UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0041

September Term, 2015

BRIAN S. CRAIG

v.

MARK H. WITTSTADT, ET AL.,
SUBSTITUTE TRUSTEES

Wright,
Graeff,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: March 24, 2016

*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.

The appellees, Substitute Trustees, Mark Wittstadt and Gerard Wm. Wittstadt, Jr. ("Substitute Trustees"), brought a foreclosure action against the appellant, Brian Craig, and filed an order to docket in the Circuit Court for Prince George's County on October 31, 2013. The court issued an order for the Substitute Trustees to proceed with the foreclosure sale on October 14, 2014. Craig appeals from the judgment of the circuit court dated March 9, 2015, denying his motion to stay sale of property, dismiss foreclosure action, and requesting a hearing on all issues.

Questions Presented

For the purpose of clarity, we shall answer the questions as rephrased by the Substitute Trustees:[1]

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[1] Craig presented the following questions:

> 1. Did the judge error in using his/her power to expand time on the Motion to Stay the Sale?
>
> 2. Did the judge exceed jurisdiction by not hearing Appellants claim, when Appellant clearly assert the claim that Appellee withheld information about the nature of the debt?
>
> 3. Did the Circuit Court error in stating that Appellants claim was without merit when appellant claimed with particularity the following:
>
> Appellee has changed its claim throughout the history of their Order to Docket as to who the note Owner and Holder is.
>
> That Bank of America stated that they made a claim against the Insurance policy associated with the loan.
>
> That Movant claimed that its new client Christiana Trust claimed it purchased the Note with "Notice of Default."

(continued…)

I. Did the Circuit Court err in denying Appellant's Motion without a hearing, when the Motion failed on its face to assert 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, as required under Md. Rule 14-211(b)(2)?

II. Did the Circuit Court err in concluding that the Substitute Trustees had standing to initiate the foreclosure proceedings?

For the reasons discussed below, we answer both questions in the negative and, therefore, affirm the decision of the circuit court.

Facts

Countrywide Home Loans, Inc. ("Countrywide") was the holder of a note ("Note") secured by a Deed of Trust from Craig for the purchase of the real property known as 607 71st Street, Capitol Heights, Maryland 20743. The property was purchased in 2007. Four years later, on September 28, 2011, Countrywide transferred the Deed of Trust to Bank of America.[2] Subsequently, on October 31, 2013, Bank of America appointed the Substitute Trustees. That same day, the Substitute Trustees initiated a foreclosure action against Craig by filing an order to docket in Prince George's County.

On December 12, 2013, within two weeks of the initial foreclosure action, Craig filed a motion to stay sale of foreclosure, dismissal of action, and requested a hearing on all issues. On March 4, 2014, the circuit court denied Craig's motion and request. Craig filed a motion for reconsideration which was denied on May 20, 2014. In August 2014,

4. Was the circuit court legally correct when [MD rule 2-311(f)] requires the trial court to hold a hearing before rendering a decision disposing of a claim or a defense?

[2] Bank of America purchased Countrywide in 2008.

Craig filed a request for mediation which was held on October 3, 2014; however, an agreement was not reached. On October 14, 2014, a foreclosure of sale was ordered without a hearing and thereafter, the Substitute Trustees proceeded with the foreclosure action.

The Deed of Trust was transferred several times. On December 8, 2014, Bank of America assigned all rights under the Deed of Trust to the Secretary of Housing and Urban Development. Thereafter, on March 5, 2015, the Secretary of Housing and Urban Development transferred all rights to GCAT 2014-4, LLC. On the same day, GCAT 2014-4, LLC, transferred all rights to Wilmington Savings Fund Society, FSB, doing business as Christiana Trust, to act as trustee to BCAT 2014-4, LLC.

Between October 31, 2014, and February 24, 2015, Craig filed several motions. First, Craig filed a stay sale of foreclosure, moved to dismiss, and requested a hearing. Then, Craig revised the motion for reconsideration. Within a couple weeks, Craig filed a motion to request stay of sale and dismissal. Lastly, Craig filed an emergency request to stay and dismiss the foreclosure action and requested a hearing. On March 4, 2015, the circuit court denied all of Craig's motions without granting a hearing, then entered its judgment on March 9, 2015.

Standard of Review

An appellate court reviews a denial of motion to stay sale of property by the trial court *de novo*. *Wincopia Farm, LP v. Goozman*, 188 Md. App. 519, 528 (2009). After a foreclosure action is initiated, "the defaulting borrower may file a motion to 'stay the sale

of the property and dismiss the foreclosure action.'" *Bates v. Cohn*, 417 Md. 309, 318 (2010) (citation omitted). "The grant or denial of injunctive relief in a property foreclosure action lies generally within the sound discretion of the trial court." *Anderson v. Burson*, 424 Md. 232, 243 (2011) (citation omitted). Thus, we review the circuit court's decision to deny a foreclosure injunction for an abuse of discretion. *Id.*

Discussion

I. The circuit court did not err in denying Craig's motion without a hearing.

Craig argues that the circuit court abused its discretion by denying his motion to stay foreclosure without a hearing, and that "the judge should have expanded the time for him to file his Motion pursuant to Md. Rule 14-211."[3] Craig contends that pursuant to Md. Rule 2-311(f), which provides that the "court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested," he was denied due process by the circuit court. Craig asks us to reverse the circuit court's denial of his motion to stay foreclosure. In addition, Craig urges us to remand this case and instruct the court "to hold a hearing to consider the appellants [sic] emergency motion to stay and/or dismiss of the foreclosure action."

In response, Substitute Trustees contend that the circuit court acted within its scope of discretion since Craig did not file his motion in a timely manner pursuant to Md.

[3] On March 9, 2015, the circuit court ordered that Craig's Motion for Reconsideration be denied pursuant to Md. Rule 2-535, that Craig's Request for Stay of Sale; Dismissal of Action Pursuant to Md. Rule 2-535 Due to Fraud and Fraud upon the Court; and Emergency Request to Stay and Dismiss the Foreclosure Action be denied without a hearing pursuant to Md. Rule 14-211.

Rule 14-211(a)(2). Further, the Substitute Trustees argue that a dispositive decision has not been made in this case, and thus, Md. Rule 2-311(f) is not applicable. Therefore, Substitute Trustees ask us to affirm the circuit court's decision. We agree with the Substitute Trustees that the circuit court did not abuse its discretion in denying Craig's motion to stay.

When a party files a motion to stay, Md. Rule 14-211(b) provides:

> (1) *Denial of motion*. The court shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion:
>
> (A) was not timely filed and does not show good cause for excusing non-compliance . . . ;
>
> (B) does not substantially comply with the requirements of this Rule; or
>
> (C) 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.

In this case, there was just cause for dismissal because the motion was not timely filed. Neither party disputes that the motion was filed untimely; however, Craig believes that the circuit court should have granted him an extended time period to file his motion. Craig claims that the delay in receiving full disclosure and the information that the Substitute Trustees supposedly withheld concerning the transfer of rights under the Deed of Trust prevented Craig from defending himself.

The circuit court acted within its scope to determine that the untimely filing of the motion did not warrant an extension. "The grant or denial of an injunction [to stop a foreclosure sale] lies within the sound discretion of the trial court, and on appeal, we

review the trial court's decision for an abuse of discretion." *Jones v. Rosenberg*, 178 Md. App. 54, 65 (2008) (citation omitted). Despite Craig's claim that the delay in receiving information from the Substitute Trustees is a valid reason to grant an extension, the circuit court found that there was no evidence of any fraud, mistake, or irregularity pursuant to Md. Rule 2-535. Under Md. Rule 2-535(b), a court "may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity." Thus, without evidence of fraud, the court exercised proper discretion in declining to exercise its revisory power and grant Craig an extension to file his motion.

Further, pursuant to Md. Rule 14-211(b)(1)(C), the circuit court found that there was no valid defense of the lien, the lien instrument, or the right of the Substitute Trustees to foreclose. Without being able to identify Craig's defense to the validity of the lien or the lien instrument or to the right of the Substitute Trustees to foreclose, the circuit court did not err in denying Craig's motion without a hearing.

Lastly, the docket entries clearly reflect that Craig's original motion to stay sale of foreclosure was filed on December 12, 2013. The court order of March 4, 2014, to deny Craig's motion to stay sale of foreclosure was dispositive of Craig's claim. By denying the motion for reconsideration on March 9, 2015, the court merely refused to change its original ruling which had disposed of Craig's claims. The ruling of March 9, 2015, was not "disposition of a claim or defense" and, thus, no hearing was mandated under Md. Rule 2-311(f) even though a hearing was requested. *Lowman v. Consol. Rail Corp.*, 68 Md. App. 64, 75 (1986).

II. The circuit court did not err in concluding that the Substitute Trustees had standing to initiate the foreclosure proceedings.

Craig next argues that the Substitute Trustees did not have standing to proceed with a foreclosure action because they had no right to enforce the Note. In response, the Substitute Trustees argue that they were appointed by the Noteholder as Substitute Trustees, and they therefore have standing in the case. We agree with the Substitute Trustees that the circuit court did not err in concluding that the Substitute Trustees had standing.

Md. Code (1975, 2013 Repl. Vol.), Commercial Law Article ("CL") § 3-205(b) provides:

> If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

In this case, Bank of America indorsed the Note without specifying an intended payee, which renders the Note a blank indorsement. An indorsement is a signature and pursuant to CL § 3-204(a), "[f]or the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument." In this case, the indorsements on the Note are located on the front and back of the signature page and it was physically fastened to the Note. Therefore, the indorsement is not an independent document and it is a valid part of the Note.

On the same day that Bank of America indorsed the Note in blank, the appellees were appointed as Substitute Trustees. The Note was transferred several times through

execution of valid assignments of Deed of Trust to the Secretary of Housing and Urban develop, then to GCAT 2014-4, LLC, and finally to Wilmington Savings. The valid change in assignments does not affect that the Note was properly indorsed in blank and the holder of the Note is entitled to enforce it. *Deutsche Bank Nat. Trust Co. v. Brock*, 430 Md. 714, 7290-30 (2013). Thus, because the Note was indorsed in blank, the Substitute Trustees had standing to bring the foreclosure action.

Craig claims that having no knowledge of all the transfers of the Note is a valid defense. However, "[u]nder established rules, the maker [of a note] should be indifferent as to who owns or has an interest in the note so long as it does not affect the maker's ability to make payments on the note." *Id.* at 731 (quoting *In re Veal*, 450 B.R. 897, 912 (2011)). Further, in *Anderson, supra*, 424 Md. at 246, the Court held that a deed of trust securing a negotiable promissory note "cannot be transferred like a mortgage; rather, the corresponding note may be transferred, and carries with it the security provided by the deed of trust." (Citation omitted). Therefore, the multiple, valid transfers of the Note are not a valid defense to Craig's default in payment or to whether the Substitute Trustees have standing.

For all of the foregoing reasons, we affirm the circuit court's judgment.

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