Circuit Court for Montgomery County
Case No.: 450778V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1978

September Term, 2024

ERIK B. CHERDAK

v.

KRISTINE D. BROWN, *et al.*

Arthur,
Shaw,
Beachley, Donald E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 24, 2026

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

In July 2018, the appellees, acting as Substitute Trustees[1] for Wells Fargo Bank, N.A., filed an Order to Docket in the Circuit Court for Montgomery County, seeking to foreclose on real property owned by appellant Erik B. Cherdak and his estranged wife, Lauren Cottone.[2] Just before the property was scheduled to be sold in June 2023, Cherdak moved to stay or dismiss under Maryland Rule 14-211, and the circuit court stayed the sale until an evidentiary hearing could be held. After a hearing in November 2024, the court denied Cherdak's motion. This appeal followed.

On appeal, Cherdak contends that the Substitute Trustees lacked standing to initiate the foreclosure action because they lacked authority to enforce the Note. He also contends that, in any event, the loan had been paid off in 2009. We are not persuaded.

Generally, we review the denial of a Rule 14-211 motion for an abuse of discretion. *Anderson v. Burson*, 424 Md. 232, 243 (2011). Legal conclusions are reviewed *de novo*. *Id.*

Under CL § 3-301, a promissory note may be enforced by: "(i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to § 3-309 or § 3-418(d)." A "holder," in this context, is "the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is

[1] Substitute Trustees are Kristine D. Brown, William M. Savage, Gregory N. Britto, R. Kip Stone, and Thomas J. Gartner.

[2] Cottone participated in the proceedings in the circuit court but not on appeal. The record makes clear, however, that she does not agree with Cherdak's arguments.

the person in possession[.]" CL § 1-201(b)(21)(i). The holder of a note is "entitled to enforce the instrument even [if it is] not the owner of the instrument or is in wrongful possession of the instrument." CL § 3-301.

"If an indorsement is made by the holder of an instrument, . . . and the indorsement identifies a person to whom it makes the instrument payable, it is a 'special indorsement.'" CL § 3-205(a). A specially indorsed instrument is payable to the identified person. *Id.* In contrast, if an indorsement is made by the holder of an instrument, and the indorsement does not identify to whom it makes the instrument payable, it is a "blank indorsement." CL §3-205(b). "When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed." *Id.* A note "payable to an identified person may become payable to bearer if it is indorsed in blank[.]" CL § 3-109(c). "Thus, the 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'l Tr. Co. v. Brock*, 430 Md. 714, 729–30 (2013) (footnotes omitted).

At the hearing on Cherdak's motion, the Substitute Trustees produced the original wet-ink Note. The Note was originally payable to Wachovia Bank Mortgage Corporation, which later indorsed the Note, identifying Wachovia Bank, National Association as the payee. Wachovia Bank then indorsed the Note but did not identify a payee. Thus, the Note is indorsed in blank and, as such, is payable to bearer and negotiable by transfer of possession alone. CL §§ 3-109(c) & 3-205(b).

To be sure, Cherdak questions the "validity and authorization" of the signatures on the indorsements, and he argues that the circuit court should have required the Substitute

Trustees to present more proof demonstrating them. But under CL § 3-308(a), the signatures are "presumed to be authentic and authorized[.]" It is also irrelevant—despite Cherdak's argument—that the indorsement signatures appear to be "stamped." A document is properly signed if it includes "any symbol executed or adopted with present intention to adopt or accept a writing," CL § 1-201(b)(37), even if that symbol is "stamped," *see Messing v. Bank of Am., N.A.*, 143 Md. App. 1, 13–14 (2002).

Ultimately, the Substitute Trustees are in possession of the Note indorsed in blank, so they are the holder. CL § 1-201(b)(21)(i). As a holder, they are entitled to enforce the Note and, by extension, the Deed of Trust. CL § 3-301; *Deutsche Bank*, 430 Md. at 728. As a result, the Substitute Trustees have standing to foreclose.

As for Cherdak's second argument, there was no evidence admitted at the hearing to support Cherdak's claim that he had paid off the loan in 2009. He attempted to introduce a letter from his divorce attorney that attached a supposed payoff letter from Wachovia, but neither document was authenticated and so neither was admitted.[3] Without these, Cherdak relied only on his own testimony that he had paid off the loan, which was refuted by a mountain of contrary evidence. For example, the record reflects that the Substitute Trustees' predecessors initiated several prior proceedings to foreclose on the property as far back as 2009. Yet for more than 10 years, Cherdak never claimed that the loan had been paid off until the motion that spawned this appeal—including in earlier Rule 14-211 motions filed in this case. Instead, each time, Cherdak made payments to bring the loan

[3] Cherdak does not argue on appeal that the circuit court erred in excluding these documents.

current and cure the default. Indeed, the circuit court noted that Cherdak and Cottone "paid a total of $322,109.93 . . . between September 2013 and July 2016 on a loan [] Cherdak now asserts was paid off in 2009." What's more, when Cottone declared bankruptcy in 2019, she listed Wachovia and Wells Fargo as creditors in the proceeding. She also refused to support Cherdak's claim at the hearing on his motion.

Ultimately, the circuit court had to weigh Cherdak's credibility against this contrary evidence. In assessing witnesses' credibility, "the circuit court is entitled to accept—or reject—all, part, or none of their testimony, whether that testimony was or was not contradicted or corroborated by any other evidence." *Hripunovs v. Maximova*, 263 Md. App. 244, 263 (2024) (cleaned up). "It is not our role, as an appellate court, to second-guess, the trial judge's assessment of a witness's credibility." *Id.* at 264 (cleaned up). Cherdak has not pointed to anything in the record that shows the court's factual findings were clearly erroneous. The court thus did not err in rejecting his testimony and finding that the loan had not been paid off. Consequently, the court did not err or abuse its discretion in denying Cherdak's Rule 14-211 motion.

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