Circuit Court for Prince George's County
Case No. CAEF16-07380

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 704

September Term, 2017

GLORIA J. COOKE

v.

KRISTINE D. BROWN, *et al.*

Graeff,
Berger,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: February 26, 2019

*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.

Gloria J. Cooke, appellant, defaulted on a residential mortgage loan on property located in Upper Marlboro, Prince George's County, resulting in the filing of a complaint for foreclosure proceedings, in 2016, by the substitute trustees, appellees. After many filings, attempts to cure the default, uncredited payments, attempted mediation, and mounds of document production, the circuit court resolved the matter by the entry of an order, in 2017, denying appellant's Motion to Stay and Dismiss. Appellant's Motion to Alter or Amend was likewise denied. Both orders were entered without benefit of a hearing.

In her timely appeal, appellant presents four questions for our review:

1. Whether the trial court had the discretion or authority to consider the Appellees' response when the Appellees filed the response late, did not move the court for an extension of time to file the opposition and made no showing of good cause for filing the opposition late.

2. Whether the trial court erred in finding that Appellant did not raise a valid defense to foreclosure when Appellant alleged the lender failed to meet a condition precedent to foreclosure incorporated in the Deed of Trust and therefore had no right to foreclose.

3. Whether the defense Appellant raised in her Motion to Stay or Dismiss foreclosure was pleaded with sufficient particularity to require the circuit court to hold an evidentiary hearing on the merits of her defense.

4. Whether Maryland foreclosure mediation process is a substitute to HUD FHA regulation requirement of a face-to-face meeting *prior* to initiating foreclosure.

Because we conclude that appellant's *pro se* Motion to Stay or Dismiss was pleaded with sufficient particularity to require an evidentiary hearing, we shall remand this matter

to the circuit court. Thus, we need not consider her other questions and leave those for determination by the circuit court.

Motion to Stay or Dismiss Foreclosure Proceedings

For clarity and completeness, we reproduce relevant portions of appellant's *pro se* Motion,[1] filed on November 28, 2016:

> The foreclosure action should be dismissed due to Plaintiffs failure to satisfy the FHA deed of trust's ("DOT") conditions precedent to foreclose. More specifically, the Plaintiffs and/or their principals … did not abide by the DOT's requirement to conduct a face-[to-]face meeting as a condition precedent to accelerating the loan and initiating foreclosure proceedings. In pertinent part, the HUD guidelines incorporated into the [DOT] … stipulate that "[t]he mortgagee must have a face-to-face interview with the mortgagor, or make a reasonable effort to arrange such a meeting, before three full monthly installments due on the mortgage are unpaid."
>
> Neither [the note holders] nor trustees conducted or attempted to conduct a face-to-face meeting with the defendant. None of them sent the defendant a letter or made a physical visit to the defendant in attempt [sic] to arrange a personal meeting….
>
> * * *
>
> Plaintiffs and/or its agents actions or inactions … had a detrimental effect of defendant's ability to avoid foreclosure. Defendant has … questions regarding the (1) claimed amount due on the loan, (2) ownership of the loan, and (3) person[s] entitled to enforce the note.

The substitute trustees' response to appellant's motion was filed with the court on February 1, 2017, well beyond the time established for a reply. Appellant posits that the response ought not to have been received by the court and asked the court to strike it, pursuant to Md. Rule 2-311(b) – Response.

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[1] Appellant's Motion to Stay and Dismiss Foreclosure Proceedings was filed in proper person in the circuit court. In this Court, she was represented by counsel.

The final entry with which we are concerned is the court's order of February 28, 2017:[2]

> 1. Defendant's Motion does not state a valid defense or present meritorious argument and
>
> 2. Defendant's Motion fails to state factual and legal basis per MD Rule 14-211(a)(3)(B)
>
> **ORDERED** that Defendant's Motion is **DENIED** without a hearing pursuant to MD Rule 14-211(b)(1).

Sufficiency of the Motion to Stay or Dismiss
Rule 14-211

Our consideration of the question before us is guided by Maryland Rule 14-211 – Stay of the sale; dismissal of action – and particularly subsection (a)(3)(B), which provides:

> (3) Contents. A motion to stay and dismiss shall:
>
> * * *
>
> (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[.]

As a result of an unprecedented number of foreclosure filings following the 2008 collapse of the real estate "bubble," the Court of Appeals, effective May 1, 2009, adopted the current iteration of Maryland Rules 14-201, *et seq*.[3] The purpose of the rule was set out in a letter from the Rules Committee to the Court of Appeals:

> A number of significant changes are recommended to the Rule governing a stay of the sale (proposed Rule 14-211). The Rules Committee

[2] The Order of Court was executed by the court on February 28, 2017, but the order was not entered until March 6, 2017. The delay in entry has no bearing on this Court's decision.

[3] Subsequent amendments to these rules have been made since their May 2009 adoption, however, no substantive changes were made to relevant rules applicable to this appeal.

> proposes to detach that procedure from the Rules governing injunctions and to deal with it in a Rule specific to foreclosure sales. The Rule attempts to strike a fair balance by providing borrowers and others with sufficient standing, who have a legitimate defense to the foreclosure, a reasonable and practical opportunity to raise the defense, but not allowing for frivolous motions intended solely to delay the proceeding….

Bechamps v. 1190 Augustine Herman, LC, 202 Md. App. 455, 461-62 (2011).

Standard of Review

Our standard of review of the denial of a motion to stay and dismiss under Rule 14-211 was recognized in *Buckingham v. Fisher*, 223 Md. App. 82, 92 (2015), wherein this Court explained that: "Because we are asked to answer a question of law – whether Buckinghams' motion stated a forgery defense with sufficient particularity – we review the trial court's denial of the motion for whether it [wa]s legally correct." As we explained in *Mitchell v. Yacko*, 232 Md. App. 624, 640-41 (2017):

> [W]e first recognize that the denial of a motion to stay a foreclosure sale and dismiss the action under Maryland Rule 14-211 "lies generally within the sound discretion of the trial court." *Anderson v. Burson*, 424 Md. 232, 243 (2011). Although we generally review the circuit court's denial of [a] Rule 14-211 motion for an abuse of discretion, *Svrcek v. Rosenberg*, 203 Md. App. 705, 720 (2012), "[w]e review the trial court's legal conclusions *de novo*." *Id*….

We further held in *Buckingham* that defenses asserted in a Rule 14-211 motion to stay and dismiss must be pleaded with particularity. 223 Md. App. at 91. Appellant's mortgage was initially in favor of Countrywide Home Loans, Inc., which subsequently assigned the loan to Bank of America, NA, which, in turn, engaged Carrington Mortgage Services, LLC to service the loan. Thus, during the short life of the transactions, appellant was required to deal with three different loan servicers. Moreover, the transfer of the loan

servicing responsibilities by Bank of America, NA (BofA) to Carrington occurred after BofA declared the loan to be in default in August 2015.[4] Despite declaring appellant's loan in default in August, the record is void of any notice of default or letter proposing mortgage assistance until the December 18, 2015 Notice of Intent to Foreclose. Appellant referred the circuit court to the language in paragraph 9(d) of the executed Deed of Trust, which had been provided to the court with appellees' initial Order to Docket Foreclosure filing. That provision of the Deed defers authority to accelerate the loan to that of the Code of Federal Regulation's (C.F.R.) Housing and Urban Development (HUD) provisions by stating, in relevant part, "[t]his Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the [HUD] Secretary." *See also* 24 C.F.R. § 203.604(b) (providing that "[t]he mortgagee must have a face-to-face interview with the mortgagor, or make a reasonable effort to arrange such a meeting, before three full monthly installments due on the mortgage are unpaid."). Appellant also avers that BofA accepted, but did not credit, an installment payment, allegedly made within days of the service

[4] Neither the record nor the parties' briefs contain the transfer documents or the particular date of the servicing transfer from BofA to Carrington. Appellant's confusion as to the ownership of the loan and as to the party entitled to enforce the Note was apparent throughout her Motion to Stay and Dismiss. We do note that appellees attempt to include in the appendix of their brief various documents that were not part of the record before the circuit court, one of which is a copy of appellant's subsequent amended complaint against Carrington and BofA filed in the United States District Court for the District of Maryland that contains assertions of her receipt of notice of the servicing transfer in December 2015. *See Franklin Credit Mgmt. Corp. v. Nefflen*, 208 Md. App. 712, 724 (2012) (noting that "[p]arties to an appeal are not entitled to supplement the record[,]" because "an appellate court must confine its review to the evidence actually before the trial court when it reached its decision." (internal quotations and citations omitted).

transfer to Carrington.[5] As a result of a default, both federal and state regulations are implicated and require foreclosure mediation. Appellant avers that no such effort was made; appellees respond that, to the contrary, a meeting was scheduled but appellant failed to attend, which raises a significant question of fact, the resolution of which would impact the legitimacy of the foreclosure action.

As we consider the entire record, we are satisfied that appellant's assertions of defenses that the lenders did not comply with conditions precedent to foreclosure, prematurely accelerated the loan, and failed to make timely and adequate efforts at foreclosure mediation have been pleaded with the necessary particularity.

Thus, we conclude that the circuit court's denial of appellant's motion to stay and dismiss was in error. We shall vacate the court's judgment and remand for a hearing consistent with this opinion. In so doing, we make no determinations, factually or legally, as to the merits of appellant's allegations, either substantively or procedurally.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED; CASE REMANDED TO THAT COURT FOR A HEARING CONSISTENT WITH THIS OPINION; COSTS ASSESSED TO APPELLEES.

[5] Because this assertion was made in her reply to appellees' belated answer to her motion to stay and dismiss, which had been filed a day before the court executed its order denying the motion, it is unclear whether the court considered her reply in its consideration.