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Mariyana T. Spyropoulos
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION**

KYLE HADLEY,)
)
Plaintiff,)
)
v.)
BRANDON MCGIVERN,)
)
Defendant.)
)

Case No. **2025-CH-05527**

Judge Eve M. Reilly
Courtroom 2405

**DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO
STRIKE AFFIRMATIVE DEFENSES**

NOW COMES Defendant, BRANDON MCGIVERN, pro se, and respectfully
opposes Plaintiff's Motion to Strike Affirmative Defenses, and in support thereof states:

I. INTRODUCTION

1. Plaintiff's Motion to Strike exemplifies the very litigation abuse and forum shopping that Defendant's Eighth Affirmative Defense addresses. The Motion contains demonstrable falsehoods about the case timeline, mischaracterizes critical documents, and seeks to avoid accountability for fabricated evidence that forms the foundation of Plaintiff's claims.

2. This Motion represents yet another attempt to obstruct legitimate defenses while Plaintiff simultaneously engages in systematic discovery violations. As of this filing, Plaintiff has:

FILED DATE: 8/29/2025 1:16 PM 2025CH05527

- Failed to provide complete discovery responses, missing 14 months of critical bank statements
- Produced a total of three contradictory versions of sworn discovery responses on August 13 and August 28
- Fabricated evidence including a \$47,123.45 Ford Mustang claimed as an \$18,000 Toyota Prius
- Concealed rental operations while claiming owner-occupancy intent

3. Defendant's affirmative defenses are detailed, fact-specific, and legally sufficient under Illinois law. Each defense contains extensive factual allegations, precisely what Illinois law requires. Plaintiff's motion to strike these well-pleaded defenses while simultaneously defending demonstrably false evidence reveals the weakness of Plaintiff's underlying claims. Discovery has now confirmed every allegation in Defendant's defenses, including Plaintiff's rental operations, vehicle purchase with condo proceeds, and systematic fabrication of evidence.

II. PLAINTIFF'S MOTION CONTAINS MULTIPLE FALSE STATEMENTS

4. **False Statement #1 - Paragraph 11:** While the June 2022 date is correct for initial discussions, Plaintiff falsely claims this was "seller-financing." The parties never agreed to seller financing. This was briefly discussed once but never agreed upon. The actual agreement was for Plaintiff to purchase after his condo sold in October 2023. Discovery now proves he breached by spending \$47,123.45 on a Ford Mustang Mach-E instead of purchasing the property as agreed.

5. **False Statement #2 - Paragraph 11:** Plaintiff falsely characterizes

Defendant's February 15, 2025 letter as "an effort to unwind the underlying Purchase Agreement." This letter was sent AFTER Plaintiff's February 14, 2025 email admitting he could not purchase the property for at least 4 months. It was a good faith attempt to provide resolution options after Plaintiff's multiple breaches and admission of inability to perform.

6. **False Statement #3 - Paragraph 12:** Plaintiff falsely claims he "performed substantial property maintenance and assumed regular payments" between March and April 2025. The \$30,000 in payments were made in March, April, and May 2024, not 2025. Defendant has never contested receiving these 2024 payments.

7. **False Statement #4 - Paragraph 13:** Plaintiff references "April 14, 2025" written purchasing terms from Defendant. This is false. On April 14, 2025, attorney Cole sent an email proposing terms. Defendant's response explicitly stated the 60-day notice remained in effect and outlined prerequisites that must be met by April 30, 2025 if Plaintiff wished to pursue purchase. These were not "purchasing terms" but conditions precedent.

8. **False Statement #5 - Paragraph 14:** Plaintiff falsely claims a "60-day notice" was sent on "May 16, 2025." The notice was served March 18, 2025 (not May 16), providing until May 17, 2025 to vacate. This was not "abrupt" but followed Plaintiff's July 29, 2024 non-response to deadline letter, October 9, 2024 repudiation texts, and February 14, 2025 admission of inability to purchase.

9. **False Statement #6 - Paragraph 15:** Plaintiff mischaracterizes Defendant's emergency motion for access. This motion was filed because Plaintiff sent an email that week stating there was still ongoing water damage requiring urgent attention after

concealing it for 5 months. Defendant was protecting his property interests, not engaging in harassment.

10. **False Statement #7 - Paragraph 15:** Plaintiff falsely claims Judge Porter "specifically stricken" the eviction case on June 26, 2025. Judge Porter did not strike the eviction case; he ruled on a motion to dismiss. The eviction case proceeded to trial on July 21, 2025, where Plaintiff failed to appear, resulting in a default judgment for possession in Defendant's favor.

11. **Mischaracterization of Forum Shopping:** In Paragraphs 2-5, Plaintiff attempts to paint Defendant as the aggressor when documented timestamps prove the opposite. Defendant filed the eviction case on May 20, 2025. Plaintiff was notified May 21 at 9:14 AM and filed this Chancery case at 12:24 PM the same day, just 3 hours later. Plaintiff then immediately demanded Defendant withdraw the eviction case, proving the retaliatory nature of this filing.

12. **Mischaracterization of Defendant's Status:** Paragraph 5 claims Defendant is using "litigation as a weapon" and engaging in "gamesmanship." Defendant is a pro se litigant with zero legal training defending against two licensed professionals: a real estate agent who knows the law and his attorney. The power imbalance favors Plaintiff, not Defendant.

III. THE EVICTION DEFAULT JUDGMENT VALIDATES

DEFENDANT'S DEFENSES

13. On July 21, 2025, Plaintiff Kyle Hadley and his attorney Mason Cole failed to appear at the properly noticed eviction trial in Case No. 2025-M1-707919. Plaintiff

knew Defendant believed trial was scheduled because Defendant served trial exhibits on July 14, 2025. Judge Porter entered a default judgment for possession in Defendant's favor, awarding immediate possession and \$166.67 per day in holdover damages.

14. Rather than accept responsibility for failing to appear, Plaintiff filed a Motion to Vacate on July 22, 2025, containing additional false statements. Attorney Cole falsely claimed that "Judge Porter explicitly struck all motions, including the July 21 trial date" when the June 26, 2025 order contains no such language.

15. Attorney Cole also falsely claimed that "Plaintiff submitted two conflicting proposed orders" when in fact Cole himself submitted both competing orders after the June 26 hearing. These misrepresentations to the municipal court mirror the pattern of fabrication evident in this motion.

16. The default judgment confirms Plaintiff's unlawful holdover status and undermines any legitimate basis for equity claims. A party in unlawful possession cannot seek equitable relief while violating court orders and accumulating \$166.67 daily in holdover damages.

IV. PLAINTIFF'S DISCOVERY MISCONDUCT UNDERMINES THIS MOTION

17. Plaintiff seeks to strike defenses while simultaneously violating discovery obligations and court orders:

A. Complete Non-Response to Discovery (36 Days Overdue)

18. Defendant served discovery requests on June 24, 2025. Responses were due July 24, 2025. Plaintiff provided deficient responses on August 13, 2025; 20 days late and less than 18 hours before scheduled hearings. This delay was strategic, Plaintiff

wanted to avoid providing damaging discovery before the eviction case proceedings.

B. Refusal to Participate in Court-Ordered Rule 201(k) Conference

19. The Court ordered a Rule 201(k) conference on August 1, 2025. Defendant attempted to schedule this conference on:

- August 1 (initial request)
- August 4 (proposed August 11)
- August 8 (offered seven time slots)
- August 11 (follow-up)
- August 14 (per court order)
- August 16 (weekend follow-up)
- August 18 (final attempt)

20. Attorney Cole's only substantive response was to "punt" the conference until after critical hearings, then refused to allow recording and ultimately never participated despite the Court's explicit order. This pattern shows deliberate obstruction to avoid addressing discovery deficiencies.

C. Discovery Deficiencies Remain Unresolved

21. As documented in Defendant's August 21, 2025 submission to the Court, Plaintiff's discovery responses contain:

- **14 months of missing Bank of America statements** (most of 2023 when transactions were critical)

- **Three different versions of responses:** August 13 (signed), August 28 at 4:55 PM (unsigned), and August 28 at 6:50 PM (signed), with material contradictions between versions
- **No text messages after March 10, 2025:** conveniently omitting the April 15 "You are a f*cking monster" text and all subsequent communications
- **Contradictory contractor claims:** April 2025 inspection by Miguel Delgado in first version; latest version claims "No other contractors" accessed property
- **Vehicle purchase lies:** Claimed \$18,000 Toyota Prius; receipt shows \$47,123.45 Ford Mustang Mach-E purchased October 3, 2023, using condo proceeds meant for property purchase

22. Most damaging, Plaintiff's own text productions prove systematic rental operations:

- **Timothy Lenihan** (August 1, 2022): "I need to Zelle the rent to your email"
- **Timothy Lenihan** (August 1, 2024): "I deducted the Lululemon purchase from the rent this month"
- **Kyle to Tim** (August 16, 2024): "I can't turn down regular rent"
- **Michael Sheets** (March 28, 2023): "rent is coming up"
- **Michael Sheets** (July 27, 2023): "what about the rent?"

23. During the Court-ordered August 21 breakout room conference, when Defendant identified these deficiencies, Attorney Cole requested 14 more days. Defendant objected given the 28-day delay already elapsed. The Court granted only 7 days, yet the production remained deficient with multiple contradictory versions, including an unsigned version presented as complete.

V. EACH AFFIRMATIVE DEFENSE IS PROPERLY PLEADED

A. First Defense - Statute of Frauds (Properly Pleaded)

24. Defendant's First Affirmative Defense specifically cites 740 ILCS 80/1 and alleges that any purported agreement for the sale of real estate was oral and therefore void. This is a complete defense under Illinois law. *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482 (1997) (oral agreements for real estate are void and unenforceable).

25. The defense contains specific factual allegations: the agreement was never reduced to writing, Plaintiff as a licensed real estate agent knew this requirement, and Plaintiff cannot produce any written contract signed by Defendant.

B. Second Defense - Breach/First Breach (Detailed Facts Provided)

26. This defense contains extensive factual allegations with specific dates:

- October 2023: Plaintiff's condo sale proceeds used for vehicle instead of purchase
- July 29, 2024: Defendant's deadline letter setting end of 2024 deadline, which Plaintiff ignored
- October 9, 2024: Plaintiff's texts stating "Sell the house. I'll move out" and "I'm over it"
- February 14, 2025: Plaintiff's email admitting inability to purchase for months
- April 15, 2025: Plaintiff's text "You are a f*cking monster" after April 14 prerequisites

27. These detailed allegations far exceed Illinois pleading requirements.

Defendant gave Plaintiff from July 29, 2024 to February 14, 2025 to work things out.

That is over 6 months. Defendant did not "second guess" or "obstruct" anything. He

protected his interests after Plaintiff's repeated breaches. *Barber v. American Airlines, Inc.*, 241 Ill. App. 3d 310 (1st Dist. 1993) (affirmative defenses need only provide fair notice).

C. Third Defense - Unclean Hands (Extensive Evidence)

28. This defense alleges specific misconduct now proven by Plaintiff's own discovery:

- **Fabricated Exhibit B:** Contains entries through May 2025 despite Plaintiff losing access January 30, 2025. This temporal impossibility proves fabrication
- **Five-month water damage concealment:** Plaintiff admits discovering damage January 6, 2025 but only notified Defendant once, contradicting his claim of "repeatedly notified"
- **Multiple contradictory discovery responses:** Two signed versions (August 13 and August 28 at 6:50 PM) contain material contradictions about contractors; unsigned version (August 28 at 4:55 PM) sent as if complete
- **Concealed rental enterprise:** Text messages prove "regular rent" from Timothy Lenihan, Michael Sheets, and Yalea Baughman while claiming owner-occupancy
- **Spoilation of evidence:** No texts produced after March 10, 2025, concealing the April 15 "f*cking monster" text and all subsequent hostile communications

29. Plaintiff's discovery proves the vehicle lie: claimed \$18,000 Toyota Prius in interrogatories; receipt shows \$47,123.45 Ford Mustang Mach-E purchased October 3, 2023 with condo proceeds that were supposed to fund the property purchase. These are precisely the type of fact-specific allegations Illinois law requires. *Lewitton v. ITA*

Software, Inc., 2014 IL App (1st) 123370 (unclean hands requires specific factual allegations of misconduct).

D. Fourth Defense - No Irreparable Harm (Supported by Affidavit)

30. Defendant attached a sworn affidavit stating no intention to sell the property. The property requires extensive repairs due to Plaintiff's concealed water damage. Discovery confirms Plaintiff's contradictory claims about contractors. He first claimed Miguel Delgado inspected in April 2025, then in his latest version claimed "No other contractors" accessed property. No irreparable harm can exist when the requested relief (preventing sale) addresses a non-existent threat.

31. Furthermore, a party who spent \$47,123.45 on a luxury vehicle instead of purchasing the property as agreed cannot claim irreparable harm from losing a property he chose not to buy when he had the funds.

E. Fifth Defense - Professional Ethics Violations (Heightened Duties)

32. Plaintiff's status as a licensed real estate agent creates heightened duties under Illinois law. The defense alleges specific violations now confirmed by discovery:

- Pursuing void oral contract claims while admitting knowledge of Statute of Frauds requirement
- Concealing property damage (admitted discovering January 6, 2025)
- Operating rental business collecting "regular rent" while claiming owner-occupancy

- Making material misrepresentations about vehicle purchase (\$47,000 Mustang vs. \$18,000 Prius)
- Filing three contradictory sworn statements in same case

33. Professional misconduct is a valid defense to equitable relief. A licensed real estate agent cannot claim equity while violating fundamental duties of disclosure and honesty. *Stonecrafters, Inc. v. Foxfire Printing & Packaging, Inc.*, 633 F. Supp. 2d 610 (N.D. Ill. 2009).

F. Sixth Defense - Waiver, Estoppel, and Laches (Specific Facts)

34. This defense alleges with supporting discovery evidence:

- **Subletting operations inconsistent with purchase:** Kyle's texts show "regular rent" collection from multiple tenants
- **\$47,123.45 vehicle purchase:** Used condo proceeds for luxury car instead of property purchase
- **Damage concealment while claiming ownership:** Admitted discovering damage January 6, failed to arrange repairs
- **Access denial documented by police:** Event #2513009537
- **Unreasonable delay:** Collected rent for years while avoiding purchase obligation

35. Each element is supported by specific facts from Plaintiff's own discovery admissions and produced documents, not mere conclusions.

G. Seventh Defense - Failure to State a Claim (Valid Under Illinois Law)

36. Contrary to Plaintiff's assertion, failure to state a claim IS a valid affirmative defense

under 735 ILCS 5/2-613(d). *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428 (1989).

The defense alleges:

- No valid written contract exists
- Statute of Frauds bars relief
- No irreparable harm shown
- Fabricated evidence undermines claims

H. Eighth Defense - Abuse of Process/Forum Shopping (Timeline Proves)

37. The defense provides specific facts:

- Eviction filed May 20, 2025
- Plaintiff notified May 21 at 9:14 AM
- Chancery case filed at 12:24 PM same day (3 hours later)
- Immediate demand to withdraw eviction

38. This timeline establishes retaliatory filing and forum shopping.

VI. PLAINTIFF'S CITED CASES SUPPORT DEFENDANT

39. **Vernon v. Schuster** requires affirmative defenses to contain factual allegations. Defendant's defenses contain extensive factual allegations.

40. **International Insurance** allows defenses that would defeat or mitigate claims. That is exactly what Defendant pleads.

41. **Performance Food Group** permits detailed defenses demonstrating application to case facts. That is precisely what Defendant provided.

42. **Maniez v. Citibank** struck only conclusory defenses lacking factual support. That is unlike Defendant's fact-laden defenses.

VII. THE MOTION IS PROCEDURALLY IMPROPER

43. Plaintiff seeks to strike defenses while:

- Defending fabricated evidence (Exhibit B)
- Violating discovery obligations
- Refusing court-ordered conferences
- Accumulating \$166.67 daily in holdover damages

44. Most critically, Plaintiff requests in his prayer for relief to "Stay Plaintiff's obligation to respond to Defendant's Complaint" (Paragraph D). Plaintiff never filed an Answer to Defendant's Counterclaim, which was due 30 days after June 23, 2025. Plaintiff cannot now seek to stay an obligation he already violated over 60 days later. He had access to all of Defendant's evidence in early July for the eviction case and still failed to answer.

45. Illinois law does not permit a party to challenge pleadings while simultaneously violating court orders and discovery rules. *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112 (1998).

VIII. SANCTIONS ARE WARRANTED

46. This Motion contains demonstrable falsehoods warranting sanctions under Supreme Court Rule 137:

- False timeline allegations (paragraphs 11-14)
- False procedural history (paragraph 15)
- Mischaracterization of parties' positions
- Pursuit of frivolous motion while violating discovery obligations
- Strategic delay tactics to avoid answering counterclaim

47. The pattern of misrepresentation is now undeniable:

- **Exhibit B:** Fabricated with entries through May 2025 after January 30, 2025 access revocation
- **Vehicle lie:** \$47,123.45 Ford Mustang falsely claimed as \$18,000 Toyota Prius
- **Two contradictory sworn responses:** Signed versions from August 13 and August 28 with material differences (contractor exists vs. doesn't exist)
- **Unsigned version deception:** August 28 at 4:55 PM version sent as complete despite lacking signature
- **Concealed rental income:** Texts prove "regular rent" while claiming owner-occupancy
- **Spoliation of evidence:** No texts after March 10, concealing April 15 "f*cking monster" text
- **False representation to Court:** Counsel claimed August 29 in court that "there are no more documents" when extensive discovery remains missing

48. When confronted with these deficiencies during the August 21 conference, Attorney Cole requested 14 additional days despite already being 28 days late. The Court granted only 7 days, yet Plaintiff still failed to produce court-ordered documents. Today's

suggestion that Defendant should depose Plaintiff to obtain documents that must exist in Plaintiff's possession shows continued bad faith. This systematic fabrication of evidence and obstruction of discovery demonstrates litigation tactics warranting maximum sanctions.

IX. CONCLUSION

49. Plaintiff's Motion fails because:

- Each affirmative defense contains extensive factual allegations now proven by discovery
- The defenses state legally recognized bars to relief
- Plaintiff's own discovery confirms every allegation in Defendant's defenses
- The Motion contains multiple false statements
- Plaintiff seeks relief while violating court orders and failing to answer counterclaim
- The Court today recognized Plaintiff's discovery violations by directing Defendant to file a Motion to Compel

50. The discovery produced after this Motion was filed devastatingly confirms Defendant's defenses: Plaintiff collected "regular rent" while claiming ownership intent, spent \$47,123.45 on a luxury vehicle with funds meant for property purchase, fabricated evidence with temporally impossible entries, and filed two contradictory sworn discovery responses with an unsigned version deceptively sent as complete. Even after a Court order to produce complete discovery by August 28, and counsel's representation today that "there are no more documents," critical documents remain missing. A party cannot

strike defenses about misconduct while the discovery proves that exact misconduct and while actively withholding evidence.

51. Counsel's suggestion today that Defendant should depose Plaintiff rather than receive documents is particularly troubling. Plaintiff has already provided multiple contradictory sworn statements. Allowing him to now "clarify" his testimony through deposition would reward his pattern of fabrication and impose unnecessary costs on Defendant. The documents either exist or they don't. If they exist, they must be produced. If they don't exist, Plaintiff must say so under oath and face the consequences of spoliation.

WHEREFORE, Defendant respectfully requests this Court:

- A. **DENY** Plaintiff's Motion to Strike in its entirety;
- B. **FIND** that Defendant's affirmative defenses are properly pleaded and proven by Plaintiff's own discovery;
- C. **DENY** Plaintiff's request to stay his obligation to respond to Defendant's Counterclaim as he is already in default for failing to answer within 30 days;
- D. **STRIKE** Plaintiff's Exhibit B as fabricated evidence containing impossible post-January 30, 2025 entries;
- E. **ENTER** adverse inferences for Plaintiff's spoliation of evidence (missing texts after March 10, 2025 and 14 months of bank statements);

F. **SANCTION** Plaintiff and counsel for false statements in the Motion and discovery responses pursuant to Rule 137;

G. **AWARD** Defendant his costs and fees incurred in defending this frivolous motion and pursuing the Motion to Compel directed by the Court;

H. **GRANT** any other relief this Court deems just and proper.

RESPECTFULLY SUBMITTED,

/s/ Brandon McGivern

Brandon McGivern, Defendant

Brandon McGivern, Pro Se
5701 N Sheridan Rd #23G
Chicago, IL 60660
Phone: [REDACTED]
Email: [REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response was served upon Plaintiff's counsel by email to mcole@colesadkin.com on August 29, 2025.

/s/ Brandon McGivern

Brandon McGivern, Pro Se
