

Circuit Court for Prince George's County
CAEF1520135

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 852

September Term, 2020

NORTH STAR PROPERTIES, LLC

v.

EDWARD S. COHN, et al.

Kehoe,
Arthur,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: November 22, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

As a matter of contract and convention, foreclosure sale purchasers who deposit a portion of the purchase price commonly “pay interest upon the unpaid balance for the period between the time fixed for settlement and the date of actual settlement” and pay property taxes from the date of the sale. *See Donald v. Chaney*, 302 Md. 465, 477 (1985); *AMT Homes, LLC v. Fishman*, 228 Md. App. 302, 310 (2016). Yet if ratification of the sale or the ensuing settlement is delayed, the Court of Appeals has held that equitable exceptions may be warranted under certain circumstances, including when the delay is “caused by the conduct of other persons beyond the power of the purchaser to control or ameliorate.” *Donald*, 302 Md. at 477.

In this appeal, we are asked to hold that the Circuit Court for Prince George’s County erred or abused its discretion in refusing to abate post-sale interest and taxes under this exception, after the Chief Judge of the Court of Appeals of Maryland temporarily stayed pending foreclosure proceedings during the COVID-19 pandemic. We decline to do so. Instead, because we conclude North Star Properties, LLC (“North Star”), appellant, noted this appeal prematurely, before ratification of the foreclosure sale, we must dismiss the appeal.

BACKGROUND

At a foreclosure sale conducted on December 10, 2019, North Star purchased residential property at 6102 43rd Avenue, Hyattsville, Maryland 20781 (the “Property”) for \$313,000.00. For convenience, we shall refer to North Star as the Foreclosure Purchaser,

and to Edward S. Cohn and the other substitute trustees collectively as the Substitute Trustees.¹

The Foreclosure Purchaser deposited \$10,000. In pertinent part, the Contract of Sale for the Property provides:

Balance of the purchase to be paid in cash within ten days of final ratification of sale by the Circuit Court for Prince George’s County. . . . *The purchaser . . . shall pay interest on the unpaid purchase money at the note rate [of 5.625%] from the date of foreclosure auction to the date funds are received in the office of the Substitute Trustees. In the event settlement is delayed for any reason, there shall be no abatement of interest. . . . Real estate taxes . . . , not otherwise divested by ratification of the sale, to be adjusted as of the date of foreclosure auction[.]*

(Emphasis added.)

On March 18, 2020, Mary Ellen Barbera, then Chief Judge of the Court of Appeals of Maryland, issued an “Administrative Order on Suspension of Foreclosures and Evictions during the COVID-19 Emergency” that was “effective immediately[.]” *See* <https://mdcourts.gov/sites/default/files/admin-orders/20200316restrictedoperationsduetocovid19.pdf>. The order stayed all “foreclosures of residential properties . . . pending in the circuit courts[.]”

On April 20, 2020, the Foreclosure Purchaser filed a Motion to Abate and Limit Interest, seeking to reduce both post-sale interest and taxes on the Property. Citing the Chief Judge’s order, the Foreclosure Purchaser argued that because the “unforeseen stay of proceedings that was a response to the COVID-19 pandemic” differs from a foreseeable

¹ The Substitute Trustees, appellees, are Edward S. Cohn, Stephen N. Goldberg, Richard E. Solomon, Richard J. Rogers, Michael McKeefery, and Christianna Kersey.

“court back log[,]” it “would be inequitable and contrary to the holdings and spirit of existing case law” to make foreclosure purchasers “responsible for all interest and real property taxes from the date of the foreclosure sale up to the date of settlement.” The Foreclosure Purchaser acknowledged that in these circumstances, abatement of post-sale interest and taxes “would fully shift the additional costs from the foreclosure purchaser to the lender[,]” but argued that “a court ordered stay due a worldwide pandemic” was not “foreseeable[.]”

The Substitute Trustees responded that the “standard language” in the Contract of Sale expressly precludes such abatement regardless of the reason for any delay in ratification. They argued that this pandemic-related delay “is most closely analogous to where the delay is caused by Court review[,]” which under *AMT Homes*, 228 Md. App. at 313, “falls within the universe of risks properly allocated to purchasers, and cost of doing business’.” Furthermore, the Foreclosure Purchaser cited “no authority for abating real estate taxes.”

On June 3, 2020, Chief Judge Barbera issued an amended order lifting the stay on residential foreclosure proceedings, effective July 25, 2020. *See* <https://www.mdcourts.gov/sites/default/files/admin-orders/20200603amendedliftingsuspensionduringcovidofforeclosuresevictionsandotherejectmentsinvolvingresidences.pdf>.

By written order entered August 27, 2020, the circuit court denied the Foreclosure Purchaser’s motion for abatement. The court concluded that “the delay in ratifying the sale was due to an unprecedented pandemic and through no fault of any party[,]” and that “the court is not deemed a ‘person beyond the power of the purchaser to control or ameliorate[.]”

so that abating post-sale taxes would reallocate what this Court recognized is a “well-known” responsibility that “frames everyone’s expectations.” *See AMT Homes*, 228 Md. App. at 310. The court also concluded that it did not have jurisdiction to reallocate “property tax obligations incurred during a state of emergency and catastrophic health emergency related to COVID-19[.]”

The Foreclosure Purchaser moved to alter or amend the order, arguing that the “[c]ourt only ruled on Foreclosure Purchaser’s request to abate real property tax and did not rule on Foreclosure Purchaser’s request to abate interest.” By written order entered September 30, 2020, the circuit court denied the motion to alter or amend. Clarifying its earlier order, the court applied the same principles governing allocation of post-sale tax responsibility to post-sale interest.

The Foreclosure Purchaser noted this appeal on October 9, 2020, presenting five questions challenging the denial of interest and tax abatements.² On May 5, 2021, after the

² In its brief, North Star presents the following questions:

1. Did the Circuit Court abuse its discretion in denying Appellant’s Motion to Abate and Limit Interest and Real Property Taxes filed with the Circuit Court on April 20, 2020 and Appellant’s Motion to Alter o[r] Amend Judgment Pursuant to Maryland Rule 2-534 filed with the Circuit Court on September 3, 2020[?]
2. Did the Circuit Court abuse its discretion when it failed to rule the court is not a “person beyond the power of the purchaser to control or ameliorate within the context of the facts presented in this case”[?]
3. Did the Circuit Court abuse its discretion when it did not consider the equities at all and declined to exercise its discretion[?]

record was transmitted to this Court, the circuit court entered a Deficiency Notice, notifying the parties that the failure to “provide Department of Permitting, Inspection and Enforcement Foreclosure Registration form per [M]aryland Rule 14-209(d)” precluded the court from executing a Final Order of Ratification of Sale and, if not rectified “within 30 days of this notice[,]” could “result in the case being dismissed without prejudice.”

On June 10, 2021, the court ratified the sale and referred the matter to the court auditor for a suggested account. On September 15, 2021, the court affirmed the ratification order.

DISMISSAL

Although neither party addressed the finality of the Order denying North Star’s motion for abatement of post-sale interest and property taxes, “we may raise the finality of the Order sua sponte.” *Baltimore Home All., LLC v. Geesing*, 218 Md. App. 375, 380 (2014). Because “[t]he requirement that a party appeal from only a final judgment is a jurisdictional requirement[,]” and the issue of whether a particular ruling is a final judgment is a question of law, we review the appealability of the challenged ruling *de novo*. *See id.* at 380-81.

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4. Did the Circuit Court abuse its discretion when it ruled that reallocation of real property taxes was not within the Circuit Court’s jurisdiction[?]
 5. Did the Circuit Court abuse its discretion when the order denying Appellant’s request to abate interest and real property taxes did not address whether Appellant was afforded its right to a timely decision[?]

Here, the Foreclosure Purchaser noted an appeal from the denial of its motion to abate interest and taxes, without waiting for ratification of the sale. For that reason, this appeal is premature. Denial of a foreclosure purchaser’s motion for abatement, when noted before the entry of a final judgment ratifying the sale, does not fall within any of the exceptions to the final judgment rule. *See id. Cf. Huertas v. Ward*, 248 Md. App. 187, 205 (2020) (“an order ratifying a foreclosure sale is a final judgment as to any rights in the real property, even if the order refers the matter to an auditor to state an account”).

As in *McLaughlin v. Ward*, 240 Md. App. 76, 82 (2019), the Foreclosure Purchaser did not note an appeal from the subsequent order ratifying the foreclosure sale. Because we lack appellate jurisdiction to consider this premature appeal, we must dismiss on our own motion. *See id.*

**APPEAL DISMISSED. COSTS TO BE PAID
BY APPELLANT.**