

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1021

September Term, 2015

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MINH VU HOANG

v.

CINDY DIAMOND, et al.  
SUBSTITUTE TRUSTEES

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Graeff,  
Friedman,  
Wilner, Alan M.  
(Retired, Specially Assigned),

JJ.

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Opinion by Wilner, J.

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Filed: June 27, 2016

\*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.

Appellants defaulted on a deed of trust loan on their home in Montgomery County whereupon, in February 2011, the trustees filed this foreclosure action.<sup>1</sup> Appellants did not go gently into the night but, as self-represented litigants, challenged virtually every aspect of the foreclosure proceeding and managed to remain in the home for more than four years without making any further payment on the deed of trust note. The docket entries in the case consume 42 pages, and this is appellants' sixth appeal to this Court.

We need not describe again all of the past proceedings. *See Hoang v. Diamond*, S.T. 2013, No. 1526 (Unreported Opinion filed August 7, 2015). Suffice it to say that all of their challenges to date have been rejected. The property was first sold at a foreclosure sale in November 2011 and then, following exceptions filed by appellants, resold, to the same purchaser, in May 2012. That sale was ratified and all appeals from that ratification were dismissed. This appeal challenges an April 2015 order granting possession of the property to a substituted purchaser – the lender, Citibank, N.A., as trustee for CMLTI Asset Trust. It too shall fail.

The right of a purchaser at a foreclosure sale to obtain possession of the property is governed by Title VII of the Federal Protecting Tenants at Foreclosure Act of 2009 (PTFA), Md. Code, §7-105.6 of the Real Property Article (RP), and Md. Rule 14-102. The principal substantive provision applicable to this appeal, under both the Federal and State statutes is that, in a foreclosure of residential property, an “immediate successor in

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<sup>1</sup> The briefs show only Minh Vu Hoang as the appellant. All of the papers filed in the Circuit Court, including the Notice of Appeal, show his wife, Thanh, as a party as well.

interest who has acquired legal title to the property under the foreclosure shall assume the interest subject to . . . the provision by the successor in interest of a notice to vacate to any **bona fide** tenant at least 90 days before the effective date of the notice . . . .”

(Emphasis added). *See* RP § 7-105.6(b)(2)(i).

Under both statutes, a tenancy is considered to be bona fide only if (1) the mortgagor, or grantor or the child, spouse, parent of the mortgagor or grantor is not the tenant, (2) the tenancy was the result of an arm’s length transaction, and (3) the tenancy requires the receipt of rent that is not substantially less than the fair market rent for the property or the unit’s rent is reduced or subsidized due to a Federal, State, or local subsidy. *See* RP § 7-105.6(b)(1) and PTFA §702(b). Rule 14-102 provides, in relevant part, that, if the purchaser of an interest in real property at a foreclosure sale is entitled to possession and the person in actual possession fails or refuses to deliver possession, the purchaser or successor in interest may file a motion for judgment awarding possession, which is what the substituted purchaser did.

Section (a)(3) of the Rule requires that, if the movant’s right to possession arises from a foreclosure sale of residential property, the motion must contain averments, based on a reasonable inquiry into the occupancy status of the property, establishing either that the person in possession is not a bona fide tenant having rights under the statutes or that the required notice was given. Section (b) requires the motion to be accompanied by an affidavit stating, among other things, that (1) the person in actual possession was a party to the action that resulted in the sale, (2) if the purchaser paid the full purchase price and

received a deed for the property, the date the payment was made and the deed was received, and (3) if the purchaser has not paid the full purchase price or has not received a deed for the property, the factual basis for the purchaser's claim of entitlement to possession.

The nub of appellants' complaint in this appeal is that there were bona fide tenants occupying their property who did not get proper notice. The notice that was sent, they claim, was not timely – did not provide 90 days notice – and the sender of that notice was not a successor in interest because it had not paid the full purchase price for the property. The relevant facts, so far as we can discern from the record before us and the briefs, are as follows.<sup>2</sup>

The effective sale of the property occurred on May 14, 2012. The property was sold to Iraj Alimoradi and Roya Khodabakhshi for \$1,350,000, of which \$100,000 was paid as a deposit. The court entered an order ratifying that sale on October 25, 2012. Appellants' appeal from that order was dismissed by this Court and their petition for *certiorari* was denied by the Court of Appeals. On October 24, 2013, the trustees and the purchasers filed a consent petition to substitute the lender, Citibank N.A., as Trustee for CMLTI Asset Trust, as a substitute purchaser. Over appellants' objection, the court

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<sup>2</sup> Mercifully, perhaps, the entire record of the foreclosure proceeding was not transmitted with respect to this appeal, but, except for the docket entries, only the part dealing with the judgment for possession.

granted that petition.<sup>3</sup> On June 10, 2014, the trustees signed and acknowledged a deed for the property to the substituted purchaser, acknowledging in the deed that the purchase money, in the amount of \$1,350,000, was paid.

The motion for judgment awarding possession was filed by Citibank on February 13, 2015. Citibank alleged that it was the substituted purchaser, that the sale had been ratified, that Citibank had complied with the terms of the sale, but that the mortgagors remained in possession of the property and had refused to deliver possession. Attached to the petition were the trustees' deed which, by then, had been recorded, and an affidavit by Sara Roberts, acting as the servicer for Citibank attesting, in pertinent part, that:

- (1) "The purchaser paid the full purchase price for the Property as the Purchaser was the foreclosing lender and could therefore credit bid at the foreclosure sale, and was not required to tender funds to the Substitute Trustees in connection with the sale of the Property" and
- (2) Based on inspections of the property and papers filed in the proceeding, the property was occupied by appellants.

Appellants objected to the petition, claiming that, because Citibank was not the bidder at the sale, it is not entitled to a lender's credit bid and, therefore, had not paid the purchase price, (2) because it had not paid the purchase price, it should not have received

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<sup>3</sup> It appears that the initial purchasers defaulted on their bid, that the trustees thereupon filed a petition to resell the property at the risk of the purchasers, but later withdrew that petition and opted instead to have the lender substituted as the purchaser.

a deed from the trustees, and (3) that deed was therefore invalid and ineffective against appellants. Attached to that response were two affidavits. One was from a person purporting to be Mercie C. Mumcu who claimed that he/she was “an occupant” of the property and, on February 17, 2015, saw a person stop in front of the property and take pictures of the house. The affiant did not indicate under what authority he/she occupied the property, whether there was a lease and, if so, the terms of the lease. The second affidavit was from Mr. Hoang, who claimed that he could not find any record of the trustee’s deed to Citibank and that he and his wife were therefore still the owners of the property.<sup>4</sup>

Obviously rejecting those defenses, the court entered a judgment awarding possession on April 7, 2015. It appears from appellants’ brief that they actually were evicted on July 10, 2015. This appeal followed the denial of appellants’ motion to reconsider the entry of the judgment for possession.

Rule 14-102(d)(3)(B) requires that any response in which the person asserts that the motion should be denied because the person is a bona fide tenant having a right of possession under PTFA or RP §7-105.6 must include a copy of any bona fide lease or documents establishing the existence of such a lease or state why the lease or documents are not attached. No such lease, documents, or statements were attached. As noted, in order to be a bona fide tenant under the two statutes, there must be a showing that the

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<sup>4</sup> As a further delaying tactic, appellants removed the case to Federal Court, which promptly remanded it back.

tenancy was the result of an arm's length transaction and that it requires the receipt of rent that is not substantially less than the fair market rent for the property. There was no such showing in appellants' response. Accordingly, there was no basis for the court to find that the property was occupied by a bona fide tenant entitled to notice – not Mercie Mumcu and not appellants (who, under the statutes, would not qualify as bona fide tenants).

Nor was there any basis for the court to find that appellants still owned the property. Apart from the un rebutted averment in the affidavit attached to the motion for judgment of possession that the property had been conveyed to Citibank, the deed attached to the motion showed on its face that it had been recorded and that the transfer and recording taxes had been paid.

We are left then with the propositions that, because Citibank was not the actual bidder at the sale, it had no right to apply the balance due on the loan to the purchase price (credit bid) and that, in any event, the amount due on the loan was less than the purchase price, which means that the full purchase price had not been paid. Neither of those assertions has merit. In *Citibank v. New Plan Realty*, 131 Md. App. 44, 52 (2000), we confirmed as “well-settled in Maryland that a mortgagee may purchase the mortgaged property at a foreclosure sale by applying the mortgage debt to the purchase price, rather than by paying with cash or certified check.” *See also Weismiller v. Bush*, 56 Md. App. 593, 598 (1983), tracing the history of that rule in Maryland back to 1828. As a properly

approved substitute purchaser, Citibank – the lender – certainly had the benefit of that privilege.

Appellants contend that only \$850,000 was due on the loan when the property was sold, but they do not tell us where that number came from. In the unreported Opinion of this Court in *Hoang v. Diamond, supra* (S.T. 2013, No. 1526), we cited the Affidavit of Right to Foreclose and Statement of Deed of Trust Debt, in the record then before the Court (which, as noted, was not transmitted with respect to this appeal) showing a payoff total due **as of March 3, 2011** of \$1,112,745, with interest accruing daily of \$152.87. Absent any evidence of subsequent payments or other credits, the court was not bound to accept appellants’ assertion that the amount due as of the date of sale fourteen months later was only \$850,000.

**JUDGMENT AFFIRMED; COSTS TO BE PAID  
BY APPELLANTS.**