UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 492

September Term, 2016

JENNIFER W. COLE

v.

CARRIE M. WARD ET AL.
SUBSTITUTE TRUSTEES

Berger,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 7, 2017

In this appeal from a foreclosure action in the Circuit Court for Prince George's County, Jennifer W. Cole, appellant, challenges the court's denial of a motion to stay and dismiss the action, and a motion to alter or amend that judgment. For the reasons that follow, we shall affirm.

In November 2007, Cole and her husband obtained from Bank of America a loan, in exchange for a note in which the couple promised to pay the amount of the loan, "plus interest, to the order of the Lender." The note was secured by a deed of trust in which the couple irrevocably granted and conveyed their residential property to the trustee, in trust, with power of sale. Thereafter, ownership of the note was transferred to the Federal National Mortgage Association (hereinafter "Fannie Mae"). The authorized subservicer for the Association is Seterus, Inc. (hereinafter "Seterus").

In October 2013, Cole's husband died. In February 2014, Cole defaulted on the terms of the note. In November 2014, Seterus sent to Cole a "Notice of Intent to Foreclose." The notice stated that the "Total Amount Required to Cure Default as of the Date of [the] Notice" was $15,034.09. The notice further stated: "If you wish to reinstate your loan by paying all past due payments and fees, please call the mortgage company and ask for the total amount required to cure the default and reinstate the loan."

In December 2014, Cole sent to Bank of America and Seterus a letter in which she stated: "I have been granted [a] loan on the condition that I . . . certify Seterus, Inc. or Bank of America is in possession of the 2007 Note. In order to certify Seterus, Inc. or Bank of America are in possession of the Note, either entity must send me a copy . . . made directly from the original note with the date that the copy was made." Cole acknowledged

that the amount required to cure the default was $15,034.09. In January 2015, appellees[1] were appointed as substitute trustees. In February 2015, Seterus sent to Cole a certified copy of the note. That same month, appellees filed an order to docket the foreclosure action.

In October 2015, Cole filed the motion to stay and dismiss. Cole contended that the "foreclosure action should be dismissed due to [appellees'] unclean hands in [her] purported default," because "Seterus'[s] failure to provide proof that it was the holder of the Note and its failure to send monthly mortgage statements notifying [her] of the amount claimed to be due[] caused [her] failure . . . to cure the purported default." She stated:

> [Cole] arranged to have her purported arrears cured via a personal loan. The private lender agreed to lend [Cole] the money required to cure the default. . . . .
>
> The private lender required that [Cole] verify that Seterus Inc. was the current holder of the Note. The lender further requested documentation to substantiate the amount required to cure the default. To satisfy the lender's demands, [Cole] requested [that] Seterus provide a certified copy of the Note. . . . . Seterus did not provide a certified copy of the Note until 3 months later on or about February 18, 2015. Prior to providing the certified copy of the Note, Seterus merely provided regular copies of the Note that did not establish Seterus was in possession of the original promissory note. Therefore [Cole] was unable to ascertain Seterus was entitled to receive the payment and her lender would not loan her the money to cure the default.

(Paragraph numbering omitted.) Cole further stated that, "[a]s a result of Seterus[']s] failure to provide monthly mortgage" statements, she "did not have notice of the amount past due, and the interest and fees that were being assessed against her."

[1]Appellees are Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Pratima Lele, Joshua Coleman, Richard R. Goldsmith, Jr., Ludeen McCartney-Green, Jason Kutcher, Nicholas Derdock, and Elizabeth C. Jones.

The court summarily denied the motion. Cole thereafter filed the motion to alter or amend, in which she requested "factual findings [and] particular rulings of law." The court denied the motion, stating: "Based on [Cole's] arguments, the [c]ourt cannot find that there is a nexus between the loan servicer's alleged unclean hands and [Cole's] default. Without that intersection, the [c]ourt cannot then find that the loan servicer dirtied its hands in order to gain the right to foreclose upon [Cole's] property."

On appeal, Cole contends that Seterus's "actions constituted unclean hands," and the "court erred . . . by exclusively focusing on the cause of the default." We disagree. "The unclean hands doctrine refuses recognition and relief from the court to those guilty of unlawful or inequitable conduct pertaining to the matter in which relief is sought." *Hicks v. Gilbert*, 135 Md. App. 394, 400 (2000) (internal citation and quotations omitted). "There must be a nexus between the misconduct and the transaction, because what is material is not that the plaintiff's hands are dirty, but that he dirties them *in acquiring the right he now asserts*." *Id.* at 400-01 (internal citations, quotations, and brackets omitted) (emphasis added).

Here, Cole does not contend that Fannie Mae is not the rightful holder of the note, or that Fannie Mae dirtied its hands in obtaining the note. She also does not contend that Fannie Mae, Seterus, or appellees caused her to default, or that she was not notified of the amount required to cure the default, or how to obtain an updated accounting of that amount. Cole challenges only Seterus's alleged failure to respond in a timely manner to a request, made approximately 10 months after default, for a certified copy of the note, and to send monthly mortgage statements. Even if Seterus dirtied its hands in responding, or failing to

respond, to Cole's request, or failed to send monthly mortgage statements, it did not dirty its hands in acquiring the right it and Fannie Mae now assert. There is no nexus between the alleged misconduct and the transaction, and hence, the doctrine of unclean hands is inapplicable. The court did not abuse its discretion in denying the motion to stay and dismiss and subsequent motion to alter or amend.

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