

Circuit Court for Baltimore City
Case No. 24-C-23-001191

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 953

September Term, 2023

VALEDIA GROSS

v.

FIRST NLC FINANCIAL SERVICES, LLC

Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 9, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Valedia Gross, appellant, filed a complaint for declaratory judgment in the Circuit Court for Baltimore City wherein she sought to invalidate the Deed of Trust that had encumbered her real property prior to it being sold at a foreclosure auction. After the circuit court dismissed her complaint with prejudice, appellant filed this appeal, raising nine questions that are reducible to one: whether the court erred in dismissing her complaint for declaratory judgment. For the reasons that follow, we shall affirm.

In September 2006 appellant borrowed \$120,250.00 from First NLC Financial Services, LLC (First NLC). In exchange, appellant executed a promissory note which was secured by a Deed of Trust encumbering real property located at 4018 Carlisle Avenue in Baltimore. The promissory note was subsequently assigned to Deutsche Bank, appellee. In May 2007 the First NLC Deed of Trust was recorded in the land records. Between the time that appellant signed the loan documents and the time the First NLC Deed of Trust was recorded, appellant executed a deed conveying the property to herself and her sister as joint tenants for no consideration. That Deed of Assignment was recorded in November 2006.

In 2010 Deutsche Bank filed a declaratory judgment action seeking a declaration that the Deed of Trust was a valid and enforceable lien and had priority over the Deed of Assignment (the 2010 declaratory judgment action). Appellant filed a counterclaim for breach of contract, conspiracy, and fraud asserting that First NLC and Deutsche Bank had conspired to transfer the Deed of Trust and Note without her permission in an attempt to keep her from being able to pay the mortgage. The circuit court ultimately dismissed appellant's counterclaims and entered summary judgment in favor of Deutsche Bank. This

Court affirmed on direct appeal. *See Gross v. Deutsche Bank Nat'l Tr.*, No. 496, Sept. Term 2011 (filed Oct. 18, 2012).

In July 2018, Deutsche Bank served appellant with a Notice of Intent to Foreclose. This resulted in two parallel actions being filed. First, in September 2018, appellant filed a declaratory judgment action seeking a declaration that the original Deed of Trust and note were unenforceable because of alleged fraud (the 2018 declaratory judgment action). Although appellant was aware that Deutsche Bank was claiming that it had the right to enforce the note, she did not name Deutsche Bank as a party or serve it with notice of the action. Rather, the sole named defendant was First NLC, which was a defunct entity.

After First NLC failed to file an answer, appellant obtained a default declaratory judgment in January 2020, which ordered and declared that the Deed of Trust and note signed by appellant were null and void and that the assignment by First NLC to Deutsche Bank was null and void. Appellant recorded the declaratory judgment in the land records in February 2020. Upon learning of the default judgment, Deutsche Bank intervened in the case and filed a motion to vacate the declaratory judgment pursuant to Rule 2-535(b), claiming that appellant had committed extrinsic fraud by filing the action without notifying Deutsche Bank despite knowing that it had an interest in the litigation. As to the merits, Deutsche Bank argued that the declaratory judgment action was barred by the doctrine of res judicata because the validity of the Deed of Trust and the subsequent assignment had been conclusively established in the 2010 declaratory judgment action.

At a subsequent hearing on that motion before the circuit court, appellant argued for the first time that the Deed of Trust should also be invalidated because it contained two

forged signatures, including her own. In May 2020, the circuit court vacated the default declaratory judgment. Shortly thereafter, it dismissed the action on the grounds that it was barred by res judicata. This Court affirmed on direct appeal, holding that the circuit court did not err in finding that the declaratory judgment action, including her new claims of forgery, was barred by the doctrine of res judicata. *Gross v. First NLC Fin. Servs., LLC, et al.*, No. 581, Sept. Term 2020 (filed August 18, 2021).

One month after appellant filed the 2018 declaratory judgment action, the substitute trustee appointed by Deutsche Bank filed an Order to Docket foreclosure. Appellant filed numerous motions to stay or dismiss the foreclosure action, all of which were denied. Among other things, these motions asserted that the assignment of the Deed of Trust was invalid and that her signature had been forged. The property was ultimately sold at a foreclosure auction to Deutsche Bank for \$145,000.00 by way of a credit bid. The circuit court entered an order ratifying the sale on October 10, 2019, and the case was referred to an auditor. Following the ratification of the auditor's report, appellant filed a notice of appeal. This Court affirmed the judgment ratifying the auditor's report. *Gross v. Ward*, No. 42, Sept. Term 2020 (filed March 9, 2021). In doing so, we declined to consider appellant's claims that the court had erred in denying her motions to dismiss and overruling her exceptions to the sale because her notice of appeal was untimely as to the court's order ratifying the foreclosure sale. We subsequently affirmed the circuit court's denial of appellant's Maryland Rule 2-535(b) motions to revise the ratification order based on alleged fraud. *Gross v. Ward*, No. 717, Sept. Term 2021 (filed July 1, 2022).

In February 2023, approximately 3 years after the ratification of the foreclosure sale, appellant filed the instant declaratory judgment action, naming First NLC as the defendant and Deutsche Bank and Silk Abstract Title Company, appellees, as “interested parties.”¹ The complaint sought a declaration, based, in part, on allegedly new evidence, that the security agreement between herself and First NLC was invalid because it contained a “forged Deed of Trust” which did not contain her signature. Following a hearing, the court granted the motions to dismiss filed by appellees, finding that appellant’s claims were barred by *res judicata*, collateral estoppel, and the statute of limitations. This appeal followed.

As an initial matter, appellee asserts that the court erred in denying appellee’s motions to dismiss because they were only interested parties and “there [were] no claims asserted in the Complaint against [them].” However, as the holder of the note, and current owner of the property, Deutsche Bank would have been directly affected by any declaration issued by the court. Thus, regardless of how appellant pleaded her complaint, Deutsche Bank was required to be a party to the action. *See* Cts. & Jud. Proc. § 3-405(a)(1). Thus, it had the right to file a motion to dismiss. And in any event, it is irrelevant who filed the motion to dismiss, as an appellate court may *sua sponte* raise the issue of *res judicata*. *See Anne Arundel Cnty. Bd. of Educ. v. Norville*, 390 Md. 93, 105 (2005); *Holloway v. State*, 232 Md. App. 272, 282-83 (2017).

¹ First NLC is a defunct entity and did not participate in the circuit court case or file a brief in this appeal.

Turning to the merits of the dismissal, *res judicata* (“a thing adjudicated”) 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.” *Norville*, 390 Md. at 106 (quotation marks and citation omitted). *Res judicata* is composed of three elements: (1) the parties in the present litigation are the same or in privity with the parties to the earlier litigation; (2) the claim presented in the current action is identical to that determined or that which could have been raised and determined in the prior litigation; and (3) there was a final judgment on the merits in the prior litigation. *See Spangler v. McQuitty*, 449 Md. 33, 65 (2016). Because the question of whether *res judicata* applies to a particular case is a question of law, we review *de novo*. *See Seminary Galleria, LLC v. Dulaney Valley Improvement Ass’n, Inc.*, 192 Md. App. 719, 734 (2010).

We are persuaded that all three elements of *res judicata* were met in this case. First, appellant and appellees were either parties, or in privity with the parties, in the 2010 declaratory judgment action, the 2018 declaratory judgment action, and the foreclosure action. Second, there is no question that appellant claimed that the Deed of Trust had been forged in both the 2018 declaratory judgment action and the foreclosure action. Moreover, we have previously held that the forgery claim could also have been raised in the 2010 declaratory judgment action. Finally, each of those actions resulted in a final judgment on

the merits. Consequently, the circuit court did not err in dismissing the declaratory judgment action with prejudice.²

Finally, based on our review of the record, we find no support for appellant’s contention that the motions judge acted improperly at the hearing on the motions to dismiss, either by inquiring about a pending motion for judgment of possession in the foreclosure action or in questioning appellant regarding certain information that he believed had been omitted from her complaint.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

² Appellant also appears to assert that the court erred in dismissing the complaint rather than issuing a declaratory judgment. Although dismissal is rarely appropriate in a declaratory judgment action, when “a declaratory judgment action is brought and the controversy is not appropriate for resolution by declaratory judgment, the circuit court is neither compelled, nor expected, to enter a declaratory judgment.” *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 477 (2004). Because appellant’s claims were barred by the doctrine of res judicata, the circuit court properly found that the entry of a declaratory judgment would not be helpful in resolving the dispute in the instant case.