

ILLINOIS APPELLATE COURT AFFIRMS FORECLOSURE DESPITE DISCREPANCY IN COPY OF NOTE

The Appellate Court of Illinois, Third District, recently affirmed a grant of summary judgment of foreclosure in favor of a mortgagee in spite of an inconsistency between the copy of the note attached to the complaint and the note introduced into evidence.

A copy of the opinion is available at: [Link to Opinion](#).

The foreclosing plaintiff mortgagee originally attached to its complaint a note that had a stamp stating it was a “true and correct copy of the original.”

This copy of the note did not have any indorsement. However, at summary judgment, the plaintiff introduced the original note. Unlike the “true and correct” copy attached to the complaint, the original note did have an indorsement in blank.

The plaintiff also was not described as the mortgagee on the mortgage itself. However, the plaintiff did allege in its complaint that it was the mortgagee, as required by Illinois law.

Despite these discrepancies, the trial court entered summary judgment for the plaintiff mortgagee.

On appeal, the borrowers raised three arguments. The Appellate Court rejected all of them.

First, the borrowers claimed that the plaintiff mortgagee had not alleged it was the current mortgagee as required by Illinois law. The Appellate Court summarily dismissed this argument because the plaintiff mortgagee had alleged “Capacity in which Plaintiff brings this foreclosure: Plaintiff is the Mortgagee under 735 ILCS 5/15-1208.”

The Court did not reject this allegation as impermissibly conclusory. Instead, the Court held that “Plaintiff’s complaint complies with the statutory requirements.”

Next, the borrowers argued that there was a genuine issue of material fact about whether the plaintiff mortgagee was the holder of the note because the “true and correct” copy of the note attached to the complaint was not

indorsed in blank. The borrowers claimed this created an issue of fact about whether the plaintiff mortgagee actually was entitled to enforce the note.

The Court again agreed with the plaintiff mortgagee. It found that the plaintiff mortgagee's holding the note indorsed in blank was prima facie evidence of its right to enforce the note. Likewise, the Appellate Court held that attaching the note to the complaint was prima facie evidence of ownership. The Court rejected the differences between the original note and the copy by saying “[w]hile the nonidentical copies do raise some questions—such as, at what point in time the note attached to the complaint was copied—these questions are immaterial to the issue o[f] ownership or standing.”

The Appellate Court noted that an Illinois rule promulgated in 2013 would have required that the note “including all indorsements and allonges” be attached to the complaint. However, that rule became effective after the plaintiff mortgagee had filed the complaint. Under present Illinois law, attaching a note without all indorsements and allonges would not be acceptable under the rule currently in place now.

Lastly, the borrower raised an issue regarding a discovery dispute that was unrelated to the merits of the case. The borrower had served a number of requests to admit facts and genuineness of documents. The plaintiff mortgagee asserted blanket objections in response. The borrower argued that the requests should have been deemed admitted because the objections were improper.

Without going into any detail, the Appellate Court acknowledged that some of the objections were improper. In fact, the Court found that the borrowers' allegations of bad faith had “substantial merit.”

However, the Appellate Court held that the trial court had not abused its discretion, because the borrowers never asked the trial court to rule on the objections. “Where a party responds to requests for admissions in the form of objections to those requests, it is the duty of the requesting party to raise the issue of the objection in a motion before the trial court.” *La Salle National Bank of Chicago v. Akande*, 235 Ill. App. 3d 53, 67 (1992). Under Illinois Supreme Court Rule 216, which governs requests for admission, “[a]ny objection to a request or to an answer shall be heard by

the court upon prompt notice and motion of the party making the request.”
Ill. S. Ct. R. 216(c) (eff. May 1, 2013).

Here, the borrower moved in the lower court to have the requests be deemed admitted because the objections were improper. The Appellate Court stated that it was not aware of any law that required this, noting that “[i]ndeed, such a position would run counter to our supreme court’s stated policy goal of adjudicating cases on their merits rather than on technicalities.”

Accordingly, the Appellate Court affirmed the lower court’s rulings in favor of the plaintiff mortgagee.