Circuit Court for Baltimore City
Case No. 24-O-22-000181

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2240

September Term, 2023

DANIEL MENCHEL, ET AL.

v.

THOMAS J. KOKOLIS, ESQ., ET AL.

Nazarian,
Reed,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: July 7, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

In May 2022, Decorative Wood Design, LLC, appellee, purchased real property located on Greenspring Avenue in Baltimore City (hereinafter the "Property") at a foreclosure auction ("First foreclosure"). At the time of sale, there were two liens on the Property. The substitute trustee for the senior lienholder failed to provide to the junior lienholder the notice required by Maryland law. In October 2022, the Circuit Court for Baltimore City issued an order ratifying the sale, and a deed conveying the Property to appellee thereafter was recorded in the land records for Baltimore City.

Daniel Menchel, Jeffrey Nadel, and Scott Nadel, appellants, the substitute trustees for the junior lienholder, learned of the foreclosure sale through "grapevine notice," after the sale but several months prior to ratification. Instead of intervening and filing exceptions to the foreclosure sale, they pursued a separate foreclosure action ("Second foreclosure"), claiming that, because of the defective notice in the First foreclosure, the ratification of the sale to appellee did not extinguish their lien. Following a hearing, the circuit court dismissed the Second foreclosure action. In the appeal that followed, appellants raise the following question for our review[1]:

[1] Appellee recasts the questions presented as follows:

> 1. May Appellants bring a foreclosure action on a deed of trust that was extinguished by the foreclosure of a superior deed of trust?
>
> 2. Is Appellants' underlying foreclosure case an impermissible, collateral attack on an enrolled judgment in a prior proceeding?
>
> 3. Did Appellants waive the right to challenge the prior proceeding by intentionally choosing to seek a windfall rather than moving to intervene in the prior proceeding?

> Where a prior foreclosure sale of the Property failed to provide notice of foreclosure to a junior deed of trust in accordance with the Maryland requirements pertaining to such notice in advance of the foreclosure sale, does the junior deed of trust continue to encumber the Property?

Perceiving no reversible error, we shall affirm.

BACKGROUND

The underlying facts in this case are not in dispute. On October 9, 1973, Harry W. Poindexter and Ann R. Poindexter, husband and wife, purchased the Property as tenants by the entirety, and a deed was recorded in the land records of Baltimore City. On April 5, 2002, the Poindexters refinanced the mortgage on the Property and executed a promissory note in the amount $42,160.00, secured by a deed of trust ("First lien") granted to Bank of America, which was recorded in the land records of Baltimore City. On January 21, 2006, the Poindexters took out a second mortgage on the Property and executed a promissory note in the amount $19,000.00, secured by a deed of trust ("Second lien") granted to Bank of America, which was recorded in the land records of Baltimore City. On May 27, 2017, Ms. Poindexter died (Mr. Poindexter had died previously). Thereafter, on February 10, 2020, Thomas J. Kokolis, Esquire, was appointed the Personal Representative of the Estate of Ann R. Poindexter.

On September 4, 2019, Bank of America assigned the First lien to U.S. Bank National Association as trustee, and that assignment was recorded in the land records of Baltimore City. On September 13, 2021, Bank of America assigned the Second lien to MEB Loan Trust IV c/o U.S. Bank Trust National Association as trustee, and that

assignment ultimately was recorded, on January 6, 2022,[2] in the land records of Baltimore City.

On December 20, 2021, John Ansell, Esquire, as substitute trustee for the First lienholder, filed an Order to Docket Suit ("First foreclosure") after a default on the note that was secured by the First lien. *Ansell, Substitute Trustee v. Estate of Harry Poindexter, et al.*, No. 24-O-21-000326 (Cir. Ct. Balt. City). On February 25, 2022, an appointment of substitute trustees for the Second lienholder was recorded in the land records of Baltimore City. That document, executed on behalf of MEB Loan Trust IV, named appellants as substitute trustees and recited their address in Calverton, Maryland.

On March 3, 2022, appellants filed an Order to Docket Suit ("Second foreclosure") in Case No. 24-O-22-000181, attempting to foreclose on the Second lien. Thereafter, on May 19, 2022, a foreclosure sale was held in the First foreclosure action, and appellee was the winning bidder at $94,000.00. As appellee acknowledges, Mr. Ansell, the substitute trustee in the First foreclosure action, did not provide notice to appellants, as required by Maryland statute and rule. The assignment of the Second lien was recorded, and appellants were appointed as substitute trustees "more than 30 days prior to the scheduled foreclosure sale date[.]" Mr. Ansell had filed an Affidavit of Notice in Compliance with the pertinent statutes and rules, including Maryland Rule 14-210, which requires that notice be given to

[2] For reasons that are unclear, the assignment of the Second lien originally was recorded, erroneously, in the land records of Prince George's County.

"the holder of any subordinate interest in the property subject to the lien[.]"[3] Md. Rule 14-210(b).

Barbie Anson, the office manager at MDC Auctions, LLC, "received a request to hold an auction" of the Property "on July 7, 2022 for the Law Office of Jeffrey Nadel[,]" and she "placed the foreclosure sale advertisements with the paper of general circulation prior to the July 7 sale date."

Yehoshua Hopfer, a foreclosure sale investor who had been interested in the Property but was not the winning bidder at the foreclosure sale, "observed an advertisement for the sale of the same" Property that had been sold to appellee, but "with different trustees, namely the Law Office of Jeffrey Nadel[.]" Mr. Hopfer "was familiar with Mr. Menchel [one of the appellants in this case], an attorney in Mr. Nadel's office," and "called him after May 19, 2022 and prior to the July 7 sale date to understand why the [P]roperty was being sold again after it had already been sold" to another purchaser. Mr. Menchel "acknowledged the information" he had been "provided about the May 19 sale and said he would look into it." Prior to the scheduled sale, on June 28, 2022, an employee of the Nadel firm sent an email to Ms. Anson, instructing her to cancel the sale, which she did.

Three months later, on October 20, 2022, the circuit court issued a final order ratifying the sale in the First foreclosure. Approximately five weeks later, on December 1,

[3] In addition, on May 27, 2022, Mr. Ansell filed a Report of Sale and Affidavit of Fairness of Sale and Truth of Report of Sale in the circuit court. In that affidavit, Mr. Ansell averred that Notice of Sale had "been given to those parties entitled to notice under the Maryland Rules[.]"

2022, Mr. Ansell executed a deed, conveying the Property to appellee, which was recorded in the land records of Baltimore City on January 12, 2023. On April 11, 2023, the Auditor's Report was filed in the circuit court, indicating that a surplus of $22,261.40 remained after payment of all other costs and expenses in the First sale, to be paid to the Estate of Harry Poindexter, the borrowers' successor.[4] Two months later, on June 14, 2023, the circuit court entered an order, ratifying and confirming the Auditor's Report and Account.

In July 2023, in the Second foreclosure, appellants filed an Amended Order to Docket Suit, adding appellee as a party. One month later, in August 2023, appellee filed a Motion to Stay Sale and Dismiss Foreclosure Action, pursuant to Maryland Rule 14-211,[5] and a request for an evidentiary hearing on the merits. In that motion, appellee acknowledged that the notice of sale owed to appellants was defective but contended that the Second lien "was extinguished by the foreclosure sale" of the Property, "ratification of

[4] The Auditor's Report was not included in the Record Extract, but the parties do not dispute its validity. To the extent necessary, we take judicial notice of it, as it is part of the record in a judicial proceeding in a Maryland circuit court. Md. Rule 5-201(b), (c), (f).

[5] Maryland Rule 14-211(a)(1) permits (among others) a record owner to "file in the action a motion to stay the sale of the property and dismiss the foreclosure action." Subsection (a)(2)(B) provides that, as to property that is not owner-occupied residential property, such a motion "shall be filed within 15 days after service pursuant to Rule 14-209 of an order to docket or complaint to foreclose." Subsection (e) provides:

> After the hearing on the merits, if the court finds that the moving party has established that the lien or the lien instrument is invalid or that the plaintiff has no right to foreclose in the pending action, it shall grant the motion and, unless it finds good cause to the contrary, dismiss the foreclosure action. If the court finds otherwise, it shall deny the motion.

the sale by the court[,] and transfer" of the Property to appellee, "pursuant to a superior lien." Appellee further asserted that

> [a]t no time did the Substitute Trustees for MEB Loan Trust IV attempt to intervene in the foreclosure of the First in order to file exceptions to the ratification of sale or to claim any of $22,261.40 in surplus proceeds allowed by the auditor nor has any action been filed against the trustee(s) of the First who failed to give notice to MEB Loan Trust IV.

After the filing of the Motion to Stay and Dismiss and prior to the filing of appellants' answer, appellee filed a Supplement, asserting that "counsel for MEB Loan Trust IV was advised of the sale to the Record Owner between May 19 and July 7 and, as a result of that knowledge, cancelled the sale in the instant matter which had been set for July 7, 2022 on June 28, 2022." In support of that assertion, appellee attached affidavits from Mr. Hopfer and Ms. Anson, averring to the circumstances surrounding appellants' discovery of the First foreclosure.

Appellants filed an Opposition to the Motion to Stay and Dismiss. In their opposition, appellants pointed out that appellee had conceded that the notice required by Maryland law was defective. As for the notice appellants did receive, they asserted that it had no legal significance because it did not originate from "the 'individual authorized to make the sale' as is required by Rule 14-210 (d)[,]" and furthermore, it came too late, "well after the sale had already taken place[.]" Appellants further asserted that "Decorative Wood is making a completely misguided argument . . . that despite the Substitute Trustees having failed to give notice to MEB of the senior sale, . . . somehow miraculously" the junior lien was extinguished in this case. Appellants contended that they were under no obligation to intervene in the First foreclosure because they had not received notice of the sale. They

concluded that, because of the defective notice, appellee did not obtain clear title to the Property, but rather, it "owns the property subject to the Deed of Trust held by MEB." Accordingly, appellants asked the circuit court to deny the motion to dismiss and "[f]or such other and further relief" as the court "may determine to be equitable and proper."

In December 2023, the circuit court held a hearing on appellee's Motion to Stay and Dismiss. Without objection, the court admitted into evidence the exhibits that had been attached to appellee's Motion to Stay and Dismiss, as well as the Hopfer and Anson affidavits that had been attached to appellee's supplemental motion. The parties further stipulated that the substitute trustee in the First foreclosure, *Ansell v. Estate of Poindexter*, did not send the required notice to MEB Loan Trust IV. At the conclusion of the hearing, the circuit court granted appellee's Motion to Stay and Dismiss, declaring:

> But here is the Court's ruling, I find that the lien of MEB Loan Trust IV was extinguished by the prior foreclosure in Ansell versus Estate of Poindexter. One who forecloses from first position, or from any position, is required to give notice to junior lienholders.
>
> In th[i]s case, or in the Ansell versus Estate of Poindexter case, the trustee didn't comply with that requirement inasmuch as the trustee failed to give notice of the foreclosure to Nadel's client, MEB Loan Trust IV.
>
> If that was the end of the facts this case might turn out different, but that's not all that happened that is relevant. MEB Loan Trust IV learned just through the community of the existence of the foreclosure filed by Ansell and, furthermore, knew everything that a junior lienholder can do in that situation, in particular a junior lienholder can attend the sale and it can make a claim for surplus proceeds.
>
> Now in this case MEB Loan Trust IV learned about the earlier foreclosure after the sale had been ratified, so it could not -- Did I get that right, was it after ratification of the sale . . . ?
>
> [APPELLEE'S COUNSEL]: After the sale and before the ratification.

THE COURT: After the sale and before the ratification, that's even worse for MEB Loan Trust IV. So . . . it couldn't have showed up and bid because the sale had already occurred, but it could have done what the junior lienholder did in [*Island Financial, Inc. v. Ballman*, 92 Md. App. 125 (1992),] and intervened and demanded a re-sale at which it could bid or it could have made a claim for the proceeds of sale in this case.

There literally was surplus proceeds of I think around $22,000 that it could have gotten. That's a little unusual because usually there is no surplus proceeds at the foreclosure of a first in my somewhat limited experience, but here there was, and MEB Loan Trust could have gotten it by filing a claim with the auditor, but it didn't do any of that, so it was not harmed by the lack of notice and no harm, no foul is the cliche here.

Whatever rights MEB Loan Trust IV had they could have exercised, but, rather, it made a tactical decision to wait until the sale was ratified and the audit was ratified and then tried to foreclose from first position and that would, if it were allowed to do that, be inequitable because it would create a windfall for the second lienholder to the extent that they would be foreclosing from first position at the expense of Decorative Wood Designs having paid off the first.

Decorative Wood Designs didn't pay off the first to help MEB Loan Trust IV, it did it to become owner of the property. It would suffer a forfeiture and MEB Loan Trust would get a windfall.

Both of those outcomes are abhorred by equity and as I am sitting in equity I am not going to allow that to occur.

I can't remember if a few minutes ago I talked about waiver in my ruling, but there is an aspect of waiver to this inasmuch as, which is also an equitable principle, inasmuch as MEB Loan Trust IV knew what its rights were, it had an opportunity to exercise them by demanding a re-sale or filing a claim for proceeds, and it deliberately elected not to exercise those rights and thereby waived them.

Now MEB Loan Trust is not without a remedy. I am not going to pre-judge it and say that they are going to succeed if they sue Mr. Ansell or whoever the trustee was, but that does appear to be an avenue where they can seek some compensation.

> Since we're within the three years of the statute of limitations set forth in Real Property Article Section 7-105.5(f), I think that's what they are going to have to do.
>
> Now this is disappointing to MEB Loan Trust, but from my point of view they could have avoided this if they had exercised their rights like the junior lienholder in Island Financial did or by filing a claim with the auditor. So that's why I think this is the fair and equitable outcome that is appropriate sitting in equity.
>
> All right. For all of those reasons the Motion to Stay and Dismiss will be granted and I will enter an Order that just says for the reasons stated at the hearing the Motion to Stay and Dismiss the foreclosure sale is granted.

Appellants then noted a timely appeal.

DISCUSSION

Parties' Contentions

Appellants contend that the circuit court erred in dismissing the Second foreclosure because the failure of the substitute trustee in the First foreclosure to provide the notice required under Maryland law meant that appellee took title to the Property subject to the Second lien. They begin from the premise, which is undisputed, that they did not receive notice under the procedures mandated by Maryland Code (1974, 2015 Repl. Vol., 2021 Supp.),[6] Real Property Article ("RP"), § 7-105.5(b), and Maryland Rule 14-210(d). Although appellants acknowledge that they received actual notice of the First foreclosure after the sale but prior to the ratification, they contend that the "grapevine" notice they received was legally insufficient for two reasons: first, that notice did not (and never did)

[6] Except where otherwise specified, all statutory and rule references are to those that were effective at the time of the First foreclosure in 2022.

come from "the individual authorized to make the sale," as required by statute and rule; and that notice was "after-the-fact[.]" According to appellants, the circuit court "misapplied" *Island Financial* and its progeny; in the wake of *Island Financial*, the General Assembly amended the foreclosure statutes to provide greater protection for subordinate interests in real property as a matter of due process; and consequently, because appellants were not afforded those procedural protections, appellee is not entitled[7] to the benefit of RP § 7-105(c).[8] Thus, the sale in the First foreclosure "could not operate to extinguish the MEB Deed of Trust (or Appellants' property interests therein)."

In effect, appellants contend that they had a choice of remedies under RP § 7-105.5;[9] they could have elected to intervene in the First foreclosure and either force a resale or claim the surplus proceeds, or they could wait, as they did, and foreclose on the Second

[7] Appellants further seem to suggest that the buyer at the First foreclosure had a duty to conduct its own, independent title examination, and had appellee done so, it would have discovered the defective notice.

[8] RP § 7-105(c) provides:

> (c) A sale made pursuant to this section, §§ 7-105.1 through 7-105.10 of this subtitle, or the Maryland Rules, after final ratification by the court and grant of the property to the purchaser on payment of the purchase money, has the same effect as if the sale and grant were made under decree between the proper parties in relation to the mortgage or deed of trust and in the usual course of the court, and operates to pass all the title which the borrower had in the property at the time of the recording of the mortgage or deed of trust.

[9] RP § 7-105.5(f) provides for a cause of action by a junior lienholder "for the failure of the person authorized to make a sale in an action to foreclose a mortgage or deed of trust to comply with" the statutory notice provisions.

lien, which, they insist, is now in a senior position. Therefore, they assert, the circuit court erred in dismissing the Second foreclosure.

Appellee counters that the ratification of the sale in the First foreclosure is an enrolled judgment that "unequivocally extinguished" appellants' junior lien and that the Second foreclosure is, in substance, a collateral attack on that judgment. According to appellee, appellants were required to file a motion to vacate the judgment in the First foreclosure on the grounds of fraud, mistake, or irregularity to raise the issue of defective notice in that action, but have not done so. Thus, appellee asserts, the issue of proper notice in the First foreclosure is not properly raised in this case. But even were we to consider whether notice in the First foreclosure had been proper, the remedy appellants seek is, according to appellee, "not equitable," "not logical," and "not supported by Maryland case law, statutes or legislative history."

Appellee attacks what it construes as appellants' attempt to impose a duty on "the innocent auction bidder . . . to conduct a title search to discover all the subordinate lienholders and review the affidavit accompanying the Report of Sale to determine if there is an infirmity in the sale *before* ratification of the sale." Appellee further disparages what it terms appellants' attempt to obtain a "windfall by treating their Second lien as a first lien on the new funds paid by" appellee. Appellee insists that appellants were not entitled to "disregard[] the opportunity to correct" the defective notice in the First foreclosure and thereby seek to transform their junior lien into a senior lien, which would result in a gain to them of approximately $10,000 at appellee's expense.

Appellee avers that "[n]one of the Maryland legislative history cited by" appellants justifies the "windfall remedy" to which they claim to be entitled. Relying upon *Island Financial*, appellee asserts that appellants had a duty to intervene in the First foreclosure upon learning of the defective notice and ensuing sale. According to appellee, it is precisely because a foreclosure on a senior lien extinguishes junior liens that the Supreme Court of the United States has held that due process entitles junior lienholders to presale notice. Appellants' failure to intervene in the First foreclosure prior to ratification, however, despite having a clear opportunity to do so, extinguished their junior lien. And finally, appellee asserts that the doctrine of equitable subrogation requires that it obtain title to the Property free and clear of appellants' junior lien because it, in effect, stepped into the shoes of the senior, foreclosing lender. Therefore, appellee concludes, we should affirm the circuit court's judgment dismissing the Second foreclosure.

Standard of Review

Maryland Rule 14-211(a)(1) provides that a record owner, such as appellee, "may file in the action a motion to stay the sale of the property and dismiss the foreclosure action." The movant bears the burden to "establish[] that the lien or the lien instrument is invalid or that the plaintiff has no right to foreclose in the pending action[.]" Md. Rule 14-211(e). We review a circuit court's grant or denial of a motion to dismiss without deference. *Est. of Brown v. Ward*, 261 Md. App. 385, 409 (2024) (stating that "the standard

of review of the grant or denial of a motion to dismiss is whether the trial court was legally correct" (quotation marks and citations omitted)).[10]

The legal issues raised in this appeal turn on the interpretation of statutes. "The goal of statutory interpretation is to 'ascertain and effectuate the real and actual intent of the Legislature.'" *Nationstar Mortg. LLC v. Kemp*, 476 Md. 149, 169 (2021) (quoting *Gardner v. State*, 420 Md. 1, 8 (2011)). "We begin with an examination of the text of a statute within the context of the statutory scheme to which it belongs." *Id.* (citing *Aleman v. State*, 469 Md. 397, 421, *cert. denied*, 592 U.S. __, 141 S. Ct. 671 (2020)). "A particular section of a statute must be construed in a manner consistent with the larger statute's object and scope." *Id.* at 169-70 (citing *Blackburn Ltd. P'ship v. Paul*, 438 Md. 100, 122 (2014)).

Analysis

Appellants' argument turns primarily on the interpretation of two statutes, RP § 7-105 and RP § 7-105.5. The former sets forth the effect of certain foreclosure sales on subordinate liens and, under certain circumstances, provides that a foreclosure purchaser obtains good title in the property it has purchased. The latter sets forth the notice to junior lienholders that is required in a foreclosure sale. Before examining these statutes, we consider the decision relied upon by both parties and the circuit court and which is most closely on point in its facts, *Island Financial, Inc. v. Ballman*, 92 Md. App. 125, *supra*.

[10] "The grant or denial of injunctive relief in a property foreclosure action lies generally within the sound discretion of the trial court." *Anderson v. Burson*, 424 Md. 232, 243 (2011). In this case, however, the circuit court did not merely enjoin appellants, it dismissed their foreclosure action entirely.

In that case, a foreclosure sale occurred and was ratified without notice to a junior lienor (Island Financial). *Id.* at 127-28. "In the process of foreclosing," the trustees for Island Financial "learned that the property had already been sold by appellees, B. George Ballman and Sherri E. Turner, substitute trustees for" the senior lienor, "as a result of the foreclosure of the first deed of trust." *Id.* at 127.

Although the specific dates and filings are not clear from the appellate opinion, the docket entries in the case are available and have been reproduced in Appellants' Brief.[11] The docket entries indicate that the circuit court ratified the sale on September 25, 1990. Two months later, Island Financial moved to intervene in the earlier foreclosure proceeding, and, on December 5, 1990, the circuit court granted the motion. The court auditor filed an account of sale on February 27, 1991. On March 11, 1991, more than thirty days after the ratification of sale, Island Financial filed exceptions to the auditor's report and moved to vacate the order ratifying the sale. On May 10, 1991, the court denied the motion to vacate and overruled the exceptions.

On appeal, the senior lienor admitted that it had not given notice to Island Financial but argued that the statute in effect at that time did not require that notice be given because Island Financial had "failed to record," as then required by statute, "a request for notice of foreclosure." *Id.* at 128. Island Financial admitted that it had failed to record a request for notice of sale and that the trustees had complied with the applicable Maryland foreclosure

[11] We take judicial notice of the docket entries in *Ballman v. Rogers*, No. CAE89-23440 (Cir. Ct. Prince George's Cnty.), as they are part of the record in a judicial proceeding in a Maryland circuit court. Md. Rule 5-201(b), (c), (f).

rules but countered that notice was, nonetheless, required by constitutional due process. *Id.* at 129.

We reversed, holding that constitutional due process required giving notice to a junior lienor. *Id.* at 136. In doing so, we relied heavily on the U.S. Supreme Court's decision in *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983). In that case, the Supreme Court held that a failure to give notice of a tax sale to a mortgage holder, whose "name and address" were "reasonably ascertainable," violated the mortgage holder's right to due process. *Id.* at 798-800.

At the time that *Island Financial* was decided, RP § 7-105 contained separate subsections with respect to record owners and holders of subordinate liens. Subsection (c) applied to the holders of subordinate liens and provided that a senior lienor had to give notice of foreclosure to a junior lienor, but only if the junior lienor had filed among the land records a request to receive a notice of sale.[12] Subsection (c)(2) was a safe-harbor provision that protected the title of a bona fide purchaser at a foreclosure sale, stating:

[12] The version of the notice statute in effect at that time provided:

> (b)(1) In addition to any notice required to be given by provisions of the Annotated Code of Maryland or the Maryland Rules of Procedure, the person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall give written notice of the proposed sale to the present record owner of the property to be sold.
>
> (2) The written notice shall be sent by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the present record owner's last known address. The notice shall state the time, place, and terms of the sale. The notice shall be sent not earlier than 30 days and not later than 10 days before the date of sale. The person giving the notice shall

(continued…)

file in the proceedings a return receipt or an affidavit that the provisions of this paragraph have been complied with. Where such filing is made before final ratification, failure of the mortgagor to receive the notice shall not invalidate a sale.

(3) Failure to comply with the requirements of notice contained in this subsection shall not affect the validity of the sale under the mortgage or deed of trust and a purchaser for value at the sale shall be under no duty to ascertain whether the notice was validly given.

(4) In the event of postponement of sale, which may be done in the discretion of the trustee, no new or additional notice need be given pursuant to this section.

(c)(1) The holder of a superior recorded mortgage or deed of trust shall give written notice of any proposed foreclosure sale to the holder of any subordinate recorded mortgage, deed of trust, or other subordinate recorded or filed interest, including a judgment, in accordance with the requirements of the Maryland Rules applicable to the giving of notice to the mortgagor or grantor of the mortgage or deed of trust being foreclosed, if the holder of the subordinate interest has recorded in the land records office of each county where the property is located a request for notice of sale at least 30 days prior to the date of a foreclosure sale which is actually held. A request for notice of sale shall:

(i) Be recorded in a separate docket or book which shall be indexed under the name of the holder of the superior mortgage or deed of trust and under the book and page numbers where the superior mortgage or deed of trust is recorded;

(ii) Identify the property in which the subordinate interest is held;

(iii) State the name and address of the holder of the subordinate interest; and

(iv) Identify the superior mortgage or deed of trust by stating:

1. The names of the original parties to the superior mortgage or deed of trust;

(continued…)

> Failure to comply with the notice requirements provided in this subsection does not affect the validity of the sale under the mortgage or deed of trust and a bona fide purchaser for value at the sale is under no duty to ascertain whether the notice was validly given.

Subsection (b) applied to the "record owner" and required notice of foreclosure to the record owner. Subsection (b)(2) provided that, if the person giving notice filed, before final ratification, a return receipt or an affidavit, attesting to compliance with the notice provisions, then the failure of the mortgagor to receive the notice shall not invalidate the sale. Subsection (b)(3) was a safe-harbor provision, similar to (c)(2), and stated:

> Failure to comply with the requirements of notice contained in this subsection shall not affect the validity of the sale under the mortgage or deed of trust and a purchaser for value at the sale shall be under no duty to ascertain whether the notice was validly given.

Following the decision in *Island Financial*, the General Assembly amended the notice provisions to ensure that the due process rights of lienholders were protected. Notably, a 1995 amendment deleted the safe-harbor provisions and established a cause of action for the failure of the person authorized to make a foreclosure sale to comply with

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> 2. The date the superior mortgage or deed of trust was recorded; and
>
> 3. The office, docket or book, and page where the superior mortgage or deed of trust is recorded.
>
> (2) Failure to comply with the notice requirements provided in this subsection does not affect the validity of the sale under the mortgage or deed of trust and a bona fide purchaser for value at the sale is under no duty to ascertain whether the notice was validly given.

Md. Code (1974, 1988 Repl. Vol.), RP § 7-105.

the notice provisions. 1995 Md. Laws, ch. 580. The relevant provisions, following the 1995 amendment, stated:

> (b)(4) The right of a record owner to file an action for the failure of the person authorized to make a sale in an action to foreclose a mortgage or deed of trust to comply with the provisions of this subsection shall expire 3 years after the date of the order ratifying the foreclosure sale.

Md. Code (1974, 1996 Repl. Vol.), RP § 7-105(b)(4).

> (c)(5) The right of a holder of a subordinate mortgage, deed of trust, or other subordinate interest to file an action for the failure of the person authorized to make a sale in an action to foreclose a mortgage or deed of trust to comply with the provisions of this subsection shall expire 3 years after the date of the order ratifying the foreclosure sale.

Md. Code (1974, 1996 Repl. Vol.), RP § 7-105(c)(5).

Since then, the relevant statutes have been rewritten and reorganized, but in substance remain relevantly similar to the versions as amended in 1995. Section 7-105.5 applies to junior lienholders. At the time of the sale in this case, it provided[13]:

> (a) In this section, "holder of a subordinate interest" includes any condominium council of unit owners or homeowners association that has filed a request for notice of sale under subsection (c) of this section.
>
> (b) **The person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall give written notice of any proposed foreclosure sale to the holder of any subordinate mortgage, deed of trust, or other subordinate interest, including a judgment, in accordance with § 7-105.4 of this subtitle and the requirements of Maryland Rule 14-210.**[14]

[13] Section 7-105.5(c)(3)(i) was amended by 2025 Maryland Laws, chapter 65, effective October 1, 2025, so that, henceforth, a request for notice of sale shall be recorded "in a separate paper or electronic index" rather than in a "docket or book[.]"

[14] Section 7-105.4 defines "record owner" and sets forth the notice that must be provided to a record owner prior to a foreclosure sale. In addition, it provides for a record (continued…)

(c)(1) The land records office of each county shall maintain a current listing of recorded requests for notice of sale by holders of subordinate mortgages, deeds of trust, or other subordinate interests.

(2) The holder of a subordinate mortgage, deed of trust, or other subordinate interest may file a request for notice under this subsection.

(3) Each request for notice of sale shall:

(i) Be recorded in a separate docket or book which shall be indexed under the name of the holder of the superior mortgage or deed of trust and under the book and page numbers where the superior mortgage or deed of trust is recorded;

(ii) Identify the property in which the subordinate interest is held;

(iii) State the name and address of the holder of the subordinate interest; and

(iv) Identify the superior mortgage or deed of trust by stating:

1. The names of the original parties to the superior mortgage or deed of trust;

2. The date the superior mortgage or deed of trust was recorded; and

3. The office, docket or book, and page where the superior mortgage or deed of trust is recorded.

(4)(i) Except as provided in subparagraph (ii) of this paragraph, **failure of a holder of a subordinate mortgage, deed of trust, or other subordinate interest to record a request for notice under this subsection does not affect the duty of a holder of a superior interest to provide notice as required under this section.**

owner's cause of action for the failure of the person authorized to make a sale to comply with the notice provisions. RP § 7-105.4(e).

(ii) A holder of a superior interest does not have a duty to provide notice to a condominium council of unit owners or homeowners association that has not filed a request for notice under this subsection.

(d) The person giving notice under this section shall file in the action:

(1) The return receipt from the notice; or

(2) An affidavit that:

(i) The notice provisions of this section have been complied with; or

(ii) The address of the holder of the subordinate interest is not reasonably ascertainable.

(e) The person authorized to make a sale in an action to foreclose a mortgage or deed of trust is not required to give notice to the holder of a subordinate mortgage, deed of trust, or other subordinate interest if:

(1) The existence of the mortgage, deed of trust, or other subordinate interest is not reasonably ascertainable;

(2) The identity or address of the holder of the mortgage, deed of trust, or other subordinate interest is not reasonably ascertainable;

(3) With respect to a recorded or filed subordinate mortgage, deed of trust, or other recorded or filed subordinate interest, the recordation or filing occurred after the later of:

(i) 30 days before the day on which the foreclosure sale was actually held; and

(ii) The date the action to foreclose the mortgage or deed of trust was filed;

(4) With respect to an unrecorded or unfiled subordinate mortgage, deed of trust, or other unrecorded or unfiled subordinate interest, the subordinate interest was created after the later of:

(i) 30 days before the day on which the foreclosure sale was actually held; and

> (ii) The date the action to foreclose the mortgage or deed of trust was filed; or
>
> (5) With respect to a condominium council of unit owners or homeowners association, the condominium council of unit owners or homeowners association has not filed a request for notice under subsection (c) of this section.
>
> **(f) The right of a holder of a subordinate mortgage, deed of trust, or other subordinate interest to file an action for the failure of the person authorized to make a sale in an action to foreclose a mortgage or deed of trust to comply with the provisions of this section shall expire 3 years after the date of the order ratifying the foreclosure sale.**

RP § 7-105.5 (emphasis added).

It is undisputed that the substitute trustee(s) in the First foreclosure failed to comply with subsection (b). Appellants concede that they had actual notice after the foreclosure sale but prior to ratification. According to appellants, the fact that they received actual notice after the sale but prior to ratification was of no legal effect. Indeed, appellants asserted below that their client knowingly chose not to intervene in the First foreclosure, because it believed it was under no legal obligation to do so, and it would obtain a greater payout by foreclosing on its lien after ratification of the sale in the First foreclosure. According to appellants, they were entitled to an election of remedies under RP § 7-105.5(f)—either to intervene in the First foreclosure and demand either a resale or the surplus proceeds, **or** to foreclose on their lien, which, they maintain, is now a senior lien. Specifically, appellants contend that the legislative history of the Maryland foreclosure statutes, following *Island Financial*, in particular, the repeal of the safe-harbor

provisions, confirms that appellee is not entitled to the benefit of RP § 7-105 and did not take title unencumbered by their lien.

Section 7-105(c) states the effect of a foreclosure sale on the title conveyed in that sale:

> (c) A sale made pursuant to this section, §§ 7-105.1 through 7-105.10 of this subtitle, or the Maryland Rules, after final ratification by the court and grant of the property to the purchaser on payment of the purchase money, has the same effect as if the sale and grant were made under decree between the proper parties in relation to the mortgage or deed of trust and in the usual course of the court, and operates to pass all the title which the borrower had in the property at the time of the recording of the mortgage or deed of trust.

Appellants point to subsection (c) and assert that, because the notice in this case was defective, the sale in the First foreclosure was not a "sale made pursuant to this section, §§ 7-105.1 through 7-105.10 of this subtitle, or the Maryland Rules," and therefore did not "pass all the title which the borrower had in the property at the time of the recording of the mortgage or deed of trust." Thus, appellants contend that the sale in the First foreclosure "could not operate to extinguish the MEB Deed of Trust (or Appellants' property interests therein)." In other words, appellants assert that RP § 7-105(c) **implies** that:

> (c) A sale **not** made pursuant to this section, §§ 7-105.1 through 7-105.10 of this subtitle, or the Maryland Rules, after final ratification by the court and grant of the property to the purchaser on payment of the purchase money, ~~has~~ **does not have** the same effect as if the sale and grant were made under decree between the proper parties in relation to the mortgage or deed of trust and in the usual course of the court, and **does not** operate~~s~~ to pass all the title which the borrower had in the property at the time of the recording of the mortgage or deed of trust.

Appellants' interpretation of the statute does not follow from its text. There is no statute that states the foreclosure sale is void, as distinguished from being voidable. The applicable statutes do not expressly validate or invalidate the lien. Subsection (f) of RP § 7-105.5 simply refers to the right to file an "action," leaving open the nature of that action. The result in this case is that it is possible for a non-conforming sale, such as what occurred in the First foreclosure, to confer good title on the foreclosure purchaser, and we hold that it did so here.

The final judgment in the First foreclosure extinguished the right to redeem the property by the borrower or a junior lienor. Appellants argue that they do not assert that right; nevertheless, the remedy they seek against appellee is, in essence, the right to the full amount of their lien, not the amount of loss sustained as damages on a contract or tort theory.

We emphasize that this result is fact-driven and would not occur under different facts. In this case, however, appellants had actual knowledge of the First foreclosure sale more than three months prior to ratification. They could have intervened in that case, filed exceptions, and been entitled to a resale upon demand or to the surplus proceeds (in excess of $22,000) that resulted from the sale.

Island Financial provides limited assistance. In that case, there was a direct attack and not, as here, a collateral attack.[15] Although there were post-judgment issues related to

[15] We reject appellants' contention that they are not collaterally attacking the sale and final judgment in the First foreclosure, but rather, they are "separately seeking to enforce their un-foreclosed interest."

the auditor's account before this Court, presumably the ratification order was considered under Maryland Rule 2-535. Moreover, unlike here, the remedy that was sought was to have the property resold.

With respect to due process, appellants had actual notice of the First foreclosure in time to intervene. Due process requires notice and an opportunity to be heard before property rights are affected. *Mennonite*, 462 U.S. at 795. Here, appellants had actual notice in time to be heard in the First foreclosure proceeding. Although the procedure through which appellants became aware of the First foreclosure did not comply with the applicable statute and rule, the **purpose** of those provisions was satisfied. There was no violation of due process in this case.

We are left with a balancing of the equities. Appellants could have initiated a direct attack on the foreclosure and sought a resale. In that event, appellants would have been paid from the proceeds of the resale. In the alternative, they could have claimed the surplus funds that resulted from the First foreclosure sale. They did neither. The equities weigh in favor of appellee.[16] The result leaves the final judgment in the First foreclosure intact while recognizing a potential action for damages.

[16] We note that RP § 7-105.5(b) and (c) impose a duty on a superior lienor, not on the foreclosure purchaser, to notify junior lienors of a proposed sale. We reject appellants' attempt to shift blame onto appellee for the defective notice.

The holding herein is limited to the facts of this case and is not a general ruling on the extinguishment of junior liens in the absence of notice by the senior lienor and in the absence of actual notice prior to ratification of the sale.[17]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

[17] In passing, we note that appellants also rely on cases from other jurisdictions. Appellee argues that the cases from other jurisdictions are distinguishable in that the statutes state that a junior lienor has to be included in a foreclosure as a party and, in the absence of notice, the junior liens are not extinguished. We agree that statutory provisions vary but other jurisdictions recognize, as we do, that the proceedings are equitable in nature. *See, e.g.*, *Deutsche Bank Nat. Tr. Co. v. Mark Dill Plumbing Co.*, 903 N.E.2d 166, 168 (Ind. Ct. App.), *decision clarified on reh'g*, 908 N.E.2d 1273 (Ind. Ct. App. 2009). In any event, we are not persuaded that any of those authorities compel a different result than the one we reach.

We further note, in passing, that appellee argues that equitable subrogation should apply, but the circuit court did not reach that argument, and neither do we.