

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0471

September Term, 2015

FODAY DAVID KAMARA

v.

SHAPIRO BROWN & ALT, LLP, ET AL.

Graeff,
Berger,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: March 17, 2016

*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 case arises out of a foreclosure proceeding initiated in the Circuit Court for Prince George’s County by substitute trustees Kristine D. Brown, William M. Savage, and Gregory N. Britto (collectively, the “Substitute Trustees”), appellees. In the foreclosure proceeding, the Substitute Trustees foreclosed on real property located at 2202 Dunrobin Drive, Bowie, Maryland 20721 (“the Property”) owned by mortgagor Foday David Kamara (“Kamara”), appellant. The foreclosing lender, HSBC Bank USA (“HSBC”), appellee, purchased the Property at public auction.

Following the foreclosure sale, but before the ratification of the sale, Kamara filed a third-party complaint against HSBC seeking damages and a declaratory judgment. Kamara’s third-party complaint was later dismissed. Upon the dismissal of Kamara’s third-party complaint, the circuit court ratified the foreclosure sale and granted HSBC’s motion for judgment awarding possession.

On appeal, Kamara challenges the denial of his exceptions to the foreclosure sale, the dismissal of his third-party complaint, and the failure of the circuit court to grant him discovery for allegations alleged in this third-party complaint. Indeed, Kamara presents six questions for our review,¹ which we have consolidated and rephrased as follows:

¹ The issues, as presented by Kamara, are:

1. Did the lower court err in denying Appellant’s Exceptions to [the] Foreclosure Sale, in dismissing his Amended Third-Party Complaint, and in denying his Motion for Reconsideration of the Ratification of the Foreclosure Sale without [a] hearing?

(continued...)

1. Whether the circuit court erred in denying Kamara’s exceptions and later ratifying the foreclosure sale.
2. Whether the circuit court erred by dismissing Kamara’s third-party complaint.
3. Whether the circuit court impermissibly denied Kamara discovery.
4. Whether the circuit court erred by denying Kamara’s motions for reconsideration without a hearing.

For the reasons set forth herein, we shall affirm the judgments of the Circuit Court for Prince George’s County.

FACTS AND PROCEEDINGS

In 2004, Kamara purchased the Property for \$610,646. In 2006, Kamara refinanced his home by making an Interest Only/Adjustable Rate Note payable to Mortgage Lenders Network USA, Inc. in the amount of \$596,000. The note was subsequently transferred to HSBC Bank USA (“HSBC”). The note was secured by a Deed of Trust on the Property.

¹ (...continued)

2. Did the lower court err in denying Appellant’s request for pre-trial discovery?
3. Did the lower Court commit a mistake of law in dismissing Appellant’s Amended Third-Party Complaint against HSBC Bank USA?
4. Were Appellant Kamara’s due process rights violated by the lower court?
5. Is the Substitute Trustee’s Deed void?

Subsequent to the refinance of Kamara's mortgage, Kamara endured employment and business related financial hardships, and his wife passed away. Thereafter, following repeated attempts to negotiate a loan modification, Kamara fell into default.

Later, on August 22, 2012, the Substitute Trustees commenced the foreclosure proceedings at issue in this appeal. On March 12, 2013, the Property was sold at a public auction. HSBC was the highest bidder and purchased the Property for \$408,000. Following the sale of the Property, Kamara filed exceptions to the foreclosure sale. Kamara's exceptions were denied without a hearing on June 18, 2013. After Kamara's exceptions had been denied, Kamara filed a document styled as a third-party complaint against HSBC seeking damages and a declaratory judgment arising from allegations of misconduct relating to the note, Deed of Trust, and HSBC's conduct during negotiations to modify Kamara's obligation on the note.

HSBC filed a motion to dismiss the third-party complaint, and the circuit court held a hearing on that motion on January 10, 2014. At the hearing, the trial judge observed that the third-party complaint failed to allege sufficient facts that would entitle Kamara to the relief he sought. Notwithstanding the deficiencies in his complaint, the trial judge declined to rule on the motion and opted instead to permit Kamara to file an amended complaint within ten days.

On January 22, 2014, Kamara filed an amended third-party complaint. Thereafter, HSBC filed a motion to dismiss the amended complaint, and Kamara opposed the motion and

requested a hearing. On April 14, 2014, the circuit court dismissed Kamara's third-party complaint. Notably, the court did not hold a second hearing on the motion to dismiss the third-party complaint. Following the dismissal of Kamara's third-party complaint, the circuit court ratified the foreclosure sale and granted HSBC's motion for judgment awarding possession. Additionally, the circuit court denied motions made by Kamara to reconsider the dismissal of his third-party complaint, and the ratification of the foreclosure sale.

This timely appeal followed. Additional facts will be discussed as necessitated by the issues presented.

DISCUSSION

In the present appeal, Kamara challenges judgments made with respect to the Substitute Trustees' foreclosure proceedings, as well as Kamara's third-party complaint against the lender. We shall address these issues in turn.

I. The Circuit Court Did Not Err by Denying Kamara's Exceptions And Later Ratifying the Foreclosure Sale.

A. The Circuit Court Did Not Err by Denying Kamara's Exceptions to the Foreclosure Sale.

Kamara asserts that the circuit court's denial of his exceptions to the foreclosure sale deprives him of his property without having been afforded adequate process under the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights. The Substitute Trustees, for their part, assert that the circuit court properly denied Kamara's exceptions in accordance with Md. Rule 14-305(d)(2), and therefore, the circuit court did not

deprive Kamara of his property in want of procedural due process. We agree with the Substitute Trustees.

“The due process clauses in the Fourteenth Amendment and in Article 24 of the Maryland Declaration of Rights protect an individual’s interest in substantive and procedural due process.” *Knapp v. Smethurst*, 139 Md. App. 676, 703 (2001). “A fundamental component ‘of the procedural due process right is the guarantee of an opportunity to be heard and its instrumental corollary, a promise of prior notice.’” *Id.* (quoting Lawrence Tribe, *American Constitutional Law* § 10-15, at 732 (2nd ed.1988)). Procedural due process, however, is “a flexible concept that calls for such procedural protection as a particular situation may demand.” *Wagner v. Wagner*, 109 Md. App. 1, 24 (1996).

“‘An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties and the pendency of the action and afford them an opportunity to present their objections.’” *Griffin v. Bierman*, 403 Md. 186, 197 (2008) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Critically, however, the scope of the property interests protected and the process that is due is “‘created and [its] dimensions are defined by existing rules or understandings that stem from an independent source such as state law-rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.’” *Elliott v. Kupferman*, 58 Md. App. 510, 520-21 (1984) (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)).

In this case, the independent source that governs the rights afforded to borrowers, such as Kamara, during a judicial sale is Title 14 of the Maryland Rules. Pursuant to Title 14, an owner of real property is “possessed of three means of challenging a foreclosure: obtaining a pre-sale injunction pursuant to Maryland Rule [14-211], filing post-sale exceptions to the ratification of the sale under Maryland Rule 14-305(d), and the filing of post-sale ratification exceptions to the auditor's statement of account pursuant to Maryland Rule 2-543(g), (h).” *Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705, 726 (2007). Post-sale exceptions are governed by Md. Rule 14-305(d). Maryland Rule 14-305(d) provides:

(d) **Exceptions to Sale.** (1) How taken. A party, and, in an action to foreclose a lien, the holder of a subordinate interest in the property subject to the lien, may file exceptions to the sale. Exceptions shall be in writing, shall set forth the alleged irregularity with particularity, and shall be filed within 30 days after the date of a notice issued pursuant to section (c) of this Rule or the filing of the report of sale if no notice is issued. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(2) Ruling on exceptions; hearing. The court shall determine whether to hold a hearing on the exceptions but it may not set aside a sale without a hearing. The court shall hold a hearing if a hearing is requested and the exceptions or any response clearly show a need to take evidence. The clerk shall send a notice of the hearing to all parties and, in an action to foreclose a lien, to all persons to whom notice of the sale was given pursuant to Rule 14-206(b).

Md. Rule 14-305(d).

Accordingly, pursuant to Rule 14-305(d), Kamara was only entitled to a hearing if “a hearing is requested **and** the exceptions or any response clearly show a need to take

evidence.” *Id.* (emphasis added). In his exceptions, Kamara contended that the sale should have been set aside because it was represented to him that the foreclosure sale would not occur if Kamara successfully modified his mortgage, and that the sale occurred before he was afforded an opportunity to modify his mortgage. In essence, Kamara argued that the Substitute Trustees had no right to foreclose because they had not afforded him sufficient time to modify his obligation. Our authorities, however, clearly articulate that exceptions to a foreclosure exist not to allow a borrower to challenge the lender’s right to foreclosure, but rather to permit a borrower to challenge the conduct of the sale itself.

The means by which a litigant may challenge a foreclosure become increasingly limited after a sale has occurred. Indeed, “[a]fter [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). Procedural irregularities that may be raised through post-sale exceptions are generally limited to issues “such as the advertisement of sale was insufficient or misdescribed the property, the creditor committed a fraud by preventing someone from bidding or by chilling the bidding, challenging the price as unconscionable, etc.” *Greenbriar Condo., Phase I Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683, 741 (2005), *superseded by rule*, Md. Rule 14-305, *as recognized in Thomas, supra*, 427 Md. at 445. Therefore, “Rule 14-305 is not an open portal through which any and all pre-sale objections may be filed as exceptions, without regard to the nature of the objection or when

the operative basis underlying the objection arose and was known to the borrower.” *Bates v. Cohn*, 417 Md. 309, 327 (2010).

Specifically, the Court of Appeals in *Bates* observed that:

Rule 14-211 allows homeowners to prevent a foreclosure sale by challenging, among other things, the “right of the [lender] to foreclose” Md. Rule 14-211(a)(3)(B). The Committee notes raised the issue of loss mitigation three times. It did so by stating that the failure to grant loss mitigation “may be a defense to the *right* of the [lender] to foreclose in the pending action.” 2010 Committee Note to Rule 14-211(a)(3) (B) (emphasis added). A reasonable construction of this language (and its placement within Rule 14-211) indicates that a lender’s failure to comply with loss mitigation requirements goes to its right to foreclose, rather than its procedural handling of the sale. As a result, a homeowner, who wishes to use the lender’s failure as the basis of his or her claim, must do so through Rule 14-211’s pre-sale injunctive relief apparatus.

Id. at 328-29 (alterations in original).

If Kamara sought to challenge whether HSBC’s conduct during negotiations for a loan modification negates the Substitute Trustees’ right to foreclose on the Property, the proper means would have been to move for a pre-sale injunction pursuant to Md. Rule 14-211. Notably, Kamara made no such motion in this case. Moreover, Kamara did not allege any procedural irregularities in the conduct of the sale. Rather, assuming the truth of all the factual allegations in Kamara’s exceptions, the circuit court did not err in denying Kamara a hearing because his exceptions challenged whether the Substitute Trustees have a right to foreclose rather than the conduct of the sale.

The procedural mechanisms set forth in Title 14 of the Maryland Rules ensure that a borrower has adequate notice and an opportunity to be heard consistent with the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights. In the instant action, although Kamara declined to exercise his right to challenge the Substitute Trustees' right to foreclose prior to the sale pursuant to Md. Rule 14-211, he most certainly had notice of the impending foreclosure and an opportunity to argue against it. We, therefore, hold that the denial of Kamara's exceptions in a manner consistent with Md. Rule 14-304(d), and the Court of Appeals' holding in *Bates, supra*, does not violate Kamara's procedural due process rights under the Fourteenth Amendment or Article 24 of the Maryland Declaration of Rights.²

B. The Circuit Court Did Not Err in Ratifying the Foreclosure Sale.

Kamara further contends that HSBC's title is void because the deed was prepared and recorded before Kamara's motion for the circuit court to reconsider the ratification of the sale

² We further note that Kamara was not deprived of due process when his amended third-party complaint was allegedly dismissed without a hearing. The due process clause prevents an individual from being deprived of their property in the absence of due process. In the foreclosure proceeding, the Substitute Trustees affirmatively sought to deprive Kamara of his interest in the Property. In the third-party complaint, however, Kamara sought damages for HSBC's alleged statutory violations. The constitutional provisions of the due process clause do not attach to Kamara's claim for damages the same way it does to foreclosure proceedings in which Kamara is affirmatively being deprived of his property. Accordingly, the allegations with regard to Kamara's third-party complaint do not implicate the due process clause of the Fourteenth Amendment the same way it does in the underlying foreclosure proceedings. Whether the dismissal of Kamara's third-party complaint otherwise compiles with the Maryland Rules is a matter we shall address in Part II(C), *infra*.

was resolved.³ HSBC, for its part, argues that the title it acquired from the foreclosure sale is a valid, enforceable instrument that is only voidable upon a finding of a defect. We agree with HSBC, and hold that the title HSBC acquired from the foreclosure sale was not void.

Kamara’s argument that HSBC’s title to the Property is void is premised upon the assertion that a foreclosure sale “does not pass title to the property until ratified by the court.” *Fisher v. Fed Nat. Mortg. Ass’n*, 360 F. Supp. 207, 211 (D. Md. 1973) (quoting *Plaza Corp. v. Alban Tractor Co., Inc.*, 219 Md. 570, 578 (1959)).⁴ This statement in isolation, however, fails to represent a complete recitation of the process by which title passes in foreclosure proceedings. Rather:

“After the foreclosure sale the purchaser had the equitable interest in the land commensurate with that conveyed by the mortgage deed, and he was entitled to the legal title upon the final ratification of the sale by the court and the payment of the purchase money In short, after the sale,

³ Kamara’s argument on this issue is ambiguous as to a specific error alleged to have been made by the trial court. Rather, Kamara asks that “this Court make a finding that: (1) the Fee Simple Trustee’s Deed, dated June 20, 2014, is void; and (2) the Fee Simple Trustee’s Deed, dated June 20, 2014 shall be stricken from the land records for Prince George’s County.” Our function on appeal is not to exercise original jurisdiction and make findings, but only to review for trial court errors. Giving Kamara’s argument a broad and liberal construction, however, we construe this argument as an allegation that the trial court erred in ratifying the foreclosure sale.

⁴ We note that the persuasive value of *Fisher* is discounted by the fact that: 1) *Fisher* is not binding authority on the subject of Maryland foreclosure law; 2) *Fisher* opines on the scope of the Federal District Court’s subject matter jurisdiction, and not the status of Maryland foreclosure law; and 3) *Fisher* relies on a case involving the judicial sale of tangible personal property as opposed to real property.

equity regarded the property in the land as in the buyer, and the property or the price as in the assignee and mortgagor. It is true that the sale is incomplete until ratified by the court, and that the purchaser's title is an inchoate and equitable one from the day of sale until the final ratification, which, however, retroacts so that the purchaser is regarded by relation as the equitable owner from the time of the sale, and entitled to all the intermediate rents and profits of the estate.”

Union Trust [v. Briggs], 153 Md. [50,] 55-56, 137 A. [509,] 512 (1927) (emphasis [omitted]). Therefore, while the purchaser of property at a foreclosure sale may not yet have legal title until ratification of the sale by the court and the purchase price paid, as well as the delivery of the deed, an inchoate equitable title does vest for the purchaser at the time of the foreclosure sale. This inchoate equitable title becomes a complete equitable title when the foreclosure sale is ratified by the court. See *Simard v. White*, 383 Md. 257, 313, 859 A.2d 168, 201 (2004) (stating that “[o]nce the court ratifies the sale, [complete] equitable title passes to the purchaser”) (alterations added). As mentioned, legal title, separate and distinct from equitable title, vests in a foreclosure sale purchaser after ratification of the sale by a court and payment of the purchase money.

Empire Prop., LLC v. Hardy, 386 Md. 628, 646-47 (2005).

Accordingly, the moment HSBC prevailed in the foreclosure auction on August 22, 2012, it possessed an “inchoate equitable title to the property.” *Id.* at 650. Upon the ratification of the foreclosure sale “complete equitable title accrues to the purchaser.” *Id.* “Legal title to the property is not conveyed, however, until the purchase price is paid and other terms of sale, if any, are met and a deed of conveyance delivered.” *Id.*

In this case, Kamara asks this Court to find that HSBC's title is void because a motion to reconsider the ratification was still pending at the time HSBC recorded its deed. While the specific status of the title held by HSBC is commensurate with the standards set forth in *Empire Prop., LLC*, it is sufficient for our purposes to hold that the circuit court did not err in finding that HSBC's title was not void. We, therefore, hold that the circuit court did not err in ratifying the foreclosure sale.

II. The Circuit Court Did Not Err in Dismissing Kamara's Third-Party Complaint.

Kamara further avers that the circuit court erred when it dismissed his third-party complaint because it failed to state a claim upon which relief could be granted. HSBC argues that the circuit court properly dismissed the third-party complaint because Kamara failed to plead facts that would entitle him to the relief he sought. Although the issue was not raised in the parties' arguments, we hold that a third-party complaint is not an appropriate pleading to file in response to a foreclosure proceeding. As such, the circuit court did not err in dismissing the third-party complaint. Assuming, *arguendo*, that we otherwise accept the validity of the third-party complaint, we further hold that the circuit court did not err in finding that Kamara failed to state a claim upon which relief could be granted.

A. A Third-Party Complaint Is Not a Cognizable Pleading in a Foreclosure Proceeding.

After Kamara's exceptions to the foreclosure sale were denied, Kamara proceeded to file a document styled as a third-party complaint making allegations against HSBC. The pleadings that are appropriate in a foreclosure proceeding are set forth in Md. Rule 14-207.

Maryland Rule 14-207 sets forth three types of pleadings allowed in a foreclosure proceeding, namely: 1) Power of sale; 2) Assent to a decree or lien instrument with no power of sale or assent to a decree; and 3) Lien instrument with both a power of sale and assent to a decree. Md. Rule 14-207. Notably, a third-party complaint is absent from the list of permissible pleadings that may be filed in foreclosure proceedings. Rather, the legal authority permitting a party to file a third-party complaint is derived from Title Two of the Maryland Rules. *See* Md. Rule 2-302 (“There may be . . . a third-party complaint.”).

Under Md. Rule 2-332(a):

A defendant, as a third-party plaintiff, may cause a summons and complaint, together with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action, to be served upon a person not a party to the action who is or may be liable to the defendant for all or part of a plaintiff’s claim against the defendant. A person so served becomes a third-party defendant.

Md. Rule 2-332(a).

In this proceeding, Kamara attempts to graft the provision of Title Two of the Maryland Rules--which permits a party to file a third-party complaint in a civil action--onto the provision of Title 14--which does not permit a party to file a third-party complaint in a foreclosure proceeding.⁵ For the reasons that follow, we hold that a party may not file a

⁵ When questioned regarding the legal authority permitting a borrower to file a third-party complaint in foreclosure proceedings, Kamara was unable to cite us to authority permitting such a practice. Nevertheless, Kamara represented that this practice is commonplace and that litigants facing foreclosure often file third-party complaints in (continued...)

third-party complaint in a foreclosure proceeding because the authority permitting a third-party complaint is inconsistent with the procedural construct set forth in Title 14 of the Maryland Rules.

A defendant may assert a claim against a third-party “who is or may be liable to the defendant for all or part of a plaintiff’s claim against the defendant.” Md. Rule 2-332(a). Plainly, then, in order to recover from a third-party defendant, a plaintiff must first assert a claim against the third-party plaintiff. By filing an order to docket a foreclosure, however, the Substitute Trustees do not assert a claim against a defendant. *Wells Fargo Home Mortg., Inc., supra*, 398 Md. at 726 (“This ‘power of sale’ foreclosure is ‘intended to be a summary, **in rem** proceeding’ which carries out ‘the policy of Maryland law to expedite mortgage foreclosures.’” (emphasis added) (quoting *G.E. Capital Mortg. Servs., Inc. v. Levenson*, 338 Md. 227, 245 (1995))). Indeed,

an ‘order to docket’ is not a pleading. This is so in spite of the fact that it is the delivery of the order to the clerk which gives the equity court jurisdiction over the mortgaged property when a power of sale is being exercised. But the order need not make factual allegations sufficient to show a right to proceed. No process is issued or served upon the filing of an order. It is not designed to be answered, denied, or traversed, so as to arrive at issues. It neither broadens nor narrows the scope of the court’s function in the case. It does not, without more, call upon the court to decide whether a complaining party is entitled to any equitable relief. *Ruley v. Hyland*, 77 Md. 487, 26 A. 1038 (1893).

⁵ (...continued)
foreclosure proceedings.

Saunders v. Stradley, 25 Md. App. 85, 95 (1975); *Pac. Mortg. & Inv. Grp., Ltd. v. LaGuerre*, 81 Md. App. 28, 39 (1989) (“A petition for foreclosure, like an order to docket, ‘is not designed to be answered, denied, or traversed, so as to arrive at issues.’” (quoting *Saunders*, *supra*, 25 Md. App. at 95.)); *but see Cohn v. Charles*, 857 F. Supp. 2d 544, 548 (D. Md. 2012) (questioning, in dictum, whether *Saunders* “reflect[s] the current state of Maryland foreclosure law.”).

Because a foreclosure action is an in rem proceeding, and no “claim” is asserted against the borrower, no third-party can be “liable to the defendant for all or part of a plaintiff’s claim against the defendant.” Md. Rule 2-332(a). The incomparability of a third-party complaint in a foreclosure proceeding is further evinced by the fact that a third-party complaint must be filed “at any time before ten days of the scheduled trial date” or after that date with the consent of either the court or the plaintiff consent. Md. Rule 2-332(e). In a foreclosure proceeding, there is no trial date to serve as the guidepost for when to file a timely third-party complaint.

The reason why we refuse to acknowledge the validity of a third-party complaint in the foreclosure proceeding here, however, is because to do so would undermine the entire procedural construct set forth in Title 14 of the Maryland Rules. As we observed in Part I(A), *supra*, an owner of real property is “possessed of three means of challenging a foreclosure: obtaining a pre-sale injunction pursuant to Maryland Rule [14-211], filing post-sale exceptions to the ratification of the sale under Maryland Rule 14-305(d), and the

filing of post-sale ratification exceptions to the auditor's statement of account pursuant to Maryland Rule 2-543(g), (h).” *Wells Fargo Home Mortg., Inc., supra*, 398 Md. at 726. In this case, however, Kamara employs the third-party complaint as a fourth means for challenging a foreclosure that is not otherwise envisioned in Title 14 of the Maryland Rules.

In *Bates, supra*, the Court of Appeals limited the scope of arguments that may be entertained at each of these three stages in the foreclosure process. To be sure, *Bates, supra*, reflects the law’s interest in the finality of proceedings, and fairness to borrowers during the foreclosure process. Moreover, the rule in *Bates, supra*, allows bidders at a foreclosure sale to bid with the confidence that the title they acquire from the sale will not later be subject to question. Kamara’s attempt to circumvent the requirements of Title 14 by filing a third-party complaint would require those who participate at foreclosure auctions to discount their bids to accommodate the risk of the ongoing litigation that would inevitably ensue. Indeed,

the spectre of foreclosure is as daunting as it is disheartening, if a borrower was able to raise any sort of exception after the foreclosure sale, there undoubtedly would be a chilling effect on interested prospective purchasers coming to sales. Prospective third-party purchasers would be unable--based on most practical notions of what constitutes due diligence--to gauge against such claims the risk of an intended investment. Being a bona fide purchaser for value then would not mean as much or even offer the traditional safe harbor underlying that status.

Bates, supra, 417 Md. at 329-30.

To permit Kamara to challenge the propriety of the foreclosure proceedings after the foreclosure sale by means of a third-party complaint is not only inconsistent with

Title 14--which does not permit a third-party complaint to be filed in foreclosure proceedings--but it undermines the mandate of our authorities which expressly require a borrower to make a challenge to the lender's right to foreclose prior to the foreclosure sale. Accordingly, we hold that the circuit court did not err by dismissing Kamara's third-party complaint that was not filed in accordance with the Maryland Rules.

B. The Circuit Court Did Not Err in Dismissing Kamara's Claims Under the Maryland Consumer Protection Act, the Maryland Consumer Debt Collection Act, or Kamara's Claim for a Declaratory Judgment.

For the reasons stated in Part II(A), *supra*, we hold that a third-party complaint is not an appropriate pleading in a foreclosure proceeding. We are also cognizant, however, that “[a]ll pleadings shall be so construed as to do substantial justice.” Md. Rule 2-303(e). Accordingly, we proceed to address the questions raised by Kamara in this appeal and the allegation that the circuit court erred by granting HSBC's motion to dismiss Kamara's third-party complaint. Although we conclude that it was improper to assert claims against HSBC in a third-party complaint, assuming, *arguendo*, that we were otherwise inclined to accept the validity of Kamara's pleading, and construe his pleading as a complaint, we further hold that the trial judge did not err in dismissing Kamara's claims.

Under Maryland Rule 2-322(b)(2), a defendant may seek a dismissal of a complaint if the complaint fails “to state a claim upon which relief can be granted.” Indeed,

“[t]he proper standard for reviewing the grant of a motion to dismiss is whether the trial court was legally correct. In reviewing the grant of a motion to dismiss, we must determine whether the complaint, on its face, discloses a legally sufficient

cause of action.” In reviewing the complaint, we must “presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom.” “Dismissal is proper only if the facts and allegations, so viewed, would nevertheless fail to afford plaintiff relief if proven.”

Higginbotham v. Pub. Serv. Comm’n of Md., 171 Md. App. 254, 265-66 (2006) (quoting *Britton v. Meier*, 148 Md. App. 419, 425 (2002)). “When moving to dismiss, a defendant is asserting that, even if the allegations of the complaint are true, the plaintiff is not entitled to relief as a matter of law.” *Heist v. E. Sav. Bank, FSB*, 165 Md. App. 144, 148 (2005). Accordingly, we will review Kamara’s complaint to determine whether the allegations made therein satisfy the elements necessary to obtain the relief sought. In so doing, we will accept as true the factual allegations made in the complaint, but we review the legal premises upon which Kamara’s relief is sought *de novo*.

In the present action, Kamara sought relief for HSBC’s alleged violation of the Maryland Consumer Protection Act, and the Maryland Consumer Debt Collection Act. Additionally, Kamara sought a declaratory judgment to determine his rights with respect to the note and title to the Property. In reviewing the circuit court’s grant of HSBC’s motion to dismiss, we accept Kamara’s factual allegations, but we review *de novo* whether the allegations presented amounts to violations of the Consumer Protection or Debt Collection Acts, and whether Kamara is entitled to a declaration.

1. The Trial Court Did Not Err in Dismissing Kamara’s Claim Under the Maryland Consumer Protection Act.

Under Md. Code (1975, 2013 Repl. Vol., 2015 Suppl.) § 13-408 of the Commercial Law Article (“CL”), “any person may bring an action to recover for injury or loss sustained by him as the result of a practice prohibited by” the Consumer Protection Act. Accordingly, in order for an individual to recover for damages under the Maryland Consumer Protection Act, the individual must allege that: 1) the defendant violated the Consumer Protection Act; 2) the individual sustained injury or loss; and 3) the injury or loss was a result of a practice prohibited by the Consumer Protection Act. CL § 13-408(a). In its complaint, Kamara alleges that HSBC engaged in unfair or deceptive trade practices by:

- a. Making a false or misleading oral or written statement or other representation of any kind which had the capacity, tendency, or effect of deceiving or misleading Mr. Kamara; and
- b. Failing to state a material fact and the failure deceived or tended to deceive Mr. Kamara.

Indeed, CL § 13-301 provides that an unfair or deceptive trade practice includes any:

(1) False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers; [or]

...

(3) Failure to state a material fact if the failure deceives or tends to deceive;

CL § 13-301.

Kamara alleges that his claim under the Consumer Protection Act arises out of a meeting with a Well Fargo loan underwriter named Calvin Cole on September 13, 2013. Kamara alleges that he and Cole discussed Kamara's mortgage, finances and his loan modification options. Moreover, Cole advised that Kamara qualified for a loan modification, and that he would receive a follow-up phone call a few days later. Kamara never received a follow-up phone call, and he never received a loan modification. Kamara alleges that Cole's statements misled him into believing that he would obtain a loan modification at a rate he could afford. Kamara, however, never received a loan modification and the property was foreclosed upon. Additionally, Kamara asserts that he paid more than eight thousand dollars on his obligation in reliance on a statement made by an unnamed representative of HSBC that doing so would qualify him for a modification.

As an initial matter, we observe that there are no allegations or facts upon which to infer that Cole's statements were actually false. Indeed, it is entirely possible, if not probable, that Cole's statement did not violate CL § 13-301.⁶ Assuming, *arguendo*, that Cole's statements somehow violate CL § 13-301, those statements are otherwise insufficient

⁶ For example, Kamara might have been qualified for a loan modification that he was nonetheless unable to afford. Moreover, it is difficult to objectively infer from Cole's statement that because Kamara qualifies for a loan modification Kamara would have modified his loan, therefore Kamara would have emerged from default, therefore HSBC would not have foreclosed on the property. In essence, although we affirm the trial judge's decision because Kamara failed to show injury caused by an alleged violation of the Consumer Protection Act, we further question whether Kamara pleaded facts sufficient to establish the initial violation of the Consumer Protection Act.

to permit Kamara to recover under CL § 13-408. Under CL § 13-408 an individual must suffer “injury or loss sustained by him as the result of a practice prohibited” by the Consumer Protection Act. Here, however, Kamara asserts that the statements by Cole and the unnamed representatives of HSBC “caused the Kamara Home to be unaffordable and deprived him of a reasonable ability to meet his mortgage obligations.” Kamara avers that but for HSBC’s deceptive practices, he would have received more favorable loan terms thereby avoiding the damages “caused by the ensuing foreclosure action.”

Kamara’s bald allegation cannot sustain a claim under the Maryland Consumer Protection Act because the damages he suffered would have occurred notwithstanding the alleged deceitful statements. Indeed, had the statements not been made, Kamara’s home would have still been unaffordable, Kamara would have still had been in default, and the Substitute Trustees would have still foreclosed on the Property. Kamara did not allege that he took any action in reliance on the alleged statements that would have influenced the injury he suffered. Accordingly, Kamara’s complaint fails to state a claim under Maryland’s Consumer Protection Act.⁷

⁷ In its brief, HSBC argues Kamara has failed to state a claim under the Consumer Protection Act because a plaintiff in a fraud action bears a heightened pleading standard when alleging fraud under Fed. R. Civ. P. 9(b). We disagree. First, our pleading standards are governed by the Maryland Rules, not the Federal Rules of Civil Procedure. Secondly, HSBC’s comparison of the Consumer Protection Act to an action for fraud is inappropriate because unlike a claim for fraud, scienter is not required to prevail in an action under CL §§ 13-301(1) or (3). *Golt v. Phillips*, 308 Md. 1, 11 (1986) (“[Section] 13-301(1), (2), and (3) does not require scienter . . . the subsections require only a false or deceptive statement that
(continued...)”)

2. The Trial Court Did Not Err in Dismissing Kamara’s Claim Under the Maryland Consumer Debt Collection Act.

In his complaint, Kamara argues that HSBC’s conduct during the foreclosure proceedings violated the Maryland Consumer Debt Collection Act. In support of his claim, Kamara asserts that HSBC’s right to foreclose is in question because “there is confusion and contradiction concerning the ownership of the Note secured by [the Property].” HSBC argues that its conduct did not violate the Consumer Debt Collection Act because it had a right to foreclose on the property upon a default. We hold that the circuit court did not err in finding that Kamara failed to state a claim under the Consumer Debt Collection Act.

Under CL § 14-203, “a collector who violates any provision of [the Consumer Debt Collection Act] is liable for any damages proximately caused by the violation.” One way a collector may violate the Consumer Debt Collection Act is to “[c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist.” CL § 14-202(8). Plainly, then, in order to make a *prima facie* case under subsection eight of the Maryland Consumer Debt Collection Act, Kamara must allege that: 1) HSBC claimed, attempted, or threatened to enforce a right; 2) HSBC knew that they had no legal right to enforce; 3) Kamara suffered damages; and 4) Kamara’s damages were proximately caused by HSBC’s violation of the Consumer Debt Collection Act. CL §§ 14-202(8), and 14-203.

⁷ (...continued)
has the capacity to mislead the consumer. . .”).

There are three reasons why Kamara’s complaint is insufficient to sustain a claim under the Consumer Debt Collection Act. First, for the reasons stated in Part I(A), *supra*, Kamara waived his opportunity to challenge HSBC’s right to foreclose on the property when he failed to move for injunctive relief prior to the foreclosure sale. *See Bates, supra*, 417 Md. at 327. Secondly, for the reasons stated in Part II (B)(1), *supra*, Kamara has not alleged that he has suffered damages that are proximately caused by the violation of the Consumer Debt Collection Act. Thirdly, in order to recover under CL § 14-202(8), a plaintiff must allege that the collector had “knowledge that the right does not exist.” Although we reject the premise that HSBC had no interest in Kamara’s note and Deed of Trust, assuming, *arguendo*, that HSBC had no right to enforce Kamara’s note, Kamara makes no allegations in his complaint that HSBC knew that it had no right to collect on Kamara’s note. That is to say, Kamara has not alleged that HSBC acted with the scienter required under this section. Accordingly, the trial judge did not err in dismissing Kamara’s claim under the Consumer Debt Collection Act.

3. The Trial Court Did Not Err in Dismissing Kamara’s Claim for Declaratory Relief.

Thirdly, in his complaint, Kamara sought a declaratory judgment to determine the “rights, status and legal relations under the Deed of Trust.” Maryland Code (1973, 2013 Repl. Vol., 2015 Suppl.), § 3-409(a) of the Courts and Judicial Proceedings Article (“CJP”) provides: “a court may grant a declaratory judgment . . . if it will serve to terminate the uncertainty or controversy giving rise to the proceeding. . . .” Generally, it is inappropriate

to dismiss a claim for a declaratory judgment. Indeed, contrary to the permissive ‘may’ language used in CJP § 3-409(a),

we have historically enforced the provisions of the Declaratory Judgment Act and insisted that courts declare the rights of parties when presented with an action properly susceptible to a declaratory judgment. Rarely, we have held, is it permissible to dismiss an action for declaratory judgment in lieu of declaring the rights of the party seeking the judgment.

Post v. Bregman, 349 Md. 142, 159-60 (1998).

“It is, however, ‘within the discretion of the circuit court to refuse a declaratory judgment when it does not serve a useful purpose or terminate controversy.’” *Volkman v. Hanover Inv., Inc.*, 225 Md. App. 602, 613 (2015) (quoting *Polakoff v. Hampton*, 148 Md. App. 13, 27 (2002)). One instance when a declaration will not terminate controversy and serve a useful purpose is where a party seeks to circumvent the procedures of pending proceedings. *Stevenson v. Lanham*, 127 Md. App. 597, 613 (1999) (“When facts underlying a controversy do not exist, either because they have not yet arisen or because they have lapsed with the passage of time, a ruling on a request for declaratory relief based on those facts is merely an academic exercise and will not be entertained.”); *Caroline St. Permanent Bldg. Ass’n No. 1 of Balt. City v. Sohn*, 178 Md. 434, 433 (1940) (Holding that in foreclosure proceedings a declaratory judgment is designed “to supplement and not to supersede effective ordinary actions at law or suits in equity.”).

In this case, the circuit court did not abuse its discretion by dismissing Kamara’s claim for a declaratory judgment. First, as we stated in Part II(A), *supra*, the circuit court did not

err in dismissing Kamara's third party complaint because it is not proper to file a third-party complaint in a foreclosure proceeding. Secondly, assuming that the third-party complaint was otherwise appropriate, the circuit court did not err in dismissing a claim for a declaratory judgment that had the effect of circumventing the procedures for judicial sales prescribed in Title 14 of the Maryland Rules. Finally, even it was proper to file a third-party complaint--and it would have been proper to seek a declaratory judgment in that complaint--Kamara would not have been entitled to the declaration it sought because the court's ratification of the foreclosure sale conclusively quiets title in HSBC, and by negative implication establishes that HSBC was entitled to enforce Kamara's note, and that Kamara has no interest in the Property.⁸ We, therefore, hold that the circuit court did not err in dismissing Kamara's third-party complaint.

C. The Circuit Court Did Not Err by Dismissing Kamara's Amended Third-Party Complaint Without a Hearing.

Kamara further alleges that he was entitled to a hearing before the circuit court dismissed his amended third-party complaint. Our review of the record, however, indicates that Kamara received a hearing with respect the HSBC's motion to dismiss the initial third-party complaint. Only after the trial judge indicated that he was inclined to grant the

⁸ The only question that cannot be deduced from the judgment in the foreclosure proceeding is what, if any, obligation remains on Kamara's note. Kamara's complaint, however, does not contain facts regarding the outstanding obligation on the note, but only challenges whether HSBC is entitled to enforce the note. Accordingly, we do not construe Kamara's complaint--invalid as it is--as a request the declare the outstanding obligation on the note, but only a request for the court to declare who is entitled to enforce the note.

motion to dismiss did the parties agree to permit Kamara to file an amended third-party complaint with the understanding that there would be no additional hearing on the motion. Indeed, at the conclusion of the January 10, 2014 hearings on HSBC's motion to dismiss, the following colloquy ensued:

THE COURT: . . . I'll give you ten days to amend. Make sure you serve on the Bank, within the ten days. Send a courtesy copy to my chambers.

[KAMARA]: Yes, Your Honor.

THE COURT: And I will hold off making a decision until I see the courtesy copy.

[KAMARA]: I appreciate your help, Your Honor.

[HSBC]: Thank you, Your Honor. I appreciate your time.

THE CLERK: (Inaudible) --

THE COURT: I'm Sorry?

THE CLERK: -- (inaudible) the date for?

THE COURT: No, I don't want -- I'm not going to reset it. I'm going to look at the pleadings. If I get a response from the Bank, I'll consider the response from the Bank, and then I'll make a decision.

. . .

THE COURT: So, why don't you set it in for a disposition in 30 days. And unless we call you, and tell you, you have to come in court, you do not.

. . .

[KAMARA]: Thank you, Your Honor. Have a good Weekend.

It is apparent from Kamara's representation with the court on January 10, 2014, that it was the understanding of all the parties that there would be no further hearing on HSBC's motion to dismiss. Rather, the parties were in agreement that Kamara would have the opportunity to amend his complaint to remedy the defects articulated in HSBC's motion to dismiss, and that the trial judge would reserve judgment on the motion to dismiss until Kamara filed his amended motion to dismiss. Only in Kamara's opposition to HSBC's second motion to dismiss did Kamara request a hearing. The trial court was then faced with the inconsistent positions advanced by Kamara. On one hand, all the parties initially agreed on January 10, 2014, that there would be no hearing on a motion to dismiss the amended third-party complaint, on the other, Kamara apparently sought to rescind that understanding by asking for a hearing in his opposition to HSBC's second motion to dismiss.

Presented with Kamara's conflicting positions on this matter, we hold that the circuit court did not err in dismissing Kamara's third-party complaint without a hearing. Although Kamara might arguably have been entitled to a hearing prior to the dismissal of amended third-party complaint under Md. Rule 2-311(f), Kamara's acquiescence by agreeing to the procedure discussed at the January 10, 2014 hearing, in lieu of having his complaint immediately dismissed, precludes him from the relief he seeks on appeal. *Chimes v. Michael*, 131 Md. App. 271, 280 (2000) (“[B]y accepting the benefits of the trial court’s judgment . . . [appellant] has ‘lost by acquiescence in, or recognition of, the validity of the decision below

from which the appeal is taken.” (quoting *Rocks v. Brosius*, 241 Md. 612, 630 (1966))). We, therefore, hold that the circuit court did not err in dismissing the amended third-party complaint without a hearing.

III. The Circuit Court Did Not Impermissibly Deny Kamara Discovery.

Kamara asserts that the trial court erred by denying him discovery and that HSBC failed to respond to his discovery requests. HSBC avers that Kamara made no motion to compel discovery pursuant to Md. Rule 2-432. Accordingly, HSBC maintains that the circuit court could not have erred because it made no ruling on the issue of discovery. We agree with HSBC.

Generally, “the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.” Md. Rule 8-131(a). This rule represents:

[O]ne of the most fundamental tenets of appellate review: Only a judge can commit error. Lawyers do not commit error. Witnesses do not commit error. Jurors do not commit error. The Fates do not commit error. Only the judge can commit error, either by failing to rule or by ruling erroneously when called upon, by counsel or occasionally by circumstances, to make a ruling.

DeLuca v. State, 78 Md. App. 395, 397-98 (1989).

In this action, Kamara fails to direct our attention to a ruling that violates his right to obtain discovery. Rather, in support of his argument, Kamara notes that the trial judge twice

said “You’re not entitled to discovery,” and that Kamara had an outstanding request for discovery. The argument advanced by Kamara’s statements of these facts inaccurately imply that the trial judge actually rendered a decision denying Kamara discovery to which he was entitled. Rather, the trial judge could not have erroneously denied Kamara’s request for discovery because Kamara had not moved to compel discovery pursuant to Md. Rule 2-432.

On January 10, 2014, Kamara was arguing as to why the trial judge should not grant HSBC’s motion to dismiss his third-party complaint. The trial judge was clearly concerned that the complaint failed to allege any statement that might entitle Kamara to relief under the Consumer Protection or Debt Collection Act, and the following colloquy ensued:

THE COURT: And so, if there was something legitimate, that you would like to amend the -- I haven’t heard whether to -- tell me, whether it’s in the pleadings or not, what are you going to plead that you think would change this circumstance?

[KAMARA]: Your Honor, if we’re permitted --

THE COURT: Loan officer saying that if there’s a change in circumstance, or if you have new data to present for me, I’ll be happy to look at it. It doesn’t change the situation.

[KAMARA]: It doesn’t change my client’s financial situation which got him in this situation in the first place. However, that situation has improved. You Honor, with discovery which we’ve requested in --

THE COURT: You’re not entitled to discovery --

[KAMARA]: -- our opposition -- I’m sorry, Your Honor?

THE COURT: You’re not entitled to discovery.

[KAMARA]: With the Court’s permission, Your Honor, we certainly can get discovery in a foreclosure case, or in a Declaratory Judgment Case. . . .

When observed in context, the trial judge’s comment, that Kamara is not entitled to discovery, was not an appealable judgment. Rather, the trial judge’s comments were an acknowledgment that Kamara must plead sufficient facts to show that he is entitled to relief, and that Kamara cannot use the discovery rules to go on a phishing expedition to acquire the facts necessary to draft a legally sufficient pleading. Although the record appears to indicate that Kamara made a request for discovery on September 19, 2013, the record is silent as to the contents of that discovery request because Kamara never raised the issue before the trial court.

Later, in Kamara’s opposition to HSBC’s motion to dismiss the amended third-party complaint, Kamara made what might be construed as a motion to compel discovery prior to a final ruling on the pending motion to dismiss. Kamara’s request, however, belies the purpose of our discovery rules which are “to advance ‘the sound and expeditious administration of justice’ by ‘eliminat[ing], as far as possible, the necessity of any party to litigation going to trial in a confused or muddled state of mind, concerning the facts that gave rise to the litigation.’” *Gallagher Evelius & Jones, LLP v. Joppa Drive-Thru, Inc.*, 195 Md. App. 583, 596 (2010) (alteration in original) (quoting *Balt. Transit Co. v. Mezzanotti*, 227 Md. 8, 13 (1961)). Accordingly, discovery is intended to help a litigant prove or defend claims made during the course of litigation, but it is not intended as a tool to permit a litigant

to extract information that may be used to manufacture a claim in an otherwise insufficient complaint. We, therefore, hold that the circuit court did not err by articulating that Kamara must first file a legally sufficient pleading before petitioning the court for discovery.

IV. The Circuit Court Did Not Err in Denying Kamara’s Motions for Reconsideration Without a Hearing.

Kamara finally alleges that he was denied due process when the circuit court denied his motions for the circuit court to reconsider the orders dismissing the third party complaint and ratifying the foreclosure sale. Generally, “the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.” Md. Rule 2-311(f). “By denying the motion for reconsideration, the court merely refused to change its original ruling, which had disposed of [Kamara’s] claims. That ruling was not ‘dispositive of a claim or defense,’ and thus no hearing was mandated under Rule 2-311(f) even though a hearing was requested.” *Lowman v. Consol. Rail Corp.*, 68 Md. App. 64, 75 (1986). Accordingly, the circuit court did not err in denying Kamara’s motions for reconsideration without a hearing.

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