Circuit Court for Baltimore City
Case No. 24-O-13-000528

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1367

September Term, 2019

RENEE L. MCCRAY

v.

JOHN E. DRISCOLL, III, et al.

Reed,
Shaw Geter,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: September 17, 2020

This appeal involves a foreclosure action brought in the Circuit Court for Baltimore City by John E. Driscoll, III and several other Substitute Trustees to foreclose on property owned by appellant, Renee L. McCray ("McCray" or "appellant"). The case has a long and complicated history brought about by skillful dilatory tactics used by McCray that have allowed her to continue to live at her property even though she has made no payments on the promissory note secured by a deed of trust on that property for over eight years. Her efforts to avoid eviction have included four bankruptcy filings, a federal lawsuit, four previous appeals to this Court, plus numerous requests filed in the circuit court to reconsider earlier orders.

In almost all her pleadings filed in the circuit court, McCray has asserted that "she is not schooled in the law" and because she is filing her pleadings *pro se* she "should not be held to the same standards as bar attorneys." For that proposition, she cites *Tretick v. Layman*, 95 Md. App. 62, 68 (1993), which stands for the exact opposite ("The principle of applying the rules equally to *pro se* litigants is so accepted that it is almost self-evident."). *See also Dept. of Labor v. Woodie*, 128 Md. App. 398, 411 (1999) ("It is a well-established principle of Maryland law that *pro se* parties must adhere to procedural rules in the same manner as those represented by counsel."). In this appeal, apparently believing, or possibly hoping that she is not bound by the rules governing appeals to this Court, she has filed a brief that in almost every possible respect does not comply with the Maryland Rules governing the content of an appellate brief.

I.

PROCEDURAL AND FACTUAL BACKGROUND[1]

On October 7, 2005, McCray borrowed $66,500 from American Home Mortgage Corporation ("American Mortgage") to refinance her home located at 109 N. Edgewood Street, Baltimore, Maryland ("the Property"). She gave American Mortgage a thirty-year note and a deed of trust on the Property to secure repayment of the note.

The note provided that American Mortgage could transfer the note, and that anyone who obtained the note by transfer was entitled to receive payment under the note as the noteholder. The deed of trust recognized American Mortgage as the original lender but also identified the Mortgage Electronic Registration Systems, Inc. ("MERS") "as nominee for Lender and Lender's successors and assigns." At some point after the note was executed, American Mortgage sold the loan to the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and Wells Fargo Bank, N.A. ("Wells Fargo") was retained by Freddie Mac as a servicer on the loan. By June of 2011, at least, McCray knew that Wells Fargo was the servicer on the note because that was when she first disputed a monthly billing statement sent by Wells Fargo and asked it to send her information about the fees and costs that it was charging.

For reasons that are not shown in the record, in May of 2012, McCray stopped making payments on the note that was secured by the deed of trust. On June 26, 2012,

[1] The facts set forth in Part I are based on documents in the record in the subject case together with documents filed in proceedings in other courts of which this Court will take judicial notice.

Wells Fargo filed, in the Circuit Court for Baltimore City, a "Corporate Assignment of Deed of Trust." That assignment conveyed from MERS to Wells Fargo, the deed of trust. The assignment, however, did not transfer ownership of the debt.

Wells Fargo sent McCray a notice that she had defaulted on the note secured by the deed of trust on August 2, 2012. On February 12, 2013, John E. Driscoll, III and the other Substitute Trustees who had previously been appointed by Wells Fargo, filed an "Order to Docket Suit of Foreclosure of Deed of Trust" in the Circuit Court for Baltimore City. The Order to Docket was filed pursuant to Md. Rule 14-207. Accompanying the Order to Docket were the ten exhibits that are required by Md. Rule 14-207(b) to be filed in a foreclosure suit against owners of residential property. One of the exhibits filed was a copy of a promissory note McCray had signed. Importantly, the note showed on its face that it had been assigned by American Mortgage to Wells Fargo and that Wells Fargo, in turn, had indorsed the note in blank.

Another exhibit attached to the Order to Docket was an affidavit by a vice president of loan documentation for Wells Fargo stating that Freddie Mac was the owner of the note and that the owner had authorized Wells Fargo to be the holder of the note for purposes of bringing the subject foreclosure action. Also attached to the Order to Docket was a document showing that the Substitute Trustees, who are the appellees in this case, were appointed by Wells Fargo, on November 6, 2012, to sell the subject property.

As explained more fully *infra*, principles of law enunciated in the case of *Deutsche Bank Nat. Trust Co. v. Brock*, 430 Md. 714 (2013) demonstrates that Wells Fargo, who had

physical possession of the note, had the right to appoint trustees to bring the subject foreclosure action.

The Order to Docket was served on McCray on February 28, 2013. Two months later, on May 1, 2013, McCray requested mediation. A mediation hearing was held on June 26, 2013 but failed to result in any agreement.

On July 9, 2013, McCray timely filed her first motion to stay the sale and dismiss the action. Unfortunately, there was no indication that movant had any knowledge of the legal principles applicable to cases of this sort; those principles were explained in *Deutsche Bank Nat. Trust Co. v. Brock*, *supra*.

McCray said in her motion that, "[u]pon information and belief," the Substitute Trustees "have no legal interest in the promissory note or deed of trust and no right to enforce either[.]" She gave no indication as to the foundation for her belief that the Substitute Trustees did not have the right to bring the action. And, in her motion, McCray did not deny that she had failed to make the payments due under the note. Instead she said, again "upon information and belief," that she "owe[s] nothing to the [Substitute Trustees] or any company of which the [Substitute Trustees] might claim to be servant respecting the promissory note and deed of trust[.]"

McCray did not ask for a hearing in regard to her first motion to stay and dismiss. That motion was denied by the circuit court on August 7, 2013. The grounds for the denial were that McCray had failed to state a valid defense to the validity of the lien or the lien instrument or to the right of the Substitute Trustees to foreclose.

McCray filed a motion to reconsider the denial of the motion to stay and dismiss on August 16, 2013, which was denied by order of the circuit court dated September 11, 2013.

Besides filing a motion to stay the foreclosure sale and to dismiss it, McCray filed, on May 23, 2013, an action for money damages in the United States District Court for the District of Maryland ("U.S. District Court"), in which she named as defendants, Freddie Mac, the Substitute Trustees (and the law firm that employed them), and Wells Fargo. That lawsuit involved the same deed of trust, promissory note and efforts by the Substitute Trustees and/or their agents to collect money owed on the promissory note as are involved in the subject case. The lawsuit, which was filed *pro se* by McCray, alleged, *inter alia*, violation by the defendants of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq*. (2012); the Truth in Lending Act ("TILA"), 15 U.S.C. § 1641(g) (2012); and the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601 *et seq*. (2012).

Shortly after the circuit court denied McCray's motion to reconsider the denial of her first motion to stay and dismiss the foreclosure action, McCray filed a bankruptcy petition in the United States Bankruptcy Court for the District of Maryland ("Bankruptcy Court"). That bankruptcy filing stayed the proceeding effective October 1, 2013.

On January 24, 2014, the U.S. District Court, in an opinion written by the Honorable George L. Russell, III, dismissed McCray's FDCPA and TILA claims against Freddie Mac and Wells Fargo, and granted summary judgment in favor of Freddie Mac and Wells Fargo on McCray's RESPA claim. *McCray v. Federal Home Loan Mortgage Corporation, et*

al., 2014 WL 293535. McCray filed an appeal of that decision to the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit").

On March 2, 2014, McCray filed, in the Bankruptcy Court, an amended complaint containing three claims, "each of which [was] grounded upon Ms. McCray's assertion that Wells Fargo does not have the right to enforce a security interest against the Property." *McCray v. Wells Fargo Bank, N.A., et al.*, 2014 WL 12682280. Slip op. at 2 (filed November 3, 2014). The Bankruptcy Court ruled against McCray saying:

> Ms. McCray's assertions, in the District Court Action, in this adversary proceeding and as a defense to the Motion for Relief from Stay, revolve around a common core—Ms. McCray believes that Wells Fargo is not a holder of the note and/or does not have the right to enforce the promissory note that it clearly holds. The basis for Ms. McCray's position is not entirely clear, but she seems to believe that Wells Fargo does not validly hold the note that it got from the predecessor lender or that the original note has not been (but must be) produced or that something is ineffective about the endorsement. However, Wells Fargo has certified in the Circuit Court for Baltimore City that it possesses the promissory note signed by Ms. McCray in connection with the Property and that the Note has been duly endorsed over to Wells Fargo. The note contains a special endorsement from American Home Mortgage (the undisputed originator of the loan) to Wells Fargo, and a general endorsement by Wells Fargo. Wells Fargo is the holder of the note and is entitled to enforced it.
>
> Under Maryland law, a promissory note is a negotiable instrument governed by the Uniform Commercial Code (as enacted in Maryland) and the rights under an associated deed of trust travel with the note. *Deutsche Bank Nat. Trust v. Brock*, 430 Md. 714 (2013). Under Md. Code Com. Law § 3-301 a "holder" is the person in possession of a negotiable instrument. This is distinct from the "owner" of a note. As the Comment to Md. Code Com. Law § 3-203 states, "[t]he right to enforce an instrument and ownership of the instrument are two different concepts." The 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." *Id*. at § 3-301. Accordingly, Wells Fargo is the holder, has authority to enforce the note, and the Amended Complaint fails to state a claim.

> Accordingly, upon consideration of the foregoing, it is hereby ORDERED that the Amended Complaint [] is hereby Dismissed.

Id. Slip op. at 3.

The Motion for Relief of Stay order of the Bankruptcy Court (filed May 21, 2014), stated that "Wells Fargo Bank, N.A. is the Noteholder and the proper party to bring this Motion for Relief [from the Stay]." By an order dated July 14, 2014, the Bankruptcy Court discharged McCray's obligation to pay the debt secured by the deed of trust. This discharge, however, did not prohibit the noteholder from enforcing its rights by foreclosing on the Property. That Bankruptcy Court decision was affirmed by the U.S. District Court. *McCray v. Wells Fargo Bank, N.A.*, 2015 WL 13216988. Parenthetically, it should be noted that the Bankruptcy Court's finding that Wells Fargo is the holder of the promissory note, flatly undermines McCray's position in this case where she maintains that Wells Fargo is not the noteholder and therefore had no right to name the Substitute Trustees.[2] If the issue had been raised in the circuit court (it wasn't), her claim in this case that Wells Fargo did not have the right to appoint the Substitute Trustees would have been barred by the doctrine of collateral estoppel. *Colandrea v. Wilde Lake Community Association, Inc.*, 361 Md. 371, 391-92 (2000).

[2] In her brief filed in this case, McCray says that she recently filed a motion to reopen the 2014 bankruptcy case, but her cites to the record extract in support of that contention do not support that contention and our research has failed to show that such a motion had been filed.

After the bankruptcy stay was lifted, McCray filed a request for a second foreclosure mediation, which the Substitute Trustees moved to strike. The motion to strike was granted.

On July 14, 2015, appellant filed a second motion to stay/dismiss the foreclosure action and a request for a show cause order. That second motion and request for an injunction was denied by order dated August 6, 2015. Four days later, on August 10, 2015, McCray filed a "Motion for Reconsideration of Order Denying Defendant's Motion to Dismiss and Request for a Show Cause Hearing." That motion was denied by the court on September 9, 2015. Five days later, on September 14, 2015, McCray filed a pleading entitled "Notice of Objection" to the denial of her motion for reconsideration. The court treated this last pleading as a motion and denied it on October 8, 2015.

Meanwhile, on September 4, 2015, McCray filed her first notice of appeal to this Court. By order dated December 23, 2015, we dismissed the appeal "as not allowed by law."

McCray, on March 18, 2016, filed a Chapter 13 bankruptcy proceeding petition, which stayed the case once again. On April 26, 2016, the circuit court was notified that McCray had terminated the last-mentioned bankruptcy action. On the same day that the bankruptcy stay was lifted, McCray filed what she called an "Amended Rule 14-211 Motion to Stay Foreclosure Pending Resolution of Legal Claim and Request for Hearing." That "Amended Rule 14-211 Motion to Stay" was denied by the circuit court on May 13, 2016, on the grounds that the motion was untimely, and that McCray had failed to show good cause for non-compliance with the relevant time requirement; also, the court ruled

that McCray had failed to state a valid defense to the foreclosure action. Less than two weeks after the court had denied her amended Rule 14-211 motion, McCray, on May 26, 2016, filed a "Second Amended Rule 14-211 Motion to Stay Foreclosure, Dismissal of Action and Request for Hearing." That same day she filed a "Notice of Objection to Court Order" dated May 13, 2016.

McCray next attempted to remove this case to the U.S. District Court on June 2, 2016. Although that attempt was unsuccessful, it caused more delay.

On October 7, 2016, McCray's appeal to the United States Court of Appeals for the Fourth Circuit was decided. *McCray v. Federal Home Loan Mortgage Corporation, et al*., 839 F.3d 354 (2016). In its opinion, the Fourth Circuit noted that McCray, in her complaint, alleged that Freddie Mac was the owner of the debt. *Id*. at 356. McCray's admission that Freddie Mac owned the debt is at odds with appellant's position in the circuit court and in this appeal, i.e., that Freddie Mac did not own the debt. Also, as the Court of Appeals for the Fourth Circuit noted, McCray voiced no disagreement with the U.S. District Court's finding that when Freddie Mac assigned the debt to Wells Fargo to act as servicer, Wells Fargo acquired a beneficial interest in the deed of trust. But she also alleged that Wells Fargo acquired an "ownership interest" in the loan. *Id.* at 362.[3]

The Fourth Circuit sustained the dismissal of all claims against Freddie Mac and Wells Fargo but held that the U.S. District Court had erred when it dismissed the FDCPA claim against the Substitute Trustees. *Id.* at 363. The Court found that there was an issue

[3] The court rejected McCray's contention that Wells Fargo acquired an ownership interest in the loan. 839 F.3d at 362-63.

of fact as to whether the Substitute Trustees and the law firm that represented them, were acting as "debt collectors" as defined in the FDCPA. *Id*. That victory, however, was short lived because, on remand, the U.S. District Court, on February 26, 2017, granted summary judgment in favor of the Substitute Trustees on the FDCPA claim; that ruling was affirmed by the Fourth Circuit, *McCray v. Samuel I. White, P.C., et al.*, 774 F. App'x 148 (2019).

Meanwhile, McCray's attempt to transfer the foreclosure action to the U.S. District Court was rejected by that Court, but the case was not remanded to the Circuit Court for Baltimore City until March 22, 2017.

Once this foreclosure case was remanded by the federal court, the circuit court, on March 31, 2017, denied McCray's "Second Amended Rule 14-211 Motion to Stay" and overruled her "Notice of Objection."

On April 25, 2017, McCray filed her second notice of appeal to this Court, but that appeal was dismissed by her on June 9, 2017.

In the meantime, McCray filed another Chapter 13 bankruptcy petition, which caused the foreclosure action to be once more stayed. McCray dismissed that bankruptcy petition, however, and on July 12, 2017, the stay was lifted.

McCray, on August 14, 2017, filed a pleading entitled "Emergency Motion for Injunctive Relief and Request for Hearing"; an "Affidavit in Support of Emergency Motion for Injunctive Relief"; and a "Demand to Vacate Order Dated March 31, 2017 and All Orders Denying Defendant's Motions to Dismiss Foreclosure Action . . . ." She claimed the circuit court lacked jurisdiction over the subject matter and requested a hearing. The circuit court denied, on August 28, 2017, the emergency motion for injunctive relief and

on September 19, 2017, denied, as well, her demand to vacate the order dated March 31, 2017. On September 22, 2017, McCray filed what she called "Notice[s] of Objection" with respect to the August 28 and September 19, 2017 orders. She then filed, on September 26, 2017, her third notice of appeal to this Court, which was limited to the orders dated August 28 and September 19, 2017. We had jurisdiction to entertain that appeal because it was an appeal from the denial of an order to stay.

In an unreported opinion, *McCray v. Driscoll, III, et al.*, No. 1463, September Term, 2017, (Md. Ct. Spec. App., October 3, 2018), a panel of this Court, citing Maryland Rule 14-211(a)(2)(A), held that the motion to stay or dismiss was untimely. This was a fatal flaw, because the motion did not state "with particularity any reason why it could not have been filed in a timely manner." Slip op. at 3. As the panel pointed out, the motion at issue was McCray's fifth motion to stay and dismiss and was filed almost four years after the date it was due. *Id.* Also, in commenting upon the fact that the motion to stay and dismiss was untimely, the panel said, "McCray had essentially raised the same claims regarding [the Substitute Trustees] in several of her previous motions to stay. Moreover, the court rulings that she referenced occurred in October 2016 and March 2017, yet she did not file the fifth motion to stay until August 2017." *Id*. In its ruling, the panel also held that the circuit court did not abuse its discretion in denying McCray's motion to vacate all previous orders, etc. *Id*. Appellant filed a petition for *writ of certiorari* to the Maryland Court of Appeals, but the Court denied that petition. *McCray v. Driscoll, et al*., 462 Md. 89 (2018). She then filed a petition for *writ of certiorari* to the United States Supreme Court, which likewise, denied her petition. *McCray v. Driscoll, et al*., 139 S.Ct. 2617 (2019).

While McCray's appeal to this Court was pending, the Property was sold at a foreclosure sale on November 15, 2017. Fannie Mae was the purchaser. The winning bid was $29,750.[4]

The Report of Sale was filed on December 11, 2017. McCray, on January 4, 2018, filed her first set of exceptions to the Report of Sale. The Substitute Trustees filed an opposition to the exceptions and on March 2, 2018, the circuit court overruled McCray's first set of exceptions. McCray filed a motion for reconsideration on March 9, 2018, which was denied on March 23, 2018. On March 30, 2018, McCray filed her fourth appeal to this Court. That appeal was subsequently dismissed by us as premature.

Next, McCray filed, on June 4, 2019, a pleading entitled "Motion to Vacate All Orders Denying Defendant's Motions to Dismiss This Foreclosure Action, and Exceptions to Sale Because Plaintiffs' [sic] Lacked Standing to Invoke the Court's Jurisdiction and Request for Hearing" (hereinafter the "June 4, 2019 motion to vacate all orders"). That motion was denied on July 29, 2019.

Evidently, due to the delay caused by McCray's many appeals and/or other filings, the notice of report of sale was redocketed on June 18, 2019. On July 2, 2019, McCray filed another set of exceptions (the "2019 exceptions") and another emergency motion for injunctive relief and request for hearing. Fifteen days later, on July 17, 2019, the circuit

[4] It was lawful to sell the Property while an appeal was pending because McCray had attempted to enjoin the sale but had failed. Because there was no injunction prohibiting it, the Substitute Trustees went forward with the sale.

court entered an order denying the emergency motion for injunctive relief along with an order overruling the 2019 exceptions.

The circuit court, on July 19, 2019, filed an order ratifying the foreclosure sale. On July 22, 2019, McCray filed a motion to reconsider the July 17, 2017 order denying the emergency motion for injunctive relief and overruling her 2019 exceptions.

McCray, on July 29, 2019, filed a motion to vacate the ratification order, which the Substitute Trustees opposed. The circuit court denied the motion for reconsideration on August 26, 2019. The motion to vacate the ratification order was denied on August 29, 2019.

While the motion to vacate the first ratification order was pending, the circuit court, on August 15, 2019, filed a new order ratifying the foreclosure sale. That order was identical to the order signed on July 19, 2019.

McCray, on August 27, 2019, noted an appeal (her fifth) to the order denying her June 4, 2019 motion to vacate the order denying her July 22, 2019 motion for reconsideration and the court's order dated August 15, 2019 ratifying the sale. She noted a sixth appeal on September 27, 2019, seeking review of the court's order dated July 29, 2019 that denied her motion to vacate. In this appeal, she presents 21 questions.

II.

APPELLANT'S BRIEF

Maryland Rule 8-504 establishes the requirements for the contents of a brief filed by an appellant in this Court. In pertinent part, Rule 8-504(a) states:

(a) Contents. A brief shall . . . include the following items in the order listed:

* * *

> (2) A brief statement of the case, indicating the nature of the case, the course of the proceedings, and the disposition in the lower court . . . .
>
> (3) A statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail.
>
> (4) A clear concise statement of the facts material to a determination of the questions presented . . . . Reference shall be made to the pages of the record extract supporting the assertions. . . .
>
> (5) A concise statement of the applicable standard of review for each issue, which may appear in the discussion of the issue or under a separate heading placed before the argument.
>
> (6) Argument in support of the party's position on each issue.

* * *

The brief filed by McCray in this case does not come close to complying with Rule 8-504(a). First, rather than "[a] brief statement of the case, indicating the nature of the case, the course of the proceedings, and the disposition in the lower court," McCray's statement of the case mentions nothing concerning the course of the proceedings in the lower court or the disposition of the various motions she filed. In fact, the only filing she mentions in her statement of the case is the February 12, 2013 order to docket filed by the Substitute Trustees. Instead, her statement of the case contains a combination of argument (e.g., "[a]ppellees have never provided any material fact evidence in the foreclosure action, or in any court in the [S]tate of Maryland, that they represented a creditor of the [a]ppellant[.]") coupled with bald assertions that are not supported by anything in the record (e.g. "appellant discovered [in her federal lawsuit] that the [a]ppellees never

represented a party with 100% enforcement rights to the [a]ppellants 2005 Note and Deed of Trust.").

Rather than a "clear concise statement of the facts material to a determination of" the questions presented, McCray sets forth seven pages of legal argument coupled with irrelevant musings and assertions, which are typically unsupported by the record even on the few occasions on which she actually purports to offer any support for them.

Rather than providing "[a] concise statement of the applicable standard of review for each issue, which may appear in the discussion of the issue or under a separate heading placed before the argument," appellant never once discusses the standard of review. More importantly, she raises twenty-one issues in her brief, but only has separate headings concerning three of her arguments. Also, she violated Md. Rule 8-504(a)(6), in regard to eighteen of her questions presented, by not setting forth argument in support of her position on each issue. This means that in order to determine what her position is as to eighteen of the questions presented, a reader is required to look through eleven pages of argument to see what contention, if any, she advanced as to those eighteen questions.

Given these material deficiencies in content and coherence, McCray's brief leaves us unable to answer, at least some of the many questions she presents. Dismissal is appropriate under Rule 8-504(c), which provides that this Court "may dismiss the appeal" "[f]or non-compliance with" the substantive requirements for appellate briefs. Dismissal is also appropriate under Rule 8-602(c)(6), which provides that this Court may dismiss an appeal if the contents of a brief does not comply with Rule 8-504. *See Rollins v. Capital*

Plaza Assocs., L.P., 181 Md. App. 188, 203 (2008); *see also Smithfield Packing Co., Inc. v. Evely*, 169 Md. App**.** 578, 607-08 (2006).

Rather than dismiss this appeal, however, we shall exercise our discretion and address the merits of appellant's contentions—at least to the extent that we are able to understand them. The bottom line, however, is that we shall affirm the Circuit Court for Baltimore City's ratification of the Report of Sale—the final order in this case, and all the interlocutory orders to which appellant objected.

III.

LEGAL PRINCIPLES THAT GOVERN THIS CASE

Before addressing any of appellant's questions presented, it is useful to discuss certain basic legal principles. First, the record in this case could not be clearer. Under the legal principles set forth in *Deutsche Bank Nat. Trust Co. v. Brock*, *supra*., McCray had no good faith grounds for believing that Freddie Mac was not the lender or that Wells Fargo was not the entity in possession of the note, which had been indorsed in blank.

In *Deutsche Bank*, the Court held that the servicing agent was a holder who was entitled to enforce the note by foreclosing under the accompanying deed of trust. 430 Md. at 728-30. The Court also held that even though the servicing agent was not the owner of the instrument, it was the holder by virtue of its possession of the blank-indorsed note. *Id.* at 732-33. "A blank indorsement is usually the signature of the indorser on the back of the instrument without other words." Maryland Code (1974, 2013 Repl.Vol.) § 3-205 of the Commercial Law Article ("Com. Law") (Comment 2). Such an instrument may be enforced by "the holder of the instrument." Com. Law § 3-301. A holder is defined as the

person "in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." Com. Law § 1-201(b)(21)(i). A negotiable instrument is payable to the bearer when the instrument: "(1) [s]tates that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment[.]" Com. Law § 3-109(a)(1).

The note signed by McCray was payable to bearer because, as mentioned earlier, it provided that American Mortgage could transfer the note, and that anyone who obtained the note by transfer was entitled to receive payment under the note as the noteholder. Thus, "the person in possession of a note . . . indorsed in blank, is a holder entitled generally to enforce that note." *Deutsche Bank*, 430 Md. at 729-30 (footnotes omitted).

In the subject case, the documents filed with the Order to Docket showed: 1) that Freddie Mac was the owner of the loan executed by McCray; 2) that Freddie Mac had authorized Wells Fargo to be the holder of the note for purposes of conducting a foreclosure action; and, 3) that Wells Fargo, as the holder of the note, had replaced the trustees named in the deed of trust with the appellees. Upon their appointment, the Substitute Trustees had authority to exercise the powers of sale in the deed of trust in accordance with Md. Rule 14-214.1(b)(2) ("An individual appointed as trustee in a deed of trust or as a substitute trustee shall conduct the sale of property subject to a deed of trust.")

In order to circumvent the above legal principles, McCray contends that certain words used by counsel for Wells Fargo in an errata sheet that was filed in the Fourth Circuit, prove that Wells Fargo did not have the right to appoint the Substitute Trustees. She argues:

> [Wells Fargo's] own admission in the one-page [e]rrata [sheet] filed [with McCray's June 4, 2019] Motion to Vacate, contradicts their assertion that [Wells Fargo] is the "holder of the note." The [e]rrata [sheet] states that the 2012 Corporate Assignment of Deed of Trust that the [a]ppellees filed in the foreclosure action had no beneficial interest. The assignment was "the Deed of Trust alone, and not the underlying debt."

(References to record extract omitted).

What Wells Fargo said in the errata sheet, insofar as is here pertinent, was:

> McCray argues that she was entitled to notice [of the transfer by MERS] under TILA that her loan had changed hands. However, Judge Russell correctly found that the MERS assignment was of ~~a beneficial, not legal, interest~~ the Deed of Trust alone, and not the underlying debt, and that Wells Fargo continued at all times to be her loan servicer. Indeed, McCray acknowledged always paying Wells Fargo until she defaulted on May 1, 2012. An assignment by MERS of ~~its beneficial interest~~ only the ~~in a~~ deed of trust to the holder of the underlying debt does not implicate 15 U.S.C. § 1641(g).

(Emphasis in the original.)

As can be seen, Wells Fargo never admitted that it was not the holder of the note. What it represented, and what Judge Russell (and later the Fourth Circuit) held, was that under TILA, Wells Fargo had no duty to notify the borrower of a transfer of ownership of the debt, because it did not own the debt—Freddie Mac owned it. *McCray*, 839 F.3d at 362. Only a creditor, who is the new owner of the debt, has such a duty under TILA. *Id*.

In many of the pleadings filed by McCray in her attempts to derail the foreclosure action, she contended that the affidavits filed by the appellees should be disregarded because they were in improper form. In regard to that contention, two Maryland Rules are of importance. Maryland Rule 1-202 defines the word "affidavit" as follows:

> In these rules the following definitions apply except as expressly otherwise provided or as necessary implication requires:

* * *

> (b) Affidavit. "Affidavit" means a written statement the contents of which are affirmed under the penalties of perjury to be true. Unless the applicable rule expressly requires the affidavit to be made on personal knowledge, the statement may be made to the best of the affiant's knowledge, information, and belief.

Maryland Rule 14-207.1 provides, in pertinent part:

> (a) Generally. The court may adopt procedures to screen pleadings and papers filed in an action to foreclose a lien. If the court determines that the pleadings or papers filed do not comply with all statutory and Rule requirements, it may give notice to the plaintiff and each borrower, record owner, party, and attorney of record that the action will be dismissed without prejudice or that some other appropriate order will be entered by reason of the non-compliance if the plaintiff does not demonstrate within 30 days that the papers are legally sufficient or that the deficiency has been cured.
>
> (b) Review of Affidavits. (1) In this section, "affidavit" includes any attestation or certification by an attorney, borrower, record owner, party, or agent of the attorney, borrower, record owner, or party concerning the truth or accuracy of a pleading or paper.
>
> (2) If the court has reason to believe that an affidavit filed in the action may be invalid because the affiant has not read or personally signed the affidavit, because the affiant does not have a sufficient basis to attest to the accuracy of the facts stated in the affidavit, or, if applicable, because the affiant did not appear before the notary as stated, the court may order the party to show cause why the affidavit should not be stricken, and, if it is stricken, why the action should not be dismissed or other relief granted.

The affidavits filed by the appellees in the circuit court were in complete accord with the requirements of Md. Rule 1-202(b). The circuit court was provided with no reason to believe that the affidavits were invalid. Moreover, when appellant filed her first motion to stay the sale and dismiss the case, she never asked the court to issue a show cause order.

Nevertheless, in her brief, appellant has repeatedly voiced the contention that the affidavits submitted were not "sufficient." She relies on *Fletcher v. Flournoy*, 198 Md. 53, 58 (1951), which stands for the proposition that an affidavit stating that matters asserted therein were true to the best of the affiant's knowledge, information and belief must be disregarded. That case interpreted what was then Md. Rule 2, which is substantively the same as the current Md. Rule 2-501(c). The latter rule provides that an affidavit "supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit." As can be seen, McCray's reliance on *Fletcher* is misplaced because this case does not deal with a motion for summary judgment. In a foreclosure case, an affidavit need only comply with Md. Rule 1-202.

IV.

QUESTIONS PRESENTED

We will address the twenty-one questions presented by McCray, *seriatim*.

A. Question 1

Did the lower court err when the [a]ppellees were not required to provide any material fact evidence of their standing to invoke the lower court's jurisdiction, once the [a]ppellant challenged the [a]ppellees standing?

For the reasons explained in Part III above, particularly our discussion of the *Deutsche Bank* case, we hold that the substitute trustees did provide evidence that they had standing to bring the foreclosure action. Appellant's challenges to appellees' standing were without merit.

B. Question 2

Did the lower court err in denying the [a]ppellant's Motion to Vacate without a hearing (Doc. 110/0, E.164-E.204)?

Based on her record extract references, the question presented concerns the pleading filed on June 4, 2019 entitled "Motion to Vacate all Orders Denying Defendant's Motions to Dismiss This Foreclosure Action, and Exceptions to Sale Because Plaintiffs' [sic] Lacked Standing to Invoke the Court's Jurisdiction and Request for Hearing."[5] Before directly addressing Question 2, it is useful, at this point, to review certain basic rules governing foreclosure sales in Maryland.

First, under Md. Rule 14-211(a), a defendant in a foreclosure action, like McCray, may file "a motion to stay the sale of the property and dismiss the foreclosure action." Md. Rule 14-211(a)(2) provides strict guidelines as to when the motion to stay/dismiss must be filed. In cases like this one, where the property foreclosed upon is an owner-occupied residential property, the motion to stay/dismiss must be filed (with exceptions not here applicable) no later than fifteen days after the date that the final loss mitigation affidavit was filed. Md. Rule 14-211(a)(2)(A)(i). For good cause shown, the circuit court may extend the time for filing the motion to stay/dismiss. *See* Md. Rule 14-211(a)(2)(C). In this case, that meant that McCray had until fifteen days from June 26, 2013, which was the date of filing of the final loss mitigation affidavit, to file a motion to stay/dismiss. She met

[5] In her brief, appellant asserts that pursuant to MD. Rule 2-311(f), she was entitled to a hearing on her June 4, 2019 motion to vacate. That last mentioned rule has no application here because the court's denial of the motion to vacate all orders was not dispositive of any claim or defense. The only dispositive order in this case was the order ratifying the sale. *Pelletier v. Burson*, 213 Md. App. 284, 293 (2013).

that deadline on July 9, 2013. But, as we pointed out in *Bechamps v. 1190 Augustine Herman, LC*, 202 Md. App. 455, 462 (2011), a motion to stay/dismiss may not be granted if the movant fails to present a defense to the foreclosure itself. "Peripheral matters that do not affect the ability of the party to foreclose cannot justify a stay of foreclosure under Rule 14-211[.]" *Id.* For reasons already explained in Part III above, appellant's original motion to stay/dismiss did not present a valid defense.

In this case, McCray brought a total of six motions to stay/dismiss. Because of the strict time restraints set forth in Md. Rule 14-211(a), all but the first one was time-barred. This was the grounds a panel of this Court gave for affirming the denial of McCray's fifth motion to stay/dismiss. The panel's holding is the law of the case and binding on appellant, unless McCray could present some reason for us to hold that the panel's decision in the prior appeal was wrongly decided. Under the law of the case doctrine, "once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." *Scott v. State*, 379 Md. 170, 183 (2004). In her brief, McCray does not even mention the panel's prior decision much less argue that the case was wrongly decided.

McCray argues that because none of the denials of her motions to stay/dismiss were final orders, she had the right, on June 4, 2019, to file a motion to vacate all of them. She is correct in asserting that the prior orders were not final. Those orders were all interlocutory and were "subject to revision within the general discretion of the trial court[.]" *Quartertime Video v. Hanna*, 321 Md. 59, 64 (1990). Thus, McCray had a right

to file a motion to revise them, but except for the first motion, the circuit court did not have the discretion to grant any of them because they were time-barred.

In her brief, McCray does not directly argue that the circuit court erred in denying her motion to revise her first motion to stay/dismiss, but she does argue, in various ways, that the case should have been dismissed because the Substitute Trustees did not prove that they had standing to bring the foreclosure action. That argument is without merit because, as already demonstrated, the Substitute Trustees did prove, by the documents filed with the Order to Docket, that they had standing.

Appellant also argues that "the [a]ppellees have never given any explanation as to why the copy of the alleged original note they submitted in the foreclosure action was allegedly indorsed from American Home Mortgage to the servicer, [Wells Fargo]." The short answer to that contention is that the Substitute Trustees were not required to give any explanation inasmuch as the documents they filed showed that Wells Fargo was the holder of the note and, as explained in the *Deutsche Bank* case, a noteholder is entitled to foreclose.

Under the heading of "Motion to Vacate," appellant set forth several arguments that are impossible to understand. For instance, she states:

> The [a]ppellant stated in her motion to vacate that she reported to the Clerk of the Court that a paralegal to the General Master, Ms. Maria Golder[,] colluded against her by assisting the attorney of record in the foreclosure action, in ex[]parte communication (s*ee* Doc. 104/O, E.239-E.245). The Clerk of the [C]ourt was made aware of the ex[]parte communication and the [a]ppellees being allowed to file false, misleading and deceptive documents into the foreclosure action, contrary to Md. Rule 14-207.1.

There is nothing in the record showing that the documents that were filed were either "false, misleading [or] deceptive." Moreover, nothing in appellant's brief explains what the paralegal did when she assisted counsel for the trustees or how her actions warranted the dismissal of the subject case. *See Dual v. Lockheed Martin*, 383 Md. 151, 173 (2004) (bald allegations set forth in conclusory form without sufficient factual basis need not be addressed by a reviewing Court).

Lastly, it is to be noted that in the pleading cited by appellant when she framed Question 2, she asked, among other questions, whether the trial court erred in failing to vacate all orders "denying her motions to vacate the denial of her exceptions to sale." In her brief, appellant puts forth no argument, and does not even mention, the denial of the June 4, 2019 motion to vacate insofar as it dealt with the exceptions to sale. Therefore, that question will not be addressed. *Beck v. Mangels*, 100 Md. App. 144, 149 (1994) (appellant must put forth argument in support of his/her position).

C. Question 3

Did the lower court err in denying the [a]ppellant's Motion to Vacate (Doc. 110/0, E.164-E.204) without providing its Findings of Facts and Conclusions of Law to support the [c]ourt's denial, as requested by the [a]ppellant?

According to appellant's record extract references, this question concerns the same motion as discussed in response to Question 2. In her brief, appellant does not set forth any argument in support of her (assumed) position that the court is required to provide a "Finding of Fact and Conclusion of Law" when it denies a motion. Therefore, we shall not address that question. *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1997) (A party's

failure to provide legal support for an argument on appeal, constitutes a waiver of that argument.).

D. Question 4

Did the lower court err by not requiring the [a]ppellees to provide material fact evidence that the 2012 Corporate Assignment of Deed of Trust did not violate USC Title 18 § 335, and Md. Statute of Frauds (see E.380-E.419), pursuant to Md. Rule 14-207.1?

Question four, based on the record extract references provided by appellant, deals with a motion she filed "to hold case in abeyance." That motion was filed on September 22, 2015. In the argument section of her brief, appellant says nothing about the motion to hold case in abeyance nor does she put forth any argument as to what grounds she has for asserting that the 2012 Corporate Assignment of Deed of Trust violated any statute. Moreover, she does not explain how such a violation would affect this case. Once again, we will not decide any question presented when an appellant fails to put forth argument in support of her contentions in her opening brief. What the Court said in *Burson v. Capps*, 440 Md. 328, 341, n.18 (2014) is apposite:

> Even if that issue were properly before this Court, Capps failed to argue the question with particularity in that he failed to cite even a single case or authority relevant to the question in his brief either to us or the intermediate appellate court. "[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal." *Klauenberg v. State*, 355 Md. 528, 552 (1999) (refusing to consider an argument when one statement to that effect was "lumped in" with another argument); *Mathis v. Hargrove*, 166 Md. App. 286, 318 (2005) (refusing to review one argument on appeal because no authority for the position was cited); *Poole v. State*, 207 Md. App. 614, 633 (2012) (refusing to consider an argument when it was made in one sentence, in a footnote, with no supporting argument). The full extent of his argument to this Court on the question of fraudulent conduct attributable to the Substitute Trustees is as follows: "[I]nstead of honoring Respondent's request, the lender told him that his request was legally not effective and that

> he was bound by the Note and its terms. This was both a violation of TILA and fraudulent conduct, and, as a result, the Note and Deed of Trust are not enforceable." The point was argued similarly in his brief to the Court of Special Appeals as well. This is plainly insufficient under our appellate Rules and case law. . . .

E. Question 5

Did the lower court err by not allowing the [a]ppellant an opportunity to provide material fact evidence that the alleged original Note the [a]ppellees presented to her, was a counterfeit negotiable instrument, which violated Maryland Criminal Law Title 8, Section 8-601 and 8-602, and the Md. Commercial Law Code (see E.235-E.238.4)?

Based on her record extract cite, question 5 deals with a letter McCray wrote to the United States Attorney for Maryland on August 31, 2018, and the "affidavit of criminal complaint" filed with it. Both documents allege, in one way or another, that misdeeds were committed by the Substitute Trustees and/or their attorneys, or Wells Fargo, but appellant's brief and record extract make it impossible to understand when, or even if, the circuit court was asked to give McCray an opportunity to "provide material fact evidence" based on those documents. Moreover, question 5 is not addressed anywhere in the argument section of appellant's brief. For those reasons, we will not address that question.

F. Question 6

Did the lower court err [in] denying the [a]ppellant's Motion to Vacate, once the [a]ppellant refuted the [a]ppellees' unsupported allegations that Federal Home Loan Mortgage Corporation (FHLMC), was the alleged owner of the Note, in order to give Wells Fargo Bank, N.A. (WFBNA) authority to be the alleged holder of the note, pursuant to Md. Rule 14-207.1?

It is impossible to tell from reading appellant's brief, what motion to vacate she is referring to in Question 6. Appellant filed four separate motions to vacate if one were to

count the "Demand to Vacate" that was discussed and decided in our prior unreported opinion.

In any event, the premise of Question 6 is that appellant somehow "refuted" the allegation that Freddie Mac owned the note. That premise is invalid. Appellant never refuted the Substitute Trustees' allegation that Freddie Mac was the owner of the note. In fact, when appellant sued Freddie Mac in federal court and sought money damages against it, she maintained that Freddie Mac was the owner of the note.

Also, in the argument portion of appellant's brief, she does not present argument supporting her position that Freddie Mac did not own the note. Therefore, we shall not address this issue further. *Beck v. Mangels*, 100 Md. App. at 149.

G. Question 7

Did the lower court err by not granting the [a]ppellant's Motion to Strike the Affidavit Certifying Ownership of Debt Instrument and Accuracy of Note Submitted Herewith, when the [a]ppellees never provided any admissible evidence that the statements in the affidavit were true and correct (Doc. 25/0, E.459-E.461), pursuant to Md. Rule 14-207.1?

Based on the pages in the record extract cited by appellant, this question concerns a motion filed by appellant on August 5, 2013, which was twenty-seven days after she filed her first motion to stay/dismiss. In the circuit court, McCray's contention that the affidavits should have been stricken was based on the case of *A.J. Decoster Co., et al. v. Westinghouse Electric Corporation*, 333 Md. 245, 263 (1994), which stands for the proposition that when an affidavit is filed in support of, or in opposition to, a summary judgment motion, that the affiant must attest to personal knowledge of the facts asserted and a basis for that knowledge. The *A.J. Decoster* case, like *Fletcher v. Flournoy*,

discussed *supra*, deals exclusively with affidavits filed in summary judgment cases. That case has nothing to do with the validity, *vel non*, of an affidavit filed in a foreclosure case. Here, the "Affidavit Certifying Ownership of Debt Instrument and Accuracy of Note Submitted Herewith" was signed by a vice president of loan documentation for Wells Fargo and states, in conformity with Md. Rule 1-202(b), that the affiant affirmed "under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief." The circuit court did not err in denying appellant's motion to strike.

H. Question 8

Pursuant to the due process and equal protection of the law clause in the United States Constitution, did the lower court err by not mailing the [a]ppellant a copy of the initial Notice of Sale issued by the Court on December 11, 2017 (E.344)?

In this Court, and in the circuit court, McCray alleged that the clerk of the circuit court did not mail her a copy of the initial notice of sale that was issued on December 11, 2017. We will assume for the purpose of argument, that the clerk did err in this regard. Nevertheless, it is clear that appellant was not harmed by the error on the part of the clerk, because McCray filed a timely objection to the notice of sale. Therefore, even if appellant was not sent a notice by the clerk, this would not be grounds for reversing the order signed by the Circuit Court for Baltimore City, overruling McCray's exceptions to the notice of sale. *See Benik v. Hatcher*, 358 Md. 507, 537 (2000) (an appellant, to succeed on appeal in a civil case, must show not only error on the part of the circuit court, but must show as

well that the error was prejudicial in the sense that the error affected the outcome of the case).[6]

I. Question 9

Did the lower court err in Overruling the [a]ppellant's Exceptions to the Report of Sale without a Hearing (Doc. 81/1, E.336-E.343)?

The Exceptions to the Report of Sale, to which question 9 refers, are the exceptions filed on January 4, 2018. The exceptions were denied on March 2, 2018. The order denying the Exceptions to the Report of Sale was not dispositive of any claim or defense. *Pelletier*, 213 Md. App. at 292-93. And, in any event, McCray does not set forth in her brief any argument in support of her implied contention that she was entitled to a hearing.

In regard to the substantive issue as to whether appellant's Exceptions to the Report of Sale should have been granted, appellant's brief does not address the exceptions filed on January 4, 2018. Instead, her brief concerned exceptions filed subsequent to that date. We will address those arguments in our discussion of Question 16.

J. Question 10

Did the lower court err in denying the [a]ppellant's Motion for Reconsideration for Exceptions to the Report of Sale (Doc. 81/5, E.321-E.334)?

Based on appellant's reference to the record extract, Question 10 concerns a motion for reconsideration filed by McCray on March 8, 2018. There is no argument set forth in McCray's brief concerning whether the court's March 2018 denial of the motion for reconsideration was appropriate. Therefore, Question 10 will not be addressed.

[6] The only damages claimed by appellant due to the clerk's (assumed) mistake was that McCray incurred copying costs.

K. Question 11

Did the lower court err in denying the [a]ppellant's Motion to Set Aside the Notice of Sale without a hearing (Doc. 87/0, E.318-E.320)?

Question 11, based on the reference to the record extract, concerns a Motion to Set Aside the Notice of Sale and Request for Hearing filed on January 4, 2018. In that motion, McCray complained that the bond that John E. Driscoll, III filed for $25,000 indicates that the bond covered not only John E. Driscoll, III, but covered other persons who were not Substitute Trustees. In the argument section of her brief, appellant does not even mention this claimed irregularity, much less demonstrate that she was prejudiced by it. In addition, no other argument set forth in McCray's brief discussed the motion filed on January 4, 2018. Because appellant failed to show prejudice and because appellant failed to put forth any argument as to Question 11, that question will not be further addressed.

L. Question 12

Did the lower court err in denying the [a]ppellant's Motion to Strike Auctioneer's Affidavit without a hearing (Doc. 88/0, E.312-E.313), when the [a]ppellees did not provide any admissible evidence to support the affidavit, pursuant to Md. Rule 14-207.1(b)?

In regard to the auctioneer's affidavit, appellant says in her brief:

> [T]he lower court erred by denying the [a]ppellant's [m]otion[] to [s]trike the . . . Auctioneer's Affidavit . . . . [T]he [a]ppellant stated in . . . the motion[] to strike, [that] the affidavits [of the auctioneers and others] were hearsay, and without personal, first-hand knowledge.

In regard to this argument, we note that the auctioneer's affidavit was sworn to before a Notary Public and read:

AUCTIONEER'S AFFIDAVIT

> I, the undersigned, solemnly affirm under penalties of perjury and personal knowledge that the contents of the foregoing paper are true and correct and any fees and sums are all and singular of the fees and sums due us, and that we have not paid or will not pay, directly or indirectly, any sum or consideration to anyone for employing us to be employed to make the sale in this matter.

As can be seen, the affiant swore that the contents of "the foregoing paper" was based on "personal knowledge" and was "true and correct." Thus, contrary to appellant's argument, the auctioneer did swear that he had "first-hand knowledge."

McCray's complaint that the affidavit contained "hearsay" does not make sense because the hearsay rule is applicable to what evidence may be admitted at a trial or hearing, to prove the truth of the matter asserted. *See* Md. Rule 5-801(c). Here, there was no trial or hearing.

M. Question 13

Did the lower court err in denying the [a]ppellant's Motion to Strike the [p]laintiff's Report of Sale and Bond, and Request for Hearing (Doc. 89/0, E.302-E.308), when the [a]ppellees did not provide any admissible evidence to support the affidavit pursuant to Md. Rule 14-207.1(b)?

We will first address appellant's contention that she was entitled to a hearing. Unless the court decides to set aside a sale, the court has discretion to decide whether or not to hold a hearing on exceptions to the report of sale. *See* Md. Rule 14-305(d)(2). In her brief, McCray does not even argue that the circuit court abused its discretion.

As can be seen, Question 13 refers to Md. Rule 14-207.1(b). It is likely that appellant meant to cite Md. Rule 14-207(b)(1) – (10), which sets forth the documents that must be filed with an order to docket to foreclose on residential property. The supporting

documents that the Substitute Trustees filed, as mentioned earlier, satisfied all the requirements of Md. Rule 14-207(b)(1) – (10). But, even if the documents filed with the Order to Docket were somehow deficient, this would not be grounds to strike the report of sale. Such objections must be raised pre-sale. As we said in *Hood v. Driscoll*, 227 Md. App. 689, 695-96 (2016):

> [I]n *Thomas v. Nadel*, 427 Md. 441, 445 (2012), the Court of Appeals confirmed what it had said in *Bates v. Cohn*, 417 Md. 309 (2010) and *Maddox v. Cohn*, 424 Md. 379 (2012)—that a homeowner/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." *Thomas*, 427 Md. at 445, quoting from *Bates*, 417 Md. at 328. Consistently—harmoniously—with that approach, *Bates* made clear that Rule 14-305 "is not an open portal through which any and all presale objections may be filed as exceptions, **without regard to the nature of the objection or when the operative basis underlying the objection arose and was known to the borrower."** *Bates*, at 327. (Emphasis supplied).
>
> This Court expounded on that in *Jones v. Rosenberg*, 178 Md. App. 54, 69 (2008) and *Johnson v. Nadel*, 217 Md. App. 455, 466 (2014), giving as examples of the kinds of procedural irregularities properly raised in exceptions under Rule 14-305(d) "allegations such as 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." *See also Fagnani v. Fisher*, 418 Md. 371 (2011); *101 Geneva v. Wynn*, 435 Md. 233 (2013); *Maddox v. Cohn*, *supra*, 424 Md. 379, 399.

Post-sale, the Substitute Trustees were not required to present "admissible evidence" to support the documents filed with the original Order to Docket. Lastly, nothing in appellant's brief supports her contention that the bond should have been stricken.

N. Question 14

Did the lower court err in denying the [a]ppellant's Motion to Strike Purchaser's Affidavit and Request for Hearing (Doc. 90/0, E.291-E.297), when the [a]ppellees did

not provide any admissible evidence to support the affidavit, pursuant to Md. Rule 14-207.1(b)?

In regard to the adequacy of the purchaser's affidavit, the only mention appellant makes about that subject in the argument section of her brief, is the same thing she said about the auctioneer's affidavit, i.e., the affidavit was "hearsay and without personal, first-hand knowledge." The purchaser's affidavit was signed by John E. Driscoll, III. It read:

> I, the undersigned, John E. Driscoll, III, as counsel for the purchaser on this 5th day of December, 2017 do hereby affirm under penalty of perjury and make an oath in due form of law that to the best of my knowledge, information and belief, and based upon the records of the purchaser that are kept in the ordinary course of business that:
>
> 1. Federal Home Loan Mortgage Corporation is the purchaser at the foreclosure sale in these proceedings.
> 2. That I am the attorney for Federal Home Loan Mortgage Corporation, as the purchaser at the foreclosure sale.
> 3. There are no other persons or entities interested as principals.
> 4. That I have not directly or indirectly discouraged anyone from bidding for the subject property known as 109 N. Edgewood Street, Baltimore, MD 21229.

That affidavit, like the auctioneer's affidavit, was in proper form. Appellant advances no valid argument to support her position that it should have been stricken.

O. Question 15

Pursuant to due process and equal protection of the law clause in the United States Constitution, did the lower court err by not mailing the [a]ppellant a copy of the 2nd Notice of Sale issued by the [c]ourt on June 18, 2019 (E.160)?

Our answer to that question is the same as our answer to Question 8, which is that even if we assume that the notice was not sent to McCray by the clerk, she did not demonstrate in her brief that she suffered any prejudice due to this lapse that would have

affected the outcome of this case. McCray filed a timely objection to the second report of sale. There clearly was no prejudice.

P. Question 16

Did the lower court err in Overruling the [a]ppellant's Exceptions to the Report of Sale without a Hearing (Doc. 111/1, E.130-E.159)?

Most arguments that appellant sets forth in her brief as to why the court erred in not sustaining her second notice of exceptions to sale concern whether Freddie Mac was the secured lender, and whether Wells Fargo had the right to appoint the Substitute Trustees to bring the action. Those arguments were required to be made pre-sale and even if they had merit (they don't), they would not be grounds to sustain appellant's exceptions to the report of sale.

In her exceptions, several substantive reasons were offered as to why the sale should be set aside. One of those arguments is based on the allegation that at the sale, the purchaser bought the Property using a "credit bid." In that regard, she argued in her exceptions as follows:

> The [d]efendant recently discovered that only a beneficiary can buy property at a trustee sale with a "credit bid." Since there is no evidence that [Wells Fargo] is a beneficiary to the [d]efendant's 2005 Note and Deed of Trust, the $29,750.00 credit bid stated in the Notice of Sale should be invalid. If the [c]ourt allows the alleged credit bid without [Wells Fargo] proving their legal authority to make the bid for a creditor, secured party or beneficiary of the 2005 Note and Deed of Trust, this would be prejudicial to the [d]efendant.

The short answer to appellant's credit bid argument is that Wells Fargo was not the purchaser: Freddie Mac was. Because Freddie Mac was the secured party, it was a beneficiary of the deed of trust and note, and could purchase by making a credit bid.

In her brief, appellant makes one fleeting comment, indicating that she believes that her objections to the report of sale should have been granted because the bid price was too low. That fleeting reference was made in the following sentence: "The [a]ppellant also stated in the [e]xceptions that it was unfair and prejudicial to her that the alleged trustees allowed the bid of $29,750[] which was well below the fair market value of the property." The fact that a bid is below the market value is not grounds to set aside a sale. *Lewis v. Beale*, 162 Md. 18, 23 (1932).

Additionally, what the Court said in *Butler v. Daum*, 245 Md. 447, 452 (1967), is instructive:

> The cases concerning inadequacy of price are multitudinous, but a quotation from one—*Suburban Garden Farm Homes Corp. v. Duckett*, 179 Md. 648, 655 (1941)—will suffice to state the law on this point:
>
> > "The law is well settled that to justify a court of equity in setting aside an adequately advertised sale of property upon this ground [inadequacy of price] facts must be shown from which the conclusion arises that the price is so insignificant as to shock the conscience of the Court. The facts must be such as to compel the conclusion that because of the inadequacy of the price, constructive fraud is implied."
>
> The burden of proving inadequacy was on the exceptants and they did not do so. As a consequence, the chancellor found absolutely no evidence of fraud or irregularity and stated that if the price was inadequate, the evidence thereof was not such as to shock his conscience. His findings will not be disturbed.

Here, appellant did not even argue that the price was so low as to shock the conscience of the court or that constructive fraud was proven.

Appellant also claims that the person who made the $29,750 bid was one Arnold Hillman. According to appellant, he was not "the individual authorized to make the sale."

This is true, but Hillman did not "make the sale." Instead, according to appellant who attended the sale, Hillman made the successful bid. He did so as an agent for Freddie Mac.

McCray also makes the following argument: "Appellant also stated [in her exceptions to the report of sale] that the [a]ppellees discouraged others from bidding at the alleged trustees' sale, because the deposit of $20,000[] was unreasonable when a previous deposit for the same property was only $5,000[]." The "previous deposit," to which appellant refers, was a $5,000 deposit requirement set by the Substitute Trustees when they initially advertised the Property for sale.

In her brief, appellant makes no argument to support her position that the $20,000 deposit was so high as to discourage bidders. Quite obviously, the mere fact that the amount of the required deposit was increased by $15,000 does not support a rational inference that it was too high. For all we know, $5,000, the initial deposit bid requirement, was too low. Moreover, even if $20,000 was too high, appellant puts forth no factual or legal support for her argument that $20,000 was so high as to discourage bidders.

Lastly, McCray contends that the court erred in not holding a hearing to consider her exceptions to the report of sale. Maryland Rule 14-305(d)(2) grants the court discretion as to whether to hold a hearing. Nothing in her brief addresses the question of whether the court abused its discretion when it overruled the exceptions without a hearing.

Q. <u>Question 17</u>

Did the lower court err in denying the [a]ppellant's Motion for Injunctive Relief and Request for a Hearing (Doc. 112/0, E.85-E.128)?

Based on the docket entry appellant cites, Question 17 refers to appellant's motion, filed on July 2, 2019, that was captioned "Emergency Motion for Injunctive Relief and Request for Hearing." This was the second request for an injunction filed by McCray. In her second motion, McCray asked the court to enjoin the Substitute Trustees "from continuing to harm the [d]efendant, until the [p]laintiffs can provide material fact evidence that [Wells Fargo] is the '[h]older of the [d]efendant's 2005 [n]ote,' with 100% enforcement rights, and for such other and further relief as may be deemed by this [c]ourt." The emergency motion for injunctive relief was denied by the court on July 17, 2019. In the argument section of her brief, McCray does not even mention the emergency motion for injunctive relief, much less put forth any argument in support of her (assumed) position that the court erred in denying the motion. Thus, we will not address Question 17.

R. Question 18

Did the lower court err in denying the [a]ppellant's Motion for Reconsideration for Exceptions to the Report of Sale and Emergency Motion for Injunctive Relief (Doc. 114/0, E.77-E.83), pursuant to Md. Rule 14-207.1?

McCray filed a motion for reconsideration of the court's orders overruling her exceptions to the notice of sale, and denying her emergency motion for injunctive relief. That motion was filed on July 22, 2019.

Appellant's only argument concerning the denial of her motion for reconsideration is a claim that her rights were violated when the court denied the reconsideration motion without setting the matter down for an evidentiary hearing. McCray cites no authority, nor do we know of any, that requires a circuit court judge in a foreclosure action to grant a hearing on a motion for reconsideration. As just mentioned, under Md. Rule 14-305(d)(2),

the circuit court has discretion as to whether to grant a hearing on the defendant's exception to sale. If the court has discretion to not hold a hearing on the exceptions, it follows, logically, that the court would have discretion not to grant a hearing on a motion to reconsider that same matter. *See also Pelletier,* 213 Md. App. at 293.

S. Question 19

Did the lower court err in denying the [a]ppellant's Motion to Vacate the Order Ratifying the Report of Sale and Request for an Evidentiary Hearing (Doc. 115/0, E.69-E.74), pursuant to Md. Rule 14-207.1?

The motion to vacate referred to in Question 19, was filed on July 29, 2019, which was within ten days of the court's ratification of the report of sale. In her brief, in support of her argument that the trial court erred in denying her motion to vacate the order ratifying the report of sale, appellant only contends that the sale should not have been ratified because, purportedly, the Substitute Trustees had "never proven their rights to enforce the [a]ppellant's Note."

Such a claim cannot be made post sale. As mentioned earlier, in *Bates*, 417 Md. at 327, the Court said that Maryland Rule 14-305 (governing exceptions to sales) "is not an open portal through which any and all presale objections may be filed as exceptions, without regard to the nature of the objection or when the operative basis underlying the objection arose and was known to the borrower."

In her reply brief, McCray contends that the rule set forth in *Bates v. Cohn*, "should not apply in this instance for the reasons stated in the [d]efendant's Unopposed Motion to

Vacate . . . , the Exceptions to the Notice of Sale . . ., the [d]efendant's "Emergency Motion for Injunctive Relief . . ., and this Motion for Reconsideration."[7]

Bates stands for the proposition that "after a foreclosure sale 'the debtor's later filing of exceptions . . . may challenge only procedural irregularities at the sale or . . . the statement of indebtedness." 417 Md. at 327 (citing *Greenbrier Condominium, Phase I Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683, 688 (2005)). The *Bates* Court left open only two possible exceptions to the rule just stated. One possible exception was that the Court did not decide whether, in a Md. Rule 14-305 exceptions filing, a borrower could legitimately make an allegation "that a deed of trust was the product of fraud, and therefore, the sale was invalid and incapable of passing title"; and 2) the issue of whether a homeowner/borrower could make, under Rule 14-305, as a post-sale exception, a claim that a "foreclosure sale was the product of the lender affirmatively and purposely misleading the borrower in default" to believe "that ultimately unsuccessful pre-sale loss mitigation or loan modification efforts would likely be successful (or protracting strategically the denial of those efforts) and therefore dissuading the borrower from seeking to assert pre-sale defenses in a timely manner." *Bates*, 417 Md. at 327-28. Neither of these possible exceptions are here applicable.

In her reply brief, appellant cites *Bierman v. Hunter*, 190 Md. App. 250 (2010) in an effort to circumvent the holding in *Bates v. Cohn*. But, the *Bierman* decision was

[7] Ordinarily, we would not even consider arguments presented in this fashion because we cannot be expected to comb through the record to find out what arguments an appellant previously addressed. *Von Lusch v. State*, 31 Md. App. 271, 281-82 (1976).

overruled by *Bates* and therefore McCray's reliance on that case is misplaced. *Bates*, 417 Md. at 327.

Appellant's motion to vacate was filed pursuant to Md. Rule 2-535(a). Prior to denying such a motion, the court is not required to hold a hearing. *Pelletier*, 213 Md. App. at 293.

T. Question 20

Did the lower court err in not ruling on the [a]ppellant's Ten-Day Motion for Reconsideration of the Order Dated 08/15/2019 Ratifying the Sale and Request for an Evidentiary Hearing (Doc. 116/0, E.36-E.41), pursuant to Md. Rule 14-207.1?

In the argument section of appellant's brief, McCray makes only one mention of the motion for reconsideration at issue. That mention appears in the last sentence in the portion of her brief titled "Ratification of Sale," *viz*.:

> For all the reasons stated above, and in the [a]ppellant's Unopposed Motion to Vacate . . ., Unopposed Exceptions to the Notice of Sale . . ., Unopposed Emergency Motion for Injunctive Relief . . ., and Motion for Reconsideration . . ., the [a]ppellant is requesting this Court to set aside the July 19, 2019 . . . and August 15, 2019 . . . Orders Ratifying the Report of Sale.

As previously stated, Maryland appellate courts require that a party set forth in their brief, argument in support of their position. That requirement is not fulfilled when a party simply refers to assertions and/or arguments made in motions previously filed in the circuit court. *See Clarke v. State*, 238 Md. 11, 22-23 (1965) (refusing to answer appellant's contention where the appellant merely stated, "the court erred in overruling defendant's various motions for a mistrial" and then cited various motions included in the record extract).

U. Question 21

Did the lower court err in denying the [a]ppellant's Ten-Day Motion for Reconsideration of Motion to Vacate . . . and Request for a Hearing (Doc. 117/0, E.25-E.35), pursuant to Md. Rule 14-207.1?

Question 21 deals with a motion filed on August 20, 2019 by McCray that had the following unwieldly title: "Defendant's Ten-Day Motion for Reconsideration of Motion to Vacate All Orders Denying Defendant's Motions to Dismiss This Foreclosure Action, and Exceptions to Sale Because Plaintiffs' [sic] Lacked Standing to Invoke the Court's Jurisdiction and Request for Hearing." Despite the wording of the question presented, that motion was not filed pursuant to Md. Rule 14-207.1. That last mentioned rule concerns the duty of the court, after an order to docket has been filed, to review the pleadings and papers filed by the plaintiff in a foreclosure action to ensure that the pleadings or papers filed "comply with all statutory and Rule requirements[.]" *See* Maryland Rule 14-207.1(a). Under subsection (b) of that rule, the court is required to review the affidavits filed in support of the order to docket.

The erroneous citation to Maryland Rule 14-207.1 aside, McCray's "ten-day motion" sought to vacate all orders denying defendant's prior motions to dismiss. As of August 20, 2019, McCray had filed four prior motions to dismiss. Except for the first motion to dismiss filed in July of 2013, all the others were untimely, which meant that the circuit court could not have legitimately granted them. Thus, as of August 20, 2019, the only motion to dismiss that the court could have even conceivably revisited, was the motion to stay/dismiss filed on July 9, 2013.

In the argument section of her brief, McCray discusses the motion to vacate all orders that were filed before the ratification of the sale, which we have covered in our discussion of Questions 2 and 3, *supra*. But in the argument section of appellant's brief, she sets forth no argument in support of her (assumed) position that the court erred in denying her ten-day motion for reconsideration, etc., filed August 20, 2019. Once again, because appellant does not set forth argument in support of her position, we will not address the question of whether the court erred in denying the motion filed on August 20, 2019. *Diallo v. State*, 413 Md. 678, 692-93 (2010) ("'[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.'") (quoting *Klaunberg v. State*, 355 Md. 528, 552 (1999)).

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.