

FILED
11/6/2025 7:41 PM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
2025CH05527
Calendar, 7
35255958

**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

FILED DATE: 11/6/2025 7:41 PM 2025CH05527

**DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR DEFAULT
JUDGMENT ON COUNTERCLAIMS**

NOW COMES Defendant, BRANDON MCGIVERN, pro se, and for his Reply in Support of Motion for Default Judgment on Counterclaims, states:

**I. PLAINTIFF'S OCTOBER 8 ANSWER CANNOT CURE HIS 107-DAY
DEFAULT**

1. Plaintiff's Opposition fundamentally misunderstands Illinois law: **once a motion for default judgment is filed, a defendant cannot cure the default by filing a late answer.** *Jackson v. Graham*, 323 Ill. App. 3d 766, 773 (2d Dist. 2001). The proper procedure requires: (a) filing a motion to vacate default under 735 ILCS 5/2-1301; (b) demonstrating good cause for the delay; and (c) filing an answer only if the motion to vacate is granted. *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1021 (2d Dist. 2006).

2. Plaintiff has done none of these. Instead, he filed his answer one day after Defendant's default motion, 107 days after the deadline. This procedural violation cannot

be cured by his counsel's creative arguments about "active litigation" or "constantly moving targets."

II. PLAINTIFF'S "ACTIVE LITIGATION" ARGUMENT PROVES STRATEGIC DEFAULT

3. Plaintiff's Opposition inadvertently proves Defendant's case. By detailing Plaintiff's extensive litigation activities, filing nine separate motions, three sets of discovery responses, and opposition briefs to every motion, Plaintiff demonstrates he **deliberately ignored the counterclaims while vigorously pursuing everything else.**

4. Consider the timeline Plaintiff admits:

- July 8, 2025: Filed Motion to Strike Affirmative Defenses from the same document containing the counterclaims

- July-August 2025: Filed three sets of discovery responses

- August-September 2025: Filed opposition briefs to multiple motions

- October 7, 2025: Default motion filed

- October 8, 2025: Suddenly files answer, after 107 days of silence

5. This selective engagement proves strategic avoidance, not oversight. A party cannot cherry-pick which portions of a pleading to address while claiming confusion about deadlines.

III. THE "PROCEDURAL CONFUSION" DEFENSE IS CONTRADICTED BY THE RECORD

6. Plaintiff claims Defendant created "disarray through over-filing" (Opposition ¶16), yet the record shows:

(a) Defendant filed the first motion on May 29, 2025 to strike Exhibit B as

fabricated, a motion necessitated entirely by Plaintiff's submission of false evidence (which this Court granted on September 29)

(b) Plaintiff created the chaos by filing contradictory discovery responses, fabricating financial documents and admissions, and refusing to respond to legitimate requests until motions were filed; forcing Defendant to file multiple motions just to get truthful answers. Any procedural confusion stems entirely from Plaintiff's own misconduct.

(c) Plaintiff's counsel is Mason Cole, a named partner at Cole Sadkin LLC, not some junior associate unfamiliar with basic procedural deadlines. A law firm partner claiming confusion about counterclaim deadlines strains credulity. Counterclaim deadlines are universal: 30 days. Every Illinois lawyer knows this, it hasn't changed in decades.

7. The reality is stark: Defendant is a pro se litigant defending himself against a retaliatory lawsuit filed just 3 hours after serving an eviction notice. Despite facing a law firm, it's the pro se party following procedures while the experienced counsel claims "confusion" about deadlines.

8. No Illinois case excuses a represented party's 107-day delay because of "procedural volatility" they helped create. The cases Plaintiff cites, *In re Haley D.* and *Venema*, involved pro se parties or minor delays, not a represented party ignoring counterclaims for over three months while actively litigating everything else.

IV. PLAINTIFF CANNOT CLAIM "NO PREJUDICE" WHILE DEFAULTING

9. Plaintiff argues Defendant suffered no prejudice (Opposition ¶17), but this inverts the analysis. The prejudice from default is **presumed**; it is Plaintiff who must show good cause to vacate, which he hasn't even attempted. Moreover, Defendant has suffered concrete prejudice:

- (a) **Litigation costs**: Prosecuting counterclaims while Plaintiff refused to respond
- (b) **Strategic disadvantage**: Plaintiff avoided admissions that would damage his equity claims
- (c) **Delayed resolution**: 107 days of uncertainty about contested issues
- (d) **Judicial resources**: Multiple motions necessitated by Plaintiff's defaults

10. The Illinois Supreme Court recognizes that "prejudice to the judicial system" occurs when parties ignore deadlines. *People v. Shinaul*, 2017 IL 120162, ¶25.

V. PLAINTIFF'S CITED CASES SUPPORT DEFENDANT

11. Plaintiff's own authorities undermine his position:
- *City of Joliet v. Szayna*, 2016 IL App (3d) 150092: Held default proper where party "failed to file a timely answer" despite other participation
 - *Buck v. Culkin*, 2025 IL App (4th) 240283-U: Required showing of "excusable neglect" which Plaintiff hasn't attempted
 - *Hoddenpyl v. Fiskum* (Oregon case): Inapplicable Oregon law; Illinois requires stricter compliance

12. None of these cases permit a represented party to ignore counterclaims for 107 days while actively litigating other matters, then cure default by filing an answer after a default motion.

VI. THE COURT'S SEPTEMBER 29 FINDINGS AMPLIFY THE DEFAULT'S SIGNIFICANCE

13. This Court has already found Plaintiff fabricated evidence (September 29 Order granting motion to strike Exhibit B). A party who fabricates evidence, defaults on counterclaims, and only pays court-ordered Use & Occupancy after contempt motions are filed (Municipal Court, October 2025) cannot claim the equitable high ground. Plaintiff's default on counterclaims demonstrates not confusion, but calculated avoidance of accountability. His 107-day silence speaks louder than his counsel's after-the-fact explanations.

VII. CONCLUSION

14. Plaintiff's Opposition confirms what the record shows: a represented party deliberately ignored counterclaims for 107 days while aggressively litigating everything else. His improper attempt to cure default by filing an answer after Defendant's motion violates Illinois procedure. This is not merely a procedural technicality, it's part of a calculated pattern of avoiding accountability that undermines his entire equity claim. No amount of rhetoric can overcome these facts:

- (a) Counterclaims filed: June 23, 2025
- (b) Answer deadline: July 23, 2025
- (c) Default motion filed: October 7, 2025
- (d) Days in default: 107
- (e) Proper cure attempted: None

15. **Illinois law is clear:** Plaintiff's October 8 answer cannot cure his default. This Court should grant Defendant's motion and enter judgment on all five counterclaims.

WHEREFORE, Defendant respectfully requests this Court:

- (A) Strike Plaintiff's untimely October 8 answer as procedurally improper;
- (B) Enter default judgment on all five counterclaims totaling \$62,467.14 plus daily holdover damages;
- (C) Find Plaintiff liable for waste, unjust enrichment, conversion, and professional misconduct as admitted through default;
- (D) Award all costs and fees incurred in prosecuting these defaults;
- (E) Grant such other and further relief as 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



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Defendant's Reply in Support of Motion for Default Judgment on Counterclaims** was served upon Plaintiff's counsel by email to mcole@colesadkin.com on November 6, 2025.

/s/ Brandon McGivern
Brandon McGivern, Pro Se