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SIXTH DIVISION  
June 28, 2013

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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DEUTSCHE BANK NATIONAL TRUST, as Trustee of	)	Appeal from the
Ameriquest Mortgage Securities, Inc., Series 2001-A,	)	Circuit Court of
Asset-Backed Certificates, Under the Pooling and	)	Cook County.
Servicing Agreement Dated as of November 1, 2001,	)	
Without Recourse, Assignee of Ameriquest Mortgage	)	
Company,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07 CH 27191
	)	
SHARON D. PAIGE, PDA Financial Trust 2003-1,	)	
Under Judgment Recorded as Document Number	)	
0436420175, City of Chicago, Department of Water	)	
Management, Under Lien Recorded as Document Number	)	
0717111119,	)	The Honorable
	)	Darryl B. Simko,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.  
Justices Hall and Gordon concurred in the judgment.

**ORDER**

¶ 1 *HELD:* The trial court had personal jurisdiction to enter a foreclosure judgment and order of sale of the subject property and an order confirming the sale and distribution of the property.

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The trial court's orders were not erroneous. In addition, the trial court did not abuse its discretion in entering the orders and refusing to grant defendant leave to file a counterclaim for an accounting and/or for an evidentiary hearing.

¶ 2 Defendant, Sharon Paige, PDA Financial Trust 2003-1, under judgment recorded as document number 0436420175, City of Chicago, Department of Water Management, under lien recorded as document number 0717111119, appeals the trial court's order confirming the sale of a property pursuant to a foreclosure action presented by plaintiff, Deutsche Bank National Trust, as trustee of Ameriquest Mortgage Securities, Inc. series 2001-A, asset backed certificates, under the pooling and servicing agreement dated as of November 1, 2001, without recourse, assignee of Ameriquest Mortgage Company. Defendant contends the trial court did not obtain personal jurisdiction over her and, therefore, all orders were void where she was not properly served with process. Defendant additionally contends that the trial court's foreclosure judgment and order of sale, as well as the order approving the report of sale and distribution of the property contained errors requiring reversal. Defendant finally contends that the trial court abused its discretion in denying her request for leave to file a counterclaim for an accounting and/or for an evidentiary hearing. Based on the following, we affirm, but remand the cause for further proceedings.

¶ 3

#### FACTS

¶ 4 Defendant was a mortgagor and obligor under a note and mortgage owned by plaintiff for a property located at 1624 N. McVicker Avenue in Chicago, Illinois. According to plaintiff, defendant defaulted on the note and mortgage on May 1, 2007. On September 26, 2007, plaintiff filed a complaint to foreclose on the mortgage. A special process server had been appointed for

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the attorneys representing plaintiff. On September 30, 2007, service of process was attempted unsuccessfully on defendant at the McVicker Avenue address. On October 3, 2007, defendant was successfully served via substitute service at 8216 S. Prairie Avenue in Chicago, Illinois. The return of service affidavit provided that substitute service was completed by "leaving a copy of this process at his/her usual place of abode with: Larry Adams, (Relationship) Brother, a person residing therein." On January 8, 2008, the trial court entered an order for default against defendant for failing to appear and a judgment of foreclosure and order of sale for the subject property against defendant.

¶ 5 On January 15, 2009, defendant filed a bankruptcy case.

¶ 6 On July 7, 2009, plaintiff voluntarily dismissed the suit with leave to reinstate upon a motion supported by bankruptcy court documentation within 90 days of the resolution of defendant's pending bankruptcy case. On February 25, 2010, plaintiff filed a motion to reinstate the matter following resolution of defendant's bankruptcy case. No court action was conducted on that motion. On August 11, 2010, plaintiff filed a second motion to reinstate the foreclosure action, alleging that defendant did not have sufficient income to qualify for a workout plan.

Plaintiff's notice of the second motion to reinstate was sent to defendant at the McVicker Avenue address. Defendant did not appear. On August 17, 2010, plaintiff's motion was granted by the trial court. The foreclosure action was reinstated.

¶ 7 On October 20, 2011, the subject property was sold at a foreclosure sale. On November 1, 2011, plaintiff filed a motion to confirm the sale. Plaintiff's notice of the motion was sent to defendant at the Prairie Avenue address. On November 14, 2011, defendant's counsel filed an

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appearance and was granted leave to file a response. Defendant filed a response and plaintiff filed a reply in support of its motion. The suit was continued a number of times until February 7, 2012, at which time a hearing was held.

¶ 8 At the February 7, 2012, hearing, defendant argued that the report of sale of the subject property contained a "material defect," in that plaintiff failed to advise the selling officer that plaintiff received over \$10,000 through a bankruptcy prepetition mortgage arrears payment, which had been submitted by defendant to the bankruptcy trustee. In addition, defendant argued that she made postpetition mortgage payments to defendant, which would further reduce defendant's amount due and affect her right of redemption for the property. For the first time, defendant requested leave to file a counterclaim for an accounting. In response, plaintiff argued that the applicable statute did not require the level of detail requested by defendant and, the lack of detail notwithstanding, the report of sale took into account defendant's prepetition payments. Furthermore, plaintiff argued that defendant did not have a statutory right to an accounting. The trial court granted plaintiff's motion confirming the sale and distribution of the subject property and denied defendant's request for leave to file a counterclaim for an accounting. The February 7, 2012, order confirming the sale provided that "there remains a deficiency balance in the sum of \$43,914.70, and an In-Rem Judgment is hereby entered." This appeal followed.

¶ 9

#### DECISION

¶ 10

#### I. Jurisdiction

¶ 11 Defendant contends the trial court erred in entering its January 8, 2008, order for default and judgment of foreclosure and its February 7, 2012, order approving the report and sale of the

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subject property where it lacked personal jurisdiction over defendant.

¶ 12 In general, "[i]f a court lacks either subject matter jurisdiction over the matter or personal jurisdiction over the parties, any order entered in the matter is void *ab initio* and, thus, may be attacked at any time." *In re M.W.*, 232 Ill. 2d 408, 414 (2009). When a trial court fails to obtain personal jurisdiction over a party, the court does not have the authority or power to impose judgment against the party. *Id.* at 428. Personal jurisdiction may be imposed on a respondent or defendant by effective service of summons or the respondent or defendant may consent to personal jurisdiction by his appearance. *Id.* at 426. Whether a trial court obtained personal jurisdiction is a question of law we review *de novo*. *In re Dar. C.*, 2011 IL 111083, ¶ 60.

¶ 13 Defendant contends the trial court did not have personal jurisdiction over her on January 8, 2008, when it entered the default and foreclosure judgment and ordered the sale of the subject property. Specifically, defendant argues that the service of process was not effective because it was not completed by an authorized agent appointed by the court. In the alternative, defendant argues that the substitute service of process was improper because it was left with her brother-in-law, who did not reside at her usual place of abode. Defendant additionally contends that the trial court failed to obtain jurisdiction over her prior to the entry of its February 7, 2012, order approving the report and sale of the subject property because plaintiff did not attach any supporting documentation from the bankruptcy proceeding required to reinstate the lawsuit. Plaintiff responds that defendant has waived her jurisdictional challenges by filing an appearance and response to plaintiff's motion without first having objected to the court's jurisdiction.

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¶ 14 Section 3-301 of the Code of Civil Procedure (Code) provides that:

"(a) Prior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear, a party may object to the court's jurisdiction over the party's person, either on the ground that the party is not amenable to process of a court of this State or on the ground of insufficiency of process or insufficiency of service of process, by filing a motion to dismiss the entire proceeding or any cause of action involved in the proceeding by filing a motion to quash service of process. \*\*\*.

(a-5) If the objecting party files a responsive pleading or a motion (other than a motion for an extension of time to answer or other appear) prior to the filing of a motion in compliance with subsection (a), that party waives all objections to the court's jurisdiction over the party's person." 735 ILCS 5/2-301 (West 2006).<sup>1</sup>

¶ 15 In *GMB Financial Group, Inc., v. Marzano*, 385 Ill. App. 3d 978 (2008), this court held that when a defendant files a motion that is "not a motion 'for an extension of time to answer or otherwise appear' (735 ILCS 5/2-301(a) (West 2006)) and [is] not accompanied by a motion challenging personal jurisdiction, [he] [waives] any objection that the trial court lacked personal

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<sup>1</sup>We recognize that the legislature codified a similar statute expressly related to foreclosure actions in section 15-1505.6 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1505.6 (West 2011)). That statute, however, did not exist during the relevant period in the case before this court.

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jurisdiction over [him] when it entered the prior default judgment." *Marzano*, 385 Ill. App. 3d at 991. This court continued by announcing that "[w]aiver is an 'all or nothing' situation under section 2-301: if a litigant takes any single action, other than move for an extension of time to plead or otherwise appear, without also challenging personal jurisdiction, waiver is triggered." *Id.* at 992, fn. 3. In other words, the submission of any filing without also filing a challenge to the court's jurisdiction acts as a waiver of jurisdictional challenges of any of the court's orders, both retroactive and prospective. *Id.* at 994.

¶ 16 Here, as stated, defendant challenges the jurisdiction of the trial court's January 8, 2008, order and February 7, 2012, order; however, on November 14, 2011, defendant filed an appearance and subsequently filed a response to plaintiff's motion to confirm the sale of the foreclosed subject property. Defendant did not file any pleading challenging the trial court's jurisdiction. In fact, defendant never raised an objection to the trial court's jurisdiction during oral arguments on plaintiff's motion to confirm the sale and distribution of the property. The jurisdictional challenge is being raised for the first time on appeal. Defendant, therefore, has waived any and all challenges to the trial court's jurisdiction, both retroactive and prospective to her appearance and response. By participating in the case without raising an objection to personal jurisdiction, defendant voluntarily submitted to the court's jurisdiction and waived any objections thereto. *Deutsche Bank National Trust Co. v. Hall-Pilate*, 2011 IL App (1st) 102632, ¶ 18.

¶ 17

## II. Errors Requiring Reversal

¶ 18 Defendant alternatively contends that the court's January 8, 2008, and February 7, 2012, orders contain fatal flaws requiring reversal.

¶ 19 Turning first to the contention related to the January 8, 2008, order, defendant contends that the January 8, 2008, judgment of foreclosure and order of sale included an erroneous fee incurred by plaintiff where the "fees, costs, and advances" included a line item for \$200 to "Sheriff," yet there is no evidence that a sheriff was involved in the foreclosure action.

Defendant also contends that the January 8, 2008, judgment was internally inconsistent because it provided two different redemption periods. In particular, the January 8, 2008, judgment stated that "this Court finds that the subject property is non-residential property with a six month period of redemption"; however, the subsequent paragraph stated that the statutory redemption period expired on May 3, 2008, which calculated to a seven month period of redemption. Plaintiff responds that defendant has forfeited her arguments by failing to raise them in her response to plaintiff's motion to confirm the sale of the subject property and at the subsequent hearing on the motion.

¶ 20 It is well established that issues not presented to the trial court will not be considered on review. *Daniels v. Anderson*, 162 Ill. 2d 47, 58 (1994); *Board of Trustees of Community College District No. 508 v. Bakalis*, 64 Ill. App. 3d 967, 972 (1978). Where the record fails to demonstrate that the defendant raised an objection to the alleged error, an appellate court will not consider the contention for the first time on appeal. *Bakalis*, 64 Ill. App. 3d at 972 (citing *Kobrand Corp. v. Foremost Sales Promotions, Inc.*, 8 Ill. App. 3d 418, 422 (1972)). A defendant

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may not chose to remain silent and prevent the trial court from having an opportunity to correct the error if one exists. *Id.* Allowing a defendant to present a new theory on appeal would weaken the adversarial process and could cause prejudice where the plaintiff may have been able to present evidence to discredit the theory if it had been raised at the trial level. *Daniels*, 162 Ill. 2d at 59.

¶ 21 In this case, defendant did not raise the alleged defects in the January 8, 2008, foreclosure judgment and order of sale in either her response to plaintiff's motion to confirm the sale or at the hearing on that motion. Rather, defendant limited her argument to the failure of the report of sale to provide credit for defendant's pre and postpetition payments in order to reduce her obligation for redemption. As a result, defendant forfeited review of her claims of error related to the foreclosure judgment and order of sale. Moreover, there is nothing to suggest that either of the alleged errors, *i.e.* in the \$200 sheriff fee or the date of expiration of the redemption period, affected defendant's ability to redeem the subject property where defendant made no attempt at redemption pursuant to the statutory requirements established by section 15-1603(b) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1603(b) (West 2006)).

¶ 22 Next, in relation to the February 7, 2012, order, defendant contends the trial court abused its discretion in granting plaintiff's motion to confirm the sale and distribution of the property where the physical description of the property in the motion conflicted with that of the notice of sale and the certificates of publication of sale. Specifically, the motion to confirm the sale described the subject property as "improved by a Two-flat residence," while the other documents described the property as "improved with a single family residence." The trial court's July 7,

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2009, dismissal order additionally described the property as a "non-owner occupied single family home or condominium." Defendant maintains that "these errors alone regarding the nature of the improvements on the property are or should be sufficient to void the sale and the subsequent" February 7, 2012, order confirming the sale.

¶ 23 At the outset, we note that defendant has failed to cite to relevant authority to support her contention that a foreclosure sale should be voided on the basis of errors in the property description within the notice of sale, motion to confirm the sale, and certificates of publication for the sale. Defendant, therefore, has violated Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008).

¶ 24 Section 15-1507(c) of the Foreclosure Law (735 ILCS 5/15-1507(c) (West 2006)) provides the content that is required for a notice of sale. In relevant part, the statute requires that "the mortgagee, or such other party designated by the court, in a foreclosure under this Article shall give public notice of the sale" which "shall include at least the following information, but an immaterial error in the information shall not invalidate the legal effect of the notice." 735 ILCS 5/15-1507(c)(1) (West 2006). One of the elements listed is "a description of the improvements on the real estate." 735 ILCS 5/15-1507(c)(1)(D) (West 2006). Section 15-1508(d) of the Foreclosure Law, in relevant part, further states that "[e]xcept as provided in subsection (c) of [this] Section [*i.e.*, concerning failure to give notice in compliance with subsection (c) of section 15-1507], no sale under this Article shall be held invalid or be set aside because of any defect in notice thereof or in the publication of the same \*\*\* except upon good cause shown in a hearing pursuant to subsection (b) of [this] Section [governing the hearing to

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confirm the sale]." 735 ILCS 5/15-1508(d) (West 2006).

¶ 25 In *Marzano and Cragin Federal Bank For Savings v. American National Bank & Trust Co. of Chicago*, 262 Ill. App. 3d 115 (1994), the appellate court found that, in order to establish "good cause" to overturn a sale under section 15-1508(d) of the Foreclosure Law, a mortgagor needed to provide evidence that the property sold for substantially less than its actual value as a result of the mortgagee's failure to provide adequate notice. *Marzano*, 385 Ill. App. 3d at 997; *Cragin Federal Bank For Savings*, 262 Ill. App. 3d at 121.

¶ 26 Here, defendant has failed to show that the subject property sold for significantly less than its value and, therefore, has not demonstrated "good cause" to invalidate the sale. Moreover, defendant only argues that plaintiff failed to provide proper notice of the improvements on the real estate.<sup>2</sup> We find the inconsistencies between the description of the improvements, namely, as a single family residence or a two-flat building, are immaterial errors that did not invalidate the legal effect of the notice of sale. 735 ILCS 5/15-1507(c)(1) (West 2006). Defendant's argument that plaintiff's failure to provide consistent, accurate information regarding the improvements could have deterred potential purchasers is speculation and conjecture, neither of which can support invalidating the sale. See *Marzano*, 385 Ill. App 3d at 997.

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<sup>2</sup>As an aside, we note that defendant states that the subject property is a three-flat building. Defendant, however, failed to cite to the record in support of her assertion in violation of Supreme Court Rule 341(h)(7).

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¶ 27 In addition, defendant briefly argues that the trial court abused its discretion in granting the motion to confirm the sale and distribution of the property where plaintiff's notice of motion was sent to the property address and not her service address (the Prairie Avenue address) causing "misdirection" regarding the continuation of the foreclosure and sale proceedings. As acknowledged by defendant, section 15-1507(c)(3) of the Foreclosure Law provides that "the party who gives notice of public sale in accordance with subsection (c) of Section 15-1507 shall also give notice to all parties in the action *who have appeared and have not theretofore been found by the court to be in default for failure to plead.*" (Emphasis added.) 735 ILCS 5/15-1507(c)(3) (West 2006). Defendant was found to be in default for her failure to plead. Accordingly, she was not entitled to notice. See *Eckel v. Bynum*, 240 Ill. App. 3d 867, 880 (1992). We, therefore, find the trial court did not err in confirming the property sale and distribution on the basis that defendant was misdirected or uninformed regarding proceedings for which she had not appeared.

¶ 28 In sum, the challenged errors in the January 8, 2008, and February 7, 2012, orders do not require reversal of either the foreclosure judgment or the confirmation of sale and distribution of the subject property.

¶ 29 III. Counterclaim for Accounting and/or Request for Evidentiary Hearing

¶ 30 Defendant finally contends the trial court erred in denying her request for leave to file a counterclaim for an accounting or, at a minimum, the court should have provided an evidentiary hearing regarding plaintiff's failure to issue proper credit for payments that would have reduced the deficiency judgment and affected her redemption rights. Defendant's argument refers to the

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amount of \$10,899.99, which she submitted to a bankruptcy trustee as part of her bankruptcy case. In addition, defendant maintains that she submitted other mortgage payments to plaintiff outside of the bankruptcy payments. Defendant argues that she did not receive credit for any of her payments against the \$43,914.70 *in rem* deficiency judgment. Plaintiff responds that the trial court did not abuse its discretion in confirming the sale and distribution of the property where the deficiency amount was not relevant to defendant's right of redemption and where any error in the deficiency judgment would not have affected defendant personally because plaintiff only sought an *in rem* deficiency and not a personal deficiency.

¶ 31 Section 15-1508(b) of the Foreclosure Law provides:

"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) that justice was otherwise not done, the court shall then enter an order confirming the sale." 735 ILCS 5/15-1508(b) (West 2006).

"The provisions of section 15-508 have been construed as conferring on circuit courts broad discretion in approving or disapproving judicial sales." *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008). We will not disturb a trial court's decision regarding a judicial sale absent an abuse of discretion. *Id.*

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¶ 32 As to the first reason for the court not to confirm a foreclosure sale, we previously determined that defendant was not entitled to notice as provided by section 15-1507(c) where she was found in default for her failure to plead. Nevertheless, defendant received notice and filed an appearance and response to plaintiff's motion to confirm the sale of the subject property.

¶ 33 In terms of the second reason not to confirm a foreclosure sale, defendant fails to demonstrate the terms of the sale were unconscionable. In her appellate brief, defendant acknowledges that she did not provide an appraisal. There is no evidence that the sale was unconscionable. *Cf. Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105, 115 (1993) ("[t]o determine the extent of the hearing to be afforded the mortgagor, the court should look to 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").

¶ 34 As to the third reason for a court not to confirm a foreclosure sale, there is no allegation that the sale was conducted fraudulently.

¶ 35 Finally, in relation to the fourth reason not to confirm a foreclosure sale, defendant cannot demonstrate injustice. Pursuant to section 15-1603(b) of the Foreclosure Law (735 ILCS 5/15-1603(b) (West 2006)), defendant's redemption period for the subject property expired on May 3, 2008, which was 7 months after defendant was served with substitute process. Therefore, defendant had no standard right of redemption nearly four years later when the motion to confirm the sale was argued. As for defendant's special right of redemption, it was not affected by the lack of credit for payments because, pursuant to section 15-1604(a) of the Foreclosure Law (735

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ILCS 5/15-1604(a) (West 2006)), where plaintiff was the purchaser of the property as the mortgagee who was a party to the foreclosure, defendant only was required to pay the sale price, additional costs and expenses, and interest in order to redeem the subject property. Therefore, the trial court's alleged failure to provide credit for defendant's payments did not alter the amount required to exercise her special right of redemption. Further, defendant cannot establish that the trial court's confirmation of the sale was unjust based on its refusal to allow defendant to file a counterclaim for an accounting. Section 15-1504(e)(1) of the Foreclosure Law (735 ILCS 5/15-1504(e)(1) (West 2006)), provides *plaintiff* with the ability to obtain an accounting "under the direction of the court." The statute has been interpreted to be at the discretion of the court and to be limited to plaintiff. *Inland Bank & Trust v. Knight*, 399 Ill. App. 3d 378, 384-85 (2010).

Therefore, defendant was not entitled to an accounting.

¶ 36 Based on the foregoing, we find defendant was not entitled to file a counterclaim for an accounting nor was it necessary to provide defendant with an evidentiary hearing in relation to her redemption rights. In sum, the trial court did not abuse its discretion in confirming the judicial sale and distribution of the subject property. However, we must remand this case to the trial court to determine whether defendant has been assessed any personal liability for the deficiency judgment. In the event defendant is subject to personal liability, we instruct the trial court to conduct an evidentiary hearing to determine the accurate amount of defendant's liability particularly in relation to any payments she has made that would reduce her liability.

¶ 37

#### CONCLUSION

¶ 38 We affirm the judgment of the trial court where the court had personal jurisdiction to

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enter the foreclosure judgment and order of sale of the subject property in addition to the order confirming the sale and distribution of the property, and where the orders were proper.

Moreover, the trial court did not abuse its discretion in entering the orders and refusing to grant defendant leave to file a counterclaim for an accounting. Notwithstanding, we remand this cause for further proceedings consistent with this order.

¶ 39 Affirmed and remanded.