2014 IL App (2d) 140225-U
No. 2-14-0225
Order filed October 20, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE BANK OF NEW YORK MELLON, f/k/a THE BANK OF NEW YORK AS S/I/I TO JPMORGAN CHASE BANK, N.A. AS TRUSTEE FOR STRUCTURED ASSET MORTGAGE INVESTMENTS II, INC., BEAR STEARNS, ALT-A TRUST 2004-7, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-7,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 09-CH-4330
JOHN VANDENBROOK; KIMBERLEY VANDENBROOK a/k/a Kimberley N. Vandenbrook,	)	
Defendants-Appellants,	)	
(Wells Fargo Bank, N.A., Willoughby Farms Master Association, Target National Bank f/k/a Retailers National Bank, and Unknown Owners and Non-record Claimants, Defendants.)	)	Honorable Leonard J. Wojtecki, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: Mortgagors forfeited their arguments regarding the propriety of the trial court's order entering summary judgment in favor of the mortgagee by failing to cite relevant legal authority; the trial court did not abuse its discretion in confirming the judicial sale over mortgagors' objections.

¶ 2 In this mortgage foreclosure case, defendants, John Vandenbrook and Kimberley Vandenbrook, appeal from various orders of the trial court, including an order granting summary judgment in favor of plaintiff, the Bank of New York Mellon, f/k/a The Bank of New York as s/i/i to JPMorgan Chase Bank, N.A. as trustee for Structured Asset Mortgage Investments II, Inc., Bear Stearns, ALT-A Trust 2004-7, Mortgage Pass-Through Certificates, Series 2004-7. Defendants also appeal from an order confirming the judicial sale over their objections. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On March 18, 2004, defendants executed a mortgage and note in favor of Wells Fargo Home Mortgage, Inc. (Wells Fargo). The record contains an assignment dated December 29, 2009, reflecting that prior to November 2, 2009, Wells Fargo assigned the mortgage and note at issue to plaintiff. On November 2, 2009, plaintiff filed a complaint for foreclosure against defendants, among other parties. Plaintiff filed its amended complaint on May 28, 2010.

¶ 5 On June 29, 2010, defendants filed a motion to dismiss the amended complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)). Among their arguments, defendants contended that plaintiff had agreed on December 28, 2009, to modify the terms of their mortgage and to delay proceeding with the foreclosure. Defendants asserted that plaintiff "promised Defendants an opportunity to escape foreclosure by entering into a binding payment plan," but then "made it impossible to comply with the payment plan by mailing out the payment schedule on a date after the first payment was due." Accordingly, they argued, plaintiff

was precluded by the doctrines of laches and unclean hands from proceeding with the foreclosure.

¶ 6 On July 6, 2010, defendants filed an addendum to their motion to dismiss, which included defendants' joint affidavit as an exhibit. Among the documents attached to their affidavit was a letter from Wells Fargo dated December 7, 2009. The letter indicated that Wells Fargo was "considering a program that may assist you in curing the delinquency on your loan." The letter advised defendants that it was "not a guarantee or approval of the loan modification," but that, to continue the review, defendants were required to return certain documentation and an initial payment of $3,000 by December 21, 2009. The letter continued: "Please note that until you are approved for a modification, normal default servicing will continue which includes any foreclosure action that may be in process [*sic*]." Defendants asserted in their affidavit that the postmark on this letter was dated December 21, 2009, and that they did not receive the letter until December 23—after their initial payment was due.

¶ 7 Defendants also attached to their affidavit a letter from Wells Fargo dated December 28, 2009, which provided, in relevant portion:

> "We have agreed to accept a partial reinstatement in the amount of $.00 [*sic*], to be submitted in the form of certified funds or a cashier's check, to be received on or before 3 [*sic*]. The funds are to be sent, along with this fully executed agreement in the self-addressed envelope provided. ***
>
> The receipt of such payments *** does not constitute a waiver of our rights or remedies contained in the Note and/or Mortgage; and acceptance of any payments made by you will not be deemed to affect the acceleration of the Note and/or Mortgage in the

> event of default under the terms of this agreement and the remainder of the accelerated loan balance shall remain due and owing.
>
> We will hold legal action only upon receipt of agreed [*sic*] funds, signed agreement, and proof of income. ***
>
> We will instruct our foreclosure counsel to suspend foreclosure proceedings once the funds for partial reinstatement have been received by the aforementioned date. If you make all the required payments resulting in reinstatement, we will instruct our foreclosure counsel to dismiss foreclosure proceedings and report to credit bureaus accordingly."

The letter indicated that the first payment was due on January 1, 2010. However, in their affidavit, defendants claimed that they did not receive this letter until January 4, 2010. According to defendants, when they contacted Wells Fargo about the impossibility of complying with the deadlines due to the late mailing, they were advised that Wells Fargo was unwilling to proceed with the forbearance plan due to defendants' non-compliance with the terms of the proposed agreement.

¶ 8 On November 24, 2010, the trial court denied defendants' motion to dismiss.

¶ 9 On January 3, 2011, defendants filed their verified answer and affirmative defenses. Among their affirmative defenses, defendants claimed: 1) unclean hands and estoppel based on plaintiff rendering it impossible for defendants to comply with the deadlines of the forbearance agreements; and 2) failure to attach to the summons the homeowner notice required by section 15-1504.5 of the Illinois Mortgage Foreclosure Law (IMFL) (735 ILCS 5/15-1504.5 (West 2010)). Defendants attached as an exhibit to their affirmative defenses the same affidavit that

they had previously presented to the court with their July 6, 2010, addendum to their motion to dismiss.

¶ 10 On February 23, 2011, the matter came before the court on plaintiff's petition for judgment for foreclosure and sale. Plaintiff requested additional time to present the necessary documents and affidavits for prove-up, and the court continued the matter to June 15, 2011. On June 15, 2011, plaintiff again requested a continuance, and the court set the matter for November 9, 2011. On November 9, 2011, the trial court set a briefing schedule on plaintiff's motion for summary judgment over defendants' objection.

¶ 11 On November 17, 2011, plaintiff filed what it labeled a "reply" to defendants' affirmative defenses. That same day, plaintiff also filed a motion for summary judgment. Plaintiff argued that because it submitted copies of the mortgage and note along with affidavits evidencing defendants' default and the amount owed, the burden shifted to defendants to prove payment or to establish a defense to the foreclosure. Plaintiff also argued that each of defendants' "unsupported and conclusory" affirmative defenses were insufficient to create an issue of material fact. Addressing the affirmative defense of unclean hands and estoppel, plaintiff argued: 1) the December 7, 2009, letter was not an agreement to modify the loan and did not state that plaintiff would hold off on any collecting activities or proceedings; 2) although defendants claimed that plaintiff did not send the December 7 letter until after the initial payment was due, the postmark on the envelope that defendants relied on bore a date in 2008; 3) plaintiff's collection notes indicated that the December 7 letter was sent that same day; 4) defendants were aware that the $3,000 payment was due, as one of the defendants contacted plaintiff's service provider on December 11 and indicated that they did not have the funds to make the payment; and 5) although it was under no obligation to negotiate or approve a loan

modification, it indeed attempted to resolve defendants' default through a loss mitigation workout, but defendants failed to provide all necessary documents and payments. Finally, addressing the affirmative defense that it failed to attach the homeowner notice to the summons, plaintiff asserted that defendants "provide absolutely no factual support for this contention." Plaintiff attached a copy of the summons, which did indeed contain the required homeowner notice, as an exhibit to its motion.

¶ 12 On December 15, 2011, defendants filed their response to plaintiff's motion for summary judgment and cross-motion for summary judgment. They argued that plaintiff's motion should be denied, and their cross-motion granted, because plaintiff was barred from recovery under the principles of equitable estoppel and laches. In support of their equitable estoppel argument, defendants once again insisted that plaintiff rendered it impossible for them to comply with the loan modification agreement, relying on the same affidavit that they first submitted with their addendum to their motion to dismiss. Responding to plaintiff's motion for summary judgment, defendants argued that their affidavit and verified answer to the amended complaint and affirmative defenses created genuine issues of material fact both as to whether there was a default on the loan and whether plaintiff failed to attach the required homeowner notice to the summons. Finally, defendants sought sanctions against plaintiff pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994).

¶ 13 On January 5, 2012, plaintiff filed both its response to defendants' cross-motion for summary judgment and a reply brief in support of its own motion for summary judgment.

¶ 14 On January 13, 2012, defendants filed a "motion for leave to file a sur-response to plaintiff's motion for summary judgment, for leave to file a reply to defendants' cross-motion for summary judgment, and to continue the hearing on plaintiff's motion for summary judgment."

In this motion, defendants argued that new facts had come to light since they filed their response to plaintiff's motion for summary judgment. Specifically, they represented that on December 30, 2011, they received an Independent Foreclosure Review (IFR) notice from the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency. This notice purportedly indicated that defendants were part of a class of Wells Fargo customers who may have been financially injured as a result of errors, misrepresentations, or other deficiencies made during the foreclosure process. According to defendants, the notice indicated that defendants were to receive an independent review of their foreclosure proceeding "to determine what injuries may have occurred." Upon investigation, defendants' counsel discovered that on April 13, 2011, Wells Fargo had signed a consent order mandating an independent review for all Wells Fargo mortgagors whose mortgages on their primary residences were active in the foreclosure process between January 1, 2009, and December 31, 2010. Defendants argued that they should be allowed to address the significance of the IFR to the plaintiff's summary judgment motion. Defendants also requested leave to file a reply brief in support of their cross-motion for summary judgment based on the fact that the original briefing schedule had not contemplated such a reply.

¶ 15 On January 13, 2012, the trial court granted defendants leave to file a reply brief in support of their cross-motion for summary judgment, but denied leave to file a sur-response to plaintiff's motion for summary judgment. The written order reflects that the court found that the IFR was a collateral matter. Defendants filed their reply brief in support of their cross-motion for summary judgment on February 6, 2012.

¶ 16 On February 24, 2012, the trial court granted plaintiff's motion for summary judgment and denied defendants' cross-motion. At the hearing, defendants requested to make an offer of

proof regarding the IFR, and the court indicated that it would not consider anything that was not submitted in response to the motion for summary judgment with appropriate affidavits. However, the court allowed counsel to make an offer of proof outside the presence of the court after the hearing.

¶ 17 Defendants filed a motion to reconsider the February 24, 2012, order, again requesting permission to introduce evidence related to the IFR. The court denied the motion on June 8, 2012.

¶ 18 On August 21, 2012, the trial court entered a judgment for foreclosure and sale. It appears from the order, which was prepared by plaintiff's counsel, that plaintiff requested a judgment of $332,721.70. That amount was crossed out, and the court awarded $322,558.86.

¶ 19 The judicial sale was stayed over the next eight months as the parties briefed the issue of whether to render the court's August 21, 2012, order immediately appealable under Supreme Court Rule 304(a) (eff. Feb. 26, 2010). The court ultimately denied defendants' motion on May 1, 2013.

¶ 20 On August 9, 2013, plaintiff filed its certificate of publication regarding a judicial sale set for September 5, 2013. The published notice incorrectly indicated that the judgment amount was $332,721.70.

¶ 21 The property was sold on September 5, 2013, for $214,200 to plaintiff. On October 30, 2013, defendants filed their objections and motion to set aside the sale pursuant to section 15-1508(b) of the IMFL (735 ILCS 5/15-1508(b) (West 2012)). Among their arguments, defendants contended that the notice of sale was defective because it listed an incorrect judgment amount.

¶ 22 On January 29, 2014, the matter proceeded to a hearing on defendants' objections to confirmation of the sale. During the hearing, defendants acknowledged that "the IMFL does not require [*sic*] to include the judgment amount," but argued that "by voluntarily electing to include that judgment amount, Plaintiff was still bound, under 1507 [735 ILCS 5/15-1507 (West 2012)], to ensure that the sale occurred in accordance with the terms of the judgment of foreclosure." The court asked defendants how including an incorrect judgment amount affected the bidding. Counsel for defendants responded: "Well, that's the thing, Your Honor. We don't know what bidders did not show up because this is the publication." Plaintiff then argued that defendants had not shown good cause to set aside the sale because defendants were "speculating that certain potential third-party bidders were turned away from appearing at the sale." Plaintiff also argued that the judgment amount was not required to be included in the notice of sale and that the discrepancy was immaterial because it did not affect the opening bid. Plaintiff agreed that there would be a problem if the incorrect judgment amount was an intentional violation of the court's order, but argued that there was no showing of that in this case. In response to plaintiff's arguments, defendants insisted that an improperly listed judgment amount could deter potential buyers, who might think that they would be "on the hook" for a greater amount if they purchased the property. Specifically, speaking from the perspective of a potential buyer, defendants' counsel stated:

> "My calculation is going to go, well, what's the deficiency? Regardless of what the opening bid is. I don't care what the opening bid is. I'm going to know as a buyer, at the end of the day, I'm on the hook for $320,000. Whether I have to pay it today or down the road through the interim deficiency that's going to be placed on this property I'm buying. At the end of the day, I know when I see this number, that is the number I will ultimately

have to pay for this property because that is the judgment that is against this piece of property I'm trying to buy."

¶ 23 At the conclusion of the hearing the trial court overruled defendants' objections to confirming the sale. The court found that there was not a violation of section 15-1507 of the IMFL because that section did not require the amount of the judgment to be included in the notice of sale. The court explained that the question was whether the improper judgment amount "created a situation that's been elevated into a fraudulent sale or a misleading sale." The court expressed that if the gap between the proper judgment amount and the listed amount had been bigger, the court would have been more inclined to accept defendants' argument. However, the court would not assume that there had been prejudice to the defendants based on the amount of the discrepancy in this case, stating: "I definitely think there would be a level where this could be an unjust sale. You just don't have enough." The court ordered plaintiff to provide defendants with an amended receipt of sale and set the matter for confirmation of the sale on February 10, 2014.

¶ 24 On February 10, 2014, the court entered an order approving the report of sale and entering an *in rem* deficiency judgment in the amount of $140,604.14.

¶ 25 Defendants filed a timely notice of appeal from the trial court's orders of January 13, 2012, February 24, 2012, June 8, 2012, August 21, 2012, January 29, 2014, and February 10, 2014.

¶ 26 II. ANALYSIS

¶ 27 Defendants raise three issues on appeal: 1) whether the court erred in granting summary judgment in plaintiff's favor in light of defendants' affidavit and their affirmative defenses of equitable estoppel/unclean hands and plaintiff's failure to comply with the homeowner notice

requirement of section 15-1504.5 of the IMFL; 2) whether the court erred in granting summary judgment in plaintiff's favor in light of the IFR notice that defendants received after they had submitted their response to plaintiff's motion for summary judgment; and 3) whether the court erred in confirming the sale where the notice of sale listed a judgment amount that was $10,162.84 higher than the entered judgment, and where such amount had been specifically denied by the trial court.

¶ 28 Defendants have forfeited their arguments with respect to the first two issues by failing to cite relevant legal authority in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) (appellant's brief must include "[a]rgument, 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"). See *ING Bank, FSB, v. Tanev*, 2014 IL App (2d) 131225, ¶ 24 ("undeveloped arguments, or contentions with some argument but no authority, are forfeited" (citing *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 720 (2010))). Moreover, defendants have failed to provide a cogent legal analysis of these issues, and their brief is filled with unsupported arguments. By way of example, on several occasions defendants suggest, without citing any authority, that the trial court's summary judgment order somehow deprived them of their constitutional right to property without due process of law. Additionally, in support defendants cite only a handful of non-foreclosure cases for boilerplate language regarding summary judgment standards, a case dealing with contract novation, and an Illinois Bar Journal article from 1987. None of the authorities cited by defendants in their appellant's brief address equitable estoppel, unclean hands, or section 15-1504.5 of the IMFL. Nor do any of defendants' authorities shed light on whether the IFR notice was a collateral matter or whether it affected plaintiff's right to summary judgment. Defendants have done nothing more than

complain that the trial court's rulings were unfair. "This court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented [citation], and it is not a repository into which an appellant may foist the burden of argument and research." (Internal quotation marks omitted.) *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010). Accordingly, we will not address any of defendants' arguments relating to whether the trial court erred in granting summary judgment in favor of plaintiff.

¶ 29 The only issue remaining is whether the trial court properly approved the judicial sale over defendants' objections. Section 15-1508 of the IMFL governs confirmation of judicial sales. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008). Subsection (b) of the statute provides, in relevant portion:

> "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) justice was otherwise not done, the court shall then enter an order confirming the sale." 735 ILCS 5/15-1508(b)(i-iv) (West 2012).

The trial court has "mandatory obligations to (a) conduct a hearing on confirmation of a judicial sale where a motion to confirm has been made and notice has been given, and, (b) following the hearing, to confirm the sale unless it finds that any of the four specified exceptions are present." *Household Bank, FSB*, 229 Ill. 2d at 178. Once the plaintiff files a properly supported motion to confirm the sale and notices it for hearing, "the interested party opposing the sale bears the burden of proving that grounds exist sufficient for the trial court to not enter an order approving the sale." *Sewickley, LLC v. Chicago Title Land Trust Co.*, 2012 IL App (1st) 112977, ¶ 35. The

trial court has broad discretion to confirm or deny a judicial sale, and we will not reverse its decision absent an abuse of discretion. *Bayview Loan Servicing, LLC v. 2010 Real Estate Foreclosure, LLC*, 2013 IL App (1st) 120711, ¶ 32. The trial court abuses its discretion only when "its ruling rests on an error of law or where no reasonable person would take the view adopted by the circuit court." *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 57.

¶ 30 On appeal, defendants only specifically invoke the "justice" provision of section 15-1508(b)(iv). To the extent that any other sub-section of 15-1508(b) may be relevant to the issues, defendants fail to clearly articulate those arguments. Defendants simply argue that the trial court abused its discretion in confirming the judicial sale because the notice of sale included an incorrect judgment amount which was $10,162.84 higher than the entered judgment, and which represented an amount that had been specifically denied by the trial court. Section 15-1507(c) of the IMFL (735 ILCS 5/15-1507(c) (West 2012)) provides the form of the required notice of judicial sale. The notice must provide "at least" certain specified information, but the statute provides that "an immaterial error in the information shall not invalidate the legal effect of the notice." 735 ILCS 5/15-1507(c)(1) (West 2012). The amount of the judgment is not part of the information that must be included in the notice.

¶ 31 Section 15-1508(b)(iv) codified the "long-standing discretion of the courts of equity to refuse to confirm a judicial sale" where "unfairness is shown that is prejudicial to an interested party." *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 19. In addressing this section, courts "balance[] the interests of the parties and exercise[] [their] equitable authority to vacate a sale, applying traditional equitable principles." *McCluskey*, 2013 IL 115469, ¶ 20. This provision "provides a narrow window through which courts can undo sales because of serious defects in the actual sale process, and not because of alleged errors in the process leading up to

the underlying judgment." *NAB Bank v. LaSalle Bank, N.A.*, 2013 IL App (1st) 121147, ¶ 19. "There is no bright-line definition of what defects in the sale process might constitute an 'injustice.' " *NAB Bank*, 2013 IL App (1st) 121147, ¶ 18.

¶ 32 The parties have not cited, and we have not found, a case addressing whether a sale should be confirmed where the mortgagee includes inaccurate, though unnecessary, information in the notice of judicial sale. In *NAB Bank*, the court correctly observed that "[t]here is only a handful of reported cases where a court vacated a sale under the justice clause, and almost all of them did so because of an unconscionable sale price, which is a separately listed basis on which a court can decline to confirm a sale." 2013 IL App (1st) 121147, ¶ 18 (collecting cases).

¶ 33 Nevertheless, the supreme court observed that the appellate court has found injustice under section 15-1508(b)(iv) where "the lender's conduct *** prevented the borrowers from protecting their interest in the property and affected their right to redeem the property." *McCluskey*, 2013 IL 115469, ¶ 22. For example, in *Fleet Mortgage Corp. v. Deale*, 287 Ill. App. 3d 385 (1997), the court affirmed an order vacating a judicial sale to a third party where the mortgagors paid the mortgagee in full on the last day of the redemption period, but the mortgagee failed to take steps to cancel the sale. The court reasoned that the public policy of "promot[ing] stability in the conduct of a judicial sale" could not be "given ascendancy over the articulated purpose of the [IMFL] to protect the equity of a mortgagor by permitting mortgage redemptions prior to forced sales." *Fleet Mortgage Corp.*, 287 Ill. App. 3d at 389. Similarly, in *Citicorp Savings of Illinois v. First Chicago Trust Co. of Illinois*, 269 Ill. App. 3d 293 (1995), the court affirmed an order denying confirmation of a sale to a third party where the sale proceeded prematurely and only by mistake. The court stated that "it would not be in the interests of justice for the court to have confirmed the sale of the property after [the mortgagee] affirmatively

represented to the [mortgagors] that a sale would not take place." *Citicorp Savings of Illinois*, 269 Ill. App. 3d at 300-01. In *Commercial Credit Loans, Inc. v. Espinoza*, 293 Ill. App. 3d 915 (1997), the appellate court likewise affirmed the denial of a motion to confirm a sale to a third party where the sale price was 1/6th of the value of the property and where the trial court found that the mortgagee "shrugged off" the mortgagor's redemption attempts. *Espinoza*, 293 Ill. App. 3d at 928.

¶ 34 Defendants do not argue that plaintiff affected their right of redemption and prevented them from protecting their interest in the property, so the above cases are not analogous factually. They do, however, stand for the proposition that the trial court should consider the effects of confirming or denying the sale on all interested parties. The court must also balance the prejudice to the mortgagors against the interests of the mortgagee, while considering the interest of the public in fostering stability in judicial sales. With these principles in mind, we address defendants' arguments as to why the scales of equity should tip in their favor and why the trial court abused its discretion in failing to so conclude.

¶ 35 Defendants argue that the judicial sale in this case was not conducted in accordance with the judgment of foreclosure because plaintiff "voluntarily included blatantly false information in the Notice of Sale which caused justice to not otherwise be done in the conduct of the sale." As an initial matter, defendants have no factual basis to argue or imply that plaintiff intentionally included an inflated judgment amount in the notice. Defendants have not articulated any advantage, and we can think of none, that plaintiff would possibly gain by "voluntarily" including "blatantly false" information in the notice of sale.

¶ 36 Furthermore, the cases defendants rely on are readily distinguishable. Defendants assert that "[t]he Plaintiff must specifically follow the directions of the foreclosure decree when

conducting the sale," citing a partition case, *Barnes v. Swedish American National Bank of Rockford*, 371 Ill. 20 (1939), and *Ehrgott v. Seaborn*, 363 Ill. 292 (1936), which involved a sale from a decedent's estate. In *Barnes*, the court held that the decree of sale was not carried out as directed because of the failure to provide proper notice of the sale. Specifically, there was no indication that "the publication was had in a secular newspaper of general circulation, printed and published for at least six months prior to the first publication of the notice, as required by law." *Barnes*, 362 Ill. at 27. Additionally, there was no description of the property included in the notice. *Barnes*, 362 Ill. at 28. Similarly, in *Ehrgott*, the court affirmed an order refusing to confirm a sale from a decedent's estate where the terms of the sale required at least a 1/3 cash payment on the day of the sale, but the high bidder paid a lesser amount and attempted to take an advance on his share of the estate. *Ehrgott*, 363 Ill. at 293, 296. These cases are inapposite because, as defendants concede, plaintiff's notice of sale included all information required by section 15-1507(c), but simply included additional information that was neither required nor prohibited by the statute. Although defendants insist that the IMFL demands strict compliance with its provisions, they fail to explain how plaintiff could strictly comply with a statute that is silent on a particular issue. Accordingly, this is not a case where plaintiff failed to comply with the terms of sale or the judgment of foreclosure. Other cases that defendants cite, including *First Federal Savings & Loan Ass'n of Ottawa v. Chapman*, 116 Ill. App. 3d 950, 957 (1983) (sale vacated where plaintiff did not publish notice of a continued sale date), and *Chase Manhattan Mortgage Corp. v. Belke*, 2004 WL 1403799 (N.D. Ill. June 18, 2004) (unpublished federal district court order in which the sale at issue was neither public nor conducted by auction), are distinguishable for the same reason. Furthermore, unpublished federal decisions are not binding

on Illinois courts. *Horwitz v. Sonnenschein Nath & Rosenthal LLP*, 399 Ill. App. 3d 965, 976 (2010).

¶ 37 The trial court was therefore correct in focusing the inquiry on whether the inflated judgment amount in the notice created a misleading sale. As to why the incorrect judgment amount misled the public, defendants argue as follows:

> "The judgment amount is a crucial piece of information to any potential foreclosure buyer because of the potential for an *in rem* deficiency judgment being entered against the property. Any prudent buyer would consider the judgment amount as compared to the amount the buyer is willing to bid to calculate whether he should or should not purchase the property. *** By incorrectly listing a judgment higher than the actual judgment, the Plaintiff could have easily turned away potentially interested buyers who determined that the potential amount of a deficiency judgment was too great. *** It is impossible to know how many potential bidders failed to register or attend the auction based upon the Plaintiff's inclusion of the incorrect judgment amount. The Defendants were prejudiced by the lender's conduct because had other bidders registered, the ultimate sale price could have been higher, thus lowering the deficiency, or eliminating it altogether."

There are several problems with this argument. By their own admission, defendants can only speculate as to whether they suffered any actual prejudice from the inclusion of an incorrect judgment amount in the notice of sale. Additionally, it appears that defendants erroneously believe that a third-party purchaser at auction takes title to the property subject to any deficiency judgment. "Under early jurisprudence of this state, in part because of the distinction between actions at law and equity, and in part because foreclosure actions were largely considered '*in*

rem,' a personal deficiency judgment at law could not be entered in a foreclosure proceeding in the absence of statutory authority." *Metrobank v. Cannatello*, 2012 IL App (1st) 110529, ¶ 19. However, "courts in equity had the power to enter decrees directing that rents or other income relating to the property be used to satisfy any deficiency, even in the absence of personal service, as such a judgment was considered to be against the property or '*in rem*' and not personal." *Metrobank*, 2012 IL App (1st) 110529, ¶ 20.

¶ 38 An *in rem* judgment against the property in a foreclosure proceeding amounts to "no more than the creation of a lien In rem against the property and the rents[,] issues[,] and profits therefrom to be paid upon account of the deficiency." *St. Ange v. Chambliss*, 71 Ill. App. 3d 658, 660 (1979). This lien applies "during the full period of redemption" (*St. Ange*, 71 Ill. App. 3d at 660), and becomes relevant when the mortgagor exercises its special right to redeem. Under section 15-1604 of the IMFL (735 ILCS 5/15-1604 (West 2012)), if the purchaser of residential real estate at a sale is either the mortgagee or its nominee and the sale price is less than the amount required to redeem, then, for a period of 30 days after confirmation of the sale, an owner of redemption may redeem by paying the mortgagee: 1) the sale price, 2) all additional costs and expenses incurred by the mortgagee set forth in the report of sale and confirmed by the court, and 3) interest at the statutory judgment rate from the date the purchase price was paid or credited as an offset. If the mortgagor exercises this right, the mortgagee continues to have a lien on the property to the extent that there is a remaining deficiency. 735 ILCS 5/15-1604(b) (West 2012) ("Nothing contained herein shall affect the right to a personal or in rem deficiency judgment, and enforcement thereof shall be allowed as provided by law. Any deficiency judgment shall retain the same priority on title as did the mortgage from which it arose."). Defendants have cited no authority, and we are aware of none, that would make a third-party

purchaser at an auction responsible to pay their deficiency judgment under these circumstances. If such were the case, judicial auctions would truly become traps for the unwary.

¶ 39 Furthermore, defendants find fault in the trial court's alleged "improper fixation on the amount of the difference between the judgment granted and the judgment published." Under section 15-1508(b)(iv), the trial court properly considered the amount of the discrepancy as a gauge of whether there was "unfairness *** shown that is prejudicial to an interested party." *McCluskey*, 2013 IL 115469, ¶ 19. To that end, the trial court stated that "there would be a level where this could be an unjust sale," but it found that defendants in this case "just don't have enough." Given that defendants have not shown any prejudice, that the judgment amount was not required to be included in the notice of sale, that the discrepancy was only approximately 3% of the actual judgment amount, that there is no indication that plaintiff acted in bad faith, and that plaintiff did not prevent defendants from protecting their interests in the property and affect their right to redeem the property, we cannot conclude that the trial court abused its discretion in finding that defendants failed to show injustice under section 15-1508(b)(iv).

¶ 40 Finally, defendants argue that the trial court erred in failing to consider their affirmative defenses of equitable estoppel and unclean hands when deciding whether to confirm the sale. However, we have already held that defendants have forfeited their arguments regarding their affirmative defenses. Forfeiture aside, "objections to the confirmation under section 15-1508(b)(iv) cannot be based simply on a meritorious pleading defense to the underlying foreclosure complaint." *McCluskey*, 2013 IL 115469, ¶ 25; see also *NAB Bank*, 2013 IL App (1st) 121147, ¶ 19 ("The 'justice clause' provides a narrow window through which courts can undo sales because of serious defects in the actual sale process, and not because of alleged errors in the process leading up to the underlying judgment.").

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the trial court's orders in all respects.

¶ 43 Affirmed.