IN THE COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2016

No. 00821

CAROL G. SULLIVAN, *et vir.*,

Appellants,

v.

MARK S. DEVAN, *et al.*,

Appellees.

APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY

(HON. MICKEY J. NORMAN)

BRIEF OF APPELLANTS

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Civil Appeal Lawyer

Dated: October 24, 2016

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I. STATEMENT OF THE CASE

In this foreclosure action, Wells Fargo failed to grant loss mitigation that should have been granted. The servicer further failed to acquire the right to foreclose by not complying with statutory prerequisites. While failing to comply with its contractual and legal obligations, the servicer misled the homeowners into believing that loan modification efforts would likely be successful. These assurances dissuaded the homeowners from attending foreclosure mediation and also from filing a timely motion to stay and dismiss.

Once it became clear that the servicer's assurances were false, the deadline for the homeowners to assert their defenses in a pre-sale motion to stay and dismiss had passed. The homeowners were thereby confined to attempting to assert their defenses in an untimely motion to stay and dismiss, and also in exceptions to sale. The lower court denied both efforts without holding any evidentiary hearing.

II. QUESTIONS PRESENTED

1. Did the lower court err in ruling that the homeowners' motion to stay and dismiss did not, on its face, state a valid foreclosure defense?
2. Did the lower court err in ruling that there was no good cause for the late filing of the homeowners' motion to stay and dismiss?
3. Did the lower court err in denying the homeowners' motion to stay and dismiss, and exceptions to sale, without a hearing?

III. STATEMENT OF FACTS

Wells Fargo, through its division, America's Servicing Company (ASC), acted as the servicer for Robert and Carol Sullivan's mortgage loan. In September 2009, after the Sullivans encountered financial hardship, Wells Fargo offered the Sullivans a Trial Period Plan (TPP) under the Home Affordable Modification Program (HAMP). (E. 50, Servicer's Computer Notes.) The TPP Agreement provided, *inter alia*, that the Sullivans would receive a permanent modification if they made three timely payments in the amount of $2,366. (*Id*.; E. 15, Aff. Robert Sullivan ¶ 3.) The Sullivans made the required payments. (E. 88-97, TPP Payments.)

In January 2010, Wells Fargo offered the Sullivans a second TPP. (E. 50, Servicer's Computer Notes; E. 99, Servicer's Jan. 14, 2010 Letter.) Under the new TPP Agreement, Wells Fargo agreed to offer a permanent modification if the Sullivans made three timely payments in the amount of $2,091.11. (E. 50, Servicer's Computer Notes.) The Sullivans again made the required payments. (E. 88-97, TPP Payments.)

Wells Fargo's computer records do not contain any indication that the Sullivans failed to meet any other requirements under the TPP agreements. (E. 35-85.) Nevertheless, Wells Fargo refused to offer a permanent modification. (E. 15-16, Aff. Robert Sullivan ¶¶ 3-4.) Clearly, Wells Fargo failed to grant loss mitigation that should have been granted.

Realizing the Sullivans had completed two TPP agreements, Wells Fargo confirmed that it considered the loan current on January 25, 2011. (E. 33, Servicer's

Jan. 25, 2011 Letter.) However, on August 1, 2012, the servicer issued a Notice of Intent to Foreclose that noted the date of default as March 2, 2009. (E. 26.) This strongly suggested that Wells Fargo's calculation of the amount required to cure the default included amounts the Sullivans had already paid under the TPP agreements.

The Sullivans believed a loan modification was forthcoming, since they upheld their end of the bargain under the TPP agreements. (E. 16, Aff. Robert Sullivan ¶ 5.) Indeed, Wells Fargo continued to lead the Sullivans to believe that it would grant the permanent modification it was required to grant. (*Id*.) Wells Fargo's false reassurances dissuaded the Sullivans from feeling it necessary to attend the foreclosure mediation scheduled for October 3, 2013, and further dissuaded them from filing a timely motion to stay and dismiss. (*Id*.)

As noted, a foreclosure mediation was scheduled for October 3, 2013. (E. 6, Docket Entries.) The Sullivans did not attend. (*Id*.) This was because Wells Fargo had assured them the loan modification was forthcoming. (E. 16, Aff. Robert Sullivan ¶ 5.) Since the mediation was held on October 3, 2013, the deadline for the Sullivans to file a motion to stay and dismiss was October 18, 2013. Md. R. 14-211(a)(2)(A)(iii)(a).

On June 17, 2014 (well after the deadline that the Sullivans missed due to Wells Fargo's assurances), the Sullivans concluded that Wells Fargo would not willingly provide the loan modification, and the Sullivans filed a Chapter 13 bankruptcy action in an attempt to restructure the loan, and essentially force the servicer to provide the modification. (*Id*.; E. 6, Docket Entries.) On January 20,

2016, the bankruptcy proceedings concluded. (E. 7, Docket Entries.) Only then was it clear that the attempt to force the servicer to honor its obligation to provide the loan modification was fruitless. (E. 16, Aff. Robert Sullivan ¶ 5.) Less than one month later, on February 12, 2016, the Sullivans filed their motion to stay and dismiss. (E. 7, Docket Entries.)

The motion to stay and dismiss asserted that Wells Fargo failed to grant loss mitigation that should have been granted. (E. 11-14.) The motion further outlined how the servicer failed to comply with statutory prerequisites to its right to foreclose, by incorrectly stating the amount of the debt in the Notice of Intent to Foreclose and the affidavit affirming the amount of the debt included in the Order to Docket. (*Id*.)

Nevertheless, on March 31, 2016, the lower court denied the motion without a hearing. (E. 131, Order.) Thereafter, the Sullivans filed exceptions to the foreclosure sale, wherein they again asserted their defenses. (E. 132.) The Sullivans requested a hearing in the exceptions. (E. 135.) The lower court denied the exceptions without a hearing on June 17, 2016. (E. 145, Order.)

IV. ARGUMENT

A. Legal Standard

Prior to a foreclosure sale, the homeowner may file a motion to "stay the sale and dismiss the action." Md. R. 14-211(a)(1). The motion may assert defenses that challenge "the right of the plaintiff to foreclose in the pending action." Md. R. 14-211(a)(3)(B). If the motion states, on its face, a valid defense, "the court shall set the matter for a hearing on the merits." Md. R. 14-211(b)(2)(C). The court must enter an order staying any foreclosure sale if the hearing cannot be held before the sale date. Md. R. 14-211(c)(1).

Before a lender acquires the right to foreclose in a pending action, it must comply with the requirements of MD. CODE, REAL PROP. § 7-105.1 and Md. R. 14-207. One such requirement is that the secured party send the homeowner a Notice of Intent to Foreclose that states the "amount required to cure the default." § 7-105.1(c)(4)(ii)(3). Another prerequisite is that the Order to Docket (the pleading initiating the foreclosure action) contain an affidavit that states "the debt remaining due and payable." Md. R. 14-207(b)(2).

After a foreclosure sale, the homeowner may file exceptions to set aside the sale. Md. R. 14-305(d)(1). The exceptions may set forth any "irregularity" that occurred in connection with the sale. *Id*. The court must set aside the sale if it finds that the sale was not "fairly and properly made" in light of an irregularity. Md. R. 14-305(e). The court must hold an evidentiary hearing if requested to do so, and if there is a "need to take evidence." Md. R. 14-305(d)(2).

A mortgage servicer's failure to grant loss mitigation that should have been granted is a valid defense that challenges the right of the lender to pursue foreclosure. *Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705 (2007). Indeed, the Maryland Court of Appeals' Standing Committee on Rules of Practice and Procedure proposed, and the Court adopted, a Committee note that accompanies Md. R. 14-211(e), which provides, "If the court finds that the plaintiff has no right to foreclose in the pending action because loss mitigation should have been granted, the court may stay entry of its order of dismissal . . . so that loss mitigation may be implemented."

Ordinarily, the defense that the servicer failed to grant loss mitigation that should have been granted "must be raised . . . pre-sale in an effort to prevent the sale from occurring." *Bates v. Cohn*, 417 Md. 309, 328 (2010). However, in cases where the servicer leads the borrower to believe a loan modification is forthcoming, it is an open question whether the defense may be raised in post-sale exceptions:

> Nor do we determine whether a homeowner/borrower may assert under 14-305, as a post-sale exception, claims that a foreclosure sale was the product of the lender affirmatively and purposefully misleading the borrower in default that ultimately unsuccessful pre-sale loss mitigation or loan modification efforts would likely be successful (or protracting strategically the denial of those efforts) and therefore dissuading the borrower from seeking to assert pre-sale defenses in a timely manner.

Id. Once the defense is raised, the circuit court must hold an evidentiary hearing. *Id*. n.14 ("[W]e do not reach the merits of Bates' claim that GMAC failed to comply with loss mitigation requirements. Had we needed to confront that claim on its merits, we would have remanded the matter to the trial court for fact-finding . . . .").

B. On Its Face, The Borrowers' Motion To Stay & Dismiss Stated A Valid Defense To The Right Of The Substitute Trustees To Foreclose

1. *Failure To Grant Loss Mitigation That Should Have Been Granted*

A mortgage servicer's failure to grant loss mitigation that should have been granted is a valid defense that challenges the right of the lender to pursue foreclosure. *Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705 (2007). Indeed, the Maryland Court of Appeals' Standing Committee on Rules of Practice and Procedure proposed, and the Court adopted, a Committee note that accompanies Md. R. 14-211(e), which provides, "If the court finds that the plaintiff has no right to foreclose in the pending action because loss mitigation should have been granted, the court may stay entry of its order of dismissal . . . so that loss mitigation may be implemented."

The U.S. Department of the Treasury implemented the Home Affordable Modification Program (HAMP) pursuant to its authority under the Troubled Asset Relief Program (TARP) to incentivize lenders to offer "loan modifications to prevent avoidable foreclosures." 12 U.S.C. § 5219(a)(1). The modification process under HAMP consists of two stages. *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 557 (7th Cir. 2012). First, if the lender determines a homeowner is eligible, it may offer a Trial Period Plan (TPP). *Id*. The TPP is a temporary loan modification that lasts three or more months. *Id*. Second, if the homeowner complies with the terms of the TPP, including the obligation to make all of the required payments, "the servicer ha[s] to offer a permanent modification." *Id*.

In *Wigod*, the servicer, Wells Fargo, offered a TPP, and the homeowner made the required monthly payments and otherwise met her requirements under the TPP. *Id*. at 561. Nevertheless, the servicer refused to offer a permanent modification. *Id*. The court held that these facts gave rise to a claim for breach of contract. *Id*.

Initially, the court held that "[o]nce Wells Fargo signed the TPP Agreement and returned it to Wigod, an objectively reasonable person would construe it as an offer to provide a permanent modification agreement if she fulfilled its conditions." *Id*. at 563. Valid consideration existed because, under TPP agreements, a homeowner "agree[s] to open new escrow accounts, to undergo credit counseling (if asked), and to provide and vouch for the truth of [their] financial information," and these agreements are "above and beyond [the homeowner's] existing legal duty to make mortgage payments." *Id*. at 564. Lastly, the court recognized that TPP agreements are enforceable because, despite the fact that servicers may have "some limited discretion to set the precise terms of an offered permanent modification," they are "certainly required to offer *some* sort of good-faith permanent modification." *Id*. at 565.

Numerous other courts have held that, once a homeowner complies with their obligations under a TPP, the servicer must offer a permanent modification. *George v. Urban Settlement Servs.*, 833 F.3d 1242 (10th Cir. 2016); *Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843 (8th Cir. 2014); *Corvello v. Wells Fargo Bank, N.A.*, 728 F.3d 878 (9th Cir. 2013); *Young v. Wells Fargo Bank, N.A.*, 717 F.3d 224 (1st Cir. 2013); *Allen v. Citimortgage*, No. CCB-10-2740, 2011 WL 3425665 (D. Md. Aug. 4, 2011).

In the case sub judice, Wells Fargo offered the Sullivans a TPP. The Sullivans made the required monthly payments. Wells Fargo's computer records do not contain any indication that the Sullivans failed to meet any other requirements under the TPP. Nevertheless, Wells Fargo refused to offer a permanent modification. Clearly, Wells Fargo failed to grant loss mitigation that should have been granted. The Sullivans' motion to stay and dismiss, therefore, stated on its face a valid defense that challenged the lender's right to pursue foreclosure.

2. *Failure To Correctly State The Amount Of The Debt*

Before a lender acquires the right to foreclose in a pending action, it must comply with the requirements of MD. CODE, REAL PROP. § 7-105.1 and Md. R. 14-207. One such requirement is that the secured party send the homeowner a Notice of Intent to Foreclose that states the "amount required to cure the default." § 7-105.1(c)(4)(ii)(3). Another prerequisite is that the Order to Docket (the pleading initiating the foreclosure action) contain an affidavit that states "the debt remaining due and payable." Md. R. 14-207(b)(2).

Wells Fargo never complied with these obligations. On January 25, 2011, Wells Fargo confirmed that the loan was current. However, the Notice of Intent to Foreclose noted the date of default as March 2, 2009. Rudimentary logic dictates that the date of default giving rise to a foreclosure action cannot be a date prior to a time when the loan was current.

The fact that Wells Fargo noted the date of default as a date prior to a time when the loan was current strongly suggests that its calculation of the amount required to cure the default included amounts the Sullivans had already paid. Accordingly, there was strong evidence to suggest that the Notice of Intent to Foreclose did not comply with § 7.105.1(c)(4)(ii)(3). Such a mathematical error would also extend to the affidavit required under Md. R. 14-207(b)(2). For these reasons, the Sullivans' motion to stay and dismiss stated on its face a valid defense that challenged the lender's right to pursue foreclosure.

C. There Was Good Cause For The Late Filing Of The Borrowers' Motion To Stay & Dismiss

Maryland Rule 14-211(a)(2)(C) permits the court to extend the time for filing a motion to stay and dismiss for "good cause." Under Rule 14-211(a)(2)(A)(iii)(a), the deadline for the Sullivans' motion to stay and dismiss was 15 days after their foreclosure mediation session was held. The mediation was held on October 3, 2013, thus the deadline for the motion was October 18, 2013. The Sullivans did not file their motion until February 12, 2016.

Good cause existed for the late filing. As stated in the Sullivans' respective affidavits attached to the motion, the mortgage servicer led the Sullivans to believe that it would provide the loan modification to which the Sullivans were entitled. It was reasonable for the Sullivans to believe that the loan modification was forthcoming because they had met their requirements under the TPP Agreement by making all of the required payments.

When it became clear that the servicer was not going to provide the loan modification (despite being required to under the TPP Agreement), the Sullivans filed for Chapter 13 bankruptcy in an attempt to restructure the loan (essentially an attempt to force the servicer to provide the required loan modification). On January 20, 2016, the bankruptcy proceedings concluded. Only then was it clear that the attempt to force the servicer to honor its obligation to provide the loan modification was fruitless. Less than a month later, on February 12, 2016, the Sullivans filed their motion to stay and dismiss.

Although the servicer filed a response in opposition to the Sullivans' motion, it did not include an affidavit contradicting the Sullivans' affidavits, which affirmed that the servicer led them to believe it was in the process of granting the modification it was required to grant. Since the Sullivans made their TPP payments, the lower court should have recognized that it was reasonable for them to believe that a permanent loan modification was forthcoming, *especially* since they affirmed that the servicer continued to lead them to believe it was forthcoming. This constitutes good cause.

It was further reasonable for the Sullivans to attempt, in a roundabout way, to force the servicer to grant the loan modification by restructuring the loan in a Chapter 13 bankruptcy action. It then made sense for the Sullivans to wait and see how the bankruptcy action concluded before taking further action in the lower court. Since the Sullivans then filed their motion less than one month after the conclusion of the bankruptcy action, the lender was not prejudiced.

For these reasons, good cause existed for the Sullivans to file their motion to stay and dismiss on February 12, 2016. The lower court erred when it ruled to the contrary.

D. The Lower Court Should Have Held A Hearing On The Borrowers' Motion To Stay & Dismiss

When a homeowner files a motion to stay and dismiss that states, on its face, a valid defense that challenges the right of the lender to foreclose in the pending action, "the court shall set the matter for a hearing on the merits." Md. R. 14-211(b)(2)(C). The court must enter an order staying any foreclosure sale if the hearing cannot be held before the sale date. Md. R. 14-211(c)(1).

As outlined above, the Sullivans' motion to stay and dismiss stated two valid defenses that challenged the right of the lender to foreclose in this case. As further outlined above, good cause existed for the late filing of the motion. The lower court, therefore, erred in denying the motion without first holding a hearing on the merits.

E. The Lower Court Should Have Set Aside The Sale Or Held A Hearing On The Borrowers' Exceptions To Sale

After a foreclosure sale, the homeowner may file exceptions to set aside the sale. Md. R. 14-305(d)(1). The exceptions may set forth any "irregularity" that occurred in connection with the sale. *Id*. The court must set aside the sale if it finds that the sale was not "fairly and properly made" in light of an irregularity. Md. R. 14-305(e). The court must hold an evidentiary hearing if requested to do so, and if there is a "need to take evidence." Md. R. 14-305(d)(2).

Ordinarily, the defense that the servicer failed to grant loss mitigation that should have been granted "must be raised . . . pre-sale in an effort to prevent the sale from occurring." *Bates v. Cohn*, 417 Md. 309, 328 (2010). However, in cases where the servicer leads the borrower to believe a loan modification is forthcoming, it is an open question whether the defense may be raised in post-sale exceptions:

> Nor do we determine whether a homeowner/borrower may assert under 14-305, as a post-sale exception, claims that a foreclosure sale was the product of the lender affirmatively and purposefully misleading the borrower in default that ultimately unsuccessful pre-sale loss mitigation or loan modification efforts would likely be successful (or protracting strategically the denial of those efforts) and therefore dissuading the borrower from seeking to assert pre-sale defenses in a timely manner.

Id.

As outlined above, the Sullivans affirmed that the lender led them to believe a loan modification was forthcoming. This reasonable belief led the Sullivans to forego filing a *timely* motion to stay and dismiss. On June 17, 2014, when the Sullivans figured out that the servicer would not willingly grant the loan modification, the October 18, 2013 deadline for the motion to stay and dismiss had already passed. In sum, the lender affirmatively and purposefully misled the Sullivans into believing that pre-sale loan modification efforts would likely be successful, and thereby dissuaded the Sullivans from timely asserting their pre-sale defenses.

In their exceptions, the Sullivans requested a hearing. The evidence showed that the lender failed to grant loss mitigation that should have been granted. Thus, the lower court should have either set aside the sale, or held an evidentiary hearing.

V. CONCLUSION

For the reasons stated above, the Circuit Court for Baltimore County erred in denying the borrowers' motion to stay and dismiss and in ratifying the sale of the property. The rulings should be reversed, and the case remanded to the circuit court for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on this day, October 24, 2016, I served two copies of the Brief of Appellants, and two copies of the Record Extract, on the following person by regular mail, postage prepaid:

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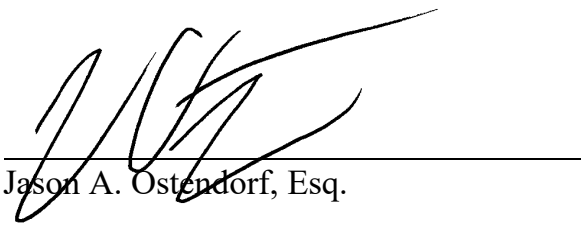

Jason A. Ostendorf, Esq.

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH MD. R. 8-112

This brief contains 3988 words, excluding the parts of the brief exempted from the word count by Md. R. 8-503. This brief complies with the font, spacing and type size requirements stated in Md. R. 8-112.

Jason A. Ostendorf, Esq.

CONSTITUTIONAL PROVISIONS,
STATUTES, ORDINANCES, RULES AND REGULATIONS

MD Rules, Rule 14-211

(a) Motion to Stay and Dismiss.

(1) *Who May File.* The borrower, a record owner, a party to the lien instrument, a person who claims under the borrower a right to or interest in the property that is subordinate to the lien being foreclosed, or a person who claims an equitable interest in the property may file in the action a motion to stay the sale of the property and dismiss the foreclosure action.

(2) *Time for Filing.*

(A) Owner-Occupied Residential Property. In an action to foreclose a lien on owner-occupied residential property, a motion by a borrower to stay the sale and dismiss the action shall be filed no later than 15 days after the last to occur of:

(i) the date the final loss mitigation affidavit is filed;

(ii) the date a motion to strike postfile mediation is granted; or

(iii) if postfile mediation was requested and the request was not stricken, the first to occur of:

(a) the date the postfile mediation was held;

(b) the date the Office of Administrative Hearings files with the court a report stating that no postfile mediation was held; or

(c) the expiration of 60 days after transmittal of the borrower's request for postfile mediation or, if the Office of Administrative Hearings extended the time to complete the postfile mediation, the expiration of the period of the extension.

(B) Other Property. In an action to foreclose a lien on property, other than owner-occupied residential property, a motion by a borrower or record owner to stay the sale and dismiss the action shall be filed within 15 days after service pursuant to Rule 14-209 of an order to docket or complaint to foreclose. A motion to stay and dismiss by a person not entitled to service under Rule 14-209 shall be filed within 15 days after the moving party first became aware of the action.

(C) Non-Compliance; Extension of Time. For good cause, the court may extend the time for filing the motion or excuse non-compliance.

(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;

Committee note: The failure to grant loss mitigation that should have been granted in an action to foreclose a lien on owner-occupied residential property may be a defense to the right of the plaintiff to foreclose in the pending action. If that defense is raised, the motion must state specific reasons why loss mitigation pursuant to a loss mitigation program should have been granted.

(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) state the date the moving party was served or, if not served, when and how the moving party first became aware of the action; and

(F) if the motion was not filed within the time set forth in subsection (a)(2) of this Rule, state with particularity the reasons why the motion was not filed timely.

To the extent permitted in Rule 14-212, the motion may include a request for referral to alternative dispute resolution pursuant to Rule 14-212.

(b) Initial Determination by Court.

(1) *Denial of Motion.* 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.

Committee note: A motion based on the failure to grant loss mitigation in an action to foreclose a lien on owner-occupied residential property must be denied unless the motion sets forth good cause why loss mitigation pursuant to a loss mitigation program should have been granted is stated in the motion.

(2) *Hearing on the Merits.* If the court concludes from the record before it that the motion:

(A) was timely filed or there is good cause for excusing non-compliance with subsection (a)(2) of this Rule,

(B) substantially complies with the requirements of this Rule, and

(C) states on its face a defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action, the court shall set the matter for a hearing on the merits of the alleged defense. The hearing 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.

(c) Temporary Stay.

(1) *Entry of Stay; Conditions.* If the hearing on the merits cannot be held prior to the date of sale, the court shall enter an order that temporarily stays the sale on terms and conditions that the court finds reasonable and necessary to protect the property and the interest of the plaintiff. Conditions may include assurance that (1) the property will remain covered by adequate insurance, (2) the property will be adequately maintained, (3) property taxes, ground rent, and other charges relating to the property that become due prior to the hearing will be paid, and (4) periodic payments of principal and interest that the parties agree or that the court preliminarily finds will become due prior to the hearing are timely paid in a manner prescribed by the court. The court may require the moving party to provide reasonable security for compliance with the conditions it sets and may revoke the stay upon a finding of non-compliance.

(2) *Hearing on Conditions.* The court may, on its own initiative, and shall, on request of a party, hold a hearing with respect to the setting of appropriate conditions. The hearing may be conducted by telephonic or electronic means.

(d) Scheduling Order. In order to facilitate an expeditious hearing on the merits, the court may enter a scheduling order with respect to any of the matters specified in Rule 2-504 that are relevant to the action.

(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.

Committee note: If the court finds that the plaintiff has no right to foreclose in the pending action because loss mitigation should have been granted, the court may stay entry of its order of dismissal, pending further order of court, so that loss mitigation may be implemented.

Source: This Rule is new.

Credits

[Adopted February 10, 2009, eff. May 1, 2009. Amended June 7, 2010, eff. July 1, 2010; October 11, 2011, eff. November 1, 2011; March 11, 2013, eff. May 1, 2013.]

MD Rules, Rule 14-305

(a) Report of Sale. As soon as practicable, but not more than 30 days after a sale, the person authorized to make the sale shall file with the court a complete report of the sale and an affidavit of the fairness of the sale and the truth of the report.

(b) Affidavit of Purchaser. Before a sale is ratified, unless otherwise ordered by the court for good cause, the purchaser shall file an affidavit setting forth:

(1) whether the purchaser is acting as an agent and, if so, the name of the principal;

(2) whether others are interested as principals and, if so, the names of the other principals; and

(3) that the purchaser has not directly or indirectly discouraged anyone from bidding for the property.

(c) Sale of Interest in Real Property; Notice. Upon the filing of a report of sale of real property or chattels real pursuant to section (a) of this Rule, the clerk shall issue a notice containing a brief description sufficient to identify the property and stating that the sale will be ratified unless cause to the contrary is shown within 30 days after the date of the notice. A copy of the notice shall be published at least once a week in each of three successive weeks before the expiration of the 30-day period in one or more newspapers of general circulation in the county in which the report of sale was filed.

(d) Exceptions to Sale.

(1) *How Taken.* A party, and, in an action to foreclose a lien, the holder of a subordinate interest in the property subject to the lien, may file exceptions to the sale. Exceptions shall be in writing, shall set forth the alleged irregularity with particularity, and shall be filed within 30 days after the date of a notice issued pursuant to section (c) of this Rule or the filing of the report of sale if no notice is issued. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(2) *Ruling on Exceptions; Hearing.* The court shall determine whether to hold a hearing on the exceptions but it may not set aside a sale without a hearing. The court shall hold a hearing if a hearing is requested and the exceptions or any response clearly show a need to take evidence. The clerk shall send a notice of the hearing to all parties and, in an action to foreclose a lien, to all persons to whom notice of the sale was given pursuant to Rule 14-206(b).

(e) Ratification. The court shall ratify the sale if (1) the time for filing exceptions pursuant to section (d) of this Rule has expired and exceptions to the report either were not filed or were filed but overruled, and (2) the court is satisfied that the sale was fairly and properly made. If the court is not satisfied that the sale was fairly and properly made, it may enter any order that it deems appropriate.

(f) Referral to Auditor. Upon ratification of a sale, the court, pursuant to Rule 2-543, may refer the matter to an auditor to state an account.

(g) Resale. If the purchaser defaults, the court, on application and after notice to the purchaser, may order a resale at the risk and expense of the purchaser or may take any other appropriate action.

Source: This Rule is derived from former Rule BR6.

Credits

[Adopted June 5, 1996, eff. Jan. 1, 1997.]