UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1741

September Term, 2015

JAMES PFARR

v.

JEFFREY B. FISHER

Wright,
Graeff,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: December 16, 2016

In 2015, after his house located at 12106 Reardon Lane in Bowie, Maryland was foreclosed upon and sold, James C. Pfarr, Appellant, filed various motions, including one to stay and others to determine bond, allow discovery and dismiss. Judge Toni E. Clarke of the Circuit Court for Prince George's County denied all of the motions without a hearing, after treating them as exceptions to the sale. Mr. Pfarr filed a timely notice of appeal, in which he posited: "Where a homeowner, in a post-sale motion, claims he neither had notice of the case nor notice of the impending sale whether it was an abuse of discretion not to schedule a hearing on the motion under to [sic] totality of circumstances presented in the motion?" We shall answer the question in the negative.

Mr. Pfarr alleges that he did not receive notice of the foreclosure sale in the manner prescribed by Section 7-105.2 of the Real Property Article of the Maryland Code (1974, 2015 Repl. Vol.) [1] and that he is entitled to a hearing on his exceptions pursuant to

[1] Section 7-105.2(b) of the Real Property Article of the Maryland Code (1974, 2015 Repl. Vol.) requires, in relevant part:

> (b) *Notice to record owner of property. —* In addition to any notice required to be given by provisions of the Annotated Code of Maryland or the Maryland Rules, the person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall give written notice of the proposed sale to the record owner of the property to be sold.
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> (c) *Written notice. —* (1) The written notice shall be sent:
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> (i) By certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service, to the record owner; and
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> (ii) By first-class mail.
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> (3) The person giving the notice shall file in the proceedings:
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> (i) A return receipt; or
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> (ii) An affidavit that:

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Maryland Rule 14-305(d). According to Rule 14-305(d)(2), however, Mr. Pfarr is entitled to a hearing on exceptions, once requested, only if his exceptions "clearly show a need to take evidence":

> (d) **Exceptions to sale.** (1) How Taken. A party, and, in an action to foreclose a lien, the holder of a subordinate interest in the property subject to the lien, 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 (c) 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).

As this Court has recognized in *Four Star Enterprises Ltd. Partnership v. Council of Unit Owners of Carousel Center Condominium, Inc.*, 132 Md. App. 551, 567 (2000), a hearing on exceptions is not mandatory, even if the parties request it: "A hearing is by no means mandatory under Rule 14–305(d)(2), even if one of the parties requests it. Because this rule is written in conjunctive form, authorizing a proceeding 'if a hearing is requested *and* the exceptions or any response clearly show a need to take evidence,' it gives the court discretion."

(. . . continued)

> 1. The provisions of this subsection have been complied with; or
> 2. The address of the record owner is not reasonably ascertainable.

In determining whether a person has demonstrated a need to take evidence under Rule 14-305(d), the trial court, as well as we, consider whether the exceptions that have been posited are appropriate challenges following a foreclosure sale. In so doing we are mindful of the body of jurisprudence that has evolved regarding post-sale exceptions.

In *Greenbriar Condominium, Phase I Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683 (2005), the Court of Appeals had occasion to elucidate what are appropriate exceptions to a foreclosure sale. Judge Dale R. Cathell, writing for the Court, noted:

> The equities cannot be maintained—and are not intended to be maintained—*after* the foreclosure sale by any method other than the filing of exceptions. The nature of the exceptions may be to request that the Circuit Court take action relative to an audit that has been duly stated or even to set aside the sale due to irregularities in the sale process itself—but not to upset retroactively a sale properly held. Challenges, by means of filing exceptions to the foreclosure sale are generally promulgated in two manners after the sale: first, exceptions filed prior to the Circuit Court's ratification of the sale generally assert procedural irregularities in the sale itself. These might include allegations such as 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. Alternatively, or in addition, challenges to the creditor's exact statement of debt are generally submitted by filing exceptions to the post-ratification auditor's report. Generally, the auditor has no role to play in the ratification of the sale.

Id. at 741.

In attempting to refine what the *Greenbriar* Court referred to with respect to "irregularities in the sale process itself," this court in *Bierman v. Hunter*, 190 Md. App. 250 (2010), interpreted *Greenbriar* to permit a hearing on post-sale exceptions in which the validity of the underlying lien was challenged, because the trial court possessed "full power to hear and determine all objections to the foreclosure sale" as an equity court. *Id.* at 264.

Bierman's interpretation of the reach of post-sale exceptions, however, was limited by the Court of Appeals in *Bates v. Cohn*, 417 Md. 309, 327 (2010), in which the conclusion in *Greenbriar* was reaffirmed that, "after a foreclosure sale, 'the debtor's later filing of exceptions . . . may challenge only procedural irregularities at the sale or . . . the statement of indebtedness.'" In *Bates*, Bates' home was sold at a foreclosure sale, and she thereafter filed exceptions to the sale, pursuant to Rule 14-305(d), claiming that her lender did not comply with federal pre-foreclosure loss mitigation requirements.[2] After the trial court denied the exceptions and ratified the sale, the Court of Appeals affirmed, concluding that a challenge to the pre-foreclosure sale loss mitigation requirements must be raised prior to a foreclosure sale:

> [A] homeowner/borrower ordinarily must assert known and ripe defenses to the conduct of a foreclosure sale prior to the sale, rather than in post-sale exceptions. A lender's failure to comply with pre-sale loss mitigation requests is one such defense, which must be raised ordinarily pre-sale in an effort to prevent the sale from occurring.

Id. at 328. Whether a homeowner could assert as a post-sale exception that a loan was the product of fraud was left unanswered.

In *Thomas v. Nadel*, 427 Md. 441, 445 (2012), the Thomases attempted to raise the issue of fraud affecting the deed of trust as an issue in post-sale exceptions, but the Court of Appeals rejected their contention. The Court reaffirmed that only irregularities

[2] The deed of trust at issue in *Bates v. Cohn*, 417 Md. 309 (2010), referred to pre-foreclosure loss mitigation requirements, issued by the Secretary of Housing and Urban Development, that require lenders to consider loss mitigation options after three monthly payments have become due and unpaid; many of these requirements are found in 24 C.F.R. § 203.355 (2010). HUD, Loss Mitigation Program – Comprehensive Clarification of Policy and Notice of Procedural Changes, Mortgagee Letter 00-05 (2000).

in the sale itself may be challenged post-sale, in addition to fraud in the underlying deed of trust.

In the instant case, Mr. Pfarr does not make any allegation, nor is there any evidence in the record, of fraud in the underlying deed of trust. Rather, Mr. Pfarr alleges that he did not receive notice of the sale of his home in foreclosure, as required by Section 7-105.2(b) of the Real Property Article, which states:

> (b) *Notice to record owner of property. —* In addition to any notice required to be given by provisions of the Annotated Code of Maryland or the Maryland Rules, the person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall give written notice of the proposed sale to the record owner of the property to be sold.
> (c) *Written notice. —* (1) The written notice shall be sent:
> (i) By certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service, to the record owner; and
> (ii) By first-class mail.
> * * *
> (3) The person giving the notice shall file in the proceedings:
> (i) A return receipt; or
> (ii) An affidavit that:
> 1. The provisions of this subsection have been complied with; or
> 2. The address of the record owner is not reasonably ascertainable.

Maryland Rule 14-210 (2011), implementing the statute, requires that notice of the time, place, and terms of the sale must be sent to the borrower by certified and first-class mail and that an affidavit of compliance be filed with the court.[3]

[3] Maryland Rule 14-210 (2011), provides, in relevant part:

> (b) **By certified and first-class mail.** 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

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We had occasion in *Jones v. Rosenberg*, 178 Md. App. 54 (2008), *cert. denied* 405 Md. 64 (2008), to determine whether the failure to personally serve a homeowner-debtor by certified and first-class mail, pursuant to Section 7-105,[4] could be one of the irregularities about which a debtor could complain through post-foreclosure sale exceptions pursuant to Rule 14-305(d). In that case, the Joneses filed exceptions to the sale of their home alleging, among other issues, that they had not received personal service of the notice of sale of their house in foreclosure. After the circuit court denied the exceptions because the record reflected personal service, we affirmed, stating that, "Appellants' challenge on the basis of improper notice was the only procedural challenge

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> borrower, (B) the record owner of the property, and (C) the holder of any subordinate interest in the property subject to the lien and (2) by first-class mail to "All Occupants" at the address of the property. The notice to "All occupants" shall be in the form and contain the information required by Code, Real Property Article, § 7-105.9 (c). 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.
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> * * *
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> (e) **Affidavit of notice by mail.** An individual who is required by this Rule to give notice by mail shall file an affidavit stating that (1) the individual has complied with the mailing provisions of this Rule or (2) the identity or address of the borrower, record owner, or holder of a subordinate interest is not reasonably ascertainable. If the affidavit states that an identity or address is not reasonably ascertainable, the affidavit shall state in detail the reasonable, good faith efforts that were made to ascertain the identity or address. If notice was given to the holder of a subordinate interest in the property, the affidavit shall state the date, manner, and content of the notice.

[4] Section 7-105 of the Real Property of the Maryland Code was amended in 2008 through Chapters 1 and 2, Laws of Maryland 2008. The 2008 amendments re-designated Section 7-105(a-1), which contained the notice requirements to the record owners, as Section 7-105.2.

to the foreclosure sale and, thus, was the only proper exception to the foreclosure sale." *Id.* at 70.

In the present case, then, a hearing on the allegation of improper notice could have been held, but was not necessary, because there was no need to take evidence. The record in the case before Judge Clarke included a certified mail receipt dated January 26, 2015 that was addressed to "James C. Pfarr, 12106 Reardon Ln, Bowie, MD 20715-3220", bearing a signature of "J C Pfarr". The record also included a printed copy of the certified mail transaction report, found online, that reflected that certified mail was sent to Mr. Pfarr's home on January 26, 2015 and was listed as "Signed." Fisher Law Group also had filed an affidavit with the court[5] averring that notice of the impending foreclosure sale was sent to Mr. Pfarr, at his address, by certified and first-class mail on January 26, 2015,

[5] Kris Terrill on behalf of Fisher Law Group averred that:

> 1. Timely notice of the time, place and terms of sale was mailed by certified mail and by first class mail, postage prepaid, to the borrower(s) as defined in Maryland Rule 14-202(b), to the record owner(s) of the property and to the holder(s) of any subordinate interest in the property subject to the lien (including judgments), in compliance with Sections 7-105.2 and 7-105.3, Real Property Article and Rule 14-210(b).
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> * * *
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> 4. Pursuant to Maryland Real Property Code Section 7-105.9(c)(1) and Maryland Rule 14-210(b)(2) a written Notice of Impending Foreclosure Sale addressed to "ALL OCCUPANTS" was sent by first-class mail, on January 26, 2015 to the residential property located at 12106 Reardon Lane, Bowie, MD 20715. The notice was a separate document printed in at least 12 point type, containing the substantive content required by Section 7-105.9(c)(1), i.e. notice of the date, time and place of the foreclosure sale, providing contact information for the person authorized to sell the property, and referring the recipient to DCHD. The outside of the envelope contained the written notice "IMPORTANT NOTICE TO ALL OCCUPANTS: FORECLOSURE INFORMATION ENCLOSED. OPEN IMMEDIATELY" as required, on the address side in bold, capitalized letters in at least 12 point type[.]

and the notice included the time, place, and terms of the sale pursuant to Section 7-105.2 of the Real Property Article.

Clearly, the record did not support Mr. Pfarr's allegation that he had not received personal service of the notice of sale, so there was no need to take evidence at a hearing; Judge Clarke did not err.

In his post-sale exceptions, Mr. Pfarr also challenged the contents of the Notice of Intent to Foreclose that had been filed prior to the foreclosure sale, pursuant to Section 7-105.1(c) of the Real Property Article of the Maryland Code (1974, 2015 Repl. Vol.):

> (c) *Written notice.*—(1) Except as provided in subsection (b)(2)(iii) of this section, at least 45 days before the filing of an action to foreclose a mortgage or deed of trust on residential property, the secured party shall send a written notice of intent to foreclose to the mortgagor or grantor and the record owner.
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> (2) The notice of intent to foreclose shall be sent:
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> (i) By certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service; and
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> (ii) By first-class mail.
>
> (3) A copy of the notice of intent to foreclose shall be sent to the Commissioner of Financial Regulation.
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> (4) The notice of intent to foreclose shall:
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> (i) Be in the form that the Commissioner of Financial Regulation prescribes by regulation; and
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> (ii) Contain:
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> 1. The name and telephone number of:
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> A. The secured party;
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> B. The mortgage servicer, if applicable; and
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> C. An agent of the secured party who is authorized to modify the terms of the mortgage loan;
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> 2. The name and license number of the Maryland mortgage lender and mortgage originator, if applicable;
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> 3. The amount required to cure the default and reinstate the loan, including all past due payments, penalties, and fees;
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> 4. A statement recommending that the mortgagor or grantor seek housing counseling services;
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> 5. The telephone number and the Internet address of nonprofit and government resources available to assist mortgagors and

> grantors facing foreclosure, as identified by the Commissioner of Financial Regulation;
> 6. An explanation of the Maryland foreclosure process and time line, as prescribed by the Commissioner of Financial Regulation; and
> 7. Any other information that the Commissioner of Financial Regulation requires by regulation.

Mr. Pfarr specifically alleged, moreover, that the Notice of Intent to Foreclose was inadequate because it mislabeled Green Tree Servicing, LLC as the loan servicer rather than the secured party.[6] He also argued that he owed less than the amount required to cure his default that was included in the Notice of Intent to Foreclose.[7]

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[6] The Notice of Intent to Foreclose conveyed the following pertinent information about Mr. Pfarr's mortgage loan:

> Date of Notice: **March 26, 2014**
> Address of Property Subject to This Notice: **12106 Reardon Lane, Bowie, MD 20715**
> Name of Borrower(s): **James C. Pfarr**
> Mailing Address of Borrower(s): **12106 Reardon Lane, Bowie, MD 20715**
> * * *
> Name of Secured Party: **Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America.**
> Telephone Number of Secured Party: **800-732-6643**
> Name of Loan Servicer (if different from Secured Party): **Green Tree Servicing LLC**
> Telephone Number of Loan Servicer (if applicable): **800-544-8056**

That the secured party, Green Tree Servicing, LLC is labeled incorrectly would not have been a basis for dismissing a foreclosure action. In *Shepherd v. Burson*, 427 Md. 541, 556-57 (2012), where the Notice of Intent to Foreclose identified only one of the two secured parties, the Court of Appeals concluded it was harmless error that did not require dismissal of the foreclosure action because the debtor was not prejudiced by the "incomplete" notice.

[7] The Notice of Intent to Foreclose included information about Mr. Pfarr's loan payments that were in default:

> Date Most Recent Loan Payment Received: **September 8, 2010**

(continued . . .)

Mr. Pfarr alleges that his challenges to the pre-sale Notice of Intent to Foreclose are permissible as post-sale exceptions, required to be heard, based upon our holding in *Granados v. Nadel*, 220 Md. App. 482 (2014), a case in which we permitted post-sale exceptions to be heard when there had been a failure to send a Notice of Intent to Foreclose in a second foreclosure action, after the first had been voluntarily dismissed by the lender a year prior. Where the trial court denied the exceptions without a hearing, we concluded that, "when a lender institutes a foreclosure action, and then dismisses that action, the lender should issue a new [Notice of Intent to Foreclose]" particularly where "legislative changes providing new protections to borrowers" render the old notice insufficient. *Id.* at 506. Certainly, *Granados* is inapposite because a Notice of Intent to Foreclose was issued in Mr. Pfarr's case to Mr. Pfarr, which he could have challenged pre-sale, but not post-sale.

Mr. Pfarr finally argues, without reliance on any statutes, rules, or cases, that after the foreclosure sale, counsel for Mr. Pfarr, Gerald Solomon, did not receive notice of the report of sale following the foreclosure sale or the supporting documents accompanying the sale. There is simply no basis for this argument.

(. . . continued)

Period to Which Most Recent Mortgage Loan Payment Was Applied: **September 1, 2010**
Date of Default: **October 2, 2010**
Total Amount Required to Cure Default as of the Date of this Notice: **$61,106.32**
(If you wish to reinstate your loan by paying all past due payments and fees, please call the mortgage company and ask for the total amount required to cure the default and reinstate the loan.)
Your mortgage loan payment is currently **1270** days past due and is in default.
Name of Mortgage Lender (if applicable): **Bank of America, N.A.**

In conclusion, we hold that Judge Clarke did not err in denying Mr. Pfarr's exceptions without a hearing.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.