

No. 1-13-0244

**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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GMAC MORTGAGE, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 10 CH 31143
	)	
KAMELIA HRISTEVA,	)	Honorable
	)	Daniel P. Brennan,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE MASON delivered the judgment of the court.  
Justices Neville and Pucinski concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court properly granted summary judgment in a mortgage foreclosure action where the motion was supported by an affidavit and the record demonstrates that the property owner received adequate notice of the motion. Property owner identified no genuine issue of material fact precluding the entry of summary judgment.

¶ 2 Plaintiff-appellant, Kamelia Hristeva, is a defendant in a mortgage foreclosure proceeding filed by GMAC Mortgage, LLC. Hristeva appeals from an order of the circuit court of Cook County confirming the judicial sale of property formerly owned by her and located at 300 N. State Street, Unit 4206, in Chicago. Hristeva claims that she was not given proper notice of

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GMAC's motion for summary judgment and that, in any event, GMAC failed to establish that it was entitled to judgment as a matter of law. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 GMAC filed its foreclosure complaint against Hristeva on July 21, 2010. The complaint alleged that the original mortgagee was Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Lifetime Financial Partners, Inc. According to the complaint, Hristeva had failed to make required monthly payments since March 2010 and the principal balance of the note and mortgage, as of the filing of the complaint, was \$214,004.31. Copies of the original note and mortgage executed by Hristeva were appended to the complaint. Also joined as a defendant was Marina Towers Condominium Association by virtue of its potential interest in the property based on unpaid assessments or other charges.

¶ 5 A default judgment was originally entered against Hristeva. On May, 13, 2011, Hristeva filed her *pro se* answer, and the default judgment was later vacated. GMAC filed its motion for summary judgment on June 15, 2011. The motion was supported by the affidavit of Kimberly Fritz attesting to the amounts due as of May 26, 2011.

¶ 6 GMAC's motion was noticed for July 6, 2011. A notice of motion and proof of service in the record shows that the notice and motion were mailed to Hristeva on June 22, 2011, at the address of the property. Hristeva failed to appear for the presentment of GMAC's motion and the motion was granted. The judgment for foreclosure and sale entered by the trial court recited that balance due of \$243,813.59 was accounted for in the affidavit filed by GMAC.

¶ 7 A judicial sale of the property was originally scheduled for October 11, 2011, and continued to November 4, 2011. Notice of the judicial sale was sent directly to Hristeva on

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August 31, 2011. Prior to the sale and without notice to counsel for GMAC, Hristeva, through counsel (who also did not serve a copy of her appearance on counsel for GMAC), filed a motion to vacate the judgment of foreclosure on August 9, 2011. The notice of filing of the motion to vacate was sent directly to GMAC through its registered agent in Springfield, Illinois. The basis asserted for vacating the judgment was lack of notice of GMAC's motion for summary judgment and MERS' asserted lack of authority to assign the note and mortgage.

¶ 8 Following the sale, GMAC filed a motion to confirm the sale and set the motion for presentment on December 1, 2011. Evidently at some point GMAC learned that Hristeva was represented by counsel as the notice of motion was sent to Hristeva's counsel of record. At the December 1, 2011 hearing, Hristeva, through new counsel, withdrew her motion to vacate the judgment of foreclosure, but argued that the judicial sale should not be confirmed for a number of reasons, including GMAC's failure to serve notice in accordance with section 15-1507(c)(3) of the Illinois Code of Civil Procedure (735 ILCS 5/15-1507(c)(3) (West 2010)), by serving the notice of sale on Hristeva's counsel of record. The order entered that day denied confirmation of the sale due to GMAC's failure to serve proper notice of the sale. Hristeva's alternative bases for denying confirmation – that (1) GMAC lacked standing to bring the action, (2) GMAC had failed to give proper notice to Hristeva throughout the proceedings and (3) Hristeva was the victim of malpractice by her prior counsel – were not addressed in the order.

¶ 9 GMAC scheduled another judicial sale for March 27, 2012, and moved to have the sale confirmed on April 6, 2012. That motion was withdrawn, however, when it was discovered that notice was again sent to Hristeva directly.

¶ 10 A third judicial sale was scheduled for August 1, 2012. Notice of the sale was sent to

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Hristeva's counsel of record. On July 31, 2012, the day before the sale, Hristeva moved for leave to file a counterclaim for fraud against GMAC based upon GMAC's alleged lack of interest in the note and mortgage. The motion was noticed for September 25, 2012. At the hearing on the motion, the trial court denied leave to file the counterclaim based on its finding that it was not timely and because counsel for GMAC presented the original of the note and rider in open court.

¶ 11 On October 15, 2012, GMAC presented its motion to confirm the March 27, 2012 sale. Hristeva was granted leave but failed to respond to the motion and an order confirming the sale was entered on December 6, 2012. Hristeva timely filed this appeal.

¶ 12 ANALYSIS

¶ 13 On appeal, Hristeva again contends that she was not given proper notice of GMAC's motion for summary judgment. She contends that contrary to the notice appearing in the record, the notice she received contained no date or time for presentment of the motion.<sup>1</sup> The record shows that at the hearing on Hristeva's motion to vacate the judgment, her motion was withdrawn and she elected to pursue only objections to the confirmation of the sale. Given that Hristeva was afforded the opportunity to present all of her arguments following entry of the foreclosure judgment and because she identifies no genuine issue of material fact (other than her claim that GMAC failed to establish its entitlement to summary judgment, which we address below), her arguments regarding notice do not warrant reversal in any event.

¶ 14 As to the propriety of entering summary judgment in favor of GMAC, Hristeva argues, again contrary to the record, that GMAC's motion was not supported by affidavit. Because the

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<sup>1</sup> Actually, in the trial court, Hristeva took conflicting positions on her receipt of notice of GMAC's motion for summary judgment. In her petition to vacate filed on August 9, 2011, Hristeva claimed she had received no notice of the motion for summary judgment, but later took the position that the notice she received did not have the date or time of presentment filled in.

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record contains Ms. Fritz' affidavit and the judgment of foreclosure recites the trial court's reliance on an affidavit submitted by GMAC, there is no merit in this argument.

¶ 15 Moreover, as GMAC argues, Hristeva waived any objections to the judgment of foreclosure. First, Hristeva withdrew her motion to vacate that judgment on December 1, 2011. In her motion to vacate, Hristeva did not raise any issue regarding the lack of an affidavit in support of GMAC's motion for summary judgment. In her objections to the confirmation of the November 4, 2011 sale filed on January 10, 2012, Hristeva likewise raised no issue regarding the lack of an affidavit. Further, between December 1, 2011, and December 6, 2012, when the judicial sale of the property was confirmed, Hristeva failed to raise any arguments regarding claimed defects in the judgment of foreclosure. Her claim regarding GMAC's alleged failure to support its motion for summary judgment with an affidavit is made for the first time on appeal. This argument is, therefore, waived. See *Cambridge Engineering, Inc. v. Mercury Partners*, 378 Ill. App. 3d 437, 453 (2007) (issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal).

¶ 16 For the foregoing reasons, the order of the circuit court is affirmed.

¶ 17 Affirmed.