

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2109

September Term, 2013

SABIR A. RAHMAN

v.

JACOB GEESING, ET AL., SUBSTITUTE
TRUSTEES

Berger,
Arthur,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: June 24, 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.

This appeal arises out of a foreclosure action initiated in the Circuit Court for Montgomery County by substitute trustees Jacob Geesing, Howard N. Bierman, and Carrie M. Ward (collectively, “Substitute Trustees”), appellees, against mortgagor Sabir A. Rahman (“Rahman”), appellant. Rahman filed exceptions to the ratification of the foreclosure sale, which were denied by the circuit court.

On appeal, Rahman presents four questions for our review, which we set forth verbatim:

1. Did the Trial Court make an error in ignoring MD Rule 14-207(c) by not questioning the validity of the Deed of Appointment of Substitute Trustee?
2. Did the Trial Court make an error in ignoring MD Rule 14-207(c) by failing to scrutinize and question the validity of the Affidavits filed by Jacob Geesing?
3. Did the Trial Court make an error in failing to question why the foreclosure case was filed on behalf of an entity different from the entity named in the deed of trust submitted to the Docket?
4. Did the Trial Court abuse its discretion by allowing a foreclosure on a property on which there was no lien, and then by allowing and ratifying a wrongful foreclosure.

As we shall explain, the specific allegations of error set forth by Rahman are not properly before this Court on appeal. Accordingly, we shall affirm the judgments of the Circuit Court for Montgomery County.

FACTS AND PROCEEDINGS

In 2006, Rahman and his late wife, Saeeda Rahman, refinanced their home mortgage. The Rahmans obtained a loan in the amount of \$750,000.00, which was secured by a lien on

real property located at 18806 Brooke Road, Sandy Spring, Maryland, 20860 (“the Property”). Rahman subsequently defaulted on the loan by failing to remit required payments. On July 22, 2011, the Substitute Trustees, on behalf of the secured party, Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2006-4, filed a foreclosure action in the circuit court. The Property was sold at public auction and the Substitute Trustees filed a Report of Sale on September 10, 2013.

On October 11, 2013, Rahman filed exceptions to the sale. Following a hearing on the merits on December 4, 2013, the circuit court denied Rahman’s exceptions. On December 6, 2013, the circuit court ratified the foreclosure sale. Rahman filed a notice of appeal on December 11, 2013.¹

DISCUSSION

We have explained that the following standard applies to our review of a trial court’s ruling on a party’s exceptions to a foreclosure sale:

In reviewing a court’s ratification of a foreclosure sale, we disturb the circuit court’s findings of fact only when they are clearly erroneous. *Jones v. Rosenberg*, 178 Md. App. 54, 68–69, 940 A.2d 1109 (2008). In reviewing the circuit court’s findings of fact, we are mindful that the exceptant to a foreclosure sale bears the burden of proving that the sale was invalid. *J. Ashley*

¹ The auditor’s report was filed on January 9, 2014. Rahman filed exceptions to the auditor’s report on January 22, 2014, which were denied by the circuit court following a hearing on March 17, 2014. No appeal was taken from the trial court’s order denying Rahman’s exceptions to the auditor’s report.

Corp. v. Burson, 131 Md. App. 576, 582, 750 A.2d 618 (2000) (citing *Ten Hills Co. v. Ten Hills Corp.*, 176 Md. 444, 449, 5 A.2d 830 (1939)). The exceptant must also demonstrate that any irregularities caused “actual prejudice.” *J. Ashley Corp., supra*, 131 Md. App. at 586, 750 A.2d 618; *see also Harris v. David S. Harris, P.A.*, 310 Md. 310, 319, 529 A.2d 356 (1987) (stating, “In civil cases, it is well established that the burden of demonstrating both error and prejudice is on the complaining party”). We conduct our review on the basis of the evidence introduced into the record, and not on the basis of either the statements of counsel as to what occurred in other cases, *Witt v. Zions*, 194 Md. 186, 189, 70 A.2d 594 (1949), or proffers not accepted by the court as evidence. *Cf. J. Ashley Corp., supra*, 131 Md. App. at 582, 750 A.2d 618.

We review the court’s legal determinations de novo. *Jones, supra*, 178 Md.App. at 68–69, 940 A.2d 1109 (citing *Liddy v. Lamone*, 398 Md. 233, 246–47, 919 A.2d 1276 (2007)).

Fagnani v. Fisher, 190 Md. App. 463, 470-71 (2010), *aff’d*, 418 Md. 371 (2011).

In its opinion in *Fagnani v. Fisher*, the Court of Appeals summarized the law governing foreclosure sales and exceptions to foreclosure sales. The Court explained:

A foreclosure sale is governed by Md. Code (1974, 1996 Repl. Vol. 1999 Supp.), § 7-105 of the Real Property Article, and the Maryland Rules. Maryland Rule 14-305(d) provides that if a party perceives an irregularity in the foreclosure sale, it may file exceptions to the sale of the property. The ratification of a foreclosure sale is, however, presumed to be valid. *Webster v. Archer*, 176 Md. 245, 253, 4 A.2d 434, 437-438 (1939). It is settled law that, “there is a presumption that the sale was fairly made, and that the antecedent proceedings, if regular on the face of the record, were adequate and proper, and the burden is upon one attacking the sale to prove the contrary.” *Id.* The party excepting to the sale bears the burden of showing that the sale was invalid, and must show that any claimed errors caused prejudice. *Ten Hills Co. v. Ten Hills Corp.*, 176 Md. 444, 449, 5 A.2d 830, 832 (1939). Additionally, “[i]n reviewing a court’s

ratification of a foreclosure sale, we will disturb the circuit court’s findings of fact only when they are clearly erroneous.” *Fagnani*, 190 Md. App. at 470, 988 A.2d at 1138 (relying on *Jones v. Rosenberg*, 178 Md. App. 54, 68-69, 940 A.2d 1109 (2008)). Further, “if a mortgagee or his assignee complies with the terms of the power of sale in the mortgage, and conducts the foreclosure sale properly, the court will not set aside the sale merely because it brings loss and hardship upon the mortgagor.” *Bachrach v. Washington United Cooperative, Inc.*, 181 Md. 315, 324, 29 A.2d 822, 827 (1943).

Fagnani v. Fisher, 418 Md. 371, 383-84 (2011). “After [a foreclosure] sale, the borrower is ordinarily limited to raising procedural irregularities in the conduct of the sale.” *Thomas v. Nadel*, 427 Md. 441, 442-43 (2012). Pursuant to Md. Rule 14-211, a borrower must raise issues relating to a lender’s right to foreclose prior to the foreclosure sale through a motion to stay and dismiss rather than post-sale through the filing of exceptions. *Bates v. Cohn*, 417 Md. 309, 329 (2010).²

In his exceptions to the foreclosure sale, Rahman raised three grounds for exception:

(1) that the Substitute Trustees erred by failing to provide notice to the Estate of Saeeda

² Rahman filed multiple motions to stay and/or dismiss, but none were timely filed. Rahman’s first motion to dismiss was filed on May 21, 2012. Pursuant to Md. Rule 14-211, a motion to stay the sale and dismiss the action must be filed no later than 15 days after the last to occur of the following: (i) the date the final loss mitigation affidavit is filed; (ii) the date a motion to strike foreclosure mediation is granted; or (iii) if foreclosure mediation request is not stricken, the first to occur of either the date the foreclosure mediation was held, the date the Office of Administrative Hearings files with the court a report stating no mediation was held, or the expiration of 60 days after the request for mediation. In the present case, the final loss mitigation was filed on March 16, 2012. A motion to stay and dismiss the action must have been filed within fifteen days thereafter. Rahman’s first motion to dismiss (which Rahman subsequently withdrew) was filed over two months after the filing of the final loss mitigation affidavit.

Rahman³; (2) that the Substitute Trustees abused their powers as trustees by proceeding with the foreclosure sale while the property was subject to a pending collateral quiet title action; and (3) that the pending collateral lawsuit negatively impacted the sale price of the Property. On appeal, Rahman does not reassert the issues raised in his exceptions but instead attempts to raise various other issues related to the Substitute Trustees' authority to foreclose. We note, however, that the law supports the trial court's denial of Rahman's exceptions.

The collateral litigation provided no basis for the foreclosure sale to be disturbed. First, we note that there is no indication that any bidders were aware of the collateral lawsuit, which was filed on the day of sale. Second, a quiet title claim may be brought only "if an action at law or proceeding in equity is not pending to enforce or test the validity of the title, lien, encumbrance, or other adverse claim" -- such as a foreclosure. Md. Code (1974, 2010 Repl. Vol.), § 14-108 of the Real Property Article ("RP"); *see also Keefauver v. Richardson*, 233 Md. 545 (1964) (dismissing quiet title suit when previously-filed action to foreclose was pending).

Rahman's assertion that the estate of his late wife should have received notice of the sale is similarly unavailing. Rahman became the sole owner of the property following the death of his wife. *See, e.g., Beall v. Beall*, 291 Md. 224, 234 (1981) ("Maryland retains the estate of tenancy by the entirety in its traditional form. By common law, a conveyance to husband and wife does not make them joint tenants, nor are they tenants in common; they

³ Saeeda Rahman died on December 18, 2011.

are in the contemplation of the law but one person, and hence they take, not by moieties, but by the entirety. Neither can alienate without the consent of the other, and **the survivor takes the whole.**”) (emphasis added) (internal citation omitted). Furthermore, any objection relating to the alleged deficiencies in notification should have been asserted pre-sale.

In this appeal, the issues raised by Rahman were not raised before the trial court at the exceptions hearing. Pursuant to Md. Rule 8-131(a), we will “not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.” Although references to the issues raised by Rahman appear in various pleadings in the record, they were never properly raised before or decided by the trial court. For example, Rahman challenged the Substitute Trustees’ authority to foreclose in an Emergency Motion to Dismiss Foreclosure, which was filed on May 21, 2012. Critically, however, that motion was both untimely and subsequently withdrawn by Rahman. Rahman cannot raise issues now which were never decided by the circuit court and could have only properly been argued in the context of a timely motion to stay and dismiss pursuant to Md. Rule 14-211.

In sum, the trial court properly denied Rahman’s exceptions. Other issues raised by Rahman in this appeal were not properly raised before trial court and are not properly before us on appeal. Accordingly, we affirm.

**JUDGMENT OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**