

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, MUNICIPAL DIVISION**

BRANDON MCGIVERN,)		
)		
<i>Plaintiff,</i>)		
)		
v.)	Case No.	2025-M1-707919
)		
KYLE HADLEY,)	Judge	Brian Porter
)		
<i>Defendant.</i>)	Courtroom	1402

**PLAINTIFF’S REPLY IN SUPPORT OF MOTION TO VACATE DEFAULT
JUDGMENT AND ORDER FOR POSSESSION**

Defendant, Kyle Hadley, by his attorney, Mason Cole of Cole Sadkin, LLC, respectfully submits this Reply in further support of his Motion to Vacate the default judgment and order for possession entered on July 21, 2025. Plaintiff’s opposition misstates both the law and the facts. Vacatur is appropriate under 735 ILCS 5/2-1301(e) in the interest of substantial justice.

I. The Trial Date Was Stricken by the Court on June 26, 2025

1. Plaintiff’s central premise—that the July 21 trial date remained active—is contradicted by the record. At the June 26 hearing, Judge Porter clearly ruled that the trial was off-calendar and the eviction matter would be stayed pending resolution of Defendant’s Chancery case.

2. Although the written order issued that day omitted the language striking the trial date, it is well-established that a court’s oral pronouncement controls in the event of inconsistency. See *People v. Smith*, 242 Ill. App. 3d 399, 609 N.E.2d 1004 (4th Dist. 1993).

3. Defendant's counsel acted in good faith in relying on that oral ruling. At no point did the court, Plaintiff, or the Clerk advise that a trial remained set for July 21.

4. The oversight, if any, stemmed from a breakdown in procedural clarity—not bad faith or willful disregard. Plaintiff's emphasis on a clerical omission in the written order should not result in forfeiture of Defendant's substantive rights.

5. The resulting default was a product of excusable neglect, not intentional delay, and provides a textbook case for vacatur under Section 2-1301(e).

II. Defendant Acted Promptly and in Good Faith

6. Defendant filed his Motion to Vacate on July 24—less than 72 hours after learning of the default. This is well within the time frame routinely accepted by Illinois courts evaluating diligence under Section 2-1301(e).

7. Plaintiff's suggestion of delay is belied by Defendant's active litigation posture: counsel had appeared, filed a substantive motion to dismiss, and engaged in communication regarding proposed orders.

8. Plaintiff's attempt to transform a routine procedural disagreement into an ethical violation is meritless. Defendant's counsel submitted competing proposed orders transparently, in line with the court's invitation to do so.

9. At no point did Defendant's counsel purport to submit an agreed order, nor did he obscure the fact that the parties disagreed on the trial setting outcome. These were clearly bracketed issues for the Court to resolve.

10. The record reflects nothing more than reasonable procedural confusion following a contested hearing. That cannot serve as a basis to penalize Defendant with judgment and possession.

III. Defendant Has a Meritorious Defense Based on an Ownership Interest

11. The threshold dispute between the parties is one of ownership, not tenancy. Plaintiff accepted a \$30,000 down payment in May 2023, and Defendant took possession and invested thousands of dollars in improvements.

12. Defendant's Chancery Complaint (Case No. 2025-CH-03115) seeks declaratory title based on equitable interest—relief that can only be granted in equity and cannot be resolved in summary eviction court.

13. Courts consistently hold that eviction actions must yield to pending Chancery proceedings where ownership is in dispute. See *Fannie Mae v. Sullivan*, 2012 IL App (1st) 112070-U.

14. The existence of that parallel action, involving identical parties and the same property, weighs strongly in favor of vacatur and coordinated adjudication in the appropriate forum.

15. Defendant's ownership claim is far from frivolous and would constitute a complete defense to Plaintiff's summary possession claim.

IV. Vacatur Serves the Interests of Justice

16. Section 2-1301(e) provides for liberal relief from default judgments before final order, especially where a meritorious defense exists and the movant acts diligently.

17. The law strongly favors resolving cases on the merits. See *Young v. Wieland (In re Estate of Young)*, 2020 IL App (2d) 190392, 150 N.E.3d 170. That principle is especially applicable where property interests are at stake.

18. Plaintiff will suffer no prejudice if the default is vacated. Defendant remains in possession, and the parties' rights are already being litigated in a more appropriate forum.

19. Conversely, enforcement of the default judgment would wrongfully deprive Defendant of his property interest without meaningful judicial review.

20. Vacating the July 21 judgment is not only procedurally appropriate—it is required to avoid substantial injustice.

Date: July 30, 2025

Respectfully submitted,
/s/ Mason Cole

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