

Circuit Court for Montgomery County
Case No. 485008V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 909

September Term, 2021

FLAUBERT MBONGO, *et al.*

v.

SPECIALIZED LOAN SERVICING, LLC, *et al.*

Graeff,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 2, 2022

*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.

Flaubert and Charlotte Mbongo, appellants, appeal from an order, issued by the Circuit Court for Montgomery County, dismissing their complaint against Specialized Loan Servicing, LLC (SLS) and Carrie M. Ward (Ward), appellees,¹ for forgery, civil conspiracy, and declaratory judgment. Appellants raise two issues on appeal, which reduce to one: whether the circuit court erred in dismissing their complaint. For the reasons that follow, we shall affirm.

In 2007, appellants defaulted under the terms of a deed of trust that encumbered their residential real property known as 14434 Bradshaw Drive, Silver Spring, Maryland. In 2015, Ward, along with several other substitute trustees appointed under the deed of trust, initiated foreclosure proceedings in the circuit court. Appellants filed five separate motions to stay or dismiss the foreclosure action, all of which were denied.² Notably, in two of those motions, appellants claimed that the substitute trustees were seeking to foreclose on their property using a “fake” note and allonge. Specifically, in their motion to dismiss that was filed in June 2017, they asserted that the note attached to the Order to Docket contained a signature from Ms. Mbongo which had been “forged” by SLS. Appellees’ home was eventually sold at a foreclosure auction and the circuit court ratified

¹ SLS was the servicer for appellants’ loan and Ward was one of the substitute trustees appointed under the deed of trust.

² Appellants appealed from the denial of four of the motions and we affirmed in separate unreported opinions. *See Mbongo v. Ward*, No. 950, Sept. Term 2018 (filed June 6, 2019); *Mbongo v. Ward*, No. 1526, Sept. Term 2018 (filed November 26, 2018); *Mbongo v. Ward*, No. 2229, Sept. Term 2016 (filed Feb. 9, 2018); *Mbongo v. Ward*, No. 2436, Sept. Term 2015 (filed Jan. 18, 2017).

the sale. This Court affirmed the ratification order on appeal. *Mbongo v. Ward*, No. 1722, Sept. Term 2019 (filed Nov. 6, 2020).

Approximately four months after the mandate issued, appellants filed a civil action against appellees raising claims of forgery, civil conspiracy, and declaratory judgment. The underlying factual basis for all these claims was appellants’ allegation that appellees had instituted the 2015 foreclosure action “with a falsely made note” that contained “a forged signature purported to be that of Plaintiff Charlotte J. Mbongo.” They further alleged that SLS had “manufactured the false note [and] robot signed it in its premises, sometime before initiating the foreclosure action[.]” As relief, appellants sought \$700,000 in damages, a “declaration of the illegality of the foreclosure action,” and a “declaration that [appellants] conduct constitute[d] a material violation of [§ 8-601 of the Criminal Law Article],” which prohibits the counterfeiting of private instruments and documents.

Appellees filed a motion to dismiss and/or motion for summary judgment claiming that appellants’ complaint was barred by the doctrine of res judicata and the statute of limitations. With respect to res judicata, appellees noted that appellants had raised the exact same forgery claim in the foreclosure action; that the foreclosure action involved the same parties; and that this Court had ultimately affirmed the ratification of the foreclosure sale on appeal. Appellees also asserted that appellants claims were barred by the three-year statute of limitations because the allegedly forged note had been filed with the Order to Docket foreclosure in October 2015. Finally, they contended that a

declaratory judgment would serve no useful purpose because the dispute regarding the forgery of the note had been resolved in the foreclosure action.

Appellants filed an opposition and cross-motion for summary judgment, wherein they claimed that, because the note was forged, it was void and could be challenged at any time. They also claimed that the statute of limitations did not apply because they did not know about the forged deed until they filed their motion to dismiss the foreclosure action. Following a hearing, the court granted appellees' motion and dismissed the complaint. This appeal followed.

On appeal, appellants claim that the court erred in dismissing their complaint. Appellees counter that the complaint was properly dismissed on both res judicata and statute of limitations grounds. We need not address whether appellants' claims were barred by the statute of limitations because we are persuaded that they were barred by the doctrine of res judicata. Res judicata (“a thing adjudicated”) is “an affirmative defense [that] bar[s] the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been - but was not - raised in the first suit.” *Anne Arundel Bd. Of Educ. v. Norville*, 390 Md. 93, 106 (2005) (quotation marks and citation omitted). By preventing parties from relitigating matters that “have been decided or *could have been* decided fully and fairly,” the doctrine of res judicata ““avoids the expense and vexation attending multiple lawsuits, conserves the judicial resources, and fosters reliance on judicial action by minimizing the possibilities of inconsistent decisions.”” *Id.* at 107 (quoting *Murray Int’l Freight Corp. v. Graham*, 315 Md. 543, 547 (1989)). Under Maryland law, the elements of res judicata,

or claim preclusion, are: (1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and (3) that there has been a final judgment on the merits. *See Colandrea v. Wilde Lake Comm. Ass’n.*, 361 Md. 371, 392 (2000).

All three elements of *res judicata* were met in this case. First, appellants and appellees were either parties in the foreclosure action or in privity with those parties. *See FWB Bank v. Richman*, 354 Md. 472, 498 (1999) (“Privity in the *res judicata* sense generally involves a person so identified in interest with another that he represents the same legal right.”)(quotation marks and citation omitted); *see also Proctor v. Wells Fargo Bank, N.A.*, 289 F. Supp.3d 676, 683 (2018) (noting that when a substitute trustee prosecutes a foreclosure action on behalf of the lender, “the servicer, lender, and substitute trustee share the same right to foreclose on the [subject] mortgage such that the privity component of claim preclusion is satisfied” (internal quotation marks and citation omitted)). Second, there is no question that appellants raised the same forgery issues in the foreclosure action. Third, because the foreclosure sale has been ratified, and the ratification order has been affirmed on appeal, there has been a final judgment on merits for *res judicata* purposes. *See Jones v. Rosenberg*, 178 Md. App. 54, 72, *cert. denied*, 405 Md. 64 (2008) (noting that final ratification of sale “is *res judicata* as to the validity of such sale, except in the case of fraud or illegality” and therefore the regularity of a final ratification of sale, cannot be attacked in collateral proceedings).

Appellants cannot avoid the doctrine of res judicata by repackaging their forgery claim in a civil action for damages or a declaratory judgment. Because the existence of a forged document would have nullified the foreclosure, the foreclosure action was the proper forum to litigate that claim. Therefore, the court’s ratification of that sale was res judicata as to that issue. *See Fairfax Sav., F.S.B. v. Kris Jen Ltd. Partnership*, 338 Md. 1, 31 (1995) (holding that a final judgment in a deed of trust foreclosure was res judicata as to the borrowers’ subsequent lender liability claims which were based on an allegation that there was no foreclosure-triggering default because such claims would have nullified an essential foundation for the foreclosure judgment and could have been raised in the foreclosure action). Moreover, there is no merit to appellants’ claim that the doctrine of res judicata does not apply to a “declaration of the nullity of a forged instrument.” Even if we were to agree with appellants that the validity of a void note could be challenged at any time, such a rule would not apply when, as here, the same claim had already been raised and rejected in another action where a final judgment had been entered. *See Tucker v. Tucker*, 35 Md. App. 710, 712-13 (1977) (holding that res judicata can preclude an attack on a void judgment where the same voidness challenge was raised in another action). Otherwise, a party could file an endless series of complaints raising the same voidness claim, regardless of how many times that claim was found to lack merit.

In short, appellants’ complaint was an attempt to relitigate the issue of whether the note had been forged, an issue that was raised multiple times in the foreclosure action and had been finally resolved by the ratification of the foreclosure sale. Thus, their complaint constituted a collateral attack on the foreclosure that the doctrine of res judicata bars.

Accordingly, the circuit court did not err in dismissing their complaint on ground of res judicata. Finally, because the issue raised in appellants’ complaint had already been fully adjudicated in the foreclosure action the court was not required to enter a declaratory judgment as doing so would “not serve a useful purpose.” *See Hanover Investments, Inc. v. Volkman*, 455 Md. 1, 15-16 (2017).

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANTS.**