Circuit Court for Baltimore City
Case No. 24-C-16-005246

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3328

September Term, 2018

AMANDA BOSKENT

v.

THE BELVEDERE COUNCIL OF
UNIT OWNERS, ET AL.

Kehoe,
Nazarian,
Gould,

JJ.

PER CURIAM

Filed: May 1, 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.

In this appeal from a civil action in the Circuit Court for Baltimore City, Amanda Boskent, appellant, challenges the court's award of summary judgment to the Belvedere Council of Unit Owners ("Belvedere") and Bank of America, N.A. ("Bank of America"), appellees, and failure to grant a motion to vacate the award as to Bank of America and withdraw or amend admissions. For the reasons that follow, we shall affirm the award of summary judgment to appellees, but remand the case for review and resolution of the motion to vacate the award as to Bank of America and withdraw or amend admissions.

In June 1996, Ms. Boskent obtained from Bank of America, then known as NationsBank, a loan secured by a deed of trust on her residence, which was a condominium located in a building managed by Belvedere. In the deed, Ms. Boskent agreed to "promptly pay when due the principal of and interest on the debt." The deed further states: "If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property . . . , then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property," including "entering on the Property to make repairs." In March 2012, Bank of America sent to Ms. Boskent a notice of intent to foreclose upon the property on the ground that Ms. Boskent had "missed one or more payments on [the] mortgage loan, or [was] otherwise in default."

In September 2016, Ms. Boskent filed a complaint in which she contended that in February 2014, Belvedere's "building manager . . . used [a] spare key to allow representatives from Bank of America" to enter the property. Ms. Boskent contended that

appellees' actions constituted a violation of her "[c]onstitutional right to privacy," a violation of her "security," and "trespassing."

On December 1, 2017, Bank of America served upon Ms. Boskent a "First Set of Requests for Admissions," in which Bank of America requested that Ms. Boskent admit, among other things:

- That Ms. Boskent has "defaulted on the Loan."
- That Ms. Boskent has "not paid all the real property taxes owed on the Property and that [Bank of America] has advanced the amounts necessary to pay the Property's tax bills since the 2010 tax year."
- That "the Property was vacant and unoccupied at the time of [Bank of America's] purported entry [onto] the Property."
- That Bank of America's "purported entry [onto] the Property was authorized pursuant to the terms of the Deed of Trust."
- That Ms. Boskent is "not entitled to any damages from [Bank of America] resulting from the actions alleged in [the] Complaint."
- That Bank of America "took reasonable steps to protect and secure the condition of the Property as a result of [Ms. Boskent's] default under the terms of the Loan and the Property's status as vacant."

In September 2018, Bank of America filed a motion for summary judgment, in which it contended that Ms. Boskent had "failed to respond to" the requests for admission, and her "failure to issue a timely denial of these admissions means that these requests are deemed admitted." In October 2018, Ms. Boskent filed a "Response/Opposition" to Bank of America's motion, in which she acknowledged that she had received the requests for admission. In November 2018, Belvedere filed a motion for summary judgment.

On December 3, 2018, the court held a hearing on Bank of America's motion. Counsel for appellees appeared before the court, but Ms. Boskent did not. Following the hearing, the court, noting that Ms. Boskent had "failed to respond to . . . discovery requests,

including the . . . request for [a]dmission," issued an order in which it granted the motion and dismissed the case with prejudice.

On December 6, 2018, Ms. Boskent filed a notice of service in which she contended that on December 3, 2018, she served Bank of America with "Objections and Responses to . . . Bank of America's[] First Set of Admissions." On December 13, 2018, Ms. Boskent filed a "Motion to Vacate/Reconsider Order for Summary Judgment," in which she contended that she "had good cause for being late for the hearing on December 3," because "[t]here was a medical emergency," and she then "inadvertently went to the wrong [c]ourt house." Ms. Boskent further contended that she "had responded to [d]iscovery," and that the delay in her response did "not prejudice Bank of America because it was fully aware . . . that [she] did not admit to anything in its Requests for Admissions." Ms. Boskent asked the court to "allow [her] to withdraw or amend deemed admissions," and "[v]acate the Order dismissing this case with prejudice." On December 31, 2018, Bank of America filed an opposition to the motion.

On January 2, 2019, the court held a hearing on Belvedere's motion for summary judgment, which was attended by Ms. Boskent and counsel for appellees. Following the hearing, the court granted the motion on the grounds, among others, that "Bank of America had an independent legal right to enter the property," and Belvedere "simply assisted Bank of America in exercising that legal right."

Ms. Boskent first contends that the court erred in granting summary judgment to Bank of America because she "had responded to discovery." But, Rule 2-424(b) states that a response to a request for admission must be served "[w]ithin 30 days after service of the

request," and if a party fails to so respond, "[e]ach matter of which an admission is requested shall be deemed admitted." Here, Ms. Boskent did not respond to Bank of America's requests for admission for over a year. The court was required to deem the matters of which Bank of America requested admission admitted, and because the matters included the authorization of Bank of America's entry onto the property pursuant to the terms of the deed of trust and Ms. Boskent's lack of entitlement to damages from Bank of America resulting from the entry, Bank of America was entitled to judgment as a matter of law. Hence, the court did not err in granting summary judgment to Bank of America.

Ms. Boskent next contends that the court erred in failing to grant her motion to vacate the award of summary judgment to Bank of America and request to withdraw or amend her admissions, because she "had in fact responded to discovery requests," and we concluded in *Gonzalez v. Boas*, 162 Md. App. 344 (2005), that a court had "abused its discretion . . . in denying [a] request to withdraw any deemed admissions" where "the requested admissions . . . went to the core of [Gonzalez's] case, and the facts were genuinely in dispute." *Id.* at 360. But, there is no evidence in the record that the motion, which was received and entered into the record by the clerk's office, was submitted to the court for review and resolution.[1] There is no final judgment as to the motion, and hence, we shall remand the case to the circuit court to enter such a judgment. *See* Rule 8-602(g)(1) ("[i]f the appellate court determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed but that the lower court had discretion

[1]The docket entries reflect a ruling that the motion is "[m]oot." But, it is unclear whether the entry was made at the direction of the court or by a clerk *sua sponte*.

to direct the entry of a final judgment pursuant to Rule 2-602(b), the appellate court, as it finds appropriate, may . . . remand the case for the lower court to decide whether to direct the entry of a final judgment[.]"

Finally, Ms. Boskent contends that the court erred in granting summary judgment to Belvedere, because "Belvedere never verified the validity of" Bank of America's claim that it had a right to enter the property, and in "giving information about [Ms. Boskent] to perfect strangers, which by its own policy it is not supposed to do, it not only breached its contract, it trespassed and also violated [Ms. Boskent's] privacy." But, in granting summary judgment to Bank of America, the court found that Ms. Boskent had admitted that the property "was vacant and unoccupied at the time of [Bank of America's] purported entry" onto the property, and Bank of America "took reasonable steps to protect and secure the condition of the" property. Ms. Boskent does not cite any authority that prohibited Belvedere from assisting Bank of America in invoking its right under the deed of trust to enter the property to make repairs and do whatever else necessary to protect the value of, and Bank of America's rights in, the property. Hence, the court did not err in granting summary judgment to Belvedere.

AWARD OF SUMMARY JUDGMENT TO APPELLEES AFFIRMED. CASE REMANDED TO CIRCUIT COURT FOR BALTIMORE CITY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID TWO-THIRDS BY APPELLANT AND ONE-THIRD BY MAYOR AND CITY COUNCIL OF BALTIMORE.