STATE OF ILLINOIS ARDC No.: 6311207

COUNTY OF ROCK ISLAND

IN THE CIRCUIT COURT OF THE 14TH JUDICIAL CIRCUIT,

ROCK ISLAND COUNTY, ROCK ISLAND, ILLINOIS

|  |  |
| --- | --- |
| U.S. BANK NATIONAL ASSOCIATION |  |
| Plaintiff, | Case No. 16 CH 295 |
| vs. |  |
| Property Address:  514 E 22ND AVE A  COAL VALLEY, IL 61240 |
| TODD CAULKINS A/K/A TODD W. CAULKINS, VALERIE CAULKINS A/K/A VALERIE M. CAULKINS, UNKNOWN OWNERS AND NON-RECORD CLAIMANTS |  |
| Defendant(s). |  |

**PLAINTIFF’S MOTION TO AMEND THE ORDER APPROVING SALE ENTERED DECEMBER 7, 2017, *NUNC PRO TUNC***

NOW COMES the Plaintiff, U.S. BANK NATIONAL ASSOCIATION, by and through its attorney, MARINOSCI LAW GROUP, P.C., and moves this Court to amend the Order Approving Report of Sale and Distribution, Confirming Sale and Order of Possession entered on December 7, 2017, *nunc pro tunc*, and in support thereof, states as follows:

**BACKGROUND**

1. Plaintiff obtained a judgment for foreclosure in the above captioned action on August 14, 2017.
2. Subsequently, Plaintiff held a judicial sale on November 14, 2017.
3. Said sale resulted in the highest bidder being a third party, to wit, First Financial Group, LLC for the winning bid of $69,763.00.
4. A report of sale evidencing the same was presented to the court for its approval when Plaintiff presented its motion to confirm sale on September 14, 2017.
5. Through inadvertence, the order that was presented for the court to execute on December 7, 2017 incorrectly recited that the winning bidder was Plaintiff, not the highest bidder First Financial Group, LLC, as was supported by the Report of Sale. Furthermore, because the order presented incorrectly listed the Plaintiff as the winning bidder, the order omitted language that the proceeds of the sale should be remitted to Plaintiff, in accordance with the Report of Sale.

**ARGUMENT**

Plaintiff seeks for this court to amend its order confirming sale, nunc pro tunc, to conform its order to the proofs presented to the Court. The purpose of a nunc pro tunc order is to correct the record of judgment, not to alter the actual judgment of the court. *Beck v. Stepp*, 144 Ill.2d 232 (1991). A nunc pro tunc order may not be used to supply omitted judicial action, to correct judicial errors under the pretense of correcting clerical errors, or to cure a jurisdictional defect. *Id*. Nunc pro tunc orders must be based upon definite and precise evidence in the record. *Id*.

Plaintiff recognizes that the order confirming sale, which constitutes a final order in a mortgage foreclosure case, was entered more than 30 days ago. However, it has long been recognized that a court has the inherent power to enter an order nunc pro tunc at any time to correct a clerical error or a matter of form. *Dauderman v. Dauderman*, 263 N.E.2d 708 (5th Dist. 1970).

In the instant case, the evidence in the record at the time of, and the documentation presented with, Plaintiff’s motion to confirm the sale affirmatively demonstrated that the true highest bidder was not Plaintiff, but rather was First Financial Group, LLC. The order entered should have been one that memorialized that First Financial Group, LLC was the winning bidder, and as such, the proceeds of the sale should be remitted to Plaintiff. Plaintiff has attached a proposed corrected order amending the sale which it seeks to enter, nunc pro tunc, to December 7, 2017 (**Exhibit A**).

WHEREFORE, Plaintiff prays that this Court:

1. Amend the Order Approving Report of Sale and Distribution, Confirming Sale and Order of Possession entered on December 7 2017, *nunc pro tunc*, to reflect that First Financial Group, LLC was the highest bidder and as such, the proceeds of the sale should be released to Plaintiff.
2. Grant any further relief the Court deems just and equitable.

|  |  |
| --- | --- |
|  | Respectfully submitted,  SHAUN CALLAHAN    By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Shaun Callahan  Attorney, Marinosci Law Group, P.C.  ARDC #: 6296022 |

MARINOSCI LAW GROUP, P.C.

134 N. LaSalle Street, Suite 1900

Chicago, IL 60602

Telephone: 312-940-8580

Fax: 401-234-5130

[mlgil@mlg-defaultlaw.com](mailto:mlgil@mlg-defaultlaw.com)