2026 WL 1487434
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United States Court of Appeals, Seventh Circuit.

ABERDEEN DEVELOPERS, LLC, Plaintiff-Appellant,
v.
WELLS FARGO BANK, N.A., AS TRUSTEE FOR REGISTERED HOLDERS OF DEUTSCHE MORTGAGE & ASSET RECEIVING CORPORATION, CD 2019-CD8 MORTGAGE TRUST, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2019-CD8, a National Bank and LNR Partners, LLC, Defendants-Appellees.

No. 25-1667
|
Argued May 14, 2026
|
Decided May 28, 2026

Synopsis

Background: Borrower, which had offered mixed-use building as collateral for loan, brought breach-of-contract action in state court against loan servicer and trustee for lender's assignee arising from servicer's continued holding of excess building revenue, including rental income, as additional security. Case was removed. The United States District Court for the Northern District of Illinois, John F. Kness, J., 2024 WL 4894286, granted servicer's motion to dismiss for failure to state a claim. Borrower appealed.

[Holding:] The Court of Appeals, Scudder, Circuit Judge, held that under Illinois law, loan's governing documents were ambiguous as to length of time that servicer could hold the additional security, presenting fact issue that precluded dismissal for failure to state claim.

Reversed and remanded.

Procedural Posture(s): On Appeal; Motion to Dismiss for Failure to State a Claim.

West Headnotes (9)

[1] Federal Courts Pleading

Court of Appeals reviews without deference a dismissal for failure to state a claim. Fed. R. Civ. P. 12(b)(6).

[2] Federal Civil Procedure Insufficiency in general

To survive a motion to dismiss for failure to state a claim, a complaint must state a claim to relief that is plausible on its face. Fed. R. Civ. P. 12(b)(6).

[3] Federal Civil Procedure Insufficiency in general

A claim has facial plausibility, as required to survive a motion to dismiss for failure to state a claim, when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Fed. R. Civ. P. 12(b)(6).

[4] Federal Civil Procedure Fact issues

Breach of contract claim cannot be resolved on motion to dismiss for failure to state claim when language of alleged contract is ambiguous regarding parties' intent. Fed. R. Civ. P. 12(b)(6).

[5] Contracts Ambiguity in general

Under Illinois law, when language of alleged contract is ambiguous regarding parties' intent, the interpretation of the ambiguous contract language is a question of fact. Fed. R. Civ. P. 12(b)(6).

[6] Contracts Existence of ambiguity

Under Illinois law, contract is ambiguous if it is subject to more than one reasonable interpretation.

[7] **Contracts** Existence of ambiguity

Under Illinois law, mere fact that parties disagree over contract's interpretation does not suffice to establish ambiguity.

[8] **Contracts** Existence of ambiguity

Contracts Reasonableness of construction

Under Illinois law, court will consider only reasonable interpretations of contract language and will not strain to find ambiguity where none exists.

[9] **Federal Civil Procedure** Fact issues

Under Illinois law, governing documents for loan secured by mixed-use building, allowing loan servicer to hold "Excess Cash Flow" as additional security in a "sweep account" but also requiring servicer to disburse all "Excess Cash Flow" to borrower "each Collection Period," defined separately as a monthly time interval, and providing for sweep account funds to be remitted to borrower following a "Cash Sweep Cure," were ambiguous as to whether servicer could hold the excess cash flow until the "Cash Sweep Cure" trigger event occurred and thus presented a question of fact, precluding dismissal for failure to state claim in borrower's breach-of-contract action against loan servicer arising from servicer's continued retention of excess building revenue as additional security. Fed. R. Civ. P. 12(b)(6).

More cases on this issue

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:23-cv-14279 — **John F. Kness,** *Judge.*

Attorneys and Law Firms

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Before Ripple, Scudder, and St. Eve, Circuit Judges.

Opinion

Scudder, Circuit Judge.

***1** Aberdeen Developers, LLC, secured a loan by offering a mixed-use building as collateral. During the COVID-19 pandemic, one of the building's largest tenants filed for bankruptcy, allowing the loan servicer, LNR Partners, LLC, to hold excess building revenue (like rental income) in a special account as additional security. The parties dispute how long LNR Partners may hold that excess revenue. The district court dismissed Aberdeen Developers' breach-of-contract claim, concluding that the relevant agreements unambiguously favored the defendants. We disagree. The agreements are ambiguous because both sides offer reasonable constructions. So we reverse and remand for further proceedings.

I

In 2018, MUFG Union Bank loaned Aberdeen Developers $41 million. Aberdeen Developers secured the loan with a mixed-use building in Chicago worth around $73 million. MUFG Union Bank then sold its rights as the lender to a corporation that named Wells Fargo Bank as the trustee. Wells Fargo eventually appointed LNR Partners as the loan's special servicer. As servicer, LNR Partners makes all substantive decisions about loan administration.

Two documents govern the loan. The first is the Loan Agreement, which provides the general terms of the loan. The second is the Cash Management Agreement, also known as the CMA, which clarifies how to handle cash flow from the mixed-use building. Aberdeen Developers and the original lender signed and are parties to both agreements.

Things went smoothly until the COVID-19 pandemic. In January 2021, one of the building's largest tenants filed for bankruptcy. Under the terms of the CMA, that event allowed the servicer to declare a Cash Sweep Trigger Event, which initiated a Cash Sweep Event Period. The CMA provides special rules that apply during a Cash Sweep Event Period.

By way of example, the CMA states that income generated by the mixed-use building must go into a Cash Management Account held by LNR Partners instead of the Borrower Operating Account maintained by Aberdeen Developers. The Cash Sweep Event Period ends only when LNR Partners determines that a Cash Sweep Cure has occurred.

The CMA also dictates how LNR Partners should apply the funds in the Cash Management Account during the Cash Sweep Event Period. Section 3.4 provides that each month, LNR Partners must disburse the funds in a certain order of priority, paying taxes, insurance, fees, and expenses before eventually holding the remainder in a subaccount as extra security or giving it back to Aberdeen Developers. Here is how the contract puts it:

> **Application of Cash Management Account Funds.** Provided no Event of Default shall have occurred and is continuing, commencing on the first Business Day of each Collection Period following a Cash Sweep Trigger Event, Lender (or Servicer on behalf of Lender) shall apply all funds on deposit in the Cash Management Account in the following amounts and order of priority, or as otherwise directed pursuant to the written instructions of Lender:
>
> ***2** (a) First, ... funds in an amount required to be deposited into the Tax Escrow Fund and then the remaining balance, if any, to the Insurance Escrow Fund, shall be disbursed to Lender pursuant to the provisions of the Loan Agreement to be deposited into such Tax Escrow Fund and/or Insurance Escrow Fund, as applicable;
>
> ...
>
> (h) Eighth, payments for Extraordinary Expenses for the applicable period approved by Lender, if any, shall be deposited into the Borrower Operating Account;
>
> (i) Ninth, all amounts then remaining after payments of items (a) though (h) (the "**Excess Cash Flow**"), shall be deposited into a separate subaccount (the "**Sweep Account**") to be held by Lender as additional security for the Loan; and
>
> (j) Tenth, all Excess Cash Flow shall be disbursed to, or at the written direction of, Borrower.

CMA § 3.4 (emphasis in original).

Aberdeen Developers believes that section 3.4(j) of the CMA compels LNR Partners to return all Excess Cash Flow at the end of each month. But LNR Partners reads section 3.4(i) to allow it to hold all Excess Cash Flow until a Cash Sweep Cure occurs.

Neither party contends that a Cash Sweep Cure has occurred or will occur. As a result, LNR Partners has accumulated about $2.3 million in the Sweep Account as of the date of the First Amended Complaint. That number increases by about $150,000 every month. Should no Cash Sweep Cure occur, the sum will grow until the end of the contract term in 2029, resulting in an estimated $11.7 million in additional security.

In August 2023, Aberdeen Developers sued Wells Fargo and LNR Partners in Illinois state court, alleging a breach of contract. The defendants removed the action to federal court and then moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). The district court granted the motion, concluding the Loan Agreement and CMA unambiguously allowed LNR Partners to retain all Excess Cash Flow in the Sweep Account until the end of the contract term.

Aberdeen Developers appealed.

II

[1] **[2]** **[3]** We review a Rule 12(b)(6) dismissal without deference. See *Levy v. W. Coast Life Ins. Co.*, 44 F.4th 621, 626 (7th Cir. 2022). To survive a motion to dismiss, a complaint must "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).

[4] **[5]** The parties agree that Illinois law applies. A breach-of-contract claim cannot be resolved on a motion to dismiss when "the language of an alleged contract is ambiguous regarding the parties' intent." *Kap Holdings, LLC v. Mar-Cone Appliance Parts Co.*, 55 F.4th 517, 526 (7th Cir. 2022) (quoting *Quake Constr., Inc. v. Am. Airlines, Inc.*, 141 Ill.2d 281, 152 Ill.Dec. 308, 565 N.E.2d 990, 994 (1990)). In those circumstances, the interpretation of ambiguous contract language "is a question of fact." *Id.* (quoting *Quake Constr., Inc.*, 152 Ill.Dec. 308, 565 N.E.2d at 994).

[6] [7] [8] "A contract is ambiguous if it is subject to more than one reasonable interpretation." *Gomez v. Bovis Lend Lease, Inc.*, 387 Ill.Dec. 119, 22 N.E.3d 1, 4 (Ill. App. Ct. 2013). "The mere fact that the parties disagree over the contract's interpretation does not suffice to establish ambiguity." *Id.* "A court will consider only reasonable interpretations of the contract language and will not strain to find an ambiguity where none exists." *Lease Mgmt. Equip. Corp. v. DFO P'ship*, 392 Ill.App.3d 678, 331 Ill.Dec. 300, 910 N.E.2d 709, 716 (2009).

III

***3** The Loan Agreement and CMA are ambiguous because both sides offer reasonable constructions of their terms.

[9] We begin with Aberdeen Developers. It contends that section 3.4(j) of the CMA requires LNR Partners to "disburse[ ]" "all Excess Cash Flow" to Aberdeen at the end of each month. CMA § 3.4(j). That construction is reasonable because the opening language of section 3.4 states that the disbursements should occur "each Collection Period," which the CMA defines as a monthly time interval. *Id.* §§ 1.1, 3.4.

Section 3.4(i) of the CMA does not expressly foreclose Aberdeen Developers' construction. While it allows LNR Partners to hold the exact same money—the Excess Cash Flow—as additional security in the Sweep Account, the provision never clarifies how long LNR Partners may do so. See *id.* § 3.4(i). Aberdeen Developers insists that the parties never intended for the Sweep Account to grow to over $11 million across the lifetime of the loan without speaking more clearly. See *Suburban Auto Rebuilders, Inc. v. Associated Tile Dealers Warehouse, Inc.*, 388 Ill.App.3d 81, 327 Ill.Dec. 792, 902 N.E.2d 1178, 1190 (2009) ("Courts will construe a contract reasonably to avoid absurd results."). That view is plenty reasonable.

Nor do we see anything implicit in section 3.4(i) that forecloses Aberdeen Developers' construction. It might seem odd to say that LNR Partners receives "additional security" on such a large loan merely by retaining the Excess Cash Flow until the end of the month. CMA § 3.4(i). But section 5.1(a) of the CMA describes all of the pre-disbursement Cash Management Account funds as "additional security," and no one disputes that at least some of those funds are disbursed on a monthly basis. *Id.* § 5.1(a); see, *e.g., id.* § 3.4(a). So money does not cease to provide security within the meaning of this contract just because it gets disbursed each month. See *Gallagher v. Lenart*, 226 Ill.2d 208, 314 Ill.Dec. 133, 874 N.E.2d 43, 58 (2007) ("[B]ecause words derive their meaning from the context in which they are used, a contract must be construed as a whole, viewing each part in light of the others.").

Now consider Wells Fargo and LNR Partners' construction. It too is reasonable. They insist that LNR Partners may hold the Excess Cash Flow until a Cash Sweep Cure occurs. They point to section 6.3(b) of the Loan Agreement, which provides:

> Following the occurrence and *during the continuance* of a Cash Sweep Trigger Event, Borrower acknowledges that *all proceeds* on deposit in (and subsequently deposited into) the Clearing Account shall be transferred to and *held* in the Cash Management Account (as defined in the Cash Management Agreement) as additional Collateral under the Loan. Following a Cash Sweep Cure and provided no Event of Default is then occurring, all funds on deposit in the Cash Management Account shall be immediately remitted to Borrower in accordance with the Cash Management Agreement.

Loan Agreement § 6.3(b) (emphasis added).

By its terms, section 6.3(b) contemplates that "all proceeds" transferred to the Cash Management Account will be "held" in the Cash Management Account, which includes the Sweep Account, as "additional Collateral" "during the continuance of a Cash Sweep Trigger Event." *Id.* In light of this provision, it stands to reason that the money added to the Sweep Account pursuant to section 3.4(i) should be "held" by LNR Partners "during the continuance of a Cash Sweep Trigger Event"—in other words, until a Cash Sweep Cure occurs. Loan Agreement § 6.3(b); see also *Gallagher*, 314 Ill.Dec. 133, 874 N.E.2d at 58 ("[I]nstruments executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction are regarded as one contract and will be construed together.").

***4** Wells Fargo and LNR Partners' construction does not render section 3.4(j) of the CMA superfluous. In their view, section 3.4(j) still matters after a Cash Sweep Cure. Section 6.3(b) of the Loan Agreement provides that "[f]ollowing a Cash Sweep Cure," "all funds on deposit in the Cash Management Account," including those in the Sweep Account, "shall be immediately remitted to Borrower in accordance with the Cash Management Agreement." Loan Agreement § 6.3(b). The CMA in turn provides that "[i]n the event that a Cash Sweep Event Period shall no longer exist," "Lender shall either apply in accordance with Section 3.4 of this Agreement or disburse the then current balance of funds related solely to the Premises ... to the Borrower Operating Account." CMA § 3.3 (cleaned up). Should LNR Partners choose to apply the funds in accordance with section 3.4 instead of immediately returning them to Aberdeen Developers, section 3.4(j) clarifies that "all Excess Cash Flow shall be dispersed to ... Borrower" in the end. CMA § 3.4(j). This view is reasonable.

* * *

Both sides reasonably construe the Loan Agreement and CMA. Having taken our own hard look at both agreements, we are unsure about the parties' intent. When a contract is ambiguous, we cannot resolve an Illinois breach-of-contract claim on a motion to dismiss. We therefore REVERSE and REMAND for additional proceedings.

All Citations

--- F.4th ----, 2026 WL 1487434