

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0831

September Term, 2015

DAVID VACH

v.

CARRIE WARD, ET AL. SUBSTITUTE
TRUSTEES

Krauser, C.J.,
Berger,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: April 26, 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.

This case arises out of a foreclosure proceeding initiated in the Circuit Court for Worcester County by substitute trustees Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Pratima Lele, Tayyaba C. Monto, Joshua Coleman, Richard R. Goldsmith, Jr., Ludeen McCartney-Green, and David W. Simpson, Jr. (collectively, the “Substitute Trustees”), appellees. In the foreclosure proceedings, the Substitute Trustees filed an order to docket a foreclosure with respect to real property located at 2101 Philadelphia Avenue, Unit 305, Ocean City, Maryland 21842 (“the Property”) owned by mortgagors David and Carol Vach, and Robert Boyle (collectively “Vach”), appellants.¹

Prior to the foreclosure sale, Vach filed a motion to stay the foreclosure sale pursuant to Md. Rule 14-211. Vach’s motion was denied, and the foreclosure sale proceeded as scheduled. Following the foreclosure sale, Vach filed exceptions to the foreclosure sale pursuant to Md. Rule 14-305. The circuit court denied Vach’s exceptions to the foreclosure sale, and the court proceeded to ratify the sale.

On appeal, Vach challenges the denial of his motion to stay the foreclosure sale, and the denial of his exceptions to the foreclosure sale. Vach presents several questions for our review,² which we have consolidated and rephrased as follows:

¹ Although Robert Boyle is listed on the Deed of Trust as having an interest in the Property, this appeal appears only to be pursued by Mr. and Mrs. Vach.

² The issues, as presented by Vach, are:

- I. Did the lower court abuse its discretion by denying appellants’ 14-211 motion less than twenty-two (22) minutes after it was docketed, despite valid assertions requiring a hearing?

(continued...)

1. Whether the circuit court erred in denying Vach's motion to stay the foreclosure sale.
2. Whether the circuit court erred in denying Vach's exceptions to the foreclosure sale.

For the reasons set forth herein, we shall affirm the judgments of the Circuit Court for Worcester County.

FACTS AND PROCEEDINGS

In July of 2007, Vach purchased the Property in exchange for a note and a Deed of Trust made to the order of USA Home Loans, Inc., Corp., in the amount of \$417,000.00 plus interest. On September 2, 2011, Vach defaulted on his payments under the note. In accordance with the acceleration clause in the note, the entire amount of his obligation became due upon his default. Thereafter, on December 16, 2014, the Substitute Trustees filed an order to docket the foreclosure. The order to docket contained an affidavit from the

² (...continued)

- (a) The Appellees were guilty of dual tracking in violation of federal regulations.
 - (b) Appellants raised a material fact issue of who owned the loan material.
 - (c) Appellants raised material fact issues regarding the Allonge and its relationship to the Note.
- II. [Whether] the lower court abused its discretion by failing to grant appellants' exceptions.

note holder attesting that as of July 25, 2014, Vach's outstanding obligation that was in default totaled \$494,204.43.

The Substitute Trustees later scheduled a foreclosure sale for April 14, 2015. On April 13, 2015, at 2:37 p.m., Vach filed a *pro se* motion to stay the foreclosure proceeding. Vach styled his motion as an “emergency motion to stay” Moreover, in the caption of his motion, Vach indicated in bold and all capital letters that the sale was scheduled for the following day. In his motion, Vach alleged that the foreclosure sale should be stayed because the lender engaged in “dual tracking.” Vach further alleged that he was unaware as to whom currently held his note, and that an allonge affixed to the note was invalid. The circuit court promptly denied Vach's motion at 3:00 p.m. the same day it was filed.

The following day, the Substitute Trustees sold the Property at a public auction to Federal National Mortgage Association for \$414,987.43. Following the sale of the Property, Vach filed exceptions to the foreclosure sale. The Substitute Trustees filed an opposition to Vach's exceptions. By order dated June 5, 2015, the circuit court denied Vach's exceptions and ratified the foreclosure sale.

This timely appeal followed. Additional facts will be discussed as necessitated by the issues presented.

DISCUSSION

In Maryland, pursuant to Title 14 of the Maryland Rules, two means by which an owner of real property may challenge a foreclosure are “obtaining a pre-sale injunction pursuant to Maryland Rule [14-211, and] filing post-sale exceptions to the ratification of the

sale under Maryland Rule 14-305(d).” *Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705, 726 (2007). In the present appeal, Vach challenges the denial of his motion for a pre-sale injunction staying the foreclosure sale, as well as the denial of his exceptions to the foreclosure sale made pursuant to Md. Rule 14-305. We shall address these issues in turn.

I. The Circuit Court Did Not Err by Denying Vach’s Motion for a Pre-Sale Injunction Staying the Foreclosure Sale.

Vach contends that the circuit court erred in denying his motion for a pre-sale injunction to prevent the sale of the Property. In support of his argument, Vach asserts that the circuit court abused its discretion by denying Vach’s motion for a pre-sale injunction twenty-two minutes after it was filed. Moreover, Vach asserts that he was entitled to a pre-sale injunction because the Substitute Trustees engaged in dual tracking. Vach further maintains that he was uncertain who was entitled to enforce the note, and the validity of an allonge affixed to the note was in question. The Substitute Trustees assert that Vach’s motion was untimely, and that they were otherwise justified in foreclosing on the Property. We agree with the Substitute Trustees.

“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). In order to make a *prima facie* case for injunctive relief, a claimant must demonstrate “that it will sustain substantial and irreparable injury as a result of the alleged wrongful conduct.” *El Bey v. Moorish Sci. Temple of Am., Inc.*, 362 Md. 339, 355 (2001).

A trial court abuses its discretion when:

[N]o reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles. It has also been said to exist when the ruling under consideration appears to have been made on untenable grounds, when the ruling is clearly against the logic and effect of facts and inferences before the court, when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice.

North v. North, 102 Md. App. 1, 13-14 (1994) (internal quotations and citations omitted).

While the trial court is granted a significant degree of discretion when deciding whether to enjoin acts that are wrongful, the court's discretion to deny an injunction is at its apex when the act sought to be enjoined is not, legally, wrongful. *El Bey, supra*, 362 Md. at 355. Moreover, a trial judge's discretion with respect to a motion to stay a foreclosure sale is further tempered by the procedural requirements outlined in Md. Rule 14-211, which require the court to make an initial determination as to whether the court should deny the motion or hold a hearing. Md. Rule 14-211(b). Specifically, the Rule expressly 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 with subsections (a)(2) of this Rule;

(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 the right of the plaintiff to foreclose in the pending action.

Md. Rule 14-211(b). Moreover, pursuant to Md. Rule 14-211 (c), and (e), a court may only order a stay if it determines that it should hold a hearing. The court shall hold a hearing if the motion:

(A) was timely filed or there is good cause for excusing non-compliance with subsection (a)(2) of this Rule,

(B) substantially complies with the requirements of this Rule, and

(C) states on its face 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, the court shall set the matter for a hearing on the merits of the alleged defense. The hearing shall be scheduled for a time prior to the date of sale, if practicable, otherwise within 60 days after the originally scheduled date of sale.

Md. Rule 14-211(b)(2).

The Substitute Trustees assert that Vach's motion for an injunction was not timely because it was not filed within fifteen days of the date that Vach was served with the order to docket the foreclosure proceedings. Indeed, Md. Rule 14-211(a)(2) provides:

(B) Other Property. In an action to foreclose a lien on property, other than owner-occupied residential property, a motion by a borrower or record owner to stay the sale and dismiss the action shall be filed within 15 days after service pursuant to Rule 14-209 of an order to docket or complaint to foreclose. A motion to stay and dismiss by a person not entitled to service under Rule 14-209 shall be filed within 15 days after the moving party first became aware of the action.

Md. Rule 14-211(a)(2)(B).

In the context of this rule, “[o]wner-occupied residential property” means residential property in which at least one unit is occupied by an individual who has an ownership interest in the property and uses the property as the individual’s primary residence.” Md. Rule 14-202(1). Whether a property is “owner-occupied residential property” is a question of fact that we review under the clearly erroneous standard. “A finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.” *Goss v. C.A.N. Wildlife Trust, Inc.*, 157 Md. App. 447, 455-56 (2004) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)).

In this case, the trial judge was not clearly erroneous in finding that the Property was “Other Property” within the construct of Md. Rule 14-211(a)(2) because there was ample evidence in the record that the Property was not owner-occupied residential property. Indeed, on his Deed of Trust, Vach reports his address as 11 McGregor Way, Bel Air, Maryland 21014. Moreover, incorporated into Vach’s Deed of Trust was a second home rider in which Vach promised that the Property would only be used as a second home. Finally, in his motion for an injunction, and in his exceptions to the foreclosure sale, Vach reports that his address is 11 McGregor Way, Bel Air, Maryland 21014.³ Accordingly, the record reflects that there is an abundance of competent and material evidence from which the circuit court could have concluded that the Property was not “Owner-Occupied Residential

³ Maryland Rule 1-311 requires that every “paper of a party who is not represented by an attorney shall be signed by the party. Every . . . paper filed shall contain the signer’s address . . .” In his papers Vach does not report the Property as his “address” under Md. Rule 1-311(a).

Property.” Accordingly, we hold that the trial court’s finding that the property is not “Owner-Occupied Residential Property” is not clearly erroneous.

Having concluded that the Property is not “Owner-Occupied Residential Property,” the provisions of Md. Rule 14-211(a)(2)(B) govern, requiring Vach to have filed his motion within 15 days of being served with an order to docket. In the instant matter, Vach was served with an order to docket on December 29, 2014. Vach filed his motion for an injunction on April 13, 2015. Accordingly, Vach’s motion for an injunction did not comply with the timing requirements of Md. Rule 14-211(a)(2). Having concluded that Vach’s motion was untimely, the trial judge was obliged to deny the motion unless the motion “show[s] good cause for excusing non-compliance with subsection (a)(2) of this Rule.” Md. Rule 14-211(b)(1)(A).

In this case, the trial judge did not err in finding that good cause was not shown sufficient to excuse non-compliance with Md. Rule 14-211(a)(2). In his motion for an injunction, Vach argued that “[t]his motion is timely filed as [Vach] is under a federal stay pursuant to the Consumer Financial Protection Bureau (CFPB) as is outlined in this motion.” Initially, to the extent that Vach’s assertion appeared to represent that there was an order staying the pending foreclosure proceedings, such an assertion is unsupported by the record before us. Rather, Vach’s motion apparently argued that federal regulations regarding dual tracking preempt the Maryland Rules with respect to foreclosure sales. We are unpersuaded.

Before the trial court, Vach averred that the Substitute Trustees had no right to initiate a foreclosure sale because the Substitute Trustees failed to comply with the loss mitigation

procedures outlined in Regulation X, promulgated under the authority of the Real Estate Settlement Procedures Act (“RESPA”). 12 C.F.R. § 1024.41. Whether the Substitute Trustee’s complied with federal mortgage regulations, however, is immaterial to whether there is good cause to excuse the timing requirements of Md. Rule 14-211(a)(2). We note that the RESPA “does not annul, alter, or affect, or exempt any person . . . from complying with, the laws of any State with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of this chapter.” 12 U.S.C. § 2616. Indeed, Maryland lenders are obliged to comply with federal mortgage regulations, and the federal regulations preempt Maryland’s rules to the extent they are inconsistent with the federal rules. Where, as here, the federal regulations do not conflict with Maryland’s foreclosure procedure, both are applied simultaneously. Accordingly, Maryland courts will enforce federal mortgage regulations within the procedural construct of the Maryland Rules relating to judicial sales. Therefore, assuming *arguendo*, that Vach may have had a claim to relief under Regulation X, Vach is nevertheless required to abide by the procedural timing requirements imposed by Md. Rule 14-211(a)(2).⁴

Having found that Vach had not complied with the timing requirements outlined in Md. Rule 14-211(a)(2), and having not been presented with good cause sufficient to excuse non-compliance with that requirement, the trial court was bound to deny Vach’s motion upon

⁴ Counsel for the appellant acknowledged at oral argument that the provisions of the Code of Federal Regulations at issue are inapplicable to property that is not the borrower’s principal residence. Nevertheless, for the reasons stated herein, the applicability of 12 C.F.R. § 1024.41 is immaterial in this case.

its initial determination. We, therefore, hold that the trial court did not abuse its discretion in refusing to enjoin the scheduled foreclosure sale of the Property. Notably, because we affirm the trial court’s denial of Vach’s motion upon its initial determination, we do not reach Vach’s remaining questions as to whether the Substitute Trustees engaged in dual tracking, who is entitled to enforce Vach’s note and Deed of Trust, or whether the allonge affixed to the note is valid. Stated differently, because we affirm the trial judge’s determination that the motion “was not timely filed and does not show good cause for excusing non-compliance” under Md. Rule 14-211(b)(1)(A), we do not reach Vach’s argument with respect to Md. Rule 14-211(b)(1)(C).

Vach additionally implies that the circuit court inappropriately denied Vach’s motion for an injunction without giving the motion adequate consideration. In support of this contention, Vach asserts that the court could not have given adequate consideration to his motion between the time his motion was filed and the time the motion was denied twenty-two minutes later. We are unpersuaded by Vach’s suggestion that the circuit court’s prompt disposition on his motion warrants a reversal.

Initially, we note that Vach has not cited us to any authority mandating that the circuit court reserve ruling on a motion for a particular length of time. Moreover, our review of Vach’s motion indicates that Vach affirmatively invited the court to decide this matter with such urgency. Indeed, Vach styled his motion for an injunction as an “**EMERGENCY MOTION TO STAY.**” (emphasis in original). Moreover, in the caption of his motion, Vach articulated in bold and all capital letters that the sale is scheduled for April 14th. The haste

with which the court addressed Vach's motion was further warranted by the fact that Vach filed his motion late in the afternoon, a mere twenty-four hours and fifty-three minutes, before the foreclosure sale.

Moreover, the trial court was presented with Vach's motion well beyond the permissible timing requirements and so close to the time of the foreclosure sale. In any event, consideration of Vach's motion, here, did not require a great degree of deliberation when upon his initial determination, the trial judge could ascertain from the motion that it was filed more than three months beyond the filing deadline prescribed by Md. Rule 14-211(a)(2). Accordingly, we are unpersuaded that the trial judge abused his discretion by promptly denying Vach's motion.

Having concluded that the trial judge was legally correct in finding that Vach failed to satisfy the procedural timing requirements of Md. Rule 14-211(a)(2), and that it was not improper for the trial judge to decide Vach's motion so promptly, we conclude that the trial judge did not err in denying Vach's motion for a pre-sale injunction. We, therefore, affirm the circuit court's denial of Vach's motion for an injunction.

II. The Circuit Court Did Not Err by Denying Vach's Exceptions to the Foreclosure Sale.

Vach further argues that the circuit court erred by failing to grant his exceptions to the foreclosure sale. In support of his argument, Vach contends that his exceptions should have been granted because the Substitute Trustees misrepresented the documents filed in support of their order to docket the foreclosure. The Substitute Trustees respond and argue that the

denial of Vach’s exceptions was proper because Vach failed to allege a procedural irregularity with respect to the foreclosure sale. We agree with the Substitute Trustees.

The means by which a litigant may challenge a foreclosure become increasingly limited after a sale has occurred. Indeed, “[a]fter [a foreclosure] sale, the borrower is ordinarily limited to raising procedural irregularities in the conduct of the sale[.]” *Thomas v. Nadel*, 427 Md. 441, 442-43 (2012). Procedural irregularities that may be raised through post-sale exceptions are generally limited to issues “such as the advertisement of sale was insufficient or misdescribed the property, the creditor committed a fraud by preventing someone from bidding or by chilling the bidding, challenging the price as unconscionable, etc.” *Greenbriar Condo. Phase I Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683, 741 (2005), *superseded by rule*, Md. Rule 14-305, *as recognized in Thomas, supra*, 427 Md. at 445.

There may, however, be a narrow exception to the general rule that limits arguments to issues arising from the actual sale of the property in instances when the establishment of the debt-creating instrument is said to be attributable to extrinsic fraud.⁵ *Bierman v. Hunter*, 190 Md. App. 250, 268 (2010) (“As an equity court, the trial court had full power to hear and determine all objections to the foreclosure sale, ‘which would naturally include an attack

⁵ In essence, this argument is that, pursuant to Md. Code (1975, 2013 Repl. Vol.), § 3-401 of the Commercial Law Article (“CL”), a signature is required for a party to become liable on a negotiable instrument. A signature is “any symbol executed or adopted with the present intention to adopt or accept a writing.” CL § 1-201(b)(37). Accordingly, a party cannot be liable on an instrument when extrinsic fraud has negated the required intent to adopt or accept the instrument.

on the validity of the mortgage.” (quoting *Wilson Bros. v. Cooley*, 251 Md. 350, 360 (1968))), *abrogated by Bates v. Cohn*, 417 Md. 309, 327-28 (2010) (“Rule 14-305 is not an open portal through which any and all pre-sale objections may be filed as exceptions, without regard to the nature of the objection or when the operative basis underlying the objection arose and was known to the borrower.”). The Court of Appeals’ decision in *Bates*, however, rejects the reasoning in *Bierman*, significantly limits this narrow exception, and questions whether the exception is compatible with Md. Rule 14-305(d). *Bates, supra*, 417 Md. at 327-28 (“We do not rule here on whether a homeowner may raise under 14-305, as a post-sale exception, allegations that a deed of trust was the product of fraud. . . . We hold only that, given the limitation of Rule 14-305 . . . a homeowner/borrower ordinarily must assert known and ripe defenses to the conduct of a foreclosure sale prior to the sale, rather than in post-sale exceptions.”).

We need not, however, engage in the academic exercise of determining the legitimacy or scope of this exception here because it is inapplicable to this case. To be sure, Vach makes numerous allegations that sound of fraud. Notwithstanding the fact that Vach’s allegations fall short of making a prima facie showing of fraud, *see Spangler v. Sprosty Bag Co.*, 183 Md. 166, 173 (1944) (“[One] seeking any relief on the ground of fraud must distinctly state the particular facts and circumstances constituting the fraud. . . . General charges of fraud or that acts were fraudulently committed are of no avail. . . .”), the fraud Vach alleges is unrelated to the circumstances that gave rise to the debt-creating instrument.

In his brief, Vach alleges that the Substitute Trustees have “dirtied their collective hands” or committed fraud “by stating falsely that Fannie Mae is the secured party, by claiming that Appellants did not have an existing short sale offer, and by presenting an incomplete Note, full of uncertainty surrounding the Allonge and the note’s very pagination.” These claims, however, are similar to the ones rejected by the Court of Appeals in *Thomas, supra*, 427 Md. at 454 (holding that general allegations of fraud unrelated to the debt-creating instrument are insufficient to fit within “the ‘distinct question’ left open in *Bates[, supra, 417 Md. 309].*”). That is to say, the fraud Vach alleges in his exceptions and on appeal does not relate to whether the original debt-creating instrument is valid, but whether the Substitute Trustees had a right to foreclose. Accordingly, Vach’s allegations of fraud do not bring his grievances within the scope of matters that can be considered by means of post-sale exceptions under Md. Rule 14-305(b).

The arguments that Vach advanced in his exceptions do not relate to the manner by which his property was sold, but rather to whether the lender had a right to foreclose on the Property. Although *Bates, supra*, may leave open a narrow exception for making such an argument when extrinsic fraud is alleged to undermine the validity of the debt-creating instrument, that exception is inapplicable in this case. As a result, for the reasons stated above, defenses to foreclosure must be argued prior to the foreclosure sale, and post-sale exceptions are limited issues relating to the “procedural handling of the sale.” *Bates, supra*, 417 Md. at 329. Accordingly, the arguments raised in Vach’s post-sale motion to strike the foreclosure sale were untimely, and the circuit court did not err in denying the same. We,

therefore, hold that the circuit court did not err in denying Vach's exceptions to the foreclosure sale.

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