

FIFTH DIVISION  
May 19, 2017

No. 1-15-3124

**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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|--|---|---------------------------|
| COLONY BMO FUNDING, LLC,                     | ) | Appeal from the           |
|  | ) | Circuit Court of          |
| Plaintiff-Appellee,                          | ) | Cook County.              |
|  | ) |                           |
| v.   | ) | Nos. 12 CH 35645          |
|  | ) | 10 CH 46919 cons.         |
| REKHA M. MADAN, as an adult individual;      | ) |                           |
| and LAJPAT R. MADAN, as an adult individual, | ) | Honorable                 |
|  | ) | Anthony C. Kyriakopoulos, |
| Defendants-Appellants.                       | ) | Judge Presiding.          |

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

**ORDER**

*HELD:* We affirm the circuit court's order confirming the judicial sale of the subject property.

¶ 1 In the latest continuation of this mortgage foreclosure action, defendants Lajpat R. Madan and his wife Rekha M. Madan appeal a circuit court order confirming the judicial sale of the subject property commonly known as 506-610 W. Wise Road, Schaumburg, Illinois. The circuit

court's order confirming the judicial sale contained language pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) providing that there was no just reason to delay the enforcement or appeal of the order. This appeal followed.

¶ 2 The Madans contend on appeal that the circuit court abused its discretion in entering the order confirming the judicial sale of the subject property without first conducting an evidentiary hearing pursuant to section 15-1508(b)(iv) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(b)(iv) (West 2010)), to assess whether the sale was fair. They claim that no evidence was ever presented showing the existence of a relationship between the bid price and the market value of the subject property.

¶ 3 Because we find the Madans have forfeited this issue for review by failing to raise it in the circuit court, we affirm. Moreover, even if we considered the matter, we would find the claim to be meritless.

¶ 4 **BACKGROUND**

In November 2006 the ATG Trust Company, as trustee under a trust agreement dated November 7, 2006, and known as the ATG Trust Company Trust No. L006-127 (Trust), purchased the subject property. The property was being utilized as a shopping center.

¶ 5 The Madans, who are beneficiaries of the Trust, executed several loan documents, including a promissory note under which BMO Harris Bank National Association f/k/a Harris, N.A. (Harris Bank) extended the couple a commercial loan in the original principal amount of \$2,737,500.00 to finance the purchase of the subject property. To secure the obligations of the promissory note, the Trust executed and delivered to Harris Bank, a mortgage which granted the bank a first-priority mortgage against the subject property. The mortgage was duly recorded on December 21, 2006.

¶ 6 By the time the promissory note matured on November 17, 2011, the Madans had failed to pay the indebtedness as of that date. They had also failed to pay the second installment of 2010 and first installment of 2011 taxes on the subject property, which, along with the failure to meet other obligations, were events of default under the loan documents.

¶ 7 In March 2012, Harris Bank assigned all of its rights, title, and interest in the loan documents, promissory note, and mortgage to Colony BMO Funding, LLC (Colony). On September 20, 2012, Colony filed a three-count verified complaint for foreclosure and money judgment against various parties, including the Madans.

¶ 8 In response to the complaint, the Madans each separately filed various pleadings including verified answers with affirmative defenses and counterclaims. Colony moved to strike the affirmative defenses pursuant to a combined motion brought under section 2-619.1 of the Illinois Code of Civil Procedure (Code) ( 735 ILCS 5/2-619.1 (West 2012)). Colony moved to dismiss the counterclaims pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)).

¶ 9 On May 21, 2014, the circuit court granted Colony's motion for summary judgment on all counts and entered a judgment of foreclosure and sale against the Madans and the other defendants who are not parties to this appeal in the amount of \$3,235,312.59, and also entered a default judgment against all unknown owners and nonrecord claimants. The court also ordered a sale of the subject property by public auction.

¶ 10 Sale of the subject property was originally set for September 30, 2014, however the parties subsequently submitted an agreed order to continue the judicial sale without publication. The judicial sale of the subject property occurred on August 31, 2015, where Colony was the highest bidder at \$2,350,000.00.

¶ 11 On September 3, 2015, Colony filed a motion for an order confirming judicial sale, granting possession, amending judgments and for other relief. The next day, counsel for Colony renoticed the motion to all other counsel, including counsel for the Madans. The renoticed motion stated that Colony's motion for an order confirming judicial sale would be presented in the circuit court on September 29, 2015.

¶ 12 The Madans filed no objections to Colony's motion for an order confirming judicial sale. On September 29, 2015, the circuit court entered an order granting Colony's motion for an order confirming judicial sale. The order recited, "This is a final order with no just reason delaying enforcement or appeal." The Madans did not file a motion for reconsideration. The Madans filed their notice of appeal on October 29, 2015.

¶ 13 ANALYSIS

¶ 14 As mentioned, the Madans claim the circuit court abused its discretion by entering the order confirming the judicial sale of the subject property. The Madans argue the circuit court should not have entered the order confirming the judicial sale before first conducting an evidentiary hearing under section 15-1508(b)(iv) of the Foreclosure Law (735 ILCS 5/15-1508(b)(iv) (West 2010)) to determine the fairness of the sale. In support of this argument, the Madans contend that no evidence was ever presented showing the existence of a relationship between the price Colony bid on the subject property and the market value of the property.

¶ 15 Colony correctly notes that the Madans failed to raise this issue in the circuit court. It is well settled that a party that does not raise an issue in the circuit court forfeits that issue and may not raise it for the first time on appeal. See *U.S. Bank National Association v. Prabhakaran*, 2013 IL App (1st) 111224, ¶ 24 ("Arguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal"); *Vantage Hospitality Group, Inc. v. Q Ill*

*Development, LLC*, 2016 IL App (4th) 160271, ¶ 49 ("It has long been the law of the State of Illinois that a party who fails to make an argument in the trial court forfeits the opportunity to do so on appeal"). Reviewing courts have applied this well-established rule in mortgage foreclosure cases. See, e.g., *Sewickley, LLC v. Chicago Title Land Trust Co.*, 2012 IL App (1st) 112977, ¶¶ 30-37; *Citimortgage, Inc. v. Sharlow*, 2014 IL App (3d) 130107, ¶ 15. Accordingly, the Madans have forfeited this issue for review.

¶ 16 Moreover, even if we considered the matter, we would find the claim to be meritless. A circuit court's decision to confirm a judicial sale of property is reviewed for an abuse of discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008). An abuse of discretion occurs only when the circuit court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the court. *Jones v. Live Nation Entertainment, Inc.*, 2016 IL App (1st) 152923, ¶ 29.

¶ 17 The Foreclosure Law provides that following a sheriff's sale, the court shall enter an order confirming the sale unless the court finds, among other things, "that justice was otherwise not done." 735 ILCS 5/15-1508(b)(iv) (West 2010); *Resolution Trust Corporation v. Holtzman*, 248 Ill. App. 3d 105, 113 (1993). In the instant appeal, we do not believe the circuit court abused its discretion by entering the order confirming the judicial sale of the subject property before first conducting an evidentiary hearing under section 15-1508(b)(iv) of the Foreclosure Law to assess whether the sale was fair.

¶ 18 Contrary to the Madans' suggestions, parties are not unconditionally entitled to an evidentiary hearing under section 15-1508(b). Our courts have determined that the extent of an evidentiary hearing afforded a party under section 15-1508(b) of the Foreclosure Law is left to

the sound discretion of the circuit court. See *Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 6 (2006).

¶ 19 Once a motion to confirm a judicial sale under section 15-1508(b) has been filed, the party opposing the sale bears the burden of proving that grounds exist sufficient for the circuit court not to enter an order approving the sale. *Sewickley, LLC v.*, 2012 IL App (1st) 112977, ¶ 35. At this stage, it is not sufficient under section 15-1508(b)(iv) to merely raise a meritorious defense to the underlying foreclosure complaint. *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶¶ 25-26. Rather, the party must establish "that justice was not otherwise done because either the lender, through fraud or misrepresentation, prevented the borrower from raising his meritorious defenses to the complaint at an earlier time in the proceedings, or the borrower has equitable defenses that reveal he was otherwise prevented from protecting his property interests." *Id.* at ¶ 26.

¶ 20 The Madans fail to point to any equitable defenses or fraudulent or misleading conduct on the part of Colony which would support their contention that "justice was not otherwise done" in regard to the judicial sale of the subject property. The Madans suggest that in order to assure that justice was done, Colony should have attached either an appraisal report, a broker's price opinion, or other similar valuation of the subject property to its motion for order confirming the judicial sale. We disagree.

¶ 21 The Madans have cited no Illinois case law which requires a mortgagee to attach such valuation evidence to its motion for an order confirming a judicial sale. If the Madans truly believed that Colony's bid at the judicial sale was inadequate or unconscionable, they were the ones who should have submitted evidence objecting to the confirmation of sale. See, *e.g.*, *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 265 (2008) (Party to litigation has the

authority under section 15-1508 of the Foreclosure Law to object to judicial sale and be heard on its complaints that the sale price was unconscionable and that justice was not done). The Madans fail to point to any fraud or irregularity in the judicial sale. Therefore, even if the Madans had not forfeited review of their arguments concerning the circuit court's confirmation of the judicial sale of the subject property, we would have concluded that the court did not abuse its discretion in this regard.

¶ 22 Finally, we decline Colony's request to impose sanctions against the Madans' appellate counsel pursuant to Illinois Supreme Court Rule 375(b), which permits sanctions if an appeal is "frivolous" or "not taken in good faith, or for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). We find that the Madans' arguments had some basis in the law at the time their appeal was filed and therefore we do not believe that sanctions are appropriate under the circumstances of this case.

¶ 23 Accordingly, for the foregoing reasons, we affirm the circuit court's order confirming the judicial sale of the subject property.

¶ 24 Affirmed.