

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 490

September Term, 2021

DAWN E. CROWELL

v.

CARRIE M. WARD, ET AL.

Wells, C.J.,
Leahy,
Tang,

JJ.

Opinion by Wells, C.J.

Filed: May 12, 2022

*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.

Dawn E. Crowell, appellant, challenges an order of the Circuit Court for Prince George’s County denying her motion to stay foreclosure and dismiss the foreclosure action without a hearing. Ms. Crowell argues that the security interest in her home was obtained pursuant to a defective consent judgment. In a companion case, *Dawn E. Crowell v. Planet Home Lending, LLC*, No. 420, September Term, 2021 (filed on March 1, 2022) (“the consent judgment action”), we determined that the circuit court had abused its discretion in denying Ms. Crowell’s motion to vacate the consent judgment and remanded that case to the circuit court for a hearing. Because we conclude that Ms. Crowell’s motion to stay and dismiss the foreclosure action was pleaded with sufficient particularity to require an evidentiary hearing, we shall remand this case to the circuit court for further proceedings.

BACKGROUND

I. Quiet Title Action

The following background facts were set forth in detail in this Court’s opinion in *Crowell v. Planet Home Lending, LLC*:

In October 2018, Planet Home Lending, appellee, filed a complaint against Ms. Crowell and M&T Bank seeking to quiet title in real property located at 14715 Turner Wooten Parkway, Upper Marlboro, Maryland (the property). In the complaint, appellee alleged that Ms. Crowell had executed a promissory note in 2007 that was secured by a Deed of Trust on the property. In 2010 Ms. Crowell entered into a forbearance agreement which extended the loan maturity date and bifurcated the loan into two portions. Portion A of the loan was for \$650,000 and Portion B of the loan was for \$235,029.22. The rights of Portion A of the Deed of Trust were eventually assigned to appellee and the rights to Portion B of the Deed of Trust were assigned to M&T Bank. Appellee further alleged that in 2018, M&T Bank executed a Release of the Deed of Trust that inadvertently discharged appellee’s rights in the property despite the fact that appellee’s lien on the

property had not been satisfied. Therefore, appellee sought an order declaring that the release filed by M&T Bank was null and void; expunging the release; and reviving and reinstating its Deed of Trust, inclusive of the statutory power of sale, to its first lien position.

A review of the record indicates that no return of service or affidavit of service was filed with respect to Ms. Crowell. Nevertheless, in January 2019 counsel claiming to represent Ms. Crowell filed an answer to the complaint which generally denied the allegations raised therein. Approximately two months later, appellee filed a motion for consent judgment. In that motion, appellee asserted that “M&T has consented to the relief sought and that . . . Ms. Crowell has confirmed that she is not opposed to this Motion.” The motion was signed by an attorney for appellee, an attorney for M&T Bank, and the attorney who had filed the answer on Ms. Crowell’s behalf. Notably, it was not signed by Ms. Crowell. The court subsequently granted the motion without a hearing and entered a consent judgment which awarded appellee the relief requested in its complaint.

In March 2021, appellee filed an Order to Docket seeking to foreclose on the property. Shortly thereafter, Ms. Crowell filed a motion seeking to vacate the consent judgment pursuant to Maryland Rule 2-535(b). In the motion to vacate motion, Ms. Crowell alleged that the judgment had been irregularly obtained because she was never served with a copy of the quiet title action, was unaware of the quiet title action, “did not hire any attorney or consent to any attorney representing her,” and did not know the attorney who had filed the answer on her behalf. Appellee filed an opposition claiming that Ms. Crowell had failed to identify a basis to vacate the judgment because the “undisputed evidence” demonstrated that she had filed an answer and agreed to the consent judgment. Ms. Crowell filed a reply wherein she again asserted that the judgment was “void” because she “was never served with process, nor did [she] hire any law firm or any attorney to represent [her] or to receive process or enter any consent judgments on [her] behalf.” She also requested a hearing so that sworn testimony could be heard on that issue. In addition, Ms. Crowell filed an affidavit in support of her Rule 2-535(b) motion, averring that she had never been served with process, that she never agreed to the consent judgment, and that she had never met or retained the attorney who filed the answer and agreed to the consent judgment on her behalf. The court subsequently denied Ms. Crowell’s Rule 2-535(b) motion without holding a hearing.

Crowell v. Planet Home Lending, LLC, slip op. at 1–3 (footnote omitted). We concluded that “Ms. Crowell’s allegations, if credited, could be sufficient to support a finding of

jurisdictional mistake that would require the consent judgment to be vacated.” *Id.*, slip op. at 6. Accordingly, we determined that the circuit court had abused its discretion in denying without a hearing Ms. Crowell’s motion to vacate the consent judgment and remanded the case to the circuit court for an evidentiary hearing. *Id.*, slip op. at 6–7.

II. The Foreclosure Action

On March 24, 2021, appellees, acting as substitute trustees,¹ filed an Order to Docket in the Circuit Court for Prince George’s County, seeking to foreclose on real property owned by Ms. Crowell located in Upper Marlboro.

On April 5, 2021, a private process server filed an affidavit attesting that, on March 30, 2021, Ms. Crowell was served with the Notice of Foreclosure and Order to Docket. On April 26, 2021, Ms. Crowell filed a motion to stay foreclosure and motion to dismiss, arguing that “[p]laintiffs[’] alleged security interest in [her] home stem[s] from a ruling issued in a separate action filed by Planet Home Lending, LLC, . . . case no. CAE18-40023” and “the ruling issued by the [c]ourt in [that] case . . . is void because [she] was never served process in that matter[.]” Ms. Crowell asserted that “[t]he Plaintiffs[’] action seeking foreclosure sale against [her] home is fraudulent because Plaintiffs very well know that their alleged security interest in [her] home was obtained by sleight of hand.”

On April 30, 2021, Ms. Crowell filed an Amended Motion to Stay Foreclosure and Motion to Dismiss, submitting a “corrected” Exhibit A, which included the docket entries

¹ Appellees are Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Pratima Lele, Joshua Coleman, Richard R. Goldsmith, Jr., Elizabeth C. Jones, Nicholas Derdock, Andrew J. Brenner, Christopher Robert Selig, and Philip Shriver.

for circuit court Case No. CAE18-40023 (Docket 9). Ms. Crowell asserted that the docket entries for Case No. CAE18-40023 demonstrated that she had not been served with process in that case, as the docket showed that no return of service or affidavit of service had been filed.

On May 18, 2021, Ms. Crowell filed a Motion to Dismiss, asserting that the time for filing a response to her motion had expired without a response from substitute trustees and requesting dismissal of the foreclosure action.

On May 19, 2021, substitute trustees filed an opposition to Ms. Crowell’s Amended Motion to Stay and Dismiss, arguing that she had failed to comply with the procedural prerequisites of Md. Rule 14-211 and that she was precluded from challenging the validity of the consent judgment entered in the collateral case.

On May 21, 2021, Ms. Crowell filed a Second Amended Motion to Stay Foreclosure and Motion to Dismiss and supporting Affidavit, arguing that she was not in default and the substitute trustees had fraudulently obtained a void judgment and security interest in her property.

On June 1, 2021, the circuit court entered an order denying the Amended Motion to Stay and Dismiss (Docket 9) without a hearing.² The court found that the Amended Motion did not substantially comply with the requirements of Rule 14-211(a)(3), as it was neither under oath nor supported by affidavit; did not state on its face a valid defense to the validity of the lien or the substitute trustees’ right to foreclose; and failed to state a meritorious

² The court also denied Ms. Crowell’s motion to dismiss filed on May 18, 2021 (Docket 12).

factual or legal basis for the circuit court to grant the relief requested.³ The court did not address Ms. Crowell’s Second Amended Motion to Stay Foreclosure and Motion to Dismiss and supporting Affidavit filed on May 21, 2021.

Ms. Crowell noted an appeal on June 7, 2021.

STANDARD OF REVIEW

Generally, the grant or denial of injunctive relief in a foreclosure action is within the sound discretion of the trial court. *Buckingham v. Fisher*, 223 Md. App. 82, 92–93 (2015) (citing *Anderson v. Burson*, 424 Md. 232, 243 (2011)). The issue before us in this case is whether Rule 14-211 required an evidentiary hearing before the court decided Ms. Crowell’s motion to stay and dismiss foreclosure. *See id.* at 93. “When a circuit court declines to hold an evidentiary hearing on the merits of the defense asserted in a foreclosure action, this Court reviews the decision to determine whether it was legally correct.” *Id.*; accord *Huertas v. Ward*, 248 Md. App. 187, 209 (2020). Accordingly, we review the circuit court’s denial of Ms. Crowell’s motion to stay and dismiss for legal correctness.

DISCUSSION

Rule 14-211(a)(3) provides that a motion to stay or dismiss the foreclosure action must:

- (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

³ On June 1, 2021, the court entered a second order denying Ms. Crowell’s May 18, 2021 motion to dismiss (Docket #12).

to the right of the plaintiff to foreclose in the pending action;
[(Emphasis added)]

- (C) be accompanied by any supporting documents or other material in the possession or control of the moving 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[.]

The circuit court denied Ms. Crowell’s Amended Motion on grounds that: (1) the motion was not under oath or supported by affidavit; (2) did not state a valid defense to the validity of the lien or lien instrument or the right of plaintiff to foreclose; and (3) the motion failed to state a meritorious factual or legal basis for the court to stay or dismiss the foreclosure sale pursuant to Rule 14-211.

With respect to the lack of an affidavit, the record reflects that Ms. Crowell’s first Amended Motion to Stay (Docket 9) did not include an affidavit. On May 21, 2021, however, Ms. Crowell submitted a Second Amended Motion to Stay and Dismiss, which included an Affidavit (Docket 15). It appears that the court did not consider the Second Amended Motion and Affidavit prior to its ruling on May 26, 2021.

The circuit court found that in addition to the apparent lack of affidavit, Ms. Crowell’s Amended Motion also failed to state a valid defense and meritorious factual or legal basis for the court to stay and dismiss the foreclosure. “To sufficiently raise a defense, a party must satisfy the minimum pleading standards for raising defenses in a foreclosure action.” *Huertas*, 248 Md. App. at 210. In order to meet the minimum pleading standards required for a hearing on the motion, “a party must plead all elements of a valid defense

with particularity.” *Buckingham*, 223 Md. App. at 91. In this context, “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 case, Ms. Crowell’s challenge to the right of the substitute trustees to foreclose was based on alleged defects in the consent judgment affecting the lien. In support of her claim that she had not received notice of the consent judgment action, she submitted a copy of the docket in case number CAEF21-02678, showing that no return of service had been filed in that case. She also submitted an affidavit attesting that she did not know the attorney who, on her behalf, filed an answer and consented to the motion for entry of the consent judgment, nor did she authorize him to represent her. If successful, Ms. Crowell’s challenge to the consent judgment could give rise to a legal or equitable defense resulting in dismissal of the foreclosure action.

We conclude that, based on the record before the circuit court at the time of its ruling on May 26, 2021, Ms. Crowell had sufficiently pleaded facts in support of a “valid defense to the validity of the lien instrument,” warranting an evidentiary hearing under Rule 14-211(b). Accordingly, we shall vacate the court’s order denying Ms. Crowell’s Amended Motion to Stay Foreclosure and Motion to Dismiss and remand for further proceedings. *See Mitchell v. Yacko*, 232 Md. App. 624, 643 (2017) (remanding case for a hearing where the appellant pleaded with particularity the elements of forgery and her motion stated ““a valid defense to the validity of the lien instrument””) (citing Md. Rule 14-211(b)). We express no opinion as to the merits of her claim and any possible defenses in the consent

judgment action. We note only that the outcome of the evidentiary hearing in the consent judgment action will likely affect the disposition of the evidentiary hearing in this case. This case is remanded to the circuit court for further proceedings consistent with the outcome of the evidentiary hearing in CAE18-40023.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY,
DOCKET 16e, VACATED; CASE
REMANDED FOR FURTHER
PROCEEDINGS NOT INCONSISTENT
WITH THIS OPINION. EACH PARTY TO
PAY HER/HIS OWN COSTS.**