

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0370

September Term, 2015

BALTIMORE EAGLE, LLC

v.

DIANE S. ROSENBERG, et al.
SUBSTITUTE TRUSTEES

Wright,
Graeff,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: July 7, 2016

*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.

Appellant, Baltimore Eagle, LLC is the record owner of property known as 2020 N. Charles Street. In September 2013, Appellees, substitute trustees, filed a foreclosure action in the Circuit Court for Baltimore City against the Estate of Richard B. Richardson, from whom Appellant purchased the property in December 2012. Appellant moved to stay and dismiss the action pursuant to Maryland Rule 14-211. The court denied the motion on the grounds that Appellant was not a party to the action, and had not moved to intervene; the transfer of title created a default; the motion was untimely; and there was no facially valid challenge to the validity of the lien or the right to foreclose. Appellant filed a timely appeal and presents the following questions, which we have edited, for our review:¹

- A. Did the circuit court err in holding that Appellant did not have standing to file a motion to stay and dismiss pursuant to Maryland Rule 14-211?
- B. Did the circuit court err when it held that Appellant’s motion to stay and dismiss was untimely?
- C. Did the circuit court apply an improper standard or abuse its discretion when it denied Appellant’s motion to stay and dismiss on the grounds that

¹ Appellant phrased the questions presented as follows:

Did the circuit court err as a matter of law when it determined that the record owner of the property prior to the foreclosure being docketed was “not a party to the [foreclosure] action”?

Did the circuit court err as a matter of law when it held that a motion under Rule 14-211 was filed by the record owner before the record owner was served in the foreclosure was untimely?

Did the circuit court apply an improper standard or abuse its discretion when it held that a motion which described three specific unauthorized charges, detailed the unlawful actions of the lender which created the initial default and the lender’s continued refusal to provide an accounting?

Appellant failed to state a valid defense to the validity of the lien or the lien instrument or to the right of Appellees to foreclose?

As explained below, we answer each question in the affirmative and remand for further proceeding, consistent with this opinion.

BACKGROUND

In 1997, Richard B. Richardson purchased property known as 2020 N. Charles St., financed by a purchase money mortgage. Ultimately, the note and deed of trust were assigned to JP Morgan Chase (Chase). In September 2007, Mr. Richardson died. Mr. Richardson's estate (the Estate) arranged for automatic mortgage payments from a bank account that Chase had authority to debit.

On September 26, 2013, the trustees, Appellees, initiated a foreclosure action in circuit court against the Estate. On November 22, 2013, Charles Management Company, an alleged agent of the Estate, pursuant to Md. Rule 14-211, filed a motion to dismiss. The primary allegation was that Chase improperly debited the bank account for amounts not due, thereby creating a default that should not have existed. The movant recited that the Estate was paying amounts into escrow pending resolution of the dispute over amounts due.

On December 16, 2013, Appellees filed an opposition to the motion. Chase asserted that there was a default in non-payment of amounts due and argued that there was no challenge to the validity of the lien. By order dated January 9, 2014, the circuit court struck the motion on the ground that movant was not a party.

On January 23, 2014, the Estate filed what was essentially the same motion, and Appellees re-filed their opposition. By order dated March 12, 2014, the court denied the motion on the ground that it was untimely and presented no facially valid defense to the validity of the lien or Appellees right to foreclose. See Rule 14-211 (b)(1).

On August 15, 2014, Appellant filed a motion to stay and dismiss. Appellant asserted that it took title to the property on December 6, 2012 by deed recorded on February 12, 2013. Appellant maintained that it learned of the foreclosure on August 1, 2014. Appellant was not named as a party in the action. Appellant argued that Chase had improperly charged the Estate's account, thereby creating a default, and consequently, Chase had no right to foreclose.

The parties engaged in settlement discussions for several months. On March 11, 2015, Appellees filed their opposition to Appellant's motion to stay and dismiss. Appellees asserted that they had been unaware of the transfer of title. Appellees argued that (1) the payment issue had been raised by the Estate, and had been decided; (2) the transfer of title to appellant created a default because it was done without Chase's consent; and (3) Appellant did not dispute the validity of the lien.

By order dated March 27, 2015, the court denied the motion to stay and dismiss on the ground that Appellant was not a party; the transfer of title created a default; the motion was untimely; and there was no facially valid challenge to the validity of the lien or the right to foreclose.

On April 1, 2015, appellant was served with process in the foreclosure action. On April 27, 2015, appellant filed a motion to intervene. By order dated May 29, 2015, the court granted the motion. On April 27, 2015, appellant noted an appeal to this Court.

STANDARD OF REVIEW

We review a trial court's decision to grant or deny a stay of proceedings for an abuse of discretion. *Bechamps v. 1190 Augustine Herman, LC*, 202 Md. App. 455, 460 (2011).

DISCUSSION

A.

Appellant contends the court erred in finding that it did not have standing to file its motion to stay and dismiss. While Appellees recognize that Appellant's could intervene as of right under Maryland Rule 2-214(a)², they nonetheless conclude that because Appellant was not a named party to this case, it lacked standing to file a Rule 14-211 motion. The court erred in denying Appellant's motion on the basis that Appellant was not a party to the action, because Appellant, as the record owner of the property, had standing to file a motion to stay and dismiss pursuant to Rule 14-211(a).

Md. Rule 14-211, which governs the filings of motions to stay and dismiss foreclosure actions provides:

² Maryland Rule 2-214. Intervention

- (a) **Of right.** Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.

The borrower, a record owner, a party to the lien instrument, a person who claims under the borrower a right to or interest in the property that is subordinate to the lien being foreclosed, or a person who claims an equitable interest in the property may file in the action a motion to stay the sale of the property and dismiss the foreclosure action.

The rules do not address the question of intervention because Rule 14-209 requires the foreclosing parties to join the record owner. Appellees erred in failing to do so. Appellant had the right to intervene; it was not discretionary. Under those circumstances, and considering that ultimately Appellant did intervene, we will not elevate form over substance. The court erred in denying the motion on that basis.

B.

Appellant contends that, because the motion was filed within the time limits prescribed in Maryland Rule 14-211(a)(2)(B), the court erred in holding that the motion was untimely. Appellees argue that Appellant’s motion was untimely as it was not filed within the time limits prescribed in Rule 14-211(a)(2)(A)(i), which applies to owner-occupied residential property. We agree with Appellant.

In prescribing time limits in which to file motions to stay and dismiss, Rule 14-211 distinguishes between “[o]wner-occupied residential property” and “[o]ther property.” Rule 14-211(a)(2)(A)(i) provides that with respect to owner-occupied residential property, a motion by a borrower shall be filed no later than 15 days after the date the final loss mitigation affidavit is filed.³ Rule 14-211(a)(2)(B) provides that, with respect to non-

³ Rule 14-211(a)(2)(A)(i) is relevant here; however, the full text of 14-211(a)(2)(A) reads as follows:

(cont.)

owner-occupied property, a motion by a record owner shall be filed within 15 days after services of process.

Maryland Rule 14-202(l) defines owner-occupied residential property as “residential property in which at least one unit is occupied by an individual who has an ownership interest in the property and uses the property as the individual’s primary residence.”

In the present case, Appellees filed the Order to Docket Suit against the Estate of Richard B. Richardson on September 24, 2013. Appellees served the Estate of Richard B. Richardson on October 7, 2013. Appellant filed its motion to stay and dismiss on August 15, 2014, which was denied by the circuit court on March 27, 2015. Appellees did not serve Appellant with process until April 1, 2015, after Appellant filed its motion. Appellant, a limited liability company, was the record owner, and therefore, the property was not an owner-occupied residential property. Since the property was not owner-

(cont.)

(2) Time for filing. (A) Owner-occupied residential property. In 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;
 - (b) the date the Office of Administrative Hearings files with the court a report stating that no postfile mediation was held; or
 - (c) the expiration of 60 days after transmittal of the borrower’s request for postfile mediation or, if the Office of Administrative Hearings extended the time to complete the postfile mediation, the expiration of the period of the extension.

occupied residential property, the motion to stay and dismiss under Rule 14-211 must have been filed within 15 days after service. Appellant’s motion was filed before service of process and, therefore, was timely pursuant to Rule 14-211(a)(2)(B).

C.

Appellant contends that the court erred in denying its motion to stay and dismiss on the grounds that Appellant failed to state a valid defense, because Appellant’s motion detailed the alleged improper charges by Chase, which created a default. Appellant concludes, that absent a real default, Appellees had no right to foreclose⁴. Appellees respond that Appellant’s motion “failed to raise a sufficient defense to the foreclosure action,” and that Appellant is collaterally estopped because the Estate had filed the same motion. Interestingly, Appellees cite no cases to support the estoppel argument, perhaps because there was no final judgment. That argument has no merit.

Assuming *arguendo* that Appellant prevails in their argument that Appellees have no right to foreclose on the basis of non-payment because it was Appellees who created the default, the issue of lack of default on that basis is immaterial because the sale of the property to Appellant without Chase’s consent was a default.

The question then becomes what are the rights of the parties, given the existence of a default and a disagreement as to amounts due. Appellees argue that Appellant has no

⁴ Maryland Rule 14-205(a) provides as follows:

An action to foreclose may not be filed unless (1) the instrument creating or giving notice of the existence of the lien has been filed for record, and (2) there is a default that lawfully allows a sale.

right to reinstate the loan, a contractual obligation. Appellees conclude that Appellant’s only right is to dispute amounts due in the audit post sale. We agree, at least in this context, that Appellant has no right to reinstate the loan because the default, *i.e.*, transfer of title, cannot be cured. Thus, we need not address the legal question of a record owner’s right to cure. We disagree with Appellees’ conclusion, however.

We conclude that Appellant, as record owner, has a right of redemption. See *McNiece v. Eliason*, 78 Md. 168 (1893); Restatement (Third) of Property §6.4 (and § 1.6); *Simard v. White*, 383 Md. 257 (2003). Consequently, we vacate the court’s March 27, 2015 order and remand for an evidentiary hearing to determine the amount due to redeem the property. See *Buckingham v. Fisher*, 223 Md. App. 82 (2015).

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY VACATED,
CASE REMANDED FOR AN
EVIDENTIARY HEARING TO
DETERMINE THE AMOUNT DUE TO
REDEEM THE PROPERTY; TWO-
THIRDS COSTS TO BE PAID BY
APPELLEES, ONE-THIRD TO BE PAID
BY APPELLANT.**