

No. 1-12-0892

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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CITIMORTGAGE, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	No. 10 CH 17536
MARIA DZIEGLEWICZ, WEBSTER BANK, N.A.,	)	
UNKNOWN OWNERS and NONRECORD	)	
CLAIMANTS,	)	Honorable
	)	Jean Prendergast Rooney,
Defendants-Appellants.	)	Judge Presiding.

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JUSTICE STERBA delivered the judgment of the court.  
Presiding Justice Neville and Justice Hyman concurred in the judgment.

**ORDER**

¶ 1 *Held:* Mortgage foreclosure defendant's motions to reconsider were properly denied where defendant failed to properly allege that plaintiff fell outside the exceptions to the licensing requirements or the allegations were rebutted by the record.  
Affirmed.

¶ 2 After finding defendant Maria Dzieglewicz in default, the trial court entered a judgment of foreclosure in favor of plaintiff CitiMortgage, Inc. and subsequently approved the judicial sale of a single-family residence owned by defendant. Defendant subsequently filed two motions to reconsider the judgment. The first motion alleged that the judgment was void because plaintiff

was not licensed as a debt collector. The second motion alleged that the judgment was void because plaintiff was not licensed as a mortgage broker. Plaintiff responded to each motion alleging that no licenses were required because (1) it was collecting its own debt, and (2) it was a subsidiary of a national bank and allowed to lend without obtaining a mortgage brokers license. The trial court denied each motion to reconsider. Plaintiff timely appealed and on appeal the parties present the same issues raised in the motions to reconsider. We affirm.

¶ 3 The following facts can be gleaned from the common law record. On April 22, 2010, plaintiff filed a complaint for foreclosure alleging that defendant's mortgage was in arrears approximately \$30,000 with a principal balance of approximately \$320,000 remaining on the original loan. Defendant was served at her home, but did not appear during the original proceedings. The trial court entered a default judgment, in September 2010, and, in July 2011, the property was sold to plaintiff in a judicial sale.

¶ 4 On August 29, 2011, defendant filed a motion to vacate all orders and deny confirmation of the sale. Defendant argued that the orders were void because plaintiff was acting as a debt collector without registering. Plaintiff answered the motion arguing that it was not a debt collector within the meaning of the Collection Agency Act (225 ILCS 425/1 *et seq.* (West 2010)) because it was a lending institution collecting its own debt and specifically exempted under section 2.03 of the Act (225 ILCS 425/2.03 (West 2010)). The trial court denied defendant's motion and approved the sale on November 15, 2011.

¶ 5 On December 13, 2011, defendant filed a motion to reconsider, alleging that the orders were void because plaintiff was not licensed under the Residential Mortgage License Act (205 ILCS 635/1-1 *et seq.* (West 2010)). Plaintiff answered that, as a bank, it was exempt under section 1-4 of the Act (2015 ILCS 635/1-4 (West 2010)). On March 8, 2012, the trial court denied defendant's motion. Defendant timely appeals.

¶ 6 On appeal defendant argues that the judgment against her is void because plaintiff lacked a debt collector license and a residential mortgage license. Plaintiff initially contends that defendant has waived these arguments by failing to comply with Supreme Court Rule 341(h)(7) (eff. July 1, 2008).

¶ 7 On the issue of waiver, we agree. Defendant's entire argument covers 2 ½ pages stating that the courts should be "troubled" by the proceedings here and asking, rhetorically, "who or what is CitiMortgage, Inc." Although three cases are string-cited, defendant does not discuss them at all or make any argument as to how they relate to the case at bar. It is well-established that: "[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." *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009) quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). The party challenging the decision of the trial court bears the burden of persuasion on appeal, and we find defendant's brief inadequate to justify review of that judgment.

¶ 8 Even if we were to consider defendant's contentions, she would fare no better. Plaintiff has responded in its appellee's brief that it is a subsidiary of a national bank attempting to collect its own debt from defendant and is therefore exempt from the licensing requirements at issue here.<sup>1</sup> In her first motion to reconsider the judgment of foreclosure, defendant alleged that plaintiff was attempting to collect the debt of another. However, this allegation is clearly rebutted by the original mortgage document, which was attached to the complaint and is contained in the record. The document clearly lists plaintiff as the original lender. There is no support in the record for defendant's allegation that plaintiff acquired the mortgage in 2010.

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<sup>1</sup>Plaintiff asserts that this court may take judicial notice of these "readily ascertainable facts that are contained in public documents," but fails to provide these documents or direct this court to their location.

¶ 9 In her second motion to reconsider, defendant alleged that plaintiff was not licensed as a mortgage broker. The Residential Mortgage License Act of 1987 (205 ILCS 635/1-1 *et seq.* (West 2012)), however, clearly exempts from its coverage numerous organizations including national banks. See 205 ILCS 635/1-4(d)(1)(ii) (West 2012). As the proponent of the motion to vacate and dismiss, it was defendant's obligation to plead that plaintiff was not an exempt bank. See *Altek, Inc. v. Vulcan Tube & Metals Co.*, 79 Ill. App. 3d 226, 230 (1979) (holding the party opposing a motion to dismiss is not required to file a response). Nevertheless, plaintiff responded to defendant's motion and alleged that it was a bank. Defendant replied arguing that plaintiff's act of subsequently obtaining a mortgage broker's license was inconsistent with this allegation, but did not directly deny the allegation. Therefore, based solely on the pleadings, plaintiff was not required to obtain a license. Accordingly, the trial court did not abuse its discretion in denying the motions to vacate and dismiss.

¶ 10 The purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law. *Langone v. Shad, Diamond and Shedden, P.C.*, 406 Ill. App. 3d 820, 829 (2010). We review the judgment on such a motion for an abuse of discretion. See *Regas v. Associated Radiologist, Ltd.*, 230 Ill. App. 3d 959, 967 (1992). The record before us discloses no abuse of discretion.

¶ 11 Finally, plaintiff asks that we impose sanctions against defendant under Rule 375(b) for filing a frivolous appeal. The decision to impose sanctions rests within our discretion, and we decline to do so under the circumstances presented here. See *Kheirkhahvash v. Baniassadi*, 407 Ill. App. 3d 171, 182 (2011).

¶ 12 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 13 Affirmed.