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, and known as Land Trust # 32731,
Plaintiff- Petitioner,

Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust,
Defendant-Respondent.

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, No. 2023-CH-05985
The Honorable **Allen Price Walker**, Judge Presiding

REPLY BRIEF OF PLAINTIFF-APPELLANT

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ARGUMENT

THE ULTIMATE ISSUES BEFORE THIS COURT

Plaintiff's[1] Opening Brief presented this Court with legal authorities affirming the long-established rule in Illinois that a lien is merely a mechanism for enforcing an underlying obligation. When the underlying obligation is no longer enforceable, the lien is a nullity. The note is "the principal thing." *Fish v. Glover*, 154 Ill. 86, 92 (1894). The mortgage is merely an incident to it. *Richey v. Sinclair*, 167 Ill. 184, 194 (1897).

Also central to Plaintiff's Brief is the undisputed statutory law that a promissory note is *not* enforceable after its limitations period expires. In Illinois, that period has always been 10 years after breach or maturity. See 735 ILCS 5/13-206 and 735 ILCS 5/13-115. Plaintiff further demonstrated that the Statute of Limitations for mortgages must always be read in connection with the Statute of Limitations for promissory notes, and that the mortgage will be barred whenever the note is barred. *Schifferstein v. Allison*, 123 Ill. 662, 665 (1888); *Hibernian Banking Ass'n v. Commercial Nat'l Bank*, 157 Ill. 524, 537 (1895). Finally, Plaintiff urged this Court to affirm the purpose of quiet title actions -- to remove clouds on title, including unenforceable mortgages. See *Gambino v. Blvd. Mortg. Corp.*, 398 Ill. App. 3d 21, 52 (1st Dist. 2009).

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[1] Plaintiff-Appellant is 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, and known as Land Trust # 32731 and shall be referred to herein as "Plaintiff."

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Defendant's[2] Response Brief does not challenge these fundamental legal principles. It only reiterates the error below: interpreting 735 ILCS 5/13-116 as creating a stand-alone 20-year statute of limitations for mortgage liens that trumps Illinois law retiring a promissory note and a mortgage after 10 years. Defendant wrongly argues that the underlying debt is still owed on a moral basis even if its legal viability has ceased -- and that the legislature therefore intentionally created a remedy with no underlying right. As shown herein, a lien is not a debt and cannot be enforced as if it were; Section 13-116 regulates public notice of a mortgage to third parties and was not designed to breathe life into a lapsed note. To accept Defendant's position, this Court would need to overturn over 160 years of its own precedent.

At its core, this case turns on a single distinction that the appellate court failed to grasp. Plaintiff has never argued that the Statute of Limitations extinguishes the underlying debt. The note may survive as an unenforceable obligation -- even, as Defendant suggests, as a moral one. That point is not in dispute. What the Statute of Limitations extinguishes is the remedy for enforcing that debt: the mortgage. A mortgage is not a debt. It is a remedial device -- a mechanism by which the creditor enforces the underlying obligation against the property. When the law renders that obligation unenforceable, the enforcement mechanism has nothing left to enforce and is extinguished by operation of law. The appellate court's error was in conflating the survival of the debt with the survival of the remedy. They are not the same thing. The debt may persist as an obligation; the mortgage, as a purely remedial instrument, cannot outlive the enforceability of the right it was created to secure.

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[2] Defendant-Appellee is Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust and shall be referred to herein as "Defendant."

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I. Section 13-116 is a recording statute designed exclusively to protect third parties; it has no application between the parties to the mortgage.

Defendant anchors her entire response on the mistaken premise that Section 13-116 of the Code of Civil Procedure (735 ILCS 5/13-116) establishes a standalone, 20-year lifespan for a mortgage lien, completely divorced from the enforceability of the underlying debt. Her reliance on Section 13-116 is misplaced because the statute is strictly a recording act designed to protect *third parties only*. Defendant cannot use a third-party notice statute to bypass the bedrock common law rule that a mortgage is extinguished when the debt it secures is time-barred.

The text of Section 13-116 is unequivocal: it is a *recording statute*. The entire statute deals with the recording of a mortgage extension or an affidavit of extension. But between the parties to the mortgage, neither the mortgage nor any extension need be recorded for the agreement to be valid and binding. The governing statute, Section 30 of the Conveyances Act (765 ILCS 5/30), expressly states that instruments "shall take effect and be in force from and after the time of filing the same for record… *as to all creditors and subsequent purchasers, without notice.*" (Emphasis added).

This Court addressed this in *Haas v. Sternbach*, 156 Ill. 44, 57 (1894), holding that "no one will contend that the recording of a mortgage is, in this State, necessary to its validity. *Recording such instruments serves but one purpose, and that is to make them valid as against creditors and subsequent purchasers without notice.*" (Emphasis added). The Seventh Circuit confirmed this in *Union County v. MERSCORP, Inc.*, 735 F.3d 730, 734 (7th Cir. 2013), noting that under long-settled Illinois Supreme Court precedent, recording protects

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the holder's interest against *third parties* -- it is not a requirement for the lien to exist between the original parties. It is therefore a gross misreading of Section 13-116 to suggest that a provision governing the recording of extension agreements was intended to apply between the parties to the original transaction rather than as a notice statute for third parties.

The legislative history confirms this. In *Kraft v. Holzmann*, 206 Ill. 548 (1903), this Court held that an unrecorded extension of an underlying note kept the incident mortgage alive, binding even third parties without notice. Unrecorded extensions consequently caused titles to remain unmerchantable. The legislature enacted the predecessor to Section 13-116 -- formerly Section 11(b) of the Limitations Act -- in direct response to *Kraft*.

The appellate court has explicitly confirmed this interpretation. In *Zyks v. Bowen*, 351 Ill. App. 491, 495-96 (1st Dist. 1953), the court explained that Section 11(b) "was to modify that portion of the holding in the *Kraft* case which held that the recording of extensions was not required as to subsequent encumbrancers and purchasers." The *Zyks* court was explicit that *McCarthy v. Lowenthal*, 327 Ill. App. 166 (1st Dist. 1945), "*does not suggest, as defendants argue, that the legislature intended to change the long-established rule that recording was unnecessary between the original contracting parties to a mortgage extension*." (Emphasis added). *Id.* at 496. The court concluded: "[i]f the mortgage operates as a lien without recording as to original parties surely the legislature did not intend that an extension agreement should have a different status." *Id.* at 497.

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In *Palkey v. Donichy*, 18 Ill. App. 2d 356, 361 (1st Dist. 1958), the court was equally explicit: "the effect of section 11b is that *as against persons other than the original parties to the mortgage* an unrecorded extension agreement has no validity." (Emphasis added).

Defendant's reliance on *McCarthy*, *Zyks*, and *Palkey* to argue that Section 13-116 creates a substantive, stand-alone 20-year lifespan for her mortgage is misplaced. See Def.'s Resp. at 4. These cases unanimously confirm the law as set forth by Plaintiff -- Section 13-116 operates exclusively with respect to third parties. Consequently, Section 13-116 does not extend the enforceability of Defendant's former mortgage. This quiet title action is a dispute between the parties to the mortgage contract. When the 10-year statute of limitations on the underlying promissory note expired, the incident mortgage lien was extinguished *by operation of law*.

II. Illinois law provides several ways of extinguishing a mortgage lien -- Section 13-116 addresses only one of them, and it is not the one at issue here.

Defendant asks rhetorically: if a mortgage is extinguished when the underlying debt becomes time-barred, what is the point of Section 13-116? See Def.'s Resp. at 3. The answer: to automatically terminate old mortgage liens with respect to third parties without litigation. Section 13-116 did *not* alter the enforceability of notes and mortgages between the parties to those instruments, did not create a stand-alone 20-year statute of limitations for mortgages independent of the note, and did not eliminate the ability to bring quiet title actions when the note a mortgage secured became unenforceable by operation of the statute of limitations. Section 13-116 merely states that once 20 years have passed since the

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maturity date of a mortgage and there is no recorded extension, third parties are not required to file quiet title actions to clear unreleased mortgages.

Illinois law has always recognized *several and distinct* ways a mortgage lien can be extinguished. The first arises from the common law: when the statute of limitations has run on the underlying obligation, the mortgage -- being but an incident to that obligation -- is extinguished by operation of law. *Emory v. Keighan*, 88 Ill. 482, 485 (1878). The second arises from Section 13-116: even where the statute of limitations on the underlying note has *not* yet run -- meaning the debt is still enforceable -- the recorded mortgage lien will nonetheless automatically cease to bind third parties after 20 years from its maturity date if the mortgagee has not filed an affidavit or extension agreement of record. Section 13-116 therefore addresses a completely different situation than the one before this Court. It speaks to the scenario where a mortgagee sits on a valid, enforceable mortgage without extending it of record -- the precise mischief that *Kraft* created and that Section 13-116 was enacted to remedy.

These two provisions work *in pari materia*, not in conflict. Section 13-206 and the common law extinguish the mortgage when the underlying note is barred by the statute of limitations. Section 13-116 provides an additional, independent ceiling: even where the note is *not* yet barred, the recorded lien will automatically cease to bind third parties after 20 years unless the mortgagee takes affirmative steps to extend the mortgage of record. As between the parties to the mortgage contract, recording is never required. Defendant's argument that Section 13-116 creates a 20-year limitation period for all mortgage liens --

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including those whose underlying notes are already time-barred -- is based on a misunderstanding of these two distinct mechanisms.

Defendant expressly disclaims that Section 13-116 constitutes a statute of limitations, acknowledging -- as the appellate court held -- that it "does not represent a separate statute of limitations for mortgage liens." *Watkin*, 2025 IL App (1st) 241354, ¶ 33; Def.'s Resp. at 2. Yet Defendant's entire argument depends on treating Section 13-116 as if it functions precisely as one -- granting a mortgage lien a freestanding 20-year lifespan irrespective of the enforceability of the underlying obligation. That position is internally inconsistent. If Section 13-116 is not a statute of limitations, it cannot override or extend the limitations periods governing actions on notes and mortgages. The only coherent reading that harmonizes Sections 13-115, 13-116, and 13-206 is that Section 13-116 serves a distinct, non-limitations function -- one that does not revive or prolong an otherwise unenforceable lien. Defendant's suggestion that a future voluntary payment might restart the limitations period cannot preserve a present lien: a property encumbrance cannot be sustained on the basis of a speculative event that has not occurred in over a decade.

III. The mortgage is a mere incident to the debt and is extinguished by operation of law when the statute of limitations on the debt expires.

Defendant does not dispute that, under Illinois law, the mortgage lien is a mere incident to the debt it secures, and tacitly agrees that the statute of limitations on a note is 10 years. What Defendant misses -- and what the appellate court below likewise failed to appreciate -- is that Plaintiff has never argued the statute of limitations extinguishes the

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note as a debt. It does not. The note may survive as an unenforceable personal obligation. What the statute of limitations does extinguish is all legal remedy for enforcing that debt.

This Court recognized as much over 170 years ago. In *Keener v. Crull*, 19 Ill. 189, 191 (1857), this Court held that the statute of limitations "bars the action, and all remedy for recovery of the debt; and, when the bar is complete, the statute being interposed in defense, no action for the recovery of the debt can be maintained. The debt, however, is not annihilated, and remains the same as before, excepting that all remedy for enforcement of the obligation is gone." This Court reaffirmed the same principle just forty years later. In *Roberts v. Tunnell*, 165 Ill. 631, 633 (1897), this Court held: "As long as the debt was alive and an action could be maintained at law on the note, appellee could foreclose the mortgage and enforce her security." The inverse necessarily follows: once no action can be maintained at law on the note, the mortgage cannot be foreclosed and the security cannot be enforced. And the mortgage is nothing more than a remedy -- a device for enforcing the underlying obligation against the property. Once the law strips away every legal means of enforcing the note, the mortgage, as a purely remedial instrument, is left securing nothing. It is extinguished not because the debt disappears, but because a remedy with nothing to enforce is a nullity.

This Court's jurisprudence is unbroken. In *Emory*, 88 Ill. at 485, this Court held that "the existence of the debt, for the securing of which a mortgage is given, is essential to the life of the mortgage, and that when the debt is paid, discharged, released, or barred by the Statute of Limitations, or by a judgment of a court, the mortgage is gone, and has effect no longer." The Court reaffirmed this in *Emory v. Keighan*, 94 Ill. 543, 545 (1880). That

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authority directly belies Defendant's claim that "no court has ever cited [*Emory*] for the proposition that a mortgage goes away when the statute of limitation has run on the underlying note." See Def.'s Resp. at 7. Defendant is wrong.

In *Kraft*, 206 Ill. at 549-50, this Court explicitly cited *Emory* first among seven cases when reaffirming that "the debt is the principal thing and the mortgage or trust deed but an incident thereto," and that the statute of limitations for mortgages "must" be construed in connection with the statute of limitations for promissory notes -- meaning when the debt is barred, the mortgage is barred. The rule was cemented across a full century of this Court's precedent. *Schifferstein*, 123 Ill. at 665: "the period of limitation which bars the debt, bars also the mortgage or deed of trust." *Hibernian Banking Ass'n*, 157 Ill. at 537: "it has been repeatedly decided by this court that the mortgage is a mere incident of the debt, and is barred when the debt is barred." *Bradley v. Lightcap*, 201 Ill. 511, 517 (1903): "the term of [the mortgage's] existence is measured by the debt, and when the debt is paid, discharged, released or barred by limitation, the mortgagee's title is extinguished by operation of law." *Markus v. Chicago Title & Trust Co.*, 373 Ill. 557, 560 (1940): "[w]here 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."

These principles are not relics of antiquated property law. In *ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526, 536 (2010), this Court reaffirmed that foreclosure actions "are based on the note, the vehicle which gives the plaintiff the legal right to proceed against the property." In *First Midwest Bank v. Cobo*, 2018 IL 123038, ¶ 39 n.2, this Court expressly recognized this "old Illinois rule." In *U.S. Bank Nat'l Ass'n v. Gagua*,

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2020 IL App (1st) 190454, ¶ 49, the appellate court explicitly characterized a mortgage lien as "a mere incident to the debt." In *Fin. Freedom v. Kirgis*, 377 Ill. App. 3d 107, 124 (1st Dist. 2007), the appellate court applied the "old principle" that "where the note is barred, the mortgage being but an incident to it, all right of action on the mortgage is also barred." The Seventh Circuit summarized the rule plainly: "long-standing Illinois law precludes a plaintiff from foreclosing on a mortgage when an action on the underlying note is barred by the statute of limitations." *United Cent. Bank v. KMWC 845, LLC*, 800 F.3d 307, 311 (7th Cir. 2015). Just weeks before the decision below, a different First District panel held that "[a] mortgage is tied to the life of the underlying note." *BMO Bank N.A. v. Vaca*, 2025 IL App (1st) 241793-U, ¶ 17; see also *BMO Bank N.A. v. Zbroszczyk*, 2025 IL App (1st) 241333, ¶ 27 ("where the underlying obligation is barred by the statute of limitations, a mortgage foreclosure action is similarly barred").

Defendant attempts to sidestep this mountain of precedent by relying on *Dunas v. Metropolitan Trust Co.*, 41 Ill. App. 2d 167 (1st Dist. 1963), and *Owens v. LVNV Funding, LLC*, 832 F.3d 726 (7th Cir. 2016), to argue that because a time-barred debt remains a "moral obligation," the lien must survive. This exposes the flaw in Defendant's logic. *Dunas* explicitly states 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." *Dunas*, 41 Ill. App. 2d at 170. The *Dunas* court then noted that the running of a statute of limitations "does not extinguish the debt itself." *Id. Dunas* therefore reaffirms Plaintiff's position and defeats Defendant's argument: the note is of no legal effect, and the security instrument -- the mortgage -- is extinguished and "is no longer a lien on the property." Defendant cannot

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rely on *Dunas* while ignoring its central holding on this point. Similarly, *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010, 1020 (7th Cir. 2014), acknowledged that "some people might consider full debt repayment a moral obligation, even though *the legal remedy for the debt has been extinguished*." (Emphasis added).

The appellate court below dismissed this unbroken line of precedent by claiming the early cases were decided when Illinois followed the "title theory" of mortgages. That logic is backwards -- and *Kirgis* expressly said so. The court in *Kirgis* confirmed, 377 Ill. App. 3d at 125, that the shift from title theory to lien theory did *not* render the older authorities inapplicable; those cases recognized the lender's interest as a lien, making them entirely consistent with current lien theory. Moreover, the logic of the title theory cases actually *strengthens* Plaintiff's position: if a time-barred note was powerful enough to extinguish legal title under the old theory, it certainly extinguishes a mortgage as a mere security interest today.

IV. Sections 13-115, 13-206, and 13-116 must be read *in pari materia*, and the legislature recently reaffirmed the common law rule of extinguishment.

When interpreting statutes, a court must "attempt to construe the conflicting statutes together *in pari materia*." *People v. Freeman*, 404 Ill. App. 3d 978, 988 (1st Dist. 2010). As this Court recognized in *Schifferstein*, the statute of limitations for mortgages must always be read in conjunction with the statute of limitations for promissory notes because the mortgage is but an incident to the note. *Schifferstein*, 123 Ill. at 665. To read Section 13-116 as creating a second, independent statute of limitations for mortgage liens

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renders Section 13-206 partially meaningless and allows exactly what Section 13-206 forbids: effective enforcement of time-barred debt through title leverage.

When the legislature enacted the predecessor to Section 13-116 in 1941, this Court's jurisprudence on the inseparable nature of notes and mortgages was already deeply entrenched. "When the legislature amends a statute but leaves unchanged provisions which have been judicially construed, the unchanged provisions ordinarily retain the construction given prior to the amendment." *People v. Antoine*, 286 Ill. App. 3d 920, 925 (4th Dist. 1997). The plain language of Section 13-116 contains no language suggesting an intent to overrule *Emory*, *Schifferstein*, or *Hibernian Banking*. If the General Assembly had intended to sever the mortgage from the note and grant liens a freestanding, 20-year lifespan regardless of the debt's enforceability, it would have explicitly said so.

The legislature's recent intervention underscores this point. In *SEC v. EquityBuild, Inc.*, 101 F.4th 526, 532 (7th Cir. 2024), the Seventh Circuit erroneously held that under the Illinois Mortgage Act, payment of a debt alone does not extinguish a mortgage lien absent a valid, recorded release. The Illinois legislature immediately enacted Section 17 of the Illinois Mortgage Act, effective August 1, 2025, providing: "The Act does not abrogate the Illinois common law that the payment in full of a debt secured by a mortgage extinguishes the lien." 765 ILCS 905/17. That amendment was already in full force when the appellate court issued its opinion on August 20, 2025. The Legislature's message is unequivocal: modern statutes governing mortgages and recording do not abrogate the traditional Illinois common law rules of extinguishment. Nothing in Section 13-116 abrogates the common law rule that expiration of the statute of limitations on the note

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extinguishes the incident mortgage. Defendant's position relies on the same flawed logic that the General Assembly repudiated.

V. Defendant's bankruptcy argument is inapposite.

Defendant conflates the term "discharged" as used in Illinois property law with the distinct concept of a federal bankruptcy discharge. When this Court in *Emory*, *Bradley*, and their progeny stated that a mortgage is extinguished when the debt is "paid, discharged, released or barred by limitation," the term "discharged" referred to the performance or satisfaction of an obligation -- not a bankruptcy discharge. See Black's Law Dictionary (10th ed. 2014) (defining "discharge" as "the payment of a debt or satisfaction of some other obligation").

A bankruptcy discharge and the running of the statute of limitations are not comparable events. A bankruptcy discharge eliminates only the *in personam* remedy against the debtor personally -- it does not eliminate the *in rem* remedy against the property, which federal law expressly preserves. See 11 U.S.C. § 524(a). The mortgage therefore survives a bankruptcy discharge because it still has a remedy to serve: the creditor retains the right to proceed against the property. The mortgage, as an enforcement mechanism, still has work to do.

The statute of limitations presents an entirely different situation. As this Court held in *Keener*, 19 Ill. at 191, the statute of limitations bars "all remedy for recovery of the debt." Unlike a bankruptcy discharge, it does not eliminate one remedy while preserving another -- it eliminates every legal means of enforcing the underlying obligation, both personal and against the property. The mortgage, being the remedy for enforcing the debt against the

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property, is left with nothing to enforce. A remedy with nothing to enforce is a nullity, and the mortgage is extinguished along with the enforceability of the debt it was created to secure.

VI. Allowing an unenforceable lien to remain on title creates an impermissible backdoor enforcement mechanism.

Allowing an unenforceable mortgage lien to remain as a cloud on title is the functional equivalent of enforcement. The holder of such a "zombie lien" can extort any amount of money to release its cloud on title, forcing the property owner into protracted litigation over the terms and validity of a time-barred instrument — precisely the litigation the statute of limitations was designed to prevent.

If the homeowner tries to sell, must she pay from the proceeds the amount that would have been due on the extinguished note? The recorded mortgage shows only the original face amount — not the actual amount due, accrued interest, or payment history. If the former creditor submits a payoff demand, is that not enforcement of the time-barred note? In bankruptcy, probate, partition, and dissolution proceedings, how is equity calculated when an unenforceable lien sits on title? None of these questions has a satisfying answer under Defendant's theory. See *Lincoln-Way Community High School Dist. v. Frankfort*, 51 Ill. App. 3d 602, 607-08 (3d Dist. 1977) (statutes of limitations exist because "records are lost and memories dimmed with the passage of time" and defendants must be able to "vigorously answer the charges of plaintiffs").

The appellate court's ruling arms former creditors -- or third-party purchasers of stale discounted liens who may have no connection to the original transaction -- with

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leverage to extort payment not to satisfy lawful debts, but to remove clouds that should not exist. This Court has recognized that statutes of limitation rest on the principle that the right to be free of stale claims prevails over the right to pursue them. *Golla v. General Motors Corp.*, 167 Ill. 2d 353, 369-70 (1995). The ruling below achieves the opposite.

A quiet title action is the precise equitable proceeding designed to remedy this situation. A cloud on title includes any apparent legal claim that is "actually invalid or unenforceable." *CitiMortgage, Inc. v. Maryland at Five LLC*, 2025 IL App (1st) 231548-U, ¶ 45; *Gambino*, 398 Ill. App. 3d at 52. Defendant concedes she cannot foreclose the mortgage. Because the debt is time-barred and the enforcement mechanism is extinguished by operation of law, the mortgage is a cloud on title and a quiet title action is the time-honored remedy to remove it. The appellate court's refusal to quiet title allows Defendant to leverage a legally dead encumbrance indefinitely -- a result that eviscerates the statute of limitations in practice while paying lip service to it in theory.

VII. Defendant's attacks on controlling precedent are meritless, ignore the context of the rulings, and cannot override this Court's precedent.

To agree with Defendant and the appellate court, this Court would need to overturn over 160 years of its own precedent. In an attempt to evade that precedent, Defendant attacks the foundational cases establishing that a mortgage is extinguished when the underlying debt becomes time-barred. Each attack mischaracterizes the relevant holding and fails for a threshold reason Defendant does not acknowledge: the appellate court in *Chi. Title Land Trust Co. v. Watkin*, 2025 IL App (1st) 241354 had no authority to disregard this Court's precedents. The appellate courts are without authority to overrule the Supreme

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Court or modify its decisions. *Rickey v. Chicago Transit Authority*, 98 Ill. 2d 546, 551 (1983). The *Watkin* court's disregard of *Emory*, *Hibernian Banking*, *Bradley*, and *Schifferstein* was not merely erroneous statutory interpretation -- it exceeded the appellate court's authority. *Sims v. Deutsche Bank Nat'l Trust Company*, 2025 IL App (1st) 241112-U, an unpublished order carrying no precedential weight under Illinois Supreme Court Rule 23(b), reached the same erroneous conclusion and is subject to the same deficiencies.

On the merits, Defendant's individual attacks fail. First, the United States Supreme Court's reversal of *Bradley v. Lightcap*, 201 Ill. 511 (1903), rested on a narrow constitutional ground -- whether retroactive divestiture of legal title violated due process. *Lydia Bradley v. Lightcap*, 195 U.S. 1 (1904). It did not touch the underlying Illinois property law principle that when the debt is barred, the mortgage is extinguished by operation of law, a principle Illinois courts have continuously cited in the century since.

Second, *McGahan*, 237 Ill. 2d 526 (2010), overruled *Markus v. Chicago Title* solely on the procedural question of whether a foreclosure action is strictly *in rem* or *quasi in rem*. *McGahan* did not disturb -- and in fact reaffirmed -- the substantive holding 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," and that foreclosure is "based on the note, the vehicle which gives the plaintiff the legal right to proceed against the property." *McGahan*, 237 Ill. 2d at 536.

Third, Defendant dismisses *Dunas v. Metropolitan Trust Co.* as mere *obiter dictum*. See Def.'s Resp. at 9. A holding that directly resolves the central legal dispute between the parties is not dictum. The *Dunas* court was required to determine the status of the mortgage

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once the statute of limitations barred enforcement of the note, and definitively concluded that the mortgage "is no longer a lien on the property." *Dunas*, 41 Ill. App. 2d at 170.

Finally, Defendant points to an ALR annotation and a circuit court opinion to suggest that the Illinois cases establishing the extinguishment rule predate the 1941 enactment of Section 13-116. See Def.'s Resp. at 7-8. This is a logical fallacy. The 1941 enactment of a recording statute designed solely to limit the effect of unrecorded extensions against third parties did not silently strip Illinois of its foundational common law rules of extinguishment. Courts do not infer the abrogation of the common law absent clear and explicit legislative intent. *McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶ 30. Until the legislature expressly states that a mortgage lien survives the legal death of its underlying debt -- which, as the recent Mortgage Act amendment proves, it has actively declined to do -- the mortgage and the note are inextricably and fatally bound.

VIII. Defendant's attempt to dismiss the amicus curiae arguments fails under *Livingston*.

Defendant dismisses the amicus curiae arguments, claiming that "no authority is advanced" for the proposition that Section 13-116 is a mechanism designed to extinguish "ancient mortgages" without litigation. See Def.'s Resp. at 13. But in *Livingston v. Meyers*, 6 Ill. 2d 325 (1955), this Court explicitly articulated the legislative intent behind Section 13-116: "[p]rior to the adoption of [the amendment] in 1941, many properties in the State had become encumbered by trust deeds and mortgages unreleased of record. It was difficult if not impossible in many instances to obtain releases of these instruments, and litigation to

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remove such purported liens as clouds on title was expensive and time consuming." *Livingston*, 6 Ill. 2d at 332. The amicus curiae correctly identified this purpose.

The legislature enacted Section 13-116 not to eliminate the right to quiet title against a time-barred debt, but to make such litigation *unnecessary* after 20 years.

Neither the appellate court nor Defendant has grappled with the context that *Livingston* actually presented. *Livingston* was a dispute between a seller and a prospective third-party purchaser who refused to complete a real estate transaction because unreleased trust deeds clouded title. That is precisely the third-party purchaser context for which Section 11(b) was enacted. The *Livingston* Court applied Section 11(b) because it was directly on point for that third-party dispute -- not because it was the exclusive mechanism for extinguishing time-barred mortgage liens between original parties. This case involves a dispute between the original parties to the mortgage, a scenario *Livingston* does not address. Nor does the appellate court's "could have rested on that basis" argument hold up: in *Livingston*, both the 10-year statute of limitations and the 20-year Section 11(b) period had expired, and the *Livingston* Court addressed Section 11(b) because it was the provision most directly applicable to the third-party dispute before it. When two independent grounds support the same result, a court's choice to rest on the more directly applicable one does not signal that the other ground would fail. The *Livingston* Court's silence on the statute of limitations ground proves nothing about its operation in a dispute between original parties. Most tellingly, *Livingston* itself confirmed that "a bill to quiet title or to remove a cloud could have been maintained prior to the enactment of section 11(b)." *Livingston*, 6 Ill. 2d at 336. That is an explicit acknowledgment by this Court that the pre-existing quiet title right

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-- grounded in the 10-year statute of limitations and the common law rule of extinguishment -- was sufficient to remove a time-barred mortgage lien before Section 11(b) existed. The legislature did not create a new regime when it enacted Section 13-116; it made expensive litigation unnecessary for third parties after 20 years. The pre-existing quiet title right that *Livingston* expressly confirms is precisely what Plaintiff invokes here. *Livingston* is not Defendant's authority. It is Plaintiff's.

IX. An unenforceable lien is a cloud on title; Plaintiff's superior title was established the moment the mortgage was conceded to be unenforceable.

Defendant suggests that Plaintiff could simply wait until 20 years passes under Section 13-116, sell the property subject to the encumbrance, or hope a title company will "insure over" it. See Def.'s Resp. at 10. A quiet title action is an equitable proceeding designed to resolve disputes over ownership and to remove clouds on title -- claims that appear valid of record but are in fact invalid or unenforceable. *Gambino*, 398 Ill. App. 3d at 52. To prevail, a plaintiff need only demonstrate that her title is *superior to that of the defendant*. *Diaz v. Home Federal S&L Ass'n*, 337 Ill. App. 3d 722, 726 (2d Dist. 2002). A quiet title action is a proper vehicle for eliminating unenforceable encumbrances. *CitiMortgage*, 2025 IL App (1st) 231548-U, ¶ 45.

Here, both parties concede that Defendant's note and mortgage are barred by the statute of limitations and that Defendant cannot foreclose. See *Watkin*, 2025 IL App (1st) 241354, ¶ 21. Once those concessions were made, nothing remained but a recorded shadow of a lien – the textbook definition of a cloud on title. Plaintiff's title was superior the

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moment Defendant's right of enforcement was conceded to be extinguished. Nothing more was required to entitle Plaintiff to judgment.

An unreleased mortgage of record creates severe title defects that must be addressed before clear title can be transferred or pledged – yet holders of unenforceable mortgages can still demand full payoff before issuing releases. The appellate court's ruling strips property owners of their only mechanism to ward off zombie mortgages and rewards creditors who sit on their rights, contrary to the most basic principles of equity.

CONCLUSION

For more than 160 years, Illinois law has spoken with one voice: the promissory note is the principal, the mortgage is the incident, and when enforcement of the debt is barred by the statute of limitations, the mortgage is extinguished by operation of law. Section 13-116 is a recording statute designed exclusively to protect third parties; it operates in a distinct lane from the common law extinguishment rules, serves a wholly different purpose, and cannot be used to resurrect an expired lien between the parties to the mortgage. Defendant's contrary arguments misread the statute, mischaracterize controlling case law, exceed the appellate court's authority to overrule over a century of Supreme Court precedent, and ignore the legislature's unequivocal reaffirmation of common law extinguishment principles. Allowing an unenforceable lien to fester on title gives Defendant exactly what the statute of limitations was designed to deny: a backdoor mechanism to leverage a legally dead obligation against a property owner who can no longer be compelled to pay it in any court in this State.

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WHEREFORE, the Plaintiff respectfully requests that this Honorable Court reverse the decision of the appellate court and the judgment of the circuit court, and remand this cause with instructions to enter a decree quieting title in favor of Plaintiff, free and clear of Defendant's Mortgage, and for such other and further relief as this Court deems just and equitable.

Respectfully submitted,

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, and known as Land Trust # 32731

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Rules 341 (a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, 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 5,923 words.

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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, and known as Land Trust # 32731,
Plaintiff- Petitioner,

v.

Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust,
Defendant-Respondent.

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, No. 2023-CH-05985
The Honorable **Allen Price Walker**, Judge Presiding

NOTICE OF FILING

To: Robert T. Kuehl, Kuehl Law, P.C., Attorney for Defendant, 555 S. Randall Road, Suite 205, St. Charles, Illinois 60174 (via e-mail to *bob@kuehllawpc.com*)

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On **April 22, 2026**, the Plaintiff-Appellant, 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, and known as Land Trust # 32731, by and through its attorney, Arthur C. Czaja, electronically served for filing upon the Clerk of the Supreme Court of the State of Illinois, the enclosed **REPLY BRIEF OF PLAINTIFF-APPELLANT** in the above captioned matter.

/s/ *Arthur C. Czaja* .
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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on **April 22, 2026**, he caused a true and correct copy of this Notice to be served upon the party(ies) listed above, by attaching a copy of this Notice to an electronic mail transmission and using Green Filing Illinois to the party(ies) identified hereinabove at the electronic mail address(es) identified hereinabove from 7521 N. Milwaukee Avenue, Niles, IL 60714. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ *Arthur C. Czaja* .

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