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**OPINION, THIRD DISTRICT COURT OF
APPEAL STATE OF FLORIDA
(AUGUST 30, 2023)**

**THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

GAZUL PRODUCCIONES SL
UNIPERSONAL, ETC.,

Appellant,

v.

SHEDDF2-FL5 LLC, ETC.,

Appellee.

No. 3D22-878

Lower Tribunal No. 19-35002

Opinion filed August 30, 2023. Not final until disposition of timely filed motion for rehearing.

An Appeal from the Circuit Court for Miami-Dade County, Alan Fine, Judge.

Before: LOGUE, C.J., and HENDON and GORDO, JJ.

PER CURIAM.

Affirmed. *See Starks v. Howard*, 611 So. 2d 52, 53 (Fla. 3d DCA 1992) (“A party submits to the jurisdiction of the court and waives jurisdictional defects by taking

a step in the proceeding amounting to an appearance.”); *Laura M. Watson, P.A. v. Stewart Tilghman Fox & Bianchi, P.A.*, 162 So. 3d 102, 106 (Fla. 4th DCA 2014) (“Florida law is well established that service of process, and any defect in service of process, can be waived by the general appearance of a party before the trial court.”); *Parra v. Raskin*, 647 So. 2d 1010, 1011 (Fla. 3d DCA 1994) (“[W]hen a defendant waives an objection to insufficient service of process by failing to timely object, the defendant thereby consents to litigate the action and the court may not, either on the defendant’s motion or its own initiative, dismiss the suit for insufficient service of process.”).

**ORDER DENYING DEFENDANT'S MOTION
FOR RELIEF, CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA
(MAY 12, 2022)**

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

SHEDDF2-FL5 LLC,

Plaintiff(s),

v.

MUSIC ON WHEELS LLC, ET AL.,

Defendant(s).

Case No: 2019-035002-CA-01

Section: CA20

Before: Alan Fine,
Circuit Court Judge.

**ORDER DENYING DEFENDANT'S,
GAZUL PRODUCCIONES SL UNIPERSONAL,
MOTION FOR RELIEF FROM FINAL
DEFICIENCY JUDGMENT**

Docket Index Number: 306

THIS CAUSE came on to be heard before me, on April 26, 2022, upon Defendant's, Gazul Producciones SL Unipersonal, *Motion for Relief from Final Deficiency Judgment* (the "Motion") and the Plaintiff's *Response to Gazul's Motion for Relief from Final Deficiency Judgment* (the "Response"), and the Court having reviewed the file, the record evidence, hearing argument of counsel, and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED that the Motion be and the same is hereby DENIED for the reasons set forth in the transcript of the hearing that has been filed herein.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 12th day of May, 2022.

/s/ Alan Fine

2019-035002-CA-01

05-12-2022 1:41 PM

Circuit Court Judge

Electronically Signed

**BENCH RULING ON PERSONAL SERVICE,
HEARING TRANSCRIPT
(APRIL 26, 2022)**

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE
COUNTY, FLORIDA CIRCUIT CIVIL DIVISION

SHEDDF2-FL5, LLC,

Plaintiff,

v.

MUSIC ON WHEELS, LLC, ET AL.,

Defendants.

Case No.: 2019-035002-CA-01
Miami-Dade County Courthouse
Miami, Florida
Tuesday, April 26, 2022
2:00 p.m. - 2:37 p.m.

Hearing via Zoom in above-styled cause taken
before the Honorable Alan Fine, Judge of the
above-styled court, reported by Rinele Abramson,
Shorthand Reporter and Notary Public in and for
the State of Florida at Large, pursuant to Notice
filed in the above cause.

(Thereupon, the following proceedings were had):

THE COURT: This is Shedd-F2 versus Music on Wheels, et al., 2019-35002, although the defendant today is Gazul Producciones SL Unipersonal.

All right. Can I get appearances, please.

Do we have two court reporters?

THE COURT REPORTER: It looks like, Judge.

THE COURT: Okay. This is the defendant's motion, so which reporter was hired by Gazul?

MR. LITOW: We hired Veritext, Judge.

MR. SPUCHES: Apologies, Ms. Gumbar.

THE COURT: Okay. So, Mr. Litow, it's your motion.

MR. LITOW: Yes, sir.

It is Gazul's motion for relief from final deficiency judgment. We filed a motion with incorporated memorandum. I'm not going to regurgitate that to the court, and try to distill this down to its basics. And, Judge, I think the most important part of this is the time line.

So the complaint was filed on November 27, 2019. A week before the complaint was filed, Mr. Pagliery, who was the attorney for Gazul—not the trial attorney, but simply the attorney, general counsel, so to speak—advised the plaintiff that a gentleman who had been acting on the plaintiff's behalf—I'm sorry—had been acting on Gazul's behalf, or purported to act on Gazul's behalf, a Mr. Gervas, was no longer an agent of Gazul.

This notification is attached to Mr. Pagliery's declaration as Exhibit A. This letter went out a week before the complaint was filed.

When the complaint was filed a week later, the original summons to Gazul was directed to Gazul at its corporate office.

THE COURT: In Spain, in Madrid.

MR. LITOW: Yes.

THE COURT: And they served Gervas in Miami.

MR. LITOW: Yes, sir.

THE COURT: Right.

MR. LITOW: And that's exactly what happened.

So now we fast-forward to—up to this point in time, in fact, up to the next time period we are going on, which is the default, the default was entered against Gazul and the other co-defendants on April 23, 2020. Up to that point, no written document of any kind was filed in the court by Gazul.

Next thing that happens in this case relevant to this motion is that on May 22nd of 2020, Mr. Spuches placed—or one of the attorneys, counsel for plaintiff, placed Mr. Pagliery on the court's electronic docket as someone to receive copies of motions.

This was not done by Mr. Pagliery. It was done by Mr. Spuches actually, according to the letter from the court, which is dated May 22nd of 2020 at 7:19 p.m.

In any event, what happens next that's relevant is a hearing on August 4th. And it's a hearing—this was not reported. At the hearing on August 4th, to which Mr. Pagliery was—he uses the word “invited.” He received the e-notice of hearing

because Mr. Spuches had placed him on the court's notice list.

Mr. Pagliery appeared. The court, at the time, asked Mr. Pagliery whether he had any objection to the entry of the judgment.

Now, again, this is not reported, but according to Mr. Pagliery's declaration, because he was not appearing as counsel of record and had never appeared, and up to this point nothing was filed in writing on behalf of Gazul, Mr. Pagliery said, No, I have no objection, because he wasn't the attorney of record.

THE COURT: Was there something about Judge Thomas' JA reaching out to him and asking him to show up? Did I make that up? I thought I saw that somewhere.

MR. LITOW: I saw something about that. I can't tell you where it was. It's not in anything I filed.

THE COURT: Okay.

MR. LITOW: My understanding—

THE COURT: Where is Pagliery's affidavit? Where do I go to look for that?

MR. LITOW: It was a declaration. It was filed very recently. Let me bring up my docket sheet here.

It was filed right about the same time the motion was filed, Judge.

THE COURT: I got it. February 7th. Same day.

MR. LITOW: Yes, sir.

THE COURT: I got it.

MR. LITOW: So that's Mr. Pagliery's declaration.

So up until this point, there was still nothing in writing filed on behalf of Gazul, and there was no discussion at the hearing whatsoever about service of process.

Now, the case continued along and a bunch of events happened. At no time in this case up through today has any document been filed on behalf of Gazul except the following. Kozyak Tropin filed a notice of special appearance without waiving service of process or agreeing to jurisdiction, number one, and also filed a motion to vacate.

Sometime later—

THE COURT: I think I heard that, but motion to vacate what?

MR. LITOW: Motion to vacate the default.

THE COURT: Okay. And that motion was denied; right?

MR. LITOW: I don't think it was ever heard.

MR. SPUCHES: Which motion?

THE COURT: Motion to vacate default.

MR. SPUCHES: There was a motion to quash the default.

MR. LITOW: That's it. Mr. Spuches is right. But I don't believe that motion was ever heard.

MR. SPUCHES: Well—

MR. LITOW: And Mr. Spuches will correct me if I'm wrong, but I don't believe it was ever heard.

MR. SPUCHES: If you don't mind, I'll address it at the end. I'll let you finish everything.

MR. LITOW: Okay. I don't believe the motion was ever heard.

I came in a substantial period of time later, filed a notice of special appearance. And also, again, this time filed a motion to vacate the ultimate deficiency judgment that was filed. And that's what this hearing is, the motion for relief from the final deficiency judgment.

So the only physical papers ever filed on behalf of Gazul was notice of special appearance, a motion to quash and a motion to vacate.

Now, there are a number of orders that were entered that I'm sure opposing counsel will point out to the court where the court specifically stated that there was valid service of process over all the defendants.

However, there was never any hearing about service of—where service of process was an issue that was contested at all by—or attended at all by Gazul.

So you've got the statements and orders that were prepared by plaintiff counsel's office, submitted to the court, which the judge signed, says there was valid service. But, A, service was never an issue because it was just never discussed. There was never a hearing on it.

And, number one, those statements are in dehors of the record, because the record shows that the only service of process was on Mr. Gervas, and at his home address, not on—and after the plaintiff

was advised that Mr. Gervas was no longer an authorized representative of Gazul.

Now, the case law, which Your Honor has reviewed my motion—so the case law is clear that the service of process statute is going to be strictly construed. There was certainly no valid service of process.

Now, what I anticipate plaintiff arguing is, well, you had Mr. Pagliery at the hearing that was not instituted by him. He was added to the certificate of service. Whether or not the clerk—the JA actually got him on the phone, I can't state for a fact. I'm not going to state it to the court unless I know it for a fact. But there has been some information out there about that.

But in any event, again, the court—so what actions do we have that Gazul took? The only actions that Gazul took were attending the hearing—because Mr. Pagliery received the notice of hearing. Attending the hearing and the court inquiring whether or not Gazul had an objection. Because they weren't appearing in the case and they weren't appearing because it was improper service of process, of course Mr. Pagliery said, I have no objection.

He wasn't going to inject himself into the case and have an appearance be made on behalf of Gazul. That's what we have got.

Now, there is case law we've cited in our memo—I'm not going to regurgitate it again to the court, but there is case law we—

THE COURT: I know what the standard is.

MR. LITOW: Yes, sir. Yes, sir.

And, again, I don't want to take the court's time excessively.

THE COURT: Listen, I understand your side of the case. I mean, in summary, it's that your client was never properly served. There was never a need to appear in court because there was no service. You're entitled to vacate any default or judgment based on the default at any time if there was no legal service of process.

I mean—

MR. LITOW: Yes, sir.

THE COURT: Yeah.

And by the way, let me clear up—I think the question I asked about Mr. Pagliery receiving a call from the judge's chambers. In his affidavit, he says, at paragraph 13, "As a result of being placed on the service list by someone else, I received an e-mail notification from the court requesting my presence at a hearing before Judge Thomas on August 4, 2020." And he, therefore, appeared.

So that's automatic in CourtMAP. Once a notice of hearing goes out, it goes to everyone on the service list he maintained by e-service. So if his name was on there, he got it. I understand the substance of his affidavit.

MR. LITOW: Yes, sir.

THE COURT: I'll let you have an opportunity for rebuttal, but I understand your argument.

Now I'm going to hear from Mr. Spuches.

This is a very confused situation, but go ahead.

MR. SPUCHES: Thank you, Your Honor. Christopher Spuches with the law firm Agentis, for the plaintiff.

There's a few points I want to respond to, and then I'll sort of get into more argument.

First, Mr. Litow argued that Mr. Pagliery told us, please don't deal with Mr. Gervas because he doesn't have authority anymore. But that's not how it works.

So in other words, anybody that e-mails us and says, hey, this guy doesn't have authority anymore, we're supposed to just take somebody's word for it?

We had a corporate document where this person was the person to serve. So simply an e-mail from an attorney saying "Don't serve that guy" is not enough.

But that's not going to matter, but I just wanted to respond to that.

THE COURT: But before you move on to what happened in court, what document is it that you have that says that Juan Gervas was a registered agent or authorized person to receive service of process?

Because I've seen something that shows him the manager of a different corporation with a different individual as the manager for Gazul. But I don't know what the corporate records show or—I mean, if he is listed, or was on the date of service, listed as the manager of the LLC or the foreign

entity and he was in Florida, you know, then that's good service.

But if he wasn't, then he wasn't.

And I agree with you. Getting an e-mail from somebody that says he's been dismissed from his position, it's not definitive. If he was, he was. If he wasn't, he wasn't.

MR. SPUCHES: Your Honor, to answer that question, I don't have that document in front of me. I can dig it up when Mr. Litow is talking. It's a Spanish document that's sort of like certificate of authority.

THE COURT: Okay.

MR. SPUCHES: But I can dig it up. I know I have it.

THE COURT: Okay.

MR. SPUCHES: In any event—

THE COURT: And the date of service here was like Thanksgiving-ish?

MR. SPUCHES: The date of service?

THE COURT: Yeah.

MR. SPUCHES: I have the actual service here, so let me grab that.

THE COURT: While you are looking for that, I'll ask the court reporter a question that's not on the record.

(A discussion was held off the record.)

MR. SPUCHES: I'm 99 percent sure it was January, not November—

THE COURT: Okay.

MR. SPUCHES: —but I'm looking as we speak.

Here is the return of service of Music on Wheels.
Here is for Alja.

For Gazul, it was January 7, 2020.

THE COURT: Okay.

MR. SPUCHES: So in terms of whether the motion to quash was heard, I wanted to point something out.

I put in our motion that it was heard on September 14, 2021, and I cited to Docket Entry 201 because that's a motion for hearing—I'm sorry, a notice of hearing on that motion.

As I was preparing for this, I realized that there was another notice of hearing, an amended notice of hearing, which appears to have taken that motion down. So I just wanted to correct that because I don't want this motion to be inaccurate.

However, it came up at prior hearings. And the court alluded to it in the order granting us the deficiency judgment and in the final judgment, and referred to our response to the motion to quash in both the order and the judgment and referred to the default in both.

So is there a specific solitary order just on the motion to quash, no, I don't think that that exists.

THE COURT: So take me to the first order that, you know, denies it implicitly apparently, if that's your argument.

MR. SPUCHES: Sure.

THE COURT: The order that Judge Thomas entered.

MR. SPUCHES: I guess that would be the default final judgment, which is Docket Entry 33.

THE COURT: 33.

MR. SPUCHES: Pardon me, Your Honor?

THE COURT: Docket Entry—it's not 33.

MR. SPUCHES: I have—let me see here.

THE COURT: What's the date?

MR. SPUCHES: 3/26/2020.

THE COURT: Oh, maybe it is. Well, but how—oh, the motion to quash was set for hearing afterwards.

I mean, it wasn't—the motion to quash wasn't filed until September of '21, so the default final judgment could not have adjudicated it if it was 2020.

MR. SPUCHES: Oh, no. I was going further back as to the first time the court addressed the issue of the default and the service. That would be this.

THE COURT: Basically there was a motion for default, the default was entered, the affidavits were filed, the court entered default final judgment.

There was not yet an issue about the validity of the service?

MR. SPUCHES: Correct.

THE COURT: Right. Okay.

MR. SPUCHES: Okay. So that judgment gets entered.

Subsequently, two additional iterations of that judgment are entered. One, I believe on 9/8/2020;

that's Docket Entry 35. And then Docket Entry 38 is on 10/20/2020.

Those are orders—

THE COURT: That's very strange.

MR. SPUCHES: Well, they didn't file a motion to quash until, I think, January of the next year, I believe, if I have that correctly.

Yes, January 7, 2021. That's when the motion to quash was filed. I think they probably wanted to get it in within a year of the service date, but that's just a guess, though.

But if the court would look at the—first the default final judgment, which is Docket Entry 35—

THE COURT: I'm looking at that. That's very strong.

MR. SPUCHES: Yeah, the court says—

THE COURT: After having entered it. In other words, the court entered the default final judgment in August—excuse me, September 8th. And then on October 20th, enters an order granting the motion for default final judgment.

MR. SPUCHES: Right. And if the court looks at the actual order, which is Docket Entry—

THE COURT: I know it says at the September 22nd hearing, "Sergio Pagliery appeared for the defendants and did not object to a sale date being set by this court when asked."

Listen, I can understand—I wasn't there, and apparently there is no transcript, but I can understand where Pagliery shows up because he got a notice from the court to show up. And he

says, Well, I represent the defendants, because he does, but maybe he clarified, but not sufficiently for the judge, that he hasn't entered an appearance in the case, doesn't know why he is there.

He is objecting to service. I don't think he probably said anything about objecting to service, but he didn't move to set aside a default, which he was on notice of by that time.

Wouldn't you agree he was at least on notice of the default by that time—

MR. SPUCHES: Well, not only that, Your Honor—

THE COURT: —motion for default final judgment?

MR. SPUCHES: I copied him on everything. He asked for the complaint, I sent it to him. When I filed a motion for default, I sent it to him. When I moved for final default judgment, I sent it to him. There is a trail that I put in my motion. He was noticed on everything in this case.

Not only that, I noticed him on the language of these judgments before they were entered, which specifically said, your clients were served and were defaulted.

And he went in front of the judge—and if you look at Docket Entry Number 38, which is the amended default final judgment entered on 10/20, what it says is, "Defendant's counsel appeared and advised the court that the defendant had no objection to the sale or the sale date, and acknowledged that the mortgagor—which is Gazul—had tendered possession of the mortgaged property to plaintiff."

And then it says, “On the evidence presented, the court finds that service of process was duly effectuated on the defendants who were subsequently defaulted by this court.”

Mr. Pagliery got notice of this both before it was entered and after and never objected to it.

Now, this was beneficial to Gazul. The entry of this judgment was beneficial to Gazul. The reason I say that is because we had been in negotiations with Mr. Pagliery for quite some time, in fact, since around Thanksgiving of the year before. And they did not want default interest to keep running because it was running at 25 percent.

So one of the reasons they wanted this judgment entered was because that would drop the rate down from 25 percent to—

THE COURT: The legal rate.

MR. SPUCHES: —which is 5 or 6 percent or something.

So this was advantageous for them to agree to this, and they agreed to it.

So what happens next? They filed their motion to quash months later, after already having appeared like this, and consenting to the jurisdiction of the court, never objecting to any of the language.

Then we have a big fight about the deficiency. And they kind of straddle the fence until they lose that. And now when they lose that, they come in and say, Hey, we weren’t served properly.

But the interesting thing is, Judge, they are only asking to vacate the deficiency judgment.

And, Mr. Litow, correct me if I'm wrong on that.

But that's what the motion appears to be to me, which doesn't vacate any of the other judgments. And the other judgments say that they were served properly and defaulted. And when you are defaulted, you admit all the well-pled allegations.

So I think it's procedurally defective because I think the motion to quash was ostensibly denied and had to be appealed and wasn't. And I think it's procedurally defective because they are not asking for the correct judgment to be vacated.

But besides all of that, Mr. Pagliery was on notice every way a person can possibly be on notice. Appeared at these hearings, never objected to the language that his clients were served, and did not file anything in response, certainly not exhibiting any sort of diligence to get these vacated.

And so that's why the judge ruled the way that the judge ruled, and that's the judge has—the former court denied a motion for reconsideration and why this court denied a motion for re-hearing.

These issues have all come up over and over again. Mr. Robinson raised this issue at the evidentiary hearing. The service issue came up at the evidentiary hearing. So it's not like the court hasn't heard this before.

So for these reasons, Your Honor, for the procedural defects and because, on the merits, this motion should be denied, we ask the court to deny the motion for relief from the judgment.

THE COURT: Thank you.

Mr. Litow?

MR. LITOW: Briefly, Your Honor.

I think most telling is the fact that the plaintiff never—there has been no argument and no evidence presented that Gazul ever consented to service of process, or Mr. Pagliery ever consented to service of process on behalf of Gazul.

And Mr. Spuches is absolutely correct. Mr. Pagliery was aware, by virtue of being on that e-notice, of all the proceedings that occurred. We'll stipulate to that.

However, being aware of proceedings does not mean you've injected yourself into proceedings to the extent that the law deems you to have waived service of process.

In fact, the case law that we've cited in our motion that Your Honor has read says basically—even had Mr. Pagliery filed documents that didn't seek affirmative relief, that does not constitute a waiver of the necessity of proper service of process.

Going back to the original argument I made, and that is, these statutes have to be strictly construed, and burden is on the plaintiff to prove proper service.

Now, there has been some discussion about whether Mr. Gervas was or wasn't the proper agent for service of service. And Mr. Spuches says that the document he relied on is in Spanish. Well, that's not a record to the Secretary of State of Florida, certainly if the document is in Spanish.

THE COURT: It doesn't have to be because it's not a Florida corporation. I mean, if it's a Spanish corporation and the appropriate document for that entity, of course it should be in Spanish. And if it names him as somebody authorized to receive service of process or puts him in a position equivalent to that, which is the manager of an LLC . . .

Anyway—

MR. LITOW: But does that last forever? So once that document is—

THE COURT: No. It lasts until the document is officially changed or modified.

MR. LITOW: I would submit to the court that Mr. Pagliery's letter to Mr. Spuches said he is no longer an employee.

THE COURT: That's a representation of the lawyer of the company that he is not authorized. But what makes him not authorized is changing his name with what would be the Secretary of State in Florida as a registered agent.

Yeah, I said "Secretary of State." The Department of the State of Florida has a registry. The company names its registered agent. You can change it from time to time.

If they hadn't done it, then all Pagliery's statement is an intention to do it. But saying it was done doesn't carry much weight. It either was done or wasn't done.

MR. LITOW: Well, I don't know. I haven't seen—it could be there. I haven't seen this document that

plaintiff is referencing. If it's not in the record, it's not in the record. And if it's not in the record, how can it be relied on in opposition to this motion?

THE COURT: That's a good question.

MR. SPUCHES: Well, I'll see if it's in the record. But specifically, I'm not relying on that whatsoever. Because what I'm relying on is Mr. Pagliery and the defendants—him appearing at hearings for the defendants and saying he is appearing for the defendants.

And if you look at what the case law says, there's a Third DCA case that came out two months ago. It's *Allstate Mortgage Solutions Transfer v. Bank of America*. It's 2022 WL301663.

And it cites to a bunch of Third DCA, Second DCA and Florida Supreme Court cases which say that a defendant can voluntarily appear in a case and submit to the court's jurisdiction in any number of ways, ranging from failure to timely object to personal jurisdiction, to submission implied from conduct, to express consent to the prosecution of a case before the court. *Cites Babcock v Whatmore*, which is 707 So.2d 702. It's a Florida Supreme Court case from Florida, 1998.

So what the Third DCA and the Florida Supreme Court is saying is, you can't just continually appear at hearings like this. You say you're with the defendants, you represent the defendants, you have no objection to this order and this judgment being entered. Both the order and the judgment said the defendants were validly served with process and were defaulted.

You can't not object to the entry of that, and then take it back later and say, Well, now that things didn't go the way we wanted it to with the deficiency judgment, we're going to challenge everything, including service.

That is submission implied by conduct, which the Third DCA, three months ago, expressly said waives any jurisdictional question by a defendant. And that's exactly what happened here.

MR. LITOW: Judge, that Third DCA case, the Allstate Mortgage, is not on point because in that case, the defendants at issue actively filed written motions. So there was conclusive record on what was stated and requested and by whom.

We don't have any written motions other than those attacking service filed by Gazul in this case.

The case is distinguishable. It's not on point.

THE COURT: But attacking service when? I mean, long after the—

MR. LITOW: The case provides we can attack service at any time. I mean, there is no case law that says you have to attack service within a certain period of time, you know, before judgment is entered, after judgment is entered.

You can attack service because if the court—if there is no valid service, the court doesn't have jurisdiction. If there is no jurisdiction, as set forth in the cases we cite, there is no—no order could possibly be binding. And it could be attacked at any time, which is exactly what Gazul has done.

THE COURT: You know, one of the interesting things about my job is you always look for cases that will dictate the result. And there is no hearing with good lawyers where there is such a case because the facts of the case being argued fall in between—maybe closer to one than the other—that's how I make decisions—but, you know, it falls in between because you have conflicting principles here.

MR. LITOW: Imagine our frustration, Judge. At least you get to make the rules.

THE COURT: I don't make the rules. I guess I make the rulings. Believe me, there are rules I don't like.

I'm going into a hearing at 3:00 and adjudicate a motion that—the portion that I'm going to deal with is probably a \$50 million issue, and someone is going to lose on that. And it's based on an application of a doctrine that, if I were a legislature, I'd make it different.

But I'm doing my best to interpret the law as I found it, not the way I think it ought to be. Which is one of the reasons why I never want to be an appellate judge because I'd be way too tempted to start writing what I think the law should be.

In any event, you have conflicting principles here. As of right now, the plaintiff has not shown they served a person authorized to be served. Unless that registry is in the record, then there is no record evidence that he was the right person to be served.

On the other hand, the party doesn't have to actually be served in order for a default or a judgment to be entered against it if they appear.

So I think the way to frame the issue here is whether or not Mr. Pagliery's appearance on September 22nd and the statements that are recorded in the amended default final judgment are sufficient to be a waiver of the obligation of service of process.

And if this is his first appearance in the case, he is obligated to state something in order to avoid waiving it.

If he hadn't shown up and completely ignored the procedure, you could attack this at any time. But it seems to me, based on language in the amended default final judgment, that that constituted a waiver of the obligation to serve process.

I note this is a very usual situation, because his showing up was prompted by an act that—he did not register for e-service. I accept his affidavit on that. And if it was Mr. Spuches who put him on there, fine. I don't take it that there is anything improper by putting him on there except that it may have misled the court into thinking he had filed something of record previously or that he had entered a notice of appearance.

Because now that I—until today, I would always assume that if a lawyer shows up because they received an e-notice, that it's because they themselves or someone from their firm registered them for it because they wanted to actively participate in a case.

But in an abundance of caution to make sure that he got all the orders, if opposing counsel put his name on there, so be it. That has no legal significance, and I can see how he shows up.

But if he objected to proceeding, he should have said—and I have to say that I'm going to rely on the accuracy of what Judge Thomas put in the amended default final judgment.

When was the first attempt to set it aside?

First of all, nobody has ever attempted to set this one aside; right?

MR. SPUCHES: No, Your Honor.

MR. LITOW: That's correct.

THE COURT: All right. Well, then I think the defendant is stuck with that. You know, that he could have, upon receipt of this, said, Oh, no. No, you misunderstand. I showed up because I thought I was ordered to show up. I haven't entered an appearance. Gazul maintains its objection to service. We are going to move to vacate the default.

And they had the opportunity, they knew about it and they didn't do it. So I'm going to deny the motion. Bottom line.

MR. SPUCHES: Thank you, Your Honor.

THE COURT: But, Mr. Spuches, I'll ask you to draft it. I do want you to lay all of this out, you know, that there is no record of the hearing other than what the judge wrote in the amended default final judgment, but that this court presumes that it's accurate for two reasons: One, it's of record;

and, two, it wasn't—there was no motion to set it aside or vacate it or correct it.

Pagliery showed up, said whatever he said, the judge wrote what he wrote. And then if Pagliery had an issue with it, he could have immediately sought to clarify, limit or something. In fact, he could have said, We object to service. So no valid service has been made. And, therefore, we object to any judgment against us. However, we don't object as a non-party, or we don't object to the foreclosure sale.

Now, was Gazul the title owner or guarantor?

MR. LITOW: Title owner, Your Honor.

THE COURT: Okay.

Well, if you don't object to the sale, I don't know how you can object to the—I mean, if you don't object to the entry of the default judgment and a sale, and you specifically say so, I don't know how you can reserve an objection on a deficiency at some other date on the basis of jurisdiction.

If there is an legal argument to avoid deficiency—you know, and I know there are some, but I don't—but that's not what's being raised here. The only argument being raised is lack of jurisdiction.

So lay it all out there, Mr. Spuches. Send it to Mr. Litow so that if it's appealed, the appellate court has the benefit of all the information in front of me.

MR. SPUCHES: Sure. We will do that, Your Honor.

And if I could just ask Ms. Abramson if we could order this for delivery, maybe three days.

THE COURT REPORTER: Of course.

THE COURT: He wants a hybrid rate. He doesn't want to pay overnight, but he's willing to pay more than standard.

THE COURT REPORTER: I can accommodate that.

Mr. Litow, would you like a copy?

MR. LITOW: Yes, ma'am.

THE COURT REPORTER: For three days as well?

MR. LITOW: That would be great.

THE COURT: Counsel, take care.

(Thereupon, the proceedings were concluded at approximately 2:37 p.m.)

**AMENDED DEFAULT FINAL JUDGMENT,
CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA
(OCTOBER 20, 2020)**

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SHEDDF2-FL5 LLC,

Plaintiff(s),

v.

MUSIC ON WHEELS LLC, ET AL.,

Defendant(s).

Case No: 2019-035002-CA-01

Section: CA20

Before: William Thomas,
Circuit Court Judge

AMENDED DEFAULT FINAL JUDGMENT

THIS ACTION was heard on August 4, 2020 on Plaintiff's Motion for Judgment of Foreclosure (the "Motion"), and again on September 22, 2020, in order to obtain a sale date. At the September 22, 2020 hearing, Defendants' counsel appeared and advised the Court that the Defendant had no objection to the sale or the

sale date, and acknowledged that the mortgagor had tendered possession of the mortgaged property to the Plaintiff. The parties also all acknowledged that the mortgaged property is vacant and no longer occupied by the mortgagor or any other party.

On the evidence presented, the Court finds that service of process was duly effectuated on the Defendants, who were subsequently defaulted by this Court on April 21, 2020.

IT IS ORDERED AND ADJUDGED that the Motion is GRANTED against all of the Defendants, MUSIC ON WHEELS LLC, GAZUL PRODUCCIONES SL UNIPERSONAL, and ALJA PRODUCTIONS, INC as follows:

1. Amounts Due and Owing. Plaintiff is due from each of the above Defendants, jointly and severally, the following amounts:

Principal the note secured by the mortgage foreclosed: \$7,000,000.00

Regular interest (through 10/15/2020):
\$44,722.22

Default interest (10/16/2017-8/4/2020):
\$ 4,860,487.68

Appraisal fees: \$ 1,200.00

Attorneys' fees and costs: \$ 88,313.94

Credit: (\$ 33,541.67)

Escrow balance: (\$ 9,286.32)

GRAND TOTAL: \$11,951,895.85

2. Interest. The grand total amount referenced in paragraph 1 shall bear interest from this date

forward at the prevailing legal rate of interest under § 55.03 which is 6.03%.

3. Lien on Property. Plaintiff, whose address is 1521 Alton Road, 529, Miami Beach, Florida 33139, holds a lien for the grand total sum superior to all claims or estates of the Defendants on the following described property in Miami-Dade County, Florida:

Lot 12 in Block 15 of SUNSET LAKE SUB-DIVISION, according to the plat thereof, as recorded in Plat Book 8, Page 52 of the Public Records of Miami-Dade County, Florida.

Property address: 2050 North Bay Road, Miami, Florida 33139.

4. Sale of Property. If the grand total amount with interest at the rate described in paragraph 2 and all costs accrued subsequent to this judgment are not paid, (1) the Clerk of the Courts shall sell the subject property at public sale. Pursuant to Administrative Order 09-18, the Clerk of the Courts for the Eleventh Judicial Circuit is authorized to conduct online public auctions of real property in lieu of on-site auctions. If the property is sold by the Clerk of the Courts at public sale, the Clerk of the Court shall conduct the sale online at www.miamidade.realforeclose.com commencing at 9:00 a.m. on November 9, 2020, to the highest bidder for cash. The Court reserves jurisdiction to enter orders relating to the sale, including, without limitation, orders directing the Clerk of the Courts to issue a certificate of sale and/or certificate of title in favor of the winning bidder.

5. Costs. Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them if plaintiff is not the purchaser of the property for sale,

provided, however, that the purchaser of the property for sale shall be responsible for documentary stamps affixed to the certificate of title. If Plaintiff is the purchaser, plaintiff's bid shall be credited with the total sum with interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full.

6. Distribution of Proceeds. On filing the Certificate of Title, the proceeds of the sale, so far as they are sufficient, shall be distributed as follows: first, all of the Plaintiff's costs; second, documentary stamps affixed to the Certificate; third, Plaintiff's attorneys' fees; fourth, the total sum due to the Plaintiff, less items paid, plus interest at the rate prescribed in paragraph 2 from this date to the date of the sale; and fifth, according to further order of this Court.

7. Right of Redemption/Right of Possession. Upon filing of the Certificate of Sale, Defendants and all persons claiming under or against Defendants since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the property, except as to claims or rights under Chapter 718 or Chapter 720 of the Florida Statutes, if any. The Defendants have waived any and all rights they had under Fla. Stat. § 45.031 and §45.0315. Upon filing of the Certificate of Title, the person named on the Certificate of Title shall be let into possession of the property, subject to tenant protections in compliance with the provisions of Fla. Stat. § 83.561.

8. Attorneys' Fees. Because a default has been entered against the mortgagor, and because the fees requested do not exceed 3% of the principal amount owed at the time the complaint was filed, it is not

necessary for the Court to hold a hearing or adjudge the requested attorneys' fees to be reasonable. *See* § 702.065(2), Fla. Stat. ("In a mortgage foreclosure proceeding, when a default judgment has been entered against the mortgagor and the note or mortgage provides for the award of reasonable attorney's fees, it is not necessary for the court to hold a hearing or adjudge the requested attorney's fees to be reasonable if the fees do not exceed 3 percent of the principal amount owed at the time of filing the complaint, even if the note or mortgage does not specify the percentage of the original amount that would be paid as liquidated damages. Such fees constitute liquidated damages in any proceeding to enforce the note or mortgage.").

9. Jurisdiction. The Court retains jurisdiction of this action to enter further orders that are proper, including, without limitation, orders directing the Clerk of the Courts to issue a certificate of sale and/or certificate of title in favor of the winning bidder, enforcement of the judgment, writs of possession, and deficiency judgments (and all orders relating to the deficiency judgment). IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT. IF YOU ARE A SUBORDINATE LIEN HOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN SIXTY (60) DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 20th day of October, 2020.

/s/ William Thomas
2019-035002-CA-01
10-20-2020 1:29 PM
Circuit Court Judge
Electronically Signed

**ORDER DENYING MOTION FOR REHEARING,
THIRD DISTRICT COURT OF APPEAL,
STATE OF FLORIDA
(FEBRUARY 7, 2024)**

THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

GAZUL PRODUCCIONES SL
UNIPERSONAL, ETC.,

Appellant,

v.

SHEDDF2-FL5 LLC, ETC.,

Appellee.

No. 3D22-878

Lower Tribunal No. 19-35002

Opinion filed February 7, 2024.

An Appeal from the Circuit Court for Miami-Dade
County, Alan Fine, Judge.

Before: LOGUE, C.J., and HENDON
and GORDO, JJ.

PER CURIAM.

ON MOTION FOR REHEARING

We deny appellant's motion for rehearing, clarification, written opinion and certification. We withdraw our original opinion, and substitute the following opinion in its stead:

Affirmed.

**ORDER DENYING MOTION
FOR REHEARING EN BANC,
THIRD DISTRICT COURT OF APPEAL,
STATE OF FLORIDA
(FEBRUARY 7, 2024)**

IN THE DISTRICT COURT OF APPEAL OF
FLORIDA THIRD DISTRICT

GAZUL PRODUCCIONES SL,
UNIPERSONAL, ETC.,

Appellant(s),

v.

SHEDDF2-FL5 LLC,

Appellee(s).

3D2022-0878

Court Case No. 19-35002

Upon consideration, Appellants' Motion for Rehearing En Banc is hereby denied.

LOGUE, C.J., and HENDON and GORDO, JJ., concur.

A True Copy
ATTEST

/s/ Mercedes M. Prieto
3D2022-0878 2/7/24]
Clerk District Court of Appeal
Third District

CC: Mathew Daniel Gutierrez
Laurence Stephan Litow
Leslie Rothenberg
Andrew Todd Sarangoulis
Christopher B. Spuches
Peter Charles Vilmos

LA

**DEFENDANT GAZUL PRODUCCIONES
SL UNIPERSONAL'S MOTION TO
QUASH SERVICE OF PROCESS AND
VACATE DEFAULTS
(JANUARY 7, 2021)**

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE
COUNTY, FLORIDA CIRCUIT CIVIL DIVISION

SHEDDF2-FL5 LLC
a Florida Limited Liability Company,

Plaintiff,

v.

MUSIC ON WHEELS LLC, a Florida Limited
Liability Company, GAZUL PRODUCCIONES SL
UNIPERSONAL, a Spanish Limited Liability
Company, and ALJA PRODUCTIONS, INC.,
a Florida Corporation,

Defendants.

Case No.: 2019-035002-CA-01

**DEFENDANT GAZUL PRODUCCIONES
SL UNIPERSONAL'S¹ MOTION TO
QUASH SERVICE OF PROCESS AND
VACATE DEFAULTS**

Appearing specially, Gazul Producciones SL Unipersonal respectfully requests this Court quash service of process and, therefore, vacate the defaults entered against it in these proceedings.

Plaintiff SHEDDF2-FL5, LLC filed a complaint seeking foreclosure and other causes of action against Gazul and two other co-defendants. *See generally* Complaint. As acknowledged in the complaint, Gazul is a foreign limited liability company. Compl. at ¶ 4 (“The Second Borrower [i.e., Gazul] is a Spanish limited liability company that owns the real property”).

Pursuant to Florida Statues, Section 48.602, service on a foreign limited liability company may be made upon (1) its registered agent; (2) its member, if it is a member-managed LLC; (3) its manager if it is a manager-managed LLC; or (3) a designated employee if and only if the member or manager is not available during regular business hours. § 48.062(1), (2)(a)-(c), Fla. Stat. Only after one attempt has failed to serve any of the above individuals may process be served “on the person in charge of the limited liability company during regular business hours.” § 48.062(2)(c), Fla. Stat.

Plaintiff’s pleadings submitted to this Court indicate that Gazul had a “sole” administrator: Juan Ramon Ramirez Lozano (“Mr. Lozano”). *E.g.*, Compl., Ex. C at 17. This is an excerpt from the January 2009

¹ Gazul enters this special appearance and does not waive the obligation to be served with process in this action.

mortgage and security note filed as Exhibit C to the complaint:

IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year above first written.

Witnesses:


Print Name: Juan Gervas
Print Name: Cristina Jimenez

GAZUL PRODUCCIONES SL
UNIPERSONAL, a Spanish ~~corporation~~
limited liability company

By: Juan Ramon Ramirez Lozano
Title: Sole Administrator

Id. Those same pleadings indicate that a Juan Gervas (“Mr. Gervas”) was the manager for another defendant in this action: Music on Wheels, LLC. *See* Ex. A at p. 7. That instrument reads:

LENDER EXTENDING CREDIT TO MAKER. FURTHER, MAKER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF LENDER, NOR LENDER'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE THAT LENDER WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION.

MUSIC ON WHEELS, LLC, a Florida
limited liability company

By: Juan Gervas
Title: Manager

GAZUL PRODUCCIONES SL
UNIPERSONAL, a Spanish limited liability
company

By: Juan Ramon Ramirez Lozano
Title: ~~Sole~~ Administrator

Id.

Plaintiff purported to serve Gazul with process on January 6, 2020. *See* Return of Service (Gazul), filed January 8, 2020. According to the return of service, Plaintiff made one attempt to serve Gazul, but it served Mr. Gervas—not Mr. Lozano—as the “manager” for Gazul. *See id.* The return of service reads in relevant part:

I, Ana Baltazar, do hereby affirm that on the 7th day of January, 2020 at 7:00 pm, I:

Served a CORPORATION by delivering a true copy of the **Summons and Complaint for Foreclosure and Other Relief with Exhibits** with the date and hour of service endorsed there by me, to: **Juan Gervas as Manager** for GAZUL PRODUCCIONES SL UNIPERSONAL, at the address of: **935 NE 76 ST, Miami, FL 33138**, and informed said person of the contents therein, in compliance with state statutes.

Id.

Based on this purported service of process, Plaintiff applied for and acquired a number of clerk's default and/or foreclosure defaults against Gazul. Those orders include, without limitation, the following: (1) April 23, 2020 Default; (2) the August 26, 2020 Default Final Judgment; (3) the September 8, 2020 Default Final Judgment; and (4) the October 20, 2020 Amended Default Judgment (collectively, the "Defaults"). Because those orders are void (or at the least, voidable), Gazul hereby requests this Court vacate the Defaults as to Gazul.

MEMORANDUM OF LAW

"[S]tatutes governing service of process are to be strictly construed and enforced." *Shurman v. Alt. Mortg. & Inv. Corp.*, 795 So. 2d 952, 954 (Fla. 2001). "When a process server fails to strictly comply with these rules, service must be quashed." *Brown v. U.S. Bank Nat'l Ass'n*, 117 So. 3d 823, 824 (Fla. 4th DCA 2013).

“Florida courts have recognized a distinction between a judgment that is void for ‘total want of service’ and one that is voidable based on ‘irregular or defective service.’” *Sewell v. Colee*, 132 So. 3d 1186, 1188 (Fla. 3d DCA 2014). “A void judgment lacks legal force or effect and may be vacated at any time.” *Id.* “By contrast, a voidable judgment must be attacked under Florida of Civil Procedure 1.540(b) within one year” *Id.* The Third District Court of Appeal vacated a judgment where a plaintiff improperly served a defendant’s attorney with service of process instead of the defendant. *See id.* (holding that the lack of service “may constitute a ‘total want of service,’ rendering the judgment void).

Absent service of process, this Court lacked jurisdiction over Gazul. *See Sams Food Store, Inc. v. Alvarez*, 443 So. 2d 211, 212 (Fla. 3d DCA 1983). The Third District has held that “[u]pon finding that the defendant had never been served with process, the trial court was required to conclude as a matter of law that the default was entered without jurisdiction over the defendant.” *Id.* (reversing order that had refused to set aside a default); *see also id.* (“In short, the sufficient service of process initiates a case in the trial court, and until the case has been properly initiated, no determination of the adverse claims of the parties may be made.”).

Pursuant to *Sewell* as well as Florida Rule of Civil Procedure 1.540(b), Gazul requests that this Court vacate the judgments due to the lack of service of Gazul. *See also Weiss v. Mashantucket Pequot Gaming Enters.*, 935 So. 2d 69, 70-71 (Fla. 3d DCA 2006) (holding that a party may move to vacate a void judgment under Florida Rule of Civil Procedure 1.540(b)(4)).

Each of the Defaults were entered less than a year after the present motion.

Here, by Plaintiff's own admissions in its pleadings, it did not serve Gazul. Under Florida Statues, Section 48.602, service on a foreign limited liability company may be made upon (1) its registered agent; (2) its member, if it is a member-managed LLC; (3) its manager if it is a manager-managed LLC; or (3) a designated employee under circumstances not at issue here. § 48.062(1), (2)(a)-(c), Fla. Stat. Plaintiff served none of the above, and instead, Plaintiff served Mr. Gervas, the manager for another one of the defendant LLCs. *See* Return of Service; *see also* Decl. of S. Pagliery, attached as Exhibit A. As such, the Defaults are all void as to Gazul, the only entity who owned the property purportedly foreclosed upon by the Defaults at issue. Gazul thus respectfully requests that this Court vacate the Defaults.

CONCLUSION

Because the Plaintiff failed to serve Gazul with process, this Court lacked jurisdiction over Gazul to enter any of the Defaults. Those defaults should respectfully be vacated as to Gazul.

Certificate of Good Faith Conference

Pursuant to Complex Business Div. Rule 4.3, the undersigned certifies that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues, but has been unable to resolve the issues.

Dated: January 7, 2021.

KOZYAK TROPIN & THROCKMORTON LLP
*Attorneys for Defendant Gazul
Producciones SL Unipersonal*
2525 Ponce de Leon Blvd., 9th Floor
Miami, Florida 33134
Tel.: 305-372-1800
Fax: 305-372-3508

By: Dwayne A. Robinson
Dwayne A. Robinson Esq.
Fla. Bar No. 0099976
Email: drobinson@kttlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 7, 2021, a true and correct copy of the foregoing was filed with the Florida Court's E-Filing Portal and served by electronic mail via the Florida Court's E-Filing Portal upon all counsel of record.

By /s/ Dwayne A. Robinson
Dwayne A. Robinson, Esq.

EXHIBIT A
DECLARATION OF SERGIO A. PAGLIERY

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE
COUNTY, FLORIDA CIRCUIT CIVIL DIVISION

SHEDDF2-FL5 LLC
a Florida Limited Liability Company,

Plaintiff,

v.

MUSIC ON WHEELS LLC, a Florida Limited
Liability Company, GAZUL PRODUCCIONES SL
UNIPERSONAL, a Spanish Limited Liability
Company, and ALJA PRODUCTIONS, INC.,
a Florida Corporation,

Defendants.

Case No.: 2019-035002-CA-01

**DECLARATION OF SERGIO A. PAGLIERY
IN SUPPORT OF DEFENDANT GAZUL
PRODUCCIONES SL UNIPERSONAL'S
MOTION TO QUASH SERVICE OF PROCESS
AND VACATE DEFAULTS**

I, Sergio A. Pagliery, hereby declare as follows:

1. My name is Sergio A. Pagliery, and I maintain an office at 8788 SW 8th Street, Miami, FL 33174. I am over the age of 18 and am familiar with the matters set forth herein and make this declaration (the “Declaration”) in support of Defendant Gazul Producciones SL Unipersonal’s Motion to Quash Service of Process and Vacate Defaults (“Motion to Quash”).

2. I am an attorney and client representative for Gazul Producciones SL Unipersonal (“Gazul”).

3. Juan Gervas is not a member, manager, registered agent, or designated employee of Gazul as of the date hereof.

4. Juan Gervas’ employment and relationship with Gazul ceased on November 19, 2019, in all respects.

5. As of the alleged date of service of the summons and complaint upon Juan Gervas in this matter, which is alleged to have occurred on January 7, 2020 as per the return of service filed in this matter with respect to Gazul, Juan Gervas was no longer affiliated with Gazul in any way, shape, or form.

6. Oscar Garcia Blesa has been and was the administrator of Gazul since November 19, 2019, pursuant to appropriate deeds and legal instruments dated November 20, 2019, bearing public records file number EW8336784, as recorded in the official public records of Madrid, Spain.

7. There has not been any service of process on Gazul or any of its authorized agents, officers, or legal counsel in this matter at any time.

8. This concludes my Declaration.

I DECLARE under penalty of perjury that the foregoing is true and correct. Executed on January 7, 2020.

/s/ Sergio A. Pagliery _____