

Circuit Court for Montgomery County
Case No. 410429V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 89

September Term, 2022

FLAUBERT MBONGO, *et al.*

v.

CARRIE M. WARD, *et al.*

Graeff,
Zic,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 4, 2022

*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.

Flaubert Mbongo, appellant,¹ appeals from an order issued by the Circuit Court for Montgomery County granting a motion for judgment of possession filed by Wells Fargo Bank, N.A., as Trustee for Structured Asset Mortgage Investments II Inc., Bear Sterns Mortgage Funding Trust 2007-AR2, Mortgage Pass-Through Certificates, Series 2007-AR2 (Wells Fargo). He raises four issues on appeal which reduce to one: whether the court abused its discretion in granting the motion for judgment of possession.² For the reasons that follow, we shall affirm.

In 2007, Mr. Mbongo defaulted under the terms of a deed of trust that encumbered residential real property known as 14434 Bradshaw Drive, Silver Spring, Maryland. In 2015, the substitute trustees filed an order to docket in the circuit court seeking to foreclose on the property. The property was ultimately sold to Wells Fargo at a foreclosure sale for the sum of \$432,000.00. The sale was ratified in August 2019, and this Court affirmed the ratification order on appeal. *Mbongo v. Ward*, No. 1722, Sept. Term 2019 (filed Nov. 6, 2020).

After the mandate was issued, Wells Fargo filed a motion for judgment of possession. For reasons not clear from the record, the motion indicated that the name of

¹ Appellant's brief was also signed by his wife Charlotte Dikongue, who was also a party in the foreclosure action. However, Ms. Dikongue did not sign the notice of appeal. And one spouse's signature on a notice of appeal is not sufficient to make the non-signing spouse a party to the appellate proceedings. See *In re Nicole B.*, 410 Md. 33, 62-63 (2009).

² Wells Fargo contends that the appeal is moot because the writ of possession has already been executed and appellant is no longer living at the property. However, it does not cite to any case law directly supporting this contention. Moreover, because we are persuaded that the court did not abuse its discretion in granting the motion for judgment of possession, we need not resolve this issue on appeal.

the foreclosure purchaser was Wilmington Trust, N.A.³ Mr. Mbongo filed a motion to dismiss or, in the alternative, to stay the judgment of possession based on a pending appeal in this Court involving the circuit court’s dismissal of a civil complaint that he had filed against one of the substitute trustees. That complaint had raised claims of fraud and civil conspiracy related to the foreclosure action.⁴ On November 9, 2021, Wells Fargo filed a line withdrawing its motion for judgment of possession. Thereafter, the court denied Mr. Mbongo’s motion to dismiss or stay as moot.

Wells Fargo filed a new motion for judgment of possession on January 10, 2022, this time listing itself as the foreclosure purchaser. Appellant filed an opposition, wherein he argued that Wells Fargo’s withdrawal of the first motion for judgment of possession had been with prejudice and therefore, had resulted in an adjudication of the motion on the merits. Consequently, Mr. Mbongo asserted that the second motion was both moot and barred by collateral estoppel. The court granted the motion for judgment of possession on February 18, 2022. This appeal followed.

On appeal, Mr. Mbongo contends that Wells Fargo’s line withdrawing its first motion for judgment of possession constituted a voluntary dismissal of its claim pursuant to Maryland Rule 2-506. Because he had already filed an opposition to the first motion for judgment of possession prior to the line being filed, and he did not consent to Wells Fargo

³ In their brief, appellees assert that this was a clerical error.

⁴ In that appeal, we affirmed the judgment of the circuit court dismissing his complaint. *Mbongo v. Specialized Loan Servicing, LLC*, No. 909, Sept. Term 2021 (filed March 2, 2022).

withdrawing the motion, Mr. Mbongo asserts that, pursuant to Rule 2-506, the withdrawal of the motion should have been “with prejudice.” He thus claims that the issue of possession was conclusively decided when Wells Fargo withdrew its first motion, resulting in the second motion for judgment of possession being both moot and barred by collateral estoppel. He further contends that, because the first motion was dismissed with prejudice, the court abused its discretion in finding good cause to allow Wells Fargo to file a second motion for judgment of possession.

These claims, however, are based on flawed premise. Wells Fargo attempted to obtain possession of the property by way of a motion for judgment of possession filed in the foreclosure action, as allowed by Maryland Rule 14-102. By its plain language, Rule 2-506 only addresses the dismissal of claims, counterclaims, crossclaims, and third party claims. Wells Fargo’s motion was none of these things. Therefore, Rule 2-506 is inapplicable and did not prevent Wells Fargo from withdrawing its motion and re-filing it at a later date. Appellant’s arguments regarding mootness, collateral estoppel, and “good cause” all flow from his belief that the first motion for judgment of possession was withdrawn “with prejudice” pursuant to Rule 2-506. Because that Rule has no relevance in this case, those contentions also lack merit.

Finally, we note that the trial court did not otherwise abuse its discretion in granting Wells Fargo’s motion. Pursuant to Rule 14-102(a)(1), “[i]f the purchaser of an interest in real property at a sale conducted pursuant to the Rules in this Title is entitled to possession and the person in actual possession fails or refuses to deliver possession, the purchaser or a successor in interest who claims the right of immediate possession may file a motion for

judgment awarding possession of the property.” “To invoke [Rule 14-102], the purchaser must show that (1) the property was purchased at a foreclosure sale, (2) the purchaser is entitled to possession, and (3) the person in possession fails or refuses to relinquish possession.” *G.E. Cap. Mort. Servs., Inc. v. Edwards*, 144 Md. App. 449, 457 (2002). “[G]enerally, a purchaser of property at a foreclosure sale may be entitled to seek possession of that property when the sale is ratified by the Circuit Court.” *Empire Props., LLC v. Hardy*, 386 Md. 628, 651 (2005). In the instant case, Wells Fargo purchased the property at the foreclosure sale and the circuit court ratified that sale. Moreover, there is no evidence in the record indicating that the property was being occupied by bona fide tenants. Consequently, Wells Fargo had the right to obtain possession of the property under Maryland Rule 14-102.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**