

Circuit Court for Anne Arundel County
Case No. C-02-CV-18-003317

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1259

September Term, 2022

ANGELA J. PIERALDI

v.

KRISTINE D. BROWN, ET AL.

Wells, C.J.,
Leahy,
Wright, Alexander Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: October 24, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

In the Circuit Court for Anne Arundel County, appellant Angela J. Pieraldi moved to stay the foreclosure of real property. Appellees Kristine Brown and several others, (collectively, “the Substitute Trustees”), who initiated the foreclosure on behalf of the noteholder, opposed. The circuit court denied the motion without a hearing and the foreclosure went forward.

Pieraldi filed a timely appeal in which she raises the issue of whether the circuit court committed reversible error by not stating why it denied the motion to stay.¹ For the reasons that follow, we hold the circuit court did not abuse its discretion in denying the motion. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The parties do not dispute what happened in this case. The dates of certain events play an important role here, therefore, we include them when necessary.

On August 27, 2005, Pieraldi and her husband executed a \$234,600.00 promissory note secured by a deed of trust that encumbered real property located at 3612 Second Avenue, Edgewater, Maryland (“the Edgewater property”). Pieraldi defaulted on the loan on April 2, 2017, and on August 29, 2017, the Substitute Trustees mailed to Pieraldi an

¹ Pieraldi’s verbatim question to us is:

WHERE THE TRIAL COURT FAILED TO STATE WHICH FACTS IT RELIED UPON, STATE THE LAW UPON WHICH IT WAS RELIED AND APPLY THE LAW TO THE FACTS WHETHER THE ACTION MUST BE REMANDED DIRECTING THE TRIAL COURT TO MAKE THE REQUIRED FINDINGS AND CONDUCT AN ANALYSIS OF THE FACTS IN RESOLVING THE ULTIMATE ISSUE?

Intent to Foreclose. The Substitute Trustees went forward with the foreclosure proceedings, filing the necessary paperwork, including the Order to Docket, and sought loss mitigation options with Pieraldi, including mediation. A mediation hearing was originally scheduled for February 2019, but for various reasons, the mediation hearing didn't go forward until April 15, 2019. The parties did not reach an agreement. As a result, a foreclosure sale was set for June 18, 2019.

The foreclosure sale never materialized because Pieraldi filed for bankruptcy protection under Chapter 7 of the United States Bankruptcy Code, staying the foreclosure. The stay was lifted two months later specifically as to the Edgewater property, allowing the Substitute Trustees to move forward with the foreclosure. Pieraldi was discharged from bankruptcy weeks later. The Substitute Trustees initiated another foreclosure sale, which, after several delays, was scheduled for February 11, 2020. Once again, Pieraldi moved for bankruptcy protection, this time under Chapter 13, staying the sale.

Pursuant to Pieraldi's Chapter 13 bankruptcy plan of reorganization, she agreed to pay the mortgage arrears subject to the original deed of trust. Additionally, Pieraldi agreed to a five-year plan to pay down the mortgage and keep the Edgewater property. With this and other aspects of the reorganization agreement in place, Pieraldi voluntarily dismissed the Chapter 13 proceedings, and the stay was automatically lifted.

Sometime around October 1, 2021, the mortgage servicer, Wells Fargo Home Mortgage, applied a payment of \$57,495.99 to Pieraldi's mortgage account and escrow balance. After that, Pieraldi paid nothing more toward the mortgage under the Chapter 13

plan. As a result, the Substitute Trustees again moved to foreclose. After the lender and Pieraldi engaged in loss mitigation negotiations that ultimately failed on April 15, 2019, the foreclosure sale was finally set for August 23, 2022.

Once more, Pieraldi moved to stay and dismiss the foreclosure sale but this time under Maryland Rule 14-211, and the Substitute Trustees filed a written response opposing the stay. On August 22, 2022, the day before the foreclosure sale was scheduled, the circuit court denied Pieraldi’s motion in a one sentence order and the sale went forward. Pieraldi filed this timely appeal.

Additional facts will be discussed when needed.

STANDARD OF REVIEW

We review the denial of a motion to stay for abuse of discretion. *Andrews v. O’Sullivan*, 256 Md. App. 532, 544 (2022). As our Supreme Court has held, we will reverse under this standard if we determine that “no reasonable person would take the view adopted by the [trial] court[].” *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 419 (2007). We have found abuses of discretion where the trial court ruling was “clearly against the logic and effect of facts and inferences before the court[] . . . or when the ruling is violative of fact and logic.” *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534, 545 (2013).

DISCUSSION

A. Parties’ Contentions

Simply put, Pieraldi argues the circuit court committed reversible error because it did not explain why it denied her motion to stay. In her Opening Brief she guesses at why

the court might have denied the motion. Pieraldi speculates the court did not find she had good cause to go beyond the statutorily mandated fifteen-day window to request a stay. Pieraldi argues the court’s “out of hand rejection” of her motion “without any explanation” robbed this Court of the ability to review the circuit court’s actions. Additionally, she claims her Chapter 7 bankruptcy somehow shielded her from foreclosure by terminating her mortgage obligation.

The Substitute Trustees dismiss Pieraldi’s Chapter 7 bankruptcy theory asserting that it is not supported by the Bankruptcy Code or appellate authority. Substitute Trustees argue that this claim is not even before us because she didn’t raise the Chapter 7 discharge theory in the circuit court. On the merits, Pieraldi’s claim is baseless because while Chapter 7 shielded her from personal liability, it didn’t preclude her from making voluntary payments to prevent foreclosure, particularly when Pieraldi received the benefit of making payments to salvage the property from foreclosure under her Chapter 13 bankruptcy discharge agreement. Separately, Substitute Trustees point out that Pieraldi filed the motion to stay many months after mediation failed and did not give a meritorious reason for why she filed the motion to stay months after the deadline.

B. Maryland Rule 14-211

This case centers on the application of Rule 14-211, which permits a party to a scheduled foreclosure sale the right to move to stay the sale and dismiss the foreclosure action. Rule 14-211 went into effect in May of 2009. This Court explained the purpose of

the rule, quoting a letter from the Rules Committee to the Court of Appeals (now called the Supreme Court of Maryland), which stated:

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

Rule 14-211(a)(3) sets out the required contents of a motion to stay sale and dismiss the foreclosure action. It provides in relevant part:

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

- (A) be under oath or supported by affidavit;
- (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; and
- (C) be accompanied by any supporting documents or other material in the possession or control of the moving party.

Further, Rule 14-211(b)(1) sets out the procedures for the initial determination by the circuit court, and if the court finds one or more of the grounds for denial, the court has the discretion to deny the motion before holding a hearing on the merits. This section provides in part:

- (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.

Section 14-211(b)(2), however, requires that the court hold an evidentiary hearing on the merits if none of the three grounds for denial provided in subsection (b)(1) are present.

(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.

If the court finds the motion was timely, complies with the requirements of the Rule, and states a valid defense, then an evidentiary hearing on the merits is required before the circuit court makes a final determination on whether to grant or deny the motion.

Pieraldi's motion to stay is predicated only on her contention that because Wells Fargo applied less than the full payment due to the note, they could not accelerate payments and foreclose. Her reasoning is that because Wells Fargo told her she was in default, it had a right to demand full, accelerated, payment of the entire note. In the motion she quotes a provision in the note that states:

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have a right to do so if I am in default at a later time.

She also quotes the Deed of Trust:

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, . . .

In the motion, she argues that “[i]f Wells Fargo accepts anything other than a full payment under the terms of its documents, then Wells Fargo does not waive the right to accelerate its rights in *the future*.” (Emphasis in the original.) But she admits, “Maryland has not ruled on whether acceptance of partial payments constitutes an abandonment of those rights in the future.” She cites several cases on the concept of abandonment of accelerated payments on a note by the note holder. Among the cited authority, she offers a partial citation to what is properly cited as *Boren v. U.S. Nat. Bank Ass’n*, 807 F.3d 99, 104–06 (2015), which she argues stands for the proposition that “to abandon (or waive) an acceleration, a lender must manifest its intent to abandon acceleration by a clear affirmative act.”

In this case, the court could have denied Pieraldi’s motion on one of two grounds. The first is that under Rule 14-211(b)(1) Pieraldi failed to state a valid defense. Pieraldi’s rationale—the lender (Wells Fargo) forfeited the right to foreclose by accepting a partial payment—is nonsensical on its face. This argument is wholly unsupported by any authority in the Bankruptcy Code. A lender who accepted a sizeable partial payment could hardly have been said to have waived or abandoned the right to accelerate payment and,

ultimately, foreclose. This is particularly so under the circumstances here where Pieraldi staved off the lender’s two prior attempts to conduct a foreclosure sale by filing two separate bankruptcy proceedings. Under the Chapter 13 filing, Pieraldi agreed to continue to pay down the arrears balance and pay down the mortgage but did not do so. To argue that the lender abandoned the right to foreclose by accepting a partial payment but then permit Pieraldi default on her mortgage payments is absurd.

A second and equally valid reason the court could deny the motion is that by her own admission Pieraldi filed the motion to stay many months after one of two triggering events occurred: the conclusion of foreclosure mediation, or the filing of the final loss mitigation affidavit. Further, she did not offer a “good cause” explanation for going **three years** over the deadline. Rule 14-211(a)(2) states:

In an action to foreclose a lien on residential property, a motion by a borrower or record owner to stay the sale and dismiss the action shall be filed no later than **15 days** after the last to occur of . . . the conclusion of foreclosure mediation or the filing of a final loss mitigation affidavit.

(Emphasis supplied). Additionally, Rule 14-211(a)(3)(F) provides: “if the motion [to stay and dismiss] was not filed within the time set forth in subsection (a)(2) of this Rule, [the motion to stay and dismiss shall] state with particularity the reasons why the motion was not filed timely.”

In this case, neither side disputes that the final loss mitigation affidavit was filed on April 15, 2019, after mediation failed. Pieraldi argued in her motion that she couldn’t move to stay until after Wells Fargo accepted the \$57,495.99 payment. But, again, that argument

is meritless on its face. And Pieraldi abandoned that issue by not arguing it in her appellate brief.

Equally important, even if we agreed with Peiraldi that she couldn't have filed between the loss mitigation affidavit, April 15, 2019, and the date of the partial payment, October 2021, Pieraldi still waited until August 2022, or 10 months, before she filed the motion to stay. In short, Pieraldi failed to offer the circuit court a valid reason to look past her pleading and set the matter in for a hearing. Further, her motion was out of time. The court did not err in summarily denying the motion to stay.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. APPELLANT TO PAY THE
COSTS.**