Circuit Court for Montgomery County
Case No: 410429-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1722

September Term, 2019

FLAUBERT MBONGO

v.

CARRIE M. WARD, *et al.*

Nazarian,
Gould,
Wright, Alexander
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: November 6, 2020

Flaubert Mbongo and Charlotte J. Dikongue (also known as Charlotte J. Mbongo) noted an appeal from two orders entered by the Circuit Court for Montgomery County in a foreclosure action: (1) a final order of ratification of the sale of property and (2) the denial of their motion for reconsideration of an order denying their motion to set aside the sale. For the reasons to be discussed, we shall affirm the judgments.[1]

BACKGROUND

We need not belabor the facts in this case and will relate only those necessary for context and a resolution of this appeal.

In 2007, Mr. Mbongo and Ms. Dikongue defaulted under the terms of a deed of trust that encumbered residential real property known as 14434 Bradshaw Drive, Silver Spring, Maryland. In 2015, appellees initiated foreclosure proceedings in the circuit court.[2] Mr. Mbongo and Ms. Dikongue have sought to derail, or certainly delay, the foreclosure process by filing at least 14 separate petitions for bankruptcy in the U.S. Bankruptcy Court, District Court of Maryland, Greenbelt Division (the "bankruptcy court") and four appeals

[1] The Notice of Appeal, filed on October 29, 2019, was in the name of Flaubert Mbongo and Charlotte J. Dikongue and included signatures for both of them. The appellate brief was submitted by Mr. Mbongo and in the statement of the case he asserts that "[t]he debtor Charlotte J. Mbongo is not part of this Appeal[.]" While Ms. Dikongue (appears to have) signed the Notice of Appeal, she did not file any papers in this Court, including a brief. Thus, to the extent that she perfected an appeal from a final judgment, she has not advanced any arguments in support of her claims.

[2] Appellees are Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Pratima Lele, Joshua Coleman, Richard R. Goldsmith, Jr., Ludeen McCartney-Green, Jason Kutcher, Elizabeth C. Jones, and Nicholas Derdock, substitute trustees.

to this Court.[3] They also pursued unsuccessful litigation related to a mortgage modification. *See Mbongo v. JP Morgan Chase Bank, N.A.*, 552 Fed. Appx. 258 (4th Cir. 2014) (affirming summary judgment in favor of the defendant with respect to claims of breach of contract and promissory estoppel) and *Mbongo v. JP Morgan Chase Bank, N.A.*, 589 Fed. Appx. 188 (4th Cir. 2015) (affirming dismissal of claims alleging violations of federal and state statutes and common law torts).

Relevant to the appeal presently before us, on January 10, 2019, Ms. Dikongue filed a bankruptcy petition in bankruptcy court (the "Dikongue Bankruptcy")—the 13th bankruptcy petition filed by Ms. Dikongue or Mr. Mbongo since they defaulted on the loan. The secured lender underlying the foreclosure proceeding responded by filing a Motion for Relief From The Automatic Stay and Co-Debtor Stay Along With *In Rem* Relief Request Pursuant to 11 U.S.C. § 362(D)(4). Ms. Dikongue and Mr. Mbongo, jointly filed a response opposing the motion. Following a hearing, the bankruptcy court granted the requested relief and on March 14, 2019, issued an order (the *"In Rem* Order") that, in pertinent part, provided:

> **ORDERED**, that the *In Rem* Automatic Stay under 11 U.S.C. § 362(d)(4) is GRANTED, and provided that this Order is recorded in conformity therewith, this Order terminating the automatic stay under 11 U.S.C. § 362(a) as to Secured Creditor's interest in the Property shall be binding in any other case filed under the Bankruptcy Code purporting to affect the Property that is filed not later than two years after the date of this

[3] It appears that all of the bankruptcy petitions were dismissed shortly after they were filed. We affirmed the judgment in the four previous appeals that appellants took to this Court. *See Mbongo, et al. v. Ward, et al.*, No. 2436, Sept. Term, 2015 (filed Jan. 18, 2017); *Mbongo, et al. v. Ward, et al.*, No. 2229, Sept. Term, 2016 (filed Feb. 9, 2018); *Mbongo, et al. v. Ward, et al.*, No. 1526, Sept. Term, 2017 (filed Nov. 26, 2018); and *Mbongo, et al. v. Ward, et al.*, No. 950, Sept. Term, 2018 (filed June 6, 2019).

> order, such that the automatic stay under 11 U.S.C. § 362(a) shall not apply to Secured Creditor's interest in the Property.

The *In Rem* Order described the "Property" as "14434 Bradshaw Drive, Silver Spring, Maryland." The "Secured Creditor" was identified as "Wells Fargo Bank, National Association as Trustee for Structured Asset Mortgage Investments II Inc., Bear Stearns Mortgage Funding Trust 2007-AR2, Mortgage Pass-Through Certificates, Series 2007-AR2, its successors and assigns[.]" The "cc" on the order included both Charlotte Julieene Mbongo and Flaubert Mbongo.[4] Based on appellees' assertion, and the limited record before us, neither Ms. Dikongue nor Mr. Mbongo appealed the *In Rem* Order. The Dikongue Bankruptcy was dismissed on March 15, 2019.

The *In Rem* Order was recorded in the Land Records of Montgomery County on March 27, 2019. A sale of the property, pursuant to the circuit court foreclosure action, was scheduled for May 10, 2019. The day before the sale, Mr. Mbongo filed a petition for bankruptcy ("the Mbongo Bankruptcy")—the 14th petition filed by either him or Ms. Dikongue. On May 10th, the property was sold at a foreclosure auction.

Mr. Mbongo and Ms. Dikongue filed exceptions to the sale, asserting that the sale was a "nullity" because the filing of the Mbongo Bankruptcy petition on May 9th had "trigger[ed] the automatic stay on the property[.]" They asserted that the *In Rem* Order applied only to Ms. Dikongue because it arose in the Dikongue Bankruptcy, which she alone had filed. Accordingly, they maintained that appellees violated the automatic stay

[4] "Charlotte Julienne Mbongo aka Charlotte Julienne Dikongue" was identified as the "Debtor" and Mr. Mbongo as "Co-Debtor."

that arose in the Mbongo Bankruptcy when they sold the property on May 10th. They also asserted that the foreclosure sale should be set aside because the "purported signature of Charlotte Julienne Dikongue on the 'note' is robot-signed, and therefore invalid."

Appellees filed an opposition to the exceptions, maintaining that the *In Rem* Order was binding for two years in any bankruptcy case purporting to affect the property and it did not matter that Mr. Mbongo was not a party to the Dikongue Bankruptcy. In other words, the automatic stay was not triggered by the Mbongo Bankruptcy because the *In Rem* Order attached to the property itself. Further, appellees asserted that the other grounds Mr. Mbongo and Ms. Dikongue raised for setting aside the sale were waived and/or outside the permissible scope of post-sale exceptions.

On June 25, 2019, the court sent the parties a notice that a hearing on the exceptions was scheduled for July 30, 2019. The day before the hearing, Mr. Mbongo and Ms. Dikongue filed a motion for continuance claiming their "absence from the United States for family issues overseas" and stating that they required "additional time to return to the United States and be ready for the hearing." At the July 30th hearing, which was not attended by either Mr. Mbongo or Ms. Dikongue or any representative in their place, the court denied the motion to postpone, "denied and overruled" the exceptions, "ratified and confirmed" the sale of the property, and referred the matter to the auditor. A written order reflecting that action was filed on August 5, 2019.

Mr. Mbongo and Ms. Dikongue then filed a motion requesting that the court reconsider its August 5th order. They claimed that they had left the United States on June 16, 2019 and traveled to Cameroon seeking medical treatment for Mr. Mbongo's recent

diagnosis of diabetic polyneuropathy and that while there, they "decided to pursue a six-week proposed Chinese treatment." They also reasserted their position that there was, in fact, an automatic stay in place by virtue of the Mbongo Bankruptcy when the property was sold at auction. Appellees opposed the motion for reconsideration, arguing that whether the sale had violated an automatic stay was purely a legal issue requiring no need for evidence taking. Additionally, they maintained that the motion to postpone the hearing was properly denied as it was "bald and unsupported, and did not even reference the supposed medical treatment, much less [include] a detailed explanation or supporting documents."

On September 3, 2019, the auditor filed his report, which reflected a deficiency of $432,000.00. The court filed a final order of ratification on September 25, 2019, and on October 28, 2019, the court denied the motion for reconsideration that Mr. Mbongo and Ms. Dikongue had filed in mid-August. This appeal followed.

QUESTIONS PRESENTED

Mr. Mbongo presents two questions for our review, which we quote:

1. Did the circuit court err or abuse its discretion when it ratified the sale after overruling the [appellants'] exceptions to set aside the sale of their property for violation of the Bankruptcy automatic stay?

2. Did the circuit court err or abuse its discretion when it willfully chose to ignore the multiple forgeries committed by the Appellees from the inception and throughout this foreclosure action?

DISCUSSION

I.

THE *IN REM* ORDER

Mr. Mbongo continues to maintain that the property was sold in violation of the automatic stay, which he asserts arose with the filing of the Mbongo Bankruptcy the day before the sale took place. He claims that, because he was not a party to the Dikongue Bankruptcy, the *In Rem* Order filed in that case was not binding on him.[5] Appellees disagree, as do we.

11 U.S.C. § 362(d), in pertinent part, provides:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) on this section, such as by terminating, annulling, modifying, or conditioning such stay –
>
> ***
>
> (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either –
>
> (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or
> (B) multiple bankruptcy filings affecting such real property.

[5] Mr. Mbongo also asserts that the bankruptcy court erred in granting the *In Rem* Order "without a showing of fraud by the movant." That issue, however, is not before us and is something Mr. Mbongo or Ms. Dikongue could have raised in the bankruptcy court. We note, however, that 11 U.S.C. § 362(d)(4) provides that such an order may be granted upon the court's finding that multiple bankruptcy filings were part of a "scheme to delay, hinder, *or* defraud creditors." (Emphasis added.) To be clear, whether the court erred in finding that the movant was entitled to the *In Rem* Order is an issue that is not properly before this Court and we shall not address it.

> If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local government unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

Here, Mr. Mbongo does not dispute that the *In Rem* Order was properly recorded in the Montgomery County Land Records and that less than two years elapsed between the date the order was filed and the date the property was sold. Nor does he allege that the bankruptcy court had granted him relief from the *In Rem* Order based upon any "changed circumstances or for good cause shown." *Id.*

The *In Rem* Order itself provided that the automatic stay under 11 U.S.C. § 362(a) "shall not apply to Secured Creditor's interest in the Property" and that the order "shall be binding in *any other case filed under the Bankruptcy Code purporting to affect the Property*." (Emphasis added.) This language tracked the language of 11 U.S.C. § 362(d)(4) which, as noted above, provides that the granting of relief from the automatic stay "shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court[.]" In other words, the secured creditor's relief from the automatic stay attached to the property, regardless of who filed the bankruptcy petition.

The United States Bankruptcy Appellate Panel of the Ninth Circuit addressed this issue in *In re Alakozai,* 499 B.R. 698 (B.A.P. 9th Cir. 2013). The court held that, "an in

rem order entered in a prior bankruptcy case [filed by the husband] was effective as to the real property in question, and thus the automatic stay did not prohibit the foreclosure, even though it occurred during the pendency of a later bankruptcy case filed [by the wife]." *Id.* at 700. The court stated that, "[a]n order entered under § 362(d)(4) has serious implications." *Id*. at 703. "By seeking relief under § 362(d)(4), the creditor requests specific prospective protection against not only the debtor, but also every non-debtor, co-owner, and subsequent owner of the property." *Id.* (citations omitted). Thus, the court concluded that the wife in *In re Alakozai* "was bound by the terms of the In Rem Order even though she was not a debtor in the Fourth [bankruptcy] Case [in which the order was entered], and the automatic stay arising from the filing of the Fifth Case [by the wife] did not invalidate the trustee's sale of the Property." *Id.* at 704-05. And in *In re Abdul Muhaimin*, 343 B.R. 159, 169 (Bankr. D. Md. 2006), the Bankruptcy Court for the District of Maryland observed that, "[i]f granted, Section 362(d)(4) relief would nullify the ability of the Debtor and any other third party with an interest in the property to obtain the benefits provided by the automatic stay in future bankruptcy cases for a period of two years."[6] The reasoning set forth in both *In re Alakozai* and *In re Abdul Muhaimin* is sound and applies here to the same effect.

[6] In 2006, when *In re Abdul Muhaimin* was decided, § 362(d)(4) offered *in rem* relief upon a finding that the bankruptcy petition "was part of a scheme to delay, hinder, *and* defraud creditors[.]" (Emphasis added.) The language was later amended to read, "was part of a scheme to delay, hinder, *or* defraud creditors[.]" (Emphasis added.) The change in the language, however, did not affect the court's determination that relief under § 362(d)(4) provides "prospective protection, not only against the debtor but also bind[s] every non-debtor, co-owner and subsequent owner of the property." *In re Abdul Muhaimini*, 343 B.R. at 169.

Accordingly, we hold that the circuit court did not err in overruling the exceptions to the sale based on the allegation that the sale violated an automatic stay associated with the Mbongo Bankruptcy.

II.

THE "MULTIPLE FORGERIES"

Mr. Mbongo also asserts that the circuit court erred or abused its discretion "when it willfully chose to ignore the multiple forgeries committed by the Appellees from the inception and throughout this foreclosure action." He claims that the "purported signature of Charlotte Julienne Dikongue on the 'note' is robot-signed and therefore invalid." He also claims that the "Allonge to Note" was also "a forged document."

Appellees respond that Mr. Mbongo's forgery claims "could only be litigated pre-sale through a motion to stay and dismiss filed under Rule 14-211, rather than through post-sale exceptions." Moreover, appellees characterize the forgery claims as a challenge to their standing to maintain the foreclosure action, an issue they assert is barred by the law of the case doctrine because it could have been raised in a prior appeal. We agree.

We note that Mr. Mbongo raised his forgery claims in a pre-sale motion to dismiss or stay the foreclosure sale filed on May 11, 2018.[7] The circuit court denied that motion,

[7] Prior to filing the May 2018 motion, Mr. Mbongo and Ms. Dikongue had filed four other motions to stay or dismiss the sale, all of which had been denied. It is not clear from the record presently before us whether they had also raised the forgery claims in those motions. However, all motions were denied. Mr. Mbongo and Ms. Dikongue appealed from the denial of three of those motions, and we affirmed the judgment in separate unreported opinions. *See Mbongo, et al. v. Ward, et al.*, No. 2436, Sept. Term, 2015; *Mbongo, et al. v. Ward, et al.*, No. 2229, Sept. Term, 2016; *Mbongo, et al. v. Ward, et al.*, No. 1526, Sept. Term, 2017.

and Mr. Mbongo appealed. We affirmed the denial of the motion, holding that the court did not err because the motion was untimely. *Mbongo, et al. v. Ward, et al.*, No. 950, Sept. Term, 2018. Thus, having previously addressed the denial of that motion, we shall not revisit the forgery issue in this appeal. *State v. Holloway*, 232 Md. App. 272, 285 (2017) (Under the law of the case doctrine, "[n]either questions that were decided nor questions that could have been raised and decided on appeal can be relitigated." (quotation omitted)).

Having been thwarted in his attempts to dismiss the foreclosure sale, Mr. Mbongo again raised the forgery claims as a post-sale exception. Even if we assume that the issue is not barred by the law of the case doctrine, we would find no abuse of discretion by the circuit court in overruling that exception.

"A borrower's ability to challenge a foreclosure sale is in part determined by whether relief is requested before or after the sale. Prior to the sale, a borrower may file a motion to stay the sale and dismiss the foreclosure action under Maryland Rule 14-211." *Thomas v. Nadel*, 427 Md. 441, 443 (2012). "In other words, the borrower may petition the court for injunctive relief, challenging the validity of the lien or . . . the right of the [lender] to foreclose in the pending action." *Svrcek v. Rosenberg*, 203 Md. App. 705, 720 (2012) (quotations omitted). However, if the pre-sale motion to stay or dismiss the bankruptcy fails and "[s]hould a sale occur, . . . the debtor's later filing of exceptions to the sale may challenge only procedural irregularities at the sale or the debtor may challenge the statement of indebtedness by filing exceptions to the auditor's statement of account." *Thomas*, 427 Md. at 444 (quoting *Greenbriar Condo v. Brooks*, 387 Md. 683, 688 (2005)).

Here, the forgery claims raised by Mr. Mbongo do not concern a procedural irregularity related to the sale. Rather, Mr. Mbongo, once again, is challenging the right of appellees to foreclose on the property, something he was required to (and in fact did) raise pre-sale. Consequently, the forgery claims were not cognizable post-sale exceptions and were properly overruled.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.