UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2058

September Term, 2014

BEAR CREEK SLIP HOLDERS' ASSOCIATION, INC.

v.

RUSSELL S. DRAZIN, et al. SUBSTITUTE TRUSTEES

Krauser, C.J.,
Arthur,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: December 17, 2015

Appellant, Bear Creek Slip Holders' Association, Inc. ("Bear Creek"), a Maryland stock corporation, filed an untimely notice of exceptions to a foreclosure sale that had occurred two weeks before it was even incorporated. The Circuit Court for Baltimore County overruled the exceptions and ratified and confirmed the sale. Bear Creek filed a motion for reconsideration, which the court denied.

In this timely appeal, Bear Creek raises two questions, which we rephrase into one: Did the circuit court err or abuse its discretion in overruling Bear Creek's exceptions to the foreclosure sale?[1]

For the reasons that follow, we answer this question in the negative and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This dispute centers on a marina in Dundalk that went into foreclosure. DiGiulian Boulevard Limited Partnership ("DiGiulian") was the grantor under the deed of trust for the marina and the borrower under the promissory note secured by that deed of trust. Appellees Russell S. Drazin and Jason A. Pardo are the substitute trustees under the deed of trust.

Drazin and Pardo filed the foreclosure case on May 30, 2014. They were the sole plaintiffs, and DiGiulian was the sole defendant.

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[1] Bear Creek phrased its questions as follows:

I. Whether, the court erred by denying exceptions, or a hearing on the exceptions, to resident slip holders, when the property where they resided was the subject of an improper foreclosure action (despite the clear analogy, in any residential scheme, to a mobile home or brick and mortar tenancy.

II. Whether, the court erred by ratifying an improperly held foreclosure sale.

The foreclosure sale occurred on August 4, 2014. The purchaser, a wholly-owned subsidiary of the lender, took title on the lender's behalf following its successful bid of $700,000.

The clerk of the Circuit Court for Baltimore County issued the notice of sale, pursuant to Md. Rule 14-305(c), on August 18, 2014. Md. Rule 14-305(d) required that exceptions be filed within 30 days thereafter, *i.e.*, by September 17, 2014.

Meanwhile, on August 19, 2014, some of the marina's tenants incorporated Bear Creek. Bear Creek claims to be "the body responsible to, and representing the occupants, residents and/or tenants" of the marina.

Bear Creek filed exceptions to the foreclosure sale on October 1, 2014, two weeks after the running of the 30-day deadline. Among other things, Bear Creek argued that the court should not approve the sale because, it said, the "residents, occupants and/or tenants" did not receive proper notice, the sale price was unjustifiably low, and the sale was not properly advertised in the local newspaper.[2] Bear Creek did not request a hearing.

The circuit court, by an order docketed on November 6, 2014, overruled the exceptions with prejudice and ratified and confirmed the foreclosure sale. On the following day, Bear Creek filed a motion to reconsider, which the court denied on December 1, 2014. Bear Creek filed a timely notice of appeal.

[2] The last of those assertions is demonstrably incorrect, and Bear Creek has abandoned it on appeal.

MOTION TO DISMISS

Drazin and Pardo move to dismiss the appeal because Bear Creek filed its brief ten days after the May 14, 2015, deadline in the briefing order, and because Bear Creek failed to file a record extract.

Bear Creek unquestionably filed its brief late, in violation of Md. Rule 8-502(a). In addition, it appears that, in violation of Md. Rule 8-501(a), Bear Creek initially failed to file a record extract. Although Bear Creek eventually filed an extract after Drazin and Pardo had filed their brief, Bear Creek's extract is incomplete, in that it lacks certain documents, including those evidencing the deed of trust and foreclosure sale, that are rightly considered to be "parts of the record that are reasonably necessary for the determination of the questions presented by the appeal." Md. Rule 8-501(c). These errors are bases for dismissal. *See* Md. Rule 8-602(a)(7), (8).

This Court does not condone Bear Creek's errors. Drazin and Pardo, however, have not shown sufficient prejudice from these errors to warrant dismissal. *See Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 92 (2013) ("[t]his Court generally will not dismiss an appeal unless the appellee is prejudiced by appellant's noncompliance with the Maryland Rules") (citation omitted); *accord McAllister v. McAllister*, 218 Md. App. 386, 399 (2014) (citing *Kemp-Pontiac Cadillac, Inc. v. S&M Constr. Co.*, 33 Md. App. 516, 524 (1976)).

Here, Drazin and Pardo have mitigated any possible prejudice by supplying the omitted material in the 190-page appendix to their brief. Consequently, we shall not dismiss the appeal. Instead, we shall require that Bear Creek pay the costs of printing the

omitted material in the appellees' appendix. *See McAllister*, 218 Md. App. at 399; *Kemp-Pontiac Cadillac*, 33 Md. App. at 524.

DISCUSSION

I. Standing

Md. Rule 14-305(d) dictates who may file exceptions to a foreclosure sale. It states, in pertinent part, that "[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." Drazin and Pardo argue that we must affirm the judgment because Bear Creek had no standing to file exceptions.

Bear Creek was clearly not a "party" to the foreclosure sale, because it did not even come into existence until after the sale had occurred and the notice of sale had been issued. Nor was Bear Creek the holder of a subordinate interest, because it is neither a "condominium council of unit owners or homeowners association that has filed a request for notice of sale" under Md. Code (1974, 2010 Repl. Vol.) § 7-105.3(a) of the Real Property Article, nor the holder of a subordinate mortgage, deed of trust, or other subordinate interest, including a judgment. *See id.* §§ 7-105.3(a)-(b). Under Rule 14-305(d), therefore, Bear Creek had no standing to file exceptions. *See Four Star Enterprises L.P. v. Council of Unit Owners of Carousel Center Condo., Inc.*, 132 Md. App. 551, 568-69 (2000) (holding that entity that was not record owner of foreclosed properties had no standing to challenge foreclosure).

Bear Creek responds that it represents the marina's "tenants," who lived on their boats, and who had entered into what it characterizes as residential leases with DiGiulian.

If the marina were "residential property," which it is not,[3] the tenants themselves might have had the right to a form of notice of the foreclosure sale under section 7-105.9 of the Real Property Article. As the tenant's putative representative, however, Bear Creek had no such right. Bear Creek itself certainly cannot complain that it received no notice of the sale, as Bear Creek did not come even into existence until two weeks after the sale occurred.

In any event, even if we indulged the fiction that Bear Creek had the rights of all of the marina's tenants, it would not solve the problem of standing, because none of tenants were parties or holders of subordinate interests in the property. Bear Creek, therefore, lacked standing to challenge the sale.

II. The Merits

Even if Bear Creek had standing, we would not reverse, because the factual findings implicit in the circuit court's decision were not clearly erroneous and because its legal conclusions were correct. *See generally Johnson v. Nadel*, 217 Md. App. 455, 465 (2014) (stating the standard of appellate review for rulings on exceptions to foreclosure sales).

First, Bear Creek did not file its exceptions until two weeks after its deadline. The circuit court need not have even considered those untimely exceptions.

[3] Section 7-105.1(a)(12) of the Real Property Article (2015 Supp.) defines "residential property" as "real property improved by four or fewer single family dwelling units that are designed principally and are intended for human habitation." The record contains nothing to suggest that the marina in this case satisfies this definition.

Second, contrary to Bear Creek's assertions, the record establishes that the marina's "occupants, residents and/or tenants" received due notice of the sale. The marina is not "residential property" within the meaning of § 7.105.1(a)(12) of the Real Property Article – *i.e.*, it is not "real property improved by four or fewer single family dwelling units that are designed principally and are intended for human habitation." Consequently, the alleged occupants' right to notice is not governed by § 7-105.9 of the Real Property Article, concerning notice to the occupants of residential property, but by section 7-105.3 and Rule 14-210(b). The substitute trustees, Drazin and Pardo, established that they exceeded the requirements of those provisions by sending written notice of the foreclosure sale by certified mail, and not merely by first-class mail as Rule 14-210(b) requires, to "all occupants" of the marina. Bear Creek submitted no admissible evidence to counter that proof.

Third, contrary to Bear Creek's assertions, the circuit court had no legal or factual basis to conclude that the foreclosure sales price was inadequate. In *Fagnani v. Fisher*, 418 Md. 371 (2011), in upholding a foreclosure sales price of about 50 percent of the market value of the interest that was sold, the Court of Appeals, noted the "'well settled'" rule that "'inadequacy of price alone, unless it indicates fraud, unfairness or some misconduct or mistake for which the purchaser should be held responsible, ordinarily is not a sufficient ground to set aside a sale.'" *Id.* at 393 (quoting *Pizza v. Walter*, 345 Md. 664, 667 (1997)). Here, the marina sold for $700,000, exactly 51 percent of its assessed value for tax purposes, and Bear Creek presented nothing beyond conjecture to indicate

that the property sold for less than it should have, or that others were prevented from bidding on the property alongside the eventual purchasers.

Fourth and finally, Bear Creek complains that the court did not conduct a hearing on its exceptions. Bear Creek, however, did not request a hearing on its exceptions. Moreover, even if Bear Creek had requested a hearing, the court was required to hold a hearing only if the exceptions or the response "clearly show[ed] a need to take evidence." Md. Rule 14-305(d)(2). Given Bear Creek's lack of standing, the untimeliness of its exceptions, and the absence of legal or factual support for its assertions, the circuit court did not abuse its discretion in finding no need for a hearing. *See Four Star*, 132 Md. App. at 567-68. Bear Creek did request a hearing on its motion to reconsider, but it had no conceivable right to a hearing on that motion. *See* Md. Rule 2-311(f).[4]

MOTION TO DISMISS DENIED. JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. APPELLANT TO PAY ALL COSTS, INCLUDING THE COST OF APPELLEES' APPENDIX.

[4] Bear Creek raised other allegations, ranging from the factually unsupported (a claim that the substitute trustees improperly organized a purchaser), to the irrelevant (the invocation of statutes pertaining to mobile home parks), to the legally groundless (an assertion that in some jurisdictions tenants are entitled to "rights of first refusal" at foreclosure sales). These unsubstantiated claims do not warrant extended discussion.