

Circuit Court for Frederick County  
Case No. C-10-CV-21-000548

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND\*\*

No. 1129

September Term, 2022

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GERARD KARLEN

v.

WELLS FARGO MORTGAGE BACKED  
SECURITIES 2007-2 TRUST, ET AL.

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Berger,  
Shaw,  
McDonald, Robert N.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Shaw, J.

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Filed: July 25, 2023

\*\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 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.

Gerard Karlen, Appellant pro-se, filed a two-count complaint in the Circuit Court for Frederick County against Wells Fargo Mortgage Backed Securities 2007-2 Trust, Wells Fargo Asset Securities Corporation, and Wells Fargo Bank, N.A., Appellees. The complaint sought information about the present and historical owners of a note executed in 2006 by Appellant and his wife. The Circuit Court issued an order and accompanying memorandum dismissing Karlen’s complaint. Appellant timely appealed raising the following rephrased question:<sup>1</sup>

Did the Circuit Court err in granting Appellees’ motion to dismiss?

For the reasons that follow, we affirm the judgment.

### **FACTS**

This appeal stems from a 2014 foreclosure action filed in the Connecticut Superior Court (“Superior Court”) by HSBC Bank USA N.A., as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2007-2, with Wells Fargo Bank, N.A., acting as its servicer. The subject of the foreclosure action was a note (the “Note”) executed in 2006 by Appellant and his wife for \$800,000, endorsed in blank and secured by a mortgage on residential property in Westport, Connecticut on which the Karlens failed to make payments.

During the pendency of the action, the Karlens pursued discovery, filing numerous discovery requests and motions seeking information about and disputing the ownership of the Note. The parties eventually filed motions for summary judgment. A hearing was held

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<sup>1</sup> Appellant’s original question: Was the Circuit Court of Frederick County correct in dismissing the Appellant’s Complaint herein?

at which Wells Fargo presented the original, wet-ink signed Note.<sup>2</sup> The Superior Court subsequently entered summary judgment (as to liability<sup>3</sup>) for the Plaintiffs and issued a memorandum, stating:

[D]efendant, Gerard Karlen alleges the document presented as [the] note in Court was not an original as he didn't see pen impressions in the paper. Carla Rivers Karlen did not recall the transaction. The Court reviewed the documentation [submitted]. The Court finds the documents presented to the Court to be the original documents, over defendants' objections and, therefore, finds the plaintiff in possession of the note and mortgage.

\* \* \*

[Thus,] the Court finds that the original plaintiff properly commenced this action as owner and holder of the note and mortgage[.]

The Karlens filed a motion for reconsideration. After reconsidering its ruling, the Superior Court again reached the same conclusion as stated in its memorandum. The Karlens subsequently filed another subpoena application to depose corporate designees of Wells Fargo Mortgage Backed Securities 2007-2 Trust and for documents, to which Wells Fargo objected.

On December 5, 2021, two weeks after the Karlens filed their subpoena application, which is still pending, Appellant filed a complaint in the Circuit Court for Frederick County requesting an order and declaratory judgment. In his complaint, he listed two causes of actions. In the first cause of action, he alleged that: 1) Wells Fargo has purposefully hidden

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<sup>2</sup> A wet-ink signature is the process of signing a physical document with a pen and ink as opposed to an electronic signature.

<sup>3</sup> Under Connecticut law, a court was then to review the balance due on the Note and approve the form of judgment requested, if and when Wells Fargo moved for a judgment of foreclosure.

the identity of the owner of the Note; 2) “it is possible” that the Note is owned by another entity; and 3) he is entitled to and needs the information about who has owned the Note “in order to evaluate claims made by Wells[.]” Based on those allegations, Appellant asked the Circuit Court to order Wells Fargo to “reveal” the owner of the Note from March 1, 2007, through the current date. In his second cause of action, Appellant reiterated his above allegations. He then asked the court to issue a Declaratory Judgment establishing the “dates of ownership” of the Note from March 1, 2007, through the current date. Wells Fargo filed a motion to dismiss, arguing that Appellant had failed to state a claim upon which relief could be granted. Following a hearing, the Circuit Court dismissed Appellant’s complaint. Appellant filed this timely appeal.

### **Standard of Review**

The standard of review by which we review the grant of a motion to dismiss “is whether the trial court was legally correct.” *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019) (quotation marks and citations omitted). A court must assume the truth of all well-pleaded facts in the complaint and all reasonably drawn inferences from them and order dismissal only if those allegations and inferences, “if true, would not afford relief to the plaintiff[.]” *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 643 (2010) (citations omitted).

### **DISCUSSION**

A pleading is required to contain a statement of facts that shows the “pleader’s entitlement to relief[.]” Md. Rule 2-303(b). Additionally, Md. Rule 2-322(b)(2) provides that a defendant may seek dismissal of a complaint if the complaint fails “to state a claim

upon which relief can be granted[.]” The Circuit Court reasoned that Appellant’s “cause of action” seeks information about his Note, which is basically a discovery request, but he does not allege why he is entitled to that legal relief, particularly where another court, the Connecticut Superior Court, has already ruled that Wells Fargo was the owner of the Note. We agree, and accordingly, we find no error by the circuit court in dismissing Appellant’s first cause of action for failure to state a cause of action.

The Maryland Uniform Declaratory Judgments Act is codified at Md. Code Ann., Cts. & Jud. Proc. Art. §§ 3-401, *et. seq.* A declaratory judgment action “is a vehicle by which a person may obtain a judicial declaration ‘to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.’” *Hanover Invs., Inc. v. Volkman*, 455 Md. 1, 15 (2017) (quoting Cts. & Jud. Proc. Art. § 3-402). The uncertainty must be justiciable, however, and a “declaratory judgment action may not be used to resolve abstract questions or questions that are moot or that may never arise.” *Id.* (citation omitted). Moreover, a court should not entertain an action for declaratory relief when there is already a pending action “involving the same parties and in which the identical issues that are involved in the declaratory action may be adjudicated.” *Id.* at 17 (quotation marks and citations omitted). A court should decline to grant a declaratory judgment in “deference to a pending action” so as to conserve judicial resources, avoid conflicted judgements, and prevent evasion of the final judgment requirement for an appeal. *Id.* (footnotes omitted).

Appellant’s second cause of action speculates that the Note is owned by another but offers no facts to support that speculation. Therefore, as found by the Circuit Court, we

hold there is no justiciable controversy. Even if there was a justiciable controversy, we would find no abuse of discretion in the court’s decision to dismiss the complaint because of the earlier filed Superior Court action involving the same parties and issues.

The Superior Court litigation and the litigation here involve the same parties – Karlen and Wells Fargo. The fact that the parties reversed roles in the Maryland litigation or that there were additional parties in the Superior Court case is of no moment. *See Volkman*, 455 Md. at 20 (“The mere existence of additional parties on one side of the case does not necessarily mean that a court must proceed with an otherwise duplicative declaratory judgment action. To hold otherwise would [] invite a party to add another nominal plaintiff to circumvent this limitation on declaratory judgment actions.”) (citation omitted).

The information sought here is identical to the information Karlen sought in the Superior Court foreclosure action - the name of the owner of the Note and the Note’s transfer history. An identical issues question is “whether the question presented in the declaratory judgment action can be adequately decided, or may be adjudicated, in the earlier-filed, pending action.” *Id.* at 21 (quotation marks, footnotes, and emphasis omitted). Appellant is wrong when he states that “[o]wnership of the Note is not at issue” in the Superior Court case. Appellant’s argument that “it is clear that the [Superior] Court has not taken jurisdiction over the question as to the ownership of the Note” is false. The Superior Court ruled that Wells Fargo, as holder of the Note, was the owner and entitled to enforce the mortgage.

Under the circumstances presented, the Circuit Court did not err in granting the motion to dismiss Appellant’s complaint.

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