

Circuit Court for Montgomery County
Case No: 436150V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 809

September Term, 2018

TIEMOKO COULIBALY

v.

CARRIE WARD, *et al.*

Friedman,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 25, 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.

In 2017, appellees, acting as substitute trustees,¹ filed an Order to Docket in the Circuit Court for Montgomery County, seeking to foreclose on real property owned by Tiemoko Coulibaly, appellant. The substitute trustees filed a final loss mitigation affidavit on January 5, 2018. Pursuant to § 7-105.1(n) of the Real Property Article and Maryland Rule 14-209.1(b), after the passage of thirty days, the substitute trustees were permitted to advertise for and conduct a foreclosure sale of the real property.

As of March 15, 2018, a foreclosure sale had not occurred. Therefore, the circuit court issued a notification of noncompliant foreclosure filing and contemplated dismissal (“deficiency notice”), notifying the substitute trustees that six documents must be filed with the court before a Nisi of Sale Order could be executed.² The deficiency notice warned that failure to demonstrate the sufficiency of the case filings or to cure the deficiency within 30 days *may* result in the case being dismissed without prejudice. On March 23, 2018, the substitute trustees sold the real property to Siavash Asgari, appellee, at a foreclosure auction. Within thirty days of the deficiency notice, five of the required documents had been filed by the substitute trustees. The substitute trustees also submitted a written response to the deficiency notice, detailing the status of the outstanding document, the

¹ Appellees are Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Pratima Lele, Joshua Coleman, Richard R. Goldsmith, Jr., Ludeen McCartney-Green, Elizabeth C. Jones, Nicholas Derdock, Andrew J. Brenner, Angela Dawkins, and Wayne Anthony Holman.

² These documents included: 1) an affidavit of notice of time, place and terms of sale, 2) pre-sale proof of advertising of notice of sale, 3) a report of sale, 4) purchaser’s affidavit, 5) updated military affidavit, and 6) order nisi notice.

order nisi notice, and its anticipated time of filing. The order nisi notice was thereafter filed on April 24, 2018, satisfying all the documents requested in the deficiency notice.

On April 6, 2018, Mr. Coulibaly filed exceptions³ to the foreclosure sale alleging, in pertinent part, that the sale should have been stayed due to the existence of related, pending litigation. This litigation included a “wrongful foreclosure lawsuit” filed by Mr. Coulibaly in the circuit court four days before the foreclosure sale occurred and cases filed in the U.S. District Court for the District of Maryland which had previously been dismissed. A hearing regarding the exceptions occurred on May 16, 2018, in which Mr. Coulibaly’s exceptions were denied.

Mr. Asgari filed a motion for possession of the real property on May 9, 2018. Mr. Coulibaly did not file an opposition to Mr. Asgari’s motion and failed to appear at the subsequent motions hearing on May 30, 2018 due to a purported medical emergency. As such, an order was entered granting Mr. Asgari’s motion.

A ratification order was entered by the circuit court on June 6, 2018. On June 11, 2018, Mr. Coulibaly filed a motion to vacate the ratification order based on the substitute trustees’ prior noncompliance with the pre-foreclosure sale deficiency notice.⁴ This motion was denied by the circuit court.

³ Though titled otherwise, Mr. Coulibaly’s April 6, 2018 filing was treated by the circuit court as post-sale exceptions.

⁴ Though titled otherwise, Mr. Coulibaly’s June 11, 2018 filing is treated by this Court as a motion to vacate the ratification of sale order.

On appeal, Mr. Coulibaly raises the following issues,⁵ which we rephrase and consolidate for clarity: (1) whether the court abused its discretion in denying his post-sale exceptions to the foreclosure; (2) whether the circuit court abused its discretion granting possession of the real property to Mr. Asgari; and (3) whether the court erred in denying Mr. Coulibaly’s June 11, 2018 motion to vacate the ratification of sale order. Based on our review of the record, we are not persuaded that the circuit court erred as contended by Mr. Coulibaly. Therefore, we affirm the judgment of the circuit court.

Post-Sale Exceptions

Mr. Coulibaly first contends that the circuit court abused its discretion in denying his post-sale exceptions to the foreclosure sale.⁶ In his exceptions, he argued that the foreclosure sale should have been stayed due to related, pending litigation. However, pursuant to Maryland Rule 14-211, Mr. Coulibaly was required to file a motion for stay of sale no later than fifteen days after the final loss mitigation affidavit was filed. Mr. Coulibaly did not file a motion to stay the foreclosure sale at any point before the sale occurred. Instead, he first raised the issue of a stay in his post-sale exceptions. Because

⁵ Mr. Coulibaly’s brief dedicates a section to “illegal premature eviction letters,” but he does not cite any authority regarding the legality of the letters and fails to argue any prejudice. This Court declines to consider this section because a cogent argument has not been articulated with any particularity.

⁶ Mr. Coulibaly’s brief mentions a failure by the circuit court to issue notice pursuant to Md. Rule 14-305(c). This is incorrect. The record reveals that the required notice was published by the court on April 24, 2018 and that a post-sale printer’s certificate was filed on May 18, 2018. Even if Mr. Coulibaly did not receive the notice, he did not suffer prejudice because he filed post-sale exceptions as prescribed by the notice.

Mr. Coulibaly did not make a timely request for a stay, the circuit court did not abuse its discretion in denying his exceptions.

Further, Mr. Coulibaly did not raise a proper basis for a post-sale exception. The Court of Appeals has held that post-sale exceptions are “not an open portal through which any and all pre-sale objections may be filed as exceptions.” *Bates v. Cohn*, 417 Md. 309, 327 (2010). Specifically, post-sale exceptions may challenge either procedural irregularities of the sale itself or the statement of indebtedness. *Id.* As it pertains to his request for a stay, Mr. Coulibaly’s exceptions did not raise either type of challenge. Requesting a stay of the foreclosure sale was a pre-sale remedy available to Mr. Coulibaly that he did not exercise. It was not a proper basis for a post-sale exception.

Moreover, although Mr. Coulibaly asserts that related, pending litigation necessitated a stay of the foreclosure, the mere existence of such litigation is not in itself, grounds for the stay of a sale. Maryland Rule 14-211(e) requires the circuit court to deny a request for stay of sale in a foreclosure action if the moving party fails to establish that the lien or lien instrument was invalid or that the plaintiff has no right to foreclose. Mr. Coulibaly’s exceptions did not address with sufficient particularity whether the pending litigation dealt with or affected these issues. Therefore, we perceive no abuse of the circuit court’s discretion in denying Mr. Coulibaly’s exceptions.

Possession of Property Ruling

The circuit court did not abuse its discretion in granting Mr. Asgari’s motion for possession of the property despite Mr. Coulibaly’s absence at the May 30, 2018 motions hearing. Maryland Rule 2-311(b) requires a party to file a response to a motion within

fifteen days of being served with the motion. If no such response is filed, the circuit court may proceed to rule on the motion. Moreover, Maryland Rule 14-102(b)(4) allows the circuit court to enter a judgment awarding possession of property when a timely response to a motion for possession has not been filed. Such is the case in this matter. Mr. Asgari filed his motion for possession of property on May 9, 2018. Mr. Coulibaly's response to the motion became due on May 24, 2018, but none was filed. Therefore, the circuit court was permitted to rule on Mr. Asgari's motion for possession at any time after the response became due. Further, Maryland Rule 2-311(f) requires a request for hearing to be made in a response. Because Mr. Coulibaly did not comply with this Rule, and no hearing was required by rule, the circuit court was not required to hold a hearing.

Additionally, the burden is on Mr. Coulibaly, as appellant, to establish that he was prejudiced by the circuit court's decision to proceed without his presence at the motions hearing. However, Mr. Coulibaly does not put forth any argument as to how his presence at the hearing would have led the circuit court to a different conclusion, and this Court declines to speculate about the potential arguments he would have made had he been present. Because prejudice has not been argued, this Court will not disturb the ruling of the circuit court.

Motion to Vacate Ratification of Sale

Mr. Coulibaly finally contends that the court erred in denying his June 11, 2018 motion to vacate the ratification of sale order due to the substitute trustees' noncompliance

with the deficiency notice.⁷ Md. Rule 14-207.1(a) is a discretionary rule that permits the court to give notice to the parties when pleadings or papers in a foreclosure proceeding do not comply with all statutory and Rule requirements. The rule does not require that courts issue such notices to the parties, nor does the rule require the dismissal of foreclosure actions when deficiencies are not cured within thirty days of the notice. The March 15, 2018 deficiency notice at issue in this matter only states that the case *may* be dismissed without prejudice if the deficiencies are not cured. It was within the circuit court’s discretion to allow the foreclosure action to proceed or not based on the substitute trustees’ response to the deficiency notice.

By its very nature, the deficiency notice in this case called for a foreclosure sale to occur. The documents sought would not exist until such a sale had occurred. Therefore, it was necessary for the substitute trustees to commence with the foreclosure sale on March 23, 2018 to cure the deficiencies. In doing so, the substitute trustees were able to substantially comply with the deficiency notice within the prescribed thirty-day period. They also provided written notice to the circuit court regarding the status of an outstanding document, the order nisi notice, which was ultimately filed a mere nine days after the expiration of the thirty-day period and prior to the sale being ratified. Certainly, given the substitute trustees’ substantial compliance, it was reasonable for the circuit court to permit

⁷ Mr. Coulibaly’s reply brief contends that the ratification order should have been vacated because Mr. Asgari breached the terms of the foreclosure sale and has no legal right to the real property. This issue was not properly raised in Mr. Coulibaly’s initial brief. Therefore, the Court declines to consider this issue. *Anderson v. Burson*, 196 Md. App. 457, 476 (2010).

the foreclosure action to proceed for the sake of judicial economy. Accordingly, this Court holds that the circuit court did not abuse its discretion in refusing to vacate the ratification of sale order.

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