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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

U.S. BANK, N.A., as Trustee for the)	Appeal from the Circuit Court
Structured Asset Investment Loan Trust)	of Stephenson County.
2006-2,)	
)	
Plaintiff and Defendant-Appellee,)	
)	
v.)	Nos. 08-CH-18
)	08-CH-127
LEONARDO J. IBARRA,)	
)	
Defendant-Appellant)	
)	Honorable
(Super Mix, Inc., Plaintiff and Defendant;)	David L. Jeffrey,
Hortensia Ibarra, et al., Defendants).)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* Because service on defendant by one plaintiff was proper, the trial court had personal jurisdiction of defendant for the purposes of effecting a valid foreclosure and sale, even if, as defendant claimed, service on him by another plaintiff was improper.

¶ 2 Leonardo J. Ibarra, the property-owner defendant in a foreclosure proceeding, appeals from the confirmation of the judicial sale of the property. He asserts that U.S. Bank's service by publication was improper, so that the sale was void for want of personal jurisdiction. The judicial

sale took place in consolidated proceedings on two foreclosure actions relating to the same property. Super Mix, Inc., holder of a mechanic's lien, filed the first (No. 08-CH-18), naming as defendants Ibarra; U.S. Bank, N.A., as Trustee for the Structured Asset Investment Loan Trust 2006-2 (U.S. Bank), which was the first mortgage holder; and others with known or possible interests. U.S. Bank filed the second (No. 08-CH-127), naming as defendants Ibarra, Super Mix, and, again, others with known or possible interests. The record is clear that Super Mix properly served Ibarra personally. That service was sufficient to give the court jurisdiction for the foreclosure and sale. An owner's rights can be foreclosed only once, and the foreclosure can lead to one sale only. As a result, any error in service by U.S. Bank is without jurisdictional consequence. We therefore affirm the confirmation.

¶ 3

I. BACKGROUND

¶ 4 Super Mix filed its foreclosure action on February 5, 2008. It alleged that Ibarra lived at 8863 E. Weber Road in Ridott (the property) and that it had a valid mechanic's lien on the property. It sought to foreclose on that lien. A special process server for Super Mix served Ibarra personally on February 7, 2008.

¶ 5 On August 13, 2008, U.S. Bank filed its suit seeking to foreclose on the property. On October 16, 2008, Super Mix filed a motion to consolidate its suit with U.S. Bank's. The court granted the motion on November 12, 2008. On December 30, 2008, Super Mix answered U.S. Bank's complaint. On January 20, 2009, U.S. Bank answered Super Mix's complaint. U.S. Bank and Super Mix both claimed priority as lienholders.

¶ 6 On August 27, 2009, Ibarra filed "Defendant Leonardo Ibarra and Ibarra Cement Inc.'s Declaration of Being Discharged under Section 727 of Title 11 U.S. Bankruptcy Code." He filed

this *pro se* and did not address it to any particular party. The filing included Ibarra's Chapter 11 discharge, dated June 10, 2009.

¶ 7 On August 31, 2009, the court entered dual orders stating a judgment of foreclosure, one in favor of Super Mix and one in favor of U.S. Bank. Both judgments reserved the issue of the relative priorities of Super Mix's and U.S. Bank's liens.

¶ 8 On October 2, 2009, Super Mix and U.S. Bank jointly filed a motion asking the court to require Ibarra to allow inspection of the premises, something that they alleged they needed for resolution of the lien priority. They also alleged that Ibarra's dogs made it dangerous to go on the property.

¶ 9 Ibarra filed a response in which he asserted that he had not been aware of the judgment and that his debt to Super Mix (a listed creditor in his bankruptcy) was discharged. The court ruled that it could not enter judgment against Ibarra in person, but required him to allow inspection of the property.

¶ 10 The judicial sale took place on October 13, 2010. U.S. Bank was the buyer.

¶ 11 On May 3, 2011, counsel appeared for Ibarra. On July 5, 2011, Ibarra filed a "Motion to Declare that All Orders Entered in this Case Prior to May 3, 2011, Including Judgments Etc., Are Void, for Want of Jurisdiction over De[f]endant Leonardo J. Ibarra." The motion was captioned with the heading for case No. 08-CH-127 (the case filed by U.S. Bank) alone. The motion asserted categorically that Ibarra "was not served with any Summons to appear as defendant" and that the court therefore lacked jurisdiction. U.S. Bank responded to the motion, asserting that its service was proper, but, in any event, Ibarra had waived the matter by his filings.

¶ 12 On November 30, 2011, the court denied Ibarra's motion. Ibarra moved for reconsideration, and the court denied that motion also. The court confirmed the sheriff's sale on April 23, 2012, in an order that recited that no just cause existed for delay in enforcement of, or appeal from, the order. Ibarra filed a notice of appeal on May 21, 2012.

¶ 13 II. ANALYSIS

¶ 14 On appeal, Ibarra argues that service by publication (something done by U.S. Bank only) was improper and that consequently the foreclosure judgment and subsequent sale were void for lack of personal jurisdiction. Once one recognizes that, given a proper preexisting foreclosure case, U.S. Bank's status *as a plaintiff* is not critical to the court's having the power to foreclose upon and sell the property, the analysis becomes straightforward.

¶ 15 Super Mix sued Ibarra and served him personally. It also sued U.S. Bank, which answered, asserting the priority of its lien. Under the circumstances, the court clearly had the jurisdiction needed to resolve the rights of Ibarra, Super Mix, and U.S. Bank. Codefendants do not need to serve one another, and the court would have had the same power to resolve U.S. Bank's rights were it solely a codefendant.

¶ 16 Another way to understand what happened here is to consider what would happen if we vacated the foreclosure order that the court wrote as specifically in favor of U.S. Bank. As we have noted, Ibarra has not challenged the order written as a judgment in favor of Super Mix, and we do not see any flaw in the procedure leading to that judgment. The "effect [of foreclosure] is the termination of legal and equitable interests in the real estate." *Resolution Trust Corp. v. Hardisty*, 269 Ill. App. 3d 613, 616 (1995). Thus, one foreclosure judgment was sufficient to terminate Ibarra's rights in the property, and one foreclosure judgment was a sufficient basis for the judicial

sale. We cannot partially vacate the sale or the confirmation. Super Mix is entitled to its judgment, and any relief we might give Ibarra directed against U.S. Bank would equally affect Super Mix, making the relief improper. We should be clear that we are *not* saying that the proper judgment for Super Mix bars us from doing anything about a (possibly) improper judgment in favor of U.S. Bank. Instead, we are saying that, in spite of the two orders the court entered here, the judgment in favor of U.S. Bank added nothing over the judgment in favor of Super Mix.

¶ 17 U.S. Bank makes a strong argument that Ibarra waived any jurisdictional claim by his filings, particularly his “Declaration of Being Discharged under Section 727 of Title 11 U.S. Bankruptcy Code.” We *arguably* could characterize that filing as an answer, and under section 2-301(a-5) of the Code of Civil Procedure (Code) (735 ILCS 5/2-301(a-5) (West 2010)), the filing of an answer would waive any objection to personal jurisdiction. However, such a characterization is not beyond question as an equally plausible argument can be made that Ibarra’s “Declaration” was a responsive filing but not a responsive pleading under Section 2-301(9-5).

¶ 18 We need not resolve this question in light of our determination that Ibarra’s jurisdiction objection had no merit.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we affirm the confirmation of the judicial sale.

¶ 21 Affirmed.