

Circuit Court for Montgomery County
Case No. 382445V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2367

September Term, 2018

FATIMA MUSTAFA, *et al.*

v.

CARRIE M. WARD, *et al.*

Kehoe,
Gould,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 30, 2019

*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.

In 2013, appellees, acting as substitute trustees,¹ filed an Order to Docket in the Circuit Court for Montgomery County, seeking to foreclose on real property owned by Fatima and Kamal Mustafa, appellants. The Mustafas’ home was eventually sold to JPMorgan Chase Bank Association (Chase) at a foreclosure auction and the circuit court ratified the sale on May 14, 2015. The Mustafas appealed to this Court and we affirmed the court’s ratification of the foreclosure sale. *Mustafa v. Ward*, No. 474, Sept. Term 2015 (filed February 15, 2019)

The case was then referred to an auditor and the auditor filed his report in the circuit court on June 15, 2018. The report ultimately stated a “deficiency in the proceeds of the sale less than the amount required to pay the debt[.]” The Mustafas filed exceptions to the auditor’s report, claiming that: (1) a loan modification agreement executed by the parties in 2009 had rendered the deed of trust null and void, and (2) a July 15, 2017 consent order entered by the Bankruptcy Court disallowing Chase’s proof of claim had rendered the note securing the deed of trust null and void.² Following a hearing, the court entered an order overruling the Mustafas’ exceptions and ratifying the auditor’s report. The Mustafas now

¹ Appellees are Carrie M. Ward, Howard N. Bierman, and Jacob Geesing.

² Mr. Mustafa filed for bankruptcy in 2016. During the bankruptcy proceedings Mr. Mustafa filed a proof of claim on behalf of Chase who, at that point, had already received the deed from the substitute trustees and recorded it in the Montgomery County Land Records. Mr. Mustafa then filed an objection to the proof of claim that *he filed*, arguing that the filing was insufficient. Chase consented to the relief sought by Mr. Mustafa, which was disallowing the proof of claim he had previously filed *on behalf of Chase*. Chase indicated that it was only consenting because it had already foreclosed on the property and was not seeking a deficiency judgment against the Mustafas.

appeal, raising two issues which reduce to one: whether the court erred in ratifying the auditor’s report. For the reasons that follow, we shall affirm.

As an initial matter, the Mustafas do not address either of the contentions that they raised in their exceptions to the auditor’s report in their brief. Consequently, they have waived any issues related to those claims on appeal. *See Rosales v. State*, 463 Md. 552, 569-70 (2019) (“[A] question not presented or argued in an appellant’s brief is waived or abandoned and is, therefore, not properly preserved for review.”) (internal quotation marks and citation omitted). In any event, their claims regarding the validity of the note and deed of trust are not cognizable exceptions to the auditor’s report because such exceptions can only challenge the amount that is due and owing on the mortgage following the foreclosure sale. *See Pac. Mortg. & Inv. Grp., Ltd. v. LaGuerre*, 81 Md. App. 28, 33-34 (1989) (noting that the auditor determines “the amount that is due and owing under the mortgage in stating the account” and, if that “amount due is disputed, exceptions may be filed pursuant to Rule 2-543(g)”). Instead, any challenge to validity of the lien or the substitute trustees standing to foreclose must be raised in a motion to stay or dismiss the foreclosure sale pursuant to Maryland Rule 14-211.³

Rather than pressing the claims that they raised in the circuit court, the Mustafas now assert for the first time on appeal that the court erred in ratifying the auditor’s report because: (1) it resulted in a deficiency judgment being entered against them despite their

³ We note that on November 18, 2018, the Bankruptcy Court entered an order rejecting the Mustafas’ request to strike the deed of trust and finding that the 2017 consent order had “merely disallowed [Chase’s claim] in the context of the bankruptcy case and had no effect on the lien.”

personal liability for the debt having been discharged in bankruptcy, and (2) the transfer of the property to Chase in 2015 was unlawful because the sale had not been ratified and Chase could not use the unpaid balance of the loan as a credit to purchase the property. However, because these claims were not raised in the circuit court, they are not preserved for appellate review. *See* Maryland Rule 8-131(a).

But, even if preserved, neither contention would require us to vacate the ratification of the auditor’s report. The order ratifying the auditor’s report does not conflict with any orders issued by the Bankruptcy Court because, contrary to the Mustafas’ claim, it did not result in the entry of a deficiency judgment against them.⁴ *See* Maryland Rule 14-216(b) (setting forth the procedure for obtaining a deficiency judgment). Rather, the auditor’s report was simply an accounting of the proceeds of the foreclosure sale that was required by Maryland Rule 14-305(f). Moreover, the Mustafas’ claims regarding the transfer of title from appellees to Chase are not proper exceptions to an auditor’s report and should have been raised prior to the ratification of the foreclosure sale. Consequently, we are not persuaded that the court erred in denying their exceptions and in ratifying the auditor’s report.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**

⁴ In fact, in its filings in the Bankruptcy Court Chase has repeatedly indicated that it is not seeking a deficiency judgment against the Mustafas.