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No. 1-10-2066

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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UNITED CENTRAL BANK, as assignee of	)	
DMK, LLC, successor in interest to	)	Appeal from the
MUTUAL BANK,	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08 CH 8480
	)	
FAITHFULWORKS, LLC, an Illinois Limited	)	
Liability Company, and NICHOLAS	)	Honorable
MITCHELL, et al.,	)	Franklin Ulyses Valderrama,
	)	Judge Presiding.
Defendants-Appellants.	)	

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PRESIDING JUSTICE QUINN delivered the judgment of the court.

Justices Neville and Murphy concurred in the judgment.

**ORDER**

*Held:* Where defendants in this mortgage foreclosure action failed to raise in a timely manner, before the circuit court, their request for an accounting and failed to allege one of the statutory grounds for setting aside a foreclosure sale, the circuit court's judgment denying defendants' motion to vacate the foreclosure sale, denying defendants' motion for an accounting, and confirming the foreclosure sale is affirmed.

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Defendants Faithfulworks, LLC, and its sole member Nicholas Mitchell, (Faithfulworks) appeal from the circuit court's confirmation of the foreclosure sale in this case and the court's denial of defendants' motion to vacate and for an accounting. Defendants argue that plaintiff DMK, LLC (DMK) was statutorily required to provide an accounting prior to the entry of an order confirming the foreclosure sale and, thus, the circuit court's orders rendered in favor of DMK were void. For the reasons that follow, we affirm the judgment of the circuit court.

## I. BACKGROUND

On February 25, 2003, Faithfulworks executed a note in favor of Mutual Bank in the original principal amount of \$3 million. The note was secured by a mortgage against the subject property, commonly known as 1070-1090 E. Oakton Street and 1555 Times Drive, Des Plaines, Illinois. The subject property is an office building, which generated monthly rental income. The note was amended on several occasions to increase the principal balance to \$4,400,000., and the modifications of mortgage were recorded.

The note, as amended, matured on April 23, 2007, and at that time, was not paid. On July 17, 2007, Mutual Bank filed suit to foreclose the mortgage on the subject property, as well as several other related properties. The mortgage included an "assignment of rents" provision in favor of the mortgagee, which provided that the mortgagee would become mortgagee in possession upon default. Faithfulworks also executed an "Assignment of Rents and Leases" in favor of Mutual Bank, which was recorded with the Office of the Cook County Recorder of Deeds. The Assignment of Rents and Leases allows the assignee to take possession of the subject property and to collect rents from it, but does not require the assignee to account to the

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assignor for the rents collected and disbursed.

On September 11, 2007, the circuit court entered an order appointing Mutual Bank as mortgagee in possession with respect to the subject property. The circuit court subsequently dismissed Mutual Bank's suit to foreclose the subject property without prejudice, so that Mutual Bank could re-file separate foreclosures for each property. On March 5, 2008, Mutual Bank re-filed a separate suit to foreclose on the subject property and continued to act as mortgagee in possession with respect to the subject property. On August 18, 2008, Mutual Bank filed a motion for default judgment against unknown owners and non-record claimants and a motion for summary judgment of foreclosure. During the proceedings, Mutual Bank became insolvent and, on September 30, 2008, Mutual Bank assigned the note, mortgage, and Assignment of Rents and Leases with respect to the subject property to DMK.

On November 13, 2008, the circuit court entered an order allowing DMK to substitute as a party plaintiff and appointing DMK mortgagee in possession of the subject property. The circuit court's order also granted Faithfulworks 21 days to respond to the motion for summary judgment, allowed DMK 14 days to reply in support of the motion for summary judgment, and allowed Faithfulworks 16 days to comply with outstanding discovery.

On December 11, 2008, the circuit court entered an order granting DMK's motion for discovery sanctions against Faithfulworks, which barred Faithfulworks from submitting any affidavits in the lawsuit. On December 22, 2008, the circuit court conducted a hearing on DMK's motion for summary judgment. Faithfulworks did not file a response in opposition to the motion for summary judgment. The circuit court entered an order defaulting unknown owners

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and non-record claimants, and granting summary judgment of foreclose against Faithfulworks in the amount of \$5,514,912.36. The circuit court also entered a separate order for foreclosure and sale of the subject property, which included a finding that there was no just cause to delay enforcement or appeal under Supreme Court Rule 304(a) (155 Ill. 2d R. 304(a)).

On February 19, 2009, the subject property was sold at a Sheriff's sale to DMK, who bid the full amount of the mortgage debt (\$5,514,912.36). The Sheriff prepared a report of sale and distribution and issued a certificate of sale to DMK. On August 10, 2009, DMK assigned to United Central Bank its interest in the mortgage and certificate of sale. United subsequently replaced DMK and Mutual Bank as the plaintiff in the mortgage foreclosure case.

On February 5, 2010, United Central Bank filed a motion to confirm the Sheriff's sale and order of possession. On February 9, 2010, Faithfulworks filed a motion to vacate and for a final accounting from the mortgagees in possession of the subject property. Faithfulworks argued that the circuit court could not confirm the sale of the subject property until United Bank, on behalf or itself and its predecessors, prepared a final accounting for all rents received while serving as mortgagee in possession. Faithfulworks maintained that without such accounting, the report of sale did not reflect any credits to Faithfulworks for net income generated by the subject property during the pendency of the foreclosure litigation.

On April 14, 2010, the circuit court conducted a hearing on Faithfulworks' motion to vacate the foreclosure sale and for an accounting, and United Central Bank's motion to confirm the foreclosure sale. At the hearing, United Central Bank presented an affidavit from Catherine Magnuson, a loan officer at United Central Bank, which indicated that the mortgagees in

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possession had collected \$292,672 in rents from the subject property but had paid \$312,406 in property taxes. The circuit court found that there was no court order requiring the mortgagees in possession to report on a periodic basis regarding rents received from the subject property. The court noted that Faithfulworks could have requested such documentation from the mortgagees in possession at an earlier stage in the lawsuit, but failed to do so. As a result, the court denied Faithfulworks' motion to vacate and for an accounting where the request for an accounting was untimely. With respect to the motion to confirm the foreclosure sale, the circuit court found that Faithfulworks had not argued any of the four bases in section 15-1508(b) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(b) (West 2008)) to justify setting aside the sale. Therefore, the circuit court granted the motion to confirm the foreclosure sale.

Faithfulworks now appeals.

## II. ANALYSIS

Faithfulworks initially contends that the standard of review in this case is *de novo* because the issue of whether a mortgagee in possession is required to submit a final accounting before the circuit court may confirm a mortgage foreclosure sale is a question of law. However, section 15-1508(b) of the Foreclosure Law confers broad discretion on circuit courts in approving or disapproving judicial sales, and that exercise of discretion will not be disturbed absent an abuse of discretion. *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 4 (2010).

Faithfulworks argues that the circuit court erred in confirming the foreclosure sale without ordering a final accounting from the mortgagees in possession. Faithfulworks asserts

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that under section 15-1703 of the Foreclosure Law, a mortgagee in possession is required to submit an accounting prior to the entry of an order confirming a sale in a foreclosure action.

Section 15-1703 of the Foreclosure Law provides that mortgagees in possession of property subject to foreclosure have “the same powers, duties and liabilities as a receiver appointed for the real estate in accordance with this Article.” 735 ILCS 5/15-1703(a)(3) (West 2008). Section 15-1704(c) sets forth the duties of a receiver in a foreclosure case, including the duty to manage the mortgaged real estate “as would a prudent person,” and “apply receipts to payment of ordinary operating expenses, including royalties, rents and other expenses of management.” 735 ILCS 5/15-1704(c) (West 2008). Contrary to Faithfulworks’ contention, nothing in the Foreclosure Law requires that an accounting occur prior to a foreclosure sale and confirmation of the sale.

Even if Faithfulworks was entitled to an accounting from the mortgagees in possession of the subject property, Faithfulworks forfeited the issue by failing to raise it in a timely fashion before the circuit court. Faithfulworks did not file a response in opposition to DMK’s motion for summary judgment and, on December 22, 2008, the circuit court entered an order defaulting unknown owners and non-record claimants, and granting summary judgment of foreclose against Faithfulworks in the amount of \$5,514,912.36. The circuit court also entered a separate order for foreclosure and sale of the subject property, which included a finding that there was no just cause to delay enforcement or appeal under Supreme Court Rule 304(a) (155 Ill. 2d R. 304(a)).

Faithfulworks did not appeal from that final foreclosure judgment order. See *Mortgage Electronic Registration Systems, Inc.*, 406 Ill. App. 3d at 4 (unless the court includes Supreme

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Court Rule 304(a) language, a mortgage foreclosure judgment is not final and appealable until the court enters an order approving the sale). Faithfulworks thereafter participated in the proceedings and attempted to raise the accounting issue only after the foreclosure and sale and in response to United Central Bank's motion to confirm the sale. Defendant, therefore, forfeited the accounting issue. See *Mortgage Electronic Registration Systems, Inc.*, 406 Ill. App. 3d at 6-7 (defendant forfeited issue of standing in mortgage foreclosure action by failing to timely raise the issue before the circuit court).

Further, Faithfulworks cannot establish that the circuit court abused its discretion in confirming the foreclosure sale. The plain language of section 15-1508(b) requires the circuit court to confirm a foreclosure sale unless it finds following a hearing that: (1) there has been a failure to give proper notice; (2) the terms of sale were unconscionable; (3) the sale was conducted fraudulently; or (4) justice was otherwise not done. 735 ILCS 5/15-1508(b) (West 2008). Faithfulworks did not argue or present evidence that any or those four grounds existed to justify setting aside the foreclosure sale. Accordingly, we conclude that the circuit court did not abuse its discretion in approving the foreclosure sale.

For the foregoing reasons, the judgment of the circuit court confirming the sale of the subject property in this case is affirmed.

Affirmed.