

DENIED

12/20/19

Angela M. Eaves
Angela M. Eaves

Exhibit A 12/14/2019

Cheryl Jones

Entered: Clerk, Circuit Court for
Harford County, MD
December 23, 2019

2954 Burnley Court

12-C-13-004086

Abingdon, Maryland, 21009

To: Honorable Judge of Circuit Court

Reference to: WRIT OF POSSESSION

On November 19, 2019,

This court granted a WRIT OF POSSESSION awarding the Lender possession of the property AT 2954 Burnley Court, Abingdon, Maryland, 21009.

THE EVICTION IS SCHEDULED FOR JANUARY 2, 2020.

The case is pending review by the United States Supreme Court.

I request a STAY of the writ of possession until a FINAL DECISION IS MADE BY THE SUPREME COURT.

Respectfully,
Cheryl Jones

Cheryl JONES

Francilien70@hotmail.co

m

4437876624

FILED

2019 DEC 19 P 2:43
CLERK OF CIRCUIT COURT
HARFORD COUNTY, MD
CIVIL DEPT.

Attachment
Writ of Possession

True Copy:
Test: James Reilly
Clerk of Circuit Court
By: J. Sanders
Deputy Clerk



I CERTIFY THAT ON DECEMBER 14th, 2019, A COPY OF THE FORGOING REQUEST FOR WRIT OF CERT, WAS SERVED ON ALL INTERESTED PARTIES POSTAGE PAID.

Stephen Goldberg, et, al
600 baltimore Ave. Suite 208
Towson. MD. 21204

Harford County Sheriff Department
45 Souh Main street
Bel air 21014

Harford County Circuit Court
20 west courtland st
Bel air, Maryland 21014

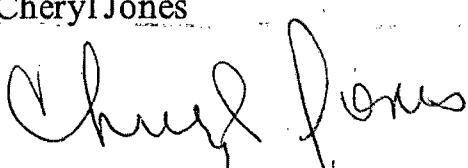
Cheryl Jones

4437876624



Exhibit A

Harford County Sheriff's Office

45 South Main Street
Bel Air, Maryland 21014-0150



Jeffrey R. Gahler
Sheriff

Writ of Possession Notification

Established
1774

12C13004086
November 12, 2019

Cheryl F. Cohens
FKA Jones, Cheryl F
2954 Burnley Court
Abingdon, Maryland 21009

RE: Writ of Possession: Edward S. Cohn vs.
Cheryl F. Jones

I now have the Court Order for the repossession of the property located at 2954 Burnley Court Abingdon, Maryland 21009. This is your eviction notice. You have until January 2, 2020 at 10am . in which to vacate the premises. At that time, The Sheriff's Office will be there to enforce the Writ of Possession order. If you have any questions, you can contact the attorney for the plaintiff at 410-296-2550. Ask for the person in charge of Writs of Possessions. I can be reached Monday through Friday between the hours of 7:00 a.m. and 3:00 p.m. at (410)838-8053 or (410)879-4645.

Sincerely,

Cpl J. Sanchez #780

Cpl J. Sanchez #780

CHERYL JONES

v.

STEPHEN GOLDBERG, et al

* IN THE
* COURT OF APPEALS
* OF MARYLAND
* COA-PET-0154-2019
* CSA-REG-1270-2017
* (No. 12-C-13-004086, Circuit
Court for Harford County)

O R D E R

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, the request to waive filing fees, and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the filing fee in this Court be, and it is hereby, waived, and it is further

ORDERED, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Mary Ellen Barbera

Chief Judge

DATE: September 30, 2019

FILED

2017 AUG -2 PM 3:14

EDWARD S. COHN, *et al.* * IN THE
Plaintiffs * CIRCUIT COURT
VS. * FOR
CHERYL F. JONES * HARFORD COUNTY
Defendant * CASE NO. 12-C-13-4086

* * * * *

CLERK OF CIRCUIT COURT
HARFORD COUNTY
CIVIL DEPT

MEMORANDUM OPINION

This case comes before the court on the Defendant's Motion to Vacate Foreclosure Sale and Exceptions to Foreclosure Sale.

FACTUAL AND PROCEDURAL BACKGROUND

On March 23, 2009, Cheryl F. Jones (hereinafter referred to as "the Defendant" or "Ms. Jones") executed a Note for the purpose of purchasing the property known as 2954 Burnley Court. This Note was secured by a Deed of Trust (hereinafter referred to as the "DOT") executed on the same day which was duly recorded in the Land Records of Harford County.

The Defendant apparently went into default under the terms of the Note by not making payments and, as a result, this foreclosure action was filed on December 23, 2013. On March 6, 2014 a Suggestion of Bankruptcy was filed with this court thereby staying any further action on this case.

On August 22, 2014 a copy of an Order from the federal court dismissing the bankruptcy case as of August 6, 2014 was filed with this court. A sale of the property was scheduled and held on September 25, 2014. A Certificate of Publication of Notice of Sale was filed with this court on October 2, 2014. As a result, a Notice of Sale was issued by the Clerk of the Court on October 2, 2014 giving any interested party until November 3, 2014 to show cause why the sale should not be ratified. When no objection was filed by the Defendant, the sale was ratified by the court on November 6, 2014. This case was then referred to the Court Auditor who filed a Report with this court on January 15, 2015. The Auditor's Report was ratified by the court on February 4, 2015.

A Motion for Possession of the property was filed on behalf of the sale purchaser on June 1, 2015. The motion was withdrawn on June 19, 2015 when it was discovered that there was a tenant in possession.

An Amended Motion for Possession of the property was filed by the purchaser on June 2, 2016. An Order was signed granting possession on June 6, 2016.

66,070
MATT

On June 27, 2016, a request to grant a "temporary restraining order" to halt any further action in this case was filed by the Defendant. A response to that request was filed on behalf of the purchaser on August 4, 2016 and a reply to that response was filed by the Defendant on July 18, 2016. Prior to the filing of the Defendant's answer, this court reviewed this case and by a letter dated July 13, 2016 granted a temporary stay.

On January 9, 2017, this court held a hearing on all of the open motions. By a letter dated January 13, 2017, the court briefly reviewed the procedural status of the case but gave the Defendant two (2) weeks before finalizing the writ of possession to consult with an attorney to determine any options that were available to her.

On January 4, 2017, the Defendant filed a Motion to Vacate Foreclosure Sale and Exceptions to Foreclosure Sale. A response to that motion was filed on behalf of the Substitute Trustees on January 30, 2017.

DISCUSSION

In her motion the Defendant asserts that in July of 2014 she left the United States for a period of almost two (2) years. She contends that prior to her departure she advised the Lender that she was going to leave the country and provided them with an address for any communications that were needed regarding the property. She further states that at the time she left she was negotiating a loan modification with the Lender but received no information from them during the period that she was out of this country as to whether the loan modification had been granted or denied.

The Plaintiff raises several issues. First she contends that service of process of the notice of the foreclosure action was made on a person who was not authorized to be in the property, specifically, her former husband who was barred from going on the property. Second, she denies signing the DOT. Third, she contends that the DOT filed in this particular is not a true and accurate copy of the document contained in Land Records. She asserts that three notes are attached to the Order of Docket originally filed in this case which made it difficult to determine which is applicable to the DOT that is being relied on for the foreclosure action. Finally, she asserts that there are two other DOTs in the land records on the same property.

Under the applicable Rules of Procedure found in Title 14 of the Rules, there are three ways that an owner of real property may challenge a foreclosure sale:

- (1) by obtaining a post-sale injunction;
- (2) by filing post-sale exceptions; and
- (3) by filing exceptions to the Auditor's Statement and Account.

Wells Fargo Home Mortgage, Inc. v. Neil, 398 Md. 705, 922 A.2d 538 (2007).

Rules 14-211(a)(3)(B) provides that a borrower must raise issues relating to the lender's right to foreclose *prior* to the foreclosure sale through a motion to stay or dismiss which requires the defendant:

[S]tate with particularity the factual and legal basis of each defense that the moving party has to the validity of the lien or lien instrument or to the right of the plaintiff to foreclose in a pending action.

All normal challenges to the legitimacy of a foreclosure action must be raised in a motion to dismiss and, if possible, litigated prior to any sale. The borrower must ordinarily assert known and right defenses to the conduct of the foreclosure sale prior to the time it occurs rather than post-sale exceptions. Devan v. Bomar, 225 Md. App. 258, 123 A.3d 696 (2015); Bates v. Cohn, 417 Md. 307, 9 A.3d 824 (2010); Thomas v. Nadel, 427 Md. 441, 48 A.3d 276 (2012).

After a foreclosure sale has been held, the means by which a litigant may challenge a foreclosure action becomes increasingly limited. The borrower must file exceptions to the foreclosure sale within thirty (30) days after the notice of sale and those exceptions must set forth the alleged irregularity with particularity pursuant to Maryland Rule 14-305(d)(1) which states in pertinent part:

(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.

A challenge to the foreclosure proceeding itself that could have been raised pre-sale must be raised pre-sale otherwise defenses to the conduct of the sale are waived. Bates v. Cohen, 417 Md. at 311, 9 A.3d 846. Maryland appellate law is clear that post-sale exceptions to a foreclosure sale under 14-305 are not an appropriate vehicle to challenge the broad equities of a foreclosure proceeding itself. Devan v. Bomar, *supra*.

The Defendant argues pursuant to Bates v. Cohen, *supra*, that a challenge to the foreclosure proceeding is not waived because she did not know about the alleged fraud until after the sale. While Bates did find that all known and ripe requests for relief must be raised pre-sale, subsequent cases have narrowed that exception, finding that defenses are waived regardless of a defendant's knowledge at the time, where the defenses were ripe during pre-sale. Bierman v. Hunter, 190 Md. App. 250, 988 A.2d 530 (2010); Greenbriar Condo., v. Brooks, 387 Md. 638, 878 A.2d 528 (2005).

The issue is whether this court is able to hear fraud allegations post-sale ratified under Rule 14-305 or under the court's own equitable powers.

The Defendant argues that pursuant to Rule 14-305, the judge has discretion to terminate the foreclosure process. That assertion is incorrect. Rule 14-305 does not allow courts of equity to determine all objections to a foreclosure sale, although this court does have the power to terminate a post-sale foreclosure in instances of fraud. The Bierman v. Hunter, *supra*, the court's decision was a very narrow, fact specific holding where the Court upheld a post-sale defense, not under Maryland Rule 14-305, but because the underlying deed of trust was invalid due to forgery. The decision in Bierman, did establish the courts authority, not within the rules, but in equity, to find that the underlying deed was invalid. It would therefore be a permissible exercise of judicial discretion to allow a defense to a foreclosure when fraud is alleged post-sale, post-ratification and post-auditor report, where the deed of trust is product of fraud and where the defendant could not have known of that fraud until after post-sale ratification. Ids.

It has been established by the Maryland Courts that when the challenge a foreclosure sale is untimely, the conduct must rise to the level of forgery or alteration that renders the deed invalid. The rationale for that rule is that there can be no bona fide holder of title under a forged deed which compels a court to exercise its equity.

The Court in Bierman found reason to vacate the foreclosure because the type of fraud alleged challenged the underlying validity of the lien instrument. The Court in Thomas v. Nadel, *supra*, recognized this, finding that under CL § 3-305(a)(1)(iii) of the commercial law that after a judicial sale for a homeowner to interfere with the rights of a holder in due course, the fraud must affect the underlying instrument and the homeowner had neither knowledge nor reasonable opportunity to learn of the fraud.

Fraud effecting the underlying debt is actionable where there is an alleged forgery. One seeking any relief on the ground of fraud must distinctly state the particular facts and circumstances constituting the fraud and the facts so stated must be sufficient in themselves to show that the conduct complained of was fraudulent. Thomas v. Nadel, *supra*, quoting Spragler v. Sprosty Bog Co., 183 Md. 166, 173, 36 A.2d 685 (1944).

The Defendant's contentions that she was induced into default because her loan modification was denied without notice and that she was not improperly served with notice are insufficient basis to be considered as "fraud" to allege during post-sale proceedings. These allegations do not affect the validity of the instrument to such an extent that this court can exercise its discretionary powers in equity.

The Defendant also contends that there was fraud because she did not sign the DOT. The Defendant argues that the DOT from which the Plaintiff is enforcing is not the true and correct copy, that a page is missing and a page is included that is not in the land records. The facts before this court are analogous to Thomas v. Nadel. In that case the court found the fraud alleged was regarding gaps in the chain of title but those allegations were insufficient to amount to fraud for purposes of the court employing its discretionary equitable powers. The court held that while there were general allegations of fraud and defects in notice, the issue was really one of chain of title because it suggested that another legal holder of the note or another note may exist rather than arguing on the validity of the underlying Deed.

The Defendant is making a similar argument in challenging the validity of the foreclosure process and not the validity of the underlying note. The Defendant alleges that supposedly the Land Records have two other Deed of Trust's that are contemporaneous with the Deed filed in this case and it is impossible to tell which Deed is the proper security instrument that supports this action. This is insufficient to render the Deed invalid. Her contention is not that there is no valid DOT, but that there are too many DOTs and she does not know which Deed is being enforced.

Similar to the facts in this case, the Court in Thomas v. Nadel found that that the defendant signed a note and deed of trust. Id. This Defendant is not alleging that her Deed was forged, that she never signed a Deed, or received any benefit or that she was not the one who took out the loan on the Note which went into default on December 23, 2013 but rather she is challenging which Deed is the correct Deed. Distinguishably the defendant in Bierman v. Hunter, *supra*, testified that her signature on the deed of trust was forged and that the defendant did not receive any portions, proceeds or benefit from the creditor. The Defendant does not contend that she did not sign the Deeds. All three Deeds were executed on March 23, 2009 for \$188,953.00 with the lender named as 1st Alliance Lending. The Deeds are valid and therefore the fraud alleged is not the type of fraud that could trigger this court to exercise its power. The Defendant is alleging what amounts to a defect similar to a chain of title defect, making this case more analogous to Thomas v. Nadel than to Bierman v. Hunter.

This court finds that because Ms. Jones is not challenging that a Note was secured by a DOT(s) executed on March 23, 2009 by her and with her signature, this court is without authority in equity or under the Maryland Rules to provide this Defendant the relief requested. The challenges asserted were ripe pre-sale and therefore the Defendant's motion must be dismissed as untimely under Md. Rule 14-211.

CONCLUSION

For the reasons set forth above, the court will dismiss the Defendant's Motion to Vacate Foreclosure Sale and Exceptions to Foreclosure Sale will be denied.

W.O.C.
WILLIAM O. CARR, JUDGE

cc:

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