

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2229

September Term, 2016

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FLAUBERT MBONGO, ET AL.

v.

CARRIE WARD, ET AL.,  
SUBSTITUTE TRUSTEES

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Woodward, C.J.,  
Eyler, Deborah S.,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: February 9, 2018

\*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.

On October 7, 2015, substitute trustees, appellees, filed an order to docket foreclosure of 14434 Bradshaw Drive, Silver Spring, Maryland, in the Circuit Court for Montgomery County.<sup>1</sup> On October 22nd, Flaubert Mbongo and Charlotte Dikongue (collectively, the appellants), filed a motion to stay, which the court treated as a motion pursuant to Rule 14-211.<sup>2</sup> In their motion, appellants argued that a pending suit against the loan servicer supported a stay. The circuit court denied the motion, and this Court affirmed in an unreported opinion. *See Mbongo v. Ward*, No. 2436, Sept. Term 2015 (filed Jan. 18, 2017) (hereinafter *Mbongo I*).

Meanwhile, a foreclosure sale was scheduled for January 27, 2016. On that day, Mbongo filed for bankruptcy in the United States Bankruptcy Court for the District of Maryland, which halted the sale. *See* 11 U.S.C. § 362 (providing for bankruptcy stay). Approximately three weeks later, however, the bankruptcy court dismissed the case, lifting the stay. *See id.* at § 362(c). Appellees then scheduled a foreclosure sale for November 4, 2016. Appellants filed a motion for injunctive relief on October 31, 2016, contending that appellees had failed to comply with Rule 14-206(a)(4), and, therefore, the foreclosure could not proceed. After the circuit court denied appellants' motion, they noted this appeal. Appellants maintain that following the lifting of the bankruptcy stay, appellees were

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<sup>1</sup> The substitute trustees in this case 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.

<sup>2</sup> Appellants asserted that their motion was not based on Rule 14-211 and was, instead, filed pursuant to Rules 2-311 and 12-102.

required to file for immediate foreclosure pursuant to Rule 14-206 or to file a completely new proceeding. For the reasons stated below, we disagree and affirm.

Appellants, as in their previous appeal, maintain that their motion for injunctive relief was not filed pursuant to Rule 14-211. In *Mbongo I*, we stated that appellants’ motion “had to comply with Rule 14-211” because there are “three means of challenging a foreclosure: obtaining a pre-sale injunction; filing post-sale exceptions to the ratification of the sale; and filing post-sale exceptions to the auditor’s statement of account.” *Mbongo I* at slip op. 3. Because no sale had occurred, appellants’ remedy in this case, as in the prior one, was a motion filed pursuant to Rule 14-211.

Appellants’ motion, however, failed to comply with the requirements of the rule. For example, Rule 14-211(a)(2)(A) requires a pre-sale motion to stay for owner-occupied residential property to be filed “no later than 15 days after the last to occur of: (i) the date the final loss mitigation affidavit is filed; (ii) the date a motion to strike postfile mediation is granted;” or (iii) certain events occurring with mediation. Because appellants did not request mediation in this case, then a motion to stay pursuant to Rule 14-211 had to have been filed within fifteen days of the final loss mitigation affidavit, which was filed on November 24, 2015. Accordingly, appellants’ motion for injunctive relief filed on October 31, 2016, was untimely.

Furthermore, Rule 14-211(a)(3) requires motions to stay to be supported by affidavit and “state with particularity the factual and legal basis of 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.” Appellants’ motion was not supported by affidavit and

did not state with particularity any factual or legal basis of a defense to the validity of the lien or the lien instrument or to the right of appellees to foreclose.

Rather, appellants contended that appellees were required to file a motion to proceed with an immediate foreclosure pursuant to Rule 14-206(a)(4) following the lifting of the bankruptcy stay. Appellees were not, however, required to do so because Rule 14-206(a) is permissive, providing that a “secured party **may** file a petition to be excused from the time and notice requirements [of applicable foreclosure rules] and for leave to file an action for immediate foreclosure of a lien against residential property” in the event of a default occurring after the lifting of a stay in a bankruptcy proceeding. Rule 14-206(a)(4) (emphasis added). Accordingly, even if timely, appellants’ reasoning for the stay did not warrant a stay of the proceedings.

Finally, appellants baldly assert that the circuit court should have granted their motion for injunctive relief because they demonstrated a likelihood of success on the merits. At no point, however, do they discuss what those merits are or what their defense is to the lien.

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