

# Illinois Official Reports

## Appellate Court

### ***HSBC Bank USA, National Ass'n v. Gonzalez, 2024 IL App (1st) 240378***

Appellate Court  
Caption

HSBC BANK USA, NATIONAL ASSOCIATION, as Trustee for Mortgage Pass-Through Certificates, MLMI Series 2006-A4, Plaintiff-Appellee, v. MARIO E. GONZALEZ; LAURA GONZALEZ; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; UNKNOWN OWNERS; and NON-RECORD CLAIMANTS, Defendants (Laura Gonzalez, Defendant-Appellant).

District & No.

First District, Sixth Division  
No. 1-24-0378

Filed

December 20, 2024

Decision Under  
Review

Appeal from the Circuit Court of Cook County, No. 18-CH-3649; the Hon. Patricia S. Spratt, Judge, presiding.

Judgment

Affirmed.

Counsel on  
Appeal

George Escareno, of Chicago, and Arthur C. Czaja, of Niles, for appellant.

Simon Fleischmann and Louis J. Manetti Jr., of Locke Lord LLP, of Chicago, for appellee.

Panel

JUSTICE GAMRATH delivered the judgment of the court, with opinion.  
Presiding Justice Tailor and Justice Hyman concurred in the judgment and opinion.

## OPINION

¶ 1 This appeal concerns a mortgage foreclosure judgment entered in favor of plaintiff HSBC Bank USA, National Association, as Trustee for Mortgage Pass-Through Certificates, MLMI Series 2006-A4 (HSBC), against defendants-mortgagors Mario E. Gonzalez and Laura Gonzalez, who are husband and wife. Laura appeals the circuit court’s order denying her amended motion to quash service, vacate foreclosure sale, and vacate void judgment (amended motion) pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2022)). On appeal, she asserts the circuit court erred in denying her amended motion because HSBC failed to strictly comply with the statutory requirements for effecting substitute service of process where the process was not mailed to the specific apartment unit that was her usual place of abode. We affirm.

## ¶ 2 BACKGROUND

¶ 3 On March 20, 2018, HSBC filed a mortgage foreclosure complaint against Mario and Laura regarding a property identified as “2816 West Washington Boulevard, Chicago, IL 60612.” HSBC alleged that Mario and Laura, as mortgagors, failed to make payments when due, and the unpaid principal balance totaled \$394,612.90. Mario was identified as personally liable for the deficiency, and HSBC sought to terminate Mario’s and Laura’s rights to possess the property. HSBC requested, *inter alia*, a judgment of foreclosure and sale, an order approving the foreclosure sale, and an order granting possession. HSBC attached to its complaint a copy of the mortgage and occupancy rider signed by Mario and Laura as borrowers. Both documents reflect a property address of “2816 W. Washington Blvd, Chicago, Illinois 60612,” and the occupancy rider expressly states that Mario and Laura agree that the property will be occupied as their principal residence. There is no reference to separate units within the property address.

¶ 4 On April 3, 2018, a process server filed an affidavit averring that on March 22, 2018, at 4:49 p.m., he personally served Mario with the mortgage foreclosure complaint and summons at “2816 West Washington Boulevard, Chicago, IL 60612.” Upon being served, Mario confirmed Laura lived with him at this address.

¶ 5 The process server filed a second affidavit, averring that he served Laura by substitute service on March 22, 2018, at 4:49 p.m., at “2816 West Washington Boulevard, Chicago, IL 60612,” through Mario, her “SPOUSE, a person residing therein who is of the age of 13 years or upwards.” The process server averred he informed Mario of the contents of the process and “mailed a copy of this process in a sealed envelope with postage paid addressed to the defendant at his/her usual place of abode.” The process server further averred that Mario “confirmed he lives at this address with Laura Gonzalez.”

¶ 6 On May 31, 2018, HSBC moved for a default judgment against defendants and mailed notice to them at 2816 West Washington Boulevard. Before the motion was heard, Mario filed an application for waiver of court fees, listing his address as “2816 W. Washington Blvd.,

Chicago, IL 60612.” He also filed *pro se* an appearance and answer listing the same address without any unit number.

¶ 7 On August 8, 2018, HSBC filed a motion for summary judgment against Mario and a motion for default judgment against Laura. Once again, in his response to the motion for summary judgment, as well as in his certification for exemption from e-filing, Mario listed his address as “2816 W. Washington Blvd.” without any unit number.

¶ 8 On November 7, 2018, the circuit court entered an order of summary judgment in favor of HSBC and against Mario. The court entered a separate order holding Laura in default. The court additionally entered a judgment of foreclosure on the property “2816 West Washington Boulevard, Chicago, IL 60612,” identifying the same legal description contained in HSBC’s complaint. The court found it had jurisdiction of the parties, and that service of process was done properly.

¶ 9 On November 8, 2018, the circuit court issued a notice of entry of default and judgment of foreclosure to Laura. The court mailed this to Laura at “2816 West Washington Boulevard, Chicago, IL 60612.”

¶ 10 On December 27, 2018, the Intercounty Judicial Sales Corporation filed a notice of sale, stating that the property would be sold at a public auction on February 8, 2019, at 11 a.m. Service of the notice was sent by mail to Mario and Laura at “2816 West Washington Boulevard, Chicago, IL 60612.” On January 14 and 18, 2019, and August 6, 2019, HSBC filed certificates of publication in the Chicago Daily Law Bulletin and Lawndale News respectively, providing notice of the sale.

¶ 11 The sale was stayed several times through most of 2019 on Mario’s motions alleging he had submitted a loan modification application to the bank. The attachments to Mario’s motions to stay the sale include a mortgage assistance application, which purports to have been signed by both Mario as the account holder and Laura as the co-account holder. The document identifies “2816 West Washington Boulevard, Chicago, IL 60612” as the property address. It also describes this address as the parties’ mailing address, a primary residence, and owner-occupied. No unit number is specified.

¶ 12 On November 8, 2019, the Intercounty Judicial Sales Corporation filed a certificate of sale, reflecting that the property was sold on October 30, 2019, to HSBC, the highest bidder. The circuit court confirmed the sale on November 26, 2019, and eviction proceedings commenced in 2022.

¶ 13 On June 20, 2023, Laura, through counsel, filed an appearance and emergency motion to quash service and vacate the foreclosure sale. On July 26, 2023, Laura filed an amended motion, adding a request to vacate the “void” judgment of foreclosure pursuant to section 2-1401 of the Code. Laura alleged the circuit court lacked personal jurisdiction over her because the process server failed to serve her at her “usual place abode,” which was specifically unit 1 of the building located at 2816 West Washington Boulevard. Laura stated: “At no point during the course of her ownership of the property” did she live in the basement unit or unit 2 of the building. According to Laura, mailing the summons and complaint to the subject property without identifying unit 1 did not strictly comply with statutory requirements for substitute service of process.

¶ 14 In support of the amended motion, Laura attached her affidavit, averring that she and her husband Mario purchased the property at 2816 West Washington Boulevard on April 22, 2004.

She averred there were three units in the building commonly known as the basement unit, unit 1, and unit 2. Mario and Laura’s primary residence was unit 1. They never occupied the entire building or other units, and Laura had “never been responsible for managing the financial affairs of [her] family.”

¶ 15 Laura averred she was never personally served with a copy of the summons or complaint. Nor did she receive them by mail. Laura was not aware of the foreclosure action until the Cook County Sheriff (Sheriff) came to the property to perform an eviction. She stated that the forcible entry and detainer paperwork referenced an individual unit at the property, and the Sheriff placed labels on the doors of each individual unit to specify each unit’s number.

¶ 16 Laura also attached the affidavit of Mario, who averred to the same facts, adding that he “concealed the fact that we had fallen into foreclosure from [Laura].” He confirmed that he and Laura resided only in unit 1 and never occupied the entire building or other units, despite owning the entire building. Laura also attached an eviction order entered in a separate forcible entry and detainer action, which states that HSBC was entitled to possession of “2816 West Washington Boulevard, Unit 1, Chicago, IL 60612.”

¶ 17 On November 14, 2023, HSBC filed a response to Laura’s amended motion, asserting the motion was barred by *laches* and that Laura failed to overcome the *prima facie* evidence of proper service of process on her. The circuit court agreed and, on January 22, 2024, denied Laura’s amended motion to quash, vacate foreclosure sale, and vacate void judgment filed pursuant to section 2-1401.

¶ 18 On appeal, Laura argues the circuit court erred in denying her amended motion because the substitute service was not mailed to her usual place of abode. Although it was mailed to the building she owned and resided in, the mailing did not specify unit 1. As such, the court lacked personal jurisdiction to enter the default judgment against her.

¶ 19 We disagree. The record shows Laura was served properly by substitute service through her husband Mario at their usual place of abode, and the process server mailed the summons and complaint to Laura at the residence in a manner reasonably likely to provide her with actual knowledge of the proceedings. This is sufficient to satisfy due process and for the court to exercise personal jurisdiction over Laura.

## ¶ 20 LEGAL STANDARD

¶ 21 Section 2-1401 of the Code provides a statutory procedure by which final orders and judgments can be vacated or modified more than 30 days after their entry. 735 ILCS 5/2-1401 (West 2022).

“Although a section 2-1401 petition is ordinarily used to bring facts to the attention of the trial court which, if known at the time of judgment, would have precluded its entry [citation], a section 2-1401 petition may also be used to challenge a purportedly defective judgment for legal reasons [citation].” *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 94 (2006).

A section 2-1401 petition is the proper vehicle by which to challenge a judgment as void for lack of personal jurisdiction. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002).

¶ 22 To enter a valid judgment, a court must have jurisdiction over both the subject matter and the parties. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. A judgment

entered by a court without jurisdiction over the parties is void and may be challenged at any time directly or collaterally. *Id.* We review *de novo* the circuit court’s ruling on a section 2-1401 petition claiming voidness due to a lack of personal jurisdiction. *Deutsche Bank National Trust Co. v. Hall-Pilate*, 2011 IL App (1st) 102632, ¶ 12.

¶ 23 Proper service of process may be had by substitute service  
“by leaving a copy at the defendant’s usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the contents of the summons, provided the officer or other person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his or her usual place of abode.” 735 ILCS 5/2-203(a)(2) (West 2022).

When substitute service is performed via the defendant’s abode, the return or affidavit of service must affirmatively state all these things and show strict compliance with every requirement of the statute. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 309-10 (1986).

¶ 24 Where the return of substitute service is challenged by a contradictory affidavit, and there is no counter affidavit to address this challenge, the return of service itself is not enough evidence. *Id.* at 312. Instead, the contradictory affidavit must be taken as true, and the service of summons must be quashed. *Id.* This said, a process server’s affidavit constitutes “*prima facie* evidence of service that cannot be set aside based upon an uncorroborated affidavit from the person served.” *Central Mortgage Co. v. Kamarauli*, 2012 IL App (1st) 112353, ¶ 28.

## ¶ 25 ANALYSIS

¶ 26 The parties do not dispute that the process server personally left a copy of the summons and complaint with Laura’s husband Mario on March 22, 2018, at the address “2816 West Washington Boulevard, Chicago, IL 60612.” They do not dispute that Mario and Laura resided together, or that Mario informed the process server that he and Laura lived at that address. Nor do they dispute that the process server signed an affidavit saying he mailed a copy of the complaint and summons to Laura at her “usual place of abode.” Rather, the crux of the dispute is whether the process server was required to specifically mail the process to “unit 1” for substitute service to be valid.

¶ 27 A defendant’s “usual place of abode” is generally a question of fact. *In re J.B.*, 2018 IL App (1st) 173096, ¶ 38. “No hard and fast definition of ‘usual place of abode’ can be laid down and each case must turn on its particular facts.” *United Bank of Loves Park v. Dohm*, 115 Ill. App. 3d 286, 289 (1983). There is a rebuttable presumption that the house where a party’s spouse and children reside is the party’s usual place of abode. *Id.* The ultimate consideration is whether substitute service at the chosen dwelling address was “reasonably likely to provide the defendant with actual notice of the proceedings.” *Id.*; *Department of Healthcare & Family Services ex rel. Sanders v. Edwards*, 2022 IL App (1st) 210409, ¶ 47.

¶ 28 We find the substitute service sufficient to confer the circuit court with personal jurisdiction over Laura, as the record overwhelmingly contradicts Laura’s claim that her usual place of abode was not 2816 West Washington Boulevard. The undisputed evidence shows Mario and Laura owned the entire building. The record contains mortgage-related documents that Laura and Mario signed, reflecting their address as 2816 West Washington Boulevard without

reference to a specific unit. In particular, the mortgage assistance application states that 2816 West Washington Boulevard is Mario and Laura's mailing address and primary residence. Laura signed this document and certified these facts.

¶ 29 Mario also filed multiple documents with the circuit court listing his address as 2816 West Washington Boulevard without a unit number. Given that Laura lived with Mario and Mario was served at this address, there is a rebuttable presumption that this residence was Laura's usual place of abode. See *Dohm*, 115 Ill. App. 3d at 289.

¶ 30 Laura argues there is "a dearth of case law in Illinois about whether a person's abode is an individual apartment unit within a multi-unit building, or the entire apartment building itself." Accordingly, she turns to out-of-state cases, which hold that serving a complaint on a person that resides in the same physical building as the defendant, but in a different residential unit, fails to satisfy the abode requirement. These cases are factually inapposite since there is no allegation substitute service was had on a stranger or performed in a different unit than where Laura and Mario resided together.

¶ 31 The undisputed facts show Laura's husband Mario was served personally at 2816 West Washington Boulevard. He accepted process for himself and on behalf of Laura and confirmed to the process server that he lived there with Laura. Had a neighbor been served in the basement unit or unit 2 of the building, Laura's argument might have merit. But the evidence shows this is not the case, making the out-of-state cases she cites distinguishable.

¶ 32 Alternatively, Laura seeks a remand, claiming her affidavit gives rise to a question of fact worthy of an evidentiary hearing. Not so. Even accepting Laura's protestation that her usual abode was unit 1, not the entire building, mailing the summons and complaint to her at 2816 West Washington Boulevard without a specified unit number was "reasonably likely" to provide Laura with actual knowledge of the proceedings. *Id.*; *Edwards*, 2022 IL App (1st) 210409, ¶ 47. This comports with due process.

¶ 33 Although Laura claims she never received the summons and complaint by mail, this does not vitiate the presumptive validity of the process server's affidavit. There is no evidence or allegation in the record that Laura could only receive mail if it was addressed to unit 1. In fact, we know Mario received multiple documents by mail addressed without a unit number. This makes sense, for it is a small building—three units at most—and Laura and Mario were the owners. They also repeatedly held out their address as 2816 West Washington Boulevard without listing a unit number. What is more, Mario confirmed for the process server that he lived at 2816 West Washington Boulevard with Laura. Laura also agreed to occupy 2816 West Washington Boulevard (no specific unit number) as her principal residence in the mortgage documents. Thus, despite Laura's protestations that 2816 West Washington Boulevard was not her usual place of abode, the undisputed evidence shows it was. No evidentiary hearing is necessary under these circumstances.

¶ 34 Laura's reliance on *Thill*, 113 Ill. 2d 294, does not convince us otherwise, for the facts are drastically different. *Thill* remanded for an evidentiary hearing because the substitute service return was defective in several essentials. The affidavit of service did not show that any summons was served, the affidavit failed to show that an additional copy of the summons was left at the abode for the defendant, and the affidavit did not state that a copy of the summons was subsequently mailed in a sealed envelope with postage fully prepaid to the defendant at the pertinent address. Here, there is nothing on the face of the process server's affidavit to show service was defective or noncompliant with the statutory requirements for substitute service.

Accordingly, we see no reason to remand for an evidentiary hearing.

¶ 35

#### CONCLUSION

¶ 36

Having determined that the process server validly effected substitute service on Laura, we hold the circuit court had jurisdiction to enter the default judgment against her.

¶ 37

Affirmed.