UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2244

September Term, 2013

HENRY C. GEORGE

v.

JACOB GEESING, *et al.*

Woodward,
Leahy,
Reed,

JJ.

Opinion by Leahy, J.

Filed: July 9, 2015

This is an appeal from a foreclosure action brought by Wells Fargo and substitute trustees Howard N. Bierman, Jacob Geesing, and Carrie M. Ward (collectively "Wells Fargo," "Trustees," or "Appellees") against Appellant Henry C. George, Sr. in the Circuit Court for Worcester County, on his residence located at 411 Charlotte Court Street, Ocean Pines, Worcester County, Maryland. Mr. George, in his timely appeal, presents one question for our review:

> "Did the lower court err in denying Appellant's Motion to Stay and/or Dismiss Foreclosure Proceeding (pursuant to Md. Rule 14-211[])]?"

We hold that the court did not abuse its discretion in denying the motion, which was filed 254 days late. We therefore affirm the judgment of the circuit court.

I.

Mr. George obtained a purchase money loan in the amount of $451,900.00 from Entrust Mortgage, Inc. on November 30, 2006. The loan was evidenced by a note and secured by a deed of trust recorded against Mr. George's real property in the Ocean Pines area of Worcester County, Maryland.[1] The deed of trust listed RGS Fountainhead Title as the trustee and designated MERS (Mortgage Electronic Registration Systems Inc.) as the nominee of Entrust Mortgage and its successors and assignees as the beneficiaries

[1] This case involves a deed of trust to secure repayment of the loan promissory note. Because the case before us turns on whether the court abused its discretion in denying a late motion to dismiss, the differences "between whether the associated security instrument is a mortgage or a deed of trust, are of no moment in resolving the present case." *Anderson v. Burson*, 424 Md. 232, 234 n.1 (2011) (citing *Simard v. White,* 383 Md. 257, 269-90 (2004)). Accordingly, we may treat these two types of instruments interchangeably, and therefore, "we may use the term *mortgage,* at some points in this opinion, to embrace both mortgages and deeds of trust, without blurring their distinction for other purposes." *Id.* (citations omitted).

under the instrument. The deed of trust was accompanied by several riders, including, among others, an adjustable rate rider, a planned unit development rider, and a second home rider. The second home rider acknowledged that Mr. George would use the property as his second home for his exclusive use and enjoyment at all times. The loan was assessed at an initial interest rate of 6.875%, which would become an adjustable rate based on the LIBOR[2] starting on December 1, 2011. Entrust Mortgage indorsed the adjustable rate note in blank.

On or about January 1, 2007, Mr. George's loan was sold or transferred into the pool of mortgages that constitute the Nomura Home Equity Loan, Inc., Home Equity Loan Trust, Series 2007-1 (the "Trust").[3] Pursuant to the Trust's Pooling and Servicing Agreement, Wells Fargo was appointed master servicer for the Trust and thus the servicer for Mr. George's loan.

[2] The London Interbank Offered Rate.

[3] The Court of Appeals described the pooling process, or securitization, as follows:

> Securitization starts when a mortgage originator sells a mortgage and its note to a buyer, who is typically a subsidiary of an investment bank. Christopher L. Peterson, *Foreclosure, Subprime Mortgage Lending, and the Mortgage Electronic Registration System,* 78 U. Cin. L. Rev. 1359, 1367 (2010). The investment bank bundles together the multitude of mortgages it purchased into a "special purpose vehicle," usually in the form of a trust, and sells the income rights to other investors. *Id.* A pooling and servicing agreement establishes two entities that maintain the trust: a trustee, who manages the loan assets, and a servicer, who communicates with and collects monthly payments from the mortgagors. *Id.*

Anderson, 424 Md. at 237 (footnote omitted).

Sometime before December 2009, Mr. George defaulted on the note. He entered into a loan modification agreement dated December 2, 2009, which transformed the note from an adjustable interest rate mortgage to a fixed interest rate mortgage. According to Mr. George, he attempted to make payments on the modified loan, but his servicer did not apply them to his account.[4] He defaulted on his modified loan on June 2, 2010. The servicer sent Mr. George a notice of intent to foreclose ("NOI") on August 29, 2010, which listed the mortgage lender as Entrust Mortgage, Inc. and apprised Mr. George of the procedure and timeline for foreclosure in Maryland. The NOI also included a list of non-profit organizations in the HOPE Housing Counselors Network that assist homeowners who are dealing with a potential foreclosure and could help Mr. George navigate the foreclosure and mediation process.[5]

On February 21, 2012, MERS, as nominee for Entrust Mortgage recorded the assignment of the deed of trust to HSBC Bank USA, NA, as trustee for the holders of the Trust. Wells Fargo, as servicing agent for the note holder, the Trust, appointed Howard

[4] Mr. George sent his payments and communicated with America's Servicing Company. The record does not explicitly indicate Wells Fargo's role at that point in time, but it is likely that America's Servicing Company was a subservicer and had been delegated authority by Wells Fargo to service the loan.

[5] The HOPE Housing Counselors Network is part of the Home Owners Preserving Equity ("HOPE") Initiative, supported by the Maryland Department of Housing and Community Development ("DHCD"). "DHCD supports a statewide network of 31 nonprofit agencies that provide foreclosure prevention assistance. DHCD provides financial support and training to these agencies. These counselors are the critical link in assisting individuals facing foreclosures, acting as a resource to negotiate reasonable terms with mortgage servicers, and advising citizens on the best actions to take to save their homes." *See* Counselors, Maryland HOPE Initiative, DHCD, http://mdhope.dhcd.maryland.gov/Counseling/Pages/default.aspx.

N. Bierman, Jacob Geesing, and Carrie M. Ward as Substitute Trustees under the deed of trust on March 6, 2012 (recorded July 6, 2012).

On July 6, 2012, Wells Fargo, through the Substitute Trustees, filed an order to docket foreclosure action in the Circuit Court for Worcester County. In the order to docket, Trustees certified that they complied with the requirements of Maryland Code (1974, 2010 Repl. Vol., 2011 Supp.), Real Property Article § 7-105.1, which required Trustees to verify the accuracy of the contents of the notice of intent to foreclose on the property located at 411 Charlotte Court Street in Ocean Pines, and that loss mitigation information was included with the order to docket. Mr. George was served by posting documents to the foreclosure property on July 17, 2012, which included a copy of a notice of foreclosure action, request for foreclosure mediation, two addressed envelopes, a final loss mitigation affidavit, and a copy of the order to docket along with all other papers filed with it (affidavit of service filed August 15, 2012). The above documents were also sent to Mr. George by first class and certified mail.

Mr. George requested mediation on July 23, 2012 (filed July 24, 2012) to forestall the foreclosure, indicating that he wanted to participate in mediation "to see if I qualify for a loan modification or other alternative to a foreclosure sale of my home." The parties participated in mediation on September 11, 2012. At mediation, Wells Fargo agreed to review Mr. George's records to determine whether he made his monthly mortgage payments from February 1, 2010 through June 30, 2010, and whether he was correctly charged late fees and interest during that same period. The parties met late that fall and consented to extend the time for mediation to January 2013. On January 8, 2013,

the parties participated in their final mediation session; however, no agreement was officially reached. Unofficially, Wells Fargo agreed to stay the foreclosure proceedings while it processed a second loan modification application from Mr. George, if it received such application by January 22, 2013. The record does not reflect that Mr. George ever submitted a second loan modification application.

Meanwhile, unaware of the informal agreement between the parties, the circuit court issued an order on January 14, 2013 (filed the same day) informing the parties that the foreclosure may proceed. The order stated:

> [H]aving received from the Office of Administrative Hearings a report stating that the foreclosure mediation it held on the borrower's request did not result in an agreement, pursuant to Maryland Rule 14-209.1(f)(2) and Real Property Article, 7-105.1(k), [i]t is . . . ORDERED that the secured party may schedule the foreclosure sale, subject to the right of the borrower to file a motion pursuant to Rule 14-211 to stay the sale and dismiss the action.

The Trustees scheduled the foreclosure sale for June 5, 2013. One day before the scheduled sale, Mr. George filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the District of Maryland. The Trustees canceled the scheduled sale and filed a Suggestion of Bankruptcy with the circuit court on June 6, 2013, in which they requested that the court stay the foreclosure proceedings until the resolution of Mr. George's bankruptcy proceeding, pursuant to 11 U.S.C. § 362. The circuit court stayed the case in an order dated June 10, 2013 (entered June 11, 2013).

After the bankruptcy proceeding was dismissed on or about July 9, 2013, Wells Fargo rescheduled the foreclosure sale for October 15, 2013. As required by Maryland

Rule 14-201(a), the Trustees published notice of the time, place, and terms of the sale in the Ocean City Digest on September 26, October 3, and October 10, 2013.

Eleven days before the second scheduled foreclosure sale and 254 days from the deadline for filing a motion under Maryland Rule 14-211, Mr. George filed a *pro se* motion to stay and/or dismiss foreclosure proceeding on October 4, 2013. At the outset of his motion, Mr. George represented that he did not file his motion within the 15-day period because he was unaware of the deadline and because: "[he] had attended three (3) mediations and at the last mediation held on January 8, 2013, Wells Fargo agreed to review [his] loan for a modification[, and] . . . [he] is pursuing a loan modification with Wells Fargo as servicer of his loan. Pendency of the loss mitigation efforts continues as [Mr. George] awaits Wells Fargo's decision as to his final loan modification result." Mr. George produced e-mails between the Administrative Law Judge who presided over the mediation, himself, and his attorneys, indicating, as noted above, that even though the Office of Administrative Hearings officially transmitted to the circuit court that the parties did not reach an agreement, Wells Fargo and Mr. George informally agreed to stay the foreclosure proceedings while Wells Fargo processed a second loan modification application from Mr. George, if Wells Fargo received his application by January 22, 2013.

Substantively, Mr. George made the following claims in his motion to dismiss: (1) Wells Fargo violated the dual tracking restrictions in the National Mortgage Settlement[6] when it proceeded with the foreclosure while his loan modification application was pending; (2) Wells Fargo had unclean hands; (3) discrepancies existed concerning the identity of the loan owner; and (4) the appointment of the Substitute Trustees was invalid.

Wells Fargo responded to the motion on October 10, 2013, arguing that Mr. George's motion was untimely and that no good cause to file the motion late existed. Wells Fargo addressed Mr. George's other arguments on the merits. Wells Fargo also attached to its response a certification that a loan modification application for Mr. George was not pending as of May 28, 2013.[7] The circuit court denied Mr. George's motion to

[6] On February 9, 2012, the Maryland Attorney General entered into a settlement with the nation's five largest mortgage servicers, including Wells Fargo ("National Mortgage Settlement" or "NMS"). The agreement reformed Wells Fargo's mortgage servicing practices and required it to make payments to the federal government, states, and borrowers, in exchange for releases from liability from certain alleged criminal conduct. Wells Fargo paid $5.35 billion in total and did not admit any liability for any wrongdoing. State Attorneys General Mortgage Servicing Settlement, Maryland Attorney General, available at http://www.oag.state.md.us/mortgageSettlement/index.html; National Mortgage Settlement Fact Sheet, (March 6, 2012), available at https://d9klfgibkcquc.cloudfront.net/Mortgage_Servicing_Settlement_Fact_Sheet.pdf. The NMS required that Wells Fargo, among other things, change its mortgage servicing procedures to ensure accuracy during the foreclosure process and to give borrowers a chance to successfully pursue loan modification programs with Wells Fargo. For example, the NMS placed restrictions on so-called "dual tracking," in which a mortgage servicer would simultaneously process a borrower's loan modification application and proceed with a foreclosure action against the mortgaged property.

[7] Mr. George provided no evidence rebutting Wells Fargo's certification. Later, in his exceptions to sale, he cast aspersions on the certification itself—contending that none of the circumstances detailed in the certification applied to him and that he had received no denial letter from Wells Fargo. Notwithstanding the fact that arguments of this type

(Continued . . .)

dismiss and vacated the bankruptcy stay in an order entered on October 11, 2013, issued without a memorandum opinion. Then, on October 15, 2013, as reflected by the report of sale filed with the court, the Substitute Trustees sold the property as scheduled to the note holder, HSBC Bank USA, NA, as Trustee for the Holders of Nomura Home Equity Loan, Inc., Home Equity Loan Trust, Series 2007-1.

On November 13, 2013, Mr. George, through counsel, filed exceptions to the sale. Mr. George again asserted that Wells Fargo had unclean hands because it violated its duties under the National Mortgage Settlement. He also disputed the accuracy of Wells Fargo's certification that no loan modification application was pending. Wells Fargo moved to strike the exceptions on December 3, 2013, asserting that, in his exceptions, Mr. George raised arguments that were improper under Rule 14-305 for exceptions to the sale.[8] The exceptions were overruled or stricken by the circuit court, which ratified the sale on December 4, 2013 (entered on December 5, 2013).

(. . . continued)
are inappropriate for exceptions to a foreclosure sale, *see* footnote 8, *infra*, Mr. George provided no affirmative evidence that to support his claim that he submitted a second loan modification application nor proof that one was pending.

[8] Exceptions to the sale must set forth the alleged irregularities with particularity. Maryland Rule 14-305(d)(1). However, "Rule 14-305 is not an open portal through which any and all pre-sale objections may be filed as exceptions, without regard to the nature of the objection or when the operative basis underlying the objection arose and was known to the borrower." *Bates v. Cohn,* 417 Md. 309, 327 (2010). Proper exceptions allege procedural irregularities, which might include "allegations such as the advertisement of sale was insufficient or misdescribed the property, the creditor committed a fraud by preventing someone from bidding or by chilling the bidding, challenging the price as unconscionable, etc." *Johnson v. Nadel*, 217 Md. App. 455, 466
(Continued . . .)

Mr. George noted his timely appeal on January 6, 2014. The circuit court ratified and confirmed the auditor's report on January 15, 2014 (entered on January 16, 2014). We will discuss additional facts as needed.

II.

Mr. George contends that the circuit court erred by not finding good cause to accept his motion to dismiss the foreclosure action, filed more than eight months after the deadline prescribed by Rule 14-211. Wells Fargo responds that the circuit court did not abuse its discretion in denying Mr. George's motion because he, in fact, did not have good cause to late-file his motion. Thus, the parties do not dispute the untimeliness of the motion—only whether good cause existed.

We review the circuit court's decision to deny a motion to stay for abuse of discretion. *See Svrcek v. Rosenberg*, 203 Md. App. 705, 720-21 (2012). A circuit court abuses its discretion "where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (quoting *North v. North,* 102 Md. App. 1, 13 (1994)) (internal citations, alterations, and quotation marks omitted).

(. . . continued)
(2014) (quoting *Jones v. Rosenberg*, 178 Md. App. 54, 69 (2008)) (internal quotation marks omitted).

Maryland Rule 14-211(a)(2)(A)[9] states that "a motion by a borrower to stay the sale and dismiss the action shall be filed no later than 15 days after the last to occur of: (i) the date the final loss mitigation affidavit is filed;. . . [or] the date the postfile mediation was held." However, "[f]or good cause, the court may extend the time for filing the motion or excuse non-compliance." Md. Rule 14-211(a)(2)(C).

The Court of Appeals in *In re Robert G.*, 296 Md. 175 (1983), quoted and relied on the definition of good cause from Black's Law Dictionary:

> Substantial reason, one that affords a legal excuse. Legally sufficient ground or reason. Phrase 'good cause' depends upon circumstances of individual case, and finding of its existence lies largely in discretion of officer or court to which decision is committed.... 'Good cause' is a relative and highly abstract term, and its meaning must be determined not only by

[9] Maryland Rule 14-211 states, in pertinent part:

> (2) *Time for Filing.*
>
> (A) Owner-occupied Residential Property. In an action to foreclose a lien on owner-occupied residential property, a motion by a borrower to stay the sale and dismiss the action shall be filed no later than 15 days after the last to occur of:
>
> (i) the date the final loss mitigation affidavit is filed;
>
> (ii) the date a motion to strike postfile mediation is granted; or
>
> (iii) if postfile mediation was requested and the request was not stricken, the first to occur of:
>
> (a) the date the postfile mediation was held;
>
> (b) the date the Office of Administrative Hearings files with the court a report stating that no postfile mediation was held; or
>
> (c) the expiration of 60 days after transmittal of the borrower's request for postfile mediation or, if the Office of Administrative Hearings extended the time to complete the postfile mediation, the expiration of the period of the extension.
>
> * * *
>
> (C) Non-compliance; Extension of Time. For good cause, the court may extend the time for filing the motion or excuse non-compliance.

> verbal context of statute in which term is employed but also by context of action and procedures involved in type of case presented.

Id. at 179 (quoting *Black's Law Dictionary* 623 (5th ed. 1979)). In *Svrcek v. Rosenberg*, 203 Md. App. 705, *cert. denied,* 427 Md. 610 (2012), we held that the circuit court did not err in finding that the borrower did not have good cause to file his motion late when he did not know about the deadline for filing. *Id.* at 721. There, we noted that "ignorance of the law is no excuse." *Id.* (quoting *Hi Caliber Auto & Towing, Inc. v. Rockwood Cas. Ins. Co.*, 149 Md. App. 504, 507 (2003)).

Turning to the instant case, the deadline for filing a motion to dismiss the foreclosure is governed by Rule 14-211(a)(s2)(A)(iii)(a), which provides that the borrower shall file the motion no later than 15 days after the date the postfile mediation was held. Here, the parties last met to mediate on January 8, 2013. Accordingly, Mr. George then had until January 23, 2013 to file a Rule 14-211 motion. Yet, Mr. George did not file his motion to dismiss until October 4, 2013, 255 days after the motion deadline and eleven days before the scheduled foreclosure sale.

In his *pro se* motion to dismiss, Mr. George asserted that he was not informed by his counsel of the motion deadline and that he was awaiting a final decision on his loan modification application. However, as we noted in *Svrcek v. Rosenberg*, ignorance of the law is no excuse for late filing. 203 Md. App. at 721. Moreover, although Mr. George reproduced certain e-mails dating back to early January, 2013, that show the parties had an informal agreement that Wells Fargo would stay the foreclosure proceedings if Mr. George submitted a second loan modification application, he provided the circuit court

with no evidence that he, in fact, filed this loan modification application. Nor did Mr. George provide evidence of any subsequent communications with Wells Fargo to confirm that his application was being processed. Instead, Mr. George, obviously aware that the Trustees were proceeding with the foreclosure, filed bankruptcy the day before the foreclosure sale was scheduled on June 5, 2013.

The motion to stay or dismiss was filed considerably after the 15 days allotted in Rule 14-211. In view of the facts and circumstances, we cannot say that the circuit court abused its discretion by failing to find good cause for the delay and in denying Mr. George's motion.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.