

Improper Service Puts Real Estate Title In Jeopardy

Amundsen Davis Real Estate and Financial Services Alert

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On June 17, 2021, the Illinois Supreme Court issued an opinion resolving a split in the appellate courts on whether or not a summons can be properly served in Cook County, Illinois by someone other than a Cook County Sheriff if the case is not one that was filed in Cook County. In affirming older precedent, the Supreme Court held that regardless of the county in which the complaint was filed, summons can only be served on a party in Cook County by the Cook County Sheriff unless the court enters an order appointing someone else as a process server for the case. This opinion may have a monumental effect on banking and real estate because the case at issue was a mortgage foreclosure case, and the Supreme Court's opinion just vacated the judicial sale of the property and remanded it back to the trial court.

A defendant must be properly served with a summons to appear in court or the court will not have jurisdiction over the defendant and can make no rulings for or against that defendant. In Illinois, the Cook County Sheriff must serve all summonses in Cook County unless there has been an order entered by the trial court appointing a special process server. A summons served in Cook County by someone other than the sheriff without an appointment by the court as a special process server is void, and the court does not have jurisdiction over that defendant.

The reasoning for the existence of this law is irrelevant for the purposes of this article, but the fact remains that improper service of a summons can completely unwind months, if not years of litigation that everyone likely thought was moving forward. In this most recent case, a mortgage foreclosure case will have to revert back to the beginning even though there is a claim that the property had already been sold to a third party.

Lenders and real estate buyers/sellers need to be aware of this case so that they can perform extra due diligence on any real estate at issue for them that may have been the subject of litigation at some time in the past. They need their counsel to ensure that any past litigation involving the property was completed properly and will not suddenly be subject to sales being vacated due to improper service of a summons.

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