

No. 1-16-2545

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

DEUTSCHE BANK NATIONAL TRUST COMPANY,)	Appeal from the
AS TRUSTEE FOR THE BENEFIT OF THE)	Circuit Court of
HARBORVIEW 2004-8 TRUST FUND,)	Cook County
)	
Plaintiff-Appellee,)	
)	No. 10 CH 20358
v.)	
)	
VICTORIA W. MACCARTHY,)	Honorable
)	Michael Otto,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

- ¶ 1 *Held:* Affirming the judgment of the circuit court of Cook County confirming a judicial sale in a foreclosure action where the public notice of sale was adequate.
- ¶ 2 Plaintiff Deutsche Bank National Trust Company, as Trustee for the Benefit of the Harborview 2004-8 Trust Fund (Bank), filed a mortgage foreclosure action in the circuit court of Cook County against defendant Victoria W. MacCarthy (MacCarthy). On appeal, MacCarthy argues that the circuit court abused its discretion in confirming the judicial sale of her property because the Bank failed to comply with the proper procedure for publishing the details of the sale. For the reasons discussed herein, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 MacCarthy borrowed \$420,000 from Countrywide Home Loans, Inc. in 2004, secured by a mortgage on a single-family residence¹ in the 1400 block of West Berteau Avenue in Chicago (Property). After she defaulted, the Bank filed a mortgage foreclosure complaint in May 2010. MacCarthy appeared *pro se* and filed a verified answer wherein she admitted all of the allegations in the complaint but represented that she was attempting to obtain a loan modification.

¶ 5 The Bank filed an amended complaint which reflected the assignment of the mortgage to the Bank and added the State of Illinois and the United States of America as party defendants, based on their tax liens. The United States filed an answer, and the Bank filed motions (i) for summary judgment against the United States and MacCarthy, (ii) for a default judgment against a junior lienholder; (iii) for a judgment of foreclosure and sale, and (iv) to appoint a selling officer. In response, MacCarthy requested permission to personally prepare the Property for sale and act as the selling agent. Based on her experience as a real estate agent and broker, her knowledge of the Property, and her familiarity with the surrounding neighborhood, MacCarthy believed that she could sell the Property for more than \$750,000.

¶ 6 The circuit court granted summary judgment in favor of the Bank and against MacCarthy and the United States and entered a default judgment against the junior lienholder. The circuit court also appointed The Judicial Sales Corporation as the selling officer and entered a judgment of foreclosure and sale in the amount of \$595,822.07. At a judicial sale conducted on May 3, 2016, the Bank successfully bid \$655,000. The Bank subsequently filed a motion for an order approving the report of sale and distribution and for possession. The Bank also sought a

¹ Although portions of the record suggest that the Property was not owner-occupied, MacCarthy represented in 2015 that she resided at the Property.

personal deficiency judgment against MacCarthy.²

¶ 7 MacCarthy retained counsel and filed a response to the motion to confirm the sale. She asserted, in part, that the sale should not be confirmed pursuant to section 15-1507 of the Illinois Mortgage Foreclosure Law (IMFL) (735 ILCS 5/15-1507 (West 2010)) because there was insufficient evidence that the notice of sale was properly published. MacCarthy observed that the Bank's motion did not include copies of the newspaper listings which are customarily filed to demonstrate proof of publication as required by the IMFL.

¶ 8 After the proofs of publication were tendered to her counsel in open court, MacCarthy filed an amended response to the motion to confirm the sale. She stated, in part, that the property index number (PIN) in the *Chicago Daily Law Bulletin* notice was correctly listed as 14-17-305-036-0000. According to MacCarthy, the PIN was not clearly legible in the *Lawndale News* notice, and was incorrectly listed as 14-17-305-038-0000. (Emphasis added.)

¶ 9 MacCarthy also argued that section 15-1507(c)(1)(A) of the IMFL requires the notice to state the name, address and telephone number of the person to contact for information regarding the real estate. The publication notice herein provided, in part:

“Visit our website at service.atty-pierce.com. between the hours of 3 and 5 pm.
PIERCE & ASSOCIATES, Plaintiff's Attorneys, One North Dearborn Street
Suite 1300, CHICAGO, IL 60602. Tel No. (312) 476-5500. Please refer to file
number PA1003722. THE JUDICIAL SALES CORPORATION One South
Wacker Drive, 24th Floor, Chicago, IL 60606-4650 (312) 236-SALE You can
also visit The Judicial Sales Corporation at www.tjsc.com for a 7 day status report
of pending sales.”

² The Bank originally sought a personal deficiency judgment in the amount of \$156,563.85. After MacCarthy pointed out that the report of sale listed a deficiency of \$2,230.70, the Bank acknowledged its error and modified the amount.

MacCarthy claimed that the notice failed to clearly provide that The Judicial Sales Corporation was the auctioneer for the Property or that the Bank's counsel could be accessed by address and telephone for information. She also contended that the punctuation after "5 pm" suggested that information regarding the Property was solely available for a two-hour period on the law firm's website. Thus, arguing that the lack of available information contributed to the low sale price for the Property, MacCarthy asserted that the sale should not be confirmed under sections 15-1508(b)(i) and 15-1508(b)(iv) of the IMFL.

¶ 10 The Bank replied, in part, that the PINs listed in the *Chicago Daily Law Bulletin* and the *Lawndale News* notices were identical and correct. The circuit court entered an order on August 25, 2016, approving the report of sale and distribution, confirming the sale and order of possession, and entering a personal deficiency judgment. MacCarthy filed a timely appeal.

¶ 11 ANALYSIS

¶ 12 MacCarthy contends that circuit court erred in granting the motion to confirm the sale because the published notices failed to comply with the IMFL. As the parties correctly observe, the standard of review is abuse of discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008). The circuit court abused its discretion if it committed an error of law or where no reasonable person would take the view adopted by the court. *CitiMortgage, Inc. v. Lewis*, 2014 IL App (1st) 131272, ¶ 31.

¶ 13 After a judicial sale and a motion to confirm the sale has been filed, the circuit court's discretion to vacate the sale is governed by the mandatory provisions of section 15-1508(b) of the IMFL. *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 18. Section 15-1508(b) provides, in part, that, unless (i) a notice required in accordance with subsection (c) of Section 15-1507 was not given, (ii) the terms of the sale were unconscionable, (iii) the sale was

conducted fraudulently, or (iv) justice was otherwise not done, the circuit court shall enter an order confirming the sale. 735 ILCS 5/15-1508(b) (West 2010). The objecting party bears the burden of proving that sufficient grounds exist to disapprove of a judicial sale. *Bayview Loan Servicing, LLC v. 2010 Real Estate Foreclosure, LLC*, 2013 IL App (1st) 120711, ¶ 32.

MacCarthy contends that the published notices were deficient under section 15-1507(c), and thus the sale should not have been confirmed pursuant to sections 15-1508(b)(i) and 15-1508(b)(iv) of the IMFL. Simply put, we reject this contention.

¶ 14 Under section 15-1508(b)(i), notice must be provided in accordance with section 15-1507(c), which mandates “public notice of the sale.” Among other things, the public notice was required to include a legal description of the Property sufficient to identify it with reasonable certainty. 735 ILCS 5/15-1507(c)(1)(C). The notice was also required to include the name, address and telephone number of the person to contact for information regarding the Property. 735 ILCS 5/15-1507(c)(1)(A).

¶ 15 The public notice in the *Chicago Daily Law Bulletin* included a common address, a PIN, and a legal description of the Property, whereas the *Lawndale News* notice listed a common address and a PIN but no separate legal description. As detailed in section 15-1507(c)(2) of the IMFL, however, the legal description was required in only one of the two publications. 735 ILCS 5/15-1507(c)(2).

¶ 16 We further observe that the information provided in both the *Chicago Daily Law Bulletin* and the *Lawndale News* was sufficient to identify the Property with reasonable certainty. The PIN is a numerical code for the legal description of a piece of land.³ Although the photocopy of the *Chicago Daily Law Bulletin* notice is clearer than the *Lawndale News* notice, both appear to

³ See, e.g., <http://www.cookcountyclerk.com/TSD/MAPS/Pages/AboutPINs.aspx> (last checked Sept. 12, 2017).

list the correct PIN for the Property. In any event, MacCarthy has provided no legal support for her proposition that a one-digit typographical error in the PIN in a public notice in a single publication would be fatal to confirmation of the sale. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (requiring “citation of the authorities *** relied on”). See also 735 ILCS 5/15-1508(d). As expressly stated in section 15-1507(c) of the IMFL, “an immaterial error in the information shall not invalidate the legal effect of the notice.” 735 ILCS 5/15-1507(c). *E.g., Cragin Federal Bank for Savings v. American National Bank & Trust Co. of Chicago*, 262 Ill. App. 3d 115, 118 (1994) (defendants in foreclosure action conceded that the bank’s failure to include the case title, case number, and court in the public notice – as is required by section 15-1507 – constituted “immaterial errors which did not, in themselves, invalidate the sale”).

¶ 17 MacCarthy further contends that the notice included contact information for both the Bank’s counsel and the selling officer without specifying which entity was acting as the point of contact. Neither section 15-1507(c) nor any case cited by MacCarthy, however, precludes the inclusion of *additional* information in a public notice. We are also untroubled by the reference to the 3 p.m to 5 p.m. period to access the law firm’s website, particularly given that the notice includes the firm’s name, address, telephone number, and an email address. See 735 ILCS 5/15-1507(c)(1)(A).

¶ 18 For the foregoing reasons, MacCarthy’s objections to the sale based on allegedly defective notice pursuant to section 15-1508(b)(i) of the IMFL must fail. Although she also invokes section 15-1508(b)(iv), she advances no substantive arguments as to why “justice was otherwise not done.” 735 ILCS 5/15-1508(b)(iv). In practice, section 15-1508(b)(iv) is “often invoked by defendants making a last-ditch effort to extricate themselves from a lost foreclosure case.” *NAB Bank v. LaSalle Bank, N.A.*, 2013 IL App (1st) 121147, ¶ 16. Based on our review

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of the record, MacCarthy's challenge under section 15-1508(b)(iv) is without merit.

¶ 19

CONCLUSION

¶ 20 The judgment of the circuit court of Cook County is affirmed in its entirety.

¶ 21 Affirmed.