Circuit Court for Anne Arundel County
Case No. C-02-CV-16-001622

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1875

September Term, 2017

ALEXANDER MILETICH

v.

CITIMORTGAGE, INC.

Wright,
Arthur,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: January 9, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case arises out of an action for declaratory judgment filed by Citimortgage, Inc., appellee, against Alexander Miletich, III, appellant, as personal representative of the estate of Reiko Miletich,[1] in the Circuit Court for Anne Arundel County. Specifically, appellee requested that the court declare a mortgage, granted to Reiko Miletich by Richard Miletich[2] on April 23, 1998, to have been satisfied and released. On November 1, 2017, the circuit court issued an order declaring that "the mortgage in favor of Reiko Miletich . . . was satisfied, released, and is of no further force or effect." Appellant appeals the court's order and presents the following questions for our review, which we have reworded for clarity:[3]

1. Whether the circuit court erred in finding that appellee's action for declaratory judgment was not barred by the statute of limitations, nor by laches?

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[1] Reiko Miletich passed away on June 14, 2016. Appellant, who is the son of Reiko Miletich, was appointed as the personal representative of her estate on November 29, 2016.

[2] Richard Miletich is the son of Reiko Miletich and the brother of appellant.

[3] Appellant presented his questions to the Court as follows:

1. Did the Trial Court err in holding that the statute of limitations and laches did not apply to a transaction that occurred 11 years before suit?

2. Did the Trial Court err in admitting documents from third parties in the possession of the Appellee under the business exception Rule and considering certain documents not admitted into evidence?

3. Did the Trial Court err in determining that the Appellee met its burden of proof that the Appellant's first loan was paid off and that the Appellant received the payoff funds?

2. Whether the circuit court erred in admitting documents created by a third party under the business records exception to the hearsay rule, in admitting testimony related to Richard Miletich's bankruptcy, or in considering certain documents not admitted into evidence?

3. Whether the circuit court erred in finding that appellee met its burden of proof to establish that appellant's loan was satisfied?

BACKGROUND

On April 23, 1998, Reiko Miletich provided Richard Miletich with a $90,000.00 loan to facilitate his purchase of property located at 7 Leeward Court, Annapolis, Maryland, 21043. To secure the loan, Richard Miletich provided Reiko Miletich with a mortgage on the property.[4] On May 31, 2005, Richard Miletich refinanced the property with a loan from C&F Mortgage Corporation ("C&F Mortgage") in the amount of $160,000.00, and in return provided C&F Mortgage with a deed of trust to secure the loan.[5] On August 23, 2010, C&F Mortgage assigned its interest in the property to appellee.

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[4] The $90,000 loan was originally provided to both Richard Miletich and Annebeth Bunker. Additionally, both Richard Miletich and Annebeth Bunker granted Reiko Miletich a mortgage on the property. However, on April 8, 2002, Annebeth Bunker transferred her interest in the property to Richard Miletich, and on May 1, 2002, a modification agreement released Annebeth Bunker from any obligations related to the mortgage.

[5] As this Court explained in *Chicago Title Ins. Co. v. Mary B.*, 190 Md. App. 305, 315 (2010):

> A deed of trust is a security interest against real property, similar to a mortgage. The parties to a deed of trust to secure are the grantor (debtor), the grantee (trustee), and the *cestui que trust* (creditor). Unlike in a traditional mortgage, however, *the lender or creditor* has no right to take possession upon default, or to foreclose. Instead, a deed of trust gives *the*

The loan from C&F Mortgage was intended to be used, in part,[6] to pay off the amount due to Reiko Miletich for her mortgage, so that C&F Mortgage's lien would have first priority. The parties dispute that Reiko Miletich's lien was ever satisfied. On May 13, 2016, appellee filed a complaint seeking a declaratory judgment that Reiko Miletich's mortgage was satisfied and released.[7] At trial, neither party contested the fact that a certificate of satisfaction[8] for Reiko Miletich's loan had not been filed, nor the fact that the check allegedly containing payment for Reiko Miletich's lien could not be produced. However, the parties presented opposing views on whether the lien had been satisfied.

> *trustees* the right to sell the real property to satisfy the debt for which the deed of trust was given as a security. A deed of trust thus constitutes a lien against the real property securing it.

(Internal citations and quotations omitted) (emphasis in original).

[6] The loan was also intended to be used to pay off a lien held by Deepgreen Financial in the amount of $50,836.07.

[7] In addition to its complaint, appellee filed a notice of *lis pendens*. In *Washington Mut. Bank v. Homan*, 186 Md. App. 372, 380 n.7 (2009), this Court explained:

> The doctrine of *lis pendens*, which has its roots in the common law, literally means a pending action; the doctrine derives from the jurisdiction and control which a court acquires over property involved in an action pending its continuance and until final judgment is entered. Under the doctrine, one who acquires an interest in the property pending litigation relating to the property takes subject to the results of the litigation.

(Citations omitted).

[8] "[U]nder Maryland law, a properly-recorded certification of satisfaction acts to release property from any lien contained thereon." *In re Levitsky*, 401 B.R. 695, 722 (D.Md. 2008).

Appellee averred that there was sufficient evidence for the circuit court to conclude that Reiko Miletich's lien had been satisfied. Appellee presented a handwritten note from Reiko Miletich to C&F Mortgage stating that a payment of $101,609.51 would satisfy her lien on the property and release any related claims that she may have. According to testimony from the records custodian of Annapolis One Title,[9] Richard Miletich requested that the check for Reiko Miletich be sent to his address. In conjunction with this request, a disbursement statement from Annapolis One Title showed that $101,609.51 was disbursed to Reiko Miletich on June 7, 2005,[10] and a United Parcel Service ("UPS") shipment receipt from the same date revealed that a package was sent from Annapolis One Title to Richard Miletich. The records custodian also testified that he was sure that the check to Reiko Miletich had been cashed. He explained that he knew this because he reconciled Annapolis One Title's bank statements each month to make sure there were no discrepancies between money received and money distributed. Separately, as further evidence that the lien had been paid, appellee produced a copy of the inventory report that appellant filed in the Register of Wills for Anne Arundel County on July 21, 2017, wherein appellant listed $0 in mortgages due to Reiko Miletich's estate.

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[9] Annapolis One Title facilitated the settlement of C&F Mortgage's loan to Richard Miletich.

[10] In its role of facilitating settlement of the loan, Annapolis One Title first received the loan proceeds from C&F Mortgage and then forwarded them to Richard Miletich.

Appellant, in response, argued that there was not sufficient evidence to conclude that Reiko Miletich's lien was satisfied. Specifically, appellant contended that since the check allegedly containing payment to Reiko Miletich could not be located, and since no certificate of satisfaction was ever filed, there was not conclusive evidence for the circuit court to determine that Reiko Miletich received funds to satisfy her lien on the property. Finally, appellant asserted that appellee's claim was barred by either the statute of limitations or by laches, as C&F Mortgage made its loan to Richard Miletich nearly twelve years prior to the date on which suit was filed.

At the conclusion of the trial, the circuit court found that there was "no doubt" that the check was cashed, and that the request for declaratory relief was not barred by the statute of limitations or laches because the disposition of Reiko Miletich's estate was "still ongoing." The court subsequently issued an order on November 1, 2017, in which it granted relief in favor of appellee and ordered "that the mortgage in favor of Reiko Miletich . . . was satisfied, released and is of no further force or effect as of May 31, 2005[.]" Appellant appeals the circuit court's order to this Court.

Additional facts will be included as they become relevant to our discussion below.

STANDARD OF REVIEW

Md. Rule 8-131(c) governs the scope of appellate review for non-jury trials. Specifically, the Rule states:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

This Court has further explained the standard of review for non-jury trials as follows:

> [U]nder the clearly erroneous standard, this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case. Our task is limited to deciding whether the circuit court's factual findings were supported by substantial evidence in the record: The appellate court must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed.
>
> Although the factual determinations of the circuit court are afforded significant deference on review, its legal determinations are not. The clearly erroneous standard for appellate review in [Md. Rule 8-131(c)] . . . does not apply to a trial court's determinations of legal questions or conclusions of law based on findings of fact. Instead, . . . where the order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are "legally correct" under a *de novo* standard of review.

L.W. Wolfe Enterprises, Inc. v. Maryland National Golf, L.P., 165 Md. App. 339, 343-44 (2005) (internal citations and quotations omitted).

DISCUSSION

I.

Appellant avers that appellee's request for declaratory judgment should be barred by both the statute of limitations and by laches. First, appellant claims that the three-year statute of limitations established by Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings ("CJP") § 5-101 applies to this suit. Appellant asserts that the three-year period began to run on May 31, 2005, the date on which Reiko Miletich's loan was settled. Since appellee did not bring its request for declaratory relief until May 13, 2016,

appellant contends that the request should be barred by the statute of limitations. Finally, appellant argues that even if appellee is seeking equitable relief, such that laches would apply, appellee's claim should still be barred because the appellee failed to file the suit during the same three-year period.

In response, appellee relies on Md. Code (1974, 2010 Repl. Vol), Real Property Article ("RP") § 7-106(c)[11] and contends that the right of an interested party to prove payment of the lien should be "co-extensive with the [m]ortgagee's right to enforce a lien." Since appellant, in his capacity as personal representative of Reiko Miletich's

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[11] **§ 7-106. Releases; continuation statements.**

[. . .]

(c) *Presumption of payment; termination of lien; continuation statements*.

(1) If a mortgage or deed of trust remains unreleased of record, the mortgagor or grantor or any interested party is entitled to a presumption that it has been paid if:

(i) 12 years have elapsed since the last payment date called for in the instrument or the maturity date set forth in the instrument or any amendment or modification to the instrument and no continuation statement has been filed;

[. . .]

(2) Except as otherwise provided by law, if an action has not been brought to enforce the lien of a mortgage or deed of trust within the time limit provided in paragraph (1) of this subsection and, notwithstanding any other right or remedy available either at law or equity, the lien created by the mortgage or deed of trust shall terminate, no longer be enforceable against the property, and shall be extinguished as a lien against the property.

[. . .]

estate would have until April 1, 2040, to enforce the mortgage, appellee argues that its right to prove payment should exist at least until that date. Appellee concludes that regardless of whether its request for declaratory judgment is deemed to be at law or in equity, "it would be error to bar evidence of payment of the underlying obligation [three] years after such payment in full."

At trial, the circuit court concluded, and counsel for appellant agreed, that appellee's request for declaratory relief was an action in equity. We agree with the court's conclusion, as appellee's request merely sought a declaration from the circuit court regarding the status of Reiko Miletich's mortgage and did not seek any alteration or change as to the parties' legal rights. Therefore, as such, we will apply the doctrine of laches to determine whether appellee's request was untimely.

In *Liddy v. Lamone*, 398 Md. 233, 243 (2007), the Court of Appeals explained the doctrine of laches:

> "[L]aches is a defense in equity against stale claims[.] In its application, there is no inflexible rule as to what constitutes, or what does not constitute, laches; hence its existence must be determined by the facts and circumstances of each case.
>
> It is, however, well settled that laches applies when there is an unreasonable delay in the assertion of one's rights and that delay results in prejudice to the opposing party. Prejudice is generally held to be [any thing] that places [the defendant] in a less favorable position.

(Internal citations and quotations omitted).

When applying the doctrine of laches, courts often seek guidance from the applicable statute of limitations to determine the "applicable measure of impermissible delay." *State Center, LLC v. Lexington Charles Ltd. Partnership*, 438 Md. 451, 603-04

(2014); *LaSalle Bank, N.A. v. Reeves*, 173 Md. App. 392, 409 (2007). However, time limits set forth in the statutes of limitations are not binding in conducting the laches analysis. *See State Center, LLC*, 438 Md. at 603-04; *LaSalle Bank, N.A.*, 173 Md. App. at 413; *Buxton v. Buxton*, 363 Md. 634, 646 (2001) (explaining that "there *is* a relationship between laches and the statute of limitations, although the statute does not govern.") (emphasis in original). Thus, our analysis will be guided, but not bound, by the three-year statute of limitations established in CJP § 5-101. As explained below, the application of this three-year period does not alter our conclusion that appellee's request for relief was *not* time-barred.

For laches to apply, the party's delay in asserting its right must have been *unreasonable*. *Liddy*, 398 Md. at 243 (emphasis added). In other words, "since laches implies negligence in not asserting a right within a reasonable time after its discovery, [the party asserting the right] must have had knowledge, or the means of knowledge, of the facts which created [the party's] cause of action in order for [the party] to be guilty of laches." *Parker v. Board of Election Sup'rs*, 230 Md. 126, 131 (1962). "Therefore, laches cannot be imputed to a party who, through no fault of his or her own, is ignorant of facts giving rise to a cause of action and has, as a consequence, failed to assert it." *Frederick Road Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 118 (2000).

Here, there is no evidence that appellee negligently or unreasonably caused any delay in bringing its request for declaratory relief. Further, there is nothing to indicate that appellee knew, or should have known, that its request for declaratory relief would be challenged, or that Reiko Miletich's estate may claim that her lien had not been satisfied

and released. Instead, appellee knew that a check was written to the order of Reiko Miletich for the satisfaction of her lien, and that twelve years had passed without Reiko Miletich claiming that her lien was not satisfied. Given that appellant did not list Reiko Miletich's lien as a mortgage owed to her estate in his June 2017 inventory report, it also seems that appellant originally believed that Reiko Miletich's lien was previously satisfied, as well. These facts and circumstances indicate that appellee had no knowledge of a dispute as to the satisfaction of Reiko Miletich's lien until it filed the request for declaratory relief on May 13, 2016. Therefore, the applicable limitations period did not begin until appellant contested appellee's request for declaratory relief, and appellee's claim is *not* time-barred.

II.

A. *Admission of Handwritten Note from Reiko Miletich*

At trial, the circuit court admitted into evidence a note allegedly written by Reiko Miletich, which stated that a payment of $101,609.51 would satisfy her lien on the disputed property. The circuit court found that the note was admissible under the business records exception to the hearsay rule.

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Hearsay is generally not admissible. *See* Md. Rule 5-802. In *Hall v. University of Maryland Medical System Corporation*, 398 Md. 67, 83-84 (2007), the Court of Appeals explained the rationale behind the hearsay rule:

> Among the reasons for excluding hearsay testimony is the inherent uncertainty of its reliability, and the fact that the person stating the thing to be a fact is not under oath and subject to cross-examination. The purpose of presenting evidence in support of a contention is to establish facts from which reasonable minds form conclusions and render judgments. In a majority of cases these facts are established by testimony of witnesses who have personal knowledge upon the subject, and this testimony is received for the reason that it has the guarantee of reliability.

(Quoting *Globe Indemnity Co. v. Reinhart*, 152 Md. 439, 446 (1927)).

Hearsay is admissible "if the statement falls within an exception to the hearsay rule. One of the exceptions to the hearsay rule is the business records exception." *Hall*, 398 Md. at 84. The business records exception, contained in Md. Rule 5-803(b)(6), states:

> (6) *Records of Regularly Conducted Business Activity*. A memorandum, report, record, or data compilation of acts, events, conditions, or diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation. A record of this kind may be excluded if the source of information or the method or circumstances of the preparation of the record indicate that the information in the record lacks trustworthiness. In this paragraph, "business" includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Appellant argues that the note should not have been admitted under the business records exception to hearsay since the exception "does not embrace statements by persons outside the business[.]" *Hall*, 398 Md. at 89 (citations, quotations, and emphasis omitted) (explaining that documents created by third parties are generally not admissible under the business records exception "because those persons are under no business duty

to record or transmit information truthfully, so that their statements lack a circumstantial guarantee of trustworthiness.”). In response, appellee contends that the note should be admissible under the business records exception because payoff statements, such as the one admitted, are “relied upon by title companies every day[,]” and because it was within Reiko Miletich’s interest “to present accurate information which is intended to be relied upon.”

We will review the circuit court’s “ruling on the admissibility of evidence . . . for abuse of discretion.” *Wheeler v. State*, 459 Md. 555, 560 (2018). Further, “even with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards.” *Id.* at 561. Abuse of discretion occurs when a circuit court’s ruling “is well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *Id.* Appellate courts will not grant a reversal on the basis of an improper evidentiary ruling unless the moving party can also establish that it was prejudiced by the ruling. *See* Md. Rule 5-103(a); *see Crane v. Dunn*, 382 Md. 83, 92 (2004) (citations omitted) (explaining that “[t]o justify the reversal, an error below must have been both . . . manifestly wrong and substantially injurious.”) This is known as the harmless error doctrine. The Court of Appeals previously summarized the harmless error doctrine:

> It has long been the policy in this State that this Court will not reverse a lower court judgment if the error is harmless. The burden is on the complaining party to show prejudice as well as error.
>
> Precise standards for determining prejudice have not been established and depend upon the facts of each individual case. Prejudice can be demonstrated by showing that the error was likely to have affected the

> verdict below; an error that does not affect the outcome of the case is harmless error. We have also found reversible error when the prejudice was substantial. The focus of our inquiry is on the probability, not the possibility, of prejudice.

Flores v. Bell, 398 Md. 27, 33 (2007) (internal citations omitted).

Here, even if we assume *arguendo* that the handwritten note was not admissible under the business records exception to the hearsay rule,[12] its admission merely constituted harmless error.[13] The circuit court stated the following in its explanation of the ruling:

> THE COURT: [. . .] The settlement company's records show that the check was paid to Reiko [Miletich]. It was basically through her son, Richard [Miletich]. The records through the settlement company indicate the check was cashed. I have absolutely no doubt somebody cashed the check because it never showed up in the settlement reconciliation records that would indicate an overpay of $100,000+.

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[12] In spite of our assumption that the note was inadmissible under the business records exception, we are not convinced that the note could not have been admitted. At trial, the circuit court explained its ruling on the admissibility of the note as follows:

> THE COURT: I think that . . . the issue for me is what weight do I give [to the note]? I don't think it is any question that it is admissible as a business record. My ruling. But I think it is more along the lines of what probative value do I have relying on that that because if [the] *business relied on those documents, then I think I can consider them to the extent that they considered them.* That is all.

(Emphasis added). Here, the circuit court seems to indicate that the handwritten note could be considered for the *non-hearsay purpose* of merely establishing that C&F Mortgage had notice that it was to send $101,609.51 to Reiko Miletich and that it relied on such notice in doing so. If this was the only purpose for which the note was admitted, the court did not err in admitting the documents.

[13] As a preliminary point, we note that appellant failed to argue in both its brief or at oral argument that the admission of the handwritten note from Reiko Miletich was prejudicial and constituted reversible error.

> But then we have some other facts. Richard [Miletich]'s bankruptcy. She was not listed. That tells me a little bit more. Then, the inventory in the estate where [appellant] is the personal representative, the debt again is not listed. He has been represented by counsel since January. Where is Richard? Why wasn't any effort whatsoever made to bring Richard into this litigation . . . . But [the lien] wasn't even listed on the inventory. That is the whole purpose of an inventory.
>
> [. . .]

This circuit court's explanation of its ruling does not specifically mention Reiko Miletich's handwritten note. The explanation does, however, make clear that there was significant *other* evidence upon which the circuit court could properly rely to find that Reiko Miletich's lien had been satisfied. There is simply no indication that the handwritten note "was *likely* to have affected the verdict[.]" *Flores*, 398 Md. at 33 (emphasis added). Therefore, we hold that the admission of the note was merely harmless error, and there is no basis to reverse the circuit court's judgment because the note was admitted.

B. *Admission of Testimony that Richard Miletich "Was Helping His Mom"*

Appellant contends that the circuit court impermissibly admitted testimony from the records custodian at Annapolis One Title that Richard Miletich "was helping his mom." Appellant argues that because the records custodian "did not attend settlement and had no personal knowledge of the transaction[,]" his statement was impermissibly speculative. In response, appellee asserts that the record custodian's statement was properly admitted because it was merely an observation gathered from the conversation log that Annapolis One Title routinely maintained. The conversation log states, in pertinent part:

> 5/6[:] Richard [Miletich] to get written [payoff] from his mother and give to Jeff to forward on to us.
>
> [. . .]
>
> 5/13[:] . . . . Mr. Miletich will get payoff [and] fax.[14]

We agree with appellee and hold that the record custodian's testimony was properly admitted. In *Goren v. U.S. Fire Ins. Co.*, 113 Md. App. 674, 685-86 (1997), this Court explained the permissibility of opinions provided by non-expert witnesses:

> A lay witness may opine on matters as to which he or she has first-hand knowledge. Only lay opinions that are rationally based on the perceptions of the witness and helpful to the trier of fact are admissible[.] The admissibility of a lay opinion is vested in the sound discretion of the trial court.

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[14] In his brief, appellant contends that the records custodian's testimony should not have been admitted because it was "at least in part based on an unadmissible document[,]" specifically, Reiko Miletich's handwritten note. However, a review of the trial transcript indicates that the testimony was not at all based on the handwritten note:

> THE COURT: Can I ask you why [the check] was overnighted to Richard [Miletich] instead of Reiko [Miletich]?
>
> THE WITNESS: Yes, because Richard was the, uh, person who, uh, was acting on behalf of his mom. And he -- let me --
>
> THE COURT: Did he have power of attorney?
>
> THE WITNESS: Pardon. No, when we called his mom for the payoff, the response came back that Richard will get it and provide it to us. That's on the conversation log.
>
> THE COURT: Okay.
>
> THE WITNESS: So he was helping his mom.

> The general principle governing lay opinions is embodied in [Md.] Rule 5-701, which states:
>
> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.
>
> The two requirements in [Md.] Rule 5-701 for the admissibility of lay opinions are conjunctive. Thus, a lay opinion must be based on the perceptions of the witness *and* must be helpful to the trier of fact.

(Internal citations and quotations omitted) (emphasis in orginal).

Here, although the records custodian did not personally attend the settlement, he did have first-hand knowledge of the settlement through his review of the related records. The testimony at issue here is directly related to the notes in Annapolis One Title's conversation log, as discussed above. Therefore, the record custodian's statement that Richard Miletich "was helping [Reiko Miletich]" was rationally based on the statements which he observed in the log. Further, the record custodian's statement was "helpful to a clear understanding of [his] testimony," as it allowed the circuit court to better comprehend the information contained in the conversation log. Furthermore, it served to explain why Annapolis One Title sent the settlement funds to Richard Miletich. Accordingly, the records custodian's statement that Richard Miletich "was helping his mom" was properly admitted by the circuit court.

C. *Consideration of Richard Miletich's Bankruptcy Petition*

During cross-examination of appellant, counsel for appellee explored the extent to which appellant reviewed records related to debt owed to Reiko Miletich's estate:

[COUNSEL]: You were now appointed the personal representative for your mother's estate. And did you undertake a diligent [review] of records available to you to determine whether or not this money was paid to [Reiko Miletich]?

[APPELLANT]: That's why I hired my attorney.

[COUNSEL]: I am asking you, sir. Did you undertake, as a personal representative, a diligent search of records available you to determine whether or not that money was paid?

[. . .]

[APPELLANT]: I reviewed all the documents that were presented to me through the courts.

[. . .]

[COUNSEL]: All right. Did you happen to notice in among those documents a schedule in a bankruptcy that your brother filed?

[APPELLANT]: No.

[. . .]

[COUNSEL]: You are aware that your brother filed bankruptcy, right?

[APPELLANT]: I believe -- yes, I am aware.

[COUNSEL]: Okay. And did you happen to look at the creditors holding secured claims of the schedule that he filed?

[APPELLANT]: No.

[COUNSEL]: All right. Would you take a look at this document that I am showing you now?

[. . .]

[COUNSEL]: This is from case 10-37993, schedule D. You see that?

[APPELLANT]: Okay. What do you -- what am I looking for?

[COUNSEL]: Do you see the document?

[APPELLANT]: Yes.

[COUNSEL]: And do you see any indication on there that Reiko Miletich is listed as a secured creditor in your brother's bankruptcy?

[APPELLANT]: No.

At the end of the trial, the circuit court explained its ruling, stating in pertinent part: "But then we have some other facts. Richard's bankruptcy. [Reiko Miletich] was not listed. That tells me a little bit more."

Appellant contends that the circuit court impermissibly relied on "[Richard Miletich's] bankruptcy filings as proof that the first loan had been paid."[15] Appellee responds by asserting that "[t]he bankruptcy schedule was not introduced as substantive evidence but was used for cross examination to show that [appellant] made little to no effort to verify whether [Reiko Miletich's] mortgage loan had been paid." We agree with appellee.

The circuit court did not err when it referred to Richard Miletich's bankruptcy petition as additional justification to support the conclusion that Reiko Miletich's lien

[15] Appellant argues that the circuit court's citing to the bankruptcy filing "was error on two grounds." First, appellant contends that "the fact that the borrower may or may not have considered the debt due . . . does not mean that the lender was not still due the money." Secondly, appellant avers that "the only evidence of the bankruptcy petition was the statement of the [a]ppellant indicating that the document in front of him did not appear to list any debt." Therefore, according to appellant, "[t]o rely on the testimony of a witness that had no knowledge of the document for the truth of the contents of the petition that the [circuit court] never saw itself was erroneous."

was satisfied. Although appellant correctly points out that "the bankruptcy schedule was not introduced," appellant's testimony about his observations of the bankruptcy petition – that he did not see Reiko Miletich's lien listed on the document – was properly before the circuit court. In addition, appellant's counsel did not object to this specific line of testimony at trial, and appellant cannot now argue that the court's reliance on the testimony was improper. Md. Rule 2-517(a).[16] See *Halloram v. Montgomery County Dept. of Public Works*, 185 Md. App. 171, 201-02 (2009). Therefore, we hold that the circuit court did not err in considering appellant's testimony about Richard Miletich's bankruptcy petition.

III.

Appellant argues that the circuit court "erred by determining that [a]ppellee met its burden of proof where the only evidence that [Reiko Miletich] received the payoff of her [lien] was a UPS receipt that [the money] was sent to [Richard Miletich]." Appellant goes on to assert that the appellee could not "provide beyond a preponderance of the evidence that the lender actually received the funds and that she endorsed the check."

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[16] **Md. Rule 5-517(a). Objections to evidence.** An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived. The grounds for the objection need not be stated unless the court, at the request of a party or on its own initiative, so directs. The court shall rule upon the objection promptly. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court may admit the evidence subject to the introduction of additional evidence sufficient to support a finding of the fulfillment of the condition. The objection is waived unless, at some time before final argument in a jury trial or before the entry of judgment in a court trial, the objecting party moves to strike the evidence on the ground that the condition was not fulfilled.

Finally, appellant contends that the circuit court erroneously shifted the burden of proof to him and required him to explain "why [he] did not pursue [Richard Miletich] to recover the funds that . . . were paid to him." In response, appellee argues that there was "sufficient circumstantial evidence for the [circuit] court's conclusion that Reiko Miletich, the payee on the check, was paid, and her mortgage debt was satisfied."

As explained above, we review non-jury trials under a clearly erroneous standard. *See L.W. Wolfe Enterprises, Inc.*, 165 Md. App. at 343. "Under [this] standard . . . , [o]ur task is limited to deciding whether the circuit court's factual findings were supported by substantial evidence in the record." *Id*. "[I]f substantial evidence was presented [at trial] to support the [circuit] court's determination, it is *not* clearly erroneous and *cannot* be disturbed." *Id*. (Emphasis added).

We agree with appellee's contention that there was "sufficient circumstantial evidence for the [circuit] court's conclusion that Reiko Miletich['s] . . . mortgage debt was satisfied." During trial, appellee presented evidence to establish that Annapolis One Title wrote a check to Reiko Miletich, that the check was sent to Richard Miletich in order that it could be delivered to Reiko Miletich, and that the check was cashed. Additionally, appellee presented the inventory report filed by appellant, under oath, wherein appellant stated that $0 in mortgages were owed to Reiko Miletich's estate. Finally, the circuit court heard testimony to establish that Richard Miletich did not list Reiko Miletich as a secured creditor in his bankruptcy petition. Taken together, the circuit court had more than enough evidence to conclude that Reiko Miletich's lien was paid and satisfied.

Appellant seemingly argues that appellee failed to meet its burden of proof because it did not provide direct evidence that Reiko Miletich received the check sent to her by Annapolis One Title. It is true, as appellant points out, that neither party was able to produce the check that Annapolis One Title wrote to Reiko Miletich during the settlement of her lien. However, there is no requirement that a case be proven only by direct evidence. Here, there is substantial circumstantial evidence to support the circuit court's conclusion that Reiko Miletich's lien was satisfied. MPIJ-Cv 1:8. Direct and Circumstantial Evidence.[17] *See Henderson v. Md. Nat'l Bank*, 278 Md. 514, 522 (1976) (Circumstantial evidence is as persuasive as direct evidence.). Accordingly, the circuit court's conclusion is not clearly erroneous.

Finally, we find nothing in the record to support the contention that the circuit court shifted the burden of proof to appellant to establish "why [he] did not pursue

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[17] **MPJI-Cv 1:8. Direct and Circumstantial Evidence.**

There are two types of evidence – direct and circumstantial.

Direct evidence is, for example, testimony of a person reporting firsthand knowledge of a matter, such as testimony of an eyewitness to an occurrence. Circumstantial evidence is indirect and is proof of a chain of facts and circumstances that point to the existence of certain facts.

[For example, if a witness testifies that he saw a deer in the field, that is direct evidence that there was a deer in the field. If a person testifies that he saw deer prints in the snow in the field, that is direct evidence that there were deer prints in the snow, and circumstantial evidence that there was at least one deer in the field.]

The law makes no distinction between the weight to be given to either type of evidence. No greater degree of certainty is required of circumstantial evidence than of direct evidence. In reaching a verdict, you should weigh all of the evidence presented, whether direct or circumstantial.

[Richard Miletich] to recover the funds that . . . were paid to him." In mentioning Richard Miletich, the circuit court was merely displaying its frustration that he was not called to testify in the case and explaining the consequences of ruling in appellant's favor.[18] At no time during the trial did the circuit court impermissibly place the burden of proof on the appellant to explain why Richard Miletich was not contacted. Therefore, the circuit court did not commit reversible error.

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

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[18] The circuit court stated the following about Richard Miletich and his possible relation to the funds:

> And I can't overemphasize the importance of Richard [Miletich] sitting somewhere in our own county, if Laurel encompasses several jurisdictions, maybe it is Anne Arundel. But if it is not, it is an adjoining county. He is sitting there. If he benefitted originally from some criminal conduct [*i.e.*, stealing the check that was sent to Reiko Miletich], why wasn't that reported to the proper authorities for prosecution? It is a felony theft. The check was cashed. He had possession of the check. It is a logical conclusion that he either paid off the debt or absconded with the money. And everybody is okay with him absconding with the money. That is what is amazing to me.
>
> And if I rule in favor of [appellant] in this case, Richard is going to get paid twice because he [is] an heir under the estate. It is preposterous. The whole theory that the defense has been presenting here makes little sense to this [court]. As I stated, either [Reiko Miletich] was paid . . . , or he stole the money. Only two choices. So, it is easy for me to make a finding that the loan was paid and satisfied.
>
> [. . .]