

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1916

September Term, 2017

ANTOINETTIA KNIGHT

v.

KRISTINE D. BROWN, ET AL.

Meredith,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: March 14, 2019

*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.

This case arises out of a foreclosure sale of a home owned by Ms. Antoinetta Knight, appellant, located at 1642 Northwick Rd., Baltimore, MD 21218. On July 25, 2017, Ms. Knight's home was sold via a foreclosure sale by Kristine D. Brown, William M. Savage, Gregory N. Vritto, and R. Kip Stone., appellees ("Substitute Trustees"). After the sale, Ms. Knight filed exceptions alleging that the foreclosing party had misled her regarding her legal rights prior to the sale. The Circuit Court for Baltimore City overruled her exceptions and ratified the foreclosure sale. This appeal followed.

QUESTIONS PRESENTED

Ms. Knight presents the following questions for our review, which we have rephrased:

1. Did the circuit court err when it overruled Ms. Knight's exceptions to the foreclosure sale based on allegedly fraudulent statements from the lender?
2. Did the circuit court abuse its discretion when it failed to hold an evidentiary hearing to determine whether Ms. Knight stated a credible allegation of extrinsic fraud in her exceptions pleading?
3. Did the circuit court violate Ms. Knight's rights to procedural due process?¹

¹ Ms. Knight's questions were phrased as follows:

1. Do statements from a mortgage servicer to a homeowner constitute extrinsic fraud when they misstate the homeowner's rights under federal law with the intent of inducing reliance, when the homeowner justifiably relies on the misstatement, and when, as a result, the homeowner fails to assert available legal defenses in a timely manner?
2. Must a trial court hold an evidentiary hearing when a homeowner makes a credible allegation of extrinsic fraud in an exceptions pleading?

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For the reasons set forth herein, we shall affirm the judgment of the Circuit Court for Baltimore City.

FACTS AND PROCEDURAL HISTORY

On March 26, 1987, Mr. James Edward Knight, Jr., purchased the home at 1642 Northwick Road, Baltimore, MD 21218. On May 26, 1990, Mr. Knight married Ms. Antoinettia Knight (the appellant in this appeal), and they lived together in the family home from that time forward. On November 12, 2007, Mr. Knight, as the sole owner of record and sole signatory, refinanced the property and executed a promissory note in the amount of \$144,231, secured by a deed of trust lien against the property. (We may refer to that debt and lien instrument herein using the colloquial term “mortgage.”) On May 9, 2008, Mr. Knight executed a deed that conveyed the property to himself and his wife as tenants by the entireties. Unfortunately, in February 2014, Mr. Knight passed away.

Ms. Knight alleges that, after Mr. Knight’s untimely death, Nationstar, who then held or serviced the mortgage, told her she needed to either assume the mortgage or obtain a new loan to refinance the unpaid balance on the loan her husband had negotiated in 2007. Ms. Knight was upset to be told, after living in the property with her husband for so many years, and knowing that they had made timely payments on the debt for

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3. Does it violate appellant’s rights to procedural due process to require her to bring an action before she knows that a bank’s actions have violated her legal rights and given her a cause of action?

many years, that her ownership of her home was in jeopardy. Concerned that Nationstar would accelerate the loan and foreclose, Ms. Knight reached out to representatives from the United States Department of Veteran Affairs and Senator Barbara Mikulski, seeking assistance to protect the home from foreclosure. Senator Mikulski's office forwarded Ms. Knight's concerns to the United States Consumer Financial Protection Bureau ("CFPB"). The CFPB contacted Nationstar and requested its response to Ms. Knight's concerns.

In a letter dated October 5, 2015, Nationstar advised Ms. Knight that an assumption of the loan her husband negotiated may be possible, but that she would need to apply for and obtain Nationstar's approval. The letter further asserted:

Loans are assumable based on loan type and investor guidelines among other criteria. The Assumption Department must review each loan to determine eligibility. An Assumption requires the applicant to qualify financially. They must go through an underwriting process similar to one required for a new loan. Please contact our Assumption Representative, William Brandenburg, at 972.956.6598 for further information regarding this program.

Ms. Knight asserts that she applied to Nationstar to assume the mortgage, but she was denied. She also applied to Sun Trust Bank for a new mortgage loan, but was denied. Despite this series of events, Ms. Knight continued to make the monthly mortgage payments to Nationstar on time through October 3, 2016.

However, in November 2016, Ms. Knight concluded that Nationstar was determined to proceed with foreclosure, and she stopped making mortgage payments, and, at all times thereafter, the loan was in a default status. Although Ms. Knight asserts

that she had the ability to continue paying the mortgage, she believed that, if the house was going to be sold at foreclosure, she would need to save money to prepare to move.

On December 14, 2016, after two missed mortgage payments, Nationstar sent a Notice of Intent to Foreclose on the home. The notice stated that the mortgage loan was past due for the November 1, 2016 payment and was “due for all payments from and including that date” which, at that point, amounted to \$2,294.07. On March 21, 2017, the Substitute Trustees filed a foreclosure action in the Circuit Court for Baltimore City, and the court entered it on the docket three days later (March 24, 2017). Prior to the foreclosure sale, nothing was filed by or on behalf of Ms. Knight in the foreclosure case.

On July 6, 2017, the property was sold at a foreclosure auction, and the report of that event was entered on the docket on July 25, 2017. On August 21, 2017, Ms. Knight filed exceptions to the foreclosure sale. In her exceptions, she alleged the following:

. . . After husband’s death, wife sought to assume the mortgage from noteholder Nationstar Mortgage, L.L.C., hereinafter Nationstar, but Nationstar’s employees and/or agents repeatedly told wife that she had no right to assume the mortgage because she was not a party to the loan and that her only option, if she wished to continue living in the home, was to refinance. This statement was a misstatement of the law, as the Garn-St. Germain Depository Institutions Act of 1982 prohibits the enforcement of due on sale clauses against family members who inherit after the death of a mortgagor.

. . . Nationstar knew that its statements to wife about her need to refinance were false. Nationstar sought to induce reliance on wife’s part, wife’s reliance was justifiable, and wife was injured by being deprived of a right granted her under federal law.^[2]

² The exceptions provided no citation to any section of the United States Code, or any provision in the Code of Federal Regulations, or any case law in support of the bald continued...

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assertion that Nationstar had made misstatements as to the applicable law. A similar argument was asserted by a surviving spouse in *Devan v. Bomar*, 225 Md. App. 258, 262-63 (2015). In *Devan*, as in the present case, the alleged violation of federal banking law was not asserted in the foreclosure case until after the property had been sold at auction. We held that Mrs. Bomar had not raised the argument in time for it to be considered by the court, and it was reversible error for the circuit court to grant Mrs. Bomar relief on that basis. We explained, *id.* at 262-63:

In her April 11, 2014, filing of exceptions to the actual foreclosure sale of March 10, 2014, Mrs. Bomar, *inter alia*, charged the following:

“The circumstances behind the foreclosure sale of this property are dubious. As explained above, the spouse of a deceased note holder, who also happens to be a record owner of the Cascade property, is wrongly prevented from making payments on the promissory note. See 12 C.F.R. § 591.4(b)(1)(iii).”

At the exceptions hearing on August 11, 2014, Mrs. Bomar argued that, as a surviving wife and home occupier, she is protected by a federal statute from the type of due-on-sale option exercised by PNC Bank on this occasion. In its Opinion and Order, the court expressly found and ruled that the action of the bank had, indeed, violated the federal banking regulations in question[, stating:]

“Under 12 C.F.R. § 591.5(b) (2014), ‘*A lender shall not . . . exercise its option pursuant to a due-on-sale clause upon: . . . a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety; a transfer, in which the transferee is a person who occupies or will occupy the property, which is: (A) A transfer to a relative resulting from the death of the borrower; (B) A transfer where the spouse or child(ren) becomes an owner of the property*’ According to the facts proffered, *the substitute trustees ceased accepting Mrs. Bomar’s payments, and demanded that the note be paid in full. This is a direct violation of the federal banking regulation cited above.*”

(Emphasis supplied).

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On September 5, 2017, the Substitute Trustees filed a response to Mr. Knight's exceptions, arguing that the exceptions did not comply with Maryland Rule 14-305 for the following reasons: (1) they did not raise allegations as to the validity of *the sale* itself; (2) the loan was not accelerated due to the death of Mr. Knight, but, rather, foreclosure was due to non-payment of the mortgage; (3) Ms. Knight was not entitled to loss mitigation; and (4) Ms. Knight failed to state a claim for fraud.

On October 24, 2017, the Circuit Court for Baltimore City overruled Ms. Knight's exceptions. The court made the following findings:

FOUND that pre-sale objections may not be raised as exceptions. *See Bates v. Cohn*, 417 Md. 309 (2010); and it is further

FOUND that the defendant failed to set forth the alleged irregularity in the manner or conduct of the sale with particularity pursuant to Rule 14-305(d)[.]

continued...

Although Maryland has not had an occasion to rule on the issue, it may well be that the protection of the federal regulation, limiting the utilization of due-on-sale clauses as predicates for foreclosures, is binding on Maryland. It is unnecessary, however, for us to address that substantive issue. What is before us, rather, is the procedural issue of whether a challenge of that nature is one that must be raised before the foreclosure sale takes place or is one that may also be raised as a post-foreclosure sale exception.

This Court concluded in *Devan, id.* at 270, that Mrs. Bomar's "challenge, whatever might have been its merit, simply came too late. Bad timing can be as fatal as lack of merit."

On October 31, 2017, the court entered a final order ratifying report of sale. On November 22, 2017, Ms. Knight appealed to this Court. On December 22, 2017, Ms. Knight filed a motion in the circuit court for a hearing to speak with a judge, and filed with the court copies of many documents she considered pertinent to her predicament.³

STANDARD OF REVIEW

“In reviewing the trial court’s ruling on exceptions to a sale, we apply a *de novo* standard of review as to questions of law but do not substitute our judgment for that of the trial court as to findings of fact unless we find them to be clearly erroneous.” *Hood v. Driscoll*, 227 Md. App. 689, 697 (2016) (citing *Burson v. Capps*, 440 Md. 328, 342-43 (2014)). If “substantial evidence is present to support the trial court’s determination, it is not clearly erroneous and hence will not be disturbed on appeal.” *Maryland Metals, Inc. v. Metzner*, 282 Md. 31, 41 (1978). “[W]e view all the evidence ‘in a light most favorable to the prevailing party.’” *Goss v. C.A.N. Wildlife Tr., Inc.*, 157 Md. App. 447, 456 (2004) (citing *GMC v. Schmitz*, 362 Md. 229, 234 (2001)). Here, the Substitute Trustees were the prevailing party.

“There is a presumption in favor of the validity of a judicial sale, and the burden is on the exceptant to establish to the contrary.” *Jones v. Rosenberg*, 178 Md. App. 54, 69 (2008) (citing *Jackson v. Townsend*, 249 Md. 8, 13-14 (1968)). “The party excepting to

³ The documents included copies of correspondence between Ms. Knight and various entities, bank statements, deeds, the will of Mr. Knight, a death certificate for Mr. Knight, the Knights’ marriage certificate, and documents reflecting Mr. Knight’s service in the United States Army and Reserve.

the sale has the twin burden of showing that the sale was invalid and that any claimed errors caused prejudice.” *Hood*, 227 Md. App at 697. Prejudice will not be presumed and cannot be based on pure speculation but must be supported by evidence. *Id.* at 697-98.

DISCUSSION

I

Ms. Knight alleges that Nationstar fraudulently misled her to believe that she could not assume the loan her husband had negotiated in 2007. She asserts that Nationstar’s misstatements of law violate the Garn-St. Germain Depository Institutions Act of 1982. (Although no specific code section was cited in either Ms. Knight’s exceptions or her brief filed in this Court, we have speculated that counsel may have been referring to 12 U.S.C. § 1701j-3(d)(3) (2012).) Ms. Knight’s attorney contends that, because of allegedly fraudulent statements made to Ms. Knight by Nationstar, she was unable to assert her objection prior to the sale in a timely manner. But the documents in the record before us do not support that contention. We conclude that our holding in *Devan* is dispositive.

“A borrower’s ability to challenge a foreclosure sale is in part determined by whether relief is requested before or after the sale.” *Thomas v. Nadel*, 427 Md. 441, 443 (2012). “Prior to a sale, a borrower may file a motion to stay the sale and dismiss the foreclosure action under Maryland Rule 14-211.” *Id.* A motion under Rule 14-211 shall “state with particularity the factual and legal basis” of each claim and “be accompanied

by any supporting documents.” Maryland Rule 14-211(a)(3)(B),(C). “It was intended that knowable challenges to the legitimacy of a foreclosure action be raised in such a motion to dismiss and, if possible, be litigated before any foreclosure sale is authorized.” *Devan. supra*, 225 Md. App. at 265. **“Improprieties in the larger foreclosure process that occur before the sale and are known to the homeowner prior to the sale must be raised pre-sale.”** *Id.* at 268 (emphasis added) (citing *Thomas*, 427 Md. at 449). Ordinarily, a borrower **“must assert known and ripe defenses to the conduct of a foreclosure sale prior to the sale, rather than in post-sale exceptions.”** *Bates*, 417 Md. at 328 (emphasis added).

After a foreclosure sale, a borrower may file post-sale exceptions under Maryland Rule 14-305(3). This Court has explained the limited nature of exceptions to a foreclosure sale as follows:

A post-sale exception to a foreclosure sale is not an appropriate vehicle to challenge the broad equities of the entire foreclosure proceeding itself. It is, rather, a narrow challenge to the procedures employed in the execution of the sale process itself. Even an impeccable foreclosure may be implemented by a foreclosure sale that is procedurally flawed Conversely, even an unconscionable foreclosure proceeding, if foreclosure should be erroneously ordered, might be implemented by a sale that is itself procedurally impeccable. In such a case, Rule 14-305 exceptions would be the wrong weapon aimed at the wrong target.

Devan, 225 Md. App. at 267 (emphasis added). After a foreclosure sale, “the debtor’s filing of exceptions . . . may challenge only procedural irregularities at the sale or . . . the statement of indebtedness.” *Greenbriar v. Brooks*, 387 Md. 683, 688 (2005).

In *Hood, supra*, 227 Md. App. at 693-96, Judge Alan Wilner, writing for this Court, reiterated that the objections that may be raised after a foreclosure sale has already taken place are limited:

Rule 14–211 deals specifically with a motion to stay a sale or dismiss the foreclosure action altogether, both as to when such a motion may be filed and what it must contain. Rule 14–305(d) deals with exceptions to the trustee’s or mortgagee’s report of sale, including when they must be filed and, in an exceedingly brief statement, what they must contain. The Rules and the case law complement each other.

Rule 14–211(a)(3) requires that a motion to stay and dismiss must “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.**” (Emphasis added). That describes the function of the motion—to raise a challenge to the foreclosure action itself—not to the manner in which the sale is conducted but to whether there should be a sale at all.

Consistent with that function, Rule 14–211(a)(2)(A) requires that *the motion must be filed prior to the sale. . . .*

Rule 14–305(d), which deals with exceptions to a sale, has a more narrow focus. Exceptions to a sale must set forth, with particularity, alleged irregularities in the sale itself. The court must ratify the sale if convinced that “the sale was fairly and properly made.” *The focus of the exceptions is on the conduct of the sale, not whether the trustee had a right to have the property sold.*

The case law supports that distinction. (Citing cases.)

227 Md. App. at 694-95 (italics added) (footnotes omitted).

In December 2016, Nationstar put Ms. Knight on notice of its intent to foreclose on the property. In March 2017, Nationstar filed this foreclosure action in the Circuit Court for Baltimore City. After the foreclosure action was instituted, Ms. Knight did not file in the circuit court any objection to the sale or motion to stay before the auction sale

was held on July 6, 2017. Under Maryland law, post-sale exceptions are limited to issues concerning how the sale was conducted. Ms. Knight's arguments in her exceptions all complained of Nationstar's conduct leading up to the foreclosure sale. Because these issues were knowable and ripe prior to the foreclosure sale, Ms. Knight was required to file a motion to stay or dismiss pursuant to Maryland Rule 14-211 *prior* to the sale. Unfortunately, this did not happen. Although we are sympathetic to Ms. Knight's misfortune, we are obligated to apply the law governing foreclosure actions, and we conclude that the circuit court did not err in overruling the exceptions to the sale.

II

Ms. Knight also asserts that the trial court abused its discretion when it did not hold an evidentiary hearing on her exception alleging fraud.

Maryland Rule 14-305(d)(2) discusses hearings on post-sale exceptions, and states the following:

The court shall determine whether to hold a hearing on the exceptions but it may not set aside a sale without a hearing. The court shall hold a hearing **if** a hearing is requested and the exceptions or any response **clearly show a need to take evidence**.

(Emphasis added.) Judge Thieme explained this rule as follows in *Four Star Enterprises Ltd. Partnership v. Council of Unit Owners of Carousel Center Condominium, Inc.*, 132 Md. App. 551, 567 (2000):

A hearing is by no means mandatory under Rule 14-305(d)(2), even if one of the parties requests it. Because this rule is written in conjunctive form, authorizing a proceeding "if a hearing is requested *and* the exceptions or any response **clearly show** a need to take evidence," it gives the court discretion.

(Italics in original, bold emphasis added.) An abuse of discretion occurs “when the court acts without reference to any guiding rules or principles.” *Wilson-X v. Department of Human Resources*, 403 Md. 667, 677 (2008) (citation omitted).

In this case, the circuit court found that Ms. Knight’s pre-sale objections could not be raised as post-sale exceptions, and cited as authority *Bates v. Cohn*, 417 Md. 309 (2010). Because the exceptions did not *clearly show* a need to take evidence, the circuit court, guided by the Maryland Court of Appeals’s decision in *Bates*, did not abuse its discretion in not holding a hearing.

III

Ms. Knight asserts that her rights to procedural due process were violated when the circuit court found that she was required to bring her objection before she knew that Nationstar’s allegedly fraudulent statements violated her legal rights and gave her a cause of action.

The Maryland foreclosure scheme is designed to provide procedural due process before and after a foreclosure sale, while according finality to the proceedings. *See* Maryland Rule 14-211 and Maryland Rule 14-305. “In balancing the interests of the parties, the General Assembly has looked to economy, efficiency, and minimal involvement of the judiciary.” *Griffin v. Bierman*, 403 Md. 186, 212 (2008) (citation omitted). Ms. Knight knew that she objected to Nationstar’s foreclosure before the sale was conducted. Pursuant to Maryland Rule 14-211, Ms. Knight was afforded the right to file a motion to stay or dismiss prior to the foreclosure sale, raising any objections she

had to Nationstar's entitlement to conduct a sale. Unfortunately, nothing was filed at that time. Because we conclude that the Maryland foreclosure law afforded Ms. Knight procedural due process to object prior to the foreclosure sale, we do not reach the merits of her claim that she was fraudulently induced by Nationstar to take no action, and we express no opinion on whether there may be any other remedy available to her with respect to her claim of fraud.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**