

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CHANCERY DIVISION**

U.S. Bank Trust National Association not in its	)	
Individual Capacity but solely as Owner Trustee	)	Case Number 2024 CH 10398
for RCF2 Acquisition Trust	)	
Plaintiff,	)	Cal. 60
	)	
v.	)	Judge Debra A. Seaton
	)	
David A. Niksich; BMO Bank N.A.; Discover Bank;	)	Property Address
Knolls of Amber Grove Homeowner's Association;	)	582 Ivory Lane
Unknown Owners and Nonrecord Claimants,	)	Bartlett, IL 60103
Defendants.	)	

**COURT'S RULING**

**Defendant's Motion for Summary Judgment / Plaintiff's Motion to Amend the Complaint**

This matter comes before the Court on Defendant's Motion for Summary Judgment simultaneously with Plaintiff's Motion to Amend their Complaint. Counsel for Plaintiff and Counsel for Defendant were present before the Court via Zoom. Both counsels filed briefs and sur briefs in this matter. The Court heard oral arguments and took the matter under advisement. The Court having jurisdiction and being fully advised in the premises makes the following ruling.

**BRIEF STATEMENT OF FACTS**

On November 26, 2024, U.S. Bank filed its mortgage foreclosure complaint as trustee for "RCF2 Acquisition Trust." The spelling of the U.S. Bank name used by Plaintiff contained no space between the "F" and the "2". On September 13, 2025, U.S. Bank filed an amended complaint with the same name.

The spelling of the U.S. Bank trust name is of paramount importance in this case. The name of the actual mortgage assigned to U.S. Bank on March 23, 2022 was assigned to U.S. Bank, as trustee for "RCF 2 Acquisition Trust." The actual assignment contains a space between the "F" and the "2", whereas the name in the filed complaint contains no space.

On November 4, 2025, Defendant filed their answer and affirmative defenses. Defendant's affirmative defense asserted that U.S. Bank lacked standing because it filed its lawsuit against the wrong trust.

On November 12, 2025, U.S. Bank moved to strike Defendant's affirmative defenses. On February 20, 2025, after briefing and oral arguments, this Court entered an order striking Defendant's standing affirmative defense without prejudice. Leave to replead by March 12, 2026 was given to the Defendant.

After the ruling, U.S. Bank filed a motion to amend U.S. Bank's name. U.S. Bank seeks to change the name trust named in the lawsuit at the time of filing to the correct name of the trust. Defendant contends that the amendment cannot be allowed because the name change names an entirely different entity.

On March 12, 2026, Defendant filed their amended answer and affirmative defenses. Defendant asserts a lack of standing as affirmative defenses. The affirmative defenses assert that the name of the trust that U.S. Bank filed its complaint in and the one in which it wishes to correct the name to are two separate, distinct entities. U.S. Bank is the trustee for both trusts. The trust for which U.S. Bank wants to amend the name to is the only trust that has standing to enforce the mortgage. Defendant stands upon the assertion that U.S. Bank brought this lawsuit on behalf of the wrong trust entity by filing its complaint on behalf of the trust without capacity to sue.

On March 19, 2026, Defendant argued that U.S. Bank failed to conduct the analysis required under *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263 (1992) for amendment of pleadings. Defendant believes that Illinois law does not support the application of *misnomer* to permit U.S. Bank to change the identity of the trust to cure a standing issue.

U.S. Bank's counsel filed an affidavit asserting that when the document was filed with their office the uploading split U.S. Bank trust's name on different lines and a scrivener's error was made by not putting the space. The loan modification documents attached as exhibits to U.S. Bank's complaint contain the *correct* spelling of the trust.

## ARGUMENTS

Defendant's Motion for Summary Judgment is premised upon the fact that the wrong U.S. Bank entity is named in the mortgage foreclosure complaint. Defendant argues that this is not a misnomer. Rather, the filing reflects a mistaken identity of the U.S. Bank trust as Plaintiff. Defendant argues that correcting a misnomer cannot defeat standing.

Plaintiff seeks to amend the complaint to reflect the correct name of the U.S. Bank trust as a misnomer.

## CASELAW

735 ILCS 5/2-401(b) of the Illinois Compiled Statute (ILCS) states that "[m]isnomer of a party is not a ground for dismissal but the name of any party may be corrected at any time, before or after judgment, on motion, upon any terms and proof that the court requires." 735 ILCS 5/2-401(b)

The rule that misnomer is not a ground for dismissal is a narrow one and applies only where an action is brought and summons is served upon a party intended to be made a defendant. In a misnomer case, actual notice of the lawsuit is given to the real party in interest, but the complaint and process do not refer to the person by his correct name. *Barbour v. Fred Berglund & Sons, Inc.*, 208 Ill. App. 3d 644, 567 N.E.2d 509, 1990 Ill. App. LEXIS 1978, 153 Ill. Dec. 551

Illinois courts have consistently distinguished the misnomer rule from rules applicable to a mistake in identity. The misnomer statute applies *only* to correctly joined and served, but misnamed, parties. Mistaken identity occurs when the wrong person was joined and served. *Barbour, supra*. The test in deciding whether the misnomer statute applies is whether the party sued is the real party in interest. Where a suit is brought against an entity, *which is legally nonexistent*, the proceedings are void ab initio. The most probative evidence of who a plaintiff intends to sue is the party named by the plaintiff in the complaint.

The intent of the plaintiff *is a pivotal inquiry in the determination of whether a particular case involves misnomer or mistaken identity*. A plaintiff's subjective intent as to whom he intended to sue is not controlling where the record contains objective manifestations indicating an intent to sue another.

735 ILCS 5/2-401(b) authorizes amendment of a complaint to name, and cause process to be served upon the correct party.

The pivotal inquiry in dealing with an issue of misnomer is *who did the plaintiff intend to sue*. To conduct this inquiry, *a court must look at evidence in the record which serves as a manifestation of the plaintiff's intent*. The most probative evidence of who a plaintiff intended to sue *is the party named by the plaintiff in the complaint*. If such a party in fact exists, but is not the real party in interest, a court can conclude that the plaintiff has mistakenly sued the wrong party. *Clinton v. Avello*, 105 Ill. App. 3d 336, 434 N.E.2d 355, 1982 Ill. App. LEXIS 1663, 61 Ill. Dec. 202

A determinative factor in deciding whether misnomer applies is whether the party sued actually exists. *Greil v. Travelodge International, Inc.*, 186 Ill. App. 3d 1061, 541 N.E.2d 1288, 1989 Ill. App. LEXIS 1035, 133 Ill. Dec. 850, 2 A.L.R.5th The most probative evidence of who a plaintiff intended to sue is the party named by the plaintiff in the complaint. If such a party in fact exists, but is not the real party in interest, a court *could* conclude that the plaintiff has mistakenly sued the wrong party. *Thielke v. Osman Construction Corp.* (1985), 129 Ill. App. 3d 948, 951, 773 N.E.2d 574 *Clinton v. Avello* (1982), 105 Ill. App. 3d 336, 338, 434 N.E.2d 355, appeal denied (1982), 91 Ill. 2d 568

In *Pond v. Ennis* (1873), 69 Ill. 341, 344, the Court noted, "Names are nothing. The gist of the matter is, were the parties in interest actually served."

In *Marsden v. Neisius* (1955), 5 Ill. App. 2d 396, [\*1066] 126 N.E.2d 44 plaintiff brought an action naming a corporation as defendant. The real defendant was an individual. There were two separate entities: an individual and a corporation. Plaintiff did not misname the right party, but named the wrong party. In this case, it was a mistake and not a misnomer.

735 ILCS 5/1-106 of the Illinois Compiled Statutes (ILCS) states that "This Act shall be liberally construed, to the end that controversies may be speedily and finally determined according to the substantive rights of the parties..."

One purpose of the misnomer provision of the Code is to avoid dismissal of cases on a purely technical basis and to allow the action to reach its substantive merits. The spirit and letter of the Code is to allow correction of misnomers.

### **AMENDMENTS TO A COMPLAINT**

735 ILCS 5/2-616 of the Illinois Compiled Statutes (ILCS) delineates the rules regarding amendments in Illinois. 735 ILCS 5/2-616 sets out three requirements for a complaint to be amended and relate back to the date of the original complaint when there is a case of mistaken identity is involved rather than misnomer. See, 735 ILCS 5/2-616 (d).

### **ANALYSIS**

Illinois courts are reluctant to allow parties to correct parties' names when they are incorrect because of a mistaken identity rather than a misnomer. Determining whether a case involves mistaken identity or misnomer depends on the intent of a plaintiff. Plaintiff's intent is established from the objective evidence contained in the record. *United States Bank Nat'l Ass'n v. Lockett*, 2013 IL App (1st) 113678

The Court looks to the record to ascertain the objective intent of a plaintiff who has misnamed a party to a lawsuit. Evidence submitted by the parties becomes controlling. *Strauss v. City of Chi.*, 2022 IL 127419, 47. Sworn affidavits and exhibits submitted by the parties may be considered. *McCormick v. McCormick*, 118, Ill. App. 3d 455. Where exhibits attached to a complaint conflict with the pleadings in the complaint, exhibits override and take precedence over the pleadings. *Id.*, 460.

Plaintiff offered two pieces of evidence. The first is an affidavit submitted by counsel for the plaintiff. The affidavit from plaintiff's counsel is not a traditional exhibit in a mortgage foreclosure lawsuit. This affidavit, which is part of the record, can be taken into consideration. It was not objected to by the Defendant and probably could not have been refuted by the Defendant. The second piece of evidence is the loan modification agreement. Defendant agrees that this document bares the correct name of the correct U.S. Bank trust.

Defendant filed evidence recorded documents and numerous instances where the two different U.S. Bank trusts had done business in their respective names, showing that they are two separate and distinct entities.

United States Bank Nat'l Ass'n v. Lockett, 2013 IL App (1st) 113678 is closely aligned to the facts of this case. Plaintiff sought to amend the name "Bank National Association, as Trustee for Credit Suisse First Boston HEAT 2005-5" to "U.S. Bank National Association, as Trustee for Credit Suisse First Boston HEAT 2005-5" in its complaint. The initial complaint named "Bank National Association, as Trustee for Credit Suisse First Boston HEAT 2005-5". "U.S." was omitted in the original complaint. An order of confirmation of sale (OAS) correctly naming the plaintiff with "U.S." in the name was attached to the complaint.

The First District Appellate held that the omission was a misnomer because "of the *very slight difference between the two names.*" There was a lack of evidence showing "the difference [was] attributable to anything but a scrivener's error."

This Court believes that the evidence in this case lends itself more toward a misnomer than a mistaken identity because of *the presence of the loan modification document bearing the correct name of the trust to be sued.* The document as an exhibit overrides the complaint as a pleading. Without the presence of the loan modification document, the affidavit of counsel is self-serving. The record would be devoid of any evidence of the correct entity to be sued. The intent of the Illinois Code of Civil Procedure to grant liberal construction to avoid dismissal based on technicalities comes into play.

The difference between the correctly named plaintiff and the wrongly named plaintiff is a space: "RCF2 Acquisition Trust" versus "RCF 2 Acquisition Trust." Defendant points out that both trusts operate under the U.S. Bank name and that there are documents showing the differences between the two trust.

The Court takes note of Defendant's evidence. Without the presence of the loan modification document with the correct name attached to the complaint, Defendant case for dismissal is

stronger. However, the loan modification agreement which contains the correct name of the trust is controlling. This case is akin to *Lockett, supra*. Due process considerations of proper notice and service are conferred upon the Defendant.

This Court finds that amending the complaint as a misnomer is not an attempt to confer standing. It is remedy provided by Illinois law to correct an error that is plainly shown by the attachment of the loan modification agreement. It is reasonable to infer that a plaintiff would attach a *corresponding loan modification agreement* to the complaint to prove up the terms of the loan, the correct maturity date, amounts due and owing, date of default, etc. Standing and capacity to sue is conferred by the attachment of the loan modification with the complaint.

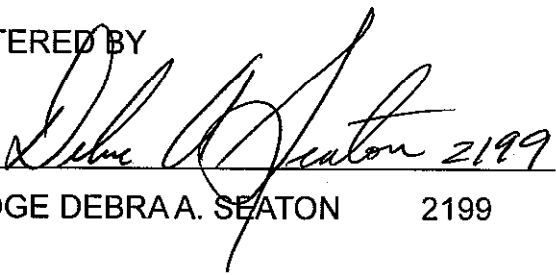
**IT IS HEREBY ORDERED:** \_\_\_\_\_

Defendant's Motion for Summary Judgment is **DENIED**.

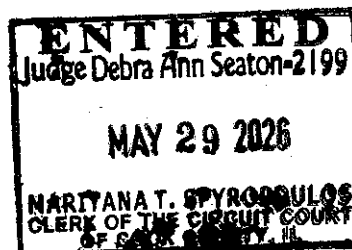
Plaintiff's Motion to Amend the Complaint is **GRANTED**

DATED: May 29, 2026

ENTERED BY

  
\_\_\_\_\_  
JUDGE DEBRA A. SEATON 2199

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



\*Additional research to the Court's own was provided by Cal 60 Summer Externs - Aidan King and Benjamin Saxon