APPENDIX A

Circuit Court for Baltimore City
Case No. 24-C-18-005408

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 581

September Term, 2020

VALEDIA GROSS

v.

FIRST NLC FINANCIAL SERVICES, LLC, ET AL.

Kehoe,
Leahy,
Beachley, JJ.

Opinion by Kehoe, J.

Filed: August 18, 2021

For more than a decade, Valedia Gross has been arguing that a deed of trust encumbering her property and its associated note are unenforceable. The current holder of the note is Deutsche Bank National Trust Company ("Deutsche Bank"), in its capacity as the trustee for Morgan Stanley Ixis Real Estate Capital Trust 2006-2 Mortgage Pass Through Certificates, Series 2006-2. It does not agree with Ms. Gross.

The current appeal arises out of a civil action filed in the Circuit Court for Baltimore City in 2018, in which Ms. Gross sought a declaratory judgment that the deed of trust and the note were unenforceable. The circuit court initially issued a default declaratory judgment in her favor but then vacated that judgment and, eventually, denied her requested relief. On appeal, Ms. Gross argues that the circuit court erred when it vacated the default declaratory judgment and when it ultimately denied her request for a declaratory judgment in her favor.[1]

[1] The question presented by Ms. Gross was stated in her brief as follows:

> Did the circuit court err or abuse its discretion in vacating the enrolled judgment 5/15/20 to then, deny the Amended Complaint 7/10/20 that was properly Granted, 1/29/20?

Ms. Gross's first appellate contention is not properly before us. The court did not err in denying her request for a declaratory judgment because the issues between the parties were conclusively resolved in a prior action between Ms. Gross and the holder of the note. We will affirm the judgment of the circuit court.

BACKGROUND

Ms. Gross and Viola Wright obtained title to the property at 4018 Carlisle Avenue in Baltimore in December 1999. Ms. Wright passed away in February 2000. On September 29, 2006, Ms. Gross borrowed $120,250 from First NLC Financial Services, LLC ("First NLC").[2] She executed a promissory note in which she promised to pay the amount of the loan, plus interest, to the lender. The loan was secured by a deed of trust encumbering the Carlisle Avenue property that was recorded among the land records of Baltimore City on or about May 8, 2007. In the deed of trust, Ms. Gross conveyed the property to a trustee with a power of sale. The First NLC deed of trust was eventually assigned to Deutsche Bank.

In the eight month interval between the day that she signed the loan documents and the date that the First NLC deed of trust was recorded, Ms. Gross executed a deed of

[2] First NLC was named as a party in the declaratory judgment action from which this appeal arises but it did not participate in that action or file a brief in this appeal. The parties do not dispute that it is a defunct entity.

assignment conveying the property to herself and Miriam Gross as joint tenants for no consideration. The deed of assignment was recorded among the land records of Baltimore City on November 22, 2006, that is, several months before First NLC recorded its deed of trust.

The 2010 litigation

In 2010, Deutsche Bank, who by that time was the holder of the note,[3] initiated a declaratory judgment action in the Circuit Court for Baltimore City, Case No. 24-C-10004309 OG.[4] Deutsche Bank sought a declaration that the deed of trust was a valid and enforceable lien with priority over the deed of assignment. Deutsche Bank prevailed. The court entered a judgment declaring that the deed of trust was a valid and enforceable lien against the property and that Miriam Gross was a subsequent assignee whose interest was to that lien. The declaratory judgment was recorded in the land records for Baltimore City. Ms. Gross noted an appeal to this Court. In an unreported opinion, *Gross v. Deutsche Bank National Trust, et al.*, No. 496, Sept. Term 2011, filed October 18, 2012, this Court affirmed the judgment.

The 2018 Litigation

In July 2018, Deutsche Bank provided Ms. Gross with notice of its intention to foreclose. Thereafter, she filed an action for a declaratory judgment in the Circuit Court for

[3] At the time, Deutsche Bank held the note as trustee for Morgan Stanley Ixis Real Estate Capital Trust 2006-2 Series 2006-2.

[4] In the instant case, Deutsche Bank explained that the most recent assignment of the deed of trust at issue was recorded among the land records of Baltimore City on or about February 15, 2008 and a copy of that assignment was attached as an exhibit to Deutsche Bank's "Verified Motion to Re-Open Case and Intervene For the Purpose of Moving to Vacate Judgment And Request for Hearing" filed in Case No. 24-C-18-005408, which we shall discuss, *infra*."

Baltimore City, which was docketed as *Valedia Gross v. First NLC Financial Services, LLC*, Case No. 24-C-18005408, from which this appeal arises. Additionally, substitute trustees acting on Deutsche Bank's behalf filed a foreclosure action, docketed as *Carrie M. Ward, et al. v. Valedia Gross*, Case No. 24-O-18-001996. Ultimately, the foreclosure sale was ratified and confirmed in an order of the Circuit Court for Baltimore City dated October 10, 2019. The circuit court's judgment in the foreclosure case was affirmed by this Court in *Valedia Gross v. Carrie M. Ward, et al.*, No, 42, September Term, 2020 (filed March 9, 2021). We return to the declaratory judgment action.

Ms. Gross's 2018 declaratory judgment action named only one defendant, the original lender, First NLC. In addition to challenging the enforceability of the deed of trust (the issue in the 2010 litigation), Ms. Gross also asserted that the deed of trust note was unenforceable. Even though she knew that Deutsche Bank was claiming that it had the right to enforce the note, Ms. Gross did not name Deutsche Bank as a party nor did Ms. Gross serve Deutsche Bank with notice of the action. Ms. Gross sought to invalidate the deed of trust and its subsequent assignment. At the time Ms. Gross's declaratory judgment action was filed, First NLC was defunct and did not file an answer or other responsive pleading. After serving First NLC through the Maryland State Department of Assessments and Taxation, Ms. Gross obtained a default declaratory judgment, which she recorded in the land records for Baltimore City on or about February 7, 2020. In relevant part, the judgment declared that the deed of trust, the deed of trust note, and an assignment of the deed of trust

note to one of Deutsche Bank's predecessors in title were all "null and void." Additionally, the judgment directed the clerk of the circuit court to accept a certified copy of the order for recordation in the land records of Baltimore City. All of the provisions of the order were "subject to further order" of the circuit court. The date of the judgment was January 29, 2020.

In March 2020, and after learning of the default declaratory judgment obtained by Ms. Gross, Deutsche Bank filed a motion to re-open the case and intervene for the purpose of vacating the default declaratory judgment and striking it from the land records. Deutsche Bank argued that it was, and at all relevant times had been, the beneficiary of the deed of trust since before the initiation of Ms. Gross's declaratory judgment action, and that it had an interest in the subject property prior to the time Ms. Gross filed her action. Moreover, Deutsche Bank asserted that Ms. Gross had engaged in extrinsic fraud in proceeding with her declaratory judgment action by failing to notify it despite knowing that Deutsche Bank had an interest in the litigation and that the most recent assignment of the deed of trust had been recorded among the land records on or about February 15, 2018. Deutsche Bank alleged that Ms. Gross had "actively participated in a concurrent foreclosure case in which Deutsche Bank was identified as the beneficiary of the Deed of Trust" and that both the 2010 litigation and the foreclosure action made her aware that Deutsche Bank was the present interest holder in the property and should have been made a party to the declaratory judgment action.

Turning to the merits, Deutsche Bank argued that Ms. Gross's declaratory judgment action was barred by the doctrine of *res judicata* because the validity of the deed of trust had been conclusively determined by the circuit court in the 2010 litigation and that judgment had been affirmed on appeal. In addition, Deutsche Bank asserted that during the pendency of Ms. Gross's declaratory judgment action, the deed of trust was being foreclosed upon. In fact, at the time the circuit court issued its default declaratory judgment on January 29, 2020, the final order ratifying the foreclosure sale of the property had been issued.[5] As a result, the validity and enforceability of the deed of trust, "including its power of sale provision, for the purpose of foreclosure were finally decided and were not subject to collateral attack[.]" Deutsche Bank emphasized that, even though both the 2010 litigation and the foreclosure action directly concerned the same subject matter as Ms. Gross's declaratory judgment action, she had failed to reference either action to the circuit court.

On May 15, 2020, the court vacated the default declaratory judgment and ordered that the recorded copy of that judgment be removed from the land records. Thereafter, on July 10, 2020, the circuit court held a contested hearing on Ms. Gross's amended complaint for declaratory judgment. At the conclusion of the hearing, the court, relying on *Sprenger v. Pub. Serv. Comm'n of Maryland*, 400 Md. 1 (2007) and *Hanover Investments, Inc. v. Volkman*, 455 Md. 1 (2017), explained that "it is well settled law that a trial court is not

[5] As we have already noted, the foreclosure sale was ratified by the Circuit Court for Baltimore City on or about October 10, 2019.

authorized to hear a declaratory judgment action while a similar case involving the same issues and the same parties is pending before another court, and also that [a] declaratory judgment action should not be used where [a] declaration would not serve a useful purpose." The court also stated that the issues raised by Ms. Gross "either were raised or could have been raised in the foreclosure proceeding and that the foreclosure proceeding would have been an appropriate place and is an appropriate place for the court to adjudicate the validity" of the deed of trust and the note as well as Deutsche Bank's right to enforce them. The court rejected Ms. Gross's argument that she did not have sufficient information to make her arguments in the foreclosure proceeding. The court concluded that a declaratory judgment would not be helpful in resolving the dispute. By order entered on July 14, 2020, the court denied Ms. Gross's amended complaint for declaratory judgment.

THE LEGAL STANDARDS

Md. Code, Courts & Jud. Proc. § 3-409(a) authorizes a circuit court to issue a declaratory judgment in a civil case, if doing so "will serve to terminate the uncertainty or controversy giving rise to the proceeding[.]" In such actions, the trial court ordinarily "must declare the rights of the parties in light of the issues raised." *Jennings v. Gov't Employees Ins. Co.*, 302 Md. 352, 355 (1985). Although dismissal is rarely appropriate in a declaratory judgment action, *Volkman*, 455 Md. at 17, when "a declaratory judgment is brought and the controversy is not appropriate for resolution by declaratory judgment, the circuit court is neither compelled, nor expected, to enter a declaratory judgment." *Converge Servs. Group,*

LLC v. Curran, 383 Md. 462, 477 (2004). A circuit court may dismiss a complaint for declaratory judgment only when a plaintiff is not entitled to a declaration of his or her rights. *Allied Inv. Corp. v. Jasen*, 354 Md. 547, 556 (1999). For example, a motion to dismiss may lie when a case is moot, *Broadwater v. State*, 303 Md. 461, 468 (1985), or when the same issues are awaiting decision in another common-law proceeding. *Haynie v. Gold Bond Bldg. Prods.*, 306 Md. 644, 650-54 (1986). Similarly, a circuit court may dismiss a declaratory judgment action when there is already a pending action "'involving the same parties and in which the identical issues that are involved in the declaratory action may be adjudicated.'" *Volkman*, 455 Md. at 17 (quoting *Sprenger*, 400 Md. at 27-28, and citing Borchard, *Declaratory Judgments* (2d ed. 1941 at 350 ("[I]t is manifestly unwise and unnecessary to permit a new petition for a declaration to be initiated" when there is a pending action involving the same parties in which the dispute can be resolved)). In the instant case, the circuit court did not reach the merits of the complaint for declaratory judgment but "denied" it—in effect, the court dismissed the action. We review the grant of a motion to dismiss to determine whether the circuit court was legally correct. *Lamson v. Montgomery County*, 460 Md. 349, 360 (2018); *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 284 (2018).

ANALYSIS

Ms. Gross contends that the circuit court erred in vacating her default declaratory judgment, in allowing Deutsche Bank to intervene in the declaratory judgment case, and in denying her amended complaint for declaratory judgment. She asserts that Deutsche Bank

failed to show fraud, mistake or irregularity, as required by Md. Rule 2-535(b). She maintains that Deutsche Bank's motion to intervene and to vacate the default declaratory judgment was filed in bad faith and under false pretenses. She states that she attached a copy of her complaint for declaratory judgment to a filing in the foreclosure action and, therefore, Deutsche Bank had knowledge of her declaratory judgment action. Ms. Gross also argues that fraud occurred during the closing on the First NLC loan and that the deed of trust contained the forged signatures of herself and another individual. Ms. Gross does not deny that she signed the deed of trust, only that the recorded version of her signature was a forgery. She challenges Deutsche Bank's assertion that the validity of the deed of trust was conclusively determined in the 2010 litigation. Finally, Ms. Gross states that "it was beyond any serious dispute that [Deutsche Bank] failed to exercise ordinary diligence in presenting [its] challenge to the court, and [the trial judge] did not revise the judgment only upon a showing, by clear and convincing evidence, of 'fraud, mistake, or irregularity.'" Ms. Gross's arguments are unpersuasive for two reasons.

A

Ms. Gross's challenge to the circuit court's order vacating the default declaratory judgment in her favor is not properly before us.

Although an order vacating an enrolled judgment does not resolve the case and, indeed, reopens it, ordinarily, an order vacating an enrolled judgment is treated as a final judgment and is immediately appealable. *See e.g., Ventresca v. Weaver Bros., Inc.*, 266 Md. 398, 403 (1972) (one who obtains "an enrolled judgment acquires a substantial right which, if

divested by an order setting it aside, confers an immediate right of appeal[.]"); *Davis v. Attorney General*, 187 Md. App. 110, 120 (2009); *see also* Kevin F. Arthur, FINALITY OF JUDGMENTS AND OTHER APPELLATE TRIGGER ISSUES 46–47 (3d Ed. 2018) (collecting and analyzing relevant appellate decisions). The reason for this "well-established principle is that the person who benefitted from the now-vacated enrolled judgment has lost an important right, and therefore an appeal of the ruling is necessary to vindicate that right, if it was wrongfully lost." *Davis*, 187 Md. App. at 122 (citing *Ventresca*, 266 Md. at 403). There is no doubt that the court's order vacating the default summary judgment was immediately appealable by her.

The circuit court granted Deutsche Bank's motion to vacate the default declaratory judgment on May 15, 2020. Ms. Gross failed to note an appeal from that order within thirty days. As a result, no issue relating to the circuit court's decision to vacate the default declaratory judgment is properly before us.[6]

B

We now turn to the circuit court's decision to deny Ms. Gross's request for a declaratory judgment. Her declaratory judgment action was based on her assertion that First NLC and its agents, successors, and assigns, engaged in fraudulent acts and failed to perform certain duties expressed in the terms and conditions of the promissory note and deed of trust between her and First NLC. Ms. Gross alleged, among other things, that various assignments of the deed of trust occurred without her consent, that First NLC failed

[6] Were the merits before us, we would affirm the circuit court's decision to vacate the default declaratory judgment. As Ms. Gross recognizes in her brief, an enrolled judgment is subject to revision by the circuit court pursuant to Md. Rule 2-535(b), which requires a showing by clear and convincing evidence of "fraud, mistake, or irregularity." *Davis*, 187 Md. App. at 123-24. "Fraud" in this context means extrinsic fraud and not intrinsic fraud. *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013); *DeArriz v. Klingler-DeArriz*, 179 Md. App. 458, 470 (2008). Fraud is extrinsic when it actually prevents an adversarial trial. *Pelletier*, 213 Md. App. at 290-91. In addition, a party seeking to set aside an enrolled judgment must show that it acted "with ordinary diligence and in good faith upon a meritorious cause of action or defense." *Bland v. Hammond*, 177 Md. App. 340, 357 (2007) (quoting *J.T. Masonry Co. v. Oxford Constr. Servs., Inc.*, 314 Md. 498, 506 (1989)).

There was certainly clear and convincing evidence that Ms. Gross was guilty of extrinsic fraud—she named First NLC, an entity that no longer existed and had no interest in the property, as the sole defendant, but did not name Deutsche Bank as a defendant, which she must have known had a claim to enforce the note as a result of the 2010 litigation and the currently-pending foreclosure action. To put it another way, Ms. Gross successfully concealed Deutsche Bank's interest in the property from the court and her actions prevented the adversarial trial to which Deutsche Bank was entitled. Ms. Gross points to nothing in the record that suggests to us that Deutsche Bank failed to act with due diligence in this case once it learned of the default declaratory judgment.
to conduct business with her in good faith, and that an individual falsely identified herself as a vice president of MERS[6] and was not authorized to sign the assignment. Our review of the record makes clear that the circuit court's decision to dismiss Ms. Gross's declaratory judgment action was legally correct because all of Ms. Gross's claims were barred by the doctrine of *res judicata*.

The doctrine of *res judicata*, or claim preclusion, "bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter and causes

[6] A reference to the Mortgage Electronic Registration System, a database created by the mortgage banking industry. *See Anderson v. Burson*, 424 Md. 232, 237–38 (2011).

of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation." *Anne Arundel County Bd. of Educ. v. Norville*, 390 Md. 93, 106-07 (2005). The doctrine "restrains a party from litigating the same claim repeatedly and ensures that courts do not waste time adjudicating matters which have been decided or *could have been* decided fully and fairly." *Id.* at 107 (emphasis in original). In Maryland, *res judicata* consists of three elements:

> (1) the parties in the present litigation are the same or in privity with the parties to the earlier litigation; (2) the claim presented in the current action is identical to that determined or that which could have been raised and determined in the prior litigation; and (3) there was a final judgment on the merits in the prior litigation.

Cochran v. Griffith Energy Servs., Inc., 426 Md. 134, 140 (2012). *Accord, Davis v. Wicomico County Bureau,* 447 Md. 302, 306-07 (2016); *Colandrea v. Wilde Lake Community Ass'n, Inc.*, 361 Md. 371, 392 (2000).

In the case at hand, all the elements of *res judicata* have been satisfied. The parties to the instant case were clearly the same or in privity with the parties in the 2010 litigation, which was filed by Deutsche Bank to clear the cloud on the title and establish that the deed of trust was a valid and enforceable lien with priority over Ms. Gross's deed of assignment. The validity of the deed of trust was established in the 2010 litigation and the court's

judgment was affirmed on appeal to this Court. In the instant case, Ms. Gross sought a declaratory judgment invalidating the deed of trust and the assignment to Deutsche Bank. Her allegations in the instant case were based on the same facts and transactions that formed the basis of the 2010 litigation. Both cases arose out of the same operative facts and concerned the same subject, specifically, the 2007 mortgage loan transaction and the validity and enforceability of the deed of trust. The facts upon which Ms. Gross's current claims are based occurred prior to the initiation of the 2010 litigation and her claims clearly could have been litigated in the prior action.

At the hearing before the circuit court, and in her brief, Ms. Gross argued that the deed of trust should be invalidated because it contained two forged signatures, including her own. Although Ms. Gross claimed to have discovered the forged signatures in early 2020, the deed of trust was recorded among the land records of Baltimore City and was publicly available since the time it was recorded in 2007, prior to the time the 2010 litigation was initiated. Thus, Ms. Gross's claims pertaining to alleged forged signatures could have been raised in the 2010 litigation and, for that reason, are also barred by the doctrine of *res judicata*. (Additionally, and for exactly the same reasons, Ms. Gross's claims are also barred by the *res judicata* effect of the foreclosure action.)

Because the grounds presented by Ms. Gross in the present action were barred by the doctrine of *res judicata*, the circuit court properly concluded that entry of a declaratory judgment would not be helpful in resolving a dispute in the instant case. The circuit court's decision to deny her requested relief was legally correct.

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

APPENDIX B

VALEDIA GROSS	*	IN THE
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
FIRST NLC FINANCIAL SERVICES, LLC	*	BALTIMORE CITY
Defendant	*	CASE NO. 24-C-18-005408

* * * * * * * * * * * * * *

ORDER DENYING DECLARATORY JUDGMENT

This matter came before the Court on July 10, 2020, for a hearing on Plaintiff's Amended Complaint seeking declaratory judgments (Docket Entry No. 2). The hearing was conducted via remote electronic participation pursuant to Maryland Rule 2-802(a). Plaintiff participated. Deutsche Bank's counsel participated. Upon consideration of the pleadings, oral arguments, and applicable law, it is this 10th day of July 2020, by the Circuit Court for Baltimore City, Part 24, hereby:

ORDERED that for the reasons stated on the record, Plaintiff's Amended Complaint seeking declaratory judgments (Docket Entry No. 2) is DENIED; and it is further

ORDERED that the Clerk shall mark this case "CLOSED," with costs assessed to Plaintiff.

Judge Kendra Young Ausby
Judge's Signature appears on the original document

Kendra Y. Ausby
Judge

TRUE COPY
TEST

Marilyn Bentley

MARILYN BENTLEY, CLERK

Notice to Clerk: Please send copies to Plaintiff and Deutsche Bank's counsel.

APPENDIX C

VALEDIA GROSS	*	**IN THE CIRCUIT COURT**
V.	*	**FOR BALTIMORE CITY**
FIRST NLC FINANCIAL SERVICES, LLC.	*	**CASE 24 C 18 005408**

ORDER

For reasons outlined in Deutsche Bank's Motion to Vacate Declaratory Judgment and Strike Order from Land Records (Paper #15), it is this 15th day of May 2020 ORDERED

a) That this Court's Declaratory Judgment by Default entered January 29, 2020 (Paper #12) is VACATED,

b) That any recordation of the entry of that judgment in the Land Records of the Circuit Court for Baltimore be removed,

c) That the Clerk set in this matter for a hearing on the Fast Track Docket, and

d) That the Clerk provide true test copies of this order to counsel of record.

Judge Philip Jackson
Judge's Signature appears on the original document

Philip S. Jackson, Judge
Circuit Court for Baltimore City

This order was signed by Judge Cavin with authorization of Judge Jackson

TRUE COPY
TEST
Marilyn Bentley
CLERK

Unlocated; None

APPENDIX D

VALEDIA GROSS	*	**IN THE**
	*	**COURT OF APPEALS**
	*	**OF MARYLAND**
	*	**Petition Docket No. 275 September Term, 2021**
v.	*	
	*	**(No. 581, Sept. Term, 2020 Court of Special Appeals)**
FIRST NLC FINANCIAL SERVICES, LLC, et al.	*	**(No. 24-C-18-005408, Circuit Court for Baltimore City)**

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above-captioned case, it is this 20th day of December, 2021

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, DENIED as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Joseph M. Getty
Chief Judge