

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0380

September Term, 2015

MAI LOAN PHAM

v.

JAMES E. CLARKE, *et al.*
SUBSTITUTE TRUSTEES

Leahy,
Friedman,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: July 19, 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.

Admitting her failure to make mortgage payments, Mai Loan Pham now attempts to prevent foreclosure by alleging that the Substitute Trustees, James E. Clarke, Renee Dyson, and Brian Thomas (collectively “Substitute Trustees”) lack the authority to collect on her debt. Specifically, Pham argues that their attempt to collect fails because forged signatures on the original mortgage Note rendered the Note void from the start. Because Pham failed to plead with particularity a facially valid defense, however, we affirm the trial court’s decision to deny Pham’s Motion to Stay and Dismiss the foreclosure without a hearing.

BACKGROUND

In 2006, Pham obtained a mortgage in the amount of \$233,200, evidenced by a Note payable to Metrocities Mortgage LLC. Pham defaulted in June 2010. Substitute Trustees for Metrocities Mortgage initiated foreclosure proceedings in December 2014. Pham filed a Request for Foreclosure Mediation, mediation was conducted, but no resolution was achieved. With mediation efforts at an impasse, under Maryland Rule 14-209.1(f) the Circuit Court for Frederick County ordered that the Substitute Trustees may schedule the foreclosure sale. To prevent the foreclosure sale, Pham filed a “Verified Motion to Stay/Dismiss” the foreclosure under Maryland Rule 14-211.

In her Motion, Pham alleged that the Note could not be enforced because, in her view, the signatures on the indorsement page of the Note were forgeries. The circuit court denied Pham’s Motion without a hearing. Pham appealed the denial.

ANALYSIS

Pham predicates her argument on her view that two signatures on the indorsement to the Note, both purporting to be by “John Andersen, AVP” on behalf of Metrocities Mortgage LLC, are so dissimilar that they had to have been made by different hands. We are not handwriting experts, but, we agree: the signatures look very different. That the signatures were made by two different hands—even if true—does not compel the conclusion that the trial court should have granted a hearing or stopped the foreclosure proceedings. In *Buckingham v. Fischer*, 223 Md. App. 82 (2015), this Court held that to plead a valid defense of forgery to a foreclosure action, a party must plead with particularity all three elements of forgery: “[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.” *Buckingham*, 223 Md. App. at 93-94 (citing *Harding v. Ja Laur*, 20 Md. App. 209, 212 (1974)). Here, Pham’s Motion failed to assert—much less with the requisite particularity—any intent to defraud. As in *Buckingham*, it is at least equally likely that one or both of the signatures were made by another person on behalf of John Andersen, AVP, with his express permission and without an intent to defraud. In the absence of Pham making an allegation that the signatures were made with the intent to defraud, the circuit court had no choice but to deny Pham’s Motion without a hearing. *Buckingham*, 223 Md. App. at 94; Rule 14-211.

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