

Circuit Court for Prince George's County
Case No. CAEF15-25095

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1617

September Term, 2019

PHILO AMAECHI

v.

CARRIE M. WARD, *et al.*

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

JJ.

PER CURIAM

Filed: December 17, 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.

Philo Amaechi, appellant, appeals from an order issued by the Circuit Court for Prince George’s County ratifying the foreclosure sale of her home. She raises three issues on appeal, which reduce to one: whether the court erred in denying her “Motion to Excuse Noncompliance with Filing Deadline Pursuant to MD Rule 14-211(2)(C) and Motion to Vacate Sale and to Stay or Dismiss the Foreclosure Proceeding and Exception to Ratification of the Sale” (the motion to stay and dismiss). For the reasons that follow, we shall affirm.

After Ms. Amaechi defaulted on her deed of trust home loan, appellees, acting as substitute trustees,¹ filed an Order to Docket Foreclosure in the circuit court. After appellees filed the final loss mitigation affidavit, Ms. Amaechi requested postfile mediation. A foreclosure mediation was held on August 29, 2016 but the parties failed to reach an agreement. The foreclosure action was then stayed after Ms. Amaechi filed successive bankruptcy petitions in the United States Bankruptcy Court for the District of Maryland. On January 9, 2019, the Bankruptcy Court granted appellees’ motion for relief from the automatic stay. Ms. Amaechi’s home was then sold at a foreclosure auction in May 2019.

On June 18, 2019, Ms. Amaechi filed the motion to stay and dismiss, claiming that, after she initiated her second bankruptcy proceeding, her loan servicer had violated HUD servicing regulations by failing to send her attorney information that “indicated loss

¹ Appellees are Carrie M. Ward, Howard N. Bierman, Joshua P. Coleman, George J. Geesing, Pratima Lele, and Tayyaba C. Monto.

mitigation might be available” and “provided instructions sufficient to facilitate workout discussions.” She further contended that her loan servicer had miscalculated her income when it had evaluated a loss mitigation application that she had filed in 2017. However, when she “directly approached [the servicer] on or about January 17, 2019,” and indicated that it had made “a gross error in the calculation of her income for purposes of qualifying for an FHA-HAMP loan modification,” the servicer wrongfully told her “that she could not again be reviewed for any loss mitigation opportunities[.]”

Ms. Amaechi acknowledged that the motion to stay or dismiss was not timely under Maryland Rule 14-211. However, she asserted that the court should excuse the untimely filing because her defenses to the foreclosure sale were “not ripe and did not exist at the time her motion to stay or dismiss was due to be filed.” Ms. Amaechi alternatively claimed that her loan servicer’s alleged violation of the HUD servicing regulations constituted a valid exception to the foreclosure sale and was therefore not required to be raised in a pre-sale motion to stay or dismiss.

The circuit court ultimately denied the motion to stay or dismiss without a hearing, finding, *inter alia*, that it was untimely, failed to establish good cause to excuse the untimeliness, and failed to state a valid defense to the validity of the lien or the right of appellees to foreclose. The same day it entered an order ratifying the foreclosure sale. This appeal followed.

As she did in the circuit court, Ms. Amaechi concedes that her motion to stay and dismiss was untimely because it was not filed within 15 days after the date of the foreclosure mediation. *See* Rule 14-211(a)(2)(A)(iii)(a). However, she claims that the

court should have excused her non-compliance with the time requirements of that Rule because her defenses “were not ripe and did not exist at the time her motion to stay or dismiss was due to be filed.”

To be sure, Rule 14-211 allows a court to extend the time to file a motion to stay or dismiss for good cause shown if the movant “state[s] with particularity the reasons why the motion was not timely filed.” *See* Rule 14-211(a)(3)(F). However, even if we assume the truth of Ms. Amaechi’s claims, she was either aware, or should have been aware, of the existence of the defenses raised in her motion to stay and dismiss prior to the time that appellees conducted the foreclosure sale. In fact, as previously set forth, Ms. Amaechi specifically alleged in her motion to stay or dismiss that she “was told by [the loan servicer] that she could not again be reviewed for any loss mitigation opportunities . . . on or about January 17, 2019[.]” But instead of filing the motion to stay and dismiss at that time, or at any point prior to the foreclosure sale, she waited until almost one month after the sale had occurred. Consequently, the court could reasonably find that Ms. Amaechi did not act diligently in filing her motion and, therefore, that she had not established good cause to excuse its untimely filing.

Ms. Amaechi alternatively asserts that, even if the motion to stay and dismiss was not timely, her claims constituted valid exceptions to the foreclosure sale and, therefore, that they could be raised post-sale. In support of this contention, she relies on *Bierman v. Hunter*, 190 Md. App. 250, 268 (2010), wherein we stated that, in considering post-sale exceptions, the “trial court had full power to hear and determine all objections to the foreclosure sale” not “merely objection to the regularity of the mode in which the sale was

conducted.” However, in *Bates v. Cohn*, 417 Md. 309, 327-28 (2010), the Court of Appeals expressly rejected the reasoning in *Bierman* and held that “a homeowner/borrower ordinarily must assert known and ripe defenses to the conduct of foreclosure sale prior to the sale, rather than in post-sale exceptions.” Moreover, the Court in *Bates* specifically held that a lender’s failure to comply with loss mitigation requirements was not a procedural irregularity with the sale but rather the type of “defense, which must be raised ordinarily pre-sale in an effort to prevent the sale from occurring.” *Id.* at 328. Consequently, the claims raised in the motion to stay and dismiss were not proper exceptions to the foreclosure sale.

Because Ms. Amaechi did not comply with the timing requirement of Rule 14-211(a)(2), did not present good cause sufficient to excuse non-compliance with that requirement, and did not set forth any cognizable post-sale exceptions, the trial court was required to deny her motion to stay and dismiss. *See* Rule 14-211(b)(1)(A) (stating that the “court *shall* deny the motion [to stay or dismiss]” if the motion “was not timely filed and does not show good cause for excusing non-compliance”). Therefore, we find no error in its refusal to enjoin or dismiss the foreclosure action. Because we affirm the denial of Ms. Amaechi’s motion on that basis, we need not reach the issue of whether the motion, if it had been timely filed, established a valid defense to the foreclosure sale.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**