Circuit Court for Prince George's County
Case No.: CAEF13-33472

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 639 & 1707

September Term, 2016

AMINATA WILLIAMS

v.

JOHN E. DRISCOLL, III, ET AL.
SUBSTITUTE TRUSTEES

Woodward, C.J.,
Kehoe,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: September 25, 2017

In 2004, appellant, Aminata Williams, purchased a home on Ogels Hope Drive in Bowie, Maryland, subject to a mortgage. She then refinanced in September 2006 to an adjustable rate balloon loan that quickly fell into default. The current outstanding balance, including arrears, is now in excess of $1 million. Appellant subsequently filed a number of bankruptcy petitions in federal court, and beginning in 2013, appellees[1] initiated foreclosure proceedings. After the last of the federal court stays were lifted, appellees scheduled a foreclosure sale on May 5, 2016; appellant then filed a motion to stay and/or dismiss the sale in the Circuit Court for Prince George's County, which the court denied in a memorandum opinion and order. Appellant timely appealed and presents three issues that we have reordered as follows:

1. Whether the court erred in denying Appellant's Motion to Dismiss on the basis that she did not show good cause.

2. Whether the court erred in denying Appellant's Motion to Dismiss where Appellees lacked standing to enforce the Note and Deed of Trust.

3. Whether the court erred in denying Appellant's Motion to Dismiss on the erroneous basis that 15 U.S.C. § 1635 is inapplicable because 15 U.S.C. § 1635(b) exempts mortgage and refinance transactions.

For the reasons set forth below, we shall affirm the judgment of the circuit court.

BACKGROUND

Appellant has resided in 13107 Ogels Hope Drive since 2004. On September 25, 2006, she refinanced her mortgage by borrowing $732,000. Appellant made payments on

[1] Appellees, John Driscoll, Jana Gantt, Laura Harris, Kimberly Lane, and Deena Reynolds, are substitute trustees for the secured party, 21st Mortgage Company (Twenty-First Mortgage).

the loan for approximately nine months, then defaulted in July 2007. The loan has remained in default since that time. The amount due, including arrears, is now in excess of $1 million.

On September 19, 2008, appellant tendered a notice of rescission to appellees' servicer-in-interest, Homecomings Financial.[2] Appellant's letter stated that she was exercising her right of rescission pursuant to the Truth in Lending Act (TILA), 15 U.S.C. § 1635, and Regulation Z, 12 C.F.R. § 226.23. Appellant alleged that based on information she received from a third-party auditing firm, the TILA disclosure provided to her "was defective in a number of ways." She did not assert a specific TILA violation. Upon receipt of appellant's notice, her lender disputed the rescission and claimed that it had not violated any of TILA's disclosure requirements. At no time did appellant seek to enforce the rescission. She did, however, challenge the mortgage on July 20, 2014, when she filed an adversary proceeding in the United States Bankruptcy Court for the District of Maryland.[3]

On November 7, 2013, appellees began the process of foreclosing on the property by filing an order to docket in the Circuit Court for Prince George's County. The record indicates that appellees also filed a preliminary loss mitigation affidavit; a final loss mitigation affidavit; and affidavits of attempted delivery, posting, mailing, and notice. On

[2] Twenty-First Mortgage is the holder of a secured adjustable rate balloon note executed by appellant on September 25, 2006. All obligations under the note are secured by the property in dispute, 13107 Ogels Hope Drive.

[3] Adversary proceedings are defined in the Federal Rules of Bankruptcy Procedure. They may be used to, among other things, determine the validity of a lien, Fed. R. Bankr. P. 7001(2), and the dischargeability of a debt, *id.* 7001(6).

April 7, 2014, appellant filed a request for mediation. She failed to appear, however, and the Office of Administrative Hearings filed a mediation report on April 20 concluding that based on her failure to appear, no agreement had been reached.[4]

Following an order from the circuit court, appellees scheduled a foreclosure sale on May 8, 2014. That same day, appellant filed a bankruptcy petition and, as a result, the sale was cancelled.[5] The U.S. trustee subsequently filed a motion to dismiss the petition and the adversary proceeding; appellant consented; and the bankruptcy court dismissed both cases in March 2016.[6] Thereafter, on April 22, 2016, appellant filed an action seeking declaratory and injunctive relief in the United States District Court for the District of Maryland. The district court held a hearing and denied both requests for relief on May 3, 2016.

In addition to the above-mentioned federal filings, appellant filed a motion to stay and/or dismiss the foreclosure sale in the Circuit Court for Prince George's County on April 22, 2016. Appellant argued that the note securing the property was void because she submitted a timely rescission; Twenty-First Mortgage does not have standing to enforce

[4] Md. Code Ann., Real. Prop. § 7-105.1(l)(4) (West 2012) requires the Office of Administrative Hearings to file a report with the court that states the outcome of the request for foreclosure mediation within the earlier of: 1) seven days after a foreclosure mediation is held; or 2) the end of the sixty-day mediation period specified in subsection (k)(2), plus any extension the Office previously granted.

[5] Appellant filed a total of seven bankruptcy petitions, all of which have either been dismissed or resolved. In her 2010 filing, appellant received a Chapter 7 discharge and is no longer personally liable, although the lien is still secured against the property.

[6] Appellant claims that the bankruptcy stay was lifted on March 23, 2016. The docket entries from the bankruptcy court, however, indicate that the order dismissing the case was entered on March 8, 2016.

the lien; and the circuit court should stay the foreclosure pending the resolution of the federal court action. Appellees filed an opposition, contending that appellant's arguments were untimely; moot; collaterally barred; and failed to assert a legitimate defense as to the validity of the lien.

On May 11, 2016, the circuit court issued a memorandum opinion and order finding: 1) appellant's motions do not state a valid defense or present a meritorious argument; 2) appellant does not have a right to rescind under 15 U.S.C. § 1635; and 3) appellant's motion is not timely filed and good cause was not shown to excuse the belated filing under Md. Rule 14-211. This appeal followed.

STANDARD OF REVIEW

"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). Accordingly, we review the trial court's grant or denial of a foreclosure injunction for an abuse of discretion. *Id.*; *see also Fishman v. Murphy*, 433 Md. 534, 546 (2013) (internal citations and quotations omitted) ("We have found abuses of discretion where the trial court ruling was clearly against the logic and effect of facts and inferences before the court[ ] . . . or when the ruling is violative of fact and logic."). The trial court's legal conclusions are reviewed *de novo*. *Svrcek v. Rosenberg*, 203 Md. App. 705, 720 (2012).

I. Motion to Stay

Before a foreclosure sale takes place, the defaulting borrower has the right to file a motion to stay the sale of the property and dismiss the foreclosure action. *Bates v. Cohn*,

417 Md. 309, 318 (2010) (citing Md. Rule 14-211(a)(1)). As a prerequisite to filing such a motion, however, the borrower must comply with the filing requirements in Md. Rule 14-211(a)(2)(A), which provides:

> (A) Owner-Occupied Residential Property. In an action to foreclose a lien on owner-occupied residential property, a motion by a borrower to stay the sale and dismiss the action shall be filed no later than 15 days after the last to occur of:
>
> * * *
>
> (iii) if postfile mediation was requested and the request was not stricken, the first to occur of:
>
> * * *
>
> (b) the date the Office of Administrative Hearings files with the court a report stating that no postfile mediation was held[.]

Subsection (b)(1)(a) states that the trial court shall deny the motion to stay if the court concludes from the record that the motion "was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule."

In *Svrcek v. Rosenberg*, the substitute trustees commenced an action to foreclose a lien pursuant to a power of sale by filing an order to docket. 203 Md. App. at 711. The debtor, Paul Svrcek, filed a motion to vacate the sale and dismiss the foreclosure proceedings, arguing that the substitute trustees did not have standing to foreclose on his property. *Id.* at 716. Like this case, the trustees filed an opposition on the ground that the motion was filed outside of the fifteen-day window set forth in Md. Rule 14-211. *Id.* at 717. The circuit court did not find good cause for the belated filing, and it denied Svrcek's motion to stay the sale and dismiss the foreclosure proceeding. *Id.* at 718–19. On appeal, we noted that Svrcek became aware of the sale when he was served with an order to docket and held that although Svrcek claimed he did not know he had fifteen days to file a

response, ignorance of the law is no excuse. *Id.* at 721. As a result, we affirmed the circuit court's finding. *Id.*

In this case, there is no dispute that appellant failed to file her motion to stay and/or dismiss the foreclosure sale within fifteen days of the foreclosure mediation report. The Office of Administrative Hearings filed the report on April 10, 2014; appellant did not file her motion until two years later—April 22, 2016. Moreover, even if appellant's bankruptcy proceeding extended the time to file, the automatic stay arising from that case was lifted on March 8, 2016. Thus, her filing was forty-five days late. The issue, therefore, is whether appellant established good cause for the untimely filing under Md. Rule 14-211.

Appellant raises three arguments in order to establish good cause. First, appellees did not give proper notice of intent to foreclose. Second, citing *Madore v. Baltimore County*, 34 Md. App. 340 (1976), appellant argues that the test for good cause is "whether the claimant prosecuted [her] claim with that degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances." Third, appellant did not know that she was required to file the motion within fifteen days. Appellees, by contrast, argue that service was proper, the fifteen-day requirement in Md. Rule 14-211 is mandatory, and good cause has not been shown. We agree.

The record reflects that appellees made good faith efforts to serve appellant on two different days, November 13, 2013, and November 15, 2013. Pursuant to Md. Rule

14-209,[7] appellees were permitted to effectuate service by 1) mailing, by certified and first-class mail, a copy of all papers filed to commence the action; and 2) posting a copy of the papers in a conspicuous place on the residential property. Appellees complied with both requirements. As a result, service (*i.e.* notice of intent to foreclose) was complete when the property was posted and the mailings were made. Next, appellant's obligation to prosecute her case did not end with the filing of the bankruptcy petition. At a minimum, she was required to file her motion to stay within fifteen days after the bankruptcy stay was lifted but did not do so. *Madore*, cited by appellant, is a case in which we found no abuse of discretion, wherein the trial court did not find good cause to excuse the belated filing. It is thus inapposite. We further find that appellant did not pursue her claim with any degree of diligence. Finally, as we explained in *Svrcek*, ignorance of the law is no excuse. Accordingly, the circuit court did not err in denying appellant's motion to stay and/or dismiss the foreclosure sale.

II. Remaining Claims

The remaining claims offered by appellant do not provide a basis for relief. First, appellees have standing. As the Court of Appeals explained in *Deutsche Bank Nat'l Trust*

[7] Md. Rule 14-209(b) states: "If on at least two different days a good faith effort to serve a borrower or record owner pursuant to section (a) of this Rule was not successful, the plaintiff shall effect service by (1) mailing, by certified and first-class mail, a copy of all papers filed to commence the action, accompanied by the documents required by Code, Real Property Article, § 7-105.1(h), to the last known address of each borrower and record owner and, if the person's last known address is not the address of the residential property, also to that person at the address of the property; and (2) posting a copy of the papers in a conspicuous place on the residential property. Service is complete when the property has been posted and the mailings have been made in accordance with this section."

Co. v. Brock, "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.'" 430 Md. 714, 730 (2013) (quoting Md. Code Ann., Com. Law § 3-301 (West 2013)). As appellees correctly point out, the affidavits filed in the order to docket confirm that Twenty-First Mortgage is the holder of the note and, indeed, in possession of the original note. Appellees are therefore entitled to enforce the lien.

Second, we are persuaded by the Fourth Circuit's reasoning that more is required to complete a rescission than communicating to the creditor an intention to rescind. *See Gilbert v. Residential Funding LLC*, 678 F.3d 271, 277 (4th Cir. 2012) (internal citations and quotations omitted) (finding a creditor must either acknowledge "that the right of rescission is available and the parties must unwind the transaction amongst themselves, or the borrower must file a lawsuit so that the court may enforce the right to rescind" in order to complete a rescission and void a contract). Here, the lender did not acknowledge the right of rescission, nor did appellant file a claim to enforce the rescission. As such, there is no basis for her to rescind under 15 U.S.C. § 1635.[8] In sum, appellant's motion to stay was not timely filed and there is no good cause to excuse her noncompliance.

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

[8] While we disagree with the circuit court's order as to the applicability of section 1635, we nevertheless affirm the court's judgment. *See Pope v. Bd. of Sch. Comm'rs*, 106 Md. App. 578, 591 (1995) ("[A]n appellate court will affirm a circuit court's judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.").