

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1996

September Term, 2015

FREDERICK KAMBUGU

v.

JOHN S. BURSON, *et. al.*,
SUBSTITUTE TRUSTEES

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 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.

In 2006, Frederick Kambugu, appellant, borrowed money from Long Beach Mortgage Corporation (the “Note”) to purchase a home. Long Beach Mortgage Corporation subsequently transferred the Note to the Long Beach Mortgage Loan Trust 2006-4 (the “Trust”). When Kambugu defaulted on the Note, in 2007, Deutsche Bank National Trust, as acting trustees of the Trust, instituted proceedings to foreclose on Kambugu’s home. In 2008, the home was sold, and, that same year, the sale was ratified by the Circuit Court for Montgomery County.

Approximately seven years after the sale was ratified, in 2015, Kambugu filed a motion to vacate the court’s order ratifying the sale, claiming that because the Note, filed with the court, was unendorsed, Deutsche Bank did not have standing to invoke the jurisdiction of the court and enforce the Note by instituting foreclosure proceedings. When the court denied Kambugu’s motion to vacate, Kambugu noted this appeal, contending that the court erred in finding that Deutsche Bank could enforce the Note and, furthermore, that Deutsche Bank’s attorneys, appellees, had committed fraud by representing to the court that Deutsche Bank could enforce the Note, even though the Note was unendorsed.

We hold that the court did not err in denying Kambugu’s motion to vacate. First, Kambugu’s claim is untimely, as the motion to vacate was filed seven years after the court had entered judgment ratifying the sale. Generally, a court may exercise revisory power over any judgment within thirty days after entry of the judgment. Md. Rule 2-535(a). If, however, a motion is filed beyond this time period, the court may still exercise revisory power, but only in cases of fraud, mistake, or irregularity. Md. Rule 2-535(b). “To establish fraud under Rule 2-535(b), a movant must show extrinsic fraud, not intrinsic

fraud.” *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013) (internal citations omitted). “‘Fraud is extrinsic when it actually prevents an adversarial trial but is intrinsic when it 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.’” *Id.* at 290-91.

Here, there was nothing extrinsic about the alleged fraud. Whether appellees had a right to enforce the Note had no bearing on Kambugu’s ability to fully present his case. In other words, Kambugu had every opportunity to challenge appellees standing prior to or immediately after the court’s ratification of the foreclosure sale in 2008. Because there was no extrinsic fraud, the court did not err in denying Kambugu’s motion to vacate.

Moreover, other than the unendorsed Note, Kambugu presented no evidence at the hearing, on his motion, to support his claim, while appellees presented sufficient evidence that Deutsche Bank had obtained possession of the Note as acting trustees of the Trust, which had obtained possession of the Note from the original lender and holder of the Note. That the Note was unendorsed is not, without more, sufficient to deny Deutsche Bank the right to enforce the Note as, at a minimum, a nonholder in possession. *See Anderson v. Burson*, 424 Md. 232, 248 (2011) (“The Commercial Law Article recognizes alternatively that an instrument may be enforced...by a nonholder in possession...if his/her transferor was a holder, because a transferee obtains the rights of his transferor/holder, which includes the right to enforce the instrument.”).

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