

Circuit Court for Anne Arundel County
Case No. C-02-CV-15-002705

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1404

September Term, 2016

LAURA JEWELL

v.

KEITH YACKO ET AL.
SUBSTITUTE TRUSTEES

Woodward, C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 27, 2017

*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.

In this appeal from a foreclosure action in the Circuit Court for Anne Arundel County, Laura Jewell, appellant, challenges the court’s denial of a motion to stay and dismiss the action. For the reasons that follow, we shall affirm the judgment.

In March 2006, Jewell obtained from Taylor, Bean & Whitaker Mortgage Corp. (“TBW”) a loan secured by a deed of trust on her residence. Jewell executed a promissory note in which she promised to pay the amount of the loan, plus interest, to the lender. In the deed of trust, Jewell irrevocably granted and conveyed the property to a trustee, in trust, with a power of sale. The trustee for TBW was U.S. Bank National Association (“U.S. Bank”), and the servicer of the loan was Homeward Residential, Inc. (“Homeward”).

In May 2012, Jewell defaulted on the terms of the note. In August 2012, Homeward sent to Jewell a letter in which it offered her “a forbearance plan . . . under the Home Affordable Unemployment Program (HAUP).” Under the plan, which would become effective on September 1, 2012, Jewell would make a payment of five dollars each month for ten months. If Jewell made “all required Forbearance Plan payments on a timely basis in accordance with th[e] Agreement, at the end of [the] Plan, [her] accrued but unpaid balance [would] be approximately \$21,592.53.”

At some time thereafter, Ocwen Loan Servicing, LLC (“Ocwen”), became the servicer of the loan. In April 2015, appellees¹ were appointed as substitute trustees under the deed of trust. In August 2015, appellees filed the order to docket the foreclosure action, in which they contended that Jewell “failed to make the installment payment due on May 1,

¹Appellees are Keith M. Yacko, Robert E. Frazier, Thomas J. Gartner, Jason L. Hamlin, and Gene Jung.

2012 and each month thereafter.” On February 3, 2016, the parties participated in a foreclosure mediation. The mediator subsequently filed with the court a notification of status, in which she certified that “no agreement was reached.”

On March 29, 2016, Jewell filed the motion to stay and dismiss, in which she contended that Ocwen, Homeward, U.S. Bank, and their “agents have committed fraud with the malicious intent of acquiring” her residence. Jewell stated that Ocwen initially “denied any knowledge of the HAUP” and “demand[ed] that [she] immediately bring the loan current,” and subsequently “stated that the HAUP contract was not valid [and] had never been valid.” Jewell further stated that, “[r]egarding [the] timeliness of” the motion, “[c]ounsel was to serve [her] with [an a]greement immediately following mediation,” but “[s]aid [a]greement was not received . . . until” March 16, 2016, “and also was not to [her] satisfaction.”

In June 2016, the court held a hearing on the motion. During Jewell’s argument, the transcript of which is approximately seventeen pages long, she contended that Ocwen improperly “denied the existence of,” and then “cancelled,” the HAUP. Jewell claimed that “this was either completely intentional, to acquire [her] property, or complete negligence in allowing this situation to progress to this point.” She stated that, in 2011, she was “laid off from [her] job,” but she “did go back to work [in] 2013.” Jewell admitted that she “can’t reaffirm the debt because they’ve accrued so much back payments and fees[] and interest that the property would be grossly upside down,” and that she intends to “forego that property.” When Jewell offered several documents into evidence, the court stated: “[I]f you wish to submit something, why don’t you gather everything you want to

submit and bring it up, show it to counsel. I’m happy to receive it.” The court subsequently admitted the documents.

Following the hearing, the court stated that it would hold the matter *sub curia* for thirty days, and “encourage[d] both sides to see if they can come to a resolution that will kind of end this.” The parties subsequently informed the court that they were unable to reach an agreement, and the court denied the motion.

On appeal, Jewell contends that the court abused its discretion in denying the motion, because she “was not afforded the opportunity to properly present her [d]efense” or “fully submit[]” exhibits, and the court “should have reconvened” after “settlement was not reached.” We disagree.

The court allowed Jewell to present lengthy argument and submit multiple documents, and she does not identify any argument or document that she was prevented from submitting. Also, although the court, under certain circumstances, “may stay entry of its order of dismissal, pending further order of court, so that loss mitigation may be implemented,” Committee Note to Rule 14-211(e), the court is not required to reconvene following expiration of that stay. Finally, Rule 14-211(e) states that the court shall grant a motion to dismiss a foreclosure action if “the moving party has established that the lien or the lien instrument is invalid or that the plaintiff has no right to foreclose.” Here, Jewell does not cite any authority that would render the lien or lien instrument invalid due to alleged misconduct by Ocwen or any other entity. She also does not contend that she has made any payments to Ocwen or any other entity since the expiration of the forbearance plan or her return to work, and admitted that, because the “property [is] upside down,” she

intends to “forego th[e] property.” Appellees have a right to foreclose, and hence, the court did not abuse its discretion in denying the motion to stay and dismiss.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**