

Circuit Court for Baltimore County
Case No. C-03-CV-19-002435

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1902

September Term, 2021

A1A PROPERTIES, LLC

v.

EDWARD S. COHN, ET AL.

Wells, C.J.,
Graeff,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: May 12, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 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.

A1A Properties, LLC (“A1A”), appellant, purchased a residential property in Baltimore County at a foreclosure sale. The Substitute Trustees,¹ appellees, timely reported the sale to the Circuit Court for Baltimore County. Before the sale was ratified, the Governor declared a State of Emergency due to the COVID-19 pandemic. Soon after, residential foreclosure cases were stayed subject to an administrative order issued by the Chief Judge of the Supreme Court of Maryland,² and then, in some cases, due to federal moratoria. More than 20 months after the report of sale was filed, the court ratified the sale.

A1A filed a motion to abate post-sale interest and property taxes that accrued during the COVID-19 related stays and moratoria. The circuit court initially denied the motion, then granted A1A’s motion for reconsideration. The substitute Trustees then filed a motion for reconsideration, which the court granted, vacating its grant of the motion to abate based upon this Court’s decision in *North Star Properties, LLC v. Nadel*, 253 Md. App. 164 (2021).

On appeal, A1A presents three questions for review,³ which we have consolidated to the following question:

¹ The Substitute Trustees are: Edward S. Cohn, Stephen N. Goldberg, Richard E. Solomon, Richard J. Rogers, Michael McKeefery, and Christianna Kersey.

² At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

³ The questions as posed by A1A are:

Did the circuit court err or abuse its discretion in denying an equitable abatement based upon trustee neglect and/or conduct of other persons outside its control?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

On July 19, 2019, the Substitute Trustees filed in the circuit court an order to docket foreclosure for a residential, owner-occupied property at 5508 Windsor Mill Road in Gwynn Oak, Maryland (“the Property”). The Property was sold at auction on December 5, 2019, to A1A, the highest bidder, for \$142,000. A1A paid a \$12,000 deposit, and consistent with the terms of sale, it was obligated to pay interest at a rate of 4.625 percent on the balance of the sales price (\$130,000), in addition to property taxes, utilities, private

1. Did the trial court err in denying purchaser’s requested abatement of interest and taxes accruing from March 20, 2020 through September 8, 2021 where interest and taxes continued to accrue for about one-and-a-half years because the foreclosure trustees neglected to file a Declaration within their control and the control of their foreclosing lender client?
2. Should the foreclosure trustees and their lender client be able to pass on the costs of their own delay solely to benefit the foreclosing lender where the foreclosure trustees delayed the filing of a declaration of exemption that allowed the foreclosing lender to collect more money from the purchaser than the lender would have collected had the foreclosure trustees timely filed the declaration of exemption and essentially benefit from their own neglect and delay at the expense of the purchaser?
3. Does *North Star Properties v. Nadel* apply to this case not involving judicial backlog or court delay but instead trustee neglect, or in the alternative, delay caused by unconstitutional conduct of the federal government beyond the control of Foreclosure Purchaser to ameliorate?

assessments, and other carrying costs until settlement. The terms of sale further provided that there would be “no abatement of interest” in “the event settlement [was] delayed for any reason.”

On December 20, 2019, the Substitute Trustees filed a “Report of Sale.” A month later, the Substitute Trustees filed a line with the court advising that the “file [was] eligible for ratification” and asking the Clerk’s Office to send it to a judge for review.

I.

The Delay in Ratification

On March 5, 2020, Governor Hogan declared a State of Emergency due to the COVID-19 pandemic. On March 18, 2020, the Chief Judge of the Supreme Court of Maryland issued an Administrative Order suspending residential foreclosures, tax sales, and evictions. *See North Star*, 253 Md. App. at 168 (discussing the administrative order). Consequently, the case was stayed, and the sale was not ratified. The Supreme Court lifted the stay of proceedings related to residential foreclosures on July 25, 2020, but federal moratoria continued to apply to many lien instruments insured, backed, or owned by federal agencies. *Id. See Amended Administrative Order Lifting The Suspension During The COVID-19 Emergency Of Foreclosures, Evictions, And Other Ejectments Involving Residences* (Chief Judge, Court of Appeals of Maryland, June 3, 2020) (stay of proceedings related to residential foreclosures lifted effective July 25, 2020); *Eighth Amended Administrative Order On The Suspension During The COVID-19 Emergency Of Foreclosures, Evictions, And Other Ejectments Involving Residences* (Chief Judge, Court

of Appeals of Maryland, Feb. 16, 2021) (explaining the continuing impact of federal moratoria on residential foreclosures and setting out the procedure for establishing an exemption from those moratoria).⁴

In November 2020, A1A filed a “Declaration of Exemption from Foreclosure Moratorium,” seeking to enforce a judgment of possession that had been entered in its favor on September 4, 2020. It asserted that the Coronavirus Aid, Relief, and Economic Security Act of 2020, Pub. L. No. 116-136, 134 Stat. 281, prohibited only evictions by lessors, and because A1A was a foreclosure purchaser, not a lessor, it was not barred from enforcing its judgment.

By order dated January 19, 2021, the circuit court ruled that the declaration filed by A1A failed to show that the lien instrument did not remain subject to federal moratoria on residential foreclosures. The court noted that A1A, as the foreclosure purchaser, was neither a “secured party representative or a trustee” with access to the facts regarding the lien instrument and the occupancy status of the Property.

On March 2, 2021, the circuit court entered a memorandum and order vacating the September 4, 2020 judgment of possession. The court found that the sale had not yet been ratified, and that there were no equitable grounds supporting an award of immediate possession.

⁴ Active and superseded orders are available at <https://mdcourts.gov/coronavirusorders>.

On August 11, 2021, the Substitute Trustees filed a “Declaration of Exemption from Moratorium,” stating that, although the lien instrument was owned by a federal agency, it no longer was subject to any federal moratoria because: (1) the loan was in default for more than 120 days prior to March 1, 2020; and (2) the foreclosure sale occurred before that date. Twenty days later, on August 31, 2021, the Substitute Trustees filed a letter with the Clerk of the Circuit Court for Baltimore County, advising that the foreclosure sale was eligible for ratification.

On September 8, 2021, the circuit court ratified the sale.

II.

A1A’s Motion to Abate Interest and Taxes

On September 30, 2021, A1A moved to abate interest and real property taxes that had accrued from March 20, 2020, through September 8, 2021. It asserted that “[t]he entirety of the delay in this action is attributable to the moratorium placed on Trustees by the various federal agencies who secure the mortgages,” and based on the delay, A1A owed \$8,862.26 in interest, \$8,490.27 in taxes, and \$2,163.36 for legal fees in an action to foreclose a tax lien on the Property. According to A1A, the stays and moratoria that delayed ratification were, under *Donald v. Chaney*, 302 Md. 465, 477 (1985), “conduct of other persons beyond the power of the purchaser to control or ameliorate,” which is a ground upon which a foreclosure purchaser may be entitled to abatement of its interest, taxes, and costs.

The Substitute Trustees opposed the motion to abate. They argued that delays caused by state stays and federal moratoria during the COVID-19 pandemic were analogous to a judicial backlog, which this Court had held in *AMT Homes, LLC v. Fishman*, 228 Md. App. 302, 313 (2016), could not support an equitable abatement of interest and other costs.

The circuit court initially denied the motion to abate. A1A moved for reconsideration, reiterating and further explaining the grounds raised in its original motion. On November 22, 2021, the circuit court granted A1A's motion for reconsideration and ordered the Substitute Trustees to abate the pro-rata share of interest on the unpaid purchase price and property taxes for the period from March 20, 2020, to September 8, 2021.

On November 19, 2021, however, days before the circuit court's order, this Court had issued its decision in *North Star*, 235 Md. App. at 179.⁵ We held that a circuit court did not abuse its discretion in denying a foreclosure purchaser's motion to abate post-sale interest and taxes arising from delays during the judiciary-wide stay of residential foreclosure cases occasioned by the COVID-19 pandemic.

On November 30, 2022, relying on *North Star*, the Substitute Trustees moved for reconsideration of the order granting A1A's motion for reconsideration and abating interest and property taxes. A1A opposed the motion, arguing that *North Star* was distinguishable because, in this case, the delays were occasioned not just by administrative orders issued

⁵ The Substitute Trustees brought the *North Star* decision to the attention of the court by a supplemental opposition to the motion to reconsider on November 22, 2021, the same day the court granted that motion.

by the Chief Judge of the Supreme Court, but also by federal government actions and moratoria. A1A also argued, *for the first time*, that abatement was warranted based upon trustee neglect, asserting that the Substitute Trustees failed to timely file a declaration of exemption from the federal moratoria.

By order entered January 5, 2022, the circuit court granted the Substitute Trustees' motion to reconsider. Based on *North Star*, it vacated its order granting the motion to abate interest and real property taxes for March 20, 2020 through September 8, 2021.

This timely appeal followed.

STANDARD OF REVIEW

In assessing the propriety of a decision to deny a motion to abate interest and property taxes, we review *de novo* the legal standard that the court applied. *AMT Homes*, 228 Md. App. at 308. The court's ultimate decision to deny abatement of interest and taxes is reviewed for abuse of discretion, and will be reversed "only where the decision under consideration is well removed from any center mark imagined by this Court and beyond the fringe of what we deem minimally acceptable." *Id.*; *Smith v. State*, 480 Md. 534, 561 (2022).

DISCUSSION

A1A contends that the circuit court erred in denying its motion to abate post-sale interest and taxes because the delay in ratification was caused by the Substitute Trustees' "prolonged failure" to file a declaration of exemption from federal foreclosure moratoria. It asserts that the circuit court granted its first motion for reconsideration on that basis, but

the court erroneously reversed course after the decision in *North Star*. Alternatively, A1A argues that the “unconstitutional conduct of the federal government in imposing the foreclosure moratoria is conduct by a person not within the control or power of [A1A] to ameliorate.”

The Substitute Trustees respond that trustee neglect was not raised by A1A in its motion to abate or its motion for reconsideration, and therefore, that argument should not be considered on appeal. On the merits, the Substitute Trustees maintain that they could not file a declaration of exemption until the Property was eligible, on July 31, 2021, a mere eleven days before it filed its declaration.

Ordinarily, “as a matter of contract and convention,” a foreclosure purchaser who deposits a portion of the purchase price must “‘pay interest upon the unpaid balance for the period between the time fixed for settlement and the date of actual settlement’ and pay property taxes from the date of the sale.” *North Star*, 253 Md. at 166. There are three equitable exceptions to that general rule if there is a delay:

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 (1) stems from neglect on the part of the trustee; (2) was caused by necessary appellate review of lower court determinations[;] or (3) was caused by the conduct of other persons beyond the power of the purchaser to control or ameliorate.

Donald, 302 Md. at 477 (cleaned up; numbering added). *Accord North Star*, 253 Md. App. at 166 (recognizing that the equitable exceptions likewise apply to a request to abate property taxes).

In *AMT Homes*, 228 Md. App. at 311–12, this Court applied these principles to hold that delays in ratification occasioned by judicial backlog, which is outside the control of all parties, does not warrant shifting the obligation to pay interest and taxes from the foreclosure purchaser to the lender. We rejected the foreclosure purchaser’s argument that the court was an “other person,” the conduct of whom could justify abatement, noting that the cases addressing delay caused by “other persons” uniformly related to conduct of the “former owners” of the property. *Id.* at 311. *See also Baltrotsky v. Kugler*, 395 Md. 468, 476 (2006) (former owner of foreclosed property initiated *pro se* litigation that delayed ratification); *Zorzit v. 915 W. 36th St., LLC*, 197 Md. App. 91, 108-09 (2011) (former owners of foreclosed properties filed exceptions that delayed ratification). We reasoned that delays in ratification caused by judicial backlog fell “within the universe of risks properly allocated to purchasers, and a cost of doing business in this space.” *AMT Homes*, 228 Md. App. at 313.

In *North Star*, we addressed these principles in the context of the COVID-19 related administrative orders staying residential foreclosure cases. We held that a “delay in judicial review resulting from neutral conditions affecting judicial operations – whether caused by the court-wide backlog in *AMT Homes* or by the pandemic-related stay effective judiciary-wide in this case – does not warrant equitable relief from a foreclosure purchaser’s contractual obligation to pay interest and taxes.” 253 Md. App. at 179. We held that, although “a judiciary-wide stay in response to a public emergency” is beyond a foreclosure purchaser’s control, it is “not caused by the ‘conduct of other persons’ so as to warrant

abating the foreclosure purchaser’s responsibility for interest and taxes.” *Id.* Similarly here, the orders issued by the Chief Judge of the Supreme Court and moratoria imposed by federal agencies in the wake of the COVID-19 pandemic were not “conduct of other persons beyond the power of the purchaser to control or ameliorate.”

We hold that the circuit court did not err or abuse its broad discretion by granting the Substitute Trustees’ motion for reconsideration and vacating its grant of the motion to abate interest and taxes. As indicated, under *North Star*, the judiciary-wide stay was not a ground justifying equitable abatement. And A1A’s alternative contention, that *North Star* is distinguishable because, here, the delay resulted from federal agency actions, as opposed to a stay imposed by the Maryland Judiciary, is not persuasive.⁶ Moratoria imposed by federal agencies, like the judiciary-wide stays, resulted from “neutral conditions” that were outside of the control of *all* the parties to the foreclosure proceeding. *North Star* and *AMT Homes* make clear that equitable cost-shifting is not justified in such circumstances because the foreclosure purchaser assumes the risk of unforeseen delays. A1A assumed that risk when it purchased the Property, expressly agreeing that it would not be entitled to abatement of interest due to delays in settlement.

Finally, with respect to A1A’s argument that trustee neglect caused the delay, we note that this argument was raised for the first time in its opposition to the Substitute

⁶ We decline to address A1A’s argument, raised for the first time in this Court, that the federal agencies engaged in unconstitutional conduct and that this justifies a departure from the principles enunciated in *North Star*. See Md. Rule 8-131(a) (ordinarily this Court will not address any non-jurisdictional argument that was not raised in or decided by the trial court).

Trustees' motion for reconsideration. The circuit court acted within its discretion in declining to consider that argument. *See, e.g., Morton v. Scholtzhauer*, 449 Md. 217, 232 n.10 (2016) ("A circuit court does not abuse its discretion when it declines to entertain a legal argument made for the first time in a motion for reconsideration that could have, and should have, been made earlier, and consequently was waived.").

For all these reasons, the circuit court did not err or abuse its discretion by denying A1A's motion to abate interest and taxes.

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