

Circuit Court for Carroll County
Case No. C-06-CV-18-000521

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2127

September Term, 2019

SEAN SPARKS

v.

CARRIE M. WARD, *ET AL.*

Kehoe,
Nazarian,
Reed,

JJ.

Opinion by Kehoe, J.

Filed: January 12, 2021

*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. *See* Md. Rule 1-104.

Sean Sparks appeals from a judgment of the Circuit Court for Carroll County that denied his exceptions to the foreclosure sale of his former residence. Appellees, who are the substitute trustees appointed by the loan servicer, RoundPoint Mortgage Servicing Corporation, have filed a motion to strike parts of Sparks' brief and record extract. We will affirm the judgment and deny the motion to strike.

In 2008, Sparks signed a promissory note secured by a deed of trust encumbering his home in Carroll County. He fell behind on his payments. In 2014, Sparks and the loan servicer signed a modification agreement that lowered his interest rate, provided for the payments of past due amounts over time, and reduced the principal balance. Unfortunately, Sparks continued to have difficulty in making payments. In 2018, the substitute trustees filed the present foreclosure action. Sparks requested a loss mitigation mediation session with a representative of the secured party pursuant to Md. Code Real Prop. § 7-105.1. RoundPoint was the secured party's representative. The session took place on June 12, 2019 with the assistance of an administrative law judge. The ALJ reported to the circuit court that "[t]he parties participated in the mediation but no agreement was reached."

On July 5, 2019, Sparks filed a motion to stay or dismiss the foreclosure action pursuant to Md. Rule 14-211. Notably, Sparks' pre-sale motion did not assert that the mediation session had not been completed, or that RoundPoint had failed to participate in the mediation session in good faith. The gist of the pre-sale motion was that RoundPoint had "violated its duty of good faith and fair dealing and the policy goals behind Maryland's

foreclosure law by failing to cancel a foreclosure sale when the servicer [had] a complete package of documents in support of loan modification review.” The circuit court denied the motion and the foreclosure sale took place.

Sparks then filed exceptions to the sale pursuant to Md. Rule 14-305(d). In that motion, he asserted that the substitute trustees violated Maryland law by holding the sale “prior to the conclusion of the mediation process.” The mediation session was never completed, he said, because RoundPoint did not participate in good faith. The circuit court denied the motion after a hearing and this appeal followed.

1.

To this Court, Sparks argues that the circuit court erred when it concluded that RoundPoint had participated in the pre-sale mediation process or indeed, that a mediation process had even occurred. Sparks has waived these arguments. His current contentions that a mediation had not taken place or that the loan servicer failed to participate in good faith in the process are paradigmatic examples of the sorts of issues that must be raised in a pre-sale motion to stay or dismiss pursuant to Md. Rule 14-211. Because Sparks didn’t present these contentions in his motion to stay or dismiss, he has waived them. *See, e.g., Thomas v. Nadel*, 427 Md. 441, 445 (2012); *Bates v. Cohn*, 417 Md. 309, 328 (2010); *Greenbriar Condominium v. Brooks*, 387 Md. 683, 688 (2005).

We emphasize that “improprieties in the larger foreclosure process that occur before the sale and are known to the homeowner prior to the sale must be raised pre-sale.” *Devan*

v. Bomar, 225 Md. App. 258, 268 (2015). If not timely raised, then those claims are waived and cannot be asserted in the post-sale exceptions. *Id.*¹

2.

The substitute trustees filed a motion to strike portions of Sparks’ brief and the record extract on the basis that they contain references to discussions that occurred during the mediation session. They say that evidence of the discussions is “inadmissible under Maryland law.” The authority they cite for this proposition, Md. Rule 5-408(a), is inapposite because that rule addresses the admissibility of evidence of statements made in mediations “to prove the validity, invalidity or amount” of a claim in a civil action. *Id.* To the extent that Sparks attempted to introduce evidence of what occurred and didn’t occur during the mediation session, he did so in order to prove that RoundPoint was not acting in good faith. That isn’t the same thing as contesting the amount due under the loan documents.

The substitute trustees also assert that a confidentiality agreement signed at the mediation session prohibits Sparks from referencing what occurred at the mediation session. The agreement states in pertinent part that “mediation discussions are confidential . . . and are not admissible in any . . . judicial proceeding.” Because the agreement

¹ Were we to consider this appeal on its merits, we would hold that there is insufficient information in the record for us to conclude that the administrative law judge erred when he informed the circuit court that a mediation proceeding had taken place.

references admissibility in judicial proceedings, we conclude that it must be interpreted in the context of the existing law, which is set out in Md. Rule 5-408.

We are aware that Md. Rule 17-105 contains a broad prohibition against the disclosure of mediation communications for most purposes. However, title 17 of the Maryland Rules does not apply to mediations, like the one in this case, that are “conducted by the Office of Administrative Hearings under Rule 14-209.1[.]” Md. Rule 17-101(b)(2).

We are not persuaded that Maryland law or the terms of the mediation agreement prevent Sparks from referencing what was said and what wasn’t said in the foreclosure mediation session to support his contention that RoundPoint was not participating in the mediation process in good faith.

**THE MOTION TO STRIKE IS
DENIED. THE JUDGMENT OF THE
CIRCUIT COURT FOR CARROLL
COUNTY IS AFFIRMED.**

**COSTS TO BE DIVIDED EQUALLY
BETWEEN THE PARTIES.**