Circuit Court for Baltimore County
Case No.: C-03-CV-21-003388

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 126

September Term, 2022

CHARLES E. SAYLOR, *et al.*,

v.

SN SERVICING CORPORATION, *et al.*,

Ripken,
Tang,
Kehoe, Christopher B.**

JJ.

Opinion by Tang, J.

Filed: November 3, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

** Kehoe, Christopher B., now retired, participated in the hearing of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

Appellants Charles E. Saylor, Deborah A. Saylor, and Rebecca L. Saylor filed a lawsuit in the Circuit Court for Baltimore County against appellees SN Servicing Corporation ("SNS"), THL, LLC ("THL"), and James Tennyson, alleging various causes of action arising out of the foreclosure of property located in Howard County. The court dismissed the claims against SNS on the ground of *res judicata*, and it dismissed the claims against THL and Mr. Tennyson for lack of proper venue. On appeal, the Saylors present two questions that we rephrase slightly:

1. Did the court err in dismissing the claims against SNS on the ground of *res judicata*?

2. Did the court err in dismissing the claims against THL and Mr. Tennyson for lack of proper venue in Baltimore County?

For the reasons set forth below, we affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The Saylors resided on property located in Howard County, Maryland (the "Property"). In 2007, Mr. Saylor executed a deed of trust for the Property to secure a mortgage loan. Rushmore Loan Management Services, LLC ("Rushmore") acted as the mortgage servicer until around July 2019 when it transferred the servicing rights to SNS.

Foreclosure Action in Howard County

On September 27, 2018, Rushmore directed the filing of an Order to Docket in the Circuit Court for Howard County in *Ward v. Saylor*, No. C-13-CV-18-000574 (the "Foreclosure Action"). In that action, Carrie Ward and other substitute trustees were the named plaintiffs, and Mr. Saylor was the named defendant.

On January 31, 2019, the Saylors contacted Rushmore to discuss how to bring the account back into good standing. Rushmore agreed to a payment plan whereby interest would be capitalized, and the account would be noted as paid as agreed. Rushmore would not dismiss the Foreclosure Action, but it agreed to suspend the action so long as the Saylors made monthly payments. The Saylors proceeded to make online mortgage payments between February 2019 and June 2019 without issue.

The Saylors attempted to make another online payment in July, but it was rejected and returned. Unbeknownst to the Saylors, Rushmore had transferred the servicing rights to SNS prior to their attempted payment. The Saylors felt uncomfortable making further payments because they thought that Rushmore had rescinded their agreement.

In September 2019, after learning that SNS had become the successor servicer, the Saylors contacted SNS and advised it of their agreement with Rushmore. SNS claimed it was unaware of such agreement, and it indicated that the "loan was in foreclosure." After various follow-up calls, SNS ultimately told the Saylors that the Property was not in jeopardy, the Foreclosure Action merely involved a few thousand dollars in attorneys' fees, they could make payment "sometime after the New Year," and the account would return to good standing once the fees were paid.

In January 2020, the Saylors made their next payment and contacted SNS the following month to confirm that they were "still back on track[.]" SNS assured the Saylors that the Property was not in jeopardy, they could forego payments for a few months, and SNS would contact them if the status changed.

In July 2020, the Saylors contacted SNS again. SNS told the Saylors to make payment to cover the "attorneys' fees" to maintain the account in good standing. The Saylors proceeded to make the requested payment, but SNS rejected and returned it.

In October 2020, the Saylors contacted SNS, and SNS assured the Saylors that the Property was not in jeopardy, "due partly to COVID." The following month, the Saylors made further payment toward the satisfaction of "attorneys' fees" to ensure that the account remained in good standing.

On June 24, 2021, the substitute trustees in the Foreclosure Action mailed the Saylors a Notice of Foreclosure Sale, wherein they advised that the sale of the Property was scheduled to take place on July 16. The Saylors were "taken aback" when they saw this notice, and they contacted SNS. SNS claimed it did not know why the Property was scheduled to be sold at auction. It told the Saylors that they "might be able to save the home" by submitting a loan modification application. The Saylors submitted the application, but SNS claimed it never received it despite a fax confirmation sheet showing that it did. The Saylors requested to resubmit the application, but SNS said "it was too late," and the sale would proceed, contrary to SNS's repeated assurances otherwise.

On July 16, 2021, THL and Mr. Tennyson purchased the Property at the foreclosure auction. That same day, THL's agent and Mr. Tennyson allegedly trespassed onto the Property, confronted the Saylors, and threatened to change the locks.

On August 2, 2021, SNS filed a Supplemental Affidavit of Deed of Trust Debt that did not account for the two payments the Saylors made in January and November 2020.

SNS's failure to account for these payments led the Saylors to conclude that SNS "pocket[ed]" the funds "for its own benefit" and did not apply the funds to the mortgage balance.

On August 11, 2021, counsel entered his appearance on Mr. Saylor's behalf in the Foreclosure Action. On November 29, 2021, the Circuit Court for Howard County entered an order ratifying and approving the auditor's report and account. Mr. Saylor never moved to dismiss the Foreclosure Action, he did not file any exceptions to the sale, nor did he appeal from the entry of the ratification order.[1]

Complaint Filed in Baltimore County

On October 14, 2021, while the Foreclosure Action was pending, the Saylors filed a Complaint in the Circuit Court for Baltimore County, pursuing four causes of action against SNS and two against THL and Mr. Tennyson.[2] The general premise of the Saylors' claims against SNS was that SNS employed a "strategy of keeping the Saylors in a false state of comfort in order to ensure a quick and easy foreclosure[.]" The "plan" included making misrepresentations that ultimately enriched SNS and "allow[ed] the past due amount to build up to a total that the Saylors could not possibly afford, in order to solidify a ratified foreclosure sale, transfer of title, and eventual eviction."

[1] Through counsel, however, Mr. Saylor responded to a motion for possession of the Property, which the court denied without prejudice.

[2] The Saylors initially asserted a cause of action against SNS for interference with contract (Count III) that they later agreed should be dismissed. They also asserted Count I and a separate claim for injunctive relief (Count VIII) against THL and Mr. Tennyson, but they subsequently conceded that the claims were either no longer viable or did not pertain to these defendants.

In Counts I (Violations of the Maryland Consumer Protection Act) and V (Fraud), the Saylors alleged that SNS failed to notify them that it had succeeded Rushmore as the mortgage servicer, and it lied about the status of the Property and how to bring the account into good standing "to ensure that the home would be sold at the foreclosure auction." They further alleged that SNS violated the statute and engaged in fraud when it "pocketed" two of the Saylors' payments.

In Count II (Unjust Enrichment), the Saylors alleged that SNS received the benefit of two payments that SNS never applied to the mortgage balance, and its retention of the funds was inequitable "in light of its wrongful and fraudulent conduct[.]"

In Count IV (Interference with Economic Relationship), the Saylors alleged that SNS knew about the agreement with Rushmore and intentionally persuaded them not to make mortgage payments "to ensure a foreclosure, from which SNS stood to gain collection fees from the secured party or investor[.]"

The last two counts, Counts VI (Violations of Real Property Article § 7-113)[3] and Count VII (Trespass), alleged that THL and Mr. Tennyson, through their agent, threatened to take possession of the Property, "trespassed onto the [P]roperty with tools," took photographs of the Property, and threatened to change the locks.

[3] Section 7-113 provides for restrictions relating to taking or threatening to take possession of residential property. Md. Code Ann., Real Property Article ("RP") § 7-113 (1974, 2015 Repl. Vol.).

Motions to Dismiss the Complaint

SNS filed a motion to dismiss the claims against it on grounds that they were barred by *res judiciata* and otherwise failed to state a claim. Separately, THL and Mr. Tennyson filed a motion to dismiss the claims against them based on improper venue because the alleged trespass occurred in Howard County where the Property is located, not in Baltimore County where the Complaint was filed.

After a hearing, the court entered an order dismissing the Complaint as to SNS.[4] It reasoned that the claims against SNS were barred by the doctrine of *res judicata* because they arose from the same transaction as the earlier Foreclosure Action that resulted in a final judgment. Separately, the court dismissed, without prejudice, the Complaint as to THL and Mr. Tennyson because the Property, where the alleged trespassed occurred, is in Howard County.[5]

STANDARD OF REVIEW

"A trial court may grant a motion to dismiss if, when assuming the truth of all well-pled facts and allegations in the complaint and any inferences that may be drawn, and viewing those facts in the light most favorable to the non-moving party, 'the allegations do

[4] The order does not explicitly state that the Complaint as to SNS was dismissed with prejudice, but both parties understand that it was. *See* Md. Rule 2-322(c) ("If the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend.").

[5] The Saylors did not dispute that their claim for violation of RP § 7-113 (Count VI) was founded on an alleged trespass on the Property. The court apparently treated Count VI as one for trespass for venue purposes. *See Piven v. Comcast Corp*., 397 Md. 278, 290 (2007) (unjust enrichment and quiet title counts were founded solely on an alleged trespass and stood no differently, for venue purposes, than the trespass count).

not state a cause of action for which relief may be granted.'" *Latty v. St. Joseph's Soc'y of the Sacred Heart, Inc.*, 198 Md. App. 254, 262 (2011) (citation omitted). "'We review the grant of a motion to dismiss *de novo*.'" *Unger v. Berger*, 214 Md. App. 426, 432 (2013) (citation omitted).

DISCUSSION

The Saylors argue that the Circuit Court for Baltimore County erred in dismissing their claims. As to the counts against SNS, we need not address whether they failed to state a claim because we are persuaded that they were barred by the doctrine of *res judicata*. As to the counts against THL and Mr. Tennyson, the court did not err in dismissing those counts for lack of proper venue. We begin with a brief primer on the principles governing foreclosures that are pertinent to the issues discussed later.

Foreclosure proceedings are governed by the Real Property Article of the Maryland Code and the Maryland Rules. *Laney v. State*, 379 Md. 522, 535 (2004). Generally, when "a purchaser of real property secured by a mortgage or deed of trust ('mortgagor') defaults under the terms of the mortgage or deed of trust, the holder of the security interest ('mortgagee' or 'trustee') may initiate foreclosure proceedings." *Id*. (citing RP § 7-105). "Foreclosure cases do not begin with the filing of a complaint but with the filing of an 'order to docket.'" *Huertas v. Ward*, 248 Md. App. 187, 201 (2020) (citing Md. Rule 14-207(a)(1)).

Although the order to docket is not a pleading, in the strict sense, *Huertas*, 248 Md. App. at 201, the procedural rules governing foreclosure actions have evolved over the years

to "provide homeowners with more notice and greater opportunities to challenge the foreclosure." *Garey v. BWW Law Group, LLC*, No. 19-CV-03112, 2021 WL 4521329, at *4 (D. Md. Oct. 4, 2021). The current rules require that the order to docket must be accompanied by certain documents and served on the borrower/homeowner. Md. Rule 14-209(a). Service on the borrower/homeowner shall be made by personal delivery to the mortgagor or leaving the required papers with a "resident of suitable age and discretion" at the mortgagor's dwelling. *See* RP § 7-105.1(h)(1). If two good faith efforts at personal service on different days have failed, the plaintiff may effectuate service by mailing the required documents to the mortgagor by certified and first-class mail and conspicuously posting a copy of the required documents on the subject property. *See* Md. Rule 14-209(b); RP § 7-105.1(h)(5).

Before the foreclosure sale may take place, the mortgagee must fulfill certain notice requirements. The person authorized to conduct the foreclosure sale "shall publish notice" of the proposed sale in a newspaper of general circulation and further send notice by certified and first-class mail to the mortgage debtor, record owner, and the "holder of any subordinate interest in the property." Md. Rule 14-210 (a), (b). "[W]here a third party trustee is appointed by the court to conduct the foreclosure sale, the trustee shall give notice by advertising 'the time, place, and terms of sale in a newspaper of general circulation[.]'" *Laney*, 379 Md. at 537 (quoting Md. Rule 14-303(b)). "Once proper notice has been provided, the one authorized to conduct the foreclosure sale may sell the property." *Id*. The Saylors do not dispute that these service and notice requirements were satisfied.

"The Maryland Rules provide 'two avenues by which a borrower may challenge a foreclosure sale.'" *Huertas*, 248 Md. App. at 201 (citation omitted). "One is a motion to dismiss the foreclosure action or stay or enjoin a threatened sale; the other is to file exceptions to a sale that already has occurred." *Id*. at 202 (citation omitted). "Before a foreclosure sale takes place, a borrower may file a motion to stay the sale of the property and dismiss the foreclosure action" pursuant to Rule 14-211. *Id*. (internal quotations omitted). "The function of such a motion 'is to raise a challenge to the foreclosure action itself[,]' i.e., a challenge 'to whether there should be a sale at all.'" *Id*. (citation omitted). "The borrower, in other words, may petition the court for injunctive relief, challenging the validity of the lien or the right of the plaintiffs to foreclose in the pending action." *Id*. (cleaned up); Md. Rule 14-211(a)(3)(B). The Rule requires that the motion shall be filed within a certain time, but "the court may extend the time for filing the motion or excuse non-compliance" for "good cause." Md. Rule 14-211(a)(2)(A), (C).

"Even after a purchaser buys a property at a foreclosure sale, the transaction remains incomplete until the sale is approved by the court." *Huertas*, 248 Md. App. at 202. "Borrowers may challenge a foreclosure sale by filing exceptions, setting forth any allegations of irregularities in the sale." *Id*.; *see* Md. Rule 14-305(d)(1)); *Hood v. Driscoll*, 227 Md. App. 689, 695 (2016) (Rule 14-305(d) "has a more narrow focus" "on the conduct of the sale, not whether the trustee had a right to have the property sold."). "Irregularities that may justify setting aside a sale include deficiencies in the advertisement of sale, conduct that inhibited bidding on the property, or an unconscionable sale price." *Huertas*,

248 Md. App. at 203. "When the court finally ratifies a sale, the purchaser acquires complete equitable title to the property and becomes the substantial owner of the property, retroactive to the date of the sale." *Id*. at 203. "Among other things, the purchaser then becomes entitled to seek possession of the property." *Id*. With these principles in mind, we turn to the issues raised on appeal.

I.

Claims Against SNS

Res judicata is "an affirmative defense [that] bar[s] the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been–but was not–raised in the first suit." *Anne Arundel Cnty. Bd. of Educ. v. Norville*, 390 Md. 93, 106 (2005) (internal quotations and citations omitted). "By preventing parties from relitigating matters that have been or *could have been* decided fully and fairly, the doctrine of *res judicata* avoids the expense and vexation attending multiple lawsuits, conserves the judicial resources, and fosters reliance on judicial action by minimizing the possibilities of inconsistent decisions." *Gonsalves v. Bingel*, 194 Md. App. 695, 709 (2010) (internal quotations omitted and emphasis in original).

Under Maryland law, the elements of *res judicata*, or claim preclusion, are that: (1) the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) the claim presented in the current action is identical to the one determined in

the prior adjudication; and (3) there was a final judgment on the merits. *Colandrea v. Wilde Lake Comty. Ass'n*, 361 Md. 371, 392 (2000).

We can dispose of the first and third requirements quickly. As to the first requirement, "[p]rivity in the res judicata sense generally involves a person so identified in interest with another that he represents the same legal right." *FWB Bank v. Richman*, 354 Md. 472, 498 (1999). In the Foreclosure Action, the plaintiffs were the substitute trustees acting on behalf of the lender (the secured party); SNS (the mortgage servicer) was not a party. The Saylors do not seriously dispute that SNS is in privity with the substitute trustees that filed the Foreclosure Action on behalf of the lender. "Indeed, when a substitute trustee prosecutes a state court foreclosure action on behalf of a mortgage servicer, which in turn serviced the underlying mortgage on behalf of the lender, the servicer, lender and substitute trustee share the same right to foreclose on the [subject] mortgage, such that the privity component of claim preclusion is satisfied." *Proctor v. Wells Fargo Bank, N.A.*, 289 F.Supp.3d 676, 683 (D. Md. 2018) (cleaned up and citations omitted). Nor do the Saylors dispute that Deborah and Rebecca Saylor, not named parties in the Foreclosure Action, are in privity with Mr. Saylor, the named defendant in the Foreclosure Action.

As to the third requirement, there has been a final judgment on the merits for *res judicata* purposes when a foreclosure sale has been ratified. *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008); *see Manigan v. Burson*, 160 Md. App. 114, 120 (2004) ("Ordinarily, upon the court's ratification of a foreclosure sale objections to the propriety of the

foreclosure will no longer be entertained."). The Saylors do not dispute that the ratification order constituted a final judgment on the merits of the Foreclosure Action.

As to the second requirement, our courts have applied the transaction test to determine whether claims are identical. *See Kent Cnty. Bd. of Educ. v. Bilbrough*, 309 Md. 487, 498-99 (1987). "Under the transaction test, a 'claim' includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the claim arose." *Boyd v. Bowen*, 145 Md. App. 635, 656 (2002). "Cases are grouped by 'transaction' pragmatically, 'giving weight to such considerations as whether the facts are related in time, space, origin or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.'" *Douglas v. First Sec. Fed. Sav. Bank, Inc*., 101 Md. App. 170, 188 (1994) (quoting *deLeon v. Slear*, 328 Md. 569, 590 (1992)). Here, the underlying action and the earlier Foreclosure Action involve the same transaction or same series of transactions—the payment obligations under the deed of trust, the Foreclosure Action that resulted when payments were not made, and the eventual sale of the Property at auction.

In *Fairfax Savings, F.S.B. v. Kris Jen Limited Partnership*, 338 Md. 1 (1995), the Supreme Court of Maryland addressed the preclusive effect of a foreclosure judgment on claims made in a separate suit, holding that a separate and subsequent complaint against the mortgage lender following a foreclosure judgment was barred by *res judicata*. *Id*. at 31. There, a lender, Fairfax, instituted a foreclosure action after the debtor, Kris Jen,

defaulted on its note. *Id.* at 4–5. Kris Jen filed exceptions to the sale, but later withdrew the exceptions. *Id.* at 5. The trial court ratified the sale and the auditor's report. *Id*.

Kris Jen then filed a multi-count complaint against Fairfax, in which it asserted, *inter alia*, that various actions by Fairfax induced the foreclosure. *Id.* at 6–8. The trial court concluded that Kris Jen was precluded from asserting a "no default defense" to the foreclosure in its case against Fairfax, because the issue was a condition precedent to the foreclosure action. *See id*. at 9.

The Court agreed with the trial court, explaining:

> [I]t is possible for a mortgage foreclosure proceeding in Maryland in which no deficiency decree is sought to be purely *in rem.* It is also possible, if the mortgagor voluntarily appears, for the proceeding to include judgments in the form of rulings on exceptions to the sale and to the auditor's report, respectively, that have *in personam* collateral estoppel effect.
>
> In the instant matter, Kris Jen personally appeared in the foreclosure action and filed exceptions to the report of sale. Those exceptions, however, were never adjudicated, so that we are not concerned in this case with collateral estoppel or issue preclusion against the Plaintiffs, but with *res judicata.* Consequently, any preclusive effect that the order of ratification in this matter may have, greater than the preclusive effect that a foreclosure judgment would have if entered without any exceptions having been filed, is necessarily dependent on Plaintiffs' voluntary appearance in the foreclosure proceeding.

Id. at 17. If the foreclosure action had been purely *in rem,* Kris Jen could have relitigated the no default claim in the subsequent case. *Id.* at 20–21 (citing Restatement (Second) of Judgments, § 30 (1982); Restatement of Judgments, § 73 (1942)). But, because Kris Jen appeared in the foreclosure action, it had an opportunity to assert the no default defense as a counterclaim in that proceeding. *Id.* at 22.

Invoking the general rule under Restatement § 22(1), Kris Jen argued that its failure to allege certain facts as a defense or counterclaim in the foreclosure action did not preclude it from relying on those facts in a subsequent action against Fairfax. *Id*. at 23. The Court, however, focused on the exception to the general rule under §22(2)(b). Section 22 reads:

> (1) Where the defendant may interpose a claim as a counterclaim but he fails to do so, he is not thereby precluded from subsequently maintaining an action on that claim, *except as stated in Subsection (2)*.
>
> (2) A defendant who may interpose a claim as a counterclaim in an action *but fails to do so is precluded*, after the rendition of judgment in that action, from maintaining an action on the claim *if*:
>
> > (a) The counterclaim is required to be interposed by a compulsory counterclaim statute or rule of court, or
> >
> > (b) The relationship between the counterclaim and the plaintiff's claim is such that successful prosecution of the second action *would nullify the initial judgment or would impair rights established in the initial action*.

Kris Jen, 338 Md. at 10–11 (quoting Restatement (Second) of Judgments § 22 (1982)) (emphasis added).

In affirming the trial court's decision, the Court explained:

> [A] foreclosure-triggering default is a condition precedent to a Maryland mortgage foreclosure. Ordinarily the existence of that essential will be demonstrated by the statement of mortgage debt and by the mortgage that are required to accompany the order to docket the summary proceeding. Allegations that there was no foreclosure-triggering default negate, contradict, and in that sense nullify an essential foundation for the foreclosure judgment. Those allegations were precluded by the foreclosure judgment, and the circuit court correctly ruled that they should be culled from Plaintiffs' second amended complaint.

Id. (citations to the then-current foreclosure rules omitted).

SNS argues that the holding and rationale of *Kris Jen* apply to preclude the Saylors' claims against it. The Saylors, on the other hand, contend that their case is distinguishable, rendering *Kris Jen* inapplicable. First, the Saylors note that they "never voluntarily appeared or asserted any exceptions in the Foreclosure Action." SNS responds that the Saylors' counsel entered his appearance in the Foreclosure Action, weeks before the entry of the ratification order, such that the Saylors (through Mr. Saylor) could have challenged the foreclosure at that time. We agree with SNS.

Not only did the Saylors know of the pending Foreclosure Action and acknowledge proper service and notice, but their counsel entered his appearance in the action after the Property had been sold at auction and before entry of the ratification order. *See Lovering v. Lovering*, 38 Md. App. 360, 363 (1977) ("Generally, a party who enters a general appearance either in person or by counsel consents to the jurisdiction of the court[.]"); *Keen v. Keen*, 191 Md. 31, 41 (1948) ("[I]f an appearance, no matter how characterized, is in effect a general appearance, it will have the result of binding the party appearing in subsequent proceedings in this case."); *see also Cooke v. Caliber Homes Loans, Inc*., No. 18-370, 2020 WL 1434105, *5–6 (D. Md. Mar. 24, 2020) (rejecting homeowner's argument that foreclosure judgment had no preclusive effect on her subsequent claims where she did not voluntarily appear and make challenges in foreclosure action). Mr. Saylor had the opportunity to challenge the Foreclosure Action but declined to do so. *See Manigan*, 160 Md. App. at 120 ("[W]here one is given that opportunity [of being heard],

and elects to stand mute and allow the decision to go against him without protest or objection, that he is bound by it.") (citation omitted).

Second, the Saylors argue that they could not have moved to stay and dismiss the Foreclosure Action under Rule 14-211(a) before the sale, nor could they have filed exceptions under Rule 14-305(e) after the sale, because their claims do not fit within the realm of available defenses under those rules. Even if we accept the argument regarding post-sale exceptions, the Saylors do not adequately explain why Mr. Saylor could not have raised any defenses in a motion to dismiss pursuant to Rule 14-211(a).

Rule 14-211(a)(3)(B) provides that a motion to stay and dismiss shall "state with particularity the factual and legal basis of each defense that the moving party has *to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action*[.]" (Emphasis added). As to the latter, the Rule does not enumerate the types of cognizable defenses to the right to foreclose, but the committee note to the Rule indicates that the failure to grant loss mitigation may be one such defense. The Saylors argue that their claims "are focused squarely" on SNS's unjust enrichment and misrepresentations and are therefore unrelated to the validity of the lien or loss mitigation. On this premise, they maintain that the claims asserted in the underlying action "could not have been meritoriously asserted in a Rule 14-211(a) motion to stay and dismiss."

This argument was not raised below and is not preserved for our review. At the motions hearing, the Saylors explained that they "chose not to file a preliminary [m]otion to [d]ismiss [because] they were being defrauded at the time. So, once a deadline to file

the [m]otion to stay and dismiss passed, they were still being defrauded." In other words, the Saylors failed to file a motion to dismiss because they missed the filing deadline due to SNS's ongoing fraud, not because the claims are unrelated to the validity of the lien or the failure to grant loss mitigation, as they now argue on appeal.

In any event, the Saylors do not explain, on appeal, why the claims against SNS could not have been raised as defenses to the right to foreclose under Rule 14-211(a). To the extent they contend that the Rule limits available defenses to a failure to grant loss mitigation, our Court has rejected such a contention. *See Devan v. Bomar*, 225 Md. App. 258, 270–72 (2015) (rejecting assertion that Rule 14-211 is limited to challenges based upon failure of lender to comply with pre-sale loss mitigation requests; an alleged, known violation of federal statute is a "plausible reason" to file a motion to dismiss the foreclosure proceeding); *see also Buckingham v. Fisher*, 223 Md. App. 82, 95 (2015) (parties acknowledged that inadequate notice of sale could be a valid defense to the right to foreclose).

Third, the Saylors highlight "[a]nother crucial difference" between *Kris Jen* and the instant matter. The "no default defense in *Kris Jen* could have been raised in a counterclaim" "because the defense was directed against the secured party" (the lender, Fairfax). "In this case, the claims are against the mortgage servicer [SNS], and not the secured party." The Saylors, however, do not develop this argument, nor do they explain the import of this distinction. *See* Md. Rule 8-504(a)(6). Without a particularized argument with supporting legal authority, we are without a framework to review this

contention. *See Mathis v. Hargrove*, 166 Md. App. 286, 318 (2005) (declining to address the assignment of error because appellant did not provide a framework for the Court's consideration).

Finally, the Saylors contend that the allegations in their Complaint do not challenge the foreclosure triggering default established in the Foreclosure Action; their claims relate to SNS's misrepresentations and the unjust enrichment it received from "pocketing" payments for which they seek damages. We are not persuaded. The Saylors' claims share a common premise that SNS engaged in an ongoing scheme of wrongful conduct during the Foreclosure Action to "solidify a ratified foreclosure sale." The counts asserted against SNS are essentially claims that there had been no foreclosure-triggering default, and a successful prosecution of the claims would effectively nullify an essential foundation for the foreclosure judgment. *See*, *e.g.*, *Cooke*, 2020 WL 1434105, *7 (barring homeowner's claims for violations of protective statutes and breach of contract because they were predicated on defendants' failure to comply with conditions precedent to foreclosure action and sale, and claims could have been raised in foreclosure action); *Bullock v. Ocwen Loan Servicing, LLC*, No. 14-3836, 2015 WL 5008773, at *6 (D. Md. Aug. 20, 2015) (barring homeowner's claims for violations of protective statutes because they were premised wholly on assertion that defendants lacked authority to foreclose, and claims could have been asserted as counterclaims in foreclosure action). The Saylors cannot avoid the doctrine of *res judicata* by repackaging their claims in a separate action for damages. Permitting the claims to proceed would amount to a collateral attack on the foreclosure that

the doctrine bars. *See Coleman v. Countrywide Home Loans, Inc.*, No. L-10-2297, 2010 WL 5055788, at *4 (D. Md. Dec. 3, 2010) ("To allow [the homeowner] now to claim damages stemming from the ratification of the foreclosure sale which she failed to contest would permit her impermissibly to attack a final judgment of the Circuit Court[.]"). Accordingly, the court did not err in dismissing the claims against SNS on the ground of *res judicata*.[6]

II.

Claims Against THL and Mr. Tennyson

In their Complaint, the Saylors alleged that venue is proper in Baltimore County because THL maintains its principal offices and Mr. Tennyson resides there. THL and Mr. Tennyson respond that venue is proper in Howard County where the Saylors alleged the trespass occurred.

"The relevant laws relating to venue—where an action may be brought—are set forth in [Courts & Judicial Proceedings] §§ 6-201 through 6-203." *Piven v. Comcast Corp.*, 397 Md. 278, 283 (2007). Section 6-201 states the general rule:

> (a) *Subject to the provisions of §§ 6-202 and 6-203* of this subtitle and unless otherwise provided by law, a civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed, or

[6] In their reply brief, the Saylors argue that RP § 7-105.1 establishes a three-year limitations period for suits in response to wrongful foreclosures, and thus foreclosures cannot be intended to have preclusive effect. Because the Saylors did not raise this argument in the circuit court, and they raise it for the first time in their reply brief, it is not properly before us. *See* Md. Rules 8-131, 8-504(a)(6); *Weatherly v. Great Coastal Express Co.*, 164 Md. App. 354, 367 (2005) (declining to address an argument that was neither preserved nor raised in the principal brief).

> habitually engages in a vocation. In addition, a corporation also may be sued where it maintains its principal offices in the State.

Md. Code, Courts & Judicial Proceedings Article ("CJP") (1973, 2020 Repl. Vol.) (emphasis added).

Section 6-202 provides alternative venues in thirteen circumstances, the last of which is relied upon by the Saylors. Section § 6-202(a)(13) provides:

> In addition to the venue provided in § 6-201 or § 6-203, the following actions may be brought in the indicated county: . . . (13) In a local action in which the defendant cannot be found in the county where the subject matter of the action is located -- In any county in which the venue is proper under § 6-201.

"Section 6-203 sets forth certain exceptions to the general rule stated in § 6-201." *Piven*, 397 Md. at 283; CJP § 6-203(a) ("The general rule of § 6-201 of this subtitle does not apply to actions enumerated in this section."). Section 6-203(b)(1)(iv) provides, in relevant part, that venue in an action for "trespass to land" "is in the county where all or any portion of the subject matter of the action is located[.]" As the Supreme Court of Maryland explained:

> In an action for trespass to land, the "subject matter of the action" is the trespass—the intrusion upon the land and the interference with the plaintiff's alleged right of possession and use of the land—and that necessarily is where the land itself is situated. Under § 6-203, therefore, an action for trespass to land must be brought in the county where all or any portion of the land is located, and it may not be brought anywhere else.

Piven, 397 Md. at 284.

The Saylors do not dispute that their claims against THL and Mr. Tennyson are founded on an alleged trespass on the Property. *See* n.5, *supra*. Rather, they attempt to

circumvent § 6-203(b)(1)(iv) by relying on § 6-202(13), contending that venue is proper in Baltimore County where Mr. Tennyson resides and THL maintains its principal office. Section 6-202(13), however, is not applicable because the Saylors did not allege in the Complaint that THL and Mr. Tennyson "cannot be found" in Howard County. *See Pivens*, 397 Md. at 290 ("Section 6-202(13) has no application, as there has been no allegation that the Comcast defendants 'cannot be found' in Baltimore City."). The circuit court did not err in dismissing the claims against THL and Mr. Tennyson for lack of proper venue.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.