2016 IL App (2d) 160169-U
No. 2-16-0169
Order filed December 23, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WELLS FARGO BANK, NATIONAL ASSOCIATION, successor by merger to Wells Fargo Bank Minnesota, National Association, as Trustee for Banc of America Mortgage Securities, Inc. Mortgage Pass-Through Certificates, Series 2003-6,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 15-CH-162
SHAMSE A. HAFIZ; WALIUL Y. HAFIZ; BMO HARRIS BANK NATIONAL ASSOCIATION, f/k/a Harris N.A.; UNKNOWN OWNERS; NON-RECORD CLAIMANTS; and FALCON MEADOWS HOMEOWNER'S ASSOCIATION,	)	
Defendants	)	
(BMO Harris Bank, N.A., Defendant-Appellant v. Shamse A. Hafiz and Waliul Y. Hafiz, Defendants-Appellees).	)	Honorable Robert G. Gibson, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Hudson and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in applying the mailbox rule to BMO Harris' motion to vacate the default order against it. This incorrectly led the trial court to deny the motion based on its application of section 15-1508(b) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1508(b) (West 2014)) instead of section 2-1301(e) of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2014)). The trial court provided an alternative rationale for denying the motion under section 2-1301(e), but even then the trial court applied the wrong standard by focusing on BMO Harris' diligence rather than whether substantial justice was being done between the litigants. Therefore, we reversed and remanded.

¶ 2 In this mortgage foreclosure case, defendant, BMO Harris Bank, N.A. (BMO Harris), is a junior lienholder on the property. It appeals from the trial court's denial of its motion to vacate the default order against it, the trial court's denial of its petition to turn over surplus funds from the judicial sale, and the trial court's award of the surplus to defendants, Shamse A. Hafiz and Waliul Y. Hafiz. On appeal, BMO Harris argues that the trial court incorrectly applied the mailbox rule to plaintiff's, Wells Fargo Bank, National Association's (Wells Fargo's), motion to confirm the judicial sale, resulting in the trial court's denial of BMO Harris' motion to vacate the default order. BMO Harris argues that even if the mailbox rule generally applies to such situations, it should not have been applied here because Wells Fargo's motion did not contain the proper proof of filing. BMO Harris argues that to the extent the trial court alternatively denied its motion under section 2-1301(e), its ruling was an abuse of discretion because it denied substantial justice between the litigants in that the trial court improperly considered only BMO Harris' diligence.

¶ 3 We agree with BMO Harris that the trial court should not have applied the mailbox rule to this situation, as the mailbox rule pertains only to documents with filing deadlines. We also agree with BMO Harris that in ruling on BMO Harris' motion to vacate the default order, the trial court erred by looking only at BMO Harris' diligence rather than focusing on substantial justice between the litigants. Therefore, we reverse and remand.

¶ 4 I. BACKGROUND

¶ 5 On January 27, 2015, Wells Fargo filed a complaint to foreclose a mortgage secured by a house owned by the Hafizes. The property was commonly known as 1606 South Charlotte Court in Lombard, Illinois. The complaint alleged that the original indebtedness was $360,000 and that the Hafizes currently owed $291,469.25. Wells Fargo named BMO Harris as a junior lienholder. BMO Harris was served on February 5, 2015, and the Hafizes were served on February 9, 2015.

¶ 6 The Hafizes had filed for personal bankruptcy in June 2014, and they were discharged from bankruptcy on March 18, 2015.

¶ 7 On April 30, 2015, Wells Fargo filed a motion for an order of default and a motion for entry of a judgment of foreclosure and sale. On May 26, 2015, the trial court entered an order defaulting the Hafizes and BMO Harris. The same day, it entered a judgment for foreclosure and sale in the amount of $328,027.20. The property was sold at a judicial sale on September 15, 2015, resulting in a surplus of $20,476.31.

¶ 8 On September 29, 2015, BMO Harris filed a motion seeking leave to file an appearance and to vacate the default order against it under section 2-1301(e) of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2014)). BMO Harris also filed a petition for the turnover of surplus funds, alleging that it had a junior mortgage on the property securing an indebtedness of $250,813.38.

¶ 9 On October 2, 2015, Wells Fargo's motion to confirm the judicial sale was received and filed-stamped by the clerk of the circuit court. The certificate of service stated that it was mailed on September 24, 2015.

¶ 10 On October 8, 2015, the trial court entered an order confirming the report of sale and distribution. In a separate order entered that day, the trial court gave the Hafizes 28 days to respond to BMO Harris' filings.

¶ 11 The Hafizes' attorney filed an appearance and response on November 5, 2015. The Hafizes argued that BMO Harris was not diligent in protecting its mortgage lien because it failed to timely answer the foreclosure complaint. They further argued that Wells Fargo's petition for an order confirming the judicial sale was mailed on September 24, 2015, which should be considered the filing date pursuant to *Pakrovsky v. Village of Lakemoor*, 274 Ill. App. 3d 515 (1995). They argued that because BMO Harris' motion to vacate the default order was filed after that date, under *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, BMO Harris was limited to seeking relief under section 15-1508(b) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(b) (West 2014)), which it failed to do. The Hafizes filed a separate petition seeking turnover of the surplus funds to them as the former owners and mortgagors of the property.

¶ 12 In its reply, BMO Harris argued that it was not seeking to vacate the judgment of foreclosure, but rather just the default against it, and that the Hafizes sought to be held to a different standard even though they were also defaulted. BMO Harris argued that equitable considerations favored it, as it was the junior lien holder and the Hafizes admittedly had owed it money.

¶ 13 On February 24, 2016, the trial court denied BMO Harris' motion to vacate the default and its petition for the turnover of surplus funds. It granted the Hafizes' motion for the turnover of surplus funds. The trial court stated as follows. Neither BMO Harris nor the Hafizes filed an appearance or answer in a timely fashion. The equities could seem to favor BMO Harris because

it had loaned the Hafizes $240,000, but there were complicating factors, such as the Hafizes' bankruptcy discharge. The trial court had heard many foreclosure cases and had previously chastised BMO Harris for its pattern of not responding to summonses and attempting to protect its rights only after it saw that there was a surplus. The trial court was denying BMO Harris' motion to vacate the default and petition to turn over surplus funds on the basis that BMO Harris filed them after Wells Fargo's motion for an order approving the sale was deemed filed. Aside from the filing dates, there would still be "the issue of whether the factors favor[ed] [BMO] Harris to vacate the judgment and allow [it] to essentially modify it to include [its] interest." BMO Harris clearly was not diligent in protecting its rights, and there was no case law supporting its position that it could compare itself to another party who also was not diligent. BMO Harris' lack of diligence was "an additional factor that would accrue *** in favor of denying" its petition.

¶ 14 BMO Harris timely appealed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, BMO Harris first argues that the trial court erred in applying the mailbox rule to deny its section 2-1301(e) motion to vacate as untimely. The trial court ruled that BMO Harris' motion was not subject to section 2-1301(e) because it was filed after Wells Fargo filed its petition for an order confirming the judicial sale. The filing dates of the documents are relevant under *McCluskey,* 2013 IL 115469. There, our supreme court noted that section 2-1301(e) generally allows a party to seek relief from a nonfinal order of default or from a default judgment within 30 days of its entry. *Id.* ¶ 11-12. The supreme court stated that without an Illinois Supreme Court Rule 304(a) finding, the order confirming the sale, rather than the judgment of foreclosure, is the final judgment in a foreclosure case. *Id. A*s such, a motion to

vacate a default judgment of foreclosure that was filed before the order confirming the sale or within 30 days after it entered it would be timely. *Id.*

¶ 17 The supreme court then considered the relationship between sections 2-1301(e) and 15-1508(b) of the Foreclosure Law, the latter which sets forth the procedures for the confirmation of judicial sales. *Id.* ¶ 15. The supreme court stated that the statutory framework for foreclosures balanced the borrower's interest of protecting his or her equity in the property with the lender's competing concern of enforcing its security interest efficiently. *Id.* ¶ 24. Built-in statutory protections for the borrower had to be satisfied before the judicial sale. *Id.* Once the sale had been conducted and the lender had filed a motion to confirm the sale under section 15-1508(b), the balance of interests shifted from the borrower to the lender. *Id.* ¶ 25. At that point, objections to confirming the sale could not be based solely on a meritorious pleading defense to the underlying sale. *Id.* The supreme court stated:

> "To allow the borrower to utilize the standards of a section 2-1301(e) motion to both set aside the judicial sale and also unravel the underlying foreclosure judgment—after being given ample statutory opportunity to respond to the allegations of the complaint, and after being fully informed of the court process—would indeed be inconsistent with the need to establish stability in the judicial process." *Id.*

Thus, under section 15-1508(b), a party seeking to set aside the sale must show that proper notice of the sale was not given; the sale's terms were unconscionable; the sale was conducted fraudulently; or justice was not otherwise done. *Id.* ¶ 18 (citing 735 ILCS 5/15-1508(b) (West 2010)).

¶ 18 The supreme court therefore held that "up until a motion to confirm the judicial sale is filed, a borrower may seek to vacate a default judgment of foreclosure under the standards set

forth in section 2-1301(e)" (*id.* ¶ 27) for which there is a liberal policy with respect to vacating default judgments (*id.* ¶ 16). "However, 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.

¶ 19 BMO Harris does not dispute that *McCluskey* applies to this case, so we do not consider that question. Instead, the issue before us is whether BMO Harris filed its motion before Wells Fargo filed its petition to confirm the judicial sale. The timeliness of the motion presents a question of law, which we review *de novo*. See *Baca v. Trejo*, 388 Ill. App. 3d 193, 194 (2009).

¶ 20 We now examine *Pakrovsky*, 274 Ill. App. 3d 515, on which the Hafizes primarily rely for their position that the mailbox rule applied to Wells Fargo's filing of its motion to confirm the judicial sale. In that case, the defendant had to file a notice of rejection of an arbitration award within 30 days under Illinois Supreme Court Rule 93(a) (eff. June 1, 1983). *Pakrovsky*, 274 Ill. App. 3d at 516. The defendant's notice of rejection was mailed within the 30-day period but was received and file stamped by the court clerk after the 30-day period. *Id.* This court stated:

> "Except for the filing of complaints and the filing of petitions pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 1994)), the appellate court has consistently held that documents mailed to the circuit court within the requisite time period but received thereafter are timely filed. (Emphasis added.) *Id.* at 517.

After examining various cases, we concluded that "the weight of authority clearly favors equating the mailing date with the filing date for court documents which do not commence a new cause of action." *Id.* at 518.

¶ 21 BMO Harris argues that the mailbox rule was established to assist parties in meeting filing deadlines and not, as the trial court held here, to establish deadlines for another party. BMO Harris argues that the trial court's ruling represents an unwarranted expansion of the mailbox rule and *McCluskey* that not only prejudices BMO Harris but also establishes a dangerous precedent that could prejudice other parties as well.

¶ 22 BMO Harris notes that for documents filed in the trial court, the application of the mailbox rule is not based on statute or formal rules of the court. BMO Harris takes the position that courts apply the mailbox rule in such situations by analogy to Illinois Supreme Court Rule 373 (eff. Sept. 19, 2014), which pertains to the date of filing papers in a reviewing court. Rule 373 states:

> "Unless received after the due date, the time of filing records, briefs or other papers required to be filed within a specified time will be the date on which they are actually received by the clerk of the reviewing court. If received after the due date, the time of mailing, or the time of delivery to a third-party commercial carrier for delivery to the clerk within three business days, shall be deemed the time of filing." *Id.*

BMO Harris points out that our supreme court has stated that Rule 373 was established so that counsel would not have to ensure that briefs and other documents mailed before the filing date actually reached the reviewing court within the deadline. *Harrisburg-Raleigh Airport Authority v. Department of Revenue*, 126 Ill. 2d 326, 341 (1989).

¶ 23 Citing various cases, BMO Harris argues that the mailbox rule has been used by courts only to determine, based on Rule 373's plain language, whether a document mailed to the court satisfied an established deadline. See *Tolve v. Ogden Chrysler Plymouth, Inc.*, 324 Ill. App. 3d 485, 493 (2001) (petition for attorney fees was timely filed); *Pakrovsky*, 274 Ill. App. 3d at 517

(notice of rejection of arbitration award was timely filed); *Board of Trustees of Southern Illinois University v. Department of Human Rights*, 190 Ill. App. 3d 644, 649 (1989) (entry of appearance and answer were timely filed); *A.S. Schulman Electric Co. v. Village of Fox Lake*, 115 Ill. App. 3d 746, 749-50 (1983) (post-trial motion was timely filed). BMO Harris argues that because Wells Fargo was not subject to a due date for filing its motion to confirm the sale, the mailbox rule should not apply. BMO Harris contends that the focus on whether a deadline exists for a document is rational because if a document is mailed before an established deadline but received afterwards, the party mailing the document would be unfairly prejudiced by the delay. BMO argues that, in contrast, the trial court's application of the mailbox rule here has no effect on the movant but creates prejudice to the defaulted party by effectively shortening the time it had to seek relief under 2-1301(e), without notice. BMO maintains that the time of filing should be when the circuit court clerk receives and stamps the motion to confirm the judicial sale, thereby making the filing part of an undisputable public record. BMO argues that its 2-1301(e) motion was timely because it was filed on September 29, 2015, which was three days before Wells Fargo's motion to confirm the judicial sale was file-stamped.

¶ 24 The Hafizes argue that BMO Harris' notice argument is not persuasive, as Wells Fargo mailed BMO Harris a notice of its motion to confirm the sale, which is presumably how BMO Harris learned of the surplus. The Hafizes also argue that Rule 373 is simply not relevant here, as it pertains only to filings in reviewing courts. The Hafizes note that our supreme court has stated that Rule 373 does not directly apply to circuit courts but "evinces a general policy of equating mailing and filing dates, particularly with respect to appellate practice." *Harrisburg-Raleigh Airport Authority*, 126 Ill. 2d at 341. The Hafizes argue that the supreme court's

statement reinforces the idea that the date of mailing should generally be equated to the date of filing.

¶ 25 The Hafizes argue that BMO Harris cannot escape our clear statement in *Pakrovsky* that "the weight of authority clearly favors equating the mailing date with the filing date for court documents which do not commence a new cause of action." *Pakrovsky*, 274 Ill. App. 3d at 518. The Hafizes maintain that Wells Fargo's filing of its motion to confirm the report of sale did not begin a new cause of action, so it must be deemed filed upon the date of mailing. The Hafizes argue that, contrary to BMO Harris' position, nothing in *Pakrovsky* limits the mailbox rule to instances where deadlines are at issue. The Hafizes maintain that it is understandable that published cases all deal with filing deadlines, because parties would appeal only cases in situations where a deadline was contested. The Hafizes further argue that BMO Harris was not diligent in protecting its interest, whereas the mailbox rule protects a diligent plaintiff from facing 11th-hour motions to vacate long-standing judgments.

¶ 26 We agree with BMO Harris that the trial court erred in applying the mailbox rule to a situation such as this one, where there was no deadline for Wells Fargo to file its motion for an order to confirm the judicial sale. As BMO Harris points out, Rule 373 illustrates that the supreme court has chosen to distinguish between documents that have a specified due date and those that do not, and have applied the mailbox rule only to the former. See Ill. S. Ct. R. 373 (eff. Sept. 19, 2014). Such a construction makes sense, for the mailbox rule helps to mitigate the effects of delays in the mail service (see *Pakrovsky*, 274 Ill. App. 3d at 518), which are not relevant if time is not of the essence. In other words, the generally-accepted date of filing is the date a document is received and file-stamped by the circuit clerk, and the mailbox rule operates as an exception to this general principle. We recognize that Rule 373 applies only to documents

filed in a reviewing court, but courts have looked to Rule 373, among other sources, in applying the mailbox rule to filings in the trial court, such as postjudgment motions. See *Baca v. Trejo*, 388 Ill. App. 3d 193, 195 (2009).

¶ 27 The Hafizes rest heavily on *Pakrovsky* in arguing that almost all filings are subject to the mail box rule. However, *Pakrovsky* also dealt with a filing deadline, specifically for a notice of rejection of an arbitration award. *Pakrovsky*, 274 Ill. App. 3d at 516. We specifically stated that "the issue before the court is whether a notice of rejection is filed on the date it is mailed or on the date it is received and stamped by the clerk of the court." *Id.* By stating that "the appellate court has consistently held that documents mailed to the circuit court *within the requisite time period* but received thereafter are timely filed" (emphasis added) (*id.* at 517), we further recognized that the mailbox rule pertains to only documents with deadlines. We did state in a concluding paragraph that "the weight of authority clearly favors equating the mailing date with the filing date for court documents which do not commence a new cause of action" (*id.* at 518), but this statement must be viewed in the context of the precise issue before us at the time and our analysis, which all involved filing deadlines.

¶ 28 Notably, in *Gruszeczka v. Illinois Workers' Compensation Comm'n*, 2013 IL 114212, our supreme court also directly referred to filing deadlines in applying the mailbox rule. It stated, "The courts simply have not drawn a distinction between statutes and rules when applying the mailbox rule to filing deadlines" and "ample authority supports application of the mailbox rule when a filing deadline is supplied by statute." *Id.* ¶ 25. If filing deadlines were irrelevant, there would be no reason for the supreme court to distinguish between statutes with filing deadlines and those without such deadlines.

¶ 29 Accordingly, we conclude that the trial court erred in applying the mailbox rule to Wells Fargo's motion to confirm the judicial sale, as there was no filing deadline for that motion. As such, Wells Fargo's motion was filed on October 2, 2015, when it was filed-stamped by the circuit clerk. BMO Harris filed its motion to vacate the default judgment against it prior to that date, on September 29, 2015. As BMO Harris' motion was filed earlier, under *McCluskey* the trial court should have ruled on it based on the more lenient standards of section 2-1301(e), as opposed to the heightened standards of section 15-1508(b). See *McCluskey*, 2013 IL 115469, ¶ 27. Based on our resolution of this issue, we do not address BMO Harris' alternative argument that Wells Fargo's motion did not satisfy the mailbox rule because Wells Fargo did not file a proper proof of mailing.

¶ 30 We recognize that the trial court gave a secondary basis for its ruling. It essentially stated that even applying a section 2-1301(e) analysis (which we have determined was the proper analysis), it would deny BMO Harris' motion to vacate because BMO Harris was not diligent in protecting its rights, in that it waited until after learning that there was a surplus to take any action in the case.

¶ 31 Section 2-1301(e) of the Code provides:

> "The court may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2014).

As stated, there is a liberal policy regarding vacating default judgments under section 2-1301(e). *McCluskey*, 2013 IL 115469, ¶ 16. The entry of a default is a drastic remedy to be used only as a last result, and the law prefers that controversies be determined according to the parties'

substantive rights. *In re Haley D.*, 2011 IL 110886, ¶ 69. The overriding consideration in ruling on a motion to vacate under section 2-1301(e) is whether substantial justice has been done between the litigants and whether it is reasonable to compel the other party to go to trial on the merits. *McCluskey*, 2013 IL 115469, ¶ 16. In determining whether substantial justice will be achieved, considerations can include a party's diligence or lack thereof, whether the party has a meritorious defense, the severity of the resulting penalty, and the relative hardships on the parties. *Draper & Kramer, Inc., v. King*, 2014 IL App (1st) 132073, ¶ 23. "Although relevant, the party need not necessarily show a meritorious defense and a reasonable excuse for failing to timely assert such defense." *McCluskey*, 2013 IL 115469, ¶ 16. The appropriate considerations depend on the facts of each case. *Id.* Whether to set aside a default is within the trial court's discretion. 735 ILCS 5/2-1301(e) (West 2014); *In re Haley D*, 2011 IL 110886, ¶ 69.

¶ 32 BMO Harris argues that it is critical to note that the procedural posture of the case involves two defendants, as opposed to a plaintiff and a defendant. BMO Harris observes that plaintiff Wells Fargo was unaffected by BMO Harris' and the Hafizes' motions. BMO Harris argues that to the extent any defendant was not diligent, both it and the Hafizes were equally so, and therefore it was prejudicial for the trial court to find that only BMO Harris was not diligent.

¶ 33 BMO Harris contends that it was also reversible error for the trial court to consider only diligence in determining whether substantial justice was being accomplished where there were many other relevant factors at play. BMO Harris refers to three particular factors. First, BMO Harris argues that it was the only defendant to file a motion to vacate, whereas the Hafizes participated in the case and ultimately prevailed as a defaulted party. Second, BMO Harris argues that the Hafizes did not have standing to object to its section 2-1301 motion because they were a defaulted party. BMO Harris argues that Wells Fargo had no reason to object, that its

motion did not prejudice the Hafizes' participation in the case, and that it requested relief to which it was substantively entitled. Third, BMO Harris argues that it is unrebutted that the Hafizes borrowed $240,000 from it and that the indebtedness was $250,813.38 at the time of its section 2-1301 motion. BMO Harries contends that due to the Hafizes' bankruptcy discharge, the only way that it could recoup any money was ultimately through the surplus. BMO Harris states that it defies all concepts of fairness and justice for the Hafizes to be able to borrow $240,000, reap the benefits of a bankruptcy discharge by having their personal liability extinguished, and then be given the $20,476.31 surplus. BMO Harris argues that a grant of its section 2-1301 motion would simply have allowed its lien to be included in the already-existing judgment of foreclosure, with no procedural prejudice to Wells Fargo or the Hafizes. BMO Harris asserts that the denial of its motion instead resulted in an unjust windfall for the Hafizes.

¶ 34 The Hafizes argue that from the initial case filing to the property's sale, BMO Harris made the conscious decision to ignore the proceedings and the extinguishing of any lien or rights it may have had. The Hafizes maintain that, therefore, BMO Harris was clearly not diligent. The Hafizes argue that BMO Harris' response is only that the Hafizes were also defaulted and not diligent. The Hafizes point out that they had filed for chapter 13 bankruptcy long before Wells Fargo filed the mortgage foreclosure action and that any personal liability for their mortgages with Wells Fargo and BMO Harris was discharged in bankruptcy six months before the sale. The Hafizes maintain that spending time and/or money to defend this case would have been a fruitless drain on their already precarious financial condition. They argue that they wound up with the only right that they could have claimed, that being the equitable right to any surplus from the sale. The Hafizes argue that BMO had an affirmative obligation to protect its

lien, especially since the bankruptcy discharge meant that BMO Harris could not recover from the Hafizes directly, and that they did nothing to dissuade BMO Harris from asserting its rights.

¶ 35 We agree with BMO Harris' argument that it was reversible error for the trial court to consider only diligence in ruling on its section 2-1301(e) motion. Although the trial court referred to some equitable factors in discussing BMO Harris' motion, its rationale for denying the motion was exclusively based on its determination that BMO Harris was not diligent in protecting its rights. However, as discussed, the primary consideration in ruling on a section 2-1301(e) motion is whether substantial justice has been done between the litigants and whether it is reasonable to compel the other party to go to trial on the merits. *McCluskey*, 2013 IL 115469, ¶ 16. As BMO Harris did not seek to vacate the judicial sale, the focus should have been on whether substantial justice was being done. As the trial court incorrectly considered only diligence, it applied the wrong standard in ruling on the motion.

¶ 36 "Normally where a circuit court is found to have applied the wrong standard, we reverse and remand to give it the opportunity to apply the correct standard." *In re Haley D.*, 2011 IL 110886, ¶ 68. That is the appropriate result in this case. Accordingly, we reverse the trial court's denial of BMO Harris' section 2-1301(e) motion, which also necessitates a reversal of its denial of BMO Harris' petition for the turnover of the surplus and its grant of the Hafizes' motion for turnover of the surplus. We remand for the trial court to apply the proper standard of substantial justice in ruling on BMO Harris' section 2-1301(e) motion. At that time, the parties are free to reassert their arguments regarding what result substantial justice requires in this case. *Cf. Bank & Trust Co. v. Line Pilot Bungee, Inc.*, 323 Ill. App. 3d 412, 415 (2001) (the appellate court reversed and remanded where, in ruling on a section 2-1301(e) motion, the trial court looked only at whether the defendants presented a meritorious defense and offered a reasonable

excuse for their delay; the trial court should have instead focused on whether substantial justice had been done between the parties).

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we reverse the trial court's rulings (1) denying BMO Harris' section 2-1301(e) motion to vacate the default order against it; (2) denying BMO Harris' petition to turn over surplus funds; and (3) awarding the surplus to the Hafizes. We remand the cause for the trial court to apply the proper standard in ruling on BMO Harris' section 2-1301(e) motion, after which it may rule on the competing petitions seeking the surplus.

¶ 39 Reversed and remanded.