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Mariyana T. Spyropoulos
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20251707919
Courtroom, 1402
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FILED DATE: 12/29/2025 11:27 AM 20251707919

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
FIRST DISTRICT, MUNICIPAL DIVISION

BRANDON MCGIVERN,	)	
	)	
Plaintiff,	)	
	)	Case No. **20251707919**
v.	)	
KYLE HADLEY,	)	Presiding Judge
	)	Courtroom 1301
Defendant.	)	
	)	

PLAINTIFF'S MOTION TO LIFT STAY,
SET EXPEDITED TRIAL, AND MODIFY USE & OCCUPANCY

Plaintiff Brandon McGivern, appearing pro se, respectfully moves this Court to (1) lift the stay imposed on September 16, 2025; (2) set this matter for expedited virtual trial as originally contemplated; and (3) increase Use & Occupancy payments to market rate. In support thereof, Plaintiff states:

I. PROCEDURAL BACKGROUND

1. On July 21, 2025, this Court entered default judgment in Plaintiff's favor after Defendant failed to appear for trial. Judge Brian Porter indicated that in the event Defendant filed a motion to vacate, Plaintiff would receive an expedited virtual trial, given that Plaintiff had traveled internationally to appear for the scheduled trial.

2. On September 16, 2025, this Court granted Defendant's Motion to Vacate and stayed this eviction action "pending the outcome of 25CH05527" (the related Chancery case).

3. On December 8, 2025, Plaintiff's Motion for Substitution of Judge was granted, and this case was transferred to the Presiding Judge, First Municipal District, for reassignment.

4. On December 22, 2025, the Chancery Division issued a comprehensive order that substantially resolves the Chancery case in Plaintiff's favor.

II. THE OWNERSHIP DISPUTE HAS BEEN RESOLVED IN PLAINTIFF'S FAVOR

5. The December 22, 2025 Order in Case No. 2025-CH-05527 (attached as Exhibit A) eliminated the only basis for the stay, Defendant's claimed ownership interest in the property:

A. Defendant's Ownership Claims Dismissed: The Court, *sua sponte*, dismissed with prejudice Count III (Constructive Trust) and Count IV (Injunctive Relief) of Defendant's Chancery Complaint, finding they "do not state valid causes of action." These were the ONLY claims asserting Defendant had an equitable ownership interest in the property or seeking to prevent Plaintiff from exercising his rights as owner.

B. Only Money Disputes Remain: Defendant's remaining claims (Count I - Breach of Contract; Count II - Quantum Meruit) seek only monetary damages. Similarly, Plaintiff's counterclaims, on which default judgment was granted, seek monetary relief. These money disputes do not affect Plaintiff's right to possession and can proceed regardless of occupancy.

C. Default Judgment on Counterclaims: The Court granted Plaintiff's Motion for Default Judgment on Counterclaims, finding Defendant's answer was "filed late without leave of court." A prove-up hearing is set for January 26, 2026.

D. No Equitable Barrier to Eviction Remains: With Defendant's constructive trust and injunctive relief claims dismissed with prejudice, there is no remaining equitable claim that could affect Plaintiff's right to possession of his own property.

III. THE STAY SHOULD BE LIFTED

6. The stay was imposed on September 16, 2025 "pending the outcome of 25CH05527." The purpose of that stay was to preserve the status quo while Defendant's ownership claims were adjudicated. Those claims have now been dismissed with prejudice.

7. The remaining money disputes in the Chancery case, Defendant's Counts I and II seeking monetary damages, and Plaintiff's counterclaims set for prove-up, do not require Defendant to remain in possession of Plaintiff's property. Money judgments can be collected regardless of where a party resides. There is no legal basis to allow Defendant to continue occupying Plaintiff's property rent-free (or at below-market rates) while purely monetary claims are litigated.

8. Additionally, Defendant has demonstrated a pattern of contempt, paying Use & Occupancy late for four consecutive months (September through December), only after Plaintiff threatened contempt motions. This pattern of non-compliance further supports lifting the stay and proceeding to trial.

IV. USE & OCCUPANCY SHOULD BE INCREASED TO MARKET RATE

9. Defendant is currently paying $2,080/month in Use & Occupancy, far below market rate, while Plaintiff's monthly mortgage obligation is $2,303.69, guaranteeing Plaintiff's financial loss each month.

10. Illinois law provides that holdover tenants may be liable for market-rate rent. 735 ILCS 5/9-202. The property at 6122 N. Winthrop Ave., Unit C is a **fully furnished townhouse**. Comparable rental listings in the immediate area (attached as Exhibit B) demonstrate market rates for similar *unfurnished* 3-bedroom units:

- Nearest comparable (0.03 miles away, same street): $2,500/month
- Average of 14 comparable units within 1.7 miles: $3,259/month
- Range: $2,500 to $4,100/month
- All comparables are UNFURNISHED; furnished units typically command 20-30% premium

11. Defendant, a licensed real estate agent, is profiting from this arrangement by subletting portions of Plaintiff's property for $800-1,600/month while paying below-market Use & Occupancy. Using the average of comparable unfurnished units ($3,259/month) as a conservative baseline, without any furnished premium, this Court should increase Use & Occupancy to $3,259/month to reflect actual market value.

V. EXPEDITED VIRTUAL TRIAL SHOULD BE SCHEDULED

12. When Plaintiff won default judgment on July 21, 2025, Judge Porter indicated this matter would proceed to an expedited virtual trial. Nearly six months have passed. Plaintiff respectfully requests this Court schedule an expedited virtual bench trial at the earliest available date.

WHEREFORE, Plaintiff Brandon McGivern respectfully requests this Court enter an Order:

A. Lifting the stay imposed on September 16, 2025;

B. Scheduling this matter for expedited virtual bench trial;

C. Increasing Use & Occupancy from $2,080/month to $3,259/month;

D. Granting such other relief as this Court deems just and proper.

Dated December 29, 2025

Respectfully submitted,

/s/ Brandon McGivern

Plaintiff

Brandon McGivern
[redacted]
Plaintiff, Pro Se

CERTIFICATE OF SERVICE

I, Brandon McGivern, a non-attorney, on oath state that on December 29, 2025, I served a copy of the foregoing **Motion to Lift Stay, Set Expedited Trial, and Modify Use & Occupancy** via email to:

Mason S. Cole
mcole@colesadkin.com
Attorney for Defendant Kyle Hadley

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth in this instrument are true and correct.

/s/ Brandon McGivern
Brandon McGivern, *Pro Se*

EXHIBIT A

December 22, 2025 Court Order

Case No. 2025-CH-05527 Chancery Division, Circuit Court of Cook County

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

Kyle Hadley,
Plaintiff(s),

v.

Brandon McGivern,
Defendant(s).

Case No: 2025CH05527
Calendar 7

ORDER

THIS MATTER coming before the Court for oral argument on five fully briefed motions: (1) Defendant's Motion for Judgment on the Pleadings; (2) Defendant's Motion to Compel Complete Discovery Responses and for Sanctions; (3) Defendant's Motion for Entry of Order Specifying Rule 137 Sanctions; (4) Defendant's Motion for Default Judgment on Counterclaims; and (5) Defendant's Motion to Strike Plaintiff's Untimely Answer to Counterclaims, the Court being fully advised on the matter. It is hereby ordered:

1. Defendant's Motion for Judgment on the Pleadings is DENIED. Even in consideration of the admissions contained within Plaintiff's Responses to the Request to Admit, there remains a question of material fact as to whether there was partial performance of the oral agreement by Plaintiff as an exception to the Statute of Frauds.

2. However, the Court, *sua sponte*, dismisses Counts III (Constructive Trust) and IV (Injunctive Relief) of Plaintiff's Complaint with prejudice as they are remedies and do not state valid causes of action. Similarly, Counts IV (Holdover Tenancy Damages) and V (Attorneys' Fees and Costs) of the Counterclaim are also dismissed, *sua sponte,* with prejudice as they also do not state valid causes of action.

3. Defendant's Motion for Entry of Rule 137 Sanctions is DENIED because the Court already issued a sanction in the form of deeming facts admitted.

4. As to Defendant's Motion to Compel, the Motion is granted, in part, as follows:

    a. Plaintiff shall produce the missing Bank of America Statements for January 2023 – July 2023, October 2023 – December 2023, August 2024 – September 2024, and June 2025 – July 2025.

    b. Plaintiff shall also produce legible copies of the Venmo Statements as they are currently illegible.

    c. All objections contained within Plaintiff's Responses to written discovery requests are overruled. However, it appears that responses were provided over objection and were sufficient notwithstanding those in need of supplementation as specified herein.

5. Defendant's Motion to Compel is DENIED, in part, as to Interrogatory #5. Further, the Court declines to enter sanctions relating to this Motion to Compel.

6. All of Plaintiff's supplemental discovery production shall be completed by or before January 20, 2026.

7. Defendant's Motion to Strike the Answer to the Counterclaims as untimely is GRANTED as it was filed late without leave of court. As such, Defendant's Motion for Default Judgment on the Counterclaims is GRANTED.

8. This matter is set for prove-up on the remaining counterclaims for January 26, 2026 at 10:00 a.m. via Zoom Teleconference (Meeting ID: 943 7767 4389; Passcode; 980847; Dial-in: (312) 626-6799).

Judge Eve M. Reilly
DEC 22 2025
Circuit Court-2122

Entered:
ER 2122

Judge Eve M. Reilly

EXHIBIT B

Comparable Rental Listings

3-Bedroom Units Near 6122 N. Winthrop Ave., Unit C

Chicago, IL 60660

Comparable Rental Listings

3-Bedroom Units Near 6122 N. Winthrop Ave., Unit C, Chicago, IL 60660

Subject Property: 6122 N. Winthrop Ave., Unit C – Fully Furnished 3BR/2.5BA, 1,800 sq ft, Townhouse with parking and in-unit laundry room.

Current Use & Occupancy: $2,080/month

Average Comparable Rent (Unfurnished): $3,259/month

Note: All comparable units listed below are UNFURNISHED. Furnished rentals typically command a 20-30% premium.

Address	Distance (mi)	Price	Size (sqft)	Bdrms	Baths	Property type	List date
6136 N Winthrop Ave Unit A, Chicago, IL 60660	0.03	$2,500	1,100	3	2ba	Townhouse	1/19/25
6044 N Winthrop Ave, Apt 208, Chicago, IL 60660	0.08	$3,146	-	3	3ba	Apartment	4/19/25
1062 W Glenlake Ave, Apt 2, Chicago, IL 60660	0.08	$2,895	1,250	3	2ba	House	11/26/24
6044 N Winthrop Ave, Apt 508, Chicago, IL 60660	0.08	$2,996	1,170	3	3ba	Apartment	4/17/25
6042 N Kenmore Ave, Apt 2, Chicago, IL 60660	0.1	$2,900	-	3	2ba	Condo	4/10/25
1258 W Hood Ave, Chicago, IL 60660, USA	0.28	$4,100	2,400	3	2.5ba	Apartment	5/12/24
1524 W Thorndale Ave, Chicago, IL 60660, USA	0.73	$3,100	1,900	3	2ba	Condo	11/6/24
1522 W Thorndale Ave, Chicago, IL 60660, USA	0.73	$2,900	1,900	3	2ba	Condo	11/6/24
6455 N Newgard Ave, Chicago, IL 60626	0.9	$3,100	1,350	3	2ba	Apartment	7/4/25
1149 W Farwell Ave, Chicago, IL 60626, USA	1.25	$3,400	2,050	3	2ba	Apartment	9/9/24
1472 W Summerdale Ave Unit 1F, Chicago, IL 60640	1.5	$4,095	-	3	2.5ba	Apartment	-
7008 N Sheridan Rd, Chicago, IL 60626, USA	1.56	$2,700	1,800	3	2ba	Apartment	8/17/24
1135 W Winona St, Chicago, IL 60640, USA	1.68	$4,000	1,846	3	3ba	Apartment	3/15/25
1420 W Winnemac Ave,Chicago, IL 60640	1.7	$3,800	-	3	2ba	Apartment	6/15/25

Source: Public rental listing data from Zillow, Apartments.com, and Redfin.