2015 IL App (2d) 150480-U
No. 2-15-0480
Order filed December 23, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| U.S. BANK NATIONAL ASSOCIATION as Trustee, successor in interest to Bank of America, National Association as successor by merger to LaSalle Bank National Association, as Trustee for Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-6, | ) | Appeal from the Circuit Court of Du Page County. |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 12-CH-3035 |
| SLOBODAN FILIPOVIC and BOBAN FILIPOVIC, | ) | |
| Defendants-Appellants | ) | |
| (Desanka Filipovic; Wheaton Sanitary District; Ford Motor Credit Company, LLC d/b/a Land Rover Capital Group; Gary Ave. Gardens Home Owners Association; and Unknown Owners and Nonrecord Claimants, Defendants). | ) | Honorable Robert G. Gibson, Judge, Presiding. |

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Schostok and Justice Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court did not abuse its discretion in confirming a judicial sale where the defendants failed to prove by a preponderance of the evidence that they had reapplied for a loan modification under the Home Affordable Modification Program or that the plaintiff violated federal regulations.

¶ 2 Defendants, Slobodan and Boban Filipovic, appeal from the trial court's order confirming a judicial sale. They contend that the sale proceeded in violation of section 15-1508(d-5) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(d-5) (West 2014)), and that justice was not done in accordance with section 15-1508(b)(iv) (735 ILCS 5/15-1508(b)(iv) (West 2014)), because their reapplication for a loan modification pursuant to the Home Affordable Modification Program (HAMP) was not properly evaluated by the loan servicer prior to the sale. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 20, 2012, plaintiff—U.S. Bank National Association as Trustee, successor in interest to Bank of America, National Association as successor by merger to LaSalle Bank National Association, as Trustee for Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-6—filed a foreclosure complaint pertaining to a residential property in Carol Stream, Illinois. Slobodan and Boban were served with process on June 24 and July 8, 2012, respectively. Neither of them filed an appearance or answered the complaint before December 11, 2013, when the court entered a default judgment for foreclosure and sale. The judicial sale was continued on several occasions before ultimately proceeding on September 9, 2014. On September 16, 2014, plaintiff filed a motion to approve the report of sale and distribution.

¶ 5 Defendants subsequently appeared through counsel and filed an objection to plaintiff's motion. The factual basis for defendants' objections to confirming the sale were set forth in the affidavit of Zaklaina Filipovic[1] (Slobodan's daughter-in-law and Boban's wife). Defendants

[1] Her name is spelled elsewhere in the record as "Zaklina." We will adopt the spelling that she used in signing the affidavit. Zaklaina is a non-borrower and non-party to this case.

also provided the court with numerous documents that had purportedly been sent at various times to Ocwen Loan Servicing, LLC (Ocwen), plaintiff's servicing agent.

¶ 6 In her affidavit, which was designated as "Exhibit A" to defendants' response brief to plaintiff's motion to approve the report of sale and distribution, Zaklaina attested to the following. She had "been exclusively handling the loan modification application" on behalf of Slobodan and had "faxed a complete loan modification application" to Ocwen on April 8, 2014. Her family "had been applying for a loan modification before this date for quite some time without any formal resolution," and Ocwen requested a new application due to a change in her income. Between April and September 2014, while the loan modification application was under review, Ocwen "occasionally requested updated documents," and those documents were "sent promptly." On September 2, 2014, Ocwen requested an updated application because the previous application had expired. Someone from Ocwen informed her at that time that the judicial sale scheduled for September 9 would be postponed, and she submitted a new application. On September 8, 2014, an Ocwen representative told her that "the application was under review with its underwriting department." The representative then placed her on hold and came back on the line to inform her that the sale would *not* be postponed. Zaklaina requested that the sale be postponed due to the application being under review, but the representative denied the request. Zaklaina then spoke to a different representative of Ocwen, who said that she [the representative] "would notify the foreclosure department to postpone the judicial sale due to the application being under review." On September 10, 2014, Zaklaina spoke to an Ocwen representative, who informed her that the sale had proceeded the day before and that the loan modification application would no longer be considered. Since then, Zaklaina had made many phone calls to Ocwen, but no representative had called her back to discuss the

application. Her family received neither a denial letter in response to the application nor a reason why the judicial sale proceeded despite the application being under review. The family was not offered a trial modification or a permanent modification.

¶ 7 "Exhibit B" to defendants' response brief was labeled "Loan Modification Application Submitted on April 8, 2014." In her affidavit, Zaklaina averred that this exhibit contained both a copy of the application and the accompanying fax confirmation sheet. However, the actual application was not attached. Instead, the exhibit contained only a single page consisting of a transmission log suggesting that 29 pages were transmitted to Ocwen on April 8. On that same page, there was a fax cover sheet indicating that Slobodan sent two pages to Ocwen on June 15, 2014.

¶ 8 "Exhibit C" to defendant's response brief was labeled "Documents Submitted Subsequent to Initial Application." In her affidavit, Zaklaina did not authenticate the documents in this exhibit. The exhibit contained transmission logs and fax cover sheets suggesting that faxes were sent on June 3, June 16, July 10 or 11,[2] July 18, and August 2, 2014. However, it is not possible to identify the date when any particular document included in the exhibit was actually transmitted to Ocwen. Exhibit C contained eight pages of a request for mortgage assistance (RMA) pursuant to the Making Home Affordable Program. It is not clear when that RMA was executed, as different pages bear different dates.[3] Exhibit C also included 11 pages of an RMA that was executed on August 25 or 26, 2014, as well as one page of an RMA that was signed on

[2] A transmission log indicates that 9 pages were sent to Ocwen on July 11, 2014, but the fax cover sheet on the same page states that the fax was sent on July 10.

[3] For example, a non-borrower consent form was signed on June 15, 2014, but a request for a tax return transcript was signed on July 16, 2014.

October 22, 2013.

¶ 9 Other documents submitted with Exhibit C included: letters from the Social Security Administration pertaining to Slobodan's benefits; earnings statements documenting Boban's and Zaklaina's wages for July and August 2014; a March 25, 2014, letter—apparently from an accountant—summarizing Slobodan and his wife Desanka Filipovic's tax liability for 2013; Slobodan's and Desanka's state and federal tax returns for 2013; and a JPMorgan Chase Bank statement reflecting the activity from July 16 to August 14, 2014, on accounts owned by Slobodan and Desanka. One of the pages of Slobodan's and Desanka's federal form 1040 was signed by them on September 8, 2014—one day before the judicial sale. The exhibit also contained an undated letter signed by Slobodan and Boban directed "[t]o whom it may concern" purporting to guarantee that Boban would be responsible for the monthly payment on the loan. Another undated letter from Slobodan addressed "[t]o whom it may concern" purported to decline a loan modification offer due to Zaklaina's loss of employment in January 2014. No address was listed for the recipient of either letter.

¶ 10 Against this factual backdrop, defendants argued in their response brief to plaintiff's motion to approve the report of sale and distribution that plaintiff violated section 15-1508(d-5) of the Foreclosure Law by proceeding with the judicial sale while a loan application pursuant to HAMP was under review. They cited chapter II, section 3.1.1 of the Handbook for Servicers of Non-GSE Mortgages (March 3, 2014), [4] *available at* https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_44.pdf (last

[4] We will cite to version 4.4 of the HAMP guidelines, the version that was in effect when defendants allegedly reapplied for a loan modification in April 2014. Version 4.5 was released in June 2015.

visited December 17, 2015) (hereinafter *HAMP Guidelines*), which provides that "[a] servicer may not refer any loan to foreclosure or conduct a scheduled foreclosure sale unless and until" certain circumstances exist. Defendants asserted that none of those specified circumstances existed. Additionally, defendants cited HAMP guideline 3.3, which states, in relevant portion: "When a borrower submits a request for HAMP consideration after a foreclosure sale date has been scheduled and the request is received no later than midnight of the seventh business day prior to the foreclosure sale date (Deadline), the servicer must suspend the sale as necessary to evaluate the borrower for HAMP." *HAMP Guidelines*, *supra*, ch. II, § 3.3. According to defendants, plaintiff failed to suspend the foreclosure sale and properly evaluate them for HAMP, as required by these provisions.

¶ 11 For similar reasons, defendants argued that plaintiff violated Regulation X of the Real Estate Settlement Procedures Act (RESPA). They cited 12 C.F.R. § 1024.41(c) (2014), which provides, in relevant portion:

> "If a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, then, within 30 days of receiving a borrower's complete loss mitigation application, a servicer shall *** [e]valuate the borrower for all loss mitigation options available to the borrower[] and *** [p]rovide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage."

Defendants also cited 12 C.F.R. § 1024.41(g) (2014), which establishes that "[i]f a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale,

or conduct a foreclosure sale," except in specified circumstances. Defendants argued that those specified circumstances did not apply. Without invoking a particular basis in the Foreclosure Law for denying confirmation of the sale, defendants asserted that plaintiff's violations of these regulations justified setting aside the sale.

¶ 12 Plaintiff filed a reply brief in support of its motion to approve the report of sale and distribution. Plaintiff relied on the affidavit of Paul Myers, a loan analyst for "Ocwen Financial Corporation, whose indirect subsidiary is Ocwen Loan Servicing, LLC." Myers explained that Ocwen had determined on three separate occasions that Slobodan was ineligible for a HAMP modification. Specifically, on May 10, 2012, Ocwen determined that Slobodan was ineligible for a HAMP Tier 1 loan modification because he did not occupy the property as his primary residence. Records for Slobodan's account reflected that a letter was mailed to Slobodan on May 16, 2012, regarding his ineligibility, but Ocwen was unable to locate that letter. Additionally, according to Myers, Ocwen determined on October 20, 2012, that Slobodan was ineligible for a HAMP Tier 1 loan modification because he did not submit a complete application. A copy of an October 20, 2012, letter explaining this to Slobodan was attached to Myers' affidavit. Myers also asserted that on January 30, 2014, Ocwen determined that Slobodan was ineligible for a HAMP Tier 2 loan modification "because Ocwen was unable to create a post-modification monthly payment that was between 10% and 55% of the Borrower's monthly gross income." Myers declared that Ocwen sent a letter to Slobodan on January 30 explaining his ineligibility, and that letter was attached to the affidavit. According to Myers, Slobodan "did not dispute his HAMP ineligibility within 30 days of the January 30, 2014 letter."

¶ 13 Plaintiff argued in its reply brief in support of its motion to approve the report of sale and distribution that defendants had not shown by a preponderance of the evidence that there was a

HAMP violation so as to justify setting aside the sale under section 15-1508(d-5) of the Foreclosure Law. Specifically, plaintiff argued, "the Borrower had already been found to be ineligible for a HAMP modification, so HAMP regulations permitted the sale to go forward." Plaintiff relied on HAMP guideline 3.1.1, which establishes that a servicer may conduct a scheduled foreclosure sale if "[t]he borrower is evaluated for HAMP and is determined to be ineligible for the program." *HAMP Guidelines*, *supra*, ch. II, § 3.1.1. Plaintiff also disputed the sufficiency of the documentation supporting Zaklaina's attestation that she had "faxed a complete loan modification application" to Ocwen on April 8, 2014, observing that the actual application was not submitted with defendants' response brief. Plaintiff argued that the court therefore could not determine whether defendants had submitted the proper documentation so as to "apply for assistance" within the meaning of section 15-1508(d-5) of the Foreclosure Law.

¶ 14 Nor, plaintiff argued, could defendants prove by a preponderance of the evidence that they had submitted a complete HAMP application *seven business days* prior to the sale. Plaintiff relied on HAMP guideline 3.3, which provides that servicers are not required to suspend a sale if a request for HAMP consideration is received later than midnight of the seventh business day prior to the sale. *HAMP Guidelines*, *supra*, ch. II, § 3.3. Plaintiff noted that the seventh business day prior to the September 9 sale was August 29, 2014. According to plaintiff, "even if the Borrower had not previously been determined to be ineligible for a HAMP modification, there can be no dispute that the Trustee had no obligation to suspend the sale since the Borrower's motion is based on testimony that the operative HAMP application was submitted on or after September 2."

¶ 15 Moreover, plaintiff contended, any alleged violations of federal regulations were not grounds for setting aside the sale, because section 15-1508 of the Foreclosure Law provided the

exclusive bases for setting aside sales. Furthermore, because defendants presented "no evidence to suggest that Ocwen received and considered the purported April 8 application to be a *complete* application for RESPA purposes" (emphasis in original), the regulations cited by defendants were not triggered. See 12 C.F.R. § 1024.41(b)(1) (2014) ("A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower.").

¶ 16 Defendants filed a sur-reply brief in opposition to plaintiff's motion to approve the report of sale and distribution. They argued that case law supported that it is a violation of section 15-1508(d-5) of the Foreclosure Law to proceed to a judicial sale when a homeowner has reapplied for a HAMP modification due to changed circumstances. To that end, they insisted that they "reapplied with a change in circumstance on April 8, 2014, a full five months before the scheduled sale," and that plaintiff "never fully evaluated this application despite assuring the homeowners that it would." Addressing plaintiff's point that a servicer need not suspend a sale if the application is not made seven business days in advance, defendants declared: "[t]his argument is absurd on its face as it would provide any servicer an opportunity to disregard its obligations under HAMP by simply asking for updated documents right before a scheduled sale." Additionally, in support of their argument that plaintiff violated federal regulations, defendants proposed, for the first time, that this indicated that "justice was otherwise not done" in accordance with section 15-1508(b)(iv) of the Foreclosure Law. 735 ILCS 5/15-1508(b)(iv) (West 2014). Defendants insisted that the court must not become an indirect participant in the wrongful conduct by confirming a sale that took place in violation of federal law.

¶ 17 Plaintiff's motion to approve the report of sale and distribution was scheduled for hearing on February 23, 2015. The written order reflects that the court granted the motion, but it provides no indication as to the court's reasoning. Nor does the record on appeal contain a transcript of the hearing, a bystander's report, or an agreed statement of facts. On March 24, 2015, defendants filed a motion to reconsider the order confirming the sale. The court denied that motion on April 7, 2015. Although there is no transcript of the April 7 proceedings in the record, it seems that no hearing was held on the motion to reconsider, as the order reflects that "no attorney or party has appeared for Defendants."

¶ 18 Defendants timely appealed.

¶ 19 II. ANALYSIS

¶ 20 Defendants argue that the trial court improperly confirmed the sale in violation of sections 15-1508(d-5) and 15-1508(b)(iv) of the Foreclosure Law. They also argue that "the trial court should be estopped from confirming a foreclosure sale that violates federal regulations."

¶ 21 As an initial matter, plaintiff notes that defendants failed to provide an agreed statement of facts, a bystander's report, or a transcript of the hearing at which the court confirmed the sale. The "appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392. Nevertheless, we may affirm on any basis appearing in the record, even if the trial court did not rely on that particular reasoning. *In re Parentage of M.M.*, 2015 IL App (2d) 140772, ¶ 45.

Because it is clear from the record provided to us that defendants did not meet their burden to prove that they "applied for assistance" under HAMP in the weeks or months prior to the September 2014 sale, we will address the merits of the appeal rather than simply affirming based on defendants' failure to provide a sufficient record.

¶ 22 Relying on *NAB Bank v. LaSalle Bank, N.A.*, 2013 IL App (1st) 121147, ¶ 14, defendants suggest that we should review the trial court's order *de novo* because the court did not hold an evidentiary hearing. However, it is clear that a trial court has broad discretion to confirm or reject a judicial sale. See *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008) ("The provisions of section 15-1508 have been construed as conferring on circuit courts broad discretion in approving or disapproving judicial sales. (Citation.) A court's decision to confirm or reject a judicial sale under the statute will not be disturbed absent an abuse of that discretion."); *Citimortgage, Inc. v. Johnson*, 2013 IL App (2d) 120719, ¶ 18 (applying abuse of discretion standard of review where the defendants argued that a judicial sale proceeded in violation of section 15-1508(d-5) of the Foreclosure Law). Indeed, the appellate court has expressly rejected the notion that *NAB Bank* compels *de novo* review of an order confirming a sale pursuant to the Foreclosure Law. See *Citimortgage, Inc. v. Lewis*, 2014 IL App (1st) 131272, ¶ 29 ("Although the court [in *NAB Bank*] examined the Foreclosure Law to assist in resolving the issues presented, it did not consider a motion to set aside the sale pursuant to the Foreclosure Law. [Citation.] Accordingly, the standard of review employed in *NAB Bank* is inapplicable to the present matter.").

¶ 23 Section 15-1508(d-5) of the Foreclosure Law provides, in relevant part:

> "The court that entered the judgment shall set aside a sale held pursuant to Section 15-1507, upon motion of the mortgagor at any time prior to the confirmation of the sale, if

> the mortgagor proves by a preponderance of the evidence that (i) *the mortgagor has applied for assistance under the Making Home Affordable Program* established by the United States Department of the Treasury pursuant to the Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009, and (ii) the mortgaged real estate was sold in material violation of the program's requirements for proceeding to a judicial sale." (Emphasis added.) 735 ILCS 5/15-1508(d-5) (West 2014).

HAMP is one component of the Making Home Affordable Program. *Citimortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 64. In *Bermudez*, the court explained that " 'applied for assistance under [the Making Home Affordable Program]' means to formally apply, usually in writing, for help pursuant to the procedures set forth by HAMP." *Bermudez*, 2014 IL App (1st) 122824, ¶ 64. "[I]n order to 'apply for assistance under [the Making Home Affordable Program]' pursuant to section 15-1508(d-5) of the Foreclosure Law the borrower must submit the documentation required by the servicer to determine the borrower's eligibility and verify his or her income." *Bermudez*, 2014 IL App (1st) 122824, ¶ 66. If the borrower does not meet the threshold burden to show that he or she "applied for assistance" under HAMP, then the property could not have been sold in material violation of HAMP's requirements. See *Bermudez*, 2014 IL App (1st) 122824, ¶ 60.

¶ 24 Defendants argue that they "applied for assistance" under HAMP by reapplying for a loan modification in April 2014 and thereafter periodically providing updated documents at Ocwen's request. HAMP guideline 4 indicates that "a servicer may evaluate a borrower for HAMP only after the servicer receives *** the 'Initial Package.' " *HAMP Guidelines*, *supra*, ch. II, § 4. Guideline 3.3 similarly states: "A borrower is deemed to have requested

consideration for HAMP when an Initial Package is received by the servicer or its foreclosure attorney/trustee prior to the Deadline," which is seven business days before a scheduled sale. *HAMP Guidelines, supra*, ch. II, § 3.3. According to guideline 4:

"The Initial Package includes:

● RMA Form, including, for rental properties, the rental property certification ***,

● Either (i) IRS Form 4506-T or 4506T-EZ or (ii) a signed copy of the borrower's tax return for the most recent tax year, including all applicable schedules and forms ***,

● Evidence of income, and

● Dodd-Frank Certification (either as part of the RMA form or as a stand alone document)." *HAMP Guidelines, supra*, ch. II, § 4.

A servicer "may establish additional requirements for requests received later than 30 calendar days prior to a scheduled foreclosure sale date" if such requirements are posted on the servicer's website and are communicated to the borrower in writing. *HAMP Guidelines, supra*, ch. II, § 3.3.

¶ 25 Defendants failed to meet their burden to prove that they "applied for assistance" under HAMP within the meaning of section 15-1508(d-5) of the Foreclosure Law. In her affidavit, Zaklaina averred that she "faxed a complete loan modification application" to Ocwen on April 8, 2014. However, defendants did not produce a copy of that application. Nor did they provide the trial court with any response from Ocwen either acknowledging the sufficiency of that application or requesting additional materials. Accordingly, we cannot know whether defendants provided Ocwen at that time with the "Initial Package"—*i.e.*, the documentation necessary to determine eligibility and verify income. Absent any supporting documentation, Zaklaina's statement that

she faxed a "complete" application was conclusory. See *Bermudez*, 2014 IL App (1st) 122824, ¶ 68 ("Moreover, Wildermuth's affidavit contained conclusory statements such as 'our office transmitted to Citi via facsimile and overnight mail both the TPP agreement executed by the defendants and *a complete application package* for a permanent modification.' " (emphasis in original)). Of course, if, as Zaklaina attested, Ocwen indeed asked defendants to submit updated documents, that would tend to suggest that Ocwen did not have all of the information that it needed to determine eligibility and verify defendants' incomes.

¶ 26 Defendants also failed to satisfy their burden because they neglected to authenticate Exhibit C to their response brief, which purportedly consisted of documents submitted to Ocwen subsequent to the April 2014 application. See *Bermudez*, 2014 IL App (1st) 122824, ¶ 68 (documents submitted with a motion to set aside a judicial sale must be authenticated). "To properly authenticate a document, a party must present evidence which demonstrates that the document is what the party claims it to be." *Piser v. State Farm Mutual Automobile Insurance Co.*, 405 Ill. App. 3d 341, 348 (2010). In her affidavit, Zaklaina asserted that between April and September 2014, Ocwen "occasionally requested updated documents" and that those documents were "sent promptly." However, she did not attest that Exhibit C contained true and accurate copies of the materials that were transmitted to Ocwen.

¶ 27 In addition to this lack of authentication, it is impossible to discern when any of the documents in Exhibit C were actually sent to Ocwen. This is fatal to defendants' arguments, which rest on the presumption that Ocwen, at one time or another, received all necessary materials. Without knowing what documents were sent to Ocwen and when, the trial court was not in a position to determine whether plaintiff's obligations under the HAMP guidelines were triggered.

¶ 28 Defendants nevertheless attempt to analogize the matter to *Citimortgage, Inc. v. Lewis*, where the court determined that a defendant met her burden to prove that she "applied for assistance" within the meaning of section 15-1508(d-5) of the Foreclosure Law despite her "failure to include all of the materials she submitted to plaintiff with her motion to set aside the sale." *Lewis*, 2014 IL App (1st) 131272, ¶ 48. However, the facts in *Lewis* are distinguishable from the present case. Specifically, in the weeks before the judicial sale in *Lewis*, the plaintiff twice denied the defendant's requests to be placed in a hardship assistance program before ultimately advising her in writing that it would take 30 days to review her application. *Lewis*, 2014 IL App (1st) 131272, ¶ 14. Under those unique circumstances, the court determined that the defendant had met her burden to show that she "applied for assistance," reasoning that "[t]he denial of defendant's application on the merits demonstrates that plaintiff had all the required documentation it needed in order to make its assessment." *Lewis*, 2014 IL App (1st) 131272, ¶ 48. Unlike in *Lewis*, as explained above, the documentary evidence in the present case did not indicate when, if ever, plaintiff possessed the documentation required to evaluate defendants' 2014 request for a loan modification.

¶ 29 For these reasons, the trial court could have reasonably concluded that defendants did not meet their burden of proving that they "applied for assistance" under HAMP within the meaning of section 15-1508(d-5) of the Foreclosure Law. Accordingly, the court did not abuse its discretion in confirming the sale over defendants' objections based on section 15-1508(d-5).

¶ 30 Defendants also argue that the trial court should have declined to confirm the sale pursuant to section 15-1508(b)(iv) of the Foreclosure Law, which pertains to situations where "justice was otherwise not done." 735 ILCS 5/15-1508(b)(iv) (West 2014). This provision 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 a challenge to a judicial sale under this provision, 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.

¶ 31 Defendants' arguments as to why justice was not done in large part depend on the assumption, which we have previously rejected, that defendants met their burden to show that they had reapplied for a HAMP loan modification in the weeks or months before the judicial sale. Specifically, defendants contend that justice was not done because (1) their HAMP loan modification was under review and plaintiff promised that it would not conduct a sale on September 9, 2014, and (2) plaintiff's failure to correctly resolve the HAMP loan modification application violated RESPA.

¶ 32 Defendants assert that they "relied on [the promise not to conduct the sale] to their detriment" and insist that they "did not have an opportunity to explore other options because they relied on the Plaintiff's misrepresentations." However, they fail to explain exactly how they "relied on" the unnamed Ocwen representative's alleged statements; nor do they identify what "other options" they would have "explored." In a similarly conclusory fashion, they propose that they "had equitable defenses that they were prevented from raising upon an emergency motion" and were thus "unable to protect their property interests." Again, defendants offer no insight into the nature of their supposed "equitable defenses," and they do not explain what they would have done differently to protect their property interests. Therefore, to the extent that these contentions are more than repackaged versions of the arguments that we have already rejected, defendants fail to meaningfully articulate any prejudice that they suffered by virtue of the allegedly conflicting information that they received about whether the sale would proceed.

Accordingly, the cases they cite are readily distinguishable. See *Fleet Mortgage Corp. v. Deale*, 287 Ill. App. 3d 385, 386 (1997) (the defendants tendered the entire amount owed to the plaintiff on the last day of the redemption period, yet the plaintiff failed to cancel the judicial sale); *Commercial Credit Loans, Inc. v. Espinoza*, 293 Ill. App. 3d 915, 928 (1997) (the defendant's attempts to redeem the property were "shrugged off" because of her inability to speak English, and the property was sold at the judicial sale for 1/6 of its appraised value).

¶ 33 With respect to their argument based on RESPA, defendants observe that the regulations impose certain requirements upon loan servicers when they receive a loan modification application more than 37 days prior to a scheduled judicial sale. Although the argument is underdeveloped, defendants proceed on the assumption that they had submitted a "complete loss mitigation application" to Ocwen. 12 C.F.R. § 1024.41(b)(1) (2014) provides:

> "A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating the application for the loss mitigation options available to the borrower. A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application."

For the reasons detailed above, the trial court could have reasonably determined that defendants did not submit a complete loss mitigation application. Once again, defendants did not provide the trial court with a copy of the purported April 2014 application. Nor did they authenticate the numerous documents that they did provide to the court. Moreover, the documents were insufficient to allow the court to determine when, if ever, defendants submitted a complete application to Ocwen. Under these circumstances, the trial court reasonably declined to set

aside the judicial sale pursuant to the justice clause of section 15-1508(b)(iv) of the Foreclosure Law.

¶ 34 Finally, defendants briefly argue that "the trial court should be estopped from confirming a foreclosure sale that violates federal regulations." Having rejected the related contention that plaintiff violated the regulations at issue, we need not comment further on this point.

¶ 35 III. CONCLUSION

¶ 36 The judgment of the circuit court of Du Page County is affirmed.

¶ 37 Affirmed.