

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION  
MORTGAGE FORECLOSURE/MECHANICS LIEN SECTION**

<p><b>U. S. BANK, N.A., etc.,</b></p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p style="text-align: center;"><b>vs</b></p> <p><b>JOSEPH YOUNES, RICHARD DANIGGELIS,</b> <i>et al.,</i></p> <p style="text-align: center;"><b>Defendants.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Case No. 07 CH 29738</b></p> <p><b>1720 N Sedgwick Ave.</b> <b>Chicago, IL</b></p>
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**ORDER**

**THIS MATTER** coming before the Court for ruling on the Motion of Plaintiff/Counter-Defendant U.S. Bank National Association (“Plaintiff” or the Bank) for Partial Summary Judgment as to Counts II and III of the Third Amended Complaint and Counts I, II, III and V of Richard Daniggelis’s Amended Counterclaim, and Counter-Plaintiff Daniggelis’s Motions to Strike the Affidavits of Rashad Blanchard and Howard Handville, the Court being fully advised in the premises including the oral arguments presented regarding this and other motions on February 15, 2013;

**THE COURT HEREBY ORDERS:**

The Bank’s Motion for Partial Summary Judgment is denied in part as moot, and granted in part, and Daniggelis’s Motions to Strike are denied as moot, for the reasons stated below.

**Background**

This case has been pending before this Court for approximately five and a half years. Voluminous pleadings have been filed, motion practice engaged in and discovery propounded. The relevant factual framework for purposes of the issues raised in the motions presently before the Court, however, can be stated succinctly. In short, Daniggelis claims to be the victim of mortgage rescue fraud. *See, e.g., LaSalle Bank v. Ferone*, 384 Ill. App. 3d 239 (2d Dist. 2008). He asserts that in 2006, Paul Shelton, Erika Rhone and Joseph Younes conspired to dupe him into signing over to Younes a deed to his home, under the guise of rescuing his home from a foreclosure suit then pending against Daniggelis. They then subsequently misused that deed, along with a power of attorney Daniggelis had executed to Rhone, to effectuate a sale to Younes without Daniggelis’s consent.

The Bank has now moved for partial summary judgment, arguing in essence that the Bank merely provided money to finance a facially valid transaction. As such, the Bank argues, it must be held blameless regardless of whether any such fraud in fact occurred.

The below facts are either uncontradicted or are taken from Daniggelis's December 3, 2009 Verified Third Amended Answer, Affirmative Defenses and Counterclaims, and the Exhibits thereto. For the purposes of this Motion, the Court assumes the truth of the well-pled facts contained therein. The Court makes no finding to that effect, however, as it is not necessary (nor would it be appropriate) to do so at the summary judgment stage.

Defendant Daniggelis has lived at the subject property since 1989. In 2004, he fell behind on his mortgage payments and his lender, Deutsche Bank, filed a foreclosure action against him in this Court. *See Deutsche Bank v. Daniggelis*, No. 04CH10851.

In May 2006, while the Deutsche Bank foreclosure action was still pending, Daniggelis signed a warranty deed transferring the property to Defendant Joseph Younes. Daniggelis has attached that deed as Exhibit G to the Counterclaim.

Also in May 2006, Daniggelis executed a "Limited Power of Attorney For Real Estate Transaction" (POA) in favor of Rhone. Daniggelis has attached the POA as Exhibit L to the Counterclaim.

Exhibit L consists of two pages. Daniggelis asserts that both pages are part of the POA. Page 1 is a typewritten document, captioned as noted above. It is signed by Daniggelis, and names Rhone as his

true and lawful Attorney-In-Fact to act in, manage and conduct all my affairs individually for that purpose in my name and on my behalf to do and execute any or all of the following acts, deeds, and other documents and things, to wit:

To execute any and all documents and perform any and all acts necessary to effectuate the sale of the property at:

THE EAST 66 FEET OF LOT 8 IN C. J. HULLS SUBDIVISION OF BLOCK 51 IN CANAL TRUSTEE'S SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

CKA: 1720 North Sedgwick Street Chicago Illinois 60614

PIN#: 14-33-324-044-0000

Other Acts (if any): \_\_\_\_\_

**HEREBY GIVING AND GRANTING** unto my said attorney full power and authority whatsoever requisite or proper to be done in or about the premises, as fully to all intents and purposes as I might or could lawfully do if personally present, and hereby certifying and confirming all that my said attorney shall do or cause to be done under and by virtue of these presents.

(Counterclaim Exh. L, p. 1.) Page 1 of Exhibit L provides that the POA would remain in effect until revoked in writing, and was in any event irrevocable until June 30, 2006. On its face, Page 1 of Exhibit L contains no restrictions other than as noted above. It does not refer to any additional pages or terms. It bears Daniggelis's signature at the bottom of the page.

Page 2 of Exhibit L is a document handwritten on lined paper. Daniggelis asserts that the page was signed by Rhone (CC ¶ 76), but the Exhibit does not bear any signature. It provides:

AS LONG AS I (RICHARD) DO NOT SIGN  
OR SELL WITH ANYONE ELSE  
AND PAUL RECEIVES HIS MO [sic]<sup>1</sup>  
BACK BY EITHER SELLING  
JOE YIONES [sic] OR RICHARD PAY  
HIM BACK DIRECTLY I ERIKA WILL N  
USE THE POWER OF ATTORNEY F  
ANY REASON OTHER THAN TODA  
PAYMENT OF ANY LEGAL AND MORTGAGE ARREARAGE

(Counterclaim Exh. L, p. 2.)

Subsequently, on July 28, 2006, there was a closing at Stewart Title. Daniggelis did not attend the closing. Where Daniggelis's signature was required on the closing documents, they were signed "Richard Daniggelis, attorney in fact, Erika Rhone." The settlement statement from the closing lists Daniggelis as selling of the property to Younes, for a purchase price of \$833,000.

To finance the property, Younes entered into the loan at issue in the present matter, in the amount of \$583,100, in addition to funds from at least two separate sources. The settlement statement indicated that among the disbursements was a payoff in full of the Daniggelis mortgage with Deutsche Bank, in the amount of \$634,604.55.

Daniggelis attaches as Exhibit DD to his Counterclaim a copy of the warranty deed from Daniggelis to Younes which was recorded with the Cook County Recorder of Deeds on August

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<sup>1</sup> The Court has reproduced the text of the Court's copy of the document verbatim including where lines end. Due perhaps to imperfect reproduction, it appears that the rightmost edge of page 2 of Exhibit L may have been cut off, resulting in some letters being omitted.

16, 2006. The document is in most respects identical to the warranty deed Daniggelis claims to have signed in May. The date, however, differs. Exhibit G to the Counterclaim states that it was signed “on this 9th day of May, 2006.” The entire clause is typewritten. The recorded version of the deed, however, states that it was signed “on this 9th day of July, 2006.” The word “July” is handwritten in the document. No initials appear next to it. (Exh. DD.) The notary stamp also contains a handwritten “July.”

In August 2006, Rhone came to Daniggelis’s home, informed him about the July 2006 closing, and tendered him copies of the closing documents, which he refused to accept. In April 2007, Daniggelis filed a Notice of Forgery with the Recorder of Deeds, stating that the deed filed in August 2006 was a forgery.

Daniggelis contends that the deed he signed in May 2006 was intended to take effect only if the property was sold on or before May 31, 2006. He claims that the July 2006 closing took place without his awareness or consent.

### **Pleadings**

**Complaint.** In 2007, LaSalle Bank filed the instant foreclosure action. The Bank’s third amended complaint, filed October 7 2011, is in three Counts. Count I of the Complaint is a mortgage foreclosure action, asserting that mortgagor Younes has defaulted on the July 2006 loan. Count II of the Bank’s Complaint seeks equitable subrogation to the Deutsche Bank loan which was paid off at the July 2006 closing. Count III of the Complaint seeks to recover principal and interest on the July 2006 loan based on the theory of unjust enrichment.

**Counterclaim.** Daniggelis answered the Complaint and brought an 11-count Counterclaim. The several counts of the Counterclaim seek relief against many counter-defendants, including the Bank, Younes, Rhone, Shelton, Stewart Title, and others. Multiple legal theories are raised. Only four counts of the Counterclaim are at issue for purposes of the present motion, however. Those are:

**Count I:** Quiet Title: Invalid Deed

Here Daniggelis seeks to quiet title in himself because the Bank (and others) “knew or should have known that the deed had been altered on its face and was no longer valid when the closing occurred.”

**Count II:** Quiet Title: Invalid Power of Attorney

Here Daniggelis seeks to quiet title in himself because the Bank (and others) “knew or should have known that Daniggelis did not consent to the closing” because the POA “specified that it was only to be used to pay the arrearages on the Home and not for any other purpose.”

**Count III:** Rescission Based on Unjust Enrichment

Here Danigellis seeks to rescind the transaction as against the Bank because the Bank was “unjustly enriched to the extent it received fees from the subject transaction and/or a security interest in Daniggelis’s property and the right to collect interest on the new mortgage executed by Younes.”

**Count V:** Quiet Title: Based on Erika Rhone and Paul Shelton’s Fraud Against LaSalle Bank, N.A.

Here Danigellis seeks to quiet title in himself because Rhone and Shelton “fraudulently used the Power of Attorney and Warranty Deed to effectuate the sale of the Home to Younes” and the Bank (and others) “knew or should have known that Rhone used the Power of Attorney fraudulently to effectuate the sale to Younes.”

### **Motion Practice**

The Bank has now moved for Summary Judgment on Counts II and III of its Complaint and Counts I, II, III and V of the Daniggelis Counterclaim.

Daniggelis filed no response to the Bank’s Motion, but instead only moved to strike the affidavits of Rashad Blanchard and Howard Handville, which were among the exhibits to the Bank’s Motion. The Bank filed a combined Response to Daniggelis’s Motions to Strike.

Concurrently with Bank’s Motion for Summary Judgment and Daniggelis’s Motions to Strike, numerous other motions were brought.

- The Bank brought a separate motion for summary judgment on Count I of the Complaint (foreclosure) against Younes, Mortgage Electronic Registration Systems, Inc. (“MERS”), and unknown owners and non-record claimants – this motion was not directed against Daniggelis.
- The Bank also moved to find MERS in default.
- Daniggelis moved for summary judgment against the Bank on Counts I, II and III of the Complaint.
- Younes moved for Summary Judgment against Daniggelis, contending that Younes was a bona fide purchaser for value. This motion does not on its face state explicitly the counts of the pleadings towards which it is directed, but does reference Daniggelis’s three quiet title counts against Younes (Counts I, II and V of the counterclaim).

The Court disposed of all motions other than the pending Motion for Summary Judgment and Motions to Strike as provided in its Order of February 15, for the reasons stated on the record at the hearing.

## ANALYSIS

### I. Counts II and III of the Third Amended Complaint

The Court denies the Bank's Motion as to Counts II and III of the Third Amended Complaint on the grounds of mootness. At the February 15 hearing, after the Court had disposed of the other motions noted above, the Court inquired of the Bank whether there remained a need to decide the instant motion for summary judgment given the Court's disposition of the other motions – specifically, the Court having granted Younes's Motion for Summary Judgment against Daniggelis and the Bank's Motion for Summary Judgment on Count I of the Complaint. The Bank acknowledged that the instant motion was moot as it pertains to Counts II and III of the Complaint, because those Counts sought relief if the Court found Daniggelis's rights superior to Younes (or declined to rule). Because the Court has granted the Bank a judgment of foreclosure against Younes based on the default on the July 2006 mortgage, and has found Younes to be a bona fide purchaser from Daniggelis, there is no need to resolve Counts II and III of the Complaint.

### II. Counts I, II, III and V of the Counterclaim

The Court grants the Bank's Motion for Summary Judgment on Counts I, II, III and V of the Counterclaim. On these matters, the Bank's Motion is a *Celotex*-type motion for summary judgment. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 91 L. Ed. 2d 265, 273, 106 S. Ct. 2548, 2552 (1986). As the Appellate Court has explained:

A defendant who moves for summary judgment may meet its initial burden of production in at least two ways: (1) by affirmatively disproving the plaintiff's case by introducing evidence that, if uncontroverted, would entitle the movant to judgment as a matter of law (traditional test), or (2) by establishing that the nonmovant lacks sufficient evidence to prove an essential element of the cause of action (*Celotex* test).

*Williams v. Covenant Med. Ctr.*, 316 Ill. App. 3d 682, 688-689 (4th Dist. 2000) (citations omitted). Here, the Bank, as Counter-Defendant, argues that Daniggelis lacks evidence to support his counterclaims against the Bank.

In opposing a *Celotex*-type motion, the non-movant may rely on his pleadings. See *Id.*<sup>2</sup> Thus, the Court assumes for purposes of analysis the truth of the well-pled facts contained in Daniggelis's Counterclaim and the Exhibits thereto.

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<sup>2</sup> By contrast, "a party may not rely upon his or her own verified pleadings to oppose a motion for summary judgment when the movant has" filed a *traditional* motion for summary judgment, and has "supplied evidentiary material, such as an affidavit, that, if uncontradicted, would entitle him or her to judgment as a matter of law." *Gassner v. Raynor Mfg. Co.*, 409 Ill. App. 3d 995, 1005 (2d Dist. 2011).

**Count I:** Quiet Title: Invalid Deed

The Bank's motion is granted as to Count I. Daniggelis does plead that the warranty deed from himself to Younes "had been altered on its face" and provides evidence in support of that allegation – specifically, Exhibits G and DD to the Counterclaim, the Deed he signed in May 2006 and the Deed recorded with Cook County, with the latter identical but for the July handwritten the signature date.

The difficulty for Daniggelis is that he provides no factual or legal support for his assertion that, assuming the signature date to have been altered, the Bank therefore "knew or should have known that the deed ... was no longer valid when the closing occurred." It is true that any *material* alteration of a written instrument after signature will render the instrument void. *See, e.g., Ruwaldt v. McBride, Inc.*, 388 Ill. 285, 293 (1944). But this rule defines a "material" change as one which "so changes [the instrument's] terms as to give it a different legal effect from what it originally had, and thus work some change in the rights, obligation, interests or relations of the parties." *Id.* By contrast, a change which "could have no effect whatever upon the [instrument] or upon the rights, obligations, interests or relations of the plaintiff and defendant as the parties thereto ... could not be an alteration changing the legal effect of the instrument." *Cities Service Oil Co. v. Viering*, 404 Ill. 538, 547 (1949). Instruments remain fully enforceable notwithstanding an immaterial change. *Id.* Indeed, in *Viering*, the Illinois Supreme Court upheld a decree of specific performance of a land contract notwithstanding the deletion of a signator's name, on the grounds that the signator was not necessary.

In the instant matter, Daniggelis has offered no factual or legal support why the alteration of the signature date would have had any effect on the validity of the document, why the Bank should have believed the modification to have any legal effect on its enforceability, or for that matter why the Bank should have believed the modification to have been made after signature, as opposed to at the time Daniggelis signed the deed. Thus, even assuming the signature date to have been changed after Daniggelis signed it, the Bank is entitled to summary judgment.

**Count II:** Quiet Title: Invalid Power of Attorney

The Bank is entitled to summary judgment on Count II of the Counterclaim for similar reasons. Daniggelis again has shown no evidence why the Bank "knew or should have known" that the POA "specified that it was only to be used to pay the arrearages on the Home and not for any other purpose." The first page of the POA is facially a complete document. Daniggelis has presented no evidence that the Bank was ever made aware of what he represents to be the second (handwritten) page of the POA, nor why the Bank should have been aware of that page.

**Count III:** Rescission Based on Unjust Enrichment

The Bank is also entitled to Summary Judgment on Count III, Daniggelis's claim for rescission based on unjust enrichment. Daniggelis has shown no legal or factual basis for his contention that the Bank was "unjustly enriched" by having "received fees from the subject

transaction and/or a security interest in Daniggelis's property and the right to collect interest on the new mortgage executed by Younes." These matters – fees for extending a loan, a security interest and the right subsequently to collect interest on the loan – are ordinary, if not indeed essential, attributes of a mortgage transaction. Daniggelis has not given any explanation of how they constitute unjust enrichment in the instant case.

**Count V:** Quiet Title: Based on Erika Rhone and Paul Shelton's Fraud Against LaSalle Bank, N.A.

Finally, the Bank is clearly entitled to summary judgment on Count V of the counterclaim, which seeks to quiet title based on Rhone and Shelton's fraud *against the Bank*. Although Daniggelis asserts that the Bank should have known that Rhone was using the POA fraudulently, he provides no support for that conclusion here, just as he provided none in Count II of the Counterclaim, of which (at least as applied to the Bank) Count V appears to be nothing more than a restatement.

### III. Daniggelis Motions to Strike

The Court denies as moot Daniggelis's Motions to Strike Affidavits. As noted above, the Bank's Motion for Summary Judgment on the Counterclaim is a *Celotex*-type Motion, in which the Bank argues it is entitled to judgment because Daniggelis "lacks sufficient evidence to prove an essential element of the cause of action." *Williams*, 316 Ill. App. 3d at 688-689. The Court has found the Bank entitled to judgment on that basis. Accordingly, the Court did not consider the evidentiary material the Bank submitted in support of its Motion as regards Counts II and III of the Complaint. The Motions to Strike are thus moot.



Accordingly, IT IS HEREBY ORDERED:

Plaintiff's Motion for Summary Judgment is DENIED IN PART AS MOOT, as regards Counts II and III of the Complaint. The Motion is GRANTED as regards Counts I, II, III and V of the Counterclaim.

Counter-Plaintiff's Motions to Strike are DENIED AS MOOT.

ENTER:



Michael F. Otto # 2065 Michael F. Otto

Judge

MAR 08 2013

Circuit Court - 2065

This order was sent to the following on the above stamped date:

Mr. Andjelko Galic, Esq. 134 N. LaSalle Street, Suite 1810 Chicago, IL 60602	Mr. Peter King, Esq. King Holloway LLC 101 North Wacker Drive, Suite 2010 Chicago, IL 60606
Mr. Richard Indyke, Esq. 221 N. LaSalle Street, Suite 1200 Chicago, IL 60601	

Counsel for Plaintiff will send copies of this order to all counsel of record not listed.