Circuit Court for Prince George's County
Case No. CAE16-28461

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1418

September Term, 2016

IBRAHIM AWANDA, ET AL.

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, SOLELY IN ITS CAPACITY AS TRUSTEE FOR GSAA MORTGAGE LOAN TRUST 2006-11, ET AL.

Woodward, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 7, 2017

*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.

On May 12, 2015, an order to docket foreclosure was filed in the Circuit Court for Prince George's County concerning 2608 Box Tree Drive, Upper Marlboro, Maryland 20774 ("the property"). The homeowners, Ibrahim and Camille Awanda, appellants, responded with a motion to stay the foreclosure, which the court denied. Then, on July 12, 2016, appellants filed a complaint against Deutsche Bank National Trust Company, PNC Mortgage, and the substitute trustees (collectively, "appellees"), seeking an "injunction" declaring the original deed of trust – executed on December 14, 2005, and recorded in the Prince George's County land records on June 19, 2006 – to be invalid.[1] Appellees filed a motion to dismiss, which the court granted on September 1, 2016. The Awandas challenge the court's dismissal of their complaint, contending that the original deed of trust was invalid. For the reasons stated below, we disagree and affirm.

Prior to a consideration of the merits of the case, appellees move to dismiss the appeal for what they consider a "flagrant disregard" for the rules of appellate procedure. Specifically, appellees contend that the Awandas failed to properly designate their record extract, failed to discuss the record extract with appellees, included extraneous material in the record extract, and omitted items required by Rule 8-504 in their brief. Indeed, the

[1] Although not raised by appellees, it appears that the Awandas' complaint is essentially a complaint seeking a declaratory judgment that the deed of trust was invalid. In *Waicker v. Colbert*, 347 Md. 108, 113 (1997), the Court of Appeals stated that, generally, "courts will not entertain a declaratory judgment action if there is pending, at the time of the commencement of the action for declaratory relief, another action or proceeding involving the same parties and in which the identical issues that are involved in the declaratory action may be adjudicated." There are strong policy considerations supporting this rule – judicial efficiency, avoiding piecemeal appeals, and determining "related matters in a single action." *Id.* at 115.

Awandas' brief and record extract are not models of appellate litigation, and we do not countenance their failure to abide by the rules of appellate procedure. The "'preferred alternative,'" however, "is always 'to reach a decision on the merits of the case.'" *McAllister v. McAllister*, 218 Md. App. 386, 399 (2014) (quoting *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 348 (2007)). This Court will not, therefore, typically dismiss an appeal for failure to abide by the rules of appellate procedure, "unless the appellee sustains prejudice." *Id.* Because we do not perceive that the appellees have sustained any prejudice in this case, we deny appellees' motion to dismiss, but we grant their motion to strike insofar as the Awandas' record extract contains material not considered by the circuit court in ruling on appellees' motion to dismiss. *See Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 200 (2008) (noting that an appellant "is 'not entitled to supplement the record by inserting into [the] record extract such foreign matter as [he or she] may deem advisable'" (quoting *Cmty. Realty Co., Inc. v. Siskos*, 31 Md. App. 99, 102 (1976))).[2]

[2] In their record extract, the Awandas included an amended complaint and an opposition to appellees' motion to dismiss the complaint, which were both filed after the court dismissed the complaint. The circuit court, therefore, did not have these documents in ruling on the motion, and we will not consider them.

The Awandas argue that they did not have the proper amount of time to respond to appellees' motion prior to the court's ruling, pursuant to Rules 2-321 and 2-322. Rule 2-321 is, however, inapplicable because it governs the timing requirements for a defendant to file an answer, not for a plaintiff to respond to a motion. Rule 2-322 provides that when a court grants a motion to dismiss, an amended complaint may be filed within thirty days of the dismissal, "only if the court expressly grants leave to amend[,]" Rule 2-322(c), which the court did not do in this case. Appellees' motion to dismiss was, therefore, unopposed, and the Awandas failed to file a timely opposition. *See* Rule 2-311(b) (requiring responses to motions to be filed within fifteen days or within the time permitted for the original pleading).

Turning to the merits of the Awandas' challenge, we note that in reviewing a motion to dismiss, "'we must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them[.]'" *Yuan v. Johns Hopkins Univ.*, 452 Md. 436, 448-49 (2017) (quoting *Parks v. Alpharma, Inc.*, 421 Md. 59, 72 (2011)). Dismissal is warranted "'only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, *i.e.*, the allegations do not state a cause of action for which relief may be granted.'" *Id.* at 449 (quoting *Parks*, 421 Md. at 72). On appeal, we assess whether the circuit court was legally correct. *See Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP*, 451 Md. 600, 609 (2017).

In their complaint and on appeal, the Awandas maintain that the 2005 deed of trust was invalid for any of three reasons: 1) that it failed to include a certificate of preparation by an attorney as required by Maryland Code (1974, 2015 Repl. Vol.), Real Property ("R.P."), § 3-104(f); 2) that it failed to include a proper affidavit of acknowledgement by the notary, required by Rule 1-304, and also misspelled Ibrahim's name as "Abraham" in the notary section; and 3) that it was recorded improperly in that it did not include a land records intake sheet and refinance affidavit, as required by R.P. § 3-104(g)(2).

The Awandas' characterization of the deed and the law, however, is inaccurate. Subsection (f)(1) of R.P. § 3-104 provides that a deed must include a certification that it was prepared by an attorney "or a certification that the instrument was prepared by one of the parties named in the instrument." In this instance, the deed of trust included a certification that it was prepared by Shirley Koonce, identified as an agent of the lender, a

party named in the instrument. Hence, the deed of trust included a proper certificate of preparation.

Furthermore, we note that the deed of trust included a proper affidavit of acknowledgement, and the notary's misspelling of Ibrahim's name in one instance does not materially affect the document. Indeed, his name is properly spelled throughout the document, including on his signature line. *See also Cohen v. Am. Home Assurance Co.*, 255 Md. 334, 339 (1969) (noting that misspelling of a name did not invalidate insurance contract).

Finally, the failure to include a land records intake sheet and refinance affidavit also does not affect the validity of the document. *See* R.P. § 3-104(g)(10)(iii) ("The lack of an intake sheet does not affect the validity of any conveyance, lien, or lien priority based on recordation of an instrument.").

Furthermore, even assuming *arguendo* that these allegations could affect the validity of the deed, the Awandas would still face a major obstacle. Section 4-109(b) of the Real Property Article provides that for documents recorded after January 1, 1973, "any failure to comply with the formal requisites listed in this section has no effect unless it is challenged in a judicial proceeding commenced within six months after it is recorded." Subsection (c) of that statute lists the "formal requisites" that are challengeable in a judicial proceeding, which includes defective acknowledgements, omissions of clerk's certificates or notary seals, a lack of proper acknowledgement, omissions of attestations, or a failure to name a trustee. Whatever shortcomings, if any, the deed of trust had were waived because the Awandas did not challenge the validity of the document until approximately

ten years after its recordation. *See also Ameriquest Mortg. Co. v. Paramount Mortg. Servs., Inc.*, 184 Md. App. 120, 141 (2009), *rev'd on other grounds*, 415 Md. 656 (2010) (noting that R.P. § 4-109(b) is a curative statute "which 'correct[s] errors in deed, mortgages, etc., defectively executed or acknowledged'" (quoting *Wingert v. Zeigler*, 91 Md. 318, 326 (1900))).

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