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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WELLS FARGO BANK, N.A.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CH 0876
)	
DEWAINE G. JACKSON,)	Honorable
)	Bridget Mitchell,
Defendant-Appellant.)	Judge, presiding.
)	

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in confirming foreclosure sale and in denying defendant's motion to vacate the sale where defendant failed to establish that he applied for the Home Affordable Modification Program.
- ¶ 2 This appeal arises from a mortgage foreclosure action involving the sale of property located at 341 166th Avenue, Calumet City, Illinois (the property), which was previously owned by defendant Dewaine G. Jackson. Jackson now appeals alleging that the court abused its discretion in confirming the sale of the property and in denying his motion to vacate the

sale because (1) the sale violated the Home Affordable Modification Program (HAMP) and (2) "justice was not done." We affirm.

¶ 3

BACKGROUND

¶ 4

On November 11, 2003, Jackson was granted a mortgage on the property to secure a loan. First Magnus Financial Corporation, doing business as Charger Funding, was the original lender and the mortgage was later assigned to plaintiff Wells Fargo Bank, N.A. Prior to the foreclosure and sale, Jackson had entered into two loan modification agreements with Wells Fargo, one on April 10, 2008, and another on February 17, 2010.

¶ 5

On March 12, 2012, Wells Fargo filed a mortgage foreclosure complaint against Jackson contending that he was in default for failing to tender required mortgage payments for the property as of June 1, 2011. Thereafter, Wells Fargo filed a motion for summary judgment and judgment for foreclosure and sale. Attached to the motion was a loss mitigation affidavit stating that Jackson's loan was eligible for the Making Home Affordable Program (MHAP)¹ and loss mitigation options. Wells Fargo's motion was granted on February 2, 2015.

¶ 6

Pursuant to the judgment for foreclosure and sale, there was a judicial sale of the property on May 20, 2015. Wells Fargo filed a motion for confirmation of sale and distribution and for possession on June 5, 2015. Jackson filed a response contending that the foreclosure sale was invalid because Wells Fargo violated subsection 1508 (d-5) of the Illinois Foreclosure Law (735 ILCS 5/15-1508(d-5) (West 2014)) when it failed to suspend the sale and evaluate Jackson's HAMP assistance application. Jackson alternatively argued that the sale must be vacated pursuant to subsection 15-1508(b)(iv) because "justice was not otherwise done"

¹ "The Making Home Affordable Program [was] 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." 735 ILCS 5/15-1508(d-5). HAMP is a component of the Making Home Affordable Program. *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶64.

where Wells Fargo received funds from the Troubled Asset Relief Program and thus should have provided him with financial assistance. 735 ILCS 5/15-1508(b)(iv)(West 2014). In an affidavit attached to his response, Jackson asserted that he applied for a HAMP loan modification on May 12, 2015, but had not been notified whether his application was approved or denied. He alleged that he spoke to an agent at Wells Fargo who told him to go to the Wells Fargo website and download an application. He further averred in the affidavit that he downloaded the documents from the website and faxed them to Wells Fargo on May 12, 2015. Jackson did not attach a copy of his application or any of the financial documents required for HAMP to his response.

¶ 7 Wells Fargo replied to Jackson's response by contending that he failed to provide sufficient evidence that he actually completed a HAMP application. Jackson subsequently filed a sur-response with a second affidavit, in which he stated that he had applied for HAMP assistance on April 23, 2015, and May 9, 2015. Again, he did not attach the application or any financial documents. However, he attached letters from Wells Fargo dated May 4 and May 18, 2015. Both letters stated:

"We're responding to your recent request for assistance. At this time, we are not moving forward with an evaluation of your current situation.

We have reviewed your mortgage account in the past. Based on that review and the recent information you have provided to us, we have determined there has not been a sufficient enough change in your circumstances for us to conduct another review."

The court rejected Jackson's argument that Wells Fargo violated the Illinois Foreclosure Law and confirmed the sale. Jackson subsequently filed a motion to reconsider, which was denied.

¶ 8

ANALYSIS

¶ 9

a. Confirmation of Sale

¶ 10

Jackson contends that the court abused its discretion in confirming the foreclosure sale and in denying his request to vacate the sale. Specifically, he argues that he applied for HAMP assistance and pursuant to subsection 15-1508 (d-5) of the Illinois Foreclosure Law, Wells Fargo was required to evaluate his HAMP application prior to selling the property. Wells Fargo responds that Jackson failed to meet his burden to establish that he applied for HAMP assistance by a preponderance of the evidence. A court's order for confirmation of sale and its denial of a motion to vacate the sale are both reviewed for an abuse of discretion. *CitiMortgage, Inc. v. Lewis*, 2014 IL App (1st) 131272, ¶ 31. The court "abuses its discretion when its ruling rests on an error of law or where no reasonable person would take the view adopted by the circuit court." *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 57. The party opposing the sale has the burden of demonstrating by a preponderance of the evidence that sufficient grounds exist to vacate the sale. 735 ILCS 5/15-1508 (d-5) (West 2014); *Lewis*, 2014 IL App (1st) ¶¶ 31, 45. We note that we can affirm the court's judgment on any basis that appears in the record, regardless of whether the trial court relied on that basis or whether the court's reasoning was correct. *Father & Sons Home Imp. II, Inc. v. Stuart*, 2016 IL App (1st) 143666, ¶ 27.

¶ 11

Subsection 15-1508 (d-5) of the Illinois Foreclosure Law requires that the court set aside a sale upon a motion by the mortgagor prior to the confirmation of sale where the mortgagor (i) applied for assistance under HAMP and (ii) the mortgaged real estate was sold in material violation of HAMP's requirements. 735 ILCS 5/15-1508 (d-5). MHA guidelines provide, in relevant part:

"When a borrower submits a request for HAMP consideration after a foreclosure sale date had 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." *Making Home Affordable Handbook for Servicers of Non-GSE Mortgages* (v4.4) § 3.3 90 (2014).

¶ 12 Here, the only evidence that Jackson actually applied for HAMP assistance was his assertion in his affidavit that he applied on April 23 and May 9, 2015. He maintains that the letters he received from Wells Fargo dated May 4 and May 18, 2015, also indicate that he applied for HAMP assistance and are sufficient to establish that he applied. Jackson primarily relies on *CitiMortgage Inc. v. Lewis*, 2014 IL App (1st) 131272, to support his proposition.

¶ 13 In *Lewis*, the defendant contended that the sale of her property must be vacated because the plaintiff failed to review her MHAP application prior to the sale. *Id.* ¶ 1. The defendant attached an affidavit to her response to the motion to confirm sale that asserted that she had sent a complete MHAP application to the plaintiff. *Id.* ¶ 12. Notably, in addition to her affidavit, she attached a copy of her application and three letters from the plaintiff. *Id.* ¶¶ 12-14. The first letter denied her request to be placed in a hardship assistance program that the plaintiff offered because it determined that her current income was insufficient to offer an affordable payment solution for "FHA Modification requirements." *Id.* ¶ 14. The second letter denied the defendant's request to be placed in a hardship assistance program and stated "FHA Home Affordable Modification Program requirements not met: insufficient income." *Id.* The third letter thanked the defendant for applying to participate in a foreclosure prevention program and informed her of the expected timeframe for review for program eligibility. *Id.* The defendant failed to attach the financial documents that are necessary for a

"complete" MAHP application, however, she explained to the trial court that she could supply them. *Id.* ¶¶ 12, 20. The appellate court concluded that she had proven she applied for MAHP assistance by a preponderance of the evidence because the letters from the plaintiff specifically stated that the defendant was ineligible for FHA-HAMP, indicating that she had applied for HAMP assistance. *Id.* ¶ 48. The appellate court further reasoned that the letters show that the plaintiff had submitted the necessary documents with her application because the plaintiff denied her application on its merits. *Id.*

¶ 14 *Lewis* is readily distinguishable from the instant appeal. Unlike the defendant in *Lewis*, Jackson did not attach a copy of his HAMP application to his response, which would have indicated the assistance for which he had actually applied. Further, he did not supply any of the financial documents that would have been necessary for a HAMP application and did not contend that he could ever supply these documents. Significantly, none of the letters from Wells Fargo refer to HAMP or indicate in any way that the assistance Jackson requested was through HAMP as opposed to another assistance program. In addition, the letters state that Wells Fargo was not moving forward with review because there was no indication that Jackson's circumstances had changed based on the information he provided. Therefore, unlike in *Lewis*, the letters do not clearly establish that Wells Fargo had made a decision on the merits because its decision could have been made based on the fact that Jackson failed to provide documents to show Wells Fargo that his circumstances had changed. Accordingly, the court did not abuse its discretion in finding that Jackson did not satisfy his burden, and did not err in confirming the sale and denying Jackson's motion to vacate the sale.

¶ 15 Jackson next argues that the court should not have confirmed the sale because "justice was not done" pursuant to subsection 15-1508(b)(iv). 735 ILCS 5/15-1508(b)(iv) (West

2014). Wells Fargo maintains that this provision does not apply here. We agree. Our supreme court has explained that in order to vacate a sale under subsection 15-1508(b)(iv) the defendant must demonstrate "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." *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 26. Jackson argues that justice was not done because Wells Fargo received money from the Troubled Asset Relief Program and therefore it should have given him financial assistance. He has not alleged, and the record does not suggest, that he was prevented from raising meritorious defenses by fraud or otherwise. Thus, the court did not abuse its discretion in confirming the sale and denying Jackson's motion to vacate pursuant to subsection 15-1508(b)(iv).

¶ 16

b. Motion to Reconsider

¶ 17

We additionally find that the court did not err in denying defendant's motion to reconsider. Jackson's argument regarding the denial of his motion to reconsider is unclear. Regardless, we note that the purpose of a motion to reconsider is to bring the court's attention newly discovered evidence, changes in existing law, or errors in the court's application of the law. *Illinois Service Federal Savings & Loan Ass'n of Chicago v. Manley*, 2015 IL App (1st) 143089, ¶ 29. Defendant did not present new evidence, there was no change in existing law, and the court correctly applied relevant law. Therefore, the motion to reconsider was properly denied.

¶ 18

CONCLUSION

¶ 19

For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

No. 1-16-0506

¶ 20

Affirmed.