

# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## Alex Rahmi v. Pill & Pill, PLLC

No. 18-0533 · No. No. 18-0533 · Decided September 3, 2019

### SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the dismissal of Alex Rahmi's action seeking to prevent completion of a foreclosure sale and seeking damages. The court held that GMAC Mortgage was not a defendant and that Rahmi failed to plead fraud with the particularity required by West Virginia Rule of Civil Procedure 9(b).

### CASE DETAILS

|                       |                                                                                                                                                                                                                      |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                            |
| WRITING FOR THE COURT | Chief Justice Elizabeth D. Walker; Justice Margaret L. Workman; Justice Tim Armstead; Justice Evan H. Jenkins; Justice John A. Hutchison                                                                             |
| JURISDICTION          | West Virginia                                                                                                                                                                                                        |
| DECIDED               | September 3, 2019                                                                                                                                                                                                    |
| DOCKET                | No. 18-0533                                                                                                                                                                                                          |
| DISPOSITION           | affirmed                                                                                                                                                                                                             |
| PROCEDURAL POSTURE    | Petitioner appealed the circuit court's order granting respondents' Rule 12(b)(6) motion and dismissing his action seeking to prevent completion of a foreclosure sale and asserting allegations construed as fraud. |
| STANDARD OF REVIEW    | De novo review of an order granting a motion to dismiss a complaint.                                                                                                                                                 |
| PRECEDENTIAL VALUE    | Nonprecedential memorandum decision under West Virginia Rule of Appellate Procedure 21.                                                                                                                              |
| PARTIES               | Alex Rahmi v. Pill & Pill, PLLC, Bank of New York Mellon Trust Company, National Association, R & D Investments, LLC                                                                                                 |

### TOPICS

[motions to dismiss](#) [pleadings](#) [foreclosure](#) [injunctions](#) [appellate procedure](#)

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the circuit court properly dismissed Rahmi's action under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.
2. Whether Rahmi's allegations stated a fraud claim with the particularity required by Rule 9(b), where the alleged wrongdoer, GMAC Mortgage, was not a defendant.
3. Whether dismissal was proper regardless of whether Rahmi sought injunctive relief, money damages, or both.

## HOLDINGS

1. The circuit court properly dismissed the action because Rahmi failed to state a claim upon which relief could be granted.
2. Fraud allegations must be pleaded with particularity, and Rahmi's allegations did not satisfy that requirement.
3. The action could not proceed on allegations directed at GMAC Mortgage because GMAC Mortgage was not a defendant in the case.

## KEY QUOTATIONS

*“Appellate review of a circuit court’s order granting a motion to dismiss a complaint is de novo.”* (at 3)

*“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.”* (at 3)

## FACTUAL BACKGROUND

Rahmi's residential property in Charles Town, West Virginia, was sold at a foreclosure sale in August 2017, with Pill & Pill serving as trustee, the Bank holding the deed of trust, and R & D Investments purchasing the property. Rahmi had previously filed a Chapter 11 bankruptcy that was converted to Chapter 7, and the bankruptcy court denied him a discharge after finding that he intentionally transferred and concealed settlement proceeds. The bankruptcy court later lifted the automatic stay for cause based on Rahmi's prolonged failure to perform under the loan obligations. Rahmi then sued in state court, seeking to prevent completion of the foreclosure sale and later asserting allegations construed as fraud against GMAC Mortgage.

## PROCEDURAL HISTORY

Rahmi filed a complaint in the Circuit Court of Jefferson County seeking an injunction concerning the foreclosure of his residence and later filed amended complaints seeking compensation for injuries and damages allegedly caused by GMAC Mortgage. The circuit court permitted the bank and R & D Investments to intervene, considered the amended allegations, and dismissed the action under Rule 12(b)(6), concluding that GMAC

Mortgage was not a defendant and that any fraud allegations were not pleaded with particularity under Rule 9(b). The Supreme Court of Appeals of West Virginia affirmed.

#### DISPOSITION

affirmed

#### CASES CITED

- Forshey v. Jackson, 222 W. Va. 743, 671 S.E.2d 748 (2008)
- In re Rahmi, 535 B.R. 655, 661 (Bankr. N.D. W. Va. 2015)
- State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc., 194 W. Va. 770, 461 S.E.2d 516 (1995)
- Hager v. Exxon Corp., 161 W. Va. 278, 241 S.E.2d 920 (1978)

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