

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0027

September Term, 2015

LINDSEY W. SIKES, JR.

v.

CARRIE M. WARD, ET AL.
SUBSTITUTE TRUSTEES

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Reed, J.

Filed: April 8, 2016

*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.

We are called upon in this case to determine whether the Circuit Court for Montgomery County erred where it denied, without a hearing, the motion to stay the sale and dismiss the foreclosure action filed by the appellant, Lindsey W. Sikes, Jr., under Maryland Rule 14-211.¹ For the following reasons, we hold that the circuit court did not so err and, therefore, affirm the judgment below.

FACTUAL AND PROCEDURAL BACKGROUND

On April 28, 2006, the appellant obtained a mortgage loan from Home Loan Corporation dba Expanded Mortgage Credit in the amount of four hundred and five thousand dollars (\$405,000.00). The loan was evidenced by a promissory note (hereinafter the “Note”) and secured by a deed of trust on the property located at 4507 Grenoble Court, Rockville, Maryland 20853 (hereinafter the “Property”). On January 2, 2008, the appellant defaulted on his payments under the Note. As a result, by an Order to Docket filed in the Circuit Court for Montgomery County on May 13, 2014, the Substitute Trustees (hereinafter the “appellees”) instituted a foreclosure proceeding against the Property.

On July 23, 2014, the appellant filed a request for foreclosure mediation. Said mediation was held on October 23, 2014, before an administrative law judge (“ALJ”) from

¹ The question is set forth in the appellant’s brief as follows:

Was the trial court’s denial of the Appellant’s Motion to Stay the Sale and Dismiss the Foreclosure action and request for sanctions without granting the Appellant a hearing he requested, legally correct when Maryland Rule 2-311(f) requires the trial court to hold a hearing before rendering a decision disposing of a claim or defense?

the Office of Administrative Hearings. The ALJ filed a mediation report with the circuit court on October 27, 2014, indicating that “[t]he parties participated in the mediation but no agreement was reached.” Therefore, on November 6, 2014, the circuit court ordered “that the secured party may schedule the foreclosure sale, subject to the right of the borrower to file a motion pursuant to Rule 14-211 to stay the sale and dismiss the action.” The appellant filed such a Rule 14-211 motion (hereinafter the “Motion”) on November 26, 2014, alleging “[the appellees] provided no proof of ownership to the property at the mediation hearing.” On December 15, 2014, the appellees filed their opposition to the appellant’s Motion. They argued, among other things, that “the Motion is untimely filed and does not provide any good cause as to why.” Ultimately, by Order dated February 6, 2015, and signed by the Honorable Joseph A. Dugan, Jr., the circuit court denied the Motion.

The Property was sold at a foreclosure sale on December 3, 2014, which, notably, was before the appellees filed their opposition to the Motion and before the Motion was denied by the court. The court ratified the sale on February 11, 2015, and on March 6, 2015, the appellant noted a timely appeal.

DISCUSSION

I. MOTION TO STAY THE SALE AND DISMISS THE ACTION

A. Parties’ Contentions

The appellant makes two arguments on appeal. First, the appellant argues the circuit court erred by denying his Motion without first holding a hearing as required by Md. Rule

14-211. The appellant asserts the circuit court failed to meet the requirement of Md. Rule 14-211(b)(2)(C) that a hearing be held on any motion to stay the sale and dismiss the action which “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.” Furthermore, the appellant contends the circuit court erred under Md. Rule 14-211(c)(1), which states that “[i]f the hearing on the merits cannot be held prior to the date of sale, the court shall enter an order that temporarily stays the sale on terms and conditions that the court finds reasonable and necessary to protect the property and the interest of the plaintiff.”

The second argument advanced by the appellant is that the circuit court erred in accepting a lost note affidavit from the appellees in lieu of a copy of the original debt instrument as required by both Md. Rule 14-207(b)(1)² and Md. Code Ann., Real Prop. (“RP”) § 7-105.1(e)(2)(iii).³ According to the appellant, “[n]o original or certified copy was filed with the courts.”

² Md. Rule 14-207(b)(1) provides:

(b) Exhibits. Except as provided in section (c) of this Rule, a complaint or order to docket shall include or be accompanied by:

- (1) a copy of the lien instrument supported by an affidavit that it is a true and accurate copy, or, in an action to foreclose a statutory lien, a copy of a notice of the existence of the lien supported by an affidavit that it is a true and accurate copy[.]

³ RP § 7-105.1(e)(2)(iii) provides:

(e) An order to docket or a complaint to foreclose a mortgage or deed of trust on residential property shall:

(continued...)

Finally, in addition to advancing the above arguments for why the circuit court erred in denying his Motion, the appellant moves for sanctions against the appellees’ counsel pursuant to RP § 7-320(c) for “intentionally violat[ing Md. Rule 14-211] by holding the sale on the original date of December 3, 2014.” The appellant requests the maximum amount of damages allowed under § 7-320(c),⁴ which, by his calculation, is \$549,170.58 in the present case.

The appellees present three arguments for why the circuit court’s denial of the Motion should be affirmed. The first of these is that the appellant did not comply with the statutory requirements of Md. Rule 14-211 and, thus, was not entitled to a hearing on the Motion. Specifically in this regard, the appellees assert that the Motion was properly denied without a hearing under Md. Rule 14-211(b)(1) for the appellant’s failure to meet the requirements of Md. Rules 14-211(a)(2)(A) and 14-211(a)(3)(A)-(F).

* * *

(2) Be accompanied by:

* * *

(iii) A copy of the debt instrument accompanied by an affidavit certifying ownership of the debt instrument[.]

⁴ RP § 7-320(c) provides that “[i]f the court finds that the defendant willfully or knowingly violated this subtitle, the court may award damages equal to three times the amount of actual damages.”

Second, the appellees contend the circuit court’s denial of the Motion without a hearing should be affirmed because the appellant did not properly request a hearing under Md. Rule 2-311(f).⁵

Lastly, the appellees argue that the appellant “plainly failed to present any meritorious defense to the foreclosure action” in his Motion. The appellees assert the sole defense raised in the Motion is plainly false. In other words, the appellees contend their Order to Docket did not contain a lost deed affidavit in lieu of the original debt instrument as required by Md. Rule 14-207(b)(1) and RP § 7-105.1(e)(2)(iii). Therefore, the appellees contend “the Motion was properly denied without a hearing pursuant to Rule 14-211(b)(1).”

B. Standard of Review

In *Bates v. Cohn*, 417 Md. 309 (2010), the Court of Appeals described the nature of motions pursuant to Rule 14-211 to stay the sale and dismiss the action as follows:

Before a foreclosure sale takes place, the defaulting borrower may file a motion to “stay the sale of the property and dismiss the foreclosure action.” Md. Rule 14–211(a)(1). *The borrower, in other words, may petition the court for injunctive relief, challenging “the validity of the lien or . . . the right of the*

⁵ Md. Rule 2-311(f) provides:

A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading “Request for Hearing.” The title of the motion or response shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

[lender] to foreclose in the pending action.” Md. Rule 14–211(a)(3)(B).

Bates, 417 Md. at 318-19 (emphasis added). As a consequence the fact that motions pursuant to Rule 14-211 constitute requests for injunctive relief, their “grant or denial . . . 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)), *cert. denied*, 427 Md. 610 (2012).

C. Analysis

In order to resolve this case, we need look no further than Md. Rule 14-211(b)(1), which 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.

More specifically, we need look no further than Md. Rule 14-211(b)(1)(A), *supra*, which mandates, in no uncertain terms, that “[t]he court shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion . . . was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule.” Subsection (a)(2) of Md. Rule 14-211 sets forth the time requirements for the

filing of a motion to stay the sale and dismiss the foreclosure action. That subsection, entitled “time for filing,” provides, in relevant part:

(A) Owner-Occupied Residential Property. In an action to foreclose a lien on owner-occupied residential property, a motion by a borrower to stay the sale and dismiss the action **shall 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) if postfile mediation was requested and the request was not stricken, **the first to occur of:**

- (a) **the date the postfile mediation was held;**
- (b) the date the Office of Administrative Hearings files with the court a report stating that no postfile mediation was held; or
- (c) the expiration of 60 days after transmittal of the borrower's request for postfile mediation or, if the Office of Administrative Hearings extended the time to complete the postfile mediation, the expiration of the period of the extension.

* * *

(C) Non-Compliance; Extension of Time. **For good cause, the court may extend the time for filing the motion or excuse non-compliance.**

Md. Rule 14-211(a)(2)(A) & (C) (emphasis added). In the present case, the appellees assert the Motion was filed untimely and without good cause shown. We agree.

Our review of the record indicates that the post-file mediation was held on October 23, 2014. Therefore, pursuant to Md. Rule 14-211(a)(2)(A), the appellant had fifteen (15) days from October 23, 2014, to file a timely motion. This put the filing deadline

on November 7, 2014. However, the appellant did not file the Motion until November 26, 2014, nineteen (19) days after the deadline.

We dealt with the very issue presented in the present case in *Murphy v. Fishman*, 207 Md. App. 269 (2012), *rev'd on other grounds*, *Fishman v. Murphy*, 433 Md. 534 (2013). In that case, we quite aptly held that

[f]ailure to comply with the requirements set forth in Maryland Rule 14-211 is a proper ground for denial of a motion to stay or dismiss. *Id.* at 282. In *Svrcek*, 203 Md. App. at 721, 40 A.3d 494[,] this Court held that the trial court did not abuse its discretion in denying a property owner's motion to stay the sale and dismiss the foreclosure proceedings where the motion was filed after the deadline set forth in Maryland Rule 14-211. The trial court found that the property owner failed to show good cause to excuse non-compliance with the filing deadline. *Id.* This Court held that, even if the trial court had found good cause for the late filing, “the [trial] court would have acted properly in denying the motion because [the motion] failed to state a legitimate defense to the validity of the lien or the lien instrument and the right of the appellees to foreclose.” *Id.* at 722, 40 A.3d 494 (citation omitted).

Murphy, 207 Md. App. at 282-283. In the case *sub judice*, the Motion provided no reason whatsoever for the delay. Therefore, in accord with the plain language of Md. Rule 14-211(b)(1), Md. Rule 14-211(a)(2)(A) & (C), and the relevant case law, which includes *Murphy* and *Svrcek*, we hold that the circuit court did not abuse its discretion in denying the Motion without a hearing.

Because our holding is predicated solely upon the untimeliness of the Motion, the appellant's other arguments, namely, those concerning the lack of a hearing and the

submission of a lost note affidavit in lieu of a copy of the original deed, “are effectively moot and need not be addressed.” *Devan v. Bomar*, 225 Md. App. 258, 262 (2015).

We also deny the appellant’s request for damages under RP § 7-320(c). That section states that “[i]f the court finds that the defendant willfully or knowingly violated *this subtitle*, the court may award damages equal to three times the amount of actual damages.” *Id.* (emphasis added). In his request for sanctions, however, the appellant does not allege a violation of Subtitle 7 of the Real Property Article, but rather alleges a violation of Md. Rule 14-211. Therefore, in the case *sub judice*, sanctions pursuant to RP § 7-320(c) are inappropriate.

For the reasons set forth above, the judgment of the circuit court is hereby affirmed.

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