Circuit Court for Montgomery County
Case No. 435983V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3034

September Term, 2018

RIGOBERTO VENTURA, et al.

v.

DIANE S. ROSENBERG, et al.

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 13, 2020

*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 this appeal from a foreclosure action in the Circuit Court for Montgomery County, Rigoberto Ventura and Raquel Mejia, appellants, challenge the court's denial of a post-foreclosure sale "Application for a Stay of the Proceedings" (hereinafter "application for stay"), and issuance of a "Final Order of Ratification of Sale." For the reasons that follow, we shall affirm the judgments of the circuit court.

On November 18, 2005, appellants obtained from Accredited Home Lenders, Inc., a loan secured by a deed of trust on their residence at 9915 Valley Park Drive, #B-1, in Damascus. Appellants executed a promissory note in which they promised to pay the amount of the loan, plus interest, to the lender. In the deed of trust, appellants granted and conveyed the property to a trustee, in trust, with a power of sale.

In March 2016, appellants defaulted on the terms of the note. In March 2017, appellees[1] were appointed as substitute trustees under the deed of trust. In August 2017, appellees filed the order to docket the foreclosure action. In October 2017, appellants filed a "Notice of Removal of State Court Proceedings to U[.]S. District Court." In February 2018, the federal court remanded the case to the circuit court.

On October 17, 2018, the Valley Park Drive residence was sold. On October 22, 2018, appellee Mark D. Meyer filed an affidavit in which he "affirm[ed] under the penalty of perjury that on September 20, 2018, [he] mailed or caused to be mailed" to appellants at the Valley Park Drive residence, "by certified mail, return receipt requested, and by first

[1]Appellees are Diane S. Rosenberg, Mark D. Meyer, John A. Ansell, III, Kenneth Savitz, Jennifer Rochino, and Sydney Roberson.

class mail, notice of the time, place[,] and terms of the sale." Mr. Meyer also filed a "Report of Sale," in which he "affirm[ed] under the penalty of perjury" that the sale occurred "after having given due notice of the time, place, manner[,] and terms of sale by advertisement inserted in [the] Washington Post . . . once a week for at least three successive weeks before the day of sale." Mr. Meyer attached to the report a copy of the advertisement. Mr. Meyer also included in each pleading a certificate of service in which he certified that a copy of the pleading was "sent . . . by first class mail, postage prepaid[,] to" appellants at the Valley Park Drive residence.

On November 16, 2018, appellants filed the application for stay, in which they presented the following exceptions to the sale:

- "[A]t all times after the remand back, . . . neither defendant has been lawfully served with . . . court documents [appellees have] filed with the court in violation of their right to full due process of law to be served with same." (Capitalization omitted.)

- Mr. Ventura "was never given the right to a modification he was promised nor any right to have a mediation the statutes require lenders to extend to homeowners."

- Mr. Ventura "was not in default when same was declared."

- Mr. Ventura "was promised that his loan would be modified and that no foreclosure would be performed during his modification process."

- "[N]othing was provided in [Mr. Ventura's] native Spanish language." (Boldface and underlining omitted.)

- Appellees "are not authorized to bring a foreclosure action without more proof of delegated ostensible authority in writing to act."

- The "loan was rescinded in 2008[] by delivery of a letter within the 3 year period allowed under the provisions of [t]he Truth in Lending Act." (Footnote omitted.)

On November 21, 2018, the court issued an order in which it stated that, "[u]pon consideration of" the application for stay "and [appellees'] Opposition thereto," the application was denied. The court subsequently ordered that the sale be "finally ratified and confirmed." Both orders were entered by the clerk on November 26, 2018. On December 17, 2018, appellants filed a notice of appeal. On February 26, 2019, the court issued a final order of ratification on the auditor's report.

Appellants contend that, for numerous reasons, the court erred in denying the application for stay and ratifying the sale. First, appellants contend that "the court failed to give [them] required notice . . . after remand," because "document[s] that require service were never served to them by" appellees. (Capitalization, boldface, and underlining omitted.) But, each pleading filed by appellees subsequent to the remand contains a certificate of service in which appellees certified that a copy of the pleading was sent to appellants at the Valley Park Drive residence, and Rule 1-323 states that a "certificate of service is prima facie proof of service." Also, appellants did not assert in the application, or attach to the application any evidence, that they have any mailing address other than the Valley Park Drive residence.[2] Moreover, appellees attached to their report of sale evidence that for at least three successive weeks before the day of sale, they published in the Washington Post the time, place, manner, and terms of the sale as required by Rule 14-210(a) ("[b]efore selling property in an action to foreclose a lien, the individual authorized

[2]Indeed, on the cover and in the body of their brief, appellants list the Valley Park Drive residence as their address. *See* Rule 8-503(c) (the "cover page [of a brief] shall contain the . . . address . . . of the party if not represented by an attorney").

to make the sale shall publish notice of the time, place, and terms of the sale in a newspaper of general circulation in the county in which the action is pending," and the notice "shall be published at least once a week for three successive weeks"). We conclude that this evidence is sufficient to show that appellants received adequate notice of post-remand proceedings.

Appellants next contend that the court erred in denying the application for stay for the following reasons:

- The court "acted without jurisdiction in" issuing a final order of ratification on the auditor's report "after the appeal was filed."[3] (Boldface and underlining omitted.)
- Mr. Ventura "believes he was discriminated against based on his ethnicity."
- Appellees do not have standing.
- The "loan was rescinded" by the letter allegedly sent by Mr. Ventura in September 2008,[4] and "the transaction must be undone consistent with" the Supreme Court's opinion in *Jesinowski v. Countrywide Home Loans, Inc.*, 574 U.S. 259 (2015).
- Mr. Ventura "was never effectively given the right to a modification he was promised nor any right to have a mediation the statutes require lenders [to] extend to homeowners." (Underlining omitted.)

[3]It appears that the "jurisdiction" challenged by Mr. Ventura is the authority of the trial court to amend or modify its judgment following the filing of the notice of appeal, rather than the "jurisdiction of the trial court over the subject matter and . . . [Mr. Ventura's] person," which "may be raised in and decided by the appellate court whether or not raised in and decided by the trial court." Rule 8-131(a). We also note that, because the court issued its final order of ratification on the auditor's report after Mr. Ventura filed his notice of appeal, that judgment is not before us.

[4]We note that appellants did not attach a copy of the letter to the application for stay. We also note that appellants continued to make payments toward the debt from September 2008 through February 2016.

The Court of Appeals has instructed that after a foreclosure sale occurs, "the debtor's later filing of exceptions to the sale may challenge only procedural irregularities at the sale[.]" *Greenbriar v. Brooks*, 387 Md. 683, 688 (2005) (footnote omitted). Such irregularities "might include allegations such as the advertisement of sale was insufficient or misdescribed the property, the creditor committed a fraud by preventing someone from bidding or by chilling the bidding, challenging the price as unconscionable, etc." *Id.* at 741. The contentions listed above do not allege any procedural irregularity at the foreclosure sale in this case, and hence, we cannot reach the contentions.

Finally, appellants contend that the court erred in failing to give them "the right to file a usual '[r]eply' to [appellees'] Opposition" to, and to hold a hearing on, the application for stay. We disagree. Rule 14-305, which governs procedure following a foreclosure sale, does not give a party the right to reply to an opposition to exceptions to a sale, and does not require a court to postpone resolution of the exceptions until that party files such a reply. Also, Rule 14-305(d)(2) states that a "court shall hold a hearing" on exceptions to a sale "if . . . the exceptions . . . clearly show a need to take evidence." For the above-described reasons, appellants' exceptions did not show a need for the court to take evidence. We hold that the court was not required to give appellants the opportunity to reply to appellees' opposition or hold a hearing on the application for stay, and therefore, the court did not err or abuse its discretion in denying the application and ratifying the sale.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.