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

WELLS FARGO BANK N.A., AS
TRUSTEE, FOR CARRINGTON
MORTGAGE LOAN TRUST, SERIES
2006-NC4, ASSET-BACKED PASS-
THROUGH CERTIFICATES,

Plaintiff,

v.

ERICA D. LUCAS; UNKNOWN
OWNERS AND NON-RECORD
CLAIMANTS; STATE OF ILLINOIS -
DEPARTMENT OF REVENUE,

Defendants.

Case Number: 2021 CH 03877

Calendar 60

Honorable Debra A. Seaton,
Judge Presiding

Property Address

8 Rich Court
Park Forest, Illinois 60466

MEMORANDUM OPINION AND ORDER

DEBRA A. SEATON, Circuit Judge:

Plaintiff WELLS FARGO BANK N.A., AS TRUSTEE, FOR CARRINGTON MORTGAGE LOAN TRUST, SERIES 2006-NC4, ASSET-BACKED PASS-THROUGH CERTIFICATES's ("Wells Fargo") Motion for Summary Judgment and related judgment motions as well as Defendant STATE OF ILLINOIS - DEPARTMENT OF REVENUE's ("the State") Cross-Motion for Summary Judgment are before the Court. For the following reasons, Wells Fargo's Motion for Summary Judgment is GRANTED as to the priority issue only and DENIED in all

other aspects without prejudice. The remainder of Wells Fargo's judgment motions are all DENIED without prejudice. The State's Cross-Motion for Summary Judgment is DENIED without prejudice as to the amounts due and owing, but is DENIED with prejudice as to the priority issue.

I. BACKGROUND

On May 2, 2006, Freddie and Earnestine Harris ("Mortgagors") executed a promissory note ("Note") in the amount of \$148,500.00 secured by a Mortgage ("Mortgage") on the Property located at 8 Rich Court in Park Forest, Illinois ("the Property"). Shortly thereafter, on June 5, 2006, the State, pursuant to the Senior Citizens Real Estate Tax Deferral Act ("Deferral Act") (320 ILCS 30/1; *et seq.*), recorded its first of several liens against the Property. The liens were for property taxes paid by the State on behalf of the Harrises pursuant to the Deferral Act. The State recorded ten such liens against the Property, one in nearly every fiscal year beginning in June of 2006 and ending in June of 2017, with the exception of 2013 and 2015.

On August 6, 2021, Wells Fargo filed its initial Complaint to foreclose upon its Mortgage on the Property. The Complaint alleged that the loan had gone into default for failure to pay the December 1, 2020, monthly installment. Mortgagors Freddie and Earnestine Harris had passed away sometime prior to the institution of this action. The Complaint named Erica D. Lucas ("Lucas") and Unknown Owners and Non-Record Claimants as party Defendants. Lucas is believed to be an heir of Earnestine Harris with an ownership interest in the Property. Lucas appeared via

counsel and answered the initial Complaint on November 3, 2021. Lucas's counsel was granted leave to withdraw as counsel of record on September 19, 2023. Lucas was afforded 21 days to hire new counsel. Lucas never filed a new appearance via counsel or *pro se*. Wells Fargo then amended its Complaint on March 21, 2024, to add the State of Illinois - Department of Revenue due to the series of subordinate liens the State had recorded against the Property pursuant to the Deferral Act. The State timely filed its Appearance and its Answer on April 8, 2024. In its Answer, the State denied that its interest in the Property was subordinate and inferior to Wells Fargo's Mortgage interest. Lucas never answered the Amended Complaint.

On July 16, 2024, Wells Fargo filed a Motion for Summary Judgment. The Parties appeared before this Court on August 9, 2024, for presentment of Wells Fargo's Motion for Summary Judgment and other related judgment motions. The State expressed an interest in filing its own motion for summary judgment at the presentment date. In its August 9, 2024, Order, the Court provided a deadline for the State to file a cross-motion for summary judgment of its own along with time for each party to file its respective response and reply briefs to both Motions.

On September 23, 2024, the State filed its Cross-Motion for Summary Judgment. The State timely filed its Response to Wells Fargo's Motion for Summary Judgment on October 23, 2024. Wells Fargo timely filed its Response to the State's Cross-Motion on October 24, 2024. The State timely filed its Reply to its own Cross-Motion on November 13, 2024. Wells Fargo timely filed its Reply to its own Motion on November 14, 2024.

Wells Fargo and the State appeared before this Court on December 5, 2024, for a hearing on both Motions for Summary Judgment. No hearing on the Motions occurred on December 5, 2024. Instead, the Court noted that it had identified a potential constitutional issue that it preferred fleshed out prior to hearing arguments and ruling on the Motion. The Court contemporaneously entered an Order directing each Party to file a memorandum of law discussing the constitutional issues raised by the Court related to the Contract Clause of the United States Constitution. These memoranda were to be filed on or before January 16, 2025. Both Motions were set for hearing on February 10, 2025. On the next day, December 6, 2025, the Court entered another Order. This Order amended the previous day's Order and additionally directed the Parties to likewise address whether the State's proposed application of the Deferral Act would violate the Contract Clause of the Illinois Constitution.

The State later filed a Motion for Extension of Time to file its memorandum. On January 8, 2025, the Court entered an Order granting the State's Motion for Extension of Time. The Court provided an additional 41 days for each Party to file its respective memorandum of law. Hearing on the Motions for Summary Judgment was rescheduled for March 12, 2025. Each Party timely filed its respective memoranda on February 25, 2025.

After having read both Motions for Summary Judgment, both Responses, both Replies, and both Memoranda of Law, the Court listened to oral arguments from the Parties' attorneys on March 12, 2025. Following the hearing, the Court

entered an Order taking the Motions under advisement for the issuance of a written ruling. The Court's ruling follows.

II. LEGAL STANDARD

Wells Fargo moves this Court for summary judgment pursuant to 735 ILCS 5/2-1005(a). The State moves for summary judgment pursuant to 735 ILCS 5/2-1005(b). Litigants may move for summary judgment where, "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c).

At summary judgment, "the court does not try issues of fact, but must ascertain if any exist." *Burns v. City of Chicago*, 2016 IL App (1st) 151925, ¶15 citing *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511, 517 (1993). Summary judgment is a drastic measure that should only be granted when the moving party's right to judgment is, "clear and free from doubt." *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). "Where a reasonable person could draw divergent inferences from undisputed facts, summary judgment should be denied." *Id.* "If disputes as to material facts exist or if reasonable minds may differ with respect to the inferences drawn from the evidence, summary judgment may not be granted." *Associated Underwriters of America Agency, Inc. v. McCarthy*, 356 Ill. App. 3d 1010, 1016 (1st Dist. 2005).

The Court notes that when parties file cross-motions for summary judgment, “they agree that only a question of law is involved and invite the court to decide the issues based on the record.” *Pielet v. Pielet*, 2012 IL 112064, ¶28. The Court is not obligated to render summary judgment. *Id.* This does not imply that there is not an issue of material fact. *Id.*

III. ANALYSIS

The question before the Court is whether Wells Fargo or the State is entitled to judgment as a matter of law. Specifically, the Court must determine which Party’s encumbrance upon the Property is paramount. The Parties here agree that there is only a question of law involved and invite this Court to decide the issue of priority upon the law and the record. Because the Motions involve identical issues of law, the Court will analyze both Motions simultaneously.

A. The Parties’ Arguments

The Court finds that the record is clear and speaks for itself. *Old Kent Bank v. Stoller*, 254 Ill. App. 3d 1085, 1097 (1st Dist. 1993) (finding that a court may determine that a record may speak for itself). There is no need to use a copious amount of time distilling each and every point advanced in the 64 pages of written argument provided for the Court’s review. The Court will simply draw attention to some of the key arguments offered by each Party for purposes of succinctness. The Court, however, has taken all arguments raised into consideration in making its decision herein.

In Wells Fargo's Motion for Summary Judgment, Wells Fargo first draws attention to the State's assertion that the State believes its liens on the Property have first priority to all other liens and encumbrances. Wells Fargo notes that while property taxes are always a priority lien under the Illinois Property Tax Act ("Property Tax Code"), once they are paid, such priority ceases to exist. 35 ILCS 200/1; *et seq.* Wells Fargo offers a citation directly to Section 8 of the Deferral Act: "[n]othing in this Act (a) affects any provision of any mortgage or other instrument relating to land requiring a person to pay real estate taxes." 320 ILCS 30/8. Wells Fargo maintains that this language does not indicate that deferral liens are first in priority. Such language does indicate that deferral liens are second to any pre-existing encumbrance.

The State pays the mortgagor's taxes under the Deferral Act and the respective program established therein. The funds advanced via the program are only recaptured once the property is sold or upon the death of the owner or Mortgagor of the property. A recapture of the deferred taxes and accrued interest would only occur *after* superior liens have been paid. Wells Fargo also argues that the statutory language regarding lien priority is unambiguous. Nothing in the Deferral Act indicates that liens pursuant to the Act are first in priority. First-in-time, first-in-right thereby applies by default. Wells Fargo contends that its Mortgage maintains its position of priority because (1) it has not been fully paid, (2)

the property taxes have been paid, and (3) the State's liens on the Property were recorded *after* its Mortgage.

The Court now turns to the State's Cross-Motion for Summary Judgment. The State asserts that its liens are first in priority and are superior to all other liens. The State argues that the language of Section 3(2) of the Deferral Act shows that the subject Property may not be sold or transferred until all taxes, plus accrued interest, have been paid. The State concludes that the deferred taxes and the State's resulting liens on the Property are superior to any other encumbrance, including that of Wells Fargo's Mortgage. The State emphasizes that unpaid taxes *always* enjoy first priority. According to the State, such property taxes have not been paid here and have merely been *deferred*. The State insists that its liens, while not prior in time, are superior to Wells Fargo's Mortgage.

B. The Constitutionality of the Deferral Act

After filing their briefs, both Parties were ordered at the originally scheduled oral arguments to submit supplemental memoranda of law pertaining to potential constitutional issues identified by the Court. The Court saw a potential conflict between the State's proposed application of the Deferral Act with the Contract Clauses of both the United States and Illinois Constitutions.

The supplemental memoranda demonstrate that both sides agree that the Deferral Act *is* constitutional on its face. The Deferral Act establishes a program where qualifying homeowners have their property taxes paid by the State. The

State advances the funds on the promise that the funds will be repaid on the death of the homeowner or subsequent conveyance of the property. A corresponding lien is placed on the property to ensure repayment of the deferred property taxes. Participation in the program is contractual. Any deferred tax lien placed on the property does not interfere with or impair any other existing contractual agreements.

Because the Parties agree here that the Deferral Act *is* constitutional, there is no constitutional issue for this Court to resolve. As such, the Court will not opine and look further into the Deferral Act's constitutionality. The Court has "a duty to uphold the constitutionality of a statute if reasonably possible" and need not delve into the issue of constitutionality as it pertains to the interpretation of the Deferral Act. *Best Buy Stores, L.P. v. Department of Revenue*, 2020 IL App (1st) 191680 ¶29; *In re J.W.*, 346 Ill. App. 3d 1, 13 (1st Dist. 2004) ("[A court's] inquiries into the constitutionality of statutes are limited to the extent required by the particular case, and it will not formulate a rule broader than necessitated by the circumstances of that case.").

C. What is the Deferral Act?

The Deferral Act created the Senior Citizens Real Estate Deferral Program. This program provides tax relief to senior citizen homeowners. It allows them to defer all or part of their property tax and special assessment payments on their principal residences. Deferred amounts are borrowed from the State of Illinois, who

pays the property tax bill on the homeowner's behalf. In exchange, a corresponding lien is recorded against the property to ensure repayment of the advanced funds. The received benefit must be repaid back to the State with interest.

The Court notes that the Deferral Act is *not* a part of the Property Tax Code. See 35 ILCS 200/1; *et seq.* Though dealing with property taxes, the Deferral Act has its own function outside of the purview of the Property Tax Code. The Deferral Act functions as a support program, similar to other support programs where the State acts as a lender. For example, the Illinois Department of Commerce and Economic Opportunity offers small businesses low-interest loans through its "Advantage Illinois" program. Small businesses do not always have access to capital, often because these businesses are high-risk debtors, so the State steps in to help. Illinois Department of Commerce and Economic Opportunity, Low Interest Loan Programs, <https://dceo.illinois.gov/businesshelp/lowinterestloanprograms.html> (last visited Apr. 1, 2025). The Deferral Act provides funds to indigent seniors to assist them in paying their property taxes and to keep them in their homes. However, the Deferral Act is *not* a tax program governed under the Illinois Property Tax Act.

D. Statutory Interpretation

The crux of this case lies in Section 3(2) of the Deferral Act, which states that "any real estate taxes deferred under this Act and any interest accrued thereon are a lien on the real estate and improvements thereon until paid." The Court notes that despite existing for approximately 40 years, there are no on point precedential

cases interpreting this relevant language from the Deferral Act. The Court resorts to the traditional canons of statutory interpretation.

Courts are obligated to ascertain and give effect to the legislative intent behind the statute when tasked with the duty of interpreting a statute. *People v. Pearse*, 2017 IL 121072, ¶41. The best way to determine legislative intent is by the “plain and ordinary meaning of the statutory language.” *People v. Davidson*, 2023 IL 127538, ¶14; *see generally Field v. People*, 3 Ill. 79, 108 (1839). “[A] literal reading must fail if it yields absurd, inconvenient, or unjust results.” *Scott v. American Alliance Casualty Co.*, 2024 IL App (4th) 231305, ¶20 *citing Cassidy v. China Vitamins, LLC*, 2018 IL 122873, ¶17. All statutory language should be “interpreted in relation to each other and the entire act, and no word should be rendered meaningless.” *Schultz v. St. Clair County*, 2022 IL 126856, ¶18 *citing Cassens Transport Company, v. Industrial Commission*, 218 Ill. 2d 519, 524 (2006).

The Court must examine the statute “in conjunction with other statutes touching upon the same or related subjects.” *Saunders v. Symphony Beverly, LLC*, 2024 IL App (1st) 230996, ¶13. This implies that “[w]here the plain language of one statute appears to conflict with the plain language of another statute, [the court] must look beyond the plain language of the statutes to determine the legislature’s intent, which is of paramount importance.” *People v. Freeman*, 404 Ill. App. 3d 978, 988 (1st Dist. 2010) *citing Moore v. Green*, 219 Ill. 2d 470, 479 (2006). This Court cannot presume that the legislature would enact a statute that directly contradicts

a pre-existing statute. This Court must “attempt to construe the conflicting statutes together *in pari materia*, where such an interpretation is reasonable.” *Freeman*, 404 Ill. App. 3d at 988.

Where a court identifies a statutory omission, it will apply the Latin maxim “*expressio unius est exclusio alterius*” meaning that anything not explicitly mentioned by the statute has been excluded by deliberate choice, not inadvertence. *People v. Foster*, 2021 IL App (2d) 190116, ¶11 citing *People v. Roberts*, 214 Ill. 2d 106, 117 (2005) (“[T]he expression of one thing is the exclusion of another.”). “[W]hen the language of a statute is clear, it must be applied as written without resort to aids or tools of interpretation.” *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). This Court cannot read additional language into a statute where it does not exist. *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 461 (2010) (“[Courts] do not depart from the plain language of a statute by reading into it exceptions, limitations, or conditions that conflict with legislative intent”) citing *Harrison Telephone Company v. Illinois Commerce Commission*, 212 Ill. 2d 273, 251 (2004). “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.” *Midwest Sanitary Service v. Sandberg*, 2022 IL 127327 ¶24 citing *Sandifer v. United States Steel Corp.*, 571 U.S. 220, 227 (2014).

1. *Deferral Lien Priority*

To make sense of the Deferral Act, the Court must first determine the definition of the word “lien.” The Court notes that there are no descriptive terms preceding or following the term “lien” in Section 3(2) of the statute. There is no plain or implicit language in the Deferral Act that suggests there is a context-specific definition of lien in the statute either. The Court defers to the common definition of a lien for the purposes of this statute. *Midwest Sanitary Service*, 2022 IL 127327, ¶24 (“Unless the words are defined within the statute itself, they will be interpreted as taking their ordinary, contemporary, common meaning.”) (internal quotations omitted). A *lien* is defined as a “legal right or interest that a creditor has in another’s property, lasting usually until a debt or duty that it secures is satisfied.” *Lien*, Black’s Law Dictionary (12th ed. 2024).

The Court begins its analysis with determining the type of lien created under the Deferral Act. Examples of liens that may be placed upon a property include both property tax liens and mechanics liens. Pursuant to the Property Tax Code, and reinforced by case law. Property tax liens have historically been deemed superior to any pre-existing liens or encumbrances on a property. *Forman Realty Corp. v. Brenza*, 11 Ill. 2d 531, 539 (1957) (“[Property taxes], together with all penalties, interest and costs, that may accrue thereon, shall be a prior and first lien on such real property, superior to all other liens and encumbrances, (***) [until] paid or until the real property is sold pursuant to any of the provisions of this Act.”). The

statute itself declares that taxes and any interest accrued “shall be a *prior* and *first* lien on the property, *superior* to all other liens and encumbrances.” 35 ILCS 200/21-75. The legislature has made clear its intent that property tax liens are paramount to any other pre-existing or subsequent liens. The use of explicit descriptors, including “prior,” “first,” and “superior,” allows for no speculation as to the fact that a property tax lien is first in priority despite when it comes into existence.

A Mechanic’s lien is defined as a:

statutory lien that secures payment for labor or materials supplied in improving, repairing, or maintaining real or personal property, such as a building, an automobile, or the like; specifically, a claim created by law to secure priority of payment of the price or value of work performed and materials furnished in erecting or repairing a building or other structure, and attaching to the land as well as to the buildings and improvements on that land. *Mechanic’s Lien*, Black’s Law Dictionary (12th ed. 2024).

The Mechanics Lien Act states that “the amount due [to] each lien creditor [shall be paid] to each in proportion to their several amounts, according to the provisions of this act, but the claims of all person for labor (***) shall be paid *first*.” 770 ILCS 60/19. Mechanics liens have priority “only with respect to the value of the property attributable to those improvements for which they furnished material or services.” *LaSalle Bank National Association v. Cypress Creek 1, LP*, 242 Ill. 2d 231, 233 (2011). “When a mechanics lien attaches to a property previously encumbered by a mortgage, ‘such *lien* is *paramount* to the lien of the mortgage to the extent of the increased value of the premises by reason of the improvements or repairs.’” *Id.* at

241 *quoting Albrecht v. Buelow*, 191 Ill. App. 481, 490 (1st Dist. 1915) (emphasis added). Through the use of explicitly clear language, the Mechanics Lien Act makes it evident that a mechanics lien will take priority over existing encumbrances. Such inclusions and omissions are undoubtedly intentional.

The Mechanics Lien Act and Property Tax Code are different from the Deferral Act by the sheer fact that they contain explicit language that establishes that the respective liens created under those acts are superior and first. Section 3(2) of the Deferral Act does not contain *any* language to this effect. *See* 320 ILCS 30/3(2).

The Deferral Act's language more closely mirrors that of the Illinois Mortgage Foreclosure Law's language ("IMFL"). Section 15-1301 of the IMFL states, "from the time a mortgage is recorded it *shall be a lien* upon the real estate that is the subject of the mortgage for all monies advanced or applied or other obligations secured in accordance with the terms of the mortgage or as authorized by law." 735 ILCS 5/15-1301 (emphasis added). Any lien created by the Deferral Act and any lien created by a mortgage must be rendered inferior to existing encumbrances on a property. This is unlike the Property Tax Code or Mechanics Lien Act which establish such liens as "prior" and "first" by their very own language. 35 ILCS 200/21-75; 770 ILCS 60/19. There is no explicit language in either the IMFL or the Deferral Act establishing either lien as superior or first. 735 ILCS 5/15-1301; 320 ILCS 30/3(2).

Section 3(2) of the Deferral Act states that “any real estate taxes deferred under this Act and any interest accrued thereon are a lien on the real estate and improvements thereon until paid.” 320 ILCS 30/3(2). However, Section 3(2) is silent as to lien priority. In fact, nearly the entire statute is silent on this point. Section 3(3) contains the only exception, stating that “upon the death of the taxpayer claiming the deferral the heirs-at-law, assignees or legatees shall have first priority to the real property.” 320 ILCS 30/3(3). The Court must apply the general principle that statutory omissions are purposeful. When the legislature included the term “priority” in Section 3(3) of the statute, but excluded it in Section 3(2), the omission of “priority” was intentional. *People v. Clark*, 2019 IL 122891, ¶23; *Chicago Teachers Union, Local No. 1 v. Board of Education*, 2012 IL 112566, ¶24 (“When the legislature includes particular language in one section of a statute but omits it in another section of the same statute, courts presume that the legislature acted intentionally and purposely in the inclusion or exclusion, and that the legislature intended different meanings and results.”). Section 3(2) is silent as to lien priority. 320 ILCS 30/3(2).

Wells Fargo does not dispute that the State has recorded several deferral liens against the Property. Wells Fargo also does not dispute that the State is owed a particular value in the amount of funds advanced under the program. It is the priority of the State’s liens that is disputed. No language in the statute or in case law ties liens levied under the Deferral Act to the sort of priority of liens levied

under the Property Tax Code or the Mechanics Lien Act. Nothing in the Deferral Act permits such deferral liens to be awarded a superior position in the line of priority either. This Court may not act outside the bounds established by the legislature's language in the Deferral Act itself. There is no statutory basis to boost the priority of the State's deferral liens to first place. Deferral liens must be treated as any other common lien placed upon a property.

This Court finds that the legislature's omission of specific language with regards to lien priority in the Deferral Act is intentional. *People v. Wells*, 2023 IL 127169, ¶31 ("In interpreting a statute, [a court] may not add words or fill in perceived omissions. It is the judiciary's role to enforce clear, unambiguous statutes as written, not to question the wisdom of the legislature."). The legislature is presumed to have been aware of both the Mechanics Lien Act and the Property Tax Code along with the language used therein because both statutes predate the enactment of the Deferral Act by several decades. *See Freeman*, 404 Ill. App. 3d at 988 ("The legislature is presumed to know of existing statutes at the time it enacts new statutes."). Yet the legislature did not use the language pointing to priority from those statutes (or any similar language) in the Deferral Act.

The Illinois legislature has not been shy to use descriptive terminology in establishing specific liens as superior to other encumbrances. *See Carver v. Bond/Fayette/Effingham Regional Board of School Trustees*, 146 Ill. 2d 347, 353 (1992) ("When the legislature uses certain language in one part of a statute and

different language in another, [a court] may assume different meanings were intended”); *see also People v. Bailey*, 375 Ill. App. 3d 1055, 1061 (2nd Dist. 2007) (“In interpreting a statute, courts will presume that the legislature knew of prior interpretations placed on particular language by judicial decision.”). “The legislature is presumed to know of existing statutes at the time it enacts new statutes.” *Freeman*, 404 Ill. App. 3d at 988. If the legislature wished for deferral liens to be provided a first priority position, it would have included such language in the statute itself. Such language is unambiguously missing. The legislature could have mirrored the language of the Property Tax Code in the Deferral Act. The legislature could have specifically referenced the Property Tax Code in Section 3(2) of the Deferral Act. The legislature could have amended the Property Tax Code to include deferral liens. The legislature did none of these things. This Court cannot write such language in where it is missing.

The State asserted during oral argument that the plain language of this statute undoubtedly demonstrates that deferral liens receive an automatic first priority status such that the State’s deferral liens may jump the line of priority in front of Wells Fargo. This could not be farther from the truth. Also contrary to the State’s arguments made at the hearing, a party’s capacity to endure financial loss is not determinative in establishing priority to be made whole from a judicial sale. The Deferral Act creates liens that simply function like any other common lien. The State’s interpretation of the Deferral Act is flawed. This Court may not provide for

an outcome that is generally “absurd.” *Cassidy*, 2018 IL 122873, ¶17 (“[A] literal reading must fail if it yields absurd, inconvenient, or unjust results.”). Therefore, this Court finds that liens created pursuant to the Deferral Act maintain no automatic priority status by virtue of such liens being recorded. Such deferral liens act as any other common lien on a property. They do not receive automatic first priority ahead of prior encumbrances despite the time of recordation.

2. “Until Paid”

To further make sense of the Deferral Act, the Court must also define what *paid*, *unpaid*, and *deferred* mean. According to Merriam-Webster Dictionary, *paid* is past-tense of the verb *pay*, which means “to make due return to for services rendered or property delivered” or “to discharge indebtedness for.” *Paid*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/paid> (last visited Apr. 1, 2025); *Pay*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/pay> (last visited Apr. 1, 2025). By contrast, *unpaid* simply means “not paid.” *Unpaid*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/unpaid> (last visited Apr. 1, 2025). There is no mistaking that these two terms, under any circumstance, could be construed to mean the same thing. They are opposites. The last word to be defined is *deferred*. *Deferred* is the past participle of the term *defer*, meaning “withheld for or until a stated time.” *Deferred*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/deferred> (last visited Apr. 1, 2025).

Defer is defined as “to delegate to another.” *Defer*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/defer> (last visited Apr. 1, 2025).

There is one similarity that exists between the Deferral Act and the Property Tax Code—the statutes’ use of the language “until paid.” 320 ILCS 30/3(2); 35 ILCS 200/21-75. This Court’s inquiry is, “does not every lien on every property exist until paid?” The answer is yes. There is no plain language of the Deferral Act that shows otherwise. The Court concludes that liens stemming from the Deferral Act, like every other lien, exist until paid. Section 3(2) specifically states that “any real estate taxes deferred under this Act and any interest accrued thereon are a lien on the real estate and improvements thereon until paid.” 320 ILCS 30/3(2). The Property Tax Code’s plain language is that the purpose of the statute is to “make the taxes a lien superior to all other liens, without regard to priority in point of time, and to continue such lien without limitation of time until the taxes are paid or the lien discharged by a foreclosure as provided by law.” *French v. Toman*, 375 Ill. 389, 393 (1940). This linguistic congruence is not sufficient to elevate the priority of the State’s liens under the Deferral Act.

This Court takes judicial notice of information on the Cook County Clerk’s website. See Ill. R. Evid. 201(b), (c); see also *Krewionek v. McKnight*, 2022 IL App (2d) 220078, ¶36 (finding that a court may take judicial notice of information on a government website) citing *Ashley v. Pierson*, 339 Ill. App. 3d 733, 739-40 (4th Dist. 2003). There is not and never has been, in the relevant time period, a property tax

lien (only deferral liens pursuant to the Deferral Act) on the Property. *Recordings*, Cook County Clerk's Office, <https://crs.cookcountyclerkil.gov/Search/ResultByPin?id1=31352010310000> (last visited Apr. 2, 2025). Wells Fargo's Mortgage predates *any* lien placed on the Property by the State pursuant to the Deferral Act. *Id.*

The Court also takes notice of the Department of Revenue's own website that specifically states, "Is the property tax bill actually paid when it is due? Yes." Senior Citizens Real Estate Tax Deferral Program (PIO-64), Illinois Department of Revenue, <https://tax.illinois.gov/research/publications/pio-64.html> (last visited Apr. 2, 2025). According to the Department of Revenue's website, the deferred amounts are expected to be repaid upon the sale or transfer of the property or upon the death of the homeowner. *Id.* The website notes that the taxes themselves are *paid* by the Illinois Department of Revenue, which "sends the tax bill payment to the county collector [or treasurer]." *Id.*

The Court finally takes judicial notice of the Cook County Treasurer's website indicating that the property taxes have been paid. *Your Property Tax Overview*, Cook County Treasurer, <https://www.cookcountytreasurer.com/taxbillhistoryresults.aspx> (last visited Apr. 2, 2025).¹ Reading these three websites together, it is clear that the Harises' property taxes *have been paid* and there is no property tax lien on

¹ The Court searched and reviewed all relevant property tax bills for the Property during the period of time in question. The Court used the Property Index Number ("PIN") as indicated in the Amended Complaint: 31-35-201-031-0000. This was then also cross-referenced using the common address as shown in the Amended Complaint and in the caption of this Memorandum Opinion and Order.

the Property. The Property Tax Code is simply inapplicable. The State may seek to be reimbursed for these advanced funds at a later point in time with interest, as it seeks in this foreclosure action.

Logically, it follows that so long as the property taxes remain unpaid and a tax lien has been recorded, such a lien remains at the top of the list, superior to any mortgage or encumbrance. However, if the property taxes are paid, there is no property tax lien to have superiority because Property Tax Code is no longer applicable. When the State voluntarily pays a senior homeowner's property taxes, such superiority *must* also cease.² This is exactly what occurred here. The State paid the Harrises property taxes, so the Property Tax Code is plainly no longer applicable. The State's lien's here cannot be afforded a senior status under the Property Tax Code because they are not a fruit of the Property Tax Code. The plain language of the Deferral Act pursuant to which the State's liens were recorded does not authorize this Court to elevate the State's liens to a position of priority superior to that which they currently maintain.

E. The Default Rule – “First-in-Time, First-in Right”

“First-in-time, first-in-right” is one of the building blocks of Property Law. Under this rule, “a lien that is recorded first in time generally has priority and is

² The State's request to permit it to jump the line in superiority seems to be a failed attempt at encouraging equitable subrogation. However, it must be noted that there has never existed a property tax lien on the Property at any relevant point in time. It would be impossible for this Court to enforce equitable subrogation where such a property tax lien, equitable or recorded, pursuant to the Property Tax Code has never existed in the first place.

entitled to prior satisfaction of the property it binds.” *As 1, LLC v. Celtic Home Solutions LLC*, 2022 IL App (1st) 220485, ¶31. A first lien is defined as a “lien that takes priority over all other charges or encumbrances on the same property and that must be satisfied before other charges may share in proceeds from the property’s sale.” *First Lien, Black’s Law Dictionary* (12th ed. 2024).

A lien or encumbrance that is first-in-time has priority is entitled to satisfaction before any other later recorded liens. *Fannie Mae v. Kuipers*, 314 Ill. App. 3d 631, 634 (2nd Dist. 2000). First-in-time, first-in-right has its exceptions though like property taxes as an example. “Taxes upon property, together with all penalties, interests and costs that may accrue thereon, shall be a *prior* and *first* lien on the property, *superior* to all other liens and encumbrances.” 35 ILCS 200/21-75. Illinois property tax liens are deemed superior to all other liens on the property until they are paid. *Brenza*, 11 Ill. 2d 531, 540 (1957) (“A valid lien for unpaid general taxes is superior to a mortgage lien whether tax lien attached before or after the execution of the trust deed.”).

The Harrises executed their Mortgage and the lender recorded it prior to their approval for the Senior Citizens Real Estate Tax Deferral Program and recordation of the State’s deferral liens. The Mortgage was, and still is, the first priority lien on the Property. Only a property tax lien (or other lien statutorily permitted to take first priority) may precede the Mortgage in priority. This is not at issue since the State itself has decided to pay the property taxes on the Harrises’

behalf and no property tax lien pursuant to the Property Tax Code encumbers the Property. Any argument for the State's liens under the Deferral Act to jump the line in priority holds no weight on the basis that the property taxes have been *paid* in full by the State. The deferral liens cannot circumvent this statutory scheme. The first of several deferral liens was placed on the Property on June 5, 2006, just shy of two months after Wells Fargo's Mortgage had been executed. The status of the State's deferral liens cannot be elevated to first priority liens based on a plain reading of the Deferral Act and because there are no property taxes that are due under the Property Tax Code. Any appeal to the Property Tax Code is irrelevant and facially moot.

The Deferral Act states that the "total deferred taxes plus interest will not exceed such 80% of the taxpayer's equity interest in the property." 320 ILCS 30/3(1). "Equity interest" is defined by the Act as "the current assessed valuation of the qualified property (***) minus any *outstanding debts* or *liens* on that property." 320 ILCS 30/2(g) (emphasis added). The Deferral Act also provides that "[n]othing in this Act (a) affects any provision of any mortgage or other instrument relating to land requiring a person to pay real estate taxes." 320 ILCS 30/8. The language of both of these sections would be rendered superfluous if this Court accepted the State's interpretation and proposed application of the statute. Any holding to the contrary would be in error. *Board of Education of Springfield School District No. 186 v. AG of Illinois*, 2017 IL 120343, ¶25 ("[Courts are to construe] a statute so

that no part of it is rendered meaningless or superfluous and will not read into it exceptions, limitations, or conditions that conflict with the expressed intent.”) (internal citations omitted). The statute itself acknowledges and anticipates that there may be pre-existing encumbrances on a property at the time a deferral lien is recorded, including mortgages. 320 ILCS 30/2(g), 8.

Following the logic of “first-in-time, first-in-right,” it becomes clear that the deferral liens shall not enjoy first priority over any other encumbrance or lien attached to a property—especially a prior mortgage. A plain reading of this provision shows that there is no legislative intent for later recorded deferral liens to receive priority over prior encumbrances such as a mortgage. The Deferral Act itself specifically contemplates the existence of potential prior and senior liens like Wells Fargo’s Mortgage here. Accordingly, the Court finds that the State’s deferral liens are all inferior to Wells Fargo’s senior and paramount Mortgage.

F. Both Parties Are Not Yet Entitled To Their Respective
Amounts and Ruling as to Priority Only

Upon reviewing the record, the Court has noticed that neither Wells Fargo nor the State are seeking summary judgment against Erica D. Lucas today. Lucas had counsel who filed an appearance submitting Lucas to the jurisdiction of the Court. Counsel for Lucas was later permitted to withdraw his appearance on behalf of Lucas by the Court. No subsequent appearance has even been filed by Lucas or

by an attorney on her behalf. Lucas answered the initial Complaint via counsel, but never answered the Amended Complaint whether by counsel or *pro se*.

In its Motion for Summary Judgment brought against the State, Wells Fargo requested, “any further relief this Honorable Court deems equitable and just.” (Pl.’s Mot. Summ. J., at 6.) Nothing in Wells Fargo’s Motion explicitly seeks summary judgment against Lucas. Wells Fargo also does not bring a separate motion seeking default or summary judgment against Lucas. Additionally, this Court may not enter summary judgment against a party where it was not sought. *Peterson v. Randhava*, 313 Ill. App. 3d 1, 11 (1st Dist. 200) (“Section 2-1005 of the Code of Civil Procedure does not authorize a trial court to *sua sponte* summarily grant summary judgment.”). Doing so would violate “the basic principles of our system that a party receive notice and an opportunity to respond to a potentially dispositive motion. *Id.* at 12. “Such opportunity is ‘deeply imbedded in our concept of fair play and justice.’” *Id.* quoting *English v. Cowell*, 10 F.3d 434, 437 (7th Cir. 1993). It would not be equitable or just to enter summary judgment *sua sponte* in Wells Fargo’s favor and against Erica D. Lucas or to allow Wells Fargo to prove up its amounts due and owing. Likewise, it would be wrong to permit the State to do the same. Accordingly, the Court declines to do so.

735 ILCS 5/1-104(b) vests this Court with the power to make rules regulating its docket, calendar, and business. In so doing, the Court has issued a Standing Order containing court rules that have the force of a statute and are binding on the

parties. *See Jones v. State Farm Mutual Automobile Insurance Co.*, 2018 IL App (1st) 170710, ¶21. Section XV(h) of the Court's Standing Order specifically states that "[m]oving for judgment in a piecemeal fashion against separate litigants is strictly prohibited." Amended and Restated Standing Order, Calendar 60, § XV(h) (Feb. 19, 2025) (emphasis omitted). Wells Fargo is not seeking judgment against one of the litigants today—Lucas. This is strictly prohibited.

Section I(b) of the Standing Order states that "[f]ailure to strictly comply with the requirements set forth in this Standing Order may result in denial of a motion, dismissal of a case for want of prosecution, or any other appropriate sanction at the Court's discretion." Amended and Restated Standing Order, Calendar 60, § I(b) (Feb. 19, 2025). Accordingly and in the Court's discretion, Wells Fargo's Motion for Entry of Order of Summary Judgment on Count II of the Complaint and for an Order Reforming the Mortgage, Motion to Dismiss Party Defendant, Motion to Appoint a Special Selling Officer, and Motion for Entry of a Judgment for Foreclosure and Sale are all DENIED without prejudice. The Court will not evaluate the amounts due and owing to either Wells Fargo or the State today. The Court's ruling is limited in scope as to the priority of Wells Fargo's Mortgage and the State's liens only. Wells Fargo may bring renewed judgment motions (including a motion brought against Lucas) and may seek to prove up the amounts due and owing at a later date. The State may seek to prove up its amounts due and owing at a later date too.

As to the priority battle between Wells Fargo and the State, the Court is clear and free from doubt that summary judgment as to this issue is proper. *Outboard Marine Corp.*, 154 Ill. 2d at 102. There is no genuine issue as to any material fact. The Court finds that Wells Fargo's Mortgage on the Property is first in time, paramount, and senior to all of the State's deferral liens. The Court additionally finds that all of the State's deferral liens are subordinate and inferior to that of Wells Fargo's prior and paramount Mortgage. Accordingly, Wells Fargo's Motion for Summary Judgment Pursuant to 735 ILCS 5/2-1005 Against the State of Illinois - Department of Revenue is GRANTED as to the priority issue only. Insofar as Wells Fargo seeks summary judgment against the State on any other issue today, such a request is DENIED without prejudice to be brought with Wells Fargo's forthcoming renewed judgment motions. The State's Cross-Motion for Summary Judgment is DENIED without prejudice as to the amounts due and owing, but is DENIED with prejudice as to the priority issue.

IV. CONCLUSION

For the reasons mentioned above, Wells Fargo's Motion for Summary Judgment is GRANTED as to the priority issue only. Insofar as Wells Fargo seeks summary judgment against the State on any other issue today, such a request is DENIED without prejudice to be brought with Wells Fargo's forthcoming renewed judgment motions. The remainder of Wells Fargo's judgment motions are all DENIED without prejudice. The State's Cross-Motion for Summary Judgment is

DENIED without prejudice as to the amounts due and owing, but is DENIED with prejudice as to the priority issue.

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

- (1) Wells Fargo's Motion for Summary Judgment Pursuant to 735 ILCS 5/2-1005 Against State of Illinois - Department of Revenue is GRANTED as to the priority issue only;
- (2) Wells Fargo's request for summary judgment against the State on any other issue today is DENIED without prejudice to be brought with Wells Fargo's forthcoming renewed judgment motions;
- (3) Wells Fargo's Motion for Entry of Order of Summary Judgment on Count II of the Complaint and for an Order Reforming the Mortgage is DENIED without prejudice;
- (4) Wells Fargo's Motion to Dismiss Party Defendant is DENIED without prejudice;
- (5) Wells Fargo's Motion to Appoint a Special Selling Officer is DENIED without prejudice;
- (6) Wells Fargo's Motion for Entry of a Judgment for Foreclosure and Sale is DENIED without prejudice;
- (7) The State's Cross-Motion for Summary Judgment is DENIED without prejudice as to the amounts due and owing, but is DENIED with prejudice as to the priority issue;
- (8) All discovery is closed; and
- (9) The Parties shall file all final dispositive motions on or before June 2, 2025.

IT IS SO ORDERED. Judge Debra Ann Seaton


Date: April 17, 2025

APR 17 2025

ENTERED:

Circuit Court - 2199

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


Honorable Debra A. Seaton
Cook County Circuit Judge