

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1315

September Term, 2013

LIBERATO O. DELUMEN, et al.

v.

LAURA H. G. O’SULLIVAN, et al.
SUBSTITUTE TRUSTEES

Meredith,
Leahy,
Sonner, Andrew L.
(Retired, Specially Assigned),

JJ.

Opinion by Sonner, J.

Filed: February 26, 2016

*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.

The question of first impression presented by this appeal is whether a circuit court, after vacating a temporary stay order issued under Maryland Rule 14-211(c), may entertain proceedings to enforce a foreclosure sale that took place while that stay was in effect. Our answer is no, because the foreclosure sale was invalid and cannot be retroactively ratified. We shall remand to the Circuit Court for Howard County with instructions to vacate the foreclosure sale conducted while a Rule 4-211(c) stay was in effect on the residential real property of appellants Liberato O. Delumen and Fatima S. Delumen (the Homeowners).

FACTS AND LEGAL PROCEEDINGS

At the time of these foreclosure proceedings, the Delumens owned and occupied a residence at 11060 Berrypick Lane in Columbia (the Property), on which there was a Deed of Trust purportedly assigned to Deutsche Bank National Trust Company (Deutsche). The following time line sets forth the proceedings relevant to our discussion:

- | | |
|---------------|---|
| March 2012 | Deutsche, through substitute trustees appointed under the Deed of Trust, appellees Laura H. G. O’Sullivan et al. (the Substitute Trustees), initiated foreclosure proceedings in the Circuit Court for Howard County. |
| February 2013 | Foreclosure mediation was unsuccessful. |
| June 19, 2013 | The Substitute Trustees notified the Homeowners that the Property was scheduled to be sold at a foreclosure sale occurring on July 8, 2013 at 11:30 a.m. |
| July 1, 2013 | The Homeowners filed a Motion to Stay the foreclosure sale, pursuant to Md. Rule 14-211. |
| July 2, 2013 | A circuit court judge signed an order scheduling an August 1, 2013 hearing on the Motion to Stay and ordering “that any scheduled foreclosure sale in the above captioned matter is STAYED pending a hearing on the . . . Motion to Stay the Foreclosure Sale.” We shall refer to this as the Stay Order. |

- July 31, 2013 The Substitute Trustees filed a written Response to the Homeowners’ Motion to Stay.
- July 8, 2013 The Stay Order was entered on the court’s docket. The same day, the Substitute Trustees, apparently unaware of the Stay Order, conducted a foreclosure sale of the Property, at which Deutsche Bank was the purchaser.
- August 1, 2013 Following a hearing on the Homeowners’ Motion to Stay, the circuit court denied the motion and vacated its July 8 Stay Order.
- August 5, 2013 The Substitute Trustees filed a Report of Sale, Auctioneer’s Affidavit, Purchaser’s Affidavit, and other documents based on the July 8 sale.

DISCUSSION

Maryland Rule 14-211 governs foreclosure stays. In pertinent part, it provides:

(a) Motion to Stay and Dismiss.

(1) *Who May File.* The borrower . . . may file in the action a motion to stay the sale of the property and dismiss the foreclosure action.

(3) *Contents.* A motion to stay and dismiss shall:

(A) be under oath or supported by affidavit;

(B) 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;

(C) be accompanied by any supporting documents or other material in the possession or control of the moving party and any request for the discovery of any specific supporting documents in the possession or control of the plaintiff or the secured party; . . .

(F) if the motion was not filed within the time set forth in subsection (a)(2) of this Rule, state with particularity the reasons why the motion was not filed timely. . . .

(b) Initial Determination by Court. . . .

(2) *Hearing on the Merits.* If the court concludes from the record before it that the motion:

(A) was timely filed or there is good cause for excusing non-compliance with subsection (a)(2) of this Rule,

(B) substantially complies with the requirements of this Rule, and

(C) states on its face a defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action, the court shall set the matter for a hearing on the merits of the alleged defense. The hearing shall be scheduled for a time prior to the date of sale, if practicable, otherwise within 60 days after the originally scheduled date of sale.

(c) Temporary Stay.

(1) *Entry of Stay; Conditions.* If the hearing on the merits cannot be held prior to the date of sale, the court shall enter an order that temporarily stays the sale on terms and conditions that the court finds reasonable and necessary to protect the property and the interest of the plaintiff. . . .

(e) Final Determination. After the hearing on the merits, if the court finds that the moving party has established that the lien or the lien instrument is invalid or that the plaintiff has no right to foreclose in the pending action, it shall grant the motion and, unless it finds good cause to the contrary, dismiss the foreclosure action. If the court finds otherwise, it shall deny the motion.

(Underlining added.)

The underlined language in subsection (c) of this rule is mandatory, requiring that when, as in this case, a hearing on the merits of a motion to stay a foreclosure sale cannot be held before the scheduled sale date, “the court shall” order a temporary stay of the sale.

The circuit court complied with this rule by issuing the Stay Order, resulting in a temporary stay of the foreclosure sale scheduled to take place on July 8, 2013, until the August 1, 2013 hearing on the merits of the Homeowners’ Motion to Stay the foreclosure sale.

Although the Stay Order was signed by a judge on July 2, it was not entered on the court’s docket until July 8, which was the scheduled date of the foreclosure sale. There is no indication in this record that the Substitute Trustees knew about the Stay Order before they proceeded with the foreclosure sale on July 8. But such knowledge or lack of knowledge is immaterial; because the Stay Order was effective on July 8, 2013, the day it was docketed, the parties agree that it was valid at the time the foreclosure sale took place. *Cf. Martino v. Arfaa*, 169 Md. App. 692, 701 (2006) (effective date is date when entered on the docket, “not the date that the judge signs an order,” nor “the time-stamp date that is placed upon the order when it is filed with the clerk’s office”), *aff’d on other grounds*, 404 Md. 364 (2008); Md. Rule 2-601(b) (date a judgment is entered on court’s docket “shall be the date of the judgment”).

We conclude that when a foreclosure sale is conducted while a Rule 14-211(c) stay order is in effect, the sale is invalid and a court may not retroactively ratify it. A contrary conclusion would undermine both the rule governing foreclosure stays and the rule of law. As the Substitute Trustees emphasized in oral argument, a Rule 14-211(c) stay temporarily preserves the status quo, by prohibiting a foreclosure sale until the court determines on the merits whether a longer stay is warranted. After making that decision, the court may vacate the temporary stay. But the effect of such an order is to terminate that stay *prospectively*, extinguishing it either on the date of the order to vacate or at a designated time thereafter.

Such an order vacating a Rule 14-211(c) stay does not operate *retroactively*, to dissolve the temporary stay as if it had never been issued.

To be sure, courts have inherent nunc pro tunc power to make an order effective before the date on which it was actually entered on the court’s docket. *Short v. Short*, 136 Md. App. 570, 578 (2001). As its translation “now for then” suggests, the phrase describes “an entry made now of something actually previously done to have effect of former date[.]” *Prince George’s County v. Commonwealth Land Title Ins. Co.*, 47 Md. App. 380, 386 (1980) (quoting *Black’s Law Dictionary* (5th ed. 1979)). Properly exercised, such authority exists “to make the record speak the truth” by “supply[ing] omission in the record of action really had but omitted through inadvertence or mistake.” *Id.* Because “the purpose of a nunc pro tunc entry is to correct a clerical error or omission as opposed to a judicial error or omission,” *id.*, a court may not exercise such authority to retroactively vacate a Rule 14-211(c) stay order on the ground that the stay was improvidently granted or on the ground that the proponent of the stay is not entitled to an extension beyond the merits hearing.

There is no means to measure the chilling effect of a Rule 14-211(c) stay on bidding at a foreclosure sale conducted while that stay is in effect. With rare exceptions, we will never know whether there were any potential bidders who were discouraged after discovering such a stay, either through court records or other means. The fact that a court subsequently determines that the proponent of the temporary stay is not entitled to an extension of it does nothing to mitigate the taint of such an unauthorized foreclosure sale.

The transcript of the August 1, 2013 hearing on the Motion to Stay the foreclosure

sale shows that the Homeowners did not expressly ask the circuit court to vacate the July 8, 2013 foreclosure sale. Yet the Substitute Trustees proffered that if the court denied the Homeowners’ Motion to Stay on the merits, they intended to proceed with foreclosure based on the July 8 sale. The circuit court did not address whether the Substitute Trustees could do so, either during the hearing, in its written order, or in its docket entry.

Based on this record, we cannot say that the circuit court erred in vacating the July 8, 2013 stay or in denying the Homeowners’ Motion to Stay. Accordingly, we shall affirm those orders. But we must remand for the court to preclude foreclosure proceedings based on the invalid July 8, 2013 foreclosure sale. In the absence of an order vacating that sale, the Substitute Trustees filed documents to enforce it, including a Report of Sale, Auctioneer’s Affidavit, and Purchaser’s Affidavit. In light of our ruling that the July 8, 2013 foreclosure sale is invalid – void *ab initio* because it was prohibited by the Stay Order properly issued under Rule 14-211(c) – we shall remand this case for further proceedings consistent with this opinion, including an order vacating that sale and appropriate orders striking any pleadings and orders relating to it.¹

¹ We do not address the preservation and appealability issues raised by the Substitute Trustees in their brief because counsel abandoned them in oral argument.

ORDER VACATING TEMPORARY STAY UNDER MD. RULE 14-211(c) AND DENYING APPELLANTS' MOTION TO STAY AFFIRMED. CASE REMANDED FOR ENTRY OF AN ORDER VACATING THE JULY 8, 2013 FORECLOSURE SALE AND FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.