

No. 1-11-2773

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RAY WILLIAMS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
ROYAL CARIBBEAN CRUISES, LTD., Individually)	
and d/b/a ROYAL CARIBBEAN INTERNATIONAL,)	
)	
Defendant-Appellant.)	No. 06 L 11368
)	
and)	
)	
SCOTTLIND TRAVEL, LTD., Individually and d/b/a)	
JETWAY WORLD TRAVEL,)	Honorable
)	Laurence Dunford,
Defendant.)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice McBride and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's order denying defendant's motion to quash service of process and vacate judgment is affirmed where defendant failed to provide sufficient evidence to contradict the special process server's affidavits that service was properly made on defendant.

¶ 2 In this premises liability action, defendant Royal Caribbean Cruises, Ltd., doing business as Royal Caribbean International, appeals from an order of the circuit court denying its motion to quash service of process and vacate the default judgment entered against it. On appeal, defendant contends the circuit court erred in denying its motion because service of process was not made in strict compliance with the statutory requirements. Defendant also claims that it sufficiently demonstrated that it was never served with process. We affirm.

¶ 3 Documents contained in the record show that on October 27, 2006, plaintiff Ray Williams filed a complaint against defendant and codefendant Scottlind Travel, Ltd. (Scottlind), doing business as Jetway World Travel, alleging he was injured in his stateroom while he was a passenger on defendant's cruise ship. Plaintiff claimed that he tripped and fell due to a faulty closet door that hit him in the head, causing him to sustain severe injuries.

¶ 4 On November 17, 2006, the circuit court appointed Julio Melo and Joe Young of Sterling Process as the special process servers in this case. On November 30, 2006, plaintiff filed a verified affidavit of service from special process server Julio Melo. Therein, Melo stated that on November 21, 2006, he served "a copy of the Summons and Complaint" on defendant through its registered agent, Bradley Stein. In the next paragraph, Melo stated that he served "the within summons on Donald Tyler (legal counsel)." Melo described the person he served as an African-American male, approximately 35 years old or older. Melo further stated that he left the summons at the address of 1050 Caribbean Way in Miami, Florida. Attached to Melo's affidavit was a copy of the summons, which stated that a copy of the complaint was attached to it.

¶ 5 On December 1, 2006, plaintiff filed a verified affidavit from special process server Joseph Young, who stated that he served process on codefendant Scottlind through Linda Scott on November 27, 2006. Young described the person he left the summons with as a black male

between the ages of 35 and 40. Young stated that he left the summons at the address of 1702 West 106th Place in Chicago, Illinois.

¶ 6 The case was assigned to mandatory arbitration, and an arbitration hearing was held on January 4, 2008. Neither defendant nor Scottlind appeared at the hearing. The arbitrators entered an award in favor of plaintiff and solely against defendant for the sum of \$17,000. The arbitrators did not enter an award against Scottlind.

¶ 7 Plaintiff moved for entry of a default judgment against Scottlind, noting the arbitration award was silent as to codefendant, and asking for judgment in the amount of \$17,000. On January 31, 2008, the circuit court entered an order stating that it would conduct a hearing on plaintiff's motion on February 4, 2008, and that a default judgment would then be entered which would reflect that both defendants were jointly and severally liable for the \$17,000 award. On February 4, 2008, the circuit court granted plaintiff's motion for a default judgment and summary judgment against Scottlind, and entered a judgment on award of arbitration in favor of plaintiff and against both defendant and codefendant in the amount of \$17,000. The arbitration judgment stated that both defendants were jointly and severally liable for the total amount.

¶ 8 On November 25, 2008, Scottlind moved to quash service of process and vacate all orders entered against it arguing that Linda Scott was never served as claimed in process server Young's affidavit. In an attached affidavit, Linda Scott stated that she was the owner of Scottlind, she is a Caucasian female, Scottlind was registered with the Secretary of State, and her registered agent was her attorney whose address was in Crete, Illinois. Scott stated that she and her husband moved from the Chicago address indicated on Young's affidavit in September 2006, and on the alleged date of service, she lived in Oak Lawn, Illinois. Scott further stated that in November 2006, the Chicago property was vacant. Scott averred that she was unaware of the lawsuit until

October 2008. Also attached to the motion to quash was a copy of Scott's brokerage agreement showing that the Chicago property was for sale on the date of the alleged service.

¶ 9 On March 4, 2009, the circuit court entered an order quashing service and vacating all defaults entered against Scottlind. The court also vacated the January 31, 2008, order which stated that both defendant and Scottlind were jointly and severally liable for the \$17,000 award. In addition, the court vacated the February 4, 2008, orders entering the judgment on award of arbitration against Scottlind, and granting plaintiff's motion for a default judgment and summary judgment against Scottlind. The court ruled that Scottlind was no longer jointly and severally liable for the \$17,000 award.

¶ 10 On July 12, 2011, defendant filed a motion to quash service of process and vacate the February 4, 2008, judgment on award of arbitration entered against it. Defendant asserted that it was never served with process in this case. Defendant stated that it has a specific procedure for handling service of process that is strictly followed. It explained that when service is received, it is logged into an index called the "Service of Process Log," and a memorandum is sent to defendant's risk management department. A copy of that memorandum is kept by defendant's legal secretary, Martha Ramos. Defendant argued that its service of process log showed no record of defendant ever receiving a copy of the summons and complaint in this case.

¶ 11 In addition, defendant argued that the affidavit of service provided by special process server Melo did not conform with the statutory requirements of section 2-208 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-208 (West 2006)). Specifically, defendant argued that Melo failed to indicate the time, date and manner of service in his affidavit, and failed to expressly state that he served Tyler with a copy of the complaint. Defendant noted that Melo stated in one paragraph that he served Stein, and in the following paragraph that he served Tyler,

thus making it unclear as to who was served. Defendant also asserted that Melo's affidavit was not notarized and not made under oath.

¶ 12 Attached to defendant's motion was an affidavit from its legal secretary, Martha Ramos. Therein, Ramos stated that she was responsible for logging all summons and complaints served upon defendant into its service of process log. She explained that she would then send a memorandum to defendant's risk management department, maintaining a copy for her own records. Ramos stated that the service of process log showed no entry for this case, and neither she nor defendant had any record of ever receiving the summons or complaint in this case.

¶ 13 Plaintiff filed a response to defendant's motion to quash. The table of contents for the record on appeal contained in the appendix of defendant's brief indicates that the response begins on page 86 of the record; however, pages 86 through 89 have been removed from the record prior to its submission to this court. The exhibits that were attached to plaintiff's response are contained in the record. The first exhibit is a copy of the Florida Department of State Division of Corporations website displaying defendant's corporate information. The page shows that Bradley Stein was defendant's registered agent at the same address indicated on Melo's service of process affidavit. The second exhibit is a copy of Donald Tyler's LinkedIn page, which states that Tyler was employed as director and senior associate counsel with defendant from August 1998 through July 2008. Tyler's photograph on the page shows that he is an African-American man.

¶ 14 In its reply to plaintiff's response, defendant argued that special process server Melo's affidavit was unreliable because plaintiff admitted that Melo incorrectly stated that he served Bradley Stein. Plaintiff had described the use of the two men's names as a discrepancy, explaining that Melo pre-printed Stein's name on the affidavit because that is who he planned to serve, but when Stein was unavailable, Melo served Donald Tyler instead. Defendant claimed Melo engaged in "egregious conduct" and that the use of the two names was not a discrepancy.

Defendant also maintained its arguments that Melo's affidavit was insufficient because it was not notarized, and it did not strictly comply with the requirements in section 2-208 of the Code.

¶ 15 On August 30, 2011, plaintiff filed a notarized supplemental affidavit from special process server Melo, incorporating Melo's original affidavit. Melo stated that his original affidavit contained a pre-printed section which listed Bradley Stein as defendant's registered agent, and Melo intended to serve Stein. However, when Melo arrived at defendant's address, he was told that Stein was unavailable, and consequently, Melo served Donald Tyler instead. Melo stated that Tyler told him he was defendant's in-house legal counsel and authorized to accept service on defendant's behalf. Melo explained that when he completed his original affidavit, he mistakenly forgot to cross out Stein's pre-printed name. To clarify the information in his original affidavit, Melo stated that he served a copy of the summons and complaint by hand delivery upon defendant through Donald Tyler, legal counsel, at 2:15 p.m. on November 21, 2006. Melo again described Tyler as an African-American male, age 35 or older. Melo also verified that the summons and complaint were served at 1050 Caribbean Way in Miami, Florida.

¶ 16 On September 8, 2011, the circuit court held a hearing on defendant's motion to quash service. Defendant argued that because it was located outside the state of Illinois, the statutory requirements for service of process had to be strictly complied with, and they were not. Defendant also argued that Melo's original affidavit of service was false, and that it was irrelevant whether Melo's inaccuracies were intentional or a mistake. Defendant further argued that Martha Ramos' affidavit stating that service was never received was more credible than Melo's affidavit. Defendant acknowledged that Donald Tyler was its legal counsel at the time of the alleged service, but maintained that it never received service of process.

¶ 17 Plaintiff argued that defendant should have provided an affidavit from Donald Tyler because he would have had personal knowledge of the events that occurred. Plaintiff noted that

defendant provided no explanation for not producing an affidavit from Tyler. In addition, plaintiff asserted that Ramos had no personal knowledge of whether Tyler was served. Plaintiff reiterated that Melo's original affidavit was pre-printed with the name of defendant's registered agent, but upon arrival at defendant's office, Melo learned he could not serve that agent, and instead, served Tyler, who was authorized to accept service of process. Plaintiff further argued that certification pursuant to section 1-109 of the Code (735 ILCS 5/1-109 (West 2006)) was sufficient in place of notarization. Plaintiff acknowledged that Stein's name appeared on Melo's affidavit, but described it as a typographical error that did not make the affidavit false.

¶ 18 In reply, defendant maintained that the service of process requirements under section 2-208 of the Code were not strictly complied with in this case. It further maintained that Melo's document was not an affidavit because it was not notarized. Defendant claimed that the court need not consider whether Tyler was served or not, because Melo's affidavit did not comply with the law. Defendant asserted that the court could quash service on that basis alone.

¶ 19 The circuit court found that certification pursuant to section 1-109 of the Code was sufficient to make Melo's document a valid affidavit for purposes of section 2-208 of the Code. The court then stated that it had to balance Melo's service of process affidavit against defendant's affidavit from Martha Ramos. The court found that Ramos' statement that defendant's log did not contain the complaint was not the same as saying defendant never received the complaint. The court stated that, as legal counsel, Tyler should have known what to do with a summons served upon him, but that lawyers sometimes do not do what they are supposed to do. The court further found that, although Tyler was no longer employed by defendant, he is still an attorney and would have been available to file an affidavit. The court then denied defendant's motion to quash service of process and vacate judgment.

¶ 20 On appeal, defendant first contends that the circuit court erred in denying its motion because service of process was not made in strict compliance with the statutory requirements contained in section 2-208 of the Code. Defendant argues that Melo's original affidavit of service fails to indicate the time of service, which alone, renders the service void. Defendant further argues that it is unclear if service was made upon Bradley Stein or Donald Tyler, and that the description does not specify which man it is describing. Defendant also asserts that Melo's affidavit merely states that Tyler was served with a summons, and it does not indicate that he was served with a copy of the complaint.

¶ 21 For a judgment to be valid, the circuit court must have jurisdiction over both the subject matter of the litigation, and over the parties named in the action. *Deutsche Bank National Trust Co. v. Hall-Pilate*, 2011 IL App (1st) 102632, ¶ 13. Unless waived by a party, personal jurisdiction can only be attained where the party is served with process in accordance with the manner directed by statute. *Hall-Pilate*, 2011 IL App (1st) 102632, ¶ 13. Where the circuit court denies a motion to quash service based solely on documentary evidence, our review of the court's ruling is *de novo*. *U.S. Bank, N.A. v. Dzis*, 2011 IL App (1st) 102812, ¶ 13.

¶ 22 Section 2-208(b) of the Code provides the manner for attaining personal service over parties outside the state of Illinois. The statute states:

"The service of summons shall be made in like manner as service within this State, by any person over 18 years of age not a party to the action. No order of court is required. An affidavit of the server shall be filed stating the time, manner and place of service. The court may consider the affidavit, *or any other competent proofs*, in determining whether service has been

properly made." (Emphasis added.) 735 ILCS 5/2-208 (West 2006).

Strict compliance with section 2-208 is required to obtain personal jurisdiction over an out-of-state party. *In re Marriage of Lewis*, 213 Ill. App. 3d 1044, 1045 (1991). To effectuate service of process on a private corporation, a copy of the summons and complaint may be left with the corporation's registered agent, or any of its officers or agents. 735 ILCS 5/2-204 (West 2006); *Capital One Bank, N.A. v. Czekala*, 379 Ill. App. 3d 737, 746 (2008). To determine whether the circuit court had personal jurisdiction over the defendant, we must consider the whole record, including the pleadings and the return of service. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 313 (1986). Generally, the process server's return of service is considered *prima facie* evidence of service, which can be set aside only by clear and satisfactory evidence. *Dei v. Tumara Food Mart, Inc.*, 406 Ill. App. 3d 856, 862 (2010).

¶ 23 Here, based on our *de novo* review of the entire record, we find that service of process was made upon defendant in strict compliance with the requirements of section 2-208 of the Code. The statute expressly states that when determining whether service was properly made, this court may consider the process server's affidavit, "or any other competent proofs." 735 ILCS 5/2-208 (West 2006). Therefore, we may consider Melo's supplemental affidavit together with his original affidavit to determine if service was properly made. Melo stated in his original affidavit that he "served a copy of the Summons and Complaint upon Royal Caribbean Cruises, LTD Individually and d/b/a Royal Caribbean International through registered agent Bradley Stein on 11/21/06." Melo next stated that he "served the within Summons on Donald Tyler (legal counsel)." In his supplemental affidavit, Melo explained that he had pre-printed Stein's name on the affidavit and intended to serve him, but when Stein was unavailable, Melo served Tyler instead. Melo said he mistakenly forgot to cross out Stein's name. Melo also clarified that he

hand delivered the summons and complaint to Tyler at 2:15 p.m. on November 21, 2006. Melo described Tyler as an African-American male, age 35 or older. We thus find that Melo's original and supplemental affidavits clearly establish that he hand delivered a copy of the summons and complaint to Donald Tyler at defendant's Miami address at 2:15 p.m. on November 21, 2006.

¶ 24 The only evidence defendant provided to contradict the information in Melo's affidavits was an affidavit from its legal secretary, Martha Ramos, who stated that there was no entry for this case in defendant's service of process log, and she had no record of ever receiving the summons or complaint. As noted by the circuit court, the fact that this case was not recorded in defendant's log does not prove that Melo did not deliver the summons and complaint to Tyler. It is possible Melo handed the summons and complaint to Tyler, whom he accurately described in his affidavit, and Tyler did not subsequently forward that service to Ramos. We find that Ramos' affidavit is not clear and satisfactory evidence that sufficiently contradicts the information stated in Melo's affidavits. Accordingly, we will not set aside Melo's affidavits, which show that he made service on defendant through Tyler, and that service was made in strict compliance with section 2-208 of the Code.

¶ 25 Defendant next contends that it sufficiently demonstrated that it was never served with process in this case. Defendant argues that Martha Ramos' affidavit shows that defendant had a procedure in place for handling summons and complaints, and that there is no record that defendant was ever served in this case. Defendant points to the fact that service was quashed against codefendant Scottlind where the process server claimed he served Linda Scott at her home, which was vacant. Defendant claims that the errors in the process server's affidavits of service to Scottlind render Melo's affidavits of service to defendant, at minimum, circumspect, and at worst, false.

¶ 26 We reject defendant's argument. As discussed above, Martha Ramos' affidavit merely explained defendant's procedure for handling service of process, indicated that defendant's service of process log showed no entry for this case, and stated that neither she nor defendant had any record of ever receiving the summons and complaint. Her affidavit does not contradict any information stated in Melo's affidavits, which establish that Melo hand delivered a copy of the summons and complaint to Donald Tyler at defendant's Miami office on November 21, 2006.

¶ 27 In addition, we find that the fact that service was quashed as to Scottlind is irrelevant. The record shows that the affidavit of service for Scottlind was not completed by Melo, but rather, by another special process server, Joseph Young. The record further shows that Linda Scott provided an affidavit that directly contradicted the information stated in Young's affidavit of service, specifically, that she was a Caucasian female, not a black man, and that the Chicago property was vacant on the date of the alleged service. Scott also provided a copy of her brokerage agreement showing that the Chicago property was for sale on that date. We find no nexus that leads us to connect the errors in Young's affidavit of service for Scottlind to Melo's affidavits of service for defendant. Nor do the errors in Young's affidavit make us question the veracity of the information in Melo's affidavits. Based on this record, we conclude that defendant failed to sufficiently demonstrate that it was not served with process in this case.

¶ 28 For these reasons, we affirm the judgment of the circuit court of Cook County denying defendant's motion to quash service of process and vacate the default judgment.

¶ 29 Affirmed.