Circuit Court for Prince George's County
Case No. CAEF14-11741

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 564

September Term, 2018

JOSEPH HARRIS, et ux.

v.

LAURA H.G. O'SULLIVAN, et al.

Fader, C.J.
Beachley,
Wilner, Alan M.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wilner, J.

Filed: December 26, 2019

*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 the foreclosure sale of appellants' residential property due to a default on their deed of trust note. They claim that the court had no jurisdiction to order the sale because the seller was not licensed as a mortgage lender and, apart from that, because of various interlocutory procedural irregularities. They also challenge the auditor's report that was approved by the Circuit Court.

The jurisdictional claim appears to be an effort to overcome the Order of this Court entered on October 5, 2018 that limited the issues on appeal to whether the Circuit Court erred, as a matter of law or as an abuse of discretion, in (1) denying appellants' February 20, 2018 motion for reconsideration of a Final Order of Ratification entered by the Circuit Court on December 26, 2017, and (2) overruling appellants' exceptions to the court auditor's report. We shall respond in the negative on both issues and affirm the judgment of the Circuit Court.

FACTUAL AND PROCEDURAL BACKGROUND

On August 23, 2006, appellants borrowed $362,493 from Household Finance Corporation and, to secure that debt, executed a deed of trust on their home in Prince George's County to Mortgage Two Corporation, as trustee for the lender. In March 2014, Household Finance assigned the note and deed of trust to U.S. Bank Trust, as trustee for LSF8 Master Participation Trust.

On April 9, 2014, the loan being in default, U.S. Bank Trust, as trustee for LSF8 Master Participation Trust, which was alleged to be the current holder of the note and deed of trust, appointed Laura H.G. O'Sullivan and others as substitute trustees with authority to exercise the powers and duties of the trustee. We shall henceforth refer to the substitute trustees collectively as O'Sullivan.

On May 16, 2014, O'Sullivan filed an Order to Docket, commencing a foreclosure proceeding in the Circuit Court for Prince George's County. Attached as exhibits were various documents required by Rule 14-207(b) and Md. Code, Real Property Article (RP), § 7-501.1 (e), including an affidavit of default signed by Isabel Trujillo, a default service officer for Caliber Home Loans, Inc., attesting to a debt of $453,073. Caliber was alleged to be an attorney in fact for U.S. Bank Trust.

What followed was an avalanche of motions and exceptions from appellants, all designed to prevent the foreclosure from proceeding. That effort was partially successful; it delayed a foreclosure sale for over two years. It ultimately failed, however, largely for procedural lapses that may have resulted from appellants' proceeding as self-represented litigants until after the court auditor rendered his Report.

The initial response to the Order to Docket was a motion under Rule 14-211 to dismiss the proceeding on the ground that Caliber had not shown that it was in possession of the note or who *was* in possession of it. O'Sullivan responded that the motion failed to comply with the requirements of Rule 14-211, in that it was not under oath or supported

by affidavit (*see* Rule 14-211(a)(3)(A)), and that there is no requirement that the original note actually be produced.

On November 13, 2014, the court denied the motion without comment, whereupon appellants filed (1) an amended answer asserting various defenses, including lack of standing by O'Sullivan to sue, fraudulent allonge, securitization failure, failure to state a cause of action, fraud on the court, and unclean hands, and (2) a three-count counterclaim for violations of the Federal Debt Collection Practices Act and the Fair Credit Reporting Act, and to quiet title based on the allegation that, due to "Agency and Securitization Failures," O'Sullivan was not the owner of the note and deed of trust.

The case then stagnated until July 2016 when, in response to a request by Caliber that it be allowed to proceed, appellants filed an emergency motion to stay any sale, require additional discovery from Caliber, and for a jury trial on appellants' counterclaims. O'Sullivan responded that the motion was not timely under Rule 14-211, was unsupported by an affidavit, and failed to raise a cognizable defense to foreclosure. The Court found merit in O'Sullivan's response and, on April 12, 2017, denied the motion without a hearing and directed that the case continue in due course.

On May 15, 2017, appellants filed what they termed an "Objection," which was treated as a motion to reconsider the court's April 12 Order. That was denied on July 10, 2017. In its Order, the court concluded that, upon a review of the filings, it was apparent that appellants had failed to provide a valid defense and offered no new facts sufficient to

persuade the court to reconsider its April ruling. It found, in addition, that the request was not timely under Rule 14-211(a)(2) and (a)(3)(F), failed to state a legal basis pursuant to Rule 14-211(a)(3)(B), failed to supply supporting documents required by Rule 14-211(a)(3)(C), and that there was no certificate of service of the motion.

The foreclosure sale took place on July 13, 2017. The property was purchased by U.S. Bank N.A., solely as trustee for Maroon Plains Trust, alleged to be the current noteholder. The sale price was $168,300, which the Report of Sale stated was the highest bid. On July 20, appellants filed exceptions to the sale which, with exhibits, comprised 167 pages. Claiming new evidence, fraud, partiality by the court in ruling on appellants' previous motions, and other irregularities, they asked the court not to ratify the sale. O'Sullivan responded that appellants' exceptions were all based on matters preceding the sale that had been resolved by the court, that exceptions to a sale must be grounded on procedural irregularities in the sale itself, and that appellants had produced no evidence of any such irregularities. The court agreed with O'Sullivan, found that appellants had failed to identify any procedural irregularity regarding the sale, and therefore, on September 22, 2017, entered an Order overruling the exceptions.

Undaunted, on October 11, 2017, appellants filed a "Plea," asking that a new judge be assigned to the case, that all other activities cease, and that a jury trial be held. The "plea," which the court treated as three separate motions, was denied on November 29, and on December 26, 2017, the court filed an Order ratifying the sale and referring

the case to the court auditor. Appellants refused to accept that. On January 5, 2018, they filed a motion "in opposition to the final order of ratification" and demanded that all court orders in the case be rescinded. That motion was denied on February 8, 2018.

No timely appeal was filed from that Order. Instead, on February 20, appellants moved again that the court cease all activities and rescind the sale and, this time, the deed of trust as well. That request, treated as a motion to vacate the final order of ratification, was denied on April 19, 2018. A notice of appeal, from that Order, was filed on May 10, 2018.

The case was then sent to the court auditor, who filed his Report on May 7, 2018. He found a deficiency of $361,003. Through an attorney, appellants filed exceptions to the Report. For the first time, the defense was raised that, because neither LFS8 nor Maroon Plains was ever licensed as a *collection agency* in Maryland, neither was entitled to profit from what appellants alleged was its illegal activity and, as a result, had no authority to file the foreclosure action. That argument was based on this Court's decision in *Blackstone v. Sharma*, 233 Md. App. 58, *cert. granted*, 456 Md. 53 (2017), subsequently *reversed*, 461 Md. 87 (2018), holding that foreign trusts that held mortgage debt were collection agencies under the Maryland Collection Agency Licensing Act (MCALA) and were required to be licensed as such. The exceptions were overruled on June 14, 2018. On July 2, 2018, an appeal from that Order was filed.

DISCUSSION

Ratification of the Sale
Non-Licensure – Jurisdiction

The first prong of this appeal concerns the court's ratification of the sale. As noted, however, no timely appeal was taken from that Order. The only timely appeal is from the Order denying appellants' February 20, 2018 motion to reconsider the December 26, 2017 final order of ratification. Because that motion was filed more than 30 days after the order of ratification was entered, the Circuit Court had lost its general discretion under Rule 2-535(a) to reconsider that Order but was empowered to review it only upon a showing under Rule 2-535(b) of fraud, jurisdictional mistake, or irregularity.

Based on the arguments made by appellants in the Circuit Court, we find no evidence of any of those grounds. The thrust of appellants' argument in the Circuit Court was that, because neither the lender nor the loan servicer, nor any assignee of the note or deed of trust was licensed as a collection agency, none of them had any authority to file the foreclosure action and the court had no jurisdiction to entertain it.

The ground has shifted on that issue. In *Blackstone v. Sharma*, *supra,* 461 Md. 87 (2018), the Court of Appeals reversed the judgment of this Court. It held that MCALA did not apply to mortgage foreclosure proceedings and that entities such as LFS8 did not constitute collection agencies within the ambit of that Act and did not have to be licensed

as such. Regulation of those entities, the Court of Appeals declared, instead is governed by the laws dealing with mortgage/deed of trust foreclosures on real property.

In light of the Court of Appeals decision, it is evident that the argument appellants made to the Circuit Court in their exceptions to the auditor's Report has no validity. Instead, they now argue that the Maryland Mortgage Lender Law (MMLL), codified in Title 11, Subtitle 4 of the Financial Institutions Article, applies to entities such as LSF8 and Maroon Plains, that those entities were required to be licensed under *that* law, that they were not licensed, and that, for *that* reason, they were disqualified from proceeding against appellants. That argument, however, was never presented to the Circuit Court. It could have been presented – MMLL, in its present form and as interpreted by the Court of Appeals in *Blackstone*, has been in existence since 2010 – so this is not a question of whether a *new* law, not in existence when the case was before the Circuit Court, should be applied on appeal.

Ordinarily, pursuant to Rule 8-131(a), this Court will not decide any non-jurisdictional issue not raised in or decided by the trial court. To escape that bar, appellants contend that failure of the lenders and servicers in this case to be licensed under MMLL precludes them from filing and pursuing this foreclosure action and that, under established caselaw, that preclusion deprived the Circuit Court of subject matter jurisdiction to entertain the action. For that proposition, they cite *Harry Berenter v. Berman*, 258 Md. 290 (1970) and *McDaniel v. Baranowski*, 419 Md. 560 (2011).

That argument was not raised below, but, because it attacks the subject matter jurisdiction of the court, we shall address it. The answer is that neither case supports appellants' jurisdictional claim. The principle stated and applied in those cases was well-stated in *Berenter*:

> "We, and our predecessors, have held that if a statute requiring a license for conducting a trade, business or profession is regulatory in nature for the protection of the public, rather than merely to raise revenue, an unlicensed person will not be given the assistance of the courts in enforcing contracts within the provisions of the regulatory statute because such enforcement is against public policy." *Id.* at 293.

Neither *Berenter* nor *McDaniel* suggested that a statutory denial of enforcement to an unlicensed plaintiff deprives the court of subject matter jurisdiction. Whether a plaintiff is required to be licensed is often a mixed question of fact and law – what the plaintiff actually does (issue of fact) and whether what it does falls within the licensing statute (issue of law). The court must entertain the case and, *if the issue is raised or is apparent on its face*, explore it and make a determination. That, indeed, is what happened in *Berenter* and in *McDaniel*. If the court concludes that the plaintiff was not entitled to bring the action, it should dismiss the complaint for that reason or enter judgment for the defendant. In doing so, it exercises its jurisdiction to determine whether there is a cognizable cause of action. If the issue is properly raised and the court's decision is wrong, it can be reversed on appeal, but the court is not without jurisdiction to

render a decision and can, in rendering a decision, be excused from failing to address an issue that was not properly raised.

In *County Commissioners v. Carroll Craft*, 384 Md. 23 (2004), the Court noted the distinction between fundamental jurisdiction – the power of the court to render a valid judgment – and the propriety of granting the relief sought, and observed that a court that has fundamental jurisdiction retains it even though "its ability to exercise that power may be 'interrupted' or circumscribed by statute or Maryland Rule" *Id*. at 45. *See also LVNV Funding v. Finch*, 463 Md. 586, 608-09 (2019).

Unquestionably, the circuit courts have fundamental jurisdiction over foreclosure actions. Whether a particular lender, or its agent, is authorized to commence a foreclosure action may go to whether it is appropriate to exercise that jurisdiction in the particular case, but, to make that determination, the issue – the basis for a conclusion that it is *not* appropriate – needs to be raised. In this case, it was not raised, and we therefore shall not consider it. We cannot fault the Circuit Court for failing to consider an argument never made to it and for which, at the time, there was no binding precedent.

Validity of Notice of Intent to Foreclose

Appellants complain that O'Sullivan initiated the proceeding based on a Notice of Intent to Foreclose that failed to identify the actual secured party at the time the Order to Docket was filed. The Notice of Intent, which is required by RP § 7-105.1(c) to be sent

to the borrower/owner at least 45 days before filing an action to foreclose, must be on a form approved by the Commissioner of Financial Regulation. It was in this case. Among the items on that form are the names of the secured party and the loan servicer. On the November 14, 2013 Notice of Intent sent to appellants, the secured party was identified as Household Finance Corp III and the loan servicer was identified as HSBC Consumer Lending Mortgage Servicers, with the same telephone number as the secured party. As noted, accompanying the Order to Docket was a copy of an assignment of (1) the deed of trust, and (2) the note, from Household Finance Corporation III to U.S. Bank Trust, N.A., as trustee for LSF8 Master Participation Trust.

Appellants complain that, (1) because the Notice of Intent failed to disclose the ultimate owner of the note as of the time the Order to Docket was filed, fraud was committed and the entire proceeding was a nullity, and (2) if, due to securitization, the note becomes detached from the deed of trust, foreclosure cannot proceed. Neither proposition has merit.

Their first premise is that, if there is a change in ownership during the interim between the Notice of Intent and the Order to Docket, a new Notice of Intent is required. For that, appellants rely on *Granados v. Nadel*, 220 Md. App. 482 (2014). *Granados* involved a situation where the lender dismissed the foreclosure action, after which new requirements were added to the law. In that circumstance, this Court held that a new Notice of Intent was required in order to refile the action. That is not the case here.

Assignments are not prohibited, as long as they are disclosed. Here, it was. Appellants were correctly advised who the owner was at both times. There was no fraud.

The second prong of appellants' argument is answered by *Deutsche Bank v. Brock*, 430 Md. 714 (2013). The Court there made clear that, where a deed of trust is involved, the note secured by it does not become detached. Even when the note is part of a securitized bundle, the deed of trust follows it. Citing earlier cases, the Court held that a deed of trust securing a negotiable promissory note cannot be transferred like a mortgage. If the note is transferred, "the right to enforce the deed of trust follows." *Id*. at 728. Apart from the fact that appellants' motion raising that argument was denied because it failed to comply with the requirements of Rule 14-211, including that it was not under oath, the evidence here sufficed to show that the note was in the possession of Caliber, the attorney in fact for U.S. Bank Trust.

We do not regard what occurred here as a fraud, jurisdictional mistake, or irregularity sufficient to require, or even permit, reconsideration of the Order ratifying the sale.

Constitutional Violations

Appellants make a general complaint that they were denied hearings on some of their motions and were not permitted a reasonable opportunity to present their arguments at a scheduled hearing, which they claim constitutes a violation of Article 19 of the Md.

Declaration of Rights. We take any such claim seriously, particularly when presented by a self-represented litigant, and have examined the various motions filed by appellants, the responses by appellee, and the court's rulings. In some instances, no hearing was held, in part, because none was requested. Most were denied because they failed to comply with the requirements of Rule 14-211, failed to allege facts sufficient to justify relief, or sought to raise issues previously resolved.[1]

We do understand the difficulties facing self-represented litigants in foreclosure actions, which are governed by some very technical requirements. Most of those

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[1] In their brief, appellants cite their July 5, 2016 motion to compel production of documents and their July7, 2017 motion to stay the sale as examples of the denial of a request for hearing. We do not see any request for a hearing on those motions. The first of them was denied on the ground that it was not timely or accompanied by supporting documents, as required by Rule 14-211. The latter was denied, in part, for the same reason. Appellants' "Plea" of October 11, 2017 requesting the assignment of a new judge, a stay of proceedings, and a jury trial did not request a hearing. It was denied because some of the relief it sought had previously been denied, no basis for recusal was pled, and foreclosure actions are not triable by a jury.

There were some motions that did contain a request for hearing that were denied without one. An example is appellants' exceptions to the sale that was denied upon a finding that appellants "had failed to comply with Md. Rule 14-305(d) by failing to identify any legitimate procedural irregularity with particularity re[gar]ding the June 11, 2017 sale" or "to plead any grounds that which would support the setting aside of the sale of the Real Property."

Appellants complain as well that they were precluded from presenting argument at a hearing that was held on April 19, 2018. Appellants offered several exhibits into evidence. Some were not objected to and were admitted. The court rejected others because they constituted inadmissible hearsay or were irrelevant. Throughout, appellants, proceeding *pro se*, were permitted to offer their evidence and explain why they thought it admissible.

requirements were adopted for the benefit of homeowners, to give them a greater opportunity to defend against the foreclosure, and they must be complied with by all parties.

Exceptions to the Auditor's Report

Our Order limiting the issues on appeal does not preclude appellants from raising any preserved issues regarding the ratification of the auditor's report. With one exception, the exceptions taken to that report all are based on appellants' claim that, because LSF8 and Maroon Plains were not licensed as a collection agency, they had no right to recover. We have already dealt with and rejected that claim. The only other complaint in the exceptions was that the trustees' commission and attorney's fees "appear to be excessive and unreasonable." That has not been pursued in this appeal.

JUDGMENT AFFIRMED; APPELLANTS TO PAY THE COSTS.