

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2436

September Term, 2015

FLAUBERT MBONGO, et al.

v.

CARRIE M. WARD, et al.
SUBSTITUTE TRUSTEES

Arthur,
Reed,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: January 18, 2017

*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.

In this foreclosure action, Flaubert Mbongo and Charlotte J. Dikongue, appellants, self-represented, appeal from an order dated December 7, 2015, entered by the Circuit Court for Montgomery County, denying appellants’ “MOTION TO STAY FORECLOSURE SALE AND NOTICE OF LIS PENDENS” (hereinafter “motion to stay” or, in context, “motion”). Appellants contend that the circuit court erred in denying the motion without permitting discovery. Perceiving no reversible error, we shall affirm.

Factual and Procedural Background

On December 20, 2006, appellants executed a promissory note and deed of trust. The deed of trust created a lien on property located at 14434 Bradshaw Drive, Silver Spring, Maryland. On September 2, 2007, appellants defaulted on the loan.¹

On July 30, 2015, 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, substitute trustees under the deed of trust, appellees, served appellants with a notice of intent to foreclose. On September 3, 2015, appellants filed a complaint in circuit court against the servicer of the loan, Specialized Loan Servicing, LLC (SLS). SLS removed the case to the United States District Court for the District of Maryland, and filed a motion to dismiss.

¹ Appellants pursued litigation prior to the lawsuit referenced herein. *See Mbongo v. J P Morgan Chase Bank, N.A.*, 552 Fed. Appx. 258 (2014) (affirming summary judgment in favor of the defendant with respect to claims of breach of contract and promissory estoppel); *Mbongo v. J P Morgan Chase Bank, N.A.*, 589 Fed. Appx. 188 (2015) (affirming dismissal of claims alleging violation of federal and State statutes and common law torts).

On October 7, 2015, appellees filed an Order to Docket this foreclosure action. On October 22, 2015, appellants filed a motion to stay. In their motion, appellants referenced the complaint filed against SLS in which they alleged that SLS had violated several federal statutes and argued that the pending suit supported a stay. Appellants sought an order staying the foreclosure pending disposition of the action against SLS. In their opposition to the motion, appellees asserted that they had standing to foreclose, the action against SLS did not support a stay, and appellant’s motion did not comply with Maryland Rule 14-211. In their reply, appellants asserted that (1) their motion was pursuant to Rules 2-311 and 12-102 and not Rule 14-211; (2) the pending suit against SLS created a *lis pendens*; and (3) appellees lacked standing. As an alternative to “denying outright” their motion to stay, appellants also requested the court to grant them leave to conduct discovery.

After conducting a hearing on December 7, 2015, the court entered the December 15, 2015 order denying the motion to stay.

Questions Presented

In their words, appellants present the following questions:

- 1) Whether the Circuit Court abused its discretion by allowing Appellees/Plaintiffs to continue foreclosure proceeding in its due course against Appellants/Defendants’ property given that rule 12-102 and case laws provide that *lis pendens* has given rise to the maxim *Pendente lite nihil innovetur* (“During the pendency of a litigation, nothing new shall be introduced”)?
- 2) Whether the Circuit Court abused its discretion by denying the Appellants/Defendants request to be allowed to conduct discovery which

would backed up their defense that the Appellees/Plaintiffs lacked standing to foreclose on the Appellants/Defendants’ residence?

3) Even if the Appellants/Defendants’ Motion to Stay was turned into one pursuant to Maryland Rule 14-211, whether the Circuit Court abused its discretion in denying the Defendants’ request to conduct discovery?

Discussion

Appellants present the following arguments: (1) their motion to stay was not pursuant to Rule 14-211, and therefore, they did not have to comply with its terms; (2) they were entitled to a stay based on the fact litigation was pending against SLS; and (3) they were entitled to discovery to explore the issue of appellees’ standing to pursue foreclosure.

Appellants’ motion had to comply with Rule 14-211. 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. These means are governed by Title 14 of the Maryland Rules. *See Wells Fargo Home Mortgage, Inc. v. Neal*, 398 Md. 705, 726 (2007); *Devan v. Bomar*, 225 Md. App. 258, 264 (2015) (Rule 14-211 contains the procedure for challenging a foreclosure after proceedings have been filed but before a sale has occurred). Because the motion to stay was filed before sale, Rule 14-211 was the available procedural tool.

Rule 2-311, cited by appellants, contains general requirements for the filing of motions in civil proceedings. Rule 12-102, also cited by appellants, provides that in an

action in which lis pendens applies, the filing of a complaint is constructive notice of the lis pendens as to real property.

Neither the Rule nor the doctrine of lis pendens prevent the sale of property, however, and thus, they do not require a stay. The doctrine serves notice to buyers of the pending litigation and the buyer takes subject to restrictions on title, if any, that result from the litigation. *Weston Builders & Developers, Inc. v. McBerry, LLC*, 167 Md. App. 24, 29-34 (2006). Rules 2-311 and 12-102 do not excuse compliance with Rule 14-211, the specific Rule that applies to this situation.

Rule 14-211, in part, provides that a motion to stay shall be “under oath or supported by affidavit”; “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”; and “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.” Rule 14-211 (a) (3).

Appellants’ motion was not in compliance with the Rule. It was not under oath or supported by affidavit. Additionally, it did not state with particularity any basis that goes to the validity of the lien or the right to foreclose. As the circuit court observed, the pending lawsuit, if successful, might result in an award of damages; it would not affect the lien or right to foreclose. A failure to state a valid defense is a ground for denial of a motion to stay without conducting an evidentiary hearing. *Buckingham v. Fisher*, 223

Md. App. 82, 90 (2015); *Bechamps v. 1190 Augustine Herman, LC*, 202 Md. App. 455, 462 (2011) (pursuant to Rule 14-211, a stay “may be granted only when other pending litigation could affect the plaintiff’s ability to foreclose”).²

Citing Rules 5-101 and 5-103, appellants argue that the circuit court should not have considered the documentation submitted by appellees based on appellants’ suggestion that appellees might not have standing. Rule 5-101, which addresses the scope of Title 5, and Rule 5-103, which continue the procedure applicable to rulings on the admissibility of evidence, have nothing to do with the issue before us. The Order to Docket was in compliance with Rule 14-207, the applicable Rule. Appellants’ suggestion that appellees might lack standing was general and conclusory in nature and was not supported by any specific information. It was the appellants’ burden to present enough information in the manner required by Rule 14-211 to obtain an evidentiary hearing. Rule 14-211(b) provides, in part, that the court shall deny a motion to stay if the motion does not substantially comply with the Rule or does not facially state a defense to the validity of the lien or the right to foreclose. *Bechamps*, 202 Md. App. at 462.

In their reply to appellees’ opposition to their motion to stay, appellants requested leave to conduct discovery. After filing their reply, pursuant to Title 2 of the Maryland Rules, appellant filed interrogatories, requests for documents, and requests for admissions.

² Appellees argue that they have defenses to the lawsuit, including the statute of limitations and failure to sue the correct party. We have no need to address those issues or to determine if the litigation is still pending.

Title 2 is not applicable. Title 2 applies to civil proceedings which are commenced by the filing of a complaint. Rule 2-101(a). Title 14 applies to sales of property. A foreclosure pursuant to a power of sale is commenced by an order to docket, without the issuance of service. Rule 14-207(a).

A foreclosure action is governed by Title 14 of the Maryland Rules. *Wells Fargo Home Mortgage*, 398 Md. at 726. Rule 14-211(a) (3) (C) provides for limited discovery, specifically, a request for “any specific supporting documents in the possession or control of the plaintiff or the secured party.” Here, appellants did not ask for specific documents in their motion. They did not raise the issue until they filed their reply. They did not give specific reasons as to why appellees might not have standing. Moreover, as stated above, appellants’ motion was not supported by oath or affidavit.

Appellees met their initial burden of filing documents that were in compliance with Rule 14-207 (b) (*inter alia*, a copy of the lien instrument supported by affidavit; the right to foreclose supported by affidavit; a copy of the note supported by affidavit; and appointment of substitute trustees/assignment of deed of trust supported by affidavit). Appellants then had the burden of facially stating a defense to the validity of the lien or the right to foreclose. This they failed to do.

For the above reasons, the circuit court did not err in denying appellants' motion to stay.

**ORDER ENTERED BY THE CIRCUIT
COURT FOR MONTGOMERY COUNTY
DENYING STAY AFFIRMED. COSTS TO
BE PAID BY APPELLANTS**