2011 IL App (1st) 103327-U
No. 1-10-3327

FIRST DIVISION
August 8, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FORD MOTOR CREDIT COMPANY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 00 M1 106434
	)	
WILLIAM HARRIS,	)	Honorable
	)	Joyce Marie Murphy Gorman,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.

JUSTICES Hoffman and Rochford concurred in the judgment.

O R D E R

HELD: Circuit court's denial of defendant's motion to quash service affirmed where the substitute service of defendant was proper.

¶ 1 Defendant William Harris appeals from an order of the circuit court of Cook County granting the petition of plaintiff, Ford Motor Credit Company, to revive a 10-year-old default judgment entered against him, and denying his motion to declare the underlying default judgment void for lack of personal

jurisdiction. Defendant claims that the default judgment was void because he was never properly served at his usual place of abode, and presented the court with an affidavit to that effect.

¶ 2 The common law record filed in this case shows that on February 8, 2000, plaintiff filed a complaint against defendant for breach of contract alleging that defendant defaulted on the loan he secured for the car he purchased for $11,223. Plaintiff alleged that it repossessed the car and resold it, and was seeking the remaining balance of $6,523.06 plus interest, late charges, and attorney fees from defendant. Plaintiff attached supporting documentation to its complaint, including a statement of sale which detailed the sale of the car, and listed defendant's address as 12500 South Lincoln Street, Apartment 6, Riverdale, Illinois.

¶ 3 On March 1, 2000, the sheriff unsuccessfully attempted service on defendant at 16534 Ashland Avenue, in Markham, Illinois. Thereafter, a special process server was appointed, who subsequently submitted an affidavit averring that on June 23, 2000, he left a copy of the summons and complaint at 16534 Ashland Avenue, Markham, Illinois, with defendant's mother, Edna Malone, informed her of the contents, and mailed a copy of same in a sealed envelope with postage prepaid and addressed to defendant on June 26, 2000.

¶ 4 Defendant did not appear or answer, and on August 2, 2000, a default judgment in the amount of $8,373.36 was entered against him. On May 30, 2001, a wage deduction order was entered for payment of the monies owed under the judgment.

¶ 5 Ten years later, in September 2010, plaintiff filed a petition to revive the default judgment entered against defendant in August 2000. Defendant was personally served with a copy of this petition on September 26, 2010.

¶ 6 On October 13, 2010, defense counsel filed an appearance *pro hac vice*, and an answer to plaintiff's petition denying that a judgment of $8,373.36 was entered against defendant in August 2000. He also claimed statute of limitation defenses.

¶ 7 On October 25, 2010, defendant filed a general appearance, and the circuit court entered a written order reviving the August 2000, default judgment. The court noted that no payments had been made on the judgment, and that the amount of the judgment was currently $15,488.50.

¶ 8 That same day, defense counsel filed a motion requesting the circuit court to hold the underlying default judgment *void ab initio*. He claimed that the court did not have personal jurisdiction over defendant when the default judgment was initially entered because defendant was never served with summons.

¶ 9 Counsel also filed a memorandum in support of his "motion for declaratory judgment holding defalut [*sic.*] judgment as viod [*sic.*]." He alleged that defendant was never served with summons or given a copy of the complaint filed against him, and, as a result, the circuit court did not have personal jurisdiction over him when it entered the underlying default judgment rendering that judgment void, and impervious to revival. In support of the motion, defendant filed his own affidavit attesting that "[p]laintiff never served process on [him]" for the underlying default judgment. He also attested that he was unaware of the default judgment until he was served with the petition for the revival of that judgment, and that he was never given notice or an opportunity to be heard in the hearing on the underlying default judgment. On November 8, 2010, the circuit court denied defendant's "motion to quash service," and defendant filed a timely notice of appeal from that order.

¶ 10 In this court, defendant contends that the default judgment entered in August 2000, and the order reviving it are void because the court lacked personal jurisdiction over him when it entered the initial default judgment. He maintains that the substitute service in 2000 was defective because he was not served at his usual place of abode, but, rather, at the home of his mother. Our review of whether the court had personal

jurisdiction over defendant to enter the default judgment is *de novo*. *Mugavero v. Kenzler*, 317 Ill. App. 3d 162, 164 (2000).

¶ 11 It is essential to the validity of a judgment that the court have jurisdiction of the subject matter and over the parties to the litigation. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986). Where no general appearance is filed, personal jurisdiction may be acquired by service of process in the manner prescribed by law. *State Bank of Lake Zurich*, 113 Ill. 2d at 308.

¶ 12 In Illinois, the methods for service of process are set forth in section 2-203 of the Code of Civil Procedure (Code) (735 ILCS 5/2-203 (West 2000)). As pertinent to this appeal, subsection (a) of that section (735 ILCS 5/2-203(a) (West 2000)) provides that a defendant may be served through substitute service by leaving a copy of the summons at defendant's usual place of abode with some person of the family or person residing there of the age of 13 years or older, and informing that person of the contents of the summons, provided the person making service also sends a copy in a sealed envelope with postage prepaid, addressed to defendant at his usual place of abode. Where service is effectuated in this manner, the return of the process server must show strict compliance with the statute since the presumption of validity that attaches to a return on personal

service does not apply to substitute service. *State Bank of Lake Zurich*, 113 Ill. 2d at 309.

¶ 13 In this case, the special process server attested that on June 23, 2000, he served defendant by leaving a copy of the summons and complaint at 16534 Ashland Avenue, Markham, Illinois, with defendant's mother, Edna Malone, and informed her of the contents thereof. He further attested that he mailed a copy of same in a sealed envelope with postage prepaid on June 26, 2000, addressed to defendant.

¶ 14 Defendant challenged the effectiveness of that service, and filed his own affidavit in support. He maintains here that this court can reasonably infer from his affidavit that he did not live at the Markham address, and that the record does not permit the inference that this was his usual place of abode.

¶ 15 We observe that the recitals in the return of substitute service that are generally not within the server's personal knowledge, such as defendants' usual place of abode, may be rebutted by an affidavit from defendant. *Nibco Inc. v. Johnson*, 98 Ill. 2d 166, 172-73 (1983); *Four Lakes Mgmt. & Dev. Co. v. Brown*, 129 Ill. App. 3d 680, 684 (1984). A defendant places the validity of the substituted service in issue where he attests in his affidavit that he did not reside at the location where the service was effectuated and that he resided elsewhere. *Prudential Property and Cas. Ins. Co. v. Dickerson*, 202 Ill. App.

3d 180, 185 (1990). Where defendant so attacks the return of substitute service, and no counter-affidavit is filed, defendant's affidavit, *if otherwise sufficient*, must be taken as true absent testimony from the server, and the purported service is quashed. (Emphasis added.) *Prudential Property and Cas. Ins. Co.*, 202 Ill. App. 3d at 184.

¶ 16 Here, defendant filed an affidavit, but merely attested that "[p]laintiff never served process on [him]," that he was not aware of the judgment until he was served with the revival petition, and that he was never given notice or an opportunity to be heard in the underlying judgment. Defendant did not deny that he resided at the Markham address where the substitute service was effectuated through his mother, or state that he resided elsewhere on that date. Thus, defendant failed to place the validity of the substituted service in issue through his affidavit.

¶ 17 By contrast, in *Prudential Property and Cas. Ins. Co.*, 202 Ill. App. 3d at 185, defendant attested in his affidavit that he did not reside at the address where the service was effectuated and resided elsewhere. Thus, defendant's affidavit in that case was otherwise sufficient to not only place the substitute service in issue but also to quash it (*Prudential Property and Cas. Ins. Co.*, 202 Ill. App. 3d at 185), unlike

here, where defendant did not attest that he did not reside at the address where the service was effectuated.

¶ 18 Furthermore, affidavits submitted in support of a motion to quash service must aver facts with particularity, and not state mere conclusions. Ill. S. Ct. R. 191(a) (eff. July 1, 2002); 735 ILCS 5/2-301 (West 2010). In his affidavit, defendant stated a self-serving legal conclusion, namely, that plaintiff did not serve him with process, in contravention of Supreme Court Rule 191(a) (eff. July 1, 2002). *La Salle National Bank of Chicago v. Akande*, 235 Ill. App. 3d 53, 61 (1992). As a result, we conclude that defendant's affidavit was not "otherwise sufficient" to quash or even place the substitute service in issue; and, accordingly, plaintiff's failure to file a counteraffidavit was not fatal to the assertion of personal jurisdiction over defendant (*La Salle National Bank of Chicago*, 235 Ill. App. 3d at 61).

¶ 19 Although in his brief, defendant alludes to his "proper address" as that set forth in the statement of sale, we observe that defendant never presented the Riverdale address as his usual place of abode in the circuit court, and has thus forfeited any claim regarding it on appeal. *Wilson v. Gorski's Food Fair*, 196 Ill. App. 3d 612, 617 (1990). We further observe that defendant cites to *Conley v. McNamara*, 334 Ill. App. 396 (1948), in support of his contention that the substitute service was improper.

Conley, however, was published in abstract only, and as defendant did not provide this court with a copy of the text of that case, we need not consider it. *People v. Stevens*, 125 Ill. App. 3d 854, 856 (1984), citing *Chapman v. Foggy*, 59 Ill. App. 3d 552, 557 (1978).

¶ 20 Finally, we note that the service statute requires that the process server, in his affidavit or return of service, identify the sex, race, and approximate age of the defendant or other person served, and the place where (whenever possible in terms of an exact address) and the date and time of day when the summons was left with the person served. 735 ILCS 5/2-203(b) (West 2000). The server's affidavit in this case contained all of this information, including the exact address where service was effectuated, and, accordingly, complied with the requirements set forth in the statute. 735 ILCS 5/2-203(b) (West 2000).

¶ 21 Based on our review, we conclude that defendant was properly served via substitute service in the underlying cause of action, and the circuit court thus had personal jurisdiction over him to enter the initial default judgment and the order reviving that judgment. Accordingly, we affirm the order of the circuit court of Cook County denying defendant's request for relief.

¶ 22 Affirmed.