Circuit Court for Charles County
Case No. 08-C-17-001208

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1427

September Term, 2021

HAIZUANNA ZANO

v.

JOHN E. DRISCOLL, III, *et al.*

Berger,
Shaw,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: October 18, 2022

On May 26, 2017, Appellees, acting as substitute trustees, filed an order to docket, seeking to foreclose on real property owned by Appellant, Haizuanna Zano in the Circuit Court for Charles County. In 2019, the property was sold at a public auction to Bank of America, N.A. ("B.A.N.A."). Appellant filed post-sale exceptions to the foreclosure sale, which the court denied in an order entered on June 26, 2019. Appellant appealed from that order. We dismissed that initial appeal for want of a final judgment.

On remand, the circuit court ratified the sale and referred the case to an auditor for accounting. Appellant, acting *pro se*, noted a second appeal and presents four questions for our review, which we have rephrased as follows:

1. Did the court err by ratifying the foreclosure sale despite purported procedural infirmities in the proceedings?

2. Did the court err by permitting the foreclosure sale prior to the parties participating in mediation?

3. Did the court commit reversible error by accepting Appellees' untimely responses to Appellant's filings?

4. Did the court err by failing to strike the auditor's report for having been filed (i) after the court-ordered deadline and (ii) during a stay of the proceedings?[1]

[1] In her brief, Appellant articulated her questions presented as follows:

1. Did the trial court err in allowing the judgment of foreclosure and subsequently the sale of the property even though mediation was not offered?

2. Did the trial court err in allowing Appellee[s] to repeatedly file documents well outside the response times (30 days) in reply to Appellant's filings? Some of which timelines exceeded 70 days before Appellee[s] made any response.

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

BACKGROUND

On March 18, 2011, Appellant borrowed $326,690.00 from Universal American Mortgage Company, LLC ("U.A.M.C."), evidenced by a promissory note and secured by a deed of trust encumbering real property located at 11628 Port Royal Avenue in Waldorf, Maryland ("the Property"). U.A.M.C. assigned the deed of trust to B.A.N.A. on January 5, 2012. On or about August 2, 2015, Appellant defaulted on her loan payments.

On May 26, 2017, B.A.N.A. appointed Appellees (John E. Driscoll, III, Sara K. Turner, Robert A. Jones, Amy C. Czekala, E. Edward Farnsworth, Jr., Arnold Hillman, and Deena L. Reynolds) as substitute trustees. That same day, Appellees initiated foreclosure proceedings against Appellant by filing an order to docket in the circuit court.

In the first of several attempts to forestall foreclosure, on July 18, 2017, Appellant filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the District of Maryland ("the Bankruptcy Court"). On August 10th, Appellees filed a suggestion of bankruptcy, advising the circuit court that Appellant's petition had triggered an automatic stay of the foreclosure proceedings pursuant to 11 United States Code Annotated ("U.S.C.A.") § 362(a). The following day, Appellant filed a "Motion to

---

3. Did the trial court err in allowing the ratification of the sale with the significant deficiencies not cured by Appellees?

4. Did the trial court err in not immediately striking on its[] own accord the late auditors report for (a) not filing by November 25, 2021, and (b) for no[t] adhering to the Order to Stay issued on December 10, 2021?

Stop/Suspend Foreclosure Action," wherein she requested that the court "stop all foreclosure proceedings [i]n this case, due to the open Chapter 13 Bankruptcy case being worked on to prevent further action by Bank of America[.]" The motion was accompanied by a letter wherein Appellant claimed that she had first received notice of Appellees' intent to foreclose in November 2015, at which time she was two months in arrears on her payments. Appellant also described repeated attempts that she had purportedly made to modify the terms of her loan. Finally, she alleged that Appellees had failed to properly serve her with notice of the foreclosure proceedings by certified mail. In an order entered on July 16, 2018, the Bankruptcy Court dismissed Appellant's Chapter 13 petition because she had neither amended her Chapter 13 plan nor converted the case to another chapter despite having been granted leave to do so. Accordingly, on August 1st, Appellees filed with the circuit court a "Notice of Termination of Automatic Stay."

On August 23, 2018, Appellees filed a "Certification of Mailing Final Loss Mitigation Affidavit," wherein they, through counsel, averred:

> [O]n August 22, 2018[,] the attached Notice of Foreclosure Action, Request for Foreclosure Mediation Instructions and Final Loss Mitigation Affidavit, together with the required addressed envelopes were mailed by first class, postage prepaid, and certified mail in compliance with Md. Code, Real Property, 7-105.1(i)(1)(ii)[.]

According to a supporting exhibit attached to, and incorporated by reference in, the final loss mitigation affidavit, B.A.N.A. did not conduct a loss mitigation analysis because Appellant had failed to submit "all required loan documents within the required timeframe." Although Appellees mailed Appellant an accompanying "Request for

Foreclosure Mediation" form and instructions, the record does not reflect that she timely filed the form or otherwise requested mediation.

On September 5, 2018, Appellant filed a "Motion for Extension of Time," seeking "an additional 45 days to respond to the lawsuit and mitigation request recently sent to [her] on August 23, 2018." In that motion, she argued that an extension was warranted "due to the complexity of the issues and large number of attachments and exhibits to review and research[.]" The court denied Appellant's request without explanation.

On or around September 12, 2018, Appellant filed a second Chapter 13 bankruptcy petition, which again automatically stayed the foreclosure action. In an order entered on January 17, 2019, however, the Bankruptcy Court denied Appellant's proposed Chapter 13 plan without leave to amend. Appellant subsequently failed to convert the bankruptcy case to another chapter. Accordingly, the Bankruptcy Court dismissed her petition on February 4th, thereby terminating the automatic stay in the circuit court.

On April 10, 2019, Appellant filed a "Motion to Hold Foreclosure Proceedings for Loan Modification, Tax Remediation, and Surgery," seeking a sixty to ninety-day extension to afford her an opportunity to resolve a tax issue with the Internal Revenue Service ("I.R.S.") and to recover from a surgery scheduled for later that month. Appellant also stated that she "ha[d] received correspondence from [B.A.N.A.] on or around February 9, 2019, directly asking [her] to pursue a new loan modification[.]" Finally, Appellant advised the court that she had recently retained the services of the Neighborhood Assistance Corporation of America ("N.A.C.A.") to facilitate a loan modification. While

that motion was pending, Appellees filed a foreclosure bond with the court and scheduled a sale of the Property for May 2nd.

On April 22, 2019, Appellant filed another motion, which she captioned as a "Motion to Stop Foreclosure Sale Urgent Response Requested." She asserted a defense of "dual processing by the mortgage[e]," claiming that B.A.N.A. had impermissibly pursued the foreclosure sale during "an active process to ratify a loan modification with the Neighborhood Assistance Corporation of America."[2] Appellant also asserted that Appellees failed to send her written notice of the date of sale by registered mail as required by Maryland Code (1974, 2015 Repl. Vol., 2021 Supp.), § 7-105.1(h)(2) of the Real Property Article ("R.P.").

The court denied Appellant's April 10th and April 22nd motions in orders entered on April 23, 2019.[3] Construing them as motions for a stay of sale, it reasoned that they had

[2] Appellant appears to have invoked 12 Code of Federal Regulations § 1024.41(g), which provides, in pertinent part: "If a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale[.]"

[3] Although the court's orders denying injunctive relief were immediately appealable pursuant to Maryland Code (1974, 2020 Repl. Vol.), § 12-303(3)(iii) of the Courts and Judicial Proceedings Article, Appellant declined to seek appellate review thereof. *See Towers Oaks Blvd., LLC v. Procida*, 219 Md. App. 376, 390 n.1 (2014) ("A stay is in the nature of an injunction; and an order refusing to grant an injunction is appealable, even though it is interlocutory[.]"), *cert. granted*, 441 Md. 217, *cert. dismissed as improvidently granted*, 444 Md. 691 (2015).

not been timely filed and did not comply with the requirements of Maryland Rule 14-211(a)(3).[4]

On April 30, 2019, Appellant filed another Chapter 13 bankruptcy petition. As she had two previous bankruptcy petitions pending within the past year both of which had been dismissed, the filing of her third petition did not trigger an automatic stay. *See* 11 U.S.C.A. § 362(c)(4)(A)(i).[5] Accordingly, Appellant moved to reinstate the automatic stay *nunc pro tunc*, which motion the Bankruptcy Court denied without prejudice.

On May 2, 2019, Appellees sold the Property at a public auction to B.A.N.A., then the promissory noteholder, for $324,092.13. On May 29th, they filed with the circuit court and mailed to Appellant a "Report of Sale," a "Proposed Order of Ratification," a "Certificate of Publication of the Advertisement of Sale," and an "Affidavit of Notice." The certificate of publication shows that Appellees published notices of the sale in the Maryland Independent, a newspaper of general circulation in Charles County, for the three successive weeks immediately preceding the sale. According to the affidavit of notice, on

[4] As to Appellant's latter motion, the court also found it did "not state a valid defense to the validity of the lien or lien instrument or to the right of [Appellees] to foreclose in the pending action pursuant to Maryland Rule § 14-211(b)(l)(C)[.]"

[5] 11 U.S.C.A. § 362(c)(4)(A)(i) provides:

> [I]f a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case[.]

April 3rd and April 18th, Appellant was "mailed by certified, postage pre-paid, return receipt requested and first class mail notice of the time, place, and terms of sale[.]"[6]

On May 31, 2019, Appellant filed exceptions to the foreclosure sale. In an amendment filed on June 20th, she articulated her exceptions as follows:

> 1. [Appellees] failed to give proper notice to [Appellant], as required by Rule 14-210(b) and 14-210[(a)].[7]
>
> 2. [Appellant] had a complete loss mitigation in process and the sale would be improper pursuant to Real Estate Settlement Procedures Act (RESPA) 12 CFR 1024.41(g) and pursuant to *Wells Fargo v. Neal*, 398 Md. 705, 730 (2007), because [Appellees] initiated a foreclosure proceeding while my loan modification application was pending, therefore, [Appellees] had unclean hands which is a valid defense to a foreclosure proceeding.
>
> 3. [Appellant] currently ha[s] a pending Chapter 13 bankruptcy that should encompass any debt due and owing on [the Property].

Appellees filed an opposition to Appellant's exceptions on June 25th, arguing: (i) Appellees properly sent Appellant notices of the foreclosure sale; (ii) Appellees complied with Maryland Rule 14-210(a)'s requirement that they publish a notice of sale in a newspaper of general circulation at least once per week for three successive weeks; (iii) "[s]ince the loss mitigation package was incomplete prior to the 37 day deadline, the

[6] Although Appellees concede that "[t]he certified mail was returned as 'unclaimed,'" they maintain that "the first-class mailing was not returned[.]" Appellees also assert that "[i]t is evident that Appellant received notice of the sale because she references the sale in her April 10, 2019[,] and April 22, 2019[,] motions."

[7] Maryland Rule 14-210(a) sets forth advertising requirements with which lenders must comply prior to conducting a foreclosure sale. Rule 14-210(b), in turn, prescribes the requirements for sending written notice of an impending foreclosure sale to, *inter alia*, the record owner and occupants of the subject property.

noteholder had no obligation to stop the May 2nd foreclosure sale date;" and (iv) the foreclosure sale was unaffected by Appellant's third bankruptcy petition "because there was no automatic stay in effect at the time of the . . . sale nor is the automatic stay in place at this point." The court overruled Appellant's exceptions in an order entered on June 26th. Appellant noted an appeal two days later. Appellees responded with a motion to dismiss the appeal as premature, which we granted on May 13, 2020.

On July 28, 2021, the circuit court notified Appellees of various deficiencies that prevented it from ratifying the foreclosure sale.[8] Approximately one month later, Appellees filed a "Motion in Response to Notice of Deficiencies in Order to Docket" accompanied by the documents that the court identified as having been missing from the case file. In a reply filed on September 27th, Appellant alleged additional "deficiencies" that had neither been raised by the court nor "cured" by Appellees. Specifically, Appellant asserted that Appellees had prematurely advertised and sold the property while mediation was pending, and that the court had erred by denying Appellant's objections to the foreclosure sale without a hearing. In orders entered respectively on October 25 and

[8] The delay in the foreclosure proceedings is attributable, in part, to an administrative order issued by the Court of Appeals on March 18, 2020, which stayed "[t]hose foreclosures of residential properties . . . pending in the circuit courts[.]" Court of Appeals of Maryland Administrative Order on Suspension of Foreclosures and Evictions During the COVID-19 Emergency, at 2 (2020). The Court lifted that stay in an amended order effective July 25, 2020. Court of Appeals of Maryland Administrative Order on Lifting of the Suspension During the COVID-19 Emergency of Foreclosures, Evictions, and Other Ejectments Involving Residences, at 2 (May 2020).

November 1, 2021, the court found that Appellees had cured the deficiencies and ratified the sale. Appellant noted an appeal from the ratification of sale on November 10th.

On November 11, 2021, Appellant filed a "Motion to Stay the Procedural Actions of the Ratification Order Pending Appeal," which the circuit court granted in an order entered on December 10th. Notwithstanding the stay, on December 13, 2021, the auditor filed his account and report.[9] Appellant excepted to the audit, claiming that the auditor had violated the court's order staying the proceedings pending the resolution of the instant appeal. The record does not reflect that the court has yet ratified either the auditor's account or his report.

DISCUSSION

I.

Appellant contends that the circuit court committed reversible error by ratifying the foreclosure sale, claiming that the proceedings were tainted by "deficiencies not cured by Appellees[.]"[10] Appellees respond that Appellant's pre-sale objections to the sale were

[9] In his account, the auditor assessed a deficiency against Appellant in the amount of $13,177.67.

[10] At the outset, we note that the only purported "deficiency" to which Appellant's brief refers is Appellees' having "proceeded as if ratification was guaranteed despite Appellant[']s objections, exceptions[,] and appeals," as when they filed a Form 1099-A, "Acquisition or Abandonment of Secured Property," with the I.R.S. in January 2020. As Appellant did not raise this argument before the circuit court, we will not consider it in the instant appeal. *See* Md Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"). By failing to identify with particularity any other purported defect, moreover, Appellant has waived appellate review of the pre-sale objections and post-sale exceptions raised below. *See Hopkins v. Silber*, 141 Md. App. 319, 338 (2001)

neither timely filed nor "state[d] with particularity the factual and legal basis of any valid defense to the validity of the lien or the lien instrument or to the right of Appellees to foreclose based on the default." As to Appellant's post-sale exceptions, Appellees assert that they are either unsupported by the record or were not proper post-sale exceptions.

A. The Pre-Sale Objections

"Before a foreclosure sale takes place, the defaulting borrower may file a motion to stay the sale of the property and dismiss the foreclosure action." *Burson v. Capps*, 440 Md. 328, 341 (2014) (quotation marks and citations omitted). We review the court's denial of a pre-sale motion to stay and dismiss for abuse of discretion. *See Svrcek v. Rosenberg*, 203 Md. App. 705, 720 ("[W]e review the circuit court's denial of a foreclosure injunction for an abuse of discretion."), *cert. denied*, 427 Md. 610 (2012). We will not, therefore, disturb the court's decision unless it is "well removed from any center mark imagined by [us] and beyond the fringe of what [we] deem[] minimally acceptable." *Eastside Vend Distribs., Inc. v. Pepsi Bottling Grp., Inc.*, 396 Md. 219, 239 (2006) (quotation marks and citation omitted).

("[A]rguments not presented with particularity will not be considered on appeal."). *See also Health Servs. Cost Review Comm'n v. Lutheran Hosp. of Md., Inc.*, 298 Md. 651, 664 (1984) ("This Court has consistently held that a question not . . . argued in an appellant's brief is waived or abandoned and is, therefore, not properly preserved for review."). We will, however, in the exercise of our discretion, briefly address those pre-sale objections and post-sale exceptions.

Maryland Rule 14-211 "allows homeowners to prevent a foreclosure sale by challenging, among other things, the right of the lender to foreclose," *Bates v. Cohn*, 417 Md. 309, 328-29 (2010) (cleaned up), and provides, in part:

> (a) **Motion to Stay and Dismiss. —**
>
> * * *
>
> (2) **Time for Filing.** —
>
> (A) Owner-Occupied Residential Property. In an action to foreclose a lien on owner-occupied residential property, a motion by a borrower to stay the sale and dismiss the action *shall be filed no later than 15 days after* the last to occur of:
>
> (i) *the date the final loss mitigation affidavit is filed*;
>
> (ii) the date a motion to strike postfile mediation is granted; or
>
> (iii) if postfile mediation was requested and the request was not stricken, the first to occur of:
>
> (a) the date the postfile mediation was held;
>
> (b) the date the Office of Administrative Hearings files with the court a report stating that no postfile mediation was held; or
>
> (c) the expiration of 60 days after transmittal of the borrower's request for postfile mediation or, if the Office of Administrative Hearings extended the time to complete the postfile mediation, the expiration of the period of the extension.
>
> * * *
>
> (C) **Non-Compliance; Extension of Time. —** For good cause, the court may extend the time for filing the motion or excuse non-compliance.
>
> * * *
>
> (b) **Initial Determination by Court.** —

> (1) **Denial of Motion.** — *The court shall deny the motion*, with or without a hearing, *if the court concludes* from the record before it *that the motion*:
>
> (A) *was not timely filed* and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule[.]

Md. Rule 14-211(a)&(b) (emphasis added). The filing deadlines prescribed by Rule 14-211(a) are mandatory. *See Bates*, 417 Md. at 320 ("[I]njunctions are to be filed prior to the action which they seek to forestall. The timing of this remedy is not elective."). Accordingly, "[f]ailure to comply with the requirements set forth in Maryland Rule 14-211 is a proper ground for denial of a motion to stay or dismiss." *Murphy v. Fishman*, 207 Md. App. 269, 282 (2012), *rev'd on other grounds*, *Fishman v. Murphy*, 433 Md. 534 (2013). *See also Svrcek*, 203 Md. App. at 721. If the court finds "one or more grounds for denial," moreover, it "has discretion to deny the motion before holding a hearing on the merits." *Buckingham v. Fisher*, 223 Md. App. 82, 89 (2015).

As discussed *infra*, Appellant failed to request mediation. Accordingly, she was required to file a Rule 14-211 motion on or before September 7, 2018—fifteen days after the date on which Appellees filed the final loss mitigation affidavit. Appellant did not, however, file her first Rule 14-211 motion until April 10, 2019—over seven months after the deadline passed.[11] Moreover, Appellant's motions did not present any justification or

[11] Although Appellant filed a "Motion for Extension of Time" on September 5, 2018, we do not construe that filing as a motion to stay the sale or dismiss the foreclosure action, as it did not raise any factual or legal "defense . . . to the validity of the lien or the lien instrument or to the right of [Appellees] to foreclose in the pending action[.]" Md. Rule 14-211(a)(3)(B). Even if Appellant had intended it as a motion to stay or dismiss, we would

excuse for not having been timely filed. As a result, we hold the circuit court did not abuse its discretion by denying Appellant's belated Rule 14-211 motions.

B. The Post-Sale Exceptions

Following a foreclosure sale, a debtor may file exceptions to said sale pursuant to Maryland Rule 14-305(e), which provides:

> (e) **Exceptions to Sale. —**
>
> (1) **How Taken. —** A party . . . may file exceptions to the sale. Exceptions shall be in writing, shall set forth the alleged irregularity with particularity, and shall be filed within 30 days after the date of a notice issued pursuant to section (d) of this Rule or the filing of the report of sale if no notice is issued. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.
>
> (2) **Ruling on Exceptions; Hearing. —** The court shall determine whether to hold a hearing on the exceptions but it may not set aside a sale without a hearing. The court shall hold a hearing if a hearing is requested and the exceptions or any response clearly show a need to take evidence. The clerk shall send a notice of the hearing to all parties and, in an action to foreclose a lien, to all persons to whom notice of the sale was given pursuant to Rule 14-206 (b).

Rule 14-305 is not "an open portal through which any and all pre-sale 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*, 417 Md. at 327. Rather, a borrower's "filing of exceptions . . . may challenge only procedural irregularities at the sale or . . . the statement of indebtedness." *Id.* (quotation marks and citation omitted).

---

hold that the court properly denied that motion, as (i) it was neither made under oath nor was supported by affidavit; (ii) it did not state with particularity the factual or legal bases for a defense; (iii) it was unaccompanied by any supporting documents; and (iv) it did not state how or when Appellant first learned of the action. *See* Md. Rule 14-211(a)(3).

Such procedural irregularities include allegations 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." *Id.* (quotation marks and citation omitted).

In *Jones v. Rosenberg*, 178 Md. App. 54, 68, *cert. denied*, 405 Md. 64 (2008), we articulated the following standard of review for post-sale exceptions to a foreclosure sale:

> In ruling on exceptions to a foreclosure sale and whether to ratify the sale, trial courts may consider both questions of fact and law. In reviewing a trial court's finding of fact, we do not substitute our judgment for that of the lower court unless it was clearly erroneous and give due consideration to the trial court's opportunity to observe the demeanor of the witnesses, to judge their credibility and to pass upon the weight to be given their testimony. Questions of law decided by the trial court are subject to a *de novo* standard of review.

(Quotation marks and citations omitted). "The party excepting to the sale has the twin burden of showing that the sale was invalid and that any claimed errors caused prejudice."[12] *Hood v. Driscoll*, 227 Md. App. 689, 697 (2016). *See also Jones*, 178 Md. App. at 69 ("There is a presumption in favor of the validity of a judicial sale, and the burden is on the exceptant to establish to the contrary.").

[12] In cases such as this, where the foreclosure purchaser was also the note holder, the sale is subject to heightened appellate scrutiny. *See Fagnani v. Fisher*, 418 Md. 371, 395 (2011) ("When the purchaser at the foreclosure sale is the mortgagee or his assignee, the Courts will examine the sale closely to determine whether or not the sale was bona fide and proper. The Courts will set aside such a sale upon slight evidence of partiality, unfairness, or want of the strictest good faith." (Quotation marks and citation omitted)).

Pending Loss Mitigation Application

We first address Appellant's claim that "the sale was improper . . . because [Appellees] initiated foreclosure proceeding[] while [her] loan modification application was pending[.]" Appellees assert that "Appellant's argument regarding loss mitigation is not a proper post-sale exception, and accordingly, was properly denied by the [c]ircuit [c]ourt."

We hold Appellant's argument with respect to loss mitigation constituted a defense to the right of Appellees to foreclose, rather than an allegation of procedural irregularities in the sale itself. *See Bates*, 417 Md. at 329 ("[A] lender's failure to comply with loss mitigation requirements goes to its *right* to foreclose, rather than its procedural handling of the sale." (Emphasis retained)). As such, Appellant was required to assert that defense in a timely pre-sale motion to stay or dismiss pursuant to Rule 14-211. *See Thomas v. Nadel*, 427 Md. 441, 442 (2012) ("[A] borrower challenging a foreclosure action must ordinarily assert known and ripe defenses to the conduct of the foreclosure sale in advance of the sale."); *Bates*, 417 Md. at 329 ("[A] homeowner, who wishes to use the lender's failure [to comply with loss mitigation requirements] as the basis of his or her claim, must do so through Rule 14-211's pre-sale injunctive relief apparatus."). As discussed *supra*, although Appellant alleged that Appellees had failed to comply with the loan mitigation requirements in her pre-sale motions, the court properly denied those motions as untimely filed. Given that a post-sale exception to the foreclosure sale was an inappropriate vehicle to revive Appellant's untimely challenge to the conduct of the sale, the court properly

overruled her post-sale exception to Appellees' alleged violation of the loss mitigation requirements.

Notice by Mail & Publication

In her post-sale exceptions, Appellant also claimed that Appellees had violated the personal notice and advertising requirements prescribed by Maryland Rule 14-210. On appeal, Appellees argue that these exceptions are clearly belied by uncontroverted evidence in the record. Again, we agree with Appellees.

Maryland Rule 14-210 governs the notice procedures with which trustees must comply prior to conducting a foreclosure sale and provides, in pertinent part:

> Before selling the property subject to the lien, the individual authorized to make the sale shall also *send* notice of the time, place, and terms of sale (1) by certified mail and by first-class mail to (A) the borrower, (B) the record owner of the property . . . and (2) by first-class mail to "All Occupants" at the address of the property. . . . . Except for the notice to "All Occupants," the mailings shall be sent to the last known address of all such persons, including to the last address reasonably ascertainable from a document recorded, indexed, and available for public inspection 30 days before the date of the sale. The mailings shall be sent not more than 30 days and not less than ten days before the date of the sale.

(Emphasis added). *See also* R.P. § 7-105.4(c)(2) (requiring that notice be *sent* "not earlier than 30 days and not later than 10 days before the date of sale"); R.P. § 7-105.11(b)(1) ("[T]he person authorized to make a sale in an action to foreclose a mortgage or deed of trust on residential property shall send . . . a written notice addressed to 'all occupants' at the address of the residential property[.]").

The Court of Appeals's decision in *Griffin v. Bierman*, 403 Md. 186 (2008), is instructive as to the resolution of this sub-issue. In that case, Griffin, a defaulting property

owner, filed post-sale exceptions to the foreclosure sale of her residence by the trustees. Although the trustees had sent Griffin three notices, via certified and first-class mail, to advise her of the time, date, and location of the sale, Griffin claimed—and the circuit court found—that she "did not receive any of these notices." *Id.* at 194. The trustees conceded, moreover, that they "took no additional actions to notify Griffin of the pendency of the sale after receiving the returned 'unclaimed' certified letters." *Id.* The circuit court nevertheless denied Griffin's exceptions and ratified the foreclosure sale.

On appeal, Griffin argued that "her right to due process of law, guaranteed by the Fourteenth Amendment to the United States Constitution and Article 24 of the Maryland Declaration of Rights, was violated, in application, by the failure to receive advance notice of the sale."[13] *Id.* at 195-96 (footnote omitted). As a threshold matter, the Court of Appeals determined that "[t]he Trustees . . . follow[ed] Maryland's notice requirements[.]" *Id.* at 201. The Court then held that the "foreclosure notice process passes constitutional muster," both facially and as applied to Griffin. *Id.* at 200. As to Griffin's facial challenge to the constitutionality of Maryland's notice scheme, the Court concluded:

> We cannot say that the Maryland notice system fails to balance the competing interests within the constitutionally allowable spectrum and, thus, the facts of this case, where that system was followed, did not result in an unconstitutional application or result as to Griffin. The function of the courts is to ascertain whether a legislative scheme exceeds constitutional limits. These limits are not exceeded under the due process clauses of the Maryland and Federal Constitutions unless the party challenging the ordinance can show that it is arbitrary, oppressive, or unreasonable.

[13] Griffin did not dispute that "the Trustees properly mailed notice in accordance with the relevant statute and rule." *Id.* at 196 n.9.

> The Maryland foreclosure scheme requires that the Trustees send notice by both certified and first-class mail, two "efficient and inexpensive means of communication" that we conclude are calculated reasonably to inform interested parties of the pending foreclosure action. In balancing the interests of the parties, the General Assembly has looked to economy, efficiency, and minimal involvement of the judiciary. We cannot say that that judgment was unreasonable.

Id. at 211-12 (cleaned up). With respect to Griffin's "as applied" challenge to the notice scheme, the Court held:

> [T]he only fact distinguishing the instant case from the typical foreclosure case is that the trial judge found as a matter of fact that Griffin did not receive actual notice of the pending foreclosure sale. The fact that Griffin did not receive actual notice does not render the law unconstitutional as applied to her. It is well settled that due process of law is not violated in application because the interested party did not receive actual notice.

Id. at 208.

Returning to the instant case, on May 29, 2019, Appellees filed an affidavit of notice affirming that, on April 3, 2019, and April 18, 2019, Appellant had been mailed "by certified, postage pre-paid, return receipt requested and first class mail notice of the time, place, and terms of sale . . . not earlier than 30 days and no later than 10 days before such sale[.]" Although Appellant denied having received such notifications, she neither denied nor refuted Appellees' assertion that such notice was properly sent. As the Court of Appeals established in *Griffin*, neither Maryland's notice requirements nor due process demand that a debtor *receive* such notice in advance of sale. Absent any evidence to refute the Appellees' affidavit of service or to rebut the presumption in favor of the validity of the sale, we defer to the court's implicit finding that Appellees complied with the applicable notice requirements.

Just as Appellant's claim that Appellees failed to properly mail the required notices is belied by the record, so too is her assertion that they violated Maryland Rule 14-210(a), which provides:

> Before selling property in an action to foreclose a lien, the individual authorized to make the sale shall publish notice of the time, place, and terms of the sale in a newspaper of general circulation in the county in which the action is pending. Notice of the sale of an interest in real property shall be published at least once a week for three successive weeks, the first publication to be not less than 15 days before the sale and the last publication to be not more than one week before the sale. Notice of the sale of personal property shall be published not less than five days nor more than 12 days before the sale.

As recounted *supra*, on May 29, 2019, Appellees filed a certificate of publication in which a representative of the Maryland Independent averred that an advertisement of sale had been published on April 12, April 19, and April 26, 2019. Appellant's bald assertion that she "ha[d] not seen any listing of the foreclosure sale online in the local Maryland Independent archives *since May 23, 2019*"—three weeks after the date of sale—does not remotely rebut the presumption that advertisements of sale were properly published. (Emphasis added).

The Pending Bankruptcy Proceeding

Finally, we find no merit in Appellant's apparent assertion that the foreclosure sale was void because it occurred during pending bankruptcy proceedings.

Pursuant to 11 U.S.C.A. § 362(a), a bankruptcy petition "operates as a stay, applicable to all entities, of -- (1) the commencement or continuation. . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been

commenced before the commencement of the [bankruptcy proceeding]." That automatic stay is, however, subject to an applicable exception. Under § 362(c)(4), "if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed . . . the stay under subsection (a) shall not go into effect upon the filing of the later case[.]" 11 U.S.C.A. § 362(c)(4)(A)(i).

As discussed *supra*, Appellant filed two Chapter 13 petitions—both of which were dismissed—within the one year preceding the filing of her April 30, 2019, Chapter 13 petition. Therefore, an automatic stay was not triggered by her filing the third petition. Absent any such stay, the court was free to ratify the foreclosure sale.

II.

Appellant also asserts that Appellees "materially violated Maryland's Foreclosure Mediation Statute, Real Prop. § 7-105.1, when they prematurely sold [her] home after a request for foreclosure mediation was granted but the mediation had not yet been held." "[B]y extinguishing her property rights before the foreclosure mediation process was complete," she claims that the circuit court denied her due process of law. Appellees respond that because Appellant failed to request a foreclosure mediation within twenty-five days after they had filed the final loss mitigation affidavit, she "cannot, now four years after [that affidavit] was filed, try to use her failure to request mediation as grounds to undo the [s]ale or reverse the [r]atification."

R.P. § 7-105.1 prescribes mandatory procedures governing the foreclosure of residential property. Where, as here, an "order to docket . . . is accompanied by a

preliminary loss mitigation affidavit, the secured party, at least 30 days before the date of a foreclosure sale, shall":

> (i) File with the court a final loss mitigation affidavit in the form prescribed by regulation adopted by the Commissioner of Financial Regulation; and
>
> (ii) Send to the mortgagor or grantor by first class and by certified mail:
>
> 1. A copy of the final loss mitigation affidavit; and
>
> 2. A request for postfile mediation form and supporting documents[.]

R.P. § 7-105.1(i)(1). In foreclosure cases involving owner-occupied residential properties, a mortgagor must file a completed request for post-file mediation within "25 days after the mailing of the final loss mitigation affidavit." R.P. § 7-105.1(j)(1). If a mortgagor elects to do so, a foreclosure sale of owner-occupied residential property may not take place until "at least 15 days after: (i) The date the postfile mediation is held; or (ii) If no postfile mediation is held, the date the Office of Administrative Hearings files its report with the court." R.P. § 7-105.1(n)(3).

In this case, Appellees filed their order to docket and a preliminary loss mitigation affidavit on May 26, 2017. On August 22nd, they sent Appellant a "Notice of Foreclosure Action," a "Request for Foreclosure Mediation Application," and a final loss mitigation affidavit by both first-class mail, postage prepaid, and certified mail in accordance with R.P. § 7-105.1(i)(1). Although the Notice specifically stated that the request for foreclosure mediation "**must be sent back within <u>25 days</u>**," the record does not reflect that Appellant filed a request for post-file mediation—timely or otherwise. (Emphasis retained).

III.

Appellant penultimately asserts that the court erroneously accepted Appellees' untimely filed responses to her motions. Appellees respond that "[i]t is unclear exactly what filings Appellant contends were late or untimely, as she does not cite to any specific filings or examples in her brief." Even assuming the veracity of Appellant's claim, Appellees "are unaware of any Maryland Law that provides Appellees' failure to timely file replies as a ground to reverse ratification of a sale."

Appellant fails to identify which responses the court purportedly erred in accepting. For that reason alone, her contention fails. *See Diallo v. State*, 413 Md. 678, 692-93 (2010) ("Arguments . . . not presented with particularity will not be considered on appeal." (Quotation marks and citation omitted)); *Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 201 ("We cannot be expected to delve through the record to unearth factual support favorable to [the] appellant." (Quotation marks and citation omitted)), *cert. denied*, 406 Md. 746 (2008). In any event, Appellant does not proffer, nor does the record reflect, any prejudice arising from the court's acceptance of the unspecified, purportedly untimely responses about which she complains. Accordingly, Appellant has failed to meet her burdens on this issue. *See Hood*, 227 Md. App. at 697 ("The party excepting to the sale has the twin burden of showing that the sale was invalid and that any claimed errors caused prejudice."); *Fagnani*, 418 Md. at 384 ("The party excepting to the sale bears the burden of showing that . . . any claimed errors caused prejudice.").

IV.

Finally, Appellant asserts that the circuit court erred by failing to strike, *sua sponte*, the auditor's report, arguing that it was both untimely filed and violated the December 10, 2021, stay. Appellees respond that this argument is not properly before us, as "the exceptions to the Auditor's Report are still pending, and no judgment has been entered."

"Generally, appeals may be taken only from final judgments." *In re Damon M.*, 362 Md. 429, 434 (2001). To qualify as a "final judgment," a court's order must ordinarily satisfy the following three conditions:

> (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy[;] (2) unless the court acts pursuant to Maryland Rule 2-602(b) to direct the entry of a final judgment as to less than all of the claims or all of the parties, it must adjudicate or complete the adjudication of all claims against all parties; (3) it must be set forth and recorded in accordance with Rule 2-601.

Metro Maint. Sys. S., Inc. v. Milburn, 442 Md. 289, 298 (2015) (citations omitted). Although an order ratifying a foreclosure sale does not necessarily have the effect of putting the parties out of court, "an order ratifying a foreclosure sale is a final judgment as to any rights in the real property, even if the order refers the matter to an auditor to state an account." *Huertas v. Ward*, 248 Md. App. 187, 205 (2020). "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.'" *Id.* at 206 (quoting *Hood*, 227 Md. App. at 694 n.1). Accordingly, the adjudication of exceptions to an auditor's report "is collateral to the foreclosure proceeding, and . . . does not affect the finality of an order ratifying the foreclosure sale." *Id*. at 206. A

court's ratification of an auditor's report is, therefore, "a second judgment, from which any party aggrieved by that ruling can appeal." *Id.*

Although Appellant excepted to the auditor's report on December 23, 2021, the circuit court has not yet adjudicated the merits thereof. As such exceptions remain pending, her appeal with respect to that issue is premature and must be dismissed.

For the foregoing reasons, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.