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

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WELLS FARGO BANK, NATIONAL  
ASSOCIATION, AS TRUSTEE, ON BEHALF  
OF THE REGISTERED HOLDERS OF CSAIL  
2019-C16 COMMERCIAL MORTGAGE TRUST,  
COMMERCIAL MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2019-C16,

*Plaintiff,*

*v.*

1600 WESTERN VENTURE LLC, a  
Illinois limited liability company; U.S. SMALL  
BUSINESS ADMINISTRATION; UNKNOWN  
OWNERS; and NON-RECORD CLAIMANTS,

*Defendants.*

Case Number: 2024 CH 00050

Calendar 60

Honorable William B. Sullivan  
Judge Presiding

Property Address:

2441, 2443 and 2444 West 16th  
Street, Chicago, Illinois 60608

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**MEMORANDUM OPINION AND ORDER**

**WILLIAM B. SULLIVAN, Circuit Judge:**

Before the Court is Defendant 1600 WESTERN VENTURE LLC's ("1600 Western") Motion for Leave to File Amended Answer and File Affirmative Defenses and for Other Relief ("Motion"). For the following reasons, 1600 Western's Motion is hereby GRANTED.

**I. BACKGROUND**

On or about April 8, 2019, 1600 Western allegedly entered into a "Promissory Note" ("Note") in the amount of \$9,000,000 secured by a "Mortgage, Assignments of

Leases and Rents and a Security Agreement” (“Mortgage”) on the property located at 2441, 2443 and 2444 West 16th Street in Chicago, Illinois with CIBC INC (“Original Lender”).

On January 3, 2024, Plaintiff WELLS FARGO BANK (“Wells Fargo”) filed its Verified Complaint. On March 18, 2024, 1600 Western filed its Verified Answer (“Original Answer”). On April 26, 2024, 1600 Western filed its Motion for Leave to File Amended Answer and File Affirmative Defenses and for Other Relief. On June 21, 2024, Wells Fargo timely filed its response brief in opposition to the Motion. On July 19, 2024, 1600 Western timely filed its reply brief in support of its Motion. On August 7, 2024, after having read the Motion, the Response, and the Reply, the Court heard oral arguments from both parties’ counsels via Zoom and, following the hearing, on August 8, 2024, the Court entered an order taking the Motion under advisement for the issuance of a written ruling. The Court’s ruling follows.

## II. LEGAL STANDARD

Illinois courts liberally allow for the amendment of a pleading—including verified answers pursuant to 735 ILCS 5/2-616. *Westfield Insurance Co. v. Birkey's Farm Store, Inc.*, 399 Ill. App. 3d 219, 236 (3rd Dist. 2010); 735 ILCS 5/2-616(c). Even though amendments of pleadings are liberally allowed, denials are appropriate as long as the court did not abuse its discretion considering these four factors: “(1) whether the proposed amendment will cure the defective pleading; (2) whether the proposed amendment would surprise or prejudice the opposing party; (3) whether the proposed amendment was timely filed; and (4) whether the moving

party had previous opportunities to amend.” *Board of Directors of Bloomfield Club Rec. Ass’n v. The Hoffman Group*, 186 Ill. 2d 419, 432 (1999). If a verified answer is amended the admissions in the original verified answer are judicial admissions that remain, unless those judicial admissions were made due to inadvertence. *American National Bank & Trust Co. v. Erickson*, 115 Ill. App. 3d 1026, 1029-30 (1st Dist. 1983). Judicial admissions may not be contravened within the case in which they were made. *National Union Fire Insurance Co. v. DiMucci*, 2015 IL App (1st) 122725, ¶ 56. If a defendant argues that a verified answer was a product of mistake or inadvertence, the defendant must support that argument with a redemptive explanation and not merely conclusory statements. *Beverly Bank v. Coleman Air Transport*, 134 Ill. App. 3d 699, 704 (1st Dist. 1985); *Nelson v. Quarles & Brady, LLP*, 2013 IL App (1st) 123122, ¶ 61. If the Court then finds that there was indeed mistake or inadvertence in the verified pleading, the judicial admissions within said verified answer are deemed evidentiary admissions only. *Los Amigos Supermarket v. Metropolitan Bank & Trust Co.*, 306 Ill. App. 3d 115, 125 (1st Dist. 1999).

### III. ANALYSIS

Before this Court is a question of whether 1600 Western should be granted leave to file an amended verified answer, affirmative defenses, and a counterclaim to quiet title.

1600 Western relies on two main contentions for why the Court should grant the requested relief: (1) Wells Fargo’s Complaint is false on its face and contains

mistakes; therefore, 1600 Western cannot be bound by its erroneous Original Answer to these false pleadings; and (2) inadvertent mistakes made by 1600 Western's Attorney in the Original Answer. 1600 Western avers that the Complaint is false on its face because the Complaint alleges that the Mortgage was signed on April 8, 2019, but the signature page of that document in Exhibit 1 of the Complaint is dated March 28, 2019. 1600 Western believes that these problematic allegations prove the Complaint is false; therefore, 1600 Western's admission in the Original Answer cannot be held as judicial admissions.

1600 Western then argues that the mistakes that were made in the original Verified Answer were caused by the numbering error made in the Verified Complaint by Wells Fargo, the signer of the Original Answer was the incorrect person for the information, and problematic details in the Mortgage were mistakenly overlooked by 1600 Western's Attorney. 1600 Western supports the claim that Mr. Flisk was not the right person to garner information about the signing of the Mortgage from by explaining that Ms. Flisk—the alleged signer of the Mortgage—is more informed on the facts of the situation than Mr. Flisk. Also, the problematic aspects of the Mortgage's signature page were noticed by Ms. Flisk. 1600 Western's Attorney then sets forth that these issues exist in his affidavit.

Also, 1600 Western contends that Plaintiff is prematurely attacking the proposed Affirmative Defenses and Counterclaim and that the documents provided in the Exhibits of Wells Fargo's Response should be disregarded as they are not

supported by affidavits and have no place when trying to support alleged facts. Lastly, 1600 Western avers that the Proposed Answer, Affirmative Defenses, and Counterclaim satisfy the four-factor test for abuse of discretion when denying a motion to amend a pleading.

Wells Fargo argues that 1600 Western's Original Answer was not the product of mistake because it aligns with the facts of the situation surrounding the commencement of the Mortgage. Wells Fargo provides screenshots of emails that are unsupported by affidavit in an attempt to demonstrate that the signature page of the Mortgage was not fraudulently attached to the contract. Lastly, Wells Fargo contends that 1600 Western's Motion should also be denied because the Proposed Counterclaim does not state a claim because the facts of the situation do not align with 1600 Western's Proposed Answer.

#### 1. Discussion

Before the Court is the question of whether 1600 Western should be given leave of court to file its Amended Verified Answer, Affirmative Defenses, and Counterclaim, as well as whether the previous judicial admissions from the Original Answer should be deemed evidentiary admissions. For the following reasons, 1600 Western's Motion is granted, and the previous judicial admissions from the Original Answer are hereby deemed evidentiary admissions.

This Court will begin with the four factors of abuse of discretion on a motion to amend an answer that Wells Fargo raises in its argument that the Counterclaim

and Affirmative Defenses fail to state a cognizable claim. The first factor as stated in *The Hoffman Group* is, “whether the proposed amendment will cure the defective pleading.” 186 Ill. 2d at 432. When analyzing the Proposed Answer it has been established in *Hayes Mechanical, Inc. v. First Industrial, Ltd. Partnership* that a court can save resources by implying a motion to dismiss within a motion to amend. 351 Ill. App. 3d 1, 7 (1st Dist. 2004) (“It is not necessary for the parties to go through the process of filing an amended pleading and then testing its sufficiency by a motion to dismiss - when ruling on a motion to amend, the court may consider the ultimate efficacy of a claim as stated in a proposed amended pleading”). This challenge is similar to a 735 ILCS 5/2-615 motion to dismiss; therefore, this Court will apply the same standards when viewing the Proposed Answer. A motion to dismiss under Section 2-615 requires the Court to construe the pleadings and other supporting documents in the most favorable light to the non-moving party, as the motion “admits as true all well pleaded facts and all reasonable inferences from those facts.” *Kopf v. Kelly*, 2024 IL 127464, ¶ 63. A pleading is required to allege ultimate facts that satisfy each element of the cause of action or affirmative defenses and should only be dismissed when it appears a party “cannot recover under any set of facts.” *Kilburg v. Mohiddin*, 2013 IL App (1st) 113408, ¶ 20; *Spillyards v. Abboud*, 278 Ill. App. 3d 663, 668 (1st Dist. 1996).

In this case, the Court is viewing the non-moving party for the purposes of the implied motion to dismiss as 1600 Western, and will be viewing the facts pled in the Proposed Answer in the light most favorable to 1600 Western. In 1600

Western's Proposed Answer, its Affirmative Defenses are supported by well-pled facts that if taken as true could be sufficient to defeat Wells Fargo's claim. (Def.'s Mot. to Amend Answer Ex. A, 12-15). The Counterclaim is also supported by well-pled facts, but 1600 Western must also satisfy the elements of a quiet title claim. The elements of quiet title are: (1) the party invoking quiet title must possess true title to the property; (2) that the party's title must be superior to all other claims; and (3) the party must be in possession of the property. *Marlow v. Malone*, 315 Ill. App. 3d 807, 812 (4th Dist. 2000); *Dodge v. Nieman*, 150 Ill.App.3d 857, 860 (1<sup>st</sup> Dist. 1986). 1600 Western pled that Wells Fargo recorded the Mortgage which contained a fraudulent signature page on the property owned by 1600 Western and subject to this lawsuit, satisfying elements 1 and 2 of a quiet title claim. (Def.'s Mot. to Amend Answer Ex. A, 17-18). 1600 Western also pled that they are in possession of the property upon which the Mortgage was recorded, satisfying element 3 of a quiet title claim. (Def.'s Mot. to Amend Answer Ex. A, 17). 1600 Western has supported both the Affirmative Defenses and Counterclaim with well-pled facts that are sufficiently satisfactory to survive a motion to dismiss and to cure the defects in the Original Answer; therefore, it would be an abuse of this Court's discretion to deny 1600 Western's Motion.

The second factor as stated in *The Hoffman Group* is, "whether the proposed amendment would surprise or prejudice the opposing party." *The Hoffman Group*, 186 Ill. 2d at 432. Wells Fargo has not alleged any prejudice or surprise in their response to 1600 Western's Motion. This Court also cannot find any reason that

1600 Western's Motion would prejudice or surprise Wells Fargo especially given the youthful age of the instant case.

The third factor as stated in *The Hoffman Group* is, "whether the proposed amendment was timely filed." *Id.* 1600 Western filed its Original Answer on March 18, 2024, and then filed its Motion on April 26, 2024. In *Loyola Academy v. S & S Roof Maintenance, Inc.*, the Illinois Supreme Court held that the plaintiff timely filed its motion to amend its complaint 17 months after the original complaint was filed, partially because the other parties were on notice that the plaintiff intended to file this motion since the pleading stage of litigation. 146 Ill. 2d 263, 275 (1992). This Court finds that 1600 Western timely filed its Motion, as it was filed a mere 39 days after the Original Answer was filed, and this case is likewise still in the pleading stage of litigation.

The fourth factor as stated in *The Hoffman Group* is, "whether the moving party had previous opportunities to amend." *The Hoffman Group*, 186 Ill. 2d at 432. It is clear that 1600 Western has not had previous opportunities to amend its Original Answer; therefore, if this Court denied 1600 Western's Motion it could be construed as an abuse of this Court's discretion.

Next, this Court will discuss 1600 Western's two main arguments that its Verified Answer was the product of mistake or inadvertence: (1) mistakes in Wells Fargo's Complaint and (2) mistakes made by 1600 Western's Attorney in overlooking false pleadings and garnering information from a less informed party. The mistake in Wells Fargo's Complaint was a misnumbering of paragraphs, which



created two paragraph 11's and could have thrown off which paragraphs 1600 Western was responding to in its Original Answer. (Pl.'s Complaint, 3). The vast alterations made within 1600 Western's Proposed Answer clearly goes far beyond fixing misnumbered paragraphs; and, therefore, is not, in this Court's eyes, a redemptive explanation as required by *Los Amigos Supermarket* to show that the judicial admissions made in the Original Answer should be deemed evidentiary admissions. 306 Ill. App. 3d at 125.

1600 Western has also argued that its Attorney has made a mistake by overlooking errors within the Mortgage and Complaint, as well as communicating with Mr. Flisk instead of with Ms. Flisk for information regarding this case. As alleged, Ms. Flisk, on behalf of 1600 Western, signed the Mortgage; therefore, Ms. Flisk is more knowledgeable regarding the facts of this case than Mr. Flisk, and 1600 Western's Attorney should have consulted with her prior to drafting the Original Answer. 1600 Western's Attorney also admits he made a mistake in not noticing the contradiction between the Complaint and Exhibit 1 of the Complaint regarding the date the Mortgage was signed. Again 1600 Western's Attorney admits he made a mistake in not noticing the contradiction between the alleged Mortgage's creation date and the date on the Mortgage's signature page. 1600 Western's Attorney also provided a redemptive explanation for these mistakes in 1600 Western's reply and during oral arguments. (Def.'s Reply, 5-7). This Court in the pursuit of justice will not hinder 1600 Western's attempt to correct its mistake

because 1600 Western has met the required redemptive explanation. *Los Amigos Supermarket*, 306 Ill. App. 3d at 125. Also, since 1600 Western's redemptive explanation was sufficient, this Court deems the judicial admissions contained within the Original Answer to be evidentiary admissions. *Id.*

#### IV. CONCLUSION

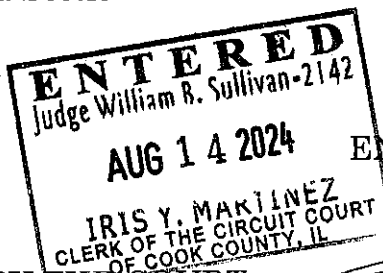
For all the reasons mentioned herein, 1600 Western's Motion for Leave to File Amended Answer and File Affirmative Defenses and for Other Relief is GRANTED and the admissions in the Original Answer shall be deemed evidentiary admissions only.

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

- (1) 1600 Western's Motion for Leave to File Amended Answer and File Affirmative Defenses and for Other Relief is hereby GRANTED;
- (2) Defendant shall have 7 days, through August 21, 2024, to file its Amended Answer, Affirmative Defenses, and Counterclaim;
- (3) All admissions in the Original Verified Answer are hereby deemed evidentiary admissions; and
- (4) Wells Fargo shall have 28 days thereafter, through September 18, 2024, to respond to the Amended Answer, Affirmative Defenses, and Counterclaim by way other than a Section 2-615 motion.

**IT IS SO ORDERED.**


Date: August 14, 2024



ENTERED:

ORDER PREPARED BY THE COURT

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(312) 603-3894

  
Honorable William B. Sullivan  
Cook County Circuit Judge