Circuit Court for Prince George's County
Case No. CAEF15-16453

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 989

September Term, 2022

DARYL GREEN

v.

DIANE S. ROSENBERG, ET AL.

Leahy,
Albright,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 14, 2023

* This is an unreported opinion. The 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).

**During the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This case returns to us for the third time on appeal as Daryl Green, ("Appellant"), challenges the order issued by the Circuit Court for Prince George's County on April 21, 2022, denying the latest in a series of emergency motions filed by Appellant to stay the foreclosure sale and dismiss the underlying foreclosure action. Appellant also challenges the court's order, issued on July 6, 2022, denying his motion to reconsider its ruling.

In 2007, Appellant executed a promissory note on a loan of $417,000.00, along with a deed of trust secured against his home in Accokeek, Maryland. The Appellant defaulted on his mortgage loan in August 2009. Appellees Diane Rosenberg, et al. ("Trustees")—substitute trustees appointed under the deed of trust—initiated foreclosure proceedings in the circuit court in June 2015. After the circuit court denied the latest motion to stay and dismiss the foreclosure action, the foreclosure sale was finalized and ratified on August 16, 2022. Appellant presents three questions for our review, which we restate and condense as follows:[1]

[1] The questions presented by Appellant in his brief are:

I. (a) Did the lower court err by finding that the copy of the note at issue was enforceable, even after the filing of a lien release with the Appellant in possession of the actual note?
(b) Did the lower court abuse its discretion by refusing to have an evidentiary hearing to determine who had the right to enforce the note, as it was not Wells Fargo, which was acting as the servicer?

II. Should this court remand to the circuit court for an evidentiary hearing as suggested by defense counsel and agreed to by plaintiff's counsel in the April 21, 2022, lower court hearing?

III. Do the above circumstances eliminate any grounds for sanctions under Md. Rule 1-341?

(continued)

I. Did the circuit court abuse its discretion when it denied Appellant's request for an additional hearing on Appellant's Emergency Motion to Stay and Dismiss Foreclosure?

II. Did the circuit court act within its discretion when it denied Appellant's Emergency Motion to Stay and Dismiss Foreclosure?

III. Did the circuit court act within its discretion when it granted Trustees' motion for sanctions in response to Appellant's Exceptions to the foreclosure sale.

Discerning no error or abuse of discretion on the part of the circuit court, we shall affirm the court's judgment.

BACKGROUND

2007 Promissory Note and Deed of Trust

On August 24, 2007, Appellant executed a promissory note and a deed of trust for a loan of $417,000.00 ("2007 Note") with C&F Mortgage Corporation ("C&F"). The deed of trust ("Deed") was secured by Appellant's principal residence located in Accokeek, Maryland ("Property"), and was recorded in the land records for Prince George's County. The Deed conveyed property in trust with the power of sale to the original trustees on behalf of Mortgage Electronic Registration Systems ("MERS"),[2]

[2] The Supreme Court of Maryland (then, the Maryland Court of Appeals) has explained the growing role that MERS plays in the bundling and securitization of mortgages. "Mortgage-securitization investors utilize the Mortgage Electronic Registration System (MERS), a private land-title registration system created by mortgage banking companies to expedite the securitization process[,]" in which "the mortgage broker names MERS as a nominal mortgagee in the mortgage. Then, subsequent (continued)

acting as nominee for the note holder, and provided that the 2007 Note could be sold without prior notice to Appellant. The record indicates that the 2007 Note was transferred multiple times, and three undated indorsements on the Note show that: 1) C&F sold and indorsed the 2007 Note to Franklin American Mortgage Company ("FAMC"); 2) FAMC sold and indorsed the note to Wells Fargo Bank, N.A. ("Wells Fargo"); and 3) Wells Fargo executed a blank indorsement.[3] There is no documentation in the record of when C&F's assignment of the 2007 Note to FAMC took place;[4] however, the record includes documents that demonstrate C&F was no longer the holder

transfers of the mortgage are recorded electronically and entirely on MERS while the original mortgage, recorded in the public land title records, remains unchanged." *Anderson v. Burson*, 424 Md. 232, 237-38 (2011) (internal citations to *Jackson v. Mortg. Elec. Registration Sys.*, 770 N.W.2d 487, 490-49 (Minn.2009) removed).

[3] A negotiation of an instrument payable to an identified person, "requires the holder to transfer possession and indorse the instrument," with the result that the "recipient of a negotiated instrument is a holder." *Anderson v. Burson*, 424 Md. 232, 246–47 (2011) (*citing* Maryland Code (1975, 2013 Repl. Vol.), Commercial Law Article ("CL"), section 3–201(a)–(b) & cmt. 1). The negotiation by indorsement is made one of two ways. A "'special indorsement' identifies a person to whom it makes the instrument payable[,]" with the result that in a future transfer, the instrument "may be negotiated only by the indorsement of that person." CL § 3-205(a). If, however, a holder indorses the instrument without identifying the person to whom it is to be payable, it is a "blank indorsement." CL § 3-205(b). In that case, the "instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed." *Id.*

[4] The dates of the indorsements do not appear on the 2007 Note. Appellees adopt Mr. McCann's assertion, in an email included in the record, that C&F sold the 2007 Note to FAMC in September 2007, and "has never owned the loan since[.]"

of the 2007 Note as of 2009. One of the key documents in the underlying litigation is the 2009 Modification Agreement.

2009 Modification Agreement

Appellant defaulted on the loan on or about August 1, 2009. On October 28, 2009, he executed a loan modification agreement with Wells Fargo pursuant to which he agreed that he owed $424,323.19 on the loan and that he would resume payments on January 1, 2010. The Agreement identified Wells Fargo as the "Lender" as well as the servicer of the loan. It stated that it was not "a satisfaction or release of [Appellant's] obligations under the [2007] Note or Security Instrument" and that the parties remained bound by its terms and provisions, as amended.

Foreclosure Proceedings and Prior Appeals

On June 2, 2010, Appellant again defaulted on his loan payments, and over the next five years, the 2007 Note was transferred several more times. As explained in one of our prior opinions in this case:

> [A]t the time of the order to docket, Wilmington Savings Fund Society, FSB, not it its individual capacity but solely as Trustee for the PrimeStar-H Fund I Trust, was the holder of the [2007 N]ote, and Statebridge Company, LLC, was the loan servicer. Subsequent to the filing of the order to docket, the note was transferred to 'PROF-2014-S2 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee,' with Fay Servicing, LLC, as the loan servicer.[5]

[5] The most current assignment as of the date of this appeal reflects that the 2007 Note and Deed of Trust were conveyed to Wilmington Savings Fund Society, FSB, as Owner Trustee of The Residential Credit Opportunities Trust VII-A ("Wilmington VII-A").

Green v. Rosenberg & Associates, LLC, et. al., No. 724. September Term 2017 ("Green I"), slip op. at 2-3 (filed October 2, 2018).

On June 11, 2015, the Trustees, in their capacity as substitute trustees appointed by Wilmington Savings Fund Society, FSB, as Trustee for PrimeStar, the contemporaneous holder of the Note, initiated foreclosure proceedings against Appellant. The Order to Docket Foreclosure attached copies of the 2007 Deed of Trust as well as the 2007 Note containing the three indorsements by C&F, FAMC, and Wells Fargo.

Appellant responded with a barrage of filings in the circuit court. On March 21, 2016, he filed an Emergency Motion to Stay and Dismiss Foreclosure Sale, alleging "major gaps and endorsement fraud in the alleged transfers of the note" and claimed that the 2007 Note provided by the Trustees was forged; a motion he later withdrew pending the outcome of the foreclosure mediation that he requested. However, before mediation, Appellant filed a "counter complaint" alleging that C&F had provided him with "improper and unlawful predatory loans" and that all subsequent conveyances of the 2007 Note were fraudulent. Appellant further alleged that in 2012, he entered into a settlement agreement with C&F whereby he agreed to forego litigation against C&F in consideration for C&F's release of his obligations under the 2007 Note.[6] Appellant did

[6] Additional documentation showing that C&F was not the holder of the 2007 Note in 2012 include: 1) a Notice of Intent to Foreclose dated August 1, 2010 identifying Wells Fargo Bank, N.A. as the "secured Party"; an assignment of the Deed of Trust dated November 16, 2010, from MERS to Wells Fargo, which was duly recorded in the county land records; and, 3) an Appointment of Substitute Trustees filed in the land records on (continued)

not provide any documentary support for this alleged settlement agreement, nor did he explain how he convinced representatives of C&F that he had a viable claim against them. Appellant sought injunctive, monetary, and declaratory relief against the Trustees and servicers of the loan.

On May 4, 2016—the same day as the mediation conference—Appellant filed a second motion to dismiss, alleging that he was not in default under the 2007 Note and Deed of Trust because he "owns [h]is home outright" and the 2007 Note provided by the Trustees "was fictitious and was a forgery." The mediation conference did not result in an agreement. While those motions were pending, the circuit court entered an order on August 22, 2016, permitting the Trustees to schedule a foreclosure sale "subject to the right of [Appellant] to file a motion pursuant to Rule 14-211 to stay the sale and dismiss the action."

On August 31, 2016, Appellant filed an affidavit with the circuit court in which he asserted his ownership of the "cancelled" 2007 Note and provided, for the first time in the proceedings, a purported reproduction of the 2007 Note which bore the stamp

April 29, 2011, by Wells Fargo, as "the present holder or authorized agent of the holder" of the 2007 Note. Under RP 7-105 it is the holder who has the power to make such an appointment.

"cancelled" ("the Green Note"); however, the three indorsements that appeared on the third page of the 2007 Note were missing.[7]

Appellant followed the filing of this affidavit with two more motions to dismiss or stay the foreclosure sale, reasserting in each motion that he was "the owner and holder of his canceled notes" and thus "owns his home outright without any encumbrances." In an order entered on April 13, 2017, the circuit court granted Appellant's March 17, 2017 Motion to Stay Foreclosure and ordered that the sale be "stayed until May 12, 2017." Appellant responded with "a 'Motion to Alter or Amend Judgment and Order for Emergency Stay Rule 2-534,' requesting the court to modify its order granting the temporary stay and to enter a permanent stay and to dismiss the case." *Green I*, slip op. at 2. The circuit court denied the motion without a hearing, observing that "[Appellant] has failed to provide a valid legal basis or present a meritorious argument" and "raises no new facts or issues sufficient to persuade this [c]ourt to reconsider its previous order."

The court held a hearing on May 12, 2017, to address Appellant's outstanding motions, but Appellant did not attend. *Green 1*, slip op. at 2. In a bench ruling, the court denied Appellant's motion to stay, dismissed his counter-complaint, and resolved several other outstanding motions regarding discovery. *Id.* at 2-3. Appellant noted a timely appeal from those orders.

[7] The record reflects that the Green Note is identical to the 2007 Note provided by the Trustees, except for two key discrepancies: (1) the three indorsements appearing on the third page of the 2007 Note provided by the Trustees are missing and (2) the bottom of the third page, where the indorsements should appear, is stamped "cancelled."

In *Green I*, we explained that, because the foreclosure sale had not yet taken place, there was no final judgment from which to appeal, and the only appealable interlocutory order before us was the denial of Appellant's motion to stay. *Id.* at 3-4. We held that the circuit court did not abuse its discretion in temporarily staying the sale, explaining that the claim was moot, and that the denial of Appellant's motion was a permissible application of Rule 14-211(c). *Id.* at 4-5. We went on to note:

> [Appellant] also contends that the circuit court erred in denying his motion to stay on the merits, claiming that he owns the home "outright without any liens or encumbrances" and that the substitute trustees lack standing to foreclose. But [Appellant] was given an opportunity to present these claims, and all other claims raised in his motion to stay, at the May 12, 2017 hearing; yet, he failed to appear. As the moving party on the motion to stay, [Appellant] had the burden of proof as to his defenses, and he clearly could not carry that burden if he was not present.

Id. at 5-6 (citation omitted).

Thereafter, Appellant filed two motions in the circuit court: one requesting that the court issue a summons for his counter-complaint and another seeking to strike the May 12 order for deficient notice of the scheduled hearing pursuant to Maryland Rule 1-324(a). *Green v. Rosenberg*, No. 3466, Sept. Term 2018 ("Green II"), slip op. at 2 (filed Sep. 10, 2020). The circuit court denied the motions and we ultimately affirmed in *Green II* in an unreported per curiam opinion. *Id.*

Bankruptcy Proceedings

Meanwhile, on March 18, 2019—shortly after the circuit court issued the orders underlying the *Green II* appeal—Appellant filed for bankruptcy in the United States Bankruptcy Court for the District of Maryland, invoking an automatic stay on foreclosure

proceedings. The court dismissed Appellant's claim, thus lifting the stay, on September 20, 2021. Appellant filed a second bankruptcy petition on November 22, 2021, which the court likewise dismissed on January 12, 2022.

Additional Filings in Federal Court

Appellant removed the case to the United States District Court for the District of Maryland on May 15, 2017. The case was remanded back to state court on December 28, 2017.

Just prior to his removal filing, on March 17, 2017, Appellant filed suit in the federal District Court for the District of Maryland against the Trustees and a number of individuals (the "Rosenberg Defendants'), as well as several other banks and companies that serviced the 2007 Note, including Wilmington Savings Fund Society FSB, as trustees for Primestar; Statebridge Company, LLC; and Fay Servicing. *Green v. Rosenberg & Assocs., LLC*, No. CV PJM 17-732, 2018 WL 1183655, at *1 (D. Md. Mar. 7, 2018). Appellant alleged seven causes of action, including violations of the Fair Debt Collection Practices Act and violations of the civil Racketeer Influenced and Corrupt Organization ("RICO") statute**.** *Id.* at 3. All of the federal claims were dismissed with prejudice by Judge Peter Messitte in a written opinion dated March 7, 2018, for failure to state a claim as Appellant's complaint fell "short of even the minimal pleading requirements[.]" *Id.* at 10. Judge Messitte declined to exercise supplemental jurisdiction over the remaining state law claims, asserting causes of action under the Maryland Consumer Debt Collection Act and Maryland Collection Agency Licensing Act (as well as a tort claim

for intentional infliction of emotional distress), and dismissed those claims without prejudice. In so doing, however, the Judge Messitte stated in a footnote that:

> However, if within ten days, Green files with the Court the original of the purported cancelled note, or a copy of the note, certified by a duly authorized notary public, along with an affidavit by Green affirming, under the penalties of perjury, when the note was paid off as well as how, when, and by whom it was cancelled, the Court may reconsider its ruling herein.

Id. at *8 n. 5. Appellant failed to make the suggested filing.

Additionally, Appellant litigated the validity of the foreclosure claim in bankruptcy proceedings in federal court. As part of those proceedings, the then-current holder of the 2007 Note, 1900 Capital Trust II, by U.S. Bank Trust National, filed a claim for the unpaid loan evidenced by the 2007 Note and secured by the 2007 Deed of Trust. Appellant's objection to the claim was initially overruled by the bankruptcy court, but that order was vacated in part by the United States District Court of the District of Maryland and remanded for the bankruptcy court to consider Appellant's allegations "regarding the purported fraudulent nature of the Note." A hearing for the bankruptcy court to address those allegations was never scheduled because of delays attributable to "Green's numerous other motions and proceedings" and "the case was dismissed prior to the hearing because Green had failed to make child support payments." *Green v. Prince George's County Office of Child Support*, 641 B.R. 820, 827-28 (D. Md. 2022) *aff'd* No. 22-1705, 2023 WL 3051812 (4th Cir. Apr. 24, 2023).

Judge Messitte offered overarching comments about Appellant's adversary proceedings in the federal courts:

> Daryl Anthony Green, a resident of Accokeek, Maryland, acting pro se, has a history of filing frivolous, repetitive, and vexatious pleadings in the United States Bankruptcy Court for the District of Maryland and the United States District Court for this District. His litigation activity since 2019, which has been extraordinarily reckless, even at times malicious, has consisted of three bankruptcy petitions, five bankruptcy adversary proceedings, twenty bankruptcy appeals to the District Court, and eight appeals to the United States Court of Appeals for the Fourth Circuit. His numerous pleadings, all substantially identical, include rambling allegations of fraud and civil rights violations, even crimes on the part of his adversaries. These tactics have placed a substantial burden on his adversaries, the Clerk's Offices of the Bankruptcy and District Courts, and the Judges of both Courts, and have been detrimental to bona fide users of the bankruptcy system.

Green v. Prince George's Cnty. Off. of Child Support, 641 B.R. 820, 825 (D. Md. 2022), *aff'd* No. 22-1705, 2023 WL 3051812 (4th Cir. Apr. 24, 2023). The court imposed a pre-filing injunction and monetary sanctions on Appellant and warned him that "if he persists in his vexatious conduct in the future, he may face contempt proceedings, civil and/or criminal in nature." *Id.* at 841-44.

Underlying Emergency Motion to Stay and Dismiss Foreclosure Action

On March 28, 2022, Appellant filed yet another emergency motion in the circuit court to stay the foreclosure sale and dismiss the foreclosure action under Maryland Rule 14-211. In the motion, Appellant reasserted that C&F released his obligations under the 2007 Note and Deed of Trust in 2012 as compensation pursuant to a settlement agreement. For the first time, Appellant produced two documents to substantiate his claim.

March 6 Letter and Certificate of Satisfaction

Appellant alleged in his March 2022 Memorandum in Support of Motion to Stay and Dismiss that he learned of an investigation into C&F by the United States Department of Justice ("DOJ")[8] subsequent to a discussion he had with Kevin McCann, Chief Financial Officer for C&F, on February 2, 2012. A letter dated the same day from Mr. McCann to Appellant documents McCann's request for a copy of Appellant's 2006 tax returns and refers to conversation he had with Appellant earlier in the day. Appellant alleged that on March 6, 2012, C&F "offered to cancel his Note and release him from the Deed of Trust," "[r]ather than have [Appellant] challenge his rights under the DOJ case," even though the case had already concluded in a consent order in 2011. Appellant alleged that C&F sent him a letter, signed by Kevin McCann and dated March 6, 2012 ("March 6 Letter"), that enclosed the 2007 Note marked 'CANCELLED'. The letter reads, in relevant part, as follows:

> Re: Daryl A. Green
> Property – 15416 Cedar Drive, Accokeek, MD 20607
> Mortgage note(s): 1) $159,000; 2) $417,000
>
> Mr. Green,
>
> Let me take the time to both thank you for your time and patience regarding this matter and to congratulate you on the satisfaction of your home loans with C&F Mortgage. I am very sorry for any inconvenience in settling this matter and delivering those documents to you. Having noted your satisfaction of the above captioned mortgage notes and pursuant to our

[8] In August of 2010, the DOJ began an investigation of C&F's allegedly discriminatory lending practices that concluded in a consent order in October of 2011.

> agreement, please find enclosed, your original mortgage notes marked cancelled as promised.
>
> As Senior Vice President and Chief Financial Officer, I am the duly appointed agent for C&F Mortgage Corporation with authority to process this release. **Please consider this written communication as C&F Mortgage Corporation[']s acknowledgement of your fully satisfied and discharged loan**. C&F MORTGAGE CORPORATION was, at the time of the satisfaction, the holder of the notes that were secured by a Deed of Trust secured by you on August 24, 2007. Your Deed of Trust was recorded among the land records of PRINCE GEORGE'S COUNTY MARYLAND IN BOOK 28692 PAGE 672. **The lien and Deed of Trust is now acknowledged as FULLY RELEASED.** The original mortgage notes marked cancelled and attached are your evidence of full satisfaction of your loans and are also included for your further individual processing and handling.

(Emphasis added).

The Trustees vigorously disputed the existence of the alleged offer and the authenticity of the March 6 Letter and the copy of the Green Note Appellant claimed that it contained. In the motion, Appellant claimed that C&F stamped the original mortgage note "CANCELLED" and enclosed it in the letter, and that this was the source of the Green Note that he had submitted six years earlier with his August 31, 2016, affidavit. Appellant asserted that he was "an African-American given a predatory loan by C&F in 2007[,]" and claimed that C&F released his obligations in consideration for his forbearance to pursue other litigation against C&F. In further support of this contention, Appellant produced a copy of a recorded certificate of satisfaction confirming the release

on February 18, 2022.[9] The Certificate of Satisfaction that Appellant revealed was duly recorded in Prince George's County land records on February 18, 2022. The certificate states that C&F Mortgage is "the present holder of the Mortgage/Deed of Trust" and certifies that it "is hereby RELEASED, SATISFIED, AND PAID IN FULL and the real estate described herein is fully released from said Mortgage/Deed of Trust."

The circuit court granted a temporary stay of the foreclosure sale, which was set to take place on April 5, 2022, and scheduled a hearing on Appellant's motion for April 21, 2022. The Trustees filed their opposition on April 14, 2022, arguing that Appellant had not established any release under the Deed of Trust for the simple reason that "C&F no longer owned the [2007] Note in 2012" and therefore "did not have the authority to cancel the [2007] Note." The Trustees reasserted the authenticity of the 2007 Note originally appended to the order to docket containing the three indorsements. Referencing several other actions filed by Appellant in federal court, as well as the prior appeals in the present litigation, the Trustees also asserted that Appellant's forgery defense was barred by res judicata because "[t]he state and federal courts have rejected all of [Appellant's] challenges to the Deed of Trust and [2007] Note[.]" Finally, the

[9] As explained by Appellant's counsel at the hearing, the 2022 Certificate of Satisfaction was prepared and recorded by Kevin McCann in response to an inquiry from Appellant's counsel about the status of the loan. Mr. McCann later stated in an email message that this was done in error as he later realized that "we sold this loan in September 2007 to Franklin American Mortgage Company" and no copy of the March 6, 2012 letter was found in his records.

Trustees urged the court to dismiss the motion as untimely—by nearly 6 years— under Rule 14-211.[10]

April 2022 Motions Hearing

The circuit court held a remote hearing on April 21, 2022. The court had before it the conflicting versions of the 2007 Note presented by Appellant and the Trustees as well as the 2009 Modification Agreement, 2012 letters allegedly from C&F, and the January 2022 Certificate of Satisfaction, which were exhibits attached to the June 2015 Order to Docket, the March 2022 Motion to Stay and Dismiss, and the April 2022 Opposition to the Motion to Stay and Dismiss. Counsel also shared the exhibits on screen to be identified and marked for the record.

Appellant's counsel acknowledged that "[t]he Land Records do show about l3 assignments" but asserted that "C&F Mortgage returned the original Notes to [her] client, prior to these assignments," and stated that the 2007 Note was "paid off" in "March of 2012." She stated that the January 2022 Certificate of Satisfaction proved "that this

[10] Maryland Rule 14-211(a)(2)(A) provides, in relevant part, that "[i]n an action to foreclose a lien on owner-occupied residential property, a motion by a borrower to stay the sale and dismiss the action shall be filed **no later than 15 days after the last to occur of**: (i) the date the final loss mitigation affidavit is filed; (ii) the date a motion to strike postfile mediation is granted; or (iii) if postfile mediation was requested and the request was not stricken, the first to occur of: (a) the date the postfile mediation was held[.]" Md. Rule 14-211(a)(2) (emphasis added). Subsection (b)(1) of the Rule, in turn, provides that the "**court shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion: (A) was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule.**" Md. Rule 14-211(b)(1)(A) (emphasis added). Here, postfile mediation between the parties was held on May 4, 2016.

mortgage can no longer be attempted to be enforced by the Substitute Trustees[.]" Therefore, she said, the several transferees succeeding C&F "have to fight amongst themselves" because "here, the homeowner is clearly out of the picture."

The court then challenged the authenticity of the Green Note, observing that Appellant had failed to produce it when the federal district court judge offered to reopen its dismissal of Appellant's federal action, in 2021, if he provided "the original of the reported cancelled Note, a copy of the Note certified by a duly authorized notary public, along with an Affidavit, [] agreeing and affirming under the penalties of perjury when the Note was paid off, as well as how, when and by whom it was cancelled." Appellant's counsel affirmed that "Mr. Green has them in his possession. I presented a copy of it -- so we met in person and I copied it. He wanted to keep it in his possession." She claimed that the 2007 Note attached by Trustees to their Order to Docket has "similar font, similar terms, but it appears to be a digitized image where the signature was definitely different and, you know, there's some markings behind the G in his signature," and concluded that Appellant "does not recognize that to be his signature" on the document.

The Trustees' counsel asserted that, "under Maryland law, assignments are not necessarily for enforcement of the instrument," but serve to "put the world on notice." She observed that "in this case, we do have a pretty complete chain of assignments from the beginning." She displayed the image of the 2007 Note from the Order to Docket and identified the indorsements in chronological order, "the first one was from C&F Bank paid to the order of Franklin. And then Franklin, you see, has an endorsement to Wells

Fargo Bank. And then Wells Fargo Bank has a blank endorsement where they are just endorsing in blank." She explained that as "a blank endorsed Note, […] whoever holds the original is entitled to enforce the Deed of Trust." She concluded, "C&F is certainly not now the holder of this Note, and we would also argue that they were not in 2012."[11]

Trustees' counsel next displayed the 2009 Modification Agreement in which Appellant acknowledged his debt of a "modified unpaid principal of $424,323.19." She continued, Appellant "agrees that he's going to pay these sums to Wells Fargo for the mortgage, who at that time was the investor." She noted that "to our understanding, C&F Mortgage never -- we purchased this loan. There's certainly nothing to indicate it in the endorsements or in the assignments to indicate that C&F ever owned this loan again after this period of time." Counsel acknowledged "[w]e don't know when they sold it . . . They do not date endorsements on a Note. But we know that as of 2009, certainly, Wells Fargo was the owner of this loan." She asserted that "since Mr. Green has still never provided any evidence of actual payment of the loan, and the documentation from C&F

[11] In one of the bankruptcy actions, Appellant acknowledged that in 2011, Wells Fargo initiated a "foreclosure attempt" by placing an Order to Docket Foreclosure notice ownership on his front door, but never filed the Order with the Circuit Court. Appellant's exhibits include a September 8, 2011 Notice of Intent to Foreclose executed by Kristine D. Brown, Esquire for the Substitute Trustees Shapiro & Burson, LLP; and another affidavit "certifying ownership of the debt instrument" dated July 8, 2011 by Camille Garcia, Vice President of Loan Documentation of Wells Fargo Bank, N.A. that Federal National Mortgage Association is the owner of the loan, and that Wells Fargo is the holder for purposes of conducting the foreclosure action.

was all provided after they no longer owned the loan. We would submit that this was never satisfied and the current investor is entitled to enforce."

The court offered each party the opportunity to explain how there came to be two Notes of different appearance in the possession of the two parties. Neither attorney could answer from knowledge, but both speculated accounts that favored their party, without alleging outright fraud. At the end of the hearing, the counsel for the Trustees suggested that "if Your Honor wanted to have a further hearing where everybody brought their original copies to the Court, we would be happy to do that," to which Appellant's counsel added, "I would definitely support that, Your Honor." However, the court determined that there wasn't a "need for an additional hearing." The judge outlined the considerations most pertinent to her decision in her bench ruling:

> And upon review of all of the documents and the cancellation that was provided by the Defendant in this case, that in order to proceed on foreclosure, that there is a lien on that property and that property, there was a default in the lien.
>
> And in this case, understanding this Certificate of Satisfaction from the loan that was signed back in 2007, the Court also has this Loan Modification Agreement from 2009 that it says Wells Fargo -- it says, "Loan Modification Agreement ('Agreement'), made on October 24th, 2009, by and between Daryl Green (the 'Borrower') and Wells Fargo Bank (the 'Lender'), together with the Borrower be considered 'the parties.'" And that was to pay the balance of 424 -- he had a loan for $424,323.19. And the balance as of October 24th, 2009, the unpaid -- the amount payable under the Note and security interest, the unpaid balance, is $408,810.97. And this Agreement hereby modifies those terms and outlines what the modification is, and that that Agreement was dated October 28th, 2009, signed by Daryl Green and by an officer of Wells Fargo, the Vice President of Loan Documentation.

> And there appears to Note and with all of the assignments, the Court had an opportunity to look at all the assignments, that there is a lien on the property that has not been paid.

Thereupon, the court denied Appellant's Motion to Stay and Dismiss and entered that decision on the docket on May 19, 2022. The foreclosure sale was held May 31, 2022.

Post-Hearing Motions and Appeal

Motion for Reconsideration

On May 31, 2022, Appellant timely moved for reconsideration of the circuit court's ruling denying his motion to stay and dismiss, identifying three "points for reconsideration." First, Appellant asserted that the circuit court's reliance on the 2009 Modification Agreement with Wells Fargo was misplaced because "the satisfaction of the original Note from 2007 made by C&F results in the satisfaction of all modifications stemming from it[.]" Second, Appellant asserted that he did not need to show any proof of payment because his purported agreement to forego litigation against C&F constituted an accord and satisfaction discharging his debt. Third, Appellant alleged that he wished to present new evidence, primarily consisting of the documents purportedly prepared by Wells Fargo in 2011 as part of the order to docket that was never filed.

Trustees, in their June 5 response to the motion for reconsideration, did present new evidence in the form of the email from Mr. McCann dated May 26, 2022 ("May 26 email"), stating that he "did not prepare nor sign the letter dated March 6, 2012 to

Appellant canceling his notes and declaring them paid in full[,]" and stating that he is "willing to sign a rescission" of the release "assuming that is an option."

In the May 26 email, Mr. McCann said that he was contacted by Lexicon Title in January of 2022, on behalf of Appellant, who requested him to execute a lien release on the 2007 Note. An attached a copy of the March 6, 2012 Letter that purported to cancel the 2007 Note. Mr. McCann wrote that he "executed the lien release without any further research and sent it back to Lexicon Title." He asserted: "Based on the fact C&F sold this loan to FAMC in September 2007 and I personally responded to audit findings from FAMC in February 2012, I did not prepare nor sign the letter dated March 6, 2012 to Appellant canceling his notes and declaring them paid in full. I do not know who created the letter, but I believe my letter to Appellant on February 2, 2012 was used to prepare the letter dated March 6, 2012." Mr. McCann concluded, "I should not have executed the lien release dated January 19, 2022 on the subject loan[,]" and offered to sign a rescission of the release.

The court denied Appellant's motion for reconsideration by written order entered on July 6, 2022.

Exceptions to Foreclosure Sale

On May 31, 2022, the Trustees held the long-delayed foreclosure sale and sold the Property to Wilmington Savings Society Fund, FSB, as Owner Trustee of The Residential Credit Opportunities Trust VII-A. Appellant filed exceptions to the sale on July 3, 2022, reiterating the same essential arguments presented in his motion to stay and motion for

reconsideration regarding the authority of the Trustees to exercise their power of sale under the Deed of Trust. In their response to Appellant's exceptions, the Trustees moved for sanctions against Appellant pursuant to Maryland Rule 1-341, asserting that he had "repeatedly litigated the same issues in an effort to forestall a valid foreclosure action" through "continuous, repetitive filings[.]" In an order entered on August 5, 2022, the court denied Appellant's exceptions to the foreclosure sale and granted the Trustees' motion for sanctions while exercising its discretion to not award costs or attorneys' fees. Appellant noted the appeal in this case on that same day.

The court later ratified the foreclosure sale by written order entered on August 16, 2022,[12] and referred the matter to an auditor in accordance with Rule 2-543(e). The auditor's report was filed on September 14, 2022, and thereafter ratified by the court by an order entered on November 3, 2022.

DISCUSSION

At the threshold, we observe that Appellant's claims—that C&F cancelled the 2007 Note in 2012, and that the 2007 Note that the Trustees submitted with their Order To Docket in June of 2015 was invalid—are not new and have been litigated multiple times in State and federal courts. Nonetheless, we decline to embark upon a lengthy exposition on the application of the doctrines of res judicata or collateral estoppel to this

[12] As explained in our discussion, Appellant's appeal from the August 5 order imposing sanctions is not properly before us because his notice of appeal was filed prior to the ratification of the foreclosure sale on August 16, 2022.

case—doctrines that the parties did not brief on appeal and trial court did not address—in order to dismiss this appeal on those grounds *sua sponte*.[13] Instead, we will affirm the trial court's decision to deny Appellant's emergency motion to stay the foreclosure sale and dismiss the foreclosure on the merits.[14]

[13] We simply observe, however, that Appellant's repetitious and frivolous allegations that the 2007 Note is fraudulent have been rejected multiple times by the Circuit Court for Prince George's County, this Court, and the United States District Court for the District of Maryland.

[14] At the appellate level, "'[a]n appellant can, of course, abandon some of the issues raised below and stand here on a narrower ground.'" *Harmon v. State Roads Comm'n*, 242 Md. 24, 30 (1966) (quoting *Weil v. Free State Oil Co. of Md.*, 200 Md. 62, 66 (1952)). "This Court has consistently held that a question not presented or argued in an appellant's brief is waived or abandoned and is, therefore, not properly preserved for review." *Health Servs. Cost Rev. Comm'n v. Lutheran Hosp. of Maryland, Inc.*, 298 Md. 651, 664 (1984). *See Rosales v. State*, 463 Md. 552, 569–70 (2019). In fact, we "may dismiss an appeal "or make any other appropriate order with respect to the case" for a party's failure to comply with the rule. Md. Rule 8–504(c)." *Klauenberg v. State*, 355 Md. 528, 552 (1999).

Conversely, Maryland Rule 8–131(a) "'grants the appellate courts of this State discretion to review any unpreserved issue.'" *Nat'l Union Fire Ins. Co. of Pittsburgh, PA. v. Fund for Animals, Inc.*, 451 Md. 431, 466–67 (2017) (quoting *Jones*, 379 Md. at 715, 843 A.2d at 784–85). However, while an appellate court has the discretion to raise collateral estoppel sua sponte, there is no requirement for the appellate court to do so. *See Ritchie v. Donnelly*, 324 Md. 344, 375 (1991) (holding that where the "Court of Special Appeals in this case could have, in its discretion, considered the arguments" that the plaintiff failed to address in her opening brief, the Court's "refusal to do so, however, was not an abuse of discretion."). Collateral estoppel is not a jurisdictional issue that the court must address where it is not promulgated by the parties, and unlike lack of jurisdiction, does not survive a failure of a party to plead. *See Fund for Animals, Inc.*, 451 Md. at 464.

Appellate courts also have the discretion to raise the related issue of res judicata sua sponte. *Anne Arundel Cnty. Bd. of Educ. v. Norville*, 390 Md. 93, 105 (2005) (citing *Arizona v. California*, 120 S. Ct. 2304, 2318, *supplemented*, 121 S. Ct. 292 (2000) for the proposition that the exercise of an appellate court's discretion to dismiss an action sua (continued)

I

STATUTORY DUE PROCESS FOR A MOTION TO STAY AND DISMISS FORECLOSURE PROCEEDINGS

We reject Appellant's categorical proposition that he did not receive an evidentiary hearing. He asserts that he was unfairly denied the opportunity "have a further hearing where everybody brought their original copies to court," after the April 21, 2022, remote hearing. He contends the circuit court should not have ruled without comparing the parties' "original copies" of the 2007 Note. Appellant writes, "THIS DENIAL IS THE CRUX OF APPELLANT'S APPEAL." (Emphasis in original). He further demands that "[b]oth sides should be entitled to pre-hearing discovery, and to subpoena witnesses" at this additional hearing.

Maryland Rule 14-211(b)(1) provides that the "court shall deny the motion [to stay or dismiss foreclose proceedings], *with or without a hearing*, if the court concludes from the record before it that the motion: (A) was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule." Appellant's

---

sponte on grounds of res judicata may be consistent with "the avoidance of unnecessary judicial waste."). However, res judicata is an enumerated affirmative defense under Maryland Rules, which in the trial courts must be asserted in an answer. Md. Rule 2-323(a), (g). As with collateral estoppel, "a court is not required to apply res judicata sua sponte[.]" 50 C.J.S. Judgments § 1203. *See, e.g., Chambco, Div. of Chamberlin Waterproofing & Roofing Sys., Inc. v. Urb. Masonry Corp.*, 101 Md. App. 664, 669–70 (1994), *vacated on other grounds sub nom. Chambco, Div. of Chamberlin Waterproofing & Roofing, Inc. v. Urb. Masonry Corp.*, 338 Md. 417 (1995) (finding the parties had not "properly presented the issue" of *res judicata* and deciding to **"**resolve the matter on other grounds").

motion was filed nearly six years after post-file mediation concluded, rather than the fifteen days allotted under Maryland Rule 14-211(a) from the last to occur in a menu of events. We note, therefore, that under Maryland Rule 14-211(b)(1), the circuit court could have denied his motion without *any* hearing because it was filed six years late, *and*, because—even if it had been filed in time—he was still not entitled to a hearing.

Nonetheless, the record is clear that Appellant received a hearing on his motion at which he received a full and fair opportunity to present his evidence. On April 21, 2022, the court heard argument from counsel and received documentary evidence—including the conflicting versions of the 2007 Note presented by Appellant and the Trustees as well as the 2009 Modification Agreement with Wells Fargo, 2012 letters allegedly from C&F, and the 2022 Certificate of Satisfaction.

Appellant's further assertion that the court was obligated to put the matter before a jury for them to examine the physical original documents, is not grounded in law. Neither the rule nor the statute governing hearings on motions to stay and dismiss foreclosure actions require jury hearings or original documents. *See Huertas v. Ward*, 248 Md. App. 187, 211–12 (2020) (holding rules governing foreclosure under a power of sale contain no requirement that substitute trustees produce "original documents in wet ink[.]").

II

CIRCUIT COURT'S DECISION TO DENY MOTION TO STAY AND DISMISS

Before this Court, Appellant presents at least two arguments that he has recycled in countless motions and actions that he has filed since 2015. First, he claims the circuit court erred in allowing the foreclosure action to proceed because the 2007 Note attached to the Trustees' Order to Docket Foreclosure was not authentic. Second, he contends the circuit court abused its discretion in denying his motion to stay the foreclosure sale and dismiss the case because the Trustees failed to prove their standing to enforce the 2007 Note. What was new about the underlying emergency motion to stay and dismiss was Appellant's presentation of the 2022 Certificate of Satisfaction. Appellant now argues that, because of the 2022 Certificate of Satisfaction, under Maryland Code (1974, 2015 Repl. Vol.), Real Property Article ("RP"), section 7-103, "[t]here is a conclusive presumption that if the mortgage is clearly released of record (as here), it has been paid[.]"

Appellant states that "if the note, has been paid or satisfied and is marked 'paid' or 'cancelled' and recorded (as here) it is effective as a release of the property[.]" (citing RP § 3-105(d)). He claims the Note's original holder, C&F, accepted alternative performance from him in satisfaction for the loan in 2012, cancelled the 2007 Note, and returned the original documents to him. Appellant argues that the circuit court should have recognized the 2007 Note as cancelled because the evidence he presented should have been more persuasive than the Trustees' 2007 Note filed with the 2015 Order to

Docket, which "contained multiple undated endorsements." Appellant further contends that "there is no proof Wells Fargo purchased the Note from C & F[,]" and insists that Wells Fargo was "only the servicer in 2009 at the time of the loan modification."

The Trustees respond[15] that they have the power of sale under the Deed of Trust because the 2007 Note's original holder, C&F, sold the Note in 2007, initiating a chain of transactions, under which the entity that appointed the Trustees now holds the 2007 Note and legal title to the Property. According to the Trustees, the record demonstrates that Appellant never satisfied the loan, and no holder has released or offered to release the Deed of Trust or to cancel the 2007 Note.

For the reasons discussed below, we affirm the circuit court's determination made after having considered the evidence and the testimony presented in the motions and during the April 21, 2022 hearing, including the Loan Modification Agreement dated

[15] The background events that Trustees recount in their brief which are at variance with those asserted by Appellant are briefly noted here. Trustees say that in September of 2007, C&F sold and specifically indorsed the Promissory Note ("Note") to Franklin American Mortgage Company ("FAMC"), that at some later time, FAMC sold and specifically indorsed the Promissory Note to Wells Fargo Bank, and that Wells Fargo subsequently blank-indorsed the Note. Trustees agree that Appellant and Wells Fargo entered into the Loan Modification Agreement in October of 2009, but they say that Wells Fargo was the holder of the Note at the time, not solely the servicer. Trustees state that a chain of assignments of the Deed of Trust followed, and in April of 2015 PrimeStar-H Fund I Trust ("PrimeStar") acquired the beneficial interest of the Deed of Trust and appointed Trustees to act for them.

Trustees flatly deny Appellant's claim that on March 6, 2012, the CFO of C&F sent a letter to Appellant that stated the loan was satisfied, "and which purportedly included a copy of two cancelled promissory notes." Trustees state that the purported author has searched and found "no copy of the March 6, 2012 letter in C&F's records and believes that the February 2, 2012 letter was used to create the March 6, 2012 letter."

October 24, 2009, which declares itself to be "by and between Daryl Green (the 'Borrower') and Wells Fargo Bank (the 'Lender')." It was well within the trial court's discretion to disregard the 2022 Certificate of Satisfaction by C&F based on the evidence presented and conclude that the Trustees had the right to foreclose on the Property.

A. Legal Framework

"The grant or denial of injunctive relief in a property foreclosure action lies generally within the sound discretion of the trial court." *Anderson v. Burson*, 424 Md. 232, 243 (2011) (citing *Wincopia Farm, LP v. Goozman*, 188 Md. App. 519, 528 (2009)). Abuse of discretion means that a ruling will be reversed when that ruling "'does not logically follow from the findings from which it supposedly rests or has no reasonable relationship to its announced objective.'" *Anderson*, 424 Md. at 243 (quoting *Eastside Vend Distrib., Inc.*, 396 Md. at 240). Factual findings are reviewed for clear error, and "'we will not disturb the factual findings of the trial court if there is any competent evidence to support those factual findings.'" *Jones v. Ward*, 254 Md. App. 126, 138, *cert. denied*, 478 Md. 520 (2022) (quoting *Dickerson v. Longoria*, 414 Md. 419, 433 (2010)). We review the trial court's legal conclusions, however, without deference. *See Moscarillo v. Prof'l Risk Mgmt. Servs., Inc.*, 169 Md. App. 137, 145 (2006).

Section 7-103(a) of the Real Property Article provides:

> The title to any promissory note, other instrument, or debt secured by a mortgage, both before and after the maturity of the note, other instrument, or debt, conclusively is presumed to be vested in the person holding the record title to the mortgage. If the mortgage is duly released of record, the promissory note, other instrument, or debt secured by the mortgage, both

> before and after the maturity of the promissory note, other instrument, or debt, conclusively is presumed to be paid as far as any lien on the property granted by the mortgage is concerned.

A mortgage note may be enforced by "the holder of the instrument," or by "a nonholder in possession of the instrument who has the rights of a holder," as well as by "a person not in possession of the instrument" who is otherwise entitled by statute. Maryland Code (1975, 2013 Repl. Vol.), Commercial Law Article ("CL"), section 3-301. "[O]nce the note is transferred, 'the right to enforce the deed of trust follow[s].'" *Deutsche Bank Nat. Tr. Co. v. Brock*, 430 Md. 714, 728 (2013) (quoting *Svrcek v. Rosenberg*, 203 Md. App. 705, 727 (2012)). Where a mortgage or deed of trust authorizes such, the note holder may appoint a trustee or substitute trustee to exercise a power of sale of the property upon default on the note. RP § 7-105(b)(1), (5).

A "power of sale" foreclosure is "'intended to be a summary, in rem proceeding' which carries out 'the policy of Maryland law to expedite mortgage foreclosures.'" *Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705, 726 (2007) (quoting *G.E. Capital Mortgage. Servs., Inc. v. Levenson*, 338 Md. 227, 245 (1995)). The foreclosure process itself is one with limited pleadings and defenses and limited discovery. Kevin Hildebeidel, *Introduction to Foreclosure of Secured Interests in Maryland* in 5 GORDON ON MARYLAND FORECLOSURES (Maryland State Bar Association, Deutsch & Nadel, eds., 2021).

Under Maryland Rule 14-207, a secured party or that party's agent may commence an action to foreclose on a lien pursuant to a power of sale by filing an order

to docket. Md. Rule 14-207(a)(1). Amongst other exhibits, the order to docket must include:

> (1) a copy of the lien instrument supported by an affidavit that it is a true and accurate copy, or, in an action to foreclose a statutory lien, a copy of a notice of the existence of the lien supported by an affidavit that it is a true and accurate copy;
>
> (2) an affidavit by the secured party, the plaintiff, or the agent or attorney of either that the plaintiff has the right to foreclose and a statement of the debt remaining due and payable;
>
> (3) a copy of any separate note or other debt instrument supported by an affidavit that it is a true and accurate copy and certifying ownership of the debt instrument;
>
> (4) a copy of any assignment of the lien instrument for purposes of foreclosure or deed of appointment of a substitute trustee supported by an affidavit that it is a true and accurate copy of the assignment or deed of appointment;

Md. Rule 14-207(b)(1)–(4).

The Real Property Article imposes corresponding requirements, in that an order to docket or a complaint to foreclose on a mortgage or deed of trust on residential property shall be accompanied by, inter alia:

> (i) The original or a certified copy of the mortgage or deed of trust;
>
> (ii) A statement of the debt remaining due and payable supported by an affidavit of the plaintiff or the secured party or the agent or attorney of the plaintiff or secured party;
>
> (iii) A copy of the debt instrument accompanied by an affidavit certifying ownership of the debt instrument;
>
> (iv) If applicable, the original or a certified copy of the assignment of the mortgage for purposes of foreclosure or the deed of appointment of a substitute trustee; . . .

RP § 7-105.1(e)(2)(i)–(iv).

Under the Maryland Rules, there are "'two avenues by which a borrower may challenge a foreclosure sale.'" *Huertas v. Ward*, 248 Md. App. 187, 201 (2020) (quoting *Hood v. Driscoll*, 227 Md. App. 689, 693 (2016). "'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. *See* Md. Rule 14-211, Md. Rule 14-305(e). Unlike the motion to dismiss the foreclosure action, the function of which is to contest "whether there should be a sale at all[,]" the post-sale exceptions must directly challenge "the conduct of the sale[.]" *Hood v. Driscoll*, 227 Md. App. 689, 694, 695 (2016). The foreclosure sale transaction remains incomplete until the sale is approved by the court, and borrowers may file exceptions "setting forth any allegations of irregularities in the sale." *Huertas*, 248 Md. App. at 202. Examples of irregularities that could merit setting aside a sale are "deficiencies in the advertisement of sale, conduct that inhibited bidding on the property, or an unconscionable sale price." *Id.* at 203. These procedures are equitable in nature and must only be approached with clean hands. *Mitchell v. Yacko*, 232 Md. App. 624, 637 (2017).

A mortgagor seeking a pre-sale injunction must file a Motion to Stay and Dismiss according to Maryland Rule 14-211, which, amongst other requirements, shall:

> (A) be under oath or supported by affidavit;
>
> (B) 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;
>
> (C) be accompanied by any supporting documents or other material in the possession or control of the moving party and any request for the

> discovery of any specific supporting documents in the possession or control of the plaintiff or the secured party; …

Md. Rule 14-211(a)(3).

As previously noted, under Maryland Rule 14‑211(b)(1), the court "shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion:

> (A) was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule;
> (B) does not substantially comply with the requirements of this Rule; or
> (C) does not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action."

Md. Rule 14‑211(b)(1). Finally, if the court grants a hearing on the merits, and at its conclusion "the court finds that the moving party has established that the lien or the lien instrument is invalid or that the plaintiff has no right to foreclose in the pending action, it shall grant the motion and, unless it finds good cause to the contrary, dismiss the foreclosure action. If the court finds otherwise, it shall deny the motion." Md. Rule 14-211(e).

B. Analysis

As previously stated, we give great deference to the circuit court's determination that the 2022 Certificate of Satisfaction did not operate in this case to release Appellant's obligations under the 2007 Note. In those cases tried before the court in which the authenticity of material evidence is in dispute, we defer to the trial court's unique role as the finder of fact, and we "will not set aside the judgment of the trial court on the

evidence unless clearly erroneous[.]" Md. Rule 8-131. "If any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous." *MAS Assocs., LLC v. Korotki*, 465 Md. 457, 474 (2019) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)). "The trier of fact may believe or disbelieve, accredit or disregard, any evidence introduced." *Great Coastal Exp., Inc. v. Schruefer*, 34 Md. App. 706, 725 (1977) (citing *Phelps v. Goldberg*, 270 Md. 694, 705 (1974)). "We may not-and obviously could not-decide upon an appeal how much weight must be given, as a minimum to each item of evidence." *Id.*

At the hearing, the evidence before the judge included the Trustees' Order to Docket a Foreclosure attaching the 2007 Note with a blank indorsement. As a blank indorsed negotiable instrument is negotiated by transfer of possession alone, under the evidence presented, Trustees were holders of the Note, and thus entitled to the instrument under CL § 3–301. *See also* CL § 3–301(b). In previous actions, courts had already determined that Appellant's possession of the Green Note failed to "raise[] a presumption of payment" as a "creditor's cancellation of the evidence of indebtedness." *See Brady v. Brady*, 110 Md. 656 (1909). The balance of presumptions attendant upon the documents competing for authenticity can be resolved by the fact-finder's credibility determinations, and the fact that "[o]rdinarily there is no presumption of payment of a debt, and in the absence of any evidence on the subject there is a rebuttable presumption against payment." 70 C.J.S. *Payment* § 67 (Karl Oakes, ed., West 2023).

In her ruling on the Appellant's Motion to Stay and Dismiss, the judge explained the evidence which she had accorded the greatest weight. The judge noted that she had reviewed "all of the documents and the cancellation that was provided by the Defendant" and that she inspected the Trustees' "Note and with all of the assignments," before concluding that "there is a lien on that property and . . . there was a default [on] the lien." The judge specifically weighed the Certificate of Satisfaction of the 2007 Note from C&F against the 2009 Modification Agreement with Wells Fargo and found the 2009 Modification Agreement to be dispositive. The court noted that the agreement that Appellant signed in 2009—three years prior to the Green Note and purported March 2012 Letter from C&F—identified Appellant, Daryl Green, as "(the 'Borrower') and Wells Fargo Bank (the 'Lender')." The court concluded that "there is a lien on the property that has not been paid" based on the 2009 Modification Agreement, documenting an unpaid balance of $424,323.19 that Appellant committed to pay the balance to the holder of the 2007 Note at the time, Wells Fargo.

Indeed, the 2009 Modification Agreement is not only documentary evidence of Wells Fargo's status as holder of the 2007 Note, but Appellant's formation of the agreement is evidence that he was on notice of that fact. *See Jones v. Ward* 254 Md. App. 126, 151–52 (2022) (holding mortgagors' formation of a loan modification agreement with Wells Fargo and subsequent payments to be "strong evidence that Wells Fargo was the secured party[.]"). *See also Anderson v. Burson*, 424 Md. 232, 251 n.22 (2011) (finding that the appellant conceded his debt by listing the appellee as a secured

creditor; renegotiating his mortgage payments; and making mortgage payments to the appellee). Further evidence of Wells Fargo's ownership of the 2007 Note follows from their appointment of Substitute Trustees under Real Property 7-105 in 2011; not to mention Appellant's own admissions to the same contained in his numerous bankruptcy filings. *See* note 11 *supra.*

To controvert the evidence of the Trustees' note and the presumption of enforceability that attend it, Appellant had to persuade the court that C&F had the authority to release the 2007 Note in 2012. Having failed multiple times in the past, including his prior submission of the Green Note in 2016, he presented the trial court in the underlying case with the 2022 Certificate of Satisfaction and claimed that it carried a statutory presumption that the lien was released under RP § 3-105(d). However, the trial court did not find the condition precedent necessary to effectuate the release of a debt secured by a deed of trust under RP 3-105(d): namely that C&F was the "holder of the [2007 N]ote or his agent," in 2012 or in when the 2022 Certificate of Satisfaction was recorded.[16]

[16] The statute provides, in relevant part:

> When the debt secured by a deed of trust is paid fully or satisfied, and any bond, note, or other evidence of the total indebtedness is marked "paid" or "canceled" by the holder or his agent, it may be received by the clerk and indexed and recorded as any other instrument in the nature of a release. The marked note has the same effect as a release of the property for which it is the security, as if a release were executed by the named trustees, if there is attached to or endorsed on the note an affidavit of the holder, the

(continued)

Appellant failed to provide any explanation for why he did not produce the Green Note prior to August 2016, nor why a certificate of satisfaction was not filed in land records until 2022 when the 2007 Note was allegedly satisfied in 2012. The 2009 Modification Agreement, by contrast, which Appellant signed, clearly shows that C&F had already conveyed its interest in the 2007 Note years before the purported 2012 cancellation and release.

Furthermore, Appellant failed to demonstrate why C&F would agree to release the 2007 Note for no monetary consideration. The sole evidence he produced of this is the March 6 Letter, allegedly sent to him by Mr. McCann for C&F. At the April 2022 Motions Hearing, Trustees repeatedly denied the authenticity of the letter, demonstrating that C&F could not have been the holder of the 2007 Note in 2012. Further, in response to Appellant's motion for reconsideration, C&F through Mr. McCann, directly repudiated authorship of the letter. *See Van Schaik v. Van Schaik*, 35 Md. App. 19, 26 (1977) ("[I]f a release of mortgage is mistakenly recorded, that release is effective as to subsequent bona fide purchasers, but the mortgage remains valid as between the parties and equity will enforce it."). Appellant did not produce the original of the March 6 Letter or the Green Note over a ten-year period, despite United States District Court for the District of

---

> party making satisfaction, or an agent of either of them, that it has been paid or satisfied, and specifically setting forth the land record reference where the original deed of trust is recorded.

R § 3-105(d)(1).

Maryland's invitation in 2018 to re-open his action if he were to present some evidence that the 2007 Note was cancelled.

Further, Appellant failed to provide any explanation for why he had not produced the March 6 Letter at any earlier point in the legal proceedings that commenced with the Trustees first initiation of foreclosure proceedings in 2015, including when he filed his motion to dismiss or stay the foreclosure with the circuit court in 2016 on the ground that he was the "holder of his cancelled notes." Nor did he explain why he did not even allege its existence at any time before he used it to persuade Mr. McCann to sign a Certificate of Satisfaction in January of 2022. Further, Appellant did not present any testimony or affidavit from the Mr. McCann to support his statement that C&F accepted this forbearance as consideration for the loan. He failed to offer any evidence of the consideration he offered, nor of C&F's acceptance of it, and he did not produce any negotiated agreement or release such as the release form that parties to the 2011 consent order signed discharging C&F's obligations to them under that litigation.

Finally, the account that Appellant provided of C&F's consideration for the alleged release of the 2007 Note lacks logical consistency. The terms of the 2007 Note specify payment by money. Where money is loaned, "[i]n the absence of any showing to the contrary it is to be presumed that the medium for payment of a debt is money," 70 C.J.S. *Payment* § 72 (Karl Oakes, ed., West 2023). Here, Appellant claims that in 2012 he discovered that C&F had been the subject of federal investigation. But that matter had been resolved in a consent order in October 2011, pursuant to which C&F agreed to

create a settlement fund containing a total of $140,000 "for the purpose of compensating aggrieved persons," which was to be distributed amongst 191 mortgagors identified in the agreement. The Order concludes "C&F's compliance with its terms "shall fully and finally resolve all claims of the United States relating to the alleged violations by C&F of the fair lending laws," and that after those terms were enforced the case would be dismissed with prejudice, thus effectively curtailing its exposure to further liability. In light of the terms or the consent order, it is not surprising that Appellant's explanation that C&F agreed to forgive his debt of over $400,000 in exchange for his forbearance to "challenge his rights under the DOJ case," a year after the consent order strained the credulity of the circuit court. Furthermore, the alleged forbearance would not be recognized as consideration for a cancellation of debt under Maryland decisional law. As outlined in *Fiege v. Boehm*, 210 Md. 352 (1956):

> We have thus adopted the rule that the surrender of, or forbearance to assert, an invalid claim by one who has not an honest and reasonable belief in its possible validity is not sufficient consideration for a contract. 1 Restatement, Contracts, sec. 76(b). We combine the subjective requisite that the claim be *bona fide* with the objective requisite that it must have a reasonable basis of support. Accordingly a promise not to prosecute a claim which is not founded in good faith does not of itself give a right of action on an agreement to pay for refraining from so acting, because a release from mere annoyance and unfounded litigation does not furnish valuable consideration.

Id. at 360.

Appellant has entirely failed to show that his threat of joining the DOJ action was a bona fide claim, or that it had any reasonable basis of support.

All of the above are factors that a reasonable jurist would consider in her credibility determinations, which are within the exclusive province of the trial court. Taken in sum, we discern no error or abuse of discretion by the trial court in denying the Emergency Motion to Stay and Dismiss the foreclosure action.

III

SANCTIONS UPON APPELLANT'S EXCEPTIONS TO FORECLOSURE SALE

We decline to address Appellant's challenge to the circuit court's August 5, 2022 order granting the Trustees' Motion for Sanctions for Bad Faith Filing of exceptions to the foreclosure sale under Maryland Rule 1-341 because his notice of appeal was filed prior to the ratification of the foreclosure sale on August 16, 2022.

That issue was not raised by either party. Instead, Appellant's argument on brief is that the circuit court's grant of the Trustees motion for sanctions was inappropriate because Maryland Rule 1-341 "is not intended to penalize a party and/or counsel for asserting a colorable claim," and his entire argument is a rehash of his arguments challenging the foreclosure sale.[17] Trustees respond that sanctions are warranted because Appellant's arguments "are made simply to delay foreclosure of the Subject Property, on which he has not made a loan payment for 13 years." Trustees argue, as an affirmative

[17] Appellant stresses that "possession of the original note marked CANCELLED as received from his original lender, three years before the Trustees even filed their order to docket, justifies a pro se Defendant to engage in vigorous litigation. Appellant posits that his lack of bad faith is established by the fact that the circuit court initially granted a stay of the sale and scheduled a full hearing on the merits.

defense, that "neither the denial of exceptions or award of sanctions is before this court" because Appellant failed to specify that he was appealing from the grant of the motion for sanctions in his notice of appeal.[18]

We need not explore either party's arguments due to the non-appealability of the interlocutory order that granted the sanctions.

A. Legal Framework

It is well established that "an order of a circuit court must be appealable in order to confer jurisdiction upon an appellate court, and this jurisdictional issue, if noticed by an appellate court, will be addressed *sua sponte*." *Johnson v. Johnson*, 423 Md. 602, 605-06 (2011). "Appellate jurisdiction in Maryland is a 'creature of statute.'" *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 660 (quoting *Kurstin v. Bromberg Rosenthal, LLP*, 191 Md. App. 124, 131 (2010)). Broadly speaking, an appellate court "has jurisdiction over an appeal when the appeal is taken from a final judgment or is otherwise permitted by law, and a timely notice of appeal was filed." *Id.* at 661. An order qualifies as a final judgment when it "fully adjudicates all claims in the case by and against all parties to the case." *Huertas v. Ward*, 248 Md. App. 187, 200 (2020). In the context of a foreclosure action, "a court does not enter a final judgment at least until it has ratified the

[18] We disagree. The Supreme Court of Maryland has previously noted that "the purpose of a notice or order of appeal is not to designate or limit the issues on appeal" and that "the designation of issues on appeal is a function of the information report required by Rule 8–205, the prehearing conference under Rule 8–206(b), and the briefs." *B & K Rentals & Sales Co., Inc. v. Universal Leaf Tobacco Co.*, 319 Md. 127-133-34 (1990).

foreclosure sale." *McLaughlin v. Ward*, 240 Md. App. 76, 83 (2019). There are only three exceptions to the final judgment rule: "appeals from interlocutory orders specifically allowed by statute; immediate appeals permitted under Maryland Rule 2-602; and appeals from interlocutory rulings allowed under the common law collateral order doctrine." *Salvagno v. Frew*, 388 Md. 605, 615 (2005).

B. Analysis

Although not raised by the parties in their briefing before this Court, we must conclude that Appellant's appeal, as related to the issue of the motion for sanctions, was prematurely filed.[19] Specifically, Appellant noted his appeal on August 5, 2022, eleven days before the court ratified the foreclosure sale on August 16, 2022. Upon noting this defect, we are duty bound to determine the appealability of the underlying order because "an order of a circuit court must be appealable in order to confer jurisdiction upon an appellate court, and this jurisdictional issue, if noticed by an appellate court, will be addressed *sua sponte*." *Johnson v. Johnson*, 423 Md. 602, 605-06 (2011).

In *McLaughlin*, we recently confronted a premature appeal from the denial of the appellant's exceptions to a foreclosure sale and motion to abate the purchase price. There, the appellant, Dominion, had previously purchased the subject property at a foreclosure sale that was not ratified due to deficiencies in the affidavit of service. *Id.* at

[19] Appellant did file a motion in this appeal requesting that this Court "order *nunc pro tunc* the ratification of the [sale] order within the scope of this appeal." That motion was denied by an order entered February 9, 2023.

81-82. After making improvements to the property, Dominion again bought the property at a second foreclosure sale, but for a higher purchase price. *Id.* at 82. Dominion timely filed exceptions to the sale and a motion to abate the purchase price due to the increased cost of sale. *Id.* The lower court denied the motion and the exceptions and Dominion noted an immediate appeal "without waiting for the ratification of the sale" and "did not note another appeal after the ratification of the sale." *Id.*

We concluded that the appeal was premature, explaining that there is no final judgment to appeal from in a foreclosure action until ratification of the sale because the need for determining error in each prior phase of the proceeding may be obviated if the court ultimately declines to ratify the sale. *See id.* at 84 ("[h]ad the court declined to ratify the second sale after Dominion appealed from the denial of its exceptions, the appeal would have become completely superfluous"). Accordingly, since Dominion's appeal was premature, we dismissed the appeal because "we acquire no appellate jurisdiction over a premature appeal" and none of the exceptions to the final judgment rule applied. *Id.* at 84-85.

Here, as in *McLaughlin*, Appellant noted his appeal *prior* to the court's August 16, 2022, order ratifying the foreclosure sale and did not note a second appeal thereafter. To be sure, as we explained in *Green I*, that was entirely proper with respect to the denial of Appellant's motion to stay and dismiss. Although the appeal of that order preceded the entry of final judgment, pursuant to the statutory exceptions to the final judgment rule provided in Maryland Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings

Article ("CJP"), section 12-303, "an order denying a request for a stay of the sale of the property is appealable as an [interlocutory] order refusing to grant an injunction." *Huertas*, 248 Md. App. at 202; CJP § 12-303(3)(iii) (providing that a party may appeal from an interlocutory order "[r]efusing to grant an injunction"). But just because an appeal from *one* interlocutory order is permissible, does not mean that we ipso facto possess the "authority to consider other interlocutory orders that are not independently appealable." *Md. Bd. Physicians v. Geier*, 451 Md. 526, 553 (2017). Indeed, the Supreme Court of Maryland has made clear that "orders that do not independently [constitute an appealable interlocutory order] may not be appealed by 'piggybacking' onto another interlocutory order that does" fall under one of the exceptions. *Id.* at 554-55. Therefore, we must determine whether the circuit court's order granting the Trustees' motion for sanctions was independently appealable.

We shall address each of the three exceptions to the final judgment rule in turn, starting with the narrow categories of immediately appealable interlocutory orders delineated in CJP § 12-303. As we recently explained in *McLaughlin*, CJP § 12-303, among other things, "authorizes interlocutory appeals from orders granting, dissolving, or denying certain injunctions; from certain orders appointing a receiver; from orders depriving a parent, grandparent, or guardian of the care and custody of a child; from orders granting a petition to stay an arbitration proceeding; and from orders denying certain claims of statutory immunity." *McLaughlin*, 240 Md. App. at 85. Although CJP § 12-303(3)(v) authorizes an immediate appeal from an order for "the payment of

money[,]" the order here did not provide for any monetary award, and regardless, we have previously explained that a sanctions award is "not immediately appealable under [CJP § 12-303(3)(v)] as an order for the payment of money, because it [is] not 'equitable in nature' and d[oes] not 'proceed directly to the person so as to make [him] directly and personally answerable to the court for noncompliance.'" *Tobin v. Marriott Hotels, Inc.*, 111 Md. App. 566, 570 (1996) (quoting *Simmons v. Perkins*, 302 Md. 232, 236 (1985)).

Next, pursuant to Rule 6-202(b), a party may appeal from an interlocutory order that is certified as a final judgment when the lower court "expressly determines in a written order that there is no just reason for delay" and directs "in the order the entry of final judgment (1) as to one or more but fewer than all of the claims or parties." Md. Rule 2-602(b). That procedure is, of course, unavailing in the present case because the circuit never certified its order granting the motion for sanctions as a final judgment, nor was it ever requested to do so. That reality, however, does not necessarily end our inquiry due to operation of the related savings provision contained in Maryland Rule 8-602(g)(1). Under that provision:

> If the appellate court determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed but that the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602 (b), the appellate court, as it finds appropriate, may (A) dismiss the appeal, (B) remand the case for the lower court to decide whether to direct the entry of a final judgment, (C) enter a final judgment on its own initiative or (D) if a final judgment was entered by the lower court after the notice of appeal was filed, treat the notice of appeal as if filed on the same day as, but after, the entry of the judgment.

Md. Rule 8-602(g)(1). Rule 8-602(g)(1) thus, under appropriate circumstances, empowers this Court to manifest a legal fiction whereby a premature appeal is treated as timely filed if it could have properly been certified under Rule 2-602(b). That discretion, however, is to be applied only "in the most extraordinary circumstance" and should be especially closely guarded when the circuit court was never requested to pass on the issue. *Smith v. Lead Industries Ass'n, Inc.*, 386 Md. 12, 26 (2005). We need not wrestle too fiercely with the narrow confines of our discretion, however, because we are unconvinced that the order in this case would have even been eligible for certification pursuant to Maryland Rule 2-602(b).

The "term 'claim,' as used in [Rule 2-602(b)], refers to a complete, substantive cause of action." *Eubanks v. First Mount Vernon Indus. Loan Ass'n, Inc.*, 125 Md. App. 642, 649 (1999). It is unclear whether a motion for sanctions pursuant to Maryland Rule 1-341, which is a procedural device ground in the court's remedial authority, would fall under that heading. *See* Md. Rule 1-341(a). And even if it did, as in *McLaughlin*, there was almost certainly was a "just reason" for delay "when the ratification of the sale, and thus the end of the case for all parties, was close at hand." *McLaughlin*, 240 Md. App. at 87. We therefore decline to consider Appellant's premature appeal as having been filed after the ratification of sale pursuant to Rule 8-602(g)(1).

Finally, there remains the possibility the order granting the Trustees' motion for sanctions was appealable under the collateral order doctrine, which rests on a "judicially created fiction, under which, certain interlocutory orders are considered to be final

judgments, even though such orders are clearly *not* final judgments." *Dawkins v. Balt. City Police Dep't*, 376 Md. 53, 64 (2003). To qualify under the doctrine, the relevant order must satisfy a four-part test: "(1) the order must conclusively determine the disputed question; (2) the order must resolve an important issue; (3) the order must resolve an issue that is completely separate from the merits of the action; and (4) the issue would be effectively unreviewable if the appeal had to await the entry of a final judgment." *Geier*, 451 Md. at 546.

Certainly, an order granting a motion for sanctions pursuant to Rule 1-341 might be able to satisfy some of those requirements as they are "supplemental proceedings" separate from the merits of the action. *Litty v. Becker*, 104 Md. App. 370, 376 (1995) ("a trial court may entertain a motion for costs even though the principle [sic] suit has been concluded" because "a motion for costs pursuant to Md. Rule 1-341 is an 'independent proceeding supplemental to the original proceeding[.]") Yet, we have made clear that such orders—at least when directed to a party—cannot meet the fourth prong of the test (*i.e.*, that the issue be effectively unreviewable upon entry of final judgment) because any error "can be corrected on review after final judgment." *Yamaner v. Orkin*, 310 Md. 321, 326 (1987).

At bottom, then, we conclude that we lack jurisdiction to address Appellant's appeal from the order granting the Trustees' motion for sanctions. The appeal was prematurely filed because it was noted before the ratification of the foreclosure sale on August 16, 2022, which constituted the final judgment in this case. *McLaughlin*, 240

Md. App. at 83. Nor, as we have explained, do any of the exceptions to the final judgment rule apply in the present case.

Accordingly, because we "we acquire no appellate jurisdiction over a premature appeal[,]" we lack the ability to address the merits of his arguments challenging the grant of the motion for sanctions. *Id.* at 84-85. Appellant's appeal from that order—*not* from the order denying his motion to stay and dismiss—is therefore, on initiative of this court, dismissed. *See* Md. Rule 8-602(a) ("[t]he court may dismiss an appeal pursuant to this Rule on motion or on the court's own initiative"); Md. Rule 8-602(b) ("The Court shall dismiss an appeal if (1) the appeal is not allowed by these Rules or by other law").

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AS TO DENIAL OF MOTION TO STAY AND DISMISS IS AFFIRMED. APPEAL DISMISSED AS TO GRANT OF MOTION FOR SANCTIONS. COSTS TO BE PAID BY APPELLANT.