Circuit Court for Baltimore County
Case No. 03-C-10-010763

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1009

September Term, 2016

SURESH K. HATTE

v.

BALTIMORE COUNTY, MARYLAND, ET AL.

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 11, 2017

*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.

In 2007, Suresh K. Hatte, appellant, participated in a tax sale auction held by Baltimore County, appellee ("the county"). Hatte was the highest bidder on a parcel of residential property and, after paying the delinquent property taxes and a bid premium, Hatte was provided with a tax sale certificate. In 2009, Hatte obtained a judgment foreclosing the property owners' right of redemption, and, as a result, was vested with "leasehold title" to the property.[1] When Hatte thereafter failed to pay the balance of his bid and the outstanding taxes, interest and penalties that had accrued on the property, as required by statute,[2] the county filed suit, in the Circuit Court for Baltimore County, and obtained a monetary judgment against Hatte in the amount of $124,143.47. Hatte filed a motion to alter, amend or revise that judgment. The court denied the motion, and Hatte appealed. For the following reasons, we shall affirm.

"An appeal from the denial of a motion asking the court to exercise its revisory power is governed by the abuse of discretion standard." *Central Truck Center, Inc. v. Central GMC, Inc.*, 194 Md. App. 375, 397 (2010) (citation omitted). "[T]o be reversed

[1] Pursuant to Md. Code (1985, 2012 Repl. Vol.), Tax–Property Article ("TP"), § 14-847, a judgment of foreclosure "shall direct the supervisor [of assessments] to enroll the holder of the certificate of sale in fee simple or in leasehold, as appropriate, as the owner of the property." It is not clear from the record why Hatte was vested with leasehold title as opposed to fee simple title. *But see* TP § 14-816 (providing that "when any property subject to sale under this subtitle is subject to a ground rent or lease for a term of 99 years renewable forever, the [tax] collector shall sell the leasehold interest only, with the improvements erected on the leasehold interest, if any; provided, however, that any property sold, subject to a ground rent or lease under this section, to a bona fide purchaser for value or the government of the jurisdiction conducting the sale, upon foreclosure of the rights of redemption, is not subject to any claim for rent unpaid, due, or accruing prior to the date of the judgment of foreclosure.")

[2] *See* TP § 14-844(d).

'[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Id.* at 398 (citations omitted).

On appeal, Hatte claims that the court erred in denying his motion because (1) the court failed to consider the former owner's attempts to redeem the property; (2) he was not provided an opportunity to demonstrate good cause to strike the foreclosure judgment pursuant to § 14-847(d) of the Tax-Property Article ("TP"); and (3) the monetary judgment against him for the bid surplus and outstanding taxes results in unjust enrichment and violates public policy.

We conclude that the trial court did not abuse its discretion by not taking into consideration any desire or effort by the pre-judgment owner to reclaim the property. Pursuant to TP § 14-844(d), upon entry of the judgment of foreclosure, Hatte became "immediately liable for the payment of all taxes due and payable after the judgment" and was required to pay the county "any surplus bid and all taxes together with interest and penalties on the taxes due on the property." As the court properly noted, the judgment of foreclosure Hatte obtained extinguished any interest the prejudgment owner had in the property, and any effort the previous owner may have made to reclaim the property after that judgment was entered had no legal bearing on Hatte's contractual and statutory obligations to the county.

We further conclude that Hatte's claim that the court erred in denying his motion to strike the judgment of foreclosure pursuant to TP § 14-847(d) is waived as Hatte effectively withdrew his motion. In a written order dated March 24, 2016, the court granted a hearing

specifically "limited to the issue of whether or not good cause exists" to strike the judgment of foreclosure. The order noted that the hearing was conditioned upon Hatte posting a surety bond in an amount sufficient to satisfy the open property taxes, including interest and penalties, and clearly noted that, if Hatte were to prevail in his motion to strike for good cause, he would "still be obligated to the [county] for all past due property taxes." Hatte posted the required bond and proceeded with the hearing on his motion to strike the judgment of foreclosure.

At the hearing on June 14, 2016, the trial court determined that there was good cause to strike the judgment and was prepared to issue an order to that effect, which would have relieved Hatte of his obligation to pay the bid surplus of approximately $93,000. But, after the attorney for the county outlined the effect of an order striking the foreclosure judgment, Hatte expressly rejected that relief, apparently because he believed that he was also entitled to a refund of the property taxes that he had paid:

> [ASSISTANT COUNTY ATTORNEY]: And so the bid premium, which the County holds, the taxes which the County holds, that is money that the County will transfer to the General Fund. The relief that Mr. Hatte will be given is that he is no longer on the hook for this gargantuan sum, his surplus.
>
> [THE COURT]: I understand that. I don't know that he understands that, though.
>
> And do you [Mr. Hatte] - - do you not want that relief? Tell me now, because I don't - - I don't have to grant this motion at all.
>
> MR. HATTE: No, ma'am. Because what the understanding of the case law is, the case - - once they would show - - the cases show the case has to be invalidated….

(Emphasis added). The court then asked the attorney for the county to "have a conversation" with Hatte, to "make sure that this is what Mr. Hatte wants to do before [the

court] give[s] him what he's asking for[.]" The attorney for the county then explained, on the record, the effect that the proposed ruling granting Hatte's motion to strike the judgment would have, and Hatte again expressly rejected the relief:

> [ASSISTANT COUNTY ATTORNEY]: Mr. Hatte, what I'd like to explain on the record is that the judgment can be affirmed in full or it can be affirmed in part today. You can either be released from your obligation to pay upwards of $90,000 to the County, or you can have that obligation restored. But there is no outcome today where the judgment that was - - that was put forward by this Court is going to be reversed in full.
>
> I strongly advise, granted that - - not as your attorney, but as adverse counsel, that you - - that you maintain the posture and you accept the release of the bulk of what you owe.
>
> THE COURT: It's up to you, sir. I think the County's been very generous with you. But again - -
>
> MR. HATTE: I don't think so.
>
> THE COURT: - - these are your rights.
>
> MR. HATTE: I have been harmed.
>
> THE COURT: And I don't - -
>
> MR. HATTE: I got the letter from the County here on June 9th.
>
> THE COURT: All right.
>
> MR. HATTE: You are supposed to redeem.
>
> THE COURT: Then all we'll do today - -
>
> MR. HATTE: And they are being paid again. I don't accept at all.

(Emphasis added).

As the trial court made clear, the purpose of the hearing was limited to the issue of whether or not there was good cause to strike judgment of foreclosure, and not to relitigate

Hatte's obligation to pay past due taxes.[3] The court was correct in ruling that, in rejecting the proposed order striking the judgment of foreclosure and relieving Hatte of his obligation to pay the bid surplus, Hatte effectively withdrew his motion to strike the judgment of foreclosure. Consequently, he may not complain on appeal that the court erred in not granting the motion. *See Brockington v. Grimstead*, 176 Md. App. 327, 351 (2007) (stating that "a voluntary act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review.") (citations omitted).

Finally, Hatte's claims that the monetary judgment resulted in unjust enrichment and that it violated public policy are not properly before this Court for review as they were not raised below. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" *See also Chertkof v. Dep't of Natural Resources,* 43 Md. App. 10, 16 (1979) ("the appellant [is] precluded from raising a theory in this appeal upon which it now relies for the first time.") In any event, these claims are without merit. *See Kona Properties v. W.D.B. Corp*, 224 Md. App. 517, 560-562 (2015) (rejecting similar arguments made by

[3] At the evidentiary hearing, in October 2015, on the county's complaint for payment of the bid surplus and accrued taxes, counsel for Hatte conceded that Hatte was responsible for the open property taxes and transfer taxes, and argued only that Hatte should not have to pay the bid surplus.

defendants/tax sale certificate holders in a suit by former property owners to compel payment of bid surplus.)

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.