

## **Plaintiff is ‘Mortgagee’ Sufficient Under Illinois Mortgage Foreclosure Law**

The Appellate Court of Illinois, First District, recently held that an allegation that the plaintiff is a “mortgagee” under the Illinois Mortgage Foreclosure Law (IMFL) is sufficient to plead its capacity to sue.

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

The plaintiff mortgagee filed a complaint alleging defendant borrowers were in default, and that it was the “mortgagee” under the IMFL, 735 ILCS 5/15-1208. The plaintiff attached copies of the mortgage and the note indorsed in blank to the complaint.

The defendants subsequently filed a motion to dismiss and requested the circuit court to strike portions of the complaint, arguing that the plaintiff failed to sufficiently plead its capacity to sue, in that the plaintiff’s allegation that it was the “mortgagee” provided no indication of plaintiff’s interest in the loan. The defendants also argued that the plaintiff could not qualify as the holder of the note because the note listed a different entity as the lender.

The trial court denied defendant’s motion without stating a basis. Defendants then answered the complaint and asserted three affirmative defenses: (1) lack of standing in that the plaintiff supposedly did not demonstrate it was the holder of the note; (2) lack of consideration in that the plaintiff supposedly did not pay anything in exchange for the transfer of the note; and (3) lack of privity to contract as the defendants did not execute a contract with the plaintiff. The plaintiff filed a motion to strike the affirmative defenses.

After the plaintiff presented the original note indorsed in blank in open court, the trial court allowed the defendants to withdraw with prejudice their affirmative defenses, which then allowed the plaintiff to withdraw its motion to strike as moot.

The trial court granted the plaintiff’s motion for summary judgment and a judgment for foreclosure was entered. The defendants appealed.

As you may recall, the IMFL establishes the formal pleading requirements for a foreclosure complaint. Section 15-1504(a)(3)(N) of the IMFL requires the plaintiff to state the capacity in which it brings the foreclosure. The section further provides how a plaintiff might be a mortgagee, such as by being the legal holder of the indebtedness, pledgee, agent, trustee under a trust deed “or otherwise as appropriate.”

Section 15-1208 of the IMFL defines a “mortgagee” as “(i) the holder of an indebtedness or obligee of a non-monetary obligation secured by a mortgage or any person designated or authorized to act on behalf of such holder and (ii) any person claiming through a mortgagee as successor.” 735 ILCS 5/15-1208.

The Appellate Court based its holding on the phrase “or otherwise as appropriate” in Section 15-1504(a)(3)(N) of the IMFL. The Court found that “or otherwise as appropriate” indicates the list provided is not all-inclusive. The Appellate Court found that stating that the plaintiff is a “mortgagee” under the IMFL is sufficient to plead a plaintiff’s capacity to bring a foreclosure cause of action under the IMFL.

Additionally, by attaching copies of the mortgage and a note endorsed in blank to the complaint, the Appellate Court held that the plaintiff sufficiently pleaded that it was bringing suit in the capacity of legal holder of the indebtedness. Accordingly, the Appellate Court held that the plaintiff complied with the IMFL’s pleading requirements.

Thus, the Appellate Court found that the trial court did not err when it denied the defendants’ motion to dismiss, and affirmed the judgment of the trial court.