UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 312

September Term, 2016

CASSANDRA G. NELSON ET AL.

v.

JEFFREY B. FISHER ET AL.
SUBSTITUTE TRUSTEES

Berger,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 7, 2017

In this appeal from a foreclosure proceeding in the Circuit Court for Prince George's County, Cassandra G. Nelson and John A. Nelson, appellants, challenge the court's final order of ratification of the sale of their former residential property. For the reasons that follow, we shall affirm.

In January 2007, appellants obtained a loan secured by a deed of trust on their residence. Appellants executed a promissory note in which they promised to pay the amount of the loan, plus interest, to the lender. In the deed of trust, appellants irrevocably granted and conveyed the property to the trustee, in trust, with a power of sale.

In 2011, appellants defaulted on the loan. In January 2013, appellees[1] were appointed as substitute trustees. In February 2013, appellees filed an order to docket the foreclosure proceeding. Appellees attached to the order a copy of the note, which the lender solemnly affirmed under the penalties of perjury to be a true and accurate copy of the original instrument. In October 2013, a foreclosure specialist "authorized to act on behalf of the secured party" filed a Final Loss Mitigation Affidavit. On March 25, 2014, the parties participated in mediation. Three days later, the foreclosure mediator filed with the court a notification of status, in which she certified that "no agreement was reached."

In December 2014, appellants filed an "Application for Temporary Restraining Order," in which they contended that they had been impermissibly denied a "visual inspection of the original promissory note," and that they are "entitled to have the [original] instrument presented to" them. On January 23, 2015, the property was sold at a foreclosure

[1]Appellees are Jeffrey B. Fisher, Carletta M. Grier, Virginia S. Inzer, William Smart, and Doreen A. Strothman.

sale. That same day, appellants filed an "Affidavit of Facts," in which they contended that appellees "stole and illegally sold [appellants'] property." (Capitalization omitted.) Appellants also filed a pleading titled "Bona Fide Proof," in which they requested that appellees produce a "copy of the signed original contract" and other documents. Appellants did not request a hearing on the pleadings.

On January 28, 2015, the court issued an order in which it stated that it would treat the application for temporary restraining order as a motion to stay the foreclosure sale, and denied the motion, without a hearing, on three grounds: the motion was "not timely filed" and "not excused for good cause;" the motion "[d]oes not state a valid defense or present meritorious argument;" and the motion "[f]ails to state [a] factual and legal basis." In April 2015, the court, upon appellees' motion, struck the "Affidavit of Facts" and "Bona Fide Proof." In March 2016, the court issued the final order of ratification.

On appeal, appellants contend that the court erred in issuing the final order of ratification for two reasons. They first contend that the court erred in failing to grant a hearing on the motion to stay, "Affidavit of Facts," and "Bona Fide Proof." We disagree.

Rule 14-211(b)(2) states that a court shall schedule a hearing on a motion to stay only "[i]f the court concludes from the record before it that the motion . . . was timely filed or there is good cause for excusing non-compliance," "substantially complies with the requirements of this Rule," and "states on its face a defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action." Rule 14-211(a)(2) states that, if postfile mediation is held, a motion to stay "shall be filed no later than 15 days after the last to occur" of "the date the final loss mitigation affidavit is filed"

or "the date the postfile mediation was held." The Rule further states: "For good cause, the court may extend the time for filing the motion or excuse non-compliance."

Here, the final loss mitigation affidavit was filed in October 2013, and mediation was held on March 25, 2014. Although appellants were required to file the motion to stay by April 9, 2014, they did not file the motion until December 2014, and did not contend in the motion that good cause existed to extend the time for filing the motion or excuse non-compliance. Hence, the motion was untimely, and the court did not err in denying the motion without a hearing. Also, appellants did not request a hearing on the "Affidavit of Facts" and "Bona Fide Proof," and do not cite any statute or rule that required the court to hold such a hearing. The court did not err, therefore, in striking the pleadings without a hearing.

Appellants next contend that, because they were not allowed a "visual inspection of the original promissory note," there "is no contract . . . between the" parties, appellees "brought th[e] claim without standing," and the court "lack[ed] subject matter jurisdiction." (Capitalization and boldface omitted.) We disagree. Rule 14-207(b) states that an "order to docket shall include or be accompanied by . . . a copy of the lien instrument supported by an affidavit that it is a true and accurate copy." Here, appellees attached such copy and affidavit to the order to docket. Appellees were not required to produce the original lien instrument in order to show the existence of a contract between the parties, and hence,

appellees had standing to file the order to docket, and the court had subject matter jurisdiction over the action.

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