Circuit Court for Baltimore County
Case No. 03-C-18-010881

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 224

September Term, 2020

TERRY L. TRUSTY, *et al.*

v.

MTGLQ INVESTORS L.P., *et al.*

Arthur,
Beachley,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: September 24, 2021

The events that led to this *pro se* appeal began in October 2015, with foreclosure proceedings for a residence at 9005 Forest Oaks Road, Owings Mills in Baltimore County (the "Property"). At that time, Terry L. Trusty and Ellen Trusty, appellants, occupied the Property under what they claim was a lease agreement accompanied by a contract to purchase it from the owners and mortgagors. Ensuing adjudications, resulting in three decisions by this Court, established that under the proffered lease and purchase contract, the Trustys did not have an interest affording them the right to intervene in or otherwise challenge the foreclosure, sale, or judgment of possession regarding the Property. *See Trusty v. Ward*, No. 2571, Sept. Term, 2015, 2017 WL 1788184, at *1-2 (Md. Ct. Spec. App. filed May 5, 2017) (affirming denial of motion to intervene), *cert. denied*, 456 Md. 94 (2017); *Trusty v. Ward*, No. 485, Sept. Term 2017 (Md. Ct. Spec. App. filed Nov. 6, 2017) (dismissing appeal), *cert. dismissed*, 457 Md. 683 (2018); *Taylor v. Ward*, No. 1432, Sept. Term, 2017 (Md. Ct. Spec. App. filed Nov. 7, 2018), 2018 WL 5877289, at *2 (dismissing appeal), *cert. denied sub nom. Trusty v. MTGLQ Investors*, 463 Md. 159 (2019).

On October 30, 2018, while their third appeal in the foreclosure case was still pending before this Court, the Trustys filed this separate lawsuit in the Circuit Court for Baltimore County, alleging a "fraudulent, illegal, and so far successful conspiracy to wrongfully evict" them, as "bonafide [sic] tenants," from the Property, "without conforming to the legal duties established in Maryland law." According to the Trustys, "[t]he main conspirators" were a group of entities and individuals involved in the

foreclosure and judgment of possession, which includes the secured party, MTGLQ Investors L.P. ("MTGLQ"), which purchased the Property at the foreclosure sale (collectively, Appellees).[1]

After the Trustys amended their complaint in response to Appellees' joint motions to dismiss, the circuit court dismissed their third amended complaint without leave to amend and with prejudice. In this timely appeal challenging the ensuing judgment, the Trustys present two questions:

1. Did the Circuit Court err in dismissing all 23 counts of the third amended complaint with prejudice and without leave to amend?

2. Do the allegations and evidence in this case meet the requirement to set aside the ratification of the foreclosure and the judgment for possession under [Md. Rule] 2-535?

Based on our review of the complaint and pleadings, we conclude that the Trustys set forth facts supporting claims against MTGLQ and NAAC under Md. Code (1974, 2015 Repl. Vol.), § 7-113(d) of the Real Property Article ("RP") and for conversion, alleging monetary losses after the Trustys allegedly were locked out of the Property without the notice required by law or an accounting concerning the Trustys' personal property on the

[1] In addition to MTGLQ, the Trustys named as defendants, Samuel I. White, P.C. and attorney E. Edward Farnsworth, Jr.; BWW Law Group, LLC and attorneys Howard N. Bierman, David Sloan, Carrie M. Ward, Jacob Geesing, Pratima Lele, Tayyaba Monto, and Joshua Coleman; NAAC, LLC t/a Keller Williams Realty Crossroads ("NAAC") and its agents, Patrick Hiban and Michael Sloan; Federal National Mortgage Association ("Fannie Mae"); New Penn Financial, LLC t/a Shellpoint Mortgage Servicing; John P. Fitzgerald, III, Acting United States Trustee; and the "Baltimore County Sheriff."

premises.[2] Although we vacate the judgment and remand for further proceedings on those two counts and the two appellees set forth above, we emphasize that the Trustys are precluded from pursuing any other claims challenging the foreclosure, sale, or conveyance of the Property. Nor may they otherwise claim a right to occupy the Property or assert any other possessory interest in it, either in this case or any other.

BACKGROUND

Throughout this action and the prior foreclosure proceedings, the Trustys have refused to accept the final adjudications ratifying the foreclosure sale and judgment of possession for this Property. Even though the Property has been sold and conveyed to MTGLQ, which then sold it to a third party, the Trustys are still seeking a judicial order conveying it to them as a remedy for their grievances against creditors of their former landlords and others who allegedly participated in the foreclosure and eviction.

The Foreclosure Proceedings

In reviewing the record pertinent to this appeal, we draw on accounts of the foreclosure proceedings and the Trustys' claims set forth in our previous decisions. The *per curiam* opinion in the Trustys' first appeal regarding the Property recounts the outset of the foreclosure dispute:

> On October 5, 2015, appellees, Carrie Ward, et al., Substitute Trustees, initiated foreclosure proceedings as to a residential property owned

[2] Our review of the record reveals that no summons was ever issued for the Baltimore County Sheriff and therefore it was never served with original process. This likely explains why the Baltimore County Sheriff did not participate in these proceedings. Consequently, we express no opinion regarding any claims made by the Trustys against the "Baltimore County Sheriff."

> by Paul Taylor, Jr. and Cheryl Taylor ("the Taylors") in the Circuit Court for Baltimore County. A month later, Terry L. Trusty and his wife Ellen, appellants, filed a motion to intervene in the foreclosure proceedings as defendants, either by right or by permission of the court, based on their purported "equitable, leasehold, or contract interests" in the property. Appellants, who then resided at the property, claimed that in 2008, they had entered into a lease agreement and a contract to purchase the property from the Taylors in an arrangement they claim was a "land installment contract."
>
> Appellants also filed motions for mediation or alternative dispute resolution and to appoint a trustee to "settle" the property in equity, and, after that, a motion to stay the foreclosure sale and/or dismiss the foreclosure action, contending that appellees were not authorized to foreclose on the property. After the circuit court denied all of their motions, appellants noted [their first] appeal.

Trusty v. Ward, *supra*, 2017 WL 1788184, at *1.

Affirming, this Court held that the Trustys did not have the right to intervene or otherwise object to or participate in the foreclosure proceedings. *See id.* at *1-2. We explained that under Md. Rule 2-214(a), governing intervention as a matter of right based on a claim of "interest relating to the property or transaction that is the subject of the action,"

> [a]ppellants failed to provide evidence demonstrating that they had a valid ownership interest in the property. Appellants' claims of ownership pursuant to a "land installment contract" are not supported by the record. In fact, the contract between appellants and the Taylors, executed in 2008, does not satisfy the elements of a valid land installment contract pursuant to § 10-101 *et seq*. of the Real Property Article of the Maryland Code. Specifically, the contract did not refer to five or more subsequent payments as required by RP § 10-103(b)(7), it was never indexed and recorded in the office of the clerk of court of the county where the property is located as required by RP § 10-104, and several statutorily mandated notices were not incorporated into the agreement as required by RP § 10-103.
>
> Instead, the record reflects that the appellants executed both a contract to purchase the property from the Taylors and a lease to rent until the sale occurred. Although the appellants took possession of the premises and made

> some payments to the Taylors, the sale never took place and hence there is no deed of trust transferring ownership of the property to appellants. Based on the forgoing [sic], the appellants were not entitled to intervene "as a matter of law" in the foreclosure matter. For the same reasons, the circuit court did not abuse its discretion by denying appellants' motion for permissive intervention. Because appellants failed to establish an interest in the foreclosure proceedings sufficient to give them standing to intervene, the circuit court did not err by denying their remaining motions.

Id. at *1-3 (footnote omitted).

In the ensuing proceedings, the Property was sold on September 15, 2016, to MTGLQ, the secured party holding the deed of trust. *See Taylor v. Ward, supra*, 2018 WL 5877289, at *2. After the circuit court ratified the sale, the Property was conveyed to MTGLQ on February 16, 2017, and that deed was recorded. *See id.*

In their second appeal to this Court, the Trustys challenged the denial of their exceptions to the foreclosure sale and other motions pertaining to those proceedings. *See id.* at *3. We dismissed that appeal and remanded for continuation of the foreclosure proceedings. *See id.*

On July 20, 2017, MTGLQ filed a motion for possession of the Property. *See id.* On August 21, 2017, the Trustys attempted to remove the foreclosure action to federal court, which concluded there was no federal question or diversity jurisdiction and remanded back to the circuit court on August 30, 2017. *See id.; Ward v. Taylor*, No. ELH-17-2386 (D. Md. Aug. 30, 2017). Over the Trustys' opposition, MTGLQ obtained a judgment awarding possession of the Property pursuant to Md. Rule 14-102. *See Taylor v. Ward, supra*, 2018 WL 5877289, at *3.

On September 11, 2017, the Trustys noted their third appeal, challenging the validity of the foreclosure proceedings, including the sale and order of possession, and reasserting their claim that they hold "a valid option to purchase the property at the time of the eviction[.]" *See id.* at *1, *3. This Court dismissed that appeal, explaining why "the Trustys' lack of standing to intervene in the foreclosure preclude[d] consideration of the merits of any of the issues raised in th[at] appeal." *See id.* at *3, *5. Based on the prior adjudications, we reasoned that the Trustys' failure "to establish an interest in the foreclosure proceedings sufficient to give them standing to intervene" or "an interest that will be affected by prosecuting the appeal" effectively "render[ed] their non-party appeal impermissible." *Id.* at *5. "Accordingly," we held, "our prior determination that the Trustys had no right to be involved in the underlying foreclosure action mandates the dismissal of this appeal." *Id.*

According to the Trustys, they "respond[ed] to the unfolding of the foreclosure case by . . . removing much of the personal property from the premises and relocating to York, Pa." MTGLQ proceeded, via an order awarding possession executed by the Baltimore County Sheriff, to take possession of the Property on October 31, 2017.

This Case

On October 30, 2018, while their third appeal in the foreclosure case was still pending before this Court, the Trustys filed this separate action in the Circuit Court for Baltimore County, asserting claims arising from what they characterize as violations of their rights and remedies under various foreclosure and eviction-related laws. As they did

in the foreclosure litigation, the Trustys have represented themselves throughout this action.

When MTGLQ moved to dismiss the Trustys' initial complaint, other defendants joined in that motion. Although the Trustys responded by filing amended complaints, MTGLQ and other defendants renewed their joint motion to dismiss each one, arguing that all of the Trustys' claims are precluded by principles of *res judicata*, collateral estoppel, law of the case, mootness, statutes of limitation, lack of standing, and failure to state a claim based on the allegations in the complaint.

The Trustys' third amended complaint, in addition to presenting factual background for both the foreclosure case and this litigation, includes argumentative assertions regarding the effect of the prior adjudications, the applicability of legal principles precluding relitigation of claims, the validity of the order of possession, and Maryland law protecting tenants in possession of property subject to foreclosure. As we shall detail, the 23 counts include claims seeking specific performance of their alleged rights in the Property and other injunctive, declaratory, and monetary relief based on allegations that various Appellees violated the automatic bankruptcy stay under 11 U.S.C. § 362(a), federal and state debt collection practices and consumer protection statutes, and provisions of the Maryland Code and Rules governing possession and eviction following a foreclosure sale. The Trustys also assert common law causes of action for fraud and conversion. They claim "significant" damages in excess of $75,000, including "the intentional infliction of emotional distress by the defendants with the various foreclosure notices based upon a

knowingly invalid foreclosure action[,]" "emotional distress" from being denied "a hearing" on their "grievances[,]" "expend[ing] incalculable hours of legal research and drafting of petitions[,]" being "evicted from the property which should have been conveyed to them[,]" and "having to pay moving expenses, the loss of the property and the loss of personal property through conversion."

At the hearing on the motion to dismiss, as well as in their written opposition, the Trustys presented argument regarding the nature and viability of their claims. In a bench ruling and subsequent written order, the circuit court granted the defense motion, dismissing the complaint with prejudice and without leave to amend. The Trustys noted this timely appeal.

DISCUSSION

The Trustys contend that the circuit court erred in dismissing their third amended complaint without leave to amend and with prejudice, because the claims and issues in this action differ from the claims and issues adjudicated in the prior foreclosure action, in which they were not parties. Appellees, citing the "prior decisions that the Trusty[s] lacked any actionable interest in the Property, nor any privity with any of the Appellees[,]" counter that the motion court correctly concluded that the Trustys' complaint is an impermissible "attempt to collaterally attack the ratification of the underlying foreclosure action, and the decisions and enrolled judgments entered thereon." Appellees contend that, because the Trustys' claims are precluded by the prior adjudications, statutes of limitation, and the Trustys' failure to state claims upon which relief can be granted, the motion court did not

err or abuse its discretion in dismissing all counts without leave to amend and with prejudice.

After reviewing the legal principles governing dismissal, we consider the counts and contentions in turn.

Standards Governing Dismissal of Complaint

"When deciding whether to grant a motion to dismiss a complaint as a matter of law, a [motion] court is to assume the truth of factual allegations made in the complaint and draw all reasonable inferences from those allegations in favor of the plaintiff." *Nationstar Mortg., LLC v. Kemp*, ___ Md. ___, No. 43, Sept. Term, 2020 (filed Aug. 27, 2021), 2021 WL 3828679, at *9. *See* Md. Rule 2-322(b)(2); *Ceccone v. Carroll Home Servs., LLC*, 454 Md. 680, 691 (2017). "Because the resolution of the motion to dismiss turns on a question of law, appellate review is *de novo*, without any special deference to the trial court." *Nationstar Mortg. v. Kemp*, 2021 WL 3828679, at *9.

In determining whether a complaint contains a "legally sufficient" cause of action, courts examine only the allegations contained within the four corners of the complaint, accepting as true all well-pleaded facts and any reasonable inferences that may be drawn from those averments. *See Pittway Corp. v. Collins*, 409 Md. 218, 234 (2009); *Horridge v. St. Mary's Cty. Dep't of Soc. Servs.*, 382 Md. 170, 176 (2004); *Torbit v. Balt. City Police Dep't*, 231 Md. App. 573, 583 (2017). Dismissal is proper when the alleged facts and permissible inferences, viewed in the light most favorable to the plaintiffs, would still be insufficient to establish a cause of action. *See O'Brien & Gere Eng'rs, Inc. v. City of*

Salisbury, 447 Md. 394, 403-04 (2016). To survive a motion to dismiss for failure to state a cause of action, allegations in the complaint must establish a *prima facie* case, by setting forth facts to support all the basic elements of the claim for which the plaintiff seeks relief. *See Scott v. Jenkins*, 345 Md. 21, 28 (1997).

Pertinent to this case is the requirement that factual allegations must be well-pleaded, meaning they must be "simple, concise, and direct," Md. Rule 2-303(b), and set forth "with sufficient specificity." *Bobo v. State*, 346 Md. 706, 708 (1997). Although "a complaint is sufficient to state a cause of action even if it relates 'just the facts' necessary to establish its elements[,]" *Tavakoli-Nouri v. State*, 139 Md. App. 716, 730 (2001), it must allege facts, and not mere conclusions or a restatement of the elements of the claim. "Bald assertions and conclusory statements by the pleader will not suffice." *Bobo*, 346 Md. at 708-09. This requirement gives defendants fair notice of the nature of the claims against them, "establish[es] the boundaries of the litigation[,]" and permits "speedy resolution of frivolous claims." *Heritage Harbour, LLC v. John J. Reynolds, Inc.*, 143 Md. App. 698, 710 (2002).

Because the circuit court applied principles of preclusion in determining that the Trustys may not relitigate their claim that they hold an interest in the Property that affords them the right to challenge the foreclosure, sale, and right to possess the Property, we summarize the specifics and scope of such doctrines. "Res judicata, or claim preclusion, 'restrains a party from litigating the same claim repeatedly and ensures that courts do not waste time adjudicating matters which have been decided *or could have been* decided fully

and fairly.'" *Att'y Grievance Comm'n of Md. v. Sperling*, 472 Md. 561, 585 (2021) (citations omitted). *Res judicata* applies when

> "(1) the parties in the present litigation are the same or in privity with the parties to the earlier litigation; (2) the claim presented in the current action is identical to that determined or that which could have been raised and determined in the prior litigation; and (3) there was a final judgment on the merits in the prior litigation."

Cochran v. Griffin Energy Servs., Inc., 426 Md. 134, 140 (2012) (citation omitted). The doctrine of collateral estoppel, or issue preclusion, applies when claims in a subsequent complaint differ from claims in a prior action, so that "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Sperling*, 472 Md. at 585 (citation omitted).

Maryland courts consistently apply the doctrines of *res judicata* and collateral estoppel to prevent challenges to a ratified foreclosure sale. Summarizing this jurisprudence, Judge Arthur, writing for our Court, has explained that

> [w]hen the court finally ratifies a [foreclosure] sale, the purchaser acquires complete equitable title to the property and becomes the substantial owner of the property, retroactive to the date of the sale. *Simard v. White*, 383 Md. at 313. Among other things, the purchaser then becomes entitled to seek possession of the property. *See Empire Props., LLC v. Hardy*, 386 Md. 628, 650 (2005).
>
> The Court of Appeals has held that "[a]n order ratifying a sale is a judgment" within the meaning of the rule limiting a circuit court's power to revise an enrolled judgment, "because it is an 'order of court final in its nature.'" *Hughes v. Beltway Homes, Inc.*, 276 Md. 382, 384 (1975) (citing *Hersh v. Allnutt*, 252 Md. 513, 519 (1969), and *Ed Jacobsen, Jr., Inc. v.*

> *Barrick*, 252 Md. 507, 511 (1969)); *see also Billingsley v. Lawson*, 43 Md. App. 713, 718 (1979). "Thus, after final ratification of [a] foreclosure sale, [a] trial court [is] authorized to review the validity of the sale only upon a finding of fraud, mistake or irregularity." *Bank of New York Mellon v. Nagaraj*, 220 Md. App. 698, 708 (2014) (citing *Manigan v. Burson*, 160 Md. App. 114, 120 (2004)). "'[T]he final ratification of the sale of property in foreclosure is *res judicata* as to the validity of such sale, . . . and hence its regularity [ordinarily] cannot be attacked in collateral proceedings.'" *Manigan v. Burson*, 160 Md. App. at 120 (quoting *Ed Jacobsen, Jr., Inc. v. Barrick*, 252 Md. at 511) (further quotation marks omitted); *see also Walker v. Ward*, 65 Md. App. 443, 447 (1985).

Huertas v. Ward, 248 Md. App. 187, 203 (2020).

Likewise, relitigating the validity of a ratified foreclosure sale and judgment of possession may be prohibited under the related doctrine of law of the case. As this Court has recognized, *res judicata* and law of the case "are similar defenses aimed at preventing parties from re-litigating issues that have already been decided in court. The law of the case doctrine acts as a corollary to *res judicata* keyed specifically to appellate decisions." *Holloway v. State*, 232 Md. App. 272, 282 (2017). Lying "somewhere beyond *stare decisis* and short of *res judicata*[,]" law of the case principles preclude relitigation of issues that this Court has fully and finally decided. *See id.* at 282-83 (citation omitted) (holding that a defense based on law of the case may be raised for the first time on appeal, either by a party or by the court). As the Court of Appeals has explained, "once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." *Scott v. State*, 379 Md. 170, 183 (2004). "Not only are lower courts bound by the law of the case, but '[d]ecisions rendered by a prior appellate panel will generally govern the second appeal' at the same appellate

level as well[.]'" *Id*. (quoting *Hawes v. Liberty Homes*, 100 Md. App. 222, 231 (1994)). Like *res judicata* and collateral estoppel, "the law of the case doctrine applies to both questions that were decided and questions that could have been raised and decided." *Holloway*, 232 Md. App. at 282.

Dismissal of the Trustys' Third Amended Complaint

In moving to dismiss the Trustys' third amended complaint, MTGLQ and the other defendants argued that none of the 23 counts states a claim upon which relief can be granted because most are precluded by the final adjudications in the foreclosure case, while the remaining counts are barred by applicable statutes of limitation and/or failure to plead facts and elements essential to state a cause of action. In addition, Appellees maintained that the complaint failed to particularize allegations against each of the defendants.

The Trustys, pointing out that they were "not seek[ing] to intervene in the foreclosure case which was the holding of the prior appeals[,]" contend that their claims in this case "were not adjudicated in the prior action." They dispute that "Mootness and Preclusion Doctrines . . . apply to the facts, law and claims propounded in the third amended complaint," arguing that they "were not parties to the" foreclosure case so that "[t]he merits of [their] claim[s] were not addressed" and "[t]he elements of collateral estoppel are not met." Likewise, because "Maryland courts lack jurisdiction to deal with Bankruptcy issues, the issues arising from the alleged violation of the bankruptcy stay "cannot [be] said to have been litigated."

In their view, "[t]he order of possession and writ of possession were void as having been enacted while the case was removed to Federal Court" and "the foreclosure was infected with fraud and was illegal and absolutely void." Moreover, "the writ of possession was void" because "the order of possession was signed on August 29, 2017 and the case was not remanded from removal by the United States District Court of Maryland until August 30, 2017." With respect to specificity regarding the individual defendants, the Trustys maintain that they pleaded "facts and conspiracy with particularity against all appellees throughout the complaint."

We agree with the circuit court that prior adjudications that finally determined the Trustys did not have a sufficient interest in the Property to challenge the ratified foreclosure sale, conveyance of the Property to MTGLQ, or judgment of possession, preclude any claims emanating from those determinations. Although the Trustys were not permitted to intervene or otherwise participate as parties to the foreclosure proceedings in the circuit court, they were parties to the three appeals before this Court. In the first appeal, we held that the alleged purchase contract lacked specific elements necessary to make it valid. *See Trusty v. Ward, supra,* 2017 WL 1788184, at *1. In the third appeal, we held that the Trustys could not attack the judgment of possession because we had previously determined that "the Trustys had no right to be involved in the underlying foreclosure action." *Id*. at *14.

Because these appellate decisions are law of the case that is binding on the Trustys, they may not relitigate the issue of whether they acquired an "executory" ownership

interest in the Property under the proffered purchase contract. Nor may they relitigate the validity of the ratified foreclosure sale, the judgment of possession, or MTGLQ's right to take possession of the Property in compliance with applicable law.

Based on the allegations in the third amended complaint and the Trustys' arguments, we agree with the motion court that the Trustys sought to repackage many of their prior claims in a renewed attempt to dispute the validity of the foreclosure sale and judgment of possession.[3] The factual averments in the prefatory paragraphs of the complaint focus on the Taylors' note and deed of trust, the extension of the Trustys' lease "from year to year" until "the tenancy became an at will tenancy"; the Taylors' filing of bankruptcy on March 30, 2012, without listing "[t]he lease and purchase agreement" or the Trustys on their bankruptcy schedules; an earlier notice of foreclosure dated August 2, 2012, immediately after the Taylors' bankruptcy discharge; changes made to underlying loan documents during that foreclosure process; issuance of a subsequent notice of intent to foreclose in

[3] We note that the Trustys' briefs to this Court supply few citations to the record extract, as required by Md. Rule 8-504(a)(4), mandating that "[r]eference shall be made to the page of the record extract supporting the assertions" of fact made in their briefs. When the Trustys fail to provide record citations for their factual assertions, we decline to search the record for support. *Cf. ACandS, Inc. v. Asner*, 344 Md. 155, 192 (1996) (filing of record extract does not excuse party from failing "to furnish in the brief references to factual material in support of a party's argument as required" or otherwise "alter the fundamental rule of appellate practice under which the appellate court has no duty independently to search through the record for error"); *Pulte Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 760-61 (2007) (stating that it is the party's obligation to provide "a clear reference to a page or pages of the record extract"), *aff'd*, 403 Md. 367 (2008); *Schaefer v. Cusack*, 124 Md. App. 288, 299 (1998) ("[A] party may lose the right to appeal on an issue by failing to indicate in that party's brief the location in the record where the alleged error occurred.").

October 2015; and the denial of the Trustys' motion to intervene in that foreclosure case. The Trustys allege wrongful conduct by the Appellees throughout the foreclosure proceedings, in making affidavits, sending notices, violating the automatic bankruptcy stay in effect before the Taylor bankruptcy was discharged in 2012, pursuing the foreclosure and order of possession under "false" premises, and "[t]aking possession of and disposing of [their] personal property" that remained on the premises when the Trustys were locked out.

The complaint also alleges that "[a]s of October 1, 2017, the [Trustys] resided in the property as a bonafide [sic] tenant originally established under a lease agreement dated November 8, 2009" and "were owners of a purchase agreement of the same date." With respect to prior adjudications, the Trustys assert that "[u]nder federal law, the lease agreement and the purchase option agreement remain property of the bankruptcy estate because they were not listed on the bankruptcy schedule and not abandoned at the close of the case."

Despite these averments, the Trustys assert in their briefs to this Court that their "claims are not dependent upon a collateral attack on the ratified foreclosure because the main thrust . . . survive[d] the ratified foreclosure." Inconsistently, they ask us to determine whether "the allegations and evidence in this case meet the requirement to set aside the ratification of the foreclosure and the judgment for possession under [Md. Rule] 2-535[.]" And they then argue in their reply brief that

> the ratified foreclosure and subsequent order of possession are subject to collateral attack for at least four reasons:

> 1) The foreclosure action is illegal and void to the extent that the action exercised control over property of the Taylor bankruptcy estate including the unexpired lease and reversion.
>
> 2) The foreclosure action is invalid to the extent that the case invalidates the appellants[’] rights established under 11 U.S.C. 365 (i).
>
> 3) The order and writ of possession is void to the extent they depend on actions taken by the Circuit Court while the case was removed to Federal Court. FEDERAL NAT. MORG. ASSOCIATION V. Milainovich, 161 F. Supp. 3d 981 – Dist. Court, D. New Mexico[.]
>
> 4) The fraud alleged in this case is supported by the Freeman fraud exception to the collateral attack doctrine described in Klein v. Whitehead, 389 A. 2d 374 – Md. Court of Special Appeals 1978.

Based on the Trustys’ pleadings and arguments to this Court, we agree with the motion court that they are collaterally attacking both the foreclosure sale and the judgment of possession. By filing this separate action, the Trustys are still seeking to circumvent the final judgments in the foreclosure case, adjudicating the validity of the foreclosure sale and judgment of possession, the invalidity of the Trustys’ proffered purchase contract, and the Trustys’ lack of an interest affording them the right to remain in possession of the Property. As discussed, the first appeal finally adjudicated that the Trustys do not have an interest that gives them property rights under the purchase contract, and the third appeal effectively determined that the Trustys did not have the right as tenants at will to prevent MTGLQ from obtaining possession of the Property.

Consequently, the motion court did not err in determining that the Trustys may not claim an interest in the Property by virtue of the proffered lease or purchase contract. The effect of the ratified foreclosure sale on the Trustys’ rights and remedies under the tenancy at will alleged in their complaint is governed by the protections afforded to tenants of

property in foreclosure under RP § 7-105.8, RP § 7-113, and Md. Rule 14-102. When MTGLQ acquired legal title to the Property, it assumed the interest previously held by the Taylors, which was the right to possess the Property subject to the Trustys' tenancy at will. *See* RP § 7-105.8(b)(2). The only prerequisite for obtaining a judgment of possession was providing notice to the Trustys that they had 90 days to vacate. *See* RP § 7-105.8(b)(2)-(4); Md. Rule 14-102(a). The entry of judgment awarding possession of the Property to MTGLQ constitutes a final adjudication that such notice was given. What was not adjudicated in the foreclosure case, however, was whether, as the Trustys allege in this complaint, they were locked out of the Property without the post-judgment possession notices required under RP § 7-105.11(d), RP § 7-113(d) and Md. Rule 14-102(e) and without an accounting for their personal property on the premises.

Like the motion court, we consider each count of the third amended complaint in turn. Based on the Trustys' allegations, the bench ruling, and the parties' arguments, we conclude that the motion court erred in dismissing 2 of the 23 claims as pleaded, against two defendants.[4] For reasons that follow, we will vacate the judgment as to those defendants and remand for further proceedings on claims for monetary damages under RP § 7-113(d)(ii)-(iii) (Count 4), and under common law conversion (Count 15), for the alleged loss of personal property as a result of allegedly being locked out of the Property without the legally required notice or accounting for personal property.

[4] We reiterate that, because the Baltimore County Sheriff was never properly served and did not participate in the circuit court proceedings, we express no opinion concerning any claims against the Baltimore County Sheriff.

"Count 1 Specific Performance under 11 USC 365(I)"

Count 1 of the third amended complaint alleges that the Trustys "executed a lease for the property and a sales contract" on November 8, 2008, and extended the purchase option on January 8, 2012. When Paul Taylor filed for bankruptcy in 2012, "[t]hese agreements were not listed on the bankruptcy schedules" and the Trustys "were not listed as creditors" or "informed of the bankruptcy." Although Mr. Taylor was discharged from bankruptcy and the case closed on July 30, 2012, "[t]he lease agreement and the purchase option agreement were rejected pursuant to 11 USC 365(d)(4)" instead of being conveyed to the Trustys as "purchaser[s] in possession under a lease option agreement." The Trustys seek specific performance of the proffered purchase contract, citing this bankruptcy provision governing executory contracts for the sale of real property, "under which the purchaser is in possession" and has the right either to "treat such contract as terminated" or to "remain in possession[.]" 11 U.S.C. § 365(i)(1).

The motion court dismissed this count because (1) "to the extent there was any right under [11 U.S.C. § 365(i)(1)], that . . . right should have been asserted in the bankruptcy proceeding" but "was not"; and (2) "the Trustys do not have a sufficient interest in the subject property to provide any basis for relief under [11 U.S.C. § 365(i)(1)]." The Trustys challenge this ruling on the ground that they had the "executory" rights of a "purchaser in possession of a rejected" land installment contract, which "continue[d] as property of the bankruptcy estate" and still warrants "complete relief by appointing a trustee to convey the property to" them. Appellees respond that this count, like many others, "arose out of the

actions associated with the foreclosure and constitute[s] an attempt to revisit/reargue the foreclosure action," but is "barred by the law of the case doctrine and/or preclusion doctrines[.]"

We agree that this claim collaterally attacks the prior adjudication that the proffered purchase contract was not valid and did not give the Trustys an interest – executory or otherwise – in the Property. Because the Trustys are precluded from relitigating that issue or seeking specific performance of the invalid purchase contract, the motion court did not err in dismissing this count.

"Count 2 Violation of 11 USC 362(a)"

The Trustys allege that because "the reversion associated with the lease and the purchase option agreement became property of the [bankruptcy] estate[,]" and is therefore "not legally subject to the control of any [other] entity[,]" the "foreclosure process including the termination of the lease option agreement and execution of the order for possession is an effort to control the reversionary interest" that constitutes "a violation of 11 USC 362(a) and is therefore void." The motion court, "for the same reasons as count one[,]" determined that "to the extent there was any basis for relief, it should have been requested in the bankruptcy proceeding" and that "the Trustys do not have sufficient interest in the subject property to assert a claim in this Court based on alleged violation of" this statute.

In this Court, the Trustys argue that "[a]s creditors" based on their status as "[a] non-debtor party to a rejected executory contract[,]" they "have standing to bring a claim

for violation of the automatic stay" based on Appellees' "initiating a foreclosure action, conducting a foreclosure sale, terminating the lease, and dispossessing the [Trustys] from the [P]roperty." We agree with Appellees that because the Trustys are again attempting to collaterally attack the prior adjudication by this Court that they have no interest in the Property under the proffered contract, the motion court did not err in dismissing this claim.

"Count 3 Violation of Fair Debt Collection [P]ractices [A]ct"

The Trustys allege in this count that Appellees violated both the bankruptcy stay and the federal Fair Debt Collection Practices Act ("FDCPA") by "[t]aking or threatening to take . . . nonjudicial action to effect dispossession or disablement of property[.]" *See* 15 U.S.C. § 1692a(6) (defining "debt collector"); 11 U.S.C. § 362(f) ("Upon request of a party in interest, the court . . . shall grant such relief from the [bankruptcy] stay . . . as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under" other provisions of the stay statute). The Trustys allege that their claim was "timely as being complained of within 1 year of the" lock out on October 31, 2017, that "[t]he law of the case doctrine does not" bar this count, and that Appellees were "debt collectors" for the note and deed of trust. Claiming they "were in possession of" the Property as "bonafide [sic] tenants[,]" they aver that at 2:30 p.m. when Mr. Trusty returned from the storage unit where he was "protect[ing] some of the family property[,]" the doors to the property had been locked and a notice posted that it had been repossessed. According to the Trustys, "[t]here was no indication" that they could "restore possession to themselves[,]" mandatory

notices required by statute were not sent or filed with the court, and Appellees knew "they had no present right to possession of the property[.]" The Trustys further allege that Appellees "executed on the writ of possession with full knowledge that the writ was not fully ripe" and "that the order for possession was void" because "it was signed on August 29, 2017 while the foreclosure case was removed to" federal district court.

In moving to dismiss this count, Appellees argued that the FDCPA did not apply to the Trustys as they owed no debt, nor was any collection action ever instituted against them in these proceedings. Appellees also argued that the Trustys failed to allege that they had even engaged in the type of conduct expressly prohibited by the Act. The motion court concluded that "the Trustys lack a sufficient interest in the subject property to state a claim for which relief can be granted under" this statute and also that this claim is barred under the "one year statute of limitations[.]"

We conclude that the motion court did not err in dismissing this count. In order to prevail on a claim under the FDCPA, a plaintiff must establish that:

> (1) it is a "consumer" as defined by the FDCPA, (2) the "debt" arose "out of transactions which are 'primarily for personal, family or household purposes[,]'" (3) the defendant is a "debt collector" as defined by the FDCPA, and (4) the defendant violated the prohibitions set forth in [15 U.S.C.] § 1692e.

Bauman v. Bank of Am., N.A., 808 F.3d 1097, 1100 (6th Cir. 2015) (some quotation marks omitted) (quoting *Wallace v. Washington Mut. Bank, F.A.*, 683 F.3d 323, 326 (6th Cir. 2012)).

First, the Trustys have failed to allege facts which would establish that they are "consumers" under the FDCPA. Under the Act, "consumers" are defined as "any natural person obligated or allegedly obligated to pay any debt." 15 U.S.C. 1692a(3). Clearly, the Trustys do not allege that they are obligated to pay Appellees any debt.

Additionally, the Trustys have failed to allege that Appellees violated the prohibitions set forth in the FDCPA. In their complaint, the Trustys allege that, on October 31, 2017, upon returning to the Property, they discovered that the locks had been changed and that the Property had been repossessed in violation of Maryland laws concerning the requisite notice provided in Maryland Rule 14-102(e) and RP § 7-105.9(d), (e). These allegations, however, are not within FDCPA's purview. That Act prohibits a debt collector from harassing, oppressing, or abusing a debtor, *see* 15 U.S.C. § 1692d, and limits the means and manner in which the debt collector may communicate with the debtor, *see* 15 U.S.C. §§ 1692c, 1692e. The allegedly inadequate notice and repossession of the Property therefore fail to state claims under the FDCPA, and the motion court did not err in dismissing this count.[5]

"Count 4 Violation of Real Property 7-113"

The Trustys allege violations of RP § 7-113, governing when a party claiming the legal right to possess a residential property takes possession from a "[p]rotected resident," who is defined as "an owner or former owner in actual possession of residential property"

[5] We will apply a similar analysis when affirming the dismissal of Count 12, an alleged violation of the Maryland Fair Debt Collection Act.

and "includes a . . . tenant . . . or other person in actual possession by, through, or under an owner or former owner of a residential property." RP § 7-113(a)(2)-(3)(ii)-(iii).

Under the statutory scheme governing execution of judgments awarding possession of residential property to a purchaser at foreclosure, with exceptions not applicable here, the "party claiming the right to possession may not take possession . . . from a protected resident by . . . [l]ocking the resident out of the residential property[,]" unless doing so under "a writ of possession issued by a court and executed by a sheriff[.]" RP § 7-113(b)(1)-(2). In turn, such a writ of possession may not be executed before giving the notice and filing the affidavit required under RP § 7-105.11(d)-(e).

Likewise, under Md. Rule 14-102(e), the judgment awarding possession of residential property to a purchaser at foreclosure may be executed only after the purchaser mails a notice to "All Occupants" as specified by RP § 7-105.11(d), and files an affidavit that such notice was given. Under RP § 7-113(d)(i)-(iii), the remedies for violating these restrictions against taking possession of residential property without a properly executed writ are "[p]ossession of the property, if no other person then resides in the property," "[a]ctual damages[,]" and "[r]easonable attorney's fees and costs." *See generally Uthus v. Valley Mill Camp, Inc.*, 472 Md. 378, 399 n.6 (2021) (explaining that "the General Assembly enact[ed] Real Prop. § 7-113 into law '[f]or the purpose of prohibiting a party claiming the right to possession or threatening to take possession of residential property from a certain protected resident in a certain manner[.]' 2013 Maryland Laws Ch. 514 (S.B. 642).").

The Trustys pleaded that on the date the writ of possession was executed, they were protected residents "by virtue of being a tenant having possession by, through, or under" the Taylors, and that they were locked out under a writ of possession executed by the Baltimore County Sheriff without the prior notice and affidavit required by RP § 7-105.8 and Md. Rule 14-102(e). According to the Trustys, they are entitled to the remedies available under RP § 7-113(d) because "the execution of the writ of possession was not lawful as the defendants did not comply with Maryland Rule 14-102(e)."

The motion court ruled that "the Trustys lack a sufficient interest in the subject property to state a claim" under this statute. In their brief, the Trustys argue that the court erred in dismissing this count because MTGLQ, Mr. Farnsworth[6], and the Baltimore County Sheriff "attempted to execute a writ of possession without proper notice" and "locked the premises without providing proper notice of abandonment[,]" causing damages from "premature moving and storage cost[s] and the loss of converted personal property." Appellees argue that this count is predicated on "unfounded contentions" of "various Rules and statutory violations" that are "not cognizant causes of action in Maryland[.]"

[6] In their third amended complaint, the Trustys alleged that on October 31, 2017, "MTGLQ, Baltimore County Sheriff and Keller Williams did appear at the property and did lock the door to the property." The complaint describes E. Edward Farnsworth as an attorney with the law firm Samuel I. White, P.C., but it is unclear why the Trustys claimed in their *appellate brief* but not their actual complaint, that he was present for the execution of the writ of possession. Indeed, our careful review of the operative complaint reveals that the Trustys never specifically alleged that Mr. Farnsworth or Samuel I. White, P.C. were involved with execution of the writ of possession or the removal of their personal property.

We conclude that the Trustys have pleaded facts sufficient to state a claim for monetary damages under RP § 7-113(d)(1)(ii)-(iii). As explained, RP § 7-113 expressly establishes both requirements governing execution of an order awarding possession of real property and remedies when those provisions are violated. As established by the prior appeals, MTGLQ gave the notice required to obtain the writ of possession. But there were additional notice and filing requirements in RP § 7-105.11(d)-(e), RP § 7-113(b)(2)(i), and Md. Rule 14-102(e) that must be satisfied before the sheriff may execute that writ.

The motion court erred in dismissing this count on the ground that the Trustys lacked a sufficient interest in the Property. As explained, the statute defines "protected resident" to include a "tenant . . . or other person in actual possession by, through, or under an owner or former owner of residential property." RP § 7-113(a)(3)(ii). Because the Trustys allege that they were tenants at will, in actual possession of the Property at the time the writ of possession was executed without the notice and affidavit required by law, they have sufficiently alleged that they were entitled to the protections and remedies afforded under this statutory scheme.

"Count 5 Violation of Real Property 7-109.9 now 7-105.11"

The Trustys allege Appellees also violated RP § 7-105.11(d)-(e), requiring proof of notice of the judgment of possession to them. As discussed, a residential foreclosure purchaser "shall send, after the entry of a judgment awarding possession and before any attempt to execute the writ of possession, a written notice addressed to 'all occupants'" in the prescribed content and format, and also must file an affidavit of compliance after each

notice. *Id*. Pleading that they "were damaged by the uncertainty and instability of their housing status" and "the costs of moving and the cost of other housing[,]" the Trustys "request that they be restored to possession of the property."

The motion court dismissed this count, ruling that the Trustys "lack a sufficient interest in the subject property" and "were not obligors under the Deed of Trust or the Promissory Note." The Trustys contend that such an "[i]nterest in the property is not an element of this" statutory claim.

We agree. Although the Trustys allege they were "bona fide tenants," apparently seeking to fit within the statutory definition by identifying themselves as not related to the mortgagor/grantor and occupying the Property under an arm's length tenancy requiring the payment of fair market rent, that is not necessary to state a claim because the requirements regarding notice and filing a supporting affidavit under the statutory scheme that includes § 7-105.11, exist for the benefit of "all occupants" of a property for which a judgment awarding possession has been entered. *See* RP § 7-105.8(b)(1); RP § 7-105.11(a)(2); RP § 7-105.11(d)(1).

Nevertheless, this count is duplicative of Count 4. The Trustys point to the same conduct, alleging that Appellees "did not provide the notice" required "after the entry of a judgment awarding possession and before any attempt to execute the writ of possession" and otherwise "did not file the appropriate affidavits in the docket." They then argue that "[t]his failure is grounds for return of the possession to the appellants under the authority of 7-113." As we explained with respect to Count 4, the Trustys' allegations state a single

claim under this statutory scheme, for which the remedy is limited to monetary damages, as specified in RP § 7-113(d)(1)(ii)-(iii). For that reason, we shall affirm dismissal of this count.

"Count 6 Violation of Maryland Rule 14-102(e)"

Citing the same conduct alleged in Counts 4 and 5, the Trustys allege a violation of Md. Rule 14-102(e), requiring notice and an affidavit after entry of a judgment awarding possession of residential property but before executing on the judgment. The motion court dismissed this count on the ground that the Trustys "lack the requisite interest in the subject property to be able to state a claim for which relief can be granted under Maryland Rule 14-102(E)." The Trustys contend that "[t]he rule in companion with the statute does not require interest" and that "the failure of the appellees to follow the rules is evidence of constructive fraud."

Again, this count, like Counts 4 and 5, alleges that Appellees did not serve notice or file "the affidavit of proper notice[,]" causing them to be locked out and lose personal property. For the same reasons explained with respect to Count 5, we conclude that this count is a duplicative claim under the statutory scheme for which the remedy is available under RP § 7-113(d)(1). We shall affirm dismissal of this count.

"Count 7 Violation of Maryland Rule 2-647"

The Trustys allege that MTGLQ violated Maryland rules governing enforcement of a judgment awarding possession of the Property, by requesting "that the court issue a writ of possession for a judgment of August 29, 2017," even though "[t]here is no

judgment" with that date and the clerk, without authority, instead issued a writ "for a judgment of August 30, 2017." The motion court dismissed this count, again based on "a lack of requisite interest in the subject property[.]"

In their brief, the Trustys argue that there was "an irregularity" that "invalidates the order" and writ of possession, because "[t]he order of possession was signed on August 29, 2017" but "[t]he clerk improperly changed the signing date of the order of possession to August 30, 2017 and issued the false writ in violation of" this rule, thereby "invalidat[ing] the order of possession and the subsequent writ of possession."

The motion court did not err in dismissing this count because it is an impermissible collateral attack on the validity of the judgment of possession issued in the foreclosure case, which is a final adjudication of that issue. *See Taylor v. Ward*, *supra*, 2018 WL 5877289, at *1 (declining to address the same issue).

"Count 8 Execution of a void judgment"

The Trustys again allege that the possession order that was signed on August 29, 2017, one day before the case was remanded from federal district court on August 30, is "void" for lack of jurisdiction. The motion court dismissed this count because the Trustys "do not have standing to contest the judgment in the foreclosure proceeding, which is an issue that has already been decided."

In this Court, the Trustys contend that their "interest as a protected resident under [RP §] 7-113 and as a bonafide [sic] tenant under [RP §] 7-105.9 is sufficient interest to bring this claim." In their view, once they removed the foreclosure case to federal court

"on 8/21/2017[,]" all action in the foreclosure case should have ceased, so that when the circuit court signed the order of possession on August 29, before the case was remanded on August 30, it rendered the order of possession "void ab initio as having been signed while the case was removed."

We again agree with Appellees that this count constitutes an impermissible attempt to collaterally attack the final adjudication in the third appeal that addressed the Trustys' "possessory rights and a wrongful eviction." Consequently, the motion court did not err in dismissing this count.

"Count 9 Wrongful Eviction"

The Trustys allege in their third amended complaint that in locking them out, Appellees did not comply with Md. Rule 14-102(e), requiring that "[a]fter entry of a judgment awarding possession of residential property . . . , but before executing on the judgment, the purchaser shall . . . send by first-class mail the notice required by [RP §] 7-105.11(d) addressed to 'All Occupants' at the address of the property" and "file an affidavit that the notice was sent." The motion court dismissed this count because the Trustys "lacked sufficient interest" to assert such a claim.

The Trustys now argue that was error because the Appellees "had no present right of possession" given that "the order of possession was void and the writ of possession was invalid" and otherwise "failed to comply with" the requirements in Md. Rule 14-102(e). Again, we agree with the Appellees that this count seeks to relitigate the validity of the judgment of possession. To that extent, it is precluded by the prior adjudication. To the

extent this claim seeks relief for the alleged failure to give notice and file the affidavit required under this rule and the related statutory scheme governing execution of a writ of possession for occupied residential property, this count is duplicative of Count 4 stating a claim under RP § 7-113(d). For these reasons, dismissal of this count was legally correct.

"Count 10 Civil Conspiracy Wrongful Eviction"

The Trustys allege that "each of the defendants dispatched representatives" who conspired to lock them out. The motion court dismissed this count "for the same reasons" as Count 9. Citing *Van Royen v. Lacey*, 262 Md. 94, 97-98 (1971), the Trustys contend that was error because "Mr. Farnsworth, the Baltimore County Sheriff, and a representative from each of the defendants agreed together to execute the writ of possession on October 31, 2017 in violation of MD Rule 14-102(e), MD RP 7-105.9 and 7-113[,]" resulting in damages consisting of "loss of real and personal property and excess storage cost for personal items."

Because this is another duplicative count seeking relief for the allegedly wrongful execution of the writ of possession without sufficient notice, dismissal is warranted for the same reasons Counts 5, 6, and 9 were properly dismissed.

"Count 11 Civil Conspiracy Wrongful Foreclosure"

The Trustys allege that, as in Count 10, Appellees "Fannie Mae, Chase, BWW Law Group and MTGLQ worked together in agreement to accomplish the foreclosure and repossession" that "damaged" them "by having to move and lose the right to conveyance that they are entitled to." The motion court dismissed this count because the Trustys "lack

a sufficient interest in the subject property" and "specifically because they were not obligors on the Note or the Deed of Trust with respect to the subject property."

The Trustys now argue that the named Appellees "agreed to falsify the affidavits to conduct the foreclosure" that "was prohibited by the automatic stay" under 11 U.S.C. § 362 "and is therefore void ab initio." They further contend that they "lost their home, had to expend funds for storage and los[t] valuable possessions in the home."

The motion court did not err in dismissing this count because it collaterally attacks the ratified foreclosure sale and judgment of possession in the foreclosure case on grounds that have been finally adjudicated against the Trustys.

"Count 12 Maryland Fair Debt Collection Act"

The Trustys allege that when the writ of possession was executed, the required notice under Md. Rule 14-102(e) "had not been completed[,]" rendering the representations made to obtain the writ a violation of the Maryland Consumer Debt Collection Act (the "MDCA"), *codified at* Md. Code (1975, 2013 Repl. Vol., 2020 Supp.), § 14-202 of the Commercial Law Article ("CL"), governing consumer debt collection activity. The motion court dismissed this count because the Appellees "were not collecting a debt and because the [Trustys] were not parties to the Deed of Trust or the Note with respect to the subject property."

The Trustys now contend that, along with the two ensuing counts under the Maryland Consumer Protection Act, this count alleges that the Appellees, by locking them out of the Property "on the basis of abandonment" and without "notice in violation of MD

RP 7-113[,]" violated the MDCA, causing them "injury or loss at having to remove items to a storage unit and the loss of personal property that was in the premises when it was locked." Appellees counter that this is another impermissible attempt to relitigate the issues resolved in the foreclosure action and that "it was undisputed that there was no debtor/creditor, mortgage lender/borrower, nor landlord/tenant relationship" between the Trustys and Appellees.

As discussed, the Trustys' claim arising from the allegedly wrongful execution of the writ of possession is not precluded by the prior adjudications regarding the foreclosure and judgment of possession. Nevertheless, the MDCA applies to a "collector," who is statutorily defined to "mean[] a person collecting or attempting to collect an alleged debt arising out of a consumer transaction." CL § 14-201(b); CL § 14-202. In turn, a "consumer transaction" is "any transaction involving a person seeking or acquiring real or personal property, services, money, or credit for personal, family, or household purposes." CL § 14-201(c). As the motion court recognized, the Trustys were not debtors, and the parties involved in executing the writ of possession were not attempting to collect anything from them. Moreover, at the time the writ of possession was executed on October 31, 2017, the enumerated list of prohibited acts included improper threats, harassment, disclosures, and knowing assertions of non-existent rights.[7] *See* CL § 14-202. As discussed, the Trustys

[7] CL § 14-202 provides:

In collecting or attempting to collect an alleged debt a collector may not:

(continued . . .)

are precluded from disputing MTGLQ's right to possess the property as a result of the

> (1) Use or threaten force or violence;
>
> (2) Threaten criminal prosecution, unless the transaction involved the violation of a criminal statute;
>
> (3) Disclose or threaten to disclose information which affects the debtor's reputation for credit worthiness with knowledge that the information is false;
>
> (4) Except as permitted by statute, contact a person's employer with respect to a delinquent indebtedness before obtaining final judgment against the debtor;
>
> (5) Except as permitted by statute, disclose or threaten to disclose to a person other than the debtor or his spouse or, if the debtor is a minor, his parent, information which affects the debtor's reputation, whether or not for credit worthiness, with knowledge that the other person does not have a legitimate business need for the information;
>
> (6) Communicate with the debtor or a person related to him with the frequency, at the unusual hours, or in any other manner as reasonably can be expected to abuse or harass the debtor;
>
> (7) Use obscene or grossly abusive language in communicating with the debtor or a person related to him;
>
> (8) Claim, attempt, or threaten to enforce a right with knowledge that the right does not exist;
>
> (9) Use a communication which simulates legal or judicial process or gives the appearance of being authorized, issued, or approved by a government, governmental agency, or lawyer when it is not;
>
> (10) Engage in unlicensed debt collection activity in violation of the Maryland Collection Agency Licensing Act; or
>
> (11) Engage in any conduct that violates §§ 804 through 812 of the federal Fair Debt Collection Practices Act.

Subsections (10) and (11), however, were not in effect until October 1, 2018. *See Chavis v. Bilbaum & Assocs.*, __ Md. __, No. 30, Sept. Term, 2020, 2021 WL 3828655, at *7 n.9 (filed Aug. 27, 2021).

foreclosure and judgment of possession. To the extent the Trustys dispute the manner in which the writ of possession was executed, their remedy is under RP § 7-113(d). In these circumstances, the motion court did not err in dismissing this count.

"Count 13 Maryland Consumer Protection Act"

The Trustys allege that violations of the fair debt collection laws also constitute violations of "the Maryland consumer protection act." They specifically identify as wrongful conduct bringing the foreclosure proceeding "because the relevant deed of trust was not valid and not recorded," "mortgage servicing" activities allegedly performed without a license, notifying them they "had 30 days to respond to the motion for an order of possession" but requesting such an order "after only 15 days had passed[,]" and "execut[ing] on an order of possession" that was "void because it was signed . . . o[n] August 29, 2017 while the foreclosure case was in removal status with the Federal Court System."

The motion court dismissed this count because the Trustys "have not sufficiently pleaded any unfair trade practice that would be a basis for relief under the Maryland Consumer Protection Act and also because they have not sufficiently pled any damages or other legally recognized injury under the Maryland Consumer Protection Act." The Trustys lodge the same challenge to this ruling as their challenges to counts 12 and 14.

Based on the Trustys' allegations and argument as to the specific acts that constitute violations of the MDCA, we conclude that this claim is an impermissible attempt to relitigate the validity of the foreclosure proceedings and judgment of possession that is

precluded by the final adjudications regarding those events. The motion court did not err in dismissing it.

"Count 14 Maryland Consumer Protection Act"

The Trustys allege that they are "consumers" under the Maryland Consumer Protection Act and that Appellees "engaged in unfair and deceptive trade practices as defined in MD Code, Commercial Law, § 13-301" by "falsely communicating to [them] through the [B]altimore [C]ounty [S]heriff that they were authorized to execute the writ of possession" and "fraudulently convinc[ing]" the Sheriff to "wrongfully" execute the writ of possession even though "the proper notice and affidavit had not been filed." They further assert that "MTGLQ performed the duties of a mortgage servicer without a license in violation of the Maryland Mortgage Lender Licensing Act," and "wrongfully executed the eviction." The motion court dismissed this count "for the same reasons as count thirteen[.]"

In their brief, the Trustys argue that the conduct of "MTGLQ, Samuel I[.] White with the Baltimore County Sheriff," in enforcing the writ of possession, violated Maryland and federal debt collection laws.[8] The Trustys maintain that "[a] ratified foreclosure does

[8] As noted in footnote 6, *supra*, we fail to see where in the complaint the Trustys alleged that Mr. Farnsworth or Samuel I. White, P.C., were involved with the execution of the writ of possession. Moreover, to the extent this count seeks to assert a claim against Samuel I. White, P.C., or any lawyer or law firm named as a defendant, it does not state a claim upon which relief could be granted against those parties, because under CL § 13-104(1), "the MCPA . . . plainly 'does not apply' to the 'professional services of a . . . lawyer.'" *Hawkins v. Kilberg*, 165 F. Supp. 3d 386, 390 (D. Md. 2016).

not inhibit an occupant from bringing claims associated with disobedience to the rules and statutes." Their losses include "having to remove items to a storage unit and the loss of personal property that was in the premises when it was locked." Appellees respond that, like counts 12 and 13, this count asserting "various consumer oriented lending claims" fails because Appellees did not have a creditor, borrower, or tenant relationship with the Trustys.

In reviewing this claim, we recognize that "[a] violation of the MDCA also constitutes a violation of the MCPA as an 'unfair, abusive, or deceptive trade practice.' CL § 13-301(14)(iii)." *Chavis v. Blibaum Assocs., P.A.*, __ Md. __, No. 30, Sept. Term 2020, 2021 WL 3828655, at *6 (filed Aug. 27, 2021). To the extent this MCPA count is predicated on the alleged failure to give notice before executing the writ of possession, however, we agree with the motion court that such an allegation does not state a claim under the MDCA or the MCPA. For that reason, we shall affirm the dismissal.

"Count 15 Conversion"

In this common law count, the Trustys allege that when they were locked out of the Property, without notice or legal justification, "[p]ersonal property such as a pool table, furniture, tools," a refrigerator, a microwave oven, "and other items were left" inside, as well as the Trustys' "Ford Explorer[.]" Claiming that "the defendants in this case knew they had not completed the requirements to execute the writ of possession" and then "refused to return the property" and "disposed of" it, the Trustys claim that Appellees intentionally converted their personal property.

The motion court dismissed this count on the ground that the Trustys "do not have a sufficient interest in the subject property to be able to state a claim for conversion." The Trustys contend that "an underlying interest in the real property is not required to sustain an action for conversion" based on their "lost personal property on the premises as a result of the lock out." Appellees argue that this is another count arising "out of the actions associated with the foreclosure and constituted an attempt to revisit/reargue the foreclosure action, all of which were barred by the law of the case doctrine and/or preclusion doctrines."

The allegations in this common law count track the allegations in the Count 4 claim under RP § 7-113(d), but do not identify specific defendants involved and add more detail regarding the items of personal property that the Trustys allege they lost when they were locked out without notice or an accounting for that property. "The remedies set forth in [RP § 7-113(d)] are not exclusive." RP § 7-113(d)(2). Because this count alleges sufficient facts to state an alternative common law basis for recovery arising from the allegedly wrongful retention of personal property following execution of the writ of possession, the motion court erred in dismissing this claim as to MTGLQ and NAAC t/a Keller Williams Realty Crossroads. *See generally Donegal Asssocs., LLC v. Christie-Scott, LLC*, 248 Md. App. 448, 475 (2020) (recognizing that "a party claiming constructive conversion" based on violations of restrictions on repossession of residential real property under RP § 7-113 "must show a demand for and refusal" to return the personal property in dispute), *cert. denied*, 474 Md. 182 (2021).

"Count 16 Violation of Maryland RULE 2-321(c). TIME FOR FILING ANSWER"

The Trustys allege that Appellees violated Md. Rule 2-321(c), governing the time for filing an answer, by twice proceeding "with pleadings when the time for a response was not yet complete." Specifically, the Trustys aver that they "filed a rule 2-322 motion" that "was not decided until 11/3/17" even though the writ of possession was executed "on 10/31/17" and that "[t]he remand from the federal court was made on 8/30/17. The defendant requested a writ of possession on 9/14/17."

The motion court dismissed this count "because it fails to state a claim for which relief can be granted. It is difficult to imagine any circumstances under which there would be a cause of action under this rule but, in any event, [the Trustys] have not stated a legally and factually sufficient cause of action with respect to Maryland Rule 2-321(c)." In their brief, the Trustys assert that this claim "goes to the irregularity of the foreclosure proceedings" because they "were deprived of property interest without due process" and that this "rule has since been changed to clarify that the person responding to a rule 14-102 motion is entitled to a hearing on the motion pursuant to rule 2-311(f)." Appellees counter that the alleged violation of this rule does not support a cognizable cause of action.

We agree with the motion court that the Trustys may not assert a separate cause of action based on the alleged violations of Rule 2-321.

"Count 17 U.S. Code § 1983. Civil action for deprivation of rights"

The Trustys assert a claim under 42 U.S.C. § 1983, alleging their civil rights were violated when the Baltimore County Sheriff "conspired" with other Appellees "to execute

a writ of possession" even though they "knew or should have known that" was "improper under [Md. Rule] 14-102(e)." The motion court dismissed this count because the Trustys "failed to state a claim to which they may be entitled to relief under . . . Section 1983."

The Trustys argue that they have "rights in the property by virtue of the agreements signed in November 2008," affording them rights as a "bonafide [sic] tenant or protected resident under 7-113 and MD RP 7-105.9." In their view, their incorporation of paragraphs 1-77 of their complaint provides sufficient facts, "detail[ing] how Fannie Mae, JP Morgan Chase, BWW Law Group," Pratima Lele, and later MTGLQ, "upon determining that the proper deed of trust note dated 4/5/2005 was lost, agreed . . . to falsify affidavits submitted in . . . [the] foreclosure proceeding to conceal the fact that the deed of trust and note of March 31, 2004 did not match the business records." They argue that "[t]he conspirators violated [their] civil rights when the property interest secured by the agreements were seized without a hearing[.]" Appellees counter that this count amounts to "conclusory" assertions "without setting forth necessary elements or predicate facts.

We agree that the Trustys have not stated a claim under § 1983. *See generally Campbell v. Cushwa*, 133 Md. App. 519, 535 (2000) (outlining the "essential elements" to be alleged in order to state a claim under 42 U.S.C. § 1983). Moreover, the allegations in this count seek to relitigate matters that were finally adjudicated in the foreclosure case.

"Count 18 Fourth Amendment seizure"

Based on their prior pleading, the Trustys allege that their "Fourth amendment rights were violated as a result of the wrongful eviction on October 31, 2017." The motion court

dismissed this count because the Trustys "lack a sufficient property interest in the subject property to be able to assert any rights under the Fourth Amendment or under the corresponding provisions of the Maryland Declaration of Rights."

In their brief, the Trustys contend that the complaint sufficiently alleges "meaningful interference with" their "possessory interests" in the Property, based on their "actual possession" of it as "bonafide [sic] tenant[s] and protected resident[s.]" They seek "the return of possession" to them because "the writ of possession was not valid"; the lockout did not "adhere to" RP § 7-113; and "the improper eviction converted personal property." Appellees respond that this count asserting "conclusory matters" fails to articulate the factual predicate or elements necessary to state a claim and is an improper "attempt to revisit/reargue the foreclosure action[.]"

We conclude that this count is another duplicate claim arising from the Trustys' allegation that the sheriff executed the writ of possession without notice and without accounting for their personal property. Moreover, the private parties sued by the Trustys, including MTGLQ, cannot violate the Trustys' right to be free from unreasonable seizure of their property by the government, which is the protection afforded by the Fourth Amendment and Article 26 of the Maryland Declaration of Rights.

"Count 19 Fraudulent Concealment"

The Trustys allege that Appellees fraudulently concealed "the inconsistency of the foreclosure action between the March 31, 2004 loan documents and the loan documents as defined in the modification agreement and supported by account statements." The motion

court dismissed this count because the Trustys "lack a sufficient interest in the subject property to be able to state a claim for which relief can be granted under this count."

The Trustys argue that the complaint sufficiently alleges that "the appellees committed the tort throughout the foreclosure process" by "fail[ing] to disclose that [F]annie [M]ae or its agents did not have the note and the affidavit for the premises" and that "the efforts to obtain possession failed to disclose that the appellees were not entitled to retain possession of the property after the illegal lockout without the proper notice of abandonment." They contend that they "relied on these representations to rent a storage facility and prepare for relocation" and were "damaged by the cost of relocation and the loss of real and personal property."

Appellees respond that in addition to failing to allege facts stating all the elements of a fraud claim, the Trustys are improperly attempting to relitigate finally adjudicated issues. We agree that this count is precluded to the extent it seeks to relitigate the validity of the foreclosure sale and judgment of possession. With respect to the claims arising from the lock out, Counts 4 and 15 state claims for relief that makes this claim duplicative and unnecessary.

"Count 20 Declaratory Judgment void Order of Possession"

The Trustys, incorporating the previous 340 paragraphs in the complaint, "request" a declaration that "the order of possession signed on August 29, 2017" is "void ab initio in as much as it was signed while the case was removed to Federal Court." The motion court dismissed this count because the Trustys "lack a sufficient interest in the subject property

to be able to assert a cause of action to avoid the Order of Possession."

The Trustys contend that the complaint sufficiently alleges a substantial controversy regarding the validity of the order of possession. They "claim a continuing right to possession and conveyance under 11 USC 365" and that "the eviction without a valid order of possession is a violation of" RP § 7-113. In turn, they argue, that this violation "forms the basis for a violation of" federal and Maryland debt collection statutes, for which the relief "is the return of possession to" them. We again conclude that the motion court did not err in dismissing this count on the ground that it seeks to relitigate the final adjudication regarding the validity of the judgment of possession in the foreclosure proceedings.

"Count 21 Declaratory Judgment Tenancy agreement property of bankruptcy estate"

The Trustys next request a declaration "that the agreements between [them] and Paul Taylor became property of the bankruptcy estate upon the filing of the bankruptcy case" but "were not listed on" the Taylors' bankruptcy schedules and that they "were not listed on the creditor matrix[,]" so that "when the case was closed, the agreement remained property of the bankruptcy estate and so remains even now." The motion court, noting that the count "refers to tenancy agreement, property of bankruptcy estate[,]" dismissed this count because the Trustys "lack a sufficient interest in the subject property and to the extent there was any basis for relief, it would have had to have been solved in the Bankruptcy Court."

The Trustys, incorporating their arguments regarding Count 20, contend that this Court "has found that there is a tenancy agreement" that "became and remains property of

the estate as an unscheduled item[,]" so that terminating the tenancy agreement violated the automatic stay, which makes the order "void ab initio." Appellees respond that this count is foreclosed by the prior adjudications establishing that the Trustys had no relationship to the Property or the Appellees as debtors, borrowers, or tenants.

Again, we conclude that because prior adjudications preclude this attempt to relitigate the Trustys' claim that they acquired an interest in the Property under the proffered purchase contract, the motion court did not err in dismissing this count.

"Count 22 Constructive Fraud"

The Trustys allege that, as "bonafide [sic] tenants[,]" they were denied "truthful affidavits and appropriate notices" and that "[a]s a consequence, [they] have acquiesced in the foreclosure proceeding and lost possession of their property." The motion court dismissed this count because the Trustys "lack a sufficient interest in the subject property to be able to assert a claim for fraud in this case."

The Trustys argue that their complaint sufficiently alleges fraud based on a breach of Appellees' duty to provide proper notice both before and after they were locked out, causing injury based on their "loss of personal property and . . . actual possession of the real property." Appellees respond that this count also rests on "actions associated with the foreclosure" and is "an attempt to revisit/reargue the foreclosure action" even though that is "barred by law of the case doctrine and/or preclusion doctrines[.]"

Because this count also seeks relief based on the alleged failure to provide notice and an accounting surrounding the lock out, without stating additional facts sufficient to

establish the intentional misrepresentation element of fraud, the motion court did not err in dismissing this claim.

"Count 23 Mortgage Fraud"

The Trustys allege that MTGLQ violated RP § 7-401(d)(6), prohibiting "[f]iling or causing to be filed in the land records in the county where a residential real property is located, any document relating to a mortgage loan that the person knows to contain a deliberate misstatement, misrepresentation, or omission[,]" by filing "the Assignment of Deed of Trust on January 22, 2016." The Trustys allege that MTGLQ "knew that they received their authority from the purchase of the non-performing loan from Fannie Mae" but that their filing "purposely omits the full story of the assignment," and therefore "constitutes mortgage fraud." The motion court dismissed this count because the Trustys "are not obligors or a party to the mortgage or Deed of Trust or any other documents related to the mortgage."

The Trustys contend that protection against mortgage fraud like that alleged here "is codified in" RP § 7-401 and other remedial statutes and rules affecting the foreclosure process. Citing paragraphs 1-77 of the complaint, the Trustys maintain that they have adequately "detail[ed] the who, what, when, where, and how of the fraud" as well as "the reliance and damages associated with the fraud." They point to documents identifying both Fannie Mae and JP Morgan "as the owner of the debt," as proof that "both of these statements cannot be true," that "Fannie Mae was the owner of the debt associated with the note dated 4/5/2005[,]" and that the documents "filed in the land records of Baltimore

County on the January 22, 2016" are "knowingly false[.]" Appellees counter that this count was properly dismissed because the Trustys did not have a "debtor/creditor" or "mortgage lender/borrower" relationship to Appellees.

We agree that the motion court did not err in dismissing this claim. "Mortgage fraud" is statutorily defined to encompass knowingly filing a "document containing [a] misstatement, misrepresentation, or omission" with the intent that it "be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process." RP § 7-401(d). Because the Trustys were neither borrowers nor parties to any other part of the mortgage lending process, they do not have a claim for damages under RP § 7-406.

Leave to Amend and Dismissal With Prejudice

After considering the parties' extensive arguments and ruling on each count, the motion court concluded that "there have been enough bites at this apple to get down to its core" and dismissed the Trustys' third amended complaint with prejudice and without leave to amend. Because "[t]he determination to allow amendments to pleadings or to grant leave to amend pleadings is within the sound discretion of the trial judge[,]" we review the dismissal of a claim without leave to amend for abuse of discretion. *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443-44 (2002); *Bord v. Balt. Cty.*, 220 Md. App. 529, 565 (2014).

Appellees contend that the motion court properly exercised discretion in dismissing counts without leave to amend because "further amendments would . . . waste judicial resources and potentially lead to inconsistent decisions[.]" In support, they point out that

the Trustys had already filed two amendments to the complaint, doing so without leave of court even though there were pending motions to dismiss, and then did not ask the court for leave to amend in their opposition or at the motion hearing. Moreover, they "appear to be vexatious litigants" based on "their numerous appeals and actions in the underlying action in federal and state courts." *See* Md. Rule 5-502(b) (granting courts the power to issue "pre-filing order[s] . . . . to control the actions of a vexatious or frivolous litigant"); *Riffin v. Cir. Ct. for Balt. Cty.*, 190 Md. App. 11, 28-29 (2010). Finally, "the preclusive effect" of the prior adjudications also supports the denial of leave to amend.

For the reasons we have explained, Count 4 and Count 15 of the third amended complaint state claims under RP § 7-113(d)(1) and for conversion, respectively, based on the alleged failure of MTGLQ and NAAC (t/a Keller Williams Realty Crossroads), before executing the writ of possession, to provide the notice and affidavit required under pertinent statutes and rules. We conclude that the motion court did not abuse its discretion in dismissing the remainder of the Trustys' claims without leave to amend and with prejudice.

Although the Trustys have not been adjudicated to be vexatious litigants, they have had numerous opportunities to argue their grievances about a property in which they admittedly were tenants at will. The Trustys amended their complaint after Appellees moved to dismiss their first two versions. At the hearing on Appellees' motion to dismiss the Third Amended Complaint, the Trustys persisted in their attempt to relitigate the

validity of the foreclosure sale and possession of the Property, but did not ask leave to amend their claims.

Given the Trustys' persistence in asserting claims that ignore prior adjudications, and their failure to request an opportunity to revise this complaint, the motion court had substantial reason to conclude that they have had "enough bites at the apple to get down to its core." In these circumstances, the motion court did not abuse its discretion in dismissing the other 21 counts without leave to amend and with prejudice.

JUDGMENT DISMISSING WITHOUT LEAVE TO AMEND AND WITH PREJUDICE BY THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED ONLY AS TO COUNT 4 AND COUNT 15 OF THE THIRD AMENDED COMPLAINT, AGAINST APPELLEES MTGLQ AND NAAC. JUDGMENT IS OTHERWISE AFFIRMED. CASE REMANDED FOR FURTHER PROCEEDINGS AS TO COUNTS 4 AND 15. COSTS TO BE PAID ½ BY APPELLANTS, AND ½ BY APPELLEES MTGLQ AND NAAC, JOINTLY AND SEVERALLY.