

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2161

September Term, 2023

KAMAL MUSTAFA, *et al.*

v.

COMMUNITY LOAN SERVICING, LLC

Nazarian,
Reed,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 1, 2024

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

Kamal Mustafa and Sidikatu Raji, appellants, appeal from a final judgment issued by the Circuit Court for Washington County which: (1) prohibited them from marketing, selling, renting, or entering non-residential real property owned by Community Loan Servicing, LLC, appellee, and (2) ordered them to pay CLS \$65,890.09 in attorney’s fees and costs. On appeal, Mr. Mustafa contends that: (1) appellee lacked standing to bring the action; (2) the law firm who represented appellee is a “Washington, DC, law firm . . . [that] is currently not in good standing in Maryland[,]” and therefore could not represent appellee; and (3) the invoices for attorney’s fees and costs submitted by appellee were “incorrect” and did “not meet the requirements of Business record exceptions.” Mr. Raji has not filed a brief.¹ For the reasons that follow, we shall affirm.

In 2005, Sampach and Paula Prak submitted Articles of Incorporation for Sam & Paula, LLC (Sam and Paula I). Thereafter, the Praks, through Sam and Paula I, executed a promissory note to InterBay Funding, LLC in the amount of \$235,688.00. That notice was secured by a “Deed of Trust and Security Agreement, Assignment of Leases and Rents, Security Agreement and Fixture Filing” which was executed against non-residential real property located at 640 Frederick Street in Hagerstown, Maryland. In February 2019, Paula Prak submitted Articles of Cancellation for Sam and Paula I. Shortly thereafter, the loan fell into default and the property was sold to appellee at a foreclosure auction on October 7, 2022.

¹ Appellee contends that the appeal should be dismissed as to Mr. Mustafa because: (1) he filed an informal brief without being allowed to do so pursuant to Maryland Rule 8-502(a)(9), and (2) he did not raise any objections to its request for attorney’s fees in the circuit court. We shall deny that motion.

Several months before the foreclosure auction, Mr. Mustafa submitted Articles of Incorporation for a new Sam & Paula, LLC (Sam and Paula II). Then, in November 2022, appellee learned that Mr. Raji, a real estate agent employed by Anne Arundel Properties, Inc. d/b/a Taylor Properties, had listed the property for sale on behalf of Mr. Mustafa and Sam and Paula II without its consent. Immediately thereafter, appellee filed a complaint against appellants raising claims of disparagement of title, fraud, conversion, intentional interference with prospective economic advantage, conspiracy, and to quiet title. They also filed a motion for a temporary restraining order and preliminary injunction to prevent appellants from selling the property during the pendency of the litigation. Following a hearing on the preliminary injunction and TRO, at which appellants failed to appear, the court entered an order on January 27, 2023, granting the preliminary injunction. Appellants appealed, and this court affirmed, finding that none of the issues raised on appeal were raised in the circuit court. *See Mustafa v. Community Loan Servicing, LLC*, No. 2176, Sept. Term, 2022 (filed Nov. 6, 2023).

Shortly thereafter, appellee filed a request for an order of default as to all defendants, noting that no defendant had filed an answer. On November 21, 2023, Mr. Mustafa filed a response. In that response, he did not indicate why he had not filed an answer but asserted that the original loan from InterBay Funding to Sam and Paula I, was “legally unenforceable” because InterBay Funding “never had a Maryland Mortgage lender license” as required by Section 11-504 of the Maryland Financial Institutions Article (FI), and therefore that any assignment of the loan was a “nullity.” The response did not provide any support for this claim. On November 22, 2023, the court issued an Order of Default

against Mr. Mustafa and the other defendants. On December 26, 2023, Mr. Mustafa filed a motion to vacate the order of default, again asserting that the original loan was “unenforceable” because InterBay was not a licensed mortgage lender. In support, appellant attached a screenshot from his computer, which appeared to show that he had conducted an online search of the Nationwide Multistate Licensing System (NMLS) and found no record that Interbay Funding, LLC was a licensed mortgage lender in Maryland. The court denied the motion to vacate without a hearing finding that appellant had “offered no valid reason to vacate [the] Order of Default.”

Following a January 8, 2024, hearing, the court entered a default judgment which prohibited appellants from marketing, selling, renting, entering, or interfering with appellee’s ownership of the property. That judgment reserved the issue of appellee’s request for attorney’s fees, pending appellee’s submission of a detailed invoice to the court. Appellants attended the January 8 hearing, but did not make any arguments or raise any objections.

After the default judgment was entered, counsel for appellee submitted an invoice and affidavit of fees and costs to the court. Appellants did not file a response. The court then held an evidentiary hearing on the attorney’s fees request on March 13, 2024, which appellants did not attend. Thereafter, the court entered a judgment against appellants in the amount of \$65,890.09, \$54,229.00 of which represented appellee’s attorney’s fees, and \$11,661.09 of which represented its costs. Mr. Mustafa and Mr. Raji filed separate notices of appeal from both the default judgment and the judgment awarding attorney’s fees and costs.

As an initial matter, Mr. Raji has not filed a brief. And because Mr. Mustafa is not a licensed attorney in Maryland, he may not file a brief on Mr. Raji’s behalf. Consequently, Mr. Raji has waived his right to raise any issues on appeal.

Mr. Mustafa has filed a brief, and contends that (1) appellee lacked standing to bring the action because the original loan was void; (2) the law firm who represented appellee in the circuit court is a “Washington, DC, law firm . . . [that] is currently not in good standing in Maryland[,]” and therefore it could not represent appellee; and (3) the invoices for attorney’s fees and costs submitted by appellee were “incorrect” and did “not meet the requirements of Business record exceptions.” Mr. Mustafa, however, did not raise his second and third claims in the circuit court. In fact, he did not file a response when appellee filed its invoice and affidavit of fees and costs. And he did not attend the hearing where the court considered the issue of attorney’s fees. Consequently, we will not address either of those issues for the first time on appeal. *See* Maryland Rule 8-131(a) (noting that an appellate court will not ordinarily decide an issue “unless it plainly appears by the record to have been raised in or decided by the trial court”).²

Mr. Mustafa’s remaining claim, which he raised for the first time after appellee requested an order of default, is that the original loan from InterBay Funding to Sam and Paula I was a “nullity” because InterBay funding was not a licensed mortgage lender in

² In any event, Mr. Mustafa’s second claim is wholly without merit. A law firm is not required to be registered as a business in Maryland for one of its attorneys to represent a client in Maryland provided that the attorney is licensed to practice law in Maryland, which counsel for appellee was in this case.

Maryland, as required by FI § 11-504. He further contends that because the loan was void, appellee could not acquire a valid title when it purchased the property at the foreclosure auction and, therefore, that it lacked standing to file the complaint against him. We disagree.

At the outset, it is not clear that Mr. Mustafa has standing to raise a challenge to the validity of the loan between InterBay Funding and Sam and Paula I. Mr. Mustafa was not a party to that loan. Nor was he a party to the foreclosure proceeding where appellee purchased the property. In fact, there is no evidence in the record that he has any interest in the property at all, much less any right to sell the property without appellee’s consent.

Nevertheless, his claim is meritless. To qualify as a mortgage lender under FI § 11-504 an entity must make mortgage loans, service mortgage loans, or assist or aid borrowers in obtaining mortgage loans. *See generally* FI § 11-501(k)(1). And a mortgage loan is defined as “any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate on which a dwelling is constructed or intended to be constructed.” FI § 11-501(m)(1). But the loan from Interbay Funding to Sam and Paula I was for a non-residential property. Consequently, Mr. Mustafa has failed to demonstrate that Interbay Funding was required to be licensed as a mortgage lender.³

³ Additionally, the fact that Interbay Funding is not in the NMLS database does not, without more, demonstrate that it was not licensed as a mortgage lender in 2005 when the loan was made.

Moreover, even if we assume that Interbay Funding was required to have a mortgage lending license and that it did not possess such a license at the time the loan was made, that does not mean that the court erred in entering the default judgment. Appellee acquired title to the property after purchasing it at a foreclosure auction. And any challenges to the validity of the loan could have been raised by the borrower in that foreclosure action. But no such challenges were raised. Thus, the ratification of that foreclosure sale by the circuit court is res judicata as to the validity of the sale. *See Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008). Because the court had fundamental jurisdiction to ratify that foreclosure sale, Mr. Mustafa may not collaterally attack the sale in this case. *LVNV Funding, LLC v. Finch*, 463 Md. 586, 608 (2019) (holding that collateral attacks “are permitted only when the court that rendered the judgment had no jurisdiction to do so” (emphasis omitted)).

In sum, Mr. Mustafa has failed to present a valid defense as to why he should not be enjoined from selling, renting, or entering property in which he has no discernable legal interest. Nor has he provided a reason why he should not be required to pay the attorney’s fees and costs that appellee incurred to prevent him from doing so. Consequently, we shall affirm the judgments of the circuit court.

**APPELLEE’S MOTION TO DISMISS
DENIED. JUDGMENT OF THE
CIRCUIT COURT FOR WASHINGTON
COUNTY AFFIRMED. COSTS TO BE
PAID BY APPELLANTS.**