracy of NOI.” In this Combined Affidavit, the Substitute Trustee represented that Wilmington Trust, National Association had the right to enforce the promissory note, that the note was in default and had been since June 2, 2007, that the reason for the default was the Toms’ failure to make periodic payments on the debt, what the total then owed was and how that figure was arrived at, and that the 2014 NOI was accurate when it was sent, among other things. This information is consistent with the 2014 NOI.

the inclusion of the 2014 NOI with the Order to Docket in the second foreclosure case. Thus, Mr. Tom first points to 7-105.1(c), RP § 7-105(e), four related COMAR provisions,<sup>8</sup> and *Granados v. Nadal*, 220 Md. App. 482 (2014), to argue that the Substitute Trustee’s failure to send a new NOI prior to filing the second foreclosure action renders the subsequent foreclosure sale invalid. Second, Mr. Tom contends that, under the Maryland Rules, the Substitute Trustee’s failure to include a new NOI with the second Order to Docket left the circuit court without jurisdiction to foreclose. Third, Mr. Tom argues that the second Order to Docket did not state a cause of action because the NOI that it included was not valid. We disagree with all of these arguments.

Foreclosure actions are unlike other types of civil lawsuits:

A foreclosure action under a power of sale ‘is intended to be a summary, in rem proceeding, ‘the primary object of which is to determine the rights of all persons as to their interests in the subject property.’ A foreclosure case [pursuant to a power of sale] is thus initiated not by filing a complaint, but by filing an ‘order to docket’.”

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<sup>8</sup> These are COMAR 09.03.12.01B, 09.03.12.02B, 09.03.12.08E, and 09.03.12.09E. Mr. Tom argues that because these regulations were adopted or amended after the 2014 NOI was sent, the Substitute Trustee could not rely on the 2014 NOI to satisfy RP § 7-105.1(c)’s notice requirements for the second foreclosure. To be sure, it appears that these regulations were adopted or amended after 2014. But Mr. Tom did not mention these regulations (or changes to them) in his June 10, 2019 or August 2, 2019 motions. Moreover, here, Mr. Tom does not show how changes in these regulations affect this case. At least one regulation, COMAR 09.03.12.08E pertaining to “vacant and abandoned” property, appears not to apply at all given that the Property was occupied by the Toms when the second foreclosure action started. Thus, without more specificity from Mr. Tom, we are left to guess. For these reasons, we will not address Mr. Tom’s arguments related to the above COMAR regulations. Md. Rules 8-131(a) and 8-504(a)(6).

*Daughtry v. Nadel*, 248 Md. App. 594, 601-02 (2020) (cleaned up). Md. Rule 14-207(a)(1) (“An action to foreclose a lien pursuant to a power of sale shall be commenced by filing an order to docket. No process shall issue.”).<sup>9</sup>

Procedurally, a borrower has two means by which to challenge such a foreclosure action: 1) file a pre-sale motion to stay or dismiss pursuant to Md. Rule 14-211; and 2) file post-sale exceptions pursuant to Md. Rule 14-305.<sup>10</sup> *Hood v. Driscoll*, 227 Md. App. 689, 693-94 (2016).<sup>11</sup> We review the denial of a pre-sale motion to stay or dismiss for abuse of discretion. *Svrcek v. Rosenberg*, 203 Md. App. 705, 720 (2012). We review a court’s denial of post-sale exceptions on both the law and the evidence, giving deference to the

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<sup>9</sup> By contrast, where the lien instrument contains no power of sale, foreclosure is initiated by filing a complaint to foreclose. Md. Rule 14-207(a)(2).

<sup>10</sup> In arguing that the Substitute Trustee’s failure to include a new NOI with the second Order to Docket, Mr. Tom says “[t]he lower court lacked jurisdiction over the property that is the subject of this foreclosure case.” He adds that “[t]he lower court’s ability to exercise foreclosure jurisdiction over the subject property is contingent upon a proper filing of the foreclosure case.”

Notwithstanding Mr. Tom’s use of “subject” in his argument, we do not read his challenge as going to the circuit court’s subject matter jurisdiction. In any event, “[t]he circuit court has general equity jurisdiction over mortgage foreclosure proceedings and it may invoke all the equitable powers with which it is imbued under the common law.” *Voge v. Olin*, 69 Md. App. 508, 514 (1986) (citations omitted); *Saunders v. Stradley*, 25 Md. 85, 91 (1975). Accordingly, even if Mr. Tom’s focus on the lack of a second NOI amounted to a challenge to the circuit court’s subject matter jurisdiction, his challenge would fail.

<sup>11</sup> “[A] third avenue of relief [is] directed not at the right to sell the property or to the conduct of the sale itself, but to the allowance or disallowance of expenses of the sale or the distribution of net proceeds. That is done through exceptions to the auditor’s report following ratification of a sale.” *Hood*, 227 Md. App. at 694 n.1 (citations omitted). It does not appear that Mr. Tom had availed himself of this third kind of relief prior to noting this appeal.

court’s factual findings, but reviewing the court’s legal conclusions *de novo*. *Jones v. Rosenberg*, 178 Md. App. 54, 68 (2008).

### **A. Pre-sale Motion to Stay or Dismiss**

Under Maryland Rule 14-211, after a foreclosure action has been initiated, a borrower “[m]ay file a motion to stay the sale of the property and dismiss the foreclosure action.” Md. Rule 14-211(a)(1). Such a motion “[r]aise[s] a challenge to the foreclosure action itself—not to the manner in which the sale is conducted but to whether there should be a sale at all.” *Hood v. Driscoll*, 227 Md. App. 689, 694 (2016) (footnote omitted). Thus, Rule 14-211 sets forth strict requirements for when such a motion must be filed in an action involving residential property:

#### *(2) Time for Filing.*

(A) Owner-Occupied Residential Property. In an action to foreclose a lien on owner-occupied residential property, a motion by a borrower to stay the sale and dismiss the action shall be filed no later than 15 days after the last to occur of:

- (i) the date the final loss mitigation affidavit is filed;
- (ii) the date a motion to strike postfile mediation is granted; or
- (iii) if postfile mediation was requested and the request was not stricken, the first to occur of:
  - (a) the date the postfile mediation was held;
  - (b) the date the Office of Administrative Hearings files with the court a report stating that no postfile mediation was held; or
  - (c) the expiration of 60 days after transmittal of the borrower’s request for postfile mediation or, if the Office of

Administrative Hearings extended the time to complete the postfile mediation, the expiration of the period of the extension.

Md. Rule 14-211(a)(2).

The Rule also states that, if a motion to stay or dismiss is not timely filed, it must “[s]tate with particularity the reasons why the motion was not filed timely.” Md. Rule 14-211(a)(3)(F). Finally, the Rule states that, under certain circumstances, a motion to stay or dismiss must be denied:

(1) *Denial of Motion*. The court shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion:

(A) was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule;

(B) does not substantially comply with the requirements of this Rule; or

(C) does not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action.

Md. Rule 14-211(b)(1). Where the borrower does not challenge the validity of the lien, or the lender’s right to foreclose, it is an abuse of discretion to grant a stay of the foreclosure proceeding. *Bechamps v. 1190 Augustine Herman, LC*, 202 Md. App. 455, 462-63 (2011).

Against this backdrop, we hold that the circuit court did not err in refusing to stay the sale or dismiss the second foreclosure action in response to Mr. Tom’s August 2, 2019 motion. At the Toms’ request, postfile mediation was held on June 24, 2019. Mr. Tom was therefore required to file a motion to stay or dismiss pursuant to Rule 14-211 within 15 days of that date. Mr. Tom’s “Motion to Dismiss Foreclosure Action for Lack of

Jurisdiction,” in which he raised the issue of the NOI and asked the court to dismiss the case pursuant to Rule 14-211, was not filed until August 2, 2019, well beyond the 15-day time limit set forth in Rule 14-211. In addition to being untimely, Mr. Tom’s motion also failed to state with particularity the reasons why the motion was not timely filed, and it provided no showing of “good cause” for excusing his failure to comply with subsection (a)(2) of the Rule. For those reasons, the court did not abuse its discretion in denying Mr. Tom’s August 2, 2019 motion.

Similarly, we discern no error, or abuse of discretion, in the circuit court’s denial of Mr. Tom’s June 10, 2019 Motion to Strike Residential Property Statement and No Pre-File Mediation Statement. The gist of Mr. Tom’s argument in that motion was that the second foreclosure action could not proceed because it was based on the 2014 NOI. Fundamentally, though, a motion to strike is for “pleadings,” Md. Rule 2-322(e); an Order to Docket is not a pleading, Md. Rule 1-202(v). And, a motion to strike cannot function as a motion to dismiss for failure to state a claim. *See Millison v. Citizens Nat. Bank of Southern Md.*, 256 Md. 431, 438 (1970) (holding that motion to strike cannot “[s]erve the office of a demurrer, . . .”). On these grounds alone, denial of Mr. Tom’s June 10, 2019 motion was not inappropriate.

Nonetheless, even if we were to reach the merits of Mr. Tom’s NOI argument, and thereby overlook the untimeliness of Mr. Tom’s August 2, 2019 motion and the flaws in Mr. Tom’s June 10, 2019 motion, his challenge would fail. The second foreclosure action came on the heels of the first. The 2014 NOI contained the information required by the



Real Property Article. There is no contention that the information in the 2014 NOI was inaccurate at the time of the second foreclosure action. Therefore, the “new” NOI Mr. Tom contends he was required to receive pursuant to RP § 7-105.1(c) would have largely duplicated the 2014 NOI, with the only changes being the date the notice was sent to the Toms and an updated (much larger) amount for cure. Under these circumstances, we fail to see how the use of the 2014 NOI in the second foreclosure action would have robbed the circuit court of *in rem* jurisdiction or otherwise rendered the foreclosure sale invalid. The Toms and the Substitute Trustee attended foreclosure mediation – a variety of foreclosure mitigation – while the second foreclosure action was proceeding. At best, failure to send a new NOI before filing the second foreclosure action and inclusion of the 2014 NOI with the second Order to Docket were harmless and not a basis for dismissal.

Maryland’s Rules make clear that in an *in rem* foreclosure action such as this, the circuit court’s jurisdiction attaches when the Order to Docket is filed. Relevant here are Md. Rule 14-203, which governs the attachment of jurisdiction, and Md. Rule 14-205, which sets forth the requirements for the filing of a foreclosure action. Rule 14-203 states, in pertinent part, that the circuit court’s “jurisdiction over the property subject to the lien attaches when an action to foreclose is filed.” Md. Rule 14-203(b). Rule 14-205(b) states the following:

[A]n action to foreclose a lien on a residential property may not be filed until the later of (1) 90 days after a default for which the lien instrument lawfully allows a sale, or (2) 45 days after the notice of intent to foreclose required by [RP § 7-105.1(c)] . . . has been sent . . . .

Also relevant is Maryland Rule 14-207.1, which allows the court “[t]o screen pleadings and papers filed in an action to foreclose a lien” and to determine if “[t]he pleadings or papers filed do not comply with all statutory and Rule requirements[.]” Md. Rule 14-207.1(a). That Rule also states that, if the court determines that a pleading or paper is not in compliance with a relevant statute or rule, the court may notify the plaintiff “[t]hat the action will be dismissed without prejudice or that some other appropriate order will be entered by reason of the non-compliance if the plaintiff does not demonstrate within 30 days that the papers are legally sufficient or that the deficiency has been cured.” Md. Rule 14-207.1(a).

Here, the circuit court acquired *in rem* jurisdiction over the Property when the second Order to Docket was filed on January 3, 2019. Md. Rule 14-203. On May 15, 2019, the circuit court notified the parties that the Order to Docket was incomplete because it lacked a report about what had occurred at prefile mediation. On May 23, 2019, the Substitute Trustee notified the circuit court that the parties did not elect prefile mediation. On June 3, 2019, the circuit court deemed the Order to Docket complete.

Although Mr. Tom would have us interpret Rule 14-205 to require that its requirements be met *before* jurisdiction attaches, nothing in the language of either Rule 14-205 or 14-203 says that. Indeed, interpreting Rule 14-203 in such a manner would require us to add words or conditions where none exist, additions that would be contrary to our basic rules for construing Maryland’s statutes and procedural rules.<sup>12</sup> Because the Order to

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<sup>12</sup> “We begin with the plain language of the rule, and if that language is clear and unambiguous, we need not look beyond the provision’s terms to inform our analysis.”

Docket was filed, and deficiencies in it were timely corrected, the circuit court acquired (and maintained) jurisdiction over the Property.

Finally, we are unpersuaded by Mr. Tom’s reliance on *Granados v. Nadel*, 220 Md. App. 482 (2014), a case in which we reversed the ratification of a foreclosure sale because the lender, in filing a second foreclosure action, failed to send a new NOI after the first foreclosure action was dismissed. *Id.* at 509. In that case, unlike this case, the borrower filed a timely motion to dismiss that complied with Rule 14-211. *Id.* at 497 n. 13. That fact alone distinguishes *Granados* from this case, as the requirements of Rule 14-211(b)(1)(A) were not at issue in that case. *See Id.* (“The court *shall* deny the motion, with or without a hearing, if the court concludes from the record before it that the motion . . . was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule[.]”) (emphasis added).

*Granados* is distinguishable in other salient respects. In that case, the NOI sent prior to the first foreclosure action preceded several substantive changes to RP § 7-105.1(c), changes designed to tell borrowers how to “[p]ursue remediation of their default.” *Granados*, 220 Md. App. at 506. Specifically, we noted that between the filing of the first

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*Lopez-Villa v. State*, 478 Md. 1, 11 (2022) (internal quotations omitted). Moreover, the rule “must be given a reasonable interpretation, not one that is absurd, illogical, or incompatible with common sense.” *Lockshin v. Semsker*, 412 Md. 257, 276 (2010) (referencing cases). “A court may neither add nor subtract words to alter the meaning of statutory terms and must avoid forced or subtle constructions that limit or extend a statute’s application.” *Md. Office of People’s Counsel v. Md. Public Serv. Comm’n*, 226 Md. App. 483, 505 (2016). Here, Mr. Tom does not contend that Rules 14-203, 14-205, or 14-207.1(a) are ambiguous.

and second foreclosure actions, the General Assembly added subsection (5) to RP §7-105.1(c). That new subsection required that for owner-occupied residential property, a notice of intent to foreclose had to include a loss mitigation application, instructions for how to complete it, a telephone number to call to confirm receipt of the application, a description of eligibility requirements for applicable loss mitigation programs offered by the secured party, and an envelope addressed to the person responsible for conducting loss mitigation analysis for the secured party. *Id.* at 503-504 n. 18 (quoting RP § 7-105.1(c) (5)). Based on these legislative changes, we held that a new NOI needed to have been sent prior to the filing of the second foreclosure. *Granados*, 220 Md. App. at 501-06. No such changes are at issue here.

Indeed, even leaving aside those changes in the relevant legal landscape, the *Granados* NOI did not name the then-current secured party or loan servicer or include contact information for someone then authorized to perform loan modification. *Granados*, 220 Md. App. at 506-08. We held, therefore, that the failure to dismiss in that case could not be deemed harmless. *Id.*

Here, unlike *Granados*, Mr. Tom identifies no intervening changes to RP § 7-105.1(c) such that a second NOI would have been necessary.<sup>13</sup> Nor does Mr. Tom identify any way in which the information in the 2014 NOI was no longer accurate in 2019. The

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<sup>13</sup> Indeed, since 2014, it appears that the only changes to RP § 7-105.1 pertain to technical corrections (Act effective Apr. 14, 2015, c. 22, § 1); vacant and abandoned property (Act effective Oct. 1, 2017, c. 617, c. 617, §1); the foreclosed property register (Act effective Oct. 1, 2019, c. 93, §2); and utility service shutdowns (Act effective May 13, 2019, c. 522, §1).

Toms were notified of their remediation options during the first foreclosure action and had a further chance at postfile mediation during the second. Unlike *Granados*, the failure to send a new NOI was harmless.

In sum, we hold that the circuit court did not err in denying Mr. Tom’s August 2, 2019 “Motion to Dismiss Foreclosure Action for Lack of Jurisdiction” or his June 10, 2019 “Motion to Strike Residential Property Statement and No Pre-File Mediation Statement.” Neither conformed to the relevant rules. Even so, failure to send a new NOI prior to instituting the second foreclosure action, or to include a new NOI with the second Order to Docket, did not warrant dismissal of this foreclosure action.

### **B. Post-Sale Exceptions**

Mr. Tom next claims that the circuit court erred in allowing the foreclosure sale to proceed and in ultimately ratifying the sale. He asserts that the court should have dismissed the action because the Substitute Trustee failed to send the requisite NOI prior to filing the Order to Docket. He claims that Substitute Trustee’s Order to Docket “[f]ailed to state a claim upon which the lower court could grant relief.” Again, we disagree.

As noted, a borrower may also challenge a foreclosure sale by filing exceptions to the sale pursuant to Maryland Rule 14-305. Such a challenge, however, “[i]s not an open portal through which any and all pre-sale objections may be filed as exceptions, without regard to the nature of the objection or when the operative basis underlying the objection arose and was known to the borrower.” *Bates v. Cohn*, 417 Md. 309, 327 (2010). Rather, challenges to a foreclosure sale via post-sale exceptions are limited to either procedural

irregularities in the sale or the validity of the statement of indebtedness. *Id.* Examples of “procedural irregularities” properly raised in post-sale exceptions include: “[a]llegations such as the advertisement of sale was insufficient or misdescribed the property, the creditor committed a fraud by preventing someone from bidding or by chilling the bidding, challenging the price as unconscionable, etc.” *Hood*, 227 Md. App. at 696 (citations and quotations omitted).

We hold that the circuit court did not err in denying Mr. Tom’s post-sale exceptions. The failure to send a new NOI prior to filing the second foreclosure action, or to include a new NOI with the second Order to Docket, did not constitute a procedural irregularity in the sale, nor did it affect the validity of the statement of indebtedness.<sup>14</sup>

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

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<sup>14</sup>Maryland Rule 14-305(f) suggests that the circuit court should not consider ratifying a foreclosure sale until after it rules on a party’s exceptions. Md. Rule 14-305(f)(“[t]he court shall ratify the sale if (1) the time for filing exceptions . . . has expired and exceptions . . . were not filed or were filed but overruled[.]”). Here, Mr. Tom raises no specific argument about the circuit court’s having ratified the sale before ruling on his exceptions. Accordingly, and given that the circuit court did not err in denying Mr. Tom’s exceptions, we do not address this issue either.