In the Circuit Court for Howard County
Case No. 13-C-14-099312

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1306

September Term, 2015

EDIDIONG UBOM, ET AL.

v.

CARRIE M. WARD, ET AL.,
SUBSTITUTE TRUSTEES

Nazarian,
Kehoe,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: July 25, 2017

Appellants, Edidiong U. Ubom ("Mrs. Ubom") and the Reverend Uduak J. Ubom, Esq. ("Rev. Ubom")[1] (collectively, "the Uboms"), appeal an order of the Circuit Court for Howard County denying appellants' Verified Motion for Temporary Restraining Order and Preliminary and Permanent Injunctive Relief, Motion to Dismiss/Stay Foreclosure Sale, and Exceptions to Foreclosure Sale. They present eight questions for our review,[2] which collectively question the propriety of the circuit court's ruling

[1] Rev. Ubom is a licensed attorney admitted to the bar in Washington, D.C. Throughout the proceedings, the court was aware Rev. Ubom is an attorney.

[2] Appellants present the following eight questions for our review, which we set forth verbatim:

I. The Trial Court erred in denying Appellant's Exceptions, Motions for restraining order, preliminary and permanent injunction, motion to dismiss/stay sale, motion to reinstate modification agreement and other foreclosure remedies where Appellees breached the September 21, 2009 contract/modification agreement between WaMu/Chase/PennyMac and Appellants.

II. The Trial Court erred in denying Appellant's Exceptions, Motions for restraining order, preliminary and permanent injunction, motion to dismiss/stay sale, motion to reinstate modification agreement and other foreclosure remedies where Appellants were not served the notice to docket pursuant to Section 15, of the Deed of Trust, as modified by Appellants.

III. Whether the Trial Court erred in denying Appellant's Exceptions, Motions for restraining order, preliminary and permanent injunction, motion to dismiss/stay sale, motion to reinstate modification agreement and other foreclosure remedies where Appellant's presented enough evidence to support a grant.

IV. The Trial Court erred in denying Appellant's Exceptions, Motions for restraining order, preliminary and permanent injunction, motion to dismiss/stay sale, motion to reinstate modification agreement and other foreclosure remedies where the Court refused to accept or admit any evidence supporting a prior modification contract/agreement or ongoing correspondence from Appellees assuring Appellants that their modification application is being considered.

(Continued…)

denying Appellants' motions based on its finding that the Uboms failed to meet their burden of proof. We have consolidated and rephrased the questions presented into the following question:

> Did the circuit court err in denying Appellants' Verified Motion for Temporary Restraining Order and Preliminary and Permanent Injunctive Relief, Motion to Dismiss/Stay Foreclosure Sale, and Exceptions to Foreclosure Sale?

For the reasons that follow, we affirm the judgment of the circuit court.

(…cont'd)

V. The Trial Court erred in denying Appellant's Exceptions, Motions for restraining order, preliminary and permanent injunction, motion to dismiss/stay sale, motion to reinstate modification agreement and other foreclosure remedies where Appellants offered to purchase the property for $300,000 before the foreclosure sale, whereas Appellees sold the property to itself for $290,000.

VI. The Trial Court erred in denying Appellant's Exceptions, Motions for restraining order, preliminary and permanent injunction, motion to dismiss/stay sale, motion to reinstate modification agreement and other foreclosure remedies where Appellants requested a reinstatement amount from Appellees and Appellees assured Appellants the amount will be provided before any sale but was never provided.

VII. The Trial Court erred in denying Appellant's Exceptions, Motions for restraining order, preliminary and permanent injunction, motion to dismiss/stay sale, motion to reinstate modification agreement and other foreclosure remedies where the Final loss Mitigation Affidavit filed by Appellees is false, as Appellants never defaulted in returning required documents. Real Property 7.105.1.

VIII. The Trial Court erred in denying Appellant's Exceptions, Motions for restraining order, preliminary and permanent injunction, motion to dismiss/stay sale, motion to reinstate modification agreement and other foreclosure remedies where Appellees negotiated in bad faith with Appellants in their effort to retain their property.

FACTUAL AND PROCEDURAL BACKGROUND

A division of PennyMac Loan Services, LLC, PNMAC Mortgage Opportunity Fund Investors, LLC ("PNMAC"), was the holder of a note endorsed in blank[3] and secured by a deed of trust from appellants for real property identified as 6408 Southampton Court, Elkridge, MD 21075 ("Elkridge"). Appellants executed the note on or about August 28, 2007, for $405,000. At all times, appellants' primary residence was 12324 Needlepine Terrace, Silver Spring, MD 20904 ("Needlepine").

Elkridge was first used as an unspecified type of group home sponsored by the State of Maryland and required Mrs. Ubom to reside there. Beginning in March 2009, appellants defaulted on the payments due under the note. On or about June 4, 2013, appellants ceased using Elkridge as a group home and began leasing it. Although they received rental payments from their tenant, appellants continued to miss payments due under the note. On February 18, 2014, nearly five years after appellants first defaulted on payments, PNMAC mailed a Notice of Intent to Foreclose to appellants at Needlepine.

On February 24, 2014, PNMAC appointed as Substitute Trustees Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Pratima Lele, Tayyaba C. Monto, Joshua Coleman, Richard R. Goldsmith, Jr., and Ludeen McCartney-Green ("the Substitute Trustees") (collectively, PNMAC and the Substitute Trustees are referred to as "the Appellees") by

[3] The note was first held by Homecomings Financial. However, it was sold to several banks, including Washington Mutual and JP Morgan Chase, before PennyMac Loan Services, LLC ("PennyMac") purchased the note.

an Appointment of Substitute Trustees recorded in the Land Records of Howard County on June 10, 2014.

Meanwhile, appellants submitted a request for loss mitigation to PNMAC; they, however, failed to include some of the required documents (RMA, 4506T, Pay Stubs, Tax Returns, Bank Statements, and Utility Bill), and, on March 7, 2014, the appellees filed a Preliminary Loss Mitigation Affidavit with the Circuit Court, stating the Loss Mitigation Application was denied due to incomplete application. Because appellants continued to default on payments due, the Substitute Trustees filed a foreclosure action against the appellants in Howard County Circuit Court on June 9, 2014.

On June 12, 2014, at 7:04 p.m., the process server attempted to serve a Notice of Foreclosure Action, Preliminary Loss Mitigation Affidavit, and a Loss Mitigation Application with Instructions and Description of Loss Mitigation Options on the appellants at Needlepine but failed because no one answered the door. The process server made a second attempt on June 14, 2014, at 11:59 a.m. to serve the appellants at Needlepine and, once again, failed for the same reason. After the second unsuccessful attempt at service, the process server posted a copy of the documents at Elkridge on June 14, 2014, at 12:20 p.m. In addition, the Substitute Trustees mailed a copy by certified mail to appellants at both Elkridge and Needlepine.

Appellants submitted the Loss Mitigation Application (their second such filing) that was included in the documents served at Elkridge, requesting consideration for Home Affordable Modification Program Tier 2 ("HAMP"). Appellants did not include

their tax returns, utility bill, and RMA. On October 3, 2014, appellants' HAMP request was denied because appellants' housing expense ratio did not fall within the range required for HAMP eligibility.

On October 31, 2014, Mrs. Ubom completed and signed a Request for Foreclosure Mediation and filed it with the Circuit Court for Howard County on November 5, 2014. In response to Mrs. Ubom's request for mediation, on November 14, 2014, the Substitute Trustees filed a Motion to Strike the Request for Mediation, arguing under Md. Code (1974, 2010 Repl. Vol.), § 7-105.1(j)(1)(ii) of the Real Property Article,[4] foreclosure mediation is available only to mortgagors and grantors of owner-occupied residential property and, because the Uboms do not reside at Elkridge, they are not eligible for foreclosure mediation.

According to the appellants, Rev. Ubom, on December 8, 2014, made an offer to PennyMac on behalf of a client to purchase Elkridge for $300,000 using an IOLTA

[4] Section 7-105.1(j) provides:

> (j) Filing completed request for postfile mediation.–
>
> (1) (ii) In a foreclosure action on owner-occupied residential property, the mortgagor or grantor may file with the court a completed request for postfile mediation not later than:
>
> (1) If the final loss mitigation affidavit was delivered along with the service of the copy of the order to docket or complaint to foreclose under subsection (h) of this section, 25 days after that service on the mortgagor or grantor; or
>
> (2) If the final loss mitigation affidavit was mailed as provided in subsection (i) of this section, 25 days after the mailing of the final loss mitigation affidavit."

Attorney Trust Account, but the offer was rejected.[5] Over the appellees' objection at not having been provided evidence as to the offer before the hearing, the trial judge permitted admission of a letter written on generic paper by Rev. Ubom and dated November 5, 2014, supposedly substantiating this claim. However, the trial judge noted he had "difficulty accept[ing]– understanding it or attaching significance to it because there isn't any evidence to support it. . . ." Ultimately, the trial judge found the letter to have "no credibility."

On November 20, 2014, the Substitute Trustees sent the appellants a Notice of Foreclosure Sale stating Elkridge will be sold at auction on December 10, 2014, at 9:44 a.m. In addition, and in accordance with Maryland law, on November 20, 2014, November 27, 2014, and December 4, 2014, the Substitute Trustees advertised the sale in the Howard County Times newspaper.

In response to the Notice of Foreclosure Sale, appellants filed on December 1, 2014, a Verified Motion for a Temporary Restraining Order and Preliminary and Permanent Injunctive Relief, a Motion to Dismiss/Stay Foreclosure Sale or in the Alternative Order Reinstatement of Agreement and/or Consideration of Modification Application or Other Alternative Foreclosure Remedy. On December 5, 2014, the Substitute Trustees filed a motion opposing the appellants' motions, arguing the Uboms were properly served and, pursuant to Maryland Real Property law, were not entitled to

[5] An IOLTA Attorney Trust Account is an "Interest on Lawyer Trust Account" where client funds are deposited and earn interest. *See* "What is IOLTA?" *http://www.iolta.org/what-is-iolta* (last visited June 22, 2017).

mediation because Elkridge was not owner-occupied. There was no hearing on the motions, and the sale went forward. On December 10, 2014, Elkridge was sold at auction to PennyMac for $290,420.

On December 22, 2014, the trial court judge granted the Substitute Trustees' Motion to Strike the Request for Mediation and struck the Request for Mediation.

On December 26, 2014, the Substitute Trustees filed a Report of Sale and Affidavit of Fairness of Sale and Truth of Report, an Affidavit of Notice by Mail Prior to Sale, and an Affidavit by Purchaser. In response, on January 1, 2015, the Uboms filed an Exception/Opposition to Trustees Foreclosure Sale. On January 15, 2015, January 22, 2015, and January 29, 2015, the Substitute Trustees placed a notice of the sale in the Howard County Times.

On February 9, 2015, the Substitute Trustees' filed an Opposition to the Uboms' Exceptions to Sale. A hearing was set for March 5, 2015. However, due to inclement weather the courthouse was closed for the day, and the hearing was rescheduled for April 3, 2015. At Rev. Ubom's request, the hearing was rescheduled for May 8, 2015. At the May 8, 2015 hearing, at the Uboms' request, the hearing was rescheduled for June 4, 2015; Mrs. Ubom, however, failed to appear at the hearing, and the Uboms were granted another thirty-day continuance. On July 17, 2015, the court held a hearing on the motions.[6]

[6] At no point did Mrs. Ubom appear before the court.

At the hearing, Rev. Ubom appeared pro se and testified as a witness. After oral argument, testimony, and cross examination, the trial judge denied as moot the Verified Motion for Temporary Restraining Order and Preliminary and Permanent Injunctive Relief and denied the Motion to Dismiss/Stay Foreclosure Sale and the Exception/Opposition to Report of Sale.

On August 14, 2015, the Uboms noted a timely appeal to this Court.

DISCUSSION

Pre-Sale and Post-Sale Challenges to the Foreclosure

An owner of real property is "possessed of three means of challenging a foreclosure: obtaining a pre-sale injunction pursuant to Maryland Rule [14-211], filing post-sale exceptions to the ratification of the sale under Maryland Rule 14-305(d), and the filing of post-sale ratification exceptions to the auditor's statement of account pursuant to Maryland Rule 2-543(g), (h)." *Wells Fargo Home Mortgage, Inc. v. Neal*, 398 Md. 705, 726 (2007) (citing Alexander Gordon IV, *Gordon on Maryland Foreclosures* § 21.01 (3d ed. 1994)). "'The grant or denial of injunctive relief in a property foreclosure action lies generally within the sound discretion of the trial court.'" *Svrcek v. Rosenberg*, 203 Md. App. 705, 720 (2012) (quoting *Anderson v. Burson*, 424 Md. 232, 243 (2011)). Thus, we review a ruling on a motion to stay a foreclosure for an abuse of discretion. *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534, 546 (2013). We, however, review the trial court's legal conclusions de novo. *Svrcek*, 203 Md. App. at 720.

In *Jones v. Rosenberg*, this Court described the applicable standard of review for a trial court's ruling on an exception as follows:

> In ruling on exceptions to a foreclosure sale and whether to ratify the sale, trial courts may consider both questions of fact and law. In reviewing a trial court's finding of fact, we do not substitute our judgment for that of the lower court unless it was clearly erroneous and give due consideration to the trial court's opportunity to observe the demeanor of the witnesses, to judge their credibility and to pass upon the weight to be given their testimony. Questions of law decided by the trial court are subject to a *de novo* standard of review.

178 Md. App. 54, 68 (2008) (citations omitted) (internal quotation marks omitted).

The Specific Issues Raised by the Uboms on Appeal

The Trial Court's Ruling on Appellants' Motion for a Temporary Restraining Order to Halt the Foreclosure Sale

Finding the Motion was moot because the sale had already occurred, the trial court did not rule on the merits of appellants' Motion for a Temporary Restraining Order. A question is moot if, at the time it is before the court, there is no longer any effective remedy that the court can provide. *Attorney Gen. v. Anne Arundel Cty. Sch. Bus Contractors Ass'n, Inc.*, 286 Md. 324, 327 (1979). Because Elkridge had already been sold at auction and appellants sought a temporary restraining order to prevent the sale, the trial court concluded appellants' Motion for a Temporary Restraining Order was moot. We perceive neither error nor abuse of discretion.

The Trial Court's Ruling on Appellants' Motion to Dismiss/Stay the Foreclosure

The time for filing a motion to stay and dismiss is governed by Maryland Rule 14-211(a)(2)(B), which provides that, "[i]n an action to foreclose a lien on property, other

than owner-occupied residential property,[7] 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." Under Maryland Rule 14-209(b),

> [i]f on at least two different days a good faith effort to serve a borrower or record owner . . . 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 . . . 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.

Because Elkridge was not owner-occupied, Maryland Rule 14-211(a)(2)(B) required that the Uboms file a pre-sale challenge no later than 15 days after service. The record reflects that service was effectuated on June 14, 2014. Appellants challenge this service as improper and contend that they therefore lacked notice of the foreclosure proceedings, but nothing in the record supports this claim. Rather, the record reflects the process server made two good faith efforts to serve the Uboms on two different days, but was unsuccessful because no one answered the door when he knocked. In accordance with the law, the process server posted the required documents and appellees also sent a copy via certified first class mail to appellants at both Elkridge and Needlepine. The trial court's finding that appellants were served on June 14, 2014, was not clearly erroneous.

[7] The trial court found Elkridge was not owner-occupied and Rev. Ubom clearly admitted under oath that Elkridge was not owner-occupied. The trial court's finding was not clearly erroneous.

Appellants filed their Motion to Dismiss/Stay on December 1, 2014—nearly six months after the fifteen-day window had closed. Accordingly, the trial court correctly dismissed appellants' Motion to Dismiss/Stay as untimely.

The Trial Court's Ruling on Appellants' Post-Sale Exceptions

Under Maryland law, a homeowner "must assert known and ripe defenses to the conduct of a foreclosure sale prior to the sale, rather than in post-sale exceptions." *Bates v. Cohn*, 417 Md. 309, 328 (2010) (citing Md. Rule 14-305). If homeowners were permitted to collaterally attack the foreclosure sale after the sale takes place, "[p]rospective third-party purchasers would be unable—based on most practical notions of what constitutes due diligence—to gauge against such claims the risk of an intended investment. Being a bona fide purchaser for value then would not mean as much or ever offer the traditional safe harbor underlying that status." *Id.* at 329–30. For that reason, and, as the Court of Appeals has stated, Maryland permits post-sale exceptions to challenge only procedural irregularities at the foreclosure sale or the amount of the debt. After the foreclosure sale, "the debtor's later filing of exceptions . . . may challenge only procedural irregularities at the sale or . . . the statement of indebtedness[.]" *Id.* at 327.

Appellants allege generally that appellees denied appellants' request for a reinstatement amount; that appellees negotiated in bad faith with appellants in their effort to retain Elkridge; that appellees filed a false Final Loss Mitigation Affidavit because appellants never defaulted in returning required documents; and that appellees breached a

contract modification dated September 21, 2009. The trial court found appellants' allegations were unsupported by the record and, thus, were not credible.

Appellants fail to point us to, and we cannot find, evidence in the record that would substantiate their general allegations related to a denial of a request for a reinstatement amount, bad faith negotiations, a false Final Loss Mitigation Affidavit, a breach of a contract modification or even the existence of the alleged modification. Appellants also argue that the trial court refused to admit evidence that would have substantiated these claims, but appellants point us to pages in the July 17, 2015 hearing transcript that show that the trial court *admitted* that evidence but found "a failure of competent and *credible* evidence that's been accepted by the Court." (Emphasis added.)

Based on our review of the record, the court's finding is not clearly erroneous.

CONCLUSION

In short, we perceive neither error nor an abuse of discretion in the denial of the Verified Motion for Temporary Restraining Order and Preliminary and Permanent Injunctive Relief, the Motion to Dismiss/Stay Foreclosure Sale, or the Exception/Opposition to Report of Sale.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.