UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1240

September Term, 2014

CAPITALSOURCE BANK FBO
AEON FINANCIAL, LLC

v.

WELDON SOLLERS

Eyler, Deborah S.,
Graeff,
Berger,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: June 18, 2015

In an action to foreclose right of redemption arising out of a tax sale, the Circuit Court for Anne Arundel County entered a judgment against "CapitalSource Bank, FBO Aeon Financial LLC," and "Aeon Financial LLC," jointly and severally, and in favor of Weldon Sollers, for $158,153.15. Sollers, the owner of the property sold at the tax sale, is the appellee before this Court. The notice of appeal was filed by "CapitalSource Bank FBO Aeon Financial, LLC" ("CapitalSource FBO Aeon"). The only appellant's brief was filed by Aeon Financial, LLC ("Aeon").

On appeal, Aeon asserts that CapitalSource Bank ("Capital Source") was not a real party in interest, and therefore the circuit court erred by entering judgment against "CapitalSource Bank FBO Aeon Financial LLC." It also asserts that the court erred by entering judgment against CapitalSource Bank FBO Aeon because there is no such entity.[1]

For the following reasons, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

A. *Tax Sales in Maryland*

Tax sales are governed by Md. Code (1985, 2012 Repl. Vol.), sections 14-808 *et seq.* of the Tax-Property Article 9 ("TP"), and Rules 14-501 through 14-506. If the owner of real

[1]In its brief, Aeon frames the issues as follows:

> I. Did the lower court err in determining that CapitalSource Bank is a real party in interest despite the fact that it brought the action in a solely representative capacity pursuant to Maryland Rule 2-201 and an agreement with Aeon Financial, LLC?
>
> II. Did the lower court err in entering a judgment against CapitalSource Bank FBO Aeon Financial, LLC, a non-entity?

property in Maryland fails to pay property taxes for more than a statutorily specified period of time, the Collector of Taxes ("Collector") for the county in which the property is located (including Baltimore City) is required to sell the property at a public auction tax sale in order to satisfy the unpaid taxes. TP § 14-808(a). The high bidder at a tax sale must pay the Collector the amount advertised, which comprises the unpaid taxes plus interest and certain administrative fees. TP § 14-818(a). The "residue of the purchase price," *i.e.*, the balance of the bid above the amount of the unpaid taxes and fees, is not due at the time of the tax sale. *Id.* The Collector issues the tax sale purchaser a certificate of sale ("Certificate"). TP § 14-820(a).

The owner of the property sold at tax sale may redeem it by paying the unpaid taxes, statutory interest, and costs to the Certificate holder at any time before the property owner's right of redemption is "finally foreclosed." TP § 14-827. No sooner than six months and no later than two years after the tax sale, an action may be brought to foreclose the owner's right of redemption in the property. TP § 14-833(a). The complaint to foreclose right of redemption shall be filed in the circuit court in the county where the property is located, TP § 14-835, and the plaintiff "shall be the holder of the certificate of sale." TP §14-836(a). The defendants shall include the record title holder of the property and the county where the property is located. TP § 14-836(b).

If the court enters a final judgment foreclosing the property owner's right of redemption, the plaintiff, *i.e.*, the Certificate holder, must pay the Collector the balance of the purchase price for the property and the amount of any taxes that have accrued since the

date of sale. TP § 14-818(a)(2). Upon receiving payment, the Collector shall execute a deed transferring the property to the plaintiff. TP § 14-818(a)(3). "Any balance over the amount required for payment of taxes, interest, penalties, and costs of sale shall be paid by the [C]ollector to . . . the person entitled to the balance" or into the court registry if there is a dispute as to who is entitled to the balance. TP § 14-818(a)(4).

If, after obtaining a final judgment foreclosing the property owner's right of redemption, the Certificate holder does not pay the balance owed, the circuit court may issue an order compelling payment. *Hardisty v. Kay*, 268 Md. 202, 211-12 (1973).

B. The Tax Sale

In the instant case, Sollers failed to pay over $3,000 in property taxes on his real property located at 999 Mt. Zion Marlboro Road, in Lothian, Maryland ("the Property"). On June 4, 2009, the Collector for Anne Arundel County ("the County") sold the Property at a tax sale auction for $132,888.25. The high bidder was "CapitalSource Bank FBO Aeon Financial" (which, as noted, we are calling "CapitalSource FBO Aeon").

The day of the sale, the Collector issued the Certificate to CapitalSource FBO Aeon. The Certificate states that the Property was sold to CapitalSource FBO Aeon; lists a Chicago address for that entity; states the purchase price; and verifies that CapitalSource FBO Aeon paid a deposit on the Property in the amount of $3,621.86, which was the amount of the unpaid taxes and other fees.

On December 11, 2009, in the Circuit Court for Anne Arundel County, CapitalSource FBO Aeon, as the Certificate holder, filed an action to foreclose Sollers' right of redemption

in the Property. The complaint named the County, the County Office of Finance, and Sollers as defendants. CapitalSource FBO Aeon alleged that it was the Certificate holder; it had complied with all the "noticing requirements"; and Sollers could redeem the Property by paying CapitalSource FBO Aeon $3,621.86, "the original amount due for unpaid taxes and costs," and interest on that amount at the statutory rate of 18% per annum, plus other costs and fees. CapitalSource FBO Aeon further alleged that if Sollers failed to redeem the Property, it was seeking a judgment foreclosing his right of redemption and empowering it to take title to the Property.

The County and Sollers filed answers to the complaint in which they did not oppose foreclosure of Sollers' right of redemption. In other words, unlike real property owners who do not want to lose their property for nonpayment of taxes, Sollers did not want to keep the Property. On January 18, 2011, the circuit court entered a judgment foreclosing Sollers' right of redemption and directing the County to execute a deed to the Property "to the Plaintiff" "upon payment [by the Plaintiff] to [the] Collector of the balance of the purchase price due."

After entry of the January 18, 2011 judgment, more than ten months passed without CapitalSource FBO Aeon paying the balance of the purchase price (or any other sum) to the Collector or doing anything at all with respect to the Property. Evidently, the County became tired of waiting for CapitalSource FBO Aeon to make payment of the delinquent property taxes, and on November 14, 2011, filed a motion to strike the January 18, 2011 judgment. That would allow it to take steps to sell the Property to someone else.

Sollers opposed the County's motion to strike and filed against CapitalSource FBO Aeon a "Motion for Judgment and to Compel Payment" of the tax sale purchase price ("motion for judgment"). On January 20, 2012, the court denied the County's motion to strike and deferred ruling on Sollers' motion for judgment.

On June 11, 2012, CapitalSource FBO Aeon, the County, and Sollers appeared before the court for a hearing on open motions. The court struck a belated opposition to Sollers' motion for judgment filed by Aeon in open court; heard argument; and entered an order granting Sollers' motion for judgment. The court entered an order to that effect on June 19, 2011. CapitalSource FBO Aeon filed a notice of appeal.

In an unreported opinion, this Court affirmed. We held that a circuit court has authority under the Tax Property Article to compel a plaintiff Certificate holder to consummate the tax sale once a final judgment foreclosing the property owner's right of redemption has been entered. *Aeon Financial, LLC v. Weldon Sollers*, No. 969, Sept. Term 2012 (filed Nov. 25, 2013). In that appeal, as in this one, the only appellant's brief was filed by Aeon. In a footnote, we commented that "[i]n the pleadings at the circuit court level, the nominal plaintiff was [CapitalSource FBO Aeon]; Aeon is, according to its brief, the real party in interest and filed the appeal." Slip Op. at *1, n.1.[2]

On December 17, 2013, in the action to foreclose right of redemption, Sollers filed a "Motion to Fix Judgment Amount." He asked the court to enter judgment against "the

[2] Aeon filed a petition for *writ of certiorari*, which the Court of Appeals denied. *Aeon Financial v. Sollers*, 437 Md. 423 (2014).

Plaintiffs" CapitalSource *and* Aeon, in the amount of $195,710.52, which, he alleged, comprised the purchase price plus interest, less the amount of the deposit paid to the County.

CapitalSource FBO Aeon filed an opposition. It argued that the motion was premature because this Court's mandate had not yet issued; that the tax sale statute does not provide a mechanism for a court to enter a money judgment in favor of the defendant property owner and against the plaintiff tax sale purchaser; and that Sollers' calculation of the amount due was incorrect. In a footnote, CapitalSource FBO Aeon asserted that "CapitalSource Bank is not the real party in interest in this action. The case was filed by Capital Source Bank for the benefit of Aeon [] pursuant to Maryland Rule 2-201."

On July 28, 2014, the circuit court held a hearing on Sollers' motion to fix the amount of the judgment. Greg Carroll introduced himself as counsel "on behalf of CapitalSource, fbo Aeon Financial LLC." Counsel for Sollers and counsel for the County also introduced themselves. Carroll raised the following "preliminary matter":

> [T]he Plaintiff is listed as CapitalSource Bank for the benefit of Aeon Financial. Our – my position would be that Aeon Financial is the real party in interest pursuant to the rule.
>
> CapitalSource Bank, fbo Aeon Financial, to the extent that it's combined, is not an entity that exists. CapitalSource [B]ank was listed solely as a security pursuant to the rules of Maryland court because they were part of a contract when they lent money for the system.
>
> So, I think that I would just argue that Aeon Financial is the real party in interest and not CapitalSource Bank.

Counsel for Sollers disagreed, arguing that the June 17, 2012 order granting Sollers' motion for judgment was "against both of them," *i.e.*, CapitalSource and Aeon. He asserted that if CapitalSource and Aeon had "something between them let them work it out." Carroll

countered that the June 19, 2012 order named CapitalSource FBO Aeon, which, he asserted, is an "entity that does not exist." The court interjected that the existence, *vel non*, of that entity was not "before the Court in the form of any evidence." Carroll replied that, under Rule 2-201, a person or entity is

> allowed to bring an action in the name of the real party in interest if there's a contract that exists, and that's what the fbo stands for, for the benefit of, and so, I think that it's a jurisdictional question, was [CapitalSource] ever really before the Court in terms of whether the Court has jurisdiction to enter a judgment against it.

He suggested that he could present evidence on this issue if the court so desired.

After more discussion, the court asked Carroll to explain the "specific terms of [the] agreement between [CapitalSource and Aeon]." Carroll replied:

> CapitalSource Bank was merely a lender. They – you know, Aeon [] put down a certain amount of money on tax liens over the course of a year, and CapitalSource Bank, based on that contract that they had, based on the lending agreement, listed their name as – solely for securitization purposes so that when the properties were deemed [sic] or when – I guess, yeah, so that when properties were deemed [sic] they [*i.e.*, CapitalSource] would be repaid the amount of the money – amount of money that they lent, you know, on a case by case basis.[3]

Sollers' lawyer noted that there was nothing in any of the pleadings explaining the existence or nature of this lending arrangement. Carroll responded that there was "nothing in any of the pleadings that states that CapitalSource Bank is a party in any respect at all." Sollers' lawyer replied that CapitalSource could file a motion to vacate the judgment if it took the position that it never was a party to the action.

[3] It is clear that Carroll either said or meant to say "redeemed," not "deemed."

The court decided to hear testimony about the amount of the judgment to be fixed and to "take . . . the issue . . . [of the identity] of the judgment debtor under advisement." At the conclusion of the hearing, Carroll again stated that he wanted to "preserve" his request that "CapitalSource Bank not be included as they're not a party" and asked for leave to further brief that issue. The court advised counsel that it intended to enter judgment that day and that CapitalSource and/or Aeon could file a motion to alter or amend if so disposed. Sollers' lawyer then asked whether Aeon would "admit" that it was a party. Carroll replied that he did not dispute that Aeon was "the real party in interest in the action."

On August 5, 2014, the court entered an order denying CapitalSource FBO Aeon's "Motion to Substitute Parties, made at the . . . hearing" and entering judgment in favor of Sollers and against "Plaintiff CapitalSource Bank, FBO Aeon Financial LLC" and Aeon, jointly and severally, in the amount of $158,153.15. The judgment included a statement that the parties had consented at the hearing to the entry of judgment against Aeon individually.

Ten days later, Aeon filed a motion to alter or amend the judgment. That same day, CapitalSource FBO Aeon filed a notice of appeal.

In its motion to alter or amend, Aeon asked the court to strike the judgment against CapitalSource FBO Aeon, leaving Aeon as the sole judgment debtor.[4] It also asked the court to amend the judgment to direct the County to transfer title to the Property to it (Aeon) upon

[4]Aeon disputed that it had consented to the entry of judgment against it *and* CapitalSource FBO Aeon. Rather, it maintained that it had consented to the entry of judgment "solely as to Aeon."

payment of the judgment and to direct Sollers to vacate the premises and transfer possession of the Property to it (Aeon).

Aeon attached to its motion an affidavit by Mark Schwartz, the CEO of Axis Capital Management, Inc., the "portfolio manager" for Aeon. In his affidavit, Schwartz attested that he was "personally involved in the drafting and all negotiations of the loan and security agreement between Aeon [] and CapitalSource [], including the titling of the [C]ertificate[] [and], captioning of the instant complaint." He averred that "at all times material" Aeon was the "[C]ertificate holder, real party in interest and sole owner" of the Certificate. He explained that the "ONLY" reason CapitalSource's name was included, followed by "FBO," was

> to ensure that any redemption checks transmitted and received by Anne Arundel County on account of such certificate(s) would need to be deposited in an account at CapitalSource [] and therefore remain subject to the loan and security agreement between CapitalSource [] and Aeon []. In other words, Aeon [] would not be able to cash, deposit, or otherwise negotiate any checks, without first depositing them at CapitalSource [].

According to Schwartz, the "FBO term" was intended to make clear that "any funds received would, first, need to be deposited in a general funding account only at CapitalSource [], nowhere else, where CapitalSource [] would have control over such funds before they would then be applied FBO (ie. [sic] for the benefit of) Aeon [], the true account holder, certificate holder, account beneficiary and real-party-in-interest." Schwartz attested that "Aeon's name could have been listed in the caption first, just as easily as CapitalSource's."

The County filed a response to the motion, stating that it "[took] no position on whether Aeon [] is a proper party," but noting that TP section 14-836 requires that an action to foreclose the property owner's right of redemption be brought by the holder of the Certificate, which, in this case, was CapitalSource FBO Aeon. The County did not object to Aeon's request that the judgment be amended to direct the County to transfer title to Aeon upon the payment of the judgment. It asked the court to add a provision requiring Sollers to pay the total outstanding taxes to the County prior to delivery of a deed to Aeon.

Sollers opposed the motion to alter or amend, in part. He did not object to the requests by Aeon and the County to amend the provisions of the judgment pertaining to the transfer of title and the payment of outstanding taxes. He did object, however, to Aeon's request that the judgment be amended to strike CapitalSource FBO Aeon as a judgment debtor. He asserted that CapitalSource FBO Aeon was a real party in interest because it was the holder of the Certificate.

On October 23, 2014, the court issued an order granting the motion to alter or amend "in part." Specifically, it ordered Sollers to pay all the outstanding taxes, interest, and penalties immediately upon receipt of payment of the judgment and to vacate the Property thereafter; and ordered the County to execute a deed "to the holder of the [C]ertificate" on payment of the balance of the purchase price due, together with all taxes, interest, and penalties accruing after the date of sale. The order stated that CapitalSource FBO Aeon's

request that it be stricken from the August 5, 2014 judgment was denied. The October 23, 2014 order was entered on November 12, 2014.[5]

MOTION TO DISMISS

Sollers has moved to dismiss this appeal on two grounds.

First, Sollers contends CapitalSource is not an existing legal entity, and therefore cannot pursue this appeal. He asserts that on January 30, 2014, which was after he filed his motion to fix judgment but before the hearing on that motion, CapitalSource merged with Pacific Western Bank ("Pacific"). We shall not dismiss the appeal on this basis. The alleged merger of CapitalSource and Pacific took place before the entry of the judgment that is being challenged in this appeal. Because the fact of, and any possible impact of, that merger was not raised or decided in the circuit court, it is not properly before this Court in the instant appeal. *See* Md. Rule 8-131(a).

Second, Sollers contends Aeon lacks standing to prosecute this appeal because it is not aggrieved by the judgment against CapitalSource FBO Aeon and is not challenging the judgment against Aeon alone. He points out that Aeon represents in its brief that it brought

[5]Neither CapitalSource FOB Aeon, Capital Source, nor Aeon filed a notice of appeal after the court entered the November 12, 2014 order granting in part and denying in part the motion to alter or amend. That order added to the August 5, 2014 judgment but otherwise left it intact by denying the portion of the motion to alter or amend requesting to strike CapitalSource FBO Aeon as a judgment debtor. In its brief, Aeon does not challenge the changes made to the August 5, 2014 judgment. It only challenges the aspect of the judgment making CapitalSource FBO Aeon a judgment debtor. Because that provision of the August 5, 2014 judgment was unchanged by the November 12, 2014 order, and a timely notice of appeal of the August 5, 2014 judgment was filed, we have jurisdiction over this appeal.

this appeal only on behalf of itself; CapitalSource is not a party to the appeal and is not represented by legal counsel.

To this contention, Aeon responds that it defies logic that CapitalSource FBO Aeon is not represented by counsel in this appeal because, if that were the case, CapitalSource FBO Aeon also was not represented by counsel in the circuit court. Aeon further responds that it is aggrieved by the August 5, 2014 judgment because its "relationship with its lender, and future lenders, would be substantially harmed if Sollers prevails and this Court directs the lower Court to enter a judgment against CapitalSource Bank." Moreover, if Sollers prevails, Aeon also could "suffer even more significant harm" because its lenders potentially could "seek one-half interest in any judgment" in Aeon's favor in other foreclosure actions not related to this matter.

We also shall not dismiss this appeal based on Sollers' legal representation and aggrievement arguments. As we have recounted, before the trial court, Gregory Carroll introduced himself as counsel for CapitalSource FBO Aeon; and the notice of appeal was filed by CapitalSource FBO Aeon. That party is aggrieved by the judgment because the judgment was entered against it and Aeon, jointly and severally. Moreover, as we shall discuss, while the principal relief sought by Aeon is the striking of the judgment against CapitalSource FBO Aeon, the alternative relief it seeks is a declaration that the judgment and/or the tax sale is void. Aeon plainly is aggrieved by the judgment against it and has a sufficient interest in that judgment being declared void to give it standing in this appeal.

DISCUSSION

On the merits, Aeon advances two contentions. First, it asserts that CapitalSource should not be a judgment debtor because it is not a real party in interest. It argues that, "[p]ursuant to Maryland Rule 2-201, this Court should remand this matter to the lower court with directions to enter judgment against Aeon [] and strike any reference to CapitalSource in the judgment." It asserts that CapitalSource never appeared "individually as a party" in this action and was never represented by counsel (notwithstanding that Carroll introduced himself to the circuit court as counsel for CapitalSource FBO Aeon).

Second, and alternatively, Aeon contends that, although a judgment in an action to foreclose right of redemption only may be entered against the certificate holder, and here CapitalSource FBO Aeon is the Certificate holder, it "is not and . . . never has been an actual organization, corporation or entity" and was not eligible to bid at the tax sale. It asks us to find that CapitalSource FBO Aeon could not "have purchased the tax lien" and was not a proper certificate holder, and on that basis declare the tax sale void or void *ab initio*. Alternatively, Aeon maintains that because the judgment only could be entered against CapitalSource FBO Aeon, a non-entity, we should hold that the judgment is void as having been entered against a non-entity (CapitalSource FBO Aeon) and a non-Certificate holder (Aeon).

Sollers responds that CapitalSource was not a "representative party" in the action to foreclose right of redemption, but was a "real party in interest with a personal stake in the

outcome of the transaction." Moreover, Sollers maintains, if CapitalSource was not represented by counsel before the circuit court, this was a "self-inflicted wound."

A "real party in interest" is a "person entitled under the substantive law to enforce the right sued upon and who generally but not necessarily, benefits from the actions [sic] final outcome." *Mid-Atlantic Power Supply Ass'n. v. Pub. Serv. Comm'n*, 361 Md. 196, 221 (2000). Rule 2-201, "Real party in interest," states:

> **Every action shall be prosecuted in the name of the real party in interest, except** that an executor, administrator, personal representative, guardian, bailee, trustee of an express trust, **person with whom or in whose name a contract has been made for the benefit of another**, receiver, trustee of a bankrupt, assignee for the benefit of creditors, or a person authorized by statute or rule **may bring an action without joining the persons for whom the action is brought**. When a statute so provides, an action for the use or benefit of another shall be brought in the name of the State of Maryland. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for joinder or substitution of the real party in interest. The joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(Emphasis added.) The Rule "provides illustrations of specific instances of real parties in interest who are permitted by substantive law to bring an action for the benefit of another, and is intended only to illustrate the application of the Rule in contexts that might otherwise cause confusion." *South Down Liquors, Inc. v. Hayes*, 323 Md. 4, 7 (1991).

We return to the case at bar. Under Rule 2-201, a party to a contract that is made for the benefit of another may sue in its own name to recover under the contract. That is not what happened here. CapitalSource loaned Aeon money to use to purchase tax liens, including the tax lien on the Property. According to Schwartz, and as argued below, pursuant

to a loan and security agreement between CapitalSource (as lender) and Aeon (as borrower), if Aeon recovered funds in a tax sale case (which would happen if the owner redeemed his right in the property), those funds were to be deposited in CapitalSource's "general funding account" and then "applied FBO (ie. [sic] for the benefit of) Aeon." Thus, under the contract between CapitalSource and Aeon (the precise terms of which are not in the record), Aeon was not a third-party beneficiary. It was one of the contracting parties. CapitalSource could not bring an action "for the benefit of" Aeon under Rule 2-201 and, even if it could have done so, it would have done so as a real party in interest.

Moreover, as we have explained, pursuant to TP section 14-836(a), the plaintiff in an action to foreclose right of redemption "shall be" the Certificate holder. Here, CapitalSource FBO Aeon was the Certificate holder. The action to foreclose Sollers' right of redemption had to be brought by CapitalSource FBO Aeon and, in fact, it was. There is nothing in the designation "FBO" that makes Aeon the real party in interest and CapitalSource or CapitalSource FBO a non-party. If CapitalSource takes the position that it never entered its appearance in the circuit court -- directly contrary to what the record reflects -- it may seek appropriate relief before that court. The docket entries and the complaint to foreclose right of redemption make plain, however, that CapitalSource FBO Aeon was the plaintiff and the Certificate holder. Under those circumstances, the circuit court did not err by entering judgment in favor of Sollers and against CapitalSource FBO Aeon.[6]

[6]Aeon does not challenge the judgment entered against it "by consent."

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY AEON FINANCIAL, LLC.