Circuit Court for Baltimore County
Case No. 03-C-15-010733

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1432

September Term, 2017

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PAUL TAYLOR, ET AL.

v.

CARRIE M. WARD, ET AL.,
SUBSTITUTE TRUSTEES

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Kehoe,
Berger,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: November 7, 2018

*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.

This appeal arises out of foreclosure proceedings as to a property located at 9005 Forest Oaks Road in Owings Mills. The foreclosure was initiated in the Circuit Court for Baltimore County by substitute trustees Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Pratima Lele, Tayyaba C. Monto, and Joshua Coleman (collectively, the "Substitute Trustees"), appellees, against mortgagors Paul Taylor, Jr. and Cheryl Taylor ("the Taylors"). Terry and Ellen Trusty, appellants, moved to intervene in the foreclosure proceedings. The Trustys resided at the property at the time and claimed that they had entered into a lease agreement and a contract to purchase the property from the Taylors in an arrangement they characterized as a "land installment contract."

As we shall explain *infra*, this is the third time the Trustys challenge to the foreclosure action has been before this Court on appeal. This appeal specifically stems from the circuit court's order granting the motion for possession filed by foreclosure purchaser MTGLQ Investors LP ("MTGLQ").[1] In this appeal, the Trustys present five questions for our consideration.[2] For reasons explained herein, we shall hold that the

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[1] The Trustys have also appealed the circuit court's denial of various other motions, including their Motion to Strike Line Requesting Entry of Order, Motion to Strike/Deny Request for Writ of Possession, Motion to Stay, and Motion to Alter or Amend Judgment Awarding Possession.

[2] The issues presented by the Trustys are:

> 1) Is the order of possession void because the Circuit of Baltimore did not have jurisdiction to sign an order of possession while the foreclosure sale was under the jurisdiction of the United States District court based upon a removal notice?

Trustys have no standing to pursue this appeal. We, therefore, shall not address the merits of the various issues raised by the Trustys on appeal.

## FACTS AND PROCEEDINGS

The Trustys' challenges to the foreclosure of the property have previously formed the basis of a *per curiam* opinion issued by this Court, *Terry Trusty v. Carrie M. Ward, et al., Substitute Trustees*, No. 2571, Sept. Term 2015 (filed May 5, 2017). In setting forth the underlying facts and procedural history of this case, we draw from the prior *per curiam* opinion of this Court.

This Court's prior *per curiam* opinion set forth the following:

> On October 5, 2015, appellees, Carrie Ward, et al., Substitute Trustees,1 initiated foreclosure proceedings as to a residential property owned by Paul Taylor, Jr. and Cheryl Taylor ("the Taylors") in the Circuit Court for Baltimore County. A month later, Terry L. Trusty and his wife Ellen, appellants, filed a motion to intervene in the foreclosure proceedings as defendants, either by right or by permission of

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> 2) Are the entire foreclosure proceedings void because the possessory/beneficial interest in the property are property of a bankruptcy estate and remain under the exclusive jurisdiction of the United States District Court because they were not schedule on the bankruptcy petition?
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> 3) Did the appellants have a valid option to purchase the property at the time of the eviction?
>
> 4) Did the appellants have a right to a hearing before their claims were disposed of?
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> 5) Are the entire foreclosure proceedings void because MTGLQ did not have the proper licenses to maintain the foreclosure action and/or to conduct loss mitigation?

> the court, based on their purported "equitable, leasehold, or contract interest" in the property. Appellants, who then resided at the property, claimed that in 2008, they had entered into a lease agreement and a contract to purchase the property from the Taylors in an arrangement they claim was a "land installment contract."
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> Appellants also filed motions for mediation or alternative dispute resolution and to appoint a trustee to "settle" the property in equity, and, after that, a motion to stay the foreclosure sale and/or dismiss the foreclosure action, contending that appellees were not authorized to foreclose on the property. After the circuit court denied all of their motions, appellants noted this appeal.

*Trusty v. Ward*, *supra*, No. 2571, Sept. Term 2015, slip op. at 1. We affirmed the circuit court, reasoning as follows:

> Rule 2–214 (a) provides:
>
> Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.
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> A ruling on a motion to intervene as a *matter of right*, premised on any ground other than untimeliness, is, on appeal, subject to de novo review, *Environmental Integrity Project, et al. v. Mirant Ash Management, LLC, et al.*, 197 Md. App. 179, 185 (2010), and a ruling on permissive intervention is reviewed for an abuse of discretion. Id. at 193.
>
> Appellants failed to provide evidence demonstrating that they had a valid ownership interest in the property. Appellants' claims of ownership pursuant to a "land

> installment contract" are not supported by the record. In fact, the contract between appellants and the Taylors, executed in 2008, does not satisfy the elements of a valid land installment contract pursuant to § 10-101 *et seq.* of the Real Property Article of the Maryland Code. Specifically, the contract did not refer to five or more subsequent payments as required by RP § 10-103(b)(7) , it was never indexed and recorded in the office of the clerk of court of the county where the property is located as required by RP § 10-104, and several statutorily mandated notices were not incorporated into the agreement as required by RP § 10-103.
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> Instead, the record reflects that the appellants executed both a contract to purchase the property from the Taylors and a lease to rent until the sale occurred. Although the appellants took possession of the premises and made some payments to the Taylors, the sale never took place and hence there is no deed of trust transferring ownership of the property to appellants. Based on the forgoing, the appellants were not entitled to intervene "as a matter of law" in the foreclosure matter. For the same reasons, the circuit court did not abuse its discretion by denying appellants' motion for permissive intervention. Because appellants failed to establish an interest in the foreclosure proceedings sufficient to give them standing to intervene, the circuit court did not err by denying their remaining motions.

*Id.* at 1-3 (footnote omitted).

MTGLQ purchased the property on September 15, 2016, and the Substitute Trustees subsequently reported the sale. The Trustys filed exceptions to the sale and a motion to review and dismiss. The circuit court denied the exceptions and ratified the foreclosure sale on December 29, 2016. The Trustys filed a motion for reconsideration, which was denied. On February 16, 2017, the Substitute Trustees conveyed the property to MTGLQ. The deed was recorded in the Baltimore County land records.

On May 5, 2017, this Court issued its opinion affirming the circuit court's denial of the Trustys motion to intervene. On June 11, 2017, the Trustys noted a second appeal to this court raising issues related to their exceptions to the foreclosure sale. That appeal was dismissed by this Court. *Terry Trustee v. Carrie M. Ward et al., Substitute Trustees*, No. 485, Sept. Term 2017 (appeal dismissed Nov. 6, 2017).

MTGLQ filed a motion for possession on July 20, 2017, which the circuit court subsequently granted. On August 21, 2017, the Trustys sought to remove the proceeding to the United States District Court for the District of Maryland. Judge Hollander of the United States District Court determined that the Federal District Court lacked diversity or federal question jurisdiction, and, therefore, remanded the case to the circuit court. *Carrie M. Ward et al. v. Paul A. Taylor et al.*, No. ELH-17-2386 (D. Md. Aug. 30, 2017).

The Trustys filed their third notice of appeal on September 11, 2017.

## DISCUSSION

The Trustys have continued to file pleadings and notices of appeal in the instant foreclosure action despite the circuit court's denial of their motion to intervene, which was affirmed by this Court. We shall hold, again, that the Trustys' lack of standing to intervene in the foreclosure precludes our consideration of the merits of any of the issues raised on appeal.

MTGLQ asserts that the Trustys' appeal is barred by the law of the case doctrine, and we agree. In *Grandison v. State*, we explained the law of the case doctrine as follows:

> Under the law of the case doctrine, "once 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, 840 A.2d 715 (2004). Moreover, "'[d]ecisions rendered by a prior appellate panel will generally govern the second appeal' at the same appellate level as well, unless the previous decision is incorrect because it is out of keeping with controlling principles announced by a higher court and following the decision would result in manifest injustice." *Id.* at 184, 840 A.2d 715 (quoting *Hawes v. Liberty Homes*, 100 Md. App. 222, 231, 640 A.2d 743 (1994) ). And, more recently, in *Holloway v. State*, 232 Md. App. 272, 282, 157 A.3d 356 (2017), we observed that the law of the case doctrine applies, not only to a claim that was actually decided in a prior appeal, but also to any claim "that could have been raised and decided."

234 Md. App. 564, 580 (2017).

This Court has already determined that the Trustys "failed to provide evidence demonstrating that they had a valid ownership interest in the property." We held that the Trustys "were not entitled to intervene 'as a matter of law' in the foreclosure matter" and that "the circuit court did not abuse its discretion by denying [the Trustys'] motion for permissive intervention." We further held that "[b]ecause [the Trustys] failed to establish an interest in the foreclosure proceedings sufficient to give them standing to intervene, the circuit court did not err by denying their remaining motions."

The Trustys acknowledge that they were not parties to the underlying proceeding, but nonetheless maintain that they have the right to pursue this appeal as non-party appellants. In support of this assertion, the Trustys cite the case of *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs., P.A.*, 392 Md. 75, 90 (2006), in which the Court of Appeals explained as follows: "In situations where the aggrieved appellant, challenging a trial court

discovery or similar order, is not a party to the underlying litigation in the trial court, or where there is no underlying action in the trial court but may be an underlying administrative or investigatory proceeding, Maryland law permits the aggrieved appellant to appeal the order because, analytically, it is a final judgment with respect to that appellant."

The principle permitting certain non-party appeals "has been applied sparingly, however." *Lopez-Sanchez v. State*, 155 Md. App. 580, 594 (2004), *aff'd*, 388 Md. 214 (2005). In *Lopez-Sanchez*, we discussed the issue of non-party appeals at length:

> The appellant is correct that the Court of Appeals has recognized that one not a party to a suit in the circuit court may nevertheless be treated as a party, for purposes of prosecuting an appeal, upon a showing of a direct interest in the subject matter of the suit that will be affected by the decision on appeal. *See Lickle v. Boone*, 187 Md. 579, 584, 51 A.2d 162 (1947) (stating that the statute then in effect permitting an appeal by a party in an equity case "does not restrict the right of appeal to the technical parties to the suit. A person may have such a direct interest in the subject matter of a suit as to entitle him to maintain an appeal, even though he is not one of the actual parties"); *Preston v. Poe*, 116 Md. 1, 6, 81 A. 178 (1911) (observing that, "[w]hile it has been held that [the statute governing appeals] does not restrict the right of appeal to those who are technical parties to the suit, yet it is also well settled that an appellant must be able to show that he has a direct interest in the subject-matter of the litigation"). The principle has been applied sparingly, however.
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> In *Hall v. Jack*, 32 Md. 253 (1870), the non-party appellant was the assignee of certain promissory notes that the equity court ordered placed in a fund to be distributed to creditors of the assignor. He moved to intervene in the suit, without success. The statute then governing appeals in equity cases permitted an appeal from any final decree or order in the

> nature of a final decree "passed by a Court of Equity, by any one or more of the persons parties to the suit . . . ." 1864 Md. Laws, Chap. 156. The Court of Appeals held, within the meaning of that statute, that the appellant possessed a sufficient interest in the subject matter of the case to be treated as a party, for purposes of appeal, because the equity court's order had concluded his rights as to the notes. "[B]eing directly interested in the subject matter of the decree, and having filed his petition in the cause, praying to be permitted to intervene for the protection of his rights, he must be considered as a party within the meaning [of the statute], [and] entitled to [an] appeal." *Hall*, *supra*, 32 Md. at 263.

155 Md. App. at 594-95.

We explained "[t]he holding in *Hall* derives from a fundamental principle of standing to appeal -- that an appellate court will not entertain an appeal by one who does not have an interest that will be affected by prosecuting the appeal." *Id.* at 594 (citing *Curley v. Wolf*, 173 Md. 393, 399 (1938) (dismissing appeal by an original party, which lacked any interest in the outcome of the controversy). We emphasized that "[t]his principle applies to parties and non-parties alike." *Id.*

In *Lopez-Sanchez*, we further discussed examples of when the holding in *Hall* had been applied to permit and disallow various appeals:

> The holding in *Hall*, recognizing that in some situations non-parties will be treated as parties for purposes of appeal, has been restated most frequently by the Court of Appeals in cases that, conversely to this case, involve appellants who in fact were parties below, but did not have an interest that could be affected by a decision on appeal, and therefore lacked standing to prosecute an appeal. *See Kreatchman v. Ramsburg*, 224 Md. 209, 222, 167 A.2d 345 (1961) (dismissing an appeal by a taxpayer who had been permitted by the circuit court to intervene as a party in a zoning case but did not have a

sufficient interest in the subject matter of the appeal to have standing); Lickle, supra 187 Md. at 586, 51 A.2d 162 (holding that a co-respondent in a divorce case who had been permitted by the circuit court to intervene as a party did not have an interest in the case so as to allow him to appeal).

In the same vein, in *First Union Sav. & Loan, Inc. v. Bottom*, 232 Md. 292, 193 A.2d 49 (1963), the Court held that a corporation that was a party to proceedings below, in which a conservator had been appointed to take custody of its property and manage its affairs, nevertheless had a sufficient interest or right in the property to appeal from an order discharging the conservator and appointing a receiver. Likewise, in *Maryland–Nat'l Capital Park and Planning Comm'n v. McCaw*, 246 Md. 662, 229 A.2d 584 (1967), the Court held that the Maryland National Capital Park and Planning Commission (the "Commission") had a sufficient interest in the outcome of an appeal of a circuit court's approval of a petition for abandonment of a subdivision plat, which included land dedicated by the Commission as a park, to have standing to appeal. The Commission had been permitted to intervene below. The Court of Appeals made plain that, even if the Commission had not been allowed to intervene as a party in the circuit court, its interest in the subject matter of the litigation was sufficient to confer standing to appeal. *Id.* at 672, 229 A.2d 584.

In numerous cases, the Court has recognized the principle stated in *Hall* but has concluded that, in the circumstances before it, the non-party appellant's interest in the subject matter of the appeal was not sufficient to warrant his being treated as a party for that purpose. *See Preston*, *supra*, 116 Md. at 6, 81 A. 178 (holding that a stockholder in a corporation did not have a sufficient interest in a suit to appoint receivers for the voluntary dissolution of the corporation to permit him to appeal an order dismissing the suit); *In re Buckler Trusts*, 144 Md. 424, 428, 125 A. 177 (1924) (dismissing appeal by a tenant of property for which the appointment of successor trustees under deed of trust was sought and granted, because the tenant was not a party and had no interest in the subject matter of the suit); *Karr, Hammond & Darnall v. Shirk*, 142 Md. 118, 124, 120 A. 248 (1923)

> (dismissing appeal by an attorney who represented a trustee in a sale of mortgaged premises because attorney was not a party and was not directly interested in the subject matter of the suit); *American Colonization Soc'y v. Latrobe*, 132 Md. 524, 529, 104 A. 120 (1918) (dismissing appeal by the State from a circuit court dismissal of a petition to have property escheated to the State); *Rau v. Robertson*, 58 Md. 506, 508 (1882) (dismissing appeal by former owner of property from decree of sale, holding that appellant did not have any interest in the property). *See also Weinberg v. Fanning*, 208 Md. 567, 570-71, 119 A.2d 383 (1956) (recognizing the principle in *Hall* but holding that the issue on appeal was moot in any event); *Brashears v. Lindenbaum*, 189 Md. 619, 628, 56 A.2d 844 (1948); *Donovan v. Miller*, 137 Md. 555, 557, 112 A. 926 (1921); *Wagner v. Freeny*, 123 Md. 24, 31, 90 A. 774 (1914).

*Lopez-Sanchez*, *supra*, 155 Md. App. at 595-97.

The critical question, therefore, is whether the Trustys possess an interest that will be affected by prosecuting this appeal. This question has already been addressed by the circuit court and by this Court in the prior appeal when this Court determined that "[b]ecause [the Trustys] failed to establish an interest in the foreclosure proceedings sufficient to give them standing to intervene, the circuit court did not err by denying their remaining motions." The law of the case doctrine dictates that we reach the same conclusion in this case. The Trustys' lack of an interest in the underlying foreclosure action renders their non-party appeal impermissible. Accordingly, our prior determination that the Trustys had no right be involved in the underlying foreclosure action mandates the dismissal of this appeal.

**APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANTS.**