

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2527

September Term, 2014

SONIA K. KOCHHAR

v.

LAURA H. O'SULLIVAN, et al.
SUBSTITUTE TRUSTEES

Kehoe,
Reed,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: October 20, 2016

*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.

This appeal arises out of the trial court’s denial of a motion to dismiss or stay the sale of a foreclosure action. Sonia Kochhar, appellant, filed an admittedly late motion challenging the validity of the foreclosure. We hold that the trial court did not abuse its discretion in denying appellant’s motion and therefore affirm.

FACTS AND PROCEEDINGS

On January 11, 2008, appellant executed a promissory note (“Note”) for \$750,000.00 in favor of SunTrust Mortgage, Inc. (“SunTrust”), the lender. That same day, appellant executed a deed of trust (“Deed of Trust”) for \$750,000.00 securing the loan against her property at 7030 Woodyard Road, Upper Marlboro, Maryland 20772 (the “Property”).

On May 13, 2011, SunTrust sent appellant a Notice of Intent to Foreclose, stating that appellant had defaulted on her loan on December 2, 2010. SunTrust assigned the Deed of Trust to Newbury Place REO II, LLC (“Newbury REO”) on June 2, 2011. In December of 2011, Newbury REO executed a Deed of Appointment of Substitute Trustees, and substituted new trustees collectively referred to as the Geesing trustees.

On March 2, 2012, the Geesing trustees filed a foreclosure action against appellant. The Geesing trustees voluntarily moved to dismiss their action on September 24, 2012, and the Circuit Court for Prince George’s County dismissed the foreclosure action without prejudice. On January 3, 2013, the Geesing trustees executed their own Deed of Appointment of Substitute Trustees, and appointed appellees as new trustees. Appellees

acquired all rights conferred by the Deed of Trust. Because the loan was in default, the Substitute Trustees initiated the foreclosure proceedings which are at issue on appeal.

In an effort to prevent the foreclosure, appellant filed a request for foreclosure mediation on March 29, 2013. Although originally scheduled for May 14, 2013, appellant requested and received a postponement which rescheduled the mediation for July 15, 2013. Appellant failed to appear for the mediation session.

On August 5, 2013, more than fifteen days after the scheduled mediation, appellant, *pro se*, filed a Motion to Dismiss. Appellant argued, among other things, that the assignment from SunTrust to Newbury REO was fraudulent and backdated. The circuit court denied the motion in an order dated September 19, 2013, on the basis that appellant failed to “state a valid defense or present meritorious argument” and failed “to state [a] factual and legal basis” challenging the validity of the lien.

On June 12, 2014, Newbury REO assigned the Deed of Trust to Newbury Place Ventures II, LLC (“Newbury Place”). That same day, Newbury Place assigned the Deed of Trust to Goshen Mortgage REO, LLC.¹

On August 25, 2014, appellant, represented by counsel, filed a Motion to Dismiss or, in the Alternative, Stay Foreclosure Pursuant to Md. Rule 14-211 (the “Second Motion to Dismiss”).² In the Second Motion to Dismiss, appellant acknowledged that the motion

¹ Appellees remained the substitute trustees throughout these assignments.

² The Second Motion to Dismiss also included a Counterclaim for Intrinsic and Extrinsic Fraud. The Counterclaim is not subject to our review.

was late, but argued that good cause existed to excuse the delay in filing. Additionally, appellant contended that the Substitute Trustees lacked the legal right to foreclose on her property. A hearing was held on September 25, 2014, whereupon the trial court took the matter under advisement. At that hearing, the Substitute Trustees produced the original Note, indorsed in blank by SunTrust.

In its Memorandum and Order of Court dated December 31, 2014, the trial court ruled that the “Motion to Dismiss, or Alternative [sic] Stay was not timely filed.” The trial court also found that appellant did not “[provide] a meritorious argument as to the validity of the [appellees’] right to foreclose on the mortgage Note.” Appellant timely appealed.

STANDARD OF REVIEW

The Court of Appeals has explained that motions pursuant to Maryland Rule 14-211 are motions for injunctive relief. *Bates v. Cohn*, 417 Md. 309, 318-19 (2010). In *Bates*, the Court explained:

Before a foreclosure sale takes place, the defaulting borrower may file a motion to “stay the sale of the property and dismiss the foreclosure action.” Md. Rule 14-211(a)(1). The borrower, in other words, may petition the court for injunctive relief, challenging “the validity of the lien or . . . the right of the [lender] to foreclose in the pending action.” Md. Rule 14-211(a)(3)(B).

Id. “The grant or denial of injunctive relief in a property foreclosure action lies generally within the sound discretion of the trial court Therefore, we review the trial court’s grant or denial of a foreclosure injunction for an abuse of discretion.” *Anderson v. Burson*, 424 Md. 232, 243 (2013) (internal citations omitted). A trial court abuses its discretion when its ruling “does not logically follow from the findings from which it supposedly rests

or has no reasonable relationship to its announced objective.” *Id.* (internal quotation marks omitted). “We review the trial court’s legal conclusions *de novo.*” *Svreck v. Rosenberg*, 203 Md. App. 705, 720 (2012).

DISCUSSION

I. The Late Second Motion to Dismiss

Appellant asks us to consider whether the trial court abused its discretion in denying her Second Motion to Dismiss when it found the motion untimely in violation of Maryland Rule 14-211. Maryland Rule 14-211(b)(1) instructs the trial court to deny a motion to stay or dismiss if any *one* of the conditions set forth in subsection (b)(1)(A), (B) *or* (C) exists.

The rule provides:

Denial of Motion. The court shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion:

- (A) was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule;
- (B) does not substantially comply with the requirements of this Rule;
or
- (C) does not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action.

Md. Rule 14-211(b)(1) (emphasis added). We hold that the trial court did not abuse its discretion in finding the Second Motion to Dismiss late under Rule 14-211.

Section 14-211(a)(2)(A)(iii) of the Maryland Rules provides that,

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*

(emphasis added). Here, appellant’s postfile mediation was held on July 15, 2013, but appellant filed her Second Motion to Dismiss more than a year later on August 25, 2014.

Appellant recognized that her Second Motion to Dismiss was filed much later than 15 days after mediation, but contended that she had good cause to excuse the delay. Specifically, appellant argued that: first, she had discovered new evidence; second, that she had been working with her loan servicer and had been told that no sale would take place provided that she submit loan modification materials; and finally, that she had only recently retained counsel. Based on those three reasons, appellant urged the trial court to excuse her late filing for good cause.

In a variety of contexts, we have previously described good cause to be a “substantial reason, one that affords a legal excuse.” *G. Heileman Brewing Co., Inc. v. Stroh Brewery Co.*, 308 Md. 746 (1987); *Erwin & Shafer, Inc. v. Pabst Brewing Co.*, 304 Md. 302, 313 n. 14 (1985); *In re Robert G.*, 296 Md. 175, 179 (1983). Through this lens, we review appellant’s contentions in her Second Motion to Dismiss.

A. Discovery of New Evidence

In her Second Motion to Dismiss, appellant argued to the trial court that she had discovered new evidence that proved that the Substitute Trustees did not have the legal right to foreclose on her property. Specifically, appellant pointed to what she characterized as a broken chain of title to demonstrate that appellees lacked a legal right to foreclose. Arguing that her Deed of Trust was assigned to both MCM Capital Partners LLC and Newbury REO on the same day, June 2, 2011, appellant disputed whether the Substitute Trustees were even entitled to enforce the note.

That the assignments at issue were recorded in June of 2011 shows that they could not be considered “new evidence.” Not only should appellant have known about this seeming ambiguity more than two years prior to the scheduled mediation, but the record proves that she did.

On August 5, 2013, appellant, *pro se*, filed her first Motion to Dismiss. In her motion, appellant stated,

[t]he plaintiffs’ attorney has filed an Assignment of Deed of Trust which is dated on June 2, 2011 and signed by Susan King, Vice President of Sun Trust Bank.

Newbury Place REO II, LLC does not have an office at 7500 Old Georgetown Ave Suite 130 Bethesda, MD 20814.

Exhibit 4 shows clearly that on June 11, 2011 their office was 7201 Wisconsin Ave. suite 725 Bethesda, MD 20814 on 12-28-2011. MCM Capital Partner, LLC filed a resolution to change its principal office which is recorded in SDAT Maryland office.

The corporate Assignment of Deed of Trust is backdated and is fraudulent. (stylistic, grammatical, and spelling errors corrected).

These contentions mirror those that appeared in the Second Motion to Dismiss. There, through counsel, appellant argued that the Substitute Trustees maintained a broken chain of title. To support that contention, appellant stated,

14. [Appellant] has recently procured from the loan servicer and Plaintiff evidence of two sets of chains of title of the Note

15. This evidence shows at least two possible note owners at present: Goshen Mortgage, LLC as trustee for an unnamed securitization trust, and MCM Capital Partners LLC. Even more troubling, Defendant has procured yet another assignment that seems to be endorsed without any assignee.

The “new” evidence appellant relied upon to justify the lateness of her Second Motion to Dismiss was not “new.” The trial court exercised proper discretion in rejecting this “new evidence” as good cause to excuse the untimely motion.

B. Cooperation with Loan Servicer

Appellant next argued that she had been cooperating with her loan servicer, who promised her that no foreclosure date would be set provided that she submit requested loan modification materials.

The exhibits produced in support of this contention do not state what appellant claims.³ Rather, the exhibits, two e-mail exchanges, simply show that the documents the Substitute Trustees requested had not been provided. The e-mails referenced do not contain the statements of the loan servicer, nor do they contain promises relating to whether

³ Appellant failed to provide necessary documents in her record extract pursuant to Maryland Rule 8-501(c). The Court located the exhibits in the record.

a foreclosure date would be scheduled. There is simply no basis to conclude that the loan servicer promised to defer a foreclosure based upon the exhibits that accompanied the Second Motion to Dismiss. Accordingly, the trial court did not abuse its discretion in disregarding this argument.

C. Appellant’s Self-Representation

As the final justification to excuse the lateness of her Second Motion to Dismiss, appellant argued to the trial court that she had only recently hired counsel. We have both seen and rejected this argument in *Svrcek v. Rosenberg*, 203 Md. App. 705, 721 (2012). Asking the trial court to excuse his late motion to dismiss the foreclosure proceedings, Svrcek admitted in an affidavit that “he did not know he had fifteen days to file” his motion. *Id.* We held that, “ignorance of the law is no excuse” and concluded that the circuit court did not err in deciding that Svrcek did not demonstrate good cause to excuse his late filing. *Id.* (quoting *Hi Caliber Auto and Towing, Inc. v. Rockwood Cas. Ins. Co.*, 149 Md. App. 504, 508 (2003)).

We again hold that appellant’s ignorance of the law does not excuse her late filing. The trial court did not abuse its discretion when it found that the Second Motion to Dismiss was not timely filed.

II. The Right to Foreclose

Appellant devotes most of her brief to alleging defects in the Substitute Trustees’ right to foreclose. She attacks the validity of the Note produced at the hearing and asserts that its blank indorsement contradicts the history of its assignments.

Assuming *arguendo* that appellant is correct in her argument on the Substitute Trustees' right to foreclose, she cannot prevail. As noted previously, Rule 14-211(b)(1) instructs the court to deny the motion if it finds that any of the conditions set forth in subsections (A), (B) *or* (C) exist. We have concluded that the trial court properly determined that appellant's motion was untimely and that there was no good cause to excuse its lateness. That determination ends our inquiry.

CONCLUSION

The trial court did not abuse its discretion in denying appellant's Second Motion to Dismiss. The motion was untimely and the trial court properly concluded that good cause did not exist to excuse the lateness. Therefore, we affirm.

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