No. 126290

IN THE

SUPREME COURT OF ILLINOIS

MUNICIPAL TRUST AND SAVINGS BANK Plaintiff-Appellee, v. DENIS J. MORIARTY, MUNICIPAL TRUST AND SAVINGS BANK, as Trustee Under Provisions of a Trust Agreement Dated January 8, 2014, and Known as Trust No. 2487; LUCIEN SHERROD; THE CITY OF KANKAKEE; KANKAKEE ENVIRONMENT UTILITY SERVICE; UNKNOWN OWNERS; and NONRECORD CLAIMANTS, Defendants. (Denis J. Moriarty, Defendant-Appellant)	Appellate Court, Third Judicial Case No. 3-19-0016 Circuit Court, Kankakee Co., Illinois Twenty-first Judicial Circuit Circuit Court Number: 16-CH-258 The Honorable Ronald J. Gertz, Judge Presiding.

Defendant-Appellant Denis J. Moriarty's Additional Brief and Appendix

Oral Argument Requested

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II. STATEMENT AND NATURE OF THE CASE

Municipal Trust and Savings Bank ("the Bank") filed a commercial mortgage foreclosure case in Kankakee County, naming Denis J. Moriarty ("Moriarty"), borrower/mortgagor, as one of the defendants. Moriarty was "served" with process in Cook County, by a process server who had not been appointed. The Trial Court determined that service was proper, and the Appellate Court (Third District) agreed, ruling that a process server may properly serve a defendant anywhere in the state without appointment if the summons was issued from a county with a population of less than two million.

III. ISSUES PRESENTED FOR REVIEW

A. Whether the Third District's decision holding that a special process server may serve a defendant anywhere in the state "without special appointment" so long as summons was issued from a county "with a population less than 2,000,000" (2020 IL App (3d) 190016, ¶ 22) runs afoul of the plain language and meaning of 735 ILCS 5/2-202;

B. Whether the Third District's analysis and interpretation of 735 ILCS 5/2-202 runs afoul of the long-held interpretations and findings by the Second and First Districts;

C. Whether the Third District's interpretation of the statute runs afoul of its legislative history; and

D. Whether this Court should order the Bank to return to Moriarty the commercial properties it sold to itself because the lack of jurisdiction was apparent on the record, rendering the result of no *bona fide* purchaser.

IV. STATEMENT OF JURISDICTION

The confirmation order was entered by the Trial Court on July 17, 2017. On August 17, 2017, Moriarty objected to the manner in which he was served and filed a "Quash Service Judication" [sic], which the Trial Court denied on August 28, 2017.

On September 25, 2017, Moriarty filed a timely Notice of Appeal appealing the Trial Court's denial of that motion.

On April 26, 2018, the Third District granted Moriarty's Motion to Voluntarily Dismiss the appeal. (3-17-0646)

On May 21, 2018, Moriarty filed a 735 ILCS 5/2-1401 Petition which the Trial Court denied on September 21, 2018. Moriarty filed a Motion to Reconsider on October 22, 2018, which the Trial Court denied on December 17, 2018. On January 4, 2019, Moriarty filed a timely Notice of Appeal. The Third District issued its Opinion on May 4, 2020. Moriarty filed a Petition to Reconsider on May 26, 2020. That Petition was denied on June 9, 2020. On August 18, 2020, Moriarty filed a Petition for Leave to Appeal to the Illinois Supreme Court. The Petition was accepted on November 18, 2020.

The Trial Court's Opinion and Order were reviewable by the Appellate Court pursuant to the provisions of Illinois Supreme Court Rules 301 and 303. The Appellate Court's ruling is reviewable by the Illinois Supreme Court pursuant to the provisions of Illinois Supreme Court Rule 315.

V. STATUTE INVOLVED

750 ILCS 5/2-202 Persons authorized to serve process; place of service; failure to make return.

> (a) Process shall be served by a sheriff, or if the sheriff is disqualified, by a coroner of some county of the State. ... A sheriff of a county with a population of less than 2,000,000 may employ civilian personnel to serve process. In counties with a population of less than 2,000,000, process may be served, without special appointment, by a person who is licensed or registered as a private detective under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 or by a registered employee of a private detective agency certified under that Act as defined in Section (a-5). ...
> (a-5) Upon motion and in its discretion, the court may appoint as a special process server a private detective agency certified under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004. Under the appointment, any employee of the private detective agency who is registered under that Act may serve the process. The motion and the order of appointment must contain the number of the certificate issued to the private detective agency by the Department of Professional Regulation under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004.
> ...
> (b) Summons may be served upon the defendants wherever they may be found in the State, by any person authorized to serve process. An officer may serve summons in his or her official capacity outside his or her county, but fees for mileage outside the county of the officer cannot be taxed as costs. The person serving the process in a foreign county may make return by mail.

VI. STATEMENT OF FACTS

On December 14, 2016, the Bank filed a mortgage foreclosure complaint against Moriarty, Municipal Trust and Savings Bank as Trustee under provisions of a trust agreement dated January 8, 2014 and known as Trust #2487, Lucien Sherrod, City of Kankakee, Kankakee Environment Utility Service, Unknown Owners, and Non-Records Claimants. (C10-C213)

The Bank had a Summons issued by the Kankakee County Circuit Clerk for Moriarty for 5601 S. County Line Road, in Hinsdale, Illinois, an address located in Cook County, Illinois. (C243) The Third District misstates in its Opinion that the Bank listed Moriarty's residence in Kankakee County. (Opinion, ¶1) The address listed on the Summons was actually an address in Cook County. (C243)

On December 28, 2016, Ryan Leggott, a registered employee of Diligent Detective Agency, Ltd. served Moriarty at 1620 E. Harrison #703 South JRB in Chicago (Cook County) Illinois (at Rush Hospital). (C244) No motion or request for appointment of process server had been made by the Bank and the Trial Court had not appointed of a process server. (C2-9)

On January 23, 2017, the Bank filed a Motion for Entry of Judgment of Foreclosure and Sale, alleging, *inter alia*, that Moriarty had been personally served with process on December 28, 2016 and therefore that the Trial Court had personal jurisdiction over him. (C250, 254)

On January 30, 2017, the Trial Court entered a Judgment for Foreclosure and Sale, finding, *inter alia*, that Moriarty was personally served with process on December 28, 2016

and that Moriarty was in default for failure to answer or otherwise appear. (C290-350) The Trial Court specifically found that service of process in each instance (as to each Defendant) was properly made in accordance with the Illinois Code of Civil Procedure. (C290-291, C8, R3-4) The property was sold by the Bank to itself (Municipal Trust and Savings Bank). (C363-366, C367-370, C371-374)

On June 30, 2017, the Bank filed a confirmation motion. (C375-376)

On July 17, 2017, Moriarty filed an Appearance, pro se. (C381)

At a hearing on the Motion for Confirmation of Foreclosure Sale on July 17, 2017, the Bank's counsel admitted that Moriarty was served in the hospital in Chicago. (R8) The Bank's counsel stated to the Trial Court that all defendants were in default. (R10) The Trial Court noted that Moriarty had been served at 1620 East Harrison in Chicago. (R10)

When Moriarty appeared in Court on July 17, 2017 and objected to the entry of the Order Confirming Sale based on the fact that the Trial Court did not have jurisdiction over him, the Trial Court ruled that the Bank had complied with service requiring notice of public sale to all Defendants who had been served and not defaulted (R11-12) The Trial Court then ruled that because the Bank had complied with all they had to do to have the sale confirmed, the Court entered an Order Confirming Sale. (R15-16)

The record shows that the Bank, as Trustee, was the successful bidder. (Sheriff's Report of Sale – C371) There is no evidence in the record that the property has subsequently been sold.

Moriarty filed a motion to quash service of summons for improper service on August 17, 2017. (C384-386, R16) He also filed the Notice of Motion for hearing setting a hearing

on the Motion on August 28, 2017. (C387)

On August 28, 2017, the Trial Court denied Moriarty's motion, stating, "The Illinois law governs. It's not a different law in Chicago. The person can serve down here. They can serve anywhere in the State of Illinois." (R17) Moriarty objected to the Trial Court's finding, pointing out that that's not the case if there are more than two million people (as in Cook County) - then they have to be appointed. (R17) Moriarty offered to show the Trial Court the "paper work." (R17)

The Trial Court denied Moriarty's motion to quash, stating that "it is the sheriff of this county that determines how the process is going to be served because it's a Kankakee County case. The rule is no different in a city of two million than it is down here in a city of 200. It is the sheriff of the county where the suit is filed who determines how process gets served." (R18)

On September 25, 2017, Moriarty filed a timely Notice of Appeal appealing the Trial Court's denial of that motion.

On April 26, 2018, the Third District granted Moriarty's Motion to Voluntarily Dismiss the appeal. (3-17-0646)

On May 21, 2018, Moriarty filed a 735 ILCS 5/2-1401 Petition which the Trial Court denied on September 21, 2018. The Bank objected to Moriarty's 2-1401 Petition, but not on any grounds that the matter was moot or should be dismissed based on the voluntary dismissal in 3-17-0646. (C424-431, 432-441, 450-452)

On October 22, 2018, Moriarty filed a Petition pursuant to 735 ILCS 5/2-1401, along with his Affidavit. (C 402-410).The Bank filed a Brief in opposition to the Petition (C 424-

431) and a Response to the Petition and objections to affidavits. (C 432-443). The Court denied Moriarty's Petition and then denied Moriarty's Motion to Reconsider on December 17, 2018. Moriarty filed his Notice of Appeal on January 4, 2019.

The Third District denied Moriarty's appeal on May 24, 2020. Moriarty filed a Motion to Reconsider on May 26, 2020, which was denied on June 9, 2020.

Moriarty filed his Petition for Leave to Appeal on August 18, 2020. The Bank filed its Answer to Moriarty's Petition for Leave to Appeal on September 28, 2020. On November 18, 2020, the Illinois Supreme Court granted Moriarty's Petition for Leave to Appeal.

VII. ARGUMENT: The Third District misapplied the law, erring in its interpretation and application of the plain language and meaning of 735 ILCS 5/2-202, contradicting well–established law in the First and Second Districts and running afoul of the legislative history of the statute regarding service of process by holding that a defendant can be served with process in a county with a population of more than 2,000,000 by a process server that has not been appointed by the trial court so long as the summons is issued from a county with a population of less than 2,000,000.

When the Trial Court defaulted Moriarty and entered its Judgment of Foreclosure and Sale against him on January 30, 2017 and subsequent confirmation order (C-290-350), the Trial Court lacked jurisdiction over him because Moriarty had not been properly served, as required by 735 ILCS 5/2-202. As such, the Default Judgment and the Judgment of Foreclosure and Sale (C290-350) and the Order Placing Mortgagee in Possession (C351-C361) are void. The subsequent confirmation order entered by the Court on July 17, 2017 (C380-381) is void because there cannot be a confirmation order when the default judgment was void. Moriarty appeared on July 17, 2020 and objected to entry of the confirmation order and all prior orders entered against him as they were void because they relied on the prior judgments entered against him in violation of 735 ILCS 5/2-202.

The Court's review of a question of law is non-deferential and *de novo. Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 211.

As the Third District noted on page 4 of its decision, "[s]trict compliance with the statutes governing service of process is necessary." 2020 IL App (3d) 190016 ¶ 15 (citing *Sarkissian v. Chicago Board of Education*, 201 Ill.2d 95, 109 (Ill. 2002)).

Strict compliance with service of process is required, and a violation of the same makes the Judgment(s) entered void and subject to attack and vacation an any time, directly

or collaterally. *Sarkissian v. Chicago Board of Education* 201 Ill.2d 95, 109 (2002), *State Bank of Zurick v. Thill*, 113 Ill.2d 294, 308-309 (1986)

The Orders entered by the Trial Court finding Moriarty in default are void and this Court should vacate the Orders as void *ab initio.* Pursuant to its powers under Illinois Supreme Court Rule 366, this Court should order that the properties taken from Moriarty in violation of 735 ILCS 5/2-202 be returned to him, and additionally order the Bank to pay Moriarty's financial losses from the properties being unlawfully taken from him and sold to itself (and the income those commercial properties had generated), order the Bank to pay Moriarty's attorney's fees incurred in representing him all by a date certain, and for further sanctions against the Bank as this Court deems just and appropriate.

A. The Third District's ruling violates the plain language of 735 ILCS 5/2-202.

735 ILS 5/2-202(a) states, in relevant part: "In counties with a population of less than 2,000,000, process may be served, without special appointment, by a person who is licensed or registered as a private detective under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004-or by a registered employee of a private detective agency certified under that Act as defined in Section (a-5)."

735 ILCS 5/2-202(b) states, in relevant part: "(b) Summons may be served upon the defendants wherever they may be found in the State by any person authorized to serve process."

"Absent a general appearance, personal jurisdiction can be acquired only by service of process in the manner directed by statute." *State Bank of Lake Zurich v. Thill*, 113 Ill.2d 294 (1986), citing *In re: Marriageo f Hostetler*, 124 Ill.App.3d 31, 33 (1st Dist. 1984);

Mercantile All-In-One Loans, Inc. V. Menna, 63 Ill.App.3d 931, 937 (1st Dist. 1978), *Gocheff v. Breeding*, 53 Ill.App.3d 608, 609-610 (5th Dist. 1977). In this case, the parties admit and the Court found that Mr. Moriarty was served in Chicago, Cook County. (R10)

"Filing a written appearance and paying an appearance fee do not waive an objection to personal jurisdiction, because neither of those acts involves a responsive pleading or a motion (which are the only kinds of acts that can cause a waiver under section 2–301 (a–5))." *KSAC Corp. v. Recycle Free, Inc.*, 364 Ill. App. 3d 593, 596, 846 N.E.2d 1021, 1024 (2006). A court lacks jurisdiction over a party when service is flawed and the party has not voluntarily submitted himself to the jurisdiction of the court. *People v. Wallace*, 405 Ill.App.3d 984, 988 (2010).

735 ILCS 5/2-301 states: "Prior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear, a party may object to the court's jurisdiction over the party's person, either on the ground that the party is not amenable to process of a court of this State or on the ground of insufficiency of process or insufficiency of service of process, by filing a motion to dismiss the entire proceeding or any cause of action involved in the proceeding or by filing a motion to quash service of process." 735 ILCS 5/2-301(a).

The parties differ as to when the Trial Court gained jurisdiction over Moriarty, but Moriarty submits that in now way was there personal jurisdiction over him prior to him appearing in Court on July 17, 2017.

A party's voluntary submission to the circuit court's personal jurisdiction is prospective-only and does not retroactively validate prior orders entered without jurisdiction.

BAC Home Loans Servicing, LP v. Mitchell, 2014 IL 116311, ¶¶3-8.

In this case, Moriarty filed an entry of appearance on July 17, 2017, nearly six months after the Trial Court entered a default Judgment for Foreclosure and Sale against him (C290-350) and entered an Order Placing Mortgagee in Possession. (C351-361) The Trial Court's jurisdiction over Moriarty is only prospective - at earliest from July 17, 2017 – but arguably not even as early as that date. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶¶3-8.

"Section 202 of the Code requires that the private detectives serving process in Cook County be appointed by the trial court." *C.T.A.S.S.& U. Fed. Union v. Johnson*, 383 Ill.App.3d 909, 912 (1st Dist. 2008) (citing 735 ILCS 5/2-202 and *Schorsch v. Fireside Chrysler - Plymouth, Mazda, Inc.*, 172 Ill.App.3d 993, 996-98 (2nd Dist. 1988)).

Though the Third District noted that in statutory interpretation, "[w]e view the statute as a whole," the Third District goes on to then parse out and read the different sections of the same statute (735 ILCS 5/2-202) as if they are separate statutes addressing different issues. 2020 IL App 3d 190016, ¶ 17, citing *People v. Clark,* 2019 IL 122891, ¶ 20

In ¶ 21 of its Opinion, the Third District cites to a Second District case (*West Suburban Bank v. Advantage Financial Partners, LLC*, 2014 IL App (2d) 131146), for the proposition that "[w]hen read with subsection 2-202(b), subsection 2-202(a) 'governs who may serve process in Illinois.'" Id. at ¶¶ 12, 13-14. Setting aside that this is the same District that has ruled to the contrary, it is not clear how this supports the Appellate Court's decision. In *West Suburban Bank*, the defendant–appellant argued that service was defective because the process server was not properly licensed. *Id.* 2014 IL App (2d) 131146, ¶ 12.

735 ILCS 5/2-202(b) deals with who may serve process, "by any person authorized to serve process" and 735 ILCS 5/2-202(a) provides that a process server must be appointed to serve in a county (like Cook) with a population of more than 2,000,000.

The Appellate Court's comment in ¶ 19 of its decision that "[t]he term 'in counties' can refer to either the location at which the defendant is served or the venue where the case is pending" finds no support in the statute (or case law); "in counties" clearly refers to the county were service occurs, and the Appellate Court does not provide any authority here. That interpretation contradicts long-held interpretations and findings by the First and Second Districts, and runs foul of the plain language of the statute, which is clearly focused on where service occurs.

735 ILCS 5/2-202(a) refers to where service occurs – not where the case is pending. As Justice Schmidt correctly states in his concurrence, "[a] plain reading of subsection (a) of the statute reveals that in order to possess authorization to serve process in a county with a population of more than 2,000,000, the licensed or registered private detective must be appointed." 2020 IL App (3d) 190016, ¶ 29.

On page 7, the Third District asserts that subsection 2-202(b) has no limitation. ("It places no limitation on where authorized persons may serve defendants." 2020 IL App 3d 190016, ¶ 21.) However, that subsection of the statute clearly provides, as the Third District acknowledges, that the person serving must be *authorized* to serve process. 2020 IL App 3d 190016, ¶ 21 (citing 735 ILCS 5/2-202(b)). As Justice Schmidt notes, "[t]he majority's interpretation renders the portion of the statute [202(b)] meant to regulate who has authority to serve process in Cook County superfluous." 2020 IL App 3d 190016, ¶ 30

"Where service of process is not obtained in accordance with the requirements of the statute authorizing service of process, it is invalid, no personal jurisdiction is acquired, and any default judgment rendered against a defendant is void." *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc.,* 172 Ill.App.3d 993, 998 (2nd Dist. 1988) A foreclosure judgment entered without service of process is void. *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 12

The *Schorsch* Court noted:

> that from ***a plain reading of section 2–202***, a licensed or registered private detective is authorized to serve process without court appointment only in counties with a population of less than 1 million. Where service of process is not obtained in accordance with the requirements of the statute authorizing service of process, it is invalid, no personal jurisdiction is acquired, and any default judgment rendered against a defendant is void. (Emphasis added.) (*ITT Thorp Corp. v. Hitesman* (1983), 115 Ill.App.3d 202, 206, 70 Ill.Dec. 798, 450 N.E.2d 11; *Gocheff v. Breeding* (1977), 53 Ill.App.3d 608, 609–10, 11 Ill.Dec. 374, 368 N.E.2d 982; *County of Lake v. X–Po Security Police Services Inc.* (1975), 27 Ill.App.3d 750, 754, 327 N.E.2d 96.)

Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc., 172 Ill. App. 3d 993, 996–98 (2nd Dist. 1988)

Contrary to what the Third District decided, 735 ILCS 5/2-202(a) does not refer to where a case is filed (or where summons issues). The statute has nothing to do with where a case is filed. (That is an issue of venue, addressed in a different section of the Illinois Code of Civil Procedure: 735 ILCS 5/101 et seq.)

735 ILCS 5/2-202(a) and (b) refer to how process is served once a case has already been filed anywhere. It is not clear, linguistically, why the Appellate Court focused on the

county where summons is issued, as opposed to where the case is pending, or where the lawsuit was filed. 2020 IL App (3d) 190016 ¶ 23. Regardless, 735 ILCS 5/2-202(a) is clearly concerned with the county of service, not where the case is pending, or the county where summons is issued.

Read as a whole – the way the statute must be viewed – there should be no confusion that if a party is to be served in a county of more than 2 million people for a lawsuit filed anywhere in the State, then the service of process must be done by the sheriff or by a process server appointed by the Trial Court.

There is no dispute that Moriarty was served in Cook County, on a Kankakee County case, and that the process server had not been appointed at the time of service. No motion or request for appointment of special process server had been made by the Bank and the Trial Court had made no appointment of a special process server. (C2-9)

The Third District maintains on page 7 that Moriarty's position (that service of process in a county of more than 2 million must be done by a sheriff or an appointed process server) would create "an inconvenience." 2020 IL App 3d 190016, ¶ 21 It is not clear how the Third District is defining that term, or why "inconvenience" to a plaintiff means that compliance with a statute may be excused.

The Bank had summons issued for Moriarty for an address in Cook County. (C 18) The Summons issued to Moriarty attached to the Complaint set forth a Cook County address. (C 62) And Moriarty was "served" in Cook County (C 244), by which time Moriarty had been in Cook County for more than two months. (R 9) How was this inconvenient for the Bank? And if it was inconvenient, how is that relevant?

The Bank clearly knew or had reason to know that Moriarty was in Cook County - especially because the typed Summons listed a Cook County address (C 215). It would seem that all plaintiffs must be "inconvenienced" to some degree or another as to locating a defendant in order to serve him or her with process.

The Third District also maintains that Moriarty's position defies logic, asking the question why the legislature would provide broad authority to serve a defendant anywhere in the state if it intended to limit this authority by population of county where the defendant is served. 2020 IL App. (3d) 190016 ¶ 21. Subsection 2-202(b) provides that the summons may be served "...by any person authorized to serve process." Subsection 2-202(a) deals with who such an authorized person is.

Read as a whole, the statute is not inconvenient nor does it defy logic – it explains that if a defendant is going to be served in a county of more than 2,000,000 (i.e. Cook County), then that defendant must be served by a sheriff or by a process server specially appointed by the Trial Court.

As Section 202(b) states, "[S]ummons may be served upon the defendants wherever they may be found in the State, by any person authorized to serve process." 735 ILCS 5/202(b) That is, if, in this case, the Bank serves a defendant who is located in Kankakee County, then it could be done by a sheriff or by a process server. However, because the Bank served Moriarty in Cook County, then, in adherence to the statute, the Bank had to either have the Cook County sheriff serve him or have a process server specially appointed to serve him.

The Bank did neither, and therefore, the Trial Court did not obtain jurisdiction over

him when the process server (who was not specially appointed), handed Moriarty the Summons and Complaint. The Bank's failure to comply with the statute, read as a whole, means that the Bank did not obtain jurisdiction over Moriarty when it "served" him in Cook County, and therefore, the Court's actions taken prior to Moriarty appearing on July 17, 2017, are void. If the Judgment of Foreclosure and Sale fails, the order of confirmation must also fail.

The specially concurring opinion by Justice Schmidt concurred in judgment but not with the majority's analysis. 2020 Il App (3d) 190016, ¶28. Justice Schmidt would have relied on the absurd results doctrine to find that service of process in this case was appropriate, writing:

> In order to avoid either an absurd result or 'inconvenience,' I would find that the party requesting the summons must engage in a reasonable search to ascertain whether the party to be served is located in Cook County. If the party requesting the summons knows or could reasonably discover that the party to be served is in Cook County, compliance with the statute is required. However, if a reasonable search fails to provide notice that the registered or licensed private detective would need to serve process in Cook County, and instead due diligence leads to the county, compliance is unnecessary.

2020 IL App (3d) 190016, ¶ 31

Setting aside that the statute does not speak of any such 'reasonable search' requirement, and how such a framework would be enforced, the definition of "reasonable" is stated nowhere in the statute. The Summons prepared by the Bank, attached to the Complaint for Foreclosure, listed the address of the Moriarty in Cook County, Illinois. (C62) Moriarty was "served" in Cook County (C 244), by which time Moriarty had been in Cook County for more than two months. (R 9) The Bank clearly knew that Moriarty was in Cook

County - because the Bank prepared the Summons that listed Moriarty at a Cook County address. (C220) The Summons prepared by the Bank and issued by the court clerk was for an address located in Cook County, Illinois (C 218) and Moriarty was served in Cook County at Rush Hospital in Chicago. (C 244) Additionally, how could the private process server have located Moriarty at Rush Hospital in Cook County without reasonable information leading him there?

Defects in service are neither "technical" nor insubstantial. *West Suburban Bank v. Advantage Financial Partners, LLC*, 2014 Il.App. (2d) 131146, ¶ 20. Where a private detective who is not appointed as required by section 735 ILCS 5/2-202 serves process on a defendant in Cook County, then the court lacks personal jurisdiction over the defendant and any default judgment entered against the defendant is void. *Universal Underwriters Ins. Co. v. Judge & James, Ltd.*, 372 Ill.App.3d 372, 383 (1st Dist. 2007); *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc.*, 172 Ill.App.3d 993, 998 (2nd Dist. 1988).

As the *Schorsch* Court succinctly puts it, failure to comply with the statutory requirement of service of process in a county of more than 2 million renders the default judgment entered against the defendant void:

> We conclude that from a plain reading of section 2–202, a licensed or registered private detective is authorized to serve process without court appointment only in counties with a population of less than 1 million. Where service of process is not obtained in accordance with the requirements of the statute authorizing service of process, it is invalid, no personal jurisdiction is acquired, and any default judgment rendered against a defendant is void.

Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc., 172 Ill.App.3d 993, 998 (2nd Dist. 1988).

Justice Schmidt also argued in this case that the a default judgment against Moriarty cannot follow because of the "absurd result" that such a ruling would create.

The absurd results doctrine does not apply.

As the United States Supreme Court has noted, "interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982).

As Justice Freeman noted in his concurrence in *In re DF*, 208 Ill. 2d 223, 249-250 (Ill. 2003):

> As the West Virginia Supreme Court explained in *Taylor -Hurley v. Mingo County Board of Education*, 209 W. Va. 780, 788, 551 S.E.2d 702, 710 (2001), "[t]he absurd results doctrine merely permits a court to favor an otherwise reasonable construction of the statutory text over a more literal interpretation where the latter would produce a result demonstrably at odds with any conceivable legislative purpose. It does not, however, license a court to simply ignore or rewrite statutory language on the basis that, as written, it produces an undesirable policy result." I also note the cautionary statement in Sutherland on Statutory Construction that "the absurd results doctrine should be used sparingly because it entails the risk that the judiciary will displace legislative policy on the basis of speculation that the legislature could not have meant what it unmistakably said. 2A N. Singer, *Sutherland on Statutory Construction* § 46:07; at 199 (6th ed. 2000).

Justice Schmidt, in ¶ 29, states that "[c]learly, the legislature wished to impose limitations on who has authority to serve process in Cook County." 2020 IL App (3d) 190016, ¶ 29 (citations omitted). There is only one interpretation of the statute ("the clear legislative intent"; ¶ 30). There are not various interpretations, certainly not any producing "an absurd or unjust result." 2020 IL App (3d) 190016 ¶ 31. As such, the doctrine cannot

apply.

Also, what would the "absurd result" be?

A "reasonable search" is not part of 735 ILCS 5/2-202. At the bottom of page 10, Justice Schmidt indicates that the subject properties and Moriarty's last known address were in Kankakee. 2020 IL App(3d) 190016, ¶ 33. However, the Summons issued to Moriarty attached to the Complaint listed the address of Moriarty as one in Cook County (C 62), and the address listed on the summons prepared by the Bank and issued by the court clerk was for an address located in Cook County (C 218), where Moriarty was residing, prior to "service," for months. (R 9) The Bank clearly knew that Moriarty was in Cook County given that it issued the Summons to him at an address in Cook County.

Justice Schmidt notes that the majority's Opinion in interpreting the statute renders portions of the statute meant to regulate who has authority to serve process in Cook County superfluous. (Opinion, ¶30) . But, as noted in *In re DF*, 208 Ill. 2d 223, 249-250 (Ill. 2003) above, that does not give the Third District license to simply ignore or rewrite statutory language on the basis that, as written, it produces an undesirable policy result. The Third District's ruling does just as Justice Freeman warned against in *In re DF*, 208 Ill.2d223, by "displac[ing] legislative policy on the basis of speculation that the legislature could not have meant what it unmistakably said." *In re DF*, 208 Ill. 2d 223, 249-250 (Ill. 2003).

Moriarty was not properly served and the Trial Court had no jurisdiction over him when it entered the Judgment of Foreclosure and Sale and confirmation order because the Court had no jurisdiction over Moriarty when the default judgment was entered, and as such, those orders are void.

B. The Third District's analysis and interpretation of 735 ILCS 5/2-202 run afoul of the long-held interpretations and findings by the Second and First Districts.

In fact, prior to the Third District ruling in this case that service on Moriarty was proper, the law (735 ILCS 5/2-202) had been consistently applied to require the appointment of a process server to serve a defendant in Cook County - no matter in what county the suit had been filed.

There had not been a conflict between any of the districts of the Appellate Court. The Third District's ruling is in conflict with the holdings of the Second and First Districts. As the Appellate Court has held until the Third District ruling in this case, "[t]he plain language of the statute was clearly concerned with where the service takes place — "In counties with a population of less than 1,000,000" — not where the case is pending. There was no reference in section 2–202(a) to the county in which the case is pending. *U.S. Bank Nat. Ass'n v. Rahman,* 2016 IL App (2d) 150040, ¶ 34

In *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc.*, the Appellate Court also held,

> [w]e conclude that from a plain reading of section 2–202, a licensed or registered private detective is authorized to serve process without court appointment only in counties with a population of less than 1 million. Where service of process is not obtained in accordance with the requirements of the statute authorizing service of process, it is invalid, no personal jurisdiction is acquired, and any default judgment rendered against a defendant is void.

Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc., 172 Ill. App. 3d 993, 998 (2nd Dist. 1988)

The First District has also interpreted the statute at issue in this case and held

"Section 2–202 of the Code requires that private detectives serving process in Cook County be appointed by the trial court. 735 ILCS 5/2–202 (West 2002) ... [The] well-established rule in Illinois that strict compliance with statutes governing service of process is required." *C.T.A.S.S. & U. Fed. Credit Union v. Johnson*, 383 Ill. App.3d 909, 912 (1st Dist. 2008) (citations omitted) (interpreting 735 ILCS 5/2–202).

While it does not appear that the First District has addressed the issue of service in Cook County on a non-Cook County case under the 735 ILCS 5/2-202 framework (in a matter of practicality it would never happen since the First District only deals with cases that arise out of Cook County), there is an apparent conflict and disagreement between the First and Third Districts, based on the fact that the first district case *(C.T.A.S.S. & U. Fed. Credit Union v. Johnson*, 383 Ill. App.3d 909 (1st Dist. 2008) cites to *Schorsch* with approval regarding the fact.

Similar to the case *sub judice*, in *Schorsch,* the plaintiff argued that pursuant to subsection (b) of section 2–202, summons may be served upon a defendant wherever he may be found in the State by any person authorized to serve process. She argued that reading subsections (a) and (b) together, the logical inference is that the county in which the lawsuit is filed controls the authority of the process server, not the county in which service is made. Thus, because the lawsuit was filed in DuPage County, Illinois, the restriction in subsection (a) permitting service by private detectives only in counties of less than 1 million population is inapplicable.

The *Schorsch* Court found that argument to be unpersuasive, and the Illinois Supreme Court should too.

The legislature has not changed that statute regarding who may serve process since the decision in *Schorsch* was made in 1988, and the Third District is without authority to modify the statute by choosing to change the interpretation that has been in place for more than three decades.

In case after case, in both the First and Second Districts, the interpretation of the statute has been held to require the appointment of a special process server when a defendant is served in Cook County by anyone other than a sheriff's deputy, ***regardless of where the lawsuit is filed*** – whether that was made by the Second District, in *Schrosch v. Fireside Chrysler-Plymouth, Mazda, Inc.*, 172 Ill.App.3d 993, 998 (2nd Dist. 1988), *U.S. Bank Nat'l Ass'n v. Rahman*, 2016 IL App (2d) 150040 ¶24), and *W. Suburban Bank v. Advantage Fin. Partners, LLC*, 2014 IL App (2d) 131146, ¶ 17; or in the First District, in *C.T.A.S.S. & U. Fed. Credit Union v. Johnson*, 383 Ill. App. 3d 909, 912 (1st Dist. 2008).

The Third District, for the first time and different from all of the other Appellate Court opinions that have interpreted this statute, chose to interpret the statute differently than any other Appellate Court has interpreted the statute and different from how the legislature intended the statute to be interpreted (as cited by the *Schrosch* Court).

This Court should reverse the Third District's ruling and find that because Moriarty was served in Cook County by a process server who was not appointed by the Trial Court, service was not proper and the default judgment as well as all subsequent orders entered are void; and further that the Trial Court's ruling denying Moriarty's 2-1401 Petition should be reversed and orders should be entered consistent with his Petition and as permitted pursuant to Illinois Supreme Court Rule 366.

C. The Third District's interpretation of the statute runs afoul of the legislative history.

On page 8 of its Opinion, the Appellate Court indicated that the Second District "...relies primarily on the legislative debates ..." 2020 IL App (3d) 190016, ¶ 22. That is not the case. The Second District found the language of 735 ILCS 5/2-202(a) clear and unambiguous, delving into the legislative history merely to bolster its position. As the *Rahman* court noted:

> While *Schorsch* referenced historical notes and legislative debates outside of the language of the statute to bolster its interpretation, these reference were not essential to its holding based on the plain language of the statute.

U.S. Bank Nat. Ass'n v. Rahman, 2016 IL App (2d) 150040, ¶ 34.

As the *Schorsch* Court noted,

> subsection (a) of section 2–202 is concerned with who is authorized to serve process. Subsection (b) is concerned with the place of service. The recent legislation adding the provision permitting service of process by a licensed or registered private detective without court appointment clearly limits the authority of the private detective to serve process in counties with a population of less than 1 million. Thus, while subsection (b) allows process to be served upon a defendant wherever he may be found in the State, the provision further provides that it be 'by any person authorized to serve process,' thus referring to subsection (a).

The interpretation that the Third District adopted was the same one that the Second District rejected in a case cited by the Appellate Court in ¶¶ 22 and 29 of its Opinion, *U.S. Bank Nat'l Ass'n v. Rahman*, 2016 IL App (2d) 150040:

> We reject the Badermans' invitation to reinterpret section 2-202(a) to hold that the relevant county is the county in which the case is pending. The Badermans' disagreement with *Schorsch* is misplaced. *Schorsch* rightly held that, under the plain language of section 2-

> 202(a), service by a special process server was authorized without a court appointment only in a county with a population of less than 1 million. Section 2-202(a) provided that "[i]n counties with a population of less than 1,000,000, process may be served, without special appointment," by certain licensed or registered persons. 735 ILCS 5/2-202(a) (West 2008). The plain language of the statute was clearly concerned with where the service takes place—"In counties with a population of less than 1,000,000"—not where the case is pending. There was no reference in section 2-202(a) to the county in which the case is pending. Other appellate courts have cited *Schorsch's* interpretation approvingly. See *Malarz*, 2015 IL App (2d) 140639, ¶ 39; *C.T.A.S.S.&U. Federal Credit Union v. Johnson*, 383 Ill. App. 3d 909, 912 (2008) (section 2-202 requires that a private detective serving process in Cook County be appointed by the trial court).

U.S. Bank Nat'l Ass'n v. Rahman, 2016 IL App (2d) 150040 ¶ 34.

The Third District acknowledges its role in interpreting a statute, as the Court is called to do so in this case: "'When interpreting a statute, the court's primary objective is to ascertain and give effect to the intent of the legislature.' *Van Dyke v. White*, 2019 IL 121352 ¶ 46" 2020 IL App (3d) 190016 ¶17. However, the Third District then goes on to ignore the intent of the legislature, which was included in the Second District's *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc.*, 172 Ill.App.3d 993, 996-998 (1988):

> [T]he supplement to historical and practice notes for subsection (a) indicates that the provision permitting service of process by a licensed or registered private detective without a special appointment by the court is permitted 'if the process is to be served in a county with a population of less than 1,000,000, thus facilitating a practice frequently found useful outside of the most populated areas of the state.' (Ill.Ann.Stat., ch. 110, par. 2–202(a), Supplement to Historical and Practice Notes, at 28 (Smith–Hurd Supp.1988).) Such commentary is helpful when ascertaining legislative intent. (*Schutzenhofer v. Granite City Steel Co.* (1982), 93 Ill.2d 208, 212, 66 Ill.Dec. 637, 443 N.E.2d 563.) Further, debate on the floor of the General Assembly at the time the bill was being considered to authorize private detectives to serve process reveals a legislative

> intent that it was not intended that private detectives be allowed to serve process in Cook County. (See 85th Ill.Gen.Assem., Senate Proceedings, June 21, 1985, at 18 (statements of Senator Sangmeister).) Originally, this bill authorizing private detectives to serve process applied to all Illinois counties, but the amendment to Public Act 84–942, (Pub.Act 84–942, eff. Sept. 25, 1985 (amending Ill.Rev.Stat.1983, ch. 110, par. 2–202)) limited this authorization, in its application, to counties with a population of less than 1 million, thereby indicating a legislative intent to exclude Cook County from those counties in which process may be served by a private detective without special appointment by the court. (85th Ill.Gen.Assem., Senate Journal, at 3469.)

Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc., 172 Ill.App.3d 993, 996–98 (2nd Dist. 1988).

Even if there is ambiguity in the statute, the legislative history reveals that the legislative intent was that a process server be appointed before serving process in Cook County. *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc.*, 172 Ill.App.3d 993, 997 (2nd Dist. 1988).

D. Because the lack of jurisdiction was apparent on the face of the pleadings, there was no *bona fide* purchaser and the Court should order the Bank (who was the purchaser for Moriarty's properties) to return the properties to Moriarty.

Though not addressed by the Appellate Court in its Opinion, in the interest of judicial economy and pursuant to Illinois Supreme Court Rule 366, this Court should find that there was no *bona fide* purchaser of the properties unlawfully foreclosed on because the lack of jurisdiction was apparent on its face (in the record) and order that the real estate unlawfully taken from Moriarty be returned to him along with payment of lost income from the commercial property since the property was placed in the Bank's possession, attorney's fees, and sanctions as the Court deems just and appropriate.

"Innocent third-party purchasers are not protected from setting aside a judicial sale where a lack of personal jurisdiction affirmatively appears on the face of the record." *Concord Air v. Malarz*, 2015 IL App. (1st) 140639, ¶ 41.

To determine whether a lack of jurisdiction is apparent from the record, the Court must look to the whole record, including the pleadings, the return on the process, and the judgment of the Court. If the jurisdictional defect does not require inquiry beyond the face of the record, a *bona fide* purchaser cannot prevent a collateral attack on the judgment. (*Concord Air v. Malarz*, 2015 IL App. (1st) 140639, ¶ 42, *State Bank of Lake Zurich v. Thill*, 113 Ill.2d 294, 314 (1986) In this case, the lack of personal jurisdiction affirmatively appears on the face of the record where the service of summons provides the address in Chicago. (C242) And nowhere in the record is there a motion to appoint a special process server or an order appointing a special process server.

The improper service on Moriarty was apparent on the face of the record, which shows that service was performed by a private process server in Chicago, located in Cook County, and that there was no motion for appointment of a process server nor appointment of a process server from the Trial Court.

The foreclosure should be set aside because there was no valid judgment entered, and that evidence is clear on the face of the record.

West Suburban Bank v. Advantage Financial Partners, LLC held that the statutes governing the setting aside of foreclosure judgments apply only to valid judgments entered with jurisdiction over the parties and the subject matter. *West Suburban Bank v. Advantage Financial Partners*, LLC, 2014 IL App (2d) 131135, ¶ 25. Without a valid judgment entered

with jurisdiction over Moriarty, the Illinois Mortgage Foreclosure Law does not preclude a collateral attack on the judgment based on a lack of personal jurisdiction. *(West Suburban Bank v. Advantage Financial Partners*, LLC, 2014 IL App (2d) 131135, ¶19)

As the *West Suburban Bank* Court stated,

> "[a] judgment entered without jurisdiction over the parties is void *ab initio* and lacks legal effect. *(Village of Algonquin v. Lowe*, 2011 Il App. (2d) 100603, ¶24; *Bell Federal Savings & Loan Ass'n v. Horton*, 59 Ill.App.3d 923-928-29)) Even if the legislature had the power to make a void judgment effective, nothing in section 15–1509 [of the Mortgage Foreclosure Law] indicates that the legislature sought to make foreclosure judgments take effect and deprive owners of their properties when the trial court lacked personal jurisdiction over the owners." (*Deutsche Bank National Trust Co. V. Brewer*, 2012 IL App. (1st) 111213 ¶ 15)

West Suburban Bank v. Advantage Financial Partners, LLC, 2014 IL App (2d) 131146, ¶ 25

Accordingly, the reviewing court held that the strictures governing the setting aside of foreclosure judgments apply only to "valid judgments entered with jurisdiction over the parties and the subject matter." *Id.;* see also *MB Financial Bank, N.A. v. Ted & Paul LLC*, 2013 IL App. (1st) 122077 ¶ 19)

The third party purchaser of the properties (who is the Bank (C363-366, C367-370, C371-374), is not a *bona fide* purchaser because it is and was apparent from the record that Moriarty had not been properly served, and therefore the Judgment of Foreclosure and Sale and confirmation order are void *ab initio*. Without a Judgment of Foreclosure, one cannot sell the properties, as the Bank did, in violation of the law.

VIII. CONCLUSION

WHEREFORE, for the reasons stated herein, Defendant-Appellant Denis J. Moriarty prays that this Court: reverse the Third District's ruling affirming the Trial Court's denial of Moriarty's 2-1401 Petition, along with the orders granting Judgment of Foreclosure and Sale, Order Confirming Sale, and all other orders entered by the Trial Court and remand the case to the Trial Court for entry of orders consistent with the reversal of the Trial Court's orders, order the properties that had been sold by Plaintiff-Appellee Municipal Trust and Savings Bank be returned to Moriarty, and further relief as requested in Moriarty's 2-1401 Petition.

Alternatively, Defendant-Appellant Denis J. Moriarty prays that this Court reverse the Third District's ruling affirming the Trial Court's denial of Moriarty's 2-1401 Petition, along with orders consistent with the reversal of the Trial Court's orders and for such further and other relief as this Court deems just and equitable.

Respectfully Submitted,
DENIS J. MORIARTY, Defendant-Appellant

By: /s/ Ruth E. Wyman
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IX. CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 315(h), Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and 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 29 pages.

/s/ Ruth E. Wyman
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PROOF OF SERVICE (By Attorney)

I, as the attorney for the Defendant-Appellant Denis J. Moriarty, under penalties of perjury as provided by Section 1-109 of the Illinois Code of Civil Procedure, certify that I caused to be served the original of the Defendant-Appellant Denis J. Moriarty's Additional Brief and Appendix, upon the following person(s):

Clerk of the Supreme Court of Illinois
Supreme Court Building
Springfield, IL 62701
By: Efile on December 23, 2020

and a copy of the same to the following person(s):

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Attorney Kendra Karlock
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and a copy of the same to the following person(s):

Municipal Trust & Savings Bank Trust
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Lucien Sherrod
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by depositing them in the United States mailbox located at 202 S. Broadway in Urbana, Illinois, at approximately 4 pm with the complete address showing on the envelope and proper postage prepaid on December 23, 2020

/s/ Ruth E. Wyman

VERIFICATION

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 his instrument are true and correct.

/s/ Ruth E. Wyman

No. 126290

IN THE

SUPREME COURT OF ILLINOIS

MUNICIPAL TRUST AND SAVINGS BANK Plaintiff-Appellee, v. DENIS J. MORIARTY, MUNICIPAL TRUST AND SAVINGS BANK, as Trustee Under Provisions of a Trust Agreement Dated January 8, 2014, and Known as Trust No. 2487; LUCIEN SHERROD; THE CITY OF KANKAKEE; KANKAKEE ENVIRONMENT UTILITY SERVICE; UNKNOWN OWNERS; and NONRECORD CLAIMANTS, Defendants. (Denis J. Moriarty, Defendant-Appellant)	) Appellate Court, Third Judicial) Case No. 3-19-0016))) Circuit Court, Kankakee Co., Illinois) Twenty-first Judicial Circuit) Circuit Court Number: 16-CH-258)))))))) The Honorable Ronald J. Gertz,) Judge Presiding.

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2020 IL App (3d) 190016

Opinion filed May 4, 2020

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2020

MUNICIPAL TRUST AND SAVINGS BANK, Plaintiff-Appellee, v. DENIS J. MORIARTY; MUNICIPAL TRUST AND SAVINGS BANK, as Trustee Under Provisions of a Trust Agreement Dated January 8, 2014, and Known as Trust No. 2487; LUCIEN SHERROD; THE CITY OF KANKAKEE; KANKAKEE ENVIRONMENT UTILITY SERVICE; UNKNOWN OWNERS; and NONRECORD CLAIMANTS, Defendants (Denis J. Moriarty, Defendant-Appellant).	Appeal from the Circuit Court of the Twenty-first Judicial Circuit, Kankakee County, Illinois. Appeal No. 3-19-0016 Circuit No. 16-CH-258 The Honorable Ronald J. Gertz, Judge, presiding.

JUSTICE McDADE delivered the judgment of the court, with opinion.
Justice Holdridge concurred in the judgment and opinion.
Justice Schmidt specially concurred, with opinion.

OPINION

¶ 1 This appeal concerns whether defendant, Denis J. Moriarty, was properly served under section 2-202 of the Code of Civil Procedure (Code) (735 ILCS 5/2-202 (West 2016)). Plaintiff, Municipal Trust and Savings Bank, filed a complaint to foreclose a mortgage against, *inter alia*,

defendant. Plaintiff issued summons from Kankakee County, listing defendant's residence in Kankakee County. The trial court entered a default judgment against defendant when he did not file an answer and failed to appear. Defendant filed a notice of appeal, which he later dismissed.

¶ 2 Seven months after the confirmation of the foreclosure sale, defendant filed a section 2-1401 (735 ILCS 5/2-1401 (West 2016)) petition challenging the judgment as void. He argued that service of process was improper, and therefore, the trial court lacked jurisdiction to enter the void judgment. He also argued that all subsequent decisions were also void. The trial court found that process was proper and denied defendant's petition.

¶ 3 Defendant now appeals. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On December 14, 2016, plaintiff filed a complaint for foreclosure against defendant. The complaint was filed in Kankakee County, where defendant resided and where the mortgaged real estate is located. Ryan Leggott, a registered employee of Diligent Detective Agency, Ltd., served defendant on December 28, 2016 at Rush Hospital in Cook County, Illinois. Plaintiff made no motion for appointment of process server, and the trial court had made no appointment.

¶ 6 Defendant never filed an answer to the complaint. Plaintiff filed a motion for entry of judgment of foreclosure and sale on January 23, 2017. On January 30, 2017, the trial court entered a judgment, finding, *inter alia*, that defendant was personally served with process and was in default by failing to answer the complaint or otherwise appear. The court specifically found that service of process was properly made in accordance with the Code. The court also entered a personal money judgment in plaintiff's favor and against defendant in the amount of $54,383.85, with an additional $5936 in attorney fees and costs. The redemption period was set to end on June 19, 2017.

¶ 7 On June 30, 2017, plaintiff filed a motion for confirmation of foreclosure sale. Defendant entered his appearance *pro se* on July 17, 2017, at a hearing on plaintiff's motion. At the confirmation hearing, defendant stated that he had not been aware of the sale. He explained that he had been in a nursing home for the past 10 months and did not received notice of the sale. He requested that he be given 30 days to pay plaintiff.

¶ 8 After reviewing the record, the trial court explained that because defendant was in default in the original foreclosure proceedings, plaintiff had no obligation to give him notice of the public sale. Nonetheless, Plaintiff had mailed defendant a notice at the address where he had been served. The court ruled that plaintiff complied with the procedure necessary to obtain a confirmation of the foreclosure sale. The court then granted plaintiff's motion for confirmation.

¶ 9 Defendant filed a notice of appeal on September 25, 2017. On April 26, 2018, this court allowed defendant's motion to voluntarily dismiss the appeal.

¶ 10 On May 21, 2018, defendant filed a section 2-1401 petition, arguing that the trial court was without personal jurisdiction to enter the default judgment in the original foreclosure proceeding. Defendant explained that under subsection 2-202(a) of the Code, a private process server cannot serve process on a defendant in Cook County without first being appointed by the trial court. 735 ILCS 5/2-202(a) (West 2016). Defendant contended that process was improper because Leggott had not been appointed by the trial court when he served him at Rush Hospital in Chicago. Defendant requested that the court set aside the default judgment and foreclosure sale as void.

¶ 11 The trial court denied defendant's section 2-1401 petition on September 21, 2018. The court explained:

> "The private process server was not required by 202(a) to be specially appointed. He was allowed by § 202(b) to serve that process 'outside his or her county' without limitation in this State. The court must assume that if the legislator [*sic*] chose to limit that power to serve summons, the legislator [*sic*] would have said so."

¶ 12 Defendant filed a motion to reconsider on October 22, 2018, which was denied on December 17, 2018. This appeal follows.

¶ 13 II. ANALYSIS

¶ 14 The issue before this Court is whether the trial court was vested with personal jurisdiction over defendant when private detective Leggott served him with process. Defendant contends that Leggott was without authority to serve him in Cook County, a county with a population of more than 2,000,000 persons, and therefore, process was not proper. In response, plaintiff asserts that Leggott was authorized to serve process in Kankakee County where the case was pending, and thus, could serve defendant anywhere in this state.

¶ 15 An order, judgment, or decree entered by a court without jurisdiction of the subject matter or the parties is void and may be attacked, directly or indirectly, in any court at any time. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002). Personal jurisdiction must be established with service of process or voluntary submission to the court's jurisdiction. *BAC Home Loans Servicing, LP v.* Mitchell, 2014 IL 116311, ¶ 18. Strict compliance with the statutes governing service of process is necessary. *Sarkissian*, 201 Ill. 2d at 109. Accordingly, a judgment rendered without voluntary submission or service of process in strict compliance with statutory authority is void, regardless of whether the defendant had actual knowledge of the proceedings. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986).

¶ 16 Whether the trial court had personal jurisdiction over a defendant is a question of law subject to *de novo* review on appeal. *Jayko v. Fraczek*, 2012 IL App (1st) 103665, ¶ 3. In this case, the parties dispute the proper reading of section 2-202 of the Code as it applies to service of process, which presents a question of statutory construction also subject to *de novo* review. *Id.*

¶ 17 "When interpreting a statute, the court's primary objective is to ascertain and give effect to the intent of the legislature." *Van Dyke v. White*, 2019 IL 121452, ¶ 46. "The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning." *People v. Clark*, 2019 IL 122891, ¶ 20. We view the statute as a whole, taking "words and phrases in light of other relevant statutory provisions and not in isolation. Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *Id.* "In addition, specific statutory provisions will control over general provisions on the same subject." *Van Dyke*, 2019 IL 121452, ¶ 46. Finally, we will presume "that the General Assembly did not intend absurdity, inconvenience, or injustice in enacting legislation." *Clark*, 2019 IL 122891, ¶ 20.

¶ 18 Section 2-202 provides:

> "(a) Process shall be served by a sheriff, or if the sheriff is disqualified, by a coroner of some county of the State. In matters where the county or State is an interested party, process may be served by a special investigator appointed by the State's Attorney of the county ***. A sheriff of a county with a population of less than 2,000,000 may employ civilian personnel to serve process. In counties with a population of less than 2,000,000, process may be served, without special appointment, by a person who is licensed or registered as a private detective under the Private Detective, Private Alarm, Private

> Security, Fingerprint Vendor, and Locksmith Act of 2004 ***. *** The court may, in its discretion upon motion, order service to be made by a private person over 18 years of age and not a party to the action. ***
>
> * * *
>
> (b) Summons may be served upon the defendants wherever they may be found in the State, by any person authorized to serve process. An officer may serve summons in his or her official capacity outside his or her county, but fees for mileage outside the county of the officer cannot be taxed as costs. The person serving the process in a foreign county may make return by mail." 735 ILCS 5/2-202(a), (b) (West 2016)

¶ 19 Defendant relies on subsection 2-202(a) to argue that the service of process was improper and, therefore, the trial court lacked jurisdiction to enter the default judgment. However, subsection 2-202(a), read out of its context, appears ambiguous in cases where the summons was issued in a county with a population less than 2,000,000 but the defendant was personally served in Cook County. "A statute is ambiguous if it is capable of more than one reasonable interpretation." *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11. The term "in counties" can refer to either the location at which the defendant is served or the venue where the case is pending. Both interpretations are reasonable—when subsection 2-202(a) is read in isolation.

¶ 20 Subsection 2-202(b), however, is clear and unambiguous, with only one reasonable interpretation: it empowers "any person authorized to serve process" to do so on "defendants wherever they may be found in the State." 735 ILCS 5/2-202(b) (West 2016). Defendant asks us

to read subsection 2-202(a) as limiting this provision. We reject defendant's request. " 'No rule of construction authorizes this court to declare that the legislature did not mean what the plain language of the statute imports, nor may we rewrite a statute to add provisions or limitations the legislature did not include.' " *Clark*, 2019 IL 122891, ¶ 47 (quoting *People v. Smith*, 2016 IL 119659, ¶ 28). Subsection 2-202(b) has no limitation. 735 ILCS 5/2-202(b) (West 2016).

¶ 21 Defendant's position is unreasonable and insupportable for two reasons. First, it would create an inconvenience. In cases like this one, plaintiffs would have to determine whether a defendant is presently or temporarily located in Cook County before issuing a summons—even if defendant's residence is in a county not requiring special appointment. This outcome is unacceptable; we must presume the legislature did not intend an inconvenience. *Clark*, 2019 IL 122891, ¶ 20. Second, it defies logic. Why would the legislature provide broad authority to "serve defendants wherever they may be found in this state" if it intended to limit this authority based on the population of the county where defendant is located at the time of service? Clearly, it did not do that. When read with subsection 2-202(b), subsection 2-202(a) "governs who may serve process in Illinois." *West Suburban Bank v. Advantage Financial Partners, LLC*, 2014 IL App (2d) 131146, ¶¶ 12, 13-14. It informs subsection 2-202(b) in terms of identifying who is a "person authorized to serve process." It places no limitation on where authorized persons may serve defendants. If the legislature intended to limit a process server's authority based on county population it would not have added the broad authority to serve the process wherever a defendant may be found in this state. Defendant's understanding would render subsection 2-202(b) superfluous. "No part of a statute should be rendered meaningless or superfluous." *Van Dyke*, 2019 IL 121452, ¶ 46.

¶ 22 We hold that a duly licensed or registered private detective may serve process, "without special appointment," anywhere in the state so long as the summons was issued from a county "with a population less than 2,000,000." We note that the Second District has reached a different outcome on this issue. *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc.*, 172 Ill. App. 3d 993, 998 (1988); see *also U.S. Bank National Ass'n v. Rahman*, 2016 IL App (2d) 150040, ¶ 34 (rejecting plaintiff's "invitation to reinterpret section 2-202(a)" contrary to its holding in *Schorsch*). We, however, find the Second District's reasoning unpersuasive because it relies primarily on the legislative debates to limit the clear and unambiguous language of subsection 2-202(b). *Schorsch*, 172 Ill. App. 3d at 997. "If, and only if, the statutory language is ambiguous, we may look to other sources to ascertain the legislature's intent." *Maschek v. City of Chicago*, 2015 IL App (1st) 150520, ¶ 44. Although subsection 2-202(a) is ambiguous when read in isolation, the plain language of subsection 2-202(b) is not, and it eliminates the seeming ambiguity of subsection 2-202(a). Accordingly, we read the statute as a whole, find no lingering ambiguity and we need not consider the legislative debates.

¶ 23 Leggott, a registered detective, served defendant with process 14 days after the summons was issued from Kankakee County, a county "with a population less than 2,000,000." Leggott was duly authorized to serve defendant in Cook County under subsection 2-202(b). Therefore, the trial court had personal jurisdiction over defendant to enter the default judgment of foreclosure, and that judgment is not void. Defendant voluntarily dismissed his appeal in the original proceeding. Finding no void judgment, we hold he cannot now challenge it in a section 2-1401 proceeding.

¶ 24 III. CONCLUSION

¶ 25 The judgment of the circuit court of Kankakee County is affirmed.

¶ 26 Affirmed.

¶ 27 JUSTICE SCHMIDT, specially concurring:

¶ 28 I concur in the judgment. I do not agree with the majority's analysis.

¶ 29 The majority holds that "a duly licensed or registered private detective may serve process, 'without special appointment,' anywhere in the state so long as the summons was issued from a county 'with a population less than 2,000,000.' " *Supra* ¶ 22. I disagree. A plain reading of subsection (a) of the statute reveals that in order to possess authorization to serve process in a county with a population of more than 2,000,000, the licensed or registered private detective must be appointed. In the following section, it states that "[s]ummons may be served upon the defendants wherever they may be found in the State, by any person *authorized* to serve process." (Emphasis added and internal quotation marks omitted.) *Supra* ¶ 18. "Subsection (a) of section 2-202 is concerned with who is authorized to serve process. Subsection (b) is concerned with the place of service." *Schorsch*, 172 Ill. App. 3d at 997. Clearly, the legislature wished to impose limitations on who has authority to serve process in Cook County. See *id.*; *Rahman*, 2016 IL App (2d) 150040, ¶ 34; *C.T.A.S.S.&U. Federal Credit Union v. Johnson*, 383 Ill. App. 3d 909, 912 (2008).

¶ 30 The majority's interpretation renders the portion of the statute meant to regulate who has authority to serve process in Cook County superfluous. See *Van Dyke*, 2019 IL 121452, ¶ 46 ("No part of a statute should be rendered meaningless or superfluous."). Instead of disregarding the clear legislative intent by engaging in a convoluted analysis of the statute to avoid the obvious restriction on authority, I would turn to the absurd results doctrine. See *In re Donald A.G.*, 221 Ill. 2d 234, 246 (2006) (noting a court is not bound by the literal language of the statute if it would lead to

absurd or unjust results not contemplated); see also *supra* ¶ 21 ("This outcome is unacceptable; we must presume the legislature did not intend an inconvenience.").

¶ 31 In order to avoid either an absurd result or "inconvenience," I would find that the party requesting the summons must engage in a reasonable search to ascertain whether the party to be served is located in Cook County. If the party requesting the summons knows or could reasonably discover that the party to be served is in Cook County, compliance with the statute is required. However, if a reasonable search fails to provide notice that the registered or licensed private detective would need to serve process in Cook County, and instead due diligence leads to the county, compliance is unnecessary. This interpretation would not render the restriction on who has authority to serve process in Cook County meaningless.

¶ 32 Given the above, I find no reason to cast aspersions on the analysis undertaken in *Schorsch*. The *Schorsch* court found the plain meaning of the statute apparent, going on to note that even if an ambiguity existed, the legislative history supported its understanding of the plain meaning. *Schorsch*, 172 Ill. App. 3d at 996-97. I believe the inclusion of the requirement that the party seeking the summons be unaware that the party to be served is located in Cook County, after a reasonable search, allows this situation and that in *Schorsch* to exist harmoniously.

¶ 33 In *Schorsch*, the plaintiffs secured a summons in Du Page County and served the summons upon the defendant in Cook County. *Id.* at 995. Plaintiff was aware that the defendant's business address was located in Cook County, as even a cursory search would have revealed that fact. *Id.* Here, defendant's last address was in Kankakee, as well as the property at issue in the underlying foreclosure action. The search for defendant took the process server into Cook County.

¶ 34 In order for a licensed or registered private detective to serve process in Cook County, without receiving special appointment by the court, a reasonable search for the individual to be served must show that a venture into Cook County is not necessary.

No. 3-19-0016

Cite as:	*Municipal Trust & Savings Bank v. Moriarty*, 2020 IL App (3d) 190016
Decision Under Review:	Appeal from the Circuit Court of Kankakee County, No. 16-CH-258; the Hon. Ronald J. Gertz, Judge, presiding.
Attorneys for Appellant:	Ruth E. Wyman, of Ruth E. Wyman Law Office LLC, of Urbana, for appellant.
Attorneys for Appellee:	Kendra Karlock, of Bourbonnais, for appellee.

STATE OF ILLINOIS
THIRD DISTRICT APPELLATE COURT

Matthew G. Butler
Clerk of the Court
815-434-5050

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Ottawa, Illinois 61350
TDD 815-434-5068

June 9, 2020

Ruth Elizabeth Wyman
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RE: Municipal Trust and Savings Bank v. Moriarty, Denis J., et al.
General No.: 3-19-0016
County: Kankakee County
Trial Court No: 16CH258

The court has this day, June 09, 2020, entered the following order in the above entitled case:

Appellant's Petition for Rehearing is DENIED.

Matthew G. Butler
Clerk of the Appellate Court

c: Kendra Karlock

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(January 30, 2017)

No witnesses called

Colloquy:

Between Court and Mr. Grotevant R2 – R5

Hearing on Plaintiff's Motion for Confirmation of Sheriff's Sale

(July 17, 2017)

No witnesses called

Colloquy:

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(August 28, 2017)

No witnesses called

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(June 25, 2018)

No witnesses called

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Between Court, Mr. Grotevant, and Ms. Wyman R26 – R32

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(September 18, 2018)

No witnesses called

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(December 17, 2018)

No witnesses called

Colloquy:

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