

No. 1-13-2917

**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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|-----------------------------|---|--------------------|
| HOMEWARD RESIDENTIAL, INC., | ) | Appeal from the    |
|                             | ) | Circuit Court of   |
| Plaintiff-Appellee,         | ) | Cook County.       |
|                             | ) |                    |
| v.                          | ) | No. 12 CH 23224    |
|                             | ) |                    |
| ZOFIA SOBOLEWSKA,           | ) | Honorable          |
|                             | ) | Michael T. Mullen, |
| Defendant-Appellant.        | ) | Judge Presiding.   |

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JUSTICE Ellis delivered the judgment of the court.  
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Service by publication was valid where affidavits of lender and special process server outlined inquiries into mortgagor's whereabouts and residence, and mortgagor's affidavit asserting she could have been located for personal service did not present significant issue regarding truthfulness of process server's affidavit.

¶ 2 In this mortgage foreclosure action, defendant Zofia Sobolewska Szastaj<sup>1</sup> appeals the circuit court's order denying her motion to quash service by publication. Sobolewska contends her motion should have been granted because the mortgage lender did not demonstrate due or

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<sup>1</sup> The complaint names defendant as "Zofia Sobolewska Szastaj a/k/a Zofia Szastaj a/k/a Zofia Sobolewska." We use the surname with which she signed her affidavit in his case.

diligent inquiry in ascertaining her whereabouts or her residence, as required by section 2-206(a) of the Code of Civil Procedure (the Code) (735 ILCS 5/2-206(a) (West 2012)). We affirm.<sup>2</sup>

¶ 3 On June 22, 2012, JPMorgan Chase Bank, N.A. (Chase), filed a foreclosure complaint regarding a property at 7838 South Kostner Avenue in Chicago, naming Sobolewska as a defendant, along with Ford Motor Credit Company LLC, and unknown owners and non-record claimants. A special process server was appointed.

¶ 4 On July 27, 2012, Chase filed a motion to allow service by publication, claiming that Sobolewska could not be located and process could not be personally served upon her. Attached to the motion for service by publication was an affidavit of due diligence by Mark Skrydlak, stating that the last known residence of Sobolewska was 7838 South Kostner. The affidavit detailed the search of numerous databases, including telephone records, vehicle records, business listings, utility records, driver's license records and criminal records, for any alternative address at which service on Sobolewska could be accomplished. According to Skrydlak's affidavit, the search of each of the approximately 35 record sources "[p]rovided no recent viable address outside of [the] attempted addresses."

¶ 5 Also attached to the motion was an affidavit of the appointed process server, LaRue E. Bey, who described 12 attempts between June 27 and July 15 to personally serve Sobolewska at 7838 South Kostner. Those 12 attempts were made at various times between 2:10 p.m. and 8:39 p.m. Bey attested that during all but one of those service attempts, no one answered the door and

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<sup>2</sup> This case was originally assigned to Justice William H. Taylor, II. An unpublished Rule 23 order was filed on September 30, 2014. On October 27, 2014, this court granted a motion to publish and the Rule 23 order was withdrawn. After Justice Taylor's retirement, the matter was reassigned to Justice David W. Ellis, and the motion to publish was vacated on the Court's own motion.

Justice James Epstein was an original panel member in this cause. Pursuant to his retirement, Justice Cynthia Cobbs now sits in his stead.

no contact was made with neighbors. During his 10th attempt at service, at 8:22 p.m. on July 10, Bey spoke with an occupant named Maria who would not accept service and said she was watching the house because Sobolewska was in Poland until late August.

¶ 6 Sobolewska was served by publication via notices in the Chicago Daily Law Bulletin newspaper on August 2, August 9, and August 16, 2012. In November 2012, Chase moved for a default judgment and judgment of foreclosure and sale. Homeward Residential Inc. (Homeward), who is the appellee in this case, was substituted as the plaintiff after Chase transferred its interest in the loan to Homeward. On December 18, 2012, the circuit court granted the motion to substitute Homeward and entered a default judgment of foreclosure and sale in favor of Homeward and against Sobolewska. The property was sold at auction in March 2013.

¶ 7 In May 2013, Sobolewska filed a motion to quash service, claiming the judgment of foreclosure and sale must be vacated because she was not properly served with notice of the proceedings. The motion asserted Chase did not conduct diligent searches and inquiry in order to find and serve her because, contrary to the affidavits presented with the motion for service by publication, Sobolewska was living "openly" at 7838 South Kostner.

¶ 8 Attached to the motion to quash service was an affidavit of Sobolewska attesting she lived at 7838 South Kostner Avenue in Chicago and was never served with a complaint regarding the foreclosure proceedings. She stated she received mail at that location, had utilities in her name there and listed that address on her taxes and driver's license. Sobolewska attested she was in Poland starting on July 25, 2012, and returned on September 6 and that the person who collected her mail was a man named Derek, not a woman named Maria as stated in Bey's affidavit. Sobolewska attested Derek did not tell her about a notice from a bank and she did not see any notes on her door from a bank. The affidavit also stated she had attempted to obtain a

loan modification but was unsuccessful.

¶ 9 In July 2013, Homeward filed a response to Sobolewska's affidavit asserting that, as shown in the affidavits filed earlier, Bey had attempted service 12 times at 7838 South Kostner. Homeward argued Sobolewska had not shown she was present and amenable to service at that address or explain where she was during those service attempts. On July 23, 2013, Sobolewska filed a reply in support of her motion to quash, challenging the credibility of Bey's affidavit.

¶ 10 On August 15, 2013, the circuit court entered an order denying the motion to quash service. Sobolewska filed a notice of appeal of that order on September 10, 2013.

¶ 11 On appeal, Sobolewska contends the circuit court erred in denying her motion to quash service by publication. She asserts the affidavits in support of the request for service by publication did not demonstrate a complete inquiry into her whereabouts, and she contends her own affidavit refuted her opponent's filings and created factual conflicts that must be resolved in an evidentiary hearing. Homeward responds that no material conflicts exist between Sobolewska's own attestations and the affidavits filed in support of service by publication, particularly that of special process server Bey.

¶ 12 Service of process protects the right of a defendant in a lawsuit by allowing notice of an action and an opportunity to be heard. *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 12. Failure to effect service as required by law deprives a court of jurisdiction over the person, and therefore, any default judgment based on defective service is void. *Id.* More precisely, a foreclosure judgment that is entered without service of process is void. *Id.*, citing *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986). The issue of whether the court obtained personal jurisdiction over a defendant presents a legal question, which is reviewed *de novo*. *Sutton v. Ekong*, 2013 IL App (1st) 121975, ¶ 17; see also *Karbowski*, 2014 IL App (1st)

130112, ¶ 10 (*de novo* standard applies to trial court ruling on a motion raising jurisdictional issues where no evidentiary hearing was held and the trial court relied on the parties' written submissions and counsel's arguments in ruling on motion to quash).

¶ 13 Section 2-206(a) of the Code allows a plaintiff to serve process on a defendant by publication in limited cases where the plaintiff has strictly complied with the requirements for such service. *Deutsche Bank National Trust Co. v. Brewer*, 2012 IL App (1st) 111213, ¶ 18.

Section 2-206(a) states, in relevant part:

"Whenever, in any action affecting property or status within the jurisdiction of the court, including an action to obtain the specific performance, reformation, or rescission of a contract for the conveyance of land, plaintiff or his or her attorney shall file, at the office of the clerk of the court in which the action is pending, an affidavit showing that the defendant resides or has gone out of this State, or on due inquiry cannot be found, or is concealed within this State, so that process cannot be served upon him or her, and stating the place of residence of the defendant, if known, or that upon diligent inquiry his or her place of residence cannot be ascertained, the clerk shall cause publication to be made in some newspaper published in the county in which the action is pending." 735 ILCS 5/2-206(a) (West 2012).

¶ 14 As the statute indicates, before a plaintiff can conduct service by publication, the plaintiff must present an affidavit stating a defendant cannot be located based on a due inquiry in ascertaining the defendant's whereabouts and diligent inquiry in ascertaining the defendant's residence. *Citimortgage, Inc. v. Cotton*, 2012 IL App (1st) 102438, ¶ 18. The requirement of

"due inquiry" means "an honest and well-directed effort to ascertain the whereabouts of a defendant by an inquiry as full as circumstances can permit." *City of Chicago v. Leakas*, 6 Ill. App. 3d 20, 27 (1972).

¶ 15 The defendant may eventually challenge the plaintiff's affidavit by filing an affidavit showing that upon due inquiry, he could have been found. *Cotton*, 2012 IL App (1st) 102438, ¶ 18. The plaintiff may respond to the defendant's attestation either by successfully questioning the conclusory nature of the defendant's challenge or by producing evidence showing in fact that the plaintiff made due inquiry to locate the defendant so that process could be served upon him. *Cotton*, 2012 IL App (1st) 102438, ¶ 18. "If the defendant is able to present a significant issue with respect to the truthfulness of the affidavit filed by the plaintiff's agent for service by publication, then the trial court should hold an evidentiary hearing on the issue with the burden of proof being on the plaintiff to establish that due inquiry was made to locate the defendant." *Id.*, citing *First Federal Savings & Loan Ass'n v. Brown*, 74 Ill. App. 3d 901, 907-08 (1979).

¶ 16 Here, Chase complied with the due inquiry and diligent inquiry requirements for service by publication. Chase filed an affidavit stating that Sobolewska could not be personally served because her whereabouts could not be ascertained, that her last known place of residence was 7838 South Kostner and that no other address could be determined. Accompanying that filing was the affidavit of process server Bey, who described 12 service attempts at 7838 South Kostner. Sobolewska countered with her own affidavit, filed along with her motion to quash service, in which she stated she lived at 7838 South Kostner.

¶ 17 Sobolewska contends her attestation that she lived "openly" at 7838 South Kostner creates a factual conflict with Bey's affidavit. Sobolewska has not presented a significant issue as to the truth of her opponent's affidavit. In fact, Sobolewska's affidavit supports Bey's

representations that he attempted personal service at the correct address because she affirms that Bey sought to serve her at her acknowledged residence. Sobolewska thereby confirms her opponent's attestations that there is nowhere else personal service could have been attempted. The fact that Bey was ultimately unsuccessful in personally serving her at that address does not negate the fact that service was repeatedly attempted in the correct location.

¶ 18 Furthermore, Sobolewska's affidavit confirms she was in the country when he attempted service between June 27 and July 15, because Sobolewska attested that she did not leave for Poland until July 25. Although Bey attested he was told on July 10 by Maria that Sobolewska was out of the country, Bey's list of service attempts indicates that he continued to try to serve Sobolewska at the residence until July 15. Bey's affidavit does not conflict with Sobolewska's statements that Derek was getting her mail. Other portions of Sobolewska's affidavit, such as her statements that she attempted to complete a loan modification and that she did not receive any notice on her door from her bank, are unresponsive to Bey's affidavit.

¶ 19 Sobolewska contends the conflict between her affidavit and Bey's affidavit is comparable to the affidavits in *Cotton*, where this court found sufficient conflicting facts to warrant an evidentiary hearing. In that case, the process server attempted service at a main residence 10 times and at an alternate residence 9 times. *Cotton*, 2012 IL App (1st) 102438, ¶ 28. The process server attested that the mortgagor's name was not listed on the doorbells or mailboxes at the alternate residence. *Id.* The mortgagor rebutted that statement by providing photographs of the alternate residence that showed his name on two doorbells and attaching affidavits from two residents of the alternate residence attesting to that fact. *Id.* The mortgagor also attached a photograph showing that, contrary to the process server's representation, the alternate residence had only one mailbox, not multiple mailboxes. *Id.* The process server also provided an inaccurate

physical description of the alternate residence. *Id.* In addition, the mortgagor attested he was having a large birthday party in the yard of the main residence at one of the times service was attempted. *Id.* The appellate court concluded in *Cotton* that those facts created significant questions as to the propriety of service by publication and remanded the case for an evidentiary hearing. *Id.* at ¶ 29-33.

¶ 20 Here, in contrast, Sobolewska has not established a significant issue as to the truthfulness of Bey's affidavit. No other addresses were found at which Sobolewska could have been personally served, and her affidavit did not contradict Bey's 12 attempts to effect service of process at 7838 South Kostner, where she admitted she lived during the relevant time.

¶ 21 Because Sobolewska has not presented a significant issue as to the truthfulness of Bey's affidavit, service by publication was proper. Therefore, the circuit court had jurisdiction to enter the default judgment in this case and properly denied Sobolewska's motion to quash service.

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

¶ 23 Affirmed.