UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2022

September Term, 2014

M&T BANK

v.

PHILLIP SARRIS

Kehoe,
Berger,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: December 17, 2015

M&T Bank appeals from a judgment of the Circuit Court for Baltimore County denying its petition claiming the surplus proceeds of a foreclosure sale of property owned by Phillip Sarris. M&T asserts that the circuit court abused its discretion when it denied its petition; Mr. Sarris disagrees. We conclude that the circuit court erred when it denied M&T's petition.

Background

Mr. Sarris was the owner of a residential property located in Freeland, Maryland. The property was encumbered by first and second deeds of trust securing loans from M&T. The loans were made to Mr. Sarris and his former spouse, Debra Sarris. They defaulted on both loans.[1] In March 2013, substitute trustees acting on behalf of M&T filed a proceeding to foreclose the first deed of trust. Mr. Sarris requested mediation, pursuant to Md. Code Ann. § 7-105.1 of the Real Property Article,[2] and the court stayed proceedings pending the outcome of mediation. The mediation process was unsuccessful. Mr. Sarris contends that mediation was unsuccessful because M&T did not participate in good faith. On January 17, 2014, the Office of Administrative Hearings reported to the circuit court that mediation had not been successful, and the court authorized the substitute trustees to proceed with the sale.

[1]At some point, Mr. and Ms. Sarris were divorced and Ms. Sarris transferred her interest in the property to Mr. Sarris.

[2]The subsections applicable to postfiling mediation are Real Property §§ 7-105.1(j) through (m).

On January 29, 2014, Mr. Sarris filed a motion to stay the foreclosure sale and dismiss the action pursuant to Md. Rule 14-211.[3] Among other grounds, Mr. Sarris

[3]The rule states in pertinent part (emphasis added):

Rule 14-211. Stay of the sale; dismissal of action.

(a) **Motion to Stay and Dismiss**.

(1) *Who May File*. The borrower, a record owner, a party to the lien instrument, a person who claims under the borrower a right to or interest in the property that is subordinate to the lien being foreclosed, or a person who claims an equitable interest in the property may file in the action a motion to stay the sale of the property and dismiss the foreclosure action.

* * * *

(3) *Contents*. A motion to stay and dismiss shall:

(A) be under oath or supported by affidavit;

(B) state with particularity the factual and legal basis of each defense that the moving party has to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action;

(C) be accompanied by any supporting documents or other material in the possession or control of the moving party and any request for the discovery of any specific supporting documents in the possession or control of the plaintiff or the secured party; . . . .

(b) Initial Determination by Court.

(1) Denial of Motion. The court shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion:

(A) was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule;

(B) does not substantially comply with the requirements of this Rule; or

(C) does not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action.

* * * *

asserted that "M&T Bank has not negotiated in good faith regarding the loan modification[.]" On January 31, 2014, the circuit court denied the motion "pursuant to Maryland Rule 14-211(b)(1)(A)&(C)." In other words, the court concluded that the motion was not timely filed (subsection (b)(1)(A)), and that the motion "[did] not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action." (subsection (b)(1)(C)). Mr. Sarris did not appeal the court's order.[4]

The substitute trustees conducted the sale on February 5, 2014. M&T was the successful bidder and its bid amount, after satisfying the first lien and expenses of sale, resulted in a substantial surplus—in excess of $80,000.[5] On March 11, M&T filed a petition and claim for surplus proceeds pursuant to Maryland Rule 14-216.[6] On April 7, 2014, the circuit court granted the surplus petition. On April 10, Mr. Sarris filed an

[4]*See Fishman v. Murphy*, 433 Md. 534, 540 n.2 (2013) (A party "ha[s] the right to appeal the Circuit Court's interlocutory order denying the Motion to Stay and Dismiss because the motion was made under Rule 14-211 and contemplated injunctive relief as a remedy.").

[5]As of oral argument, the exact figure is unavailable. There appears to be no dispute that the amount due under the second deed of trust is greater than the surplus.

[6]In pertinent part, Md. Rule 14-216 provides:

> **(a) Distribution of Surplus.** At any time after a sale of property and before final ratification of the auditor's account, any person claiming an interest in the property or in the proceeds of the sale of the property may file an application for the payment of that person's claim from the surplus proceeds of the sale. The court shall order distribution of the surplus equitably among the claimants.

answer to the surplus petition. He presented four reasons why the surplus petition should be denied:

(1) Ms. Sarris had filed for bankruptcy and the case should automatically be stayed;

(2) the sale had not been finally ratified;

(3) M&T was not entitled to any portions of the surplus proceeds without an evidentiary hearing; and

(4) M&T was not entitled to the surplus proceeds because he "has an actionable claim to said proceeds based on the bad faith actions of M&T Bank, as to both the first and second mortgages in the above foreclosure sale[.]"

Upon receipt of Mr. Sarris's answer, the court vacated its order. No further action was taken in this case until the automatic stay resulting from Ms. Sarris's bankruptcy proceeding was lifted, which apparently took place in August or early September, 2014. Once the stay was lifted, the court ratified the foreclosure sale on September 5[7] and scheduled a 15 minute hearing on the surplus petition for October 14, 2014, at 9 am.

M&T's counsel did not appear. (She thought the hearing was scheduled for 9:30 and arrived in the court room a few minutes after the hearing was over.) The circuit court ascertained from Mr. Sarris's counsel that: (1) the substance of his answer to the petition had not changed since it had been filed; (2) if the court denied the surplus petition, Mr.

[7]Mr. Sarris did not file a notice of appeal after the ratification.

Sarris intended to file an interpleader action to determine rights to the proceeds; and (3) the hearing had been requested by Mr. Sarris, and not M&T.[8] The court indicated its intent to rule on the papers and, on October 15, signed an order that read in pertinent part that "[w]herein counsel for Defendant Sarris appeared and submitted on the papers, and counsel for the Plaintiff failed to appear," the surplus petition was denied.

On October 24, M&T filed a motion for reconsideration and to alter or amend judgment, which the court denied without a hearing.

Analysis

The circuit court's authority to resolve claims to the surplus proceeds from the Sarris foreclosure sale derives from Md. Rule 14-216(a), which reads in pertinent part:

> (a) *Distribution of Surplus*. At any time after a sale of property and before final ratification of the auditor's account, any person claiming an interest in the property or in the proceeds of the sale of the property may file an application for the payment of that person's claim from the surplus proceeds of the sale. The court shall order distribution of the surplus equitably among the claimants.

The gravamen of the rule, namely, that courts should resolve conflicting claims to the surplus on an equitable basis, reflects long-standing Maryland law. *See, e.g.*, *William H. Metcalfe & Sons, Inc. v. Canyon Defined Benefit Trust*, 318 Md. 565, 569 (1990) ("Courts of this State assess competing claims to proceeds of the sale of mortgaged

[8]The court also noted for the record that M&T's counsel had telephoned the clerk's office earlier in the morning. The substance of that conversation is not clear from the record.

property based on standard principles of equity."); *Hamilton v. Schwehr*, 34 Md. 107, 118-20 (1871) (applying equitable principles to resolve a dispute between junior lienholders as to surplus proceeds).

When courts exercise equitable authority, they do so in a discretionary capacity. *Schisler v. State*, 394 Md. 519, 534 (2006). Although the scope of a court's discretionary authority is very wide, it is not unlimited. For example, "even with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards." *Id.* at 536 (citations omitted); *see also Noor v. Centreville Bank*, 193 Md. App. 160, 175 (2010) ("A trial court has no discretion to misapply equitable doctrines or to refuse to apply one when the facts and circumstances of the case clearly warrant its application.").

The "correct legal standards" applicable in this case are those that govern the rights of junior lien holders to excess sale proceeds in foreclosure actions. Maryland law is very clear that such proceeds are available to junior lien holders in order of priority. *Metcalfe*, 318 Md. at 568 ("It is a settled proposition of the law that the order of priority for payment of surplus proceeds from a foreclosure sale is based on the general rule 'first in time is first in right.' That is, the party whose claim attaches first to the subject property will be first reimbursed for the amount of that claim." (footnote omitted)); *McCann v. McGinnis*, 257 Md. 499, 512 (1970) ("Any money remaining after the satisfaction of the expenses of sale and the first lien would accrue to the underlying lien

holders in order of priority and, if an excess still remained, to the owners of the land."). A property owner is entitled to surplus proceeds only after all the liens of secured creditors are satisfied. *Full Gospel Ministries v. Investors Financial Services*, 418 Md. 86, 97 (2011).

Neither Mr. Sarris nor anyone else has asserted: (1) that there is a junior lien holder whose rights to the proceeds take priority over M&T's; or (2) that M&T's exercise of its right to the surplus will unfairly prejudice any third party.[9] Under these circumstances, there is no authority in Maryland for the proposition that the court had the

[9]To be sure, Mr. Sarris contends that M&T's exercise of its right will unfairly prejudice him but the law does not support his position. For example, he claims that M&T's right to the surplus proceeds ceased to exist once its purchase of the property was ratified. He states: "M&T Bank, argues that it had some special or unique status as the holder of the second mortgage; however, that status no longer existed upon ratification of the sale and the transfer of the Property to M&T Bank [as] Purchaser." There are several problems with this contention.

First, his appellate contention is diametrically opposed to his position before the circuit court, which was that M&T was barred from pursuing its claim to the surplus proceeds because the sale had not been ratified. Mr. Sarris cannot have it both ways.

Second, Mr. Sarris is wrong as to the timing. Md. Rule 14-216(a) allows a party to file a petition for all or part of the proceeds "[a]t any time after a sale of property and before final ratification of the auditor's account[.]" (Emphasis added.) A foreclosure action is referred to the court auditor after ratification of the sale. Md. Rule 14-305(f).

Finally, and most fundamentally, Mr. Sarris misconceives the legal and equitable relationship of the surplus proceeds to the foreclosed property. The surplus "represents what remains of the equity of redemption and is, as such, a substitute res. The surplus stands in the place of the foreclosed real estate, and the liens and interests that previously attached to the real estate now attach to the surplus." RESTATEMENT (THIRD) OF PROPERTY (MORTGAGES) § 7.4 (1997) Comment (a).

authority to deny M&T's claim to the surplus proceeds.[10] To be sure, it would have been preferable for M&T's counsel to have presented a more detailed explanation of her client's right to the surplus to the court prior to the October 14, 2014, hearing or, failing that, to have appeared at the hearing and made M&T's case to the court, but counsel's failings do not change the law. Moreover, M&T presented these arguments to the court in its motion for reconsideration. We reverse the court's judgment and remand the case for the court to grant M&T's petition.[11]

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS REVERSED AND THE CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.

[10]Citing *Simard v. White*, 383 Md. 257, 316 (2004), Mr. Sarris asserts that the circuit court's authority to protect the interests of property owners and other interest holders in foreclosure proceedings permitted the court to deny M&T's claim. We do not read *Simard* nearly as broadly as does Mr. Sarris. As we explained in the main text, junior lien holders have claims to surplus proceeds that are superior to those of the property owner. *Simard* does not suggest otherwise.

[11]Our conclusion makes it unnecessary for us to address M&T's contention that res judicata bars Mr. Sarris from further litigating his claim that M&T was guilty of bad faith in the mediation process.