

No. 1-15-1812

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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THE BANK OF NEW YORK MELLON f/k/a	)	Appeal from the
THE BANK OF NEW YORK, AS TRUSTEE FOR	)	Circuit Court of
THE CERTIFICATE HOLDERS CWABS, INC.,	)	Cook County.
ASSET-BACKED CERTIFICATES,	)	
SERIES 2006-24,	)	
	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09 CH 51152
	)	
LAURA FANDRICH, UNKNOWN OWNERS-	)	Honorable
TENANTS-OCCUPANTS, and NON-RECORD	)	Mathias W. Delort and
CLAIMANTS,	)	Honorable
	)	Michael Otto,
Defendant-Appellant.	)	Judges Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice McBride and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's ruling granting summary judgment in favor of the Bank is affirmed; defendant failed to provide any evidence in support of her defense that the Bank did not have standing because there was no assignment of the note. Trial court's rulings denying defendant's motions to vacate sale are also affirmed where those motions were filed after the Bank filed a motion to confirm the sale and consisted of arguments that did not properly attack the Bank's motion to confirm the sale.

¶ 2 Plaintiff The Bank of New York Mellon (Bank) filed a foreclosure action against defendant Laura Fandrich alleging that she defaulted on paying the mortgage loan. Fandrich filed an answer and affirmative defense in which she alleged the Bank did not have standing because there was no assignment of the note to the Bank. The trial court granted summary judgment in favor of the Bank and, after the property was sold, the trial court approved the sale. Fandrich filed this appeal. For the reasons below, we affirm the trial court's entry of summary judgment as well as those orders that denied Fandrich's motions to reconsider or vacate the order summary of judgment and foreclosure sale.

¶ 3 Background

¶ 4 Defendant, Laura Fandrich, obtained a loan on December 4, 2006 in the amount of \$337,500.00 from America's Wholesale Lender to purchase the property located at 2856 West 39th Place, Chicago, Illinois 60632 (subject property). To secure the loan, defendant obtained a mortgage from America's Wholesale Lender listing as security for the mortgage the subject property. The mortgage contained language that stated that Mortgage Electronic Registration Systems, Inc. (MERS) was mortgagee and nominee for the lender and lender's successors and assigns under said mortgage. Language in the note stated that the note is transferable to a holder and the holder would be entitled to enforce the terms of the agreement; it provided no procedure for transfer of the note. The Bank filed a complaint to foreclose on the subject property on December 21, 2009. Attached to the complaint was a copy of the mortgage and assignment of

the mortgage from MERS to the Bank and a copy of the note. The complaint alleged that the Bank was the assignee of the mortgage and the holder of the note.

¶ 5 On February 10, 2010, Fandrich filed an answer to the Bank's complaint. The answer admitted most paragraphs in the complaint, but denied paragraphs 3J, 3K and 3P. Paragraph 3J states that the mortgage has been "in default since December 1, 2008, with a principal balance due of \$332,723.66, plus accrued interest and late charges." Paragraph 3K states that the unpaid principal, interest, other charges and total amount due is as follows: "December 1, 2008, through October 19, 2009, principal and interest and escrow of \$362,520.72, plus escrow advances, late charges, attorney's fees and court costs." Paragraph 3P states that the capacity in which the Bank brings the foreclosure is as "Legal holder of the mortgage and note." Fandrich's answer also included the following affirmative defense: "The loan is with America's Wholesale Lender, see exhibit 'B'. The Plaintiff is the Bank of New York Mellon. The Plaintiff should show evidence of assignment of the note or the case should be dismissed for lack of standing."

¶ 6 On April 11, 2012, the Bank filed its "Motion for Summary Judgment against Defendant," "Motion for an Order of Default against Unknown Owners-Tenants-Occupants and Non-Record Claimants," "Motion for an Order to Appoint a Special Selling Officer," and "Prove Up of Entry and Judgment of Foreclosure and Sale." Attached to the motion for summary judgment is an affidavit of Michael D. Heath. In the affidavit, Heath testifies to the following facts:

"1. I am authorized to sign this affidavit as an officer of Bank of America, National Association ('BANA'), which is [the Bank's] servicing agent for the subject loan[.] \*\*\*

\* \* \*

3. The information in this affidavit is taken from BANA's business records [which are attached]. \*\*\*

\* \* \*

6. THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATE HOLDERS CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-24 holds the promissory note given for the Loan. The attached business records show LAURA FANDRICH defaulted by failing to make required payments, and as of February 15, 2012 the amount of default is \$449,683.59[.] \*\*\*[.]"

¶ 7 On May 4, 2012, the court ordered that EV Law Group, LLC's additional appearance operate as a substitute appearance for Fandrich. Also on May 4, 2012, the court entered a briefing schedule on the Bank's "Motion for Summary Judgment against Defendant" and set a hearing date on June 29, 2012. Fandrich filed her response attacking the legal sufficiency of the affidavit of Mr. Heath that was submitted to prove she was in default because in that affidavit Heath did not allege that he personally reviewed the records attached. Fandrich also argued that she raised issues of material facts in her answer because she raised the issue of standing.

¶ 8 On August 30, 2012, counsel for Fandrich and the Bank were present in court for hearing on the Bank's "Motion for Summary Judgment against Defendant." The trial court judge granted summary judgment in favor of the Bank. In doing so, the trial court presumed that the affiant, who offered testimony by way of affidavit in support of the Bank's motion, had reviewed the business records attached to his affidavit. The court further found that although Fandrich denied

the Bank's allegation in the complaint that it was the assignee of the mortgage and holder of the note, that denial by Fandrich in her answer and in her "affirmative defense" did not in itself raise a material issue of fact. The court also granted the Bank's "Order of Default," "Motion to Appoint Selling Officer," and "Judgment of Foreclosure and Sale."

¶ 9 On September 28, 2012, Fandrich filed a "Motion to Reconsider" the trial court's August 30, 2012 order granting summary judgment in favor of the Bank, and the court denied that motion on November 2, 2012.

¶ 10 On April 16, 2013, Kozeny & McCubbin Illinois, LLC filed an additional appearance for the Bank. On December 16, 2013, Fandrich filed an "Emergency Motion to Set Aside Foreclosure Sale" and a "Motion for Leave to File Amended Answer to the Complaint." On December 20, 2013, Fandrich filed a "Motion for Redacting or Filing Under Seal." On December 20, 2013, the trial court granted Fandrich's "Motion for Redacting or Filing Under Seal" and entered a briefing schedule on the "Motion to Set Aside Foreclosure Sale." On February 19, 2014, the court granted Fandrich's "Motion to Vacate Foreclosure Sale" and denied Fandrich's motion to amend her answer.

¶ 11 On October 7, 2014, Fandrich filed an "Emergency Motion to Stay/Postpone Foreclosure Sale" and a "Motion to Vacate/Set Aside Judgment of Foreclosure and Sale and Order Granting Plaintiff's Motion for Summary Judgment," and, on October 8, 2014, the trial court denied these motions.

¶ 12 The subject property was sold at a public auction on October 8, 2014,<sup>1</sup> and on October 22, 2014, the Bank filed its "Motion for an Order Approving Report of Sale and Distribution, Confirming Sale and Order of Possession." In response, Fandrich filed a "Second Motion to Vacate Foreclosure Judgment and Set Aside Foreclosure Sale" and a "Motion to Deny

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<sup>1</sup> The Bank was the highest bidder at the public auction.

Confirmation of Sale." On February 15, 2015, the trial court granted an "Order Approving Report of Sale and Distribution, Confirming Sale, and Order of Possession."

¶ 13 Fandrich then filed a "Combined Motion to Vacate Foreclosure Judgment, Set Aside Foreclosure Sale and Set Aside Confirmation of Foreclosure Sale." On May 22, 2015, the trial court denied this combined motion, but granted Fandrich leave to file a motion to stay the enforcement of the judgment pending the appeal. On May 26, 2015, the court denied Fandrich's "Emergency Motion to Stay Enforcement of Foreclosure Judgment." On June 19, 2015, Fandrich timely filed her notice of appeal from the orders entered by the trial court from the entry of summary judgment in favor of the Bank through its denial of her "Emergency Motion to Stay Enforcement of Foreclosure Judgment."

¶ 14 Analysis

¶ 15 Motion for Summary Judgment

¶ 16 Fandrich first argues that the trial court erred in granting summary judgment in favor of the Bank where the Bank lacked standing to bring the foreclosure action. The gist of Fandrich's argument is that although there is an assignment of the mortgage from MERS to the Bank attached to the complaint, as well as a copy of the note, there is no documentation for transfer of the note. Specifically, Fandrich argues that the Bank lacked standing where: (1) the exhibits attached to the complaint indicate that America's Wholesale Lender is the holder of the note; (2) the assignment of the mortgage fails to assign the note; (3) the Bank's affidavit of indebtedness from Michael Heath did not comply with Illinois Supreme Court Rule 191 and, therefore, cannot be used as a basis for finding that the Bank is the holder of the note and mortgage; and (4) the Bank never filed a reply to Fandrich's affirmative defense, which Fandrich argues results in the Bank's admission that it is not the holder of the note.

¶ 17 The Bank argues that it had standing to file the foreclosure action and that Fandrich's arguments must fail because: (1) the Bank established a *prima facie* case in accordance with 735 ILCS 5/15-1504, and Fandrich did not present any evidence to rebut its *prima facie* case; (2) the assignment of the mortgage proves the Bank was mortgagee prior to filing its complaint; (3) the Bank's affidavit relies on attached business records in accordance with Illinois Supreme Court Rule 191; and (4) the Bank was not required to file a reply to Fandrich's affirmative defense where that affirmative defense merely denied a well-plead fact the Bank alleged in its complaint. The defendant has the burden of proving the lack of standing as an affirmative defense. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 24. Stated differently, the borrower must present some evidence that the mortgage and note were not transferred to the plaintiff before the complaint was filed. *Bayview Loan Servicing, LLC v. Carnejo*, 2015 IL App (3d) 140412, ¶ 13. Fandrich has not offered any evidence to show that the Bank was not the holder of the note in this case. Therefore, for the reasons that follow, we affirm the trial court's grant of summary judgment in favor of the Bank.

¶ 18 Summary judgment is proper when “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 2010). In reviewing a motion for summary judgment, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the moving party to determine whether a genuine issue of material fact exists. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). A genuine issue of fact exists where the material relevant facts in the case are disputed, or where reasonable persons could draw different inferences and conclusions from undisputed facts. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). To survive a motion for summary

judgment, the nonmoving party need not prove her case at this preliminary stage of litigation; however, the nonmovant must present some evidentiary facts that would arguably entitle her to judgment. *Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 8 (2004). Although courts have deemed summary judgment a “drastic means of disposing of litigation” (*Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)), it is nonetheless an appropriate mechanism to employ to expeditiously dispose of a lawsuit when the moving party's right to a judgment in its favor is clear and free from doubt (*Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001)). Ultimately, a trial court's ruling on a motion for summary judgment is subject to *de novo* review and the judgment may be affirmed based on any basis found in the record. *Weather-Tite, Inc. v. University of St. Francis*, 233 Ill. 2d 385, 389 (2009); *Rosestone Investments, LLC. v. Garner*, 2013 IL App (1st) 123422, ¶ 23.

¶ 19 First, we address Fandrich's argument that the Heath affidavit did not comply with Illinois Supreme Court Rule 191 where it failed to allege that Heath reviewed the documents attached to the affidavit and made allegations that were conclusory. “The form of affidavits used in connection with motions for summary judgment is governed by Supreme Court Rule 191 \* \* \*.” *Harris Bank Hinsdale, N.A. v. Caliendo*, 235 Ill. App. 3d 1013, 1025 (1992). Illinois Supreme Court Rule 191 provides in relevant part:

“Affidavits in support of \* \* \* a motion for summary judgment under section 2-1005 of the Code of Civil Procedure \* \* \* shall be made on the personal knowledge of the affiants; 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 documents 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).

Accordingly, a Rule 191(a) affidavit must not contain mere conclusions and must include the facts upon which the affiant relied. *Landeros v. Equity Property & Development*, 321 Ill. App. 3d 57, 63 (2001). “ ‘If, from the document as a whole, it appears that the affidavit is based upon the personal knowledge of the affiant and there is a reasonable inference that the affiant could competently testify to its contents at trial, Rule 191 is satisfied.’ ” *Doria v. Village of Downers Grove*, 397 Ill. App. 3d 752, 756 (2009) (quoting *Kugler v. Southmark Realty Partners III*, 309 Ill. App. 3d 790, 795 (1999)).

¶ 20 Here, we find that, reading the affidavit as a whole, including the documents that were attached as business records, Heath reviewed the documents attached to his affidavit and the facts he averred to in his affidavit are based upon the information in those documents. Specifically, Heath's affidavit states, "I am authorized to sign this affidavit as an officer of Bank of America, National Association ('BANA'), which is [the Bank's] servicing agent for the subject loan[.]" It further states: "The information in this affidavit is taken from BANA's business records" which are attached to his affidavit. The affidavit then goes on to itemize several calculations including but not limited to the principal balance, interest due through 2/15/2012, pre-acceleration late charges, real estate taxes, MIP/PMI, hazard insurance, escrow advance etc. Based on these calculations, it is clear that Heath reviewed the documents attached to his affidavit.

¶ 21 Fandrich also takes issue with Heath's averments that "THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATE

HOLDERS CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-24 holds the promissory note given for the Loan. The attached business records show LAURA FANDRICH defaulted by failing to make required payments, and as of February 15, 2012 the amount of default is \$449,683.59[.] \*\*\*[.]" Fandrich argues that these averments are improper because they are conclusions and not facts that would otherwise be admissible in evidence. We disagree. Heath's averments are based upon facts contained in the business records attached to his affidavit, namely, Exhibit C "Assignment of Real Estate Mortgage." The "Assignment of Real Estate Mortgage" states:

"For value received, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ACTING SOLELY AS A NOMINEE FOR AMERICA'S WHOLESALE LENDER, who previously sold assigned and transferred to THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATE HOLDERS CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-24, its successors and assigns, all right, title and interest in and to a certain mortgage executed by LAURA FANDRICH[.]"

As such, Heath's averment that the Bank is the assignee of the mortgage and the holder of the note is a factual allegation. Therefore, because it is clear that Heath reviewed the documents attached to his affidavit and alleged facts based on those documents, we find Heath's affidavit to be valid and in compliance with Illinois Supreme Court Rule 191. See Ill. S. Ct. R. 191 (eff. July 1, 2002).

¶ 22 Fandrich argues that the note itself contradicts the Bank's assertion that it is the holder of the note because the note attached to the complaint states that America's Wholesale Lender is the holder of the note. However, the "Assignment of Real Estate Mortgage" clearly shows that the mortgage was assigned to the Bank prior to the filing of this mortgage foreclosure complaint. Therefore, the Bank had a legal interest in the mortgage at the time the complaint was filed. First, the Bank attached copies of the note and mortgage to its complaint. The mere attachment of a note to a complaint is *prima facie* evidence that plaintiff owns the note. See *Parkway Bank*, 2013 IL App (1st) 130380, ¶ 24; *HSBC Bank, National Ass'n v. Rowe*, 2015 IL App (3d) 140553, ¶ 21 (Attaching the note to the complaint in and of itself constitutes *prima facie* evidence that the plaintiff owns the note). Second, the Bank alleged in its complaint that it was the legal holder of the mortgage and the note and further attached to its motion for summary judgment an affidavit from Michael Heath, who averred that the Bank was the holder of the note. Third, the Bank produced the "Assignment of Real Estate Mortgage" which shows that the mortgage and note at issue here were transferred to the Bank. We find this was sufficient evidence to show that the Bank was the holder of the note and had standing to pursue this foreclosure action.

¶ 23 Furthermore, Fandrich did not file any counter-affidavits to contest the testimony in Heath's affidavit and, therefore, it follows that we may accept Heath's averment in his affidavit that the Bank is the holder of the note. *Bank of America, N.A. v. Land*, 2013 IL App (5th) 120283, ¶ 16 (“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”). Accordingly, the circuit court rightfully relied on Heath's affidavit in finding the Bank had standing to bring this foreclosure action and granting summary judgment in favor of the Bank. See *In re Marriage of Palacios*, 275 Ill. App. 3d 561, 568 (1995) (“The mere

suggestion that a genuine issue of material fact exists without supporting documentation does not create an issue of material fact precluding summary judgment.”); see also, *e.g.*, *US Bank, National Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶¶ 26-27 (affidavit submitted in foreclosure action satisfied the requirements of Rule 191 where it was based on the personal knowledge of the affiant, contained facts rather than conclusions, and was accompanied by the documents on which the affiant relied).

¶ 24 Fandrich next argues that the Bank did not file a reply to the allegations in her affirmative defense that the Bank is not the holder of the note, and consequently the failure to file a response results in an admission. Therefore, Fandrich argues there is a material question of fact whether the Bank had standing to foreclose on the subject property. We find that Fandrich's argument fails. While it is true that the failure of a party to reply to new matters raised by way of affirmative defense constitutes an admission of those allegations (*Sobel v. Franks*, 261 Ill. App. 3d 670, 680 (1994)), we find that Fandrich's affirmative defense did not raise new matters that fell outside the scope of the pleadings. Here, the Bank's complaint for foreclosure of mortgage clearly states that the "[c]apacity in which plaintiff brings this foreclosure" was as the "Legal holder of the mortgage and note." Fandrich denied this fact in her answer and also stated, as an affirmative defense, "The loan is with America's Wholesale Lender, see exhibit 'B'. The Plaintiff is the Bank of New York Mellon. The Plaintiff should show evidence of assignment of the note or the case should be dismissed for lack of standing." "Where the complaint itself negates the affirmative defense, no reply is necessary." *Adams v. Zayre Corp.*, 148 Ill. App. 3d 704, 711 (1986); *Warren Barr Supply Co. v. Haber Corp.*, 12 Ill. App. 3d 147, 149 (1973); *Nitrin, Inc. v. American Motorists Insurance Co.*, 94 Ill. App. 2d 197, 206-07 (1968) (A liberal construction should be afforded the rule that no reply is necessary if the complaint itself negates an

affirmative defense). The Bank's well-plead fact that the Bank is the "Legal holder of the mortgage and note" negates Fandrich's alleged affirmative defense. Therefore, the Bank's failure to file a reply to that affirmative defense does not result in an admission of that fact.

¶ 25 Last, Fandrich argues that the assignment of the mortgage does not also assign the note, thereby stripping the Bank of standing to bring this action. We disagree. A mortgage assignee has standing to bring a foreclosure action. See 735 ILCS 5/15-1208 (West 2008) ("mortgagee" includes any holder of indebtedness or a person authorized to act on behalf of a holder); *Bayview Loan Servicing, L.L.C. v. Nelson*, 382 Ill. App. 3d 1184, 1188 (2008) (assignment transfers all right, title, and interest in the mortgage). Illinois courts have long held that a mortgage assignment may be oral or written. *Garner*, 2013 IL App (1st) 123422, ¶ 28.

¶ 26 We further note that the function of standing is "to insure that issues are raised only by those parties with a real interest in the outcome of the controversy." *Wexler v. Wirtz Corp.*, 211 Ill. 2d 18, 23 (2004). Given the complaint, mortgage assignment, affidavit, and note in this case, there is no question that the Bank has a real interest in the outcome of this controversy. See *Garner*, 2013 IL App (1st) 123422, ¶¶ 24-27. Thus, we reject Fandrich's argument that the Bank lacked standing to bring this foreclosure action.

¶ 27 In reaching this conclusion, Fandrich alleges the Second District's decision in *Deutsche Bank National Trust Co. v. Gilbert*, 2012 IL App (2d) 120164, should be followed and the burden of establishing standing should be shifted to the Bank. We disagree. Aside from the fact that our district has made it clear it will not follow *Gilbert* (see *Garner*, 2013 IL App (1st) 123422, ¶ 28), *Gilbert* is distinguishable on the facts from the present case. In *Gilbert*, the plaintiff attached to the complaint to foreclose mortgage a copy of the note and mortgage, which contained no assignment at all. When the plaintiff filed an amended complaint, it attached an

assignment of the mortgage that was dated after the date the complaint was filed. The Second District concluded that the plaintiff therefore did not have standing at the time it filed its complaint because the assignment was dated after the time of filing the complaint. See *Gilbert*, 2012 IL App (2d) 120164. In this case, however, the assignment of the mortgage document was executed prior to the filing of the complaint, which transferred the mortgage and all related documents to the Bank. Related documents clearly include the note. See *Federal National Mortgage Ass'n v. Kuipers*, 314 Ill. App. 3d 631, 635 (2000) (observing that a mortgage note assignment carries an equitable assignment of the mortgage by which it was secured and the assignee stands in the assignor-mortgagee's shoes regarding the rights under the note and mortgage).

¶ 28 In sum, "[o]nce a plaintiff has filed a complaint, a defendant may raise the plaintiff's lack of standing as an affirmative defense." *Garner*, 2013 IL App (1st) 123422, ¶ 24. "The defendant has the burden of pleading and *proving* the plaintiff's lack of standing." (Emphasis in original.) *Id.*

Here, Fandrich raised the Bank's lack of standing, but failed to meet her burden of proof to present evidence in support of that defense. Therefore, we find the trial court properly granted summary judgment in favor of the Bank.

¶ 29 Motion to Reconsider Motion for Summary Judgment

¶ 30 Next, Fandrich argues that the trial court erred in denying her motion to reconsider where its ruling on summary judgment was improper. However, since we have affirmed the trial court's grant of summary judgment in favor of the Bank, it follows that the court did not improperly deny Fandrich's motion to consider that ruling. As such, the court's denial of Fandrich's motion to reconsider the ruling on summary judgment is also affirmed.

¶ 31 Motions to Vacate Judgment

¶ 32 Next Fandrich argues that the trial court judge erred in denying her motions to vacate judgment where the trial court's ruling improperly relied on *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1 (2010). The Bank in turn argues that the trial court's rulings were proper where Fandrich's motions—her "Second Motion to Vacate Foreclosure and Set Aside Foreclosure Sale" and her "Motion to Vacate Foreclosure Judgment"—were filed after the Bank filed its "Motion to Confirm Sale," making both motions an attack on the Bank's "Motion to Confirm Sale." We agree.

¶ 33 Our supreme court has stated that defenses are limited after a plaintiff files a motion to confirm a judicial sale:

" \*\*\* after a motion to confirm the judicial sale has been filed, a borrower seeking to set aside a default judgment of foreclosure may only do so by filing objections to the confirmation of the sale under the provisions of section 15-1508(b)." *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 27.

Section 15-1508(b) provides that upon motion and notice, the court *shall* confirm the sale unless the court finds that: (i) proper notice of the sale was not given; (ii) the terms of the sale were unconscionable; (iii) the sale was conducted fraudulently; or (iv) justice was otherwise not done. 735 ILCS 5/15-1508(b) (West 2008). "Thus, a party seeking to set aside the sale at that point is limited to the three specified grounds related to defects in the sale proceedings, or to the fourth ground, that 'justice was otherwise not done.'" *McCluskey*, 2013 IL 115469, ¶ 18 (citing 735 ILCS 5/15-1508(b) (West 2010)).

¶ 34 Here, Fandrich does not argue that proper notice of the sale was not given, the terms of the sale were unconscionable, the sale was conducted fraudulently, or that justice was otherwise not done. As such, because Fandrich filed her "Second Motion to Vacate Foreclosure and Set Aside Foreclosure Sale" and her "Motion to Vacate Foreclosure Judgment" after the Bank filed its "Motion to Confirm Sale," but failed to make any arguments based on the only four grounds that are recognized as being proper attacks on a motion to confirm a sale, we find that the trial court properly denied Fandrich's motions to vacate. *Barnes*, 406 Ill. App. 3d at 8.

¶ 35 Fraud Upon the Court

¶ 36 Fandrich last argues that the trial judge and the Bank's attorneys committed fraud upon the court. Specifically, Fandrich argues that the basis of her fraud claim is several comments made in the trial court's summary judgment ruling, several comments made in the trial court's judgment of foreclosure, and several comments made by the Bank's attorney in its motion for default. Preliminarily, we find that Fandrich waived this issue by not raising it at any point below. *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996) ("It is well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal.").

¶ 37 Waiver aside, we find Fandrich's contentions to be without merit. The Bank filed a complaint for foreclosure due to Fandrich's default on the loan. The Bank subsequently filed a motion for summary judgment on its complaint, and, as we have determined, the trial court properly granted the Bank's motion for summary judgment. The language in the court orders about which Fandrich now complains include the court's statements as to why it is granting the Bank's motion for summary judgment and judgment of foreclosure, and the language in the motion for default about which Fandrich now complains includes the Bank's arguments for

default. There is nothing fraudulent about the judgment of foreclosure and sale that the Bank prepared and that the trial court signed. *U.S. Bank National Ass'n v. Sauer*, 392 Ill. App. 3d 942, 947-48 (2009). Furthermore, as discussed above, the Bank submitted evidence that Fandrich had defaulted on the mortgage loan and evidence that it was the holder of the mortgage and note; Fandrich did not present anything to contradict this evidence. See *id.* Accordingly, Fandrich presents no valid basis for disturbing the trial court's judgments.

¶ 38

Conclusion

¶ 39 For the reasons above, we affirm the trial court's rulings.

¶ 40 Affirmed.