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Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 09/05/2014 02:27 PM Pg: 1 of 5

**MEMORANDUM AND ORDER VACATING ORDER ENTERED ON  
JANUARY 17, 2014 RECORDED AS DOCUMENT 1402216053  
RELATING TO MORTGAGE RECORDED AS DOCUMENT  
0902057139**

**Legal Description**

LOT 11 IN SKOKIE TERRACE, BEING A SUBDIVISION OF PART OF THE  
NORTH 1/2 OF THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE NORTHEAST  
1/4 OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 41 NORTH,  
RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK  
COUNTY, ILLINOIS.

**COMMONLY KNOWN  
AS:**

3615 Grove Street  
Skokie, IL 60076

**TAX PARCEL NUMBER:** 10-14-304-056-0000

Prepared by and Return to:  
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

DANIEL SCHWARTZ,

Plaintiff,

v.

The Property: 3615 Grove St.  
Skokie, IL 60076  
*Quasi In Rem,*

and

Mortgage Electronic Registration  
System, Inc. a/k/a MERS, Inc.,

Respondent.

13 CH 12647

## MEMORANDUM AND ORDER

JPMorgan Chase Bank has filed a Petition to Intervene and to Vacate Order Entered January 17, 2014.

### I. Background

On May 14, 2013, Plaintiff Daniel Schwartz filed a Complaint to Declare Mortgage Void and Remove Cloud on Title (Quiet Title) ("Complaint") to property located at 3615 Grove St., Skokie, Illinois ("Property"). The Complaint alleged that a purported mortgage against the Property recorded by Mortgage Electronic Registration System, Inc. a/k/a MERS, Inc. ("MERS") was invalid.

On November 26, 2013, a default order was entered against MERS. On January 17, 2014, judgment was entered for Plaintiff finding the MERS mortgage was invalid. The order was recorded on January 22, 2014. On February 14, 2014, JPMorgan Chase Bank ("Chase") filed a Petition to Intervene and to Vacate Order Entered January 17, 2014.

### II. Petition to Intervene and to Vacate Order

#### *A. Petition to Intervene*

Chase is seeking to intervene as a defendant in this case under 735 ILCS 5/2-408(a)(2). Section 2-408 of the Illinois Code of Civil Procedure provides in relevant part:

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(a) Upon timely application anyone shall be permitted as of right to intervene in an action: \* \* \* (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action; \* \* \*

\* \* \*

(e) A person desiring to intervene shall present a petition setting forth the grounds for intervention, accompanied by the initial pleading or motion which he or she proposes to file. In cases in which the allowance of intervention is discretionary, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

\* \* \*

735 ILCS 5/2-408.

Chase asserts that MERS assigned the mortgage at issue to Chase on June 7, 2013. The assignment was recorded on June 17, 2013. (Pet. at Ex. A). As part of referring the mortgage for foreclosure, Chase performed a title search. On February 12, 2014, Chase discovered the January 17, 2014 order.

Contrary to Plaintiff's assertions, Chase is clearly entitled to intervene as a matter of right under §2-408(a)(2). Chase's interests in the mortgage were not adequately represented by MERS because MERS no longer possessed any interest in the Property after assigning the mortgage to Chase less than a month after the filing of this action. MERS had no incentive to litigate an action in which it no longer had any viable interest. Chase may be bound by the January 17, 2014 order and its interests were not represented before this court. Therefore, Chase is entitled to intervene.

Plaintiff also argues that Chase's Petition is defective because it has not attached an initial pleading. Section 2-408(e), however, requires an initial pleading or motion. Chase's Petition is a combined petition to intervene and motion to vacate the January 17, 2014 order. Chase has sufficiently complied with §2-408(e).

## ***B. Motion to Vacate***

Chase is moving to vacate the January 17, 2014 order pursuant to 735 ILCS 5/2-1301. Section 2-1301(e) provides that: "The court may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e). As the motion was filed within 30 days of the entry of judgment, §2-1301 properly applies.

In determining whether, in the exercise of its discretion, a §2-1301 motion should be granted, the court's overriding consideration should be whether substantial justice is being done between the litigants and whether, under the circumstances of the case, it is reasonable to

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compel the other party to trial on the merits.” Kral v. Fredhill Press Co., Inc., 304 Ill. App. 3d 988, 994 (1<sup>st</sup> Dist. 1999). On a §2-1301 motion, a party “need neither establish the existence of a meritorious claim or defense on the face of the motion nor show due diligence or good cause for the delay.” First Nat’l Bank v. Board of Managers of Falkner Condo. Ass’n, 252 Ill. App. 3d 139, 143 (1<sup>st</sup> Dist. 1993).

Chase was assigned the disputed mortgage months prior to the entry of judgment. Chase, however, was never named as a defendant in this suit and was therefore denied the opportunity to litigate the merits of Plaintiff’s claim. Substantial justice between the parties requires that Chase’s motion be granted. Contrary to Plaintiff’s assertions, Chase is not required to establish diligence, good cause or a meritorious defense under §2-1301.

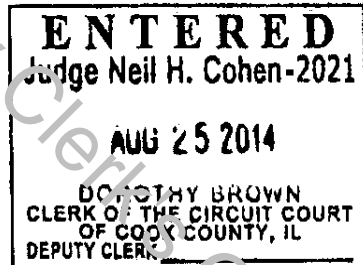
### III. Conclusion

Chase’s Petition to Intervene and to Vacate Order Entered January 17, 2014 is granted. The status date of September 10, 2014 at 9:30 am. stands.

Enter: \_\_\_\_\_

8/25/14

  
Judge Neil H. Cohen



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I hereby certify that the document to which this certification is affixed is a true copy.

Date **DOROTHY BROWN SEP 05 2011**

Dorothy Brown  
Clerk of the Circuit Court  
of Cook County, IL

