Circuit Court for Harford County
Case No. 12-C-12-001400

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1341

September Term, 2015

LISA KRICK

v.

JOHN E. DRISCOLL, III, ET AL.
SUBSTITUTE TRUSTEES

Graeff,
Leahy,
Salmon, James, P.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 3, 2017

John E. Driscoll, III, Robert E. Frazier, Jana M. Gantt, Laura D. Harris, Daniel J. Pesachowitz, and Deena Reynolds (the "Substitute Trustees" or "Appellees") initiated a foreclosure proceeding on May 22, 2012, in the Circuit Court for Harford County on the marital home of Lisa Krick ("Appellant") and David Von Paris.[1] Ms. Krick and Mr. Von Paris defaulted on their refinanced home mortgage in the midst of their divorce proceedings. After multiple unsuccessful attempts at mediation and a premature foreclosure sale, which was subsequently cancelled, Ms. Krick filed a motion to stay or dismiss the foreclosure action under Maryland Rule 14-211. Following the circuit court's denial of her motion and order to continue loss mitigation efforts, Ms. Krick filed this interlocutory appeal. On appeal,[2] Ms. Krick asks whether the circuit court "abuse[d] its discretion by failing to dismiss th[e] foreclosure action because:"[3]

> a. "current ownership of Appellant's loan is questionable, and an assignment of the loan was fabricated[.]"
>
> b. "Appellees failed to comply with loss mitigation requirements[.]"
>
> c. "Appellees conducted a foreclosure sale of Appellant's home in violation of the lower court's order that the case be remanded for mediation[.]"

[1] Ms. Krick (formerly known as Lisa Krick Von Paris) filed a divorce action against her then-husband, David Von Paris, on December 8, 2010. The divorce hearing occurred on June 16, 2011, and the divorce was final 30 days after that hearing. Ms. Krick was awarded use and possession of the marital home for three years. Pursuant to a divorce decree, Mr. Von Paris executed a quit claim deed conveying his interest in their home to Ms. Krick on December 24, 2014. At oral argument, the parties confirmed that Mr. Von Paris has not been released from the Mortgage and is still liable under the Mortgage.

[2] Although he participated as a defendant in the underlying litigation, Mr. Von Paris is not a party to this appeal.

[3] We have reordered the subparts of Ms. Krick's question to reflect the order in which the issues are addressed in our discussion, *infra*.

> d. "Appellees had unclean hands due to their improper and inequitable conduct[.]"

We hold that the circuit court did not abuse its discretion in denying Ms. Krick's motion to stay or dismiss the foreclosure proceeding. We conclude that Nationstar, as holder of the promissory note, is entitled to enforce the promissory note and initiate the foreclosure action. We also conclude that, although Regulation X of the Real Estate Settlement Procedures Act of 1974 ("RESPA") applies to Ms. Krick's 2014 loss mitigation application, Ms. Krick failed to demonstrate that she submitted a complete application, and her remaining contentions are without merit. Accordingly, we affirm.

BACKGROUND

Ms. Krick and Mr. Von Paris were married and owned a home located at 2712 Baldwin Mill Road, Baldwin, Maryland 21013 ("Property"). The couple refinanced their home loan by entering into a new adjustable-rate promissory note ("Note") on December 6, 2007, with Taylor, Bean, and Whitaker Mortgage Corporation ("TBW" or "Lender"). The Note was secured by a deed of trust, which was duly recorded in the Harford County Land Records (the Note and deed of trust may be referred to collectively as the "Mortgage"). Mortgage Electronic Registration Systems, Inc.[4] ("MERS") was named as

[4] Judge Harrell writing for the Court of Appeals in *Anderson v. Burson* succinctly described the role MERS plays in mortgage securitization. 424 Md. 232 (2011). MERS is

> a private land-title registration system created by mortgage banking companies to expedite the securitization process. MERS increases the efficiency and profitability of mortgage markets by skirting the traditional land-title recording process in localities, which can be costly and time

grantee and the nominee for the Lender. The Note contained provisions allowing for changes in interest rate and monthly payments. The Note also stated that the Lender may transfer the Note, and that any entity or person entitled to receive payments under the Note is called the "Note Holder."

The parties do not dispute that the Mortgage went into default on or about September 2, 2010. Several months later, on December 8, 2010, Ms. Krick initiated an absolute divorce proceeding against Mr. Von Paris in the Circuit Court for Harford County. In the divorce decree entered on June 17, 2011, the court awarded Ms. Krick use and possession of the marital home for three years and ordered Mr. Von Paris to bring the mortgage current, but he failed to do so. Ms. Krick filed an application to participate in the Home Affordable Modification Program ("HAMP") on December 29, 2011.

On December 30, 2011, TBW indorsed the promissory Note to Ocwen Loan Servicing, LLC ("Ocwen"), and assigned the Deed of Trust to Ocwen. Ocwen, in turn, appointed the Substitute Trustees under the deed of trust on January 23, 2012. An "Affidavit Certifying Ownership of the Note" by Ocwen's contract Management coordinator, dated April 23, 2012, affirmed that the Note Holder was Ocwen, and stated

> consuming, and replacing it with the industry's own electronic tracking system. To do so, the mortgage broker names MERS as a nominal mortgagee in the mortgage. Then, subsequent transfers of the mortgage are recorded electronically and entirely on MERS while the original mortgage, recorded in the public land title records, remains unchanged. MERS's industry-appreciated virtues have made it a near ubiquitous aspect of contemporary residential mortgages; two-thirds of all newly originated residential loans in the United States name MERS as the nominal mortgagee.

Id. at 237–38 (footnotes and internal citations omitted).

that the owner of the Note was Federal Home Loan Mortgage Corporation ("Freddie Mac").

Foreclosure Proceeding

The Substitute Trustees sent a notice of intent to foreclose to Ms. Krick and Mr. Von Paris on March 22, 2012. On May 22, 2012, the Substitute Trustees filed an order to docket, initiating a foreclosure proceeding in the circuit court. The final loss mitigation affidavit dated February 8, 2013, stated that the secured party conducted a loss mitigation analysis and received "no response [from Ms. Krick] to HELP solicitations sent 1/4/12, 7/6/12, 8/31/12, and 9/20/12."

Ms. Krick filed a request for foreclosure mediation on March 7, 2013. The mediation was initially scheduled for April 30, 2013, and was rescheduled twice to June 24, 2013, and to August 15, 2013. In the midst of rescheduling the mediations, Ocwen negotiated the Note and assigned the deed of trust to Nationstar Mortgage, LLC ("Nationstar") on May 31, 2013. Nationstar mailed Ms. Krick a notice of this assignment dated May 31, 2013. Appellees requested to reschedule the April 30, 2013, mediation to allow Nationstar time to prepare for the mediation. Appellees also requested to reschedule the June 24, 2013, mediation so that Ms. Krick could submit a loan modification application. Before the parties met for mediation, Ms. Krick submitted another loan modification application to Nationstar on July 30, 2013. The parties finally met for mediation on August 15, 2013, however, the Nationstar's legal representative was not able to reach Nationstar by phone.

Twelve days after the failed mediation attempt, the administrative law judge ("ALJ") from the Office of Administrative Hearings ("OAH") who conducted the mediation filed a foreclosure mediator's notification of status report, notifying the circuit court that "[t]he lender failed to attend the mediation and/or failed to have access to someone with required authority to settle the dispute." The circuit court then issued a notice to show cause, ordering Appellees to provide an explanation for their failure to appear at the mediation, otherwise the proceeding would be dismissed. While the show cause order was pending, on September 4, 2013, Ms. Krick filed a motion to stay or to dismiss the foreclosure action, citing Appellees' failure to complete mediation as a grounds for granting the motion.

Appellees responded to the court's show cause order on September 16, 2013, explaining that they failed to appear at the August 15 mediation because they "incorrectly calendared" the date. On September 26, 2013, the court remanded the case to OAH to schedule the case for another mediation. Although the court found that dismissal was not appropriate at that time, the court admonished Appellees that it reserved the right to dismiss the case if "the mediation [is] unsuccessful due to the failure of the representative of the lender to either be present or be available by telephone." OAH rescheduled the mediation for September 4, 2014.

On July 23, 2014, Appellees prematurely conducted a foreclosure auction to a third party. Realizing their error, Appellees subsequently cancelled the sale.

In advance of the fourth scheduled mediation date, Ms. Krick submitted a loan

modification application to the Substitute Trustees on August 31, 2014. Nationstar acknowledged receipt of this application on September 2, 2014, but the letter notifying her that her application was incomplete was not sent until November 25, 2014. Meanwhile, the fourth and final mediation occurred on September 4, 2014, without resolution. The mediator filed a status report on September 5, 2014, notifying the circuit court that the parties were unable to reach an agreement.

On September 19, 2014, Ms. Krick filed a second motion to stay or dismiss the foreclosure proceeding pursuant to Maryland Rule 14-211 and requested a hearing. Ms. Krick raised four arguments in her motion. First, Ms. Krick asserted that the Substitute Trustees failed to comply with the loss mitigation requirements of Regulation X, HAMP, and Freddie Mac. Second, Ms. Krick argued that the court should dismiss the action because the Substitute Trustees sold the Property at a foreclosure auction contrary to the Consumer Financial Protection Bureau's ("CFPB") prohibition on "dual tracking"[5] found in Regulation X of RESPA and in contempt of the court's order remanding the case to mediation. Third, Ms. Krick challenged the Substitute Trustees' authority to initiate the foreclosure action. Ms. Krick asserted that TBW's December 30, 2011, assignment of the Mortgage to Ocwen and Ocwen's subsequent appointment of the Substitute Trustees were

[5] Dual-tracking refers to when a loan servicer proceeds with a foreclosure action and simultaneously works with a borrower on loss mitigation to avoid foreclosure. CFPB's prohibition on dual tracking is memorialized in 12 C.F.R. § 1024.41 (2014) (Regulation X). Regulation X prohibits a loan servicer from moving for a foreclosure judgment if a borrower has submitted a complete loss mitigation application more than 37 days before a foreclosure sale. 12 C.F.R. § 1024.41(g).

invalid because TBW went out of business in August 2009. Fourth, Ms. Krick asserted that, relying on *Wells Fargo v. Neal*, 398 Md. 705, 730 (2007), because the Substitute Trustees initiated a foreclosure proceeding while her loan modification application was pending, the Substitute Trustees had unclean hands (a defense to a foreclosure proceeding).

In response the Substitute Trustees argued, *inter alia*, that Nationstar is the holder of the Note and entitled to enforce the Note by means of the foreclosure proceeding. The Substitute Trustees also contended that the doctrine of clean hands was inapplicable because the doctrine requires a nexus between misconduct and the equitable relief sought. In this case, the Substitute Trustees claimed that they had not engaged in misconduct related to the foreclosure proceeding.

The circuit court held a hearing on Ms. Krick's motion on January 5, 2015, at which the parties reiterated their arguments. The circuit court entered an order denying Ms. Krick's motion on July 16, 2015, finding that the deed of trust did not require Appellees to submit to HAMP loss mitigation, and that dismissal was not the remedy for violation of the RESPA.

With respect to Ms. Krick's argument that the foreclosure action should be dismissed because the Substitute Trustees violated Regulation X's prohibition on "dual-tracking" and the court's order by prematurely selling the Property (as noted *supra* the sale was subsequently cancelled), the court found that Ms. Krick "failed to show that she has suffered any prejudice as a result of the sale [of the Property in the cancelled foreclosure auction." The court pointed out that "the sale has been nullified, and [Ms. Krick] has been

allowed to go forward with the loss mitigation process. As a result, it found "no reason as to why the sale of the home should prevent the foreclosure case from moving forward."

Additionally, with respect to Nationstar and the Substitute Trustees' authority to foreclose on the Note, the court found that

> Nationstar has been assigned the loan, as evidenced by the recorded instrument dated June 13, 2013, which gives it the right to enforce the promissory note, which is in the possession of [Appellees]. As such, this court finds that [Appellees] have the right to bring this action. . . . At this time, this court does not believe that [Ms. Krick's] argument warrants a dismissal of the case at hand.
>
> This court also finds Nationstar did give actual notice to [Ms. Krick] of the transfer of the loan from Ocwen to Nationstar as evidenced by the letter presented as [Appellees'] Exhibit 1 at the hearing before this court in January. Additionally, as mentioned *supra*, there was a recorded instrument on June 13, 2013 stating that the DOT was assigned from Ocwen to Nationstar.

Lastly, the court found that the doctrine of unclean hands was inapplicable. Although the court described Appellees' conduct as "certainly [] less-than forthright and at times careless," it determined that Appellees' conduct was not fraudulent or illegal. In its order, the circuit court instructed Ms. Krick to "submit all required paperwork necessary for loss mitigation" because Appellees offered to continue with the loss mitigation process.[6]

Ms. Krick timely noted an appeal on August 12, 2015.

[6] Pursuant to the July 20, 2015 circuit court order, Ms. Krick emailed a loan modification application to Nationstar via Robert Hillman, Esq. Mr. Uehlinger improperly included a post-hearing affidavit in the appendix to Ms. Krick's brief. *See* Maryland Rule 8-501. With this affidavit, counsel attempted to present additional facts to this Court that were not presented to the circuit court. We have not considered or included the facts presented in the post-hearing affidavit in this appeal.

DISCUSSION

A defaulting borrower may file a motion to stay the sale of a property and dismiss a foreclosure action pursuant to Maryland Rule 14-211.[7] *Bates v. Cohn*, 417 Md. 309, 318 (2010). A motion under Rule 14-211 is effectively a request for "injunctive relief, challenging 'the validity of the lien or . . . the right of the [lender] to foreclose in the pending action.'" *Id.* at 318–19 (quoting Md. Rule 14-211(a)(3)(B)). We review the circuit court's denial of a foreclosure injunction for abuse of discretion. *Svrcek v. Rosenberg*, 203 Md.

[7] **Rule 14-211. Stay of the sale; dismissal of action.**

(a) **Motion to Stay and Dismiss**.

(1) Who May File. 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.

(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:

(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[.]

* * *

(e) Final Determination. After the hearing on the merits, if the court finds that the moving party has established that the lien or the lien instrument is invalid or that the plaintiff has no right to foreclose in the pending action, it shall grant the motion and, unless it finds good cause to the contrary, dismiss the foreclosure action. If the court finds otherwise, it shall deny the motion.

App. 705, 720 (2012).

I.

Ownership of Note

Ms. Krick argues that the circuit court erred in denying her motion to dismiss because the current ownership of the Note "is questionable." Ms. Krick attempts to cast the ownership of the Note as a morass. She points out that TBW went out of business in August 2009, yet the Note was not assigned to Ocwen until December 30, 2011. Ms. Krick maintains that the appointment of the Substitute Trustees and the subsequent assignment to Nationstar were invalid. Additionally, Ms. Krick claims that she never received notice that Ocwen assigned the Mortgage to Nationstar as required by Regulation Z 131(g) of the Truth in Lending Act ("TILA").

Appellees counter that Nationstar is the secured party on the deed of trust and the holder of the Note, and, therefore, an entity entitled to enforce the Note under Title 3 of Maryland's Commercial Code. In support, Appellees point out that Ocwen assigned the deed of trust to Nationstar on May 31, 2013 and that assignment is recorded in the Harford County Land Records. Additionally, Appellees call our attention to Ocwen's blank indorsement of the Note, because pursuant to Title 3 of the Commercial Code, an entity in possession of a note indorsed in blank is the holder of that note. Appellees also maintain that TBW's indorsement of the Note to Ocwen and MERS's assignment of the deed of trust to Ocwen were valid transactions. Lastly, Appellees point out that in a letter dated May 31, 2013, they mailed a notice of Ocwen's assignment of the Note to Nationstar to Ms.

Krick at the Property's address.

Ownership and holdership of notes are common issues raised in defense against foreclosure actions. *See, e.g.*, *Deutsche Bank Nat. Trust Co. v. Brock*, 430 Md. 714, 727 (2013); *Anderson v. Burson*, 424 Md. 232, 249 (2011). As we see in *Anderson*, irrespective of ownership, under certain conditions, a nonholder has the right to enforce a note through foreclosure. The Andersons (the borrowers), challenged the substitute trustees' right to enforce the note. 424 Md. at 239. The substitute trustees did not have the note when they filed the order to docket. *Id.* at 236. The note at issue was payable to Wilmington and transferred three times. *Id.* at 239. The Court summarized the transfer history as follows:

> First, the initial lender, Wilmington, transferred the Note to Morgan Stanley Mortgage Capital Holding, Inc. (Morgan Stanley I), who in turn transferred the Note to Morgan Stanley ABS Capital I Inc. (Morgan Stanley II). Morgan Stanley II securitized the Anderson Note, along with a multitude of others, into the Morgan Stanley Home Equity Loan Trust 2007–2 (Morgan Stanley Trust). The Morgan Stanley Trust pooling and servicing agreement (PSA) named Deutsche as trustee (and Saxon as servicer), and so the note was transferred to Deutsche as trustee.

Id. At the second in a series of three evidentiary hearings, the substitute trustees produced the original unendorsed note and stated that they "d[id] not have an allonge[.]" *Id.* at 239–40. At the third evidentiary hearing, the substitute trustees produced an undated, unattached allonge, signed by Wilmington, the initial lender, transferring the note to Deutsche. *Id.* at 240. The Court of Appeals was presented with the issue of whether the nonholder of an "under-indorsed"[8] note in possession of that note may institute a

[8] The Court of Appeals described the note as "under-indorsed" because the "Anderson Note itself was unindorsed—despite the Substitute Trustees's initial representation that they possessed the Note indorsed in blank. The Substitute Trustees

foreclosure action. *Id.* at 242.

The Court noted that the "reputed transferee in possession of an unendorsed mortgage note has the burden to establish its right under that note[.]" *Id.* at 245. The Court explained that Title 3 of the Commercial Law Article of the Maryland Code [now codified at Maryland Code (1974, 2013 Repl. Vol.), Commercial Law Article ("Com. Law"), § 3-101 *et seq.*] governs promissory notes secured by deeds of trusts, and that "the corresponding note may be transferred, and carries with it the security provided by the deed of trust." *Id.* at 246 (citation omitted). Section 3-301 of the Commercial Law Article defines who is entitled to enforce a negotiable instrument: "(i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder [*i.e.*, a transferee] or (iii) a person not in possession of the instrument who is entitled to enforce pursuant to § 3–309. . . ." *Id.* at 247. Because the note at issue was unendorsed, Deutsche, though in possession of the note, was not a holder. *Id.* The Court disregarded the allonge, concluding it was "anachronistically impossible" because "by the time Wilmington reputedly made the allonge to Deutsche, Wilmington had no rights in the Note to transfer." *Id.* at 247–48.

The Court concluded that Deutsche was entitled to enforce the note as "a nonholder in possession of the [note] who has the rights of a holder" as long as it could "'account for [its] possession of the unendorsed instrument by proving the transaction through which the

represented later that they did not have an allonge, but at a subsequent hearing, produced an undated allonge (unattached to the original note and signed by the initial holder only), which the Court of Special Appeals considered void." *Anderson*, 424 Md. at 234 n.2.

transferee acquired it." *Id.* at 248–49 (citing Com. Law § 3-301(ii)). Deutsche, therefore, had the burden to prove each of the three transfers of the note that led to its possession. *Id.* at 249. "Once the transferee establishes a successful transfer from a holder, he or she acquires the enforcement rights of that holder." *Id.* at 249 (citing Com. Law § 3-203 cmt. 2). The Court ultimately concluded that the note's transfer history was established and that the substitute trustees acquired the right to enforce the note and institute the foreclosure action. *Id.* at 252.

The Court of Appeals revisited its holding in *Anderson* two years later in *Brock*. The borrower, Brock, defaulted on her home loan and the substitute trustees of BAC Home Loan Servicing, LP ("BAC") initiated a foreclosure proceeding. 430 Md. at 721. In an action separate from the foreclosure proceeding, Brock filed a complaint challenging, *inter alia*, the authority of the substitute trustees to foreclose on her property. *Id.* at 717, 721. Brock alleged that BAC did not own the note and, therefore, lacked authority to appoint the substitute trustees who initiated the foreclosure proceeding. *Id.* at 724–25. Brock contended that "only the owner of the note may enforce the Note and bring an action to foreclose." *Id.* at 730. The Court of Appeals granted *certiorari* to consider "whether an entity in possession of a promissory note indorsed in blank . . . is not a holder and is merely a non-holder in possession, in conflict with Title 3 of the Maryland UCC and a misinterpretation of this Court's decision in *Anderson*[.]"

In considering Brock's contention, the Court reviewed the applicable Commercial

Law Article provisions relating to the enforcement of promissory notes.[9] *Id.* at 729–30. First, Com. Law § 3-412 instructs that "the person or entity obligated on a promissory note must pay the obligation to . . . 'a person entitled to enforce the instrument.'" *Id.* at 729 (footnote and other citation omitted) (citing Com. Law § 3-412). Next, Com. Law § 3-301 defines a person entitled to enforce an instrument as: "(i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to § 3–309 or § 3–418(d)." *Id.* The Court then considered the definition of a "holder." *Id.* Com. Law § 1-201(b)(21)(i) defines a holder as "[t]he person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." *Id.* Lastly, a note is payable to bearer "if it states that: (a) it is payable to bearer or to cash; (b) indicates that an individual or entity in possession of the promise or order is entitled to payment; (c) does not state a payee; or, (d) otherwise indicates that it is not payable to an identified person." *Id.* (citing Com. Law § 3-109(a)).

The Court found support for the distinction between ownership and holdership of a note in the statutory provisions and in the comments to the Maryland UCC. The comment to "[Com. Law] § 3-203 states, '[t]he right to enforce an instrument and ownership of the instrument are two different concepts.'" *Id.* at 730. Additionally, Com. Law § 3-301 provides that "[a] person may be a person entitled to enforce the instrument even though

[9] The provisions of the Commercial Law discussed in *Brock* and *Anderson* are the same that were in effect when Appellees filed the foreclosure action.

the person is not the owner of the instrument[.]"

Applying these statutory provisions, the Court determined that BAC was an entity entitled to enforce the note as a holder of the note. *Id.* at 732. The Court reasoned that, unlike the note in *Anderson*, the note contained "all necessary indorsements" (the most recent of which was in blank) and BAC was in possession of the note. *Id.* at 732. Therefore, the Court held that BAC had authority to appoint the substitute trustees who initiated the foreclosure action. *Id.* at 733.

Ms. Krick misconstrues *Anderson* in her argument that because ownership cannot be traced, Nationstar cannot enforce the Note to bring the foreclosure action. However, as *Anderson* and *Brock* instruct, ownership of the note is a distinct issue from who may enforce the note and bring a foreclosure action. *See Brock*, 430 Md. at 729–30; *Anderson*, 424 Md. at 248–49. Instead, we must look to the holdership and transfer history of the Note to determine whether the Substitute Trustees had the authority to initiate the foreclosure proceeding in this case.

We conclude that the Substitute Trustees established that Nationstar was the holder of the Note in this case. TBW, the initial lender, issued the Note on December 6, 2007. TBW was listed as the secured party in the corresponding deed of trust. The Note was then negotiated to Ocwen on December 30, 2011. The Note contains a special endorsement from TBW to Ocwen. TBW also assigned the deed of trust to Ocwen on that same date. While Ocwen was holder of the Note and secured party of the corresponding deed of trust, Ocwen appointed the Substitute Trustees on January 23, 2012. The Note was next

negotiated from Ocwen to Nationstar on June 13, 2013. Ocwen also assigned the deed of trust to Nationstar on May 31, 2013. Ocwen indorsed the Note in blank by attaching an allonge to the Note that did not identify to whom the note is payable. Ocwen converted the Note from order paper—a note indorsed to an identified person or entity—to bearer paper pursuant to Com. Law § 3-109(a)(3) when it indorsed the Note in blank by attaching an allonge that did not identify to whom the note is payable. Unlike Deutsche in *Anderson* who was a nonholder in possession, TBW's special indorsement to Ocwen and Ocwen's blank indorsement to Nationstar were sufficient to transfer holdership to Nationstar. We also agree with the circuit court that Nationstar provided notice of the May 31, 2013, assignment of the Note when it mailed a copy of the notice to Ms. Krick at the Property's address. Therefore, we hold that the circuit court did not abuse its discretion when it found that Nationstar had been assigned the Note, that Nationstar had the right to enforce the Note by filing the foreclosure action, and that Nationstar gave Ms. Krick actual notice of the transfer of the loan from Ocwen to Nationstar.

II.

Loss Mitigation

Ms. Krick contends that the circuit court should have granted her motion to dismiss because Appellees failed to comply with the "loss mitigation requirements of the CFPB, HAMP, and other investor guidelines, including those of Freddie Mac." (Footnote omitted). Additionally, Ms. Krick asserts that Appellees have not complied with the

"CFPB requirement obligating the servicer to acknowledge in writing within 5 days of receipt of the application whether or not [Ms. Krick's] application is complete."

Appellees counter that the terms of the Mortgage did not require loss mitigation and that Appellees have complied with the applicable CFPB regulations. Appellees further contend that they have not violated the dual-tracking prohibition in CFPB's regulations because Appellees have neither moved for a final judgment on the foreclosure nor scheduled a foreclosure sale. Appellees also assert that Ms. Krick has yet to submit a complete loss mitigation package and that Ms. Krick has "effectively request[ed] that this Court search out facts absent from the record to support her contention that she submitted a complete modification package[.]"

Congress granted the CFPB the authority to promulgate regulations under RESPA in 2010. 12 U.S.C. § 5512(b) ("The Director [of CFPB] may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof."); 12 U.S.C. § 2601 *et seq.* (RESPA). With this authority, the CFPB issued a final rule amending Regulation X of RESPA, which became effective on January 10, 2014. This regulation, in pertinent part, provides:

> (g) Prohibition on foreclosure sale. If a borrower submits a **complete** loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless:
>
> > (1) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss

> mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;
>
> (2) The borrower rejects all loss mitigation options offered by the servicer; or
>
> (3) The borrower fails to perform under an agreement on a loss mitigation option.

12 C.F.R. § 1024.41(g) (emphasis added).

Ms. Krick raises multiple contentions regarding the loss mitigation applications submitted before 2014; however, because the parties continued to negotiate, the relevant loss mitigation application in this appeal is the application that she submitted on August 31, 2014. Regulation X does apply, but Ms. Krick failed to demonstrate to the circuit court that the August 31 application was complete. Ms. Krick also did not include the August 31 application in the record extract on appeal to demonstrate that she submitted a complete application as required by Regulation X. Therefore, we can only rely on the January 5, 2015, motion to stay or dismiss hearing transcript and circuit court's record. Both seem to indicate that Nationstar notified Ms. Krick in a letter dated November 25, 2014, that documents were missing from her August 31 application. As the regulation clearly states, the prohibition on dual-tracking applies when the borrower has submitted a **complete** loss mitigation application. 12 C.F.R. § 1024.41(g) (emphasis added). In any event, the circuit court, in its July 15, 2015, order denying Ms. Krick's motion to stay or dismiss the foreclosure action, ordered the parties to continue loss mitigation discussions and

Appellees, in their brief, indicated their willingness to continue those discussion prior to scheduling another foreclosure sale.

III.

Foreclosure Sale

Ms. Krick argues that the circuit court erred in denying her motion to stay or dismiss the foreclosure proceeding because Appellees sold the Property in violation of the circuit court's order remanding the case to mediation and in violation of Regulation X's prohibition on dual-tracking.[10] Appellees counter that the "cancelled foreclosure sale does not warrant reversal of the circuit court's order [denying the motion to dismiss]" because Appellees voluntarily cancelled the sale in favor of further foreclosure mediation. Appellees contend "any grievance about the sale . . . was rendered moot when [the sale] was cancelled."

As the Court of Appeals had noted previously, the party challenging a foreclosure sale "must show that any claimed errors caused prejudice." *Fagnani v. Fisher*, 481 Md. 371, 384 (2011). We agree with the circuit court that Ms. Krick did not present any evidence of harm or prejudice resulting from the cancelled foreclosure sale. In fact, Ms. Krick has remained in her home and has not made a payment in seven years. Although we recognize how frustrating it must have been for Ms. Krick, who was actively working to

[10] Ms. Krick also asserts that Appellees used "misleading" and "defective" affidavits of ownership to sell Ms. Krick's home at the July 23, 2014 foreclosure sale, which was subsequently cancelled. Ms. Krick, however, offered no evidence to demonstrate that these affidavits were misleading, defective, or fraudulent to the circuit court. *See e.g. Mitchell v. Yacko*, ___ Md. App. ___, ___, No. 200, September Term 2016, slip op. at 1 (filed May 31, 2017).

modify her Mortgage with Appellees, to learn that Appellees sold her home in a foreclosure auction on July 23, 2014, we conclude the trial court did not abuse its discretion in denying Ms. Krick's motion to dismiss.

IV.

Doctrine of Unclean Hands

Ms. Krick argues that the circuit court erred in denying her motion to dismiss because the doctrine of unclean hands was a defense to Appellees' foreclosure action. Ms. Krick listed Appellees' conduct that she deemed to be improper or inequitable:

> docketing a foreclosure complaint despite Appellant's loan modification application undergoing review – a classic example of dual-tracking; (2) submitting contradictory documents and sworn Affidavits in the Order to Docket as to who the secured party is/was; (3) by being privy to multiple transfers occurring in the ownership of the subject loan, including one that appears to be fraudulent, and to Appellant not being lawfully notified of any change in ownership as required by TILA Section 131(g); (4) after Appellees postponed two mediations, they failed to have their parties appear for the third mediation; (5) Appellees' client, the Servicer, failed to render a decision on Appellant's July 30, 2013 application for a loan modification; (6) Appellees moved forward to sell the subject property at foreclosure sale on July 23, 2014 in violation of Maryland law, CFPB, HAMP and [the circuit] court's order[;] and (7) Appellees have not complied with the CFBP requirements regarding any of the loan modifications submitted by Appellant on August 31, 2014[.]

Appellees counter that the doctrine of unclean hands was not an applicable defense to the foreclosure proceedings because Appellees cancelled the foreclosure sale and have offered to continue loss mitigation discussions with Ms. Krick prior to scheduling another foreclosure sale.

The doctrine of clean hands provides that "courts of equity will not lend their aid to anyone seeking their active interposition, who has been guilty of fraudulent, illegal, or

inequitable conduct in the matter with relation to which he [or she] seeks assistance." *Hlista v. Altevogt*, 239 Md. App. 43, 48 (1965) (citations omitted). The doctrine does not apply, however, if the defendant has not been harmed by the plaintiff's alleged conduct. *Id.*

> In declining to apply the doctrine of unclean hands, the circuit court here found
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> > [A]lthough there was certainly some less-than forthright and at times careless conduct on behalf of Nationstar and the Substitute Trustees, this Court does not find that such conduct is on par with fraudulent or illegal conduct as envisioned by Maryland courts, or that such conduct unduly prejudiced the Defendant.

The circuit court reasoned that "[Appellees] have offered to continue with the loss mitigation process." We agree with the circuit court. Ms. Krick did not present any evidence of fraudulent or illegal conduct, including any "fabricated assignments" of the Note. Further, Ms. Krick did not establish that any harm resulted from the foreclosure sale or any of the other alleged improper conduct. Therefore, we conclude the circuit court's decision denying Ms. Krick's motion to dismiss was properly within its discretion.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.