Circuit Court for Prince George's County
Case No. CAEF16-07406

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3503

September Term, 2018

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DAWUD J. BEST

v.

ROBERT FRAZIER, et al.

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Beachley,
Shaw Geter,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: May 6, 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 foreclosure action in the Circuit Court for Prince George's County, Dawud J. Best, appellant, challenges the court's denial of his "Emergency Motion for Temporary Restraining Order and/or Request for Preliminary Injunction" (hereinafter "the motion and request"). For the reasons that follow, we shall affirm the judgment of the circuit court.

In October 2007, Mr. Best obtained from Chevy Chase Bank, F.S.B., a loan secured by a deed of trust on his residence. Mr. Best executed a promissory note in which he promised to pay the amount of the loan, plus interest, to the lender. In the deed of trust, Mr. Best granted and conveyed the property to a trustee, in trust, with a power of sale.

In April 2010, Mr. Best defaulted on the terms of the note. In February 2016, appellees[1] were appointed as substitute trustees under the deed of trust. In March 2016, appellees filed the order to docket the foreclosure action.

Prior to August 14, 2018, Mr. Best sent to Shellpoint Mortgage Servicing ("Shellpoint") a "request for a loss mitigation workout."[2] On that date, Shellpoint sent to Mr. Best a letter in which it stated, in pertinent part:

> Shellpoint . . . has received your request for a loss mitigation workout. However, because you have not provided all the documentation previously requested, your response package is considered incomplete. If we do not receive the required documents by 09/13/18, we may conclude that you have withdrawn your request for a loss mitigation program and may resume other

[1]Appellees are Robert Frazier, Keith M. Yacko, Thomas J. Gartner, Laura D. Harris, Robert M. Oliveri, Thomas W. Hodge, David M. Williamson, and Gene Jung.

[2]The record does not contain a copy of this request. In his brief, Mr. Best states that in June 2018, he "received a series of correspondences from Shellpoint . . . . These letters claimed Shellpoint was servicing [the] mortgage loan transaction." Mr. Best further states that on "August 10th," he submitted to Shellpoint a "loss mitigation application."

> means to collect any amounts due on your account. To proceed with your request for a workout, you must provide Shellpoint with the documents marked with an "X" . . . .
>
> The evaluation process will begin when we receive all required documentation.
>
> * * *
>
> X First trial period mortgage payment of $2,146.85
>
> In addition to the documents listed above, if you are pursuing a short sale, we ask that you also send in the following documentation:
>
> X Copy of HUD1
> X Copy of the Listing Agreement
> X Copy of the MLS listing
> X The Contract for sale
>
> * * *
>
> If we do not receive this information by 09/13/18, we will close your request for assistance.

(Boldface omitted.)

On December 31, 2018, Mr. Best filed the motion and request, in which he contended that appellees had "scheduled a foreclos[ure] sale for" January 3, 2019, and hence, Shellpoint was "actively dual tracking [the] loss mitigation application in direct violation of the Real Estate Settlement Procedures Act ('RESPA')[,] 12 C.F.R. Part 1024.41 (Regulation X)." (Boldface omitted.) On January 3, 2019, the court denied the motion and request for five reasons. First, Mr. Best had not filed a bond as required by Rule 15-503(a), and the court set the amount of the bond "as the outstanding balance owed to" appellees. Second, Mr. Best failed "to meet the requirements for a temporary restraining order under" Rule 15-504(a). Third, the motion was "untimely pursuant to"

Rule 14-211(a)(2)(A). Fourth, the motion failed "to comply with the requirements" of Rule 14-211. Finally, Mr. Best failed "to set forth a meritorious factual or legal basis for [the court] to grant such relief."

Mr. Best now contends that the court erred in denying the motion and request, because the "court's setting of the bond amount as the outstanding balance owed to [appellees] was not legally correct," and the "court erred when it ruled [that the motion and request] failed to meet the requirements of . . . Rule 15-504(a)." (Capitalization, boldface, and underlining omitted.) But, Rule 1-101(n) states that "proceedings relating to sales of property" are governed not by Title 15 of the Rules, but by Title 14. Indeed, a motion to stay the foreclosure sale of a property and dismiss the foreclosure action must be filed pursuant not to Title 15 of the Rules, but to Rule 14-211. Mr. Best does not cite any precedent that authorizes him to use Title 15 of the Rules to stay the foreclosure sale of his residence or dismiss the foreclosure action, and hence, the court did not err in concluding that Mr. Best failed to meet the requirements for a temporary restraining order or set forth a meritorious factual or legal basis for the court to grant relief.

Mr. Best next contends that the "court erred by allowing the state law schematic to overshadow RESPA and Regulation X," because "federal law . . . provides greater protections against unlawful foreclosure." But, even if we assume *arguendo* that Mr. Best is correct, 12 C.F.R. § 1024.41(g) states that "a servicer shall not . . . conduct a foreclosure sale" if the "borrower submits [to the servicer] a *complete* loss mitigation application." (Emphasis added.) Here, Mr. Best did not attach to the motion and request any evidence that the application that he submitted to Shellpoint prior to August 14, 2018 was complete,

or that he subsequently completed the application by submitting to Shellpoint the documentation requested in its August 14, 2018 letter. Hence, 12 C.F.R. § 1024.41(g) is inapplicable, and the court did not err in denying the motion and request.

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