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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

DEUTSCHE BANK NATIONAL TRUST)	Appeal from the Circuit Court
COMPANY, AS TRUSTEE IN TRUST)	of Kane County.
FOR THE REGISTERED HOLDERS OF)	
ARGENT SECURITIES, INC., <i>et al.</i> ,)	
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08-CH-4166
)	
BENJAMIN GARCIA, <i>et al.</i> ,)	Honorable
)	Leonard J. Wojtecki,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's order denying defendant's motion to vacate a default judgment and judicial sale affirmed.

¶ 2 On December 31, 2008, plaintiff, Deutsche Bank National Trust (as trustee in trust for the registered holders of Argent Securities, Inc.), instituted a mortgage-foreclosure action against defendant, Benjamin Garcia. On August 20, 2009, the court entered a default judgment against defendant and, on April 7, 2011, the Kane County Sheriff held a foreclosure sale. That sale was

confirmed by the trial court on April 18, 2011. In May and November 2011, defendant moved to vacate: (1) the default judgment against him; (2) the sheriff's sale of his property; and (3) the court order confirming the sheriff's sale. On January 18, 2012, after hearing oral argument, the transcript of which is not contained in the record, the trial court denied defendant's motion. Defendant appeals. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On December 31, 2008, plaintiff filed a complaint pursuant to the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1704(a) (West 2008)) to foreclose on defendant's Aurora home. Defendant was served, and, in June 2009, he, through counsel, filed an appearance. The court gave defendant until August 6, 2009, to respond to the complaint. Defendant did not do so. Plaintiff moved for a default judgment against defendant and, on August 20, 2009, the court granted plaintiff's motion, entering a default judgment and finding that "plaintiff's complaint is hereby taken as confessed by" defendant. Further, the court entered a judgment of foreclosure noting that defendant had until November 20, 2009, to redeem the property or a sheriff's sale would be held.

¶ 5 The record reflects that, more than one year later, on March 30, 2011, a notice was filed stating that, on April 7, 2011, defendant's property would be the subject of a sheriff's sale. The record reflects that notice of the scheduled sale was published for three weeks, commencing on March 17, 2011, and ending on March 31, 2011. The April 7, 2011, sale was successful and, on April 18, 2011, plaintiff moved the court to approve the sale. The court confirmed the sale that same day.

¶ 6 One month later, on May 18, 2011, defendant moved to dismiss the foreclosure or, alternatively, to vacate the judgment sale and order confirming the sale. Attached to defendant's motion was an affidavit, whereby defendant attested to following instructions to modify his loan, few or misleading communications from his lenders with respect thereto, and not receiving notice of the sheriff's sale. On November 21, 2011, defendant filed a supplemental motion seeking dismissal and/or an order vacating all prior orders. Defendant argued that plaintiff did not have standing to bring the present action because the assignment of the mortgages at issue from Argent Mortgage Company (defendant's mortgage lender) to plaintiff was invalid. Specifically, defendant argued that the loan assignment from Argent to plaintiff was dated December 1, 2005, but, as that was the date that the trust closed, the assignment violated the terms of the trust's pooling and servicing agreement. Further, defendant argued that the assignment's notarization, executed on January 6, 2009 (*i.e.*, more than three years after the assignment), in the foreclosing attorney's office, reflects that the purported assignment was fraudulent. Thus, defendant argued that, without a valid assignment, plaintiff lacked standing, and, therefore, the court should vacate all previously entered orders and judgments.

¶ 7 A January 18, 2012, order reflects, that "this matter coming before the court for argument on the defendant's motions to vacate the August 20, 2009[,] judgment of foreclosure, counsel for plaintiff and counsel for [defendant] appearing and advising the court in the premises," defendant's motions to vacate the judgment and for other relief were denied. Defendant appeals.

¶ 8 II. ANALYSIS

¶ 9 Defendant's appellate brief purports to raise five arguments: (1) where there was evidence that the assignment was fraudulent and all orders were, therefore void, the court erred in denying his supplemental motion to vacate the default judgment, sheriff's sale, and order confirming the sale;

(2) defendant was not served with notice of the sheriff's sale; (3) plaintiff failed to honor defendant's completed loan modification and the sale should not have been confirmed; (4) the supplemental motion should have been granted because plaintiff did not file a counteraffidavit; and (5) plaintiff, by pursuing loan foreclosure and conducting a sale, violated the Home Affordable Modification Program (HAMP) (12 U.S.C. § 5219 (2009)) and, therefore, the sale must be vacated pursuant to the Making Home Affordable Program of the Foreclosure Law (735 ILCS 5/15-1508(d-5) (West 2000)).

¶ 10 The argument section of defendant's brief, however, consists of only four, conclusory paragraphs. Set forth therein are: the general concept that a fraudulent assignment can render subsequent orders void; an assertion that plaintiff did not rebut defendant's affidavit (regarding the loan modification process); and an assertion that, while negotiating the loan modification, plaintiff's sale was improper. However, the arguments set forth are not fully developed. "A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research." *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986); see also *Vilardo v. Barrington Comm. School District 220*, 406 Ill. App. 3d 713, 720 (2010). Illinois Supreme Court Rule 341(h)(7) (eff. Sept. 1, 2006) requires that arguments raised on appeal be supported by citation to authority and the pages in the record relied upon. "An issue not clearly defined and sufficiently presented fails to satisfy the requirements of Supreme Court Rule 341(h)(7) and is, therefore, waived." *In re Lieberman*, 379 Ill. App. 3d 585, 610 (2007). Thus, to the extent they are unsupported or undeveloped, defendant's arguments are forfeited.

¶ 11 Moreover, even if we were to consider defendant's arguments sufficiently developed for our consideration, defendant has failed to present a record of the January 18, 2012, hearing held on his

supplemental motion. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (appellant bears the burden to present a sufficiently complete record to support his or her claims of error, whether by a hearing transcript, bystander's report, or agreed statement of facts). The primary issues defendant presents, namely that the court erred in: denying his supplemental motion to vacate a default judgment; confirming the judicial sale; and not vacating the judicial sale, are reviewed for an abuse of discretion. *Jacobo v. Vandervere*, 401 Ill. App. 3d 712, 714 (2010) (default judgment); *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008) (confirmation of sale); and *Northwest Diversified, Inc. v. Mauer*, 341 Ill. App. 3d 27, 33 (2003) (vacate sale). Accordingly, without a transcript, bystander's report, or agreed statement of facts by which we could review the arguments, evidence presented, and, further, the court's reasoning for its ruling, we presume the court's decision was correct. *In re Marriage of Gulla*, 234 Ill. 2d 414, 422 (2009) ("Without an adequate record preserving the claimed error, the court of review must presume the circuit court's order had a sufficient factual basis and that it conforms with the law").

¶ 12 Finally, were we to consider them sufficiently developed for our consideration, we would reject defendant's arguments that: (1) the assignment was invalid, requiring that the sale and all orders be vacated; and (2) the judicial sale should have been vacated pursuant to section 15-1508(d-5) of the Foreclosure Law. As to the assignment, defendant appears to base his claim of invalidity on the fact that the notarization was entered in 2009, but the sale occurred on December 1, 2005. The need to perpetuate fraud, defendant suggests, is due to the fact that, according to its pooling and servicing agreement, the trust closed on December 1, 2005. Therefore, defendant asserts, the assignment into the trust on that date violates the agreement. We reject this argument for three reasons: (1) the notarization states that, on the specified date in 2009, the notary was provided with

sufficient evidence, including personal appearances by the signatories to the assignment, to attest that those persons executed the assignment *in 2005* (*i.e.*, the notarization did not suggest that the assignment occurred in 2009); (2) defendant asserts in his appellate brief that the pooling servicing agreement provides that the trust closed on December 1, 2005, and that no mortgage loans could be sold into the trust *after* that date; as such, even based on defendant's own assertions, a sale into the trust *on* the closing date does not appear to conflict with the agreement; and (3) even if the assignment conflicted with the pooling and servicing agreement's terms, defendant does not have standing to challenge the validity of an assignment between two other parties. See *Bank of America v. Bassman FBT, LLC*, 2012 IL App (2d) 110729, ¶¶ 14-16 (rejecting an argument that violation of a pooling and servicing agreement necessarily rendered an assignment invalid and noting that, generally, unless an assignment is void on its face, a borrower lacks standing to challenge its validity).

¶ 13 We also reject defendant's argument that, because he was negotiating a loan modification when plaintiff proceeded with the sale, the trial court must, pursuant to section 15-1508(d-5) of the Foreclosure Law, set aside the judgment. First, section 15-1508(d-5) permits a trial court, in certain situations, to set aside a sale "upon motion of the mortgagor at any time *prior to the confirmation of the sale*[" (Emphasis added.) Defendant's motion here was filed after the sale was confirmed. Second, defendant does not allege which provisions of HAMP plaintiff allegedly violated, nor that, even if plaintiff violated HAMP, the proper remedy would be to vacate the trial court's confirmation of the sale.

¶ 14

III. CONCLUSION

¶ 15 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 16 Affirmed.

