

Circuit Court for Prince George's County  
Case No.: CAEF20-01954

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1447

September Term, 2022

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DAVID J. SIMARD

v.

BRIAN T. GALLAGHER

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Reed,  
Ripken,  
Kenney, James A., III  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: June 30, 2023

\*At 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 is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2020, Brian T. Gallagher, appellee, acting as substitute trustee, filed an Order to Docket, in the Circuit Court for Prince George’s County, seeking to foreclose on real property owned by David J. Simard, appellant. Simard filed a motion to stay or dismiss the foreclosure action, which was denied, and his property was ultimately sold at a foreclosure auction on December 14, 2021.<sup>1</sup>

Thereafter, Simard filed an “Objection to Ratification,” which the circuit court denied as untimely under Rule 14-305(d) with no good cause to excuse the untimeliness. In the interim, the foreclosure sale was ratified on July 15, 2022, and the property was conveyed to the third-party purchaser a week later. Simard did not file a timely appeal from the order ratifying the foreclosure sale or the order denying his “Objection to Ratification.”

Instead, on September 9, Simard filed a “Motion to Reconsider Order Denying Objection to Ratification of Sale,” wherein he sought to vacate the order ratifying the foreclosure sale pursuant to Maryland Rule 2-535(b) based on “[s]everal irregularities and mistakes[.]” Specifically, he claimed that: (1) the third-party purchaser’s rights were breached because the trustee could not deliver good and marketable title to the property; (2) he was not served with the trustee’s response to his objections and therefore could not respond before ratification; (3) the trustee did not notify the subordinate lienholders more than 25 days before the sale date; (4) the trustee pressured the buyer to settle in a short

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<sup>1</sup> Simard appealed previously from the denial of his motion to stay but failed to post a *supersedeas* bond to stay the ratification order. Because the foreclosure sale was ratified, and the property was conveyed to the third-party purchaser while that appeal was pending, this Court dismissed it as moot. *Simard v. Gallagher*, No. 132, Sept. Term, 2022, 2023 WL 2595254, at \*2 (App. Ct. Md. March 22, 2023).

timeframe; and (5) the holder of the Note securing the Deed of Trust did not have a license to act as a debt collection agency in Maryland, as required by the Maryland Collection Agency Licensing Act (MCALA), and thus, did not have a right to initiate the foreclosure action or conduct the foreclosure sale. The circuit court denied the motion without a hearing. This appeal followed.<sup>2</sup>

On appeal, Simard raises four issues: (1) that Gallagher failed to properly advertise the property’s positive attributes to obtain the best sale value; (2) that the Note holder lacked standing to bring the underlying action because it was not registered to conduct business in Maryland; (3) that the ratification order was entered prematurely; and (4) that the Note holder was acting as an unlicensed debt collection agency in violation of the MCALA. The only judgment or order entered in the 30 days preceding Simard’s notice of appeal—and thus the only judgment or order we will review, *see* Md. Rule 8-202(a)—is the denial of his “Motion to Reconsider Order Denying Objection to Ratification of Sale.” Because Simard’s motion did not present the first three issues he raises on appeal, they are unpreserved and not properly before us. Md. Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]”). We will therefore consider only Simard’s fourth issue.

Here, the July 15, 2022, order ratifying the foreclosure sale constituted the final judgment on the merits as to the validity of the foreclosure sale. *Huertas v. Ward*, 248 Md. App. 187, 205 (2020). Because Simard’s “Motion to Reconsider Order Denying Objection

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<sup>2</sup> In contrast to his prior appeal, Simard posted the required *supersedeas* bond on April 5, 2023. We will therefore consider his appeal on its merits.

to Ratification of Sale” was filed more than 30 days after the ratification order was entered, the only basis for the circuit court to have granted the motion would have been if it demonstrated the possible existence of fraud, mistake, or irregularity in the judgment. *See* Maryland Rule 2-535(b).

Simard contends that the Note holder was acting as a collection agency when it pursued the foreclosure action and therefore, that the MCALA required it to have a debt collection license, which it did not have. Unlike his other contentions, this claim, if true, could result in the foreclosure action being rendered “void.” Thus, it could be raised at any time. *See Finch v. LVNV*, 212 Md. App. 748, 768 (2013) (holding that a judgment obtained by an unlicensed debt collector was void and could be challenged at any time). Although this claim was cognizable in a Rule 2-535(b) motion, it lacks merit. In *Blackstone v. Sharma*, 461 Md. 87 (2018) the Court of Appeals examined the 2007 amendments to the MCALA and held that they did not “expand the scope of MCALA to include mortgage industry players seeking foreclosure actions[.]” *Id.* at 95. Consequently, Gallagher and the Note holder were not subject to the requirements of MCALA and did not require a debt collector’s license before pursuing the foreclosure action. The court therefore did not err in denying Simard’s motion without a hearing.

**JUDGMENTS OF THE CIRCUIT  
COURT FOR PRINCE GEORGE’S  
COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANT.**