

No. 1-11-2609

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

VENUS CHAPPO,) Appeal from
) the Circuit Court
Plaintiff-Appellant,) of Cook County
)
v.) No. 1-11-2609
)
BARILE FORD, INC., an Indiana corporation,) Honorable
) John Patrick Kirby,
Defendant-Appellee,) Judge Presiding.
)
(and JUSTIN CONOVER,)
)
Defendant.))

JUSTICE CONNORS delivered the judgment of the court.
Justices Harris and Cunningham concurred in the judgment.

ORDER

¶ 1 **Held:** Trial court properly granted defendant's section 2-301 motion to dismiss plaintiff's complaint for lack of personal jurisdiction because plaintiff failed to make a *prima facie* case of personal jurisdiction.

¶ 2 Plaintiff Venus Chappo appeals from the circuit court's grant of defendant Barile Ford,

Inc.'s motion to dismiss for lack of personal jurisdiction. On appeal, plaintiff argues that the circuit court had personal jurisdiction over defendant pursuant to section 10-301 of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/10-301 (West 2008)) . Defendant maintains that plaintiff failed to make a *prima facie* case of personal jurisdiction pursuant to section 2-209 (735 ILCS 5/2-209 (West 2008)) of the Code of Civil Procedure. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On July 27, 2010, plaintiff Venus Chappo filed a complaint against Justin Conover, an individual, and Barile Ford, Inc., an Indiana corporation doing business as a car dealership in Indiana (defendant). Plaintiff alleged that on January 2, 2010, Conover obtained permission from defendant to test drive a vehicle. Conover drove the vehicle to Chicago, Illinois, and at some point acquired a passenger, plaintiff. While on an Illinois highway, I-94, Conover struck the rear of a tractor trailer that was parked on the right shoulder of the highway, which allegedly caused injury to plaintiff.

¶ 5 Plaintiff claimed in her complaint that Conover was a "permissive user" of the car, and that he was an "agent" of defendant at the time of the accident. She further claimed that Conover and defendant violated their duties to exercise ordinary care and caution for the safety of plaintiff by failing to operate the car in a proper lane of traffic, failing to keep a proper lookout for other vehicles, driving at a speed which was greater than reasonable and proper with regard to traffic conditions, failing to safely and reasonably decrease the speed of the car, failing to equip the car with proper brakes, failing to keep a car under proper control, and colliding with the rear end of

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another stopped vehicle. Plaintiff claimed that as a result of Conover's and defendant's breaches of duty, she sustained injuries of a personal and pecuniary nature, and asked for a judgment of \$50,000. Defendant was served by certified mail.

¶ 6 On August 24, 2010, defendant filed a combined motion, pursuant to section 619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2008)), combining a motion to quash service of process under section 2-301(a) of the Code (735 ILCS 5/2-301(a) (West 2008)), and a motion to dismiss the complaint under sections 2-619(a) and 2-301(a) of the Code (735 ILCS 5/2-619(a), 2-301(a) (West 2008)).

¶ 7 In regards to its section 2-301(a) motion to quash, defendant claimed that John Barile, Jr., the registered agent and president of defendant, was never personally served. Defendant alleged that section 2-208 of the Code provides that personal service of summons to a party outside the state must be made in a like manner as service within the state. 735 ILCS 5/2-208 (West 2008). It further claimed that section 2-204 of the Code required that service of summons for corporations must be effected by leaving a copy of the process with the corporation's registered agent or any officer or agent of the corporation. 735 ILCS 5/2-204 (West 2008). Accordingly, defendant alleged that it had to be served through its registered agent, and that service by registered mail was not proper and should be quashed.

¶ 8 Defendant's next section of its combined motion was marked "Motion to Dismiss Pursuant to 5/2-619(a)(1)," and alleged that defendant was an Indiana corporation doing business as a car dealership in Valparaiso, Indiana, and that it did not conduct business in Illinois, did not advertise in Illinois, had no contacts with Illinois, and thus, Illinois had no personal jurisdiction

over it. Defendant further stated that the court lacked personal jurisdiction over defendant because there were no acts committed by defendant that submitted it to the jurisdiction of Illinois. Conover was not an employee or agent of defendant, and only went to the dealership as a customer.

¶ 9 Defendant further contended that in order for an Illinois court to assert jurisdiction over a non-Illinois resident, there must be some act by which the nonresident purposefully availed itself of the privilege of conducting activities within Illinois. Defendant argued that personal jurisdiction attaches in one of two ways, pursuant to section 2-209 of the Code: (1) under the "long arm statute," which subjects a nonresident to jurisdiction if the nonresident has transacted business in Illinois, and where that business was transacted in connection with or arose from the claim being asserted, or where the tortious act complained of occurred in Illinois; or (2) if the corporation is "doing business" in Illinois.

¶ 10 In defendant's "long arm statute" argument, it contended that section 2-209 of the Code provides that a party who in person, or through an agent, does any of the 14 enumerated acts listed submits itself to the jurisdiction of the court as to any cause arising out of those acts. 735 ILCS 5/2-209 (West 2008). Defendant argued, however, that even though the accident happened in Illinois, the person who was involved in the accident, Conover, was not an agent of defendant at the time of the accident, and thus the long arm statute did not reach defendant.

¶ 11 In terms of whether defendant was "doing business" in Illinois, defendant argued that it never conducted business in Illinois in such a way as to avail itself of the laws of Illinois. The plaintiff has the burden of demonstrating that the out-of-state defendant had the necessary

minimum contacts with Illinois, and defendant argued that plaintiff failed to do so in this case.

Defendant further contended that any claim that defendant may have known, or should have known, that test-driven cars could end up in Illinois, is of no consequence in determining whether defendant had purposely availed itself of the privilege of conducting activity in Illinois.

¶ 12 John Barile's affidavit was attached to defendant's combined motion. Barile stated that Conover, an Indiana resident, entered the dealership alone on the day in question, selected a car to test drive, and provided an Indiana driver's license. He took a 2005 Chevrolet Impala for a test drive and did not return. After several hours, the dealership contacted the Valparaiso police department and reported the car stolen. Barile further stated that defendant did not have any registered agents in Illinois, did not have any employees working in Illinois, did not have an Illinois telephone number, did not advertise in any Illinois-based publications, did not transact business in Illinois, did not own or occupy any real or personal property in Illinois, had no offices or bank accounts in Illinois, and did not solicit business from any persons or corporations in Illinois.

¶ 13 On October 8, 2010, plaintiff filed a response to defendant's combined motion to dismiss. She alleged that on July 27, 2010, a summons and complaint were served on defendant, via its registered agent John Barile, Jr., through the Secretary of State of Indiana.

¶ 14 Plaintiff further responded that while section 2-204 of the Code provides that a private corporation may be served by leaving a copy of the process with its registered agent or any officer or agent of the corporation found in the state, section 2-204 did not apply because it only applied to service of summons on private corporations in the state of Illinois, and defendant is

located in Indiana.

¶ 15 Plaintiff further argued that the proper Illinois statute controlling service of process upon a nonresident was section 10-301 of the Vehicle Code (625 ILCS 5/10-301) (West 2008)), which provides for service of process through the Illinois Secretary of State when a person or his duly authorized agent or employee uses and operates a vehicle on the highways of Illinois. Plaintiff also stated that the proper Illinois statute controlling service of process upon a corporation was section 5.25 of the Business Corporation Act of 1983 (805 ILCS 5/5.25 (West 2008)), which provides for service of process on the registered agent appointed by the corporation, or upon the Illinois Secretary of State, if that corporation has the authority to transact business in the state. Plaintiff contended that defendant improperly applied the Code of Civil Procedure for service of process on in-state residents and corporations, and that the Illinois Motor Vehicle Code controlled service of process on nonresidents and corporations using Illinois roads and highways.

¶ 16 On October 26, 2010, defendant filed a reply to plaintiff's response, clarifying that its combined motion attacked the court's jurisdiction for two separate reasons: the first reason was to challenge jurisdiction based on insufficiency of process, and the second reason was to challenge jurisdiction based on the lack of personal jurisdiction over defendant.

¶ 17 In support of its motion to quash service of process, defendant reiterated its earlier arguments and also refuted plaintiff's reliance on section 10-301 of the Illinois Vehicle Code as authority to serve the Secretary of State, arguing that section only applies when a person or his duly authorized agent or employee is operating a vehicle on an Illinois road. Here, defendant was not operating the vehicle. Rather, Conover was operating the vehicle at the time of the alleged

accident, and Conover was not defendant's agent or employee at that time.

¶ 18 Defendant further argued that as an alternative to lack of jurisdiction based on improper service of process, the court lacked personal jurisdiction over defendant because neither the "long arm statute," nor the "doing business" requirement applied in this case pursuant to section 2-209 of the Code.

¶ 19 On November 12, 2010, the trial court granted defendant's motion to quash for improper service and did not rule on the section 2-619 motion to dismiss for lack of personal jurisdiction. It stated that an alias summons was to be issued to defendant.

¶ 20 It appears from the record that an alias summons had already been issued to defendant by plaintiff, prior to the court's order, through the Illinois Secretary of State, rather than the Indiana Secretary of State.

¶ 21 On December 1, 2010, defendant filed a combined motion pursuant to section 2-619.1, moving to quash service of process under section 2-301(a) of the Code, and to dismiss the complaint for lack of personal jurisdiction under section 2-301(a) of the Code.

¶ 22 Defendant's motion to quash service of process stated that plaintiff failed to obtain proper service of the alias summons because when she sent the alias summons, it had not yet been authorized by the November 12, 2010, order of the court.

¶ 23 Defendant also re-argued that the suit should be dismissed based on a lack of personal jurisdiction. It noted that a similar motion was prepared and presented to the court for ruling on November 12, 2010, but because the motion to quash service of process was granted, the court did not reach any decision on personal jurisdiction. Defendant then reiterated its arguments that

the long arm statute did not apply, and that defendant was never "doing business" in Illinois, and thus there was no personal jurisdiction, pursuant to section 2-209 of the Code.

¶ 24 Plaintiff responded to defendant's combined motion to dismiss on January 26, 2011. She stated that on October 25, 2010, an alias summons was issued for service on defendant through the Illinois Secretary of State, and that on November 8, 2010, the Secretary of State accepted service on behalf of defendant. On November 12, 2010, the Secretary of State's confirmation of service and the alias summons were filed and time-stamped by the court. Plaintiff contended that Illinois Supreme Court Rule 103(a) (eff. July 1, 2007) states that on request of any party, the clerk shall issue successive alias summonses, regardless of the disposition of any summons or alias summons previously issued, and thus plaintiff did not have to wait until the court's November 12, 2010, order to issue a new summons. Plaintiff then reiterated her argument that service was proper pursuant to section 10-301 of the Illinois Vehicle Code.

¶ 25 In response to defendant's personal jurisdiction argument, plaintiff argued that the proper analysis regarding Illinois' interest in the defendant's conduct should be reviewed under 10-301 of the Illinois Vehicle Code, and not the long arm statute under section 2-209.

¶ 26 Defendant replied to plaintiff's response, stating that section 10-301 of the Illinois Vehicle Code only applies to serve a person for the use and operation by any person or his authorized agent, and in this case the individual (Conover) operating the vehicle on Illinois highways was neither an agent nor an employee of defendant. Defendant further stated that the trial court previously entered an order granting its motion to quash process of service for lack of

personal service,¹ and that another attempt to serve defendant through the Illinois Secretary of State was disingenuous.

¶ 27 Defendant further argued in its reply that even if plaintiff were to have followed the rules of proper service of process, the court still would still lack personal jurisdiction over defendant. Defendant again reiterated its arguments regarding the long arm statute and "doing business" in Illinois pursuant to section 2-209 of the Code.

¶ 28 On February 17, 2011, the trial court denied defendant's motion to quash service of process and chose not to hear oral arguments on, or rule on, defendant's motion to dismiss for lack of personal jurisdiction. Instead, the trial court ordered defendant to answer the complaint or otherwise plead.

¶ 29 On February 25, 2011, defendant moved to dismiss the complaint for lack of personal jurisdiction pursuant to section 2-301(a). The argument section of the motion was substantially similar to the previous motions to dismiss which argued lack of personal jurisdiction under both the long arm statute and the "doing business" test in Illinois, pursuant to section 2-209 of the Code.

¶ 30 Before a response was filed by plaintiff, the trial court ordered limited discovery on the jurisdictional issue only. Interrogatories and requests for production were then issued, and John Barile's deposition was taken on April 28, 2011.

¶ 31 On July 18, 2011, plaintiff responded to defendant's motion to dismiss the complaint for

¹We only have the trial court's order from November 12, 2010, and therefore do not know the reasons why the court granted defendant's motion to quash.

lack of jurisdiction pursuant to section 2-301(a). However, plaintiff labeled her response, "Plaintiff's Response to Defendant's Section 2-615 Motion to Dismiss." She argued that section 2-615 motions attack the legal sufficiency of the complaint by asserting that a complaint fails to state a cause of action upon which relief can be granted. In considering a motion to dismiss under section 2-615, all well-pleaded facts are admitted and must be taken as true. Plaintiff again contended that while defendant argued Illinois does not have jurisdiction over it pursuant to the long arm statute, the proper analysis is under section 10-301 of the Illinois Vehicle Code.

¶ 32 Plaintiff stated that defendant relied on Barile's affidavit to support its argument that Illinois has no personal jurisdiction, but that Barile's deposition testimony showed that he lacked the personal knowledge necessary to properly testify as to the agreement made between Conover and defendant. Plaintiff contended that Barile's role as president was supervisory in nature, and that he did not handle day-to-day operations. Barile testified in his deposition that he had no contact with Conover on the day in question. Barile further testified that the details of a test drive are left to the discretion of management and any spoken agreement between the sales person and the prospective buyer.

¶ 33 Plaintiff argued that Barile's testimony supports her argument that an agency relationship existed between Conover and defendant. Specifically, plaintiff relies on the fact that there were no signs telling prospective buyers how far they could take vehicles for a test drive. Accordingly, plaintiff argues that Conover had both express and implied permission to take the car for a test drive, and that Illinois courts have jurisdiction over defendant under section 10-301 of the Illinois Vehicle Code.

¶ 34 Plaintiff stated in her conclusion that the court did not have jurisdiction under the long arm statute because millions of vehicles enter and leave Illinois every day without ever conducting business in Illinois, and thus, Illinois citizens are protected by section 10-301, which confers jurisdiction for any action or proceeding against owners or operators of a vehicle, growing out of such use or resulting in damage or loss to person or property. We note that plaintiff never made an argument addressing the substance of section 2-209 of the Code, which governs personal jurisdiction of a nonresident defendant, and her only response to defendant's 2-209 argument was to say that section 10-301 should apply instead.

¶ 35 On July 29, 2011, defendant replied that its motion was brought pursuant to section 2-301 of the Code, not section 2-615. Defendant stated that there was no basis in law for the plaintiff to allege that a customer who takes a car for a test drive becomes an agent of the car dealership. Furthermore, defendant contends that plaintiff cites absolutely no case law to support her theory that section 10-301, which allows the Secretary of State to accept service of process for nonresident defendants, confers personal jurisdiction on a nonresident corporation. Defendant then again reiterated its arguments regarding the long arm statute and whether it was doing business in Illinois.

¶ 36 On August 18, 2011, the trial court held a hearing on defendant's motion to dismiss. A transcript of this hearing was not included in the certified record on appeal, but was attached in the appendix to plaintiff's opening brief.

¶ 37 After the hearing, the trial court granted defendant's section 2-301(a) motion to dismiss the complaint for lack of jurisdiction. The trial court included Illinois Supreme Court Rule

304(a) language so that plaintiff could immediately appeal. Ill. S. Ct. R. 304(a) (eff. Sept. 20, 2006) (allowing for an appeal from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying appeal). The question of whether the trial court properly granted defendant's section 2-301 motion to dismiss for lack of personal jurisdiction is now before this court.

¶ 38

II. ANALYSIS

¶ 39 On appeal, plaintiff contends that the trial court improperly granted defendant's motion to dismiss for lack of personal jurisdiction over defendant. Plaintiff contends that the trial court had personal jurisdiction over defendant pursuant to section 10-301 of the Illinois Vehicle Code. Alternatively, she argues for the first time on appeal, that the trial court had personal jurisdiction over defendant pursuant to section 2-209 of the Code. Defendant maintains that the trial court properly granted its section 2-301 motion to dismiss plaintiff's complaint for lack of personal jurisdiction pursuant to section 2-209.

¶ 40

A. Standard of Review

¶ 41 As an initial matter, we address this court's standard of review of the grant of a section 2-301 motion to dismiss based on personal jurisdiction. Section 2-301(a) states that prior to filing 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 an Illinois court, or on the ground of insufficiency of service of process, by filing a motion to dismiss the entire proceeding or any cause of action involved in the proceeding, or by filing a motion to quash service of process. 735 ILCS 5/2-

301(a) (West 2008). Such a motion can 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 of the Code. *Id.*

¶ 42 Section 2-301(b) states that in disposing of a motion objecting to the court's jurisdiction over the person, the court shall consider all matters apparent from the papers on file in the case, affidavits submitted by any party, and any evidence adduced upon contested issues of fact. 735 ILCS 5/2-301(b) (West 2008). No determination of any issue of fact in connection with the objection is a determination of the merits of the case or any aspect thereof. *Id.*

¶ 43 Thus, "section 2-301 unequivocally implies that the circuit court may resolve issues of fact in ruling on such a motion *** after a hearing, at which the circuit court would receive the 'evidence adduced upon [contested] issues of fact.'" *TCA International, Inc. v. B & B Custom Auto, Inc.*, 299 Ill. App. 3d 522, 531 (1998) (citing 735 ILCS 5/2-301(b) (West 1996)). If the circuit court holds such an evidentiary hearing, this court would review the circuit court's findings of fact under the manifest weight of the evidence standard. *Id.*

¶ 44 However, there is no need to hold an evidentiary hearing if the plaintiff cannot meet her initial burden of establishing a *prima facie* case of jurisdiction over the defendant through the untraversed pleadings, documents, and affidavits. *TCA International, Inc.*, 299 Ill. App. 3d at 532 (in determining whether a particular defendant is subject to jurisdiction of this state, the circuit court must first determine whether plaintiff has established a *prima facie* case of jurisdiction through the untraversed pleadings, documents, and affidavits); *Knaus v. Guidry*, 389 Ill. App. 3d 804, 813 (2009) (the burden for establishing a basis for personal jurisdiction over a

nonresident defendant belongs to the plaintiff).

¶ 45 "Concomitantly, at this juncture the court must also accept as true any facts averred by the defendant *** which have not been contradicted by an affidavit submitted by plaintiff." *TCA International, Inc.*, 299 Ill. App. 3d at 531. "If plaintiff has failed to establish a *prima facie* case, the inquiry is at an end and the defendant's motion should be granted." *Id.* "On appeal from an order dismissing a case on this basis, our standard of review would be *de novo*, as it would involve 'solely the application of law to undisputed facts.'" *Id.* (citing *Farmers State Bank v. Neese*, 281 Ill. App. 3d 98, 101 (1996)).

¶ 46 Where, as here, a circuit court determines jurisdiction without an evidentiary hearing, we review the court's decision *de novo*.² *Hanson v. Ahmed*, 382 Ill. App. 3d 941, 943 (2008). On appeal, we may consider a plaintiff's complaint and any affidavits submitted by the parties. *Id.* Unrebutted allegations are taken as true. *Id.* We may affirm the trial court on any basis supported by the record. *Real Estate Buyer's Agents, Inc. v. Foster*, 234 Ill. App. 3d 257, 259 (1992).

¶ 47

B. Personal Jurisdiction

¶ 48 As defendant repeatedly noted in its pleadings, section 2-209 of the Code, known as the

²The hearing transcript was attached to appellant's brief, but was not made part of the certified record on appeal. We "may not consider documents that are not part of the certified record on appeal." *Kensington's Wine Auctioneers and Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 14 (2009). "Attachments to appellate briefs that are not contained in the certified record on appeal cannot be used to supplement the record and are not properly before the reviewing court." *Id.* It will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

long-arm statute, "governs when Illinois courts have the power to exercise personal jurisdiction over an out-of-state defendant." *Sabados v. Planned Parenthood of Greater Indiana*, 378 Ill. App. 3d 243, 246 (2007); 735 ILCS 5/2-209 (West 2006). In particular, subsection 2-209(a) describes 14 grounds under which specific jurisdiction arises and subsection 2-209(b) describes 4 grounds under which general jurisdiction arises. 735 ILCS 5/2-209(a), (b) (West 2006).

However, "exercise of any form of personal jurisdiction must comport with due process."

Sabados, 378 Ill. App. 3d at 246; *Commercial Coin Laundry Systems, v. Loon Investments, LLC*, 375 Ill. App. 3d 26, 29 (2007); *Klump v. Duffus*, 71 F. 3d 1368, 1371 (7th Cir. 1995) (Illinois long-arm statute was amended in 1989 to add subsection (c), which is "coextensive with the due process requirements of the United States Constitution").

¶ 49 The federal due process clause limits a state's exercise of personal jurisdiction over a nonresident defendant to those instances where the defendant had at least "minimum contacts" with the state." *Russell v. SNFA*, 408 Ill. App. 3d 827, 831 (2011) (citing *Rosier v. Cascade Mountain, Inc.*, 367 Ill. App. 3d 559, 561 (2006)). The action must arise out of the defendant's contacts with the forum state to the extent that it is reasonable to require the defendant to litigate in the forum state. *Sabados*, 378 Ill. App. 3d at 247. Illinois due process requires that it be "fair, just, and reasonable to require a nonresident defendant to defend an action in Illinois, considering the quality and nature of the defendant's acts which occur in Illinois or which affect interests located in Illinois." *Rollins v. Ellwood*, 141 Ill. 2d 244, 275 (1990).

¶ 50 Although dependent on whether a court seeks to assert specific jurisdiction or general jurisdiction, the minimum contacts analysis requires that the defendant engaged in some act "by

which the defendant purposefully availed itself of the privilege of conducting activities in the forum state, in or order to ensure that a nonresident will not be haled into the forum solely as a result of random, fortuitous, or attenuated contacts with the forum or the unilateral acts of a consumer or some other third person." *Rosier*, 367 Ill. Ap. 3d at 562. Specific jurisdiction arises when the defendant purposefully directed its activities to Illinois residents and injuries arose out of or were caused by those activities. *Sabados*, 378 Ill. App. 3d at 248.

¶ 51 In the case at bar, it was plaintiff's burden to show that Illinois had personal jurisdiction over defendant pursuant to section 2-209 of the Code and due process, yet plaintiff did not once allege that section 2-209 conferred jurisdiction; nor did she respond to defendant's section 2-209 argument. Rather, she maintained throughout her pleadings that personal jurisdiction was conferred on defendant via section 10-301 of the Illinois Vehicle Code. Accordingly, plaintiff did not meet her burden of establishing a *prima facie* case of jurisdiction over a nonresident defendant pursuant to section 2-209 of the Code, and the trial court properly granted defendant's motion to dismiss.

¶ 52 Moreover, we note that defendant, in its pleadings, attached an affidavit of Barile, defendant's registered agent, which stated that defendant had no contacts with Illinois, did not do business in Illinois, did not advertise in Illinois, and that Conover was not an agent or an employee of defendant. Plaintiff failed to rebut Barile's affidavit with an affidavit, and thus defendant's affidavit was uncontroverted, and must be taken as true. See *TCA International*, 299 Ill. App. 3d at 531 (citing *Kutner v. DeMassa*, 96 Ill. App. 3d 243, 247-8 (1981) (where defendant's affidavit contains factual assertions which vary from those in the complaint, the

affidavit controls; in deciding issues of personal jurisdiction, court must accept as true any facts averred by defendant which have not been contradicted by an affidavit submitted by plaintiff); *Hanson*, 382 Ill. App. 3d at 943 (unrebutted allegations made in an affidavit are taken as true).

¶ 53 We note that plaintiff now appears to make a section 2-209 argument for the first time on appeal. An argument cannot be considered on appeal where it was never raised by the appellant in the trial court, and thus the argument is waived on review. *Burgdorff v. International Business Machines*, 74 Ill. App. 3d 158, 162 (1979). Even if we were to review such argument, however, we would find it to be insufficient. Defendant contends that pursuant to section 2-209(a) of the Code, specific jurisdiction exists when the cause of action arose out of defendant's, or defendant's agent's, contacts with the forum state. See *Knaus*, 389 Ill. App. 3d at 814. Plaintiff claims in her appellant brief that Conover was an agent of defendant because he was "acting on behalf of [defendant] from the moment he was given the keys to the vehicle," and thus defendant is responsible for Conover's actions. Plaintiff cites to no case law that supports the proposition that a customer who takes a car for a test drive from a dealership becomes the dealership's agent. Accordingly, we find that plaintiff has waived her agency contentions by failing to supply proper argument as required by Supreme Court Rule 341(h)(7) (eff. Sept. 1, 2008). *Chicagoland Chamber of Commerce v. Pappas*, 378 Ill. App. 3d 334, 365 (2007) (a reviewing court is entitled to have issues clearly defined with pertinent authority cited and coherent arguments presented; arguments inadequately presented on appeal are waived).

¶ 54 Lastly, any reliance that plaintiff put on section 10-301 of the Vehicle Code is misplaced. Plaintiff argued at trial, and maintains on appeal, that section 10-301 of the Vehicle Code gave

Illinois personal jurisdiction over defendant. Section 10-301 governs service of process for nonresidents. 625 ILCS 5/10-301 (West 2010). It states in pertinent part that the use and operation by any person or that person's duly authorized agent or employee of a vehicle on Illinois highways, shall be deemed an appointment of the Secretary of State to be his true and lawful attorney upon whom may be served all legal process in any action against him, and the use or operation shall be signification of his agreement that such process against him shall be of the same legal force and validity as though served upon him personally if such person is a nonresident of Illinois, or in the event the vehicle is owned by a nonresident and is being operated over and upon the highways of this State with the owner's express or implied permission. 625 ICLS 5/10-301 (West 2010).

¶ 55 Section 10-301 deals entirely with service of process on nonresidents. Plaintiff did in fact use the Secretary of State as a means to serve defendant in this case, which was apparently found to be proper by the trial court when the court denied defendant's motion to quash service of process. However, once a nonresident defendant has been served, it can challenge personal jurisdiction by bringing a section 2-301 motion, either on its own or in combination with other motions. Defendant used a section 2-301 motion to challenge jurisdiction pursuant to section 2-209 of the Code, which is the section of the Code that governs personal jurisdiction over nonresident defendants. It was then plaintiff's burden to make a *prima facie* showing of personal jurisdiction based on section 2-209 of the Code, which she never did. Accordingly, we find that since plaintiff did not set forth a *prima facie* case of personal jurisdiction pursuant to section 2-209 of the Code in the trial court, the trial court properly granted defendant's motion to dismiss.

¶ 56 Moreover, we note that the only other citation plaintiff includes in her argument regarding section 10-301 on appeal is a citation to the hearing transcript that she included in the appendix of her brief. As we noted earlier, attachments to appellate briefs that are not otherwise of record are not properly before a reviewing court and cannot be used to supplement the record. *Taylor v. Frey*, 406 Ill. App. 3d 1112, 1115 (2011). Additionally, mere contentions without argument or citation of authority do not merit consideration on appeal, nor do statements unsupported by argument or citation of relevant authority. *Eckiss v. McVaigh*, 261 Ill. App. 3d 778, 786 (1994).

¶ 57 Accordingly, for the reasons set forth above, we affirm the circuit court's order granting defendant's section 2-301 motion to dismiss the complaint for lack of personal jurisdiction.

¶ 58

III. CONCLUSION

¶ 59 We affirm the judgment of the Circuit Court of Cook County.

¶ 60 Affirmed.