

No. 1-15-1826

**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).

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

GREEN TREE SERVICING, LLC,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14 CH 570
	)	
FOLAKE OLALEYE,	)	
	)	
Defendant-Appellant	)	
	)	
(Abayomi Olaleye; The Bank Of New York Mellon f/k/a	)	
Bank Of New York, as successor in Interest to JPMorgan	)	Honorable
Chase, N.A., as trustee for Series #CWHEQ 2006-H; The	)	Anthony Kyriakopoulos and
City of Chicago; Unknown Owners and Non-Record	)	Bridget Mitchell,
Claimants, Defendants).	)	Judges Presiding.

JUSTICE DELORT delivered the judgment of the court.  
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

**ORDER**

¶ 1 **Held:** We affirm the circuit court’s judgment confirming sale of the subject property following a mortgage foreclosure, and its order denying a stay of the sale, finding that the defendant mortgagor failed to sustain her burden to demonstrate that the sale occurred in violation of state law protecting mortgagors who had filed applications for loan modification under the HAMP program. We reject the defendant’s other contentions of error.

¶ 2 The defendants, Abayomi Olaleye and his wife, Folake Olaleye, signed a mortgage with Countrywide Home Loans to finance their purchase of a residential property in Steger, Illinois. The mortgage and corresponding note were eventually assigned to the plaintiff, Green Tree Servicing, LLC (Green Tree). After the loan became delinquent, Green Tree filed this lawsuit against the Olaleyes to foreclose on the mortgage.

¶ 3 The Olaleyes failed to appear or answer the complaint, and the court entered a default order of foreclosure and sale against them. They filed two emergency motions to stay the sale, each arguing that they had an application pending for relief under the Home Affordable Modification Program (HAMP) and that section 15-1508(d-5) of the Illinois Mortgage Foreclosure Law (the Mortgage Foreclosure Law) (735 ILCS 5/15-1508(d-5) (West 2012)) prevented the sale of their home while the HAMP loan modification application was pending. HAMP, as established by the United States Department of the Treasury, allows the treasury to work with loan service providers to “use loan guarantees and credit enhancements to facilitate loan modifications to prevent avoidable foreclosures.” 12 U.S.C.A. § 5219 (West 2014).

¶ 4 The Olaleyes’ first *pro se* emergency motion to stay the sale asserted that they applied for a HAMP modification on August 6, 2014. The motion affirmatively stated that “The Bank acknowledged receipt of the loan modification application in a letter dated September 10, 2014. (Exhibit B).” The attached Exhibit B, was not, however, merely an acknowledgment of receipt of the Olaleyes’ HAMP application. Rather, it was a letter from Green Tree to Folake Olaleye specifically rejecting the Olaleyes’ August 6, 2014, application as incomplete because it did not contain a “Signed and Dated Quarterly to Year-to-Date Profit Loss Statement.” The letter indicated that it was Folake’s “responsibility to send in the above-referenced documentation by 10/08/2014,” and that if it was not received by that date, Green Tree could deny the HAMP

modification request. The trial court denied the first motion to stay sale as moot because Green Tree had voluntarily postponed the sale.

¶ 5 The Olaleyes filed a second *pro se* motion to stay sale on November 26, 2014; that motion is at issue in this appeal. The second motion differed from the first in that it omitted any reference to Green Tree's September 10, 2014, rejection letter and did not include a copy of that letter. By the time the Olaleyes filed the second motion, the deadline that Green Tree established in the rejection letter for the Olaleyes to submit income documentation had expired about six weeks earlier.

¶ 6 The second motion also relies on the Olaleyes' original August 6, 2014, application for a HAMP loan modification. The motion did, however, indicate that the Olaleyes had applied "for reconsideration" of a HAMP denial on November 21, 2014, due to alleged misinformation regarding another property they no longer owned. The motion was accompanied by documents purporting to be the HAMP application in question that were largely identical to those submitted as part of the first motion. Abayomi indicated in this HAMP application that "I have my own company and my material has gotten to [sic] expensive and work has gone down. Also my wife is not working in [sic] the moment." The application indicated a monthly household self-employment income of \$3,200 for the couple but did not indicate the nature of that self-employment.

¶ 7 The application specifically required that the applicant provide proof of income. Below a bold heading labeled "Required Income Documentation," the Olaleyes marked an "X" in the box next to the choice, "Are you self-employed?," and immediately beneath that question was an instruction stating:

“For each borrower who receives self-employed income, include a complete, signed individual federal income return and, as applicable, the business tax return; AND either the most recent signed and dated quarterly or year-to-date profit/loss statement that reflects activity for the most recent three months; OR copies of bank statements for the business account for the last two months evidencing continuation of business activity.”

¶ 8 However, no profit/loss statements, income tax returns, bank statements, or similar materials were included with the application attached to the second motion. The second motion did include an affidavit from a housing counselor attesting that on November 21, 2014, he sent “Mr. Folake’s HAMP application reconsideration [*sic*] and supporting documents to Green Tree.” The affidavit did not, however, identify or reference the materials attached to the motion as being the same materials as were sent to Green Tree. No affidavit from either of the Olaleyes was included with the second motion.

¶ 9 On December 8, 2014, the circuit court denied the second motion to stay sale. The written order contains no reasons for the denial, and the record contains no transcript of the hearing on the motion. The sale occurred later the same day.

¶ 10 Green Tree later moved for confirmation of the sale. The Olaleyes, through counsel, filed a written response objecting to confirmation of the sale, raising the single issue that the sale occurred in violation of HAMP regulations and section 15-1508(d-5). Their objection repeated many of the same arguments they presented in their motions to stay sale. The objection also included an affidavit from Abayomi indicating that he authorized his housing counselor to fax materials to Green Tree on two separate dates and “never received a response” from Green Tree.

The court set a formal briefing schedule allowing Green Tree to file a reply in support of confirmation by March 12, 2015, and setting a March 26, 2015, hearing date.

¶ 11 On March 9, 2015, a few days before Green Tree’s reply was due, the Olaleyes filed an “amended objection” to the confirmation motion without leave of court. The amended objection contained many of the same materials as in the previous three filings, a more detailed argument regarding HAMP, and, for the first time, a self-produced “quarterly profit/loss statement” dated November 15, 2014, and signed by Abayomi, specifying that he began work as a taxi driver recently and had previously had “independent contractor engineering work.” The statement indicated that Abayomi had earned precisely \$3,300 in self-employment income each month for the last ten months, offset by exactly \$100 in gasoline expenses each of those months, and that he expected to make \$3,300 again in each of the next two months. However, the statement was not accompanied by any tax returns or bank statements.

¶ 12 On March 12, 2015, Green Tree filed a reply in support of its original motion, noting therein that it was only replying to the Olaleye’s original response, since the March 9 “amended objection” was filed without leave of court. Green Tree’s reply argued that the Olaleyes had not met their burden to show they had a valid HAMP application on file because: (1) there was no proper foundation laid for the documents attached to the motion and were not authenticated in any way; and (2) the Olaleyes failed to cite any authority supporting a borrower’s ability to rely on an application for “reconsideration” of a previously-rejected HAMP denial to stay a foreclosure sale.

¶ 13 On March 23, 2015, the Olaleyes filed a second reply in opposition to the motion to confirm sale, again without leave of court. This reply included many of the same documents as

previously submitted, and also included voluminous documents regarding HAMP and United States Treasury regulations.

¶ 14 On March 26, 2015, the circuit court struck the two pleadings that the Olaleyes filed without leave of court, overruled their objections, and confirmed the sale.

¶ 15 On April 24, 2015, although their attorney had not withdrawn, the Olaleyes filed a *pro se* motion to vacate the judgment of foreclosure and sale pursuant to section 2-1203(a) of the Code of Civil Procedure (735 ILCS 5/2-1203(a) (West 2012)), listing a host of purported errors that they had never raised before, including, among other things, that Green Tree failed to meet its burden of proof on various issues, and that they had not received either a “grace period notice” before Green Tree sued them, as required by section 15-1502.5 of the Mortgage Foreclosure Law (735 ILCS 5/15-1502.5 (West 2012)), nor the “required” mediation of their dispute at the initial case management hearing (that the record shows they did not attend), nor various other notices. The motion also challenged the court’s earlier denial of their HAMP-related motions. On June 24, 2015, the circuit court denied the motion to vacate. This appeal followed.

¶ 16 ANALYSIS

¶ 17 On appeal, the Olaleyes, proceeding *pro se*, claim that: (1) the circuit court should have stayed or set aside the foreclosure sale because they submitted sufficient proof of their pending HAMP application; (2) the court should have held an evidentiary hearing and granted them discovery with respect to their HAMP-related motions; (3) the court erred by not vacating various orders pursuant to their post-judgment motion to vacate, in particular because of Green Tree’s alleged failure to send the Olaleyes a “grace period notice” before it filed this lawsuit; (4) the court should have conducted an evidentiary hearing on the post-judgment motion to vacate; and (5) section 15-1504(c) of the Mortgage Foreclosure Law (735 ILCS 5/15-1504(c) (West

2012)), providing that foreclosure complaints in a certain form are automatically deemed to contain certain routine allegations, violates their right to due process of law.

¶ 18 Before considering the merits of the appeal, we note that although both Olaleyes were defendants in the case below and both signed the appellants' brief in this court, the notice of appeal lists only Folake Olaleye as an appellant, and the signature on the *pro se* notice of appeal, although illegible, corresponds to some of the other specimens of her signature in the record. A notice of appeal must contain the signature and address of each appellant or appellant's attorney. Ill. S. Ct. R. 303(b) (eff. June 4, 2008); see also *People v. Kruger*, 146 Ill. App. 3d 530, 533 (1986). Since Folake is not a licensed attorney in Illinois, Abayomi cannot authorize her to represent him in this court. Accordingly, we will consider the appeal as only having been brought by Folake.

¶ 19 Folake contests the circuit court's refusal to grant relief on the HAMP-related motions with respect to the second motion to stay sale, the ultimate confirmation of the sale, and their motion to vacate.

¶ 20 Section 15-1508(d-5) of the Mortgage Foreclosure Law (735 ILCS 5/15-1508(d-5) (West 2012)), creates a state law remedy for borrowers whose property has been sold at a foreclosure sale in violation of the federal requirement that the sale be suspended during the pendency of a HAMP modification application. That section requires a court to set aside such a sale if:

“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." 735 ILCS 5/15-1508(d-5) (West 2012).

¶ 21 Although section 15-1508(d-5) is silent with respect to stays of forthcoming sales, courts will stay an impending foreclosure sale if a borrower demonstrates that he has a valid HAMP application pending, since in that situation federal requirements mandate that the lender "must suspend the sale as necessary to evaluate the borrower for HAMP." *CitiMortgage, Inc. v. Johnson*, 2013 IL App (2d) 120719, ¶ 23 (citing Handbook for Servicers of Non-GSE Mortgages, Version 4.1 (Dec. 13, 2012), available at [https://www.hmpadmin.com/portal/programs/docs/hamp\\_servicer/mhahandbook\\_41.pdf](https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_41.pdf)).

¶ 22 We review a trial court's decision to confirm a judicial foreclosure sale for an abuse of discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008). We also review the denial of a stay for an abuse of discretion. *Hastings Mutual Insurance Co. v. Ultimate Backyard, LLC*, 2012 IL App (1st) 101751, ¶ 29. An abuse of discretion occurs only when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court. *Seymour v. Collins*, 2015 IL 118432, ¶ 41. We can affirm the judgment below on any reason supported by the record, whether or not the trial court relied on that particular reason. *Steiner Electric Co. v. Maniscalco*, 2016 IL App (1st) 132023, ¶ 49.

¶ 23 The question of whether the court should have granted HAMP-related relief from a foreclosure sale can arise in the context of a motion to stay a sale, or in a request to refuse confirmation of a sale that has already occurred. In the former case, the federal HAMP rule prohibiting lenders from selling properties subject to a HAMP modification application governs; in the latter, the Illinois statute comes into play. Regardless of the procedural posture, both the



legal requirements for relief and our standard of review are the same. Accordingly, we will consider Folake's challenges to the denial of their motion to stay sale and their objections to the confirmation of sale together.

¶ 24 In *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 64, this court provided an exhaustive analysis of HAMP rules and section 15-1508(d-5) of the Mortgage Foreclosure Law. The *Bermudez* court held that to "apply for assistance" under section 15-1508(d-5), a borrower must submit certain "documentation required by the loan servicer to determine the borrower's eligibility and verify his or her income." *Id.* ¶ 67. The court rejected the borrowers' contention that they fulfilled the requirements of section 15-1508(d-5) on several bases, including that the self-employed borrower failed to submit "the most recent quarterly or year-to-date profit/loss statement," a document required by HAMP rules. *Id.*

¶ 25 The *Bermudez* court also found that the borrowers' submissions were faulty for a second reason. The HAMP documents attached to their motion were "not sworn copies" and thus not properly authenticated. *Id.* ¶ 68. Although they were accompanied by affidavits of a borrower and his attorney, "[n]either affidavit contained the statement that the documents attached were true and correct copies of what was submitted." *Id.* Additionally, the court noted that the lawyer's affidavit contained "conclusory statements such as 'our office transmitted \*\*\* via facsimile and overnight mail \*\*\* a complete application package for a permanent modification.'" (Emphasis in the original.) *Id.* Based on these deficiencies, the court held that the trial court did not abuse its discretion in confirming the sale of the property. *Id.* ¶ 69.

¶ 26 This case parallels *Bermudez* in both respects. First, the package of materials attached to the Olaleyes' second motion was notably missing any verification of Abayomi's self-employment income of \$3,200 per month, which was the entire family income asserted in

support of the application. In fact, none of various HAMP-related pleadings the Olaleyes properly filed below included this crucial proof of income, something that the HAMP forms clearly indicate is required. The last two filings below included the self-generated profit/loss statement, but those filings were struck as having been filed without leave of court. Even assuming that the profit/loss statement was properly presented, the record still contains no proof that the Olaleyes ever submitted any of the required tax returns or bank statements in support of their HAMP application.

¶ 27 Additionally, the Olaleyes' HAMP-related materials were not authenticated in any way. Both Abayomi's and the housing counselor's affidavits fail to identify what documents were sent to Green Tree to constitute the HAMP modification application. Notably, the materials purporting to have been submitted in support of the HAMP application actually vary from filing to filing, making the issue of proper authentication all the more important.

¶ 28 The Olaleyes had the burden to show they had filed a valid, complete HAMP modification application, not merely a slapdash, skeletal one. They also were required to show that "the mortgaged real estate was sold in material violation" of HAMP requirements. 735 ILCS 5/15-1508(d-5) (West 2012). Their own submissions did not contain any proof of income, something that is obviously crucial to any loan application. Because of the lack of income verification, authentication, and foundation of the materials submitted in support of the Olaleyes' various HAMP-related motions, we cannot hold that the circuit court abused its discretion by refusing to stay or set aside the sale based on a pending HAMP modification application. See *Bermudez*, 2014 IL App (1st) 122824 at ¶ 68.

¶ 29 Relatedly, Folake also contends that the circuit court abused its discretion by not allowing discovery or an evidentiary hearing with respect to the HAMP modification application. Folake

also argues for the first time on appeal that: (1) the judgment below was “void” because of the lack of a grace-period notice; and (2) the use of “deemed and admitted” allegations in a statutory foreclosure complaint violated her right to due process of law. Green Tree correctly notes that the record is bereft of any evidence that the Olaleyes ever demanded discovery or an evidentiary hearing below. The other issues were raised for the first time in this court. Because these arguments were not made in the court below, they are forfeited. *1010 Lake Shore Ass’n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 15.

¶ 30 Folake also claims that the circuit court erred by denying the post-sale motion to vacate, which attacked both the underlying foreclosure judgment that had been obtained by default and the order confirming sale that had been granted after full briefing. The motion to vacate raised the HAMP issue again and also, among other things, complained about Green Tree’s alleged failure to send the Olaleyes a grace-period notice before filing suit. We review the denial of motions to vacate for an abuse of discretion. *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, ¶ 32. Additionally, when considering a motion to vacate a default judgment, “the overriding consideration is simply whether or not substantial justice is being done between the litigants and whether it is reasonable.” *In re Haley D.*, 2011 IL 110886, ¶ 57.

¶ 31 The analysis above relating to the HAMP-related issues applies with equal force to the same issues presented in the motion to vacate. All the other claims in the motion to vacate deal with matters that conceivably could have been defenses to the original foreclosure judgment. That judgment was entered by default after the Olaleyes failed to appear. When they did appear, they did not raise these lack of notice or other issues presented in the motion to vacate, but instead solely litigated their HAMP-related claim.

¶ 32 Our supreme court has explained that “[a]fter a motion to confirm the sale has been filed, it is not sufficient \*\*\* to merely raise a meritorious defense to the complaint.” *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 26. Rather, at that late juncture, a borrower’s burden is governed solely by the criteria set forth in section 15-1508(b)(iv) of the Mortgage Foreclosure Law (735 ILCS 5/15-1508(b)(iv) (West 2012)), which requires that the borrower show that “justice was not otherwise done because either the lender, through fraud or misrepresentation, prevented the borrower from raising his meritorious defenses to the complaint at an earlier time in the proceedings, or the borrower has equitable defenses that reveal he was otherwise prevented from protecting his property interests.” *McCluskey*, 2013 IL 115469 at ¶ 26. A defense relating to failure to send a grace-period notice is untimely if brought at the sale stage of a foreclosure case. See, e.g., *Beal Bank USA v. Barrie*, 2015 IL App (1st) 133898, ¶ 11 (grace-period-notice defense untimely if brought at sale stage).

¶ 33 The record amply demonstrates that Folake did not meet her burden to overcome the presumption of validity of the sale. Similarly, because of Folake’s unexplained tardiness in raising a barrage of legally tenuous attacks against the original foreclosure judgment, we cannot say that substantial justice between the parties would be furthered by vacating that judgment. Accordingly, the court did not abuse its discretion by denying the motion to vacate.

¶ 34 CONCLUSION

¶ 35 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 36 Affirmed.