

Circuit Court for Prince George's County
Case No.: C-16-CV-23-003152

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 690

September Term, 2024

OMID LAND GROUP, LLC

v.

STEPHEN B. JACKSON, ET AL.

Berger,
Leahy,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: May 8, 2025

*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).

Omid Land Group, LLC (“Omid”), appellant, purchased a property at a foreclosure sale. After the sale was ratified by the Circuit Court for Prince George’s County (“circuit court”) and Omid settled on the property, it moved for payment of a claim from the surplus proceeds to account for the reasonable rental value of the property from the date of sale until the date it obtained possession and for the cost to repair the alleged damage to the property caused in the interim by the occupant. After the auditor’s report was ratified, the circuit court denied the motion.

Steven Henne and Stephen Jackson, substitute trustees, and Sandra Spencer, personal representative for the Estate of Vera Mae Burney, the mortgagor, are the appellees. They did not file briefs in this Court.

On appeal, Omid asks three questions,¹ which we combine and rephrase as one:

¹ The questions as posed by Omid are:

- I. Whether a foreclosure purchaser, like Appellant, Omid Land Group, LLC, who has entered an appearance, and made filings in the case, is required to file a motion to intervene to have a petition for surplus proceeds considered?
- II. Whether a foreclosure purchaser, like Appellant, Omid Land Group, LLC, is required to file a motion to intervene in a foreclosure case, despite there being no such requirement in the relevant rules, statutes, or case law?
- III. Whether the trial court erred by denying a motion for surplus proceeds which required a court to make an equitable distribution without stating grounds for its decision and/or expressing an exercise of discretion in the denial of the motion?

- I. Whether the circuit court erred or abused its discretion by denying Omid’s motion for payment of claim from surplus proceeds?

For the following reasons, we answer that question, “No,” and affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

On July 11, 2023, the substitute trustees filed an order to docket a foreclosure proceeding for the property located at 4309 30th Street, Mount Rainier, Maryland 20712 (“the Property”). The Property had been owned by Vera Burney, who died on November 18, 2021.

On October 6, 2023, the Property was sold at auction to Omid for \$271,000. On December 1, 2023, counsel for Omid entered his appearance in the action.

The sale was ratified five days later. Thereafter, the court referred the matter to the auditor. That same day, Omid, through counsel, moved for a judgment awarding possession. It alleged that on the date of the foreclosure sale, an agent of Omid went to the Property and met with the occupant, Ms. Burney’s son. Six days after the sale, Omid sent Ms. Spencer and the occupant a notice to quit or vacate, advised them that the fair market rental value of the Property was \$2,450 per month or \$81.67 per day, and asked them for proof, if any, that the occupant of the Property was a bona fide tenant.

On December 29, 2023, the circuit court denied the motion for judgment awarding possession because the record did not reflect that the occupant of the Property had been served in compliance with Maryland Rule 14-102(d).²

Five days later, a process server filed an affidavit averring that he made two unsuccessful attempts to personally serve the occupant of the Property and subsequently, on December 11 and December 12, 2023, posted and mailed the documents as required by Maryland Rule 14-102(d). Thereafter, Omid declined to renew its motion for the judgment awarding possession.

On February 1, 2024, Omid went to settlement and received the deed to the Property.³ That same day, the substitute trustees filed a suggested audit, showing a surplus of \$120,042.68.

On February 22, 2024, Omid filed its “Motion for Payment of Claim from Surplus Proceeds” under Maryland Rule 14-216(a). It alleged that it had served the occupant with the notice to quit on October 12, 2023, but that he continued to occupy the Property and had “created waste on the inside and outside of the house.” It sought \$13,230.54 as the

² Maryland Rule 14-102(d) provides that a motion for judgment awarding possession shall be served on the person in actual possession of the property and that if the person in possession was neither a party to the action or a party to the deed of trust it shall be served by personal delivery or, if that is unsuccessful, by certified mail, first class mail, and posting. Md. Rule 14-102(d).

³ A week after settling on the Property, Omid filed a wrongful detainer action in the District Court of Maryland sitting in Prince George’s County, Case No. D-05-CV-24-011054. It attached to its complaint a copy of the Deed and the October 12, 2023, Notice to Quit and Vacate Premises. On March 18, 2024, Omid obtained an order granting possession. We take judicial notice of these parallel proceedings.

reasonable rental value of the Property from the date of the sale until it filed its motion, plus additional sums and interest accruing until it took possession. Omid also asked the court to award \$25,000 for damages and \$3,600 for cleanup costs.

In a supporting affidavit presented by Ali Aliaskari, Omid’s managing member, he averred to the facts set forth in the motion and explained how the rental value was calculated. Mr. Aliaskari further averred that Omid had requested that the occupant vacate the Property “in writing, and orally on several occasions, beginning on October 6, 2023[.]” Omid attached to its motion undated photographs of the interior and exterior of the Property depicting trash and debris. Omid did not request a hearing on its motion.

Ms. Spencer answered the motion and requested that the court deny it,⁴ arguing that the Property was sold as is and that Omid assumed the risk of loss or damage to the Property. She further asserted that the Estate had not “entered into a lease agreement with any entity.”

On March 20, 2024, the auditor filed its report reflecting a surplus of \$121,845.78. The report stated that, consistent with Maryland Rule 2-543, exceptions should be filed within 10 days.⁵ On April 8, 2024, the court ratified the auditor’s report without any exceptions having been filed.

⁴ Ms. Spencer also filed a “Counter Claim” alleging that Omid was “attempting to extort money from the [Estate] with frivolous claims[.]” Omid moved to dismiss the counter claim and, by order entered April 28, 2024, it was dismissed with prejudice.

⁵ As pertinent, that Rule provides that “a party or claimant may file exceptions with the clerk” within ten days after the auditor’s report is filed or within three days after service of exceptions filed by another party or claimant. Md. Rule 2-543(g)(1).

On May 6, 2024, the court entered an order denying Omid’s motion for surplus proceeds. After reciting the procedural history, the court reasoned that Omid’s motion for judgment awarding possession previously was denied and that it “fail[ed] to file a Motion to Intervene,” meaning that it was “not a party to this action[.]”

This timely appeal followed. Thereafter, the substitute trustees successfully moved for the court to enter an order permitting them to pay the surplus proceeds into the court registry pending the outcome of this appeal.

STANDARD OF REVIEW

In an action tried without a jury, we “review the case on both the law and the evidence” and “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, . . . giv[ing] due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c).

DISCUSSION

Omid contends that the circuit court misconstrued Maryland Rule 14-216(a) to require it to intervene in the underlying action before filing its motion for payment of claim from surplus proceeds and, as a result, failed to exercise its discretion to determine the equitable distribution of the proceeds. Omid maintains that we should vacate the denial of the motion for payment of claim and remand for further proceedings or, in the alternative, enter judgment in its favor for \$44,630.54 for the reasonable rental value of the Property and the cost to repair the damages and to clean up the Property.

Maryland Rule 14-216 governs the proceeds of the sale in foreclosure actions. Subsection (a) applies when, as here, there is a surplus:

At any time after a sale of property and before final ratification of the auditor’s account, any *person*⁶ claiming an interest in the property or in the proceeds of the sale of the property may *file an application* for the payment of that *person’s* claim from the surplus proceeds of the sale. The court shall order distribution of the surplus equitably among the *claimants*.

(Emphasis added.) We agree with Omid that Maryland Rule 14-216(a) does not appear on its face to require a motion to intervene before a “person” can “file an application for the payment of that person’s claim from the surplus proceeds of the sale.” This is consistent with Maryland Rule 2-543, governing auditors, which allows “a party *or claimant*” to file exceptions to the auditor’s report.⁷ Thus, to the extent that the circuit court denied Omid’s motion based on its non-party status, this was in error.

Notably, this was not the sole basis relied upon by the circuit court in denying the motion for payment of claim. The court also ruled based upon the fact that Omid had not obtained a judgment of possession in the circuit court. As we will explain, this was an

⁶ “Person” is defined in the Maryland Rules to mean “any individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, its agencies or political subdivisions, any court, or any other governmental entity.” Md. Rule 1-202(v). Omid, a limited liability company, is a “person[.]”

⁷ It is questionable whether Omid may attack the distribution of the surplus proceeds given that it did not except to the auditor’s report and did not note an appeal within thirty days after the court ratified the report. *See Huertas v. Ward*, 248 Md. App. 187, 206 (2020) (noting that the ratification of an auditor’s report is “a second judgment, from which any party aggrieved by that ruling can appeal”). Nonetheless, we reach the merits because Omid’s motion for payment of claim remained pending when the circuit court ratified the auditor’s report. Further, Omid noted an appeal within thirty days after the denial of that motion and the surplus proceeds were paid into the registry of the court.

appropriate basis for the court to deny Omid’s claim for the reasonable rental value of the Property.

In its motion, Omid requested the reasonable rental value of the Property from October 6, 2023 (the date of sale) until it obtained possession of the Property, or the court entered an order granting its motion, whichever was sooner. Such a claim is controlled by the Supreme Court of Maryland’s decision in *Legacy Funding, LLC v. Cohn*, 396 Md. 511, 513 (2007). That case involved the foreclosure sale of three residential properties that were occupied by their respective owners and were not rented or otherwise commercially productive. *Id.* at 514. The Supreme Court reasoned that a foreclosure purchaser’s right to seek reimbursement from surplus proceeds for the fair rental value of a residential property turned upon a determination of “when the purchaser at a foreclosure sale becomes entitled to possession of the mortgaged property.” *Id.* at 515. The Court cited *Empire Properties, LLC v. Hardy*, 386 Md. 628 (2005), and explained that a foreclosure purchaser “becomes entitled to possession only when it has either paid the full purchase price in conformance with the terms of sale and received a conveyance of legal title to the property, or, following ratification of the sale but prior to settlement, has received an order for possession from the court.” *Legacy Funding*, 396 Md. at 516. In a footnote, however, the Court cautioned that “absent compelling circumstances, circuit courts should be wary of granting possession of foreclosed property to a purchaser who has not yet paid the full purchase price.” *Id.* at 516 n.3.

The Court distinguished the facts of *Legacy Funding* from those cases involving the foreclosure of a commercially productive property where the mortgagor receives rents

and/or profits from the date of sale until possession transfers to the purchaser. *Id.* at 519.

In those cases, the Court noted that the foreclosure purchaser was entitled to such income.

Id. Conversely, the foreclosure purchaser in *Legacy Funding* was

not seeking to recover income actually received by the mortgagor from his commercial use of the property following the sale, but rather damages based on its alleged inability to obtain possession for its own purposes. There is a difference, both as to the elements of the claim and the nature of the relief.

Id. at 519-20. Analogizing the foreclosure purchaser’s claim to a non-statutory wrongful detainer action, the Court held that “the claimant must show that (1) [the foreclosure purchaser] was lawfully entitled to possession, (2) [the foreclosure purchaser] demanded possession *following its entitlement to do so*, and (3) the possession was wrongfully denied.” *Id.* at 520-21 (emphasis added).

Applying that framework here, under the first prong, Omid was lawfully entitled to possession of the Property on the date that it paid the purchase price (February 1, 2024). *See id.* at 516. Omid could have been entitled to possession of the Property following ratification of the sale, which occurred on December 6, 2023 if it had been granted an order of possession consistent with Maryland Rule 14-102. Though Omid did move for a judgment awarding possession under that Rule, the motion was denied because the record did not reflect that the occupant had been properly served. Although the private process server subsequently filed an affidavit of service evidencing compliance with the Rule, Omid did not renew its motion in the circuit court. Omid was thus not entitled to possession until it paid the purchase price on February 1, 2024.

Second, Omid was obligated to adduce evidence that it had demanded possession of the Property *after it became entitled to do so*. *Id.* at 520-21. The record reflects that Omid demanded possession of the Property on October 12, 2023, before Omid was entitled to possession of the Property. In his affidavit supporting the motion, Mr. Aliaskari averred that Omid had demanded possession of the Property “on several occasions beginning on October 6, 2023[,]” but did not specify if it had made such demand after February 1, 2024, when it became entitled to possession of the Property. Though we take judicial notice of the fact that Omid filed a parallel wrongful detainer action in the District Court on February 8, 2024, before it filed its claim for payment of surplus proceeds and after it was entitled to possession, it did not allege this in its motion and Mr. Aliaskari did not aver that Omid had done so in his affidavit.⁸

Third, Omid was obligated to demonstrate that it was wrongfully denied possession of the Property. Mr. Aliaskari averred in his affidavit that as of February 22, 2024 -- three weeks after Omid received the deed -- Ms. Burney’s son continued to reside in the Property “without authority or claim of right to do so.” We shall assume for purposes of this opinion that this was sufficient to satisfy the third prong.

On this record, Omid failed to satisfy the second prong of the *Legacy Funding* case because, as the circuit court reasoned, there was no evidence that Omid had demanded or been awarded possession of the Property after February 1, 2024. Because Omid did not

⁸ In *Legacy Funding*, the Court noted the risks involved when a foreclosure purchaser pursues relief in the District Court and the circuit court simultaneously, including compromising “the efficiency and cohesion” of the circuit court proceedings and creating “the prospect of inconsistent determinations.” 396 Md. at 517 n.4.

demonstrate entitlement to relief, the circuit court did not err or abuse its discretion by denying the claim for reasonable rental value of the Property.

Omid also moved for the payment of \$28,600 from the surplus proceeds to cover costs associated with repair of damages to and cleanup of the Property. Because the motion was not supported as to this claim, we will affirm the circuit court’s denial of it. *See Pope v. Bd. of Sch. Comm’rs of Balt. City*, 106 Md. App. 578, 591 (1995) (“an appellate court will affirm a circuit court’s judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.”). We explain.

The “Terms of Sale” for the Property provided that the Property was being sold “AS IS, WHERE IS[.]” Omid provided no support for its contention that the condition of the Property deteriorated *after* the foreclosure sale, as opposed to during the nearly two years after Ms. Burney died and before that sale or prior to her death. The photographs appended to Omid’s motion were undated and Mr. Aliaskari did not aver when they were taken. The record reflects that an agent of Omid visited the Property on October 6, 2023, the same day as the foreclosure sale, and met with the occupant. Obviously, Omid is not entitled to reimbursement from the surplus proceeds for the cost to repair or clean up the Property based upon damage existing as of that date. Omid also provided no support for the amounts requested to repair the alleged damage. For these reasons, the circuit court did not err by denying Omid’s claim against the surplus proceeds for damage to the Property.

Even if there was evidentiary support for this aspect of Omid’s claim, we would nevertheless conclude it was not entitled to this relief. The sole case Omid cited in support

of its claim for damages is *Boucher Invs., L.P. v. Annapolis-West Ltd. P’ship*, 141 Md. App. 1 (2001), involving an action for permissive waste brought by a mortgagee on a commercial property against the mortgagor after the property was sold at foreclosure and the mortgagee failed to recover its loan amount. *Id.* at 41. We have found no cases applying the principals of waste in the context of a claim against surplus proceeds made by a foreclosure purchaser. This is unsurprising given that such claims would necessitate a mini trial to determine the cause of any damages, the timing of the damages, and the cost to repair damages to the Property, delaying the audit.

For all these reasons, the circuit court did not err by denying the motion for payment of claim.

**ORDER OF THE CIRCUIT COURT FOR
PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY THE
APPELLANT.**