Circuit Court for Montgomery County
Case No. 465223V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2104, September Term, 2022

&

No. 2394, September Term, 2023

CONSOLIDATED CASES

SCOTT WEBBER, ET AL.

v.

CARRIE M. WARD, ET AL.

Nazarian,
Zic,
Kenney, James
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: July 16, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Scott Webber and Kamala Deonauth obtained a loan in 2000 and executed a deed of trust that granted the lender a security interest in their property in Bethesda. Mr. Webber and Ms. Deonauth defaulted on the loan in 2015, and the substitute trustees under the deed of trust initiated foreclosure proceedings in April 2019. The trustees sold the property on July 1, 2022, and the Circuit Court for Montgomery County ratified the sale and referred the matter to an auditor on September 16, 2022. The auditor filed three reports: one that stated the surplus from the sale; an amended version of that same report; and a final report that recommended the distribution of the proceeds to various parties. Mr. Webber filed exceptions to the amended and final reports, but the court overruled those exceptions and ratified both. Mr. Webber filed two notices of appeal challenging the court's decisions to overrule his exceptions and to ratify the auditor's reports. He also filed a notice of appeal on behalf of his mother, Edith Webber, as her "attorney-in-fact," challenging the ratification of the final report.

We strike Ms. Webber's brief and the majority of Mr. Webber's second brief for failure to comply with the Maryland Rules. We dispose of multiple claims in Mr. Webber's first appeal under the doctrine of *res judicata*. And as for his remaining challenges, we affirm the judgment of the circuit court.

I. BACKGROUND

On October 16, 2000, Mr. Webber and Ms. Deonauth obtained a loan of $427,000 and signed a deed of trust that granted the lender, Washington Mutual Bank, FA, a security interest in their property at 8803 Seven Locks Road, Bethesda (formerly 8713 Seven Locks

Road) (the "Senior Lien"). In the event of a default, the deed of trust permitted Washington Mutual Bank (or any future beneficiary) to accelerate the loan and direct the substitute trustees to sell the property if Mr. Webber and Ms. Deonauth failed to cure the default within thirty days.

On July 25, 2002, Mr. Webber and Ms. Deonauth executed a second loan—a Home Equity Credit Line Revolving Loan Agreement—for $35,000, and they signed another deed of trust that granted the lender, Household Finance Corporation, a security interest in their Seven Locks property (the "Junior Lien"). As with the Senior Lien, this second deed of trust granted Household Finance (or any future beneficiary) the right to accelerate the loan and invoke the power of sale in the event of a default.

A. The First Sale

Mr. Webber and Ms. Deonauth defaulted on the Household Finance loan in 2009. The appointed substitute trustees of the Junior Lien initiated foreclosure proceedings against the Seven Locks property on March 18, 2019, and sold the property to Mr. Webber's and Ms. Deonauth's son, Ashton Webber-Deonauth, at a public auction on February 5, 2021 (the "First Sale"). The later proceedings in that foreclosure action are not relevant to this appeal.

B. The Second Sale

Mr. Webber and Ms. Deonauth also defaulted on the Washington Mutual Bank loan in 2015. The substitute trustees of the Senior Lien (the "trustees") initiated foreclosure proceedings against the Seven Looks property on April 3, 2019—less than a month after the substitute trustees of the Junior Lien had begun a foreclosure action against it. Mr.

Webber filed multiple unsuccessful pre-sale motions, and the trustees sold the property to Ms. Deonauth for $1,000,000 on October 15, 2021 (the "Second Sale"). Mr. Webber filed exceptions to the sale that the court overruled. Then on February 8, 2022, the court ratified the sale and referred the matter to an auditor.

On February 17, 2022, Ms. Deonauth filed an emergency motion to set aside the Second Sale in which she claimed that she never received proper notice of the trustees' intent to foreclose on the property. The trustees then filed a motion to resell the property on February 22, 2022, alleging that Ms. Deonauth failed to pay the purchase price within ten days of the ratification of the sale, as the terms of the Second Sale required. Mr. Webber filed an opposition, but Ms. Deonauth didn't. Then Mr. Webber and Ms. Deonauth both filed motions to dismiss the case, contending that the court lacked jurisdiction to adjudicate the foreclosure action due to the trustees' failure to serve proper notice on Ms. Deonauth.

The court held a hearing on April 27, 2022. Ms. Deonauth informed the court that the trustees had not sent notice of the Second Sale to her residence (which was not the Seven Locks property) and that she learned of it only by searching through the auctioneer's website. She believed the Second Sale was illegal due to the lack of proper notice and that, legally, she only had to proceed with the First Sale (*i.e.*, selling the property to Ashton[1]). The trustees responded that Ms. Deonauth's motion was untimely because a party must bring claims grounded in a lack of notice *before* the foreclosure sale takes place. They also

[1] We refer to Ashton and his brother Christopher Webber-Deonauth by their first names to avoid confusion. We mean no disrespect by doing so.

claimed they had no other address for Ms. Deonauth when they sent the foreclosure documents to the Seven Locks address and that once they learned of her correct address at the Second Sale, they sent all future documents there. As to their motion to resell, the trustees argued that Ms. Deonauth signed the contract agreeing to settle within ten days of the ratification of the sale and that she had not provided any legally sufficient reason why she failed to comply with those terms. They asked that the court allow them to resell the property and to order the forfeiture of Ms. Deonauth's $29,000 deposit, which she had provided to the trustees on the day of the Second Sale per the terms of that sale.

The court found that Ms. Deonauth had notice of the Second Sale, even if she didn't receive the notice in the mail, because she attended the sale and bid on the property. The court also found no legal justification for Ms. Deonauth's failure to proceed with the Second Sale. The court denied Ms. Deonauth's motion to set aside the sale, granted the trustees' motion to resell the property, and ordered that Ms. Deonauth's $29,000 deposit go to the trustees as liquidated damages.

C. The Third Sale

The trustees held another auction on July 1, 2022, and sold the property to two third-party purchasers (the "purchasers") for $1,135,000 (the "Third Sale"). Mr. Webber filed exceptions to this sale, arguing, among other things, that the court lacked jurisdiction because the trustees had not given proper notice to Ms. Deonauth or their two sons, Ashton and Christopher Webber-Deonauth, in whose names Ashton had registered the purchase of the Seven Locks property after the First Sale. On September 16, 2022, the court overruled

Mr. Webber's exceptions without a hearing, ratified the Third Sale, and referred the matter to an auditor.

1. The auditor's first and amended reports

The auditor filed a report on November 8, 2022, stating that the Third Sale had resulted in a surplus of $640,990.78. The auditor recommended that any interested parties file or perfect their claims to those proceeds within thirty days and that the court re-refer the matter to the auditor to determine how to distribute the funds properly. The auditor filed an amended report three days later to correct the address of the property but made no other changes. On December 13, 2022, the auditor sent a notice to all interested parties that informed them of the surplus and the deadline to file any claims to the proceeds.

Mr. Webber filed exceptions to the auditor's amended report and requested a hearing. He advanced ten arguments, most of which boiled down to claims that (1) the Third Sale was illegal and (2) the trustees had provided incorrect or fraudulent information to the auditor. The auditor and the trustees filed oppositions. On January 6, 2023, the court issued an order overruling Mr. Webber's exceptions, denying his request for a hearing, and ratifying the auditor's amended report. Mr. Webber appealed the court's ratification of the amended report on February 5, 2023, which initiated the first appeal that we address in this opinion.

2. The auditor's final report

In accordance with the auditor's December 13, 2022 notice, multiple interested parties filed claims to the surplus proceeds: Interstate TD Investments, LLC (the beneficiary of the Junior Lien), Ms. Deonauth, Mr. Webber, Diana H. Metcalf (Mr.

Webber's former attorney in an unrelated action), and the purchasers. The trustees also filed, but later withdrew, a claim seeking proceeds to cover their attorneys' fees. The court referred these claims to the auditor for additional fact finding. The auditor held a three-day evidentiary hearing on March 29, 30, and April 12, 2023, and each interested party submitted supporting exhibits. On October 6, 2023, the auditor filed a second and final report stating their findings and the amount owed to each claimant: $34,806.09 to Interstate TD Investments, LLC; $60,000 to Ms. Metcalf, payable solely from Mr. Webber's share of the proceeds; $48,132.46 to the purchasers, payable solely from Mr. Webber's share of the proceeds; $288,948.66 to Ms. Deonauth; and $180,816.40 to Mr. Webber, accounting for the claims payable from his share.

Mr. Webber filed exceptions to the auditor's final report and requested a hearing. He argued, among other things, that his mother, Edith Webber, was entitled to $150,000 of the proceeds. In a notice of rejected submission, the clerk of the circuit court explained that Ms. Webber must file her exceptions herself or have a licensed Maryland attorney do so on her behalf and that multiple filings must be submitted as separate documents. Acting as Ms. Webber's "attorney-in-fact," Mr. Webber filed a motion seeking leave to re-submit Ms. Webber's exceptions on her behalf. The court overruled Mr. Webber's exceptions without a hearing on November 7, 2023, and later denied his request to resubmit Ms. Webber's exceptions as her attorney-in-fact.

On December 29, 2023,[2] the court ratified the auditor's final report and ordered that the surplus proceeds be paid to the claimants in accordance with the auditor's findings. Mr. Webber filed a motion for reconsideration, which the court denied without a hearing on January 16, 2024. Mr. Webber filed two notices of appeal on February 15, 2024, one for himself as a *pro se* appellant and one for Ms. Webber as her attorney-in-fact, challenging the court's ratification of the auditor's final report. These are the second and third appeals we address in this opinion.

We include additional facts as necessary in the Discussion.

II. DISCUSSION

Mr. Webber's *first* appeal arises from the court's ratification of the auditor's amended report. He presents nine questions for our review.[3] For reasons explained in Subsection II.B.1 of this opinion, we rephrase these into three questions:

1. Did the circuit court have jurisdiction to adjudicate the foreclosure action that the trustees initiated?

[2] The court first ratified the second report on December 12, 2023. The court then filed an amended order on December 22, 2023, because the first order didn't account for the disposition of the interest that accrued on the surplus proceeds while they were in the Court Registry's possession. On December 29, 2023, the court filed a second amended order because the first amended order contained an error in the amount owed to one of the claimants.

[3] Mr. Webber phrased his Questions Presented as follows:

> 1. Because the Substitute Trustees did not serve all property owners with the statutorily-mandated documents [Notice Of Intent To Foreclose package] necessary as a condition precedent to the initiation of the foreclosure action, [Filing of the Order To Docket package] did the Circuit Court ever

Continued . . .

obtain legal jurisdiction over the matter, including the authority to ratify the Auditor's Report?

2. Did the Circuit Court unlawfully deny the Appellant [all parties] an Auditor's Report Exceptions Hearing when one was properly requested and clearly necessary?
3. Did the Circuit Court unlawfully deny the Appellant [all parties] a Post-Sale Exceptions Hearing when one was properly requested and clearly necessary?
4. Did the Circuit Court unlawfully deny the Appellant [all parties] a Pre-Sale Exceptions Hearing when one was properly requested and necessary?
5. Did the Auditor have the legal authority to ignore or overrule the Terms Of Sale governing the foreclosure sale at issue?
6. Did the Auditor fail to perform his fundamental duty to actually [and independently] 'audit' the account under review, and accept a facially fraudulent and/or erroneous Affidavit of Debt; or in the alternative, did the Auditor unlawfully show unacceptable bias in favor of the Plaintiff, by accepting – without question – the accounting figures provided by the Plaintiff that were known to be fraudulent, or if not verified as 'fraudulent', at least known to be grossly inaccurate, erroneous, and unquestionably inconsistent, and in conflict with, the figures also previously filed with the Court?
7. Did the Circuit Court and/or Auditor unlawfully allow a commission on a 'Damages' award?
8. Did the Circuit Court and/or Auditor unlawfully allow the Substitute Trustees a claim for 'liquidated damages' with a resultant forfeiture of the deposit, AND simultaneously allow the 'resale' of the property and allow the Substitute Trustees 'actual damages' as well?
9. Did the Auditor unlawfully allow the submission of fraudulently omitted and/or incomplete vouchers?

The trustees phrased the Questions Presented as follows:

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2. Did the court err in ratifying the auditor's amended report?
3. Did the court err in denying Mr. Webber's request for a hearing on his exceptions from the auditor's amended report?

Mr. Webber's *second* appeal and Ms. Webber's sole appeal arise from the court's ratification of the auditor's final report. Mr. Webber presents thirty-five questions for our review.[4] Ms. Webber "incorporates" twenty of Mr. Webber's questions in her brief and

1. Are all attempts to appeal the Ratification Order barred from re-litigation pursuant to the doctrines of res judicata and law of the case?
2. Did the circuit court properly ratify the Auditor's Amended Report and overrule any exceptions, since any such exceptions did not allege a particular error in the Amended Auditor's Report for which he was damaged?

[4] Mr. Webber phrased the Questions Presented as follows:

1. Because this entire matter was DISMISSED by the Circuit Court on March 21, 2024, are all other issues and/or questions, moot?
2. Because the Substitute Trustees did not serve all property owners with the statutorily-mandated documents [Notice Of Intent To Foreclose package] necessary as a condition precedent to the initiation of the foreclosure action, [Filing of the Order To Docket] did the Circuit Court ever obtain legal jurisdiction over the matter, including the authority to ratify the Auditor's Report?
3. Did the Circuit Court unlawfully deny the Appellant [all parties] an Auditor's Report Exceptions Hearing when one was properly requested and clearly necessary?
4. Did the Circuit Court unlawfully deny the Appellant [all parties] a Post-Sale Exceptions Hearing when one was properly requested and clearly necessary?
5. Did the Circuit Court unlawfully deny the Appellant [all parties] a Pre-Sale Exceptions Hearing when one was

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properly requested and necessary?

6. Did the Auditor have the legal authority to ignore or overrule the Terms Of Sale governing the foreclosure sale at issue?

7. Did the Auditor fail to perform his fundamental duty to actually [and independently] 'audit' the account under review, and accept a facially fraudulent and/or erroneous Affidavit of Debt; or in the alternative, did the Auditor unlawfully show unacceptable bias in favor of the Plaintiff, by accepting – without question – the accounting figures provided by the Plaintiff that were known to be fraudulent, or if not verified as 'fraudulent', at least known to be grossly inaccurate, erroneous, and visably inconsistent, and in conflict with, the figures also previously filed with the Court?

8. Did the Circuit Court and/or Auditor unlawfully allow a commission on a 'Damages' award?

9. Did the Circuit Court and/or Auditor unlawfully allow the Substitute Trustees a claim for 'liquidated damages' with a resultant forfeiture of the deposit, AND simultaneously allow the 'resale' of the property, AND simultaneously allow the Substitute Trustees 'actual damages' as well?

10. Did the Auditor unlawfully allow the submission of fraudulently omitted and/or incomplete vouchers from the Substitute Trustee, without review?

11. Is a challenge to the underlying jurisdiction of a Ratification Order obtained by clear extrinsic fraud on behalf of the Substitute Trustees caused by the known fraudulent filing of an Order To Docket prior to valid service of the mandatory and preliminary Notice Of Intent To Foreclose covered up by the subsequent filing of known false affidavits, barred from review by the Appellate Court by the doctrine of res judicata?

12. Is a challenge to the underlying jurisdiction of the subject case as the result of a violation of the doctrine of custodia legis, not yet litigated, barred from review by the Appellate

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Court by the doctrine of res judicata?

13. Is a challenge to the underlying jurisdiction of a Ratification Order that was obtained without statutory conditions precedent being met, and such matters never being accorded a hearing, barred from review by the Appellate Court by the doctrine of res judicata?

14. Did the Circuit Court err when it ruled that mere knowledge of an advertised foreclosure sale by a property owner, and showing up for the sale, 1) constituted a waiver over any claim of jurisdictional defect, 2) nullifies the service requirement of a Notice Of Intent To Foreclose, and 3) justifies jurisdictional attachment of the Court sufficiently to order a re-sale of the property prior to the lawful filing of an Order To Docket that can ONLY be filed 45 days AFTER service of the NOI to all property owners?

15. Does the hiring of legal counsel after a foreclosure sale waive jurisdictional preconditions necessary before the sale, including the statutory requirement that all property owners must be served with a legal Notice Of Intent To Foreclose at least 45 days BEFORE an Order To Docket can be filed, that is itself a condition precedent to the sale of the subject property?

16. Does a deeded homeowner have automatic standing in an in rem foreclosure action upon his property after the Court assumes jurisdiction over the PROPERTY?

17. Do more than 250 pages of detailed supporting documentation, including transaction details down the penny, dates down to the very minute of transmission, Electronic Trace IDs, File Trace IDs, payment method codes, and other elements that add up to the multiple hundreds of thousands of data points, and resultant spreadsheets analyzing and reporting inconsistencies, errors, and omissions, constitute sufficient ‘particularity’ to be considered by the Court as valid assertion of errors before the Court Auditor?

18. Did the Court err in determining ‘liquidated damages’ to

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the be same as 'actual damages'?

19. Did the Court err in declaring a 'damage award' in one sale to constitute an element of the 'gross sale' of a separate sale, and award a 'commission' to the substitute trustees based on the damages award in the unrelated sale?

20. Did the Court err by accepting and ratifying a Recommended Auditor's Report that was solely the work product of the servicer, without any independent verification by the Auditor, and without providing the opportunity for review and challenge by the mortgagor?

21. 100% servicer-provided that clearly and obviously did not accurately reflect the payments and expenses subsequently submitted to the Auditor, but rejected?

22. Did the Auditor err when he failed to declare the sale 'Null and Void' in accordance with the published 'Terms Of Sale' when a specified trigger clause existed?

23. Does the failure or absence of a statutorily required condition precedent in a foreclosure sale automatically bar jurisdiction?

24. Does the Doctrine Of Custodia Legis apply to foreclosure sales?

25. Did the Auditor err and exceed his discretion by boldly disregarding existing Court decisions and violating the contract law underlying multiple binding Settlement Agreements in place for years, claiming he is not bound by prior Court Order(s) in his considerations?

26. Did the Auditor err, exceed his authority, and violate the Unclean Hands Doctrine by aiding and awarding payment to an unlicensed out-of-state business that fraudulently claimed to be a 'lender' while extorting money from the Appellant regarding an unenforceable loan?

27. Did the Auditor err and exceed his authority by awarding 'rental' payments to a foreclosure purchaser who the Courts have – repeatedly – declared does not yet have the right of possession?

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28. Did the Auditor err and grossly exceed his legal authority by declaring Appellant a 'wrongful detainer' and awarding extraordinary damages against Appellant for being guilty of such, when both District Court and Circuit Court judges have determined – 6 times - that Purchaser, Abdoh, has not met the legal threshold to make such a claim?

29. Did the Auditor err, exceed his authority, and violate the Unclean Hands Doctrine by awarding 'rental' payments to a foreclosure purchaser who is not a bone fide purchaser, does not yet have possession of the property, and does not have the rental license that is required in the County before a landlord can collect any rent?

30. Did the Auditor err and exceed his authority by refusing to honor the fulfillment of Court-ordered Settlement Agreements, claiming he [the Auditor] was not bound by prior Court decisions, and refusing to conduct the analysis, and effect the carefully and clearly articulated distribution of proceeds, covered by the – ignored – Order?

31. Did the auditor err and exceed his authority by imposing the construction of 'Tenants By Entireties' in his distribution formulation to an unmarried couple who explicitly declared in writing their understanding to be 'Tenants In Common' with a carefully constructed Settlement Agreement in place detailing their desired distributions of proceeds upon the sale of their mutually-owned property, that was arbitrarily ignored, and contradicted by the Auditor?

32. Did the Auditor err and exceed his authority, by fabricating – out of thin air – a contractual designation, "market sale" that does not appear ANY of the signed and executed and Court ordered Settlement Agreements, contradicts the understanding of the authors of the Agreements, but uses his fictitious classification as the determining factor in determination as to whether he wants to honor compliance with the Court-ordered Agreements.

33. Did the Auditor err and greatly exceed his legal authority by depriving the property owners from devising and

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adds four questions of her own.[5] For reasons we explain in Section II.A and Subsection II.C.1 of this opinion, we will not address any of the questions presented in Ms. Webber's briefs and we will address one of Mr. Webber's questions, which we have rephrased:

executing their own ownership contract, and instead, imposing and substituting his self-generated contractual construction for 'co-tenant owners', in clear violation of centuries old statutory and decisional contract law?

34. Did the Auditor err and abuse his authority by refusing to calculate 'credits', when such credits were specifically called for in the Court-ordered distribution formula that the Auditor ignored, and are a well-established element of proceeds distribution, were provided to the Auditor, but he refused to review them?

35. Did the Auditor err and abuse his discretion by accepting as an 'expert witness' for the purpose of determining the 'fair rental value' of the property, a paid 'expert' who had never once stepped foot on the property or so much as seen a single square foot of space inside the home, but whose opinion was determinative of the 'fair rent'?

The trustees phrased the Questions Presented as follows:

1. Are all attempts to appeal the Ratification Order untimely, moot, and/or barred by the doctrines of res judicata and law of the case?

2. Should this Court strike the Brief filed by Scott Webber on behalf of Edith Webber as a violation of Rule 8-402?

[5] Ms. Webber phrased her additional Questions as follows:

1. Did the Court err in rejecting Edith's claim to surplus proceeds when she filed her claim via a valid Attorney-In-Fact?

2. Did the Court err in denying Edith's Leave Of Court and Re-Submitted Claim?

3. Did the Court violate Edith's right to be informed and

Continued . . .

> Did the circuit court dismiss the entire case in its March 21, 2024 order denying Mr. Webber's motion for reconsideration such that all other issues are now moot?

We hold *first* that the court had jurisdiction to adjudicate the trustees' foreclosure case; *second*, that the court did not err in ratifying the auditor's amended report; *third*, that the court committed harmless error when it denied Mr. Webber's request for a hearing on his exceptions to that report; and *fourth*, that the court's March 21, 2024 order did not dismiss the entire foreclosure action.

A. We Strike Ms. Webber's Brief For Non-Compliance With The Maryland Rules Because Mr. Webber Cannot Serve As Her Attorney-In-Fact.

Mr. Webber filed a brief in this Court, purportedly on Ms. Webber's behalf as her "attorney-in-fact." He "incorporated" many of the questions he presented in his *pro se* briefs and added four questions about the circuit court's decision to deny Ms. Webber the opportunity to file a claim to the surplus proceeds after the auditor had filed the final report. The trustees have asked us to strike Ms. Webber's brief because Maryland law does not allow Mr. Webber, who is not licensed to practice law in Maryland, to serve as an "attorney-in-fact," and the Maryland Rules require an appellant either to have an attorney or to litigate their case *pro se*. *See* Md. Rule 8-402(a)(1). We agree that Mr. Webber cannot

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> including as a rightful Claimant?
>
> 4. Did the Court Auditor err and abuse his discretion in his determination that neither he – nor the Circuit Court - are bound by existing Circuit Court Standing Order(s) that directed the distributions of proceeds from the sale of the property?

file pleadings on Ms. Webber's behalf and strike her brief for failure to comply with the Rules.

Under Md. Code (2000, 2018 Repl. Vol.), § 10-601(a) of the Business Occupations & Professions Article ("BOP"), "[e]xcept as otherwise provided by law, a person may not practice, attempt to practice, or offer to practice law in the State unless admitted to the Bar." This includes giving legal advice as well as filing pleadings and appearing in court on another's behalf. BOP § 10-101(h)(1)–(2). Even a person who has been appointed or "authorized" to serve as another's "attorney-in-fact" (although the record contains no evidence of such authorization), cannot perform legal services on another's behalf unless licensed to practice law in the state. *See Ross v. Chakrabarti*, 194 Md. App. 526, 535–38 (2010) (citations omitted). Mr. Webber is not a licensed attorney in Maryland and cannot prepare or file pleadings on Ms. Webber's behalf or anyone's other than his own. Because neither a licensed attorney nor Ms. Webber herself filed her brief with this Court, we strike her brief for noncompliance with Rule 8-402(a)(1) and proceed with the issues raised in Mr. Webber's *pro se* appeals.

B. Mr. Webber's First Appeal Fails Because The Doctrine Of *Res Judicata* Bars Many Of His Claims, The Court Had Jurisdiction, The Court Ratified The Auditor's Amended Report Properly, And The Court Committed Harmless Error When It Denied Mr. Webber's Request For A Hearing On His Exceptions.

1. Mr. Webber's claims challenging the Third Sale are barred by the doctrine of res judicata.

Some of the questions presented in Mr. Webber's *first* appeal pertain to the propriety of the Third Sale rather than the ratification of the auditor's amended report. Specifically,

Mr. Webber challenges the court's denials of his requests for hearings on his pre-sale motion to dismiss and post-sale exceptions; the trustees' claim that he defaulted on the Washington Mutual Bank loan; and the auditor's failure to declare the Third Sale "null and void" per the Terms of Sale. Invoking the doctrine of *res judicata*, the trustees urge us to dismiss these portions of Mr. Webber's appeal because the ratification of the Third Sale was a final judgment, and the ratification of the auditor's amended report is a collateral judgment that does not affect the ratification of the sale. We agree that *res judicata* bars Mr. Webber's challenges to the Third Sale.

In *Huertas v. Ward*, 248 Md. App. 187 (2020), we explained that "an order ratifying a foreclosure sale is a final judgment as to any rights in the real property . . . ." *Id.* 205. This remains true, "even if the order refers the matter to an auditor to state an account," because although "the foreclosure case continues after the ratification of the sale, the proceeding no longer involves an adjudication of rights in the real property." *Id.* at 205–06. The sale ratification order is "'*res judicata* as to the validity of such sale,'" and "'its regularity [ordinarily] cannot be attacked in collateral proceedings.'" *Id.* at 203 (*quoting Manigan v. Burson*, 160 Md. App. 114, 120 (2004)). "The process of referring the case to an auditor and resolving any exceptions to the auditor's report is collateral to the foreclosure proceeding," which means "it does not affect the finality of an order ratifying the foreclosure sale." *Id.* at 206. Instead, the court's decision on exceptions to the auditor's report "represents a *second judgment*" from which an aggrieved party may appeal. *Id.* (emphasis added); *see also Fetting v. Flanigan*, 185 Md. 499, 506 (1946) (order ratifying

auditor's report is not part of the final judgment in a foreclosure action but is "'conclusive of the matter to which it relates'" (*quoting* Edgar G. Miller, *Equity Procedure as Established in the Courts of Maryland* 650 (1897))). In short, an appeal from the ratification of the auditor's report is not an appeal from the ratification of the sale, and any issues that challenge the sale are barred by the doctrine of *res judicata*.

Here, Mr. Webber's questions about his pre- and post-sale exceptions challenge the court's rulings in matters related to the sale, not the auditor's amended report. *See* Md. Rule 14-211(a)(3)(B) (pre-sale motions challenge "the validity of the lien or the lien instrument or . . . the right of the plaintiff to foreclose in the pending action"); Md. Rule 14-305(e)(1) (post-sale exceptions challenge alleged irregularities in the sale). Likewise, his claim that the underlying loan was never in default goes to the trustees' right to foreclose on the property, not to the allowances or disallowances in the auditors' report. *See Fairfax Sav., F.S.B. v. Kris Jen Ltd. P'ship*, 338 Md. 1, 20–21 (1995) ("[T]he existence of a default is a condition precedent to commencing a mortgage foreclosure in Maryland."); *Hood v. Driscoll*, 227 Md. App. 689, 694 (2016) ("whether there should be a sale at all" is a question a party must raise in a pre-sale motion to dismiss); Md. Rule 14-211(a)(3)(B). Because these claims arise from the Third Sale and not the ratification of the auditor's amended report, they are barred by the doctrine of *res judicata*.

Although less obvious, Mr. Webber's claim that the auditor should have voided the sale because his loan was in forbearance status goes to the terms (and thus the validity) of the sale itself, not to the auditor's duties or report. The terms of the Third Sale stated that

the sale would be "subject to a post-sale audit of the status of the loan with the loan servicer" to determine "whether the borrower entered into any repayment agreement." If so, the sale would be declared "null and void." The auditor, however, is not the loan servicer; they are the court-appointed auditor whose duties are limited to "'that of a calculator and accountant for the court.'" *Huertas*, 248 Md. App. at 206 (*quoting Walker v. Ward*, 65 Md. App. 443, 448 (1985)). Moreover, the question of whether the trustees had the right to foreclose on the property during the alleged forbearance period challenges the foreclosure action itself (*i.e.*, "whether there should be a sale at all") and must be raised in a pre-sale motion to dismiss. *Hood*, 227 Md. App. at 694; *see also* Md. Rule 14-211(a)(3)(B) (pre-sale motions challenge "the validity of the lien or the lien instrument or . . . the right of the plaintiff to foreclose in the pending action"); *Bates v. Cohn*, 417 Md. 309, 328 (2010) ("[A] homeowner/borrower ordinarily must assert known and ripe defenses to the conduct of a foreclosure sale prior to the sale . . . ."). Therefore, Mr. Webber's challenge regarding the terms of the Third Sale, although clothed as challenging the auditor's amended report, arose from the validity of the Third Sale and is barred by the doctrine of *res judicata* as well.

2. Mr. Webber's notice claim is not jurisdictional, and it is barred by res judicata*, but notice was adequate in any event.*

As to the remaining issues, Mr. Webber asserts *first* that the circuit court never gained jurisdiction over the trustees' foreclosure action because the trustees didn't send the notice of intent to foreclose to Ms. Deonauth's residential address. Mr. Webber admits that the trustees "served all the necessary documents to 8803 Seven Locks Road" and doesn't

challenge the sufficiency of that notice. Rather, he argues that because the trustees didn't send the notice to Ms. Deonauth's residence in Silver Spring, they failed to provide notice to all record owners of the property and the court never acquired jurisdiction.

In response, the trustees contend that this claim is barred by *res judicata* or the law of the case. Alternatively, the trustees argue that because this is an *in rem* action, the circuit court's jurisdiction attached when they filed the order to docket. The trustees claim as well that Mr. Webber lacked standing to assert Ms. Deonauth's personal jurisdiction objection and that even if he had standing, Ms. Deonauth waived the issue because she appeared for the sale. Finally, the trustees contend that the record shows that Ms. Deonauth had notice of the foreclosure action and that Mr. Webber's "evidence to the contrary is limited to self-serving statements" and documents that post-date the notice of intent to foreclose and the order to docket. We agree with the trustees that this is not a jurisdictional issue and that it is barred by the doctrine of *res judicata*. And even if *res judicata* didn't apply, notice to Ms. Deonauth was adequate.

A foreclosure action is a "summary *in rem* proceeding that grants the mortgagee the power to dispose of the property." *Pulliam v. Dyck-O'Neal, Inc.*, 243 Md. App. 134, 143 (2019). In this case, the trustees initiated the foreclosure proceedings by filing an order to docket, Md. Rule 14-207(a), and the circuit court's "jurisdiction over the property subject to the lien attaches when" the order to docket was filed. Md. Rule 14-203(b). The order to docket, not the notice of intent to foreclose, established the court's jurisdiction. Mr. Webber's notice argument raises no jurisdictional issue.

As we explained above, the doctrine of *res judicata* prohibits a party who has challenged proceedings collateral to the ratification of the sale (such as the ratification of the auditor's report) from raising issues related to the validity of the sale. *See Huertas*, 248 Md. App. at 203–06. Whether the trustees provided adequate notice of the foreclosure action is a procedural question that goes to the regularity (*i.e.*, the validity) of the sale. *See Jones v. Rosenberg*, 178 Md. App. 54, 69 (2008) (recognizing lack of notice as a "procedural irregularity" that may be addressed in post-sale exceptions); Md. Rule 14-305(e)(1). The regularity of the Third Sale is not before us in this appeal and is barred by the doctrine of *res judicata*.

Although *res judicata* resolves it, Mr. Webber relies on this notice argument throughout the foreclosure proceedings. Under Md. Code (1974, 2023 Repl. Vol.), § 7-105.1(c) of the Real Property Article ("RP"), a secured party must send written notice of their intent to foreclose upon a property to the record owner(s) of that property by both certified and first-class mail, and they must do so at least forty-five days before filing the order to docket. RP § 7-105.1(c)(1)–(2). Our Supreme Court has upheld the constitutionality of this statutory scheme, concluding that notice sent by ordinary and certified mail is a reasonable means of informing the property owners of the foreclosure action. *See Griffin v. Bierman*, 403 Md. 186, 212 (2008) (concluding that notice requirements in RP § 7-105.1 are "calculated reasonably to inform interested parties of the pending foreclosure action"). And if the secured party has no reason to believe that the address to which they sent the notice is incorrect or that the borrower/record owner does

not reside at that address, the notice remains sufficient. *Compare id.* at 192–94, 201 (notice sufficient where trustees mailed notices of intent to foreclose to owner via ordinary and certified mail, letters sent by certified mail returned to trustees marked as "unclaimed," but letters sent by regular mail weren't returned to trustees) *with Nichol v. Howard*, 112 Md. App. 163, 166–67, 176 (1996) (notice insufficient where the *only* notice mailed to owner was returned stamped "Return to Sender," and no effort was made subsequently to notify owner via personal service).

In this case, the trustees filed a signed affidavit stating that they sent the notice of intent to foreclose to the required parties, including the record owners (Mr. Webber and Ms. Deonauth), on January 22, 2019, well over forty-five days before they filed the order to docket on April 3, 2019. The notice of intent to foreclose listed Mr. Webber's and Ms. Deonauth's address as 8803 Seven Locks Road and indicated that the trustees had no other mailing address for the record owners. During the hearing on April 27, 2022, the trustees told the court that they had no other address for Ms. Deonauth at the time that they sent the notice of intent to foreclose; that they had no reason to believe she had a different address; that the notices were not returned to them; and that they began sending documents to her correct address when they learned of it at the Second Sale. Indeed, the trustees mailed the notice of the Third Sale, the report and relevant documents pertaining to the Third Sale, and the auditor's amended report (to name just a few of their post-Second Sale filings) to Ms. Deonauth's Silver Spring address. Ms. Deonauth provided no evidence that the trustees knew or should have known that her mailing address was not 8803 Seven Locks Road other

than an affidavit (filed with *Mr. Webber's* motion to dismiss the case for lack of jurisdiction) in which she stated that she hasn't lived at the Seven Locks property for more than eleven years. But she didn't say whether the trustees knew this information before they mailed the notice of intent to foreclose or how they would've known that information.

The record contains no evidence to suggest that the trustees knew or should've known before sending the notice of intent to foreclose that Ms. Deonauth had a different mailing address. And because, according to their attorney, the letters were not returned to them as unclaimed, they had no reason to believe Ms. Deonauth didn't receive the notice or that they sent the notices to the incorrect address. The notices, then, were sufficient under Maryland law. *See Griffin*, 403 Md. at 212.

3. The court did not err in ratifying the auditor's amended report.

Next, Mr. Webber raises several issues concerning the auditor's amended report. We resolved some of them in Subsection II.B.1 above. His remaining arguments include: (1) the claim that the circuit court's order granting the trustees permission to resell the property *and* to retain Ms. Deonauth's deposit, and the auditor's related distributions, were "unlawful"; (2) the claim that the auditor credited an "unlawful" commission to the trustees on Ms. Deonauth's forfeited deposit; (3) the claim that the auditor allowed the trustees to submit incomplete information; and (4) the claim that the auditor accepted the trustees' "fraudulent" and "erroneous" affidavit of debt and, in doing so, demonstrated "unacceptable bias in favor of" the trustees. We address each claim in turn and conclude that the court did not err in ratifying the auditor's amended report.

First, Mr. Webber challenges the court's order granting the trustees permission to resell the property and to retain Ms. Deonauth's $29,000 deposit. This challenge goes to the legality of that order and the trustees' right to conduct the Third Sale, not to the accuracy of the auditor's amended report. *See Huertas*, 248 Md. App. at 206 (challenges to auditor's report must be directed at "'allowance or disallowance of expenses of the sale or the distribution of the proceeds.'" (*quoting Hood*, 227 Md. App. at 694 n.1)). Even so, we will construe Mr. Webber's argument as challenging the auditor's distribution of Ms. Deonauth's deposit as well, and we conclude that the auditor did not err in distributing the deposit as he did.

Contrary to Mr. Webber's assertion, the court has the authority to grant a substitute trustee's simultaneous request to resell a property after a purchaser defaults and for liquidated damages in the form of a forfeited deposit—doing so would constitute "any other action," besides reselling the property at the risk and expense of the defaulting purchaser, as permitted under Rule 14-305(h). What the court *cannot* do is require the defaulting purchaser to forfeit their deposit *and* require the property be resold *at the risk and expense of the defaulting purchaser*. *See* Md. Rule 14-305(h) (if purchaser defaults, court can "order a resale at risk and expense of purchaser" *or* "take any other appropriate action"); *Greentree Series V, Inc. v. Hofmeister*, 222 Md. App. 557, 576–77 (2015) (court can order defaulting purchaser to forfeit deposit (or other appropriate relief) *or* court can order resale at risk and expense of defaulting purchaser, but not both). The court here did not require the trustees to resell the property at Ms. Deonauth's risk and expense after she defaulted

on the Second Sale. The court required Ms. Deonauth to forfeit her deposit "to offset the costs of a resale and the expense of filing" the trustees' motion to resell, then "relieved [Ms. Deonauth] from any further liability . . . ." "'[A] deposit may be treated as a fund out of which damages may be paid,'" *Greentree*, 222 Md. App. at 569 (*quoting Blood v. Gibbons*, 288 Md. 268, 274 (1980)), which is precisely what the court ordered here. And the auditor's amended report concluded correctly that under the court's order, Ms. Deonauth's deposit covered a portion of the costs of the Third Sale and that the remainder went towards the mortgage debt (*i.e.*, was credited back to Mr. Webber and Ms. Deonauth).

Second, Mr. Webber argues that the auditor gave an "unlawful" commission on Ms. Deonauth's forfeited deposit to the trustees. He claims that the trustees can't receive a commission on the forfeited deposit, that the correct sale price from which the trustees could have received a commission would have been the $1,000,000 sale price of the Second Sale, and that the trustees can't receive a commission on both the Second Sale and the Third Sale. This is incorrect. A substitute trustee's commission on a foreclosure sale, including on a sale in which the purchaser defaulted, is based on the amount the substitute trustee actually received, not the amount they would have received had the sale gone through. *See Tolzman v. Gwynn*, 267 Md. 96, 98–100 (1972) (holding that trustee's commission on first unsuccessful sale must come from the cash deposit received, not from the sale price). And a substitute trustee can receive a commission on both a forfeited deposit from an unsuccessful sale as well as the proceeds of a later successful resale. *See McCullough v. Pierce*, 55 Md. 540, 543, 546 (1881) (where trustees received deposit on

first sale, purchaser defaulted, and trustees had to resell property, trustees could receive commission on the deposit received (not the sale price) from the first sale as well as commission on the full sale price of the second consummated sale).

Here, the Senior Lien provides that the trustees may receive a five percent commission on the "gross sale price" of the foreclosure sale of the Seven Locks property. A five percent commission to trustees is a "customary" provision in deeds of trust in Maryland. *Baltrotsky v. Kugler*, 395 Md. 468, 482–83 (2006) (*citing Bunn v. Kuta*, 109 Md. App. 53, 67 n.1 (1996)). And the auditor in this case calculated correctly that the trustees should receive a commission of $1,450 from the Second Sale (five percent of $29,000) and $56,750 from the Third Sale (five percent of $1,135,000).

Third, Mr. Webber contends that the trustees failed to submit, and the auditor failed to require, mailing logs from 2019 and 2020. His only contention relating to these mailing logs is that they would've proven that the trustees failed to send the notice of intent to foreclose and the order to docket to Ms. Deonauth's correct address before initiating the foreclosure action. As we explained in Subsection II.B.2, however, the adequacy of the trustees' notice to Ms. Deonauth is a question that goes to the validity of the sale, not the accuracy of the auditor's report. *See Jones*, 178 Md. App. at 69. Mr. Webber raises no other issues about these mailing logs other than the notice argument that we resolved above, and it is not a proper challenge to the auditor's amended report. *See Huertas*, 248 Md. App. at 206; *Hood*, 227 Md. App. at 694 n.1.

Finally, Mr. Webber claims that the trustees' affidavit of debt was "fraudulent and/or erroneous" and that the auditor shouldn't have accepted it. The one example he provides of "fraudulent" information in the affidavit of debt is that the principal balance decreased from January 2019 to July 2022 while the interest and escrow balances increased. He claims there is "no logical reason" for the principal balance to decrease while the interest and escrow balances increase. As the trustees explain in their brief, however, the decrease in the principal balance was the result of the auditor crediting $26,239.87 to the mortgage debt after accounting for the trustees' five-percent commission and the costs of the sale attributable to Ms. Deonauth under the court's order. And under the terms of the Senior Lien, interest continued to accrue on the principal balance, and escrow payments continued to accumulate, until the loan was paid in full, which occurred when the purchasers of the Third Sale settled with the trustees on September 30, 2022. So the interest and escrow balances increased from 2019 to 2022 according to the Senior Lien, and the principal decreased when the trustees applied the remainder of Ms. Deonauth's deposit to the mortgage balance. There is nothing illogical about these numbers.

At bottom, Mr. Webber has failed to assert a legitimate or supportable challenge to the auditor's amended report, and we see no error in the court's decision to ratify it.

4. The court erred when it denied Mr. Webber's request for a hearing on his exceptions to the auditor's amended report, but the error was harmless.

Finally, Mr. Webber argues that the circuit court erred when it overruled his exceptions to the auditor's amended report without granting his request for a hearing, as

required, he says, under Maryland Rule 2-543.[6] The trustees argue that the court was not required to hold a hearing because Mr. Webber's request was untimely. Alternatively, the trustees contend that Mr. Webber's exceptions were meritless and, therefore, he was not prejudiced by the court's decision not to hold a hearing. We hold that the court erred when it denied Mr. Webber's request for a hearing, but the error was harmless and does not warrant reversal.

Rule 2-543 requires a party to file any exceptions to an auditor's report within ten days after the filing of that report. Md. Rule 2-543(g)(1). The excepting party must state the asserted errors with particularity, *id.*, and must direct their exceptions "'not at the right to sell the property or to the conduct of the sale itself, but to the allowance or disallowance of expenses of the sale or the distribution of the proceeds.'" *Huertas*, 248 Md. App. at 206 (*quoting Hood*, 227 Md. App. at 694 n.1). The court may rule on the exceptions without a hearing unless the excepting or opposing party requests a hearing "within five days after service of the exceptions." Md. Rule 2-543(h).

The auditor in this case filed his amended report on November 11, 2022, and Mr. Webber filed his exceptions, which included a request for a hearing, on November 21, 2022. His exceptions and hearing request were timely, and the court should have granted his request for a hearing per Rule 2-543(h). Mr. Webber, however, has not argued that he

[6] Although not included in his Questions Presented, Mr. Webber also argued briefly that the court should have granted his request for a hearing on his motion to alter or amend the court's ratification of the auditor's amended report. This was more of a passing comment than an argument, however, and he includes no authority to support his position, so we will not address it. *See* Md. Rules 8-504(a)(6), 8-504(c).

was prejudiced by the court's failure to hold a hearing on his exceptions.[7] And our review of Mr. Webber's exceptions, which largely mirror the claims that we've disposed of in Subsections II.B.1 and 3 of this opinion, confirms that Mr. Webber was not prejudiced by the lack of a hearing. We do not reverse circuit court judgments unless the complaining party shows that the court erred *and* that they were prejudiced by that error. *See Sumpter v. Sumpter*, 436 Md. 74, 82 (2013) ("'[A]ppellate courts of this State will not reverse a lower court judgment for harmless error: the complaining party must show *prejudice* as well as *error*.'" (*quoting Harris v. David S. Harris, P.A.*, 310 Md. 310, 319 (1987))). We will not reverse the court's order denying Mr. Webber's request for a hearing and overruling his exceptions.

C. Mr. Webber's Second Appeal Fails Because We Do Not Reach His Claims Regarding The Auditor's Second Report, And We Reject His Argument Regarding The Court's March 21, 2024 Order.

1. We decline to reach the merits of all but one question in Mr. Webber's brief for failure to comply with the rules.

Mr. Webber's *second* appeal arises from the court's ratification of the auditor's final report. He presents thirty-five questions for our review, thirty-four of which contain no supporting argument and merely reference his arguments in prior filings in this Court or in

[7] Mr. Webber claims that a hearing is necessary, "if for no other reason, [to conduct] a factual inquiry regarding the sufficiency of initial service." But the sufficiency of service of the notice of intent to foreclose goes to the validity of the sale itself and is therefore not a proper challenge to an auditor's report and not a proper inquiry for a hearing on exceptions to an auditor's report. *See Jones*, 178 Md. App. at 69; *Huertas*, 248 Md. App. at 206. Moreover, as we explained in Subsection II.B.2 of this opinion, notice was adequate in this case.

the circuit court. Maryland Rule 8-504(a)(6) requires all briefs filed in this Court to contain an "[a]rgument in support of the party's position." In a case involving multiple appellants or appellees, an appellant may "adopt by reference any part of the brief of another." Md. Rule 8-503(f). This exception, however, doesn't apply where, as here, a party attempts to adopt parts of their own prior filings rather than those in another party's briefs. *See Monumental Life Ins. Co. v. U.S. Fidelity & Guar. Co.*, 94 Md. App. 505, 544 n.34 (1993) (finding Rule 8-503(f) didn't apply because appellant referenced own prior arguments and not those of another party). When a party fails to comply with the rules that govern procedure in this Court, we have the discretion to "dismiss the appeal or make any other appropriate order with respect to the case . . . ." Md. Rule 8-504(c). Mr. Webber has failed to comply with Rule 8-504(a)(5) as to thirty-four of his questions presented. We will, therefore, limit our review of Mr. Webber's second appeal to the one fully briefed Question Presented: whether the circuit court dismissed the entire case in its March 21, 2024 order denying Mr. Webber's motion to reconsider the ratification of the auditor's final report.

2. The court did not dismiss the foreclosure action in its March 21, 2024 order.

Mr. Webber asks us to read the court's March 21, 2024 order, which denied his motion to reconsider the ratification of the auditor's final report, as having dismissed the entire foreclosure action because in addition to denying his motion, the order said, "the matter shall be **DISMISSED** . . . ." In response, the trustees contend that the March 21 order "has no impact on the final judgments entered prior to its issuance," including the orders ratifying the Third Sale, the auditor's amended report, and the auditor's final report.

We agree with the trustees that the March 21 order does not affect prior ratification orders and did not dismiss the entire case.

This seems to be a matter of misinterpretation. Rather than draft a new order denying Mr. Webber's motion for reconsideration, the court crossed out portions of Mr. Webber's proposed order and added the word "**DENIED**" where Mr. Webber had typed "GRANTED." The result is less than perfect but got the court's point across:

> **UPON CONSIDERATION** of Defendant, Scott Webber's *Motion To Reconsider Ratification Of Auditor's Second And Final Report*, and having considered any opposition thereto, and the record herein, it is this 20th day of March, 2024, by the Circuit Court of Montgomery County, Maryland, it is hereby
>
> **ORDERED**, that the Defendant's *Motion To Reconsider* be and hereby is ~~GRANTED~~ **DENIED**; ~~and upon reconsideration, it is~~
>
> **FURTHER ORDERED**, that the matter shall be **DISMISSED** for lack of original juris~~diction, it have been shown that Defendant and Property Owner Deonauth was not lawfully served with the documents required prior to initiating a foreclosure action in the Circuit Court; but should the matter not be ripe for jurisdictional determination just yet, it is~~
>
> ~~**FURTHER ORDERED**, that the matter shall be REMANDED to the Auditor for additional evidentiary fact finding to determine the status of the account, and recalculation of the surplus to include, at a minimum, all elements of the June 12, 2007 Settlement Agreement between Defendants Webber and Deonauth, and consideration for the claim made by Edith Webber.~~

We read this order as denying Mr. Webber's motion for reconsideration. The fact that the court didn't cross out the paragraph dismissing the matter for lack of original jurisdiction completely does not raise alarm bells for us about the validity of the earlier ratification orders, not least because they are final orders that can't be attacked in collateral

proceedings. *See Huertas*, 248 Md. App. at 203–06 (sale ratification order is final as to validity of the sale and cannot be attacked in proceedings regarding auditor's report). The only prior decision that this order could affect is the court's ratification of the auditor's final report. It's clear from the order, though, that the court *denied* Mr. Webber's motion to reconsider, leaving the ratification of that report in place.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.