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

US BANK TRUST, N.A., NOT IN ITS
INDIVIDUAL CAPACITY BUT,
SOLELY AS OWNER AND TRUSTEE
FOR RCAF ACQUISITION TRUST,

Plaintiff,

v.

MARK GEOGHEGAN; UNKNOWN
OWNERS; AND NON-RECORD
CLAIMANTS,

Defendant.

Case Number: 2019 CH 13307

Calendar 60

Honorable William B. Sullivan,
Judge Presiding

Property Address
5928 North Rockwell Street
Chicago, Illinois 60659

MEMORANDUM OPINION AND ORDER

WILLIAM B. SULLIVAN, Circuit Judge:

Before the Court is Defendant MARK GEOGHEGAN's, ("Geoghegan") Motion to Reconsider the Order entered March 11, 2025 ("Motion to Reconsider"). For the following reasons, Geoghegan's Motion to Reconsider is DENIED.

I. BACKGROUND

This Motion to Reconsider stems from a nearly six year old foreclosure case. On March 11, 2025, the Court entered a 19-page opinion in which the Court ultimately denied Geoghegan's Motion for Summary Judgment, with prejudice.¹ A

¹ For a full explanation of the Court's decision to deny Geoghegan's Motion for Summary Judgment and for a more fully developed procedural history of this case, see the Memorandum Opinion and Order entered on March 11, 2025, and the additional reasoning and history included in the Court's October 29, 2024, Memorandum Opinion and Order denying Plaintiff's judgment motions

copy of that opinion is attached hereto as Exhibit 1. In that Opinion, the Court *sua sponte* struck Geoghegan's Counterclaims III, IV, V, and VI for failure to state a claim, and further struck Counterclaims I and II for lack of standing.

On March 25, 2025, Geoghegan filed four separate motions to reconsider this Court's March 11, 2025, Opinion, that were stricken for non-compliance with the Court's Standing Order. On May 7, 2025, Geoghegan filed his consolidated Motion to Reconsider. On May 21, 2025, Geoghegan's Motion for Leave to File an Amended Answer was denied, without prejudice. U.S. Bank timely filed its Response to Geoghegan's Motion to Reconsider and Geoghegan timely filed his Reply. The Court set a hearing on Geoghegan's fully briefed Motion to Reconsider for August 12, 2025.

On that date, the Court heard oral argument on the Motion to Reconsider and entered an Order taking the matter under advisement for the issuance of a written opinion. 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 Insurance 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

and Geoghegan's Motion to Strike the Affidavit of Tonya Tillman. The Court would like to note, however, that the Tillman Affidavit was *sua sponte* stricken from the record.

IL App (1st) 143188, ¶20; 735 ILCS 5/2-1203(a). Here, the Motion to Reconsider is not seeking reconsideration of a final order under Section 2-1203. However, 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 Opinion is being issued pursuant to that inherent authority.

III. ANALYSIS

Geoghegan seeks that this Court reconsider its ruling denying his Motion for Summary Judgment as to his Counterclaims III, IV, V, and VI.² Upon further review, the Court has identified a procedural defect: Geoghegan’s six Counterclaims fail to comply with 735 ILCS 5/2-608. A “[c]ounterclaim shall be a part of the Answer, and shall be designated as a counterclaim.” 735 ILCS 5/2-608(b). While Geoghegan filed both his Counterclaims and Answer to Plaintiff’s Complaint on March 19, 2020, Geoghegan filed separately from his Answer a document titled “Counterclaims.” This procedural misstep grants the Court discretion to strike Geoghegan’s Counterclaims. However, rather than exercise this discretionary power, this Court will rule on the merits of Geoghegan’s Motion.

² The Motion does not request reconsideration of the Court’s ruling striking the Counterclaims I and II; therefore, such argument is waived and the Court need not reanalyze these causes of action. Accordingly, the Court’s ruling as to Counterclaims I and II stands as entered previously on March 11, 2025. These counterclaims remain stricken.

A. Counterclaim III

Geoghegan seeks reconsideration of the Court's March 11, 2025, Order that struck Counterclaim III with prejudice for failure to state a claim under 12 C.F.R. §1024.39(b).

The regulation at issue mandates:

Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section no later than the 45th day of the borrower's delinquency and again no later than 45 days after each payment due date so long as the borrower remains delinquent.
12 C.F.R. §1024.39(b)(1).

Geoghegan asserts that the Court should have previously recognized that he is indeed a "borrower" under the Mortgage and Note and that Plaintiff was required to send him pre-suit notice of the foreclosure, pursuant to the statutory regulation. U.S. Bank, in accordance with 12 C.F.R. §1024.39(b), contends that Geoghegan is not a borrower.

1. *No Right of Action Exists for Geoghegan*

The Court must determine whether a private right of action exists under this regulation before determining whether Geoghegan is a borrower. Generally, to bring suit, a plaintiff must have standing to bring a legally cognizable cause of action. A cause of action is only established under a federal statute if the text of the statute so provides. *Keen v. Helson*, 930 F.3d 799, 800 (6th Cir. 2019). A private right of action to enforce federal law must be created by Congress, and courts must interpret statutes to determine whether Congress intended to create both a private right and a remedy. *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). When a court

finds the terms of a statute unambiguous, judicial inquiry is complete, except in “rare and exceptional circumstances.” *Rubin v. United States*, 449 U.S. 424, 430 (1981). The Illinois Supreme Court has established that in construing federal statutes, it will defer to precedent set by the United States Supreme Court and federal appellate and trial courts. *State Bank of Cherry v. CGB Enterprises, Inc.*, 2013 IL 113836, ¶33. Where a statute establishes a private right of action, plaintiffs may sue for violations of federal regulations that “authoritatively construe the statute itself.” See *Sandoval*, 532 U.S. at 284. Courts ask “whether [the plaintiff] falls within the class of plaintiffs whom Congress has authorized to sue,” and courts answer that question using the “traditional tools” of statutory interpretation. *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125–28 (2014).

A federal agency’s interpretation of its own regulation is controlling, unless that interpretation is “plainly erroneous or inconsistent with the regulation.” *Auer v. Robbins*, 519 U.S. 452, 461 (1997). A regulation is not ambiguous merely because discerning the “only possible interpretation requires a taxing inquiry.” *Kisor v. Wilkie*, 588 U.S. 558, 575 (2019) (quoting *Pauley v. Bethenergy Mines*, 501 U.S. 680 (1991) (Scalia, J., dissenting)). To make that effort, a court must “carefully consider” the text, structure, history, and purpose of a regulation, in all the ways it would if it had no agency to fall back on. *Id.* at 559. Regulations that “simply effectuate the express mandates of the controlling statute” may be enforced through the private

cause of action available under that statute. *Ability Center of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 906 (6th Cir. 2004).

In 2010, the Real Estate Settlement Procedures Act of 1974 (“RESPA”) was amended, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”; “the Act”), Pub. L. No. 111–203, 124 Stat. 1376 (2010). The Act created the CFPB, an agency tasked with prescribing rules and regulations, as well as interpretations, “as may be necessary to achieve” RESPA’s purpose. 12 U.S.C. §2617(a); *see generally Edwards v. First American Corp.*, 798 F.3d 1172, 1179 (9th Cir. 2015) (discussing transfer of authority for rulemaking, enforcement, and compliance of RESPA from the Department of Housing and Urban Development to the CFPB). The Mortgage Servicing Rules (or Regulation X) were repromulgated by the CFPB in 2013 and became effective on January 10, 2014. *See* Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) (hereinafter, “Mortgage Servicing Rules”), 78 Fed. Reg. 10696-899 (Feb. 14, 2013) (codified at 12 C.F.R. pt. 1024).

RESPA establishes a private right of action for violations of its requirements, as confirmed in *Catalan v. GMAC Mortgage Corp.*, 629 F.3d 676 (7th Cir. 2011). Section 6 of RESPA provides the general authorization for private enforcement. *Canizales v. Wolf Firm*, No. SACV 22-208 JVS (DFMx), 2022 U.S. Dist. LEXIS 206557 (C.D. Cal., June 30, 2022). The liability framework established under 12 U.S.C. §2605(f)(1) states that “[w]hoever fails to comply with any provision of this section shall be liable to the borrower for each such failure.” Additionally, RESPA

§6(j)(3) grants the CFPB authority to “establish any requirements necessary to carry out this section.” 12 U.S.C. §2605(j)(3). Mortgage loan servicers must “[c]omply with any other obligation found by the Bureau of Consumer Financial Protection [CFPB] by regulation, to be appropriate to carry out the consumer protection purposes of this Act.” 12 U.S.C. §2605(k)(1)(E). The CFPB exercised this authority by promulgating §1024.39, explicitly relying on RESPA §6 as its legal foundation.

When the CFPB enacted §1024.39 under §6 of RESPA, it intended to create a private right of action to enforce the regulation. In *Vance v. Wells Fargo Bank, N.A.*, the court examined the regulatory history of §1024.39 to determine whether the regulation conveyed a private right of action. *Vance v. Wells Fargo Bank, N.A.*, 291 F. Supp. 3d 769 (W.D. Va. 2018). After considering the industry comments, the CFPB rejected alternative suggestions and adopted §1024.39 under the authority of RESPA §6. *Id.* at 772. Therefore, §1024.39 conveys a private right of action. *See Vance*, 291 F. Supp. 3d at 773.

Contrasting regulatory histories reinforce the Court’s finding that the CFPB intended to establish a private right of action in §1024.39. In *Canizales v. Wolf Firm*, the court relied on the contrasting treatment of 12 C.F.R. §1024.40 to support its conclusion that the CFPB intended to create a private right of action in §1024.39. *Canizales*, 2022 U.S. Dist. LEXIS 206557. This Court agrees with this analysis. The CFPB initially proposed implementing §1024.40 pursuant to its authority under §6 of RESPA, in which case, “like other rules issued pursuant to the

Bureau's [CFPB] authority under §6 of RESPA, §1024.40 would have been enforceable through private rights of action." Regulation X, 78 Fed. Reg. 10,696, 10,808. However, in its final ruling, the CFPB dropped its reliance on §6 of RESPA and explicitly stated that the regulation did not provide any private right of action. *See id.* ("[T]he Bureau [CFPB] believes private liability is not compatible (***) The Bureau [CFPB] has therefore decided to finalize §1024.40 such that there will be no private liability for violations of the provision."). Therefore, *Canizales* concluded that while the CFPB explicitly did not create a private right of enforcement in enacting §1024.40, the CFPB's promulgation of §1024.39 under §6 of RESPA demonstrates that this regulation does provide individuals with a private right of action.

Section 1024.39(b) requires that a "[s]ervicer shall provide to a delinquent borrower a written notice." *Gresham v. Wells Fargo, N.A.*, 642 Fed. Appx. 355, 359 (5th Dist. 2016) (emphasis added). The Court has previously determined that Geoghegan failed to contest whether Plaintiff sent the borrower, Beth Marie Janiak, notice pursuant to §1024.39. Geoghegan has not—and continues to not—dispute this point. However, Geoghegan has failed to present any statutory or legal authority that personally entitles *him* to notice in accordance with 12 C.F.R. §1024.39(b).

RESPA only authorizes "borrowers" to sue. 12 U.S.C. §2605(f). The Mortgage here explicitly states, "Borrower is BETH MARIE JANIAC, A MARRIED WOMAN," and further notes that the "Borrower is the mortgagor under this security

instrument.” (Pl.’s Compl., Ex. A Mortg., ¶1.) Not only is Geoghegan not a signatory to either the Mortgage or Note, but his name also does not appear on any security instrument or document relevant to the case at bar. (Pl.’s Compl., Ex. A Mortg., ¶12; Pl.’s Compl., Ex. B Note, ¶3.)

Indeed, Congress could have said that any individual injured by a RESPA violation could sue, such as “mortgagors” or “homeowners” (as insinuated by Geoghegan). *Cf.* 42 U.S.C. §3613(a)(1)(A). Instead, Congress said that only “borrowers” could sue. “[E]xpanding the term ‘borrower’ to include [Geoghegan] would not be ‘broadly construing’ RESPA—it would be rewriting it.” *Keen*, 930 F.3d at 805. Courts are not at liberty to rewrite statutes just because they believe doing so would better effectuate Congress’s purposes.³ *Id.* at 806.

It is undisputed that Geoghegan never signed the Mortgage or Note. Geoghegan is explicitly not obligated under the loan, nor does he have any legal relationship with the lender. Only people who are personally obligated under the loan—those who signed or assumed it—can be borrowers under RESPA. *Garrasi v. Selene Finance, LP*, 407 F. Supp. 3d 110, 118 (N.D.N.Y. 2019). Signing a mortgage or owning a home subject to one, does not make one a borrower. *Keen*, 930 F.3d at 802. Accordingly, there is no private right of action available to Geoghegan to enforce

³ In construing RESPA, the United States Supreme Court has stated that every statute aims “not only to achieve certain ends, but also to achieve them by particular means,” and “[v]ague notions of statutory purpose provide no warrant for expanding” those chosen means. *Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 637 (2012). “This is especially true where such an expansion would entitle a whole new class of people to sue.” *Keen*, 930 F.3d at 806, *citing Lexmark International, Inc.*, 572 U.S. at 128. Illinois courts are held to the same standard. *Herndon v. Kaminski*, 2022 IL App (2d) 210297, ¶41 (Holding that Illinois courts may not enact or amend statutes. Courts cannot restrict or enlarge the meaning of unambiguous statutes. There is a difference between statutory interpretation and correcting legislation. Courts cannot judicially rewrite statutes. Nor can courts create new rights not suggested by statutory language.).

RESPA or its related regulations. *See Spraggins v. Caliber Home Loans, Inc.*, No. 3:20-cv-01906-S-BT, 2020 U.S. Dist. LEXIS 249011 (N.D. Tex. Dec. 31, 2020).

2. *Geoghegan's Successor in Interest Status*

Geoghegan further attempts to assert that he fits the definition of a “confirmed successor in interest” under the Mortgage. A successor in interest is an individual who has acquired an ownership interest in a property, but was not the original borrower on the mortgage loan. 12 C.F.R. §1024.31. An individual becomes “a [confirmed] successor in interest once [the] servicer has confirmed the successor in interest’s identity and ownership interest in a property that secures a mortgage loan subject to this subpart.” 12 C.F.R. §1024.31. Federal regulations confer the same rights available to a borrower *only when* a successor in interest becomes a “confirmed successor in interest.” 12 C.F.R. §1024.30(d). A servicer who receives written communication indicating a person may be successor in interest must respond by requesting the required documents to confirm that person’s status. 12 C.F.R. §1024.36(i). A person is deemed to be a “confirmed” successor in interest once that individual has provided satisfactory proof of both their identity and ownership. *Nilsson v. Continental Machine Manufacturing Co.*, 251 Ill. App. 3d 415, 418 (1993). The servicer must then treat that person as a borrower for purposes of the mortgaging servicing regulations. 12 C.F.R. §1024.31.

RESPA imposes duties on loan *servicers* to respond to *borrower* inquiries and requests in a timely manner. 12 U.S.C. §2605(e)(1)(A). “[I]f any servicer of a federally related mortgage loan receives a qualified written request from the

borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 5 days.” *Id.* RESPA imposes no duty upon servicers vis-à-vis *potential* successors in interest. RESPA does not extend a private right of action to *potential* successors in interest for a servicer’s failure to properly acknowledge or respond to a successorship request either. The CFPB’s commentary clearly states that the Mortgage Servicing Rules do not provide a *potential* successor in interest a private right of action. Consumer Financial Protection Bureau, *Small Servicers and Key Provisions of the 2016 Mortgage Servicing Rule*, 1–3 (Aug. 4, 2016), <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/amendments-2013-mortgage-rules-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/>. Nor do the CFPB regulations provide a notice of error procedure for claims that a servicer made an inaccurate determination about successorship status or failed to comply with §1024.36(i) or §1024.38(b)(1)(vi).

Courts have held that an unconfirmed successor has no standing to bring RESPA claims. In *Sharp v. Deutsche Bank National Trust Co.*, the court denied an heir/co-mortgagor leave to add a RESPA claim because RESPA’s servicing duties run to “borrowers,” not mortgagors. Although the heir qualified as a successor in interest under 12 C.F.R. §1024.38, the CFPB’s regulation provides no private right of action to non-borrowers (or their *confirmed* successors in interest). *Sharp v. Deutsche Bank National Trust Co.*, No. 14-cv-369-LM, 2015 U.S. Dist. LEXIS 105968, at *16 (D.N.H. Aug. 11, 2015).

Similarly, in *Parsley v. Rushmore Loan Management Services LLC*, the court dismissed a RESPA claim because the defendant failed to submit documentation to the servicer. The failure to allege whether or not the claimant was either a borrower, or a confirmed successor in interest, resulted in her inability to invoke RESPA's private right of action. *Parsley v. Rushmore Loan Management Services LLC*, No. 3:23-0525, 2024 U.S. Dist. LEXIS 29526 (S.D. W. Va. Feb. 21, 2024).

While Geoghegan does satisfy the definition of a “successor in interest,” there is no evidence that he took the actions required under the Mortgage to assume the rights and obligations owed to Borrower by the Lender and to be confirmed as Janiak's successor in interest.

Section 13 of the Mortgage states:

Subject to the provisions of Section 18, any Successor in Interest of Borrower *who assumes Borrower's obligations under this Security Instrument in writing*, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument.
(Pl.'s Compl., Ex. A Mortg., ¶10.) (emphasis added).

Section 18 of the Mortgage states:

'Interest in the Property' means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond or deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.
(Pl.'s Compl., Ex. A Mortg., ¶¶10–11.)

Even though the Mortgage contemplates the position that Geoghegan holds, it does not automatically entitle him to the rights and remedies afforded under the contract. Nowhere in Geoghegan's Counterclaims or Motion for Summary Judgment does he provide any documentation or evidence that he sent the servicer written

notice of his request to assume Borrower's obligations. Nor is there any such evidence attached to support such a claim in his instant Motion to Reconsider (assuming *arguendo* that he would even be able to assert such new matter in his Motion to Reconsider). Geoghegan is, at most, a "potential" or "unconfirmed" successor in interest.

Additionally, Geoghegan attempts to argue that he "assumed the title" of a confirmed successor in interest by operation of law, through Janiak's execution of the quit claim deed conveying the property to herself and Geoghegan. However, ordinary and routine transfers of property title does not permit unconfirmed successors to automatically inherit the rights and obligations under the Mortgage and Note that encumber the property. None of the obligations or benefits under the Mortgage pass to any successor in interest, unless the bank confirms the transaction in writing. *In re Tumba v. U.S. Bank*, No. 3:20cv832 (MPS), 2021 U.S. Dist. LEXIS 186511 (D. Conn., Sept. 21, 2021). There is *absolutely no evidence* that U.S. Bank ever confirmed Geoghegan as a successor in interest; therefore, none of the obligations or benefits under the Mortgage passed to Geoghegan. This Court will not open the floodgates of litigation to all persons who obtain title to a property to be able to enforce a contract to which they are not a party or federal regulations/statutes that facially do not provide a right or remedy to such transferees.

Geoghegan further asserts that a successor in interest "is a person who obtains ownership of the property in question from the borrower or original

mortgagor.” However, RESPA clearly indicates that such an individual only rises to the level of borrower if that individual is a *confirmed* successor in interest. To get around this, Geoghegan confusingly asserts that the act of “simply suing him as mortgagor” is enough to constitute the servicer’s confirmation of his successor in interest status. This Court is entirely unpersuaded. This Court cannot find any statute, regulation, or case that stands for Geoghegan’s proposition. It would be wrong to assume that Geoghegan’s being on title makes it such that he inherited the rights under the Mortgage, without express authorization from the bank. Geoghegan is *not* in privity of contract with the bank. This Court must do substantial justice between the parties. Agreeing with Geoghegan on this point would do the opposite.

Geoghegan has only alleged a failure to send notice to him, personally. For this Court to *sua sponte* require the bank to send Geoghegan notice would be contrary to its role to enforce valid contracts as written. It is not the job of the Court to renegotiate or rewrite a contract to suit one party.⁴ *Schweihs v. Davis, Friedman, Zavett, Kane & MacRae*, 344 Ill. App. 3d 493, 499 (1st Dist. 2003). Although a title search would have yielded Geoghegan’s name, this does not impart an affirmative duty on part of the bank to send him notice as a condition precedent to the

⁴ It is the black letter of the law that a court must enforce a contract as written and not make new contracts between parties. *See Carter Oil Co. v. Dees*, 340 Ill. App. 449, 458 (4th Dist. 1950) (“Courts do not, and cannot, undertake to make a new contract for the parties.”) In the absence of ambiguous language, the court may not reform the contract. *People ex rel. Illinois State Scholarship Com. v. Harrison*, 67 Ill App. 3d 359, 360 (1st Dist. 1978); *see also Schweihs v. Davis, Friedman, Zavett, Kane & MacRae*, 344 Ill App. 3d 493, 499 (1st Dist. 2003) (“Courts will enforce contracts as written, and they will not rewrite a contract to suit one of the parties.”)

commencement of foreclosure proceedings—even if doing so would be best business practices.

Even assuming, *arguendo*, that Geoghegan is a confirmed successor in interest and he has adopted the rights and obligations under the Mortgage and Note, the notice sent by Plaintiff was proper even with the technical defect of only including Janiak's name. *See Bank of America, N.A. v. Luca*, 2013 IL App (3d) 120601, ¶¶16–1 (holding that notice sent to the property but only addressing one of the defendant mortgagors and not the other, was proper notice). 12 C.F.R. §1024.32(c), titled *Multiple Notices Unnecessary*, states that a servicer does not need to provide a confirmed successor in interest any written notice required by §1024.39(b), if the servicer provided the same specific disclosure to another borrower on the account. As Janiak was the only borrower under the Mortgage, she was the only one to whom a specific disclosure was owed.

Moreover, Geoghegan reasons that because the Plaintiff added him to the complaint, and thereby made him a party to this matter, Plaintiff consequently confirmed his “successor in interest” status. The Court could not find any authority to support that assertion. 735 ILCS 5/15-1501 states that “only (i) the mortgagor and (ii) other persons (but not guarantors) who owe payment of indebtedness or the performance of other obligations secured by the mortgage and against whom personal liability is asserted shall be necessary parties defendant in a foreclosure.” Janiak was deceased at the time this foreclosure was filed. She is the only person who owed a payment of indebtedness under the Note, but, because she is deceased,

Plaintiff could not sue her. “[A] lawsuit filed against a deceased person is a nullity and does not confer jurisdiction on the court.” *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, ¶21.

The IMFL defines a “mortgagor” as “(i) the person whose interest in the real estate is the subject of the mortgage and (ii) any person claiming through a mortgagor as successor.” Here, Geoghegan meets paragraph (i) of the definition of mortgagor. He owns an interest in the property subject to Plaintiff’s mortgage interest; therefore, he is a necessary party that had to be named. However, Geoghegan never formally claimed that he was a successor, so he does not meet paragraph (ii) of the definition of mortgagor.

Plaintiff was never required to name a special representative, nor name the estate of Janiak (none has been opened), since “the court is not required to appoint a special representative for a deceased mortgagor for the purpose of defending the action, if there is a living person, persons, or entity that holds a 100% interest in the property, by virtue of being the deceased mortgagor’s surviving joint tenant or surviving tenant by the entirety.” 735 ILCS 5/15-1501(h)(1). It still remains a mystery to this Court as to why Geoghegan never opened an estate for the purpose of litigating the issues he brings before the Court, and why Geoghegan, in the capacity of a named executor/administrator of such a hypothetical estate, did not argue these points—assuming the notice was not actually sent to Janiak.

Moreover, Geoghegan did not provide any citation to relevant law on his assertion in any of his pleadings or arguments. Geoghegan never received explicit

confirmation from Plaintiff regarding his ownership and identity interests. The complaint's naming of Geoghegan as a party does not simply "substitute" the statutorily required confirmation of identity from Plaintiff.

3. *This Court's Jurisdiction to Hear Geoghegan's Counterclaims*⁵

"A 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota v. Toyota Motor Sale, U.S.A.*, 199 Ill. 2d 325, 335 (2002) (citing *Exchange National Bank of Chicago v. County of Cook*, 6 Ill. 2d 419, 422 (1955); *Health Cost Controls v. Sevilla*, 307 Ill. App. 3d 582, 587 (1999); *City of Chicago v. Chicago Board of Education*, 277 Ill. App. 3d 250, 261 (1995)).

As simply stated by the Illinois Supreme Court in *Belleville Toyota*, subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceeding in question belongs. *People v. Western Tire Auto Stores, Inc.*, 32 Ill. 2d 527, 530 (1965); *Van Dam v. Van Dam*, 21 Ill. 2d 212, 216 (1961); 14 Ill. L. & Prac. *Courts* §16, at 183 (1968); see also *Faris v. Faris*, 35 Ill. 2d 305, 309 (1966); Restatement (Second) of Judgments §11 (1982). The trial court's subject matter jurisdiction is conferred entirely by the Illinois Constitution. Ill. Const. 1970, art. VI, §9; *In re Lawrence M.*, 172 Ill. 2d 523, 529 (1996); *In re M.M.*, 156 Ill. 2d 53, 65 (1993). Under Section 9 of article VI of the Illinois Constitution, the trial court's jurisdiction extends to all "justiciable matters." Ill. Const. 1970, art.

⁵ This subsection regarding standing and subject matter jurisdiction also applies to the Court's ruling on Counterclaims IV, V, VI in Section III(B) of this Opinion.

VI, §9. A plaintiff's case, as framed by the complaint, must present a justiciable matter in order to invoke the subject matter jurisdiction of the trial court. *See People ex rel. Scott v. Janson*, 57 Ill. 2d 451, 459 (1974) (if a complaint states a case belonging to a general class over which the authority of the court extends, subject matter jurisdiction attaches); *Western Tire Auto Stores, Inc.*, 32 Ill. 2d at 530 (the test of the presence of subject matter jurisdiction is found in the nature of the case as made by the complaint and the relief sought); *Ligon v. Williams*, 264 Ill. App. 3d 701, 707 (1994) (the court's authority to exercise its jurisdiction and resolve a justiciable question is invoked through the filing of a complaint or petition). This Court simply lacks subject matter jurisdiction to entertain Geoghegan's counterclaims because he facially does not meet the statutory/regulatory threshold to bring the actions in the first instance

The Court clearly did not err in its application of the law when it relied on the plain language of 12 C.F.R. §1024.39(b) in issuing its March 11, 2025, Memorandum Opinion and Order. This is also because Geoghegan lacks standing to sue under 12 C.F.R. §1024.39(b). The United States Supreme Court has held "that the prerequisites of standing to sue under a federal statute are (1) injury in fact and (2) an interest arguably within the zone of interests intended to be protected by the statute." *Landau v. Chase Manhattan Bank, N.A.*, 367 F. Supp. 992, 995 (S.D.N.Y. 1973) (citing *Association of Data Processing Service Organizations v. Camp*, 397 U.S. 150 (1970)). Here, Geoghegan has no injury in fact because the bank complied with the federal regulation. Also, Geoghegan is clearly not within the zone of

interests intended to be protected by Congress because, as discussed above, he is not a borrower nor a confirmed successor in interest. Therefore, there is no case or controversy as to Geoghegan's Counterclaims to adjudicate. They are non-justiciable.

Additionally, while true that the burden to prove Geoghegan's lack of standing would be on U.S. Bank, the Court may raise issues of jurisdiction *sua sponte* leaving the Court with only the power to dismiss the Counterclaims. *Hebrew University of Jerusalem v. Zivin (In re Estate of Zivin)*, 2015 IL App (1st) 150606, ¶17; *Brandon v. Benell*, 368 Ill. App. 3d 492, 501-02 (2d Dist. 2006) ("Subject matter jurisdiction can be raised *sua sponte* by the trial court at any time, since the lack of subject matter jurisdiction deprives the trial court of all power except to dismiss the action." (citing *Barrington Community Unit School District No. 220 v. Special Education District of Lake County*, 245 Ill. App. 3d 242, 245 (2d Dist. 1993))).

Here, Geoghegan is clearly not a proper plaintiff to bring these Counterclaims because the action, as framed by the counterclaim, cannot be brought as a matter of law. Not only does this mean that Geoghegan lacks standing, but the subject matter jurisdiction of this Court has also not been properly invoked under the Illinois Constitution. Accordingly, the Court only has the power to do one thing—dismiss the action.

4. *U.S. Bank is Not the Servicer*

Notwithstanding Geoghegan's lack of standing under RESPA because he is neither a borrower nor a *confirmed* successor in interest, U.S. Bank is not a loan

servicer and therefore cannot be liable under RESPA for a servicing violation. RESPA's servicing obligations only apply to loan servicers, defined as the person responsible for servicing the loan. 12 U.S.C. §2605(i)(2). The loan holder may be included only if it also directly services the loan. *Id.*

Plaintiff U.S. Bank is the mortgagee and plays absolutely no role in the servicing of the loan. No allegation is made by Geoghegan that Plaintiff ever serviced the loan or assumed any servicing duties. The Mortgage itself distinguishes between ownership of the Note and the separate "Loan Servicer," which collects periodic payments and handles servicing obligations. (Pl.'s Resp. to Def.'s Mot. to Recons., Ex. 1 Pl.'s Compl., Ex. A Mortg., ¶20.) A loan owner or assignee cannot be held vicariously liable for RESPA servicing violations, when it did not itself perform the servicing.

Most courts have concluded that by Congress specifically limiting RESPA §2605's obligations to "servicers," that it did not intend to extend liability to non-servicing assignees. Had Congress wanted loan holders to be liable for their servicers' RESPA duties, it would have used broader language like "no person" as it did in RESPA §2607. *See Christiana Trust v. Riddle*, 911 F.3d 799, 804–05 (5th Cir. 2018). RESPA §2605 expressly holds the obligations to "a servicer." Accordingly, Plaintiff does not meet RESPA's definition of a "servicer." On this basis, Geoghegan's RESPA claim against Plaintiff fails.

In *Christiana Trust*, a homeowner brought a counterclaim against both the loan servicer and the loan trustee owner for an alleged failure to respond to her loss

mitigation application. The RESPA claim against the owner was dismissed. The United States Court of Appeals for the Fifth Circuit held that “as a matter of law, [the loan owner] is not vicariously liable for the alleged RESPA violations of its servicer.” *Christina Trust*, 911 F.3d at 804. This Court finds the reasoning of *Christina Trust* to be persuasive. Plaintiff U.S. Bank, as a non-servicer, cannot be directly liable under RESPA §2605. Geoghegan’s RESPA Counterclaim is defeated as a matter of law because Plaintiff cannot be sued under this theory.

5. *Illinois Supreme Court Rule 133*⁶

Notwithstanding Geoghegan’s lack of standing to sue, U.S. Bank’s inability to be sued, and this Court’s lack of jurisdiction to hear these claims, Geoghegan’s Answer also fails to properly contest the ability of the bank to foreclose. Geoghegan’s Answer is required to comply with Illinois Supreme Court Rule 133(c), which provides:

In pleading the performance of a condition precedent in a contract, it is sufficient to allege generally that the party performed all the conditions on his part; if the allegation be denied, the facts must be alleged in connection with the denial showing wherein there was a failure to perform.

Ill. Sup. Ct. R. 133(c).

Where a complaint follows the prescribed format of Section 15-1504(a) of the Illinois Mortgage Foreclosure Law (“IMFL”), it is “deemed and construed” to allege, *inter alia*, “that any and all notices of default or election to declare the indebtedness due and payable or other notices required to be given have been duly and properly

⁶ This subsection regarding Supreme Court Rule 133 also applies to the Court’s ruling on Counterclaims IV, V, VI in Section III(B) of this Opinion.

given.” *See* 735 ILCS 5/15-1504(c)(9). There is no dispute that Plaintiff’s Complaint followed the statutorily prescribed format. Consequently, Geoghegan’s Answer was required to comply with Rule 133(c), by properly rejecting with specific facts the deemed and construed allegations asserting compliance with the conditions precedent to the filing of the foreclosure. *See* Ill. Sup. Ct. R. 133(c); *see also Bank of New York Mellon v. Wojcik*, 2019 IL App (1st) 180845. To comply with Rule 133(c), Geoghegan was required to plead in his Answer specific facts showing that Plaintiff failed to perform the conditions precedent to filing the foreclosure—*i.e.*, sending notice to the borrower, Janiak. *See generally Radkiewicz v. Radkiewicz*, 353 Ill. App. 3d 251, 259 (2nd Dist. 2004). “[A] general denial to an allegation of the performance of a condition precedent in a contract is treated as an admission of that performance.” *Wojcik*, 2019 IL App (1st) 180845, ¶21.

As the Mortgage explicitly stated that the bank was required to give notice to the borrower “prior to acceleration” following a breach, Plaintiff’s sending of notice was clearly required. (Pl.’s Compl., Ex. A Mortg., ¶22.); *see also Deutsche Bank National Trust Co. v. Roongseang*, 2019 IL App (1st) 180948, ¶27 (noting that “when construing the language of the contract, we give terms their plain and ordinary meaning”). Illinois courts have held that where a loan instrument requires such notice to be provided, the lender’s failure to do so constitutes a failure to satisfy a condition precedent to foreclosure. *See Credit Union 1 v. Carrasco*, 2018 IL App (1st) 172535, ¶15 (stating that “[t]his type of acceleration notice has been held to be a condition precedent to the lender’s right to bring suit”). Geoghegan does not contest

that Plaintiff's complaint substantially complied with the requirements of Section 15-1504 of the IMFL, which "provides a form complaint which many plaintiffs employ essentially verbatim." *Wells Fargo Bank N.A. v. Bednarz*, 2016 IL App (1st) 152738, ¶8. Under Section 15-1504, the statements contained in a complaint that complies with the "statutory form" are deemed and construed to include additional statutorily specified allegations. 735 ILCS 5/15-1504(c). These deemed and construed allegations "take a number of normally innocuous and uncontested issues out of play," and thus establish a balance between the lender's interest that a foreclosure case "not be bogged down by formalistic proofs over noncontroversial matters" and a borrower's interest in preserving their property. *Simpson*, 2015 IL App (1st) 142925, ¶¶45–46.

The dispute herein relates to one of the deemed and construed allegations in Plaintiff's Complaint against Geoghegan, *i.e.*, that "any and all notices of default or elections to declare the indebtedness due and payable or other notices required to be given have been duly and properly given." 735 ILCS 5/15-1504(c)(9). In his Answer, Geoghegan denied this allegation and asserted that Plaintiff failed to provide notice to *him* pursuant to Sections 20 and 22 of the Mortgage, which he asserts is a condition precedent to both the acceleration and the filing of the foreclosure action. The problem is that Geoghegan was never entitled to such notice.

Rule 133(c) has governed the pleading of conditions precedent in cases involving conditions precedents in a contract for years. It long predates the issuance

of the *Wojcik* opinion. Nothing in *Wojcik* modifies Rule 133(c). *Wojcik* simply reaffirms and applies the Rule's established language:

In light of the requirements of Rule 133(c), courts have repeatedly recognized that a mere general denial of the performance of the conditions precedent of a contract in a party's responsive pleading, without allegations of specific facts, results in forfeiture of the issue of the performance of the conditions precedent of a contract (***) No specific facts were alleged in the defendants' answer to support this denial. As such, defendants have forfeited this issue; indeed, their general denial stands as an admission that Bank of New York provided all proper notices.

Wojcik, 2019 IL App (1st) 180845, ¶¶21–22.

In *Wojcik*, in response to the lender's allegation that all required notices were given, the borrowers simply stated that "defendants deny the above allegation", without alleging any specific facts to support the denial. *Id.* at 22. Similarly, Geoghegan's general denial that notice was sent *to him* stands as an admission that Plaintiff complied with §1024.39 and the terms of the Mortgage. Geoghegan does not deny with specific factual allegations that Plaintiff did not send the *borrower*, Janiak, any Notice of Default pursuant to §1024.39(b) or the terms of the Mortgage itself. As such, Geoghegan has judicially admitted, in accordance with Rule 133(c) and *Wojcik* as a matter of law, that the notice was properly sent. The Court must, therefore, construe Geoghegan's mere denial that proper notice was sent to him as a forfeiture of the issue and a judicial admission that all proper notices were provided. *Wojcik*, 2019 IL App (1st) 180845, ¶22.

"While a nonmoving party need not prove his or her claim at the summary judgment stage, it is the 'put up or shut up' moment in a suit, and the nonmoving party must present some factual basis to support his or her claim." *Wells Fargo*

Bank, N.A. v. Coghlan, 2021 IL App (3rd) 190701, ¶23 (citing *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶14; *Schrager v. North Community Bank*, 328 Ill. App. 3d 696, 708 (1st Dist. 2002)). Illinois courts have made it clear that when a defendant raises the non-performance of a condition precedent—such as a failure to send notice—the burden shifts to the defendant to plead and prove the non-performance with specific factual allegations. *CitiMortgage, Inc. v. Bukowski*, 2015 IL App (1st) 140780, ¶16. Due to notice being a deemed and construed allegation, Geoghegan must deny the allegation and provide facts in support of his assertion that notice was not sent to Janiak, to be in strict compliance with Rule 133(c). *Roongseang*, 2019 IL App (1st) 180948, ¶23 (“To comply with Rule 133(c), a party *must* set forth the specific conditions that the opposing party failed to perform” (emphasis added)); *Babcock v. Wallace*, 2012 IL App (1st) 111090, ¶10 (“strict compliance with supreme court rules is generally mandated”); *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995) (“The rules of court we have promulgated are not aspirational. They are not suggestions. They have the force of law, and the presumption must be that they will be obeyed and enforced as written.”). Geoghegan has not done this. Even assuming *arguendo* that Geoghegan’s Answer is sufficient, this Court did not err in denying Geoghegan’s Motion for Summary Judgment. This is because Geoghegan is not the borrower under the Mortgage and Note, does not have standing to sue, and this Court lacks subject matter to adjudicate the Counterclaims.

Geoghegan’s assertion that U.S. Bank is required to prove compliance with §1024.39(b) is misfounded. Instead, the burden is upon Geoghegan to show that notice was in fact *not* sent to the borrower. *See generally Bukowski*, 2015 IL App (1st) 140780, ¶16. Section 15 of the Mortgage states in pertinent part, “any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower’s notice address if sent by other means.” (Pl.’s Compl., Ex. A Mortg., ¶15.) Geoghegan’s assertion that he opened Janiak’s mail and that he never saw a notice from the bank cannot, standing alone, show an issue of fact about whether notice was given under the terms of the Mortgage.⁷ *Bank of New York Mellon v. Tidhar*, 2019 IL App (1st) 190088-U, ¶20.⁸

Therefore, the Court’s holding striking Counterclaim III, as ordered in the March 11, 2025, Memorandum Opinion and Order, stands as entered for the reasons outlined therein and supplemented herein.

Accordingly, Counterclaim III remains dismissed with prejudice.

B. Counterclaims IV, V, and VI

The Court now addresses Counts IV, V, and VI of Geoghegan’s Counterclaims, which allege “unfair or deceptive” practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”)—815 ILCS 505/1; *et seq.*

⁷ Opening mail before it has been delivered to the person to whom it was directed carries criminal penalties pursuant to federal statute. 18 U.S.C. § 1702. There is no exception to opening mail directed to a spouse or even a deceased spouse without the authority of being an executor or administrator of a probate estate for the decedent. Geoghegan admits to having done this without opening an estate for Janiak.

⁸ Pursuant to Illinois Supreme Court Rule 23(a), the Court uses *Bank of New York Mellon v. Tidhar* as persuasive and not controlling authority.

Underlying each claim is the allegation that Plaintiff failed to send notice to *Geoghegan* personally—there is not an allegation that the Plaintiff failed to send notice to the Borrower, Janiak. Each Counterclaim is premised on the same alleged omission, but they are derived from three separate contractual or regulatory sources.

1. *Geoghegan’s ICFA Counterclaims Deriving from 12 C.F.R. §1024.39*

First, Counterclaim VI is premised on a failure to comply with the notice requirement of 12 C.F.R. §1024.39 and not on any part of the Mortgage or Note. This is the same allegation made in the *Geoghegan’s* Counterclaim III, with an *additional framing of unfair conduct* under a state law statutory cause of action. 12 C.F.R. §1024.39 requires the servicer to “provide to a delinquent *borrower* a written notice” within 45 days of delinquency. 12 C.F.R. §1024.39 (emphasis added). The provision exclusively uses the term “borrower” throughout, not “homeowner” as *Geoghegan* implies in his Motion for Summary Judgment. (Def’s Mot. Summ. J., ¶10.)⁹

To bring a claim under ICFA, there must be an underlying unfair or deceptive business practice. Section 10a of ICFA provides that “[a]ny person who suffers actual damages as a result of a violation of this Act committed by any other person

⁹ This Court must use the specific language contained in the regulation absent ambiguity. It is the fundamental role of the courts in interpreting statutes to effectuate the will of the legislature. *People ex rel. Birkett v. City of Chicago*, 202 Ill. 2d 36, 45 (2002); *Dusthimer v. Board of Trustees*, 368 Ill. App. 3d 159, 165 (4th Dist. 2006) (Courts interpret administrative regulations the same way as statutes). Here, there is no ambiguity which would require judicial intervention. It was the intent of the Congress and the CFPB to require notice to borrowers and not to unannounced successors in interest like *Geoghegan*.

may bring an action against such person.” 815 ILCS 505/10a. To bring such a claim, the complaint must allege:

(1) a deceptive act or practice by defendant; (2) defendant’s intent that plaintiff rely on the deception; (3) the occurrence of the deception in the course of conduct involving trade or commerce; and (4) actual damage to plaintiff; (5) proximately caused by the deception.

Avery v. State Farm Mutual Automobile Insurance Co., 216 Ill. 2d 100, 180 (2005).

For the reasons specified in the Court’s ruling above regarding Counterclaim III, Plaintiff was not required to send notice to Geoghegan pursuant to §1024.39. It is clear that ICFA does not apply to “[a]ctions or transactions specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this State or the United States.” 815 ILCS 505/10b(1); *see Weatherman v. Gary-Wheaton Bank of Fox Valley, N.A.*, 186 Ill. 2d 472, 488 (1999) (finding defendant exempt from liability pursuant to Section 10b(1) of ICFA because it acted in accordance with RESPA). In *Weatherman*, a bank’s disclosure of the assignment-recording fee complied with RESPA. The Court held that the bank was exempt from consumer-fraud liability. *Id.* at 487-88. The court reasoned that “actions specifically authorized” by RESPA fall under ICFA’s exemption. *Id.* at 488.

This safe harbor provision requires affirmative acts or expressions of authorization by the regulatory body. *Price v. Phillip Morris, Inc.*, 219 Ill. 2d 182, 241 (2005). It explicitly rejects “mere compliance” as being sufficient. *Id.* The exemption applies even if the conduct might otherwise be considered unfair or deceptive by a trier of fact. *Id.* at 244. Similarly, Plaintiff’s handling of the

conditions precedent to filing the foreclosure lawsuit, as authorized by the CFPB's regulations, cannot be deemed as an "unfair" practice as a matter of law.

A lender's actions that are in accordance with RESPA requirements are "specifically authorized by law[]." 815 ILCS 505/10b(1). For the purposes of ICFA's exemption, such a lender's conduct would necessarily comply with RESPA. Section 10b(1)'s safe harbor provision exempts a party from ICFA liability when complying with federal law. 815 ILCS 505/10b(1).

Geoghegan's ICFA Counterclaim VI cannot survive because it is completely dependent on the RESPA claim which this Court rejected above. The ICFA count hinges on whether Plaintiff was required to send notice to Geoghegan personally. As previously stated, Geoghegan is not the borrower, nor is he a confirmed successor in interest. He thus cannot assert that the pre-suit notice should have been sent to him under RESPA. It is inconsistent to hold that conduct which does not qualify as a RESPA violation, can *stand alone* as a violation of ICFA.

Geoghegan has failed to establish any deception, fraud, or unfairness that would justify a cause of action under ICFA. The lender complied with all terms of the Mortgage and Note; necessarily, there can be no deception, fraud, or unfairness which could justify a cause of action for Geoghegan under ICFA. Furthermore, Geoghegan also failed to present any misapplication of the law by the Court in its March 11, 2025, Memorandum Opinion and Order, holding that he was not entitled to any notice under §1024.39. Additionally, due to Geoghegan's judicial admissions of the deemed and construed allegations discussed above under Illinois Supreme

Court Rule 133(c), this Court finds as a matter of law that notice to Janiak was sent and that Geoghegan's assertions under ICFA are barred by the Section 10b(1)'s safe harbor provision.

Illinois law does not allow one to circumvent the limits of a statutory scheme by re-labeling the claim under ICFA. *Laughlin v. Evanston Hospital*, 133 Ill. 2d 374, 390–91 (1990). Where an ICFA theory is duplicitous of the same conduct under another statute that does not make the conduct actionable, courts will not permit the claim. *Id.* (holding that where conduct did not state a cause of action under the Illinois Antitrust Act, it could not support an ICFA claim based on the same claim or conduct). Illinois courts have rejected ICFA claims premised on alleged RESPA violations when the RESPA claim itself fails. *Johnson v. Matrix Financial Services Corp.*, 354 Ill. App. 3d 684, 698 (1st Dist. 2004).

Therefore, the Court's holding striking Counterclaim VI, as ordered in the March 11, 2025, Memorandum Opinion and Order, stands as entered for the reasons outlined therein and supplemented herein.

2. Geoghegan's ICFA Counterclaims Deriving from the Mortgage

Underlying both Counterclaims IV and V is the allegation that Plaintiff failed to send notice as required by Paragraphs 20 and 22 of the Mortgage, respectively.¹⁰ Counterclaim V is premised on a breach of Paragraph 22 of the Mortgage, which requires the Lender to send a Notice of Acceleration to the *Borrower* prior to accelerating the amount due on the Note, following the Borrower's

¹⁰ Both Counterclaims IV and V align with Counterclaims I and II for breach of contract, which this Court already previously struck and Geoghegan is not asking for reconsideration.

breach of any covenant or agreement. (Pl.'s Compl., Ex. A Mortg., ¶22.) Counterclaim IV is similarly premised on a breach of Paragraph 20 of the Mortgage, which requires the Lender to send notice to the Borrower when it begins judicial proceedings for foreclosure. (Pl.'s Compl., Ex. A Mortg., ¶20.) Paragraph 20 of the subject Mortgage states: “[t]he notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 (***) shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.” (Pl.'s Compl., Ex. A Mortg., ¶20.) The notice requirement under Paragraph 20 is satisfied by notice under Paragraph 22. (Pl.'s Compl., Ex. A Mortg., ¶20.) Common to both is the requirement that the Lender send notice to the Borrower, and no other party. The Borrower is defined under the subject Mortgage as “BETH MARIE JANIAK.” (Pl.'s Compl., Ex. A Mortg., ¶1.)

Recovery under ICFA is available for both “unfair” and “deceptive” practices. *Rockford Memorial Hospital v. Havrilesko*, 368 Ill. App. 3d 115, 121 (2006). Unfairness is determined by whether the conduct: (1) offends public policy; (2) is immoral, unethical, oppressive, or unscrupulous; and (3) causes substantial consumer injury. *Dubey v. Public Storage, Inc.*, 395 Ill. App. 3d 342, 354 (2009). This analysis is fact-specific, and not all three factors must be present. *Id.* Counterclaims IV and V both allege that Plaintiff failed to satisfy the conditions precedent to bring a foreclosure action under the Mortgage; specifically, sending notice of the acceleration and judicial proceedings to Geoghegan personally. Geoghegan attempts to assert that Plaintiff's failure to satisfy these conditions precedent is

demonstrative of unfair conduct under ICFA. However, Geoghegan's allegation that U.S. Bank failed to comply with Paragraphs 20 and 22 of the subject Mortgage is completely without merit and misstates the controlling law in Illinois. Notwithstanding the lack of an unfair or deceptive business practice, "[a] breach of contractual promise, without more, is not actionable under the Consumer Fraud Act." *Avery*, 216 Ill. at 169.

The *Avery* court emphasized that a defendant's failure to fulfill contractual promises, standing alone, cannot constitute actionable deception under ICFA because such conduct is inherent in every breach of contract claim. *Id.* The First District court in *Bank of New York Mellon v. Fiorentino* applied this principle to unfair conduct allegations, holding that where "allegations of unfair conduct [are] essentially allegation[s] that the Lender or its agent failed to perform in accordance with their obligations under the mortgage contracts," summary judgment for the counterdefendant is proper because these claims amount to nothing more than contractual breach allegations. *Bank of New York Mellon v. Fiorentino*, 2022 IL App (1st) 210660-U, ¶61.¹¹ Geoghegan's Counterclaims IV and V fail this same test discussed in *Fiorentino*. Both claims arise from the same alleged contractual violations without any independent unfair conduct beyond the purported noncompliance with Sections 20 and 22 of the Mortgage.

Illinois courts have consistently asserted that a plaintiff must allege unfair conduct separate and apart from an isolated breach of contract to state a viable

¹¹ Pursuant to Illinois Supreme Court Rule 23(a), the Court uses *Bank of New York Mellon v. Fiorentino* as persuasive and not controlling authority.

claim under ICFA.¹² *Burress-Taylor v. American Security Insurance Co.*, 2012 IL App (1st) 110554, ¶29. Geoghegan's failure to meet this standard renders the ICFA counterclaim *insufficient as a matter of law*. Geoghegan's argument relies on a long chain of inferences and merely repackages a common law breach of contract claim as a consumer fraud action. Under Illinois law, courts consistently hold that an ICFA claim must "involve more than the mere fact that a defendant promised something and then failed to do it." *Zankle v. Queen Anne Landscaping*, 311 Ill. App. 3d 308, 312 (2nd Dist. 2000). Geoghegan's Counterclaims fail to establish the independent unfair conduct required for an ICFA claim under Illinois law.

Geoghegan's ICFA Counterclaims also lack causation and damages. Geoghegan argues that he was harmed (*i.e.*, emotional distress from the pending foreclosure). First, Geoghegan's Counterclaims do not assert damages for emotional distress. Second, they are not actionable, even if there was no ICFA safe harbor provision. Plaintiff cannot be held responsible for Geoghegan's own failure to take the steps necessary to confirm himself as a successor in interest to the Property. The emotional distress that Geoghegan claims is a consequence of his own inaction, as

¹² If litigants could invoke the ICFA based solely on contractual breaches through such inferential leaps, common law breach of contract actions would be supplemented in every case with an additional and redundant remedy under this Act. This is clearly not permitted by the law. ICFA was *not* intended to replace Illinois's common law of contract remedies and actions available. *Golembiewski v. Hallberg Insurance Agency, Inc.*, 262 Ill. App. 3d 1082, 1093 (1994).

Illinois courts have consistently explained that if ICFA did apply to "simple breach of contract claims," those claims "would be supplemented in every case with an additional and redundant remedy." *Id.* Illinois courts have further explained that "[e]very individual breach of contract between two parties does not amount to a cause of action cognizable under the [ICFA]" because ICFA "is intended to reach practices of the type which affect consumers generally and is not available as an additional remedy to address a purely private wrong." *Bankier v. First Federal Savings & Loan Association of Champaign*, 225 Ill. App. 3d 864, 875 (1994). Here, there is no risk that Geoghegan's ICFA counterclaims will be redundant to any breach of contract claims because Geoghegan has no rights under the relevant Mortgage and Note. As a result, the general rule that an ICFA claim cannot be premised on a breach of contract claim does not apply in this case.

his lack of communication regarding his successor in interest status contributed to the situation in which Geoghegan finds himself. Any attempt to link alleged unfair practices and damages is tenuous at best.

Geoghegan cites to *Hill v. Wells Fargo Bank, N.A.* in contending that Plaintiff's failure to comply with the conditions precedent prior to filing to foreclosure suit constitutes unfair conduct. However, this should be seen for what it actually is: an attempt to circumvent the foreclosure process in Illinois, which is against Illinois public policy. *Hill v. Wells Fargo Bank, N.A.*, 946 F.Supp. 2d 817, 827 (N.D. Ill. 2013). *Hill* is a federal case that deals with a violation of the IMFL after alleged illegal attempts by a property management company to drive the homeowners out of the property. The court held that the plaintiff adequately alleged "unfair" conduct under ICFA, as the defendant engaged in conduct such as repeatedly breaking into the home, vandalizing property, and stealing belongings in order to force the homeowners out and avoid foreclosure procedures. Such deliberate acts are *fundamentally* different from the alleged contractual breaches here.

In accordance with Rule 133(c) and *Wojcik*, Geoghegan, not Plaintiff, has the burden to set forth facts that demonstrate that Plaintiff failed to comply with Paragraphs 20 and 22 of the subject Mortgage as a matter of law. Here, not only did Geoghegan fail to set forth specific facts demonstrating that Plaintiff failed to comply with Paragraphs 20 and 22, but Geoghegan additionally failed to contest whether Plaintiff sent the Borrower, Beth Marie Janiak, any Notice of Default pursuant to Paragraphs 20 and 22. Simply stated, Geoghegan failed to set forth any

provision of the Mortgage and Note with which Plaintiff failed to comply. If Plaintiff fully complied with the terms of the Mortgage and Note, there is no deception, fraud, or unfairness which would justify a cause of action under ICFA. Plaintiff did in fact fully comply with the requirements set forth in the Mortgage. (See Pl.'s Compl., Ex. A Mortg., ¶15) ("Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail (***) Notice to any one Borrower shall constitute notice to all Borrowers, unless applicable law expressly requires otherwise.").

Illinois law clearly prohibits using the Consumer Fraud Act to transform ordinary breach of contract claims into consumer fraud actions, regardless of whether the conduct occurs in a consumer context. *Brewer v. Allstate Life Insurance Co.*, 2022 IL App (1st) 210932-U, ¶25.¹³ Permitting Geoghegan's theory would effectively eliminate the distinction between contract and consumer fraud law, allowing every disappointed contracting party to pursue duplicative ICFA remedies in contravention of established Illinois precedent. Permitting a person on title to bring actions under ICFA would allow any individual, through the mere execution of a quitclaim deed, to challenge the terms of a contract to which they are not a party and thereby delay proceedings indefinitely. This Court will not open the floodgates to such litigation.

¹³ Pursuant to Illinois Supreme Court Rule 23(a), the Court uses *Brewer v. Allstate Life Insurance Co.* as persuasive and not controlling authority.

3. *Geoghegan's Lack of Privity with Plaintiff*

Given the fact that Geoghegan lacks privity of contract with the lender who owed no duties to him, he cannot legally contest the sending of notice. This is simply not his fight to join. Privity is defined as a “[m]utual or successive relationship to the same rights of property, or such an identification of interest of one person with another as to represent the same legal right; (***) [t]hus the executor is in privity with the testator, the heir with the ancestor, the assignee with the assignor,” *etc.* Black’s Law Dictionary, 1078 (5th Ed. 1979). *Privity of estate*, specifically, refers to the mutual or successive relationship to the same rights of property, typically arising when one party transfers an interest in the property to another, such as through inheritance of sale. *Id.* at 1079.

However, there is also privity between a lender and borrower, known as *privity of contract* – a “connection or relationship which exists between two or more contracting parties.” *Id.* at 1080. It should be noted that there is no privity of contract between a lender and a third party, unless that third party has assumed the obligations and respective rights of the borrower.

Individuals who are in privity with one another likely have standing to sue if contractual obligations are not met. Standing to sue means that:

“[a] party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. Standing is a concept utilized to determine if a party is sufficiently affected so as to ensure that a justiciable controversy is presented to the court. The requirement of ‘standing’ is satisfied if it can be said that the [party] has a legally protectable and tangible interest at stake in the litigation.

Black's Law Dictionary, 1260 (5th Ed. 1979) (internal citations omitted).

Needless to say, without a “contractual nexus,” a party cannot have standing to plead defenses in a lawsuit related to the contract. *See* 735 ILCS 5/2-619(a)(2); *see also Deutsche Bank National Trust Co. v. Payton*, 2017 IL App (1st) 160305, ¶26.

Janiak is in privity of contract with Plaintiff, as they are the sole parties to the Mortgage and Note. On the other hand, Janiak and Geoghegan are in privity of estate with one another, because Geoghegan succeeded Janiak's interest in the property after her death. This privity relates to the ownership or interest in the Property itself, not the Mortgage contract. Janiak is in privity of contract with Plaintiff and privity of estate with Geoghegan; however, Plaintiff and Geoghegan are not in privity at all. No contractual relationship exists between them since Geoghegan did not sign the Mortgage or Note and he is not defined as the “borrower” or ever became a “confirmed successor in interest” by the Mortgage's very own terms.

Privity requires compliance with obligations set by the contract and “requires that the party suing has some contractual relationship with the one sued.” *1400 Museum Park Condominium Association v. Kenny Construction Co.*, 2021 IL App (1st) 192167, ¶38. It is reasonable to assume that where there is privity, the parties are obligated to strictly comply with the conditions precedent; including, but not limited to, Plaintiff's duty to provide notice and opportunity to cure the default before acceleration of the loan. *Cathay Bank v. Accetturo*, 2016 IL App (1st) 152783, ¶32; *Associates Asset Management, LLC v. Cruz*, 2019 IL App (1st) 182678, ¶35.

Moreover, where there is no privity, there may be no contractual obligations or rights asserted, and as the record shows, there is no privity between Plaintiff and Geoghegan. Therefore, Plaintiff is not bound by any contractual obligation to provide Geoghegan with notice of the loan default.

Therefore, the Court's holding striking Counterclaims IV and V, as ordered in the March 11, 2025, Memorandum Opinion and Order, stands as entered for the reasons outlined therein and supplemented herein.

Accordingly, Counterclaims IV, V, and VI remain dismissed with prejudice.

IV. CONCLUSION

The Court finds that Plaintiff was not contractually or statutorily obligated under 12 C.F.R. §1024.39, nor the Note or Mortgage to provide Geoghegan with notice, nor has Geoghegan stated an actionable claim as to any of his four Counterclaims at issue in his Motion to Reconsider. Accordingly, for the aforementioned reasons, Counterclaims III, IV, V, and VI remain dismissed with prejudice. Geoghegan's Motion to Reconsider is hereby DENIED.

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

- (1) Defendant GEOGHEGAN's Motion to Reconsider the Order Entered March 11, 2025, is DENIED;
- (2) U.S. Bank is granted leave to file renewed dispositive motions on or before January 2, 2026, FINAL;
- (3) U.S. Bank's final renewed dispositive motions shall be presented on January 20, 2026, at 2:00 PM via Zoom on Calendar 60's Zoom Information as listed below; and
- (4) Plaintiff shall email electronic courtesy copies to the Court's email address listed below on or before 4:30 PM on January 5, 2026, in strict conformity with Calendar 60's Standing Order.

Zoom Information:

Meeting ID: 810 2556 7672

Passcode: 021601

Call-In: (312) 626-6799

IT IS SO ORDERED.

Judge William B. Sullivan

Date: November 3, 2025

ENTERED:

NOV 03 2025

Circuit Court - 2142



Honorable William B. Sullivan
Cook County Circuit Judge

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

EXHIBIT 1

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

MCLP ASSET COMPANY INC.,

Plaintiff,

v.

MARK GEOGHEGAN; UNKNOWN
OWNERS AND NON- RECORD
CLAIMANTS,

Defendant.

Case Number: 2019 CH 13307

Calendar 60

Honorable William B. Sullivan,
Judge Presiding

Property Address
5928 North Rockwell Street
Chicago, Illinois 60659

MEMORANDUM OPINION AND ORDER

WILLIAM B. SULLIVAN, Circuit Judge:

Before the Court is Defendant/Counter-Plaintiff MARK GEOGHEGAN's ("Geoghegan") Motion for Summary Judgment ("Motion") as to his counterclaims. For the following reasons, Geoghegan's Motion is hereby DENIED with prejudice. *Sua sponte*, Geoghegan's Counterclaims III, IV, V, and VI are STRICKEN with prejudice for failure to state a claim and Counterclaims I and II are likewise STRICKEN for lack of standing. Plaintiff/Counter-Defendant MCLP ASSET COMPANY INC.'s ("MCLP") Motion for Extension of Time is GRANTED, and its Motion for Leave to Answer Defendant's Counterclaims is STRICKEN as moot.

I. BACKGROUND

On July 14, 2016, Beth Marie Janiak (“Janiak”), solely executed a promissory note (“Note”) in the amount of \$323,000.00, secured by a mortgage (“Mortgage”) on the property located at 5928 North Rockwell Street in Chicago, Illinois (“the property”).

On October 27, 2016, Janiak executed a quit claim deed to convey the property in tenancy by the entirety to herself and Geoghegan. Over two years later on December 30, 2018, Bayview Loan Servicing, LLC, (“Bayview”) the original Mortgagee, sent Notice of Default and Intent to Accelerate addressed to Janiak at the property.

On November 15, 2019, Bayview filed its Complaint to Foreclose Mortgage (“Complaint”) against Janiak. Soon thereafter, Janiak passed away, leaving her husband, Mark Geoghegan as the sole titleholder of the property. Following Bayview’s initial Complaint, in March 2020, Geoghegan timely filed an Answer and Affirmative Defenses, wherein he alleged that Bayview had not strictly complied with the conditions precedent to filing the foreclosure action, including their alleged failure to provide sufficient and proper notice pursuant to the Mortgage.

Concurrent with the filing of his answer and affirmative defenses, Geoghegan filed a separate document titled “Counterclaim” in which he alleged six counts against Bayview. His counterclaims comprise: two alleged breach of contract claims, three alleged violations of the Illinois Consumer Fraud and Deceptive Business

Practices Act (“ICFA”), and one alleged violation of a Consumer Financial Protection Bureau regulation.

On August 3, 2022, Bayview filed a Motion to Substitute Party Plaintiff, which was granted, naming NationStar Mortgage, LLC as the official Party Plaintiff. Ten months later, on June 14, 2023, the Court entered yet another order substituting MCLP Asset Company, Inc. (“MCLP”) as the official Party Plaintiff and the Plaintiff before the Court today.¹

One year later, in June of 2024, Geoghegan deposed one of Plaintiff’s affiants, Tonya Tillman, a foreclosure specialist for NewRez, LLC, who was the servicer of the loan on behalf of Plaintiff. In Tillman’s deposition, she testified to documents related to the loan and servicing procedures pertaining to the Mortgage.

Nearly one month later, MCLP filed a Motion for Summary Judgment, which included an Affidavit by Tillman affirming that MCLP had complied with all requisite conditions precedent so established by the Mortgage prior to initiating the foreclosure suit, including having sent the mortgagor Notice of Default. Defendant Geoghegan filed a Motion to Strike Tillman’s Affidavit on August 9, 2024.

Just five days later on August 15, 2024, on the presentment date of MCLP’s judgment motions, the Court entered an Order advancing Geoghegan’s Motion to Strike the Tillman Affidavit. The Court then struck the scheduled presentment date for the Motion to Strike, set a hearing date and a briefing schedule on the Motion to

¹ The Court would like to note that following its Order, on October 30, 2024, Plaintiff MCLP filed a Motion to Substitute Party Plaintiff. In that Motion, MCLP requested entry of an Order substituting the name of the Plaintiff to U.S. Bank Trust National Association (“U.S. Bank”). The Court never entered an order granting this Motion; however, in subsequent documents filed by Plaintiff, Plaintiff, nevertheless, names U.S. Bank as the Party Plaintiff in the caption.

Strike, and entered and continued MCLP's judgment motions to the hearing date on Defendant's Motion to Strike.

After having heard oral argument, reviewing the Motion to Strike, Response, and Reply, the Court issued a corresponding Memorandum Opinion and Order on October 29, 2024. In its Order, the Court denied Geoghegan's Motion to Strike; however, the Court nevertheless *sua sponte* struck the Tillman Affidavit due to its lack of compliance with Illinois Supreme Court Rule 191(a), and thereby denied Plaintiff's judgment motions without prejudice.

Less than two months later, on November 6, 2024, Defendant Geoghegan filed his Motion for Summary Judgment as to Counts III, IV, V, and VI in his Counterclaim. Plaintiff/Counter-Defendant MCLP timely filed its Response brief in opposition and Defendant/Counter-Plaintiff Geoghegan timely filed his Reply brief in support of the Motion.

The Court, after having reviewed the Motion, the Response, and the Reply, and after having heard oral argument on the Motion, took the Motion under advisement for the issuance of a written opinion. The Court's ruling follows.

II. LEGAL STANDARD

Geoghegan now moves this Court for summary judgment pursuant to 735 ILCS 5/2-1005. 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) 15192, 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 MarineCorp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90 (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 (1st Dist. 2005).

III. ANALYSIS

Before the Court is the question of whether Geoghegan is entitled to Summary Judgment as to his Counterclaims III, IV, V, and VI. Underlying all of his counterclaims is an allegation that Geoghegan did not receive notice to which he argues he was entitled. As he did not sign the Mortgage or Note, Geoghegan relies on the premise that he meets certain definitions contained in statutory and contractual language to assert his right to notice. However, he fails to meet any definition which entitles him to the rights he claims under the Mortgage and Note, and has failed to allege facts tending to show that MCLP violated ICFA or Consumer Financial Protection Bureau (“CFPB”) regulations.

A. Geoghegan's Relation to this Suit

There are a number of legal identities which Geoghegan claims in relation to this suit. Geoghegan attempts to identify as a Borrower, Successor in Interest, and Mortgagor; however, he falls short on several fronts.

First, Geoghegan does *not* satisfy the characteristics of a Borrower. Borrower is defined as a “person obligated under the mortgage loan.” 765 ILCS 910/2. Accordingly, the Mortgage explicitly states, “Borrower is BETH MARIE JANIAK, A MARRIED WOMAN,” and further notes that the “Borrower is the mortgagor under this security instrument.” (Compl., Ex. A Mortgage at 1.) Geoghegan is a signatory to neither the Mortgage nor the Note, and his name does not appear on any security instrument or document relevant to the case at bar. (Compl., Ex. A Mortgage at 12; Compl., Ex. B Note at 3.)

In his Counterclaim III, Geoghegan cites the definition of Borrower provided in 765 ILCS 77/70 to claim this legal identity. (Countercl., at 14.) However Geoghegan would not even fit under this definition which is in the context of counseling for predatory lending, and only applies “[a]s used in this Article”. 765 ILCS 77/70. The definition being “a person seeking a mortgage loan” does not help Geoghegan, as he is not actively seeking a mortgage loan, and has not done so in relation to this suit as will be discussed later. *Id.* The operative definition is the one contained in the Mortgage, not a tangentially related statute. Conclusively, and by having not signed the Note, Geoghegan is not a Borrower for the purposes of this lawsuit.

Second, Geoghegan *does* satisfy the definition of Successor in Interest under the Mortgage. Section Q of the Mortgage defines Successor in Interest of Borrower as “any party that has taken title to the Property, whether or not that party has assumed Borrower’s obligations under the Note and/or this Security Instrument.” (Compl., Ex. A Mortgage at 1.) Since Geoghegan took title to the property upon Janiak’s death, he satisfies this definition.

However, and what is essential to this holding: he did not take the actions required under the contract to assume the rights and obligations owed to Borrower by the Lender. Section 13 of the Mortgage states:

Subject to the provisions of Section 18, any Successor in Interest of Borrower *who assumes Borrower’s obligations under this Security Instrument in writing*, and is approved by Lender, shall obtain all of Borrower’s rights and benefits under this Security Instrument. (Compl., Ex. A Mortgage at 10) (emphasis added).

Section 18 of the Mortgage states:

‘Interest in the Property’ means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond or deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser. (Compl., Ex. A Mortgage at 10-11.)

Even though the contract contemplates the position Geoghegan holds, it does not entitle him to the rights and remedies under the contract. Under Section 18, he possesses an interest in the property; and, therefore—by definition—Geoghegan is a Successor in Interest under the contract. However, he failed to obtain the rights of the Borrower under Section 13, because no evidence has been presented to this Court that Geoghegan affirmatively assumed Janiak’s obligations under the Note in

writing. Accordingly, Geoghegan, despite being a Successor in Interest, did not assume the rights and duties of the Borrower under the Mortgage and Note, such as notice as a condition precedent to Plaintiff's ability to bring the present foreclosure action.

Finally, Geoghegan *does* satisfy the definition of a Mortgagor, thereby making him a necessary party to this suit. A Mortgagor is defined as "(i) the person whose interest in the real estate is the subject of the mortgage and (ii) any person claiming through a mortgagor as a successor." 735 ILCS 5/15-1209. A mortgagor can either be a person with an interest in the subject property or someone claiming through them as a successor. Geoghegan received an interest in the property when he and Janiak came to be tenants by the entirety in the subject property. His claim extended when Janiak passed away, leaving him as the sole titleholder of the property. Plain interpretation of this statute clearly establishes that Geoghegan *does* satisfy the requisite characteristics of a mortgagor under 735 ILCS 5/15-1209. Therefore, Geoghegan shall be referred to and identified as such. Accordingly, Geoghegan is a Mortgagor and a necessary party to this suit.

Geoghegan has tried on every hat in the store, and he found one that fits: Mortgagor. However, Geoghegan is not the Mortgagor referred to in the Mortgage and the Note. He is not "the mortgagor under this security instrument" per the Mortgage. (Compl., Ex. A Mortgage at 1.) Nor does his status as the Mortgagor convert him into the Borrower to which Plaintiff owed the duty of notice as a condition precedent to bringing this foreclosure suit under the Mortgage and Note.

Geoghegan was the correct party for Plaintiff to sue, but this does not mean he inherited the rights and duties of Janiak under the Mortgage and Note when he received title to the property. Given his marginal status in relation to the contracts at issue, Geoghegan's counterclaims fail to satisfy their essential elements.

B. Counterclaims IV, V, and VI

Geoghegan is seeking summary judgment as to his three counterclaims brought under ICFA: IV, V, and VI. Underlying each is the allegation that MCLP failed to send notice to *him*, Geoghegan, personally. This was not required. No allegation indicates that MCLP failed to comply with conditions precedent under the Mortgage and Note, or the regulations of the CFPB.

To bring a claim under ICFA, there must be an underlying unfair or deceptive business practice. Section 10a of ICFA provides that "[a]ny person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person." 815 ILCS 505/10a. To bring such a claim, the complaint must allege:

(1) a deceptive act or practice by defendant; (2) defendant's intent that plaintiff rely on the deception; (3) the occurrence of the deception in the course of conduct involving trade or commerce; and (4) actual damage to plaintiff; (5) proximately caused by the deception. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 180 (2005).

If the lender complied with all terms of the Mortgage and Note, there would be no deception, fraud, or unfairness which could justify a cause of action under ICFA. Where a plaintiff has failed to establish an element of their cause of action,

summary judgment in their favor is improper. *See Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163 (2007).

Each counterclaim is premised on the same alleged omission, but they are derived from three separate contractual or statutory sources. First, Counterclaim V is premised on a breach of Paragraph 22 of the Mortgage, which requires the Lender to send a Notice of Acceleration to the Borrower prior to accelerating the amount due on the Note. (Compl., Ex. A Mortgage at 11.) Second, Counterclaim IV is similarly premised on a breach of Paragraph 20 of the Mortgage, which requires the Lender to send notice to the Borrower when it begins judicial proceedings to obtain a foreclosure. (Compl., Ex. A Mortgage at 10.) The notice requirement under Paragraph 20 is satisfied by notice under Paragraph 22. (Compl., Ex. A Mortgage at 10.) Common to both is the requirement that the Lender send notice to the Borrower, and no other party.

Third, Counterclaim VI, in contrast, is premised on a failure to comply with the notice requirement of 12 C.F.R. § 1024.39, not any part of the Mortgage or Note. This provision requires the Lender to “provide to a delinquent *borrower* a written notice within 45 days of delinquency. 12 C.F.R. § 1024.39 (emphasis added). The provision exclusively uses the term “borrower” throughout, not “homeowner” as Geoghegan implies in his Motion. (Def’s Mot. Summ. J., at 10.)²

² This Court must use the specific language contained in the statute absent ambiguity, not the amended version Geoghegan has written to favor his cause. It is the fundamental role of the courts in interpreting statutes to effectuate the will of the legislature. *People ex rel. Birkett v. City of Chicago*, 202 Ill. 2d 36, 45 (2002). Here there is no ambiguity which would require judicial intervention. It was the intent of the legislature to require notice to borrowers and not to unannounced successors in interest like Geoghegan.

Although Geoghegan was not himself owed notice, these provisions do not show that the Lender had no notice obligation at all. On the contrary, each provision requires that the Lender send notice to the Borrower, and this act alone was still a condition precedent to the instant foreclosure proceeding. If Geoghegan has properly alleged that notice was not properly sent, then he may be entitled to summary judgment. In mortgage foreclosures, the allegation that the lender provided notice is a deemed and construed allegation. 735 ILCS 5/15-1504(c)(9); *See Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶43. Properly written and compliant mortgage foreclosure complaints incorporate this allegation by function of the statute, and it is a defendant's burden to rebut them.

Illinois Supreme Court Rule 133(c) states in relation to conditions precedent that: "it is sufficient to allege generally that the party performed all the conditions on his part; if the allegation be denied, *the facts must be alleged in connection with the denial showing wherein there was a failure to perform.*" Ill. Sup. Ct. R. 133(c) (emphasis added). Geoghegan was required to allege facts tending to show that MCLP failed to comply with its contractual duty to send notice. If he failed to deny the bank's assertion that it complied with the notice requirements under the contracts, the bank's allegations will be deemed admitted. *See Bank of N.Y. Mellon v. Wojcik*, 2019 IL App (1st) 180845, ¶21 (where even a general denial of the bank's allegation that it complied with conditions precedent was deemed an admission under the 133(c) rule). Unfortunately for Geoghegan, he never rebutted MCLP's allegation that it mailed the Borrower notice.

Despite appearances, Geoghegan has never claimed that MCLP failed to send notice to the Borrower. His only allegation—in his Answer, Affirmative Defenses, and Affidavits—is that MCLP failed to send notice to him personally, not that they failed to send it to the Borrower. (Def. Ans., at 3, 4, 6; Def. Affid., at 2-3.) Even if this Court accepts this as truth, it does not indicate that MCLP failed to comply with its obligations in any way. MCLP's obligations exclusively ran to the Borrower—Janiak. No allegation in the entire record tends to rebut the presumption that MCLP sent notice to Janiak, the only party entitled to such notice in the first instance.

It remains a mystery to this Court what unfair or deceptive practice underlies these claims. The mailing affidavit filed January 28, 2025, by MCLP provides clear evidence that the notice was sent to the proper party: Janiak. This Court has the power to review everything in the record at this stage in the litigation.³ See *Glenview v. Northfield Woods Water & Utility Co.*, 216 Ill. App. 3d 40, 46 (1st Dist. 1991) (“When ruling on a motion for summary judgment, the trial court must consider the entire record.”)

Further, Geoghegan does not refute the presence of the mailing affidavit or that proper notice was sent to the Borrower. This court has previously concluded that Geoghegan was not a Borrower, nor did he obtain the rights and obligations of the Borrower as a Successor in Interest. He did not take the required steps pursuant to Sections 13 and 18 of the Mortgage to inherit Janiak's rights and

³ Due to the lateness of MCLP's current mailing affidavit, this Court will not rely on it, and it does not weigh on the Court's ruling today. However, this Court will not strike the mailing affidavit either.

obligations. (See Compl., Ex. A Mortgage at 10.) He did not assume the Borrower's obligations in writing, nor was it approved by the Lender. MCLP was under no obligation to send Geoghegan notice. As such, any failure to do so is a non sequitur, which cannot form the basis for an ICFA claim.

Geoghegan's counterclaims are premised on an element he has failed to allege. The counterclaims themselves also merely state that MCLP failed to send notice to Geoghegan, not the Borrower. (Def. Countercl., at 4, 9.) The line of logic underpinning these counterclaims is incorrect, and assumes that a Successor in Interest to title on the property automatically inherits the rights and obligations under the Mortgage and Note which encumber that property. This is incorrect per the terms of the contract. (See Compl., Ex. A Mortgage at 10.) This halts the analysis at the first step, because he has not alleged "a deceptive act or practice by defendant". *Avery*, 216 Ill. 2d at 180. As long as there is no allegation that MCLP failed to perform an actual obligation under the Mortgage, Note, or CFPB regulation, there is no valid claim. Geoghegan has only alleged a failure to send notice to him, personally.

For this Court to *sua sponte* require MCLP to send Geoghegan notice would be contrary to its role to enforce valid contracts as written. It is not the job of the Court to renegotiate or rewrite a contract to suit one party. *Schweihs v. Davis, Friedman, Zavett, Kane & MacRae*, 344 Ill. App. 3d 493, 499 (1st Dist. 2003). It is the black letter of the law that a court must enforce a contract as written and not make new contracts between parties. See *Carter Oil Co. v. Dees*, 340 Ill. App. 449,

458 (4th Dist. 1950) (“Courts do not, and cannot, undertake to make a new contract for the parties.”) In the absence of ambiguous language, the court may not reform the contract. *People ex rel. Illinois State Scholarship Com. v. Harrison*, 67 Ill App. 3d 359, 360 (1st Dist. 1978); *see also Schweih v. Davis, Friedman, Zavett, Kane & MacRae*, 344 Ill App. 3d 493, 499 (1st Dist. 2003) (“Courts will enforce contracts as written, and they will not rewrite a contract to suit one of the parties.”)

This Court will not bend the law to further benefit Geoghegan's interest in this case. It would be an unfair standard to require MCLP to send notice to any and all potential parties, even when those parties are unknown and not signatories to the contract. Although a title search would have yielded Geoghegan's name, this does not impart an affirmative duty to send him notice as a condition precedent to the commencement of foreclosure proceedings—even if doing so would be best business practices.

Even assuming, *arguendo*, that Geoghegan had adopted the rights and obligations under the Mortgage and Note, the notice was proper even with the technical defect of only including Janiak's name. *See Bank of America, N.A. v. Luca*, 2012 IL App (2d) 110899, ¶9. (Notice sent to the property but only addressing one of the defendant mortgagors and not the other, was proper notice). The only person that failed to provide notice in this case is Geoghegan. He failed to give MCLP notice that he intended to assume the obligations of the Borrower under the Mortgage. By not giving MCLP this notice, MCLP was not obligated to provide Geoghegan notice.

As a matter of law, Geoghegan has failed to state a claim under ICFA. No allegation in the record indicates that MCLP engaged in unfair or deceptive acts in this matter. Geoghegan has not fulfilled his burden to refute the deemed and construed allegation that notice was sent to the Borrower. MCLP provided notice to the person to whom it had a contractual obligation to send notice, Beth Janiak. As such, Geoghegan has failed to satisfy the first element of a claim under ICFA. For those reasons, Geoghegan's Motion for Summary Judgment is denied as to Counterclaims IV, V, and VI, and they are dismissed with prejudice for failure to state a claim.

C. Counterclaim III

Geoghegan's Counterclaim III was not brought under ICFA, but instead is a violation of 12 C.F.R. § 1024.39. The relevant section provides:

(b)(1) Notice required. Except as otherwise provided in this section, a servicer shall provide to a *delinquent borrower* a written notice with the information set forth in paragraph (b)(2) of this section no later than the 45th day of the borrower's delinquency and again no later than 45 days after each payment due date so long as the *borrower* remains delinquent. (***) 12 C.F.R. § 1024.39(b)(1) (emphasis added).

This regulation only requires notice to be given to delinquent borrowers. As Geoghegan is not a Borrower, he was not entitled to notice. Additionally, as discussed above, Geoghegan did not allege that MCLP failed to send the Borrower, Janiak, notice. Therefore, nothing in the record before this Court indicates that MCLP failed to comply with 12 C.F.R. § 1024.39, and Geoghegan has failed to state a claim. Thus, Summary Judgment is denied as to Geoghegan's Counterclaim III, and it is stricken with prejudice.

D. Counterclaims I and II

Although Geoghegan did not move for summary judgment as to his Counterclaims I and II, MCLP raised the issue of standing regarding these claims in its response to Geoghegan's Motion. These counterclaims allege a breach of contract through the failure to send Geoghegan notice. Geoghegan does not have standing to bring a breach of contract claim because he is not a party to which notice was required to be given. Standing to sue means that:

[a] party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. Standing is a concept utilized to determine if a party is sufficiently affected so as to ensure that a justiciable controversy is presented to the court. The requirement of 'standing' is satisfied if it can be said that the [party] has a legally protectable and tangible interest at stake in the litigation. Black's Law Dictionary, 1260 (5th Ed. 1979) (internal citations omitted).

The doctrine of standing is designed to preclude individuals who have no interest in a controversy from bringing a suit or raising issues. An individual that lacks standing may not file motions or other court actions. *People v. Johnson*, 2021 IL 125738, ¶72.

Geoghegan has argued that standing has been waived because it was not raised at the inception of this suit. The cases upon which Geoghegan relies state that lack of standing will be waived "if not raised in a timely fashion" because a "challenge to standing in a civil case is an affirmative defense." *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 508 (1988); *U.S. Bank, N.A. v. Kosterman*, 2015 IL App (1st) 133627, ¶10. However, Illinois law has been clear that "an affirmative defense raised for the first time in a motion for summary

judgment ‘is timely and may be considered even if not raised in defendant's answer.’” *Kim v. State Farm Mutual Automobile Insurance Co.*, 2021 IL App (1st) 200135, ¶39 (citing *Salazar v. State Farm Mutual Automobile Insurance Co.*, 191 Ill. App. 3d 871, 876, 548 N.E.2d 382, 138 Ill. Dec. 969 (1989)).

MCLP raises the issue of standing in its response to Geoghegan’s Motion for Summary Judgment. The First District has recognized that an affirmative defense is waived if it has not been timely raised, but notes that affirmative defenses first raised in an answer to a complaint or a response to a motion for summary judgment are timely. *Deutsche Bank National Trust Co. v. Iordanov*, 2016 IL App (1st) 152656, ¶36-38. Other Cases from the Third District are instructive as to the timeliness requirement on this point, indicating that affirmative defenses can be raised in motions for summary judgement. *See Salazar v. State Farm Mut. Automobile Insurance Co.*, 191 Ill. App 3d 871 (1989); *Donath v. Village of Plainfield*, 2020 IL App (3d) 190762. Thus, the affirmative defense of lack of standing has been timely raised by MCLP.

Not only has the issue of standing been timely raised, but this Court has already ruled on Geoghegan’s lack of standing in this suit. The Court will not entertain any new arguments as they relate to standing given the fact that it has already addressed this issue in its previously entered opinion dated October 29, 2024. (Mem. Op. and Ord., 9 Oct. 29, 2024.) This Court found that Geoghegan lacked standing to bring a motion to dismiss the Tillman affidavit because

Geoghegan was not a borrower and lacked a contractual obligation which required MCLP to send notice. *Id.* at 9.

It has been clearly established by this Court that Geoghegan lacks standing to file motions and raise claims related to MCLP's alleged failure to send notice. Geoghegan does not have the contractual relationship necessary to bring a breach of contract claim. No contractual relationship exists between Geoghegan and MCLP because he is not a borrower or a successor in interest, as previously discussed. Because Geoghegan is only a Mortgagor, he has no right to bring a breach of contract claim against a party (here, MCLP) when there was no contractual relationship between them whatsoever.

As such, Geoghegan's Counterclaims I and II are stricken with prejudice as being nonjusticiable for lack of standing.

IV. CONCLUSION

Accordingly, for the aforementioned reasons, Geoghegan's Motion for Summary Judgment is hereby DENIED with prejudice for failure to state a claim. The Court finds that MCLP was not contractually or statutorily obligated to provide Geoghegan with notice, nor has Geoghegan stated a claim as to the four counterclaims. As such, Counterclaims III, IV, V, and VI are hereby STRICKEN with prejudice for failure to state a claim. Counterclaims I and II are hereby STRICKEN with prejudice for lack of standing.

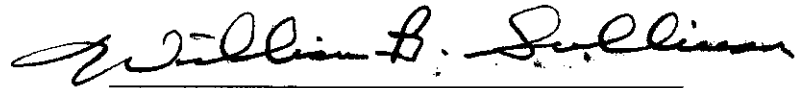
**THEREFORE, FOR THE AFOREMENTIONED REASONS, THE COURT
HEREBY ORDERS AS FOLLOWS:**

- (1) Counter-Plaintiff's Motion for Summary Judgment is hereby DENIED with prejudice;
- (2) Counter-Plaintiff's Counterclaims IV, V, and VI are hereby STRICKEN with prejudice for failure to state a claim under ICFA;
- (3) Counter-Plaintiff's Counterclaim III is hereby STRICKEN with prejudice for failure to state a claim under 12 CFR §1024.39;
- (4) Counter-Plaintiff's Counterclaims I and II are hereby STRICKEN with prejudice as being nonjusticiable for lack of standing;
- (5) MCLP's Motion for Extension of Time is GRANTED;
 - (a) MCLP is granted additional time to file its dispositive motion on or before May 12, 2025; and
- (6) Counter-Defendant's Motion for Leave to Answer Counter-Plaintiff's Counterclaims is STRICKEN as moot.

IT IS SO ORDERED.

Date: March 11, 2025

ENTERED:



Honorable William B. Sullivan
Cook County Circuit Judge

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

Judge William B. Sullivan

MAR 11 2025

Circuit Court - 2142