

No. 132383

IN THE
SUPREME COURT OF ILLINOIS

CHICAGO TITLE LAND TRUST COMPANY, AS SUCCESSOR TRUSTEE TO
AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS
TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 1, 1974, AS KNOWN AS
LAND TRUST # 32731,

Plaintiff-Appellant,

v.

SARA WATKIN, AS TRUSTEE OF THE SARA WATKIN 2000 REVOCABLE TRUST,

Defendant-Appellee.

On Petition for Leave to Appeal from the Appellate Court of Illinois
First Judicial District, No. 1-24-1354
There Heard on Appeal from the Circuit Court of Cook County, Illinois
County Department, Chancery Division, Case. No. 2023 CH 05985
The Honorable Allen Price Walker, Judge Presiding

BRIEF OF DEFENDANT-APPELLEE

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ISSUES PRESENTED FOR REVIEW¹

1. Does Defendant's mortgage lien survive statutorily?
2. Should 735 ILCS 5/13-116 be overturned and, if not, should this Honorable Court not enforce it as to Defendant's mortgage lien?
3. Does Defendant's mortgage lien survive under the common law?

STATEMENT OF FACTS

No payment was ever made under the Note. A024, ¶ 4; R, V1, C239, C267, C287. It was not released or forgiven. R, V1, C287.

Defendant did not argue below that her mortgage lien "remained separately enforceable pursuant to Section 13-116" (page 7).

ARGUMENT²

I. 735 ILCS 5/13-116 is clear and unambiguous, setting the lifespan of Defendant's mortgage lien at 20 years (or more, with extensions).

Under the clear and unambiguous language of 735 ILCS 5/13-116, Defendant's mortgage lien survives. With respect to this appeal, the statute provides that a mortgage lien that has not ceased by limitation before July 16, 1941 ceases by limitation after 20 years from the time the lien became due on its face. Here, the mortgage lien did not cease by limitation before July 16, 1941. While there is a bit of linguistic tension between the note and the mortgage as to repayment, the mortgage mentioning "monthly payments" (A115) and the note specifying "a lump sum payment of principal and accrued and unpaid

¹ Plaintiff improperly assumes as part of its second issue that the common law rule is that a mortgage is extinguished when the limitations period on a note expires and, further, as purported principles, that a mortgage lien ceases to be when the underlying claim/debt is no longer enforceable (judicially, presumably) and that 735 ILCS 5/13-116 is a statute of limitations (pages 2-3 of its opening brief).

² Defendant also objects to Plaintiff's improper adoption and incorporation into its brief of the arguments set forth in the Petition for Leave to Appeal and the rehearing petition (page 2).

interest” (A125), *both* documents clearly set forth a due date of June 24, 2012. Moreover, Plaintiff’s statement of facts focuses only on the note language in this regard (page 4).³ The note has not been paid, released, or forgiven. As such, the statute fixed the life of Defendant’s mortgage lien at 20 years (to June 24, 2032), with possible statutory extensions.

Try as it might, Plaintiff simply cannot get around the clear and unambiguous language of the statute. At the top of page 18, Plaintiff argues that, if the Illinois General Assembly had intended for the statute “to completely sever the mortgage from the note,” that the statute would so provide. There is no severance; a note and the mortgage securing it are inseparable. There is no severance as between a time-barred mortgage and the non-judicial enforceability of the underlying note. The appellate court did not interpret the statute “as a standalone loophole that allows a mortgage to outlive its note” (page 20). Defendant never argued below, nor does she argue here, that the statute creates a separate statute of limitations; to be clear, 735 ILCS 5/13-116 *does not* constitute a separate limitations period, as the appellate court explicitly elucidated in ¶ 33 of its opinion. *Chi. Title Land Trust Co. v. Watkin*, 2025 IL App. (1st) 241354 (A036-A037).

Plaintiff maintains on page 21, when discussing its view of the proper harmonization of 735 ILCS 5/13-206, 735 ILCS 5/13-115, and 735 ILCS 5/13-116, that Section 5/13-116 “imposes an outer limit on a lien’s existence against third parties absent a recorded affidavit or recorded extension agreement,” going on to state that the statute “does not confer vitality upon an expired mortgage lien once the enforcement of the

³ Even if there were no due date appearing on the face of the mortgage (or if the due date were not ascertainable), per 735 ILCS 5/13-116(a), Defendant’s lien would survive, pursuant to 735 ILCS 5/13-116(b), until June 24, 2041, 30 years from the date the mortgage was executed (with possible statutory extensions).

obligation that the mortgage secures has expired.” This assertion is belied by the clear and unambiguous language of the statute. 735 ILCS 5/13-116 establishes the lifespan of a mortgage lien, the expiration of which only occurs, absent a release, after 20 or 30 years (or more, with statutory extensions), the existence of which lien is not limited to third parties. In the instant case, the debt remains, so the note remains, as does the mortgage, as well as Defendant’s mortgage lien, consistent with 735 ILCS 5/13-116.

In its opinion, at ¶¶ 26-33 (A034-A037), the appellate court discussed *Livingston v. Meyers* (6 Ill. 2d 325 (Ill. 1955)) extensively, stating, in ¶ 31, that that decision “makes clear that section 13-116 operates to extinguish a mortgage lien 20 years after the maturity of the debt instrument unless the mortgagee takes affirmative action to extend the lien.” *Watkin*, 2025 IL App. (1st) 241354. The appellate court went on to note that, in light of the fact that both the 10-year statute of limitations and the 20-year period had both expired in *Livingston*, “if the expiration of the statute of limitations had extinguished the liens at issue, the supreme court could easily have rested its decision on that basis.” A036, ¶ 32.

Under Plaintiff’s strained interpretation of the statute, there could never be a situation where it comes into play. If, as Plaintiff contends, a mortgage is extinguished when the underlying debt becomes time-barred, a mortgage lien could never survive 20 years. There would be no point to the statute, which has been on the books (first as Section 11b of the Limitations Act) for nearly 85 years. If, as Plaintiff argues, a mortgage lien falls when, after 10 years, the underlying debt becomes time-barred and ergo unenforceable, a principle that Illinois has supposedly followed for over 150 years (page 11), why would the legislature enact a law setting the lifespan of a mortgage lien at 20 years? Why not 10 years? Why enact the statute in the first place?

On page 19, Plaintiff maintains that Section 5/13-116 is inapplicable, as no third-party purchaser is involved. There is no support for such a statement, which runs afoul of the statute.

“The primary goal of interpreting a statute is to ascertain and give effect to the intent of the legislature.” *People v. Reed*, 2025 IL 130595, ¶ 25 (citation omitted). “The best indicator of legislative intent is the statute’s language, given its plain and ordinary meaning.” *Id.* (citation omitted). Where a statute is unambiguous, its provisions are applied as written, without reference to extrinsic aids of statutory construction. *Id.* at ¶ 27 (citation omitted). The statute here is clear and unambiguous.

Further support for the proposition that 735 ILCS 5/13-116 sets the lifespan of a mortgage lien at 20 years (or more) can be found in *McCarthy v. Lowenthal*, 327 Ill.App. 166 (1st Dist. 1945) (page 168), *Zyks v. Bowen*, 351 Ill.App. 491 (1st Dist. 1953) (page 495), and *Palkey v. Donichy*, 18 Ill.App.2d 356 (1st Dist. 1958) (page 361).

II. The Court should not overturn the statute or decline to enforce it.

To get to where Plaintiff wants to be, namely, the reversal of the decision of the appellate court and the judgment of the trial court, this Court would have to overturn or decline to enforce 735 ILCS 5/13-116. Plaintiff does not ask that the Court do so, nor did it ask for such relief below. Regardless, given the clear and unambiguous language of 735 ILCS 5/13-116, this Court would have to overturn or decline to enforce the statute to reverse the decision of the appellate court and the judgment of the trial court.

However, the statute is not unconstitutional, nor is there any conflict between it and the other statutes at play in this appeal, or amongst the districts of our Illinois appellate court. On page 18, Plaintiff quotes *McCarthy v. Lowenthal*, 327 Ill. App. 166 (1st Dist.

1945), which court saw, as between the sections at issue, “no repugnancy.” 327 Ill. App. at 169.

Even if the Court determines that there is some level of incompatibility amongst the various statutes, it would not be proper for it to legislate in this regard. It is up to the Illinois General Assembly to change the statute if it is believed the statutes are not compatible, or that 735 ILCS 5/13-116 is unfair or even repugnant. The appropriate remedy would be for the legislature to change the statute as opposed to this Court legislating a perfectly clear and unambiguous statute.

If the statute or some portion thereof is overturned, if retroactive application would affect Defendant’s mortgage lien, such ruling should only be prospective.

Even if the Court were to overturn or decline to enforce the statute, the decision of the appellate court and the judgment of the trial court should not be disturbed. Under the common law, as will be shown below, a mortgage lien survives the expiration of the statutes of limitation. A note and a mortgage do not become unenforceable upon expiration of the statutes of limitation. A statute of limitations does one thing, to provide an affirmative defense to a lawsuit. That is it. It does not preclude a lawsuit, and certainly does not create substantive rights or obligations with respect to existing loan documents. The appellate court used 735 ILCS 5/13-116 to *strengthen* its conclusion. *Watkin*, 2025 IL App. (1st) 241354, ¶ 25 (A033). The *Sims* court did not even need to discuss whether the trial court there erred in finding that 735 ILCS 5/13-116 further supported its granting of the defendants’ summary judgment motion where the trial court found that the lien was not “rendered unenforceable” even if the mortgage were unenforceable owing to the expiration

of the statute of limitations. 2025 IL App (1st) 241112-U, *supra*, at ¶¶ 30, 14 (*see also* *Watkin*, 2025 IL App. (1st) 241354, page 7, footnote 3 (A029)).

III. Under the common law, the running of the statutes of limitation did not extinguish the mortgage.

In ¶ 28 of its opinion, the appellate court quoted *Livingston*, itself citing *Kraft v. Holtzmann*, 206 Ill. 548, 549-50 (Ill. 1903), that “a mortgage will not be barred until the debt is barred.” *Watkin*, 2025 IL App. (1st) 241354 (A034). Here, the debt remains, as does the mortgage. To the extent if any the *Holtzmann* court meant that a mortgage goes away when the creditor can no longer sue on the underlying debt, such position runs afoul of 735 ILCS 5/13-116, bankruptcy law, and the common law.

Under Illinois law, “the expiration of the statute of limitations period does not extinguish the underlying debt.” *Owens v. LVNV Funding, LLC*, 832 F.3d 726, 731 (7th Cir. 2016) (citing, among other cases, *Fleming v. Yeazel*, 379 Ill. 343, 345 (Ill. 1942)); *see also* *Cook v. Britt*, 8 Ill.App.3d 674, 676 (1st Dist. 1972) (“[i]t is generally agreed that a statute of limitations is an act limiting the time within which legal action shall be brought and affects the remedy only and not a substantive right”), *American Acoustics and Plastering Co., Inc. v. Illinois Department of Revenue*, 107 Ill.App.3d 616, 622 (2nd Dist. 1982) (citations omitted), and *In re: Glenn*, 542 B.R. 833, 842-43 (Bankr. N. D. Ill. 2016) (“[i]n most jurisdictions, time-barred debts remain” (842) (quoting, at 843, *Fleming, supra*, 379 Ill. at 345)). “The creditor retains the legal right to appeal to the debtor to honor the debt out of a sense of moral obligation even if the legal obligation can no longer be enforced in court.” *Pantoja v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679, 684 (7th Cir. 2017). A statute of limitations bars only the remedy in an action to collect on a debt but not the right to payment even after the limitations period has expired. 54 C.J.S. Limitations of Actions

§ 20 (2022). Here, the debt remains, as does the mortgage, as does Defendant's mortgage lien.

On page 12, Plaintiff cites to the case of *Bradley v. Lightcap*, 201 Ill. 511 (1903), which was reversed by the United States Supreme Court in *Lydia Bradley v. Lightcap*, 195 U.S. 1 (1904). Plaintiff also cites to an even older case, *Emory v. Keighan*, 88 Ill. 482 (1878). Based upon the undersigned's research, no court has ever cited to that case for the proposition that a mortgage goes away when the statute of limitation has run on the underlying note. These cases were decided before the enactment in 1941 of Section 11b of the Limitations Act (now 735 ILCS 5/13-116), and after the 10-year statutes of limitation came into being in Illinois, in 1872. It should be noted, however, that the *Keighan* court mentions a 16-year statute of limitations as to promissory notes. 88 Ill. 482, *supra*, at 486. According to the appellate court, the "continued effect" of cases decided before the enactment of Section 11b of the Limitations Act "is unclear." *Watkin*, 2025 IL App. (1st) 241354, ¶ 34 (A037).

On page 15, Plaintiff cites to Dale Joseph Gilsinger, Annotation, *Survival of Creditor's Rights Created by Mortgage or Deed of Trust as Affected by Running of Limitation Period for Action on Underlying Note*, 36 A.L.R. 6th 387, § 7 (2008). All of the Illinois cases that author sets forth in § 7, dealing with the rule that the running of the statute of limitations on a note secured by a mortgage terminates the mortgagee's lien rights, including *Markus v. Chicago Title & Trust Co.*, 373 Ill. 557, 560 (1940), discussed *infra*, were decided before the enactment of Section 11b of the Limitations Act, save *Mutual National Bank of Chicago v. Winkelman*, 9 Ill.App.2d 569 (1st Dist. 1956) (abstr.), which has only been cited by one court, to set forth a rule as to standing with respect to an estate

(*McGill v. Lazzaro*, 92 Ill.App.3d 393, 395 (1st Dist. 1980)). § 4 deals with the rule that the mortgagee's rights survive, statutorily, notwithstanding the running of the limitations period on a note, while § 5 addresses the common law rule that a note secured by a mortgage becoming time-barred does not operate to extinguish, automatically, a mortgagee's lien rights. Interestingly, more cases are set forth there, from more states, than in § 7.

In footnote 2, Plaintiff references the *Bank of New York v. Bartelstein* case (2007 CH 38051 (Cook Cty. Cir. Ct., Sept. 25, 2024)). Judge Sullivan, in his lengthy opinion, noted, on page 61, that "Gilsinger's research clearly maps the dichotomy that exists between states with regards to whether or not a lender may seek judgment of foreclosure on the property after the statute of limitations on the note has expired." On the following page, Judge Sullivan goes on to state as follows:

Nebraska, Massachusetts, and Hawaii are among the twenty-five states which hold that, 'as a matter of common law, the rule that the bar by statute of limitations of an action to collect a promissory note secured by a mortgage does not operate to automatically extinguish the mortgagee's lien holder rights...These states include: Alabama, Connecticut, Florida, Georgia, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia, Wisconsin, and Wyoming.

He discusses Illinois, indicating that it is one of 15 states where, as a matter of common law, the running of the statute of limitations on a note secured by a mortgage serves to terminate the mortgagee's rights. However, as indicted above, the vast majority of Illinois cases Gilsinger lists in § 7 came down prior to the enactment in 1941 of Section 11b of the Limitations Act (now 735 ILCS 5/13-116). Judge Sullivan does not appear to mention 735 ILCS 5/13-116 at all in his opinion. That statute makes clear that a mortgagee's lien *is not* terminated with the running of the limitation periods.

Again, Plaintiff relies upon the case of *Dunas v. Metropolitan Trust Co.*, 41 Ill.App.2d 167, 170 (1st Dist. 1963). The phrase from *Dunas* that ““where the debt is paid or barred by the Statute of Limitations, a mortgage being but incident to the debt, is no longer a lien on the property”” comes from *Markus v. Chicago Title & Trust Co.*, 373 Ill. 557, 560 (Ill. 1940) (overruled on other grounds by *ABN AMRO Mortgage Group Inc. v. McGahan*, 237 Ill.2d 526, 538 (2010)). *Markus* provides no support for that phrase other than to note that it was “conceded” by the parties. 373 Ill. 557, *supra*, at 560. In addition, immediately after quoting *Markus*, the *Dunas* court stated as follows: “The running of a statute of limitations bars the remedy for enforcing a debt, but does not extinguish the debt itself.” 41 Ill.App.2d, *supra*, at 170 (citing 25 I.L.P., Limitations, Ch. 5, § 161, and quoted by the appellate court, *Watkin*, 2025 IL App. (1st) 241354, ¶ 35 (A038)). At the top of page 17, Plaintiff argues that the appellate court’s reliance upon that quote “exposes the flaw in its logic,” maintaining that the continued existence of the debt does not mean that the lien survives. Plaintiff is mistaken. The debt survives, therefore the note survives, therefore the mortgage survives, as does the mortgage lien. The clause in *Dunas* preceding the statement from *Markus* that a lien ceases to be once the mortgage becomes time-barred focuses on *enforcement* (“The Silvers do not dispute the fact that, if applicable here, the Statute of Limitations would bar the enforcement of both their \$2,250 note and the mortgage securing it”). Moreover, the statement upon which Plaintiff relies appears to be *obiter dictum* (see *Cates v. Cates*, 156 Ill.2d 76, 80 (Ill. 1993)). Lastly, the phrase runs contrary to the clear and unambiguous language of 735 ILCS 5/13-116. In light of *Dunas*, as interpreted by Plaintiff, could a creditor ever properly file a mortgage foreclosure action after a bankruptcy discharge? When a borrower is discharged in a Chapter 7 bankruptcy,

the lender cannot file a lawsuit on the note. But the note is still enforceable, either through foreclosure of the mortgage, levy on or foreclosure of a judgment lien (if one exists), or via acceptance of voluntary payments. By Plaintiff's logic, none of those things could happen if Plaintiff is equating enforcement with the filing of a lawsuit.

It is not clear what theory could be used to challenge the amount demanded for a lien on a time-barred mortgage. Plaintiff could proceed with a sale of the subject property with the "unenforceable" lien on it. A title company might very well insure over. Plaintiff could pay off the indebtedness or simply wait until Defendant's mortgage lien ceases to be under 735 ILCS 5/13-116.

Plaintiff cites to 765 ILCS 905/17 on page 22. Here, however, the debt has not been paid.

It argues on page 29 that it is unfair to allow an unenforceable mortgage lien to remain where the law extinguishes judgment liens and mechanics liens upon the expiration of their respective enforcement periods. Again, 735 ILCS 5/13-116 is clear and unambiguous. Mortgages and mortgage liens are treated differently than judgments and mechanic's liens. "In Illinois, a judgment is valid forever." Robert G. Markoff and Christopher J. McGeehan, *Reviving Judgments in Illinois*, Illinois Bar Journal, January 2010, Vol. 98, Issue 1, Page 40. A judgment can have a lifespan of up to 27 years under 735 ILCS 5/2-1602. The life of a judgment lien (735 ILCS 5/12-101) can exceed that of a mortgage lien under 735 ILCS 5/13-116.

On page 31, Plaintiff asserts that it is foreseeable that the reviewing court's decision "will encourage third parties to purchase stale, discounted mortgage liens expressly to hold them until a property owner attempts to sell or refinance" and that, "[a]t that point, the

lienholder can demand a substantial payoff in exchange for a lien release.” Plaintiff’s proposition, highly speculative and not grounded in economic reality, is rather absurd, lacking plausibility because it posits the extremely unlikely occurrence in which one would ever knowingly purchase an unenforceable mortgage lien. Plaintiff speaks of “belated litigation” and “a significant challenge to the administration of justice,” but fails to specify what litigation could possibly ensue as to an unenforceable mortgage lien.

Plaintiff argues, confusingly, that the appellate court’s opinion “incentivizes endless extrajudicial delay,” eviscerating the 36-month time standard for closure of cases (page 32). The time standard only comes into play once a lawsuit is filed. Apart from a meritless quiet title action, what possible cause(s) of action could be advanced by the mortgagor after the statutes of limitation have run? Tellingly, Plaintiff does not indicate (because there are none). This argument is anemic. Plaintiff offers no authority to support its assertion that “[t]hese zombie properties become unmarketable, leading to neighborhood blight, depreciated property values, and an evaporated tax base for local municipalities.” Plaintiff assumes that a quiet title action is a defense, and the only defense, to a “zombie mortgage.” Some “defenses” to such a mortgage include not borrowing the money in the first place, paying off the note, working out a settlement with the lender/mortgagee, and getting the property sold in spite of the “unenforceable” mortgage lien. Title companies may insure over depending upon the circumstances and the party involved. Plaintiff cries foul at lenders trying to collect on loans outside of the statute of limitations. However, homeowners should not be enriched for failing to pay back loans simply due to the passage of time. That is precisely what 735 ILCS 5/13-116 is for, putting an outer limit on when mortgage liens are automatically extinguished. Moreover, it may be the case that a

reduction in the length of time a mortgage lien is attached to a property may lead to stricter loan underwriting and higher interest rates, neither of which is good for homeowners.

Ultimately, none of the arguments Plaintiff sets forth changes the clear and unambiguous language of 735 ILCS 5/13-116, or alters the common law rule that a debt remains notwithstanding the expiration of the statute of limitations on the underlying note, or militates in favor of this Honorable Court reversing the decision of the appellate court and the judgment of the trial court.

Plaintiff makes a point of emphasizing that Defendant's mortgage lien is unenforceable. While that is true, depending upon what exactly is meant by the term "enforceable" in this context, Defendant's lien should not be voided simply because it is not now enforceable via a lawsuit. While her note and mortgage are time-barred, she could, in the future, file a lawsuit and prevail. As the appellate court noted, statute of limitations is an affirmative defense, "intended to be a procedural bar, not a substantive discharge of an underlying property interest." *Watkin*, 2025 IL App. (1st) 241354, ¶ 24 (A032). Moreover, in *Sims v. Deutsche Bank National Trust Company*, 2025 IL App (1st) 241112-U, referenced in ¶ 16 (A029), one of the facts that the appellate court set forth, in ¶ 27, was that the servicing company apprised the plaintiff that it could bring a claim in the future if the plaintiff made a payment, which action might start a new limitations period. "...if any payment or new promise to pay has been made, in writing, on any bond, note, bill, lease, contract, or other written evidence of indebtedness, within or after the period of 10 years, then an action may be commenced thereon at any time within 10 years after the time of such payment or promise to pay." 735 ILCS 5/13-206. Here, one or more of the borrowers could make a partial payment on the note, or a new promise to pay, thereby restarting the

limitations period. Were the Court to reverse the decision of the appellate court and the judgment of the trial court, Defendant would be deprived of that potential option.

IV. The arguments advanced by the *amicus curiae* are unavailing.

The *amicus curiae* Association of Foreclosure and Consumer Protection Attorneys (the Association) contends on pages 8 and 10 of its brief that 735 ILCS 5/13-116 is a mechanism to extinguish “ancient mortgages” from the recorder of deeds office where no mortgage release has been recorded. Setting aside that this position runs afoul of the clear and unambiguous language of the statute, no authority is advanced. It is not clear how the death of a lien under the statute results in the removal of the lien from the recorder’s office.

On page 11, the Association, again sans authority, claims that “Section 13-116 was enacted to protect those homeowners whose unenforceable mortgage obligations still appear of record as clouds on title in the county recorders of deed offices...” Tellingly, the Association here acknowledges that the mortgage is still an obligation.

If, as the Association contends, Defendant’s mortgage ceased by limitation upon the expiration of the 10-year statutes of limitation, what is the point of Section 5/13-116? Under the Association’s distorted interpretation, apparently after 20 years (or more, with extensions), Defendant’s mortgage lien will somehow just cease to be in the clerk’s office (which now handles recordings in Cook County) if no release has been recorded. If a mortgage lien is properly extended under the statute, how would the lien cease to be under this interpretation? Is there some trigger or mechanism in the clerk’s office? Nothing in the statute or caselaw supports this position. And, if the Association is correct in this regard, why did our legislature set the life of a mortgage lien at 20 or 30 years? Why not 10? Why the need for such a scheme in the first place?

One of the arguments is the suggestion that attempting to collect a time-barred debt may be a basis for liability under the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. § 1692 *et seq.*). The Association does not state that the debt here is a consumer debt, or show why the undersigned (or another attorney Defendant may use) would be a debt collector under the FDCPA. Or why Defendant could not attempt to collect herself, which would remove the matter from the purview of the FDCPA. So it is not clear from what has been presented how the FDCPA would even apply. Moreover, Defendant has not sued or threatened to sue on a time-barred debt. Indeed, both Plaintiff and the Association argue that Defendant *can no longer sue on her note or mortgage*. Her lien exists statutorily, and under the common law.

The Association, on page 17, argues that “attempting to collect a time-barred debt” (however such attempt is defined) could be an unfair act under Illinois’ consumer fraud statute (815 ILCS 505/1 *et seq.*). The Association fails to show how, here, any unfair conduct could possibly occur during the course of trade or commerce, as those terms are defined in 815 ILCS 505/1(f). That the unfair acts occur during the course of trade or commerce is an essential element for any consumer fraud claim. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill.2d 403, 417 (Ill. 2002) (citation omitted). The Association fails to establish any of the other elements for such a claim.

Each of the above laws provides for remedies to aggrieved plaintiffs. The Association fails to make a sufficient nexus between a potential violation of one or both to the reversal of the decision of the appellate court and judgment of the trial court.

The Association also argues on page 17 of its brief that the reviewing court’s opinion “violates the strong public policy to ensure real estate is freely alienable and

transferrable.” This is another hollow argument, the Association referring to the judicial sales process. Does not the concept of a mortgage itself violate this “strong public policy”?

The Association makes a “special” legislation argument on page 19 of its brief, arguing that if the legislature were to codify the proposition of law set forth by the appellate court, that it would be stricken down. Under 735 ILCS 5/13-116 and the common law, the expiration of the statute of limitations did not and does not extinguish Defendant’s mortgage lien. The appellate court’s opinion is entirely in keeping with that authority. Nothing set forth by the Association changes that, or militates in favor of disturbing the decision of the appellate court and the judgment of the trial court.

Contrary to footnote 19 of the Association’s brief, mortgage lenders would not win 100% of the time. Homeowners can wait until the statutory lien dies or they can sell the property. There is nothing in the record indicating that a title company could not or would not insure over a mortgage lien where the statutes of limitation have run. They might also simply wait until the lien ceases to be under 735 ILCS 5/13-116.

CONCLUSION

Defendant demonstrated that Plaintiff’s claim to unencumbered title was not superior to her mortgage claim. Plaintiff did not and could not show that its purported claim to unencumbered title was superior to Defendant’s mortgage claim, which was an essential element on its quiet-title claim. *Dudley v. Neteler*, 392 Ill.App.3d 140, 143 (4th Dist. 2009). Her mortgage lien survives under 735 ILCS 5/13-116 as well as under the common law. She respectfully requests that this Honorable Court sustain the decision of the reviewing court and the judgment of the trial court, and award such further or other relief it deems just and equitable.

Respectfully submitted,

SARA WATKIN, AS TRUSTEE OF THE
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Certificate of Compliance

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 16 pages.

Robert T. Kuehl

Certificate of Service

The undersigned certifies that he emailed this brief (unfiled) as a PDF attachment to Arthur C. Czaja, Esq., at arthur@czajalawoffices.com, Erica Crohn Minchella, Esq., at erica@minchellalaw.com, and Stephen T. Saporta, Esq., at WillCountyLawyer@aol.com, on April 8, 2026.

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