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

FIFTH THIRD BANK, NATIONAL ASSOCIATION, *Plaintiff,* *v.* ANGELA MCCORD; CARL MCCORD; THE FIRST NATIONAL MORTGAGE EXCHANGE, INC.; SECRETARY OF HOUSING AND URBAN DEVELOPMENT; ILLINOIS HOUSING DEVELOPMENT AUTHORITY; UNKNOWN OWNERS AND NON-RECORD CLAIMANTS, *Defendants.*	Case Number: 2024 CH 02363 Calendar 60 Honorable Debra A. Seaton, Judge Presiding Property Address: 3901 St. Charles Place Bellwood, Illinois 60104

MEMORANDUM OPINION AND ORDER

DEBRA A. SEATON, Circuit Judge:

Defendant ANGELA MCCORD's ("A. McCord")[1] Motion to Dismiss Plaintiff's Complaint pursuant to Section 2-619(a)(9) of the Code of Civil Procedure ("Motion") is before the Court. For the reasons stated below, A. McCord's Motion to Dismiss is GRANTED and Plaintiff's Complaint is DISMISSED with PREJUDICE. Plaintiff FIFTH THIRD BANK, NATIONAL ASSOCIATION ("Fifth Third") is found liable to

[1] This Court will refer to Angela McCord as A. McCord and Carl McCord as C. McCord since they share the same last name. This Court intends no dishonor in doing so. This Court has respect for all persons appearing before it.

A. McCord for all reasonable attorneys' fees and costs incurred associated with litigating this case.

I. BACKGROUND

On September 24, 2009, A. McCord executed a note (the "Note") with Fifth Third Mortgage Company for an original principal of $231,418. Only A. McCord signed the Note. The loan secures the property located at 3901 St. Charles Place in Bellwood, Illinois (the "Property"). Both A. McCord and CARL MCCORD ("C. McCord") (jointly, the "McCords") signed a mortgage (the "Mortgage") pledging the property as collateral to secure the loan. On September 20, 2012, C. McCord and A. McCord executed a loan modification agreement. A. McCord executed a second loan modification on October 27, 2014. C. McCord did not sign the 2014 loan modification agreement.

A. First Foreclosure Action - McCord I

On June 25, 2015, Fifth Third filed a complaint against C. McCord and A. McCord, *inter alia*, to foreclose on the Mortgage. *Fifth Third Mortgage Company v. McCord*, Case Number 2015CH09912 ("McCord I") is the first case that was filed. Fifth Third alleged that the borrower defaulted by failing to pay the monthly payment due as of February 1, 2015. Fifth Third subsequently filed a motion to voluntarily dismiss its first foreclosure complaint on May 5, 2016. The court entered an order dismissing that complaint without prejudice on May 25, 2016.

B. Second Foreclosure Action - McCord II

On July 28, 2016, Fifth Third filed a second foreclosure complaint against the McCords based upon the same Mortgage and Note. *Fifth Third Mortgage Company v. McCord*, Case Number 2016CH09991 ("McCord II") is the second case that was filed. Fifth Third alleged in its 2016 complaint, the same date of default of February 1, 2015, as it did in its 2015 complaint.

On March 14, 2017, C. McCord and A. McCord filed a motion to dismiss Fifth Third's second complaint. The McCords argued that Fifth Third failed to conduct a face-to-face meeting pursuant to 24 C.F.R. § 203.604.[2] Fifth Third argued *for the first time* that it was not required to conduct a face-to-face meeting with A. McCord because she had sent a cease-and-desist letter in 2014.

C. McCord and A. McCord's motion to dismiss was stricken on July 17, 2017. They were granted twenty-eight days to answer the complaint.

On August 23, 2017, C. McCord and A. McCord filed their answer. C. McCord and A. McCord filed a motion for leave to file an amended answer to the complaint on October 26, 2017. The amended answer alleged an affirmative defense that Fifth Third failed to conduct a face-to-face meeting or to make a reasonable effort to conduct such a meeting. The terms of the Mortgage and Note mandated the mortgagee to comply with federal regulations. (Def.'s Mot to Dismiss, Ex. C Compl., Ex. A. Mortg. ¶9(d); Ex. B Note ¶6(B).) On November 8, 2017, the court granted C. McCord and A. McCord's motion and allowed their amended answer to be filed

[2] On August 2, 2024, the Department of Housing and Urban Development adopted a new rule, changing the face-to-face meeting requirement effective January 1, 2025. *See* 89 FR 63082.

instanter. Fifth Third filed a reply to C. McCord and A. McCord's affirmative defense on November 20, 2017.

On April 23, 2018, Fifth Third filed its motion for summary judgment and judgment of foreclosure. C. McCord and A. McCord then filed a motion supported by a Rule 191(b) affidavit for leave to depose Kathy Bohman, Fifth Third's affiant based upon Fifth Third's refusal to answer some of the questions raised in discovery on June 15, 2018. The court granted C. McCord and A. McCord's motion for leave to take the deposition on July 25, 2018.

C. McCord and A. McCord filed a motion for leave to file their response to Fifth Third's motion for summary judgment on January 11, 2019. C. McCord and A. McCord also filed a cross-motion for summary judgment.

Fifth Third filed its reply in support of its motion for summary judgment on January 17, 2019. The court granted C. McCord and A. McCord's motion for leave to file their response to Fifth Third's motion for summary judgment and their cross-motion for summary judgment on January 28, 2019.

On March 6, 2019, the court granted Fifth Third's motion for summary judgment and judgment of foreclosure. The McCord's cross-motion for summary judgment was denied by the court. The court found that the February 14, 2014 letter was a cease-and-desist demand and had never been withdrawn. Accordingly, the lender had no legal duty to conduct a face-to-face meeting with the borrower.

On December 5, 2019, the Property was sold at a judicial foreclosure sale. Fifth Third filed its motion to confirm the sale on December 16, 2019. On January

31, 2020, C. McCord and A. McCord filed a response to the confirmation motion. They again raised the issue regarding Fifth Third's failure to conduct a face-to-face meeting before filing the foreclosure complaint.

The court granted Fifth Third's motion for an order approving the report of sale and distribution on February 11, 2020. The order included a personal deficiency judgment against A. McCord in the amount of $139,870.90.

C. McCord and A. McCord filed a timely notice of appeal on March 12, 2020. The appellate court reversed the circuit court's orders granting Fifth Third's motion for summary judgment and motion for order approving sale on October 29, 2021. The Appellate Court reasoned as follows:

> Clarification of the February 1, 2014, letter is the single most important fact in the determination of whether Fifth Third was entitled to summary judgment, and that clarification has yet to transpire. Thus, the trial court in this case erred in granting summary judgment in favor of Fifth Third. (***) "We therefore vacate the trial court's judgment granting summary judgment, on the sole basis that a genuine issue of material fact exists as to whether the February 1, 2014, letter was a cease-and-desist letter that exempted Fifth Third from the face-to-face meeting requirement. We remand the case to the trial court for further proceedings. As we are vacating a summary judgment order on the basis that a question of material fact exists, we make no judgment as to the merits of the underlying foreclosure action. *Fifth Third Mortgage Company v. McCord*, 2021 IL App (1st) 200512, ¶28.

On March 1, 2022, Fifth Third filed its motion to reinstate the case in the circuit court. The court granted this request on March 30, 2022. On August 17, 2022, Fifth Third filed a motion to voluntarily dismiss the case. A. McCord then filed a petition for attorney's fees and costs pursuant to 735 ILCS 5/15-1510(a) on August 31, 2022.

Fifth Third responded to A. McCords's petition for attorney's fees arguing that A. McCord was not a "prevailing party" under Section 15-1510(a). The appellate court vacated the order granting Fifth Third's motion for summary judgment, reversed part of the case and reset the procedural posture. Judgment was not granted in the McCords' favor. Accordingly, there was no prevailing party under Section 15-1510(a).

On November 18, 2022, Judge Lyle denied A. McCord's petition for Attorney's fees. However, the court granted A. McCord's petition for court costs in the amount of $1,085.50. Judge Lyle agreed with Fifth Third that A. McCord was not entitled to attorney's fees under Section 15-1510(a). The court granted Fifth Third's motion to voluntarily dismiss the foreclosure case without prejudice on November 18, 2022.

C. Third Foreclosure Action - McCord III

On March 21, 2024, Firth Third Bank[3] filed a *third* foreclosure complaint against the McCords to foreclose on the *same Mortgage and Note* as in the *2015 and 2016* complaints—this case ("McCord III"). Fifth Third alleges in its third complaint

[3] McCord I and II were brought by Fifth Third Mortgage Company. McCord III has been brought by Fifth Third Bank. Attached to the Complaint as Exhibit D of McCord III is a copy of an "Agreement of Merger" demonstrating that Fifth Third Mortgage Company was a wholly-owned subsidiary of Fifth Third Bank. The "Agreement of Merger" indicates that Fifth Third Mortgage Company merged "with and into" Fifth Third Bank in 2018. This is *prima facie* evidence of Fifth Third Bank's standing to bring McCord III. This also explains why the name of the plaintiff in McCord I and II differs from the name of the plaintiff in McCord III. This is especially relevant where McCord III's Complaint has no copy of an assignment of the Mortgage nor indorsement of the Note and Fifth Third Bank's name also does not appear on either the 2012 nor 2014 Loan Modification Agreements. A successor bank that merges with the original mortgagee obtains the rights possessed by the original bank as a matter of law. *See Standard Bank & Trust Co. v. Madonia*, 2011 IL App (1st) 103516, ¶19. Both entities were Ohio entities and Ohio law controls the terms of the Agreement of Merger per paragraph 15 of the Agreement of Merger. Ohio law essentially holds the same to be true as Illinois. "The absorbed company becomes part of the resulting company following merger and the merged company has the ability to enforce agreements as if the resulting company had stepped in the shoes of the absorbed company." *JPMorgan Chase Bank, NA v. Carroll*, 2013-Ohio-5273, ¶17 (Ct. App.).

that A. McCord defaulted on the September 1, 2023, payment. It also alleges a principal due and owing of $160,639.14, slightly less than the amount sought in McCord I and II

On December 4, 2024, A. McCord filed this Motion to Dismiss. This Court entered a briefing schedule on February 11, 2025. This Court granted Fifth Third's Motion for Extension of Time to respond to the Motion to Dismiss on April 15, 2025 and reset the briefing schedule. This Court also granted Fifth Third's *second* Motion for Extension of Time to file a response brief on June 20, 2025. The briefing schedule was reset for a final time. Fifth Third's response brief was timely filed on July 15, 2025. A. McCord's reply brief was timely filed on August 5, 2025. This Court heard arguments on the Motion to Dismiss on August 19, 2025. After reading the Motion, Response, and Reply and hearing the arguments, this Court entered an Order taking the Motion under advisement for the issuance of a written opinion on August 20, 2025. This Court's ruling follows.

II. LEGAL STANDARD

A motion to dismiss under 735 ILCS 5/2-619(a)(9) of the Code of Civil Procedure allows for the involuntary dismissal of a claim that is barred by an affirmative matter that defeats the claim. The single refiling rule under 735 ILCS 5/13-217 is such an affirmative matter. *See Wells Fargo Bank, N.A. v. Rodriquez*, 2024 IL App (3d) 230020. A "[d]efendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief." 735 ILCS

5/2-619(a). The Court has discretion to grant or deny the motion based upon all the factual evidence and questions raised by the parties. 735 ILCS 5/2-619(c).

"A motion to dismiss, pursuant to section 2-619 of the Code, admits the legal sufficiency of the plaintiffs' complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiffs' claim." *Jackson v. Hehner*, 2021 IL App (1st) 192441, ¶25 (*quoting DeLuna v. Burciaga*, 223 Ill. 2d 49, 59). "[T]he movant is essentially saying 'Yes, the complaint was legally sufficient, but an affirmative matter exists that defeats the claim.'" *Jackson*, 2021 IL App (1st) 192441, ¶25 (*quoting Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶31). "Dismissal is permitted based on certain listed 'defects' (735 ILCS 5/2-619(a)(1)-(8) (West 2020)) or some 'other affirmative matter' (735 ILCS 5/2-619(a)(9) (West 2020)) outside the complaint." *Jackson*, 2021 IL App (1st) 192441, ¶25 (*citing Reynolds*, 2013 IL App (4th) 120139, 31). Under a Section 2-619 motion to dismiss, all well-pled facts and reasonable inferences from those facts are admitted to be true. *Kopf v. Kelly*, 2024 IL 127464, ¶63. The Court must construe the motion in the light most favorable to the non-moving party. *Id.*

III. ANALYSIS

A. McCord raises two main arguments in her Motion. This first is a violation of the single refiling rule. This Court must determine whether Fifth Third's third foreclosure action violates the single refiling rule under 735 ILCS 5/13-217 requiring dismissal of this case. For the reason outlined below, the Court finds that it does. Because this first issue is dispositive, this Court exercises judicial restraint

and finds that it need not analyze the second issue of a violation of the face-to-face meeting requirement.

A. McCord argues that the prior two foreclosure cases (McCord I and II) arise out of the *same transaction or occurrence as the present action* (McCord III). She argues that there was no deaccelertion of the accelerated Note following the first two cases. Accordingly, Fifth Third is barred from attempting this *third* foreclose upon the same cause of action. A. McCord argues that alleging a different date of default and a slightly reduced principal balance does not change this reasoning. Because the Note was never deaccelerated, there was never a September 2023 payment she could have missed. *This failure is due entirely to Fifth Third's voluntary dismissal following reversal of McCord II by the Appellate Court.*

Fifth Third filed its first foreclosure action in 2015 where it alleged a February 1, 2015 date of default and a principal balance of $168,602.74. McCord I was voluntarily dismissed without prejudice in 2016.

Fifth Third filed its second foreclosure action in 2016 where it alleged the same February 1, 2015 date of default and a principal balance of $168,602.74. After reinstatement of the case, McCord II was voluntarily dismissed without prejudice in 2022 following the Appellate Court's reversal just as McCord I.

Fifth Third filed this case, its third foreclosure action in 2024. McCord III alleges September 1, 2023 as the new date of default. Fifth Third argues that the acceleration of the Note was deaccelerated as a result of the 2022 dismissal of McCord II. Fifth Third asserts that the deacceleration resulted in a reinstatement

of the monthly installment payments. One of these payments, September 1, 2023, was allegedly missed. McCord III alleges a principal due and owing of $160,639.14, slightly less than the amount sought in McCord I and II. Fifth Third maintains that certain amounts were forgiven from the prior delinquencies.

This is where Illinois' single refiling rule becomes relevant. Illinois', single refiling rule provides that if:

> the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution, (***) the plaintiff, his or her heirs, executors or administrators may commence a new action within one year or within the remaining period of limitation, whichever is greater, after (***) the action is voluntarily dismissed by the plaintiff.
> 735 ILCS 5/13-217.

The single refiling rule "permits one, and only one, refiling of a claim" after a voluntary dismissal. *Flesner v. Youngs Development Co.*, 145 Ill. 2d 252, 254 (1991). The single refiling rule is an extension of the *res judicata* doctrine. *D'Last Corp v. Ugent*, 288 Ill. App. 3d 216, 220 (1st Dist. 1997). Issues concerning *res judicata* analysis are questions of law within a court's authority. *Venturella v. Dreyfuss*, 2017 IL App (1st) 160565, ¶27.

This Court must "apply the test for 'identity of cause of action' for *res judicata*—the 'transactional test'" in analyzing this Motion under Section 13-217. *First Midwest Bank v. Cobo*, 2018 IL 123038, ¶18; *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 311 (1998). The Illinois Supreme Court adopted this test in *River Park, Inc.* It was reaffirmed by the Illinois Supreme Court in *Cobo*.

Under the transactional test, separate claims are treated as the same cause of action "if they arise from a single group of operative facts." *Cobo*, 2018 IL 123038,

¶19. Courts are to apply the transactional test pragmatically. *Id.* Weight is given "to considerations such as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Id.*

This Court rules that McCord III improperly asserts the same cause of action brought in McCord I and II. All three lawsuits arise out of the same 2009 Note and Mortgage. They share the same original indebtedness of $231,418, and the same 2014 Loan Modification Agreement. McCord I and II share identical operative facts. February 1, 2015 is alleged as the date of default in McCord I and II. Both also alleged the same principal balance of $168,602.74.

McCord III's new date of default and slightly reduced principal *do not* alter the alleged core single group of operative facts. The record is devoid of any evidence of a valid deacceleration when taking the facts in the light most favorable to Fifth Third. A. McCord's affidavit asserts no payments or modifications since 2015. The approximate $8,000 reduction in the principal can not reflect the forgiveness of eight years of delinquencies.

This Court must consider whether the change in the date of default from McCord I and II to McCord III is enough to constitute a separate cause of action.. In *Webster Bank, N.A.,* the United States District Court for the Northern District of Illinois, persuasively guides this Court in its application of Illinois law. *Webster Bank* states that varying a date of default circumvents the rule and results in

"unsustainable situations." *Webster Bank, N.A. v. Pierce & Associates, P.C.*, No. 16 C 2522, 2019 U.S. Dist. LEXIS 42780, at *10 (N.D. Ill. Mar. 14, 2019). *Webster Bank* states that simply changing the date of default would result in a lawsuit "never be[ing] barred by any prior adjudication as long as the Bank can vary its complaints ever-so-slightly by changing a default date." *Id.* A bank cannot be permitted to continuously bring lawsuits over and over again until they get the result they seek. *Levin v. King*, 271 Ill. App. 3d 728, 732 (1st Dist. 1995) ("[A]fter a party has 'had his day in court and his right has been conclusively determined,' he may not return to 'harass' the same opponent about the same issues." *citing Shedd v. Patterson*, 302 Ill. 355, 360 (1922)). Mere changes in the date of default is *not* enough. Applying the rationale of *Webster* to McCord III, this Court cannot find that the change in the date of default is enough to constitute a separate cause of action.

Fifth Third also changed the amount due in McCord III from McCord I and II. Fifth Third asserts that the voluntary dismissal of McCord II deaccelerated the loan. This deacceleration caused the monthly installments to be put back in place. A. McCord's failure to pay the *re-instituted* September 2023 payment is the failure that created a separate breach and a separate cause of action according to Fifth Third. This Court believes that Fifth Third's reasoning is incorrect.

Deutsche Bank Trust Co. Americas v. Sigler, 2020 IL App (1st) 191006, ¶¶ 53, 56, is binding First District precedent. Acceleration unifies the debt into one indivisible obligation, merging installments into the full balance. *Id.* Deacceleration

requires explicit revocation, borrower notification and receipt, agreement or performance and reinstatement evidence. *Id.*

In *Sigler*, a second notice offering reinstatement was deemed ineffective because it was sent during pending litigation, lacked borrower agreement or performance, and had no new payment schedule. Similarly, in *Wells Fargo Bank, N.A. v. Rodriguez*, 2024 IL App (3d) 230020, ¶¶ 30-31, deacceleration was rejected without explicit revocation or borrower engagement. Dismissals and HAMP trial payments were insufficient as no new amortization schedule existed. *Rodriguez* notes that acceleration through separate notice requires more than a dismissal for revocation of that acceleration. *Rodriguez*, 2024 IL App (3d) 230020, ¶30.

Fifth Third presents the Haydon affidavit in support of its argument that there was a deacceleration of the loan after the dismissal of McCord II. Forgiveness and reinstatement existed with a "paid to" date of August 1, 2023, loan history showing adjustments and a demand letter for the September 1, 2023 payment. *Sigler* involved a single notice during litigation. *Rodriguez* had no evidence beyond the dismissals. The Haydon affidavit evidences unilateral deacceleration. As such, it falls short under *Sigler*'s strict standard of notification, receipt, or agreement to the "new" schedule by the borrower.

A. McCord's unrefuted affidavit denies notification, receipt, or agreement to any new schedule since 2015. The loan history and demand letter reflect actions by Fifth Third. They do not reflect borrower performance or explicit acceptance to a new payment schedule. No new amortization schedule is even provided. A. McCord's

affidavit is admissible under *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993). It is taken as true absent counter-evidence refuting her claims. *Rodriguez* contained *a* similar affidavit. *Rodriguez*, 2024 IL App (3d) 230020, ¶21.

Fifth Third relies upon *Freedom Mortgage Corp. v. Olivera*, 2021 IL App (2d) 190462, ¶¶ 38-41, a Second District case. *Olivera* allowed for forgiveness and new defaults post-deacceleration. *Bank of New York Mellon v. Dubrovay*, 2021 IL App (2d) 190540, ¶¶ 29-30, a Second District case which held that a voluntary dismissal deaccelerates a loan is also relied upon by Fifth Third. Both are unpersuasive as non-binding cases which conflict with the First District's strict requirements of *Sigler*. There must be explicit borrower involvement. *Sigler*, 2020 IL App (1st) 191006, ¶¶ 53, 56.[4] This Court is *bound* by *Sigler*.

There was no borrower involvement prior to bringing McCord III that would decelerate the loan. Voluntary dismissal of McCord II also did not deaccelerate the loan as a matter of law. The loan in fact was never deaccelerated. The acceleration in 2015 unified the debt into one indivisible obligation and merged all the future installments into the full balance due. Accordingly, there was no September 2023 payment for A. McCord to miss. McCord III camouflages the same default that occurred in 2015 brought in McCord I and II. This is *not* permitted by the single refiling rule.

---

[4] Published decisions of the appellate court are binding on circuit courts throughout the state, unless there are conflicting decisions from various appellate districts and no controlling authority from a particular circuit court's home district, in which case that circuit court may choose between the conflicting decisions. *State Farm Fire & Casualty Co. v. Yapejian*, 152 Ill. 2d 533, 539-40 (1992). "[T]he precedential scope of a decision [however] is limited to the facts before the court." *People v. Palmer*, 104 Ill. 2d 340, 345-46 (1984).

Fifth Third asserts that the approximate $8,000 principal reduction supports a finding that McCord III does not arise from the same single group of operative facts. Fifth Third *unilaterally* forgave a part of the principal owed to file this lawsuit. This was an attempt to not run afoul of the single refiling rule. This undermines *Sigler*'s requirement for explicit borrower involvement. *Sigler*, 2020 IL App (1st) 191006, ¶¶ 53, 56.

A. McCord's affidavit makes clear that she never made any payments under the loan since 2015. This Court must consider how the principal was reduced after the dismissal of McCord II but before the filing of McCord III when no payments were made by A. McCord. It appears to be a unilateral action by Fifth Third. This is impermissible.

"[A]llowing plaintiffs to save their claims from the single-refiling rule simply by changing the relief sought in their complaint would be like allowing a plaintiff in a personal-injury case to save his claim by amending his complaint to forgo a couple of months of lost wages." *Sigler*, 2020 IL App (1st) 191006, ¶57. A reduction in the amount sought was not enough for the *Rodriguez* court. *Rodriguez*, 2024 IL App (3d) 230020, ¶11. It is also not enough for this Court. Fifth Third's argument that this reduction in the amount sought is sufficient to allege a new cause of action beyond what was previously brought in McCord I and II is not permissible under the law.

There is no evidence presented by Fifth Third in opposition to A. McCord's Motion to Dismiss or her affidavit that the loan was reinstated, deaccelerated, or modified in any way *with her involvement* following the 2015 default and

acceleration. *Dubrovay* points out in its dissent that, "[t]here is no evidence of a new amortization schedule requiring monthly installments after the dismissal of any of the foreclosure complaints." *Dubrovay*, 2021 IL App (2d) 190540, ¶55 (Hutchinson, J., dissenting). Neither did Fifth Third negotiate a new schedule with A. McCord. The accelerated contract was still effective, making the debt indivisible, when Fifth Third filed McCord II. McCord II was the only refiling permissible under Section 13-217.

"Illinois courts are open to all litigants for the settlement of their rights. (***) After a party has had his day in court, he may not return to 'harass' the same opponent about the same issues. *Levin v. King*, 271 Ill. App. 3d 728, 732 (1st Dist. 1995) (*citing Shedd v. Patterson*, 302 Ill. 355, 360 (1922)). No final adjudication of Fifth Third's alleged rights occurred in the voluntary dismissals of McCord I and II. The voluntary dismissal of McCord II followed the reversal of the entry of summary judgment by the Appellate Court. Fifth Third may have been disappointed by the Appellate Court's ruling in McCord II. It may have scrapped the case and sought another "bite." *Levi*, 271 Ill. App. 3d at 732. This Court cannot speculate as to Fifth Third's intent in bringing this case. Nonetheless, Fifth Third *cannot* bring McCord III under the principles of *res judicata.*

Voluntary dismissal in McCord I *did not* bar Fifth Third from bringing McCord II under *res judicata.* However, application of the same *res judicata* principles under the single refiling rule to the voluntary dismissal of McCord II

results in a bar to bringing McCord III. *See Cobo*, 2018 IL 123038, ¶18; *see also River Park, Inc.*, 184 Ill. 2d 290, 311 (1998).

Without valid deacceleration, McCord III arises from the same operative facts as McCord I and II; a violation of the single refiling rule under 735 ILCS 5/13-217. A new date of default where there was no deacceleration does not create a new cause of action. Nor does unilateral reduction in the amount sought create a new cause of action. Neither are sufficient to create a separate cause of action upon which Fifth Third may sue. Accordingly, Defendant's motion to dismiss is GRANTED.

This case is DISMISSED with PREJUDICE as an impermissible second refiling in violation of 735 ILCS 5/13-217. This procedural issue is entirely dispositive. This Court does not need to analyze A. McCord's second argument regarding compliance with the face-to-face meeting requirement of 24 C.F.R. § 203.604 under the doctrine of judicial restraint.

IV. CONCLUSION

McCord III constitutes an impermissible second refiling under Section 13-217. It arises from the same operative facts as McCord I and II. It involves the same note, mortgage, loan modification agreement, original indebtedness of $231,418 and the 2015 acceleration. No valid deacceleration created a new cause of action. Fifth Third's argument for deacceleration fails to meet *Sigler*'s binding standard. Explicit borrower notification, agreement, or performance and evidence of reinstatement is *required*. None of these are present here. A. McCord's affidavit is

unrefuted. It attests that no payments or agreements were made since 2015. The seemingly unilateral reduction in principal and lack of a new amortization schedule undermine Fifth Third's argument. Dismissal with prejudice is warranted because Fifth Third's complaint violates the single refiling rule.

Defendant A. McCord's Motion to Dismiss Plaintiff Fifth Third Bank's foreclosure complaint pursuant to Section 2-619(a)(9) is GRANTED. Fifth Third's Complaint is DISMISSED with PREJUDICE.

A. McCord seeks attorneys' fees and costs related to this suit. 735 ILCS 5/15-1510 states that "[t]he court may award reasonable attorney's fees and costs to the defendant who prevails in a motion, an affirmative defense or counterclaim, or in the foreclosure action." This Court finds that Angela McCord has prevailed in her motion brought in this foreclosure action.

A. McCord's request for attorneys' fees and costs under 735 ILCS 5/15-1510 is GRANTED against Fifth Third. A. McCord is granted leave to file a petition for attorney's fees and costs to prove up damages for attorneys' fees and costs of this case.

THE COURT HEREBY ORDERS AS FOLLOWS:

(1) A. McCord's Motion to Dismiss Plaintiff Fifth Third Bank's foreclosure complaint pursuant to Section 2-619(a)(9) is GRANTED;

(2) Fifth Third's Complaint is DISMISSED in its entirety with PREJUDICE as an impermissible second refiling in violation of 735 ILCS 5/13-217;

(3) Fifth Third is found liable to A. McCord for reasonable attorneys' fees and costs incurred associated with litigating this case pursuant to 735 ILCS 5/15-1510;

(4) The case is set for status on November 20, 2025, at 2:30 PM via Zoom at the below listed Zoom Information;

(5) A. McCord is granted 30 days leave from the date of entry of this Order, on or before, October 30, 2025, to file a petition for attorney's fees and costs to prove up damages concerning attorneys' fees and costs awarded to her;

(6) Fifth Third may file before this Court a Motion to Reconsider the entirety or any portion of this judgment pursuant to 735 ILCS 5/2-1203 within the statutory allotted time from the entry of this Order;

(7) Courtesy copies for a petition or motion presented to the Court by either party shall be submitted to the Court's email address listed below in strict conformity with the Court's Standing Order no later than 4:30 PM on November 5, 2025; and

(8) This is a FINAL and APPEALABLE ORDER unless Fifth Third files a post judgment motion pursuant to (6) above.

Zoom Information:
Meeting ID: 810 2556 7672
Passcode: 021601
Call-in: (312) 626-6799

ENTERED
Judge Debra Ann Seaton-2199
SEP 30 2025
MARIYANA T. SPYROPOULOS
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

IT IS SO ORDERED.

Date: September 30, 2025

ENTERED:

Honorable Debra A. Seaton
Cook County Circuit Judge

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