

Circuit Court for Baltimore City  
Case No. 24O19000233

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

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No. 0708

September Term, 2019

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ELAINE C. GARBETT-PARKER

v.

EDWARD S. COHN, et. al.

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Nazarian,  
Leahy,  
Friedman,

JJ.

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Opinion by Friedman, J.

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Filed: December 7, 2020

\*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.

We are asked to determine whether the trial court abused its discretion in denying Appellant Elaine Garbett-Parker's motion to stay or dismiss the foreclosure proceeding against her rental properties. As we will explain below, we affirm the trial court because Garbett-Parker's motion failed to state a valid defense, was filed too late, and was unsupported by affidavit.

### **BACKGROUND**

Elaine Garbett-Parker bought seven residential properties from Rudolph Cohen in 1996 for \$225,000. Cohen financed the sale privately and Garbett-Parker promised to repay the purchase price in monthly installments. When Cohen died in January 2017, his rights in the mortgage were transferred to a trust of which Edward Cohn, Appellee, is the trustee.

Garbett-Parker failed to make her March 1, 2017, mortgage payment. Cohn eventually filed a Notice of Foreclosure in the Circuit Court for Baltimore City. Garbett-Parker was served with the Order to Docket and supporting documents on March 4, 2019. Cohn asserted that Garbett-Parker owed \$94,632.93, including principal, interest, and attorneys' fees. Nearly two months later, on April 25, 2019, Garbett-Parker filed a Motion to Stay and Dismiss Foreclosure. In her motion, Garbett-Parker argued only that the amount owed on the mortgage was \$22,550.73, including principal, interest, and attorneys' fees, an amount significantly less than that asserted by Cohn. The circuit court denied Garbett-Parker's motion in a short, written order:

ORDERED that the motion be, and the same hereby is, DENIED. A motion to stay shall be denied if the court concludes that, on its face, it failed to state a valid defense to the validity of the lien or lien instrument or to the right of the plaintiff to foreclose. Maryland Rule 14-211(b)(1)(C). [Garbett-Parker] does not assert such defenses, but rather addresses [Cohn's] calculations

regarding the amount due pursuant to the Note. Furthermore, the motion is untimely and is not supported by an affidavit. Maryland Rule 14-211(a)(2)(B) and (3)(A).

This timely appeal followed.

## DISCUSSION

A defaulting borrower may seek to stay and dismiss a foreclosure sale pursuant to the terms of Maryland Rule 14-211, which governs who may file such a motion, when it must be filed, what it must contain, under what circumstances the court must hold a hearing, and under what circumstances it may grant relief. As noted above, the circuit court denied Garbett-Parker’s motion on three grounds: (1) it failed to state a valid defense, MD. RULE 14-211(a)(3)(B); (2) it was not timely filed, MD. RULE 14-211(a)(2)(B); and (3) it was unsupported by affidavits, MD. RULE 14-211(a)(3)(A). We will address each, in turn.

### I. FAILURE TO STATE A VALID DEFENSE

First, Rule 14-211(a)(3)(B) requires that a motion to stay and dismiss “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.” Garbett-Parker’s motion contained no such statements. In fact, she doesn’t deny the validity of the lien or Cohn’s right to foreclose. Instead, she contests only the amount owed.<sup>1</sup> Given that, the circuit court did not err in denying Garbett-Parker’s motion

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<sup>1</sup> It is a harsh reality that in Maryland, once the foreclosure process has commenced, the appropriate time to challenge the amount owed comes only after the property has been sold. A calculation error in a statement of mortgage debt does “not constitute grounds for enjoining or setting aside the foreclosure sale.” *Pacific Mortg. & Inv. Group, Ltd. V. LaGuerre*, 81 Md. App. 28, 33 (1989). Rather, the appropriate time to challenge the

pursuant to Rule 14-211(b)(1)(C), which requires the circuit court to deny a motion if it “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.”

## II. NOT TIMELY FILED

Next, the circuit court found that Garbett-Parker’s motion to stay and dismiss was not timely filed. Because these properties are not owner-occupied, a motion to stay and dismiss must be filed within 15 days of service of the order to docket. MD. RULE 14-211(a)(2)(B). Garbett-Parker was served with the order to docket on March 4, 2019. She filed her motion to stay and dismiss on April 25, 2019, some 52 days later. Thus, her motion to stay and dismiss was indisputably late. Moreover, although Garbett-Parker could have argued why the timeliness rules should not apply to her under Rule 14-211(a)(3)(F), she did not. As such, it was necessary and appropriate for the circuit court to deny the motion, pursuant to Rule 14-211(b)(1)(A), which provides that “[t]he court shall deny the motion, with or without hearing, if the court concludes from the record before it that the motion ... was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule.” MD. RULE 14-211(b)(1)(A).

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calculation is in the post-foreclosure sale audit: “If the statement [of debt] is erroneous in not showing the true balance due upon the mortgage, it is open to correction, when the account may be stated by the auditor; but it furnishes no reason for setting aside the sale.” *Id.* (quoting *Md. Perm. Ld. & Bld. Soc. v. Smith*, 41 Md. 516, 522 (1875)). The audit is mandatory by Rule. MD. RULE 14-215(a) (“The procedure following a sale made pursuant to this Chapter shall be as provided in Rules 14-305 and 14-306, *except that an audit is mandatory*”) (emphasis added). A party must contest the amount owed on the mortgage as found by the audit within ten days. MD. RULE 2-543(g)(1) (“Within 10 days after the filing of the auditor’s account or report, a party or claimant may file exceptions with the clerk.”).

### **III. UNSUPPORTED BY AFFIDAVITS**

Finally, as the circuit court noted, the Maryland Rules require that a motion to stay and dismiss must be filed under oath or supported by affidavit. MD. RULE 14-211(a)(3)(A). Garbett-Parker’s was not. As such, her motion did not “substantially comply with the requirements of the Rule,” and was therefore properly subject to denial pursuant to Rule 14-211(b)(1)(B).

### **CONCLUSION**

We conclude that the circuit court was well within its discretion to deny Garbett-Parker’s motion for stay and dismissal of foreclosure on any of the three grounds stated in the Order. We, therefore, affirm.

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