2017 IL App (1st) 160657-U

FOURTH DIVISION
May 25, 2017

No. 1-16-0657

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITIMORTGAGE, INC.,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	10-CH-41227
	)	
LOUIS M. MORALES,	)	Honorable
	)	Darryl B. Simko,
Defendant-Appellant.	)	Judge Presiding

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held*: Where affidavits underlying service by publication were defective on their face, trial court erred in granting mortgage lender's motion to dismiss an alleged borrower's combined motion to quash service of process by publication and petition for relief from foreclosure judgment.

¶ 2 Louis M. Morales, a resident of Indiana and Florida, appeals from a trial court order dismissing his combined motion to quash service of process by publication and petition for relief from a judgment of foreclosure that was entered in favor of his alleged lender, CitiMortgage, Inc. The trial court granted CitiMortgage's motion to dismiss Morales's combined motion and petition, on grounds that service by publication on the out-of-state resident was effective.

Morales contends his property manager, Cynthia Ivin, fraudulently mortgaged the Chicago residential property, publication service was based on defective affidavits about the lender's efforts to personally serve him, and he learned of the mortgage loan and foreclosure suit only after the property had been sold pursuant to court order. Morales also contends he promptly prepared and filed his combined motion to quash and petition for relief from a judgment that is void for want of personal jurisdiction. Morales made these allegations in his combined motion and petition, and he repeats them on appeal as grounds for reversal of the dismissal.

¶ 3 "Louis M. Morales by Cynthia Ivin attorney in fact"[1] borrowed $90,000 from Tamayo Financial Services, Inc. on October 31, 2009, secured by a note and residential mortgage on 2338 West Taylor Street, Chicago, Illinois, 60612. The person currently before the court contends this was a fraudulent transaction performed without his knowledge or consent. The note obligated Morales to make monthly payments of $700.05 for 14 years. The mortgage required Morales to occupy the property as his primary residence for at least one year. An allonge and assignment executed that same day indicate Tamayo Financial Services sold its contract rights to CitiMortgage. According to CitiMortgage's complaint filed less than a year later on September 23, 2010, Morales defaulted almost immediately on the debt and owed $88,965 in principal. CitiMortgage sued Morales, but not Ivin.

¶ 4 CitiMortgage hired ProVest, LLC to serve the complaint and a summons on Morales at the Taylor Street apartment building. The lender later filed affidavits indicating that it looked for him there for about a week but could not serve Morales personally and wanted to serve him by publication. In actions affecting property, section 2-206(a) of the Code of Civil Procedure allows for service by publication in a local newspaper coupled with mailing a copy of the notice to the

[1] We note that Illinois notary Karla Perez acknowledged the signature of "Louis M. Morales by Cinthia *[(sic)]* Invin *[(sic)*] attorney in fact" on the mortgage contract.

defendant at his or her residence. 735 ILCS 5/2-206(a) (West 2010). Section 2-206(a) requires a plaintiff to first file an affidavit showing that the defendant "resides or has gone out of this State, or on due inquiry cannot be found, or is concealed within this State, so that process cannot be served upon him or her" and also "stating the place of residence of the defendant, if known, or that upon diligent inquiry his or her place of residence cannot be ascertained." 735 ILCS 5/2-206(a) (West 2010). See also *Bell Federal Savings & Loan Ass'n v. Horton*, 59 Ill. App. 3d 923, 927-28, 376 N.E.2d 1029, 1033 (1978) (indicating the plaintiff must conduct both "due inquiry" in ascertaining the defendant's whereabouts and "diligent inquiry" in ascertaining the defendant's residence before the plaintiff can properly execute an affidavit stating that the defendant cannot be found). After the first publication, the office of the clerk of the court is required to mail a copy of notice to the defendant at the residential address stated in the affidavit. 735 ILCS 5/2-206(a) (West 2010). The circuit court of Cook County adopted a local rule that elaborates on the requirement for the affidavits in foreclosure suits. Rule 7.3 states:

> "Pursuant to 735 ILCS 5/2-206(a), due inquiry shall be made to find the defendant(s) prior to service of summons by publication. In mortgage foreclosure cases, all affidavits for service of summons by publication must be accompanied by a sworn affidavit by the individual(s) making such 'due inquiry' setting forth with particularity the action taken to demonstrate an honest and well directed effort to ascertain the whereabouts of the defendant(s) by inquiry as full as circumstances permit prior to placing any service of summons by publication." Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996).

¶ 5 Thus, plaintiffs seeking foreclosure in Cook County must support a request for publication service with affidavits in which the individuals who tried to serve the defendant with

process and ascertain the defendant's whereabouts "set[] forth with particularity the action" they personally took to accomplish these tasks. Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996).

¶ 6 Blanca Vazquez's affidavit filed on November 10, 2010, states that the trial court appointed ProVest as process server on September 27, 2010, and that although two nominal municipal defendants had been served, Morales had not been served. Vazquez attached affidavits completed by Karl Brown and Teresa Duffey. Brown swore "he/she was appointed by the Court to serve process in the above mentioned cause and/or is a special appointed process server, licensed private investigator, and/or an employee/agent of ProVest, LLC, Department of Professional Regulation number 117-001336." Brown then listed eight attempts to serve Morales at the mortgaged property. Brown, however, did not disclose the name of the person who attempted to serve Morales and three of the attempts he listed were prior to the date Vazquez said the trial court appointed ProVest to the case:

> "NON-SERVICE for reason that after diligent investigation found [*(sic)*].
>
> Numerous attempts with no contact.
>
> ***
>
> 9/24/2010 8:06:00 AM – 2 story red brick apartment building. No garage. No response.
>
> 9/24/2010 6:38:00 PM – No response. No lights on inside.
>
> 9/26/2010 4:39:00 PM – No response. No activity seen.
>
> 9/28/2010 5:50:00 PM – No response. No activity seen.
>
> 9/30/2010 5:13:00 PM – No response. No activity seen.
>
> 10/1/2010 6:47:00 PM – No response. No lights on inside.
>
> 10/2/2010 8:15:00 PM – No response. No activity seen.
>
> 10/3/2010 7:46:00 PM – No response. No lights on inside."

In the other affidavit attached to Vazquez's affidavit, Duffey said, "I hereby certify that I am not a party to the above action or suit and I am over the age of 18 years and the affidavit is true and correct." Duffey did not state that she was employed or otherwise associated with ProVest, that she had been individually appointed to serve process in this case, or that she had personally attempted service. Instead she stated: "ADDRESS WHERE ATTEMPTED OR SERVED [on October 22, 2010 at 12:00 p.m.]: 1704 EVERGREEN ST, Sebring, FL 33870." Also:

> "NON-SERVICE for reason that after diligent investigation found [*(sic)*].
>
> Non-service as per Dr. Miguel A. Morales, father of Defendant Louis M. Morales a/k/a Dr. Louis M. Morales at this address, his son has a Recreational Vehicle and travels from State of Indiana to State of California and has not see [(*sic*] his son Louis M. Morales since 2009 and does not know his phone number."

¶ 7 CitiMortgage filed additional affidavits five days later on November 15, 2010, including Daniel H. Olswang's "Affidavit for Service by Publication" pursuant to section 2-206(a) (735 ILCS 5/2-206(a) (West 2010)), which was dated November 9, 2010, and consisted of the following preamble and three numbered paragraphs:

> "DANIEL H. OLSWANG, on oath states as to defendants *** as follows:
>
> 1. On due inquiry UNKNOWN OWNERS and NONRECORD CLAIMANTS cannot be found or are concealed or are evading service of process so that process cannot be served upon defendants.
>
> 2. Defendant, LOUIS M. MORALES A/K/A DR. LOUIS M. MORALES, place of residence: 2338 W. TAYLOR ST. CHICAGO, IL 60612 was not served on October 3, 2010. Current resident stated the defendant does not reside there. Through a skip trace, Provest, LLC. [*(sic)*] was unable to locate an additional address. To avoid any

jurisdictional issues, LOUIS M. MORALES A/K/A DR. LOUIS M. MORALES is being served by publication.

3. Defendants, LOUIS M. MORALES A/K/A DR. LOUIS M. MORALES, CITY OF CHICAGO, TOWN OF CICERO, UNKNOWN OWNERS and NONRECORD CLAIMANTS places of residence upon diligent inquiry cannot be ascertained and their last known places of residence are *** Unknown."

Olswang's affidavit did not incorporate any exhibits. CitiMortgage also filed a document entitled "Affidavit to Allow Service by Publication Pursuant to Local Rule 7.3," in which an unnamed person stated on November 9, 2010:

"I, the undersigned attorney, on oath, states [*(sic)*] to [*(sic)*] Defendants: LOUIS M. MORALES A/K/A DR. LOUIS M. MORALES

1. Defendants reside or have gone out of this State, or on due inquiry cannot be found, or are concealed within this state, so that process cannot be served upon them.

2. Diligent inquiry has been made as to the whereabouts of all the aforesaid Defendants.

3. That upon diligent inquiry, the place of residence of the aforesaid Defendants cannot be ascertained and/or their last known place of residence is: 2338 W. TAYLOR ST. CHICAGO IL 60612.

4. Service upon the defendants has been attempted by the Court Appointed Special Process Server (see attached exhibits)[.]"

Beneath these paragraphs was a signature line that contained an illegible handwritten mark and no typewritten name. Attached to the unidentified person's statement was an affidavit from Daniel Walton who stated he was a ProVest employee who performed a "diligent search and

inquiry" to determine Morales's residential address, but the address remained "unknown." Walton identified the various databases he queried in his effort to locate Morales's residential address, including Social Security, employment, credit, "Directory Assistance," driver's license, motor vehicles, vessels, voter registration, professional licenses, "Nationwide Masterfile Death," county jail, state prison, federal prison, and property tax databases. Walton did not specify the parameters of his search, such as naming the counties or states he researched.

¶ 8 Based on these documents and pursuant to section 2-206(a) and local rule 7.3, CitiMortgage initiated publication service by printing notice to Morales in the Chicago Daily Law Bulletin newspaper on November 19, 26, and December 3, 2010. 735 ILCS 5/2-206(a) (West 2010); Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996).

¶ 9 On November 23, 2010, the clerk of the circuit court of Cook County mailed notice to Morales at the subject property indicating his appearance was necessary on or before December 20, 2010.

¶ 10 On December 20, 2010, "Cynthia Ivin for Louis M. Morales" executed and filed an "Application and Affidavit to Sue or Defend as an Indigent Person," seeking waiver of the court filing fees (see 735 ILCS 5/51-05 (West 2010). The handwriting style on this document appears identical to the handwriting on the loan documents executed by "Cynthia Ivin attorney in fact." Later that same day, in what also appears to be the same handwriting, "Louis M. Morales" completed and filed a *pro se* general appearance form. See *Yelm v. Masters*, 81 Ill. App. 2d 186, 197, 225 N.E.2d 152, 157 (1967) (judges and juries are capable of comparing handwriting); *Wausau Sulphate Fibre Co. v. Comm'r of Internal Revenue*, 61 F.2d 879, 880 (7th Cir. 1932) (members of tax appeal board could competently compare signatures).

¶ 11 Nine months later, on September 30, 2011, CitiMortgage filed motions for default judgment and judgment of foreclosure, contending it was entitled to judgment because Morales had filed an appearance but had not answered or otherwise responded to the complaint. When CitiMortgage presented the motions in open court on November 1, 2011, the trial judge granted Morales additional time to file an appearance and an answer or other response, and continued CitiMortgage's motions to December 12, 2011. The order was handwritten by an attorney associated with Olswang's law firm, Hauselman, Rappin & Olswang, and gives no indication as to who was in the courtroom to request the continuance on Morales's behalf. That same afternoon, "Louis M. Morales" signed and filed a second fee waiver application, a second *pro se* general appearance, and an answer form. The handwriting and signature on these documents again appears to be the same handwriting and signature that appeared on the loan documents and previous court documents signed by Ivin. The person who completed the answer admitted to the existence of the mortgage but indicated he or she had insufficient information to admit or deny the allegations of nonpayment. Because there was an answer on file, CitiMortgage withdrew its motions for default judgment, filed motions for summary judgment, and appeared in court on January 13, 2012, to obtain a briefing schedule and hearing date. The order entered that day was written by an attorney associated with Hauselman, Rappin & Olswang, and does not indicate who appeared in the courtroom for Morales. The order requires the parties to file legal briefs during February 2012 and schedules the matter for hearing on March 13, 2012.

¶ 12 On the March date, in another order prepared by an attorney from Hauselman, Rappin, & Olswang, the court continued the summary judgment motion for two weeks "for status of referral to mediation and entry of judgment." Ivin, still purporting to be "Attorney-In-Fact for Louis M. Morales" and Illinois attorney Karl N. Fehr executed and filed a motion on March 27, 2012,

asking the court to refer the foreclosure action to mediation. The record discloses that the trial court's Foreclosure Mediation Program is a free program limited to borrowers who both own and occupy the property that is being foreclosed upon. In the motion, Ivin stated, "The Property is the primary residence of the Defendant" and "Defendant intends to stay in the Property." An order that Fehr drafted identifies himself and Ivin as the only individuals who are required to appear on Morales's behalf at the mediation and states that Ivin has "full authority to enter into a complete compromise and settlement." Ivin's mailing address is the subject property. No contact information is stated for Morales himself. The mediation order sets a post-mediation status date of June 20, 2012. According to reports filed in 2013 by the court-appointed mediator and court orders that were entered in 2012 and 2013, four mediation sessions were scheduled, three of which were attended by "2 Lawyers" and "2 Clients," but no agreement was reached, and the case was referred back to the trial call. Fehr is identified as the attorney who represented Morales. The person who attended the mediation sessions as Fehr's "client" is not named.

¶ 13 After the mediation failed, CitiMortgage filed in late 2013 another set of motions for summary judgment and foreclosure, a briefing schedule was entered, and a hearing date was set for April 17, 2014. Fehr, who had not previously filed an appearance in the case, filed an appearance on March 24, 2014, to "substitute" as counsel for Morales. No one appeared for Morales at the April hearing date and CitiMortgage was granted summary judgment and judgment of foreclosure and sale. The judgment order specifies that Morales had been "duly and regularly served by publication in the manner provided by law" and had "appeared and answered."

¶ 14 Judicial sale of the property was scheduled for June 2014; rescheduled to July 2014, in part because Fehr informed the court that Morales was attempting to renegotiate his debt with

CitiMortgage through the "loss mitigation assistance" program; and rescheduled to September 2014 and then November 2014, because Fehr tendered a different lender's letter indicating Morales had been approved for a reverse mortgage loan up to $250,000. The property was sold on April 23, 2015, pursuant to the circuit court's order and resulted in a surplus of $23,309. On May 26, 2015, the trial judge approved the sale and extended the date that possession of the property would be relinquished to the buyer from 30 days to 90 days. The reason for the 60 day extension is not noted in the order.

¶ 15 On June 3, 2015, Fehr filed a petition seeking turnover of the surplus funds. The petition bears the signature "Louis M. Morales," and again, the handwriting appears to be the same as the handwriting that appeared on the loan documents and court forms that were expressly executed by Ivin. Fehr filed an identical petition two weeks later. On June 25, 2015, Judge Moshe Jacobius, the presiding judge of the circuit court's Chancery Division, continued the petition to a later date and ordered that "[t]he petitioner shall present an affidavit as to why Louis M. Morales cannot be present in court." The record does not indicate what became of the surplus funds.

¶ 16 Nothing additional was filed until August 12, 2015, when Morales filed an appearance and a combined motion and petition pursuant to sections 2-301 and 2-1401 of the Code, which are statutes that govern challenges to the court's personal jurisdiction and provide for relief from final orders and judgments that are more than 30 days old. 735 ILCS 5/2-301; 2-1401 (West 2014). A party who submits to the court's jurisdiction does so prospectively only and his or her appearance does not retroactively validate prior orders. *BAC Home Loans Servicing, L.P. v. Mitchell*, 2014 IL 116311, ¶ 43, 8 N.E.2d 162. The purpose of a section 2-1401 proceeding is to bring facts not appearing of record to the attention of the trial court, which, if known to the court at time judgment was entered, would have prevented its rendition. *Falcon Manufacturing. Co. v.*

Nationwide Brokers, Inc., 123 Ill. App. 3d 496, 498, 462 N.E.2d 562, 564-65 (1984). Morales was represented by the law firm Gomberg, Sharfman, Gold & Ostler, PC. Morales indicated that he had only recently learned of Ivin's fraudulent mortgage loan and equally fraudulent "*pro se*" defense of the foreclosure proceedings; that the telephone number on the fee waiver application belonged to Ivin's husband, Juan Ivin; that Morales did not file a fee waiver form or a *pro se* appearance; and that he did not hire Fehr or participate in the mediation. Morales described Ivin as a former employee and family friend, a resident of one of the apartments at the subject property since 2001, and the property's caretaker since perhaps 2006. Morales said he had reduced Ivin's rent to $600 and given her authority to maintain the Taylor Street apartments by collecting and depositing rent and paying utility and property tax bills. However, he had given her no other powers, he did not sign the "Special Power of Attorney" she used to execute the note and mortgage, he did not authorize her to mortgage his property, and he did not receive any of the borrowed money or have any idea what happened to the funds. Morales said Ivin's improper conduct came to light after he suffered a stroke on July 10, 2015, while at home in Plymouth, Indiana—the place he had resided since 1999—and his, daughter, Melyssa, came to visit him in the hospital. When Melyssa flew in from Florida, Ivin picked up Melyssa at O'Hare Airport and drove her to Plymouth, and during the ride, Ivin made some statements that aroused Melyssa's suspicion about her father's finances. Melyssa then talked with her father, examined his bank records, obtained credit reports, and discovered that his bank account was depleted, the property had been mortgaged and foreclosed upon, and two bankruptcy petitions had been filed in his name. Morales retained counsel on July 29, 2015, and filed his combined motion and petition about two weeks later. Morales supported his combined section 2-301 motion and section 2-1401 petition with affidavits from himself and Melyssa, copies of her travel records,

and printouts from text conversations in which Ivin purportedly admits to owing Morales money. 735 ILCS 5/2-301, 2-1401 (West 2014). Morales's signature on the attachments appears different from the handwriting and signatures on all the previously-filed documents.

¶ 17 CitiMortgage then filed the motion now at issue on appeal, seeking dismissal of Morales's combined motion and petition, primarily by arguing that Morales did not and could not plead that publication service was improper. See 735 ILCS 5/2-615, 2-619.1 (West 2014). As we indicated above, the trial judge, after considering the parties' written briefs and oral arguments, granted the dismissal on grounds that the publication service was justified and CitiMortgage "was not required to have performed searches to determine [Morales's] whereabouts in the State of Indiana." The trial judge did not reach CitiMortgage's argument that the judicial deed issued to buyer AF RE LLC Series 2338 W. Taylor two months before Morales appeared in 2015 was unassailable. See 735 ILCS 5/2-619(a)(9) (West 2014).

¶ 18 In this *de novo* review, we consider whether the dismissal was proper as a matter of law. *Ostendorf v. International Harvester Co.*, 89 Ill. 2d 273, 279-80, 433 N.E.2d 253, 256 (1982) (a section 2-1401 petition is subject to a motion to dismiss when it either fails to state a cause of action or it shows on its face that the petitioner is not entitled to relief); *Miner v. Fashion Enterprises, Inc.*, 342 Ill. App. 3d 405, 419, 794 N.E.2d 902, 916 (2003) (dismissal of a pleading pursuant to section 2-615 is reviewed *de novo* and poses the question of whether the allegations, interpreted in a light most favorable to the pleading party, are sufficient to state a cause of action upon which relief may be granted). See also *BAC Home Loans Servicing*, 2014 IL 116311, ¶ 17, 6 N.E.3d 162 (we review *de novo* whether the circuit court obtained personal jurisdiction).

¶ 19 Morales's primary argument is that the affidavits for constructive service are defective on their face. He contends the documents lack factual detail, contain contradictory, unsubstantiated

and false statements, and formulaically recite all four reasons that service by publication could be allowed under section 2-206(a), instead of showing that CitiMortgage determined through due inquiry into his whereabouts and diligent inquiry into his residence that he was residing out of state, and thus setting out a reason why publication should be allowed under the statute. 735 ILCS 5/2-206(a) (West 2010). Morales also contends the conclusory affidavits do not satisfy Cook County's local rule concerning publication service in foreclosure cases, because the affidavits do not "set[] forth with particularity the action taken" in an "honest and well directed effort" to find him. Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996).

¶ 20 Morales further argues that the affidavits disclose CitiMortgage failed to make a spirited attempt at personal service, in that it did not follow up on the leads it obtained, and that the trial judge erred in finding that CitiMortgage's search was due and diligent within the meaning of the publication statute and local rule. For instance, the ProVest "skip trace" detail report that Morales obtained by subpoena to Olswang's law firm indicates Walton's database searches were made on October 14, 2010, which was after the purported attempts at service at the mortgaged Illinois property but before the purported attempt at service and conversation at the father's Florida residence. Thus, no search was made after the father purportedly indicated Morales spent a lot of time traveling and directed the search back to the northern and western parts of the United States. Morales also points out that the skip trace shows that at the time of service, Morales had a current, valid Florida driver's license that was issued in 2008 and would expire in 2012, and that it does not appear CitiMortgage worked with that information to search for a Florida location where Morales might be at the time, other than purportedly talking with the father in late 2010 who said he had not seen Morales "since 2009." Morales concludes CitiMortgage should have searched further for him in Indiana, Florida, or even California, but

chose not to follow up on the information it was purportedly given in order to identify Morales's correct residential address.

¶ 21 Morales concludes that the dismissal of his combined motion and petition should be vacated, his motion to quash should be granted, and all the orders of judgment, foreclosure, and sale should be found void for lack of jurisdiction. In the alternative, he argues for an evidentiary hearing concerning the affidavits for publication service, so that the trial judge can grant the motion to quash service and consider Morales's arguments for vacating the judgment. Morales contends that as soon as he discovered Ivin's acts of fraud with his property title and against the trial court, he took swift action to disaffirm her transactions and present his meritorious defense to the foreclosure suit, and that justice requires that his section 2-1401 petition be heard on the merits. 735 ILCS 5/2-1401 (West 2014).

¶ 22 CitiMortgage responds that the only affidavit we need to examine is Morales's affidavit. The lender contends the settled procedure for a defendant challenging publication service is to file an affidavit showing that upon due inquiry he could have been found, and only when the defendant's affidavit makes that showing does the burden shift to the plaintiff to produce evidence of its compliance with section 2-206(a). 735 ILCS 5/2-206(a) (West 2010). Instead, Morales swore that he lived outside of Illinois and he described decades-long travel patterns across a large swath of the country, with general statements such as "I was living in Plymouth, Indiana at the time the service attempts were made in late September and early October 2010" and "I *** reside in Plymouth, Indiana during the spring and summer and Kissimmee, Florida during the fall and winter." Also, Morales supported his argument with information that was not available to CitiMortgage at the time of service in 2010, such as a credit report indicating that in 2013 he was in Kissimmee, Florida. All in all, Morales confirmed that he did not live in Illinois

and that "it would have taken *** either an incredible stroke of luck or a fantastic, multi-state effort to successfully locate [him in person in 2010]," thus, confirming that publication service was proper and providing the trial judge with a clear basis to dismiss the motion to quash service by publication.

¶ 23 CitiMortgage contends that when a defendant resides or has gone out of Illinois, a foreclosure plaintiff can disregard the "due inquiry" language in section 2-206(a) (735 ILCS 5/2-206(a) (West 2010)), and obtain publication service by averring to facts from which it can be reasonably inferred that the defendant is outside of Illinois's borders. CitiMortgage contends section 2-206(a) contains a disjunctive sentence describing four circumstances when publication is an appropriate method of service, those being: (1) when, on due inquiry, the defendant cannot be found; (2) when, on due inquiry, the defendant is concealed in the state; (3) when the defendant resides out of state; or (4) when the defendant has gone outside the state. CitiMortgage also argues that requiring a foreclosure plaintiff to engage in due inquiry into the defendant's whereabouts even "when the defendant resides or has gone out of state is impractical and incentivizes wasting resources." When questioned at appellate arguments, CitiMortgage conceded that no case law supports its contention that the due inquiry standard applies only to defendants who are within this jurisdiction. In its written brief, CitiMortgage did not address the relevance of Cook County Rule 7.3, which also contains due inquiry language, but at appellate arguments, CitiMortgage stated that the local rule could not supersede Illinois law by independently imposing a due inquiry requirement. Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996). In the event we find this unpersuasive, CitiMortgage contends the record shows it exhausted all of its leads in its due search for Morales.

¶ 24 Finally, when asked whether this court should affirm the dismissal of Morales's section 2-1401 petition despite a record indicating the judgment was based on Ivin's fraud upon the trial court, CitiMortgage answered "Yes" and cited *JPMorgan Chase Bank v. Ontiveros*, 2015 IL App (2d) 140145, 27 N.E.2d 1027 (2015), for the proposition that we should affirm as long as the publication service was proper.

¶ 25 In order to render a valid judgment, a court must have jurisdiction over both the subject matter of the litigation and the parties. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308, 497 N.E.2d 1156, 1161 (1986). Jurisdiction over a defendant is obtained either by effective service of process in a manner authorized by Illinois statute or by that person's voluntary submission to jurisdiction by general appearance. *Thill*, 113 Ill. 2d at 308, 497 N.E.2d at 1161. A judgment may be attacked at any time by a necessary party who is not given proper notice of the proceedings. *City of Rockford v. Lemar*, 157 Ill. App. 3d 350, 352, 510 N.E.2d 128, 130 (1987). Moreover, a judgment that is based on fraud or unconscionable behavior may be attacked at any time. *In re Marriage of Lindjord*, 234 Ill. App. 3d 319, 325, 600 N.E.2d 431, 435 (1992). A defendant's attack on a prior judgment does not retroactively validate orders that were entered without personal jurisdiction. *BAC Home Loans Servicing*, 2014 IL 116311, ¶ 43, 6 N.E.3d 162. Rather, when a judgment is void when entered, it remains void despite a party's subsequent appearance. *BAC Home Loans Servicing*, 2014 IL 116311, ¶ 27, 6 N.E.3d 162. Prospective-only submission to the court's jurisdiction is based on the principle that a defendant should have his or her day in court. *BAC Home Loans Servicing*, 2014 IL 116311 ¶ 43, 6 N.E.3d 162. A defendant should receive prior notice and an opportunity to be heard before judgment is entered against him. *BAC Home Loans Servicing*, 2014 IL 116311, ¶ 28, 8 N.E.2d 162.

¶ 26 Constructive service, meaning publishing notice in a local newspaper or posting notice in a designated location is a disfavored form of service. "Although the Code contemplates service by publication, our court long ago recognized that such service is 'an extraordinary means of serving notice–one unknown at common law' and that, from the perspective of the person to be notified, it is the 'least satisfactory method' of giving notice and 'often it is no notice at all.' " *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 13, 12 N.E.3d 792 (quoting *Public Taxi Service, Inc. v. Ayrton*, 15 Ill. App. 3d 706, 713, 304 N.E.2d 733, 739 (1973)). "Every defendant in an action filed against him in this State is entitled to receive the best possible notice of the pending suit and it is only where personal service of summons cannot be had, that *** constructive service may be permitted." *Horton*, 59 Ill. App. 3d at 926, 376 N.E.2d at 1032. "Securing jurisdiction by constructive service 'is a concession of the law to the hard circumstance of necessity' " and this concession is not one that Illinois courts will readily make. *Equity Residential Properties Management Corp. v. Nasolo*, 364 Ill. App. 3d 26, 31, 847 N.E.2d 126, 131 (2006).

¶ 27 Thus, publication service is to be used only as a last resort. *In re Dar*, 2011 IL 11083, ¶ 64, 957 N.E.2d 898 (discussing publication service in an action to terminate parental rights); *Application of County Collector for Judgment & Order of Sale Against Lands & Lots Returned Delinquent for Nonpayment of General Taxes for Year 1987 & Prior Years*, 278 Ill. App. 3d 168, 173, 662 N.E.2d 535, 539 (1996) (discussing publication service in action to be awarded a judicial deed due to payment of delinquent taxes); *JP Morgan Chase, National Ass'n v. Ivanov*, 2014 IL App (1st) 133553, ¶ 48, 19 N.E.3d 1039 (publication service is allowed only in limited cases where personal service cannot be achieved).

¶ 28 The statutory prerequisites of making due inquiry to determine the defendant's whereabouts and diligent inquiry to determine his or her place of residence must be strictly complied with in order for a court to obtain jurisdiction over a defendant through constructive service. *Bank of New York v. Unknown Heirs & Legatees*, 369 Ill. App. 3d 472, 475-76, 860 N.E.2d 1113, 1117 (2006). The "statutory prerequisites are not intended as *pro forma* or useless phrases requiring mere perfunctory performance, but, on the contrary, require *** an honest and well-directed effort to [locate] a defendant by inquiry as full as circumstances permit." *Unknown Heirs & Legatees*, 369 Ill. App. 3d at 476, 860 N.E.2d at 1117. What amounts to an honest and well-directed effort depends upon the particular circumstances of each case, but may include inquiring with neighbors and following other leads to determine when and where it is likely to contact the defendant. *Nasolo*, 364 Ill. App. 3d at 32, 847 N.E.2d at 131. A diligent inquiry is " 'that kind of search or investigation which a diligent person, intent on ascertaining a fact, would usually and ordinarily make.' " *In re Dar C.*, 2011 IL 111083, ¶ 65, 957 N.E.2d 898. When someone is diligent, he or she engages in "steady, earnest, attentive, and energetic application and effort' " in accomplishing a task. *In re Dar C.*, 2011 IL 111083, ¶ 65, 957 N.E.2d 898 (*quoting* Webster's Third New International Dictionary 633 (1986)). When a plaintiff's compliance with section 2-206(a) is instead "casual, routine, or spiritless," service by publication is not justified. *Unknown Heirs & Legatees*, 369 Ill. App. 3d at 476, 860 N.E.2d at 1117. The purpose of requiring the plaintiff's best efforts to locate the defendant is so that service, if possible, can be had in person. *Nasolo*, 364 Ill. App. 3d at 32, 847 N.E.2d at 131. When a plaintiff does not comply with the law, the plaintiff's affidavit for service by publication is ineffective and the court does not acquire jurisdiction by constructive service. *Graham v. O'Connor*, 350 Ill. 36, 41, 182 N.E. 764, 766 (1932).

¶ 29 With these principles in mind, we have considered the claimed deficiencies in service of process in this action. We find the lender's affidavits to be fatally defective on their face and not a proper basis for publication service. CitiMortgage's affidavits consist of unsubstantiated conclusions, contradictory and anonymous remarks, and a catch-all statement that does not satisfy the standards of the Illinois statute and the Cook County rule governing publication service. Statements of this quality were insufficient to justify publication service and did not shift the burden to defendant Morales to demonstrate in his subsequent affidavit and motion to quash that he could have been given personal service instead of constructive service. The law does not permit CitiMortgage to claim the benefit of publication service on the basis of its insufficient search and deficient affidavits and then avoid scrutiny of its sworn statements because it turns out that Morales was actually outside the jurisdiction when CitiMortgage published. CitiMortgage needed to make adequate efforts in 2010 so that its affidavits spoke the truth in 2010 and described CitiMortgage's strict compliance with the law in 2010. CitiMortgage's affidavits, however, were facially inadequate when they were filed.

¶ 30 CitiMortgage's affidavits did not show that the company made due inquiry to ascertain Morales's whereabouts and diligent inquiry as to Morales's place of residence, and, therefore, reveal, on their face, CitiMortgage's lack of compliance with the terms of section 2-206(a) of the Code and Cook County Rule 7.3 so as to justify its resort to publication service. 735 ILCS 5/2-206(a) (West 2010); Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996). Section 206(a) requires that the affidavit "show[]" that one of four circumstances has occurred. 735 ILCS 5/2-206(a) (West 2014). In order to meet this requirement, the sworn statements must "be made on the personal knowledge of the affiants" and should "affirmatively show that the affiant, if sworn as a witness [could] testify competently thereto." Ill. S. Ct. R. 191(a) (eff. July 1, 2002). The rule we are

quoting, Illinois Supreme Court Rule 191(a), does not expressly speak to affidavits underlying publication service. However, the definition is plainly relevant in this circumstance because unless an affiant personally knows and sets out facts in his or her statement, the statement is not a "showing" and is instead comprised of subjective conclusions and/or hearsay statements. Furthermore, Rule 7.3 essentially incorporates the standards of Rule 191(a) by mandating that the "individual(s)" who actually searched and inquired into the defendant's whereabouts "set[] forth with particularity" what actions they took in order to "demonstrate" to the court's satisfaction that the affiant engaged in an "honest and well directed effort" to personally serve the defendant. Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996). *Deutsche Bank National Trust Co. v. Brewer*, 2012 IL App (1st) 111213, ¶ 24, 974 N.E.2d 224 (finding that Cook County Rule 7.3 applies the general requirements of Supreme Court Rule 191 to affidavits filed in support of publication in foreclosure suits).

¶ 31 Vazquez's affidavit was not a basis for publication service because she swore only to the date on which ProVest was appointed to make service of process, and summarized that the two nominal defendants had been served, but that Morales was not served. Vazquez did not describe one of the four circumstances that would justify publication service on Morales and she did not indicate that she herself searched for Morales.

¶ 32 Similarly, Brown swore only that he had been appointed by the court and that he had an employee or agent relationship with ProVest. Brown failed to disclose the name(s) of the process server(s) who purportedly made eight visits to the property. Because Brown did not indicate how he knew these visits occurred, he did not indicate he was a capable witness regarding CitiMortgage's efforts to personally serve Morales. Furthermore, Brown's statement "Numerous attempts with no contact" is comparable to the declarations that were rejected in *Brewer*, 2012 IL

App (1st) 111213, 974 N.E.2d 224. The affiants in *Brewer* said " 'attempts were made' " to serve the defendant at her mortgaged condominium and " 'it was discovered that no contact could be made' " at the property or at some other addresses. *Brewer*, 2012 IL App (1st) 111213, ¶¶ 6-7, 974 N.E.2d 224. The court indicated that statements phrased in this way imply that someone other than the affiant was responsible for the action and reported it to the affiant, and that affidavits of this nature do not justify service of process by publication. *Brewer*, 2012 IL App (1st) 111213, ¶ 22, 974 N.E.2d 224 ("If he searched the databases himself, he should have said so. If he relies on the searches others performed as the due inquiry, the rule requires sworn affidavits from the individuals who searched the databases.") Brown did not swear to his own efforts and to facts within his personal knowledge, and nothing in his affidavit justified service by publication.

¶ 33 Our conclusion that the Brown affidavit is defective on its face is confirmed by comparing it to the "Affidavit of Special Process Server" form that is maintained on the public website of the clerk of the circuit court of Cook County (http://www.cookcountyclerkofcourt.org/Forms/pdf_files/CCGN060.pdf, last visited Apr. 21, 2017).[2] The form begins with a sentence that the process server is to complete with his or her name and the date on which he or she was appointed to the case: "_____ being first duly sworn on oath deposes and says that s/he was appointed by the Court on _____, ____ to serve process in the above

[2] Information on a mainstream website is subject to judicial notice. *Kopnick v. JL Woode Mgmt. Co., LLC*, 2017 IL App (1st) 152054, ¶ 26; *People v. Vara*, 2016 IL App (2d) 140849, ¶ 37, 68 N.E.3d 1018 (taking judicial notice of the federal government's National Sex Offender Public Website); *People v. Clark*, 406 Ill.App.3d 622, 633, 940 N.E.2d 755, 766 (2010) (indicating information acquired from mainstream Internet sites is sufficiently reliable to be the subject of judicial notice, and that an appellate court may take judicial notice of fact that the trial court did not); *People v. Crawford*, 2013 IL App (1st) 100310, ¶ 118 n.9, 2 N.E.3d 1143 (indicating the appellate court may take judicial notice of information on a public website even though the information was not in the record on appeal).

mentioned cause." Below this sentence are four sections for the process server to choose from and complete. When marked and filled in, each section is an affirmative statement of the process server's own acts. The first section, for instance, would be marked and filled in if the process server had accomplished personal service: "☐ 1. That s/he served the within summons and a copy of the complaint on the within named Defendant, _____, by leaving a copy of each with the said Defendant personally on _____, ____." The second section is for indicating that the processor served accomplished abode service. The third section is for describing the physical appearance of the person who was served and where and when that contact occurred. The fourth option is for indicating that service was not possible: "☐ 4. That s/he was unable to serve the within named Defendant." The one page form concludes with a blank line for the "Special Process Server Signature" and a section to be filled in and signed by the notary public who swore in the affiant and witnessed that person's signature. Had CitiMortgage followed this format, its affidavits would have consisted of statements made on the personal knowledge of the affiants, describing their personal actions, in compliance with the publication statute and local rule.

¶ 34 Furthermore, the fact that the Brown affidavit consists of impersonal statements is not the only problem with its contents. The purported visits listed in Brown's statement were made mostly during traditional work hours at approximately 8 a.m. or during a three-hour window beginning at 4:39 p.m. when there was "no activity" and "no lights on inside," yet the unidentified process server(s) did not vary the timing of the visits in order to find the defendant at home. The notes indicating a lack of activity and lights at the property suggest that the Taylor Street property appeared to be inhabited, instead of vacant, and that a resident could have been found at home at a different time of day or a different day of the week. In contrast, a private

investigator in *King* specified in his affidavit, "I looked in the windows. There was no furniture or any other items in the house to suggest that home was occupied. *** In my opinion, the home is vacant." *King*, 311 Ill. App. 3d at 1057, 726 N.E.2d at 624. It seems that in this case, the process server(s) established a routine of making perfunctory stops at the inhabited property, mostly in the early evening, instead of engaging in a well-directed effort to actually locate the defendant in person.

¶ 35 Also, all of the visits occurred within a 10 day period, which is a relatively short time period. Furthermore, the first three visits, which purportedly occurred on September 24 and 26, 2010, must be disregarded because Vazquez swore "that ProVest LLC, was appointed by the Court on September 27, 2010 to serve process in the above mentioned cause," and case law indicates that service of process prior to the court's leave is ineffective. *C.T.A.S.S. & U. Federal Credit Union v. Johnson*, 383 Ill. App. 3d 909, 912, 891 N.E.2d 558, 562 (2008) (service by a private process server one day before being appointed by the court was not in strict compliance with the law and was defective). Thus, there were only five attempts over a six day period. The law does not require a specific number of attempts or a certain time span for the attempts (*see* 735 ILCS 5/2-206(a) (West 2010); Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996); *Ivanov*, 2014 IL App (1st) 133553, ¶ 55 19 N.E.3d 1039)); nevertheless, Brown's list does not demonstrate that it was pointless to return to the property on another day to attempt personal service on Morales.

¶ 36 In addition, there was no effort to develop and follow leads at this location, such as contacting neighbors, particularly another resident of the subject property which the process server(s) described as a "2 story red brick apartment building," and CitiMortgage described as a "multi-family" property in order to determine Morales's schedule and/or obtain the landlord's contact information.

¶ 37 Thus, what Brown swore to were not efforts that were "as full as the circumstances permit." Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996).

¶ 38 CitiMortgage relies on *People* ex rel. *Waller v. Harrison*, 348 Ill. App. 3d 976, 981-82, 810 N.E.2d 589, 593 (2004), for the proposition that it was not required to make "extraordinary," "futile" efforts to locate Morales and need only aver that serving him in person would be "impractical." The case is distinguishable because that plaintiff's detailed and descriptive affidavits "*showed* that it had *exhausted* all of its leads in its attempt to locate [the] defendant," (emphasis added) *Harrison*, 348 Ill. App. 3d at 981, 810 N.E.2d at 593, but in this case CitiMortgage relied on impersonal statements that indicated CitiMortgage barely scratched the surface before giving up the search for the person it sued.

¶ 39 Duffey said even less than Brown, given that she failed to state that she had *any* relationship to ProVest or that she that she had been individually appointed to make service in this case and she did not identify herself as the person she indicates attempted service in Sebring, Florida and spoke with Morales's father. Duffey statements such as "NON-SERVICE for reason that after diligent investigation found [*(sic)*]" were in the impersonal style that Brown used and did not indicate that any pertinent facts were within her personal knowledge. *Brewer*, 2012 IL App (1st) 111213, ¶¶ 6-7, 974 N.E.2d 224.

¶ 40 The Olswang affidavit also suffers from multiple defects. Olswang stated that an unnamed person made only one attempt to serve Morales at the mortgaged residence, that is, "[Morales] was not served on October 3, 2010. Current resident stated defendant does not reside there. Through a skip trace, Provest, LLC. [*(sic)*] was unable to locate an additional address." A single visit to the mortgaged property, by an unnamed person, who purportedly spoke with an unidentified resident of the apartment building, and a skip trace search that did not locate an

additional address cannot be characterized as sufficient effort to locate and personally serve a person. Furthermore, Olswang's statement that a conversation with a current resident occurred at the mortgaged property contradicts Brown's hearsay statements that there were no lights, no response, no activity, and no contact made on eight visits to the "2 story red brick apartment building" over a 10 day period in late September and early October 2010. Olswang did not describe anyone's steady effort "persevering application" or "devoted and painstaking application to accomplish [the task of giving Morales the best possible notice of the pending suit]." *In re Dar C.*, 2011 IL 111083, ¶ 65, 957 N.E.2d 898 (discussing diligent inquiry); Webster's Third New International Dictionary 633 (1986) (defining diligence); *Horton*, 59 Ill. App. 3d at 926, 376 N.E.2d at 1032 (indicating every defendant is entitled to the best possible notice of the pending suit).

¶ 41 In the attached affidavit, Walton swore that he personally searched various databases, which he named, but Walton failed to specify the county or state parameters of his database searches, and effectively "show" that his research was extensive enough and targeted enough to make contact with Morales. Furthermore, Walton contradicted himself by first stating "The subject does not show current ownership of a vehicle in the State of Illinois" and then listing a 1997 Jeep Grand Cherokee registered to Morales which "SHOWS AN ADDRESS OF 2338 W TAYLOR ST., CHICAGO, IL 60612." Walton also listed a 2004 Holiday Rambler recreational vehicle registered in Morales's name and thus lent support to the idea that Morales was traveling from Indiana to California, meaning that Morales was spending time in Illinois. The leads that Morales had two vehicles in Illinois would reasonably direct the search for him back to the mortgaged Illinois property or perhaps to a campground in the vicinity that could accommodate the Holiday Rambler and the Jeep. Walton's database searches also indicated Morales registered

a boat in Florida, suggesting the possibility that Morales could be found on the vessel in a Sebring, Florida marina. Walton's report did not support his personal conclusion that he performed a diligent search and inquiry in compliance with the Illinois law and Cook County rule regarding placing service of summons by publication.

¶ 42 Finally, there was an affidavit filed specifically to comply with local Rule 7.3, but the name of the affiant was not disclosed (and could not be discerned from the illegible signature), rendering the sworn statement defective on its face. Equally problematic is that the author simply recited all four of the potential grounds for justifying publication service, rather than committing to the single basis that was revealed through a supposedly honest and well directed effort to locate Morales. Cook Co. Cir. Ct. R. 7.3 (eff. Oct. 1, 1996). If CitiMortgage complied with the local rule, it would have had no difficulty in committing to *one* of the four grounds for publication service. Instead, the noncommittal recitation of all four potential circumstances reveals CitiMortgage's failure to engage in an "honest and well-directed effort to ascertain the whereabouts of the defendant." Cook Co. Cir. Ct. R. 7.3 (eff. Oct. 1, 1996). CitiMortgage's catch-all statement did not satisfy the local rule.

¶ 43 Furthermore, reading all the affidavits together leads to the same conclusion: CitiMortgage did not comply with the terms of section 2-206(a) and local rule 7.3. 735 ILCS 5/2-206(a) (West 2010); Cook Co. Cir. Ct. R. 7.3 (eff. Oct. 1, 1996). The record reveals CitiMortgage did little—hardly anything—to accomplish personal service before invoking constructive service. When the suit was only 10 days old, CitiMortgage gave up on finding Morales at the mortgaged property. When the suit was only a month old, CitiMortgage searched a database, found a family member's address and a boat and recreational vehicle registered in Morales's name, supposedly learned from the family member that Morales lived on the

recreational vehicle, but then CitiMortgage made no effort to find the vehicle or the boat. During the next month, CitiMortgage filed its affidavits and motion for publication service and when the suit was only two months old, CitiMortgage published notice. CitiMortgage's efforts were perfunctory and inadequate, they were "casual, routine, or spiritless," and they were ineffective. *Unknown Heirs & Legatees*, 369 Ill. App. 3d at 476, 860 N.E.2d at 1117. CitiMortgage's affidavits came nowhere close to showing that serving Morales by publication was a last resort and a reluctant concession that needed to be made. *In re Dar*, 2011 IL 11083, ¶ 64, 957 N.E.2d 898 (publication service is to be used only as a last resort); *Application of County Collector for Judgment & Order of Sale Against Lands & Lots Returned Delinquent for Nonpayment of General Taxes for Year 1987 & Prior Years*, 278 Ill. App. 3d at 173, 662 N.E.2d at 539 (same); *Ivanov*, 2014 IL App (1st) 133553, ¶ 48, 19 N.E.3d 1039 (publication service is allowed only in those limited cases where personal service cannot be achieved); *Nasolo*, 364 Ill. App. 3d at 31, 847 N.E.2d at 131 (constructive service is a reluctant concession of the law to the hard circumstance of necessity).

¶ 44 We reject CitiMortgage's contention that section 2-206 should be read so that its "due inquiry" terms do not apply here. 735 ICLS 5/2-206 (West 2010). CitiMortgage argues that "due inquiry" into the defendant's whereabouts need be conducted only when the defendant is thought to be within Illinois but is either concealed or is not found, and that there is no need to inquire into the whereabouts of someone who resides or has gone outside of Illinois. CitiMortgage could not cite authority or otherwise substantiate that constructive service may be undertaken lightly and in disregard of the fundamental due process concept that *every* defendant is entitled to notice and opportunity to be heard before judgment is entered. "Providing effective service is a means of protecting an individual's right to due process by allowing for proper notification of interested

individuals and an opportunity to be heard." *In re Dar C.,* 2011 IL 111083, ¶ 61, 957 N.E.2d 898 (citing *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950)). The right to be heard "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Mullane*, 339 U.S. at 314.

¶ 45 We also reject CitiMortgage's contention that by swearing he resided outside of Illinois in 2010, Morales confirmed there were grounds for publication service and conceded his challenge to CitiMortgage's affidavits. Morales was under no obligation to show that he could have been found through diligence. CitiMortgage is asking us to disregard Morales's primary argument, which is an attack on the facial validity of CitiMortgage's documents. CitiMortgage's reliance on the analysis in *Cotton* and *King* would be appropriate if Morales was using his own affidavit to dispute whether CitiMortgage's process servers were factually accurate or truthful in their statements about their attempts to personally serve him. *Cotton*, 2012 IL App (1st) 102438, 977 N.E.2d 255; *King*, 311 Ill App. 3d 1053, 726 N.E.2d 621. These cases are relevant for their general discussion of constructive service, but they are not factually on point. Morales makes a legal argument, not a fact-based argument, when he contends CitiMortgage's affidavits for publication service are defective on their face because they do not comply with the State and local standards for publication service. In *Cotton*, publication service was authorized partly because a process server swore he made nine attempts at personal service. *Cotton*, 2012 IL App (1st) 102438, ¶ 8, 977 N.E.2d 255. However, the defendant, Cotton, subsequently filed a photograph, his counteraffidavit, and affidavits from other residents of the building which revealed the falsehoods or inaccuracies in the process server's physical description of the property; showed there was only one mailbox, instead of multiple boxes as the process server had claimed; and indicated that Cotton's name did actually appear at the doorbells. *Cotton*, 2012

IL App (1st) 102438, ¶ 8, 977 N.E.2d 255. The accuracy and truthfulness of a second process server who purportedly made 10 fruitless visits to the mortgaged property was also called into doubt when Cotton swore that there had been a large birthday party in the yard that he attended on one of those dates. *Cotton*, 2012 IL App (1st) 102438, ¶ 8, 977 N.E.2d 255. Cotton's presentation revealed factual inconsistencies that warranted an evidentiary hearing to determine which side spoke the truth and ultimately whether CitiMortgage had diligently inquired before relying on publication service. *Cotton*, 2012 IL App (1st) 102438, ¶ 27, 977 N.E.2d 255. Morales, however, did not challenge whether it is true that a process server visited the Taylor Street building and there is no reason for us to order an evidentiary hearing to determine whether the process server is credible.

¶ 46 Similarly, in *King*, the details in the defendant's counteraffidavit were central to her appeal challenging the bank's affidavit. *King*, 311 Ill App. 3d 1053, 726 N.E.2d 621. However, in contrast to the specific facts and the building photograph which defendant Cotton tendered, defendant King swore to a conclusory statement and she did not cast doubt on the contents of the bank's affidavit. *King*, 311 Ill App. 3d at 1057, 726 N.E.2d at 624. Accordingly, instead of ordering an evidentiary hearing that focused on the bank's efforts at personal service of process, the trial court dismissed King's petition, and was affirmed on appeal. *King*, 311 Ill App. 3d 1053, 726 N.E.2d 621.

¶ 47 CitiMortgage also quotes a sentence fragment from *Ivanov* in order to suggest that the only way Morales could challenge publication service was through his counteraffidavit demonstrating that he could have been found through due inquiry. *Ivanov*, 2104 IL (1st) 133553, ¶ 82, 19 N.E.3d 1039. In fact, the *Ivanov* opinion is a detailed criticism of numerous defects in the lender's affidavits for publication service (*Ivanov*, 2104 IL (1st) 133553, ¶¶ 50-55, 19 N.E.3d

1039), followed by the court's express rejection of the bank's argument that its affidavits were subject to scrutiny only after the defendant had first shown that he could have been found upon due inquiry. *Ivanov*, 2104 IL (1st) 133553, ¶¶ 58-59, 19 N.E.3d 1039. In other words, *Ivanov* considered and rejected CitiMortgage's current argument. The court concluded, "Although a defendant *is not required to file affidavits* in order for the trial court to find a plaintiff's affidavits insufficient, defendant in the present case did file affidavits showing that upon due inquiry he could have been found. Indeed, '[a] defendant *may* challenge a plaintiff's section 2-206(a) affidavit by filing an affidavit showing that upon due inquiry, he could have been found.' " (Emphasis added.) *Ivanov*, 2014 IL App (1st) 133553, ¶ 59, 19 N.E.2d 3d 1039. Thus, CitiMortgage's argument misstates *Ivanov*'s analysis and holding. We find that Morales was under no obligation to file a counteraffidavit in order to permit the trial court to review the face of the sworn statements the lender filed prior to publication service. The procedure that CitiMortgage advocates is not pertinent when the defendant is arguing the lender's affidavits were defective on their face and never entitled the lender to serve the defendant by publication.

¶ 48 Furthermore, by its plain terms, Rule 7.3 applies to all mortgage foreclosure cases in Cook County, not just those involving defendants who are within Illinois's borders as CitiMortgage has argued, and this court has already considered and rejected the argument that the local rule somehow conflicts with section 2-206. See *Brewer*, 2012 IL App (1st) 111213, ¶ 24, 974 N.E.2d 22 (finding that Rule 7.3 "merely applies the general requirements for affidavits to affidavits filed in support of motions for service by publication" and does not conflict with section 2-206).

¶ 49 We find that CitiMortgage did not comply with the statute, local rule, or precedent, and that its affidavits for service by publication were deficient. We further find the deficient

affidavits for service by publication were incapable of vesting the circuit court with jurisdiction over Morales as to the mortgage note and title to the Taylor Street property. *Graham*, 350 Ill. at 41, 182 N.E. at 766. Accordingly, we vacate the circuit court's dismissal order and grant Morales's motion to quash publication service. *Ivanov*, 2014 IL App (1st) 133553, ¶ 48, 19 N.E.3d 1039 (reversing trial court and quashing service by publication).

¶ 50 If publication service had been the sole basis for the subsequent proceedings, we would also conclude that the judgment of foreclosure was invalid and that any third-party purchaser was put on notice by the facially defective affidavits that service by publication on Morales was not proper. S*ee Lemar*, 157 Ill. App. 3d at 354, 510 N.E.2d at 131 (where defective substitute service is apparent from face of record, innocent third-party cannot rely on jurisdictional recitals in foreclosure judgment). However, the record also contains two *pro se* general appearances in Morales's name in 2010 and 2011 and a general appearance filed by attorney Fehr to "substitute" as Morales's counsel in 2014, which occurred prior to the entry of judgment in 2015. Although the record strongly suggests that these are false documents filed by Ivin or at Ivin's request without Morales's authority, the record is inconclusive. Accordingly, we stop short of granting Morales further relief and we remand for further proceedings consistent with this order as to the remainder of Morales's section 2-1401 petition, in order to determine the validity of the general appearances, foreclosure, and sale. 735 ILCS 5/2-1401 (West 2014).

¶ 51 Reversed and remanded.