UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0030

September Term, 2014

JACK WILLS *ET AL.*

v.

ONE WEST BANK, FSB *ET AL.*

Zarnoch,*
Kehoe,
Leahy,
JJ.

Opinion by Kehoe, J.

Filed: August 11, 2016

*Zarnoch, Robert A., J., participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this court.

Jack Wills and the Jackie Wills Revocable Trust Dated May 22, 2008, appeal a judgment of the Circuit Court for Prince George's County granting declaratory relief to One West Bank, FSB ("One West") and Financial Freedom Acquisition, LLC ("Freedom Acquisition"). The substance of the declaratory judgment was that a parcel of real estate owned by appellants is subject to a deed of trust securing repayment of a note now owned by Freedom Acquisition.[1] Appellants present a number of contentions but the dispositive one is whether a 2009 sheriff's sale extinguished the deed of trust. We conclude that the sheriff's sale had that effect and so reverse the judgment of the trial court.

Background

The relevant facts in this case are undisputed.

In 2003, Wills obtained a civil judgment against Stanley Carter in the amount of $11,000 in the District Court of Maryland for Prince George's County. On August 12, 2003, and pursuant to Md. Rule 2-623(b),[2] Wills recorded a notice of lien from the District Court in the judgment records of the Clerk of the Circuit Court for Prince George's County. Recordation of the District Court notice of lien had the legal effect of

[1]One West is a party because it is the servicer of the loan.

[2]Rule 2-623(b) states:

> **District Court Notice of Lien.** Upon receiving a certified copy of a Notice of Lien from the District Court pursuant to Rule 3-621, the clerk shall record and index the notice in the same manner as a judgment.

establishing a judgment lien against any real property owned by Carter in Prince George's County. *See* Md. Rule 2-621(c).[3]

At that time, Carter was in fact the owner of a residence in Fort Washington, Maryland (the "Property"). On October 1, 2003—that is, about six weeks *after* Wills filed the notice of lien was in the circuit court judgment records—Carter entered into a reverse mortgage transaction with Financial Freedom, Senior Funding Corporation ("Senior Funding"). In order to secure eventual repayment of the loan, Carter executed and delivered a note and a deed of trust encumbering the Property for the benefit of the lender. The deed of trust was recorded in the land records for Prince George's County in on June 22, 2004.

In 2009, Wills obtained a writ of execution for his judgment against Carter. Wills, who is an attorney, notified the Sheriff's Office that the Property was encumbered by the

[3]The relevant portion of Rule 2-621 states:

> (a) **County of Entry**. Except as otherwise provided by law, a money judgment that is recorded and indexed in the county of entry constitutes a lien from the date of entry in the amount of the judgment and post-judgment interest on the defendant's interest in land located in that county.
>
> . . . .
>
> (c) **District Court Judgment**. Except as otherwise provided by law, a money judgment of the District Court constitutes a lien from the date of recording of a Notice of Lien, if the notice is recorded and indexed pursuant to Rule 2-623(b), in the amount of the judgment and post-judgment interest on the defendant's interest in land located in the county of recording.

deed of trust and provided the Sheriff with a mailing address for Senior Funding. The Sheriff conducted a sale of the Property and sold it to Wills for $14,838, of which $168 was actually paid. (The balance of the purchase price was credited against what was due under the judgment.) The sale was ratified by the District Court on October 23, 2009. The parties agree that the sale was properly conducted and that appellees, or their predecessor-in-interest, received actual notice of the sale before ratification, but took no steps to intervene in the case. A few months later, the Sheriff executed and delivered a deed for the Property to Wills, which he recorded in the land records. Wills later conveyed the property to himself and the Jackie Wills Revocable Trust.

Senior Funding was a subsidiary of IndyMac Bank, FSB. In the financial crisis of 2008, IndyMac failed and its assets were transferred to the Federal Deposit Insurance Corporation (the "FDIC"), as receiver. In 2009, the FDIC transferred some of Senior Funding's assets, including the note signed by Carter, to Freedom Acquisition. Although the details aren't entirely clear from the record, Carter breached one or more of his obligations under the loan documents and Freedom Acquisition decided to initiate a foreclosure action. Before doing so, however, Freedom Acquisition filed this action, seeking a declaratory judgment that the deed of trust was an enforceable lien against the Property.

Freedom Acquisition filed a motion for summary judgment, which the circuit court granted after a hearing on November 6, 2013. In addition to the facts set out in the

previous paragraphs, appellants presented evidence as to the expenses they incurred in improving the Property. The court filed a memorandum opinion and order on February 14, 2014. The trial court concluded that there were no material facts in dispute and that the outcome turned on whether a valid and properly conducted sheriff's sale extinguishes a junior lien against a property. The trial court decided that the sheriff's sale in this case did not.

In reaching this result, the court relied upon *Goldberg v. Frick Electric Co.*, 363 Md. 683, 691 (2001), and *McCartney v. Frost*, 282 Md. 631, 636 (1978)[4] for the proposition that the rule of *caveat emptor* generally applies in sheriffs' sales. The court concluded that, because the rule of *caveat emptor*, the sheriff's sale did not extinguish Freedom Acquisition's deed of trust in the Property. This appeal followed.

We will reverse the circuit court's judgment and remand the case for it to enter a judgment consistent with this opinion.

Analysis

I.

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Rule 2-501(f). "[O]nce the moving party has provided the court with

[4] The court also decided that several affirmative defenses advanced by appellants were unavailing. We reach the same conclusion.

sufficient grounds for summary judgment, the nonmoving party must produce sufficient evidence to the trial court that a genuine dispute of a material fact exists." *Jones v. Mid-Atl. Funding Co.*, 362 Md. 661, 675 (2001). We review the circuit court's decision to grant summary judgment *de novo. Todd v. MTA*, 373 Md. 149, 154 (2003).

The question before us is a narrow one. The issue is whether a junior lien—junior in that it was both entered into and recorded after the recordation of the judgment lien—is extinguished by a sheriff's sale.

The parties' contentions can be succinctly summarized.

Appellants' principal argument is that the sheriff's sale extinguished the lien created by the deed of trust because the deed of trust was entered into after Wills recorded his notice of lien in the circuit court records. They analogize to cases holding that foreclosure of a mortgage[5] extinguishes junior liens and encumbrances, citing specifically, *Leonard v. Groome*, 47 Md. 499, 503 (1878).

For its part, One West and Freedom Acquisition contend that the sheriff's sale did not extinguish their lien. They assert that "[t]he rule of *caveat emptor* applies to all

[5]For brevity's sake, courts sometimes use the terms "mortgage" and "deed of trust" interchangeably and we will do so in this opinion. We are not suggesting that there are no differences between the two types of instruments but rather that those differences have no bearing on the issues in this case. *See Anderson v. Burson*, 424 Md. 232, 234 n. 1, (2011) (noting that, while courts sometimes use the terms "mortgage" and "deed of trust" interchangeably, there are "recognized differences" between the two.); and *Simard v. White*, 383 Md. 257, 269–90 (2004) (discussing the historical development of mortgages and deeds of trust in Maryland).

execution sales." *McCartney v. Frost*, 282 Md. 631, 636 (1978). In support of their position, they direct us to *Brown v. Wallace and Mitchell*, 4 G. & J. 479 (Md. Ch. 1832), wherein the Chancellor observed that, in a court sale, "the court sells only the right of the parties to the suit [and] that the purchaser should ascertain for himself, whether or not, the title to the parties can be impeached[.]" *Id.* at 492.[6]

II.

We believe the best starting point for our analysis is to compare foreclosure and sheriffs' sales. We recognize that the conceptual bases for foreclosure sales and sheriffs' sales are different, *see Fowler v. Fitzgerald*, 82 Md. App. 166, 173–75 (1990), and that principles from one area of the law aren't necessarily applicable in the same way in the other. Nonetheless, noting some of the differences between the procedures will illuminate the path forward in determining the effect the ratification of the sheriff's sale had in this case on Freedom Acquisition's deed of trust in the Property.

With regard to foreclosures of mortgages and deeds of trust, Maryland Code Real Property Article ("RP") § 7-105(c) provides that, upon ratification of the sale by the court, the trustee's deed "operates to pass all the title which the borrower had in the

[6]Freedom Acquisition also cites *The Monte Allegre*, 22 U.S. 616 (1824), for additional support. This decision is not particularly helpful to the specific issue presented by this appeal. The issue in *The Monte Allegre* was not whether the trustee passed good title to the personalty sold (which was undisputed) but rather whether the purchaser could rescind the sale because of the condition of some of the merchandise. *Id.* at 641.

property *at the time of the recording of the mortgage or deed of trust.*" (Emphasis added.) Because a purchaser at a foreclosure auction acquires whatever interest the debtor had in the property "at the time of the recording of the mortgage," a foreclosure necessarily extinguishes the liens of junior mortgages and similar encumbrances. This is, beyond cavil, the law of Maryland. *See, e.g., IA Const. Corp. v. Carney*, 341 Md. 703, 709 (1996) (interlocutory mechanics' liens extinguished); *Southern Maryland Oil, Inc. v. Kaminetz*, 260 Md. 443, 449–50 (1971) (a subsequent lease extinguished); *Union Trust Co. v. Biggs*, 153 Md. 50, 60 (1927) ("Since a judgment is but a general lien and the judgment creditor not a purchaser for value, its lien must yield to the superior equity of a prior specific lien."); *Garner v. Union Trust Co.*, 185 Md. 386, 392–93 (1945) (A judgment lien is subordinate to the lien of a mortgage recorded before entry of judgment.). We turn now to sheriff's sales.

The legal effect of a recorded judgment was summarized by this Court in *Kroop & Kurland, P.A. v. Lambros*, 118 Md. App. 651, 664 (1998):

> In Maryland, a properly indexed and recorded money judgment is a lien against real property of the judgment debtor located in the county in which the judgment was rendered . . . . A judgment lien is a general lien on real property signifying the right of the judgment creditor to order the sale of all or part of the debtor's property to satisfy the judgment. A judgment creditor does not have a property right in the land of the judgment debtor; however, the creditor does have a vested interest in the property in the nature of a remedy, i.e., the right to levy on the land.

(Citations and quotation marks omitted).

Maryland Code Courts and Judicial Proceedings Article ("CJP") § 11-501 provides in pertinent part that (emphasis added):

> A sheriff . . . to whom any writ of execution is directed may seize and sell *the legal or equitable interest of the defendant* named in the writ in real or personal property. The sheriff or constable shall execute the writ, conduct the sale, and distribute the proceeds pursuant to rules adopted by the Court of Appeals.

Consistent with CJP § 11-501, Maryland Rule 2-644(d) states (emphasis added):

> (d) **Transfer of Real Property Following Sale**. . . . . After ratification of the sale by the court, the sheriff shall execute and deliver to the purchaser a deed conveying *the debtor's interest in the property*, and if the interests of the debtor included the right to possession, the sheriff shall place the purchaser in possession of the property. It shall not be necessary for the debtor to execute the deed.

Both the statute and the rule make it clear that the sheriff sells the judgment debtor's interest in the property. Neither CJP § 11-501 nor Rule 2-644(d) specify whether the judgment debtor's interest is determined at the time the sheriff's sale occurs, or at the time the judgment lien attaches to the property.

The Court of Appeals has considered this question, in a variety of factual and procedural contexts, and has consistently concluded that the judgment debtor's interests in a sheriff's sale are determined at the time the judgment is entered. *See, e.g.*, *Eastern Shore Bldg. & Loan Corp. v. Bank of Somerset*, 253 Md. 525, 529–30 (1969) (The "interest in land owned or held by the judgment debtor . . . is subject to the limitations, legal or equitable, to which that interest is subject at the time of the entry of the

judgment."); *Hammer v. Westphal*, 120 Md. 15, 19 (1913) ("It is undoubtedly the rule that a purchaser at an execution sale acquires only such title as the debtor had at the time of the rendition of the judgment."); *Glen Morris-Glyndon Supply Co. v. McColgan*, 100 Md. 479, 480 (1905) ("The lien of a judgment attaches only to such interest in the debtor's land as he has at the time of its rendition or thereafter acquires."); *Valentine v. Seiss*, 79 Md. 187, 190 (1894) ("The judgment creditor stands in the place of his debtor, and he can only take the property of his debtor subject to the equitable charges to which it was justly liable in the hands of the debtor at the time of the rendition of the judgment.").

Courts read statutes and provisions of the rules of procedure together. When we do so in this case, it is evident that, while the relevant foreclosure statute, RP § 7-105(c), explicitly states the point in time when the borrower's interest in the real property is transferred to the lien-holder, the corresponding provisions for the statute and rule pertaining to sheriffs' sales do not. *See* CJP § 11-501; Rule 2-644(d). Nevertheless case law makes clear that, as purchasers at the sheriff's sale, appellants obtained whatever interest Carter had in the Property when Wills recorded the notice of the judgment lien in the circuit court. At that time, the Property was not encumbered by Freedom Acquisition's deed of trust.

Against this backdrop, we turn to the two cases upon which the circuit court relied in entering judgment for Freedom Acquisition, *Goldberg v. Frick Electric Co.*, 363 Md. 683, 691 (2001), and *McCartney v. Frost*, 282 Md. 631, 636 (1978).

Goldberg involved a dispute between the judgment creditor (Goldberg) and the purchaser at the sheriff's sale (Frick). At the sale, the sheriff announced, incorrectly, that the property was subject to a prior mortgage with a balance of $17,000. Frick was the successful bidder, only to learn shortly thereafter that the property was encumbered by another mortgage with a balance due of over $100,000 and that the lender was initiating a foreclosure proceeding. Frick then intervened in the sheriff's sale proceeding and requested that the sale be set aside. The circuit court granted Frick's exception and set the sale aside. *Id.* at 691. In affirming the circuit court's ruling, the Court of Appeals noted that, as a general rule, the rule of *caveat emptor* applied in sheriff's sales.[7] Therefore, a sheriff was not required to provide information about prior liens to potential bidders.

[7] *See* Md. Rule 2-644 provides in pertinent part:

> Rule 2-644. **Sale of Property Under Levy**
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> (b) Notice of Sale. *The sheriff shall give notice of the time, place, and terms of the sale*. The notice shall be posted on the courthouse door or on a bulletin board in the immediate vicinity of the door of the courthouse and published in a newspaper of general circulation in the county where the property is located at least (10) ten days before the sale of an interest in personal property or (20) twenty days before the sale of an interest in real property. When the property under levy is perishable, the sheriff may sell the property with less notice or with no notice, if necessary to prevent spoilage and loss of value.

However, if the sheriff decides to do so, "the sheriff has a duty to make sure that the information is correct [and, if it was not,] the sale may be set aside if the misrepresentation was material and relied unpon by the purchaser[.]" *Id.* at 698.

In *McCartney v. Frost*, the judgment debtor, McCartney, filed exceptions to set the sheriff's sale aside because the successful bid, $2,000, was grossly inadequate in light of the fair market value of the property, which was approximately $18,000. 282 Md. at 640. The Court of Appeals concluded that the price was so low that it "shocked the conscience of the court." *Id.* at 639.

As the circuit court correctly noted, *Goldberg* and *McCartney* make one point that is relevant to the present case: namely, that the rule of *caveat emptor* generally applies in sheriff's sales. The reason why the rule of *caveat emptor* applies is because the sheriff, under whose authority the sale is conducted, is not required to make any representations to prospective bidders as to title, value, or condition of the property. *Goldberg*, 363 Md. at 698 ("It is clear that the sheriff only has to provide the time, place and terms of sale in the notice."). This is why "[a] sheriff's sale has been compared to buying a pig in a poke." *Id*. at 702 n.9. However, that the rule of *caveat emptor* applies to sheriff's sales does not imply that a sheriff's sale conveys property free and clear of liens that are junior

to the judgment that is being enforced through the sale.[8] *Caveat emptor* means that a would-be purchaser must make its own inquiries before bidding.[9]

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[8]The result in this case would be different under any of the following scenarios:

(1) If the deed of trust between Carter and Senior Funding secured repayment of the purchase price. *See* RP § 7104 (A purchase money mortgage or deed of trust "shall be preferred to any previous judgment or decree for the payment of money which is obtained against the purchaser[.]");

(2) If the Senior Funding deed of trust was a re-financing of an existing purchase money mortgage and Senior Funding was unaware of Wills's judgment. *See G.E. Capital Mortgage Servs., Inc. v. Levenson,* 338 Md. 227, 239–42 (1995) (applying the doctrine of equitable subordination); or

(3) If Carter executed the deed of trust to Senior Funding *before* Wills recorded his judgment in the circuit court records, even if the deed of trust was recorded afterwards. *See Chicago Title Ins. Co. v. Mary B.*, 190 Md. App. 305, 319, *cert. granted,* 415 Md. 38, *cert. dismissed*, 417 Md. 384 (2010). This is because RP § 3-201 states (emphasis added):

> The effective date of a deed is the date of delivery, and the date of delivery is presumed to be the date of the last acknowledgment, if any, or the date stated on the deed, whichever is later. Every deed, when recorded, takes effect *from its effective date* as against the grantor, his personal representatives, every purchaser with notice of the deed, and *every creditor of the grantor with or without notice*.

[9]This result works no unreasonable hardship on Freedom Acquisition. When Carter signed the deed of trust, he conveyed his interest in the Property. His ownership interest was, of course, subject to the judgment lien. Because his interest was subject to being sold "at the instance of the judgment creditor[], [Senior Funding obtained] but a shadow of title" to the Property. *Heuisler v. Nickum*, 38 Md. 270, 278 (1873). Freedom Acquisition's interest in the Property is the same as Senior Funding's. Freedom Acquisition can hardly expect to improve its position because Wills exercised his right to have a sheriff's sale.

(continued...)

We hold that the sheriff's sale in this case passed title to the purchaser free and clear of the deed of trust in for the benefit of Senior Funding. Because Freedom Acquisition's asserted interest in the Property is derived exclusively from that deed of trust, the Freedom Acquisition interest in the Property was extinguished by the sheriff's sale. We reverse the judgment of the circuit court and remand the case for the court to enter a declaratory judgment consistent with this opinion.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS VACATED AND THIS CASE REMANDED FOR ENTRY OF A JUDGMENT CONSISTENT WITH THIS OPINION. APPELLEES TO PAY COSTS.

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[9](...continued)

Nor should this result come as a surprise. All potential purchasers of real property are on constructive notice of properly indexed information in the land and court records of the county in which the property is located. The existence of Wills' judgment lien would have been readily uncovered by a title examination. *See Greenpoint Mortgage Funding v. Schlossberg*, 390 Md. 211, 228-30 (2005). As this Court recently observed, ironically in the context of another reverse mortgage transaction:

> [A] would-be purchaser or lender may choose to forego a title examination, or to hire a negligent examiner, or to decline to take the trouble to look at the information generated by the title search, but imprudence of this sort bears its own risks.

James B. Nutter & Co. v. Black, 225 Md. App. 1, 22-23 (2015), *cert. denied*, 446 Md. 220 (2016).