FOURTH DIVISION
September 30, 2016

No. 1-15-1703



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| U.S. BANK NATIONAL ASSOCIATION, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County |
| | ) | |
| v. | ) | No. 11 CH 25322 |
| | ) | |
| VALERIE JENKINS, | ) | Honorable |
| | ) | Daniel Patrick Brennan, |
| Valerie-Appellant. | ) | Judge Presiding. |

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JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held*: Trial court's entry of summary judgment and judgment of foreclosure in favor of plaintiff affirmed. Plaintiff had standing to pursue mortgage foreclosure action against defendant, and no genuine issue of material fact existed as to defendant's default on, and responsibility for, mortgage loan. Trial court did not abuse its discretion in confirming judicial sale, where none of grounds for vacating sale in relevant foreclosure statute applied. Defendant failed to show that plaintiff violated loan modification or loss mitigation requirements and did not prove by a preponderance of evidence that she had applied for the Making Homes Affordable Program.

¶ 2 In this mortgage foreclosure suit brought by plaintiff U.S. Bank National Association (U.S. Bank), defendant Valerie Jenkins (Valerie) appeals from the circuit court's order entering a judgment of foreclosure and from the court order approving the sale.

¶ 3 Valerie's central argument is that her now-deceased husband, not she, was the party to the mortgage and note at issue because she did not sign the note attached to the complaint. Her next argument centers on U.S. Bank's conduct regarding loan modification. Defendant claims that U.S. Bank: sent her ambiguous, incomplete and false information regarding the loan modification process; committed fraud and misrepresentation by luring her into a loan modification while concurrently attempting a foreclosure and sale process on the subject property; and violated the "Making Homes Affordable Program" by proceeding to sale after Valerie had applied for assistance. Valerie also argues that the court should not have entered an order confirming the sale when the sale price was unconscionable.

¶ 4 Most, if not all, of the issues raised by Valerie have been forfeited, either because they were not raised in the trial court, are not adequately argued on appeal, are not supported with record cites or any evidence, are incapable of review absent transcripts of proceedings (which are not contained in the record), or for a combination of these reasons.

¶ 5 Despite forfeiture, U.S. Bank has addressed all of Valerie's contentions, and we have considered them on the merits. We agree with U.S. Bank that all of Valerie's arguments are meritless. We affirm the judgment of the circuit court in all respects.

¶ 6 I. BACKGROUND

¶ 7 On August 21, 2006, Valerie and her husband entered into a home mortgage loan. The mortgage loan was later assigned to U.S. Bank.[1]

¶ 8 In early 2011, Valerie and her husband stopped making their mortgage payments. On July 19, 2011, U.S. Bank filed a complaint to foreclose on the mortgage. [2]

[1] Valerie does not raise the assignment as an issue.

[2] U.S. Bank correctly notes that the file stamp on the original complaint incorrectly states that the year was "2012," but that this discrepancy has no bearing on the issues on appeal.

¶ 9 Valerie's husband died on October 15, 2011. When U.S. Bank learned of his death, it moved to appoint a personal representative for Valerie's husband and to file an amended complaint, both of which the court granted.

¶ 10 The amended complaint was filed on March 20, 2012. In paragraph two, U.S. Bank stated that it attached a copy of the mortgage as "Exhibit A" and a copy of the note as "Exhibit B." Both contain the signatures of Valerie and her husband. Paragraph three of the complaint alleged factual information concerning the mortgage (in 20 subparagraphs).

¶ 11 Valerie, represented by counsel, answered the complaint. She denied the allegations of paragraph two and demanded that U.S. Bank submit competent evidence. She did not deny any of the remaining allegations, including the allegations in paragraph three that she was one of the mortgagors and that she had "executed the Note." She also did not deny the date or amount of default. She did not deny that U.S. Bank had standing, and she filed no affirmative defenses. She demanded only that U.S. Bank submit competent evidence. Valerie further requested that the court enter judgment in her favor and award her attorney fees and costs incurred in responding to the complaint.

¶ 12 The personal representative filed a report and a motion for discharge. He noted that he had examined the file and reviewed documents including the complaint, the note, the mortgage, the title report, and all returns of service. He reported on his efforts to find heirs of the decedent. He stated that he did not believe there were viable defenses for the action. He further stated that the case should proceed as a default matter based on U.S. Bank having satisfied its statutory burden.

¶ 13 On August 15, 2012, Valerie terminated her attorney. Shortly thereafter, Valerie filed for bankruptcy, and an automatic stay went into effect. Once it was lifted, Valerie's counsel filed a motion for leave to withdraw. On September 11, 2013, the court granted the motion.

¶ 14 On December 2, 2013, U.S. Bank filed a motion for summary judgment, arguing that Valerie's general denials in her answer, and lack of supporting documentation, failed to set forth sufficient facts to indicate that there was a genuine issue of material fact. In support of its motion, U.S. Bank submitted an affidavit setting forth facts establishing that Valerie was in default and the amounts that remained due. U.S. Bank attached the loan's payment history going back to 2010, before the default. U.S. Bank also submitted a loss mitigation affidavit showing that, in compliance with its obligations under the applicable loss mitigation programs, U.S. Bank had taken the following steps: solicitation letters, outbound calls, additional–information-required letters, and denial/appeal period letters. According to the affidavit, Valerie had been denied both "MHA Loss Mitigation Options" and "Proprietary Loss Mitigation Options."

¶ 15 Valerie filed a *pro se* response to the motion for summary judgment. She did not submit a counteraffidavit. Notably, Valerie did not dispute that she had signed the note and mortgage or that that she had defaulted on the loan. Valerie did not challenge the loss mitigation affidavit but did challenge the affidavit that had set forth facts establishing that Valerie was in default and the amounts that remained due—she claimed it was inadmissible pursuant to Illinois Supreme Court Rules 191(a) (eff. Jan.4, 2013) and 113(c)(2)(ii), (iii) (eff. May 1, 2013), but argued only that the records attached to the affidavit were insufficient because they did not include "an appropriate payment history for the period of August 21, 2006, when the mortgage was executed, to January 3, 2010." She did not explain the relevance of her payment history years before her default.

¶ 16 On May 19, 2014, the circuit court granted U.S. Bank's motion for summary judgment and judgment of foreclosure. The record does not contain a report of the proceedings. The court determined that Valerie's answer, "as pleaded without sufficient supporting documentation," did not raise a genuine issue of material fact sufficient to preclude the entry of summary judgment. And, as we have noted, Valerie had not submitted a counteraffidavit, or any documentation, in opposing plaintiff's motion for summary judgment.

¶ 17 On November 6, 2014, the foreclosure sale proceeded. U.S. Bank was the highest bidder, with its $68,000 bid.

¶ 18 On November 20, 2014, U.S. Bank filed its motion for an order approving the report of sale and distribution.

¶ 19 On April 21, 2015, now represented by new counsel, Valerie filed an amended response, claiming that the sale was improper pursuant to section 15-1508(b) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508)(b) (West 2010). Valerie attached "Affirmative Allegations" to her response, which contained four "counts." "Count I" alleged that Valerie did not sign the note attached to the complaint. "Count II" claimed that, throughout the loan modification and foreclosure process, Valerie received conflicting information regarding her status with respect to title to the home and her status as a mortgagor. "Count III" alleged that U.S. Bank violated the "Making Homes Affordable Program" by proceeding to sale after Valerie had applied for assistance. "Count IV" alleged that the sales price of $68,000 was unconscionable based on the "resulting outrageous deficiency judgment" against Valerie for $118,620.19. Valerie attached an affidavit stating that she did not sign the note.

¶ 20 On May 6, 2015, the circuit court entered an order approving the report of sale and distribution, confirming the sale, and granting possession of the property to U.S. Bank. The court

also entered judgment against Valerie in the amount of $118,620.19. Once again, the record does not contain a report of the proceedings. Valerie appeals.[3]

¶ 21 II. ANALYSIS

¶ 22 We have already noted that the record contains no transcripts for either the May 19, 2014 hearing, in which the circuit court granted U.S. Bank's motion for summary judgment, or the May 6, 2015 hearing, in which the circuit court entered an order approving the report of sale and distribution, confirming the sale, and granting possession of the property to U.S. Bank. "An appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 23 Moreover, although Valerie purports to raise four separate issues on appeal, she has failed to provide any citations to the record whatsoever in her brief. Thus, Valerie's brief does not comply with Supreme Court Rule 341(h)(7), which requires an appellant's brief to include:

> "Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. Evidence shall not be copied at length, but reference shall be made to the pages of the record on appeal or abstract, if any, where evidence may be found. Citation of numerous authorities in support of the same point is not favored. Points not argued 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. Feb. 6, 2013).

[3] This court allowed Valerie's *pro se* late notice of appeal and allowed her numerous extensions of time to file her brief. Valerie obtained appellate counsel who filed a brief on March 8, 2016. On March 23, 2016, we granted counsel's motion for leave to withdraw.

This court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010). An appellant forfeits issues that are "[i]ll-defined and insufficiently presented." *Id.*; see also *Law Offices of Nye & Associates, Ltd. v. Boado*, 2012 IL App (2d) 110804, ¶ 24 ("An appellant who fails to present cogent arguments supported by authority forfeits those contentions on appeal."). "The appellate court is not merely a repository into which an appellant may dump the burden of argument and research, nor is it the obligation of this court to act as an advocate or seek error in the record." (Internal quotation marks omitted). *CE Design, Ltd. v. Speedway Crane*, LLC, 2015 IL App (1st) 132572, ¶ 18; accord *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 10.

¶ 24 Additionally, Supreme Court Rule 341 states that "[t]he appellant must include a concise statement of the applicable standard of review for each issue, with citation to authority, either in the discussion of the issue in the argument or under a separate heading placed before the discussion in the argument." Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013). Valerie has also failed to discuss the standard of review for any of the issues she raises. "The rules of procedure concerning appellate briefs are rules, not mere suggestions, and it is within our discretion to strike a brief and dismiss the appeal for failure to comply with those rules." *Korzen*, 2013 IL App (1st) 130380, ¶ 10.

¶ 25 In spite of these numerous deficiencies, U.S. Bank has responded to Valerie's arguments. Thus, although we could justifiably strike Valerie's brief, or dismiss her appeal, based on these supreme court rule violations, we choose to address this appeal. See *id.* (reviewing court has discretion to review appeal despite multiple Rule 341 violations); *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 19 (same).

¶ 26 A. May 19, 2014 Judgment of Foreclosure

¶ 27 We will first address Valerie's challenges to the grant of summary judgment and judgment of foreclosure. Generally, an allegedly meritorious defense to an underlying foreclosure judgment is insufficient once the trial court enters an order confirming the judicial sale. *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 26; *DLJ Mortgage Capital, Inc. v. Frederick*, 2014 IL App (1st) 123176, ¶ 18. "To vacate both the sale and the underlying default judgment of foreclosure, the borrower must not only have a meritorious defense to the underlying judgment, but must establish under section 15-1508(b)(iv) that justice was not otherwise done because either the lender, through fraud or misrepresentation, prevented the borrower from raising his meritorious defenses to the complaint at an earlier time in the proceedings, or the borrower has equitable defenses that reveal he was otherwise prevented from protecting his property interests." *McCluskey*, 2013 IL 115469, ¶ 26.

¶ 28 Valerie has raised many of her arguments as a challenge to *both* the judgment of foreclosure and the judgment approving the judicial sale, claiming that that justice was not otherwise done. We choose to address her arguments in both contexts.

¶ 29 Summary judgment is appropriate where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, reveal that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *CitiMortgage, Inc. v. Bukowski*, 2015 IL App (1st) 140780, ¶ 17. We review *de novo* the trial court's May 19, 2014 order granting summary judgment and judgment of foreclosure. *Id.*

¶ 30 Valerie's first argument is that her now-deceased husband was the party to the mortgage and note at issue, but she was not. She claims that she never signed the note on August 21, 2006.

Valerie also states that she signed a note and mortgage in 2004 but contends that U.S. Bank lured her into signing the note by misrepresenting that she would not be a responsible party on the loan. She claims that she was advised (by whom, she does not say) that she would automatically be removed from that mortgage loan in six months and would not be responsible for the mortgage. She further states, however, that this 2004 loan was paid in full in 2006.There are no copies of the 2004 documents in the record, nor does Valerie explain their relevance to this mortgage foreclosure action. More importantly, in opposing summary judgment, Valerie submitted no counteraffidavit, or other evidence, supporting these claims.

¶ 31 As noted earlier (see *supra*, ¶ 10), in paragraph two of the amended complaint, U.S. Bank attached as exhibits both a copy of the mortgage and a copy of the note, and Valerie's signature appears on both. As U.S. Bank notes, Valerie did not deny the authenticity of the note or her signature. See *Korzen*, 2013 IL App (1st) 130380, ¶ 45 (where defendants in mortgage foreclosure action failed to "specifically deny" the authenticity of their signatures on the note, the signatures were deemed admitted). Nor did Valerie deny the authenticity of the mortgage and note in a sworn statement; thus, they were deemed admitted. As we have explained: "If a defendant truly wishes to deny the authenticity of a mortgage or note, he must do so under oath so as to subject himself to a criminal perjury charge if his denial is knowingly false." *Id*. ¶ 41.[4]

¶ 32 If a party moving for summary judgment supplies facts which, if not contradicted, would entitle that party to a judgment as a matter of law, the party opposing motion for summary judgment "cannot rely on his pleadings alone to raise issues of material fact." *Purtill v. Hess*, 111 Ill. 2d 229, 240-41 (1986). "Denials in a defendant's answer do not create a material issue of

[4] As U.S. Bank further notes, Valerie did not raise any issue of fraud or forgery as an affirmative defense before the entry of summary judgment, nor did she mention them in her response to the motion. *After* the judicial sale occurred, Valerie submitted an affidavit, in which she stated that she did not sign the note, which we address below.

genuine fact to prevent summary judgment." (Internal quotation marks omitted.) *US Bank, National Ass'n v. Advic*, 2014 IL App (1st) 121759, ¶ 31. Although Valerie generally denied the allegations in paragraph two, that general denial did not create a genuine issue of material fact as to Valerie's default on, and responsibility for, the mortgage loan.

¶ 33 Similarly, to the extent Valerie now attempts to raise an issue of standing, the lack of standing is an affirmative defense, which is forfeited if not raised in a timely fashion in the trial court. *Countrywide Home Loans Servicing, LP v. Clark*, 2015 IL App (1st) 133149, ¶ 38; see also *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 6-7 (2010) (defendant forfeited issue of standing by failing to raise it before entry of judgment of foreclosure). Valerie did not raise the issue of standing in the trial court. Thus, Valerie's attempt to challenge U.S. Bank's standing on appeal fails. She has forfeited the issue.[5]

¶ 34 But any argument that U.S. Bank lacked standing is also meritless. "[T]he mere attachment of a note to a complaint is *prima facie* evidence that plaintiff owns the note." *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 26. As U.S. Bank notes, it attached a copy of the original note to its complaint, and the note contained signatures of both Valerie and her husband. We agree with U.S. Bank that this demonstrated that U.S. Bank owns the note and has standing. Valerie filed no reply brief on appeal addressing U.S. Bank's contention; she has failed to show that U.S. Bank lacked standing. In sum, apart from forfeiting the issue, any argument that U.S. Bank lacked standing has no merit.

[5] We say "to the extent" she raises the issue of standing because Valerie has claimed in her brief, without any citation to the record, that she "previously plead [*sic*] that Appellant was not a party and U.S. Bank had no standing and is an affirmative defense [*sic*] as Appellants previous trial attorney pled in the trial court as per Petitioners directed." Not only is this contention unclear, but it contains inaccurate assertions regarding the trial court proceedings. Valerie's brief is replete with similarly imprecise "arguments."

¶ 35 Valerie's next argument directed at the judgment of foreclosure is that U.S. Bank sent her ambiguous, incomplete and false information regarding the loan modification process. She specifically contends that U.S. Bank violated Supreme Court Rules specific to mortgage foreclosure cases, including Rule 99.1 (Mortgage Foreclosure Mediation Programs) (eff. Mar. 13, 2013), Rule 113 (Practice and Procedure in Mortgage Foreclosure Cases) (eff. May 1, 2013), and Rule 114 (Loss Mitigation Affidavit) (eff. May 1, 2013). She also claims that U.S. Bank "failed to file affidavits pursuant to Supreme Court Rule 191(a) and [Rule] 113(c)(2)(ii)." We agree with U.S. Bank that Valerie's arguments regarding Supreme Court Rules 99.11 (Mortgage Foreclosure Mediation Programs) (eff. Mar. 13, 2013) and Rule 114 (Loss Mitigation Affidavit) (eff. May 1, 2013) "are forfeited several times over."

¶ 36 First, Valerie's arguments pertaining to Rule 99.1 or Rule 114 are forfeited because she failed to raise them in the trial court. Issues not presented in the trial court and properly preserved for review should not be considered for the first time on appeal (*In re Estate of Zivin*, 2015 IL App (1st) 150606, ¶ 25), even in the case of summary judgment. *Cabrera v. ESI Consultants, Ltd*., 2015 IL App (1st) 140933, ¶ 106; *In re County Collector of Du Page County*, 397 Ill. App. 3d 301, 309 (2009), *Chandler v. Doherty*, 299 Ill. App. 3d 797, 806 (1998). Valerie did not raise any purported violations of Rule 99.1 or Rule 114 in either her response to U.S. Bank's motion for summary judgment, or her amended response to U.S. Bank's motion for an order approving the sale.

¶ 37 The second reason these arguments are forfeited is Valerie's failure, in her brief, to specifically argue *how* U.S. Bank violated Rule 99.1 or Rule 114. As we have noted, Supreme Court Rule 341(h)(7) requires an appellant to present argument that contains the contentions of

the appellant "and the *reasons* therefor, with citation of the authorities and the pages of the record relied on." (Emphasis added.)

¶ 38 The final reason these arguments are forfeited is Valerie's failure to include a transcript of proceedings. As noted earlier, pursuant to *Foutch*, 99 Ill. 2d at 391-92, where an appellant fails to meet her burden of including, in the record on appeal, a sufficient record of the proceedings at trial, we presume the order entered by the trial court was in conformity with law and had a sufficient factual basis.

¶ 39 In sum, Valerie forfeited her arguments regarding Supreme Court Rules 99.11 (Mortgage Foreclosure Mediation Programs) (eff. Mar. 13, 2013) and Rule 114 (Loss Mitigation Affidavit) (eff. May 1, 2013). Thus, we need not address U.S. Bank's additional (and well-taken) arguments that these claims are meritless.

¶ 40 Valerie's arguments that U.S. Bank's affidavits failed to comply with Supreme Court Rule 113 (Practice and Procedure in Mortgage Foreclosure Cases) (eff. May 1, 2013) and Supreme Court Rule 191(governing requirements for affidavits) (eff. Jan. 4, 2013), fare no better. Although she raised these arguments in response to U.S. Bank's motion for summary judgment, she again fails to present any cogent argument to this court. More importantly, however, Rule 113(a) states that the rule applies "only to those foreclosure actions filed on or after the effective date of May 1, 2013." Ill. S. Ct. R. 113(a) (eff. May 1, 2013). This action was originally filed on July 19, 2011, and the amended complaint was filed on March 20, 2012. Thus, Rule 113 is inapplicable, and we need not further address Valerie's arguments to the extent that they are premised on purported violations of this rule.

¶ 41 Only Rule 191 applied to the affidavits filed by U.S. Bank. Once again, Valerie fails to present any argument as to why U.S. Bank's affidavits did not comply with Rule 191. The only

reference to the rule in her brief is one sentence: "The lender failed to file affidavits pursuant to Supreme Court Rule 191(a)."

¶ 42 Rule 191(a) states, in relevant part, that

> "Affidavits in support of and in opposition to a motion for summary judgment under section 2-1005 of the Code of Civil Procedure *** shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all documents upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto." Ill. S. Ct. R. 191(a) (eff. Jan. 4, 2013).

¶ 43 In the trial court, Valerie claimed a violation of Rule 191 in that "the copies of the records attached to the affidavit are insufficient because they do not include an appropriate payment history for the period of August 21, 2006, when the mortgage was executed, to January 3, 2010." But Valerie did not explain the relevance of her payment history several years before her default, in either the trial court or in her brief on appeal, much less how that objection would have anything to do with Rule 191.

¶ 44 We agree with U.S. Bank that its affidavit complied with Rule 191(a). See *US Bank, National Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶¶ 26-27 (bank employee's affidavit contained sufficient factual detail to satisfy Rule 191, where affiant stated she had personal knowledge of facts stated in affidavit based on her review of relevant loan documents). As U.S. Bank notes, in its affidavit of the amounts due and owing, the affiant (who was the vice president of loan documentation for Wells Fargo Bank, the servicing agent for U.S. Bank) stated that he

had personal knowledge of Wells Fargo Bank's business records and how they were kept in the regular course of business for the purpose of servicing mortgage loans, and he described how such computerized records were generated and maintained. He confirmed that the attached payment history was such a record.

¶ 45 Moreover, Valerie did not submit a counteraffidavit, or any other evidence, contradicting the affiant's sworn statements. Where an affidavit is filed in support of a motion for summary judgment, and the party opposing the motion has not challenged or contradicted the affidavit by filing a counteraffidavit or presenting any other evidence, the facts stated in the affidavit are deemed admitted. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 262 (2004); *Zedella v. Gibson*, 165 Ill. 2d 181, 185 (1995); *Advic*, 2014 IL App (1st) 121759, ¶ 31.

¶ 46 For the foregoing reasons, we affirm the circuit court's May 19, 2014 order granting U.S. Bank's motion for summary judgment and judgment of foreclosure.

¶ 47 B. May 6, 2015 Order Approving Sale

¶ 48 We next address Valerie's challenges to the May 6, 2015 court order approving the report of sale and distribution, confirming the sale, and granting possession of the property to U.S. Bank. We first discuss the standard of review.

¶ 49 After a judicial sale and a motion to confirm the sale has been filed, the trial court's decision to confirm or vacate the sale is governed by the mandatory provisions of section 15-1508(b) of the Foreclosure Law, which has been construed as conferring broad discretion on the circuit court. *McCluskey*, 2013 IL 115469, ¶ 18; accord *Household Bank, FSB v. Lewis*, 229 Ill.2d 173, 178 (2008). Thus, we review the court's May 6, 2015 decision to approve the report of sale and distribution, confirm the judicial foreclosure sale, and grant possession of the property to U.S. Bank for an abuse of discretion. *Household Bank*, 229 Ill. 2d at 178. "A trial

court abuses its discretion when it acts arbitrarily without the employment of conscientious judgment or if its decision exceeds the bounds of reason and ignores principles of law such that substantial prejudice has resulted. [Citation.]" (Internal quotation marks omitted.) *Wells Fargo Bank, N.A. v. Hansen*, 2016 IL App (1st) 143720, ¶ 14.

¶ 50 Section 15-1508(b) of the Foreclosure Law requires that a sale *shall* be confirmed unless the court finds that: (i) notice of the sale was not given; (ii) the terms of the sale were unconscionable, (iii) the sale was conducted fraudulently; or (iv) justice was otherwise not done. 735 ILCS 5/15-1508(b) (West 2010)). Thus, the party seeking to vacate a judicial sale is limited to the three specified grounds in subsections (i),(ii), and (iii) that relate to defects in the sale proceedings, or to the fourth ground, that " 'justice was not otherwise done.'[Citation.] " *McCluskey*, 2013 IL 115469, ¶ 18. Valerie relies on subsection ii ("the terms of the sale were unconscionable") and subsection iv ("justice was otherwise not done."). 735 ILCS 5/15-1508(b) (West 2010)).

¶ 51 In her amended response to U.S. Bank's motion for an order approving the sale, Valerie made numerous claims which can be summarized as follows: (1) Valerie did not sign the note attached to the complaint; (2) throughout the loan modification and foreclosure process, Valerie received conflicting information regarding her status with respect to title to the home and her status as a mortgagor; (3) U.S. Bank violated the "Making Homes Affordable Program" by proceeding to sale after Valerie had applied for assistance; and (4) the sales price of $68,000 was unconscionable based on the "resulting outrageous deficiency judgment" of $118,620.19.

¶ 52 By its order approving the judicial sale, the trial court obviously found each claim to be meritless, forfeited, or an insufficient basis to vacate the judicial sale. We do not know what happened during the hearing because Valerie has failed to provide a transcript. Although we

believe that Valerie has forfeited review of these claims by failing to include the transcript of proceedings, U.S. Bank has addressed Valerie's claims on appeal. Thus, we shall briefly address the merits of Valerie's arguments. See *Whitmer v. Munson*, 335 Ill. App. 3d 501, 511-12 (2002) (and cases cited therein) (failure of appellant to include transcript of proceedings is not necessarily fatal if record contains sufficient documents to allow meaningful review of merits of appeal).

¶ 53 First, as to Valerie's claim that she did not sign the note, she never made this claim prior to the judicial sale, either in her answer or her opposition to U.S. Bank's motion for summary judgment and judgment of foreclosure. She raised it for the first time in her opposition to U.S. Bank's motion to approve the judicial sale. We have earlier addressed Valerie's claim that she did not sign the note, in the context of her challenge to the earlier judgment of foreclosure; we concluded that the claim was unsupported and meritless.

¶ 54 But in opposing the confirmation of the sale, Valerie also attached an affidavit stating she did not sign the note. This was, and is, a serious claim. We would be quite troubled if the record indicated that a judicial sale had been approved against a homeowner who had not even signed the mortgage note. But Valerie's claim is belied by the record. U.S. Bank attached a copy of the mortgage and the note to its complaint, and both documents (as well as an adjustable rate rider) *were* signed by Valerie. Valerie has utterly failed to address this fact on appeal, other than inserting a sentence in her brief (without record citation or argument) that "the mortgage foreclosure case was filed when Appellant never signed the proper documents as falsely stated by Plaintiff U.S. Bank."

¶ 55 Valerie argued in the trial court, and argues on appeal, that she made demands to see the "original" note and U.S. Bank refused to produce it, perhaps in an attempt to *insinuate* that the

copy of the note was inaccurate. But, other than the one sentence in her brief, *i.e.*, that she "never signed the proper documents as falsely stated by" U.S. Bank, Valerie never actually makes any claim that U.S. Bank forged the signature on the copy of the note, and she does not dispute the authenticity of her signature. She certainly has provided no evidence to support any such claim. Although Valerie claimed that someone (she does not say who) told her that only her husband would be responsible for the mortgage, and she would not be responsible, this claim was similarly unsupported by any affidavit or other evidence. Valerie failed to provide any additional statements in an affidavit, and produced no evidence whatsoever, to support her assertion that she did not sign the note attached to the complaint.

¶ 56 To the extent that Valerie is attempting to raise, as a separate issue, U.S. Bank's failure to produce the *original* note, it is unavailing. Section 15-504 of the Foreclosure Law does not require that the original note be attached to the complaint and, instead, references "a copy" or "copies" of the mortgage and the note. See 735 ILCS 5/15-1504(a)(2), (c)(2) (West 2010); see also *Korzen*, 2013 IL App (1st) 130380, ¶ 26 ("For over 25 years, the Foreclosure Law has been interpreted as *not* requiring plaintiffs' production of the original note, nor any specific documentation demonstrating that it owns the note or the right to foreclose on the mortgage, other than the copy of the mortgage and note attached to the complaint.") (Emphasis in original.) Moreover, the Illinois Supreme Court's rule governing mortgage foreclosure practice and procedure, which applies to cases filed after May 1, 2013 (and therefore would not apply here in any event), requires only that a "copy" of the note be attached to the complaint. Ill. S. Ct. R. 113 (eff. May 1, 2013).

¶ 57 Valerie's next two claims overlap but are related to U.S. Bank's purported violations regarding the loan modification process. Valerie contended that throughout the loan modification

and foreclosure process, she received conflicting information regarding her status with respect to title to the home, and her status as a mortgagor. She also contended that she had applied for the Making Home Affordable Program before the judicial sale took place, and that U.S. Bank proceeded with the sale in violation of the program.

¶ 58 In the allegations attached to her amended response, Valerie states that, sometime after her husband's death on October 31, 2011, she "was working with Nationwide to be approved for a loan modification, including a modification under the Making Homes Affordable *** Program." She also states that "while attempting to modify the loan, [she] was informed that she was not on the loan and, therefore, the mortgage company could not enter into a modification." She also states that she "had applied for the Making Home Affordable Program prior to the sale date in October of 2014 and could not have been evaluated prior to the sale date of November 6, 2014." In her affidavit, she states: "I did apply for a loan modification and submitted the required documentation." She also states: "I was denied several times, with the mortgage company and counsel for [U.S. Bank] stating that there was inadequate evidence that [Valerie] was on title to the home and/or on the mortgage."

¶ 59 At the outset, we again note that in the loss mitigation affidavit submitted by U.S. Bank, the affiant (who was the vice president of loan documentation for Wells Fargo Bank, the servicing agent for U.S. Bank) stated that, in compliance with its obligations under the applicable loss mitigation programs, including the Making Home Affordable Program, U.S. Bank had taken certain steps which included solicitation letters, outbound calls, additional-information-required letters, and denial/appeal period letters. According to the affidavit, Valerie had been denied under the programs.

¶ 60 The loss mitigation affidavit was filed on December 2, 2013, the same date U.S. Bank filed its motion for summary judgment, in compliance with Illinois Supreme Court Rule 114 (eff. May 1, 2013). In her response to the motion for summary judgment, Valerie did not file a counteraffidavit nor raise any issue related to loan modification or loss mitigation. Although she raised the issue in her response to U.S. Bank's motion for an order approving the report of sale and distribution, her claims concerning what she was "informed" of during the loan modification process were not supported by any documents or other evidence. On appeal, like most of her arguments, Valerie fails to cite to the record or legal authority.

¶ 61 We agree with U.S. Bank that Valerie failed to satisfy her burden to prove a violation of the Making Home Affordable Program requirements. Section 15-1508(d-5) of the Foreclosure Law provides, in relevant part:

> "The court that entered the judgment shall set aside a sale held pursuant to Section 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 requirements for proceeding to a judicial sale." (Emphasis added.) 735 ILCS 5/15-1508(d-5) (West 2012).

Thus, Valerie had to prove, by a preponderance of the evidence, both that she applied for the Making Home Affordable Program and that her property was sold in material violation of the program's requirements.

¶ 62 As to the first requirement of proving by a preponderance of the evidence that she applied for assistance under the Making Home Affordable Program, we look to this court's thorough

analysis of the issue in *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824. There, we construed the phrase " 'applied for assistance under the Making Home Affordable Program' " in section 15-1508(d-5) and decided that it meant "to formally apply, usually in writing, for help pursuant to the [relevant] procedures." *Id*. ¶¶ 63-64.[6]

¶ 63 We further concluded in *Bermudez* that " in order to 'apply for assistance under [the Making Home Affordable Program]' pursuant to section 15-1508(d-5) of the Foreclosure Law the borrower must submit the documentation required by the servicer to determine the borrower's eligibility and verify his or her income." *Id*. ¶ 66. In deciding that the defendants had not met their burden of proving by a preponderance of the evidence that they had applied for assistance, we noted that the defendants had attached only unsworn documents to their affidavits and that neither affidavit stated that the attached documents were "true and correct copies of what was submitted." *Id*. ¶ 68. Similar to the instant case, the defendants in *Bermudez* had not provided a report of proceedings. *Id*. ¶ 68. As the court explained: " 'An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding.' " *Id*. ¶ 69 (quoting *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005)). Thus, we could not say the trial court abused its discretion in confirming the sale of the property. *Id*.

[6] As we further explained in *Bermudez*, those procedures are "set forth by [the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury or "HAMP"] a component of [the Making Home Affordable Program]. *Id*. ¶ 64. "HAMP is a program jointly created by the Department of Treasury, the Federal Housing Finance Agency, the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac), which offers financial incentives to mortgage lenders to modify the home loans of borrowers in danger of foreclosure. The program was *** signed into law on October 3, 2008. [Citation.] ***. On February 18, 2009, the [United States] Treasury created the Making Home Affordable Program, a comprehensive plan to prevent avoidable foreclosures after the collapse of the housing market in 2008." *Id*. ¶ 64, n.2.

¶ 64 Despite Valerie's various conclusory statements, including her statements that she "did apply for a loan modification" and "submitted the required documentation," she submitted no documents whatsoever that were related to any loan modification or application for the Making Home Affordable Program. As U.S. Bank notes, her affidavit "did not even specify which documents she submitted or inform the court of the dates of her applications for assistance." The only document Valerie submitted was a letter she received from American Servicing Corporation, which she described in her response as being "from ASC to Valerie Jenkins re: her assigned home preservation specialist." But as U.S. Bank notes, this letter had the subject line "Future contact information for your records" and did not indicate that Valerie had ever applied for a loan modification or that a loan modification was pending. Valerie has failed to prove by a preponderance of the evidence that she applied for the Making Homes Affordable Program. Other than her unsubstantiated statements, the record contains no evidence that Valerie applied for *any* loan modification program. Thus, her arguments related to U.S. Bank's conduct during the loan modification process, and U.S. Bank's purported violations of the Making Home Affordable Program, cannot serve as a basis for disturbing the trial court's decision in approving the sale.

¶ 65 Valerie's final argument for vacating the May 6, 2015 order approving the judicial sale is that the purchase price of $68,000 was unconscionable "[b]ased on the resulting outrageous deficiency judgment" of $118,620.19." Yet, other than noting that the purchase price of a property at a foreclosure sale is one of the "terms of sale" as used in section 15-1508(b), Valerie presented no further argument in her response. The circuit court approved the sale after holding a hearing on plaintiff's motion, but the record contains no transcript of that hearing. As we have repeatedly explained above, "[a]n appellant has the burden to present a sufficiently complete

record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 391-92.

¶ 66 On appeal, Valerie reiterates her claim, *again* with no further supporting argument as to why the purchase price of $68,000 was unconscionable, other than noting that the deficiency judgment was "an outrageous $118,620.19." As Valerie has not presented a cohesive legal argument, she has forfeited the issue by failing to comply with Supreme Court Rule 341(h)(7).

¶ 67 Forfeiture aside, her argument is meritless. "Courts have the discretion to disapprove a judicial sale where the amount bid is so grossly inadequate that it shocks the conscience of a court of equity. [Citation.]" (Internal quotation marks omitted.) *Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 8 (2006). Valerie has failed to provide any reason why the sale amount here was "conscience-shocking."

¶ 68 "It is well recognized that it is unusual for land to bring its full, fair market value at a forced sale." *NAB Bank v. LaSalle Bank, N.A.*, 2013 IL App (1st) 121147, ¶ 20; see *Burtley*, 371 Ill. App. 3d at 8 ("At a forced sale, a 'debtor must expect to suffer a loss.' ") (quoting *World Savings & Loan Ass'n v. Amerus Bank*, 317 Ill. App. 3d 772, 780 (2000)). Unless there is fraud or some other irregularity in the foreclosure proceeding, the price at which the property is sold is "the conclusive measure of its value." *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 35. Thus, "in the absence of mistake, fraud or violation of duty by the officer conducting the sale, mere inadequacy of price is not a sufficient reason to disturb a judicial sale." *Amerus Bank*, 317 Ill. App. 3d at 780. "This rule is premised on the policy which provides stability and permanency to judicial sales and on the well-established acknowledgment

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." *Id*.

¶ 69 Valerie has not claimed that there was any fraud or irregularity in the judicial sale process. Although Valerie has claimed that the sale price is unconscionable in view of the amount of the deficiency judgment against her, she has failed to provide a report of the proceedings. As we have repeatedly explained, the absence of a transcript leaves us no basis to disturb the trial court's reasoned judgment on this question. Valerie has failed to show that the circuit court abused its discretion in confirming the judicial sale.[7]

¶ 70 III. CONCLUSION

¶ 71 For the reasons stated above, we affirm the circuit court's order granting summary judgment and judgment of foreclosure.

¶ 72 Affirmed.

[7] As U.S. Bank points out, Valerie's only other statement on the property's value is that "[t]he Court could take judicial notice by Zillow to determine the fair market value of the property and had a duty to do so," but Valerie cites no authority for the circuit court's "duty" to visit the Zillow website and therefore forfeits this contention, too.