UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

ARW TRUST, ET AL.

v.

HUNTER C. PIEL, ET AL.

No. 1950, September Term, 2014

ARW TRUST

v.

INDEPENDENT MORTGAGE COMPANY, ET AL.

No. 871, September Term, 2015

Graeff,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: November 18, 2016

This consolidated appeal, as briefed, involved two separate, but related, rulings issued by the Circuit Court for Anne Arundel County in connection with a July 16, 2014, foreclosure sale. The first ruling appealed arises from the court's denial of exceptions to the foreclosure sale filed by appellants, ARW Trust ("ARW") and Quebec Court Trust ("Quebec"). The second ruling on appeal involves the circuit court's dismissal of ARW's subsequent Complaint for Declaratory Judgment, in which ARW sought, among other things, a declaratory judgment against appellees, M&T Mortgage Company ("M&T") and Independent Mortgage Company, Inc. ("IMC"). Specifically, it sought a declaration that IMC's claimed right in a M&T deed of trust was null and void and that ARW's rights regarding the Property were superior to any interest that IMC had in the property.

After oral argument, the appeal was winnowed down to the following question, which we have rephrased, as follows:

> Did the circuit court err in dismissing ARW's declaratory action on the ground of *res judicata*?[1]

For the reasons set forth below, we shall affirm the judgment of the circuit court.

[1] At oral argument, counsel for ARW Trust ("ARW") and Quebec Court Trust ("Quebec"), stated that he was not pursuing his challenge to the denial of the exceptions to the foreclosure sale. Thus, this Court will dismiss the appeal regarding the judgment of the circuit court in the first consolidated case. Quebec Court Trust, et al. v. Hunter C. Piel, et al., No. 1950, Sept. Term, 2014.

FACTUAL AND PROCEDURAL BACKGROUND

Background

The issues in this case arise from a dispute regarding a foreclosure sale of property located at 1857 Quebec Court, Severn, Maryland (the "Property"), and the parties' relative priority status as lienholders. The Property originally was purchased in 1989 by Robert B. Styles and Ruth E. Styles.[2] On April 18, 2002, the Styles refinanced the Property with M&T in the amount of $116,775. The Deed of Trust was recorded on May 15, 2002, with M&T listed as the beneficiary, and the Property listed as collateral.

In November 2003, the Styles executed a deed conveying the Property to Quebec. Quebec borrowed $145,000 from ARW and executed a Deed of Trust in favor of ARW, with the Property listed as collateral.[3] Neither the Deed conveying the Property to Quebec, nor the ARW Deed of Trust, were recorded in the county land records at that time.

According to ARW's Complaint for Declaratory Judgment, the Styles entered into a lease with Quebec in 2003, but several years later, they stopped making rent payments to Quebec, which resulted in Quebec failing to pay the mortgage. M&T instituted foreclosure proceedings, and IMC contacted the Styles regarding refinancing the Property to stop the foreclosure. On September 25, 2007, the Styles executed a refinance Deed of Trust, which

[2] The record indicates that, at some point near the time of the proceedings below, Robert B. Styles passed away.

[3] The record indicates that, for reasons not explained, Quebec Court Trust attempted to mortgage the Property two days before Robert and Ruth Styles transferred the Property to the Trust.

listed IMC as the beneficiary, the amount of debt as $170,000, and the Property as collateral.

As a result of the foreclosure activity involving the Property, ARW discovered that the deed conveying the Property to Quebec, and the Deed of Trust listing ARW as lienholder, had not been recorded. On September 26, 2007, ARW recorded both documents. The next day, September 27, 2007, IMC recorded the Deed of Trust that the Styles had executed in its favor two days earlier.

On October 15, 2007, a document entitled "Assignment of Beneficial Interest Under Deed of Trust" was recorded in the county land records. The assignment stated that, on September 28, 2007, M&T had assigned its debt (a "Note") and all of its interest under the 2002 M&T Deed of Trust to IMC, and it bore a signature purporting to be that of Christopher M. Zeis, Assistant Vice President of M&T. On October 29, 2007, M&T recorded a Certificate of Satisfaction, dated October 18, 2007, indicating that the debt owed by the Styles to M&T was "fully paid and discharged," and the lien created by the 2002 Deed of Trust was "released."[4]

Foreclosure and Exceptions to the Sale

Approximately four years later, the Styles defaulted on the IMC loan. On December 2, 2011, the appointed substitute trustees initiated an action to foreclose on the Property. IMC subsequently appointed Hunter C. Piel as substitute trustee, and on

[4] In its opening brief, M&T states that the Certificate of Satisfaction "was recorded in error as M&T had already assigned the M&T [Deed of Trust] to Independent Mortgage one month earlier."

May 30, 2013, Mr. Piel filed a "First Amended Residential Order to Docket," asking the clerk of the circuit court to substitute his name in place of the former substitute trustees.

On January 24, 2014, Quebec filed a Motion to Intervene and a Counterclaim to Quiet Title. On June 11, 2014, the circuit court granted Quebec's motion to intervene, but it denied the counterclaim.

By letter dated July 3, 2014, Mr. Piel sent notice to ARW, via certified mail, that a foreclosure sale of the Property would take place on July 16, 2014. Attached to that letter was a copy of an advertisement that was to appear in The Baltimore Sun, giving public notice of the sale.

On July 16, 2014, the Property was sold to the highest bidder, Red River Development Corporation, for the sum of $187,000. On July 22, 2014, the circuit court issued a Notice acknowledging that Mr. Piel had filed a Report of Sale and declaring that the sale would be ratified unless an exception was made on or before the August 21, 2014.

On August 26 and September 8, 2014, Quebec and ARW, respectively, filed exceptions to the foreclosure sale. In addition, Quebec filed a "Request for Extension of Time to File Exceptions," and ARW filed a "Conditional Motion for Leave to File Exceptions Out of Time." In its exceptions, ARW stated as follows:

> ARW Trust is both the legal and equitable owner of a deed of trust on the property in question. Its deed of trust has priority over that deed of trust currently being foreclosed. Moreover, ARW Trust has not received proper notice or service of the foreclosure sale and the sale is therefore a nullity. These exceptions are presented under Rule 14-305(d)(1) as ARW trust is a record lien holder in the property.
>
> In addition, the following exceptions are taken:

1) The mortgage that is proposed for foreclosure has been paid off. That sale is a nullity.

2) The mortgage has never been assigned by M&T Bank.

3) The signature of Christopher Zeis on the assignment document is not his.

4) The signature of Christopher Zeis on the assignment was likely robo-signed, and is therefore invalid.

5) The beneficial owners of the interest under the deed of trust never authorized or knew that Christopher Zeis was assigning the note, nor if it was even his signature on the assignment.

6) The purported lender foreclosing on the note came about through a fraudulent transaction. It was advised before it closed that there were prior owners and interests on the property. Those owners and interests were of record prior to the purported lender filing its documents of record.

7) The current holder of the beneficial interest and purported lender did attempt to make a new loan, but during the process of making it learned that the property had been sold some time in the past.

8) The current holder of the beneficial interest in the deed of trust, the purported lender and their agents knew that ARW Trust's deed, and deed of trust were put on record prior to its advancing any funds on any other financing instrument. They was informed of this and cautioned not to disperse funds.

9) The current holder of the beneficial interest and purported lender attempted to foreclose upon the mortgage. We believe this was its first attempt, which would show that the M&T mortgage was obviously paid off.

10) The attached Chicago Title letter shows prior attempts to transfer this property and cautions lenders of the prior interest. This same information was made available to Daniel Staeven of Dackman & Heyman, LLC Title Company. This was done prior to them advancing further funds that is involved in this foreclosure suit, and they apparently ignored this information then reverted to an attempt to purchase or have assigned to them the original M&T mortgage, which

had been paid off, released by M&T, and a notice filed in the land records to this effect.

11) The current lender is barred from foreclosing on a note that has been paid off.

12) A note that has been paid off cannot be subsequently assigned.

13) Christopher Zeis did not have M&T's authority to make any transfers and most likely did not sign the transfer.

14) ARW Trust has attached the pertinent documents to these Exceptions that are involved in these transactions.

In ARW's motion to file exceptions out of time, counsel for ARW argued as follows:

> ARW Trust's attorney herein was retained to process this matter on Saturday, September 6, 2014. It has investigated the facts of the case, prepared the necessary pleadings and filed them within the Court on Monday, September 8, 2014.
>
> There has been no action with respect to the disbursement of foreclosure proceeds and no parties are inconvenienced by the potential late filing of these exceptions. Accordingly, we asks that these exceptions be filed and considered in the ordinary course.
>
> It appears from the Court's docket sheet in this case that the borrowers have filed their Exceptions one business day earlier – Friday Sept 5, 2014 – pursuant to a granted extension.

On October 27, 2014, the circuit court denied Quebec's exceptions without a hearing, stating:

> Upon consideration of Quebec Court Trust's Exceptions to Plaintiff's Report of Sale, and Substitute Trustees' Response thereto, and pursuant to Maryland Rule 14-305, the Court DENIES Quebec Court Trust's Exceptions to Plaintiff's Report of Sale. *See Bates v. Cohn*, 417 Md. 309 (2010). This matter may proceed in the normal course.

On November 18, 2014, the court issued an Order denying ARW's exceptions and motion to extend time without a hearing, stating that, upon consideration of the parties' filings, "it is . . . hereby; **ORDERED**, that ARW Trust's Conditional Motion for Leave to File Exceptions Out of Time is **DENIED**: and it is further **ORDERED**, that ARW Trust's Exceptions are **DENIED**." No further explanation was provided.

On December 11, 2014, the court ratified the foreclosure sale, and the Final Order ratifying the sale was docketed December 15, 2014. On December 19, 2014, ARW filed a Notice of Appeal.[5]

ARW's Declaratory Action

On December 2, 2014, approximately five months after the sale and one week before the court ratified the foreclosure sale, ARW filed a "Complaint for Declaratory Judgment" in the circuit court. In its complaint, ARW asserted two counts against the Styles, one count against M&T, and one count against IMC. It alleged, among other things, that ARW recorded its mortgage before IMC, and after IMC "lost the race to record," it asserted priority rights based on asserted rights to M&T's 2002 deed of trust. ARW asserted that IMC's priority status was subordinate to ARW's because IMC never had "rights to assert under the M&T deed of trust" because (a) it had been satisfied, and (b) the assignment upon which the right was based was void because it was a forgery.

[5] On December 19, 2014, ARW also filed a motion for reconsideration. This motion was denied without explanation.

With respect to Count III against M&T, ARW requested that the court "grant a declaratory judgment voiding the assignment of rights from [M&T] to [IMC] as a forgery or as the result of fraud, and a judgment indicating that ARW Trust's deed of trust has rights that have priority over any deed of trust held by M&T." With respect to Count to IV, against IMC, ARW requested that the court

> grant a declaratory judgment against [IMC] in favor of [ARW] declaring [IMC's] claimed right in the M&T deed of trust to be null and void, and that ARW Trust has superior rights to any interest [IMC] has in the Quebec Court property, and that any actions [IMC] has taken contrary to that position are declared null and void.

In February 2015, IMC and M&T filed motions to dismiss. IMC argued that ARW's action was barred by the doctrine of *res judicata* because any "challenges to the right of Substitute Trustee to foreclose could have and should have been brought prior to the sale," and the "very relief that ARW Trust seeks in this action bears directly on IMC's right to foreclose on the Property and, if granted, would completely undermine this Court's prior decision in the Foreclosure Action." It asserted that ARW was "clearly dissatisfied with the denial of its exceptions to the sale," and it "filed the present Complaint seeking 'another bite at the apple' by attempting to re-litigate the same issues that it raised in the foreclosure action which have been decided by this Court and which are embodied in the Final Order of Ratification."

M&T argued that ARW's declaratory action, as it related to M&T, should be dismissed because M&T no longer had any interest in the mortgage or the Property by virtue of its assignment to IMC and because the loan was satisfied and a certificate was

recorded to that effect. It contended that, "because Count III of the Complaint fails to allege an actual case or controversy between Plaintiff and M&T, Plaintiff's declaratory judgment action against M&T fails and must be dismissed."

On May 31, 2015, ARW filed a motion to amend its complaint, seeking to add an additional count against IMC and M&T. In its proposed amendment, it alleged that either M&T committed fraud and conversion by "ignor[ing] Maryland law and creat[ing] false payoff documents so that it could receive some benefit," or IMC committed fraud and conversion by "ignor[ing] notices it received of ARW's monetary interest in the payoff amounts and creat[ing] paperwork on its own to obscure and attempt to cut off ARW's right to its payoff amounts." ARW asked the court for a "declaration that it is entitled to $175,000 or an amount determined after discovery and audit for the balance due on its mortgage/deed of trust which was first in line for payment."

On June 3, 2015, the circuit court held a hearing and granted appellees' motions to dismiss. At the hearing, counsel for IMC characterized ARW's action as a "classic example of a party that was notified of a foreclosure proceeding, sat on its rights, allowed the foreclosure sale to take place, belatedly attempted to file exceptions to the foreclosure sale raising the exact same issues it's raising in the present complaint." IMC contended that "cases suggest that when [a] subsequent lawsuit attempts to contradict or nullify the essential foundation of [a] foreclosure judgment," it is appropriate for the circuit court "to apply principles of res judicata and to deny that relief."

Counsel for ARW argued that, despite the prior ruling, ARW was permitted to raise its claim of fraud, stating:

> It looks like something went really wrong in the process of these documents being signed. It looks like a robo signing situation or somebody, you know, was doing somebody a favor or something like that. We should have a right to get to the bottom of that. That's all we're asking for.

Counsel for IMC noted that the issue had been raised in the exceptions and denied by the court. He stated that the proper time to raise the issue was prior to the sale, and

> the point . . . for res judicata . . . is that it's not that they didn't decide it, it's [that] they could have raised it and it could have been decided in the case. They sat on their rights and have now tried to get a second bite of the apple and . . . it's pretty clear that under the principals [sic] of res judicata they can't have a collateral attack on that prior judgment.

The circuit court disagreed with ARW that its claims of fraud did not have to be raised earlier and were "non-waivable." Accordingly, it granted IMC's motion to dismiss.

Counsel for M&T also argued in favor of its motion to dismiss. The thrust of M&T's motion was that "M&T ha[d] no interest in the [P]roperty," and therefore, "whether or not [IMC] has a first priority interest or a second priority interest or whether the assignment is null and void or whether it's fully effective, M&T doesn't care, they have no interest in the [P]roperty." It argued that, "absent an interest in the [P]roperty," it had "no live case or controversy with ARW."

ARW conceded that M&T no longer had an interest in the property, but it asserted that M&T did "have some potential liability if their vice president" committed fraud. When the court challenged ARW on its claim for fraud, questioning whether that was an "independent cause of action," counsel stated: "Well, I think it is, your Honor. I think its

conversion or whatever actions their vice president took to take our rights away and make sure we didn't get paid and somebody else got paid that's conversion . . . and M&T is responsible for that."

In response, M&T contended that, generally, the "laws of conversion really deal with conversion of personal property," not an intangible right. With respect to ARW's allegations of fraud, M&T argued that the claim would "fail at the threshold" because "ARW didn't rely on any representation made by M&T."

After considering these arguments, the circuit court granted M&T's motion to dismiss.[6] The court also denied, without elaboration, ARW's May 31, 2015, motion to amend its complaint.

ARW contends that the circuit court erred in dismissing its Complaint for Declaratory Judgment against M&T and IMC. For the reasons set forth below, we disagree.

[6] At that point, although ARW's claims against IMC and M&T were dismissed, ARW's claims against the Styles remained unresolved. Therefore, the court would not certify the judgments as final. The court gave counsel for ARW until July 1, 2015, to confer with his client about voluntarily dismissing the remaining claims against the Styles. It appears that no further action was taken until July 1, 2015, when ARW failed to appear at a scheduled pretrial conference. At that point, the court dismissed ARW's remaining claims with prejudice. Counsel for ARW subsequently filed a motion for reconsideration, which the circuit court granted, modifying its dismissal of ARW's claims against the Styles to be without prejudice, thereby permitting ARW to refile its claims against those defendants.

DISCUSSION

I.

M&T

As indicated, M&T moved to dismiss the complaint against it on the ground that there was a lack of justiciable controversy between M&T and ARW. It argued that M&T's loan had been paid and its deed of trust assigned to IMC, and therefore, it had no interest in the Property or the distribution of the proceeds of the sale.

ARW contends on appeal that the circuit court erred in accepting this argument and granting the motion to dismiss. It asserts that M&T's argument that "it no longer has any interest in the Property or in any dispute involving the Property . . . misses the point of ARW's Complaint, which is that M&T engaged in suspicious activity with its Co-Defendant IMC that served to undermine ARW's interest in the Property." It asserts that ARW "was directly injured by M&T's involvement in this matter, and the Complaint provides sufficient allegations to demonstrate that M&T may be found liable for this injury."

Standard of Review

This Court recently reiterated the standard of review of a circuit court's grant of a motion to dismiss:

> "A trial court may grant a motion to dismiss if, when assuming the truth of all well-pled facts and allegations in the complaint and any inferences that may be drawn, and viewing those facts in the light most favorable to the non-moving party, 'the allegations do not state a cause of action for which relief may be granted.'" *Latty v. St. Joseph's Soc'y of the Sacred Heart, Inc.*, 198 Md. App. 254, 262-63 (2011) (quoting *RRC Northeast, LLC v. BAA Md.,*

> *Inc.*, 413 Md. 638, 643 (2010)). The facts set forth in the complaint must be "pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *RRC*, 413 Md. at 644.
>
> "'We review the grant of a motion to dismiss de novo.'" *Unger v. 583 Berger*, 214 Md. App. 426, 432 (2013) (quoting *Reichs Ford Road Joint Venture v. State Roads Comm'n*, 388 Md. 500, 509 (2005)). *Accord Kumar v. Dhanda*, 198 Md. App. 337, 342 (2011) ("We review the court's decision to grant the motion to dismiss for legal correctness."), *aff'd*, 426 Md. 185 (2012). We will affirm the circuit court's judgment "'on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.'" *Monarc Constr., Inc. v. Aris Corp.*, 188 Md. App. 377, 385 (2009) (quoting *Pope v. Bd. of Sch. Comm'rs*, 106 Md. App. 578, 591 (1995)).

Advance Telecom Process, LLC v. DSFederal, Inc., 224 Md. App. 164, 173-74 (2015).

To be entitled to declaratory relief, there must be "'a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *Benning v. Allstate Ins. Co.*, 90 Md. App. 592, 602 (1992) (quoting *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941)). A declaratory judgment is appropriate only when "there are actual, concrete, and adverse claims or interests.'" *Krause Marine Towing Corp. v. Ass'n of Md. Pilots*, 205 Md. App. 194, 226 (2012) (quoting *DeWolfe v. Richmond*, 434 Md. 403, 433 (2012)).

Here, we agree with M&T that the complaint ARW filed against M&T did not allege substantial controversy between parties having adverse legal interests. As M&T argues, Count III of the Complaint, the only count asserting a claim against it, "seeks a judicial declaration determining the interests of the parties relative to the Property."[7] Because

[7] Court III requests that the court "grant a declaratory voiding the assignment of rights from [M&T] to [IMC] as a forgery or as the result of fraud, and a (continued . . .)

M&T's loan was paid off, and its deed of trust was assigned to IMC, however, M&T has no interest in the Property. It has no interest with respect to who has priority in the proceeds of the sale of the Property, the issue presented in the complaint. Accordingly, the circuit court properly granted M&T's motion to dismiss Count III of the complaint.

II.

IMC

The circuit court granted IMC's motion to dismiss the Complaint for Declaratory Judgment against IMC on the ground of *res judicata*. ARW contends that this ruling was error. As indicated, we generally "'review the grant of a motion to dismiss de novo.'" *Advance Telecom*, 224 Md. App. at 173 (quoting *Unger v. Berger*, 214 Md. App. 426, 432 (2013)).

With respect to IMC's argument that ARW's declaratory action was barred by *res judicata*, however, the court considered evidence of actions taken in the earlier foreclosure action, matters outside the complaint. Under these circumstances, the motion to dismiss was converted into a motion for summary judgment. *See* Md. Rule 2-322 ("If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment."); *North Am. Specialty Ins. Co. v. Boston Med. Group*, 170 Md. App. 128, 136 (2006) (defendant's motion to dismiss based on *res*

(. . . continued) judgment indicating the [ARW's] deed of trust has rights that have priority over any deed of trust held by [M&T], or passing through those entities."

judicata was converted into a motion for summary judgment when it attached, and the court considered, "exhibits from the first case").

The determination "'[w]hether summary judgment was granted properly is a question of law. The standard of review is *de novo* and we are concerned with whether the trial court was legally correct.'" 170 Md. App. at 136 (quoting *Lightolier, A Div. of Genlyte Thomas Group, LLC v. Hoon*, 387 Md. 539, 551 (2005)). Accordingly, we review whether the court was legally correct in granting summary judgment in favor of IMC.

ARW asserts that the circuit court erred in accepting the argument that *res judicata barred* the complaint because:

> "(1) ARW's complaint does not simply attack the validity of the sale, but instead seeks a declaratory judgment as to ARW's interest in the Property that survives the foreclosure sale of the Property and affords ARW an interest in the proceeds of the sale of the property; and (2) the trial court's application of [r]es [j]udicata in the instant case would be contrary to the policy underlying the principle of [r]es [j]udicata."

ARW contends that its complaint contained "ample allegations to support the assertion that ARW holds a first-priority lien on the Property, and is first in line to collect the proceeds of the foreclosure sale," but "ARW has not received payment of the proceeds of the foreclosure sale." It argues that the complaint "does not seek to re-litigate ARW's exceptions to the foreclosure sale," but rather, it "seeks to preserve ARW's interest in the

proceeds of the sale."[8] It asserts that this is a completely separate issue, and *res judicata* does not bar the complaint.

IMC argues that the circuit court "correctly dismissed Count IV of the Complaint in the declaratory judgment case under principles of *Res Judicata*." It contends that, in the context of a foreclosure sale, the effect of a final ratification of sale is "'*res judicata* as to the validity of such sale, except in the case of fraud or illegality,'" and "a ratified sale cannot be attacked in a collateral proceeding." It asserts that this rule favors finality of judgments, which is outweighed only by a showing of "extrinsic" fraud, which prevents a fair trial, as opposed to "intrinsic fraud," i.e., forged documents or other frauds that are "intrinsic" to the trial of the case.

IMC argues that the complaint sought "'another bite at the apple' by attempting to re-litigate the same issues that it raised in the foreclosure action which were decided by the [c]ircuit [c]ourt." It asserts that the "very relief that ARW Trust sought in the Declaratory Judgment Case bore directly on IMC's right to foreclose on the Property and, if granted, would have completely undermine[d] the prior decision in the Foreclosure Case."

[8] ARW also asserts, without any supporting authority, that the court erred in granting the motion to dismiss "without opinion or discussion." To be sure, the general rule is that, "when a declaratory judgment action is brought **and the controversy is appropriate for resolution by declaratory judgment**, 'the court must enter a declaratory judgment, defining the rights and obligations of the parties or the status of the thing in controversy,' and that judgment must be in writing and in a separate document." *Lovell Land, Inc. v. State Hwy. Admin.*, 408 Md. 242, 256 (2009) (emphasis added). Here, the rule does not apply because the court determined that the controversy was not appropriate for resolution by declaratory judgment.

In *Jones v. Rosenberg*, 178 Md. App. 54, 72, *cert. denied*, 405 Md. 64 (2008), this Court explained that final ratification of sale "is *res judicata* as to the validity of such sale, except in the case of fraud or illegality," in which case, a motion pursuant to Maryland Rule 2-535 could be filed.[9] Generally, the regularity of a final ratification of sale, cannot be attacked in collateral proceedings. *Jones*, 178 Md. App. at 72.

In *Manigan v. Burson*, 160 Md. App. 114, 119 (2004), this Court set forth the methods by which a party may challenge a foreclosure action. First, "'plaintiffs may move prior to sale to enjoin foreclosure.'" *Id.* (quoting *Billingsley v. Lawson*, 43 Md. App. 713,

[9] Maryland Rule 2-535 provides:

> (a) **Generally.** On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.
>
> (b) **Fraud, Mistake, Irregularity.** On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.
>
> (c) **Newly-Discovered Evidence.** On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533.
>
> (d) **Clerical Mistakes.** Clerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed by the appellate court, and thereafter with leave of the appellate court.

724 (1979)). Second, "'after the sale but before ratification, plaintiffs have the opportunity to file objections to the sale.'" *Id.* (quoting *Billingsley*, 43 Md. App. at 724).

Here, the circuit court agreed with IMC that the complaint constituted a collateral challenge to foreclosure, and therefore, it was barred by the doctrine of *res judicata*. The elements of a claim for *res judicata* are:

> (1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and, (3) that there has been a final judgment on the merits.

Anne Arundel County Bd. of Educ. v. Norville, 390 Md. 93, 107 (2005).

ARW contends that the second element is not met here. It asserts that, although it raised the same factual allegations in his exceptions to the foreclosure action, to attack the validity of the foreclosure sale, its complaint sought to "preserve ARW's interest in the proceeds of the sale," which is "a completely separate issue."

In *Fairfax Savings, F.S.B. v. Kris Jen Limited Partnership*, 338 Md. 1 (1995), the Court of Appeals addressed a similar argument. In that case, Kris Jen borrowed $3,200,000 from Fairfax Savings, and the loan was secured by a deed of trust on certain property owned by Kris Jen. *Id.* at 4. After Kris Jen defaulted, Fairfax instituted a foreclosure action. *Id.* at 5. Although Kris Jen filed exceptions to the report of sale, he withdrew them, and the court ratified the sale. *Id.* at 5, 17. Kris Jen subsequently filed a civil suit alleging a number of claims, including "allegations that there was no foreclosure-triggering default." *Id* at 6-8, 22-23, 31. The Court noted that "Kris Jen had the opportunity to litigate to judgment in

the foreclosure action its defense that there was no foreclosure-triggering default." *Id* at 31. It concluded:

> [A] foreclosure-triggering default is a condition precedent to a Maryland mortgage foreclosure. Ordinarily the existence of that essential will be demonstrated by the statement of mortgage debt and by the mortgage that are required to accompany the order to docket the summary proceeding. Allegations that there was no foreclosure-triggering default negate, contradict, and in that sense nullify an essential foundation for the foreclosure judgment. Those allegations were precluded by the foreclosure judgment, and the circuit court correctly ruled that they should be culled from Plaintiffs' second amended complaint.

Id. at 31 (citations omitted).

Here, ARW, despite its attempt to repackage its claims on appeal, seeks to relitigate the propriety of M&T's assignment of its deed of trust to IMC, an issue raised in its exceptions and finally resolved by the ratification of the foreclosure sale. ARW's Complaint for Declaratory Judgment constitutes a collateral attack on the foreclosure that the doctrine of *res judicata* bars. Accordingly, the circuit court did not err in dismissing ARW's complaint on ground of *res judicata*.

APPEAL OF JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IN CASE NO. 1950 DISMISSED. COSTS TO BE PAID BY APPELLANTS.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IN CASE NO. 871 AFFIRMED. COSTS TO BE PAID BY APPELLANTS.