

Circuit Court for Montgomery County
Case No. 409885V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2084

September Term, 2017

MOHAMMED I. KHAN

v.

CARRIE M. WARD, *et al.*

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

JJ.

PER CURIAM

Filed: February 1, 2019

*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.

In 2015, appellees, acting as substitute trustees,¹ filed an Order to Docket in the Circuit Court for Montgomery County, seeking to foreclose on real property owned by Mohammed Khan, appellant. Appellees filed the final loss mitigation affidavit on February 22, 2016. The case was stayed after Mr. Khan filed a suggestion of bankruptcy in February 2017. The stay was ultimately lifted on October 5, 2017, and a foreclosure sale was scheduled for November 20, 2017.

On November 16, 2017, Mr. Khan filed an “Emergency Motion to Dismiss Foreclosure for Non-Compliance” (motion to dismiss),² a motion to shorten the time for appellees to respond to the motion to dismiss (motion to shorten time), and a request for post-file mediation. In the motion to dismiss, Mr. Khan contended that the final loss mitigation affidavit should be stricken because it violated § 7-501.1(g) of the Real Property Article. Mr. Khan further asserted that he should be allowed to engage in post-file mediation because appellees “misguided [him] by providing wrong information [that] distracted him from requesting postfile mediation in time.” The court denied the motion to shorten time the same day; however, it did not immediately rule on the motion to dismiss or request for foreclosure mediation.

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

² We note that Mr. Khan also filed a motion to dismiss the foreclosure action in October 2015. The circuit court denied that motion in November 2015, and Mr. Khan did not appeal that decision to this Court.

On November 20, 2017, Mr. Khan filed an “Emergency Injunction to Stay Foreclosure Sale, Dismiss the Case, or Grant Trial by Jury” (motion to stay). The motion was filed approximately three hours before the foreclosure sale was scheduled to occur. In that motion, Mr. Khan asserted that the preliminary loss mitigation affidavit and final loss mitigation affidavit contained “misleading information and were defective” because the information provided in them “reflected that there was no mitigation available, but plaintiff distracted defendant from taking appropriate actions to protect his house from being foreclosed.” He also claimed that appellees and his mortgage lender were negligent because they had: (1) “benefitted from taxpayers money by making taxpayers believe that this money [would] be used to help the community,” but instead used that money to “foreclose [his] house;” (2) “caused inflation in [the] housing market;” (3) gave him “false hopes” that “his loan c[ould] be made affordable for him;” and (4) used taxpayer money “for the trade of papers in the name of ‘growth of wealth.’” On December 4, 2017, the court entered an order denying the motion to dismiss, the motion to stay, and the request for foreclosure mediation. This appeal followed.

On appeal, Mr. Khan raises five issues, which we rephrase for clarity: (1) whether the court erred in denying his request for post-file mediation; (2) whether the court abused its discretion in denying his motion to dismiss and motion to stay; (3) whether the court erred in denying his motion to dismiss and motion to stay without holding a hearing; (4) whether the court erred in not ruling on his motions in the order in which they were filed; and (5) whether the court erred in not ruling on his motion to stay before the foreclosure sale occurred. Based on our review of the record, we are not persuaded that the circuit

court abused its discretion in denying Mr. Khan’s request for post-file mediation, motion to stay, or motion to dismiss without a hearing. Moreover, Mr. Khan has not demonstrated that he was prejudiced by the order or the timing in which the trial court ruled on those motions. Therefore, we affirm the judgment of the circuit court.

Mr. Khan first contends that the court erred in denying his request for post-file mediation. However, a request for post-file mediation must be filed within “25 days after the mailing of the final loss mitigation affidavit.” Md. Code Ann., Real Property § 7-105.1(j)(1). In this case, the final loss mitigation affidavit was filed on February 22, 2016. But Mr. Khan did not file his request for post-file mediation until November 16, 2017, almost two years later. Thus, it was untimely. Moreover, even if we assume that the trial court had the authority to excuse the untimely filing, we perceive no abuse of its discretion in its refusal to do so. Although Mr. Khan asserted that appellees had “misguided [him] by providing wrong information [that] distracted him from requesting postfile mediation in time,” he did not specify what information they had provided, why it was incorrect, or why it had prevented him from filing his request for mediation for almost two years.³ Consequently, the court did not err in denying Mr. Khan’s request for post-file mediation.

³ In his reply brief, Mr. Khan contends for the first time that the court erred in denying his request for post-file mediation because appellees’ opposition to that request was not accompanied by an affidavit. Because this issue was not raised in his initial brief, we decline to address it on appeal. *See Bryant v. Bryant*, 220 Md. App. 145, 173 (2014) (“The purpose of a reply brief is to reply within the boundaries established by first, the appellant’s brief and then, more narrowly, the appellee’s brief.” (emphasis in original)).

Mr. Khan next claims that the court abused its discretion in denying his motion to dismiss and motion to stay. Again, we disagree. As an initial matter, both motions were untimely because they were filed more than fifteen days after the filing of the final loss mitigation affidavit and did not state with particularity the reasons why they were not timely filed. *See* Maryland Rule 14–211(a)(2)(A). Thus, they could have been denied for this reason alone.

Moreover, the motions did not comply with Maryland Rule 14-211(a)(3)(B), which requires that a motion to stay or dismiss a foreclosure action “state with particularity the factual and legal basis for each defense that the moving party has to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action.” First, Mr. Khan’s claims that appellees misused taxpayer money, caused inflation, and gave homebuyers false hope about the affordability of their loans were not valid defenses to the foreclosure action. Second, although a claim that a lender failed in its duty to pursue loss mitigation efforts can be a defense in a foreclosure action, Mr. Khan’s conclusory assertion that the final loss mitigation affidavit failed to comply with § 7-501.1(g) of the Real Property Article did not satisfy the requirement that defenses be stated “with particularity.” Moreover, the committee note accompanying Rule 14-211(a)(3)(B) explains that if a motion to dismiss or stay is based on the failure to grant loss mitigation, the motion must “set[] forth good cause why loss mitigation pursuant to a loss mitigation program should have been granted.” Yet, neither of Mr. Khan’s motions demonstrated why he would have likely been granted loss mitigation but for the alleged errors in the final loss mitigation

affidavit. Therefore, the circuit court did not abuse its discretion in denying Mr. Khan’s motion to stay and motion to dismiss.

Mr. Khan also contends that the court erred in not holding a hearing on those motions because he was deprived of the opportunity to present his claims to the court. However, because his motions were untimely and did not set forth a valid defense to the foreclosure action, Mr. Khan was not entitled to a hearing on those motions. *See* Maryland Rule 14-211(b)(1) (stating that the court shall deny a motion to stay or dismiss without a hearing if it is untimely, fails to substantially comply with Rule 14-211, or fails to state a valid defense to the validity of the lien or the right of the plaintiff to foreclose).

Finally, Mr. Khan asserts that the trial court erred in not ruling on his motions in the order that they were filed and in not ruling on his motion to stay until after the foreclosure sale was completed. We initially note that Mr. Khan does not cite any legal authority to support these claims. But even if we assume that the trial court erred, reversal would not be required because Mr. Khan cannot demonstrate prejudice. *See Zook v. Pesce*, 438 Md. 232, 252 (2014) (“[I]n a civil case, a petitioner must not only show error but must demonstrate that the error was prejudicial”). For the reasons already set forth, the court would have been required to deny Mr. Khan’s motions pursuant to Rule 14-211(b)(1) even if they had been addressed in the order that they were filed and prior to the foreclosure sale.

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