SIXTH DIVISION
Order filed: May 18, 2018

No. 1-17-2128



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| U.S. BANK NATIONAL ASSOCIATION, as Trustee, Successor in Interest to Bank of America, National Association, as Successor by Merger to LaSalle Bank National Association, as Trustee for WAMU Mortgage Pass-Through Certificates Series 2007-HY07 Trust, | ) | Appeal from the Circuit Court of Cook County |
| Plaintiff-Appellant, | ) | |
| v. | ) | No. 09 CH 10076 |
| RENATA PLACEK; KRZYSZTOF F. PLACEK; JPMORGAN CHASE COMPANY; IRENE RICHARDSON a/k/a Irene Patyk; UNKNOWN OWNERS AND NONRECORD CLAIMANTS, | ) | |
| Defendants, | ) | Honorable Michael F. Otto, |
| (Renata Placek, Defendant-Appellee). | ) | Judge, Presiding. |

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

**ORDER**

¶ 1 *Held*: (1) The dismissal of counts I, II, and XI of the second amended complaint is affirmed where the plaintiff failed to address the issue in its appellate brief and forfeited the issue for review. (2) The circuit court erred by dismissing the plaintiff's claims for equitable subrogation and equitable liens (count III), foreclosure of the equitable liens (count IV), and unjust enrichment (count VII)

> where the second amended complaint alleged sufficient facts upon which relief could be granted. (3) The court properly dismissed counts V and VI of the second amended complaint where the claims were duplicative of the claims alleged in counts III and IV. (4) The cause is remanded to the circuit court with instructions to strike paragraph 43(C) of the prayer for relief in count III.

¶ 2 The plaintiff, U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association, as Successor by Merger to LaSalle Bank National Association, as Trustee for WAMU Mortgage Pass-Through Certificates Series 2007-HY07 Trust (U.S. Bank), appeals from an order of the circuit court of Cook County, which granted the defendant, Renata Placek's, motion to dismiss counts III-VII of its second amended complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)). For the following reasons, we affirm in part, reverse in part, and remand with instructions.

¶ 3 The procedural history of this protracted litigation is convoluted, and we set forth only as much information as is relevant for disposition of this appeal. The following facts are derived from the various pleadings, which we accept as true in the context of a motion to dismiss. See *Wackrow v. Niemi*, 231 Ill. 2d 418, 420 (2008).

¶ 4 In October 1989, Renata and Krzysztof Placek, husband and wife, obtained title as joint tenants to a single-family home located at 7910 Davis Street in Morton Grove, Illinois. In November 2003, the Placeks borrowed $340,000 from Washington Mutual Bank, which was secured by a mortgage on the property (WAMU Mortgage). In February 2005, Krzysztof conveyed his interest in the property to Renata. Thereafter, in September 2006, Renata borrowed an additional $310,000, this time from Harris Bank, which was secured by a mortgage (Harris Mortgage).

¶ 5 Less than a year later, on May 1, 2007, Renata purportedly entered into a new loan with Washington Mutual Bank. The loan was in the amount of $720,000 and was secured by a mortgage (2007 Mortgage). Approximately $600,207.13 of the loan proceeds were used to pay off the WAMU and Harris Mortgages while the remaining $112,771.87 was allegedly given to Renata at closing. As a result of the refinance, the WAMU Mortgage and Harris Mortgage were released. After monthly payments on the 2007 mortgage were made for more than a year, payments stopped in November 2008.

¶ 6 On March 5, 2009, Bank of America, as successor in interest to Washington Mutual Bank, filed a single count complaint against the defendants, Renata, Krzystof, JPMorgan Chase Company, and unknown owners and non-record claimants, seeking to foreclose on the 2007 Mortgage that was purportedly executed by Renata.[1]

¶ 7 On April 3, 2009, Renata filed her *pro se* appearance and answer to the complaint. In her answer, Renata stated that she did not sign the documents connected to the 2007 Mortgage as she was in Poland at the time it was allegedly executed by her. In response to Bank of America's discovery requests, Renata produced a copy of her passport, which contained stamps supporting her claim that she entered Poland on April 24, 2007, and re-entered the United States on May 8, 2007.

¶ 8 On August 2, 2011, Bank of America sought leave to file an amended complaint, which the circuit court granted on August 18, 2011. In the amended complaint, Bank of America re-pled count I of its original complaint, seeking to foreclose upon the 2007 Mortgage. In count II, which was pled in the alternative to count I, Bank of America sought the imposition of equitable

[1] The 2007 Mortgage was originally executed in favor of Washington Mutual Bank. However, after JP Morgan Chase acquired Washington Mutual Bank, it assigned the mortgage to Bank of America.

liens upon the subject property in the amount of $600,207.13 and that it "be subrogated to" the lien positions of Washington Mutual Bank and Harris Bank. According to the amended complaint, Bank of America alleged that, from the proceeds of the 2007 Mortgage, Washington Mutual Bank paid $289,778.56 to WAMU and $310,428.57 to Harris to extinguish the WAMU and Harris Mortgages.

¶ 9 On September 12, 2011, Renata filed an answer to the amended complaint in which she denied that she was "in any way connected" to the 2007 Mortgage as the 2007 Mortgage was "fraudulently executed."

¶ 10 On August 3, 2012, Bank of America filed a motion for substitution of plaintiff, asserting that U.S. Bank had succeeded to its interest in the 2007 Mortgage. The circuit court granted the motion on August 3, 2012, allowing U.S. Bank to substitute as plaintiff.

¶ 11 On February 12, 2013, Renata filed a *pro se* motion to dismiss the amended complaint, but failed to specify under which section of the Code (735 ILCS 5/2-101 *et seq.* (West 2012)) that it was brought. That motion asserted, *inter alia*, that Renata did not sign the 2007 Mortgage, and raised a number of factual arguments addressing U.S. Bank's right to recover, such as the lack of any contract between herself and U.S. Bank's predecessor in interest. Attached to the motion was a certified copy of Renata's passport and a letter from Tamara Kaiden, a forensic document examiner, stating that the signatures on the 2007 Mortgage documents did not match Renata's signature.

¶ 12 On July 22, 2013, the circuit court entered an order dismissing both counts of the amended complaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2012)).

¶ 13 On appeal, this court affirmed the dismissal of the mortgage foreclosure claim (count I) on grounds that U.S. Bank's brief contained no argument as to the propriety of the dismissal of

the foreclosure claim and the issue was forfeited. Regarding count II of the amended complaint, we noted that the court's reason for dismissing that claim—namely, that U.S. Bank failed to allege that Renata was a "participant in the fraud"—was the proper subject of a section 2-615 motion, not a section 2-619 motion. And, because Renata's motion to dismiss did not challenge the sufficiency of the allegations in count II of the complaint, we concluded that dismissal of count II was error whether predicated on the provisions of section 2-615 or section 2-619 of the Code. We, therefore, affirmed the dismissal of count I of the amended complaint, reversed the dismissal of count II of the amended complaint, and remanded the matter for further proceedings. *U.S. Bank National Ass'n v. Placek*, 2015 IL App (1st) 133696-U.

¶ 14 On remand, U.S. Bank sought leave to file a nine-count second amended complaint, which the circuit court granted. In the second amended complaint, filed March 30, 2016, U.S. Bank re-pled count I of the amended complaint, seeking to foreclose upon the 2007 Mortgage. In count II, U.S. Bank sought a declaratory judgment that Renata had ratified the 2007 Mortgage by making monthly mortgage payments for more than a year. Count III, entitled "equitable subrogation," sought the imposition of equitable liens on the property in the amounts of $600,207.13 and $112,771.87, and an order subrogating U.S. Bank to the first-priority lien position held by Washington Mutual Bank.[2] In count IV, U.S. Bank sought to foreclose upon the equitable lien identified in count III. Count V, entitled "equitable lien," was pled in the alternative to count III and sought an equitable lien on the property in the amount of $720,000, while count VI sought to foreclose on that equitable lien. In count VII, U.S. Bank alleged unjust enrichment in that Renata retained a benefit to U.S. Bank's detriment, while count XI alleged

[2] The prayer for relief did not seek an order subrogating U.S. Bank to the lien position of Harris Bank.

conversion.[3] Finally, count X of the second amended complaint alleged common law fraud against Krzysztof and Irene Richardson (Irene).[4]

¶ 15 On July 5, 2016, Renata filed a "combined motion to dismiss counts I-IX [*sic*]" (see 735 ILCS 5/2-619.1 (West 2016)), contending, in relevant part, that the complaint failed to state a claim upon which relief could be granted. Renata argued that count II, seeking a declaration that she ratified the 2007 Mortgage, should be dismissed since U.S. Bank failed to allege that she had full knowledge of the facts surrounding the fraudulent mortgage. Regarding the equitable subrogation claim (count III) and equitable lien claim (count V), Renata maintained that dismissal was appropriate because there were no allegations that she was *unjustly* enriched or that her conduct "created a debt, duty or obligation" owed by her to U.S. Bank. As to counts IV and VI, which sought to foreclose upon the equitable liens in counts III and V, respectively, Renata argued that those claims necessarily fail because counts III and V failed. As to the unjust enrichment claim (count VII), Renata asserted that it must be dismissed because "unjust enrichment is not a separate cause of action, but is instead subsumed by the claim for an equitable lien." Finally, Renata contended that the conversion claim in count XI should be dismissed since the second amended complaint does not allege any facts establishing that she wrongfully assumed control over U.S. Bank's property.

¶ 16 While Renata's motion to dismiss was pending, U.S. Bank sought leave to file a third amended complaint. The circuit court granted U.S. Bank's motion, but only allowed it to amend

[3] The second amended complaint does not contain a count VIII or IX. And, because count XI appears before count X, the parties sometimes refer to it as count IX.

[4] Count X alleges that that Irene signed Renata's name without her authority in order to obtain the 2007 Mortgage.

the allegations in count X, which alleged common law fraud against Krzysztof and Irene. U.S. Bank filed its third amended complaint on November 14, 2016.

¶ 17 On December 21, 2016, following a hearing, the circuit court entered a 17-page written order dismissing counts I-VII of the second amended complaint with prejudice and dismissed count XI without prejudice. More specifically, the court dismissed count I on grounds that its prior dismissal order, which was affirmed on appeal, was law of the case. As to count II, the claim seeking a declaration that Renata ratified the 2007 Mortgage, the court dismissed that count because U.S. Bank failed to allege that she "had full knowledge of the 2007 Mortgage at any time during the purported ratification." Relying on *CitiMortgage, Inc. v. Parille*, 2016 IL App (2d) 150286, the court dismissed the equitable subrogation claim in count III because U.S. Bank sought to be subrogated only to the position held by Washington Mutual Bank, and requested equitable liens in the amount of $600,207.13 and $112,771.87, which far exceeds the $289,778.56 used to pay off the WAMU Mortgage. The court also stated that dismissal of count III was warranted because U.S. Bank improperly combined a claim for equitable subrogation with a claim for an equitable lien. As to count V, the claim seeking an equitable lien in the amount of $720,000, the court stated that dismissal was appropriate under *Parille* because U.S. Bank failed to state a claim for equitable subrogation and, without equitable subrogation, U.S. Bank could not establish the existence of a debt, duty, or obligation owed to it by Renata. Next, the court determined that, because counts III and V failed to state a claim for equitable liens, "the corresponding counts to foreclose those liens [(counts IV and VI)] must also fall." With respect to count VII, the claim of unjust enrichment, the court dismissed that claim on grounds that unjust enrichment is not an independent cause of action. And, the court dismissed the conversion claim (count XI), but gave U.S. Bank an opportunity to file an amended pleading as to that

count. Finally, the court's written order stated that, while U.S. Bank did not request leave to file an amended complaint, it "would deny such leave" as U.S. Bank "has had multiple chances to plead equitable lien, and has failed to do so." Thereafter, U.S. Bank filed a motion to reconsider the dismissal of counts III-VI.

¶ 18 Meanwhile, Irene and Krzysztof filed separate motions to dismiss the common law fraud claim as pled in count X of the third amended complaint. The circuit court granted Irene's motion to dismiss on February 2, 2017, and granted Krzysztof's motion on July 26, 2017. Both dismissal orders were "with prejudice." Also on July 26, 2017, the circuit court entered an order "denying" U.S. Bank's conversion claim (count XI) "with prejudice" and denying U.S. Bank's motion for reconsideration.[5] This timely appeal followed.

¶ 19 As a preliminary matter, we note that U.S. Bank does not challenge that portion of the circuit court's order dismissing its foreclosure claim (count I), its claim seeking a declaration that Renata ratified the 2007 Mortgage (count II), or its conversion claim (count XI). Accordingly, any arguments pertaining to the propriety of the dismissal of those counts have been forfeited. Ill. S. Ct. Rule 341(h) (eff. Nov. 1, 2017); *Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010) (the failure to argue a point in the appellant's opening brief results in forfeiture of the issue).

¶ 20 Instead, U.S. Bank challenges the circuit court's order dismissing its claims seeking equitable subrogation and imposition of equitable liens in the amount of $600,207.13 and $112,771.87 (count III), an equitable lien in the amount of $720,000 (count V), foreclosure of the equitable liens (counts IV and VI), and its claim alleging unjust enrichment (count VII). In the

[5] The record reveals that U.S. Bank never filed an amended pleading to count XI.

alternative, U.S. Bank argues that the circuit court abused its discretion when it denied it leave to file a fourth amended complaint. We address each contention in turn.

¶ 21 A motion to dismiss a complaint under section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)) attacks the legal sufficiency of a complaint based upon defects apparent on the face of the complaint. *Bogenberger v. Pi Kappa Alpha Corp., Inc.*, 2018 IL 120951, ¶ 23. The critical inquiry is whether the allegations of the complaint, when construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Id*. In making this determination, all well-pleaded facts in the complaint must be taken as true. *Id.* Our supreme court has emphasized that Illinois is a fact-pleading jurisdiction which requires the plaintiff to allege sufficient facts "to bring a claim within a legally recognized cause of action." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). A cause of action will not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved which will entitle the plaintiff to recover. *Beahringer v. Page*, 204 Ill. 2d 363, 369 (2003). Our review is *de novo. Bogenberger*, 2018 IL 120951, ¶ 23.

¶ 22 U.S. Bank's first contention on appeal is that the circuit court erred in dismissing count III of its second amended complaint alleging equitable subrogation and seeking the imposition of equitable liens in the amount of $600,207.13 and $112,771.87.

¶ 23 Before reaching the merits, we initially address the parties' disagreement as to whether U.S. Bank's claims for equitable subrogation and the imposition of equitable liens must be pled in separate counts. As noted above, the circuit court dismissed count III based on its finding that U.S. Bank improperly combined its equitable-subrogation claim with its equitable-lien claims. Presumably, the court relied upon section 2-603(b) of the Code, which states in pertinent part, as follows:

> "(b) Each separate cause of action upon which a separate recovery might be had shall be stated in a separate count or counterclaim, as the case may be and each count, counterclaim, defense or reply, shall be separately pleaded, designated and numbered, and each shall be divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate allegation." 735 ILCS 5/2-603(b) (West 2016).

U.S. Bank contends, however, that section 2-603(b) of the Code does not control as pleadings in equitable actions are governed by Supreme Court Rule 135(a) (eff. July 1, 1982). We agree. Rule 135(a) states as follows:

> "(a) Single Equitable Cause of Action. Matters within the jurisdiction of a court of equity *** may be regarded as a single equitable cause of action and when so treated as a single cause of action shall be pleaded without being set forth in separate counts and without the use of the term 'count.' " S. Ct. R. 135(a) (eff. July 1, 2018).

¶ 24 In this case, U.S. Bank's second amended complaint sought equitable and declaratory relief, and it was not obligated to plead its claims in separate counts. *Nance v. Donk Brothers Coal & Coke Co.*, 13 Ill. 2d 399, 401-02 (1958); *Willmschen v. Trinity Lakes Improvement Ass'n*, 362 Ill. App. 3d 546, 555 (2005) ("requests for equitable relief *** are considered part of a single cause of action and need not be pleaded in separate counts"). In reviewing U.S. Bank's second amended complaint, we find no violations of the Code or the Supreme Court Rules that would provide a basis for dismissing the complaint with prejudice. Thus, the circuit court erred in concluding that separate counts were required in this equitable proceeding.

¶ 25 Turning to the merits, we first address U.S. Bank's assertion that the circuit court erred in dismissing that portion of count III of its second amended complaint alleging equitable subrogation. Our supreme court has described the doctrine of equitable subrogation as follows:

> "The doctrine of subrogation is a creature of chancery. It is a method whereby one[,] who has involuntarily paid a debt or claim of another[,] succeeds to the rights of the other with respect to the claim or debt so paid. [Citation.] The right of subrogation is an equitable right and remedy which rests on the principle that substantial justice should be attained by placing ultimate responsibility for the loss upon the one against whom in good conscience it ought to fall. [Citation.] Subrogation is allowed to prevent injustice and unjust enrichment but will not be allowed where it would be inequitable to do so. [Citation.] There is no general rule which can be laid down to determine whether a right of subrogation exists since this right depends upon the equities of each particular case. [Citation.]
>
> One who asserts a right of subrogation must step into the shoes of, or be substituted for, the one whose claim or debt he has paid and can only enforce those rights which the latter could enforce. [Citation.]" *Dix Mutual Insurance Co. v. LaFramboise*, 149 Ill. 2d 314, 319 (1992).

Moreover, "a mere stranger or volunteer" who pays the debt of another cannot be subrogated to the creditor's rights with respect to the security given by the real debtor. *Ohio National Life Insurance Co. v. Board of Education of Grant Community High School District No. 124*, 387 Ill. 159, 171 (1944). However, "if the person who pays the debt is compelled to pay for the protection of his own interest and rights, then the substitution should be made." *Id.*

¶ 26 U.S. Bank argues that the allegations in count III of the second amended complaint are sufficient to state a claim for equitable subrogation and that it should be allowed to assert the rights of the mortgagees whose loans it paid off—in other words, that it should be equitably subrogated to the WAMU and Harris Bank mortgages—and requests the imposition of equitable liens in its favor. In support of its argument, it cites *Deutsche Bank National Trust Co. v. Payton*, 2017 IL App (1st) 160305 and *Shchekina v. Washington Mutual Bank*, No. 08 C 6094, 2012 WL 3245957 (N.D. Ill. Aug. 7, 2012).[6]

¶ 27 In *Payton*, 2017 IL App (1st) 160305, ¶ 4, the defendants, husband and wife, executed two notes and mortgages, using their home as collateral. The following year, a warranty deed containing the defendants' forged signatures conveyed the property to the Paytons who, in turn, obtained a note and mortgage from Long Beach, which paid off the defendants' mortgages and gave the defendants a cash payout of $119,583.92. *Id.* ¶ 6. The mortgage (obtained via the forgery) then went into default and Deutsche Bank (who was assigned the mortgage from Long Beach) commenced foreclosure proceedings. The defendants challenged the foreclosure proceedings, asserting that they never met the Paytons or sold property to them, and that their signatures on the warranty deed were forged. *Id.* ¶ 7. As a result of the challenge, the circuit court ruled that Deutsche Bank could not foreclose on the mortgage, but granted partial summary judgment in its favor, finding that it was entitled to be equitably subrogated to the interests of the prior mortgagees whose debt it had paid.

[6] *Shchekina* is an unpublished federal case. "Unpublished federal decisions are not binding or precedential in Illinois courts." *Kind's Health Spa, Inc. v. Village of Downers Grove*, 2014 IL App (2d) 130825, ¶ 63. However, "nothing prevents this court from using the same reasoning and logic as that used in an unpublished federal decision, should it so choose." *Id.*

¶ 28 On review, the appellate court affirmed, holding that by paying off the defendants' two mortgages, Deutsche Bank's assignor "was subrogated by operation of law and stepped into the shoes of the [defendants'] mortgagees, Citimortgage and Countrywide," and "acquired Citimortgage's and Countrywide's priority interest in the subject property." *Id.* ¶ 22. The court noted that, despite the forgery, a benefit was conferred on the defendants when Deutsche Bank's assignor paid their valid mortgages and that equity would not allow the defendants to receive a windfall. To hold otherwise would permit the defendants to invoke a legal defense that divested the bank of its interest in the property and would result in them being unjustly enriched. *Id.* ¶ 30. The court concluded, therefore, that Deutsche Bank was entitled to be equitably subrogated to the position of the defendants' two mortgagees and the circuit court properly entered partial summary judgment in Deutsche Bank's favor. *Id*.

¶ 29 The court in *Shchekina*, 2012 WL 3245957, addressed a similar scenario. In that case, the plaintiff and her husband purchased a home and executed a note and mortgage to finance the purchase. *Id.* at *1. Over the course of a two-year period, they executed three subsequent notes and mortgages (all of which were executed for the purposes of refinancing). *Id.* The plaintiff then filed suit against the three banks, contending that her signatures on the loan and mortgage documents were forged and that she had no knowledge that any of these loans were taken out to pay off the balances of the prior loans. *Id*. Chase Bank moved for summary judgment on grounds that it be subrogated to the position of Guaranty Residential and awarded an equitable lien securing the amount due on the Guaranty Residential loan. *Id.* at *2. In granting Chase Bank's motion, the court reasoned that:

> "In the present case, each mortgagee, in turn was compelled to pay the prior mortgagee to protect its own interest in the mortgaged property.

> Even if [the plaintiff's] signature was forged ***, she received a benefit in each instance, in that any liability she might have had with regard to the previous mortgage was extinguished by the later mortgagee. *** If [the plaintiff] now is found to hold the property free and clear ***, she would be getting the benefit of being off the hook on the prior debts and mortgages without having given anything in return. Chase [Bank], on the other hand, would be left holding the bag. Chase [Bank] advanced funds that were used to pay off a prior loan, which in turn (indirectly) paid off a loan on which [the plaintiff] was concededly liable—the Guaranty Residential loan—and yet Chase [Bank] would be unable to recover anything from Shchekina and would have no lien on the property." *Shchekina*, No. 08 C 6094, 2012 WL 3245957, at *4.

Accordingly, the court determined that Chase Bank would suffer unjust harm if it was not equitably subrogated to the position of the prior mortgagee and granted an equitable lien. *Id.* *6.

¶ 30 Similarly here, count III of U.S. Bank's second amended complaint alleges that Renata had two mortgages on the property totaling $600,207.13 and that U.S. Bank (via its predecessor-in-interest, Washington Mutual Bank), loaned Renata $720,000, which was used, in part, to extinguish the preexisting mortgages. U.S. Bank further alleged that Washington Mutual Bank funded the 2007 Mortgage based upon its belief that it acquired a first priority lien interest in the property. To obtain a first-priority lien, Washington Mutual Bank was compelled to pay the prior mortgagees. Moreover, even if Renata's signature was forged on the 2007 Mortgage, the second amended complaint alleged that she received a benefit in that any liability she might have had with regard to the previous mortgages was extinguished by the 2007 Mortgage.

¶ 31 Nonetheless, Renata argues that the circuit court correctly dismissed the equitable subrogation claim because U.S. Bank was required to "seek subrogation as to both of the prior lenders." While it is true, as Renata asserts, that paragraph 43(A) of the prayer for relief requested an order "[s]ubrogating [U.S. Bank] to the 2003 WAMU Mortgage," but not the 2005 Harris Mortgage, this "defect" is not fatal to U.S. Bank's equitable-subrogation claim. Throughout count III, U.S. Bank refers to both the WAMU and Harris Mortgages and paragraph 43(B) of the prayer for relief seeks equitable liens totaling $600,207.13, the amount used to pay off the WAMU and Harris Mortgages. And, paragraph 43(D) contains a general prayer for relief, which "is sufficient to warrant any judgment that is supported by the facts alleged in the complaint if those facts are proved by evidence." See *Fritzsche v. LaPlante,* 399 Ill. App. 3d 507, 522 (2010). In our view, the allegations in count III, construed as a whole, contain sufficient information to reasonably inform Renata that U.S. Bank seeks equitable subrogation as to both the WAMU and Harris Mortgages.

¶ 32 In sum, we conclude that count III of U.S. Bank's second amended complaint alleged sufficient facts to state an equitable subrogation claim and the circuit court erred when it dismissed that portion of count III.

¶ 33 Next, U.S. Bank contends that the circuit court erred in dismissing that portion of count III of its second amended complaint seeking the imposition of equitable liens in the amount of $600,207.13 (the amount used to pay off the WAMU and Harris Mortgages), and $112,771.87 (the amount paid to Renata at closing).

¶ 34 The imposition of an equitable lien is a remedy for a debt that cannot be legally enforced, but which ought in right and fairness to be recognized. *Hargrove v. Gerill Corp.*, 124 Ill. App. 3d 924, 930-31 (1984). This special remedy constitutes an encumbrance on the property, so that the

very property itself may be proceeded against and sold under a judicial decree, and its proceeds applied upon the demand of the lienholder. *Watson v. Hobson*, 401 Ill. 191, 201 (1948). An equitable lien can arise despite the absence of an express agreement by the defendant to be liable for the debt. *Hargrove*, 124 Ill. App. 3d at 931. The essential elements of an equitable lien are: (1) a debt, duty, or obligation owing by one person to another; and (2) a *res* to which that obligation fastens. *Cole Taylor Bank v. Cole Taylor Bank*, 224 Ill. App. 3d 696, 704 (1992).

¶ 35 In this case, count III of the second amended complaint alleged that Renata assumed an obligation to pay WAMU and Harris Bank $340,000 and $310,000, respectively, pursuant to the terms of the WAMU and Harris Mortgages. It further alleged that her obligation to pay both mortgages was secured by the same *res* namely, her residence. U.S. Bank argues that, by paying off the WAMU and Harris Mortgages, its predecessor-in-interest stepped into the shoes of the prior mortgagees giving rise to a debt, duty, or obligation owed by Renata to it. We agree.

¶ 36 While there is no express agreement here, the second amended complaint alleges sufficient facts establishing the requirements of an equitable lien: the existence of a debt arises from our determination that U.S. Bank is equitably subrogated to the WAMU and Harris Mortgages, and the *res* still exists. Once a bank is equitably subrogated to a prior mortgage, the debtor must be viewed as owing the bank a debt in the amount of that mortgage. *Shchekina*, 2012 WL 3245957, at *6 (after finding that the lender was entitled to equitable subrogation, the court determined that both requirements for an equitable lien were met); *Aames Capital Corp. v. Interstate Bank of Oak Forest*, 315 Ill. App. 3d 700, 710 (2000). Thus, U.S. Bank may assert equitable liens on the mortgaged property in the amount owed under the WAMU and Harris Mortgages.

¶ 37 In so holding, we find the decision in *CitiMortgage, Inc. v. Parille*, 2016 IL App (2d) 150286, a case cited by Renata, to be inapposite. In that case, the Parilles obtained a loan, used the proceeds to satisfy a preexisting mortgage on the property, and subsequently defaulted on the loan. *Id.* ¶¶ 7-8, 10. During foreclosure proceedings, the Parilles claimed that the mortgage was not a valid encumbrance on the property because only the wife had signed the mortgage documents. The bank sought the imposition of an equitable lien on the Parille's property but did not assert a claim of equitable subrogation. The Parilles moved to dismiss the claim for an equitable lien under section 2-615 of the Code on the basis that the bank failed to allege any facts that would give rise to a debt, duty, or obligation by the Parilles toward the bank. *Id.* ¶ 14. On appeal, the Second District Appellate Court affirmed the circuit court's order dismissing the bank's claim for an equitable lien. The court reasoned that, because the bank failed to sufficiently plead a claim for equitable subrogation, it did not establish a basis for the imposition of a debt or duty upon the Parilles. *Id.* ¶ 39. Accordingly, the court held that the bank's claim for an equitable lien must also fail. *Id.*

¶ 38 Renata argues that this case is similar to *Parille* because U.S. Bank failed to properly "pair" its equitable lien claim with its equitable subrogation claim. She contends that, "without the initial step of equitable subrogation, there is no debt, duty, or obligation that [she] *** would owe to U.S. Bank." As discussed above, however, count III of the second amended complaint did, in fact, state a claim for equitable subrogation. It is this equitable subrogation claim that serves the basis for U.S. Bank's contention that Renata owes it a debt, duty, or obligation. See *Shchekina*, 2012 WL 3245957, at *6. As a consequence, *Parille* is distinguishable.

¶ 39 Renata also argues that the circuit court correctly dismissed count III of the second amended complaint because the prayer for relief is excessive as it seeks equitable liens in the

amount of $600,207.13 (the amount used to pay off the WAMU and Harris Mortgages) and $112,771.87 (the amount paid to Renata at closing). While excesses in the prayer for relief do not make U.S. Bank's equitable lien claim defective (*Cannell v. Medical & Surgical Clinic, S.C.*, 21 Ill. App. 3d 383, 386 (1974)), U.S. Bank concedes that it is only entitled to equitable liens totaling $600,207.13. Indeed, the amount recoverable by operation of equitable subrogation is limited by the general rule that "a subrogee is entitled to indemnity to the extent of the money actually paid by him to discharge the obligation, or the value of the property applied for that purpose." 73 Am. Jur. 2d *Subrogation* § 67; *Shchekina*, 2012 WL 3245957, at *5, n.1 (declining to hold the plaintiff liable for the entire amount of the loan). Accordingly, U.S. Bank is entitled to equitable liens totaling $600,207.13, the amount actually paid to discharge WAMU and Harris Mortgages. Therefore, we instruct the circuit court to strike paragraph 43(C) of the second amended complaint seeking an equitable lien in the amount of $112,771.87.

¶ 40 Having found that the circuit court erred in dismissing count III of the second amended complaint, we next address whether the court erred in dismissing count IV, which sought to foreclose on the equitable liens pled in count III. We note that the circuit court dismissed count IV based on its finding that U.S. Bank failed to state a claim for the imposition of equitable liens. Moreover, the parties' arguments in this regard rest entirely upon their argument addressing the dismissal of the claim for equitable liens. Since we have found that U.S. Bank alleged sufficient facts in support of its claim for equitable liens, we reverse that portion of the circuit court's order dismissing the foreclosure claim in count IV.

¶ 41 U.S. Bank's next contention on appeal is that the circuit court erred in dismissing counts V and VI of its second amended complaint, which sought the imposition of an equitable lien in the amount of $720,000 (the amount of the 2007 Mortgage) and foreclosure of that lien,

respectively. Our review of the second amended complaint discloses that the factual allegations in counts V and VI are substantially similar to the allegations in counts III and IV. Because counts V and VI are duplicative of counts III and IV, and because U.S. Bank concedes it is not entitled to an equitable lien in the amount of $720,000, we affirm the circuit court's order dismissing counts V and VI of the second amended complaint. *US Bank, National Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 18 (We may affirm on any ground that appears in the record).

¶ 42 Lastly, U.S. Bank argues that the circuit court erred by dismissing count VII of its second amended complaint, alleging unjust enrichment. To state a claim for unjust enrichment, "a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience." *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160 (1989). Unjust enrichment is not an independent cause of action (*Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill. App. 3d 1017, 1024 (2009)) and the theory is inapplicable where an express contract, oral or written, governs the parties' relationship. *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25. Rather, unjust enrichment "may be brought about by unlawful or improper conduct as defined by law, such as fraud, duress, or undue influence" (*Alliance Acceptance Co. v. Yale Insurance Agency, Inc.*, 271 Ill. App. 3d 483, 492 (1995)), or, alternatively, it may be based on contracts which are implied in law (*Perez v. Citicorp Mortgage, Inc.*, 301 Ill. App. 3d 413, 425 (1998)).

¶ 43 Here, U.S. Bank's second amended complaint alleged that Renata had two mortgages on the property and that U.S. Bank (via its predecessor-in-interest, Washington Mutual Bank), loaned Renata $720,000, of which, $600,207.13 was used to pay off the preexisting mortgages

and the remaining $112,771.87 was allegedly given to Renata at closing. It further alleged that Washington Mutual Bank funded the 2007 Mortgage based upon its belief that it acquired a first priority lien interest in the property and that, under these circumstances, it "would be inequitable" to allow Renata to "retain the benefit of ownership of the Property" and "retain the $112,771.87 that was paid in cash at closing." As relief, U.S. Bank sought "all amounts unjustly retained by Renata to [its] detriment." These allegations, taken as true and viewed in a light most favorable to U.S. Bank, sufficiently allege the elements of unjust enrichment: Renata has unjustly retained a benefit to U.S. Bank's detriment, and her retention of the benefit violates the fundamental principles of justice, equity, and good conscience. See *First American Title Insurance Co. v. TCF Bank, F.A.*, 286 Ill. App. 3d 268, 275 (1997); *Decaro v. M. Felix, Inc.*, 371 Ill. App. 3d 1103, 1109-10 (2007).

¶ 44 In so holding, we reject Renata's contention that the circuit court properly dismissed count VII on grounds that the unjust-enrichment claim was pled as an independent cause of action. Viewing the complaint as a whole (*Kaiserman v. Bright*, 61 Ill. App. 3d 67, 73 (1978)), U.S. Bank's unjust enrichment claim is based upon the equitable subrogation claim pled in count III, which is in the nature of a contract implied in law. A contract implied in law, or quasi contract, is founded on the implied promise by the recipient of services or goods to pay for something of value which it has received. *Century 21 Castles by King, Ltd. V. First National Bank of Western Springs*, 170 Ill. App. 3d 544, 548 (1988). It is one in which no actual agreement exists between the parties, but a duty to pay a reasonable value is imposed upon the recipient of services or goods to prevent an unjust enrichment. *Hayes Mechanical, Inc. v. First Industrial, LP*, 351 Ill. App. 3d 1, 8 (2004); see also *Karen Stavins Enterprises, Inc. v. Cmty. Coll. Dist. No. 508*, 2015 IL App (1st) 150356, ¶ 7 ("The essence of a cause of action based upon

a contract implied in law is the defendant's failure to make equitable payment for a benefit that it voluntarily accepted from the plaintiff."). In this case, U.S. Bank's unjust-enrichment claim is predicated upon a contract implied in law—namely that, Renata received the benefit of the 2007 Mortgage; she has refused to make payments to U.S. Bank; and she has unjustly retained a benefit in violation of fundamental principles of equity and good conscience. As such, count VII should have survived dismissal pursuant to section 2-615.

¶ 45 Nonetheless, Renata maintains that U.S. Bank's unjust-enrichment claim was properly dismissed because it is duplicative of its equitable subrogation and equitable lien claims. She cites *Mulligan v. QVC, Inc.*, 382 Ill. App. 3d 620, 631 (2008) in support of her assertion. *Mulligan*, however, does not stand for the proposition that a claim for unjust enrichment is duplicative of claims seeking equitable subrogation and the imposition of equitable liens. Instead, the court in *Mulligan* simply held that a claim of unjust enrichment, standing alone, cannot form the basis for liability. See *id*. (affirming the circuit court's grant of summary judgment in the defendant's favor on the plaintiff's claim for unjust enrichment where the plaintiff's underlying consumer fraud claim failed). As just discussed, U.S. Bank's unjust enrichment claim is based upon a contract implied in law. We conclude, therefore, that the circuit court erred in dismissing U.S. Bank's claim of unjust enrichment (count VII) of the second amended complaint.

¶ 46 Having found that the circuit court erred in dismissing counts III, IV, and VII of U.S. Bank's second amended complaint, we need not address its alternative argument that the court abused its discretion in denying it leave to file a fourth amended complaint.

¶ 47 For the foregoing reasons, we affirm the circuit court's dismissal of counts I, II, V, VI, and XI of the second amended complaint; reverse the dismissal of counts III, IV, and VII of the

second amended complaint; and remand with instructions that the circuit court strike paragraph 43(C) of the second amended complaint.

¶ 48 Affirmed in part, reversed in part, cause remanded with instructions.