

Nos. 1-10-3800 & 1-11-1031, Consolidated

**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).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

METROBANK, Successor by Merger With	)	Appeal from the
Community Bank of DuPage,	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellant and Cross-Appellee,	)	
	)	
v.	)	
	)	
NORTH STAR TRUST COMPANY, As Trustee Under	)	
Trust Agreement Dated December 1, 2004, a/k/a Trust	)	
No. 04-7899, GRAND MORTGAGE CORPORATION,	)	
UNKNOWN OTHERS, AND NONRECORD	)	
CLAIMANTS,	)	
	)	No. 09 CH 23847
Defendants,	)	
	)	
and	)	
	)	
ARMANDO GAMBOA,	)	
	)	
Defendant-Appellee and Cross-Appellant,	)	
	)	
and	)	
	)	
XOCHITL MEZA,	)	Honorable
	)	Mathias W. Delort,
Defendant-Appellee.	)	Judge Presiding.

---

## ORDER

JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

**Held:** Denial of personal deficiency judgment in foreclosure action was error, as abode service satisfied requirement defendant be subjected to "personal service" under section 15-1508(e) of the Illinois Mortgage Foreclosure Law.

¶ 1 Plaintiff-appellant and cross-appellee, Metrobank, successor by merger with Chicago Community Bank of DuPage, brought this action against North Star Trust Company, as trustee under a trust agreement dated December 1, 2004, a/k/a trust No. 04-7899 (North Star), Grand Mortgage Corporation, Unknown Others, Nonrecord Claimants, Armando Gamboa, and Xochitl Meza, to foreclose a mortgage and obtain personal deficiency judgments against defendant-appellee and cross-appellant, Gamboa, and defendant-appellee, Meza. Defendants were served with summons – defendant Meza by abode service. Defendants failed to appear and a default judgment was entered against them. After the judicial sale of the mortgaged property, the circuit court confirmed the sale, denied defendant Gamboa's motion to quash service, and entered a deficiency judgment against defendant Gamboa. The circuit court also denied plaintiff's request for a personal deficiency judgment against defendant Meza, having found defendant Meza was not personally served as required under section 15-1508(e) of the Illinois Mortgage Foreclosure Law (Foreclosure Law). 735 ILCS 5/15-1508(e) (West 2010).

¶ 2 Plaintiff appealed from the order denying the personal deficiency judgment against defendant Meza (No. 1-10-3800). Defendant Gamboa appealed the personal deficiency judgment entered against him (No. 1-11-1031), but has failed to pursue that appeal before this court. For the following reasons, we reverse the order denying the entry of a deficiency judgment against defendant Meza and

Nos. 1-10-3800 & 1-11-1031, Consolidated

dismiss Gamboa's cross-appeal for want of prosecution.

¶ 3

### BACKGROUND

¶ 4 The mortgage at issue was executed by defendant North Star on a commercial property located at 630 N. North Court, Palatine, Illinois (property). The mortgage was secured by the promissory note of defendants Gamboa and Meza, in a principal amount of \$1,348,000. Subsequently, there was a default on the required payments. The mortgage provided for various remedies, in the event of a default, including the right to obtain a judgment for any deficiency owed plaintiff after foreclosure and sale of the property.

¶ 5 On July 16, 2009, plaintiff filed its complaint seeking to foreclose the mortgage on the property pursuant to section 15-1504 of the Foreclosure Law. 735 ILCS 5/15-1504 (West 2010). The unpaid principal balance, at the time of the filing of the complaint, was \$1,332,744. Plaintiff also alleged defendants Gamboa and Meza were personally liable for any deficiency. The complaint prayed for a judgment of foreclosure, sale of the property, and a personal judgment against defendants Gamboa and Meza, for any deficiency balance found due after the sale.

¶ 6 On August 21, 2009, an order was entered appointing a special process server. Pursuant to section 2-203 of Article II of the Illinois Code of Civil Procedure (735 ILCS 5/2-203 (West 2008)), plaintiff accomplished abode service on defendant Meza. The affidavit of service averred that, on August 29, 2009, a copy of the complaint and summons was left with Armando Gamboa, age 36, a member of defendant Meza's household, who lived at 804 W. Willow Street, Palatine, Illinois, defendant Meza's usual place of abode. The affidavit further stated, the special process server explained the contents of the complaint and summons to defendant Gamboa, and mailed the

Nos. 1-10-3800 & 1-11-1031, Consolidated

summons and complaint in a sealed envelope with postage prepaid to defendant Meza at the same address. A separate affidavit of the special process server stated defendant Gamboa was personally served on August 29, 2009.

¶ 7 Defendants failed to appear or answer. On December 15, 2009, upon plaintiff's motion, with notice to defendants, and supported by affidavits and exhibits, the circuit court found defendants in default and entered a default judgment in the amount of \$1,454,966.58, in favor of plaintiff, and ordered the sale of the property. Judicial Sales Corporation was appointed selling officer for the public auction of the property.

¶ 8 On January 22, 2010, the property was sold to plaintiff as the highest bidder for a credit bid of \$800,000. The report of the sale and distribution indicated a deficiency of \$681,534.48. On June 1, 2010, plaintiff filed a motion to confirm the sale and a motion, under section 15-1508(e) of the Foreclosure Law (735 ILCS 5/15-1508(e) (West 2010)), seeking *in personam* judgements against defendants Gamboa and Meza for the deficiency. Section 15-1508(e) of the Foreclosure Law provides:

"In any order confirming a sale pursuant to the judgment of foreclosure, the court shall also enter a personal judgment for deficiency against any party (i) if otherwise authorized and (ii) to the extent requested in the complaint and proven upon presentation of the report of sale in accordance with Section 15-1508. Except as otherwise provided in this Article, a judgment may be entered for any balance of money that may be found due to plaintiff, over and above the proceeds of the sale or sales, and enforcement may be had for the collection of such balance, the same as when the judgment is solely for the payment of money. Such

judgment may be entered, or enforcement had, only in cases where personal service has been had upon the persons personally liable for the mortgage indebtedness, unless they have entered their appearance in the foreclosure action." *Id.*

Defendants were notified of the motions.

¶ 9 Defendants Gamboa and Meza filed a joint motion to quash service on July 14, 2010. In affidavits attached to the motion, defendant Gamboa denied being served on August 29, 2009, and defendant Meza denied that, at the time of the alleged service, her usual place of abode was 804 W. Willow Street, Palatine, Illinois. Defendant Meza averred that on the date of the purported service, she "stayed at an address in Hanover Park, Illinois," and "often spent the night where I worked in Hoffman Estates." Plaintiff filed a response to the joint motion with supporting evidence showing defendant Meza's address as 804 W. Willow Street, Palatine, Illinois. On September 7, 2010, the circuit court entered an order denying defendant Gamboa's motion to quash and set defendant Meza's motion to quash for hearing. Defendant Meza then filed a motion to amend her motion to quash service asserting a new position. She contended, because abode service is not sufficient for the entry of a personal deficiency judgment against her, and she was not a necessary party as to the foreclosure, an evidentiary hearing as to her motion to quash would be "a waste of the court's time." Defendant Meza further stated she now sought only the denial of the motion for entry of a personal deficiency judgment against her.

¶ 10 On November 30, 2010, the circuit court confirmed the sale but denied the motion for a personal deficiency judgment against defendant Meza based on the fact that only abode service was had on her. The circuit court also entered a personal deficiency judgment, in the sum of

Nos. 1-10-3800 & 1-11-1031, Consolidated

\$681,534.48, against defendant Gamboa. Plaintiff timely appealed the denial of the personal deficiency judgment against defendant Meza on December 28, 2010. On December 29, 2010, defendants North Star and Gamboa filed a motion to reconsider the orders confirming the sale, and entering a deficiency judgment against defendant Gamboa. The motion to reconsider was denied on March 17, 2011. Defendant Gamboa filed a notice of appeal on April 13, 2011, and the appeals have been consolidated. Defendant Gamboa has not pursued his appeal in this court.

¶ 11

#### ANALYSIS

¶ 12 On appeal, plaintiff contends the circuit court erred when it determined abode service was insufficient to obtain a personal deficiency judgment against defendant Meza under section 15-1508(e), where defendant had not appeared. Plaintiff argues the phrase "personal service," as used in section 15-1508(e), should be interpreted to include both manners of service on individuals as provided under section 2-203 of Article II of the Code of Civil Procedure (735 ILCS 5/15-1508(e) (West 2010)). We agree.

¶ 13 Defendant Meza has not filed an appellee's brief. We previously entered an order stating this case would be taken for consideration on the record and appellant's brief only. We, therefore, consider the merits of plaintiff's appeal, pursuant to the principals set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976) (a reviewing court should decide the merits of an appeal where the record and the claimed errors are such that a decision can be made easily without the aid of an appellee's brief).

¶ 14 Absent the appearance of defendant or waiver of process, the service of summons "in the matter directed by statute," is necessary to create personal jurisdiction over a defendant. *Kappel v.*

Nos. 1-10-3800 & 1-11-1031, Consolidated

*Errera*, 164 Ill. App. 3d 673, 677 (1987); *State Bank of Lake Zurich v. Thill*, 135 Ill. App. 3d 747, 754 (1985). "Service to be effective must be by personal service unless designated otherwise by law." *Bell Federal Savings & Loan Ass'n v. Horton*, 59 Ill. App. 3d 923, 927 (1978) (citing *Haj v. American Bottle Co.*, 261 Ill. 362 (1932)). Section 2-203(a) of Article II of the Code of Civil Procedure states:

"[S]ervice of summons upon an individual defendant shall be made (1) by leaving a copy of the summons with the defendant personally, [or] (2) by leaving a copy at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the contents of the summons, provided the officer or other person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his or her usual place of abode \*\*\*." (Emphasis added.) 735 ILCS 5/2-203(a) (West 2008).

The abode service provision of section 2-203 has been found to meet the requirements of due process in a foreclosure action, as such service is a reasonable method of informing a defendant of the pendency of the suit and providing a defendant an opportunity to be heard. *Mid-America Federal Savings & Loan Ass'n v. Kosiewicz*, 170 Ill. App. 3d 316, 327 (1988). Accordingly, where there is abode service as set forth in section 2-203, a court hearing a foreclosure action or any other action at law or equity would have personal jurisdiction over a defendant who resides within this state.

¶ 15 The Foreclosure Law provides a claim for deficiency judgment may be brought as part of a foreclosure action, and where defendant is personally liable for such deficiency, and has appeared or been subject to "personal service," a deficiency judgment shall be entered and enforced as any

Nos. 1-10-3800 & 1-11-1031, Consolidated

other money judgment. Although the Foreclosure Law does not include a definition of the phrase "personal service," it does specifically provide that service shall be in accordance with Article II of the Code of Civil Procedure, which notably includes the abode service provisions of section 2-203.

¶ 16 The affidavit of service shows service was made on defendant Meza at her usual place of abode, the complaint and summons were left with defendant Gamboa, a person of proper age who was averred to be a member of defendant Meza's household, and the complaint and summons were then correctly mailed to her. Plaintiff, in response to the motion to quash service, provided further evidence as to service and that defendant Meza lived at the address where service was accomplished. In the face of this evidence, defendant Meza chose to waive an evidentiary hearing on the issue of the abode service in the circuit court and abandoned her contention that the abode service should be quashed. She has therefore forfeited any challenge to service on appeal, as " '[a] movant has the responsibility to obtain a ruling from the court on his motion to avoid waiver on appeal.' " *In re M.R.*, 393 Ill. App. 3d 609, 618 (2009) (quoting *People v. Redd*, 173 Ill. 2d 1, 35 (1996)).

¶ 17 Based on the record, we conclude the circuit court had personal jurisdiction over defendant Meza and service was accomplished as set forth in section 2-303 of Article II of the Code of Civil Procedure. We further find that, when the phrase "personal service" is read in conjunction with section 2-203, which governs service on individuals and has been specifically incorporated into the Foreclosure Law, it is reasonable to conclude abode service satisfies the service requirements of section 15-1508.

¶ 18 In *Metrobank v. Cannatello*, 2012 IL App (1st) 110529, ¶ 32, we recently held abode service satisfied the "personal service" requirement of section 15-1508(e) of the Foreclosure Law. 735 ILCS



Nos. 1-10-3800 & 1-11-1031, Consolidated

5/15-1508 (West 2010). We reached this decision after reviewing the history and nature of foreclosure actions and deficiency judgments, examining relevant portions of the Foreclosure Law, and discussing the pertinent provisions for service of process on individuals contained in section 2-203. *Cannatello*, 2012 IL App (1st) at ¶¶ 36-38. The *Cannatello* decision is controlling here and requires a finding that the personal-service requirement of section 15-1508(e) was met as to defendant Meza.

¶ 19

#### CONCLUSION

¶ 20 We find the circuit court erred in denying plaintiff's motion for a deficiency judgment, reverse only that decision, and remand for further proceedings consistent with this decision.

¶ 21 Moreover, because defendant Gamboa has failed to pursue his cross-appeal, in any way, we find it has been abandoned. See *Senior Housing, Inc. v. Nakawatase, Rutkowski, Wyns & Yi, Inc.*, 192 Ill. App. 3d 766, 770 (1989) ("Generally, an appeal will be considered as abandoned where the appellant fails to prosecute the appeal or does some act inconsistent with its prosecution."). Therefore, Gamboa's cross-appeal is dismissed. See *Molnar v. Conseco Medical Ins. Co.*, 358 Ill. App. 3d 418, 421 (2005) (dismissing cross-appeal for want of prosecution).

¶ 22 No. 1-10-3800, affirmed in part and reversed in part; cause remanded.

¶ 23 No. 1-11-1031, dismissed.