

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0037

September Term, 2015

LAMONT McGRIFF

v.

LAURA H.G. O’SULLIVAN, ET AL.

Berger,
Reed,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: June 3, 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.

This appeal from a judgment of the Circuit Court for Anne Arundel County arises out of a foreclosure action against real property owned by appellant, Lamont McGriff. In his appeal, McGriff presents five (5) questions for our review¹, which we have condensed and rephrased for clarity:

¹ The questions, as presented by McGriff, are:

1. Did the Circuit Court err in granting the Plaintiff's Foreclosure Screening Order to Docket Foreclosure / Complaint to Foreclose in a manner inconsistent with the rules promulgated by this court which may have been due to false, fraud, and incorrect documents and content and/or procedures and improperly time filing which causes substantial harm to the Appellant?
2. Did the Circuit Court err in granting the Ratified Sale / the Final Ratification Report of Sale in a manner inconsistent with the rules promulgated by this court which may have been due to false, fraud, and incorrect documents and content and/or procedures and improperly time filing which causes substantial harm to Appellant?
3. Did the Circuit Court err in granting the Judgment of Writ of Possession in a manner inconsistent with the rules promulgated by this court which may have been due to false, fraud, and incorrect documents and content and/or procedures and improperly time filing which causes substantial harm to Appellant?
4. Did the [Plaintiff], the allege mortgage holder(s) and parties not yet involved in the mortgage foreclosure lawsuit (third-parties), violated laws (Constitutional Provisions, Statues & Rules, Laws, and Affirmative Defenses / Defenses) from the inception to the implementation of this foreclosure lawsuit and the circuit court err in granting the Plaintiff (Foreclosure Screening Order to Docket foreclosure / Complaint to foreclose, the Ratified Sale / the final Ratification Report of Sale, Judgment of Writ of Possession, and the Final Order Ratifying Auditor's Report which causes substantial harm to the Appellant?
5. Did the Circuit Court err in granting the final order Ratifying Auditor's Report in a manner inconsistent with the rules promulgated by this court which may have been due to false, fraud, and incorrect documents and content and/or procedures and improperly time filing which causes substantial harm to the Appellant?

1. Did the circuit court err in denying McGriff's Motion to Vacate Foreclosure and Motion for a Counterclaim?²
2. Did the circuit court err in ratifying the foreclosure sale?
3. Did the circuit court err in ratifying the Report and Account of the Auditor?
4. Did the circuit court err in denying McGriff's Motion to Set Aside Judgment of Possession?

For the reasons set forth below, we answer the above questions in the negative. Accordingly, we shall affirm the judgment of the circuit court.³

FACTS and PROCEEDINGS

On May 7, 2007, McGriff obtained a refinance loan for the property located at 1607 Benoli Court in Odenton, Anne Arundel County, (the "Property") in exchange for a note in the amount of \$325,000, secured by a lien on the Property. On May 15, 2007, a "Refinance Deed of Trust"⁴ was recorded, listing Lamont McGriff as the Borrower, JP Morgan Chase

² McGriff did not include the court's order denying his motion to vacate foreclosure and for a counterclaim in his questions presented on appeal. However, in one paragraph within his brief, McGriff argues that his motion to vacate foreclosure "was denied by the court without any explanation at all," and he asks this Court to "grant the Defendant's Motion to Vacate Foreclosure[.]" We deem the issue properly raised and include it in our review.

³ Appellant appears *pro se* in this appeal. Appellees did not submit a brief or otherwise participate.

⁴ A copy of the original deed for the Property was not included in the Record Extract or in circuit court record.

Bank, N.A. (“JP Morgan”) as the lender, and Angela Greenberg as the trustee. McGriff made no payments on the loan and, on January 2, 2009, the mortgage was placed in default. On November 1, 2013, JP Morgan gave notice to McGriff of Intent to Foreclose.

On March 12, 2014, pursuant to Md. Rule 14-204(a), Laura H.G. O’Sullivan, and others, (“Substitute Trustees”) filed an Order to Docket Suit of Foreclosure.⁵ On June 18, 2014, McGriff filed a Motion to Vacate Foreclosure and Motion for a Counterclaim, which the court denied. The Property was sold at a foreclosure auction on July 9, 2014, to Federal Home Loan Mortgage Corporation (“Federal Home”). The court ratified the sale on September 18, 2014.

On December 9, 2014, the Report and Account of the Auditor was submitted pursuant to Md. Rule 2-543(e). On December 22, 2014, McGriff filed an Opposition to the Notice of Audit Filing, which the court denied as untimely. On February 21, 2015, the court ratified the Report and Account of the Auditor.

On November 13, 2014, Federal Home filed a Motion for Judgment of Possession pursuant to Md. Rule 14-102. McGriff did not oppose the motion, and on December 24, 2014, the court issued an Order Awarding Possession of Property to Federal Home. On

⁵ Md. Rule 8-501(c) requires that “[t]he record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal[.]” McGriff failed to comply with Md. Rule 8-501(c) by failing to include in the Record Extract the Order to Docket the Foreclosure, any of the motions or oppositions he seeks to have considered, and all but one of the circuit court orders.

January 21, 2015, McGriff filed a Motion to Set Aside Judgment of Possession, which the court denied. This appeal followed.

DISCUSSION

McGriff’s brief consists of a series of rambling arguments, allegations, and legal theories which are largely contradicted by the record or otherwise entirely lacking in relevance or merit. But, because McGriff appears *pro se*, we have read his papers as broadly as they permit and construed his arguments liberally. See *Anderson v. O’Sullivan*, 224 Md. App. 501, 507 (2015).

We begin by noting that a borrower is “possessed of three means of challenging a foreclosure: obtaining a pre-sale injunction pursuant to Md. Rule [14-211], filing post-sale exceptions to the ratification of the sale under Md. Rule 14-305(d), and the filing of post-sale ratification exceptions to the auditor’s statement of account pursuant to Md. Rule 2-543(g), (h).” *Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705, 726 (2007). To the extent that we are able to discern the orders McGriff seeks to challenge, we address them in turn.

I.

The procedure by which to challenge a foreclosure proceeding prior to the foreclosure sale is a motion to stay the sale and to dismiss, pursuant to Md. Rule 14-211(a), which provides in pertinent part:

(a) Motion to stay and dismiss.

(1) Who may file. The borrower, a record owner, a party to the lien instrument, a person who claims under the borrower a right to or interest in the property that is subordinate to the lien being foreclosed, or a person who claims an equitable interest in the property may file in the action a motion to stay the sale of the property and dismiss the foreclosure action.

(2) Time for filing.

(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.

(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.

* * *

(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.

Here, the Final Loss Mitigation Affidavit was filed on April 23, 2014. McGriff's Motion to Vacate Foreclosure was not filed until June 18, 2014, and was not submitted under

oath or accompanied by an affidavit as required by Md. Rule 14-211(a)(3)(A). Neither McGriff's motion, nor his supplemental pleading (filed on July 1, 2014), contain any explanation for the filing of the motion beyond the 15-day deadline. "The grant or denial of injunctive relief in a property foreclosure action lies generally within the sound discretion of the trial court." *Anderson v. Burson*, 424 Md. 232, 243 (2011)(citations omitted). We review the circuit court's denial of a foreclosure injunction for an abuse of discretion. *Burson v. Capps*, 440 Md. 328, 342 (2014)(citations omitted). However, we review the trial court's legal conclusions *de novo*. *Id.*

The circuit court did not set forth the basis upon which it denied McGriff's Motion to Vacate Foreclosure and Motion for a Counterclaim. Nonetheless, we may affirm or reverse on "any ground adequately shown by the record, whether or not relied upon by the trial court." *Gomez v. Jackson Hewitt, Inc.*, 427 Md. 128, 142 (2012) (quoting *Parks v. Alpharma, Inc.*, 421 Md. 59, 65 n.4 (2011)(citation omitted)). *See also First Nat. Bank of Maryland v. Shpritz*, 63 Md. App. 623, 636 (1985). McGriff's Motion to Vacate Foreclosure was untimely and failed to show good cause for excusing non-compliance with Md. Rule 14-211(a)(2). Although a court may extend the time for filing the motion or excuse non-compliance for good cause shown, "ignorance of the law is no excuse." *Svrcek v. Rosenberg*, 203 Md. App. 705, 721 (2012)(quoting *Hi Caliber Auto and Towing, Inc. v. Rockwood Cas. Ins. Co.*, 149 Md. App. 504, 508 (2003)).

We likewise find that the counterclaim motion was untimely filed. The Court of Appeals has recognized that counterclaims are not necessarily prohibited in foreclosure proceedings, but they present practical difficulties because the judicial sale cannot be consolidated with the trial of the counterclaim; thus, there is presented a timing problem of whether the claim or counterclaim is tried first. *Fairfax Sav. v. Kris Jen Ltd.*, 338 Md. 1, 22 n.9 (1995).

Although no “answer” is required to be filed in a foreclosure proceeding, the timing of the filing of a counterclaim must be such that it provides adequate notice in advance of any dispositive filings. Maryland Rule 2-331(d), which addresses counterclaims and cross-claims, provides that a counterclaim may be stricken if filed more than thirty (30) days after the “time for filing that party’s answer[.]” McGriff’s Motion for a Counterclaim was filed well beyond the reasonable 30 day period - in fact, 98 days - pursuant to Md. Rule 2-331(d), and in any event, the counterclaim was filed more than 30 days after the Final Loss Mitigation Affidavit was filed on April 23, 2014. Accordingly, the court did not err in denying McGriff’s Motion to Vacate Foreclosure and Motion for a Counterclaim.

II.

McGriff asserts that he “disagrees with the Foreclosure Judgment and disagrees with the Ratify Sale/Judgment for the Ratify Sale” because “[t]his foreclosure fraud has involved

faulty documents and/or procedures which resulted in homeowner wrongfully losing his home.”

Maryland Rule 14-305(d) provides:

(d) **Exceptions to sale.** (1) How taken. A party ... may file exceptions to the sale. Exceptions shall be in writing, shall set forth the alleged irregularity with particularity, and shall be filed within 30 days after the date of a notice issued pursuant to section (c) of this Rule or the filing of the report of sale if no notice is issued. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

On July 18, 2014, the Substitute Trustees filed their report of sale. McGriff did not file exceptions to the foreclosure sale. On September 18, 2014, the court ratified the sale. Generally, upon the court’s ratification of a foreclosure sale, objections to the propriety of the foreclosure proceedings will be foreclosed. *Manigan v. Burson*, 160 Md. App. 114, 120 (2004). The ratification of a foreclosure sale is presumed to be valid. *Webster v. Archer*, 176 Md. 245, 253 (1939). McGriff did not challenge the sale below, and cannot raise it for the first time on appeal. See Maryland Rule 8-131(a) (“[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised or decided by the trial court[.]”). In short, McGriff’s challenge to the foreclosure sale fails for want of a challenge in the circuit court.

III.

On December 9, 2014, the Report and Account of the Auditor was submitted pursuant to Rule 2-543(e). On December 22, 2014, McGriff filed an Opposition to the Notice of

Audit Filing. The same day, McGriff filed a separate request for an extension of time to file an Opposition to the Notice of Audit Filing, claiming that the Notice of Audit Filing “was sent out to my residence during the time I was moving from Maryland to Washington DC.”

The court denied the Opposition to the Notice of Audit Filing as untimely, finding that,

Maryland Rule 14-305(d) governs exceptions to foreclosure sales, and provides that exceptions must be filed within thirty (30) days of Notice of Ratification of Sale has been issued by the Court. Notice that the sale would be ratified and confirmed in the above-captioned matter was issued by the Circuit Court for Anne Arundel County on August 18, 2014.

We agree that the opposition was untimely. However, in reaching that conclusion we rely on Md. Rule 2-543(g) pertaining to auditor reports, which provides, “[w]ithin ten days after the filing of the auditor’s account or report, a party or claimant may file exceptions with the clerk.” McGriff’s opposition to the auditor’s report was due within 10 days after the filing of the report, rather than 30 days from the date of the Notice of Ratification of Sale, as cited by the circuit court. Although the procedural basis for the trial court’s judgment may be misplaced, we “may still examine the record ‘to determine if the court reached the right result ... albeit for the wrong reason.’” *Van Wyk, Inc. v. Fruitrade Int’l, Inc.*, 98 Md. App. 662, 669 (1994)(quoting *Faulkner v. American Casualty Co.*, 85 Md. App. 595, 629 (1991)). We conclude, therefore, that the opposition should have been filed on or before December 19, 2014, and its filing on December 22, 2014 was not timely.

IV.

On November 13, 2014, Federal Home moved for Judgment of Possession pursuant to Rule 14-102. McGriff did not file an opposition to the motion, and on December 24, 2014, the court issued an Order Awarding Possession of Property to Federal Home. On January 21, 2015, McGriff filed a Motion to Set Aside Judgment of Possession.

In denying McGriff's Motion to Set Aside Judgment of Possession, the court cited to Md. Rule 2-534, which allows a party to file a motion to alter or amend within ten days of the entry of the order. As McGriff's motion was filed more than ten days after the circuit court's order issued on December 24, 2014, the court did not err in denying the motion.

**JUDGMENT FOR THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**