

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 254

September Term, 2014 Term

MOHAMMED ASLAM KHAN

v.

JOHN S. BURSON, ET AL.,
SUBSTITUTE TRUSTEES

Eyler, Deborah S.,
Meredith,
Berger,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: May 19, 2015

*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 July of 2005, Mohammad Aslam Khan, the appellant, borrowed \$260,000 to purchase residential property located at 9125 6th Street, in Lanham (the “Property”). He executed an “Obligation to Pay” and a purchase money deed of trust (the “Deed of Trust”), which created a lien on the Property. Subsequently, he defaulted on his payments. In the Circuit Court for Prince George’s County, the substitute trustees under the Deed of Trust instituted a foreclosure action. In December of 2009, the Property was sold at foreclosure to Federal Home Loan Mortgage Corporation (“Freddie Mac”). In October of 2010, the court ratified the auditor’s report, which stated that the proceeds of the foreclosure sale were insufficient to satisfy the debt.

Freddie Mac then assigned its interest in the “Obligation to Pay” to Dyck-O’Neal, Inc. (“DONI”), the appellee. DONI filed a motion for deficiency judgment. Khan filed an opposition, arguing that DONI’s motion was not timely filed and, irrespective of the motion’s timeliness, DONI was not entitled to a deficiency judgment. By order entered on January 30, 2014, the court granted DONI’s motion and entered a deficiency judgment against Khan for \$63,535.77, plus post-judgment interest.

Khan noted this appeal, asking whether the circuit court erred in entering a deficiency judgment in favor of DONI. We shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

On July 14, 2005, Khan borrowed \$260,000, from 2004-0000361, LLC (the “Lender”), to purchase the Property. In order “to conform to religious principles that eschewed the charging and the paying of monetary interest,” Khan entered into an “Islamic

Home Acquisition Transaction and Co-Ownership Program,” by which he and the Lender executed three documents: an “Obligation to Pay,” which was a promissory note; the Deed of Trust; and a “Co-Ownership Agreement.”¹

The “Co-Ownership Agreement,” executed for the purpose of “facilitat[ing Khan’s] acquisition of the Property,” gives the “Purchase Price of the Property” as \$325,000. Khan paid \$65,000 of the purchase price and the Lender paid the remaining \$260,000. In exchange for its contribution, the Lender received an 80% “undivided share of all equitable interests relating to the Property.” Khan retained “the ability to purchase the rights of [the Lender] at any time at the Buyout Amount.”²

In the “Obligation to Pay,” Khan, “[i]n return for the consideration stated in the Co-Ownership Agreement[,] . . . promise[d] to pay the Original Acquisition Balance of \$260,000” by making monthly payments of \$1,558.84 “until [he had] paid all of the Net Monthly Payments.” The Deed of Trust provided that it “secure[d] to the [Lender] (and [its] Assignees), as beneficiary under [the Deed of Trust], the performance of [Khan’s] covenants and agreements under the Co-Ownership Agreement and Obligation to Pay.”

Also on July 14, 2005, the Lender transferred its interest in the “Obligation to Pay” and the Deed of Trust to Guidance Residential, LLC.

¹None of these documents include an interest rate. Additionally, they refer to the appellant as the “Consumer,” never a debtor, and the Lender as the “Co-Owner,” rather than as a creditor.

²The “Co-Ownership Agreement” and the “Obligation to Pay” refer to another document, titled “Definitions of Key Terms,” which defines capitalized terms. That document is not in the record.

In November of 2008, Khan defaulted on the “Obligation to Pay.” On August 25, 2009, in the Circuit Court for Prince George’s County, substitute trustees John S. Burson, William M. Savage, Gregory N. Britto, Jason Murphy, Kristine D. Brown, and Erik W. Yoder (the “Substitute Trustees”), filed a foreclosure action.

On December 8, 2009, the Property was sold at foreclosure to Freddie Mac for \$208,053. The Substitute Trustees filed a report of sale, and the court ratified the sale by order entered on August 3, 2010. Then, the court referred the matter to an auditor, who, on September 27, 2010, filed a report stating that there was a \$63,535.77 deficiency. The appellant did not file exceptions to the report of sale or the auditor’s report. By order entered on October 12, 2010, the court ratified the auditor’s report.³

Neither the Substitute Trustees nor Freddie Mac, the new holder of the “Obligation to Pay,” sought a deficiency judgment. Instead, on February 27, 2012, Freddie Mac assigned to DONI the “Obligation to Pay,” “along with any other evidence of indebtedness” and “its rights, title, and interest in and to any cause of action against [Khan] for a deficiency claim.”

On October 11, 2013, DONI filed a motion for a deficiency judgment, which Khan opposed. Khan asserted that DONI’s motion was not filed within three years of the court’s final ratification of the auditor’s report, as required by Rule 14-216(b), and therefore the court could not enter a deficiency judgment. He also argued, irrespective of Rule 14-216(b),

³The record contains the wrong auditor’s report. The one included is for a different foreclosure action initiated by the Substitutes Trustees. It was ratified by order entered January 12, 2011. The docket entries, however, reflect the dates above. Neither Khan nor DONI contends that the above dates or that the amount of the deficiency is incorrect.

that the Deed of Trust and the “Co-Ownership Agreement” did not entitle DONI to a deficiency judgment. On January 30, 2014, the court entered a deficiency judgment in favor of DONI and against Khan in the amount of \$63,535.77, plus post-judgment interest.

On March 4, 2014, Khan filed a notice of appeal.⁴

Additional facts will be included as pertinent to our discussion.

DISCUSSION

Khan contends the court erred in entering a deficiency judgment against him for two reasons. First, DONI’s motion for a deficiency judgment was not timely filed. Second, DONI was not entitled to a deficiency judgment under the terms of the Deed of Trust and “Co-Ownership Agreement.”

DONI counters that this Court lacks jurisdiction because Khan did not file a timely notice of appeal. DONI further contends that, even if Khan’s notice of appeal was timely, its (DONI’s) motion for deficiency judgment under Rule 14-216(b) also was timely, and it was entitled to a deficiency judgment.

(a)

A notice of appeal must “be filed within 30 days after entry of the judgment or order from which the appeal is taken.” Md. Rule 8-202(a). In this case, on January 30, 2014, the court entered judgment in favor of DONI and against Khan. Thirty days after that was March 1, 2014, a Saturday. The next business day was Monday, March 3, 2014. That day the

⁴Also on March 4, 2014, Khan filed a motion for reconsideration, which the court denied by order entered June 13, 2014.

Circuit Court for Prince George’s County was closed because of a snow storm. Therefore, Khan had until the next day -- Tuesday, March 4, 2014 -- to timely file his notice of appeal. *See* Md. Rule 1-203. He filed the notice of appeal that day. Accordingly, we have jurisdiction over this appeal.

(b)

Rule 14-216(b) governs the filing of a motion for a deficiency judgment. It reads, in relevant part, as follows:

At any time *within three years* after the final ratification of the auditor’s report, a secured party or any appropriate party in interest may file a motion for a deficiency judgment if the proceeds of the sale ... are insufficient to satisfy the debt and accrued interest.

(Emphasis added.) By order entered on October 12, 2010, the circuit court finally ratified the auditor’s report. DONI filed its motion for a deficiency judgment on October 11, 2013, which was within three years after the final ratification of the auditor’s report.

In arguing that the motion was not timely filed, Khan points to an October 21, 2013 time stamp on the motion. This argument is misplaced. That time stamp is crossed out and is replaced by an October 11, 2013 time stamp. The docket entry also reflects that DONI’s motion was filed on October 11, 2013. Therefore, the motion was timely filed.

(c)

Khan contends that the circuit court erred in entering a deficiency judgment because “[n]either the [Deed of T]rust nor the Co-Ownership Agreement permit[s] the Co-Owner to obtain a deficiency judgment. Further, the the [sic] Co-Ownership Agreement states that the

Co-Owner shall have no recourse against Appellee [sic].” The two sentences just quoted are Khan’s *entire* argument to this Court on the only substantive issue presented on appeal.

Rule 8-504(a)(6) provides that a brief shall contain “[a]rgument in support of the party’s position on each issue.” This provision is “mandatory and, therefore, it is necessary for the appellant to present *and argue* all points of appeal in his initial brief.” *Federal Land Bank of Baltimore, Inc. v. Esham*, 43 Md. App. 446, 457 (1979) (emphasis added). When a party raises an issue but fails to provide supporting argument, this Court will decline to consider the merits of the unargued issue. *Id.* at 457-58. *See also Klauenberg v. State*, 355 Md. 528, 552 (1999) (1999) (“*arguments* not presented in a brief or not presented with particularity will not be considered on appeal” (emphasis added)).

Khan has utterly failed to make any legal argument to this Court on the question whether any of the terms of the Deed of Trust or the Co-Ownership Agreement (or any other document connected to the transaction) protect him from a deficiency judgment. It is not this Court’s function to make an appellant’s legal argument for him, and then address it. By failing to include any legal argument on the deficiency judgment issue, Khan has waived it for review.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY THE
APPELLANT.**