

Circuit Court for Montgomery County
Case No. 410429V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 950

September Term, 2018

FLAUBERT MBONGO, *et al.*

v.

CARRIE M. WARD, *et al.*

Berger,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 6, 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.

On October 7, 2015, the substitute trustees, appellees, filed an order to docket foreclosure of 14434 Bradshaw Drive, Silver Spring, Maryland, in the Circuit Court for Montgomery County.¹ On May 11, 2018, Flaubert Mbongo and Charlotte Dikongue, appellants, filed their fifth motion to dismiss the foreclosure action, claiming that appellees had unclean hands and therefore, that they lacked standing to foreclose on the property.² After the circuit court denied the motion, appellants filed this interlocutory appeal, raising two issues which reduce to one: whether the circuit court abused its discretion in denying their motion to dismiss the foreclosure action. Because their motion was untimely and failed to state with particularity any reason why it was not timely filed, we shall affirm.

Maryland Rule 14-211(a)(2)(A) provides that “a motion by a borrower to stay the sale and dismiss the [foreclosure] action shall be filed: “no later than 15 days after the last to occur of: (i) the date the final loss mitigation affidavit is filed; (ii) the date a motion to strike postfile mediation is granted”; or (iii) certain events occurring with mediation. Any motion that is untimely must “state with particularity the reasons why it was not timely filed.” Md. Rule 14-211 (a)(3). If the court concludes that the motion was not timely filed

¹ The substitute trustees in this case are: Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Pratima Lele, Joshua Coleman, Richard R. Goldsmith Jr., Ludeen McCartney–Green, Jason Kutcher, Elizabeth C. Jones, and Nicholas Derdock.

² Appellants previously filed motions to stay or dismiss the foreclosure action on October 22, 2015; October 31, 2016; June 16, 2017; and March 29, 2018. Those motions were all denied. Appellants appealed from the denial of three of the motions and we affirmed in separate unreported opinions. *See Mbongo v. Ward*, No. 1526, Sept. Term 2018 (filed November 26, 2018); *Mbongo v. Ward*, No. 2229, Sept. Term 2016 (filed Feb. 9, 2018); *Mbongo v. Ward*, No. 2436, Sept. Term 2015 (filed Jan. 18, 2017).

and does not show “good cause” to excuse noncompliance with Rule 14-211(a)(2)(A) it “*shall* deny the motion[.]” Md. Rule 14-211(b)(1)(A) (emphasis added).

Because appellants did not request mediation, any motion to stay or dismiss the foreclosure action had to have been filed within fifteen days of November 24, 2015, which was the date the final loss mitigation affidavit was filed. Therefore, appellants’ May 18, 2018, motion to dismiss was untimely. Moreover, the motion failed to “state with particularity” why it was not filed in a timely manner. Although appellants generally asserted that the motion was based on “newly discovered evidence,” by their own admission, they were aware of that evidence in August 2017. And nowhere in the motion did they explain why they waited approximately 10 months after having discovered the evidence to file their fifth motion to dismiss. Thus, even if we assume that the existence of newly discovered evidence might constitute “good cause” to file an untimely motion to dismiss under certain circumstances, it did not in this case. Consequently, the circuit court did not abuse its discretion in denying appellants’ motion to dismiss the foreclosure action.

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