

2019 IL App (1st) 180589-U  
No. 1-18-0589  
March 29, 2019

SECOND DIVISION

**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).

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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|                                |   |                               |
|--------------------------------|---|-------------------------------|
| CITIMORTGAGE, INC.,            | ) | Appeal from the Circuit Court |
|                                | ) | Of Cook County.               |
| Plaintiff-Appellee,            | ) |                               |
|                                | ) |                               |
| v.                             | ) | No. 16 CH 12386               |
|                                | ) |                               |
| YVONNE M. MOORE, ALINAN TRUST, | ) | The Honorable                 |
| UNKNOWN OWNERS AND NON-RECORD  | ) | John Curry,                   |
| CLAIMANTS,                     | ) | Judge Presiding.              |
|                                | ) |                               |
| Defendants,                    | ) |                               |
|                                | ) |                               |
| ALINAN TRUST,                  | ) |                               |
|                                | ) |                               |
| Defendant-Appellant.           | ) |                               |

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JUSTICE WALKER delivered the judgment of the court.  
Presiding Justice Mikva and Justice Pierce concurred in the judgment.

**ORDER**

¶ 1 *Held:* If a motion, including a motion to quash service of process, is not noticed within 90 days of filing, the circuit court does not abuse its discretion when it denies the motion pursuant to Cook County Circuit Court Rule 2.3.

¶ 2 Plaintiff Citimortgage, Inc., filed a foreclosure complaint against defendant Alinan Trust. Citimortgage then filed and was granted a request to allow service by publication because upon attempting service at Alinan's last known address, Citimortgage discovered that Alinan does not reside there and that the residence of the subject person is unknown. On June 6, 2017, the trial court found Alinan in default and entered a judgment of foreclosure and sale against Alinan. On September 7, 2017, the property was sold and Citimortgage filed a motion for confirmation of sale. On September 18, 2017, Alinan filed a motion to quash service of process and argued Citimortgage failed to comply with the requirements of service by publication, but Alinan did not notice the motion for hearing. On October 2, 2017, the court confirmed the sale of the property. On February 21, 2018, Citimortgage filed a motion for entry of an order denying Alinan's motion to quash because Alinan failed to notice its motion for hearing within 90 days of filing pursuant to Local Rule 2.3 (rule 2.3). On February 23, 2018, Alinan filed a notice of motion to present its motion to quash. The circuit court denied the motion to quash because Alinan failed to satisfy rule 2.3. Alinan appeals and argues that its motion to quash service was in substance a section 2-1401 petition challenging a final judgment as void and therefore could be brought at anytime, thus rule 2.3 does not apply.

¶ 3 We find that a judgment ordering the foreclosure of a mortgage is not final and appealable until the court enters orders approving the sale. Accordingly, because Alinan filed its motion to quash service after the court found Alinan in default and entered a judgment of foreclosure and sale, but prior to the circuit court entering the order confirming sale, we find that its motion to quash service did not seek relief from a final judgment. Therefore, we find that the motion to quash was not in substance a section 2-1401 petition which may be

brought at anytime. We also find that once a motion to quash is filed, the party seeking relief must notice the motion within 90 days as required by rule 2.3 and therefore, we hold the circuit court did not abuse its discretion when it denied Alinan's motion to quash for failing to notice the motion within 90 days of filing.

¶ 4

#### BACKGROUND

¶ 5

On July 3, 2012, Yvonne Moore executed a mortgage loan for \$112,300.00 with Citimortgage, secured by real property located at 454 Luella Avenue, Calumet City, Illinois. On April 27, 2016, Moore conveyed the property by quitclaim deed to defendant Alinan Trust. The deed indicates Alinan's address as 15233 Lexington Avenue, Harvey, Illinois, 60426.

¶ 6

On September 19, 2016, Citimortgage filed a foreclosure complaint against Alinan. Citimortgage also named as defendants Moore, unknown tenants, unknown owners and non-record claimants. Citimortgage filed an "affidavit to allow service by publication pursuant 735 ILCS 2/2-206." The affidavit was signed by Mark Skrzydlak of United Processing, Inc., Citimortgage's court appointed special process server. Skrzydlak averred that Alinan, on due inquiry, could not be located. Citimortgage also filed an "affidavit of due diligence pursuant to local rule 7.3" sworn to and signed by Skrzydlak on October 20, 2016. Skrzydlak averred that "after my diligent search and inquiry, the residence of the subject person is unknown." The due diligence affidavit detailed 38 unsuccessful search inquiries to discover Alinan. Citimortgage also attached an affidavit of attempted service sworn to and signed by Robert T. Scheidel, also of United Processing, Inc. Scheidel averred that upon attempting service at 15233 Lexington Avenue, Harvey, Illinois, 60426, it was discovered that Alinan does not

reside there and that the location's occupant, Charice Hill, did not know Alinan or its whereabouts.

¶ 7 On November 7, 2016, the Clerk of the Circuit Court of Cook County filed a certificate of mailing notice. The certificate indicated the Clerk sent a notice of publication to "UNKNOWN TENANTS; 545 LUELLA AVE; CALUMET CITY, IL 60409." On November 21, 2016, Citimortgage filed a certificate of publication indicating that it had published notice in the Chicago Daily Bulletin on November 4, 11, and 18, 2016.

¶ 8 On May 4, 2017, Citimortgage filed a motion for entry of an order of default against Alinan because more than six months had passed since date of service. Citimortgage also filed a motion for entry of a judgment for foreclosure and sale. Furthermore, Citimortgage filed a motion to dismiss unknown tenants, unknown owners, and non-record claimants as party defendants.

¶ 9 On June 6, 2017, the trial court found Alinan in default and entered a judgment for foreclosure and sale against Alinan. The court also granted Citimortgage's motion of summary judgment and entered a judgment for foreclosure and sale against Moore. Furthermore, the court granted Citimortgage's motion to dismiss unknown tenants, unknown owners, and non-record claimants as party defendants.

¶ 10 On September 7, 2017, the property was sold at a judicial sale. On September 18, 2017, Citimortgage filed a motion for confirmation of sale. On the same day, September 18, 2017, Alinan filed an appearance. Alinan also filed a motion to quash service and requested the trial court vacate all orders. Alinan argued Citimortgage's publication affidavit did not strictly comply with 735 ILCS 5/2-206(a) because (i) it was not dated or signed by Citimortgage or

its attorney, and (ii) the court file only contained evidence that the Clerk of the Circuit Court mailed the publication notice to "unknown tenants at the property address" but the publication was not mailed to Alinan Trust.

¶ 11 On October 2, 2017, the court entered an order confirming the sale of the property. On October 12, 2017, Citimortgage filed its response to Alinan's motion to quash service. Citimortgage argued that it complied with 735 ILCS 5/2-206(a) because (i) only the person conducting the inquiry needs to sign the affidavit and not the client or the client's counsel and (ii) the clerk is only required to mail notice to a defendant whose place of residence is stated in the affidavit and because the address of the affiant who signed the affidavit was unknown, no notice was required. Citimortgage also argued that it exercised due diligence in locating Alinan as evidenced by the 38 inquiries stated in its affidavit.

¶ 12 On February 21, 2018, Citimortgage filed a motion for entry of an order denying Alinan's motion to quash service. Citimortgage argued Alinan's motion should be denied because Alinan did not set its motion for hearing within 90 days of filing the motion in violation of rule 2.3 (initially inadvertently listed in its circuit court pleading as rule 2.1).

¶ 13 On February 23, 2018 Alinan filed a notice of motion to present its motion to quash. On the same day, Alinan filed a reply to Citimortgage's response to Alinan's motion to quash service. Alinan argued that Citimortgage did not strictly comply with section 2-206 of the Code of Civil Procedure. Alinan contended Citimortgage's affidavit was required to be filed and signed by Citimortgage or its counsel and not by Skrzydlak of United Processing, Inc., Citimortgage's court appointed special process server. Alinan also argued the clerk's

certificate of mailing notice failed to comply with section 2-206 of the Code because the clerk never mailed the notice to Alinan.

¶ 14 On March 13, 2018, the trial court found that Alinan's motion to quash was not in compliance with local rule 2.3 and denied the motion. The trial court also denied Citimortgage's motion seeking entry of an order denying the motion to quash as moot.

¶ 15 On March 15, 2018, Alinan filed its notice of appeal. Alinan sought "(i) reversal and/or vacatur of [March 13, 2018] order and all previous orders leading up to that order, (ii) remand [the case] back to the Circuit Court and (iii) Grant to [Alinan], any and such other and/or further relief as is found by the reviewing court to be proper and available to it in this appeal." On March 19, 2018, Citimortgage filed a motion to alter or amend the March 13, 2018 order to reflect that the court's denial of Alinan's motion to quash was based on rule 2.3, and not rule 2.1 indicated in the March 13, 2018 order. On April 2, 2018, the court granted the motion to alter and modified the March 13 order to indicate that "Alinan's motion to quash is denied under local rule 2. This includes the court's consideration of local rule 2.3."

¶ 16 ANALYSIS

¶ 17 Alinan argues the circuit court erred when it denied its motion to quash service of process because Alinan failed to notice its motion for hearing within 90 days pursuant to rule 2.3. Citing our supreme court's decision in *Sarkissian v. Chicago Board of Education.*, 201 Ill. 2d 95 (2002), Alinan contends rule 2.3 does not apply to a motion to quash service of process because due diligence is not required to attack a void judgment. Accordingly, Alinan argues the trial court erred in denying the motion to quash based on rule 2.3.

¶ 18 The trial court found Alinan in default and entered a judgment for foreclosure and sale against Alinan on June 6, 2017. Alinan filed its motion to quash service on September 18, 2017. The trial court entered an order confirming the sale of the property on October 2, 2017. Accordingly, we find that Alinan's motion to quash service did not seek relief from a final judgment, but instead challenged the court's personal jurisdiction. Alinan argues that rule 2.3 does not apply to a judgment entered when the trial court did not have jurisdiction.

¶ 19 Citimortgage argues that the court did not abuse its discretion when it denied Alinan's motion to quash for failure to notice its motion for hearing for over five months. "A reviewing court will not disturb the trial court's denial of motions for failure to comply with local rule 2.3 unless that decision constitutes an abuse of discretion." *Givot v. Orr*, 321 Ill. App. 3d 78, 91 (2001).

¶ 20 Rule 2.3 provides "[t]he burden of calling for hearing any motion previously filed is on the party making the motion. If any such motion is not called for hearing within 90 days from the date it is filed, the court may enter an order overruling or denying the motion by reason of the delay." Cook Co. Cir. Ct. R. 2.3 (eff. July 1, 1976). Thus, "rule 2.3 grants the circuit court the discretion to overrule or deny a motion which has not been called for hearing within 90 days of its filing." *JPMorgan Chase Bank, Nat. Ass'n v. Barber*, 2016 IL App (1st) 152058, ¶ 30.

¶ 21 In *Givot*, plaintiffs requested the trial court allow them to file a proposed amended complaint, but never sought a hearing on their motion for nine months. *Id.* at 91. The trial court denied the motion pursuant to rule 2.3. *Id.* The appellate court found that nine months was a substantial delay and concluded that the trial court's ruling was not an abuse of

discretion. *Id.* Similarly in *In re Marriage of Izzo*, 264 Ill. App. 3d 790 (1994), plaintiff filed a petition requesting the trial court grant her attorney fees. *Id.* at 792. However, plaintiff never sought a hearing on the motion for six months. *Id.* The trial court dismissed the motion pursuant to rule 2.3. *Id.* Plaintiff's counsel argued that he had undergone surgery and failed to continue the matter. *Id.* The appellate court agreed with the trial court that plaintiff's counsel should have had another attorney seek a continuance in the case and therefore, the trial court did not abuse its discretion. *Id.*

¶ 22 Following *Givot* and *In re Marriage of Izzo*, we find that once a motion to quash is filed, the party seeking relief must notice the motion within 90 days as required by rule 2.3. Therefore, we hold the circuit court did not abuse its discretion when it denied Alinan's motion to quash.

¶ 23 CONCLUSION

¶ 24 All motions, including a motion to quash, must be noticed within 90 days pursuant to local rule 2.3. If the motion is not noticed within 90 days, the circuit court does not abuse its discretion when it denies the motion.

¶ 25 Affirmed