UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0756

September Term, 2014

MARIAN MATTHEWS A/K/A/ MARIAN MATTEWS

v.

CARRIE M. WARD, ET AL., SUBSTITUTE TRUSTEES

Hotten,
Reed,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: May 26, 2015

Appellant, Marian Matthews, defaulted on her mortgage and thereafter, substitute trustees, Carrie Ward, Howard N. Bierman, Jacob Geesing, Pratima Lele, Tayyaba C. Monto and Joshua Coleman, (collectively appellees) initiated foreclosure proceedings. Following a foreclosure sale, appellant filed exceptions and requested a hearing. The Circuit Court for Prince George's County overruled appellant's exceptions and ratified the foreclosure sale. Appellant noted an appeal relative to the denial of her exceptions, not to the ratification of the sale. She frames the following questions for our consideration:

> 1. Should post-sale objections relating to loss-mitigation be considered by the [c]ircuit [c]ourt, where the objections include a substantial allegation that the [d]efendant was fraudulently induced by the mortgage servicer to refrain from filing objections prior to sale?
>
> 2. Did the [c]ircuit [c]ourt err in denying [appellant's] [m]otion for [e]xceptions to [f]oreclosure [s]ale without a hearing despite [appellant's] allegations that [a]ppellees fraudulently induced her to refrain from filing objections prior to sale?

For the reasons that follow, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL HISTORY

In 1999, appellant purchased the home subject to this appeal, 410 Cedarleaf Avenue, Capitol Heights, MD 20743 ("the Property"). After experiencing some financial difficulties, appellant fell behind on her mortgage payments and in March 2012 was approved for loan modification with her mortgage servicer, JPMorgan Chase Bank ("Chase"). In December 2012, appellant again fell behind on her mortgage payments. On January 24, 2013, Chase mailed to the Property via first class mail and certified mail, a Notice of Intent to Foreclose which included information regarding how to apply for mortgage assistance. Chase executed the required Final Loss Mitigation Affidavit

("FLMA")[1] on April 16, 2013. On August 11 and 12, 2013, a process server twice unsuccessfully attempted to personally serve appellant with the Foreclosure Order to Docket and FLMA. The documents were eventually served by posting them to the Property and by mail on August 14, 2013. On the same date, as required by the Home Affordable Mortgage Program ("HAMP")[2], appellant received a letter from Stephanie Edgehill ("Ms. Edgehill"), a customer assistance specialist with Chase contacted appellant, indicating that she was appellant's point of contact for questions regarding her mortgage. Appellant contacted Ms. Edgehill, asserting the letter she had received from Ms. Edgehill conflicted with the documents she had been served regarding foreclosure. Ms. Edgehill advised

[1] Maryland Code (1974 Repl. Vol. 2010) of the Real Property Article §7-105.1(a)(3): "Final loss mitigation affidavit" means an affidavit that: (i) Is made by a person authorized to act on behalf of a secured party of a mortgage or deed of trust on owner-occupied residential property that is the subject of a foreclosure action; (ii) Certifies the completion of the final determination of loss mitigation analysis in connection with the mortgage or deed of trust; and (iii) If denied, provides an explanation for the denial of a loan modification or other loss mitigation.

[2] *See Granados v. Nadel*, 220 Md. App. 482, 488 fn.4 (2014) (explaining that HAMP is a federal program enacted by Congress in response to the financial crisis of the mid-2000s. The program, intended to help borrowers avoid foreclosure, sets out a number of requirements for both lenders and borrowers. "To be eligible for a HAMP loan modification, a borrower must meet the following requirements: The mortgage loan must be a first lien mortgage loan that was originated on or before January 1, 2009; the property must not be condemned; the borrower must have documented financial hardship and represented that he or she does not have sufficient liquid assets to make the monthly mortgage payments; the borrower must agree to set up an escrow account for taxes and insurance; and the current unpaid principal balance must not be greater than $729,750 for a single unit property. Treasury Department, *The Making Home Affordable Program Handbook for Servicers of Non–GSE Mortgages*, at 72–74 (2014), *available at* https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_44.pdf. ").

appellant to apply for loan modification. The record demonstrates that appellant did not pursue mediation or any other option for mortgage assistance.

On October 16, 2013, the Property was sold at a public auction. On December 6, 2013, appellant filed exceptions to the sale, alleging: that the FLMA was inaccurate, that she was not provided notice of the foreclosure sale pursuant to Md. Rule 14-210, and that appellees and Chase committed fraud by encouraging her to sit on her rights. She also requested that the court conduct a hearing on her exceptions. Appellees opposed appellant's exceptions and on March 21, 2014, the circuit court overruled the exceptions without holding a hearing. The court ratified the foreclosure sale on March 28, 2014.

Appellant noted an appeal, challenging the court's denial of her exceptions subsequent to the foreclosure sale. No appeal was noted relative to the ratification of the foreclosure sale. Additional facts shall be provided, *infra*, to the extent they prove relevant in addressing the issues presented.

STANDARD OF REVIEW

"The requirement that a party appeal from only a final judgment is a jurisdictional requirement. Whether a judgment is final, and thus whether this Court has jurisdiction to review that judgment, is a question of law to be reviewed *de novo*." *Baltimore Home Alliance, LLC v. Geesing*, 218 Md. App. 375, 381 (2014) (internal citations omitted).

This Court reviews a circuit court's denial of foreclosure sale exceptions under the "clearly erroneous" standard set out in Maryland Rule 8-131(c), which provides:

> (c) Action tried without a jury. When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly

> erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

When reviewing the circuit court's factual findings, "we are mindful that the exceptant to a foreclosure sale bears the burden of proving that the sale was invalid." *Fagnani v. Fisher*, 190 Md. App. 463, 470-71 (2010) (citing *J. Ashley Corp. v. Burson*, 131 Md. App. 576, 582 (2000). We review the legal conclusions *de novo*. *Id*.

DISCUSSION

I. Is appellant's appeal proper?

Preliminarily, appellees argue that appellant's appeal is improper because she challenges only the circuit court's denial of exceptions which is non-appealable. Appellees contend that the final order in the foreclosure case was the ratification of the sale and since appellant did not appeal that order, this Court lacks jurisdiction to review appellant's appeal.

Maryland Code, Courts and Judicial Proceedings (2006 Repl. Vol. 2013) §12-301 provides in relevant part, "a party may appeal from a final judgment entered in a civil or criminal case by a circuit court. The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law." In a foreclosure action, once a foreclosure sale has taken place, the last opportunity for a homeowner to challenge the sale is by filing exceptions. *See* Md. Rule 14-305(d). While appellees are correct that the order ratifying the sale is the final order, a court's denial of exceptions sufficiently determines the rights and interest in the property such to warrant an appeal. Maryland

Courts have long considered a number of cases in which a party challenges the trial court's ruling on exceptions. *See e.g. Hobby v. Burson*, 222 Md. App. 1 (2015) (reviewing a party's appeal challenging only the court's denial of exceptions to the foreclosure sale, stating "[t]his appeal arises out of an order of the Circuit Court for Prince Georges County denying exceptions to a foreclosure sale filed by [Hobby]"). *See also Thomas v. Nadel*, 427 Md. 441, 449 (2012); *Bates v. Cohn*, 417 Md. 309 (2010) (both addressing a sole question regarding the circuit court's denial of exceptions to a foreclosure sale); *Bilbrey v. Strahorn*, 153 Md. 491 (1927). Accordingly, we conclude that appellant may challenge the circuit court's denial of her exceptions.

II. Did the court err in overruling appellant's exceptions?

Once a foreclosure sale has occurred, a debtor's recourse for challenging the sale is limited.[3] As the Court of Appeals explained in *Greenbriar Condo., Phase I Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683, 688 (2005): "Should a [foreclosure] sale occur, however, the debtor's later filing of exceptions to the sale may challenge *only procedural irregularities at the sale* or the debtor may challenge the statement of indebtedness by filing exceptions to the auditor's statement of account." (emphasis added).

[3] *But see Thomas v. Nadel*, 427 Md. 441, 443 (2012) ("Prior to the sale, a borrower may file a motion to stay the sale and dismiss the foreclosure action under Maryland Rule 14–211."). Maryland Rule 14-211 provides:

> (a) Motion to Stay and Dismiss. (1) Who May File. The borrower, a record owner, a party to the lien instrument, a person who claims under the borrower a right to or interest in the property that is subordinate to the lien being foreclosed, or a person who claims an equitable interest in the property may file in the action a motion to stay the sale of the property and dismiss the foreclosure action.

> Maryland Rule 14-305(d) grants the right to file a post-sale exception.
>
> (1) How Taken. A party, and, in an action to foreclose a lien, the holder of a subordinate interest in the property subject to the lien, may file exceptions to the sale. Exceptions shall be in writing, shall set forth the alleged irregularity with particularity, and shall be filed within 30 days after the date of a notice issued pursuant to section (c) of this Rule or the filing of the report of sale if no notice is issued. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

The Court of Appeals, in *Bates v. Cohn*, 417 Md. 309 (2010), clarified which challenges may be made in post-sale exceptions. There, the plaintiff was notified that she was in default of her mortgage in late 2007. *Id.* at 313. Over the course of more than one year, she was in communication with her lenders regarding her account and her efforts to make her account current. *Id.* at 313-14. In January 2009, the defendant's mailed her a Notice of Intent to Foreclose, which included the required foreclosure documents and information regarding contacting a loss mitigation manager. *Id.* at 314. The plaintiff's home was sold following a foreclosure sale in June 2009, after which she filed exceptions to the sale under Md. Rule 14-305(d), alleging that the defendant's did not comply with a federal pre-foreclosure loss mitigation requirement. *Id.* at 316. Following a hearing on the matter, the circuit court denied the exceptions and ratified the sale, reasoning that the defense of a pre-sale claim cannot be raised after the sale as been completed. *Id.* at 317-18.

The Court of Appeals granted *certiorari* before this Court could address the issue. *Id.* at 318. The Court noted that Maryland law provides an avenue for a defaulting borrower to challenge a foreclosure sale *before* the sale is ratified by filing a motion to stay the sale or dismiss the action. *Id.* It continued, explaining that once a property is sold, a borrower may file exceptions "pursuant to Md. Rule 14-305 only as to 'exceptions to the sale.'" *Id.*

at 319. (emphasis omitted). The Court then engaged in a detailed discussion regarding the case law on foreclosure sale exceptions over the last decade. *See generally Greenbriar Condo., Phase I Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683 (2005); *Wells Fargo Home Mortgage, Inc. v. Neal*, 398 Md. 705 (2007); *Bierman v. Hunter*, 190 Md. App. 250 (2010). The Court concluded:

> Rule 14-305 is not an open portal through which any and all pre-sale objections may be filed as exceptions, without regard to the nature of the objection or when the operative basis underlying the objection arose and was known to the borrower . . . . We hold only that, given the limitations of Rule 14-305 and our *Greenbriar* and *Wells Fargo* opinions, a homeowner/borrower ordinarily must assert known and ripe defenses to the conduct of a foreclosure sale prior to the sale, rather than in post-sale exceptions.

Bates, 417 Md. at 327-28.

Returning to the case at bar, appellant argues in her brief that the circuit court did "not address [her] arguments that [appellees] failed to properly review her case for loss mitigation, nor [did] it address her argument that [she] was induced not to raise her loss mitigation defense until after [a]ppellees sold her home." However, we decline to assign error because Maryland law is clear that only procedural irregularities with the foreclosure sale itself may be challenged in post-sale exceptions. Appellant maintains that her exceptions were permissible to raise in post-sale exceptions because Chase engaged in what the *Bates* Court characterized as "silent fraud."[4] There, the Court of Appeals surmised

[4] There, the Court of Appeals remarked that the plaintiff did not "assert that [the bank] actively encouraged her to sit on her rights and await the outcome of loss mitigation or loan modification efforts that would never come to pass, such that the sale was the product of a silent fraud and title should not pass. *Bates*, 417 Md. at 325

(continued . . .)

that if a debtor asserted that the bank "actively encouraged her to sit on her rights and await the outcome of loss mitigation or loan modification efforts that would never come to pass," then the foreclosure sale would be the product of fraud. *Bates*, 417 Md. at 325. Appellant contends that her situation falls squarely under this category because she was contacted via letter in August 2013 by Ms. Edgehill which led her to believe that this was the only recourse to avoid foreclosure. We are not persuaded. Appellant was properly served with a Notice of Intent to Foreclose in January 2013. The documents advised that she should obtain counsel in order to assist her with the proceedings. Two months later, appellant contacted Chase in an attempt to pay the missed December 2012 mortgage payment, but was advised that to become current on her mortgage, she had to pay the entire unpaid balance (which consisted of the missed payments from Dec. 2012, Jan. 2013, and Feb. 2013). Appellant was unable to do so. Then, on August 14, 2013, appellant received the letter from Chase, sent by Ms. Edgehill. Appellant avers that this letter "strongly implied" that Chase was the only party with which she could work to resolve the pending foreclosure action, and that pursuant to the letter, she did not have to be concerned with other foreclosure procedures. We disagree. The letter from Chase via Ms. Edgehill stated:

> I am writing to let you know that I will serve as your new dedicated Customer Assistance Specialist. I will be on point to help with whatever you need as we work on finding the best option for your mortgage.

(. . . continued)
(emphasis omitted). Silent fraud in this context would constitute extrinsic fraud as opposed to intrinsic fraud. "Put simply, '[f]raud is extrinsic when it actually prevents an adversarial trial but it is intrinsic when it is employed during the course of the hearing which provides the forum for the truth to appear, albeit, that truth was distorted by the complained of fraud.' *Manigan v. Burson*, 160 Md. App. 114, 121 (2004). *See also Hresko v. Hrsesko*, 83 Md. App. 228, 232 (1990).

> Please do not hesitate to call me any time you have questions or concerns. I am here to make things as easy as possible for you and clear up any confusion you may have. In addition, I will be in touch with you from time to time to provide updates and remind you about important deadlines.

The letter then lists several avenues of contact, including three telephone numbers and a mailing address. Finally, it states that if appellant is not satisfied with any aspect of her service, she can be put in contact with a supervisor. On the same date, appellant was served with the Order to Docket and the FLMA by posting on the property's door. The Order to Docket included a request for mediation form, which appellant could have completed and submitted to Chase to begin that process. It also included an application to participate in HAMP, the federal program intended to help borrowers avoid foreclosure. Appellant contacted Ms. Edgehill following receipt of both the letter and the Order to Docket documents, and was advised that she should apply for a loan modification. At appellant's request, Chase sent two additionally copies of the loan modification packets in August. Appellant alleges that she called Chase ten times between August and October of 2013. However, while appellant contends she thought that she could only pursue mitigation through Ms. Edgehill to prevent foreclosure, she failed to take advantage of either of the options presented. She declined to initiate either mediation or the loan modification program. Additionally, we observe that appellant was cognizant of how to pursue at least the loan modification program option, as she had previously participated in the program when she modified her loan just six months prior to the relevant declaration of default in January 2013. Appellant maintains that the Order to Docket and the letter from Ms. Edgehill were conflicting which contributed to her failing to exercise her rights. To the

contrary, we conclude that the documents were complementary. Chase served appellant with the Order to Docket and she received a letter from Customer Service indicating that if she had any questions regarding the foreclosure proceeding to contact them. We are not persuaded that the letter from Ms. Edgehill would have misled appellant into sitting on her rights.

Appellant's allegations of misconduct by appellees all relate to events prior to the foreclosure sale, which, pursuant to *Bates*, she could not raise in a post-sale exceptions motion. Additionally, we are not persuaded that appellant met her burden of establishing that the sale itself was invalid or that she was fraudulently induced to sit on her rights. We conclude that the circuit court was legally correct in its finding that appellant's exceptions should have been overruled.

III. Did the court err in denying appellant a hearing?

Finally, appellant argues that the circuit court erred in failing to hold a hearing on her exceptions as requested. Maryland Rule 14-305(d)(2) provides:

> The court shall determine whether to hold a hearing on the exceptions but it may not set aside a sale without a hearing. The court shall hold a hearing if a hearing is requested and the exceptions or any response clearly show a need to take evidence. The clerk shall send a notice of the hearing to all parties and, in an action to foreclose a lien, to all persons to whom notice of the sale was given pursuant to Rule 14-206(b).

In *Four Star Enterprises Ltd. P'ship v. Council of Unit Owners of Carousel Ctr. Condo*., Inc., 132 Md. App. 551 (2000), the plaintiff challenged the trial court's failure to hold a hearing on its exceptions to a foreclosure sale. Declining to find error, we explained:

> A hearing is by no means mandatory under Rule 14–305(d)(2), even if one of the parties requests it. Because this rule is written in conjunctive form,

> authorizing a proceeding "if a hearing is requested *and* the exceptions or any response clearly show a need to take evidence," it gives the court discretion.

Id. at 567. When reviewing for a circuit court's abuse of discretion, we consider whether "no reasonable person would take the view adopted by the [trial] court, or when the court acts "without reference to any guiding rules or principles." *Bland v. Hammond*, 177 Md. App. 340, 346-47 (2007). In the instant case, the circuit court was under no obligation to hold a hearing. Based on the Rule, a circuit court is only required to hold a hearing if it sets aside a foreclosure sale, and where "the exceptions or any response clearly show a need to take evidence." We fail to find any evidence that the court abused its discretion in declining to grant appellant's request for a hearing.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.