

No. 1-13-2247

**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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CITIBANK, N.A., as Trustee for Certificate	)	
Holders of Bear Stearns Asset Backed	)	Appeal from the
Securities Trust 2007-2, Asset Backed	)	Circuit Court of
Certificates, Series 2007-2,	)	Cook County
	)	
Plaintiff-Appellee,	)	
	)	No. 08 CH 30783
v.	)	
	)	
CHRISTINE PERKINS and MAURICE	)	Honorable
PERKINS,	)	Lisa Ann Marino,
	)	Judge Presiding.
Defendants-Appellants.	)	

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JUSTICE MASON delivered the judgment of the court.  
Presiding Justice Pucinski and Justice Hyman concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Order confirming judicial sale of property in mortgage foreclosure case affirmed; mortgagors' assertions of lawyer misconduct, fraud, and forgery were speculative and not supported by the record.
- ¶ 2 Plaintiff Citibank, N.A., brought this action to foreclose on residential property located at 4836 Michigan Avenue in Chicago and owned by defendants Christine and Maurice Perkins.

The circuit court granted summary judgment for Citibank and, on June 19, 2013, entered an order confirming a judicial sale of the property. Defendants now appeal, asserting that they were never served with process, their counsel was operating under a conflict of interest, the loan was fraudulent and unenforceable, and the mortgage was never validly assigned to Citibank. Finding no error, we affirm.

¶ 3

## I. BACKGROUND

¶ 4

Citibank's complaint, filed on August 21, 2008, alleges that on January 26, 2007, defendants mortgaged their residence as security for a \$350,000 loan evidenced by a promissory note that Christine executed on the same day. Citibank further alleged that since March 2008, defendants had been in default on payments due on the loan. Citibank, as the trustee for the holder of the mortgage, sought to foreclose.

¶ 5

Christine entered a *pro se* appearance and filed an answer to the complaint on October 17, 2008. On April 7, 2009, attorney Anthony Peraica entered an appearance for Christine, and on the following day, he also entered an appearance for Maurice. Maurice, through Peraica, filed an answer to the complaint on April 21, 2009.

¶ 6

On December 18, 2009, Citibank moved for summary judgment. Defendants did not file any response to that motion. On March 23, 2010, the trial court entered an order granting summary judgment for Citibank, as well as a judgment of foreclosure and sale. A judicial sale of the property was scheduled for June 25, 2010.

¶ 7

Maurice filed an emergency motion to vacate the judgment order, stating that he needed additional time to secure financing for a short sale of the property. At a June 1, 2010, hearing on Maurice's motion, counsel for Citibank informed the trial court that the June 25 sale date had been canceled; the trial court then denied Maurice's motion.

¶ 8 The judicial sale was rescheduled multiple times and eventually set for March 7, 2013. On March 5, 2013, the court granted defendants' emergency motion to stay the sale and rescheduled it for March 19, 2013. Peraica appeared for the defendants at the March 5 hearing. On March 20, 2013, the court denied defendants' second emergency motion to stay the sale and ordered the sale to proceed "as scheduled" on that same date. Peraica again appeared for the defendants at the March 20 hearing.

¶ 9 After the sale took place on March 20, 2013, Citibank filed a motion for an order approving the report of sale and distribution and for an order of possession. Defendants raised no objections to this motion. On June 19, 2013, the trial court granted Citibank's motion and entered an order confirming the judicial sale and granting possession to Citibank.

¶ 10 On July 1, 2013, defendants filed a *pro se* "Notice of Appeal," in which they stated that they were appealing from the trial court's order of June 19, 2013. Defendants asserted that, unbeknownst to them, their attorney Peraica had quit the case, leaving them unaware that a judicial sale of their property had occurred or that Citibank had filed a motion to confirm the sale. They stated that if they had been aware of these facts, they would have come to court *pro se* to challenge Citibank's motion. They additionally argued that the court erred in confirming the sale because "[t]he terms of the sale were unconscionable, the sale was conducted fraudulently and justice was not done." Attached to the "Notice of Appeal" is defendants' "Brief in Support of Motion for Stay of Judgment," which states that it is "a timely post-trial motion in this matter asking the trial court to reconsider its decision of eviction, or if that should be rejected, to stay its Judgment pending appeal."

¶ 11 On July 10, 2013, the trial court held a hearing on defendants' motion, at which defendants appeared *pro se*. The court continued the motion to August 14, 2013, and also ordered Peraica to either appear on that date or withdraw as counsel of record.

¶ 12 On July 18, 2013, defendants filed a second "Notice of Appeal" in which they again stated that they were appealing from the trial court's June 19, 2013, order. They also filed a motion requesting a stay of eviction proceedings while their appeal was pending. On August 14, 2013, over Citibank's objection, the trial court granted a stay until September 9, 2013, for defendants to obtain substitute counsel. The record does not reflect whether the stay was extended further beyond that date. The trial court also granted Peraica's motion to withdraw as counsel.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendants contend that the trial court erred in confirming the judicial sale for four reasons: (1) they were never served with process in the foreclosure action; (2) their attorney had a conflict of interest that caused him to deliberately "throw[] the case" in favor of Citibank; (3) the loan upon which the mortgage was premised was fraudulent; and (4) the mortgage was never validly assigned to Citibank.

¶ 15 Once a judicial sale has occurred and a motion to confirm the sale has been filed, the court's discretion to vacate the sale is governed by section 15-1508(b) of the Illinois Mortgage Foreclosure Law, which provides: "Unless the court finds that (i) a notice [of the sale] \*\*\* 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) (West 2012). The trial court has broad discretion in determining whether any of these conditions have been met, and its decision to confirm or reject a judicial sale under the

statute will not be disturbed absent an abuse of that discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008).

¶ 16 Before we reach the substance of defendants' contentions, Citibank urges us to dismiss the appeal because defendants' brief does not comply with Supreme Court Rule 341. Citibank points out that defendants' statement of facts is replete with statements that are argumentative and have no basis in the record, in contravention of Rule 341(h)(6), which requires appellants to state the facts of the case "accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal" (Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013)). Additionally, defendants' argument section does not contain citations to the record or present the issues sought to be decided in an orderly manner. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument section must set forth the appellant's contentions "with citation of the authorities and the pages of the record relied on"); *Lake County Grading Company, LLC v. Village of Antioch*, 2014 IL 115805, ¶ 36 (reviewing court is entitled to have the issues clearly defined). An appellant's failure to present an organized and cohesive argument that complies with Rule 341 will justify dismissal of the appeal. *Harvey*, 117 Ill. App. 3d at 451; *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38. However, the mandates of Rule 341 are admonitions to the parties, not jurisdictional in nature, and we therefore choose to entertain this appeal in the interest of fairness and justice. See *In re Marriage of Souleles*, 111 Ill. App. 3d 865, 869 (1982).

¶ 17 We additionally note that defendants filed two notices of appeal in this action, on July 1, 2013, and on July 18, 2013, both of which appeal from the trial court's June 19, 2013 order confirming the judicial sale. Both were filed within 30 days of the judgment appealed from and are therefore timely. Ill. S. Ct. R. 303(a) (eff. June 4, 2008). We shall treat the second notice of

appeal as an amended notice of appeal. In any case, our characterization of the second notice of appeal makes no difference to our resolution of this case, since both notices of appeal are appealing from the same order, and the second notice of appeal does not raise any new issues that were not raised in the first notice of appeal.

¶ 18

A. Service of Process

¶ 19

Defendants' first contention is that they are entitled to relief from the judgment because they were never served with process in the foreclosure action. The record demonstrates otherwise. After a special process server made eight unsuccessful attempts to serve defendants from August 27, 2008, to September 3, 2008, they were served by publication pursuant to section 2–206(a) of the Code of Civil Procedure (735 ILCS 5/2–206(a) (West 2008)). There is nothing in the record that would indicate that service by publication was improper. Additionally, both Christine and Maurice appeared in court and filed answers to Citibank's complaint. By filing answers, they waived any objection to the court's exercise of personal jurisdiction over them due to insufficiency of service of process. 735 ILCS 5/2-301(a-5) (West 2008); see *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 29 (defendant could not contest service of process on appeal where he voluntarily submitted himself to the trial court's jurisdiction by filing a responsive pleading). Thus, any alleged insufficiency of service is not grounds for reversal.

¶ 20

B. Counsel's Alleged Conflict of Interest

¶ 21

Defendants next contend that their counsel had a conflict of interest that caused him not to zealously represent them. In support of this contention, defendants claim that on the day that the trial court heard Citibank's motion to confirm the judicial sale, defendants' attorney Peraica did not appear in court. In his place, he sent "a new associate attorney" from his law firm who

was “a neophyte law school graduate.” According to the defendants, this new associate (who remains unnamed in defendants’ brief) wished to get a job at the law firm that was representing Citibank. In order to curry favor with that law firm, he chose not to file any objection or response to Citibank’s motion to confirm the judicial sale. Defendants argue that confirming the sale under such circumstances was a miscarriage of justice, and the trial court should instead have vacated the sale under section 15-1508(b)(iv) (735 ILCS 5/15-1508(b)(iv) (West 2012) (circuit court has discretion to refuse to confirm a judicial sale if “justice was otherwise not done”)).

¶ 22 Defendants have forfeited this issue by failing to raise it before the trial court. In the trial court, defendants did not raise any claims regarding an associate attorney who allegedly represented them at the hearing on Citibank’s motion to confirm the judicial sale. It is well established that issues not raised in the trial court cannot be raised for the first time on appeal. *Cambridge Engineering v. Mercury Partners*, 378 Ill. App. 3d 437, 453 (2007).

¶ 23 In any event, even if we were to overlook defendants’ forfeiture and consider their argument on its merits (see *id.* (forfeiture is not a jurisdictional limitation but an admonition to the parties)), there is no support for defendants’ allegations in the record on appeal. In particular, there is no record of any proceedings that took place on Citibank’s motion to confirm the judicial sale. There is no indication that an associate attorney appeared on the defendants’ behalf, much less any evidence that he desired a job with Citibank’s law firm or was otherwise colluding with Citibank. It is well-established that “[r]eviewing courts must determine the issues before them on appeal solely on the basis of the record made in the trial court.” *Lake v. State*, 401 Ill. App. 3d 350, 352 (2010); see also *People v. Heaton*, 266 Ill. App. 3d 469, 476 (1994) (evidence which is not part of the record on appeal may not be considered by a reviewing court). Because

defendants' conflict-of-interest argument is premised entirely upon allegations that are unsupported by the record, it is not grounds for reversal.

¶ 24 Defendants additionally argue that Peraica "abandoned" the case by not appearing at the hearing on Citibank's motion to confirm the sale and not raising any objections to that motion. Defendants speculate that Peraica "probably benefitted from his nondisclosure of no objections to Plaintiff[s] confirmation of sale." As discussed above, we cannot base our decision upon speculation that has no support in the record. *Lake*, 401 Ill. App. 3d 352; *Heaton*, 266 Ill. App. 3d at 476. In any event, as shall be developed below, defendants do not raise any meritorious defenses that Peraica, or any attorney appearing in his stead, could have raised at the hearing on Citibank's motion to confirm the sale.

¶ 25 C. Validity of Underlying Loan

¶ 26 Defendants next assert that the loan upon which their mortgage is premised is fraudulent and therefore unenforceable. They state that Citibank "used toxic waste security to swindle everybody out of their equity in this case" and that the case is "a criminal racket." Defendants further state that the loan in question was an "Illusionary Loan that Never Existed."

¶ 27 These contentions are not supported by authority or cohesive argument and are therefore forfeited. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). Furthermore, none of these factual allegations have any foundation in the record. Defendants' claim that the loan was "[i]llusionary" is directly contradicted by the mortgage documents attached to Citibank's complaint, which state that Christine, as borrower, executed a promissory note for \$350,000 and mortgaged her residence as security for that loan. The documents are signed by both Christine and Maurice, and no questions as to their genuineness were raised in the proceedings in the trial court. Moreover, there is no evidence of record that the loan at issue was fraudulent. Defendants



devote substantial portions of their brief to discussing issues of fraud in the mortgage industry generally, stating that “[t]his suit came at a time when foreclosure fraud was at its highest peak in America” and further stating that the mortgagees in this case “had amassed a global corrupt securization [*sic*] empire.” However, defendants present no evidence, and certainly none of record, that their particular loan was procured through fraud. Accordingly, even if we were to overlook the forfeiture of this issue, defendants’ contentions in this regard are without merit. See *Lake*, 401 Ill. App. 3d 352.

¶ 28 D. Validity of Mortgage Assignment

¶ 29 Defendants’ final contention is that the mortgage on their property was never validly assigned to Citibank and that Citibank therefore lacks any legal interest in the property. In this regard, defendants argue that the present case is analogous to *Bayview Loan Servicing, L.L.C. v. Nelson*, 382 Ill. App. 3d 1184 (2008). We find *Bayview* inapposite.

¶ 30 In *Bayview*, the defendant executed a mortgage in favor of Old National Bank. *Id.* at 1185. When defendant defaulted, plaintiff Bayview Loan Servicing brought a mortgage foreclosure suit against him. *Id.* But the record showed that defendant’s mortgage had not been assigned to Bayview Loan Servicing, but to Bayview Financial Trading Group, which was a separate and distinct legal entity. *Id.* at 1186-87. The *Bayview* court held that since the plaintiff was not the correct legal entity to have brought the action, the trial court erred in entering a judgment of foreclosure and sale in favor of plaintiff. *Id.* at 1187.

¶ 31 Defendants argue that, as in *Bayview*, Citibank is not the correct legal entity to have brought mortgage foreclosure proceedings against them. The record belies this assertion. A copy of the mortgage, attached to Citibank’s complaint, shows that the original mortgagee was Mortgage Electronic Registration Systems, Inc., as nominee for Encore Credit Corporation. Also

attached to the complaint is an assignment from Mortgage Electronic Registration Systems to Citibank. Based upon these documents, which were never challenged by defendants in the trial court, it is apparent that Citibank does, in fact, have a legal interest in the subject property and is the proper party to bring suit.

¶ 32 In their brief, defendants allude to an argument that the assignment was forged, stating: “ALL WAS PURPORTEDLY SIGNED but signed without authority or without true knowledge of the facts. Given the horribly organized and terribly inefficient operations of the lenders and servicers in this case at bar, there are likely a huge number of erroneous releases as well involved in this case.” Defendants also make reference to various “forged, inaccurate and inadvertent releases” that have allegedly been signed in other mortgage foreclosure cases. But defendants do not point to any evidence of record that would suggest that the assignment in this case, as opposed to other cases that are not presently before this court, is forged or otherwise “erroneous.” Accordingly, defendants’ unsupported accusations of forgery do not warrant reversal. See *Lake*, 401 Ill. App. 3d 352; *Heaton*, 266 Ill. App. 3d at 476.

¶ 33 III. CONCLUSION

¶ 34 The trial court did not err in confirming the sale of the subject property, and the order appealed from is therefore affirmed.

¶ 35 Affirmed.