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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

WELLS FARGO BANK, N.A.,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellee,)	
)	
v.)	No. 10-CH-6415
)	
MALIK KAHN,)	
)	
Defendant-Appellant)	
)	
(Mortgage Electronic Registration)	Honorable
Systems, Inc., and Unknown Owners and)	Robert G. Gibson,
Nonrecord Claimants, Defendants).)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly confirmed a judicial sale: because defendant had been defaulted, he was not entitled to notice of the sale, and thus neither was his attorney.

¶ 2 Defendant, Malik Kahn, appeals from a judgment of the circuit court of Du Page County confirming the sale of residential property pursuant to a mortgage foreclosure action by plaintiff, Wells Fargo Bank, N.A. He contends that the judgment should be reversed because his attorney

was never given notice of the sale. Because Kahn, who was found in default, was not entitled to notice, his attorney was not entitled to notice. We therefore affirm.

¶ 3

I. BACKGROUND

¶ 4 On November 10, 2010, plaintiff filed a complaint against Kahn (the mortgagor), Mortgage Electronic Registration Systems, Inc. (Mortgage Electronic), and unknown owners and nonrecord claimants, seeking to foreclose a mortgage on real property located at 410 North Lombard Avenue, Lombard. Kahn and Mortgage Electronic were served with a summons and complaint.

¶ 5 On November 18, 2011, the trial court found both Kahn and Mortgage Electronic in default for having failed to appear and plead and entered a judgment of foreclosure and sale. The court also dismissed the unknown owners and nonrecord claimants.

¶ 6 On June 20, 2014, Kahn's attorney filed an appearance on behalf of Kahn. On June 27, 2014, plaintiff mailed Kahn a notice of the sale scheduled for July 24, 2014. Plaintiff did not provide notice to Kahn's attorney.

¶ 7 On July 22, 2014, Kahn filed an emergency motion to stay the sale. He asserted that his attorney sent a notice of his appearance to plaintiff but that neither he nor his attorney had received a notice of the sale. The motion for stay further stated that Kahn "hope[d] that [the] Court would decline to approve any sale as notice of said sale was *not* properly given pursuant to statute." (Emphasis in original.) The motion added that, because plaintiff did not give proper notice of the sale, no "sale should be allowed or confirmed by [the] Court." Finally, the motion requested that the court stay the sale and grant any further appropriate relief.

¶ 8 Kahn's attorney's affidavit, filed in support of the motion to stay the sale, averred that Kahn had been unaware of the judgment of foreclosure and sale and that neither Kahn nor

counsel had received notice of the sale. Kahn did not submit his own affidavit. On July 22, 2014, the trial court denied Kahn's motion for a stay of the sale.

¶ 9 The sale took place as scheduled and, on July 31, 2014, plaintiff filed a motion to confirm the sale. Plaintiff sent a notice of the motion to Kahn's attorney. Kahn did not file any objection to the motion or otherwise oppose confirmation of the sale.

¶ 10 On August 12, 2014, the trial court entered an order confirming the sale. In doing so, the court found that all notices required by section 15-1507(c) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1507(c) (West 2010)) had been given properly.

¶ 11 Kahn filed no motion to vacate, reconsider, or otherwise challenge the August 12 order. On September 11, 2014, Kahn filed a timely notice of appeal.

¶ 12 **II. ANALYSIS**

¶ 13 On appeal, Kahn contends that the trial court abused its discretion in confirming the sale, because plaintiff failed to provide notice of the sale to his attorney. Plaintiff initially contends that Kahn "waived"¹ any challenge to the confirmation because he failed to object to the motion to confirm. Plaintiff alternatively asserts, among other things, that, because Kahn was not required to receive notice of the sale, notice to his attorney was not required.

¶ 14 A motion to confirm a judicial sale invokes the requirements of section 15-1508(b) of the Foreclosure Law (735 ILCS 5/15-1508(b) (West 2010)). *Bayview Loan Servicing, LLC v. 2010*

¹ A waiver is a voluntary relinquishment of a known right, whereas a forfeiture is a failure to timely raise an issue. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505, ¶ 26 (citing *People v. Phipps*, 238 Ill. 2d 54, 62 (2010), and *People v. Houston*, 229 Ill. 2d 1, 9 n.3 (2008)). Because plaintiff's argument is actually based on forfeiture, we will use that term.

Real Estate Foreclosure, LLC, 2013 IL App (1st) 120711, ¶ 32. An interested party seeking to oppose the sale bears the burden of proving that sufficient grounds exist to disapprove the sale. *Bayview Loan Servicing, LLC*, 2013 IL App (1st) 120711, ¶ 32. The trial court has broad discretion in confirming or rejecting a judicial sale, and, absent an abuse of that discretion, the reviewing court will not disturb a decision to confirm the sale. *Bayview Loan Servicing, LLC*, 2013 IL App (1st) 120711, ¶ 32 (citing *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008)). An abuse of discretion occurs when the court's ruling is unreasonable, fanciful, or arbitrary. *Bayview Loan Servicing, LLC*, 2013 IL App (1st) 120711, ¶ 32.

¶ 15 We first address plaintiff's contention that Kahn forfeited any challenge to the confirmation of the sale because he failed to object to the motion to confirm. Ordinarily, a failure to oppose a proposed order to confirm a sale constitutes a forfeiture of the enumerated statutory grounds, including lack of notice. See *Sewickley, LLC v. Chicago Title Land Trust Co.*, 2012 IL App (1st) 112977, ¶ 37 (using the term waiver in the sense of a forfeiture). Although Kahn did not object to the motion to confirm, or oppose the order confirming the sale, he did raise the lack-of-notice issue in his motion to stay the sale. Indeed, he asserted therein that notice of the sale had not been provided to his attorney, such that the sale should not be allowed or confirmed. Moreover, when plaintiff filed the motion to confirm, the trial court was required by section 15-1508(b) to enter an order confirming the sale unless it found, among other things, that proper notice was not given under section 15-1507(c). See 735 ILCS 5/15-1508(b) (West 2010). Accordingly, the trial court, in confirming the sale, found that all required notices had been given. Clearly, the lack-of-notice issue was before the court. Thus, we conclude that Kahn did not forfeit the issue and may raise it in this appeal.²

² In concluding that there was no forfeiture, we are not endorsing the approach taken by

¶ 16 Turning to the merits, we agree with plaintiff that it was not required to provide notice to Kahn's attorney, because it was not required to provide notice to Kahn. According to section 15-1507(c)(3), notice shall be given to "all parties in the action who have appeared and have not theretofore been found by the court to be in default for failure to plead." 735 ILCS 5/15-1507(c)(3) (West 2010). Because Kahn had been found in default for failing to plead, he was not entitled to notice under section 15-1507(c)(3). See *Eckel v. Bynum*, 240 Ill. App. 3d 867, 880 (1992). Kahn has cited no authority, and we are aware of none, that would require notice to be given to his attorney in the absence of any requirement to notify Kahn. Because the failure to provide notice to Kahn's attorney was not a valid basis to object to the sale, the court did not abuse its discretion in confirming the sale.

¶ 17 Finally, we recognize that Illinois Supreme Court Rule 113(f)(1) (eff. May 1, 2013) requires that, in a mortgage foreclosure proceeding, notice of the sale be given via mail to all defendants, including those in default. That provision, however, does not apply in this case. See Ill. S. Ct. R. 113(a) (eff. May 1, 2013) (Rule 113 applies only to those foreclosure actions filed on or after May 1, 2013).

¶ 18 **III. CONCLUSION**

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 20 Affirmed.

Kahn. Clearly, the preferred approach is to oppose a motion to confirm a sale, raising all applicable objections.