UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2261

September Term, 2014

PAULETTE WILLIAMS

v.

CARRIE M. WARD, et al.
SUBSTITUTE TRUSTEES

Nazarian,
Leahy,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Rodowsky, J.

Filed: January 26, 2016

This appeal stems from the foreclosure of the deed of trust encumbering property located at 32 Running Brooke Drive, Windsor Mill, Maryland 21244 ("the Property"), formerly owned by Paulette Williams, the appellant. The Property was sold at a foreclosure auction on May 2, 2014, by the appellees, in their capacity as substitute trustees, and the sale was ratified by the Circuit Court for Baltimore County on July 25, 2014. Although the appellant had neither opposed the foreclosure action nor filed any exceptions to the sale itself, she refused to vacate the Property. On November 17, 2014, the appellees filed a Motion for Judgment Awarding Possession.

Thereafter, on November 25, 2014, the appellant filed, *pro se*, an "Affidavit of Fraud on the Court with No Standing," challenging the validity of the deed of trust and the appellees' right to foreclose. On December 15, 2014, the circuit court granted the appellees' motion for judgment awarding possession. The appellant noted her appeal on January 5, 2015.

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

Factual and Procedural Background

On January 17, 2008, the appellant executed a promissory note for $185,600.00, for the purpose of refinancing an existing mortgage on the Property. The note was secured by a deed of trust against the Property. The appellant defaulted under the terms of the deed of trust on May 2, 2012, when she failed to make a payment due on May 1, 2012. A notice of intent to foreclose was sent to the appellant on October 31, 2012. The notice listed Federal

National Mortgage Association ("FNMA") as the then secured party. The record does not indicate what actions, if any, the appellant took to cure the default or otherwise to avoid foreclosure.[1]

On August 22, 2013, the appellees initiated foreclosure proceedings by filing an Order to Docket in the Circuit Court for Baltimore County. After two unsuccessful attempts to serve the appellant personally with notice of the foreclosure action, service was effected on August 23, 2013, by posting on the front door of the Property.

The appellant did not file any opposition to the foreclosure action, and a sale was scheduled for May 2, 2014, at the door of the Baltimore County courthouse. Notice of the sale date and location was sent to the appellant's address. The information was also advertised in *The Jeffersonian*, a weekly newspaper published in Baltimore County, for three successive weeks beginning on April 17, 2014. The auction took place as scheduled and the Property was purchased by FNMA for $200,000.00, which was paid in the form of a credit on the debt.

The appellees reported the sale to the circuit court on May 19, 2014, and the court notified appellant that the sale would be ratified in 30 days absent a showing of cause to the

[1]On December 12, 2013, the appellant filed a Chapter 7 Bankruptcy Petition in the United States Bankruptcy Court for the District of Maryland. The foreclosure proceedings were briefly stayed until the appellant's petition was dismissed by that court on February 6, 2014, for failing to comply with filing requirements.

contrary. Notice of the completed sale was published in *The Jeffersonian* for three successive weeks beginning on May 27, 2014. On June 25, 2014, the appellees filed a request that the sale be ratified, and a copy of the request was mailed to the appellant. The appellant did not file any exceptions to the sale, and it was ratified by order filed on July 25, 2014.

In the months that followed, the Property remained occupied despite a notice to vacate which was sent on August 5, 2014. During that time, the appellant submitted a series of documents to the circuit court declaring her belief that she remained the owner of the Property.[2] Finally, on November 17, 2014, the appellees filed a Motion for Judgment Awarding Possession of the Property on behalf of FNMA, and stating that (1) it had paid the purchase price in the form of a credit on the debt, and (2) it received the substitute trustee deed to the Property on October 20, 2014.

On November 25, the appellant filed an "Affidavit of Fraud on the Court with No Standing," in which she challenged the validity of the deed of trust and the appellees' right to foreclose. The appellant's theory appeared to be that the promissory note had paid off the

[2]The documents submitted by the appellant did not request any relief from the court or explain the basis for the appellant's ownership theory. Instead, they primarily contained accusations directed at the appellees for crimes such as extortion, theft, and fraud. One document indicated that if anyone attempted to enter and take the Property the appellant would defend it "by any means necessary."

balance of the pre-existing mortgage, thereby granting her the Property "free and clear" of any further obligation:

> "The **DEBT WAS NEVER IN DEFAULT** because the promissory note that was given to Supreme Title Company during closing paid off the balance; therefore creating the Certificate of Satisfaction stating that the house was discharged, free and clear in Paulette Williams' name[.]"

(Emphasis in original).

This argument relied primarily upon the conclusions of an October 13, 2014, "securitization analysis report," prepared by Certified Forensic Loan Auditors, LLC., a Los Angeles company ("the CFLA report"). The appellant claimed:

> "The report shows Paulette Williams as the owner of [the Property]. It also shows how the note was securitized for a substantial amount of consideration for MBS (mortgage backed securities,) how the deed of trust and note were separated which is illegal and how [the substitute trustees] or [the loan sevicer] does not have a secured interest in the property."

On December 15, 2014, the circuit court, finding that no cause to the contrary had been shown, signed an order awarding FNMA possession of the Property. Meanwhile, appellees, considering appellant's affidavit to be a motion under Rule 2-535(b), prepared a fourteen page opposition that was received on December 23, 2014 at 10:38 a.m. The court's order was filed on December 23. This appeal followed.

Discussion

In her *pro se* appellate brief, the appellant sets forth a series of rapid one- to two-sentence contentions which generally mirror the thrust of her November 25, 2014 affidavit.

All of her points can be distilled into two broad contentions: (1) according to the CFLA report, the appellees lacked a secured interest in the property and, *ipso facto*, they had no right to foreclose, and (2) the foreclosure in this instance was the result of fraud due to the absence of signatures and/or notary seals on various documents filed in the course of the proceedings.

The appellees respond, first and foremost, that although this appeal is taken from the circuit court's Order of Judgment Awarding Possession, the appellant "fails to provide a single relevant factual basis to suggest that the [order] was improperly entered," and instead, "devotes the entirety of her brief to claims purporting to attack the validity of the underlying foreclosure action." Secondly, the appellees suggest that even if this Court were to treat the appellant's affidavit as a Rule 2-535(b) revisory motion directed at the ratification order of July 25, 2014, the appeal would still fail because: (1) ratification of the sale had not been timely challenged, (2) it fails to advance a meritorious defense to the foreclosure because the allegations do not amount to fraud, and (3) in any event, the theory of fraud described in the affidavit would have been intrinsic to the proceedings and therefore would not justify vacating an enrolled order. We agree with the appellees, and explain.

Motions for judgment of possession are governed by Maryland Rule 14-102. Subsections (a)(1) and (2) of that rule state:

> "(1) If the purchaser of an interest in real property at a sale conducted pursuant to the Rules in this Title is entitled to possession and the person in actual possession fails or refuses to deliver possession, the purchaser or a successor in interest who claims the right of immediate possession may file a motion for judgment awarding possession of the property.
>
> "(2) The motion shall state the legal and factual basis for the movant's claim of entitlement to possession."

Generally, the purchaser of property at a foreclosure sale is entitled to possession when the purchase price is paid, and, through delivery of a deed of conveyance, legal title passes. *Legacy Funding LLC v. Cohn,* 396 Md. 511, 515-16, 914 A.2d 760, 763 (2007); *but see*, *G.E. Capital Mortgage Services, Inc. v. Edwards*, 144 Md. App. 449, 462, 798 A.2d 1187, 1194 (2002) (noting that prior to ratification a purchaser is not entitled to possession, but only entitled to *seek* possession through court order). A circuit court's decision to award possession of property is reviewed for abuse of discretion. *Billingsley v. Lawson*, 43 Md. App. 713, 726-27, 406 A.2d 946, 955 (1979); *G.E. Capital Mortgage Services, Inc.*, *supra*.

I

The appellant's brief focuses exclusively on attacking the initial foreclosure action. That is not an appropriate or effective basis for challenging the circuit court's decision to award possession of the Property to FNMA. *See Manigan v. Burson*, 160 Md. App. 114, 118-19, 862 A.2d 1037, 1040 (2004) (noting that, on appeal from the grant or denial of a

writ of possession, "the appeal must pertain to the issue of possession," and "may not be an attempt to relitigate issues that were finally resolved in a prior proceeding."). We will begin by explaining why the appeal must fail as a challenge to the foreclosure action itself.

The primary flaw in the appellant's position in this regard, and indeed the dispositive failure, is that she did not challenge the foreclosure action in any way until after the sale of the Property had already been ratified. Timing is paramount in the context of challenging a foreclosure action. The Court of Appeals has cautioned that there are certain challenges – such as the validity of the lien instrument or the right of a party to foreclose – which must be raised prior to the sale. As the Court stated recently in *Thomas v. Nadel*, 427 Md. 441, 443, 48 A.3d 276, 277 (2012):

> "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. After holding a hearing on the merits of such a motion, the court may dismiss the foreclosure action if it finds 'that the lien or the lien instrument is invalid or that the plaintiff has no right to foreclose in the pending action.' Maryland Rule 14-211(e)."

(Footnote omitted). *See also Bates v. Cohn*, 417 Md. 309, 318-19, 9 A.3d 846, 852 (2010) ("[A] homeowner/borrower ordinarily must assert known and ripe defenses to the conduct of a foreclosure sale prior to the sale, rather than in post-sale exceptions.").

The Court emphasized that "the situation is different after a foreclosure sale," at which point the borrower is limited to filing exceptions to perceived irregularities in the sale itself.

> "The situation is different after a foreclosure sale. Following a sale, the clerk is to publish a notice identifying the property and stating that the sale will be ratified unless 'cause to the contrary' is shown within 30 days of the date of the notice. Maryland Rule 14-305(c). During that period, a borrower may file written exceptions that describe any alleged 'irregularity with particularity.' Maryland Rule 14-305(d). The rule further provides that the court is to ratify the sale if (1) no exceptions are filed within the 30-day period or any that were made have been overruled and (2) the court is satisfied that 'the sale was fairly and properly made.' Maryland Rule 14-305(e)."

Thomas, 427 Md. at 444, 48 A.3d at 277-78. *See Bates v. Cohn*, 417 Md. at 319, 9 A.3d at 853 ("Once the property is sold at foreclosure, the borrower may file a claim pursuant to Rule 14-305 only as to 'exceptions to the *sale*.'" (alteration in original).).

The appellant's brief, like her affidavit of November 25, 2014, is an amalgamation of theories as to why the foreclosure sale of May 2, 2014, should not have taken place. The sale *did* take place, however, in the absence of any contemporaneous challenge by the appellant. Any argument regarding the right of the appellees to foreclose was waived at that point. When the sale was ratified on July 25, 2014, in the absence of any post-sale exceptions, the preclusive effect was virtually absolute. *Manigan v. Burson*, 160 Md. App. 114, 120, 862 A.2d 1037, 1040 (2004) ("Ordinarily, upon the court's ratification of a foreclosure sale objections to the propriety of the foreclosure will no longer be

entertained."); *Ed Jacobsen, Jr., Inc. v. Barrick*, 252 Md. 507, 511, 250 A.2d 646, 648 (1969) ("[T]he law is firmly established in Maryland that the final ratification of the sale of property in foreclosure proceedings is res judicata as to the validity of such sale, except in the case of fraud or illegality, and hence its regularity cannot be attacked in collateral proceedings." (Citations omitted).).

After ratification of the sale, Maryland Rule 2-535(b) would apply. *See* Alexander Gordon, IV, GORDON ON MARYLAND FORECLOSURES, § 24.3 (4th ed. 2004), p. 1149. That rule provides:

> "On motion of any party filed at any time, the court may exercise revisory power and control over the judgment *in case of fraud, mistake, or irregularity*."

(Emphasis added).

To be entitled to relief under Rule 2-535(b) on the basis of fraud, a litigant must show "clear and convincing proof" of "extrinsic" fraud. *Billingsley v. Lawson*, 43 Md. App. 713, 718-19, 406 A.2d 946, 951 (1979) (citation omitted).

> "[A] litigant seeking to set aside an enrolled decree must prove extrinsic fraud and not intrinsic fraud. ...
>
> > "*[A]n enrolled decree will not be vacated even though obtained by the use of forged documents, perjured testimony, or any other frauds which are 'intrinsic' to the trial of the case itself*. Underlying this long settled rule is the principle that, once parties have had the opportunity to present before a court a matter for investigation and determination, and once the decision has been rendered and the litigants, if they so choose,

> have exhausted every means of reviewing it, the public policy of this State demands that there be an end to that litigation ... This policy favoring finality and conclusiveness can be outweighed only by a showing 'that the jurisdiction of the court has been imposed upon, or that the prevailing party, by some extrinsic or collateral fraud, has prevented a fair submission of the controversy.' (Citation omitted.).
>
> "*Fraud is extrinsic when it actually prevents an adversarial trial but it is intrinsic when it is employed during the course of the hearing which provides the forum for the truth to appear*, albeit that truth was distorted by the complained of fraud. *Maryland Steel Co. v. Marney*, 91 Md. 360, 46 A. 1077 (1900)."

Billingsley, 43 Md. App. at 718-19, 406 A.2d at 951 (emphasis added, citation omitted). *And see, Schwartz v. Merchants Mortg. Co.*, 272 Md. 305, 322 A.2d 544 (1974) (holding that alleged conspiracy among defendants to commit perjury, entered into prior to trial of action to set aside mortgages, was allegation of intrinsic fraud.).

Although the appellant's affidavit and her appellate brief are replete with terms such as "fraud" and "fraudulent," the words are not anchored to any cogent legal or factual explanation. In her brief, she accuses the appellees of "filing fraudulent Substitute Deed Papers on October 20, 2014," but does not explain what about the Substitute Trustee Deed she considers to have been fraudulent, beyond the fact that it was the capstone of a foreclosure sale that she now argues should not have occurred. She also suggests that "a fraudulent deed of trust" was created by the appellees "without the permission/wet ink signature of Appellant." However, the copy of the deed of trust which is part of the record

of this appeal is signed by the appellant, and her initials appear at the bottom of each of its fifteen pages.[3] She claims that the appellees, "falsely or fraudulently prepared documents required ... to foreclose as a calculated and fraudulent business practice," and that the foreclosure as a whole "involved numerous fraudulent, false, deceptive and misleading practices[.]" She does not specifically identify the practices which are the subject of this general allegation, nor does she articulate the manner in which those practices resulted in a material misrepresentation which she relied upon to her detriment.

The appellant has failed to adequately allege a theory of fraud. In addition, the variety of fraud that could most plausibly result from the submission of falsified documents such as those described by the appellant would be, by definition, intrinsic to the proceedings. That is, she does not allege that she was prevented from litigating her present claims due to some actions of the appellees. In short, the appellant has not demonstrated that she is entitled to any relief pursuant to Rule 2-535(b), and has provided no basis for undoing the ratification of the sale of her Property which she, heretofore, never opposed.

[3]Moreover, there is no indication in the record that any of the substitute trustees were involved in the creation of the underlying deed of trust in this case, nor is there any reason to believe that they were.

II

Turning to the circuit court's order awarding possession of the property to FNMA, the decision from which this appeal was actually taken, the appellant has failed meaningfully to dispute any of the factors bearing on that decision. The record reflects that at the time the motion for judgment was filed on November 17, 2014, the sale of the Property had been ratified, FNMA had paid the purchase price, and it had received the substitute trustee deed to the Property. On the basis of these facts, it would appear that FNMA was entitled to possession. The circuit court's decision to grant the motion was not, therefore, an abuse of discretion.[4]

[4]In this Court, on November 10, 2015, the appellant filed the following paper writings, all of which are captioned, "Superior Court of the State of Maryland in and for the County of Baltimore." Each caption has the case number of this appeal in this Court. Each caption lists the appellant as "Plaintiff" and names numerous defendants including, "Does 1 through 100, inclusive."

The papers are titled:

1. Mandatory Judicial Notice
2. Notice of Pendency of Action
3. Application for Temporary Restraining Order, Preliminary Injunction, and Declaratory Relief
4. A thirty-two page complaint, containing ten alleged claims.

Paper No. 1 asks the "Superior" court to take judicial notice, pursuant to Federal Rules of Evidence Rule 201(b)(d), of thirteen legal subjects by topic headings, followed by case law, statutory, and Federal Rules of Civil Procedure citations. Paper No. 1 states that it asserts a claim and that the plaintiff is seeking equitable relief and compensatory, special, general, and punitive damages totaling $2,000,000.

(continued...)

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED.

COSTS TO BE PAID BY THE APPELLANT.

[4](...continued)

We are unclear whether the appellant is merely asking this Court to notice papers that she has already presented to the Circuit Court for Baltimore County or whether appellant is attempting to file in the first instance in this Court. The Clerk of the Circuit Court for Baltimore County certified the record in this case to this Court on April 2, 2015, and it does not contain the papers that the appellant presented to this Court on November 10, 2015.

If this Court is simply being asked to notice the papers as a sort of supplemental brief, we rule that they do not affect or alter the mandate herein.

The papers, however, seemingly are an attempt to assert claims, the consideration of which is not the function of an appellate court in the first instance. Accordingly we shall direct the clerk of this Court to transmit the papers to the clerk of the Circuit Court for Baltimore County for that court's consideration of whether the papers present an acceptable filing.