

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2012

PALM BAY 17, LLC,

Appellant,

v.

Case No. 5D10-3547

FIRST BANK OF PUERTO RICO, ETC.,  
ET AL.,

Appellees.

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Opinion filed February 3, 2012

Appeal from the Circuit Court  
for Brevard County,  
Robert Wohn, Jr., Judge.

Regen J. Shanzer and Joseph L. Rebak,  
P.A., of Tew Cardenas LLP, Miami, for  
Appellant.

No Appearance for Appellee.

EVANDER, J.

Palm Bay 17, LLC (“Palm”) appeals from a final judgment of foreclosure, contending that the trial court erred in determining that First Bank of Puerto Rico (“First Bank”) had properly effected service of process on Palm. We conclude that the statutory conditions for mailbox service upon Palm were not met and, accordingly, reverse.

First Bank filed a verified complaint alleging, inter alia, that Palm, a Florida corporation, had defaulted on its mortgage with First Bank by failing to make its monthly

payments. Palm's registered agent was Julio Quintana. Florida's Division of Corporation's website listed a private mailbox at a United Parcel Service (UPS) store located in Miami Lakes, Florida, as Quintana's address. First Bank purported to effect service on Palm by having a copy of the summons and complaint delivered to the manager of the UPS store.

Subsequently, pursuant to section 702.10, Florida Statutes (2009),<sup>1</sup> First Bank filed an Ex Parte Motion for an Order to Show Cause for the Entry of a Foreclosure Judgment Against Commercial Real Property. Palm responded to the verified complaint and the ex parte motion by filing a Motion to Quash Service of Process and an Amended Motion to Quash Service of Process. In these motions, Palm argued that its registered agent had a physical address discoverable through Florida's public records and, therefore, pursuant to section 48.031(6), substitute service of process was improper. The trial court rejected Palm's argument and entered a final judgment of foreclosure in favor of First Bank.

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<sup>1</sup>Section 702.10. Order to show cause; entry of final judgment of foreclosure; payment during foreclosure

(1) After a complaint in a foreclosure proceeding has been filed, the mortgagee may request an order to show cause for the entry of final judgment and the court shall immediately review the complaint. If, upon examination of the complaint, the court finds that the complaint is verified and alleges a cause of action to foreclose on real property, the court shall promptly issue an order directed to the defendant to show cause why a final judgment of foreclosure should not be entered. . . .

Any final judgment of foreclosure entered under this subsection is for in rem relief only. Nothing in this subsection shall preclude the entry of a deficiency judgment where otherwise allowed by law. . . .

A trial court's ruling on a motion to quash service of process is a question of law subject to a de novo standard of review. *Hernandez v. State Farm Mut. Auto. Ins. Co.*, 32 So. 3d 695, 698 (Fla. 4th DCA 2010). Because a statute allowing substitute service is an exception to the general rule requiring a defendant to be personally served, there must be strict compliance with the statutory requirements so as to protect a defendant's due process rights. *Id.*

In Florida, domestic and foreign corporations qualified to do business in the state are required to designate a registered agent and a registered office. §§ 48.091, 607.0501, 607.1507, Fla. Stat. (2009). Pursuant to section 48.081(3)(a), process against a private corporation may be served on its registered agent. If, as in the present case, the address provided for the registered agent is a private mailbox, service on a corporation may be made by serving the registered agent in accordance with section 48.031. See § 48.081(3)(b).<sup>2</sup>

Section 48.031(6) provides that "[i]f the only address for a person to be served, which is discoverable through public records, is a private mailbox, substitute service may be made by leaving a copy of the process with the person in charge of the private mailbox, but only if the process server determines that the person to be served maintains a mailbox at that location." Thus, substitute service on a corporation by

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<sup>2</sup>Section 48.081. Service on corporation

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(3)(b) If the address provided for the registered agent, officer, director, or principal place of business is a residence or private mailbox, service on the corporation may be made by serving the registered agent, officer, or director in accordance with s. 48.031.

serving the person in charge of a private mailbox is not authorized unless the only address for the person to be served, which is discoverable through public records, is a private mailbox. *TID Services, Inc. v. Dass*, 65 So. 3d 1 (Fla. 2d DCA 2010) (in order to perfect service of process on corporation by serving person in charge of mailbox store, plaintiff must establish: (1) that address of record of corporation's officers, directors, registered agent and principal place of business was private mailbox; (2) that only address discoverable through public records for corporation, its officers, directors, or registered agent was private mailbox; and (3) that process server properly determined that corporation, or its officers, directors, or registered agent maintained mailbox at that location).

At the hearing on Palm's motions to quash service of process, First Bank had the burden to establish that the only address for Palm and Quintana, discoverable through public records, was the private mailbox. See *Clauro Enters., Inc. v. Aragon Galiano Holdings, LLC*, 16 So. 3d 1009 (Fla. 3d DCA 2009); *Beckley v. Best Restorations, Inc.*, 13 So. 3d 125 (Fla. 4th DCA 2009). First Bank failed to meet that burden. Indeed, the only evidence presented on this matter was that Quintana's driver's license set forth an additional address that was discoverable through a public records search.

For the reasons set forth above, we reverse the final judgment entered against Palm. On remand, the trial court shall also vacate its order denying Palm's motions to quash service of process.

REVERED and REMANDED with directions.

ORFINGER, C.J. and SAWAYA, J., concur.