

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 291

September Term, 2024

ROCHELLE RANDOLPH AKA ROCHELLE

N. CAMPBELL

v.

DIANE S. ROSENBERG, *ET AL.*

Wells, C.J.,
Ripken,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: April 14, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Linear Mortgage, LLC (“Linear”) initiated a foreclosure action against Rochelle Campbell,¹ appellant, after Campbell defaulted on her Home Equity Line of Credit (“HELOC”). Linear appointed Diane S. Rosenberg, Mark D. Meyer, and Maurice O’Brien as Substitute Trustees. Campbell filed multiple motions to stay or dismiss the foreclosure action, alleging in relevant part that the Substitute Trustees had not filed an affidavit sufficient to establish Linear’s authority to foreclose and that Linear was attempting to foreclose on an incorrect debt amount. All of the motions filed by Campbell were denied by the circuit court in a single order. The court also ordered that the case proceed in the normal course. This timely interlocutory appeal followed.

ISSUES PRESENTED FOR REVIEW

Campbell presents the following issues for our review:²

- I. Whether the circuit court abused its discretion in denying the motion to stay or dismiss the foreclosure action as there existed a dispute over the debt amount.
- II. Whether the circuit court abused its discretion in finding that Linear had authority to foreclose.

¹ The appellant is also identified in the record as “Rochelle Randolph” and “Rochelle Campbell Shields.” The appellant does not appear to refer to herself using “Randolph,” thus we refer to her only as “Campbell.”

² Consolidated and rephrased from:

1. Whether a foreclosure defendant can move to stay, dismiss or enjoin a foreclosure sale based on the foreclosure plaintiff seeking to foreclose on an improper debt amount.
2. Whether a promissory note on a home equity line of credit is a negotiable instrument and if not, can a non-negotiable instrument be enforced like a holder of a negotiable instrument.
3. Whether an evidentiary hearing was required to determine the Appellees were in physical possession of the original promissory note that was properly endorsed.

III. Whether the circuit court erred in declining to hold a hearing.

We discern no error or abuse of discretion by the circuit court and accordingly we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Creation of the Mortgage

In January of 2006, Campbell executed a Home Equity Line of Credit agreement (“HELOC Note” or “Note”) with PNC Bank which had a maximum credit limit of \$75,000. The HELOC was secured against residential real property owned by Campbell. The terms of the HELOC Note divided the life of the loan into two periods: the “draw” period, during which loans could be obtained; and the “repayment” period, during which no new loans could be obtained, and during which the balance of the existing loan was to be repaid. Based on the payment plan Campbell selected, the draw period was to close on the seventh anniversary of the opening of the account. The transaction history of the account, which the Substitute Trustees filed as an exhibit attached to their opposition, demonstrated that the account was opened in January of 2006. Hence, PNC Bank provided Campbell with a payoff quote seven years later, in January of 2013. The Note also provided terms for calculating the maturity date of the loan.

In July of 2006, Campbell and PNC Bank executed an amendment to the HELOC Note (“amended HELOC Note”) raising the maximum credit limit to \$91,000. The amended HELOC Note includes the following language:

Borrower’s Request for Amendment: Borrower(s) presently has a Choice [HELOC] Account The Account is secured by a Mortgage. In this

Amendment, the term ‘Current Agreement’ means the agreement for the Account that was in effect before Borrower(s) signed this Amendment, including the original [HELOC Note.]

Simultaneous with the execution of the amended HELOC Note, PNC Bank filed a Deed of Trust in the Prince George’s County land records which secured its interest in Campbell’s real property.

PNC Bank subsequently indorsed the HELOC Note to US Mortgage Resolution, LLC (“US Mortgage”). In October of 2018, PNC Bank recorded an assignment of the Deed of Trust to US Mortgage in the Prince George’s County land records. In February of 2019, US Mortgage attached an allonge to the amended HELOC Note indorsing it to Linear. Simultaneous to the signing of the allonge, US Mortgage recorded an assignment of the Deed of Trust to Linear.³

Foreclosure Proceedings

In September of 2023, the Substitute Trustees initiated the present foreclosure action by filing an Order to Docket Suit pursuant to Maryland Rule 14-204. Included in the attachments to the Order to Docket was a Statement of Debt. The Statement of Debt indicated that the “note secured by the Deed of Trust in the amount [of] \$91,000.00” was in default and further indicated a total balance due of \$159,958.49, which included a principal balance of \$90,124.86. The Substitute Trustees also filed an Affidavit of Note

³ The recorded assignment from US Mortgage to Linear was not introduced as part of the record in the circuit court. However, it is an official public document to which this Court may take judicial notice pursuant to Maryland Rule 5-201(c). *See Chesek v. Jones*, 406 Md. 446, 456 n.8 (2008).

Ownership (“the Affidavit”) signed by Linear, which was accompanied by the amended HELOC Note and the allonge from US Mortgage to Linear. The Substitute Trustees also filed the Deed of Trust recorded by PNC Bank. The Final Loss Mitigation Affidavit was filed simultaneously with the Order to Docket. Campbell requested foreclosure mediation, which took place on November 16, 2023, and which did not result in an agreement.

Campbell filed her first motion to stay or dismiss, pursuant to Rule 14-211, on November 30, 2023. She alleged several grounds in support of a stay or dismissal: that the Substitute Trustees were not properly appointed by the holder of the HELOC Note because the Affidavit did not document an indorsement from PNC Bank to US Mortgage; that the Statement of Debt misstated the debt amount; unclean hands; and laches. The Substitute Trustees opposed the motion and filed an amended Affidavit of Note of Ownership (“the amended Affidavit”), which included the original HELOC Note indorsed by PNC Bank to US Mortgage. The Substitute Trustees acknowledged that their initial Affidavit included an incomplete copy of the HELOC Note, which they asserted was due to clerical error.

In February of 2024, Campbell filed three additional motions in close succession.⁴ Campbell first filed a “Motion for Preliminary Injunction Hearing,” alleging that Linear was not properly licensed as a collection agency. Campbell next filed a renewed Motion to

⁴ Campbell was initially represented by counsel in the circuit court. Campbell’s counsel moved to withdraw in December of 2023. His request to withdraw was not granted until May of 2024. However, all four of Campbell’s motions are signed only by Campbell and some identify her as pro se, and the circuit court appears to have treated her as such.

Stay or Dismiss pursuant to Rule 14-211.⁵ Campbell alleged that the HELOC Note was not a negotiable instrument, and that the Substitute Trustees had not established Linear's standing as a holder of the Note merely by showing possession. Campbell also asserted that the amended Affidavit was improper, that the Substitute Trustees' claim of clerical error was "incredulous" and "a fraudulent cover up," and, echoing her motion for a preliminary injunction, that Linear was not properly licensed as a collection agency. Finally, Campbell filed a "Motion to Void Ab Initio and Release Lien/Deed of Trust," in which she again asserted that Linear was not properly licensed and alleged that Linear had violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C.A. section 1692 *et seq.* The Substitute Trustees opposed Campbell's motion for a preliminary injunction. The Substitute Trustees asserted that Linear was not required to hold mortgage servicer or collection agency licenses because Linear was the owner of the loans it services, and the mortgage industry was exempt from debt collection licensing requirements.

The circuit court entered an order on March 12, 2024, denying all four of Campbell's motions. The court construed Campbell's "Motion for a Preliminary Injunction" and "Motion to Void Ab Initio" as motions to stay or dismiss pursuant to Rule 14-211. The court also construed the renewed Rule 14-211 motion as a supplement to the initial Rule 14-211 motion. The court found that the Substitute Trustees' initial Affidavit did not include the full chain of indorsements, but that the Substitute Trustees had illustrated the

⁵ The circuit court held the first Motion to Stay or Dismiss in abeyance until the Substitute Trustees' time to respond elapsed; however, it had not yet ruled on the motion prior to Campbell's subsequent filings.

“full and unbroken chain of [i]ndorsements” with their amended Affidavit. The court also found that Campbell had acknowledged the default, and that a dispute over the precise debt amount when a default is conceded was not a defense to the holder’s right to foreclose. The court agreed with the Substitute Trustees that Linear, as a mortgage lender, was exempt from licensure as a collection agency. Thus, the circuit court held that Campbell had failed to state a facially valid defense to the validity of the lien instrument or to the right of Linear to foreclose.

Campbell noted a timely appeal. Additional facts will be introduced as they become relevant.

DISCUSSION

Standard of Review

The disposition of a motion to stay or dismiss a foreclosure sale under Maryland Rule 14-211 “lies generally within the sound discretion of the trial court.” *Mitchell v. Yacko*, 232 Md. App. 624, 640–41 (2017) (quoting *Anderson v. Burson*, 424 Md. 232, 243 (2011)). Under this standard, this Court will reverse only if “no reasonable person would take the view adopted by the [circuit] court.” *Fishman v. Murphy ex rel. Est. of Urb.*, 433 Md. 534, 546 (2013) (internal quotation marks and citation omitted). The circuit court’s decision to deny the motion without a hearing is a legal conclusion which we review *de novo*, for legal correctness. *Mitchell*, 232 Md. App. at 641.

Rule 14-211 Motions

Under Maryland Rule 14-211, “an interested party to a scheduled foreclosure sale [has] the right to file a motion to stay the sale and dismiss a foreclosure action.”

Buckingham v. Fisher, 223 Md. App. 82, 88 (2015). The movant must “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[.]” Md. Rule 14-211(a)(3)(B). “These defenses must not only be articulated, but documented[.]” *Anderson v. O’Sullivan*, 224 Md. App. 501, 507 (2015) (citing Md. Rule 14-211(a)(3)(C)).

In making its initial determination, it is mandatory for the circuit court to deny the motion if it is not timely, does not substantially comply with the requirements of the Rule, or “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). A hearing on the merits is required if the motion is timely, compliant with the Rule, and on its face states a valid defense; otherwise, whether to hold a hearing before ruling on the motion is within the discretion of the circuit court. *Id.* at (b)(2); *see Buckingham*, 223 Md. App. at 84, 89.

Party Contentions

Campbell contends that a dispute over the amount of the debt is proper grounds to stay or dismiss a foreclosure action under *Greenbriar Condominium, Phase I Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683 (2005). Campbell argues that the circuit court misapplied *Greenbriar* in its order. Campbell next argues that a HELOC Note is a non-negotiable instrument and therefore cannot be enforced by a holder; rather, she contends, Linear must satisfy the requirements of section 9-203(b) of the Uniform Commercial Code (“UCC”) to establish enforcement authority. Last, Campbell contends that the copy of the

HELOC Note filed with Linear’s amended Affidavit is an “entirely different promissory note” than the amended HELOC Note filed with Linear’s initial Affidavit. She asserts that an evidentiary hearing was required to determine whether Linear had physical possession of the original HELOC Note.⁶

The Substitute Trustees argue, without conceding that the Statement of Debt was inaccurate, that an incorrect debt amount is not grounds to stay or dismiss a foreclosure action. The Substitute Trustees contend that the issue of whether the HELOC Note is a non-negotiable instrument was not raised before the circuit court. They further contend that the case law relied on by Campbell to make this argument is factually distinguishable and not controlling in Maryland. The Substitute Trustees also assert that they properly supplemented their Affidavit in response to Campbell’s initial motion and that a hearing was therefore not required.

I. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DENYING A STAY BASED ON A DISPUTED DEBT AMOUNT.

Before the circuit court, Campbell contended that Linear was attempting to foreclose on an incorrect debt amount because the Statement of Debt filed by the Substitute Trustees identified the debt in default as “the note secured by the Deed of Trust in the

⁶ In her reply brief, Campbell raises three additional arguments: that Linear is not a licensed debt collector and therefore does not have the authority to foreclose; that Linear ignored notice from the Maryland Department of Labor to that effect; and that Linear misrepresented itself as a servicer of Campbell’s debt in violation of the FDCPA. Campbell waived these arguments by failing to raise them in her initial brief before this Court. *See Burson*, 424 Md. at 243 (“A reply brief cannot be used as a tool to inject new arguments.” (quoting *Strauss v. Strauss*, 101 Md. App. 490, 509 n.4 (1994))). We therefore will not disturb the circuit court’s rulings on these waived issues.

amount [of] \$91,000.00, recorded among the land records of Prince George’s County[.]” Campbell argued that the HELOC Note had a credit limit of \$91,000 and she “did not max out her credit limit.” She also stated that she no longer has records of her purchases but “knows that she did not come close” to the credit limit. Campbell did not, and does not, contest that she is in default on her loan.

Were we to assume for the purpose of this analysis that the Statement of Debt was erroneous, such an error would not defeat the Substitute Trustees’ ability to proceed with a sale. *See Pac. Mortg. & Inv. Grp., Ltd. v. LaGuerre*, 81 Md. App. 28, 33 (1989). The purpose of a Rule 14-211 motion is to “raise a challenge to the foreclosure action itself—not to the manner in which the sale is conducted but to whether there should be a sale at all.” *Hood v. Driscoll*, 227 Md. App. 689, 694 (2016). Circuit courts may only grant a Rule 14-211 motion if it raises “defenses that potentially could defeat the ability of the foreclosing party to foreclose.” *Bechamps v. 1190 Augustine Herman, LC*, 202 Md. App. 455, 461 (2011). For instance, in *Hood v. Driscoll*, this Court reversed a circuit court’s ruling that a dispute over the interest rate applied to the purchase price of the foreclosure sale should have been raised in a Rule 14-211 motion. 227 Md. App. at 692–93. This Court stated that this type of objection would not have been proper in a Rule 14-211 motion because the defendants

were not arguing any defect in the lien or lien instrument, or in the right of the trustee to sell the property. They were not challenging the validity of the note or deed of trust and *were not contesting that they had defaulted on the debt* or that the secured party or the trustees had failed to comply with a statutory or other legal precondition to proceeding with a foreclosure.

Id. at 696 (emphasis added).

It is well-established that a dispute over the debt amount does not call into question the ability of the foreclosing party to foreclose, but rather is properly left to the post-ratification audit stage of the proceeding where the Statement of Debt is “open to correction[.]” *Pac. Mortg.*, 81 Md. App. at 33 (quoting *Md. Permanent Land & Bldg. Soc. of Balt. v. Smith*, 41 Md. 516, 522 (1875)). This distinction relates to the respective purposes of these two stages of a foreclosure proceeding; as we have noted, a Rule 14-211 motion provides a vehicle to challenge the foreclosing party’s authority. *See Bechamps*, 202 Md. App. at 461. Exceptions filed at the audit ratification stage, by contrast, are “directed not at the right to sell the property . . . but to the allowance or disallowance of expenses of the sale or the distribution of net proceeds.” *Huertas v. Ward*, 248 Md. App. 187, 206 (2020) (quoting *Hood*, 227 Md. App. at 693–94 n.1). It would thus be appropriate to raise a challenge to the debt amount, i.e., a challenge to the distribution of proceeds to the foreclosing party, as an exception to the audit ratification. A Rule 14-211 motion is not the proper stage of the proceeding to resolve such a dispute. *Id.*

The circuit court relied on *Greenbriar Condominium, Phase I Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683 (2005), to find that, because Campbell concedes default, Linear has the right to foreclose. Campbell asserts that *Greenbriar* stands for the opposite proposition—that a dispute over the debt amount must be raised in a Rule 14-211 motion. We agree with the circuit court’s application of *Greenbriar*. In *Greenbriar*, the Supreme Court of Maryland reiterated that “determination of the precise debt is a matter reserved for the post-sale audit process.” *Id.* at 733. Campbell quotes a statement from

Greenbriar that “[the foreclosing party’s] submission of a figure exceeding thirty-thousand dollars would seem to be a signal to Mr. Brooks of a considerable disagreement as to the indebtedness amount, and would serve as further motivation for his moving to enjoin the foreclosure sale.” *Id.* at 740. Campbell asserts that this language supports the principle that “wrong debt amount was a valid reason to preclude foreclosure.” Campbell misinterprets the context of this quote.

In *Greenbriar*, the defendant, Brooks, attempted to exercise his right of redemption⁷ by tendering payment of what he believed to be the amount due. *Id.* at 687, 693. Brooks then filed post-sale exceptions, and the circuit court found that he had been unlawfully deprived of his right of redemption. *Id.* at 703, 708. The Supreme Court disagreed and held that Brooks should have raised his attempt at redemption prior to the foreclosure sale. *Id.* at 736, 745–46. The language Campbell quotes thus highlights that the dispute over the debt amount was relevant to a pre-sale injunction only insofar as it should have motivated Brooks to prosecute his right of redemption. *Id.* at 740. Contrary to Campbell’s assertion, the Court in *Greenbriar* reiterated that a dispute over the debt amount is properly left to post-sale proceedings. *See id.* at 745 (“As we have indicated . . . the foreclosure sale’s continuing to proceed does not hinge on the creditor’s statement of indebtedness.”).

The facts of *Greenbriar* are distinguishable from this case. Campbell does not argue, nor does the record indicate, that she attempted to exercise her right of redemption by

⁷ The right of redemption is the right of a property owner who has mortgaged their property to repay the debt and thus reacquire clear title to the property, divesting it of the lien created by the mortgage. *Greenbriar*, 387 Md. at 735 (quoting *Simard v. White*, 383 Md. 257, 272 n.12 (2004)). The right is more commonly raised in tax sales.

tendering full payment of her debt to Linear. Rather, she raises a dispute over the precise amount of her defaulted debt.⁸ The circuit court was thus correct in concluding that this dispute does not constitute grounds to stay or dismiss the sale, because it is not a defense to the ability of the foreclosing party to foreclose. *See Bechamps*, 202 Md. App. at 462 (“Rule 14-211(e) makes it mandatory for the circuit court to deny the motion if the moving party fails to present a defense to the foreclosure itself.”). The circuit court did not abuse its discretion in denying the motion on this ground.

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT LINEAR HAD AUTHORITY TO FORECLOSE.

Preservation

We note initially that ordinarily, this Court will not review any issue “unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Md. Rule 8-131(a). The Substitute Trustees assert that Campbell raised arguments before the circuit court concerning the indorsements to the HELOC Note and Linear’s status as a holder but did not specifically argue that the HELOC Note is a non-negotiable instrument. We do not agree. In Campbell’s renewed motion to stay or dismiss she asserted that **“the HELOC Note is a line of credit and therefore, it is not a negotiable instrument[.]”** (emphasis in original). Campbell continued, arguing that the Substitute Trustees had

⁸ Campbell argues in her brief that, under Rule 14-207, the Substitute Trustees were required to provide a Statement of Debt, and that *Greenbriar* “does not render these provisions to be meaningless.” Campbell is correct that a Statement of Debt is a required exhibit to an Order to Docket. Md. Rule 14-207(b)(2). The Substitute Trustees did file such a statement. The holding in *Greenbriar* does not conflict with this requirement; rather, *Greenbriar* holds that a dispute over the amount of the debt as indicated in the statement is properly left to post-sale proceedings. *See* 387 Md. at 733.

therefore not properly established Linear’s standing as a note holder. Although the circuit court’s order did not specifically address this facet of Campbell’s challenge to Linear’s standing,⁹ she did raise the issue, and it is thus preserved for our review.

Analysis

In the circuit court, Campbell argued that Linear was not the holder of the HELOC Note, and that the Substitute Trustees therefore lacked standing to bring the foreclosure action on Linear’s behalf. To be entitled to enforce a negotiable instrument, a person must be “(i) the holder of the instrument, (ii) a nonholder in possession . . . who has the rights of a holder, or (iii) a person not in possession . . . who is entitled to enforce the instrument” pursuant to statute. Md. Code (1975, 2013 Repl. Vol.) Com. L. § 3-301 (“Com. L.”). “[T]he person in possession of a note, either specially indorsed to that person or indorsed in blank, is a holder entitled generally to enforce that note.” *Deutsche Bank Nat. Tr. Co. v. Brock*, 430 Md. 714, 729–30 (2013). The circuit court found that Linear had the authority to foreclose, illustrated by the “full and unbroken chain of [i]ndorsements” in the record.

Initially, Campbell was correct that the Substitute Trustees’ Affidavit raised a question about Linear’s status as a holder. At the outset, the Substitute Trustees filed only

⁹ The circuit court’s order noted that it was treating the renewed motion to dismiss as a supplement to Campbell’s first motion to dismiss. This was likely done to address timeliness requirements. Under Rule 14-211, as applicable here, an interested party must file a motion to stay or dismiss no later than fifteen days after the date post-file mediation was held. Md. Rule 14-211(a)(2)(A). Mediation was held on November 16, 2023, and Campbell’s first Rule 14-211 motion was filed on November 30, rendering it timely. Campbell’s subsequent motions were not filed until February of 2024. However, the circuit court has discretion to excuse untimeliness for good cause. Md. Rule 14-211(a)(2)(C). The Substitute Trustees have not challenged the timeliness of Campbell’s February motions, and we will not disturb the circuit court’s discretion in considering these motions.

the amended HELOC Note with the attached allonge specially indorsing¹⁰ the Note from US Mortgage to Linear. *See Brock*, 430 Md. at 729–30. Negotiation¹¹ of a note such as the one at issue here, which names a party to whom it is payable, “requires the holder to transfer possession and indorse the instrument[.]” *Burson*, 424 Md. at 247. An instrument can only be negotiated by its holder. *Id.* “Even a single break in the transaction chain can be fatal to a transferee’s claim of holder status.” *Id.* at 250. The allonge attached to the amended HELOC Note purported to negotiate the Note from US Mortgage to Linear. Thus, the Substitute Trustees were required to prove that US Mortgage had been a holder entitled to negotiate the Note. They did provide such proof.

Attached to the opposition to Campbell’s first Rule 14-211 motion, and filed separately as an amended Affidavit, the Substitute Trustees provided the circuit court with the original HELOC Note containing a special indorsement from PNC Bank to US Mortgage. In concert with the allonge attached to the amended HELOC Note, this established that PNC Bank, the named party entitled to payment in the Note, specially indorsed it to US Mortgage, which then specially indorsed it to Linear. When there is not a gap in the documented chain of negotiations, a special indorsement is sufficient to establish that the party in possession of a note is its holder.¹² *See Brock*, 430 Md. at 729–

¹⁰ An indorsement that “identifies a person to whom it makes the instrument payable” is a special indorsement. Com. L. § 3-205(a). Otherwise, it is a blank indorsement. *Id.* at (b).

¹¹ “Negotiation” is the process of transferring possession of an instrument such that the transferee becomes the holder of the instrument. Com. L. § 3-201(a).

¹² Additionally, “[t]he title to any promissory note, other instrument, or debt secured by a mortgage . . . conclusively is presumed to be vested in the person holding the record title

30, 732. By documenting the full chain of indorsements, the Substitute Trustees established Linear’s status as a holder of the note and thus their own standing to foreclose.¹³

Campbell asserts that it is “well-established” that a HELOC is not a negotiable instrument. She claims that because the HELOC Note is, in her view, a non-negotiable instrument, Linear is not a holder because the concept of being a holder “only applies to negotiable instruments.” She further asserts that Linear must satisfy the requirements of Com. L. section 9-203(b)¹⁴ to establish its authority to enforce the HELOC Note.

In support of her claim that a HELOC is not a negotiable instrument, Campbell cites only to out-of-state authority. She cites to *Gary v. Hladik Onorato & Federman, LLP*, 509 F. Supp. 3d 368 (W.D. Pa. 2020), in which the federal district court analyzed whether a HELOC could be considered a non-negotiable instrument for the purpose of pleading an affirmative claim of misrepresentation under the FDCPA. The court found that, because a

to the mortgage.” Md. Code (1974, 2023 Repl. Vol.) Real Prop. § 7-103(a). The circuit court had before it, filed as an attachment to Campbell’s first Rule 14-211 motion, the recorded assignment of the Deed of Trust from PNC Bank to US Mortgage. This Deed supported US Mortgage’s status as a holder entitled to negotiate the Note at the time it made the indorsement to Linear. It does not appear from the record that the circuit court had the subsequent recorded assignment from US Mortgage to Linear, as we do now. The second recorded assignment cannot be assumed to have influenced the circuit court’s determination but does provide further support for the court’s conclusion.

¹³ The initial error in the Substitute Trustees’ affidavit of ownership does not form grounds for this Court to reverse because no substantive relief to Campbell would result; the Substitute Trustees would simply file a new Order to Docket supported by the full chain of indorsements. *See Burson*, 424 Md. at 244 (holding that, where the foreclosing party initially filed a lost note affidavit but later produced the note, reversal would not bring practical relief because on remand the foreclosing party “would file a new or amended order to docket[.]”).

¹⁴ Maryland’s codification of Article 9, Section 203 of the UCC.

negotiable instrument was defined as “an unconditional promise to pay a fixed amount of money,”¹⁵ the instrument at issue did not qualify because it was a revolving line of credit. *Id.* at 378–79. In addition to being noncontrolling in Maryland, *Gary* is inapplicable to the issues before us because the concerns raised in *Gary* are not present here.

In *Gary*, the federal district court denied a motion to dismiss a claim under the FDCPA and found that the borrower had pled sufficient facts to raise a claim based on misrepresentation. *Id.* at 380. The borrower asserted that the mortgage company attempting to foreclose on her property had falsified an assignment from the previous noteholder, which had ceased doing business five years prior to the alleged assignment. *Id.* at 376. Whether the HELOC at issue was a negotiable instrument was crucial to the disposition of the motion to dismiss, because under Pennsylvania law, paying the holder of a negotiable instrument would discharge a borrower’s debt regardless of whether the holder was the true owner. *Id.* at 377. The same may not have been true of a non-negotiable note; thus, by alleging that the HELOC was a non-negotiable instrument, the borrower successfully alleged an injury in fact based on fraudulent collection practices. *See id.* at 379. *Gary* therefore establishes the principle that, under Pennsylvania law, a pleading that a HELOC is a non-negotiable instrument and was fraudulently assigned is sufficient to state a claim under the FDCPA.

¹⁵ Maryland employs the same definition of “negotiable instrument.” *See* Com. L. § 3-104(a).

That conclusion is not applicable to the case before us because the posture and relevant facts of the present case are entirely distinguishable.¹⁶ There is nothing in the record to suggest that the indorsements resulting in Linear’s holder status were outside the normative practice. The circuit court addressed and rejected Campbell’s claims regarding Linear’s licensure, and Campbell has waived that issue from our review. *See supra* note 6.

As we understand her argument, Campbell cites to *OneWest Bank, N.A. v. FMCDH Realty, Inc.*, 83 N.Y.S.3d 612 (N.Y. App. Div. 2018), for the principle that the Substitute Trustees cannot establish standing through Linear’s status as a holder because a HELOC is non-negotiable. *OneWest Bank* does not stand for this principle; this Court recently addressed a similar argument and described the holding of *OneWest Bank* as “support[ing] the proposition that, where a party seeks to foreclose based on its possession of a non-negotiable instrument that has been indorsed in blank, the party must provide additional proof of its standing to foreclose.” *Est. of Brown v. Ward*, 261 Md. App. 385, 453 (2024). As we have explained, the Substitute Trustees rely on significantly more than a blank indorsement to establish that Linear is the holder of the HELOC Note; the holding of

¹⁶ The court in *Gary* cites Pennsylvania law which supports the proposition that a HELOC is not a negotiable instrument because it is not a loan for a fixed amount of money. *Gary*, 509 F. Supp. 3d at 377. However, “courts have reached different conclusions regarding whether a HELOC is a negotiable instrument.” *Marquez Vargas v. RRA CP Opportunity Tr. 1*, No. 2:22-CV-01440-LK, 2024 WL 3992573, at *21 (W.D. Wash. Aug. 29, 2024) (slip op.). For instance, Nevada has held that “a HELOC with a closed draw period and specified maturity date . . . is an unconditional promise to pay a fixed amount of money[.]” *Wishengrad v. Carrington Mortg. Servs.*, 529 P.3d 880, 885 (Nev. 2023). Maryland has not yet decided whether a HELOC can properly be defined as a negotiable instrument, and because the question is not dispositive in this case, we decline to do so now.

OneWest Bank, in addition to being noncontrolling, is not applicable to the facts of this case.

Campbell additionally cites to *Bank of N.Y. Mellon Trust Co., N.A. v. Hendrickson*, 191 N.Y.S.3d 571 (N.Y. Sup. Ct. 2023), which expanded the rule in *OneWest Bank* to hold that a party seeking to enforce a non-negotiable instrument must meet the requirements of section 9-203(b) of the UCC to establish standing. *Id.* at 576. Campbell seeks to have this Court adopt the same rule. However, in *Estate of Brown*, we held that it was sufficient for the foreclosing party to establish standing as the holder of a HELOC through a recorded assignment of the Deed of Trust. *See Est. of Brown*, 261 Md. App. at 454–55. Thus, to the extent that we have previously entertained the holding of *OneWest Bank*, Maryland has applied a standard to establish standing for a holder of a HELOC which diverges from that adopted in New York.¹⁷

We are satisfied, as was the circuit court, that the fully documented chain of indorsements establishes Linear’s standing as the holder of the HELOC Note; this documentation is further supported by the recorded assignments in the Prince George’s County land records. The circuit court’s denial of the Rule 14-211 motion based on Linear’s holder status was not an abuse of discretion.

¹⁷ As adopted in Maryland, Article 9 of the UCC generally does not apply to “[t]he creation or transfer of an interest in or lien on real property[.]” Com. L. § 9-109(d)(11).

III. THE CIRCUIT COURT DID NOT ERR IN DECLINING TO HOLD A HEARING.

Campbell asks this Court to determine whether the circuit court was required to hold an evidentiary hearing to determine whether the Substitute Trustees were in physical possession of the HELOC Note. Pursuant to Rule 14-211(b)(2), the circuit court is required to hold a hearing on the merits of a motion only when a valid defense is stated on the face of the motion. *See Buckingham*, 223 Md. App. at 84.

We note initially that Campbell did not raise the contention that the Substitute Trustees should be required to produce the physical copy of the HELOC Note before the circuit court. Accordingly, that issue is not preserved for our review.¹⁸ Md. Rule 8-131(a).

In her brief, Campbell asserts that the original HELOC Note filed with the Substitute Trustees' amended Affidavit was an "entirely different promissory note" to the Note initially filed with the order to docket. She also asserts that "PNC Bank never [i]ndorsed the promissory note" and that as a result, US Mortgage had no rights in the Note to negotiate it to Linear. We understand these contentions to refer to Campbell's argument before the circuit court that the amended Affidavit was "likely a fraudulent cover up." *See*

¹⁸ Moreover, even if Campbell had raised this issue properly before the circuit court, this would not have been a valid legal defense such that a hearing was required. Rule 14-207(b) lists the exhibits a foreclosing party is required to file alongside the Order to Docket. Included on that list is "a copy of any separate note or other debt instrument supported by an affidavit that it is a true and accurate copy and certifying ownership of the debt instrument[.]" *Id.* at (3). The Rule does not state that the foreclosing party is required to produce the hardcopy original note; it "requires a mortgagee to produce a *copy* of the note." *Burson*, 424 Md. at 245 (emphasis added); *see also Huertas*, 248 Md. App. at 211–12 (the rules governing foreclosure do not require that an order to docket be accompanied by "original documents in wet ink[.]"). The Substitute Trustees' amended Affidavit complied with the requirements of Rule 14-207.

Huertas, 248 Md. App. at 207 (“Generally, this Court liberally construes pleadings filed by self-represented litigants.”). Thus, we will address that argument as a basis for Campbell’s contention that the circuit court was required to hold a hearing.

A properly pled claim of forgery can form a valid defense to a foreclosure action. *See Mitchell*, 232 Md. App. at 640. However, a Rule 14-211 motion “must plead all elements of a valid defense with particularity.” *Buckingham*, 223 Md. App. at 91. “[B]are assertions of a broad defense to the validity of a lien instrument will not be sufficient.” *Id.* The elements of forgery as a defense under Rule 14-211 are: “(1) a false making or material alteration, (2) with intent to defraud, (3) of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability.” *Mitchell*, 232 Md. App. at 640 (quoting *Buckingham*, 223 Md. App. at 93). To satisfy the pleading standard, each element of the defense must be pled with particularity and include factual and legal support. *See Huertas*, 248 Md. App. at 210. For instance, in *Mitchell*, the movant supported an allegation of forgery with exhibits, including a copy of the note filed with the Order to Docket and a copy of what she contended was the true note. *Mitchell*, 232 Md. App. at 642–43. This supported a sufficiently pled claim of forgery. *Id.* at 643. By contrast, in *Huertas*, the movant made only “general allegations” that the note was a forgery but “never alleged any factual basis or identified any evidentiary support for a conclusion that any person” committed forgery. *Huertas*, 248 Md. App. at 211.

Here, Campbell has not identified facts nor provided documentary evidence that the copy of the original HELOC Note filed with the amended Affidavit is not a true copy of the Note. Before the circuit court, Campbell asserted that the Substitute Trustees’ claim of

clerical error was “incredulous,” and that the “last-minute change to the HELOC Note [was] likely a fraudulent cover up.” These broad assertions do not identify any factual basis that would lead to the conclusion that the original HELOC Note had been falsified or materially altered. *See Huertas*, 248 Md. App. at 211. Nor did Campbell provide, in her motions, any document she claims to be a true copy of the original HELOC Note. *See Mitchell*, 232 Md. App. at 642 (where the copy of the note filed by the movant was marked “VOID,” while the copy filed with the order to docket did not contain the mark). The sole basis for her claim appears to be that the original and amended HELOC Notes are distinct documents. However, it is clear from the content of both documents that they are interrelated and form one and the same Note. The amended HELOC Note identifies the original HELOC Note as the “Current Agreement” and states that “Borrower(s) requests the Lender to make the changes shown below to the Account and to the Current Agreement.” Campbell does not identify specific facts regarding the original and amended HELOC Notes that would give rise to a facially valid claim of forgery.

While Campbell raised a claim of fraud, she did not plead that claim with particularity as required of a defense raised in a Rule 14-211 motion. *See Buckingham*, 223 Md. App. at 91. Thus, she did not state a facially valid defense to the foreclosure sale, and the circuit court was not required to hold a hearing prior to ruling on the motion. The circuit court did not err.

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