

NOTICE  
Decision filed 10/23/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 160092-U

NO. 5-16-0092

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

U.S. BANK, N.A., as Trustee on Behalf of	)	Appeal from the
Manufactured Housing Contract Senior/Subordinate	)	Circuit Court of
Pass-Through Certificate Trust 1999-6 by Green	)	Franklin County.
Tree Servicing, LLC,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 15-CH-3
	)	
TINA M. LAMPLEY; TIMOTHY J. LAMPLEY;	)	
FRANKLIN COUNTY, as Trustee for Taxing	)	
Districts; and UNKNOWN OWNERS AND	)	
NON-RECORD CLAIMANTS,	)	
	)	
Defendants	)	Honorable
	)	Eric J. Dirnbeck,
(Tina M. Lampley, Defendant-Appellant).	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.  
Justices Goldenhersh and Cates concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where Tina M. Lampley did not establish good cause as required by Illinois Supreme Court Rule 183 (Ill. S. Ct. R. 183 (eff. Feb. 16, 2011)), the trial court’s order denying her motion for additional time to respond to U.S. Bank’s complaint was correct. Where the record on appeal is incomplete, we affirm the trial court’s entry of judgment. Where the accrued interest amount was incorrectly calculated, we modify the amount of the judgment and the amount of the deficiency judgment.

¶ 2 Tina M. Lampley appeals from the trial court's February 9, 2016, order that confirmed the sale of her mobile home after foreclosure. U.S. Bank is the holder of a promissory note secured by a mortgage on Lampley's mobile home. After default on her mortgage, U.S. Bank began a foreclosure proceeding that culminated in the sale of Lampley's mobile home.

¶ 3 In Lampley's notice of appeal, she states that she is appealing from the court's February 8, 2016, order confirming the sale of her mobile home after foreclosure. She did not specifically appeal the order denying her request for leave to file her answer out of time. However, Lampley raises the issue that she was denied the opportunity to litigate the case and devotes a substantial portion of her brief on appeal to the issue of the trial court's denial of her motion. Other issues listed in her notice of appeal appear to be affirmative defenses she would have raised had she filed a responsive pleading to U.S. Bank's complaint to foreclose mortgage. Although Lampley's notice of appeal is not typical and not in strict compliance with Supreme Court Rule 303(b)(2) (Ill. S. Ct. R. 303(b)(2) (eff. May 30, 2008)), we will address the Supreme Court Rule 183 issue. For the reasons set forth in this order, we affirm the court's judgments, but modify the amount of the judgment and the deficiency judgment.

¶ 4

## FACTS

¶ 5 On June 11, 1999, Tina Lampley and her then husband, Timothy, signed a promissory note with U.S. Bank<sup>1</sup> in the amount of \$77,911.35, representing the cost of a manufactured home. The promissory note was secured by a mortgage. On March 14, 2014, the mortgage was assigned to U.S. Bank. Since January 2014, Lampley has not made mortgage payments.

¶ 6 U.S. Bank filed its complaint against Lampley on January 12, 2015, and Lampley was personally served on January 22, 2015. Lampley hired an attorney and timely filed her entry of appearance on February 13, 2015. She filed a motion asking for an extension of 21 additional days in which to file her responsive pleading. Lampley's attorney did not include a proposed order for the court to sign. Furthermore, Lampley's attorney did not seek to have the motion set for hearing. The attorney for U.S. Bank set the motion for hearing on March 23, 2015. U.S. Bank's attorney certified that he served the notice of motion hearing on Lampley's attorney by first class mail. Lampley did not file a

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<sup>1</sup>Both the promissory note and the mortgage were originally entered into between the Lampleys and Green Tree Financial Servicing Corporation. Green Tree Financial Servicing Corporation went through a couple of corporate identity changes: Green Tree Financial Servicing Corporation became known as Conseco Finance Servicing Corporation, and then became known as Green Tree Servicing, LLC. On March 14, 2014, Green Tree Servicing, LLC, assigned the mortgage to U.S. Bank, N.A., as trustee on behalf of Manufactured Housing Contract Senior/Subordinate Pass-Through Certificate Trust 1999-6. For purposes of simplicity, we will refer to the plaintiff-appellee as U.S. Bank throughout this order.

motion to continue the motion hearing. During the additional 21 days Lampley requested on February 13, 2015, she filed no pleadings.

¶ 7 On March 23, 2015, Lampley's motion for extension of time to plead was called for hearing. Counsel for U.S. Bank was present, but neither Lampley nor her attorney appeared. The trial court ruled on the motion stating:

“the amount of additional time requested by \*\*\* Lampley from the filing of said motion has lapsed and then some and \*\*\* Lampley has still not filed any further pleading. Therefore, \*\*\* Lampley's Motion is denied. \*\*\* Lampley is in Default. [Plaintiff] to Notice up Hearing on Motion for Judgment.”

The trial court did not enter judgment against Lampley in this order.

¶ 8 Lampley did not file a motion to reconsider the court's order denying her request for additional time.

¶ 9 On May 11, 2015, U.S. Bank filed its motion for default and its motion for judgment. U.S. Bank filed its motion for default pursuant to section 2-1301(d) of the Code of Civil Procedure (735 ILCS 5/2-1301(d) (West 2012)), stating that Lampley was served on January 22, 2015, and to that date had not filed a responsive pleading to its foreclosure complaint. By filing its motion for judgment, U.S. Bank asked the court to enter a judgment of foreclosure and sale pursuant to section 15-1506(a) of the Code of Civil Procedure (735 ILCS 5/15-1506(a) (West 2012)). U.S. Bank set these motions for hearing on June 1, 2015.

¶ 10 Between March 23, 2015, when the court noted that Lampley was then in default, and May 11, 2015, when U.S. Bank began the formal process to obtain a judgment, Lampley filed no pleadings.

¶ 11 On May 29, 2015, Lampley's attorney filed an answer to complaint for foreclosure, including an affirmative defense and a counterclaim alleging breach of contract. Lampley's attorney had not obtained leave of court to file this pleading.

¶ 12 On June 1, 2015, at the hearing, U.S. Bank withdrew its motions as it still needed to file a loss mitigation affidavit. The court noted that the case would be reset for hearing.

¶ 13 On the following day, Lampley's attorney filed a motion asking for leave to file the answer. In this motion, Lampley's attorney alleged:

1. that U.S. Bank's attorney did not contact her before setting the hearing date on her motion for an extension of time to respond to the complaint;
2. that she had not been available on the hearing date; and
3. that Lampley believed that the amount of the debt was too high and that Lampley should be allowed to have an accountant review the documents.

Lampley's attorney did not set the motion for hearing.

¶ 14 On August 4, 2015, U.S. Bank filed a motion to strike Lampley's motion seeking leave to file her answer, or alternatively to strike Lampley's answer filed on May 29, 2015, without leave of court. Factually, U.S. Bank noted that Lampley had already asked the court for an additional 21 days to respond to its complaint; that Lampley did not respond within that 21-day period requested; that the court denied the motion on March 23, 2015; and that Lampley had been in default since that date. Legally, U.S. Bank argued that Lampley was required to file her responsive pleading within 30 days of her

January 22, 2015, service—on or before February 21, 2015. Ill. S. Ct. R. 101(d) (eff. May 30, 2008). However, Supreme Court Rule 183 allows the trial court to extend the time for filing a responsive pleading for good cause. Ill. S. Ct. R. 183 (eff. Feb. 16, 2011). U.S. Bank argued that Lampley had failed to establish “good cause” in her June 2, 2015, pleading. Specifically, U.S. Bank pointed to Lampley’s claim that it improperly added insurance costs to her balance owed. U.S. Bank countered by citing to the affidavit of amounts due and owing it filed on April 14, 2015, that contained no insurance charges. Furthermore, Lampley provided no supporting documentation of these alleged improper insurance charges.

¶ 15 On September 11, 2015, U.S. Bank filed several motions. U.S. Bank filed its motion for judgment on the replevin count of its complaint. In the motion, U.S. Bank explained that pursuant to the terms of the note and mortgage, Lampley agreed to make monthly payments; that U.S. Bank retained a security interest in the mobile home and the right to repossession; that U.S. Bank had declared that the mortgage was in default since March 2014 for nonpayment of monthly payments; that it sent Lampley a notice of default and right to cure default as required by federal law outlining the amount owed to cure the default; that U.S. Bank filed its complaint for foreclosure; that Lampley was still in possession of the mobile home; and that U.S. Bank was entitled to receive immediate possession of the mobile home. U.S. Bank also filed a motion for summary judgment of foreclosure, arguing that the facts and law entitled it to judgment. Additionally, U.S. Bank filed its motion to appoint selling officer to manage the sale of the mobile home if

the trial court granted the relief requested on its other motions. U.S. Bank set all of these motions for hearing on September 21, 2015.

¶ 16 Lampley's attorney attended the September 21, 2015, hearing. The trial court denied Lampley's motion for leave to file answer and affirmative defenses, and concluded that U.S. Bank's motion to strike Lampley's answer was moot. The court also entered summary judgment and judgment of foreclosure and sale in the amount of \$93,084.19 against Lampley. The record on appeal does not include the transcript from this motion hearing, and so we are unable to surmise any additional foundation for the bases of the court's orders.

¶ 17 The sheriff's sale was set for January 6, 2016. U.S. Bank had the winning bid of \$53,295. The sheriff's report listed a deficiency on the judgment of \$44,116.85. On February 2, 2016, U.S. Bank filed its motion for an order approving the report of sale and distribution, confirming the sale, and for an order for possession. On February 8, 2016, the trial court granted this motion.

¶ 18 Lampley appeals.

¶ 19 **LAW AND ANALYSIS**

¶ 20 On appeal, Lampley argues that the trial court erred in not granting her permission to file her answer out of time. She also argues that the evidence was insufficient for the trial court to have entered judgment in U.S. Bank's favor.

¶ 21 **Trial Court's Denial of Lampley's Motion to File an Untimely Answer**

¶ 22 Supreme Court Rule 183 provides that the trial court "may extend the time for filing any pleading or the doing of any act which is required by the rules to be done

within a limited period, either before or after the expiration of the time” if the party seeking the extension files a motion with notice to the opposing party and provides “good cause” for the trial court to grant the motion. Ill. S. Ct. R. 183 (eff. Feb. 16, 2011). On appeal from a denial order pursuant to Rule 183, we must determine if the trial court abused its discretion. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 354, 875 N.E.2d 1065, 1079 (2007). “A trial court abuses its discretion only if it ‘act[s] arbitrarily without the employment of conscientious judgment, exceed[s] the bounds of reason and ignore[s] recognized principles of law [citation] or if no reasonable person would take the position adopted by the court.’ ” *Schmitz v. Binette*, 368 Ill. App. 3d 447, 452, 857 N.E.2d 846, 851 (2006) (quoting *Popko v. Continental Casualty Co.*, 355 Ill. App. 3d 257, 266, 823 N.E.2d 184, 192 (2005)).

¶ 23 In *Vision Point of Sale, Inc. v. Haas*, the supreme court was presented with a certified question involving the concept of good cause in Supreme Court Rule 183 requests for additional time. *Vision Point of Sale, Inc.*, 226 Ill. 2d at 335-36, 875 N.E.2d at 1069. The certified question posed was whether the court was allowed to consider “ ‘facts and circumstances of record that go beyond the reason for noncompliance. ’ ” *Id.* at 335-36, 875 N.E.2d at 1068. The appellate court answered the question in the affirmative. *Id.* at 336, 875 N.E.2d at 1068. The supreme court concluded that the trial court may not consider anything other than the reason for noncompliance in determining whether the party seeking the extension exhibited good cause. *Id.* at 336, 875 N.E.2d at 1069. Although the extension of time in *Vision Point of Sale, Inc.* involved a request for admission of fact pursuant to Supreme Court Rule 216 (Ill. S. Ct. R. 216 (eff. Aug. 1,



1985)), we find that the analysis equally applies to the facts of this case. The court noted that the party seeking an extension of time bears the burden of proof on the issue of good cause and “must submit to the court clear, objective reasons why it was unable to meet the original deadline and why an extension of time should be granted.” *Id.* at 347-48, 875 N.E.2d at 788. Furthermore, the trial court is allowed to receive evidence regarding whether the delinquency “was caused by mistake, inadvertence, or attorney neglect, but may not engage in an open-ended inquiry which considers conduct that is unrelated to the causes of the party’s original noncompliance.” *Id.* at 353, 875 N.E.2d at 1078. The court declined to define “good cause,” instead reiterating that the question is fact specific and is therefore within the trial court’s discretion. *Id.* at 354, 875 N.E.2d at 1078-79.

¶ 24 We turn to the facts of this case and analyze whether Lampley provided clear, objective reasons for her late filing, and thus established good cause. On February 13, 2015, Lampley, through her attorney, timely filed a motion asking for additional time in which to respond to U.S. Bank’s foreclosure complaint. There is no proposed order included in the record on appeal. Lampley did not set this motion for a hearing. Instead, U.S. Bank set the motion for hearing on March 23, 2015. Lampley did not object to this hearing date or time or file a pleading asking that the hearing be reset. In a later pleading, Lampley’s attorney complained that U.S. Bank’s attorney had not contacted her prior to setting her motion for hearing. She also alleged that she was not available on the hearing date, but does not provide any detail about why she was unavailable. Lampley’s attorney does not appear to dispute that she knew about the hearing date, but just claims that she was unavailable. The record also contains no indication that Lampley’s attorney

informed the court that she would not be available on the hearing date. Furthermore, the record also contains no claim that she contacted the attorney for U.S. Bank about her unavailability. On March 23, 2015, the trial court called Lampley's motion for hearing. Neither Lampley nor her attorney was present. The court denied Lampley's motion and stated on the docket sheet that Lampley was now in default on U.S. Bank's complaint. Lampley did not file a motion to reconsider the order denying her request for additional time.

¶ 25 Despite being in default, Lampley filed no pleading until after May 11, 2015, when U.S. Bank began the process of formalizing its foreclosure process. On May 29, 2015, Lampley filed her answer to complaint for foreclosure. On June 2, 2015, Lampley filed a motion asking the court to grant her leave to file her answer out of time. In addition to alleging that she was unavailable on the date of the original hearing, she also alleged that she felt that the debt amount listed in the foreclosure complaint was too high, and that she should be allowed to have an accountant review the documents. Lampley explained that she and her ex-husband were involved in a Chapter 13 bankruptcy proceeding from 2009 to 2014. During the bankruptcy, she and Timothy Lampley reaffirmed the debt with U.S. Bank. Ultimately, the Lampleys divorced, and Tina continued making payments to U.S. Bank. Lampley alleges that at the end of the Chapter 13 proceeding, U.S. Bank required her to make a lump sum payment for "forced place insurance," and that she did not have the funds to do so. Thereafter, she filed a Chapter 7 bankruptcy on her own, and attempted to reaffirm her debt with U.S. Bank, but never could reach an agreement. She claimed that the loan documents supported her claim that

“forced place insurance” was added to her loan balance 12 times. She also alleged that there “were other small, unexplained debits to the loan which caused [her] true debt to be inaccurate \*\*\*.” She stated that although the loan was 14 years old, and that she had made payments throughout that time period, her loan indebtedness had only decreased by a small amount. Overall, Lampley claimed that it was these perceived inaccuracies to the loan amount that precluded her from filing an answer to the foreclosure complaint. Lampley attached no supporting documents as exhibits to this motion.

¶ 26 Lampley asks this court to find that the trial court’s order denying her request to file her answer constituted an abuse of discretion. Having reviewed the record and brief on appeal, we find no reason to conclude that the trial court’s decision was arbitrary. Notably, Lampley does not argue that she had good cause for an extension of time after the deadline passed. Here, the basis for Lampley’s delinquency was not alleged to have been caused by mistake, inadvertence, or attorney neglect, but instead was based on the attorney’s desire to consult with an accountant in order to determine the accuracy of the balance owed. Lampley does not articulate how consultation with an accountant would have impacted her ability to answer this complaint. Furthermore, the record contains no evidence that Lampley did consult with an accountant. There are no affidavits or documentary evidence establishing a delay based on the need for having an accounting consultation. The very claims Lampley made in her motion asking for leave to file her responsive pleading—that the amount of the debt was too high—reflect that she had not gleaned any insight into the accounting issues in the three months since her answer was

due. Without any foundation for Lampley's claim, we are not persuaded that she was unable to file a response in a timely fashion.

¶ 27 We also find that the claimed accounting discrepancies were discovered during Lampley's bankruptcy cases (2009 and 2014)—well before U.S. Bank filed its complaint for foreclosure and replevin. Therefore, Lampley's claim that she needed additional time to consult with an accountant *after* U.S. Bank filed its foreclosure complaint is specious. Lampley acknowledges that she and U.S. Bank attempted to reach a reaffirmation of the loan amount during this second bankruptcy but were unable to “reach an agreement as to how much was owed.” The issues of the loan balance, therefore, predate this foreclosure complaint.

¶ 28 Furthermore, the answer to complaint for foreclosure Lampley filed on May 29, 2015, contradicts her assertion that consultation with an accountant was necessary to file a response. In her answer, Lampley admits that she was named in the foreclosure complaint; admits the dates of the note and mortgage and that copies of these documents are attached to the complaint; admits that a certificate of title is attached to the complaint; admits that she had not been making payments in the months preceding the foreclosure filing, but contests the “accounting procedures” used; and admits that the property has not been taken for any tax or fine. Lampley also denies the validity of the note and mortgage “upon information and belief” and generally neither admits nor denies the remaining allegations of the complaint. Lampley's affirmative defense alleged that U.S. Bank failed to administer the loan in a commercially reasonable manner—claiming accounting issues, excessive fees, and issues with the interest charged on the loan. Lampley's counterclaim

alleged breach of contract due to the added insurance charges she discovered during the bankruptcy process. Nothing about her simple answer filed three months after it was due validates her claim that she needed extra time to plead. And nothing about her answer reflects an accounting analysis of her claims.

¶ 29 Accordingly, we find no basis to conclude that the trial court abused its discretion in denying Lampley's request to file her responsive pleading out of time.

¶ 30 Judgment for U.S. Bank

¶ 31 Lampley has no pleading on file in the trial court. She did not file a written response to any of the pleadings U.S. Bank filed for judgment. Lampley's attorney was present at the September 21, 2015, hearing, and we presume that she made some argument to the court against U.S. Bank's motions. However, there is no transcript of this hearing in the record on appeal. If the record on appeal is incomplete, the reviewing court will construe any doubts against the appellant and take every reasonable presumption in favor of the judgment entered by the trial court. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319, 789 N.E.2d 1248, 1251 (2003); *Hassebrock v. Deep Rock Energy Corp.*, 2015 IL App (5th) 140105, ¶ 54, 29 N.E.3d 1054.

¶ 32 We briefly address the arguments Lampley raises regarding the judgment entered against her. First, Lampley argues that the judgment could not be entered against her because there was no subject matter jurisdiction over her codefendants. Lampley's attorney does not represent the other defendants, and thus lacks the right to make this claim. Furthermore, Lampley provides no legal basis for her related conclusory claim that the court cannot enter a judgment against only one defendant in a foreclosure case.

Lampley also argues that the affidavit attached to U.S. Bank's motion for summary judgment was legally insufficient, but then reverts to her continued argument that insurance charges were added to her balance and that generally "[t]he loan history is difficult to decipher." Lampley raises a more specific deficiency with the affidavit in that the affiant did not explain how the documents attached were created and also failed to aver that the records were accurate. U.S. Bank contends that the affidavit arguments were not raised in the trial court and thus Lampley's right to raise them on appeal has been forfeited.

¶ 33 With no written record of Lampley's arguments, and no transcript of the September 21, 2015, hearing, we conclude that the record on appeal is insufficient to review this issue. As Lampley is responsible for the record on appeal, any doubts about this argument and whether the argument was preserved for appellate review are construed against her.

¶ 34 We find that the record fails to support a conclusion that the trial court's judgment was incorrect.

¶ 35 *Amount of Judgment and Deficiency Judgment*

¶ 36 The trial court entered judgment in U.S. Bank's favor for \$93,084.19 in its September 21, 2015, judgment of foreclosure and sale. Lampley argues that the judgment must be vacated because it was unsupported by an affidavit or other testimony. We have thoroughly reviewed the record and conclude that Lampley's argument has some merit in that there is a mathematical error in the judgment amount, but there are

affidavits in the record otherwise supporting the dollar amounts. This is how the trial court arrived at the final number:

Unpaid Principal	\$70,596.67
Interest through September 21, 2015	\$17,504.68
Advances by U.S. Bank	\$ 536.84
Attorney Fees	\$ 2,825.00
Costs of Suit	\$ 1,621.00
<b>TOTAL</b>	<b>\$93,084.19</b>

¶ 37 U.S. Bank filed an affidavit of Angela Cake, a foreclosure specialist for U.S. Bank. This affidavit of amounts due and owing was filed on April 14, 2015, and at that time, the total amount owed by Lampley was \$80,982.86. Cake stated that the principal balance was \$70,596.67; that deferred interest was \$6,062.78; and that accrued interest from October 28, 2014, to March 22, 2015, totaled \$3,786.57. She indicated that interest would continue to accrue at a *per diem* rate of \$14.51. Additionally, she stated that U.S. Bank had advanced costs in the amount of \$536.84.

¶ 38 U.S. Bank's attorney, Alexander E. Porter, filed his affidavit for attorney fees and costs. We have confirmed that the mortgage signed by Lampley made her responsible for attorney fees and costs. Attorney Porter claimed attorney fees of \$2,825 and costs of \$1,621.

¶ 39 The only issue with the trial court's total amount owed involves the interest. We have calculated the *per diem* interest of \$14.51 from March 23, 2015, through September 21, 2015, a total of 183 days. The extra interest is \$2,655.33. Adding that amount to the deferred interest and accrued interest totals listed in Cake's affidavit, we conclude that the total interest owed is \$12,504.68—not \$17,504.68. We find that due to this \$5,000

error, the judgment entered against Lampley should have been \$88,084.19—not \$93,084.19, and the deficiency judgment should have been \$39,116.85—not \$44,116.85.

¶ 40 Accordingly, pursuant to our powers under Supreme Court Rule 366(a)(5), we modify the total of the court’s September 21, 2015, judgment of foreclosure and sale to \$88,084.19. Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994). We also modify the *in rem* deficiency judgment in the court’s February 8, 2016, order approving report of sale and distribution, confirming sale, and order for possession to \$39,116.85. The deficiency judgment was an *in rem* judgment—against the property itself. Although the deficiency judgment currently in place was not entered personally against Lampley and the attorneys for U.S. Bank have stated that the bank has no intention to seek the deficiency amount from Lampley, we still modify the amount of the deficiency judgment for continuity and accuracy.

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, we affirm the judgments of the Franklin County circuit court denying Lampley’s request to file a responsive pleading and for summary judgment. We modify the judgment of foreclosure and sale and the order approving report of sale and distribution, confirming sale, and order for possession as detailed in this order.

¶ 42 Affirmed; judgments modified.