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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

SEAWAY BANK AND TRUST COMPANY,)	Appeal from the Circuit Court of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12-CH-2222
)	
CARLOS HRUZA,)	
)	
Defendant-Appellant)	
)	
(Image Professional Upholstering Corporation, Lisa Hruza, and Unknown Owners and Non-Record Claimants, Defendants).)	Honorable Bonnie M. Wheaton, Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court erred in denying defendant's motion to quash service and vacate a foreclosure judgment against him: although an attached service list named him as a defendant, the summons itself did not, and thus the court never obtained personal jurisdiction over him.
- ¶ 2 In this foreclosure action, defendant, Carlos Hruza, appeals the denial of his motion to quash service. Plaintiff, Seaway Bank & Trust Company, failed to name defendant on the face

of the summons, but named him on an attachment directing that he be served. Defendant contends that, because of the defect in the summons, the judgment of foreclosure against him is void. We agree. Accordingly, we reverse and remand.

¶ 3

I. BACKGROUND

¶ 4 On May 7, 2011, plaintiff filed a complaint for foreclosure against defendant's company, Image Professional Upholstering Corp. (the company), his wife, and other defendants. Plaintiff issued a summons with a case caption that listed "Image Professional Upholstering, Corp., et al." as defendants. A line directed "To each Defendant" stated, "Please See Attached Service List." A page attached to the summons, with the title "Service List," directed that it be served on a list of defendants that included defendant. On May 15, 2012, defendant accepted service of process on the company and was also personally served at his home address. Defendant's wife was served by publication.

¶ 5 Although an attorney appeared on behalf of the company, defendant did not appear. On March 29, 2013, an order of default was entered. Defendant then appeared and moved to quash service. The trial court denied the motion and, on July 14, 2015, the property was sold to a third-party purchaser. The court entered an order confirming the sale, and defendant appeals.

¶ 6

II. ANALYSIS

¶ 7 Defendant contends that the summons was fatally defective and resulted in a lack of personal jurisdiction. Plaintiff contends that the summons was sufficient and that any defect did not deprive the court of jurisdiction.

¶ 8 "Generally, a judgment rendered without service of process, where there has been neither a waiver of process nor a general appearance by the defendant, is void regardless of whether the defendant had actual knowledge of the proceedings." *Schorsch v. Fireside Chrysler-Plymouth,*

Mazda, Inc., 172 Ill. App. 3d 993, 1001 (1988). Accordingly, a foreclosure judgment entered without service of process is void. *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 12. Where a summons is invalid, service of the same is also without effect. *Schorsch*, 172 Ill. App. 3d at 1001.

¶ 9 In Illinois, the use of summons is governed by statute and supreme court rules. Section 2-201(a) of the Code of Civil Procedure provides for the issuance of summons in civil cases and states: “Every action, unless otherwise expressly provided by statute, shall be commenced by the filing of a complaint. *** The form and substance of the summons, and of all other process, and the issuance of alias process, and the service of copies of pleadings shall be according to rules.” 735 ILCS 5/2-201(a) (West 2012).

¶ 10 Illinois Supreme Court Rule 101(a) (eff. May 30, 2008) provides for the form of the summons and states: “The summons shall be issued under the seal of the court, tested in the name of the clerk, and signed with his name. It shall be dated on the date it is issued, shall be directed to each defendant, and shall bear the address and telephone number of the plaintiff or his attorney.”

¶ 11 Rule 101(d) provides a sample form for the summons, stating that the summons shall be “substantially” in the form provided. Ill. S. Ct. R. 101(d) (eff. May 30, 2008). That form includes a caption that directs “naming all defendants.” *Id.* Illinois Supreme Court Rule 131(c) (eff. Jan 4, 2013), pertaining to pleadings and other documents, provides that, in cases where there are multiple parties, “it is sufficient in entitling documents, *except a summons*, to name the first-named plaintiff and the first-named defendant with the usual indication of other parties.” (Emphasis added.)

¶ 12 “The procedures for issuance of summons set forth in section 2-201(a) and the supreme court rules must be adhered to in order to give the court personal jurisdiction over a defendant.” *Schorsch*, 172 Ill. App. 3d at 1001. Further, “a summons which does not name a person on its face and notify him to appear, is no summons at all, so far as the unnamed person is concerned.” *Ohio Millers Mutual Insurance Co. v. Inter-Insurance Exchange of the Illinois Automobile Club*, 367 Ill. 44, 56 (1937); see also *Theodorakakis v. Kogut*, 194 Ill. App. 3d 586, 588 (1990) (stating the same).

¶ 13 For example, in *Ohio Millers Mutual*, a summons that failed to name approximately 3,000 people on its face was invalid. *Ohio Millers Mutual*, 367 Ill. at 56. In *Schorsch*, the summons was not issued, signed, or dated by the clerk of the court, and thus it was invalid. *Schorsch*, 172 Ill. App. 3d at 1001 (citing *Ohio Millers Mutual*, 367 Ill. at 56). In *Theodorakakis*, a summons was invalid when a trust was designated with the wrong number, even though the body of the complaint contained the correct number. *Theodorakakis*, 194 Ill. App. 3d at 589.

¶ 14 We recently addressed the effect of the failure to name a defendant on the face of a summons and reaffirmed the principles from *Ohio Millers Mutual* and *Theodorakakis*. See *Arch Bay Holding, LLC-Series 2010 B v. Perez*, 2015 IL App (2d) 141117. There, as here, the summons failed to name the defendant on its face and instead included the defendant’s name on an attachment page. We rejected the plaintiff’s argument that the summons substantially complied with the model form, as the model form requires the names of all defendants in the caption. Thus, the rule requires the summons to have the substantial equivalent of all defendants’ names. There, the defendant’s name appeared nowhere on the face of the summons and, while it appeared in the list of defendants to be served, that was not directed to the

defendant. Instead, it was directed to the process server and thus was not part of the summons. We further noted that the summons and the complaint will not be considered in conjunction and that actual knowledge of the action through a flawed summons will not vest the court with jurisdiction. *Id.* ¶ 19

¶ 15 Plaintiff attempts to distinguish *Arch Bay Holdings* on the basis that, unlike in *Arch Bay Holdings*, where a line for naming the defendants was left blank, here the line stated “Please See Attached Service List.” Thus, plaintiff argues, the summons was directed to defendant through this notation. But we reaffirmed in *Arch Bay Holdings* that a summons that does not name a defendant on its face is no summons at all. *Id.* ¶ 14. Here, although the line was addressed “To Each Defendant,” only the company was listed as a defendant on the summons. Further, the attached list was clearly directed at the process server, as it was labeled “Service List.” Plaintiff also attempts to distinguish *Arch Bay Holdings* on the basis that defendant was personally served, while the defendant in *Arch Bay Holdings* was served by substitute service. That distinction makes no difference, as we held in *Arch Bay Holdings* that actual knowledge of an action through a flawed summons will not vest the court with jurisdiction. *Id.* ¶ 19

¶ 16 As we noted in *Arch Bay Holdings*, to avoid confusion, jurisdictional rules are most functional when they are unambiguous and straightforward. *Id.* Rule 101(a) requires that the summons “shall be directed to each defendant.” Ill. S. Ct. R. 101(a) (eff. May 30, 2008). Here, that was not the case, as the summons did not name defendant at all, while the attachment that did name him was directed to the process server. As a result, the summons was invalid, and the court was without jurisdiction.

¶ 17

III. CONCLUSION

¶ 18 The summons was invalid when it failed to include defendant's name on its face. Accordingly, the judgment of the circuit court of Du Page County is reversed and the cause is remanded.

¶ 19 Reversed and remanded.