

Circuit Court for Harford County  
Case No. 12-C-13-4086

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1270

September Term, 2017

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CHERYL F. JONES

v.

STEPHEN GOLDBERG, et. al.

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Berger,  
Friedman,  
Eyler, James R.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Friedman, J.

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Filed: May 22, 2019

\*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.

Cheryl Jones filed post-sale exceptions to the foreclosure proceedings on her home. She argues that because she received improper service of process, she should be able to challenge the foreclosure. Because we hold that Maryland Rule 14-305 only allows post-sale exceptions in limited circumstances that do not include an allegation of improper service of process, we affirm.

### **BACKGROUND**

In 2009, Jones executed a note to purchase real property at 2954 Burnley Court. About a year later, Jones went into default because she missed payments. Appellees, acting as substitute trustees,<sup>1</sup> instituted foreclosure proceedings against Jones in 2013. Service to provide notice of the foreclosure proceedings was made at the property upon Daniel Cohens, Jones's now former husband. A sale of the property was scheduled and held in September of 2014. About a week later, the Trustees filed a certificate of publication of notice of sale, prompting the Circuit Court for Harford County to issue a notice of sale, which gave any interested party eleven days to show cause why the sale should not be ratified. After no objections were made, the circuit court ratified the sale.

More than two years after the circuit court ratified the sale, Jones filed exceptions to the sale alleging that she received improper service of process.<sup>2</sup> The circuit court denied Jones's exceptions. The circuit court found that improper service of process was not a

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<sup>1</sup> Appellees are Edward S. Cohn, Stephen N. Goldberg, Richard E. Solomon, Richard J. Rogers, and Randall J. Rolls and will be referred to collectively as "the Trustees."

<sup>2</sup> Jones also alleged fraud but abandoned that claim in this Court.

sufficient ground to challenge the foreclosure through post-sale exceptions. Jones filed a timely notice of appeal and before us argues that the circuit court erred by holding that improper service of process is an insufficient basis to challenge the foreclosure sale.

### DISCUSSION

“A borrower’s ability to challenge a foreclosure sale is in part determined by whether relief is requested before or after the sale.” *Thomas v. Nadel*, 427 Md. 441, 443 (2012). The Rules reflect this dichotomy: Maryland Rule 14-303 describes pre-sale procedures, including methods of pre-sale challenge, while Maryland Rule 14-305 governs post-sale procedures, including limits on post-sale challenges.<sup>3</sup> *Id.* at 444. Here, because Jones filed exceptions to the foreclosure sale two years after the sale had taken place, Maryland Rule 14-305 governs. We must first decide if Maryland Rule 14-305 and the governing case law would permit a post-sale challenge to a foreclosure based upon improper service of process.

Rule 14-305 *requires* a court to ratify a sale if two conditions are satisfied:

- (1) the time for filing exceptions . . . has expired and exceptions to the report either were not filed or were filed but overruled, and
- (2) the court is satisfied that the sale was fairly and properly made. If the court is not satisfied that the sale was fairly and properly made, it may enter any order that it deems appropriate.

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<sup>3</sup> It is self-evident that while mortgage borrowers may challenge foreclosures on a variety of grounds pre-sale, after the sale to an uninvolved third-party purchaser (i.e., a bona fide purchaser for value without notice) the grounds for challenge are necessarily much narrower.

Md. Rule 14-305(e). Our Courts have held that the “fairly and properly made” standard allows challenges based only on: (1) procedural irregularities at the sale, including but not limited to: challenges to the sufficiency of advertisement used for the sale, claims that the creditor prevented bidding, claims that the price was unconscionable, or (2) problems with the statement of indebtedness. *Bates v. Cohn*, 417 Md. 309, 327 (2010).<sup>4</sup>

The circuit court held, and we agree that, the first condition was fulfilled. Here, Jones filed exceptions over two years after the Circuit Court for Harford County issued a notice of sale notice. The rule required Jones to file exceptions to the sale within 30 days after the circuit court issued the notice. Md. Rule 14-305(d)(1). The time for filing exceptions had long since expired by the time Jones filed her exceptions.

The circuit court also held that the second condition was fulfilled, and again, we agree. We hold that allegations of improper service of process, even if true, are challenges to the procedures used for the sale and are not challenges to the statement of indebtedness. Therefore, Jones’s challenge is not relevant to the determination that the sale was fairly and properly made. In the absence of an argument that the sale was not fairly and properly made, the circuit court had no choice under Maryland Rule 14-305 but to ratify the sale.<sup>5</sup>

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<sup>4</sup> It is not clear whether a third ground exists—a post-sale exception that challenges the validity of the sale because of fraud infecting the underlying debt. The Court of Appeals expressly left this question unanswered in *Bates* but we need not answer it to resolve this appeal. *Bates v. Cohen*, 417 Md. 309, 327-28 (2010).

<sup>5</sup> Because of our resolution of this case, we need not reach the merits of Jones’ claim that she was not properly served. Nevertheless, we note that in a foreclosure action, service of process is proper when it is made by personal delivery of the papers or by leaving the papers with a resident of suitable age and discretion at the dwelling house or usual place

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

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of abode of the person to be served. Md. Rule 14-209(a). “The burden of proof is on the person denying that [s]he was served and this burden can only be discharged by adducing conclusive and unrefuted testimony or circumstances.” *Ashe v. Spears*, 263 Md. 622, 628-29 (1971). The process server retained by the Trustees prepared an affidavit indicating that he served Daniel Cohens on January 5, 2014 at 2954 Burnley Court. Jones argues, however, that this was improper service because Cohens was her ex-husband and was not legally permitted to be on the property at the time because, she claims, she had obtained a protective order against him. Were we to reach it, we would reject Jones’ argument because, contrary to Jones’ assertion, court records indicate that Jones and Cohens were married on the date of service. *Cohens v. Cohens*, Circuit Court for Harford County, Case No. 12-C-14-002300; Marriage Record Number 122007-014759 (showing marriage from December 31, 2007 until October 16, 2014). Moreover, we find no court record of an active protective order on the date of service of process, nor has Jones proffered one. Given the strong presumption of proper service, and the allocation of the burden of proof to the party contesting service, if we were to reach the issue we would find that Jones was given proper service, and affirm.