

NOTICE
Decision filed 05/15/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 090393-U
NOS. 5-09-0393 & 5-09-0620 (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
FIFTH DISTRICT

ELAINE CUETO, as Independent Executor of the Estate of Amiel Cueto, Deceased,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee and Cross-Appellant,)	St. Clair County.
)	
v.)	No. 08-L-289
)	
AMERICAN BANK HOLDINGS, INC.,)	Honorable
)	Andrew J. Gleeson,
Defendant-Appellant and Cross-Appellee.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Spomer and Justice Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* Where the trial court did not have personal jurisdiction over American Bank Holdings, Inc., the default judgments entered against that defendant are void. American Bank Holdings' combined motion properly preserved the personal jurisdiction issue, and thus waiver does not apply. Because there was no personal jurisdiction, the cross-appeal to reinstate the judgment for punitive damages and to reverse the execution stay of the default judgments fails.

¶ 2 **FACTS**

¶ 3 In appeal 5-09-0393, American Bank Holdings, Inc., appeals from the trial court's judgment of compensatory damages awarded after entry of a default judgment. Amiel Cueto cross-appeals from the rulings subsequent to the original judgment in which the court vacated the award of punitive damages, and also argues that the trial court did not have jurisdiction to stay execution of the judgment because the judgment was final and appealable.

¶ 4 In appeal 5-09-0620, American Bank Holdings, Inc., appeals from the trial court's default judgment, arguing that a Maryland court order which found that American Bank was

not subject to the personal jurisdiction of the St. Clair County circuit court had preclusive effect in this case mandating that the default judgments be vacated. Alternatively, American Bank argues that Cueto failed to satisfy his burden of proof that personal jurisdiction existed, that Cueto's complaint failed to state a cause of action, and/or that the default judgment should be vacated because it was entered without a hearing on damages and was otherwise not supported by admissible evidence of injury.

¶ 5 Amiel Cueto passed away on May 28, 2012. In June 2012, Elaine Cueto was appointed by the circuit court to be the independent executor of the estate of Cueto. This court granted Elaine's motion to be substituted as the plaintiff in this case on April 26, 2013.

¶ 6 In 1996, Cueto became the owner of about 32 acres of real estate in East Saint Louis. The land was located on the Illinois riverfront and was bordered by Front Street on the west and by Missouri Avenue on the south.

¶ 7 Cueto began negotiations to sell this land in 2004. Eventually, he entered into a contract to sell the property to Lester J. Petty & Associates, Inc., for \$8 million. The proposed project was called Grandview Plaza and Towers. These negotiations continued into 2005. United Capital Lending of Cary, North Carolina, made a "formal commitment" to provide a construction loan to Lester J. Petty & Associates for the Grandview Plaza and Towers project. The principal amount of the formal commitment was \$600 million, which was to pay for the land and the construction costs. The copy of this commitment letter in the file is not signed by Lester J. Petty, but bears an electronic signature of Kevin T. Gleaton, who is listed as a principal of United Capital Lending. Although not entirely clear from the record, we believe that Wells Fargo was planning on being involved with the financing of Grandview Plaza and Towers. No other names of individuals or of corporations are listed in this document. On June 20, 2005, a vice-president of Wells Fargo Investments, LLC, an affiliate of Wells Fargo Bank, sent a letter to Kevin T. Gleaton of United Capital Lending,

in which Wells Fargo Investments confirmed that it would issue through the Wells Fargo Bank "an irrevocable commitment in the form of one Letter of Credit" in the amount of \$300 million as provided by the instructions of a Lana L. Carter who was reportedly the CEO of Lester J. Petty & Associates. Wells Fargo Investments required confirmation that the amount was committed by a prime bank.

¶ 8 Cueto sent a letter dated June 29, 2005, to several people involved in the transaction. In this letter, he expressed his frustration at the lack of progress towards his payment of \$8 million for the land. Originally, the "closing" was to occur in Memphis, Tennessee, on June 16, 2005. Before that date, he was told that the actual closing and payout of his funds would not occur until after that date. In the letter, Cueto outlines numerous phone calls and e-mails between the parties with which he was repeatedly assured that his payment would be expeditiously wired pursuant to his requests. Cueto concluded the letter demanding completion of the deal by the next day. He alleged that he had passed on an offer to sell this land to another prospect due to the repeated assurances that finalization of the deal was near. At the close of the following day, June 30, 2005, Cueto lifted the deadline, as he was informed that the funds would be wired by Wells Fargo Bank to his account at the Bank of Edwardsville. The wire transfer was to be confirmed by a phone call from Kevin Gleaton of United Capital Lending. On July 1, 2005, Gleaton advised Cueto that he had not told Lester J. Petty that the money would be transferred on that day, but that the money would be wired on July 8, 2005.

¶ 9 The other potential buyer was a man named Demond Williams from Belleville. The record contains what purports to be a backup real estate contract in the event that the Lester J. Petty deal fell through.

¶ 10 On July 8, 2005, no funds were wired to Cueto. He drafted another letter to all involved persons and parties on July 13, 2005, indicating that if he did not have the \$8

million by the following day, he would go forward and accept the purchase offer from Demond Williams at the same price.

¶ 11 A woman by the name of Lana L. Carter, who Cueto alleges is an agent for the defendants in this lawsuit, called him. She asked him not to sell to Demond Williams, but to give Lester J. Petty until July 18, 2005, to come up with the money. On July 18, 2005, reportedly at Lana L. Carter's direction, Lester J. Petty issued a check to Cueto in the amount of \$8 million. However, the account on which the check was written lacked sufficient funds when Cueto tried to cash it. As a result of the inability to cash the check, negotiations continued until August 2, 2005. A new contract between Cueto and Lester J. Petty was entered into on August 3, 2005. Lana L. Carter became a party associated with Lester J. Petty on this contract. The written contract explained that Lana's company, Oracle Capital Holdings, was providing the financing. Lana signed the contract in the capacity of a corporate officer of Oracle. The contract stated that the purchase price was \$8 million, and the money was to be delivered to Cueto by August 3, 2005, at noon. If the money was not timely delivered, the price would increase to \$9 million, and if that amount was not delivered to Cueto by 5 p.m. on August 10, 2005, Lester J. Petty & Associates, Inc., and Oracle Capital Holdings would owe him \$1 million in damages. The written contract contained additional information about the second potential buyer of the land. This buyer was given a proposal on July 26, 2005. Cueto contractually agreed not to finalize a contract with the second prospective buyer until after 5 p.m. on August 10, 2005.

¶ 12 Cueto alleges in his complaint that the \$8 million purchase price plus \$1 million in damages was never paid. He also alleges that as a result of his reliance upon the defendants to provide financing by the required dates, he rejected the other prospect's offer to purchase the land. The backup sales plan outlined in the August 3, 2005, written contract clearly did not conclude as Cueto planned.

¶ 13 Cueto continued to seek a buyer for the land in an effort to mitigate any damages. The land had been used to secure mortgage loans with West Pointe Bank that totaled \$1,609,144.90 as of October 17, 2007. Commerce Bank acquired West Pointe Bank earlier in 2007 and decided to call in Cueto's loans. On October 17, 2007, Cueto sold the land for the amount of the loans—\$1,609,144.90.

¶ 14 Cueto filed suit on June 11, 2008, against numerous defendants—three different Wells Fargo entities, United Capital Lending, Inc., Kevin T. Gleaton, Oracle Capital Holding Company, Lana L. Carter, and Lester J. Petty & Associates, Inc. Additionally, Cueto named United Federal Mortgage as a defendant in its role as a principal doing business through United Capital Lending, Inc., and/or Kevin T. Gleaton, as agents. He also sued American Bank Holdings, Inc. He attributed two other names to American Bank Holdings, alleging that the company was also known as American Bank Mortgage Group and/or as United Federal Mortgage. Cueto alleged that American Bank Holdings, Inc., did business through United Capital Lending, Inc., and/or Kevin T. Gleaton as its agents.

¶ 15 Cueto alleged that the corporate defendants, with the exception of Lester J. Petty and Oracle Capital Holding Company, violated the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 to 12 (West 2006)) and also committed common law fraud by deceptively and falsely promising financing for the purchase of his land intending that he rely upon the deception. He stated that he relied upon the promises and suffered actual damages in the amount of \$7,390,855.10. Cueto calculated the damages by subtracting the sales price of \$1,609,144.90 from the contract price of \$9 million. Cueto also sought punitive damages and attorney fees. With essentially the same allegations, the complaint also contained a count charging the defendants with detrimental reliance/promissory estoppel. Cueto contended that Lana L. Carter and Oracle Capital Holding Company committed consumer fraud, common law fraud, and breach of contract.

Cueto alleged one count of breach of contract against Lester J. Petty & Associates, Inc.

¶ 16 Subpoenas for all defendants were issued on June 11, 2008. On June 18, 2008, the registered agent for American Bank Holdings, Inc., CT Corporation, was served in Baltimore, Maryland, with a copy of the lawsuit and the summons.

¶ 17 On July 23, 2008, 35 days later, Cueto filed a motion for default judgment, on the basis that American Bank Holdings had been served more than 30 days before and had not entered its appearance in court. The motion was filed *pro se*. Two days later, an attorney, Grey R. Chatham, entered his appearance as "of counsel" for Cueto. Grey R. Chatham's appearance indicated that Cueto remained *pro se* and that it was unnecessary for the clerk's office to send attorney Chatham any orders or other papers in the case. Cueto also filed an affidavit with the court, outlining the damages sought—compensatory and punitive—and included a request for attorney fees. Additionally, Cueto attached documents to the affidavit in an effort to connect American Bank Holdings to the other corporate defendants by attaching printouts from an Internet website that described American Bank Mortgage Group, a division of American Bank, which was formerly known as United Federal Mortgage. Another website printout indicated that American Bank Mortgage Group is owned by American Bank Holdings, Inc. He also attached a printout containing an address and telephone numbers for United Federal Mortgage and claimed that the address and numbers were identical to those for American Bank Holdings. Based upon the information contained within these documents, Cueto contended that American Bank Holdings was the same corporate entity as United Federal Mortgage and also did business through its agents United Capital Lending and Kevin T. Gleaton. The motion for default judgment and the affidavit were not served upon American Bank Holdings.

¶ 18 On the date that Cueto filed his motion for default judgment, the trial court entered a document entitled "Findings of Fact and Conclusions of Law". The findings of fact stated

that "[e]ach and every fact alleged in each count of the Complaint as applied to American Bank Holdings, Inc. *** is held to be proved and established." The court document also found that American Bank Holdings' conduct was willful and wanton and intentionally or recklessly tortious, "performed with an utter indifference or conscious disregard for the Plaintiff." The court awarded compensatory damages in the amount of \$7,390,855.10. Punitive damages were awarded in the amount of \$66,517,695.10. Attorney fees were awarded pursuant to the Consumer Fraud Act in the amount of \$24,636,183.65. The court also found that it had jurisdiction over American Bank Holdings. The court entered three separate judgment orders—one for the compensatory damages, one for the punitive damages, and one for the attorney fee award in favor Grey R. Chatham (an attorney who had not yet entered his appearance as Cueto's attorney).

¶ 19 On July 30, 2008, Cueto filed motions to voluntarily dismiss all claims against 6 of the other 10 defendants—all three Wells Fargo entities, as well as Oracle Capital Holding Company, Lana L. Carter, and Lester J. Petty & Associates, Inc. In this motion, Cueto claimed that United Medical Bank, United Capital Lending, Inc., and Kevin T. Gleaton were agents of American Bank Holdings and that United Federal Mortgage was the corporate alter ego of American Bank Holdings. The motion asked the court to dismiss these four defendants with respect to any allegations of personal liability, but did not seek dismissal to the extent that their liability was imputable to American Bank Holdings. The court granted Cueto's motion.

¶ 20 In February 2009, Cueto filed his judgments in a Maryland court and began the process of enforcement.

¶ 21 American Bank Holdings first learned of the default judgments after Cueto registered the judgments in a Maryland court on February 12, 2009. On February 26, 2009, American Bank Holdings filed a petition to vacate and void the default judgments in St. Clair County

circuit court, pursuant to sections 2-301 and 2-1401 of the Illinois Code of Civil Procedure (735 ILCS 5/2-301, 2-1401 (West 2006)), citing a lack of personal jurisdiction. Alternatively, American Bank Holdings sought to set aside, strike, or void Cueto's affidavit, the default judgments, and the court's findings of fact and conclusions of law. After the combined petition was filed, American Bank Holdings filed a motion to stay enforcement of the default judgment. In the motion to stay, American Bank Holdings stated that it was filing the motion "without waiving any and all objections to this Court's personal jurisdiction over ABHI."

¶ 22 In support of the petitions, American Bank Holdings filed an affidavit of its president, James E. Plack. Plack swore that American Bank Holdings never conducted business in Illinois, never owned real or personal property in Illinois, never had an address, office, bank account, employees, agents, or representatives in Illinois, and was not licensed or registered to do business in Illinois. Plack also indicated that none of the defendants in this case—corporate or individual—were employees or agents of American Bank Holdings or of its subsidiaries and that none of the defendants had been authorized to transact any business on behalf of American Bank Holdings or its subsidiaries. More specifically, Plack stated that neither American Bank Holdings nor its subsidiaries authorized any person or entity to commit funds related to the purchase or development of Cueto's land.

¶ 23 On June 25, 2009, the trial court denied American Bank Holdings' combined petition, without entering any findings of fact. The order stated that the court had personal jurisdiction over American Bank Holdings pursuant to section 2-209 of the Code of Civil Procedure (735 ILCS 5/2-209 (West 2006)). The court also held that American Bank Holdings waived its objection because it did not file a motion to dismiss or a motion to quash before it filed any other pleadings. The order preserved the judgment for compensatory damages, reduced the punitive damages award to \$21 million, and vacated the attorney fee

award.

¶ 24 Also on June 25, 2009, Cueto filed paperwork in St. Clair County to enforce the default judgments. American Bank successfully quashed this attempt by a July 16, 2009, order of the court.

¶ 25 On June 29, 2009, the St. Clair County circuit court vacated the \$21 million punitive damages award *sua sponte*.

¶ 26 On July 14, 2009, Maryland's Montgomery County circuit court entered an order temporarily staying enforcement of the judgments and setting a hearing on the matter for August 17, 2009.

¶ 27 On July 23, 2009, the St. Clair County circuit court entered another *sua sponte* order stating:

"Upon further consideration and following further review of the briefs, and arguments of counsel, this Court remains troubled by the jurisdictional issue."

With this statement, the court certified two questions for interlocutory review pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 1, 1994). The first question asked whether the trial court had personal jurisdiction over American Bank Holdings. The second question asked if American Bank Holdings waived its rights to contest personal jurisdiction. These two certified questions compose part of American Bank's appeal in 5-09-0393.

¶ 28 Cueto did not appear at the August 17, 2009, Maryland hearing, nor did he appear for his earlier-noticed deposition. However, he was aware of the Maryland court order, because Cueto filed that order in St. Clair County circuit court, asking the court to vacate the Maryland order staying enforcement. On August 17, 2009, the Maryland court received testimony and evidence, and proceeded to vacate the St. Clair County judgments on the basis that the St. Clair County circuit court lacked personal jurisdiction over American Bank Holdings. Cueto filed a motion asking the Maryland court to set aside this order. He made

three arguments to the court in support of this motion. He argued that there was no record that he was served with a copy of the court's July 14, 2009, order; that the Maryland judge's secretary tricked him into thinking that there would not be a hearing on August 17, 2009; that the Maryland court clerk's office falsified records to fix the decision on behalf of American Bank Holdings and to cover up the deception of the judicial secretary; and that the Maryland judge violated the Canon of Judicial Ethics.

¶ 29 American Bank Holdings filed a motion to stay enforcement of the St. Clair County default judgment pending the appeal to this court. The circuit court granted the stay and further ordered that effective October 19, 2009, the judgment was final and appealable.

¶ 30 On October 26, 2009, the Maryland court denied Cueto's motion to set aside the August 2009 order.

¶ 31 American Bank Holdings filed its second notice of appeal on November 16, 2009, from the default judgment, after the court's October 19, 2009, order made the judgment final and appealable. This appeal is filed as 5-09-0620.

¶ 32 On its own motion, this court consolidated the two appeals on August 6, 2010, for record, oral argument, and disposition.

¶ 33 **LAW AND ANALYSIS**

¶ 34 **Appellate Jurisdiction Over Appeal**

¶ 35 American Bank Holdings first appealed from the court's June 25, 2009, denial of its motion seeking relief from the default judgment pursuant to section 2-1401 of the Code of Civil Procedure. Supreme Court Rule 304(b)(3) expressly provides the right to appeal from a "judgment or order granting or denying any of the relief prayed [for] in a petition under section 2-1401." Ill. S. Ct. R. 304(b)(3) (eff. Jan. 1, 2006). American Bank Holdings timely filed this appeal on July 23, 2009. Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008).

¶ 36 American Bank Holdings' second appeal was taken from the default judgment itself.

Originally, Cueto named 11 defendants in his suit. After obtaining the default judgment against American Bank Holdings on July 23, 2008, all claims against the remaining 10 defendants remained pending. On July 30, 2008, at Cueto's request, the court granted motions dismissing all claims against six of these defendants. A second court order also entered on July 30, 2008, granted Cueto's motion seeking to voluntarily dismiss the remaining four defendants. Cueto did not dismiss any claims against American Bank Holdings and/or any of its corporate alter egos, merged or acquired corporations, or agents. Cueto specifically alleged that United Medical Bank, United Capital Lending, Inc., and Kevin T. Gleaton were agents of American Bank Holdings. He also alleged that American Bank Holdings and United Federal Mortgage were the same corporation. In light of these allegations, along with the fact that the motion did not ask for all claims against these three other defendants to be dismissed, this July 30, 2008, order clearly left pending claims. The court's order also did not indicate that the order was final and appealable pursuant to Supreme Court Rule 304(a) (eff. Jan. 1, 2006).

¶ 37 On October 19, 2009, the circuit court entered an order pursuant to Supreme Court Rule 304(a) stating that the order was final and appealable. The order did not expressly dismiss the claims against the other defendants, but we concur with American Bank Holdings' argument that the court implicitly did so by making the order final and appealable.

¶ 38 American Bank Holdings timely filed its notice of appeal on November 16, 2009. Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008).

¶ 39 Standard of Review

¶ 40 The central issue in this consolidated appeal is whether the St. Clair County circuit court had personal jurisdiction over American Bank Holdings, based on either traditional jurisdictional factors or waiver. Court rulings on personal jurisdiction are reviewed *de novo*. *KSAC Corp. v. Recycle Free, Inc.*, 364 Ill. App. 3d 593, 594, 846 N.E.2d 1021, 1022 (2006);

Community Merchant Services, Inc. v. Jonas, 354 Ill. App. 3d 1077, 1083, 822 N.E.2d 515, 521-22 (2004); *Adams v. Harrah's Maryland Heights Corp.*, 338 Ill. App. 3d 745, 747, 789 N.E.2d 436, 439 (2003).

¶ 41 Personal Jurisdiction

¶ 42 The circuit court found, without explanation, that the court had personal jurisdiction by virtue of the long-arm statute (735 ILCS 5/2-209 (West 2006)).

¶ 43 The burden of proof to establish that a non-Illinois resident has sufficient contacts with the state falls upon the plaintiff who is bringing the suit. *Howard v. Missouri Bone & Joint Center, Inc.*, 373 Ill. App. 3d 738, 740-41, 869 N.E.2d 207, 210 (2007). In other words, the plaintiff carries the burden of establishing a *prima facie* basis for the exercise of personal jurisdiction. *International Business Machines Corp. v. Martin Property & Casualty Insurance Agency, Inc.*, 281 Ill. App. 3d 854, 857-58, 666 N.E.2d 866, 868 (1996), *superseded by statute on other grounds*, 735 ILCS 5/2-209(c) (West 2002). Once the plaintiff has met this burden, the burden then shifts to the defendant to show why the assertion of jurisdiction would be unreasonable. *Adams*, 338 Ill. App. 3d at 747, 789 N.E.2d at 439 (citing *Worldtronics International, Inc. v. Ever Splendor Enterprise Co.*, 969 F. Supp. 1136, 1142 (N.D. Ill. 1997)).

¶ 44 The Illinois long-arm statute authorizes Illinois courts to exercise personal jurisdiction over nonresident defendants. 735 ILCS 5/2-209(a), (b), (c) (West 2006). Various events would constitute an act submitting to jurisdiction, including:

- "(1) The transaction of any business within this State;
- (2) The commission of a tortious act within this State;
- (3) The ownership, use, or possession of any real estate situated in this State;

* * * [and]

- (7) The making or performance of any contract or promise substantially

connected with this State ***." 735 ILCS 5/2-209(a)(1), (a)(2), (a)(3), (a)(7) (West 2006).

Furthermore, a corporation "doing business within this State" would be subjected to our courts' jurisdiction. 735 ILCS 5/2-209(b)(4) (West 2006). An Illinois court may exercise jurisdiction "on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States." 735 ILCS 5/2-209(c) (West 2006).

¶ 45 In addition to Illinois long-arm jurisdiction factors, federal due process mandates that the defendant have certain minimum contacts with the forum state such that the maintenance of the suit there does not offend " 'traditional notions of fair play and substantial justice.' " *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). These "minimum contacts" must have a basis in " 'some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.' " *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 109 (1987) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

"The concept of minimum contacts *** can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-92 (1980).

When we conduct a federal due process analysis, we must consider whether "(1) the nonresident defendant had minimum contacts with the forum state such that there was fair warning that the nonresident defendant may be haled into a forum court, (2) the action arose out of or related to the defendant's contacts with the forum state, and (3) it is reasonable to

require the defendant to litigate in the forum state." *Adams*, 338 Ill. App. 3d at 748, 789 N.E.2d at 440 (citing *Burger King Corp.*, 471 U.S. at 471-77). "A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere." *World-Wide Volkswagen Corp.*, 444 U.S. at 291.

¶ 46 The minimum contacts rule is further broken down and applied in two ways, dependent upon whether the forum is asserting specific jurisdiction or general jurisdiction over the foreign defendant. Specific jurisdiction is appropriate when a single action by the defendant satisfies jurisdiction. *Conroy v. Andeck Resources '81 Year-End Ltd.*, 137 Ill. App. 3d 375, 388-89, 484 N.E.2d 525, 535-36 (1985). This single act must "(1) give rise to the cause of action and (2) be one by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State and voluntarily invokes the benefits and protections of the state's laws." *Id.* General jurisdiction does not exist unless the foreign company was conducting business activity within Illinois " 'with a fair measure of permanence and continuity.' " *Howard*, 373 Ill. App. 3d at 741, 869 N.E.2d at 211 (quoting *Maunder v. DeHavilland Aircraft of Canada, Ltd.*, 102 Ill. 2d 342, 351, 466 N.E.2d 217, 221 (1984)).

¶ 47 Additionally, a court's exercise of personal jurisdiction must satisfy Illinois due process. Pursuant to our constitution, "[j]urisdiction is to be asserted only when it is fair, just, and reasonable to require a nonresident defendant to defend an action in Illinois, considering the quality and nature of the defendant's acts which occur in Illinois or which affect interests located in Illinois." *Rollins v. Ellwood*, 141 Ill. 2d 244, 275, 565 N.E.2d 1302, 1316 (1990).

¶ 48 In determining whether the court has personal jurisdiction over a nonresident defendant, the court must "accept as true any facts averred by the defendant which have not been contradicted by an affidavit submitted by plaintiff." *Knaus v. Guidry*, 389 Ill. App. 3d

804, 813, 906 N.E.2d 644, 652 (2009).

¶ 49 As referenced earlier, American Bank Holdings filed an affidavit with the court. The affidavit, sworn to by James E. Plack, president of the company, indicated that American Bank Holdings had never conducted business in Illinois, did not own any real or personal property in Illinois, is not licensed or registered to do business in Illinois, and never had an address, office, telephone number, bank account, employee, agent, or representative in Illinois. Cueto filed no counteraffidavit or documentation in support of his position responsive to James E. Plack's affidavit. We must accept the facts sworn to in James E. Plack's affidavit as true because Cueto did not contest the facts by way of his own sworn affidavit(s). *Knaus*, 389 Ill. App. 3d at 813, 906 N.E.2d at 652; *Kutner v. DeMassa*, 96 Ill. App. 3d 243, 248, 421 N.E.2d 231, 235 (1981).

¶ 50 Nothing in the allegations of the complaint, or any of the "evidentiary" materials Cueto attached to documents filed in St. Clair County or in Maryland, established that American Bank Holdings was connected to the failed financial transactions entered into by those persons and companies who were attempting to purchase Cueto's land. There was no evidence that American Bank Holdings had a relationship between the parties to the failed contract nor any evidence that American Bank Holdings committed a tortious act. However, even if there was some remote connection to the entities involved in this case, there is no evidence that St. Clair County circuit court could exercise personal jurisdiction over American Bank Holdings—specifically or generally. American Bank Holdings' lack of contact with Illinois does not satisfy the required "continuous and systematic general business contacts" mandated by general jurisdiction. *Adams*, 338 Ill. App. 3d at 749, 789 N.E.2d at 441. Furthermore, with no evidence of any connection to the failed transactions at issue, there is no single action within Illinois giving rise to the cause of action, by which American Bank Holdings purposefully availed itself of the benefits of Illinois laws. *Conroy*, 137 Ill.

App. 3d at 388-89, 484 N.E.2d at 535-36. With no involvement in Illinois, especially with respect to this particular failed business transaction, there is no basis by which American Bank Holdings could reasonably foresee being called into an Illinois court. *Howard*, 373 Ill. App. 3d at 740-41, 869 N.E.2d at 211.

¶ 51 Cueto did not satisfy the burden of proof that American Bank Holdings had sufficient minimum contacts with Illinois to provide Illinois courts with the ability to exercise personal jurisdiction over the company. Accordingly, the court's exercise of personal jurisdiction was in violation of federal and state due process. Because the court never had personal jurisdiction over American Bank Holdings, judgments entered against the company were void.

¶ 52 Waiver of Personal Jurisdiction

¶ 53 While we conclude that St. Clair County did not have personal jurisdiction over American Bank Holdings, we must address the question of waiver. The court held that American Bank Holdings waived the personal jurisdiction issue by filing a petition to void the default judgment for lack of personal jurisdiction as its first pleading in St. Clair County.

¶ 54 American Bank Holdings' petition was filed pursuant to both sections 2-1401 and 2-301 of the Code of Civil Procedure (735 ILCS 5/2-1401, 2-301 (West 2006)). Section 2-1401 provides a means by which a defendant can seek relief from a final order and judgment after 30 days from the date of its entry. 735 ILCS 5/2-1401(a) (West 2006). The petition for relief of judgment must be filed in the same court proceeding in which the order or judgment was entered. 735 ILCS 5/2-1401(b) (West 2006). Section 2-301 mandates that the party objecting to personal jurisdiction must object "[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." 735 ILCS 5/2-301(a) (West 2006). The section provides that the "motion may be made singly or included with others in a combined motion." *Id.* Consequently, there is no mandate that a

defendant must file a separate motion to quash for lack of personal jurisdiction. Therefore, a combination motion can satisfy the requirement that the defendant object to personal jurisdiction before any other pleading is filed.

¶ 55 American Bank Holdings' combined petition filed on February 26, 2009, was filed pursuant to both sections, and therefore in doing so, the petition was in compliance with the requirement of section 2-301 of the Code of Civil Procedure that an objection to personal jurisdiction be lodged before any other pleading is filed. The objection to personal jurisdiction was the first argument within the combined petition filed by American Bank Holdings.

¶ 56 In addition to the wording of the procedural sections, case law supports the conclusion that American Bank Holdings did not waive its objection to personal jurisdiction.

¶ 57 In *Sarkissian v. Chicago Board of Education*, the Illinois Supreme Court held that a defendant will not be penalized by waiver when the defendant files a motion to vacate a default judgment that is characterized as being void for defective service of process. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 105, 776 N.E.2d 195, 202 (2002). At issue in this case was a \$10 million default judgment entered against the Chicago Board of Education for injuries to a minor child. *Id.* at 98, 776 N.E.2d at 198. The judgment was over seven years old, and so had to be revived before it could be enforced. *Id.* The school board first filed a general appearance and about one month later filed a motion to vacate the default judgment as void because service had not been made upon a president or clerk or other officer. *Id.* (citing 735 ILCS 5/2-211 (West 2000)). The trial court ruled in favor of the school board and vacated the default judgment. *Id.* at 99, 776 N.E.2d at 199. Plaintiff appealed the trial court's order vacating the default judgment. *Id.* The appellate court concluded that service was appropriate, and reversed the trial court's order vacating the default judgment. *Id.* The court stated that the law was undisputed that the defendant could

challenge a default judgment on voidness grounds at any time, whether the attack is direct or collateral. *Id.* (citing *Barnard v. Michael*, 392 Ill. 130, 135, 63 N.E.2d 858, 861-62 (1945)). By its holding, the Illinois Supreme Court sought to clarify conflicts in the appellate court. *Id.* The court held that a petition that seeks to vacate a void judgment should be construed as a petition for relief from judgment brought pursuant to section 2-1401 of the Code of Civil Procedure. *Id.*; see also *Capital One Bank, N.A. v. Czekala*, 379 Ill. App. 3d 737, 739-47, 884 N.E.2d 1205, 1209-15 (2008) (holding that a section 2-1401 petition to vacate default judgment and dismiss wage deduction on the basis of a lack of personal jurisdiction, as the first pleading filed by the defendant, was proper, and that the judgment was void *ab initio*).

¶ 58 The combination motion filed by American Bank Holdings satisfied the requirement of section 2-301 of the Code of Civil Procedure that a petition contesting personal jurisdiction must be filed before any other pleading. Accordingly, we find that American Bank Holdings did not waive its personal jurisdiction argument.

¶ 59 Cross-Appeal

¶ 60 Cueto filed his cross-appeal asking this court to reinstate the trial court's default judgment order for punitive damages. Because we have held that St. Clair County circuit court never had personal jurisdiction over American Bank Holdings, Inc., the default judgments entered by the court were void. The trial court vacated its judgment orders for punitive damages. Without personal jurisdiction, there is no basis by which this court could reinstate this judgment. Similarly, because there was no personal jurisdiction, Cueto's argument that the trial court improperly stayed execution of the judgment also fails.

¶ 61 CONCLUSION

¶ 62 For the foregoing reasons, the judgment of the circuit court of St. Clair County is hereby reversed.

¶ 63 Reversed.