

2. On July 21, 2025, Plaintiff secured a default judgment for possession after alleging that Defendant failed to appear for trial. Defendant promptly moved to vacate that default, and his Motion to Vacate is now fully briefed and under advisement by this Court. The outcome of that motion is critical because it will determine whether Defendant is entitled to defend the eviction action on the merits and whether the July 21 judgment should be set aside.

3. On August 14, 2025, during the hearing on Defendant's Motion to Vacate, Plaintiff made an oral motion for use and occupancy. This Court granted the motion in limited form, entering an order that "Plaintiff's oral motion for use and occupancy is granted." Importantly, the August 14 order did not establish any dollar amount, did not impose retroactive arrears, and did not specify terms of payment. Rather, it merely preserved Plaintiff's ability to accept payments without waiver of his right to pursue possession, a narrow and equitable safeguard recognized under Illinois law.

4. Despite the limited nature of that ruling, Plaintiff subsequently filed an "Emergency Motion for Entry of Use and Occupancy Payment Terms." In that motion, Plaintiff demanded \$7,750 in alleged arrears within 48 hours and \$2,500 monthly going forward, and has elsewhere suggested monthly sums exceeding \$5,000. These figures are untethered to any historic rental arrangement, which Plaintiff himself has previously claimed was approximately \$2,050, and are premised instead on selective market comparables and Plaintiff's asserted financial hardship.

5. Defendant has consistently maintained that he is not a tenant and owes no rent. His payments into the property, totaling more than \$30,000 plus additional capital improvements, were made in reliance on the parties' verbal purchase agreement and are the subject of the

pending Chancery litigation. Defendant does not contest that any use and occupancy payments accepted by Plaintiff would not waive Plaintiff's possession claim; however, Defendant vigorously contests any attempt to impose mandatory rent obligations while his Motion to Vacate remains unresolved and while the Chancery Division is actively adjudicating ownership.

ARGUMENT

I. Plaintiff's Motion Improperly Expands the August 14 Order

6. The Court's order of August 14, 2025, granted Plaintiff's oral request for "use and occupancy" in the narrowest sense. That order did not fix a dollar amount, impose a payment schedule, or award arrearages. Instead, it functioned only as a procedural safeguard: it allowed Plaintiff to accept any payments Defendant might tender, without waiving his right to pursue possession.

7. By contrast, Plaintiff's emergency motion seeks to convert that limited ruling into a full-blown rental obligation, demanding \$7,750 in alleged arrears within 48 hours and \$2,500 per month thereafter. In other filings, Plaintiff has floated figures exceeding \$5,000. Such relief is not only beyond the scope of the August 14 order but effectively amounts to an improper money judgment entered without trial.

8. Illinois courts caution against expanding U&O orders beyond their equitable purpose. In *Circle Management, LLC v. Olivier*, 378 Ill. App. 3d 601, 882 N.E.2d 129 (1st Dist. 2007) the court emphasized that U&O does not create contractual obligations or constitute a lease; rather, it is a narrow equitable remedy to prevent unjust enrichment. Plaintiff's motion here improperly transforms a procedural device into a punitive obligation.

9. Plaintiff also seeks retroactive payments dating back months before the August 14 order. Yet Illinois law is clear that U&O orders are prospective, not retrospective, absent express statutory authority. See *City of Chicago v. American National Bank & Trust Co.*, 171 Ill. App. 3d 680, 688 (1st Dist. 1988). Plaintiff's request for back-dated payments therefore exceeds the Court's equitable powers.

10. In short, Plaintiff's emergency motion overreaches by attempting to rewrite the August 14 order. The Court should reject this effort to bootstrap a neutral procedural order into a damages award, especially while Defendant's Motion to Vacate remains pending.

II. Defendant Has Consistently Contested Tenancy

11. From the outset of this litigation, Defendant has denied the existence of a landlord-tenant relationship. His occupancy of the Winthrop property arises from a verbal purchase agreement and substantial payments toward equity and improvements, all of which are now before the Chancery Division in Case No. 25-CH-05527. These facts distinguish this matter from a typical rental dispute.

12. Illinois courts have consistently held that payment of use and occupancy does not create or concede a tenancy. In *Yarc v. American Hospital Supply Corp.*, 17 Ill. App. 3d 667, 671 (1st Dist. 1974), the court emphasized that U&O is merely a method to balance equities during litigation.

13. Even where courts impose U&O, they are careful to clarify that compliance is not an admission of tenancy. Defendant's position remains consistent: any payment made under a U&O order would be compelled by court directive, not voluntary rent.

14. Plaintiff cannot conflate U&O compliance with proof of tenancy. To do so would collapse the distinction Illinois law draws between equitable remedies and substantive contract rights. Defendant's equitable ownership claims in chancery remain fully intact, and nothing in the eviction case should prejudice those claims.

15. Accordingly, even if this Court were inclined to set prospective U&O terms, it should be explicit that such payments do not establish tenancy or waive Defendant's equitable rights.

III. Plaintiff's Demand Is Unreasonable

16. Plaintiff's emergency motion demands \$2,500 monthly and \$7,750 in arrears, while elsewhere asserting that Defendant should pay upwards of \$5,000 per month. Yet Plaintiff previously represented that the rent was approximately \$2,050. This inconsistency reveals that Plaintiff's figures are opportunistic, not grounded in history or contract.

17. Courts require that U&O awards be tied to reasonable value, not inflated speculation. See *First National Bank of Evergreen Park v. Chrysler Realty Corp.*, 168 Ill. App. 3d 784, 791 (1st Dist. 1988). Plaintiff's comparables, which include larger units and dissimilar buildings, cannot justify tripling the alleged rate.

18. Defendant disputes any obligation to pay rent at all, as his payments were made toward purchase, not tenancy. But even assuming *arguendo* that U&O were appropriate, it must be limited to fair market value supported by reliable evidence. Inflated demands designed to punish Defendant or recoup claimed damages fall outside the equitable purpose of U&O.

19. Plaintiff also seeks retroactive payments dating back months, despite the August 14 order being silent on arrears. Illinois courts do not generally impose retrospective financial obligations unless the court order explicitly allows it. See *In re Marriage of Rees*, 2014 IL App (5th) 130263-U, where the Appellate Court upheld enforcement only of arrearages clearly addressed in a prior consent judgment, not retroactive support imposed without express court approval. Plaintiff's request is therefore both factually unfounded and legally impermissible.

20. For these reasons, Plaintiff's proposed figures are unreasonable, unsupported, and inconsistent with Illinois law governing U&O awards.

IV. Pending Chancery Action Supersedes

21. Defendant's chancery case, *Hadley v. McGivern*, Case No. 25-CH-05527, addresses whether Defendant has equitable ownership rights in the property. That action seeks constructive trust, specific performance, and equitable remedies arising from a purchase agreement. The outcome of that case will directly determine whether any rent is owed.

22. By General Order, Cook County assigns equitable cases to its Chancery Division. Claims seeking constructive trust and specific performance are classic equitable remedies appropriately heard in Chancery. See *Daniels v. Anderson*, 162 Ill. 2d 47, 642 N.E.2d 128 (1994). The Municipal Division, by contrast, is limited to adjudicating possession and cannot resolve equitable title.

23. To impose rental terms in this eviction case would risk prejudging ownership issues squarely before Chancery. Courts avoid such inconsistent rulings by deferring to chancery proceedings.

24. Defendant’s Motion to Vacate the July 21 default remains pending. Until the Court determines whether Defendant may defend the eviction action, there is no basis to impose U&O obligations. The more prudent course is to await resolution of the Chancery case, which will decide the parties’ substantive rights.

25. This Court should therefore deny Plaintiff’s emergency motion or, at minimum, clarify that the eviction proceeding will not be used to impose rent obligations that undermine the ongoing Chancery litigation.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests this Court:

- A. Deny Plaintiff’s Emergency Motion for Entry of Use & Occupancy Payment Terms;
- B. Alternatively, clarify that the August 14, 2025 order does not mandate rent but simply preserves Plaintiff’s rights if voluntary payments are made;
- C. Confirm that any use and occupancy compliance does not waive or prejudice Defendant’s equitable claims in *Hadley v. McGivern*, 25-CH-05527; and
- D. Grant such other and further relief as this Court deems just and proper.

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Respectfully submitted,

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