Circuit Court for Baltimore City
Case No. 24-O-20-000640

UNREPORTED

IN THE APPELLATE COURT OF

MARYLAND

No. 0600

September Term, 2021

K.A.J. ENTERPRISES, INC.,

v.

GERARD F. MILES, JR.

Reed,
Beachley,
Eyler, Deborah S.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: December 12, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case concerns the foreclosure and subsequent sale of 4100-4102 East Lombard Street Baltimore, Maryland ("Property"). K.A.J. Enterprises Inc. ("Appellant") owned and operated the property as an adult lounge prior to the foreclosure action and was assigned both a Liquor License and Adult Entertainment License (collectively, "Licenses"). In 2007, Appellant and Lexington National Insurance Corporation executed a deed of trust for a loan on the Property. The deed of trust was accompanied by a term note, which outlined the agreed terms (collectively, "Loan Agreement"). The Loan Agreement was subsequently assigned to 30 E. 25th St., LLC, and thereafter assigned to A&P, LLC ("A&P") – the current note holder. Appellant defaulted upon the loan upon its transfer to A&P, where current substitute trustees, Gerard F. Miles, Jr. ("Appellee") and Henry Callegary ("Trustees") filed a non-residential foreclosure action. Ultimately, the circuit court ratified the foreclosure sale of the property and Appellant subsequently appealed.

In bringing their appeal, Appellant presents three questions for appellate review, which we have rephrased for clarity[1]:

I. Does the property constitute "residential" property?

II. Did the circuit court err in allowing the foreclosure to proceed without service provided to Appellant?

[1] Appellant presents the following questions:

I. Did the circuit court err in allowing the case to proceed without service provided to the Appellant?

II. Did the circuit court err in denying requests for injunctive relief and motion to dismiss, and allowing the Appellee to proceed in a foreclosure without coming into compliance with the Maryland foreclosure laws?

III. Did the circuit court err in ratification of the sale?

III. Did the circuit court err in denying Request for Injunctive Relief and Motion to Dismiss and Allowing the Appellee to proceed in a foreclosure without coming into compliance with foreclosure laws?

IV. Did the circuit court err in the ratification of the sale?

The Appellee included in their brief a Motion to Dismiss asking the following question:

> Should the Appeal be dismissed due to the Appellant's failure to comply with Md. Rule 8-501?

We deny the Motion to Dismiss, even though we find that the rule was violated in part because of a lack of coordination between the parties but there was no prejudice to the Appellee. Also, finding no error as asserted by the Appellant in their brief, we affirm the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

In 2007, Appellant and Lexington National Insurance Corporation executed a deed of trust for a loan on the Property. The deed of trust was accompanied by a term note, which outlined the agreed terms (collectively, "Loan Agreement"). Specifically, the Appellant signed a note to Lexington National Insurance Corporation to repay $400,000 at 13% interest over a five-year period. The Loan Agreement was subsequently assigned to 30 E. 25th St., LLC, and thereafter assigned to A&P, LLC – the current note holder.

Upon default of the loan, A&P, through substitute trustee, and Appellee, Gerard F. Miles, Jr. ("Appellee"), docketed a non-residential foreclosure case. According to the

Appellee's filing, Appellant was in default as of September 2, 2019.[2] On May 21, 2020, Appellee filed for a Confessed Judgment against Appellant in Harford County, which was granted five days later. On June 16, 2020, Appellee filed a request with the Baltimore City Circuit Court for recordation of the Confessed Judgment. However, the request was denied because Appellant had not received proper notice of the action in Harford County.

Thereafter, on November 10, 2020, Appellee filed an Order to Docket/Notice of Intent to Foreclose ("NOI") in Baltimore City Circuit Court, which instituted the present forfeiture action against the Property. Shortly after, on November 25, 2020, and pursuant to Real Property 7-105.2, and Md. Rule 14-210, Appellee provided notice to various addresses associated with Appellant, specified below, of the upcoming foreclosure.

On December 16, 2020, Appellant filed a motion to dismiss and a petition for Emergency Restraining Order and Preliminary Injunctive Relief. On January 5, 2021, Appellee filed a proposed sale with the circuit court. These motions were ultimately denied on January 8, 2021. One day later, the circuit court ratified the sale. Aside from Appellant's motion to dismiss and the Petition for Emergency Restraining Order and Preliminary Injunctive Relief and the circuit court denying such motions, there were no other foreclosure proceedings within the circuit court. Following ratification of the sale, Appellant timely filed notice of appeal.

[2] However, in a previous 2020 filing by A&P in Harford County Cir. Ct., A&P asserts that Appellant's last payment was made on Sept. 8, 2016.

DISCUSSION

I. APPELLEE'S MOTION: Should this Court dismiss Appellant's Appeal due to failure to comply with Md. Rule 8-501?

Prior to addressing the substance of Appellant's appeal, we must address a preliminary matter: Appellee's motion to dismiss the appeal due to alleged record extract deficiencies in accordance with Md. Rule 8-501.

As Appellee notes, Md. Rule 8-501 allows both parties to provide input into the record so that the Court has "all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal." Md. Rule 8-501(c). Further, Md. Rule 8-501 provides that:

> **(d) Designation by Parties.** Whenever possible, the parties shall agree on the parts of the record to be included in the record extract. If the parties are unable to agree:
>
> (1) Within 15 days after the filing of the record in the appellate court, the appellant shall serve on the appellee a statement of those parts of the record that the appellant proposes to include in the record extract.

Md. Rule 8-501(d)(1). Additionally, Rule 8-501(c) provides, in relevant part, that "the record extract shall contain all parts of the record that are reasonably necessary for the determination of the question presented by the appeal and any cross-appeal." Md. Rule 8-501(c). Rule 8-501(e) also states that "if the record extract does not contain a part of the record that the appellee believes is material, the appellee may reproduce that part of the record as an appendix to the appellee's brief together with a statement of the reasons for the additional part. The cost of producing the appendix may be withheld or divided under section (b) of Rule 8-607. Md. Rule 801(e).

Appellee contends that Appellant violated Md. Rule 8-501 because Appellant filed

the record on or about January 6, 2022, but never contacted Appellee about what portions of the record should be included in the extract. Appellee explained that they contacted Appellant on January 25, 2022 to inquire about what documents to include in the extract; however, Appellant was not ready to discuss the matter. Appellee emphasizes that Appellant's failure to comply with Rule 8-501 caused Appellee to incur additional fees and cost to produce their own Appendix, pursuant to Md. Rule 8-501(e). Furthermore, Appellee argues that Appellant's record extract does not include all documents the court needed for the "determination of the question presented by the appeal," pursuant to Md. Rule 8-501(c). As a result, Appellee contends that Appellant's appeal should be dismissed because Appellant failed to comply with Rule 8-501. Appellee also contends that attorney's fees should be assessed in favor of Appellee and that this court assess costs in favor of Appellee against Appellant.

After reviewing Appellant's brief, materials cited within their appendix, and the record extract, we disagree with Appellee's assertion that Appellant did not comply with their obligation under Rule 8-501 to prepare an extract that contains all information reasonably necessary to help the court determine the questions presented by the appeal. Between the appendix and the record extract, both parties provided this Court all information reasonably necessary to help the court determine the questions presented by the appeal.

However, we acknowledge that Appellant violated Md. Rule 8-501(d) because Appellant did not coordinate with Appellee regarding what part of the record should be included in the record extract. Nonetheless, as this Court has held in the past, "an appeal

will not be dismissed for failure to file a record extract in compliance with Rule 8-501. *McAllister v. McAllister*, 218 Md. App. 386, 399 (2014). For an appellate court, the ""preferred alternative" is always to "reach a decision on the merits of the case." *McAllister v. McAllister*, 218 Md. App. 386, 399 (2014); *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 348 (2007). As a result, this Court typically will not dismiss an appeal, despite a party's noncompliance with Rule 8-501, unless the appellee is prejudiced. *McAllister v. McAllister*, 218 Md. App. at 399; *accord Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. at 348.

Here, Appellee did not experience any prejudice because together Appellee and Appellant provided the materials necessary for this Court to evaluate this case. Accordingly, we shall not dismiss the appeal.

II. Did the Appellee provide proper service to the Appellant. Does the property at issue constitute "Residential property"?

A. Parties' Contentions

During the oral argument before our court and in their briefs, Appellant contended that the circuit court judge should have had a checklist for residential mortgages to determine that the property was commercial and/or residential, and noted that the circuit court failed to make a finding on this issue. However, Appellant did not address nor establish that the property in question constituted a residential property in any of the documents submitted to the circuit court prior to the property's sale. Appellant contends that the property has two addresses, 4100 East Lombard Street and 4102 East Lombard Street, and that each address served a different purpose. Appellant states that 1402 has its

own mailbox and separate entrance, indicating that that it is a residential property, and as such, Appellee should have investigated further to see that the property served as both a residential and commercial property.

Appellee contends that the property in question is not a residential property, and that Appellant never described the property as such in their Temporary Restraining Order and Preliminary Injunction Order filings. Appellee argues that because Appellant solely addressed the property as 'Eldorado Lounge', that has operated for seventeen years, that Appellant itself admits there that they used the property to operate as a lounge, as opposed to a 'single family dwelling unit designed principally and intended for human habitation.'

B. Standard of Review

Maryland Rule 8-131(a) provides: "Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." *Granados v. Nadel*, 220 Md. App. 482, 499 (2014); Md. Rule 8-131(a). Furthermore, as outlined by Md. Rule 8-131, "When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous and will give due regard to the opportunity of the trial court to judge the credibility of the witness." Md. Rule 8-131(c); *see Gen. Motors Corp*., 362 Md. 229, 233-34 (2001). When a trial court's ruling involves an interpretation and application of Maryland statutory and case law , appellate courts must determine whether the lower court's conclusions are legally correct, under a *de novo* standard of review.

Nesbit v. Gov't Emples. Ins. Co., 382 Md. 65, 73 (2004).

C. Analysis

First, the issue of whether the properties constituted residential property was not raised at the circuit court level and it is therefore waived. *Granados at* 499. Even though we find that the issue has been waived, we note that this issue would have been resolved on behalf of the Appellee and determine that the property in question does not constitute residential property. This is because that status determines how foreclosure proceedings should be conducted, and whether the property should be afforded additional protections under Md. Code Real Property § 7-105.1. As Appellee contends, Appellant never indicated during the circuit court proceedings that the property also constituted residential property or that one address served as a residential property and the other served as commercial property. According to Md. Code Real Property 7-105(a)(12), "Residential property" constitutes real property improved by four or fewer single family dwelling units that are designed principally and are intended for human habitation. Md. Code Real Property 7-105(a)(12).

During the circuit court proceedings, Appellant indicated in their Petition for Emergency Temporary Restraining Order and Preliminary Injunctive Relief that they "owned operated 4100-4102 East Lombard Street, common [sic] known as 'Eldorado Lounge' for the past 17 (seventeen) years." However, not until oral argument, and Appellant's briefs did Appellant contend that the property has two addresses, 4100 East Lombard Street and 4102 East Lombard Street, and that each address served a different purpose. Specifically, Appellant states that 1402 has its own mailbox, a separate entrance,

and was used for residential purposes. Further, Appellant highlights that they solely received the adult and liquor license for 4100 East Lombard Street as opposed to both 4100 and 4102, which indicates that both properties were not used solely for commercial use. However, this Court agrees with Appellee that the Eldorado Lounge cannot suddenly be classified as both a residential and a commercial property, pursuant to Maryland Rule 8-131, because Appellant failed to raise this argument during the circuit court proceedings. Appellant could have included this information when submitting their Petition for Emergency Temporary Restraining Order and Preliminary Injunctive Relief, but they did not. Appellant characterized the property in the circuit court proceedings, particularly in their Petition for Emergency Temporary Restraining Order and Preliminary Injunctive Relief, Appellant's initial loan documents, and liquor license documentation, as the "Business Premises." Appellant indicating in their Petition that they "owned operated 4100-4102 East Lombard Street, common [sic] known as 'Eldorado Lounge' for the past 17 (Seventeen) years" constitutes an admission that Appellant used the property, including both addresses, to operate as a lounge. This admission indicates that pursuant to Md. Code Real Code Property § 7-105(a)(12) that the establishment was not "principally used as a single-family dwelling unit designed principally and intended for human habitation," and thus Appellant is not afforded the additional protection of service for a foreclosure action for a residential property, provided by the statute.

III. Did the Circuit Court err in allowing the case to proceed without service provided to Appellant?

A. Parties' Contentions

Appellant contends that the circuit court erred in allowing the case to proceed without service being provided because by not ensuring that they were served, the circuit court violated their due process rights. Appellant argues that pursuant to the procedural due process clause of the 14th Amendment of the United States' Constitution and the Article 24 of the Maryland Declaration of Rights, Appellant had the right to be served and placed on notice of the foreclosure proceeding. Furthermore, Appellant contends that personal delivery is the proper method service in this case, and because there is no indication that Appellee attempted to use personal service, or that Appellant attempted to resist or avoid personal service, that Appellee failed to provide proper notice.

In contrast, Appellee contends that they were not required to serve Appellant or provide Appellant with notice because the property in question is not residential. Appellee argues that pursuant to Md. Code Real Property § 7-105.1(c)(1)[3], residential properties are granted certain protections during the foreclosure process that are not afforded to commercial properties, such as providing written notice. As such, Appellee contends that they were not required to serve Appellant because the property in question was commercial property as opposed to residential property, and ultimately, that Appellant's constitutional

[3] Md. Real Property § 7-105 (c)(1) provides: "Except as provided in subsection (b)(2)(iii) of this section, at least 45 days before the filing of an action to foreclose a mortgage or a deed of trust on residential property, the party secured shall send a written notice of intent to foreclose to the mortgagor or grantor and the record owner."

arguments are a misapplication of the law. Nonetheless, Appellee also asserts they provided Appellant with notice of the foreclosure by sending a notice of foreclosure auction via certified mail to several addresses associated with Appellant. Additionally, Appellee contends that personal service is not required as the method of service in this case because foreclosure matters constitute *in rem* proceedings, where there is no personal service requirement, absent necessary statutory requirements, which do not apply in this case. Finally, Appellee argues that Appellant was notified or aware of the foreclosure sale because Appellant appeared at the sale and filed a motion to dismiss prior to the foreclosure sale.

B. Constitutional Due Process Arguments

Appellant contends that because Appellee allegedly failed to provide Appellant with an advance notice of the sale, the sale violated their due process rights guaranteed by the Fourteenth Amendment to the United States. Courts have held that "an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Griffin v. Bierman*, 403 Md. 186, 197 (2008). The affected party must receive notice "as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Mullane*, 339 U.S. at 315.

There is no rigid litany or cookie-cutter paradigm to determine the constitutionality of a particular procedure designed to convey notice. *Griffin v. Bierman*, 403 Md. 186, 197

(2008). As such, "[d]ue process is flexible and calls only for such procedural protections as the particular situation demands. Procedures adequate under one set of facts may not be sufficient in every situation." *Id.* at 197; *Dep't of Transp. v. Armacost*, 299 Md. 392, 416 (1984). Thus, "[t]o determine whether notice in a particular case is constitutionally sufficient, the court must 'balance the interest of the state or the giver of notice against the individual interest sought to be protected by the fourteenth amendment.'" *Griffin*, 403 Md. at 197; *Miserandino v. Resort Props., Inc.*, 345 Md. 43, 53 (1997); *see also Jones v. Flowers*, 547 U.S. 220, 229 (2006).

Nonetheless, in determining notice under the due process clause, actual receipt of notice is not required. *Griffin v. Bierman*, 403 Md. 186, 198 (2008); *Crum v. Vincent*, 493 F.3d 988, 993 (2007); *see also Jones*, 547 U.S. at 226. Generally, courts deem notice by mail as constitutionally sufficient. *Id.* Under the *Mullane* standard, a party provides 'reasonably calculated notice' "where the government sends a notice to the address provided by a party pursuant to a legal requirement to provide the government with an address" (holding that notice by publication was constitutionally defective as known to persons whose whereabouts were also known because it was not "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"). *Mullane*, 339 U.S. at 314, 319.

In *Griffin v. Bierman*, the Supreme Court of Maryland provided a detailed summary of the Supreme Court of the United States' notice of explanation and elaboration under the *Mullane* standard. *Griffin*, 403 Md. 186 at 198. Specifically, in *Griffin*, the Supreme Court of Maryland explains and applies the Supreme Court's decisions in *Dusenbery v. United*

States, 534 U.S. 161 (2002) and *Jones v. Flowers*, 547 U.S. 220 (2006).

In *Dusenbery*, the government began an administrative process to forfeit cash from an inmate. *Dusenbery*, 534 U.S. at 161. The statute in effect at the time required the government "to send written notices of the seizure and applicable forfeiture procedures to each party who appeared to have interest in the property." *Id.* The government sent notice via certified mail addressed to multiple addresses, including the federal correctional institution (FCI) where the petitioner was incarcerated; the residence where the petitioner was arrested; and to the petitioner's mother's home. *Id.* The government received no response in the allotted time from either of the addresses and ultimately the cash was forfeited. *Id.* Ultimately, the Supreme Court held that the government's notice of the cash forfeiture satisfied due process because under the *Mullane* standard, the "FBI's notice, sent by certified mail to a prison with procedures for delivering mail to the inmate, was so calculated." *Id.* at 162. The Court reasoned that the Due Process Clause does not require heroic efforts by the government to assure the notice's delivery, nor does it require the government to substitute petitioner's proposed procedures that would have required verification of notice while petitioner was present at the FCI. *Id.* As such, the Government satisfied its burden because it *attempted* to provide actual notice in a manner that is reasonably certain to inform those affected by sending the notices to each address. *Id.* at 169-70; *Mullane*, 339 U.S., at 315.

Next, the court analyzed *Jones v. Flowers*, 547 U.S. 220 (2006). In *Jones*, The Arkansas State government sent certified letters to indicate to a property owner that he owed property taxes and that they would sell his property at a tax sale. *Jones*, 547 U.S. at

224; *Griffin*, 403 Md. at 199. However, the letters were returned as unclaimed. *Id.* Subsequently, in a local newspaper, the State published a notice of tax sale, and ultimately conducted the property sale without the property owner's knowledge. *Jones*, 547 U.S. at 224. The Supreme Court held that although the State sent out a certified notice letter, the only type of notice required to be provided to the necessary party, the notice was not delivered. The State did not attempt to provide actual notice to the property owner. *Id.* at 230. While the Supreme Court did not provide a rigid service standard the government must comply with, the Supreme Court reasoned that the State must take further reasonable steps to attempt to notify the interested party. *Id.* at 230, 234. Particularly, the Supreme Court held, that on its own certified mail that is returned "unclaimed" does not satisfy due process. *Griffin*, 403 Md. at 202. The Supreme Court noted that the return of the certified letter marked "unclaimed" meant either that the Appellant still lived at the location but was not home and did not acquire the letter at the post office, or that Appellant no longer resided at the location. *Jones*, 547 U.S. at 234. Because of this, the Supreme Court provided several additional steps the State could have taken that would be reasonable, including sending the notice via regular mail instead of certified mail or "to post notice on the front door or address otherwise undeliverable mail to 'occupant.'" *Id.* at 234-35.

In comparing the Supreme Court's decisions in *Dusenbery* and *Jones* to *Griffin*, the Supreme Court of Maryland then concluded in *Griffin* that Maryland's foreclosure notice process passes constitutional muster under the Due Process Clause. *Griffin*, 403 Md. at 200. The Supreme Court held that the Trustees there satisfied Maryland's notice requirements in addition to the Supreme Court's suggested alternative steps in *Jones.*

Particularly, in *Griffin*, Trustees docketed a foreclosure action in circuit court against Griffin for lack of payment. *Id.* at 192. The Trustees contacted Griffin both by certified mail and first-class mail, to inform her of the foreclosure proceeding, satisfying the letter notice requirement under Maryland Code (1974, 2003 Repl.Vol.), Real Property Article, § 7–105 *Id.* at 192-93. Griffin did not receive the letter, as the Postal Service returned the certified mail to the Trustees as "unclaimed." *Id.* at 193. However, the Postal Service did not return the Trustees' letter sent via regular mail. *Id.* Months later, the Trustees also sent Griffin Section 7-105 notices, both via certified mail and first-class mail, of the foreclosure sale's time, date, and location, pursuant to Maryland Rule 14-206(b)(2). *Id.* at 193-94. Trustees also sent the notice to "Occupant" via certified mail and first-class mail; however, the certified letter addressed to Occupant was returned to the Trustees as "unclaimed." *Id.* at 194. Like in *Dusenbery*, the Trustees were unsure whether Griffin received the notice because the Postal Service returned the certified mail to the Trustees. *Id.* at 200. However, as in *Jones*, the Trustees satisfied the Supreme Court's alternative steps, such as sending notice to "Occupant" via first-class mail, which the Trustees also sent to Occupant via certified mail. *Jones*, 547 U.S. at 234; *Griffin*, 403 Md. at 201. Ultimately, the Supreme Court of Maryland held that "Section 7–105 of the Maryland Code and Maryland Rule 14-206 are not constitutionally infirm merely because they do not require the certified mail to be returned as undeliverable prior to requiring the Trustees to send notice via first class mail. The only substantive difference between the Maryland scheme and the satisfactory schemes described by the Supreme Court in *Jones* is that Maryland requires first-class mail to be sent in all cases, whereas the Supreme Court suggested that it was necessary only in

cases where the certified mail is returned to the sender undelivered." *Griffin*, 403 Md. at 201.

Accordingly, in this case, Appellant contends that the circuit court violated their due process rights because they allowed the case to continue without Appellee providing service or notice to Appellant. However, in applying the precedent established by the Supreme Court in *Jones*, *Dusenbury*, and similar cases, along with the Supreme Court of Maryland's ruling in *Griffin*, we hold that the Appellee satisfied the service requirements required by the due process clause of the Federal Constitution. As the courts have established, actual receipt of notice is not required to constitute a reasonably calculated notice under the due process clause. Instead, a party must attempt to provide reasonably calculated notice, which under the *Mullane* standard and elaborated upon in *Dusenbery* and *Jones*, may be demonstrated by sending notice via mail. Like in the *Dusenbery case*, Appellee here provided notice of the proposed foreclosure sale to all mortgagors, property owners, and subordinate lien holders via *both* certified and regular mail [4]. According to Appellee's Affidavit of Compliance with § 7-105.2 and § 7-105.3, on November 25, 2020, and pursuant to Real Property 7-105.2, and Md. Rule 14-210, Appellee provided notice to the following addresses:

K.A.J. Enterprises, Inc.
4100 East Lombard Street
Baltimore, MD 21224

Kenneth A. Jackson

[4] Pursuant to Md. Rule 5-201(c), this Court takes judicial notice that regular mail, as Appellee lists in their brief, constitutes the same as "first-class mail" in relation to the postal service.

4100 East Lombard Street
Baltimore, MD 21224

Rosalie Jackson
4100 East Lombard Street
Baltimore, MD 21224

Kenneth A. Jackson
612 Otter Creek Road
Edgewood, MD 21040

Rosalie Jackson
612 Otter Creek Road
Edgewood, MD 21040

K.A.J. Enterprises, Inc.
2033 E. Belvedere Avenue
Baltimore, MD 21239

Kenneth Jackson
2033 Belvedere Avenue
Baltimore, MD 21239

Rosalie Jackson
2033 Belvedere Avenue
Baltimore, MD 21239

Knarf Lending, LLC
110 Painters Mill Rd., Suite 109
Owings Mills, MD 21117

Knarf Lending, LLC
c/o Steven Gelblum, CPA
110 Painters Mill Rd., Suite 109
Owings Mills, MD 21117

Knarf Lending, LLC
P.O. Box 6098
Lutherville, MD 21094

Brian Frank
2011 N. Ocean Blvd., Unit 906
Ft. Lauderdale, FL 33305

Although the facts and record do not specifically establish that Appellant did not receive the certified mail notices returned from each of the addresses listed, which differs from *Jones*, Appellee also satisfied the alternative methods that the Supreme Court deemed as reasonable by sending the notices via first-class mail to each of these addresses listed above. In fact, by Appellee sending the notices to the eleven addresses listed above, both by certified and first-class mail, Appellee acted more than reasonably in selecting a means to inform affected parties. Appellee sent the notices to multiple people and multiple parties, including the Appellant's address and the Appellant's mother's address. [5] Thus, Appellee satisfied the elementary and fundamental due process requirement of reasonable notice, outlined in *Mullane* and the subsequent Supreme Court cases.

Method of Service

Additionally, Appellant contends that personal service is the proper method of service pursuant to Md. Rule 2-121(a), and as such, Appellee did not conduct the method of service "required to obtain personal jurisdiction over the resident or nonresident individual." We disagree. Appellee contends that because foreclosure proceedings constitute *in rem* proceedings according to *Daughtry v. Nadel*, 248 Md. App. 594, 601

[5] While service would be accomplished on the company K.A.J. Enterprises, Inc. Kenneth A. Jackson is the owner. The mother of the owner, Rosalie Jackson is the President of K.A.J. Enterprises, Inc, and Eldorado Lounge, Inc. K.A. J. Enterprises owned a fee simple interest in the property. Rosalie Jackson and Kenneth Jackson were also the guarantors and signatories in the Assignment of the Liquor License with the Right to Reassignment in favor of Lexington National Insurance Corporation. It should also be noted that the Confessed Judgment entered in Harford County was entered against the Appellant, Rosalie and Kenneth Jackson.

(2020), personal jurisdiction is not required for foreclosure proceedings, absent any statutory requirements, and thus service is not required.

Maryland Rule 2-121(a) provides: "**(a) Generally.** Service of process may be made within this State or, when authorized by the law of this State, outside of this State (1) by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it; (2) if the person to be served is an individual, by leaving a copy of the summons, complaint, and all other papers filed with it at the individual's dwelling, house or usual place of abode with a resident of suitable age and discretion; or (3) by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail requesting: "Restricted Delivery--show to whom, date, address of delivery." Service by certified mail under this Rule is **complete upon delivery**. Service outside of the State may also be made in the manner prescribed by the court or prescribed by the foreign jurisdiction if reasonably calculated to give actual notice." Md. Rule 2-212(a). (Emphasis added.)

In cases where personal jurisdiction is required, under Maryland law, method of service by first class mail would be insufficient and personal service is preferred. *Miserandino v. Resort Props., Inc.*, 345 Md. 43, 55-56 (1997). However, that fact is of no consequence if the method of service satisfies the requirements of due process, absent any statutory requirements. *Id.* Nonetheless, foreclosure proceedings under a power of sale constitute *in rem* proceedings, as opposed to in personam proceedings, and thus does not neatly fit into the ordinary model of civil litigation. *See Daughtry v. Nadel*, 248 Md. App. 594, 601 (2020); *see Huertas v. Ward*, 248 Md. App. 187, 201 (2020); *see also Pulliam v.*

Dyck-O'Neal, Inc., 243 Md. App. 134, 143 (2019) (describing foreclosure under power of sale as "a summary *in rem* proceeding that grants the mortgagee the power to dispose of the property"). Rule 2-121(a) is not applicable here and relief is denied under this section.

In Maryland, foreclosure statutory requirements are outlined in Title 14 of the Maryland Rules. Particularly, Md. Rule 14-210 provides in relevant part that "[b]efore selling the property[,] ... the [authorized party] shall also send notice of time, place, and terms of sale (1) by certified mail and by first class mail[.]" The Supreme Court of Maryland has held that " The Maryland foreclosure scheme requires that the Trustees send notice by both certified and first-class mail, two 'efficient and inexpensive means of communication' that we conclude are calculated reasonably to inform interested parties of the pending foreclosure action." *Griffin v. Bierman*, 403 Md. 186, 212 (2008) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 319 (1950)).

Here, Appellant contends that pursuant to Md. Rule 2-121, Appellee did not properly provide Appellant with proper notice of the foreclosure because under the statute, Appellee should have provided Appellant with personal service. However, this statute does not apply to foreclosure proceedings because foreclosure proceedings constitute *in rem* jurisdiction, as opposed to proceedings that require personal jurisdiction, as discussed in *Daughtry v. Nadel*, 248 Md. App. 594, 601 (2020). As such, Md. Rule 2-121 does not apply, and Appellee did not need to provide Appellant with personal service, absent any additional statutory requirements. Alternatively, Title 14 of the Maryland Rules applies to foreclosure procedures and methods. Particularly, Rule 14-210 addresses notices prior to

sales, which Rule 14-210(b) authorizes parties to provide notice of time, place, and terms of sale via certified mail and by first-class mail to the borrower and all subordinate parties interested in the property. Here, Appellee provided notice to Appellant both via certified mail and first-class mail to all mortgagors, property owners, and subordinate lien holders in compliance with this rule. Appellee acted in reasonable, good faith efforts by sending the notice to the addresses that they did, satisfying the standard outlined in the Rule as well as in *Mullane* and *Griffin*. Appellee also provided an affidavit of notice by mail, pursuant to Rule 14-210(e), stating that on November 24, 2020, they provided Appellant, property owners, and subordinate lien holders listed above a notice via certified and first-class mail, and in compliance with the rule and Real Property Section 7-105.2 and 7-105.3. Accordingly, Appellee satisfied the necessary notice requirements for foreclosure proceedings.

Article 24 of the Maryland Declaration of Rights

Generally, procedural due process requires notice and some form of hearing or opportunity to respond if one is being deprived of a property right by governmental action. *VNA Hospice of Maryland v. Dep't of Health and Mental Hygiene*, 406 Md. 584, 603-4 (2008). Both Article 24 of the Maryland Declaration of Rights and the 14th Amendment of the United States Constitution protect an individual's interest in procedural due process. *Samuels v. Tschechtelin*, 135 Md. App. 483, 522-23 (2000); *see also Roberts v. Total Health Care, Inc*., 349 Md. 499, 508–09 (1998). Particularly, Article 24 of the Maryland Declaration of Rights provides: "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner destroyed,

or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land." Md. Const. Decl. of Rights, Art. 24. As such, our courts have long equated the Due Process Clause and Article 24. *Samuels v. Tschechtelin*, 135 Md. App. at 523; *City of Annapolis v. Rowe*, 123 Md. App. 267, 270 (1998) (stating that Article 24 "'protects due process rights and is construed in pari materia with the federal Due Process Clause'" (citation omitted)). Consequently, Supreme Court decisions interpreting the Due Process Clause "are practically direct authority for the meaning of the Maryland provision." *Samuels v. Tschechtelin*, 135 Md. App. at 523. In fact, "[T]he decisions of the Supreme Court on the Fourteenth Amendment are practically direct authorities [regarding Article 24]."; *Oursler v. Tawes,* 178 Md. 471, 483, 13 A.2d 763, 768 (1940) ("[Article 24] of the Maryland Declaration of Rights is in harmony with the 5th and 14th amendments to the Federal Constitution, and the term 'due process of law' as used in said amendments has been construed to be synonymous with the expression 'Law of the Land.'"). Thus, according to the Supreme Court's decisions in *Mullane* and additional cases, "procedural due process protection requires a State to provide 'notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Knapp v. Smethurst*, 139 Md. App. 676, 711 (2001) (quoting *Mullane*, 339 U.S. at 318).

To succeed in a procedural due process claim, where a party alleges a violation of property interest, "a plaintiff must demonstrate that he had a protected property interest, that he was deprived of that interest [by the State], and that he was afforded less procedure than was due." *Knapp v. Smethurst*, 139 Md. App. 676. The Real Property Article of the

Maryland Code, particularly Section 7-105, and Title 14 of the Maryland Rules outline the processes that govern mortgage foreclosures.

Here, neither the statutes nor the rules obligate Appellee to provide notice to Appellant via personal service, as we have addressed above. The Rules and the statutes require Appellee to provide a notice by certified mail and by first class mail to the debtor, the record owner of the property, and any party with subordinate interest in the property, and in a certain time frame before the foreclosure sale. As addressed above, Appellee satisfies these requirements. Additionally, pursuant to Appellant's Article 24 claim, as mentioned above, this Court has held that Supreme Court decisions interpreting the due process clause of the 14th Amendment serve as direct interpretation for Article 24's due process clause requirements. Therefore, because Appellee acted in a reasonably calculated manner to attempt to inform Appellant of the foreclosure proceeding under the due process clause of the 14th Amendment, Appellee also satisfied the due process requirements under Article 24.

Service on a Defunct Corporation

Appellant contends that Appellee failed to provide service to inform the corporation or a person responsible for the corporation of the foreclosure. Appellant contends that Appellee could have served Appellant because they were involved in active litigation with Appellant at the time Appellee filed the foreclosure matter and had actual knowledge of the persons of interests and their addresses. Appellant uses Md. Corps. & Assn's Code

Ann. Section 3-515[6] and case law to argue that although the corporation is defunct, Appellant should have served members of the board and other members of interest.

Appellee contends that because this is a foreclosure proceeding, service is not required according to the governing law. Succinctly, Appellee states the following:

> Code Real Property § 7-105.1 (a)(12.) As a result, the statute does not require service of process on a property that is not "residential" by definition of the statute. The Appellant cites Maryland Rule 2-134(d) to suggest who needs to be served when a corporation is being sued.[1] While it is accurate that service on a corporation needs to be effected in compliance with this Rule, the Appellant fails to acknowledge that service is not required in a foreclosure action on a property that is not "Residential" as defined by the Md. Code Real Property § 7-105.1(a)(12.) Service of process is not required in this matter. In fact, no summonses are issued in any foreclosure actions and therefore there is no "process" to serve.

Appellee argues instead that notice is the only thing required, which Appellee did by providing the required papers to all the addresses associated with Appellant and the corporation. Appellee further contends that Appellant ultimately received the notice attempted because Appellant's trial attorney filed a motion to prohibit the sale, and Appellant's agent appeared at the foreclosure sale.

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[6] According to Md. Corps. & Ass'ns Code Ann. Section 3-515, "when the charter of a Maryland corporation has been forfeited, until a court appoints a receiver, the directors of the corporation become the trustees of its assets for purposes of liquidation." Md. Corps. & Ass'ns Code Ann. Section 3-515(a). The code further lists some of the directors' duties, which include:

(c) The directors may:

(1) Carry out the contracts of the corporation;

(2) Sell all or any part of the assets of the corporation at public or private sale;

(3) Sue or be sued in the name of the corporation; and

(4) Do all other acts consistent with law and the charter of the corporation necessary or proper to liquidate the corporation and wind up its affairs.

Md. Corps. & Ass'ns Code Ann. Section 3-515(c).

This Court agrees with the Appellee's contentions. Here, it is not necessary for us to analyze the legal requirements for service on a defunct corporation, because as we have established above, service is not required for foreclosure proceedings in this context. Instead, to satisfy Appellant's due process rights under the 14th Amendment and Article 24, notice is required. In this case, Appellee provided Appellant with notice to multiple addresses and persons both via certified and first-class mail. Although Appellant contends that they were not provided notice, Appellant knew of the foreclosure proceeding, after being provided notice under the foreclosure laws, and filed a motion to prevent the foreclosure in circuit court and sent an agent to appear at the foreclosure sale. Therefore, Appellant did in fact have notice for the sale, and service here is not required.

IV. Injunctive Relief and Motion to Dismiss Challenging the Appellee's compliance with foreclosure laws.

Appellant raises various arguments about these issues. Deciphering the arguments is difficult due to the lack of citation of proper legal authority and analysis. Nonetheless, we address the arguments presented in turn, and we ultimately hold that the circuit court did not abuse its discretion.

Denying Request for Injunctive Relief and Motion to Dismiss

A. Standard of Review

"As the Supreme Court stated in *Bates v. Cohn*, 417 Md. 309, 9 A.3d 846 (2010) before a foreclosure sale takes place, the defaulting borrower may file a motion to 'stay the sale of the property and dismiss the foreclosure action.' "*Svrcek v. Rosenberg*, 203 Md. App. 705, 720 (2012). Thus, the borrower "may petition the

court for injunctive relief, challenging 'the validity of the lien or … the right of the [lender] to foreclose in the pending action.'" *Id.* The Supreme Court in *Anderson v. Burson* citing the Appellate Court of Maryland in *Wincopia Farm*, *LP v. Goozman,* 188 Md. App. 519, 528 (2009) (citing *Jones v. Rosenberg*, 178 Md. App. at 65, *Anderson v. Burson*, 424 Md. 232, 243 (2011). "The grant or denial of injunctive relief in a property foreclosure action lies generally within the sound discretion of the trial court." *Id.*; *Anderson* at 243.As such, we review the circuit court's denial of a foreclosure injunction for an abuse of discretion. *Id.* A trial court abuses its discretion when "[n]o reasonable person would take the view adopted by the [trial] court, or when the court acts without references to any guiding rules or principles. *North v. North*, 102 Md. App. 1, 13 (1994). However, we review the trial court's legal conclusions under *de novo* review. *Svrcek at* 720. The trial court is granted a significant decree of discretion. *El Bey v. Moorish Science Temple*, 362 Md. 339, 355 (2001).

A. Analysis

Appellant contends that the circuit court abused its discretion in denying Appellant's request for Injunctive Relief and Motion to Dismiss. However, Appellant fails to cite the proper legal authority for foreclosure proceedings and provide analysis to support arguments for either pre-or post-foreclosure disputes. With the authority the Appellant did provide, Appellant did not fully explain how the circuit court erred in denying Appellant injunctive relief.

Generally, a trial court judge has sound discretion to deny injunctive relief in a

property foreclosure action. *Anderson v. Burson*, 424 Md. 232, 243 (2011). To make a *prima facie* case for injunctive relief, a claimant must demonstrate "that it will sustain substantial and irreparable injury as a result of the alleged wrongful conduct." *El Bey v. Moorish Science Temple*, 362 Md. 339, 355 (2001). A borrower's ability to challenge a foreclosure sale is in part determined by whether the party requests relief before or after the foreclosure sale. *Thomas v. Nadel*, 427 Md. 441, 443 (2012). Prior to the sale, a borrower may file a motion to stay the sale and dismiss the foreclosure action under Maryland Rule 14-211. *Id.* "A trial judge's discretion with respect to a motion to stay a foreclosure sale is further tempered by the procedural requirements outlined in Md. Rule 14-211, which require the court to make an initial determination as to whether the court should deny the motion or hold a hearing." Md. Rule 14-211(b); *North v. North*, 102 Md. App. 1, 13-14 (1994). Particularly, the rule provides:

> (1) *Denial of Motion*. The court shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion:
>
> (A) was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule;[7]

[7] **(a) Motion to Stay and Dismiss**

(2) Time for Filing.

(A) Owner-Occupied Residential Property. In an action to foreclose a lien on owner-occupied residential property, a motion by a borrower to stay the sale and dismiss the action shall be filed no later than 15 days after the last to occur of:

(i) the date the final loss mitigation affidavit is filed;

(ii) the date a motion to strike postfile mediation is granted; or

(iii) if postfile mediation was requested and the request was not stricken, the first to occur of:

(a) the date the postfile mediation was held;

(b) the date the Office of Administrative Hearings files with the court a report stating that no postfile mediation was held; or

(B) does not substantially comply with the requirements of this Rule; or
(C) does not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action.

Md. Rule 14-211(b)(1). If the court determines that the motion was timely filed and complies with the requirements of the Rule, it must conduct a hearing. After a hearing on the merits of such a motion, the court may dismiss the foreclosure action if it finds "that the lien or the lien instrument is invalid or that the plaintiff has no right to foreclosure in the pending action." Maryland Rule 14-211(e)[8]; *Id.* at 444.

In the instance that the party challenges a foreclosure after the property has been sold, the clerk must publish a notice identifying the property and state that the sale will be ratified unless "cause to the contrary" is shown within 30 days of the notice. Maryland Rule 14-211(e); *Id*. at 444. During that time, the clerk must publish a notice identifying the property and stating that the sale will be ratified unless "cause to the contrary" is shown within 30 days of the date of notice. Maryland Rule 14-305(d). *Id*. at 444. The rule provides that the court must ratify the sale if (1) no exceptions are filed within the 30-day period or

(c) the expiration of 60 days after transmittal of the borrower's request for postfile mediation or, if the Office of Administrative Hearings extended the time to complete the postfile mediation, the expiration of the period of the extension.

[8] That rule states, in pertinent part:
(e) Final determination. After the hearing on the merits, if the court finds that the moving party has established that the lien or the lien instrument is invalid or that the plaintiff has no right to foreclose in the pending action, it shall grant the motion and, unless it finds good cause to the contrary, dismiss the foreclosure action. If the court finds otherwise, it shall deny the motion.

any that were made have been overruled and (2) the court is satisfied that "the sale was fairly and properly made." Maryland Rule 14-305(e); *Id.* at 444. However, if the court does not find that the foreclosure sale was "fairly and properly made," the court may issue an "appropriate" order. *Id.* Maryland Rule 14-305 provides the procedures a party may take after the sale of a foreclosed property, but before the property sale is ratified. Md. Rule 14-305(b).

In this case, Appellant filed the petition on December 16, 2020. Appellee filed their response on December 21, 2020, and sold the property via auction on December 21, 2020. On January 8, 2021, the circuit court denied the petition on the grounds that it was moot, because the property was already sold by that time. On its face, the circuit court did not abuse its discretion in denying the Petition for Emergency Temporary Restraining Order and Preliminary Injunctive Relief because by the time the circuit court received the request, the property was already sold, and as such, the matter was moot. The circuit court could not decide on a matter that was no longer an issue. Appellate courts do not decide academic or moot questions. *Attorney General v. Anne Arundel Cnty. Sch. Bus. Contractors Ass'n, Inc.*, 286 Md. 324, 327 (1979). A moot question is one where, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide. *Id.* While a court may decide a moot question where there is an imperative and manifest urgency to establish a rule of future conduct in matters of important public concern, in instances where this is not the case, courts generally do not decide moot questions. *Id.* at 328.

Nonetheless, despite the circuit court denying Appellant's petition due to mootness, the Appellant did not provide this Court with any legal authority to explain how the circuit court may have erred in denying the request for injunctive relief and motion to dismiss. Appellant did not mention nor discuss the court's non-compliance with this statute or explain how the circuit court erred in denying Appellant's request for injunctive relief and dismissal. Appellant merely states that Appellee did not comply with the necessary foreclosure laws. This leaves this court without guidance in determining exactly how the circuit court erred in denying such requests.

According to the record, the circuit court denied Appellant's motion to dismiss, which Appellant raised pursuant to Md. Rule 2-322(b)(2).[9] The circuit court included in the order that Appellant's motion to dismiss was "DENIED on the grounds that the rule could not be employed to dismiss a mortgage foreclosure action." Nonetheless, Appellant did not include in their brief to this Court whether the circuit court erred in denying their motion to dismiss because the circuit court's reasoning is inapplicable, nor did Appellant include any application of Md. Rule 14-211 in their reasoning. Specifically, Appellant failed to include Md. Rule 14-211(b)(1) as legal authority or provide any analysis to establish how or why the circuit court erred in denying the motion.

Furthermore, as seen in *Thomas v. Nadel*, the borrower also defaulted on payments, leading to the Trustees initiating a foreclosure process and ultimate sale of the property.

[9] **(b) Permissive.** The Following defenses may be made by motion to dismiss filed before the answer, if an answer is required: (2) failure to state a claim upon which relief can be granted. Md. Rule 2-322(b)(2).

However, there, appellants filed post-sale exceptions in the circuit court prior to the property being ratified, pursuant to Maryland Rule 14-305. Here, Appellants did not mention any post-sale legal authority nor attempt to file any post-sale exceptions in the circuit court to contest the foreclosure. Accordingly, Appellant did not provide enough facts or law to support his argument that the circuit court erred in denying their request for injunctive relief and the motion to dismiss. This Court holds that the circuit court rightfully denied Appellant's request for injunctive relief because Appellant's request was moot by the time the circuit court was able to review the matter. As seen in *Thomas v. Nadel*, Appellant had the opportunity to file a post-sale exception, pursuant to Md. Rule 14-305, but did not do so. *Thomas v. Nadel*, 427 Md. 441, 448 (2012) As such, the circuit court did not err in denying the request for injunctive relief. Furthermore, Appellant did not provide any legal authority or analysis to refute the circuit court's order denying Appellant's motion to dismiss due on the grounds that Md. Rule 2-322(b)(2) cannot be employed to dismiss a foreclosure action. Therefore, the circuit court did not err in denying Appellant's motion to dismiss.

We acknowledge that Appellant mentions that the circuit court erred in denying Appellant injunctive relief "to prevent continued harm against Appellant" and cites three factors from *Scott v. Seek Lane Venture*, 91 Md. App. 668, 694 (1992). Particularly, Appellant cites that "[t]he appropriateness of granting an interlocutory injunction is determined by examining four factors: (1) the likelihood that the plaintiff will succeed on the merits; (2) the "balance of convenience" determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3)

whether the plaintiff will suffer irreparable injury unless the injunction is granted (this factor must also be evaluated within the basic context of the balance-of-hardship test); and (4) the public interest." *Id. at* 694. However, Appellant solely lists these factors and does not apply them to support his argument of why he believes the circuit court erred in granting injunctive relief. Again, this leaves this court battling the shadows and reaching for air to understand how Appellant believes the circuit court erred. Furthermore, these factors do not apply because by the time the circuit court was able to review the matter, the matter was moot, as the property had already been sold. Even still, Appellant could have raised one of the sale exceptions provided in Maryland Rule 14-305(e) but did not do so.

Statute of Limitations

Appellant contends that the statute of limitations has passed for Appellee to conduct foreclosure actions. Specifically, Appellant contends that foreclosure proceedings must be filed within three years. Alternatively, Appellee contends that pursuant to *Daughtry v. Nadel*, 248 Md. App. 594, 617 (2020), there is no statute of limitations requirements in foreclosure proceedings.

In *Daughtry v. Nadel*, the Trustees conducted foreclosure action on a property nearly six and a half years after the borrower defaulted on their loan payment. *Daughtry v. Nadel*, 248 Md. App. at 201. This Court held that the three-year statute of limitations provision listed in Section 5-101 of the Courts and Judicial Proceedings Article (Repl. 2020) does not apply to foreclosure mortgages. *Id.* at 599. Relying on *Huertas v. Ward*, this Court reasoned that "[f]oreclosure cases do not neatly fit the ordinary model of civil litigation[.]" *Huertas v. Ward*, 248 Md. App. 187, 201 (2020); *Daughtry*, 248 Md. App. at

601. "A foreclosure action under a power of sale 'is intended to be a summary, in rem proceeding,'" the "primary object of [which] is to determine the rights of all persons as to their interest in the subject property." *Id.* Citing *Cunningham v. Davidoff*, 188 Md. 437, 440 (1947), the *Daughtry* court highlighted that "[t]here is no Statute of Limitations in Maryland applicable to foreclosure of mortgages" because mortgage foreclosure is an equitable remedy. *Cunningham v. Davidoff*, 188 Md. 437, 440 (1947); *Daughtry*, 248 Md. App. at 603. However, the *Cunningham* Court concluded that mortgages were subject to the presumption of payment applicable to actions at law, analogous to equity, if the "mortgage is over twenty years old" and the borrower has not provided any payment of principal or interest during that time. *Cunningham v. Davidoff*, 188 Md. 437, 440 (1947); *Daughtry*, 248 Md. App. at 604. Nonetheless, even this exception could be overcome or rebutted if "there is no legal obstacle to the foreclosure of such mortgage." *Cunningham v. Davidoff*, 188 Md. 437, 442-43 (1947); *Daughtry*, 248 Md. App. at 604.

This Court agrees with Appellee's argument that there is no statute of limitations for foreclosure proceedings. Accordingly, Appellee may conduct foreclosure proceedings for the matter at hand. Appellant does not qualify for any *Cunningham* exception here because it has not been over twenty years since Appellant made their last payment of principal or interest to the property at hand. According to the Appellee's filing, Appellant was in default as of September 2, 2019, which is well below a potential twenty-year exception period. Therefore, there is no statute of limitations issue.

Order to Docket – Foreclosure Laws

Appellant contends that Appellee failed to satisfy the necessary order to docket

requirements for foreclosure proceedings, and as such, should not have been able to proceed in circuit court. Specifically, Appellant contends that Appellee should have completed the necessary order to docket requirements for a residential property. In contrast, Appellee contends that Appellant misstates and misapplies many aspects of Maryland's order to docket law. Specifically, Appellee states that Appellant should not include order to docket law arguments and analysis for residential property, such as sending a written notice of intent or providing an offer to mediate, when the property in question does not constitute residential property, according to the statute itself. We address each argument in turn.

According to Md. Code, Real Property Section 7-105.1(c)(1), "before the filing of an action to foreclose a mortgage or deed of trust on a residential property, the secured party shall send a written notice of intent to foreclose the mortgagor or grantor and the record owner."

Here, as we have addressed above, the property in question does not constitute as residential property because Appellant did not classify the property as such during the circuit court proceeding. Therefore, Appellant is not afforded the protections under this statute. This Court agrees that Appellee did not need to send Appellant a written notice of intent, nor provide an offer to mediate because the property in question is not residential.

Next, Appellant contends that Appellee failed to abide by the order to docket Default Affidavit requirements under Md. Real Property Section 7-105(e)(1)(ii) because the date listed within the affidavit is not accurate since it does not correspond with the default date included on a different affidavit submitted to the circuit court for a separate

matter. Particularly, the statute also provides that, "an order to docket or a complaint to foreclose a mortgage or deed of trust on a residential property shall include an affidavit stating the date on which the default occurred and the nature of the default; and if applicable, that a notice was sent; and at the time the notice was sent, and that the contents of the notice of intent to foreclose were accurate." Md. Code Real Prop. Section 7-105.1(e)(1)(ii).

This Court agrees with Appellee that this statute does not apply because the property in question does not constitute residential property. Therefore, Appellee was not required to file this affidavit because this is a non-residential foreclosure proceeding. As such, the circuit court's decision to continue to move forward with this matter, irrespective of the alleged date conflict listed on an inapplicable affidavit submitted to the circuit court for a separate case, does not demonstrate an abuse of discretion, particularly when the statute does not require such an affidavit to begin with. [10]

Appellant further contends that Appellee failed to abide by Title 14 of Maryland's Rules**.** Specifically, Appellant contends that Appellee failed to provide the necessary exhibit requirements outlined in Md. Rule 14-207(b)(8). Title 14 of the Maryland Rules of Procedure, titled 'Sales of Property,' establishes foreclosure practices and procedures. *Zorzit v. 915 W. 36th St., LLC*, 197 Md. App. 91, 98 (2011). Foreclosure proceedings are initiated by filing documents to describe "the debt owed, the rights of the party seeking to

[10] Appellant compares the default date on the affidavit submitted to the Appellate Court of Maryland to a differing default date on an affidavit submitted to Harford County for a separate case, A&P LLC v. KAJ Enterprises INC., *et. al*. Due to venue issues, this case was moved to Baltimore City.

foreclose and notice to the debtor. Md. Rule 14-207; *see also Pulliam v. Dyck-O'Neal, Inc.*, 243 Md. App. 134, 143 (2019). Particularly, the rule provides:

> **(b) Exhibits.** Except as provided in section (c) of this Rule, a complaint or order to docket shall include or be accompanied by: . . . (b) in an action to foreclose a lien instrument on residential property, to the extent not produced in response to subsections (b)(1) through (b)(7) of this Rule, the information and items required by Code, Real Property Article, § 7-105.1(e), except that (A) if the name and license number of the mortgage originator and mortgage lender is not required in the notice of intent to foreclose, the information is not required in the order to docket or complaint to foreclose; and (B) if the mortgage loan is owned, securitized, insured, or guaranteed by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Federal Housing Administration, or if the servicing agent is participating in the federal Making Home Affordable Modification Program (also known as "HAMP"), providing documentation as required by those programs satisfies the requirement to provide a description of the eligibility requirement for the applicable loss mitigation program.

Md. Rule 14-207(b)(8).

Ordinarily, under Maryland Rule 8-131(a), "an appellate court will not decide any issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule. 8-131(a). Here, Appellant did not raise the issue of Appellee allegedly violating the rule during the circuit court proceeding, and as such we are not obligated to address this issue. Nonetheless, although Title 14 highlights Maryland's foreclosure process, we do not agree with Appellant's analysis. Maryland Rule 14-207(b)(8), which refers to Real Property Article, § 7-105.1(e), controls how a party should provide notice to another party during a residential foreclosure procedure. However, there is no language in either section that references non-residential property, such as the property in the matter at hand, and thus,

this is inapplicable.

Further, Appellant contends that Appellee failed to comply with Md. Rule § 14-207(b)(1) because Appellant did not provide the most recent and accurately recorded copy of the Deed of Trust recorded among the Land Records of Baltimore City. Appellant notes that "[t]he Deed of Trust that was recorded among the Land records in 2007 was assigned to Ari Mossovitz as the "Sole Trustee" and Lexington National Insurance Corporation as the Lender." In contrast, Appellee states that "it is unclear what the alleged violation is" under Md. Rule 14-207(b)(1) because they filed the Deed of Trust alongside the Order to Docket when they filed the proceeding. Furthermore, Appellee states that "[i]n section 8.02, the Deed of Trust allows for the substitution of trustees in order to pursue the foreclosure. The Substitution of Trustee properly occurred in this matter and a document was properly recorded in the Land Records of Baltimore City signifying this fact."

Maryland Rule § 14-207(b)(1) provides: "(b) Exhibits. Except as provided in section (c) of this Rule, a complaint or order to docket shall include or be accompanied by: (1) a copy of the lien instrument supported by an affidavit that it is a true and accurate copy, or, in an action to foreclose a statutory lien, a copy of a notice of the existence of a lien supported by an affidavit that is a true and accurate copy." Md. Rule 14-207(b)(1).

We also are confused by what exactly Appellant is contesting. As evidenced by the record, Appellee satisfied the rule by submitting a copy of the lien instrument, formally addressed as the Deed of Trust, and supported by an affidavit. Furthermore, section 8.02 of the Deed of Trust allows the beneficiary to "appoint a new or replacement or substitute Trustee" and "[s]uch power may be exercised at any time without notice without cause and

without specifying any reason therefor[e], by filing for record in the office where the Deed of Trust is recorded a Deed of Appointment." Therefore, Appellee had the authority to appoint substitute Trustees. According to the record, on November 2, 2020, Appellee appointed substitute Trustees and then notified Baltimore City about it. As such, Appellee satisfied Md. Rule 14-207(b)(1)'s requirements.

Additionally, Appellant contends that Appellee violated Md. Rule 14-207(b)(3) because "Appellee obtained a copy of the Term Note and has created two different copies of the Term Note, neither with an endorsement from the trustees or grantors or a notarization and has submitted an altered copy" to the circuit court. In contrast, Appellee states that they are unsure what exact issue Appellant has with the Term Note because although the Term Note was altered by an allonge and twice modified, each of the documents were properly filed and signed.

Maryland Rule 14-207(b)(3) provides: "**(b) Exhibits.** Except as provided in section (c) of this Rule, a complaint or order to docket shall include or be accompanied by: (3) a copy of any separate note or other debt instrument supported by an affidavit that it is a true and accurate copy and certifying ownership of the debt instrument." Md. Rule 14-207(b)(3). After looking through the record, this Court shares the same confusion as to why Appellant has concerns about the Term Note. Here, Appellee provides a copy of the Term Note, and with each of its modifications. Also, each document contains multiple endorsements, and they do not differ from one another. Further, as instructed by the rule, Appellee provides an affidavit to support the debt instructed, as seen in the record. Therefore, Appellee satisfied the Md. Rule 14-207(b)(3)'s requirements. As such,

Appellant did not provide a reasonable concern for this Court to evaluate regarding this rule or to provide this Court with pause.

Next, Appellant contends that Appellee failed to abide by Md. Code, R.P., Section 7-105.1(e)(2)(ii) and Rule 14-207(b)(2). Appellant contends that Appellee failed to abide by Md. Code, R.P., Section 7-105.1(e)(2)(ii) because Appellant merely listed an alleged outstanding balance and fees as opposed to what the statute requires for a party to provide alongside their order to docket. Md. Code, R.P. Section 7-105(e)(2)(ii) provides that: (e) An order to docket or a complaint to foreclose a mortgage or deed of trust on residential property shall: (2) Be accompanied by: (ii) A statement of the debt remaining due and payable supported by an affidavit of the plaintiff or the secured party or the agent or attorney of the plaintiff of secured party. This statute pertains to residential property, which we have established that this property is not. Therefore, this statute does not apply to the matter at hand.

Additionally, Appellant contends that Appellee failed to abide by Md. Rule 14-207 (b)(2) because "the debt instrument [Appellee] submitted to the lower court matured February 1, 2012; and the affidavit submitted giving rights to foreclosure was created by Appellee and his client, . . . which does not give Appellee a right to foreclose." Maryland Rule 14-207(b)(2) provides: "(b) **Exhibits.** Except as provided in section (c) of this Rule, a complaint or order to docket shall include or be accompanied by: (2) an affidavit by the secured party, the plaintiff, or the agent or attorney of either that the plaintiff has the right to foreclose and a statement of the debt remaining due and payable." Md. Rule 14-207(b)(2).

Here, Appellant did not raise the contention that Appellee failed to abide by Md. Rule 14-207(b)(2) in his petition for emergency temporary restraining order and preliminary injunctive relief submitted to the circuit court. Pursuant to Maryland Rule 8-131(a), "Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." *Granados v. Nadel*, 220 Md. App. 482, 499 (2014); Md. Rule 8-131(a). As such, this Court does not need to address matters that were not raised in lower court. [11]

Furthermore, Appellant contends that Appellee asserts they complied with Md. Rule 14-207(b)(4) but failed to do so because the Term Note Appellee submitted with their order to docket was not sufficient. Specifically, Appellant contends that "the deed of trust only has the lifespan of the accompanying Term Note and it is assigned solely to Ari Mossovitz, a nonparty to the action." Md. Rule 14-207(b)(4) provides that: "**(b) Exhibits.** Except as provided in section (c) of this Rule, a complaint or order to docket shall include or be

[11] Nonetheless, according to the record, Appellee submitted an affidavit of Compliance with Md. Rule 14-207(b)(2), which provides a statement of indebtedness. The rule provides that the order to docket should include or be accompanied by "an affidavit by the secured party, the plaintiff, *or* the agent or attorney of either that the plaintiff has the right to foreclose and a statement of the debt remaining due and payable." Appellee satisfies these requirements because they constitute as the secured party. Md. Rule 14-202 defines secured party as "any person who has an interest in the property secured by a lien or any assignee or successor in interest to that person," which includes a mortgagee. Md. Rule 14-202(s)(1). Appellee constitutes a mortgagee. Therefore, Appellee submitted an order to docket alongside an affidavit by a secured party that also included a statement of Appellant's remaining debt. Thus, Appellee satisfied Md. Rule 14-207(b)(2).

accompanied by a copy of an assignment of the lien instrument for purposes of foreclosure or deed of appointment of a substitute trustee supported by an affidavit that it is true and accurate copy of the assignment or deed appointment." Md. Rule 14-207(b)(4). Here, we have already addressed in this opinion under Appellant's Md. Rule 14-207(b)(3) arguments that Appellee provided a proper copy of the Term Note, alongside each of its modifications, as seen in the record. Thus, Appellant's improper deed of trust due to an improper Term Note argument does not apply here. What is more, Appellant contends that Appellee does not include the Trustee as a party in the matter, which is not the case. As we have already addressed in this opinion, the deed of trust in this matter allows the beneficiary to "appoint a new or replacement substitute trustee" and "such power may be exercised at any time." Appellee then appointed substitute trustees and reported such to the necessary parties, including the circuit court. Particularly, page one of the deed of trust, under the "Definition, Rules of Construction" section, it addresses the lender as "the Lender and its successor and assigns," which further addresses this concern. Thus, Appellant's argument that the Appellee did not include the proper trustees or party to the action is improper and rejected.

Appellant additionally contends that Appellee failed to inquire about Appellant's military status before submitting a Non-Military Status Affidavit pursuant to Md. Code Real Property Section 7-105.1(e)(2)(v) and Md. Rule 14-207(b)(5). In response, Appellee contends that Appellant's Non-Military Affidavit applies here because "the Defendant in this matter is not a natural person, and as a result cannot be serving in the United States Armed Forces." Appellee further states that "[t]here has never been an allegation that the Appellant, or any of its principals, are in fact members of the United States Armed Forces.

In addition, a concern is raised that a Non-Military Affidavit should be prepared for any occupants of the Property. This Property is an adult entertainment club and is zoned commercial. This is not residential property." Appellee further contends that the Affidavit does not require a party to see if the commercial property in question has any secret residents or for them to search the Department of Defense's database to confirm if any secret residents are members of the military.

Md. Code Real Property Section 7-105.1(e)(2)(v) provides that: (e) an order to docket or a complaint to foreclose a mortgage or deed of trust on residential property shall: (2) Be accompanied by: (v) if any defendant is an individual, an affidavit that is in compliance with § 521 of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq." Md. Code Real Property Section 7-105.1(e)(2)(v). Similarly, Md. Rule 14-207(b)(5) states: "**(b) Exhibits.** Except as provided in section (c) of this Rule, a complaint or order to docket shall include or be accompanied by: (5) with respect to any defendant who is an individual, an affidavit in compliance with § 521 of the Servicemembers Civil Relief Act, 50 U.S.C. app. § 501 et seq." Md. Rule 14-207(b)(5). According to the Office of the Comptroller of the Currency, the Servicemembers' Civil Relief Act (SCRA) "postpones or suspends certain civil obligations to enable service members to devote their full attention to duty and relieve stress on their families." [12] 50 U.S.C. app. § 501 et seq. The Act covers

[12] Service Members' Civil Relief Act, Office of the Comptroller of the Currency, https://www.occ.treas.gov/topics/consumers-and-communities/consumer-protection/servicemembers-civil-relief-act/index-servicemembers-civil-relief-act.html#:~:text=The%20Servicemembers'%20Civil%20Relief%20Act,relieve%20stress

all active-duty, uniformed service members, reservists, and members of the National Guard while on duty, pertaining to outstanding credit card debt; mortgage payments; pending trials; taxes; lease terminations; housing evictions; and life insurance protection. [13] 50 U.S.C. app. § 511.

Here, as Appellee characterized, Appellant constitutes as a business and the matter at hand pertains to commercial property. As such, Appellant does not constitute "a member of the uniformed services" under § 511, Sec. 101(1) of the Servicemembers' Civil Relief Act, and nor does Appellant constitute as an individual under Md. Code Real Property Section 7-105.1(e)(2)(v) and Md. Rule 14-207(b)(5). Therefore, Appellee did not need to submit affidavits under these rules because they are inapplicable. However, this submission does not harm the overall arguments at hand.

Finally, Appellant contends that Appellee failed to submit an affidavit in their order to docket "that service was rendered on or attempted to be rendered on Appellant or the grantors." However, as we have addressed multiple times throughout this opinion, this matter pertains to commercial property, and not residential property. Therefore, residential property provisions and rules, such as providing service in foreclosure matters, does not apply.

The Bond

Appellant contends that Appellee did not satisfy the bond requirements under Md.

%20on%20their%20families.&text=The%20SCRA%20covers%20all%20active,Guard%20while%20on%20active%20duty (last visited: May 4, 2023).

[13] *See* footnote 13.

Rule 14-213 because the bond submitted referenced the incorrect jurisdiction. Appellant contends that Appellee submitted an incorrectly filed bond because the bond referenced Cecil County, an incorrect jurisdiction, not Baltimore City. Appellee replies that Appellant raised issue with the bond in Appellant's pre-filing motion. They responded to the bond issue by contacting the bond company and filing a corrected, replacement bond. Appellee contends that because they replaced and corrected the bond to list the accurate county and because the court approved and notated the bond under Md. Rule 1-402, that this no longer an issue. We agree. Specifically, Appellee contends that "[i]t is the Clerk's obligation to ensure the validity of the Bond, and the Appellant has no standing to challenge it."

Md. Rule 14-213 provides, in relevant part, that "[b]efore selling property subject to a lien, the individual authorized to make the sale shall file a bond to the State of Maryland conditioned upon compliance with any court order that may be entered in relation to the sale of the property or distribution of the proceeds of the sale." Md. Rule 14-213. Additionally, Maryland Rule 1-402(b) provides: "**(b) Approval.** Except as provided in this section, a bond is subject to approval by the clerk as to form, amount, and surety. If the clerk refuses to approve the bond, if an adverse party objects in writing to the bond, or if a rule requires that the court approve the bond, the bond is subject to approval by the court, after notice and an opportunity for any hearing the court may direct." Md. Rule 1-402(b).

Here, we concur with Appellee's argument. Appellee made the necessary jurisdictional changes, listing Baltimore City on the bond, after Appellant raised the issue during the pre-filing motions. The record indicates the court's clerk approved the bond on December 2, 2020. As such, the circuit court rightfully accepted the bond to institute the

foreclosure action. Because this issue was raised with the pre-sale motion it was raised by the Appellant, heard by the court and decided upon.

Sale

Appellant's sale contentions will not detain us long. Appellant raises various challenges to the foreclosure sale, however, many lack merit or have been addressed earlier in the opinion, as this is not a residential property.

First, Appellant contends that Appellee failed to "inform the Appellant or any other parties baring an interest in the properties." And as such, the Court should not have allowed the foreclosure proceeding to continue due to the lack of notice. Specifically, Appellant states:

> Although the lower court did not rule on the Appellant's petition and motion immediately or stay the sale until the petition and/or motion could be properly previewed and responded to, the Court allowed the foreclosure auction to proceed.

However, as we have addressed many times in this opinion, the property in question is not residential property, and thus service is not necessary because the residential service requirements are not essential for this commercial property. Therefore, the circuit court did not err in allowing the foreclosure to proceed, irrespective of lack of notice. Also, the Appellee made adequate attempts to serve the Appellant, meeting all the due process standards.

Next, Appellant contends that the circuit court should not have permitted the foreclosure sale because:

> Appellee utilized a clerk issued confessed judg[e]ment to confiscate the Liquor License and Adult Entertainment licenses used to operate the lounge

> located at 4100 East Lombard Street. The Court hearing the confessed judgment action, vacated and voided the confession of judg[e]ment prior to the foreclosure auction, meaning that any acts committed with the confessed judg[e]ment is undone upon ordering it's ruling and both licenses should have been returned, but they were sold in the foreclosure auction instead.

In response, among other things, Appellee states that:

> The liquor license is not part of the case at bar. To the extent there is any argument concerning the liquor license, it should not be heard because this is not the proper forum.

This Court concurs with Appellee's contention that this is not the proper forum for Appellant's liquor license contentions, as this case focuses on the commercial property at hand. However, neither party offered any law or authority to support their position, leaving the court in the position of having to research the law and rules governing this case on behalf of the parties and combing through the record. This is what we found. Maryland Code, Alcoholic Beverages Section 4-212, provides that: "a license issued by a local licensing board: (1) is not property and does not confer property rights; and (2) is subject to: (i) suspension, revocation, and restrictions authorized by law; and (iii) regulations authorized under this article." Md. Al Bev § 4-212. Maryland Code, Alcoholic Beverages, Section 4-302 also provides that: "(a) Subject to subsection (b) of this section, a license holder or a receiver or trustee for the benefit of the creditors may: (1) transfer the license holder's place of business to some other location; or (2) transfer the license and the license holder's inventory to another person. Md. Al. Bev. § 4-302." [14]

[14] Subsection (b) of the rule further provides the conditions of transfer. Particularly, the rule provides: (b) A transfer under subsection (a) of this section may be made if: (1) an application for the transfer has been made; (2) all sales and use, amusement, admission,

Both statutes here support Appellee's contention that the liquor license is not a part of the case at bar. This is a foreclosure matter and not a licensing matter. Appellant contends that the circuit court should not have permitted the sale of the property because of a liquor licensing issue. However, as Md. Al Bev § 4-212 outlines, a liquor license is not property. Furthermore, Md. Al. Bev. § 4-302 provides that a trustee may transfer a liquor license from one location to another so long as certain conditions are met. Appellant did not provide this Court with this statute to analyze nor did Appellant provide specific evidence to state that Appellee did not satisfy the conditions under Md. Al. Bev. § 4-302(b). Appellant instead provided this Court with two letters addressed to the Baltimore City Liquor Board and a copy of the liquor license suspension notice. Furthermore, Appellant did not provide a copy of the clerk-issued confessed judgment to Appellee allegedly used to "confiscate" the liquor license to support their argument. Nonetheless, Appellant's liquor license contentions exceed the scope of the property sale dispute at hand because a liquor license is not equated to the property, but also, because Appellant did not provide the law and evidence necessary to support this argument.

Next, Appellant contends that:

> The affidavit reporting the named purchaser of the property was prepared and notarized by the auctioneer, Daniel M. Billing, *(E. 89)*. The notarized statement certifies that on the 21st day of November, 2020, that a an unreadable name, which may state Louise Contrell, resident agent for XXX

and withholding taxes have been paid to the Comptroller; (3) a bulk transfer permit has been obtained if the inventory of alcoholic beverages is to be transferred: (i) in any manner, including by sale, gift, inheritance, and assignment; and (ii) regardless of whether the consideration is paid; and (4) the local licensing board approves the new location of license holder in the same way the local licensing board approves the insurance of a license. MD. Al. Bev. § 4-302(b).

> E. Lombard, LLC purchased 4100 East Lombard Street. The signature of the purchaser is ineligible, and the purchaser never provided his name in the printed form for clarification purposes.
>
> Oddly, XXX E. Lombard, LLC was not formed and registered with the State of Maryland until December 22, 2020, a day after the sale occurred, *(E. 92)*. The resident agent is listed as Marshall Rief, the authorized person is Paul Nochumowitx, and the companies address is 151 North Highland Avenue, same as A&P, LLC. The company could not have purchased the property before it existed.
>
> The information reported to the lower court was incorrect if not deceitful. The Appellee represents Paul Nochumowitz through A&P , LLC, an unlicensed debt-collection company, *(E.95)*. Therefore, the Appellee hosted a foreclosure auction to create an illusion that a sale had been commenced, then created a shell company to allege a purchaser, then submitted false information about the alleged purchaser.
>
> The Appellee then submitted a consent affidavit to allow another shell company falsely created to further place deceit on the lower court and for the Appellee to gain ownership of the properties. The substitute purchaser, FSMX, LLC was created, formed, and registered on February 16, 2021, a couple of weeks prior to the Appellee filing the consent to the substitute purchaser, *(Add. 15)*. FSMX, LLC submitted false information to the Maryland Department of Taxation and Assessment, alleging that it's principal address is at 4100 East Lombard Street Baltimore, Maryland to falsely become an entity existing in Maryland.

Many of Appellant's contentions are merely assertions that are just being raised here in this Court, as opposed to actual contentions raised in the circuit court in Appellant's petition for Emergency Restraining Order and Preliminary Injunctive Relief. As such, pursuant to Maryland Rule 8-131(a), this Court cannot decide on these assertions because none of which were raised in or decided by the trial court for this matter.

Furthermore, Appellant contends that Appellee failed to abide by the COMAR 09.03.12.08 provisions. Appellee contends that because this case was properly docketed as

a non-residential foreclosure case, and that this provision is limited to residential properties, that Appellant's application of the statute is incorrect. We agree. As Appellant highlights, "COMAR 09.03.12.08 provides detailed instructions pertaining to the notice of the foreclosure requirements and the preliminary loss mitigation obligations." However, the provision includes requirements under Real Property Article, Section 7-105.1, which solely applies to residential property. Therefore, the cited sections of COMAR do not apply, because this is not a residential property dispute. Appellant did not raise this contention within their petition for emergency temporary restraining order and preliminary injunctive relief in the trial court.

V. Did the circuit court err in the ratification of the sale?

Appellant contends that the circuit court erred in the ratification of the sale and lists the contentions raised throughout its brief. Specifically, Appellant contends that the circuit court erred

> Due to the deliberate lack of service of the foreclosure action, lack of notice of the sale being commenced prior to hosting the auction, failure to put the court on notice of the foreclosure of the Adult and Liquor License, which was not property of the Appellant, failure to possess a legitimate copy of the matured Term Note, tolling of the statute of limitations, failure to have the recorded trustee commence the foreclosure action and auction, failure to supply the court with the proper affidavits, submitting a power of attorney to place a bond on the foreclosure using an expired notarization which the lower court having full knowledge of through the motions and communication submitted to the lower court was clear err on the lower Court's part to ratify the same. The judgement of the lower court should be reversed and the foreclosure action should be dismissed.

This is a catchall articulation of a number of previously argued contentions. However, we as a Court have addressed these concerns throughout the opinion in detail. In the absence

of arguments and evidence supporting its contentions, and in the absence of Appellant conducting the steps to amend or contest the ratification of the sale, the circuit court did not err in the ratification of the sale.[15]

CONCLUSION

Accordingly, we hold that the circuit court did not err in allowing the foreclosure to proceed without service provided to Appellant because service is not required for non-residential properties. We hold that the circuit court did not err in denying requests for injunctive relief and motion to dismiss because the matter was moot by the time the circuit court addressed the motions. Additionally, Appellee complied with the applicable foreclosure provisions. Furthermore, we hold that the circuit court did not err in the ratification of the sale for the reasons discussed above. Therefore, we affirm the circuit court's actions.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY THE APPELLANT

[15] Appellant could have "filed a motion to alter or amend the ratification of sale" following the circuit court's judgment, pursuant to Maryland Rule 2-535. *Jones v. Rosenberg*, 178 Md. App. 54, 63-64 (2008). However, Appellant did not contest the circuit court's sale ratification within the general 30-day period after the entry of judgment. Md. Rule 2-535(a).