

Circuit Court for Prince George's County
Case No. CAE12-25134

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2404

September Term, 2018

JOAQUIM NETO

v.

MARK DEVAN, *et al.*

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 17, 2020

*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.

Joaquim Neto, appellant, appeals from an order issued by the Circuit Court for Prince George’s County ratifying the foreclosure sale of his home. He raises three issues on appeal, which reduce to one: whether the court erred in denying his “Motion to Excuse Noncompliance with Filing Deadline Pursuant to MD Rule 14-211(2)(C) and Motion to Vacate Sale and to Stay or Dismiss the Foreclosure Proceeding and Exception to Ratification of Sale” (the motion to stay and dismiss). For the reasons that follow, we shall affirm.

After Mr. Neto defaulted on his deed of trust home loan, appellees, acting as substitute trustees,¹ filed an Order to Docket Foreclosure in the circuit court. Appellees filed the final loss mitigation affidavit on December 20, 2012, and Mr. Neto requested postfile mediation. The time to conduct the mediation was extended until May 8, 2013. However, Mr. Neto failed to appear at the scheduled mediation.

The foreclosure action was then stayed after Mr. Neto filed a bankruptcy petition in the United States Bankruptcy Court for the District of Maryland. During the pendency of the bankruptcy proceeding, Mr. Neto applied for a loan modification with Rushmore Loan Management Services, Inc., (Rushmore) the servicer of his loan. In April 2015, Rushmore sent Mr. Neto a notice informing him that his loan modification request had been denied. The bankruptcy court lifted the stay on June 5, 2015, and appellees were permitted to proceed with the foreclosure action. Mr. Neto’s home was ultimately sold at a foreclosure sale on September 18, 2015.

¹ Appellees are Mark S. Devan, Thomas P. Dore, and Katherine M. Loverde.

On October 14, 2015, Mr. Neto filed the motion to stay and dismiss, claiming that Rushmore had violated numerous provisions of the Real Estate Settlement and Procedures Act (“RESPA”), 12 U.S.C. § 2601, *et seq.*, including failing to provide him with accurate information regarding his account under 12 C.F.R. § 1024.40(b)(1), failing to implement proper loss mitigation evaluation policies under section 1024.38(b)(2)(v), violating the “dual tracking” prohibition in section 1024.41(g), and failing to provide an adequate denial disclosure under section 1024.41(d). He further asserted that he had attempted to appeal the denial of his loan modification request, but that no decision regarding the appeal had ever been communicated to him prior to the sale.

Mr. Neto acknowledged that the motion to stay or dismiss was not timely under Maryland Rule 14-211 because it had not been filed by May 29, 2013, which was 15 days after time for him to complete postfile mediation had expired. However, he asserted that the court should excuse the untimely filing because: (1) the relevant regulations had not been enacted until January 10, 2014, and (2) he could not have been aware that those regulations had been violated until Rushmore sent him the denial letter in April 2015. He further claimed that RESPA preempted Rule 14-211 to the extent that the Rule required him to raise a violation of the “dual tracking” prohibition in section 1024.41(g) within a certain time frame. Finally, he contended that, if his motion was not timely under Rule 14-211, the court should consider his claims to be exceptions to the foreclosure sale pursuant to Maryland Rule 14-305.

The court denied Mr. Neto’s motion without a hearing, finding that it was untimely, failed to establish good cause to excuse the untimeliness, and failed to state a valid defense.

The court further found that the claims raised by Mr. Neto in his motion were not valid exceptions because they “failed to identify any legitimate procedural irregularity” with the foreclosure sale. The court ratified the sale on July 5, 2018. This appeal followed.

On appeal, Mr. Neto acknowledges that his motion to stay and dismiss was not timely filed. *See* Rule 14-211(a)(2)(A)(iii)(c)(stating that if postfile mediation is requested after the final loss mitigation affidavit is filed, and the OAH extends the time to complete mediation, a motion to stay and dismiss the foreclosure action must be filed within 15 days after the expiration of the period of extension.) He nevertheless provides two reasons why he believes his motion should not have been dismissed as untimely.

First, he asserts that he had could not have filed the motion within the time required by Rule 14-211 because his defenses to the foreclosure action were not ripe until April 2015, when Rushmore denied his loan modification application. This may be true as far as it goes. But Rule 14-211 allows for such a situation, permitting/authorizing a court to extend the time to file a motion to stay or dismiss for good cause shown if it “state[s] with particularity the reasons why the motion was not filed timely.” *See* Rule 14-211(a)(3)(F). And, even if we assume the truth of Mr. Neto’s claims, he was, by his own admission, aware of the alleged RESPA violations in April 2015, well before the time that appellees scheduled the foreclosure sale. However, instead of filing the motion to stay and dismiss upon learning of the violations, and prior to the foreclosure sale, he waited until almost one month after the sale had occurred. Consequently, the court could reasonably find that Mr. Neto did not act diligently in filing the motion and therefore, that he had not established good cause to excuse its untimely filing.

Mr. Neto alternatively asserts that, with respect to his “dual tracking” claim pursuant to 12 C.F.R. § 1024.41(g), the time requirements under Rule 14-211 do not apply because they are preempted by RESPA. Again, we disagree. Maryland lenders are obliged to comply with federal mortgage regulations. However, RESPA “does not annul, alter, or affect, or exempt any person . . . from complying with, the laws of any State with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of this chapter. 12 U.S.C. § 2616. We perceive no inconsistency between the federal regulations prohibiting dual tracking and Rule 14-211.

First, contrary to Mr. Neto’s claim, there is nothing under the Maryland Rules that prevents a borrower from submitting a loss mitigation application more than 37 days prior to the scheduling of the foreclosure sale, as allowed by § 1024.41(g). In fact, Mr. Neto filed his loss mitigation application more than five months before the foreclosure sale was scheduled in this case. Second, in the event a borrower submits a loss mitigation application more than 37 days prior to the foreclosure sale, but after the time has expired to file a motion to stay and dismiss, Rule 14-211 does not prohibit that borrower from raising the existence of his or her pending application, or the wrongful denial of that application, as a defense to the foreclosure proceeding, provided that those issues are raised prior to the sale. Rather, as previously set forth, the borrower can request the court to excuse the untimely filing by stating with particularity why it could not have been filed earlier. And, if such good cause is shown, the court can then consider those defenses.

Finally, Mr. Neto’s assertion that Maryland law creates an obstacle to the objectives of RESPA by requiring a borrower to file a motion to stay and dismiss to enforce its

provisions lacks merit. RESPA, and the regulations promulgated under its authority, do not provide for injunctive relief. Rather, the failure to comply with its provisions only entitles the borrower to recover monetary damages. 12 U.S.C. § 2605(f) (“[w]hoever fails to comply with any provision of this section shall be liable to the borrower for each such failure . . . an amount equal to the sum of and actual damages to the borrower as a result of the failure; and any additional damages . . . in an amount not to exceed \$2,000.00.”). Accordingly, Maryland Rule 14-211 does not create an obstacle to RESPA, but rather, provides a mechanism for broader relief by allowing the borrower, under certain circumstances, to file a motion to stay the sale of the property and dismiss the foreclosure action.

Finally, Mr. Neto asserts that, even if the motion to stay and dismiss was not timely, the alleged RESPA violations also constituted valid exceptions to the foreclosure sale and thus could be raised post-sale. In support of this contention, Mr. Neto relies on *Bierman v. Hunter*, 190 Md. App. 250, 268 (2010), wherein we stated that, in considering post-sale exceptions, the “trial court had full power to hear and determine all objections to the foreclosure sale” not “merely objection to the regularity of the mode in which the sale was conducted.” However, in *Bates v. Cohn*, 417 Md. 309, 327-28 (2010), the Court of Appeals expressly rejected the reasoning in *Bierman* and held that “a homeowner/borrower ordinary must assert known and ripe defenses to the conduct of foreclosure sale prior to the sale, rather than in post-sale exceptions.” Moreover, the Court in *Bates* specifically held that a lender’s failure to comply with loss mitigation requirements was not a procedural

irregularity with the sale but rather the type of “defense, which must be raised ordinarily pre-sale in an effort to prevent the sale from occurring.” *Id.* at 328.

As in *Bates*, Mr. Neto’s claims that Rushmore had failed to comply with loss mitigation requirements affected the right of appellees to foreclose and thus, should have been raised pre-sale. Moreover, in his motion to stay and dismiss Mr. Neto did not raise any other contentions that challenged the integrity of the sale itself. *See Jones v. Rosenberg*, 178 Md. App. 54, 69 (2008) (noting that post-sale irregularities that could be raised in exceptions to the sale might include: “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, [or] challenging the price as unconscionable, etc”). Consequently, the court did not err in finding that Mr. Neto had failed to identify any procedural irregularities with the sale and thus, in denying his exceptions.

Because Mr. Neto did not comply with the timing requirement of Rule 14-211(a)(2), did not present good cause sufficient to excuse non-compliance with that requirement, and did not set forth any cognizable post-sale exceptions, the trial court was required to deny his motion to stay and dismiss. *See* Rule 14-211(b)(1)(A) (stating that the “court *shall* deny the motion [to stay or dismiss]” if the motion “was not timely filed and does not show good cause for excusing non-compliance”). Therefore, we find no error in its refusal to enjoin or dismiss the foreclosure action. Because we affirm the denial of Mr. Neto’s

motion on this basis, we do not reach the issue of whether the motion established a valid defense to the foreclosure sale.

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