UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0380

September Term, 2014

KEVIN C. BETSKOFF

v.

DIANE ROSENBERG, ET AL.
SUBSTITUTE TRUSTEES

Eyler, Deborah S.,
Hotten,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: June 10, 2015

*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.

Kevin C. Betskoff defaulted on his mortgage in 2007. This led the named individual appellees (the "Substitute Trustees") to initiate foreclosure proceedings in the Circuit Court for Carroll County in 2013. Mr. Betskoff moved to stay or to dismiss the foreclosure action, filed a counterclaim against the Substitute Trustees, and filed a Third-Party Complaint against JPMorgan Chase Bank, N.A. ("Chase"), which had acted as the servicing agent for the owner of Mr. Betskoff's mortgage. The Substitute Trustees moved to dismiss the counterclaim and Chase moved to dismiss the Third-Party complaint. (We refer to the two together as the "Appellees.") The circuit court decided all of the issues in favor of the Appellees, Mr. Betskoff appeals, and we affirm.

I. FACTS

Mr. Betskoff owned a house in Westminster (the "Property"), and on September 22, 2006 executed a promissory note with Argent Mortgage Co. ("Argent") secured by the Property. It appears that the loan went into default as of December 2, 2007. He was sent a Notice of Intent to Foreclose on August 16, 2012.[1] On June 21, 2013, the Substitute Trustees filed an Order to Docket.

Over the next six months, Mr. Betskoff filed several pleadings that sought to challenge the foreclosure:

- <u>July 23, 2013 Answer.</u> This filing generally denied liability, asserted that the plaintiffs lacked standing to sue, claimed partial repayment, and asserted improper service. Mr. Betskoff also suggested that he had been misled about

[1] The circuit court's opinion gives the year as 2011, but the record indicates that it was 2012.

the amount of monthly payments, that his home was "fraudulently over-appraised," and that he had been "targeted for an unfair or abusive mortgage loan based on violations of legally protected characteristics."[2]

- August 19, 2013 Counterclaim. Mr. Betskoff's Counterclaim against the Substitute Trustees described the "foreclosure crisis" then prevalent in Maryland and described his loan as a refinancing that took place in September 2006. The Counterclaim alleges that he decided shortly after executing the loan that "he had been deceived," and wished to rescind it. He claims that when Chase took on the loan, he sought to modify it (although he provides no date of any specific request or materials that he provided). He then claims broadly that Chase was "complicit in perpetuating the deception and the illegality that took place at the inception" of the loan, ostensibly on the part of Argent. The Counterclaim contained eight counts, ranging from violation of Maryland law prohibiting stated income loans, to violation of the Truth in Lending Act, the Real Estate Settlement Procedures Act, and the Equal Credit Opportunity Act, to claiming "wrongful foreclosure and injurious falsehood" against Chase, to violation of the Maryland Consumer Debt Collection Act. He also sought a declaratory judgment.

- August 19, 2013 Third-Party Complaint. Mr. Betskoff filed a Third-Party Complaint against Chase that restated the allegations and counts in the Counterclaim.

- December 3, 2013. Mr. Betskoff filed a Motion to Dismiss and Memorandum in Support in which he again alleged that the Appellees lacked standing, failed to attach the original note to the foreclosure proceeding, failed to notify borrower of a change in services, and that the Substitute Trustees were not creditors within the Truth in Lending Act.

Chase and the Substitute Trustees each opposed the various motions and cross-motions and Mr. Betskoff, in turn, replied. The circuit court held a hearing on January 24, 2014, and on April 1, 2014 issued an order:

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[2] The Substitute Trustees treated the Answer as a motion to dismiss, and opposed it in an "Opposition to Defendant's Motion to Stay Foreclosure and Foreclosure Sale" on August 7, 2013.

- Denying Mr. Betskoff's Motion to Dismiss Foreclosure;
- Granting the Substitute Trustees' Motion to Dismiss the Counterclaim; and
- Granting Chase's Motion to Dismiss the Third-Party Complaint.

The court articulated its reasons in a thirteen-page Order, which we will describe in greater detail as we review its specific conclusions below. Mr. Betskoff filed a timely Notice of Appeal.

II. DISCUSSION

Mr. Betskoff raises numerous issues on appeal.[3] As in the circuit court, he discusses the background and history of Maryland's revised foreclosure law. But the record in this case does not reveal any of the fraud or shoddy practices that begat the law and procedural

[3] Mr. Betskoff phrased the issues as follows:

1. Did the lower court violate the MD Constitution by improperly relying upon a court rule 14-211(a)(3)&(b)(1)(B), as open to interpretation to supersede the mandatory requirement established by the MD Legislature?

2. (Standing ?) Whether the Circuit Court erred in denying [Mr.] Betskoff's Motion to Dismiss Foreclosure when the Appelle [sic] presented no evidence that the lien or lien instrument was valid or that the Substitute trustees had a right to foreclose?

3. Whether the circuit court erred in dismissing [Mr.] Betskoff's counter / third party claim.

4. Can [Mr. Betskoff] prosecute his case?

rules governing this foreclosure. To the contrary, we agree with the circuit court that in this case, the Appellees proceeded properly.

A. The Circuit Court Properly Treated Mr. Betskoff's Answer And Counterclaim As A Motion To Stay Or Dismiss And Properly Denied Them.

Mr. Betskoff argues that the circuit court erred when it denied his motions to stay and dismiss because, he claims, the Substitute Trustees did not present a valid lien instrument and lacked standing to sue.[4] The circuit court found procedural errors on Mr. Betskoff's part, not the Appellees', starting with his decision to answer and counterclaim. Maryland Rule 14-211 governs motions to stay or dismiss a foreclosure action and sets forth who may file such a motion, when to file, and what the motion must contain (it's lengthy, so we italicize those provisions that matter most for these purposes):

> (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. [Not relevant to this case]
>
> (3) *Contents*. *A motion to stay and dismiss shall*:
>
> (A) *be under oath or supported by affidavit*;

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[4] We dispose preliminarily of Mr. Betskoff's claim that the relevant statutory provision is unconstitutional. Mr. Betskoff did not raise any issues in the court below that relate to constitutionality, so he failed to preserve them for appellate review. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.").

(B) *state with particularity the factual and legal basis of each defense that the moving party has to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action*;

(C) *be accompanied by any supporting documents* or other material in the possession or control of the moving party and any request for the discovery of any specific supporting documents in the possession or control of the plaintiff or the secured party;

(D) *state whether there are any collateral actions involving the property* and, to the extent known, the nature of each action, the name of the court in which it is pending, and the caption and docket number of the case;

(E) *state the date the moving party was served* or, if not served, when and how the moving party first became aware of the action; and

(F) if the motion was not filed within the time set forth in subsection (a)(2) of this Rule, state with particularity the reasons why the motion was not filed timely. To the extent permitted in Rule 14-212, the motion may include a request for referral to alternative dispute resolution pursuant to Rule 14-212.

(b) Initial Determination by Court.

(1) Denial of Motion. *The court shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion*:

(A) was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule;

(B) *does not substantially comply with the requirements of this Rule*; or

(C) *does not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action*.

> (2) Hearing on the Merits. If the court concludes from the record before it that the motion:
>
> (A) was timely filed or there is good cause for excusing non-compliance with subsection (a)(2) of this Rule,
>
> (B) substantially complies with the requirements of this Rule, and
>
> (C) states on its face a defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action, the court shall set the matter for a hearing on the merits of the alleged defense. The hearing shall be scheduled for a time prior to the date of sale, if practicable, otherwise within 60 days after the originally scheduled date of sale.
>
> [Sections (c) and (d) govern entry of a temporary stay and a scheduling order, and other terms not relevant here.]
>
> (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.*

(Emphasis added.) We recently articulated the standard of review for a decision granting or denying a Rule 14-211 motion, and it is a deferential standard except, as always, as to errors of law:

> "The grant or denial of injunctive relief in a property foreclosure action lies generally within the sound discretion of the trial court." *Anderson v. Burson*, 424 Md. [232,] 243 (2011) (and cases cited therein). Accordingly, we review the circuit court's denial of a foreclosure injunction for an abuse of discretion. *Id.* We review the trial court's legal conclusions *de novo*. *Wincopia Farm, LP v. Goozman*, 188 Md. App. 519,

> 528 (2009); *Svrcek v. Rosenberg*, 203 Md. App. 705, 720, *cert. denied*, 427 Md. 610 (2012).

Hobby v. Burson, 222 Md. App. 1, 8 (2015).

Rule 14-211 requires a homeowner who wants to stop a foreclosure to provide the court with real evidence that supports a specific reason that foreclosure should not proceed. The rule allows a court to give the movant a break or two, but he has to file in a timely manner and back up his claims with evidence. Mr. Betskoff's filings fell short of this standard.

First, the circuit court properly viewed Mr. Betskoff's Motions under Rule 14-211. Even though he never specifically invoked the Rule, the court looked past the title of the filings to their substance and saw in both the July 23, 2013 Answer and the December 13, 2013 Motion to Dismiss that Mr. Betskoff sought dismissal of the foreclosure action. *Second*, based on the specific procedural requirements of Rule 14-211, the circuit court found, correctly, that Mr. Betskoff had failed to "substantially comply" with that requirement both as to the Answer and the Motion to Dismiss:

> The Answer fails to meet nearly all of the requirements for a Motion to Stay and Dismiss under Md. Rule 14-211(a)(3). It certainly does not "substantially comply" with the requirements, so under Rule 14-211(b)(1)(B), the Court would have to deny the Motion if the Answer were all that had been filed. The Motion to Dismiss meets the 14-211(a)(3)(B) requirement that the pleading "state with particularity" the basis for the defenses offered. Nonetheless, the Motion to Dismiss still contains numerous deficiencies under Rule 14-211(a)(3), namely that it is not supported by affidavit, fails to state whether there are any collateral actions involving the property, and fails to state when Defendants were served. The

> Answer and Motion to Dismiss both fail to substantially comply with Md. Rule 14-211(b)(1)(B).

Third, the circuit court addressed the deficiencies of the Motion to Dismiss under Rule 14-211(e). The court found, correctly, that Mr. Betskoff had presented no "legitimate challenge" to the lien instrument's validity, particularly in light of the fact that he "concedes [the lien's] validity by stating he has made partial payments." *Fourth*, the documents attached to the Order to Docket established (a) ownership of the note in US Bank National Association, for whom Chase acted as the servicer of the loan, and (b) that the individually named Appellees had been appointed substitute trustees pursuant to the deed of trust. Although Mr. Betskoff challenges both parties' rights broadly, he presented no evidence to the circuit court beyond unsubstantiated accusations about the Appellees' connections to the underlying loan. The Appellees had met their burden to proceed with foreclosure, and Mr. Betskoff did not meet his burden under Rule 14-211 to stop the process.

B. The Circuit Court Did Not Err In Granting The Substitute Trustees' Motion To Dismiss Mr. Betskoff's Counterclaim And Chase's Motion To Dismiss His Third-Party Complaint On Limitations Grounds.

Mr. Betskoff also argues that the court erred when it dismissed his counterclaim and third-party claim. "In deciding a motion to dismiss a complaint, a circuit court assumes the truth of the complaint's factual allegations, and any reasonable inferences, in the light most favorable to the plaintiff." *Bobo v. State,* 346 Md. 706, 708, (1997). In reviewing the dismissal of a complaint, an appellate court applies the same standard and assesses whether

that decision was legally correct. *Patton v. Wells Fargo Fin. Maryland, Inc.*, 437 Md. 83, 95 (2014); *Reichs Ford Road Joint Venture v. State Roads Comm'n*, 388 Md. 500, 509 (2005).

We read Mr. Betskoff's brief on appeal to claim that the circuit court misunderstood his defense, which (according to his brief in this Court) was that even though he *did* default on the original mortgage loan made on September 22, 2006, he did *not* default on the subsequent refinance mortgage loan made on November 24, 2009. We read this to mean that Mr. Betskoff believed that he could stave off foreclosure by making certain (but not all) payments on a subsequent loan. But whether our interpretation of his defense is correct doesn't matter; Mr. Betskoff does not point us to any part of the record showing that he raised this argument below, nor did he submit any documentation to the circuit court that could support it.

Mr. Betskoff argues generally about the tolling of limitations under certain circumstances, but his brief does not tie this point to any arguments he made in the circuit court, and so it is not preserved. He also claims that he has found new information "previously unknown to him," but has neither explained what this information is or how it compels us to reverse a well-reasoned and legally sound opinion by the circuit court. The court (after detailing each of Mr. Betskoff's eight counts against the Substitute Trustees in the Counterclaim and against Chase in the Third-Party Complaint) explained why Mr. Betskoff's claims were time-barred, and specifically explained why limitations was not tolled:

> Maryland courts have made clear "that notice of facts, and not the law, is the trigger for commencement of the limitations period." *Anne Arundel Cnty. v. Halle Development, Inc.*, 408 Md. 539, 563 (2009). [Mr. Betskoff] had knowledge of the facts necessary to bring his claims for money damages under [the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*] on September 22, 2006, so his claims became time-barred on September 22, 2007.

Mr. Betskoff did not raise a tolling argument in the circuit court, but we take his argument here to relate to the corresponding portion of the circuit court's opinion, and we agree with that court's analysis.

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