

2017 IL App (1st) 160471-U

No. 1-16-0471

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FIFTH DIVISION
June 23, 2017

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

URBAN FINANCIAL GROUP, INC., Formerly Known)	Appeal from the
as Urban Financial of America, LLC,)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	No. 14 CH 08191
v.)	
)	
ARNETHA D. PRICE-MOORE,)	The Honorable
)	Michael Otto,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Hall concurred in the judgment.

ORDER

¶1 *HELD:* Where, pursuant to the language in the trust document, the deceased had the authority as trustee to enter into a reverse mortgage, the circuit court did not abuse its discretion in approving the judicial sale of the subject property following default on the mortgage because defendant failed to demonstrate that justice otherwise was not done pursuant to section 15-1508(b)(iv) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(b)(iv) (West 2014)).

¶2 Defendant, Arnetha D. Price-Moore, appears *pro se* to appeal the circuit court's order approving the report of sale and distribution of the subject property located at 122 Graymore Lane in Olympia Fields, Illinois, approving the sale of the subject property, and ordering possession thereof in favor of plaintiff, Urban Financial Group, Inc. (Urban Financial). Defendant contends the circuit court abused its discretion in approving the property sale report where justice was not otherwise done pursuant to section 15-1508(b)(iv) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(b)(iv) (West 2014)). Based on the following, we affirm.

¶3 **FACTS**

¶4 On March 5, 2008, defendant's mother, Bernice Price, created the Bernice and Charles J. Price Trust (the Trust). The subject property was transferred by deed into the Trust. The Trust named Bernice and Charles Price, defendant's father, as cotrustees with defendant and her brother, Kenneth, named as successor trustees. According to the terms of the Trust, defendant and Kenneth would succeed as cotrustees "[i]n the event *both* [Bernice and Charles] are unable to act as Co-Trustees as the result of becoming disabled in that because of mental deterioration or physical incapacity, we are not fully able to manage matters affecting our personal welfare or financial welfare." (Emphasis added.) The Trust defined "disabled or incapacitated" as "when any physician familiar with [Bernice's] condition certifies that [she and Charles] are either unable to transact ordinary business or unable to properly administer the trust for [their] benefit." The Trust, in relevant part, granted the cotrustees the power to "borrow money, and mortgage or pledge trust property."

¶5 Bernice died on April 15, 2009. Kenneth died on August 8, 2010.

¶6 On March 15, 2011, Charles, as trustee of the Trust, executed a home equity conversion mortgage, commonly known as a reverse mortgage, and a fixed rate promissory note with Urban Financial in the amount of \$405,000. Charles died on April 2, 2013. On May 14, 2014, Urban Financial filed a complaint to foreclose the subject property. Defendant was named in the complaint due to her interest in the subject property as Charles' heir.

¶7 On November 24, 2014, the circuit court entered an order of default against defendant and a judgment of foreclosure and sale of the subject property. The judicial sale was postponed a number of times. In relevant part, on April 23, 2015, defendant, appearing *pro se*, filed an emergency motion to stay the judicial sale in order to secure an attorney. In that motion, defendant alleged she had "title interest" in the subject property and it was removed from the Trust without her knowledge or authority. The motion was granted and the sale was rescheduled for July 6, 2015. Then, on July 2, 2015, defendant, through counsel, filed a second emergency motion to stay the scheduled property sale. In that motion, defendant alleged she was a cotrustee of the subject property with power of attorney. Defendant further alleged that equity was taken out of the subject property without her knowledge or authorization, resulting in the property's foreclosure. The second emergency motion was denied. The judicial sale was held on July 6, 2015.

¶8 On July 14, 2015, the circuit court entered a report of sale and distribution of the subject property. Plaintiff presented a motion to approve the report of sale and defendant was provided time to respond. In defendant's response, she argued that the judicial sale should not be approved, citing section 15-1508(b) of the Foreclosure Law as support, because "justice was otherwise not done." Defendant argued that she was the sole

survivor of the Trust, she possessed power of attorney for Charles, and Charles lacked the authority to enter into the loan with plaintiff. Plaintiff responded that defendant failed to satisfy her burden of demonstrating “justice was otherwise not done” where there was no evidence establishing any fraud or misrepresentation preventing her from raising her defenses before the judicial sale or the motion to approve the sale was filed or that an equitable defense existed. Plaintiff argued defendant failed to establish a meritorious defense where the Trust did not support her claim that Charles lacked authority to enter into transactions on behalf of the Trust.

¶9 On January 21, 2016, the circuit court entered an ordering approving the report of sale for the subject property. This appeal followed.

¶10 ANALYSIS

¶11 Defendant essentially contends the circuit court abused its discretion in approving the subject property sale report where plaintiff improperly removed the subject property out of the Trust without her authorization as cotrustee. Defendant additionally contends plaintiff improperly labeled the underlying foreclosure complaint as an action against a non-owner occupied property, targeted Charles for its predatory lending, and failed to comply with the proper guidelines, procedures, and laws governing reverse mortgages.

¶12 Pursuant to the Foreclosure Law, 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). *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 18. Section 15-1508(b) of the Foreclosure Law provides:

“(b) Hearing. Upon motion and notice in accordance with court rules applicable to motions generally, which motion shall not be made prior to sale, the

court shall conduct a hearing to confirm the sale. Unless the court finds that (i) a notice required in accordance with subsection (c) of Section 15-1507 was not given, (ii) the terms of sale were unconscionable, (iii) the sale was conducted fraudulently, or (iv) that justice was otherwise not done, the court shall then enter an order confirming the sale.” 735 ILCS 5/15-1508(b) (West 2014).

Section 15-1508 of the Foreclosure Law gives a circuit court broad discretion to approve or disprove a judicial property sale. *Cathay Bank v. Accetturo*, 2016 IL App (1st) 152783, ¶ 54. A reviewing court will not reverse a circuit court’s decision regarding whether to approve a judicial property sale unless there has been an abuse of discretion. *Id.*

¶13 The rules established by the Foreclosure Law promote stability and permanency in judicial sales. *NAB Bank v. LaSalle Bank, N.A.*, 2013 IL App (1st) 121147, ¶ 8. Our courts have stated that a party objecting to a judicial sale maintains the burden of demonstrating why the sale should not be confirmed. *Id.* ¶ 9.

¶14 The last defense against confirming a property sale, *i.e.*, that justice “otherwise [be] done,” is not expressly defined by the statute. 735 ILCS 5/15-1508(b)(iv) (West 2014). The justice clause “appears to give courts a small bit of discretion to reject judicial sales. In practice, it is often invoked by defendants making a last-ditch effort to extricate themselves from a lost foreclosure case. However, case law teaches that the court’s discretion under the justice clause is extraordinarily narrow.” *NAB Bank*, 2013 IL App (1st) 121147, ¶ 16. Cases where courts have vacated sales based on the justice clause share the common theme of low sale prices and errors relating to the actual sale process. *Id.* ¶18. In fact, our supreme court has instructed:

“[t]o vacate both the sale and underlying default judgment of foreclosure, the borrower must not only have a meritorious defense to the underlying judgment, but must establish under section 15-1508(b)(iv) 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. After a motion to confirm the sale has been filed, it is not sufficient under section 15-1508(b)(iv) to merely raise a meritorious defense to the complaint. [Citations.] This interpretation is consistent with the legislative policy of balancing the competing objectives of efficiency and stability in the sale process and fairness in protecting the borrower’s equity in the property and preserving the integrity of the sale.” *McCluskey*, 2013 IL 115469, ¶ 26.

¶15 Based on our review of the record, we conclude that the circuit court properly approved the judicial sale report for the subject property. We are not unsympathetic to defendant’s situation; however, the fact remains that she not only lacked a meritorious defense to the foreclosure complaint, but she also failed to demonstrate she was somehow prevented from raising that defense or prevented from protecting her property interests. More specifically, defendant lacked a meritorious defense to the foreclosure complaint where there was nothing to support her claim that Charles lacked authority to obtain the reverse mortgage. Instead, the plain language of the Trust did not provide defendant with authority as cotrustee unless and until *both* her mother and father were “unable to act as Co-Trustees as the result of becoming disabled in that because of mental deterioration or

physical incapacity, we are not fully able to manage matters affecting our personal welfare or financial welfare.” “Disabled or incapacitated” was defined in the Trust as “when any physician familiar with [Bernice’s] condition certifies that [she and Charles] are either unable to transact ordinary business or unable to properly administer the trust for [their] benefit.” There was absolutely no evidence presented to satisfy the Trust requirement that *both* Bernice and Charles were deemed “disabled or incapacitated” by means of a physician’s certification in order for the successor trustees, *i.e.*, defendant and Kenneth, to take control. As a result, at the relevant time of entering the reverse mortgage with plaintiff, Charles remained a trustee of the Trust. The Trust provided the trustees with the authority to “borrow money, and mortgage or pledge trust property.” We, therefore, find no support for defendant’s claim that Charles lacked the authority to enter into the reverse mortgage and, as such, the circuit court did not abuse its discretion in approving the judicial sale report for the subject property.

¶16 With regard to defendant’s remaining contentions, we find the matters are forfeited as they were not raised before the circuit court. *Wells Fargo Bank, N.A. v. Maka*, 2017 IL App (1st) 153010, ¶ 24 (a party that does not raise an issue in the circuit court forfeits that issue and may not raise it for the first time on appeal).

¶17 **CONCLUSION**

¶18 We affirm the judgment of the circuit court confirming the judicial sale report for the subject property.

¶19 Affirmed.