Circuit Court for Anne Arundel County
Case No. C-02-CV-16-001980

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0022

September Term, 2019

RENEICE RAMSAY

v.

JOHN E. DRISCOLL, III, ET AL.

Kehoe,
Beachley,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: July 22, 2020

This is an appeal from the denial of a Motion to Dismiss a foreclosure case by the Circuit Court for Anne Arundel County. Appellant, Reneice Ramsay argued the case should have been dismissed because the Affidavit Certifying Ownership of the Debt Instrument, the Deed of Removal, and the Substitution of Trustees in the Order to Docket were not signed by the holder of the Note, Freddie Mac,[1] and the Note was transferred to a third party during the pendency of the case.

Appellant timely appealed and presents the following questions for our review, which we have modified and rephrased:

1. Did the court abuse its discretion in denying the motion to dismiss because it was untimely?

2. Did the circuit court err in denying appellant's Motion to Dismiss because the Affidavit Certifying Ownership of the Debt Instrument and the Deed of Removal and the Substitution of Trustee in the Order to Docket were not signed by the owner/holder of the Note, Freddie Mac?

3. Did the circuit court err in denying appellant's Motion to Dismiss because the Note was transferred from Freddie Mac to a third party during the pendency of the foreclosure case?

For the reasons set forth below, we affirm the circuit court, holding that the motion was not filed timely and appellant did not proffer good cause for its untimeliness. We decline to examine Questions 2 and 3, based upon our decision regarding Question 1.

BACKGROUND

[1] Appellant incorrectly refers to Freddie Mac as "Fannie Mae" in her brief. We will refer to the noteholder as Freddie Mac throughout.

In 2007, appellant refinanced the mortgage on a property she owned in Glen Burnie, Maryland. She subsequently defaulted on the loan and on June 15, 2016 appellees initiated a foreclosure action in the Circuit Court for Anne Arundel County by filing an Order to Docket with accompanying affidavits. The Final Loss Affidavit was docketed on August 18, 2016, and a mediation was held on November 4, 2016. The parties did not reach an agreement and on November 29, 2016, the report of the mediation was filed in the circuit court.

Ramsey filed a Bankruptcy petition in U.S. Bankruptcy Court on January 10, 2017, and no further action on the foreclosure was taken. On August 24, 2018 the bankruptcy petition was dismissed with prejudice. Ramsey then filed, on November 28, 2018, a motion to dismiss and an emergency motion to stay the foreclosure in the Circuit Court for Anne Arundel County. Ramsey argued the case should be dismissed as

> (1) the foreclosure action is void because the Affidavit Certifying Ownership of the Debt Instrument and the Deed of Removal and the Substitution of Trustee in the Order to Docket were not signed by the holder of the Note, Fannie Mae, and (2) the Note was transferred from Fannie Mae to a third party during the pendency of the foreclosure case.

On December 10, 2018, the property was sold at a foreclosure sale. No exceptions were filed by appellant. On January 6, 2019, the court denied appellant's motion to dismiss and it was entered into the electronic court system on January 8, 2019. The sale was ratified on February 25, 2019.

Appellant noted this appeal.

STANDARD OF REVIEW

"The grant or denial of injunctive relief in a property foreclosure action lies generally within the sound discretion of the trial court. Accordingly, we review the circuit court's denial of a Rule 14-211 motion for an abuse of discretion." *Burson v. Capps*, 440 Md. 328, 342 (2014) (quoting *Anderson v. Burson*, 424 Md. 232, 243 (2011)). An abuse of discretion occurs when the decision under review is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *Consol. Waste Indus., Inc. v. Standard Equip. Co*., 421 Md. 210, 219 (2011) (internal quotation marks and citation omitted). We do not accord deference to the trial court's legal conclusions, thus, we review the trial court's legal conclusions *de novo. Capps*, 440 Md. at 342; *see also*, *Anderson v. Burson*, 424 Md. 232, 243 (2011).

DISCUSSION

I. The circuit court did not abuse its discretion in denying appellant's Motion to Dismiss because the motion was untimely.

Maryland Rule 14-211, governs motions to stay and dismiss and states, in relevant part:

> (a) Motion to Stay and Dismiss.
>
> > (1) *Who May File.* The borrower, a record owner, a party to the lien instrument, a person who claims under the borrower a right to or interest in the property that is subordinate to the lien being foreclosed, or a person who claims an equitable interest in the property may file in the action a motion to stay the sale of the property and dismiss the foreclosure action.
> >
> > (2) *Time for Filing.*
> >
> > > (A) Owner-Occupied Residential Property. 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:
>
> (a) the date the postfile mediation was held;
>
> * * *
>
> (C) For good cause, the court may extend the time for filing the motion or excuse non-compliance.
>
> (3) *Contents.* A motion to stay and dismiss shall:
>
> (A) be under oath or supported by affidavit;
>
> (B) state with particularity the factual and legal basis of each defense that the moving party has to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action;
>
> (C) be accompanied by any supporting documents or other material in the possession or control of the moving party and any request for the discovery of any specific supporting documents in the possession or control of the plaintiff or the secured party;
>
> (D) state whether there are any collateral actions involving the property and, to the extent known, the nature of each action, the name of the court in which it is pending, and the caption and docket number of the case;
>
> (E) state the date the moving party was served or, if not served, when and how the moving party first became aware of the action; and
>
> (F) if the motion was not filed within the time set forth in subsection (a)(2) of this Rule, state with particularity the reasons why the motion was not filed timely.

Subsection (b) of the Rule then states that the circuit court may deny the motion without a hearing if the motion: (1) was not timely filed and there is no good cause for this lack of compliance; (2) does not substantially comply with the Rule's requirements; or (3)

does not state a valid defense on its face. If the motion fulfills these requirements, the court must hold a hearing. Md. Rule 14-211(b)(2).

In the present case, the mediation occurred on November 4, 2016, and the report of the mediation was filed on November 28, 2016, appellant's motion to dismiss, therefore, in accordance with Rule 14-211(2)(a), was due 15 days after the mediation took place. Appellant's motion, however, was filed two years later. Thus, it was untimely. Md. Rule 14-211(2)(C) provides that the court may extend the time for filing or excuse noncompliance for good cause. Further, the court may deny the motion without a hearing, if the motion was not timely filed and there is no good cause for lack of compliance. Quoting Black's Law Dictionary, the Court of Appeals in *In re Robert G.,* defined good cause as a "[s]ubstantial reason, one that affords a legal excuse. [A] [l]egally sufficient ground or reason." 296 Md. 175, 179 (1983) (quoting *Black's Law Dictionary* 623 (5th ed.1979)). Furthermore, the "[p]hrase 'good cause' depends upon circumstances of [the] individual case, and [a] finding of its existence lies largely in [the] discretion of [the] officer or court to which [the] decision is committed." *Id.*

In our review of the motion to dismiss filed by appellant, we find no mention of why appellant failed to timely comply with the rules, much less, an assertion of good cause for its lateness. As such, we find the court did not abuse is discretion in denying the motion filed two years after the Rule's time limitation.

Even if we were to review the arguments made by appellant, we would find no merit. According to appellant, the foreclosure action is void because the Affidavit Certifying

Ownership of the Debt Instrument and the Deed of Removal and the Substitution of Trustee in the Order to Docket were not signed by the holder of the Note, Freddie Mac, but instead signed by Ditech, the servicer.

Appellant does not contend that Freddie Mac, the noteholder, could not initiate the foreclosure process. Rather, she argues that Ditech as the servicer could not. The Maryland Rules provide that a noteholder is a secured party as well as "any assignee or successor in interest to that person." Md. Rule 14-202(s). A deed of trust secures a promissory note that embodies the promise to repay a loan. The promissory note and related security interests are subject to the Maryland Uniform Commercial Code ("Maryland UCC"). *See, Anderson v. Burson*, 424 Md. 232, 246 (2011) ("The Maryland Code, Commercial Law Article governs a negotiable promissory note that is secured by a deed of trust"). We look to the Maryland UCC, which defines "secured party" as:

> A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding . . . A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest . . . is created or provided for.

CL § 9-102(a)(74)(A),(E).

The documents filed here identified Freddie Mac as the owner of the loan and Ditech, as the holder or servicer of the note. In essence, Ditech was in possession of the promissory note as an agent of the investors. Thus, Ditech, was a secured party. Ditech then signed the Deed of Appointment, allowing the Trustees to bring the action. The loan servicing was later transferred to Carrington Mortgage Services, LLC and the Note was

assigned to Wilmington Savings Fund Society, FSB, as trustees of Upland Mortgage Loan Trust. Carrington, the present loan servicer, simply stepped into the shoes of Ditech and Upland Mortgage stepped into the shoes of Freddie Mac.

Appellant's argument that the note was transferred during the foreclosure action is also without merit. First, the Deed of Trust contained a covenant which was agreed to by appellant that stated that the loan could be assigned to a new beneficiary and/or secured party after a breach or acceleration notice had been sent and enforcement action could proceed against the borrower by the new servicer. Second, appellant knew and acknowledged Upland and Carrington's interest and made no objections. Finally, a foreclosure action is brought in the name of the substitute trustee not the secured party. In sum, appellant consented to the change, it did not impact or deny her any defenses, nor did it create any prejudice or confusion.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.