

No. 1-11-1580

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

WELLS FARGO BANK, N.A.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CH 23813
)	
ADENIJI GBEMISOLA,)	Honorable
)	David B. Atkins,
Defendant-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant waived objection to jurisdiction by appearing before circuit court and entering into forbearance agreement, defendant's motion to dismiss judgment was correctly denied; the judgment of the circuit court was affirmed.

¶ 2 Defendant Adeniji Gbemisola appeals *pro se* from the circuit court's denial of her motion to dismiss a judgment of foreclosure brought by plaintiff Wells Fargo Bank, N.A. (Wells Fargo). On appeal, defendant contends that judgment was void *ab initio* because she was never served with notice of the foreclosure proceedings. We affirm.

¶ 3 On July 1, 2008, Wells Fargo filed a complaint in the circuit court to foreclose the mortgage on the property of defendant, located at 3416 West Lexington Street in Chicago.¹ The record contains affidavits of Robert Zidek and Timothy McWard, who were both special process servers with the company Pro-Vest, which was appointed for cases brought by the law firm representing Wells Fargo for the period ending August 31, 2008. Zidek attested that on July 3, 2008, he attempted to serve defendant at 3416 West Lexington Street in Chicago and was unsuccessful. McWard attested that on July 14, 2008, he completed service by leaving a copy of the summons and complaint with a man between 41 and 45 years old at 6108 North Campbell Avenue, Apt. 1, in Chicago. Argent Mortgage Company (Argent), which held the mortgage on the property, also was served with notice. On September 23, 2008, Wells Fargo filed a motion for an order of default, stating that 60 days had passed since defendant, Argent and unknown occupants or owners of the property were served.

¶ 4 On November 3, 2008, a scheduling order was entered by Wells Fargo indicating that defendant appeared before the court on that date *pro se* and was trying to refinance or reinstate the property loan and/or trying to sell the property in a short sale. That order stated that the motion for default was set for hearing on December 15, 2008. On that date, the case was continued to January 8, 2009, to allow Wells Fargo to provide documentation.

¶ 5 On January 8, 2009, the circuit court entered an order finding defendant and Argent in default and entered a judgment of foreclosure and order to sell the property. During the next six months, the parties evidently entered into a loan modification or repayment plan or some other type of settlement agreement intended to halt the foreclosure process and allow defendant to retain the property. On July 17, 2009, an order was entered dismissing the judgment pursuant to

¹ Although defendant's filings in the circuit court use both masculine and feminine pronouns, both briefs before this court refer to defendant as a woman.

section 2-1009 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-1009) (West 2008)) with leave to reinstate should defendant default upon that forbearance agreement within one year.

¶ 6 That circumstance apparently occurred, because on February 11, 2010, Wells Fargo filed a motion to reinstate the foreclosure proceedings, asserting that defendant had defaulted on the forbearance agreement on or about January 25, 2010. The case was reinstated on August 17, 2010. On December 13, 2010, an order was entered approving the sale of the property.

¶ 7 On May 27, 2011, defendant filed a *pro se* motion to dismiss the foreclosure proceedings, asserting she was out of state during the entire pendency of the lawsuit and had no knowledge of the matter. Defendant stated in the motion that she was never served with the complaint or summons for foreclosure and did not receive mail containing those documents. Defendant's filing also included an affidavit attesting she was never served. On June 3, 2011, the circuit court entered an order denying defendant's motion to dismiss the proceedings.

¶ 8 On June 7, 2011, defendant filed a *pro se* "notice of interlocutory appeal" in which defendant claimed to have never been "served with summons and complaint" or with the motion to reinstate the case. On March 8, 2012, this court dismissed defendant's appeal for want of prosecution. Defendant filed a motion to reinstate the appeal, which this court granted on March 23, 2012. Wells Fargo filed a motion to dismiss the appeal, which was denied. We now consider defendant's *pro se* appeal from the circuit court's order denying the motion to dismiss the proceedings.

¶ 9 On appeal, defendant contends the circuit court erred in entering the order approving the sale of the property because the court lacked personal jurisdiction. Defendant claims she was not personally served with notice of the action and that the affidavits of service submitted by the Pro-Vest agents were fraudulent. Wells Fargo responds that defendant was personally served with

the summons and complaint and, moreover, that defendant waived any jurisdictional argument by appearing before the court on November 3, 2008.

¶ 10 For a judgment of a court to be valid, a court must have both jurisdiction of the subject matter and jurisdiction over the parties. *In re Marriage of Seffren*, 366 Ill. App. 3d 628, 634-35 (2006). Because the person holding a mortgage on the subject property, also known as the mortgagor, is a necessary party in a foreclosure action, there must be personal service on that individual. *ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526, 537 (2010).

¶ 11 Personal jurisdiction is conferred by one of two means: (1) the service of summons or (2) by the filing of an appearance. *Id.* Service of summons notifies the defendant of the pending litigation and enables the defendant to appear and defend against it. *In re D.J.S.*, 308 Ill. App. 3d 291, 294 (1999) (noting that a plaintiff need not serve process upon a defendant who voluntarily appears in the proceeding). Personal service upon an individual defendant is achieved by: (1) leaving a copy of the summons with the defendant personally; or (2) leaving a copy at the defendant's usual place of abode, with a family member or person residing at that address who is age 13 or older, and also mailing a copy to the defendant at that location. 735 ILCS 5/2-203(a) (West 2008).

¶ 12 Wells Fargo argues on appeal that defendant waived any objection to the court's jurisdiction by appearing before the court on November 3, 2008. Section 2-301(a) of the Code provides that a party may object to the court's jurisdiction over his or her person by filing a motion to dismiss the entire proceeding "prior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear." 735 ILCS 5/2-301(a) (West 2008). If the objecting party files a responsive pleading or a motion prior to making such a request under subsection (a), that party thereby waives all objections to the court's jurisdiction over the party's person. 735 ILCS 5/2-301(a-5) (West 2008). That circumstance has occurred

here, where defendant appeared before the court in response to Wells Fargo's motion for a default order and did not raise any objection to jurisdiction. See, e.g., *LaSalle Bank, N.A. v. DeCarlo*, 336 Ill. App. 3d 280, 287 (2003) (requirement of prior service of process is waived where a person participates in court proceeding, thereby recognizing case as being in court).

¶ 13 Moreover, the record indicates that defendant entered into a forbearance agreement at some point after that appearance. This court has recently held that by entering into a forbearance agreement, a defendant has acknowledged that the "manner and method of service exercised in the original proceeding were valid," thus submitting to the jurisdiction of the court. See *Eastern Savings Bank, FSB, v. Flores*, 2012 IL App (1st) 112979, ¶ 15. Therefore, the circuit court had jurisdiction over defendant when it dismissed defendant's motion to dismiss the foreclosure proceedings on June 3, 2011.

¶ 14 Accordingly, the judgment of the circuit court is affirmed.

¶ 15 Affirmed.