Circuit Court for Prince George's County
Case No. CAEF15-16716

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1245

September Term, 2019

DANIEL VILLANUEVA

v.

CARRIE M. WARD, et al.

Nazarian,
Friedman,
Wells,

JJ.

Opinion by Wells, J.

Filed: October 29, 2020

On June 23, 2015, appellees[1], in their capacity as substitute trustees, initiated foreclosure proceedings in the Circuit Court for Prince George's County against a property held by appellant, Daniel Villanueva, located in Hyattsville. The parties participated in a mediation session on November 19, 2015, in which they mutually agreed to temporarily stay the foreclosure action pending the results of Mr. Villanueva's request for a loan modification. This contingency agreement never become final, and the appellees filed an unopposed motion to dissolve the stay, which the circuit court granted on January 13, 2016. The appellees were unable to proceed to the foreclosure sale, however, as Mr. Villanueva had filed for relief in United States Bankruptcy Court.

Following the disposition of Mr. Villanueva's third petition for bankruptcy in January 2019, appellees sold the property at a foreclosure auction on February 26, 2019. Days before the sale, however, Mr. Villanueva requested a second mediation, which the court denied. The court ratified the sale and the court auditor filed its report. Mr. Villanueva filed exceptions to that report, which the circuit court ultimately denied on July 23, 2019.

Mr. Villanueva appeals from the circuit court's ratification order and presents the following questions:

1. Did the Circuit Court err in striking Mr. Villanueva's February 22, 2019 request for mediation as untimely, where no final loss mitigation had been conducted close in

[1] In Mr. Villanueva's brief, he refers to the appellees as "WBGLMC." This is an acronym created using the initials of surnames of some of the substitute trustees: Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Pratima Lele, Joshua Coleman, Richard R. Goldsmith, Jr., Ludeen McCartney-Green, Jason Kutcher, Elizabeth C. Jones, and Nicholas Derdock. We shall refer to them simply as "appellees" or "substitute trustees."

time to the scheduling of the foreclosure sale and Mr. Villanueva's request was made pursuant to Maryland Rule 14-212, which was not time barred?

2. Did the Circuit Court err in denying Mr. Villanueva's request to dismiss the foreclosure proceedings because Appellees failed to provide him with sufficient notice of the foreclosure sale and the opportunity to engage in meaningful loss mitigation as required by Maryland Code Annotated, Real Property Article § 7-105.1?

As shall be discussed, res judicata bars Mr. Villanueva's untimely challenges to the foreclosure proceedings. Notwithstanding res judicata, however, Maryland law does not bestow unto mortgagors the right to a second foreclosure mediation, nor does it require additional notice of a foreclosure sale that has been delayed because of the mortgagor's bankruptcy proceedings. We conclude that the circuit court did not abuse its discretion in striking Mr. Villanueva's second request for mediation or in denying his motion to dismiss. We therefore affirm the judgments below.

FACTUAL AND PROCEDURAL BACKGROUND

On April 28, 2006, Mr. Villanueva borrowed $360,000.00 from Fremont Investment and Loan, which was secured by a deed of trust/mortgage lien encumbering Mr. Villanueva's home at 8412 20th Avenue in Hyattsville, Maryland. Mr. Villanueva defaulted on that loan in March 2011 after failing to tender timely payments.

The foreclosure process did not begin until April 7, 2015, when the loan's secured party sent Mr. Villanueva a Notice of Intent to Foreclose, unless Mr. Villanueva paid the outstanding balance.[2] Appellees (hereafter "substitute trustees") then initiated foreclosure

[2] The appellees replaced the original trustees of the 8412 20th Avenue property, Friedman & MacFayden, P.A., on April 13, 2015.

proceedings in the Circuit Court for Prince George's County on June 23, 2015, filing an Order to Docket and a Preliminary Loss Mitigation Affidavit.

Mr. Villanueva filed a timely request for mediation, and a mediation session was duly scheduled for November 9, 2015. During mediation, the parties agreed that the foreclosure would be temporarily stayed in order for Mr. Villanueva to submit documentation for a potential loan modification within twenty days, or November 29, 2015. Mr. Villanueva failed to submit any documentation as agreed. Substitute trustees then moved to dissolve the stay on December 16, 2015. The circuit court granted the unopposed motion and ordered the foreclosure to proceed.

Substitute trustees attempted to proceed with the sale six months later, June 2016, by filing a foreclosure bond. However, Mr. Villanueva filed for Chapter 13 bankruptcy on June 18, 2016, thereby halting the foreclosure sale. On August 11, 2016, the U.S. Bankruptcy Court, District of Maryland dismissed Mr. Villanueva's petition. The same series of events happened in March 2017, and once more in October 2017, until Mr. Villanueva's third petition for bankruptcy converted to a Chapter 7 proceeding and resulted in a bankruptcy discharge on January 30, 2019.

Following Mr. Villanueva's discharge, on February 8, 2019, substitute trustees filed with the court yet another foreclosure bond and scheduled the property to be sold at auction on February 26, 2019. Days before the auction, on February 22, 2019, Mr. Villanueva filed a second request for foreclosure mediation, which the court denied. The property was sold at auction for $311,729.29.

On March 7, 2019, substitute trustees filed a motion to strike Mr. Villanueva's second request for mediation as untimely and duplicative. That same day, Mr. Villanueva filed a motion seeking to hold the law firm representing substitute trustees in contempt for their failure to grant Mr. Villanueva a second mediation. On March 19, 2019, the circuit court granted substitute trustees' motion and struck Mr. Villanueva's second mediation request. From the March 21, 2019 order striking Mr. Villanueva's request for mediation, Mr. Villanueva noted an appeal to this Court. And on April 8, 2019, Mr. Villanueva filed a motion seeking to stay the foreclosure proceedings pending the appeal. The circuit court denied that request. We dismissed the appeal on May 2, 2019.

With no pending exceptions to the sale, on May 13, 2019, the circuit court ratified the foreclosure sale. Over a month later, on June 20, 2019, the court auditor filed a report which the circuit court ratified on July 10, 2019. Mr. Villanueva filed exceptions to that auditor's report, but the court overruled them on July 23, 2019. On August 13, 2019, three months after the ratification of the foreclosure sale and twenty days after the circuit court overruled Mr. Villanueva's exceptions, he noted this appeal.

DISCUSSION

I. Mr. Villanueva's Claims Are Barred by Res Judicata

As a preliminary matter, substitute trustees contend that Mr. Villanueva's challenges to the foreclosure are barred by the doctrine of res judicata. They argue that although Mr. Villanueva's appeal is to the court's order overruling his exceptions to the auditor's report, in substance he challenges the validity of the underlying foreclosure sale, not the distributions in the auditor's report. According to the substitute trustees, Mr.

Villanueva does not discuss the distributions let alone identify an error in the report. The substitute trustees also point out that the foreclosure sale was ratified more than thirty days before Mr. Villanueva brought this appeal. We agree that Mr. Villanueva's claims are barred by res judicata and explain.

A mortgagor like Mr. Villanueva is entitled to three separate means of challenging a foreclosure sale, which coincide with the three-step process the court conducts to protect the due process rights of the parties. *Wells Fargo v. Neal*, 398 Md. 705, 726-27 (2007). Mortgagors must raise defenses to the foreclosure "within fifteen days of the last of various procedural milestones." *Pulliam v. Dyck-O'Neal, Inc.*, 243 Md. App. 134, 144 (2019) (citing Md. Rule 14-211(a)). It thus follows that the mortgagor/borrower's ability to challenge the sale is determinant upon when in the process relief is requested. But mortgagors are offered only "two separate opportunities in which they may challenge . . . the legality of the foreclosure [itself.]" *Devan v. Bomar*, 225 Md. App. 258, 265-66 (2015) (citing *Fisher v. Federal Nat'l Mortgage Ass'n,* 360 F.Supp. 207, 211 (D. Md. 1973)).

The first is an initial pre-sale challenge, whereby the mortgagor may move to enjoin and to dismiss the foreclosure outright pursuant to Md. Rule 14-211. At this stage, the borrower must state his challenges as to the validity of the lien and the lender's right to foreclose. Md. Rule 14-211(a)(3)(B); *see also Devan,* 225 Md. App. at 264-65. Following a hearing, if the court finds that "the lien or the lien instrument is invalid or that the plaintiff has no right to foreclose in the pending action[,]" it may dismiss the foreclosure action outright. Md. Rule 14-211(e). However, challenges to the validity of the sale or right to foreclose, which are known and available to be raised by the borrower prior to the sale, but

are not raised through a pre-sale motion, are waived by the borrower after the foreclosure sale has occurred. *Bates v. Cohn*, 417 Md. 309, 328 (2010). Although orders denying motions to dismiss or stay are generally interlocutory, and therefore not appealable final orders, a borrower may appeal a court's denial of motion to dismiss or stay because such a motion functions as a request for an injunction. *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534, 540 n.2 (2013).

Should the court find that foreclosure is proper, as it did here, the second opportunity to challenge arises under Maryland Rule 14-305(c), which requires the clerk to publish a notice identifying the foreclosed property and stating that the sale will be ratified unless "cause to the contrary" is shown within 30 days of the date of notice. *Thomas v. Nadel*, 427 Md. 441, 444 (2012). During this time, the borrower may file post-sale written exceptions as to any "irregularity" concerning the sale. Md. Rule 14-305(d). However, at this post-sale stage, the mortgagor may challenge only the procedural irregularities underlying the sale itself. *Greenbriar Condo. v. Brooks*, 387 Md. 683, 688 (2005) (cited in *Thomas*, 427 Md. at 444). "Such procedural allegations may charge that 'the advertisement of sale was insufficient or misdescribed the property, the creditor committed a fraud by preventing someone from bidding or by chilling the bidding, challenging the price as unconscionable, etc.'" *Bates v. Cohn*, 417 Md. at 327 (citing *Greenbriar*, 387 Md. at 688).

"A lender's failure to comply with pre-sale loss mitigation requests," as Mr. Villanueva now alleges, "is one such defense, which must be raised ordinarily pre-sale in an effort to prevent the sale from happening." *Bates v. Cohn*, 417 Md. at 328. If no

exceptions are filed within the 30-day period, or if any such exceptions have been overruled, and the court is satisfied that "the sale was fairly and properly made," the sale is then ratified. Md. Rule 14-305(e); *see also Thomas*, 427 Md. at 444. The Court of Appeals, though, has "made it emphatically clear that those challenges to the legitimacy of a foreclosure proceeding that can be raised pre-foreclosure sale should, pursuant to Md. Rule 14-211, be raised 'before a foreclosure sale takes place.'" *Devan*, 225 Md. App. at 266 (citing *Bates*, 417 Md. at 318-19). Appellate courts have repeatedly held that a borrower "ordinarily must assert known and ripe defenses to the conduct of a foreclosure sale prior to the sale, rather than in post-sale exceptions." *Bates*, 417 Md. at 238; *see also Thomas*, 427 Md. at 445; *Devan*, 225 Md. App. at 226 ("The adjectival activator is 'known and ripe.'").

After the court ratifies the foreclosure sale, Rule 2-543 grants a mortgagor an opportunity to file post-sale ratification exceptions to the auditor's report. However, at this stage, the borrower is limited to challenging errors contained in the distribution listed in the auditor's report itself. Md. Rule 2-543(g); *see also Greenbriar Condo.*, 387 Md. at 683. Now, any "[o]bjections to the propriety of the foreclosure will no longer be entertained," because the circuit court has ratified the underlying foreclosure sale. *Manigan v. Burson*, 160 Md. App. 114, 120 (2004). Any subsequent, post-sale ratification challenges to the sale's validity must be raised through a motion to vacate under Maryland Rule 2-535. *See Manigan*, 160 Md. App. at 120. Although Mr. Villanueva did file an exception to the auditor's report, where he argued that the asserted mortgage principal amount was incorrect, he does not now challenge the circuit court's finding that his

exceptions "fail[ed] to provide the Court a sufficient legal basis for this Court to sustain the exceptions[.]" We therefore decline to analyze the circuit court's findings as to the contents of the auditor's report and limit our analysis to pre-sale and pre-ratification foreclosure challenges.

Mr. Villanueva's first opportunity to challenge the foreclosure, then, came in June 2015 when substitute trustees filed with the circuit court an order to docket. Rather than move to dismiss, Mr. Villanueva instead asked for mediation, which resulted in a pre-sale stay contingent upon his submission of loan modification documents. Mr. Villanueva failed to submit these documents and thereby failed to secure a loan modification. Consequently, the substitute trustees properly exercised their option to dissolve the stay and pushed forward with the foreclosure sale.

However, Mr. Villanueva's bankruptcy proceedings stalled the ability of the substitute trustees to continue with the sale until after Mr. Villanueva's January 2019 discharge. Upon discharge, substitute trustees continued with the sale, and notice was duly provided to Mr. Villanueva. At that point, Mr. Villanueva could have filed a motion to dismiss or to enjoin the substitute trustees under Rule 14-212, while he awaited a response to his request for a second mediation. This is not to say the request would have been granted, or that substitute trustees would have agreed to a second mediation; but we highlight this possible scenario to demonstrate that Mr. Villanueva had ample time and opportunity to challenge the impending foreclosure sale but he chose not to do so.

Mr. Villanueva's second opportunity to challenge came with the publication of the Rule 14-305(c) sale notice on March 12, 2019. From here, he had thirty days (until April

12, 2019) to file with the court any procedural irregularities with the underlying sale. But Mr. Villanueva never filed exceptions to the sale. Instead, he sought to hold BWW Law Group, substitute trustees' counsel, in contempt for their alleged failure to hold a second mediation session. The circuit court denied that request. With no exceptions filed within the 30-day window, the sale was ratified and became final by court order on May 10, 2019.

The direct consequence of the court's ratification is that Mr. Villanueva was barred from further disputing any possible irregularities that could have taken place prior to and during the sale. Of course, any challenges that Mr. Villanueva lodged between March 12 and April 12, 2019 would have been preserved for our review. However, as we recently reiterated in *Pulliam*, "once a foreclosure has ended, most attacks on its validity are barred. '*The effect of a final ratification of sale is* res judicata *as to the validity of such sale, except in the case of fraud or illegality*.'" 243 Md. App. at 144 (citing *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008)) (emphasis supplied). Because Mr. Villanueva does not allege fraud or illegality, we consider the results of the foreclosure proceeding "have been adjudicated and are not before us[.]" *Pulliam*, 243 Md. App. at 144.

Despite our conclusion, Mr. Villanueva contends that dicta in *McLaughlin v. Ward*, 240 Md. App. 76 (2019) required him to wait until after the ratification of the auditor's report to lodge his appeal, as the ratification constitutes the final appealable judgment. Therefore, in Mr. Villanueva's view, his appeal is not barred by *res judicata*, as the time to challenge the foreclosure had not yet begun until the court ratified the auditor's report. We disagree.

In *McLaughlin*, a property was sold at a foreclosure sale, but, before the sale could be ratified, the trustees determined that defects within the affidavit of service could not be remedied and dismissed the foreclosure outright. *Id.* at 81-82. However, before the case was dismissed, the purchaser, Dominion, made improvements to the property, but made no attempts to challenge the dismissal or to seek reimbursement or credit for the improvements. *Id.* at 82. Dominion later repurchased the property at another foreclosure sale for a higher amount, presumably due to "the enhanced value attributable to the improvements" that Dominion previously made. *Id.* Dominion filed exceptions to the sale and a motion to abate the purchase price, claiming that it should not be required to pay the increased cost. *Id.* The court denied the exceptions and the motion, which Dominion appealed before the court could ratify the sale. *Id.* We dismissed the appeal on the grounds that it was premature, given that Dominion sought to appeal a non-final judgment. *Id.*

Within our analysis we explained that, at a minimum, a court does not enter a final judgment in a foreclosure case until the foreclosure sale has been ratified. *Id*. at 83 (internal citations omitted). Mr. Villanueva relies on this statement, found in the proceeding sentence: "[I]f the court refers the matter to an auditor to state an account, as it may under Rule 14-305(f), *it may not enter a final judgment until it has adjudicated any exceptions to the auditor's report.*" (citing *Balt. Home Alliance, LLC v. Geesing*, 218 Md. App. 375, 383 n.5 (2014)) (emphasis added). Taken by itself, we can see how individuals such as Mr. Villanueva might interpret this assertion to defend their untimely challenges to foreclosure proceedings. However, taken in its proper context, this passage from *McLaughlin* cannot stand for such a proposition.

Any speculation about the meaning of *McLaughlin*'s dicta was addressed in *Huertas v. Carrie Ward, et al.*, ____ Md. App. ____ (decided October 28, (2020)). There, Huertas sough to forestall a residential foreclosure by twice appealing. One appeal was from the circuit court's denial of Mr. Huertas' motion to reconsider the court's earlier denial of a motion to stop the foreclosure sale. The second appeal stemmed from an order denying, among other things, Mr. Huertas' exceptions to the auditor's report of the foreclosure sale. The substitute trustees sought to dismiss both appeals as being filed "too early." (slip op. at 8). In other words, the substitute trustees argued that if Mr. Huertas wanted to challenge the circuit court's rulings, he had to wait until the court ratified the auditor's report. As he failed to appeal from that order, Mr. Huertas was now "too late." (*Id*.) The substitute trustees argued that "an order ratifying a foreclosure sale is not a final judgment and is therefore not appealable." (*Id.* at 13). They claimed that *McLaughlin* was "dispositive" of that issue. (*Id.*)

We disagreed, saying that *McLaughlin* "declined to decide whether the ratification of the foreclosure sale or the adjudication of the exceptions to the auditor's report represented the final judgment in that foreclosure case, because the appellant had noted his appeal before either of those orders." (*Id*. at 13-14). We held that an order ratifying a foreclosure sale is a final judgment, because foreclosures are in rem actions that concern property rights. Even if the foreclosure continues after the ratification (such as filing an auditor's report), the adjudication of the parties' property rights is over.

> The ratification of the sale has the practical effect of putting the parties out of court, as they can no longer prosecute or defend their rights with

> respect to the property; therefore, an order ratifying a foreclosure sale is a final judgment with respect to the in rem aspects of a foreclosure proceeding.

(*Id.* at 14.) Consequently, Mr. Huertas was permitted to appeal from the first set of court orders.

More importantly for Mr. Villanueva, we noted that

> The function of an auditor [of a foreclosure sale] is that of a calculator and accountant for the court. *Walker v. Ward*, 65 Md. App. [443,] 448 [(1985)]. The opportunity to file exceptions to the auditor's report is not an additional opportunity to challenge the adjudication of rights in the real property that occurs in the ratification of the foreclosure sale. *See Hohensee v. Minear*, 259 Md. 603, 607 (1970) (per curiam). **Exceptions to the auditor's report are "directed not at the right to sell the property or to the conduct of the sale itself, but to the allowance or disallowance of expenses of the sale or the distribution of net proceeds."** *Hood v. Driscoll*, 227 Md. App. [689,] 694 n.1 [(2016)].

(*Id.* at 15) (emphasis supplied). Consequently, Mr. Villanueva may appeal, but the grounds for the appeal are limited to the conduct of the sale, not the right to sell the property. *McLaughlin* does not support Mr. Villanueva's contention that he had to wait until after the ratification of the auditor's report to lodge his appeal and we reject his argument.

II. Even if Res Judicata Did Not Apply, Mr. Villanueva's Claims Still Fail

A. Second Request for Mediation

Even if we were to hold that Mr. Villanueva's claims were not barred by res judicata, we would nevertheless affirm the findings of the circuit court. Mr. Villanueva argues that the circuit court erred when it denied his request for a second pre-foreclosure mediation session due to untimeliness. He bases this contention on two grounds. *First*, he contends that the substitute trustees should have been required to refile a loss mitigation analysis before they went to sale in February 2019. In his estimation, the original 2015 loss analysis

was no longer an accurate assessment of his circumstances in light of his bankruptcy discharge in January 2019. And, so argues Mr. Villanueva, because such an analysis is meant to avoid foreclosure, subsequent loss mitigation is necessary to meet the requirements of Maryland Code Annotated, (1974, 2019 Repl. Vol.), Real Property ("RP") Article § 7-105.1. If a final loss mitigation analysis had not been conducted or conducted improperly, Mr. Villanueva posits, the time for filing a request for mediation after the filing of the Order to Docket had not yet run.

Second, Mr. Villanueva urges us to conclude that, despite the circuit court's findings, RP § 7-105.1 entitled him to a second mediation session with substitute trustees before they went to sale in February 2019. He also relies on Md. Rule 14-212, which permits a court, at any time before sale, to refer to mediation or alternative dispute resolution "an action in which a motion to stay the sale and dismiss the action has been filed." Moreover, he claims as neither Md. Rule 14-212 nor RP § 7-105.1 have a time limit for when mediation must take place, his second request for mediation was not untimely. Despite these contentions, we conclude that, under RP § 7-105.1 and Md. Rule 14-212, in conjunction with the facts presented, the circuit court did not abuse its discretion in denying Mr. Villanueva's request for a second mediation.

When reviewing a lower court's grant or denial of a motion to strike, we apply an abuse of discretion standard. *Bacon v. Arey*, 203 Md. App. 606, 667 (2012). Subsection (j) of the RP § 7-105.1 governs requests for post-file mediation. As is the circumstance here, "the mortgagor or grantor may file with the court a completed request for postfile mediation not later than [. . .] 25 days after the mailing of the final loss mitigation affidavit."

RP § 7-105.1(j)(1)(ii)(2). Although substitute trustees, as the secured party, "may file a motion to strike the request for postfile mediation," *id.* at (j)(2)(i), "[t]here is a presumption that the mortgagor or grantor is entitled to postfile mediation with respect to owner-occupied residential property[.]" *Id.* at (j)(2)(iv). However, the presumption is rebuttable as long as "[g]ood cause is shown why postfile mediation is not appropriate." *Id*. at (j)(2)(iv)(1). If, on the other hand, a borrower is ineligible for mediation under RP § 7-105.1, Md. Rule 14-212 grants the court discretion to refer the matter to mediation.

We begin by noting that, under RP § 7-105.1(j)(1)(ii)(2), Mr. Villanueva did, in fact, file an untimely request for mediation in February 2019. The final loss mitigation affidavit (FLMA) was filed on September 8, 2015. Mr. Villanueva filed a request for mediation on September 25, 2015, and such mediation was conducted on November 19, 2015. His second request came on February 22, 2019, *nearly three and a half years after the FLMA was filed*. Despite Mr. Villanueva's contention that the substitute trustees were required to file a renewed FLMA, he does not cite any statute, rule, or appellate decision to support this assertion. Our research has not unearthed a statute, rule, or appellate authority to support this contention.

Even if substitute trustees were required to resubmit a FLMA, as we see it, RP § 7-105.1 does not require, either expressly or implicitly, that parties participate in foreclosure mediation. The statute indicates that a borrower "*may* file with the court a completed request for postfile mediation." While the statute certainly encourages mediation, as it establishes a presumption that Mr. Villanueva was entitled to mediation, it allows lenders to rebut this presumption for "good cause."

After considering the facts presented to the trial court, we do not conclude that it was an abuse of discretion for the trial court to have found good cause as to why postfile mediation was inappropriate. The most obvious reason is that the parties had already participated in foreclosure mediation in November 2015. At that time, Mr. Villanueva agreed to secure a loan modification, or, at the very least, to submit documentation for a loan modification within twenty days of the mediation. If he failed to do that, he agreed that the substitute trustees had the right to go forward with foreclosure. Mr. Villanueva took advantage of mediation but failed to fulfill his end of the bargain. Substitute trustees then had every right to begin foreclosure proceedings.

We also find the timing of Mr. Villanueva's second request for mediation troubling. After Mr. Villanueva's bankruptcy discharge, substitute trustees, through counsel, sent notice to him on February 5, 2019 that his house was to go to foreclosure auction on February 26, 2019. Mr. Villanueva filed a request for mediation on February 22, 2019, four days before the auction was to occur. In the substitute trustees' motion to strike Mr. Villanueva's request for mediation, they informed the court that they were not aware of Mr. Villanueva's request until after the foreclosure sale had already occurred. The goal of mediation is to discuss alternatives short of foreclosure. The timing of Mr. Villanueva's second mediation request made mediation futile. As appellee's did not receive the request until the property was already sold and loss mitigation was no longer a viable option. With these facts in mind, we conclude that the circuit court's determination that Mr. Villanueva's request was "untimely" and lacked "meritorious factual or legal basis to excuse its untimeliness," was not an abuse of discretion.

B. **Renewed Notice**

Mr. Villanueva's second argument is a procedural due process allegation. He contends that the Notice of Intent ("NOI") to foreclose, sent in 2015, was no longer "valid" in 2019 for multiple reasons: the mortgage servicer changed; the party agent, who was authorized to modify the terms of the mortgage loan changed; the amount required to cure the default and reinstate the loan changed; and the Order to Docket and accompanying documents were never amended between 2015 and 2019 and, therefore, were not an accurate reflection these changes.

To support these contentions, Mr. Villanueva looks for support in *Granados v. Nadel*, 220 Md. App. 482 (2012). There, this Court held that the trustees of a foreclosure action "were required to issue a new and updated [Notice of Intent] between the dismissal of the first foreclosure proceeding and the institution of the second that contained all of the information required by [RP Article] Section 7-105.1." *Id.* at 505. We "rejected the Trustees' position that the NOI sent to Appellant . . . and used in the first foreclosure proceeding, which was dismissed, could be used as valid notice for any subsequent foreclosure proceedings." *Id*. Although *Granados* involved a change of statute, thereby requiring the Trustees to issue a new notice of intent, Mr. Villanueva urges us to extend *Granados* to the case at bar, as Mr. Villanueva's case involves "a significant change in circumstances that made the Appellee's reliance on the initial notices sent to Mr. Villanueva in 2015 insufficient[.]" We disagree.

To begin, the most glaring difference between *Granados* and Mr. Villanueva's case is that these foreclosure proceedings were never dismissed. The present appeal concerns

one single, albeit drawn out proceeding of which Mr. Villanueva had been apprised since 2015. And Mr. Villanueva does not now contend that he never received notice; in fact, he concedes that notice was served onto him. The *Granados* Court, on the other hand, required the trustees send the appellant renewed notice after the 2010 amendments to RP § 7-105.1 because "the intent of [the] 2010 amendments was to grandfather existing Notices during the transitional period surrounding the July 1, 2010 effective date of the new law." 220 Md. App. at 505. It "was not meant to confer perpetual validity to Notices issued before the new law went into effect." *Id*. The *Granados* Court also expressly "decline[d] to set an expiration date for a notice of intent to foreclose." *Id.* at 506.

In our view, the *Granados* opinion stands for the principle that "when a lender institutes a foreclosure action, and then dismisses that action, the lender should send a new NOI." *Id*. *Granados* also recognized that a

> NOI is not a blank check that will allow a lender to initiate a foreclosure proceeding against a borrower at any point in the future. It has a specific function – to give borrowers notice of a potential foreclosure and allow them to pursue remediation of their default. It is contrary to the spirit of the law that the NOI should operate as a document providing notice to a borrower of an impending foreclosure by an uncertain lender at some unpredictable time in the future.

Id. (emphasis supplied).

As we see it, substitute trustees' NOI, sent in 2015, provided Villanueva with a continuing obligation throughout his bankruptcy proceedings. Substitute trustees here were not "uncertain lenders" who sought to foreclose Mr. Villanueva's property "at some unpredictable time in the future." On three separate occasions, all at a time when Mr. Villanueva's bankruptcy petitions had just been dismissed, substitute trustees attempted to

initiate a foreclosure sale, but were prevented from doing so because of Mr. Villanueva's attempts at bankruptcy. Mr. Villanueva's foreclosure proceedings were stalled through no fault of the substitute trustees. It would be "contrary to the spirit of the law" to conclude that substitute trustees were required to send Mr. Villanueva another NOI when the initial foreclosure claim was never dismissed, and substitute trustees attempted to expeditiously conclude the foreclosure proceedings but were postponed through no fault of their own. Consequently, we conclude that substitute trustees' 2015 NOI was sufficient to put Mr. Villanueva on notice that foreclosure proceedings, including the sale of the property, would continue as planned.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; APPELLANT TO PAY THE COSTS.