

NOTICE

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2015 IL App (4th) 140776-U

NO. 4-14-0776

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 7, 2015
Carla Bender
4th District Appellate
Court, IL

HSBC BANK USA,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
ANTHONY GRASON,)	No. 08CH121
Defendant-Appellant.)	
)	Honorable
)	Albert G. Webber,
)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in distributing proceeds from the foreclosure sale.

¶ 2 On June 17, 2008, the trial court entered a judgment of foreclosure, finding plaintiff, HSBC Bank USA (HSBC), was due \$432,180.14 and had a valid lien on the property at issue in this case by virtue of a mortgage defendant, Anthony Grason, provided to HSBC as security for a loan. On July 10, 2014, at a judicial foreclosure sale of the mortgaged property, HSBC entered a winning bid of \$714,622.26. On July 31, 2014, the trial court entered an order confirming the sale and distributing the proceeds from the sale. Grason appeals, arguing the court erred in not remitting surplus proceeds from the foreclosure sale to him. We affirm the trial court's order confirming the sale and distributing the sale proceeds.

¶ 3 I. BACKGROUND

¶ 4 As the parties and this court are familiar with the facts in this case, we address only those facts pertinent to our decision in this appeal. On June 17, 2008, the trial court allowed HSBC's motion for entry of judgment of foreclosure and sale. *HSBC Bank U.S.A., N.A. v. Grason*, No. 4-10-0090, at 2 (2011) (unpublished order under Supreme Court Rule 23) (*Grason I*). On May 5, 2009, the property was sold at the foreclosure sale for \$260,401. Grason was left with a \$215,543.28 deficiency judgment. *Id.* at 3. That same morning at 8:37 a.m., unbeknownst to the trial court and the parties present for the sale, Grason filed a *pro se* bankruptcy petition in the Bankruptcy Court for the Central District of Illinois. *Id.* On June 30, 2009, the trial court confirmed the foreclosure sale. *Id.* at 1.

¶ 5 Grason appealed, and we remanded the case for the trial court to make a factual finding as to whether the foreclosure sale occurred before or after 8:37 a.m. *Id.* at 13. According to our order, if the trial court found the sale occurred after 8:37 a.m., the sale was void unless HSBC or the purchaser could establish the automatic stay did not go into effect as a matter of law. *Id.* at 14. We further stated, "[e]ven if the trial court finds the foreclosure sale occurred before 8:37 a.m., the trial court erred in confirming the sale at the confirmation sale hearing on June 30, 2009[.]" because the docket sheet indicated that hearing date had been vacated. *Id.*

¶ 6 In June 2011, on remand from this court, HSBC took the position the foreclosure sale violated the automatic stay and was void. *HSBC Bank U.S.A., N.A. v. Grason*, 2012 IL App (4th) 110788-U, ¶ 23 (*Grason II*). However, Karl Meurlot, for whose benefit the property was purchased at the foreclosure sale, argued Grason's May 5 bankruptcy filing did not affect the foreclosure sale. *Id.* The trial court held Grason's May 5, 2009, bankruptcy filing did not affect the validity of the foreclosure sale held the same day because Grason was not an eligible debtor pursuant to section 109(g)(1) of the Bankruptcy Code (11 U.S.C. § 109(g)(1) (2006)). *Id.* ¶ 2.

¶ 7 Once again, Grason appealed the trial court's decision. *Id.* We reversed the court's ruling Grason's bankruptcy petition did not affect the foreclosure sale regardless of when the bankruptcy petition was filed. *Id.* ¶ 47. We further stated:

"We also vacate the confirmation and reconfirmation of the foreclosure sale and again order the trial court to determine, by a preponderance of the evidence, whether the foreclosure sale occurred before or after 8:37 a.m. on May 5, 2009. In other words, is it more likely than not the sale occurred after 8:37 a.m. If the court finds the sale occurred after 8:37 a.m., the automatic stay applied to the foreclosure sale and the sale is void unless HSBC or Meurlot can obtain relief from the automatic stay with regard to the foreclosure sale from the Bankruptcy Court for the Central District of Illinois." *Id.*

¶ 8 On October 11, 2012, Meurlot filed a motion to reconsider dismissal and reopen Grason's case in the bankruptcy court. *HSBC Bank U.S.A., N.A. v. Grason*, 2014 IL App (4th) 131066-U, ¶ 7 (*Grason III*). In a written opinion issued in February 2013, the bankruptcy court denied Meurlot's motion for relief from stay, concluding Meurlot was a bystander to the case who

"chose to make a significant investment in a property purchased at a sheriff's sale where the purchase was clouded from the inception by a pending bankruptcy, a questionable confirmation hearing, and an appeal. And, after the Appellate Court of Illinois reversed and remanded the foreclosure case, Mr. Meurlot chose to fight HSBC's

efforts to back up and start over. That choice resulted in another appeal and another reversal. Significant resources have been expended by all involved, but that is simply not a basis to ignore Mr. Meurlot's lack of standing." *In re Grason*, 486 B.R. 448, 461 (Bankr. C.D. Ill. 2013).

HSBC then filed a motion for relief from stay in the bankruptcy court. *Grason III*, 2014 IL App (4th) 131066-U, ¶ 9. On July 18, 2013, the bankruptcy court issued an order finding Grason was an eligible debtor when he filed his petition, HSBC was bound by the automatic stay, and the sheriff's sale was void. *In re Grason*, 2013 WL 3781766, 8 (Bankr. C.D. Ill. 2013).

¶ 9 On July 29, 2013, Grason filed a motion asking the trial court to vacate the foreclosure sale, refund the sale proceeds, and vacate the order approving the report of sale and distribution. *Grason III*, 2014 IL App (4th) 131066-U, ¶ 10. Grason also asked the court to allow him to retake possession of the property at issue. *Id.* On August 28, 2013, Meurlot and C. Deadrick Development, Inc., filed a petition to intervene as a matter of right in the trial court (735 ILCS 5/2-408 (West 2012)) and requested C. Deadrick be appointed as receiver for the property. *Grason III*, 2014 IL App (4th) 131066-U, ¶ 11.

¶ 10 On October 29, 2013, the trial court allowed Grason's motions to vacate the foreclosure sale, vacate the order confirming the sale, refund the sale proceeds, and vacate the deficiency judgment. *Id.* ¶ 12. Over Grason's objection, the court allowed Meurlot and C. Deadrick's petition to intervene and appointed C. Deadrick as receiver for the property. *Id.* Once again, Grason appealed, arguing the court erred in allowing the motion to intervene, appointing C. Deadrick receiver, and denying Grason's motion for possession of the property. *Id.* ¶¶ 13, 15. We only had jurisdiction to address whether C. Deadrick was properly appointed

as receiver for the subject property and found the trial court did not abuse its discretion in appointing C. Deadrick as receiver for the property. *Id.* ¶¶ 23, 35.

¶ 11 On July 10, 2014, the property in question was sold at public auction pursuant to the June 2008 judgment of foreclosure. According to the sheriff's certificate of sale, HSBC "bid *** the sum of \$714,622.26 Dollars. This being the highest and best bid at said sale, I thereupon struck off and sold the whole of said property to said bidder for said money." The sheriff's report of sale and distribution again stated the winning bid in the auction was the sum of \$714,622.26.

The report stated the money would be distributed as follows:

"1. To [HSBC]:

A. The amount due under the Judgment	\$432,180.14
B. Interest on said amount at 9% per annum from June 17, 2008 [(date of judgment of foreclosure),] to July 10, 2014 [date of foreclosure sale]	\$235,923.84
C. Attorney's Fees post judgment	\$0.00
D. Publication Costs	\$1,150.00
E. Post-Judgment Escrow	\$44,555.78
F. Post judgment advances	
1. Appraisal	\$110.00
2. Property Inspection	\$52.50
3. Property Preservation	\$0.00
Total Advances	\$162.50
SUBTOTAL	\$713,972.26

2. Retained by Selling Officer	
a. Recording or Registration	\$50.00
b. Commission on Sale	\$600.00
SUBTOTAL	\$650.00
TOTAL	\$714,622.26
Credits (Payments)	(\$0.00)
Full Debt Minus Credit	\$714,622.26
Amount Bid at Sale	\$714,622.26
Deficiency/Surplus	\$0.00"

¶ 12 On July 17, 2014, Grason filed a motion to revise or modify the sheriff's report of sale and distribution of funds and proceeds from the judicial foreclosure sale. Grason argued the distribution of funds provided by HSBC mistakenly applied postjudgment interest to the \$432,180.14 foreclosure judgment, amounting to \$235,923.84. Grason argued no specific statutory section of the mortgage foreclosure laws provided for the collection of postjudgment interest from the date of the foreclosure judgment to the date of the sheriff's sale. Grason argued he was entitled to at least \$280,479.62 in surplus sale proceeds.

¶ 13 On July 24, 2014, HSBC filed a reply to Grason's argument. HSBC argued: "[N]othing in the [Illinois Mortgage Foreclosure Law (IMFL) (735 ILCS 5/15-1101 *et seq.* (West 2008))] or Illinois case law precludes a Mortgagee-Plaintiff from collecting post-judgment interest at 9% [per] annum pursuant to Section 2-1303 of the Illinois Code of Civil Procedure. See also — *In re Daniels*, 102 B.R. 680, 684 (N.D. Ill. 1989) (interest accrues at the contract rate

until the judgment of foreclosure and at the statutory legal rate [thereafter]). *** Since Section 2-1303 of the Illinois Code of Civil Procedure and the terms of Plaintiff's Judgment of Foreclosure both provide for interest to accrue at the statutory judgment rate, it is proper for Plaintiff to collect post-judgment interest at the statutory judgment rate from the proceeds of the foreclosure sale in this case.

Defendant goes on to allege in his Response that, 'Plaintiff [HSBC] additionally improperly makes claim to Post-judgment Escrow in the amount of \$44,555.78.' *** However, Defendant ignores the fact that the subject Mortgage allows for the Post-Judgment Escrow (See Mortgage at ¶ 3 and ¶ 9 attached hereto as Exhibit 'G'). Additionally, the plain terms of the Judgment of Foreclosure allow for the Post-Judgment Escrow to be added to the Defendant's indebtedness. (See Exhibit 'A' at ¶ 2.b) and ¶ 10 attached hereto). As such, Defendant's contention that Plaintiff 'improperly' included the Post-Judgment Escrow amount is completely without merit as the plain language of both the Mortgage and Judgment of Foreclosure allow for it."

¶ 14 Paragraph 10 of the judgment of foreclosure and sale states:

"In order to protect the lien of the mortgage, it may or has become necessary for Plaintiff to pay taxes and assessments which have been or may be levied upon the mortgaged real estate, and/or

in order to protect and preserve the mortgage [*sic*] real estate, it has or may also become necessary for the Plaintiff to pay fire and other hazard insurance premiums on the real estate or to make such repairs to the real estate as may reasonably be deemed necessary for the proper preservation thereof. Under the terms of the mortgage, any money so paid or expended has or will become an additional indebtedness secured by the mortgage and will bear interest from the date such monies are advanced at the judgment rate of interest."

The judgment further stated:

"The allegations of Plaintiff's complaint are true substantially as set forth, and the equities in the cause are with Plaintiff, and Plaintiff is entitled to the relief prayed for in the complaint including foreclosure of said mortgage upon the real estate described therein in the amount of the Total Balance Due, as found above, together with interest thereon at the statutory judgment rate after the entry of this judgment and additional advances, expenses, and Court costs, including publication costs and expenses of sale."

As to the proceeds of the sale, the judgment of foreclosure states in part:

"e) If Plaintiff is the successful bidder at said sale, the amount due the Plaintiff, plus all costs, advances and fees

hereunder with interest incurred between entry of Judgment and confirmation of sale shall be taken as a credit on its bid.

f) If any sums remain after payment to the plaintiff, said sum, if any, shall be paid to such Defendant in the order of priority as determined by the Court. If such Defendant is the successful bidder at sale, the amount due to said Defendant, plus all costs, advances, fees hereunder with interest incurred between entry of Judgment and confirmation of sale shall be taken as a credit on its bid."

¶ 15 On July 29, 2014, Grason filed an amended motion to revise or modify the sheriff's report of sale and distribution of funds and proceeds resulting from the mortgage foreclosure sale.

¶ 16 On July 31, 2014, the trial court held a hearing on Grason's amended motion to revise or modify the distribution of proceeds from the judicial foreclosure sale. Grason argued he had no objection to the court confirming the sale of the property to HSBC. Instead, he objected to HSBC's belief, reflected in the sheriff's report of sale and distribution of sale proceeds, it was entitled to the surplus proceeds from the sale. According to Grason, he was entitled to those surplus proceeds.

¶ 17 In response, HSBC argued it made a "credit bid for the full amount due under the judgment." HSBC contended section 1303 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1303 (West 2008)) provided for 9% interest from the time of the judgment of foreclosure.

¶ 18 After hearing arguments from the parties, the trial court confirmed the foreclosure sale. With regard to the distribution of the proceeds of the sale of the property, the court told Grason his "argument would be well taken under Section 1512 had there been money bid in excess of the judgment amount plus the interest and the advances made by the defendant as well as the escrow." However, the court stated no authority provided for Grason to receive postjudgment interest owed to HSBC. The court declared:

"I don't believe that there is any authority under the statutes or case law which provides that interest due a judgment creditor is to be paid to the judgment debtor. That[] stands the world on its head. I believe the statute itself is directed toward a different situation where you may get competitive bidding on a foreclosed property which runs the sale price up beyond what is owed on the debt plus any appropriate expenses, advances or postjudgment interest. And so for those reasons, the defendant's Motion to Revise or Modify the Sheriff's Report of Sale and Distribution of Funds shall be denied."

After the funds were distributed, no deficiency judgment was imposed on Grason.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On July 10, 2014, HSBC bid \$714,622.26 at the foreclosure sale for the property at issue in this case. HSBC argues its bid represented the amount of the foreclosure judgment, \$432,180.14, plus (1) statutory postjudgment interest accruing between the June 17, 2008, judgment of foreclosure and the July 10, 2014, foreclosure sale (\$235,923.84) and (2) additional

expenditures for property expenses (\$44,555.78). HSBC frames Grason's argument as an attempt to recover statutory postjudgment interest.

¶ 22 However, Grason neither argued to the trial court nor this court he was entitled to postjudgment interest. Instead, he makes a two-pronged argument. First, the amount of HSBC's winning bid at the foreclosure sale represented the fair market value of the property. Second, because he contends postjudgment interest only begins to accrue when a foreclosure sale is confirmed, he argues no postjudgment interest accrued against him, and he is entitled to the surplus funds resulting from the foreclosure sale, *i.e.*, \$282,442.12. For its part, HSBC contends "[t]he argument advanced by the defendant is not supported by statutes or case law, and, if accepted, would result in the unconscionable result of a debtor being paid interest of [*sic*] the unpaid balance of a debt that has been reduced to judgment."

¶ 23 Both Grason's and HSBC's arguments rest on their respective legal assumptions as to when statutory postjudgment interest began to accrue in this case. On the one hand, HSBC contends, pursuant to section 2-1303 of the Procedure Code (735 ILCS 5/2-1303 (West 2008)), it is statutorily entitled to \$235,923.84 in postjudgment interest, which it contends accrued between the judgment of foreclosure in June 2008 and the foreclosure sale in July 2014. On the other hand, Grason argues statutory postjudgment interest could not begin to accrue until the trial court confirmed the foreclosure sale.

¶ 24 The Third District recently dealt with a similar situation, with one significant distinguishing characteristic. See *CitiMortgage, Inc. v. Sharlow*, 2014 IL App (3d) 130107, 4 N.E.3d 580. Unlike the case *sub judice*, the foreclosure judgment in *Sharlow* contained Illinois Supreme Court Rule 304(a) (eff. Jan. 1, 2006) language, making it a final and appealable order. *Id.* ¶ 20, 4 N.E.3d 580. Like the case *sub judice*, the foreclosure judgment provided

CitiMortgage, Inc. (CitiMortgage) was entitled to collect postjudgment interest of 9% per year from the date of the foreclosure judgment. *Id.* ¶ 3, 4 N.E.3d 580.

¶ 25 At the foreclosure sale in *Sharlow*, Citimortgage purchased the mortgagor's property for more than the foreclosure judgment. *Id.* ¶ 1, 4 N.E.3d 580. The mortgagor claimed she was entitled to the surplus proceeds from the sale. *Id.* Citimortgage claimed no surplus existed and that the unallocated amount, over \$10,000, was attributable to accrued postjudgment interest and additional costs and expenses to which the bank was entitled. *Id.*

¶ 26 In determining whether Citimortgage was legally entitled to collect postjudgment interest from the date of the foreclosure judgment to the date of the sheriff's sale, the majority opinion for the Third District noted the IMFL did not specifically provide for postjudgment interest for the period between the foreclosure judgment and the sheriff's sale. *Id.* ¶ 17, 4 N.E.3d 580. According to the majority:

"Postjudgment interest is not specifically referenced, or even implied, in the statutory sections that address the foreclosure judgment itself (735 ILCS 5/15-1506 (West 2012)), the sheriff or judicial sale (735 ILCS 5/15-1507 (West 2012)), the report of and confirmation of that sale (735 ILCS 5/15-1508 (West 2012)), or the application of the sale proceeds (735 ILCS 5/15-1512 (West 2012)). Postjudgment interest, however, is addressed in the statutory section on redemption (735 ILCS 5/15-1603 (West 2012)). Under that section a person who redeems the property within the redemption period must pay postjudgment interest for the period from the date of the foreclosure judgment to the date of

redemption at the contract interest rate provided for in the mortgage documents or loan agreement. 735 ILCS 5/15-1603(d)(1)(vi) (West 2012)." *Id.*

However, the majority noted the IMFL states the provisions of article II of the Procedure Code apply to the IMFL "to the extent that those provisions are not contrary to the provisions of the [IMFL]." *Id.* ¶ 18, 4 N.E.3d 580. See 735 ILCS 5/15-1107(a) (West 2012). According to the majority:

"Section 2-1303 of the [Procedure] Code provides that '[j]udgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied.' 735 ILCS 5/2-1303 (West 2012). Thus, the question in this case becomes whether the foreclosure judgment was a judgment as referenced in section 2-1303 of the [Procedure] Code, upon which postjudgment interest could be collected. *The answer to that question, as framed by the parties' arguments in this case, is controlled by whether the judgment of foreclosure is a final and appealable judgment.*" (Emphasis added.) *Id.*

¶ 27 The majority noted, as a general rule, foreclosure judgments are not final and appealable. *Sharlow*, 2014 IL App (3d) 130107, ¶ 19, 4 N.E.3d 580. These judgments neither resolve all issues between the parties nor terminate the litigation. *Id.* Instead, the trial court's order confirming the sale and approving the proposed distribution of the sale proceeds constitutes the final and appealable judgment in a foreclosure case. *Id.* However, the majority

noted a judgment of foreclosure is appealable if it contains a Rule 304(a) finding that there is no just reason to delay enforcement or appeal. *Id.*

¶ 28 Because the foreclosure judgment in *Sharlow* contained Rule 304(a) language, the majority held the "plaintiff was entitled to collect postjudgment interest from the date of the foreclosure judgment until the date of the sale." *Id.* ¶ 20, 4 N.E.3d 580. However, in a footnote, the majority in *Sharlow* specifically stated it was taking no position on "whether [the] plaintiff's collection of interest from the date of the foreclosure judgment to the date of the sheriff's sale would have been proper without the addition of a Rule 304(a) finding in the foreclosure judgment." *Id.* ¶ 20, n.4, 4 N.E.3d 580.

¶ 29 The situation in this case is distinguishable from *Sharlow* because the judgment of foreclosure here did not contain a Rule 304(a) finding. Even with the Rule 304(a) finding, Justice O'Brien dissented in *Sharlow*, stating:

"Pursuant to the statute on judgment interest, interest shall be computed and charged only on the unsatisfied portion of the judgment. 735 ILCS 5/2-1303 (West 2010).

In a mortgage foreclosure case, there is no determination about whether there is an outstanding judgment until such time as the mortgaged property is sold in accordance with the mortgage foreclosure statute. See 735 ILCS 5/15-1508(b)(2) (West 2010) (it is the order confirming sale that may provide for a personal judgment against any party for a deficiency). Only after the sheriff's sale can it be determined whether the debt will be satisfied or whether there is some portion that remains due and owing to the

mortgagee to which postjudgment interest can be applied. See *Standard Bank & Trust Co. v. Callaghan*, 215 Ill. App. 3d 76[, 574 N.E.2d 711] (1991); see also *Thatch v. Missouri Pacific R.R. Co.*, 69 Ill. App. 3d 48[, 386 N.E.2d 1180] (1979) (a defendant should not be held responsible for a judgment and its accrued interest until the extent of that liability is settled)."
Id. ¶¶ 28-29, 4 N.E.3d 580 (O'Brien, J. dissenting).

¶ 30 Based on the facts and circumstances in this case, a decision allowing Grason to walk away from a foreclosure without a deficiency judgment and receive a windfall of almost \$300,000 would be both unjust and absurd.

¶ 31 Pursuant to the terms of the order for judgment of foreclosure and sale, the trial court appropriately distributed the sale proceeds. The order for judgment of foreclosure and sale included the following finding by the trial court:

"The allegations of Plaintiff's complaint are true substantially as set forth, and the equities in the cause are with Plaintiff, and *Plaintiff is entitled to the relief prayed for in the complaint including foreclosure of said mortgage upon the real estate described therein in the amount of the Total Balance Due, as found above, together with interest thereon at the statutory judgment rate after the entry of this judgment and additional advances, expenses, and Court costs, including publication costs and expenses of sale.*

* * *

[1(c)] In the event the Plaintiff is a purchaser of the mortgaged real estate at such sale, the Plaintiff may offset against the purchase price of such real estate the amount due under the judgment for foreclosure and the order confirming the sale."

(Emphasis added.)

As for the proceeds of the foreclosure sale, the judgment of foreclosure stated:

"[4(e)] If Plaintiff is the successful bidder at said sale, the amount due the Plaintiff, plus all costs, advances and fees hereunder with interest incurred between entry of judgment and confirmation of sale shall be taken as a credit on its bid."

¶ 32 HSBC's bid must be considered in relation to the terms of the judgment of foreclosure. According to section 15-1506(i)(2) of the IMFL (735 ILCS 5/15-1506(i)(2) (West 2012)):

"Upon the entry of the judgment of foreclosure, the rights in the real estate subject to the judgment of foreclosure of (i) all persons made a party in the foreclosure and (ii) all nonrecord claimants given notice in accordance with paragraph (2) of subsection (c) of section 15-1502, shall be solely as provided for in the judgment of foreclosure and in this Article."

In addition, section 15-1507(b) of the IMFL (735 ILCS 5/15-1507(b) (West 2012)) provides:

"Upon expiration of the reinstatement period and the redemption period in accordance with subsection (b) or (c) of Section 15-1603 or upon the entry of a judgment of foreclosure after the waiver of

all rights of redemption, except as provided in subsection (g) of Section 15-1506, the real estate shall be sold at a sale as provided in this Article, on such terms and conditions as shall be specified by the court in the judgment of foreclosure. A sale may be conducted by any judge or sheriff."

¶ 33 It would not be just to ignore the fact HSBC's bid was made based on the terms of the foreclosure judgment, which allowed its bid to be offset by the foreclosure judgment amount, postjudgment expenses, and statutory postjudgment interest accruing from the entry of the judgment of foreclosure. HSBC states in its brief:

"If it was improper to allow the post-judgment interest to augment the judgment for determining the amount received in the bid, it is not proper to consider that amount the correct [sic] for determining the value of the property. If there were any error, the cure would be one more time to vacate the sale, re-calculate the judgment amount, conduct a new sheriff auction, where the new value of the judgment could be bid, and that bid will once again prevail."

We agree.

¶ 34 As the Second District noted recently in *Bank of America, N.A. v. Higgin*, 2014 IL App (2d) 131302, ¶ 22, 19 N.E.3d 199, "in a typical case, a postsale challenge to a foreclosure-judgment term might raise issues of fairness, as a party might have relied on that term in bidding." Here that is especially true, where the mortgagor made a full-credit bid, no cash

changed hands, and Grason's position would result in a windfall. Grason has not made a mortgage payment for seven years, throughout this protracted litigation.

¶ 35 Grason fails to argue the foreclosure sale in this case or the distribution of sale proceeds did not conform to the trial court's judgment of foreclosure and sale. Further, Grason makes no argument to this court the terms of the judgment of foreclosure should have been modified prior to the foreclosure sale or the confirmation of sale. Understandably, Grason does not want to have another foreclosure sale as he could potentially be saddled with a deficiency judgment. In fact, in his reply brief, he states he "is not seeking the effect of setting aside the sale nor seeking to vacate judgment." However, the sale was held pursuant to the terms of the judgment of foreclosure, and HSBC's bid was placed pursuant to the terms of the judgment of foreclosure. Because Grason neither argues the trial court should have modified the terms of the judgment of foreclosure nor argues the trial court failed to follow the terms of the judgment of foreclosure nor requests we vacate the foreclosure sale, we will not disturb the trial court's distribution of the sale proceeds in this case.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated above, we affirm the trial court's order distributing the proceeds of the foreclosure sale.

¶ 38 Affirmed.