

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2026

MARQUETTE BANK, as Trustee Under Trust)	Appeal from the Circuit Court
Agreement Dated October 1, 2013, and Known)	of the 12th Judicial Circuit,
as Trust No. 20185,)	Will County, Illinois,
))
Plaintiff-Appellant,))
))
v.)	Appeal No. 3-24-0347
)	Circuit No. 23 MR 42
BLUE DANUBE PROPERTIES, INC., and)	Honorable
THE VILLAGE OF FRANKFORT,)	John C. Anderson,
)	Judge, Presiding.
Defendants-Appellees.))

JUSTICE BRENNAN delivered the judgment of the court, with opinion.
Justice Davenport concurred in the judgment and opinion.
Justice Holdridge specially concurred, with opinion.

OPINION

¶ 1 In 2003, the defendants, Blue Danube Properties, Inc. (Blue Danube), and the Village of Frankfort (Village) entered into a recapture agreement pursuant to section 9-5-1 of the Illinois Municipal Code (Code) (65 ILCS 5/9-5-1 (West 2002)). That same year, the recapture agreement was filed with the Will County recorder pursuant to section 9-5-2 of the Code. *Id.* § 9-5-2. The recapture agreement allowed for Blue Danube to recoup a portion of the costs associated with an improvement, which the Village had required it to construct, from the owners of the properties

who later sought to use, or “benefit” from, the improvement. Marquette Bank acquired a benefited property in 2013 and, in 2023, sought a declaration from the trial court that the recapture agreement did not encumber its property because the recapture agreement had not complied with sections 9-5-1 and 9-5-2 of the Code. The case proceeded to summary judgment, with the parties agreeing that the question of statutory compliance controlled the outcome of the lawsuit. The trial court granted summary judgment to Blue Danube, and Marquette Bank appealed. For the reasons that follow, we affirm.

¶ 2

I. BACKGROUND

¶ 3

On October 6, 2003, Blue Danube and the Village entered into a recapture agreement related to the reconstruction and widening of St. Francis Road. The recapture agreement provided a legal description describing the tract of land, common name (Candle Creek Subdivision), and property index number (PIN) of the property being developed by Blue Danube. The recapture agreement also provided that the subject road improvements were “reasonably expected to benefit properties that neighbor” the Candle Creek Subdivision, and it identified three benefited properties by their PINs. On October 24, 2003, the recapture agreement was filed with the Will County recorder as document No. R2003-268113.

¶ 4

On October 15, 2013, Marquette Bank foreclosed on one of the benefited properties, commonly known as 9433 W. St. Francis Road, and ultimately acquired and recorded title to it. On February 16, 2023, Marquette Bank filed a one-count complaint for declaratory judgment pursuant to section 2-701 of the Code of Civil Procedure (735 ILCS 5/2-701 (West 2022)) (the court may make a declaration of rights in cases of actual controversy). It alleged that Blue Danube sought in excess of \$160,000 pursuant to the recapture agreement, and it complained that the mere existence of the recapture agreement impaired its ability to develop or convey the property. It

argued that “the [r]ecapture [a]greement is not a valid encumbrance *against the real property* commonly known as 9433 W. St. Francis Road in [Frankfort] due to inadequacy of recorded notice.” (Emphasis added.) Marquette Bank argued, *inter alia*, that the recapture agreement did not adequately “describe the property” to be benefited as required by section 9-5-1 of the Code because it did not identify the property by its common address, legal description, or, in Marquette Bank’s view, the *complete* PIN. It also cited section 9-5-2 of the Code, which provides that recording a recapture agreement serves to notify interested parties, and asserted that the recapture agreement did not appear on the chain of title for the benefited property, and therefore, it was not aware that it would have to pay a charge to connect to the improvement at the time it purchased the benefited property at the foreclosure sale. It had not, as of the date of filing, sought a permit to develop the property so as to benefit from the improvement.

¶ 5 Section 9-5-1 of the Code, titled, “Reimbursement of subdivider for facilities, roadways or improvements beneficial to public,” provides in relevant part:

“The contract shall *describe the property* outside the subdivision *** that may reasonably be expected to benefit from the *** improvements that are required to be constructed under the contract and shall specify the amount or proportion of the cost of the *** improvements that is to be incurred primarily for the benefit of that property.” (Emphasis added.) 65 ILCS 5/9-5-1 (West 2022).

¶ 6 Section 9-5-2 of the Code, titled “Contracts between municipality and subdivider; filing; recording as notice,” provides in total:

“Any contract entered into between the corporate authorities of a municipality and a subdivider pursuant to Section 9-5-1 shall be filed with the recorder of each county in which all or a part of the property affected thereby is located. The recording of the contract

in this manner *shall serve to notify persons interested in such property* of the fact that there will be a charge in relation to such property for the connection to and use of the facilities constructed under the contract.” (Emphasis added.) *Id.* § 9-5-2.

¶ 7 On June 2, 2023, Blue Danube moved to dismiss the complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2022)), arguing that Marquette Bank had failed to seek relief for an actual controversy and instead sought an advisory opinion that the recapture agreement was not valid as to its property. Blue Danube explained that, under the terms of the recapture agreement, the owner of the benefited property would be subject to fees only if it applied for and was granted a permit to develop the property. Marquette Bank had not applied for a permit, nor had the Village granted a permit. In response, Marquette Bank did not dispute the factual premise that it had *not*, despite its initial allegation, been charged a recapture fee. It argued, however, that “the issue to be adjudicated is whether the [r]ecapture [a]greement properly identifies the [benefited] [p]roperty such that prospective owners were given sufficient *notice* of this substantial burden *if* they wanted to develop it.” (Emphasis in original and added.) The trial court denied the motion to dismiss and instructed Blue Danube to answer the complaint.

¶ 8 On August 24, 2023, Blue Danube answered the complaint, responding that it lacked sufficient knowledge to form a belief as to whether Marquette Bank knew of the recapture agreement at the time it acquired the property. Blue Danube raised three affirmative defenses, one of which is relevant here. Blue Danube argued that the recapture agreement was filed with the recorder in compliance with sections 9-5-1 and 9-5-2 of the Code.

¶ 9 On September 21, 2023, Marquette Bank moved for judgment on the pleadings, arguing:

“The sole issue that [Marquette Bank] seeks to have adjudicated is whether the [recapture agreement] recorded on October 24, 2003, with the Will County Recorder as

Document Number R2003-268113, properly complies with the applicable statutes, 65 ILCS 5/9-5-1 and 65 ILCS 5/9-5-2. No fact or expert discovery is necessary, as *this matter hinges entirely upon the recorded [r]ecapture [a]greement and the applicable statutes,* and is therefore ripe for a legal decision by this [c]ourt at this juncture.” (Emphasis added.)

Marquette Bank again alleged that, contrary to section 9-5-1 of the Code, the recapture agreement did not “describe the property” to be benefited by the subject improvement. It recognized that the recapture agreement set forth the PIN for the benefited property as “09-15-300-019.” However, in its view, the PIN was not complete without the first two digits, “19-09-15-300-019.” If the recapture agreement *had* sufficiently described the benefited property, it would have appeared in the chain of title for the benefited property. Marquette Bank reasoned that, since section 9-5-2 of the Code provided that recording a recapture agreement served to notify those interested in the benefited properties, an adequately described property would necessarily result in notice via appearance in the chain of title for the benefited properties.

¶ 10 On November 7, 2023, Blue Danube responded, consistent with its affirmative defense, that the recapture agreement complied with sections 9-5-1 and 9-5-2 of the Code. As to section 9-5-1’s requirement that the recapture agreement describe the benefited property, Blue Danube noted that the Code did not prescribe one particular method for how a benefited property is to be described. The instant recapture agreement described the benefited properties as neighboring the developed property (for which a legal description, common name, and PIN (omitting the first two digits) were provided). It also provided the PIN for the benefited properties (again omitting the first two digits). Blue Danube explained that the first two digits were unnecessary to identify the respective properties, because those digits were merely a computer code that automatically corresponded with the township number. A township number of “09,” as here, could only have a

computer code of “19,” as here. The Village noted that the Property Tax Code (35 ILCS 200/9-45 (West 2022)) requires that numeric descriptors corresponding with the “township, section, block, and parcel or lot” be included in a PIN. The instant recapture agreement contained these numeric descriptors and therefore was, in the Village’s view, a “complete identification of the property.”

¶ 11 As to section 9-5-2, Blue Danube argued:

“[Section] 9-5-2 merely requires that the recapture agreement be [filed] with the recorder of the county in which the benefited property is located. There is no dispute that the [b]enefited [p]roperties are located in Will County and that the [r]ecapture [a]greement was recorded in Will County.”

¶ 12 Marquette Bank replied, reiterating its position that the “incomplete description of the benefited property was not sufficient to provide notice.” It cited to *Skidmore, Owings & Merrill v. Pathway Financial*, 173 Ill. App. 3d 512, 514-15 (1988), for the proposition that

“The primary means of charging any party with *notice of an interest in real property* is to record that interest. [Citations.] In order for it to be effective as against subsequent purchasers and creditors, however, the recording must operate to give notice to those looking through the grantor-grantee index [and/or the chain of title].” (Emphasis added.)

¶ 13 On January 17, 2024, the trial court denied Marquette Bank’s motion for judgment on the pleadings, explaining: “The court finds that the recapture agreement sufficiently describes the [benefited] property. The court notes there is no cross-motion for [judgment on the pleadings] nor [a motion for summary judgment] on file.”

¶ 14 On February 13, 2024, Blue Danube moved for summary judgment, arguing as it had in its response to Marquette Bank’s judgment on the pleadings. On February 14, 2024, Marquette Bank

responded, acknowledging that the trial court had denied its motion for judgment on the pleadings and explaining that it “submits this response for the purpose of contesting the motion before this [c]ourt, and to preserve its right to appeal this ruling.” It reiterated that “the sole issue in this lawsuit is whether the [recapture agreement] recorded on October 24, 2003, with the Will County Recorder as Document Number R2003-268113, properly complies with the applicable statutes, [sections 9-5-1 and 9-5-2 of the Code].”

¶ 15 On April 22, 2024, the trial court granted summary judgment “for the rationale advanced by [Blue Danube],” which the court adopted. This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Marquette Bank challenges the trial court’s denial of its motion on the pleadings and grant of summary judgment to Blue Danube on the same point of law. It again argues that the recapture agreement was “facially defective,” in that its description of the benefited property was insufficient to comply with sections 9-5-1 and 9-5-2 of the Code, ultimately resulting in its lack of notice. Marquette Bank posits that answering this question of law in its favor will resolve its underlying complaint for declaratory judgment that the recapture agreement could, at no point in the future, obligate an owner of the benefited property to pay recapture fees in order to connect to the improvements.

¶ 18 Section 2-701 of the Code of Civil Procedure governs complaints for declaratory judgment and provides in relevant part:

“The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of *the construction of any statute*, municipal ordinance, or other governmental regulation, or of

any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested. The foregoing enumeration does not exclude other cases of actual controversy.” (Emphasis added.) 735 ILCS 5/2-701(a) (West 2022).

¶ 19 The purpose of a declaratory judgment action is “to settle and fix rights before there has been an irrevocable change in the position of the parties that will jeopardize their respective claims of right. [Citation.] The remedy is used to afford security and relief against uncertainty so as to avoid potential litigation.” (Internal quotation marks omitted.) *Behringer v. Page*, 204 Ill. 2d 363, 373 (2003). The proceeding allows the court “to take hold of a controversy one step sooner than normally—that is, after the dispute has arisen, but before steps are taken which give rise to claims for damages or other relief. The parties to the dispute can then learn the consequences of their action before acting.” (Internal quotation marks omitted.) *Id.* at 372-73.

¶ 20 Here, Marquette Bank availed itself of the declaratory judgment procedure to seek a determination of the recapture agreement’s validity as to its property before it took steps to develop or convey the property. This determination, in its own words, “hinge[d] entirely” on, and presented the “sole issue” of, construing sections 9-5-1 and 9-5-2 of the Code.

¶ 21 Summary judgment shall be granted “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2022). Summary judgment is proper when the parties agree on the facts but dispute the correct construction of the statute. *Onsen v. Commonwealth Edison Co.*, 261 Ill. App. 3d 271, 272 (1994). We review *de novo* a trial court’s grant of summary judgment, as well as questions of statutory interpretation. *Gillespie Community Unit School District No. 7 v. Wight & Co.*, 2014 IL 115330, ¶ 27.

¶ 22 When interpreting the language of a statute, our primary objective is to ascertain and give effect to the intent of the legislature. *Solon v. Midwest Medical Records Ass’n*, 236 Ill. 2d 433, 440 (2010). The most reliable indicator of the legislature’s intent is the plain language of the statute. *Id.* Each word, clause, and sentence should be given reasonable meaning and not rendered superfluous. *Gillespie*, 2014 IL 115330, ¶ 31. A court should not depart from the plain language of the statute to read into it exceptions, limitations, and conditions that conflict with expressed legislative intent. *Solon*, 236 Ill. 2d at 441. A court may, however, consider the consequences that would result from construing the statute one way or the other and should avoid a construction that leads to an absurd or unjust result. *Id.*

¶ 23 Sections 9-5-1 and 9-5-2 of the Code, quoted above, as well as section 9-5-3 of the Code, govern financing for local improvements, *i.e.*, recapture agreements. 65 ILCS 5/9-5-1, 9-5-2, 9-5-3 (West 2022). Section 9-5-3 of the Code sets forth the statute’s inapplicability to home rule units and does not apply to our case. *Id.* § 9-5-3. Section 9-5-1 of the Code provides that, when a municipality requires a developer to install municipal improvements that may be used for the benefit of outside property, the municipality may contract with the developer to reimburse the developer for a portion of the improvement costs. *Id.* § 9-5-1; *F.R.S. Development Co. v. American Community Bank & Trust*, 2016 IL App (2d) 150157, ¶ 46. The recapture agreement shall provide that the municipality will collect fees from the owners of benefited properties before those owners connect to or use the improvements. 65 ILCS 5/9-5-1 (West 2022). The legislature intended to make a broad grant of authority to allow municipalities to recapture development costs on behalf of the initial developer. *Hartz Construction Co. v. Village of Western Springs*, 391 Ill. App. 3d 75, 80 (2009). A recapture agreement may include improvements constructed “well before” its

execution. *Id.* at 86 (the recapture agreement included an improvement constructed eight years before its signing).

¶ 24 “A recapture agreement binds a third party to a contract to which [it] did not consent and for which [it] was unable to bargain.” *Beneficial Development Corp. v. City of Highland Park*, 161 Ill. 2d 321, 331 (1994). Recapture agreements are enforced, and they serve the purpose of facilitating future development in that subsequent developers are able to use a pre-existing improvement. *Id.* “Through imposition of a recapture fee, a municipality is apportioning the cost of local improvements among those of its constituents who will use the improvements.” *Id.* at 328-29. The use of the improvements, not the land itself, generates the recapture fees. *F.R.S. Development Co.*, 2016 IL App (2d) 150157, ¶ 48. The charge set by the recapture agreement may be thought of as a toll or user fee to connect to improvements for which another developer has already paid. *Id.* ¶ 49. The charge is not against the benefited property but is in relation to a benefiting property’s connection to the improvement. *Id.* If the owner of the benefited property does not seek to connect to the improvement, the developer is never entitled to a recapture fee. *Id.* ¶ 48. The recapture agreement does not grant the developer a legal or equitable interest in the benefited property, nor does the recapture agreement create a lien against the benefited property. *Id.* ¶¶ 47, 54.

¶ 25 We now turn to Marquette Bank’s statutory-interpretation argument, which it explains as follows:

“Section 9-5-1 provides that the recapture agreement must ‘describe the property’ to be [benefited]. 65 ILCS 5/9-5-1 [(West 2022)]. *** Relatedly, and read in conjunction with [s]ection 9-5-1, the primary function of [s]ection 9-5-2 is to require notice of a recapture agreement to third parties: ‘the recording of the contract in this manner *shall*

serve to notify persons interested in such property of the fact that there will be a charge in relation to such property for the connection to and use of the facilities constructed under the contract.’ 65 ILCS 5/9-5-2 [(West 2022)]. Thus, in order for notice to be effective, a recapture agreement must adequately identify the [benefited] properties such that the agreement appears in the chain of title.” (Emphasis in original.)

¶ 26 We do not agree with Marquette Bank’s interpretation of sections 9-5-1 and 9-5-2. Nowhere in the language of section 9-5-1 did the legislature instruct that the description of the property identify the benefited property so as to result in the recapture agreement’s appearance on its chain of title. See, *e.g.*, *Solon*, 236 Ill. 2d at 441 (a court should not depart from the plain language of the statute to read into it conditions that the legislature did not intend.) Moreover, Marquette Bank’s interpretation leads to an absurd result, in that a recapture agreement’s description of a benefited property, no matter how thorough, would be deemed insufficient unless the recapture agreement also appears in the chain of title for the benefited property. See *id.* The problem with such a construction lies in making the *facial sufficiency* of a “description” dependent on the *result* of its appearance in the chain of title.

¶ 27 Considering whether the description of benefited property was facially deficient in violation of section 9-5-1, we start by noting that a statutory directive to “describe” real property, absent additional statutory requirements, means that one must put forth enough information from which another could ascertain the identity of the property. See, *e.g.*, *City of Virginia v. Mitchell*, 2013 IL App (4th) 120629, ¶ 32 (the requirement in the Conveyances Act (765 ILCS 5/0.01 *et seq.* (West 2010)) to “specify” a property of interest requires only that the property can be located by the description in the deed). A statutory directive to “describe” a property is not the same as a statutory directive to “provide a legal description.” See, *e.g.*, *id.* ¶ 33 (deed valid despite absence

of a legal description). Here, while the recapture agreement did not provide the legal description or street address for the Marquette Bank property, it did describe the property by its PIN (omitting superfluous digits that did not serve the purpose of identifying the property). Consistent with *Mitchell*, a PIN is sufficient to “describe” the benefited property. Indeed, numerous courts have deemed a PIN a sufficient property descriptor in various real property contexts. See, e.g., *Illinois State Toll Highway Authority v. South Barrington Office Center*, 2016 IL App (1st) 150960, ¶ 44 (resolution authorizing the condemnation of property contained a reasonable description where the parcels to be condemned were identified by the PIN in which they were contained); *In re Application of Anderson*, 162 Ill. App. 3d 815, 822 (1987) (property was sufficiently described by PIN, as opposed to legal description, in advertisements and other notices issued for sale of tax delinquent properties).

¶ 28 *Pasquinelli v. Village of Mundelein*, 257 Ill. App. 3d 1057 (1994), relied upon by Marquette Bank, does not create a different standard. In *Pasquinelli*, the court stated in *dicta* that section 9-5-1 of the Code requires a “legal description” of the property. *Id.* at 1066. Elsewhere in its analysis, the *Pasquinelli* court correctly stated that section 9-5-1 of the Code requires a “description” of the property. *Id.* at 1065. *Pasquinelli* did not directly address what an adequate “description” entailed because the parties there provided *no* description and, in fact, had not even agreed which properties would be benefited. *Id.* at 1065-66.

¶ 29 In its opening brief, Marquette Bank appears to concede that the benefited property’s identity *can* be ascertained from the PIN provided in the recapture agreement. While the PIN here does not contain the two-digit computer code, Marquette Bank does not dispute that the two-digit computer code automatically corresponds to the township number, which is included. The two-digit computer code does not further the purpose of “describing” the property. Indeed, as Blue

Danube notes, Marquette Bank similarly omitted the two-digit computer code when it prepared the sheriff's deed in the foreclosure case involving the instant property. The essential components of a PIN, as set forth in the Property Tax Code (35 ILCS 200/9-45 (West 2022)), are the numbers that correspond with the "township, section, block, and parcel or lot." Each of these components are present in the recapture agreement's description of the benefited properties. Marquette Bank suggests that it is nevertheless "not surprising that the [recorder] *** failed to ascertain that th[e] unlabeled 10-digit number was meant to identify the Property as a 'benefited property' and therefore failed to cross-reference the [r]ecapture [a]greement in its chain of title." However, the recapture agreement, *on its face*, refutes this claim. The 10-digit number to which Marquette Bank refers was placed directly beneath the bolded words: "benefited property."

¶ 30 Marquette Bank points to its alleged lack of actual or record notice in support of its argument that the recapture agreement's description of the property failed to satisfy the identification requirement set forth in section 9-5-1. However, we reject Marquette Bank's argument that section 9-5-2's notice provision operates to heighten the identification requirement set forth in section 9-5-1. Section 9-5-2 provides that a recapture agreement entered into pursuant to section 9-5-1 of the Code shall be filed with the recorder of the appropriate county and "[t]he recording of the [recapture agreement] *in this manner* shall serve to notify persons interested in [the benefited] property" that there will be a charge in relation to the property for the connection and use of the improvements. (Emphasis added.) 65 ILCS 5/9-5-2 (West 2022). The phrase "in this manner" plainly refers to the preceding directive to file with the recorder a recapture agreement that complies with section 9-5-1 of the Code.

¶ 31 Nor are we persuaded by Marquette Bank's reliance on *Skidmore*, 173 Ill. App. 3d at 514-15, for the proposition that sections 9-5-1 and 9-5-2 require a recapture agreement to "describe"

the benefited properties such that the recapture agreement appears in the chain of title or the grantor-grantee index. *Skidmore* does not concern a recapture agreement. See *id.* Lien priority, the subject of *Skidmore*, is simply inapposite to the instant case. As discussed, recapture agreements do not create an interest in real property. See *F.R.S. Development Co.*, 2016 IL App (2d) 150157, ¶ 52. Again, the purpose of recapture agreements is not to protect mortgagees of the benefited properties but to encourage development by reimbursing the initial developer for its costs in constructing public improvements when the owners of the benefited properties later use them. *Id.* ¶ 51.

¶ 32 In relying upon *Skidmore*, Marquette Bank appears to half-heartedly invoke an equities argument concerning notice, be it actual or recorded. However, Marquette Bank did not ask the trial court to resolve this case on the equities, nor did it adequately plead or argue the equities. Rather, Marquette Bank sought a declaration that *its property* should not be encumbered by the recapture agreement due to noncompliance with the statute. This relief would necessarily apply not just to Marquette Bank but also to subsequent purchasers forevermore. A subsequent purchaser, to whom Marquette Bank under its own encumbrance theory would have otherwise had a duty to disclose the recapture agreement, would be permitted to connect to municipal improvements without paying the “toll” provided for in the recapture agreement. See *id.* ¶ 49. Marquette Bank’s request to extinguish the agreement as to its property and not just as to itself is why its allegation of a facial defect under section 9-5-1 as to its property was central to its argument. Marquette Bank’s section 9-5-1 argument is, however, without merit.

¶ 33 In sum, we have answered the question of statutory interpretation presented to us by Marquette Bank. See *supra* ¶ 25. Marquette Bank pointed to its alleged lack of notice in support of its argument that the description of its property failed to satisfy section 9-5-1’s strictures.

Marquette Bank chose to seek the invalidation of the recapture agreement as to its property based on what it incorrectly believed to be a fatal description within the recapture agreement itself. Its motivations for seeking a declaration based upon this point of law and for this relief are not for us to discern. We conclude that the trial court answered the legal question correctly, and we affirm its decision to grant summary judgment to Blue Danube and to deny Marquette Bank’s request for a declaratory judgment that the recapture agreement is invalid as to its property.

¶ 34

III. CONCLUSION

¶ 35

The judgment of the circuit court of Will County is affirmed.

¶ 36

Affirmed.

¶ 37

JUSTICE HOLDRIDGE, specially concurring:

¶ 38

I agree that the location of Marquette Bank’s property can be ascertained by referring to the PIN contained in the recapture agreement. Thus, the property is adequately “described” by the agreement, and Marquette Bank’s sole theory of relief fails. I write separately to emphasize the narrowness of our holding.

¶ 39

Marquette Bank has advanced the argument that Blue Danube’s use of a partial PIN prevented the recapture agreement from entering the chain of title. As the majority correctly notes, a document’s failure to appear in the chain of title does not necessarily mean that the property description contained therein was deficient. *Supra* ¶ 26. Marquette Bank’s theory eschewed acknowledging that a document might fail to enter the chain of title for any number of reasons, including misplacement or misfiling, presumably because focusing on Blue Danube’s description of the property had the potential to render the document facially defective. The court correctly held that Marquette Bank was not entitled to declaratory relief on that basis.

¶ 40 Marquette Bank's broader discussions of notice in this appeal are both inapposite and premature. Blue Danube has not yet sought to enforce the recapture agreement. Therefore, the recapture agreement's failure to appear in the chain of title might best be described as a possible affirmative defense should Blue Danube seek to enforce the agreement. The merits of that potential affirmative defense are not before us, and this case should not be read to comment on them. Nor should it be read to comment on the notice requirements pertaining to recapture agreements.

Marquette Bank v. Blue Danube Properties, Inc., 2026 IL App (3d) 240347

Decision Under Review: Appeal from the Circuit Court of Will County, No. 23-MR-42; the Hon. John C. Anderson, Judge, presiding.

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No brief filed for other appellee.
