
**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
MORTGAGE FORECLOSURE/MECHANICS LIEN SECTION**

ANTONIOS GOUNTANIS,

Plaintiff,

v.

JUAN M. ALVARADO; CASA DE
MARISCOS, INC.; CITY OF CHICAGO;
NON-RECORD CLAIMANTS,

Defendants.

Case Number: 2021 CH 05117

Calendar 60

Honorable William B. Sullivan,
Judge Presiding

Property Address:

5931 South Rockwell Street,
Chicago, Illinois 60629

MEMORANDUM OPINION AND ORDER

WILLIAM B. SULLIVAN, Circuit Judge:

Before the Court is Defendant JUAN M. ALVARADO's Motion to Quash Service ("the Motion"). Accordingly, for the reasons listed below, Defendant's Motion is hereby GRANTED and the Lederer Affidavit is STRICKEN from the record.

I. BACKGROUND

On January 31, 2020, Defendant entered into a commercial lease ("the Lease") with Plaintiff regarding the real property located at 5700 West Irving Park Road in Chicago, Illinois. The lease was secured by a mortgage ("the Mortgage") on Defendant's personal home at 5931 South Rockwell Street in Chicago, Illinois ("the Property"). The mortgage was recorded on March 10, 2020. This is the property that is the subject of this litigation. Defendant sought to use the property to open a restaurant; however, his efforts were thwarted by the COVID-19 pandemic.

Defendant was forced to surrender the Property, and, shortly thereafter, Plaintiff successfully re-leased the space to a different tenant.

On October 6, 2021, Plaintiff filed the Complaint in the instant matter seeking to foreclose the Mortgage lien encumbering the Property. On October 7, 2021, a summons was issued for service upon Defendant at: 820 Portsmouth Avenue, Westchester, Illinois 60154. On October 19, 2021, the Cook County Sheriff's Office advised it was unable to serve Defendant there. On January 7, 2022, Judge Joel Chupack entered an Order giving Plaintiff leave to issue an Alias Summons for Defendant and to appoint Proof Illinois PLLC as the special process server.

On January 31, 2022, Tamora Bacon filed an Affidavit of non-service claiming she could not find Defendant or his whereabouts. This Affidavit described four separate service attempts that occurred on January 26 and 29 of 2022. These attempts occurred at 2115 South Garnett Road in Tulsa, Oklahoma, a purported address for one of Defendant's businesses. This was also one of the addresses included in Judge Chupack's Order. On February 14, 2022, Ms. Bacon submitted another Affidavit of non-service describing four separate service attempts that occurred from January 29 through February 5 of 2022. These attempts occurred at 13109 East 31st Street, Unit B in Tulsa, Oklahoma that was a residential address found for Defendant and the other address listed in Judge Chupack's Order.

On February 28, 2022, Ms. Bacon filed a process server affidavit with the Court stating, once again, that she was unable to serve Defendant after five attempts spanning from February 9 to February 23 of 2022. These attempts

occurred at the business address in Tulsa again; however, employees at the business alerted Ms. Bacon that Defendant is not there on a regular basis and only stops by when visiting Tulsa.

On March 23, 2022, Plaintiff filed a Motion to Deem Defendant Served. On April 22, 2022, the Court instead granted Plaintiff leave to serve Defendant by alternative means. The authorized means included certified and regular mail to both of the Tulsa addresses as well as an email to Defendant. Plaintiff served Defendant pursuant to this Order and the Alias Summons and Complaint were sent via email.

On July 11, 2022, Plaintiff filed his Motion for Default and Judgment of Foreclosure and Sale. Subsequently on July 19, 2022, Defendant filed a Motion to Quash Service which the Court granted on October 12, 2022. Thereafter, Ms. Bacon again attempted to serve Defendant four more times throughout December of 2022 at both Tulsa addresses. During this time, Ms. Bacon was informed that Defendant was spending time in Chicago; however, he has no established address there. Plaintiff's attorney, Caren Lederer, then ran a skip trace on January 23, 2023, which failed to reveal any new addresses.

Ms. Bacon continued to attempt to serve Defendant five times throughout February of 2023 at the Tulsa addresses. During this time, Ms. Bacon was able to confirm Defendant's residence via his building management, but was still unable to serve him. After these repeated failed attempts, Plaintiff filed another Motion for Alternative Service on May 31, 2023. That Motion included the affidavits from Ms.

Bacon that described her past attempts at serving Defendant and an Affidavit in Support of the Motion executed by Ms. Lederer. On June 15, 2023, this Court granted the Motion. Pursuant to that Order, less than a month later on July 12, 2023, a paralegal acting on behalf of Plaintiff once again emailed Defendant the Complaint and Alias Summons. On July 14, 2023, following the June Order, Ms. Bacon again attempted to serve Defendant by posting copies of the Complaint and Summons to the door of Defendant's residential and business addresses in Tulsa. On the same day, another special process server, Lewis Ellis, attempted to serve Defendant pursuant to the Court's June 15, 2023, Order by posting the relevant documents on the door of Defendant's Westchester, Illinois address. Also in accordance with the Court's June Order, copies of the Summons and Complaint were mailed via First Class and Certified United States Mail as well as overnight delivery via FedEx to all three addresses: both addresses in Tulsa, Oklahoma, and the Westchester address in Illinois.

On April 4, 2024, Plaintiff refiled his Judgment Motions claiming Defendant was served in July of 2023 pursuant to the June 15, 2023, Order. On May 20, 2024, Defendant countered these Judgment Motions by filing another Motion to Quash Service. The Motion was presented on June 6, 2024, at 2:30 PM via Zoom. Plaintiff filed his Response to the Motion on June 20, 2024, and Defendant filed his reply on July 5, 2024. The Court held a hearing on the Motion and heard oral argument from each party on July 17, 2024, at 2:30 PM via Zoom. On that date, the Court took the

Motion under advisement for the issuance of a written opinion. Below is said opinion regarding the Motion.

II. LEGAL STANDARD

Defendant now moves to quash service arguing Plaintiff's Motion for Alternative Service was deficient pursuant to 735 ILCS 5/2-203.1 which allows for service by special order of court. When considering a motion objecting to the Court's jurisdiction over the objecting party, the Court shall consider all matters apparent from the papers on file in the case, affidavits submitted by any party, and any evidence adduced upon contested issues of fact. 735 ILCS 5/2-301(b). The court shall enter an appropriate order sustaining or overruling the objection. *Id.* This Court, however, has serious doubts that it should construe this Motion as a motion to quash service.

When determining how to treat a motion, courts look to the movant's request and evaluate the substantive content and not merely the label affixed thereto. *In re Haley D.*, 2011 IL 110886, ¶ 67. Furthermore, courts are allowed to consider a case's procedural posture when determining the proper character of a movant's request. *Babcock v. Wallace*, 2012 IL App (1st) 111090. Defendant's Motion to Quash was not brought pursuant to any statute. When examining its content, it becomes clear that what Defendant really requests is vacatur of the Court's June 15, 2023, Order under 735 ILCS 5/2-1301.¹ It is obvious that the Movant has asked this Court to vacate, modify, or amend its June 15, 2023, Order that granted alternative methods

¹ The Court will not consider construing the motion as falling under 735 ILCS 5/2-1203 as the June 15, 2023, Order was not the final order in this case.

of service. This is the exact sort of relief that Section 2-1301 is designed to permit. Therefore, this Court finds that the Motion is deemed to be brought under Section 2-1301 seeking vacatur of the June 15, 2023, Order and thus quashing any service on Defendant made pursuant to that Order as made without leave of Court. Therefore, this Court will only grant the Motion if it decides it should not have originally granted the Motion for Alternative Service on June 15, 2023.

III. ANALYSIS

Before the Court is Defendant's Motion to Quash which the Court construes as a Motion to Vacate. The Court would like to begin with a brief summation and analysis of the key arguments from each party.

While Defendant's instant Motion concedes Plaintiff has tried numerous times to serve him, Defendant argues those attempts have not been in a diligent and timely manner. Defendant also argues Plaintiff's Motion for Alternate Service was facially deficient, meaning the Court should never have granted it in the first place. Defendant further argues that the affidavits used to support the Motion for Alternative Service were not strictly compliant with the statutory requirements of 735 ILCS 5/2-203.1.

Under Section 2-203.1,

If service upon an individual defendant is impractical under items (1) and (2) of subsection (a) of Section 2-203, the plaintiff may move, without notice, that the court enter an order directing a comparable method of service. The motion shall be accompanied with an affidavit stating the nature and extent of the investigation made to determine the whereabouts of the defendant and the reasons why service is impractical under items (1) and (2) of subsection (a) of Section 2-203, including a specific statement showing that a diligent inquiry as to the

location of the individual defendant was made and reasonable efforts to make service have been unsuccessful. The court may order service to be made in any manner consistent with due process. 735 ILCS 5/2-203.1.

A plaintiff seeking to serve a defendant by alternative service must strictly comply with the requirements of provisions governing service by special order of court, and a failure to conduct a diligent inquiry of the defendant's location will result in improper service. *Thompson v. Ross Dialysis-Englewood, LLC*, 2017 IL App (1st) 161329, ¶ 15. Furthermore, a diligent inquiry of a defendant's location occurs when a party has exhausted all of its leads in its attempts to find the defendant when trying to serve him personally. *People ex rel. Waller v. Harrison*, 348 Ill. App. 3d. 976, 982 (2004).

The heart of Defendant's argument rests in his characterization of the affidavits used to support Plaintiff's Motion for Alternative service as improper. As discussed above, to be compliant with Section 2-203.1, an affidavit must state

the nature and extent of the investigation made to determine the whereabouts of the defendant and the reasons why service is impractical under items (1) and (2) of subsection (a) of Section 2-203, including a specific statement showing that a diligent inquiry as to the location of the individual defendant was made and reasonable efforts to make service have been unsuccessful. 735 ILCS 5/2-203.1.

In this case, Plaintiff used a singular affidavit from Ms. Caren Lederer and several affidavits from Ms. Tamora Bacon to support his motion. Defendant raised potential issues with both the Lederer Affidavit and the Bacon Affidavits. The Court will address both arguments in kind.

Defendant first argues that the Lederer Affidavit was facially deficient as it did not strictly comply with the requirements of Section 2-203.1. Defendant claims facial deficiency for several reasons. First, while the affidavit contains a preamble stating the affiant, “being duly sworn upon oath, hereby, states as follows,” it does not bear a notary or a certification pursuant to 735 ILCS 5/1-109. Defendant argues that just because an affiant states they have been “duly sworn upon oath” does not make it so. This Court agrees.

“An affidavit must be sworn to, and statements in a writing not sworn to before an authorized person cannot be considered affidavits.” *Estate of Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 494 (2002). It is clear law that only notaries may notarize documents under 5 ILCS 312/6-101 *et seq.* Attorneys are not notaries unless they also maintain notary public commission. Other individuals (including attorneys) may, however, certify their own statements in an affidavit filed in any court of the State under 735 ILCS 5/1-109 by including a statement in the document that

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true. 735 ILCS 5/1-109.

This rule does not change notwithstanding the fact that Ms. Lederer is an officer of this Court who owes a duty of candor to this Court under Illinois Supreme Court Rule 3.3 and certification under Illinois Supreme Court Rule 137(a). Since there is no Section 1-109 certification or notarization, Ms. Lederer’s document cannot be

considered an affidavit. Therefore, this Court gives it no weight when deciding this Motion.

Additionally, Defendant argues the Affidavit fails to meet the “showing” requirement of the statute requiring the Affidavit establish a due and diligent inquiry into Defendant’s whereabouts. While the Affidavit does describe attempts to locate Defendant, these were all attempted by a person other than the affiant, Ms. Lederer. However, no supporting affidavits or documents were attached to the Affidavit to supplement Ms. Lederer’s lack of personal knowledge regarding past service attempts. Defendant emphasizes the need for strict compliance with the statute and argues Ms. Lederer cannot be considered to have strictly complied.

Taken together, Defendant offers a compelling argument regarding the facially deficient nature of the Lederer Affidavit. Echoing Defendant, this Court too would like to emphasize the need for strict compliance with statutory language, especially when it impacts a court’s personal jurisdiction over a party and the ability to enter judgment against that party. Strict compliance with statutory requirements must be shown where personal jurisdiction is based upon substituted or constructive service. *State Bank of Lake Zurich v. Thill*, 135 Ill. App. 3d 747, 754 (2d Dist. 1985). It can hardly be said Ms. Lederer’s affidavit was strictly compliant with Section 2-203.1. Therefore, the Lederer Affidavit is hereby stricken from the record.

Since the Lederer Document cannot be considered an affidavit offered in support of the Motion, the Court must now consider whether Ms. Bacon's Affidavits on their own meet the standard set forth in Section 2-203.1

Ms. Bacon first became involved with this lawsuit after this Court granted Plaintiff's Motion to Appoint a Special Process Server on January 7, 2022. Shortly thereafter, Ms. Bacon subsequently began attempting to serve Defendant at both his place of business and residence in Tulsa, Oklahoma. Ms. Bacon made attempts at both locations four times each throughout January and February of 2022. During her third service attempt at Defendant's business address, Ms. Bacon was able to speak to Defendant on the phone with the assistance of an employee. Defendant informed Ms. Bacon he had an attorney and told her to leave her contact information with the employee so his attorney could get in touch. On the call, he made clear he "was not making himself available for service."

During this time period Ms. Bacon also attempted to serve Defendant at his personal residence in Tulsa four times. During her second attempt, Ms. Bacon spoke with a man through a closed door who told her Defendant does not reside there. During her third attempt, Ms. Bacon was able to confirm with the leasing office that she had the correct apartment, and Defendant did in fact live there. There was no answer at the door the third and fourth time she attempted service.

Plaintiff then subsequently filed to deem Defendant served which this Court denied; however, Plaintiff was granted leave to serve Defendant by alternative means. Plaintiff subsequently attempted to serve Defendant via those authorized

alternative means and then filed his judgment motions. Instead, this Court granted Defendant's first Motion to Quash Service on October 12, 2022, which brought Ms. Bacon back into the fold.

Ms. Bacon again began attempting to serve Defendant at both his residence and place of business in Tulsa with little luck from December 2022 through February 2023. In February, Ms. Bacon once more confirmed this was Defendant's place of residence through his building management. The failure to serve Defendant led Plaintiff to file his Motion for Alternative Service with the Bacon Affidavits attached. The Court granted the Motion on June 15, 2023. This is the Order Defendant now asks this Court to vacate. The Court will only vacate the Order if it was deemed to have been improperly granted in the first place.

Even if it accepts Plaintiff's contention that Defendant's Motion to Vacate was untimely, this Court has power to vacate the Order if it so chooses, as it has the equitable authority to modify its interlocutory orders at any time prior to final judgment. *J.D. Marshall International v. First National Bank*, 272 Ill. App. 3d 883, 891 (1st Dist. 1995). A final judgment is one that, "decides the controversy between the parties on the merits and fixes the rights, so that, if the judgment is affirmed, nothing remains for the trial court to do but to proceed with its execution." *In re J.N.*, 91 Ill. 2d 122, 127 (2d Dist. 1982). It cannot be disputed that this Court's June 15, 2023, Order was not a final judgment as it does not "dispose of all issues between the parties and it does not terminate the litigation". *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶11. In fact, this case, despite being almost three years

old now, is still in the pleading stage. Just as a court may *sua sponte* modify an order at any point in the litigation prior to final judgment even if a motion was not brought, it is likewise logical to hold that if a motion was brought to modify an interlocutory order, as was the case here, timeliness should not be a bar to such a motion brought late since the Court would still maintain its inherent power to modify that interlocutory order at any time so long as the Court still retained jurisdiction over the entire controversy. *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 42.

Defendant's main critiques of the Bacon Affidavits and Plaintiff's reliance upon them, center around their numerosity. Defendant argues the statutory language of "an affidavit" signals that only one affidavit may be attached to support a 2-203.1 motion. This would mean only one of the multiple attached Bacon Affidavits could be considered when deciding to grant the motion. Basic rules of statutory interpretation however render this argument moot. The general rules of statutory construction in Illinois include a mandate that requires that statutory language used in the singular be extended to include the plural. *Petition of K.M.*, 274 Ill. App. 3d 189, 196 (3d Dist. 1995). This principle clearly establishes it was appropriate for Plaintiff to attach multiple affidavits in support of his Motion for Alternative Service.

Furthermore, as a matter of common sense, courts ought to seek out and be provided with as much applicable information as possible to reach an equitable and just decision. Insisting the Motion can only be supported by a singular affidavit

would deprive this Court of pertinent and useful facts when reaching a decision. When considering a motion objecting to the Court's jurisdiction over the objecting party, the Court shall consider all matters apparent from the papers on file in the case, affidavits submitted by any party, and any evidence adduced upon contested issues of fact. 735 ILCS 5/2-301(b). Therefore, Defendant was incorrect to state the numerosity of Ms. Bacon's affidavits made them non-strictly compliant with Section 2-203.1's requirements.

While Defendant's argument regarding the numerosity of the Affidavits falls flat, there are key flaws with the substance of the Affidavits that greatly concern this Court.

As described above, Section 2-203.1 calls for any supporting affidavits to show multiple criteria. First, the affidavits must state the nature and extent of the investigation made to determine the whereabouts of Defendant. Traditionally, this is often done via a skip trace. While a skip trace was performed in this case, it was done so and documented by Ms. Lederer. This is problematic as it has already been established her document cannot be considered an affidavit by this Court. Additionally, Ms. Bacon's Affidavits make no mention of the skip trace. Since these are the only Affidavits being considered by this Court, the first criteria is not met. Despite Defendant acknowledging Ms. Lederer performed a skip trace, this Court had no evidence before it stating the nature and the extent of the investigation made to determine the whereabouts of the Defendant.

In addition to the aforementioned first criterion, Section 2-203.1 also requires the affidavit to state the reasons why service is impractical under the other subsections of the statute. This assertion must be supported by a specific statement showing that a diligent inquiry as to the location of the individual defendant was made and reasonable efforts to make service have been unsuccessful. There is no doubt Ms. Bacon's affidavits establish reasonable yet unsuccessful service efforts. She repeatedly attempted to serve Defendant at both his residence and place of business and consulted with his employees and building management to increase her chances of contact with him; however, the Affidavits fail to include a specific statement showing the diligent inquiry as to the location of the individual defendant. As previously discussed, this is normally achieved via a skip trace, but Ms. Bacon's Affidavits make no mention of her performing a skip trace because the only skip trace performed was the one conducted by Ms. Lederer and mentioned in her now invalidated and sticken "Affidavit."

If one were to construe Section 2-203.1 language as a comprehensive checklist, it becomes clear that the Bacon Affidavits fail to check every box. Notably, the language of the statute uses a mandatory "shall" instead of a permissive "may". The Court notes the Lederer Document contains information that would satisfy some of the check boxes; however, it cannot be considered in the record due to its procedural flaws. Therefore, there was no affidavit detailing a specific statement showing the diligent inquiry as to the location of the individual defendant. The statute's mandatory language makes clear each element of the statute is required

and not merely optional. Failure to meet any of the statute's elements results in a strict procedural bar.

As mentioned above, both Illinois law and this Court are highly concerned with strict compliance, especially when the statute in question impacts the Court's personal jurisdiction over a party. *Thill*, 135 Ill. App. 3d 747, 754 (3d Dist. 1985). If a court were to enter judgment in a case where it did not have personal jurisdiction over a party, that judgment would be void and could be challenged at any time. *In re Marriage of Verdung*, 126 Ill. 2d 542, 547, (2d Dist. 1989). Lack of personal jurisdiction ties this Court's hands regarding its ability to render a judgment. Furthermore, personal jurisdiction is a key element of due process and ensuring the rights of all parties are protected and enforced. *Id.*

It is apparent that there are serious issues with both Ms. Lederer's now stricken "Affidavit" and Ms. Bacon's Affidavits. It would be an affront to the strict compliance standard and basic notions of due process to excuse these errors and proceed with the case. While Plaintiff has clearly made several good faith efforts to locate and serve Defendant, the procedural errors present in both documents are dispositive in determining that Plaintiff's Motion should have been denied. Therefore, this Court erred when it originally granted the Motion for Alternative Service on June 15, 2023 and now corrects that oversight by granting Defendant's instant Motion.

IV. CONCLUSION

Accordingly, under this Court's discretion, Defendant's instant Motion is hereby GRANTED, and the Lederer affidavit is hereby STRICKEN from the record. As a result of this ruling, the June 15, 2023, Order is hereby VACATED in its entirety, and any and all service made on Defendant pursuant to that Order is hereby QUASHED. Alias summons to issue.

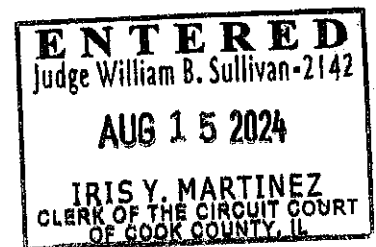
THEREFORE, FOR THE AFOREMENTIONED REASONS, THE COURT HEREBY ORDERS AS FOLLOWS:

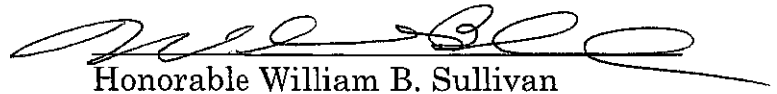
- (1) Defendant's Motion to Quash is hereby deemed to be a Motion to Vacate pursuant to 735 ILCS 5/2-1301;
- (2) Defendant's Motion is hereby GRANTED;
- (3) The Lederer Affidavit is hereby STRICKEN;
- (4) The June 15, 2023, Order is hereby VACATED;
- (5) All service effectuated upon Juan M. Alvarado pursuant to the Court's June 15, 2023, Order is hereby QUASHED; and
- (6) Alias Summons to Issue.

IT IS SO ORDERED.

Date: August 15, 2024

ENTERED:




Honorable William B. Sullivan
Cook County Circuit Judge

ORDER PREPARED BY THE COURT
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(312) 603-3894