2014 IL App (2d) 130868-U
No. 2-13-0868
Order filed December 19, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

FEDERAL NATIONAL MORTGAGE ASSOCIATION,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 12-CH-1387
SHAWN ALBRIGHT,	)	
Defendant-Appellant	)	
(Rhiannon Harrel, Unknown Owners and Nonrecord Claimants, Defendants).	)	Honorable Leonard J. Wojtecki, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly confirmed the sale of the property, denied defendant's motion to vacate, and denied defendant's motion to dismiss. Therefore, we affirmed.

¶ 2 This case involves a residential mortgage foreclosure action and judicial sale instituted by plaintiff, Federal National Mortgage Association (Fannie Mae) against defendant, Shawn Albright. On appeal, defendant argues that the trial court erred by: (1) confirming the judicial

sale; (2) denying his motion to vacate; and, (3) denying his motion to dismiss plaintiff's forfeiture complaint. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 20, 2007, defendant and Rhiannon Harrel executed a mortgage and note on property located at 1735 Roanoke Avenue, Aurora (the property). The lender was Prime Financial Corporation. The same day that the mortgage was originated, Prime Financial Corporation transferred its interest to Countrywide Bank, FSB, which then endorsed the note to the order of Countrywide Home Loans, Inc.

¶ 5 At some point, the mortgage was transferred to BAC Home Loans Servicing (BAC). On November 15, 2009, BAC and defendant and Harrel entered into a "Home Affordable Modification Trial Period Plan" (trial period plan) under Fannie Mae's Home Affordable Modification Program (HAMP).[1] On May 21, 2010, BAC sent defendant a letter denying his request for a loan modification under HAMP. According to the letter, defendant was not eligible for a modification because he did not provide all of the necessary documents. On May 28, 2010, BAC and defendant and Harrel entered into an in-house "Loan Modification Agreement."

[1] HAMP is a component of the Making Home Affordable Program, a comprehensive plan to prevent avoidable foreclosures after the collapse of the housing market in 2008. *Citimortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 1, n.2. Participation in HAMP is mandatory for government sponsored entities (GSEs) such as Fannie Mae and voluntary for non-GSEs. *Id.* Fannie Mae, as financial agent, contracts with loan servicers to ensure compliance with HAMP guidelines. *Id.*

¶ 6 Seterus then became the servicer of the loan. On November 15, 2011, Seterus sent defendant and Harrel a letter stating that their mortgage payment was past due and that their loan was in default.

¶ 7 On March 12, 2012, Prime Financial Corporation executed an assignment of mortgage to plaintiff, recorded on March 21, 2012. On April 13, 2012, plaintiff filed a complaint to foreclose the mortgage. The complaint alleged that defendant and Harrel had failed to make payments since November 2011. Neither defendant nor Harrel appeared or answered the complaint, and plaintiff moved for a default judgment on August 7, 2012. On August 9, 2012, the trial court entered a default judgment and judgment of foreclosure and sale.

¶ 8 On December 10, 2012, defendant and Harrel requested mortgage assistance by submitting a loan modification application pursuant to HAMP, which Seterus, the loan servicer, denied. Seterus sent three letters denying the request for a loan modification. The first two denial letters, dated January 6, 2013, denied the request on separate grounds. First, Seterus stated that defendant's loan payment did not exceed 31% of his gross monthly income, which was a requirement of the program. Second, Seterus stated that it had not received all payments required during defendant's trial period plan. As a result, defendant's trial period plan was no longer valid. In a third denial letter dated January 7, 2013, Seterus stated that defendant was not eligible for a forbearance plan because he did not meet the criteria for a general hardship.

¶ 9 On January 15, 2013, plaintiff sent defendant and Harrel a notice of the sheriff's sale of the property. The sheriff's sale took place on January 24, 2013.

¶ 10 Defendant retained counsel and filed an appearance on January 29, 2013. The same day, defendant moved to dismiss plaintiff's foreclosure complaint and also objected to the confirmation of the sale under section 15-1508(d-5) of the Illinois Mortgage Foreclosure Law

(Foreclosure Law) (735 ILCS 5/15-1508(d-5) (West 2012)). In his motion to dismiss, defendant argued that plaintiff failed to plead a breach of contract by not attaching a copy of his May 28, 2010, loan modification agreement to the complaint. In his objection to the confirmation of the sale, defendant made the same claim that plaintiff failed to plead a breach of contract, and he alleged that plaintiff violated HAMP in several ways.

¶ 11 All but one of defendant's HAMP violations were premised on the Making Home Affordable Program's Handbook for Servicers of Non-GSE Mortgages (Non-GSE HAMP Guidelines) (Aug. 17, 2012), *available at* https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_40.pdf (last visited Nov. 13, 2014).

¶ 12 First, defendant argued that plaintiff violated section 3.1 of the Non-GSE HAMP Guidelines by failing to review him for a loan modification prior to initiating a foreclosure. Second, defendant pointed out that under section 2.3.2 of the Non-GSE HAMP Guidelines, plaintiff was required to send a non-approval notice explaining why his request for a loan modification was denied. Defendant received a denial letter on January 6, 2013. As a result, defendant argued that plaintiff violated section 2.3.2 of the Non-GSE HAMP Guidelines by not waiting 30 days after the date of the denial letter to conduct a foreclosure sale. Third, defendant argued that plaintiff violated section 2.3.2 of the Non-GSE HAMP Guidelines by not including a description of the other foreclosure alternatives available to him in the denial letter. Fourth, defendant argued that plaintiff violated sections 6.3.1 and 6.3.3 of the Non-GSE HAMP Guidelines because contrary to what was stated in the January 6, 2013, denial letter, his current loan payment was more than 31% of his income. Fifth, without citing to a specific section of the Non-GSE HAMP Guidelines, defendant argued that contrary to what was stated in the January 6,

2013, denial letter, he was not offered a trial period plan by Seterus. According to defendant, the January 6, 2013, denial letter was "unfair" and in violation of the Non-GSE HAMP Guidelines.

¶ 13 Finally, defendant argued that the January 7, 2013, denial letter was also "unfair" because he satisfied the criteria for a general hardship. According to defendant, his hardship letter stated that his reduction in income was because his girlfriend Harrel had abandoned the house, and he was ordered to pay child support, which affected his financial situation.

¶ 14 The trial court denied defendant's motion to dismiss on March 28, 2013. The same day, plaintiff moved for an order confirming the sale.

¶ 15 On May 15, 2013, plaintiff responded to defendant's objection to the confirmation of the sale. First, plaintiff argued that defendant forfeited his claim that plaintiff failed to allege a breach of contract for failure to attach a previous loan modification document, because defendant failed to file an answer and participate in the foreclosure action. Second, plaintiff argued that the Foreclosure Law required only a mortgage and note to be attached as exhibits to a foreclosure complaint. See 735 ILCS 5/15-1501(a)(2) (West 2012). Third, plaintiff pointed out that the May 28, 2010, loan modification agreement between defendant and BAC stated that the loan would remain unchanged, thereby allowing plaintiff to file the foreclosure complaint based on the original loan. Furthermore, plaintiff argued that, because defendant did not make the required payments, defendant defaulted on the terms of the loan modification and thus the terms of the original loan.

¶ 16 Regarding the HAMP violations alleged by defendant, plaintiff argued that such violations were based on Non-GSE HAMP Guidelines. However, plaintiff, as Fannie Mae, was a Government Sponsored Enterprise (GSE), meaning that the Non-GSE HAMP Guidelines did not apply to it. In support of its position, plaintiff pointed out that the Non-GSE HAMP

Guidelines stated that GSEs such as Fannie Mae were governed by their own HAMP guidelines, which in this case was the Fannie Mae Single Family 2012 Servicing Guide (Fannie Mae HAMP Guidelines) (March 14, 2012) *available at* https://www.fanniemae.com/content/guide/svc031412.pdf (last visited Nov. 13, 2014). Plaintiff argued that it had complied with the applicable Fannie Mae HAMP Guidelines.

¶ 17 According to plaintiff, it complied with Fannie Mae HAMP Guidelines by sending several solicitations regarding foreclosure alternatives to defendant prior to commencing the foreclosure proceedings. In addition, Fannie Mae HAMP Guidelines did not require a non-approval notice, and defendant and Harrel did not, in fact, receive a non-approval notice. Rather, in compliance with Fannie Mae HAMP Guidelines, defendant and Harrel received a denial letter for each eligible loan modification program. Also, plaintiff pointed out that Fannie Mae HAMP Guidelines did not require a 30-day window between denial and judicial sale, it required a 14-day window. Plaintiff argued that the 14-day window was satisfied in this case because the third denial letter was sent on January 7, 2013, and the sale occurred 17 days later, on January 24, 2013.

¶ 18 In response to defendant's claim that "his HAMP denial was incorrect" because his monthly loan payments exceeded 31% of his gross income, plaintiff argued that defendant provided only one month of his income and no information regarding Harrel's gross income. Plaintiff argued that defendant failed to satisfy the burden of proof required for Fannie Mae HAMP Guidelines, which was two years of tax returns for defendant and Harrel.

¶ 19 Plaintiff also argued that the evidence refuted defendant's claim that he was not offered a HAMP trial period plan. Defendant and Harrel executed a Fannie Mae HAMP trial period plan with BAC on November 15, 2009. After defendant and Harrel failed that trial period plan, they

were denied a permanent HAMP modification on May 21, 2010. Under the Fannie Mae HAMP Guidelines, any loan that began a Fannie Mae trial period plan and lost good standing became ineligible for HAMP. For this reason, plaintiff denied defendant's HAMP application. This was true even if defendant could show that his loan payment exceeded 31% of his gross income.

¶ 20 Finally, plaintiff argued that defendant did not meet several of the requirements for a general hardship forbearance plan, as reflected in the January 7, 2013, denial letter. For example, the date of default was well over the "90 days or less" requirement, and defendant provided no evidence that Harrel had legally awarded defendant the house.

¶ 21 On June 13, 2013, the trial court denied defendant's objection to the confirmation of sale, finding that plaintiff followed "applicable HAMP guidelines." The court found that defendant's financial information was "insufficient because it did not include financial information regarding co-borrower" Harrel. In addition, the court found that defendant's trial period plan offered prior to the May 28, 2010, loan modification made him ineligible for a HAMP modification. Finally, the court found that section 2.3.2 of the Non-GSE HAMP Guidelines, which prevented the property from going to sale within 30 days of a denial letter, did not apply to plaintiff because plaintiff was a GSC. The trial court's order confirmed the sale.

¶ 22 On July 15, 2013, defendant moved to "vacate orders" (the June 13, 2013, order confirming the sale, the January 24, 2013, sale of the property, and the August 9, 2012, judgment of foreclosure) and to "dismiss the foreclosure complaint for lack of subject matter jurisdiction." In his motion, defendant argued that when plaintiff was assigned the loan on March 12, 2012, he was in default, making plaintiff a "debt collector" under the Collection Agency Act (225 ILCS 425/3(d) (West 2012)). Defendant first argued that plaintiff lacked standing to bring the foreclosure action because the assignment attached to the foreclosure complaint failed to provide

an account number or specify the consideration, as required under section 8b of the Collection Agency Act (225 ILCS 425/8b (West 2012)). Defendant's second argument was that plaintiff failed to register as a collection agency, as required under the Collection Agency Act (225 ILCS 425/2, 3, 4 (West 2012)), which rendered the foreclosure complaint a nullity. The result, according to defendant, was that the judgment entered on the foreclosure complaint was void.

¶ 23 On July 25, 2013, the court held a hearing on defendant's motion to vacate. In opposing defendant's motion, plaintiff argued that defendant misunderstood plaintiff's role in the case. Plaintiff argued that defendant's loan was a "Fannie Mae loan to begin with," meaning that plaintiff was the investor on defendant's loan "the entire time." Plaintiff acted once defendant was in default, not because it purchased the loan on the open market, as defendant argued, but because plaintiff was the insurer on the loan. For this reason, plaintiff was not a collection agency or a debt collector, and the Collection Agency Act did not apply to it. Plaintiff pointed out that the Collection Agency Act stated that it did "not apply" to entities whose collection activities were "confined to and [were] directly related to the operation of a business *other than that of a collection agency*." (Emphasis added.) 225 ILCS 425/2.03 (West 2012). In other words, the Collection Agency Act applied to an entity whose sole activity was collecting debt, and plaintiff engaged in a broad range of activity besides collecting debt; plaintiff was a GSE created to regulate the mortgage industry. Plaintiff distinguished the cases relied on by defendant as involving collection agencies.

¶ 24 The trial court agreed that plaintiff was not a collection agency as defined by the Collection Agency Act; therefore, the Collection Agency Act did not apply. The court denied defendant's motion to vacate.

¶ 25 Defendant timely appealed two orders: (1) the June 13, 2013, order denying his objection to the confirmation of the sale, and (2) the July 25, 2013, order denying his motion to vacate.

¶ 26 II. ANALYSIS

¶ 27 A. Confirmation of Sale

¶ 28 Defendant's first argument on appeal is that the trial court abused its discretion when it confirmed the judicial sale of the property. The standard of review of a court's approval of a judicial sale is an abuse of discretion. *Bermudez,* 2014 IL App (1st) 122824, ¶ 57. The trial court abuses its discretion when its ruling rests on an error of law or where no reasonable person would take the view adopted by it. *Id.*

¶ 29 A judicial foreclosure sale is not complete until it has been approved by the trial court. *Id.* The objecting party bears the burden of showing why the sale should not be confirmed. *NAB Bank v. LaSalle Bank,* 2013 IL App (1st) 121147, ¶ 9. Defendant moved to set aside the sale of the property under section 15-1508(d-5) of the Foreclosure Law, which governs the trial court's analysis of whether or not a judicial sale should be approved in accordance with the directives of the Making Home Affordable Program and HAMP. Section 15-1508(d-5) provides, in relevant part:

> "The court that entered the judgment shall set aside a sale held pursuant to Section 15-1507, upon motion of the mortgagor at any time prior to the confirmation of the sale, if the mortgagor proves by a preponderance of the evidence that (i) the mortgagor has applied for assistance under the Making Home Affordable Program established by the United States Department of the Treasury pursuant to the Emergency Economic Stabilization Act of 2008 *** and (ii) the mortgaged real estate was sold in material

> violation of the program's requirements for proceeding to a judicial sale." 735 ILCS 5/15-1508(d-5) (West 2012).

Accordingly, under section 15-1508(d-5), a defendant must prove by a preponderance of the evidence that he or she applied for assistance under HAMP and that the property was sold in material violation of HAMP's requirements for proceeding to judicial sale. *Bermudez*, 2014 IL App (1st) 122824, ¶ 59.

¶ 30 As defendant argued below, he begins by arguing that plaintiff violated Non-GSE HAMP Guidelines in several ways. First, defendant argues that plaintiff violated section 2.3.2 of the Non-GSE HAMP Guidelines by not waiting 30 days after the date of a non-approval of a loan modification to conduct a foreclosure sale, and by not including other foreclosure alternatives in the non-approval notice. Second, defendant argues that plaintiff violated sections 6.3.1 and 6.3.3 of the Non-GSE HAMP Guidelines by determining that his current loan payment did not exceed 31% of his income.

¶ 31 Plaintiff responds that defendant relies on the wrong set of HAMP Guidelines in alleging the above violations. Plaintiff points out that there are different sets of HAMP Guidelines, and that the type of loan, namely a GSE loan versus a non-GSE loan, dictates which HAMP Guidelines apply. Because this case involves a loan insured by a GSE, Fannie Mae, plaintiff argues that Fannie Mae HAMP Guidelines apply rather than the Non-GSE HAMP Guidelines cited by defendant. We agree.

¶ 32 In the Supplemental Directive 12/06 (Supplemental Directive) to the Non-GSE HAMP Guidelines relied on by defendant, it states that the "Treasury is issuing Version 4.0 of the Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages (Handbook), a consolidated resource for guidance related to the [Making Home Affordable]

Program for mortgage loans that are *not owned or guaranteed by Fannie Mae* or Freddie Mac (Non-GSE Mortgages). *Servicers of mortgage loans that are owned or guaranteed by Fannie Mae* or Freddie Mac (GSE) *should refer to any relevant guidance issued by the applicable* GSE." (Emphases added.) (Aug. 17, 2012), *available at* https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd1206.pdf (last visited Nov. 13, 2014).

¶ 33 Confusingly, in arguing that the "HAMP Guidelines" apply to plaintiff, defendant cites to the Fannie Mae HAMP Guidelines as proof of this proposition, as well as an unpublished federal case. In addition, defendant argues that the court erred by finding that the HAMP Guidelines did not apply to plaintiff. Defendant is mistaken, however, in what the trial court found. The trial court did not determine that the HAMP Guidelines did not apply to plaintiff; rather, it found that plaintiff, a GSE, followed the applicable HAMP Guidelines, which in this case were the Fannie Mae HAMP Guidelines. The loan in this case was written on standard forms promulgated by Fannie Mae (see *Sklodowski v. Countrywide Home Loans, Inc.*, 358 Ill. App. 3d 696, 701 (2005) (it was undisputed that the mortgage at issue was written on standard forms promulgated by Fannie Mae)), and plaintiff argued before the trial court that it (as Fannie Mae) was the investor/insurer on the loan from the beginning. Therefore, the Fannie Mae HAMP Guidelines apply in this case, and we reject all of defendant's arguments premised on the Non-GSE HAMP Guidelines.

¶ 34 Defendant's next three arguments are correctly based on the Fannie Mae HAMP Guidelines. However, the first two arguments are forfeited.

¶ 35 First, defendant argues that "[a]lthough plaintiff argued that defendant failed to make trial payments [under the trial period plan], he had never been modified under HAMP." Defendant

then cites to a Fannie Mae HAMP Guideline regarding HAMP eligibility but does not develop or explain the argument, resulting in forfeiture. See *Marzouki v. Najar-Marzouki*, 2014 IL App (1st) 132841, ¶ 12 (a reviewing court is entitled to have the issues clearly defined and supported by pertinent authority and cohesive arguments, and the failure to do so results in forfeiture). Moreover, defendant raised a different argument in the underlying proceedings, the argument that he was never offered a trial period plan, rather than the issue he now raises on appeal, which also results in forfeiture. See *Williamson v. Asher*, 2013 IL App (1st) 122038, ¶ 23 (arguments not raised before the trial court are forfeited and cannot be raised for the first time on appeal).

¶ 36 Second, defendant argues that plaintiff violated Fannie Mae HAMP Guidelines by sending an "Evaluation Notice" that did not include certain information. Like the other argument, defendant failed to raise this issue in the trial court, thereby forfeiting it. See *id.*

¶ 37 Third, defendant argues that the trial court erred by determining that he was required to submit Harrel's income to establish "financial hardship" for a general hardship forbearance plan. This argument fails for several reasons.

¶ 38 Before the trial court, defendant argued that the January 7, 2013, denial letter was "unfair" because based on the hardship letter he submitted, he satisfied the criteria for a general hardship. The January 7, 2013, denial letter stated that in order to qualify for a general hardship forbearance plan, defendant needed "to meet at least one of the following," which included "a hardship caused by divorce or separation, and you were legally awarded the property." Defendant argued that his hardship letter indicated that his reduction in income was due to Harrel abandoning the house and obtaining an order for child support, which affected his financial situation. Plaintiff responded that defendant provided no evidence that he had been legally awarded the property.

¶ 39 On appeal, defendant argues that the trial court erred by determining that he was required to submit Harrel's income to establish "financial hardship" for a general hardship forbearance plan. Defendant argues that rather than providing Harrel's income documentation, plaintiff was required to inform him that he could submit a quit claim showing that she had relinquished all rights to the property. In support of his position, defendant cites to section 609 of the Fannie Mae HAMP Guidelines, which states that "[i]n cases where a borrower and co-borrower are unmarried and either borrower or co-borrower relinquish all rights to the property securing the mortgage loan through a recorded quitclaim deed, the non-occupying borrower that has relinquished property rights is not required to provide income documentation ***."

¶ 40 However, it is not clear that the trial court found that defendant was required to submit Harrel's income to qualify for a general hardship forbearance plan. The trial court's order contained many findings, and the portion of the order stating that defendant's financial information was "insufficient because it did not include financial information regarding co-borrower" Harrel likely pertained to a different issue raised by defendant, which was the issue of whether his monthly loan payments exceeded 31% of his gross income. On that issue, plaintiff argued that defendant provided only one month of his income and no information regarding Harrel's gross income. Thus, it is likely that the court's finding that defendant's financial information was insufficient pertained to the issue of whether the loan exceeded defendant's gross income. In any event, we have no transcript aiding our analysis on this issue and resolve any doubts against defendant. See *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 734 (2009) (appellant has the burden to present a sufficiently complete record of the trial proceedings to support a claim of error); *Lambert v. Downers Grove Fire Department Pension*

Board, 2013 IL App (2d) 110824, ¶ 35 (any doubts that might arise from the incompleteness of the record will be resolved against the appellant).

¶ 41 Finally, the record shows that Harrel signed the application for a loan application, and defendant does not claim that Harrel relinquished her rights in the property. Instead, defendant argues that plaintiff failed to comply with its own Fannie Mae HAMP Guidelines, which he interprets as *requiring* plaintiff to advise him that he could submit a quit claim showing that Harrel had relinquished all rights to the property. The Fannie Mae HAMP Guideline relied on by defendant contains no such requirement, and the court specifically determined that plaintiff complied with the "applicable HAMP Guidelines." Thus, defendant cannot show a material violation of HAMP's requirements by plaintiff, and the trial court did not abuse its discretion in confirming the sale.

¶ 42 B. Motion to Vacate

¶ 43 Defendant next argues that the court erred by denying his motion to vacate the order confirming the sale and to dismiss the foreclosure complaint. Defendant argues that when plaintiff was assigned the loan on March 12, 2012, he was in default, making plaintiff a "debt collector" under the Collection Agency Act (225 ILCS 425/3(d) (West 2012). However, defendant argues that, because the assignment attached to the foreclosure complaint failed to state the consideration for the assignment, the assignment did not meet the requirements of the Collection Agency Act (225 ILCS 425/8b (West 2012)), and the trial court "erred in not granting [his] Motion to Dismiss." In addition, defendant argues that plaintiff failed to register as a collection agency, as required under the Collection Agency Act (225 ILCS 425/2, 3, 4 (West 2012)), thus rendering the foreclosure complaint "a nullity so that a judgment entered on such a complaint is void."

¶ 44 As previously stated, defendant cited no statutory provision for his motion. On appeal, the only basis for defendant's motion is the proposition that a void order may be attacked at any time. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 301 (2002) (a judgment, order, or decree entered by a court that lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void, and may be attacked at any time or in any court, either directly or collaterally).

¶ 45 At first glance, defendant's argument that he may challenge the order confirming the sale as "void" has some intuitive appeal. However, two cases from 2013, a supreme court case, *Wells Fargo Bank v. McCluskey*, 2013 IL 115469, and a first district case, *Bayview Loan Servicing, LLC v. 2010 Real Estate Foreclosure, LLC*, 2013 IL App (1st) 120711, reveal otherwise. Both of these cases hold that once a motion to confirm the judicial sale has been filed, the Foreclosure Law, and specifically section 15-1508(b), governs. *McCluskey*, 2013 IL 115469, ¶ 27; *Bayview*, 2013 IL App (1st) 120711, ¶ 30.

¶ 46 Section 15-1508(b) provides:

> "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 [for the sale] *** was not given, (ii) the terms of sale were unconscionable, (iii) the sale was conducted fraudulently, or (iv) justice was otherwise not done, the court shall then enter an order confirming the sale." 735 ILCS 5/15-1508(b) (West 2012).

¶ 47 In *McCluskey*, the court stated that after a judicial sale and a motion to confirm the sale under section 15-1508(b) have been filed, the trial court's discretion to vacate the sale is governed by the mandatory provisions of section 15-1508(b). *McCluskey*, 2013 IL 115469, ¶ 18.

While the supreme court held that *up until* a motion to confirm the judicial sale under section 15-1508(b) is filed, a borrower may seek to vacate a default judgment of foreclosure under the standards set forth in section 2-1301(e) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301(e) (West 2012)), *after* a motion to confirm the judicial sale has been filed, a borrower seeking to set aside a default judgment of foreclosure may only do so by filing objections to the confirmation of the sale under the provisions of section 15-1508(b). *Id.* ¶ 27.

¶ 48 The supreme court in *McCluskey* reasoned as follows. Once a motion to confirm the sale under section 15-1508(b) of the Foreclosure Law has been filed, the court has discretion to see that justice has been done, but the balance of interests has shifted between the parties. *Id.* ¶ 25. Objections to the confirmation under section 15-1508(b)(iv) cannot be based simply on a meritorious pleading defense to the underlying foreclosure complaint, because there is a need to promote stability in the judicial sale process. *Id.* The "justice provision" under section 15-1508(b)(iv) acts as a safety valve to allow the court to vacate the judicial sale and even the underlying judgment, based on traditional equitable principles. *Id.* However, the more liberal standards applicable to a motion to vacate under section 2-1301(e) of the Code are inconsistent with the more restrictive sale confirmation procedures set forth in section 15-1508(b) of the Foreclosure Law. *Id.*

¶ 49 In this case, not only did plaintiff file a motion to confirm the sale, thus triggering the mandatory application of the Foreclosure Law (see *id.* ¶ 1 (after a motion to confirm the sale has been filed, the Foreclosure Law governs)), the trial court confirmed the sale. As a result, the need to promote stability in the judicial sale process, as reflected in *McCluskey*, exists even more so here. See 735 ILCS 5/15-1404 (West 2012); *McCluskey*, 2013 IL 115469, ¶ 30 (section 15-1404 of the Foreclosure Law states that the interests of the borrower are terminated by the

judicial sale, "provided the sale is confirmed"; thus, it is the confirmation of the sale that ultimately divests the borrower of their property rights).

¶ 50 The procedural posture of this case mirrors *Bayview*, which was decided a few months prior to *McCluskey*. In *Bayview*, a judgment of foreclosure and order of sale was entered; a judicial sale occurred; and, as in the case at bar, the trial court had confirmed the judicial sale. *Bayview*, 2013 IL App (1st) 120711, ¶ 1. After the sale was confirmed, the intervenor sought to vacate the confirmation of the sale under *both* section 2-1301(e) of the Code and section 15-1508(b) of the Foreclosure Law. *Id*. ¶ 2. Like defendant in the case at bar, the intervenor in *Bayview* alleged that the plaintiff was required to be licensed under the Collection Agency Act (225 ILCS 425/1 *et seq*. (West 2010)), and that the plaintiff's failure to do so rendered the foreclosure action void. *Id*. ¶ 13. The *Bayview* court stated that because the plaintiff had invoked the mandatory obligations under section 15-1508(b) of the Foreclosure Law when it properly motioned for a confirmation of the sale, the part of the intervenor's motion to vacate brought under section 2-1301(e) of the Code was not applicable, and the court addressed only the intervenor's arguments concerning section 15-1508(b) of the Foreclosure Law. *Id*. ¶¶ 2, 31. Because the intervenor had properly proceeded under section 15-1508(b)(iv) to challenge the confirmation of the sale, in that he argued that justice would not be done based on the plaintiff's violation of the Collection Agency Act, the court addressed the intervenor's argument on the merits. *Id*. ¶ 34.

¶ 51 Under *McCluskey* and *Bayview*, it is clear that after plaintiff moved to confirm the sale in this case, defendant's only method of challenging the confirmation of the sale was under section 15-1508(b) of the Foreclosure Law. See *McCluskey*, 2013 IL 115469, ¶ 25; *DLJ Mortgage Capital, Inc. v. Frederick*, 2014 IL App (1st) 123176, ¶ 18 (after the sale was confirmed, a party

seeking to set aside the sale at that point was limited to the specified grounds under section 15-1508(b)). As in *Bayview*, defendant could have brought his challenges based on the Collection Agency Act under the "justice provision" of section 15-1508(b). However, because defendant did not move to vacate the confirmation of the sale under the Foreclosure Law, his argument fails. See *Bayview*, 2013 IL App (1st) 120711, ¶ 1 (reviewing court would consider motion to vacate the confirmation of sale under section 15-1508(b) of the Foreclosure Law but would not consider motion to vacate the confirmation of sale under section 2-1301(e) of the Code).

¶ 52 Accordingly, the trial court properly denied defendant's motion to vacate the order confirming the sale and to dismiss the foreclosure complaint. Though the trial court denied defendant's motion on the merits,[2] we may affirm on any basis in the record. See *Seitz-Partridge v. Loyola University of Chicago*, 2013 IL App (1st) 113409, ¶ 17 (we may affirm the trial court's decision for any reason in the record, regardless of its basis for the decision).

¶ 53 C. Motion to Dismiss

¶ 54 Defendant's final argument on appeal is that the trial court erred by denying his motion to dismiss plaintiff's foreclosure complaint. Defendant argues that "a lawsuit" under the Foreclosure Law is akin to a breach of contract; that section 2-606 of the Code (735 ILCS 5/2-606 (West 2012)) required plaintiff to attach the May 28, 2010, loan modification between defendant and BAC to the complaint; and, that plaintiff failed to state a cause of action.

[2] At the time of the hearing on defendant's motion, the supreme court had not yet issued *McCluskey*, which overruled the second district's decision permitting the borrower to proceed under section 2-1301(e) of the Code. *McCluskey*, 2013 IL 115469, ¶ 8.

¶ 55 Plaintiff's initial response to defendant's argument is that we lack jurisdiction to consider this argument. Plaintiff points out that defendant's notice of appeal does not specify the denial of his motion to dismiss, entered on March 28, 2013.

¶ 56 Illinois Supreme Court Rule 303(b)(2) (eff. May 30, 2008) provides that a notice of appeal "shall specify the judgment or part thereof or other orders appealed from." However, a notice of appeal is deemed to include an unspecified interlocutory order if that order was a step in the procedural progression leading to the judgment specified in the notice of appeal. *Themas v. Gren's Tap, Inc.*, 2014 IL App (2d) 140023, ¶ 6. If a nonspecified judgment was a step in the procedural progression, it may be reviewed because it can be said to relate to the judgment specified in the notice of appeal. *Neiman v. Economy Preferred Insurance Co.*, 357 Ill. App. 3d 786, 790-91 (2005). In addition, notices of appeal are to be construed liberally. *In re Desiree O.*, 381 Ill. App. 3d 854, 863 (2008).

¶ 57 In this case, defendant did not file a reply brief responding to plaintiff's argument that this court lacks jurisdiction to review the order denying his motion to dismiss plaintiff's forfeiture complaint. Assuming, *arguendo*, that the order denying defendant's motion to dismiss was a step in the procedural progression leading to the judgment specified in the notice of appeal, defendant's argument fails on the merits.

¶ 58 Section 2-606 of the Code, which defendant relies on, requires that "if a claim or defense is founded upon a written instrument, a copy thereof *** must be attached to the pleading as an exhibit ***." See 735 ILCS 5/2-606 (West 2012). According to defendant, plaintiff's failure to attach the May 28, 2010, loan modification agreement, entered into between defendant and BAC, resulted in the failure to allege a breach of contract. In addition, defendant argues that the failure of a complaint to state a legally cognizable cause of action is such a fundamental defect that it

may be raised at any time and cannot be forfeited. See *Cullotta v. Cullotta*, 287 Ill. App. 3d 967, 971 (1997). However, this argument is easily rejected.

¶ 59 Contrary to defendant's argument, plaintiff complied with the pleading requirements of the Foreclosure Law, which requires only that a foreclosure complaint attach copies of the mortgage and note secured thereby. See 735 ILCS 5/15-1504(a)(2) (West 2012) (stating that a foreclosure complaint "may be in substantially the following form:"; "Attached as Exhibit 'A' is a copy of the mortgage and as Exhibit 'B' is a copy of the note secured thereby."). See also F*arm Credit Bank of St. Louis v. Biethman*, 262 Ill. App. 3d 614, 622 (1994) (the Foreclosure Law requires only that a foreclosure complaint attach copies of the mortgage and note). Defendant's argument is based on a general breach of contract claim and ignores the fact that the Foreclosure Law governs. Therefore, plaintiff was not required to attach the loan modification agreement to the foreclosure complaint, and defendant's argument that plaintiff failed to state of cause of action fails. See *Biethman*, 262 Ill. App. 3d at 622 (because a foreclosure complaint under the Foreclosure Law required only that copies of the mortgage and note be attached, the court rejected the counterdefendant's argument that section 2-606 of the Code required the counterplaintiff to attach a separate agreement).

¶ 60 III. CONCLUSION

¶ 61 For the reasons stated, we affirm the Kane County circuit court judgment.

¶ 62 Affirmed.