

1-11-2760

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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BANCO POPULAR NORTH AMERICA,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
	)	Cook County.
v.	)	
	)	
MIGUEL RUIZ,	)	
Defendant-Appellant,	)	
	)	No. 07 CH 13184
and	)	
	)	
CHICAGO TITLE LAND TRUST, successor trustee to LaSalle	)	
Bank, N.A. and LaSalle National Bank as trustee under trust	)	
agreement dated August 26, 1994 & known as trust number	)	
119024; record owner of the land; beneficiaries of trust number	)	Honorable
119024; and nonrecord claimants, <sup>1</sup>	)	John C. Griffin,
Defendants.	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Rochford and Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court properly granted summary judgment in favor of the mortgagee in a foreclosure action; properly entered a judgment of foreclosure and sale of the

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<sup>1</sup>According to the complaint, these defendants were joined in the foreclosure action as those "whose interest in or lien on the mortgaged real estate is sought to be terminated." However, they are not parties on appeal before us.

property; properly denied the mortgagor's motion to vacate the judgment of foreclosure and sale of the property; and properly entered an order approving the judicial sale of the property.

¶ 2 This appeal in a foreclosure action arises from a September 16, 2010 order entered by the circuit court of Cook County, which granted summary judgment in favor of plaintiff Banco Popular North America (Banco), and against defendant Miguel Ruiz (Ruiz).<sup>2</sup> This appeal also arises from the entry of the circuit court's September 16, 2010 "judgment of foreclosure and sale"; the circuit court's November 16, 2010 order denying Ruiz's motion to vacate the September 16, 2010 "judgment of foreclosure and sale" and to stay the sale of the foreclosed property; the circuit court's August 17, 2011 "order approving report of sale and distribution"; and the circuit court's September 14, 2011 order denying Ruiz's emergency motion to stay the August 17, 2011 "order approving report of sale and distribution." On appeal, Ruiz argues that: (1) the circuit court erred in entering the August 17, 2010 "order approving report of sale and distribution" because Banco's documentation in support of the judicial sale bid price of the foreclosed property was inadmissible as a matter of law and the bid price was unconscionable; and (2) the circuit court erred in granting summary judgment in favor of Banco, erred in entering the September 16, 2010 "judgment of foreclosure and sale," and erred in denying Ruiz's motion to vacate the "judgment of foreclosure and sale," where it improperly relied on an inadmissible affidavit. For the following reasons, we affirm the judgment of the circuit court of Cook County.

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<sup>2</sup>An order of default was also entered against the other named defendants, who are not parties on appeal before us.

¶ 3

### BACKGROUND

¶ 4 On May 16, 2007, Banco filed a complaint for foreclosure against Ruiz and other named defendants,<sup>3</sup> alleging that Ruiz breached two mortgage agreements and promissory notes entered into with Banco in 2005 and 2006. The mortgages were secured by real property located at 1918 West Winnemac Avenue in Chicago, Illinois (the property). On November 29, 2007, Ruiz filed an answer and affirmative defenses to Banco's complaint.

¶ 5 On April 9, 2008, Banco filed several motions before the circuit court, including a motion for summary judgment; a motion to strike Ruiz's affirmative defenses (motion to strike); a motion for default and judgment; and a motion for entry of "judgment of foreclosure and sale." The motion for summary judgment and the motion for default judgment were supported by the affidavit of the vice president of Banco, R. Daniel Kinealy (Kinealy), which averred that Ruiz had defaulted on both of the mortgages in the total principal amount of \$800,000, plus interests, costs and fees, for an approximate total of \$1,076,669.30. On August 25, 2008, the circuit court granted Banco's motion to strike.

¶ 6 On November 5, 2008, legal counsel for Ruiz filed a motion for leave to withdraw, which was granted by the circuit court on November 19, 2008. Thereafter, Ruiz retained new counsel to represent him in this cause of action.

¶ 7 On February 17, 2009, Ruiz's new counsel filed a one-page answer to Banco's motion for summary judgment, asserting that issues of material fact existed as to the amounts allegedly owed

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<sup>3</sup>As discussed, these named defendants are not parties on appeal before this court.

by Ruiz to Banco under the terms of the mortgage agreements and promissory notes.

¶ 8 In February 2009, Ruiz filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court (In re Miguel S. Ruiz, No. 1-09-5984 (Bankr. N.D. Ill.)) (the bankruptcy case), which stayed the instant foreclosure action. On April 7, 2010, the bankruptcy case was dismissed on motion by the United States Trustee. Thereafter, on July 16, 2010, the circuit court granted Banco's motion to reinstate the foreclosure action.

¶ 9 On July 23, 2010, Banco refiled its previously filed motions, including the motion for summary judgment and the motion for entry of "judgment of foreclosure and sale." The motion for summary judgment was again supported by Kinealy's affidavit. The record does not show that Ruiz raised any new discovery requests to the circuit court in the interim after the foreclosure action was reinstated and prior to the hearing on Banco's motion for summary judgment.

¶ 10 On August 17, 2010, Ruiz filed an "emergency motion to set a settlement conference" (motion to set a settlement conference), alleging that bona fide purchasers have offered to buy other properties owned by Ruiz that were subjected to another mortgage lien held by Banco (2317-2321 North Milwaukee Avenue), and that the money received "at closing would result in [Banco] receiving 90% of its investment in the subject properties." On August 20, 2010, Ruiz filed a motion to extend time to respond to Banco's motion for summary judgment and related motions (motion to extend time). On that same day, August 20 2010, the circuit court denied Ruiz's motion to set a settlement conference, but granted his motion to extend time. However, Ruiz never filed a response to Banco's July 23, 2010 motion for summary judgment.

¶ 11 On September 3, 2010, Ruiz filed a motion to stay summary judgment proceedings, which

requested the circuit court to order the private sale of another property owned by Ruiz but that was subjected to a mortgage lien held by Banco (2319-2321<sup>4</sup> North Milwaukee Avenue) in the amount of \$640,000, requested that Banco be given priority lien in the property located at 2319-2321 North Milwaukee Avenue, and requested that the circuit court terminate Banco's interest in the mortgaged properties. On September 10, 2010, Ruiz's motion to stay summary judgment proceedings was withdrawn. However, on September 15, 2010, Ruiz filed an "emergency motion to stay summary judgment proceedings," which requested the circuit court to order the private sale of the property located at 2319-2321 North Milwaukee Avenue for the amount of \$800,000, and again requested that Banco be given priority lien in the property located at 2319-2321 North Milwaukee Avenue and that Banco's interest in the mortgaged properties be terminated.

¶ 12 On September 16, 2010, the circuit court denied Ruiz's "emergency motion to stay summary judgment proceedings," granted Banco's motion for summary judgment against Ruiz, entered an order of default against the remaining named defendants, and entered a "judgment of foreclosure and sale" of the property.

¶ 13 In a letter dated September 23, 2010, counsel for Ruiz requested Banco's attorney to provide "all backup documentation and detailed computations" in order to verify the "dollar amounts" contained in the circuit court's "judgment of foreclosure and sale" of the property.

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<sup>4</sup>Though unclear, the properties set forth in Ruiz's August 17, 2010 motion to set a settlement conference and the properties listed in the motion to stay summary judgment proceedings seem to describe some of the same units within the real estate property located on North Milwaukee Avenue. We note that the properties located on North Milwaukee Avenue had no relevance to the property at issue in the instant foreclosure action—1918 West Winnemac Avenue—but instead pertained to a separate foreclosure proceeding initiated against Ruiz.

¶ 14 On October 18, 2010, Ruiz filed an emergency motion to vacate the "judgment of foreclosure and sale" and to stay the sale of the foreclosed property (motion to vacate), arguing that the circuit court's order contained "questionable calculations" and that the averments in Kinealy's affidavit were not supported by proper documentation. On November 16, 2010, the circuit court denied Ruiz's motion to vacate.

¶ 15 On December 2, 2010, Ruiz filed a premature notice of appeal before this court, seeking reversal of the circuit court's September 16, 2010 and November 16, 2010 orders. On January 27, 2011, this court dismissed Ruiz's appeal on the basis that the court lacked jurisdiction.

¶ 16 On May 5, 2011, a judicial sale was held during which the foreclosed property was sold to Banco, the highest bidder at the public auction, for \$460,000. On June 1, 2011, Banco filed a motion to approve the report of sale from the public auction (motion to approve sale). In support of the judicial sale bid price, Banco submitted a "foreclosure bid construction form" that valued the property at \$725,000 "[l]ess 30%," and a July 19, 2010 appraisal report that valued the property at \$725,000. In response, Ruiz submitted an affidavit of a real estate agent, Fermin Perez (Realtor Perez), who averred that he listed the property at issue for sale in the range of \$959,000 and \$989,000 between October 2004 and August 2009. Realtor Perez further attested in the affidavit that the listing prices reflected the "fair and true evaluations of the subject property's value."

¶ 17 On August 17, 2011, the circuit court entered an "order approving report of sale and distribution" of the property (order approving judicial sale), finding that the valuation of the property by Realtor Perez in the range of \$959,000 and \$989,000 was good evidence of "what is not the value of the property" because the property failed to sell when it was listed in that price range during the

5-year period between October 2004 and August 2009.

¶ 18 Subsequently, Ruiz filed an emergency motion to stay the August 17, 2011 order approving judicial sale (emergency motion to stay), which the circuit court denied on September 14, 2011.

¶ 19 On September 15, 2011, Ruiz filed a notice of appeal before this court. However, in October 2011, Judge John Griffin of the circuit court (Judge Griffin), who had presided over this foreclosure action, was transferred to preside over a different court calendar. After Judge Griffin's transfer, Ruiz filed another emergency motion to stay before circuit court Judge Ann Collins (Judge Collins), which was also denied on November 10, 2011.

¶ 20 On November 14, 2011, this court granted Ruiz's motion for leave to file a corrected notice of appeal, seeking to appeal the circuit court's September 16, 2010, November 16, 2010, August 17, 2011 and September 14, 2011 orders.

¶ 21 ANALYSIS

¶ 22 We determine the following issues on appeal: (1) whether the circuit court erred in entering the September 16, 2010 order granting summary judgment in favor of Banco and, consequently, in entering a "judgment of foreclosure and sale" of the property and in denying Ruiz's motion to vacate the circuit court's "judgment of foreclosure and sale"; and (2) whether the circuit court erred in entering the August 17, 2011 order approving judicial sale of the property.

¶ 23 As a preliminary matter, we note that several of Ruiz's contentions in his brief<sup>5</sup> before us either misstate the record citations or are bereft of any citations to the record on appeal, in violation

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<sup>5</sup>Ruiz has submitted only an opening brief before this court, and has not filed a reply brief.

of Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008), which requires parties on appeal to support their arguments with proper "pages of the record relied on" and "pages of the record on appeal \*\*\* where evidence may be found." Further, Ruiz's appendix to his brief on appeal neither contains a table of contents to the appendix, nor a table of contents of the record on appeal, in violation of Illinois Supreme Court Rule 342(a) (eff. Jan. 1, 2005). Supreme Court rules "are not merely suggestions, but are necessary for the proper and efficient administration of the courts." *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5. Ruiz's failure to properly cite to the record on appeal, and to include a table of contents of the appendix and the record on appeal, was a hindrance in efficiently locating the necessary documents in order to resolve this appeal. However, despite this violation of supreme court rules by Ruiz, this court was able to find and examine the relevant documents in the record on appeal. Thus, we will not dismiss Ruiz's appeal, or deem his arguments and issues forfeited or otherwise penalize Ruiz on this basis, as Banco urges us to do. We take this position in the interest of the efficient administration of the appellate process. Ruiz is cautioned about disregarding supreme court rules in this way in the future as the outcome may be unpredictable.

¶ 24 Turning to the merits of the case, we first determine whether the circuit court erred in granting summary judgment in favor of Banco, and in entering a "judgment of foreclosure and sale" of the property.

¶ 25 Summary judgment is proper where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2008).

"In considering a motion for summary judgment, the court must view the record in the light most favorable to the nonmoving party." *Pielet v. Pielet*, 474 Ill. App. 3d 407, 419, 942 N.E.2d 606, 622 (2010). "The purpose of summary judgment is not to try a question of fact, but to determine whether one exists" that would preclude the entry of judgment as a matter of law. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 421, 432, 781 N.E.2d 249, 254, 260 (2002). "Thus, although the nonmoving party is not required to prove his case in response to a motion for summary judgment, he must present a factual basis that would arguably entitle him to judgment." *Id.* at 432, 781 N.E.2d at 260. We review *de novo* the circuit court's grant of summary judgment in favor of Banco. See *Hahn v. Union Pacific R.R. Co.*, 352 Ill. App. 3d 922, 929, 816 N.E.2d 834, 840 (2004).

¶ 26 Ruiz argues that the circuit court erroneously granted summary judgment in favor of Banco, erroneously entered a "judgment of foreclosure and sale" of the property, and erroneously denied Ruiz's motion to vacate the "judgment of foreclosure and sale" of the property because Kinealy's affidavit, which was submitted in support of Banco's motion for summary judgment, was inadmissible hearsay. Specifically, he contends that Kinealy's affidavit was inadmissible hearsay pursuant to Supreme Court Rule 191(a) (eff. July 1, 2002), because it consisted of "conclusions as opposed to material facts" such that the circuit court could not, as a matter of law, accept the affidavit as true for the purposes of summary judgment.

¶ 27 Banco counters that none of Ruiz's filings in the circuit court leading up to the hearing on the motion for summary judgment related to the issues presented in the motion for summary judgment. Banco asserts that Ruiz failed to file anything "contesting or questioning" the averments in Kinealy's

affidavit before the circuit court's ruling on the motion for summary judgment. Rather, Ruiz waited until one month later, when he filed a motion to vacate the circuit court's "judgment of foreclosure and sale," to challenge the facts set forth in Kinealy's affidavit for the first time. Thus, Banco contends that, as a result, Ruiz forfeited his right to contest Kinealy's affidavit, and the circuit court's grant of Banco's motion for summary judgment and its entry of the "judgment of foreclosure and sale" should be affirmed.

¶ 28 After examining the record, it is undisputed that Ruiz failed to make the requisite payments under the terms of the mortgage agreements and promissory notes entered into with Banco in 2005 and 2006. The record shows that after Ruiz's bankruptcy case was dismissed by the federal court in April 2010, the circuit court reinstated the instant foreclosure action against Ruiz. Thereafter, on July 23, 2010, Banco refiled several motions before the circuit court, including the motion for summary judgment and the motion for entry of a "judgment of foreclosure and sale" of the property. Banco's motion for summary judgment was supported by the affidavit of Kinealy, as vice president of Banco, who averred that Ruiz had defaulted on two mortgage loans and that he owed Banco a total of \$1,076,669.30 in principal, interests, fees and costs. There is no indication in the record that Ruiz filed a response to the July 23, 2010 motion for summary judgment, nor did he file any pleadings or evidence contesting the averments set forth in Kinealy's affidavit prior to the hearing on the motion for summary judgment. The record also does not show that Ruiz made any new discovery requests to the circuit court at that time. Instead, after Banco filed a motion for summary judgment, Ruiz only filed the following motions prior to the circuit court's summary judgment determination: (1) the August 17, 2010 motion to set a settlement conference, which was denied by

the circuit court; (2) the August 20, 2010 motion to extend time to file a response to the motion for summary judgment, which the circuit court granted; (3) the September 3, 2010 motion to stay summary judgment proceedings, which was withdrawn; and (4) the September 15, 2010 "emergency motion to stay summary judgment proceedings," requesting that the court order the private sale of another property unrelated to the instant foreclosure case, which was denied by the circuit court.

¶29 "Upon appellate review of a trial court's summary-judgment determination, the appellant may (1) refer to the record only as it existed at the time the trial court ruled, (2) outline the arguments made at the time, and (3) explain why the trial court erred by granting summary judgment." *Simmons v. Reichardt*, 406 Ill. App. 3d 317, 322, 943 N.E.2d 752, 757 (2010). In *Simmons*, on review of the trial court's entry of summary judgment in favor of the movant, the non-movant argued that a genuine issue of material fact existed as to whether the movant owned the trampoline that injured her, by relying on certain statements made by the movant in his deposition testimony. *Id.* at 322, 943 N.E.2d at 756. However, in rejecting the non-movant's argument, the reviewing court found that she had never submitted the movant's deposition to the trial court prior to the hearing on the motion for summary judgment. *Id.* at 322-23, 943 N.E.2d at 757. Specifically, the *Simmons* court noted that the trial court was correct to observe—"based upon the materials the parties had submitted"—that the movant was not the owner of the trampoline. (Emphasis in original.) *Id.* Accordingly, the *Simmons* court refused to consider the contents of the movant's deposition on appeal because it was not properly before the trial court at the hearing on the motion for summary judgment. *Id.* at 323, 943 N.E.3d at 757. It explained that, "[t]o hold otherwise would mean reversing the trial court based upon evidence it never heard, an action this court is extraordinarily

disinclined to ever take." *Id.*

¶ 30 Similar to the facts in *Simmons*, here, Ruiz failed to submit any pleadings, affidavits, or evidence challenging the averments set forth in Kinealy's affidavit prior to the hearing on the motion for summary judgment, and failed to file a response to Banco's July 23, 2010 motion for summary judgment. As such, the circuit court correctly entered summary judgment in favor of Banco, based only upon what was presented to it at the time of the ruling—an uncontested affidavit by Kinealy in support of the motion for summary judgment. Accordingly, we cannot consider Ruiz's challenges to Kinealy's affidavit, which were raised for the first time in his motion to vacate the "judgment of foreclosure and sale," and well *after* the court's ruling on the motion for summary judgment. Thus, we decline to reverse the circuit court's summary judgment determination based on alleged issues of material fact that were not properly brought before the court prior to its ruling. See *Landeros v. Equity Property & Development*, 321 Ill. App. 3d 57, 65, 747 N.E.2d 391, 399 (2001) (courts should not allow a litigant to "stand mute, lose a motion, and then frantically gather evidentiary material to show that the court erred in its ruling"); *Simmons*, 406 Ill. App. 3d at 325, 943 N.E.2d at 758 (same).

¶ 31 Further, the record is devoid of any transcripts of the hearing on the motion for summary judgment, or a certified bystander's report in lieu thereof. See Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005) (an appellant may file a bystander's report in the record on appeal if "no verbatim transcript of the evidence of proceedings is obtainable"). As the appellant, Ruiz had the burden to provide a complete record on appeal to support any claim of error. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984). In the absence of a complete record on appeal, any doubts which may arise will be resolved against the appellants, and "it will be presumed that the order

entered by the [circuit] court was in conformity with law and had a sufficient factual basis." *Id.* at 392, 459 N.E.2d at 959. Thus, even assuming, *arguendo*, that Ruiz had made an oral challenge of Kinealy's affidavit at the hearing, we have no record of the proceedings to allow us to make a meaningful assessment of the circuit court's reasoning in granting Banco's motion for summary judgment, nor do we have any means to determine what factual basis the court relied on in coming to that conclusion. See *Moening v. Union Pacific R.R. Co.*, 2012 IL App (1st) 101866, ¶ 39 (absent the transcript or a bystander's report of the proceedings, the reviewing court could not conclude that the circuit court erred because it did not have "a record of the issues that were addressed or the arguments and evidence that were presented or considered by the [circuit] court in granting the petition to adjudicate lien and in making its finding that the lien was properly perfected"); *Government Employees Insurance Co. v. Buford*, 338 Ill. App. 3d 448, 452-53, 788 N.E.2d 90, 94 (2003) (circuit court's order declining to vacate the defendant's discovery sanction could not be addressed on appeal where the record lacked any transcripts or bystander's reports of the proceedings in which the order entered). Accordingly, we must presume that the circuit court's September 16, 2010 order granting summary judgment in favor of Banco was in conformity with the law and had a sufficient factual basis.

¶ 32 Notwithstanding these deficiencies, Ruiz argues that he was not obligated to submit any counteraffidavits to oppose Kinealy's affidavit because Kinealy's affidavit was inadmissible hearsay. He maintains that Kinealy's affidavit, which consisted of "conclusions as opposed to material facts" and was unsupported by any "referenced documentation," could not be accepted as true as a matter of law by the circuit court in entering summary judgment.

¶ 33 Supreme Court Rule 191(a) requires that an affidavit in support of a motion for summary judgment "shall be made on the personal knowledge of the affiant[]; shall set forth with particularity the facts upon which the claim, counterclaim or defense is based; shall have attached thereto sworn or certified copies of all papers upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto." Ill. S. Ct. R. 191(a) (eff. July 1, 2002).

¶ 34 While "any evidence that would be inadmissible at trial cannot be considered in a summary judgment proceeding, \*\*\* minor technical deficiencies contained in an affidavit does not preclude its consideration because substance and not form controls." (Internal citations omitted.) *Wisowaty v. Baumgard*, 257 Ill. App. 3d 812, 819, 629 N.E.2d 624, 630 (1994). " 'Facts contained in an affidavit in support of a motion for summary judgment which are not contradicted by counteraffidavit are admitted and must be taken as true for purposes of the motion.' " *Village of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶ 14 (quoting *Purtill v. Hess*, 111 Ill. 2d 229, 241, 489 N.E.2d 867, 871-72 (1986)). "In a motion for summary judgment, it is the nonmoving party's duty to bring any objections to the sufficiency of an affidavit to the trial court's attention for a ruling thereon," and that "[f]ailure to do so results in [forfeiture] of the objection on appeal." *Anderson*, 2011 IL App (1st) 110748, ¶ 15.

¶ 35 As discussed, rather than state any facts to dispute Kinealy's affidavit prior to the ruling on the motion for summary judgment, Ruiz failed to file a response to Banco's July 23, 2010 motion for summary judgment and never argued that Kinealy's affidavit was insufficient for the alleged reasons that it contained unsupported and conclusory statements. The record neither shows that

Ruiz, as the nonmoving party, made any motions to strike the affidavit for its alleged deficiencies, nor in general brought any objections to the sufficiency of Kinealy's affidavit to the circuit court's attention prior to the entry of summary judgment. Compare *Cole Taylor Bank v. Corrigan*, 230 Ill. App. 3d 122, 129, 595 N.E.2d 177, 181-82 (1992) (nonmoving party properly moved the circuit court to strike an affidavit submitted by the moving party in support of its motion for summary judgment, on the basis that it violated the best evidence rule, the hearsay rule and the business records rule). As noted, the failure to include transcripts or a certified bystander's report of the proceedings on appeal must be construed against Ruiz, who had the burden as the appellant to provide this court with a complete record. Even assuming that Kinealy's affidavit was somehow deficient, as Ruiz alleges, it did not excuse Ruiz from filing a counteraffidavit opposing it or, at the very least, from bringing the deficiency to the circuit court's attention prior to its ruling on the motion for summary judgment. Thus, as a result of Ruiz's failure to raise any objections to Kinealy's affidavit until long *after* the circuit court had entered summary judgment in favor of Banco, Ruiz has forfeited his objections to the sufficiency of Kinealy's affidavit. Therefore, Kinealy's uncontested affidavit, which must be taken as true, was properly before the circuit court in support of Banco's motion for summary judgment. Accordingly, based on our review of the record which was before the circuit court at the time of its September 16, 2010 ruling, we find that Ruiz had not raised a genuine issue of material fact to survive summary judgment.

¶ 36 Nonetheless, Ruiz asserts that even if he was required to submit a counteraffidavit to oppose Kinealy's affidavit, he was unable to do so in good faith where he had "repeatedly requested that the bank documents reflecting the amounts due on the [m]ortgages and accompanying [p]romissory

[n]otes be made available to [him] for his review," but that Banco refused to tender the requested documents. We reject this contention. As Banco correctly points out, Ruiz makes no mention of any document requests which were made *prior* to the circuit court's September 16, 2010 ruling on the motion for summary judgment. Ruiz's claims that he requested documents from Banco at the September 16, 2010 hearing must be rejected, where, as noted, no transcripts or a certified bystander's report of the proceedings is included in the record on appeal. Rather, the only valid reference to Ruiz's request for documents from Banco was the September 23, 2010 letter which was sent by Ruiz's counsel to Banco's attorney a week *after* the circuit court had already entered summary judgment in favor of Banco. Ruiz's argument for reversal on this basis must also be rejected. Accordingly, we hold that the circuit court properly granted summary judgment in favor of Banco.

¶ 37 For the same reasons, Ruiz's challenges to the circuit court's September 16, 2010 entry of a "judgment of foreclosure and sale" must also be rejected. The basis of Ruiz's objections to the entry of the "judgment of foreclosure and sale" was his claim that the circuit court erroneously granted summary judgment in Banco's favor and that Kinealy's affidavit was inadmissible as a matter of law. Accordingly, based on our holding that the circuit court properly granted Banco's motion for summary judgment, that Ruiz has forfeited for review on appeal any objections to Kinealy's affidavit, and that any doubts arising from Ruiz's failure to provide transcripts or a bystander's report of the September 16, 2010 proceedings for our review are construed against Ruiz, we must likewise hold that the circuit court properly entered the September 16, 2010 "judgment of foreclosure of sale" of the property.

¶ 38 Ruiz further argues that the circuit court erred in denying his motion to vacate the "judgment

of foreclosure and sale" on November 16, 2010. The record reveals that Ruiz's October 18, 2010 motion to vacate the "judgment of foreclosure and sale" asserts *for the first time* that Kinealy's affidavit was deficient—namely, that the averments in Kinealy's affidavit were not supported by proper documentation. On November 16, 2010, a hearing on the motion to vacate was conducted during which the circuit court denied the motion to vacate and made the following findings:

"This motion to vacate, I think, if it isn't a motion for reconsideration, it's certainly akin to one; and the basis for a motion to reconsider is to bring to the [c]ourt's attention newly discovered evidence; changes in the law, or errors that the [c]ourt previously – previous applications exist [*sic*] in law. And, mostly, what has been raised here are factual arguments regarding materials that were in the affidavit in support of the motion for summary judgment. And the case of [*Landeros*], it holds that the trial court should not allow a litigant to stand mute; lose a motion; and then frantically gather evidentiary material to show that the [c]ourt erred in its ruling.

Newly discovered evidence should not be allowed in the absence of reasonable explanation of why it was not available at the time of the original hearing. In the absence of such a valid explanation, there is no reason to change the ruling."

We agree with the circuit court's findings and conclude that the circuit court properly acted within its discretion in denying Ruiz's motion to vacate the "judgment of foreclosure and sale" of the

property. See *Simmons*, 406 Ill. App. 3d at 324, 943 N.E.2d at 758 (a circuit court's decision to grant or deny a motion to reconsider is solely within its discretion and a reviewing court will not disturb such a ruling absent an abuse of discretion). Accordingly, we hold that the circuit court properly granted Banco's motion for summary judgment, properly entered a "judgment of foreclosure and sale" of the property, and appropriately denied Ruiz's motion to vacate its "judgment of foreclosure and sale."

¶ 39 We next determine whether the circuit court erred in entering the August 17, 2011 order approving judicial sale of the property, which we review under an abuse of discretion standard. See *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 179, 890 N.E.2d 934, 937 (2008). An abuse of discretion occurs where no reasonable person would take the view adopted by the circuit court. *Lakefront Plumbing and Heating, Inc. v. Pappas*, 356 Ill. App. 3d 343, 350, 826 N.E.2d 464, 469 (2005).

¶ 40 Ruiz argues, without reference to any legal authority, that the circuit court erred in entering the August 17, 2011 order approving judicial sale of the property. Specifically, he contends that documentation which Banco submitted in support of the judicial sale bid price—a "foreclosure bid construction form" that valued the property at \$725,000 "less 30%," and a July 19, 2010 appraisal report that valued the property at \$725,000—were inadmissible as a matter of law because they were neither supported by affidavits nor other evidentiary proof sufficient to authenticate them. Ruiz further argues, again without any legal support, that Banco's bid price of \$460,000 at the judicial sale of the property was unconscionable.

¶ 41 Banco counters that Ruiz has failed to provide this court with any legal authority to support

his claim that the circuit court erred in relying on the appraisal report submitted by Banco. Banco maintains that Ruiz had not provided the circuit court with any appraisals of his own, but rather, had only submitted the affidavit of Realtor Perez—who averred that the property at issue was listed for sale in the range of \$959,000 and \$989,000 between October 2004 and August 2009. Banco further argues that Ruiz had failed to provide the circuit court or this court on appeal with any support for his argument that the 2009 listing value of the property had any bearing upon the actual fair value of the property.

¶ 42 We note that Ruiz's failure to cite any legal authority in support of his arguments on this issue runs afoul of Supreme Court Rule 341(h)(7) (eff. July 1, 2008), which requires parties on appeal to support their arguments with proper legal citations. "The appellate court is not a depository in which the appellant may dump the burden of argument and research." *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5. Nonetheless, despite Ruiz's noncompliance with the rules, we may consider the issue in the interest of finding a just result because Rule 341 is an admonition to the parties and not a limitation on the court's jurisdiction. *Brown v. Brown*, 62 Ill. App. 3d 328, 332-33, 379 N.E.2d 634, 637 (1978).

¶ 43 Confirmation of foreclosure sales is governed by section 15-1508(b) of the Illinois Mortgage Foreclosure Law, which provides in relevant part:

"Upon motion and notice in accordance with court rules applicable to motions generally, which motion shall not be made prior to sale, the court shall conduct a hearing to confirm the sale. Unless the court finds that (i) a notice required in accordance with subsection

(c) of [s]ection 15-1507 was not given, (ii) the terms of sale were unconscionable, (iii) the sale was conducted fraudulently or (iv) that justice was otherwise not done, the court shall then enter an order confirming the sale." 735 ILCS 5/15-1508(b) (West 2010).

Illinois courts have held that circuit courts have the discretion to disapprove a judicial foreclosure sale " 'where the amount bid is so grossly inadequate that it shocks the conscience of a court of equity.' " *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105, 113, 618 N.E.2d 418, 425 (1993), citing *Levy v. Broadway-Carmen Building Corp.*, 366 Ill. 279, 288, 8 N.E.2d 671, 676 (1937). While a circuit court may decline to confirm a foreclosure sale if the terms of the sale are unconscionable, "the foreclosure price need not match the actual or estimated value of the property." *Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 8, 861 N.E.2d 1075, 1082 (2006). Mere inadequacy of price is not a sufficient reason to disturb a foreclosure sale absent evidence of mistake, fraud, or violation of duty by the officers conducting the sale. *Holtzman*, 248 Ill. App. 3d at 113-14, 618 N.E.2d at 425; *Illinois Federal Savings & Loan Ass'n v. Doering*, 162 Ill. App. 3d 768, 771-72, 516 N.E.2d 609, 611-12 (1987). "This rule is premised on the policy which provides stability and permanency to judicial sales, and on the well-established acknowledgment that property does not bring its full value at forced sales and that the price depends on many circumstances for which the debtor must expect to suffer a loss." *Holtzman*, 248 Ill. App. 3d at 114, 618 N.E.2d at 425. A formal evidentiary hearing is required after the judicial sale of a property only "if there is an allegation of a current appraisal or other current indicia of value which is so measurably different than the sales price as to be unconscionable." *Id.* at 115, 618 N.E.2d at 425-26.

¶ 44 In the instant case, at the August 17, 2011 hearing on the motion to approve sale of the property, the circuit court specifically found that the "indicia of value" provided by Realtor Perez's affidavit, which averred that he listed the property at issue for sale in the range of \$959,000 and \$989,000 during the 5-year period between October 2004 and August 2009, was "good evidence" of "what is not the value of the property" because the property failed to sell at these listed prices during that period of time. The circuit court then noted that the listing prices mentioned in Realtor Perez's affidavit were not an appraisal and that Ruiz had not provided the court with an appraisal of his own to warrant holding an evidentiary hearing. We find that Ruiz has neither made any arguments before the circuit court or this court on appeal that the May 5, 2011 judicial sale of the property was conducted fraudulently or that notice had not been properly given under the terms of section 15-1508(b) of the Illinois Mortgage Foreclosure Law. In confirming the sale of the property, the circuit court held, pursuant to relevant case law, that the judicial bid price of \$460,000 did not shock the court's conscience. Based on our review of the record, we cannot say that no reasonable person would take the view adopted by the circuit court, particularly where Ruiz had completely failed to provide an appraisal to the court regarding the value of the property—thus, leaving the circuit court with no choice but to rely on the appraisal values submitted by Banco in its "foreclosure bid construction form" and July 19, 2010 appraisal report.<sup>6</sup> Therefore, we hold that the circuit court did

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<sup>6</sup>At the August 17, 2011 hearing, the circuit court stated that this value was \$760,000. However, our review of Banco's July 19, 2010 appraisal report reflects an appraised value of the property at \$725,000.

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not abuse its discretion in entering the August 17, 2011 order approving judicial sale of the property.<sup>7</sup>

¶ 45 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 46 Affirmed.

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<sup>7</sup>Although Ruiz's notice of appeal before this court also purports to appeal from the circuit court's September 14, 2011 order denying his emergency motion to stay the August 17, 2011 order approving judicial sale of the property, Ruiz makes no substantive arguments on appeal regarding why the circuit court's September 14, 2011 order was erroneous. Thus, we find that this argument is forfeited on appeal. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) ("[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing").