

No. 1-16-0875

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

SUBURBAN BANK & TRUST COMPANY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 11CH23427
)	
GILMART QUALITY FOOD & LIQUORS, Inc.,)	Honorable
)	Anna M. Loftus,
Defendant-Appellee.)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

Held: We reverse the circuit court’s order granting defendant’s 2-1401 petition to quash service of process based on lack of personal jurisdiction and we reinstate all orders entered in the underlying foreclosure case.

¶ 1 In this mortgage foreclosure case, plaintiff Suburban Bank & Trust Company (Suburban Bank) appeals from the circuit court's order granting defendant Gilmart Quality Foods & Liquors, Inc.'s (Gilmart) petition to quash service of process pursuant to section 2-1401 of the

Code of Civil Procedure (the Code) (735 ILCS 5/2-1401 (West 2014)). The circuit court granted Gilmart's petition and vacated the foreclosure judgment and associated orders entered against Gilmart with respect to property located at 5016 S. Karlov Avenue in Chicago, Illinois, on grounds that the circuit court never acquired personal jurisdiction over Gilmart due to failure of service of process. For the following reasons, we reverse.

¶ 2

I. BACKGROUND

¶ 3

Gilmart executed a mortgage for property located at 5016 S. Karlov Avenue on June 27, 2008, which was secured by a promissory note in the amount of \$3,000,000. Anna Gil signed the mortgage and note on behalf of Gilmart as president and secretary.

¶ 4

When Gilmart failed to make mortgage and tax payments, Suburban Bank filed a complaint to foreclose the mortgage on July 1, 2011, naming Gilmart, Gil, and "Unknown Owners and Non-Record Claimants" as defendants.

¶ 5

The circuit court issued a summons on July 1, 2011. Plaintiff filed an affidavit for service by publication on July 6, 2011, regarding unknown owners and non-record claimants.

¶ 6

On July 30, 2011, the Sheriff of Cook County filed the summons and two affidavits of service. One affidavit of service indicated that the sheriff attempted to serve Gilmart on July 25, 2011, at its principal place of business (5050 S. Archer Avenue in Chicago), but Gilmart was not served because the listed address was vacant. The second affidavit of service indicated Gil was not served because the address (her home address in Burr Ridge, Illinois) was located in DuPage County. On August 1, 2011, Suburban Bank filed a notice of filing affidavit of service by publication as to unknown owners and non-record claimants.

¶ 7

Gil filed for bankruptcy on August 2, 2011. Suburban Bank filed a motion to voluntarily dismiss Gil without prejudice on September 15, 2011, which the circuit court granted. Suburban

Bank also filed a motion for placement of mortgagee in possession on October 11, 2011, which the circuit court granted on October 19, 2011.

¶ 8 On November 29, 2011, Suburban Bank filed a motion for leave to file an amended complaint naming Contractors Payday Corporation, Inc., as an additional defendant. The circuit court granted the motion.

¶ 9 Suburban Bank filed a notice of filing the first amended complaint on November 30, 2011. On December 9, 2011, Suburban Bank filed a notice of filing affidavit of service of the first amended complaint on Gilmart. The certificate of service indicated that the notice was mailed to Gilmart, care of Gil as registered agent, at the Archer Avenue address in Chicago and the Burr Ridge, Illinois address. Also filed on December 9, 2011, was the affidavit of process server Edward Wayne Bunch, who averred that he was a licensed private investigator and that he served the “Notice of Filing and First Amended Verified Complaint to Gilmart *** c/o Registered Agent Anna Gil by leaving a copy of each with Anna Gil personally on December 2, 2011.” Bunch averred that these documents were served at the Burr Ridge address and he provided a description of Gil. The affidavit was signed by Bunch and notarized.

¶ 10 On December 28, 2011, the sheriff filed an affidavit of service on Contractors Payday Corporation, indicating that it was served on December 16, 2011. The record contains a summons issued to Contractors Payday Corporation on December 2, 2011, and filed December 28, 2011.

¶ 11 On May 8, 2012, Suburban Bank filed a motion for default and judgment of foreclosure and sale, asserting that defendants "have been served and, to date, have failed to file an appearance or answer." Suburban Bank attached an “Attorney's Certificate of Defaulted Parties” in support of its motion, wherein its attorney, Ryan Potts, averred that Gilmart was served on

December 9, 2011, by service on the registered agent. Attached to the certificate was Bunch's December 9, 2011, affidavit of service of process.

¶ 12 The circuit court entered a judgment of foreclosure and sale against Gilmart on June 4, 2012, in the amount of \$3,832,130.79. Gilmart was involuntarily dissolved on July 13, 2012. Suburban Bank purchased the property at a foreclosure sale on July 16, 2012, for the amount of \$140,000, which was the appraised value. On September 20, 2012, the circuit court entered an order approving the sale and entering a deficiency judgment against Gilmart of \$3,736,403.32. The property was subsequently sold to a third party.

¶ 13 On October 20, 2014, Gilmart filed a verified petition to quash service of process pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)). Gilmart contended that the circuit court never acquired personal jurisdiction over it due to failure of service of process. Specifically, Gilmart asserted that the June 30, 2011, affidavit of service from the sheriff shows that it was never served with the initial complaint. Further, Gilmart asserted that it was never properly served with the amended complaint as Bunch's December 9, 2011, affidavit of process server indicated that Bunch served the notice of filing and amended complaint, but did not mention a summons. Gilmart requested that the trial court find all orders entered in the case void due to lack of jurisdiction. Gilmart asserted that the defect appeared on the face of the record. Gilmart's petition included a verification pursuant to section 1-109 of the Code (735 ILCS 5/1-109 (West 2012)), certifying that: "the undersigned certifies that the statements set forth in this VERIFIED PETITION TO QUASH are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true." The verification contained a signature, but no printed name appeared with it.

¶ 14 In response, Suburban Bank asserted that the petition should be denied because of improper verification, lack of legal capacity, *laches*, judicial estoppel, equitable estoppel, voluntary relinquishment of possessory interest, and *res judicata*. Suburban Bank argued that the verification with the petition to quash was illegible, not based on personal knowledge, and Gilmart lacked legal capacity because it was involuntarily dissolved before the petition was filed.¹ Suburban Bank argued the note and mortgage at issue in this case was also collateralized by other properties² against which Suburban Bank had initiated foreclosure actions, including 605 Oakwood, Willow Springs, Illinois, and Gilmart's attorney filed an appearance in that case and a judgment was entered in favor of Suburban Bank regarding the same loan documents. Suburban Bank argued that although there was no alias summons, the clerk does not keep copies of alias summonses issued over the counter. Suburban Bank further asserted that Gil made inconsistent factual assertions in her bankruptcy petition and in the present case.

¶ 15 In support, Suburban Bank attached an affidavit from attorney Potts, who averred that Gilmart voluntarily turned over possession of the property on July 14, 2011, and was negotiating a foreclosure agreement. Copies of emails were attached to the affidavit, which Suburban Bank claimed show alleged exchanges between Potts, Gilmart's attorney, and Suburban Bank regarding foreclosure negotiations and relinquishment of possession. Potts further averred that he recalled Gil personally appearing in court on behalf of Gilmart on more than one occasion "in more than one of the foreclosure cases that plaintiff filed against Gilmart in 2011. Though I do not recall the dates on which she appeared, or in which case and courtroom she appeared, I do

¹ Suburban Bank attached an Illinois Secretary of State printout which showed that Gilmart was involuntarily dissolved on July 13, 2012, and listed Gil as the registered agent and the agent address as 5050 S Archer Ave, Chicago, Illinois.

² The note executed by Gil on June 27, 2008, for the property at issue provides that the note was secured by the assignment of all rents and mortgages related to the Karlov Ave property; 605 Oakwood, Willow Springs; 5050 S. Archer Ave, Chicago; 8120 S. Archer Ave, Willow Springs; and 9321 Falling Water Drive, Burr Ridge.

recall her asking the court several times to exercise its jurisdiction for Gilmart's benefit." Also attached to Suburban Bank's response was Gil's bankruptcy petition filed in August 2011. She listed as personal property 100% of stock ownership in Gilmart, with a value of \$0. Under creditor holdings, she listed a \$4,000,000 claim for a loan to Gilmart by Suburban Bank. Gil was discharged from bankruptcy on May 8, 2012.

¶ 16 The circuit court ordered the parties to file memoranda on the issue of whether it had subject matter jurisdiction over the petition to quash in light of section 15-1509(c) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1509(c) (West 2012)). Following briefing by the parties, the circuit court ruled that section 15-1509(c) did not bar Gilmart's petition to quash and it had jurisdiction to decide the issues raised in the petition.

¶ 17 On February 26, 2016, after further briefing on the petition to quash and hearing oral arguments, the circuit court granted Gilmart's section 2-1401 petition to quash due to lack of service of process and vacated all orders entered in the underlying foreclosure action.

¶ 18 Suburban Bank filed a timely notice of appeal on March 28, 2016. On March 29, 2016, Gilmart filed a motion in the circuit court to clarify the circuit court's February 26, 2016, order regarding whether the finding of lack of jurisdiction was apparent on the face of the record. On April 28, 2016, the circuit court granted Gilmart's motion, ruling that the February 26, 2016, order was clarified *nunc pro tunc* to reflect the finding that the lack of jurisdiction was apparent on the face of the record.

¶ 19 II. ANALYSIS

¶ 20 Initially, we briefly discuss the circuit court's April 28, 2016, *nunc pro tunc* order, which the circuit court entered after Suburban Bank filed its notice of appeal on March 28, 2016. "[U]pon filing a notice of appeal, the circuit court is divested of jurisdiction to enter any order

involving a matter of substance, and the jurisdiction of the appellate court attaches *instanter*.” *Williamsburg Village Owners' Ass'n, Inc. v. Lauder Associates*, 200 Ill. App. 3d 474, 481 (1990).

The circuit court retains jurisdiction only to determine independent and collateral matters or correct a clerical error, and is prohibited “from entering any order which would modify the judgment or its scope.” *Id.*; *Dauderman v. Dauderman*, 130 Ill. App. 2d 807, 810 (1970).

¶ 21 Here, the circuit court’s *nunc pro tunc* order sought to do more than merely make a clerical correction. The order modified the circuit court’s previous order granting the 2-1401 petition in finding that the lack of jurisdiction was apparent on the face of the record. In light of the affidavit of process servicer Bunch, who averred that he served Gil on behalf of Gilmart, and the affidavit of Suburban Bank’s attorney, Potts, who averred that Gil had appeared in court several times, it was not apparent on the face of the record that the circuit court lacked jurisdiction over Gilmart. Accordingly, the April 28, 2016, order involved a matter of substance and is void.

¶ 22 A. Standard of Review

¶ 23 We review *de novo* a circuit court’s decision regarding a section 2-1401 petition alleging that a judgment is void. *Bank of America, N.A. v. Kulesza*, 2014 IL App (1st) 132075, ¶ 14. *Willis Capital LLC v. Belvedere Trading LLC*, 2015 IL App (1st) 132183, ¶ 19 (“Where the trial court dismisses a section 2–1401 petition without holding an evidentiary hearing, our standard of review is *de novo*.”)³

³ We note that although the trial court did not hold an evidentiary hearing, it heard oral arguments on the petition. There is no report of proceedings in the record regarding any hearings. The appellant, Suburban Bank, “has the burden of presenting a sufficiently complete record of the proceedings at trial to support a claim of error.” *Midstate Siding & Window Company, Inc. v. Rogers*, 204 Ill. 2d 314, 319 (2003)). Absent a complete record, we presume the trial court’s orders conformed to the law and had a sufficient factual basis. *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391 (1984). As there was no evidentiary hearing, the circuit court based its determination on the documents presented, which are part of the appellate record, and, as stated, our review is *de novo*.

¶ 24 Generally, a 2-1401 petition provides a mechanism for *vacatur* of a final judgment which is older than 30 days but within two years of its entry, where the petitioner demonstrates a meritorious defense or claim and due diligence. *People v. Vincent*, 226 Ill. 2d 1, 7 (2007); *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986); 735 ILCS 5/2-1401(c) (West 2012). However, when a petitioner alleges that a judgment is void, the two-year limitation does not apply, and the allegation of voidness “substitutes for and negates the need to allege a meritorious defense and due diligence.” *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103-104 (2002). “[A] judgment, order or decree entered by a court which lacks jurisdiction of the parties or of the subject matter *** is void, and may be attacked at any time or in any court, either directly or collaterally.” (Internal quotation marks omitted.) *Kulesza*, 2014 IL App (1st) 132075, ¶ 14 (quoting *Sarkissian*, 201 Ill. 2d at 103 (2002)).

¶ 25 B. Section 15-1509(c)

¶ 26 Suburban Bank first contends that section 15-1509(c) bars Gilmart’s section 2-1401 petition.

¶ 27 Section 15-1509(c) provides that “[a]ny vesting of title *** by deed pursuant to subsection (b) of Section 15-1509, *** shall be an entire bar of (i) all claims of parties to the foreclosure ***.” 735 ILCS 5/15-1509(c) (West 2012). “Delivery of the deed executed on the sale of the real estate, even if the purchaser or holder of the certificate of sale is a party to the foreclosure, shall be sufficient to pass the title thereto.” 735 ILCS 5/15–1509(b) (West 2012). Accordingly, pursuant to section 15-1509, any vesting of title by deed bars all subsequent claims of parties to the foreclosure. *U.S. Bank, N.A. v. Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30; *MB Financial Bank, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, ¶ 19.

¶ 28 However, our court has determined that section 15–1509 “applies only to valid judgments entered with jurisdiction over the parties and the subject matter” and therefore this provision does not prohibit a challenge to a judgment based on lack of jurisdiction. *Deutsche Bank National Trust Co. v. Brewer*, 2012 IL App (1st) 111213, ¶ 15. “A judgment entered without jurisdiction over the parties is void *ab initio* and lacks legal effect. [Citations.] *** [N]othing in section 15–1509 indicates that the legislature sought to make foreclosure judgments take effect and deprive owners of their properties when the trial court lacked personal jurisdiction over the owners.” *Id.* See also *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 45; *MB Financial Bank, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, ¶ 19; *West Suburban Bank v. Advantage Financial Partners, LLC*, 2014 IL App (2d) 131146, ¶¶ 24-25.

¶ 29 Gilmart contends that the circuit court never obtained personal jurisdiction over it because it was never properly served, rendering the foreclosure judgments void. “ ‘Personal jurisdiction may be established either by service of process in accordance with statutory requirements or by a party's voluntary submission to the court's jurisdiction.’ ” *Arch Bay Holdings, LLC-Series 2010B v. Perez*, 2015 IL App (2d) 141117, ¶ 10 (quoting *Mitchell*, 2014 IL 116311, ¶ 18). “ ‘Generally, a judgment rendered without service of process, where there has been neither a waiver of process nor a general appearance by the defendant, is void regardless of whether the defendant had actual knowledge of the proceedings.’ ” *Id.* (quoting *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc.*, 172 Ill. App. 3d 993, 1001 (1988)). “[A] foreclosure judgment entered without service of process is void. [Citation.] Where a summons is invalid, service of the same is also without effect.” *Id.*

¶ 30 As such, whether section 15-1509(c) bars Gilmart’s 2-1401 petition in the present case turns on whether the circuit court gained personal jurisdiction over Gilmart. That is, if service of

process was not defective, the circuit court had personal jurisdiction over Gilmart and the section 2-1401 petition cannot be used to attack the foreclosure judgment.

¶ 31 C. Service of Process

¶ 32 Suburban Bank asserts that the service of process of its amended complaint on Gilmart was sufficient. It contends that although the affidavit of the private process server, Bunch, did not indicate that an alias summons was served, this was immaterial under Supreme Court Rule 102(d) (eff. Jul. 1, 1971), and the circuit court clerk does not retain copies of issued summonses or alias summonses. Suburban Bank further argues that Gilmart failed to properly dispute or rebut (1) Bunch's affidavit, (2) the circuit court's judgment of foreclosure finding that defendants were lawfully served with "summons and complaint," or (3) attorney Potts's affidavit that Gil appeared in court on Gilmart's behalf. According to Suburban Bank, Gilmart's 2-1401 petition was improperly verified and it did not include an affidavit supporting its claim or refuting this evidence of proper service and jurisdiction.

¶ 33 The Code provides that "[e]very action *** shall be commenced by the filing of a complaint." 735 ILCS 5/2-201(a) (West 2012). "[T]he Code authorizes service of process either by summons (735 ILCS 5/2-203, 2-204, 2-205 (West 2012)) or by publication and mailing (735 ILCS 5/2-206 (West 2012))." *Concord Air, Inc. v. Malarz*, 2015 IL App (2d) 140639, ¶ 31 (quoting *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986)). The form and substance of the summons and of service of process in Illinois is governed by statute and supreme court rules. *Perez*, 2015 IL App (2d) 141117, ¶ 11 (citing 735 ILCS 5/2-201(a) (West 2012)). The clerk issues the summons upon request of the plaintiff. *Id.* (citing 735 ILCS 5/2-201(a) (West 2012)). The summons must contain the clerk's seal, name and signature, along with the date of issuance, information regarding the plaintiff or his attorney, and is addressed to each defendant.

OneWest Bank, FSB v. Markowicz, 2012 IL App (1st) 111187, ¶ 27 (citing Ill. S. Ct. R. 101 (eff. May 30, 2008)). The summons and complaint is placed with the sheriff or other authorized person to serve process. *Id.* (citing Ill. S. Ct. R. 102(a) (eff. Jul. 1, 1971)). Upon request of the plaintiff, the clerk also issues successive alias summonses. Ill. S. Ct. R. 103 (eff. Jul. 1, 2007). Under Illinois Supreme Court Rule 102(d), “[t]he officer or person making service shall make a return by filing proof of service immediately after service on all defendants has been had ***. Failure of the officer or other person to return the summons or file proof of service does not invalidate the summons or the service thereof, if had.” Ill. S. Ct. R. 102(a) (eff. Jul. 1, 1971). In the context of personal service, “[r]eturn of summons is prima facie proof of proper service.” *Ted & Paul*, 2013 IL App (1st) 122077, ¶ 24.

¶ 34 Pursuant to section 2-204, “[a] private corporation may be served (1) by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law. A private corporation may also be notified by publication and mail in like manner and with like effect as individuals.” 735 ILCS 5/2-204(1) (West 2012); *Ted & Paul*, 2013 IL App (1st) 122077, ¶ 29.

¶ 35 Here, the affidavit of service filed by Bunch indicated that Gilmart was served with the notice of filing and the amended complaint on December 2, 2011. Bunch averred in his affidavit of service that he left these documents with Gil personally on behalf of Gilmart at her Burr Ridge home address. Bunch also provided a description of Gil and signed the affidavit, and it was notarized. In addition, Suburban Bank filed a notice of filing affidavit of service of the first amended complaint on Gilmart on December 9, 2011. The certificate of service indicated that the notice and amended complaint were mailed to Gilmart, care of Gil as registered agent, at the

principal place of business on Archer Avenue in Chicago and to Gil's home address in Burr Ridge.

¶ 36 As Gilmart contends, the affidavit of service did not reflect that an alias summons was served and the record does not contain an alias summons for Gilmart. However, Rule 102(d) directs that failure to return the summons or file proof of service does not invalidate the summons or service. Moreover, the record is clear based on the affidavit of service and the notice of filing that Gilmart was served with the amended complaint and notice of filing by the private process server Bunch on December 2, 2011. "The object of service is to notify a party of pending litigation and thus secure his presence." *Winning Moves, Inc. v. Hi! Baby, Inc.*, 238 Ill. App. 3d 834, 838 (1992). Further, the trial court's June 4, 2012, judgment of foreclosure and sale found that Gilmart was properly served with summons and complaint.

"In Illinois, the affidavit of service is *prima facie* evidence that process was properly served. [Citation.] To attack the underlying default judgment on the grounds that the court never obtained personal jurisdiction over the defendant, evidence must be presented to impeach the affidavit of service. [Citation.] An uncorroborated defendant's affidavit merely stating that he had not been personally served with summons is insufficient to overcome the presumption favoring the affidavit of service. [Citations.] The default judgment will not be set aside unless the return of service is impeached by clear and convincing evidence." *Paul v. Ware*, 258 Ill. App. 3d 614, 617-18 (1994).⁴

⁴ See also *Ted & Paul*, 2013 IL App (1st) 122077, ¶ 24 (in the context of personal service, "[c]ourts are required to indulge in every reasonable presumption in favor of the return, and the uncorroborated testimony of the party upon whom service is made is not enough to set aside this evidence.").

¶ 37 Here, Gilmart's 2-1401 petition asserting that it was never properly served was accompanied by a verification containing an illegible signature with no printed name along with it to identify the signer. The verification merely stated that the signer certified that the statements in the petition were true, *i.e.*, that Gilmart was not served with a summons and had not appeared in the case. This did not constitute contradictory evidence sufficient to rebut the affidavit of service, the notice of filing, or the circuit court's order. *Winning Moves*, 238 Ill. App. at 838 ("Uncorroborated testimony of the party upon whom service purports to have been made is not considered clear and convincing evidence."); *Countrywide Home Loans Servicing, LP v. Clark*, 2015 IL App (1st) 133149, ¶ 34 (plaintiff not required to file a counter-affidavit where defendant's affidavit failed to provide clear and convincing evidence to impeach the affidavit of service and overcome presumption in favor of process server's affidavit). For similar reasons, the verification also failed to contradict Potts affidavit. Potts averred that he recalled Gil personally appearing in court on behalf of Gilmart on more than one occasion "in more than one of the foreclosure cases that plaintiff filed against Gilmart in 2011. Though I do not recall the dates on which she appeared, or in which case and courtroom she appeared, I do recall her asking the court several times to exercise its jurisdiction for Gilmart's benefit."

¶ 38 In addition, given the illegible signature and failure to otherwise identify the signer, it was not possible to determine whether the petition was signed by someone with personal knowledge, as required by 2-1401(b). Section 2-1401(b) provides in relevant part that "[t]he petition must be supported by affidavit or other appropriate showing as to matters not of record." 735 ILCS 5/2-1401(b) (West 2012). As stated, determining whether Gilmart appeared in the case or service was properly effectuated required the court to look outside the record in this case.

¶ 39 In that regard, Suburban Bank’s reliance on *Padilla v. Vazquez*, 223 Ill. App. 3d 1018, 1026 (1992), is helpful. In *Padilla*, the court found the plaintiff’s 2-1401 petition insufficient to merit relief where it was not accompanied by a verification or supported by affidavit attesting to matters outside the record based on personal knowledge. The plaintiff’s counsel filed an affidavit, but this was insufficient because it was not based on personal knowledge of the facts asserted in the petition. *Id.* “In order to be legally sufficient a request for relief under section 2–1401, based upon matters outside the trial record, must be supported by the sworn allegations of the party or parties having personal knowledge of the relevant facts, set forth either by verified petition or by attached affidavit.” *Id.*

¶ 40 In contrast, Gilmart relies on *Markowicz*, 2012 IL App (1st) 111187, in asserting that the verification need not be accompanied by a printed name. We find *Markowicz* distinguishable from the present circumstances as it involved an illegible signature on an affidavit under section 2-206 of the Code, which provides that for service by publication, “ ‘plaintiff or his or her attorney shall file *** an affidavit showing that the defendant *** on due inquiry cannot be found ***.’ ” *Id.* ¶ 42 (quoting 735 ILCS 5/2–206(a) (West 2010)).

¶ 41 Accordingly, we conclude that the circuit court erred in granting Gilmart’s section 2-1401 petition to quash service of process and vacating all orders in the original foreclosure case. Gilmart’s petition failed to rebut the evidence that the service of process was legally sufficient. It also failed to rebut the affidavit of attorney Potts indicating that Gil made appearances in this case. It has offered merely uncorroborated assertions and a verification containing an illegible signature, from which it is impossible to determine whether the assertions therein are based on personal knowledge. Because service of process was sufficient, Gilmart’s challenge to the circuit

court's personal jurisdiction over it must fail. As such, section 15-1509 bars its 2-1401 challenge to the foreclosure. *Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30.

¶ 42 In ruling, we note that we do not agree with Suburban Bank that Gilmart lacked the capacity to file the petition following its involuntary dissolution. Gilmart was involuntarily dissolved on July 13, 2012, the property was sold on July 16, 2012, and the sale was confirmed on September 20, 2012. Suburban Bank asserts that although the Illinois Business Corporations Act of 1983 has been amended to allow dissolved corporations to bring claims that arise post-dissolution, the amendment does not apply retroactively. See 805 ILCS 5/12.80 (West 2016).

¶ 43 Regardless of any retroactive application of the amendment to section 12.80 the Illinois Business Corporations Act of 1983, which allows dissolved corporations to bring claims that arise post-dissolution, Gilmart had the capacity to file the petition in this case. Section 12.80 previously provided that “[t]he dissolution of a corporation *** shall not take away nor impair any civil remedy available to or against such corporation, *** for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within five years after the date of such dissolution.” 805 ILCS 5/12.80 (West 2012). The foreclosure action against Gilmart was instituted on July 1, 2011, well before dissolution. The judgment of foreclosure was entered on June 4, 2012, also before Gilmart's dissolution. Gilmart filed the petition in the foreclosure case well before the expiration of the five-year period for pursuing claims by or against dissolved corporations, and his petition asserted that it was never properly served in the foreclosure action. See *Markus v. Chicago Title & Trust Co.*, 373 Ill. 557 (1940), overruled on other grounds by *ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526 (2010) (holding that dissolution of a corporation does not destroy a mortgage lien on corporate property and did not bar foreclosure action); *Pehr v. Metz, Train, & Youngren, Inc.*,

274 Ill. App. 3d 218, 219 (1995) (dissolved corporation filed a limited appearance to contest jurisdiction and a motion to quash service of process where the plaintiff re-filed its lawsuit more than five years after the corporation's dissolution, and the defendant successfully appealed from the trial court's denial of its motion); *Vance v. North American Asbestos Corp.*, 203 Ill. App. 3d 565 (1990) (dissolved corporation may file special appearance and motion to quash summons on grounds that court lack personal jurisdiction as the two-year (now five-year) limit had expired).

Given our resolution above, we need not address Suburban Bank's other challenges to the 2-1401 petition based on *laches*, judicial estoppel, equitable estoppel/voluntary relinquishment, and *res judicata*.

¶ 44

III. CONCLUSION

¶ 45

Based on the foregoing, we reverse the circuit court's order granting Gilmart's section 2-1401 petition to quash service of process and we reinstate the circuit court's orders entered in the underlying foreclosure action.

¶ 46

Reversed.