

Circuit Court for Anne Arundel County  
Case No. 16-002772

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1577

September Term, 2017

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EVA AUGUST HOMES, LLC

v.

CARRIE M. WARD, et al.

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\*Woodward  
Leahy,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Woodward, J.

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Filed: May 7, 2020

\*Woodward, Patrick L., J., now retired, participated in the hearing of this case while an active member of this Court, and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

\*\*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.

On January 24, 2017, Eva August Homes, LLC, appellant, purchased a residential home located at 258 Catalina Circle, Severna Park, Maryland (“the property”) at a foreclosure sale from Carrie M. Ward and other substitute trustees.<sup>1</sup> The Final Order ratifying the sale for the property was signed on April 7, 2017, and was entered on the docket in the Circuit Court for Anne Arundel County on April 10, 2017. On June 9, 2017, appellant went to settlement and paid the balance of the purchase price for the property. The owner of the property, Brett Haas, remained on the property from January 24, 2017, until June 19, 2017. Because the sale of the property produced surplus proceeds, appellant filed a claim against such proceeds for reasonable rent, real estate taxes, interest, court costs, and eviction fees. On September 20, 2017, the circuit court denied appellant’s claim. This appeal followed. Ward, the other substitute trustees, and Haas are appellees, but no brief was filed on behalf of any appellee.

On appeal, appellant presents one question for our review,<sup>2</sup> which we have rephrased and expanded:

1. Did the circuit court err in denying appellant reasonable rental value for the property from January 24, 2017, through June 19, 2017?
2. Did the circuit court err in denying interest on the unpaid purchase price, real estate taxes, attorney’s fees, court costs, and eviction fees?

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<sup>1</sup> The other substitute trustees are: Howard N. Bierman, Andrew J. Brenner, Joshua Coleman, Angela M. Dawkins, Nicholas Derdock, Jacob Geesing, Adedamola George, Richard R. Goldsmith, Jr., Wayne Anthony Holman, Elizabeth C. Jones, Jason Kutcher, Pratima Lele, and Ludeen McCartney-Green.

<sup>2</sup> As stated in its brief, appellant’s question presented reads: “Did the Circuit Court err in denying the foreclosure purchaser [a]ppellant Eva August Homes, LLC reimbursement from the surplus proceeds of the foreclosure sale for reasonable costs and expenses incurred in connection [with] obtaining possession of the Property?”

We answer this first question in the negative. As to the second question, we hold that the circuit court did not err in denying interest, real estate taxes, and attorney’s fees, but appellant may be entitled to court costs and eviction fees. Therefore, we will affirm in part and vacate in part the judgment of the circuit court.

### **BACKGROUND**

On September 2, 2016, the substitute trustees filed an order to docket a foreclosure action regarding the property. On January 24, 2017, the property was sold to appellant at a foreclosure sale. The Final Order ratifying the sale was signed on April 7, 2017, and entered on April 10, 2017. On the same day that the Final Order was entered, appellant filed a motion captioned, “Motion to Intervene, and Claim for Assessment of Reasonable Charges for Use and Retained Possession and Costs.” In the motion, appellant first argued that appellant could “intervene as a matter of right.” Appellant next argued that it was “entitled to possession pursuant to Maryland Rule 14-102(a) and ha[d] the right to execute upon the Writ of Possession once the ratification Order ha[d] been signed.” Because appellant concluded that it was entitled to possession, it requested:

That the Substitute Trustees or the Clerk of the Court as the case may [ ] be to pay to the Foreclosure Purchaser, out of the surplus foreclosure sale proceeds, if any there are, and if none that a judgment be entered against [Haas] and or Occupants, the sum of \$2000.00 per month (\$66.67 per diem) from the date of sale of January 24, 2017 through and including the date when [Haas] and or any occupant vacates the premises together with the reasonable costs associated with any Court ordered eviction, which total amount should be determined by the Court Auditor based upon the affidavit of the foreclosure purchaser as to the date it obtains actual possession.

Appellant, however, did not explicitly request that the court grant it an order of possession.

In an order signed May 24, 2017, and filed May 25, 2017, the circuit court granted

appellant's motion to intervene, but denied appellant's "Claim for Assessment of Reasonable Charges for Use and Retained Possession and Costs." Furthermore, the trial court ordered that appellant "may file a Motion for Possession pursuant to Md. Rule 14-102." Appellant did not file a motion for possession pursuant to Rule 14-102. On June 9, 2017, appellant settled on the sale and paid the purchase price. According to appellant, Haas vacated the property on June 19, 2017.

On June 26, 2017, the court auditor filed an initial report finding that there was a \$95,528.43 surplus to be distributed from the proceeds of the foreclosure sale. The report stated the subordinate lienholders "have thirty (30) days from the date this audit is filed to submit a claim for any portion or all of the retained balance." On July 19, 2017, appellant filed an affidavit requesting from the surplus proceeds reasonable rent from January 24, 2017 to June 19, 2017, taxes and interest from January 24, 2017 to June 9, 2017, as well as eviction fees, and court costs. On September 8, 2017, the court auditor filed a supplemental report, stating that "[n]o claims for surplus proceeds have been filed" and recommending that the entire surplus proceeds be distributed to Haas, minus a \$350 supplemental audit fee.

On September 12, 2017, appellant filed Foreclosure Purchaser's Exceptions to Auditor's Supplemental Report and Motion for Claim to Surplus Proceeds of Sale. In the exceptions and motion, appellant again requested from the surplus proceeds reasonable rent, interest, real estate taxes, eviction fees, and court costs. Appellant also requested, for the first time, \$600 in attorney's fees. In the Court Auditor's Response to Foreclosure Purchaser's Exceptions to Auditor's Supplemental Report and Motion for Claim to Surplus

Proceeds of Sale, which was filed on September 13, 2017, the court auditor stated that,

[b]ased on the fact that the Court had expressly denied the Foreclosure Purchaser’s Claim filed on April 10, 2017, and has not subsequently entered any other order regarding the disposition of the surplus proceeds pursuant to Maryland Rule 14-216(a), the Supplemental Report and Account proposes the distribution of the proceeds, in their entirety to [Haas].

On September 21, 2017, the circuit court entered an order denying appellant’s exceptions and motion for a claim to the surplus proceeds. Appellant noted its appeal to this court on October 11, 2017.

### **STANDARD OF REVIEW**

Maryland Rule 8-131(c) states:

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

### **DISCUSSION**

#### **I. Reasonable Rental Value**

Appellant claims that it is entitled to the reasonable rental value of the property from either the date of the foreclosure sale, or the date of final ratification of the sale, until the date that Haas vacated the property.<sup>3</sup> We disagree.

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<sup>3</sup> As stated *supra*, the date of the foreclosure sale was January 24, 2017, the date of the Final Order ratifying the sale was April 7, 2017, the date of entry of the Final Order was April 10, 2017, and the date that Haas vacated the property was June 19, 2017. In its brief, appellant incorrectly states that the date that “the Court ratified the foreclosure sale” was April 4, 2017.

Appellant’s claim for the reasonable rental value of the property is controlled by the case in *Legacy Funding LLC v. Cohn*, 396 Md. 511 (2007). *Legacy Funding* involved the foreclosure sale of three residential properties that were occupied by their respective owners and were not rented or otherwise commercially productive. *Id.* at 514. The Court of Appeals addressed whether a foreclosure purchaser could seek reimbursement from surplus proceeds for the fair rental value of a residential property from the date of sale until the time that the mortgagor vacated the property. *Id.* at 513. The Court stated that the key to answering whether the purchaser was entitled to recover the fair rental value “lies in determining when the purchaser at a foreclosure sale becomes entitled to possession of the mortgaged property.” *Id.* at 515. According to the Court, the case of *Empire Properties, LLC v. Hardy*, 386 Md. 628 (2005), established “the current view of this Court,” which was

that the purchaser becomes entitled to possession only when it has either paid the full purchase price in conformance with the terms of sale and received a conveyance of legal title to the property, or, following ratification of the sale but prior to settlement, has received an order for possession from the court.

*Legacy Funding*, 396 Md. at 516. In a footnote, the Court cautioned that “absent compelling circumstances, circuit courts should be wary of granting possession of foreclosed property to a purchaser who has not yet paid the full purchase price.” *Id.* at 516 n.3.

The Court next distinguished the facts of *Legacy Funding* from those cases involving the foreclosure of a commercially productive property where the mortgagor receives rents and/or profits from the date of sale until the turn over of possession. *Id.* at

519. In those cases, the Court said that the foreclosure purchaser was entitled to such income. *Id.* By contrast, the foreclosure purchaser in *Legacy Funding* was

not seeking to recover income actually received by the mortgagor from his commercial use of the property following the sale, but rather damages based on its alleged inability to obtain possession for its own purposes. **There is a difference, both as to the elements of the claim and the nature of the relief.**

*Id.* at 519–20 (emphasis added).

The Court analogized the foreclosure purchaser’s claim in *Legacy Funding* to a non-statutory wrongful detainer action and held that “the claimant must show that (1) [the foreclosure purchaser] was lawfully entitled to possession, (2) [the foreclosure purchaser] demanded possession following its entitlement to do so, and (3) the possession was wrongfully denied.” *Id.* at 520–21.

In the instant case, we apply the three-element framework from *Legacy Funding* to determine whether appellant is entitled to recover from the surplus proceeds the fair rental value of the property from the date of sale, January 24, 2017, until the date that Haas vacated the property, June 19, 2017, or any part of such time period.

First, appellant was lawfully entitled to possession of the property on the date that it paid the purchase price on June 9, 2017. *See id.* at 516. Appellant could have been entitled to possession of the property following ratification of the sale, which occurred on April 10, 2017, if appellant had requested, and had been granted, an order of possession pursuant to Rule 14-102. On April 10, 2017, appellant did file a motion captioned “Foreclosure Purchaser’s Motion to Intervene, and Claim for Assessment of Reasonable Charges for Use and Retained Possession and Costs.” The motion sought “an Order

pursuant to Rule 14-102(a) for a claim for assessment against the surplus proceeds[.]” In the motion, appellant assumed that it had a right to possession of the property, stating that it was “entitled to possession . . . and ha[d] the right to execute upon the Writ of Possession once the ratification Order ha[d] been signed.” Appellant’s assumption was incorrect. *See Legacy Funding*, 396 Md. at 515–16; *Empire Props.*, 386 Md. at 650. Nowhere in the motion did appellant ask the court to grant it an order of possession of the property.

On May 25, 2017, the circuit court issued an order granting the motion to intervene but denying appellant’s claim for reasonable charges for use and retained possession. The court additionally ordered “that [appellant] may file a Motion for Possession pursuant to Md. Rule 14-102.” Appellant never filed such motion.

On appeal, appellant now argues that in appellant’s motion, it “was evident that [appellant] was requesting the lower court [to] grant possession of the [p]roperty to [a]ppellant following ratification of the foreclosure sale.” We cannot agree with appellant. As explained, *supra*, appellant assumed that once the foreclosure sale was ratified, it was entitled to possession of the property, and the motion focused on recovering certain expenditures and other losses from the surplus proceeds, not gaining an order of possession of the property. Regardless of how we interpret appellant’s motion, however, the circuit court made it abundantly clear that it did not consider the motion to be a proper motion for an order of possession under Rule 14-102 and as a result, did not grant appellant such order. Therefore, without an order of court granting it possession of the property, appellant was not entitled to possession of the property until the date that it paid the purchase price of the property, which was June 9, 2017. *See Legacy Funding*, 396 Md. at 516.



Second, appellant must have demanded possession *following its entitlement to do so*. *Id.* at 520–21. Here, appellant provided no evidence that it demanded that Haas vacate the property after appellant gained legal possession of the property on June 9, 2017, as clearly required by *Legacy Funding*. *See id.* at 521. Instead, appellant points to a letter, dated March 22, 2017, that it sent to Haas demanding that Haas vacate the property within thirty days. This demand, however, was sent over two months before appellant became legally entitled to possession of the property.

Third, Haas must have wrongfully denied possession of the property to appellant. There is no evidence in the record that Haas wrongfully denied possession to appellant after appellant became legally entitled to possession on June 9, 2017. Indeed, the evidence clearly supports the conclusion that Haas did not wrongfully deny possession to appellant, because Haas vacated the property on June 19, 2017, only ten days after appellant became entitled to possession. Therefore, under the teachings of *Legacy Funding*, appellant does not have the right to recover from the surplus proceeds the reasonable rental value of the property from the date of sale until the date that Haas vacated the property, or any part thereof.

## **II. Appellant’s Other Claimed Expenses**

### *A. Interest*

Appellant asserts that it is entitled to \$4,935 from the surplus proceeds for “unpaid interest incurred during the possession of the [p]roperty.” Appellant reasons that unpaid interest constitutes waste, and therefore appellant is entitled to reimbursement for that waste from the surplus proceeds.

The Court of Appeals has stated: “It is a general rule as to sales under decrees of this Court, that the purchaser always pays interest, according to the terms of the decree, from the day of sale, whether he gets possession or not.” *Donald v. Chaney*, 302 Md. 465, 468 (1985) (quoting *Brown v. Wallace*, 4 G. & J. 479, 480 (Md. 1832)). The Court explained, however, that the general rule “should not be applied inflexibly” because the rule is “not [a rule] of absolute and unvarying application.” *Id.* at 469–70 (quoting *Oldenburg v. Regester*, 118 Md. 394 (1912)). Thus the circuit court may be “governed by equitable considerations” when the court is presented with such exceptions. *Id.* at 470. The *Donald* Court went on to recognize three exceptions to the general rule where a court can use its discretion to abate interest. *Id.* at 477. It stated:

[A] purchaser at a judicial sale will be excused from requirement to pay interest upon the unpaid balance for the period between the time fixed for settlement and the date of actual settlement only when the delay stems from neglect on the part of the trustee; was caused by necessary appellate review of lower court determinations[;] or was caused by the conduct of other persons beyond the power of the purchaser to control or ameliorate.

*Id.* (citations omitted). Later in *Baltrotsky v. Kugler*, 395 Md. 468, 481 (2006), the Court of Appeals applied the *Donald* exceptions and explained: “Petitioner’s persistent and monotonous pleadings, advancing arguments rejected previously by the Circuit Court, served only to delay settlement on the properties and constituted ‘conduct of other persons beyond the power of the purchaser to control or ameliorate.’” Thus the *Baltrotsky* Court held that “the exercise of discretion pursuant to the equitable principles articulated in *Donald*, counsels that the provision allocating the payment of interest to the purchaser was set aside properly.” *Id.* at 480–81.

Here, the terms of sale, as listed in the advertisement printed in The Baltimore Sun, read:

**Balance of the purchase price, together with interest on the unpaid purchase money at the current rate contained in the Deed of Trust Note from the date of sale to the date funds are received by the Sub. Trustees,** payable in cash within ten days of final ratification of the sale by the Circuit Court. There will be no abatement of interest due from the purchaser in the event additional funds are tendered before settlement.

(Emphasis added). In other words, the terms of sale required appellant to pay interest at the Deed of Trust Note rate from the date of sale until the date that funds were received by the substitute trustees. Nowhere in appellant’s motion to recover the interest did appellant contend that any of the *Donald* exceptions applied to the facts of the instant case. We, therefore, hold that appellant is not entitled to recover from the surplus proceeds interest paid by it from January 24, 2017 to June 12, 2017.

*B. Real Estate Taxes*

Appellant likewise claims that it is entitled to a refund of \$1,352.60 paid by it for real estate taxes from January 24, 2017, to June 9, 2017. Appellant argues that “Haas failed to pay the real estate taxes after equitable title transferred to [appellant] following the foreclosure sale, requiring [appellant] to pay the past due real estate taxes at settlement on the sale.”<sup>4</sup>

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<sup>4</sup> Contrary to appellant’s argument, the real estate taxes for the property for the tax year of July 1, 2016 to June 30, 2017, had been paid by the mortgagee. Appellant reimbursed the mortgagee for that portion of the taxes from the date of sale to the end of the tax year.

Here, the terms of sale, as listed in the advertisement printed in *The Baltimore Sun*, state: “Adjustment of current year’s real property taxes are adjusted as of the date of sale, and thereafter assumed by the purchaser.” Appellant provides no argument or legal authority as to why it should be excused from paying the pro-rated real estate taxes, as such payment was clearly required by the terms of sale. We thus hold that appellant is not entitled to be reimbursed from the surplus proceeds for the real estate taxes that it paid on the property from the date of sale.

*C. Attorney’s Fees*

Appellant requests \$600 in attorney’s fees. Appellant, however, did not request any attorney’s fees in its Foreclosure Purchaser’s Affidavit. Appellant did not request \$600 in attorney’s fees until after the court auditor filed his supplemental report and appellant filed exceptions to that supplemental report. Even then, such request was not made by affidavit, nor does the record contain any other evidence of the same. Finally, appellant makes no argument and provides no legal authority for recovery of its attorney’s fees from the surplus proceeds. Therefore, we hold that appellant is not entitled to recover \$600 in attorney’s fees from the surplus proceeds.

*D. Court Costs and Eviction Fees*

Lastly, appellant argues that it is entitled to “court costs of \$87.00 and eviction costs of \$1,660.00” from the surplus proceeds. We agree with appellant that “[f]oreclosure proceedings are equitable proceedings.” See *Wells Fargo Home Mortg. v. Neal*, 398 Md. 705, 728 (2007) (“The foreclosure procedure in Maryland is equitable in nature.”). It undoubtedly would be inequitable for Haas to benefit from appellant having to pay eviction

fees and court costs due to Haas's unwillingness to leave the property. Therefore, appellant may be entitled to recover eviction fees and court costs from the surplus proceeds. Such recovery, however, is subject to review and verification by the auditor and approval by the circuit court, none of which have occurred.<sup>5</sup> Accordingly, we shall vacate and remand as to this issue.

### **III. Conclusion**

In conclusion, we affirm the circuit court's decision to deny appellant's claim for reasonable rental value, interest, real estate taxes, and attorney's fees from the surplus proceeds. We vacate and remand for the circuit court to determine whether to grant appellant's claim for court costs and eviction fees.

**JUDGMENT OF THE CIRCUIT COURT  
FOR ANNE ARUNDEL COUNTY  
AFFIRMED IN PART AND VACATED IN  
PART; CASE REMANDED TO THAT  
COURT FOR FURTHER PROCEEDINGS  
NOT INCONSISTENT WITH THIS  
OPINION; COSTS TO BE PAID BY  
APPELLANT.**

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<sup>5</sup> It is unclear from the record when the court costs and eviction fees were incurred and what services were provided for the eviction fees. The answers to these questions will inform the auditor and court as to the validity of appellant's claim for court costs and eviction fees.