



STATE OF ILLINOIS)
) SS.
 COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 MUNICIPAL DEPARTMENT-FOURTH DISTRICT

WESLEY TERRACE CONDOMINIUM)
 ASSOCIATION,)
)
) Plaintiff,)

-vs-

No. 16 M4 000881

CHRISTOPHER STOLLER and)
 MICHAEL STOLLER,)
)
) Defendants.)

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REPORT OF PROCEEDINGS had at the hearing of
 the above-entitled cause, before the Honorable Kevin
 Lee, one of the Judges of said Court, on
 October 13, 2016, at the hour of approximately
 2:30 p.m., at Room 111, 1500 Maybrook Drive, Maywood,
 Illinois.

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PRESENT:

BY: MR. CHRISTOPHER STOLLER,
(PO Box 4195
Oak Park, Illinois 60302)
Appeared on behalf of the Defendant,
Christopher Stoller;

KOVITZ, SHIFRIN & NESBIT,
BY: MR. RONALD KAPUSTKA,
(175 North Archer Avenue,
Mundelein, Illinois 60060-2301)
(847) 777-7316
Appeared on behalf of the Plaintiff;

LAW OFFICE OF WAYNE D. RHINE,
BY: MR. WAYNE D. RHINE,
(309 West Washington Street, Suite 500
Chicago, Illinois 60606)
(312) 589-5832
Appeared on behalf of the Defendant,
Michael Stoller.

1 THE CLERK: Wesley Terrace versus
2 Christopher Stoller.

3 MR. STOLLER: Stoller, ready.

4 THE COURT: Good afternoon.

5 MR. KAPUSTKA: Good afternoon, Judge.
6 Ronald Kapustka, K-a-p-u-s-t-k-a, for the plaintiff.

7 MR. RHINE: Good afternoon, your Honor.
8 Wayne Rhine.

9 MR. STOLLER: Good afternoon, Judge. For
10 the record, Christopher Stoller for Christopher
11 Stoller, plaintiff.

12 MR. KAPUSTKA: Defendant. Judge, he's the
13 defendant.

14 MR. STOLLER: Yeah, defendant, Judge.

15 Judge, we have three matters up today. We
16 have a ruling on the Motion to Dismiss and a 137
17 corrected Motion to Produce Documents and Judge
18 Rhine's Motion to Intervene. And, Judge, I'd like to
19 start out, for the record, Judge, of the -- May I run
20 back and fourth sometimes, Judge? Sometimes I have to
21 sit down. I postponed my knee surgery for the 29th of
22 September.

23 THE COURT: No, that's fine. Let me just
24 ask a question, first. My recollection was that the

1 parties had agreed that today was just a date for
2 ruling.

3 MR. KAPUSTKA: That was your last order,
4 correct.

5 MR. STOLLER: That's correct, Judge.

6 THE COURT: Are you proposing that you want
7 to go back and forth and make some additional
8 arguments?

9 MR. STOLLER: No, Judge, what I'd like to
10 do, I want to make my record here since I have my
11 court reporter, on some of the key issues that I think
12 will help this Court and make a good record so we have
13 a proper record, especially on standing, to start out
14 with in this case. That's one of the most important
15 issues.

16 THE COURT: But you've fully briefed that
17 issue.

18 MR. STOLLER: I did brief it and I could
19 incorporate my reference into the record, but I have
20 some additional issues that could help the Court
21 with --

22 MR. KAPUSTKA: Which, of course, I have not
23 seen, so that's prejudicial.

24 MR. STOLLER: It's argument. It's all part

1 of the record.

2 MR. KAPUSTKA: Judge, if I have may, and I
3 don't want to interrupt, but --

4 THE COURT: And I appreciate that.

5 MR. KAPUSTKA: But we've had this order for
6 several months. This was for ruling only. Your Honor
7 specifically told us when we wrote the order, it's for
8 ruling, not for argument.

9 THE COURT: That's my recollection as well.

10 MR. KAPUSTKA: I can get the order out and
11 show Mr. Stoller if he doesn't remember.

12 THE COURT: We agreed that the issues had
13 been fully briefed and that it was now just up for
14 ruling.

15 MR. STOLLER: All right, Judge.

16 THE COURT: The one thing that wasn't fully
17 worked out I guess was the Motion to Intervene,
18 because that was filed I think after some of these
19 other things.

20 MR. RHINE: That's correct.

21 THE COURT: Then you didn't get a copy
22 initially, and as far as I remember, you've never had
23 an opportunity to respond to that. So we'll put that
24 one to the side, but I'll decide the other motions and

1 then we'll determine what needs to be done with that
2 one.

3 So my inventory of motions shows I have a
4 2619 Motion to Dismiss from the plaintiff, a Rule 137
5 Motion for Sanctions -- I'm sorry. From the
6 defendant, Christopher Stoller. Rule 137 Motion For
7 Sanctions from Christopher Stoller. A Request For
8 Judicial Notice from Christopher Stoller. Motion to
9 Produce from Christopher Stoller. Corrected Motion to
10 Produce from Christopher Stoller. The Motion to
11 Intervene from Michael Stoller, and a motion from the
12 plaintiff for use and occupancy.

13 MR. STOLLER: One other, Judge, if I may.
14 There was also a Memorandum of Law in support of the
15 Motion For Judicial Notice and the Motion to Dismiss
16 137 sanctions.

17 THE COURT: I did receive all of those. So
18 I'll accept that amendment to the list I read off
19 that's currently pending before the Court.

20 Okay. So this is a case where plaintiff and
21 defendant, Christopher Stoller, entered into a lease
22 for the property designated at 415 Wesley, Unit 1, Oak
23 Park, Illinois, on October 30th of 2015. Plaintiff's
24 complaint alleges that defendant failed to pay \$2,252

1 in rent in violation of the lease which was attached
2 to the complaint executed by both the plaintiff and
3 defendant.

4 Plaintiff served a five-day notice on the
5 defendant and brought this forcible entry and detainer
6 action for both possession and judgment.

7 At issue in the case is, plaintiff's
8 complaint alleges that Wesley Terrace Condominium
9 Association is the owner of the property at 415
10 Wesley, Unit 1. However, the lease entered into
11 between the parties contains the name of Wesley Court
12 Condominium Association. The word court is lined out,
13 and the word terrace is written in.

14 In the first and second paragraphs of the
15 lease agreement, additionally, the signature block for
16 the landlord at the conclusion of the lease contains
17 the name Wesley Terrace handwritten in before the
18 words Condominium Association. Defendant asserts that
19 the version of the lease that he signed does not
20 contain these modifications.

21 As the Court sees it, the following facts
22 are not in dispute. Plaintiff alleges that Wesley
23 Terrace Condominium Association is the owner of the
24 property in the complaint. Wesley Terrace Condominium

1 Association and Wesley Court Condominium Association
2 are separate corporations. At the time the contract
3 was signed, the lessor was listed as Wesley Court
4 Condominium Association. It was modified to reflect
5 that there was a lease between Wesley Terrace
6 Condominium Association and defendant.

7 The lease itself at paragraph 26 states, Any
8 provision of this lease may be modified, waived
9 discharged, only by an instrument in writing, signed
10 by the party against whom that enforcement of such
11 modification, waiver or discharge is sought.

12 So with regard to defendant's Motion to
13 Dismiss, defendant argues that the alteration of the
14 lease was both material and fraudulent. Defendant
15 argues that Wesley Terrace Condominium Association is
16 a separate legal entity from Wesley Court Condominium
17 Association and has no standing to bring this forcible
18 entry and detainer action.

19 Plaintiffs have argued variously that the
20 issues raised by defendant are served and should be
21 addressed at trial in response to the defendant's
22 Motion to Dismiss, Section 4. Plaintiff suggests in
23 this motion for use and occupancy, that the
24 modification of the lease is merely a typographical

1 error which the plaintiff characterizes as a misnomer.

2 This wasn't specifically the reply brief to
3 the Motion to Dismiss, however, the Court will address
4 it. Misnomer is defined as a situation where the
5 correct parties in the case are in the case. However,
6 one of the parties referenced is referenced by an
7 incorrect name.

8 Typically misnomer is not a basis for
9 dismissal because misnomer can be corrected by
10 amending the pleading, which is an argument that has
11 been raised by the plaintiff in this case.

12 The instant case, however, does not meet the
13 definition of misnomer. First, in the error or
14 modification of the document is not in the pleadings
15 as is ordinarily the case with misnomer. It is in the
16 lease, the contract upon which the complaint is based.

17 If the problem was simply a case of
18 misnomer, the plaintiff could have sought to amend the
19 complaint to correct the misnomer. However, no motion
20 to amend has been brought in eight months that this
21 case has been pending, as it is the contract itself
22 that is incorrect or at least inconsistent, not the
23 pleading.

24 It is clear to the Court that the lease was

1 modified because it contains handwritten information
2 which is not in the version of the lease attached to
3 defendant's Motion to Dismiss at Exhibit 4. Moreover,
4 there's nothing in the record to suggest that a
5 modification was completed in accordance with
6 Paragraph 26 of the lease, and signed by Mr. Stoller,
7 the party against whom the plaintiff seeks to enforce
8 it.

9 Consequently, Defendants 2619A9 Motion to
10 Dismiss the forcible entry and detainer action brought
11 by plaintiff, Wesley Terrace Condominium Association,
12 is granted and the case is dismissed as it is
13 predicated on a contract that was executed with a
14 different corporate entity, Wesley Court Condominium
15 Association.

16 At various points the plaintiff has made
17 arguments that the defendant shouldn't be allowed to
18 live free without paying for rent. Nothing in this
19 ruling is intended to suggest that the plaintiffs are
20 permanently precluded from being compensated for the
21 rental unit occupied by defendant. However, the
22 instant complaint is defective for the reasons stated
23 and will be dismissed.

24 Next, moving to the Rule 137 Motion For

1 Sanctions. The defendant has moved to sanction
2 plaintiffs for filing this forcible entry and detainer
3 action arguing that it was an abuse of process and
4 harassing. Sanctions are appropriate if there is a
5 violation of Rule 137 which states that the signer of
6 a pleading certifies that he or she has performed a
7 reasonable inquiry and has concluded, to the best of
8 his or her knowledge, information and belief, that the
9 pleading, motion or other paper is well grounded in
10 fact and warranted by existing law or good faith
11 argument for suspension, modification or reversal.

12 Sanctions are warranted if the pleader knew
13 or should have known that the material allegations of
14 fact the signer pled, were false. In this case Wesley
15 Terrace Condominium Association is the plaintiff, and
16 the plaintiff alleges in the complaint that plaintiff
17 and defendant entered into a condominium lease
18 agreement for the aforementioned premises commencing
19 on November 1, 2015 through October 31, 2016. This is
20 not true. Wesley Court Condominium Association and
21 defendant entered into a condominium lease agreement.

22 A reasonable investigation of the modified
23 lease agreement attached to the complaint with the
24 handwritten assertions or insertions would have put

1 plaintiff's counsel on notice as to this fact.

2 Consequently, Defendant's Motion For Sanctions will be
3 granted.

4 Now, the Court will hear argument and/or
5 will entertain written submissions as to what an
6 appropriate sanction will be. The Court does not make
7 that ruling at this juncture.

8 Next, the motion, Defendant's Motion For
9 Judicial Notice. Defendant requests that this Court
10 take judicial notice of, among other things, the fact
11 that plaintiff's attorney vowed to get even with
12 defendant in several affidavits which are in some
13 instances duplicative of documents previously filed by
14 the parties.

15 The Court agrees with the defendant, I'm
16 sorry, with the plaintiff, that some of the purported
17 material that defendant seeks to have the Court take
18 judicial notice of is hearsay and/or not appropriate
19 for judicial notice by the Court. However, in light
20 of the Court's ruling on the Motion to Dismiss, the
21 Motion For Judicial Notice is moot.

22 Defendant's Motion to Produce is also moot
23 in light of the Court's ruling on the Motion to
24 Dismiss.

1 That leaves us with the Motion For Use and
2 Occupancy. Plaintiff is seeking use and occupancy
3 during the pendency of the action. The Court
4 questions the validity of the motion for use and
5 occupancy by this plaintiff since the plaintiff was
6 not a party to the contract upon which this forcible
7 entry and detainer action is based.

8 Nonetheless, plaintiff's motion for use and
9 occupancy is now moot in light of the Court's ruling
10 on the Motion to Dismiss.

11 The only remaining motion then would be
12 defendant, Michael Stoller's, Motion to Intervene.

13 MR. RHINE: Judge, that also would be moot
14 since there is no pending pleading before the Court.
15 There's nothing to intervene.

16 THE COURT: Right. That would be the
17 Court's view on it.

18 So as the Court sees it, the only other
19 piece of business we have is to resolve the Motion For
20 Sanctions.

21 MR: STOLLER: Judge, I would like to
22 request, respectfully, Judge, we submit inquiring, as
23 you suggested, our injuries concerning the sanction
24 motion and present it to the Court in writing.

1 THE COURT: Mr. Kapustka.

2 MR. KAPUSTKA: Judge, I believe based on his
3 motion, we have a right to amend our pleadings.
4 Incumbent in a written lease is also the oral
5 agreement, the oral agreement between the landlord and
6 Mr. Stoller. So although I didn't plead it, it's
7 inferred that there is an oral agreement between the
8 association in which this unit is located, and
9 Mr. Stoller.

10 Clearly Mr. Stoller has some agreement with
11 someone to live in this unit. If he has no contract
12 with somebody, he is a squatter and should be dragged
13 out. There's an oral agreement. Mr. Stoller paid
14 monies to an association to live in the unit. We
15 request 14 days to file an amended complaint.

16 MR. STOLLER: Judge, I would object.

17 MR. KAPUSTKA: You can.

18 MR. STOLLER: First of all, he talks about
19 an oral agreement, the Statute of Frauds is very
20 clear. Any agreement in the amount of over \$500 has
21 to be in writing. He's waived that issue, Judge. He
22 hasn't brought it in front of you. You ruled. This
23 is the case law, Judge. Your order is an order of the
24 Court. Now for him to arbitrarily come up with this

1 arbitrarily capricious --

2 MR. KAPUSTKA: I'd be happy to submit case
3 law on the issue, Judge.

4 THE COURT: You can let him talk. I'll hear
5 both sides out.

6 MR. STOLLER: All right. Judge, it's not
7 appropriate for him to make an oral motion concerning
8 an oral agreement. Judge, that's ludicrous. But he
9 is --

10 THE COURT: Hold on, Mr. Stoller. What it
11 sounds like I'm hearing from you would be your
12 upcoming Motion to Dismiss his amended complaint.
13 You're not suggesting -- what I'm not hearing from you
14 is a reason for him not to file it.

15 MR. STOLLER: Well, I'll give you the law on
16 it, Judge. I have it right here. It's the standing
17 issue here. I'm going to give you the Gilbert case,
18 Judge. I have it right here. This is under -- you
19 know, he doesn't understand corporate contract or
20 process torts, Judge. It's quite obvious because he's
21 waived all those arguments.

22 THE COURT: Why don't you stick to the law
23 and the facts.

24 MR. STOLLER: The law is any alteration of a

1 written instrument that so changes its terms as to
2 give it a different legal effect from its original,
3 and thus work some changes and its rights, obligations
4 or interests, relations to parties is a material
5 alteration and renders the instrument void.

6 Regardless of whether the alteration was by internal
7 substitution, change of words or insurance by deleting
8 some material provisions. If I can tender in --

9 MR. KAPUSTKA: Judge, that relates to the
10 written --

11 MR. STOLLER: I'm still arguing.

12 MR. KAPUSTKA: That relates to the written
13 contract which your Honor has already ruled on. This
14 is with regard to the oral agreement between
15 Mr. Stoller, who moved in to a Wesley Terrace unit and
16 submitted checks to Wesley Terrace.

17 THE COURT: Okay.

18 MR. STOLLER: Judge.

19 THE COURT: You can give me a final point
20 and then I'm going to rule on this.

21 MR. STOLLER: Judge, I ask you to look at
22 the checks. It was for Wesley Condo Association.
23 Under the UCC1, they improperly endorsed those checks.
24 It's called check fraud, and there's a pending matter

1 with the authorities on that because --

2 THE COURT: Let's stick to this case.

3 MR. STOLLER: But anyhow, standing, Judge,
4 that's the issue here. The validity of standing, and
5 I'm going to give you the case and I'm going to show
6 it to you. It's Deutsche Bank National Trust versus
7 Gilbert, 212 Illinois 2nd, 120, 164, from the Second
8 District. The validity, the doctrine of standing is
9 designed to preclude persons who have no interest in a
10 controversy from bringing suit.

11 Raintree Homes versus Village of Long Grove,
12 209 Illinois 2nd. A party's standing to sue must be
13 determined as of the time the suit is filed. That's
14 the Village of Kildeer versus Village of Lake Zurich.
15 A party either has standing at the time the suit is
16 brought or it cannot amend, Judge, and here's the
17 Gilbert case. It cannot amend their case. Standing
18 has to be established at the time the suit was filed.

19 This is the leading authority here. It's a
20 little rough, Judge, but I know the case because I
21 went to the Appellate Court on this issue. The First
22 and the Second District twice. I understand this
23 Deutsche case standing. It's the leading authority.
24 It has to be established.

1 Wesley Terrace Condominium Association is
2 not the lessor. They don't own the property, Judge.
3 There is no agreement from the parties that they do
4 own it. They do not own the unit. It's Priscilla
5 Wright. If you read my affidavit, she owns it.

6 In their complaint they say they own the
7 property, Judge. They mislead the Court. I attached
8 a certified copy of the deed. They have no interest
9 in that property.

10 THE COURT: Let me ask you a couple
11 questions, Mr. Stoller.

12 Is it your contention because of the defect
13 in the lease agreement, that you will be able to
14 reside in that unit, let me finish my question,
15 indefinitely without ever paying anyone rent or
16 compensation for it?

17 MR. STOLLER: Judge.

18 THE COURT: Answer my question, please.

19 MR. STOLLER: I'm going to answer your
20 question. Wesley Terrace, Mr. Kapustka and his crew,
21 do not have an interest in that property. They have
22 no say so whether or not I pay rent or not. It's
23 Priscilla Wright. And I have agreements with the
24 owner of the property, Judge.

1 MR. KAPUSTKA: Your Honor, if I may.

2 Mr. Stoller is lying. I spoke to Priscilla Wright's
3 attorney yesterday. There is no such agreement and,
4 in fact, she's suing him.

5 MR. STOLLER: She's not, Judge. There's no
6 pending case.

7 MR. KAPUSTKA: Well, that's true. Be that
8 as it may, Judge, unfortunately for Mr. Stoller --

9 MR. STOLLER: But he --

10 MR. KAPUSTKA: Excuse me, Mr. Stoller. I
11 didn't speak. I didn't interrupt you. So now it's
12 your turn to listen to me.

13 THE COURT: He has been very patient.

14 MR. KAPUSTKA: Right, I have been.

15 So what Mr. Stoller forgets is that he wrote
16 checks to Wesley Terrace prior to this lawsuit being
17 filed. Mr. Stoller paid rent to Wesley Terrace. He
18 created a contract between himself and Wesley Terrace.
19 He forgets about these checks. He doesn't want you to
20 know about these checks. Yes, some were paid to
21 Wesley Court. Some were paid to Wesley Terrace.
22 There's a copy.

23 THE COURT: Okay. All right. I think I've
24 heard enough on this issue.

1 I want to make this clear. The Court's
2 ruling was a narrow one. The complaint that I have
3 and the lease upon which it was predicated do not line
4 up, and under the law I thought the appropriate action
5 to take was to dismiss it based upon the
6 Defendant's 2619 motion. And whenever you dismiss a
7 complaint, that leaves open the determination to make
8 by the Court whether the party, the plaintiff, will be
9 allowed to take an opportunity to try to amend the
10 complaint and state a valid cause of action. And what
11 I'm hearing from the plaintiff is that they believe
12 that they have theories available to them upon which
13 they could state a valid cause of action.

14 I'm not going to foreclose them before they
15 ever satisfy what those theories are by filing a
16 complaint saying that they can't do it. I'll give the
17 plaintiff leave to file an amended complaint if they
18 so choose to do so and, Mr. Stoller, once they do file
19 it you can re-file the arguments that you stated and
20 you can bring in a motion or you can answer or
21 otherwise plead as you see fit.

22 I don't know what plaintiff's attorney, what
23 theories he may pursue or what the validity of those
24 theories will be in advance, so I'm not going to

1 preclude him from filing it. And once he files it,
2 then you can take a look at it and decide what your
3 strategy will be with regard to it.

4 MR. STOLLER: Judge, of course as you know
5 anyone can file anything with this Court. They are
6 not stopped. What I --

7 THE COURT: If I were dismissing it with
8 prejudice then he would have to take it --

9 MR. STOLLER: I understand. But what I
10 suggest, I would stay that pending our evidentiary
11 hearing on the 137 which you granted, and then after
12 that --

13 MR. KAPUSTKA: Judge, those two have no
14 bearing on each other. We can still proceed on an
15 amended complaint separate and apart from whatever his
16 137 sanction motion might be.

17 MR. STOLLER: I didn't finish.

18 THE COURT: Let him finish.

19 MR. KAPUSTKA: Yes, Judge.

20 THE COURT: We're going to let you finish,
21 but let me correct you. I didn't say we'd have an
22 evidentiary hearing. I just said I would decide the
23 Motion For Sanctions after written submissions or
24 something else to be agreed with. I don't know that

1 we need to have a full blown evidentiary hearing.

2 MR. STOLLER: Judge, I'll file my pleading
3 that you gave us a right to do, and I think whether we
4 have an evidentiary hearing or whether you rule from
5 the bench based on what I filed is discretionary, and
6 I'll abide by what the Court wants to do.

7 THE COURT: You can submit affidavits.

8 MR. STOLLER: We can submit affidavits. But
9 I think it would be proper to terminate this aspect of
10 the case because the 137 is germane to the Motion to
11 Dismiss, and it goes to their conduct. So 137 is
12 sanctionable for what they did. Now if they start
13 right now filing another amended pleading and we
14 divert from that issue, I think it would be judicially
15 proper first to dispose of the sanction and then let
16 him amend if he wants to.

17 MR. KAPUSTKA: Judge, we're going to be
18 three months down the road and he'll be there for
19 another three months not paying rent. That is not
20 proper to this association or to Ms. Wright. They
21 both have rights to the unit which Mr. Stoller is
22 preventing them from.

23 MR. STOLLER: He doesn't represent
24 Ms. Wright.

1 MR. KAPUSTKA: No, that's true, but I spoke
2 to her attorney yesterday, you have not.

3 This is just a delay tactic on Mr. Stoller's
4 part like they all have been. It is improper to have
5 this thing hanging over the association's head for the
6 next 3 to 6 months, however long it's going to take
7 him to have his operation and submit his affidavits,
8 do all the other things he's going to do.

9 I'll amend within 14 days and he can file
10 his affidavits in support of his Motion For Sanctions
11 along with his Motion to Dismiss my amended complaint.

12 THE COURT: Yeah, it troubles me how long
13 this case has taken and I don't want to delay it any
14 further. So I'm going to allow these two things to go
15 on simultaneously. I don't know that it will take the
16 same amount of time to resolve both issues, but I'm
17 going to allow him to file his amended complaint
18 within 14 days. You can file your affidavits or
19 whatever you want to file in support.

20 MR. STOLLER: Judge, I would ask for
21 28 days. I have an appeal in the Ninth Circuit. I
22 have an appeal in the Colorado Supreme Court, a brief
23 that has to go in and a Ninth Circuit. I have a case,
24 two cases in the DC Federal Court I have to attend to.

1 Judge Rhine and I have cases in the First and Second
2 District Appellate Court, and I'm just a solo guy,
3 Judge. I need 28 days because I've got a heavy, heavy
4 schedule that I have to workout.

5 THE COURT: I assume that Mr. Kapustka
6 wouldn't have any problem with that in light that it's
7 not going to delay.

8 MR. KAPUSTKA: Yeah. If he wants 28 days
9 for his affidavits, no problem. Let's set up the
10 briefing schedule now for my amended complaint.

11 MR. STOLLER: Let him get his amended
12 complaint in first, Judge. Then one thing I would
13 ask, Judge, is I would ask that we be able to have the
14 court reporter, I'll have her transcribe this on an
15 emergency basis in one day, and then we'll prepare an
16 order based on the transcript because we had a lot of
17 information come into this order. It's a complex
18 case, and I'd like to be able to submit a proposed
19 order to Mr. Kapustka and the Court, based on your
20 ruling, and the court reporter so we have a good
21 order, and we can do that.

22 Ms. Court Reporter, you can have that in a
23 day?

24 THE REPORTER: Sure.

1 THE COURT: I don't particularly have a
2 problem with that. I think we will probably have a
3 better record.

4 MR. STOLLER: Yeah, we'll have a better
5 record.

6 THE COURT: I think the record will be
7 important in this case.

8 MR. RHINE: Does your Honor wish to set a
9 date by which the submissions as to the 137?

10 THE COURT: Well, Mr. Stoller has suggested
11 28 days. That's fine.

12 MR. RHINE: Okay.

13 MR. KAPUSTKA: So the mechanics of this,
14 Judge, is Mr. Stoller is going to get the record.
15 He's going to prepare a proposed order which he is
16 going to E-mail to me, to which I will respond before
17 he submits it to your Honor, is that correct?

18 MR. STOLLER: I agree on that, judge.

19 THE COURT: That's correct.

20 MR. KAPUSTKA: Actually, that worked last
21 time. He did E-mail me and I did respond that I got
22 it so that worked out perfectly.

23 THE COURT: We're making progress. That way
24 once I get it, it's been looked at by both sides.

1 MR. KAPUSTKA: And I can indicate my
2 agreement by signing it and sending it back to him.

3 MR. STOLLER: Sure. We'll work it out, you
4 know. You know, Judge, Mr. Kapustka is a very good
5 lawyer in this Court. He performs excellent and I say
6 he is well qualified. And as you know --

7 MR. KAPUSTKA: Judge, I have a meeting to
8 get to at 3:30 in Northbrook.

9 THE COURT: Okay.

10 MR. STOLLER: It's going to require a lot of
11 work going into this order to make it proper.

12 MR. RHINE: Does your Honor want this
13 proposed order to include the 14 days to amend and the
14 period of time in which to submit the request for the
15 137 sanctions all in one order?

16 THE COURT: Yeah. Well, actually, case law
17 that I looked at said that the Motion For Sanctions
18 should be in a separate order.

19 MR. RHINE: Okay.

20 MR. STOLLER: We will prepare a separate
21 order.

22 THE COURT: You can put that in a separate
23 order. So the order with the substantive rulings, we
24 can hold that open until you guys --

1 MR. RHINE: So just a simple order setting a
2 time limit in which to submit the request for
3 sanctions?

4 THE COURT: Yes.

5 MR. KAPUSTKA: That's the order we will
6 enter today and say there's a more comprehensive order
7 coming?

8 THE COURT: Yes.

9 MR. KAPUSTKA: I already started one.

10 THE COURT: Well, the more comprehensive
11 order will be addressing all the rulings.

12 MR. KAPUSTKA: Correct. That Mr. Stoller is
13 going to prepare and submit to my office.

14 THE COURT: Yes. But the Motion For
15 Sanctions should be on a separate order.

16 MR. RHINE: There I'll include 28 days which
17 to submit our request for --

18 MR. STOLLER: Sanctions.

19 THE COURT: Yes, absolutely.

20 MR. RHINE: Thank you, your Honor. I'll
21 prepare a separate order for that.

22 MR. KAPUSTKA: Judge Rhine, you're going to
23 work on the sanctions order and I'll work on the
24 amending and 28-day order?

1 MR. RHINE: Right.

2 THE COURT: That's fine.

3 MR. KAPUSTKA: Judge, do we need a new date?

4 THE COURT: To come back?

5 MR. KAPUSTKA: Yes.

6 MR. STOLLER: Judge, I would ask if
7 Mr. Kapustka is going to file his -- if he is going to
8 file his amended motion, and I'm sure he is, I would
9 need 28 days to respond to it and then we can set up.

10 MR. KAPUSTKA: We can put that in this
11 order, that's fine. He has 28 days to answer or
12 otherwise plead, get a status date in seven weeks.

13 THE COURT: That's fine. I'll have to
14 confirm it with Dena when she gets back, the specific
15 date, the seven weeks. Will that take us into the new
16 year?

17 MR. KAPUSTKA: No, it will take us to
18 December. Two weeks from today is the 27th. Four
19 weeks from then is Thanksgiving or you can have to the
20 28th, whatever. Then probably that December 5th for
21 status. Is that back on a forcible call or just a
22 status date?

23 THE COURT: Okay. Yeah we were putting most
24 of the dates because we are not going to have this

1 Thursday call anymore. We are giving the updates in
2 the new year. I think the first one was January 9, I
3 believe.

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5 WHICH WERE ALL THE PROCEEDINGS
6 HAD AT THE HEARING OF THE
7 ABOVE-ENTITLED CAUSE.
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1 STATE OF ILLINOIS)
) SS.
 2 COUNTY OF C O O K)
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4 I, Stephanie Apostolos, a Certified
 5 Shorthand Reporter doing business in the County of
 6 Cook and State of Illinois, do hereby certify that I
 7 reported in machine shorthand the proceedings at the
 8 hearing of the above-entitled cause.

9 I further certify that the foregoing is a
 10 true and correct transcript of said proceedings as
 11 appears from the stenographic notes so taken and
 12 transcribed by me.

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 CSR No. 84-3286
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