



## Illinois Appellate Court Holds that Substantial Compliance with Rule 113(c) will Suffice for Affidavits filed in Support of Judgment

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Kluever & Platt recently obtained yet another significant victory for foreclosure plaintiffs in Illinois, this time concerning the form of affidavits used when moving for judgment in foreclosure cases. In the first substantive ruling on the issue, the court in *U.S. Bank Nat'l Ass'n v. Khatuna Gagua*, 2020 IL App (1st) 190454, addressed the issue of whether a foreclosure judgment affidavit was in “substantial compliance” with Illinois Supreme Court Rule 113(c).

As most practitioners and those servicing loans in Illinois know, Rule 113(c) details what must be included in an affidavit used to move for judgment in foreclosure cases. Rule 113 states that the “affidavit prepared shall, at a minimum, be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.” Despite being passed in 2013, no prior Illinois appellate court had addressed what is required to meet this standard under Rule 113(c).

In *Gagua*, the defendant filed a motion to strike the plaintiff’s affidavit it filed in support of summary judgment on the basis that it did not *strictly* comply with Rule 113. The *Gagua* court held that even though the affidavit used in support of summary judgment contained minor deviations from the form affidavit supplied by the Illinois legislature—such as omitting various provisions from the form template and changing the wording of other provisions—these deviations did not rise to the level of requiring striking the affidavit. On the contrary, the court discussed specific examples of how the affidavit complied with Rule 113, ultimately holding that Rule 113 “clearly

states that the affidavit need only ‘substantially’ adopt the appearance and content of the form provided.”

While the decision was initially designated as an unpublished Rule 23 Order, Kluever & Platt successfully petitioned the appellate court to publish the ruling as an official opinion on the basis that the issue of what constitutes “substantial compliance” under Rule 113(c) is such a hotly contested issue that practitioners and the lower courts required guidance. Publication of the decision means that fellow practitioners can now cite it as binding precedent in future litigation.

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For those servicers with pending foreclosure cases in Illinois, the *Gagua* ruling provides protection against efforts by the foreclosure defense bar to attack the sufficiency of affidavits at the judgment stage. Servicers and their counsel now have the benefit of the Court’s well-reasoned legal analysis on an issue that is confronted by Illinois litigants and courts on a daily basis in most foreclosure matters by overzealous defense counsel. The ruling should help deter at least *some* of these efforts in the future.

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