

No. 126606

In the
Supreme Court Of Illinois

PNC BANK NATIONAL ASSOCIATION,
Plaintiff-Appellee,

v.

JERZY KUSMIERZ and HALINA KUSMIERZ,
Defendants-Appellants,

On Review of the Opinion of the Illinois Appellate Court, Second District
No. 2-19-0521
Therefrom Up on Appeal from the 18th Judicial Circuit Court, DuPage County, Illinois
No. 2011 CH 1585
Honorable James D. Orel, Judge Presiding

BRIEF OF APPELLANTS

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NATURE OF THE CASE

This case involves the issue of whether the court's lack of personal jurisdiction over the mortgagors was apparent on the face of the record where the purported service on the mortgagors was made by a process server before the process server was appointed to do so by the court. Also at issue is whether *laches* can be used to bar a challenge to a void judgment.

On September 12, 2018, Appellants Jerzy Kusmierz and Halina Kusmierz filed a petition for relief from void judgments pursuant to section 2-1401. The petition asserted that the orders entered against them in the foreclosure – which included an *in personam* judgment in the amount of \$54,229.26 – should be vacated as void *ab initio* for want of personal jurisdiction where the purported service had been accomplished in Cook County by a process server prior to being appointed by the court.

The circuit court dismissed the petition, finding: (1) that the *bona fide* purchaser protections set forth in section 2-1401(e) barred the Kusmierzes' petition and (2) that the Kusmierzes' petition was barred by *laches*.

The Second District affirmed the circuit court's decision holding (1) that due to the attestations in the service affidavits, the jurisdictional defect was not apparent on the face of the record, and (2) that due to the passage of time, *laches* barred the Kusmierzes from obtaining any relief from the void orders entered against them.

ISSUES PRESENTED ON APPEAL

1. Whether purchasers of property are considered *bona fide* when the record shows that purported service had been accomplished in Cook County by a special process server prior to the special process server's appointment by the court.
2. Whether the equitable doctrine of *laches* can be applied in a section 2-1401 jurisdictional challenge to a foreclosure judgment based on purely legal issues.

STATEMENT OF JURISDICTION

The Appellate Court had jurisdiction over Petitioners' appeal pursuant to Illinois Supreme Court Rule 304(b)(3). On August 28, 2020, the Appellate Court entered its opinion affirming the circuit court's decision. On November 3, 2020, the Kusmierzes timely filed their Petition for Leave to Appeal pursuant to Rule 315, which this court granted on January 27, 2021. This Court has jurisdiction pursuant to Illinois Supreme Court Rule 315.

STATUTES INVOLVED

735 ILCS 5/2-202(a)-(b)

(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, as defined in Section 3-9005 of the Counties Code. 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 private detective or licensed employee must supply the sheriff of any county in which he serves process with a copy of his license or certificate; however, the failure of a person to supply the copy shall not in any way impair the validity of process served by the person. 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. It is not necessary that service be made by a sheriff or coroner of the county in which service is made. If served or sought to be served by a sheriff or coroner, he or she shall endorse his or her return thereon, and if by a private person the return shall be by affidavit.

(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. A private detective or private detective agency shall send, one time only, a copy of his, her, or its individual private detective license or private detective agency certificate to the county sheriff in each county in which the detective or detective agency or his, her, or its employees serve process, regardless of size of the population of the county. As long as the license or certificate is valid and meets the requirements of the Department of Financial and Professional Regulation, a new copy of the current license or certificate need not be sent to the sheriff. A private detective agency shall maintain a list of its registered employees. Registered employees shall consist of:

(1) an employee who works for the agency holding a valid Permanent Employee Registration Card;

(2) a person who has applied for a Permanent Employee Registration Card, has had his or her fingerprints processed and cleared by the Department of State Police and the FBI, and as to whom the Department of Financial and Professional Regulation website shows that the person's application for a Permanent Employee Registration Card is pending;

(3) a person employed by a private detective agency who is exempt from a Permanent Employee Registration Card requirement because the person is a current peace officer; and

(4) a private detective who works for a private detective agency as an employee.

A detective agency shall maintain this list and forward it to any sheriff's department that requests this list within 5 business days after the receipt of the request.

(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 5/2-1401(e)-(f)

(e) Unless lack of jurisdiction affirmatively appears from the record proper, the vacation or modification of an order or judgment pursuant to the provisions of this Section does not affect the right, title or interest in or to any real or personal property of any person, not a party to the original action, acquired for value after the entry of the order or judgment but before the filing of the petition, nor affect any right of any person not a party to the original action under any certificate of sale issued before the filing of the petition, pursuant to a sale based on the order or judgment. When a petition is filed pursuant to this Section to reopen a foreclosure proceeding, notwithstanding the provisions of Section 15-1701 of this Code, the purchaser or successor purchaser of real property subject to a foreclosure sale who was not a party to the mortgage foreclosure proceedings is entitled to remain in possession of the property until the foreclosure action is defeated or the previously foreclosed defendant redeems from the foreclosure sale if the purchaser has been in possession of the property for more than 6 months.

(f) Nothing contained in this Section affects any existing right to relief from a void order or judgment, or to employ any existing method to procure that relief.

STATEMENT OF FACTS

On March 30, 2011, PNC Bank, National Association (“PNC Bank”), filed a foreclosure complaint against Jerzy Kusmierz and Halina Kusmierz (collectively, the “Kusmierzes”) seeking foreclosure of the real estate located at 1405 Wisconsin Ave, Lombard, IL 60148 (the “Property”). C 20-34. PNC Bank named the Kusmierzes in the complaint as owners and mortgagors of the Property. C 20-21.

On April 1, 2011, Jennifer I. Magida, an employee of Metro Detective Agency, LLC, purportedly served Jerzy Kusmierz and Halina Kusmierz with summons at 1107 West Eaton Court, Palatine, IL 60067 (the “Palatine Address”). C 65; C 69. The purported service took place in Cook County.

On April 4, 2011, Plaintiff filed a Motion for Appointment of Special Process Server (the “SPS Motion”), which the circuit court granted on the same day. C 53. The order entered by the circuit court (the “SPS Order”) appointed Metro Detective Agency, LLC as special process server. *Id.*

On April 7, 2011, Plaintiff filed affidavits of service with the clerk of the circuit court. C 62-69. According to the affidavits of service (the “SPS Affidavits”), Jennifer I. Magida, an employee of Metro Detective Agency, LLC, served Jerzy Kusmierz and Halina Kusmierz with summons on April 1, 2011 at the Palatine Address. C 65; C 69.

On February 27, 2012, PNC Bank filed a motion for default order. C 97. On February 28, 2012, the circuit court entered an order of default and judgment of foreclosure against the Kusmierzes. C 108-113. On June 12, 2012, the circuit court confirmed the judicial sale of the Property. C 127-28. The circuit court entered an *in*

personam judgment against the Kusmierzes in the amount of \$54,229.26, which continues to accrue interest. C 127-28.

On September 12, 2018, the Kusmierzes filed their petition for relief from void judgments (the “Petition”) asserting that the orders entered against them should be vacated as void *ab initio* for want of personal jurisdiction where the purported service was performed in Cook County by a special process server without appointment by the court. C 136-39.

On December 4, 2018, Respondents Nellisa S. Ragland and Brian T. Heath (collectively, the “Ragland Respondents”) filed their motion to dismiss (the “Ragland Motion”) asserting *inter alia* that they were entitled to *bona fide* purchaser protections under 735 ILCS 5/2-1401(e) and that *laches* should be applied to bar the Kusmierzes’ petition. C 157-179.

On December 7, 2018, Mortgage Electronic Registration Systems, Inc., as nominee for STC Capital Bank (“MERS” and, collectively with the Ragland Respondents, the “Third-Party Respondents”) filed a motion for extension of time and to adopt the Ragland Motion. C 182-83. The circuit court granted MERS leave to join the Ragland Motion on December 18, 2018. C 200.

On December 7, 2018, PNC Bank filed its motion to dismiss (the “PNC Motion” and, collectively with the Ragland Motion, the “Motions to Dismiss”) asserting that *laches* should be applied; that the Petition had been mooted by adverse possession of the Property; and that the Petition seeks improper relief. C 189-95.

On January 2, 2019, the Kusmierzes filed a motion for extension of time and a Rule 191(b) affidavit seeking to conduct discovery regarding the respondents’ assertions

with respect to notice of the jurisdictional defect and claims in support of *laches*. C 206-10. The circuit court denied the Kusmierzes' request for discovery. C 260.

On April 22, 2019, the Kusmierzes filed their responses to the Motions to Dismiss arguing, *inter alia*, that (1) section 2-1401(e) protections could not apply where the record revealed service was purportedly effected by a special process server before being authorized by the court to do so and (2) *laches* could not apply to a purely legal challenge to a void judgment based on lack of personal jurisdiction. C 295-329.

On May 21, 2019, after full briefing on the Motions to Dismiss, the circuit court entered an order granting, without an evidentiary hearing, the Motions to Dismiss, with prejudice, finding that the Third-Party Respondents were *bona fide* purchasers pursuant to section 2-1401(e) and that the Kusmierzes' Petition was barred by *laches*. C 349.

On June 18, 2019, the Kusmierzes timely filed their notice of appeal. C 350-52. On August 28, 2020, following full briefing, the Appellate Court issued its order affirming the circuit court's dismissal of the Kusmierzes' Petition. A 74.

On November 3, 2020, the Kusmierzes timely filed their petition for leave to appeal. On January 27, 2021, the petition for leave to appeal was allowed. A 88.

ARGUMENT

I. Standard of Review

The Illinois Supreme Court reviews the granting of a motion to dismiss pursuant to 735 ILCS 5/2-619 under the *de novo* standard of review. *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001). The Illinois Supreme Court reviews an order granting a motion to dismiss pursuant to 735 ILCS 5/2-615 under the *de novo* standard as well. *Wakulich v. Mraz*, 203 Ill. 2d 223, 228 (2003).

II. Service on the Kusmierzes was Improper

On April 1, 2011, Jennifer I. Magida, an employee of Metro Detective Agency, LLC, purportedly served the Kusmierzes with a summons and complaint in Cook County. Section 2-202(a) requires the appointment of a special process server for service on parties in counties with a population over 2,000,000. 735 ILCS 5/2-202(a). Cook County has a population of over 2,000,000. At the time of purported service, neither Jennifer I. Magida nor Metro Detective Agency, LLC were appointed by the court to serve process in Cook County in this case. On April 4, 2011, three days after the purported service, the court appointed Metro Detective Agency, LLC to service process in this matter. C 53.

First, it should be noted that, on appeal, neither PNC Bank nor the Third-Party Respondents argued that service on the Kusmierzes was proper.¹ It is therefore undisputed that the purported service on the Kusmierzes was invalid because the process

¹ The Kusmierzes note that, in the circuit court, the Third-Party Respondents argued that service on Jerzy Kusmierz was proper because the mailing required to complete substitute service under 735 ILCS 5/2-203(a)(2) was not done until April 4, 2011. C 164-65. This argument was contrary to established law that both steps for substitute service under section 2-203(a)(2) – the abode service and the mailing – must be completed by an authorized person. *Mid-America Federal Savings & Loan Association v. Kosiewicz*, 170 Ill. App. 3d 316, 321 (2d Dist. 1988). This argument was abandoned on appeal.

server was not appointed by the court to serve process at the time of purported service. The facts of *C.T.A.S.S.&U. Federal Credit Union v. Johnson* are analogous to this case. 383 Ill. App. 3d 909 (1st Dist. 2008). In *Johnson*, the Appellate Court found service to be defective because a private process server purportedly served process before being appointed by the court to do so. The facts of this case are similar to those in *Johnson* and warrant the same result.

III. Failure to Properly Serve the Kusmierzes Resulted in Void Orders

This Court has consistently ruled that, “[u]nder Illinois law, a party may challenge a judgment as being void at any time, either directly or collaterally, and the challenge is not subject to forfeiture or other procedural restraints.” *People of the State of Illinois v. Castleberry*, 2015 IL 116916, ¶ 15 (quoting *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 38). Indeed, this Court has expressed the mandate that courts “have an independent duty to vacate void orders.” *People v. Thompson*, 209 Ill. 2d 19, 27 (2014).

In its opinion, the Second District held that “[a] judgment rendered by a court which fails to acquire jurisdiction over the parties is void and may be attacked and vacated at any time, either directly or collaterally.” *Kusmierz*, 2020 IL App (2d) 190521, ¶ 23 (quoting *In re Marriage of Verdung*, 126 Ill. 2d 542, 547 (1989)); A 80-81. But the Second District tempered that expression of law by stating that, “although void judgments may be *attacked* at any time,” relief could nevertheless be “preclude[d].” *Kusmierz*, 2020 IL App (2d) 190521, ¶ 31 (citing *JP Morgan Chase Bank, N.A. v. Robinson*, 2020 IL App (2d) 190275, ¶ 30) (emphasis in original); A 83-84. The Second District’s reasoning stands as an affront to this Court’s rulings in *Thompson* and *Castleberry* which are part of a wider, long standing line of jurisprudence holding that,

“[a] void judgment is from its inception a complete nullity and without legal effect.”
Ford Motor Credit Co. v. Sperry, 214 Ill. 2d 371, 380 (2005).

IV. Due Diligence Is Not Required When Challenging a Void Order

In upholding the circuit court’s judgment, the Second District held that the Kusmierzes unreasonably delayed in bringing their jurisdictional challenge, effectively placing a due diligence requirement on jurisdictional challenges to void orders. *Kusmierz*, 2020 IL App (2d) 190521, ¶¶ 32-33; A 85. The Second District’s holding is contrary to *Sarkissian v. Chicago Board of Education* and its progeny which hold that “the allegation that the judgment or order is void substitutes for and negates the need to allege a meritorious defense and due diligence.” 201 Ill. 2d 95, 104 (2002); *accord Sperry*, 214 Ill. 2d at 379; *People v. Vincent*, 226 Ill. 2d 1, 7 n.2 (2007); *People v. Laugharn*, 233 Ill. 2d 318, 322 n.1 (2009); *In re Dar C.*, 2011 IL 111083, ¶ 104; *In re Haley D.*, 2011 IL 110886, ¶ 58; *Trice*, 2015 IL 116129, ¶ 11; *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 48; *Castleberry*, 2015 IL 116916, ¶ 15; *People v. Thompson*, 2015 IL 118151, ¶ 31; *In re N.G.*, 2018 IL 121939, ¶ 134. This lack of temporal limitation or due diligence requirement with respect to challenges to void judgments recognizes the independent duty of our courts to vacate void orders under *Thompson*. 209 Ill. 2d at 27.

In this case, the Kusmierzes’ Petition was premised on the fact that the orders entered against them were void for lack of personal jurisdiction. Therefore, the Kusmierzes were not required to allege or prove due diligence in bringing their Petition. Accordingly, the Second District erred in ruling that the Kusmierzes’ Petition was barred because they had unreasonably delayed in filing their Petition.

V. The Jurisdictional Defect Was Apparent from the Record

The Second District affirmed the circuit court’s dismissal of the Petition as to the Third-Party Respondents, finding that they were *bona fide* purchasers under section 2-1401(e). *Kusmierz*, 2020 IL App (2d) 190521, ¶¶ 26-27; A 82. The Second District, in applying 2-1401(e), held that “the service affidavit would lead a reasonably prudent purchaser to conclude that service was proper.” *Kusmierz*, 2020 IL App (2d) 190521, ¶ 27; A 82. In so ruling, the Second District focused on the SPS Affidavits without any consideration to the record as a whole, including the SPS Motion and SPS Order entered three days after the purported service. The Second District’s interpretation of section 2-1401(e) requires that the county and its population be stated in the service documents before the jurisdictional defect in this matter could be considered to “affirmatively appear on the face of the record.” *Kusmierz*, 2020 IL App (2d) 190521, ¶¶ 26-27; A 82. The Second District’s ruling is contrary to a long line of jurisprudence interpreting section 2-1401(e) and should be reversed.

Section 2-1401(e) of the Code of Civil Procedure protects third-party *bona fide* purchasers from the effects of a jurisdictional challenge brought under section 2-1401 where the complained-of lack of jurisdiction does not “affirmatively appear[] from the record proper.” 735 ILCS 5/2-1401(e). A court must “look to the whole record,” when determining whether a lack of jurisdiction is apparent from the record. *See State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 313 (1986) (holding that “a court does not acquire jurisdiction by a mere recital contrary to what is shown in the record”). “[A]lthough the section 2-1401 petitioner bears the burden to prove the facts which justify relief, after that case has been made, the burden then shifts to the party claiming to be a *bona fide* purchaser to prove that he was a *bona fide* purchaser.” *In re County Collector*, 397 Ill.

App. 3d 535, 550-51 (1st Dist. 2009) (rejecting an assertion of *bona fide* purchaser status and noting the party's failure to present any evidence "that he did any of the things that a reasonable, prudent person would do prior to purchasing the piece of real estate").

Over a century ago, this Court held that a participant in a real estate transaction is "chargeable with notice of what appeared in the [title] records, and if unusual facts appeared, such as would cause a reasonably prudent man to suspect the title, they are chargeable with knowledge of whatever would have been discovered by diligent inquiry." *Allison v. White*, 385 Ill. 311, 319 (1918); *accord Carnes v. Whitfield*, 352 Ill. 384, 390 (1933) ("It is well settled that whatever is sufficient to put a party upon inquiry is notice of all facts which pursuit of such inquiry would lead to, and without such inquiry no one can claim to be an innocent purchaser as against him."); *Smith v. Grubb*, 402 Ill. 451, 464-65 (1949) ("Whatever is notice enough to excite the attention of a prudent man and put him on his guard is notice of everything to which such inquiry might have led and every unusual circumstance is a ground of suspicion and demands investigation.").

Since *Allison*, *Carnes*, and *Smith* were decided, the courts of our State have applied a similar "reasonably prudent person" standard to parties purchasing foreclosed properties, charging them with review of judicial records and any knowledge they would have gained from diligent inquiry in light of unusual facts. *See In re County Treasurer*, 30 Ill. App. 3d 235, 240 (1st Dist. 1975) ("A purchaser of land is not a *bona fide* purchaser if he has constructive notice of an outstanding title or right in another person. A purchaser having notice of facts which would put a prudent man on inquiry is chargeable with knowledge of other facts he might have discovered by diligent inquiry."); *accord In re Application of Cook County Collector*, 228 Ill. App. 3d 719, 734 (1st Dist. 1991);

Bank of N.Y. v. Unknown Heirs & Legatees, 369 Ill. App. 3d 472, 477 (1st Dist. 2006); *see also In re County Collector*, 397 Ill. App. 3d at 550 (“Where the purchaser’s inquiry reveals the possibility that the trial court may not have had personal jurisdiction to enter a judgment necessary to his taking good title to property, that purchaser cannot be a *bona fide* purchaser unless the purchaser has resolved those issues.”).

The facts of *Johnson* are analogous to the facts presented in this case. 383 Ill. App. 3d 909 (1st Dist. 2008). In *Johnson*, the Appellate Court declined to apply section 2-1401(e) protections because the record contained a process server’s affidavit attesting to service on March 1, 2002 but the order appointing the special process server was not entered until March 12, 2002. *Id.* at 910. The *Johnson* court reasoned that where the record “show[ed] that the special process server served process before being appointed to do so,” the order appointing the special process server after the attested-to date of service “was sufficient to notify [the buyer] of a potential jurisdictional defect.” *Id.* at 913. Just as in *Johnson*, the SPS Affidavits attested to service before the process server was appointed by the circuit court to serve process. Just as in *Johnson*, this court should decline to apply 2-1401(e) protections to the Third-Party Respondents.

In this case, the jurisdictional defect becomes even more apparent when comparing the attestations in the SPS Affidavits and the text of the SPS Order. *Compare* C 65 and C 69 with C 53. The special process server averred in the SPS Affidavits that she was “a registered employee of a Private Detective Agency licensed by the Illinois Department of Financial and Professional Regulation *and thereby authorized* to serve process within the State of Illinois *pursuant to 735 ILCS 5/2-202(a).*” C 65; C 69 (emphasis added). *Id.* The SPS Order states:

This matter coming before this court on written motion of the plaintiff or the attorney for the plaintiff requesting the Court to exercise its discretion under 735 ILCS 5/2-202, Civil Practice Act, and the court being fully advised in the premises IT IS THEREFORE ORDERED that Metro Detective Agency, LLC or any employees of Metro Detective Agency, LLC, #117-001358, being over the age of 18 years of age and not a Party to this cause, be appointed to serve all writs of summons, writs and other process necessary in the above-mentioned cause.

C 53. Under the clear text of the SPS Order, the circuit court utilized its “discretion under 735 ILCS 5/2-202” to appoint the special process server to serve process in the case. *Id.*

If the process server had been fully authorized to serve process under 735 ILCS 5/2-202 by reason of her employment alone, then there would have been no need for the circuit court to utilize its discretion and appoint a special process server under the statute. The fact that the SPS Order explicitly stated that the circuit court was utilizing its discretion to appoint the process server was enough to evidence a “*potential* jurisdictional defect.” *See Johnson*, 383 Ill. App. 3d at 913 (emphasis added). This inconsistency between the SPS Order and the SPS Affidavits with respect to application of 735 ILCS 5/2-202 further supports the notion that there was sufficient information in the record, when considered *as a whole*, to have placed any subsequent purchaser of the Property on notice of the jurisdictional defect.

In an earlier decision, the Second District concluded that, based on affidavits in the record, the purchaser of a foreclosed property “had inquiry notice of a lack of personal jurisdiction.” *Concord Air, Inc. v. Malarz*, 2015 IL App (2d) 140639, ¶¶ 33-40 (citing *Thill*, 113 Ill. 2d at 312-313). In *Malarz*, the Second District ruled that the plaintiff had submitted documents in support of service by publication which contained inconsistent information and “gave [the purchaser] inquiry notice of a potential problem.” *Id.* at ¶ 40. The decisions in *Thill*, *Johnson*, and *Malarz* reflect the well-established law in

Illinois which charges purchasers of property with notice of potential jurisdictional defects based on documents in the record that are sufficient to place a reasonably prudent person on inquiry notice.

Here, the record reflects that the special process server was appointed by the court after the purported service on the Petitioners was complete and that the order appointing the special process server was entered utilizing the circuit court's discretion. However, in applying *bona fide* purchaser protections to the Third-Party Respondents, the Second District did not charge them with knowledge of the jurisdictional defect which a prudent purchaser would have discovered after reviewing the record and making a diligent inquiry into these unusual facts. *Kusmierz*, 2020 IL App (2d) 190521, ¶¶ 26-27; A 82. Instead, the Second District held that because the SPS Affidavits did not "specify the county in which service occurred," *no person* examining the record alone would have reason to suspect that service was not fully compliant with section 2-202(a) and that "a third-party purchaser should be able to rely on the [service] affidavit's statement that service complied with the service requirements." *Id.*

The Second District's opinion was erroneous because the record, considered as a whole, was sufficient to place *any* reasonably prudent purchaser on inquiry notice of the jurisdictional defect. Therefore, the respondents in this case are not *bona fide* purchasers and are not entitled to the protections under section 2-1401 of the Code.

VI. The Doctrine of *Laches* Does Not Apply to the Kusmierzes' Petition

a. The doctrine of *laches* does not apply to a purely legal challenge to jurisdiction under 735 ILCS 5/2-1401

The Second District affirmed the circuit court's dismissal of the Petition as to PNC Bank, finding that the doctrine of *laches* barred the relief sought by the Kusmierzes.

Kusmierz, 2020 IL App (2d) 190521, ¶¶ 30-34; A 83-86. “*Laches* is an equitable doctrine which precludes the assertion of a claim by a litigant whose unreasonable delay in raising that claim has prejudiced the opposing party.” *Tully v. State*, 143 Ill. 2d 425, 432 (1991). The Second District, in applying the doctrine of *laches*, relied on *James v. Frantz*, 21 Ill. 2d 377 (1961) and its progeny, and held that “although it might be a ‘curious argument’ to assert that *laches* bars *bringing* a jurisdictional challenge, nevertheless ‘in some circumstances, *laches* [has] been held to interpose a limit on when a void judgment may be collaterally attacked.’” *Kusmierz*, 2020 IL App (2d) 190521, ¶ 31 (quoting *West Suburban Bank v. Advantage Financial Partners, LLC*, 2014 IL App (2d) 131146, ¶ 26) (emphasis in original); A 83-84.

As a threshold matter, the Kusmierzes’ Petition, challenging the judgment as void under section 2-1401(f) for want of personal jurisdiction, raises a purely legal question. *See In re Luis R.*, 239 Ill. 2d 295, 299 (2010) (finding that “[t]he absence or presence of jurisdiction is a purely legal question”). “Equitable considerations are inapplicable when a section 2-1401 petition raises a purely legal issue because that type of petition will not involve a factual dispute.” *Walters*, 2015 IL 117783, ¶ 47. Most recently in *Studentowicz v. Queen’s Park Oval Asset Holding Trust*, the Appellate Court reaffirmed this long-standing principle. 2019 IL App (1st) 181182, ¶ 17. Because the Kusmierzes’ Petition raises a purely legal issue, equitable considerations such as *laches* do not apply.

In its effort to apply *laches* to the Kusmierzes’ Petition, the Second District cited to several cases, all of which are distinguishable. The first set of cases that the Second District relied upon involved a narrow exception to the general rule that *laches* does not apply to void judgments. The Second District cited to *James v. Frantz*, which held that

laches barred a dispute over mineral rights. 21 Ill. 2d at 382-83. In *James*, the doctrine of *laches* was applied because it was no longer possible to discern the intent of the original parties to a deed conveying mineral rights, a core issue. *Id.* at 382. The parties had long since passed. *Id.*

In support of the application of *laches*, the *James* decision pointed out that “‘there is no class of property in which *laches* is more relentlessly enforced’ than with respect to oil and mining property.” *Id.* at 382 (quoting *Pyle v. Ferrell*, 12 Ill. 2d 547 (1958)). *Pyle* and *James* acknowledge that special interests – such as mineral rights – coupled with factual issues may give rise to a narrow exception to the general rule that *laches* does not apply to challenges seeking to vacate void judgments. Since *Pyle* and *James*, this Court has noted this narrow exception but refused to apply *laches* when factual issues concerning mineral rights were not involved. See *Fox v. Department of Revenue*, 34 Ill. 2d 358, 361 (1966) (holding “that a void judgment may be vacated at any time and the doctrines of *laches* and estoppel do not apply.”). *Laches* does not apply to the Kusmierzes’ Petition because it does not involve factual issues concerning mineral rights.

In further support of its application of *laches*, the Second District relied upon cases involving the welfare of minor children: *In re Adoption of Miller*, 106 Ill. App. 3d 1025, 1033 (1st Dist. 1982) (barring relief where it would be “extremely prejudicial to the stability of the family life” of a minor child to vacate a void order); *Rodriguez v. Koschny*, 57 Ill. App. 3d 355, 361 (2d Dist. 1978) (applying *laches* “to prevent a serious disruption of a stable family unit”); *In re Jamari*, 2017 IL App (1st) 160850, ¶ 64 (noting that “the tranquility of [the minor child’s] life and family unit has been disrupted by the

lack of finality” and that “[f]urther delaying resolution of his permanent placement would be detrimental to [his] welfare”).

However, in *Eckberg v. Benso*, a case also relied upon by the Second District, *laches* was raised in the context of preserving “a stable family relationship of 14 years,” but the doctrine was not applied where the party asserting *laches* had failed to show “how the family relationship would be harmed . . . where the children are now of majority age.” 182 Ill. App. 3d 126, 133 (1st Dist. 1989). The court in *Eckberg* specifically noted that “[c]ases which have barred assertions of parental rights on *laches* grounds have involved children who were young minors at the time of the action, where the disruption of the continuity of the family relationship would have adversely affected their development.” *Id.* Indeed, the mere involvement of the interests of minors has not given rise to a blanket bar of all relief from judgments. *See In re Dar C.*, 2011 IL 111083 (vacating a void order terminating parental rights); *In re Haley D.*, 2011 IL 110886 (vacating a default order terminating parental rights). This case does not involve the welfare of minor children or the stability of a minor child’s family unit. Therefore, the doctrine of *laches* does not apply in this case.

The remaining cases relied upon by the Second District in support of its application of *laches* are also distinguishable. The Second District cited to its own opinion in *Miller v. Bloomberg*, which merely made a passing reference to *James*, acknowledging, in *obiter dicta*, that the doctrine of *laches* may apply in certain instances. 60 Ill. App. 3d 362, 365 (2d Dist. 1978). However, the Second District did not reach the applicability of *laches* in *Miller*. The remaining cases cited by the Second District were

not concerned with, and did not touch upon, the applicability of *laches* in the context of jurisdictional challenges to void orders; they are not applicable to the facts of this case.

Ultimately, the general rule is that a void judgment may be challenged in perpetuity and equitable considerations, such as the doctrine of *laches*, are inapplicable to such a challenge. *See Hustana v. Hustana*, 22 Ill. App. 2d 59, 64 (1st Dist. 1959). Although narrow exceptions to this general rule have been carved out on occasions where particularly compelling special interests have been at stake (*see, supra*), this general rule remains in effect. *See Walters*, 2015 IL 117783; *Studentowicz*, 2019 IL App (1st) 181182. The Kusmierzes' Petition seeks to vacate a judgment in a residential foreclosure including an *in personam* judgment for \$54,229.26. The special circumstances giving rise to the exceptions to the general rule – the involvement of interests in oil and mineral rights and the rights of minor children – are not present here. Therefore, the Second District erred in applying *laches* to the facts of this case.

b. Even if the doctrine of *laches* could be applied, respondents could never prove the required lack of due diligence

The application of *laches* in this case necessarily required the Second District to find that the Kusmierzes lacked due diligence in bringing the Petition or, in other words, that the Kusmierzes unreasonably delayed in seeking to vacate the void judgment entered against them. *People v. McClure*, 218 Ill. 2d 375, 389 (2006) (“Application of the *laches* doctrine requires a showing of lack of due diligence by the party asserting the claim . . .”); *see also Tully*, 143 Ill. 2d at 432 (“*Laches* is an equitable doctrine which precludes the assertion of a claim by a litigant whose *unreasonable delay* in raising that claim has prejudiced the opposing party.”) (emphasis added).

However, “Illinois law permits void judgments to be impeached *at any time* in any proceeding” and “challenges to void judgments are not subject to forfeiture or other procedural restraints.” *In re N.G.*, 2018 IL 121939, ¶ 43 (emphasis added); *accord BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17; *Castleberry*, 2015 IL 116916, ¶ 15; *Fox*, 34 Ill. 2d at 361; *West Suburban Bank*, 2014 IL App (2d) 131146, ¶ 26 (noting that the assertion of *laches* against a challenge to a void judgment was “a curious argument” because “the principle that a void judgment may be attacked at any time is firmly entrenched in Illinois law”). Federal courts have also held that the passage of time cannot render a void judgment valid. *See Merit Management Group v. Ponca Tribe of Indians*, 778 F. Supp. 2d 916, 919 (N.D. Ill. 2011) (“There is no time limit on an attack on a judgment as void. . . . A void judgment cannot acquire validity because of *laches* on the part of the judgment [defendant].”); *see also Allen v. United States*, 102 F. Supp. 866, 869 (N.D. Ill. 1952) (“A void judgment is as void today as it was twenty years ago. No aging process, whereby a void judgment improves as to stature and validity by the passage of time, can properly be interposed.”).

Clearly, the Kusmierzes’ Petition raises a purely legal challenge to a void judgment based on lack of jurisdiction. Given their purely legal challenge to a void judgment, the Kusmierzes were not required to show due diligence and could not have unreasonably delayed bringing their Petition. This rendered it impossible for respondents to prove a necessary element of *laches*. This Court’s holding in *Sarkissian* and its progeny are directly on point. 201 Ill. 2d at 104 (“the allegation that the judgment or order is void substitutes for and negates the need to allege . . . due diligence.”); *see also, supra*, IV. Because void judgments may be challenged in perpetuity and cannot be

ratified by the passage of time, no unreasonable delay on the part of the Kusmierzes could ever be alleged or proven to establish *laches*.

c. Even if the respondents could prove a lack of due diligence, the required evidentiary hearing was never held

In the circuit court, the Kusmierzes requested discovery and an evidentiary hearing to address *laches*. C 206-10; R 10:2-4. The circuit court denied both requests. C 260; C 349. Instead, the circuit court focused on the mere passage of time between the purported service on the Kusmierzes and the filing of the Petition. C 163; C 192; Sup C 22:12-14. In *Tully*, this Court held that the determination of whether *laches* applies depends on the facts and circumstances of each case. *Id.* 142 Ill. 2d at 432-33. The burden of establishing *laches* by a preponderance of the evidence falls on the party asserting the defense. *See O'Brien v. Meyer*, 281 Ill. App. 3d 832, 834 (1st Dist. 1996) (“Like any affirmative defense, the burden is on the defendants to establish *laches* by a preponderance of the evidence.”) (citing *Anderson v. Lybeck*, 15 Ill. 2d 227 (1958); *accord Osler Inst., Inc. v. Miller*, 2015 IL App (1st) 133899, ¶ 23. Even if *laches* could be applied to the Kusmierzes’ Petition, the circuit court needed to allow discovery and conduct an evidentiary hearing on the issues of due diligence and prejudice.

Troublingly, the Second District’s application of *laches* in this case appears to be part of a recent pattern wherein the Second District has summarily applied the doctrine of *laches* as a panacea to deny jurisdictional challenges to void orders. *See Kusmierz*, 2020 IL App (2d) 190521; *Fannie Mae v. Altamirano*, 2020 IL App (2d) 190198, ¶ 28 (“In short, we hold that petitioners’ claim is barred by *laches* regardless of whether the trial court’s judgment was void because the court lacked personal jurisdiction over petitioners.”); *Ocwen Loan Servicing, LLC v. DeGomez*, 2020 IL App (2d) 190774, ¶ 31

(applying *laches* to bar relief from a void judgment that resulted from service of an improper summons) (citing *Kusmierz*, 2020 IL App (2d) 190521); *see also JPMorgan Chase Bank, N.A. v. Robinson*, 2020 IL App (2d) 190275, ¶ 30 (stating that *laches* can preclude relief in a jurisdictional challenge); *BankUnited, N.A. v. Giusti*, 2020 IL App (2d) 190522, ¶ 39 (stating that *laches* can preclude relief in a jurisdictional challenge).

Ultimately, even if the highly fact-dependent equitable doctrine of *laches* applies to purely legal section 2-1401(f) challenges to void orders, it cannot be applied in the total absence of evidence supporting the core element of unreasonable delay. The Second District’s application of *laches* to effectively validate a void judgment must be reversed.

d. Even if equitable considerations were relevant, the doctrine of unclean hands would bar the application of *laches*

Should *laches* apply, equitable defenses, such as unclean hands, should have been considered by the circuit court and the Appellate Court. *See Mills v. Susanka*, 394 Ill. 439, 450 (1946) (holding that “he who seeks equity must do equity”). The doctrine of unclean hands precludes a party from taking advantage of its own wrong and bars relief when the party seeking that relief is guilty of misconduct in connection with the subject matter of the litigation. *Jameson Real Estate, LLC v. Ahmed*, 2018 IL App (1st) 171534, ¶ 83. In this case, PNC Bank, the original foreclosing plaintiff, represented that it properly served the Kusmierzes when it did not. C 97. Based on that misrepresentation, the circuit court entered judgments against the Kusmierzes, which not only divested them of the Property, but also resulted in a personal judgment against them in excess of \$50,000. PNC Bank’s unclean hands in obtaining a void judgment against the Kusmierzes should now bar it from asserting *laches* to effectively enforce a void judgment – including an *in personam* judgment – against the Kusmierzes.

Similarly, MERS and the Ragland Respondents, as non-*bona fide* purchasers, could not assert prejudice as they were on notice of the jurisdictional defect and resulting void orders. Nevertheless, they opted to take title to the Property. Now, MERS and the Ragland Respondents seek to invoke an equitable doctrine to bar the Kusmierzes' efforts to vacate those same void orders. Their unclean hands in this matter should bar their invocation of *laches*.

CONCLUSION

In this matter, the lack of personal jurisdiction was apparent on the face of the record because service was made by a special process server before that special process server was appointed by the circuit court. Additionally, the Kusmierzes' Petition was not barred by *laches* because the Petition raises a purely legal challenge to a void judgement based on lack of personal jurisdiction. Even if *laches* does apply, the Appellate Court should have remanded to allow discovery and for the court to hold an evidentiary hearing. Accordingly, the Appellate Court erred when it affirmed that the third-party purchasers and lender were *bona fide* and also erred when it affirmed the application of *laches* to this case.

Based on the aforementioned reasons, the decision of the Appellate Court should be reversed.

Respectfully Submitted,
Jerzy Kusmierz and Halina Kusmierz

By: /s/ Giovanni Raimondi
Attorney for Appellants

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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 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 twenty-four (24) pages or words.

/s/ Giovanni Raimondi
Attorney for Appellants

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No. 126606

In the
Supreme Court Of Illinois

PNC BANK NATIONAL ASSOCIATION,
Plaintiff-Appellee,

v.

JERZY KUSMIERZ and HALINA KUSMIERZ,
Defendants-Appellants,

On Review of the Opinion of the Illinois Appellate Court, Second District
No. 2-19-0521
Therefrom Up on Appeal from the 18th Judicial Circuit Court, DuPage County, Illinois
No. 2011 CH 1585
Honorable James D. Orel, Judge Presiding

APPENDIX

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*Exhibits have been omitted from these entries.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
WHEATON, DUPAGE COUNTY, ILLINOIS

PNC BANK, NATIONAL ASSOCIATION,

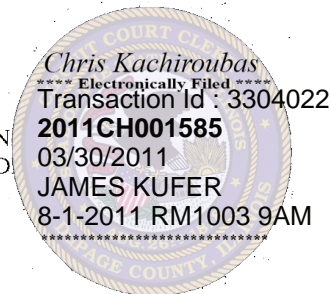
Plaintiff,

vs.

JERZY KUSMIERZ, HALINA KUSMIERZ, THE TOWNSHIP OF
YORK and PNC BANK, NATIONAL ASSOCIATION,

Defendants.

Case N
RESID



COMPLAINT FOR FORECLOSURE

1. Plaintiff, PNC Bank, National Association files this Complaint to foreclose the Mortgage hereinafter described and joins the following persons as Defendants: Jerzy Kusmierz, Halina Kusmierz, The Township of York and PNC Bank, National Association.

2. Attached as Exhibit A is a copy of said Mortgage (with loan numbers redacted) and as Exhibit B a copy of the Note (with loan numbers redacted) secured thereby.

3. Information concerning Mortgage:

(A) Nature of instrument: Mortgage.

(B) Date of Mortgage: December 9, 2005.

(C) Names of Mortgagors: Jerzy Kusmierz and Halina Kusmierz.

(D) Name of Mortgagee: MidAmerica Bank, FSB.

(E) Date and Place of Recording: December 30, 2005 in the Recorder's Office of DuPage County, Illinois.

(F) Identification of Recording: Document No. R2005-288486.

(G) Interest subject to the Mortgage: Fee Simple.

(H) Amount of original indebtedness, including subsequent advances made under the mortgage: \$120,000.00.

(I) Both the legal description of the mortgaged real estate and the common address or other information sufficient to identify it with reasonable certainty:

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Lot 19 in Block 13 in La Salle Realty Company's Villa Roosevelt, being a Subdivision of the West ½ of the West ½ of the Northeast ¼ and the East ½ of the Northwest ¼ of Section 21, Township 39 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded April 1, 1929 as Document 276750, in DuPage County, Illinois.

Permanent Index Number: 06-21-205-023

Commonly known as: 1405 Wisconsin Avenue, Lombard, IL 60148.

(J) Statements as to defaults, including, but not necessarily limited to, date of default, current unpaid principal balance, per diem interest accruing, and any further information concerning the default:

Default by failing to pay the monthly installment due December 1, 2010 and thereafter.

1.	Date of calculations:	March 30, 2011
2.	Amounts Due:	
	Principal	\$ 119,851.69
	Interest	1,607.87
	TOTAL DUE	<u>\$ 121,459.56</u>

3. Per diem interest after date of calculations: \$10.67.

(K) Names of present owners of said premises: Jerzy Kusmierz and Halina Kusmierz.

(L) Names of other persons who are joined as defendants and whose interest in or lien on the mortgaged real estate is sought to be terminated: The Township of York and PNC Bank, National Association.

(M) Names of defendants claimed to be personally liable for deficiency, if any: Jerzy Kusmierz and Halina Kusmierz.

(N) Capacity in which plaintiff brings this foreclosure: Plaintiff is the owner and legal holder of the Note, Mortgage and indebtedness. PNC Bank, National Association is the successor by merger to National City Bank, successor by merger to MidAmerica Bank, FSB.

(O) Facts in support of redemption period shorter than the longer of (i) 7 months from the date the mortgagor or, if more than one, all mortgagors (I) have been served with summons or by publication or (II) have otherwise submitted to the jurisdiction of the court, or (ii) 3 months from the entry of the judgment of foreclosure, if sought: None at this time.

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(P) Statement that the right of redemption has been waived by all owners of redemption, if applicable: Not applicable.

(Q) Facts in support of request for attorneys' fees and of costs and expenses, if applicable: Plaintiff has been required to retain counsel for prosecution of this foreclosure and to incur substantial attorney fees, court costs, title insurance or abstract costs and other expenses which should be added to the balance secured by said Mortgage as provided under the terms of the Note and Mortgage.

(R) Facts in support of a request for appointment of mortgagee in possession or for appointment of a receiver, and the identity of such receiver, if sought: None at this time.

(S) Offer to mortgagor in accordance with Section 15-1402 to accept title to the real estate in satisfaction of all indebtedness and obligations secured by the Mortgage without judicial sale, if sought: No offer made.

(T) Name or names of Defendants whose right to possess the mortgaged real estate, after the confirmation of a foreclosure sale, is sought to be terminated and, if not elsewhere stated, the facts in support thereof: Jerzy Kusmierz and Halina Kusmierz.

4. Township of York is named as a Defendant in this cause as a result of the following Notice of Lien. Said Notice of Lien is subordinate to the Plaintiff's Mortgage.

(a) Notice of Lien by the Township of York, in the amount of \$331.00, for cutting weeds, dated June 4, 2010, and recorded June 11, 2010, as Document No. R2010-074415.

5. PNC Bank, National Association is named as a Defendant in this cause as a result of the following Memorandum of Judgment. Said Memorandum of Judgment is subordinate to the Plaintiff's Mortgage.

(a) Memorandum of Judgment in favor of PNC Bank, National Association, and against Jerzy Kusmierz and Halina Kusimerz, in Case No. 10-CH-1262, rendered October 29, 2010, and recorded December 1, 2010, as Document No. R2010-166140 in the amount of \$115,808.83 plus costs.

REQUEST FOR RELIEF

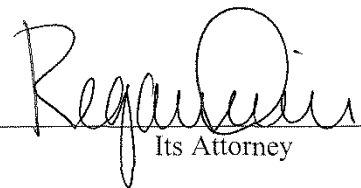
Plaintiff requests:

- (i) A Judgment of foreclosure and sale.
- (ii) An order granting a shortened redemption period, if sought.

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- (iii) A personal judgment for deficiency, if sought.
- (iv) An order granting possession, if sought.
- (v) An order placing the mortgagee in possession or appointing a receiver, if sought.
- (vi) A judgment for attorney's fees, costs and expenses, if sought.

PNC BANK, NATIONAL ASSOCIATION,
Plaintiff,

BY  Its Attorney

RICHARD L. HEAVNER (Regis. #01167618)
J. GREGORY SCOTT (Regis. #06196453)
JULIE BEYERS (Regis. #06217185)
FAIQ MIHLAR (Regis. #06274089)
JAMES COALE(Regis#0464813)
MEREDITH PITTS(Reg#6280878)
JOSHUA STEIMAN(Reg#6293875)
BRET COALE(Reg#6296103)
JOSEPH WETZEL(Reg#6284241)
HEATHER M. GIANNINO(Reg#6299848)
JOHN HERTENSTEIN(Reg#6303519)
ZANE BREITHAUPT(Reg#6301512)
REGAN LEWIS(Reg#6301846)
QUENTIN LEWIS(Reg#6301844)
PAUL CAUGHEY(Reg#6285896)
RICHARD TOBOZ(Reg#6304160)

HEAVNER, SCOTT, BEYERS & MIHLAR, LLC (ATTORNEY CODE #16320)
P.O. Box 740
Decatur, Illinois 62525
Telephone: (217) 422-1719

This advice pertains to your dealings with our firm as a debt collector. It does not affect your dealings with the court, and in particular it does not change the time at which you must answer the complaint. The summons is a command from the court, not from our firm, and you must follow its instructions even if you dispute the validity or the amount of the debt. The advice in this notice also does not affect our relations with the court. As attorneys, we may file papers in the suit according to the court's rules and the judge's instructions.

**NOTICE TO CONSUMER PURSUANT TO
FEDERAL FAIR DEBT COLLECTION PRACTICES ACT**

1. The amount of the debt is set forth in the attached Complaint.
2. The name of the Creditor is the named Plaintiff in the attached Complaint.
3. Unless you notify us within 30 days after receipt of this Notice that you dispute the validity of the debt set forth in the attached Complaint, or any portion thereof, we will assume that the debt is valid.
4. If you notify us in writing within said 30 day period that the debt or any portion thereof is disputed, we will obtain verification of the debt and a copy of such verification will be mailed to you.
5. Upon your written request within 30 days after receipt of this Notice, we will provide you with the name and address of the original creditor if it is different from the Plaintiff named in the attached Complaint.
6. This is an attempt to collect a debt and any information obtained will be used for that purpose.

1300

APPOINTMENT OF SPECIAL PROCESS SERVER

2229 (Rev. 09/08)

STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

PNC BANK, NATIONAL
ASSOCIATION

PLAINTIFF

VS

JERZY KUSMIERZ, HALINA
KUSMIERZ, THE TOWNSHIP OF
YORK and PNC BANK,
NATIONAL ASSOCIATION

DEFENDANT

11 CH1585
CASE NUMBERAPPOINTMENT
OF
SPECIAL PROCESS SERVER

FILED
2011 APR -4 PM 4:3
Chris Kachiroubas
CLERK OF THE
18th JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS
File Stamp Here

MOTION

The Plaintiff PNC Bank, National Association moves the Court to appoint:Metro Detective Agency, LLC - License Number 117-001358 a private individual over the age of eighteen

and not a party to this action to serve all writs of summons and any other writ or process required to be served in the above mentioned action.

Name Heavner, Scott, Beyers & Mihlar, LLCAddress 111 E. Main St., Suite 200DuPage Attorney Number 16320City/State/Zip Decatur, IL 62525Attorney for ☒ Plaintiff☐ Attorney for PlaintiffTelephone Number 217-422-1719

AFFIDAVIT

Daniel Schroeder, Manager

being first duly sworn upon oath deposes and states that:

1. They are an adult over the age of eighteen.
2. They are a citizen of the United States of America.
3. They are not a party to the above mentioned cause.
4. That this affidavit is made for the purpose that the Court grant leave to allow all writs of summons, writs and any other process are necessary in the above mentioned cause.

Signed and sworn to before me

4/11/11
Date
Official Seal
ERIN T. SHERRILL
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES 03/14/15
Circuit Clerk of Northern District of Illinois

ORDER

This matter coming before this court on written motion of the plaintiff or the attorney for the plaintiff requesting the Court to exercise its discretion under 735 ILCS 5/2-202, Civil Practice Act, and the Court being fully advised in the premises; the Court finding that Daniel Schroeder, Manager is a private individual over the age of eighteen and not a party to this action. Metro Detective Agency, LLC or any employees of Metro Detective Agency, LLC, #117-001358, being over the age of 18 be appointed to serve all writs of summons, writs and other process necessary in the above mentioned cause. years of age and not a party to this cause.

IT IS THEREFORE ORDERED that Agency, LLC, #117-001358, being over the age of 18 be appointed to serve all writs of summons, writs and other process necessary in the above mentioned cause. years of age and not a party to this cause.

IT IS FURTHER ORDERED that returns on said writs of summons, writs and any other process shall be made by affidavit to this Court.

Date

Judge

CHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

SUMMONS - REAL ESTATE MORTGAGE FORECLOSURE

3229-20 (Rev02/10)

STATE OF ILLINOIS

UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

COUNTY OF DU PAGE

PNC BANK, NATIONAL
ASSOCIATION

PLAINTIFF

VS

JERZY KUSMIERZ, HALINA
KUSMIERZ, THE TOWNSHIP
OF YORK and PNC BANK,
NATIONAL ASSOCIATION

DEFENDANT

2011CH001585

CASE NUMBER

CLERK OF THE
18TH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

11 APR -7 PM 1:05

FILED

File Stamp Here

SUMMONS

REAL ESTATE MORTGAGE FORECLOSURE

Jerzy Kusmierz - 1107 W. Eaton Ct., Apt. M, Palatine, IL 60067

To each Defendant:

You are Summoned and Required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance in the office of the Clerk of the Circuit Court, 505 N. County Farm Road, Wheaton, Illinois, within 30 days after service of this summons not counting the day of service.

If you fail to do so, a judgment by default may be entered against you for the relief asked in the complaint.

You are further advised that the time in which the subject real estate may be redeemed from foreclosure, pursuant to law commences to run with the service of this summons

To the Officer

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than thirty (30) days after its date.

DATE OF SERVICE

TO BE INSERTED BY OFFICER ON COPY LEFT WITH DEFENDANT
OR OTHER PERSON

Name: Heavner, Scott, Boyers, & Mihar, LLC ☐ PRO SE
DuPage Attorney Number: 16320
Attorney for: Plaintiff
Address: P.O. Box 740
City/State/Zip: Decatur, Illinois
Telephone Number: 217-422-1719



WITNESS:

CHRIS KACHIROUBAS, Clerk of the 18th Judicial Circuit Court

Judicial Date: 03/30/2011
Illinois Seal of the seal thereof, Wheaton,
Illinois



CHRIS KACHIROUBAS, Clerk

18th Judicial Circuit Court
By JAMES KUFR
Deputy Clerk

NOTE:

The filing of an appearance or answer with the Circuit Court Clerk requires a statutory fee of \$330.4022 payable at the time of filing.

CHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

IMPORTANT INFORMATION FOR HOMEOWNERS IN FORECLOSURE

1. **POSSESSION:** The lawful occupants of a home have the right to live in the home until a judge enters an order for possession.
2. **OWNERSHIP:** You continue to own your home until the court rules otherwise.
3. **REINSTATEMENT:** As the homeowner you have the right to bring the mortgage current within 90 days after you receive the summons.
4. **REDEMPTION:** As the homeowner you have the right to sell your home, refinance, or pay off the loan during the redemption period.
5. **SURPLUS:** As the homeowner you have the right to petition the court for any excess money that results from a foreclosure sale of your home.
6. **WORKOUT OPTIONS:** The mortgage company does not want to foreclose on your home if there is any way to avoid it. Call your mortgage company **PNC BANK, NATIONAL ASSOCIATION** or its attorneys to find out the alternatives to foreclosure.
7. **PAYOFF AMOUNT:** You have the right to obtain a written statement of the amount necessary to pay off your loan. Your mortgage company (identified above) must provide you this statement within 10 business days of receiving your request, provided that your request is in writing and includes your name, the address of the property, and the mortgage account or loan number. Your first payoff statement will be free.
8. **GET ADVICE:** This information is not exhaustive and does not replace the advice of a professional. You may have other options. Get professional advice from a lawyer or certified housing counselor about your rights and options to avoid foreclosure.
9. **LAWYER:** If you do not have a lawyer, you may be able to find assistance by contacting the Illinois State Bar Association or a legal aid organization that provides free legal assistance.
10. **PROCEED WITH CAUTION:** You may be contacted by people offering to help you avoid foreclosure. Before entering into any transaction with persons offering to help you, please contact a lawyer, government official, or housing counselor for advice.

INFORMACION IMPORTANTE PARA PROPIETARIOS DE CASA EN PROCESO DE EJECUCION HIPOTECARIA:

1. **POSESION:** Los ocupantes legítimos en la vivienda tienen el derecho de vivir en la casa hasta que el juez emita por escrito una Orden de Posesión judicial.
2. **TITULARIDAD:** Usted sigue como propietario de su casa hasta que el juez emita una decisión contraria.
3. **RESTABLECIMIENTO:** Como el propietario usted tiene el derecho de traer al corriente su hipoteca dentro de 90 días después de que usted recibe el Emplazamiento.
4. **REDENCION DE LA PROPIEDAD:** Como el propietario usted tiene el derecho de vender su casa, refinanciar, o pagar el total del préstamo durante el periodo de redención.
5. **EXCESO DE BIENES:** Como el propietario usted tiene el derecho de presentar una solicitud ante el tribunal para el exceso de dinero resultado de la venta de ejecución de su casa.
6. **OPCIONES DE NEGOCIACION:** El prestamista hipotecario no quiere ejecutar sobre su casa si hay cualquier modo de evitarlo. Llame a su prestamista hipotecario **PNC BANK, NATIONAL ASSOCIATION** o sus abogados para averiguar las alternativas a la ejecución hipotecaria.
7. **CANTIDAD DEL SALDO:** Usted tiene el derecho de obtener una declaración por escrita de la cantidad necesaria para pagar su préstamo. Su prestamista hipotecario (identificado arriba) debe proporcionarle esta declaración dentro de 10 días de haber recibido su petición, con tal de que su petición sea por escrita e incluye su nombre, la dirección de la propiedad y la cuenta de hipoteca o el número del préstamo. Su primera declaración del saldo será gratis.
8. **OBTENGA ASESORIA:** Esta información no es exhaustiva y no sustituye el consejo de un profesional. Usted puede tener otras opciones. Obtenga asesoría profesional de un abogado o de un consejero de vivienda certificado de sus derechos y opciones para evitar la ejecución hipotecaria.
9. **ABOGADO:** Si usted no tiene un abogado, usted podrá obtener asistencia comunicándose con la Barra de Asociación del Estado de Illinois o con una organización sin fines de lucro que proporcione asistencia legal gratuita.
10. **PROCEDA CON PRECAUCION:** Usted podría ser contactado por gente ofreciéndole ayuda para evitar la ejecución hipotecaria. Antes de entrar en cualquier transacción con personas ofreciéndole ayuda, por favor comuníquese con un abogado, representante gubernamental o consejero de vivienda para accesoria.

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

PNC BANK, NATIONAL ASSOCIATION,

Plaintiff(s),

vs.

JERZY KUSMIERZ, et al.,

Defendant(s).

Case No.: 11 CH 1585

AFFIDAVIT OF SERVICE



28557

I, Jennifer I. Magida, depose and say the following:

I am a registered employee of a Private Detective Agency licensed by the Illinois Department of Financial and Professional Regulation and thereby authorized to serve process within the State of Illinois pursuant to 735 ILCS 5/2-202(a).

On April 01, 2011 at 7:18 PM, I served the within Summons; Important Information For Homeowners In Foreclosure (English & Spanish); Complaint For Foreclosure on JERZY KUSMIERZ in the following manner:

Abode Service: By leaving a copy of the Summons; Important Information For Homeowners In Foreclosure (English & Spanish); Complaint For Foreclosure at JERZY KUSMIERZ's usual place of abode, 1107 West Eaton Court, Palatine, IL 60067, with his Wife, Halina Kusmierz, a person of his family, or other person residing there, over the age of 13 years who was informed of the contents of the Summons.

On April 04, 2011, a copy of the Summons was mailed in a sealed envelope, with postage fully prepaid, addressed to JERZY KUSMIERZ at his usual place of abode.

Halina Kusmierz is described as follows:

Sex: Female – Race: Caucasian – Approximate Age: 51

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

x J. Magida 4/5/11
Jennifer I. Magida
License(s): 129-311413 & 117-001358

Metro Detective Agency, LLC
125 North 1st Street
DeKalb, IL 60115
(800) 511-8940

9550

SUMMONS - REAL ESTATE MORTGAGE FORECLOSURE

3229-20 (Rev02/10)

STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

PNC BANK, NATIONAL
ASSOCIATION

PLAINTIFF

VS

JERZY KUSMIERZ, HALINA
KUSMIERZ, THE TOWNSHIP
OF YORK and PNC BANK,
NATIONAL ASSOCIATION

DEFENDANT

2011CH001585

CASE NUMBER

11 APR -7 PM 1:05
 Clerk of the
 18th JUDICIAL CIRCUIT
 DU PAGE COUNTY, ILLINOIS
 File Stamp Here

FILED

SUMMONS

REAL ESTATE MORTGAGE FORECLOSURE

Halina Kusmierz - 1107 W. Eaton Ct., Apt. M, Palatine, IL 60067

To each Defendant:

You are Summoned and Required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance in the office of the Clerk of the Circuit Court, 505 N. County Farm Road, Wheaton, Illinois, within 30 days after service of this summons not counting the day of service.

If you fail to do so, a judgment by default may be entered against you for the relief asked in the complaint.

You are further advised that the time in which the subject real estate may be redeemed from foreclosure, pursuant to law commences to run with the service of this summons

To the Officer

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed.

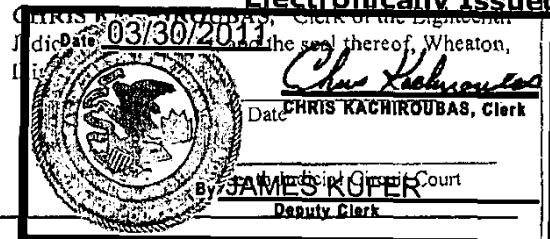
This summons may not be served later than thirty (30) days after its date.

DATE OF SERVICE

TO BE INSERTED BY OFFICER ON COPY LEFT WITH DEFENDANT
OR OTHER PERSON

Name: Heavner, Scott, Beyers, & Mihar, LLC ☐ PRO SE
 DuPage Attorney Number: 16320
 Attorney for: Plaintiff
 Address: P.O. Box 740
 City/State/Zip: Decatur, Illinois
 Telephone Number: 217-422-1719

WITNESS:



NOTE:

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CHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
 WHEATON, ILLINOIS 60187-0707

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2. **OWNERSHIP:** You continue to own your home until the court rules otherwise.
3. **REINSTATEMENT:** As the homeowner you have the right to bring the mortgage current within 90 days after you receive the summons.
4. **REDEMPTION:** As the homeowner you have the right to sell your home, refinance, or pay off the loan during the redemption period.
5. **SURPLUS:** As the homeowner you have the right to petition the court for any excess money that results from a foreclosure sale of your home.
6. **WORKOUT OPTIONS:** The mortgage company does not want to foreclose on your home if there is any way to avoid it. Call your mortgage company **PNC BANK, NATIONAL ASSOCIATION** or its attorneys to find out the alternatives to foreclosure.
7. **PAYOFF AMOUNT:** You have the right to obtain a written statement of the amount necessary to pay off your loan. Your mortgage company (identified above) must provide you this statement within 10 business days of receiving your request, provided that your request is in writing and includes your name, the address of the property, and the mortgage account or loan number. Your first payoff statement will be free.
8. **GET ADVICE:** This information is not exhaustive and does not replace the advice of a professional. You may have other options. Get professional advice from a lawyer or certified housing counselor about your rights and options to avoid foreclosure.
9. **LAWYER:** If you do not have a lawyer, you may be able to find assistance by contacting the Illinois State Bar Association or a legal aid organization that provides free legal assistance.
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2. **TITULARIDAD:** Usted sigue como propietario de su casa hasta que el juez emita una decisión contraria.
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5. **EXCESO DE BIENES:** Como el propietario usted tiene el derecho de presentar una solicitud ante el tribunal para el exceso de dinero resultado de la venta de ejecución de su casa.
6. **OPCIONES DE NEGOCIACION:** El prestamista hipotecario no quiere ejecutar sobre su casa si hay cualquier modo de evitarlo. Llame a su prestamista hipotecario **PNC BANK, NATIONAL ASSOCIATION** o sus abogados para averiguar las alternativas a la ejecución hipotecaria.
7. **CANTIDAD DEL SALDO:** Usted tiene el derecho de obtener una declaración por escrita de la cantidad necesaria para pagar su préstamo. Su prestamista hipotecario (identificado arriba) debe proporcionarle esta declaración dentro de 10 días de haber recibido su petición, con tal de que su petición sea por escrita e incluye su nombre, la dirección de la propiedad y la cuenta de hipoteca o el número del préstamo. Su primera declaración del saldo será gratis.
8. **OBTENGA ASESORIA:** Esta información no es exhaustiva y no sustituye el consejo de un profesional. Usted puede tener otras opciones. Obtenga asesoría profesional de un abogado o de un consejero de vivienda certificado de sus derechos y opciones para evitar la ejecución hipotecaria.
9. **ABOGADO:** Si usted no tiene un abogado, usted podrá obtener asistencia comunicándose con la Barra de Asociación del Estado de Illinois o con una organización sin fines de lucro que proporcione asistencia legal gratuita.
10. **PROCEDA CON PRECAUCION:** Usted podría ser contactado por gente ofreciéndole ayuda para evitar la ejecución hipotecaria. Antes de entrar en cualquier transacción con personas ofreciéndole ayuda, por favor comuníquese con un abogado, representante gubernamental o consejero de vivienda para accesoria.

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

PNC BANK, NATIONAL ASSOCIATION,

Plaintiff(s),

vs.

JERZY KUSMIERZ, et al.,

Defendant(s).

Case No.: 11 CH 1585

AFFIDAVIT OF SERVICE



20559

I, Jennifer I. Magida, depose and say the following:

I am a registered employee of a Private Detective Agency licensed by the Illinois Department of Financial and Professional Regulation and thereby authorized to serve process within the State of Illinois pursuant to 735 ILCS 5/2-202(a).

On April 01, 2011 at 7:18 PM, I served the within Summons; Important Information For Homeowners In Foreclosure (English & Spanish); Complaint For Foreclosure on HALINA KUSMIERZ in the following manner:

Personal Service: By leaving a copy of the Summons; Important Information For Homeowners In Foreclosure (English & Spanish); Complaint For Foreclosure with HALINA KUSMIERZ personally.

HALINA KUSMIERZ was served at 1107 West Eaton Court, Palatine, IL 60067.

HALINA KUSMIERZ is described as follows:

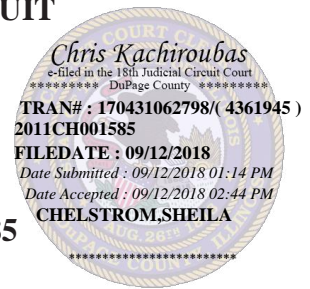
Sex: Female – Race: Caucasian – Approximate Age: 51

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

x J. Magida 4/5/11
Jennifer I. Magida
 License(s): 129-311413 & 117-001358

Metro Detective Agency, LLC
 125 North 1st Street
 DeKalb, IL 60115
 (800) 511-8940

**STATE OF ILLINOIS COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT**



**PNC BANK NATIONAL
ASSOCIATION,**

PLAINTIFF

VS.

CASE # 2011 CH 1585

**JERZY KUSMIERZ; HALINA
KUSMIERZ; THE TOWNSHIP OF
YORK; AND PNC BANK, NATIONAL
ASSOCIATION,**

DEFENDANTS

**PROPERTY: 1405 WISCONSIN
AVE, LOMBARD, IL
60148**

APPEARANCE

The undersigned, RAI LAW, LLC, enters its appearance on behalf of JERZY KUSMIERZ and HALINA KUSMIERZ, in the above captioned matter.

By: /s/ Giovanni Raimondi

RAI Law, LLC
1051 PERIMETER DR, STE 400
SCHAUMBURG, IL 60173
Phone: (312) 857-8320
Email: pleadings@railawllc.com
Attorney Code: 324817

I certify that a copy of the within instrument was served to all parties who have appeared and have not heretofore been found by the Court to be in default for failure to plead.

By: Giovanni Raimondi

**STATE OF ILLINOIS COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT**

**PNC BANK NATIONAL
ASSOCIATION,**

PLAINTIFF

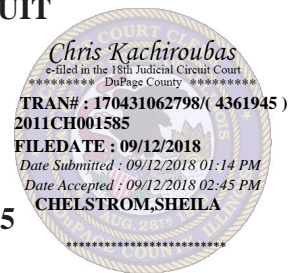
VS.

**JERZY KUSMIERZ; HALINA
KUSMIERZ; THE TOWNSHIP OF
YORK; AND PNC BANK, NATIONAL
ASSOCIATION,**

DEFENDANTS

CASE # 2011 CH 1585

**PROPERTY: 1405 WISCONSIN
AVE, LOMBARD, IL
60148**



PETITION FOR RELIEF FROM VOID JUDGMENTS

Jerzy Kusmierz and Halina Kusmierz ("Petitioners") by and through their attorney, RAI Law, LLC and for their Petition For Relief From Void Judgments pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401(f))(West 2014) states as follows:

1. On August 1, 2011 PNC Bank, National Association ("Plaintiff"), filed a foreclosure complaint against Petitioners seeking foreclosure of the real estate located at 1405 Wisconsin Ave, Lombard, IL 60148 (the "Property").
2. Plaintiff named Jerzy Kusmierz and Halina Kusmierz, in the complaint, as Mortgagors and Owners of the Property.
3. The Illinois Mortgage Foreclosure Law defines Petitioners as necessary parties pursuant to section 735 ILCS 5/15-1501(a) of the Code of Civil Procedure. (735 ILCS 5/15-1501(a)) (West 2014)
4. The Summons, and an affidavit of service, were filed with the Clerk of the Circuit Court on April 7, 2011.

5. According to the affidavit of service, Jennifer I. Magida, an registered employee, of Metro Detective Agency, LLC, served Jerzy Kusmierz and Halina Kusmierz with the summons on April 1, 2011 at 1107 West Eaton Court, Palatine, IL 60067.
6. The Court can take judicial notice that 1107 West Eaton Court, Palatine, IL 60067, is located in Cook County, Illinois.
7. There is no order in the record appointing a special process server.
8. On February 28, 2012 this Court entered an order of default against Petitioners and a judgment of foreclosure.
9. On May 31, 2012, the Property was sold at a judicial sale.
10. On June 12, 2012, the Court entered an order confirming the judicial sale.
11. On August 1, 2012 a Sheriff's Deed from John E. Zaruba, as Sheriff of DuPage County, Illinois to PNC Bank National Association was recorded as document number R2012-100116 in the Du Page County Recorder's Office.
12. On April 23, 2013 a Special Warranty Deed from PNC Bank, National Association to Naillisa S. Ragland and Brian T. Heath was recorded as document number R2013-059439 in the Du Page County Recorder's Office.
13. On April 25, 2013 a Release of Lien from The Township of York to Jerzy Kusmierz was recorded as document number R2013-060404 in the Du Page County Recorder's Office.
14. On April 25, 2013 a Release of Lien from The Township of York to Jerzy Kusmierz was recorded as document number R2013-060405 in the Du Page County Recorder's Office.
15. On June 12, 2013 a Mortgage from Naillisa S. Ragland and Brian T. Heath to Mortgage Electronic Registration Systems, Inc. was recorded as document number R2013-085198 in the Du Page County Recorder's Office.

16. On June 18, 2013 a Lien for Grass Mowing Charges from The Township of York to Naillisa S. Ragland was recorded as document number R2013-087722 in the Du Page County Recorder's Office.
17. On August 22, 2013 a Lien for Grass Mowing Charges from The Township of York to Naillisa S. Ragland was recorded as document number R2013-122204 in the Du Page County Recorder's Office.
18. On November 25, 2013 a Release of Lien from The Township of York to Naillisa S. Ragland was recorded as document number R2013-159303 in the Du Page County Recorder's Office.
19. On November 25, 2013 a Release of Lien from The Township of York to Naillisa S. Ragland was recorded as document number R2013-159304 in the Du Page County Recorder's Office.
20. On May 11, 2015 a Mortgage from Naillisa S. Ragland and Brian T. Heath to STC Capital Bank was recorded as document number R2015-053823 in the Du Page County Recorder's Office.
21. The Court did not acquire personal jurisdiction over Petitioners because Petitioners were served in Cook County, Illinois and the Circuit Court did not appoint a special process server to serve process in Cook County.
22. The lack of jurisdiction was apparent on the face of the record.

WHEREFORE, Jerzy Kusmierz and Halina Kusmierz, move this Honorable Court to:

- A. Quash service for Jerzy Kusmierz and Halina Kusmierz;
- B. Vacate all orders and judgments entered in the case as void *ab initio*;
- C. Find that the lack of jurisdiction is apparent on the face of the record;

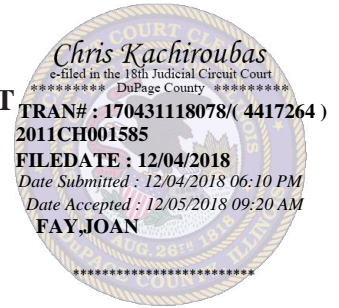
- D. Find that Jerzy Kusmierz and Halina Kusmierz are the owners of the Property.
- E. Restore possession of 1405 Wisconsin Ave, Lombard, IL 60148 to Jerzy Kusmierz and Halina Kusmierz and order PNC Bank National Association, Naillisa S. Ragland, and Brian T. Heath to pay Jerzy Kusmierz and Halina Kusmierz, as restitution, reasonable use and occupancy of 1405 Wisconsin Ave, Lombard, IL 60148 from July 12, 2012, through and including, the date Jerzy Kusmierz and Halina Kusmierz are restored to possession. In the alternative, in the event that possession is not restored to Jerzy Kusmierz and Halina Kusmierz, order PNC Bank National Association, Naillisa S. Ragland, and Brian T. Heath to pay Jerzy Kusmierz and Halina Kusmierz, as restitution, the value of the Property on the date that this petition is granted plus reasonable use and occupancy of 1405 Wisconsin Ave, Lombard, IL 60148 from July 12, 2012, through and including, the date that restitution is paid in full.
- F. Order PNC Bank National Association, Naillisa S. Ragland, and Brian T. Heath to pay Jerzy Kusmierz and Halina Kusmierz, as restitution, all profits that they derived from 1405 Wisconsin Ave, Lombard, IL 60148.
- G. Stay further proceedings until all restitution is made to Jerzy Kusmierz and Halina Kusmierz.

Respectfully Submitted,
Jerzy Kusmierz and Halina Kusmierz

By: /s/ Giovanni Raimondi
RAI Law, LLC, their Attorney

RAI Law, LLC
1051 PERIMETER DR, STE 400
SCHAUMBURG, IL 60173
Phone: (312) 857-8320
Email: lawyer@railawllc.com
Attorney Code: 324817

**THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
COUNTY OF DuPAGE – STATE OF ILLINOIS**



PNC BANK, NATIONAL ASSOCIATION,
PLAINTIFF

VS.

JERZY KUSMIERZ, HALINA KUSMIERZ, THE
TOWNSHIP OF YORK, and PNC BANK, NATIONAL
ASSOCIATION,

DEFENDANTS.

No. 2011 CH 1585

Property Address:
1405 Wisconsin
Lombard, Illinois 60148

**RESPONDENTS' COMBINED 2-619.1 MOTION TO DISMISS
PETITION FOR RELIEF FROM VOID JUDGMENTS**

NOW COMES Section 2-1401 respondents Nellisa S. Ragland ("Nellisa") and Brian T.

Heath ("Brian," and collectively with Nellisa, the "Respondents"), by and through their attorneys, Plunkett Cooney P.C., and pursuant to 735 ILCS 5/2-619.1, move this Court for the entry of an order dismissing the Petition for Relief from Void Judgments (the "Petition") filed by defendants/Section 2-1401 petitioners Jerzy Kusmierz ("Jerzy") and Halina Kusmierz ("Halina," and collectively with Jerzy, the "Petitioners"). In support of said motion, Respondents state as follows:

I. INTRODUCTION

1. The Petition seeks to vacate the orders entered in the underlying foreclosure and to divest Respondents – the current owners of the subject real estate – of their home. The basis for Petitioners' challenge is a technical defect in the manner in which they were served in the foreclosure – namely, the alleged failure to appoint a special process server for service effectuated in Cook County. Curiously, the Petitioners were unconcerned with the method of service for over six years after the conclusion of the foreclosure.

2. Aside from the peculiar timing of the Petition, the pleading is fatally defective for the following reasons: (a) Respondents are entitled to the protections afforded *bona fide* purchasers, (b) the doctrine of *laches* bars the instant proceeding, and (c) the Petition requests improper relief.

II. RELEVANT BACKGROUND TO BOTH 2-615 AND 2-619 MOTIONS¹

3. On March 30, 2011, plaintiff/Section 2-1401 respondent PNC Bank, National Association (“PNC”) commenced the underlying proceeding (the “Foreclosure”) to foreclose its mortgage lien interest in the property located at 1405 Wisconsin Avenue, Lombard, Illinois (the “Premises”). *See* Petition ¶ 1. Petitioners – the then owners of the Premises – and PNC Bank – the holder of a memorandum of judgment against Petitioners in the amount of \$115,808.83 – were named as parties-defendant in the proceeding. *See id.* ¶ 2.

4. On April 1, 2011, Halina was personally served with summons (the “Halina Summons”) and a copy of PNC’s Complaint for Foreclosure (the “Complaint”) by an employee of Metro Detective Agency, LLC (the “Detective”) at 1107 West Eaton Court, Palatine, Illinois 60067 (the “Service Address”). *See id.* ¶ 5. Certified copies of the Halina Summons and Affidavit reflecting service on Halina (the “Halina Service Return”) are attached hereto as Exhibit “A”.

5. On April 4, 2011, the court presiding over the Foreclosure entered an order pursuant to 735 ILCS 5/2-202(a-5) appointing the Detective as special process server in the proceeding (the “SPS Order”). *See* Ex. B (SPS Order).

6. On this same date, Jerzy was served with summons (the “Jerzy Summons”) and the Complaint by the Detective via abode service on his wife, Halina, at the Service Address. Certified copies of the Jerzy Summons and Affidavit reflecting service on Jerzy (the “Jerzy Service Return”) are attached hereto as Exhibit “C”.

¹ This recitation of relevant facts is based on the pleadings – in this matter and the underlying foreclosure – matters of which this Court can take judicial notice, and the judicial admissions in the record. *See K. Miller Const. Co. v. McGinnis*, 238 Ill. 2d 284, 291, 938 N.E.2d 471, 477 (2010) (in ruling on a section 2–615 motion, a trial court should consider “those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record”); *Advocate Health & Hosps. Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759, 810 N.E.2d 500, 505 (1st Dist. 2004) (in ruling on a motion brought pursuant to 735 ILCS 5/2-619, a court may “consider the pleadings, as well as any affidavits and deposition evidence, and [] take judicial notice of facts contained in public records where such notice will aid in the efficient disposition of the case”). In this regard, “[i]t is well settled that public documents that are included in the records of other courts and administrative tribunals may be the subject of judicial notice.” *NBD Highland Park Bank, N.A. v. Wien*, 251 Ill. App. 3d 512, 520, 622 N.E.2d 123, 130 (2nd Dist. 1993). Likewise, the records of the county recorder of deeds may be the subject of judicial notice. *See Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, 36 N.E.3d 266, 269, *reh’g denied* (June 30, 2015), *as modified on denial of reh’g* (Aug. 3, 2015), *appeal denied*, 39 N.E.3d 1012 (Ill. 2015)(court can take judicial notice of records maintained by the county recorder of deeds).

7. On February 28, 2012, the court in the Foreclosure entered a default order against the Petitioners as well as a Judgment of Foreclosure and Sale (the “Judgment”). *See* Petition ¶ 8. Pursuant to authorization afforded by the Judgment, the Sheriff of DuPage County (the “Sheriff”) conducted a judicial sale of the Premises on May 31, 2012, with PNC being the successful bidder (the “Sale”). *See id.* ¶¶ 9, 11.

8. On June 12, 2012, the court in the Foreclosure entered an order confirming the Sale (the “Confirmation Order”). *See id.* ¶ 10. On this same date, the Sheriff issued a deed vesting PNC with title to the Premises. *See id.* ¶ 11.

9. On or about April 9, 2013, Respondents purchased the Premises from PNC for the sum of \$24,000.00. *See* Ex. D (Affidavit of Brian Heath) ¶1; Ex. E (Affidavit of Nellisa Ragland) ¶1. The conveyance was effectuated through delivery of a Special Warranty Deed to the Respondents. *See id.*; Petition ¶ 12.

10. At the time Respondents purchased the Premises, the property consisted of a vacant lot. *See* Ex. D ¶ 2; Ex. E ¶2. Respondents subsequently constructed a five-bedroom single family home on the property. *See id.* To finance this construction, Respondents obtained two mortgage loans from STC Capital Bank (“STC”), *to wit*: (a) a \$220,400.00 loan secured by a mortgage lien interest in the Premises delivered to Mortgage Electronic Registration Systems, Inc. (“MERS”), as nominee for STC, on May 17, 2013; and (b) a home equity line of credit in the amount of \$72,250.00 secured by a subordinate mortgage lien interest in the Premises delivered to STC on May 7, 2015. *See* Petition ¶¶15, 20; *see also* Ex. D ¶ 2; Ex. E ¶ 2.

11. On September 12, 2018, Petitioners commenced the present action by filing their Petition. In pertinent part, the pleading contends that service on Petitioners in the Foreclosure did not comply with 735 ILCS 5/2-202(a) because the Detective was not appointed by the court and Petitioners were served at a location in Cook County. As a result of this alleged jurisdictional defect, Petitioners submit that all orders entered in the Foreclosure Action are void *ab initio*. Petitioners also

request, among other things, that this Court: (a) decree that they are the owners of the Premises and award them possession of the property and (b) direct PNC and Respondents to pay a monetary “restitution” award to Petitioners. (collectively, the “Extraneous Relief”).

III. LEGAL STANDARD

12. Inasmuch as a petition filed pursuant to 735 ILCS 5/2-1401 is procedurally the counterpart of a complaint, a responding party may move to dismiss the petition under either Section 2-615 or Section 2-619 of the Code of Civil Procedure (the “Code”). *Blazyk v. Daman Exp., Inc.*, 406 Ill. App. 3d 203, 207, 940 N.E.2d 796, 799 (2nd Dist. 2010). In this regard, Section 2-619.1 provides that motions under Sections 2-615 and 2-619 may be filed together as a single request. 735 ILCS 5/2-619.1.

13. A defendant may move for dismissal of a claim under Section 2-619(a) where it is barred by an “affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a). A motion made under Section 2-615, in turn, contemplates dismissal of a complaint where it appears that the pleading “is substantially insufficient in law.” 735 ILCS 5/2-615. In assessing a request submitted pursuant to this section, dismissal is warranted when “after viewing the allegations in the light most favorable to the plaintiff, the complaint fails to state a cause of action on which relief can be granted.” *YPI 180 N. LaSalle Owner, LLC v. 180 N. LaSalle II, LLC*, 403 Ill. App. 3d 1, 8 (1st Dist. 2010).

IV. ARGUMENT

a. 2-619 Motion

i. Respondents are Entitled to the Protections Afforded *Bona Fide* Purchasers Under 735 ILCS 2/1401(e)

14. In pertinent part, Section 2-1401(e) of the Illinois Code of Civil Procedure (the “Code”) provides:

Unless lack of jurisdiction affirmatively appears from the record proper, the vacation of or modification of an order or judgment pursuant to the provisions of this Section does not affect the right, title or interest in or to any real or personal property of any person, not a party to the original action, acquired for value after the entry of the order of judgment but before the filing of the petition...

735 ILCS 5/2-1401(e).

15. This provision "has been interpreted by Illinois courts as intending to protect *bona fide* purchasers for value." *U.S. Bank Nat. Ass'n v. Rahman*, 2016 IL App (2d) 150040, ¶ 41, 54 N.E.3d 866, 875, *reh'g denied* (June 2, 2016). By affording these protections, the legislature aimed "to promote the merchantability of property affected by court judgments and decrees." *Mortg. Elec. Sys. v. Gipson*, 379 Ill. App. 3d 622, 634, 884 N.E.2d 796, 806 (1st 2008) (quoting Ill. Ann. Stat., ch. 110, par. 2-1401, Joint Committee Comments, at 603-04 (Smith-Hurd 1983)).

16. As reflected by, *inter alia*, the record in the Foreclosure, Respondents were not parties to the underlying proceeding. *See* Ex. D ¶ 7; Ex. E ¶ 7. Further, Respondents acquired their interest in the Premises for value after the entry of the Confirmation Order and prior to the filing of the Petition. *See* Petition ¶¶ 10-12; Ex. D ¶ 1; Ex. E ¶ 1. Moreover, the defect complained of by Petitioners – that service failed to comport with 735 ILCS 5/2-202(a) – was not apparent from the face of the record.

17. In the context of Section 2-1401(e), a lack of jurisdiction is apparent from the record if it does not require inquiry beyond the face of the "record proper." 735 ILCS 5/2-1401(e); *see also Rahman*, 2016 IL App (2d) 150040 at ¶ 27, 54 N.E.3d at 872. In this regard, the "record proper" is a legal term of art, and our Supreme Court has held that it must be limited to "the pleadings, process, verdict of the jury and judgment or decree of the court." *Cullen v. Stevens*, 389 Ill. 35, 42, 58 N.E.2d 456, 459 (1944). This limitation is necessary in order for there to "be stability in decrees and judgments of the court." *Id.*

18. In the present instance, the Detective effectuating service of process in the Foreclosure was authorized to do so under Section 202(a) of the Code without prior appointment in any county in Illinois with a population of less than 2,000,000 people. 735 ILCS 5/2-202(a). In this regard, the Halina and Jerzy Service Returns (collectively, the "Service Returns") fail to reflect the county in which service was effectuated much less specify the number of people residing therein. In

fact, the Service Returns reflect that the Detective was “authorized to serve process within the State of Illinois pursuant to 735 ILCS 5/2-202(a)” – which would lead a reasonably prudent purchaser to conclude that service on Petitioners complied with Section 2-202(a). *See* Ex. A; Ex C.

19. Further, an investigation of the remainder of the record proper in the Foreclosure fails to reflect the county of service and/or or the population thereof. Thus, it would have been necessary to consult external materials outside the record to determine the propriety of service. Indeed, the Petitioners concede as much in requesting that this Court take judicial notice that the Service Address is located in Cook County, with a population of over 2,000,000.00. However, judicial notice is an evidentiary tool whereby a *court* may make a determination as to whether a fact has been established. *See Nicketta v. Nat'l Tea Co.*, 338 Ill. App. 159, 161–62, 87 N.E.2d 30, 31 (1st Dist. 1949) (“[t]he doctrine of judicial notice is based on convenience and expediency, and to say that a court will take judicial notice of a fact is merely another way of saying that the usual forms of evidence will be dispensed with if knowledge of the fact can be otherwise acquired”). Contrary to Petitioner’s claims, judicial notice is not a substitute for the matter appearing in the record proper.

20. In light of the foregoing, Respondents are entitled to the protections afforded *bona fide* purchasers under Section 2-1401(e).

ii. Even if Respondents are not Afforded *Bona Fide* Purchaser Status, Section 2-1401(e), as Recently Amended, Bars the Possessory Relief sought by Petitioners.

21. While Respondents maintain that they entitled to *bona fide* purchaser status, in the event Petitioners are permitted to proceed with their action, Section 2-1401(e) would nevertheless bar the possessory relief sought in the Petition. On August 23, 2018, that provision of the Code was amended to provide:

[w]hen a petition is filed pursuant to this Section to reopen a foreclosure proceeding, notwithstanding the provisions of Section 15-1701 of this Code, the purchaser or successor purchaser of real property subject to a foreclosure sale who was not a party to the mortgage foreclosure proceedings is entitled to remain in possession of the property until the foreclosure action is defeated or the previously foreclosed

defendant redeems from the foreclosure sale if the purchaser has been in possession of the property for more than 6 months.

735 ILCS 5/2-1401(e).

22. Here, Respondents were not parties to the Foreclosure and have been in possession of the Premises for more than 6 months. *See* Ex. D ¶¶ 3, 6; Ex. E ¶¶ 3, 6. Consequently, they have been entitled to possess the Premises, and will continue to be entitled to such possession unless and until the Petitioners successfully defeat PNC's resumed foreclosure action or redeem from the Sale. As such, Petitioners' requests to be immediately restored to possession of the Premises, for use and occupancy, and for profits derived from the Premises are barred by Section 2-1401(e).

iii. The Doctrine of *Laches* Precludes Prosecution of the Instant Action

23. *Laches* is “the neglect or omission to assert a right which, taken in conjunction with a lapse of time and circumstances causing prejudice to the opposite party will operate as a bar to a suit.” *Negron v. City of Chicago*, 376 Ill. App. 3d 242, 246–47, 876 N.E.2d 148, 153 (1st Dist. 2007). “[A] party asserting *laches*...must prove two fundamental elements: (1) lack of due diligence by the party asserting a claim; and (2) prejudice to the party asserting *laches*.” *Negron*, 376 Ill. App. 3d at 247, 876 N.E.2d at 153.

24. In the instant case, it is clear that the Petitioners lacked diligence bringing their claim despite the opportunity to do so. As set forth above, the Petitioners received Summons and the Complaint on April 1, 2011. *See* Petition ¶ 5; Ex. A; Ex. C. While the Petitioners contend that they were not served by the proper individual, they do not dispute that they were aware of the Foreclosure and the prospect of asserting a challenge thereto. Accordingly, Petitioners had sufficient knowledge of their rights for the purposes of *laches*. *See Pyle v. Ferrell*, 12 Ill. 2d 547, 554, 147 N.E.2d 341, 345 (1958) (the test for the application of *laches* is what the claimant “might have known by the use of the means of information within his reach with the vigilance the law requires of him”).

25. Regarding the second element of *laches*, it is clear that Respondents would be severely prejudiced if the Petitioners are permitted to pursue their attack on the orders which give

rise to Respondents' title after an egregious delay. In particular, Respondents stand to be divested of their interest in the Premises, as well as sums paid: (a) to build a home on the property, and (b) towards real estate taxes and property insurance. *See* Ex. D ¶¶4-5; Ex. E ¶¶ 4-5. In this regard, the Supreme Court has held that "a party is guilty of laches which ordinarily bars the enforcement of his right where he remains passive *while an adverse claimant incurs risk, enters into obligations, or makes expenditures for improvements or taxes.*" *Pyle*, 12 Ill. 2d at 555, 147 N.E.2d at 345 (emphasis added).

26. Moreover, the Illinois Supreme Court long ago rejected the notion that a void decree may be challenged at any time, without regard to *laches*, and affirmed that "*laches* is a familiar defense when the validity of an earlier judgment or decree has been attacked." *James v. Frantz*, 21 Ill. 2d 377, 383, 172 N.E.2d 795, 798–99 (1961). The Second District Appellate Court has observed this well established precedent – as of course it must – and found that *laches* may be interposed as a defense to an attack on a void judgment. *See, e.g., Miller v. Bloomberg*, 60 Ill. App. 3d 362, 365, 376 N.E.2d 748, 750 (2nd Dist. 1978) ("a void decree may be attacked at any time by the parties themselves or by any person who is affected thereby...although the equitable defense of laches may be interposed").

iv. Service on Jerzy was Proper

27. As noted, Jerzy was served in the Foreclosure by abode service on his wife pursuant to Section 2-203 of the Code. In this regard, Section 2-203 provides in relevant part that service upon an individual defendant may be made:

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) (emphasis added)

28. Where personal jurisdiction is based upon substituted or constructive service provided by Section 2-203(a)(2), there must be strict compliance with each statutory requirement. *State Bank of Lake Zurich v. Thill*, 135 Ill. App. 3d 747, 754, 481 N.E.2d 1215, 1219 (1985), *aff'd and remanded*, 113 Ill. 2d 294, 497 N.E.2d 1156 (1986).

29. In the present instance, substitute service on Jerzy was completed on April 4, 2011, when the Detective mailed the Summons to Jerzy at his usual place of abode. *See* Ex. C. Inasmuch as the Detective was authorized to effectuate service in the Foreclosure as of that date by virtue of the SPS Order, service on Jerzy comported with Section 2-202 of the Code.

v. The Orders Entered Against the Other Defendants Must Stand

30. In their prayer for relief, Petitioners improperly request that this court “[v]acate *all* orders and judgments entered in the case...” *See* Petition at 4. In the first place, the Petitioners lack standing to seek relief on behalf of other parties to the Foreclosure. *See Bank of Am. Nat. Ass'n v. Bassman FBT, L.L.C.*, 2012 IL App (2d) 110729, ¶ 13, 981 N.E.2d 1, 6, *as modified on denial of reh'g* (Dec. 7, 2012) (“[a] litigant must assert his or her own legal rights rather than the rights of a third party”).

31. Further, any alleged jurisdictional defect as to Halina does not impact the orders entered against defendants properly before the court. *See In re J. W.*, 87 Ill. 2d 56, 59-60. 429 N.E. 2d 501, 502-503 (1981)(mistake in the decision to proceed in the absence of necessary parties “does not deprive the court of the power to adjudicate as between the parties before it”); *In re Estate of Thorp*, 282 Ill. App. 3d 612, 618–19, 669 N.E.2d 359, 363–64 (4th Dist. 1996)(“failure to join an indispensable party is not...a ‘jurisdictional’ defect: the court can decide the case before it as to defendants who have been made parties ...”). Consequently, the Confirmation Order and subsequent conveyances of the Premises remain in effect as to the properly joined defendants – including Jerzy, *see supra* ¶¶ 27-29 – and Respondents succeed to the interests of those parties.

b. 2-615 Motion

32. Relief under section 2-1401 is *predicated on* the showing of” matters that “would have precluded rendition of the judgment in the original action” *Price v. Philip Morris, Inc.*, 2015 IL 117687, ¶ 23 (emphasis added). In this regard, the Extraneous Relief requested by Petitioners is plainly not “predicated on” matters that would have prevented a judgment from being entered against them. Therefore, these requests are beyond the scope of relief available under Section 2-1401.

33. Further, Petitioners have failed to allege facts which would support granting the Extraneous Relief – in particular, an award of use and occupancy damages. *See Grund v. Donegan*, 298 Ill. App. 3d 1034, 1037, 700 N.E.2d 157, 159 (1st Dist. 1998) (a complaint is subject to dismissal under Section 2-615 “if it does not contain factual allegations in support of each element of the claim that the plaintiff must prove in order to sustain a judgment”). As such, the Petition is legally insufficient and must be dismissed.

V. CONCLUSION

WHEREFORE, Section 2-1401 respondents Nellisa S. Ragland and Brian T. Heath pray for the entry of an order dismissing the Petition for Relief from Void Judgments, with prejudice, and such further and additional relief as this Court deems just and appropriate.

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One of their Attorneys

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**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
WHEATON, DUPAGE COUNTY, ILLINOIS**

PNC BANK, NATIONAL ASSOCIATION,

Plaintiff,

vs.

JERZY KUSMIERZ, HALINA KUSMIERZ, THE
TOWNSHIP OF YORK and PNC BANK, NATIONAL
ASSOCIATION,

Defendants.

CASE NO. 11-CH-1585

PROPERTY:

1405 WISCONSIN AVE
LOMBARD, IL 60148



**COMBINED 735 ILCS 5/2-619.1 MOTION TO DISMISS
PETITION FOR RELIEF FROM VOID JUDGMENTS**

NOW COMES the Plaintiff/Respondent, PNC Bank, National Association, by its attorneys, Heavner, Beyers & Mihlar, LLC, and for its Combined 735 ILCS 5/2-619.1 Motion to Dismiss Petition for Relief from Void Judgments, states as follows:

I. INTRODUCTION

On March 30, 2011, the Plaintiff filed its Complaint for Foreclosure. Paragraph 3(J) of the Complaint stated the subject Mortgage and Note were in default for the Defendants' failure to pay the monthly mortgage payment due December 1, 2010, and those monthly mortgage payments due and accruing thereafter.

The Defendants were served with summons but did not file an Answer to the Complaint. As a result, on February 28, 2012, an Order of Default was entered against them, and a Judgment of Foreclosure and Sale was entered in the Plaintiff's favor. Pursuant to the Judgment, on May 31, 2012, the foreclosure sale occurred, and the Plaintiff was the successful bidder at the sale. The Plaintiff thereafter proceeded to file a Motion for Confirmation of Sale, and on June 12, 2012, the Order Confirming Sale was entered.

Now, more than six years later, the Defendants have filed a Petition for Relief from Void Judgments in which they claim the foreclosure should be vacated because there is no order in the record appointing a special process server. Notably, the Defendants do not claim that the summons was improperly issued, that they were not served as indicated in the Affidavits of Service, or that they were not served by a licensed process server. For the reasons set forth below, the Defendants' Petition is without merit and should be dismissed pursuant to 735 ILCS 5/2-619.1.

II. STANDARD

Inasmuch as a petition filed pursuant to 735 ILCS 5/2-1401 is procedurally the counterpart of a complaint, a responding party may move to dismiss the petition under either Section 2-615 or 2-619 of the Code of Civil Procedure (the "Code"). **Blazyk v. Daman Exp., Inc.**, 406 Ill.App.3d 203, 207 (2nd Dist. 2010). In this regard, Section 2-619.1 provides that Motions under Sections 2-615 and 2-619 may be filed together as a single request. **735 ILCS 5/2-619.1.**

A. 735 ILC 5/2-619 MOTIONS

A Section 2-619 motion to dismiss admits the legal sufficiency of a complaint and raises defects, defenses or other affirmative matters that appear on the face of the complaint or are established by external submissions that act to defeat the claim. **Krilich v. American Nat'l Bank & Trust Co. of Chicago**, 334 Ill.App.3d 563, 569-570 (2nd Dist. 2002). A Section 2-619 proceeding permits a dismissal after the trial court considers issues of law or easily proved issues of fact. **Id.** at 571. Section 2-619(a)(9), in particular, allows a dismissal when the claim asserted is barred by affirmative matter avoiding the legal effect of or defeating the claim. **Id.** The term "affirmative matter" as used in section 2-619(a)(9) has been defined as a type of

defense that either negates an alleged cause of action completely or refutes crucial conclusions of law or conclusions of material fact unsupported by allegations of specific fact contained in or inferred from the complaint. Id. In ruling on a motion to dismiss under section 2-619, the trial court may consider pleadings, depositions and affidavits. Id.

B. 735 ILC 5/2-615 MOTIONS

The question presented by a section 2-615 motion to dismiss is whether the allegations in a complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. Griffin v. Bruner, 341 Ill.App.3d 321, 323-24 (2nd Dist. 2003). A plaintiff must allege facts sufficient to state all the elements of the asserted cause of action. Id. at 324. When ruling on a Section 2-615 motion to dismiss, the trial court should accept all well-pleaded facts as true and disregard legal and factual conclusions that are unsupported by allegations of fact. Id. If, after disregarding any legal and factual conclusions, the complaint does not allege sufficient facts to state a cause of action, the trial court must grant the motion to dismiss. Id.

III. ARGUMENT

MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619(a)(9)

A. The Doctrine of Laches Precludes Prosecution of the Instant Action.

The doctrine of laches is “the neglect or omission to assert a right which, taken in conjunction with a lapse of time and circumstances causing prejudice to the opposite party will operate as a bar to a suit.” Negron v. City of Chicago, 376 Ill.App.3d 242, 246-47 (1st Dist. 2007). “[A] party asserting laches...must provide two fundamental elements: (1) lack of due diligence by the party asserting a claim; and (2) prejudice to the party asserting laches.” Id.

Further, the Illinois Supreme Court long ago rejected the notion that a void decree may be challenged at any time, without regard to laches, and affirmed that “laches is a familiar defense when the validity of an earlier judgment or decree has been attacked.” **James v. Frantz**, 21 Ill.2d 377, 383 (1961). The Second District Appellate Court has observed this well established precedent and found that laches may be interposed as a defense to an attack on a void judgment. See, e.g., **Miller v. Bloomberg**, 60 Ill.App.3d 362, 365, 376 (2nd Dist. 1978) (“a void decree may be attacked at any time by the parties themselves or by any person who is affected thereby... although the equitable defense of laches may be interposed.”).

In the instant case, it is clear that the Defendants lacked diligence in bringing their claim despite the opportunity to do so. There is no question, and the Defendants do not dispute, that they were served with summons and a copy of the Complaint on March 9, 2010. While the Defendants claim there is no order appointing special process server in the record, they cannot claim they were unaware of this cause of action and the prospect of asserting a challenge thereto. Accordingly, the Defendants had sufficient knowledge of their rights for the purposes of laches. See, e.g., **Pyle v. Ferrell**, 12 Ill.2d 547, 554 (1958) (the test for the application of laches is what the claimant “might have known by the use of the means of information within his reach with the vigilance the law requires of him.”).

Regarding the second element of laches, the Plaintiff would be severely prejudiced if the Defendants are permitted to pursue their attack on the Orders entered in the underlying foreclosure action after an egregious delay. Specifically, by withholding their objections to service for over six years, the Defendants increased the damages they could claim without any detriment to themselves. Further, as the property has been transferred to a bona fide purchaser pursuant to 735 ILCS 2/1401(e), the Plaintiff is irreparably damaged as it now cannot recover the

property secured by the Mortgage that is the subject of this cause of action. For these reasons, the Defendants' claims are barred by the doctrine of laches, and their Petition is subject to dismissal pursuant to 735 ILCS 5/2-619(a)(9).

B. Mootness Also Precludes Prosecution of the Instant Action.

Although a live controversy may exist between parties at a specific point in time, subsequent events can render the issue moot. First Nat'l Bank v. Kusper, 98 Ill.2d 226, 233 (1983). "A matter is considered to be moot when it 'presents or involves no actual controversy, interests or rights of the parties, or where the issues have ceased to exist.'" Id. (citing People v. Redlich, 402 Ill. 270, 278-279 (1949). Where no actual rights or interests of the parties remain, Illinois courts should not address the issues raised by the litigation. People ex rel. Tucker v. Kotsos, 68 Ill.2d 88, 93 (1977). In People ex rel. Black v. Dukes, our Supreme Court stated as follows with respect to mootness:

The courts of this State should not decide a case where '[a]ny judgment [they] could render would be "wholly ineffectual for want of a subject matter on which it could operate"' (Madison Park Bank v. Zagel (1982), 91 Ill.2d 231, 235, quoting Brownlow v. Schwartz (1923), 261 U.S. 216, 217, 67 L. Ed. 620, 621, 43 S. Ct. 263, 264) and could have advisory effect only. This is true even where leave to appeal has been granted after the cause became moot (Madison Park Bank v. Zagel (1982), 91 Ill.2d 231, 236. A principal reason for this well-established rule of justiciability is the fear that the parties to a dispute which for practical purposes has ceased to exist will lack the 'personal stake' in the outcome of the controversy [which serves] to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult *** questions' (Baker v. Carr (1962), 369 U.S. 186, 204, 7 L. Ed. 2d 663, 678, 82 S. Ct. 691, 703; see County of Los Angeles v. Davis (1979), 440 U.S. 625, 59 L. Ed. 2d 642, 99 S. Ct. 1379; DeFunis v. Odegaard (1974), 416 U.S. 312, 40 L. Ed 2d 164, 94 S. Ct. 1704) and the desire to avoid binding later courts which may be better informed on the legal issue to a precedent announced by an earlier court with less reliable information. See generally Brilmayer, The Jurisprudence of Article III: Perspectives on the 'Case or Controversy' Requirement, 93 Harv. L. Rev. 297 (1979).

People ex rel. Black v. Dukes, 96 Ill.3d 273, 276-77 (1983).

In Defendants' Petition, in addition to vacating the underlying order in the case, they request that the Court find that lack of jurisdiction is apparent on the face of the record, that it restore them to possession, that it find that the deeds and mortgages recorded against the property after the sale are void, for restitution, and that it dismiss the case. However, even if the Court were to vacate the Orders, it could not grant any of the additional relief that the Defendants request, as claims to the property by the Defendant are barred pursuant to 735 ILCS 5/13-107, and their restitution claim is not predicated on matters that would have prevented a judgment from being entered (see discussion below). And given that such claims are barred, vacating the orders would be a futile act, and Defendants' participation in the foreclosure would not serve any practical purpose, as they in no event would have a superior right to the property. Defendants' Petition is therefore moot, as they no longer have any actual rights or interests remaining relative to the property (Kotsos, 68 Ill.2d at 93), and it therefore must be dismissed with prejudice.

MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-615

"Relief under section 2-1401 is *predicated on* the showing of [matters] that would have precluded rendition of the judgment in the original action..." Price v. Philip Morris, Inc., 2015 IL 117687, ¶ 23 (**emphasis added**). In this regard, the relief requested by the Defendants is plainly not "predicated on" matters that would have prevented a judgment from being entered against them. Therefore, these requests are beyond the scope of relief available under Section 2-1401.


Further, the Defendants have failed to allege facts which would support granting the relief. See, e.g., Grund v. Gonegan, 298 Ill.App.3d 1034, 1037 (1st Dist. 1998) (a complaint is subject to dismissal under Section 2-615 "if it does not contain factual allegations in support of

each element of the claim that the plaintiff must prove in order to sustain a judgment.”). As such, the Petition is legally insufficient and must be dismissed.

IV. CONCLUSION

WHEREFORE, PNC Bank, National Association respectfully requests that the Court enter an Order dismissing the Petition for Relief from Void Judgments, for an award of its costs incurred herein, and for such further and additional relief as this Court deems just and appropriate.

PNC BANK, NATIONAL ASSOCIATION,
Plaintiff/Respondent,

By: 
Meredith Pitts
Of Heavner, Beyers & Mihlar, LLC

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**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
STATE OF ILLINOIS – COUNTY OF DUPAGE**

**PNC BANK NATIONAL
ASSOCIATION,**

PLAINTIFF

v.

**JERZY KUSMIERZ; HALINA
KUSMIERZ; THE TOWNSHIP OF
YORK; AND PNC BANK, NATIONAL
ASSOCIATION,**

DEFENDANTS

CASE # 2011 CH 1585
PROPERTY: 1405 Wisconsin Ave
Lombard, IL 60148



**RESPONSE TO PNC BANK, NATIONAL ASSOCIATION’S COMBINED 735 ILCS
5/2-619.1 MOTION TO DISMISS PETITION FOR RELIEF FROM VOID JUDGMENTS**

NOW COME Petitioners, Jerzy Kusmierz and Halina Kusmierz, by and through their attorney, RAI Law, LLC, and, for their Response to Respondent PNC Bank, National Association’s Combined 735 ILCS 5/2-619.1 Motion to Dismiss Petition for Relief from Void Judgments, state as follows:

BACKGROUND

1. On August 1, 2011 PNC Bank, National Association (“Plaintiff” or “Respondent”), filed a foreclosure complaint against Petitioners seeking foreclosure of the real estate located at 1405 Wisconsin Ave, Lombard, IL 60148 (the “Property”). Plaintiff named Jerzy Kusmierz and Halina Kusmierz, in the complaint, as Mortgagors and Owners of the Property.

2. On April 7, 2011, the issued summons and an affidavit of service were filed with the Clerk of the Circuit Court. According to the affidavit of service, Jennifer I. Magida, an registered employee, of Metro Detective Agency, LLC, served Jerzy Kusmierz and Halina Kusmierz with the summons on April 1, 2011 at 1107 West Eaton Court, Palatine, IL 60067.

Despite the fact that 1107 West Eaton Court, Palatine, IL 60067, is located in Cook County, Illinois, there is no order in the record appointing a special process server.

3. On February 28, 2012 this Court entered an order of default against Petitioners and a judgment of foreclosure.

4. On May 31, 2012, the Property was sold at a judicial sale.

5. On June 12, 2012, the Court entered an order confirming the judicial sale.

6. On August 1, 2012 a Sheriff's Deed from John E. Zaruba, as Sheriff of DuPage County, Illinois to PNC Bank National Association was recorded as document number R2012-100116 in the Du Page County Recorder's Office (a true and correct copy of which is attached hereto as **Exhibit 1**).

7. On September 12, 2018, Petitioners filed their Petition for Relief from Void Judgments (the "Petition"). In summary, the Petition is predicated upon the fact that the foreclosure court's personal jurisdiction over Petitioners was fatally defective due to the failure to appoint a special process server as required by the Illinois Code of Civil Procedure.

LEGAL STANDARD

8. Pursuant to Section 2-619.1 of the Code of Civil Procedure, motions to strike under 2-615 and motions to dismiss under 2-619 may be filed together as a single request. 735 ILCS 5/2-619.1.

9. A section 2-619 movant admits the legal sufficiency of the complaint or petition but asserts the existence of a defect or defense that defeats the cause of action. 735 ILCS 5/2-619; *Burton v. Airborne Express, Inc.*, 367 Ill. App. 3d 1026, 1029 (2006). A section 2-619 is often referred to as a "Yes, but" motion. *Winters v. Wrangler*, 386 Ill. App. 3d 788, 792 (4th Dist. 2008). When ruling on a section 2-619 motion, a court must interpret all pleadings and

supporting documents in the light most favorable to the non-moving party. *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 189 (1997). If the affirmative matter does not appear from the face of the pleading, the motion must be supported by affidavit or certain other evidentiary materials. *Van Meter v. Darien Park Dist.*, 207 Ill. 2d 359 (2003). The appellate court in *Reynolds v. Jimmy John's Enterprises, LLC* noted the following about the requisite "affirmative matter": (1) affirmative matter is not a negation of the essential allegations of the cause of action; (2) affirmative matter does not include evidence upon which defendant expects to contend an ultimate fact stated in the complaint; (3) affirmative matter is not simply the defendant's version of the facts. 2013 IL App (4th) 120139, ¶¶33-37. A motion that essentially argues "Not true" is not a proper basis to bring a Section 2-619 motion, but rather properly asserted as an answer to the pleading attacked. *Howle v. Aqua III, Inc.*, 2012 IL App (4th) 120207 ¶¶36-37.

10. A motion to dismiss pursuant to section 2-615 of the Code attacks the legal sufficiency of a complaint by alleging defects on the face of the complaint. 735 ILCS 5/2-619; *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004). When ruling on a section 2-615 motion, the relevant question is whether the allegations in the complaint, construed in the light most favorable to the plaintiff or petitioner, are sufficient to state a cause of action upon which relief may be granted. *Canel v. Topinka*, 212 Ill. 2d 311, 317 (2004).

ARGUMENT

I. Respondent's Motion Pursuant to 735 ILCS 5/2-619(a)(9) is Without Merit

a. Respondent has failed to properly plead laches and the doctrine of laches does not apply to the Petition

11. Laches is an equitable doctrine invoking equitable considerations. *See Huszagh v. Holloway*, 116 Ill. App. 2d 455, 461 (2d Dist. 1969) ("Laches is purely an equitable doctrine"). Such considerations are not properly asserted in a 2-1401 proceeding considering purely legal

issues. *See Studentowicz v. Queen's Park Oval Asset Holding Trust*, 2019 IL App (1st) 181182, ¶ 17; *accord Warren Cnty. Soil & Water Conservation Dist. v. Walters*, 2015 IL 117783, ¶ 47. The Petition is an attack on a void judgment – a purely legal issue. Recently, the Supreme Court held that “Illinois law permits void judgments to be impeached at any time in any proceeding” and that “challenges to void judgments are not subject to forfeiture or other procedural restraints.” *In re N.G.*, 2018 IL 121939, ¶ 43; *accord West Suburban Bank v. Advantage Fin. Partners, LLC*, ¶ 26 (regarding assertion of laches in the void judgment context as “a curious argument” because “the principle that a void judgment may be attacked at any time is firmly entrenched in Illinois law”). In *Harris v. American Legion John T. Shelton Post*, the court considered a quash asserting lack of personal jurisdiction and noted that “[i]t is elementary law that where the court lacks jurisdiction . . . any judgment which it may enter is void and may be vacated at any time. . . . laches [does] not apply.” 12 Ill. App. 3d 235, 242 (1st Dist. 1973).

12. Respondent cites to *James v. Frantz*, 21 Ill. 2d 377 (1961) and *Miller v. Bloomberg*, 60 Ill. App. 3d 362 (2d Dist. 1978) – itself reliant on *Frantz* – to support its position that laches should apply. But more recently, the Supreme Court has held that a judgment entered without personal jurisdiction is void and may be challenged “at any time, either directly or collaterally.” *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. A year later, the Supreme Court affirmed this position in *People v. Castleberry*, noting that a void judgment is “unique” in that it may be challenged “in perpetuity.” 2015 IL 116916, ¶ 15. The unique position occupied by void judgments arises because courts “have an independent duty to vacate void orders.” *People v. Thompson*, 209 Ill. 2d 19, 27 (2014). This duty “is based upon the inherent power of the court to expunge from its records void acts of which it has knowledge.” *Irving v. Rodriquez*, 27 Ill. App. 2d 75, 79 (2d Dist. 1960). Every act of the court beyond its jurisdiction is

void and may be vacated at any time; the doctrine of laches does not apply. *Thayer v. Village of Downers Grove*, 369 Ill. 334, 339 (1938); accord *Irving*, 27 Ill. App. 2d at 79; *In re Petition of Stern*, 2 Ill. App. 2d 311 (1954). Because void judgments may be attacked in perpetuity, laches is inapplicable. This court must follow the rule of law set forth in *N.G.*, *Mitchell*, and *Castleberry*.

13. Respondent's reliance on *Frantz* is misplaced. The *Frantz* court faced a property dispute where the rights to the surface land had been separated by deed from the mineral rights. 21 Ill. 2d at 378. The Supreme Court, noting that all parties to the original agreement had died, stated that "there is no class of property in which laches is more relentlessly enforced than with respect to oil and mining property." *Id.* Six years later, the Supreme Court in *Fox v. Department of Revenue* noted, despite acknowledging the *Frantz* decision, that "this court has observed . . . that a void judgment may be vacated at any time and the doctrines of laches and estoppel do not apply." 34 Ill. 2d 358, 361 (1966). Thus, *Frantz* represents a narrow exception to the general rule that laches does not apply to petitions to vacate void judgments. This interpretation of *Frantz* is in line with other cases interposing laches where mineral rights were at issue. See, e.g., *Pyle v. Ferrell*, 12 Ill. 2d 547 (1958) (noting that imposition of laches was not a general rule but was specific to mineral and oil property).

14. The general rule is that a void judgment may be challenged in perpetuity and that laches is inapplicable to such a challenge. *Hustana v. Hustana*, 22 Ill. App. 2d 59, 64 (1959); *Irving*, 27 Ill. App. 2d at 75. The Petition does not deal with fervently protected mineral rights; but solely with the propriety of service on Petitioner. Thus, this case involves no considerations that would invoke the narrow exception in *Frantz*. As such, this Court should employ the general rule: laches is inapplicable where, as here, a petition seeks relief from a void judgment.

15. Finally, Respondent's argument that the passage of time may somehow ratify a

void judgment is meritless and must be rebuffed as soundly here as it has been in the Federal courts. In *Merit Mgmt. Group v. Ponca Tribe of Indians*, the court noted that “[t]here is no time limit on an attack on a judgment as void. . . . A void judgment cannot acquire validity because of laches on the part of the judgment [defendant].” 778 F. Supp. 2d 916, 919 (N.D. Ill. 2011). “A void judgment is as void today as it was twenty years ago. No aging process, whereby a void judgment improves as to stature and validity by the passage of time, can properly be interposed.” *Allen v. United States*, 102 F. Supp. 866, 869 (N.D. Ill. 1952). Because void judgments may be challenged in perpetuity and are not subject to laches, the Motion to Dismiss must be denied.

b. Respondent’s mootness argument is unsupported and meritless

16. Respondent argues that the Petition is moot under 735 ILCS 5/13-107. Section 13-107 provides a basis for adverse possession pursuant to seven years of possession under record title. 735 ILCS 5/13-107. At the outset, Petitioners note that it is unclear how Respondent, the original plaintiff in the foreclosure, has standing to assert a claim of adverse possession on behalf of any current owners. Thus, as a threshold matter, this argument must be denied as Respondent lacks the requisite standing to assert such matter.

17. Notwithstanding Respondent’s questionable standing, the claim of adverse possession goes beyond the scope of the Petition. A petition pursuant to section 2-1401 is narrow in scope and unconcerned with the central facts of the underlying action. *See* 735 ILCS 5/2-1401; *Cunningham v. Miller’s General Ins. Co.*, 188 Ill. App. 3d 689, 693 (4th Dist. 1989). The sole issue that is the focus of the section 2-1401 petition is the propriety of service on Petitioners. Any claim of adverse possession is a title dispute unrelated to that central inquiry and cannot serve as the basis for dismissal of the Petition.

18. Furthermore, Respondent's claim of adverse possession is baseless. Importantly, the seven year adverse possession period under section 13-107 begins to run, if the possessor acquired record title after taking possession, from the time of acquiring title. 735 ILCS 5/13-107. In the context of a section 2-619 motion, where the affirmative matter does not appear from the face of the pleading, the motion must be supported by affidavit or certain other evidentiary materials. *Van Meter*, 207 Ill. 2d at 377.

19. Respondent provides no supporting affidavits or relevant factual basis for invocation of the provisions of section 13-107. Indeed, Respondent cannot do so because no such factual basis exists. The Order Confirming Sale in the underlying foreclosure was entered on June 12, 2012. Following the conclusion of the foreclosure, a Sheriff's Deed was recorded on August 1, 2012 with the DuPage County Recorder. *See* Exhibit 1. Petitioners filed the Petition on September 12, 2018. Thus, fewer than seven years have elapsed since the recording of title after the foreclosure and the instant Petition. Respondent's argument that the Petition is moot pursuant to section 13-107 is without merit. The simple truth is that a void judgment remains entered against Petitioners. As long as that is so, a petition seek *vacatur* is ripe for adjudication.

20. Furthermore, as set forth below, Respondent's argument that the restitution claim is not predicated on matters that would have prevented a judgment from being entered is meritless.

II. Respondent's Motion Pursuant to 735 ILCS 5/2-615 is Meritless

21. Respondents declare that the relief requested by Petitioners is not "predicated on" the matters asserted in the Petition. This borders on disingenuous. The Petition argues that the orders against Petitioners were void for lack of personal jurisdiction where no special process server was appointed as required by statute. The Petition further argues that the lack of

jurisdiction was apparent on the face of the record. Had the Court been made aware of this lack of jurisdiction, it is unquestionable that it would not have proceeded to enter a void judgment. Because the orders entered against Petitioners were void *ab initio*, Petitioners are entitled to restitution in the form of the relief requested.

22. A cornerstone of our jurisprudence is that no person shall be deprived of life, liberty, or property without due process of law. *People v. Maness*, 191 Ill. 2d 478, 483 (2000). Consequently, restitution is one of our legal system's oldest doctrines. *Northwestern Fuel Co. v. Brock*, 139 U.S. 216, 219-20 (1891). Restitution is the power inherent in the courts to undo injustice done by the court's own ruling. *Id.* at 221. Thus, restitution must follow a reversal in order to restore the parties to their original rights so far as can be done without prejudice to third persons. *McJilton v. Love*, 13 Ill. 486, 495 (1851). Here, Petitioners were denied possession of the Property and others have enjoyed the use and occupancy of the Property during the period of dispossession. Petitioners should thus be awarded monetary damages in light of the period of improper dispossession. Because the relief requested is predicated upon the voidness of the orders entered against Petitioners as asserted in the Petition, dismissal is improper.

WHEREFORE, Petitioners, Jerzy Kusmierz and Halina Kusmierz, pray this Court enter an order denying Respondent's Combined 735 ILCS 5/2-619.1 Motion to Dismiss Petition for Relief from Void Judgments with prejudice; granting the relief sought in the pending 2-1401 Petition; and awarding any and all further and additional relief this Court deems fair and just.

Respectfully Submitted,
Jerzy Kusmierz and Halina Kusmierz

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By: /s/ Giovanni Raimondi
Attorney for Petitioners

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
STATE OF ILLINOIS – COUNTY OF DUPAGE**

**PNC BANK NATIONAL
ASSOCIATION,**

PLAINTIFF

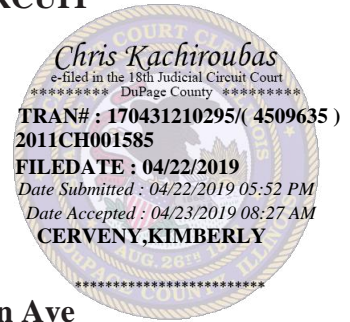
v.

**JERZY KUSMIERZ; HALINA
KUSMIERZ; THE TOWNSHIP OF
YORK; AND PNC BANK, NATIONAL
ASSOCIATION,**

DEFENDANTS

CASE # 2011 CH 1585

**PROPERTY: 1405 Wisconsin Ave
Lombard, IL 60148**



**RESPONSE TO RESPONDENTS' COMBINED 735 ILCS 5/2-619.1 MOTION TO
DISMISS PETITION FOR RELIEF FROM VOID JUDGMENTS**

NOW COME Petitioners, Jerzy Kusmierz and Halina Kusmierz, by and through their attorney, RAI Law, LLC, and, for their Response to Respondents' Combined 2-619.1 Motion to Dismiss Petition for Relief from Void Judgments, state as follows:

BACKGROUND

1. On August 1, 2011 PNC Bank, National Association, filed a foreclosure complaint against Petitioners seeking foreclosure of the real estate located at 1405 Wisconsin Ave, Lombard, IL 60148 (the "Property"). Plaintiff named Jerzy Kusmierz and Halina Kusmierz, in the complaint, as Mortgagors and Owners of the Property.

2. On April 7, 2011, the issued summons and an affidavit of service were filed with the Clerk of the Circuit Court. According to the affidavit of service, Jennifer I. Magida, an registered employee, of Metro Detective Agency, LLC, served Jerzy Kusmierz and Halina Kusmierz with the summons on April 1, 2011 at 1107 West Eaton Court, Palatine, IL 60067. Despite the fact that 1107 West Eaton Court, Palatine, IL 60067, is located in Cook County,

Illinois, there is no order in the record appointing a special process server prior to these service attempts.

3. On February 28, 2012 this Court entered an order of default against Petitioners and a judgment of foreclosure.

4. On May 31, 2012, the Property was sold at a judicial sale.

5. On June 12, 2012, the Court entered an order confirming the judicial sale.

6. On September 12, 2018, Petitioners filed their Petition for Relief from Void Judgments (the “Petition”). In summary, the Petition is predicated upon the fact that the foreclosure court’s personal jurisdiction over Petitioners was fatally defective due to the failure to appoint a special process server as required by the Illinois Code of Civil Procedure.

7. On December 4, 2018, Respondents Nellisa S. Ragland and Brian Heath (collectively, “Respondents”) filed the instant 2-619.1 Motion to Dismiss Petition for Relief from Void Judgments (the “Motion to Dismiss”).

LEGAL STANDARD

8. Pursuant to Section 2-619.1 of the Code of Civil Procedure, motions to strike under 2-615 and motions to dismiss under 2-619 may be filed together as a single request. 735 ILCS 5/2-619.1. A section 2-619 movant admits the legal sufficiency of the complaint or petition but asserts the existence of a defect or defense that defeats the cause of action. 735 ILCS 5/2-619; *Burton v. Airborne Express, Inc.*, 367 Ill. App. 3d 1026, 1029 (2006). When ruling on a section 2-619 motion, a court must interpret all pleadings and supporting documents in the light most favorable to the non-moving party. *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 189 (1997). A motion to dismiss pursuant to section 2-615 of the Code attacks the legal sufficiency of a complaint by alleging defects on the face of the complaint. 735 ILCS 5/2-619; *Vitro v.*

Mihelcic, 209 Ill. 2d 76, 81 (2004). When ruling on a section 2-615 motion, the relevant question is whether the allegations in the complaint, construed in the light most favorable to the plaintiff or petitioner, are sufficient to state a cause of action upon which relief may be granted. *Canel v. Topinka*, 212 Ill. 2d 311, 317 (2004).

ARGUMENT

I. Respondents' Motion Pursuant to 735 ILCS 5/2-619 is Without Merit

a. The protections afforded *bona fide* purchasers under 735 ILCS 2-1401(e) do not apply

9. Section 2-1401(e) protects *bona fide* purchasers for value from the effects of a section 2-1401 petition unless lack of jurisdiction affirmatively appears from the record proper. 735 ILCS 5/2-1401(e). Because the record contains no order appointing a special process server before the purported service attempts and because the record reflects that service was accomplished in Cook County, Respondents are not afforded the protections of section 2-1401(e) and their arguments otherwise are meritless.

10. A court “can take judicial notice of the location of county boundary lines.” *Turner v. Jarden*, 275 Ill. App. 3d 890, 894 (5th Dist. 1995). Courts may take judicial notice of facts which are readily verifiable from sources of indisputable accuracy. *Murdy v. Edgar*, 103 Ill. 2d 384, 394 (1984). Petitioner hereby requests that this court take judicial notice of the following readily verifiable facts: the population of Cook County and the boundaries of zip code 60067.

11. The Affidavit of Special Process Server for service on Petitioners in this case shows that service was completed at “1107 West Eaton Court, Palatine, IL 60067.” A true and correct copy of the Affidavit of Special Process Server is attached hereto as **Exhibit 1**. Respondents assert that the record fails to reflect the county of service or the number of people residing therein. However, the Affidavit of Special Process Server set forth that the zip code of

service was “60067.” *See* Exhibit 1. Zip code 60067 exists *entirely* within the borders of Cook County. Thus, information on the Affidavit of Special Process Server explicitly sets forth that service occurred in Cook County.

12. Courts may take judicial notice of the population within cities and counties. Ill. Sup. Ct. R. 201; *Coal Creek Drainage & Levee Dist. v. Sanitary Dist. Of Chicago*, 336 Ill. 11, 26 (1929) (“this court will take judicial notice of the population of the various civil divisions of the State, such as towns, cities and counties, as shown by official census reports”). Chicago alone has had a population of over 2,000,000 since at least 1910. True and correct copies of the relevant census pages are attached hereto as **Exhibit 2**. Petitioners ask this court to take judicial notice of the population and location of Chicago within Cook County. Because the population of Cook County was over 2,000,000 at the time of service, a special process server was required. Where the affidavit of service stated that service had taken place in zip code 60067, service was effected in Cook County. The absence of a motion or order for appointment of a special process server makes it apparent on the face of the record that service was improper. Consequently, Respondents’ Motion to Dismiss should be denied.

b. Restitution is required

13. Restitution, the power inherent in the courts to undo injustice done by the court’s own ruling, is one of our legal system’s oldest doctrines. *Northwestern Fuel Co. v. Brock*, 139 U.S. 216, 219-21 (1891). Restitution must follow a reversal in order to restore the parties to their original rights so far as can be done without prejudice to third persons. *McJilton v. Love*, 13 Ill. 486, 495 (1851). In the foreclosure context, a court reversing a decree must restore the parties “to the *status quo ante* to the closest degree possible.” *Yugoslav-American Cultural Ctr., Inc. v. Parkway Bank & Trust Co.*, 327 Ill. App. 3d 143, 150 (1st Dist. 2001). Here, prior to entry of the

void decrees, Petitioners were in possession of the Property and held title to the Property. In order to restore Petitioners to the *status quo ante*, they must be returned to possession of the Property and their interest in the title to the Property must be restored.

c. The doctrine of laches does not apply to the Petition

14. Laches is an equitable doctrine invoking equitable considerations. *See Huszagh v. Holloway*, 116 Ill. App. 2d 455, 461 (2d Dist. 1969) (“Laches is purely an equitable doctrine”). Such considerations are not properly asserted in a 2-1401 proceeding considering purely legal issues. *See Studentowicz v. Queen’s Park Oval Asset Holding Trust*, 2019 IL App (1st) 181182, ¶ 17; *accord Warren Cnty. Soil & Water Conservation Dist. v. Walters*, 2015 IL 117783, ¶ 47. The Petition is an attack on a void judgment – a purely legal issue. Recently, the Supreme Court held that “Illinois law permits void judgments to be impeached at any time in any proceeding” and that “challenges to void judgments are not subject to forfeiture or other procedural restraints.” *In re N.G.*, 2018 IL 121939, ¶ 43; *accord West Suburban Bank v. Advantage Fin. Partners, LLC*, 2014 IL App (2d) 131146, ¶ 26 (regarding assertion of laches in the void judgment context as “a curious argument” because “the principle that a void judgment may be attacked at any time is firmly entrenched in Illinois law”). In *Harris v. American Legion John T. Shelton Post*, the court considered a quash asserting lack of personal jurisdiction and noted that “where the court lacks jurisdiction . . . any judgment which it may enter is void and may be vacated at any time. . . . laches [does] not apply.” 12 Ill. App. 3d 235, 242 (1st Dist. 1973).

15. Respondents cite to *James v. Frantz*, 21 Ill. 2d 377 (1961) and *Miller v. Bloomberg*, 60 Ill. App. 3d 362 (2d Dist. 1978) – itself reliant on *Frantz* – to support their position that laches should apply. But more recently, the Supreme Court has held that a judgment entered without personal jurisdiction is void and may be challenged “at any time, either directly

or collaterally.” *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. A year later, the Supreme Court affirmed this position in *People v. Castleberry*, noting that a void judgment is “unique” in that it may be challenged “in perpetuity.” 2015 IL 116916, ¶ 15. The unique position occupied by void judgments arises because courts “have an independent duty to vacate void orders.” *People v. Thompson*, 209 Ill. 2d 19, 27 (2014). This duty “is based upon the inherent power of the court to expunge from its records void acts of which it has knowledge.” *Irving v. Rodriguez*, 27 Ill. App. 2d 75, 79 (2d Dist. 1960). Every act of the court beyond its jurisdiction is void and may be vacated at any time; the doctrine of laches does not apply. *Thayer v. Village of Downers Grove*, 369 Ill. 334, 339 (1938); accord *Irving*, 27 Ill. App. 2d at 79; *In re Petition of Stern*, 2 Ill. App. 2d 311 (1954). Because void judgments may be attacked in perpetuity, laches is inapplicable. This court must follow the rule of law set forth in *N.G.*, *Mitchell*, and *Castleberry*.

16. Respondents’ reliance on *Frantz* is misplaced. The *Frantz* court faced a property dispute where the rights to the surface land had been separated by deed from the mineral rights. 21 Ill. 2d at 378. The Supreme Court, noting that all parties to the original agreement had died, stated that “there is no class of property in which laches is more relentlessly enforced than with respect to oil and mining property.” *Id.* Six years later, the Supreme Court in *Fox v. Department of Revenue* noted, despite acknowledging the *Frantz* decision, that “this court has observed . . . that a void judgment may be vacated at any time and the doctrines of laches and estoppel do not apply.” 34 Ill. 2d 358, 361 (1966). Thus, *Frantz* represents a narrow exception to the general rule that laches does not apply to petitions to vacate void judgments. This interpretation of *Frantz* is in line with other cases interposing laches where mineral rights were at issue. *See, e.g., Pyle v. Ferrell*, 12 Ill. 2d 547 (1958) (noting that imposition of laches was not a general rule but was specific to mineral and oil property).

17. The general rule is that a void judgment may be challenged in perpetuity and that laches is inapplicable to such a challenge. *Hustana v. Hustana*, 22 Ill. App. 2d 59, 64 (1959); *Irving*, 27 Ill. App. 2d at 75. The Petition does not deal with fervently protected mineral rights; but solely with the propriety of service on Petitioner. Thus, this case involves no considerations that would invoke the narrow exception in *Frantz*. As such, this Court should employ the general rule: laches is inapplicable where, as here, a petition seeks relief from a void judgment.

18. Finally, Respondents' argument that the passage of time may somehow ratify a void judgment is meritless and must be rebuffed as soundly here as it has been in the Federal courts. In *Merit Mgmt. Group v. Ponca Tribe of Indians*, the court noted that "[t]here is no time limit on an attack on a judgment as void. . . . A void judgment cannot acquire validity because of laches on the part of the judgment [defendant]." 778 F. Supp. 2d 916, 919 (N.D. Ill. 2011). "A void judgment is as void today as it was twenty years ago. No aging process, whereby a void judgment improves as to stature and validity by the passage of time, can properly be interposed." *Allen v. United States*, 102 F. Supp. 866, 869 (N.D. Ill. 1952). Because void judgments may be challenged in perpetuity and are not subject to laches, the Motion to Dismiss must be denied.

d. Service on Jerzy Kusmierz was a nullity

19. Respondents argue that service on Jerzy Kusmierz was proper pursuant to the statute permitting substitute service and this court's order dated April 4, 2011 (the "April 4, 2011 Order"). A true and correct copy of the April 4, 2011 Order is attached hereto as **Exhibit 3**. Notably, the April 4, 2011 Order was entered *after* the purported process server had already attempted to serve process on April 1, 2011. Section 2-203 permits substitute service on a member of household provided that the process server then mail a copy addressed to the defendant at his usual place of abode. 735 ILCS 5/2-203(a)(2). But as set forth above, section

2-202 expressly provides that a special process server must be appointed to effect service in Cook County – the county of purported service in this matter. Thus, a process server attempting to effect substitute service in Cook County must still have been duly appointed by order of court.

20. The First District has expressly rejected the argument that an order appointing a special process server dated *after* the date of purported service can somehow retroactively validate the invalid service. *See C.T.A.S.S.&U. Fed. Credit Union v. Johnson*, 383 Ill. App. 3d 909 (1st Dist. 2008). In *Johnson*, the plaintiffs conceded that the private detective had served process *before* being appointed by the court but argued that the later appointment sufficed to confer personal jurisdiction on the court. *Id.* at 912. The First District found this argument to be “contrary to the well-established rule in Illinois that strict compliance with statutes governing service of process is required.” *Id.* The First District held that strict compliance was not had and service of process was defective. *Id.* The facts here match those in *Johnson* and warrant the same result: the purported process server attempted service on April 1, 2011 – three days before entry of the April 4, 2011 Order appointing a special process server. Respondents stress that the mailing pursuant to section 2-203 was performed on April 4, 2011 and so substitute service “was completed” following appointment of the special process server. *See* Motion to Dismiss, ¶ 29. Respectfully, Respondents miss the point: under the Illinois Code of Civil Procedure and *Johnson*, strict compliance with the statutes governing service of process is not had where *any part* of the procedure is improper. Because the purported process server was without authority when service was purportedly attempted, substitute service on Jerzy Kusmierz was a nullity.

e. Orders entered without jurisdiction are void *ab initio* and must be vacated in their entirety

21. Respondents argue that, pursuant to *In re J.W.*, 87 Ill. 2d 46 (1981), a court may adjudicate in the absence of necessary parties and that the orders and judgments must stand as to

the properly joined parties. This assertion is without merit: it is well established that an order entered without jurisdiction over a necessary party is void *ab initio*. See *Georgeoff v. Spencer*, 400 Ill. 300, 302-03 (1948); *Boghossian v. Mid-City Nat'l Bank*, 25 Ill. App. 2d 455, 463 (1st Dist. 1960). Furthermore, courts have previously wholly vacated judgments of foreclosure and sale as void for failure to serve one of the mortgagors. See, e.g., *West Suburban Bank v. Lattemann*, 285 Ill. App. 3d 313 (2nd Dist. 1996).

22. A section 2-1401 petition is concerned with determining the propriety of vacating a prior judgment; it is not concerned with litigating the merits of the underlying complaint. *Tucker v. McNulty*, 173 Ill. App. 3d 722, 727 (1st Dist. 1988). Where the judgment was improperly entered, it must be vacated and the parties restored to their pre-judgment positions. 735 ILCS 5/2-1401. Respondents' passing assertion that the orders entered without jurisdiction over Petitioners must stand as to the other parties is little more than a thinly veiled attempt to lessen exposure to the consequences of a *vacatur* by advocating a partial rather than full *vacatur*. Respondents' argument is without merit and serves only as a distraction from the true issue: was service of process on Petitioners proper or not? The clear answer is no. Therefore, dismissal of the Petition must be denied.

II. Respondents' Motion Pursuant to 735 ILCS 5/2-615 is Meritless

23. Respondents declare that the relief requested by Petitioners is not "predicated on" the matters asserted in the Petition. This borders on disingenuous. The Petition argues that the orders against Petitioners were void for lack of personal jurisdiction where no special process server was appointed as required by statute. The Petition further argues that the lack of jurisdiction was apparent on the face of the record. Had the Court been made aware of this lack of jurisdiction, it is unquestionable that it would not have proceeded to enter a void judgment.

Because the orders entered against Petitioners were void *ab initio*, Petitioners are entitled to restitution in the form of the relief requested.

24. A cornerstone of our jurisprudence is that no person shall be deprived of life, liberty, or property without due process of law. *People v. Maness*, 191 Ill. 2d 478, 483 (2000). Consequently, restitution is one of our legal system's oldest doctrines. *Northwestern Fuel Co. v. Brock*, 139 U.S. 216, 219-20 (1891). Restitution is the power inherent in the courts to undo injustice done by the court's own ruling. *Id.* at 221. Thus, restitution must follow a reversal in order to restore the parties to their original rights so far as can be done without prejudice to third persons. *McJilton v. Love*, 13 Ill. 486, 495 (1851). Here, Petitioners were denied possession of the Property and others have enjoyed the use and occupancy of the Property during the period of dispossession. Petitioners should thus be awarded monetary damages in light of the period of improper dispossession. Because the relief requested is predicated upon the voidness of the orders entered against Petitioners as asserted in the Petition, dismissal is improper.

WHEREFORE, Petitioners, Jerzy Kusmierz and Halina Kusmierz, pray this Court enter an order denying Respondents' Combined 735 ILCS 5/2-619.1 Motion to Dismiss Petition for Relief from Void Judgments with prejudice; granting the relief sought in the pending 2-1401 Petition; and awarding any and all further and additional relief this Court deems fair and just.

Respectfully Submitted,
Jerzy Kusmierz and Halina Kusmierz

By: /s/ Giovanni Raimondi
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**THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
COUNTY OF DuPAGE – STATE OF ILLINOIS**



PNC BANK, NATIONAL ASSOCIATION,
PLAINTIFF

VS.

JERZY KUSMIERZ, HALINA KUSMIERZ, THE
TOWNSHIP OF YORK, and PNC BANK, NATIONAL
ASSOCIATION,

DEFENDANTS.

No. 2011 CH 1585

Property Address:
1405 Wisconsin
Lombard, Illinois 60148

**RESPONDENTS' REPLY IN SUPPORT OF THEIR COMBINED 2-619.1 MOTION TO
DISMISS PETITION FOR RELIEF FROM VOID JUDGMENTS**

NOW COMES Section 2-1401 respondents Nellisa S. Ragland ("Nellisa") and Brian T. Heath ("Brian," and collectively with Nellisa, the "Current Owners"), and Mortgage Electronic Registration Systems, Inc., as nominee for STC Capital Bank ("Respondent") ("MERS," and collectively with the Current Owners, the "Respondents"), by and through their attorneys, Plunkett Cooney P.C., and for their reply in support of their Combined 2-619.1 Motion to Dismiss Petition for Relief from Void Judgments (the "MTD"), state as follows:

I. REPLY IN SUPPORT OF 2-619 MOTION

a. Section 2-1401(e) of the Code of Procedure Protects Respondents

1. In their response to the MTD (the "Response"), Petitioners¹ aver that Respondents cannot avail themselves of the protections afforded *bona fide* purchasers under Section 2-1401(e) of the Code of Civil Procedure because "the record reflects that service was accomplished in Cook County" by an unauthorized process server. *See* Response ¶¶ 9-12. Petitioners support this argument by demanding that this Court take judicial notice of the following information: (a) the population of Chicago as evidenced by census reports, (b) the population of Cook County, and (c) the boundaries of the zip code at which the challenged service was effectuated.

¹ Capitalized terms not otherwise defined herein have the same meaning as in the MTD.

2. Inasmuch as the information relied upon by Petitioners is outside the Foreclosure record, it has no bearing on Respondents' Section 2-1401(e) defense. *See, e.g., U.S. Bank Nat. Ass'n v. Rahman*, 2016 IL App (2d) 150040, ¶ 27, 54 N.E.3d 866, 872, *reh'g denied* (June 2, 2016) (limiting the inquiry under Section 2-1401(e) to the face of the "record proper"). The doctrine of judicial notice does not change this analysis. As noted in the MTD, judicial notice "is a matter pertaining to the judicial function and its existence." *Nicketta v. Nat'l Tea Co.*, 338 Ill. App. 159, 162, 87 N.E.2d 30, 31 (1st Dist. 1949). The doctrine is not a method by which to impute facts into the record and charge subsequent purchasers with knowledge of those facts. If judicial notice were so utilized, the protections and certainty of title afforded by 2-1401(e) would be eviscerated.

b. Petitioners are not Entitled to the Possessory Relief Sought in the Petition or any Use and Occupancy Damages Premised Thereon

3. Petitioners contend that they are entitled to the Extraneous Relief sought in the Petition pursuant to the doctrine of restitution. *See* Response ¶ 13. As set forth in the MTD, however, Section 2-1401(e) affords purchasers of property subject to a foreclosure sale – such as the Current Owners – the exclusive right to possess the subject property "until the foreclosure action is defeated or the previously foreclosed defendant redeems from the foreclosure sale." 735 ILCS 5/2-1401(e). Accordingly, restoring Petitioners to the *status quo ante* would not include restoration of possessory rights or any damages based upon those purported rights.

4. Further, irrespective of the provisions of Section 2-1401(e) and as more fully set forth below, restitution would *not* include the relief sought by Petitioners in the present instance. *See infra* ¶ 20.

c. Laches Can be Interposed as a Defense to a Jurisdictional Challenge and Precludes the Relief sought in the Petition

5. Petitioners response to Respondents' *laches* defense can be distilled into four arguments: (a) the Petition is a legal claim to which the equitable doctrine of *laches* is inapplicable, (b) the defense cannot be asserted because void judgments may be attacked into perpetuity and courts have an "independent duty" to vacate such orders, (c) the jurisprudence set forth in the MTD merely

outlines “narrow exception” to the “general rule” that *laches* cannot apply in a jurisdictional challenge, and (d) certain older Illinois cases and federal decisions suggests that *laches* cannot be interposed as a defense to a jurisdictional challenge. *See* Response ¶¶ 14-18.

6. The Petitioners’ initial contention is a red herring, as *laches* applies to both legal and equitable claims. *Coleman v. O’Grady*, 207 Ill. App. 3d 43, 51-2, 565 N.E.2d 253, 258 (1st Dist. 1990); *Villiger v. City of Henry*, 47 Ill. App. 3d 565, 567, 362 N.E.2d 120, 121 (3rd Dist. 1977). Moreover, Petitioners’ reliance upon the holdings in *Warren Cty. Soil & Water Conservation Dist. v. Walters*, 2015 IL 117783, 32 N.E.3d 1099 and *Studentowicz v. Queen’s Park Oval Asset Holding Tr.*, 2019 IL App (1st) 181182 is misguided. These cases merely held that equitable considerations were inapplicable when determining whether a petitioner had established a *prima facie* challenge to void judgment. *Walters*, 2015 IL 117783 at ¶¶ 46-47, 32 N.E.3d at 1110; *Studentowicz*, 2019 IL App (1st) 181182, ¶ 17. These decisions have no bearing on – nor did they even discuss – the applicability of *laches* in such a proceeding.

7. Further, Petitioners’ submission that *laches* is inapplicable because void judgments may be attacked in perpetuity is a *non sequitur*. Simply because a void judgment may be attacked at any time does not mean that *laches* – or any other defense for that matter – cannot be interposed as a defense. Indeed, the decisions cited by Petitioners in support of their position – *In re N.G.*, 2018 IL 121939, ¶ 43; *People v. Castleberry*, 2015 IL 116916, 43 N.E.3d 932; *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, 6 N.E.3d 162; and *Petition of Stern*, 2 Ill. App. 2d 311, 120 N.E.2d 62 (1st Dist. 1954) – do not even mention the doctrine of *laches* or its applicability to a jurisdictional challenge. Moreover, while the Second District Appellate Court in *W. Suburban Bank v. Advantage Fin. Partners, LLC*, 2014 IL App (2d) 131146, 23 N.E.3d 370 did gratuitously note that that *laches* is a “curious” argument to be made in response to an attack on a void judgment, the court nevertheless affirmed that the defense may be raised in such proceedings. *Id.* at ¶ 26, 23 N.E.3d at 378.

8. Petitioners also contend that the interposition of *laches* would run contrary to courts’ “inherent duty” to expunge void orders. As support for this assertion, Petitioners rely on *People v. Thompson*, 209 Ill. 2d 19, 805 N.E.2d 1200 (2004) – which was abrogated by *People v. Vara*, 2018 IL 121823, ¶ 76, 115 N.E.3d 53, 74, *reh'g denied* (Sept. 24, 2018) – and *Irving v. Rodriguez*, 27 Ill. App. 2d 75, 169 N.E.2d 145 (2nd Dist. 1960). However, neither *Thompson* nor *Rodriguez* involved challenges to orders based upon lack of personal jurisdiction. *See Thompson*, 209 Ill. 2d at 24–25, 805 N.E.2d at 1203 (vacating an extended-term sentence under the “void sentence rule”); *Rodriguez*, 27 Ill. App. 2d at 78, 169 N.E.2d at 146 (rejecting a post-judgment motion to vacate based upon the alleged insufficiency of the underlying complaint). It is well established that personal jurisdiction can be waived and thus only the person to whom service is owed can raise the issue. *People v. Matthews*, 2016 IL 118114, ¶ 23, 76 N.E.3d 1233, 1240. Accordingly, courts do *not* have an “inherent duty” to vacate orders as void for want of personal jurisdiction.

9. Moreover, *Thompson* and *Rodriguez* involved circumstances wherein the only persons to be affected by vacatur of the judgment at issue were the parties to the underlying case. *Thompson*, 209 Ill. 2d at 21, 805 N.E.2d at 1202; *Rodriguez*, 27 Ill. App. 2d at 78, 169 N.E.2d at 146. In the present circumstance, rights of third parties – namely, Respondents– will be impacted by unwinding the Foreclosure. Whatever inherent power courts may have with respect to void orders, it cannot be employed without affording third parties affected by vacatur of the challenged orders notice and an opportunity to present a defense. *See Nye v. Parkway Bank & Tr. Co.*, 114 Ill. App. 3d 272, 274, 448 N.E.2d 918, 919 (1st Dist. 1983) (“due process...require[s] that a person be given notice and an opportunity to be heard and to defend...”).

10. As with their other arguments, the Petitioners’ contention that the Supreme Court’s holding in *James v. Frantz*, 21 Ill. 2d 377, 172 N.E.2d 795 (1961) merely outlines “narrow exception” concerning the applicability of *laches* is without merit. *Frantz* involved circumstances analogous to the instant case; namely, a jurisdictional attack on decrees affecting property brought

after the real estate had changed hands. *Frantz*, 21 Ill. 2d at 379, 172 N.E.2d at 796. While mineral rights were at issue, the *Frantz* court's broad statements regarding the availability of *laches* as a defense to a jurisdictional challenge were in no way restricted to cases involving subterranean interests in land. *See James v. Frantz*, 21 Ill. 2d 377, 383, 172 N.E.2d 795, 798–99 (1961) (“*laches* is a familiar defense when the validity of an earlier judgment or decree has been attacked”).

11. Petitioners' reliance on the Supreme Court's decision in *Fox v. Dep't of Revenue*, 34 Ill. 2d 358, 215 N.E.2d 271 (1966) as support for their argument that the *Frantz* holding is an outlier is misplaced. In *Fox*, the court specifically declined to decide whether *laches* may be asserted in response to a challenge to an allegedly void judgment. *Fox*, 34 Ill. 2d at 361, 215 N.E.2d at 27 (“[b]ut it is unnecessary to decide [*laches*] application here, for it has not been properly put in issue”). In numerous other instances, Illinois courts have not shared this reluctance and have consistently affirmed the applicability of *laches* outside the context of mineral rights. *See, e.g., Koberlein v. First Nat. Bank of St. Elmo*, 376 Ill. 450, 455–57, 34 N.E.2d 388, 390–91 (1941) (sustaining the defense of *laches* in a proceeding to set aside a foreclosure decree on jurisdictional grounds); *Eckberg v. Benso*, 182 Ill. App. 3d 126, 131–32, 537 N.E.2d 967, 971–72 (1st Dist. 1989); *Rodriguez v. Koschny*, 57 Ill. App. 3d 355, 361, 373 N.E.2d 47, 52 (2nd Dist. 1978) (finding that *laches* may be interposed in an attack on adoption orders); *Miller v. Bloomberg*, 60 Ill. App. 3d 362, 365, 376 N.E.2d 748, 750 (2nd Dist. 1978) (noting the applicability of *laches* in an attack on a judgment directing specific performance of an option to purchase real estate).

12. Petitioners also cite a number of cases that were either decided before – or rely upon authority decided before – the Supreme Court's holding in *Frantz*. *See* Response ¶¶ 16, 18 (citing *Thayer v. Vill. of Downers Grove*, 369 Ill. 334, 339, 16 N.E.2d 717, 719 (1938); *Harris v. Am. Legion John T. Shelton Post No. 838*, 12 Ill. App. 3d 235, 242, 297 N.E.2d 795, 800 (1st Dist. 1973) (citing *Chiaro v. Lemberis*, 28 Ill. App. 2d 164, 169, 171 N.E.2d 81, 83 (1st Dist. 1960)); *Irving v. Rodriquez*, 27 Ill. App. 2d 75, 79, 169 N.E.2d 145, 147 (2nd Dist. 1960); and *Hustana v. Hustana*, 22

Ill. App. 2d 59, 65, 159 N.E.2d 265, 267–68 (1st Dist. 1959)²). Consequently, the *Frantz* court’s express finding that *laches* applies in jurisdictional challenges controls over the contrary statements in these decisions. What’s more, all of the cases relied upon by Petitioners predate *Miller v. Bloomberg*, 60 Ill. App. 3d 362, 365, 376 N.E.2d 748, 750 (2nd Dist. 1978) and *In re Jamari R.*, 2017 IL App (1st) 160850, ¶ 55, 82 N.E.3d 109, 124, which held that even if service of process is defective an attack on a decree may be barred by *laches*.

13. In a final effort to undermine Respondents’ *laches* argument, Petitioners cite several federal opinions for the proposition that the mere passage of time cannot “ratify” a void judgment. See Response ¶ 19 (citing *Merit Mgmt. Grp. v. Ponca Tribe of Indians Oklahoma*, 778 F. Supp. 2d 916 (N.D. Ill. 2011) and *Allen v. United States*, 102 F. Supp. 866, 869 (N.D. Ill. 1952)). In the first place, it is well established that the defense of *laches* “is...not a mere matter of time but principally a question of the inequity of permitting the claim to be enforced...” *Pyle v. Ferrell*, 12 Ill. 2d 547, 552, 147 N.E.2d 341, 344 (1958)(emphasis added). Moreover, inasmuch as *Allen* and *Ponca Tribes* concerned attacks on void orders arising from Sixth Amendment violations and lack of subject matter jurisdiction, respectively, they are readily distinguishable from the present circumstance. *Ponca Tribe of Indians Oklahoma*, 778 F. Supp. 2d at 919; *Allen*, 102 F. Supp. at 869. Even if the substance of these cases could be construed as analogous to a challenge to a court’s personal jurisdiction, the holdings are not binding on this Court. See *People v. Gutman*, 2011 IL 110338, ¶ 17, 959 N.E.2d 621, 625 (“[a] federal court’s construction of a federal statute is not binding on Illinois courts in construing a similar state statute”).

² It should be noted that the issue before the *Hustana* court was whether the respondent was properly joined as a party to the petition to vacate – not the applicability of *laches* to the proceeding. *Hustana*, 22 Ill. App. 2d at 60–61, 159 N.E.2d at 265–66. Accordingly, in addition to being abrogated, the Court’s comments concerning *laches* are mere *obiter dictum*. *Cates v. Cates*, 156 Ill. 2d 76, 80, 619 N.E.2d 715, 717 (1993) (as a general rule *obiter dictum* “is not binding as authority or precedent within the *stare decisis* rule”). Further, in contrast to the claims asserted in the Petition, *Hustana* involved a challenge to a decree procured by fraud. *Hustana*, 22 Ill. App. 2d at 62, 159 N.E.2d at 266.

d. The Detective was Authorized to Serve Jerzy at the Time Substitute Service was completed

14. Under Section 2-203 of the Code of Civil Procedure, there are two steps necessary for obtaining valid abode service: (a) leaving process with a member of the household over 13 years of age and (b) mailing process to the defendant at his or her address. 735 ILCS 5/2-203; *Mid-Am. Fed. Sav. & Loan Ass'n v. Kosiewicz*, 170 Ill. App. 3d 316, 321, 524 N.E.2d 663, 666 (2nd Dist. 1988). Here, there is no dispute that the Detective was appointed when the final step was completed. In this regard, *C.T.A.S.S. & U. Fed. Credit Union v. Johnson*, 383 Ill. App. 3d 909, 913, 891 N.E.2d 558, 562 (2008), relied upon by Petitioners, is inapposite. In *Johnson*, the delivery of summons and mailing both occurred prior to the appointment of the special process server. *Johnson*, 383 Ill. App. 3d at 910, 891 N.E.2d at 560.

e. The Confirmation Order – and all Prior Rulings – Must Stand as to the Properly Joined Defendants

15. Petitioners contend that the orders entered in the Foreclosure must be vacated *in toto* because: (a) an order entered without jurisdiction over a necessary party is void *ab initio*, and (b) any consideration of partial vacatur is a mere “distraction” from the issue of jurisdiction over Petitioners. *See* Response ¶¶ 21-22.

16. Far from being a distraction, the issue as whether the Foreclosure orders should be vacated as to properly joined parties goes to the very basis of the Petition. As noted, only the person to whom service is owed can object to the court’s jurisdiction over him. *People v. Matthews*, 2016 IL 118114, ¶ 23, 76 N.E.3d 1233, 1240. That being the case, Petitioners lack standing to raise jurisdictional objections on behalf of other defendants who may well be content with the outcome of the Foreclosure and have no interest in reviving their liability.

17. Moreover, while it is true that an order entered without jurisdiction over a party is void *ab initio*, it does not follow that the order must be vacated as to other parties who were subject to the court’s jurisdiction. Indeed, the cases cited by Petitioners on this point merely hold that a judgment against an absent party is void – *as to that party*. *Georgeoff v. Spencer*, 400 Ill. 300, 79

N.E.2d 596 (1948); *Boghossian v. Mid-City Nat. Bank of Chicago*, 25 Ill. App. 2d 455, 167 N.E.2d 442 (1st Dist. 1960). Petitioners' reliance on *W. Suburban Bank v. Lattemann*, 285 Ill. App. 3d 313, 674 N.E.2d 149 (2nd 1996) is equally misguided. While the Appellate Court in *Lattemann* noted in its factual recitation that the foreclosure judgment was vacated for failure to serve "one of the mortgagors," this act was unrelated to the Court's holding and thus no reasoning or context was provided. *Lattemann*, 285 Ill. App. 3d at 314, 674 N.E.2d at 149.

18. By contrast, *In re Estate of Thorp*, 282 Ill. App. 3d 612, 669 N.E.2d 359 (4th Dist. 1996) squarely addressed the issue presented in the instant matter – namely, "[w]hen two defendants are involved, and there is jurisdiction over the first defendant but not over the second, does the lack of jurisdiction over the second defendant render void the judgment against the first defendant?" *Thorp*, 282 Ill. App. 3d at 618, 669 N.E.2d at 363. The Appellate Court answered this question in the negative. *Id.* at 619, 669 N.E.2d at 364; *see also Chapman, Mazza, Aiello, Inc. v. Ace Lumber & Const. Co.*, 83 Ill. App. 2d 320, 335, 227 N.E.2d 562, 570 (2nd Dist. 1967) (a "judgment will be sustained so far as it adjudges what the court has the power to adjudge as...and will be void so far as it attempts to adjudicate upon what is beyond its power...").

II. REPLY IN SUPPORT OF 2-615 MOTION

19. Petitioners have failed to allege a factual basis for the ancillary claims related to their purported loss of possession and damages stemming therefrom. Section 9-102 of the Code of Civil Procedure delineates the circumstances under which a person may pursue an action for possession of lands. 735 ILCS 5/9-102. Importantly, a party's right to maintain such an action is contingent on a present entitlement to possession. *Id.*; *see also Wieboldt v. Best Brewing Co.*, 163 Ill. App. 246, 250. Likewise, Section 9-201 of the Code of Civil Procedure – which allows recovery for use and occupancy of lands – requires that the party seeking this relief be entitled to possession of the subject property. 735 ILCS 5/9-201; *see also Cauley v. N. Tr. Co.*, 315 Ill. App. 307, 323–24, 43 N.E.2d 147,

154 (1st Dist. 1942). Notwithstanding these requirements, the Petition is devoid of any allegations demonstrating a present entitlement to possession and is therefore subject to dismissal.³

20. Moreover, the doctrine of restitution does not provide a basis for the myriad of claims asserted by the Petitioners. Restitution upon vacatur of a judgment is the process of restoring the parties to the *status quo ante*, as nearly as possible. *See, e.g., In re Marriage of Lehr*, 317 Ill. App. 3d 853, 859, 740 N.E.2d 417, 422 (1st Dist. 2000); *see also Thompson v. Davis*, 297 Ill. 11, 15, 19, 130 N.E. 455, 457-458 (1921). In the present instance, restitution would merely require that Petitioners be restored – as close as possible – to the interest they held prior to the conclusion of the Foreclosure; namely, bare legal title to the Premises (or its monetary substitute) subject to a mortgage lien. Contrary to Petitioners’ arguments, restitution would *not* include an award of damages from Respondents. None of the cases cited by Petitioners – nor any other authority for that matter – provides that: (a) Petitioners may be rewarded for their delay in instituting this action by accruing use and occupancy damages for each day they waited to file the Petition, or (b) strangers to the underlying litigation may be held liable for “restitution.” Indeed, the very jurisprudence cited by Petitioners undermines their claims against Respondents. *See McJilton v. Love*, 13 Ill. 486, 494 (1851) (“if a judgment is reversed, the parties are to be restored to their original rights, so far as it can be done *without prejudice to third persons*” (emphasis added)).

21. It should also be noted that restitution in the present instance is likely to do Petitioners more harm than good. Even if the Premises (or its monetary substitute) is returned to the Petitioners, restoration to the *status quo ante* would put PNC back in its former position and allow the entity to enforce its security interest against Petitioners – including all interest, costs, and fees that have accrued during the course of the past seven years.

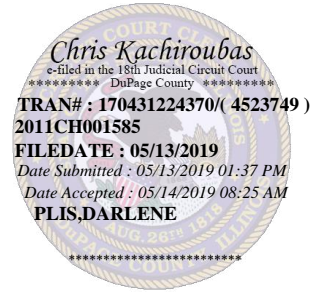
³ As set forth above, Section 2-1401(e) precludes Petitioners from asserting a present right to possession. *See supra* ¶ 3. As such, the Petition must be dismissed, with prejudice. *See Hensler v. Busey Bank*, 231 Ill. App. 3d 920, 924, 596 N.E.2d 1269, 1272 (4th Dist. 1992) (a court may dismiss a complaint with prejudice under Section 2-615 where “it clearly appears that no set of facts could be established which would entitle plaintiff to relief”).

III. CONCLUSION

WHEREFORE, Section 2-1401 respondents Nellisa S. Ragland, Brian T. Heath, and Mortgage Electronic Registration Systems, Inc., as nominee for STC Capital Bank, pray for the entry of an order dismissing the Petition for Relief from Void Judgments, with prejudice, and such further and additional relief as this Court deems just and appropriate.

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NELLISA S. RAGLAND, BRIAN T. HEATH AND
 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
 INC., AS NOMINEE FOR STC CAPITAL BANK
 By: /s/ *Nathan B. Grzegorek*
 One of their Attorneys



**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
WHEATON, DUPAGE COUNTY, ILLINOIS**

PNC BANK, NATIONAL ASSOCIATION,

Plaintiff/Respondent,

vs.

JERZY KUSMIERZ, HALINA KUSMIERZ, THE
TOWNSHIP OF YORK and PNC BANK, NATIONAL
ASSOCIATION,

Defendants/Petitioners.

CASE NO. 11-CH-1585

PROPERTY:
1405 WISCONSIN AVE.
LOMBARD, IL 60148

**REPLY TO DEFENDANTS' RESPONSE TO PNC BANK, NATIONAL
ASSOCIATION'S COMBINED 735 ILCS 5/2-619.1 MOTION TO DISMISS
PETITION FOR RELIEF FROM VOID JUDGMENTS**

NOW COMES the Plaintiff/Respondent, PNC Bank, National Association, by its attorneys, Heavner, Beyers & Mihlar, LLC, and for its Reply to Defendants' Response to PNC Bank, National Association's Combined 735 ILCS 5/2-619.1 Motion to Dismiss Petition for Relief from Void Judgments, states as follows:

I. INTRODUCTION

On December 7, 2018, the Plaintiff filed its Combined 735 ILCS 5/2-619.1 Motion to Dismiss Petition for Relief from Void Judgments (hereinafter the "Motion"). Thereafter, on April 22, 2019, the Defendants filed their Response to Plaintiff's Motion (hereinafter the "Response"). In their Response, the Defendants argue that neither the doctrines of laches nor mootness are applicable to the instant case. However, for the reasons set forth below, the Defendants'

allegations are without merit and do not preclude the Court from granting the Plaintiff's Motion to Dismiss.

II. ARGUMENT

A. The Doctrine of Laches is applicable to the instant action.

The doctrine of laches is “the neglect or omission to assert a right which, taken in conjunction with a lapse of time and circumstances causing prejudice to the opposite party will operate as a bar to a suit.” Negron v. City of Chicago, 376 Ill.App.3d 242, 246-47 (1st Dist. 2007). “[A] party asserting laches...must provide two fundamental elements: (1) lack of due diligence by the party asserting a claim; and (2) prejudice to the party asserting laches.” Id.

The Defendants argue laches is inapplicable to matters of jurisdiction, as laches is an equitable defense while jurisdictional issues require legal defenses. While the assertion that a judgment is void *ab initio* does present a legal challenge, the Defendants' use of the Illinois Supreme Court's analyses in In re N.G., 2018 IL 121939, 115 N.E.3d 102; BAC Home Loans Servicing, LP v. Mitchell, 2014 IL 116311, 6 N.E.3d 162; and People v. Castleberry, 2015 IL 116916, ¶ 5, 43 N.E.3d 932, 934 to claim laches is never applicable to questions of law is disingenuous.

As stated in the Plaintiff's Motion, the Illinois Supreme Court long ago rejected the notion that a void decree may be challenged at any time, without regard to laches, and affirmed that “laches is a familiar defense when the validity of an earlier judgment or decree has been attacked.” James v. Frantz, 21 Ill.2d 377, 383 (1961). The Defendants attempt to distinguish Frantz by stating that it represents a narrow exception to the general rule that laches does not apply to issues of jurisdiction when dealing with mineral rights. To support their assertion, the Defendants merely state that Frantz was a case dealing with mineral rights, *ipso facto* the

Supreme Court meant for laches to only apply in that narrow case. However, the very text of Frantz proves this argument to be erroneous:

The appellees attempt to meet the charge of laches by asserting that a void decree may be attacked collaterally at any time, without regard to laches. They rely upon the statements in *Thayer v. Village of Downers Grove*, 369 Ill. 334, 339, 16 N.E.2d 717, 719, and *Ward v. Sampson*, 395 Ill. 353, 70 N.E.2d 324, that ‘a void judgment or order may be vacated at any time and the doctrines of laches and estoppel do not apply.’ These statements are far too sweeping, however, for laches is a familiar defense when the validity of an earlier judgment or decree has been attacked in equity. [citation omitted] As the black letter of the Restatement puts it, ‘equitable relief from a judgment may be refused to a party thereto if * * * after ascertaining the facts the complainant failed promptly to seek redress.’ (Restatement of Judgments, s 129.) No different principles are involved because the complaint in this case concluded with a prayer for a declaratory judgment instead of a prayer for equitable relief.

Frantz, 21 Ill. 2d at 383. The Defendants cite N.G., Mitchell, and Castleberry, in an attempt to establish laches is unavailable in challenges alleging void judgments. However, these decisions do not support the Defendants’ assertion that the equitable defense of laches cannot be raised in such a proceeding, as none of these cases dealt with situations where laches was a necessary defense.

N.G. dealt with a constitutionally void statute which was dispositive of the cause of action. In re N.G., 2018 IL 121939, ¶ 43, 115 N.E.3d 102, 120. Thus, laches was not a necessary element of this matter. Mitchell discussed the implications of prospective-only waiver of objections to personal jurisdiction following the previous iteration of Section 2-301 of the Illinois Code of Civil Procedure. BAC Home Loans Servicing, LP v. Mitchell, 2014 IL 116311, ¶ 28, 6 N.E.3d 162, 168. There was no need to discuss the application of laches to that case. Castleberry is a criminal case dealing with statutory sentencing guidelines and subject matter jurisdiction. People v. Castleberry, 2015 IL 116916, ¶ 14, 43 N.E.3d 932, 936. The issue of laches was not raised in this circumstance, as the Defendant did not delay bringing the claim.

Further, it is clear the Defendants lacked diligence in bringing their claim despite having been served with notice of the pending foreclosure procedure. **See, e.g., Pyle v. Ferrell, 12 IL2d 547, 554 (1958)** (the test for the application of laches is what the claimant “might have known by the use of the means of information within his reach with the vigilance the law requires of him”). Thus, a factual analysis of the instant case shows that laches is an appropriate defense to the Defendants’ challenge.

As stated in the Plaintiff’s Motion, by withholding their objection to the foreclosure action, the Defendants unjustly increased the amount of damages they could claim against the Plaintiff and decreased the remedial choices open to the Plaintiff to cure any issues in the underlying foreclosure action. Therefore, the Plaintiff has been prejudiced by the Defendants’ eight year delay in voicing their jurisdictional objections, and the doctrine of laches precludes the Defendants’ Petition for Relief from Void Judgments. For this reason alone, PNC’s Combined 735 ILCS 5/2-619.1 Motion to Dismiss should be granted.

B. Mootness is also applicable to the instant action.

The Defendants further allege in their Response that their Petition for Relief from Void Judgments is not moot because the Plaintiff’s argument regarding adverse possession is unripe. However, as the Plaintiff stated in its Motion, the Defendants have failed to allege facts which support granting their desired relief. It is statutorily impossible for the Defendants to regain possession of the subject property, and thus their participation in any resulting foreclosure proceeding would serve no purpose.

Moreover, as it relates to the sale of property, the Supreme Court of Illinois has said:


Illinois law protects the integrity and finality of property sales, including judicial sales. [citation omitted]. Indeed, it extends this protection to purchasers who without notice at the time of the purchase buy in good faith. This finality and permanence is relied on by both purchasers and others in connection with the

purchase of the property, including financial institutions, title insurers, realtors, and tenants. Absent this policy, no person would purchase real property involved in a judicial proceeding, if afterwards he incurred the hazard of losing the property due to facts unknown to him at the time of the sale. A party may avoid the harshness of this rule by complying with the procedural mechanisms available, such as a motion to stay enforcement of the judgment and sale.

Steinbrecher v. Steinbrecher, 197 Ill. 2d 514, 528–29, 759 N.E.2d 509, 518 (2001). Before final judgment was entered in the instant action, the Defendants had procedural mechanisms available that could have avoided any damages they allegedly incurred. Instead, with the undisputed knowledge that a foreclosure was proceeding against their property, the Defendants chose to stay mute for over eight years. Public policy and Illinois law disfavors such reticence when the interests of others in connection with the foreclosure are prejudiced by that delay. Thus, as the Defendants' claims are barred pursuant to 735 ILCS 5/13-107, they are moot, and the Defendants' Petition for Relief should be dismissed.

III. CONCLUSION

WHEREFORE, PNC Bank, National Association, respectfully requests that the Court enter an Order dismissing the Petition for Relief from Void Judgments and for such further and additional relief as this Court deems just and appropriate.

PNC BANK, NATIONAL ASSOCIATION,
Plaintiff/Respondent,
By:  **Caleb Christian**
Meredith Pitts
Of Heavner, Beyers & Mihlar, LLC

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ORDER

2011CH001585-328

UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

PNC BANK NATIONAL ASSOCIATION

-VS-

JERZY KUSMIERZ

2011CH001585
CASE NUMBER**FILED**

19 May 21 PM 02: 55

Chris Kachiroubas
CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**ORDER**

This matter coming to be heard on Section 2-1401 Respondents' Motions to Dismiss the Section 2-1401 Petition to Vacate Void Judgments, the court being fully advised on the matters, it is hereby ordered that the Respondents' Motions to Dismiss are granted with prejudice for the reasons stated on the record.

Submitted by: GIOVANNI RAIMONDI

Attorney Firm: RAI LAW LLC

DuPage Attorney Number: 324817

Attorney for: PETITIONER

Address: 1051 PERIMETER DRIVE, SUITE 400

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Email address : pleadings@railawllc.com

Entered: *James D. Orel*

JUDGE JAMES D OREL

Validation ID : DP-05212019-0255-49512

Date: 05/21/2019

No. _____

**APPEAL TO THE APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
COUNTY OF DUPAGE – STATE OF ILLINOIS**

PNC Bank National Association,

Plaintiff-Appellee,

v.

Jerzy Kusmierz; Halina Kusmierz,;

Defendants-Appellants,

The Township of York; and PNC Bank,
National Association,

Defendants

Case No. 2011 CH 1585**Honorable James D. Orel,**
Judge Presiding**Orders Appealed:**
Order Granting Motion to Dismiss –
May 21, 2019**NOTICE OF APPEAL**

TO:
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Lillig & Thorsness, Ltd.
aiaria@lilliglaw.com
Attorneys for STC Capital Bank

The Township of York
1502 S Meyers Rd, Lombard, IL 60148

Appellants, Jerzy Kusmierz (“Jerzy”) and Halina Kusmierz (“Halina” and, collectively with Jerzy, “Appellants”), through their attorney, RAI Law, LLC, and pursuant to Illinois Supreme Court Rules 301 and 303, hereby appeal as a matter of right to the Appellate Court of Illinois, Second Judicial District, from the following Order(s) entered in the above-captioned

action: (1) the Order entered on May 21, 2019 (the “May 21, 2019 Order”) granting Respondents’ motions to dismiss, as well as from all other Orders entered in the above-captioned section 2-1401 petition action that naturally led to and/or resulted in the entry of the final judgment order from which appeal is taken as set forth above (collectively with the May 21, 2019 Order, the “Orders”). A true and correct copy of the May 21, 2019 Order is attached hereto as **Exhibit 1**.

Appellants respectfully request that the Appellate Court of Illinois, Second Judicial District: (i) reverse and remand or vacate the May 21, 2019 Order; and/or (ii) hold and/or order that the Motions to Dismiss filed by Respondents be denied; and/or (iii) remand the above-captioned action back for further proceedings consistent with the opinion and decision of the Appellate Court of Illinois, Second Judicial District in this appeal; and (iv) grant to Appellants any and all such other or further relief as is found by the Appellate Court of Illinois, Second Judicial District, to be proper and available to them in this appeal.

Respectfully submitted,
Jerzy Kusmierz and Halina Kusmierz

By: /s/Giovanni Raimondi
Counsel for Appellants

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2020 IL App (2d) 190521
 No. 2-19-0521
 Opinion filed August 28, 2020

IN THE
 APPELLATE COURT OF ILLINOIS
 SECOND DISTRICT

PNC BANK, NATIONAL ASSOCIATION,)	Appeal from the Circuit Court
)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CH-1585
)	
JERZY KUSMIERZ; HALINA KUSMIERZ;)	
THE TOWNSHIP OF YORK; and PNC)	
BANK, NATIONAL ASSOCIATION,)	
)	
Defendants)	
)	
(Jerzy Kusmierz and Halina Kusmierz,)	
Defendants-Appellants; Brian T. Heath,)	
Naillisa S. Ragland, and Mortgage Electronic)	Honorable
Registration Systems, Inc., Respondents-)	James D. Orel,
Appellees).)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court, with opinion.
 Justices McLaren and Bridges concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, PNC Bank, National Association (Bank), filed a foreclosure complaint against defendants, Jerzy and Halina Kusmierz, concerning property in Lombard.¹ Ultimately, in

¹ The mortgage was initially entered into by defendants and MidAmerica Bank, FSB, but

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February 2012, the trial court entered a default judgment against defendants, and the property was sold through a judicial sale.

¶ 2 Six years later, on September 12, 2018, defendants filed a petition for relief from void judgments, pursuant to section 2-1401(f) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401(f) (West 2016)), arguing that all orders entered against them in the foreclosure action were void because defendants were not properly served and, therefore, the trial court lacked personal jurisdiction over them. The Bank moved to dismiss the petition, pursuant to section 2-619.1 of the Code (*id.* § 2-619.1), as did subsequent purchasers. The court granted the motions. Defendants appeal. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On March 30, 2011, the Bank filed the foreclosure complaint and summons against defendants, relating to real estate located at 1405 Wisconsin Avenue in Lombard. The record reflects that, on March 31, 2011, Jennifer I. Magida, an employee of Metro Detective Agency, LLC, attempted service at the subject address, but the property consisted of only a vacant lot, with no structures.

¶ 5 On April 4, 2011, the court entered an order appointing Metro Detective Agency, LLC, as special process server.

¶ 6 An affidavit of service dated the next day, April 5, 2011, reflects that, on *April 1*, 2011, Magida served Jerzy by abode service when she handed the complaint and summons to his wife,

the complaint asserted that plaintiff was the legal holder of the note, mortgage, and indebtedness as the successor by merger to National City Bank, which was the successor by merger to MidAmerica Bank, FSB.

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Halina at 1107 West Eaton Court, Palatine, IL, 60067. According to the affidavit, on April 4, 2011, Magida also sent Jerzy the summons via United States mail to the same Palatine address. A second affidavit, also dated April 5, 2011, attests to personal service of Halina on *April 1*, 2011, at the Palatine address. Both affidavits attest: “I am a registered employee of a Private Detective Agency licensed by the Illinois Department of Financial and Professional Regulation and thereby authorized to serve process within the State of Illinois pursuant to 735 ILCS 5/2-202(a).”

¶ 7 On February 27, 2012, the Bank filed a motion for foreclosure and judgment of sale. It noted April 1, 2011, as the date of service for defendants but also noted that defendants never appeared.

¶ 8 On February 28, 2012, the court entered an order of default against defendants and a judgment of foreclosure in the amount of \$132,418.51. The property was sold at a judicial sale, with the Bank being the successful bidder. On June 12, 2012, the court entered an order confirming the judicial sale. In 2013, Brian T. Heath and Naillisa S. Ragland purchased the property from the Bank.

¶ 9 On September 12, 2018, approximately six years after the default judgment was entered, defendants filed a section 2-1401 petition seeking relief from the judgments. They noted that they were served in Cook County but argued that the court never acquired personal jurisdiction over them, because there was no order in the record appointing a special process server for Cook County, in violation of section 2-202(a) of the Code (735 ILCS 5/2-202(a) (West 2016)).² Defendants argued that the jurisdictional defect affirmatively appeared on the face of the record

² This assertion was incorrect; there was an order appointing a special process server, but the order was entered three days after Halina was personally served at the Palatine address.

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and that the default judgment was void. In their prayer for relief, defendants requested that the court

—quash the service;

—vacate all orders and judgments in the case as void *ab initio*;

—find that the lack of jurisdiction is apparent on the face of the record;

—find that defendants are the owners of the property;

—restore possession of the property to them and order that the Bank and the purchasers pay defendants, “as restitution, reasonable use and occupancy of [the property] from July 12, 2012, through and including the date [defendants] are restored to possession,” or, alternatively, “in the event that possession is not restored” to defendants, that the Bank and purchasers pay defendants “as restitution” the value of the property on the date that the petition is granted, plus reasonable use and occupancy of the residence from July 12, 2012, through and including the date that restitution is paid in full;

—order the Bank and the purchasers to pay defendants, “as restitution,” all profits that they derived from the residence; and

—stay further proceedings until all restitution is made to defendants.

¶ 10 The Bank filed a section 2-619.1 motion to dismiss the petition, arguing, in sum, that the petition was barred by the *laches* doctrine, was moot, and requested improper relief.

¶ 11 Heath and Ragland also filed a section 2-619.1 motion, arguing, in sum, that they were entitled to *bona fide*-purchaser protections under section 2-1401(e) (*id.* § 2-1401(e)), the *laches* doctrine barred the petition, and defendants’ requested relief was improper. In addition, they attested that, in 2013, they purchased the vacant lot from the Bank for \$24,000. They further attested that they constructed a five-bedroom home on the property, paying \$42,000 and obtaining

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two mortgage loans to finance construction: “from STC Capital Bank (‘STC’), to wit: (a) a \$220,400.00 loan secured by a mortgage lien interest in the Premises delivered to Mortgage Electronic Registration Systems, Inc. (‘MERS’), as nominee for STC, on May 17, 2013; and (b) a home equity line of credit in the amount of \$72,250.00 secured by a subordinate mortgage lien interest in the Premises delivered to STC on May 7, 2015.” Further, they attested that they remitted around \$29,500 for real estate taxes and \$6500 in property insurance. MERS later joined the section 2-619.1 motion to dismiss filed by Heath and Ragland (hereinafter, we refer to Heath, Ragland, and MERS collectively as “the purchasers”).

¶ 12 On May 21, 2019, after hearing oral argument, the trial court granted both motions to dismiss with prejudice, noting that it found that the purchasers were *bona fide* under section 2-1401(e) and that *laches* applied as to both motions. On June 18, 2019, defendants filed their notice of appeal.

¶ 13

II. ANALYSIS

¶ 14

A. Motion to Dismiss Appeal

¶ 15 Preliminarily, we note that, similar to the posture below, on appeal the Bank and the purchasers each filed a separate response brief. In addition, the purchasers, in a motion that we ordered taken with the case, have moved to dismiss the appeal. They argue, in sum, that this appeal is moot because, pursuant to sections 13-107.1 and 13-109.1 of the Code (735 ILCS 5/13-107.1, 13-109.1 (West 2018)), they have acquired title to the premises through adverse possession and, therefore, their interest in the property would not be affected by vacating the foreclosure orders.

¶ 16 We deny the motion to dismiss the appeal as moot. We faced almost-identical motions in *JP Morgan Chase Bank, N.A. v. Robinson*, 2020 IL App (2d) 190275, and *Bank of New York v. Rodriguez*, 2020 IL App (2d) 190143, and denied both, noting in *Robinson* that, to rule on the

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merits of the motion, we had to rule on the merits of the case. *Robinson*, 2020 IL App (2d) 190275, ¶ 29 n.2.

¶ 17 B. Standard of Review

¶ 18 We note that, on appeal, defendants do not contend that they were *not* actually served but, rather, that the foreclosure judgments against them were void and the trial court erred in dismissing the section 2-1401 petition. Defendants argue that service in Cook County required appointment of a special process server, which did not happen until April 4, *after* personal service occurred on April 1; the defect in service was apparent on the face of the record, as the service address was in Cook County, such that the purchasers were not *bona fide*; the doctrine of *laches* does not apply to petitions to vacate void judgments; and they are entitled to restitution.

¶ 19 For the following reasons, we conclude that dismissal of the petition against both the purchasers and the Bank was proper under section 2-619(a)(9) of the Code, which permits dismissal of an action where “the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9) (West 2018). We review *de novo* the dismissal of a pleading pursuant to section 2-619(a)(9). *McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶ 17. In addition, we review *de novo* a judgment on a section 2-1401 petition claiming voidness due to lack of personal jurisdiction. *Deutsche Bank National Trust Co. v. Hall-Pilate*, 2011 IL App (1st) 102632, ¶ 12.

¶ 20 C. Dismissal of Petition as to the Purchasers

¶ 21 Defendants contend that service was improper because it was conducted by an unauthorized person in that, although the special process server had not yet been appointed by the court, service was conducted in Cook County, which, according to section 2-202(a) of the Code (735 ILCS 5/2-202(a) (West 2010)), required service by the sheriff *or a court-appointed* special

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process server. Defendants argue that the service affidavit, reflecting service on April 1, 2011, coupled with the court order being entered on April 4, suffices to establish on the face of the record a failure to comply with section 202(a). As such, defendants conclude, section 2-1401(e)'s *bona fide*-purchaser protections do not apply. This court addressed and rejected similar arguments in *Robinson*, 2020 IL App (2d) 190275, ¶¶ 19-29, and, even more recently, in *BankUnited, National Ass'n v. Giusti*, 2020 IL App (2d) 190522, ¶¶ 31-38. But see *Municipal Trust and Savings Bank v. Moriarty*, 2020 IL App (3d) 190016, ¶¶ 22-23 (upholding denial of the mortgagor's petition for relief from judgment in a foreclosure proceeding on the basis that, even though the private detective had not been specially appointed to serve process in the county, service of process on the mortgagor in Cook County by a registered private detective was valid under section 2-202(a), (b) (735 ILCS 5/2-202(a), (b) (West 2016)) and, therefore, provided the trial court with personal jurisdiction over the mortgagor). We acknowledge that briefing in this case finished prior to our issuance of those decisions. Nevertheless, we apply the same analyses to defendants' arguments here.

¶ 22 Specifically, where, as here, a voidness challenge is brought more than 30 days after a default judgment, it may be considered under section 2-1401. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104-05 (2002). Further, a section 2-1401 petition alleging that the underlying judgment was void is not subject to the time, due-diligence, or meritorious-defense requirements applicable to other section 2-1401 petitions. *Id.* at 104.

¶ 23 As stated by our supreme court:

“In order to have a valid judgment the court must have both jurisdiction over the subject matter of the litigation and jurisdiction over the parties. [Citation.] Personal jurisdiction may be acquired either by the party's making a general appearance or by

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service of process as statutorily directed. [Citation.] A judgment rendered by a court which fails to acquire jurisdiction over the parties is void and may be attacked and vacated at any time, either directly or collaterally. [Citations.]” *In re Marriage of Verdung*, 126 Ill. 2d 542, 547 (1989).

¶ 24 However, even if we were to assume that the judgment is void, our analysis does not end, because the dispositive question becomes whether the purchasers are *bona fide*. Specifically, where the rights of innocent third-party purchasers have attached, a judgment may be collaterally attacked only where an alleged personal-jurisdictional defect affirmatively appears in the record. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 312-13 (1986) (citing Ill. Rev. Stat. 1981, ch. 110, ¶ 2-1401(e) (now 735 ILCS 5/2-1401(e) (West 2018))). Section 2-1401(e) provides:

“Unless lack of jurisdiction *affirmatively appears from the record proper*, the vacation or modification of an order or judgment pursuant to the provisions of this Section does not affect the right, title or interest in or to any real or personal property of any person, not a party to the original action, acquired for value after the entry of the order or judgment but before the filing of the petition, nor affect any right of any person not a party to the original action under any certificate of sale issued before the filing of the petition, pursuant to a sale based on the order or judgment.” (Emphasis added.) 735 ILCS 5/2-1401(e) (West 2018).

¶ 25 In determining whether a lack of jurisdiction is apparent from the record, we must look to the whole record; a lack of jurisdiction is apparent if it does not require inquiry beyond the face of the record. *Thill*, 113 Ill. 2d at 313-14. Strict compliance with the statutes governing service of process is required before a court will acquire personal jurisdiction over the person served. *Sarkissian*, 201 Ill. 2d at 109.

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¶ 26 Here, we disagree with defendants' argument that the alleged defect in service was apparent on the face of the record, such that section 2-1401's *bona fide*-purchaser protections are inapplicable. The affidavit of the special process server reflects service at 1107 West Eaton Court, Palatine, IL, 60067. It does *not*, however, specify that service was effected in Cook County. Further, the affidavit reflects the process server's representation that she was authorized to serve process "pursuant to 735 ILCS 5/2-202(a)," the very statute that defendants claim was violated.

¶ 27 We have previously held that, where an affidavit does not specify the county in which service occurred, a third-party purchaser would not, on the record alone, have any reason to suspect that service was not in compliance with section 2-202(a) and, further, that a third-party purchaser should be able to rely on the affidavit's statement that service complied with the service requirements. See, e.g., *Giusti*, 2020 IL App (2d) 190522, ¶¶ 33-36; *Robinson*, 2020 IL App (2d) 190275, ¶¶ 23-27; *U.S. Bank National Ass'n v. Rahman*, 2016 IL App (2d) 150040, ¶¶ 38-39. Defendants argue that Palatine exists entirely in Cook County. While that might be true, the "lack of jurisdiction [must] affirmatively appear[] from the record proper." See 735 ILCS 5/2-1401(e) (West 2018). A request that we take judicial notice that Palatine's 60067 zip code lies exclusively in Cook County requires us to go beyond the face of the record to establish a defect in service. In contrast, the service affidavit itself would lead a reasonably prudent purchaser to conclude that service was proper, as there is nothing on the face of the affidavit to suggest that the process server was unauthorized to serve process, or that service was in Cook County and that, therefore, the order appointing a special process server entered three days later was a reason to suspect defective service. Because the jurisdictional defect does not affirmatively appear on the face of the record, section 2-1401(e) protects the purchasers' rights in the property. See *Giusti*, 2020 IL App (2d)

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190522, ¶¶ 37-38. Accordingly, the trial court properly dismissed the section 2-1401 petition against them.

¶ 28

D. Dismissal of Petition as to the Bank

¶ 29 As to the Bank, our analysis diverges slightly from prior decisions. For example, in *Robinson*, we noted that the successor in interest to the defendant’s original mortgagee was entitled to the same protections as the subsequent purchasers because “the void judgment would not ‘affect any right of any person not a party to the original action under any certificate of sale issued before the filing of the petition, pursuant to a sale based on the order or judgment.’ ” *Robinson*, 2020 IL App (2d) 190275, ¶ 29 (quoting 735 ILCS 5/2-1401(e) (West 2018)). Here, however, the Bank is not a successor in interest; rather, it is the original foreclosing plaintiff that defendants claim took advantage of void orders to sell the property. Thus, section 2-1401(e) protections are not relevant.

¶ 30 Instead, the trial court granted the Bank’s motion to dismiss on the basis of *laches*, without ruling on the Bank’s mootness argument. Defendants argue, in sum, that the court’s ruling was improper because a void judgment may be attacked at any time and, therefore, *laches* does not apply. We conclude that the trial court properly granted the Bank’s motion to dismiss.

¶ 31 *Laches* is an affirmative defense that is equitable, and it requires the party raising it to show that there was an unreasonable delay in bringing an action and that the delay caused prejudice. *Rahman*, 2016 IL App (2d) 150040, ¶ 44. We have no quarrel with defendants’ position that void judgments may be challenged at any time. Indeed, we acknowledged above that section 2-1401 petitions alleging void judgments are not subject to that section’s ordinary time restrictions. However, although void judgments may be *attacked* at any time, in *Robinson*, we noted that *laches* “can preclude *relief* in an appropriate case where prejudice is demonstrated.” (Emphasis added.) *Robinson*, 2020 IL App (2d) 190275, ¶ 30. Further, this court has noted that, although it might be

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a “curious argument” to assert that *laches* bars *bringing* a jurisdictional challenge, nevertheless, “in some circumstances, *laches* [has] been held to interpose a limit on when a void judgment may be collaterally attacked.” *West Suburban Bank v. Advantage Financial Partners, LLC*, 2014 IL App (2d) 131146, ¶ 26 (citing *James v. Frantz*, 21 Ill. 2d 377, 383 (1961), *Eckberg v. Benso*, 182 Ill. App. 3d 126, 131-32 (1989), *In re Adoption of Miller*, 106 Ill. App. 3d 1025, 1030 (1982), and *Rodriguez v. Koschny*, 57 Ill. App. 3d 355, 361 (1978)). In addition, support for the position that *laches* may be applied, even if the issue is one concerning defective service and allegedly void orders, is also found in *Slatin’s Properties, Inc. v. Hassler*, 53 Ill. 2d 325, 329-30 (1973) (noting that the defense of *laches* is “dependent upon the facts of each case” and “[w]hen the facts indicate that it would be inequitable to allow a party to assert title, *laches* will bar this right even within the statutory period of limitation”); *In re Jamari*, 2017 IL App (1st) 160850, ¶ 55 (“ ‘Illinois cases recognize that even if service of process is defective an attack on a decree may be barred by *laches*. [Citation.] It is a basic to the *laches* doctrine that a complainant may be barred when, after ascertaining the facts, he [or she] fails promptly to seek redress.’ ” (quoting *Rodriguez*, 57 Ill. App. 3d at 361-62)); *La Salle National Bank v. Dubin Residential Communities Corp.*, 337 Ill. App. 3d 345, 350-51 (2003) (“[l]aches is a defense that is asserted against a party who has knowingly slept upon his [or her] rights and acquiesced for a great length of time, and its existence depends upon whether, under all the circumstances of a particular case, a party is chargeable with want of due diligence and failing to institute proceedings before he or she did”; moreover, “[w]hether the defense of *laches* is available is to be determined upon the facts and circumstances of each case”); *Eckberg*, 182 Ill. App. 3d at 131 (“Illinois courts have applied this [*laches*] doctrine to bar claims that a decree is void for defective service of process despite contrary arguments that such a jurisdictional claim may be brought at any time.”); *Miller v. Bloomberg*, 60 Ill. App. 3d 362, 365

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(1978) (noting that a void decree may be attacked at any time, “although the equitable defense of laches may be interposed”). As such, in light of the foregoing precedent, defendants’ position that under no circumstances may *laches* apply to this case is simply not persuasive.

¶ 32 Here, the Bank argues that both elements to bar relief based on *laches* are satisfied. The Bank notes that defendants do not argue that they were not served or had no knowledge of the foreclosure action, and, yet, they did nothing about their allegedly defective service until filing their section 2-1401 petition *six years* later. This unreasonable delay, the Bank argues, allowed defendants to increase the damages they could claim without any detriment to themselves, and it resulted in the property’s transfer to *bona fide* purchasers, such that the Bank is irreparably damaged and cannot recover the property.

¶ 33 We agree. “*Laches* has been defined as ‘such neglect or omission to assert a right, taken in conjunction with a lapse of time of more or less duration and other circumstances causing prejudice to an adverse party, as will operate to bar relief in equity.’ [Citation.] The existence of *laches* ‘depends on whether, under all circumstances of a particular case, a plaintiff is chargeable with want of due diligence in failing to institute proceedings before he did.’ [Citation.]” *In re Adoption of Miller*, 106 Ill. App. 3d at 1030. Defendants here presently seek against the Bank restitution and profits from the sale of the property, but they were served with the complaint and summons (Halina in person and Jerzy via abode service), notifying them that their interest in the property was in jeopardy, six years prior to filing their section 2-1401 petition. For six years, they did nothing to protect their rights in the property and, had they participated in court proceedings, they might have earlier discovered the alleged defect in service. Again, they do not dispute receiving service or that constructive notice of the property sale, via the recording of deeds and the purchasers’ payment of real estate taxes, would impute knowledge upon them. Nevertheless,

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they did not bring this cause of action until six years and two transfers of title later. To permit relief against the Bank at this juncture and under these circumstances would be inequitable, as the Bank has no ability to recover the property and, depending on statutes-of-limitations issues, might have no recourse against other parties or counsel. Further, nothing suggests that defendants' delay in bringing this action was reasonable. Accordingly, providing relief to defendants, despite their unreasonable delay in seeking relief, would prejudice the Bank.

¶ 34 In sum, we also affirm the trial court's dismissal of the section 2-1401 petition against the Bank.

¶ 35 III. CONCLUSION

¶ 36 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 37 Affirmed.

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No. 2-19-0521

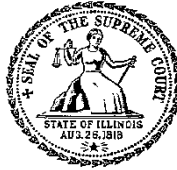
Cite as: *PNC Bank, National Ass'n v. Kusmierz*, 2020 IL App (2d) 190521

Decision Under Review: Appeal from the Circuit Court of Du Page County, No. 11-CH-1585; the Hon. James D. Orel, Judge, presiding.

**Attorneys
for
Appellant:** Giovanni Raimondi, of RAI Law, LLC, of Chicago, for appellants.

**Attorneys
for
Appellee:** Meredith Pitts, of Heavner, Beyers & Mihlar, LLC, of Decatur, for appellee PNC Bank, National Association.

Nathan B. Grzegorek and James A. Larson, of Plunkett Cooney, P.C., of Chicago, for other appellees.



SUPREME COURT OF ILLINOIS

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(217) 782-2035

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

January 27, 2021

In re: PNC Bank, National Association, et al., Appellees, v. Jerzy
Kusmierz et al., Appellants. Appeal, Appellate Court, Second
District.
126606

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above
entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which
must be filed.

Very truly yours,

A handwritten signature in cursive script that reads "Carolyn Taft Gosbell".

Clerk of the Supreme Court

2-19-0521

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

PNC BANK NATIONAL ASSOCIATION

Plaintiff/Petitioner

Reviewing Court No: 2-19-0521Circuit Court No: 2011CH001585Trial Judge: JAMES D OREL

v.

10

JERZY KUSMIERZ

Defendant/Respondent

E-FILED

Transaction ID: 2-19-0521

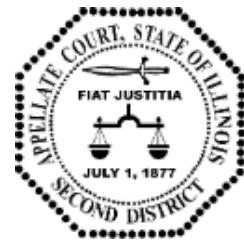
File Date: 8/19/2019 12:52 PM

Robert J. Mangan, Clerk of the Court

APPELLATE COURT 2ND DISTRICT

CERTIFICATION OF RECORD

The record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

1 Volume(s) of the Common Law Record, containing 352 pages1 Volume(s) of the Report of Proceedings, containing 17 pages0 Volume(s) of the Exhibits, containing 0 pages

I do further certify that this certification of the record pursuant to Supreme Court Rule 324, issued out of my office this 14 DAY OF AUGUST, 2019

(Clerk of the Circuit Court or Administrative Agency)

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SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

PNC BANK NATIONAL ASSOCIATION

Plaintiff/Petitioner

Reviewing Court No: 2-19-0521Circuit Court No: 2011CH001585Trial Judge: JAMES D OREL

v.

JERZY KUSMIERZ

Defendant/Respondent

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

PNC BANK NATIONAL ASSOCIATION

Plaintiff/Petitioner

Reviewing Court No: 2-19-0521Circuit Court No: 2011CH001585Trial Judge: JAMES D OREL

v.

10

JERZY KUSMIERZ

Defendant/Respondent

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APPELLATE COURT 2ND DISTRICT



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APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

Robert J. Mangan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

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PNC BANK NATIONAL ASSOCIATION

Plaintiff/Petitioner

Reviewing Court No: 2-19-0521

Circuit Court No: 2011CH001585

Trial Judge: JAMES D OREL

v.

JERZY KUSMIERZ

Defendant/Respondent

CERTIFICATION OF SUPPLEMENT TO THE RECORD

The supplement to the record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

1 Volume(s) of the Supplement to the Common Law Record Section, containing 24 pages

1 Volume(s) of the Supplement to the Report of Proceedings Section, containing 18 pages

1 Volume(s) of the Supplement to the Exhibits Section, containing 0 pages

I do further certify that this certification of the supplement to the record pursuant to Supreme Court Rule 324, issued out of my office this 2 DAY OF OCTOBER, 2019

(Clerk of the Circuit Court or Administrative Agency)

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

PNC BANK NATIONAL ASSOCIATION

Plaintiff/Petitioner

Reviewing Court No: 2-19-0521

Circuit Court No: 2011CH001585

Trial Judge: JAMES D OREL

v.

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

PNC BANK NATIONAL ASSOCIATION

Plaintiff/Petitioner

Reviewing Court No: 2-19-0521

Circuit Court No: 2011CH001585

Trial Judge: JAMES D OREL

v.

JERZY KUSMIERZ

Defendant/Respondent

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SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

PNC BANK NATIONAL ASSOCIATION

Plaintiff/Petitioner

Reviewing Court No: 2-19-0521

Circuit Court No: 2011CH001585

Trial Judge: JAMES D OREL

v.

JERZY KUSMIERZ

Defendant/Respondent

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Proceeding

Title/Description

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09/16/2019

HEARING

SUP R 28-SUP R 44

No. 126606

**IN THE
SUPREME COURT OF ILLINOIS**

PNC BANK NATIONAL ASSOCIATION,
Plaintiff-Appellee,

v.

JERZY KUSMIERZ and HALINA
KUSMIERZ,
Defendants-Appellants.

On Review of the Opinion of the Illinois
Appellate Court, Second District

No. 2-19-0521

Therefrom Up on Appeal from the Circuit
Court of Cook County, Illinois

No. 2011 CH 1585

Trial Judge:
Honorable James D. Orel

NOTICE OF FILING

To: See attached Service List

You are hereby notified that on March 3, 2021, I electronically filed Brief of Appellants with the Clerk of the Supreme Court of Illinois. A true and correct copy of the same is attached and served upon you.

Jerzy Kusmierz and Halina Kusmierz

By: /s/ Giovanni Raimondi
Attorney for Appellants

Giovanni Raimondi (#6300622)
RAI LAW, LLC
20 N Clark St, 30th Fl
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(312) 857-8320
pleadings@railawllc.com

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that on March 3, 2021, I served this notice and a true and correct copy of the above-referenced document by serving a copy in the manner so described to each person listed on the below service list before 11:59 p.m. on March 3, 2021.

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

/s/ Giovanni Raimondi

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