

Circuit Court for Harford County
Civil No. C-12-CV-18-000648

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1659

September Term, 2019

NICOLE COMEGYS

v.

LAURA H.G. O’SULLIVAN, ET AL.

Arthur,
Leahy,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: December 14, 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.

A homeowner filed exceptions to a foreclosure sale more than 30 days after the clerk had issued a notice stating that the sale would be ratified unless cause to the contrary were shown within 30 days after the date of the notice. Md. Rule 14-305(c). The Circuit Court for Harford County denied the exceptions on the ground that they were untimely.

The homeowner appealed. We shall affirm.

BACKGROUND FACTS

On September 20, 2018, appellees Laura H.G. Sullivan and others, as substitute trustees under a deed of trust, commenced this foreclosure proceeding in the Circuit Court for Harford County. The proceeding concerns a residential property in Harford County, formerly owned by appellant Nicole Comegys.

On February 26, 2019, the substitute trustees informed Ms. Comegys, by first-class mail, that they had scheduled a foreclosure sale for her property on March 14, 2019. On March 14, 2019, the substitute trustees sold the property at a foreclosure sale.

On March 27, 2019, the substitute trustees filed a report of sale, pursuant to Md. Rule 14-305(a). According to a certificate of service attached to the report of sale, the substitute trustees served that document on Ms. Comegys by first-class mail on March 26, 2019.

Maryland Rule 14-305(c) provides, in part, that “[u]pon the filing of a report of sale of real property or chattels real pursuant to section (a) of this Rule, the clerk shall issue a notice containing a brief description sufficient to identify the property and stating that the sale will be ratified unless cause to the contrary is shown within 30 days after the

date of the notice.” Under Rule 14-305(c), “[a] copy of the notice shall be published at least once a week in each of three successive weeks before the expiration of the 30-day period in one or more newspapers of general circulation in the county in which the report of sale was filed.”

In accordance with the requirements of Rule 14-305(c), the Clerk of the Circuit Court for Harford County issued the required notice on March 27, 2019. The notice stated that the sale of Ms. Comegys’s property, as made and reported by the substitute trustees, would be “ratified and confirmed,” unless cause to the contrary were shown on or before April 26, 2019, provided that a copy of the notice was inserted in a newspaper published in Harford County once in each of the three successive weeks before that date. The notice appeared in *The Aegis*, a newspaper published in Harford County, on April 5, April 12, and April 19, 2019.

Ms. Comegys filed exceptions to the foreclosure sale on April 29, 2019, three days after the deadline. In brief, she argued that the lender had violated federal regulations by engaging in “dual-tracking” – pursuing foreclosure before it had exhausted all loss-mitigation options, such as a short sale or a deed in lieu of foreclosure.

On May 3, 2019, the circuit court entered an order ratifying the foreclosure sale. It is not clear whether the court was aware of the exceptions at the time it entered that order. In any event, on May 14, 2019, the court struck the order ratifying the sale and scheduled the case for a hearing on the exceptions.

The court conducted the hearing on August 13, 2019. On September 12, 2019, the court denied the exceptions on the grounds that they were untimely and that it had no authority to grant the requested relief. The court did not address the merits.

On September 24, 2019, the court entered a final order ratifying the foreclosure sale.

On October 24, 2019, Ms. Comegys noted a timely appeal. She poses two questions, which we have restated for concision:

1. Did the circuit court err in holding that the exceptions were untimely?

2. Did the circuit court err in ratifying the foreclosure sale, because the lender had engaged in dual-tracking in violation of federal regulations?¹

For the reasons stated herein, we shall affirm the circuit court's decision that the exceptions were untimely. Like the circuit court, we shall not address the issue of dual-tracking.

¹ Ms. Comegys formulated her questions as follows:

WHETHER THE CIRCUIT COURT FOR HARFORD COUNTY ERRED WHEN IT HELD THAT THE EXCEPTIONS HAD NOT BEEN FILED TIMELY?

WHETHER THE CIRCUIT COURT FOR HARFORD COUNTY ERRED WHEN IT RATIFIED THE FORECLOSURE SALE BECAUSE APPELLEES HAD ENGAGED IN DUAL TRACKING WHICH IS PROHIBITED BY CFPB REGULATIONS?

DISCUSSION

Maryland Rule 14-305(d)(1) authorized Ms. Comegys to file exceptions to the foreclosure sale. Under that rule, the exceptions were required to “be filed within 30 days after the date of a notice issued pursuant to section (c) of this Rule or the filing of the report of sale if no notice is issued.”

As previously stated, the Clerk of the Circuit Court for Harford County issued the notice pursuant to Rule 14-305(c) on March 27, 2019. Therefore, under Rule 14-305(d), Ms. Comegys was required to file her exceptions within 30 days of that date – i.e., by April 26, 2019. In addition, the notice itself specifically stated that the court would ratify the sale unless exceptions were filed by April 26, 2019.

Ms. Comegys did not file her exceptions until April 29, 2019. Her exceptions were, therefore, untimely. The circuit court did not err in denying her untimely exceptions.

In advocating for a contrary conclusion, Ms. Comegys cites Maryland Rule 1-203(c). That rule states: “Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after service upon the party of a notice or other paper and service is made by mail, three days shall be added to the prescribed period.” Ms. Comegys contends that Rule 1-203(c) grants her another three days, after the 30 days stated in Rule 14-305(d), to file her exceptions.

Ms. Comegys is incorrect. “Rule 1-203(c) only applies when service is a prerequisite to triggering the clock.” *Kamara v. Edison Bros. Apparel Stores, Inc.*, 136 Md. App. 333, 337 (2001). In this case, however, both parties agreed the notice was not

served on the homeowner (or anyone else). Rather, it was published for three successive weeks in a newspaper of general circulation in Harford County. In these circumstances, Rule 1-203(c) simply does not apply.

Furthermore, “[t]he plain language of Rule 1-203(c) states that it applies to service by mail, not to an entry by the court.” *Id.* Thus, for example, a litigant has 30 days from the entry of judgment to note an appeal (Md. Rule 8-202(a)), not 30 days plus an additional three days for service by mail. *Id.* Similarly, a litigant must file a petition for certiorari within 15 days after the Court of Special Appeals issues its mandate (Md. Rule 8-302(a)), not 15 days plus an additional three days for service by mail. *Sterling v. Atl. Auto. Corp.*, 399 Md. 375, 383 (2007). And a defendant must move to vacate an order of default within 30 days after its entry (Md. Rule 2-613(c)), not 30 days plus an additional three days for service by mail. *See Kamara v. Edison Bros. Apparel Stores, Inc.*, 136 Md. App. at 337 (citing Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary* 18 (2d ed. 1992)).²

In summary, “the additional days are tacked onto the required time period only when the running of the period is triggered by *service by mail*.” *Id.* (quoting Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary*, *supra*, at 18) (emphasis in original). “If any event other than service begins the running of the time period, three

² Notably, in each of these instances, the entry of judgment, the issuance of the mandate, and the entry of the order of default is done by the clerk, as is the issuance of the notice in this case.

days are not added[.]’” *Id.* (quoting Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary, supra*, at 18).

Under Rule 14-305(d), the time period begins to run upon the issuance of the notice. According to the terms of the rule (and the terms of the notice itself), an interested person had 30 days from that date to file exceptions. Ms. Comegys missed that deadline. Therefore, the circuit court did not err in denying her exceptions.

The circuit court did not base its decision on the alternative ground that the exceptions would have been unmeritorious even if they were timely. We decline to express an opinion about the merits of a decision that the circuit court did not make.

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