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THIRD DIVISION
June 1, 2016

No. 1-15-0462

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

201010186060717 17 105 092 0000-L.L.C. MAIL)	
TO 207 E. OHIO ST. #373 CHICAGO 60611,)	
)	Appeal from the Circuit Court of
Plaintiff-Appellant,)	Cook County, Illinois,
)	County Department,
v.)	Chancery Division.
)	
FEDERAL NATIONAL MORTGAGE)	
ASSOCIATION, UNKNOWN OCCUPANTS,)	No. 13 CH 27767
NON-RECORD CLAIMANTS,)	
)	
Defendants-Appellees.)	
)	The Honorable
PETER CHEN, YIHUA HONG,)	Diane Larsen,
)	Judge Presiding.
Intervenors-Appellees.)	

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justice Lavin concurred in the judgment.
Justice Pucinski concurred in part and dissented in part in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in dismissing with prejudice the plaintiff's claim to quiet title and for ejectment on the basis that it was an improper collateral attack where the plaintiff filed its suit after the entry of the foreclosure judgment, and the confirmation of the judicial sale, and the suit was not filed as part of the original mortgage foreclosure action.

¶ 2 This cause arises from a foreclosure action (case number 11 CH 0326) filed by the defendant's, Federal National Mortgage Association (hereinafter Fannie Mae)'s predecessor in interest, to foreclose the property located at 1244 W. Monroe Street, Unit 10, Chicago, Illinois (hereinafter the property). After a judgment of foreclosure was entered, the property was sold at auction, and the sale and distribution were approved by the court. The property was subsequently sold to the intervenors, Peter Chen (hereinafter Chen) and Yihua Hong (hereinafter Hong). Ten months after the judicial sale, the plaintiff, an Illinois limited liability company, with the legal name "201010186060717 17 105 092 0000-L.L.C. MAIL TO 207 E. OHIO ST. #373 CHICAGO 60611" (hereinafter the L.L.C.), filed a complaint in a separate cause of action (case number 13 CH 27767) to quiet title and for ejectment, contending that because it was not properly served with process as a defendant in the original mortgage foreclosure action, the foreclosure judgment, the judicial sale and the subsequent transfer of the property to the intervenors, Chen and Hong, were all void. The defendant, Fannie Mae, and the intervenors filed separate motions to dismiss. The circuit court granted the motions to dismiss "with prejudice" as to the plaintiff's action to quiet title and for ejectment but "without prejudice" as to the plaintiff's right to file a petition pursuant to section 2-1401 of the Illinois Code of Civil Procedure (Code of Civil Procedure) (735 ILCS 5/2-1401 (West 2012)) in the original case. In doing so, the circuit court found that "the suit to quiet title and ejectment in this action [was] an improper collateral attack." On appeal, the L.L.C. asserts that it should have been permitted to proceed with its complaint because the underlying foreclosure judgment and order affirming the judicial sale were obtained without proper service on the L.L.C. and are therefore void. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 The record below reveals the following relevant facts and procedural history. The original owner, Rohit Malik (hereinafter Malik) purchased the property from 1228 West Monroe St. Corp. A special warranty deed for this purchase was executed on August 3, 2006. On that same date, Malik executed two mortgages on the property both to Mortgage Electronic Registration Systems, Inc., solely as nominee for Chicago Bancorp, Inc. (hereinafter Bancorp) in the amounts of \$284,900 and \$72,168, respectively. Both mortgages were recorded on September 11, 2006. The special warranty deed conveying the property to Malik was recorded on November 14, 2006.

¶ 5 Four years later, on November 17, 2010, Malik executed a deed transferring his interest in the property to the plaintiff, L.L.C., and a quitclaim deed was recorded on the same date.¹

¶ 6 Fannie Mae's predecessor in interest, BAC Home Loan Servicing, LP FKA Countrywide Home Loans Servicing LP (hereinafter BAC Home Loans) filed a mortgage foreclosure action on January 28, 2011 and a *lis pendens* on January 31, 2011. An amended foreclosure complaint was filed on June 27, 2011. The amended complaint named, in relevant part, Malik and "201010186060717 17 105 092 000, L.L.C.," as well as unknown owners and record claimants as defendants. The amended complaint also alleged that the current owner of the property was "201010186060717 17 105 092 000, L.L.C."

¹ Although neither party raises this issue, we note that by doing so, Malik violated the "due on sale" clause of the mortgage document (paragraph 18 of the Uniform Covenants), which explicitly forbade him from deeding the property out, without prior written approval from the lender. That section states in pertinent part: "If all or any part of the property or any interest in the property is sold or transferred (or if borrower is not a natural person and a beneficial interest in borrower is sold or transferred) without lender's prior written consent, lender may require immediate payment in full of all sums secured by this security instrument."

¶ 7 The parties do not contest whether proper service was attempted and made on Malik in the foreclosure action. Rather, the only issue raised below, as well as in this appeal, is whether proper service in the foreclosure action was made on the L.L.C. In that respect, the record reveals that BAC Home Loans initially attempted to serve the L.L.C. by a special process server. The special process server attested in an affidavit that he attempted personal service at the subject property address, but was unable to effect it there. The special process server also unsuccessfully attempted personal service at the address provided by the L.L.C. in the quitclaim deed, which instructed all parties to mail real estate tax bills to the L.L.C. at that address. That address, however, was a UPS store and the store's clerk notified the process server that the L.L.C. did not have a mail delivery box there.

¶ 8 The special process server attested in a separate affidavit that "on due inquiry" the L.L.C. could not be found and therefore personal service could not be effected. With respect to his efforts at locating the L.L.C., the special process server explained that on December 15, 2010 he: (1) ordered a data report to obtain possible additional contact addressed for the L.L.C.; and (2) reviewed BAC Home Loans' foreclosure information for additional possible addresses for the L.L.C. On December 21, 2010, the special process server reviewed a deed, and on December 29, 2010, he checked public records for any pending probate matters to determine if the L.L.C. or any related individuals were involved in any such proceedings and to determine if any additional addresses for personal service could be identified. On January 25, 2011, the special process server ordered and reviewed a property inspection report to determine the occupants of the property. The process server averred that the L.L.C.'s "last known place of residence was:

"L.L.C. MAIL TO FKA 201010186060717 17 105 092 0000, LLC C/O A. PATEL; 207 E OHIO ST STE 373; CHICAGO, IL 60611 UNKNOWN OWNERS."

¶ 9 Based on the aforementioned, the circuit court in the underlying foreclosure case found that diligent efforts had been made to personally serve the L.L.C., but that all such efforts had failed. The court therefore allowed the L.L.C. to be served by publication. A notice of publication with the following caption was printed in the Chicago Daily Law Bulletin on September 8, 2011:

"BAC HOME LOANS SERVICING, LP FKA COUTNRYWIDE HOME LOANS
SERVICING LP PLAINTIFF VS ROHIT MALIK AKA MALIK ROHIT; L.L.C. MAIL TO
FKA 201010186060717 17 105 092 000, LLC ***."

The notice further stated in pertinent part:

"NOTICEBY PUBLICATION
NOTICE IS GIVEN YOU, L.L.C. MAIL TO FKA 201010186060717 17 105 092 000, LLC
C/O A. PATEL; ***that this case has been commenced in this Court against you and other
defendants, asking for the foreclosure of a certain Mortgage conveying the premises
described as [the property]."

¶ 10 The L.L.C. never appeared in the foreclosure action. Accordingly, on September 11, 2012, the circuit court determined that the L.L.C. was properly served by publication and had failed to appear. After explicitly determining that it possessed jurisdiction over the parties and the subject matter, the court entered a default judgment against the L.L.C. Bank of America, N.A., successor by merger to BAC Home Loans (hereinafter Bank of America) was then substituted as the plaintiff in the foreclosure action, and a judgment of foreclosure and sale in favor of Bank of America was entered. Paragraph I of the foreclosure judgment states "[t]hat the rights and interest of all defendants in the subject property are inferior to the lien of [Bank of America.]"

¶ 11 On December 14, 2012, the property was sold at a foreclosure sale to Bank of America as the

highest bidder. An order approving the report of sale and distribution, and confirming the sale and possession was entered on February 7, 2013. That order states, in pertinent part:

"[U]pon request by the successful bidder, BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BACHOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, or assignee is entitled to and shall have possession of the premises as of a date 30 days after the entry of this [o]rder, without further [o]rder of court, as provided in 735 ICLS 5/15-1707."

¶ 12 Bank of America subsequently transferred its interest in the certificate of the foreclosure sale to the defendant in this cause, Fannie Mae. A deed transferring ownership of the property was executed on February 19, 2013, and recorded on May 28, 2013.

¶ 13 On June 28, 2013, Fannie Mae forcibly entered the property and took possession of it from the L.L.C.

¶ 14 On December 5, 2013, Fannie Mae sold the property and executed a special warranty deed transferring its ownership interest to the intervenors, Chen and Hong. That deed was recorded on January 14, 2014.

¶ 15 A year after the judicial sale took place, on December 17, 2013, the L.L.C. initiated the instant litigation against Fannie Mae by filing a complaint in separate case to quiet title and for ejectment pursuant to section 6-101 of the Code of Civil Procedure (735 ILCS 5/6-101 (West 2012)). The L.L.C. alleged that it was the owner of the property at the time of the foreclosure proceedings and that its interest in the property was never terminated because it was never named as a party in the foreclosure proceedings. The L.L.C. contended that the name used in those proceedings was not its full legal name (namely, "201010186060717 17 105 092 0000-L.L.C. MAIL TO 207 E. OHIO ST. #373 CHICAGO 60611"), but rather a portion of that name

(specifically, "201010186060717 17 105 092 0000, L.L.C."). For relief, the L.L.C. sought an order for possession and a declaration that it was the exclusive title holder to the property. Chen and Hong were allowed to intervene in the cause.

¶ 16 On February 28, 2014, Fannie Mae filed a motion to dismiss the complaint pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2012)). Specifically, Fannie Mae argued that the cause should be dismissed pursuant to section 2-619(4) of the Code (735 ILCS 5/2-619(4) (West 2012)) because the a suit to quiet title and for ejectment were an improper collateral attack on the final judgment in the foreclosure action, *i.e.*, those claims were barred by a final judgment of foreclosure and confirmation of the foreclosure sale entered by the mortgage foreclosure court. As to the claim to quiet title, Fannie Mae additionally sought dismissal pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)) asserting that the L.L.C. had failed to present any evidence of a key element of that claim, namely that it was in possession of the property at the time it sought to quiet title, that the property was vacant, under development or that there were other grounds for equitable relief, such as mistake or fraud, which would excuse possession.

¶ 17 On April 23, 2014, Chen and Huang filed their own motion to dismiss pursuant to section 2-619(4) of the Code (735 ILCS 5/2-619(4) (West 2012)) asserting, *inter alia*, that the L.L.C.'s complaint, although styled as an action for ejectment and to quiet title, is in fact an improper attempt to vacate the judgment entered in the foreclosure law suit. Chen and Huang argued that the L.L.C. was properly named and served by publication in the original mortgage foreclosure proceedings, and that the final judgment in that cause of action therefore extinguished any and all rights that the L.L.C. may have had in the property. Chen and Huang asserted that the L.L.C. could only seek relief, if at all, by filing a section 2-1401 petition in the original proceedings

(735 ILCS 5/2-1401 (West 2012)). In addition, they argued that as a matter of law, they could not be divested of either possession or title to the property because they were *bona fide* purchasers who were not parties to the foreclosure action but rather acquired the property for value after that property was sold at a judicial sale and that sale was approved and confirmed by the circuit court.

¶ 18 On July 11, 2014, the circuit court entered an order granting both motions to dismiss, "with prejudice" as to the L.L.C.'s action to quiet title and ejectment but "without prejudice" as to the L.L.C.'s "right to file a petition pursuant to 735 ICLS 5/2-1401 because the suit to quiet title and ejectment in this action is an improper collateral attack."

¶ 19 On August 11, 2014, the L.L.C. filed a motion to reconsider, which was denied by the circuit court. The L.L.C. now appeals.

¶ 20 II. ANALYSIS

¶ 21 On appeal, the L.L.C. argues that the trial court erred in dismissing with prejudice its cause of action to quiet title and for ejectment on the basis that the action was an improper collateral attack pursuant to section 2-619(a)(4) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(4) (West 2012)). The L.L.C. asserts that because its full legal name was not used both when it was named as a defendant in the underlying mortgage foreclosure action and when service was made by publication, no personal jurisdiction was ever obtained and the resulting judgment of foreclosure and order confirming the sale are void *ab initio*, and could not have precluded any action for quiet title and ejectment. Accordingly, the L.L.C. contends its interest in the property was never terminated and it should have been permitted to proceed with its cause of action. For the reasons that follow, we disagree.

¶ 22 Section 2-619(a)(4) of the Civil Code of Procedure permits the involuntary dismissal of a

cause of action on the basis that it "is barred by a prior judgment." 735 ILCS 5/2-619(a)(4) (West 2012); see also *Marvel of Illinois v. Marvel Containment Control Industries, Inc.*, 318 Ill. App. 3d 856, 863 (2001) (citing *People ex rel. Burris v. Progressive Land Developers, Inc.*, 151 Ill. 2d 285, 294 (1992)). Section 2-619(4) incorporates the doctrine of *res judicata*, which has three essential elements (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of cause of action; and (3) an identity of parties or their privies. *Marvel*, 318 Ill. App. 3d at 863. If all three elements are met, then the prior action is conclusive as to all issues that were, or properly might have been, raised in that action. *Marvel*, 318 Ill. App. 3d at 863 (citing *Burris*, 151 Ill. 2d at 294). We review a trial court's application of *res judicata* under section 2-619 under a *de novo* standard of review *Snyder*, 2011 IL 111052, ¶ 8; *Marvel*, 318 Ill. App. 3d at 863.

¶ 23 In the present case, the circuit court dismissed with prejudice the L.L.C.'s cause of action to quiet title and for ejectment as "an improper collateral attack," but invited the L.L.C. to raise its argument regarding improper notice and service of process by filing a petition in the original foreclosure action to vacate the mortgage foreclosure judgment and the confirmation of the judicial sale pursuant to a section 2-1401 petition (735 ILCS 5/2-1401 (West 2012)). This holding is consistent with our case-law.

¶ 24 Under the well-established collateral-attack doctrine, once a court of competent jurisdiction renders a final judgment, it is not open to contradiction or impeachment in any collateral proceeding. *Malone v. Cosentino*, 99 Ill. 2d 29, 32 (1983); see also *Apollo Real Estate Investment Fund, IV, L.P. v. Gebler*, 403 Ill. App. 3d 179, 188 (2010). Rather, as our supreme court has explained, "that judgment can only be attacked on direct appeal, or in one of the traditional collateral proceedings *** defined by statute," (including habeas corpus,

postconviction and section 2-1401 proceedings) and will remain binding upon the parties until it is reversed through such a proceeding. *Malone*, 99 Ill.2d at 32–33; see also *Apollo Real Estate*, 403 Ill. App. 3d at 188.

¶ 25 In *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104-105 (2002), our supreme court specifically held that a pleading to challenge a void judgment based on invalid service of process must be brought under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2012)). See also *OneWest Bank, FSB v. Topor*, 2013 IL App (1st) 120010, ¶ 14. Although *Sarkissian* acknowledged that a court may construe a pleading broadly and characterize it as a section 2-1401 petition even when the pleading is not so titled, it is axiomatic that such a pleading must be brought in the same proceeding in which the order or judgment was entered, and not, as here, in a separate cause of action before a different judge. See *e.g.*, *People v. Vincent*, 226 Ill. 2d 1, 7 (2007) ("Section 2-1401 requires that the petition be filed in the same proceeding in which the order or judgment was entered ***. [Citation.]"); *Glavinskas v. William L. Dawson Nursing Center, Inc.*, 392 Ill. App. 3d 347, 353 (2008) (same); see also *Burchett v. Goncher*, 235 Ill. App. 3d 1091, 1098 (1991) ("A section 2-1401 petition arises out of the same proceeding in which the order or judgment that it is directed to was entered, but it is a collateral attack on such judgment.")

¶ 26 Accordingly, under the present record, the trial court properly determined that it was not the proper forum for addressing the improper notice and service issues raised by the L.L.C., and that those issues would be better raised by way of a section 2-1401 petition (735 ILCS 5/2-1401 (West 2012)) filed in the original mortgage foreclosure action.

¶ 27 In so holding, we recognize that at present, there appears to be some disagreement among our appellate courts as to whether a party can utilize a section 2-1401 petition to challenge a

judgment of foreclosure after the circuit court has entered an order confirming the judicial sale. While some courts have held that the plain language of sections 15-1509(a) and 15-1509(c) of the Illinois Mortgage Foreclosure Law² (Foreclosure Law) (735 ILCS 5/15-1509(a), (c) (West 2012)), bars a party from using section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)) to vacate the circuit court's confirmation of a foreclosure sale (see *e.g.*, *U.S. Bank National Ass'n v. Prabhakaran*, 2013 IL App (1st) 111224, ¶ 26; see also *Harris Bank, N.A. v. Harris*, 2015 IL App (1st) 133017, ¶ 48), others have found that this bar does not apply to situations where a party is challenging jurisdiction on the basis of improper service of process (see *e.g.*, *MB Financial Bank, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, ¶ 17; *OneWest Bank*, 2013 IL App (1st) 120010, ¶ 12).

¶ 28 Regardless, while we do not take it upon ourselves to resolve the merits of the L.L.C.'s contention on appeal that it was improperly named and served in the original mortgage foreclosure action, we nonetheless note that the record reveals that the L.L.C. was not a party to the original mortgage. In fact, when Malik transferred the property to the L.L.C. he apparently

² Section 15-1509 (c) of that statute reads in pertinent part: “(c) Claims Barred. Any vesting of title by a consent foreclosure pursuant to Section 15-1402 or by deed pursuant to subsection (b) of Section 15–1509, unless otherwise specified in the judgment of foreclosure, shall be an entire bar of (i) all claims of parties to the foreclosure and (ii) all claims of any nonrecord claimant who is given notice of the foreclosure in accordance with paragraph (2) of subsection (c) of Section 15–1502, notwithstanding the provisions of subsection (g) of Section 2–1301 to the contrary. Any person seeking relief from any judgment or order entered in the foreclosure in accordance with subsection (g) of Section 2–1301 of the Code of Civil Procedure may claim only an interest in the proceeds of sale.” 735 ILCS 5/15–1509(c) (West 2012).

did so in violation of the due on sale provision of the mortgage document, which explicitly forbade him from transferring any interest in that property without the lender's prior written approval. As such, since the L.L.C. was neither a mortgagor nor a guarantor of the note, under section 15-1501 of the Foreclosure Law 735 ILCS 5/15-1501 (West 2012)), it need not have been named as a defendant in the original foreclosure proceedings. See *Applegate Apartments Ltd. Partnership v. Commercial Coin Laundry Systems*, 276 Ill. App. 3d 433, 438 (1995) ("under the express terms of section 15–1501(a), only the mortgagor and other persons who owe on indebtedness or obligations secured by the mortgage and against whom personal liability is asserted are necessary parties."); *Menard, Inc. v. 1945 Cornell, L.L.C.*, (same); see also 735 ILCS 5/15–1501(a) (West 2012)) ("[O]nly the (i) the mortgagor and (ii) other persons (but not guarantors) who owe payment of indebtedness or the performance of other obligations secured by the mortgage and against whom personal liability is asserted shall be necessary parties defendant in a foreclosure.").

¶ 29

III. CONCLSUION

¶ 30

For the aforementioned reasons, we affirm the circuit court's dismissal of the L.L.C.'s suit to quiet title and for ejectment, but recognize, just as the circuit court did, that the L.L.C. retains its right to file a section 2-1401 petition (735 ICLS 5/2-1401 (West 2012)) in the original mortgage foreclosure proceedings.

¶ 31

Affirmed.

¶ 32

JUSTICE PUCINSKI, concurring in part and dissenting in part.

¶ 33

While I agree with my colleagues on the disposition of this case I write separately to clarify the proper service of process on LLC's.

¶ 34

If mortgagors are attempting to game the system by quitclaim deeding the property to LLC's

then the service on the LLC should be correct. Service on the LLC in this particular case was incorrect but that does not help this plaintiff because the 2-1401 motion was brought in the wrong forum. However, it may be important in another case.

¶ 35 For a judgment to be valid, the circuit court must have jurisdiction over both the subject matter of the litigation and over the parties named in the action. *In re Marriage of Verdung*, 126 Ill. 2d 542, 547 (1989).

¶ 36 The LLC was served by publication after a special process server filed an affidavit that the LLC could not be served personally.

¶ 37 There is no statutory provision for service on an LLC by publication.

¶ 38 The Limited Liability Act is the only statute that has a specific provision with mandatory requirements for service of process on limited liability companies. It provides:

"§1-50. Service of process on limited liability company.

(a) Any process, notice, or demand required or permitted by law to be served upon either a limited liability company or foreign limited liability company *shall* be served either upon the registered agent appointed by the limited liability company or upon the Secretary of State as provided in this Section.

(b) The Secretary of State shall be irrevocably appointed as an agent of a limited liability company upon whom any process, notice or demand may be served under any of the following circumstances:

* * *

(2) Whenever the limited liability company's registered agent cannot, by registered or certified mail, be found at the registered office in this State or at the principal place of business stated in the articles of organization.

(c) Service under subsection (b) shall be made by the person instituting the action by doing *all* of the following:

(1) Serving on the Secretary of State, or on any employee having responsibility for administering this Act, a copy of the process, notice, or demand, together with any papers required by law to be delivered in connection with service and paying the fee prescribed by Article 50 of this Act.

(2) Transmitting notice of service on the Secretary of State and a copy of the process, notice, or demand and accompanying papers to the limited liability company being served by registered or certified mail:

(A) at the last registered office of the limited liability company shown by the records on file in the Office of the Secretary of State; *and*

(B) at the address the use of which the person instituting the action suit or proceeding knows, or on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice." (Emphasis added.) 805 ILCS 180/1-50 (West 2012).

¶ 39 While the general provision in Section 2-206 in the code of Civil Procedure allows for service by publication, the more specific provision governing service on LLC's under Section 1-50 of the Limited Liability Act requires service on the Secretary of State when the registered agent of the LLC cannot be served.

¶ 40 The special process server could not serve the registered agent of the LLC. His only other option was to serve the Secretary of State. This he did not do. There was, therefore, no effective service on the LLC.

¶ 41 Plaintiff LLC took title to the property by quitclaim deed which was recorded and which not

only transferred ownership of Malik's interest to plaintiff LLC but also meant that the LLC's title was subject to the mortgage. "****unlike a warranty deed****a quitclaim deed conveys only such title as the grantor has and contains no covenant or warranties whatsoever." *Lindy Lu LLC v. Illinois Central Railroad Co.*, 2013 IL App (3d) 120337 ¶ 23. Since the mortgages were recorded prior to Malik transferring the property to the LLC, the property was subject to the previously recorded mortgages, pursuant to the Conveyances Act (765 ILCS 5/0.01 et. seq. (West 2012)). See 736 ILCS 5/30 (West 2006) (all deeds and mortgages that are recorded take effect against all subsequent creditors and purchasers.)

¶ 42 Unlike the provision for service on corporations in the Code of Civil Procedure, the Limited Liability Act does not provide for service in "any other manner now or hereafter permitted by law." Compare 735 ILCS 5/2-204 (West 2012) with 805 ILCS 180/1-50(a) (West 2012). While subsection 1-50(a) provides for service on an LLC by "[a]ny process, notice or demand required or permitted by law," we note that this clause is restricted to only "[a]ny process, notice or demand required or permitted by law to be served upon either a limited liability company or foreign limited liability company." (Emphasis added.) 805 ILCS 180/1-50(a) (West 2012).

¶ 43 Since the LLC Act was more recently enacted than the service provisions of the Code of Civil Procedure, and since the LLC act is more specific than the Code of Civil Procedure, the fundamental rules of statutory construction require that the specific prevails over the general. *People v. Latona*, 184 Ill. 2d 260, 269-70 (1998) and that the latest prevails over the earlier statute, *Wells Fargo Bank Minnesota N.A. v. Envirobusiness, Inc.*, 2014 IL App (1st) 133575, ¶ 30.

¶ 44 The LLC was both a necessary and a permissive defendant in the foreclosure action.

¶ 45 The Mortgage Foreclosure Law provides specifically that the following are necessary parties

in a foreclosure proceeding:

"§15-1501. Parties.

(a) Necessary Parties. For the purposes of Section 2-405 of the Code of Civil Procedure, only (i) the mortgagor and (ii) other persons (but not guarantors) who owe payment of indebtedness or the performance of other obligations secured by the mortgage and against whom personal liability is asserted shall be necessary parties defendant in a foreclosure. The court may proceed to adjudicate their respective interests, but any disposition of the mortgaged real estate shall be subject to (i) the interests of all other persons not made a party or (ii) interests in the mortgaged real estate not otherwise barred or terminated by foreclosure." 735 ILCS 5/15-1501(a) (West 2012).

¶ 46 While plaintiff LLC was not the mortgagor and was not personally liable for payment of the mortgages, by taking title subject to the mortgages, plaintiff LLC was responsible for other obligations secured by the mortgage. Plaintiff LLC could not sell the property without paying off the mortgages; the proceeds of any such sale would first be used to satisfy the payment of the mortgages; the mortgages could be validly enforced after on-payment by foreclosing the property, and the plaintiff LLC would have to comply with any foreclosure and sale orders because it took title to the property subject to those mortgages. See *First National Bank of Springfield v. Equitable Life Assurance Society of the United States*, 157 Ill. App. 3d 408, 412 (1987). "Thus it is manifest that a conveyance of the mortgaged premises in no way impairs or lessens the security of the mortgage indebtedness." *Chappel v. Burwell*, 273 Ill. App. 348, 353 (1934).

¶ 47 Section 15-1301 of the Mortgage Foreclosure Law provides: "[f]rom the time a mortgage is

recorded it shall be a lien upon the real estate that is the subject of the mortgages for all monies advanced or applied or other obligations secured in accordance with the terms of the mortgage or as authorized by law, including the amounts specified in a judgment of foreclosure in accordance with subsection (d) of Section 15-1603." 735 ILCS 5/15-1301 (West 2012).

¶ 48 In addition the bank named the LLC as a permissive defendant:

"§ 2-405. Joinder of Defendants. (a) Any person may be made a defendant who, either jointly, severally or in the alternative is alleged to have or claim an interest in the controversy, or in any part thereof, or in the transaction or series of transactions out of the controversy arose, or whom it is necessary to make a party for the complete determination or settlement of any question involved therein, or against whom a liability is asserted either jointly, severally or in the alternative arising out of the same transaction or series of transactions, regardless of the number of causes of action joined." 735 ILCS 5/2-405 (West 2012).

¶ 49 Personal jurisdiction is established either by effective service or by a party's voluntary submission to the court's jurisdiction. *BAC Home Loan Servicing LP, f/k/a Countrywide Home Loan Servicing LP v. Mitchell* 2014 IL 116311 ¶35. It is undisputed that plaintiff LLC did not voluntarily submit to the jurisdiction of the court. A foreclosure judgment entered without service of process is void. *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112 ¶12.

¶ 50 While I agree that this motion was brought both in the wrong forum and is, therefore, doomed, I do not agree that the LLC had no standing in this case.