Circuit Court for Prince George's County
Case No. CAEF16-40193

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 958

September Term, 2020

MICHELLE QUARLES, *et al.*

v.

KRISTINE D. BROWN, *et al.*

Graeff,
Friedman,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: May 5, 2022

In this appeal, appellants Michelle Quarles and Donald Quarles assert that the Circuit Court for Prince George's County erred in denying their challenges to a foreclosure proceeding initiated by appellees Kristine D. Brown, *et al*., substitute trustees acting for Wells Fargo Bank, N.A. The Quarleses contend that the foreclosure action was fatally flawed and ask us to consider whether the circuit court erred in (1) denying their motions to stay or dismiss the foreclosure action; (2) overruling their exceptions to the foreclosure sale and then denying their motion to reconsider the order overruling those exceptions; (3) striking their counterclaim and then denying their motion to reconsider the order striking the counterclaim; and (4) denying their motion to revise the order ratifying the foreclosure sale. Because we see no error, we will affirm the decisions of the circuit court.

BACKGROUND

On April 3, 2008, the Quarleses executed a promissory note in the amount of $385,000 in favor of Wachovia Mortgage, FSB. The note was secured by a refinance deed of trust encumbering the Quarles' owner-occupied residence at 10011 Welshire Drive, Upper Marlboro. The note was acquired by Wells Fargo Bank, N.A., in December 2008, when Wells Fargo acquired Wachovia. The Quarleses defaulted on the note on October 2, 2010, and on December 22, 2015, Wells Fargo issued a notice of intent to foreclose. The appellees were appointed as substitute trustees on January 11, 2016.

On November 9, 2016, the substitute trustees initiated the foreclosure action by filing an order to docket and accompanying affidavits and attachments, including a copy of the note and an affidavit stating that Wells Fargo was the owner of the loan and in possession of the original note. The Quarleses were served with the notice of foreclosure

action on November 21, 2016. The substitute trustees' attorneys received the original "blue ink" note with indorsements from Wells Fargo on December 23, 2016.

Throughout the foreclosure proceedings, the Quarleses filed numerous motions to challenge or delay the substitute trustees' enforcement of the note. On December 6, 2016, the Quarleses, representing themselves, filed a motion to stay and/or dismiss the foreclosure action, pursuant to Maryland Rule 14-211, disputing that Wells Fargo was in possession of the note and owned the loan. Specifically, the Quarleses acknowledged that Wells Fargo had acquired Wachovia but asserted that "[t]here [was] absolutely no evidence that Wells Fargo Bank, N.A. was assigned [the Quarles'] mortgage and/or note as there is [no] evidence by an assignment of mortgage duly recorded in the public records of Prince George's County, Maryland or any allonge attached to the Note in controversy."[1]

While the Quarles' motion to stay was pending, Wells Fargo filed the final loss mitigation affidavit on January 10, 2017, and a foreclosure sale was scheduled for March 14, 2017. On March 2, 2017, the Quarleses filed an emergency motion for a preliminary injunction to the foreclosure sale, alleging that the foreclosure action was based upon affidavits that contained false statements by Wells Fargo.

Before the circuit court ruled on either the motion to stay and/or dismiss or the motion for an injunction, however, Donald Quarles filed a bankruptcy petition on March

[1] An allonge is generally a "slip of paper sometimes attached to a negotiable instrument for the purpose of receiving further indorsements when the original paper is filled with indorsements." *Anderson v. Burson*, 424 Md. 232, 240 n.10 (2011) (quoting Black's Law Dictionary 88 (9th ed. 2004)).

13, 2017, resulting in an automatic stay.[2] One month later, on April 13, 2017, Michelle Quarles filed a separate bankruptcy petition. Although Donald Quarles' bankruptcy petition was dismissed at his request in July 2017, Michelle Quarles' bankruptcy case continued. The automatic stay was eventually terminated on April 16, 2019. Shortly thereafter, on April 25, 2019, the Quarleses filed a second motion to dismiss the foreclosure proceedings. In this motion, the Quarleses argued that Wells Fargo was no longer the secured party and had no legal right to move forward with the foreclosure. The substitute trustees opposed the motion as untimely and as failing to state grounds upon which relief could be granted.

While the Quarles' motion to dismiss was still pending, on May 28, 2019, they also filed an emergency motion to stay the foreclosure sale then set for June 4, 2019. They asserted that dismissal of the foreclosure action was appropriate because it was still unclear to them who owned the loan, as they had received "multiple, conflicting documents … as to the owner/investor of their loan."

By order entered May 31, 2019, the circuit court denied the Quarles' motion to dismiss, finding that the motion was not timely, was not made under oath, did not state

[2] Between 2011 and 2020, the Quarleses filed Chapter 11 and Chapter 13 bankruptcies on several occasions and identified Wachovia Mortgage or Wells Fargo as a creditor.

with particularity the factual and legal basis of their defense to the validity of the lien, and offered no valid defense.[3]

The following month, while the Quarles' emergency motion to stay was still pending, Donald Quarles again filed a petition for bankruptcy, which once again served to temporarily stay the foreclosure and rendered the Quarles' motion to stay moot. This automatic stay was terminated on November 21, 2019. The substitute trustees scheduled a foreclosure sale for January 14, 2020. The Quarleses were sent notice of the sale via first class and certified mail.

On January 14, 2020, the property was sold at public auction to Cabana Properties III, LLC, for $367,893.39. Report of the sale to Cabana Properties was made to the circuit court, signed by substitute trustee Kristine Brown. On January 30, 2020, the court issued a notice that the sale would be ratified unless good cause was shown by March 2, 2020.

[3] It is not entirely clear from either the wording of the order itself or the relevant docket entry whether the circuit court's order pertains to one or both of the two motions to dismiss. In their brief, the Quarleses acknowledge that their 2019 motion to dismiss "asserted claims found in the previous motions filed" and "posed the same defenses," and assert that although the court's order "appears to reference the latest motion to dismiss ... the [c]ourt concurrently denied the original motion to dismiss." The substitute trustees also appear to agree that both "*motions were* … denied" by the circuit court's order. (Emphasis added).

As the parties have done, we will proceed on the assumption that the circuit court denied both motions to dismiss. Our courts have recognized that the denial of a motion, although not formally expressed, may be implied by the entry of a final judgment or of an order inconsistent with the granting of the relief. *Frase v. Barnhart*, 379 Md. 100, 116 (2003). Here, because the 2016 motion and the 2019 motion set forth the same claims, the denial of one would be consistent with the denial of both. Moreover, the circuit court entered a final judgment by ratifying the foreclosure sale, which would have been inconsistent with anything but a denial of the 2016 motion to dismiss.

On March 2, 2020, the Quarleses filed exceptions to the foreclosure sale and requested that the circuit court deny ratification. They claimed that, although the substitute trustees had executed and filed a report of sale with an affidavit of fairness pursuant to Maryland Rule 14-305(b), the report should have been filed by the purchaser, Cabana Properties. In addition, they asserted that the substitute trustees had failed to serve them with a required notice of sale listing the time, place, and terms of the pending sale. The Quarleses amended their exceptions on March 9, 2020 to add that the report of sale "fraudulently" claimed that the property was sold to third-party Cabana Properties, but the auctioneer's bid sheet indicated the property was not sold and had "reverted" back to the lender.

After filing their exceptions to the foreclosure sale but before the circuit court had ruled, on March 30, 2020, the Quarleses filed what they titled a "cross-claim" against Wells Fargo and its successors and/or assignees, alleging claims of misrepresentation, statutory demand, and unfair deceptive trade practices and seeking damages. The Quarleses also sought a declaratory judgment on the negotiability of the promissory note, claiming that it was not a negotiable instrument as defined by Maryland law because it did not state a "fixed amount of money" and that the indorsement on the note was insufficient to effect lawful transfer of the instrument to the substitute trustees.

On April 17, 2020, the substitute trustees moved to strike the cross-claim, arguing that it was actually an impermissible counterclaim and that even if it had been a permissible pleading in a foreclosure action, it was not timely filed. *See* MD. RULE 2-322(e) (requiring a counterclaim to be filed within 30 days after the time for filing that party's answer).

On August 14, 2020, the circuit court entered an order overruling the Quarles' exceptions to the foreclosure sale without a hearing, holding that the exceptions failed to raise any irregularity particular to the procedure of the sale and failed to state a meritorious factual or legal basis to deny the court's ratification of the sale. On the same day, the circuit court also issued an order striking the Quarles' counterclaim without comment.

On August 24, 2020, the Quarleses moved to set aside or vacate the circuit court's order striking their cross-claim, asserting that the foreclosure sale was "irregular" because no deposit was tendered by "the alleged third party purchaser." The Quarleses requested that the court stay the order to docket the foreclosure, set aside the order of ratification of the foreclosure sale, and order a separate trial. The Quarleses also moved to set aside or vacate the order overruling their exceptions to the foreclosure sale.

The circuit court denied both motions without a hearing by orders entered October 5, 2020. The court found that the Quarleses, in their motion to set aside or vacate the order overruling their exceptions, had failed to set forth a meritorious factual or legal basis to alter or amend the order and to deny the court's ratification of the sale. The circuit court further found that even assuming that a cross-claim was permitted in a foreclosure matter, the Quarles' cross-claim was untimely—having been filed more than three years after the time prescribed by Rule 2-331 and more than three months after the property was sold—and failed to show that the delay did not prejudice the other parties to the action. Furthermore, the court noted that, having "vigorously defended" the matter since its inception, the Quarleses "had several opportunities to raise the issues addressed in their cross-claim" but did not do so until it would have been prejudicial to the substitute trustees.

The circuit court entered an order on December 28, 2020, ratifying the foreclosure sale and holding that it "was fairly and properly made." The Quarleses moved to revise the judgment on January 21, 2021. They based their motion upon "newly discovered evidence" about the ownership of the note and deed of trust and the fact that several of their motions, including a motion to dismiss, were still pending before the circuit court. The substitute trustees responded that the Quarleses had made no allegations as to the validity of the sale itself and failed to provide a legal basis to overturn the ratification order.

The circuit court denied the Quarles' motion to revise without a hearing on February 17, 2021, finding that the "newly discovered evidence" that they alleged was not newly discovered because it had been filed with the court in 2016 and/or mailed by the trustees and received by the Quarleses in 2018 and 2019. The circuit court thus concluded that the Quarles' motion did not set forth a meritorious factual or legal basis to revise the order of ratification or to deny the court's ratification of the sale.

The Quarleses filed their notice of appeal of the circuit court's ratification order on January 25, 2021. On February 12, 2021, they filed a motion to stay judgment pending appeal without a supersedeas bond. The court granted that motion by order dated March 16, 2021.

DISCUSSION

The Quarleses challenge six orders entered by the circuit court in these foreclosure proceedings. These orders fall into four categories. We will first address the circuit court's order denying the Quarles' motions to dismiss the foreclosure proceedings. We will then address the circuit court's two orders denying the Quarles' exceptions to the foreclosure

sale. Next, we will address the circuit court's two orders striking the Quarles' cross-claim. And finally, we will address the circuit court's order denying the Quarles' motion to revise the judgment ratifying the foreclosure sale.

I. MOTIONS TO DISMISS AND/OR STAY THE FORECLOSURE PROCEEDINGS

In their first issue, the Quarleses contend that the circuit court erred in denying their motions to stay and/or dismiss the foreclosure action without first conducting a hearing because the ownership of the deed of trust and promissory note were in doubt. In the Quarles' view, Wells Fargo was not the owner of the note and its right to proceed with the foreclosure action was properly put at issue.

Maryland Rule 14-211 permits a defaulting borrower to file "a motion to stay the sale of the property and dismiss the foreclosure action" before a scheduled foreclosure takes place. *Bates v. Cohn*, 417 Md. 309, 318-19 (2010). "In other words, 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." *Svrcek v. Rosenburg*, 203 Md. App. 705, 720 (2012) (cleaned up). Such a motion must "be filed no later than 15 days after," as relevant here, "the date the final loss mitigation affidavit is filed."[4] MD. RULE 14-211(a)(2)(A)(i). The circuit court is, however, permitted to "extend the time for filing the motion or excuse non-compliance" for good cause. MD. RULE 14-211(a)(2)(C).

[4] If there is a motion for postfile mediation, the deadline to file a motion to stay can be extended based on proceedings relevant to the mediation. MD. RULE 14-211(a)(2)(A). Because no such motion was filed here, we are only concerned with the date on which the final loss mitigation affidavit was filed.

Failure to comply with the requirements of Rule 14-211 is a proper ground for a circuit court's denial of a motion to stay and dismiss. *Murphy v. Fishman*, 207 Md. App. 269, 282 (2012), *rev'd on other grounds sub nom. Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534 (2013); *see also Svrcek*, 203 Md. App. at 721 (the circuit court did not abuse its discretion in denying a property owner's motion to stay the sale and dismiss the foreclosure proceedings when the motion was filed after the deadline set forth in Rule 14-211 and the property owner failed to show good cause to excuse non-compliance with the filing deadline). The plain language of the Rule requires the circuit court to deny a motion to stay and dismiss "with or without a hearing" if it finds, based on the record before it, that the motion was not timely filed and did not show good cause for excusing non-compliance. MD. RULE 14-211(b)(1)(A). The court therefore has the discretion to rule on the motion without holding a hearing on the merits. *Buckingham v. Fisher*, 223 Md. App. 82, 89 (2015).

A "denial of a motion to stay a foreclosure sale and dismiss the action under Maryland Rule 14-211 'lies generally within the sound discretion of the trial court.'" *Mitchell v. Yacko*, 232 Md. App. 624, 640-41 (2017) (quoting *Anderson v. Burson*, 424 Md. 232, 243 (2011)). We review the circuit court's legal conclusions without deference, and the court's "denial of a foreclosure injunction for an abuse of discretion." *Svrcek*, 203 Md. App. at 720. We further "review the circuit court's decision to deny [a Rule 14-211] motion without a hearing for legal correctness." *Mitchell*, 232 Md. App. at 641.

In the instant case, the date the final loss mitigation affidavit was filed—January 10, 2017—governs the time for the required filing of the Quarles' motion. It is undisputed that the Quarleses did not file their 2019 motion to stay and/or dismiss within 15 days of that date, as is required by Rule 14-211(a)(2)(A)(i). The motion was not filed until April 25, 2019, more than two years after the January 25, 2017 deadline. In addition, the Quarleses made no attempt to establish good cause to excuse their untimely filing within the purview of Rule 14-211(a)(2)(C). Because the Quarleses did not timely file their 2019 motion and provided no reason to excuse the delay, the circuit court did not abuse its discretion in denying the motion without a hearing.

Moreover, to the extent that the Quarles' December 6, 2016 motion to stay and/or dismiss was timely filed and implicitly denied by the circuit court, the court acted properly in denying the motion without a hearing. We explain.

A motion to stay or dismiss under Rule 14-211 must be filed under oath or be supported by an affidavit and must, among other requirements, "state with particularity the factual and legal basis of each 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(a)(3)(B). A circuit court deciding a timely filed Rule 14-211 motion "shall deny the motion, with or without a hearing," if it concludes that the motion "does not substantially comply with the requirements of this Rule" or "does not on its face state a valid defense" to the lien or the right to foreclose. MD. RULE 14-211(b)(1). Only if neither of those circumstances apply is the circuit court required to "set the matter for a hearing on the merits of the alleged defense." MD. RULE 14-211(b)(2).

In their 2016 motion to stay and/or dismiss, the Quarleses argued that, following Wells Fargo's acquisition of Wachovia, there was no evidence that Wells Fargo owned or possessed their promissory note and had the right to foreclose. Although the Quarleses claimed that the ownership and holdership of the note was in doubt, the record belies their claim. Thus, the Quarles' defense to Wells Fargo's right to foreclose is not valid.

Even if there was some confusion about the chain of ownership of the promissory note, ownership is not required for an entity to enforce a note by foreclosing under the accompanying deed of trust. Instead, the Commercial Law Article makes clear that "[t]he holder of a note is 'entitled to enforce the instrument even [if it is] not the owner of the instrument or is in wrongful possession of the instrument.'" *Deutsche Bank Nat. Trust Co. v. Brock*, 430 Md. 714, 730 (2013) (quoting MD. CODE, COMMERCIAL LAW ("CL") § 3-301).

A "holder" is "[t]he person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession."[5] CL §

[5] In their counterclaim, discussed in section III of this opinion, the Quarleses argue that the promissory note was not a negotiable instrument because it did not describe a fixed amount of money to be repaid each month and instead provided three options for payment: a set minimum amount, interest only, or the full principle plus interest. We disagree. Pursuant to CL § 3-104(a), a "negotiable instrument" is

> an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
>
> (1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
>
> (2) Is payable on demand or at a definite time; and

1-201(b)(21)(i). A promise or order is payable to bearer if it states that: (1) it is payable to bearer or to cash; (2) indicates that an individual or entity in possession of the promise or order is entitled to payment; (3) does not state a payee; or, (4) otherwise indicates that it is not payable to an identified person. CL § 3-109(a). Therefore, the person in possession of

> (3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

The Quarleses signed a fixed rate mortgage note to Wachovia, which provided, in pertinent part:

> In return for a loan that I have received, I promise to pay U.S. $385,000.00, called "Principal," plus interest, and any other charges incurred during the course of the loan, to the order of the Lender. The Lender is WACHOVIA MORTGAGE, FSB, a FEDERAL SAVINGS BANK, ITS SUCCESSORS AND/OR ASSIGNEES, or anyone to whom this Note is transferred.

The note further provided for interest charges on the unpaid principal in the amount of 6.8% until the full amount of the principal was paid. The payments were to be made monthly, beginning June 1, 2008, with a maturity date of May 1, 2038. The indorsement on the signature page of the note reads: "WITHOUT RECOURSE PAY TO THE ORDER OF Wells Fargo Bank, N.A., successor by merger to Wachovia Mortgage, FSB, formerly known as World Savings Bank, FSB." The note is then indorsed in blank, signed and dated "12-19-16."

Applying CL § 3-104 to the note: it is signed by the makers, Michelle Quarles and Donald Quarles; it is an unconditional promise to pay a fixed amount of money—$385,000—with interest; it is payable at a definite time; and it is payable to the order of the lender or anyone to whom the note is transferred. We are not persuaded by the Quarles' claim that the possibility that their monthly payments were subject to change destroyed "a promise to pay a certain sum of money unconditionally," as required of a valid promissory note. *Maryland Fertilizing & Mfg. Co. v. Newman*, 60 Md. 584, 586 (1883). The requirements for negotiability under CL § 3-104 have thus been met, and the note is a negotiable instrument.

a note, either specially indorsed to that person or indorsed in blank, is a holder entitled generally to enforce that note. *Deutsche Bank*, 430 Md. at 729-30; CL § 1-201(b)(21)(i).

Although the Quarleses argue that there is no document in the land records to prove the note's change in ownership from Wachovia to Wells Fargo, nothing in the Commercial Law Article conditions the effectiveness of a transfer of possession on recording in the land records. On the contrary, "[t]he right to payment is transferred by delivery of possession of the instrument" when, as in this case, such delivery is made "for the purpose of giving to the person receiving delivery the right to enforce the instrument." CL § 3-203, comment 1 (quoting CL § 3-105(a)).

Wells Fargo's affidavits, filed with the order to docket, attest to the fact that it was the owner—by virtue of its acquisition of Wachovia—and possessor of the promissory note at the time of the Quarles' default in 2010 and remained the owner and possessor when it filed the order to docket in 2016. The Quarleses assert no credible dispute of that fact. As a result, there is nothing to suggest that Wells Fargo was not entitled to enforce the note and appoint substitute trustees as a matter of law.

And, by December 23, 2016, the attorneys for the substitute trustees stated, again without credible dispute from the Quarleses, that they were in possession of the original, "blue ink," note, which had been indorsed in blank on December 19, 2016. Once the note was indorsed in blank, the substitute trustees—or whomever was in possession—were entitled to enforce the note, by virtue of that possession, without regard to the possible owners of the note or the route the indorsed note took in coming into that possession. *See Deutsche Bank*, 430 Md. at 731 (quoting *In re Veal*, 450 B.R. 897, 912 (B.A.P. 9th

Cir.2011)) (stating, "'[u]nder established rules, the maker [of a note] should be indifferent as to who owns or has an interest in the note so long as it does not affect the maker's ability to make payments on the note.'"). Furthermore, it has not been suggested that any party other than Wells Fargo has attempted to foreclose on the property, despite the fact that the Quarleses have been in default for more than a decade.

Thus, notwithstanding the Quarles' questioning the ownership of the note, Wells Fargo was entitled to foreclose by virtue of its possession of the promissory note. *See Bechamps v. 1190 Augustine Herman, LC*, 202 Md. App. 455, 461 (2011) (noting that MD. RULE 14-211 contemplates the grant of a motion to stay or dismiss only if the moving party provides a defense that could defeat the ability of the foreclosing party to foreclose). Even if the Quarles' 2016 motion to dismiss was timely filed, it would have been well within the circuit court's discretion to deny the motion on the merits.

We, therefore, conclude that the circuit court did not abuse its discretion in denying the Quarles' motions to dismiss to stay or dismiss the foreclosure proceedings.

II. EXCEPTIONS TO FORECLOSURE SALE

The Quarleses next argue that the circuit court erred in overruling their exceptions to the foreclosure sale without a hearing. The Quarleses assert that they were not served with the required notice prior to sale, as required by Maryland Rule 14-210, and that there was a failure to file a "Rule 14-305 compliant affidavit" with the report of sale because the affidavit that was filed failed to name the principal and falsely claimed the property was sold to Cabana Properties when in fact the property reverted back to the bank and was not sold at all.

In reviewing the circuit court's ruling on exceptions to the sale, we review questions of law without deference, but do not substitute our judgment for that of the circuit court as to findings of fact unless they are clearly erroneous. *Hood v. Driscoll*, 227 Md. App. 689, 697 (2016).

Maryland Rule 14-305(e) provides that if a party perceives an irregularity in the foreclosure sale, it may file exceptions to the sale of the property. The exceptions must set forth, with particularity, alleged irregularities in the sale itself. MD. RULE 14-305(e)(1). "The focus of the exceptions is on the conduct of the sale, not whether the trustee had a right to have the property sold." *Hood*, 227 Md. App. at 695.

Because the ratification of a foreclosure sale is presumed to be valid and fairly made, the opponent of the sale has the burden of proving to the court that the sale was invalid and caused prejudice. *Burson v. Capps*, 440 Md. 328, 342-43 (2014) (quoting *Fagnani v. Fisher*, 418 Md. 371, 384 (2011)). It is considered "essential to the prompt administration of justice that the Rule be inviolably observed that no court shall set aside a foreclosure sale merely because of harmless errors or irregularities ... or for any slight or frivolous reasons not affecting the substantial rights of the parties." *J. Ashley Corp. v. Burson*, 131 Md. App. 576, 583 (2000) (citations omitted).

If the opponent of the sale does not establish the need for the circuit court to take evidence, a hearing on the exceptions is not required. As this Court has recognized: "[a] hearing is by no means mandatory under Rule 14-305([e])(2), even if one of the parties requests it. Because this rule is written in conjunctive form, authorizing a proceeding 'if a hearing is requested *and* the exceptions or any response clearly show a need to take

evidence,' it gives the court discretion." *Four Star Enterprises Ltd. P'ship v. Council of Unit Owners of Carousel Center Condominium, Inc.*, 132 Md. App. 551, 567 (2000).

The Quarleses first contend that they did not receive the statutorily required notice of the foreclosure sale. *See* MD. CODE, REAL PROPERTY ("RP") § 7-105.4. The record, however, contains the "Notice of Trustee's Sale" indicating the pending sale of the property on January 14, 2020. The notice describes the property and the time, place, and terms of the sale, as required by RP § 7-105.4(c)(2). Accompanying the notice of sale is an affidavit by the substitute trustees stating that they sent the notice to the Quarleses by first-class mail on December 23, 2019—not earlier than 30 nor later than ten days prior to the scheduled sale on January 14, 2020, as also required by RP § 7-105.4(c)(2). "'[T]he testimony of a witness that he properly addressed, stamped and mailed a letter raises a presumption that it reached its destination at the regular time and was received by the person to whom it was addressed.'" *Bock v. Ins. Comm'r of State of Md.*, 84 Md. App. 724, 730 (1990) (quoting *Kolker v. Biggs*, 203 Md. 137, 144 (1953)). "Testimony that the addressee did not receive the letter does not conclusively rebut the presumption of receipt." *Id.* at 733 (footnote omitted). Moreover, RP § 7-105.4 does not require that a homeowner *receive* written notice of a foreclosure sale at least ten days before the sale; the section requires only that written notice of a proposed foreclosure sale *be sent* to the record owner of the property. The substitute trustees' affidavit is sufficient evidence that they sent the notice of sale to the Quarleses by first class mail.

In addition, the record contains United States Postal Service tracking documents showing that an item sent certified mail was "out for delivery at Upper Marlboro, MD" on

December 20, 2019, but neither authorized recipient, Michelle Quarles or Donald Quarles, was available that day. The document was returned to sender as unclaimed on January 4, 2020. The record indicates, however, that the Quarles' then-attorney did receive the notice by certified mail on December 20, 2019.

We are satisfied that the circuit court did not err in finding that the substitute trustees complied with the notice requirements of RP § 7-105.4(c). Thus, the Quarles' argument that they did not receive the required notice of sale fails to provide a basis on which to find error by the circuit court in denying their exceptions to the foreclosure sale.

The Quarleses next argue that there is no Rule 14-305(b)-compliant affidavit in the court record. Maryland Rule 14-305(b) requires that, before a sale is ratified, the purchaser must file an affidavit setting forth:

> (1) whether the purchaser is acting as an agent and, if so, the name of the principal;
>
> (2) whether others are interested as principals and, if so, the names of the other principals; and
>
> (3) that the purchaser has not directly or indirectly discouraged anyone from bidding for the property.

MD. RULE 14-305(b). In fact, there is a purchaser's affidavit in the record, signed under oath by substitute trustee Kristine Brown on behalf of Cabana Properties that certifies that Cabana Properties was the purchaser of the property at the foreclosure sale, that Brown was the agent for the purchaser, that no other parties were interested as principals, and that Cabana Properties did not directly or indirectly discourage anyone from bidding on the property. We conclude that the circuit court did not err in finding that the affidavit met the requirements of Rule 14-305(b).

Finally, the Quarleses claim that Cabana Properties was not the "ultimate buyer of the property," despite Ms. Brown's affidavit to the contrary, because the bid sheet reveals the letter "R" in the "Sales Status" column, indicating that the property was not sold but reverted back to the bank. We are not persuaded, however, that this apparent discrepancy rises above the level of "harmless errors or irregularities," or affects the substantial rights of the parties such that it would defeat the presumption that the sale was valid and fairly made. *J. Ashley Corp.*, 131 Md. App. at 583. Thus, we conclude that the circuit court did not err in finding that the exception lacked merit.

Because the Quarles' exceptions failed to show a need to take evidence, there was no error in the circuit court's overruling of the exceptions without a hearing.

After the circuit court overruled their exceptions, the Quarleses filed a "motion to alter/amend judgment pursuant to Md. Rule 2-534; or in the alternative revise the motion pursuant to Md. Rule 2-535." Despite the title of the motion, due to the date it was filed, it is more accurately described as a motion asking the court to reconsider the overruling of the exceptions. That is because, at the time it was filed, there was no final judgment to alter, amend, or revise, as contemplated by Rules 2-534 and 2-535. In the motion, the Quarleses raised yet more reasons the foreclosure sale was flawed, including that the sale was irregular because the "alleged third party purchaser did not pay a deposit to the Auctioneer," because the execution of the report of sale and the purchaser affidavit were in violation of the Maryland Rules, and because of the failure of the court to review the affidavit in the report of sale served as "a great injustice and equates to nothing less than the Court's sanctioning of intrinsic fraud."

Although the Quarleses insist that the circuit court should have held an evidentiary hearing to examine their additional arguments, a trial court "has almost limitless discretion" to decline to reconsider a ruling because of new arguments that a party could have raised before the court ruled. *Schlotzhauer v. Morton*, 224 Md. App. 72, 85 (2015); *see also Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002) (a trial court need not revisit the merits after it has already made a decision). Here, the circuit court had legitimate reasons for its decision to overrule the Quarles' exceptions, and no further explanation nor a hearing was required when the Quarleses tried to interject additional support for their exceptions. We, therefore, conclude that the circuit court did not abuse its discretion in denying the Quarles' motion to reconsider its order overruling their exceptions.

III. COUNTERCLAIM

The Quarleses next claim that the circuit court erred when it struck their cross-claim—which they almost, but not quite, acknowledge in their brief was actually a counterclaim—because it raised "legitimate and serious defenses to the foreclosure sale" and the bank would not have been prejudiced if the court conducted a hearing. The substitute trustees counter that the counterclaim was improperly filed by the Quarleses because a counterclaim is not a permitted pleading in a foreclosure action.

Under the Maryland Rules, a counterclaim is a claim that is asserted against any *opposing party*, whereas a cross-claim is asserted against a *co-party*. MD. RULE 2-331. Because the Quarleses were the only defendants in the underlying foreclosure action, there is no co-party against whom they could assert a cross-claim. Thus, their *pro se* pleading should be considered a counterclaim, as their appellate attorney appears to acknowledge in

their appellate briefs. The Court of Appeals has recognized that, although counterclaims present "innumerable practical difficulties" in foreclosure proceedings, they are not necessarily prohibited. *Fairfax Savings, F.S.B. v. Kris Jen Ltd. P'ship,* 338 Md. 1, 22 n.9 (1995). Nevertheless, while a counterclaim may sometimes be permitted, we see no abuse of discretion by the circuit court in striking the counterclaim here.

While the circuit court's order did not set forth the basis upon which it struck the Quarles' counterclaim, we may affirm or reverse on "'any ground adequately shown by the record, whether or not relied upon by the trial court.'" *Gomez v. Jackson Hewitt, Inc.,* 427 Md. 128, 142 (2012) (quoting *Parks v. Alpharma, Inc.,* 421 Md. 59, 65 n.4 (2011) (citation omitted)). We conclude that the counterclaim was untimely filed.

Maryland Rule 2-331(d) provides that a counterclaim may be stricken if filed more than 30 days after the "time for filing that party's answer[.]" MD. RULE 2-331(d). Although no "answer" is required to be filed in a foreclosure proceeding, the timing of the filing of a counterclaim must be such that it provides adequate notice in advance of any dispositive filings. The Quarles' March 30, 2020 counterclaim, filed almost three years after the filing of the final loss mitigation affidavit on January 10, 2017 and almost three months after the property was sold on January 14, 2020, was well beyond any reasonable 30-day period to give the substitute trustees adequate notice of the claim.

To overcome their timeliness problem, the Quarleses argue that the circuit court had the authority to toll the application of Rule 2-311, and should have, because the bank "withheld material facts and concealed those facts for at least three years, following the

Order to Docket foreclosure." There is, however, no credible evidence of any concealment of material facts in the record.

Moreover, the Quarleses acknowledge that the counterclaim raised the same defenses as described in their injunctive motions but "considerably expanded" them. The circuit court did consider the Quarles' defenses in their earlier motions and found them lacking. There is nothing in the record to indicate that an "expansion" of those defenses in a counterclaim would have convinced the circuit court to rule differently, particularly so late in the proceedings. As a result, we conclude that the circuit court did not abuse its discretion in striking the Quarles' counterclaim.

Nor did the circuit court abuse its discretion in denying the Quarles' "motion to alter/amend judgment pursuant to Md. Rule 2-534; or in the alternative revise the motion pursuant to Md. Rule 2-535." Similar to the Quarles' motion for the court to alter, amend, or revise its order denying their exceptions, the Quarles' motion to alter, amend, or revise the judgment may be best considered a motion to reconsider the striking of the counterclaim. In it, the Quarleses re-assert that their cross-claim had been identified improperly as a counterclaim, that a counterclaim is permitted in an *in rem* proceeding, that their pleading was timely filed, and that it did not prejudice the substitute trustees. We see nothing in the motion that would have required the circuit court to revisit its decision to strike the counterclaim. *See Steinhoff*, 144 Md. App. at 484. And although we also see nothing in the motion that would have required the court to give any further explanation for its ruling, the circuit court did explain in its order why the counterclaim was untimely and that allowing it would prejudice the other parties. We thus conclude that the circuit

court did not abuse its discretion in denying the Quarles' motion to reconsider the striking of their counterclaim.

IV. MOTION TO REVISE ORDER OF RATIFICATION OF FORECLOSURE SALE

Finally, the Quarleses argue that the circuit court erred in denying their motion to revise the order of ratification of the foreclosure sale. They assert that their motion, relying on "newly discovered" evidence and the opinion of an expert private investigator, cast considerable doubt on who owned the promissory note and supported their claim that no action should have been taken on the foreclosure while that doubt existed. Acknowledging that the circuit court was divested of jurisdiction to decide the motion to revise after they noted their appeal, the Quarleses included it in their brief because "the contents of that motion are still at issue in this appeal."[6]

The circuit court's order ratifying the foreclosure sale was entered December 28, 2020. The Quarleses filed a notice of appeal from that order on January 25, 2021.

[6] It is not strictly correct to say that the circuit court was divested of its jurisdiction to decide the revisory motion. It is true that the Court of Appeals, in *Unnamed Attorney v. Attorney Grievance Comm'n*, 303 Md. 473, 486 (1985), explained that when, as here, a Rule 2-535(a) motion is filed more than ten days, but less than 30 days, after the entry of the ratification order, followed by the filing of a timely notice of appeal, during the pendency of the appeal, "the circuit court cannot decide the motion." As we have discussed, however, that phrase means that, although the circuit court ordinarily retains the "fundamental jurisdiction" to decide a Rule 2-535(a) motion filed more than ten days, but less than 30 days, after the entry of the judgment, and a timely notice of appeal is filed either before or after the motion, as a general rule, the circuit court *should not* decide the motion. *Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 66-67 (2013). That is because if the circuit court "exercises its fundamental jurisdiction to revise or amend the judgment that is the subject of an appeal, the revision or amendment of the judgment will affect, in most cases, 'the subject matter or justiciability of the appeal.'" *Id*. (citing *Kent Island, LLC v. DiNapoli,* 430 Md. 348, 361 (2013)).

On January 21, 2021, the Quarleses filed their motion to revise. This post-trial motion, filed more than ten days but less than thirty days after entry of judgment, is governed by Maryland Rule 2-535(a) or (c) ("Revisory Power"). The court entered its order denying the Quarles' post trial motion on February 17, 2021. The Quarleses did not note an appeal from the February 17, 2021 order.

Because the only notice of appeal was filed after entry of the ratification order but several weeks prior to the circuit court's denial of the Quarles' Rule 2-535 motion, the timely filed notice of appeal confers appellate jurisdiction over the ratification order but not the ruling denying the Quarles' post-trial motion. *See Suchoza*, 212 Md. App. at 68 ("It is clear that a notice of appeal must be filed within 30 days after the entry of the trial court's ruling on a motion filed more than 10 days after entry of a judgment for this Court to have jurisdiction to review such ruling."). Because the Quarleses did not note a separate appeal from the denial of their revisory motion, their claims of newly discovered evidence to support overturning the ratification of the foreclosure sale, first raised in that motion, are not before us.[7]

[7] Because we lack appellate jurisdiction over the circuit court's February 17, 2021 order denying the Quarles' revisory motion, we cannot pass upon the merits of that ruling. We note, however, that there is no basis for an attack on the ratification order, which is *res judicata* as to the propriety of the foreclosure sale. *See Ed Jacobsen, Jr., Inc. v. Barrick*, 252 Md. 507, 511 (1969) ("[T]he law is firmly established in Maryland that the final ratification of the sale of property in foreclosure proceedings is *res judicata* as to the validity of such sale, except in the case of fraud or illegality...."). The alleged newly discovered documents regarding ownership/holdership and negotiability of the promissory note were not so much newly discovered as they were again presented to the court in support of the same claims the Quarleses had made in their previous attacks on the foreclosure process. As the circuit court noted in its order, the alleged newly discovered

ORDERS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.

evidence had been filed with the court in 2016 and received by the Quarleses in 2018 and 2019. Because the Quarleses failed to set forth a meritorious factual or legal basis to revise the ratification order or deny the court's ratification of the foreclosure sale, the court properly denied the motion without a hearing. Thus, we observe that it is unlikely that the circuit court abused its discretion in also denying the revisory motion.