

Circuit Court for Prince George's County  
Case No. CAEF16-01363

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2619  
September Term, 2016

No. 1395  
September Term, 2017

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NAKIA LAVET LAFORTUNE

v.

KEITH M. YACKO, *et al.*, SUBSTITUTE  
TRUSTEES

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Graeff,  
Shaw Geter,  
Thieme, Raymond G., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Shaw Geter, J.

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Filed: June 19, 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.

This appeal arises from a foreclosure action filed in the Circuit Court for Prince George’s County. Appellees, the substitute trustees, filed an order to docket a foreclosure action against appellant Nakia LaFortune, to which appellant responded by filing a counterclaim against the substitute trustees, as well as claims against appellees SunTrust Bank and SunTrust Mortgage, Inc. After reaching an agreement, the substitute trustees moved to dismiss their complaint without prejudice. Appellant responded to the motion, consenting to the dismissal of the substitute trustee’s claims but objecting to the dismissal of her counterclaim against the substitute trustees and third-party claim against SunTrust. The court, by docket entry, dismissed the entire case. Appellant timely noted an appeal. Six months later, the court struck appellant’s counterclaim and third-party claim. Appellant then filed another appeal. The appeals were subsequently consolidated for our review.

We have merged appellant’s questions presented<sup>1</sup> as follows:

1. Did the circuit court err when it dismissed appellant’s counterclaim, over her objection, when appellee voluntarily dismissed their claim against appellant?

For the reasons set forth below, we shall vacate the judgment of the circuit court and remand for further proceedings.

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<sup>1</sup> Appellant presented the following questions for our review:

1. Whether the lower court abused its discretion in dismissing an action where there were issues pending?
2. Whether the lower court lost jurisdiction to address matters that were pending on appeal?

## BACKGROUND

Appellee Keith M. Yacko and the substitute trustees<sup>2</sup> for appellee SunTrust Mortgage, Inc.<sup>3</sup> (“SunTrust Mortgage”), requested an order to docket a foreclosure action against appellant Nakia L. LaFortune in the Circuit Court for Prince George’s County on January 27, 2016. In response, appellant filed a counterclaim against the substitute trustees, as well as counterclaims against appellee SunTrust Mortgage and SunTrust Bank (collectively “SunTrust”) on June 16, 2016.

The substitute trustees filed a motion for extension of time to respond to the counterclaim and on June 30, 2016, they moved to strike the counterclaim. Appellant filed an opposition on July 7, 2016. The motion for extension of time was ultimately granted on November 9, 2016, and provided the substitute trustees with nine days to respond. Appellees did not file a response.

Thereafter, appellant and the substitute trustees reached an agreement modifying the loan, and, on January 5, 2017, the trustees moved to voluntarily dismiss the foreclosure claim without prejudice. Appellant filed a response, wherein she agreed to the dismissal of the trustees’ claims, but not to the dismissal of her counterclaim or third-party claim against SunTrust.

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<sup>2</sup> The substitute trustees are Robert E. Frazier, Gene Jung, Laura D. Harris, Thomas W. Hodge, Thomas J. Gartner, Robert M. Oliveri, David M. Williamson and Keith M. Yacko. For clarity, we will refer to the caption as representative of the trustees.

<sup>3</sup> SunTrust Mortgage, Inc. appears as servicer for Ocwen Loan Servicing as attorney-in-fact for Bank of America, National Association as successor by merger to LaSalle Bank National Association as Trustee RAMP 2007-RSI as the noteholder.

On January 19, 2017, the case was dismissed. The court’s docket entry reads “CaseDisp: Dismissed.” No corresponding court order or notation accompanied the docket entry. Appellant noted her first appeal on February 1, 2017.

The circuit court issued a Show Cause order on May 16, 2017, requiring appellant to answer why the appeal should not be struck for untimeliness. On May 24, 2017, appellant filed her response, indicating the appeal was noted two weeks after the dismissal. No ruling was issued in response to the filing. Instead, on June 30, 2017, one year after the substitute trustees’ motion to strike was filed, the court granted the motion without prejudice, stating the case “remain[ed] closed statistically.” Appellant timely filed her second notice of appeal.

This Court, on October 4, 2017, consolidated both appeals.

### DISCUSSION

- I. The court erred in dismissing appellant’s counterclaim and third-party claims over appellant’s objections under Rule 2-506.

Appellant contends the circuit court erred in dismissing her counterclaim and third-party claim when the substitute trustees moved for voluntary dismissal of their claims. She further argues it was error for the court to later strike her already disposed of claims, because the court lacked jurisdiction to rule on the matter. Appellees, conversely, both argue the court’s initial dismissal was not dispositive of the entire case, and therefore, the court’s later order striking the claims was valid. We disagree.

Maryland Rule 2-506, detailing voluntary dismissals, states

**(a) By Notice of Dismissal or Stipulation.** Except as otherwise provided in these rules or by statute, a party who has filed a complaint, counterclaim,

cross-claim, or third party claim may dismiss all or part of the claim without leave of court by filing (1) a notice of dismissal at any time before the adverse party files an answer or (2) a stipulation of dismissal signed by all parties to the claim being dismissed.

...

**(c) By Order of Court.** Except as provided in section (a) of this Rule, a party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss the claim by order of court and upon such terms and conditions as the court deems proper. **If a counterclaim has been filed before the filing of a plaintiff’s motion for voluntary dismissal, the action shall not be dismissed over the objection of the party who filed the counterclaim unless the counterclaim can remain pending for independent adjudication by the court.**

The circuit court’s docket entry on January 19, 2017 reads “CaseDisp: Dismissed.”

As noted above, it does not contain a court order, nor any specification as to a separate disposition on the counterclaim or third party claim. It simply reads “dismissed.” Further, the court’s May 2017 Show Cause did not delineate that appellant’s appeal was limited to the foreclosure claim. Rather, it requested appellant answer why she had not timely filed her notice of appeal of the case. It is clear, then, the circuit court dismissed the entire case, including appellant’s claims, and this was error. Given appellant’s consent, the dismissal by the court of the substitute trustee’s claim was proper under Rule 2-506(a)(2). However as Rule 2-506(c) makes clear, a counterclaim is protected against dismissal when the original claim is dismissed.

We next examine the court’s ruling on the motion to strike the counter claim and third-party claim and find that it, too, was in error. “[O]rders dismissing, or granting motions to dismiss or to strike...are final and appealable.” *Houghton v. County Com’rs of Kent County*, 307 Md. 216, 221-22 (1986). Thus, “the circuit court loses jurisdiction over all issues raised on appeal when the appeal is filed.” *Douglas v. First Sec. Federal Sav.*

*Bank, Inc.*, 101 Md. App. 170, 176 (1994) (citations omitted). On January 19, 2017, the circuit court dismissed the entire case, accordingly, it was without jurisdiction to then rule on any further motions, particularly one filed prior to the dismissal.

We therefore reverse the court’s initial dismissal of appellant’s counterclaim and third-party claim, and, further, vacate the subsequent order striking the same.

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
DISMISSING APPELLANT’S CLAIMS  
REVERSED; ORDER GRANTING THE  
MOTION TO STRIKE VACATED; CASE  
REMANDED FOR FURTHER  
PROCEEDINGS; COSTS TO BE PAID BY  
APPELLEE.**