

Circuit Court for Baltimore County  
Case No. C-03-CV-20-000141

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1903

September Term, 2021

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BP REAL ESTATE INVESTMENT GROUP,  
LP

v.

JAMES E. CLARKE, ET AL.

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Wells, C.J.,  
Graeff,  
Eyler, Deborah S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Graeff, J.

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Filed: June 7, 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.

This is an appeal by BP Real Estate Investment Group, LP (“BP”), appellant, of an order by the Circuit Court for Baltimore County denying its motion to abate interest and other costs in connection with its purchase of a residential property at a foreclosure sale. The appellees are the Substitute Trustees on a deed of trust for that property.<sup>1</sup>

BP presents two questions for review,<sup>2</sup> which we have combined as follows:

Did the circuit court err or abuse its discretion by denying the motion to abate?

For the reasons set forth below, we shall dismiss the appeal.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On January 13, 2020, the Substitute Trustees filed an Order to Docket foreclosure action for a residential, owner-occupied property located at 222 Long Cove Lane, Unit M in Essex, Maryland (the “Property”). Seven months later, they filed a final loss mitigation

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<sup>1</sup> The Substitute Trustees are James Clarke, Christine Drexel, Jason Murphy, and Brian Thomas.

<sup>2</sup> The questions as posed by BP are:

1. Did the trial court err in denying Foreclosure Purchaser’s requested abatement of interest and property taxes accruing from March 26, 2021 through January 25, 2022 where interest and taxes continued to accrue in this ten (10) month timeframe because the trustee neglected to respond to a court order requesting basic documents that the trustee needed to file in order for the court to be able to ratify the sale and allow closing to occur?

2. Should a foreclosure trustee be permitted to pass-through the costs of their own trustee neglect to the foreclosed borrowers or foreclosure purchaser by declining to use money from the foreclosing lender’s portion of the sales proceeds to pay for an awarded abatement of interest and taxes?

affidavit, made by the lender, averring that the lender had not completed a loss mitigation analysis because the borrowers did not complete an application for review.

On January 14, 2021, the Property was sold at auction to BP, the highest bidder, for \$111,000. BP paid a \$10,000 deposit on the Property, and consistent with the terms of sale, it was obligated to pay interest at a rate of 6.97 percent on the balance of the sales price (\$101,000). The terms of sale in the advertisement stated that there would be “no abatement of interest” “if the settlement [was] delayed for any reason.” Taxes, ground rent, and other carrying costs were to be “adjusted to the date of sale and assumed thereafter by the purchaser.”

On February 10, 2021, the Substitute Trustees filed a Report of Sale.

## I.

### **Substitution of Purchaser**

On March 16, 2021, BP and its affiliated Maryland limited liability company, Let The Good Times Roll, LLC (“LTGTR”), filed a consent motion to substitute LTGTR in place of BP as the purchaser. The court granted the motion by order entered on March 22, 2021. BP remained “primarily liable in the event of a default by [LTGTR.]” If LTGTR did not comply with the terms of sale, BP agreed to complete the sale in its name and the Substitute Trustees agreed to accept its performance.<sup>3</sup>

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<sup>3</sup> The agreement between the parties was as follows:

[T]he original purchaser, BP REAL ESTATE INVESTMENT GROUP, LP, a Pennsylvania limited partnership, shall remain primarily liable in the event

## II.

### Deficiency Letter

On March 26, 2021, the circuit court issued a memorandum to the Substitute Trustees advising that the sale could not be ratified because the final loss mitigation affidavit was deficient.<sup>4</sup> The court explained that, because there were numerous COVID-19 related forbearance programs available to borrowers, the averment in the final loss mitigation affidavit that the borrowers had not completed an application for review did not suffice. The lender needed to complete a new affidavit specifying whether the borrower had ever requested forbearance under the relevant programs, regardless of delinquency status, and, if so, the basis upon which forbearance was denied. The Substitute Trustees were directed to “have the affiant complete an amended affidavit that sufficiently addresses the status of COVID-19 related forbearance” as of the date of the amended affidavit and to do so within 30 days.

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of a default by the Substitute Purchaser under the terms of the sale reported herein. If the Substitute Purchaser does not comply with the terms of the sale, without Further Court Order, the Original Purchaser shall complete the sale in the Original Purchaser’s own name and for the Original Purchaser’s own account; the Substitute Trustees will accept such performance from the Original Purchaser; and the Substitute Trustees will convey the property to the Original Purchaser upon tender of such performance, without necessity of further Order of Court.

<sup>4</sup> The court conducted a post-sale review pursuant to Maryland Rule 14-207.1. That Rule empowers the circuit court to “adopt procedures to screen pleadings and papers filed in an action to foreclose a lien,” and if it “determines that the pleadings or papers filed do not comply with all statutory and Rule requirements,” to give notice to the parties and, if not cured, dismiss the action, or enter any other appropriate order. Md. Rule 14-207.1(a).

**III.**

**BP's Motion to Abate Interest and Taxes**

On September 30, 2021, more than seven months later, after no response from the Substitute Trustees, BP moved to abate interest and real property taxes that accrued from March 26, 2021, through the date the circuit court ultimately ratified the sale. BP asserted that the Substitute Trustees had taken no action since the court's deficiency letter, despite BP reaching out "informally" to request action. BP asserted that \$4,967.01 in interest and \$1,772.31 in property taxes had accrued at that point. BP argued, citing *Donald v. Chaney*, 302 Md. 465, 477 (1985), that the Substitute Trustees' prolonged failure to correct the deficiency amounted to trustee neglect, which was a ground upon which abatement of interest and taxes may be granted.

On December 23, 2021, the Substitute Trustees filed an opposition to the motion to abate post-sale interest, asserting that they had been "diligently working with the [l]ender to obtain an Amended Final Loss Mitigation Affidavit that [was] sufficient to cure the deficiency," and they would "file [it] as soon as it [was] available." The Substitute Trustees argued that, pursuant to the terms of the sale, BP was not entitled to an abatement of interest during any period of delay in settlement.

On January 11, 2022, the circuit court issued a line order denying the motion to abate interest and property taxes.

**IV.**

**Correction of Deficiency and Ratification**

Two weeks later, on January 21, 2022, the Substitute Trustees filed a response to the deficiency notice and an amended final loss mitigation affidavit, dated December 29, 2021. They asserted that the borrowers had not requested a COVID-19 forbearance. The amended affidavit, like the original affidavit, averred that loss mitigation analysis had not been conducted because the borrowers never submitted a completed application. On January 25, 2022, the court ratified the sale.

This timely appeal followed.

**V.**

**Conveyance of Property to LTGTR**

On February 28, 2022, after the notice of appeal was filed, the Substitute Trustees conveyed the Property by a “Deed of Substitute Trustee” to LTGTR.<sup>5</sup> A HUD-1 settlement statement included in the appendix to the Substitute Trustees’ brief reflects that LTGTR paid \$7,830.52 in interest at settlement. The seller, however, paid the accrued property taxes.

**STANDARD OF REVIEW**

In assessing the propriety of a decision to deny a motion to abate interest and property taxes, we review *de novo* the legal standard that the court applied. *AMT Homes,*

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<sup>5</sup> This Court may take judicial notice of public records. See *MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condo., Inc.*, 253 Md. App. 279, 302 (2021).

*LLC v. Fishman*, 228 Md. App. 302, 308 (2016) (citing *Fisher v. Ward*, 226 Md. App. 149, 156 (2015)). The court’s ultimate decision to deny abatement of interest and taxes is reviewed for an abuse of discretion. *Id.* (citing *Baltrotsky v. Kugler*, 395 Md. 468, 477 n. 7 (2006)). “We therefore ask if the challenged decision ‘either does not logically flow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.’” *North Star Props., LLC v. Nadel*, 253 Md. App. 164, 171 (2021) (quoting *Zorzit v. 915 W. 36th Street, LLC*, 197 Md. App. 91, 97 (2011)).

### DISCUSSION

Ordinarily, “[a]s a matter of contract and convention,” a foreclosure purchaser who deposits a portion of the purchase price must “‘pay interest upon the unpaid balance for the period between the time fixed for settlement and the date of actual settlement’ and pay property taxes from the date of the sale.” *Id.* at 166 (quoting *Donald*, 302 Md. at 477; *AMT Homes, LLC*, 228 Md. App. at 310). There are three equitable exceptions to that general rule in instances where settlement is delayed:

a purchaser at a judicial sale will be excused from requirement to pay interest upon the unpaid balance for the period between the time fixed for settlement and the date of actual settlement only when the delay[:] (1) stems from neglect on the part of the trustee; (2) was caused by necessary appellate review of lower court determinations[;] or (3) was caused by the conduct of other persons beyond the power of the purchaser to control or ameliorate.

*Donald*, 302 Md. at 477 (cleaned up; numbering added); *see also North Star Props., LLC*, 253 Md. App. at 171 (recognizing that the equitable exceptions likewise apply to a request to abate property taxes).

BP contends that foreclosure trustees owe a duty to foreclosure purchasers to timely respond and cure deficiency orders from the trial court. BP asserts that the Substitute Trustees' failure for 10 months to "file the documents the trial court demanded" was within the Substitute Trustees' control and satisfied the first exception under *Donald*, allowing a purchaser to avoid paying interest in the event of the trustees' neglect. It asserts that, under these circumstances, the circuit court abused its discretion in denying its motion to abate post-sale interest. Further, BP states that equitable relief is necessary to avoid rewarding trustees who create unnecessary delays that result in post-sale interest to the foreclosing lenders, "who also happen to be the foreclosure trustees' clients."

The Substitute Trustees contend that the circuit court properly denied BP's motion to abate. They argue that BP did not have standing to bring the motion for abatement because, at the time, LTGTR was substituted as the purchaser at the foreclosure sale. BP had not paid or been ordered to pay the costs for which they sought abatement. Moreover, they argue that, because LTGTR, not BP, paid the post-sale interest, and LTGTR is not a party to this appeal, the appeal should be dismissed. Finally, the Substitute Trustees argue that BP failed to prove a basis for abatement.

BP argues in its reply brief that the issue of standing has been waived because the Substitute Trustees did not raise the issue in the circuit court. In any event, it asserts that the standing argument is without merit because Maryland Rule 2-201 allows for claims to be brought by "a person with whom or in whose name a contract has been made for the benefit of another . . . without joining the persons for whom the action is brought." BP



asserts that it was the “original purchaser” and that LTGTR, as the substitute purchaser, was the intended beneficiary of the contract between BP and the Substitute Trustees.

We first address the issue of standing. “[W]hen a party raises the issue of standing on appeal, this Court need not decide the issue if it was not raised and decided by the circuit court.” *Granados v. Nadel*, 220 Md. App. 482, 499 (2014). Under some circumstances, however, we will consider a standing issue even though it was not raised in the trial court. *Dorsey v. Bethel A.M.E. Church*, 375 Md. 59, 70 (2003). The issue of standing goes “to the very heart of whether the controversy before the court is justiciable. If the controversy is nonjusticiable, it should not be before the court, and therefore must be dismissed.” *State Comm’n on Hum. Rels. v. Anne Arundel County*, 106 Md. App. 221, 236 (1995). This case involves “a fundamental principle of standing to appeal—that an appellate court will not entertain an appeal by one who does not have an interest that will be affected by prosecuting the appeal.” *Lopez-Sanchez v. State*, 155 Md. App. 580, 595 (2004), *aff’d*, 388 Md. 214 (2005).

Here, it is arguable that BP did not have standing to file the motion for abatement in the circuit court. Although BP was the guarantor if LTGTR did not abide by the terms of the sale, it was not, at the time the motion for abatement was filed, a party to the contract. *Gen. Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 260 (1985) (guarantor is not a party to the principal obligation). *Accord Mercy Med. Ctr., Inc. v. United Healthcare of the Mid-Atl., Inc.*, 149 Md. App. 336, 357–58, *cert. denied*, 374 Md. 583 (2003). Other states have concluded that a guarantor does not have standing to assert the principal’s rights

under the contract. *See World Bus. Lenders, LLC v. 526-528 N. Main St., LLC*, 231 A.3d 386, 393–97 (Conn. App. 2020) (“Although the guarantors have a general interest in the foreclosure due to their separate and distinct obligation under the guarantee to pay any remaining amount due on the underlying debt, that interest does not render them parties to the foreclosure,” or give them standing to challenge a foreclosure judgment.); *Sterling Fin. Servs. Co., v. Franklin*, 259 F. App’x 367, 369 (2d Cir. 2008) (proper party to assert claims related to breach of loan agreement was borrower, not loan guarantor).

Even if BP had standing when it filed its motion for abatement in the circuit court, it clearly does not have standing to pursue an appeal in this Court. The record reflects that LTGTR paid the interest, not BP. LTGTR is not a party to this appeal, and although BP asserts on appeal that LTGTR is a “Maryland-based affiliate” of BP, it does not dispute that they are separate legal entities. BP does not have standing to assert a claim on LTGTR’s behalf, and it lacks a cognizable interest in the claim. *See Kranz v. State*, 459 Md. 456, 472 (2018) (“Ordinarily, a case becomes moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.”) (quoting *McMannis v. State*, 311 Md. 534, 538 (1988)). Therefore, this claim is not properly before us.

**APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.**