No. 2—10—0399
Order filed May 17,2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CE DESIGN LTD.,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 04—L—1048
	)	
HOMEGROWN ADVERTISING, INC.,	)	
MONTY LOREE, and LISA LOREE,	)	
	)	
Defendants	)	
	)	
(SASKATCHEWAN MUTUAL	)	Honorable
INSURANCE CO.,	)	Margaret J. Mullen,
Citation Respondent-Appellee).	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

Held: Respondent waived its challenge to personal jurisdiction because its communication with the trial court reasonably informed plaintiff of the defense it was called upon to answer constituted a pleading. We reversed the trial court's dismissal and remanded for further proceedings.

Pursuant to a settlement agreement, plaintiff, CE Design Ltd., obtained a judgment against defendants Homegrown Advertising, Inc., Monty Loree, and Lisa Loree (collectively, defendants) for $5 million. Plaintiff subsequently sought to collect on the judgment and initiated supplementary

proceedings by issuing third-party citations to respondent, Saskatchewan Mutual Insurance Co. The trial court entered an order dismissing the supplementary proceedings against respondent on the basis that it lacked personal jurisdiction. Plaintiff now appeals and raises three issues: (1) whether respondent submitted to the personal jurisdiction of the trial court when it submitted a letter to the trial court denying plaintiff's right to recover insurance proceeds; (2) whether respondent waived its ability to contest personal jurisdiction pursuant to section 2—301(a–5) of the Code of Civil Procedure (the Code) (735 ILCS 5/2—301(a–5) (West 2006)); and (3) whether the trial court erred when it concluded that it did not have personal jurisdiction over respondent. Because we determine that respondent waived its ability to object to the trial court's personal jurisdiction, we reverse and remand to the trial court for further proceedings consistent with this order.

This lawsuit stems from an insurance policy issued by respondent to defendants. Respondent is an insurance company based in Saskatchewan, Canada. Defendant Homegrown is a Canadian company and its principles are defendants Monty Loree and Lisa Loree. The insurance policy provided coverage to defendant Homegrown for bodily injury, property damage, and personal injury, and further provided that the coverage territory included "Canada and the United States," and "all parts of the world" if the injury arose out of goods or products made or sold by defendants in Canada or the United States.

On June 23, 2006, plaintiff filed their second amended complaint, bringing a class action lawsuit against defendants. The second amended complaint alleged that defendants violated the Telephone Consumer Protection Act (see 74 U.S.C. § 2227) and the Illinois Consumer Fraud and Deceptive Practices Act (see 815 ILCS 505/2 (West 2006)), as well as an allegation of conversion. The second amended complaint further alleged that Homegrown Advertising was a sham corporation

because it did not adhere to corporate formalities. Plaintiff's allegations stemmed from a junk fax advertising defendants at plaintiff's place of business. After the lawsuit commenced, respondent acknowledged the lawsuit but disclaimed a duty to defend defendants or pay damages on their behalf.

On February 15, 2007, after settlement negotiations, the trial court entered a final approval of settlement agreement and judgment. The order entered a judgment in favor of the class and against defendants for $5 million. The order further provided that the insurance policy issued by respondent was the sole source of recovery for plaintiff and the other members of the class.

Plaintiff then initiated a postjudgment collection proceeding by issuing a third-party citation to discover assets upon respondent. The citation sought an examination of respondent, production of documents, and a turnover of defendants' insurance proceeds. After being served with the citation, respondent sent a letter to the trial court stating:

> "We represent [respondent]. Our company was served with a [citation to discover assets] in the above[-]captioned matter.
>
> When this claim was presented to our client, coverage was denied. The insurance coverage offered by [respondent] relates to loss or damage caused by 'accident.' Since the complaint appears to have alleged intentional conduct, [Homegrown] and Lisa and Monty Loree were advised that the claim did not fall within coverage. We trust this is sufficient for your purposes."

The letter was filed with the trial court on April 17, 2007.

On April 26, 2007, plaintiff filed a motion for turnover of insurance proceeds, which the trial court granted and entered a judgment against respondent for $5 million. In December 2007, the trial court granted plaintiff leave to file a second citation to discover assets upon respondent. In January

2008, after being served with the second citation to discover assets, respondent moved to dismiss the citation on the ground that the trial court lacked personal jurisdiction. The trial court subsequently permitted plaintiff to take limited discovery on the issue of personal jurisdiction. On April 8, 2010, the trial court granted respondent's motion to dismiss. Plaintiff timely appealed.

The first issue raised on appeal is whether respondent submitted itself to the jurisdiction of the trial court. The absence or presence of jurisdiction is a purely legal question, and our review therefore is *de novo*. *In re Luis R.*, 239 Ill. 2d 295, 299 (2010) (citing *In re Detention of Hardin*, 238 Ill. 2d 33, 39 (2010)). The gravamen of this issue is whether respondent's April 17, 2007, letter constituted a pleading within section 2—301(a–5) of the Code. Plaintiff argues that the letter constituted a pleading because it effectively answered the citation to discover assets. Respondent counters that the letter was a "nullity" because it was drafted and sent to the trial court by an attorney not licensed to practice law in Illinois and there was no evidence that it intentionally and purposefully relinquished its right to challenge the trial court's exercise of personal jurisdiction.

Supreme Court Rule 277 (eff. July 1, 1982) provides that "[a] supplementary proceeding authorized by section 2—1402 of [the Code] may be commenced at any time with respect to a judgment which is subject to enforcement." Section 2—1402(a) of the Code provides that a judgment creditor is permitted to prosecute supplementary proceedings for the purposes of examining the judgment debtor or any other person to discover assets not exempt from the enforcement of the judgment, and to compel application of assets toward the judgment. 735 ILCS 5/2—1402 (West 2006). To bring a supplementary proceeding against a party who is not a judgment debtor, the record must contain some evidence showing that the third party possessed assets belonging to the judgment debtor. *Schak v. Blom*, 334 Ill. App. 3d 129, 133 (2002).

In addition, a trial court must have personal jurisdiction over a nonparty in a supplemental proceeding. *Poplar Grove State Bank v. Powers*, 218 Ill. App. 3d 509, 520 (1991) (dismissing a supplementary proceeding against a nonparty to the original action for lack of personal jurisdiction). For a court to have personal jurisdiction, the party over which jurisdiction is sought must have minimum contacts with the forum state so that traditional notions of substantial justice and fair play are not offended. *McNeil v. Trambert*, 401 Ill. App. 3d 1077, 1080 (2010). Section 2—301 of the Code provides that a party may object to personal jurisdiction by filing a motion to quash service of process before filing any other pleading or motion other than a motion for an extension of time to answer or otherwise appear. 735 ILCS 5/2—301(a) (West 2008). As we noted in *In re Estate of Pellico v. Mork*, 394 Ill. App. 3d 1052 (2009), before 2000, a party seeking to contest personal jurisdiction was obligated to file a special appearance pursuant to section 2—301(a) of the Code or its ability to challenge jurisdiction would be waived. *Id.* at 1066 (citing 735 ILCS 5/2—301 (West 1998)). However, effective January 1, 2000, the amended section 2—301(a) and new section 2—301(a–5) provides that an objection to personal jurisdiction is only waived if the party files a responsive pleading or motion other than a motion seeking an extension of time to answer or otherwise appear. *In re Estate of Pellico*, 394 Ill. App. 3d at 1066 (citing 735 ILCS 5/2—301(a–5) (West 2006)). The amending of section 2—301(a) of the Code reflected a legislative intent to narrow the waiver that existed under the previous law by eliminating language referring to a "general appearance." *KSAC Corp. v. Recycle Free, Inc.*, 364 Ill. App. 3d 593, 597 (2006).

As noted above, whether respondent waived its ability to challenge personal jurisdiction is contingent on whether respondent's April 17, 2007, letter constituted a pleading. Section 2—612(b) of the Code provides that "[n]o pleading is bad in substance which contains such information and

reasonably informs the opposite party of the nature of the claim or defense he or she is called upon to meet." 735 ILCS 5/2—612(b) (West 2008). Stated differently, no pleading will be construed as bad in substance where it is composed of intelligible allegations and information which reasonably inform the opposing party of the nature of the claim or the defense it will be called upon to answer. *Gonzalez v. Thorek Hospital & Medical Center*, 143 Ill. 2d 28, 35 (1991).

In the current matter, respondent's letter reasonably informed plaintiff of the defense it was called upon to answer, and therefore constituted a pleading. Specifically, the letter was filed with the trial court and expressly advised plaintiff of its defense that it was not liable to plaintiff because defendants' actions that were the basis for the lawsuit were not covered by the insurance policy. Although the letter did not have an official title, Illinois law is well-settled that a motion or pleading's substance, not title, dictates its character. See *Vanderplow v. Kyrch*, 332 Ill. App. 3d 51, 54 (2002). In addition, our conclusion that respondent's letter constituted a pleading is consistent with the underlying policy that the Code should be liberally construed so that controversies may be determined on their merits rather than on mere technicalities. *Davis v. United Fire & Casualty Co.*, 81 Ill. App. 3d 220, 224 (1980).

In reaching our determination, we find respondent's argument that the letter was a nullity because it was drafted and submitted by an attorney not licensed to practice law in Illinois unpersuasive. Our supreme court recently addressed the nullity rule in *Applebaum v. Rush University Medical Center*, 231 Ill. 2d 429 (2008). In *Applebaum*, the supreme court, during an interlocutory appeal, held that the nullity rule should not be applied to a wrongful death action where the attorney, who passed the bar, was on inactive status when the complaint was filed. *Id.* at 448. The *Applebaum* court noted that the nullity rule is grounded in the risks that are inherent to

individual clients and the integrity of the judicial system stemming from representation by an unlicensed person. The court further noted that the "purpose of the nullity rule 'is *** to protect litigants against the mistakes of the ignorant and the schemes of the unscrupulous and to protect the court itself in the administration of its proceedings from those lacking requisite skills.' " *Id.* at 435 (quoting *Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371, 389-90 (1985)). Therefore, the *Applebaum* court concluded the nullity rule "permits" dismissal of the cause, thereby treating the particular actions taken by the nonlicensed person as a nullity. *Applebaum*, 231 Ill. 2d at 435. Our supreme court, however, cautioned that despite the rule being well established in our courts, its application is harsh and should be invoked "only where it fulfills its purpose of protecting both the public and the integrity of the court system from actions of the unlicensed, and where no other alternate remedy is possible." *Id.*

More recently, the First District addressed the nullity rule and noted "[c]ontrary to prior case law using mandatory language, *Applebaum* states that the nullity rule 'permits,' rather than requires, dismissal where an unlicensed person engages in the practice of law." *Downtown Disposal Services, Inc. v. The City of Chicago*, No. 1—10—0598, slip op. at 18 (Ill. App. Feb. 3, 2011). The court in *Downtown Disposal Services* went on to conclude that the application of the nullity rule is neither automatic nor mandatory; rather, the court must consider whether the application of the rule would serve its purposes under the facts presented. *Id.* at 19 (citing *Elustra v. Mineo*, 595 F.3d 699, 705 (7th Cir. 2010) (finding that, pursuant to Illinois case law, Illinois courts will not dismiss a nonparty's filing out of hand, but "would distinguish between a filing that merely allows a party to go forward and more general prosecution of the lawsuit"). The court in *Downtown Disposal Services* reversed the trial court's decision to dismiss the complaint pursuant to the nullity rule because it

erroneously concluded that it was required to do so. *Downtown Disposal Services*, slip op. at 19-20. Accordingly, pursuant to our supreme court's holding in *Applebaum* and consistent with the First District's holding in *Downtown Disposal Services*, we are not obligated to automatically dismiss respondent's pleading because it was filed by an unlicensed attorney.

Here, voiding respondent's April 17, 2007, pleading pursuant to the nullity rule would not further the purposes on which that rule is premised. Inherent in the nullity rule is the notion that parties appearing before Illinois courts are best represented by attorneys licensed in Illinois. The record reflects that respondent was represented by counsel in Canada, who chose to file a letter with the trial court as opposed to obtaining local counsel. If we were to apply the nullity rule to respondent's pleading, we would be rewarding respondent's failure to initially obtain local counsel by providing it with an additional opportunity to file its initial responsive pleading. In other words, the nullity rule was not intended to advantage respondent by giving it a second chance to challenge the trial court's personal jurisdiction. To do so would not protect the integrity of the judicial system. Further, by not applying the nullity rule, we are merely allowing the supplementary proceeding to move forward by holding that respondent asserted its defense to the citation to discover assets and therefore submitted to the jurisdiction of the trial court. On remand, respondent still has an opportunity to present its defense that the insurance policy did not cover intentional acts by defendants, and thus, respondent is not obligated to pay plaintiff. Therefore, our decision not to apply the nullity rule is consistent with the *Applebaum* court's holding that, because the nullity rule is harsh, its use should be limited. See *Applebaum*, 231 Ill. 2d at 435.

In addition, we reject as meritless respondent's argument that its April 7, 2007, letter only applied to the second citation and therefore did not waive personal jurisdiction. Plaintiff's December

7, 2007, motion sought to refile its third-party citation against respondent, which the trial court granted. Therefore, the second citation issued against respondent was merely an extension of the first citation. See *Kirchmeimer Brothers Co. v. Jewelry Mine, Ltd.*, 100 Ill. App. 3d 360, 363-64 (1981) (holding that a trial court is authorized to grant an extension of the citation period in the interest of justice). The parties had already entered into a settlement agreement on February 15, 2007, and the trial court entered judgment based on that agreement. By respondent's logic, then, it would have been in default because it had not challenged the litigation in any manner, and furthermore, respondent would have been estopped from making its argument altogether, because plaintiff could have simply relied on the February 15, 2007, judgment. Accordingly, we conclude that plaintiff's second citation to discover assets did not render respondent's letter void.

We next turn to plaintiff's remaining issue on appeal, *i.e.*, whether the trial court erred when it concluded that respondent did not have sufficient minimum contacts with Illinois for the trial court to exercise jurisdiction. On March 24, 2011, plaintiff filed a motion in this court for leave to submit supplemental authority. Plaintiff cites *Pace Communication Services Corp v. Express Products, Inc.*, No. 2—10—0743 (Ill. App. Mar. 22, 2011), and asserts that our decision is dispositive on the issue of why personal jurisdiction exists over respondent. Respondent filed a response to plaintiff's motion for leave to submit supplemental authority and a supplemental response. We ordered the motion and the responses to be taken with the case.

As noted above, we hold that respondent waived its right to challenge personal jurisdiction. Therefore, any discussion, consideration, or analysis of whether personal jurisdiction exists based on *Pace Communication Services Corp.* would be advisory and should not be included in our disposition of this appeal. See *In re Luis R.*, 239 Ill. 2d at 299 n. 1 (citing *Golden Rule Insurance*

Co. v. Schwartz, 203 Ill. 2d 456, 469 (2003)). If the resolution of a certain question of law cannot affect the result as to the parties or controversy before it, the court should not resolve the question merely to set precedent or to guide future litigation. See *Golden Rule Insurance Co.*, 203 Ill. 2d at 469; see also *Segers v. Industrial Comm'n*, 191 Ill. 2d 421, 428 (2000). Therefore, we decline to address plaintiff's issue concerning personal jurisdiction, and we deny plaintiff's motion for leave to submit supplemental authority as moot.

For the foregoing reasons, we reverse the judgment of the circuit court of Lake County and remand for further proceedings consistent with this order.

Reversed and remanded.