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Karen A.Yarbrough
Cook County Recorder of Deeds
Date: 08/25/2015 02:39 PM Pg: 1 of 15

ABOVE SPACE FOR RECORDER'S USE ONLY

9 W. ERIE HOLDINGS, L.L.C., a Delaware Limited Liability Company,	)	
	)	In The Appellant Court
	)	of Illinois, First District
Plaintiff-Appellee,	)	
	)	
v.	)	Case No. 1-14-3104
	)	
ASPEN THORN, L.L.C., an Oregon Limited Liability Company,	)	
	)	
	)	
Defendant-Appellant.	)	

Attached herewith for recording with the Office of the Recorder of Deeds is a certified copy of the Order entered in the above-captioned case by the Appellate Court of Illinois, First District, on July 1, 2015. The legal description of the five parcels of property COMMONLY KNOWN AS 5-9 W. Erie Street, Chicago, Illinois 60610, are set forth below:

PARCEL 1: A PART OF LOTS 1 AND 2 OF ASSESSORS DIVISION OF LOT 16 IN BLOCK 24 IN WOLCOTTS ADDITION TO CHICAGO AND THE NORTH 1/2 OF BLOCK 37 IN KINZIE'S ADDITION TO CHICAGO DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE NORTH LINE OF SAID LOT 1,20 FEET 2 INCHES WEST OF THE NORTH EAST CORNER OF SAID LOT 1; RUNNING THENCE SOUTH ON A LINE PARALLEL WITH THE EAST LINE OF SAID LOTS 1 AND 2, 51 FEET TO THE SOUTH LINE OF SAID LOT 2; THENCE WEST ON THE SOUTH LINE OF SAID LOT 2,19 FEET AND 4 INCHES; THENCE NORTH ON LINE PARALLEL WITH THE EAST LINE OF SAID LOTS 1 AND 2, 51 FEET TO THE NORTH LINE OF SAID LOT 1; THENCE EAST 19 FEET 4 INCHES TO THE PLACE OF BEGINNING IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: A TRACT OF LAND DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE NORTH LINE OF LOT 1 OF ASSESSORS DIVISION OF LOT 16 IN BLOCK 24 OF WOLCOTT'S ADDITION TO CHICAGO AND THE NORTH ½ OF BLOCK 37 OF KINZIE'S ADDITION TO CHICAGO, 39 FEET 6 INCHES WEST OF THE NORTH EAST CORNER OF SAID LOT 1; THENCE RUNNING SOUTH ON A LINE PARALLEL WITH THE EAST LINE OF SAID LOT 1 AND LOT 2 IN SAID ASSESSOR'S DIVISION, 51 FEET TO THE SOUTH LINE OF THE SAID LOT 2; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 2, 19 FEET 4 INCHES; THENCE NORTH ON A LINE PARALLEL WITH THE EAST LINE OF SAID LOTS 1 AND 2, 51 FEET TO THE NORTH LINE OF SAID LOT 1; THENCE EAST 19 FEET 4 INCHES TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3: THE WEST 20.66 FEET OF LOTS 1 AND 2 IN ASSESSOR'S DIVISION OF LOT 16 IN BLOCK 24 IN WOLCOTT'S ADDITION TO CHICAGO WITH THE NORTH ½ OF BLOCK 37 IN KINZIE'S ADDITION TO CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4: LOT 14 IN BLOCK 24 IN WOLCOTT'S ADDITION TO CHICAGO IN THE EAST ½ OF THE NORTH EAST ¼ OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5: LOT 15 IN BLOCK 24 IN WOLCOTT'S ADDITION TO CHICAGO IN THE EAST ½ OF THE NORTH EAST ¼ OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN Nos: 17-09-227-007-0000
17-09-227-008-0000
17-09-227-017-0000
17-09-227-018-0000
17-09-227-019-0000

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2015 IL App (1st) 14-3104

FOURTH DIVISION
June 30, 2015

No. 1-14-3104

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

9 W. ERIE HOLDINGS, L.L.C., a Delaware Limited Liability Company, Plaintiff-Appellee, v. ASPEN THORN, L.L.C., an Oregon Limited Liability Company, Defendant-Appellant.	Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division No. 13 CH 20883 The Honorable Jean Prendergast-Rooney, Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly granted the plaintiff's motion for judgment on the pleadings. The plain language of the real estate agreement between the parties contemplated a correlation between the purchase option and the remedy for the breach of the secured obligations, so that the seller could not avail itself of both.

¶ 2 This cause arises from a declaratory judgment action to quiet title brought by the plaintiff-appellee, 9 West Erie Holdings, L.L.C. (hereinafter 9 West Erie Holdings), against the defendant-appellant, Aspen Thorn L.L.C. (hereinafter Aspen Thorn). The plaintiff sought a declaration by the circuit court that according to the purchase option provision of the parties' real

estate purchase and sales agreement, the rights of the defendant had been extinguished. The parties filed cross-motions for judgment on the pleadings, and the circuit court ruled in favor of the plaintiff. The defendant now appeals contending that the trial court misconstrued the relevant provisions of the real estate sales agreement. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The record before us reveals the following undisputed facts and procedural history. On December 6, 2007, Erie Canal, L.L.C. (hereinafter the seller), the original owner of the property located at 5-9 West Erie Street, Chicago, Illinois (hereinafter the property) sold that property to 9 West Erie, L.L.C. (hereinafter the purchaser) by executing a real estate purchase and sales agreement (hereinafter the agreement).

¶ 5 Pursuant to the agreement, the seller conveyed the land and all fixtures on the property to the purchaser for $3.515 million. Pursuant to paragraph 15 of the agreement, the purchaser was additionally and separately obligated to commence construction of a mixed-use development on the property (hereinafter the development) by April 1, 2008, consisting of a "retail area," a "garage" and a remaining undefined "residential parcel," consisting of approximately 60 residential condominium units. Paragraph 15(b) set forth multiple deadlines for construction with limited provisions to accommodate "unavoidable delays." Specifically, paragraph 15(b) required the purchaser to complete the "retail area" and the "garage" by December 1, 2008. The agreement also set forth March 1, 2009, as the "full completion date."

¶ 6 Pursuant to paragraph 15(c) the purchaser's obligations to construct the development were collectively defined as the purchaser's "secured obligations." To secure the performance of these obligations, as well as "the payment obligation, as hereinafter defined," paragraph 15(c) provided that at closing the purchaser would deliver to the seller either: (1) a letter of credit in favor of the

seller in the amount of $2.5 million, or (2) certain "assigned mortgage documents" to be held by the seller as collateral (including the assigned note in the amount of $2.5 million, the assigned mortgage, the collateral assignment, and the mortgage title policy). Paragraph 15(c) provided that should the purchaser "fail to comply with any of the secured obligations *** the seller shall have the right: (i) to draw upon the letter of credit or (ii) to take possession of the assigned note and enforce all remedies under the assigned mortgage documents, as its sole remedy for such failure." At closing, the purchaser opted to deliver the "assigned mortgage documents" securing the $2.5 million note.

¶ 7 In addition, pursuant to paragraph 16 of the agreement, titled "Option to Purchase Retail Area," the purchaser separately granted the seller a "purchase option," *i.e.*, the chance to buy back the "retail area" (along with a reciprocal easement and operating agreement) for $3.315 million "not later than ninety (90) days after the retail area and the garage shall be deemed completed as provided in paragraph 15 hereof." In that respect, paragraph 15 provided that: "the retail area and the garage shall be deemed completed" when, *inter alia*: (1) the architect who prepared the plans and specifications for the development certifies that the "retail area" has been completed in substantial accordance with certain attached plans and specifications; (2) Benihana has accepted the "retail area" in writing and executed an estoppel certificate in favor of the seller indicating that all landlord work is complete and in accordance with its lease; and (3) all governmental permits required for the occupation of the "retail area" and the garage have been issued, except for such permits that require tenant finish work. Paragraph 16 further provided: "In the event [that the] seller fails to timely exercise the purchase option, [the] purchaser shall *** pay to [the] seller the sum of [$2.5 million] (the 'payment obligation')."

¶ 8 The parties agree that the purchaser failed to commence construction of the development

according to the deadlines set forth in the agreement, thereby defaulting on its secured obligations.

¶ 9 On December 21, 2007, the seller assigned its interests in the agreement to the defendant, Aspen Thorn. By letter, titled "Notification of Disposition of Collateral," on July 9, 2008, an attorney for the defendant advised the purchaser that that it considered it in default and that it intended to exercise its "sole remedy" of accepting the $2.5 million note and mortgage documents.

¶ 10 Four years later, on June 25, 2012, the plaintiff, 9 West Erie Holdings, purchased the property from the purchaser. The defendant learned of this conveyance, and notified the plaintiff in an email dated August 31, 2012, that it intended to exercise the purchase option or receive $2.5 million from the plaintiff if "there is ever a building on [the property] with retail space."

¶ 11 On September 11, 2013,[1] the plaintiff filed the present action to quiet title and for declaratory judgment. The plaintiff sought a declaration that the defendant's acceptance of the $2.5 million note extinguished the purchase option, *i.e.*, that the purchase option "never came into existence due to the purchaser's default," namely, its failure to comply with the development deadlines. After the defendant filed its answer to the plaintiff's complaint, the parties filed cross-motions for judgment on the pleadings. In its motion, the defendant asserted that under the terms of the agreement if any building with any retail space of any design was "ever" constructed on the property, it had the right to exercise an option to purchase that new retail space for $3.315 million or to receive a $2.5 million payment, in addition to the security deposit of $2.5 million that it had already collected when the retail space defined by the agreement was not constructed.

¶ 12 On August 6, 2014, the circuit court granted the plaintiff's motion for judgment on the

[1] The plaintiff filed a corrected copy of said complaint on October 30, 2013.

pleadings. In doing so, the court disagreed with the defendant that the purchase option should be construed as an "eternal right" permitting the defendant to buy back any retail space ever designed on the property. The court explained that by its express terms, the purchase option solely applies to the "retail area" as explicitly defined in the agreement. Because the defendant's predecessor had failed to complete construction of that "retail area" by December 1, 2008, the circuit court held that "[t]he purchase option contained in the agreement was extinguished" on that date. Accordingly, the court held that the defendant has "no option to purchase any newly-constructed buildings or fixtures on the property under the agreement." The defendant now appeals the trial court's grant of the plaintiff's motion for judgment on the pleadings.

¶ 13 II. ANALYSIS

¶ 14 A motion for judgment on the pleadings is similar to a motion for summary judgment, but is limited to the pleadings. *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455 (2010). Such a motion asserts that " 'the allegations in the pleadings and the exhibits to the pleadings, which are considered part of the pleadings, permit only one disposition as a matter of law.' " *West Bend Mut. Ins. Co. v. Pulte Home Corp.*, 2015 IL App (1st) 140355, ¶ 18 (quoting *State Farm Fire & Casualty Co. v. Young*, 2012 IL App (1st) 103736, ¶ 11). Judgment on the pleadings is proper only if the pleadings disclose no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Pekin Insurance Co.*, 237 Ill. 2d at 455. In ruling on a motion for judgment on the pleadings, the court will consider only those facts apparent from the face of the pleadings, matters subject to judicial notice, and judicial admissions in the record. *Gillen v. State Farm Mut. Automobile Ins. Co.*, 215 Ill. 2d 381, 385 (2005). In addition, in deciding such a motion, the court must consider as admitted all well-pleaded facts set forth in the pleadings of the nonmoving party, and the fair inferences drawn therefrom. *Pekin Insurance Co.*, 237 Ill. 2d

at 455; see also *West Bend Mut. Ins. Co.*, 2015 IL App (1st) 140355, ¶ 18 (citing *Employers Ins. of Wausau v. Ehlco Liquidating Trust*, 186 Ill. 2d 127, 138 (1999)). Because the trial court rules as a matter of law when deciding a motion for judgment on the pleadings, our review of the judgment is *de novo*. *Rico Industries, Inc. v. TLC Group, Inc.*, 2014 IL App (1st) 131522, ¶ 14.

¶ 15 In the present case, the parties concede that the purchaser and the seller properly assigned their interests to the plaintiff and the defendant respectively, so that "the plaintiff stands in the shoes of the purchaser and the defendant in the shoes of the seller" with respect to any rights guaranteed under the agreement. On appeal, the parties solely contest the propriety of the trial court's construction of that agreement. In that respect, the defendant contends that contrary to its plain language, the trial court improperly "conflated" paragraphs 15 and 16 of the agreement thereby expanding the limited remedy provided in paragraph 15 for the purchaser's breach of its secured obligations to the seller's separate rights and obligations (to buy back the "retail area") under paragraph 16. The plaintiff, on the other hand, argues that the trial court properly read the agreement as a whole, pointing out that by its express terms paragraphs 15 and 16 continually refer to one to another and must be read in unison and not so as to render the meaning of either absurd. Consequently, the plaintiff argues that the trial court correctly found that according to the plain language of the agreement the seller's purchase option as defined by paragraph 16 expired when the purchaser failed to begin or complete construction of the "retail area" within the deadlines specified in paragraph 15. For the reasons that follow, we agree with the plaintiff.

¶ 16 The basic rules of contract interpretation are well settled. When construing a contract, our primary objective is to effectuate the intent of the parties. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011); see also *Gallagher v. Lenard*, 226 Ill. 2d 208, 232 (2007); see also *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2014 IL App (1st) 111290, ¶ 75. In doing so, we first

look to the plain language of the contract to determine the parties' intent. *Thompson*, 241 Ill. 2d at 441; *Gallagher*, 226 Ill. 2d at 233; *Palm*, 2014 IL App (1st) 111290, ¶ 75. If the words in the contract are clear and unambiguous, we must give them their plain, ordinary and popular meaning. *Thompson*, 241 Ill. 2d at 442 (citing *Central Illinois Light Co. v. Home Ins. Co.*, 213 Ill. 2d 141, 153 (2004)). However, if the language of the contract is ambiguous, we may look to extrinsic evidence to determine the parties' intent. *Thompson*, 241 Ill. 2d at 442; *Gallagher*, 226 Ill. 2d at 233. Language in a contract is ambiguous if it is "susceptible to more than one meaning." *Thompson*, 241 Ill. 2d at 442. However, mere disagreement between the parties concerning a provision's meaning will not automatically render such language ambiguous. *Thompson*, 241 Ill. 2d at 443; see also *Lease Management Equipment Corp. v. DFO Partnership*, 392 Ill. App. 3d 678, 686 (2009) ("A court will consider only reasonable interpretations of the contract language and will not strain to find an ambiguity where none exists.") (citing *Rich v. Principal Life Ins. Co.*, 226 Ill. 2d 359, 371 (2007)). Rather, instead of focusing on one clause or provision in isolation, we, as the reviewing court, must read the entire contract in context and construe it as a whole, viewing each provision in light of the other ones. See *Thompson*, 241 Ill. 2d at 441; see also *Gallagher*, 226 Ill. 2d at 233 ("[B]ecause words derive their meaning from the context in which they are used, a contract must be construed as a whole, viewing each part in light of the others."); see also *Northwest Podiatry Center, Ltd. v. Ochwat*, 2013 IL App (1st) 120458, ¶ 40 ("It is improper to determine the parties' intent by looking at a contract clause or provision in isolation"); *Brown v. Delfre*, 2012 IL App (2d) 111086, ¶ 20 ("contract terms should not be read in isolation"); see also *Hot Light Brands, L.L.C. v. Harris Realty, Inc.*, 392 Ill. App. 3d 493, 499 (2009) (contracts should not be interpreted in a manner so as to render one clause meaningless).

¶ 17 The language of the agreement here is unambiguous and clearly contemplates reading paragraphs 15 and 16 in concert with each other. Paragraph 15(c), defines the purchaser's obligations to construct a very specific development (including a "retail area," a garage and condominium units as defined by attached architectural specifications and plans) on the property and defines those obligations as "secured obligations." Paragraph 15(c) explicitly states that "[s]hould the purchaser fail to comply with any of the secured obligations," the seller's "*sole remedy* for such failure" is to draw on the "letter of credit" or take possession of and enforce the $2.5 million "assigned mortgage documents." Paragraph 15(c) also states that the same "letter of credit" or "assigned mortgage documents" also secure the purchaser's "payment obligations, as hereinafter defined." Although paragraph 15 does not define the "payment obligations," 16(a) does. It specifically provides that the "payment obligation" is the sum of $2.5 million that the purchaser must pay to the seller if the seller chooses not to timely exercise its purchase option for the "retail area" of the development as that purchase option is defined in paragraph 16. Paragraph 16(a) further defines the time limit for exercising that purchase option by referencing paragraph 15(b)'s provisions regarding the development deadlines. In that respect, paragraph 16(b) states that the option must be exercised "on a date not later than ninety (90) days after the retail area and the garage shall be deemed completed, as provided in paragraph 15." What is more, paragraph 16(b) explicitly provides that if the seller chooses to exercise its purchase option it "shall *** return[]" the assigned mortgage documents" (given to the seller pursuant to paragraph 15(b)) to the purchaser "at the closing of sale of the retail parcel."

¶ 18 When read together, by their very terms, paragraphs 15 and 16 make clear that the remedies available for the purchaser's breach of the secured obligations and the seller's failure to exercise the purchase option are mutually exclusive. Under paragraph 15, if the "retail area"

development is not commenced or completed on time, as is the case here, the seller keeps the "assigned mortgage documents" (in the sum of $2.5 million). Under paragraph 16(b), however, if the "retail area" is completed in time and the seller chooses to buy it for the specific sum of $3.315 million, then it must return the $2.5-million-worth "assigned mortgage documents" to the purchaser. Even where the seller chooses not to exercise its option, but rather seeks to enforce the payment obligation (in the amount of $2.5 million), the "assigned mortgage documents" (in the sum of $2.5 million) are the only thing securing that payment obligation. Accordingly, the plain language of the agreement makes clear that whether the purchaser breaches the secured obligations or the seller opts not to exercise its purchase option, the payout to the seller is secured by the same source and is limited to the amount of $2.5 million.

¶ 19 The defendant nevertheless asks that we construe the agreement as permitting the seller to obtain both $2.5 million in case the purchaser fails to complete the development as required by paragraph 15, and $2.5 million if the seller chooses not to exercise its option to purchase the retail space, pursuant to paragraph 16. In that respect, the defendant posits that in a scenario where the seller chose not to exercise its option to purchase the retail space after the space was completed on time (*i.e.*, by December 1, 2008 as contemplated under paragraph 15(b)), but rather sought the $2.5 million "payment obligation," prior to the purchaser's default on the remaining "secured obligations" (*i.e.*, its failure to complete the entire development by March 1, 2009), under the agreement, the seller would necessarily be entitled to a double $2.5 million payout. We disagree. The defendant ignores the fact that both the "secured obligations" and the "payment obligation" are secured by a single set of "assigned mortgage documents" in the amount of $2.5 million. As such, if the purchaser refused to pay the $2.5 million "payment obligation," and then subsequently also defaulted on its remaining secured obligations, the seller

would have no recourse but to sell the "assigned mortgage documents" already in its possession, which would only amount to $2.5 million. Accordingly, the defendant's construction of the agreement provides for pledged "assigned mortgage documents" that would be insufficient to secure both alleged obligations. This interpretation is unreasonable and would lead to an absurd result. See *Hot Light Brands, L.L.C.*, 392 Ill. App. 3d at 499 (contract should not be interpreted in a manner so as to render one clause meaningless); *Suburban Auto Rebuilders, Inc. v. Associated Tire Dealers Warehouse, Inc.*, 388 Ill. App. 3d 81, 921178 (2009) ("Courts will construe a contract reasonably to avoid absurd results") (citing *Health Professionals, Ltd. v. Johnson*, 339 Ill. App. 3d 1021, 1036 (2003)).

¶ 20 What is more, distinct from the defendant's hypothetical scenario, here, the parties agree that the purchaser in fact failed to fulfill its secured obligations by not completing construction of the "retail area" by December 1, 2008, as required under paragraph 15 of the agreement, thereby triggering the seller's right to sell the "assigned mortgage documents." Any assertion by the defendant that in this scenario the purchase option as defined by paragraph 16 continued to exist indefinitely is simply unavailing. As a matter of law, in Illinois to be valid, an option to purchase contract cannot be indefinite. *Wolfram P'Ship v. LaSalle National Bank*, 328 Ill. App. 3d 107, 216 (2001) ("An option to purchase *** has been described as a contract by which [the seller] grants the [purchaser] the right to purchase the premises at a fixed price *within a certain time frame*." (Emphasis added.)); see also *Bruss v. Klein*, 201 Ill. App. 3d 72, 79 (1991) ("An option is a contract by which the owner of property agrees with another person that he shall have the right to buy his property at a fixed price *within a time certain*." (Emphasis added.)); see also *Bonde v. Weber*, 6 Ill. 2d 365, 374 (1955) (stating that option contracts contain two elements, "an offer to sell which does not become a contract until accepted, and a contract to leave the offer

open *for a specified time*." (Emphasis added.)). Accordingly, the trial court properly held that once the purchaser failed to perform its obligation to complete construction of the "retail area" by December 1, 2008, the seller's purchase option was simultaneously extinguished, and it could only avail itself of the security collateral already in its possession.

¶ 21 III. CONCLUSION

¶ 22 For the aforementioned reasons, we affirm the judgment of the circuit court.

¶ 23 Affirmed.

IN THE APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

James Fitzgerald Smith, Justice

Nathaniel R. Howse, Jr., Justice

Cynthia Y. Cobbs, Justice

Steven M. Ravid — Thomas J. Dart, Sheriff

On the Thirtieth day of June, 2015, the Appellate Court, First District, issued the following judgment:

No. 1-14-3104

9 W. ERIE HOLDINGS, LLC, a Delaware limited liability company,
Plaintiff-Appellee
v.
ASPEN THORN LLC, an Oregon limited liability company,
Defendant-Appellant.

Appeal from Cook County
Circuit Court No. 13CH20883

As Clerk of the Appellate Court, in and for the First District of the State of Illinois, and the keeper of the Records, Files and Seal thereof, I certify that the foregoing is a true copy of the final order of said Appellate Court in the above entitled cause of record in my office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of said Appellate Court, at , this Fourteenth day of August, 2015.

Steven M. Ravid

Clerk of the Appellate Court
First District, Illinois

APPELLATE COURT OF ILLINOIS FIRST DISTRICT
JULY 1, 1877
SEAL

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CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
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CIVIL APPEALS DIVISION
DOROTHY BROWN CLERK

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

Date DOROTHY BROWN AUG 25 2015

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