

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

STEVEN E. CIACCIO AND KELLY M.
BRY-CIACCIO,

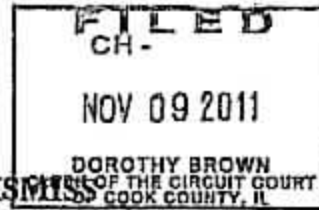
Plaintiffs,

v.

FIRST CHICAGO BANK & TRUST AS
TRUSTEE UNDER TRUST #1261-B, AND
FIRST CHICAGO BANK & TRUST,

Defendants.

Case No. 11 CH 07987



**DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT TO QUIET TITLE
PURSUANT TO 735 ILCS 5/2-615(b) AND 5/2-619(a)(9)**

Northbrook Bank & Trust Company ("Northbrook"), individually and as Trustee under that certain Trust Agreement dated June 30, 2009, and known as Trust No. 1261-B (the "Trust"), as successor in interest to First Chicago Bank & Trust ("First Chicago"), individually and as Trustee under the Trust, by and through its attorneys Polsinelli Shughart PC, moves, pursuant to 735 ILCS 5/2-615(b) and 735 ILCS 5/2-619(a)(9), to dismiss the unverified First Amended Complaint to Quiet Title (the "Amended Complaint") filed by the above-captioned plaintiffs (the "Plaintiffs"), and in support thereof, states as follows:

INTRODUCTION

The Amended Complaint represents Plaintiffs' second bite at the apple. The Court previously dismissed Plaintiffs' original, unverified Complaint to Quiet Title (the "Original Complaint"), but granted Plaintiffs leave to amend based solely on their assertions, during oral argument on the motion to dismiss, that (1) Plaintiffs were not in default at the time of the recording of the Deed; and (2) that the Deed was "altered" above and beyond the filling in of certain non-substantive blanks that were present on the Deed when executed by Plaintiffs. This

Court, in granting leave to amend the Original Complaint, allowed Plaintiffs the chance to present admissible evidence of the absence of a default and that the Deed was "altered" in a way other than filling in the blanks that had been contemplated at the time of execution. Plaintiffs have squandered that chance by submitting yet another unverified complaint, again filled with misstatements of fact and red herrings, and repeating allegations that this Court has already found to be irrelevant to any legally recognized cause of action.

The Amended Complaint contains five new material allegations: (1) the first page of the Deed was replaced with a new first page; (2) the Preliminary Closing contemplated by the Forbearance Agreement never occurred; (3) counsel for Northbrook recorded the Deed without having "a certification as required by paragraph 4 of the escrow agreement;" (4) Plaintiffs "made all payments due on the loan" and were not in default at the time the Deed was recorded; and (5) counsel for Northbrook executed a Cook County grantor-grantee statement "as an agent of Plaintiff." These new allegations are either patently false, directly contradicted by the very documents attached to the Amended Complaint, and are easily dismissed under Section 2-619(a)(9), or are red herrings designed merely to confuse the Court and which, even if true, do not give rise to a cause of action and must be dismissed pursuant to Section 2-615(b).

Because Plaintiffs have failed, again, to come up with any allegations that could give rise to a cause of action, and because Plaintiffs have had two chances to do so, the Amended Complaint must be dismissed without leave to amend.

BACKGROUND

1. On May 20, 2005, Mae Development Group, Inc ("Mae"), Steven E. Ciaccio ("Ciaccio") and Northbrook entered into that certain Construction Loan Agreement (the "Loan Agreement") pursuant to which Northbrook made a loan to Mae in the amount of \$1,310,000.00 (the "Loan"), which is evidenced by a Promissory Note executed by Mae in the original

principal amount of \$1,310,000.00 (the "Note"). (See Affidavit of DeAnn O'Donovan in Support of Motion to Dismiss (the "O'Donovan Affidavit" or "O'Donovan Aff."), which is attached hereto as Exhibit 1, at ¶ 6.)

2. On May 20, 2005, to secure the Note, Mae executed and delivered to Northbrook a Construction Mortgage (the "Mortgage") granting Northbrook a senior mortgage lien against the real estate and improvements thereon located at and commonly known as 2705 N. Magnolia Avenue, Chicago, Illinois, 60614 (the "Property"). The Mortgage was recorded with the Cook County, Illinois Recorder of Deeds on May 25, 2005, as Document No. 0514514280. (O'Donovan Aff. at ¶ 7.)

3. In connection with the Note and the Mortgage, Ciaccio executed a guaranty of Mae's obligations to Northbrook under the Loan. Ciaccio reaffirmed his guaranty of Mae's obligations on June 5, 2009, when he executed that certain Revised Guaranty of Sixth Modification, Revised Note, Revised Mortgage and Other Undertakings (the "Revised Guaranty"). (O'Donovan Aff. at ¶ 8.)

4. On August 24, 2007, a quit claim deed was recorded with the Cook County Recorder of Deeds as Document No. 0723610074, executed by Mae, as grantor, in favor of Ciaccio and Kelly M. Bry-Ciaccio ("Bry-Ciaccio"), as grantees, pursuant to which Plaintiffs became the record title owners of the Property. (O'Donovan Aff. at ¶ 9.)

5. Between November 1, 2006 and August 1, 2008, through a series of five separate loan modifications, the maturity date of the Note was extended to August 1, 2010. (O'Donovan Aff. at ¶ 10.)

6. Plaintiffs and Mae defaulted on the Loan by failing to make interest payments due as of February 5, 2009, and failing to pay real estate taxes, including certain taxes that were sold as delinquent. (O'Donovan Aff. at ¶ 11.)

7. On or about June 5, 2009, Mae, Ciaccio, and Bry-Ciaccio entered into a Sixth Loan Modification Agreement (the "Sixth Modification") which, among other things, (a) acknowledged existing defaults under the Loan, (b) granted an additional loan from Northbrook to Mae in the amount of approximately \$65,000, and (c) required the execution of a Forbearance and Deed In Lieu of Foreclosure Agreement (the "Forbearance Agreement") pursuant to which, among other things, Plaintiffs executed a deed in lieu of foreclosure to the Property (the "Deed") in favor of Northbrook, as trustee of the Trust. (O'Donovan Aff. at 12; true and correct copies of the Forbearance Agreement and the Sixth Modification are attached to the O'Donovan Affidavit as Exhibits A and B and are incorporated herein by this reference.)

8. On June 5, 2009, as contemplated by the Sixth Modification, Mae executed a Revised Promissory Note in the original principal amount of \$1,375,255.00 (the "Revised Note") in favor of Northbrook. (O'Donovan Aff. at 13; a true and correct copy of the Revised Note is attached to the O'Donovan Affidavit as Exhibit C and is incorporated herein by this reference.)

9. Pursuant to Section 2.01 of the Forbearance Agreement, the Deed was to be held by either by "Lender's attorney or the Title Company..." until a new, extended Maturity Date of August 5, 2010 (the "Maturity Date"), to allow Plaintiffs and Mae time to sell or refinance the Property, at which time the Deed would either be (a) recorded in favor of Northbrook, or (b) delivered back to Plaintiffs and Mae with a release of the Mortgage. (O'Donovan Aff. at ¶ 14; Forbearance Agreement, at § 2.01.)

10. Under Section 8.02 of the Forbearance Agreement, Northbrook was entitled to record the Deed if at any time after August 5, 2010, the Loan had not been paid in full, or if Plaintiffs and Mae otherwise defaulted under the Loan and such default continued for a period of ninety (90) days. (O'Donovan Aff. at ¶ 15; Forbearance Agreement, at § 8.02.)

11. On July 30, 2010, Plaintiffs executed the Seventh Loan Modification Agreement (the "Seventh Modification"), pursuant to which Plaintiffs acknowledged continuing defaults under the Loan. In particular, Plaintiffs acknowledged therein that as of July 30, 2010, they owed \$13,923.66 in accrued and unpaid interest, \$4,412.35 in late charges, and \$16,007.88 in costs incurred by Northbrook under the Loan, that real estate taxes had not been paid, and that the Loan was still in default. The Seventh Modification also extended the Maturity Date, to December 5, 2010 (the "Extended Maturity Date"). (O'Donovan Aff. at ¶ 16; a true and correct copy of the Seventh Modification is attached to the O'Donovan Affidavit as Exhibit D and is incorporated herein by this reference, at § M.)

12. The Seventh Modification explicitly stated that, aside from extending the maturity date of the Loan, "[a]ll other provisions of the Loan Documents, including but not limited to the terms of section 8.02(b) of the Forbearance Agreement... remain unchanged." (O'Donovan Aff. ¶ 17, Exhibit D, at § 2.)

13. Thus, the Seventh Modification did not alter any of Plaintiffs' obligations with regard to either the acknowledged defaults on the past-due payments or any future obligations not yet due under the Revised Note and the other Loan Documents. (O'Donovan Aff. at ¶ 17.) In that regard, the Revised Note required Mae to make monthly payments of interest on or before the 5th day of the month. (O'Donovan Aff. at ¶ 18; Revised Note, at § a.)

14. Between July 30, 2010 (the date Plaintiffs executed the Seventh Modification) and November 4, 2010 (the date the Deed was recorded), Plaintiffs made three monthly payments under the Revised Note, each in the amount of \$4,200.00, totaling \$12,600.00. These payments reduced the accrued and unpaid interest (as Plaintiffs acknowledged in the Seventh Modification) to \$1,323.66 (\$13,923.66 less \$12,600.00), but were not enough to pay the remaining accrued and unpaid interest (\$1,323.66), let alone the \$20,420.23 in other charges and costs that were due and owing at the time of the Seventh Modification. (O'Donovan Aff. at ¶ 19; a true and correct copy of a computer printout of the Loan history reflecting the three payments made by Plaintiffs is attached to the O'Donovan Affidavit as Exhibit E and is incorporated by this reference.)

15. Additionally, Plaintiffs did not make their ongoing monthly payments obligation under the Revised Note for the months of August, September or October 2010 (or thereafter). (O'Donovan Aff. at ¶ 20, Exhibit E.) Again, the payments made by Plaintiffs during this time frame were applied to reduced the accrued and unpaid interest as of and as acknowledged in the Seventh Modification. (O'Donovan Aff. at ¶ 20.)

16. Because Plaintiffs and Mae failed to cure the outstanding defaults they acknowledged in the Seventh Modification, and failed to make the monthly payment due under the Revised Note due August 5, 2010 (or thereafter), Plaintiffs and Mae were in continuing default under the Forbearance Agreement and the other loan documents for at least ninety (90) days when the Deed was recorded on November 4, 2010. (O'Donovan Aff. at ¶ 21.)

17. Plaintiffs and Mae had no right to cure any defaults under the Forbearance Agreement and the other loan documents after the expiration of the ninety-day period set forth

above, and regardless, made no attempt to cure the defaults. (O'Donovan Aff. at ¶ 22; Forbearance Agreement, at §§ 2.03, 8.02.)

18. As a result of the defaults, pursuant to the Forbearance Agreement, Northbrook was entitled to record the Deed, which had been held by Northbrook's attorney in compliance with the Forbearance Agreement, which it did on November 4, 2010, in the office of the Cook County Recorder of Deeds as Document No. 1030831049. (O'Donovan Aff. at ¶ 23; Forbearance Agreement, at § 8.02; a true and correct copy of the recorded Deed is attached to the O'Donovan Affidavit as Exhibit F and is incorporated herein by this reference.)

19. There are no provisions in the Forbearance Agreement which required Northbrook to give notice to Plaintiffs and Mae prior to recording the Deed. (O'Donovan Aff. at ¶ 24; Forbearance Agreement, *passim*.)

20. Plaintiffs and Mae have failed to pay the principal balance of \$1,375,255, plus all accrued interest due upon the Extended Maturity Date, and remain in default thereunder. (O'Donovan Aff. at ¶ 25.)

21. Additionally, Plaintiffs and Mae had failed to pay the final installment of 2008 and the first installment of 2009 real estate taxes assessed against the Property, which constituted further events of default under the Forbearance Agreement and the other loan documents. As a result of such non-payment, these real estate taxes have been sold to a third party and interest continues to accrue thereon. (O'Donovan Aff. at ¶ 26; a true and correct copy of the Estimate of Redemption reflecting the sale of the outstanding taxes is attached to the O'Donovan Affidavit as Exhibit G and is incorporated herein by this reference.)

22. Pursuant to the terms of the Forbearance Agreement, Plaintiffs and Mae were required to fully cooperate with Northbrook in the transfer of the Property, execute various

closing and transfer documents, and deliver keys and possession to Northbrook. Plaintiffs and Mae failed and refused to do so. (O'Donovan Aff. at ¶ 27, Forbearance Agreement at §§5.01, 4.02, 4.03(j), 4.03(k).)

23. On January 27, 2011, Northbrook caused a written demand for possession of the Property, as required by 735 ILCS 5/9-104 (the "Demand") to be served on Plaintiffs and Mae. (O'Donovan Aff. at ¶ 28; true and correct copies of the Demand and the affidavits of service thereof are attached to the O'Donovan Affidavit as Exhibits H and I, respectively, and are incorporated herein by this reference.)

24. Plaintiffs and Mae failed and refused to surrender possession of the Property pursuant to the Demand. (*See* O'Donovan Aff. at ¶ 29.)

25. Because Northbrook, as the record title owner of the Property, was (and is) entitled to possession thereof pursuant to the Forbearance Agreement, Northbrook filed a Complaint in Forcible Entry and Detainer on February 25, 2011 ("Eviction Complaint"), which case is currently pending as Cook County Case No. 2011-M1-704272 (the "Eviction Action").

26. On March 2, 2011, Plaintiffs filed their Original Complaint, alleging that (i) the Deed should not have been recorded because Plaintiffs are allegedly not in default; (ii) the Deed should have been placed in escrow with Chicago Title & Trust (and somehow that renders the recorded Deed invalid); and (iii) the Deed should not have been recorded because it was altered without their consent.

27. On or about April 20, 2011, Plaintiffs filed a motion to consolidate the Eviction Action into this action.

28. On or about April 29, 2011, Northbrook filed its motion to dismiss the Original Complaint. On September 20, 2011, at the hearing on the motion to dismiss, the Court dismissed

the Original Complaint, but granted Plaintiffs leave to amend so that they could submit proof that they were not in default at the time of the recording of the Deed and plead specific facts that the Deed had been materially altered.

29. On July 8, 2011, the Federal Deposit Insurance Corporation was appointed as receiver for First Chicago, and thereafter assigned certain assets of First Chicago to Northbrook, including the Loan, the Loan Documents and all related and attendant rights, claims and interests at issue in this matter. (O'Donovan Aff. at ¶ 30.)

30. As set forth below, each of Plaintiffs' allegations in the Amended Complaint have no basis and must fail.

ARGUMENT

Section 2-619 of the Illinois Civil Code of Procedure allows for dismissal of a complaint based on issues of law or easily proven issues of fact. Advocate Health & Hosps. Corp. v. Bank One, N.A., 348 Ill. App. 3d 755, 755, 810 N.E.2d 500, 509 (1st Dist. 2004). A court may dismiss a complaint when "the claim asserted against [a] defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9). Thus, a motion to dismiss should be granted when it raises an affirmative matter that may be "something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact [that are] unsupported by allegations of specific fact contained in or inferred from the complaint." Austin View Civic Ass'n v. City of Palos Heights, 85 Ill. App. 3d 89, 94, 405 N.E.2d 1256, 1262 (1st Dist. 1980). Where the grounds for dismissal appear on the face of the pleading, a party moving to dismiss under Section 2-619 need not provide an affidavit. 735 ILCS 5/2-619(a); Young v. Caterpillar, Inc., 258 Ill. App. 3d 792, 793, 629 N.E.2d 830, 831 (3d Dist. 1994).

Furthermore, Illinois is a fact-pleading jurisdiction that requires a plaintiff to present a legally and factually sufficient complaint. Anderson v. Vanden Dorpel, 172 Ill.2d 399, 408, 667 N.E.2d 1296, 1300 (1996). A plaintiff must allege sufficient facts to state all elements of the asserted cause of action. Inland Real Estate Corp. v. Tower Constr. Co., 174 Ill. App. 3d 421, 433, 528 N.E.2d 421, 429 (1st Dist. 1988). Fact pleading requires that a complaint contain a plain and concise statement of the plaintiff's cause of action with "substantial allegations of fact." 735 ILCS 5/2-601. A plaintiff must plead facts that bring the claim within a legally recognized cause of action. Ritchev v. Maksin, 71 Ill.2d 470, 474, 376 N.E.2d 991, 992 (Ill. 1978). For a complaint to withstand a motion to dismiss under Section 2-615, the plaintiff must plead adequate facts, not conclusory statements, to satisfy each and every element of the cause of action in question.

Plaintiffs, rather than amending the Original Complaint in line with this Court's direction, have concocted five new, baseless allegations in an effort to confuse the Court and further delay the rightful possession of the Property by Northbrook. These new allegations are either contradicted by the very documents attached to the Amended Complaint and therefore should be dismissed pursuant to Section 2-619(a)(9), or are red herrings and, even if true, do not give rise to a cause of action and therefore should be dismissed pursuant to Section 2-615(b).

I. PLAINTIFFS' ALLEGATION THAT THE DEED WAS ALTERED IS CONTRADICTED BY THE FORBEARANCE AGREEMENT AND DEED ATTACHED TO THE AMENDED COMPLAINT.

Plaintiffs allege that counsel for Northbrook substituted the entire first page of the Deed with a new first page. (Amended Complaint at ¶¶ 11, 19.) To this end, Plaintiffs claim that the first page of the Deed they executed was stamped with Exhibit F (or Exhibit D, depending upon which paragraph of the Amended Complaint one chooses to believe). However, a cursory inspection of the Forbearance Agreement and the recorded Deed disprove Plaintiffs' allegation.

In particular, the form of deed attached to the Forbearance Agreement as Exhibit F (and which is titled, "Form of Deed"), shows that the document identification number in the bottom left corner of both pages is 54853.2, the same document number shared by the remainder of the Forbearance Agreement. In contrast, both pages of the recorded Deed reflect a different document identification number of 50930.2. Thus, the document executed by Plaintiffs was the same document recorded by Northbrook.

Even if what Plaintiffs allege is true (which it is not), a cursory inspection of the recorded Deed and the form of deed attached to the Forbearance Agreement reveals that these documents are identical in all material aspects. Because the only alleged alteration of the recorded Deed was the substitution of the first page for one without an exhibit reference or designation, the substitution would not give rise to a different legal effect. See Citizens Nat'l Bank of Downers Grove v. Morman, 78 Ill. App. 3d 1037, 1043, 398 N.E.2d 49, 54 (1st Dist. 1979) ("A material alteration of a document is a change in its language, whether by interlineation or otherwise, which, if enforced, would have a legal effect different from the original language."). Under either form of deed the title to the Property would have been (and was) transferred by Plaintiffs to Northbrook. Thus, under Morman, the alleged page substitution would not constitute a material alteration.

As a result, Plaintiffs' allegation is fatally flawed and should be dismissed.

II. PLAINTIFFS' ALLEGATION THAT THE PRELIMINARY CLOSING DID NOT OCCUR IS CONTRADICTED BY THE EXPRESS TERMS OF THE FORBEARANCE AGREEMENT.

Plaintiffs allege that the Preliminary Closing, the requirements for which were outlined in the Forbearance Agreement, did not take place as required. (Amended Complaint at ¶ 7.) At the outset, it is unclear what, if any, significance this allegation has with regard to Northbrook's right to record the Deed. This is, however, another allegation that is easily disposed of with a cursory

reading of the documents attached to the Amended Complaint. In particular, the Forbearance Agreement expressly states that it "assumes simultaneous execution and closing." (Amended Complaint, Exhibit B, at p. 5.) Thus, there is no basis for Plaintiffs' allegation.

Additionally, Plaintiffs' allegation that the Preliminary Closing did not take place is contradicted by the fact that "the documents called for to be delivered at the preliminary closing" were indeed executed and delivered. The Preliminary Closing called for the execution and delivery of, among others, the Deed, the Revised Note, and the Sixth Modification. All of these documents were executed and delivered by Plaintiffs, and Northbrook has attached copies of these very documents to the O'Donovan Affidavit, thus demonstrating that the Preliminary Closing in fact occurred. (*See, e.g., O'Donovan Aff.*, Exhibit B; Amended Complaint, Exhibit A.)

In light of the foregoing, Plaintiffs' allegation lacks any merit and should be dismissed.

III. BECAUSE THE DEED WAS NOT PLACED IN ESCROW, PLAINTIFFS' ALLEGATION THAT A CERTIFICATE WAS REQUIRED PRIOR TO THE RECORDING OF THE DEED IS MISPLACED.

Plaintiffs allege that a certificate was required, pursuant to Section 4 of the Escrow Agreement, before the Deed could be recorded. (Amended Complaint at ¶ 13.) As was discussed at length with regard to the Original Complaint, there were two options available to Northbrook — the Deed could be held either (i) directly by its counsel, or (ii) in escrow by Chicago Title & Trust Company pursuant to the terms of the Escrow Agreement. Plaintiffs now reluctantly concede this point in the Amended Complaint. (*See, Amended Complaint* at ¶ 6.) Plaintiffs now argue that the requirements of the Escrow Agreement should somehow apply to Northbrook's counsel. As this Court recognized during the oral argument on the motion to dismiss the Original Complaint, however the Escrow Agreement, by the explicit terms of the Forbearance Agreement, is irrelevant because the Deed was not placed in escrow.

Plaintiffs allege that counsel for Northbrook was required to possess a certification, pursuant to Section 4 of the Escrow Agreement, prior to recording the Deed. Even if, contrary to the terms of the Forbearance Agreement and the observations of this Court, the terms of the Escrow Agreement did somehow apply to this matter, the very terms of the Escrow Agreement state that section 4 applies only to the "Escrow Trustee," which was defined as Chicago Title & Trust Company. As such, there was no requirement that Northbrook's counsel obtain the certification prior to recording the Deed.

In light of the foregoing, Plaintiffs' allegation has no basis and should be dismissed.

IV. PLAINTIFFS' BALD ALLEGATION THAT THEY WERE NOT IN DEFAULT WHEN THE DEED WAS RECORDED IS PATENTLY FALSE.

During the hearing on the motion to dismiss the Original Complaint, Plaintiffs argued for the first time that they were not in default under the Loan when Northbrook recorded Deed. Based on this new argument, the Court granted Plaintiffs leave to amend the Original Complaint to provide specific evidence that they were not in default. Instead of providing such evidence, Plaintiffs bluntly allege in the Amended Complaint that they "made all payments due on the loan until November, 2010." (Amended Complaint at ¶ 16.) This bare allegation will not suffice, and in any event it is untrue.

As set forth above, Plaintiffs expressly acknowledged in the Seventh Modification that as of July 30, 2010, they owed \$34,343.89 in accrued and past-due interest, fees, and costs (in addition to not having paid the real estate taxes due). While it is true that Plaintiffs made three monthly payments between the execution of the Seventh Modification and the recording of the Deed, these payments merely reduced the amount of accrued and unpaid interest due as of the Seventh Modification, and did nothing to satisfy the \$20,420.23 in other charges and costs that

were then due and owing.¹ Plaintiffs also failed to make the continuing monthly interest payments under the Revised Note due on August 5, 2010, and thereafter. Furthermore, Plaintiffs' Amended Complaint completely ignores the defaults under the Loan Documents related to the sale of the 2008 and 2009 real estate taxes.

Because Plaintiffs were in default as of July 30, 2010, the date that they executed the Seventh Modification, and remained in default thereafter, Northbrook was entitled to record the Deed starting 90 days later. Because Plaintiffs' defaults have been proven time and time again, and because Plaintiffs still have not offered any evidence to rebut their multiple defaults, this allegation must be dismissed.

V. PLAINTIFFS' ALLEGATION REGARDING THE GRANTOR-GRANTEE STATEMENT IS IRRELEVANT.

Finally, in a last ditch effort to avoid the loss of the Property, Plaintiffs allege that Northbrook's counsel "executed a grantor-grantee statement as an agent of Plaintiff which she was not." (Amended Complaint at ¶ 12.) As an initial matter, it must be noted that this Court granted Plaintiffs leave to file the Amended Complaint solely to provide evidence that the *Deed* had been altered. As set forth above, it is beyond dispute that the recorded Deed was not altered. Having failed in this argument, Plaintiffs now seek to divert the Court's attention by suggesting that an ancillary document, the grantor-grantee statement, is somehow suspect. Yet, Plaintiffs make no attempt to explain why this allegation is relevant. Because the Deed is the instrument that conveyed title of the Property from Plaintiffs to Northbrook, the allegation that the ancillary grantor-grantee statement has some purported defect has no bearing on who holds the right, title

¹ As highlighted above, Section 2 of the Seventh Modification expressly provided that other than extending the maturity date, "[a]ll other provisions of the Loan Documents, including but not limited to the terms of section 8.02(b) of the Forbearance Agreement . . . remain unchanged." Thus, Plaintiffs were required to pay and discharge the past due obligations under the Revised Note and the other Loan Documents as recited in the Seventh Amendment.

and interest in and to the Property. Indeed, the sole purpose of a grantor-grantee statement is simply to verify that the parties to the transaction are natural, living persons or corporations authorized to conduct business (a fact that Plaintiffs cannot deny). Lastly, if the Court finds there to be some issue with the grantor-grantee statement that is germane to this case, the Court should compel Plaintiffs to execute a new grantor-grantee statement, as they were originally required to do under the express terms of the Forbearance Agreement. (Amended Complaint, Exhibit B, at § 5.01.) Plaintiffs should not be allowed to benefit from their material breach of the Forbearance Agreement.

CONCLUSION

Plaintiffs entered into an agreement in which Northbrook agreed to forbear from exercising its rights upon Plaintiffs' acknowledged defaults. Despite Northbrook's good faith, including lending even more money to Plaintiffs so that they could pay real estate taxes, Plaintiffs have done absolutely nothing to meet their commitments under the Forbearance Agreement, including vacate the Property upon the recording of the Deed. In point of fact, Plaintiffs have enjoyed all of the benefits of the Forbearance Agreement and the other Loan Documents, but until now have refused to accept the associated burdens. Plaintiffs have been successful in drawing out this proceeding as far as it can go, living rent, mortgage, and tax free for over a year in Property that was rightfully recorded in the name of Northbrook, and in which Plaintiffs do not have permission to occupy.

The Amended Complaint, like its predecessor, is defective because the allegations are directly contradicted by the terms of the documents attached thereto, or, even if true, do not give rise to a legally recognized cause of action. Plaintiffs' Amended Complaint, like the Original

Complaint before it, is nothing more than a bad faith attempt to stall the underlying eviction action. As such, the Amended Complaint should be dismissed with prejudice.

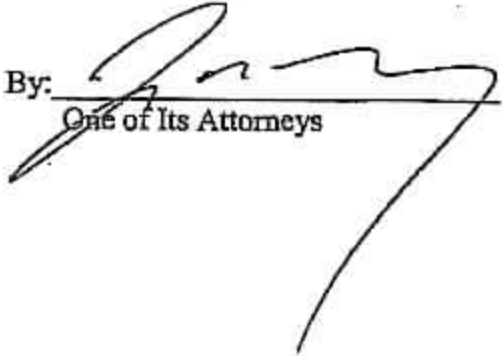
WHEREFORE, Northbrook respectfully requests that this Court dismiss the Amended Complaint, with prejudice, pursuant to Sections 2-615(b) and 2-619(a)(9), and grant such further relief as may be equitable and just.

Respectfully submitted,

**NORTHBROOK BANK & TRUST
COMPANY**

Dated: November 9, 2011

Jerry L. Switzer, Jr.
Jason L. Pyrz
POLSINELLI SHUGHART PC
161 N. Clark St., Ste. 4200
Chicago, IL 60601
(312) 819-1900 Telephone
(312) 819-1910 Facsimile
Cook County Firm No. 47375

By: 
One of Its Attorneys