2014 IL App (1st) 131917-U

FIFTH DIVISION
September 12, 2014

Nos. 1-13-1917, 1-13-1918, & 1-13-1919 (cons.)

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BMO HARRIS BANK, N.A., f/k/a HARRIS, N.A.,	)	Appeal from the Circuit Court of Cook County,
Plaintiff-Appellee,	)	
v.	)	Nos. 09 CH 08927 09 CH 08928 09 CH 15460
SUZANNE ALESHIRE,	)	
Defendant-Appellant.	)	Honorable Mathias W. Delort & Michael F. Otto, Judges Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Where the plaintiff bank circulated the notice of public sale in newspapers that were circulated to the general population in the county where the properties to be sold were located, the publication notice was proper; (2) Where the plaintiff bank sent notice of the public sale to the defendant's attorney of record as required by the rule, notice was proper; (3) Where the evidence presented by the plaintiff bank with the motion to confirm sale supported the fact that the public sales prices were not so low as to be unconscionable, and because the defendant did not present any evidence with the original motion, the court did not err by failing to hold an evidentiary hearing; and (4) Where the defendant did not raise her allegations of bad faith, ulterior motive, and intent to defraud on the part of the plaintiff bank, in

her response to the motion to confirm sale or her motion to vacate the confirmation of sale, the issue was forfeited.

¶ 2 Plaintiff, BMO Harris Bank, N.A. (Harris), filed three complaints to foreclose mortgage against defendant Suzanne Aleshire for three separate properties pursuant to the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1101 *et seq*. (West 2012) and, ultimately, the circuit court entered orders confirming the sales. Defendant has appealed from the circuit court's denial of her motions to vacate the confirmations of sale, arguing that the denial was in error because: (1) the notices of the sales were not published in newspapers with a connection to the Winnetka real estate market and therefore the public did not receive adequate notice of the sales; (2) defendant did not receive adequate notice of the sales and some of the publications were void because they were made during a bankruptcy stay; (3) the court erred by not holding an evidentiary hearing on the issues of adequate notice and actual value; and (4) the court failed to consider defendant's allegations of bad faith, ulterior motive, and intent to defraud on the part of Harris. We affirm.

¶ 3 This case involves foreclosure complaints filed against Suzanne Aleshire (defendant) and also Donald Aleshire, Jr.; Jacquelyn Mulder, as trustee under the trust agreement dated September 18, 1997, and known as the S. Aleshire Family Trust (Family Trust); Unknown Beneficiaries of the Family Trust; and unknown owners and non-record claimants, who are not parties to this appeal, by Harris with respect to three properties in Winnetka, Illinois: 777 Burr Avenue (the Burr property); 890 Greenwood Avenue (the Greenwood property); and 820 Prospect Avenue (the Prospect property).[1] The record shows that Harris,[2] as the successor-in-

[1] The complaint in case no. 09 CH 08928, involving the Greenwood property, was also filed against Robert Mulder, as trustee of the trust agreement known as the Suzanne Aleshire Trust which was established under the B. Sheldon Goreham Declaration of Trust

interest to Villa Park Trust & Savings Bank (Villa Park Bank), filed complaints to foreclose mortgage with respect to the Burr property and the Greenwood property in February 2009 (case nos. 09 CH 08927 and 09 CH 08928, respectively), and with respect to the Prospect property in April 2009 (case no. 09 CH 15460). All three complaints alleged that Harris was the holder of the notes secured by the mortgages and that: Jacquelyn Mulder, as trustee for the Family Trust executed the mortgages to Villa Park Bank; that Defendant was a beneficiary of the Family Trust; and that defendant was personally liable for any deficiency. According to the complaints, the Burr property was mortgaged in the amount of $2,000,000, the Greenwood property in the mount of $600,000, and the Prospect property in the amount of $675,000, and defendant defaulted on her mortgage for the Burr and Greenwood properties in December 2008, and for the Prospect property in February 2009.

¶ 4 In May 2009, defendant filed an answer to Harris's complaint and also asserted several affirmative defenses including breach of contract by Harris, breach of the duty of fair dealings in contract, tortious interference with business relationships, tortious interference with contractual relationships, and unclean hands. Defendant's affirmative defenses were based on her allegations that she had taken out five loans with Villa Park Bank, but that once Harris had acquired the loans from Villa Park Bank, Harris had misreported the loans to the national consumer credit reporting agencies which caused her FICO credit score to drop and prevented her from receiving financing from other lenders with which to conduct her business.

---

dated April 20, 1987, to an undivided 56 percent interest, and unknown beneficiaries of the Suzanne Aleshire Trust, none of whom are parties to this appeal.

[2] At the time the complaints to foreclose were filed, BMO Harris was known as Harris, N.A. Harris, N.A. changed its corporate title to BMO Harris Bank, N.A. effective July 5, 2011. For the sake of simplicity, in this order we will refer to plaintiff as Harris.

¶ 5 In June 2009, the circuit court designated case no. 09 CH 08927 as related to case nos. 09 CH 08928 and 09 CH 15460, so that they would be heard by the same judge.

¶ 6 In July 2009, Harris filed a motion to strike defendant's affirmative defenses arguing that, with the exception of the unclean hands claim, defendant was litigating the same claims against Harris that she alleged as affirmative defenses in federal court, in *Aleshire v. Harris, N.A.*, case no. 08 CV 7367. Harris also argued that defendant's claims were not cognizable as affirmative defenses under Illinois law because, even assuming defendant's allegations were true, her claims did not deny or avoid the legal effect of Harris's foreclosure complaints.

¶ 7 One week later, defendant filed a motion for leave to file a counterclaim against Harris. The counterclaims were substantially similar to those she had asserted as affirmative defenses, including breach of contract by Harris, breach of the duty of fair dealings in contract, tortious interference with business relationships, and tortious interference with contractual relationships.

¶ 8 Harris filed an opposition to defendant's motion for leave to file a counterclaim a week later, again arguing that defendant filed suit against Harris in federal court in December 2008 asserting the same or substantially similar claims as her proposed counterclaims. Harris concluded that giving defendant leave to file the counterclaims would neither be in the interest of justice nor aid judicial economy.

¶ 9 In October 2009, the circuit court stayed both Harris's motion to strike defendant's affirmative defenses and defendant's motion to file counterclaims, pending a ruling from the litigation in federal court.

¶ 10 In May 2010, in a written order, the circuit court denied defendant's motion for leave to file the counterclaims against Harris and granted Harris's motion to strike all of defendant's affirmative defenses with prejudice except for the defense of unclean hands, which the court

struck with leave to replead. Subsequently, defendant filed amended affirmative defenses, however, in August 2010, the circuit court struck the affirmative defenses in their entirety.

¶ 11 In July 2010, Joseph McCaffrey, an attorney, filed an appearance on behalf of defendant in all three cases. In August 2010, the appearance was treated as a substitute appearance by the circuit court and defendant's previous counsel withdrew on that date.

¶ 12 In September 2010, Harris filed a motion for summary judgment against defendant in all three cases, arguing that there were no genuine issues of material fact regarding defendant's default under the mortgages Harris was seeking to foreclose. In each, Harris requested that the court enter an order of summary judgment against defendant and enter an order of judgment of foreclosure and sale against each of the Burr, Greenwood, and Prospect properties.

¶ 13 In October 2010, Harris filed a motion for default judgment for each property with respect to Jacquelyn Mulder, as trustee for the Family Trust, unknown beneficiaries of the Family Trust, and unknown owners and non-record claimants. The motion for default judgment filed in case no. 09 CH 08928, with respect to the Greenwood property, also sought an order of default against Robert Mulder, as trustee for the Suzanne Aleshire Trust, unknown beneficiaries of the Suzanne Aleshire Trust, and unknown owners and non-record claimants.

¶ 14 In November 2010, the circuit court entered an order of default against Donald Mulder, as trustee for the Suzanne Aleshire Trust, in the Greenwood property case, and against Jacquelyn Mulder, as trustee for the Family Trust, unknown beneficiaries of the trusts, and unknown owners and non-record claimants with respect to all three cases. The circuit court also entered an order of summary judgment in favor of Harris and against defendant, and entered a judgment of foreclosure and sale against all defendants on all three properties. Specifically: as to the Burr property the court entered a judgment of foreclosure in the amount of $2,300,783.48; as to the

Greenwood property, the court entered a judgment of foreclosure in the amount of $857,816.61; and as to the Prospect property, the court entered a judgment of foreclosure in the amount of $898,357.40.

¶ 15 In March 2011, Joseph McCaffrey & Associates, the attorneys who had been representing defendant, filed a motion to withdraw as counsel, citing "irreconcilable differences." No order ruling on the motion is included in the record.

¶ 16 In September 2012, a public sale was held for the properties. The record contains a public notice of sale for each of the three properties, dated September 19, 2012, indicating that "pursuant to a Judgment of Foreclosure entered *** on November 18, 2010, [the] Sheriff of Cook County Illinois, will on September 27, 2012, at 12 Noon in the hallway outside of Room 701 of the Richard J. Daley Center, *** sell, at public auction," the properties. Each notice was certified as mailed to Joseph McCaffrey, indicating the date, place, and times of each sale.

¶ 17 On September 25, 2012, defendant, represented by counsel other than Joseph McCaffrey & Associates, filed an emergency motion to postpone the foreclosure sale, arguing that the notice of the judicial sale was not adequate.[3] The circuit court denied the motion.

¶ 18 Each of the three properties was sold at the judicial sale. A sheriff's report for each property, a certificate of sale, and a receipt upon sale, all dated November 15, 2012, reflect the following: each property was sold at the public sale on September 27, 2012; for the Burr property, Harris offered the highest bid at $1,350,000; for the Greenwood property, Harris offered the highest bid at $350,000; for the Prospect property, a third-party bidder, Maureen Block, offered the highest bid at $360,001. The sheriff's reports also indicate that the sale of

[3] Although the motion was filed in case no. 09 CH 8927, the motion refers to the judicial sale of all three properties and refers to the three cases as "consolidated."

each property was advertised "in a newspaper circulated to the general public in Cook County by publishing notice in both the real estate section and legal section for three consecutive weeks in compliance" with section 15-1507. A certificate of publication attached to the sheriff's reports show that the sales were advertised in the Chicago Daily Law Bulletin on August 20, 2012, September 6, 2012, and September 13, 2012, and in the Daily Herald on September 6, 2012, September 13, 2012, and September 20, 2012.

¶ 19 In November 2012, Harris filed a motion for an order confirming the sale, an order approving the report of sale and distribution, and to amend plaintiff's complaint on its face to reflect its name change for each of the three properties. Attached to each motion was an appraisal providing a "quick sale" value for each property, as determined by a licensed appraiser. According to the appraisals, the quick sale value of the Burr property was $1,575,000, the quick sale value of the Greenwood property was $435,000, and the quick sale value of the Prospect property was $450,000. The court set a briefing schedule and a hearing date for the motions to confirm sale.

¶ 20 In December 2012, defendant filed a response to Harris's motion to confirm sale, arguing that the notices by publication were defective.[4] Specifically, defendant argued that although Harris published notice of the sale in both the Chicago Daily Law Bulletin and the Daily Herald, "[t]he Daily Herald is circulated in the Northwest Suburbs of Chicago, but is not circulated to the general public in Winnetka, thus the notice is defective" and "the sale is defective as competitive bidding was prevented from occurring."

¶ 21 In January 2013, the circuit court entered an order confirming the sale of all three properties. The court specifically found that the notices required by section 15-1507(c) of the

[4] The record only contains a response to the motion to confirm sale for the Burr property.

Foreclosure Law were given and that the sales were fairly and properly made. In addition, the court ordered that the deed for the Burr property and the Greenwood property be issued to Harris. The court also ordered that Maureen Block was entitled to a deed of conveyance and possession for the Prospect property.

¶ 22 On February 25, 2013, the Cook County Sheriff issued a deed for the Prospect property to Maureen Block and the deed was recorded with the Cook County Recorder of Deeds on March 5, 2013. In addition, on March 14, 2013, Harris transferred the Greenwood property to Jeremy and James Waldron by special warranty deed. The deed was recorded with the Cook County Recorder of deeds on April 4, 2013.

¶ 23 Meanwhile, in February 2013, defendant filed a motion to vacate the confirmation of sale with respect to all three properties. In each motion, defendant argued that the terms of the sales were unconscionable and justice was not otherwise done. Specifically, defendant claimed that the Chicago Daily Law Bulletin and the Daily Herald were not used by buyers of real estate in the North Shore, where the properties were located, as a source of available real estate. Defendant also argued that the sale prices of the properties were "grossly inadequate." Defendant concluded that a "grossly inadequate sales price at the sale that is subject to confirmation standing on its own and separately coupled with advertising was not to the audience of residential purchasers looking to purchase in Winnetka each constitute a basis for the resulting terms of the sale being unconscionable and justice not being served and movant being straddled with the large deficiency."

¶ 24 In support of her motions, defendant attached a verified statement from Midge Powell which read:

> "I have been in the real estate business for over 27 years in Winnetka and know the North Shore real estate market. Based on my years of experience, buyers of real estate on the North Shore of which Winnetka[,] Illinois is a part use as a source of available real estate for purchase *** the local papers which includes The Wilmette Beacon, The Winnetka Current and the Winnetka Talk. The Chicago Law Bulletin [*sic*] and The Daily Herald are not considered or used by such buyers to locate available real estate on the North Shore to find real estate to purchase."

The letter also reflected estimates of the value of each of the properties. Powell estimated that the land and house value of the Burr property was $2,900,000, the land and house value of the Greenwood property was $500,000 to $525,000, and the land and house value of the Prospect property was $725,000.

¶ 25 Subsequently, defendant filed an addendum to her motion to vacate the confirmations of sale, stating that the Daily Herald did not publish in Winnetka, Illinois, and that Harris was the only party that was present at the public sale of the Burr and Greenwood properties.

¶ 26 In April 2013, Harris filed a response to defendant's motion to reconsider, arguing that defendant's motion should be denied because defendant "had an opportunity to object to the confirmation of the sale" prior to the court confirming the sales, and defendant "failed to provide any evidence or indicia of value of the real [properties] being foreclosed on."

¶ 27 In May 2013, the court held a hearing on the motion to vacate the confirmations of sale, where defendant argued that Harris did not advertise the public sale of the properties in the area where the properties were located and Harris's bids were low compared to the quick sale values

of the properties, indicating bad faith on the part of Harris. Defendant argued that a hearing should have been conducted at the time of confirmation, and concluded that the sales were unconscionable and justice was not served.

¶ 28 The circuit court denied defendant's motions to vacate. The court explained:

> "The arguments regarding the publications have been raised repeatedly and rejected in each case, and I continue to reject them. *** A sale might still be unconscionable or justice might still otherwise not have been done in the circumstance, Counsel argues, such as this where the purchase price is ostensibly so low that unconscionability is just glaring. I am not going to find that a sale which conformed in all respects to the requirements of the [Foreclosure Law] *** I am not going to hold that there is some sort of defect in the notice because it wasn't targeted to the specific area.
>
> As to the sale price, the -- my reading of this motion doesn't refer at all to the appraisals that the bank submitted -- may have submitted in conjunction with the initial motion. Those materials were not supplied to this Court for this motion, and the Court finds no basis for reconsidering the order proving the sale based on those possible prior appraisals.
>
> As to the appraisal submitted in conjunction with this motion, the new appraisal, I believe that is evidence that could have been submitted on the initial briefing, on the order approving

> sale. The motion indicates no reason that it could not have been submitted previously or was newly discovered. Moreover, there is no foundation whatsoever for the price that Ms. Powell lists for the various properties in this case. Ms. Powell simply lists the properties and lists her estimate as to the value and states nothing more than she's been in the real estate business for a number of years in Winnetka. There is no -- There are no comparables. There's no actual appraisal, no indication where those values came from other than that she apparently, by her own representation *** as experience in the target market. So I don't believe that any showings were made to the Court here for the application on the facts. I see no reason to reconsider the Court's prior ruling. The prior ruling will stand."

¶ 29 Defendant filed separate timely notices of appeal from the court's May 2013 order in each case and therefore each case was assigned a different appellate court case number: the Prospect property (case no. 1-13-1917), the Burr property (case no. 1-13-1918), and the Greenwood property (case no. 1-13-1919). This court granted a motion to consolidate the cases.

¶ 30 On appeal, defendant argues that the circuit court erred in denying her motions to vacate the confirmations of sale for each of the three properties. However, first we address Harris's contention that the appeals involving the Prospect property and the Greenwood property (case nos. 1-13-1917 and 1-13-1919, respectively) should be dismissed because both properties have been transferred to persons who were not parties to the underlying cases and who purchased the

properties in good faith. Harris argues that because this court cannot provide any relief to defendant in these two cases, the appeals should be dismissed as moot.

¶ 31 An appeal is considered moot when the reviewing court cannot grant the complaining party effectual relief. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 522-23 (2001). Illinois Supreme Court Rule 305(k) (eff. July 1, 2004) provides:

> "If a stay is not perfected within the time for filing the notice of appeal, or within any extension of time granted under subparagraph (c) of this rule, the reversal or modification of the judgment does not affect the right, title, or interest of any person who is not a party to the action in or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed; nor shall the reversal or modification affect any right of any person who is not a party to the action under or by virtue of any certificate of sale issued pursuant to a sale based on the judgment and before the judgment is stayed."

¶ 32 In *Steinbrecher*, John Steinbrecher brought an action against his two siblings, Jerome and Rosemary, seeking to partition property that the three siblings held together as tenants in common. *Steinbrecher*, 197 Ill. 2d at 516-17. The circuit court ruled the property could not be divided among the three tenants in common without prejudice and concluded that the property should be sold at a public sale. *Id.* The property was sold to the highest bidder, Moser Enterprises, Inc. and on September 24, 1998, the circuit court confirmed the sale and directed a quitclaim deed be recorded in Moser's name. *Id.* at 517-18. Rosemary filed post-trial motions,

which were denied, and then refused to vacate the property. *Id*. at 519. In October 1998, Moser sought leave to intervene for the limited purpose of enforcing its right to possession, which was Moser's first appearance in the litigation. *Id*. The circuit court granted Moser's petition for leave to intervene, granted Moser's motion for possession, and ordered Rosemary to vacate the property. *Id*. Rosemary appealed, but never filed a motion to stay the judgment in the appellate court. *Id*. at 519. The appellate court held that the case was not moot because Moser's intervention in October 1998 barred the application of the rule protecting nonparty purchasers. *Id*. at 520. The appellate court vacated the sale of the property. *Id*. John and Moser both timely appealed to the supreme court. *Id*.

¶ 33 The supreme court found that Rosemary's appeal was moot. *Id*. at 521. The court explained that Rule 305 protects "third-party purchasers of property from appellate reversals or modifications of judgments regarding the property, absent a stay of judgment pending the appeal." *Steinbrecher*, 197 Ill. 2d 514, 523 (2001). The court pointed out that the rule requires: (1) the property was passed pursuant to a final judgment; (2) the right, title, and interest of the property was passed to a person or entity who was not part of the proceedings; and (3) the litigating party failed to perfect a stay of judgment within the time allowed for filing a notice of appeal. *Id*. at 523-24. The court further explained:

> "Public policy of this state supports our conclusion. Illinois law protects the integrity and finality of property sales, including judicial sales. [Citations.] Indeed, it extends this protection to purchasers who without notice at the time of the purchase buy in good faith. This finality and permanence is relied on by both purchasers and others in connection with the purchase of the

> property. Absent this policy, no person would purchase real property involved in a judicial proceeding, if afterwards he incurred the hazard of losing the property due to facts unknown to him at the time of the sale." *Id*. at 528-29.

The court applied the requirements to the facts of the case before it, and noted that the rights to the property passed pursuant to a final judgment, to a nonparty to the litigation at the time of the judgment and sale, Moser, and Rosemary failed to perfect a stay of judgment. *Id*. at 524-26.

¶ 34 Similar to *Steinbrecher*, in the present case the Prospect property passed to Block pursuant to a final judgment: the confirmation of sale of the Prospect property to Block, who was also not a party to the case. Similarly, the Greenwood property passed to the Waldrons after the confirmation of sale, and the Waldrons were not parties to the case. Finally, defendant failed to perfect a stay of judgment in either case under Rule 305(k). Accordingly, we agree with Harris that appeal nos. 1-13-1917 and 1-13-1918 should be dismissed as moot. See *Schwind v. Mattson*, 17 Ill. App. 3d 182, (1974) (finding the appeal moot where a bank foreclosed on property, subsequently bought the property back at a judicial sale and sold the property to a third party, and the appellants failed to perfect a stay of judgment as required by the rule); see also *Horvath v. Loesch*, 87 Ill. App. 3d 615, 619-20 (1980) (where the plaintiffs, on appeal, challenged the propriety of an executed transfer of the subject property to third-party purchasers, but failed to perfect a stay in the appellate court, the appeal was moot).

¶ 35 Moreover, even if we did not dismiss the appeals related to the Prospect and Greenwood properties, we would nonetheless conclude that the trial court did not err in confirming the sales or in denying defendant's motions to vacate the sales.

¶ 36 The parties disagree as to the proper standard of review on the merits of this appeal. Harris suggests that the proper standard is an abuse of discretion, citing *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008). Defendant claims that the standard should be *de novo*, arguing that a deferential standard of review is inapplicable when the court has based its decision entirely on documentary evidence, citing *NAB Bank v. LaSalle Bank, N.A.*, 2013 IL App (1st) 121147, ¶ 14. However, our supreme court has specifically held that the provisions of the Foreclosure Law "have been construed as conferring on circuit courts broad discretion in approving or disapproving judicial sales." *Lewis*, 229 Ill. 2d at 178. Therefore, we agree with Harris that we review a court's decision to confirm or reject a judicial sale pursuant to the Foreclosure Law for an abuse of discretion. *Id.*; *CitiMortgage, Inc. v. Johnson*, 2013 IL App (2d) 120719, ¶ 18; *Sewickley, LLC v. Chicago Title Land Trust Co.*, 2012 IL App (1st) 112977, ¶ 26; *Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 5 (2006). "In our review, we determine whether the trial court's decision to deny a motion to vacate 'was a fair and just result, which did not deny [the moving party] substantial justice.' " *Burtley*, 371 Ill. App. 3d at 5 (quoting *Mann v. Upjohn Co.*, 324 Ill. App. 3d 367, 377 (2001)). We also review a circuit court's decision to deny a motion to vacate confirmation of sale for an abuse of discretion. *American Service Insurance Co. v. China Ocean Shipping Co. (Americas), Inc.*, 2014 IL App (1st) 121895, ¶ 42.

¶ 37 Whether a circuit court properly approved or confirmed a sale of property that has been foreclosed upon is governed by section 15-1508(b) of the Foreclosure Law. *Sewickley*, 2012 IL App (1st) 112977, ¶ 28. It provides, in pertinent part:

> "Upon motion and notice in accordance with 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. Unless the court finds that (i) a notice required in accordance with subsection (c) of Section 15-1507 was not given, (ii) the terms of sale were unconscionable, (iii) the sale was conducted fraudulently, or (iv) justice was otherwise not done, the court shall then enter an order confirming the sale." 735 ILCS 5/15-1508(b) (West 2012).

¶ 38 Defendant first argues that the trial court erred in confirming the sales because the notices of the sales were not published in newspapers with a connection to the Winnetka real estate market and, as a result, the public did not receive adequate notice of the sales and justice was not done.

¶ 39 Section 15-1507 of the Foreclosure Law governs the procedure for a judicial sale of real estate that was subject to foreclosure. 735 ILCS 5/15-1507(a) (West 2012). As to publishing notice of the sale, section 15-1507(c)(2) provides:

> "The notice of sale shall be published at least 3 consecutive calendar weeks (Sunday through Saturday), once in each week,*** by: (i)(A) advertisements in a newspaper circulated to the general public in the county in which the real estate is located, in the section of that newspaper where legal notices are commonly placed and (B) separate advertisements in the section of such a newspaper, which (except in counties with a population in excess of 3,000,000) may be the same newspaper, in which real estate other than real estate being sold as part of legal proceedings is commonly advertised to the general public; provided, that the

> separate advertisements in the real estate section need not include a legal description and that where both advertisements could be published in the same newspaper and that newspaper does not have sections, a single advertisement with the legal description shall be sufficient." 735 ILCS 5/15-1507(c)(2) (West 2012).

¶ 40 Based on the plain language of section 15-1507(c)(2), we conclude that Harris complied with the notice requirements. The record shows that Harris published notices of the judicial sale for each property in both the Daily Herald and the Chicago Daily Law Bulletin, which defendant concedes are newspapers circulated to the general public in Cook County, the county in which all three properties were located. The advertisements were published three consecutive calendar weeks, once each week. Although defendant admits that there was "technical compliance" with the statute, she nonetheless contends that the public did not receive adequate notice of the sales because the publications did not have any connection to the Winnetka real estate market.

¶ 41 In *Cragin Federal Bank For Savings v. American National Bank & Trust Co. of Chicago*, 262 Ill. App. 3d 115 (1994), the defendants appealed from the denial of their motion to vacate an order confirming a sale of property to the plaintiff bank after the bank had foreclosed the mortgage on the property. *Id*. at 116. The property was located in Lake Forest and, on appeal, defendants argued that " 'the terms of the sale were unconscionable and justice was not otherwise done' because the [b]ank published notice in the Vernon Hills News, which, according to the [defendants], does not serve the community of Lake Forest." *Id*. at 117. The defendants concluded that the failure to publish the notices in a newspaper with a connection to the Lake Forest real estate market failed to attract purchasers to the sale and therefore the bank was able to purchase the property for an abnormally low price. *Id*. at 120. However, the court concluded:

> "There is no evidence in this case *** that the Vernon Hills News and the other Lakeland papers which published notices of the public sale were so remote from the property as to suggest that the public did not receive adequate notice of the sale. Any determination that a Vernon Hills or other Lake County newspaper does not serve Lake Forest *or could not attract buyers to Lake Forest* would be based on pure speculation." [Emphasis added.] *Id*. at 121.

Here, Harris filed a properly supported motion to confirm the sale, at which point "the interested party opposing the sale bears the burden of proving that grounds exist sufficient for the trial court to not enter an order approving the sale." *Sewickley*, 2012 IL App (1st) 112977, ¶ 35. Similar to the defendants in *Cragin*, defendant in the present case responded to the motions to confirm sale by claiming, without any factual support, that the newspapers in which the notices were published, the Daily Herald and the Chicago Daily Law Bulletin, did not serve persons interested in purchasing properties in Winnetka. Based on defendant's unsupported arguments, the circuit court properly entered the orders to confirm the sales.

¶ 42 We acknowledge that, in her motions to vacate the confirmations of sale, defendant offered evidence to support her argument that the notices of the sales were not sufficient. In the motions, defendant attached Powell's verified statement that, in Powell's experience, the Chicago Daily Law Bulletin and the Daily Herald were not used by buyers looking for available real estate on the North Shore; and in the addendum to the motion, defendant attached documentation showing that the Daily Herald does not circulate to Winnetka. However, we note that nothing on the record suggests that this information was unavailable to defendant before the

court entered the order confirming the sales. A circuit court is "well within its authority to not disrupt a judicial sale, especially one that has already been approved after a hearing, because of a party's negligence in not making its arguments sooner." *Sewickley*, 2012 IL App (1st) 112977, ¶ 36; see also *River Village I v. Central Insurance Cos.*, 396 Ill. App. 3d 480, 493 (2009) (a motion to reconsider is meant to bring newly discovered evidence that was not available at the time of the initial hearing to the attention of the court and a court is "well within its discretion to deny such a motion and ignore its contents when it contains material that was available prior to the hearing at issue but never presented."). "Litigants should not be allowed to 'stand mute, lose a motion, and then frantically gather evidentiary material to show that the court erred in its ruling.' " *River Village*, 396 Ill. App. 3d at 493 (quoting *Gardner v. Navistar International Transportation Corp*., 213 Ill. App. 3d 242, 248 (1991)). We find the circuit court was well within its discretion to disregard Powell's verified statement and the documentation showing the circulation of the Daily Herald and, therefore, the court properly denied defendant's motions to vacate the confirmations of sale.

¶ 43 Defendant also relies on Powell's verified statement, and specifically the land and house values Powell provided for each property, to argue that there is a "significant discrepancy in the appraisals, which is unexplained," and argues that although inadequacy of price alone is not a reason to "upset a judicial sale, where there is fraud or some other irregularity in the foreclosure proceedings, the price at which the property is sold cannot be the conclusive measure of its value." Defendant concludes that these low prices combined with Harris's failure to publish the notices of sale in a publication that was likely to reach a Winnetka buyer created significant irregularities in the foreclosure and, as a result, the sales were unconscionable.

¶ 44 We again note that defendant did not provide the court with Powell's verified statement until after the court had entered orders confirming the judicial sales and did not provide any reason why Powell's statement could not have been obtained prior to the confirmations, and therefore we find the court properly disregarded the statement. *River Village*, 396 Ill. App. 3d at 493. Furthermore, although Powell's statement provides values for "land and house," her values are completely conclusory. See *Sewickley*, 2012 IL App (1st) 112977, ¶ 39 (finding an exhibit attached to a motion for reconsideration lacking, observing that the defendants "did not even attach the comparable properties, if any, that the appraiser used in arriving at his figure for the worth of the property" and that, based on the exhibit, no one could "evaluate whether the conclusion of the appraiser is in any way an accurate reflection of the property's fair market value").

¶ 45 In addition, in *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, the appellate court observed:

> "The price of properties sold at judicial sales is dependent on a number of factors, and these properties may not be sold for their full value. [Citations.] When there is no fraud or other irregularity in the foreclosure proceeding, the price at which the property is sold is the conclusive measure of its value. [Citation.] [I]t is a firmly established rule that unless there is evidence of mistake, fraud, or violation of duty by the officer conducting the sale, mere inadequacy of price alone is not sufficient cause for setting aside a judicial sale. [Citations.]" [Internal quotation marks omitted.] *Ortiz*, 2012 IL App (1st) 112755, ¶ 35.

¶ 46 Here, Harris provided the court with appraisals for the quick sale value of each property from a licensed appraiser. The quick sale value of the Burr property was $1,575,000, and the Burr property was sold to Harris for $1,350,000. The quick sale value of the Greenwood property was $435,000, and the Greenwood property was sold to Harris for $350,000. The quick sale value of the Prospect property was $450,000, and the Prospect property was sold to Block for $360,001. Considering the minimal discrepancies between the quick sale value of the properties and the purchase prices paid at the judicial sale, the notices of sales properly published pursuant to section 15-1507(c)(2) of the Foreclosure Law, and a failure of defendant to show fraud or other irregularities, we conclude that the sales of the properties were not unconscionable and the court did not abuse its discretion in denying defendant's motions to vacate the confirmations of sale.

¶ 47 Defendant next contends that the court erred by denying her motion to vacate the confirmations of sale because notice was not provided to defendant as required by section 15-1507(c) of the Foreclosure Law.

¶ 48 Section 15-1507(c)(3) of the Foreclosure Law provides that the party who gives notice of the public sale shall give notice to parties in the action who have not been found in default for failure to plead "in the manner provided in the applicable rules of court for service of papers other than process and complaint." 735 ILCS 5/15-1507(c)(3) (West 2012). Illinois Supreme Court Rule 11(a) dictates that if a party is represented by an attorney of record, "service shall be made upon the attorney." Ill. S. Ct. R. 11(a) (eff. Dec. 29, 2009).

¶ 49 Here, defendant claims that the notices of sale were served upon her through her "former attorney," Joseph McCaffrey. However, although the record on appeal contains a March 2011 motion to withdraw from McCaffrey, no order on the motion is included in the record and

defendant admits that the motion "was apparently never ruled upon." Despite that defendant "did not consider McCaffrey to be her attorney," the fact remains that, as of September 2012, McCaffrey was defendant's attorney of record. Therefore, Harris complied with section 15-1507 when it sent the notices of the judicial sales to McCaffrey. In addition, defendant admits that she received notice of the sales prior to their occurrence and she filed a motion to stay the sales. Thus, any failure of McCaffrey to notify defendant of the sales did not prejudice her in any way. Defendant has not cited any case law suggesting otherwise. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (the argument section of appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities *** relied on"). In addition, because we find that Harris provided legally proper notice to defendant pursuant to section 15-1507(c)(3) of the Foreclosure Law, we conclude that the trial court did not err in denying defendant's emergency motions to postpone the foreclosure sales.

¶ 50 Defendant also suggests that some of the publications were noticed in violation of a bankruptcy stay and were consequently void. However, Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008) requires that the argument section of the appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Where a party does not comply with Rule 341(h)(7) by failing to make reasoned argument and failing to provide citations to authority, that party forfeits review of the argument. *Vancura v. Katris*, 238 Ill. 2d 352, 369-70, 373 (2010). Here, defendant has not followed any of the Rule 341(h)(7) requirements. She has not included any bankruptcy court filing or orders in the record on appeal, and there is no indication of when or whether any bankruptcy petition was actually filed or any bankruptcy stay was entered. Instead, she has cited to circuit court orders in the record that make only passing references to a "status of bankruptcy."

In addition, defendant has not cited any authority and has not presented any reasoned argument to support her conclusion. See *Vincent v. Doebert*, 183 Ill. App. 3d 1081, 1087 (1989) ("a reviewing court is entitled to have issues clearly defined with pertinent authority and cohesive legal arguments presented [citation] and issues not sufficiently presented can be waived [citation]"). Finally, defendant never presented her contention that the notices published during the bankruptcy stay were void before the trial court. Arguments not raised before the circuit court are forfeited. *McKinley Foundation at University of Illinois v. Illinois Department of Labor*, 404 Ill. App. 3d 1115, 1120 (2010) (citing *Vine Street Clinic v. HealthLink, Inc.*, 222 Ill. 2d 276, 300-01 (2006)). Therefore, defendant has forfeited this issue.

¶ 51 Defendant next argues that the court erred in denying her motions to vacate the confirmations of sale because the court failed to hold an evidentiary hearing on actual value of the properties. Specifically, defendant claims that the court abused its discretion because "there is significant disparity between Harris'[s] appraisals and [defendant's] verified statement of property values, as proffered by real estate agent Midge Powell."

¶ 52 Section 15-1508(b) provides that "[u]pon motion and notice in accordance with court rules applicable to motions general, which motion shall not be made prior to sale, the court shall conduct a hearing to confirm the sale." This section "was intended to create a new, but limited, level of inquiry of foreclosure sales and was not intended to require an evidentiary hearing after each sale." *Sewickley*, 2012 IL App (1st) 112977, ¶ 29. The decision whether to grant an evidentiary hearing related to the confirmation of a judicial sale rests in the "sound discretion" of the circuit court. *Id*. (citing *Burtley*, 371 Ill. App. 3d at 5-6).

¶ 53 To determine the extent of the hearing that should be afforded to a defendant, the court should consider the defendant's petition or motion and if there is an allegation of a current

appraisal or other current indicia of value "which is so measurably different than the sales price as to be unconscionable, then a hearing should be afforded the defendant." *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105, 115 (1993). A foreclosure price does not need to match the actual or estimated value of the property: this rule is premised on the "well-established acknowledgement that property does not bring its full value at forced sales and that the price depends on many circumstances for which the debtor must expect to suffer a loss." *Burtley*, 371 Ill. App. 3d at 8. For example, in *Burtley*, the defendant offered his opinion that the foreclosed property value was twice the amount the foreclosing bank had bid at a judicial sale. *Id*. at 9. However, the court rejected the defendant's argument that the sale price was so low as to warrant an evidentiary hearing, because "the issue is not what [the defendant] valued the property at, but what a party was willing to pay at a foreclosure sale." *Id*. at 8.

¶ 54 Here, the only indicia of value presented before the property sales were confirmed was the appraisals offered by Harris. As we discussed above, the land and house values offered by Powell in her verified statement were not actual appraisals, were not based upon comparable homes, and were simply Powell's own opinion. Therefore, they had no evidentiary value at all and were properly disregarded by the circuit court. Compared to the quick sale values as estimated in the Harris appraisals, the sale prices for the properties were not so low as to require an evidentiary hearing and the court did not abuse its discretion by not conducting an evidentiary hearing. Furthermore, the cases on which defendant relies are distinguishable. See *JP Morgan Chase Bank v. Fankhouser*, 383 Ill. App. 3d 254, 265-66 (2008) (where the offered indicia or value showed the property was valued between $325,000 and $385,000, and the property sold for $32,212.40, the drastic difference between the prices necessitated an evidentiary hearing); *Commercial Credit Loans, Inc. v. Espinoza*, 293 Ill. App. 3d 915, 927-28 (1997) (finding that the

terms of the sale were unconscionable where the value of the property at issue was six times more than what was bid at the sale); *Merchants Bank v. Roberts*, 292 Ill. App. 3d 925, 931 (1997) (requiring a hearing where the owners presented their opinion that the two parcels of land which were foreclosed upon were worth $400,000, when the sale price was $200,000, and where the defendants asserted a meritorious defense that they did not intend for both parcels to be pledged as security for the mortgage that was the subject of the action).

¶ 55 Finally, defendant contends that the circuit court erroneously "failed to consider the issues of Harris'[s] bad faith, ulterior motive, or intent to defraud." Defendant concedes that this issue was not raised in her opposition to the motions for confirmations of sale or her motions to vacate the confirmations of sale, but nonetheless argues that we "can take note of the highly contentious nature of the proceedings, as well as [defendant's] claims against Harris" brought before the Northern District of Illinois (*Aleshire v. BMO Harris*, case no. 08 CV 7367), without any citation to authority. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (the argument section of appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities *** relied on"). Therefore, we find these arguments have been forfeited and cannot now be raised on appeal. *McKinley*, 404 Ill. App. 3d at 1120 (citing *Vine Street Clinic*, 222 Ill. 2d at 300-01).

¶ 56 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 57 Affirmed.