

Circuit Court for Montgomery County  
Case No: 444364V

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 3127

September Term, 2018

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TIEMOKO COULIBALY

v.

CARRIE WARD, *et al.*

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

JJ.

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PER CURIAM

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Filed: January 2, 2020

\*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 March 2018, Tiemoko Coulibaly, appellant, filed a “wrongful foreclosure lawsuit” in the Circuit Court for Montgomery County against JPMorgan Chase Bank, N.A., Carrie M. Ward, and Diane S. Rosenberg, appellees, asserting various causes of action designed to “challenge the bank’s right to foreclosure and the legality of the foreclosure action itself.” Though sweeping in scope, Mr. Coulibaly’s 64-page complaint explicitly identified four counts: 1) violation of the Maryland Consumer Protection Act, Md. Code Ann., Com. Law §13-101 et seq., 2) violation of the Maryland Consumer Debt Collection Act, Md. Code Ann., Com. Law §14-201 et seq., 3) violation of the Maryland Mortgage Fraud Protection Act, Md. Code Ann., Real Prop. §7-401 et seq., and 4) declaratory and injunctive relief.

In response to the complaint, each of the appellees filed a motion to dismiss, contending that Mr. Coulibaly’s claims were barred by res judicata and that, as a matter of law, the complaint failed to state a claim upon which relief could be granted. Following written opposition by Mr. Coulibaly and a motions hearing, the circuit court dismissed the complaint with prejudice. On appeal, Mr. Coulibaly advances four questions for the Court’s consideration, which we rephrase for clarity:

1. Did the circuit court err in dismissing Mr. Coulibaly’s complaint without prejudice?
2. Did the circuit court abuse its discretion by denying Mr. Coulibaly’s oral motion to amend complaint?
3. Did the circuit court err when it accepted a foreclosure lawsuit instituted by the appellees “several years after the expiration of the statute of limitations?”

4. Did the circuit court err when it ratified a foreclosure sale to a purchaser “who was never the legal owner of the property?”

For the following reasons, we shall affirm the judgment of the circuit court.

#### **DISMISSAL OF COMPLAINT**

As to whether the court was legally correct in dismissing Mr. Coulibaly’s complaint, “[we] must determine whether the complaint, *on its face*, discloses a legally sufficient cause of action.” *Pittway Corp. v. Collins*, 409 Md. 218, 234 (2009). As an initial matter, Mr. Coulibaly’s brief does not direct the Court to the facts specifically pled in his complaint and address whether they disclose a legal cause of action. Instead, the brief addresses, in large part, matters which purportedly occurred in the foreclosure action, a case not presently before us. For example, to support his claim that he was “evicted illegally” from his home and that the purchaser from the foreclosure sale was “never the legal owner,” he references a motion for reconsideration and a motion to resell property filed in the foreclosure action. Not only were these motions made in a separate case, they were filed in 2019, well after the July 2018 dismissal of the complaint which forms the basis of this appeal. Accordingly, they are not properly part of the record here, and we will not consider them in our analysis, nor any other document which was not before the circuit court when it rendered its decision.<sup>1</sup> *See* Maryland Rule 8-413(a); *see also Rosenberg v. State*, 12 Md.

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<sup>1</sup> Carrie M. Ward, appellee, moves in her brief to strike the appendix of the appellant’s brief, alleging that it “contains documents that are not part of the record of the proceedings in the circuit court below.” We agree and, therefore, strike pages 1-91 of the appendix.

App. 20, 38-39 (1971) (declining to exercise appellate review of an issue “not disclosed by the record.”).

Mr. Coulibaly’s brief advances only a single paragraph tailored to whether his complaint was wrongfully dismissed. He states, in conclusory fashion, that res judicata was not a bar to his complaint because “he never litigated any case previously [having] the same issues with the same parties like Carrie M. Ward in any previous litigation.” He further states that “[t]his is the first time Appellant litigates against Appellees.” We disagree. The doctrine of res judicata requires a showing “(1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and, (3) that there has been a final judgment on the merits.” *Anand v. O’Sullivan*, 233 Md. App. 677, 696, *cert. denied*, 456 Md. 503 (2017) (citation omitted).

In 2010 and 2015, Mr. Coulibaly instituted lawsuits in the United States District Court for the District of Maryland, asserting various causes of action against JPMorgan Chase Bank, N.A. stemming from the foreclosure action. Therefore, as to the first prong of res judicata, contrary to Mr. Coulibaly’s assertion that he had “never litigated any case previously” with the appellees, the bank was indeed a party to prior litigation with him. Appellees Diane S. Rosenberg and Carrie M. Ward, the substitute trustees in two respective foreclosure actions instituted against Mr. Coulibaly concerning the subject property, were not named defendants in either of the federal lawsuits.<sup>2</sup> However, as substitute trustees,

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<sup>2</sup> The 2015 foreclosure action was voluntarily dismissed by Diane S. Rosenberg.

they were in privity with JPMorgan Chase Bank. *See Svrcek v. Rosenberg*, 203 Md. App. 705, 729 (2012) (Substitute trustees are in privity with the holders of a note, as they are appointed to “exercise the lender’s power under the deed of trust to foreclose the [mortgagor’s] right of redemption.”). As substitute trustees, they were “so identified in interest” with JPMorgan Chase, N.A. that they represented “the same legal right.” *FWB Bank v. Richman*, 354 Md. 472, 498 (1999). We hold, therefore, that the first prong of res judicata is satisfied.

As to the second and third prongs of res judicata, Mr. Coulibaly fails to argue with sufficient specificity that the claims made in the federal lawsuits were different than the claims raised in his 2018 complaint. Nor does his brief argue that there was not a final judgment entered in either of the federal lawsuits. In contrast, the appellees explicitly contend that the claims raised in the 2018 complaint, *i.e.*, violation of the Maryland Consumer Protection Act, the Maryland Consumer Debt Collection Act and the Maryland Mortgage Fraud Protection Act, were all previously raised and adjudicated by final judgment. Because Mr. Coulibaly fails to advance argument in his brief to contradict the appellees’ assertion, the issue is deemed waived. *See* Md. Rule 8-504(a)(5) (requiring that a brief contain an “[a]rgument in support of the party’s position”); *see also Honeycutt v. Honeycutt*, 150 Md. App. 604, 618 (2003) (“[a]n appellate court is not required to address an argument on appeal when the appellant has failed to adequately brief his argument”).

#### **ORAL MOTION TO AMEND COMPLAINT**

The record reveals that Mr. Coulibaly made an oral motion to amend his complaint at the July 10, 2018 motions hearing and that the motion was denied by the court. A

transcription of this hearing has not been provided to this Court for our review. Pursuant to Maryland Rule 8-411, it is the responsibility of the appellant to provide “a transcription of any proceeding relevant to the appeal.” Mr. Coulibaly’s failure to do so is a significant impediment to our ability to review his oral motion. Without the transcript, we have no means of ascertaining the scope of his request or the circuit court’s basis for denying it. We will not, therefore, consider whether the circuit court abused its discretion in denying his oral motion to amend the complaint.

#### **REMAINING QUESTIONS**

We will not consider the latter two questions posed by Mr. Coulibaly concerning whether the court erred when it accepted a foreclosure lawsuit instituted by the appellees and whether the court erred when it ratified a foreclosure sale. These questions concern actions taken by the circuit court in a separate case than the matter presently before us with a separate record. Though Mr. Coulibaly argues that his 2018 complaint was filed as a “cross-action” in the foreclosure action and was erroneously filed in “another docket with a new case number,” he has not directed the Court to where this contention was raised in the circuit court. *See Lusch v. State*, 31 Md. App. 271 (1976) (“[A]ppellate courts cannot be expected to delve through the record to unearth factual support favorable to appellant and then seek out law to sustain his position.”).

For the foregoing reasons, we perceive no error in the circuit court’s dismissal of Mr. Coulibaly’s complaint and shall affirm.

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