

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 505

September Term, 2016

RAYMOND A. WASHINGTON,

v.

EDWARD S. COHN, et al.
Substitute Trustees

Beachley,
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw Geter, J.

Filed: May 24, 2017

*This is an unreported opinion, and 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 is an appeal from foreclosure proceedings resulting in the sale of appellant Raymond A. Washington, Jr.'s property in 2009. By Order dated December 15, 2009, the Circuit Court for Prince George's County ratified the sale and the auditor's report was ratified on February 17, 2010.

Six years later, appellant filed a Motion to Vacate Void Judgment for Lack of Subject Matter Jurisdiction, which requested the circuit court to vacate its February 17 order of ratification. Appellant claimed the court did not have subject matter jurisdiction over the foreclosure and appellees, Edward S. Cohn, Ronald S. Deutsch, Richard J. Rogers, Richard E. Solomon, and Stephen M. Goldberg, as substitute trustees were not real parties in interest. Appellees filed an Opposition to the Motion to Vacate, stating that the order of ratification was *res judicata* as to the validity of the sale. Appellant's Motion to Vacate was denied on April 20, 2016.

We have reworded appellant's questions¹ presented as follows:

1. Whether the circuit court erred by denying the motion to vacate the foreclosure sale and order of ratification?

For the reasons discussed below, we shall affirm the decision of the circuit court.

¹ In his brief, appellant asked:

1. Did the judge not error in his decision to deny the appellants motion to vacate a void judgment for lack of Subject Matter Jurisdiction.
2. Did the judge not error in going against Supreme Court decisions involving matters pertaining to subject matter jurisdiction.
3. Did the judge not error in not giving a reason for denying appellant's motion to vacate void judgment for lack of subject matter jurisdiction and for monetary damages and for summary judgment.

BACKGROUND

Appellees Edward S. Cohn, Ronald S. Deutsch, Richard J. Rogers, Richard E. Solomon, and Stephen M. Goldberg, as substitute trustees, on January 31, 2008, instituted foreclosure proceedings in the Circuit Court for Prince George’s County against appellant’s property, located at 14320 Driftwood Road, Bowie, Maryland. On June 30, 2009, U.S. Bank National Association (“U.S. Bank”), as indenture trustee for American Home Mortgage Investment Trust, purchased the property in a foreclosure sale. In an order dated December 15, 2009, the court ratified the sale. The court auditor’s report was ratified on February 17, 2010. Sometime later, U.S. Bank sold the property to a third party, Paulette B. Nielson, Trustee for the Dion’na L. Wingate Special Needs Trust.

On February 4, 2016, appellant filed a Motion to Vacate Void Judgment for Lack of Subject Matter Jurisdiction, wherein, he requested that the court vacate its Order of Ratification. Appellant further requested an award of damages in the amount of \$2,080,000.00. Appellees filed an Opposition to the Motion to Vacate on February 25, 2016. Appellant then filed an Answer and Objection to Plaintiffs Opposition to Defendants Motion to Vacate Judgment and for Monetary Damages and Motion for Summary Judgment. The circuit court, by Order dated April 20, 2016, denied appellant’s Motion to Vacate and Answer and Objection.

Appellant timely filed this appeal.

STANDARD OF REVIEW

Maryland Rule 8-131(c) states

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

DISCUSSION

I. The circuit court did not err in denying appellant's motion to vacate the judgment and order of ratification.

Appellant argues that the circuit court did not have subject matter jurisdiction over the instant case pursuant to two statutes. The first, 28 U.S.C. § 1352, Bonds executed under federal law, states:

The district courts shall have original jurisdiction, concurrent with State courts, of any action on a bond executed under any law of the United States, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

The second, 12 U.S.C.A. § 3754, states:

(a) In general. The Secretary may designate a person or persons to serve as a foreclosure commissioner or commissioners for the purpose of foreclosing upon a single family mortgage.

(b) Power of sale. A foreclosure commissioner designated under this section shall have a nonjudicial power of sale.

(c) Qualifications. The foreclosure commissioner, if a natural person, shall be a resident of the State in which the security property is located and, if not a natural person, the foreclosure commissioner must be duly authorized to transact business under laws of the State in which the security property is located. No person shall be designated as a foreclosure commissioner unless that person is responsible, financially sound, and competent to conduct a foreclosure.

(d) Designation procedure

(1) Written designation. The Secretary may designate a foreclosure commissioner by executing a written designation stating the name and business or residential address of the commissioner, except that if a person is designated in his or her capacity as an official or employee of a government or corporate entity, such person may be designated by his or her unique title or position instead of by name.

(2) Substitute commissioners. The Secretary may, with or without cause, designate a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner.

(3) Number. More than 1 foreclosure commissioner may be designated at any time.

As outlined, the statutes do not support appellant's claim. The statutes, instead, relate to federal foreclosure proceedings and the authority of U.S. District Courts and, thus, have no bearing on the case at bar.

Appellant also argues that appellees were not the real parties in interest and that, therefore, they could not initiate a foreclosure action because "they lacked standing to sue in Maryland courts." He further contends that the court lacked jurisdiction because appellees failed to bring the claim in the name of the real party of interest under Maryland Rule 2-201. Finally, appellant argues that appellees did not have the original, unaltered promissory note, and that, absent the original, they were required to "incorporate records such as a general ledger and accounting of an alleged unpaid promissory note," as well as "a complete accounting which must be sworn to and dated by the person who maintained the ledger." Because they failed to provide these documents, he contends the court lacked subject matter jurisdiction and the circuit court erred in denying his motion to vacate.

To be sure, subject matter jurisdiction refers to a court's authority to adjudicate the type of controversy presented to it. The Maryland Rules of Procedure, which govern the

courts of this state, provide that the circuit courts in Maryland have general equity jurisdiction over foreclosures. *See* Md. Rule 14-203²; *see also* *Voge v. Olin*, 69 Md. App. 508, 514 (1986) (“[T]he circuit court has authority to exercise general equity jurisdiction over mortgage foreclosure proceedings and it may invoke all the equitable powers with which it is imbued.”). Because the subject property is located in Prince George’s County, the Prince George’s County circuit court had *in rem* jurisdiction over the foreclosure once the Order to Docket was filed. Md. Rule 14-203. As such, the circuit court had subject matter jurisdiction over the foreclosure proceedings, including the ratification of sale.

A party’s alleged lack of standing does not affect the court’s jurisdiction over the subject matter. Nevertheless, it is clear, in the instant case, that appellees did have standing. The docket entries from the original foreclosure action, as provided in the record for this appeal, show that the court accepted a Deed of Appointment of Substitute Trustees, without objection. In addition, Maryland Rule 2-201 specifically provides that a trustee or other “person authorized by statute or rule may bring an action without joining the persons for whom the action is brought.” Such was the case with the appellees.

Moreover, an unaltered promissory note, or, in the alternative, the general ledger and accounting, is not required to establish that a party is a substitute trustee or the

² RULE 14-203. VENUE AND ATTACHMENT OF JURISDICTION

(a) Venue. An action to foreclose a lien shall be filed in the county in which all or any part of the property subject to the lien is located.

(b) Attachment of Jurisdiction. The court's jurisdiction over the property subject to the lien attaches when an action to foreclose is filed.

underlying contractual agreement. *See Svrcek v. Rosenberg*, 203 Md. App. 705, 728-29 (2012). Thus, the lack of original documents does not divest a court of jurisdiction. Nevertheless, in the case at bar, the docket entries evidence that the court granted appellee’s motion to admit a Lost Note Affidavit in lieu of the original note, without objection. Thus, appropriate certification was supplied to the court.

In sum, appellant’s challenges to the court’s jurisdiction lack merit. They relate to the propriety of the court’s actions, not its power. “Only a lack of jurisdictional ‘power’ can justify relief from the enrolled judgment.” *Thacker v. Hale*, 146 Md. App. 203, 224 (2002)

As the Court of Appeals noted in *First Federated Commodity Trust Corp.*:

What is meant by the lack of jurisdiction in its fundamental sense such as to make an otherwise valid decree void is often misunderstood... ‘Juridically, jurisdiction refers to two quite distinct concepts: (i) the *power* of a court to render a valid decree, and (ii) the *propriety* of granting the relief sought.’ *It is only when the court lacks the power to render a decree, for example...because the court is without authority to pass upon the subject matter involved in the dispute, that its decree is void.* On the other hand, the question of whether it was appropriate to grant the relief merges into the final decree and cannot thereafter be successfully assailed for that reason once enrolled.

First Federated Commodity Trust Corp. v. Comm’r of Sec., 272 Md. 329, 334 (1974) (internal citations omitted) (emphasis added). A challenge, therefore, to the propriety of the court’s order cannot be attacked as jurisdictional. *See Thacker*, 146 Md. App. at 224.

Furthermore, the court’s order ratifying the sale cannot be invalidated by such challenges. In *Bank of New York Mellon v. Nagaraj*, this Court reiterated:

The final ratification of the sale of property in foreclosure is *res judicata* as to the validity of such sale, except in case of fraud or illegality, and hence its regularity cannot be attacked in collateral proceedings.

Bank of New York Mellon v. Nagaraj, 220 Md. App. 698, 707 (2014) (citing *Manigan v. Burson*, 160 Md. App. 114, 120, 862 A.2d 1037 (2004) (internal citations omitted)). We continued:

Sound public policy requires that no person shall in a judicial proceeding be deprived of a right or charged with a default until he has been given a full and free opportunity of being heard in respect thereto, but the complement of that rule is that where one is given that opportunity, and elects to stand mute and allow the decision to go against him without protest or objection, that he is bound by it. There must of necessity be some end of litigation. The state can do no more than give the litigant ‘a day in court’; if he does not utilize it but suffers the decision to go against him by default, he is as conclusively and finally bound by it, as though he had actively contested it.

Id. (internal citations omitted). Appellant has made no claim of fraud or illegality and thus, the final ratification of sale is *res judicata*.

Finally, a court is not required to set out in detail their reasoning, as “we presume judges know the law and apply it ‘even in the absence of a verbal indication of having considered it.’” *Marquis v. Marquis*, 175 Md. App. 734, 755 (2007) (quoting *Wagner v. Wagner*, 109 Md. App. 1, 50, *cert. denied*, 343 Md. 334 681 (1996)).

In the instant case, the circuit court’s denial of appellant’s motion to vacate judgment was not an abuse of discretion and the court’s order ratifying the sale was not clearly erroneous.

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