Circuit Court for Prince George's County
Case No. CAEF15-25171

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 178

September Term, 2023

RAS GROUP, INC.

v.

PERVIS A. TURNBOW, Sr., *et al.*

Friedman,
Ripken,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: July 30, 2024

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

This appeal involves an issue collateral to a foreclosure action and asks us to determine whether the circuit court erred in holding a successor substitute trustee liable for the return of a deposit received by a predecessor substitute trustee. For the reasons that follow, we affirm the order of the Circuit Court for Prince George's County.

BACKGROUND

In 2008, appellees Pervis A. Turnbow, Sr., and Pervis A. Turnbow, Jr., executed a promissory note in favor of American Sterling Bank. The note was secured by a deed of trust encumbering their residence, owned as tenants in common, in Prince George's County. The deed of trust was eventually assigned to Green Tree Servicing, LLC. The Turnbows defaulted on the note in April 2014. As a result, Green Tree Servicing issued a notice of intent to foreclose on the property. Martin Goldberg, *et al*., and The Fisher Law Group, PLLC, were appointed as substitute trustees.

The substitute trustees initiated a foreclosure action in September 2015. To keep the home in the family, Alfreda Turnbow, Pervis, Sr.'s sister,[1] purchased the property at the February 2016 foreclosure sale. In the report of the sale entered in the circuit court, the substitute trustees acknowledged their receipt from Alfreda of a deposit toward the sale in the amount of $32,000. The circuit court ratified the foreclosure sale on January 16, 2018. In September 2018, the circuit court permitted Alfreda to add Ronald Anderson, Pervis, Sr.'s, brother-in-law, as a purchaser of the property.

[1] Because several of the principals in this matter are family members who share a surname, we refer to the Turnbows by their given names.

On December 7, 2018, appellant RAS Group, Inc.[2] entered its appearance as counsel for Green Tree Servicing (which had by then become known as Ditech Financial, LLC) in an effort to bring the foreclosure action to resolution. As of that date, Alfreda and Anderson still had not closed on the property. Ditech anticipated filing a demand for settlement, and if that demand was not met, a subsequent motion for Alfreda's deposit to be forfeited and the property resold.

On April 26, 2019, Ditech filed an emergency motion asking that RAS and its attorneys David Rosen, Brittany Taylor, and Eric VandeLinde be appointed as successor trustees, because Ditech's prior law firm had dissolved and filed for Chapter 11 bankruptcy, and thus the former substitute trustees were no longer with the firm. In the motion, RAS stated that as successor trustees, they had no knowledge of the whereabouts of the $32,000 deposit paid by Alfreda at the foreclosure sale and asked the circuit court to relieve them of responsibility for that deposit as a condition of their acceptance of the appointment as successor trustee. Although Alfreda and Anderson had initially consented to the appointment of the successor trustees, they withdrew that consent because they disagreed with RAS being relieved of responsibility for disbursement of the $32,000 deposit funds.

On June 3, 2019, Ditech petitioned the circuit court for an order of forfeiture of the $32,000 deposit—again claiming to have no knowledge of its whereabouts—and an order

[2] The caption in this Court identifies the appellant as "RAS Group Inc" but in the circuit court the appellant was referred to as "RAS Crane LLC." The record contains no explanation for the difference.

for resale of the property, on the grounds that Alfreda had failed to go to settlement after working with two different title companies.

The circuit court heard argument on the motion and the petition on June 13, 2019. Ditech appeared at the hearing through RAS attorney Eric VandeLinde, and Alfreda appeared *pro se*. At the hearing, Alfreda reiterated her opposition to the appointment of RAS as successor trustees unless Ditech and the substitute trustees agreed that the $32,000 deposit would be credited to the mortgage. Alfreda informed the circuit court that David Rosen, another attorney for RAS, had informed her in writing that Ditech would credit Alfreda for the $32,000 deposit, but that agreement was not included in the motion to appoint the substitute trustees.[3] VandeLinde asked the circuit court to relieve RAS of any responsibility for the $32,000 deposit, which had been held in trust by BP Fisher but never provided to Ditech or to RAS.

The court responded:

> THE COURT: Right. I understand that, but I don't know if I can—I mean, I'll appoint you substitute trustee, but I don't think I have the authority to absolve you of—to relieve you of the responsibility, you know what I mean, for the $32,000. I know a lot of people don't know where their money is. I don't think I have any authority to do that. I mean, I can appoint you substitute trustee and you come to become substitute trustee with all the attendant things that come with it. If you don't want to do that, then, you know, I don't think I can appoint you substitute trustee. ... I understand ... you don't have the money, but I don't want—I don't [have] the authority to say I'm going to absolve you of—I know you don't have the money, but I don't think I have the authority to do what you want me to do.

[3] There is an April 30, 2019, email in the record from Rosen to Alfreda and Anderson, stating, "My client has agreed to provide a credit for the purchaser's deposit at settlement, understood to be $32,000. We ask that you please provide a redacted copy of bank statement or receipt for the prior trustees that my client can have for its records."

MR. VANDELINDE: I understand, Your Honor.

THE COURT: I know you don't have any knowledge of where the Purchaser's deposit of the $32,000 is and I don't know if I can relieve you of the responsibility for that Purchaser's deposit. I don't know. You know, when you step into somebody else's shoes, you should know what you're stepping into and you take the responsibility for that and I don't want your—I don't want you to turn around and say, "Well, you've got to pay another $32,000." That's not fair to the Purchaser either, so I don't think I have the authority to do what you want me to do.

You step into the shoes of BP Fisher knowing full and well what you may be stepping into. That's some of the risk, I guess. So what do you want to do? Because it says that you would as a condition for accepting the appointment.

MR. VANDELINDE: Yes, Your Honor. That is the—

THE COURT: Do you still want to accept the appointment?

MR. VANDELINDE: If possible, could I go back and discuss with my client—

THE COURT: Sure.

MR. VANDELINDE: --prior to that?

THE COURT: Yeah. Because this is not fair. They paid their money. It's not their fault that somebody took off with the money or they don't know where the money is and so—so anyway, we'll hold off on that. I'll revise my decision on that one.

So right now you're not in it, so—

MR. VANDELINDE: Petition to Resell is—

THE COURT: --you're not in it.

MR. VANDELINDE: --moot, yes.

Alfreda advised the circuit court that she and Anderson also sought the opportunity to work with Ditech to try to come to an agreement. The court therefore continued the hearing until September 13, 2019.

When the hearing resumed on that date, Ditech's attorney advised the circuit court that "we're no longer for looking for [sic] the deposit to be waived."[4] The circuit court clarified to Alfreda that RAS "still want[ed] to be appointed as substitute trustee, but [would not] require [her] to come up with another $32,000." The circuit court appointed RAS attorneys Eric VandeLinde and Brittany Taylor as successor trustees but determined it would not relieve them of the actions taken by the BP Fisher substitute trustees.[5]

The following week, on September 24, 2019, the newly appointed successor trustees renewed their petition to order the forfeiture of the deposit and resale of the property. The circuit court issued a show cause order to Alfreda and Anderson as to why the successor trustees' petition should not be granted. On March 19, 2020, the circuit court ordered that the deposit would be forfeited and the property resold if Alfreda and Anderson did not fully

[4] The cover sheet of the hearing transcript indicates that the attorney appearing for Ditech was "Eric Finland," but the transcriber noted that their interpretation of the attorney's surname was phonetic. Because there is no listing for a Maryland attorney named Eric Finland, we presume that Ditech continued to be represented by RAS attorney Eric VandeLinde. Indeed, the circuit court pointed out during a November 10, 2022, hearing that VandeLinde had appeared in court on September 13, 2019.

We point this out because RAS, in its appellate reply brief, asserts that it was Eric *Finland*, representing Ditech, and not Eric *VandeLinde*, representing RAS, "who made that promise in the Circuit Court." Given the likelihood that RAS is, or should be, well aware of who represented its client and the firm at the hearing, we find this assertion carelessly mistaken at best and intentionally misleading to this Court at worst.

[5] On September 12, 2019, David Rosen withdrew from consideration for appointment as successor trustee and as counsel for Ditech.

and completely settle within the terms of the trustees' sale within 30 days. That settlement deadline was later extended to 30 days after the courts re-opened after closure due to the COVID-19 pandemic.

Instead of proceeding to settlement on the foreclosure sale, however, Alfreda and Anderson arranged to pay off the original mortgage based on a quitclaim deed conveying to them Pervis, Sr.'s interest in the property.[6] Based on a payoff amount provided to them by Brittany Taylor, Alfredo and Anderson paid off the underlying mortgage loan in full in August 2021. They believed that the payoff of the mortgage complied with the circuit court's order to complete settlement within the deadline.

After Alfreda and Anderson paid the mortgage debt, the successor trustees dismissed the foreclosure action. Alfreda and Anderson opposed the dismissal on the grounds that the $32,000 deposit and an additional $25,000 in post-closing funds had not been distributed to them. On April 1, 2022, the circuit court re-opened the matter for the limited purpose of determining the successor trustees' obligation, if any, to refund the $32,000 deposit paid by Alfreda at the time of the foreclosure sale.

[6] On September 3, 2019, Alfreda and Anderson had moved to set aside the foreclosure sale and to vacate the ratification order, on the ground that they had found, among Pervis, Sr.'s, papers subsequent to his death, a quitclaim deed to Alfreda and Anderson relating to Pervis, Sr.'s, interest in the property. RAS opposed the motion because it had received no evidence of the alleged quitclaim deed, and the deed had not been recorded in the land records or produced to the Maryland State Department of Assessments and Taxation, which, in RAS's view, rendered the claim "extraordinarily questionable at best." The circuit court denied Alfreda's and Anderson's motion, on the ground that it was untimely filed and did not state a meritorious factual or legal basis for the court to set aside the foreclosure sale.

In its reply to Alfreda and Anderson's opposition to the dismissal, RAS argued that Alfreda and Anderson were not parties to the action and had no standing to request a court order for reimbursement of the deposit. They argued that the foreclosure was an *in rem* action and not a civil action in which the purchasers could pursue what amounted to a counterclaim. Moreover, the successor trustees asserted that they had no liability for the deposit because it had been received and held in trust by BP Fisher and RAS had never possessed it nor agreed to be liable for it. They further argued that Alfreda and Anderson's reliance on statements made by the circuit court during the September 13, 2019, hearing was misplaced because the statements did not appear in any court order and were misconstrued by the purchasers in any event. In RAS's view, the circuit court's statement, "I don't think I have the authority to absolve you of—to relieve you of the responsibility, you know what I mean, for the $32,000," was not a ruling and should be construed as nothing more than the circuit court's understanding that it did not have the authority to make a declaration either way.

In its November 16, 2022, written order, the circuit court found "that based on the statements made on September 13, 2019, by counsel for [Ditech], who also serves as a Substitute Trustee, Purchaser is entitled to a credit for the $32,000 deposit." The circuit court found that the June 13, 2019, hearing was continued until September 13, 2019, specifically to provide RAS additional time to confer with Ditech about whether Ditech desired to move forward with RAS's appointment as successor trustee, considering that the successor trustees would not be relieved of the responsibility for Alfreda's deposit. Then, on September 13, 2019, RAS represented to the circuit court and to Alfreda that it would

not require Alfreda to pay an additional $32,000 for deposit, inducing the circuit court to appoint it as successor trustee.

The circuit court found that the appointment of VandeLinde and Taylor as successor trustees

> was conditioned upon Noteholder providing credit to Purchaser for her initial deposit. ... The record is clear that Noteholder, via counsel, agreed to credit Purchaser for the initial deposit of $32,000; and that the remaining amount owed on the sale price of the property was $259,000. It is also clear that the appointment of successor trustees was conditioned on the waiver of the requirement of Purchaser to pay an additional deposit/full sales price at the time of settlement. The Court finds that Substitute Trustees and Noteholder are bound by that agreement and those conditions.

The circuit court therefore ordered that Alfreda was "entitled to a refund of any amounts paid towards the sale price of the property, in excess of $259,000" and that she "shall be refunded" any such amount within 45 days of the date of the order.

RAS moved to alter or amend the circuit court's order, asserting that the court was "not fully aware of the relevant facts" of the underlying matter. The circuit court heard argument on the motion to alter or amend on February 8, 2023. At the hearing, RAS reiterated that it had never been in possession of the deposit because it had not been transferred to them as successor trustees from the BP Fisher trustees. And, although RAS acknowledged that it had agreed to credit Alfreda with the $32,000 deposit upon completion of the foreclosure sale, it argued that because Alfreda had paid off the deed of trust instead of completing the foreclosure sale, there was no foreclosure transaction from which to credit the deposit. Thus, RAS asserted that Alfreda's claim should be directed to BP Fisher or to Ditech, but "certainly not against the RAS trustees."

In response to a question posed by the circuit court, Alfreda explained that when she contacted Brittany Taylor at RAS about paying off the mortgage, she believed she was complying with the circuit court's order requiring the completion of settlement. As payoff of the mortgage, she paid Ditech through RAS's IOLTA account but did not receive a credit for her deposit. When she asked Ditech about the missing credit, she was told that she would have to address the matter with RAS.

In its oral ruling, the circuit court explained that "it's clear from the record that the appointment of attorney VandeLinde as well as attorney Taylor as successor trustees was conditioned upon the fact that the purchasers received credit for the $32,000 from RAS Crane's client, the noteholder." And, although Ditech, the noteholder, was not a party to the case, RAS had entered its appearance on behalf of Ditech and acted as its agent. The circuit court found that, as evidenced by her communications with Taylor, Alfreda's intention had been to complete her obligations under the sale once Taylor, knowing "full and well" that representatives from RAS had agreed to credit Alfreda for the deposit, provided her with a payoff figure. Nevertheless, Taylor provided the payoff figure, with no credit for the deposit, without advising Alfreda that Taylor was then acting in her capacity as attorney for Ditech and not as a successor trustee.

The circuit court noted that Taylor's behavior was "unjust and unethical in the fact that she did not disclose who she was representing at the time." Thus, the circuit court found that if Alfreda made a mistake in the closing process—reinstating the mortgage loan as opposed to completing the foreclosure sale—Taylor was complicit in the mistake. And, as the appointment of RAS as the successor trustees was conditioned upon credit of the

deposit, Ditech owed Alfreda the deposit, and RAS as Ditech's attorneys, bound them to that representation as made to the circuit court. The circuit court therefore concluded that either RAS should pay the money or advise Ditech to pay the money, but it was "of no consequence" which entity paid Alfreda because, to the court, "it's all one person."

In its written order, the circuit court admonished that, contrary to RAS's assertion, it was "fully aware of the relevant facts," and that it was "clear from the record" that "the appointment of Eric D. VandeLinde and Brittany M. Taylor as successor Trustees, was conditioned upon Purchasers receiving a credit for the $32,000 deposit. It is also clear that Noteholder agreed, via counsel who also served as a RAS Crane Trustee, to credit Purchasers for the deposit." The circuit court further found RAS's argument that Alfreda was not entitled to a credit or refund because the foreclosure sale was rescinded after she paid off the mortgage to be "without merit." Alfreda and Anderson had relied upon the information provided by Taylor, an RAS attorney and successor trustee, to complete the settlement. Moreover, it had been Alfreda's original intention to complete the sale through the foreclosure process and not simply to pay off the existing mortgage, so if the mortgage payoff was made directly to Ditech via RAS, rather than to RAS as successor trustees, "that is of no fault of the Purchasers."

Finally, the circuit court held that the uncontroverted facts showed that: (1) Ditech agreed to pay Alfreda for her deposit at settlement; (2) settlement occurred; and (3) Ditech did not provide Alfreda a credit for her deposit at settlement. The failure to provide Alfreda the credit was "contrary to the representation made to the Court by an attorney from RAS Crane who served as counsel for Noteholder on September 13, 2019, and as an RAS Crane

Trustee," and contrary to the April 30, 2019, email from RAS advising Alfreda that Ditech agreed to provide a credit for the $32,000 deposit at settlement.

The circuit court therefore denied RAS's motion to alter or amend and found that Alfreda was entitled to a refund for the $32,000 from RAS. The circuit court ordered that amount to be paid within 30 days of the March 2, 2023, issuance of its order. RAS Crane timely noted an appeal of the circuit court's denial of its motion to alter or amend.

DISCUSSION

The successor trustees argue that the circuit court erred in denying their motion to alter or amend its order that they return to Alfreda her $32,000 deposit. They reassert the arguments they made to the circuit court that they had never been in possession of the deposit, and that they had only agreed to credit the deposit upon settlement of a foreclosure sale that never occurred. The successor trustees also now add that the circuit court had no jurisdiction under which it could have entered what "is essentially a money judgment, in the *in rem* foreclosure action in which the Appellees are not even parties." As were at least three judges of the circuit court who considered this issue, we are unpersuaded by RAS's attempts to evade responsibility for the repayment of Alfreda's deposit.

From the start of its involvement in the Turnbow foreclosure action, RAS was fully aware of the facts and potential pitfalls in becoming successor trustees. When RAS moved to be appointed as successor trustee in April 2019, it specifically asked the circuit court—several times—to relieve it of any responsibility to return the $32,000 deposit if it were appointed successor trustee. This demonstrates that RAS was aware that the deposit was an outstanding issue in the foreclosure matter. The circuit court advised RAS that it

"d[id]n't think" it had the authority to relieve RAS of the responsibility for the deposit but that if it still wanted to be appointed as successor trustee, RAS would "step into the shoes of BP Fisher knowing full and well what you may be stepping into."[7] With those caveats, the circuit court gave RAS the opportunity to speak to Ditech before deciding whether to accept the appointment as successor trustee. When the parties reconvened after a full three-month opportunity for RAS to deliberate, VandeLinde told the circuit court that RAS still wanted to be appointed as successor trustee and was no longer seeking the waiver of Alfreda's deposit. Based on that representation, the circuit court appointed RAS as successor trustee.

It is clear from the record that Ditech, through RAS—who acted as both Ditech's counsel as well as the successor trustee—agreed to credit the $32,000 deposit to Alfreda. RAS's argument that the credit was required only if Alfreda completed settlement on the foreclosure sale, rather than closing the matter by paying off the mortgage, exalts form over function and is unavailing. Alfreda relied upon information provided by Brittany Taylor to facilitate the payoff. Taylor, who was both an attorney for Ditech and a successor trustee, did not advise Alfreda whether she was then acting as attorney for Ditech rather than as successor trustee. Either way, Alfreda completed the transaction and Ditech was paid the

[7] Indeed, the applicable deed of trust specified that "[l]ender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the city or county in which this Security Instrument is recorded. Without conveyance of the Property, *the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law*." (emphasis added).

full amount of the outstanding debt on the deed of trust (which appears to have been more than it would have received had Alfreda settled on the foreclosure sale) and it, through its successor trustees/counsel, was properly held to its agreement to credit Alfreda for the deposit.

We see no legal or equitable basis upon which to require Alfreda to forfeit her deposit. As between Alfreda, who paid the deposit in the good faith belief that she would proceed to settlement on the foreclosure sale but elected to pay off the mortgage debt when she learned she was already an owner of the property by way of quitclaim deed, and RAS/Ditech, who on several occasions agreed to credit Alfreda for the deposit but then on as many occasions attempted to renege on that agreement and ultimately suffered no loss by Alfreda's payment of the mortgage debt in full, it is clear to us that RAS is at least equitably estopped from succeeding on its appellate claim. *See Knill v. Knill*, 306 Md. 527, 534 (1986) ("equitable estoppel requires that the party claiming the benefit of the estoppel must have been misled to his injury and changed his position for the worse, having believed and relied on the representations of the party sought to be estopped"); *Griggs v. Evans*, 205 Md. App. 64, 83 (2012) (doctrine of equitable estoppel stands for the principle that it is "unfair for a party to rely on a contract when it works to its advantage, and repudiate it when it works to its disadvantage" (cleaned up)). We conclude that the circuit court's decision, which balanced the intentions of the parties with principles of equity, was a

rational legal decision and that the circuit court therefore properly denied RAS's motion to alter or amend.[8]

ORDER OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[8] As was the circuit court, we are unpersuaded by RAS's argument that the court's decision amounted to the award, without due process, of an improper money judgment in a *in rem* matter. The circuit court did not enter any judgment in favor of Alfreda. Instead, it equitably enforced the existing terms and conditions of RAS's appointment as successor trustee on behalf of Ditech.