

STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS

Alex Rahmi,  
Plaintiff Below, Petitioner

vs) No. 18-0533 (Jefferson County 17-C-201)

Pill & Pill, PLLC,  
Defendant, Respondent

FILED  
September 3, 2019  
EDYTHE NASH GAISER, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Alex Rahmi, pro se, appeals the May 17, 2018, order of the Circuit Court of Jefferson County dismissing an action, in which he sought an injunction to prevent the completion of the foreclosure sale of his residential property located at 638 Marlow Road, Charles Town, West Virginia. Respondents Pill & Pill, PLLC ("Pill & Pill"), Bank of New York Mellon Trust Company, National Association (f/k/a The Bank of New York Trust Company, N.A.) ("bank"), and R & D Investments, LLC ("R & D"), by counsel J. Mark Sutton, Christopher A. Dawson, and Abraham M. Ashton, filed a summary response in support of the circuit court's order.

The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

Petitioner's residential property, located at 638 Marlow Road, Charles Town, West Virginia, was sold at a foreclosure sale in August of 2017. Pill & Pill served as the trustee that sold the property. The Bank was the holder of the deed of trust. R & D purchased the property at the foreclosure sale. Collectively, these entities will be referred to as "respondents."

On February 21, 2012, petitioner filed a bankruptcy action pursuant to Chapter 11 of the United States Bankruptcy Code.<sup>1</sup> On February 28, 2014, the bankruptcy trustee filed a motion

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<sup>1</sup>We take judicial notice of the record from petitioner's bankruptcy in the United States Bankruptcy Court of the Northern District of West Virginia, Case No. 12-bk-200. We note that, in ruling on a motion to dismiss, a court is permitted to "consider matters that are susceptible to judicial notice." See *Forshey v. Jackson*, 222 W. Va. 743, 747, 671 S.E.2d 748, 752 (2008) (Internal quotations and citations omitted).

pursuant to 11 U.S.C. § 1112(b) to convert petitioner's Chapter 11 bankruptcy into a Chapter 7 bankruptcy following petitioner's settlement of a Canadian court action for approximately \$170,000 without court approval and his failure to adequately disclose and account for the settlement proceeds. By order entered May 16, 2014, the United States Bankruptcy Court of the Northern District of West Virginia ("bankruptcy court") granted the trustee's motion and converted petitioner's bankruptcy into one under Chapter 7. The bankruptcy trustee subsequently filed a motion for summary judgment on the trustee's claim that petitioner should be denied a discharge of his debts, and by order entered August 24, 2015, the bankruptcy court ruled that petitioner's debts would not be discharged. In denying petitioner a discharge, the bankruptcy court found that he intentionally transferred and concealed the settlement proceeds from the Canadian action. *See In Re Rahmi*, 535 B.R. 655, 661 (Bankr. N.D. W.Va. 2015).

On September 2, 2015, the bank filed a motion to lift the bankruptcy stay so that a foreclosure proceeding could proceed against petitioner's residential property. By order entered November 24, 2015, the bankruptcy court found cause pursuant to 11 U.S.C. § 362(d)(1) for lifting the stay, finding:

In this case, [petitioner]'s failure to perform under the contractual obligations of the loan is for an exceedingly long period of time; that is to say, five years of non-performance. Such a long and unmitigated failure to perform under the contract is sufficient to constitute independent cause to lift the stay; especially in the context of a Chapter 7 case.

In its order, the bankruptcy court noted that the bank filed the motion to lift the stay in "its capacity as successor to JPMorgan Chase Bank, N.A., as Trustee for Residential Asset Mortgage Products, Inc., [GMAC Mortgage] Loan Trust 2005-ARI."

On August 15, 2017, Pill & Pill sold, and R & D purchased, petitioner's property at a foreclosure sale. On August 18, 2017, petitioner filed a complaint against Pill & Pill in the Circuit Court of Jefferson County, seeking an injunction to prevent the completion of the foreclosure sale of his residential property "pending final resolution by [the] [b]ankruptcy [c]ourt[.]" By order entered August 23, 2017, the bankruptcy court denied petitioner's Rule 60(b) motion for relief from the August 24, 2015, order denying him a discharge of his debts.

On September 13, 2017, Pill & Pill filed an answer denying the allegations set forth in petitioner's complaint in the instant action. Petitioner filed amended complaints on November 17, 2017, and April 11, 2018.<sup>2</sup> In his second amended complaint, petitioner sought compensation "for

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<sup>2</sup>While not granting petitioner leave to amend his complaint, the circuit court considered the allegations in the amended complaints in its May 17, 2018, order. We note that petitioner included none of the parties' pleadings in his appendix. Pursuant to Rule 6(b) of the West Virginia Rules of Appellate Procedure, we hereby supplement the appellate record with the August 18, 2017, complaint; Pill & Pill's September 13, 2017, answer; the November 17, 2017, amended complaint; the bank's March 29, 2018, motion to dismiss; and the April 11, 2018, amended

injuries and damages caused by [GMAC Mortgage].” On January 31, 2018, the circuit court granted motions to intervene in the action filed by the bank and R & D. Thereafter, on March 29, 2018, the bank filed a motion to dismiss pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, arguing that petitioner’s “frivolous litigation” was preventing the completion of the foreclosure sale to R & D, including “the recording of a [t]rustee’s [r]eport of [s]ale and [t]rustee’s [d]eed.” Pill & Pill and R & D joined in the bank’s motion to dismiss petitioner’s action.

By order entered May 17, 2018, the circuit court dismissed the instant action. The circuit court found petitioner’s allegations “virtually unintelligible,” but could be liberally construed as asserting a fraud claim against GMAC Mortgage, which was not a defendant in the case. The circuit court further found that petitioner failed to set forth his allegations of fraud with particularity as required by Rule 9(b) of the West Virginia Rules of Civil Procedure. Therefore, the circuit court concluded that petitioner failed to state a claim upon which relief can be granted.<sup>3</sup>

Rule 12(b)(6) of the Rules of Civil Procedure provides that a defendant may file a motion to dismiss for “[a] failure to state a claim upon which relief can be granted.” “Appellate review of a circuit court’s order granting a motion to dismiss a complaint is *de novo*.” Syl. Pt. 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995). Rule 9(b) provides that “[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.” In Syllabus Point 1, in part, of *Hager v. Exxon Corp.*, 161 W. Va. 278, 241 S.E.2d 920 (1978), we held that “fraud or mistake must be alleged in the appropriate pleading with particularity.”

On appeal, petitioner’s arguments are difficult to follow. Generally, petitioner contends that his allegations sufficiently state a fraud claim against GMAC Mortgage. Respondents argue that the circuit court properly dismissed petitioner’s action for a failure to state a claim upon which relief can be granted. We agree with respondents’ position and concur with the circuit court’s finding that GMAC Mortgage is not a defendant in this case and, even if it were, petitioner fails to set forth his allegations of fraud with particularity. We find that, regardless of whether petitioner is seeking an injunction, money damages, or both, the claim upon which relief is sought is not sufficiently stated given the heightened standard for pleading fraud as required by Rule 9(b) and Syllabus Point 1 of *Hager*. *Id.* at 278, 241 S.E.2d at 921. Therefore, based on our review of the record, we conclude that the circuit court did not err in granting respondents’ motion to dismiss the action.

For the foregoing reasons, we affirm the circuit court’s May 17, 2018, order dismissing petitioner’s action.

Affirmed.

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complaint.

<sup>3</sup>Following the entry of the circuit court’s May 17, 2018, order, petitioner states that he was evicted from the property on June 5, 2018.

**ISSUED:** September 3, 2019

**CONCURRED IN BY:**

Chief Justice Elizabeth D. Walker  
Justice Margaret L. Workman  
Justice Tim Armstead  
Justice Evan H. Jenkins  
Justice John A. Hutchison

In the Circuit Court of Jefferson County, West Virginia

ALEX RAHMI, )  
Plaintiff, )  
vs.) ) Case No. CC-19-2017-C-201  
PILL & PILL, PLLC, )  
Defendant )

**Order of Dismissal**

THIS MATTER having come before the Court for hearing on May 15, 2018, on the Motion of the Intervening Defendant, The Bank of New York Mellon Trust Company, National Association (hereinafter “BONY Mellon”) to dismiss Plaintiff’s Complaint, BONY Mellon appearing by counsel, Christopher A. Dawson, Esq., Plaintiff, Alex Rahmi, appearing in person and *pro se*, Intervening Defendant, R&D Investments, LLC (hereinafter “R&D”), appearing by counsel, Abraham M. Ashton, Esq., and Defendant, Pill & Pill, PLLC appearing by counsel, J. Mark Sutton, Esq., upon hearing, the Court having reviewed the record herein and being otherwise duly and sufficiently advised;

**FINDINGS OF FACT**

1. Plaintiff filed this action against Pill & Pill, PLLC on August 18, 2017, after Pill & Pill, PLLC, as substitute trustee, on August 15, 2017, conducted a trustee sale of property commonly known as 638 Marlowe Road, Charles Town, West Virginia 25141, pursuant to a deed of trust held by BONY Mellon.

2. On November 17, 2017, Plaintiff filed a Complaint for Declaratory Relief in this same action without seeking leave from the Court to amend his original complaint, however, this Complaint contains similar information and allegations as the original Complaint.

3. In response to Plaintiff’s filing of this action, Intervening Defendants, BONY

Mellon and R&D, each sought leave from the Court to intervene in this action due to their interests rising from being the holder of the deed of trust (BONY Mellon) and the purchaser at the trustee's sale (R&D).

4. By separate Orders entered on January 31, 2018, the Court granted the Intervening Defendants' Motions and they were made parties to the case.

5. On March 29, 2018, BONY Mellon filed its Motion to Dismiss Complaint on the grounds that the Plaintiff failed to state a claim upon which relief could be granted.

6. On April 10, 2018, R&D filed a response to the Motion to Dismiss in which it agreed with and joined in the Motion to Dismiss.

7. On April 11, 2018, apparently in response to the Motion to Dismiss, Plaintiff filed an "Addition to Complaint for Declaratory Relief" to which numerous documents of unknown relevance to the case were attached. Many of the documents referenced matters involving GM automobile dealerships and GM.

8. The Court held a hearing on the Motion to Dismiss on May 15, 2018, at which the Intervening Defendants restated their arguments in favor of dismissal set forth in their pleadings filed to date and Plaintiff asserted he had a valid fraud claim against GMAC, who is not a party to this action, arising out of matters occurring in 2012.

### **CONCLUSIONS OF LAW AND JUDGMENT**

1. Dismissal under Rule 12(b)(6) is appropriate if, "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Highmark West Virginia v. Jamie*, 221 W.Va. 487, 491, 655 S.E.2d 509, 513 (2007)(quoting Syl. Pt. 3, *Chapman v. Kane Transfer Company*, 160 W.Va. 530, 236 S.E.2d 207 (1977)).

2. Rule 8(a)(1) merely requires, "a short plain statement of the claim showing that pleader is entitled to relief;" however, the complaint must include sufficient information to set

out the elements of the claim or allow inferences to be drawn to support the existence of the elements. *See Fass v. Newsco Well Service, Ltd.*, 177 W.Va. 50, 52, 350 S.E.2d 562, 563 (1986). Generalizations unsupported by relevant facts and failure to state essential elements of a plaintiff's cause of action support dismissal under Rule 12(b)(6). *Id.* at 52-53, 564.

3. Rule 9(b) requires that fraud allegations be stated with particularity so that the party defending the fraud claim can prepare a defense. *See Jamie*, 221 W.Va. at 493, 655 S.E.2d at 515. Failure to properly plead a fraud claim bars evidence of fraud at trial. *Id.*

4. Plaintiff's Complaint consists of sketchy generalizations of a conclusive nature unsupported by operative facts and, therefore, does not set forth a cause of action. In fact, the "allegations" in Plaintiff's Complaint are virtually unintelligible. However, attempting to view Plaintiff's Complaint in the light most favorable to him, it would appear Plaintiff demands injunctive relief and claims fraud.

5. In this case, Plaintiff's Complaint and subsequent pleadings state virtually unintelligible references to purported events that have nothing to do with this litigation, nor do they set forth any specific allegations of fraud against the parties to this suit.

6. Plaintiff has failed to plead the circumstances giving rise to the alleged fraud as required by Rule 9(b); *see also, Hager v. Exxon Corp.*, 161 W. Va. 278, 241 S.E.2d 920, 923 (1978) ("It has long been held in this jurisdiction that to establish fraud, it must be clearly alleged and proved.").

7. Accordingly, Plaintiff's Complaint fails to meet the standard for pleading fraud as required by Rule 9(b) of the West Virginia Rules of Civil Procedure.

8. Alternatively, Plaintiff's arguments at the hearing clarified that to the extent he has any viable fraud claims, he believes those claims are against GMAC who is not a party to this case, therefore, Plaintiff has failed to assert any claims for relief against parties to this case.

9. Finally, in regard to Plaintiff's fraud claims, it is apparent that Plaintiff has already raised these claims before the U.S. Bankruptcy Court for the Northern District of West Virginia which rejected them when it granted BONY Mellon's Motion for Relief from Stay by Order entered November 24, 2015.

10. Plaintiff's Complaint demands injunctive relief. However, not only do the paragraphs within the "Injunction and Appropriateness of Injunctive Relief" section not have anything to do with the foreclosure underlying this case, Plaintiff's Complaint also fails to meet the consistently articulated criteria necessary for this Court to grant such relief, particularly the "likelihood of success on the merits" prong. *See Jefferson County Bd of Educ. v. Jefferson County Educ. Ass'n*, 183 W. Va. 15, 24, 393 S.E.2d 635, 662 (1990).

11. Because Plaintiff's likelihood of success on the merits is non-existent, this Court must deny his request for an injunction and dismiss his Complaint. Further, Plaintiff's *Complaint for Declaratory Relief* was improper, as leave of this Court was not obtained, and it is deficient for the same reasons set forth above regarding the original Complaint and it must also be dismissed.

WHEREFORE, for the reasons set forth above, this Court hereby **FINDS, ORDERS** and **ADJUDGES** that Plaintiff's initial Complaint and Complaint for Declaratory Relief are hereby **DISMISSED, WITH PREJUDICE**, pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

**IT IS FURTHER ORDERED**, that Plaintiff shall vacate the Property within ten (10) days of the entry of this Order, leaving the same in broom clean condition and leaving all fixtures therein intact, and this Order shall act as and be deemed a writ of possession in favor of R&D and against Plaintiff such that if Plaintiff or any person claiming by, through or under Plaintiff remains in, on or about the Property after said ten (10) day period, then R&D may

notify the Sheriff of Jefferson County, who is hereby authorized to and who shall forthwith remove Plaintiff and any other person from the Property and shall return possession of the same to R&D. **IT IS FURTHER ORDERED**, that any personal property remaining in, on or about the Property after said ten (10) day period shall be deemed abandoned, whereupon such personal property may be disposed of by R&D in its discretion without liability to Plaintiff.

Plaintiff's objections to the rulings of the Court are noted and preserved. This is a final and appealable Order and this case shall be removed from the Court's active docket.

The Clerk shall provide an attested copy of this Order to the following counsel of record who have appeared, to Plaintiff and the Sheriff of Jefferson County:

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Pete Dougherty, Sheriff of Jefferson County  
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Mr. Alex Rahmi  
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*Plaintiff*

This Order prepared by:

/s/ Christopher A. Dawson

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Seen and agreed to by:

/s/ Abraham M. Ashton

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/s/ Steven Redding

Circuit Court Judge  
23rd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courtswv.gov/e-file/](http://www.courtswv.gov/e-file/) for more details.

STATE OF WEST VIRGINIA

At the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on January 9, 2020, the following order was made and entered in vacation:

Alex Rahmi,  
Plaintiff Below, Petitioner

vs.) No. 18-0533

Pill & Pill, PLLC,  
Defendant, Respondent

**ORDER**

The Court, having maturely considered the petition for rehearing filed by Alex Rahmi, self represented, and the joint response filed thereto, by the respondent, Pill & Pill, PLLC, by Christopher A. Dawson, Reisenfeld & Associates LLC, Abraham M. Ashton, The Ashton Law Firm, and J. Mark Sutton, Sutton & Janelle, PLLC, their attorney, is of the opinion to and does hereby refuse said petition for rehearing.

A True Copy

Attest: /s/ Edythe Nash Gaiser  
Clerk of Court

