2015 IL App (2d) 140320-U
No. 2-14-0320
Order filed May 29, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

METROPOLITAN CAPITAL BANK, Plaintiff-Appellee, v. RFO HOLDINGS, INC., GD LAND CORPORATION, IH LAND CORPORATION, ROBERT R. OURY, GRUPO UNIDOS PER EL CANAL, S.A., 333 WEST LAKE, LLC, INDIAN HILLS TRAINING CENTER, INCORPORATED, Defendants (RFO Holdings, Incorporated, GD Land Corporation, IH Land Corporation and Robert F. Oury, Defendants-Appellants).	)	Appeal from the Circuit Court of Kane County. No. 13-CH-671 Honorable Leonard J. Wojtecki Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order approving a report of sale and distribution, confirming the judicial sale and entering an order of possession were affirmed when: (1) the sale price of the property was not unconscionable under the Illinois Mortgage Foreclosure Law; (2) the mortgagors were not entitled to an evidentiary hearing when their valuations of the property were remote in time and they did not show any other fraud or other irregularity in the foreclosure proceeding; and (3)

mortgagors also did not show that justice was not otherwise done in order to prove a violation of the Illinois Mortgage Foreclosure Law.

¶ 2 Appellants, RFO Holdings, Inc., GD Land Corporation, IH Land Corporation and Robert F. Oury (collectively, the mortgagors), appeal from the trial court's order approving a report of sale and distribution, confirming the judicial sale, and entering an order of possession. On appeal, the mortgagors argue that the trial court erred in: (1) confirming the sale because it was unconscionable based upon the gross disparity between the purchase price and the value of the property; (2) denying the mortgagors' request for an evidentiary hearing and limited discovery; and (3) confirming the sale when justice was not otherwise done. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On March 17, 2008, the mortgagors executed a mortgage in favor of appellee, Metropolitan Capital Bank (MetCap). The mortgaged real estate consisted of approximately 280 acres known as Indian Hills Farm in Gilberts, Illinois. The mortgage secured a Fifth Amended Promissory Note (Note), dated September 1, 2012, in the principal amount of $2,562,180.88. The Note was secured by Robert F. Oury, individually and as president of RFO Holdings, Inc., GS Land Corporation, and IH Land Corporation. The Note required the makers to pay the entire principal balance then outstanding, plus any accrued and unpaid interest, penalties and late payment fees on the maturity date, March 1, 2013. The mortgagors waived the right of redemption.

¶ 5 On March 7, 2013, MetCap filed a foreclosure complaint, alleging that the mortgagors defaulted by failing to make payments as required by the Note and also failed to pay real estate taxes. MetCap noted that the total due on the mortgage as of March 1, 2013, was $2,579,173.69. On June 6, 2013, it filed an amended complaint and named Indian Hills Training Center, Inc., as

an additional party defendant whose rights to possess the mortgaged real estate were sought to be terminated.

¶ 6 On September 20, 2013, MetCap filed a motion for summary judgment. The motion was granted on November 22, 2013, and the judgment of foreclosure and sale was entered on December 18, 2013. The judgment ordered that the subject real estate be sold by public auction by the Kane County Sheriff with the proceeds to be distributed to satisfy the judgment of foreclosure in the amount of $2,854,180.67 plus interest, fees and other costs. The sale was conducted on February 20, 2014. At the sale, MetCap was the only bidder and it submitted a credit bid of $2,937,218.11, which represented the full amount owed to MetCap. On February 27, 2014, MetCap filed a motion for orders confirming the sale, approving the report of sale, and granting possession of the property.

¶ 7 On March 3, 2014, the mortgagors filed a motion to vacate and deny approval of sale. Included in the motion were one-page excerpts from two appraisals of the property performed in 2009 and 2011 by Tobin Real Estate Advisors. Those appraisals estimated the value of the property at $20 million on July 28, 2009, and at $11.4 million on March 22, 2011. Also included in the motion was an affidavit by Robert Oury wherein he stated the following:

> "On February 19th, I had a breakfast meeting at the Drake Hotel in Chicago, Illinois with Richard "Dick" Keneman, the Chief Lending Officer of Metropolitan Capital Bank. During our discussion, Mr. Keneman confirmed past promises to me that if I was able to come up with the full amount of money the bank was owed on the mortgage, then the bank would allow me to redeem ownership of the property."

¶ 8 Also on March 3, 2014, a hearing was held before Judge William Parkhurst on MetCap's motion to confirm the sale and the mortgagors' motion to vacate and deny approval of the sale.

At the hearing, counsel for the mortgagors and Indian Hills Training Center argued that the judicial sale should not be confirmed. Specifically, counsel for the mortgagors argued that both before and after the sale they had an agreement in place to have a third party come in and be a "white knight" in the process. Counsel said that his client was under the impression that the bank was amenable to that type of transaction throughout the foreclosure and the sale. In addition, there was a disparity in the sale price and the appraisals, and both issues, taken together, amounted to an injustice.

¶ 9 Counsel for the "white knight" informed the court that his client contacted him the week before the hearing and they together approached MetCap about redeeming the full amount owed on the Note, but MetCap refused the offer. According to the "white knight's" counsel, the only reason MetCap would refuse was if MetCap believed the property was worth more than they had paid for it, and MetCap was therefore trying to take advantage of the mortgagors. When asked by the trial court why the white knight did not simply bid a dollar more for the property at the judicial sale, counsel said he would love to be in that position, but he was not, and the trial court had an opportunity to put the parties in exactly the position they should be in—the bank would suffer no loss, and the "white knight" was prepared to offer a cash deal with no mortgage contingency *after it saw the title*, and the mortgagors were going to "cure that." (We assume that this means the mortgagors were going to cure any imperfections in the title.) Counsel then requested that the court continue the hearing for 7 to 10 days for tender of the full amount due and owing MetCap, and then they would be back in court with a dismissal order if that occurred.

¶ 10 In response, counsel for MetCap stated that the loan matured a year ago, there was no right to reinstate, the redemption right was waived, the white knight did not tender the cash

before the sale, and he did not have the cash with him at the hearing. In addition, MetCap's counsel stated:

¶ 11 "We were approached by Mr. Oury before the sale with a different person who was going to enter into a contract to pay us off in full. When he saw the title, there are title problems with this property. The Kane County Forest Preserve has a prior right of first refusal that extends for four months. There are tax sales that need to be taken care of on the title.

Their proposal to pay us off [was] contingent upon numerous things, none—not the least of which is a clear title, which whatever the agreement we—they propose, they're never going to be—they're always going to be in a position to back out and we're going to be back to square one.

There's a ten million dollar junior lien on the property that's being foreclosed out in this proceeding. If they don't agree to take the project—the property subject to that lien, which is being foreclosed in this proceeding, the deal falls through again."

¶ 12 With regard to the 2009 and 2011 appraisals, MetCap's counsel stated that the most recent one was still over three years old, and those appraisals were based on vacant land. Counsel noted that MetCap had a more current appraisal that showed the property had declined even further in value. The land was not vacant, there was a disassembled DC-9 airliner on the property, and there were several outbuilding and equestrian buildings that would have to be removed in order for it to be vacant and have the value as undeveloped land. In addition, counsel said that there were environmental assessments that would need to be made. Finally, counsel noted that he could foresee numerous contingencies being put in a contract that will end up with

the contract not being approved or MetCap not getting full payment. Counsel said that MetCap could always negotiate with the parties after the sale was confirmed.

¶ 13 Counsel for the mortgagors then requested an evidentiary hearing based upon the disparity between its 2009 and 2011 appraisals and MetCap's valuations. When asked about the problems with the title, counsel said that while negotiating with the current "white knight" it had obtained lien waivers, but that they had not been filed yet.

¶ 14 After taking a break to read the pertinent case law, the trial court asked MetCap's counsel about the more recent appraisal of the property that it mentioned earlier in the hearing. Counsel said that the appraisal was from July 2013 and it was for $8 million. However, counsel said that appraisal was also for vacant land, like the 2009 and 2011 appraisals, and that it was not submitting that appraisal of the property because like those earlier appraisals it did not believe that it was indicative of the fair market value of the property. Upon agreement of the parties, the hearing was then continued to March 19, 2014, before Judge Leonard Wojtecki.

¶ 15 On March 13, 2014, MetCap filed a reply in support of its motion to confirm the sale. In the reply, MetCap included the affidavit of Richard Keneman, MetCap's Chief Lending Officer. In the affidavit Keneman stated that in order to determine whether the subject property supported a full debt bid by MetCap at the sheriff's sale, MetCap consulted with a real estate professional, who advised it prior to the sale that the market value of the property was not more than $3,550,000. Keneman also stated that after the March 3, 2014, confirmation hearing was denied[1], MetCap requested a broker price opinion which indicated that the market value of the

[1] Keneman incorrectly states that MetCap's motion for a confirmation of sale was denied on March 3, 2014. Instead, as we have noted, by agreement of the parties the hearing was continued to March 19, 2014.

subject property was between $2,556,000 and $3,408,000, based upon sales of unimproved farmland in Kane County that had a value of between $9,000 to $12,000 per acre. A copy of the broker's price opinion with an explanation of the valuation provided to MetCap was attached to the affidavit.

¶ 16 In the affidavit Keneman also averred that in connection with a proposed acquisition of a portion of the subject property for the improvement of Illinois State Route 72, the Illinois Department of Transportation (IDOT) prepared a "Basis for Computing Total Approved Compensation and Offer to Purchase" that appraised the fair market value of the subject property at approximately $12,000 per acre. A copy of the IDOT offer of purchase dated September 17, 2013 was also attached to the affidavit.

¶ 17 With regard to the 2009 and 2011 appraisals that the mortgagors attached to their motion to vacate and deny approval of sale, Keneman stated that he was familiar with those appraisals and that they were not based upon the property's current use, but rather on its potential use as vacant land. Therefore, according to Keneman, those appraisals failed to reflect a consideration of the following conditions which adversely affected those valuations: (1) the appraisals assumed that consummation of sale at the appraised value would necessitate an exposure period/marketing time of around six to nine months, and as far as Keneman knew, since the foreclosure was commenced on March 7, 2013, Oury had not listed the property with a broker to actively market it in order to pay off the loan prior to the sheriff's sale; (2) the appraisals assume absolute ownership unencumbered in any way by any other interest or estate, and the property was encumbered by a right of first refusal and an option to purchase which provided an additional 127 days to enter into a purchase agreement at the offer price which, in Keneman's opinion, discounted the price substantially from an appraised value of property which was not

encumbered by such a lengthy holding period; (3) the appraisals assumed an environmentally non-impaired site, and stated that no phase I environmental investigation was supplied; therefore, those appraisals reflected no discount for any potential environmental impairments, including the operation of equestrian facilities that boarded 150 horses and land also used for accepting fill from road construction; (4) a purchaser at the foreclosure sale would take title to the property that was currently being operated as a large scale equestrian facility, and the continued operation of the equestrian facility would place substantial burdens on the purchaser in terms of (i) insuring or assuming casualty and liability risks, and (ii) terminating or phasing out the operations in an orderly manner. Keneman attached the pages from the 2009 and 2011 appraisals to which he referred.

¶ 18 Keneman also averred that in Oury's affidavit Oury incorrectly implied that he told Oury that MetCap would consider postponing the date of the sheriff's sale and confirmation hearing. Keneman stated that although he told Oury that MetCap would accept full payment prior to the sheriff's sale, at no time did he ever offer or agree to postpone or delay the foreclosure proceeding. Keneman averred, "[t]o the contrary, I consistently and unequivocally made Mr. Oury aware that the Bank would not authorize postponement of the sheriff's sale or otherwise delay the foreclosure proceedings." Finally, Keneman stated that the loan documents waive redemption rights, and to that day MetCap had never been tended full payment of the amounts owed on the mortgage or otherwise been presented with an alternative proposition acceptable to MetCap.

¶ 19 At the hearing on March 19, 2014, before Judge Wojtecki, counsel for the mortgagors argued that the purchase price of the property by MetCap at the sheriff's sale was unconscionably low based upon the $20 million 2009 appraisal, the $11.4 million 2011 appraisal,

and the $8 million dollar appraisal from 2013 that MetCap referred to in the March 3, 2014, hearing. Upon questioning by the trial court, counsel for the mortgagors admitted that there were a few things on the property's title that made it unattractive to a buyer. Specifically, there was a lien by a company in Panama for $10 million on the property, and another lien by a company in Elmhurst "for a small amount, comparatively." Counsel said that he had waivers on both liens, but he had not filed them yet.

¶ 20 The trial court then asked MetCap's counsel to address the court because it was concerned about the "$3 million versus $8 million" discrepancy. Like at the March 3, 2014, hearing, MetCap's counsel again stated that MetCap made a full debt bid of "$2.9 million plus" at the sheriff's sale so that there was no deficiency entered if the sale were confirmed. Counsel noted that the loan had matured a year ago, that the mortgagors had known since before that time that the loan had to be paid, and it had more than a year to market the property or find another lender who believed the property was worth more than $2.9 million that MetCap bid at the sheriff's sale. Counsel also re-iterated its earlier arguments regarding the 2009 and 2011 appraisals, the broker's price opinion that it solicited prior to the sheriff's sale, and the IDOT valuation. Counsel argued that all these factors indicated that the sale price was not unconscionable. Like Judge Parkhust, Judge Wojtecki then asked counsel why his client did not contact people before the sale and tell them to show up and bid a dollar more than MetCap bid if it only bid what it was owed. Again, counsel stated that they were trying to get the money together before the bid but they could not. The court then held that based upon all the surrounding facts and circumstances in this case, MetCap's bid was not unconscionable.

¶ 21 The mortgagors' counsel then said, "[t]he only thing that I'd like to clarify, Judge, is we didn't have an evidentiary hearing on the appraisal issue." Counsel argued that the mortgagors

had surpassed a threshold to show that there was a drastic disparity between the sale price and the appraised value of the property, and therefore the court should conduct an evidentiary hearing on that issue. In response, the court asked counsel what it would have an evidentiary hearing on, since the parties made the court aware of the 2009, 2011 and 2013 appraisals. Counsel then argued that if an evidentiary hearing was held the property owner could have an opportunity to discuss what he thought the property was worth. The trial court said it was true that a witness could give their opinion as to what the property is worth, but that was not relevant to an argument that the sale price was unconscionable. The court also noted that as MetCap's counsel had pointed out, there were a lot of issues with this property, ranging from a commercial airliner on the property to other issues involving horses on the property, that affected its value. Therefore, over counsel's objection, the trial court confirmed the sale.

¶ 22 II. ANALYSIS

¶ 23 On appeal, the mortgagors argue that the trial court erred in: (1) confirming the judicial sale because it was unconscionable based upon the gross disparity between the purchase price and the value of the property; (2) denying the mortgagors' request for an evidentiary hearing and limited discovery; and (3) confirming the sale when justice was not otherwise done. We will address each argument in turn.

¶ 24 A. Unconscionable Price

¶ 25 The mortgagors first argue that the trial court erred in confirming the sale when the sale price was unconscionable based upon the gross disparity between the sale price and its appraised value. As support for this contention, the mortgagors cite to *Resolution Trust Corporation v. Holtzman*, 248 Ill. App. 3d 105 (1993), *Commercial Credit Loans, Incorporated v. Espinoza*, 293

Ill. App. 3d 923 (1997), *Merchants Bank v. Roberts*, 292 Ill. App. 3d 925 (1997), and *JP Morgan Chase v. Frankhauser*, 383 Ill App. 3d 254 (2008).

¶ 26 The Illinois Mortgage Foreclosure Law provides that after a sheriff's sale, the court shall enter an order confirming the sale unless the court finds that: (1) proper notice was not given; (2) the terms of the sale were unconscionable; (3) the sale was conducted fraudulently; or (4) justice was not otherwise done. 735 ILCS 5/15-1508(b) (West 2012). These rules promote the policies of stability and permanency in judicial sales. *NAB Bank v. LaSalle Bank, N.A.*, 2013 IL App (1st) 121147, ¶ 8 (citing *World Savings & Loan Association v. AmerUs Bank*, 317 Ill. App. 3d 772, 780 (2000)). It is the objecting party's burden to show why the sale should not be confirmed. *Cragin Federal Bank for Savings v. American National Bank & Trust Company of Chicago*, 262 Ill. App. 3d 115, 119 (1994).

¶ 27 Merely comparing the bid to the appraised value of the property does not establish that the price at which the property was sold was unconscionably low. *NAB Bank*, 2013 IL App (1st) 121147, ¶ 20. It is unusual for land to bring its full, fair market value at a forced sale, and inadequacy of sale price is not sufficient, standing alone, to deny confirmation of a judicial sale. *Id*. However, while courts cannot guarantee that mortgaged property will bring its full value, they can prevent the "unwarranted sacrifice" of a debtor's property. *Id*. Nevertheless, when there is no fraud or other irregularity in the foreclosure proceeding, the sale price of the property is the conclusive measure of its value. *Id*. (citing *Nationwide Advantage Mortgage Company v. Ortiz*, 2012 IL App (1st) 112755, ¶ 35). A trial court's order confirming a judicial sale will not be reversed absent an abuse of discretion. *Household Bank FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008).

¶ 28 We have reviewed the cases cited by the mortgagors in support of their claim of unconscionability and find that those cases to be distinguishable from the instant case. In *Resolution Trust Corporation*, the property, which housed a multi-unit apartment building, was appraised in 1988 for $1.2 million and in 1990 for $488,000. The accepted bid at the sheriff's sale was $414,000. On appeal, defendants argued that the trial court erred in approving the sheriff's sale which they alleged yielded a grossly inadequate bid below the market value of the property. *Resolution Trust Company*, 248 Ill. App. 3d at 108. Instead, defendants claimed that the sale price of the property should be compared with the $1.2 million appraisal which was performed in early 1988. In reversing the trial court's order confirming the sale and remanding for an evidentiary hearing, the appellate court specifically held that "if the allegation of unconscionability rests on an appraisal rendered remote in time," which the court believed the 1988 appraisal was, "the requisite of a formal hearing was not required." *Id*. at 115. However, in that case, the appellate court reversed the confirmation of the judicial sale and remanded for an evidentiary hearing because the defendants provided evidence of the 1988 appraisal *and* raised allegations that buyers of several of the apartment units were available if the units could be sold as condominiums, and the prices of those units would have fully satisfied the mortgage obligations at issue in that case if only four of eight units were sold. *Id.*

¶ 29 Here, the mortgagors only offered the appraisals on the property from 2009 and 2011. At six years and three years respectively from the date of the judicial sale, those appraisals are considered remote in time and, standing alone, are not sufficient to reverse the confirmation of the sale. *Id*. Even taking into account the 2013 appraisal of $8 million that MetCap referred to at the hearing on March 19, 2014, that appraisal alone does not establish that the price at which the property was sold was unconscionably low. *NAB Bank*, 2013 IL App (1st) 121147, ¶ 20

(when there is no fraud or other irregularity in the foreclosure proceeding, the sale price of the property is the conclusive measure of its value).

¶ 30 Before we discuss the remaining cases the mortgagors rely upon as a basis for reversal we will address their arguments that the 2009 and 2011 appraisals were reliable. First, they argue that MetCap did not come up with any appraisal that contradicted those appraisals, only a broker's price opinion and an "IDOT document of little or no relevance." However, they do not cite any authority for the proposition that a broker's price opinion or the IDOT valuation is not equivalent in value to an appraisal. Therefore, they have forfeited this issue on review. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (a party forfeits review of an issue when he or she fails to cite any authority in support of it). Furthermore, we reject the mortgagors' inference that an appraisal which is remote in time will be considered reliable simply because the opposing party does not provide a valuation to contradict the objector's valuation.

¶ 31 Second, the mortgagors argue that MetCap had a more recent, 2013 appraisal for $8 million, but because no evidentiary hearing or limited discovery was permitted, the mortgagors had never seen it. However, it is clear from the record that the trial court considered for the purposes of the confirmation hearing that the 2013 appraisal valuing the property at $8 million showed a continuing downward trend in the value of the encumbered property, so the fact that the mortgagors did not see it is irrelevant. Finally, the mortgagors contend that its counsel indicated at the March 19 hearing that if an evidentiary hearing were permitted, he would proffer Robert Oury to testify about the more recent value of the property, but the mortgagors were denied the opportunity to do this. We are not persuaded. Here, the mortgagors could have attached an affidavit from Robert Oury in which he gave his opinion as to the value of the property in their motion to vacate and deny approval of the sale, but they did not. More

important, the mortgagors do not explain how Oury's opinion as to the value of the property would be sufficient evidence of unconscionability. As we have stated, merely comparing the bid to the appraised value of the property does not establish that the price at which the property was sold was unconscionably low, and when there is no fraud or other irregularity in the foreclosure proceeding, the sale price of the property is the conclusive measure of its value. *NAB Bank*, 2013 IL App (1st) 121147, ¶ 20.

¶ 32 We have reviewed the remaining cases that the mortgagors have cited in support of reversing the trial court's order confirming the judicial sale and we find them likewise to be dispositive of the instant case. In *Commercial Credit Loans, Inc. v. Espinoza*, 293 Ill. App. 3d 915 (1997), the appellate court affirmed the trial court's order denying the petition to confirm the mortgage foreclosure sale and required the mortgagee to accept the property owner's redemption when: (1) the sale price was only one-sixth of the property's fair market value; *and* (2) the evidence presented showed that the mortgagor attempted to redeem before the judicial sale but was "shrugged off" because of her inability to speak English. *Id*. at 928. Here, the mortgagors were represented by counsel and they do not allege that they attempted to tender the full amount necessary to satisfy the judgment before the sale.

¶ 33 In *Merchants Bank v. Roberts*, 292 Ill. App. 3d 925 (1997), among other rulings, the appellate court held that the trial court abused its discretion in denying mortgagor's emergency motion for reconsideration and vacation of a confirmation order within 30 days of a default when: (1) the motion for reconsideration was accompanied by affidavits of the landowners as to their opinions on the value of the property; and (2) defendants had been defaulted without counsel, which precluded them from asserting as a meritorious defense that they never intended that both foreclosed parcels be pledged as security for the mortgage involved. *Id.* at 931.

¶ 34 Here, such indicia of value from the landowner was not present, and other substantive problems with the sale as exhibited in *Merchants Bank* are not present in this case. Again, Robert Oury's affidavit that was attached to the mortgagors' motion to vacate and deny approval of sale provided no current indicia of value. Also, the 2009 and 2011 appraisals of the land did not take into account several conditions on the land which might greatly reduce the value of the land, including several liens on the property (one as much as $10 million)[2], as well as the cost to make the land vacant, etc. Further, the mortgagors did not disagree with MetCap regarding the conditions affecting the title and the property at the hearings. Finally, MetCap's affidavit provided two current valuations in the range of $9,000 to $12,000 per acre, and the land was sold for $10,300 per acre.

¶ 35 Finally, in *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254 (2008), the appellate court held that an evidentiary hearing on the unconscionability of a foreclosure sale for $32,212 following a foreclosure on a second mortgage was necessary when: (1) the mortgagors provided a broker's price opinion indicating that the fair market value of the property was $385,000 as well as a copy of their bankruptcy petition indicating that the property market value was $385,000; and (2) the lenders provided no information to rebut the indicia of current value provided by the defendants. *Id*. at 265. Again, the valuations provided by the mortgagors here were remote in time and did not take into account other defects in the title or several conditions on the land which might greatly reduce the value of the land. Also, MetCap provided valuations

[2] Although the mortgagors stated at both the March 3 and March 19 hearings that they had obtained lien waivers for those liens, in both instances the mortgagors admitted that lien waivers had not been filed at the time of the hearings.

that were in the range of the sale price. Finally, the alleged $8 million appraisal, standing alone, was not evidence of unconscionability.

¶ 36 For all these reasons, the trial court properly rejected the mortgagors' allegations of unconscionability and confirmed the sale.

¶ 37 B. Evidentiary Hearing

¶ 38 In the event that this court does not outright reverse the trial court's order confirming the judicial sale, the mortgagors argue in the alternative that the trial court also erred in denying their request for an evidentiary hearing. Specifically, they contend that they should at least have been permitted an evidentiary hearing as well as limited discovery to address: (1) the $8 million appraisal; (2) the basis for the broker's price opinion and the IDOT valuation; (3) whether any factors asserted by MetCap's counsel that allegedly made the 2009 and 2011 appraisals less reliable would have significantly changed the appraised value; and (4) the discrepancy between Oury and Keneman's affidavits.

¶ 39 To 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. *Resolution Trust Corporation*, 248 Ill. App. 3d at 115. If the allegation of unconscionability rests on an appraisal rendered remote in time, however, the requisite of a formal hearing is not required. *Resolution Trust* Company, 248 Ill. App. 3d at 115. Whether to grant an evidentiary hearing related to the confirmation of a judicial sale is left to the sound discretion of the trial court. *Sewickley, LLC v. Chicago Title Land Company*, 2012 IL App (1st) 112977, ¶ 29.

¶ 40 Here, the trial court did not abuse its discretion in denying the mortgagors' request for an evidentiary hearing. As set out in *Resolution Trust Corporation*, we have looked to the mortgagors' motion to vacate and deny approval of sale and we found no allegation of a current appraisal or other current indicia of value which was so measurably different than the sales price as to be unconscionable. *Resolution Trust Corporation*, 248 Ill. App. 3d at 115. As we have held, the 2009 and 2011 appraisals were too remote in time to warrant a hearing, and Robert Oury did not provide his opinion of the property's current value in the affidavit that was attached to the mortgagors' motion to vacate and deny approval of the sale. Although MetCap referred to a 2013 appraisal at the hearings that valued the property at $8 million, that appraisal was not admitted into evidence, and it was referenced by MetCap, not the mortgagors. See *Cragin Federal Bank for Savings v. American National Bank & Trust Company of Chicago*, 262 Ill. App. 3d 115, 199 (1994) (it is the objecting party's burden to show why the sale should not be confirmed). Nevertheless, it is clear from the record that the trial court took into account all the valuations of the property from both parties in deciding to confirm the sale without an evidentiary hearing. For all these reasons we hold that the trial court did not err in denying the mortgagors' request for an evidentiary hearing and limited discovery before confirming the sale.

¶ 41 C. "Justice Not Otherwise Done"

¶ 42 The mortgagors' final argument is that the trial court erred in confirming the sale because justice was not otherwise done pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1508(b) (West 2012)) because MetCap's actions in this case were fundamentally unfair. Specifically, they argue: (1) Oury's affidavit showed that at least one day prior to the sale, Keneman told Oury that he would be allowed to redeem; (2) in their motion to vacate and deny approval of the sale they argued that throughout the foreclosure proceedings Keneman reassured

Oury repeatedly that if he were able to come up with the funds to make MetCap whole, then MetCap would allow him to redeem the property; and (3) in that motion, they also averred that on February 25, when a third party buyer offered to pay MetCap what it was due on the mortgage so that Oury could retain possession of the property and eventually redeem ownership of it, MetCap refused to authorize its attorneys to negotiate a contract, instead preferring to "keep their options open."

¶ 43 Again, the Illinois Mortgage Foreclosure Law provides that after a sheriff's sale, the court shall enter an order confirming the sale unless the court finds that: (1) proper notice was not given; (2) the terms of the sale were unconscionable; (3) the sale was conducted fraudulently; or (4) justice was not otherwise done. 735 ILCS 5/15-1508(b) (West 2012). A court is justified in disapproving a judicially mandated foreclosure sale if unfairness is shown which is prejudicial to an interested party. *Commercial Credit Loans, Inc.*, 293 Ill. App. 3d at 927 (citing *Citicorp Savings v. First Chicago Trust Company*, 269 Ill. App. 3d 293, 300 (1995)).

¶ 44 We have reviewed the mortgagors' arguments and find them to be without merit. With regard to Oury's affidavit, we agree that in his affidavit Oury averred that a day before the sale Keneman confirmed to him that if he was able to come up with the full amount of money the bank was owed on the mortgage, the bank would allow him to redeem ownership of the property. However, nowhere in the affidavit does Oury state that he ever came up with the full amount of money the bank was owed or that he tendered that amount to MetCap. More important, Oury never stated in the affidavit, and the mortgagors did not allege in their motion to vacate, that this offer by Keneman was good even *after* the judicial sale. In fact, in his affidavit Keneman specifically said that he unequivocally made Oury aware that MetCap would not authorize a postponement of the judicial sale or otherwise delay the foreclosure proceedings. For the same

reason, we are also not persuaded that an injustice was done here based upon the mortgagors' allegation that a third party buyer offered to pay MetCap what it was due on the mortgage *five days after the judicial sale* and MetCap refused to authorize its attorneys to negotiate a contract. Since the mortgagors' have failed to prove that justice was not otherwise done at the judicial sale, the trial court did not abuse its discretion in confirming the sale.

¶ 45 III. CONCLUSION

¶ 46 In sum, the mortgagors did not meet their burden to show that the judicial sale should not be confirmed because the sale price was unconscionable. The appraisals offered by the mortgagors were remote in time, MetCap provided evidence that the property at issue was valued in the range of the purchase price, and a lone, current appraisal for a higher value, but one which showed a continuing downward trend in the value of the property, standing alone, was insufficient evidence of unconscionability. The trial court also properly denied the mortgagors' request for an evidentiary hearing because the appraisals listed in their motion to vacate were too remote, Oury did not give his opinion as to the property's value in his affidavit, the $8 million appraisal was referenced by MetCap, not the mortgators, and there was no need for an evidentiary hearing when the trial court considered both parties' valuations in finding no evidence of unconscionability. Finally, the mortgagors failed to show that the justice was not otherwise done in the judicial sale when they never alleged that they had all the money to pay off MetCap before the sale, Oury's affidavit did not aver that the agreement to redeem was valid after the sale, and Keneman's affidavit made it clear that no such agreement existed.

¶ 47 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 48 Affirmed.