2013 IL App (2d) 130075-U
No. 2-13-0075
Order filed September 18, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CHASE HOME FINANCE, LLC, successor by merger to Chase Manhattan Mortgage Corporation,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 08-CH-835
REBECCA CAROLE NOLAN,	)	Honorable Leonard J. Wojtecki,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Burke and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in refusing to hear the *pro se* mortgagor's section 15-1508(d-5) motion to deny confirmation of sale. 735 ILCS 5/15-1508(d-5) (West 2012). The mortgagor should have had the opportunity to establish, by a preponderance of the evidence, whether she submitted an application for a loan modification and whether, in material violation of the relevant loan modification program, the bank did not postpone the judicial sale of the home until after it had resolved the pending application. Reversed and remanded.

¶ 2 On December 10, 2012, following hearing, the trial court confirmed the judicial sale of

defendant Rebecca Carole Nolan's home. 735 ILCS 5/15-1508 (West 2012). However, at the confirmation hearing, the court refused to consider Nolan's *pro se* section 15-1508(d-5) motion to deny confirmation. 735 ILCS 5/15-1508(d-5) (West 2012). In her motion, Nolan had alleged that she applied for a loan modification under the Making Home Affordable Program (MHA) (see 12 U.S.C. § 5219 (Supp. III 2010)) through the Home Affordable Modification Program (HAMP) (Handbook for servicers of Non-GSE Mortgages (August 17, 2012), *available at* http://www.makinghomeaffordable.gov/for-partners/understanding-guidelines/Documents/mhahandbook_41.pdf (last visited August 26, 2013) (*HAMP Guidelines*), and that, in material violation of the HAMP guidelines, plaintiff Chase Home Finance, LLC, did not postpone the judicial sale of the home until after it had resolved the pending application.

¶ 3 On December 21, 2012, following hearing, the trial court denied Nolan's *pro se* motion to vacate confirmation of the sale. 735 ILCS 5/2-1301(e) (West 2012). For the reasons that follow, we reverse the trial court's judgment, vacate the confirmation of sale, and remand for a hearing on Nolan's 15-1508(d-5) motion, where she will have an opportunity to establish, by a preponderance of the evidence, that she submitted an application for a HAMP loan modification and that, in material violation of the loan modification program, Chase did not postpone the judicial sale of the home until after it had resolved the pending application.

¶ 4 I. BACKGROUND

¶ 5 This appeal concerns only the second of two hearings to confirm the judicial sale of Nolan's home, each conducted by a different trial judge. During the 2011 confirmation proceeding, Nolan successfully moved, pursuant to section 15-1508(d-5), for the confirmation to be denied. The judicial sale was set aside. Subsequently, Chase again sold the home at a judicial sale, leading to the

2012 confirmation proceeding at issue here. The 2012 motions and supporting documentation are contained in the record, but the 2012 court proceedings are recorded only in a bystanders' report. At all points prior to the instant appeal, where she is represented by Prairie State Legal Services, Nolan proceeded *pro se*.

¶ 6 A. Preliminary Facts and
The 2011 Confirmation Proceedings

¶ 7 In January 1997, Nolan signed a $76,100 mortgage in purchasing her Aurora home. Ten years later, in January 2007, Nolan lost her job and began to fall behind in her monthly payments, which were, at that time, $840. On March 11, 2008, Chase filed a complaint to foreclose the mortgage, alleging that Nolan owed $75,286 on the loan.[1] On April 10, 2008, Nolan, *pro se*, filed an appearance. On June 26, 2008, Nolan answered the complaint to foreclose. On July 10, 2008, the trial court entered an order of default on the loan and a judgment for foreclosure and sale. On September 9, 2010, the home was sold at a judicial sale to Chase, and the trial court set a hearing for the confirmation of sale.

¶ 8 On September 17, 2010, Nolan moved to deny confirmation, arguing that Chase sold the home in material violation of section 15-1508(d-5) of Code of Civil Procedure, which states:

> "Making Home Affordable Program. The court that entered judgment shall set aside a sale held pursuant to [s]ection 15-1507, upon motion of the mortgagor at any time prior to the confirmation of the sale, if the mortgagor proves by a preponderance of the evidence that (i) the mortgagor has applied for assistance under the Making Home Affordable Program ***; and (ii) the mortgaged real estate was sold in material violation of the program's

[1] Chase initially named Nolan's husband, Thomas Nolan, as a party defendant. It later moved for Thomas's dismissal as a party defendant, and the court granted the motion.

requirements for proceeding to a judicial sale." 735 ILCS 5/15-1508(d-5) (West 2010). Specifically, Nolan argued that she had applied for assistance under the MHA, or HAMP, and that, in material violation of Chapter II, section 3.3 of the *HAMP Guidelines*, Chase had proceeded to the judicial sale of her home without resolving her application.

¶ 9 On November 18, 2010, Chase moved to withdraw its motion to confirm sale. The trial court granted the motion without prejudice. On a 2011 date not contained in the record, Chase filed a second motion to confirm sale. On July 28, 2011, the trial court set the matter for hearing.

¶ 10 On August 11, 2011, Nolan again moved to deny confirmation of sale. She again argued, *inter alia*, that Chase sold the home in violation of section 15-1508(d-5), in that Chase did not suspend the sale of her home in the face of her pending application. On September 15, 2011, Chase responded to Nolan's motion. In it, Chase conceded that Nolan had applied for assistance under HAMP, satisfying the first prong of section 15-1508(d-5). Chase argued, however, that the sale could not be set aside under section 15-1508(d-5), because Chase had given Nolan a loan modification and Nolan did not make any of the trial payments. Chase attached a copy of the trial plan's offer, which was set to begin January 1, 2010, and listed a modified monthly payment of $859 per month (which is actually $19 *higher* than her previous monthly payment). Chase also attached portions of the non-GSE (non-government sponsored enterprises)[2] HAMP handbook that set forth a mortgagor's obligation to make trial payments. Nolan responded that the trial payment plan was not "properly executed." She attached to her response two letters dated March 24, 2010, and October 6, 2010, addressed to her from The Office of the Special Inspector General for the Troubled Asset

[2] Non-GSE verses GSE reflect a category of loans, which the parties debate later. However, our resolution does not require us to reach that issue.

Relief Program (SIGTARP), a federal body that oversaw programs such as MHA, or HAMP. The letters informed Nolan that "[t]he submitted documentation for HAMP consideration does not support the current Trial Plan. The lender has been advised to void the current [trial plan] and reconsider your application." Also, "[t]he lender has been ordered to void sale and shall reissue [a trial plan] with proper inputs."[3]

¶ 11 On November 3, 2011, the trial court denied confirmation of the sale. It based its ruling on Nolan's testimony that, twice in February 2010, she spoke with a Chase representative who told her to fax a new HAMP application and that Chase would then set aside the old plan (which had improperly increased her monthly payments). Nolan claimed that she faxed a new application but that Chase did not act on it before undertaking the September 2010 sale. Chase had not contradicted this testimony.

¶ 12 On November 29, 2011, prompted by the trial court's denial of confirmation, Chase moved to set aside the September 2010 sale. In its motion, Chase stated: "[We] desire[] to vacate the [September 2010] sale in order to solicit [Nolan] for a renewed HAMP application." That same day, the trial court granted the motion and set aside the September 2010 sale. The trial court judge who granted the motion to set aside the September 2010 sale did not preside over subsequent hearings.

¶ 13 B. The December 10, 2012, Confirmation at Issue on Appeal

¶ 14 Following the 2011 order to set aside the sale, Nolan purportedly submitted to Chase renewed HAMP applications on December 12, 2011; April 9, 2012; June 8, 2012; August 8, 2012; September 24, 2012; and November 14, 2012. These submissions are reflected only in fax cover sheets

[3] Portions of the letters, unfortunately, are scratched out with pen, such that this court cannot read the file number or the signature line.

contained in the record, and by Nolan's affidavits. However, in letters dated September 28, 2012, and November 19, 2012, Chase acknowledged receipt of the application(s) for "loan modifications;" the letter did not specify that the applications were HAMP applications. In each letter, Chase stated that it would not process the application(s), because they were received too close to the scheduled sale of the home.

¶ 15 As to the scheduled sale of the home, on September 12, 2012, Chase's attorneys entered a public notice that, on October 4, 2012, the home would be sold at a judicial sale. On October 4, 2012, Chase moved for and was granted a continuance for the sale date. The continuance order stated that the new sale date would be November 29, 2012. The order directed that a copy be sent to "plaintiff's attorney," *i.e.*, Chase, but it did *not* direct that a copy be sent to "defendant's attorney," *i.e.*, the *pro se* Nolan, or to "other;" those two boxes were left unchecked.

¶ 16 The judicial sale took place on November 29, 2012. That same day, in a "bare-bones" form motion, Chase moved for and was granted a date for hearing on the confirmation of sale. The court's form order stated that the confirmation hearing would be December 10, 2012. Again, the order directed that a copy be sent to "plaintiff's attorney," *i.e.*, Chase, but it did *not* direct that a copy be sent to "defendant's attorney," *i.e.*, the *pro se* Nolan, or to "other;" those two boxes were left unchecked.

¶ 17 On December 3, 2012, Chase mailed Nolan a notice of the upcoming December 10, 2012, confirmation hearing. Nolan received the notice of the confirmation hearing on Thursday, December 6, 2012. On Friday, December 7, 2012, Nolan moved pursuant to section 15-1508(d-5) to deny confirmation and set aside the sale, filing the proper "notice of motion" form. She argued that Chase again sold the home in violation of section 15-1508(d-5), in that it did not suspend the judicial sale

of her home until it resolved her pending HAMP application. She attached to her motion the fax cover sheets from her HAMP applications and the September 28, 2012, and November 19, 2012, letters from Chase, wherein Chase acknowledged its receipt of her modification requests. She served Chase a copy of her motion to deny confirmation. However, although she had filed a "notice of motion" with the circuit clerk, for whatever reason, Nolan's motion never made it into the trial court's file for the day of hearing.

¶ 18 On Monday, December 10, 2012, Chase filed its "motion for order approving report of sale and distribution and order of possession." It attached the judgment of foreclosure, notice of sale, and the sheriff's report of sale and distribution. The sheriff's report of sale set forth a deficiency of $46,664. The trial court accepted Chase's motion. The court called the case, noting that this would be a hearing to confirm sale. Nolan, *pro se*, then informed the court that she, too, had filed a motion: a section 15-1508(d-5) motion to deny confirmation. The court asked Chase if it had received a copy of Nolan's motion. Chase confirmed that it had. Nolan offered the court a file-stamped copy of her motion. The court did not accept Nolan's motion, stating it could not rule on a motion that was not in its file. Nolan explained that she had only received notice of the hearing on December 6, 2012, and that she had, within 24 hours, prepared, filed, and served her own motion. The court again stated that it could not rule on a motion that was not in its file. Nolan requested a continuance. The court denied the continuance, stating that it would rule that day on Chase's motion to confirm sale. The court instructed Nolan to schedule her own motion for a later date and it would hear her motion then. Nolan objected, trying to explain that her motion pertained to the confirmation of sale. The court again denied the continuance. It confirmed the sale and entered a deficiency judgment against Nolan in the amount of $46,664.

¶ 19 On December 17, 2012, Nolan moved to "deny and vacate" the confirmation of sale. She attached an affidavit, averring that Chase did not act on any of her HAMP applications. She called Chase on numerous occasions, and each time told her that it had lost or misplaced her application and that she should resubmit her application. Nolan again attached the fax cover sheets from her modification applications and the September 28, 2012, and November 19, 2012, letters from Chase acknowledging receipt of her modification request. Chase did not file a written response.

¶ 20 On December 21, 2012, the trial court held a hearing on the motion to deny and vacate. Chase noted that any motion to "deny" the confirmation of sale was moot, because the confirmation had already been granted. Therefore, the only issue to be addressed was whether the court should vacate the confirmation. The court agreed with Chase's framing of the issue. The court asked Nolan to present her argument. Nolan argued, as she had repeatedly, that she had applied for a HAMP loan modification, and that, in material violation of HAMP, Chase sold her home before it had processed her application.

¶ 21 Chase argued that the motion to vacate should not be granted because Nolan had not been diligent. According to Chase, Nolan had not properly set her section 15-1508(d-5) motion for hearing. On the merits, Chase argued that it did not violate HAMP. It stated that it had rejected (and, therefore, had processed) Nolan's application for a HAMP loan modification in May 2012, before the November 29, 2012, judicial sale. (However, there is no documentation of the rejection in the record.) Chase also argued, for the first time, that Nolan did not present sufficient evidence that the rule that Chase must process an application for modification before it may sell a home at a judicial sale even applied to the type of loan Nolan had. Chase stated that Nolan presented the HAMP handbook for non-GSE loans, and Nolan had a GSE loan. Chase did not comment as to

whether it had, in the 2011 proceedings, itself attached the HAMP handbook for non-GSE loans when it argued that a mortgagor was required to make his or her trial payments. Chase remained silent as to whether or not, in actuality, the processing rule applied to GSE loans as well.

¶ 22 After hearing argument, the trial court asked Nolan if she had with her a copy of her application for modification. She did not. The court denied Nolan's motion to vacate. This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, Nolan argues that she was denied her constitutional right to due process when the trial court confirmed the judicial sale of her home without hearing her section 15-1508(d-5) motion to deny confirmation. Citing *Pettigrew v. National Accounts System*, 67 Ill. App. 2d 344, 348-50 (1996) ("[a] fundamental requisite of procedural due process is that every man shall have the protection of his day in court and the benefit of an orderly proceeding according to the general law or established rules"). Nolan contends that she was denied the opportunity to establish, by a preponderance of the evidence, that: (i) she submitted a HAMP application; and (ii) Chase sold her home in material violation of the program's requirements for proceeding to a judicial sale. 735 ILCS 5/15-1508(d-5) (West 2012). Nolan further contends that a "material violation" occurred when Chase proceeded to sale in violation of HAMP guideline 3.3, which requires a servicer to suspend a sale as necessary to evaluate a borrower for HAMP if a timely application is submitted. *HAMP Guidelines*, Ch. 11 § 3.3.[4]

[4] After the parties submitted their briefs on appeal, this court released *Citimortgage v. Johnson*, 2013 IL App (2d) 120771, ¶ 36, which held that a "material violation" indeed occurs where a mortgagee proceeds to sale without resolving the HAMP application one way or another. Prior to

¶ 25 Chase agrees that Nolan has a protected property interest at stake and is, therefore, entitled to the benefits of due process. Chase argues, however, that Nolan had the opportunity to benefit from section 15-1508(d-5), but lost it due to her own untimeliness and lack of diligence. Chase also argues that, even though Nolan was not able to present her section 15-1508(d-5) argument at the confirmation hearing, she did, nevertheless, have an opportunity to air the merits of her argument at the hearing on her motion to vacate.

¶ 26 For the reasons that follow, we disagree that Nolan lacked diligence in moving pursuant to section 15-1508(d-5). If the trial court was not ready to evaluate the section 15-1508(d-5) argument, it should have granted Nolan a continuance. We also disagree that the hearing on the motion to vacate was an adequate substitute for the presentation of the section 15-1508(d-5) argument at the confirmation hearing.

¶ 27 A. Nolan's Section 15-1508(d-5) Motion was Properly Presented

¶ 28 As to timeliness and diligence, we first clarify that the relevant period begins on the date of sale, November 29, 2012. Section 15-1508(b), which, in part, governs the scheduling of confirmation hearings, states:

> "Upon motion and notice in accordance with the court rules applicable to motions generally, which motion shall *not be made prior to sale*, the court shall conduct a hearing to confirm the sale." 735 ILCS 5/15-1508(b) (West 2012). (Emphasis added.)

If a mortgagor wishes to object to the confirmation of sale on the basis of section 15-1508(d-5), then he or she must file the appropriate motion. 735 ILCS 5/15-1508(d-5) (West 2012). Logically, the mortgagor cannot object to the confirmation of sale until the sale has taken place. Indeed, a section

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oral argument in the instant appeal, we instructed the parties to be prepared to address *Citimortgage*.

15-1508(d-5) motion must allege that the home was "sold" (*i.e.*, past tense) in material violation of the program's requirements for proceeding to a judicial sale. *Id*.

¶ 29 Therefore, Chase's references to Nolan's allegedly dilatory acts prior to November 29, 2012, are red herrings. Perhaps to any lender's frustration, section 15-1508(d-5) *is* a codified avenue of relief by which a mortgagor may obtain a denial of confirmation and have the sale set aside (at least temporarily). Section 15-1508(d-5) implicitly allows for the mortgagor's past failings, in that it is unlikely that the case would ever have proceeded to sale absent those failings. However, section 15-1508(d-5) implicitly accounts for the mortgagor's positive actions as well, in that, in order to prevail, the mortgagor must have accomplished certain tasks and the mortgagee must have neglected certain tasks (*i.e.*, (i) the mortgagor must have submitted a HAMP application, and (ii) the mortgagee must have sold the home in material violation of the program's requirements to proceed to a judicial sale).

¶ 30 Also related to timeliness and diligence, we address Chase's assertion that, because Nolan did not "notice up" her section 15-1508(d-5) motion for hearing at least three court days prior to the scheduled confirmation hearing, the trial court did not err in refusing to consider her motion or in refusing to grant a continuance. Chase cites to local rule 6.05 (16 Jud. Cir. Rule 6.05 (eff. May 2008)), which states in part:

> "(c) No motion may be heard unless previously scheduled for hearing on the Court's calendar. This rule does not apply to genuine emergency motions.
>
> (d) The notice of hearing shall designate the Judge to whom the motion will be presented, state the title and case number of the action, and set forth the date and time the motion will be presented and the courtroom in which it will be presented. A copy of the motion, any papers to be presented with the motion, and proof of service shall be served with

the notice.

(e) The following notice times shall be observed *** (3) Notice by fax shall be completed by 4:00 p.m. at least three court days before the scheduled hearing."

(Chase also cites rules concerning non-time related requirements of notice and service; however, at this juncture, we discuss only those rules pertaining to "noticing up" a motion for hearing with the court and the time-frame for serving the opposing party with notice.)

¶ 31 Looking to the plain language of section 15-1508(d-5), however, it is not clear that Nolan was required to follow the three-day rule in order for her section 15-1508(d-5) motion to be considered at the scheduled confirmation hearing. Again, section 15-1508(d-5) states that, if, "upon motion of the mortgagor *at any time prior to the confirmation of the sale*," the mortgagor is able to establish by a preponderance of the evidence that he or she submitted a HAMP application and that the home was sold in material violation of the program's requirements to proceed to judicial sale, then the court must deny confirmation and set aside the sale. (Emphasis added.) 735 ILCS 5/15-1508(d-5) (West 2012). The above-quoted language of section 15-1508(d-5) expressly states that the mortgagor may submit her motion "at any time" prior to the confirmation, and the above-quoted language implies that the confirmation hearing already may have been set at the time the mortgagor moves to present a section 15-1508(d-5) argument. In contrast, section 15-1508(b), which, again, in part, governs the initial scheduling of confirmation hearings, requires that notice and motion be made "in accordance with court rules applicable to motions generally." 735 ILCS 5/15-1508(b) (West 2012). It is an accepted canon of statutory construction that the express inclusion of a provision in one section of a statute and an omission of that provision in a parallel section of the statute demonstrates the legislature's intent to omit the provision in the parallel section. *People v.*

Olsson, 2011 IL App (2d) 091351, ¶ 9. Here, section 15-1508(d-5) not only omits an instruction that the motion be made "in accordance with court rules applicable to motions generally," but it specifically instructs that a section 15-1508(d-5) motion may be made "at any time" prior to the confirmation.

¶ 32 The differing notice and service guidelines under sections 15-1508(b) and 15-1508(d-5) are in keeping with the nature of a confirmation hearing. At a hearing to confirm a judicial sale, the court is bound by Illinois Mortgage Foreclosure Law, which provides that the trial court shall confirm the judicial sale unless: (1) proper notice was not given; (2) the terms of the sale were unconscionable; (3) the sale was otherwise conducted fraudulently; or (4) justice was otherwise not done. 735 ILCS 5/15-1508(b) (West 2012); *Sewickley v. Chicago Title Land Trust Co.*, 2012 IL App (1) 112977, ¶ 35. Once the plaintiff files a "properly supported" section 15-1508(b) motion to confirm the sale and notices it for a hearing, the interested party opposing the sale bears the burden of proving that insufficient grounds exist to confirm the sale. *Sewickley*, 2012 IL App (1) 112977, ¶ 35. The interested party opposing the sale may attempt to prove insufficient grounds at the hearing. *Id*. at ¶ 36.

¶ 33 Per *Sewickley*, the mere setting of the confirmation hearing qualified Nolan to present at hearing her objections to the confirmation based on, at a minimum, any of the four grounds enumerated in section 15-1508(b). Moreover, because, arguably, any claim under section 15-1508(d-5) could be subsumed by the more general question of whether "justice was done," Nolan's motion may also be viewed as notice of the objections she would be making at the already-scheduled confirmation hearing. See, *e.g.*, *Woolums v. Huss*, 323 Ill. App. 3d 628, 633-34 (2001) (plaintiffs were not harmed by the failure to comply with the local rules on setting motions for hearing where

defendant's "motion" to strike affidavit could be seen as advance notice of arguments attacking the sufficiency of the affidavit which was already scheduled to be presented at hearing).

¶ 34 Nolan, therefore, moved for relief under section 15-1508(d-5) within the time-frame provided by statute, and the trial court should have heard her argument. If the trial court was not ready to hear her argument because, for whatever reason, Nolan's motion did not make it into its file, it should have granted Nolan a continuance.

¶ 35 B. Continuance

¶ 36 In assessing whether to grant a continuance, the decisive factor is whether the moving party has exercised due diligence in proceeding with the case. *Somers v. Quinn*, 373 Ill. App. 3d 87, 96 (2007). The court should also consider the applicant's good faith, the expediency or necessity of granting a continuance, the probability that benefit or advantage will accrue from granting the continuance, the manifest rights of all parties, and whether prejudice will result to the other parties. 12 Ill. Law and Prac. Continuances § 2 (August 2013), citing C.J.S. Continuances § 7. The trial court has broad discretion in granting or denying motions for continuances; however, such discretion must be exercised judiciously and not arbitrarily. *Bullistron v. Augustana Hospital*, 52 Ill. App. 3d 66, 70 (1977). In deciding whether the trial court abused its discretion in denying the continuance, we must balance the general goal of prompt dispositions against the moving party's equally compelling interest in obtaining justice. *Merchants Bank v. Roberts*, 292 Ill. App. 3d 925, 927 (1997).

¶ 37 As we have set forth above, Nolan did not lack diligence in moving pursuant to section 15-1508(d-5). We briefly recap that, on November 29, 2012, Chase submitted a form motion to set a confirmation hearing. The trial court's November 29, 2012, form order setting the confirmation

hearing directed that a copy be sent to "plaintiff's attorney," *i.e.*, Chase, but it did *not* direct that a copy be sent to "defendant's attorney," *i.e.*, the *pro se* Nolan, or to "other;" those two boxes were left unchecked. On December 6, 2012, Nolan received notice of the hearing. On December 7, 2012, Nolan filed a notice of motion complete with notary seal (as contained in the record), wherein she "noticed up" her section 15-1508(d-5) motion for December 10, 2012, the date of the already-scheduled confirmation hearing. She served Chase a copy of the motion via fax. At this point, Chase, in turn, had not even filed its "motion for order approving report and distribution," in support of the confirmation.

¶ 38 A trial court cannot *arbitrarily* deny a continuance, and, therefore, it is problematic that the court considered Chase's "motion for order approving report and distribution" filed December 10, 2012, but it refused to consider Nolan's section 15-1508(d-5) motion filed December 7, 2012. Chase's December 10, 2012, motion did not merely duplicate the requests in the November 29, 2012, form motion to set the matter for hearing. Rather, the court considered information contained in Chase's December 10, 2012, motion in determining the $46,664 deficiency judgment against Nolan.

¶ 39 Chase argues that the trial court did not err in denying Nolan's request for a continuance because Nolan did not comply with the following rules: (1) local rule 6.05 (16 Jud. Cir. Rule 6.05 (eff. May 2008) (quoted in ¶ 31)); (2) Illinois Supreme Court Rule 11(b)(5)(i)(ii) (eff. Oct. 24, 2012) (service of documents may be made by fax where the receiving party has consented to that mode of receipt, where the sender's telephone number is included on the certificate of service, and where each transmitted page bears the circuit court number, the title of the document, and the page number);[5]

[5] Subsequent amendments effective December 21, 2012, and January 1, 2013, did not alter subsection (b)(5).

and (3) Illinois Supreme Court Rule 12(b)(4) (eff. Dec. 29, 2009) (in the case of service by fax, service is proved by the affidavit of the person who sent the paper, stating the time and place of transmission, the sending telephone number, and the number of pages transmitted).[6] We reject this argument.

¶ 40 We have already discussed the rules concerning "noticing up" a motion for hearing with the court and the time-frame for serving the opposing party with notice. As to the others, we find disingenuous Chase's citation to the technicalities set forth in Rules 11 and 12 regarding service by fax pertaining to telephone number, case number, and page numbering. The trial court did not refuse to hear Nolan's motion or refuse to grant her a continuance on any of these bases. Moreover, Chase conceded at hearing that it received actual notice of Nolan's motion to deny confirmation of sale (though it did not specify the manner of service). Illinois Supreme Court Rules have the force of law, and they are not mere suggestions. *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995). At the same time, "unswerving obedience" is not demanded where no material harm is done to any litigant. *Levine v. Pascal*, 94 Ill. App. 2d 43, 59 (1968). Courts have been reluctant to require strict compliance with the rules for service by fax where, as here, the opposing party received actual notice. See, *e.g.*, *In re M.G.*, 301 Ill. App. 3d 401, 412 (1998).

¶ 41 For these reasons, if the trial court was not ready to hear Nolan's section 15-1508(d-5) motion, it should have granted a continuance. Chase's technical arguments do not convince us otherwise.

¶ 42 C. Prejudice

[6] Subsequent amendment effective December 21, 2012, did not alter subsection (b)(4), and subsequent amendment effective January 4, 2013, substituted the word "document" for "paper."

¶ 43 Finally, Chase argues that Nolan was not prejudiced by the trial court's denial of a continuance because, at the motion to vacate, Nolan was given the opportunity to present the merits of her argument. We disagree. Though Nolan may have been given the opportunity to air some of her arguments, she was not afforded the hearing envisioned by the statute. In moving to vacate the confirmation of sale, a party requests that the trial court "in its discretion, *** set aside [the judgment] upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2012). The movant is not presenting the issue to be decided in the first instance. Rather, the movant has the burden of showing that the standing ruling on the issue should be set aside. Chase's primary argument as to why the motion to vacate should be denied did not concern the merits of the argument; rather, the argument focused on Nolan's alleged lack of diligence. *Cf.*, *e.g.*, *Meeker v. Gray*, 142 Ill. App. 3d 717, 728 (1986) (the significance of diligence in a section 2-1301 motion is less than it once was; the court's primary concern should be substantial justice).

¶ 43 In moving to deny confirmation of the sale, a party requests that the trial court make a finding in the first instance that, more likely than not, he or she filed a HAMP application and the mortgagee sold her home in material violation of the program's requirements, here, by selling the home and seeking confirmation of sale before processing the pending HAMP application. 735 ILCS 5/15-1508(d-5) (West 2012). The mortgagor may present evidence in support of his or her section 15-1508 motion. *Id.*

¶ 44 Section 2-1301 and section 15-1508 set forth two different procedures, two different burdens of proof, and two different standards by which the court is to view the case. For example, it appears from the bystanders' report that the trial court, operating under section 2-1301 directives, denied Nolan's motion to vacate because Nolan did not, then and there, show the court a copy of her actual

application. Because Nolan failed on that one point, the court, in its discretion, did not believe that a substantial injustice would be done if it did not vacate the confirmation. In contrast, under the second standard, Nolan only had to show that it was more likely than not that she applied to HAMP and that Chase sold the home in material violation of the program's guidelines for proceeding to a judicial sale. If Nolan met that standard, then the trial court would be required to deny confirmation; it would not be a discretionary matter.

¶ 45 In sum, Nolan presented her section 15-1508(d-5) motion with adequate diligence, and the trial court should have considered it at the confirmation hearing. If the trial court was not ready to consider it, it should have granted a continuance. Finally, the hearing on the motion to vacate was not an adequate substitute for the presentation of the section 15-1508(d-5) argument. Because Nolan is entitled to a new hearing, we do not reach the merits of the argument here.

¶ 46 III. CONCLUSION

¶ 47 For the aforementioned reasons, we reverse the trial court's judgment, vacate the confirmation of sale, and remand for a hearing on Nolan's 15-1508(d-5) motion, where she will have an opportunity to establish, by a preponderance of the evidence, that she submitted an application for a HAMP loan modification and, in material violation of the loan modification program, Chase did not postpone the judicial sale of the home until after it had resolved the pending application.

¶ 48 Reversed and remanded.