Circuit Court for Prince George's County
Case No. CAEF17-27835

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1684

September Term, 2019

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DESMOND HARLEY

v.

MARK DEVAN, *et al.*

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Berger,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Zarnoch, J.

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Filed: May 4, 2021

Desmond Harley ("Harley") appeals a decision of the Circuit Court for Prince George's County upholding the denial of his Motion to Stay or Dismiss the foreclosure and ratifying the foreclosure sale. Harley presents three questions for our review, which we have rephrased slightly into two:

I. Did the Circuit Court abuse its discretion in denying Harley's Motion to Stay or Dismiss based on lack of service of process?
II. Did the Circuit Court abuse its discretion in denying Harley's Motion to Stay or Dismiss premised on a lack of standing due to purported non-compliance with federal face-to-face meeting regulations?

For the reasons set forth below, we affirm the circuit court.

## BACKGROUND & PROCEDURAL HISTORY

Harley executed a promissory note in the amount of $368,207.00 from First Home Mortgage Corporation secured by a deed of trust on property located at 10207 Spring Water Lane in Upper Marlboro ("Property"). Wells Fargo is the servicer of the loan.

Approximately twenty months later, on August 2, 2016, Harley defaulted on the loan. Wells Fargo mailed Harley a letter on September 16, 2016 via certified first-class mail, return receipt requested, advising him of the default and offering an opportunity to meet face-to-face to discuss mortgage assistance options. Harley was not at the Property at the time of the attempted delivery, so the letter was held at the post office for one month to be picked up by Harley. The return receipt and letter were ultimately returned to Wells Fargo by the Postal Service after remaining unclaimed. On October 5, 2016, a Wells Fargo representative visited the Property to discuss the mortgage assistance

options, but no one was present. The representative left a flyer regarding the face-to-face meeting.

On October 5, 2017, Devan and related parties (the "substitute trustees") filed the Order to Docket in the Circuit Court and on October 10, filed an Affidavit of Service. In the Affidavit of Service, Frantzso Antoine, a contractor with ProVest, LLC, swore under oath that on October 8, 2017, he served Harley by substitute service by personally serving Chante Hilary at the Property. Harley filed a request for foreclosure mediation with the circuit court, which was scheduled for April 9, 2018. A Final Loss Mitigation Affidavit was mailed to Harley on November 22, 2017. Prior to mediation, Harley submitted an application for a loan modification which was subsequently denied by Wells Fargo on February 27, 2018. Harley appealed the denial of his application for loan modification on March 16, 2018, which was again denied by Wells Fargo on March 23, 2018.

An in-person mediation was held in April 2018. The mediation was unsuccessful, and on May 3, the Court entered an order to proceed with the foreclosure sale. The sale of the property was scheduled for May 22, 2018. On May 8, 2018 Harley filed a Motion to Strike Affidavit of Service and to Stay and/or Dismiss Foreclosure Proceeding and Request for Discovery with the circuit court. Two days later, Harley also filed an emergency Motion to Stay Foreclosure.

The court held a hearing on May 21, 2018 and ultimately denied Harley's motion, finding that Harley waived the service requirement by participating in mediation and that he failed to meet his burden to show that Wells Fargo did not send notice of the

opportunity for a face-to-face meeting. On September 20, 2019, the court issued a Final Ratification of Sale and Referral to the Auditor.

This timely appeal follows.

## DISCUSSION

This Court reviews "the trial court's grant or denial of a foreclosure injunction for an abuse of discretion." *Anderson v. Burson*, 424 Md. 232, 243 (2011). Abuse of discretion occurs "where the ruling under consideration is 'clearly against the logic and effect of facts and inferences before the court,' or when the ruling is 'violative of fact and logic.'" *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (Citations omitted).

Harley argues that the court erred when it denied the Motion to Stay or Dismiss. He contends that the court lacked *in personam* jurisdiction because he was not properly served. On the other hand, the substitute trustees assert that Harley waived service of process by appearing and participating in the foreclosure proceeding.

The circuit court determined that Harley waived any objection to lack of service of process when he voluntarily participated in the mediation process. The circuit court explained that because the "Defendant participat[ed] in mediation, as he has a right to do, [] even if you assume that the process server did not properly serve the Defendant pursuant to the rules, [] the Defendant engaging in mediation waived that service." We agree. The ultimate purpose of service of process "is to give the defendant fair notice of the action against him and the resulting fair opportunity to be heard." *Conwell Law LLC*

*v. Tung*, 221 Md. App. 481, 500 (2015) (Internal citations and quotations omitted). A court has no jurisdiction over a party "until such service is properly accomplished, or is waived by a voluntary appearance by the defendant." *Flanagan v. Dep't of Hum. Res.*, 412 Md. 616, 624 (2010). By voluntarily requesting and personally participating in a foreclosure mediation with the court, Harley waived service of process as he was clearly on notice of the foreclosure. The court did not abuse its discretion in finding that Harley waived the opportunity to allege a defect in service by voluntarily engaging in mediation.

Harley next argues that the court erred when it denied the Motion to Stay or Dismiss because the substitute trustees lacked standing to foreclose as Wells Fargo did not make reasonable efforts to arrange a face-to-face meeting required by Federal Housing Administration ("FHA") regulations. The substitute trustees contend that Wells Fargo satisfied the regulatory requirement to make "reasonable effort" to arrange a face-to-face meeting.

Harley's mortgage is a covered loan subject to the Department of Housing and Urban Development's ("HUD") regulations. For a qualifying loan, "[t]he mortgagee must have a face-to-face interview with the mortgagor, or make a reasonable effort to arrange such a meeting, before three monthly installments due on the mortgage are unpaid." 24 C.F.R. § 203.604(b). According to 24 C.F.R. § 203.604(c)(5), a face-to-face meeting with the mortgagor is not required if "[a] reasonable effort to arrange a meeting is unsuccessful." A reasonable effort is described as "at a minimum of one letter sent to the

mortgagor certified by the Postal Service as having been dispatched," and "at least one trip to see the mortgagor at the mortgaged property." 24 C.F.R. § 203.604(d).

The record before the circuit court indicated that on September 16, 2016, Wells Fargo sent, or "dispatched," a notice letter to Harley via certified mail return receipt requested to Harley's address. The letter detailed Harley's opportunity for a face-to-face meeting and advised he contact Wells Fargo to schedule the meeting. At the hearing on Harley's Motion to Stay or Dismiss, a Wells Fargo witness testified that the notice letter was sent via certified mail return receipt requested to Harley's address. The second attempt to contact Harley was on October 5, 2016 when a Wells Fargo agent personally visited the Property to arrange a face-to-face meeting. Harley was not present at the property, so the agent left a flyer with information about scheduling a meeting. The Wells Fargo witness testified that the representative documented the visit in the Wells Fargo system, indicating that the "[v]endor [did] not speak with a valid borrower or anyone at the house, flyer left."

The letter sent by Wells Fargo via certified mail on September 16 satisfied the first requirement for the lender to make a "reasonable effort," and the in-person visit on October 5, 2016 satisfied the second requirement. The regulations do not require proof of delivery of the letter, nor does it require a representative to personally see the mortgagor as Harley contends. A "reasonable effort" only requires the letter be dispatched by certified mail with the Postal Service and a representative must make a trip to see the mortgagor. The record is clear that Wells Fargo meticulously followed the requirements

of 24 C.F.R. § 203.604 to schedule a face-to-face meeting with Harley. The court did not abuse its discretion in finding that Wells Fargo satisfied the HUD requirements and denying Harley's motion to stay or dismiss in this proceeding.

We are satisfied from our review of the record that the circuit court did not abuse its discretion in denying Harley's Motion to Stay or Dismiss on the basis that Harley waived service of process by voluntarily participating in mediation and Wells Fargo satisfied the applicable HUD requirements to schedule a face-to-face meeting.

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