

¶ 2 The circuit court of Cook County entered a default judgment of foreclosure and sale in favor of plaintiff Bridgeview Bank Group and against 1336 Western Inc. (defendant) and Citizens Bank and Trust Company of Chicago (Citizens Bank). The court later amended that judgment through an agreed order between plaintiff and Citizens Bank to include the junior mortgage interest of defendant, Federal Deposit Insurance Corporation (FDIC), the receiver for Citizens Bank.

¶ 3 While plaintiff's sale of the subject property was awaiting confirmation, defendant filed a motion to vacate and, alternatively, to quash service, which the court denied, then confirmed the sale. Defendant subsequently filed a motion to reconsider, which the court granted in part by vacating the amendment to the foreclosure judgment that allegedly violated Supreme court Rule 105 (eff. Jan. 1, 1989)¹, and affirmed the initial foreclosure judgment. On appeal, defendant maintains that the circuit court erred in failing to quash service, and, in the alternative, that the default judgment is void in its entirety based on the violation of Rule 105.

¶ 4 On November 19, 2009, plaintiff filed a complaint for foreclosure against defendant and Citizens Bank under the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(b) (West 2008)). Plaintiff alleged that on November 13, 2003, the parties executed a \$277,500 mortgage for the property at 1540-42 North Western Avenue in Chicago, that defendant had defaulted on its mortgage payments, and that Citizens Bank had a lien/interest in the mortgaged premises which it sought to terminate. Plaintiff requested, *inter alia*, a judgment of foreclosure and sale against defendant and Citizens Bank, and an order granting it possession of the mortgaged premises.

¶ 5 On December 18, 2008, the sheriff attempted service on defendant's agent, Richard J. Kramer, at 570 North East River Road in Des Plaines, but the return showed that the agent had

¹Rule 105 requires notice where additional relief is sought against a defaulting party.

moved from there in 2004. On February 4, 2010, plaintiff filed an affidavit of compliance with the Secretary of State for service of defendant under the Business Corporation Act of 1983 (Act) (805 ILCS 5/5.25 (West 2008)). In that affidavit, plaintiff averred that defendant dissolved on January 8, 2010, and that either the corporation's registered agent cannot be found with reasonable diligence at the registered office of record in Illinois or the corporation has failed to appoint and maintain a registered agent in Illinois. The affiant further stated that a copy of the attached notice would be sent by certified or registered mail to 570 North East River Road in Des Plaines and 1515 West Haddon Avenue, Suite 100 in Chicago.

¶ 6 On May 24, 2010, plaintiff filed a motion for a default judgment against defendant and Citizens Bank. Plaintiff alleged that defendant was served by publication in the Chicago Daily Law Bulletin on April 2, 9, and 16, 2010, and also on February 4, 2010, via the Illinois Secretary of State pursuant to the Act. Plaintiff requested a judgment of foreclosure and sale of the property at 1540-42 North Western Avenue, and attached a copy of the affidavit of compliance for service on the Secretary of State. Plaintiff also attached the unsigned "affidavit" of its commercial loan officer and vice-president, Eddy K. Nufio who stated that interest on the principal balance owed continues to accrue at the per diem rate of \$131.54 and that the total due as of May 24, 2010, was \$326,286.80.

¶ 7 On June 18, 2010, the circuit court, after being fully advised in the premises, entered a default order against defendant for failing to appear. On June 23, 2010, FDIC was given leave to file its appearance in the matter, and on August 18, 2010, the circuit court granted plaintiff summary judgment as to FDIC. In its written order, the court noted that defaults occurred as indicated in the complaint, and in the evidence and affidavits presented to it. The court found that plaintiff was entitled to an award of \$337,599. 24, plus \$1,500 in attorney fees and \$329 in filing costs with interest. The court entered a judgment of foreclosure and sale for plaintiff

against all defendants noting that if defendants failed to pay the amount required, the mortgaged real estate shall be sold at public auction.

¶ 8 On September 23, 2010, the court entered an agreed order between plaintiff and FDIC, amending the judgment of foreclosure "to include the junior mortgage interest of Defendant, FDIC, in the amount of \$278,003.07 as of August 30, 2010, plus per diem interest of \$53.77." The court further ordered that "[t]he remainder of the Judgment of Foreclosure and Sale shall stand."

¶ 9 On October 15, 2010, plaintiff filed a motion for order confirming sale, approving report of sale and distribution, for possession, and for entry of deficiency judgment. Plaintiff alleged that it purchased the subject property in question on October 11, 2010, and that it was requesting a personal judgment against defendant for \$146,194.40.

¶ 10 On November 9, 2010, defendant filed a motion to quash service of summons or in the alternative, to vacate the default judgment of foreclosure pursuant to section 2-1301(e) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301(e) (West 2008)). As to the motion to quash, defendant alleged that on May 8, 2009, plaintiff filed a separate action against its president, Robert Farnik, for breach of contract, and seeking enforcement of a personal guaranty of the promissory note issued to defendant. Farnik was served with summons in that case on October 20, 2009. Defendant further alleged that it dissolved on January 8, 2010, after failing to file its annual report, and thus, its president may be personally liable for any debts defendant may have incurred. Defendant also alleged that Farnik first learned of this lawsuit on November 4, 2010, when he performed a status check concerning another foreclosure action between FDIC and defendant.

¶ 11 Defendant further alleged that the substitute service on the Secretary of State should be "dismissed" because plaintiff failed to make a diligent and reasonable inquiry into the address

where defendant would likely receive service. Defendant maintained that Farnik was "amendable [*sic.*]" to service in this lawsuit where he participated in another prior, pending action in which plaintiff was seeking to enforce its lien against Farnik based on the promissory note executed by Farnik. Defendant claimed that plaintiff could have informed Farnik of the instant foreclosure suit while dealing with the other foreclosure action, and thus, plaintiff did not reasonably inquire into providing service. Since plaintiff failed to meet the required standards for reasonable due inquiry for substitute service upon the Secretary of State, defendant claimed that the circuit court should grant its motion to vacate.

¶ 12 On January 27, 2010, plaintiff filed a response to defendant's pleadings. Plaintiff alleged that the default on the mortgage occurred in 2009, prior to defendant's dissolution, and the very fact that defendant has now been reinstated to active status undermines defendant's claim that Farnik is liable for defendant's debt. Plaintiff also claimed that defendant had cited case law regarding service on a natural person, not a corporation, and that the reasonable diligence requirement of the Act speaks only in relation to finding the registered agent at the registered office in this State. Plaintiff maintained that the Act does not require it to seek out defendant's new location once it discovers that defendant has not updated the address of its registered agent. Plaintiff alleged that it sent a copy of the summons, complaint and affidavit of compliance of service on the Secretary of State to the Haddon Avenue address listed with the Secretary of State for defendant's president, which was the address it had reason to believe would most likely result in actual notice to defendant. Plaintiff further alleged that defendant did not dispute the default judgment, and that an action to recover from the guarantor of a note is separate from the remedy of foreclosure and sale.

¶ 13 On March 4, 2011, the parties appeared before the court, and following oral argument, the court entered a written order denying defendant's motion to quash service and vacate the default

judgment. The court noted in its order that it was denying that motion for "the reasons stated in the record." On that date, the court entered another written order approving the report of sale and distribution, confirming sale, and granting plaintiff possession and a deficiency judgment of \$147,275.60 against defendant.

¶ 14 The record shows that defendant filed a motion to reconsider that order, but defendant has not included a copy of that motion in the record filed on appeal. Plaintiff filed a response to this motion alleging that the arguments raised by defendant had already been raised and denied, or were improperly raised at this juncture. Plaintiff further claimed, *inter alia*, that defendant waived its Rule 105 argument by not raising it before and in writing, and offered no justifiable excuse as to why an objection to the amended judgment of foreclosure and sale was not made in its initial motion to vacate. Plaintiff additionally noted that defendant's final argument, that the circuit court applied section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)), instead of section 2-1301 was "mistaken" where the transcript from March 4, 2011, does not show that the circuit court applied section 2-1401 in considering the motion or in its resolution of the claims made.

¶ 15 On June 27, 2011, the circuit court granted and denied in part defendant's motion to reconsider. The court found that defendant had not presented any new evidence since March 4, 2011, or sufficient evidence to support its position that service should be quashed where the supreme court has upheld service through the Secretary of State after one failed attempt at service through a registered agent. The court also found that the agreed order amending the judgment entered September 23, 2010, was done without notice to defendant as required under Rule 105, and, accordingly, that the amendment was void and vacated it. However, the court denied defendant's request to vacate the default judgment entered on August 18, 2010. This appeal follows.

¶ 16 Defendant first maintains that it was not properly served with summons in this action. Defendant contends that plaintiff did not comply with the diligent inquiry requirement for obtaining service through the Secretary of State where it failed to mail notice of the foreclosure action to an address it knew was likely to provide actual notice to defendant.

¶ 17 Where a corporation is not properly served with process, all subsequent judgments entered against it are void because the court lacked jurisdiction to enter them against the corporate entity. *Capital One Bank, N.A. v. Czekala*, 379 Ill. App. 3d 737, 746 (2008). Thus, improper service may be challenged even after the sale of foreclosed property. *Deustch Bank Nat. Trust Co. v. Brewer*, 2012 IL App (1st) 111213, ¶¶14-15. In reviewing the trial court's decision on a motion to quash service of process, we must determine whether the trial court's findings were against the manifest weight of the evidence. *Deustch Bank Nat. Trust Co.*, ¶17.

¶ 18 Here, the sheriff's initial attempt to serve defendant's agent, Richard J. Kramer, at 570 North East River Road in Des Plaines, was unsuccessful. Plaintiff then filed an affidavit of compliance with the Secretary of State for service of defendant under the Act (805 ILCS 5/5.25 (West 2008)). In that affidavit, plaintiff averred that defendant dissolved on January 8, 2010, and either the corporation's registered agent cannot be found with reasonable diligence at the registered office or the corporation has failed to appoint and maintain a registered agent. The affiant further stated that a copy of the attached notice would be sent to 570 North East River Road in Des Plaines and 1515 West Haddon Avenue, Suite 100 in Chicago.

¶ 19 When serving a private corporation, a copy of the summons must be left with the corporation's registered agent or any of its officers or agents in the state. *Capital One Bank, N.A.*, 379 Ill. App. 3d at 746. However, a corporation cannot be served by substitute service on a corporate agent and may not be properly served with summons on an agent in his individual capacity. *Capital One Bank, N.A.*, 379 Ill. App. 3d at 746. Substitute service on a corporation

can only be obtained by serving the Secretary of State. *Capital One Bank, N.A.*, 379 Ill. App. 3d at 746; 805 ILCS 5/5.25(a) (West 2010).

¶ 20 By statute, the Secretary of State becomes irrevocably appointed as a corporation's agent when the registered agent cannot with reasonable diligence be found at the registered office. 805 ILCS 5/5.25(b)(2) (West 2010). To effectuate such service via the Secretary of State, the complainant must provide the Secretary of State with a copy of the process, notice or demand and any other required documents, along with an affidavit of compliance, and send the same by registered or certified mail to the corporation being served at both the last registered address on file with the Secretary of State *and* at such address the use of which the person instituting the action knows, or, on the basis of "*reasonable inquiry*," has reason to believe, is most likely to result in actual notice. (Emphasis added.) 805 ILCS 5/5.25(c)(2)(ii) (West 2010).

¶ 21 Defendant maintains that plaintiff failed to send the necessary documents by registered or certified mail to the address which plaintiff knew would most likely result in actual notice to defendant, and, instead, mailed the notice to addresses it knew to be unlikely to reach defendant. Defendant thus claims that plaintiff failed to show that it made a "diligent inquiry" into the address most likely to provide defendant actual notice.

¶ 22 We first observe that the inquiry required by the statute is a reasonable inquiry, not a diligent inquiry (805 ILCS 5/5.25(c)(2)(ii) (West 2010), and accordingly, find defendant's reliance on cases dealing with individuals instead of corporations, and requiring due diligence inquiries, misplaced. We also observe that the Act requires corporations to update their registered agent's information (805 ILCS 5/5.10, 5.20 (West 2010)); and that the reasonable diligence element of the Act does not require plaintiff to search out the corporation's new location once it is discovered that the registered address was not updated (See *3M Co. v. John J.*

Moroney & Co., 374 Ill. App. 3d 109, 112 (2007), citing 805 ILCS 5/5.25(b)(2) (West 2010), and *Dutch Farm Meats, Inc. v. Horizon Foods, Inc.*, 275 Ill. App. 3d 322, 326 (1995).

¶ 23 Defendant, nonetheless, relies on *3M Co.*, 374 Ill. App. 3d 109, to support its claim that the service attempted through the Secretary of State was insufficient and that plaintiff failed to reasonably inquire into its address where defendant would likely receive notice. In *3M Co.*, the trial court granted a motion to quash substitute service of process in favor of a corporate defendant and vacated its prior default judgment and award for plaintiff. *3M Co.*, 374 Ill. App. 3d at 110. On appeal, plaintiff did not dispute that it merely sent substitute service to the Secretary of State and defendant's registered address, thereby failing to comply with all the requirements of section 5.25(c) of the Act (805 ILCS 5/5.25(c) (West 2010)). *3M Co.*, 374 Ill. App. 3d at 112. However, in that case the facts showed that plaintiff knew, or with reasonable inquiry should have been aware of, defendant's new address because the sheriff's return service noted defendant's new address. *3M Co.*, 374 Ill. App. 3d at 112.

¶ 24 This court was not persuaded by plaintiff's argument that the trial court impermissibly expanded the "reasonable diligence" requirement, and found its reliance on *Dutch Farm Meats*, 275 Ill. App. 3d 322, misplaced. *3M Co.*, 374 Ill. App. 3d at 112. We initially noted that plaintiff failed to provide a report of the trial court's proceedings or an acceptable substitute, and subsequently presumed that the trial court properly applied the service of process statute to the facts of the case. *3M Co.*, 374 Ill. App. 3d at 112. We also observed that in *Dutch Farm*, service was found proper where plaintiff not only sent a copy of the summons, complaint, and an affidavit of compliance for service on the Secretary of State to the registered agent at the registered address, but also to the president of the corporation whose wife signed it as received. *3M Co.*, 374 Ill. App. 3d at 112-13. Consequently, this court affirmed the trial court's judgment quashing the service and vacating the default judgment. *3M Co.*, 374 Ill. App. 3d at 113.

¶ 25 Here, unlike *3M Co.*, the record shows that the sheriff's return on the initial attempt to serve defendant's registered agent reflected that the agent had moved in 2004. The record also shows that plaintiff searched the Secretary of State's website for the addresses of the agent and the president of defendant, which revealed that defendant corporation was dissolved as of January 8, 2010, that the address for the agent, Richard J. Kramer, was 570 North East River Road, Des Plaines, and that the address for the president, Robert Farnik, was 1515 West Haddon Avenue, Chicago. Based on that information, plaintiff mailed a copy of the summons, complaint, and an affidavit of compliance for service on the Secretary of State to the addresses listed for the agent *and* the president, thereby complying with the Act.

¶ 26 Notwithstanding, defendant maintains that plaintiff failed to show why it did not mail notice to 1336 Western Avenue, which, defendant claims, was its known address based on the mortgage agreement, the promissory note, and the assignment of rents which lists its address as 1336 Western Avenue, and the loan statements which were mailed to that address. Defendant further maintains that the circuit court failed to hold plaintiff to its duty to show that it complied with all the steps for service via the Secretary of State. We observe, as in *3M Co.*, that the appellant has failed to provide a sufficiently complete record for meaningful review of this matter.

¶ 27 Defendant did not include a transcript of the proceeding on March 4, 2011, and the trial court noted in its written order of that date that its reasons for denying the motion to quash and vacate were "stated in the record," after it heard "oral argument." Although excerpts from a transcript are scattered throughout the record as exhibits to pleadings, there is no order to them, many pages are taken out of order, and others are missing. Defendant, as appellant, was required to file a complete report of the proceedings in the record on appeal to comply with Supreme Court Rule 323 (eff. Dec. 13, 2005). The documents attached to the appendix to the appellate

brief that are not included in the record are not an acceptable substitute for filing a complete record and will not be considered. *Standard Bank and Trust Co. v. Madonia*, 2011 IL App 103516, ¶23; *Department of Transp. ex. rel. People v. Interstate Brands Corp.*, 251 Ill. App. 3d 785, 787 (1993). We are thus unable to review those of plaintiff's claims which are fact-sensitive and depend upon review of what was presented at the March 4, 2011, proceeding. Since defendant failed to provide this court with a complete report of the trial court's proceeding or an acceptable substitute (Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)), we invoke the presumption that the trial court properly applied the service of process statute to the facts of this case. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 28 Moreover, the record before us shows that plaintiff sent a copy of the summons, complaint, and affidavit of compliance for service on the Secretary of State to the registered agent's address *and* the president's address as listed with the Secretary of State. In this respect, the case is similar to *Dutch Farm*, where these actions were found sufficient to show a reasonable inquiry. As the court noted in *Dutch Farm*, the Act speaks to reasonable diligence only in relation to finding the registered agent at its registered office in this State, and does not require plaintiff to seek out the new location of the registered agent once the agent moves or abandons that address and fails to notify the Secretary of State of the new address. *Dutch Farm*, 275 Ill. App. 3d at 326. Here, as in *Dutch Farm*, the record shows that plaintiff attempted service on the registered agent. When that failed, plaintiff attempted to learn if the registered agent recorded his new address with the Secretary of State, and when it found that this information had not been updated, only then, did plaintiff proceed with substitute service as provided for in the Act. *Dutch Farm*, 275 Ill. App. 3d at 328-29. We therefore have no basis for finding that the order denying defendant's motion to quash service was against the manifest weight of the evidence (*Deustch Bank Nat. Trust Co.*, ¶17), and affirm its judgment.

¶ 29 Defendant next contends that the amendment to the foreclosure judgment was done in violation of Supreme Court Rule 105 because he did not receive notice of the amendment, and, as a result, the entire foreclosure judgment is void. Defendant maintains that the circuit court cannot carve out the offending portion of the order, and requests this court to reverse the decision of the circuit court and remand this action for further proceedings.

¶ 30 Rule 105 provides, in relevant part, that if new or additional relief, whether by amendment, counterclaim, or otherwise is sought against a party not entitled to notice under Rule 104 (eff. Jan. 1, 1970), notice shall be given to that party. The notice requirements of Rule 105 are designed to prevent a litigant from obtaining new or additional relief without first giving the defaulted party a renewed opportunity to appear and defend. *Palatine Sav. And Loan Ass'n v. National Bank & Trust Co. of Sycamore*, 80 Ill. App. 3d 437, 440 (1980).

¶ 31 Here, defendant does not cite any supporting case law for his claim that the amendment to the judgment of foreclosure, "destroyed the August 18, 2010 [initial foreclosure order] as if it didn't exist," and that the "only remedy for the violation of [Rule 105] was to vacate the judgment of foreclosure in its entirety." The order entered on September 23, 2010, amending the August 18, 2010, judgment of foreclosure specifically states the amendment, and then provides that "[t]he remainder of the Judgment of Foreclosure and Sale shall stand." Without any showing otherwise, we conclude that the court rectified the error by striking the amendment, which had no adverse effect on the judgment entered on August 18, 2010. Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.