Circuit Court for Baltimore City
Case No. 24-O-22-001063

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0860

September Term, 2023

NEW LIFE EVANGELICAL BAPTIST CHURCH, INC., ET. AL.

v.

WILLIAM HALLAM

Friedman,
Shaw,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.
Dissenting Opinion by Harrell, J.

Filed: January 13, 2025

* 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 MD. RULE 1-104(a)(2)(B).

Appellee, William Hallam, in his capacity as trustee for Kevin Pfeffer,[1] has sought the foreclosure of real property in Baltimore City owned by Appellant, New Life Evangelical Baptist Church, as improved by its church building, a food pantry, and Turning Point Inc., a treatment center that the church operates for people suffering with opioid addiction.[2] New Life sought to block the foreclosure and sale, asserting that Pfeffer did not have the legal right to foreclose on the properties. Because of some procedural difficulties that we will explain below, New Life was denied a hearing at which to attempt to prove its allegations. At the foreclosure sale, Pfeffer himself purchased the real property. After the foreclosure sale, New Life filed exceptions to the sale to assert that Pfeffer obtained the mortgage by fraud. Once again, the circuit court denied New Life a hearing at which to prove its allegations. Because of the unique facts and posture of this case, we invalidate the foreclosure sale of the real property and remand the matter to the Circuit Court for Baltimore City to conduct an evidentiary hearing at which New Life can attempt to prove that Pfeffer obtained the mortgage by fraud and for other, further proceedings consistent with the outcome of that hearing.

BACKGROUND

For ease of understanding, we have divided our factual recitation into two parts. The first part, labelled "Underlying Transactions," is derived from the pleadings and the hearing

[1] For simplicity, we will refer to Kevin Pfeffer and William Hallam collectively as "Pfeffer."

[2] We will refer to these entities simply as New Life unless circumstances do not allow it.

on New Life's motion for a temporary restraining order. We emphasize that these facts are mere allegations and need to be proven at an evidentiary hearing. Nothing in this first part, titled "Underlying Transactions," constitutes *res judicata* or law of the case. The second part of the factual recitation is labelled "Procedural History," and is derived from the record developed in this case.

I. Underlying Transactions

New Life owns and operates a church, a food pantry, and an opioid treatment center, called Turning Point Inc., on real property identified as 2401 and 2413-2415 East North Avenue in the South Clifton Park neighborhood of East Baltimore. Reverend Milton E. Williams, Jr. is the church's pastor and Turning Point's president. Kevin Pfeffer is (or was) a parishioner of New Life and was a longtime friend and confidant of Reverend Williams. Pfeffer is also the president of CMDS Management LLC ("CMDS Management"), which, according to its website, "offers a complete portfolio of administrative services… [to] behavioral health providers in the State of Maryland." *See* CMDS MANAGEMENT LLC., www.cmdsmanagement.com; https://perma.cc/6QQM-BP3E (last visited Dec. 16, 2024). It is our understanding that CMDS Management contracted with Turning Point to assist with its billings, finances, and human resources issues.[3]

[3] As we understand it, there is a dispute between the parties as to the nature of the relationship between New Life and CMDS Management (or its president, Pfeffer). New Life alleges that Pfeffer is a fiduciary and owes New Life a fiduciary duty. Pfeffer disputes that characterization.

In the Summer of 2000, New Life had significant debts to third party creditors.[4] Pfeffer proposed a solution. Pfeffer would pay off all of New Life's debts in exchange for $500,000 plus interest at the rate of 9%. Reverend Williams, on behalf of New Life, accepted. That transaction was formalized in a Deed of Trust Note executed on August 24, 2000. Shortly after that, however, Pfeffer cancelled the debt. In December of 2000, Pfeffer sent Reverend Williams a letter that said, in pertinent part:

> [D]ue to significant investment gains I have experienced over the past couple [of] years, I have decided to donate to the church all of the principal and interest owed to me under the subject mortgage and note, which totals $516,092.44. Congratulations, the church is now debt free.

Despite this, Pfeffer never filed a satisfaction of mortgage in the land records and never took any other steps to document that the debt had been cancelled.[5]

In 2015, New Life obtained a $2 million loan from M&T Bank to expand the services of Turning Point and buy more property. In connection with that loan, New Life executed a document subordinating Pfeffer's claims under the 2000 Deed of Trust Note. In 2018, the parties entered into an agreement that the parties refer to as the "Four Party Agreement." By the terms of that "Four Party Agreement," Pfeffer agreed to sell, and New

[4] The amount and nature of these debts is not discussed in the record on appeal although counsel for New Life reported at oral argument that in total, it amounted to approximately $30,000. Oral Argument (June 14, 2024) at 3:27–3:35. Moreover, in discovery, Pfeffer apparently revealed that he had paid nothing for the release of this debt. *See infra* note 8.

[5] Again, as we understand it, the parties dispute the reasons for this failure. New Life alleges that Pfeffer's motives were fraudulent, not negligent. At this early stage, we, of course, take no position.

Life agreed to purchase the original $500,000 mortgage debt. New Life agreed to pay Pfeffer $25,000 per month beginning on January 1, 2019, and continuing until January 1, 2050. The agreement also provided that if New Life failed to make a monthly payment, the debt would accelerate, become due immediately, and would give Pfeffer the right to exercise all remedies, including foreclosure.

New Life made monthly payments of $25,000 to Pfeffer as required by the "Four Party Agreement" until June of 2022. Thereafter, New Life requested that Pfeffer release it from the $25,000 monthly mortgage obligation because, it argued, the debt had been forgiven by Pfeffer's letter dated December 31, 2000, and quoted above. Pfeffer responded, somewhat cryptically, that he "[did] not care about the [mortgage issue]." New Life stopped making mortgage payments and on November 15, 2022, Pfeffer moved to foreclose on the property on the grounds that New Life had defaulted on the "Four Party Agreement."

To be crystal clear, the record before us leaves many questions unanswered, including but not limited to: (1) the nature of the relationship between New Life and CMDS Management (or Pfeffer), and whether that relationship created obligations that were breached; (2) the effect of Pfeffer's cancellation of the debt in December of 2000; (3) Pfeffer's reason for failing to file a satisfaction of the mortgage and the legal effect of that failure; (4) the significance, if any, of Pfeffer's statement that he "did not care about the [mortgage issue]"; and (5) the effect of New Life's entering into the subordination agreement and the "Four Party Agreement" regarding a debt it would later claim had

already been extinguished. Ultimately, these questions are (or at least may be) subsumed under one question: did Pfeffer obtain the mortgage through fraud?

II. Procedural History

Pfeffer initiated foreclosure proceedings in the Circuit Court for Baltimore City on November 15, 2022. New Life filed a motion to stay and to dismiss the foreclosure sale pursuant to Maryland Rule 14-211.[6] A motions hearing was held in the circuit court. At that hearing, New Life argued that Pfeffer was acting as its financial advisor, that he was its fiduciary, that he thus had a fiduciary duty to act in New Life's best interests in these transactions, and that he had breached that fiduciary duty. The circuit court asked New Life if it was alleging fraud and New Life responded that it was not.[7] At the conclusion of this hearing, the circuit court determined that New Life's motion was timely filed, that the

[6] New Life captioned this motion as a temporary restraining order pursuant to Maryland Rule 15-501, but the circuit court correctly interpreted this motion and docketed it as if it was filed under Rule 14-211.

[7] Pfeffer alleges that New Life's statement that it was not alleging fraud waived its defense to his foreclosure action. Despite New Life's response to the court's question, however, New Life's statement did not waive any defenses. From the first pleading, New Life consistently sought to defend against Pfeffer's foreclosure action with its theory that Pfeffer had used his position as New Life's financial advisor to dupe New Life into accepting a $500,000 mortgage for very little or (as it appears) no value. Frankly, we aren't sure why New Life disclaimed that it was alleging fraud. Maybe it was just being reflexively polite or nonconfrontational. But it is clear from the context of the pleadings and the hearing that, no matter what label is applied, New Life was not waiving and was still vigorously pursuing its theory that Pfeffer had used his position to dupe it into accepting a $500,000 mortgage for very little or no value. Neither the circuit court nor Pfeffer acted as if New Life had waived *that* theory. As a result, we will not either. Moreover, later in the litigation, as we will discuss below, additional facts came to light about Pfeffer's alleged duplicity and New Life began explicitly characterizing his actions as fraudulent.

motion substantially complied with the Rule, and the motion stated "on its face[,] a defense to the … right of [Pfeffer] to foreclose in the pending action." MD. R. 14-211(b)(2)(A); MD. R. 14-211(b)(2)(B); MD. R. 14-211(b)(2)(C). As a result, the circuit court found that New Life was entitled to an evidentiary hearing at which it could attempt to prove its allegations. Because an evidentiary hearing could not be held prior to the scheduled foreclosure sale, however, pursuant to the authority granted by Rule 14-211(c)(1), the circuit court entered a temporary stay conditioned on New Life posting a bond and obtaining appropriate insurance to "protect the property and the interest of the plaintiff." MD. R. 14-211(c)(1). New Life paid the bond but failed to obtain the insurance. As a result, the circuit court revoked the stay and allowed the foreclosure sale to proceed. On March 1, 2023, the foreclosure sale was held and Pfeffer, the lone bidder, purchased the property for $435,000.

After the foreclosure sale, New Life filed exceptions to the ratification of the sale. In its exceptions, New Life made five arguments:

1. That Pfeffer had no legal right to foreclose;
2. That the "Four Party Agreement" lacked consideration and was therefore null;
3. That the "Four Party Agreement" did not provide for foreclosure as a remedy;
4. That New Life did not default on the mortgage; and
5. That Pfeffer violated his fiduciary duties.

The circuit court ruled that each of New Life's five arguments should have been asserted pre-sale and that it had waived its opportunity to contest the validity of the mortgage. The circuit court also ruled that given the posture of the case, New Life was still

entitled to argue that the sale price was inadequate and any other procedural issues with the sale itself. The circuit court scheduled a hearing at which to consider these limited issues. Before the hearing could be held, however, New Life moved for reconsideration of the determination that it had waived its right to contest the validity of the mortgage. In this same pleading, New Life argued that it had obtained newly discovered evidence that Pfeffer had obtained the mortgage through fraud.[8] Specifically, it pointed to a deposition taken on May 9, 2023, in which Pfeffer testified that he had given no value in exchange for the original $500,000 loan on which the mortgage was purportedly based. At the hearing, the circuit court denied New Life's motion for reconsideration, finding that New Life had, by not obtaining the requisite insurance before the sale, waived its right to contest the validity of the mortgage. The circuit court then proceeded to hear testimony on the adequacy of the sale price, found the price adequate, and ratified the sale. This timely appeal followed.

ANALYSIS

We have condensed New Life's question presented to a single question: Is New Life entitled to an evidentiary hearing at which it may attempt to demonstrate that Pfeffer procured the mortgage by fraud? [9] Because we answer this question in the affirmative, we

[8] As noted in note 7, above, at the pre-sale hearing, New Life had declined to characterize Pfeffer's activities as fraudulent or label its defense as fraud. After Pfeffer revealed at his May 9 deposition that he had given no value in exchange for the $500,000 loan on which the mortgage was purportedly based, however, New Life was willing to characterize his activities as fraud. In the circumstances of this case, however, the label is less important than the substance of New Life's allegations.

[9] In its brief, New Life phrased its questions presented as:

vacate the foreclosure sale and remand the matter to the Circuit Court for Baltimore City for further proceedings consistent with this opinion.[10]

Maryland foreclosure law is well-understood and well-accepted. A borrower challenging a foreclosure must assert all known and ripe defenses to the conduct of the foreclosure sale in advance of the sale. *Thomas v. Nadel*, 427 Md. 441, 442 (2012). The procedural mechanism for such pre-sale challenges is provided in Maryland Rule 14-211, by which a borrower may identify defenses to the foreclosure and, if the circuit court finds that those defenses are facially adequate, the court can stay the foreclosure sale and have a hearing to determine the validity of those defenses. MD. R. 14-211. If a borrower fails to raise these known and ripe defenses before the sale, those defenses are generally waived. *Thomas*, 427 Md. at 449. Once the foreclosure sale has occurred, the borrower's defenses are much more limited. Ordinarily, after the foreclosure sale, the borrower may only raise procedural irregularities in the conduct of the sale. *Id.* at 443. The process for making post-sale exceptions is set forth in Maryland Rule 14-305.

Although these aspects of Maryland foreclosure law are clear and well-defined, at least one aspect remains open and unresolved. As the Supreme Court of Maryland noted in

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1. Did the lower court err in its misapplication of this Court's holding in *Bierman v. Hunter*, that permitted post-sale exceptions that "attack the validity" … [of the mortgage] … ?; and
2. Did the lower court err in ratifying a sale in which the purchase price was wholly inadequate with no *bona fide* purchaser?

[10] Our resolution of this question renders New Life's second question, regarding the adequacy of the purchase price at foreclosure sale, moot.

Thomas, cases have left open the possibility that "a borrower could assert a post-sale exception that the deed of trust was itself the product of fraud." *Id*. at 443 (citing *Bates v. Cohn*, 417 Md. 309, 324 n.10 (2010)).[11]

We hold that under the unique facts of this case, New Life is entitled to raise its claim of fraud in its post-sale exceptions filed pursuant to Maryland Rule 14-305(e). There are, in our view, three factors make this case unique and allow us to hold that New Life's defense of fraud remains viable post-sale: that New Life raised and preserved its defense pre-sale; that Pfeffer, the mortgage lender, purchased the property at the foreclosure sale (and thus that there is not an innocent third party whose interest would be prejudiced); and that the fraud alleged is not incidental but goes to the heart of Pfeffer's right to foreclose at all.[12] We will explore each of these below, but we note that we express no view on

[11] New Life has advanced a slightly different argument, which we need not and do not reach. New Life argues that our opinion in *Bierman* suggests the possibility that a borrower may be able to advance some substantive defenses other than fraud after the foreclosure sale. *Bierman v. Hunter*, 190 Md. App. 250, 264 (2010) ("As an equity court, the trial court had full power to hear and determine all objections to the foreclosure sale."). From that, New Life argues that an "utter failure of consideration" might be such a defense. We are reluctant to endorse this reading. *First*, the cases that followed *Bierman* have overwhelmingly rejected its expansive view and narrowed its dicta that there are other substantive post-sale defenses. *See, e.g.*, *Bates*, 417 Md. at 329 (limiting post-sale challenges to procedural irregularities in the sale); *Thomas*, 427 Md. at 445 (characterizing *Bates* as "expressly reject[ing]" *Bierman*'s dicta). *Second*, even if the *Bierman* dicta was right, and there are other substantive post-sale defenses, we don't see why a failure of consideration would be one. Rather, we think that a failure of consideration—at least as presented here—is an indicator of fraud and the severity of the fraud, not an independent defense.

[12] We think the best way to analyze this case is as a post-sale challenge in which we find, as described above, three reasons that this case can fit within the tight confines permitted for post-sale challenges. Should a reviewing court find that the law is even more restrictive of post-sale challenges than previously expressed, such that not even these

whether and to what extent we would be willing to permit post-sale defenses based on fraud in a future case in which these three factors do not all exist.

I. New Life Properly Raised the Issue Pre-Sale

First, as described above, New Life raised the validity of the mortgage as a defense to the foreclosure before the sale. Thus, this is not a situation in which a borrower's pre-sale inaction waived a defense. Rather, New Life vigorously advanced its defenses. Specifically, we note that New Life filed a pre-sale motion pursuant to Rule 14-211. New Life was entitled to file this motion. MD. R. 14-211(a)(1). New Life filed its motion in a timely fashion. MD. R. 14-211(a)(2). New Life's motion contained the necessary contents. MD. R. 14-211(a)(3). And, most critically, the Circuit Court for Baltimore City found that New Life was entitled to a hearing on the merits. As the court itself stated: "[T]his isn't just sort of bad faith stuff getting thrown at the wall to try to delay a foreclosure sale. It's better than that." That is, the circuit court was persuaded that New Life had pleaded a sufficient defense to Pfeffer's proposed foreclosure. MD. R. 14-211(b)(2)(C).

The circuit court then determined that a hearing on the merits could not be held prior to the foreclosure sale, so the circuit court entered an order temporarily staying the sale on

reasons are sufficient, we would hold that New Life's was a pre-sale challenge. We would hold that while the circuit court did not err by revoking the stay when New Life's failed to obtain insurance, nothing about that action was intended to or in fact did waive New Life's pre-sale challenges. As such, under this alternative method of analyzing this case, we would hold that New Life's pre-sale challenges remain open and we would remand to permit the circuit court to hold a hearing on it, even now.

the condition that New Life post a bond and obtain appropriate insurance. New Life posted the bond but failed to obtain the required insurance and the circuit court revoked the stay.

Procedurally, that is precisely what was supposed to happen. Rule 14-211(c)(1) requires the circuit court to set a hearing, allows the court to enter a temporary stay, allows the court to impose conditions on the stay (including, specifically, obtaining insurance), and allows the court to revoke the stay if its conditions are not satisfied. But that's also as far as it goes. The penalty for failing to satisfy the circuit court's conditions is revocation of the stay. MD. R. 14-211(c)(1). It does not, however, also result in a waiver of the borrower's defenses.[13]

Thus, this is not a circumstance in which the borrower slept on his defenses. Rather, New Life asserted its defenses pre-sale, precisely when it was supposed to do so.[14]

II. Pfeffer, the Mortgage Lender, is the Purchaser

Second, as noted above, Pfeffer himself purchased the property at foreclosure. Maryland foreclosure law is, as described above, very restrictive with regard to post-sale defenses to foreclosure. This limitation, however, is not for the benefit of alleged fraudfeasors like Pfeffer, but to protect unrelated third-party purchasers. *Julian v. Buonassissi*, 414 Md. 641, 661 (2010). As a policy matter, courts are hesitant to allow post-

[13] We interpret the Maryland Rules much as we interpret statutes. *Satterfield v. State*, 483 Md. 452, 474-75 (2023). Here, unequivocally, the only remedy that the Rule provides for failure to meet a condition, like insurance, is revocation of the stay—not waiver of a defense.

[14] In fact, it might be proper to characterize this as a pre-sale challenge whose resolution was simply delayed until after the sale.

sale claims so as not to have a chilling effect on willing third-party buyers. *Bates*, 417 Md. at 329-30. None of those concerns are at play in this case. Pfeffer is not an unrelated third-party purchaser. Rather, he is the mortgage lender and the alleged fraudfeasor. None of the same considerations that apply to third-party purchasers apply here.[15]

III. The Nature of the Fraud Alleged

And the *third* factor on which we base our determination is the scope of the fraud that New Life has alleged. Often in foreclosure cases, desperate property owners seeking to stave off foreclosure try to characterize minor clerical errors as fraud.[16] By contrast, New Life's allegations of fraud, if proven, would mean that it received nothing in exchange of the $500,000 mortgage. Its defenses go to the heart of Pfeffer's right to foreclose.

In *Devan v. Bomar*, Judge Charles E. Moylan, Jr., in his inimitable style, noted that fraud, "like the Queen of the Nile, enjoy[s] 'infinite variety.'" *Devan v. Bomar*, 225 Md. App. 258, 277 (2015) (quoting WILLIAM SHAKESPEARE, Anthony and Cleopatra act 2, sc.

[15] We acknowledge, as we must, that this is, in large part, a matter of luck. Anybody could have bought the property at the foreclosure sale, but that it was Pfeffer that bought the property allows us to better fashion a remedy.

[16] It is not uncommon for desperate property owners to raise allegations of fraud with the hope that if they can just find a clerical error in the mortgage documents, they will be allowed to stay on their properties and the mortgage lender will be unable to recover the money it lent them. That kind of magical thinking rarely prevails. Fraud is "not simply a label that may be applied to any set of puzzling circumstances." *Thomas*, 427 Md. at 450. If fraud is to be alleged post-sale, "the particular facts and circumstances constituting the fraud and the facts so stated must be sufficient in themselves to show that the conduct complained of was fraudulent." *Id.* at 453 (quoting *Spangler v. Sprosty Bag Co.*, 183 Md. 166, 173 (1944)). Here, the fraud that New Life alleges is more than just clerical errors. Rather, if proven, the fraud alleged would invalidate the underlying mortgage, and eliminate Pfeffer's right to foreclose.

2)). And, he observed, different types of fraud might bear different legal consequences. *Id*. at 278. We hold that the facts and circumstances of this case, as well as the scope of the fraud alleged here, provide additional factors that compel us to permit New Life to raise its claims in a post-sale hearing.

As a result of these three factors, we find that New Life is entitled to an evidentiary hearing on the merits of its defenses. At the hearing, New Life can produce evidence to prove its allegations of fraud. Of course, Pfeffer too can present evidence. Once the circuit court hears the evidence, determines the facts, and applies the law, it can proceed in the ordinary course.

FORECLOSURE SALE INVALIDATED. CASE REVERSED AND REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY TO HOLD AN EVIDENTIARY HEARING ON NEW LIFE EVANGELICAL BAPTIST CHURCH'S DEFENSES TO FORECLOSURE AND FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS ASSESSED TO APPELLEE, WILLIAM L. HALLAM.

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(Senior Judge, Specially Assigned),

JJ.

Dissenting Opinion by Harrell, J.

Filed: January 13, 2025

I dissent. I would affirm the judgment of the circuit court. Although the majority opinion advances an alluring justification for providing what strikes me as in the nature of quasi-equitable relief to New Life, I cannot join its reasoning or outcome for two reasons. As to the first reason, there are two consequences of New Life failing to secure "appropriate insurance," as required by a condition of the stay of the foreclosure sale.[17] One is the lifting of the stay and allowing the sale to proceed. The other consequence is that New Life's failure in this regard should be deemed a waiver of its ability to litigate post-sale its fraud claim. My second reason stems from gaps in the record of this case, which render this case an inapt one by which to explore the existence and boundaries of the "open and unresolved" (Maj. Op. at 9) question of when (if at all) "a borrower could assert a post-sale exception that the deed of trust was itself a product of fraud." *Id.* (citing *Thomas v. Nadel*, 427 Md. 441, 443 (2012); *Bates v. Cohn*, 417 Md. 309, 324 n.10 (2010)).

As to my first basis for dissenting, the stay of the foreclosure sale was sought by New Life to allow it to litigate a menu of challenges, one of which was effectively that Pfeffer committed fraud in obtaining the deed of trust. At the time New Life articulated its pre-sale challenges, it possessed knowledge of sufficient facts to allow it to plead effectively a fraud claim among those assertions (as acknowledged by the majority opinion at 5-6 n. 7). New Life's failure to perfect its pre-sale opportunity to litigate that claim (whether through negligence or otherwise) should be deemed a waiver of an assumed right to assert a virtually identical fraud claim as a post-sale challenge.

[17] The record does not suggest why New Life failed to secure the insurance.

Other than possibly *Bierman v. Hunter*, 190 Md. App. 250 (2010), which the majority opinion here acknowledges has been cabined considerably by the Supreme Court of Maryland in *Bates* and *Thomas* (Maj. Op. at 9 n.11), no modern reported Maryland case involved a litigant who, knowing pre-sale sufficient bases for a fraud claim, fails to pursue that claim pre-sale. The present case is a classic waiver/non-preservation situation. New Life is not entitled to essentially a do-over opportunity post-sale.

As to my second consideration, the majority opinion notes that "the record before us leaves many questions unanswered." Maj. Op. at 4. It lists at least five such gaps. Maj. Op. at 4-5. Although the majority may view these gaps as further reasons for a remand to be addressed at a post-sale hearing, I see them instead as impediments to gifting New Life with a "second bite at the apple." Moreover, before any appellate court engages with the assertedly "open and unresolved" question of whether a right to litigate post-sale a fraud claim exists (and under what circumstances), the threshold decision begs a more thorough record than we have here.

It is, I think, reasonable to assume that the majority opinion here may result in the filing of a petition for certiorari with the Supreme Court of Maryland. If that becomes the case (my above feelings about the record notwithstanding), I submit that it behooves the Court to grant such a petition and grapple conclusively with this important real property law question that casts a blur on the otherwise clear and well-defined Maryland foreclosure laws and rules. It behooves the Court more so to do this because the relevant dicta in its decisions in *Thomas* and *Bates* are the principal bases upon which the public, lawyers, lower courts, and businesses look to for the orderly conduct of the foreclosure process.