

No. 1-11-1452

**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

---

CREDIT BASED ASSET SERVICING AND SECURITIZATION, LLC,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09 CH 33288
	)	
JESUS JIMENEZ, et al.,	)	Honorable
	)	Laura Cha-Yu Liu,
Defendants-Appellants.	)	Judge Presiding.

---

JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Quinn and Justice Cunningham concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendant was properly served with valid summons, the circuit court acquired personal jurisdiction over him.

¶ 2 Jesus Jimenez, defendant in a mortgage foreclosure suit brought by plaintiff, Credit Based Asset Servicing and Securitization , LLC, appeals from a circuit court order denying his motion to quash service. On appeal, defendant contends the circuit court erred in failing to quash service and vacate all orders for lack of personal jurisdiction over him where the summons was defective

for failing to name defendant on the face of the summons. We affirm.

¶ 3 On September 14, 2009, plaintiff filed in the Circuit Court of Cook County a complaint to foreclose mortgage on property located at 2845 Atlantic Street, Franklin Park, Illinois, naming defendant Jesus Jimenez as the sole present owner of the premises and the borrower/mortgagor on a mortgage held by Fieldstone Mortgage Company. On that date, the clerk of the circuit court issued a summons which bore the correct court docket number and in which "defendants" in the case caption were listed as: "JESUS JIMENEZ; UNKNOWN HEIRS AND LEGATEES OF JESUS JIMENEZ, IF ANY; UNKNOWN OWNERS AND NON RECORD CLAIMANTS." Immediately beneath the caption appeared the title, "Mortgage Foreclosure Summons," and the salutation, "To Each Defendant:" Defendant's name appeared only in the caption and nowhere else on the first page of the summons, but the last page contained the direction "PLEASE SERVE THE FOLLOWING DEFENDANTS AT THE FOLLOWING ADDRESSES":

"JESUS JIMENEZ; 2845 ATLANTIC STREET; FRANKLIN  
PARK, IL 60131 - CO

JESUS JIMENEZ; 2904 N. MARMORA AVE; CHICAGO, IL  
60634 - CO

UNKNOWN HEIRS AND LEGATEES OF JESUS JIMENEZ, IF  
ANY; 2845 ATLANTIC STREET; FRANKLIN PARK, IL 60131  
- CO"

¶ 4 The affidavit of the special process server averred under oath that on September 16, 2009, at 7:45 p.m., he served defendant Jesus Jimenez at 2845 Atlantic Street, Franklin Park, IL 60131, and Jimenez confirmed that he resided at that address. The process server described the person served as an Hispanic male, 55 years old, 5 feet 6 inches tall, weighing 151-175, with black hair and no glasses.

¶ 5 Defendant's brief states that after he was served with summons on September 14, 2009, he appeared in court *pro se* in this matter on February 16, 2010, when plaintiff's attempt to obtain

default orders and judgment of foreclosure was continued to a later date. Defendant appeared again on June 15, 2010, and was given leave to answer or otherwise plead. On July 27, 2010, defendant appeared *pro se* once more when orders of default and judgment for foreclosure and sale were entered. On that date the court amended a phrase in the judgment for foreclosure and sale from "The rights of redemption shall expire on October 28, 2010" to "The rights of *restatement and* redemption shall expire \*\*\*."

¶ 6 A judicial sale of the Atlantic Street property was held on October 29, 2010. An order approving the selling officer's report of sale and distribution and order for possession and deed against defendant Jesus Jimenez was entered on January 13, 2011. Plaintiff's brief asserts that on that court date, defendant obtained a modification of the court's order in the form of an additional 30-day stay of possession. The record on appeal does not include a transcript of that hearing or any hearings in this case, but the court orders in the record do reflect the modifications made to the orders of July 27, 2010, and January 13, 2011.

¶ 7 On February 9, 2011, Attorney James Lowry entered an appearance on defendant's behalf and filed a "Motion to Quash Service." On February 14, 2011, defendant's attorney filed a "Motion to Set Aside Confirmation of Sale and Set Aside Sale," alleging, *inter alia*, that the terms of the sale of the Atlantic Street property were unconscionable and the sale was conducted fraudulently. Paragraph 3 of the motion stated: "Defendant \*\*\* continues to contest jurisdiction. Alternatively, Defendant files this motion to Set Aside should the court determine that jurisdiction is proper." Plaintiff filed a response to the motion to quash service and defendant filed a reply. On April 21, 2011, the circuit court denied defendant's motion to quash service. Defendant now appeals from that order.

¶ 8 On appeal, defendant asserts that by appearing *pro se* in court on various dates, he did not waive his right to contest personal jurisdiction where he filed no written motions, and that any relief the circuit court may have granted him was not shown to be relief defendant had requested.

Defendant also contends that the circuit court's denial of his motion to quash was error where summons was defective for failure to name him on its face and, consequently, the court lacked personal jurisdiction over him. Plaintiff responds that the summons was not defective and that defendant's subsequent appearance and participation in the proceedings and the court's bestowal of relief constituted a general appearance that waived any challenge to the service of process.

¶ 9 To enter a valid judgment, the circuit court must have both jurisdiction over the subject matter of the litigation and jurisdiction over the parties. *Deutsche Bank National Trust Co. v. Hall-Pilate*, 2011 IL App (1<sup>st</sup>) 102632, ¶ 13. Personal jurisdiction may be acquired over a defendant by his appearance or by effective service of summons. *Johnson v. Ingalls Memorial Hospital*, 402 Ill. App. 3d 830, 842 (2010). The court lacks jurisdiction over a party when service is flawed and that party has not voluntarily submitted himself to the jurisdiction of the court. *People v. Wallace*, 405 Ill. App. 3d 984, 988 (2010). Section 2-301 of the Code of Civil Procedure (Code) allows a party who objects to the court's jurisdiction to file a motion to dismiss for lack of jurisdiction. 735 ILCS 5/2-301(a) (West 2008); *Vailas v. Vailas*, 406 Ill. App. 3d 32, 38 (2010). The motion must be filed before the party files any pleadings or other motions in the case (section 2-301(a)), or else the objection to jurisdiction is forfeited (section 2-301(a-5)). See *Vailas*, 406 Ill. App. 3d at 38. We review *de novo* whether personal jurisdiction was conferred. *C.T.A.S.S. & U. Federal Credit Union v. Johnson*, 383 Ill. App. 3d 909, 910 (2008).

¶ 10 Defendant asserts that he did not waive his right to contest jurisdiction over the person by merely appearing in court *pro se* and being granted minor relief, *e.g.*, extending reinstatement or extending possession by 30 days. He posits that the mere fact such relief was granted does not prove he moved the circuit court to grant the relief. Defendant notes that, as a *pro se* litigant, he filed no written pleadings or motions. He apparently relies on the language from section 2-301(a) that an objection to jurisdiction must be made "[p]rior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear." The

record confirms that defendant's written objection to jurisdiction, in the form of his motion to quash service, was his first written motion and preceded the filing of his subsequent motion attacking the judgment. Plaintiff responds that defendant waived his challenge to personal jurisdiction by appearing in court on several occasions and obtaining some relief in the form of additions of language to the judgment for foreclosure and sale on July 27, 2010, and a final order on January 13, 2011.

¶ 11 We are unable to determine the extent of defendant's participation in the case or what relief, if any, he requested of the circuit court, as the record before us does not include transcripts of any of the proceedings before the court. Our review is limited to the orders contained in the common law record, which are insufficient to determine whether defendant, while acting *pro se*, actively sought relief other than for an extension of time to answer or otherwise appear. We note that when a reviewing court is faced with an incomplete record on appeal, we must presume the trial court ruled or acted correctly. *E.g., Moenning v. Union Pacific R.R. Co.*, 2012 IL App (1<sup>st</sup>) 101866, ¶ 38.

¶ 12 Nevertheless, service of summons is an alternate means of establishing personal jurisdiction over a party. *In re M.W.*, 232 Ill. 2d 408, 428 (2009). Consequently, we turn to defendant's contention, based on Supreme Court Rule 101 (eff. May 30, 2008), that summons was improperly issued and invalid because it was not directed to each defendant on its face. Defendant does not assign error to the return of summons.

¶ 13 Rule 101(a) requires that the summons "shall be directed to each defendant." Rule 101(d) sets out a form for a summons requiring appearance by each defendant within 30 days of service, and requires that the summons "shall be in substantially" the form set out in the rule, beginning with the caption, title, and requirement to answer. The caption in the sample form includes directive language in parentheses which is not part of the form itself, directing the identification of the circuit court and the insertion of the names of all plaintiffs and all defendants. Following

the title "Summons" is the salutation, "To each defendant:" However, there is no parenthetical directive language that the names of the defendants be inserted following the colon. On the other hand, Rule 101(f) sets out a form for "Waiver of Service of Summons" that provides parenthetical directions for naming all parties in the captions and also provides beneath the "Notice" heading the following: "To: (Insert the name and address of the person to be served)".

¶ 14 The summons issued to defendant in the instant case exactly duplicated the form set forth in Rule 101(d) and did not include defendant's name following "To each defendant:" However, the final page of the summons includes a list directing the process server whom to serve. The list contains three entries: Defendant's name and the Atlantic Street address; defendant's name and a second address; and "unknown heirs and legatees of Jesus Jimenez, if any," at the Atlantic Street address. Defendant contends, however, that the last page was "not incorporated into the first page" and that, as the first page of the summons did not direct the summons directly to defendant, the summons was invalid.

¶ 15 Rule 101(d) requires only that a summons be "substantially" in the form set out in the rule. The summons here was identical to that example form. Moreover, the summons contained a case caption that listed "Jesus Jimenez" as the only personal name listed as a defendant. Immediately beneath defendant's name was the heading "Mortgage Foreclosure Summons" and the salutation "To Each Defendant," which could apply only to Jesus Jimenez. In addition, the final page listed Jesus Jimenez as the only named defendant and gave his address on Atlantic Street and a second address. We conclude that the summons here was substantially in the form required by Rule 101(d) and was in compliance with the requirement of Rule 101(a) that the summons be directed to each defendant.

¶ 16 Finally, defendant's brief includes this single-sentence argument: "Lastly, there is no evidence in the record in support [of] the appointment of a Special Process Server as required for service in Cook County, Illinois." This claim fails for several reasons. First, the issue must be

deemed forfeited where it was not raised below, as questions not raised in the circuit court cannot be argued for the first time on appeal. *Parks v. Kownacki*, 193 Ill. 2d 164, 180 (2000). Second, bare contentions that fail to cite any authority do not satisfy Supreme Court Rule 341(h)(7) (eff. July 1, 2008) and do not merit consideration on appeal. *People v. Nieves*, 192 Ill. 2d 487, 503 (2000). Third, the contention is belied by the record, for in his notarized affidavit the process server stated *inter alia* under oath: "I am \*\*\* an employee of Firefly Legal, Inc., a licensed private detective agency, license number 117-001465 *appointed by the court to serve process in the above referenced cause.*" (Emphasis added.) Consequently, we reject defendant's argument.

¶ 17 We conclude that the circuit court acquired personal jurisdiction over defendant through valid service of process. Accordingly, the circuit court's denial of defendant's motion to quash summons was appropriate and is hereby affirmed.

¶ 18 Affirmed.