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

BMO BANK, N.A., *Plaintiff,* *v.* SANDRA A. GIAMBRI AKA SANDRA GIAMBRI; LEXINGTON GREEN CONDOMINIUM ASSOCIATION; CHICAGO TITLE LAND TRUST COMPANY, AS TRUSTEE OF A TRUST AGREEMENT DATED 21ST DAY OF SEPTEMBER 1979 AND KNOWN AS TRUST NUMBER 5500988; UNKNOWN OWNERS AND NON-RECORD CLAIMANTS: *Defendants.*	Case Number: 2022 CH 03362 Calendar 60 Honorable Debra A. Seaton, Judge Presiding Property Address: 318 Maplewood Court, Unit D2 Schaumburg, Illinois 60193

MEMORANDUM OPINION AND ORDER

DEBRA A. SEATON, Circuit Judge:

Plaintiff BMO BANK, N.A.'s ("BMO") Motion to Reconsider the Order Entered March 6, 2025 ("Motion") is before the Court. For the following reasons, BMO's Motion is DENIED.

I. BACKGROUND

This foreclosure action arises from an alleged default by Defendant SANDRA A. GIAMBRI ("Giambri") on a loan secured by the property located at 318

Maplewood Court, Unit D2, in Schaumburg, Illinois. BMO filed its Complaint on April 12, 2022. Giambri filed her Answer to the Complaint on September 14, 2023.

On October 7, 2024, BMO filed a series of dispositive motions (collectively, "Judgment Motions"). A Motion for Summary Judgment and a Motion for Entry of Judgment of Foreclosure and Sale are among the Judgment Motions. An affidavit of amounts due and owing executed by Harry Swanson ("the Swanson Affidavit") supported the Judgment Motions. The Swanson Affidavit is relied upon to establish the alleged default and to prove up the amounts allegedly due and owing. On January 14, 2025, Giambri filed a Motion to Strike the Swanson Affidavit.

On March 6, 2025, after briefing and hearing argument, the Court granted Giambri's Motion to Strike the Swanson Affidavit for failure to attach the full payment history. The Court entered the corresponding written Order on March 7, 2025. The Swanson Affidavit omitted key loan records predating the alleged default. This defect prevented the Court and Giambri from verifying whether there was in fact a default and how the amount claimed to be due was calculated. The Judgment Motions were accordingly withdrawn by BMO without prejudice after the Swanson Affidavit was stricken.

BMO filed its instant Motion to Reconsider on April 4, 2025. The Motion was presented to the Court on April 29, 2025 and the Court entered a briefing schedule. Giambri filed her Response on May 27, 2025. BMO's Reply was filed on June 17, 2025. The Court held a hearing on the Motion on July 1, 2025 and entered an Order

on July 2, 2025 taking the Motion under advisement for the issuance of a written ruling. The Court's ruling follows.

II. LEGAL STANDARD

"The intended purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law." *North River Ins. Co. v. Grinnell Mutual Reinsurance Co.*, 369 Ill. App. 3d 563, 572 (1st Dist. 2006). This is generally the case for Motions brought pursuant to Section 2-1203(a) of the Code of Civil Procedure. *Sanaa Hachem & Chicago Title Land Trust Co. v. Chicago Title Insurance Co.*, 2015 IL App (1st) 143188, ¶20; 735 ILCS 5/2-1203(a). Illinois courts consistently affirm that trial courts possess inherent authority to review, modify, or vacate interlocutory orders before the entry of final judgment. *Bank of New York v. Garnier*, 2015 IL App (1st) 143048, ¶34. This authority is distinct from motions brought under section 2-1203 of the Code of Civil Procedure, which applies only to final judgments. 735 ILCS 5/2-1203; *Chicago Architectural Metals, Inc. v. Bush Construction Co.*, 2022 IL App (1st) 200587, ¶41.

III. ANALYSIS

BMO seeks the Court to reconsider it's ruling striking the Swanson Affidavit. BMO relies on a narrow reading of Illinois Supreme Court Rule 113. BMO argues that its evidentiary submissions are sufficient under Illinois Supreme Court Rules 113 and 191. The Swanson Affidavit fails under both. BMO's interpretation of Rule 113—conflating the affiant's review with the Rule's attachment

requirement—misconstrues the plain language and intent of the provision. Even under BMO's reading, the Swanson Affidavit's omissions prevent the Court and Giambri from determining default or calculating amounts due and owing. The Swanson Affidavit *independently* fails under Rule 191. It does not attach all the documentary support the affiant needed to rely upon in making the affidavit. These requirements are necessary to sustain a motion for summary judgment. Each of these failures deprives the Court of a legally sufficient basis to grant relief.

A. Plaintiff's Argument: "Reviewed" versus "Required" Payment History

BMO contends that its Affidavit complies with Rule 113 because it attaches the payment history that the affiant—Swanson—reviewed and relied upon when preparing the Affidavit. BMO argues that Rule 113 does not impose any timing requirement. It does not mandate submission of the entire loan history. Rather, according to BMO, it is sufficient to attach whatever portion of the history the affiant deemed relevant when calculating the amounts due and owing. This construction is both textually and functionally flawed.

Rule 113 requires the affiant to identify "the books, records, and/or other documents in addition to the payment history that the affiant reviewed and/or relied upon in drafting the affidavit." Ill. Sup. Ct. R. 113(c)(2)(ii). If "the defendant(s) filed an appearance or responsive pleading to the complaint for foreclosure," then "[t]he payment history must be attached to the affidavit." *Id.* This is exactly the case here. Giambri filed her Answer. This triggered the mandatory language of Rule 113 that the "payment history" must be attached. BMO's

suggestion that the phrase "the payment history that the affiant reviewed" satisfies the attachment requirement is legally incorrect. No qualifying language is used in the sentence requiring the affiant to attach "the payment history" in Rule 113.

The question before the Court is: What is the interpretation of "the payment history" under Rule 113? Courts interpret Illinois Supreme Court Rules the same way they interpret statutes: by their plain and ordinary meaning. *See Xcel Supply LLC v. Horowitz*, 2018 IL App (1st) 162986, ¶36 ("When interpreting a supreme court rule, [courts] are governed by the same rules that govern statutory interpretation."); *Midwest Sanitary Service v. Sandberg*, 2022 IL 127327, ¶24 ("When interpreting statutory language, [courts] are to give effect to the plain and ordinary meaning, avoiding absurd, unreasonable, unjust, or inconvenient results. In determining the plain and ordinary meaning of a statute, [courts] must consider the statute in its entirety, the subject addressed, and the apparent intent of the legislature when it enacted the statute. Unless the words are defined within the statute itself, they will be interpreted as taking their ordinary, contemporary, common meaning. Courts may find words' ordinary, contemporary, common meaning by looking at what they meant when the statute was enacted, which is often by referencing dictionaries." (internal citation and quotations omitted)). This Court must determine if "the payment history" under Rule 113 means the payment history in its entirety or some subset thereof.

The text of Rule 113 leaves no room for a partial or selectively curated payment history to fulfill this requirement. It is improper for a court to depart from

the plain statutory language by reading into the statute exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent. *In re Marriage of Goesel*, 2017 IL 122046, ¶13. Compliance with Rule 113(c)(2)(ii) requires a complete payment history—not a selectively excerpted or partial one—as a necessary predicate for summary judgment. Only a full payment history enables meaningful judicial review of the alleged default and amounts due. This provides proper due process protections to Giambri who filed an appearance and an answer. She has a right to audit the figures presented by BMO.[1] This Court holds that the rule's language does not indicate that a partial payment history is sufficient. This is especially true where BMO is required to prove that a default has occurred. The only way to accomplish this is by looking at the whole picture—the loan's *entire* history.

BMO's reliance on *U.S. Bank, NA v. Avdic*, 2014 IL App (1st) 121759, is misplaced. *Avdic* did not address or interpret the attachment requirement under Rule 113(c)(2)(ii). In *U.S. Bank, N.A. v. Avdic*, the Appellate Court held that the affidavit, supported by attached payment histories, satisfied Illinois Supreme Court Rule 191 by providing sufficient factual detail based on the affiant's personal knowledge and review of business records. 2014 IL App (1st) 121759, ¶¶ 26–27. The court further found the payment histories admissible as business records under Rule 236, as they were made in the regular course of business and were trustworthy without requiring the affiant to have personally made the entries. *Id.* ¶¶ 29–30. The *Avdic* court did *not* address whether a complete payment history needed to be

[1] Due process is further discussed below.

attached to comply with Rule 113(c)(2)(ii). More recent decisions—such as *Deutsche Bank National Trust Co. v. Barrera*, 2020 IL App (3d) 180419 and this Court's ruling in *MTGLQ Investors, L.P. v. Ekwueme*, No. 2023-CH-04428 (Ill. Cir. Ct. Cook County, Mar. 6, 2025)—emphasize the necessity of a full payment history for compliance with both Rule 113 and summary judgment standards. BMO's attempt to extract a contrary rule from *Avdic* ignores the limits of that decision.

B. Partial History Cannot Establish Default or Amounts Due

Assuming *arguendo* that the Court were to accept BMO's interpretation, the record still compels a finding that the Swanson Affidavit is defective. The Affidavit omits several years of relevant payment information. This includes records immediately prior to the alleged default. This omission renders it impossible for the Court or Giambri to determine whether:

1. The borrower was current before default;
2. Payments made were correctly credited;
3. The alleged default occurred as claimed; and
4. The total amount due and owing is properly calculated.

In *Barrera*, the court affirmed the trial court's denial of foreclosure judgment where the plaintiff's Rule 113 affidavit failed to account for *all* payments made during the life of the loan and could not verify when default occurred. 2020 IL App (3d) 180419, ¶15. The *Barrera* court emphasized that without a full payment history, the lender could not meet its burden to prove the borrower was in default. *Id.* ¶21.

BMO has failed in the same way. The attached payment history begins long after the origination of the loan and omits crucial entries from the pre-default period. These gaps create evidentiary uncertainty that violates the purpose of Rule 113—to provide a factually documented foundation for the entry of a judgment of foreclosure.

Under the Illinois Mortgage Foreclosure Law, a foreclosure complaint is expressly deemed to request that "an accounting may be taken under the direction of the court of the amounts due and owing to the plaintiff." 735 ILCS 5/15-1504(e)(1). This statutory requirement reinforces the necessity of attaching a complete payment history. This is not merely a procedural formality. It is a substantive evidentiary tool essential to evaluate the existence of a default and the amounts allegedly owed.

Allowing judgment to be awarded to BMO based on an incomplete or selectively excerpted payment history violates Giambri's right to due process. The fundamental requirement of due process is the opportunity to be heard. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950) ("This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest. (***) An elementary and fundamental requirement of due process in any proceeding (***) [is] to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections." (internal citations omitted)). "[A] mere gesture is not due

process." *Id.* The notice must be reasonably certain to inform those affected. *Id.* Without access to a complete record of loan payments, Giambri is deprived of a fair opportunity to challenge the alleged default or verify the amounts claimed to be due and owing. Such evidentiary omissions undermine the adversarial process and erode the procedural fairness that due process demands in foreclosure proceedings.

C. The Affidavit Also Fails Under Rule 191

Illinois Supreme Court Rule 191(a) mandates that affidavits submitted in support of summary judgment "shall have attached thereto sworn or certified copies of all documents upon which the affiant relies." Ill. Sup. Ct. R. 191(a). The rule further requires that affidavits "shall not consist of conclusions but of facts admissible in evidence." Ill. Sup. Ct. R. 191(a). These requirements are not technical formalities but core components of the evidentiary framework for summary judgment proceedings. The Illinois Supreme Court has held that "strict compliance" with Rule 191 is required "to insure [*sic*] that trial judges are presented with valid evidentiary facts upon which to base a decision." *Robidoux v. Oliphant*, 201 Ill. 2d 324, 336 (2002). Summary judgment is a drastic remedy and must only be granted when the movant's evidence eliminates all genuine issues of material fact entitling that party to a judgment as a matter of law. *Robidoux*, 201 Ill. 2d at 335, 349. Illinois courts state that summary judgment should only be granted when the movant's right to judgment is clear and free from doubt. *Lopez-Arana v. Brian Props.*, Inc., 2024 IL App (1st) 231652. "The plain language of Rule 191(a) requires that documents supporting an affidavit must be attached. The failure to attach the

documents is fatal." *Preze v. Borden Chemical, Inc.*, 336 Ill. App. 3d 52, 57 (1st Dist. 2002) *citing Robidoux*, 201 Ill. 2d at 339-40.

Here, the Swanson Affidavit references documents used to calculate the amounts due and owing—including transaction records, data compilations, and account histories. It fails to identify or attach many of them. Specifically, the affidavit does not:

1. Provide a certified complete payment history;
2. Attach underlying records supporting fees, charges, or interest accruals; and
3. Identify the specific documents relied upon in reaching the total sum due.

These omissions are fatal under Rule 191(a). The rule requires that sworn or certified copies of all documents upon which the affiant relies shall be attached to the affidavit. Ill. Sup. Ct. R. 191(a). Courts have repeatedly held that an affidavit referencing such records—but failing to attach such records—cannot be considered competent evidence. *See Selby v. O'Dea,* 2020 IL App (1st) 181951, ¶15. Affidavits that fail to meet these requirements, such as those containing unsupported assertions, opinions, or conclusory statements, are insufficient and must be stricken. *First American Bank v. Poplar Creek*, LLC, 2020 IL App (1st) 192450, ¶24.

Robidoux establishes Rule 191's purpose. It is to ensure that summary judgment decisions are made based on competent, admissible evidence—not on unverified summaries, conclusions, or internal data compilations not subject to cross-examination. Courts cannot speculate, infer, or extrapolate missing facts not present within the four corners of the affidavit.

Proceeding on the basis of such unsupported affidavits risks depriving the defendant of property without due process of law. The "fundamental requirement of due process is the opportunity to be heard (***) at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). In foreclosure cases—where the consequences include potential loss of a home—the evidentiary bar must remain high. Courts must demand strict compliance with Rule 191(a) to ensure fairness and procedural integrity. That is exactly what this Court did in its prior ruling and reaffirms today.

IV. CONCLUSION

The Swanson Affidavit fails to attach the necessary documents and fails to identify those documents with specificity. The Swanson Affidavit does not comply with Supreme Court Rules 113 and 191. As such, the affidavit is legally insufficient. The affiant would not be competent to testify as to the affidavit's contents if called as a witness. This Court cannot and will not permit such an affidavit to substantiate summary judgment. BMO has not met its burden for this Court to reconsider its prior ruling striking the Swanson Affidavit. BMO's request to reconsider the Swanson Affidavit fails. Accordingly, BMO's Motion to Reconsider the Order Entered March 6, 2025, is DENIED.

THE COURT HEREBY ORDERS FOR THE AFOREMENTIONED REASONS AS FOLLOWS:

(1) Plaintiff BMO BANK, N.A.'s Motion to Reconsider the Order Entered March 6, 2025, is DENIED; and

(2) BMO is granted leave to file renewed dispositive motions, including an affidavit fully compliant with all Illinois Supreme Court Rules, on or before September 8, 2025, and shall notice up such renewed dispositive motions in the normal course through the Office of the Clerk of the Circuit Court of Cook County.

IT IS SO ORDERED.

Date: July 24, 2025

ENTERED:

Honorable Debra A. Seaton
Cook County Circuit Judge

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

ENTERED
Judge Debra Ann Seaton-2199
JUL 24 2025
MARIYANA T. SPYROPOULOS
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL