UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0999

September Term, 2014

LYNETTE GREENWOOD, ET VIR.

v.

BYRON L. HUFFMAN, ET AL.,
SUBSTITUTE TRUSTEES

Meredith,
Leahy,
Reed,

JJ.

Opinion by Reed, J.

Filed: September 7, 2016

Appellants, Lynette and Kenneth Greenwood (the "Greenwoods"), appeal from the entry of a final order by the Circuit Court of Montgomery County that ratified the sale of their real property. Their failure, however, to file a *supersedeas* bond in conjunction with this appeal requires us to dismiss this case as moot.

We shall explain.

FACTUAL AND PROCEDURAL BACKGROUND

The Greenwoods entered into a likely predatory home loan in August 2007[1]—the height of the housing bubble that ultimately led to the subsequent "Great Recession." *See In re Fannie Mae 2008 Sec. Litig.*, 742 F. Supp. 2d 382, 391 (S.D.N.Y. 2010) (discussing causes of the 2008 financial crisis). They defaulted and the mortgagees, Champlain I, LLC, and Solutions Plus, LLC, sought to foreclose on the subject real property via their substitute trustees—and appellees here—Byron Huffman and Terrye Jackson (the "Substitute Trustees"). The foreclosure was fiercely litigated but, ultimately, the property was sold at an auction held on September 4, 2013, to GT Investment Associates, LLC ("GTIA"). The circuit court entered its order ratifying the sale on March 24, 2014. The Greenwoods moved

[1] Appellant Lynette Greenwood filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Maryland. That court was particularly appalled by the treatment Ms. Greenwood had received at the hands of her creditors, Champlain I, LLC, and Solutions Plus, LLC, stating: "[I]t is impossible to let the matter go without comment on the outrageous treatment [Ms. Greenwood] seems to have received from the [creditors] and the mortgage broker . . . , who steered [Ms. Greenwood] into the clutches of these loan sharks like a Judas goat." *Champlain I, LLC v. Greenwood* (*In re Greenwood*), No. 12-19487PM, at *1 (Bankr. D. Md. July 27, 2012).

the court to declare the ratification "null and void," but that motion was denied on June 26, 2014.

Believing it could finally take possession of the property, GTIA sought a judgment of possession from the circuit court. The Greenwoods, however, timely filed an appeal to this Court on July 10, 2014.

Litigation proceeded in the circuit court even after the appeal was noted. That court awarded a judgment of possession on September 5, 2014, and a writ of possession was issued on September 16, 2014. Ms. Greenwood initially sought, on an emergency basis, to enjoin the judgment on September 25, 2014, and the Greenwoods collectively moved the circuit court on October 1, 2014, for an emergency reconsideration of the judgment. The court held a hearing but denied reconsideration on October 6, 2014, and subsequently denied injunctive relief on October 17, 2014.

DISCUSSION

The Substitute Trustees argue that the present appeal is moot because the sale was ratified and the Greenwoods failed, as required, to post a *supersedeas* bond. The Court of Appeals explained this requirement clearly in *Mirjafari v. Cohn*, 412 Md. 475 (2010), and we shall quote from the relevant discussion *verbatim*:

> In *Baltrotsky v. Kugler,* 395 Md. 468 (2006), we noted that "Maryland decisional law speaks clearly on the question of the mootness of appellate challenges to ratified foreclosure sales in the absence of a *supersedeas* bond to stay the judgment of a trial court." *Id.* at 474. The general rule is that "the rights of a *bona fide* purchaser of mortgaged property would not be affected by a reversal of the order of ratification in the absence of a bond having been filed."[] *Id.*; *Pizza v. Walter,* 345 Md. 664, 674 (1997), mandate withdrawn, 346 Md. 315 (1997) (withdrawing by joint motion pursuant to

settlement agreement); *Lowe v. Lowe,* 219 Md. 365, 368 (1959); *see also Leisure Campground & Country Club Ltd. P'ship v. Leisure Estates*, 280 Md. 220, 223 (1977). As a consequence, "an appeal becomes moot if the property is sold to a bona fide purchaser in the absence of a supersedeas bond because a reversal on appeal would have no effect." *Baltrotsky*, 395 Md. at 474; *Pizza,* 345 Md. at 674; *see also Lowe*, 219 Md. at 369. The rule operates "even though the purchaser may know that a claim is being asserted against ratification." *Leisure Campground*, 280 Md. at 223; *see also City of Hagerstown v. Long Meadow Shopping Center,* 264 Md. 481, 497 (1972).

The rule is intended to encourage non-party individuals or entities to bid on foreclosure sale properties, as bidders "justifiably would be reluctant to purchase a foreclosure property without assurance in the form of some security that their investments will be protected from subsequent litigation by recalcitrant mortgagors seeking to retain their property." *Baltrotsky*, 395 Md. at 475; *see also Leisure Campground*, 280 Md. at 223. Likewise, the rule protects lenders who have succeeded in foreclosure but who, without operation of the rule, "could not enjoy [their] success until the new action was fully litigated, all the while bearing the lost interest income." *Baltrotsky*, 395 Md. at 476. Thus, "[t]he law is clear that [mortgagors] may not litigate the validity of the foreclosure at the expense of others; the posting of security is required on [the mortgagor's] part to protect the purchasers and lender alike." *Id.* Summarizing recently the dangers of permitting extended litigation without requiring the filing of a *supersedeas* bond, in *Poku v. Friedman,* 403 Md. 47 (2008), we stated:

> If ratified foreclosure sales could be overturned long after the ratification in the absence of the filing of a supersedeas bond and the granting of a stay, the title to any property where any prior conveyance in the chain of title came out of a mortgage foreclosure sale could be questioned even if the foreclosure sale occurred a year in the past, or ten years, or fifty years. In such a scenario, lenders would become reluctant to lend money secured by such properties, buyers might become reluctant to buy such properties, and title insurers reluctant to insure title to such properties. The general marketability of title to property could be severely affected.

Id. at [53] n.7.

> The general rule requiring the filing of a *supersedeas* bond or alternative security has but two exceptions: (1) the occasion of unfairness or collusion between the purchaser and the trustee, and (2) when a mortgagee or its affiliate purchases the disputed property at the foreclosure sale. *Baltrotsky*, 395 Md. at 475; *Pizza*, 345 Md. at 674; *Leisure Campground*, 280 Md. at 223; *see also Sawyer v. Novak*, 206 Md. 80, 88 (1955).

Mirjafari, 412 Md. at 483–85 (internal parallel citations omitted).

We must agree with the Substitute Trustees that dismissal is required. The record is clear that the ratification of the sale was made final on June 26, 2014. Moreover, the record does not demonstrate that the Greenwoods posted a *supersedeas* bond upon filing of the present appeal, or that the circuit court held a hearing to fix the bond amount.

Additionally, neither of the exceptions to the rule requiring a *supersedeas* bond or other security is present here. We do not discern any allegations of "unfairness or collusion" between the Substitute Trustees and GTIA. *See id.* at 485. Furthermore, Champlain I and Solutions Plus were not the purchasers of the real property at auction, and the Greenwoods do not allege, nor is there anything in the record demonstrating, that GTIA is an affiliate of those two entities. Accordingly, neither of the exceptions apply to the present matter.

The existence of a *lis pendens* on the subject property also has no effect on this sale. The *Mirjafari* Court held that the determination of whether a foreclosure purchaser holds *bona fide* status depends on "what is known, or reasonably knowable, by the bidder as of the date of the successful bid at the foreclosure sale." *Id.* at 488. That knowledge, however, is limited to "knowledge of defects *in the foreclosure sale*[.]" *Id.* at 486 (emphasis added).

The record demonstrates that a *lis pendens* was entered on August 24, 2013—eleven days before the foreclosure sale on September 4, 2013. Nevertheless, the existence of a *lis pendens* does nothing to show that GTIA had knowledge of defects *in the foreclosure sale.*

Those of the Greenwoods' allegations that are ostensibly relevant to GTIA's *bona fide* status do not indicate any defects in the sale. In their emergency motion to the circuit court seeking reconsideration of the judgment of possession, the Greenwoods simply argued that they made it known at the auction that the property was subject to unresolved legal claims. Nothing was stated regarding GTIA's awareness of defects in the sale itself. Given the limited scope regarding the *bona fides* of a foreclosure purchaser, we cannot say the Greenwoods sufficiently demonstrated that GTIA knew of any procedural errors affecting its status as a *bona fide* purchaser.

In the absence of a *supersedeas* bond or the exceptions to that rule, *Mirjafari* counsels us that the present appeal must be dismissed.[2]

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANTS.

[2] The application of our holding in *Finch v. LVNV Funding, LLC*, 212 Md. App. 748 (2013), does not —as the Greenwoods claim— render the circuit court's Order of ratification null and void. The default judgments in that case were void because they were obtained by a debt collection agency that had failed to obtain a license as required by the Maryland Collection Agency Licensing Act. *Id.* at 759-64. The present case is distinguishable because there is no requirement under Maryland law that lenders be licensed at the time foreclosure actions are instituted. *See* Md. Code Ann., Real Prop. § 7-105.1(c)(4)(ii)(2) ("The notice of intent to foreclose shall contain the name and license number of the Maryland mortgage lender and mortgage originator, *if applicable*." (emphasis added)).