

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2427

September Term, 2016

KATANA PROPERTIES, LLC

v.

REBEKKAH BRUNSON

Meredith,
Arthur,
Reed,

JJ.

Opinion by Meredith, J.

Filed: February 21, 2018

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 2010, Rebekkah Brunson, appellee, purchased a one-bedroom condominium unit in Germantown, Maryland. Ms. Brunson paid off the mortgage for this condominium the following year, and thereafter neglected to pay the property taxes due on the property, which was occupied by her estranged mother. Montgomery County conducted a tax sale of the property in 2013. Fedhop, LLC (“Fedhop”) purchased the property at the tax sale. In 2014, Fedhop filed a complaint in the Circuit Court for Montgomery County, seeking to foreclose Ms. Brunson’s right of redemption. Fedhop then assigned its rights as purchaser to Katana Properties, LLC (“Katana”), appellant. Neither Fedhop nor Katana was able to serve Ms. Brunson personally, but notice of the foreclosure suit was posted on the property and published three times in a local newspaper. The suit was not contested, and, on October 1, 2015, the circuit court entered judgment in favor of Katana, foreclosing Ms. Brunson’s right of redemption. Katana completed the purchase and received a deed to the property.

Over a year later, on October 28, 2016, Ms. Brunson filed a Motion to Re-Open the Tax Sale Foreclosure Case and Vacate the Judgment Foreclosing Right of Redemption. She alleged that the court never obtained personal jurisdiction over her because she was not served, and, under the circumstances of this case, publication did not satisfy the jurisdictional requirement. Following a hearing, the circuit court entered an order which granted Ms. Brunson’s motion, and set a date for an accounting hearing. Katana promptly filed a motion for reconsideration, which was denied, and Katana also filed a notice of interlocutory appeal. Ms. Brunson then filed a motion to vacate the tax sale deed that had been issued to Katana. Katana filed a motion for accounting of costs

and fees, setting forth the monies it was seeking to be paid as a result of the court's order vacating the judgment of foreclosure. The circuit court held an accounting hearing in February 2017, and the parties stipulated as to the amount of certain reimbursable costs owed to Katana as a consequence of the court's order vacating the judgment foreclosing the right of redemption. On February 22, 2017, the circuit court entered monetary awards in favor of Katana based on these stipulations, and also issued an order which vacated Katana's tax sale deed.

A "deed conveying the property back to [Ms. Brunson] was recorded" in March 2017. Katana filed a second notice of appeal on March 22, 2017. Between March and June of 2017, the circuit court, Ms. Brunson's counsel, and Montgomery County issued multiple checks to Katana and Katana's counsel in satisfaction of the monetary awards granted in the order of February 22, 2017. All of the checks were deposited.

QUESTIONS PRESENTED

Katana presents the following question for our review:

Whether the lower Court erred when it granted the order Vacating Judgment Foreclosing the Right of Redemption?

In addition to urging us to answer that question in the negative, Ms. Brunson moved to dismiss this appeal based upon Katana's post-judgment conduct of "accept[ing] all of the monetary benefits derived from the re-opening of the tax sale case and Appellee Brunson's ensuing redemption of her real property." Ms. Brunson asserts that, by accepting payment of all monies ordered by the court, Katana waived its right to challenge the circuit court's December 21, 2016, order. We agree that Katana accepted

benefits of the judgment it seeks to challenge on appeal, and thereby waived its right to challenge that judgment. We will grant Ms. Brunson's motion to dismiss.

BACKGROUND

In September 2010, Ms. Brunson purchased a one-bedroom condominium unit located at 13010 Shadyside Lane, No. 13-226, Germantown, Maryland. Ms. Brunson paid \$100,000 for the condominium unit, and financed the purchase with a mortgage loan in the amount of \$60,000. According to Ms. Brunson, she purchased the condominium unit to provide a place for her mother to reside. Ms. Brunson noted that "her mother, Lucy Kuhn, has a long history of pervasive mental illness." Ms. Brunson is a professional basketball player, and she resided in California at the time of the purchase.

Even though Ms. Brunson concedes that she "has never resided in the condominium in Germantown," at the time she purchased the property she signed a document captioned Owner Occupancy Affidavit of Grantee as First-Time Maryland Home Buyer, which included an affirmation that this property would be Ms. Brunson's principal residence.¹

Within a year after purchasing the Germantown unit, Ms. Brunson paid off her mortgage. Thereafter, she neglected to pay the property taxes on the unit. As a result, in June 2013, Montgomery County sold the unit at a tax sale auction and issued the tax sale certificate to Fedhop, LLC, which reflected a purchase price of "\$66,475, including a

¹ Although Katana places great emphasis on the fact that this affidavit contained incorrect statements as to Ms. Brunson's residence, we know of no case that has held that a person who misrepresents a fact in such a document forfeits any right to be served with process in subsequent legal proceedings.

high bid premium of \$3,295 and property tax of \$948.50.” In March 2014, Fedhop, LLC filed a Complaint to Foreclose Rights of Redemption on the property. Fedhop, LLC subsequently assigned its rights as purchaser to Katana on March 23, 2015, and Katana was substituted as the plaintiff in the foreclosure action on August 28, 2015.

Neither Fedhop nor Katana was able to serve Ms. Brunson personally. Their private process server reported being unable to serve her at the Germantown condominium unit. The property was posted with notice of the foreclosure suit, and a notice of the suit was published in the Montgomery County Sentinel on April 10, 17, and 24, 2014. In August 2015, Katana filed a motion for judgment to foreclose the right of redemption. The circuit court entered a judgment foreclosing Ms. Brunson’s right of redemption on October 1, 2015. Montgomery County issued a deed which conveyed the property to Katana in March 2016.

On October 28, 2016, Ms. Brunson filed a Motion to Re-Open the Tax Sale Foreclosure Case and Vacate the Judgment Foreclosing Right of Redemption. In her motion, she asserted that the judgment should be vacated “because the Court lacked jurisdiction due to lack of service of process.” In her supporting memorandum, she elaborated: “It is undisputed that Defendant Brunson was not personally served with Plaintiff’s Summons and Complaint to Foreclose the Right of Redemption. Nor did Plaintiff obtain an order for substituted service pursuant to Maryland Rules 2-122 and 14-503(b).” In a supporting affidavit, Ms. Brunson provided the following explanation for the fact that she had not responded earlier to the suit to foreclose her right of redemption:

4.a. I bought this condominium for my mother, Lucy Kuhn, so that she would have a place to reside.

* * *

9. My mother suffers from both bi-polar and personality disorders. She has been hospitalized for her mental conditions multiple times.

10. As a result of her mental illness, I have had no contact with my mother from before 2013 to the present. She has been estranged from all of her children for many years.

* * *

11. Until October 5, 2016, I was completely unaware of the property tax deficiency on my condominium, the resulting tax sale, the notice published in the Montgomery County Sentinel newspaper, Plaintiff's lawsuit to Foreclose the Right of Redemption, the October 1, 2015 Judgment Foreclosing the Right of Redemption, the Writ of Possession, and the resulting eviction of my mother in July 2016.

12. My mother never informed me or any other family member about the property tax deficiencies, property tax sale notices, or notices that a lawsuit had been filed to foreclose the right of redemption that Plaintiffs purportedly mailed to the condominium or posted at the condominium. Nor did my mother inform me or any other family member that she had been evicted from the condominium until [sic, presumably "unit"] in July 2016. Nor did my mother forward any of [sic] notices or documents that she received at the condominium to me or any other family member regarding the property tax deficiency, the property tax sale notices, lawsuit to foreclose the right of redemption, the October 1, 2015 Judgment Foreclosing the Right of Redemption, and the resulting Writ of Possession.

13. My mother's failure to communicate with me and my siblings is one of the symptoms of her mental illness. My mother believes that her children are her enemies and pose a threat to her. She has not communicated to me and my siblings in years.

14. Accordingly, I was unaware of all attempts made by Plaintiff to notify me of the tax sale and resulting lawsuit,

Ms. Brunson's affidavit also stated that, since graduating from Georgetown University in 2004, she had "played professional basketball in the WNBA and European leagues." She had been a "resident" of California since 2008, and, since 2012, had resided at 1080 Park Place, Unit 1001, in San Diego, California. As a consequence of Ms. Brunson's sports achievements, she noted that a Google search for her name "yields over 80,000 entries," of which the "top result is my Wikipedia entry, which states that I am currently a member of the Minnesota Lynx of the WNBA." The sixth Google result "is my Facebook.com page," which includes her e-mail address, the name of her employer, and her employer's telephone number.

Ms. Brunson's motion was also supported by an affidavit of a private process server who affirmed that she had been readily "able to obtain the contact information for [Rebekkah Brunson] simply using a Facebook and Google search." The private process server further stated that, when she "ran a skip trace using [an application known as] TLO," she had obtained a report that reflected Ms. Brunson's most recent address was 1080 Park Blvd San Diego, CA. The affidavit stated that "it is my professional opinion it was very simple to locate what is believed to be [Ms. Brunson's] current place of dwelling and ownership. . . . Any efforts made in good faith by a process server to locate Rebekkah Brunson would have shown the same results."

The circuit court held a hearing on Ms. Brunson's motion on December 20, 2016. After hearing from both parties, the court orally ruled in favor of Ms. Brunson, and scheduled an accounting hearing for February 2017. On December 21, 2016, the circuit court entered an order which granted Ms. Brunson's Motion to Re-Open the Tax Sale

Foreclosure Case and Vacate the October 1, 2015 Judgment Foreclosing the Right of Redemption. Katana filed a Motion for Reconsideration, which was denied by order docketed on January 23, 2017. Katana noted an appeal on January 19, 2017.

On January 26, 2017, Ms. Brunson filed a motion to vacate the tax sale deed. On January 31, 2017, Katana filed its proposed accounting of costs and fees.

On February 21, 2017, the circuit court held a hearing to address Katana's proposed accounting of the monies it was owed as a result of the court's order granting the motion to vacate the foreclosure judgment. At the outset of the hearing, counsel for Katana advised the court:

[COUNSEL FOR KATANA]: This is a tax sale case, Your Honor. The tax sale judgment was vacated. There's a tax sale deed that's on record. The plaintiff [*i.e.*, Katana] has agreed that the tax sale deed will be vacated. In return the plaintiff will be refunded by the county for all the amounts that it paid in order to obtain [the] deed, . . .

* * *

[COUNSEL FOR KATANA]: First it's going to be \$984.50, which is the original tax sale amount.^[2]

THE COURT: \$984.50.

[COUNSEL FOR KATANA]: Yes.

[COUNSEL FOR MS. BRUNSON]: And any interest.

[COUNSEL FOR KATANA]: Right, and then you know, interest which I calculated through today at 20 percent, of \$702.67.

² The amount of property tax stated in the certificate of tax sale is actually \$948.50, but the transcript of the accounting hearing states \$984 in some instances.

THE COURT: Wait a minute, how much is it? How much is the refund?

[COUNSEL FOR KATANA]: The refund in total is going to be about \$70,000 – some.

THE COURT: No, but I thought you said 984.

[COUNSEL FOR KATANA]: Correct, 948.50. And interest for three years at 20 percent, which I calculated it out, or since 2013, so four years.

THE COURT: Okay.

[COUNSEL FOR KATANA]: And I'll rerun the numbers, Your Honor, when we submit the order.

THE COURT: I just wanted to make sure I had the amounts right —

[COUNSEL FOR KATANA]: Right.

THE COURT: — because that just seemed like a lot of money on \$948.

[COUNSEL FOR KATANA]: It does, but it's been out there for quite some time, Your Honor.

A return of the high bid premium of \$3,295, no interest running on that.

[COUNSEL FOR MS. BRUNSON]: Why not?

[COUNSEL FOR KATANA]: Because it doesn't earn interest.

[COUNSEL FOR MS. BRUNSON]: There's no interest on —

[COUNSEL FOR KATANA]: No. A return of \$65,055.29, which is the amount my client paid in order to obtain the deed. This amount includes taxes for 2013, 2014, and 2015, as well as the bid that my client

made at the time of the tax sale. And interest on that amount, Your Honor, is \$507.51.^[3]

In addition there's a return of \$758.72 for 2016 taxes that my client paid.

[COUNSEL FOR MS. BRUNSON]: Is that \$768?

[COUNSEL FOR KATANA]: Is it 768, I apologize. Thank you, Mr. [Counsel for Ms. Brunson]. I had it written down here incorrectly. With interest on that of \$57.37.

THE COURT: I'm sorry, 57 what?

[COUNSEL FOR KATANA]: \$57.37.

THE COURT: Okay.

[COUNSEL FOR KATANA]: Additionally there would be legal fees and costs of \$2,345.88, which would be sent to my law firm from the court's registry where the funds are now currently being held.

THE COURT: Okay.

The docket entry for the February 21, 2017, hearing states: "Agreement placed on the record as to accounting of monies owed on vacated tax sale. Order to be submitted." (Capitalization altered.)

On February 22, 2017, the circuit court entered two orders. One order granted Ms. Brunson's motion to vacate the tax sale deed that had been issued to Katana on March 30, 2016. The second order listed the amounts of money Katana was to receive as a consequence of the court granting Ms. Brunson's motion to vacate the foreclosure judgment. The amounts awarded to Katana were similar to those outlined by Katana's

³ In the order that was submitted by Katana's counsel after the hearing, the amount for this interest is listed as \$501.32.

counsel at the hearing on February 21, 2017, and included interest of \$702.67 on the “Tax Sale Amount,” interest of \$501.32 on the past-due taxes that had been paid, and interest of \$57.37 on the 2016 taxes Katana had paid, plus legal fees and costs. The order also ordered that this case be closed.

Between February 2017 and May 2017, the circuit court, Montgomery County, and counsel for Ms. Brunson issued the pertinent checks to Katana and Katana’s counsel. All of these checks were deposited by or on behalf of Katana.

On March 22, 2017, Katana filed a second notice of appeal. In its brief, Katana challenges the circuit court’s decision to vacate the judgment of foreclosure. Ms. Brunson has moved to dismiss the appeal because Katana accepted a benefit of that judgment, namely, full reimbursement of the amounts it paid Montgomery County, plus interest and costs.

DISCUSSION

Ms. Brunson contends that Katana waived its right to appeal the circuit court’s order that reinstated Ms. Brunson’s right of redemption because Katana has acquiesced in the judgment it now appeals. She alleges that the waiver occurred when Katana accepted the benefits of the circuit court’s February monetary judgment that was entered as a consequence of the order to vacate the foreclosure judgment. In her brief, Ms. Brunson states:

The acquiescence rule bars Appellant from appealing the December 21, 2016 Order vacating the October 1, 2015 Judgment Foreclosing the Right of Redemption, **because [Katana] has accepted all of the monetary benefits derived from the re-opening of the tax sale case and Appellee Brunson’s ensuing redemption of her real property.** Appellant received

and deposited the \$2,345.88 check from the Circuit Court, the \$185.00 from Appellee Brunson's attorney, and the \$71,318.87 check from Montgomery County.

(Emphasis added.)

In response, Katana argues that the acquiescence rule does not apply to bar its appeal of the circuit court's order because it was compelled to accept the monetary benefits that flowed from Ms. Brunson's efforts to redeem the property once the judgment foreclosing Ms. Brunson's right of redemption was vacated by the circuit court's order in December 2016. Katana states:

Once the order vacating the judgment was entered, the hands of the Appellant were tied. MD Tax Property Article § 14-827 gives an interested party an absolute right to redeem in the absence of a judgment foreclosing the right of redemption. Further, the holding of *Canaj v. Baker*[,] 391 MD 374, 401[,] 893 A.2d 1067 (2006)[,] requires that a party moving to vacate a judgment entered in a tax sale case must, as a condition precedent, make payment of the taxes in arrears.

Katana also asserts that the case law relied upon by Ms. Brunson is outdated because it was decided "prior to the complete re-writing of the tax sale statute"

In *Rocks v. Brosius*, 241 Md. 612, 630 (1966), the Court of Appeals described the "acquiescence rule" in the following manner: "The right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal." This rule has been "applied where an appellant sought to reverse an order while previously or concurrently relying on the order as being correct." *Dietz v. Dietz*, 351 Md. 683, 692 (citations omitted) (1998). In *Boyd v. Bowen*, 145 Md. App. 635, 666 (2002), this Court further addressed the parameters of this rule:

In all the cases applying the acquiescence rule to bar an appeal, **the conduct constituting acquiescence was a party's post-judgment voluntary acceptance of the benefits of the judgment.**

(Emphasis added.)

The acquiescence rule has been applied in circumstances similar to the present case. In *Suburban Development Corp. v. Perryman*, 281 Md. 168, 169 (1977), Charles County sold two lots to William D. Perryman pursuant to a tax sale after the property owner failed to pay the taxes assessed on the property. Perryman's petition to foreclose Suburban Development Corporation's right of redemption was granted. *Id.* at 169-70. After the circuit court entered foreclosure orders for the two lots, Suburban filed a petition "seeking to vacate the two foreclosure orders so as to permit redemption of the lots." *Id.* at 170. The circuit court entered an order which vacated its earlier order and reinstated Suburban's right to redeem the property. *Id.* This order permitted Suburban to exercise its right of redemption upon the condition that Suburban reimburse Perryman for "all sums of money for taxes, interest, costs of sale, penalties and other allowable expenses" *Id.* Suburban complied with this order, and a "RECEIPT OF COSTS" was filed by Perryman's attorney. *Id.* Thereafter, the circuit court directed "'that the Bill for Foreclosure be and is hereby dismissed.'" *Id.*

Perryman noted an appeal to this Court, where he "succeeded in having the foreclosure orders . . . reinstated." *Id.* The Court of Appeals, however, disagreed with this Court's decision to reach the merits of Perryman's appeal, and ruled that Perryman waived his right to appeal the reinstatement of Suburban's right of redemption when Perryman "accepted the benefits of the decree by receiving payment of expenses and

costs under it.” *Id.* at 172. The Court of Appeals, *id.* at 171, explained that this Court should have dismissed Perryman’s appeal:

It is a well-established rule in this State that unless the decree also adjudicates a separate and unrelated claim in favor of a litigant, he cannot, knowing the facts, both voluntarily accept the benefits of a judgment or decree and then later be heard to question its validity on appeal.

Among the cases cited by the Court of Appeals as authority for this “well-established rule,” *id.*, was *Dubin v. Mobile Land Corp.*, 250 Md. 349 (1968). In that case, Mr. Dubin held a mortgage against property owned by Mobile Land Corporation. After Mobile defaulted, Mr. Dubin initiated foreclosure proceedings. Mobile obtained an injunction against Mr. Dubin that enjoined him from pursuing the foreclosure proceedings, and required Mobile to reimburse Mr. Dubin for expenses he had incurred in connection with the dispute. He claimed that he was entitled to be reimbursed \$330.56. A check in that amount was tendered by Mobile, and it was accepted by Mr. Dubin, and it cleared. Mr. Dubin then noted an appeal from the injunction decree. Mobile moved for the appeal to be dismissed, and the Court of Appeals agreed, explaining that the reimbursement order was not independent of the injunction decree, and “[t]he knowledgeable acceptance, therefore, of the benefit of any portion of the decree waived any alleged error in the entire decree and estopped the accepting party from challenging the decree on appeal.” *Id.* at 353.

Similarly, here, Katana waived its right to appeal the December 21, 2016, order vacating the judgment foreclosing Ms. Brunson’s right of redemption when it later accepted benefits that flowed from the judgment. Like Mr. Dubin, Katana accepted a

refund of the funds it had paid to the county. And Katana also received the payment of interest — some at a rate of 20% per annum — on funds it had advanced. It is undisputed that Katana negotiated the checks that were tendered in payment of the reimbursements and interest. We conclude that Katana has therefore waived its right to appellate review of the judgment it has challenged on appeal, and the appeal must be dismissed.⁴

**APPELLEE’S MOTION TO DISMISS IS GRANTED.
APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.**

⁴ In the interest of completeness, we note that, even if we did not dismiss the appeal based upon Katana’s acquiescence, we would have affirmed the judgment of the circuit court vacating the foreclosure judgment for lack of jurisdiction. There was adequate evidence before the circuit court to support the court’s conclusion that Ms. Brunson had not been personally served. Further, as Ms. Brunson argued in her motion to vacate, neither Katana nor Fedhop sought an order of court to permit service via publication pursuant to Maryland Rule 2-122(a), which permits such service only upon a showing “that reasonable efforts have been made in good faith to locate the defendant.” There was evidence before the circuit court that showed that Ms. Brunson would have been located if “reasonable efforts” had been exerted by someone who wanted to locate her. *Cf. St. George Antiochian Orthodox Christian Church v. Aggarwal*, 326 Md. 90, 104 (1992) (The Court of Appeals rejected tax sale purchaser’s claim of adequate efforts to locate owner, stating that the purchaser’s limited search reflected “the type of manifest indifference which we have held cannot be countenanced without offending concepts of due process in a case of this kind.”).