

No. 1-10-0891

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

U.S. BANK, NA,) Appeal from
) the Circuit Court
Plaintiff-Appellant,) of Cook County
)
v.) No. 05 CH 05971
)
LYNN M. LAYCHAK,) Honorable
) Darryl B. Simko,
Defendant-Appellee.) Judge Presiding.

JUSTICE CAHILL delivered the judgment of the court.
Presiding Justice Garcia and Justice McBride concurred in the judgment.

ORDER

Held: The trial court's judgment of foreclosure was affirmed where defendant submitted to the court's jurisdiction by withdrawing her motion to quash service of summons and filing an answer to plaintiff's motion to reinstate. Defendant waived objections to the court's jurisdiction to enter a prior default judgment.

Defendant Lynn M. Laychak appeals from an order affirming judgment of foreclosure and confirming sale of her home located at 14310 Division Street in Posen, Illinois. She contends

1-10-0891

that the judgment is void because the court lacked general *in personam* jurisdiction. We affirm.

On April 1, 2005, plaintiff U.S. Bank, NA filed a complaint for foreclosure of mortgage on defendant's home. On June 29, 2005, the court entered judgment of foreclosure.

The court dismissed the case for want of prosecution on September 26, 2006. On that day, plaintiff filed a motion to vacate the dismissal. On March 20, 2007, plaintiff scheduled its motion to vacate, which was granted on March 28, 2007.

Defendant filed an appearance on February 11, 2008. On February 19, 2008, defendant filed her motion to quash service of summons and vacate sale. The case was continued multiple times, and on October 2, 2008, an agreed order was entered dismissing the complaint with leave to reinstate within 90 days of defendant's breach of a forbearance plan. The order also shows that defendant's motion to quash was withdrawn.

On October 28, 2009, plaintiff filed its motion to reinstate. Defense counsel appeared in court on November 12, 2009, and a briefing schedule was entered.

On November 30, 2009, defendant filed an answer to the motion to reinstate, and plaintiff filed its reply on December 3, 2009. The court heard oral arguments from the parties on December 10, 2009, and plaintiff's motion to reinstate was granted.

On February 2, 2010, defendant filed a motion to quash service of summons. On March 8, 2010, the court denied defendant's motion to quash. Plaintiff's order approving sale was also entered on that date on the ground that defendant had submitted to jurisdiction when she objected to reinstatement of the case.

On appeal, defendant contends that the court's judgment of foreclosure is void because

1-10-0891

the court lacked general *in personam* jurisdiction. Specifically, she contends that her objection to reinstatement of the case after it had been dismissed was not a submission to general *in personam* jurisdiction because: (1) the non-suited case was inactive at the time she objected to reinstatement; (2) there was a motion to quash service of summons pending in the case; and (3) defendant never responded to the pleadings or presented her affirmative defenses to foreclosure. In the alternative, defendant claims that even if this court finds she submitted to jurisdiction, jurisdiction may only be applied prospectively of the date she submitted. Defendant contends that prospective jurisdiction would render the prior judgment of foreclosure void.

Plaintiff responds that defendant submitted herself to general *in personam* jurisdiction when she objected to reinstatement of the case.

The question of whether a defendant submitted to the court's jurisdiction is one of law and is reviewed *de novo*. *Ruff v. Splice, Inc.*, 398 Ill. App. 3d 431, 433-34, 923 N.E.2d 1250 (2010).

Defendant claims she is in compliance with the requirements of section 2-301(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-301(a) (West 2006)), maintaining her objection to service of process without submitting to *in personam* jurisdiction. Section 2-301(a) states:

"Prior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear, a party may object to the court's jurisdiction over the party's person, either on the ground that the party is not amenable to process of a court of this State or on the ground of insufficiency of process or insufficiency of service of process, by filing a motion to dismiss the

1-10-0891

entire proceeding or any cause of action involved in the proceeding or by filing a motion to quash service of process. Such a motion may be made singly or included with others in a combined motion, but the parts of a combined motion must be identified in the manner described in Section 2-619.1. Unless the facts that constitute the basis for the objection are apparent from papers already on file in the case, the motion must be supported by an affidavit setting forth those facts.”

735 ILCS 5/2-301(a) (West 2006).

Defendant argues that her objection to reinstatement of the case was not a responsive pleading and urges us to read section 2-301(a) to mean that a defendant only waives an objection to jurisdiction where she files a motion or pleading “that reaches the substantive issues of the case.” We do not agree. Section 2-301(a-5) states: “If the objecting party files a *responsive pleading or a motion (other than a motion for an extension of time to answer or otherwise appear)* prior to the filing of a motion in compliance with subsection (a), that party waives all objections to the court's jurisdiction over the party's person.” (Emphasis added.) 735 ILCS 5/2-301(a-5) (West 2006). Defendant’s response to plaintiff’s motion to reinstate constitutes a responsive pleading or motion other than a motion for an extension of time to answer or otherwise appear. The statute does not provide an exception for filings based on procedural objections. Defendant’s response to plaintiff’s motion to reinstate submitted her to the court’s *in personam* jurisdiction. See *Asumendi v. Fortman*, 58 Ill. App. 3d 186, 191, 374 N.E.2d 20 (1978) (“[the] lack of jurisdiction could be overcome by the conduct of the parties in appearing before the court, by responsive pleadings and argument”).

1-10-0891

We also find unpersuasive defendant's argument that her outstanding motion to quash service prevented the court from acquiring *in personam* jurisdiction over her. As noted by the trial court, defendant never renewed her objection to jurisdiction when plaintiff's motion for reinstatement was filed. "[I]t is the responsibility of the party filing a motion to request the trial judge rule on it, and when no ruling has been made on a motion, the motion is presumed to have been abandoned absent circumstances indicating otherwise." *Rodriguez v. Prisoner Review Board*, 376 Ill. App. 3d 429, 433, 876 N.E.2d 659 (2007), citing *Commerce Trust Co. v. Air 1st Aviation Cos.*, 366 Ill. App. 3d 135, 142, 851 N.E.2d 131 (2006). When plaintiff moved to reinstate the case, defendant filed an answer to the motion and argued her motion in court. Defendant had the opportunity to raise the jurisdictional issue or request that the trial court rule on the motion to quash service. Further, the record shows defendant's original motion to quash was withdrawn on October 2, 2008, under an agreed order. Accordingly, she has waived her right to contest the court's jurisdiction.

Having found defendant submitted to general *in personam* jurisdiction when she filed her response to plaintiff's motion to reinstate, we now address her alternative claim that the court's jurisdiction should apply only as of the date of submission, making the prior judgment and confirmation of her property void.

We find defendant's argument unpersuasive. In *GMB Financial Group, Inc. v. Marzano*, 385 Ill. App. 3d 978, 899 N.E.2d 298 (2008), which considered the amended rule of section 2-301, the court said: "The current text of section 2-301 leaves us no avenue but to conclude that, when defendant filed her first motion to stay the judicial sale, which was not a motion 'for an

1-10-0891

extension of time to answer or otherwise appear' (735 ILCS 5/2-301(a) (West 2006)) and was not accompanied by a motion challenging personal jurisdiction, she waived any objection that the trial court lacked personal jurisdiction over her when it entered the prior default judgment.”

Marzano, 385 Ill. App. 3d at 991.

Here, defendant waived her objection to the court's jurisdiction when she filed her answer to plaintiff's motion to reinstate without objecting to jurisdiction. See 735 ILCS 5/2-301(a-5) (West 2006) (“[i]f the objecting party files a responsive pleading or a motion (other than a motion for an extension of time to answer or otherwise appear) prior to the filing of a motion in compliance with subsection (a), that party waives all objections to the court's jurisdiction over the party's person”). As discussed above, defendant's response to plaintiff's motion was not a motion “for an extension of time to answer or otherwise appear” and was filed after her motion to quash was withdrawn. *Marzano*, 385 Ill. App. 3d at 991; see also *Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 10, 861 N.E.2d 1075 (2006). Defendant submitted herself to the jurisdiction of the court and waived objections to that jurisdiction. The judgment and confirmation of the sale of her property is not void.

Affirmed.