Circuit Court for Montgomery County
Case No. 423530

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2218

September Term, 2016

ROBERT L. STEPHENSON, *et al.*

v.

MARK S. DEVAN, *et al.*,
Substitute Trustees

Eyler, Deborah S.,
Graeff,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: May 15, 2018

In this *pro se* appeal, Robert L. Stephenson and Joan A. King, the appellants, seek relief from foreclosure proceedings against their residential property at 21712 Slidell Road in Boyds, Maryland (the "Property"). Specifically, they challenge interlocutory orders by the Circuit Court for Montgomery County denying their requests to dismiss the foreclosure initiated by Mark S. Devan, Thomas P. Dore, Brian McNair, and Angela Nasuta, the appellees (the "Substitute Trustees"), in their capacity as substitute trustees under a deed of trust on the Property. Because we conclude that the circuit court did not err or abuse its discretion, we shall affirm those orders and remand for further proceedings.

FACTS AND LEGAL PROCEEDINGS

The appellants, who are husband and wife, jointly own the Property. In April 2005, before they were married, Stephenson obtained a $100,000.00 home equity line of credit ("HELOC") from Wachovia Bank, N.A. On April 14, 2005, as part of that transaction, Stephenson, but not King, signed a "Prime Equity Line of Credit Agreement," promising to repay any money borrowed on that line of credit (the "HELOC Note"), with the Property becoming security for the repayment of any money borrowed by Stephenson. On April 18, 2005, both Stephenson and King signed an "Open-End Deed of Trust" containing a power of sale securing the HELOC Note (the "Deed of Trust"). The Deed of Trust was recorded in the Land Records of Montgomery County and was accompanied by a land instrument intake sheet that listed only King as the grantor.

When Stephenson drew on the HELOC (the "Loan"), under the terms of the HELOC Note, monthly finance charges on the Loan were computed on any "balance owing," at a variable interest rate tied to the prime rate less 0.25%. Stephenson elected to make

minimum payments under "Option A," requiring "monthly payment equal to the greater of the Finance Charge on the outstanding Advances plus accrued but unpaid Fees or $50.00." This differed from Option B, requiring a monthly minimum payment equal to "the greater of 1.5% of the Outstanding Balance . . . or $50.00." The payment provision of the Note contains the following acknowledgement:

> A change in the **ANNUAL PERCENTAGE RATE** can cause the balance to be repaid more quickly or more slowly. When rates decrease, less interest is due, so more of my payment repays the principal balance. When rates increase, more interest is due, so less of the payment repays the principal balance creating a larger Outstanding Balance at the end of the Draw Period.

In December 2014, Stephenson defaulted on his monthly payments. In September 2015, foreclosure proceedings were initiated under the Deed of Trust. The appellants unsuccessfully moved to dismiss or stay that foreclosure, then appealed the denial of injunctive relief. While that appeal was pending before this Court, Stephenson agreed to cure the default, thereby avoiding a foreclosure sale, mooting the appeal, and prompting dismissal of the foreclosure action without prejudice.

When Stephenson failed to cure his default, the Substitute Trustees initiated this foreclosure proceeding on behalf of the Note owner, Wells Fargo Bank, N.A., by filing an order to docket on July 28, 2016. According to Wells Fargo records, the amount due on the HELOC Note as of July 14, 2016, was as follows:

Principal	$ 99,161.74
Interest accrued interest at a variable rate	$ 5,366.04 . . . .
Total	$104,527.78

> A daily variable per diem will accrue on the principal in accordance with the variable rate as set forth in the Note.

The documents filed with the order to docket included the HELOC Note, the Deed of Trust, a Statement of Indebtedness, Military Affidavits, Affidavit of Ownership of Debt Instrument, Affidavits of Default Notice, Affidavits of Compliance with Real Property Section 7-105.1, and Preliminary Loss Mitigation Affidavits.

Representing themselves, the appellants filed a "Motion to Deny All Actions and to Correct the Misleading Filings to this Court by Plaintiff's and to Set a Hearing for Dismissal of Case" [sic] (the "Motion to Dismiss"). In support, the appellants asserted that "there was no opportunity . . . for any mediation process prior," that "the Defendant never received in October 2015 or was ever served in 2016 an[y] documents from the plaintiff," that the Substitute Trustees had "not provided to this court any PROOF OF SERVICE to the defendant for any of these above mentioned times[,]" that "[t]he plaintiff never provided . . . monthly statements or . . . notice of what was owing to the defendant for the year 2015 nor 2016[,]" and that the prior foreclosure case and related appeal had been dismissed. The appellants asked the court to dismiss this foreclosure action with prejudice "for all of the above reasons and for making representation to this court statements that are not materially true" [sic].

The day after the appellants filed their Motion to Dismiss, the Substitute Trustees filed proofs of service supported by affidavits detailing attempts to personally serve the Notice of Foreclosure and accompanying documents filed with the Order to Docket. According to the affiant, he attempted to personally serve both Stephenson and King, at

the Property, on August 3, 2016, at 11:19 a.m., and again on August 4, 2016, at 5:09 p.m. The affiant then physically posted those documents on the front door of the Property on August 4, 2016. Copies of those documents were later mailed to the appellants at the Property, "via first-class and certified mail, return receipt requested," on August 10, 2016.

The Substitute Trustees also filed a written opposition to the appellants' Motion to Dismiss, pointing out that the appellants' pleadings were not under oath or supported by affidavit and, in any event, did not raise a viable defense, either to the Substitute Trustees' right to foreclose or to the validity of the lien or the Deed of Trust.

Responding to the Substitute Trustees' pleadings, the appellants filed a "Motion in Opposition to Plaintiffs' Proof of Service." They complained that the Substitute Trustees had "filed and continue to file Misleading pleadings" and insisted that they "never received in October 2015 or [were] ever served in 2016 ANY documents from the plaintiffs" and "could not have been served, when; they were out of the country around the time period stated by the plaintiff[.]" They attached copies of receipts from a Toronto hotel for July 29-August 1, 2016; a Niagara Falls duty-free shop receipt from August 1, 2016; and what purport to be photocopies of two pages from the appellants' passports showing border control stamps that, although difficult to read, appear to indicate travel to and from Ecuador between May and July of 2015.

The remainder of the appellants' motion raised new complaints regarding the Loan in an effort to avoid foreclosure. Using the paragraph numbering in the appellants' motion, we summarize these contentions as follows:

d. Mediation: The appellants maintained that the Substitute Trustees had violate[d] the State Laws and the Federal Laws that grant home owners caught up in the banks fraudulent loan process in the housing market a way out through Mediation and or an opportunity to do 'The Offer and Compromise' to settle the loan."

e. Right to convert to fixed rate: In addition, the appellants asserted that "[t]his was a loan tied to the market rate for three years" and was to have been "convert[ed] to a Fixed Mortgage shortly after Wells Fargo took over the loan[,]" but that "Wells Fargo refused to adhere to the terms of the loan for the past six years after repeated request and application process by the defendants to get the conversion."

f. Absence of King's signature: According to the appellants, Ms. King, as a "joint owner of the property," "never signed the 'Prime Equity Line Of Credit Agreement & Disclosure Statement' and was never provided with these terms and condition before she was made to sign the 'Open Ended Deed Of Trust' in violation of her constitutional rights."

g. Monthly statements: Wells Fargo "failed to provide for over a year" the monthly statements under the HELOC Note.

h. Payments: The appellants complained that they had paid "over Eighty One Thousand Dollars ($81,000.00) on a one time withdrawal of Ninety Five Thousand Dollars ($95,000.00) and the outstanding balance still stands at One Hundred Thousand Dollars ($100,000.00)."

i. Original terms and conditions: The appellants alleged "[t]hat some of the pages presented by the plaintiff as part of the agreement signed by the defendants were not the original conditions and terms that were in place at the time of signing by the defendants."

j. Dischargeability: According to the appellants, "congress passed a law that address funds taken out against a resident for the sole purpose of purchase of real estates that went 'Under Water' that it is dischargeable which is applicable in this case and the defendants had qualified for this process three years prior" [sic].

k. Stalling: The appellants accused Wells Fargo of using "stalling tactics as a means not to implement the relief conditions that should have been implemented based on State Laws," based on "the false pretext that the laws kept changing[.]"

l. Payment history: The appellants requested "proof of all the payment history of this loan and the total payment to date."

m. Fraudulent loan: Finally, the appellants contended that Wells Fargo "inherited a fraudulent loan from Wachovia Bank and instead of making it right continued down the same path only as a means to enrich the institutions bottom line."

The Substitute Trustees filed a written opposition to this motion, providing a detailed history of the proceedings and answering each of the appellants' contentions.

On November 7, 2016, the circuit court held a hearing on the appellants' motions for injunctive relief. At the hearing, Stephenson reiterated contentions from his pleadings, asserting, *inter alia*, that service was not properly made in 2015, that King had not signed the HELOC Note and was not "apprised of what" she was "being obligated to" when she signed the Deed of Trust, that Wells Fargo failed to provide monthly account statements, that Wells Fargo wrongfully denied them an opportunity to convert the variable interest rate on the HELOC Loan balance to a fixed interest rate, and that these failures resulted in increases to the loan balance despite their payments.[1] Yet Stephenson admitted that he did receive notice and documentation concerning this foreclosure action.

Counsel for the Substitute Trustees reiterated that the appellants did not satisfy the affidavit and specificity requirements under Rule 14-211 and pointed out that service did not appear to be "an issue" given Stephenson's acknowledgement and the affidavits proving service by attempted personal delivery, certified mail, and posting on the Property. Counsel proffered that "if he wants to cure the default, the bank would be more than happy[,]" but that lenders typically "don't continue to send multiple statements showing

[1] When Stephenson complained that "the lending institution also failed to provide to the property owner notice of rights to cancel . . . the loan," counsel for the Substitute Trustees objected "that's not in the pleading," and the court instructed Stephenson to keep "to what is in your pleading[.]"

what the payment is once it goes into default" and that the notice of intent to foreclose clearly stated the "total amount required to cure default as of" that date. Moreover, Stephenson claimed only that he did not "see the statements," which does not "excuse the default[.]"

At the conclusion of the hearing, the circuit court denied the appellants' motions, explaining that their allegations did not state a viable defense to the Substitute Trustees' right to foreclose or to the validity of the lien or lien instrument:

> I understand that you're frustrated in many ways. However, this is what we call a pre-foreclosure motion to dismiss, and it's controlled by this Rule, 14-211. And, the fact of the matter is that the original motion was not supported by affidavit, and [defense] counsel is right. It could be dismissed for that. But, generally, you have to show that there is some legal defense or legal defect in the proceeding with the foreclosure case. In fact, you haven't done that here. If a co-owner of the property signs a deed of trust . . . . which the co-owner did, it doesn't matter whether she signs the actual loan because she agrees to put that property at risk . . . . based upon your taking out that loan. . . .
>
> So that does not mean that they can't foreclose. So far as the monthly statements go, counsel is correct. Once you're in default, you don't get monthly statements anymore. And, in fact, you could at any time ask for a cure amount and there is a cure amount stated in one of the documents you received.
>
> So it is the determination of the Court that you have not raised a valid defense under 14-211. And, therefore, your motion for relief and to dismiss the foreclosure will be denied.

When a November 10, 2016 postfile mediation did not resolve the dispute, the appellants immediately moved for reconsideration of the order denying their motions. The Substitute Trustees filed a written opposition, and the court denied reconsideration.

From these orders, which cleared the way for a foreclosure sale, the appellants noted this timely appeal on December 28, 2016. The Substitute Trustees scheduled a foreclosure sale of the Property for March 6, 2017. The appellants moved to stay the sale. The circuit court granted a stay pending a hearing on August 2, 2017. At that hearing, the court granted a stay upon posting of a supersedeas bond, proof that Property insurance and taxes were paid, plus monthly interest payments by the appellants of $244.75 into the court registry.

We shall add facts in our discussion of the issues raised by the appellants.

DISCUSSION

In their *pro se* brief to this Court, the appellants not only challenge the order denying their motion to dismiss or stay these foreclosure proceedings but also seek "rescission and damages." We present, verbatim, their questions and citations to their record extract:[2]

QUESTIONS PRESENTED

A. Did the lower court err in failing to establish the validity of the deed before ascertaining that service was proper (E. 91, 99)[?]

B. Is service proper if the document that legally binds the parts [sic] are false or do not exist (E. 18., 19, 92, 93)[?]

C. Did the court err by failing to grant the appellants [sic] motion that addressed the appellees [sic] claim to have a Lien against a property if it fails to execute the required signatures required by Federal and State Law on the documents (i.e. Prime Equity Line of Credit Agreement & Disclosure Statement; Notice of Right of Recession [sic]

[2] The appellants filed with their brief a separate record extract, apparently without consulting the Substitute Trustees, as required by Rule 8-501(d). The Substitute Trustees provided a separate appendix to their brief, presenting documents from the record that were "omitted from Appellant's Record Extract but which are pertinent to the disposition of the issues in this appeal," in accordance with Rule 8-501(e).

and the Failure to have the Appellants [sic] signatures on the Deed Filed in the circuit court) (E. 12, 13, 90, 91, 92)?

D. Is an institution permitted to violate 'Predatory Lending Laws' in doing business and then use 'NEGATIVE AMORTIZATION' on the loan for ten years (10 years) plus?

E. Did the court err by failing to enforce the consumer laws that the appellee have to provide its customer's request of payment history (i.e. Appellee's claim that they [sic] records only go back to 2011 and not to 2005 April when the loan was taken) (E. 14, 94, 102, 103)?

F. Did the court err by failing to have the appellees justify what payment plan for the loan that was in place when the appellants took the loan (i.e. original loan amount $95,000.00 and after ten years of payments the balance is now $107,000.00 before any missed payments ever occur) (E. 13, 95)?

G. Did the lower court err by not considering the ten plus years of payments to the appellee and to determine how much money was paid already to the appellee (E. 95, 102, 103)?

H. Did the lower court err in failing to impose penalties against the Appellee for VIOLATION of the court orders issued by judges for the 'Motion to Stay All Actions Pending Appeal' (E. 51, 59)?

Ultimately, appellants request the following relief:

The appellants are hereby requesting that this honorable court reverse the decision of the lower court to dismiss this case and instruct it to rescind the faulty contract the appellants have with the appellee as a means to abide by the laws set by congress and the courts. In granting this rescission that the appellee return all the funds paid to them for the past ten years and the appellants will make full restitution of the total loan (exactly at the same time) with no other stipulations. As the laws that congress passed and this honorable court has vigorously enforced is that the creditor/appellee "Must be made whole" and the appellants must receive back all their funds including closing cost as a means to be "Made Whole." Finally the appellants feel that this honorable court should also advise the circuit court that some form of compensation should be leveled against the appellee for all of the unnecessary wrongs and deliberate contractual abuse they perpetrated against the appellants for the past four years including the defiance of the lower courts orders.

The Substitute Trustees respond to the appellants' brief by asserting that:

(1) The Deed of Trust is enforceable regardless of the fact that the Line of Credit Agreement was executed only by Stephenson, and not by King[.]

(2) Stephenson did not deny executing the Deed of Trust[.]

(3) The Loan cannot be cancelled by Stephenson[.]

(4) The Land Instrument Intake Sheet has no legal significance[.]

(5) The preparation of the deed by the loan closer has no legal significance in this appeal[.]

(6) Stephenson never denied he was in default giving rise to the right to foreclose[.]

(7) Neither the [HELOC] Agreement nor the Deed of Trust references conversion to a "fixed rate" mortgage[.]

(8) The Notice of Intention to Foreclose was properly mailed to Stephenson and service of the Order to Docket was Proper[.]

Legal Standards Governing Foreclosure Relief

Rule 14-207 establishes the requirements for a secured party to initiate foreclosure proceedings under a deed of trust with a power of sale. Pertinent to this appeal are the following provisions:

(a) Pleadings Allowed.

(1) Power of Sale. An action to foreclose a lien pursuant to a power of sale shall be commenced by filing an order to docket. No process shall issue. . . .

(b) Exhibits. Except as provided in section (c) of this Rule, a complaint or order to docket shall include or be accompanied by:

(1) a copy of the lien instrument supported by an affidavit that it is a true and accurate copy . . . .

(2) an affidavit by the secured party, the plaintiff, or the agent or attorney of either that the plaintiff has the right to foreclose and a statement of the debt remaining due and payable;

(3) a copy of any separate note or other debt instrument supported by an affidavit that it is a true and accurate copy and certifying ownership of the debt instrument;

(4) a copy of any assignment of the lien instrument for purposes of foreclosure or deed of appointment of a substitute trustee supported by an affidavit that it is a true and accurate copy of the assignment or deed of appointment;

(5) with respect to any defendant who is an individual, an affidavit in compliance with § 521 of the Servicemembers Civil Relief Act, 50 U.S.C. app. § 501 et seq.;

(6) a statement as to whether the property is residential property and, if so, statements in boldface type as to whether (A) the property is owner-occupied residential property, if known, and (B) a final loss mitigation affidavit is attached; . . .

(8) in an action to foreclose a lien instrument on residential property, to the extent not produced in response to subsections (b)(1) through (b)(7) of this Rule, the information and items required by [Md.] Code, Real Property Article, § 7-105.1(e), except that (A) if the name and license number of the mortgage originator and mortgage lender is not required in the notice of intent to foreclose, the information is not required in the order to docket or complaint to foreclose; and (B) if the mortgage loan is owned, securitized, insured, or guaranteed by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Federal Housing Administration, or if the servicing agent is participating in the federal Making Home Affordable Modification Program (also known as "HAMP"), providing documentation as required by those programs satisfies the requirement to provide a description of the eligibility requirement for the applicable loss mitigation program; . . .

(10) if the property is residential property and the secured party and borrower did not elect to participate in prefile mediation, a statement that the parties did not elect to participate in prefile mediation . . . .

Md. Rule 14-207.

Injunctive relief in pending foreclosure actions is governed by Rule 14-211, which authorizes a stay or dismissal "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[.]" Md. Rule 14-211(e). Under this rule, a "borrower, a record owner, [or] a party to the lien instrument . . . may file in the action a motion to stay the sale of the property and dismiss the foreclosure action." Md. Rule 14-211(a)(1). Pertinent to this appeal are the following prerequisites for such relief:

> (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; . . .
>
> (E) state the date the moving party was served or, if not served, when and how the moving party first became aware of the action . . . .
>
> **(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.

Md. Rule 14-211(a)(3).

A party seeking injunctive relief under this Rule "must plead all elements of a valid defense with particularity[,]" which with respect to fraud claims

> "ordinarily means that a plaintiff must identify who made what false statement, when, and in what manner (i.e., orally, in writing, etc.); why the statement is false; and why a finder of fact would have reason to conclude that the defendant acted with scienter (i.e., that the defendant either knew that the statement was false or acted with reckless disregard for its truth) and with the intention to persuade others to rely on the false statement."

Buckingham v. Fisher, 223 Md. App. 82, 91 (2015) (citation omitted). In this context, "particularity means that each element of a defense must be accompanied by some level of factual and legal support. General allegations will not be sufficient to raise a valid defense requiring an evidentiary hearing on the merits." *Id*. at 91–92.

Although we review *de novo* any legal decisions underlying the denial of a motion to dismiss under Rule 14-211, in the absence of clear factual error, we review such a decision for abuse of discretion. *See Mitchell v. Yacko*, 232 Md. App. 624, 640–41 (2017); *Buckingham*, 223 Md. App. at 92–93. "We will reverse under this standard if we determine that 'no reasonable person would take the view adopted by the [trial] court[].' *Fishman v. Murphy*, 433 Md. 534, 546 (2013) (citations omitted). The Court of Appeals has "found abuses of discretion where the trial court ruling was 'clearly against the logic and effect of facts and inferences before the court[ ] . . . or when the ruling is violative of fact and logic.'" *Id*. (citation omitted).

The Appellants' Challenges

In light of the broad range of relief requested by the appellants, we begin our analysis by emphasizing that the narrow issue in this appeal is whether the circuit court erred or abused its discretion in denying the appellants' motion to dismiss the foreclosure action under Rule 14-211. For that reason, the appellants' demands for compensatory damages, rescission, and other forms of relief are not before this Court in this appeal.

Although we acknowledge the difficulty of preparing a *pro se* appeal, we will not "delve through the record to unearth factual support favorable to [the] appellant." *Rollins*

v. Capital Plaza Assocs., L.P., 181 Md. App. 188, 201 (2008) (citation omitted). Nor will we seek out legal theories or authorities for a *pro se* appellant. *See id.* at 201–02.

We have reviewed the appellants' brief in light of their pleadings and arguments in the circuit court, detailed above. Applying the substantive and procedural law governing foreclosure to the appellants' contentions, we shall explain why none merits appellate reversal of the orders denying foreclosure relief.

As a threshold matter, the circuit court was correct that neither the appellants' Motion to Dismiss, nor their subsequent motions expanding their grounds for opposing foreclosure, satisfied the requirements of Rule 14-211(a)(3). Neither the appellants' Motion to Dismiss, nor their motion opposing the Substitute Trustees' proof of service was under oath or otherwise supported by affidavit, admissible evidence, or even proffers of evidence. Nor did those pleadings include the required information regarding service and notice of the foreclosure action.

These defects, by themselves, justified the denial of injunctive relief. Indeed, allowing a foreclosure to be halted by mere allegations undermines the primary purpose for a deed of trust containing a power of sale, by delaying foreclosure of the collateral property without the benefit of any competent evidence. *Cf. Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705, 727 (2007) ("This 'power of sale' foreclosure is 'intended to be a summary, in rem proceeding' which carries out 'the policy of Maryland law to expedite mortgage foreclosures.'") (quoting *G.E. Capital Mortg. Servs., Inc. v. Levenson*, 338 Md. 227, 245 (1995)).

Moreover, the circuit court did not abuse its discretion in concluding that the appellants failed to present a viable defense to the validity of the lien or the lien instrument, or to the right of the Substitute Trustees to foreclose in this action. *See* Md. Rule 14-211(e). We shall examine each category of the appellants' contentions in turn.

Complaints About Prior Foreclosure Proceedings

As the Substitute Trustees argued and the circuit court agreed, nothing that occurred during the prior foreclosure proceedings in 2015 provided a factual or legal basis for a defense to this foreclosure action. Accordingly, the court did not err or abuse its discretion in disregarding the appellants' complaints regarding service, notice, and the dismissal of the 2015 foreclosure action.

Complaints About Mediation

The appellants complain that the Substitute Trustees misled the court by asserting that the appellants elected not to participate in prefile mediation, when they were never offered that opportunity. As the Substitute Trustees pointed out, however, the order to docket in this foreclosure action merely stated that Wells Fargo, as the secured party, had exercised *its* right not to participate in prefile mediation. This election by the Substitute Trustees is not a defense to the right to foreclose because such mediation is not mandatory. *See* Md. Code, § 7-105.1(d) of the Real Property Article ("RP") ("For owner-occupied residential property, a secured party *may offer* to participate in prefile mediation with a . . . grantor to whom the secured party has delivered a notice of intent to foreclose" and the "grantor may elect to participate") (emphasis added); RP § 7-105(e)(2)(viii) (When "the secured party and the . . . grantor have not elected to participate in prefile mediation," the

order to docket the foreclosure action must be accompanied by "a statement that the parties have not elected to participate in prefile mediation[.]"

Regarding the appellants' right to postfile mediation, the Substitute Trustees expressly acknowledged that the appellants elected to participate. The record shows that such mediation occurred days after the court denied injunctive relief, with no resulting resolution of the default or dispute.

Complaints About Service

With respect to the appellants' complaints about service, the circuit court correctly concluded that service was proper. Under Rule 14-209(b),

> [i]f on at least two different days a good faith effort to serve a borrower or record owner pursuant to [the personal delivery provisions in] section (a) of this Rule was not successful, the plaintiff shall effect service by (1) mailing, by certified and first-class mail, a copy of all papers filed to commence the action, accompanied by the documents required by Code, Real Property Article § 7-105.1(h), to the last known address of each borrower and record owner . . . , and (2) posting a copy of the papers in a conspicuous place on the residential property. Service is complete when the property has been posted and the mailings have been made in accordance with this section.

As set forth in affidavits establishing proof of service of the Notice of Intent to Foreclose and accompanying documents, the Substitute Trustees made (1) two attempts at personal service at the Property, (2) posted the necessary documents, and (3) sent them by certified and first class mail. The appellants did not refute that evidence of compliance with Rule 14-209(b). Moreover, at the hearing on November 7, 2016, Stephenson admitted that he received notice of these foreclosure proceedings and copies of the accompanying documents.

Complaints About Bank Statements and Account Information

In response to the appellants' complaints that they did not receive monthly Loan statements in 2015 and 2016, the Substitute Trustees pointed out that Stephenson "does not assert" that he "requested the amounts necessary to reinstate" after he defaulted on payments beginning in December 2014. Nor would a failure to provide such information without request constitute "a defense to the right to foreclose."

Similarly, the appellants' complaint that pages in the HELOC Note and/or Deed of Trust were different from what the appellants signed was not supported by evidence or proffer as to which pages were affected or which terms were "not as agreed to."

Despite the appellants' complaints about the lack of accounting for payments made under the HELOC Note, Stephenson has never denied that he remains in default for nonpayment. Nor can he dispute that the precise amount of his debt is available upon request and will be finally determined during ratification proceedings following any sale of the Property. *See generally Greenbriar Condo. v. Brooks*, 387 Md. 683, 733-34 (2005) ("The precise indebtedness figure is to be adjudicated after the ratification of the sale itself, by the Circuit Court following receipt of the auditor's statement of account.").

Complaints About the Terms or Enforceability of the Note

With respect to the appellants' allegation that they were entitled to convert the variable interest rate in the HELOC Note to a fixed interest rate, there is nothing in the Note itself to support that contention. Moreover, the appellants proffered no documentation or other evidence to support this claim. Similarly, the appellants proffered

no evidence to indicate that King was "made" to sign the Deed of Trust without knowledge of the terms in the HELOC Note.

Nor does the absence of King's signature on the HELOC Note raise a viable defense to this foreclosure action. There is no dispute that King, designated as a "Borrower," signed the Deed of Trust, which expressly addresses this scenario in Paragraph 10, as follows:

> Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, *any Borrower who co-signs this Deed of Trust but does not execute the Note (a "co-signor"): (a) is co-signing this Deed of Trust only to mortgage, grant and convey the co-signor's interest in the Property under the terms of this Deed of Trust*; (b) is not personally obligated to pay the sums secured by this Deed of Trust; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Deed of Trust or the Note without the co-signor's consent.

(Emphasis added.) Having expressly agreed that her interest in the Property is security for Stephenson's obligation under the HELOC Note, King cannot avoid foreclosure on the ground that she did not sign that Note.

Likewise, Stephenson does not explain how the lack of timely notice to King of her right to cancel constitutes a defense to the validity of the Deed of Trust that was executed more than three years before the foreclosure action was filed. *See generally* 15 U.S.C. § 1635(f) ("An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this part have not been delivered to the obligor"). Moreover, Stephenson lacks standing to asserts King's expired right to cancel because, even though King's name appears on the pleadings, the notice of appeal, and the briefs and

pleadings in this Court, she has not signed those pleadings, as required for an individual who is not represented by an attorney. *See* Md. Rule 1-311.

Nor are we persuaded that the appellants may avoid foreclosure based on their belated argument, raised for the first time in their motion for reconsideration, that the land instrument intake sheet lists only King as the grantor. Under RP section 3-104(g)(10), that document "is not part of the instrument." Moreover, because "[t]he lack of an intake sheet does not affect the validity of any conveyance, lien, or lien priority based on recordation of an instrument[,]" RP § 3-104(g)(10)(iii), neither could an error in that intake sheet constitute a defense to the validity of the Deed of Trust.

The appellants make another belated challenge to the validity of the Deed of Trust based on a signature of a representative of the secured party. *See generally* RP § 3-104(f)(iii) ("A . . . deed of trust prepared by any attorney or one of the parties named in the instrument may be recorded without the certification required under subparagraph (ii) of this paragraph."). This argument is not properly before us because it was not presented to the circuit court. *See* Md. Rule 8-131(a). Even if it had been, any such defect does not raise a viable defense because it was not asserted within the statutory limitations period of six months. *See generally* RP § 4-109(b) ("any failure to comply with the formal requisites" for a deed of trust "has no effect unless it is challenged in a judicial proceeding commenced within six months after it is recorded").

With respect to the appellants' remaining allegations regarding "dischargeability" of the Loan under remedial programs and "predatory lending" practices, we agree with the

circuit court and the Substitute Trustees that the pleadings do not sufficiently identify the relevant laws, contract terms, or events to enable judicial review of those claims.

Conclusion

In support of their requests to dismiss this foreclosure action, the appellants failed to offer affidavits or proffer a viable defense, either to the validity of the HELOC Note and Deed of Trust or to the right of the Substitute Trustees to foreclose. *See* Md. Rule 14-211(e). Because the circuit court did not err or abuse its discretion in denying the appellants' requests for dismissal and other injunctive relief, we shall affirm those orders and remand for further proceedings.

ORDER DENYING "MOTION TO DENY ALL ACTIONS AND TO CORRECT THE MISLEADING FILINGS TO THIS COURT BY PLAINTIFF'S AND TO SET A HEARING FOR A HEARING FOR DISMISSAL OF CASE" AFFIRMED. ORDER DENYING "MOTION IN OPPOSITION TO PLAINTIFFS' PROOF OF SERVICE" AFFIRMED. ORDER DENYING "MOTION FOR RECONSIDERATION AND REHEARING THE DEFENDANTS' MOTION TO DISMISS" AFFIRMED. COSTS TO BE PAID BY THE APPELLANTS.