2017 IL App (1st) 163228-U

FIFTH DIVISION
September 29, 2017

No. 1-16-3228



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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| BANK OF AMERICA, N.A., Successor by Merger to BAC Loans Servicing, LP f/k/a Countrywide Home Loan Servicing LP, | ) | Appeal from the Circuit Court of Cook County |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 2013 CH 07741 |
| RENATA KUSEK, | ) | |
| Defendant-Appellant. | ) | Honorable Allen Price Walker, |
| (Unknown Owners and Non-Record Claimants, Defendants.) | ) | Judge Presiding. |

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

**ORDER**

¶ 1 *Held*: Affirming judgment of circuit court of Cook County confirming foreclosure sale of residential property.

¶ 2 Defendant Renata Kusek (Kusek) appeals from an order of the circuit court of Cook County confirming the judicial sale of her residential real estate. She contends that the circuit court abused its discretion because "justice was otherwise not done" pursuant to section 15-1508(b)(iv) of the Illinois Mortgage Foreclosure Law (IMFL) (735 ILCS 5/15-1508(b)(iv) (West 2012)). Plaintiff Bank of America, N.A. (Bank), successor by merger to BAC Loans Servicing,

LP f/k/a Countrywide Home Loan Servicing LP, seeks dismissal of this appeal as moot under Illinois Supreme Court Rule 305(k) (eff. July 1, 2004) and asserts that the circuit court did not abuse its discretion in confirming the sale. For the reasons discussed herein, we reject the Bank's mootness argument but affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 Kusek and her husband owned and lived in a single-family residence in the 7000 block of West Birchwood Avenue in Niles, Illinois (Property). Following the death of her husband, she defaulted on the mortgage. In a foreclosure complaint filed against Kusek in March 2013, the Bank, as successor mortgagee, alleged that the principal balance due was $168,795.71, plus interest, costs, advances, and fees. After Kusek failed to appear or answer, the circuit court granted the Bank's motion for a default judgment, motion to appoint a selling officer, and motion for the entry of a judgment of foreclosure and sale. The judgment of foreclosure and sale which was entered on September 20, 2013, provided that the amount due to the Bank was $182,236.47.

¶ 5 Kusek filed a bankruptcy petition on Friday, January 3, 2014, one business day prior to the scheduled judicial sale on January 6, 2014. The Bank, which was presumably unaware of her pending bankruptcy case, was the successful bidder at the sale. Because the sale was conducted in violation of automatic stay imposed by the United States Bankruptcy Code (Bankruptcy Code) (11 U.S.C. § 362), the Bank subsequently filed a motion to void the sale. The circuit court entered an order voiding the sale, and the bankruptcy court confirmed Kusek's Chapter 13 plan, wherein she agreed to make payments to the Bank. The bankruptcy court ultimately dismissed her case in January 2016 based on her failure to comply with the plan.

¶ 6 According to its certificate of service, the selling officer appointed in the foreclosure action mailed a notice of sale to Kusek on February 19, 2016, which listed the judgment amount

as $182,236.47, as was provided in the judgment of foreclosure and sale entered in 2013. A sale notice was also published on multiple dates in the *Daily Herald* and *Cook County Chronicle*.

¶ 7 During a public auction on March 28, 2016, ProBidder LLC (ProBidder) submitted the successful bid of $212,100. ProBidder then assigned its rights to the Property to DH Auctions LLC (DH Auctions). DH Auctions filed a petition to intervene. Thereafter, both DH Auctions and the Bank filed motions for an order approving the selling officer's report and distribution and an order for possession and deed (motion to confirm).[1] The selling officer's report listed the total amount due to the Bank as $233,843.03, which included more than $41,000 in interest. Although the report listed a deficiency of $21,743.03 ($233,843.03 - $212,100), the Bank did not pursue Kusek personally for this amount. The report did not reference any payments made by Kusek during or after her bankruptcy case.

¶ 8 In May 2016, Kusek filed a motion to quash service of process, asserting that she was never personally served with the complaint and summons in March 2013. The circuit court denied the motion and her subsequent motion to reconsider.

¶ 9 Kusek also objected to the Bank's motion to confirm the sale on multiple grounds. As an initial matter, she argued that the Bank had filed a motion for substitution of counsel in the foreclosure action in January 2015, in violation of the automatic stay imposed by her then-pending bankruptcy case. Kusek thus asserted that "all subsequent filings and undertakings" by the Bank through the second law firm, including the judicial sale, must be voided. In addition, she claimed that she did not receive advance notice of the judicial sale. She also provided an appraisal from May 2016 – valuing the Property at $305,000 – as support for her contention that the sale price was unfair and unconscionable. Finally, Kusek asserted that the Bank failed to

[1] The motion was filed by Federal National Mortgage Association ("Fannie Mae") as plaintiff. In September 2016, the Bank filed a motion to substitute Fannie Mae as the plaintiff. The motion was later withdrawn, and the Bank was confirmed as the plaintiff in the action.

give her credit for more than $36,000 which she had paid on account of mortgage arrearages and current mortgage payments after the entry of the judgment of foreclosure.

¶ 10 On November 8, 2016, the circuit court entered an order confirming the report of sale and distribution and for possession. Kusek timely appealed.

¶ 11 II. ANALYSIS

¶ 12 Kusek contends on appeal that the circuit court abused its discretion in confirming the judicial sale over her objection that "justice was otherwise not done" pursuant to section 15-1508(b)(iv) of the IMFL. Prior to considering her arguments, however, we must address a jurisdictional challenge raised by the Bank.

¶ 13 A. Jurisdictional Challenge

¶ 14 The Bank contends that Kusek's appeal should be dismissed as moot under Illinois Supreme Court Rule 305(k) "because the foreclosed property was sold at a judicial sale to a third party purchaser, who did not become a party, and [Kusek] failed to obtain a stay of enforcement of the final order approving the sale." An appeal is moot "when it involves no actual controversy or the reviewing court cannot grant the complaining party effectual relief." *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 522-23 (2001).[2] We will generally not consider moot questions because our jurisdiction is limited to cases which present an actual controversy. *Id.* at 523. As discussed below, Rule 305(k) "protects third-party purchasers of property from appellate reversals or modifications of judgments regarding the property, absent a stay of the judgment pending the appeal." *Id.* "[I]t is well established that without a stay, an appeal seeking possession or ownership of specific property that has already been conveyed to a third party is moot." *Northbrook Bank & Trust Co. v. 2120 Division LLC*, 2015 IL App (1st) 133426, ¶ 3.

[2] Rule 305(j) became Rule 305(k) after the decision in *Steinbrecher*. For purposes of clarity, we refer exclusively to 305(k) herein.

¶ 15 Rule 305(k) provides, in part, that if a stay is not timely perfected, the reversal or modification of the judgment does not affect the rights of a non-party in any real property that is acquired after the judgment becomes final. The rule requires "(1) the property passed pursuant to a final judgment; (2) the right, title and interest of the property passed to a person or entity who is not part of the proceeding; and (3) the litigating party failed to perfect stay of judgment within the time allowed for filing a notice of appeal." *Steinbrecher,* 197 Ill. 2d at 523-24.

¶ 16 Kusek acknowledges that the first and third requirements of Rule 305(k) have been satisfied. The Property passed pursuant to a final judgment, *i.e.*, the order confirming the sale entered on November 8, 2016. *EMC Mortgage v. Kemp*, 2012 IL 113419, ¶ 11. Despite her efforts, Kusek failed to perfect a stay of the judgment.

¶ 17 The critical question is thus whether "right, title and interest of the property passed to a person who is not part of the proceeding." *Steinbrecher*, 197 Ill. 2d at 523. ProBidder was the successful bidder at the auction conducted on March 28, 2016, and was listed as the successful purchaser on the order confirming the report of sale and distribution and for possession. ProBidder assigned its rights in the Property to DH Auctions. Approximately one week after the auction, DH Auctions filed its petition to intervene. The Bank has represented – and Kusek does not dispute – that the circuit court did not rule on the petition. In the appendix to its appellee brief, the Bank provides a copy of the judicial sale deed for the Property, which was executed in January 2017 and recorded in April 2017. The Bank requests that we take judicial notice of this deed, which lists the grantor as the court-appointed selling officer and the grantee as Chicago Title Land Trust Company (Chicago Title), as "Trustee Under Trust Agreement Dated May 7, 2014 and Known as Trust Number 8002364780, by Assignment."

¶ 18 The record on appeal suggests that ProBidder – the successful bidder at the auction – was

a third-party purchaser, *i.e.*, not related to the Bank. For example, the Bank stated in its motion to confirm that it "seeks no deficiency judgment due to the property being sold to a third party." A document entitled "Third Party Bidder Information Sheet" prepared by the selling officer listed the purchaser as ProBidder. In her response to the Bank's motion to confirm, Kusek referred to ProBidder as "a third party." If we limit our review solely to ProBidder, there is no indication that it was a party or its nominee, and the Rule 305(k) protections may apply.

¶ 19 The involvement of DH Auctions, however, complicates our analysis. ProBidder assigned the certificate of sale with respect to the Property to DH Auctions, which then filed its petition to intervene. Section 15-1501 of the IMFL "allows for a nonparty to intervene in foreclosure proceedings, either by right or in the court's discretion, depending on the circumstances, up until the time that an order confirming the sale is entered." *MidFirst Bank v. McNeal*, 2016 IL App (1st) 150465, ¶ 15. See also 735 ILCS 5/2-408 (West 2012).

¶ 20 The Bank contends that the circuit court did not rule on DH Auctions' petition to intervene and that the mere filing of such petition is "legally insufficient to make it a party." In response, Kusek notes that she served counsel to DH Auctions with all of her filings in the case, and that such counsel appeared at a hearing and argued against her motion for a stay pending appeal. She cites *First National Bank of Jonesboro v. Road District No. 8*, 389 Ill. 156, 161 (1945), wherein our supreme court distinguished between "strangers to the litigation" and "parties to the action." The *Jonesboro* court stated that "[a] party to a suit is presumed to know all of the errors in the record, and such party cannot acquire any rights or interests based on [an] erroneous decree that will not be abrogated by a subsequent reversal thereof." *Id.* at 161-62. According to Kusek, "[t]o hold that DH was not a party for purposes of Rule 305(k) simply because the trial court never expressly granted its petition to intervene, in spite of DH's

participation in this case and the rationale for Rule 305(k) as explained by the Supreme Court in [*Jonesboro*], would be elevating form over substance."

¶ 21 Kusek provides no direct support for her position that DH Auctions should effectively be considered an intervenor despite the absence of an order granting such relief. While the docketing statement filed by Kusek identifies DH Auctions as an intervenor, nothing in the record on appeal expressly provides as such. On the other hand, the presence of counsel for DH Auctions at the circuit court hearing regarding Kusek's motion to stay suggests that DH Auctions participated, in some fashion, in the circuit court proceedings. Although we are inclined to conclude that DH Auctions was not a "party" for purposes of Rule 305(k), we recognize that the "record must *unequivocally* disclose that the purchaser was not a party or nominee of a party to the action." (Emphasis added.) *Cosmopolitan National Bank of Chicago v. Nunez*, 265 Ill. App. 3d 1012, 1014 (1994). With respect to DH Auctions, the record is not "unequivocal."

¶ 22 Finally, we note that the Property did not pass from the selling officer to ProBidder or DH Auctions pursuant to the judicial sale deed recorded in April 2017, but instead passed to Chicago Title, as trustee under a specified trust agreement. The Bank argues that we may take judicial notice of the deed, despite the general prohibition on our consideration of documents *dehors* the record. See, *e.g.*, *Dixon v. Chicago & North Western Transportation Co.*, 151 Ill. 2d 108, 116-17 (1992) (stating that a "reviewing court can take judicial notice of events or facts which, while not appearing in the record, disclose that an issue has been mooted").

¶ 23 Kusek observes that the Bank does not identify the beneficiary of the underlying trust for which Chicago Title serves as trustee. While she suggests that the beneficiary is presumably DH Auctions, she posits that "theoretically it could be anyone," including the Bank. As the same contact address in Palatine, Illinois, was provided for both ProBidder and the Chicago Title

entity, we would presume that the two are related. We, however, decline to speculate regarding the connections, if any, between Chicago Title, the underlying trust, and the Bank. Unlike in other cases, the Bank has failed to provide an affidavit or other document confirming unequivocally that the Chicago Title entity is not a party or a nominee thereof. See, *e.g.*, *Town of Libertyville v. Moran*, 179 Ill. App. 3d 880, 882 (1989). Absent a definitive resolution of that issue, we cannot conclude that Rule 305(k) precludes our review of Kusek's appeal.

¶ 24 B. Kusek's Arguments

¶ 25 Kusek contends on appeal that the circuit court abused its discretion in confirming the judicial sale over her objection that "justice was otherwise not done" under section 15-1508(b)(iv) of the IMFL. 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 2012). Under the IMFL, "after a judicial sale and a motion to confirm the sale has been filed, the court's discretion to vacate the sale is governed by the mandatory provisions of section 15-1508(b)." *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 18. The objecting party bears the burden of proving that sufficient grounds exist to disapprove a judicial sale. *Bayview Loan Servicing, LLC v. 2010 Real Estate Foreclosure, LLC*, 2013 IL App (1st) 120711, ¶ 32.

¶ 26 Section 15-1508(b)(iv) – the sole section invoked by Kusek on appeal – does not expressly define "justice *** otherwise not done." *McCluskey*, 2013 IL 115469, ¶ 19. In practice, the section 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. "[C]ase law teaches that the court's discretion under the justice clause is

extraordinarily narrow." *Id.*

¶ 27 A circuit court's decision to confirm or reject a judicial sale will not be disturbed absent an abuse of discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008); *BAC Home Loans Servicing, LP v. Popa*, 2015 IL App (1st) 142053, ¶ 26. The circuit court abuses 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.

¶ 28 Kusek advances four primary arguments in support of her contention that, "[u]nder the totality of the circumstances," justice was otherwise not done under section 15-1508(b)(iv) of the IMFL and the sale should not have been confirmed. First, she asserts that the Bank violated the automatic stay during her bankruptcy. She next argues that the failure to credit her payments during her Chapter 13 case was improper and "tainted the judicial sale." Kusek also asserts that the sale price was dramatically lower than a recent appraisal. Finally, she contends that she did not receive advance notice of the judicial sale. We address each argument below.

¶ 29 1. Violation of the Automatic Stay

¶ 30 Kusek contends that the Bank's motion to substitute counsel and the circuit court order granting the substitution violated the automatic stay and were thus "void and of no force and effect." Because the Bank must be represented by counsel in legal proceedings (see *Downtown Disposal Services, Inc. v. City of Chicago*, 2012 IL 112040, ¶ 17), Kusek argues that "all actions" taken by the Bank throughout the remainder of the foreclosure case, including the sale of the Property, were null and void. While we recognize the "extremely broad" scope of the automatic stay (see *Sanders v. Farina,* 67 F. Supp. 3d 727, 729 (E.D. Va. 2014), citing *Collier on Bankruptcy* § 362.02), we conclude that the stay was not violated in the instant case.

¶ 31 "An automatic stay goes into effect upon the filing of the bankruptcy petition, prohibiting

certain actions against the debtor or the property of the bankruptcy estate." *In re Kuzniewski*, 508 B.R. 678, 683-84 (Bankr. N.D. Ill. 2014). See 11 U.S.C. § 362(a). Section 362(a) of the Bankruptcy Code provides, in part, that the filing of a bankruptcy petition operates as a stay of "the commencement or continuation *** of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the [bankruptcy case], or to recover a claim against the debtor that arose before the commencement of the [bankruptcy case]." 11 U.S.C. § 362(a)(1). "It is well established in case law that acts taken in violation of the automatic stay imposed under section 362(a) of the Bankruptcy Code are deemed void *ab initio* and lack effect." *In re Enyedi*, 371 B.R. 327, 334 (Bankr. N.D. Ill. 2007).

¶ 32 Kusek filed for bankruptcy in January 2014. Shortly thereafter, the Bank filed a motion to void the judicial sale which had occurred one business day after her bankruptcy filing; the motion was granted in February 2014. After the entry of the order voiding the sale, nothing transpired in the foreclosure action until December 2014, when the law firm of Manley Deas Kochalski, LLC (the Manley firm) and one of its attorneys filed additional appearances on behalf of the Bank. In a one-page motion for substitution of counsel filed in January 2015, the Bank's prior counsel withdrew and the Manley firm entered an appearance as attorneys of record. The motion was scheduled for presentment in the circuit court, and was served by mail on Kusek. In an order entered on January 30, 2015, the Manley firm was substituted as the attorney for the Bank and the Bank's former counsel was granted leave to withdraw. Nothing subsequently transpired in the foreclosure case until after the dismissal of Kusek's bankruptcy in 2016.

¶ 33 Kusek has provided no case law addressing the applicability of the automatic stay to a motion and order regarding substitution of counsel, and the cases on which she primarily relies –

*Skillforce, Inc. v. Hafer*, 509 B.R. 523 (E.D. Va. 2014), and *In re Hall-Walker*, 445 B.R. 873 (Bankr. N.D. Ill. 2011) – are distinguishable.

¶ 34 In *Skillforce*, the debtor filed a bankruptcy petition shortly before a scheduled state court hearing regarding interrogatories issued in a collection proceeding against her. *Skillforce*, 509 B.R. at 529. The state court stayed the proceeding but "somewhat paradoxically" continued the debtor's interrogatories for a status hearing a few months later. *Id.* At the next hearing, the state court overruled the debtor's objection that the hearing violated the stay and scheduled another hearing. *Id.* The bankruptcy court found that the creditor and its counsel willfully violated the stay by failing to withdraw the interrogatories or to prevent a hearing thereon. *Id.* at 525. In affirming the finding of a willful violation, the federal district court stated that "[a] creditor or the creditor's representative has an affirmative duty, post-petition, to discontinue any proceeding it has initiated or continued, or to take other appropriate steps that halt that proceeding if the proceeding: (i) jeopardizes or threatens in any way the integrity of the bankruptcy estate, or (ii) exposes the debtor to harassment or coercion or otherwise inhibits the debtor's 'breathing spell from [her] creditors.' " (Internal citations omitted). *Id.* at 531.

¶ 35 In *Hall-Walker*, the circuit court in a domestic relations case entered a finding of civil contempt against a former wife on her failure to comply with the requirement in her martial settlement agreement that she refinance her mortgage. *Hall-Walker*, 445 B.R. at 874. After she filed for bankruptcy, the circuit court held periodic status hearings on the collection efforts of the debtor's former husband. *Id.* at 875. When the debtor's bankruptcy counsel appeared at one such status hearing and asked that the matter be placed on the bankruptcy calendar, the judge responded that no such calendar exists. *Id.* In concluding that the husband's attorney violated the stay, the bankruptcy court stated: "During a time when the Debtor should have been focused

principally on her bankruptcy case in an effort to reorganize her debts, she was being summoned to Domestic Relations Court, accruing additional attorney's fees and facing threats of incarceration for her failure to refinance the mortgage." *Id.* at 877.

¶ 36 Both the *Skillforce* and *Hall-Walker* courts expressed concern regarding any requirement that a debtor in bankruptcy retain an attorney and appear in court for a status hearing in existing litigation. As a preliminary matter, there is no indication that Kusek – who seems to have not previously appeared or participated in the foreclosure case – attended the hearing regarding the substitution of counsel or raised any concerns thereon. The filing of a simple substitution motion required no time, expense, or effort on her part. We further note that the state courts in both *Skillforce* and *Hall-Walker* imposed repeated and continuing obligations on the respective debtors, whereas the substitution motion was addressed in a single hearing. There is simply no indication that the Bank's substitution of counsel distracted or coerced Kusek in any manner. Finally, although not dispositive, the Bank's motion to void the original judicial sale in 2014 is arguably inconsistent with any suggestion that the Bank ignored its obligations under the stay.

¶ 37 In conclusion, we reject Kusek's contentions that the filing of the motion to substitute counsel and the circuit court's ruling thereon violated the automatic stay. See, *e.g.*, *Sanders*, 67 F. Supp. 3d at 730 (concluding that the remand to state court of a removed diversity case was not an adjudication on the merits, did not jeopardize or infringe on the debtor's "breathing space" or threaten to deplete the estate, and did not put either party in a better or worse position than they previously occupied); *In re Knowles*, 442 B.R. 150, 160 (B.A.P. 1st Cir. 2011) (noting that "an act does not violate the stay unless it immediately or potentially threatens the debtor's possession of its property, such that the debtor is required to take affirmative acts to protect its interest").

¶ 38 Even if we assume that a violation of the stay occurred, we nevertheless reject Kusek's

contention that "all actions taken by [the Bank] through the rest of the case were without counsel and thus null and void." Kusek has provided no support for the proposition that the nullification of the substitution order would have the domino effect of voiding the subsequent sale of the Property and the motion to confirm the sale. When the foreclosure proceeding resumed after the automatic stay was lifted, the circuit court had the discretion to recognize the appearance of the Manley firm even if the formal appearance requirements of the Illinois Supreme Court Rules were not met. See, *e.g.*, *Larson v. Pedersen*, 349 Ill. App. 3d 203, 205-06 (2004) (concluding that an attorney's failure to file a notice of appearance did not render his subsequently-filed motion a nullity); *Ebert v. Dr. Scholl's Comfort Shops, Inc.*, 137 Ill. App. 3d 550, 555 (1985) (noting that the defendant "presented no authority requiring the nullification of an otherwise proper motion merely because of counsel's failure to file a timely substitution of attorneys"). See also *Holcomb v. Freedman Anselmo Lindberg, LLC*, 2017 WL 1105445, at *3 (N.D. Ill. Mar. 24, 2017). We thus turn to Kusek's next contention.

¶ 39 2. Failure to Credit Payments

¶ 40 Kusek argues that the Bank improperly failed to credit the payments that she made during the Chapter 13 proceedings. The judgment of foreclosure and sale entered in September 2013 provided that the amount due to the Bank was $182,236.47. Kusek asserts that she paid more than $36,000 in current mortgage payments and on account of mortgage arrearages after the judgment was entered. Following the dismissal of her bankruptcy case in early 2016, the notice of sale listed the judgment amount as the amount provided in the 2013 judgment of foreclosure and sale: $182,236.47. The Bank filed a motion to confirm the selling officer's report of sale and distribution after the Property was sold at auction for $212,100 in March 2016. The report listed a deficiency of $21,743.03, based on a total amount of $233,843.03 due to the

Bank. Kusek argues that, if her payments had been credited, she would have been entitled to a surplus.

¶ 41 Citing *BMO Harris Bank, N.A. v. Wolverine Properties*, 2015 IL App (2d) 140921, Kusek asserts that the "judgment of foreclosure should have been amended pre-sale to reflect the actual judgment amount owing." The facts of *Wolverine Properties*, however, are significantly different from the facts herein. During the *Wolverine Properties* foreclosure proceedings, the bank paid more than $470,000 in real estate taxes but failed to include the payment when seeking a judgment of foreclosure. *Id.*, ¶ 8. Although the bank successfully moved to amend the judgment of foreclosure to include additional expenses, it did not include the tax payment. *Id.*, ¶ 9. The bank was the sole bidder at the judicial sale and subsequently moved to have the sale confirmed under section 15-1508. *Id.*, ¶¶ 10-11. The bank first requested recovery of the tax payment in its motion to confirm the sale. *Id.*, ¶ 11. The appellate court affirmed the trial court order confirming the sale and ruling that the bank could not recover the tax payment. *Id.*

¶ 42 According to the appellate court in *Wolverine Properties*, the trial court "may set aside a sale *only* in the presence of one of the four circumstances set forth in section 15-1508." (Emphasis in original.) *Id.*, ¶ 26. The fourth circumstance – justice otherwise not done – "is a codification of the court's power to vacate a sale 'where unfairness is shown that is prejudicial to an interested party.' " *Id.*, citing *McCluskey*, 2013 IL 115469, ¶ 19. The *Wolverine Properties* appellate court opined that a court should not refuse to confirm a sale merely to protect a party against the result of its own negligence. *Id.* Finding that the bank presented no reasons, other than its own mistake and inadvertence, for its failure to seek to include the tax payment in the original judgment of foreclosure, the appellate court concluded that the trial court did not abuse its discretion in determining that justice did not warrant setting aside the sale. *Id.*, ¶ 27.

¶ 43 Unlike the tax payment in *Wolverine Properties*, which were made by the bank *prior* to the entry of the judgment of foreclosure, the $36,000 amount was allegedly paid by Kusek *after* the entry of the judgment of foreclosure. Kusek has provided no support for the proposition that the Bank had an affirmative obligation to seek modification of the judgment of foreclosure prior to the judicial sale. We further note that the amount listed on the notice of sale did not include the payments made by Kusek during or after her bankruptcy, but also did not include the interest, attorney fees, and other expenses incurred by the Bank during the same time period.

¶ 44 Although Kusek claims to have not received the notice of sale, we reject that argument below. In any event, she was obligated to monitor the proceedings against her. *Fiallo v. Lee*, 356 Ill. App. 3d 649, 656 (2005) (stating that even a party represented by counsel has a duty to personally follow the progress of his case). The termination of her bankruptcy case had the effect of lifting the automatic stay and resurrecting the pending foreclosure action. *E.g.*, *Standard Federal Bank for Savings v. Hanno*, 323 Ill. App. 3d 521, 525 (2001) (noting that "[a]n automatic stay must plainly terminate upon the dismissal of the petition giving rise to it"). While she contends that the Bank proceeded "in a haste to hold and then confirm the sale," the foreclosure proceedings had existed since early 2013.

¶ 45 We also observe that the record on appeal is not clear regarding the amount and status of Kusek's payments during her bankruptcy proceedings. Although the final report of the bankruptcy trustee referenced more than $18,000 in payments on account of arrearages, the record suggests that other payments were rejected by the Bank or its servicing company due to lateness or on other grounds. Based on our review of the record, Kusek did not provide adequate documentation regarding the purported total payments of $36,000. See *Bayview Loan Servicing*, 2013 IL App (1st) 120711, ¶ 32 (party challenging judicial sale bears burden of proving

sufficient grounds to disapprove of the sale). Furthermore, absent a report of the proceedings wherein the circuit court considered the parties' arguments regarding the failure to credit her payments, we are unable to determine whether the trial court abused its discretion. See *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009). As the appellant, Kusek bears the burden of providing a complete record on appeal, including a report of proceedings or an appropriate substitute. Ill. S. Ct. R. 323 (eff. Dec. 13, 2005). In the absence of a complete record, we presume that any circuit court order conformed with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 46 Kusek argues for the first time in her reply brief that "even if the sale itself could not be undone, the report of sale and order confirming the same could be amended to account for Kusek's payments, adjust the accrued interest accordingly, and direct payment to Kusek of the surplus to which she would thereby be entitled." She, however, fails to provide any support for this proposition. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (requiring citations to authority). Furthermore, we note that Kusek did not request such relief in her notice of appeal or her initial brief. We thus turn to her next contention.

¶ 47 3. Sale Price Lower Than Appraisal

¶ 48 Kusek observes the Property was appraised at $305,000 approximately one month after the judicial sale where the successful bid was $212,000. She argues that the sale price "had the effect of wiping out the equity" that she and her late husband had accumulated in the Property. When considered in conjunction with the other alleged errors in this case, Kusek contends that the low sale price resulted in "justice not otherwise done" under section 15-1508(b)(iv) of the IMFL.

¶ 49 In every case where a sale has been successfully challenged under the justice clause the

issue of an unconscionable sale price has been involved. *NAB Bank*, 2013 IL App (1st) 121147, ¶ 18. For example, in *Merchants Bank v. Roberts*, 292 Ill. App. 3d 925, 931-32 (1997), the appellate court stated that the defendants would "suffer a severe penalty" if the parcels of land were sold for less than 50% of the fair market value. In *Commercial Credit Loans, Inc. v. Espinoza*, 293 Ill. App. 3d 915, 928 (1997), the appellate court affirmed the trial court's conclusion that justice was not done because, among other things, "the value of the property at issue was six times more than what was bid at the sale." The appellate court in *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 265 (2008), vacated an order confirming the judicial sale of property based, in part, on the "drastic difference" between the sale price of approximately $32,000 and the broker's opinion and mortgagors' own valuation, each of which exceeded $300,000.

¶ 50 Simply stated, the disparity between the purchase price and the appraised value of the Property in question was significantly less than in the foregoing cases. See, *e.g.*, *Lyons Savings and Loan Association v. Gash Associates*, 189 Ill. App. 3d 684, 686-87 (1989) (the successful bid of $4,005,000 was not "grossly inadequate" where appraisals ranged between $5 million and $5.8 million). In any event, even a large difference between a sale price and an appraised value is not necessarily dispositive. As the *NAB Bank* court observed, the mere comparison of the bid to the appraisal does not establish whether the price is unconscionably low because it is unusual for land to bring its full, fair market value at a forced sale. *NAB Bank*, 2013 IL App (1st) 121147, ¶ 20. The inadequacy of the sale price is an insufficient reason, standing alone, to deny confirmation of a judicial sale. *Id.* When there is no fraud or other irregularity in the foreclosure proceeding, the sale price is the conclusive measure of the value of the property. *Id.* See, *e.g.*, *Fleet Mortgage Corp. v. Deale*, 287 Ill. App. 3d 385, 390 (1997) (affirming the trial court's

decision to disaffirm a sale where the bank had proceeded despite an earlier agreement to postpone the sale). The record herein does not indicate any fraud or other irregularity. Based on the foregoing, we cannot conclude that the circuit court abused its discretion in confirming the sale of the Property, despite the higher appraised value.

¶ 51 4. Notice of Judicial Sale

¶ 52 Kusek contends that she did not receive the notice of sale. She argues that if she had received such notice – which stated the judgment amount on its face – she could have alerted the Bank to the erroneous amount and amended the judgment prior to the sale. Kusek acknowledges that the proof of service indicates that the notice of sale was mailed to her at the Property. Although she does not challenge the Bank's "good faith and its belief that notice was sent," she offers that "it could very well be that this involved yet another of the many mistakes" which the Bank allegedly made in this case.

¶ 53 Her arguments fall short for a number of reasons. As an initial matter, the proof of service was signed by a representative of the selling officer – The Judicial Sales Corporation – and not the Bank or its counsel. Because the notice of sale was mailed to Kusek from the office of the selling officer, any purported errors by the Bank would be of minimal relevance. We further note that, under Illinois law, there is a presumption of delivery if a notice is sent by regular mail directed to a proper address. *Popa*, 2015 IL App (1st) 142053, ¶ 22. The mere assertion that Kusek did not receive the notice of sale is insufficient to demonstrate that service was inadequate. *Lewis*, 2014 IL App (1st) 131272, ¶ 39.

¶ 54 Finally, we are unmoved by her arguments regarding Illinois Supreme Court Rule 113(f)(1). Ill. S. Ct. R. 113 (eff. May 1, 2013). Rule 113(f)(1) supplements the notice requirements of the IMFL by providing that "[n]ot fewer than 10 business days before the sale,

the attorney for the plaintiff shall send notice by mail to all defendants, including defendants in default, of the foreclosure sale date, time, and location of the sale." *Id.* Kusek acknowledges that the rule was not yet in effect when the Bank filed its foreclosure complaint. She nevertheless argues that its rationale – "giving defaulted mortgagors the opportunity to address issues with the terms of the sale prior to the sale" – applies with equal force in the instant case. As notice was actually provided in this case, however, her reliance on the rule is unavailing.

¶ 55 In sum, Kusek contends that the lack of advance notice of the sale, coupled with the other alleged errors discussed above, suggest that "justice was otherwise not done." For the reasons set forth herein, we reject this contention and conclude that the circuit court did not abuse its "broad discretion" (*Lewis*, 229 Ill. 2d at 178) under section 15-1508 of the IMFL in confirming the sale of the Property.

¶ 56 III. CONCLUSION

¶ 57 For the reasons discussed above, we reject the Bank's arguments regarding Illinois Supreme Court Rule 305(k), and we affirm the judgment of the circuit court of Cook County in its entirety.

¶ 58 Affirmed.