

No. 1-11-2944

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE BANK OF NEW YORK, AS TRUSTEE FOR THE )	Appeal from the
BENEFIT OF THE CERTIFICATE HOLDERS, CHL )	Circuit Court of
MORTGAGE PASS-THROUGH TRUST 2007-8 )	Cook County.
MORTGAGE PASS-THROUGH CERTIFICATE, )	
SERIES 2007-8, )	
)	
Plaintiff-Appellee, )	No. 08 CH 33721
)	
v. )	
)	
ALEKSANDRA YACHMINSKAYA, )	Honorable
)	Jesse G. Reyes,
Defendant-Appellant. )	Judge Presiding.

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JUSTICE LAVIN delivered the judgment of the court.  
Justices Fitzgerald Smith and Sterba concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where service was had upon defendant by means of abode service, and defendant and her husband filed affidavits attesting that person served was not a member of their household, service should have been quashed; judgment was reversed and the cause remanded for further proceedings.
- ¶ 2 In this mortgage foreclosure action, defendant-appellant, Aleksandra Yachminskaya (Aleksandra), appeals from an order of the circuit court of Cook County denying her motion to

quash the abode service obtained on her by plaintiff-appellee, the Bank of New York, as Trustee for the Benefit of Certificate Holders, CHL Mortgage Pass-Through Trust 2007-8 Mortgage Pass-Through Certificate, Series 2007-8 (Bank of New York). Aleksandra contends that service was not properly obtained on her because there was insufficient proof that abode service was made upon a member of her household. She also contends that service was defective because the original affidavit of the process server did not indicate that subsequent to the abode service the summons and complaint were mailed to her. For these reasons, Aleksandra contends that the judgment entered against her is void and must be vacated.

¶ 3 On September 11, 2008, Bank of New York filed this mortgage foreclosure against Aleksandra on property commonly known as 2414 West Erie in Chicago. Service of process was accomplished on Aleksandra by means of abode service, pursuant to section 2-203(a)(2) of the Code of Civil Procedure. 735 ILCS 5/2-203(a)(2) (West 2010). The affidavit of service by the special process server states that he served the summons and complaint on Aleksandra by leaving copies of those documents at Aleksandra's usual place of abode, 2414 West Erie, Chicago, with a member of her household, Victor Nermovka. Bank of New York obtained an order of default and a judgment of foreclosure and sale against Aleksandra on January 7, 2009, and the property was sold at public auction to Bank of New York for \$846,531.98 on July 10, 2009. Bank of New York filed a motion for an order approving the report of sale and for distribution and possession on October 2, 2009. On October 6, 2009, Aleksandra filed a motion to quash service. Both parties filed briefs on this motion, supported by exhibits. One of Bank of New York's exhibits was a second affidavit by the process server, who again stated that he had effectuated an abode service by serving Victor Nermovka, a member of Aleksandra's household. But the affidavit also added that the following day, copies of the summons and complaint were mailed to Aleksandra at her home. Aleksandra and her husband, Vladimir, both filed affidavits averring that on the date

of service, October 8, 2008, no one named Victor Nermovka resided or stayed at their house as a member of the household.

¶ 4 The hearing on this motion was originally set for December 4, 2009, but was continued because Aleksandra's attorney was not present. On the rescheduled date, December 18, 2009, counsel for Aleksandra was again not present. The circuit court entered an order denying the motion to quash service. The order noted that Aleksandra's counsel was not present but it also stated that the court was "duly advised in the premises." That same day, the court granted Bank of New York's motion for an order approving the report of sale, distribution and possession.

¶ 5 Eighteen months later, Aleksandra filed a motion for a hearing on her motion to quash service, which was fully briefed by the parties and heard by the court on September 6, 2011. The court entered an order stating that it was construing Aleksandra's motion for a hearing as a motion to reconsider its order of December 18, 2009, which denied Aleksandra's motion to quash service. The court then held that the previous order would stand, and Aleksandra's motion was denied. This appeal ensued.

¶ 6 Aleksandra argues, as she did in the court below, that the judgment entered against her is void for lack of proper service of the complaint and summons. A judgment entered by a court which lacks jurisdiction of the parties is void and may be attacked at any time in any court. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 309 (1986). Accordingly, a judgment which is obtained without service of process is void. *State Bank*, 113 Ill. 2d at 293; see *Klein v. LaSalle National Bank*, 151 Ill. 2d 201, 206 (1993). Here, Aleksandra contends that she was not properly served in this cause because there was no proof that the person served by abode service was a member of her household. In support of her motion to quash service, both Aleksandra and her husband filed affidavits averring that on the date of the alleged service, October 8, 2008, no one named Victor Nermovka resided or stayed at their house as a member of the household. The

process server had stated in his affidavit of service that he served Nermovka, and that Nermovka was a member of Aleksandra's household. But Nermovka's status was not a matter which was within the personal knowledge of the process server. See *Nibco, Inc. v. Johnson*, 98 Ill. 2d 166, 172 (1983). The process server knew that he had served someone at Aleksandra's house, who told him his name. But in his affidavit he failed to set out any facts supporting his assertion that this person was a member of Aleksandra's household. Where this fact was challenged by affidavits, as it was by Aleksandra here, the process server's affidavit of service was insufficient to establish proper service. The burden then shifted to Bank of New York to prove, by the process server's testimony or otherwise, that the person served, Nermovka, was in fact a member of Aleksandra's household on the date of service. Bank of New York failed to present any additional evidence or testimony to refute Aleksandra's affidavits.

¶ 7 Bank of New York asserts that Aleksandra's affidavits should have been more comprehensive, explaining who Nermovka was, and why he was at her home if he was not a member of her household. The fact that the affidavits could have provided even more facts refuting the process server's unsupported claim that Nermovka was a member of the household does not affect the fact that this claim was directly refuted by what Aleksandra and her husband did state in their affidavits. Nor does labeling the affidavits as "threadbare" water down the potency of the affidavits' clear statements. For these reasons, the circuit court was required to accept the affidavits as true and quash the purported service of summons. *Nibco*, 98 Ill. 2d at 171-72; *Harris v. American Legion John T. Shelton Post No. 838*, 12 Ill. App. 3d 235, 237 (1973). Because Aleksandra was never properly served, the judgment entered against her is void and must be vacated.

¶ 8 Aleksandra's alternative claim is that the original service return was also faulty because it failed to state that after abode service was effectuated, there was a subsequent mailing of the

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summons and complaint to Aleksandra at her residence. 735 ILCS 5/2-203(a) (West 2010). In an additional affidavit, the process server averred that this mailing had been made the day after abode service. The circuit court was entitled to rely upon this supplemental affidavit to cure this defect. See *State Bank*, 113 Ill. 2d at 306-307.

¶ 9 For the reasons set forth in this order, we reverse the judgment of the circuit court of Cook County and remand the cause for further proceedings.

¶ 10 Reversed and remanded.