

No. 121995

IN THE ILLINOIS SUPREME COURT

THE BANK OF NEW YORK MELLON f/k/a The Bank of New York, as Trustee
for the Certificate Holders of CWALT, Inc., Alternative Loan Trust 2006-2CB
Mortgage Pass-Through Certificates Series 2006-2CB,

Plaintiff-Appellee,

v.

PACIFIC REALTY GROUP, LLC, *et al.*,

Defendants-Appellants.

On Appeal from the Illinois Appellate Court for the Third District
Appeal No. 3-14-0566

Heard on Appeal by the Illinois Appellate Court for the Third District from the
Circuit Court of the 12th Judicial Circuit, Will County, Illinois
Circuit Court No. 10 CH 3572

**BRIEF OF PLAINTIFF-APPELLEE
THE BANK OF NEW YORK MELLON**

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I. NATURE OF THE CASE

The instant appeal is nothing more than Defendant-Appellant Pacific Realty Group, LLC's ("Defendant") last ditch effort to unwind Plaintiff-Appellee The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificate Holders of CWALT, Inc., Alternative Loan Trust 2006-2CB Mortgage Pass-Through Certificates Series 2006-2CB's ("Plaintiff") lawful foreclosure of a residential mortgage related to property located at 772 Bonnie Brae Court, Bolingbrook, Illinois (the "Property"). In attempting to unwind Plaintiff's lawful foreclosure, Defendant asserts that the circuit court erred in denying its amended motion to quash service ("Amended Motion to Quash") and that the Illinois Appellate Court erred in affirming the circuit court's denial. In fact, the circuit court correctly denied Defendant's Amended Motion to Quash and the Illinois Appellate Court correctly affirmed the circuit court's denial because: 1) Defendant filed its original motion to quash service ("Original Motion to Quash") beyond the sixty (60) day statutory deadline for filing such motions set forth by Section 15-1506.6(a) of the Illinois Mortgage Foreclosure Law (the "IMFL") and 2) Illinois law expressly and unambiguously allowed Plaintiff serve Defendant by publication in the underlying foreclosure action (the "Foreclosure Action"). For these reasons, this Court should affirm the lower courts' orders.

II. STATEMENT OF JURISDICTION

On June 19, 2014, the circuit court entered an order approving the underlying foreclosure sale of the Property, which was the final and appealable order in the underlying Foreclosure Action. (C564-565). Defendant timely filed a notice of appeal on July 17, 2014 in which Defendant appealed the circuit court's May 15, 2014 order denying its Amended Motion to Quash. (C566-567). The Illinois Appellate Court had jurisdiction over matter pursuant to Illinois Supreme Court Rules 301 and 303. On January 31, 2017,

the Illinois Appellate Court affirmed the circuit court's May 15, 2014 order denying Defendant's Amended Motion to Quash. (Def.'s Brief A73-78). On March 7, 2017, Defendant timely filed a petition for leave to appeal this matter to this Court pursuant to Illinois Supreme Court Rule 315 ("Petition for Leave"). This Court granted Defendant's Petition for Leave on May 24, 2017. (Def.'s Brief A79). This Court has jurisdiction over this matter pursuant to Illinois Supreme Court Rule 315.

III. ISSUE PRESENTED

1. Whether the circuit court erred in denying Defendant's Amended Motion to Quash and whether the Illinois Appellate Court erred in affirming the circuit court's denial of Defendant's Amended Motion to Quash where Defendant filed its Original Motion to Quash beyond the sixty (60) day statutory deadline for filing such motions set forth in Section 15-1506.6(a) of the Illinois Mortgage Foreclosure Law (the "IMFL")? *They did not.*

2. If the Court finds that Defendant timely challenged service of process, did the circuit court err in finding that Plaintiff's service of process on Defendant by publication was permissible and proper under Illinois law? *It did not.* The Illinois Appellate Court did not address this issue as it held that Defendant did not file its Original Motion to Quash within the sixty (60) day statutory deadline set forth in Section 15-1506.6(a) of the IMFL and affirmed on that basis.

IV. STANDARD OF REVIEW

A. The Court Should Apply a *De Novo* Standard of Review.

Where a circuit court's denial of a motion to quash service is based only on documentary evidence, as is the case here, this Court should apply a *de novo* standard of review. See *TCF Nat'l Bank v. Richards*, 2016 IL App (1st) 152083, ¶ 25 (1st Dist. 2016).

V. STATEMENT OF FACTS

After borrower Mark Laskowski (“Borrower”) defaulted on his repayment obligations on a residential mortgage loan (the “Loan”) related to the Property and failed to cure his default, Plaintiff initiated the underlying Foreclosure Action by filing a foreclosure complaint on June 11, 2010 (the “Foreclosure Complaint”). (C2-30). Interestingly, Borrower is not part of this appeal and does not contest Plaintiff’s foreclosure of the mortgage he granted on the Property to secure the Loan (the “Mortgage”), does not contest the circuit court’s July 5, 2012 judgment of foreclosure (“Judgment of Foreclosure”), does not contest the February 6, 2013 foreclosure sale of Property, and does not contest the circuit court’s June 19, 2014 order approving the foreclosure sale of the Property (“Order Approving Sale”). (C118-125; C564-565). Instead, Defendant—an out-of-state limited liability company, who apparently does not have a registered agent in Illinois, and whose interest in the Property is unclear—is the entity challenging Plaintiff’s lawful foreclosure through the instant appeal.

At the time Plaintiff filed the Foreclosure Complaint, Borrower was the record owner of the Property. (C2-30). Plaintiff named Defendant as a defendant in the Foreclosure Action due to a potential interest it may have had in the Property due to a “Memorandum and Affidavit of Equitable Interest” that was recorded in the Will County Records of Deeds on December 3, 2008 as Document Number R2008142827. (C2-30; C397-398). The “Memorandum and Affidavit of Equitable Interest” does not provide any contact information regarding Defendant or any information about how to locate Defendant. *Id.*

After Plaintiff filed the Foreclosure Complaint, Plaintiff, through its investigator and/or process server Daniel Walton of ProVest LLC (“Walton”), Illinois Department of

Professional Regulations #117-001336, attempted to locate Defendant. (C46-47). Walton conducted a due and diligent investigation to ascertain the whereabouts of Defendant or obtain a telephone number for Defendant. *Id.* In particular, Walton conducted: 1) a “Directory Assistance Search,” which confirmed that Defendant did not have a listed telephone number; 2) a search with the Secretary of State, which confirmed the Illinois Secretary of State had no record of Defendant; and 3) an address search, which did not reveal any addresses for Defendant. *Id.* Walton attested to his efforts, and in turn Plaintiff’s efforts, to locate Defendant in an “Affidavit of Due and Diligent Search.” *Id.* Despite Walton’s due and diligent search, he was not able to locate Defendant. *Id.* As a result, Plaintiff started the process to serve Defendant by publication. In doing so, Plaintiff filed an “Affidavit for Service by Publication” with the circuit court on July 1, 2010. (C40-42). Notice of the Foreclosure Action was then published in the Labor Record, a newspaper of general circulation that is printed and published in Will County, Illinois (the same county as where the Property is located), for three consecutive weeks beginning on July 15, 2017. *See* Certificate of Publication, which is part of the Supplemental Record.¹ The circuit court clerk also prepared, signed, and filed a “Certificate of Mailing Notice by Publication.” (C40-42; C61).

Despite service by publication, Defendant did not appear in the Foreclosure Action or file a response to the Foreclosure Complaint. Accordingly, Plaintiff filed a motion for default and motion for judgment on July 2, 2012. (C116-117). On July 5, 2012, the circuit

¹ On March 31, 2015, the Illinois Appellate Court allowed a motion to supplement the record with the Certificate of Publication. It is Plaintiff’s counsel’s understanding that the supplemental record was then filed with the Illinois Appellate Court on or around June 30, 2015. It is Plaintiff’s counsel understanding that the Certificate of Publication is document C584 of the supplemental record.

court granted Plaintiff's motion and entered the Judgment of Foreclosure against Defendant. (C118-125).

Pursuant to the Judgment of Foreclosure, a foreclosure sale of the Property was conducted on February 6, 2013. (C288-89). On April 12, 2013, Plaintiff filed a motion to approve the foreclosure sale, which Plaintiff noticed for hearing on April 18, 2013. (C295-305). On April 18, 2013, Defendant—for the first time—filed its appearance in the Foreclosure Action. (C312). That same day, the circuit court also dismissed the Foreclosure Action for want of prosecution. (C314). But on May 30, 2013, the circuit court vacated its dismissal for want of prosecution and noted that the dismissal for want of prosecution was “entered in error.” (C318).

On July 18, 2013—almost three years after Plaintiff served Defendant—Defendant filed its Original Motion to Quash. (C340-349). Defendant did not submit or file an affidavit in support of its Original Motion to Quash. *Id.* The circuit court denied Defendant's Original Motion to Quash on September 26, 2013, but granted Defendant twenty-eight (28) days to file an amended motion to quash. (C375). Defendant does not challenge the circuit court's denial of its Original Motion to Quash in this appeal. (C567). Defendant filed its Amended Motion to Quash on October 23, 2013. (C377-399). Defendant did not submit or file an affidavit in support of its Amended Motion to Quash. *Id.* The circuit court denied Defendant's Amended Motion to Quash on May 15, 2014. (C542). The circuit court then entered the Order Approving Sale on June 19, 2014, which concluded the Foreclosure Action. (C564-565). Defendant filed a notice of appeal on July 17, 2014 in which it appealed the circuit court's May 15, 2014 order denying its Amended

Motion to Quash. (C566-567). On January 31, 2017, the Illinois Appellate Court affirmed the circuit court's May 15, 2014 order.

Defendant now appeals the circuit court's May 15, 2014 order denying its Amended Motion to Quash and the Illinois Appellate Court's January 31, 2017 order affirming that order. For the below reasons, the reasons set forth by Plaintiff in the circuit court and in the Illinois Appellate Court, and the reasons set forth by the circuit court and Illinois Appellate Court, Defendant's instant appeal holds no water and fails as a matter of law. This Court should, therefore, affirm the lower courts' orders.

VI. ARGUMENT

A. Defendant's Amended Motion to Quash Was Time-Barred by Section 15-1506(a) of the Illinois Mortgage Foreclosure Law.

Defendant's Amended Motion to Quash was time-barred because Defendant did not file its Original Motion to Quash within the sixty (60) day statutory deadline set for in Section 15-1506.6(a) of the IMFL. As such, the circuit court correctly denied Defendant's Amended Motion to Quash and the Illinois Appellate Court correctly affirmed the circuit court's denial.

Section 15-1506.6(a) of the IMFL requires defendants in residential mortgage foreclosure actions, including Defendant in this case, to challenge service of process within sixty (60) days from the date they file their appearance in an action or participate in a hearing without filing an appearance (or seek to extend the sixty (60) day deadline for "good cause," which Defendant did not do in this case). *See* 735 ILCS 5/15-1505.6(a). Specifically, Section 15-1506.6(a) of the IMLF states as follows:

In any residential foreclosure action, the deadline for filing a motion to dismiss the entire proceeding or to quash service of process that objects to the court's jurisdiction over the person, unless extended by the court for good cause shown, is 60 days after the earlier of

these events: (i) the date that the moving party filed an appearance; or (ii) the date that the moving party participated in a hearing without filing an appearance.

735 ILCS 5/15-1505.6(a).

Section 15-1506.6(a) of the IMFL is clear and unambiguous, and unless a defendant seeks and receives an extension of the sixty (60) day deadline for “good cause,” which did not happen in this case because Defendant did not seek such extension, Section 15-1506.6(a) of the IMFL provides no exceptions to the sixty (60) day filing deadline. *See* 735 ILCS 5/15-1505.6(a); *see BAC Home Loans Servicing, LP v. Pieczonka*, 2015 IL App (1st) 133128, ¶ 12 (1st Dist. 2015) (explaining that Section 15-1506.6(a) unambiguously imposes a sixty (60) day deadline for the filing of motions to quash service of process from the time a defendant files an appearance). Illinois courts have made clear—and it is well settled—that motions to quash service in residential mortgage foreclosure actions that are filed beyond the sixty (60) day deadline set forth in Section 15-1506.6(a) are untimely and should be denied as such. *See Pieczonka*, 2015 IL App (1st) 133128 at ¶ 12 (affirming the circuit court’s denial of defendant’s motion to quash service because defendant filed his motion beyond the sixty (60) day deadline set forth in Section 15-1506.6(a) of the IMFL); *U.S. Bank Trust, N.A. v. Colston*, 2015 IL App (5th) 140100, ¶ 20 (5th Dist. 2015) (holding that defendant waived his right to challenge personal jurisdiction based on insufficient service of process because defendant did not file a motion to quash service within sixty (60) days of the date he first participated in the underlying foreclosure action).

Contrary to Defendant’s assertion, the clear and unambiguous language of Section 15-1506.6(a) of the IMFL does not set forth any basis for tolling the sixty (60) day filing deadline. *See* 735 ILCS 5/15-1505.6(a). In situations where statutory language is clear and unambiguous—as is the case with Section 15-1506.6(a) of the IMFL—courts must

apply the statute as written and they may not depart from the plain language of the statute and read into it exceptions, limitations, or conditions. *See Gaffney v. Board of Trustees of Orland Park Fire Protection Dist.*, 2012 IL 110012, ¶ 56 (Ill. Sup. Ct. 2012); *Poris v. Lake Holiday Property Owners Ass'n*, 2013 IL 113907, ¶ 47 (Ill. Sup. Ct. 2013). Accordingly, this Court should not read any tolling exception into Section 15-1506.6(a) of the IMFL as Defendant suggests. Instead, this Court should apply the plain language of the statute, and in doing so, the Court should find that Defendant did not timely file its Original Motion to Quash within the statutory deadline set forth in Section 15-1506.6(a) of the IMFL.

Here, there is no dispute—and the record makes clear—that Defendant filed its Original Motion to Quash more than sixty (60) days after it filed its appearance in the Foreclosure Action. Defendant filed its appearance in the Foreclosure Action on April 18, 2013. (C312). As such, Defendant had until June 17, 2013, pursuant to the clear and unambiguous language of Section 15-1506.6(a) of the IMFL, to file a motion to quash service—which it did not do. *See* 735 ILCS 5/15-1505.6(a). Defendant did not seek to extend June 17, 2013 filing deadline for “good cause” (nor did Defendant have any), nor did the circuit court extend June 17, 2013 filing deadline on its own motion. Despite the June 17, 2013 statutory filing deadline, Defendant did not file any motion to quash service until it filed its Original Motion to Quash on July 18, 2013—approximately 90 days after it filed its appearance in the Foreclosure Action on April 18, 2013 and approximately 30 days after Defendant’s deadline for filing a motion to quash service expired on June 17, 2013. *See* 735 ILCS 5/15-1505.6(a); (C312; C34-349). Accordingly, Defendant’s Original Motion to Quash—and in turn its Amended Motion to Quash—were untimely and barred

by Section 15-1506.6(a) of the IMFL. *See* 735 ILCS 5/15-1505.6(a); *Pieczonka*, 2015 IL App (1st) 133128 at ¶ 12; *Colston*, 2015 IL App (5th) 140100 at ¶ 20.

In support of its appeal, Defendant argues that the dismissal for want of prosecution should have tolled the sixty (60) day statutory filing deadline set forth in Section 15-1506.6(a) of the IMFL. *See generally* Def.'s Brief. But Defendant does not cite to any case that allows for any deviation from the plain language of Section 15-1506.6(a) of the IMFL nor does Defendant cite to any case where a court, in a residential mortgage foreclosure action, considered a motion to quash service timely filed pursuant to Section 15-1506.6(a) of the IMFL where such motion was filed beyond the sixty (60) day filing deadline set forth in that section where an extension of that deadline was not first obtained for "good cause." *Id.* Moreover, nothing prohibited Defendant from filing its Original Motion to Quash service within the sixty (60) day statutory filing deadline or from requesting an extension of that deadline within the sixty (60) day deadline. Defendant filed its appearance in the Foreclosure Action on April 18, 2013 and appeared before the circuit court that day. (C312; C314). Defendant does not explain why it did not file its Original Motion to Quash that day, nor does Defendant explain why it did not request an extension of the sixty (60) day deadline that day. *See generally* Def.'s Brief. In fact, Defendant has no explanation for not doing so and nothing prohibited Defendant from doing so. Defendant easily could have requested that the circuit court extend the sixty (60) day deadline in light of the dismissal for want of prosecution, but Defendant chose not to. Moreover, the circuit court vacated the dismissal for want of prosecution on May 30, 2013—which still left Defendant with more than adequate time to file its Original Motion to Quash by the June 17, 2013 statutory filing deadline or to file a motion requesting an

extension of that deadline. (C318). Defendant chose not to and it cannot explain why it waited until July 18, 2013 to file its Original Motion to Quash, especially considering that the circuit court noted that the dismissal for want of prosecution was “entered in error.” *Id.* Nothing in Section 15-1506.6(a) of the IMFL excuses Defendant’s failures. *Id.* Defendant also appears to suggest that the sixty (60) day filing deadline should be tolled because Defendant was diligent in its efforts to file its Original Motion to Quash. As explained above, nothing about Defendant’s efforts to comply with the sixty (60) day deadline appear diligent, but even if Defendant acted diligently as it suggests, nothing in the plain language of Section 15-1506.6(a) of the IMFL mentions anything about diligence or allowing for the tolling of the sixty (60) day deadline where a party argues it was diligent. *See* 735 ILCS 5/15-1505.6(a)

For the above reasons, the circuit court correctly denied Defendant’s Amended Motion to Quash and the Illinois Appellate Court correctly affirmed the circuit court’s denial. This Court should, therefore, affirm the lower courts’ orders.

B. Plaintiff Properly Effectuated Service of Process on Defendant in Accordance with the Illinois Code of Civil Procedure.

Even if Defendant’s Motion to Quash was not time-barred—which it was—this Court should still affirm the circuit court’s order denying Defendant’s Amended Motion to Quash and the Illinois Appellate Court’s Order affirming that order because Plaintiff properly effectuated service of process on Defendant in accordance with the Illinois Code of Civil Procedure.

In support of its instant appeal, Defendant asserts that it is a New Mexico limited liability company (“LLC”) without an appointed registered agent in the state of Illinois. *See generally* Def.’s Brief. As an out-of-state LLC without an appointed registered agent

in the state of Illinois, Defendant asserts that the Limited Liability Act (the “LLC Act”) required Plaintiff to serve process on Defendant by serving the Illinois Secretary State. *Id.* Defendant asserts that Illinois law did not permit Plaintiff to serve Defendant in any other manner. *Id.* Defendant is dead wrong. In fact, the LLC Act, on which Defendant relies, clearly, explicitly, and unambiguously permitted Plaintiff to serve Defendant by publication—as it did in this case—because service by publication is an acceptable method of service of process under the Illinois law. *See* 735 ILCS 5/2–206(a).

In its opening brief, Defendant points out that Section §1-50(a) of the LLC Act states that “[a]ny process, notice, or demand required or permitted by law to be served upon either a limited liability company or foreign limited liability company shall be served either upon the registered agent appointed by the limited liability company or upon the Secretary of State as provided in this Section.” 805 ILCS 180/1-50(a); *see* Def.’s Brief at 11-12. Defendant also points out that the LLC Act states that the “Secretary of State shall be irrevocably appointed as an agent of a limited liability company upon whom any process, notice, or demand may be served under any of the following circumstances . . . [w]henver the limited liability company shall fail to appoint or maintain a registered agent in this State.” 805 ILCS 180/1-50(b)(1); Def.’s Brief at 11-12. Defendant relies exclusively on these two sections of the LLC Act to support its assertion that the LLC Act required Plaintiff to serve process on Defendant by serving the Illinois Secretary of State. *See generally* Def.’s Brief. What Defendant conveniently fails to point out is that the LLC Act also provides that “[n]othing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law.” 805 ILCS 180/1-50(d).

As such, and contrary to Defendant's assertion, the LLC Act expressly permitted Plaintiff to serve Defendant by any manner permitted under Illinois law, including service by publication as service by publication is an acceptable method of service under Illinois law pursuant to Section 2-206(a) of the Illinois Code of Civil Procedure. *See* 805 ILCS 180/1-50(d); *see* 735 ILCS 5/2-206(a).

Section 2-206(a) of the Illinois Code of Civil Procedure expressly allows service by publication:

Whenever, in any action affecting property or status within the jurisdiction of the court, including an action to obtain the specific performance, reformation, or rescission of a contract for the conveyance of land, plaintiff or his or her attorney shall file, at the office of the clerk of the court in which the action is pending, an affidavit showing that the defendant resides or has gone out of this State, or on due inquiry cannot be found, or is concealed within this State, so that process cannot be served upon him or her, and stating the place of residence of the defendant, if known, or that upon diligent inquiry his or her place of residence cannot be ascertained, the clerk shall cause publication to be made in some newspaper published in the county in which the action is pending.

735 ILCS 5/2-206(a).

In applying Section 2-206(a), Illinois courts have made clear that service of process may be made by publication in an action affecting property where the plaintiff files an affidavit attesting that the defendant "on due inquiry cannot be found" and that "upon diligent inquiry" the defendant's place of residence cannot be ascertained. *See* 735 ILCS 5/2-206(a); *Richards*, 2016 IL App (1st) 152083 at ¶ 28. To challenge service by publication where a plaintiff files the requisite affidavit, a defendant must file a counter-affidavit attesting that he or should could have been found upon due inquiry. *See First Bank & Trust Co. of O'Fallon v. King*, 311 Ill.App.3d 1053, 1056-1057 (5th Dist. 2000) (rejecting defendant's challenge to service of process by publication where defendant failed

to submit a counter-affidavit in response to plaintiff's affidavit in which plaintiff attested that it conducted a due and diligent inquiry to find defendant and that upon due inquiry defendant could not be found); *Richards*, 2016 IL App (1st) 152083 at ¶¶ 31-38 (rejecting challenge to service by publication); *People ex rel. Waller v. Harrison*, 348 Ill.App.3d 976, 981-82 (2nd Dist. 2004) (courts require a defendant challenging service by publication to file a counter-affidavit stating that upon reasonable inquiry he or she could have been found).

Here, Defendant does not dispute—and cannot truthfully—that this action is an action that affects property located in Illinois as it is a foreclosure action relating to a mortgage granted on property in Illinois (*i.e.*, the Property). Accordingly, Section 2-206(a) applies to this case and permitted Plaintiff to serve Defendant by publication. *See* 735 ILCS 5/2-206(a). The records makes clear that Plaintiff complied with Section 2-206(a) in that it filed an “Affidavit of Due and Diligent Search,” in which Plaintiff, through its investigator and/or process server (*i.e.*, Walton), attested that after a due and diligent search it could not locate Defendant. (C46-47). Plaintiff, through Walton, further attested that it could not locate a telephone number for Defendant after conducting a “Directory Assistance Search,” could not find any records regarding Defendant with the Secretary of State, and could not locate an address for Defendant after conducting an address search. *Id.*

The record also makes clear that Plaintiff filed an “Affidavit for Service by Publication” with the circuit court on July 1, 2010; that notice of the Foreclosure Action was published in the Labor Record, a newspaper of general circulation that is printed and published in Will County, Illinois (the same county as where the Property is located), for

three consecutive weeks beginning on July 15, 2010 (“Certificate of Publication”); and that the circuit court clerk prepared, signed, and filed a “Certificate of Mailing Notice by Publication.” (C42: C61); *see* Certificate of Publication, which is part of the Supplemental Record.²

Defendant had two opportunities, first through its Original Motion to Quash and then through its Amended Motion to Quash (which is the subject of this appeal), to challenge the “Affidavit of Due and Diligent Search,” “Affidavit for Service by Publication,” Certificate of Publication, and “Certificate of Mailing Notice by Publication.” by submitting a counter-affidavit. (C518-527; C377-399). Defendant chose not to present any evidence whatsoever to contradict the “Affidavit of Due and Diligent Search,” “Affidavit for Service by Publication,” Certificate of Publication, or “Certificate of Mailing Notice by Publication.” *Id.* Instead, Defendant casually and conclusorily alleged that there was a “lack of a due and diligent search [by Plaintiff] to find” Defendant. (C341; C379). Defendant’s conclusory (and untrue) allegations, without more, are not sufficient—as a matter of law—to rebut the “Affidavit of Due and Diligent Search,” “Affidavit for Service by Publication,” Certificate of Publication, and “Certificate of Mailing Notice by Publication” and are not sufficient to quash service. *See King*, 311 Ill.App.3d at 1056-1057 (rejecting defendant’s challenge to service of process by publication where defendant conclusorily alleged that “[p]laintiff did not make a diligent effort to attempt to locate [her] whereabouts,” but where defendant did not challenge plaintiff’s affidavit that she could not be found). The circuit court thus correctly denied

² *See* footnote 1 above.

Defendant's Amended Motion to Quash on May 15, 2014 and the Illinois Appellate court correctly affirmed that order. This Court should, therefore, affirm the lower court's orders.

VII. CONCLUSION

For the reasons set forth above, the reasons set forth in the record, the reasons set forth by Plaintiff in the circuit court and in the Illinois Appellate Court, this Court should affirm the circuit court's May 15, 2014 order denying Defendant's Amended Motion to Quash and the Illinois Appellate Court's January 31, 2017 order affirming that order.

Date: September 14, 2017

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 15 pages.

/s/ Joseph D. Kern

Joseph D. Kern

NOTICE OF FILING

I, the undersigned attorney, under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, certify, depose, and say upon oath that on September 14, 2017, I electronically served on and electronically filed with the Clerk of the Illinois Supreme Court the foregoing BRIEF OF PLAINTIFF-APPELLEE THE BANK OF NEW YORK MELLON.

/s/Joseph D. Kern

Joseph D. Kern

CERTIFICATE OF SERVICE

I, the undersigned attorney, under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, certify, depose, and say upon oath that I caused three (3) copies the foregoing Notice of Filing and foregoing BRIEF OF PLAINTIFF-APPELLEE THE BANK OF NEW YORK MELLON to be served upon the below named parties at said addresses in a properly addressed, postage pre-paid envelope and deposited same in the U.S. Mail in Chicago, Illinois on September 14, 2017.

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