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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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U.S. BANK, N.A., as Trustee for the	)	Appeal from the Circuit Court
Certificate Holders, Citigroup Mortgage	)	of Kane County.
Loan Trust Inc., Asset-Backed Pass-Through	)	
Certificates Series 2007-AMC1,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 7-CH-2505
	)	
PENNY J. KNUTH,	)	
	)	
Defendant-Appellant	)	
	)	Honorable
(Nonrecord Claimants and Unknown	)	Leonard J. Wojtecki,
Owners, Defendants).	)	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Zenoff and Birkett concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Without an official account of the relevant hearing, we could not say that the trial court abused its discretion in denying defendant's motion to vacate a foreclosure judgment; in any event, defendant's premise that the mortgagee was unlicensed was refuted by a public record.
- ¶ 2 Penny J. Knuth (defendant), the owner of the property in this foreclosure case, appeals, seeking review of the default foreclosure judgment, an order denying her motion to vacate the

default, and the confirmation judgment. She argues that the court erred in refusing to vacate the default; she asserts that the original lender, Argent Mortgage Company, LLC, was not licensed, making the contract void. She further asserts that the court should not have given plaintiff a larger money judgment when, on plaintiff's motion, it vacated the original foreclosure judgment and entered a new one. Because defendant has failed to provide a record on appeal sufficient to support her claims of error, we affirm.

¶ 3

### I. BACKGROUND

¶ 4 On November 27, 2007, plaintiff (U.S. Bank, N.A., as Trustee for the Certificate Holders, Citigroup Mortgage Loan Trust, Inc., Asset-Backed Pass-Through Certificates Series 2007-AMC1) filed a foreclosure complaint relating to the property at 259 Villa Street in Elgin. It named as defendant the property owner. The mortgage showed that the date of the mortgage's making was September 13, 2006, and that the lender was Argent. The mortgage stated that it was prepared by Keri Castelli of Argent, which had an address of 1701 Golf Road in Rolling Meadows, Illinois. Argent's main address was in Irvine, California.

¶ 5 The court, on plaintiff's motion, dismissed the case without prejudice pursuant to section 2-1009(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1009(a) (West 2008)).

¶ 6 On July 1, 2008, plaintiff moved for leave to reinstate the action and for leave to file an amended complaint alleging plaintiff's succession to Argent's interest. The court granted both motions. Upon the lapse of the time given defendant to answer the amended complaint, plaintiff moved for a finding of default and a foreclosure judgment. The court granted both on August 29, 2008.

¶ 7 On June 22, 2012, plaintiff moved to vacate the foreclosure and enter a new judgment based on what it characterized as corrected prove-up affidavits; those affidavits had what it

characterized as updated figures for what it sought as a money judgment. On June 29, 2012, the court allowed the motion and entered a new foreclosure judgment with a judgment amount increased based on interest accrued and advances by plaintiff.

¶ 8 The judicial sale of the property took place on April 3, 2014; plaintiff was the purchaser. On April 21, 2014, plaintiff filed a motion to confirm the judicial sale; the notice, which plaintiff had already served on defendant, set the hearing for the same day.

¶ 9 Also on April 21, 2014, defendant filed a motion to vacate the default, a motion to deny confirmation, and an appearance by counsel on defendant's behalf.

¶ 10 In the motion to vacate, defendant asserted that she had an affirmative defense in that Argent was not a licensed mortgage lender at the time of the mortgage's making. She asserted that she had searched for Argent Mortgage Company, LLC, on the web site of the Illinois Department of Financial and Professional Regulation (DFPR) at "the location listed above." "[T]here was no return of licensure and \*\*\* the location listed above was unlicensed when the Mortgage was issued on September 13, 2006." She further asserted that she found no result for "Keri Castelli."

¶ 11 In support of the motion, she provided printouts of three "results" from the DFPR website. However, two of the "results," for the "Main Office," are duplicates of one another. The "Main Office" result showed "N/A" for the address, an "Issue Date" of August 1, 2007, and an "Expiration Date" of July 31, 2008. The other result was for a different Rolling Meadows office and showed an "Issue Date" of August 1, 2006, and an "Expiration Date" of June 15, 2007.

¶ 12 In her motion to deny confirmation, defendant asserted that the increase in the money judgment was unexplained.

¶ 13 The court granted plaintiff's motion for confirmation on the day it was filed, and it confirmed the sale. The order included the finding that "there is no reason to delay enforcement of or appeal from this order." Included in the same judgment was an order of possession and an *in rem* deficiency judgment.

¶ 14 Defendant filed a notice of appeal on May 14, 2014. The orders defendant sought review of in the notice were the June 29, 2012, foreclosure judgment, the April 21, 2014, order confirming the sale, and the denial of the motion to vacate the default, which defendant states occurred on April 21, 2014, with the confirmation. The record on appeal includes no transcripts of any of the hearings or substitutes for such transcripts.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant asserts first that Argent was not a licensed mortgage lender when it and defendant entered into the mortgage, such that, under our holding in *First Mortgage Co. v. Dina*, 2014 IL App (2d) 130567, the mortgage was void as contrary to public policy. Second, she argues that the court was incorrect to allow plaintiff to seek a larger judgment. She points to what she argues are inconsistencies between plaintiff's complaints. She also asserts that plaintiff, by allowing the proceedings to last for years, failed to mitigate its damages. Defendant argues that the lack of licensure and the improper measure of damages are bases to vacate the order of default, the consequent foreclosure judgment, the confirmation.

¶ 17 Initially, we note that the record does not contain an explicit denial of defendant's motion to vacate. We note that the motion was filed before the final judgment, namely the confirmation order (*e.g.*, *Bank of America, N.A. v. Higgin*, 2014 IL App (2d) 131302, ¶ 20), and, indeed, based on the order of documents in the record, before plaintiff's motion to confirm. It was also filed the day of the confirmation hearing. Under the circumstances, we take the confirmation

judgment to be an implicit denial of the motion to vacate. This is because confirmation relies on the validity of the foreclosure, the very thing that the motion to vacate attacked.

¶ 18 Returning to defendant's arguments, we hold that defendant has failed to provide a record of the relevant proceeding sufficient to support her claim of errors. The purpose of a motion to vacate "is to alert the trial court to errors it has committed and to afford it an opportunity to correct those errors"; we review a trial court's denial of such a motion for an abuse of discretion. *E.g., Steiner v. Eckert*, 2013 IL App (2d) 121290, ¶ 16. Further, we review a court's ruling on a motion to confirm a judicial sale for an abuse of discretion *E.g., Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008).

¶ 19 Where a court's ruling is discretionary, under the rule in *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984), we generally cannot reverse that ruling absent a record sufficient to show the basis for the court's decision. Under *Foutch*, the "appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 391-92. "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392. The supreme court ruled in *Foutch* that, where the record showed that the trial court, in denying a motion to vacate a judgment, considered material adduced at the hearing, but the record did not show what those matters were, the reviewing court was required to presume that the material adduced was sufficient to support the denial. *Foutch*, 99 Ill. 2d at 393-94.

¶ 20 The record, lacking as it does any transcript<sup>1</sup> of the hearing on the motion to vacate, lacks any documentation of the court's basis for denying the motion. Therefore, under the principles of *Foutch*, we must presume that the court had a proper basis for the denial.

¶ 21 Defendant implies that, even on the record before us, we can tell that no proper basis existed. This is not the case. Defendant's motion to vacate and her objection to confirmation raised several questions that plaintiff might have addressed at the hearing. Notably, her listing of licensed mortgage brokers contained an obvious duplication, thus raising the question of whether the motion had properly excluded the possibility of the relevant branch of Argent's being licensed. Her claim that plaintiff calculated damages improperly invited quantitative explanations by counsel and further invited discussion of whether the years defendant had possession of the property during the action's pendency filing were a true detriment to her.

¶ 22 In any event, public records show that defendant's licensing premise was mistaken. We can take judicial notice public records. *E.g.*, *Phillips v. DePaul University*, 2014 IL App (1st) 122817, ¶ 27. The DFPR is an agency of the State of Illinois that makes its licensing records available on line. Online records receive essentially the same treatment as other records when we consider whether judicial notice is proper. See *People v. Clark*, 406 Ill. App. 3d 622, 633-34 (2010) (holding that maps from major online sites such as Google Maps are appropriate for judicial notice). A brief check of DFPR's records reveals three results for Argent Mortgage Company, LLC. One is at 1701 Golf Road, Suite 700, Rolling Meadows, Illinois—in other words, at the address of the lender as shown on the mortgage, except with a suite number specified. This result showed an “Issue Date” of October 14, 2003, and an “Expiration Date” of

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<sup>1</sup> It also lacks either of the allowed substitutes for a transcript: a bystander's report or an agreed statement of facts. See Ill. S. Ct. R. 323(c), (d) (eff. Dec. 13, 2005).

July 31, 2008. This span includes the time of the mortgage's making. DFPR records thus show the contrary of what defendant alleged they showed in her motion.

¶ 23

### III. CONCLUSION

¶ 24 For the reasons stated, we affirm the confirmation of sale and its predicate foreclosure judgment.

¶ 25 Affirmed.