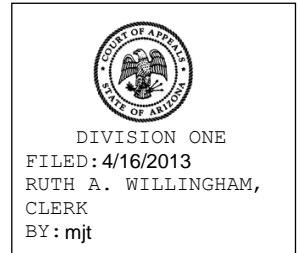


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



BANK OF AMERICA, N.A., ) 1 CA-CV 12-0110  
)  
Plaintiff/Appellee, ) Department D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
REZA SAMADI, ) Rule 28, Arizona Rules of  
) Civil Appellate Procedure)  
Defendant/Appellant. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CV2010-098783

The Honorable Bernard C. Owens, Commissioner

**AFFIRMED**

Reza Samadi  
*In Propria Persona*

Scottsdale

Miles, Bauer, Bergstrom & Winters, LLP  
By Steven E. Stern  
Attorneys for Plaintiff/Appellee Bank of America, N.A.

Henderson, NV

**T H O M P S O N, Judge**

¶1 Reza Samadi appeals from the trial court's denial of his motion to dismiss Bank of America's lawsuit or, in the alternative, vacate entry of the default judgment against him pursuant to Arizona Rules of Civil Procedure 59(j) (vacating

judgment after service by publication) and 60(c)(4) (void judgment). Finding no error, we affirm.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

¶2 In 2006, Samadi received a revolving line of credit for up to \$100,000 from Bank of America. Samadi signed a promissory note and secured it with property located at 6722 E. Eugie Terrace, Scottsdale. On or about August 2009, Samadi defaulted. Bank of America brought suit in October 2010 to collect.

¶3 Three process servers attempted service in this matter. According to the affidavit submitted by the process servers, they first attempted to serve Samadi at the 6722 E. Eugie Terrace address listed on the loan documents and learned it had been foreclosed upon and resold. The process servers did further research and located another possible address, at another home owned by Samadi, at 6640 E. Eugie Terrace, Scottsdale. Twice the processer servers attempted service there. On the first attempt no one answered and on the second attempt the resident, a Mr. Osis, "claimed he did not know who is the owner of this property and stated he did not want to answer any questions." The process servers attempted to locate, but could not find, a more current address through the post office, MVD, Maricopa County Assessors or other databases. Bank

of America then undertook service by publication and, following publication, on August 1, 2011, received a default judgment in the amount of \$110,544.97 against Samadi. Samadi received a copy of the default judgment dated August 1, 2011, by mail via his post office box.

¶4 On October 6, 2011, Samadi filed a motion seeking to vacate the default asserting that 6640 E. Eugie Terrace, Scottsdale is and has been his residential address since September 2009. He asserts he lived there alone during the time period service was attempted. He asserts that “[a]t no time while he was living there did any one come to his door and attempt to serve him.” Nor, he argues, did they attempt to serve him by mail at his post office box.<sup>1</sup> The trial court denied his motion finding “Plaintiff has diligently pursued this case.” Samadi timely appealed.

¶5 We review a trial court's denial of a motion to set aside a default judgment for an abuse of discretion. *Hilgeman*

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<sup>1</sup> We note that pursuant to Arizona Rule Civil Procedure (Rule) 4.1(d), process shall be served on a person “by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.” Service by publication is appropriate where the last known address was within Arizona but where the current address is unknown or where the party has avoided service. See Ariz. R. Civ. P. 4.1(n). Service by mail for Arizona residents is not authorized absent a court order. Ariz. R. Civ. P. 4.1(m).

*v. Am. Mortg. Sec., Inc.*, 196 Ariz. 215, 218, ¶ 7, 994 P.2d 1030, 1033 (App. 2000). In the instant matter, Samadi sought to vacate the judgment against him under Rule 59(j) and Rule 60(c)(4). In particular, he contends the in-person service of process was not undertaken in good faith, as he was residing alone at 6640 E. Eugie Terrace and was reachable and even amenable to such service. Samadi further asserts that service by publication was unlikely to, and did not, provide actual notice to him.

¶6 Bank of America asserts it was justified in using service by publication under Rule 4.1(n) because Samadi's last known address was in Arizona, they were unable to serve him at that location and they were unable to locate another more current address. We agree.

¶7 We turn next to whether the trial court should have vacated the judgment. Rule 59(j)(1) states: "When judgment has been rendered on service by publication, and the defendant has not appeared, a new trial may be granted upon application of the defendant for good cause shown by affidavit, made within one year after rendition of the judgment." Arizona's established case law provides that a process server's affidavit of service creates a presumption of service that can be rebutted only through clear and convincing evidence. *Riggs v. Huachuca Inv.*

Co., 2 Ariz.App. 527, 529, 410 P.2d 149, 151 (1966). We must, therefore, determine whether Samadi provided the trial court with evidence "of a clear and convincing nature [sufficient] to overturn the presumption of service." See *id.* We find the trial court did not abuse its discretion in finding Samadi failed to show by clear and convincing evidence that the process server's affidavit was inaccurate. Thus, the trial court's denial of relief under Rule 59(j) is affirmed.

¶8 Samadi next asserts that the trial court abused its discretion by not setting aside the default judgment, arguing it was void for lack of personal jurisdiction. See Ariz. R. Civ. P. 60(c)(4) (party may be relieved from void final judgment); *Master Fin., Inc. v. Woodburn*, 208 Ariz. 70, 74, ¶ 19, 90 P.3d 1236, 1240 (App. 2004); *Sprang v. Petersen Lumber, Inc.*, 165 Ariz. 257, 262, 798 P.2d 395, 400 (App. 1990) (a court does not acquire personal jurisdiction over a person who is not properly served and the resulting default judgment is void). As the entry of default judgment obtained after service by publication was not void, and Samadi made no other showing that would entitle him to relief under Rule 60(c), this claim likewise fails. The default judgment against Samadi is affirmed.

¶9 Bank of America is granted its reasonable attorneys' fees and costs incurred in litigating this appeal pursuant to

Arizona Revised Statutes (A.R.S.) § 12-341.01 (2012) subject to its compliance with Rule 21, Arizona Rules of Civil Appellate Procedure.

**CONCLUSION**

¶10 For the above stated reasons, the trial court is affirmed.

/s/

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JON W. THOMPSON, Judge

CONCURRING:

/s/

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JOHN C. GEMMILL, Presiding Judge

/s/

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DONN KESSLER, Judge