Circuit Court for Howard County
Case No. 13-C-12-091874 FC

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1571

September Term, 2016

MARLENA JAREAUX

v.

JEFFREY FISHER, ET AL.
SUBSTITUTE TRUSTEES

Woodward, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 7, 2017

*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 August 17, 2012, substitute trustees, appellees, filed an order to docket foreclosure in the Circuit Court for Howard County for 7355 Eden Brook Drive, Unit G43, Columbia, Maryland 21046 ("the property").[1] Appellees properly served the homeowner, Marlena Jareaux, appellant, and filed the required documents with the court. Jareaux responded with a motion to stay and dismiss the foreclosure, which the court denied. A foreclosure sale was held on May 6, 2013, and a report of sale was filed the same day. On July 1, 2013, however, appellees filed a suggestion of bankruptcy, informing the court that Gail Proctor, who was a junior lienholder on the property, had filed for bankruptcy in the United States Bankruptcy Court for the District of Maryland on March 12, 2012.[2] As such, appellees asked the court not to calendar any further proceedings due to the bankruptcy stay.[3] Appellees simultaneously filed a motion to withdraw the report of sale and a motion to vacate the final order of ratification. The circuit court ratified the sale on July 10, 2013, but it later vacated the order of ratification.

On June 9, 2014, appellees filed a notice of the termination of the bankruptcy stay – due to the dismissal of the bankruptcy petition – and re-filed an affidavit of compliance

[1] The docket entries list the substitute trustees as Jeffrey Fisher, Doreen Strothman, Virginia Inzer, William Smart, and Carletta Grier.

[2] Proctor had recorded a judgment lien against the property in the amount of $49,942 on August 28, 2012, which was the result of a lawsuit. The judgment lien was junior in seniority to the deed of trust.

[3] *See* 11 U.S.C. § 362(a)(1) & (3) (noting that the filing of a bankruptcy petition "operates as a stay" applicable to "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor . . . ." or "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate").

with Rule 14-206. Jareaux responded with a motion to stay or dismiss the foreclosure, which the court denied. A foreclosure sale was held on September 8, 2014, and a report of sale was filed the same day. The court entered a final order of ratification on February 5, 2016. On August 18, 2016, Jareaux filed a "Motion to Vacate Judgments Obtained and Strike Act Performed in Violation of Bankruptcy Automatic Stay," which the court denied on September 21st. Jareaux noted this timely appeal and challenges the court's denial of her motion to vacate. For the reasons stated below, we perceive no abuse of discretion, and we affirm.

On appeal, Jareaux maintains that because Proctor had filed for bankruptcy prior to the initiation of the foreclosure proceeding against her, the bankruptcy stay operated to render the foreclosure proceeding void *ab initio*, meaning that the circuit court lacked the jurisdiction to make any rulings as to the property from the outset. Furthermore, she contends that once the bankruptcy court had dismissed Proctor's bankruptcy petition, appellees were required to file a motion to terminate the bankruptcy stay and also to file a completely new order to docket in the circuit court. She also argues that, assuming appellants were not required to file a new action, the court erred in accepting old documents to proceed with the foreclosure sale. Essentially, she contends that the circuit court lacked the authority to act upon appellees' foreclosure proceeding because of Proctor's bankruptcy petition, and any action taken in this case was a nullity because of it.

Preliminarily, Jareaux concedes that her appeal may be moot because the court had entered a final judgment of ratification in February 2016, and she did not timely note an appeal or exceptions to that order. Indeed, "[a]bsent fraud, mistake, or irregularity in the

foreclosure sale, the ratification by the court wraps the proceeding in the armor of *res judicata* so that the foreclosure may not be collaterally attacked[.]" *Kline v. Chase Manhattan Bank, N.A.*, 43 Md. App. 133, 143 (1979). Jareaux contends that, pursuant to Rule 2-535(b), the court had the authority to revise its final judgment because it had acted by mistake in a situation where it lacked the jurisdiction to act. Rule 2-535(b) provides that, for a motion to revise filed beyond thirty days after the entry of judgment, "the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity." We review a court's decision to deny a request to revise pursuant to Rule 2-535(b) for abuse of discretion. *See Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008).

A mistake sufficient for the court to exercise its revisory power means a "'jurisdictional error, such as where the Court lacks the power to enter judgment.'" *Pelletier v. Burson*, 213 Md. App. 284, 291 (2013) (quoting *Green v. Ford Motor Credit Co.*, 152 Md. App. 32, 51 (2003)).[4]

[4] This Court has defined an irregularity as "'the doing or not doing of that, in the conduct of a suit at law, which, conformable to the practice of the court, ought or ought not to be done.'" *Pelletier*, 213 Md. App. at 290 (quoting *Davis v. Attorney Gen.*, 187 Md. App. 110, 125 (2009)). If, however, the judgment was entered "'in conformity with the practice and procedures commonly used by the court that entered it, there is no irregularity'" sufficient for the court to exercise its revisory powers. *Id.* (quoting *De Arriz v. Klingler-De Arriz*, 179 Md. App. 458, 469 (2008)). Jareaux has not alleged an irregularity, and we do not perceive one.

This Court has also explained that in order for a court to exercise its revisory power in cases of fraud, that fraud must be extrinsic, rather than intrinsic. *See Jones*, 178 Md. App. at 73 (explaining extrinsic fraud as that which "'actually prevents an adversarial trial[,]'" and intrinsic fraud as that which "'is employed during the course of the hearing which provides the forum for the truth to appear, albeit, the truth was distorted by the complained of fraud'" (quoting *Manigan v. Burson*, 160 Md. App. 114, 121 (2004)). Jareaux has not alleged fraud, and we do not perceive extrinsic fraud in this case.

Jareaux argues that the circuit court lacked jurisdiction because of the bankruptcy stay, and the filing of the suit after the commencement of the bankruptcy proceeding rendered the foreclosure void *ab initio*. Indeed, in *Kochhar v. Bansal*, 222 Md. App. 32, 43 (2015), this Court concluded that a lawsuit filed during the pendency of a bankruptcy stay was void *ab initio*, and, without action from the bankruptcy court, "the termination of the stay could not retroactively vest subject matter jurisdiction in the circuit court when the court lacked jurisdiction over the subject matter of the case when the suit was filed." The cases are, however, distinguishable.

In *Kochhar*, the bankruptcy debtors were the defendants in the subject lawsuit. Hence, the bankruptcy stay operated to stay "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor[.]" 11 U.S.C. § 362(a)(1). In this case, the bankruptcy debtor was a junior lienholder of Jareaux. Appellees assert that the filing of an order to docket against Jareaux and going through the pre-sale procedures against her did not violate the bankruptcy stay as to Proctor.[5] We note, too, that the order to docket foreclosure was initiated prior to the recordation of Proctor's lien against the property (but after the filing of the bankruptcy petition). Accordingly, appellees would have had no notice of Proctor's claim against the property at the time the order to docket was filed. Unlike in *Kochhar*, then, where the action was against the bankruptcy debtor and was commenced after the filing of the petitions for bankruptcy, in this case, at

[5] Appellees state that, because it was possible that the foreclosure could extinguish the junior lien, an "argument could have been made" that the foreclosure sale of the property would constitute the "exercise of control" over property of Proctor's bankruptcy estate.

the time appellees docketed the order of foreclosure, Proctor was not a junior lienholder, and there was no issue with the court's jurisdiction at the time the foreclosure was filed. Accordingly, whatever the applicability of the bankruptcy stay to a foreclosure involving a petition for bankruptcy filed by a junior lienholder, the circuit court had jurisdiction when the foreclosure was filed, and this case is not void *ab initio*.

To the extent that Jareaux argues that appellees were required to file a motion to terminate the bankruptcy stay – if the stay applied – no such motion was required. *See* 11 U.S.C. § 362(c)(2)(B) (providing that the bankruptcy stay continues until the case is dismissed).

We, therefore, are not persuaded that the court abused its discretion in denying Jareaux's motion to vacate.

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