
**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
MORTGAGE FORECLOSURE/MECHANICS LIEN SECTION**

MTGLQ INVESTORS, L.P.,

Plaintiff,

v.

AMOBİ EKWUEME; SUNNY OKORO;
CITY OF CHICAGO,

Defendants.

Case Number: 2023 CH 04428

Calendar 60

Honorable Debra A. Seaton,
Judge Presiding

Property Address

5257 West Fulton Street
Chicago, Illinois 60644

MEMORANDUM OPINION AND ORDER

DEBRA A. SEATON, Circuit Judge:

Before the Court is Defendant SUNNY OKORO's ("Okoro") Motion to Strike Plaintiff MTGLQ INVESTORS, L.P.'s ("MTGLQ") Affidavit of Anna Milan ("Milan") ("Milan Affidavit"). Defendant's Motion to Strike the Affidavit is hereby DENIED for the following reasons. However, the Milan Affidavit is hereby *sua sponte* STRICKEN in its entirety from the record. Plaintiff's Judgment Motions are all hereby DENIED without PREJUDICE.

I. BACKGROUND

On May 15, 2006, Defendant Amobi Ekwueme ("Ekwueme") solely executed a promissory note ("Note") in the amount of \$337,500.00 secured by a mortgage

("Mortgage"). The Mortgage was also signed only by Ekwueme on the property located at 5357 West Fulton Street in Chicago, Illinois ("the Property").

On March 22, 2009, Ekwueme quitclaimed title to the Property to herself and Defendant Sunny Okoro. However, Okoro did not sign the Note nor the Mortgage encumbering the property. Shortly thereafter, on August 7, 2009, Ekwueme signed a Loan Modification Agreement ("Modification Agreement") that adjusted the unpaid principal balance, interest to be charged, and the monthly payment amount. In signing the agreement, Ekwueme, as the Borrower, promised to pay the unpaid principal balance, plus interest, to the order of the Lender. Notwithstanding, Okoro's signature also appears on the Modification Agreement. However, he is not listed or named as a Borrower. There are no written reasons provided as to why Okoro signed the Modification Agreement.

The Note allegedly went into default for a missed payment on June 1, 2014. Borrower allegedly missed payments thereafter as well. Pursuant to Paragraph 22 of the Mortgage, MTGLQ was required to deliver proper notice to the Borrower to inform her of her various rights that exist under the Mortgage.

Nearly a decade later, in a letter dated March 28, 2023, Shellpoint Mortgage Servicing, the servicer of the loan acting on behalf of MTGLQ, sent Ekwueme presuit notice of default and intent to accelerate with an amount due of \$388,412.92. The letter explicitly declared that if the default was not cured on or before May 2, 2023, Ekwueme's ownership of the property could be terminated.

On May 4, 2023, Plaintiff filed its initial Complaint to foreclose on the property. Both Ekwueme and Okoro were named as defendants in the lawsuit. The Complaint alleges that Borrower failed to pay the monthly installment due on June 1, 2013, and the installments thereafter. The Complaint further alleges that the total due for Principal and Interest is \$550,871.84. Plaintiff attached as exhibits to its Complaint a copy of the Mortgage, Note and Loan Modification Agreement.

On March 28, 2024, Okoro filed his Answer and Affirmative Defenses. Shortly thereafter, on April 2, 2024, Plaintiff filed its Motion to Strike Okoro's Affirmative Defenses. Okoro timely responded to this Motion on May 20, 2024. Plaintiff timely filed its Reply in Support of the Motion on June 5, 2024.

On the same day Okoro filed his Response, he filed a Motion to Strike the Mailing Affidavit. Plaintiff timely responded to that Motion on May 22, 2024. Okoro timely filed his Reply on June 20, 2024. The Court issued a Memorandum Opinion and Order on July 15, 2024, in which it struck with prejudice both of Okoro's Affirmative Defenses and denied with prejudice Okoro's Motion to Strike the Mailing Affidavit.

Several months thereafter on December 9, 2024, Okoro filed his new Motion to Strike the Affidavit of Anna Milan alleging Plaintiff's failure to comply with Illinois Supreme Court Rule 191 and Illinois Supreme Court Rule 113. Plaintiff timely filed its response to this Motion on December 19, 2024. Okoro timely filed his Reply in Support of the Motion on January 28, 2025.

The Court, after reading the Motion, Response, and Reply, set a hearing on the Motion for February 19, 2025. At the hearing, counsels for both movant and respondent chose to rest on their briefs and not orally argue the Motion. The Court entered an Order on February 19, 2025, taking the Motion under advisement for the issuance of a written ruling and entered and continued Plaintiff's Judgment Motions generally. The Court's ruling is as follows.

II. LEGAL STANDARD

Okoro now moves the Court to strike the Milan Affidavit for non-compliance with Illinois Supreme Court Court Rules 191 and 113. When a court rules on a motion to strike, "only the tainted portions" of an affidavit should be stricken and any portions that comply with Rule 191(a) should be preserved. *Murphy v. Urso*, 88 Ill. 2d 444, 463 (1981). Strict compliance with Rule 191(a) is necessary to ensure that the Court is presented with valid evidentiary facts upon which to make a decision. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 338-39 (2002). "[U]nsupported assertions, opinions, and self-serving or conclusory statements do not comply with Rule 191(a)." *Jones v. Dettro*, 308 Ill. App. 3d 494, 499 (4th Dist. 1999). Rule 191(a) asserts that all documents supporting an affidavit must be attached and the failure to attach the document is fatal. *Preze v. Borden Chem., Inc.*, 336 Ill. App. 3d 52, 57 (1st Dist. 2002). "Affidavits in support of (***) a motion for summary judgment (***) shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto." Ill. S. Ct. R. 191(a).

III. ANALYSIS

Before the Court is a question of whether the Milan Affidavit should be stricken.

A. Okoro's Motion to Strike

Okoro now moves this Court to Strike the Mailing Affidavit of Anna Milan pursuant to Illinois Supreme Court Rules 113 and 191. First, Okoro asserts that Milan's Affidavit should be stricken as a result of her failure to identify any "books, records, and/or other documents in addition to the payment history that the affiant reviewed and/or relied upon in drafting the affidavit." Ill. Sup. Ct. R. 113. Okoro's argument is predicated on the fact that Milan actively referred to relied upon documents in a general sense, using general descriptors such as "data compilations" and "any other document" rather than explicitly identifying the records.

Second, Okoro contends that the payment history falls short of being complete. The loan was issued on April 10, 2006, and the alleged default occurred on June 1, 2013; however, the payment history attached to Milan's affidavit begins on July 10, 2015. Okoro argues that this is problematic as this partial payment history is insufficient to properly calculate the actual amount due and owing. Okoro asserts that this is in direct violation of Rule 113. Rule 113 requires the plaintiff to "submit an affidavit in support of the amounts due and owing under the note when they file any motion requesting judgment of default against a mortgagor or judgment of foreclosure." *Id.*

Lastly, Okoro avers that Milan's failure to attach sworn or certified copies of requisite documents infers that any statement by her is conclusory rather than being grounded on "facts admissible in evidence." Ill. Sup. Ct. R. 191. Okoro notes that Milan has openly and outwardly relied on particular documents to reach conclusions. However, she has failed to attach such certified documents. Okoro relies on case law to support his argument that conclusory statements without sufficient evidence are insufficient to comply with Rule 191.

Plaintiff, in its Response to the Motion, first asserts that Okoro lacks standing to bring this Motion to Strike, or to raise any other issue for that matter. Plaintiff buttresses its argument with supporting case law to prove that Okoro is neither a third party beneficiary, nor does he qualify as a borrower, thus barring him from raising any affirmative defenses and bringing any motions with regard to this matter.

Plaintiff maintains that the Affidavit of Anna Milan *does* comply with all applicable Supreme Court Rules. Plaintiff asserts that Milan is fully competent and has the capacity to testify to the attached documents and statements. She also possesses requisite personal knowledge as required by Supreme Court Rule 191. Plaintiff also argues that it has properly laid the foundation to introduce the attached documents as business records pursuant to Illinois Supreme Court Rule 236. Milan is more than merely familiar with these records and the records were made during the ordinary course of business at or near the time of the event. Ill. Sup. Ct. R. 236.

Plaintiff additionally argues that it has complied with Supreme Court Rule 113. Rule 113 merely requires “substantial” compliance in “adopting the appearance and content of the form provided in the Article II Forms Appendix.” Ill. Sup. Ct. R. 113. Plaintiff argues that it has sufficiently provided the requisite documents needed to prove up the amounts due and owing. The documents attached to the Affidavit do not have to be sworn or certified because they have been incorporated into the *sworn* Affidavit of Milan. Lastly, Plaintiff notes that Okoro has effectively admitted to the default (1) he has failed to dispute that the loan had gone into default, and (2) he did not file a counter-affidavit.

Before the Court may actually entertain the arguments presented, the Court must revisit a previously adjudicated matter—standing. Turning to the issue of standing, this Court, in its July 18, 2024, Memorandum Opinion and Order, ultimately found that Sunny Okoro lacked standing to bring his Affirmative Defenses. Mem. Op. Ord. 22, Jul. 18, 2024. The Court maintains this finding and concludes that Okoro lacks standing to bring his Motion to Strike the Milan Affidavit.¹

There is no question that Okoro has an *interest* in the property. However, this does not rise to the level of having standing for the purposes of raising issues involving the instant affidavit. The fact that Okoro is a necessary party in the lawsuit does not confer in him the right to raise issues either. *See Glisson v. City of*

¹ For further clarification as to the standards applicable under Illinois Law, please see a prior Opinion issued by Judge William B. Sullivan in this cause attached hereto as Exhibit A. *See MTGLQ Investors, L.P. v. Ekqueme*, No. 2023-CH-04428, 8-18 (Cir. Ct. Cook County, July 18, 2024).

Marion, 188 Ill. 2d 211, 231 (1999) (“[A] party cannot gain standing merely through a self-proclaimed interest or concern about an issue, no matter how sincere.”).

The Property that is the subject of this lawsuit was quitclaimed by Ekwueme to herself and Okoro in March of 2009. It is “elementary property law that a quitclaim deed will convey whatever title or interest the grantor may have in the land at the time it is given and only such title and interest.” *In re Didier*, 318 Ill. App. 3d 253, 261 (1st Dist. 2000). Bearing this in mind, and considering that the property was encumbered by the Mortgage at the time of the conveyance, Okoro’s interest, too, was encumbered by MTGLQ’s interest in the property. 27A I.L.P. *Mortgages* § 122 (2017) (“The grantees of mortgaged property taking under a deed specifying that the property is subject to a mortgage take title subject to the mortgage and to the mortgagee’s prior rights to rents and profits pledged in the mortgage.”).

Privity exists between co-defendants, Ekwueme and Okoro. However, no such privity exists between Okoro and MTGLQ. Privity is defined as a “[m]utual or successive relationship to the same rights of property (***) or such an identification of interest of one person with another as to represent the same legal right (***) thus the executor is in privity with the testator, the heir with the ancestor, the assignee with the assignor,” *etc.* Black’s Law Dictionary, 1078 (5th Ed. 1979). Because there is no privity, and Okoro is merely a third party with an interest in the property, Okoro lacks standing with regards to raising issues pertaining to contractual

obligations, or other issues that may arise between the lender and the borrower. Okoro is not a party to the contracts in question (*i.e.*, the Mortgage and the Note).

Whether Okoro is a possessor in interest, third party beneficiary, or mortgagor is of no import. *Wilfong v. L.J. Dodd Construction*, 401 Ill. App. 3d 1044, 1057 (2nd Dist. 2010) (“[T]he contract’s language must show that the contract was made for the direct benefit of the third person, and not just for the incidental benefit of that person”); *Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill. App. 3d 1017, 1020, 905 (3rd Dist. 2009) (“Such an intention must be shown by an express provision in the contract identifying the third-party beneficiary by name or by description of a class to which the third party belongs.”). At the most rudimentary level, Okoro is not a borrower; therefore, he has no standing to raise any issues in this suit.

Okoro’s lack of standing is dispositive in this Motion to Strike. Accordingly, Okoro’s Motion is DENIED.

B. Defects in the Milan Affidavit

Although Okoro lacks standing to raise issues pertaining to the Milan Affidavit, glaring mistakes will not be overlooked. Pursuant to Calendar 60’s Standing Order, “Dispositive motions brought pursuant to Illinois Code of Civil Procedure sections 2-1005, 2-619, and 2-301(b) or section 15-1506 of the Illinois Mortgage Foreclosure Law will be screened for strict compliance with Illinois Supreme Court Rules 113, 191, 236, and/or 803(6), as required.” Amended and Restated Standing Order, Calendar 60, § 12(m) (Feb. 19, 2025) (emphasis added).

This Court can and *will* review the Milan Affidavit *sua sponte* to determine whether Plaintiff has strictly complied with Illinois Supreme Court Rules 113 and 191. *Id.*; *Essig v. Advocate BroMenn Medical Center*, 2015 IL App (4th) 140546, ¶56 (“[The Court] can—and should—*sua sponte* strike affidavits that are insufficient under Rule 191(a).”).

Both Illinois Supreme Court Rules 113 and 191 are relevant and necessary to the practices and equitable procedures of the Illinois Mortgage Foreclosure Law. Rule 113 provides guidance as to the required documents that should be attached to initial mortgage foreclosure complaints and prove up affidavits. Rule 113 requires all plaintiffs seeking a judgment of foreclosure to attach and submit “an affidavit in support of the amounts due and owing under the note when they file any motion requesting a judgment of default against a mortgagor or a judgment of foreclosure.” Ill. Sup. Ct. R 113. Rule 113 requires the affiant to show that they possess personal knowledge and are sufficiently familiar with the business and its standards of operations, as well as “[identifying] books, records, and/or other documents in addition to the payment history that the affiant reviewed and/or relied upon in drafting the affidavit.” *Id.* Lastly, Rule 113 requires the affidavit to contain any and all evidence, “as may be necessary, in connection with the party’s right to enforce the instrument of indebtedness.” *Id.* “The payment history must be attached to the affidavit in only those cases where the defendant(s) filed an appearance or responsive pleading to the complaint for foreclosure.” *Id.*

Illinois Supreme Court Rule 191 governs affidavits submitted in connection with a Motion for Summary Judgment under Section 2-1005 of the Code of Civil Procedure. Such affidavits,

[S]hall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of ***all documents*** upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto. Ill. Sup. Ct. R. 191. (emphasis added)

Rule 191 requires affiants to include all documents relied upon and does not permit conclusory statements Rule 191 requires the affiant to provide admissible evidence as a matter of law because Plaintiff is moving for summary judgment under Section 2-1005.

Plaintiff MTGLQ has failed to comply with both Rule 113 and Rule 191. Milan did not attach a *full* and *complete* payment history to her affidavit. Okoro filed his Answer on March 28, 2024. Therefore, the affidavit had to include the entire payment history and not just a portion thereof.² Ill. Sup. Ct. R. 113 (“The

² The question before the Court is: What is the interpretation of “the payment history” under Rule 113? Courts interpret Illinois Supreme Court Rules the same way they interpret statutes, by their plain and ordinary meaning. See *Xcel Supply LLC v. Horowitz*, 2018 IL App (1st) 162986, ¶36 (“When interpreting a supreme court rule, [courts] are governed by the same rules that govern statutory interpretation.”); *Midwest Sanitary Service v. Sandberg*, 2022 IL 127327, ¶24 (“When interpreting statutory language, we are to give effect to the plain and ordinary meaning, avoiding absurd, unreasonable, unjust, or inconvenient results. In determining the plain and ordinary meaning of a statute, we must consider the statute in its entirety, the subject addressed, and the apparent intent of the legislature when it enacted the statute. Unless the words are defined within the statute itself, they will be interpreted as taking their ordinary, contemporary, common meaning. Courts may find words’ ordinary, contemporary, common meaning by looking at what they meant when the statute was enacted, which is often by referencing dictionaries.” (internal citation and quotations omitted)). So, this Court must determine if “the payment history” under Rule 113 means the payment history in its entirety or some subset thereof. The Court holds that the language does not indicate, by any measure, that only partial payment history is sufficient, especially under circumstances that require Plaintiff to prove that a default has occurred. The only way to accomplish this is by looking at the whole picture—the loan’s *entire* history.

payment history *must* be attached to the affidavit in only those cases where the defendant(s) filed an appearance or responsive pleading to the complaint for foreclosure.” (emphasis added)). In *Deutsche Bank v. Barrera*, the trial court granted summary judgment to the defendant as a result of the plaintiff’s failure to attach a complete payment history to prove default. *Deutsche Bank National Trust Co. v. Barrera*, 2020 IL App (3d) 180419, ¶16. The *Barrera* court ultimately held that the plaintiff’s failure to present “sworn testimony” as to when it received Barrera’s payments to reinstate the loan was dispositive in this action. *Id.* ¶15. The Appellate Court affirmed this judgment. *See Barrera*, 2020 IL App (3d) 180419.

Following the analogous reasoning of the court in *Barrera*, its reliance on Illinois Supreme Court Rules 113 and 191, and applying it to the facts at hand, the Court finds Plaintiff has failed to attach a full payment history. This is dispositive as to its Motion for Summary Judgment. Plaintiff’s efforts to prove that an initial default occurred are deficient, as the attachments provided alongside the Milan Affidavit not only exclude the loan history at the time of the alleged default, but exclude over 9 years of data and information dating back to the inception of the loan. This goes contrary to the requirements set by Rule 113. Ill. Sup. Ct. R. 113.

MTGLQ has also failed to provide the requisite admissible evidence as required pursuant to Rule 191. Rule 191 requires attaching *all* documents upon which the affiant relied in drafting the affidavit. Ill. S. Ct. R. 191(a). This Court does not question Anna Milan’s personal knowledge as it relates to MTGLQ’s business operations. However, the Court takes note of the conclusory statements

made without proper evidentiary support and identification of the documents relied upon by Milan in her assessment of the loan's history. Personal knowledge and competency are not mutually exclusive. Here, sheer personal knowledge is not sufficient to satisfy the competency requirement under Rule 191. Milan's assertions are wholly unsupported based upon the cursory documents submitted alongside her Affidavit. Milan cannot accurately attest to the amounts due and owing. In order for her to make the assertion that the loan has gone into default, to attest that the payments were missed, or to accurately calculate the amounts due, such statements necessarily require reliance on *some* sort of documentation. No such documentation has been attached to her Affidavit, making her statements merely conclusory according to Rule 191. Ill S. Ct. R. 191. This Court is left to draw the conclusion that if called as a witness, Milan would be entirely incompetent to testify to the alleged amount due since she has failed to provide supporting evidentiary documents which are the requisite foundation for her statements. Such a defect is fatal to Plaintiff's argument. *Preze*, 336 Ill. App. 3d at 57.

Just as Milan may not draw conclusory statements in her affidavit, neither can this Court conclude based on the record or mere inferences that a default has occurred. This Court may only consider what exists within the affidavit itself. Milan's perfunctory efforts in preparing the Affidavit and attaching its exhibits omits nearly a decade's worth of loan information from the submitted "loan history." What else lies within the rest of the record is "utterly irrelevant" for the purposes of analyzing this Affidavit. *Lucasey v. Plattner*, 2015 IL App (4th) 140512, ¶21.

MTGLQ has not provided sufficient information to prove that they are entitled to judgment as a matter of law.

Aside from MTGLQ's glaring omissions, the Court draws attention to Plaintiff's misstatement of Illinois law. In its Response to the Motion, MTGLQ states, more than once, that they are merely "substantially" required to adopt the content of the form provided in Article II of Rule 113. Illinois is a *strict* compliance state. *Clemons v. Nissan North Am., Inc.*, 2013 IL App (4th) 120943, ¶36 ("Strict compliance with Rule 191(a) is *required* to ensure the trial court is presented with valid evidentiary facts on which to base a decision." (emphasis added)). Plaintiff distorts the meaning of "substantial" as it relates to Rule 113. "Substantial" is merely in regards to flexibility in following the structure of the form affidavit. The term "substantial" does not permit Plaintiff to disregard the requirements for prove-up affidavits as outlined within Rule 113 itself. Neither does Rule 191 permit Plaintiff to substantially comply either. Rule 191 in fact requires attaching *all documents* relied upon in order for the affiant to competently testify thereto.

This Court must strike the Milan Affidavit in its entirety for failure to strictly comply with Illinois Supreme Court Rules. Its numerous defects have proven fatal. Such defects thoroughly taint the Affidavit as a whole. There is nothing left for this Court to salvage. Accordingly, the Milan Affidavit is hereby STRICKEN in its entirety by the Court *sua sponte*.

C. MTGLQ's Judgment Motions

Plaintiff's Judgment Motions were entered and continued generally. Because the Court has *sua sponte* stricken the Milan Affidavit from the record herein, the Court now turns to analyze Plaintiff's Judgment Motions. In its Judgment Motions, MTGLQ asserts that it is entitled to judgment as a matter of law on its foreclosure claim as there exists no genuine issue of material fact. For the reasons discussed *infra*, the Court disagrees and denies Plaintiff's Judgment Motions.

The Court's *sua sponte* striking the Milan Affidavit for noncompliance with Illinois Supreme Court Rules 191 and 113 is also dispositive in Plaintiff's Motion for Summary Judgment and Motion for Entry of Judgment of Foreclosure and Sale. Plaintiff has failed to produce *any* evidence. While it is true that a plaintiff need not prove the merits of the case at summary judgment, it is commonly understood that *some* evidence in support of the motion must be presented. *Calhoun v. Belt Ry. Co.*, 314 Ill. App. 3d 513, 517 (1st Dist. 2000). MTGLQ's Judgment Motions, without the Milan Affidavit or other evidence to prove up the amounts due and owing, cannot establish the requisite liability and damages pertinent to obtaining such relief.

Plaintiff's Motion for Summary Judgment and Motion for Entry of Judgment of Foreclosure and Sale lack the support of an affidavit pursuant to Illinois Supreme Court Rules 191 and 113.

MTGLQ's Judgment Motions are all hereby DENIED without prejudice. They lack support to substantiate any of its claims as a matter of law.

IV. CONCLUSION

For the reasons mentioned above, Okoro's Motion to Strike the Milan Affidavit is hereby DENIED for lack of standing. The Milan Affidavit is STRICKEN in its entirety by the Court *sua sponte* for failure to comply with Illinois Supreme Court Rules 113 and 191. Plaintiff's Judgment Motions are DENIED without PREJUDICE.

THEREFORE, FOR THE AFOREMENTIONED REASONS, THE COURT HEREBY ORDERS AS FOLLOWS:

- (1) Okoro's Motion to Strike the Milan Affidavit is DENIED;
- (2) The Milan Affidavit is STRICKEN in its entirety by the Court *sua sponte*; and
- (3) Plaintiff's Judgment Motions are all DENIED without PREJUDICE.

IT IS SO ORDERED.

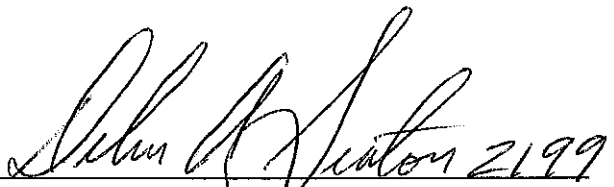
Date: March 6, 2025

ENTERED:

Judge Debra Ann Seaton

MAR 06 2025

Circuit Court - 2199


Honorable Debra A. Seaton
Cook County Circuit Judge

ORDER PREPARED BY THE COURT
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