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

WBL SPE II LLC, a Delaware limited
Liability company,

Plaintiff,

v.

Thomas Hartford; Marcia R.
Rinkenberger, as Trustee of the
Rinkenberger Family Estate Reduction
Trust dated December 22, 2010; and
Unknown Owners and Non-Record
Claimants,

Defendants.

Case Number: 2018 CH 15689

Calendar 60

Marcia R. Rinkenberger, as Trustee of
The Rinkenberger Family Estate
Reduction Trust dated
December 22, 2010,

Counter-Plaintiff,

v.

WBL SPE II LLC, a Delaware limited
liability company,

Counter-Defendant.

Honorable William B. Sullivan,
Judge Presiding

Marcia R. Rinkenberger, as Trustee of
The Rinkenberger Family Estate
Reduction Trust dated
December 22, 2010,

Third-Party Plaintiff,

v.

World Business Lenders, LLC, a
Delaware limited liability company;
and WBL SPO I LLC, a Delaware
limited liability company,

Third-Party Defendants.

Property Address:

904 Walnut Street,

Western Springs, Illinois 60558

MEMORANDUM OPINION AND ORDER

WILLIAM B. SULLIVAN, Circuit Judge:

Before the Court is Plaintiff/Counter-Defendant WBL SPE II LLC (“SPE”) and Third-Party Defendants WORLD BUSINESS LENDERS, LLC (“World Business”) and WBL SPO I, LLC’S (“SPO”) (collectively, “Movants”), Combined 2-619.1 Motion to Dismiss (“Motion”) as to the Counterclaim and Third-Party Claims (jointly, “Counterclaims”) raised by Defendant/Counter-Plaintiff/Third-Party Plaintiff MARCIA R. RINKENBERGER (“Marcia”), as Trustee of the Rinkemberger Family Estate Reduction Trust dated December 22, 2010, (“Trust”). For the following reasons, the Movants’ Motion is hereby GRANTED.

I. BACKGROUND

On September 22, 2017, Marcia as Trustee of the Trust, purchased the property located at 904 Walnut Street in Western Springs, Illinois (“Property”) for her daughter Kelly Hartford (“Kelly”), who is not a party to this case, and her son-in-law, Defendant THOMAS HARTFORD (“Thomas”), via an arms-length transaction. Marcia, individually and in her capacity as Trustee, executed a notarized Power of Attorney (“POA”) appointing Kelly as her agent for the limited purpose of purchasing the Property so that Marcia would not have to attend the closing. The POA was effective only from September 22, 2017, through October 31, 2017. The Movants and Marcia dispute whether the POA gave Kelly the authority to engage in borrowing transactions on behalf of the Trust. In the POA, attached as Exhibit D to Marcia’s Counterclaims, only Section 1(a) “Real estate transactions” is not crossed out and appears to be the sole power delegated to the attorney-in-fact.

On the other hand, Movants claim that Exhibit E to Marcia's Counterclaims is the correct version of the POA. In Movants' version of the POA, neither Section 1(a) nor Section 1(m) "Borrowing transactions" is stricken, thus allegedly giving the attorney-in-fact power to also engage in borrowing transactions. On October 13, 2017, Kelly allegedly assigned the POA to Thomas ("Assignment of POA"). The Assignment of POA reflects the Movants' alleged POA.

Thomas is the President of Legacy Underground Corporation ("Legacy"), which took out a \$650,000 business loan from World Business on October 13, 2017. On the same day Legacy and Thomas closed on the loan and delivered a Note to World Business, Thomas allegedly executed a mortgage against the Property (the "Mortgage") to secure the loan. Thomas allegedly signed the Mortgage as attorney-in-fact for the Trust via the assignment of the POA, but Marcia argues that she never authorized this borrowing transaction and did not grant any power to Kelly or Thomas to do so.

At some point, Legacy stopped making payments on the loan, and World Business declared Legacy to be in default on May 2, 2018. An assignment of the Mortgage from World Business to SPO took place on June 25, 2018. Another assignment of the Mortgage from SPO to SPE occurred shortly thereafter on July 30, 2018. When Legacy, Thomas, and the Trust allegedly failed to pay off the balance due, SPE filed its Complaint against Thomas and Marcia as Trustee for the Trust on December 19, 2018, which brought this case before the Court.

Legacy was not joined as a defendant to this lawsuit due to a prior bankruptcy filing. On April 25, 2019, Marcia filed an Answer containing affirmative defenses, therein claiming the invalidity of the POA, Assignment of POA, and (as a result) the Mortgage. On November 1, 2023, Marcia filed her Counterclaims against SPE, World Business, and SPO. Movants filed the Motion before the Court today on January 9, 2024. After the Court entered a briefing schedule on the Motion, a Response brief and a Reply brief were timely filed. Following a thorough examination of the Motion and briefs, a hearing before this Court occurred via Zoom on July 16, 2024. Due to the complex factual nature of the case and a variety of legal issues raised in the Motion, briefs, and hearing, the Court took this matter under advisement for the issuance of a written opinion. The Court's ruling follows.

II. LEGAL STANDARD

Under Section 2-619.1 of the Illinois Code of Civil Procedure, “[m]otions with respect to pleadings under Section 2-615 [and] motions for involuntary dismissal or other relief under Section 2-619 (***) may be filed together as a single motion.” 735 ILCS 5/2-619.1. 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 counterclaim 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 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 Marcia’s Counterclaims, when construed in the light most favorable to her, are sufficient to establish the causes of action alleged and whether she would be entitled to the requested relief.

III. ANALYSIS

A counterclaim is not a defense on the merits, but is an independent cause of action in favor of the defendant against plaintiff, which seeks affirmative relief. *Rucker*, 295 Ill. App. 3d at 807. The Court will review each of Marcia’s

Counterclaims in turn to determine if each Counterclaim is sufficient to establish a cause of action entitling Marcia to her requested relief.

A. Marcia's Slander of Title Claims Against
SPE, World Business, and SPO (Counts I, V, and IX)

A counter-plaintiff asserting slander of title bears the burden of proving the following: (1) the counter-defendants made an oral or written, false and malicious publication; (2) that such publication disparaged the counter-plaintiff's title to property; and (3) damages occurred due to such publication. *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 62 (1st Dist. 2009). The counter-plaintiff must also prove that the counter-defendants acted with malice—a question of fact. *Id.* “To prove malice, the plaintiff must show that the defendants knew that the disparaging statements were false or that the statements were made with reckless disregard of their truth or falsity.” *Id.* A counter-defendant acts with reckless disregard if it publishes the allegedly damaging matter with either a high degree of awareness of its probable falsity or serious doubts as to its truth. *Id.* Furthermore, the act of maliciously recording a document that clouds an owner's title to real estate is actionable as slander of title. *Id.* However, if the party who records the document has reasonable grounds to believe that it has title or a claim to the property, such party has not acted with malice. *Id.*

In her Complaint, Marcia alleges that the recording of the Mortgage constituted a false and malicious publication in writing. (Counter-Pl's Compl. ¶ 47, 53). SPE, World Business, and SPO allegedly knew the Mortgage constituted false publication because SPE, World Business, and SPO failed to contact Marcia to

confirm the authenticity of the POA or Assignment of the POA; therefore, the entities knew or should have known they did not have Marcia's authority to record the Mortgage despite relying on the POA and Assignment of the POA to do so. (Counter-Pl's Compl. ¶ 47, 48, 86, 87, 125, 126). Furthermore, Marcia alleges that SPE, World Business, and SPO owed her a legal and equitable duty to confirm the authenticity of the POA and Assignment of POA. (Counter-Pl's Compl. ¶ 49, 50, 56, 57, 88, 89, 127, 128). Marcia posits that, SPE, World Business, and SPO had no reasonable belief that they had the right to record the Mortgage, and the entities knew or reasonably should have suspected that Marcia would have provided information prohibiting the entities from recording the Mortgage against the Property. (Counter-Pl's Compl. ¶ 49, 50, 56, 57, 88, 89, 127, 128). Therefore, SPE, World Business, and SPO allegedly acted with reckless disregard to the duties they supposedly owed Marcia by (1) failing to speak with Kelly to verify the authenticity of the Assignment of the POA and (2) intentionally recording the Mortgage without authority from Marcia as Trustee to do so. (Counter-Pl's Compl. ¶ 51, 52, 90, 91, 129, 130). As a result, Marcia alleges that "the Trust's Property is now disparaged and clouded by the false and unauthorized Mortgage." (Counter-Pl's Compl. ¶ 54). Finally, Marcia claims that the Trust suffered damages as a result of the Movants' alleged slander of the Property's title in the form of the attorney's fees and costs associated with defending the lawsuit. (Counter-Pl's Compl. ¶ 58, 97, 136). As such, Marcia requests relief in the form of (1) a judgment against SPE, World Business, and SPO in an amount in excess of \$50,000.00, (2) either a declaration that the

Mortgage and all Assignments are null and void, or that the Mortgage is rescinded and void, and (3) any other relief that the Court deems appropriate and just.

In their Motion, SPO, World Business, and SPE contend that Marcia's slander of title claims are legally deficient. First, SPO, World Business, and SPE argue that they had a reasonable basis to believe that they possessed authority to record the Mortgage upon reviewing the POA (Exhibit E to Marcia's Counterclaims) and Assignment of the POA (Exhibit F to Marica's Counterclaims). The plain language of the purported POA and Assignment of the POA that SPO, World Business, and SPE reference appears to make Kelly an agent of the Trust, and give Kelly, and therefore Thomas as Kelly's assignee, authority to enter into borrowing transactions. Furthermore, SPO, World Business, and SPE argue that Marcia fails to allege that any of the entities knew the contents of the POA and Assignment of the POA were false. SPO, World Business, and SPE support their argument with language from Illinois' Power of Attorney Act which states that "any person dealing with an agent named in a copy of a document purporting to establish an agency may presume, in the absence of actual knowledge to the contrary, that the document purporting to establish the agency was validly executed." 755 ILCS 45/2-8(c). SPO, World Business, and SPE therefore contend that they were allowed to rely on the notarized POA and the Assignment of the POA as presented without any additional inquiry. In short, SPO, World Business, and SPE conclude that Marcia failed to demonstrate actionable malice meaning that the slander of title counterclaims should be dismissed.

On the other hand, Marcia argues in her Response that the Court must instead take the allegations in her Counterclaims as true which means that the Court must reference the first POA attached in Exhibit D to her Counterclaims as the correct POA. This version of the POA does not give Kelly authority to enter into borrowing transactions given that section (m) is stricken. Marcia further contends that the Court must also take as true the stated fact that "the Trustee never authorized any type of borrowing transaction in relation to the Property." Marcia further attempts to negate the Movants' arguments by stating that the Court may not consider anything outside of the four corners of the pleading, so the Movants' reference to the purported POA and Assignment of POA allowing borrowing transactions is not permitted. Finally, Marcia states that every element of a slander of title claim has been properly pled, so the Movants' Motion should be denied. SPO, World Business, and SPE counter these arguments in their Reply by stating that the correct POA and Assignment were included in the exhibits to the Trust's Counterclaims as Exhibit E and F. Since Exhibits E and F contradict the allegations set forth in Marcia's Counterclaims, SPO, World Business, and SPE argue that Exhibits E and F control. Exhibits E and F allegedly provide a reasonable basis for SPO, World Business, and SPE to conclude that they had the authority to record the Mortgage.

While viewing the facts in the light most favorable to Marcia, this Court holds that it is readily apparent from the slander of title counterclaims that there is no possible set of facts that would entitle Marcia to her requested relief against any

of the Movants. First, Marcia fails to plead the first element of a slander of title counterclaim because she cannot prove that SPO, World Business, and SPE acted with malice when the mortgage was recorded. In fact, it is clear to this Court that malice cannot be proven under any set of facts. As set out in case law, Marcia must show that SPO, World Business, and SPE knew that the Mortgage was false, or that the Mortgage was recorded with reckless disregard of its truth or falsity. *Gambino*, 398 Ill. App. 3d at 62. Marcia does not plead either in her Counterclaims. The Exhibit E POA and Exhibit F Assignment of the POA with which Movants were presented on or about the time of the Mortgage's execution clearly allowed for Kelly and Thomas, as agents for the Trust, to engage in borrowing transactions. The issue is not about what the Movants did or did not do when presented with the POA and Assignment of the POA; instead, this Court must evaluate whether upon the presentation of the POA and Assignment of the POA the Movants should have known that any subsequent Mortgage recorded would be false. From the four corners of both the Exhibit E POA and Exhibit F Assignment of POA, there is nothing to indicate that recording the Mortgage would be going against the will of the Trustee, who purportedly (and from the perspective of the third-party lender at the time of the Mortgage's execution) permitted her agents to engage in borrowing transactions. Whether Marcia actually permitted Kelly and Thomas to engage in borrowing transactions is a different matter. Furthermore, no facts could show that SPO, World Business, and SPE even acted with a high degree of awareness of the

Mortgage's probable falsity or serious doubts as to its truth. *Gambino*, 398 Ill. App. 3d at 62.

Facially, both the Exhibit E POA and the Exhibit F Assignment of POA appear to be legally sufficient when viewed on their own. Movants having required these documents be reviewed before the Mortgage was recorded further shows their diligence to confirm that they had authority to record the Mortgage against the Property, not malice. It is unreasonable for every lender to call every Trustee to confirm that an agent appearing before a lender has authority to act on behalf of a Trust. This is why the POA and Assignment of POA documents exist, and, as the Movants correctly argue, a lender dealing with an agent named in a copy of a document purporting to establish an agency may presume, in the absence of actual knowledge to the contrary, that the document purporting to establish the agency was validly executed. 755 ILCS 45/2-8(c). Movants had no knowledge to the contrary and clearly did not act with any malice. In fact, as discussed previously, Movants had reasonable grounds to believe that Thomas was actually acting within the scope of his powers as agent for the Trust; therefore, Movants had reasonable grounds to believe they had a claim to the property and thus could not have acted with malice as a matter of law. *Gambino*, 398 Ill. App. 3d at 62. Because it is impossible as a matter of law for the Movants to have acted with malice, it is therefore a legal impossibility for Marcia to allege and prove malice at all. Since proving malice is an essential element of a cause of action for slander of title, the entire counterclaim must fall.

The apparent disparity between the Exhibit D POA and the Exhibit E POA is concerning to this Court. However, at this stage in the lawsuit, this Court will not speculate as to the truth or falsity of either Exhibit D or E. Regardless of how each document came to be, the Court must dismiss a cause of action that is not properly pled and legally can never be properly pled. This Court therefore holds that Counts I, V, and IX of Marcia's Counterclaims are DISMISSED with prejudice, and Movants' Motion with respect to these counts is GRANTED.

B. Marcia's Negligence Claims Against SPE,
World Business, and SPO (Counts II, VI, and X)

To succeed on a claim for negligence, a counter-plaintiff must establish the existence of a duty, a breach of the duty, and an injury to the counter-plaintiff that was proximately caused by the breach. *Vancura v. Katris*, 238 Ill. 2d 352, 375 (2010). A duty is defined as "a legal obligation that is owed or due to another and that needs to be satisfied; that which one is bound to do, and for which somebody else has a corresponding right." DUTY, Black's Law Dictionary (12th ed. 2024). "Whether a duty exists in a particular case is a question of law for the court to decide." *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 226 (2010). The Illinois Supreme Court has noted that when conducting a duty analysis, a court must ask whether the counter-plaintiff and counter-defendant stood in such a relationship to one another that the law imposes on the counter-defendant an obligation of reasonable conduct for the benefit of the counter-plaintiff. *Id.* Factors which are relevant to the existence of a legal duty are reasonable foreseeability of injury, likelihood of injury, magnitude of burden of guarding against it, and

consequences of placing that burden upon the counter-defendant. *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 14 (2014). Absent a legal duty, recovery by a counter-plaintiff is not possible as a matter of law in a negligence action. *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 22 (2012).

In Marcia's Complaint, she alleges that SPE, World Business, and SPO owed a duty to her in her capacity as Trustee of the Trust to act as ordinarily prudent lenders. (Counter-Pl's Compl. ¶ 60, 61, 99, 100, 138, 139). This duty supposedly would require SPO, World Business, and SPE to exercise a duty of care in conducting lending activities with proper authorization from Marcia. (Counter-Pl's Compl. ¶ 60, 61, 99, 100, 138, 139). In her Response, Marcia expanded on this argument and claimed that the duty owed by SPE, World Business, and SPO was a "common law duty to the Trustee to ensure the Trustee agreed to pledge the [P]roperty as collateral before recording the [M]ortgage." While this Court agrees that a duty exists, it is different from what Marcia pleads in her Counterclaims.

The duty that SPE, World Business, and SPO owes to Marcia is to act with "reasonable diligence and prudence to ascertain whether the agent is acting and dealing with [the third party] within the scope of his powers" because the Movants are a "third party dealing with a known agent." *Cove Management v. AFLAC, Inc.*, 2013 IL App (1st) 120884, ¶ 27. Case law confirms that "a third person dealing with a known agent may not act negligently with regard to the extent of the agent's authority or blindly trust the agent's statements in such respect." *Id.* ¶ 24. As such, SPE, World Business, and SPO must have acted with reasonable diligence and

prudence to ascertain whether Thomas was acting within the scope of his powers as an agent for the Trustee. As the record shows, the Movants were presented with the Assignment of the POA by Thomas which supposedly allowed him to act as an agent for the principal and engage in borrowing transactions. Why would any person seeking a loan or a mortgage, appear before a lender with a POA that expressly does not allow them to engage in borrowing transactions? Moreover, what lender, when looking at such a POA that does not permit the agent to engage in borrowing transactions, would then draft a mortgage, permitting the agent to act *ultra vires*? Marcia presents no evidence which shows that the Assignment of POA that the Movants received did not permit Thomas to engage in borrowing transactions on behalf of the Trust.

As laid out in *Cove Management*, “[a]pparent authority is cognizable when a principal, through words or conduct, creates the reasonable impression in a third party that his agent is authorized to perform a certain act on his behalf.” *Cove Management*, 2013 IL App (1st) 120884, ¶ 24. As such, “where a principal has created the appearance of authority in an agent, and another party has reasonably and detrimentally relied upon the agent’s authority, the principal cannot deny it.” *Id.* Because the Movants had a copy of the Assignment of the POA, it seemed clear to them that Thomas had apparent authority to engage in borrowing transactions which would bind the Trustee as the principal. SPO, World Business, and SPE required the presentation of a POA before authorizing a Mortgage against a Property. Since Thomas presented the Assignment of the POA to the Movants, and

from the four concerns of the document there is nothing apparent on its face that the POA was false, the Movants fulfilled their duty to confirm the principal/agent relationship between the Trustee and Thomas. There is no duty on SPO, World Business, and SPE to investigate further, and they did not breach their duty owed to Marcia. In fact, “any person dealing with an agent named in a copy of a document purporting to establish an agency *may presume*, in the absence of actual knowledge to the contrary, that the document purporting to establish the agency was *validly executed*.” 755 ILCS 45/2-8(c) (emphasis added).

Therefore, this Court holds that while a duty exists as a matter of law, because that legal duty (nor any other) was not breached by Movants, and there are no other cognizable set of facts that would entitle Marcia any recourse against the Movants for negligence, the Motion is GRANTED with respect to Counts II, VI, and X of Marcia’s Counterclaims and these Counts are DISMISSED with prejudice.

C. Fraudulent Concealment Claims Against SPE,
World Business, and SPO (Counts III, VII, and XI)

To successfully state a claim for fraudulent concealment, a counter-plaintiff must allege the following elements: (1) the counter-defendant concealed a material fact under circumstances that created a duty to speak, (2) the counter-defendant intended to induce a false belief, (3) the counter-plaintiff could not have discovered the truth through reasonable inquiry or inspection, or was prevented from making a reasonable inquiry or inspection, and justifiably relied upon the counter-defendant’s silence as a representation that the fact did not exist, (4) the concealed information was such that the counter-plaintiff would have acted differently had he or she been

aware of it, and (5) the counter-plaintiff's reliance resulted in damages. *Abazar v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶ 27. "The information at issue in a fraudulent concealment claim must be material and must relate to an existing or past state of affairs." *Id.* ¶ 28. Therefore, projections of future events will typically not support a fraud-related claim. Moreover, "a party cannot fraudulently conceal information that it does not know." *Id.* As stated in *Abazar v. Rosalind Franklin University*, "not every relationship gives rise to a duty to speak." *Id.* ¶ 30. Importantly, a duty to speak by a counter-defendant arises where the parties are in a fiduciary relationship, or where one party occupies a position of superiority or influence with respect to the other party, and a party may also be subject to a statutory duty to disclose certain facts. *Id.* Finally, the burden of pleading and proving the existence of a fiduciary relationship lies with the party seeking to establish it. *Rucker*, 295 Ill. App. 3d at 809.

It is established in case law that a mortgagor-mortgagee relationship does not create a fiduciary relationship as a matter of law. *Teachers Ins. & Annuity Ass'n of America v. LaSalle Nat. Bank*, 295 Ill. App. 3d 61, 71 (2nd Dist. 1998). A fiduciary relationship imposes a general duty on the fiduciary to refrain from seeking a selfish benefit during the relationship. *Neade v. Portes*, 193 Ill. 2d 433, 440 (2000). Furthermore, a fiduciary relationship gives rise to a duty of loyalty when one person places trust and confidence in another who, as result, gains influence and superiority over the other. *Rucker*, 295 Ill. App. 3d at 809. As such, a

fiduciary relationship “may exist as a matter of law between partners, joint adventurers, trustee and beneficiary, guardian and ward, attorney and client, and principal and agent.” *In re Estate of Coffman*, 2023 IL 128867, ¶ 58. The standard, formal, and trusting, contractual relationship between contracting parties does not turn into a fiduciary relationship unless one of the parties places great trust in and relies heavily on the judgment of the other party. *Rucker*, 295 Ill. App. 3d at 810. In *Rucker*, the Court found that when considering the mortgage in its entirety, there was nothing to suggest that the relationship between the contracting parties was intended to be anything other than that of a mortgagor and mortgagee. *Id.* at 809. On the other hand, an individual holding a power of attorney is a fiduciary as a matter of law. *Coffman*, 2023 IL 128867, ¶ 59. Once an agency relationship is found, a fiduciary relationship arises as a matter of law. *Rucker*, 295 Ill. App. 3d at 809.

In this instance, Marcia only had an agency relationship and thus a fiduciary relationship with Kelly when the POA was executed and Thomas when the Assignment of POA was subsequently assigned. As there is a generally held view that a mortgagee is not the agent of the mortgagor, Marcia and SPE, World Business, and SPO are not in an agency relationship, and therefore, are not in a fiduciary relationship either. *Rucker*, 295 Ill. App. 3d at 810. As the comments to Section 13 of the *Restatement 2nd of Agency* note, “mortgagees (***), although having power to sell the property involved under certain conditions or to subject another to contractual liability, are not agents of the power giver; they have not undertaken to exercise such power primarily for the benefit of the person in whose

name they formally act, and they are entitled to prefer their own interests in dealing with the subject matter.” Restatement (Second) of Agency § 13 (1958). In the Mortgage, SPE, World Business, and SPO have not undertaken to exercise power primarily for Marcia’s benefit and as such are not Marcia’s agents. Rather, the Parties entered into a contract *with consideration* where each Party stood to benefit. As a result, SPE, World Business, and SPO are only in a contractual relationship with Marcia. Accordingly, Marcia failed to plead the first element of a cause of action for fraudulent concealment in her Counterclaims and there is no set of facts that would entitle her to the requested relief. Therefore, this Court need not look at the other elements of a cause of action for fraudulent concealment as the very first element has not and cannot ever be met. This Court therefore holds that Movants’ Motion is GRANTED and Counts III, VII, and XI are DISMISSED with prejudice.

D. Constructive Fraud Claims Against SPE,
World Business, and SPO (Counts IV, VIII, and XII)

Constructive fraud is defined as “anything calculated to deceive, including acts, omissions and concealments involving a breach of legal or equitable duty, trust or confidence resulting in damage to another.” *Kovac v. Barron*, 2014 IL App (2d) 121100, ¶ 64. To plead constructive fraud, a counter-plaintiff must allege: (1) a fiduciary relationship existed between the parties; (2) a breach by counter-defendant of the duties that are imposed as a matter of law because of that relationship occurred; and (3) damages resulted from the breach. As noted

previously, a fiduciary duty arises as a matter of law, not contract. *Id.* ¶ 63. In short, a breach of fiduciary duty is constructive fraud. *Id.*

This Court declines to spend time delving into each element of Marcia's constructive fraud Counterclaims because no fiduciary relationship ever existed between Marcia and SPE, World Business, and SPO as described in the previous section of this Opinion. In short, Marcia failed to adequately plead the essential first element of her constructive fraud Counterclaims and no set of facts would allow her to cure this defect. For this reason alone, the Court holds that Movants' Motion is GRANTED with respect to Counts IV, VIII, and XII of Marcia's Counterclaims and these Counts are also DISMISSED with prejudice.

E. Statute of Limitations

Finally, SPO and World Business contend that Marcia is barred from bringing Counts V through XII of the Counterclaim due to the expiration of the five-year statute of limitations period. Marcia contends that the statute of limitations clock would not begin until January 10, 2019, when she was served with the Complaint at bar, while SPO and World Business argue the clock started on October 19, 2017, the day the Mortgage was recorded. This Court agrees with SPO and World Business and holds that regardless of the prior analysis contained in this Opinion, Counts V through XII of the Counterclaim are dismissed due to the expiration of the statute of limitations period.

Section 2-619 allows the Court to dismiss a cause of action if the "action was not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5). In Illinois,

actions to recover damages for an injury done to real property must be commenced within five years after the cause of action occurred. 735 ILCS 5/13-205. As a counterbalance to these strict rules, the discovery rule starts the statute of limitations clock when a person knows or reasonably should know of his injury and also knows or reasonably should know that it was wrongfully caused. *Scottsdale Insurance Co. v. Lakeside Community Committee*, 2016 IL App (1st) 141845, ¶ 23. The term “wrongfully caused,” for purposes of determining when a counter-plaintiff reasonably should have discovered that an injury was caused by counter-defendant’s wrongful conduct, does not mean knowledge by counter-plaintiff of a specific counter-defendant’s negligent act or knowledge that an actionable wrong was committed; rather, a counter-plaintiff knows or reasonably should know an injury is “wrongfully caused” when she possesses sufficient information concerning an injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved. *Hoffman v. Orthopedic Systems, Inc.*, 327 Ill. App. 3d 1004, 1011 (1st Dist. 2002). Therefore, “a statute of limitations may run despite the *lack* of actual knowledge” of the injury causing conduct. *SK Partners I, LP v. Metro Consultants, Inc.*, 408 Ill. App. 3d 127, 130 (1st Dist. 2011).

The statute of limitations clock began to run the day the Mortgage was recorded against the Property. Per the theory of record notice “where an instrument of conveyance or a mortgage is recorded in the appropriate public office, the public record provides constructive notice to the whole world.” *Hachem v. Chicago Title*

Insurance Co., 2015 IL App (1st) 143188, ¶ 27. Therefore, information in the public record gives a counter-plaintiff knowledge of a potential injury which is wrongfully caused. *Diovatelli v. Diovatelli*, 2013 IL App (2d) 111297, ¶ 35. As such, on October 19, 2017, Marcia would have sufficient information from the public record to spark inquiry in a reasonable person as to whether the recordation of the Mortgage might be legally actionable. Marcia's lack of actual knowledge is not sufficient to overcome the fact that the Mortgage existed in the public record for the world to see. As SPO and World Business correctly argue, assignments of the Mortgage from World Business to SPO and then from SPO to SPE were recorded on June 26, 2018, and August 6, 2018, respectively. Thus, the Trust's five-year right to commence an action against World Business and SPO would have begun on October 19, 2017, and August 6, 2018, respectively, with a resultant filing deadline of October 19, 2022, and August 6, 2023, for claims against World Business and SPO. However, Marcia filed her Counterclaims against World Business and SPO on November 1, 2023, which is clearly past the expiration of the five-year statute limitations period. For these reasons as well, this Court holds that Counts V through XII of Marcia's Counterclaim are time barred and therefore DISMISSED with prejudice.

IV. CONCLUSION

Going back to the essential basics of a claim that pleads for relief from the court system, Marcia failed to plead facts for any of her Counterclaims that would entitle her to such requested relief. Therefore, all Counts are DISMISSED with prejudice and the Court GRANTS Movants' Motion.

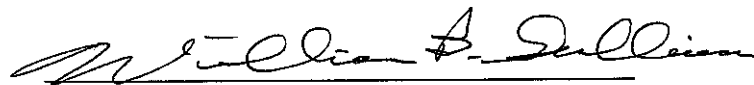
THEREFORE, FOR THE AFOREMENTIONED REASONS, THE COURT HEREBY ORDERS AS FOLLOWS:

- (1) Plaintiff/Counter-Defendant WBL SPE II LLC and Third-Party Defendants World Business Lenders, LLC and WBL SPO I LLC's Combined 2-619.1 Motion to Dismiss is hereby GRANTED; and
- (2) Defendant/Counter-Plaintiff/Third-Party Plaintiff Marcia R. Rinkenberger, as Trustee of the Rinkenberger Family Estate Reduction Trust Dated December 22, 2010's, Counterclaim (*sic*) and Third-Party Claims is hereby DISMISSED in its entirety WITH PREJUDICE.

IT IS SO ORDERED.

Date: September 5, 2024

ENTERED:



Honorable William B. Sullivan
Cook County Circuit Judge

ORDER PREPARED BY THE COURT
ccc.mfmlcalendar60@cookcountyil.gov
(312) 603-3894

