Circuit Court for Charles County
Case No. 08-C-16-002735

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1320

September Term, 2017

NICOLE RENA MCCREA

v.

MARK S. DEVAN, *et al.*

Leahy,
Shaw Geter,
Kenney, III, James A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: March 13, 2019

This appeal arises from a foreclosure action initiated by Wells Fargo Bank, N.A. ("Wells Fargo"), through its substitute trustees, Mark S. Devan, Thomas P. Dore, Brian McNair, and Angela Nasuta (collectively "Appellees" or "Trustees") against Nicole Rena McCrea ("Appellant") on real property located at 12742 Turtle Dove Place, Waldorf, Maryland ("the Property"). After receiving a loan modification on her mortgage with Wells Fargo under the Home Affordable Modification Program ("HAMP") in 2010, McCrea defaulted in June 2014.

After filing a Notice of Intent to Foreclose on May 23, 2016, the Trustees instituted the foreclosure action in the Circuit Court for Charles County on October 19, 2016. McCrea contested the foreclosure and sought to pursue foreclosure alternatives through mediation, which suspended temporarily the pending foreclosure action. In December 2016, McCrea again applied for a HAMP loan modification. Wells Fargo determined she was ineligible under HAMP, but allowed her to participate in its own modification program, which required her to complete a trial-payment period.

On January 18, 2017, McCrea and Wells Fargo attended postfile mediation, at which the parties failed to resolve the pending foreclosure. Despite the failed mediation, McCrea successfully completed her trial-payment period for the Wells Fargo loan modification. On April 17, 2017, Wells Fargo notified McCrea that it approved her loan modification, which would be finalized upon her submission of a signed loan modification agreement ("the Agreement") by May 2, 2017. Rather than signing the Agreement, McCrea submitted a complaint to the Consumer Financial Protection Bureau ("CFPB") and sought an independent review of Wells Fargo's previous decision to deny McCrea a HAMP loan

modification. The Trustees ultimately filed a foreclosure bond with the circuit court on July 21, 2017. On August 10, 2017—the day before the scheduled foreclosure sale—McCrea field a *pro se* motion to stay and dismiss the foreclosure action. The circuit court denied McCrea's motion and she timely appealed, presenting three questions for our review, which we have rephrased and consolidated into the following two[1]:

I. Did McCrea's motion to stay and dismiss the foreclosure action assert (A) good cause for the untimely filing and (B) meritorious defenses against Wells Fargo and the Trustees?

[1] McCrea phrased the questions as:

1. Did the Defendant-Appellant demonstrate, [p]ursuant to Maryland Rule ("MD Rule") §14-211(a)(2)(C), that there was [good cause] for her non-compliance with MD Rule § 14-211(a)(2)(A)?
2. In accordance with this [c]ircuit's [p]recedent established in *Wells Fargo v. Neal*, 922 A.2d 538 – Md: Court of Appeals 2007, did the Defendant-Appellant demonstrate that she had meritorious defenses against Wells Fargo and the Plaintiffs/Substitute Trustees-Appellees', as representatives of Wells Fargo, foreclosure actions due to their violations of multiple federal laws and regulations concerning the Making Home Affordable Program; and multiple administrative rules and regulations concerning the Making Home Affordable (MHA) Program; and multiple Maryland State laws and regulations concerning the mortgage and lending through their concerted and repeated acts of fraudulent denial of the Defendant-Appellant's efforts to secure loss mitigation?
3. Did the [c]ircuit [c]ourt abuse its discretion by refusing to [stay] the [f]oreclosure sale and [denying] the Defendant-Appellant's Emergency Motion to Stay and Dismiss the Foreclosure prior to the submission of [opposition] from the Plaintiffs/Substitute Trustees-Appellees' as representative of Wells Fargo, causing prejudice and tangible harm to the Defendant-Appellant due to the loss of her home and the Plaintiffs/Substitute Trustees-Appellees', as representative of Wells Fargo, removal of the Defendant-Appellant's personal belonging from the property?

II. Did the circuit court abuse its discretion in denying McCrea's motion to stay and dismiss the foreclosure proceedings prior to the submission of the Trustees' opposition to the motion?

We hold that the trial court did not abuse its discretion in denying the motion because McCrea failed to establish good cause for the untimely filing of the motion and because McCrea failed to state with particularity the factual bases of the defenses asserted against the validity of the lien or the lien instrument and the right of the Trustees to foreclose. Further, even if the circuit court denied McCrea's motion before the Trustees filed a response, any error was harmless because it caused her no prejudice.

BACKGROUND

A. The Deed of Trust

On March 7, 2007, McCrea executed a Deed of Trust to secure a $219,000 mortgage for the Property.[2] Originally, in November 2010, Wells Fargo approved McCrea for a loan modification under HAMP ("2010 HAMP loan modification").[3] The agreement for the

[2] The original lender was World Savings Bank ("World Savings"), a predecessor-in-interest to Wells Fargo Bank. Initially, in October 2006, Wachovia Corporation acquired World Savings. In 2008, Wells Fargo acquired Wachovia, including World Savings. *See World Savings is Now Wells Fargo*, Wells Fargo, https://perma.cc/WZF3-5KBZ. Accordingly, in December 2011, Wells Fargo sent McCrea a notice informing her that Wachovia was now a part of Wells Fargo Home Mortgage—a division of Wells Fargo that would begin servicing her mortgage loan without affecting the terms of her current loan. Wells Fargo remained the secured party.

[3] According to a Directive issued by the U.S. Department of the Treasury, "[i]n February 2009, the Obama Administration introduced the Making Home Affordable (MHA) Program to stabilize the housing market and help struggling homeowners obtain relief and avoid foreclosure." U.S. Dep't of Treasury, Supp. Directive 15-06, Making Home Affordable Program – Streamlined Modification Process (2015). The Home Affordable Modification Program ("HAMP") is the largest program within the MHA and offers reduced monthly mortgage payments to homeowners who are at risk of foreclosure.

2010 HAMP loan modification indicated that the modified principal balance of the Note was $200,505.10, with interest accruing as of November 1, 2010, and modified monthly payments beginning on December 1, 2010.

B. Foreclosure Proceedings

1. McCrea's Default

On June 2, 2014, McCrea defaulted on the 2010 HAMP loan modification. In May 2016, Wells Fargo sought to foreclose on the deed of trust based on the June 2014 default and appointed Appellees as substitute trustees in October.[4] According to the Notice of Intent to Foreclose, McCrea had made payments up until June 2, 2014, which applied to the May 2014 payment period. The Trustees subsequently filed an order to docket suit and a final loss mitigation affidavit in the Circuit Court for Charles County on October 19, 2016. McCrea requested postfile foreclosure mediation on October 27, 2016, to avoid foreclosure and determine her qualification for a loan modification or other foreclosure alternative. The mediation process suspended the foreclosure proceedings as of November 4, 2016. The parties participated in mediation before the Office of Administrative Hearings

U.S. Dep't of Treasury, *Home Affordable Modification Program (HAMP)*, https://perma.cc/BS5J-JTE2 (last updated Jan. 30, 2017).

[4] A letter from Wells Fargo, dated July 7, 2015, indicates that McCrea had sought additional loan assistance from Wells Fargo at some point prior to the initiation of the foreclosure action in 2016. The record does not indicate whether McCrea filed this loan assistance application prior to or following her 2014 default. In any event, this letter bears no significance to our discussion as the letter indicates that Wells Fargo was unable to offer loan assistance options due to an incomplete application.

on January 18, 2017; according to the foreclosure mediator's notification of status filed just two days later, on January 20, "no agreement was reached."

2. The HAMP Denials

During the month prior to the foreclosure mediation—December 2016—McCrea, again, sought mortgage assistance, which yielded two responses from Wells Fargo. In a letter dated December 27, 2016, Wells Fargo informed McCrea she was ineligible for both a HAMP Tier 1 loan modification because she had "reached the allowable number of modifications" and a Tier 2 loan modification because her "proposed monthly modified payment would be more than 42% of [her] monthly income." In a second letter, also dated December 27, 2016, Wells Fargo offered McCrea a loan modification program through its own long-term mortgage assistance program, subject to McCrea's successful completion of a "trial period plan" consisting of monthly trial payments of $803.79. The offer described the "modification process" as follows:

> We can finalize your modified loan terms after you successfully complete your trial plan. At that time we will send you a loan modification agreement ("Modification Agreement"), which will reflect the terms of your modified loan. **You will need to sign and promptly return to us both copies of the Modification Agreement or your loan cannot be modified.**

(Emphasis added). Despite receiving this offer, McCrea appealed Wells Fargo's denial of HAMP Tier 1 and Tier 2 loan modifications, on January 15, 2017. She alleged that she had one prior HAMP modification and that her disqualification from a Tier 2 loan modification was "unsupported." On January 20, 2017, Wells Fargo informed McCrea that its decision to deny HAMP modifications had not changed.

3. The Agreement

On April 17, 2017, Wells Fargo notified McCrea that she had successfully completed the trial plan and had been approved for the Wells Fargo loan modification. The notice indicated that the terms of the Agreement for the Wells Fargo loan modification would not apply until McCrea signed and returned the Agreement by May 2, 2017. The Agreement stated that "[i]f the Borrower's Loan [wa]s currently in foreclosure, the Lender w[ould] attempt to suspend or cancel the foreclosure action upon receipt of the first payment" under the Agreement. The Agreement indicated, however, that if the "Borrower does not return a properly signed modification Agreement by th[e due] date and make all payments pursuant to the trial plan Agreement . . . Wells Fargo Home Mortgage may deny or cancel the modification."

4. CFPB Appeal

Meanwhile, McCrea submitted a complaint to the CFPB on May 3, 2017, seeking an independent review of Wells Fargo's December 5 decision denying her a HAMP loan modification. In its response, dated June 20, 2017, Wells Fargo maintained that McCrea's account "was handled properly and no adjustments [we]re needed." Specifically, Wells Fargo explained that it reviewed McCrea's account for mortgage assistance options five times between September 2014 through July 2017, which revealed McCrea's ineligibility for another HAMP Tier 1 modification because she had previously been approved for one. Upon further review, Wells Fargo determined that McCrea "still didn't qualify for HAMP assistance." Additionally, Wells Fargo reiterated that it had not yet received a signed Agreement, and acknowledged that, although the previously initiated foreclosure action had been suspended for the mediation process, the loan was "subject to be *removed from*

suspension and the *foreclosure action w[ould] move forward*" if McCrea did not accept and/or return the signed Agreement. (Emphasis added). McCrea never submitted a signed modification agreement to Wells Fargo.

5. Motion to Stay and Dismiss Foreclosure Action

The Trustees subsequently filed a foreclosure bond with the circuit court on July 19, 2017, and the foreclosure sale date was scheduled for August 11, 2017.[5] On August 10, 2017, McCrea filed a *pro se* motion to stay and dismiss the foreclosure proceeding. In her motion, McCrea represented that "the reason for the untimely filing of [her motion] [wa]s that she was [not] aware that a foreclosure sale had been initiated until July 31, 2017[.]" Substantively, McCrea alleged that the Trustees' actions gave rise to various statutory and common-law claims, which she listed without elaboration or explanation.[6] In her request

[5] McCrea explained that she learned of the foreclosure sale through a letter from an attorney soliciting its services dated July 31, 2017, which prompted her to conduct online research for foreclosure announcements in Charles County in order to determine the foreclosure sale date. Due to her unsuccessful efforts, on August 9, 2017, McCrea went to the "Court's Civil Clerk's Office to re[trieve] any documents that announced the date of the foreclosure sale." After speaking with two clerks, both of whom indicated that the foreclosure sale date was unknown, McCrea obtained a contact number for the Trustees. McCrea subsequently attempted to contact Angela Nasuta and Wells Fargo and eventually learned from a Wells Fargo customer service representative that the foreclosure sale date was scheduled for August 11, 2017 at 12:00 pm.

[6] McCrea listed the following defenses:

> 21. Based on Wells Fargo and the Plaintiff's actions the Defendant has cause of action and/or claims under: Title VI Discrimination; Title VI Retaliation; Fair Housing Act Discrimination; Fraud in the Inducement; Detrimental reliance; Substantive Unconscionability; Procedural Unconscionability; Misrepresentation under Maryland Consumer Protection Act; Material Omission under Maryland Consumer Protection Act; Common law Fraudulent Misrepresentation; Reformation of the Mortgage; Material

for relief, McCrea implored the circuit court to stay and dismiss the foreclosure action "due to [] Wells Fargo's retaliatory intent; and the Plaintiff's impropriety and/or lack of merits to enforce foreclosure during a U.S. government agency's review of Wells Fargo's actions as pertains to the Defendant's requests and appeals of her loan modification."[7] McCrea attached to her motion communications between Wells Fargo and herself, demonstrating her acknowledgment of the Agreement for the Wells Fargo loan modification, including Wells Fargo's agreement to suspend the foreclosure proceedings so long as McCrea returned the signed Agreement.

On August 11, 2017, the Trustees filed their response, arguing that McCrea's motion was untimely and that McCrea failed to establish good cause for the untimely filing because the "foreclosure sale date is not the triggering event for the timing component of Maryland Rule 14-211." The Trustees argued, further, that McCrea failed to state with particularity a factual and legal basis to support her contention that the loan modification denial was

> Omission under Maryland Mortgage Fraud Protection Act; Material Misrepresentation under Maryland Mortgage Fraud Protection Act; Violation of Maryland Consumer Debt Collection Act; Violation of Maryland Real Property Article; Common Law Breach of Contract; Misrepresentation under the Fair Debt Collections Practices Act against Wells Fargo; Misrepresentation under the Fair Debt Collections Practices Act against the Plaintiffs; Violation of the Equal Credit Opportunity Act; Violation of the Maryland Equal Credit Opportunity Act.

[7] McCrea also requested that the circuit court stay the foreclosure sale and schedule a hearing "on the retaliatory intent of Wells Fargo; and the impropriety and/or merits of the Plaintiff's actions to enforce foreclosure during a U.S. government agency's review of Wells Fargo's actions as pertains to the Defendant's requests and appeals of her loan modification." Before this Court, however, McCrea does not challenge the trial court's denial of the motion without holding an evidentiary hearing.

improper. The Trustees asserted that McCrea's choice to forego the Wells Fargo loan modification could not be a defense to the foreclosure action.

That same day, August 11, 2017, the circuit court denied McCrea's motion to stay and dismiss the foreclosure sale in an order issued without a memorandum opinion. Also on that same day, the Trustees sold McCrea's property.

McCrea noted her timely appeal to this Court on September 8, 2017.

DISCUSSION

I.

Motion to Stay and Dismiss the Foreclosure Proceedings

Before this Court, McCrea raises three challenges to the circuit court's denial of her motion to stay and dismiss: (1) her motion established good cause for her untimely filing of the motion; (2) her motion asserted "meritorious defenses" against Wells Fargo and the Trustees; and (3) the circuit court denied her motion before the Trustees filed their opposition. The Trustees respond that the circuit court was required to deny McCrea's untimely motion because she "did not come close to establishing good cause to excuse [her] non-compliance" and she failed to plead her defenses with sufficient particularity.

Under Maryland Rule 14-211, "[a] defaulting borrower may file a motion to stay the sale of the property and dismiss the foreclosure action" before a scheduled foreclosure sale takes place. *Bates v. Cohn*, 417 Md. 309, 318-19 (2010) (internal quotations omitted). "In other words, the borrower may petition the court for injunctive relief, challenging the validity of the lien or . . . the right of the lender to foreclose in the pending action." *Svrcek v. Rosenberg*, 203 Md. App. 705, 720 (2012) (internal quotations & alterations omitted).

Maryland Rule 14-211(b)(1) provides three grounds for denying a borrower's motion to stay sale and dismiss the foreclosure action:

> **(b) Initial Determination by Court.** (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 the 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.

Accordingly, if the trial court finds "one or more grounds for denial . . . the court has the discretion to deny the motion before holding a hearing on the merits." *Buckingham v. Fisher*, 223 Md. App. 82, 89 (2015).

Motions pursuant to Rule 14-211 constitute requests for injunctive relief. *Svrcek*, 203 Md. App. at 720. We recently explained in *Mitchell v. Yacko* that

> we 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* [], 203 Md. App. [at] 720, "[w]e review the trial court's legal conclusions *de novo*." *Id.* Further, we review the circuit court's decision to deny Ms. Mitchell's motion without a hearing for legal correctness. *Buckingham*, 223 Md. App. at 92-93.

232 Md. App. 624, 640–41 (2017) (some internal citations omitted). In applying this standard of review, we will reverse the circuit court's judgment if

> we determine that "no reasonable person would take the view adopted by the trial court." We have found abuse 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, 546 (2013) (citation and alterations omitted).

A. Timeliness

Before this Court, McCrea contends that she had good cause for failing to timely file the motion because Wells Fargo made assertions to both her and CFPB about the suspension of the foreclosure sale, which she did not know was scheduled for August 11, 2017, until two days prior.

In response, the Trustees posit that McCrea failed to establish good cause because "the foreclosure sale date is not a triggering event for the timing component under Rule 14-211" and she failed to allege her inability to file an earlier motion. Anticipating that McCrea might assert the senselessness of filing a motion to stay and dismiss amidst loss mitigation discussions with Wells Fargo and her payments towards the trial plan, the Trustees aver that McCrea always believed she was entitled to a HAMP loan modification, which the parties failed to resolve at the January mediation. Moreover, McCrea's failure to return the signed loan modification made it clear that she had no intention of accepting it.

McCrea replies that she established good cause for several reasons. First, she maintains that the parties agreed on the loan modification at the foreclosure mediation. She maintains, further, that she asserted with particularity that she was unaware that (1) the foreclosure mediator had filed documents indicating that the mediation had failed; (2) Wells Fargo had continued with the foreclosure process despite her and Wells Fargo's

compliance with loss mitigation, including the period during the CFPB review; and (3) a date had been set for the foreclosure sale.

As relevant to this appeal, the time requirement for filing under Rule 14-211(a)(2)(A) states: "a motion by a borrower to stay the sale and dismiss the action shall be filed no later than 15 days *after the last to occur of*: [1] the date the final loss mitigation affidavit is filed; . . . or . . . [2] *the date the postfile mediation was held*[.]" (Emphasis added). If a borrower does not comply with the time requirements of this Rule, "[f]or good cause, the court may extend the time for filing the motion or excuse non-compliance." Md. Rule 14-211(a)(2)(C). As evidenced by Rule 14-211(a)(3)(F), a showing of good cause must be stated with "particularity." A borrower's failure to demonstrate "good cause for excusing non-compliance with subsection (a)(2) of th[e] Rule" is one of the three grounds for denial at the initial determination phase. Rule 14-211(b)(1)(A).

In the instant case, the postfile mediation date governs the time for filing McCrea's motion because it occurred after the final loss mitigation affidavit was filed on October 19, 2016. *See* Rule 14-211(a)(2)(A). It is undisputed that McCrea failed to file her motion within 15 days of the postfile mediation date, as required by Rule 14-211(a)(2)(A)(iii)(a). The parties met for postfile mediation on January 18, 2017, giving McCrea until February 2, 2017 to file her Rule 14-211 motion. McCrea did not file her motion until August 10, 2017—six months and eight days after the filing deadline and the day before the scheduled foreclosure sale. The issue, then, is whether McCrea established good cause to excuse her untimely filing within the purview of Rule 14-211(a)(2)(C).

In a variety of contexts, Maryland courts have considered and relied on the definition of good cause as stated in Black's Law Dictionary:

> **Substantial reason, one that affords a legal excuse.** Legally sufficient ground or reason. Phrase 'good cause' depends upon circumstances of individual case, and finding of its existence lies largely in discretion of officer or court to which decision is committed…. 'Good cause' is a relative and highly abstract term, and its meaning must be determined not only by verbal context of statute in which term is employed but also by context of action and procedures involved in type of case presented. (Emphasis added).

In re Robert G., 296 Md. 175, 179 (1983) (quoting *Black's Law Dictionary* 623 (5th ed. 1979)) (emphasis added); *see also G. Heileman Brewing Co., Inc. v. Stroh Brewery Co.*, 308 Md. 746, 759 (1987).

In her motion, McCrea asserted that "in satisfaction of Maryland Rule 14-211(a)(3)(F) [] the reason for the untimely filing of the . . . [m]otion . . . is that she was NOT aware that a foreclosure sale had been initiated until July 31, 2017." Indeed, the record contains communications from Wells Fargo, dating back to December 2016, confirming that the Wells Fargo loan modification would suspend the pending foreclosure proceedings. But the record also contains multiple communications from Wells Fargo warning McCrea—unambiguously—that her failure to return the signed Agreement would subject the loan modification to cancellation and cause the suspended foreclosure action to resume. Wells Fargo reiterated this fact in its June 2017 response to McCrea's CFPB complaint, in which it also highlighted that McCrea had not yet returned the signed Agreement. There is nothing in the record to establish that McCrea ever returned the signed Agreement to Wells Fargo.

Based on the facts and circumstances presented in this case, we cannot say that McCrea's ignorance of the foreclosure sale date established good cause for the untimely filing of her motion. Rule 14-211(a)(2)(A)(iii) placed McCrea on notice that the fifteen-day time for filing began ticking after the parties met for postfile mediation, regardless of her knowledge of any foreclosure sale date. And, as we explained in *Svrcek*, "ignorance of the law is no excuse." 203 Md. App. at 721 (rejecting borrower's argument that he was unaware that he had fifteen days to file a motion on the basis that ignorance of the law is no excuse) (citation omitted). Moreover, McCrea should have known, at the minimum, from her correspondence with Wells Fargo that her loan modification was at risk of cancellation—and thus, a ground for resuming the underlying foreclosure action. We, therefore, hold that the circuit court did not err or abuse its discretion in denying the motion after concluding that McCrea did not have good cause for its untimely filing.

B. Valid Defenses

McCrea argues that she asserted "meritorious defenses against Wells Fargo and the [Trustees']. . . foreclosure actions due to their violations of multiple federal laws and regulations[.]" The Trustees respond that "McCrea did not plead her defenses with sufficient particularity" as required by Rule 14-211. Specifically, the Trustees argue that McCrea's motion fails to offer particularized factual or legal support for the proposition that Wells Fargo's decisions were improper. In her reply, McCrea argues that her motion alleged the defenses with particularity by asserting "several [] allegations of improper loss mitigation under several state and federal regulations . . . with evidentiary support for the existence of improper loss mitigation."

Although we typically review the circuit court's denial of a Rule 14-211 motion for an abuse of discretion, "[w]e review the trial court's legal conclusions *de novo*." *Yacko*, 232 Md. App. at 641 (quoting *Wincopia Farm, LP v. Goozman*, 188 Md. App. 519, 528 (2009)). Because we are asked to answer a question of law—whether McCrea's motion asserted "meritorious" defenses—"we review the trial court's denial of the motion for whether it is legally correct." *Buckingham*, 223 Md. App. at 92 (citation omitted).

Rule 14-211(a)(3) sets forth the substantive requirements of a motion to stay and dismiss the foreclosure action. As relevant to this appeal, subsection (a)(3)(B) states, in part, that "[a] motion to stay and dismiss shall . . . 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." Md. Rule 14-211(a)(3)(B). Furthermore, this Court has explained that, pursuant to Rule 14-211(b)(1)(C), the "[f]ailure to state a facially valid defense is one of the three grounds for denial at the initial determination phase[.]" *Buckingham*, 223 Md. App. at 90.

In *Buckingham*, this Court assessed "the level of 'particularity' [] required for a defense to be deemed valid on its face[.]" *Id*. at 91. We observed that subsection (a)(3)(B) makes it "clear . . . that the factual and legal bases of a defense must be stated 'with particularity' and that any available supporting documents or material must be provided." *Id*. at 89. Based on this observation, we opined that the pleading standard under Rule 14-211 "is more exacting than the pleading standard for an initial complaint." *Id*. at 91. Accordingly, we held that, "under Rule 14-211, a party must plead all elements of a valid defense with particularity." *Id*. Finding "the particularity requirement for pleading fraud-

based claims in Maryland" to be instructive, we announced: "[i]n the context of Rule 14-211 . . . particularity means that *each element of a defense must be accompanied by some level of factual and legal support*. General allegations will not be sufficient to raise a valid defense requiring an evidentiary hearing on the merits." *Id*. at 91-92 (emphasis added).

McCrea cites to *Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705 (2007), to support her proposition that she asserted "meritorious defenses" against the proceeding of the foreclosure sale. The Court of Appeals in *Neal* considered, *inter alia*, whether "mortgagors may assert an allegation of regulatory noncompliance as a shield against unauthorized foreclosure actions." *Id*. at 721. In *Neal*, Wells Fargo initiated foreclosure proceedings based on Neal's default on a Fair Housing Administration ("FHA") deed of trust that secured a purchase money loan on a dwelling. *Id*. at 711-12. The deed of trust included a provision that prohibited mortgage acceleration and foreclosure in violation of Housing and Urban Development ("HUD") regulations. *Id*. at 712. In response, Neal filed two causes of action: a state law breach of contract claim and a petition for declaratory relief to prevent Wells Fargo from proceeding with foreclosure under the deed of trust. *Id*. at 712-13. In response, Wells Fargo moved for summary judgment, which the circuit court granted. *Id*. The Court of Appeals held that, although mortgagors may not "wield as a sword" the HUD regulations incorporated in an FHA form deed of trust to raise a breach of contract claim, "the violations of the HUD mortgage servicing regulations alleged of Wells Fargo by Neal may be asserted effectively as an affirmative defense within the injunctive relief apparatus provided in Rule 14-209(b)(1)." *Id*. at 727. Notwithstanding, the Court of Appeals made it clear that a movant must ultimately prove the alleged

misconduct in accordance and therefore, remanded the case for purposes of determining whether the mortgagee was entitled to summary judgment. *Id*. at 727-28, 730 n.12.

McCrea's reliance on *Neal* is, therefore, misplaced. Indeed, McCrea may assert violations of certain state and federal mortgage laws as an affirmative defense to proceeding with a foreclosure sale. A borrower must, nevertheless, allege such defenses with particularity in accordance with the requirements of Rule 14-211. McCrea's motion merely sets forth a laundry list of twenty state and federal causes of action without alleging particular factual grounds pursuant to which the trial court could determine that the Trustees' actions violated the alleged causes of action. Simply alleging that Wells Fargo had "retaliatory intent" in enforcing the foreclosure action does not meet the particularity standard under Rule 14-211(a)(3)(B), as "*each element* of [the twenty asserted] defense[s] must be accompanied by some level of factual and legal support." *Buckingham*, 223 Md. App. at 91-92 (emphasis added). Accordingly, even assuming there was good cause for the late filing of McCrea's motion, we hold that McCrea failed to allege with particularity the factual bases of the defenses asserted against the validity of the lien or lien instruments and the right of the Trustees to foreclose. *See* Md. Rule 14-211(b)(1)(C).

II.

Denial of Motion Prior to Submission of Trustees' Opposition

McCrea also asserts, without legal citation,[8] that the trial court "refused to exercise its discretion" in denying her motion because the court "affirmed [the Trustees]

[8] We note that McCrea fails to cite to any legal authority to support her argument that a trial court may not rule on a Rule 14-211 motion prior to the filing of the non-moving

predetermined position to recommence the foreclosure, *prior* to the [Trustees] opposing [McCrea's motion.]"

The Court of Appeals in *Miller v. Mathias* explained that Md. Rule 2-311(b),[9] which governs the time for responding to motions, "[n]ecessarily impli[es] . . . that the court not rule on the motion before the time allowed for a response has elapsed. 428 Md. 419, 446 (2012) (internal quotations and citation omitted) (first alteration in original). "It is just as well settled, however, . . . [that] an error that is not shown to be prejudicial does not warrant reversal." *Id*. (citation omitted).

The Trustees filed their opposition at 12:00 p.m. on August 11, 2017, the same day the court entered its order denying McCrea's motion.[10] Even if the court erred by issuing its decision before it received the Trustees' response, McCrea must still demonstrate that the court's early ruling prejudiced her. *See Miller*, 428 Md. at 446. On appeal, McCrea

party's opposition. *See Dolan v. Kemper Independence Insurance Co.*, 237 Md. App. 610, 626 (2018) ("[t]he absence of authority is alone sufficient to deem the argument to have been waived and to decline to address it.").

[9] Rule 2-311(b) states:

> Except as otherwise provided in this section, a party against whom a motion is directed shall file any response within 15 days after being served with the motion, or within the time allowed for a party's original pleading pursuant to Rule 2-321(a), whichever is later. Unless the court orders otherwise, no response need be filed to a motion filed pursuant to Rule 1-204, 2-532, 2-533, or 2-534. *If a party fails to file a response required by this section, the court may proceed to rule on the motion.*

(Emphasis added).

[10] The court's order does not have a corresponding filing time-stamp but, in light of our holding, we need not determine the chronology of these filings.

simply complains, in a conclusory manner, that the circuit court's early ruling prejudiced her because she lost her home and personal belongings as a result thereof. But it was the Trustees—the *non-moving* party—who were "entitled to the opportunity to respond to [McCrea's] motion before that motion was ruled on[.]" *See id*. at 445. She cannot explain how allowing the Trustees more time to oppose her motion would have changed the court's ultimate ruling, which was in favor of the Trustees. Discerning no prejudice, the trial court's issuance of its order would not warrant reversal even if the court failed to allow sufficient time for the Trustees to respond.

JUDGMENTS OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.