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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

CITIMORTGAGE, INC.,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff-Appellee,)	
)	
v.)	No. 12-CH-3014
)	
ALFREDO BLANCO, CHERYL F.)	
BLANCO, TREVOR CREEK)	
HOMEOWNERS ASSOCIATION,)	
UNKNOWN TENANTS, UNKNOWN)	
OWNERS, AND NON-RECORD)	
CLAIMANTS,)	
)	
Defendants)	
)	Honorable
(Alfredo Blanco and Cheryl F. Blanco,)	Michael B. Betar,
Defendants-Appellants).)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly granted plaintiff a foreclosure judgment and confirmed the sale, as defendants did not demonstrate any violation of HAMP guidelines.
- ¶ 2 Alfredo Blanco and Cheryl F. Blanco (defendants) appeal after the confirmation of the sale in a foreclosure proceeding; they ask us to reverse the confirmation order. They contend

that, because plaintiff, CitiMortgage, Inc., violated rules associated with the Home Affordable Mortgage Program (HAMP), the court should have declined to confirm the sale under section 15-1508(b)(iv) or 15-1508(d-5) of the Code of Civil Procedure (Code) (735 ILCS 5/15-1508(b)(iv), (d-5) (West 2016)). We hold that, to the extent that defendants set out their claims sufficiently cogently to allow us to address them, their claims that plaintiff violated HAMP principles all lack merit. We therefore affirm the confirmation of the sale.

¶ 3

I. BACKGROUND

¶ 4 Plaintiff filed a foreclosure complaint relating to the property at 324 Kenney Drive in Antioch. The named defendants were defendants and the Trevor Creek Homeowners Association. After plaintiff obtained a foreclosure judgment, defendants applied for modification of the mortgage under HAMP, and, in accord with section 15-1508(d-5) of the Code, they successfully sought to postpone the foreclosure sale while plaintiff considered the application. Plaintiff denied defendants' first application; defendants appealed that decision under HAMP procedures, and plaintiff denied the appeal.

¶ 5 The court further stayed the sale to allow defendants to file a second application for HAMP relief based on a claim of new household income. Plaintiff denied that application; the basis it gave was that it was "unable to create an affordable payment equal to 31% of [defendants'] monthly gross income without changing the terms of [their] loan beyond the requirements of the program." Also, "[i]n performing our underwriting of a potential modification [defendants'] proposed modified monthly payment *** was more than 42% of [their] monthly gross income *** which we verified as \$3746.25." The letter that supplied this information also included the figures that plaintiff used in its calculation of "net present value" (NPV).

¶ 6 Defendants filed a HAMP appeal of that second denial—on September 20, 2016, they sent a letter that they described as an appeal under “Regulation X, 12 C.F.R. § 1024.[41](h)(4),” and a “ ‘notice of error’ ” under “Regulation X, 12 C.F.R. § 1024.35(e)(3)(i)(B).” They disputed the use of an income of \$3746.25 in plaintiff’s NPV calculations, claiming that that figure did not include verified income from non-borrowers. They asserted that they had documented cash support from Alfredo Blanco’s family.

¶ 7 Defendants next moved for an emergency stay of a scheduled sale date. Plaintiff opposed the motion, relying on a letter dated October 4, 2016, in which it stated that it had denied the appeal:

“In response to your escalated request, reference case number 434586, we have completed a review of your account. Based on this review, there has been no change in your circumstances to reverse our previously communicated decision.”

The court allowed the sale to go forward.

¶ 8 The sale followed shortly after the court denied defendants’ request for a stay. Defendants objected to confirmation, asserting that the allowing a sale under the circumstances violated HAMP guidelines as incorporated into the Code by section 15-1508(d-5). In particular, they asserted that the second HAMP appeal was still pending when the sale took place and that plaintiff had failed to review defendants’ second application for HAMP modification. The court confirmed the sale over defendants’ objection. Defendants moved for reconsideration. The court denied the motion after a hearing in which it stated that it deemed that plaintiff had communicated its denial of the second HAMP appeal to defendants at the hearing on the stay. Defendants timely appealed.

¶ 9

II. ANALYSIS

¶ 10 On appeal, defendants contend that, because plaintiff did not comply with section 15-1508(d-5) of the Code (and HAMP provisions incorporated by that section), the court should not have confirmed the sale. They also argue that the court should have refused to confirm the sale under section 1508(b)(iv)—the court should not confirm the sale when “justice was otherwise not done.” 735 ILCS 5/15-1508(b)(iv) (West 2016). Here, for simplicity’s sake, we will assume that defendants have adequately set out the legal framework under which they can argue that violations of HAMP guidelines (and other regulations incorporated by HAMP, such as “Regulation X”) were bases on which the court should have refused to confirm the sale. We thus focus entirely on defendants’ claims of specific violations of HAMP regulations and Regulation X. At this stage of the analysis, we encounter a difficulty: the specific claims are buried deep enough in the broader argument that we are not certain that we have recognized every point that defendants intend to make. Notwithstanding the arguments’ confusing structure, we have identified four specific claims in defendants’ brief:

- (1) Plaintiff did not follow HAMP guidelines for calculating NPVs when it denied defendants’ second application for a HAMP modification.
- (2) Plaintiff “failed to process” defendants’ second HAMP appeal.
- (3) Plaintiff violated a particular HAMP guideline by failing to provide them or the court with its rules for considering non-borrower income.
- (4) Plaintiff’s calculations of defendants’ household income were inconsistent with HAMP guidelines.

Defendants imply that all four of these specific errors were bases for denying confirmation under section 15-1508(d-5). They further suggest that the court should have refused to confirm pursuant to section 15-1508(b)(iv) based on error (2). To the extent that defendants intend to

raise other specific claims, we hold that they are forfeited, for lack of sufficient development. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (the appellant’s brief must contain “the contentions of the appellant and the reasons therefor”); see also *Elder v. Bryant*, 324 Ill. App. 3d 526, 533 (2001) (“Mere contentions, without argument or citation of authority, do not merit consideration on appeal.”). Further, in addressing claim (2), we hold that defendants have forfeited related claims by raising them for the first time in their reply brief. See Ill. St. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 11 As we suggested, we need not address the rather complex legal background to defendants’ claims—which are grounded in the interaction between the Code and HAMP regulations. We can dispose of most of the arguments while accepting *arguendo* defendants’ contentions concerning the applicable law. In particular, we need not address the general questions of the extent to which section 15-1508(d-5) incorporates HAMP regulations into the Code, the extent to which HAMP regulations incorporate Regulation X associated with the Real Estate Settlement Procedures Act (RESPA) (12 C.F.R. § 1024.1 *et seq.* (2016)), or related matters. By assuming that defendants’ framework is correct, we can keep our discussion focused on the dispositive issues. Our primary assumptions are the following:

- (1) Under section 15-1508(d-5) of the Code, a foreclosure sale should not occur while a HAMP application or appeal is pending—regardless of whether that application is an original application or one based on a change of circumstances.
- (2) A lender participating in HAMP should consider properly verified non-borrower income in evaluating the application.
- (3) HAMP has binding standards for calculating NPV.

Applying these assumptions, we address defendants’ claims in the order we have stated them.

¶ 12 Defendants assert that plaintiff did not follow HAMP guidelines for calculating NPVs when it denied their second application for a HAMP modification. They assert that they entered the “NPV terms” that they contend were the “cause for the [second HAMP] denial” into the NPV calculator at CheckMyNPV.com. (That is, they appear to have run the numbers appearing in plaintiff’s denial letter through the online NPV calculator at CheckMyNPV.com.) They assert without citation that CheckMyNPV.com is “provided by the United States Department of the Treasury and Department of Housing and Urban Development *** to verify whether [a HAMP] denial complies with [HAMP] guidelines.” They contend that a printout included in the record showed that they “qualified for a HAMP tier 1 Modification work out option.”

¶ 13 The printout included in defendants’ trial court filings shows that they have greatly overstated the authoritativeness of the results given by CheckMyNPV.com. According to the printout, “[b]ased on the information you have provided you *may* be eligible for a HAMP modification.” (Emphasis added.) Further, the printout states, “CheckMyNPV.com provides only an estimate of a servicer’s NPV evaluation.” It explains, “[w]hile the NPV formula used is required to be the same as your mortgage servicer’s, differences in input data and other industry-related data may result in different outputs.” Thus, the printout does not provide any basis for the conclusion that plaintiff employed an NPV calculation that was inconsistent with HAMP guidelines.

¶ 14 Defendants next assert that plaintiff “failed to process” their second appeal. Defendants’ brief and the transcript of the hearing on their motion to reconsider suggest that, in so asserting, they are relying on their receipt of a *second* letter dated October 4, 2016—that is, a letter other than the HAMP appeal denial—that “acknowledge[ed] their request for HAMP relief and stat[ed] Plaintiff’s intention to process [the request].” They assert that, for both the

acknowledgment letter and the appeal denial letter to have been “legitimately created on October 4th stretches the bounds of reason.” They contend that the existence of the two letters suggests “that Plaintiff generated a perfunctory October 4th letter stating its intention to conduct a review of the HAMP request just so it could generate a denial letter on the same day, and use that letter to falsely persuade the Court that it was complying with HAMP and Regulation X.”

¶ 15 Defendants’ argument is implausible on its face. Although defendants do not provide a record citation for the acknowledgment letter, the record does contain a letter that appears to be the document at issue. It is plainly a form letter such as would be expected in response to an *initial application* and thus has no clear relevance to the pendency of a HAMP *appeal*. Furthermore, given that defendants filed *an appeal* relating to their second application, they must be claiming that plaintiff generated the initial denial of that application without having processed the initial application—a claim that makes no sense. The court rejected defendants’ claim that plaintiff did not process the second application; it accepted instead plaintiff’s explanation that the acknowledgement letter was the product of automated processes that continued independent of the expedited review of defendants’ second application. Neither defendants’ arguments nor the record has given us reason to conclude that the court was wrong.

¶ 16 In any event, in their reply brief, defendants seem to abandon this argument. For it, they substitute several arguments as to why the appeal denial letter did not satisfy regulatory standards for the denial of a HAMP appeal. These arguments are forfeited. Points not argued in the appellant’s brief “are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.” Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); see also *Cuevas v. Berrios*, 2017 IL App (1st) 151318, ¶ 30.

¶ 17 Defendants next assert that plaintiff violated section 5.1.9 of the Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages (Version 5.1, May 26, 2016) (hereinafter “Handbook”) by failing to “provide or reference into the record or to the borrower directly, its own internal policy that would define or limit what it would consider [as non-borrower income].”

¶ 18 The Handbook does not support defendants’ claim. Chapter II, section 5.1.9, requires that a lender *verify* any non-borrower income that it takes into account in considering a HAMP application; it does not require a lender to provide any disclosures to the applicant. Section 5 of the Handbook covers verification requirements for income: “Servicers must develop and adhere to a written policy and procedures *** that describe the basis on which the servicer will determine a borrower’s monthly gross income.” Handbook, available at <https://hmpadmin.com> (last visited Mar. 9, 2018). Concerning non-borrower income, section 5.1.9 provides, “Servicers should include non-borrower household income in monthly gross income if it is voluntarily provided by the borrower and if, in the servicer’s business judgment, that [*sic*] the income reasonably can continue to be relied upon to support the household. Non-borrower household income included in the monthly gross income must be documented and verified by the servicer using the same standards for verifying a borrower’s income.” Handbook, available at <https://hmpadmin.com> (last visited Mar. 9, 2018). The section does not include any requirement that the lender disclose criteria for consideration to the borrower.

¶ 19 Finally, defendants assert that something was wrong with plaintiff’s calculation of defendants’ household income and that plaintiff thus violated HAMP guidelines when it made the calculations:

“[(1)] As set forth in the [affidavit of defense counsel’s employee in support of defendants’ objection to confirmation] and supported by the documents attached thereto, the April ‘22, 2016, HAMP application was based on and demonstrated monthly household income in the amount of \$4,711.25. This reflects a change in income of \$818.11 per month from their previous application, which CitiMortgage determined reflected an income of \$3,893.14, as shown in the March 30, 2016 denial letter from CitiMortgage.

[In any event, (2)] Defendants still should have been awarded a HAMP modification based on Plaintiff’s income calculation of \$3,746.25.”

Defendants imply first that, because an income of \$3746.25 is inconsistent with the documentation they provided, plaintiff’s figure must therefore reflect a violation of HAMP guidelines. (Their second contention appears merely to repeat the claim that the figures defendants obtained from CheckMyNPV.com demonstrate their eligibility.)

¶ 20 This argument is patently insufficient. Defendants do not attempt to explain how they calculated an income of \$4711.25. Further, the affidavit to which they direct our attention does not provide those calculations. The income sources mentioned in the affidavit are heterogeneous; they include Supplemental Security income and child support. Defendants’ brief seems to presume that we will work through the affidavit and associated documents to decide whether a proposed income source satisfies the income verification requirements of Chapter II, section 5, of the Handbook and that we will sum the verified income sources and check the results against the figure provided by plaintiff. In *Pecora v. Szabo*, 109 Ill. App. 3d 824, 825-26 (1982), we admonished appellants that we will not do their work for them: “A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a

depository in which the appealing party may dump the burden of argument and research.” We cannot be appellants’ research staff, and we cannot be their accountants either. We therefore decline to address this argument further.

¶ 21

III. CONCLUSION

¶ 22 As none of defendants’ arguments provides a basis for reversal, we affirm the confirmation of sale.

¶ 23 Affirmed.