Circuit Court for Prince George's County
Case No. CAEF18-07836

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2727

September Term, 2018

DONALD ELLINGTON, ET AL.

v.

JAMES E. CLARKE, ET AL.

Arthur,
Shaw Geter,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed:

*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.

Appellants, Donald Ellington and Vanessa Ellington, having defaulted on a promissory note secured by a deed of trust on residential real estate, sought, on several occasions, to have the resulting foreclosure proceedings either dismissed or stayed.[1] Notwithstanding those efforts, and post-sale exceptions, the foreclosure proceeded to sale and ratification by the Circuit Court for Prince George's County.[2]

Appellants noted this appeal, asking in their brief:

> DID THE LOWER COURT ABUSE ITS DISCRETION BY FAILING TO HOLD AN EVIDENTIARY [RULE] 14-211 HEARING AND DENYING APPELLANTS' MOTIONS?
>
> a) [D]id the servicer comply with federal regulations and Maryland law in connection with Appellants' loan modification efforts?
>
> b) [D]o the two versions of the subject Note with different endorsements create a conflict with Appellees' sworn Affidavit?
>
> c) [D]o Appellees have "unclean hands," thus requiring dismissal of the foreclosure?

Finding neither error nor abuse of discretion, we shall affirm the judgment of the circuit court.

I. BACKGROUND

The mortgage transaction

On November 1, 2006, appellant, Donald Ellington, executed a promissory note and a deed of trust to Premier Mortgage Company. The deed of trust was also co-signed by his

[1] Appellants acted *pro se* throughout the circuit court proceedings but retained counsel one month before the sale was ratified.

[2] Appellees in the matter before us are, collectively, substitute trustees with authority to prosecute the foreclosure proceedings.

wife, Vanessa. The note was secured by their residential property at 417 Dennis Magruder Drive in Upper Marlboro, Prince George's County through a deed of trust. As is common in the industry, Premier, via MERS,[3] assigned the deed of trust to Bank of America which, in turn, afforded servicing rights to Wells Fargo Bank, NA, as is apparent from the indorsements reflected on the note.[4] The Corporate Assignment of Deed of Trust document, reflecting the chain of the assignment, was appropriately recorded among the land records of Prince George's County.

Foreclosure proceeding

In early May 2017, after appellants had failed to make complete mortgage payments for several months, they were notified by Wells Fargo of the default and its intent to accelerate the loan. That notice included identification of Bank of America as the secured party and Wells Fargo as the loan servicer. Wells Fargo, as servicing agent to Bank of America, appointed substitute trustees—appellees—to enforce the loan. The Order to Docket the foreclosure action was filed in the Circuit Court for Prince George's County on March 26, 2018. One month later, appellants filed the first of three motions to vacate, stay and/or dismiss the foreclosure proceeding. On July 6, 2018, before the court ruled on their

[3] As is common practice for efficiency in mortgage markets, in the deed of trust, Premier named the Mortgage Electronic Registration System (MERS) a nominal mortgagee in the mortgage, making it the beneficiary of the deed of trust and affording it legal title to the interests granted as well as the right to foreclose and sell the property. For an informative discussion of MERS and its application in the mortgage industry, refer to the Court of Appeals's decision in *Anderson v. Burson*, 424 Md. 232, 237–38 (2011).

[4] There are three indorsements on the note, the first by Premier Mortgage Company, LLC to George Mason Mortgage, LLC; the second by George Mason Mortgage, LLC to Wells Fargo Bank, N.A.; and the last by Wells Fargo Bank, N.A. in blank.

first motion, appellants filed a second motion to dismiss. On July 10, 2018, the court denied the first motion for its failure to comply with the requirements of Maryland Rule 14-211.

Following the court's denial of their first motion, with the second motion still pending, appellants filed a third "emergency" motion to stay and/or dismiss on August 6, 2018, two days before the scheduled foreclosure sale. In its emergency status, the court promptly ruled on the third motion, before ruling on the second motion. Finding the emergency motion to be deficient under Rule 14-211, the court summarily denied the emergency motion to stay, allowing the foreclosure sale to proceed as scheduled.

At the sale on August 8, 2018, Bank of America was the purchaser. Approximately three weeks later, the court denied appellants' second motion without a hearing, again for its failure to comply with the requirements of Rule 14-211. Thereafter, appellants filed both a motion to alter or amend and exceptions to the sale with requests for a hearing on each, however, both of which the court also summarily denied. The sale was ratified, and appellants noted this appeal.

II. DISCUSSION

Appellants' assertions of error

Appellants contend that the court abused its discretion when it failed to hold an evidentiary hearing pursuant to Rule 14-211 and by denying their motions. However, within that broad general complaint, they also assert three sub-contentions:

> a) It was an abuse of discretion for the [circuit] court to deny Appellants' motion to stay because loss mitigation efforts were ongoing, which is a valid defense to appellees' right to foreclose.

b) It was an abuse of discretion for the [circuit] court to deny Appellants' Motion to Stay or Dismiss because the ownership of the subject loan is unclear.

c) Appellees cannot proceed because they have unclean hands.

(Cleaned up).

Despite appellants' initial two-part challenge to the court's failure to hold an evidentiary hearing and its denial of their motions, they present argument in their brief only with respect to the latter. Ordinarily, we would decline to review any matter not adequately articulated and argued in a party's brief. Rule 8-504(a)(5)–(6). *See Barnes v. State*, 437 Md. 375, 387 (2014) (explaining that "[u]nder that Rule, '[a]n appellant is required to articulate and adequately argue all issues the appellant desires the appellate court to consider in the appellant's initial brief.'" (quoting *Oak Crest Vill., Inc. v. Murphy*, 379 Md. 229, 241 (2004))). However, considering the somewhat muddled record, and for completeness, we shall entertain appellants' arguments.[5]

Timing of Appeal

At the outset, we recognize that appellants do not challenge the foreclosure sale proceedings or its ratification; rather, they challenge only the court's denial of their pre-

[5] We are mindful that appellants were *pro se* during the pendency of the foreclosure proceeding; however, litigants who choose to self-represent do so at their own risk and are expected to be aware of, and comply with, procedural and substantive rules of court. As Judge Moylan, in writing for this Court, recently reiterated, "'the procedural, evidentiary, and appellate rules apply alike to parties and their attorneys. No different standards apply when parties appear pro se.'" *Gantt v. State*, 241 Md. App. 276, 302 (emphasis in *Gantt*) (quoting *Tretick v. Layman*, 95 Md. App. 62, 68 (1993)), *cert. denied*, 466 Md. 200 (2019). Indeed, "[i]t is a well-established principle of Maryland law that *pro se* parties must adhere to procedural rules in the same manner as those represented by counsel." *Dep't of Labor, Licensing & Regulation v. Woodie*, 128 Md. App. 398, 411 (1999).

sale motions. The issue of timing with respect to challenging the court's ruling on their pre-sale motions is very apparent and, consequently, dispositive of this appeal.

"A borrower's ability to challenge a foreclosure sale is in part determined by whether relief is requested before or after the sale. Prior to the sale, a borrower may file a motion to stay the sale and dismiss the foreclosure action under Maryland Rule 14-211." *Thomas v. Nadel*, 427 Md. 441, 443 (2012). "In other words, the borrower 'may petition the court for injunctive relief, challenging the validity of the lien or … the right of the [plaintiff] to foreclose in the pending action.'" *Svrcek v. Rosenberg*, 203 Md. App. 705, 720 (2012) (quoting *Bates v. Cohn*, 417 Md. 309, 318–19 (2010)). However, if the motion to stay fails and "'[s]hould a sale occur, … the [borrower]'s later filing of exceptions to the sale may challenge only procedural irregularities at the sale or the debtor may challenge the statement of indebtedness by filing exceptions to the auditor's statement of account.'" *Thomas*, 427 Md. at 444 (quoting *Greenbriar Condo. v. Brooks*, 387 Md. 683, 688 (2005)).

As the Court of Appeals recognized in *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534 (2013), because "[a]n interlocutory order of a court may be appealed immediately if the order refused to grant an injunction[,]" it follows that borrowers have "the right to appeal the Circuit Court's interlocutory order denying the Motion to Stay and Dismiss because the motion was made under Rule 14-211 and contemplated injunctive relief as a remedy." 433 Md. at 540 n.2 (internal citations omitted). *See also* Courts and Judicial Proceedings Article § 12-303(3)(iii).

Permitting interlocutory appeals from grants or denials of injunctive relief in the context of foreclosure proceedings is a necessary exception to the general rule of their

prohibition. *See Frase v. Barnhart*, 379 Md. 100, 117 (2003) (addressing the "'common denominator of the exceptions, … [as] the irreparable harm that may be done to one party if he [or she] had to await final judgment before entering an appeal'" (quoting *Flower World of Amer. v. Whittington*, 39 Md. App. 187, 192 (1978))). This is especially apparent because of the well-established principle that "'the final ratification of the sale of property in foreclosure is *res judicata* as to the validity of such sale, except in case of fraud or illegality, and hence its regularity cannot be attacked in collateral proceedings.'" *Bank of New York Mellon v. Nagaraj*, 220 Md. App. 698, 707 (2014) (quoting *Manigan v. Burson*, 160 Md. App. 114, 120 (2004)).

In *Devan v. Bomar*, 225 Md. App. 258 (2015), we discussed the importance of time constraints for raising certain defenses, noting that

> "*if a borrower was able to raise any sort of exception after the foreclosure sale, there undoubtedly would be a chilling effect on interested prospective purchasers* coming to sales. Prospective 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 even offer the traditional safe harbor underlying that status."

225 Md. App. at 260 (emphasis in *Devan*) (quoting *Bates*, 417 Md. at 329–30). That rationale can be applied to belated appeals of pre-sale motions to stay and dismiss. Allowing such appeals well after the sale of the property and ratification of the sale, absent "fraud or illegality," likewise offends the foreclosure process.

Accordingly, because appellants' appeal is untimely and does not assert any challenges to the sale or any allegations of fraud, their pre-sale challenges are deemed waived and we might well dismiss the appeal. However, were we to assume, *arguendo*,

that a belated appeal, taken from the denial of a Rule 14-211 motion following ratification of the foreclosure sale, could stand when it is not based on allegations of fraud, as we will discuss, *infra*, we would find no error by the court.

Standard of Review

"When the exercise of a trial court's discretion whether to grant a stay is invoked properly by a facially legally sufficient motion or petition, appellate courts review the ultimate decision whether to grant or deny the stay for abuse of discretion." *Fishman*, 433 Md. at 546 (citing *Bechamps v. 1190 Augustine Herman, LC*, 202 Md. App. 455, 460 (2011)). However, whether appellants satisfied the Rule 14-211 pleading standard for a "legally sufficient motion" to trigger the hearing requirement, is a question of law. *Buckingham v. Fisher*, 223 Md. App. 82, 92–93 (2015). When a Rule 14-211 motion is "facially legally sufficient," a court has no discretion to decline to hold an evidentiary hearing on the merits. 223 Md. App. at 93; Rule 14-211(b)(2)(A)–(C). As such, we review a "circuit court's decision to decline to hold an evidentiary hearing on the merits to determine whether or not it was legally correct." *Id*. at 93.

Hearing Requirement[6]

Appellants contend that the court "abused its discretion by failing to hold an evidentiary 14-211 hearing …." Notwithstanding appellants' lack of support for that assertion, appellees respond, averring that "Maryland law provides the Circuit Court with broad [discretion] on whether to hold a hearing[,]" and that "[t]he record below is clear that

[6] Appellants concede that whether to conduct a Rule 14-211 motion hearing is within the discretion of the trial court in the circumstances of this record.

the Court reviewed Appellants' repeated motions and submissions and properly exercised its discretion in denying the … motions and ratifying the sale."

Maryland Rule 14-211(b) provides:

> (b) Initial Determination by Court.
>
> (1) *Denial of Motion*. The court shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion:
>
> (A) was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule;
>
> (B) does not substantially comply with the requirements of this Rule; or
>
> (C) does not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action.
>
> (2) *Hearing on the Merits*. If the court concludes from the record before it that the motion:
>
> (A) was timely filed or there is good cause for excusing non-compliance with subsection (a)(2) of this Rule,
>
> (B) substantially complies with the requirements of this Rule, and
>
> (C) states on its face a defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action, the court shall set the matter for a hearing on the merits of the alleged defense. The hearing shall be scheduled for a time prior to the date of sale, if practicable, otherwise within 60 days after the originally scheduled date of sale.

Rule 14-211(b)(1)–(2).

Relevant to the arguments raised by appellants, the Rule requires that:

> (3) *Contents*. A motion to stay and dismiss shall:

> (A) be under oath or supported by affidavit;
>
> (B) 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;
>
> (C) be accompanied by any supporting documents or other material in the possession or control of the moving party and any request for the discovery of any specific supporting documents in the possession or control of the plaintiff or the secured party;
>
> (D) state whether there are any collateral actions involving the property and, to the extent known, the nature of each action, the name of the court in which it is pending, and the caption and docket number of the case;
>
> (E) state the date the moving party was served or, if not served, when and how the moving party first became aware of the action; and
>
> (F) if the motion was not filed within the time set forth in subsection (a)(2) of this Rule, state with particularity the reasons why the motion was not filed timely.

Rule 14-211(a)(3)(A)–(F).

In *Buckingham v. Fisher*, *supra*, this Court was tasked with determining the pleading standard for stating a facially valid defense under Rule 14-211 that would require a court to hold a hearing on the merits. 223 Md. App. at 85. We began our discussion by explaining the process for reviewing motions under Rule 14-211:

> Maryland Rule 14-211 sets out the process for determining whether to grant or deny a motion to stay and dismiss a foreclosure sale. First, the trial court will review the motion and the record and, if it sees fit, may elect to hold an initial hearing …. If the court determines that the motion on its face states a valid defense to the foreclosure, a temporary stay of foreclosure is entered and … an evidentiary hearing on the merits of the defense, is scheduled. On the other hand, if the trial court determines that the motion does not raise a facially valid defense, it may deny the motion without

> holding an evidentiary hearing on the merits, thereby allowing the foreclosure sale to proceed.

223 Md. App. at 84–85 (footnote omitted). In *Buckingham*, we emphasized the broad discretion afforded to circuit courts in determining whether to hold a Rule 14-211 hearing before disposing of a motion that fails to satisfy the pleading requirements.

Further, we determined that because of "the requirements of stating a defense with particularity and supporting those assertions with any available evidence …, under Rule 14-211, the pleading standard is more exacting than the pleading standard for an initial complaint." 223 Md. App. at 91. In order to satisfy the pleading requirements of Rule 14-211 motions, we held that "a party must plead all elements of a valid defense with particularity." *Id*. We held that "particularity means that each element of a defense must be accompanied by some level of factual and legal support. General allegations will not be sufficient to raise a valid defense requiring an evidentiary hearing on the merits." *Id*. at 91–92.

In this appeal, appellants reiterate (indeed, nearly *verbatim*) their circuit court filings relating to ongoing loss mitigation efforts, the ownership of the loan, and unclean hands. They contend:

> The evidence in the circuit court clearly demonstrates improper and illegal conduct by Wells Fargo and Bank of America, a defective note leading to a lack of standing to prosecute the foreclosure, and at the very least, an abuse of discretion on the part of the lower court judges, who seem to have standard orders for rejecting homeowners' pleas even when the facts do not justify the issuance of their orders.

The circuit court had essentially three opportunities from the respective pre-sale motions to consider appellants' arguments and determine whether any of the motions satisfied the requirements of Rule 14-211, compelling a hearing on the merits.

Appellants' first "Motion to Vacate and Dismiss the Foreclosure" contained only bald assertions, lacking the requisite particularity, and did not include affidavits, sworn statements, or any supporting documents as required by Rule 14-211(a)(3)(A)–(C).[7] The motion also failed to indicate whether there were collateral actions pending in relation to the property, or when they were served with notice of the foreclosure action, as required. *See* Rule 14-211(a)(3)(D)–(E).

The July 10, 2018 order denied that motion because, in the court's words:

> (1) Defendant's [sic] Motion does not state with particularity the factual and legal basis of each defense to the validity of the lien or the lien instrument, or Plaintiffs' right to foreclose pursuant to Maryland Rule 14-211(a)(3)(B);
>
> (2) Defendant's [sic] Motion is not accompanied by supporting documentation pursuant to Maryland Rule 14-211(a)(3)(C);
>
> (3) Defendant's [sic] Motion does not state whether there are other collateral actions involving the property pursuant to Maryland Rule 14-211(a)(3)(D); and
>
> (4) Defendant's [sic] Motion does not state when Defendant was served, or when Defendant became aware of the action pursuant to Maryland Rule 14-211(a)(3)(E).

[7] Six days prior to filing their first motion, appellants filed, *pro se*, an Affidavit of Facts and a document entitled "Bona Fide Proof", both of which essentially demanded proof of the claim and challenged the legal authority of the substitute trustees to pursue the foreclosure action. The Affidavit of Facts also includes allegations that appellees stole and illegally sold their property (at this point, no sale had occurred), that the trustees are attempting to extort money from appellants, and allegations of mail fraud.

We find no error in the court's ruling on the first motion, which clearly did not satisfy the requirements of Rule 14-211. Finding that the first motion failed to comply with the content requirements pursuant to Rule 14-211(a)(3), the court was not required to hold a hearing thereon. *See* Rule 14-211(b)(1)–(2).

On July 6, 2018, before the court had ruled on the first motion to vacate or dismiss, appellants filed a second motion to dismiss, which was not ruled on until after their subsequent emergency motion to stay proceedings was filed and had been ruled on, one month later. We shall return to consideration of this motion.

On August 6, 2018, while the second motion was still pending and two (2) days before the scheduled foreclosure sale, appellants filed a third motion to stay and/or dismiss under the caption: "EMERGENCY MOTION SALE SCHEDLED [sic] FOR AUGUST 8, 2018." The motion was accompanied by a memorandum with two exhibits, which included affidavits by each appellant that provided the date they were served, claims that their loan modification request was denied and appealed, and that no other legal actions were pending against the property. The second exhibit included with the memorandum was a document purporting to be an "Appeal of Loan Modification Denial and Notice of Error." The motion and memorandum articulate the same arguments presented on appeal—loss mitigation efforts were ongoing, lack of clarity in the ownership of the loan, and unclean hands on the part of Wells Fargo and Bank of America.

The court entered an order on August 7, 2018, the day before the scheduled foreclosure sale, stating:

> Defendants' Motion does not, on its face, state with particularity a valid defense to the validity of the lien, lien instrument or the right of the plaintiff to foreclose in the pending action. Defendants' Motion is not accompanied by documentation, other material and/or affidavits required to support each element of the defenses alleged[.]

Notably, the third motion only challenges "the right of [appellees] to foreclose …." Rule 14-211(a)(3)(B). The affidavits appended to the emergency motion did not support the arguments being asserted or contradict the various affidavits and supporting documents filed by appellees that demonstrated the ownership of the loan, the authority to foreclose, and the completion of preliminary and final loss mitigation efforts.

The court was not required under Rule 14-211(b)(2)(A)-(C) to hold a hearing before denying the emergency motion.

Finally, we return to the second motion, which was the last of the pre-sale motions to be ruled on and which asserted allegations of "fraud upon the court, conspiracy to illegally and intentionally record documents publicly in Maryland Land Records when all parties are unauthorized." As with the first motion, the second motion was not accompanied by affidavits, sworn statements, or documents required by Rule 14-211(a)(3)(A)–(F) in support of their assertions. In fact, many of the documents appended to appellants' second motion were the same documents provided by appellees with the Order to Docket, each of which, at that time, had been attested to by supporting affidavits. The court denied the second motion on August 23, 2018, providing essentially the same reasons as its denial of appellants' initial motion, in addition to the issue of its untimeliness and lack of good cause shown as to why it was not filed within the time prescribed under

Rule 14-211(a)(3)(F).[8] Those deficiencies likewise justified the court's denial of the motion without a hearing.

With that background, we consider appellants' specific assertions of error.

Loss mitigation efforts

Appellants first contend that "[i]t was an abuse of discretion for the lower court to deny [their] motion to stay because loss mitigation efforts were ongoing, which is a valid defense to Appellees' right to foreclose." The record does not support those contentions.

In support, appellants rely on *Bates v. Cohn*, 417 Md. 309, 328-29 (2010), which merely establishes that a lender's failure to comply with timely pre-sale loss mitigation requests and the failure to grant loss mitigation can be a defenses to a foreclosure proceeding, and 12 C.F.R. §1024.41, which provides protections for borrowers who request a loss mitigation analysis and timely submit a **complete** loss mitigation application with all required documents. *See generally* 12 C.F.R. §1024.41. Section 1024.41(b)(1) defines a "complete loss mitigation application" as meaning "an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower…."[9]

[8] The final loss mitigation affidavit was filed with the court on June 11, 2018, requiring a motion to stay/dismiss to be filed "no later than 15 days" thereafter, which would have been June 26, 2018. *See* Rule 14-211(2)(A)(i). It appears that the court may have overlooked the timeliness issue in its consideration of appellants' third "emergency" motion to stay, filed two days before the scheduled foreclosure sale on August 6, 2018.

[9] Appellants do not contend that their loan modification should have been granted, only that the denial was deficient, and their appeal was ongoing.

It is unclear either from their arguments or the record when appellants first attempted loss mitigation efforts. Consistent with both Maryland and federal laws, appellees included the requisite loss mitigation application and accompanying documents with each notice of intent to foreclose mailed to appellants on June 19, 2017, evidence of which was included with the Order to Docket filed on March 26, 2018 and was attested to by affidavit. The preliminary loss mitigation affidavit, also included with the Order to Docket, stated that Wells Fargo had not been able to obtain the necessary documentation in order to analyze potential loss mitigation options. As of June 11, 2018, almost three months later, the final loss mitigation affidavit was filed by Wells Fargo stating that appellants' request had been denied for their failure to provide all of the required documents. It had been almost a year from the date appellants were first put on notice of loss mitigation options, until the final loss mitigation affidavit had been filed, noting that the reason for denial was failure to complete the application process.

In their August 6, 2018 emergency motion to stay, appellants contend that their request for loan modification was denied and that they had "timely" appealed. The memorandum in support of their emergency motion asserted that "[o]n August 2, 2018, Wells Fargo claimed to deny defendants' application for modification." Appellants appended to their memorandum a six-page typed document purporting to be an appeal[10] of

[10] The asserted "appeal" is addressed to Wells Fargo Home Mortgage in Iowa, which is not to whom or where the loss mitigation documents were to be returned. The loss mitigation application documents filed with the Order to Docket included a copy of a return-addressed envelope to the "Loss Mitigation Department" in Minnesota for the return of the loss mitigation application and supporting documentation. The appeal also noted that "Tom

the loan modification denial. Donald Ellington stated that he was only orally informed by Wells Fargo on August 3, 2018, that the application for loan modification was denied and that: "As of this date I don't know the reason for the denial because Wells Fargo has not issued to me the letter."

In the appeal, Donald Ellington asserted that he was prevented from providing the requested documents because, on the day before the appeal, he had attempted to access the online portal to upload tax returns but was locked out and never received a response to his emails from Wells Fargo to assist him in resetting his password. For the most part, the appeal reiterates the arguments articulated in each of the motions, *supra*. The record belies appellants' contention that they provided complete loss mitigation documentation or that federally protected loss mitigation efforts were ongoing. Indeed, as addressed above, appellants' own assertions conflict and contradict the timeline in the record and their own documents offered for support.

Ownership of the loan

Appellants next assert that "[i]t was an abuse of discretion for the lower court to deny [their] Motion to Stay or Dismiss because the ownership of the subject loan is unclear." They claim that "Bank of America, N.A. itself disputes that claim [of ownership] and states that [it] is not the owner of the subject loan." In support of that contention, they cite a letter and attachment from Bank of America, dated August 17, 2018, nine days after the foreclosure sale, which stated: "We are unable to locate a mortgage account based on

Sloan CEO of Wells Fargo timothy.j.sloan@wellsfargo.com" and "Orlans PC" were copied.

the information provided[,]" and "We were unable to locate a mortgage account using your name and address…."

As we discussed at the outset, the mortgage loan was granted by Premier Mortgage Co., which, through its nominee MERS, later assigned the deed of trust to Bank of America, which, in turn, afforded servicing rights and obligations to Wells Fargo. The promissory note reflects three indorsements, the last two of which were to Wells Fargo—the first, without recourse to George Mason Mortgage, LLC, the second was indorsed in blank. There is nothing in the record before us that would indicate otherwise. The authority of MERS to enforce its rights and interest in the mortgage as nominee for Premier is expressly provided for in the deed of trust executed by appellants. The substitute trustees included with the Order to Docket the "Corporate Assignment of Deed of Trust", which states that the deed of trust was assigned to Bank of America by MERS as nominee for Premier on September 5, 2013, and which was filed and recorded in the Circuit Court for Prince George's County on October 25, 2013. Furthermore, all documents produced by Wells Fargo state that it is acting in its capacity as the loan servicer.

The response by Bank of America to appellants, after the sale, that it was "unable to locate a mortgage account based on the information provided" cannot be reasonably construed as a concession that Bank of America was not the owner of the note. The response may well be attributed to the fact that appellants' request was not sufficient to generate the information sought. It may just as well be attributed to corporate ineptitude.

Whatever the basis of the reply, it cannot be seriously taken as a corporate disavowal of ownership of the note.[11]

The indorsements to Wells Fargo coupled with a lack of dispute as to its possession of the note, support Wells Fargo's authority to enforce the deed of trust by accelerating the loan after default and appointing substitute trustees.

Unclean hands

Appellants finally assert that "Appellees cannot proceed because they have unclean hands." For support, they argue that "Appellees evidenced unclean hands by attempting to foreclose claiming that Bank of America is the secured party, when Bank of America itself disputes that claim[,]" and that Wells Fargo "has unclean hands by denying [their] application for modification by preventing [them] from submitting the requested tax returns and attempts to deny [their] rights under RESPA to appeal the denial of the loan modification application." (Emphasis in brief). As we have discussed, these arguments are without merit.

"The clean hands doctrine states that 'courts of equity will not lend their aid to anyone seeking their active interposition, who has been guilty of fraudulent, illegal, or inequitable conduct in the matter with relation to which he seeks assistance.'" *Wells Fargo*

[11] The Court of Appeals has explained, "'[t]he right to enforce an instrument and ownership of the instrument are two different concepts.' 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.'" *Deutsche Bank Nat'l Tr. Co. v. Brock*, 430 Md. 714, 730 (2013) (internal citations omitted). Further, "[i]n this context, a 'holder' is '[t]he person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.'" 430 Md. at 729 (quoting Commercial Law Article, Sec. 1-201(b)(21)(i)).

Home Mortg., Inc. v. Neal, 398 Md. 705, 729–30 (2007) (quoting *Hlista v. Altevogt*, 239 Md. 43, 48 (1965)).

The record does not support a conclusion that Bank of America was not the owner of the note; and, the record does support a conclusion that appellants failed to submit a complete loss mitigation application, timely or otherwise. There is nothing in the record to suggest that either Bank of America or Wells Fargo Bank acted in any "fraudulent, illegal, or inequitable" manner.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS ASSESSED TO APPELLANTS.