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

Specialized Loan Servicing LLC,

Plaintiff,

v.

Toru Hashinoguchi; Unknown Owners
and Non-Record Claimants;

Defendants.

Case Number: 2023 CH 04139

Calendar 60

Honorable William B. Sullivan,
Judge Presiding

Property Address:

2448 West Estes Avenue, 1
Chicago, IL 60645

MEMORANDUM OPINION AND ORDER

WILLIAM B. SULLIVAN, Circuit Judge:

Before the Court is a Motion to Dismiss pursuant to 735 ILCS 5/2-615 (“Motion”) raised by KEI ZEMLICKA (“Kei”), as independent administratrix of the estate of AI HASHINOGUCHI (“Ai”). For the following reasons, the Motion is hereby DENIED.

I. BACKGROUND

Plaintiff SPECIALIZED LOAN SERVICING LLC (“SLS”) filed the Complaint in this cause to Foreclose Financing Statement in the Nature of Mortgage (the “Complaint”) on April 26, 2023, against Defendant TORU HASHINOGUCHI (“Toru”). The cooperative Park Gables Apartment Homes, Inc. (the “Co-Op”) owns the property in question that is located at 2448 West Estes Avenue, 1 in Chicago, Illinois 60645 (the “Property”). Toru and his daughter Ai were joint tenants for the Property and jointly hold 112 common shares of stock in the Co-Op. The Share

Certificate was signed on May 3, 2007. A Proprietary Lease was entered into by the Co-Op as the Lessor and Toru and Ai as the Lessees on May 7, 2007. A Note in the amount of \$70,000.00 was signed by Toru on May 7, 2007, and a UCC-1 Financing Statement under Toru's name was recorded on May 22, 2007, which listed the Property as collateral. Toru passed away in 2017, and Kei was appointed the independent administratrix of Toru's estate. The loan security document(s) were later assigned to Plaintiff on February 15, 2019. Payments continued to be made on the loan until December of 2021. Ai passed away in 2023, and Kei Zemlicka was appointed the independent administratrix of Ai's estate. Ai has a surviving minor son, J. R. Additionally, Kei is separately seeking to re-open Toru's estate before the Probate Court.

II. LEGAL STANDARD

A Section 2-615 motion attacks the legal sufficiency of a complaint based on defects apparent on its face. *BMO Harris Bank v. Porter*, 2018 IL App (1st) 171308, ¶ 45. The Illinois Supreme Court has repeatedly noted that Illinois is a fact-pleading jurisdiction. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). Therefore, in order to state a cause of action, a claim must be both legally and factually sufficient, setting forth a legally recognized claim as its basis for recovery, as well as pleading facts which bring the claim within the legally recognized cause of action alleged. *Citicorp Savings of Illinois v. Rucker*, 295 Ill. App. 3d 801, 807 (1st Dist. 1998). While a plaintiff is not required to set forth evidence in the complaint, a plaintiff must allege facts sufficient to bring a claim

within a legally recognized cause of action, not “simply conclusions.” *Porter*, 2018 IL App (1st) 171308, ¶ 46. Therefore, conclusory allegations unsupported by specific facts will not suffice. *Id.* When ruling on a Section 2-615 motion, a court must accept as true all well-pleaded facts in the complaint, as well as all reasonable inferences that may be drawn from those facts. *Id.* ¶ 45. Furthermore, on a motion to dismiss a pleading, courts construe the allegations in the complaint in the light most favorable to the non-moving party. *Marshall*, 222 Ill. 2d at 429. However, this Court need not accept conclusions or inferences that are not supported by specific factual allegations. *Rucker*, 295 Ill. App. 3d at 807. A trial court should only dismiss a count or cause of action if it is readily apparent from the pleadings that there is no possible set of facts that would entitle the plaintiff to the requested relief. *Marshall*, 222 Ill. 2d at 429. The legal question for this Court is whether the allegations in the Plaintiff’s Complaint, when construed in the light most favorable to Plaintiff, are sufficient to establish the causes of action alleged and whether Plaintiff may be entitled to the requested relief.

III. ANALYSIS

Before beginning, the Court must set the record straight. Only parties to an action may bring motions with respect to pleadings in that action. *MidFirst Bank v. McNeal*, 2016 IL App (1st) 150465, ¶ 14. Generally, a person who is not made a party cannot appear in an action unless the appearance is acquiesced to by the plaintiff, or unless the third person makes herself a party by some recognized form of proceeding. *Id.* Since Illinois does not recognize intervention by implication, there

are specific procedures in place for a nonparty who wishes to intervene in a proceeding. *Id.* ¶ 15. While Illinois law recognizes that intervention may be either permissive or as of right, a timely application to intervene must be made regardless. 735 ILCS 5/2-408.

In the case before this Court, Movant Kei is the independent administratrix of Ai's estate. In addition to the Motion, Kei submitted a Memorandum of Law in support of the Motion. However, neither Kei as independent administrator of Ai's estate, nor Ai's estate, was named as a defendant in the Plaintiff's Complaint. Furthermore, while an appearance was filed on behalf of Kei, no timely application to intervene was ever filed by Kei. On April 1, 2024, the Court entered an Order granting SLS leave to amend its Complaint to name Kei as independent administratrix of the Estate of Ai as a party defendant with summons to issue. However, Plaintiff had not amended its Complaint before Kei's instant Motion was filed. While Kei was granted 35 days to file an appearance and answer or otherwise plead to Plaintiff's amended complaint upon filing the amended complaint in the April 1st Order, the initial Complaint was never amended and Kei was not able to answer or otherwise plead to Plaintiff's initial Complaint. Therefore, this Court holds that it lacks jurisdiction over Kei because Kei is not a party to the case. As such, this Court cannot entertain the current Motion and the appearance is stricken as premature. The process for intervention must be followed first in compliance with Illinois law, or Plaintiff must amend its complaint to make Kei a party to the case. As such, Kei's motion is DENIED.

However, the Court does have jurisdiction over Plaintiff as it filed the Complaint and is a party to this action. SLS requested leave to amend its Complaint in its Response to Kei's Motion. Therefore, the Court again orders that Plaintiff is GRANTED leave to amend its Complaint and shall have 28 days from the date of this Opinion and Order to do so.

Finally, the Court must address the inconsistent list of parties that have appeared throughout the documents filed so far in this case. First, the list of defendants in various captions filed with this Court has been inconsistent. For instance, the Motion calls Kei a defendant when she clearly is not. Furthermore, Plaintiff included Kei in the caption of its Response while simultaneously arguing that she is not a party to the lawsuit. At some point in the litigation, the name of the Plaintiff also began to change. The complaint names SLS as Plaintiff; however, beginning on February 6, 2024, Plaintiff filed a Notice of Motion of its Motion to Amend Complaint and to Appoint a Special Representative, therein listing as plaintiff, US Bank Trust National Association, not in its individual capacity but solely as owner trustee for VRMTG Asset Trust. The Court notes that no substitution of party plaintiff order appears in the record. Therefore, the Court *sua sponte* orders that every Order and document entered in this case up until this date is amended on its face to reflect the case caption on the Complaint and the top of this Opinion.

IV. CONCLUSION

As noted previously, Kei's Motion is not ripe for adjudication. Therefore, Kei's Motion is DENIED, and Plaintiff's request to amend its Complaint is GRANTED.

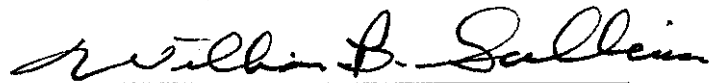
ACCORDINGLY, FOR THE AFOREMENTIONED REASONS, THE COURT HEREBY ORDERS AS FOLLOWS:

- (1) Kei's Motion to Dismiss is hereby DENIED;
- (2) Plaintiff's request to amend the Complaint is hereby GRANTED;
- (3) Plaintiff shall have 28 days from the date hereof to amend its Complaint; and all Defendants shall have 28 days thereafter to answer or otherwise plead to Plaintiff's Amended Complaint; and
- (4) *Sua sponte*, every Order and document entered in this case up until this date is amended on its face to reflect the case caption on the initial Complaint and the top of this Opinion.

IT IS SO ORDERED.

Date: October 29, 2024

ENTERED:



Honorable William B. Sullivan
Cook County Circuit Judge

ORDER PREPARED BY THE COURT
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(312) 603-3894

