Circuit Court for Baltimore City
Case No. 24-O-13-000528

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2112

September Term, 2019

RENEE L. MCCRAY

v.

JOHN E. DRISCOLL, III, *et al*.

Friedman,
Gould,
Woodward, Patrick, L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 11, 2021

*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.

Renee L. McCray, appellant, appeals from an order issued by the Circuit Court for Baltimore City ratifying and confirming the auditor's report that was filed following the foreclosure sale of her real property located at 109 North Edgewood Street, Baltimore, Maryland (the property). She raises ten issues on appeal, which reduce to two: (1) whether the court erred in overruling her exceptions to the auditor's report, and (2) whether the court erred in not holding a hearing on her exceptions. For the reasons that follow, we shall affirm the judgment of the circuit court

In 2013, appellees, acting as substitute trustees,[1] filed an Order to Docket Foreclosure. Ms. McCray's home was eventually sold to Federal Home Loan Mortgage Corporation (Freddie Mac) at a foreclosure auction by way of a credit bid. The circuit court ratified the sale in August 2019. Ms. McCray appealed to this Court and we affirmed the court's ratification of the foreclosure sale. *McCray v. Driscoll*, No. 1367, Sept. Term 2019 (filed Sept. 17, 2020)

The case was referred to an auditor and the auditor filed her report in the circuit court on November 8, 2019. In that report, the auditor determined that there were credits to Ms. McCray in the amount of $29,750, which reflected the purchase price of the property at the foreclosure auction, and debits in the amount of $100,400.94, which reflected various costs and expenses incurred by appellees, as well as the remaining $97,327.63 that was owed on the loan. This resulted in a deficiency of $70,650.94.

[1] Appellees are John E. Driscoll, III, Robert Frazier, Jana Gantt, Laura Harris, Kimberly Lane, and Deena L. Reynolds.

Ms. McCray filed timely exceptions to the auditor's report and requested a hearing. In her exceptions, Ms. McCray primarily challenged the validity of the documents that the auditor had used to calculate the debits and credits set forth in her report. For example, she claimed that there was "no evidence to substantiate" the $29,750 purchase price of the property at the foreclosure auction because: (1) Freddie Mac was not entitled to place a credit bid at the foreclosure sale; (2) the "Purchaser's Affidavit" signed by John E. Driscoll, III did "not state that he had any personal or first-hand knowledge that [Freddie Mac] was the purchaser"; and (3) John Driscoll had not provided any evidence that he had an agency agreement with Freddie Mac.

With respect to the debits set forth in the auditor's report, Ms. McCray first contended that the "$97,327.63 [amount owed] stated in the Auditor's Account . . . [w]as prejudicial and without any material fact evidence of its validity." Specifically, she asserted that the "Amended Affidavit of Debt," which the auditor relied on to calculate the final debt owed on the property, was invalid because the attorney for Freddie Mac who signed the affidavit did not state that she had "first-hand knowledge of the information stated [therein]" and had previously "refused to provide any agency agreement with [Freddie Mac]." Ms. McCray also challenged a debit of $93.75 to reimburse the cost of the Foreclosure Bond that was obtained by the substitute trustees prior to the foreclosure sale. Specifically, she claimed that this bond was "false, misleading, and deceptive" because it had included the names of people who were "not substitute trustees mentioned in the Report of Sale, nor [the] foreclosure action." With respect to the debt owed on the property, Ms. McCray also asserted that the debt had been

discharged in bankruptcy in 2014 and therefore, the auditor's attempt to "state [that she] owed this alleged debt was in violation" of the Bankruptcy Court's order.

On November 26, 2019, the circuit court denied appellant's exceptions without a hearing. The same day the court issued a separate order ratifying the auditor's report. This appeal followed.

I. THE COURT'S DENIAL OF MS. MCCRAY'S EXCEPTIONS

Ms. McCray first contends that the court erred in denying her exceptions to the auditor's report because appellees failed to "provide genuine fact evidence" to support the credits and debits found by the auditor. We disagree. The credits and debits in the auditor's report were supported by documents filed by appellees including the Substitute Trustees Report of Sale, the Purchaser's Affidavit, the Auctioneer's Affidavit, and the Amended Affidavit of Deed of Trust Debt. Moreover, Ms. McCray did not submit any evidence indicating that amounts set forth in those documents were incorrect.

To be sure, Ms. McCray's exceptions to the auditor's report challenged the validity of those documents, claiming that they had been "rebutted" and were not "legally valid." However, she raised the same objections to those documents in other motions that she filed prior to the court ratifying the foreclosure sale, including in her "Motion to Strike Amended Affidavit of DOT Debt," "Motion to Strike Purchaser's Affidavit," and "Exceptions to the Notice of Sale." Each of these motions was denied by the trial court. Moreover, she either challenged, or could have challenged, the denial of those motions in her prior appeal from the ratification order. And in affirming the ratification order we specifically addressed the denial of several of those motions, holding that: "Freddie Mac

. . . could purchase [the property] by making a credit bid"; the Purchaser's Affidavit signed by John Driscoll was "in proper form"; and that Ms. McCray had failed to show how she was prejudiced by the alleged irregularity with respect to the persons listed on the foreclosure bond. *See McCray v. Driscoll*, No. 1367, Sept. Term 2019 (filed Sept. 17, 2020). Consequently, these claims were barred by the law of the case doctrine and the court did not err in declining to consider them again before it ratified the auditor's report. *See Holloway v. State*, 232 Md. App. 272, 279 (2017) ("The law of the case doctrine provides that, 'once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case.'" (citation omitted)); *see also Baltimore County v. Baltimore County Fraternal Order of Police, Lodge No. 4*, 220 Md. App. 596, 659 (2014) (noting that "neither the questions decided [by the appellate courts] nor the ones that could have been raised and decided are available to be raised in a subsequent appeal" (citation omitted)).

In addition to challenging the documents filed by appellees, Ms. McCray also contends that the court's order ratifying the auditor's report violated the Bankruptcy Court's 2014 discharge order which released her from personal liability on the loan securing the Deed of Trust. Although this contention is not barred by the law of the case doctrine, it lacks merit. The auditor's report was an accounting of the proceeds of the foreclosure sale required by Maryland Rule 14-305(f). And in finding that there was a deficiency, the auditor simply concluded that there was not a surplus of funds following the foreclosure sale that should be distributed to Ms. McCray. It was not a deficiency

judgment and did not entitle Freddie Mac to seek a deficiency judgment against her. Thus, it did not violate the Bankruptcy Court's order.

II. THE COURT'S FAILURE TO HOLD A HEARING

Ms. McCray also asserts that the court erred in not holding a hearing on her exceptions to the auditor's report "in order for the Appellees to provide material fact evidence that the rebutted assertions in the Auditor's Account or Report could be attested to by a competent fact witness[.]" In her exceptions, Ms. McCray requested a hearing. And Maryland Rule 2-543(h) provides that the court may decide exceptions without a hearing "*unless* a hearing is requested with the exceptions[.]" Thus, we agree that the court should have held a hearing.

However, for the reasons previously set forth, Ms. McCray's exceptions to the auditor's report were either barred by the law of the case doctrine or lacked merit as a matter of law. Thus, even if the court had held a hearing, there is no reasonable possibility that it would have reached a different result. Because Ms. McCray was not prejudiced by the lack of a hearing, reversal is not required. *See Sumpter v. Sumpter*, 436 Md. 74, 82 (2013) ("Appellate courts of this State will not reverse a lower court judgment for harmless error: the complaining party must show prejudice as well as error.*"* (internal quotation marks and citation omitted)).

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