

Circuit Court for Anne Arundel County

Case No. 02-C-14-189337

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2166

September Term, 2016

KEVIN SCOTT JONES, ET AL.

v.

JOHN DRISCOLL, III, ET AL.

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

JJ.

Opinion by Wright, J.

Filed: December 18, 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.

On July 23, 2014, John Driscoll, III, and three other individuals, acting as substitute trustees (hereinafter “Substitute Trustees”), appellees, filed in the Circuit Court for Anne Arundel County an Order to Docket Foreclosure/Complaint to Foreclose (hereinafter the “Complaint to Foreclose”) against Kevin Jones, appellant, regarding real property located at 8534 Skip Jack Place in Pasadena, Maryland (hereinafter the “Property”). In November of 2014, David Cahn, appellant, purchased the Property at auction. In June of 2015, the court issued the first of four separate orders, all of which indicated that one of Substitute Trustees’ filings was deficient. Following each order, the Substitute Trustees addressed and rectified the deficiencies. The foreclosure sale was ultimately ratified in July of 2016.

In October of 2016, Cahn filed a Motion for Equitable Abatement of Purchase Price, in which he asked, among other things, that the court order that all interest on the purchase price be abated from June of 2015 until July of 2016. The circuit court granted Cahn’s request, but the court limited the abatement to only two specific time periods from June 12, 2015, to August 27, 2015, and from March 24, 2016, to April 19, 2016. In this appeal, Cahn presents the following question for our review, which we rephrase:¹

Did the circuit court err in refusing to abate the interest on the purchase price for the entire period between June of 2015 and July of 2016?

¹ Cahn phrased the question as:

Did the Circuit Court for Anne Arundel County err by not abating the interest due the Appellee and should the case be remanded to the Circuit Court with appropriate instructions?

For reasons to follow, we answer Cahn’s question in the negative and affirm the judgment of the circuit court.

BACKGROUND

As noted, this case arises from a foreclosure action instituted by Substitute Trustees regarding the Property, which Cahn eventually purchased *via* a foreclosure sale, on July 23, 2014. In initiating that action, Substitute Trustees filed, the Complaint to Foreclose. On June 12, 2015, the circuit court issued an order stating that the Complaint was deficient, namely, that Substitute Trustees’ Notice of Intent to Foreclose was not in the proper form and that Substitute Trustees had failed to properly serve a copy of the Complaint on the mortgagor or grantor, as required by Md. Code (1974, 2010 Repl. Vol.), of the Real Property Article (“RP”), § 7-105.1. On July 7, 2015, Substitute Trustees filed a Line in Response to Deficiency, which included a complete Notice of Intent to Foreclose.

On August 12, 2015, the circuit court issued another order stating that the Complaint was deficient and that Substitute Trustees had still failed to properly serve a copy of the Complaint on the mortgagor or grantor. On August 27, 2015, Substitute Trustees filed a Line in Response to Deficiency, which included a copy of an affidavit of service that Substitute Trustees claimed had been filed with the court on August 5, 2015.

On September 21, 2015, the circuit court issued a third deficiency order, which stated that Substitute Trustees had failed to send, *via* prepaid certified mail/return receipt and first-class mail, the Notice of Intent to Foreclose to mortgagor or grantor and record owner, as required by RP § 7-105.1. On October 20, 2015, Substitute Trustees filed a

Motion in Response to Notice of Deficiencies, claiming that Substitute Trustees' original Complaint, which was filed in 2014, had included the documents that the court was claiming were missing. As part of that motion, Substitute Trustees included a copy of the requested documentation that had been previously filed. On November 16, 2015, the court issued an order stating that the Complaint was complete and that the foreclosure proceedings could continue in the normal course.

On March 15, 2016, Substitute Trustees filed a Motion for Ratification of Sale. On March 24, 2016, the circuit court issued an order stating that final ratification could not be granted because Substitute Trustees had failed to include, as part of their Motion for Ratification of Sale, an affidavit of purchaser, as required by Md. Rule 14-305. On April 19, 2016, Substitute Trustees filed a Deficiency Response, which included the requisite documentation. On May 10, 2016, the court issued an order stating that the deficiency had been rectified, and, on August 11, 2016, the court ratified the sale of the Property.

Cahn thereafter filed a Motion for Equitable Abatement of Purchase Price, in which he asked the circuit court to abate any interest he owed on his bid price from June 12, 2015, when the first deficiency order had been issued, through August 11, 2016, when the court ratified the sale. The court ultimately granted Cahn's motion in part and denied it in part.² More specifically, the court ordered that interest on the unpaid purchase price be abated from June 12, 2015, to August 27, 2015, and from March 24, 2016, to

² The circuit court did not hold a hearing on Cahn's motion, as he never requested one.

April 19, 2016. The court denied Cahn’s request for abatement regarding any other time periods.

DISCUSSION

Cahn argues that the circuit court erred in failing to abate the interest on the unpaid purchase price of the Property for the entire period between June 12, 2015, and August 11, 2016. We disagree.

Generally, the purchaser of property at a judicial sale is required to pay interest on any unpaid balance for the period between the purchase date and actual settlement.

Thomas v. Dore, 183 Md. App. 388, 393-96 (2008). That requirement may be excused when settlement is delayed by: 1) neglect on the part of a trustee; 1) appellate review; 3) or, conduct by a third-party that is beyond the control of the purchaser. *Id.* at 396. In those instances, the purchaser may seek equitable relief from the court in the form of abatement of interest and other fees that may have accumulated during the period of delay.

The decision whether to abate the payment of interest by a purchaser is entrusted to the discretion of the circuit court. *Zorzit v. 915 W. 36th Street, LLC*, 197 Md. App. 91, 96-97 (2011). And, we will not reverse a court’s decision for abuse of discretion simply because we may have reached a different conclusion than that of the court. *North v. North*, 102 Md. App. 1, 14 (1994). “Rather, an abuse of discretion might occur when the trial court’s decision ‘either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.’” *Zorzit*, 197 Md. App. at 97 (citations omitted).

Here, we hold that the circuit court did not abuse its discretion in limiting Cahn's abatement period. The first abatement period – from June 12, 2015, to August 27, 2015 – included the entire period of delay resulting from Substitute Trustees twice failing to include the requisite paperwork in the Complaint, which the court indicated by way of its orders entered on June 12, 2015, and August 12, 2015, and which Substitute Trustees rectified on August 27, 2015. The second abatement period – from March 24, 2016, to April 19, 2016 – included the entire period of delay resulting from Substitute Trustees' failure to include the requisite paperwork in their Motion for Ratification of Sale, which was a wholly separate filing from the Complaint. There is no indication that Substitute Trustees' negligence in failing to include the requisite paperwork in their filings caused any delays beyond those recognized by the court in its judgment, and there is no indication or allegation that Substitute Trustees were negligent in any manner other than that which was reflected in the court's deficiency orders.

The court's refusal to include the delay resulting from the third deficiency order, which was entered on September 21, 2015, appears justified, as the record shows that that order was issued in error and that Substitute Trustees had in fact included the necessary paperwork. In short, Substitute Trustees made two separate errors in two separate filings that caused two separate delays, and the circuit court abated the interest in favor of Cahn for the entirety of those two periods. Accordingly, the court did not abuse its discretion.

**JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**