

Circuit Court for Montgomery County
Case No. 472760V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1505

September Term, 2022

CADMAN ATTA MILLS

v.

LAURA H.G. O’SULLIVAN, *et al.*

Berger,
Leahy,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: November 20, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms with Rule 1-104(a)(2)(B). Md. Rule 1-104.

This case arises out of a foreclosure action initiated in the Circuit Court for Montgomery County by substitute trustees Laura H.G. O’Sullivan, Michael T. Cantrell, and Erin M. Shaffer (collectively, “Substitute Trustees”), appellees, against mortgagor Cadman Atta Mills (“Mills”), appellant. On appeal, Mills asserts that the trial court erred in denying his motion to stay and dismiss the foreclosure action. He presents six questions for our consideration, which we have consolidated and rephrased as a single question as follows:¹

¹ Mills’s original questions presented read as follows:

1. Did the Trial Court Err as a Matter of Law when it Denied Appellant’s Motion to Vacate the July 18, 2022, Ruling and Order when Appellant’s Motion to Stay and Dismiss Foreclosure was Adjudicated/Concluded on December 30, 2019? And did the Trial Court Err as a Matter of Law in Reversing the December 30, 2019, Enrolled Order in the Absence of Fraud, Irregularity, or Mistake?
2. Did the Trial Court Further Err in Attempting to Try Appellant’s “Forgery Claims” where the Court Lacked Jurisdiction as these Claims had been Removed by JPMorgan Chase to the US District Court for the District of Maryland?
3. Did the Trial Court Err [as] a Matter of Law When it Denied Appellant’s Motion to Vacate the July 18, 2022, Ruling and Order where the Contested Loan Modification Agreement was Unnotarized and Unrecorded thus Unenforceable in a Foreclosure Proceeding?

Whether the trial court erred in denying Mills’s motion to stay and dismiss the foreclosure action.

For the reasons explained herein, we shall affirm.

FACTS AND PROCEDURAL HISTORY

The property at issue in this case is the residential property located at 10205 Windsor View Drive, Potomac, Maryland 20854 (“Property”). Substitute Trustees initiated foreclosure proceedings relating to the Property by filing an order to docket on September 30, 2019. Mills challenges the circuit court’s denial of his motion to stay and dismiss the Substitute Trustees’ foreclosure action under Maryland Rule 14-211.

Origin of the Loan and Loan Modification Agreement

Mills purchased the Property in 1987. In 2005, Mills obtained a refinanced mortgage loan (“Loan”) from Washington Mutual Bank, F.A. (“Washington Mutual”), in the principal amount of \$644,000. He executed and signed the corresponding Adjustable-

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4. Did the Trial Judge Err in Holding an Evidentiary Hearing to Comply with the Stipulated Order which had been Vacated more than two years prior to the Trial?
 5. Where the Trial Court Improperly Conducted a Trial in July 2022 to Relitigate Appellant’s Previously Granted, 2019 Motion to Stay and Dismiss Foreclosure and to Reverse the Court’s Enrolled Decision, Did the Trial Court Compound the Error by Ignoring the Law and Improperly Exercising its Discretion in Conducting a Trial that Denied the Appellant a Fair Trial?
 6. Were the “Findings of Fact”, Based on which Appellant’s October 21, 2019, Verified Motion was Improperly Denied by the Trial Court, Clearly Erroneous Based on the Evidence?

Rate Note (“Note”) and the Deed of Trust securing the Note, the latter of which was recorded in the Montgomery County land records office. JPMorgan Chase (“Chase”) acquired the loan from Washington Mutual on or around September 25, 2008. Thereafter, Chase recorded an “Assignment of Deed of Trust” in the Montgomery County land records office.

On or around May 25, 2010, Chase informed Mills that he qualified for a modification of the Loan terms and sent him a proposed “Loan Modification Agreement.” Chase received a signed copy of the Loan Modification Agreement from Mills on or around June 4, 2010. It included Mills’s signature and was dated May 31, 2010. On or around June 7, 2010, Chase sent Mills a copy of the fully executed Loan Modification Agreement. Following the execution of this agreement, Mills continued to make monthly payments on the Loan until March 2019.

Mills alleges that he did not learn of the Loan Modification Agreement until he attempted to refinance the mortgage in February 2019. He claims that he contacted Chase on or around February 25, 2019 to receive more information about the Loan Modification Agreement and alleges that he first received a copy of the agreement on or around March 19, 2019. Mills told Chase that his signature on the Loan Modification Agreement had been forged. When Chase denied this accusation, Mills stopped making his monthly payments on the Loan. Mills has not made any monthly payments since March 2019. Based on this default, Chase authorized Substitute Trustees to commence a foreclosure action.

Substitute Trustees’ Order to Docket Foreclosure, Mills’s Motion to Stay and Dismiss, and Mills’s Affirmative Case Against Chase

On September 30, 2019, Substitute Trustees filed an order to docket foreclosure in the Circuit Court for Montgomery County. The order to docket was accompanied by various documentation including the Note, the Deed of Trust, the Assignment of Deed of Trust, and a notice of intent to foreclose. On October 21, 2019, Mills filed a motion to stay and dismiss the foreclosure action. The circuit court held a brief hearing on December 30, 2019, during which the parties stipulated to temporarily stay consideration of the motion. The parties’ agreement was memorialized in the order that the court entered the following day (“Stipulated Order”). The Stipulated Order temporarily stayed the case pending further orders from the court and provided:

Rather than proceeding with a contested hearing on the Motion to Stay on December 30, 2019 [sic] at 10 am, the parties have reached an agreement for a temporary stay of this proceeding in order to allow the Plaintiffs and the secured party to provide certain discovery regarding the subject loan, and have agreed to a schedule for such discovery and a continued evidentiary hearing. Further, pursuant to Maryland Rule 14-211(d), the Court may enter a scheduling order with respect to any of the matters specified in Rule 2-504 that are relevant to this action.

The Stipulated Order further provided that an evidentiary hearing on the motion would take place on March 24, 2020.

On December 30, 2019 -- on the same day that the Circuit Court for Montgomery County held its brief hearing discussing the status of Mills’s motion -- Mills filed an

affirmative action for relief against Chase in the Circuit Court for Montgomery County.² Mills’s complaint included four counts: (1) common law fraud, (2) violation of the Maryland Consumer Protection Act, Md. Code (2013) §§ 13-101 to 13-501 of the Commercial Law Article (“CL”), (3) violation of the Maryland Mortgage Fraud Protection Act, Md. Code (1974, 2015 Repl. Vol.) §§ 7-401 to 7-409 of the Real Property Article (“RP”), and (4) violation of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 to 1681x. Mills also sought a declaratory judgment that the Loan Modification Agreement was void and unenforceable. Chase filed a timely notice of removal to the United States District Court for the District of Maryland on January 31, 2020.³

Evidentiary Hearing for Mills’s Motion to Stay and Dismiss Delayed Due to COVID-19 and Mills’s Affirmative Case in Federal Court

On January 27, 2020, the circuit court issued a hearing notice formally scheduling an evidentiary hearing on March 24, 2020 to consider Mills’s motion to stay and dismiss the foreclosure action. Due to growing concerns surrounding COVID-19, the parties filed a joint motion on March 13, 2020 requesting a continuance and proposed rescheduling the hearing to May 5, 2020. The continued escalation of the COVID-19 pandemic in the early spring and summer of 2020 severely disrupted court operations throughout Maryland and the country. Due to this disruption, the circuit could not respond to the joint motion

² *Cadman Atta Mills v. JPMorgan Chase Bank Nat’l Ass’n*, No. 477384V (Cir. Ct. Mont. Cnty. 2019).

³ *Cadman Atta Mills v. JPMorgan Chase Bank Nat’l Ass’n*, No. 8:20-cv-00279 (D. Md. 2020).

until June 26, 2020, at which time it held the motion to be moot and asserted that the “matter shall be reset by the Assignment Office at the earliest convenience.”

While the foreclosure case remained pending, Mills had filed a motion for summary judgment in his affirmative case against Chase on February 3, 2021, and Chase filed a cross-motion for summary judgment on April 12, 2021. Substitute Trustees thereafter filed multiple motions to defer dismissal of the foreclosure action pending a resolution on the cross-motions for summary judgment in the federal case and an evidentiary hearing to consider Mills’s motion to stay and dismiss the foreclosure action.⁴ The circuit court granted these motions and deferred dismissal in order to ensure that Mills’s motion would be heard on the merits.

On April 8, 2022, the United States District Court for the District of Maryland granted Chase’s motion for summary judgment in part and dismissed Mills’s complaint, holding that Mills’s claims against Chase were time-barred and barred by the Anti-Injunction Act, 28 U.S.C. § 2283.⁵ Mills subsequently filed a motion to reconsider the federal court’s ruling, which was denied on May 27, 2022.

⁴ Substitute Trustees filed such motions on May 26, 2021, February 2, 2022, May 4, 2022, and August 8, 2022. All of these motions were granted, with the circuit court deferring dismissal by 90 days on each occasion.

⁵ *Cadman Atta Mills v. JPMorgan Chase Bank Nat’l Ass’n*, No. 8:20-cv-00279, 2022 WL 1063108 (D. Md. 2020).

July 2022 Evidentiary Hearing to Consider Mills’s Motion to Stay and Dismiss

On July 14, 2022, the Circuit Court for Montgomery County conducted an evidentiary hearing to consider Mills’s motion to stay and dismiss the foreclosure action. Mills testified under oath that the signature on the Loan Modification Agreement was a forgery, arguing that he was hospitalized during the time it was signed and consequently could not have signed the document. Although hospital records submitted at the hearing demonstrate that Mills was able to sign other documents while hospitalized, Mills insisted that he never received the Loan Modification Agreement to sign. He also argued that he would never have signed the agreement because the modified terms were allegedly against his interest. Substitute Trustees also presented evidence at the hearing and called two witnesses: Donna Eisenberg, a forensic handwriting expert, and Pamela Bingham, a Chase representative. During the hearing, Ms. Eisenberg rendered her opinion to a reasonable degree of professional certainty that, based on her examination of more than 50 samples of Mills’s signature, the signature on the Loan Modification Agreement was Mills’s signature and not a forgery.

The circuit court ruled on the motion, denying Mills’s motion to stay and dismiss the foreclosure action. The circuit court found that Mills did not provide sufficient evidence to rebut the presumption that the signature on the Loan Modification Agreement was his authentic signature. The court entered its order denying Mills’s motion on July 18,

2022. On August 21, 2022, Mills filed a motion to vacate the court's order.⁶ The court denied his motion on September 28, 2022. This timely appeal followed.⁷

DISCUSSION

On appeal, Mills asserts that the circuit court erred in denying his motion to stay and dismiss Substitute Trustee's foreclosure action and in denying his motion to vacate. First, Mills argues that it was improper for Substitute Trustees to bring this foreclosure action through an order to docket suit. Second, Mills contends it was erroneous for the circuit court to hold its July 14, 2022 evidentiary hearing, arguing that the circuit court had already granted his motion in December 2019 and the issue was therefore moot. Third, Mills asserts that the July 14, 2022 evidentiary hearing failed to comply with the procedural requirements of Maryland Rule 14-211. Finally, Mills challenges the circuit court's decision on the merits, arguing that the court applied an incorrect burden of proof and erroneously concluded that he had signed the Loan Modification Agreement.

As we explain herein, we reject Mills's arguments regarding the alleged impropriety of the order to docket and evidentiary hearing and affirm the judgment of the circuit court.

⁶ Mills originally filed a motion to vacate on August 12, 2022, but this was stricken due to lack of certificate of service.

⁷ While this appeal was pending, the foreclosure action continued. The foreclosure sale occurred on March 24, 2023. The Circuit Court for Montgomery County ratified the sale on June 6, 2023 and ratified the Auditor's Report on September 6, 2023. On August 14, 2023, Mills filed a motion for a temporary restraining order and a preliminary injunction. On August 24, 2023 the circuit court denied Mills's request for a temporary restraining order and scheduled a hearing to consider Mills's request for a preliminary injunction. The hearing scheduled for August 31, 2023 was canceled and Mills's request for a preliminary injunction remains pending at this time.

I. Standard of Review

An owner of real property is “possessed of three means of challenging a foreclosure: obtaining a pre-sale injunction pursuant to Maryland Rule [14–211], filing post-sale exceptions to the ratification of the sale under Maryland Rule 14–305(d), and the filing of post-sale ratification exceptions to the auditor's statement of account pursuant to Maryland Rule 2–543(g), (h).” *Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705, 726 (2007). Accordingly, a mortgagor “may file in the action a motion to stay the sale of the property and dismiss the foreclosure action.” Md. Rule 14-211. “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) (citing *Wincopia Farm, LP v. Goozman*, 188 Md. App. 519, 528 (2009)). Therefore, we review a circuit court's denial of a motion to stay and dismiss foreclosure under an abuse of discretion standard. *Id.* On appeal, we review the trial court's legal conclusions de novo. *Svrcek v. Rosenberg*, 203 Md. App. 705, 720 (2012) (citing *Wincopia Farm, supra*, 188 Md. App. at 528)). We defer to the trial court’s factual findings unless clearly erroneous. *Fischbach v. Fischbach*, 187 Md. App. 61, 88 (2009) (citing Md. Rule 8-131(c)). “If any competent material exists in support of the trial court’s factual findings, those findings cannot be held to be clearly erroneous.” *MAS Assocs., LLC v. Korotki*, 465 Md. 457, 474 (2019) (quoting *Webb. v. Nowak*, 433 Md. 666, 678 (2013)).

II. Substitute Trustees’ order to docket suit was an appropriate vehicle to foreclose on the Property following Mills’s default.

As a preliminary matter, Mills argues that the Substitute Trustees acted in bad faith by initiating the order to docket foreclosure. Mills asserts that an order to docket suit can only be initiated when there is no dispute as to the validity of the lien instrument and the instrument has been recorded. Under Maryland Rule 8-131(a), “[o]rdinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court” Mills did not contest the validity of Substitute Trustees’ order to docket suit in his motion to stay and dismiss, nor did he raise the issue at the July 14, 2022 evidentiary hearing. He also failed to raise this issue in his motion to vacate the circuit court’s order denying his motion to stay and dismiss the foreclosure action. Therefore, Mills failed to preserve this issue for our consideration on appeal. Nevertheless, had the issue been properly preserved, we conclude that the order to docket was the proper procedure for bringing a foreclosure action in this case.

Under the Maryland Rules, there are various prerequisites to commencing a foreclosure action through an order to docket. First, only an “individual authorized to exercise a power of sale may institute an action to foreclose the lien.” Md. Rule 14-204(a). Additionally, “[a] secured party may file an action to foreclose the lien under an assent to a decree, except that an action to foreclose a deed of trust shall be instituted by a beneficiary of the deed of trust, any trustee appointed in the deed, or any successor trustee.” Md. Rule 14-204(b). Finally, “[a]n action to foreclose may not be filed unless (1) the instrument creating or giving notice of the existence of the lien has been filed for record, and (2) there

is a default that lawfully allows a sale.” Md. Rule 14-205(a). If all of these requirements are met, “[a]n action to foreclose a lien pursuant to a power of sale shall be commenced by filing an order to docket.” Md. Rule 14-207(a)(1). The order to docket shall include or be accompanied by documentation required under Maryland Rule 14-207(b), such as a copy of the lien instrument and an affidavit asserting the right to foreclose.

Mills has failed to pay his monthly mortgage payment since March 2019. As a result, there is a default in this case that lawfully allows a sale. Chase, as the servicer of Mills’s mortgage loan since 2008, had a power of sale over the Property under the Deed of Trust. Additionally, Chase properly appointed Substitute Trustees in September 2019 and authorized them to institute a foreclosure action, which they did by filing an order to docket accompanied by the proper documentation required under Maryland Rule 14-207(b). Mills does not dispute any of these facts, but instead argues that it was improper for Substitute Trustees to file the order to docket because the Loan Modification Agreement was never recorded. Although Mills is correct that the Loan Modification Agreement was never recorded, recordation of that document was not necessary to allow Substitute Trustees to bring this foreclosure action.

The language of Maryland Rule 14-205(a)(1) only requires that “the instrument creating or giving notice of the existence of the lien” be recorded. The instrument creating Chase’s security interest in the Property is the Deed of Trust executed by Mills and Washington Mutual in 2005, which was assigned to Chase in 2008. Both the Deed of Trust and the Assignment of Deed of Trust were properly recorded in the Montgomery County

land records office. Although the Loan Modification Agreement changed the terms of repayment, it is not the instrument that created the lien, nor is it the instrument that gives the public and other secured parties notice of its existence. For this reason, Chase was not required to record the Loan Modification Agreement in order to authorize Substitute Trustees to commence the foreclosure suit.

This conclusion is consistent with the language of Title III of the Real Property Article of the Maryland Code. Under that article, “no estate of inheritance or freehold, declaration, or limitation of use, estate above seven years, or deed may pass or take effect unless the deed granting it is executed or recorded.” RP § 3-101(a). However, the statute provides that “[a]ny other instrument affecting property, including any contract for the grant of property, or any subordination agreement establishing priorities between interests in property *may* be recorded.” *Id.* § 3-102(a) (emphasis added). This includes “any assumption agreement by which a person agrees to assume the liability of a debt or other obligation secured by a deed of trust.” *Id.* Therefore, while Chase was authorized by statute to record the Loan Modification Agreement, it was not required to do so. We reject Mills’s argument that the order to docket suit was an improper mechanism to foreclose on the Property and conclude that Chase and Substitute Trustees complied with all procedural requirements under the Maryland Rules to bring this foreclosure action.

III. It was proper for the circuit court to conduct the July 2022 evidentiary hearing to consider Mills’s motion to stay and dismiss the foreclosure action.

On appeal, Mills repeatedly asserts that the circuit court granted his motion to stay and dismiss the foreclosure action in December 2019. As a result, he contends that it was

improper for the circuit court to conduct the July 2022 evidentiary hearing because the issue was moot.⁸ In our view, this misrepresents the record and misunderstands the procedural mandates of Maryland Rule 14-211.

Mills was authorized to bring his motion to stay and dismiss the foreclosure action under Maryland Rule 14-211, which provides that a mortgagor “may file in the action a motion to stay the sale of the property and dismiss the foreclosure action.” The Maryland Rule also provides:

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.

Md. Rule 14-211(b)(1). However, if the court concludes that the motion is timely or is untimely with good cause, complies with the relevant procedural requirements, and states a facially valid defense, “the court shall set the matter for a hearing on the merits of the alleged defense.” Md. Rule 14-211(b)(2).

Mills contends that the hearing held on December 30, 2019 constituted a “hearing on the merits of the alleged defense” and resulted in an order dismissing the foreclosure

⁸ Mills similarly argues that the circuit court erred by granting Substitute Trustees’ multiple motions to defer dismissal, asserting that those motions were moot because the court had already granted his motion to stay and dismiss the foreclosure action. Mills also claims that he was not granted the opportunity to respond to these deferral motions. We decline to reach the merits on these arguments as Mills failure to preserve these issues for our consideration on appeal. *See* Md. Rule 8-131(a).

case. The record belies Mills’s contention. The December 30, 2019 hearing was a brief hearing during which the parties appeared and represented that they had reached an agreement for a temporary stay of the proceedings. It did not constitute an evidentiary hearing. We recognize that the language included in the case docket may have caused confusion for the parties. The docket entry on December 30, 2019 provides: “Hearing (Bonifant, J) on Defendant’s verified motion to stay and dismiss foreclosure action – granted. Order signed.” However, read in the context of the entire docket, this refers to the Stipulated Order entered by the court on December 31, 2019 granting a *temporary* stay. As stated in the Stipulated Order, “the parties [reached] an agreement for a *temporary* stay of this proceeding in order to allow the [Substitute Trustees and Chase] to provide certain discovery regarding the subject loan, and have agreed to a schedule for such discovery and a continued evidentiary hearing.” The December 2019 hearing did not constitute an evidentiary hearing, did not result in an order ruling on the motion, and did not render Mills’s motion moot.⁹ It was, therefore, proper for the circuit court to hold the evidentiary hearing on July 14, 2022.

IV. The July 2022 evidentiary hearing complied with the procedural requirements of Maryland Rule 14-211.

Mills makes multiple arguments asserting that the July 2022 hearing failed to comply with the procedural requirements of Maryland Rule 14-211 and characterizing the

⁹ Mills similarly misreads the record by suggesting that the circuit court vacated the Stipulated Order in March 2020 and arguing that the order was moot at the time of the July 2022 hearing. This is simply incorrect -- the Stipulated Order was never vacated.

hearing as a “planned ambush.” He objects to the fact that there was no formal notice of trial, no pretrial conference, and no scheduling order or timeline for discovery.¹⁰ He also alleges that Substitute Trustees were allowed to admit into evidence “hundreds of pages of documents” that he did not have the opportunity to examine prior to the hearing. Finally, he objects to the two witnesses called by Substitute Trustees, who Mills alleges “simply showed up on the day of the Trial itself.”

We would first note that the July 2022 proceeding was not a trial, but an evidentiary hearing to consider Mills’s motion to stay and dismiss Substitute Trustees’ foreclosure action against the Property. Accordingly, there was no requirement for a notice of trial or pretrial conference. Nevertheless, we conclude that Mills had sufficient notice of the hearing. The parties participated in a status conference on May 2, 2022, during which the circuit court confirmed that the evidentiary hearing would take place on July 14, 2022. Therefore, Mills received notice of the hearing more than two months before the hearing took place.

¹⁰ In Mills’s reply brief, he also argues that the hearing was untimely under Maryland Rule 14-211. Mills failed to raise this argument during the July 2022 hearing, in his motion to vacate the circuit court’s order denying his motion to dismiss, or in his brief on appeal. As such, he failed to preserve the issue of timeliness for our consideration on appeal. *See* Md. Rule 8-131(a). Nevertheless, we conclude that the hearing was timely under Maryland Rule 14-211(b)(2), which provides that a hearing to consider the merits of a motion to stay and dismiss a foreclosure action “shall be scheduled for a time prior to the date of sale, if practicable, otherwise within 60 days after the originally scheduled date of sale.” Mills argues that the originally scheduled date of sale was November 21, 2019, and the circuit court was required to hold the hearing on or before January 21, 2020. However, the sale did not occur until March 24, 2023. Therefore, the hearing took place prior to the date of sale and complied with Rule 14-211(b)(2).

We also reject Mills’s arguments regarding discovery. Under Maryland Rule 14-211(a)(3)(C), a motion to stay and dismiss a foreclosure action may include “any request for the discovery of any specific supporting documents in the possession or control of the plaintiff or the secured party.” Additionally, a court *may* enter a scheduling order but is not required to do so. Md. Rule 14-211(d). Mills included a request for discovery in his motion to stay and dismiss the foreclosure action, and his request was granted by the terms of the Stipulated Order. The parties agreed to produce documents and the court noted that it “may enter a scheduling order” with regards to discovery. Although the court elected not to enter a scheduling order, Mills had a meaningful opportunity to engage in discovery. Indeed, he successfully moved to compel the production of certain documents by Chase and Substitute Trustees. We also recognize that COVID-19 played a critical role in delaying the proceedings in this case, with the evidentiary hearing taking place more than two years after the court entered the Stipulated Order. Given this delay, Mills had ample time to engage in discovery and request helpful documentation -- some of which had already been produced to him in his affirmative case against Chase in federal court.

The record also indicates that the testimony of Ms. Eisenberg and Ms. Bingham came as no surprise to Mills. Chase produced Ms. Eisenberg’s report and declaration containing her expert opinions to Mills in the federal case. Indeed, while cross-examining Ms. Eisenberg, Mills noted that he had “looked at [her] report in great length” and engaged in substantial cross-examination regarding the contents of that report. Similarly, Mills was aware that Substitute Trustees would be calling a Chase representative as a witness for the

evidentiary hearing. In the parties' March 13, 2020 joint motion to continue, the parties acknowledged that "[a] witness from [Chase] is integral to the hearing for all parties and therefore this witness' absence will inhibit the parties ability to present the matter to the Court at the evidentiary hearing." Having had opportunity to review Ms. Eisenberg's report and knowing that a Chase representative would testify at the hearing, Mills was not subject to a "planned ambush" as he suggests.

Mills additionally makes several arguments relating to the fairness of the July 2022 hearing. For example, he contends the court allotted an inadequate amount of time to hold the evidentiary hearing. He also alleges that the circuit court asked Substitute Trustees' witnesses to remain in the courtroom throughout the proceedings "to better tailor their testimony to what was transpiring in the Court Room" -- an assertion that is unsupported by the record. Similarly, Mills objects to the routine instruction given by the circuit court that Mills -- as a witness in the proceeding -- could not discuss his testimony with others during the lunch break. Like many arguments raised by Mills on appeal, Mills never raised any of these arguments at the evidentiary hearing or in his motion to vacate the court's order denying his motion to dismiss. He, therefore, failed to preserve these issues for our consideration on appeal. *See* Md. Rule 8-131(a). Although we are not required to consider the merits of his arguments, to the extent that we do, we find all arguments unsupported by the record or otherwise without merit.

Finally, Mills argues that the judge who presided over the evidentiary hearing should have recused himself because he presided over part of Mills's divorce case in 2005.

This Court has previously held that a party has not preserved the issue of recusal for appeal unless the party filed a “timely motion” with the circuit court judge that the party seeks to recuse. *Conwell Law LLC v. Tung*, 221 Md. App. 481, 516 (2015) (citing *Miller v. Kirkpatrick*, 377 Md. 335, 358 (2003)). A “timely” motion is one that is filed “as soon as the basis for it becomes known and relevant.” *Miller, supra*, 377 Md. at 358 (citing *Surratt v. Prince George’s Cnty.*, 320 Md. 439, 468 (1990)). Therefore, “a litigant who fails to make a motion to recuse before a presiding judge in circuit court . . . waiv[es] the objection on appeal.” *Halici v. City of Gaithersburg*, 180 Md. App. 238, 255 n.6 (2008); *see also* Md. Rule 8-131(a). Mills failed to make a motion to recuse and therefore failed to preserve this issue for our consideration on appeal. We conclude that the July 2022 evidentiary hearing adhered to the procedural requirements of Rule 14-211 and was conducted in a fair and appropriate manner.

V. The circuit court did not err in denying Mills’s motion to stay and dismiss the foreclosure action.

We now turn to the merits of the circuit court’s decision to deny Mills’s motion to stay and dismiss the foreclosure action. Mills asserts that the circuit court abused its discretion by denying his motion for two reasons. First, Mills asserts that it was improper for the court to impose any burden on Mills to prove that the signature on the Loan Modification Agreement was a forgery. Second, he argues that the court erred by concluding that the signature of the Loan Modification is authentic. We reject both arguments and affirm the circuit court’s judgment.

1. *The circuit court imposed the proper burden of proof at the evidentiary hearing.*

Mills asserts that the circuit court abused its discretion by imposing a burden of proof that required Mills to prove that the signature on the Loan Modification Agreement was a forgery. He contends that he was not required to “articulate a forgery defense” at the hearing.¹¹ We conclude that the circuit court utilized the correct burden of proof.

As discussed *supra*, a mortgagor can move to stay and dismiss a foreclosure action by challenging the validity of the lien instrument. *See* Md. Rule 14-211(a). “Forgery is one of the two principal bases for finding a deed to be void.” *Buckingham v. Fisher*, 223 Md. App. 82, 93 (2015) (citing *Scotch Bonnett Realty Corp. v. Matthews*, 417 Md. 570, 583 (2011)). This is because “a party cannot institute a foreclosure upon forged documents.” *Mitchell v. Yacko*, 232 Md. App. 624, 641 (2017). When analyzing forgery as a defense to foreclosure, this Court has defined forgery as “[1] a false making or material alteration, [2] with intent to defraud, [3] of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability.” *Buckingham, supra*, 223 Md. App. at 93 (quoting *Harding v. Ja Laur Corp*, 20 Md. App. 209, 212 (1974)). While “[t]his

¹¹ Mills also asserts that the Circuit Court for Montgomery County lacked jurisdiction to consider his forgery claims due to Mills’s ancillary suit against Chase in federal court. Notably, the United States District Court for the District of Maryland granted, in part, Chase’s motion for summary judgment and dismissed Mills’s complaint prior to the circuit court’s July 2022 evidentiary hearing. *See Cadman Atta Mills v. JPMorgan Chase Bank Nat’l Ass’n*, No. 8:20-cv-00279, 2022 WL 1063108 (D. Md. 2020). The federal court also denied Mills’s motion to reconsider prior to the July 2022 hearing. Therefore, no federal case was pending at the time of the hearing. Additionally, the circuit court certainly had jurisdiction to consider Mills’s forgery claim, as his motion to stay and dismiss foreclosure was based on a forgery defense.

definition is the general definition of the crime of forgery . . . it has also applied to define forgery when claimed as a defense to a lien’s validity.” *Id.* at 94 (citing *Harding, supra*, 20 Md. App. at 212). It follows that a trial court may require a party raising a forgery defense to a foreclosure action to establish all elements of common law forgery.

The Commercial Law Article of the Maryland Code provides what Substitute Trustees characterize as a “less stringent” burden of proof for a mortgagor asserting a forgery defense in a foreclosure case. Section 3-308 of the Article provides:

In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, *but the signature is presumed to be authentic and authorized* unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature.

CL § 3-308(a) (emphasis added). A comment to the statute clarifies this presumption, providing that “until evidence is introduced which would support a finding that the signature is forged or unauthorized, the plaintiff is not required to prove that it is valid.” *Id.* cmt. 1.

The trial court relied on this statute when determining the proper burden of proof. The court concluded that Substitute Trustees were not required to prove that Mills’s signature was authentic and that Mills was required to “make some sufficient showing” that the document was forged. The court further held that “the presumption requires a finding for [Substitute Trustees]” in the absence of such evidence from Mills. In our view,

this burden of proof properly reflects the language of Section 3-308(a) of the Commercial Law Article. We conclude that the trial court did not err in determining that Mills was required to provide some evidence to rebut the presumption that his signature on the Loan Modification Agreement was authentic. For the reasons explained *infra*, we also conclude that the circuit court did not abuse its discretion by concluding that Mills failed to meet this burden and denying Mills’s motion to stay and dismiss the foreclosure action.

2. *The circuit court did not err by concluding that Mills failed to provide sufficient evidence to rebut the presumption that his signature on the Loan Modification Agreement was authentic.*

In addition to contesting the burden of proof applied by the circuit court, Mills disagrees with the circuit court’s ruling on the merits and contends that the court erred in denying his motion for several reasons. First, he contends that the Loan Modification Agreement was not recorded and, therefore, not enforceable. For reasons discussed in Section II *supra*, we reject this argument. Mills also argues that the circuit court should have granted his motion to dismiss because the terms of the Loan Modification Agreement were not favorable to him, which he contends serves as sufficient evidence to rebut the presumption that the signature on the Loan Modification Agreement was authentic. We also reject this argument and agree with the circuit court’s conclusion that “[i]ndividuals can sign agreements, whether loan agreements or otherwise, that [are] not favorable to them. That doesn’t mean they didn’t sign.”

Finally, Mills argues that it was improper for the circuit court to rely on expert testimony and hospital records in reaching its conclusion that the signature on the Loan

Modification Agreement was not forged. Mills challenges the court's reliance on Ms. Eisenberg's testimony and asserts that expert analysis cannot be the "sole evidence" upon which a court bases its decision. He also contends that it was improper for the circuit court to conclude that he must have signed the Loan Modification Agreement because he had signed other documents such as hospital records while he was hospitalized -- coining this the "doctrine of he was physically able to sign his name thus he signed his name." However, as Substitute Trustees correctly acknowledge, neither the hospital records nor the expert testimony was fully dispositive on this issue.

Ms. Eisenberg testified to a reasonable degree of professional certainty that Mills signed the Loan Modification agreement. The court considered the fact that Mills had signed other documents while he was in the hospital in conjunction with Ms. Eisenberg's expert testimony, Ms. Bingham's testimony, Mills's testimony, and other documents that Mills and Substitute Trustees submitted into evidence. Based on all of the evidence presented, the court concluded that Mills failed to provide sufficient evidence to rebut the presumption that it was his signature on the Loan Modification Agreement. We conclude that the circuit court's factual findings are not clearly erroneous and that the court did not

abuse its discretion by denying Mills’s motion to stay and dismiss the foreclosure action and motion to vacate.¹² For these reasons, we affirm.

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

¹² Mills also argues on appeal that affirming the circuit court’s ruling would “serve as a basis for a claim of collateral estoppel in Appellant’s Positive Action in federal court.” As noted *supra*, the United States District Court for the District of Maryland granted, in part, Chase’s motion for summary judgement in April 2022 and dismissed Mills’s complaint. See *Cadman Atta Mills v. JPMorgan Chase Bank Nat’l Ass’n*, No. 8:20-cv-00279, 2022 WL 1063108 (D. Md. 2020). The federal court also denied Mills’s motion to reconsider. The record before us indicates that there is no pending federal case at this time.