UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2236

September Term, 2013

SUSAN BERK, ET AL.

v.

SUNTRUST MORTGAGE, INC.

Graeff,
Kehoe,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 31, 2015

This appeal involves the ruling of the Circuit Court for Montgomery County granting the motion filed by SunTrust Mortgage, Inc. ("SunTrust"), appellee, to dismiss a second amended complaint filed by Susan Berk and Gregory Lattimer, appellants. On appeal, appellants raise the following questions for our review,[1] which we have consolidated and rephrased:

1. Did the court abuse its discretion when it orally granted SunTrust's motion to dismiss appellants' second amended complaint prior to the expiration of the time for filing a written response and without notice that it would make a ruling at the hearing?

2. Did the court properly conclude that appellants' second amended complaint failed to state a claim for relief?

[1] The "issues presented" section of appellants' brief sets forth two questions for review, as follows:

1. Did the trial court err when it failed to provide the [a]ppellants an opportunity to respond to the [a]ppellee's motion to dismiss the second amended complaint consistent with Md. Rule 2-311(b) before ruling on the motion?

2. Did the trial court violate the due process rights of the [a]ppellants when it conducted a hearing on the [a]ppellee's motion to dismiss the [a]ppellants' second amended complaint even though no notice was provided that it would do so?

The argument section of appellants' brief, however, sets forth three arguments, the third stating that the court erred in dismissing the Second Amended Complaint because appellants sufficiently alleged a mortgage fraud claim against Sun Trust. Appellants state that their position on appeal is that this Court "should not address the merits of [the] motion to dismiss as the lower court should address the issue in the first instance after affording [a]ppellants the opportunity to be heard," but that they are addressing the issue on appeal "to avoid any potential argument in the future by [SunTrust] that [they] have waived this argument because it was not raised in this appeal."

3. Did the court err in dismissing appellants' second amended complaint with prejudice, rather than allowing appellants an opportunity to amend their complaint?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On March 13, 2013, SunTrust initiated foreclosure proceedings against appellants in the circuit court.[2] On June 5, 2013, Mr. Lattimer filed a "complaint for damages" (the "first complaint") in the circuit court on behalf of himself and Ms. Berk, asserting claims for mortgage fraud and breach of good faith and fair dealing and seeking $1,000,000 in damages.[3] Mr. Lattimer was the only signatory to the first complaint, which alleged the following.

On September 6, 2006, appellants refinanced their property with SunTrust, and SunTrust held a $1,000,000 note on the residential property. On March 28, 2012, SunTrust sold the note to U.S. Bank, and "it appears" that SunTrust then became the servicer of the loan, instead of the secured party. On January 31, 2013, SunTrust named substitute trustees, and on March 13, 2013, the substitute trustees initiated foreclosure proceedings on the original note against appellants. The substitute trustees alleged that a default occurred on the note on April 2, 2010, "as a consequence of payment not being made on April 1, 2010." According to appellants, however, that "allegation [was] knowingly false

[2] The foreclosure proceedings were captioned *Jacob Geesing, et al. v. Susan Berk & Gregory Lattimore*, Case No. 374831V (filed Mar. 13, 2013).

[3] Apparently, Mr. Lattimer is an attorney licensed in the District of Columbia, but not Maryland.

inasmuch as there is a 15 day grace period for each monthly payment, and therefore, no payment could have even been deemed late until the 17th day of the month," and appellee "knew that [appellants] were not in default at that time." Furthermore, appellee "manufactured an alleged default, falsified documents, refused to acknowledge payment made by [appellants] and returned payments to [appellants] in order to increase their indebtedness," and "caused a document to be filed and/or recorded which . . . it knows contains false and/or misleading information." Pursuant to appellants' "information and belief," their mortgage was "reviewed for irregularities by government regulators and it was found that [SunTrust] had engaged in fraudulent conduct therein and in thousands of other mortgages, resulting in the assessment of fines, penalties, payments and a consent decree demanding corrective action."

Based on those facts, with respect to the mortgage fraud claim, the first complaint alleged that appellee "has submitted documents . . . that it knows are false with the intent to support a foreclosure that is legally untenable," and in submitting the false documents, appellee "has engaged in mortgage fraud." With respect to the breach of duty of good faith and fair dealing claim, the first complaint alleged that appellee "failed to act in a manner consistent with its obligations to [appellants] when [it] manufactured an alleged default, falsified documents, refused to acknowledge payments made by [appellants], and returned payments to [appellants] in order to increase their indebtedness." Those actions, appellants asserted, were "done in a manner, and for the sole reason, to take advantage of [appellants] at a time of financial hardship and exclusively for [SunTrust's] benefit."

On August 26, 2013, SunTrust filed a motion to dismiss the first complaint for failure to state a claim upon which relief could be granted, pursuant to Md. Rule 2-322(b). SunTrust argued that appellants were alleging for the first time in their first complaint that SunTrust committed mortgage fraud and/or breached a duty, and that nowhere in their complaint or filings in the foreclosure case did they "deny that they defaulted on their loan nor [did] they challenge SunTrust's right to foreclose on the property." SunTrust asserted that the "mere generalized allegations" that SunTrust engaged in fraud were insufficient to state a claim under the Maryland Mortgage Fraud Protection Act ("MMFPA"), especially because appellants "failed to demonstrate that they suffered any damages as a result of their reliance on any of SunTrust's alleged false statements." With respect to appellants' claim of breach of covenant of good faith and fair dealing, SunTrust asserted that Maryland courts do not recognize that cause of action "absent allegations that specifically identify the contractual relationship between the parties and the specific obligations that [SunTrust] failed to perform," and appellants failed to allege any facts to support those requirements. Appellants did not file a response to the motion.

On September 16, 2013, Ms. Berk filed an "amended complaint for damages" (the "amended complaint"), purportedly on behalf of herself and Mr. Lattimer.[4] The amended complaint was identical to the first complaint except that it asserted, in paragraph 13, that the knowingly false documents SunTrust had submitted in the foreclosure proceedings included an "Intent to Foreclose, Appointment of Substitute Trustees, Affidavit of Deed of

[4] SunTrust stated in its response that Ms. Berk is not a licensed attorney.

Trust Debt and Right to Foreclose and Loan Payment History," and it added an allegation in paragraph 10 that SunTrust had "admitted that it engaged in certain improprieties regarding alleged foreclosures and the documents and affidavits associated therewith."[5] Ms. Berk was the only signatory to the amended complaint.

On October 3, 2013, the court in the foreclosure proceedings denied a motion to stay and/or dismiss the foreclosure proceedings that appellants had filed on June 6, 2013. In the motion to stay and/or dismiss the foreclosure proceedings, appellants set forth essentially the same allegations that they did in the first complaint and the amended complaint.

On October 4, 2013, SunTrust moved to strike and/or dismiss the amended complaint, incorporating its original motion to dismiss and memorandum in support thereof, and asserting that: (1) the amended complaint was improper because Ms. Berk was not a signatory or proper party to the first complaint; (2) its August 26, 2013 motion to dismiss the first complaint required an opposition on or before September 13, 2013, and appellants had not filed any response to that motion; and (3) substantively, appellants' amended complaint remained insufficient to maintain a claim of fraud or any other cause of action under Maryland law. With respect to the "new facts" contained in paragraphs 10 and 13, SunTrust asserted that the "new" facts in paragraph 10 "concern proceedings Plaintiffs were not involved in and therefore cannot form the basis of their fraud and

[5] The only other difference between the first complaint and the amended complaint was that the first complaint was signed by Mr. Lattimer, and the amended complaint was signed by Ms. Berk.

contract based claims," and the "new" facts alleged in paragraph 13 were "limited to identifying with no particularity certain documents that it claims were 'false.'" Thus, SunTrust asserted, "even assuming the [a]mended [c]omplaint is a valid pleading, it must be dismissed for the same reasons identified in [its first] motion to dismiss because [the amended complaint] suffers from the same infirmities as the [first complaint]." SunTrust also moved for an order granting its unopposed motion to dismiss the first complaint. No opposition was filed to SunTrust's motion to strike and/or dismiss the amended complaint, or its motion for an order granting its unopposed motion to dismiss the first complaint.

On November 4, 2013, appellants filed a second amended complaint (the "second amended complaint"). Other than the addition of the signature of Mr. Lattimer, the second amended complaint was substantively identical to the amended complaint.

On November 14, 2013, the court notified the parties that a hearing was scheduled for November 27, 2013, on SunTrust's motion to dismiss the first complaint, its motion to strike and/or dismiss the amended complaint, its motion for order granting the unopposed motion to dismiss, and its motion for escrow payments. On November 21, 2013, SunTrust filed a motion to dismiss the second amended complaint, expressly adopting and incorporating its arguments from its prior motions to dismiss and noting that the only change from the amended complaint was the addition of Mr. Lattimer's signature. SunTrust's motion also argued that appellants were estopped from re-litigating allegations rejected by the foreclosure court, and that appellants should not be granted leave to file any further amended complaints.

On November 27, 2013, the court held a hearing to address the pending motions. The court first heard arguments on SunTrust's motion to strike the amended complaint. With respect to that motion, SunTrust argued that Ms. Berk "had nothing to amend because she was not a proper party to the" first complaint, as she was not a signatory, and Mr. Lattimer was not a party to the amended complaint. Moreover, the amended complaint did not materially change any of the allegations in the first complaint. Mr. Lattimer responded that the amended complaint was "moot anyway" because appellants had filed a second amended complaint. The court noted that the second amended complaint did add both parties' signatures, and therefore, that "problem appears to have been cured." Accordingly, the court concluded that the motion to strike was moot.

Next, the court addressed SunTrust's motion to dismiss as it applied to the second amended complaint. Mr. Lattimer argued that the motion to dismiss the second amended complaint was "not ripe yet" because that motion had just been filed and appellants had not had an opportunity to respond. The court asked if appellants would respond to the motion, and Mr. Lattimer agreed that they would "[a]t the appropriate time." SunTrust responded that the second amended complaint was identical to the amended complaint, and appellants had "completely ignored the motion to strike or motion to dismiss the . . . amended complaint," instead filing a second amended complaint after the time for responding to the amended complaint had passed. SunTrust continued that "simply by filing a second amended complaint to cure the . . . deficiency of the . . . amended complaint does not reset the clock when they have not addressed any of the substantive issues. The facts that are alleged have not changed."

The court then reviewed the amended complaint and the second amended complaint, noting that there were no substantive changes between the two other than the addition of a signature line. The court asked why it would not be appropriate, then, to treat SunTrust's motion to dismiss "as if it was directed to" the second amended complaint. Mr. Lattimer asked whether the court intended to "ignore the motion that they have filed with respect to the second amended complaint, then go back to the motion that they filed with respect to the first amended complaint?" The court responded that it "appears that what has happened is, that in response to each of the arguments that [SunTrust] has raised you have attempted to cure the deficiencies in those, in your [first] complaint, by essentially filing . . . additional amendments." Because the second amended complaint was substantively the same as the amended complaint, the court heard argument on SunTrust's motion to dismiss that complaint.

SunTrust argued that the second count should be dismissed for failure to state a claim because Maryland does not recognize an independent cause of action for breach of good faith and fair dealing. It asserted that the first count should be dismissed because the facts alleged were conclusory and non-specific, and in any event, appellants did not allege that they had relied on any alleged fraudulent documents or misstatements to support their claim. SunTrust also submitted that appellants should not be allowed leave to amend because the same claims had already been litigated and rejected in the foreclosure case, and therefore, permitting further amendment would be futile.

Mr. Lattimer argued that the only matter before the court was the second amended complaint, and it would be "improper" for the court to "force [appellants] to address that

when we haven't had sufficient time, or opportunity, to file whatever written submission that we choose." Mr. Lattimer acknowledged that he could have responded to the first two motions to dismiss, but he did not do so because, instead, he filed an amended complaint.

The court then asked Mr. Lattimer to address the substantive claims. With respect to the fraud claim, Mr. Lattimer stated: "I don't know what their argument is. I haven't read their pleading." After the court asked if he had read SunTrust's argument in the original motion to dismiss, Mr. Lattimer stated that he had. The court asked him, again, to address that argument. Mr. Lattimer responded:

> Other than to say that there is specificity in the document, mortgage fraud . . . it is identified with specificity in the second amended complaint. There is no inability of them to determine what the nature and the basis of the claim is. And I believe that the . . . standard for this is whether or not the defendant has sufficient notice in order to formulate a defense. There can be no argument here that the defendant does not have sufficient information, particularly in the second amended complaint, from which to formulate a defense. And so for that reason a dismissal is inappropriate. But even if the court were to decide that it is not, dismissal with prejudice would be even more inappropriate. The proper remedy would be dismissal without prejudice or leave to file an amended complaint to address those issues that the court believes are deficient.

Ms. Berk added that appellants did not come to the hearing "with intentions to argue the merits" of the motion to dismiss the second amended complaint, as they "[d]id not believe that the court would address a motion that we received yesterday."

Counsel for SunTrust pointed out that the motion to dismiss the second amended complaint expressly adopted the original motion to dismiss, so appellants were "fully aware" of the argument. Counsel further noted that, with respect to count two, not "a single word" had been changed.

After hearing arguments, the court issued an oral ruling from the bench. With respect to the posture of the case, the court stated:

> As a procedural matter what appears to have happened was that in response to the original motion to dismiss [appellants] filed an amended complaint, and then when there was a – then they filed a second amended complaint. And it appears that there's been an attempt by [appellants] going forward to try to correct the alleged deficiencies that Sun[T]rust has identified.
>
> Today in the file it appears that there is a motion to dismiss the second amended complaint which was filed on November 21st of 2013 . . . . And today [appellants] say that because they have filed a second amended complaint, and that the filing of the second amended complaint moots out, essentially, the motions that are before the court . . . .
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> They then say that they are not prepared to address the motion to dismiss the second amended complaint because it was only filed a few days ago. Essentially then what [appellants] have set up is a process of leapfrogging, where with respect to each subsequent motion to dismiss the[y] file an[] amendment and then say they're not ready.
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> If you look at the file as a whole it appears to me that the – as between the complaint, the . . . first amended complaint and the second amended complaint, that looking to the substance of those pleadings that they really are very similar. And looking at the substance of the motion to dismiss they are also very similar. And so the court will go ahead today and address the motion to dismiss the second amended complaint because that's where we are. And I will note, of course, that [appellants] did not oppose the original motion to dismiss.

The court then addressed the substantive claims, in the light most favorable to appellants as the non-moving party. As to the claim for breach of duty of good faith and fair dealing, the court agreed with SunTrust that "no such separate stand-alone cause of action" exists in Maryland. Accordingly, it granted the motion to dismiss Count II. As to the claim for mortgage fraud, the court agreed with SunTrust that the complaint, the amended complaint, and the second amended complaint, contained "an insufficient . . .

laying out of the factual allegations that would support a claim for mortgage fraud." It noted that SunTrust specifically stated that "there are no specific facts showing reliance," and the court agreed. The court then stated that, although it "ordinarily" would afford a party an opportunity to amend the complaint, "in this case, by virtue of having leapfrogged the motions, [appellants] have already tried to do that." Although appellants "had the benefit of looking at the motions to dismiss, seeing the deficiencies, and trying to correct the[ir] complaint[s] . . . . they still have not been able to allege the reliance that . . . is required under the statute." Accordingly, the court dismissed the case with prejudice.

On December 27, 2013, appellants filed a notice of appeal. On April 22, 2014, this Court remanded the case because a final judgment had not been entered. On May 12, 2014, the court issued a final order: (1) granting SunTrust's August 26, 2013, motion to dismiss; (2) granting SunTrust's October 4, 2013, motion to dismiss, but denying the motion as to strike; (3) denying as moot SunTrust's October 4, 2013, unopposed motion to dismiss; (4) denying as moot SunTrust's October 31, 2013, motion for escrow payments; and (5) granting SunTrust's November 21, 2013, motion to dismiss the second amended complaint with prejudice. This appeal followed.

DISCUSSION

I.

Grant of Motion to Dismiss Second Amended Complaint Prior to Expiration of Time For Filing Response and Without Notice

Appellants' first contention is that the court "inexplicably[] rejected" the "well-established" principle that an amended pleading supersedes a former pleading, when it

"ruled on motions that addressed pleadings, the complaint and amended complaint," which were superseded by the second amended complaint. They further argue that, because a response to SunTrust's motion to dismiss the second amended complaint was not due until after the hearing pursuant to Md. Rule 2-311(b),[6] and they were not provided notice that the court would consider the motion at the hearing, they were denied due process and the court committed prejudicial error.

SunTrust does not dispute that the second amended complaint superseded the prior complaints, but it states that, "regardless of whether the [court] should have ruled on those motions, the reality is that those rulings have no legal or practical effect at this juncture, they caused no harm or prejudice to the [a]ppellants, and [a]ppellants do not request any particularized relief to remedy this purported error." With respect to the court's ruling on SunTrust's motion to dismiss the Second Amended Complaint prior to the expiration of the time to respond, SunTrust argues that the court has discretion to rule on motions prior to the expiration of the fifteen-day window, "either upon motion of a party" pursuant to Md. Rule 1-204 "or in other situations if warranted by the circumstances."[7] SunTrust

[6] Md. Rule 2-311(b) provides, in part:

> **Response.** Except as otherwise provided in this section, a party against whom a motion is directed shall file any response within 15 days after being served with the motion, or within the time allowed for a party's original pleading pursuant to Rule 2-321(a), whichever is later. . . . If a party fails to file a response required by this section, the court may proceed to rule on the motion.

[7] Md. Rule 1-204(a) provides, in part:

(continued . . .)

asserts that, here, the court did not abuse its discretion when it orally granted SunTrust's motion to dismiss the second amended complaint prior to the expiration of the fifteen-day period because the court recognized that the issue presented in SunTrust's motion, i.e., the insufficiency of appellants' allegations, was identical to and incorporated from the issue presented in SunTrust's prior motions to dismiss. And, despite appellants having had ample opportunity to respond to the prior motions, instead of filing responses, appellants filed amended pleadings that continued to be insufficient to state a claim. Thus, after recognizing appellants' tactic of "leapfrogging" by the filing of amended complaints after each of SunTrust's motions to dismiss, the court decided to rule on the motion to dismiss the second amended complaint after giving appellants "a full opportunity to be heard" as to why they believed their second amended complaint stated a claim for relief.[8]

Initially, we agree with appellants, as did the circuit court, that an amended complaint supersedes a former complaint. *See Asphalt & Concrete Servs., Inc. v. Perry*, 221 Md. App. 235, 267 ("An amended complaint supersedes the initial complaint,

(. . . continued)

> **Generally.** When these rules or an order of court require or allow an act to be done at or within a specified time, the court, on motion of any party and for cause shown, may (1) shorten the period remaining . . . .

[8] SunTrust further asserts that, although the court orally granted SunTrust's motion to dismiss the second amended complaint on November 27, 2013, it did not issue a final written judgment granting dismissal and disposing of the case until May 12, 2014, well after the expiration of the fifteen-day window in which appellants could have filed a written response. Appellant's response to this argument is that SunTrust "will say or do anything to advance its position, no matter how contrary to law or common sense what it says happens to be."

rendering the amended complaint the operative pleading."), *cert. granted*, 442 Md. 515 (2015). We also agree that, pursuant to Md. Rule 2-311(b), appellants' response to SunTrust's motion to dismiss the second amended complaint was not yet due at the time of the court's ruling.

This Court, however, reviews a circuit court's decision to rule on a motion prior to the expiration of the fifteen-day window prescribed by Md. Rule 2-311(b) for an abuse of discretion. *See Miller v. Mathias*, 428 Md. 419, 445-46 (2012) (reviewing for an abuse of discretion the trial court's ruling on a motion to alter or amend before the appellant's time to answer had expired). Abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court," or when the court acts "without reference to any guiding rules or principles." *Powell v. Breslin*, 430 Md. 52, 62 (2013) (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)).

Moreover, even if the circuit court abused its discretion in ruling on a motion prior to the time that the answer was due, any such error warrants reversal only if it is prejudicial. *Miller*, 428 Md. at 445-46. As this Court has explained:

> It has long been the policy in this state that [appellate courts] will not reverse a lower court judgment if the error is harmless." *Barksdale v. Wilkowsky*, 419 Md. 649, 657 (2011) (internal citation and quotation omitted). "The burden is on the complaining party to show prejudice as well as error." *Flores v. Bell*, 398 Md. 27, 33 (2007). A verdict will not be overturned unless the error was likely to have affected the verdict below; and "an error that does not affect the outcome of the case is harmless error." *Id.* The complaining party must demonstrate that the prejudice was "likely" or "substantial." *Barksdale, supra*, 419 Md. at 662. "[T]he general rule is that a complainant who has proven error must show more than that prejudice was *possible*; she must show that it was probable." *Id.* (emphasis in original).

Gillespie v. Gillespie, 206 Md. App. 146, 169 (2012).

Here, given that the second amended complaint contained no substantive changes from the prior complaint, and that appellants had ample time to review and respond to the motion to dismiss that complaint, which arguments were incorporated into the motion to dismiss the second amended complaint, we conclude that the circuit court did not abuse its discretion in addressing the motion to dismiss the second amended complaint, even though appellant's time to answer had not expired. Moreover, even if the court erred, we reject appellants' argument that the prejudicial error occurred because they "were not given any meaningful opportunity to prepare to argue the motion before the trial court as there were no reason to assume that the trial court would consider and rule upon a motion that was not yet ripe for determination, nor which had even been scheduled for hearing on the date that it was heard." As indicated, the allegations in the second amended complaint were substantively identical to the amended complaint, and each of SunTrust's motions to dismiss expressly adopted and incorporated its arguments from its prior motions to dismiss concerning the deficiencies in appellants' allegations, motions that the appellants acknowledged that they had an opportunity to review. Accordingly, we perceive no prejudice to appellants based on the court's decision to rule on the motion to dismiss the second amended complaint after affording appellants a full opportunity to be heard and to explain orally why they believed their second amended complaint stated a claim for relief.

With respect to appellants' argument that they were denied due process, we note that "[t]he essence of due process is the requirement that the party be given 'notice of the case against him and opportunity to meet it.'" *Baltimore St. Parking Co., LLC v. Mayor & City Council of Baltimore*, 194 Md. App. 569, 593-94 (2010) (quoting *Mathews v.*

Eldridge, 424 U.S. 319, 348–49 (1976)). The opportunity to be heard means "'at a meaningful time and in a meaningful manner.'" *Id.* at 594 (quoting *Mathews*, 424 U.S. at 333). "All that is necessary is that the procedures be tailored, in light of the decision to be made, to the capacities and circumstances of those who are to be heard . . . to insure that they are given a meaningful opportunity to present their case." *Id.* (quoting *Mathews*, 424 U.S. at 349).

Here, appellants had notice that the issue to be addressed at the hearing would be the sufficiency of their allegations against SunTrust and the relief sought was dismissal of their claims. Appellants were given the opportunity to address that issue. Under the circumstances, appellants are not entitled to any relief based on the circuit court's action in ruling on the motion to dismiss prior to the expiration of the time for appellants to file a response.

II.

Failure to State a Claim Upon Which Relief Could Be Granted

Appellants next assert that their second amended complaint sufficiently alleged a claim for mortgage fraud against SunTrust.[9] In that regard, they assert that a "plain reading" of Md. Code (2010) § 7-401(d)(6) of the Real Property Article ("RP"), clearly demonstrates that a showing of specific reliance is not required, and the allegations that were alleged regarding the filing of false documents were sufficient to state a claim.

[9] Appellants do not address Count II, that SunTrust breached a duty of good faith and fair dealing, separate from the claim of mortgage fraud. Given our resolution of the mortgage fraud claim, therefore, we need not address the propriety of the court's dismissal of Count II.

SunTrust responds that appellants' second amended complaint contains only "two generic conclusory allegations" that SunTrust "filed and/or recorded" documents in unspecified locations, and those allegations "fail the requirement of particularity because they do not identify the *facts and circumstances* which constitute the alleged fraud." Noting that appellants contend, without citing any authority, that "reliance" is not an element of mortgage fraud, and the court stated that appellants had failed to plead any facts showing reliance, SunTrust responds that, regardless whether reliance is an element of mortgage fraud, appellants failed to plead fraud with particularity.

A.

Standard of Review

This Court has explained the standard of review of a trial court's order granting a motion to dismiss for failure to state a claim upon which relief could be granted:

> "A trial court may grant a motion to dismiss if, when assuming the truth of all well-pled facts and allegations in the complaint and any inferences that may be drawn, and viewing those facts in the light most favorable to the non-moving party, 'the allegations do not state a cause of action for which relief may be granted.'" *Latty v. St. Joseph's Soc'y of the Sacred Heart*, *Inc.*, 198 Md. App. 254, 262-63 (2011) (quoting *RRC Northeast, LLC v. BAA Md.*, Inc., 413 Md. 638, 643 (2010)). The facts set forth in the complaint must be "pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *RRC*, 413 Md. at 644.
>
> "'We review the grant of a motion to dismiss de novo.'" *Unger v. Berger*, 214 Md. App. 426, 432 (2013) (quoting *Reichs Ford Road Joint Venture v. State Roads Comm'n*, 388 Md. 500, 509 (2005)). *Accord Kumar v. Dhanda*, 198 Md. App. 337, 342 (2011) ("We review the court's decision to grant the motion to dismiss for legal correctness."), *aff'd*, 426 Md. 185 (2012). We will affirm the circuit court's judgment "'on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.'" *Monarc Constr., Inc. v. Aris Corp.*, 188 Md.

> App. 377, 385 (2009) (quoting *Pope v. Bd. of Sch. Comm'rs*, 106 Md. App. 578, 591 (1995)).

Advance Telecom Process LLC v. DSFederal, Inc., ___ Md. App. ___, No. 1371, Sept. Term, 2014, slip op. at 7-8 (filed July 30, 2015).

B.

Mortgage Fraud

Appellants argue in their brief that they sufficiently alleged mortgage fraud pursuant to RP § 7-401(d)(6), which provides as follows:

> *Mortgage fraud*. – "Mortgage fraud" means any action by a person made with the intent to defraud that involves:
>
> ***
>
> (6) Filing or causing to be filed in the land records in the county where a residential real property is located, any document relating to a mortgage loan that the person knows to contain a deliberate misstatement, misrepresentation, or omission.

It is well-settled in Maryland that, "[w]here a bill seeks a general account upon a charge of fraud, it is not sufficient to make such charge in general terms; but it should point out and state particular acts of fraud." *Boyd v. Shirk*, 125 Md. 175 (1915). "General or conclusory allegations of fraud are insufficient. A plaintiff must allege facts which indicate fraud or from which fraud is necessarily implied." *Antigua Condo. Ass'n v. Melba Investors Atl., Inc.*, 307 Md. 700, 735-36 (1986); *Parish v. Maryland & Virginia Milk Producers Assoc.*, 250 Md. 24 (1968); *Brack v. Evans,* 230 Md. 548 (1963); *Bachrach v. Washington United Coop., Inc.*, 181 Md. 315 (1943). "Allegation of fraud or characterizations of acts, conduct or transactions as fraudulent . . . without alleging facts which make them such, are conclusions of law insufficient to state a cause of action."

Greenbelt Homes, Inc. v. Bd. of Ed. of Prince George's Cnty., 248 Md. 350, 360 (1968). "Charges of fraud are never regarded in law as sufficient unless accompanied with allegations of the facts and circumstances which constitute the fraud." *Brack*, 230 Md. at 553.

In support of their argument that their second amended complaint "clearly demonstrates" that they "sufficiently alleged mortgage fraud," appellants cite solely to RP § 7-401(d)(6), and to the following allegations as set forth in the complaint:

> 6. On or about January 31, 2013, the defendant executed documents that it caused to be filed and/or recorded, purporting to name substitute trustees with power to take action upon the original note executed by the plaintiffs including, foreclosure.
>
> 7. On or about March 13, 2013, the substitute trustee purportedly put in place by the defendant, initiated a foreclosure proceeding in [the circuit court] . . . where in it is alleged that a default occurred on April 2, 1010, as a consequence of payment not being made on April 1, 2010. This allegation was knowingly false. Indeed, the defendant knew that plaintiffs were not in default at that time and indicated as much in other documents.
>
> 8. Moreover, at all times relevant hereto, the defendant manufactured an alleged default, falsified documents, refused to acknowledge payments made by the plaintiffs, and returned payments to the plaintiffs in order to increase their indebtedness.
>
> 9. In addition, the defendant has caused a document to be filed and/or recorded which is identified as "Affidavit of Deed of Trust Debt and Right to Foreclose" which it knows contains false and/or misleading information.
>
> 10. Plaintiffs' mortgage was reviewed for irregularities by government regulators and it was found that defendant had engaged in fraudulent conduct therein and in thousands of other mortgages, resulting in the assessment of fines, penalties, payments and a consent decree demanding corrective action. In fact, Sun[T]rust admitted that it engaged in certain improprieties regarding alleged foreclosures and the documents and affidavits associated therewith. That particular Consent Order was entered

> before the Board of Governors of the Federal Reserve System of the United States of America in Docket Nos. 11-021-B-SM; and 11-021-B-DEO.
>
> ***
>
> 13. The defendant has submitted documents that it knows contain false, misleading and/or incomplete information, the defendant has engage in mortgage fraud as that term is defined in [RP § 7-401].
>
> 14. In submitting documents that it knows contain false, misleading and/or incomplete information, the defendant has engaged in mortgage fraud as that term is defined in [RP § 7-401].

Initially, we note that paragraph 7, alleging that appellees made false statements in a foreclosure proceeding filed in court, could be a sufficient allegation in another case, but here it is not sufficient because a reference to documents filed in court is not mortgage fraud pursuant to RP § 7-401(d), which refers to filing in the land records. The conclusory allegations in the other paragraphs set forth above do not meet the stringent requirements for pleading fraud with particularity. The complaint does not allege where any documents were allegedly filed, what specific documents were filed, when they were filed, who filed them, what the relationship was of the person who filed the documents to SunTrust, and what the nature of the alleged misstatement, misrepresentation, or omission in the documents was. Accordingly, the circuit court did not err in dismissing this count for failure to state a claim upon which relief can be granted.[10]

[10] Even if the circuit court's ruling was based on appellants' failure to allege facts to show reliance, as opposed to the failure to specifically allege fraud, that is not dispositive because this Court can affirm the judgment on any ground adequately shown by the record. *See Barnes v. Greater Baltimore Med. Ctr., Inc.*, 210 Md. App. 457, 471 (2013) ("'[A]n appellate court will affirm a circuit court's judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.' In other words, we can affirm the trial court if it reached the (continued . . .)

III.

Dismissal Without Opportunity to Amend

Finally, appellants contend that, "[e]ven assuming there were deficiencies" in the second amended complaint, they "should have been afforded an opportunity to amend their complaint to cure" those deficiencies. They assert that the "record was devoid of any basis to conclude that amendment of the complaint would be improper in this case."

SunTrust contends that the court did not abuse its discretion in declining to give appellants "a fourth bite at the apple because doing so would have caused prejudice to SunTrust and ultimately [any amendments] would have been futile." Because appellants had already had several opportunities to amend their complaint to state a claim in response to SunTrust's motions to dismiss, and they failed to do so, SunTrust argues that the court properly found that further amendment was not warranted.[11]

"Although it is well-established that leave to amend complaints should be granted freely to serve the ends of justice and that it is the rare situation in which a court should not

(. . . continued) right result for the wrong reasons."). *Accord Parks v. Alpharma, Inc.*, 421 Md. 59, 65 n.4 (2011) (The grant of a motion to dismiss may be affirmed on "any ground adequately shown by the record, whether or not relied upon by the trial court.").

[11] Moreover, SunTrust asserts that the parties already litigated the accuracy and validity of the loan documents in the related foreclosure case, and therefore, appellants are collaterally estopped from re-litigating the factual issues. Appellants assert that SunTrust's representation "constitutes an outright fabrication," and they note that SunTrust has not identified "any oral or written order, or any language from any court in support of its representation." They further assert that, "[o]nce again, Sun[T]rust will say or do anything to advance its position, no matter how contrary to law or common sense what it says happens to be." Given our resolution of the case, we need not address the merits of SunTrust's collateral estoppel argument.

grant leave to amend, an amendment should not be allowed if it would result in prejudice to the opposing party or undue delay, such as where amendment would be futile because the claim is flawed irreparably." *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673-74 (2010) (internal citations omitted). "A trial court has discretion to dismiss a claim with prejudice if it fails to state a claim that could afford relief." *Pulte Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 727 (2007), *aff'd*, 403 Md. 367 (2008); Md. Rule 2-322(b)(2).

Here, given that appellants filed three separate complaints, two in response to motions to dismiss, but did not allege new or sufficient facts to support a claim for relief, we conclude that the court properly exercised its discretion by dismissing appellants' second amended complaint without allowing a fourth opportunity to amend. Appellants state no claim for relief in this regard.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANTS.