IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

September Term 2014
No. 02501

ASHLY ALEXANDER *et al.*

Appellants
v.

JOHN DRISCOLL III *et al.*,

Appellees

On Appeal from Circuit Court for Baltimore County, Maryland
(The Honorable Nancy M. Purpura Presiding)

APPELLANTS' REPLY BRIEF

&

MOTION TO STRIKE/DISREGARD A PORTION OF APPELLEES' BRIEF AND APPENDIX

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March 21, 2016

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INTRODUCTION

Having proceeded in a pattern of gamesmanship for more than a year without good faith justification, the Substitute Trustees and Green Tree Servicing LLC n/k/a Ditech Financial LLC ("Green Tree") wish the Court to sanction their conduct based upon so-called facts and evidence not even properly before the Court and expressly contrary to Green Tree's representations and statements to the Office of the Commissioner of Financial Regulation ("OCFR"). Further, to justify their actions the Substitute Trustees rely upon an alleged authority not permitted under the Maryland Rules. Finally, the Appellees ask the Court to dismiss the appeal as moot even though a controversy continues between the parties because (i) the Appellees have not dismissed their foreclosure action and (ii) Green Tree has refused to produce a valid, final loan modification agreement for Appellants to sign and execute which would terminate any controversy.

Dismissal of this appeal under the improper and unjustifiable circumstances created solely by the Appellees would be prejudicial to Appellants and might likely deny Appellants their constitutional right to complete their legal counter claims before a jury of their peers before any foreclosure sale could take place.[1] Even if the Court believed that

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[1] Appellants are permitted to file their Rule 2-331 counter claims pursuant to Rule 1-101 and the Court of Appeals binding authority. *Fairfax Sav., F.S.B. v. Kris Jen Ltd. P'ship*, 338 Md. 1, 22 (1995)("We hold that [the borrowers] could have asserted as a counterclaim in the mortgage foreclosure proceeding"); *Higgins v. Barnes*, 310 Md. 532 (1987); and Md. Code Ann., Real Prop. § 7-105.1(m)(3)("Nothing in this subtitle precludes the

the controversy between the parties is over (and Appellants do not concede that issue), the issues presented in this case are in the public interest and an exception to the mootness rules respectfully requires that the Court answer the questions presented since they are likely to present themselves again and the lower courts would benefit from this Court's instruction of the issues presented.

REPLY ARGUMENT

Imbedded in their arguments addressed herein, Appellants present the Court as 'pursausive authority' an unreported opinion of a panel of this Court in contravention to Rule 1-104(b) and one letter from Green Tree to Appellants that was produced in discovery but is not part of the record on appeal. *See* Br. of Appellees Table of Authorities at: Page ii (citing *Walker v. Discoll, III*, Case No. 1908 (February 16, 2016); Br. of Appellees at Page 8 and Apx. 1 (presenting a snippet of discovery related to a factual dispute not even in the record of the case before the Court); and Br. of Appellees at Page 9 at FN 9 (citing the unreported *Walker* decision to the Court as authority for their theory related to Regulation X). The inclusion of these authorities and related argument is improper. Appellants, contemporaneously with this Reply Brief, have moved the Court to Strike

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mortgagor or grantor from pursuing any other remedy or legal defense available to the mortgagor or grantor").

Appellees' Brief and appendix and/or disregard the improper material relied upon by Appellees.

I. A REAL AND PRESENT CONTROVERSY EXISTS BETWEEN THE PARTIES WHICH MAKE THIS APPEAL RIPE FOR THE COURT'S CONSIDERATION OF APPELLANT'S QUESTIONS PRESENTED; EVEN IF THE COURT BELIEVES THE APPEAL IS MOOT, THE IMPORTANT ISSUES PRESENTED IN THIS ACTION CONCERN IMPORTANT MATTERS OF PUBLIC CONCERN WHICH IF ADDRESSED BY THE COURT WILL ADDRESS FUTURE CONDUCT

This Court recently explained that

> "A case is moot when there is no longer any existing controversy between the parties at the time that the case is before the court, or when the court can no longer fashion an effective remedy." ... "Where, however, it seems apparent that a party may suffer collateral consequences from a trial court's judgment [or administrative decision], the case is not moot." ….
>
> In the present case if the Board prevails, it could use the existence of the violations against Thai Palace in future proceedings. At oral argument, Thai Palace expressed its intention to petition the Board again to allow the restaurant to provide live entertainment. Therefore, because the outcome of these proceedings will affect the licensee's future treatment by the Board, we hold that the case is not moot, and we deny the Board's motion to dismiss.

Thana v. Bd. of License Comm'rs for Charles Cty., 226 Md. App. 555, 2016 WL 363886, *5-6 (2016)(internal citation omitted).

Appellees first argue that this appeal concerning the denial of Appellants' Rule 14-211 motion is moot because Appellants "are still in their home" and "the February 3, 2015 foreclosure sale was vacated and the Report of Sale was withdrawn." Br. of Appellees at Pages 6-7. If Appellants had appealed from an Order ratifying a foreclosure sale, under the facts presented by Appellees this appeal might be moot. However the factual predicate relied upon Appellees' mootness argument does not exist in this record. Appellants have appealed from an Order denying their Rule 14-211 Motion to Stay (E. 305). Further,

Appellees have not dismissed their Order to Docket Suit of Foreclosure of Deed of Trust (E. 12) and the threat of foreclosure remains pending against Appellants and their home (Rep. App. 1-11[2]) and still have not finalized their modification as was promised nearly three months ago (Rep. App. 12-28). Therefore, the controversy between the parties subject to this appeal remains—i.e. Appellees continue to threaten foreclosure which Appellants believe under the law and facts actually presented in this appeal must be stayed pursuant to Rule 14-211.

Since the controversy continues in the Circuit Court, the mootness doctrine does not apply because the "the outcome of these proceedings will affect [Appellants'] future treatment by the [Appellees]." *Thana*, 226 Md. App. at *6. Because of the procedural posture, maintained solely because of Green Tree's and the Appellees' failure to (i) dismiss the pending foreclosure and/or (ii) process a final, completed modification promised to Appellants, if the Court remands the case to the Circuit Court without answering the question of whether or not Appellants Rule 14-211 Motion to Stay should have been granted, Appellants will be forced to refile another Rule 14-211 motion in the court below. However, Rule 14-211 does not provide that homeowners and borrowers subject to

[2] The Court may take judicial notice of the current docket entries from the Circuit Court for Baltimore County confirming no dismissal of the Substitute Trustees foreclosure proceeding has occurred and Appellants' Counter Complaint remains pending. Rule 5-201(c).

foreclosure are permitted to file motions to stay over the course of a foreclosure pending for more than a year. *See e.g.* Rule 14-211(a).[3]

Given that if the Court dismissed this appeal on the grounds of mootness and Appellants would simply file another motion on remand, the Court may find that the exception to the mootness doctrine applies. The Court of Appeals has explained:

> There is a limited exception to the mootness doctrine, however, which provides that "where a case, while technically moot, presents a recurring matter of public concern which, unless decided, will continue to evade review, we have nonetheless considered the case on its merits." *Office of the Pub. Defender,* 413 Md. at 423, 993 A.2d at 62 (citing *In re Julianna B.,* 407 Md. 657, 665–66, 967 A.2d 776, 780–81 (2009); *Suter,* 402 Md. at 220, 935 A.2d at 736; *Arrington v. Dep't of Human Res.,* 402 Md. 79, 91–92, 935 A.2d 432, 439–40 (2007); *Anne Arundel County Sch. Bus Contractors Ass'n,* 286 Md. at 328, 407 A.2d at 752; *Lloyd v. Bd. of Supervisors of Elections of Baltimore Cnty.,* 206 Md. 36, 43, 111 A.2d 379, 381–82 (1954).)

La Valle v. La Valle, 432 Md. 343, 352 (2013).

Not only is the controversy between the parties continuing at the moment this Court acquired jurisdiction, the controversy continues through the filing of this brief. Even if the

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[3] Even if Rule 14-211 were read to permit Appellants to renew a Rule 14-211 motion on remand, this Court has routinely held that the lower courts have wide discretion in reviewing such motions and if Appellants' motion on remand was denied on basis of timeliness for example, this Court would may not find that improper if the same questions came before the Court again in a later appeal. *Compare Svrcek v. Rosenberg*, 203 Md. App. 705, 721, 504 (2012)(" Although a court may extend the time for filing the motion or excuse non-compliance for good cause shown, it did not find good cause to do so in this case"); *Anderson v. O'Sullivan*, 224 Md. App. 501, 517, 121 A.3d 181, 190 (2015)("We agree with the trial court that the Motion…was not timely filed")(internal quotations omitted).

Court believes that the controversy is moot, it is likely to reoccur between the parties before the Court in this action and also between similar parties in other cases where the conflict of rules and laws governing the scheduling of foreclosure sales exists. For these reasons, Appellants ask the Court to disregard Appellees' mootness arguments.

II. RESPA AND REGULATION X WERE INTENDED TO PROTECT CONSUMERS AND NOT TO ACT AS A SHIELD FOR MORTGAGE SERVICERS AND THEIR AGENTS TO ACT UNFAIRLY, DECEPTIVELY, OR OTHERWISE ILLEGALLY TOWARD THE PERSONS PROTECTED BY THE NEW STATUTORY AND REGULATORY SCHEME

The crux of Appellees remaining arguments essentially ask the Court to view the authorities presented by Appellants in their Opening Brief as if they were intended to benefit Green Tree's conduct in this matter. Br. of Appellees at Pages 7-12. Appellants will address the specific arguments *infra*, but it is important to note first that the authorities at issue were not intended to be used as a shield for Green Tree's knowing acts and omissions through the Substitute Trustees. Rather, they were designed for the remedial benefit of homeowners like the Appellants.

Regulation X, which implements the Real Estate Settlement Procedures Act of 1974 ("RESPA"), was promulgated by the Bureau of Consumer Financial Protection ("CFPB"), pursuant to its authority under the DODD–FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT, PL 111-203, July 21, 2010, 124 Stat 1376 ("Dodd-Frank"). *See* Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act ("Regulation X"), 78 FR 10696-01. The Regulation X rules "[were] effective on January 10, 2014." *Id.*

The arguments advanced by the Substitute Trustees that Regulation X's new obligations do not apply on facts which allegedly occurred before Regulation X was even effective (see Br. of Appellees at Pages 7-10), is contrary to the remedial purpose of Dodd-Frank and such a construction should be avoided to effectuate the purpose of the remedial legislation and creates unintended obstacles. *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967)("we are guided by the familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes"); 3 Sutherland Statutory Construction § 60:1 (7th ed.)("Courts should not read into a remedial statute an exception that would impose obstacles to the achievement of its purpose").

The Court of Appeals has explained that

> "Under Maryland law, statutes are remedial in nature if they are designed to correct existing law, to redress existing grievances and to introduce regulations conducive to the public good." *Weathersby v. Kentucky Fried Chicken Nat'l Management Co.,* 86 Md.App. 533, 550, 587 A.2d 569, 577 (1991) (citing *State v. Barnes,* 273 Md. 195, 208, 328 A.2d 737, 745 (1974)), *rev'd on other grounds,* 326 Md. 663, 607 A.2d 8 (1992).

Langston v. Riffe, 359 Md. 396, 409 (2000).

Following these tests, Congress explained its general remedial purpose for Dodd-Frank in its preamble to the final legislation as follows:

> An Act To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, **to protect consumers from abusive financial services practices**, and for other purposes.

Dodd-Frank, 124 Stat 1376 (emphasis added).

In addition, the remedial purpose of Dodd-Frank is also shown in the statutory text enacted by Congress relevant to these proceedings:

> A **servicer of a federally related mortgage shall not**….**fail to take timely action to** respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or **avoiding foreclosure**, or other standard servicer's duties….[or] fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this chapter.

12 U.S.C.A. § 2605(k)(1)(C)(E); Dodd-Frank, 124 Stat 1376 at § 1463 (emphasis added).[4]

For these reasons, there simply is no basis for the Court to consider and adopt a restrictive review of Dodd Frank, RESPA, and Regulation X as implicitly sought by the Substitute Trustees. Rather, these authorities demonstrate the public polices related to foreclosure have tipped to the benefit of homeowners like the Appellants. *Compare Maddox v. Cohn*, 424 Md. 379, 393 (2012).

III. THE SUBSTITUTE TRUSTEES AND GREEN TREE ARE ESTOPPED FROM MAKING FACTUAL ARGUMENTS IN THIS CASE WHICH ARE CONTRARY TO THEIR PRIOR CONTENTIONS

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[4] The self-evident nature of Dodd-Frank's remedial purpose to help homeowners, like the Appellants in the context of the issues before the Court, can also been seen in other provisions of the Act. *See e.g.* Dodd-Frank, 124 Stat 1376 at § 1406 (authorizing study look at "statutory and regulatory requirements…[which would] enable homeowners at risk of foreclosure to refinance or modify their mortgages"); § 1413 (establishing a new defense for homeowners to foreclosure under the Truth in Lending Act, 15 U.S.C. 1640); § 1443 (authorizing HUD to promote national public service campaigns for "make persons facing mortgage foreclosure…[aware] that homeownership counseling is available" and to avoid foreclosure rescue scams); § 1447 (requiring HUD to create a "database of information on foreclosures; and § 1498 (requiring HUD to "establish a program for making grants for providing a full range of foreclosure legal assistance").

The Appellees now claim to the Court that (i) "Green Tree was under no obligation" to consider Appellants' loss mitigation application (Br. of Appellees at Page 8), (ii) "Appellants were not entitled to another review of the loan modification application that now forms the basis of Appellants' arguments on appeal" (Br. of Appellees at Page 9), and Appellants had no right to appeal the alleged denial of their loan modification application (Br. of Appellees at Pages 10-12).

Respectfully, Appellees arguments are belied by Green Tree's own, prior representations, consistent with Regulation X, to Ms. Alexander and Ms. Wright (E. 256-258) as well as Green Tree's own representations to Maryland's OCFR.[5]

By its own admission to the OCFR, Green Tree and the Appellees, on its behalf, are precluded by principles of equitable estoppel from claiming to this Court a factual contention which is contrary to which it represented to the agency which permits it to operate in the State. As a matter of equitable estoppel, Green Tree may not act contrary to

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[5] In response to Appellants' administrative complaint to the OCFR, Green Tree admitted to its regulator that Green Tree had wrongfully scheduled a foreclosure sale on November 19, 2014 (E. 296) even though it had no right to do so because a foreclosure sale may not be scheduled by a mortgage servicer or its agents acting until after the completion of the homeowners' foreclosure mediation session. MD. CODE ANN., REAL PROP. § 7-105.1(m). Further, Green Tree admitted that "[o]n December 29, 2014, Green Tree sent the [Appellants] the attached loan modification denial notice for failure to provide the necessary documentation. On January 28, 2015, Green Tree received a loan modification appeal from [Appellants]. Green Tree inadvertently proceeded the foreclosure sale on February 3, 2015. Green Tree has rescinded the foreclosure sale to review the appeal." E. 298-97.

its previous declaration to a government agency about whether it had a right to proceed to a foreclosure sale. The Court of Appeals has explained:

> This Court has adopted the following definition of equitable estoppel:
>
> > Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.
>
> ... "Equitable estoppel essentially consists of three elements: 'voluntary conduct or representation, reliance, and detriment.' " .... It is "cognizable at common law either as a defense to a cause of action, or to avoid a defense." ...

Lipitz v. Hurwitz, 435 Md. 273, 291-92 (2013)(internal citations omitted).

In this case all three elements are met. First, Green Tree has admitted to the OCFR that the scheduling foreclosure sale and conduct of the foreclosure sale was improper. E. 298-97. Permitting Appellees, who are acting on Green Tree's behalf in this action, to attack on appeal Green Tree's own prior admission relied upon by the State and the Circuit Court below, would be unfair and prejudicial to Appellants (and OCFR) and should not be permitted as a basis to affirm the Circuit Court's Order denying Appellants' Rule 14-211 Motion to Stay. After all it is axiomatic that Appellants are prejudiced by having to even respond to Appellees' argument raised for the first time on appeal when Appellees could have taken the same steps in the court below but voluntarily elected not to do so. *See generally* E. 1 - 307.

For these reasons Appellees should be equitably estopped on this appeal from advancing an argument contrary to the prior admission(s) of Green Tree to the Appellants and the OCFR.

IV. PURSUANT TO DODD-FRANK, RESPA AND DODD-FRANK, A NEW OBLIGATION WAS IMPOSED ON GREEN TREE AS OF REGULATION X'S EFFECTIVE DATE WHICH REQUIRED IT, UPON RECEIPT OF APPELLANTS' COMPLETED LOSS MITIGATION APPLICATION AND SUBSEQUENT APPEAL, TO NOT THREATEN OR PROCEED WITH ANY FORECLOSURE SALE

Appellees improperly advance a disputed factual argument before the Court that, Appellants' loss mitigation application subject to this appeal was invalid because they argue that Green Tree had previously denied a purported loss mitigation application. Br. of Appellees at Page 9 ("Appellants admit that they were evaluated for loss mitigation options on at least two prior occasions...and accordingly, Appellants were not entitled to another review of the loan modification that now forms the basis of Appellants' arguments on appeal"). *But see* E. 104-105 (Green Trees' sworn affidavits to the Circuit Court that do not identify any prior loss mitigation applications by Appellants to Green Tree).[6]

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[6] Real Prop. § 7-105.1(x) requires the filing of an appropriate loss mitigation affidavit to commence any foreclosure as follows: "1. If the loss mitigation analysis has been completed subject to subsection (g) of this section, a final loss mitigation affidavit in the form prescribed by regulation adopted by the Commissioner of Financial Regulation; and 2. If the loss mitigation analysis has not been completed, a preliminary loss mitigation affidavit in the form prescribed by regulation adopted by the Commissioner of Financial Regulation." Notwithstanding the sworn words the Green Tree's sworn testimony to which Appellees relied for commencing this action (E. 104-105), if Green Tree had actually reviewed Appellants for loss mitigation before the commencement of this action as

Putting aside the factual and legal problems for the Appellees in advancing their argument, it would be improper for the Court, considering the remedial aim of Dodd-Frank, RESPA, and Regulation X (*see* Argument *supra* at § II) to hold that Regulation X's obligations do not arise based upon alleged facts which occurred before the effective date of Regulation X. Such a construction would simply frustrate Regulation X's remedial purpose.

Further, notwithstanding that Appellees' argument misconstrues Appellants' well pled facts of their Counter Complaint at E. 203 & 205, which describe generally Appellants' efforts before Regulation X became effective to determine whether or not they qualified for Global Settlement Program established as a result of actions by the U.S. Department of Justice and nearly every State Attorney General, Appellants do not believe the Court should consider the factual dispute whatsoever since it was not raised below but more importantly because it is not material to the claims before the Court since they occurred before January 10, 2014--the effective date of Regulation X. 78 FR 10696-01. As explained recently by one court, a mortgage servicer such as Green Tree:

> could not possibly have "compl[ied] with the requirements of [12 C.F.R. § 1024.41] for a single complete loss mitigation application for [Plaintiff's] mortgage loan account" at a time when the statute did not exist and the term "complete loss mitigation application" was not defined. Accordingly, the Court finds that Defendant "was still required to comply with the requirements of section 1024.41 at least once after the section became

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Appellees now contend, they were not permitted to utilize a the preliminary loss mitigation affidavit to acquire the Circuit Court's jurisdiction (E. 104). Real Prop. § 7-105.1(x).

> effective." *See Bennett v. Bank of Am., N.A.*, No. 15-30-ART, 2015 WL 5063271, at *8 (E.D. Ky. Aug. 26, 2015).

Billings v. Seterus, Inc., No. 1:14-CV-1295, 2016 WL 1055753, at *3 (W.D. Mich. Mar. 17, 2016). *See also Cooper v. Fay Servicing, LLC*, *Cooper v. Fay Servicing, LLC*, 115 F. Supp. 3d 900, 906 (S.D. Ohio 2015)(holding that that Regulation X did not apply retroactively to loss mitigation processes that occurred before its effective date, rather only to those occurring after the effective date); *Lage v. Ocwen Loan Servicing LLC*, No. 14-CV-81522, --- F.Supp.3d ----, 2015 WL 7294854, at *9 (S.D. Fla. Nov. 19, 2015)(concluding that as of Regulation X's effective date "a borrower who has previously submitted an application and has been rejected, or who has a previously filed application outstanding, may resubmit the application in order to avail themselves of the new Regulation" but not based upon an application submitted prior to Regulation effective date).

While not binding upon the Court, the CFPB published, nearly contemporaneously with effective date of Regulation X, persuasive guidance to support the common sense reading of these various court holdings and Appellants' position advocated herein--i.e. that Green Tree's new obligations established by Regulation X and the rights for borrowers like the Appellants vested as of January 10, 2014 and are not dependent on facts which allegedly occurred before January 10, 2014. CFPB, Help for Struggling Borrowers: A guide to the mortgage servicing rules effective on January 10, 2014, at 8 (January 28, 2014) (available at http://files.consumerfinance.gov/f/201402_cfpb_mortgages_help-for-struggling-borrowers.pdf) (last visited March 19, 2016)("These new rules became effective on

January 10, 2014. Any borrower who files a complete loss mitigation application on or after January 10, 2014 and more than 37 days before a foreclosure sale is entitled to an evaluation of the complete loss mitigation application for all available loss mitigation options (so long as the conditions of 12 C.F.R. 1024.41 are met). The servicer must conduct this evaluation even if the borrower previously filed for, was granted, or was denied a loss mitigation plan before January 10, 2014").

The Court of Appeals has long held that "the contemporaneous interpretation of a statute by the agency charged with its administration is entitled to great deference..." *Baltimore Gas & Elec. Co. v. Pub. Serv. Comm'n of Maryland*, 305 Md. 145, 161 (1986). Here the Court should afford the same deference to the CFPB's interpretation consistent with the remedial purpose of Dodd-Frank, RESPA, and Regulation X and the holdings of *Billings*, *Cooper*, and *Lage*. If the Court fails to give such deference to the remedial purpose of Dodd-Frank, the Court implicitly would be creating a different obligation intended by Congress and frustrating the rights of Appellants and similar homeowners.

V. ACCEPTING APPELLEES' CONTENTION BASED UPON A SECRET SCHEDULING OF A FORECLOSURE SALE WITHOUT ANY NOTICE TO APPELLANTS WOULD IMPERMISSIBLY FRUSTRATE THE REMEDIAL PURPOSES OF DODD-FRANK, RESPA, AND REGULATION X ESTABLISHING OBLIGATIONS DUE TO THE APPELLANTS

Even though they are estopped from doing so (*see supra* Argument at § III), Appellees claim Regulation X's new obligations upon Green Tree do not apply because they "had already moved for and obtained an order of sale by the time Appellants

supposedly submitted their 'completed loan modification' application on December 3, 2014." Br. of Appellees at Page 11. However, Appellees admit that they did not "notif[y] Appellants of the foreclosure sale scheduled for February 3, 2015 [until a] letter dated January 9, 2015" from them to Appellees. *Id.* at 4.

Regulation X provides

> [i]f a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer **shall not** move for foreclosure judgment or order of sale, or **conduct a foreclosure sale**...

12 C.F.R. § 1024.41(g)(emphasis added).

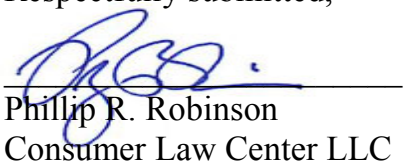
Here, Appellees seek for the Court to conclude that their alleged, but secret, scheduling of a foreclosure sale without notice to Appellants whatsoever sometime less than 37 days before the sale is just and equitable. However, if the Court were accept Appellees' construction, the remedial rights of the Appellants created under Dodd-Frank, RESPA, and Regulation X related to loss mitigation applications or appeal rights (12 C.F.R. § 1024.41(g)(h)) would be impermissibly denied. *See* Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), 78 FR 10696-01 at 10783 ("A servicer must maintain policies and procedures reasonably designed to implement these requirements even if such loss mitigation evaluations may not be required pursuant to § 1024.41. **The Bureau believes that the final rule will provide borrowers with greater access to loss mitigation options and more transparency into the evaluation process**")(emphasis added).

Unless a servicer or its agents the Substitute Trustees disclose to borrowers the foreclosure sale date more than 37 days before the sale, borrowers would be wrongly denied their 12 C.F.R. § 1024.41(g)(h) rights and the obligations intended for Green Tree because the servicer fails to act in a transparent manner which discloses to borrowers material information about where they are on the foreclosure timeline. This loophole sought by Appellees should not be sanctioned by the Court and should be avoided since it would render the obligations of 12 C.F.R. § 1024.41(g)(h) illusory. *Whitaker v. Whitaker*, 169 Md. App. 312, 318, (2006)("Such a loophole in the coverage of the statute would make the statutory protection for purchasers illusory").

CONCLUSION

For the foregoing reasons as well as those advanced in their Opening Brief, Appellants respectfully request that this Court reverse the circuit court's order denying their Md. Rule 14-211 Motion to Stay any Foreclosure.

Respectfully submitted,



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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 3,758 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements state in Rule 8-112.

CERTIFICATE OF SERVICE

I hereby certify and give notice that 2 copies of the foregoing Reply Brief was served on the Appellees' counsel by depositing same in the U.S. Mail, first class postage prepaid, on March 21, 2016 to the following:

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