

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0607

September Term, 2015

NOVA PARTNERS, LLC

v.

LAURA H. G. O’SULLIVAN, ET AL.,
SUBSTITUTE TRUSTEES

Wright,
Graeff,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: April 13, 2016

*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 May 9, 2014, appellees, Laura H.G. O’Sullivan, Erin M. Brady, Diana C. Theologou, Chastity Brown, Laura T. Curry, and Alyson Gromak, as Substitute Trustees, filed an order to docket a foreclosure action in the Circuit Court for Montgomery County. On September 24, 2014, appellees filed a report of sale indicating that appellant, Nova Partners, LLC (“Nova”), had purchased the subject property located at 13304 Dauphine Street, Wheaton, Maryland 20906 (“Property”). The circuit court ratified the sale on February 20, 2015.

On April 16, 2015, Nova filed a motion to abate “the purchase price herein in the amount of the accruing interest, taxes and homeowners association assessments for which [it] would otherwise be liable,” because ratification was delayed through no fault of its own. That motion was denied on May 11, 2015, and Nova timely filed an appeal on May 27, 2015, challenging the circuit court’s ruling.¹

Facts

When the sale of the Property was advertised, the publication included the following provisions:

¹ In its brief, Nova presented the issue as follows:

- I. Where ratification of a foreclosure sale is delayed by Court review, is the foreclosure purchaser entitled to an abatement?
- II. Where ratification of a foreclosure sale is delayed by causes or persons beyond the foreclosure purchaser’s control, is the foreclosure purchaser entitled to an abatement of taxes and other accruing charges in addition to an abatement of interest?

Interest is to be paid on the unpaid portion of the purchase price at the rate of 8.5% per annum from date of sale to the date the funds are received in the office of the Substitute Trustees *There will be no abatement of interest due from the purchaser in the event settlement is delayed for any reason. Taxes, water, rent, and all other public charges and assessments payable on an annual basis, including sanitary and/or metropolitan district charges to be adjusted for the current year to the date of sale, and assumed thereafter by the purchaser. Condominium fees and/or homeowners association dues, if any, shall be assumed by the purchaser from the date of sale.* The purchaser shall be responsible for the payment of the ground rent escrow, if required. Cost of all documentary stamps, transfer taxes, and all settlement charges shall be borne by the purchaser.

(Emphasis added). After Nova purchased the Property, the circuit court issued a notice of report of the sale on September 26, 2014, requiring anyone opposing the sale to show cause on or before October 27, 2014, why the sale should not be ratified. On October 16, 2014, the certification of publication of the notice of report of the sale was docketed, and no exceptions to the sale were filed.

On November 17, 2014, the circuit court issued a notice of non-compliance, asking appellees to clarify the identity of the Property's owners. Specifically, the court asked why "the deed of trust list[s] Ronald L. Stout as the home owner," while "Danielle Stout, Stout Family Trust and Anna Ossman are listed through[]out the file as defendants." On December 16, 2014, appellees filed a motion for reconsideration, responding to the court's inquiry and stating that Mr. Stout had conveyed his interest in the Property to the defendants. On January 12, 2015, the court issued another notice of non-compliance, requiring proof that Mr. Stout had conveyed his interest. In response, on February 11, 2015, appellees submitted deeds which evidenced the ownership of the

Property at the time of the docketing of the foreclosure. After the court accepted appellees' submissions, it ratified the sale on February 20, 2015.

When Nova filed its motion seeking abatement on April 16, 2015, it sought a total of \$5,813.20, based on “[i]nterest on \$179,000.00, the unpaid portion of the bid price, at 8.50%, \$41.48 per day” and “[r]eal estate taxes for which [Nova] is responsible at \$9.31 per day.” According to Nova, ratification was delayed by the circuit court, causing an increased expense. In support of its request, Nova cited *Zorzit v. 915 W. 36th St., LLC*, 197 Md. App. 91 (2011), *Thomas v. Dore*, 183 Md. App. 388 (2008), and Md. Rule 14-305(a) & (c), arguing that “[w]here ratification is delayed through no fault of the Purchaser, the Purchaser is entitled to an equitable abatement from the purchase price for costs occasioned by such delay.” Nova sent the motion to appellees using the following address:

c/o McCabe, Weisberg & Conway, LLC
8101 Sandy Spring Road, Ste. 100
Laurel, MD 20707

At all times during the pendency of the case, however, the address on record for appellees was: 312 Marshall Ave., Ste. 800, Laurel, MD 20707.

Although no opposition to the motion was filed, the circuit court denied Nova's motion for abatement on May 11, 2015. This appeal followed.

Standard of Review

We have previously made clear the applicable standard of review of a circuit court's ruling regarding abatement in foreclosure proceedings:

“Whether to abate the payment of interest by a [foreclosure sale] purchaser . . . is a decision entrusted to the discretion of the hearing judge.” *Thomas v. Dore*, 183 Md. App. 388, 405, 961 A.2d 655 (2008). We therefore review a circuit court’s decision to abate interest under the “familiar abuse of discretion standard.” *Baltrotsky v. Kugler*, 395 Md. 468, 477 n.7, 910 A.2d 1089 (2006).^[2]

This Court has aptly noted that “a ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling.” *North v. North*, 102 Md. App. 1, 14, 648 A.2d 1025 (1994). Rather, an abuse of discretion might occur when the trial court’s decision “either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.” *Id.*

Zorzit, 197 Md. App. at 96-97.

Discussion

Nova argues that “the circuit court erred by failing to apply the correct legal principles to consideration of [Nova’s] motion for abatement.” Specifically, it asks us to assign “no weight to [the] sale ad provision against abatement [of interest]” and to hold that a foreclosure purchaser is entitled to an abatement on equitable grounds when delays in ratification are caused by “other persons,” including the court. Citing the same reasons, Nova also contends that “the circuit court should have ordered the abatement of the real estate taxes as well.”

The Court of Appeals has previously 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 (*Oldenburg v. Regester*[], 118 Md. 394

² Accordingly, we reject Nova’s contention that this Court “may . . . review *de novo* whether the [c]ircuit [c]ourt correctly applied the law to [the undisputed] facts.”

(1912)]; *Merryman v. Bremmer*, [250 Md. 1 (1968)]; was caused by necessary appellate review of lower court determinations (*Leviness v. Consol. Gas Co.*, 114 Md. 573, 80 A. 304 [(1911)];] or was caused by the conduct of other persons beyond the power of the purchaser to control or ameliorate (*Raith v. Bldg. & Loan Ass'n*, [140 Md. 542 (1922)]).

Donald v. Chaney, 302 Md. 465, 477 (1985). In this case, Nova's primary contention is that the words "other persons" in the third factor "does not exclude the Court." Citing Md. Rule 1-202(t),³ Nova avers that "[t]he Court is a 'person' who can cause delay so as to warrant an abatement of interest."

Nova does not cite, nor can we find any, case law to support its contention. In *Raith*, the case cited by the Court of Appeals in *Donald* for the proposition now advanced by Nova, there was no substantial delay in the ratification of the sale. *Raith*, 140 Md. at 543. Rather, the purchaser contended that equitable considerations justified relaxation of the rule regarding the abatement of interest because it was unable to take possession of the property in a timely manner, due to the filing of an appeal, without an appeal bond, by a second mortgagee. *See Donald*, 302 Md. at 471. As the Court in *Donald* considered the second mortgagee to be the "other persons" responsible for any alleged delay, *Raith* is inapplicable here. In any event, the *Raith* Court ultimately held that the purchaser was

³ That rule states:

"Person" includes any individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, its agencies or political subdivisions, any court, or any other governmental entity.

Md. Rule 1-202(t).

not “relieved from paying interest and expenses which he had undertaken to pay” because “the rights of a purchaser of property at a judicial sale are not affected, even if the order of ratificat[ion] of a sale is reversed.” *Raith*, 140 Md. at 544-45.

Moreover, as appellees correctly point out, Nova’s proposed interpretation of the factors listed in *Donald* would create a “sweeping change in law.” Allowing the abatement of interest upon every court delay would be excessive and would constitute an abandonment of equitable considerations, especially in a case such as this, where the court’s reasonable 4-month delay in ratification resulted from its intent to clarify the seller’s identity in order to ensure the due process rights of the purchaser, in accordance with foreclosure laws. Here, appellees clearly outlined in the sale advertisement that “[t]here will be no abatement of interest due from the purchaser in the event settlement is delayed for any reason” and that “[t]axes . . . [and] homeowners association dues, if any, shall be assumed by the purchaser from the date of sale.” *Zorbit v. 815 W. 36th LLC*, 197 Md. 91, 108 (2011) (stating that the contractual prohibition of the abatement of interest is presumptively binding on the parties). Based upon this record, we cannot say that the circuit court abused its discretion in denying Nova’s motion for abatement of interest and real estate taxes.

Thus, for all of the foregoing reasons, we affirm the circuit court’s judgment.

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