

Circuit Court for Frederick County
Case No. 10-C-15-002700

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1052

September Term, 2017

DANIELA DELONG,

v.

KEITH M. YACKO, ET AL., SUBSTITUTE
TRUSTEES

Fader, C.J.,
Wright,
Leahy,

JJ.

Opinion by Fader, C.J.

Filed: April 11, 2019

*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 from a foreclosure action upon real property owned and occupied by appellant Daniela Delong. Ms. Delong appeals an order ratifying the foreclosure sale of the property, arguing that the court (1) improperly failed to stay foreclosure proceedings and (2) erred by not considering her motion to stay on the merits. We find no error and so affirm.

BACKGROUND

In September 2015, substitute trustees Keith M. Yacko, Robert E. Frazier, Thomas J. Gartner, Gene H. Tschirgi, and Gene Jung (the “Substitute Trustees”) filed a foreclosure action in the Circuit Court for Frederick County against residential property located at 111 Galyn Drive, Brunswick, Maryland (the “Property”). The Property was owned and occupied by Ms. Delong,¹ who had not made a mortgage payment since 2013. At the same time, the Substitute Trustees filed a preliminary loss mitigation affidavit in which a representative for Ocwen Loan Servicing, LLC (“Ocwen”), the mortgage loan servicer, attested that Ms. Delong was not eligible for loss mitigation analysis at that time.

On December 22, 2015, the Substitute Trustees filed a final loss mitigation affidavit in which the Ocwen representative stated that Ms. Delong “did not qualify for a loss mitigation program” because she “has not returned any docs for loan mod[ification]”

In a letter dated May 17, 2016, Ocwen acknowledged receipt of an application from Ms. Delong for mortgage assistance and stated that it had “evaluated [her] loan for all

¹ The Substitute Trustees named Ms. Delong and her late husband, Otis C. Delong, Jr., as defendants. The order to docket the foreclosure acknowledges that Mr. Delong was deceased at the time of filing.

available loss mitigation options,” but was unable to offer any “modifications or other alternatives to foreclosure” at that time. In a “Non-Approval Notice” attached to the letter, Ocwen stated, among other things, that Ms. Delong failed to qualify for loss mitigation under the Home Affordable Modification Program (“HAMP”) because she was “previously offered a HAMP trial plan and [she] did not make all of the trial plan payments by the end of the trial period.” Two days later, Ms. Delong filed for Chapter 13 bankruptcy, automatically staying the circuit court action.

The foreclosure action resumed in October 2016, following the dismissal of the bankruptcy case. On November 18, Ms. Delong applied again for mortgage assistance. On November 21, Ocwen mailed Ms. Delong a “missing document notice” stating that her application was “considered incomplete” because she had failed to (1) provide “all pages and schedules of the most-recently filed tax returns” and (2) sign and date a page of her application.

Ms. Delong submitted a complete loss mitigation application on January 17, 2017, which Ocwen reviewed and then denied on January 30. In a letter informing Ms. Delong of its denial, Ocwen noted that it did not review her application for eligibility under HAMP because the program had expired on December 31, 2016 and Ocwen had not received her completed application package until after that date. Ms. Delong appealed the denial, arguing that Ocwen should consider her application to have been submitted in November 2016. In a letter dated March 1, 2017, Ocwen rejected her appeal, explaining that the relevant date for HAMP eligibility was the date on which her application was complete.

The foreclosure sale of the Property was scheduled for April 12, 2017. Fifteen days before the sale—and, notably for our purposes, 462 days after the Substitute Trustees filed their final loss mitigation affidavit—Ms. Delong filed a motion to stay the sale and a request for an evidentiary hearing. The circuit court denied that motion and a subsequent emergency motion for a stay.² The foreclosure sale took place as scheduled on April 12 and the court ratified the sale on June 28. Ms. Delong then noted this appeal.

DISCUSSION

THE COURT WAS NOT REQUIRED TO STAY THE FORECLOSURE SALE.

Ms. Delong argues that the circuit court erred both by failing to stay the foreclosure sale and by rejecting her motion for a stay without first conducting a hearing. A “denial of a motion to stay a foreclosure sale and dismiss the action 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)). “[W]e review the circuit court’s denial of a foreclosure injunction for an abuse of discretion,” and “review the trial court’s legal conclusions *de novo*.” *Svrcek v. Rosenberg*, 203 Md. App. 705, 720 (2012). We further “review the circuit court’s decision to deny [a Rule 14-211] motion without a hearing for legal correctness.” *Mitchell*, 232 Md. App. at 641.

Ms. Delong filed her motion to stay under Rule 14-211, which permits an individual such as her to file “a motion to stay the sale of the property and dismiss the foreclosure

² The circuit court did not deny the initial motion to stay until after the sale was completed.

action.” Md. Rule 14-211(a)(1). The Rule requires such a motion to “be filed no later than 15 days after,” as relevant here, “the date the final loss mitigation affidavit is filed.”³ Md. Rule 14-211(a)(2)(A). The court is permitted to “extend the time for filing the motion or excuse non-compliance” “[f]or good cause.” Md. Rule 14-211(a)(2)(C). A motion to stay under Rule 14-211 must be filed under oath or be supported by an affidavit and must, among other requirements, (1) “state with particularity the factual and legal basis of each defense . . . to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action,” and (2) if not filed timely, “state with particularity the reasons why the motion was not filed timely.” Md. Rule 14-211(a)(3).

A court reviewing a motion to stay under Rule 14-211 “shall deny the motion, with or without a hearing,” if it concludes that the motion (1) “was not filed timely and does not show good cause for excusing non-compliance”; (2) “does not substantially comply with the requirements of this Rule”; *or* (3) “does not on its face state a valid defense” to the lien or the right to foreclose. Md. Rule 14-211(b)(1). Only if none of those circumstances apply is the court required to “set the matter for a hearing on the merits of the alleged defense.” Md. Rule 14-211(b)(2).

Ms. Delong contends that the circuit court erred by failing to hold a hearing on her motion and by failing to stay the foreclosure sale. She acknowledges that her motion to

³ If there is a motion for postfile mediation, the deadline to file a motion to stay can be extended based on proceedings relevant to such mediation. Md. Rule 14-211(a)(2)(A). No such motion was filed here, so we are only concerned with the date the final loss mitigation affidavit was filed.

stay was untimely, as it was filed well over a year after Ocwen filed its final loss mitigation affidavit,⁴ but contends that she established good cause for the delay because the ground on which the motion to stay was based—“Ocwen’s failure to follow the applicable loss mitigation directives”—did not arise until the deadline had passed.

Ms. Delong’s contention that the court was required to hold a hearing on her motion is belied by the plain language of the Rule, which requires the court to deny a motion for a stay “with or without a hearing” if it finds, based on the record before it, that any of the three specified circumstances exist. Md. Rule 14-211(b)(1). The court thus maintains “the discretion to deny the motion before holding a hearing on the merits,” *Buckingham v. Fisher*, 223 Md. App. 82, 89 (2015), and its decision to grant or deny such a motion “lies within the sound discretion of the trial court,” *Jones v. Rosenberg*, 178 Md. App. 54, 65 (2008).

We find no abuse of that discretion here because even if we were to accept, solely for purposes of argument, Ms. Delong’s contention that she would have had good cause to delay filing a motion to stay the proceedings until Ocwen’s rejection of her appeal from its denial of her most recent loan modification application, (1) her motion was still late and (2) she still failed to comply with the statutory requirement to state with particularity the reason she did not file the motion timely. Ocwen rejected her appeal on March 1, 2017, making a motion to stay due no later than March 16, 2017 even under her best case

⁴ Because Ms. Delong did not request foreclosure mediation, the deadline for filing a motion to stay ran from the filing of the final loss mitigation affidavit on December 22, 2015.

scenario. She did not file the motion until March 28. And Ms. Delong failed to state in her motion (or in her appellate brief) *any* reason—with or without particularity—why she did not file her motion within 15 days of March 1. The circuit court therefore did not err in denying the motion to stay.⁵

**JUDGMENT OF THE CIRCUIT COURT
FOR FREDERICK COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

⁵ Ms. Delong’s motion was also deficient because it failed to “state with particularity the factual and legal basis of each defense . . . to the right of the plaintiff to foreclose in the pending action.” Rule 14-211(a)(3)(B). In *Buckingham*, we observed that the requirement to state the basis of a defense with particularity “is more exacting than the pleading standard for an initial complaint,” and so “a party must plead all elements of a valid defense with particularity.” 223 Md. App. at 91. The Court of Appeals has also called attention to a Committee Note to Rule 14-211(b)(1)(C), which emphasizes that “[a] motion based on the failure to grant loss mitigation in an action to foreclose a lien on owner-occupied residential property must be denied unless the motion sets forth good cause why loss mitigation pursuant to a loss mitigation program should have been granted” *Bates v. Cohn*, 417 Md. 309, 319 (2010) (quoting Committee Note to Rule 14-211(b)(1)(C)) (emphasis in *Bates* removed). Here, however, Ms. Delong asserts only that Ocwen denied her modification “without a full review.” She does not state any legal basis or specific reasons why the modification should have been granted. That is particularly notable here, where the record reflects that Ms. Delong had previously failed to comply with a HAMP trial plan and she has asserted no explanation for why she would be entitled to participate a second time.