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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION**

KYLE HADLEY,

Plaintiff,

v.

BRANDON MCGIVERN,

Defendant.

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Case No. 2025-CH-05527
Judge Eve M. Reilly
Courtroom 2405

**PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANT’S MOTION TO STRIKE
UNTIMELY ANSWER**

NOW COMES Plaintiff, KYLE HADLEY (“Plaintiff”), by and through his undersigned counsel, Cole Sadkin, LLC, and for his Response in Opposition to Defendant BRANDON MCGIVERN’s (“Defendant”) Motion to Strike Plaintiff’s Answer to Defendant’s Counterclaims as Untimely, states as follows:

I. INTRODUCTION

1. Defendant’s Motion to Strike is procedurally baseless and factually inaccurate. It seeks to erase a verified pleading that fully joins the issues, causes no prejudice, and has been accepted on the record for over a week. The filing of a responsive pleading, even if marginally delayed, does not justify striking it when the Court and all parties are proceeding on a clear and active record.

2. Plaintiff filed his Answer to Counterclaims on October 8, 2025, well before any dispositive ruling, while Defendant had already engaged in extensive overlapping motion practice. The Answer is complete and substantively responsive. This timely participation

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demonstrates continuous good faith defense and compliance with the Illinois Code of Civil Procedure, not neglect or disregard for deadlines.

3. Illinois courts disfavor striking pleadings for purely technical delay, especially where the moving party has been filing simultaneous motions that suspend or obscure procedural deadlines. Equity favors decisions on the merits. To strike Plaintiff's Answer under these circumstances would elevate procedural formalism over fairness and directly contradict Illinois' long-standing policy of resolving disputes on their substantive merits.

4. Defendant's motion is internally inconsistent with his own filings—particularly his Motion for Judgment on the Pleadings, which presupposes that the pleadings are closed and that both parties have filed operative responses. He cannot simultaneously claim the record is complete enough for judgment and incomplete enough for striking. Such contradictory procedural positions undermine the integrity of the process and reflect tactical gamesmanship rather than any legitimate procedural concern.

5. In truth, Defendant's barrage of motions—including five filed within the same thirty-day period—has created the procedural congestion he now invokes. This Motion to Strike is yet another attempt to multiply filings and delay substantive resolution. The Court should reject this approach and instead reaffirm that litigants who actively plead and participate are entitled to have their cases decided on the merits, not dismissed on manufactured procedural grounds.

II. LEGAL STANDARD

8. A motion to strike a responsive pleading is an extraordinary remedy that Illinois courts apply sparingly. Under 735 ILCS 5/2-615 and Supreme Court Rule 183, courts retain broad discretion to permit late or amended pleadings “on just and reasonable terms,” and such discretion must be exercised liberally in favor of allowing cases to proceed on their merits. Illinois precedent consistently holds that where a party has appeared, participated, or otherwise defended, minor procedural delays do not justify striking a responsive pleading. *See City of Joliet v. Szayna*, 2016 IL App (3d) 150092 47¹; *In re Haley D.*, 2011 IL 110886 69.

9. The moving party bears a heavy burden to show actual prejudice before a court may strike a pleading as untimely. Courts have repeatedly rejected motions to strike where no harm results and where the challenged filing assists in clarifying the issues. *See Venema v. Venema*, 74 Ill. App. 3d 416 (1979)². Even where delay is conceded, Illinois courts emphasize that “substance should prevail over form,” and that striking a verified Answer is improper absent a showing that the delay impaired the opposing party’s ability to respond or the Court’s ability to manage its docket. *Id.*

10. This high threshold reflects the judiciary’s preference for a complete record. A responsive pleading—particularly one that fully answers a counterclaim—advances judicial economy by narrowing disputes and focusing discovery. Striking such a filing serves no practical

¹“An ex parte judgment is entered where a party has appeared and filed an answer but fails to attend trial. The procedure for entry of an ex parte judgment is to hold a trial in the party’s absence and require the opposing party to present evidence to prove their claim. By contrast, a default judgment is entered where a party has failed to appear and file an answer to the complaint. *Id.* Where a party has not answered, there are no factual issues raised, and a trial court has the discretion to enter default judgment without an evidentiary hearing”. (citations omitted) *City of Joliet* IL App (3d) at 47.

²“On the other hand, “[i]t is a fundamental principle of law that judgments by default are not encouraged and should be employed only as a last resort.” (citations omitted). *Venema*, 74 Ill. at 418.

purpose, increases motion practice, and deprives the Court of the full context necessary for equitable adjudication. Accordingly, when the pleadings are now complete and no prejudice has been shown, the Court should exercise its discretion to deny a motion to strike and allow the matter to proceed on the merits.

IV. ARGUMENT

A. Plaintiff's Answer Properly Joined the Issues and Cured Any Procedural Deficiency

17. Plaintiff's October 8, 2025 Answer fully and directly responded to each of Defendant's counterclaims, thereby joining the issues as required by 735 ILCS 5/2-602. Illinois courts routinely hold that once an Answer is filed—regardless of slight delay—the issues are joined, and striking the pleading serves no purpose. See *Barnes v. Black & Decker Mfg. Co.*, 135 Ill. App. 3d 700, 90 Ill. Dec. 289, 481 N.E.2d 1200 (1984)³

18. Even assuming arguendo that the Answer was filed outside the technical thirty-day window, Illinois courts emphasize that delay alone does not justify striking a responsive pleading. The purpose of the procedural rules is to facilitate—not frustrate—the resolution of disputes. Because Defendant can point to no prejudice, and because the case continues to advance in discovery and motion practice, any perceived lateness has been cured.

19. Moreover, Defendant's own participation in subsequent motions confirms that he has treated the Answer as operative and has not been misled or disadvantaged by its timing.

³ "...because the courts consider the striking of a party's pleadings the most severe sanction, such sanction is only proper in those cases where the actions of a party show a deliberate, contumacious, or unwarranted disregard for the court's authority." *Barnes*, 135 Ill. at 709.

Where both parties proceed with litigation as though the pleadings are complete, the Court properly deems them closed. *See Venema*, 74 Ill. App. 3d at 420. Plaintiff's Answer thus validly joined the issues, and the Motion to Strike should be denied.

B. Defendant's Simultaneous Motions Demonstrate That the Pleadings Are Properly Closed

20. Defendant's Motion for Judgment on the Pleadings, filed nearly contemporaneously with this Motion to Strike, confirms that the pleadings are complete. Under 735 ILCS 5/2-615(e), such a motion is proper only when the pleadings are closed, which necessarily requires an Answer on file. Defendant's reliance on that motion undermines the premise of the present one.

21. The inconsistency of Defendant's filings reveals the tactical nature of his procedural strategy. He alternately insists the case is ripe for judgment or incomplete for want of an Answer—whichever position momentarily advantages him. Illinois courts reject this type of procedural contradiction, recognizing that judicial efficiency requires consistency and candor. *See Parkway Bank & Tr. Co. v. Meseljevic*, 406 Ill. App. 3d 439 (2010)⁴.

22. Finally, Defendant's own motion sequence—five overlapping motions filed within thirty days—caused any procedural ambiguity that now exists. A litigant cannot manufacture confusion through over-filing and then demand sanction of the opposing party for navigating that confusion. Plaintiff acted diligently and transparently in filing his Answer, and the Court should decline to reward Defendant's procedural gamesmanship.

⁴ "...although it was within the court's discretion to strike the untimely filing, it was also within the court's discretion to allow it. Once [plaintiff] objected to the untimely response, the court was required to exercise its discretion to determine whether it should grant [defendant] leave to file the untimely response". *Parkway*, 406 Ill. App. 3d. At 439

C. No Prejudice Exists, and Equity Favors Resolution on the Merits

23. Defendant identifies no prejudice from Plaintiff's Answer, and none exists. The filing did not delay hearings, alter briefing schedules, or impede discovery. Rather, it advanced the case by clarifying factual disputes and allowing both parties to focus discovery on the real issues.

24. Illinois law strongly disfavors dismissing or striking responsive pleadings where the record benefits from a complete response. See *Nationstar Mortg. LLC v. Shimko*, 2016 IL App (3d) 160035-U.⁵ Courts consistently emphasize that the public interest and judicial economy are best served when disputes are resolved on their merits instead of on procedural defaults. The presence of Plaintiff's verified Answer aids that objective by ensuring all allegations are joined for adjudication.

25. Equity therefore compels denial of the Motion to Strike. Plaintiff has acted diligently and in good faith throughout, while Defendant seeks tactical advantage through technicalities. With no showing of prejudice and the pleadings now fully joined, the Court should deny Defendant's Motion in its entirety and allow this matter to proceed to resolution on the merits.

V. CONCLUSION

20. Defendant's Motion to Strike Plaintiff's Answer as Untimely is unsupported by the record, inconsistent with his own prior motions, and contrary to Illinois' preference for

⁵ “[defendants] filed a motion to strike [plaintiff’s] motion, claiming [plaintiff’s] motion was untimely pursuant to Illinois Supreme Court Rule 182 (eff. Jan. 1, 1967) and Rule 183 (eff. Feb. 16, 2011). On June 17, 2015, the trial court denied [defendants’] motion and granted [plaintiff’s] motion to strike and dismiss affirmative defenses with prejudice. The trial court determined that [plaintiffs] provided *prima facie* evidence to prove it had standing to bring its claim before the court pursuant to the Illinois Mortgage Foreclosure Law.” *Nationstar*, 2016 IL App (3d) at 6.

adjudication on the merits. Plaintiff's October 8 Answer joined the issues and completed the pleadings. Because no prejudice exists and the record benefits from a full and complete response, equity and judicial economy both weigh against striking the Answer.

21. In light of the extensive procedural history, Defendant's inconsistent positions, and the absence of any prejudice, entry of default would be contrary to both equity and Illinois law. Plaintiff respectfully requests that this Court deny Defendant's Motion to Strike Plaintiff's Answer to Defendant's Counterclaim in its entirety and grant such further relief as the Court deems just and proper.

Dated: October 21, 2025

Respectfully Submitted,

By: /s/Mason Cole
Attorney for Plaintiff

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