Circuit Court for Montgomery County
Case No. 411508V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1105

September Term, 2019

MICHAEL SPALLETTA

v.

EDWARD S. COHN, et al.

Nazarian,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 6, 2020

*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.

In this appeal from a foreclosure action in the Circuit Court for Montgomery County, Michael Spalletta, appellant, challenges the court's denial of his motion to set aside the foreclosure sale, ratification of the sale, denial of his "Motion to Enforce Terms of Sale," and denial of appellees' "Petition to Order Resale of Property." For the reasons that follow, we shall affirm the judgments of the circuit court.

In June 2003, Mr. Spalletta obtained from Lehman Brothers Bank, FSB, a loan secured by a deed of trust on his property at 9235 Falls Chapel Way in Potomac. Mr. Spalletta executed a promissory note in which he promised to pay the amount of the loan, plus interest, to the lender. In the deed of trust, Mr. Spalletta granted and conveyed the property to a trustee, in trust, with a power of sale.

In April 2009, Mr. Spalletta defaulted on the terms of the note. In October 2015, appellees[1] were appointed as substitute trustees under the deed of trust. In November 2015, appellees filed an order to docket the foreclosure action. In September 2017, Mr. Spalletta filed a notice that he had "filed a Chapter 13 case in the United States Bankruptcy Court for the District of Maryland," and asked the court to "stay all proceedings in the matter pursuant to 11 U.S.C. § 362." On May 10, 2018, the U.S. Bankruptcy Court ordered that the stay "as to the property . . . shall be terminated," but stayed the order "for a period of [120] days from May 10, 2018 to allow [Mr. Spalletta] to sell the property." The 120-day period expired on September 7, 2018.

[1]Appellees are Edward S. Cohn, Stephen N. Goldberg, Richard E. Solomon, Richard J. Rogers, and Randall J. Rolls.

On September 26, 2018, the property was sold to RJRE Investments, LLC (hereinafter "RJRE"). On October 4, 2018, appellee Richard J. Rogers filed an "Affidavit . . . of Notice by Mail," in which he affirmed that on September 6, 2018, "the persons authorized to make the sale . . . mail[ed] notice of the time, place[,] and terms of sale" to various parties as required by Md. Code (1974, 2015 Repl. Vol., 2017 Supp.), §§ 7-105.2(c) and 7-105.3(b) of the Real Property Article ("RP") and Rule 14-210(b)(1). Mr. Rogers also filed an "Affidavit . . . of Notice to Occupants," in which he affirmed that on September 6, 2018, a "[n]otice in compliance with" RP § 7-105.9(C) and Rule 14-210(b)(2) "was sent . . . to 'All Occupants' of the property."

On November 5, 2018, Mr. Spalletta filed a "Motion to Set Aside Foreclosure Sale," in which he contended, among other arguments, that appellees "violated the automatic stay of" 11 U.S.C. § 362 by mailing the notices required by the Real Property Article and Rule 14-210 prior to September 7, 2018, and hence, the notices were "null, void[,] and without legal effect." On December 11, 2018, the court denied the motion. On January 3, 2019, the court entered an order in which it ratified and confirmed the sale. On January 11, 2019, Mr. Spalletta moved for reconsideration of the ratification of the sale. On February 25, 2019, the court entered an order in which it denied the motion.

On April 15, 2019, Mr. Spalletta filed a "Motion to Enforce Terms of Sale," in which he asked the court "for an order to require [appellees] to collect the full amount due from the purchaser at settlement of the . . . sale," on the ground that appellees "expressed an unwillingness to collect the utility costs and other costs payable by the purchaser at settlement," or "the cost of property insurance paid by [Mr. Spalletta] for the benefit of the

purchaser and lender." On April 17, 2019, appellees filed a "Petition to Order Resale of Property," in which appellees contended that RJRE had "failed and/or refused to" go to settlement. On May 16, 2019, the court denied the motion to enforce terms of sale on the ground that Mr. Spalletta "is not a party with standing to enforce the terms of the foreclosure sale." On May 31, 2019, Mr. Spalletta moved for reconsideration of the denial of the motion. On June 20, 2019, RJRE filed an opposition to the petition to order resale, and affirmatively moved for an order "abating post sale interest chargeable to the purchaser for a total period of 140 days." On July 16, 2019, the court denied the petition to order resale, but granted RJRE's motion. On July 19, 2019, the court denied Mr. Spalletta's motion for reconsideration.

Mr. Spalletta first contends that the court erred in denying his motion to set aside the foreclosure sale and ratifying the sale, because appellees violated the "bankruptcy court order and the automatic stay of" 11 U.S.C. § 362 by "mailing legally required notices of [the] foreclosure sale . . . the day before the expiration of the . . . stay," and hence, the notices and subsequent foreclosure sale were "without legal force or effect as a matter of law." Appellees counter that because Mr. Spalletta "did not file an appeal of the . . . orders of December 11, 2018, January 3, 2019, and February 25, 2019," his "appellate rights . . . to challenge the foreclosure sale have expired and a challenge to the sale is not properly before this Court." We agree with appellees. We have stated that "an order ratifying a foreclosure sale is a final judgment with respect to the in rem aspects of a foreclosure proceeding," *Huertas v. Ward*, No. 2929, September Term 2018 (filed October 27, 2020), slip op. at 14 (citation omitted), and Rule 8-202(a) requires a party to file a notice of appeal

from such an order "within 30 days after entry of the . . . order." Mr. Spalletta failed to do so, and hence, we cannot reach his contention.

Mr. Spalletta next contends that the court erred in denying the motion to enforce terms of sale, because he "is an intended beneficiary of the foreclosure contract of sale and therefore has legal standing to enforce the contract." We disagree. In *120 W. Fayette v. Baltimore*, 426 Md. 14 (2012), the Court of Appeals stated:

> An individual is a third-party beneficiary to a contract if the contract was intended for his or her benefit and it . . . clearly appears that the parties intended to recognize him or her as the primary party in interest and as privy to the promise. It is not enough that the contract merely operates to an individual's benefit[.] An incidental beneficiary acquires by virtue of the promise no right against the promisor or the promisee.

Id. at 36 (internal citations, quotations, and brackets omitted). Here, Mr. Spalletta did not contend in the motion, and there is no evidence in the record, that appellees and RJRE intended to recognize Mr. Spalletta as the primary party in interest and as privy to the promise. Even if the contract operated to Mr. Spalletta's benefit, he did not acquire by virtue of the promise a right against appellees or RJRE. Mr. Spalletta does not have standing to enforce the contract, and hence, the court did not err in denying the motion to enforce terms of sale.

Finally, Mr. Spalletta contends that the court erred in denying appellees' petition to order resale, because RJRE's "failure to come to settlement affects the interests of [Mr. Spalletta] since he is forced to maintain the house at his own expense." For the reasons described in our resolution of the previous contention, we conclude that Mr. Spalletta does

not have standing to challenge the contract between appellees and RJRE. Hence, the court did not err in denying the petition to order resale.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.