UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0469

September Term, 2015

MARYLAND FINANCIAL REAL ESTATE INVESTMENT TRUST, LLC

v.

FRENCHMAN'S CREEK CONDOMINIUM ASSOCIATION, INC.

Graeff,
Leahy,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 24, 2016

On or about December 1, 2011, the Council of Unit Owners of Frenchman's Creek Condominium Association, Inc., filed a Statement of Condominium Lien against a unit owner–the Maryland Financial and Real Estate Trust, LLC ("MFRET")–in the land records for Prince George's County. On May 16, 2014, Frenchman's Creek Condominium Association ("FCCA"), operating under the name Frenchman's Creek Condominium Association Inc. c/o The Commercial Management Group, filed an Order to Docket Foreclosure in the Circuit Court for Prince George's County. MFRET responded by filing a motion to stay the sale and dismiss the action pursuant to Maryland Rule 14-211, asserting *inter alia*, that it was without access to condominium association records, and that it was unclear whether FCCA and its purported president, Paul Gbenoba, had authority to maintain the foreclosure action on behalf of the Frenchman's Creek Council of Unit Owners. The circuit court denied MFRET's motion to stay and MFRET appealed. MFRET presents two issues which we have slightly rephrased:

1. Did FCCA have standing to move forward in the foreclosure on behalf of the Condo Association Board?

2. Did the trial court abuse its discretion when it denied MFRET's motion to stay sale and dismiss the action?

Because MFRET's general allegations regarding FCCA fail to present any factual or legal defense to the validity of the lien, and because there is competent evidence in the record from which the court could determine that MFRET had actual notice of the condominium lien, we perceive no error or abuse of discretion on the part of the circuit court. We affirm.

BACKGROUND

On or about April 30, 1982, developer Fontainebleau, Inc., executed the Declaration and By-Laws for "Frenchman's Creek Condominium." According to Article III of the by-laws, the initial board of directors was designated by the developer.[1]

On April 2, 2008, MFRET purchased the Unit at 5540 Karen Elaine Drive, #1636, New Carrollton, Maryland ("Unit 1636") at tax sale. Thereafter, MFRET used Unit 1636 as a rental unit. Three and a half years later, on December 1, 2011, the condominium association, operating under the name "Council of Unit Owners of Frenchman's Creek Condominium Association," filed a Statement of Condominium Lien against Unit 1636. FCCA's Statement of Condominium Lien provided that Unit 1636 was subject to a lien

> in the amount of **$3,343.18** for regular assessments covering the period from **November 1, 2010,** through **December 31, 2011**. . . . The said property is also subject to a lien under [Title 14, Subtitle 2 of the Real Property Article] for such additional amounts as shall equal the interest accruing on the sum hereby secured after December 31, 2011, at the rate of 18% per annum and the costs of collecting and satisfying the obligation hereby secured including, but not limited to, reasonable attorneys' fees.

(Emphasis in original). That document was signed by condominium association managing agent Anthony Adams.

On December 2, 2013, the condominium association sent a Notice of Intent to Foreclose to MFRET. The notice provided that the name of the secured party is "Frenchman's Creek Condominium Association" ("FCCA"); that MFRET's association

[1] The record on appeal does not reflect who the original board members were or who has since replaced them.

dues were 2,130 days past due; and that MFRET should contact Anthony Adams to discuss options to avoid foreclosure.

On January 29, 2014, MFRET sent a letter to FCCA c/o Mr. Paul Gbenoba. MFRET's letter concerns water damage to Unit 1636 caused by a broken water line in the building's common area and asserts that Mr. Gbenoba's "organization is responsible for the pipes, and, by extension [Mr. Gbenoba's] organization is responsible for the damage to Unit 1636[.]" However, MFRET's letter then states:

> We have some concerns and questions about the legitimacy of your organization and your position. Despite investigation, we have not found any evidence that you or any other representative has incorporated the organization you purport to represent or has made any effort to keep the organization in good standing in Maryland. Clearly, an organization was contemplated for the condominium regime in which Unit 1636 is located. However, there are strict requirements for such organization and how it should be operated. We would like to exercise our rights as owner of Unit 1636 to examine your records for the organization you purport to represent. Please let me know a convenient time when we can conduct this examination.

On April 7, 2014**,** MFRET property manager Marty Aviles wrote to FCCA regarding carpeting in a hallway that had been removed by FCCA personnel and reiterated MFRET's request to examine association records. Then on April 17, 2014, counsel for MFRET again wrote to FCCA c/o Mr. Gbenoba regarding their request to review condominium association records. The letter states:

> We attempted to exercise our rights as owner of Unit 1636 to examine your records for the organization you purport to represent. In response to our request, you have referred us to Commercial Management Group (TCMG) for the records. However, Commercial Management Group has informed us that they do not hold records for Frenchman's Creek Condominium Association (the "Association"). Should you locate the records, we would,

> once again, request that these records be made available for inspection at your earliest convenience.
>
> As you may or may not know, both the Association By-Laws and Maryland law require notice, meetings, and a vote by the residents to grant you the authority to take action on behalf of the Association. Because you have refused our request to make condominium records you purport to maintain available so that we may verify your position and authority to act on behalf of the Association, we believe we should not make condominium association payments to you. We are not sure these payments will be used to further the condominium regime. Until you make these records available for our inspection, MFRET will not be making condominium regime payments to you. . . .

On May 8, 2014, MFRET transmitted a letter to FCCA's legal counsel which reiterated MFRET's concerns regarding Mr. Gbenoba's authority to act on behalf of FCCA and stating their belief that Mr. Gbenoba "ha[d] unilaterally appointed himself as 'President, Board of Directors and he has run out collecting monies from residents, some of which, we are concerned, he is converting to his personal use.'" MFRET again requested access to FCCA records pursuant to Maryland Code (1974, 2010 Repl. Vol., 2014 Supp.), Real Property Article ("RP"), § 11-116.

That same day, May 8, 2014**,** FCCA managing agent Anthony Adams filed affidavits of debt and indebtedness affirming that MFRET owed $25,830.47 to FCCA, and that MFRET had defaulted on the condominium lien. Mr. Adams also executed and filed an "Affidavit of Nonfiling of Complaint under Real Property Article, Sec. 14-203(c)" affirming that, to his knowledge, MFRET did not file a timely complaint to "determine whether probable cause exist[ed] for the establishment of the Condominium Lien." Then on May 16, 2014, Frenchman's Creek Condominium Association, Inc. c/o The Commercial

Management Group filed an Order to Docket Foreclosure in the Circuit Court for Prince George's County.

On June 6, 2014, MFRET filed a motion to stay sale and dismiss the foreclosure action pursuant to Maryland Rule 14-211. MFRET disputed the amount of indebtedness and requested "a temporary stay of the sale of the property on terms and conditions reasonable to the court[,]" until FCCA made its records available for inspection such that MFRET could "ascertain whether Plaintiff was operating with the proper authority." MFRET also argued that Frenchman's Creek Condominium Association, Inc., was attempting to "do[] business as a Maryland corporation, despite having never registered . . . with the Maryland Department of Assessments and Taxation." Thus, it argued that an action could not be maintained by third parties in the name of a non-existent corporation and the foreclosure must be dismissed. In support of their motion, MFRET filed an affidavit from their property manager Monty Aviles. Mr. Aviles affirmed that:

> 6. [MFRET] has made no less than five (5) formal demands in 2014 to [FCCA], its representatives, and attorneys to inspect the Association records. To date, these records have not been made available by either the Association or Commercial Management Group, who was identified by [FCCA] as the records custodian.

FCCA filed its opposition to the motion to stay on June 19, 2014, arguing that Rule 14-211 was not the proper vehicle for challenging the validity of FCCA's lien. Rather, FCCA asserted that MFRET was required to proceed pursuant to the Maryland Contract Lien Act, which requires that a party that is given notice of the creation of a lien through RP § 14-203 may challenge the existence of probable cause for that lien by filing a

complaint in the circuit court within 30 days. RP § 14-203(c)(1). FCCA argued that the time for MFRET to challenge the validity of the condominium lien had long since passed. Additionally, FCCA maintained that MFRET's requests to review records pursuant to RP § 11-116 were irrelevant to the foreclosure proceeding.

On June 26, 2014, MFRET filed a motion to strike FCCA's opposition, again arguing that "Frenchman's Creek Condominium Association, Inc.," is a non-entity incapable of maintaining an action. MFRET also requested a hearing on the motion and reiterated its records inspection request, stating that "[w]ithout obtaining these condominium records, MFRET has no way to verify whether Mr. Gbenoba has authority to represent the Condo Association." Attached to its motion, MFRET provided a second affidavit from property manager Monty Aviles, which stated, in part:

> 3. Beginning in February, 2012, several years after MFRET acquired title to the Condo, I and/or MFRET representatives began receiving letters demanding outstanding condominium assessments from an attorney purporting to represent Frenchman's Creek Condominium Association, Inc. The letters threatened collection action. I responded to the letters by stating that MFRET had received no notices of assessments and no bills for condominium dues previously. MFRET's registered agent is a matter of public record and this agent would have forwarded those notices to me. I also questioned the size of the assessments, as they seemed unreasonable for a Condo of its size. I requested an explanation, and to see the justification for the assessments, but this was not provided.
>
> 4. Thereafter, I or MFRET representatives received letters intermittingly from various attorneys and/or agents purporting to represent "Frenchman's Creek Condominium Association, Inc." Each time, I questioned the assessments. I also questioned why I had received no notices of meetings of the Condo Association, as was required by the legal documents for the Condo Association which are attached to pleadings and papers filed in this action. I would have liked to have participated in meetings where the budgets for the Condo regime were discussed and assessments were determined.

5. In an effort to press my case, I requested a meeting with the person purporting to represent the Condo Association. A meeting was arranged with a certain Paul Gbenoba who advised me that he was originally a foreign national from Nigeria. When I met with Mr. Gbenoba, he reiterated his demands for money to be paid to "Frenchman's Creek Condominium Association, Inc." and refused to make any accommodation for the fact that we had received no notices of any action of any kind from the Condo Association. He also refused to justify the size of the assessments.

6. I requested to see the records of the Condo Association in his possession and control, and Mr. Gbenoba only provided me with the original source documents for the Condo Association. He refused to provide me with any other records for the Condo Association, and I began to suspect that there were no other records. Based on my interactions with Mr. Gbenoba, I began to suspect that he was acting unilaterally, and I had no faith and trust that any money MFRET would pay him would be legitimately used by the Condo Association.

7. I requested to inspect all of the records of the Condo Association. Mr. Gbenoba refused to provide those records and referred me and my counsel to a property management company that advised that it maintained no such records.

8. Thereafter, I or MFRET representatives received, sporadically, some letters from attorneys purporting to represent Frenchman's Creek Condominium Association, Inc. to the effect that MFRET owed, as the owner of its Condo, monies to a certain to Frenchman's Creek Condominium Association, Inc. I investigated and determined that there was no such entity known as Frenchman's Creek Condominium Association, Inc. I suspected these notices were being generated at the behest of Paul Gbenoba. In response to the notices and statements, I or MFRET representatives pointed out to the attorneys generating them that there was no such entity as Frenchman's Creek Condominium Association, Inc. and I and MFRET representatives again requested the opportunity to inspect any records for the entity these attorneys represented that pertained to MFRET's Condo.

9. These attorneys failed and refused to provide records for the Condo Association, and, again, I was left to assume that Paul Gbenoba was attempting to intimidate MFRET into paying monies to him. Mr. Gbenoba appeared to be using a fictitious entity as the basis for his authority to make such demands on MFRET. Under these circumstances, it was impossible to settle the claims. I assumed that MFRET owed some condominium assessments, I just needed to confirm that the claims being levied by Mr. Gbenoba and his counsel were legitimate.

10. Since I have been dealing with Mr. Gbenoba, I have dealt with a succession of attorneys purporting to represent "Frenchman's Creek

> Condominium Association, Inc." When I have questioned the existence of this organization and the legitimacy of this purported client, some of these attorneys have simply disappeared.
>
> 11. I never received notices of contract lien or statements of debt which are cited as the basis for this action, as indicated in the motion to stay or dismiss the foreclosure case which has been brought against MFRET by a fictitious entity, Frenchman's Creek Condominium Association, Inc.

MFRET filed a second motion to strike the foreclosure pleadings on July 10, 2014.

FCCA filed a response to the request for production of documents contained in MFRET's June 6, 2014 motion on July 25, 2014. FCCA refused the request as unduly burdensome and oppressive. In response, MFRET's counsel sent a letter dated July 31, 2014, to FCCA referencing MFRET's attempt at self-help access to the records, which stated:

> Finally, my client has attempted to access the association records which are "easily accessible through the FCCA's web page" pursuant to the footnote in [FCCA's] Reply to [MFRET's] Motion to Strike and Request for Hearing. Not surprisingly, my client has been unable to register for access to the website, and requests to the website's help desk have gone unanswered. If my client's ability to register for use of the website is not promptly addressed, I will have to assume that it is yet another attempt by your client to mislead the condominium owners, and now the Court, that the association possesses documents which do not in fact exist.

On August 18, 2014, MFRET sent yet another letter to counsel for FCCA requesting the production of condominium association records. Then on September 8, 2014, MFRET filed a certificate of good faith efforts to resolve the discovery dispute and a motion to compel discovery—reiterating that the association records must be made available to unit owners pursuant to the Maryland Condominium Act. FCCA filed a prompt opposition to MFRET's motion to compel.

On September 25, 2014, the circuit court held a hearing on MFRET's motion to stay and motion to compel discovery. At the outset of the hearing, MFRET acknowledged that "[t]his is a foreclosure action on an alleged lien . . . [for] condominium dues under the Maryland Contract Lien Act." However, MFRET immediately turned to challenging the ability of Mr. Gbenoba to bring the action as president of the condominium association. The following colloquy occurred:

> [MFRET'S COUNSEL]: Mr. Gbeno[b]a is believed to have moved in and pulled an Al Haig. I am a controller and I speak for the Condo Association is what Mr. Gbeno[b]a has done, and he has -- under that color of authority, he's collected dues and converted them to his personal use. He's instituted legal action and foreclosed out persons from their condominium units and has taken title to eight of the condominium units in his own personal name. The public records show that and bear that out, and I'll offer that into evidence today.
>
> THE COURT: Wait a minute. I'm not taking any evidence today. The question is whether or not I'm going to stay it and you want it dismissed, so I'm not -- if you want me to take evidence today, then I'm going to pass this and take the oral argument case. I was not expecting to take evidence today.
>
> [FCCA'S COUNSEL]: I was not expecting to present evidence.
>
> THE COURT: I was expecting to make a determination as to whether this even goes beyond your preliminary Motion to Stay and Dismiss or whether --

After hearing argument from MFRET's Counsel, the court remarked:

> So your basic argument is that at this juncture in his alleged capacity, [Mr. Gbenoba] doesn't have standing. That's what I'm hearing. He doesn't have standing because he's technically -- he's alleging he's in that position, but you're saying he's not in the position, so he doesn't have standing to move forward on behalf of the Board.

The court acknowledged that it could set the matter for an evidentiary hearing, and stated "it certainly sounds to me like there's a problem." However, FCCA maintained that the lien had been in place since 2011 and that MFRET effectively "sat on their rights" by not challenging the imposition of the lien in accordance with the Contract Lien Act. Thus, FCCA argued that the validity of the underlying lien was no longer at issue and MFRET's records requests were not relevant to the foreclosure proceeding. At the close of the hearing, the court took the matter under advisement.

On April 16, 2015, the circuit court signed a memorandum and order denying Appellant's motions (entered on April 21). The circuit court determined that MFRET's motion to stay "d[id] not, on its face, state a valid defense to the validity of the lien or the lien instrument or the right of the plaintiff to foreclose in the pending action pursuant to Md. Rule 14-211(b)(1)(c)." The court also observed that "[i]f [MFRET] is correct about its assertions regarding Mr. Gbenoba's actions or the Association's viability, the foreclosure case is not the type of case in which those issues should be litigated." The circuit court's order provided:

> **ORDERED** that [Appellant's] Motion to Stay Sale and Dismiss Action be and hereby is DENIED pursuant to Md. Rule 14-211(b)(1) for failure to state a valid defense to the validity of the lien or the lien instrument or to the right of the [Appellee] to foreclose in the pending action; it is further
>
> **ORDERED** that [Appellant's] Motions to Strike be and hereby are DENIED as MOOT; and it is further
>
> **ORDERED** that this case shall continue in due course.

On May 8, 2015, MFRET filed a notice and application for leave to appeal to this court.[2] Additional facts will be introduced as the discussion requires.

DISCUSSION

I.

Standing

MFRET argues that the circuit court was incorrect as a matter of law in determining that FCCA had standing to bring the foreclosure action. MFRET maintains that the name appearing on FCCA's pleadings, Frenchman's Creek Condominium Association, Inc., is a "fictitious" entity. MFRET asserts that actions taken by the nonexistent corporation operated by Mr. Gbenoba are null and void. Thus, MFRET argues that "all notices, statements, complaints and legal papers [that] have been prosecuted in the name of [the] nonexistent corporation . . . are null and void."

FCCA argues that it is "a condominium association whose Board of Directors has the authority to enforce provisions of its Declaration and Bylaws." FCCA asserts that it does not need to be incorporated to have such enforcement authority. FCCA points to RP § 11-109—a section of the Maryland Condominium Act— stating in pertinent parts:

> (a) The affairs of the condominium shall be governed by a council of unit owners which, even if unincorporated, is constituted a legal entity for all purposes. The council of unit owners shall be comprised of all unit owners.

[2] An interlocutory order denying the Motion to Stay and Dismiss made under Rule 14-211 constitutes injunctive relief as a remedy. *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534, 540 (2013) (citations omitted). An interlocutory order of a court may be appealed immediately if the order refused to grant an injunction. Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article § 12-303(3)(iii).

* * *

> (d) The council of unit owners may be either incorporated as a nonstock corporation or unincorporated and it is subject to those provisions of Title 5, Subtitle 2 of the Corporations and Associations Article which are not inconsistent with this title. The council of unit owners has, subject to any provision of this title, and except as provided in item (22) of this subsection, the declaration, and bylaws, the following powers:
>
> * * *
>
> (4) To sue and be sued, complain and defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
>
> * * *
>
> (16) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the council of unit owners, under § 11-113 of this title[.]

First, we note that plain language of the statute provides that an unincorporated council of unit owners may "sue and be sued, complain and defend, or intervene in litigation . . . on matters affecting the condominium." RP § 11-109(d)(4). Despite MFRET's assertion that Frenchman's Creek Condominium Association, Inc., is not the proper name of the condominium association, such a misnomer or error in the pleadings does not divest FCCA of the ability to act on behalf of the unit owners. Indeed, the December 2, 2013 Notice of Intent to Foreclose listed "Frenchman's Creek Condominium Association" as the secured party.

Second, no argument has been made that there is any separate, proper condominium association which possesses the right to act but has declined to do so. Indeed, as late as January, April, and May of 2014, MFRET was charging FCCA with the responsibility to

repair damage to, and caused by, common elements in the condominium. Nevertheless, regarding the period of time covered by the condominium lien, MFRET acknowledged at oral argument that it had made no payments to FCCA or any other governing body.

In this case, it is plain that FCCA was the only entity acting as the governing body for the condominium association of Frenchman's Creek, and the inclusion of "Inc." in its name was a mere misnomer. It is a long-settled principle that, where the defendant in an action was not misled by the name used by a plaintiff, a misnomer of the plaintiff is a mere irregularity that may be freely amended and does not invalidate an otherwise proper judgment. *Pumpian v. E.L. Rice & Co.*, 135 Md. 364, 364 (1919). Moreover, we ordinarily will not set aside a judgment in a foreclosure matter for harmless irregularities. *See, e.g.*, *J. Ashley Corp. v. Burson*, 131 Md. App. 576, 583 (2000). We conclude that the circuit court did not err in determining that FCCA had standing to bring the foreclosure action

II.

Md. Rule 14-211 Motion to Stay Sale

MFRET argues that FCCA's foreclosure action "should have been dismissed . . . after [Mr.] Gbenoba d/b/a FCCA, Inc. refused to comply with the [] Maryland Condominium Act by allowing MFRET to examine the association's records." MFRET maintains that it did not receive a copy of the 2011 Statement of Condominium Lien until its property manager was notified of the existence of the lien in May 2012. MFRET asserts that the proper condominium association "is dormant and inactive" and that FCCA has refused to provide records to establish its legitimacy as the condominium association or to

provide justification for its assessments. Thus, MFRET argues that, having raised questions regarding the legitimacy of FCCA, it sufficiently disputed the legal basis of the condominium lien.

FCCA argues that the condominium lien was created pursuant to the Maryland Contract Lien Act, RP §§ 14-201 *et seq.*, and that any party wishing to contest the lien was required to challenge its validity in the circuit court within 30 days of service of the original notice. FCCA maintains that MFRET was provided with the Statement of Condominium Lien on or about December 2, 2013 (and by its own admission had actual notice of the lien in May 2012) but failed to contest the lien. FCCA asserts that MFRET failed to challenge the lien either "within the allotted time frame or in compliance with the procedure set forth in the Maryland Contract Lien Act." Thus, FCCA argues that MFRET waived the right to challenge the validity of the lien. Further, FCCA argues that MFRET's records inspection request is irrelevant to the Rule 14-211 motion because it does not form the basis for a factual or legal defense to the foreclosure.

a. Establishment of the Condominium Lien

The Maryland Contract Lien Act, RP § 14-202(a) provides:

> A lien on property may be created by a contract and enforced under this subtitle if:
> (1) The contract expressly provides for the creation of a lien; and
> (2) The contract expressly describes:
> (i) The party entitled to establish and enforce the lien; and
> (ii) The property against which the lien may be imposed.

Where a lien is created as the result of a breach of contract, the party seeking to create the lien must "give written notice to the party against whose property the lien is intended to be

imposed" within two years of the breach of contract. RP § 14-203(a)(1). That notice is to be served by "[c]ertified or registered mail, return receipt requested, addressed to the owner of the property against which the lien is sought to be imposed at the owner's last known address" or by personal delivery to the owner. RP § 14-203(a)(2). Additionally, where service through those means is unavailing, notice may be mailed to the owner's last known address and posted "in a conspicuous manner on the property." RP § 14-203(a)(3). Thereafter, an action to foreclose the lien may be brought at any time "within 12 years following recordation of the statement of lien." RP § 14-204(c).

Once a property owner has been provided with notice of the lien, RP § 14-203(c) provides that the property owner "may, within 30 days after the notice is served on the party, file a complaint in the circuit court for the county in which any part of the property is located to determine whether probable cause exists for the establishment of a lien." As the Court of Appeals stated in *Golden Sands Club Condo., Inc. v. Waller*:

> The unit owner **must** file suit, but that suit is not a complicated one. Section 14-203(c) spells out what the complaint must contain: names of the unit owner and the claimant; a copy of the notice sent to the unit owner under § 14-203(a); "[a]n affidavit containing a statement of facts that would preclude establishment of the lien for the damages alleged in the notice"; and a request for hearing, if one is desired.

313 Md. 484, 494-95 (1988) (emphasis added) (holding that "procedural due process does not prevent the approach to hearing which the legislature has taken" by balancing the interests of the parties and providing a unit owner with a simple and not unduly expensive way to secure a hearing and judicial action prior to the establishment of a lien on the unit).

In the present case, the parties do not dispute that the Frenchman's Creek Condominium Declaration and Bylaws establish the right of the council of unit owners or the managing association to establish and enforce a lien for default on assessments. The Statement of Condominium Lien executed by Mr. Adams on behalf of the "Council of Unit Owners of Frenchman's Creek Condominium Association, Inc." was recorded in the Prince George's County Land Records at Liber 33145 Folio 553 on or about December 1, 2011. Further, Mr. Adams affirmed in his Affidavit of Nonfiling of Complaint Under Real Property Article, Sec. 14-203(c) that "in his capacity as Managing Agent for [FCCA, he] had sent notice to [MFRET] of [FCCA's] intent to file a Statement of Condominium Lien." Moreover, as MFRET acknowledges in its brief, its property manager was notified of the lien in May 2012. Notwithstanding the issue of if and/or when MFRET received a copy of the Statement of Condominium Lien, it is clear from the record that (1) at some point prior to the foreclosure action MFRET was aware of the lien; and (2) at no time did MFRET file an action under RP § 14-203 to dispute the probable cause for the lien.

b. Rule 14-211 Pre-sale Motion to Stay

"Before a foreclosure sale takes place, the defaulting borrower may file a motion to 'stay the sale of the property and dismiss the foreclosure action.'" *Bates v. Cohn,* 417 Md. 309, 318 (2010) (quoting Md. Rule 14–211(a)(1)). A motion under Rule 14-211 amounts to a request for "injunctive relief, challenging 'the validity of the lien or ... the right of the [lender] to foreclose in the pending action.' " *Id.* at 318-19 (quoting Md. Rule 14–211(a)(3)(B)). Accordingly, we review the circuit court's denial of a foreclosure injunction

for an abuse of discretion. *Svrcek v. Rosenberg*, 203 Md. App. 705, 720 (2012) (citing *Anderson v. Burson,* 424 Md. 232, 243 (2011)). "We review the trial court's legal conclusions *de novo.*" *Id.* (citing *Wincopia Farm, LP v. Goozman,* 188 Md. App. 519, 528 (2009)).

Maryland Rule 14-211 provides, in pertinent parts:

> (a)(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) Final Determination.** After the hearing on the merits, if the court finds that the moving party has established **that the lien or the lien instrument is invalid or that the plaintiff has no right to foreclose in the pending action**, it shall grant the motion and, unless it finds good cause to the contrary, dismiss the foreclosure action. If the court finds otherwise, it shall deny the motion.

(Emphasis added).

Recently, in *Buckingham v. Fisher*, we considered the proper pleading standard for stating a facially valid defense under Rule 14-211 in the context of a challenge asserting that the underlying instrument, a deed of trust, was a forgery. 223 Md. App. 82, 86 (2015). The appellants in *Buckingham* maintained that "signatures on the lien instruments attached

to the Order to Docket are . . . forgeries, thereby rendering the lien instruments void *ab initio* and unenforceable." *Id.* The appellees in that case responded that "although the Buckinghams' motion nominally raised defenses, it failed to adequately allege all necessary elements of the defenses as required by Rule 14-211(a)(3)." *Id.* at 89.

We first noted that Rule 14-211(b)(1), which sets out the procedures for the initial determination by the circuit court, contemplates the failure of the motion to "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[,]" as one of the three grounds for denial at the initial determination stage. *Id.* at 89-90. Turning back to the appellants' argument regarding forgery we observed:

> Failure to state a facially valid defense is one of the three grounds for denial at the initial determination phase and appears to have been the basis for the trial court's denying the [] motion.
>
> * * *
>
> The text of the Rule does not make explicit what level of "particularity" is required for a defense to be deemed valid on its face and trigger an evidentiary hearing on the merits. But the fact that an asserted defense must be "accompanied by any supporting documents or other material in the possession or control of the moving party," Rule 14-211(a)(3)(C), leads us to believe that bare assertions of a broad defense to the validity of a lien instrument will not be sufficient. The requirements of stating a defense with particularity and supporting those assertions with any available evidence leads us to conclude that, under Rule 14-211, the pleading standard is more exacting than the pleading standard for an initial complaint.
>
> We hold that under Rule 14-211, a party must plead all elements of a valid defense with particularity.

Id. at 90-91. Accordingly, we determined that a defense in the context of Rule 14-211 must be accompanied by some level of factual and legal support, and "[g]eneral allegations will not be sufficient to raise a valid defense." *Id.* at 91-92.

In its motion to stay the sale and dismiss the action MFRET raised only two issues to challenge the foreclosure. First, MFRET presented the argument—which we addressed *supra*—that the action was being pursued by a nonexistent entity. Second, MFRET asserted that it was "entitled to verify the authority of the Plaintiff's representatives, to make demand for past assessments, and collect monies on behalf of the association," but had been prevented from doing so through FCCA's refusal to provide access to association records pursuant to RP § 11-116. MFRET did not, at that time, specifically dispute the validity of any of the documents underlying the foreclosure action, nor did MFRET allege any other irregularity in the foreclosure proceeding.

Put simply, MFRET's general allegations—that FCCA had not provided conclusive proof that it represents the council of unit owners or that it was unclear whether Mr. Gbenoba was the duly authorized president of FCCA—do not present a valid defense against the underlying lien instrument or the right of the secured party to foreclose. Without challenging the notice of lien, MFRET chose to ignore FCCA's lawyers and managing agent, Anthony Adams, and forgo making any payments on the lien to FCCA—or any other purported condominium association—despite its recognized obligation to make such payments.

Like MFRET, we are troubled by FCCA's apparent refusal to produce association records pursuant to RP § 11-116. However, that refusal or failure does not bear on the validity of the lien or the ability of the condominium association to foreclose, and should have been raised in a separate action. Regarding MFRET's argument that it did not receive a copy of the Statement of Condominium Lien, we recognize that the record contains contradictory affidavits regarding the notice, but note that MFRET acknowledged it was aware of the lien as of May 2012. Because MFRET's general allegations regarding FCCA and Mr. Gbenoba do not present a factual or legal defense to the validity of lien and there is competent evidence in the record from which the court could determine that MFRET had actual notice of the condominium lien, we perceive no error in the findings of the circuit court. Accordingly, the court did not abuse its discretion in denying MFRET's motion to stay.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.