

# UNOFFICIAL COPY

Doc#: 2123141247 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 08/19/2021 03:59 PM Pg: 1 of 8

## Court Order Affecting Property

Above Space For Recorder's Use Only

### Court Order Affecting Property and Title Owners

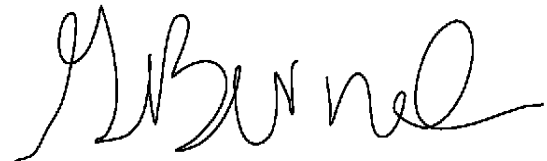
Date: August 11, 2021

#### Legal Description:

LOT 197 IN ROBBIN'S MEADOW LANE UNIT NO. 5, BEING A SUBDIVISION OF THE NORTH ½ OF THE SOUTHWEST ¼ AND THE WEST 40 FEET OF THE NORTH ½ OF THE SOUTHEAST ¼ OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS, ON NOVEMBER 8, 1956, AS DOCUMENT NO. 1706456 IN COOK COUNTY, ILLINOIS.

Tax Parcel No. 09-13-306-020-0000

Common Address: 7910 W. Davis Street, Morton Grove, Illinois 60053



Genevieve M. Bernal

Prepared by the above and after recording,  
return to: Fidelity National Law Group, 10  
S. LaSalle St., Ste. 2750, Chicago, IL 60603

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

U.S. Bank, National Association, as  
Trustee, Successor in Interest to Bank  
of America, National Association, as  
Successor by Merger to La Salle Bank  
N.A., as Trustee for WAMU Mortgage  
Pass-Through Certificates Series  
2007-HY07 Trust,

Plaintiff,

v.

Renata Placek, JPMorgan Chase  
Company, Unknown Owners and Non-  
Record Claimants,

Defendants.

Case No. 2009 CH 10076

Calendar 2

**ORDER**

RAYMOND W. MITCHELL, Circuit Judge.

Plaintiff U.S. Bank, National Association moves for partial summary judgment on Count I or, in the alternative, Count III of its fourth amended complaint and on Defendant Renata Placek's affirmative defenses of unclean hands and voluntary payment. 735 ILCS 5/2-1005.

I.

In October 1989, Defendant Renata Placek and Krzysztof Placek obtained title as joint tenants to property located at 7910 West Davis Street in Morton Grove, Illinois. In November 2003, the Placeks executed a \$340,000.00 note secured by a mortgage on the property in favor of Washington Mutual Bank. Krzysztof Placek conveyed his interest in the property to Renata Placek by quitclaim deed in February 2005. Thereafter, in September 2006, Renata Placek borrowed an additional \$310,000.00 and granted a second mortgage on the property to Harris N.A. The 2003 and 2006 mortgages encumbered Placek's property until May 2007, when the two mortgages and corresponding promissory notes were refinanced under a loan agreement with Washington Mutual Bank, which secured a \$720,000.00 promissory with a new mortgage (the "2007 WAMU mortgage") recorded against

# UNOFFICIAL COPY

Placek's property. The 2003 and 2006 mortgages were released after \$600,207.13 of the loan's proceeds were used to repay the outstanding debt in full.

Placek ceased making payments on the 2007 WAMU mortgage in 2008, and Bank of America, as Washington Mutual Bank's successor in interest, commenced foreclosure proceedings on the 2007 WAMU mortgage in March 2009. In August 2012, Plaintiff U.S. Bank, National Association was substituted for Bank of America in the action as the assignee of the 2007 WAMU mortgage. On July 22, 2013, a predecessor judge dismissed with prejudice Plaintiff's request to foreclosure on the 2007 WAMU claim after Defendant had produced evidence that a mortgage broker forged and then notarized Placek's signature on the underlying documentation. As a result, the mortgage was deemed to be an unenforceable encumbrance on the property.

Plaintiff U.S. Bank, National Association, in Count I of its fourth amended complaint, seeks to impose an equitable lien on Placek's property, in an amount equal to the 2003 and 2007 preexisting mortgages, and requests that Plaintiff be equitably subrogated to the rights of those prior mortgages. In Count II, Plaintiff seeks to foreclose on the equitable lien claimed in Count I. Plaintiff requests alternative relief under a theory of unjust enrichment in Count III. Placek asserts the affirmative defenses of unclean hands and voluntary payment, which she claims precludes Plaintiff's claims for equitable relief. Plaintiff now moves for summary judgment on Count I or, alternatively, Count III of its complaint and on Placek's affirmative defenses.

## II.

Any party may move for summary judgment in its favor on all or part of the relief it seeks or all or part of the relief sought against it. Summary judgment is proper only when the pleadings, depositions, admissions, and affidavits, when viewed in a light most favorable to the nonmovant, reveal that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005; *Progressive Universal Ins. Co. v. Liberty Mut. Fire Ins. Co.*, 215 Ill. 2d 121, 127-28 (2005). All pleadings, depositions, admissions, and affidavits are construed strictly against the movant and liberally in favor of the nonmovant. *Robinson v. Builders Supply & Lumber Co.*, 223 Ill. App. 3d 1007, 1013 (1st Dist. 1991). The burden of proof and the initial burden of production in a motion for summary judgment lie with the movant. *Medow v. Flavin*, 336 Ill. App. 3d 20, 28 (1st Dist. 2002). The movant may meet its burden by affirmatively showing that some element of the case must be resolved in its favor or by establishing that there is an absence of evidence to support the nonmovant's case. *Neufairfield Homeowners Association v. Wagner*, 2015 IL App (3d) 140775, ¶ 15. Summary judgment is a drastic means of disposing of litigation and should be granted only when the right to it is clear and free from doubt. *Allstate Ins. Co. v. Tucker*, 178 Ill. App. 3d 809, 812 (1st Dist. 1989).

# UNOFFICIAL COPY

U.S. Bank argues that the undisputed facts, which establish that U.S. Bank's predecessor in interest repaid Placek's two preexisting mortgages on her property, entitle U.S. Bank to summary judgment on its requests in Count I to enforce the rights of Placek's prior mortgagees through equitable subrogation and to impose an equitable lien in the amount used to satisfy both mortgages. According to U.S. Bank, principles of equity dictate this outcome, notwithstanding Placek's affirmative defenses, because Placek owes a duty to compensate U.S. Bank for the repayment of her mortgage debt. Placek contends that U.S. Bank's requests for equitable relief are precluded where the uncontested facts establish her affirmative defenses of unclean hands and voluntary payment.

## A.

The imposition of an equitable lien is a remedy for a debt that cannot be legally enforced but which, in consideration of fairness and justice, ought to be recognized. *CitiMortgage, Inc. v. Parille*, 2016 IL App (2d) 150286 ¶ 33. The essential elements of an equitable lien are (1) a debt, duty, or obligation owing by one person to another and (2) a res to which that obligation attaches. *Hargrove v. Gerrill Corp.*, 124 Ill. App. 3d 924, 931 (2d Dist. 1984). Under the related doctrine of equitable subrogation, one who has involuntarily paid a debt of another may enforce the rights of the original creditor with respect to the debt paid. *Dix Mutual Ins. Co. v. LaFramboise*, 149 Ill. 2d 314, 319 (1992). As a remedial device intended to prevent unjust enrichment, equitable subrogation may be applied to substitute one party to the lien priority of another. *E.g.*, *Devoit Steel Products Co. v. Hudes*, 17 Ill. App. 2d 514 (4th Dist. 1958); *Deutsche Bank Nat'l Trust v. Payton*, 2017 IL App (1st) 160305. The determination of whether equitable subrogation is an appropriate remedy depends on the equities of a particular case. *LaFramboise*, 149 Ill. 2d at 319 (stating that equitable subrogation should not apply where it would lead to an inequitable result).

Illinois courts have applied the doctrine of equitable subrogation in cases in which a borrower later challenges the validity of a lender's refinanced mortgage documents, finding that a duty arising from the lender's repayment of the borrower's preexisting mortgages supports the basis to impose an equitable lien. *See, e.g.*, *Bank of Am., N.A. v. Schroeder*, 2021 IL App (3d) 200229; *Payton*, 2017 IL App (1st) 160305; *see also CitiMortgage, Inc. v. Parille*, 2016 IL App (2d) 150286 ¶ 37 (declining to apply the remedy because of fact-specific considerations). In *Payton*, Deutsche Bank's assignor issued a loan to the Paytons in return for a mortgage, the proceeds of which the Paytons used to satisfy the defendants' two preexisting mortgages on the property. *Payton*, 2017 IL App (1st) 160305 ¶¶ 4, 6. After the Paytons defaulted on their loan, the defendants challenged the foreclosure proceedings, claiming that the warranty deed purporting to convey the property to the Paytons contained the defendants' forged signatures. *Id.* ¶ 7. Although the forgery rendered Deutsche Bank's mortgage interest on the property invalid, the

# UNOFFICIAL COPY

court held that Deutsche Bank “was subrogated by operation of law and stepped into the shoes of the [defendants’] mortgagees.” *Id.*

The application of equitable subrogation in *Payton* rested on the same reasoning found in *Shchekina v. Washington Mutual Bank*, 2012 U.S. Dist. LEXIS 110492 (N.D. Ill. Aug. 7, 2012), which was decided under similar circumstances. See *Payton*, 2017 IL App (1st) 160305, ¶¶ 21, 30; accord *Schroeder*, 2021 IL App (3d) 200229, ¶31 & n.3 (citing the logic and reasoning in *Shchekina*, 2012 U.S. Dist. LEXIS 110492, as persuasive authority); *Parille*, 2016 IL App (2d) 150286 ¶ 38 (same). In *Shchekina*, the homeowner’s apparently forged signatures on the mortgage documents presumably rendered the bank’s interest on the property unenforceable, so the bank asserted the same lien position as the holder of the most recent valid mortgage through equitable subrogation. *Shchekina*, 2012 U.S. Dist. LEXIS 110492, at \*4-5. Applying Illinois law, the district court granted the bank relief under the theory that the bank’s payment of a preexisting mortgage equitably subrogated its lien position to that of the prior mortgagee. *Id.* at \*12-13. Without the imposition of an equitable lien, in an amount equal to the extinguished mortgage but less than the full value of the loan, the defendant would have been unjustly enriched by the bank’s repayment of that prior mortgage. *Id.*

Placek contends that equitably subrogating U.S. Bank to the respective lien positions of the prior mortgagees would produce an unjust result, because the 2007 WAMU mortgage secured an additional \$112,771.87 of debt in excess of the combined amount owed under the prior mortgages. The parties contest whether Placek received the excess proceeds, but this factual dispute is immaterial to Plaintiff’s request for equitable subrogation. Indeed, Plaintiff’s remedy under Illinois law is limited to the enforcement of debt for which Placek would have been liable had U.S. Bank’s not paid it. See *Payton*, 2017 IL App (1st) 160305, ¶ 11; see also *Shchekina*, 2012 U.S. Dist. LEXIS 110492 at \*13-14, 14 n.1 (in recognizing equitable subrogation as remedy under Illinois law, declining to hold defendant liable for the full value of the loan “because [the lender] was not vigilant in making sure that all of the signatures on the mortgage instrument’ were valid.” (quoting *Chase*, 155 N.H. 28, 921 A.2d 377))). For instance, the lending bank in *CitiMortgage, Inc. v. Parille*, like the creditors in *Shchekina* and *Payton*, applied the funds of a loan to extinguish the defendant’s preexisting mortgage. 2016 IL App (2d) 150286 ¶ 39. Rather than attempt to enforce the preexisting valid mortgage that the bank had paid in full, however, the bank in *Parille* sought to impose a first-priority equitable lien predicated on the *subsequent* unenforceable mortgage instrument that the bank had intended to secure the *full value* of promissory note. *Id.* For this reason, the *Parille* court distinguished the lender’s allegations from the relief requested in *Shchekina* and dismissed the lender’s count for equitable subrogation. *Id.* Given that the allegations supporting the request for equitable subrogation were deficient, the lender had not established that the borrower owed a



# UNOFFICIAL COPY

debt, duty, or obligation to the lender, and thus, the court also dismissed the lender's request for an equitable lien. *Id.*

Here, the undisputed facts establish that U.S. Bank's assignor, Washington Mutual Bank, paid \$600,207.13 to extinguish the two preexisting mortgages recorded against Placek's property. (Pl.'s Mot. for Partial Summ. J. Exs. 6, 7). Unlike the lender's allegations in *Parille*, Count III of U.S. Bank's complaint seeks equitable liens equal to the amounts actually paid to discharge the 2003 and 2006 mortgages. (Fourth Am. Compl. ¶17); see also *United States Bank N.A. v. Placek*, 2018 IL App (1st) 172128-U ¶¶ 17, 39 (remanding Plaintiff's second amended complaint with the instruction to strike the request for an equitable lien in excess of two preexisting mortgages' value). The mortgages' satisfaction and release, to Placek's benefit, establish the basis for imposing a debt, duty, or obligation owed by Placek to U.S. Bank. Unless U.S. Bank is equitably subrogated into the same lien position as the prior mortgagees, Placek would receive a windfall, as she would be released from any obligations under the 2003 and 2006 mortgages at Plaintiff's expense.

## B.

Defendant argues that the doctrines of unclean hands and voluntary payment preclude U.S. Bank, as the assignee and successor in interest to the 2007 WAMU mortgage, from stepping into the shoes of the 2003 and 2006 mortgages. According to Placek, the payment of the preexisting mortgages was not involuntary because Plaintiff's assignor, the original lender, had no valid security interest to protect. See *Ohio Nat'l Life Ins. Co. v. Bd of Educ. of Grant Cmty. High School Dist. No. 124*, 387 Ill. 159, 178 (1944). But the subsequent failure of the mortgage instrument does not render U.S. Bank a mere volunteer with respect to those payments. In recognizing an exception to the same "volunteer rule" that Placek raises as an affirmative defense, the court in *Tyrrell v. Ward* found that "[i]t would be highly inequitable and unjust to defeat the intention of the parties" by imposing the loss on the lender. 102 Ill. 29, 37, 40 (1882); see also *Detroit Steel Products Co. v. Hudes*, 17 Ill. App. 2d 514 (4th Dist. 1958). And here, the evidentiary materials submitted by the parties establish that Plaintiff's assignor, Washington Mutual Bank, made the loan with the intention of securing repayment with a first-priority lien on Placek's property, which necessarily required the release of the two preexisting mortgages encumbering Placek's property.

As to Placek's affirmative defense of unclean hands, Plaintiff does not contest that Washington Mutual Bank's closing agent verified Placek's forged signature, (Def. Renata Placek's Resp. in Opp'n to Pl.'s Mot. for Partial Summ. J. Ex. A., ¶¶ 45-47). But to the extent that the evidentiary materials establish that Plaintiff's assignor facilitated the forgery as Placek alleges, neither the forgery nor Plaintiff's enforcement of the debt have an effect on U.S. Bank's claims for relief, neither the

# UNOFFICIAL COPY

forgery nor Plaintiff's enforcement of the debt have an effect on U.S. Bank's claims for relief. See *Bank of Am., N.A. v. Schroeder*, 2021 IL App (3d) 200229, ¶ 34 (in affirming summary judgment in favor of plaintiff, finding that "the alleged forgery of the [bank] note would not prevent plaintiff from being equitably subrogated . . . or from obtaining an equitable lien."); see also *Deutsche Bank National Trust v. Payton*, 2017 IL App (1st) 160305, ¶ 30 (finding that plaintiff had standing to seek equitable relief regardless of whether the warranty deed contained forged signatures). Here, equitably subrogating U.S. Bank to rights of Placek's prior mortgagees, in effect, places Placek in the same position as if the preexisting mortgages were reinstated and the 2007 WAMU mortgage was never executed. See *id.*; see also *Dix Mutual Ins. Co. v. LaFramboise*, 149 Ill. 2d 314, 319 (1992) (stating that equitable subrogation should not apply where it would lead to an inequitable result).

Defendant maintains that unresolved material issues of fact preclude summary judgment on Count I, but the undisputed facts sufficiently establish U.S. Bank's right to equitable subrogation and to impose an equitable lien on Placek's property. Accordingly, judgment is entered in favor U.S. Bank on Count I of the fourth amended complaint and on Placek's affirmative defenses of voluntary payment and unclean hands. Plaintiff's motion for summary judgment with respect to Plaintiff's alternative request for relief under a theory of unjust enrichment in Count III is denied as moot.

# UNOFFICIAL COPY

## III.

For the reasons stated above, it is hereby ORDERED:

- (1) Plaintiff's motion for summary judgment is GRANTED with respect to Count I of Plaintiff's fourth amended complaint and to Defendant's affirmative defenses of voluntary payment and unclean hands. Summary judgment is DENIED with respect to Count III.
- (2) Judgment is entered in favor of Plaintiff on Count I, and Plaintiff is entitled to enforce a \$600,207.13 first-priority lien consistent with the rights of Placek's prior mortgagees under the 2003 and 2006 mortgages.
- (3) This matter is continued to Wednesday, September 15, 2021 at 10:30 a.m. for status on Plaintiff's remaining request to foreclose its equitable lien in Count II.

Zoom Meeting

ID: 940 2104 4687

Password: 296476

Telephone: (312) 626-6799

ENTERED,



Raymond W. Mitchell, Judge No. 1992

Judge Raymond W. Mitchell

**AUG 11 2021**

**IRIS Y. MARTINEZ**  
Circuit Court-1992