

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2675

September Term, 2014

EDWIN C. COLEMAN

v.

CARRIE M. WARD, ET AL.
SUBSTITUTE TRUSTEES

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 9, 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.

Edwin Coleman, appellant, owned (but did not live in) a house on Mosher Street in Baltimore City (the “Property”). On October 2, 2014, Carrie M. Ward, *et al.*, the Substitute Trustees,¹ commenced foreclosure proceedings as to the Property in the Circuit Court for Baltimore City. After appellant’s motions to dismiss the foreclosure action and for a stay of the sale (the “pre-sale motions”) were denied by the circuit court, appellant filed a “motion to alter or amend court decision and in the alternative for revisory control” (the “revisory motion”), which the circuit court denied on February 2, 2015. The Substitute Trustees subsequently sold the Property at auction. This appeal followed.

Appellant contends that the circuit court erred in finding that the foreclosure complaint and accompanying documents were compliant with Maryland Rule 14-207 and in permitting the case to proceed. He also claims that the circuit court erred in denying his pre-sale motions and revisory motion. Finding appellant’s contentions to be without merit, we affirm.

We review the trial court’s grant or denial of a motion to stay or dismiss for an abuse of discretion, *Anderson v. Burson*, 424 Md. 232, 243 (2011), as we do a trial court’s denial of a motion to revise or revoke its final judgment. *Pelletier v. Burson*, 213 Md. App. 284, 289 (2013)(citation omitted). We may affirm “on any ground adequately shown by the record.” *Norman v. Borison*, 192 Md. App. 405, 419 (2010) (citations omitted).

¹ The Substitute Trustees are: Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Pratima Lele, Tayyaba C. Monto, Joshua Coleman, Richard R. Goldsmith, Jr., and Ludeen McCartney-Green.

Appellant claims that the court erred in finding the foreclosure complaint and accompanying documents to be compliant with Maryland Rule 14-207 because, he contends, he was entitled to a loan modification that the lender and loan service failed to provide, and thus he was not in default. But because appellant failed to raise this claim before the circuit court, it is not preserved for appeal. *See* Maryland Rule 8-131 (a) (noting this court will not decide an issue “unless it plainly appears by the record to have been raised in or decided by the trial court”). Even if we were to consider the issue, appellant’s claim is without merit because under Maryland law, loss mitigation programs are only available for owner-occupied properties. *See* Maryland Code (2011, 2015 Repl. Vol.), sec. 7-105.1(c)(5) of the Real Property Article. As appellant acknowledges that he does not live in the Property, he is not entitled to loss mitigation or loan modification under Maryland law.

Appellant also challenges the circuit court’s denial of his pre-sale motions without a hearing. Maryland Rule 14-211(b)(1), which governs motions to stay and dismiss foreclosure actions, provides that the circuit court “*shall* deny the motion, with or without a hearing,” if the court concludes that the motion was not timely filed; does not substantially comply with the requirements of the Rule; or does not present a facially valid defense to the foreclosure action. (Emphasis added). Thus, an evidentiary hearing on the merits was not required prior to denial of that motion under Maryland Rule 14–211. *See Buckingham v. Fisher*, 223 Md. App. 82, 96 (2015).

The circuit court found that appellant’s motion to stay was “not under oath or supported by affidavit and does not on its face state a valid defense to the validity of the lien or the lien instrument or the right of the plaintiff to foreclose in the pending action. Maryland Rule 14-211(b)(1).” In order to meet the particularity requirements of Maryland Rule 14-211(a)(3)(B), “each element of a defense must be accompanied by *some level of factual and legal support. General allegations will not be sufficient to raise a valid defense requiring an evidentiary hearing on the merits.*” *Id.* at 92 (emphasis added). Appellant’s pre-sale motions were not only not made under oath or accompanied by affidavits, they failed to state with particularity the factual and legal basis of each defense and were not accompanied by any supporting documents. Therefore, the circuit court did not abuse its discretion in denying appellant’s pre-sale motions without a hearing.

Appellant contends that the circuit court erred, in denying his revisory motion, because the court ignored the signed affidavit that he claims he submitted with an amended motion to stay. There is, however, no such motion or affidavit in the circuit court record, nor did appellant provide the circuit court with a date-stamped copy of any such filing. Moreover, appellant was required to show by “clear and convincing evidence” that the circuit court’s decisions denying his pre-trial motions were the result of fraud, mistake or irregularity, which he failed to do. *See Thacker v. Hale*, 146 Md. App. 203, 216–17 (2002). The circuit court found that appellant had “failed to set forth any facts to challenge the validity of the lien instrument or to the right of the [Substitute Trustees] to foreclose,” and there was “no mistake or irregularity in the context of Maryland Rule 2-535.” Accordingly,

the circuit court did not abuse its discretion in declining to revisit the underlying motions. *See* Maryland Rule. 2-535.

As for appellant’s remaining claims regarding the alleged fraudulent conduct of the Substitute Trustees relating to Fannie Mae’s conservatorship status, appellant makes these claims for the first time on appeal, and we therefore decline to consider them. *See* Maryland Rule 8-131(a) (noting that this court will not decide an issue “unless it plainly appears by the record to have been raised in or decided by the trial court”). Finally, appellant’s arguments challenging orders entered by the circuit court after his notice of appeal in this matter are not properly before us and therefore shall not be reviewed. *See* Maryland Rule 8-201 (noting that the only method of securing review by this Court is the filing of a notice of appeal within the time prescribed in Rule 8-202).

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