UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2710

September Term, 2015

THOMAS PILKERTON, ET UX.

v.

JEFFREY NADEL, ET AL.

Krauser, C.J.,
Berger,
Shaw Geter,

JJ.

Opinion by Berger, J.

Filed: April 10, 2017

This appeal arises out of a foreclosure action initiated in the Circuit Court for Calvert County by substitute trustees Jeffrey Nadel, Scott Nadel, and Kyle Blackstone (collectively, the "Substitute Trustees"), appellees, against mortgagors Thomas Pilkerton and Darlene E. Pilkerton ("the Pilkertons"), appellants.

On appeal, the Pilkertons present two questions for our review,[1] which we have rephrased and consolidated as a single question as follows:

> Whether the circuit court erred in denying the Pilkertons' motion to stay and dismiss and overruling the Pilkertons' exceptions to the foreclosure sale.

For the reasons explained herein, we shall affirm the judgments of the Circuit Court for Calvert County.

FACTS AND PROCEEDINGS

On May 9, 2007, the Pilkertons obtained a mortgage loan in the amount of $270,000.00 from Countryside Home Loans, Inc. in order to purchase a property located

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[1] The questions for our review, as presented by the Pilkertons, are:

> 1. Did Judge Wells on August 20, 2014 commit a reversible error by not allowing unskilled pro se litigant opportunity to present defenses and objections to the plaintiff/appellees legal representatives who had put into the record false forged robo signed and alleged forged notary documents which defendants had been contesting as far back as June 1, 2011 as forgeries?
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> 2. Regarding the court[']s order of February 9, 2016 overruling objections to fraudulent ratification of foreclosure sale obtained by fraud on the court by appellees/plaintiffs GED/robo signed documents.

at 9100 Madison Avenue, North Beach, Maryland ("the Property"). The loan servicer is Specialized Loan Servicing, LLC ("SLS"). The Pilkertons subsequently defaulted on the loan by failing to remit required payments. The mortgage loan has been in default since November 1, 2010.

On March 26, 2013, the Substitute Trustees, on behalf of the secured party, filed an order to docket in the circuit court. Attached to the order to docket was all of the required foreclosure documentation, including the affidavit of default, affidavit of ownership, and a copy of the promissory note, endorsed in blank. The affidavit certifying ownership provided that "The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificate holders of the CWABS, Inc., ASSET-BACKED CERTIFICATES, SERIES 2007-7 [(hereinafter "BONY")] is the owner of the debt instrument secured by the Mortgage or Deed of Trust which is the subject of the instant foreclosure action."

On April 29, 2013, the Pilkertons filed a pleading styled as an answer to the order to docket.[2] The Pilkertons denied all of the statements in the order to docket and demanded a jury trial.[3] The Pilkertons raised various affirmative defenses referencing, *inter alia*, the statute of frauds, accord and satisfaction, violation of federal statutes protecting consumer debtor creditor rights, assumption of risk, collateral estoppel, contributory negligence, intentional fraud, laches, usury, and waiver of rights. The Pilkertons argued that the

[2] The Pilkertons used the Domestic Relations Form "Answer to Complaint/Petition/Motion" (CC-DR 50).

[3] There is no right to jury trial in foreclosure proceedings.

Substitute Trustees engaged in willful criminal misconduct by attempting to "steal [the Pilkertons'] property under color of law and authority." The Pilkertons requested "that this matter be transferred to a United States [A]rticle 3 District Court in Washington, DC which has jurisdiction and authority over federal prevailing statutes . . ." The Pilkertons requested a hearing,[4] identifying the matter at issue as "validity of ownership/holder in due course/fair debt/collect."

On June 10, 2013, the Substitute Trustees asked the court to place the foreclosure on a temporary hold pending review of loss mitigation resolutions. The Pilkertons filed a "Line in Status Notification" indicating that they intended to "attempt to resolve this with a mediation as a final attempt before requesting the court to intervene."

On March 14, 2014, the Pilkertons requested mediation. Mediation occurred on April 28, 2014. On May 21, 2014, the mediator notified that circuit court that the parties had participated in the mediation but no agreement was reached. On June 10, 2014, the circuit court ordered "that the secured party may schedule the foreclosure sale subject to the right of the borrower to file a motion pursuant to Rule 14-211 to stay the sale and dismiss the action."

On June 20, 2014, the Pilkertons filed a motion to stay the sale and dismiss the foreclosure action. They asserted, *inter alia*, that: (1) the Substitute Trustees and SLS "are not the real parties in interest to initiate this foreclosure lawsuit"; (2) the copy of the note

[4] The Pilkertons used the Domestic Relations Form "Request for Hearing or Proceeding" (CC-DR 59).

attached to the order to docket was not a true and accurate copy because, the Pilkertons claimed, it was missing endorsements;[5] (3) the assignment of the deed of trust was untimely; and (4) SLS assigned the loan a different account number than the original servicer. The Pilkertons "admit[ted] that [they] still owe a balance," but explained that they did "not believe [SLS] is th[e] party" to whom the balance was owed. Following a hearing on August 20, 2014, the circuit court denied the Pilkertons' motion to stay and dismiss.[6] The Pilkertons filed an interlocutory appeal, which this Court dismissed as prematurely filed. While the appeal was pending, the Pilkertons filed a motion for reconsideration on December 22, 2014, which was denied on January 16, 2015.

On January 26, 2015, Darlene Pilkerton filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the District of Maryland. As a result, the foreclosure action was stayed. In her bankruptcy case, Ms. Pilkerton identified the Property, which she valued at $175,000.00, as being subject to a secured claim of approximately $373,000.00. She identified the creditor as "SLS" and provided SLS's address. Ms. Pilkerton referenced the foreclosure proceedings but did not identify the loan as disputed. Indeed, in her proposed Chapter 13 plan, Ms. Pilkerton provided for partial payment of the loan. The proposed Chapter 13 plan was denied without leave to amend. Subsequently, Ms. Pilkerton converted the bankruptcy case to a Chapter 7 liquidation and received a discharge.

[5] The Substitute Trustees respond that the note was endorsed in blank.

[6] The Pilkertons did not produce a transcript of the August 20, 2014 hearing.

Following the discharge, the stay was lifted on December 1, 2015. A foreclosure auction was held on December 10, 2015, at which the Property was sold for $212,500.00. The Substitute Trustees filed a Report of Sale on December 21, 2015. The Pilkertons filed exceptions to the sale on January 12, 2016, in which the Pilkertons challenged the Substitute Trustees right to foreclose, alleged that various loan documents were forged and/or falsified, accused the Substitute Trustees of engaging in fraudulent schemes, and asserted that their due process rights were "suppressed by insiders within the court system." The Pilkertons also raised one challenge with respect to the manner or procedure of the sale. The circuit court overruled the Pilkertons' exceptions without a hearing and ratified the foreclosure sale. This appeal followed.

DISCUSSION

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 Mortgage, Inc. v. Neal*, 398 Md. 705, 726 (2007).[7]

We review a circuit court's decision whether to grant or deny a motion to stay foreclosure for an abuse of discretion. *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md.

[7] In *Wells Fargo*, the Court of Appeals explained that a pre-sale challenge was governed by Md. Rule 14-209(b)(1). 398 Md. at 726. Under current law, a pre-sale challenge would be made by means of a motion to stay the sale and dismiss the foreclosure action under Maryland Rule 14-211. *Thomas v. Nadel*, 427 Md. 441, 444 n.5 (2012).

534, 546 (2013). "The grant or denial of injunctive relief in a property foreclosure action lies generally within the sound discretion of the trial court." *Anderson v. Burson*, 424 Md. 232, 243 (2011). We review the trial court's legal conclusions *de novo*. *Svrcek v. Rosenberg*, 203 Md. App. 705, 720 (2012).

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

I. The Pilkertons' Pre-Sale Challenge

The timing for filing a motion to stay and dismiss is regulated by Md. Rule 14- 211(a), which provides the following:

> (2) Time for filing.
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> (A) Owner Occupied Residential Property. In an action to foreclose a lien on owner occupied residential property, a motion by a borrower to stay the sale and dismiss the action shall be filed no later than 15 days after the last to occur of:
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> (i) the date the final loss mitigation affidavit is filed;
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> (ii) the date a motion to strike postfile mediation is granted; or
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> (iii) if postfile mediation was requested and the request was not stricken, the first to occur of:
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> (a) the date the postfile mediation was held;
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> (b) the date the Office of Administrative Hearings files with the court a report stating that no postfile mediation was held; or
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> (c) the expiration of 60 days after transmittal of the borrower's request for postfile mediation or, if the Office of Administrative Hearings extended the time to complete the postfile mediation, the expiration of the period of the extension.
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> (B) Other Property. In an action to foreclose a lien on property, other than owner occupied residential property, a motion by a borrower or record owner to stay the sale and dismiss the action shall be filed within 15 days after service pursuant to Rule 14 209 of an order to docket or complaint to foreclose. A motion to stay and dismiss by a person not entitled to service under Rule 14 209 shall be filed within 15 days after the moving party first became aware of the action.

> (C) Non Compliance; Extension of Time. For good cause, the court may extend the time for filing the motion or excuse non compliance.

In the present case, the parties participated in postfile mediation. Accordingly, pursuant to Md. Rule 14-211(a)(2)(A)(iii)(a), the Pilkertons were required to file a motion to stay or dismiss no later than 15 days after the foreclosure mediation was held. The record reflects that the mediator notified the circuit court on May 21, 2014 that mediation had concluded with no agreement. The Pilkertons did not file their motion to stay or dismiss until June 20, 2014. As such, the motion to stay or dismiss was untimely filed and, therefore, properly denied by the circuit court. The Substitute Trustees put forth several compelling arguments responding to the substantive challenges to their authority to foreclose. Although we need not address the merits of these issues due to the fact that they were not timely raised, we comment briefly that, assuming arguendo the Pilkertons had filed a timely motion to stay or dismiss, denial of the motion would have been appropriate because the record reflects that the order to docket is compliant in all respects. For example, the Substitute Trustees filed a copy of the promissory note as well as an accompanying affidavit of ownership, as required by Maryland Rule 14-207(b)(3). The Pilkertons' assertion that the endorsements are invalid because the promissory note was endorsed in blank is unavailing. *See Deutsche Bank Nat'l Trust Co. v. Brock*, 430 Md. 714, 732 (2013) (explaining that a holder of a note is entitled to enforce a note endorsed in blank).

Moreover, the note and its endorsements are presumptively valid. Md. Code, (1975, 2013 Repl. Vol.), § 3-308(a) of the Commercial Law Article ("CL") ("In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature."). The Pilkertons' assertion that the signature on the endorsement is invalid because it was a stamp instead of a handwritten signature is similarly unpersuasive. See CL § 1-201(b)(37) ("'Signed' includes using any symbol executed or adopted with present intention to adopt or accept a writing.").[8]

II. The Pilkertons' Post-Sale Challenges

We next turn our attention to the post-sale exceptions filed by the Pilkertons. "After [a foreclosure] sale, the borrower is ordinarily limited to raising procedural irregularities in the conduct of the sale." *Thomas*, *supra*, 427 Md. at 442 43. Pursuant to Md. Rule 14-211, a borrower must raise issues relating to a lender's right to foreclose prior to

[8] The Substitute Trustees present other examples of ways in which the order to docket was compliant with Maryland law and explain why they have the authority to foreclose. We decline to comment on each of the Substitute Trustees' responses to the Pilkertons' substantive arguments in light of our determination that the Pilkertons' pre-sale challenges were not properly raised.

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). When ruling on exceptions to a foreclosure sale and whether to ratify the sale, trial courts may consider both questions of fact and law. *S. Md. Oil, Inc. v. Kaminetz*, 260 Md. 443, 451, 272 A.2d 641 (1971). "In reviewing a trial court's findings of fact, we do not substitute our judgment for that of the lower court unless it was clearly erroneous and give due consideration to the trial court's opportunity to observe the demeanor of the witnesses, to judge their credibility and to pass upon the weight to be given their testimony." *Jones*, *supra*, 178 Md. App. at 68 (internal quotations omitted). "Questions of law decided by the trial court are subject to a de novo standard of review." *Id.*

In this case, the issues raised in the Pilkertons' exceptions were largely unrelated to any irregularity with the foreclosure sale procedures. Various exceptions challenged the validity of the deed of trust, the validity of the assignment of the deed, and the Substitute Trustees' authority to enforce the note. Those exceptions were properly denied by the trial court as improperly raised. The only exception raised by the Pilkertons which related to an alleged irregularity in the sale was based upon a claim that no deposit was taken from the creditor who successfully placed the high bid and purchased the Property at auction. The Pilkertons have abandoned this issue on appeal.[9] *See Burson v. Capps*, 440 Md. 328,

[9] Regardless, this issue is without merit. *See Citibank Fed. Sav. Bank v. New Plan Realty Trust*, 131 Md. App. 44, 52 (2000) ("It is well-settled in Maryland that a mortgagee may purchase the mortgaged property at a foreclosure sale by applying the mortgage debt to the purchase price, rather than by paying with cash or a certified check.").

340 n. 18 (2014) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal." (Citation and quotation marks omitted)). Accordingly, we hold that the circuit court properly overruled the Pilkertons' exceptions.

III. Other Issues Raised on Appeal

In their appeal to this Court, the Pilkertons make references to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*, the Truth-in-Lending Act, 15 U.S.C. § 1631, *et seq.*, and the Maryland Uniform Computer Information Transactions Act, CL § 22-101, *et seq.* These claims are presented for the first time in this appeal. Pursuant to Md. Rule 8-131(a), this Court will not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court." Because these issues were not raised before the circuit court, we will not address them on appeal.[10] Accordingly, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

[10] We note, however, that the Substitute Trustees present compelling explanations as to why the various federal and state statutes referenced by the Pilkertons are inapplicable to this case.