

AFFIRM; and Opinion Filed May 10, 2016.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-15-00887-CV

**AMOR REAL ESTATE INVESTMENT, INC. D/B/A AMOR REAL ESTATE
INVESTMENTS, Appellant**

V.

AWC, INC., Appellee

**On Appeal from the 160th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-14-12261**

MEMORANDUM OPINION

**Before Justices Francis, Fillmore, and Schenck
Opinion by Justice Francis**

In this restricted appeal, Amor Real Estate Investment, Inc. challenges a no-answer default judgment against it on AWC, Inc.'s suit to foreclose its mechanic's and materialman's lien. In its sole issue, Amor argues the default judgment is void because there is no evidence to show that it was served with the lawsuit. We affirm.

After AWC filed suit, the process server made three attempts to serve Amor's registered agent, Haileyesus Hailu, at the registered office address at 3945 Luke Lane in Carrollton, Texas. On the first attempt, the nanny answered the door, said she did know Hailu, but thought he might own the home. On the second attempt, a male resident answered, confirmed Hailu owned the home, but said he did not live there and did not come to the location. On the third attempt, there was no answer at the front door.

After these unsuccessful attempts at service, AWC filed an amended petition and sought substituted service on Amor through the secretary of state. To support substituted service, AWC attached an affidavit of due diligence from its process server setting out the attempts at service.

Citation for service on Amor through the secretary of state issued March 3, 2015. Duplicate copies of the citation and amended petition were served on the secretary of state three days later, and the statutory fee tendered. AWC filed the affidavit of service with the Dallas County District Clerk on April 6, thirty-one days after service. The secretary of state issued a certificate of service on May 15, asserting he had forwarded a copy of the citation and first amended petition to Amor at the Luke Lane address by certified mail, return receipt requested, but that “[a]s of this date, no response has been received in this office.”

Amor did not answer the lawsuit, and AWC moved for default judgment. The trial court granted default judgment on the same day. The district clerk mailed notice of the judgment to the same address on Luke Lane. Two months later, Amor filed a timely notice of restricted appeal under rule 30 of the Texas Rules of Appellate Procedure.

Because Amor filed this restricted appeal within six months of the judgment and did not participate in the default hearing, the only question we must resolve is whether error is apparent on the face of the record. *Hubicki v. Festina*, 226 S.W.3d 405, 407 (Tex. 2007) (per curiam). In a restricted appeal from a default judgment, no presumptions in favor of valid service are made. *Id.*

Amor contends error exists on the face of the record because the certificate of service shows the secretary of state received no response to the citation and petition sent certified mail, return receipt requested. Presumably, his argument is that this shows he did not receive the citation and petition, thus voiding the default judgment.

A corporation is required to continuously maintain a registered agent for service of process and a registered office. TEX. BUS. ORGS. CODE ANN. § 5.201 (West 2012). If the registered agent cannot with reasonable diligence be found at the registered office, the secretary of state is an agent for service of process on the corporation. *Id.* § 5.251(1)(B). Service of process on the secretary of state is accomplished by delivering duplicate copies of the process and any required fee. *See id.* § 5.252. After service on the secretary of state, the secretary forwards the process to the corporation by certified mail, return-receipt requested. *See id.* § 5.253. A certificate of service from the secretary of state conclusively establishes that process was served. *Campus Invs., Inc. v. Cullever*, 144 S.W.3d 464, 466 (Tex. 2004) (per curiam). When substituted service on a statutory agent is allowed, the designee is not an agent for *servicing* but for *receiving* process on the defendant's behalf. *Id.*

Here, the certificate issued by the secretary of state states he received duplicate copies of the citation and first amended petition on March 6 and forwarded both to Amor at the Luke Lane address by certified mail, return-receipt requested, on March 9. As an agent for receiving process on Amor's behalf, the secretary of state's receipt of the process gave Amor constructive notice of the lawsuit; thus, Amor was properly served. *See El Paisano Northwest Hwy., Inc. v. Arzate*, No. 05-12-01457-CV, 2014 WL 1477701, at *3 (Tex. App.—Dallas Apr. 14, 2014, no pet.) (mem. op.) That the certificate also states that “no response” was received does not invalidate service. We overrule the sole issue.

We affirm the trial court's judgment.

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/Molly Francis/
MOLLY FRANCIS
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

AMOR REAL ESTATE INVESTMENT,
INC. D/B/A AMOR REAL ESTATE
INVESTMENTS, Appellant

No. 05-15-00887-CV V.

AWC, INC., Appellee

On Appeal from the 160th Judicial District
Court, Dallas County, Texas
Trial Court Cause No. DC-14-12261.
Opinion delivered by Justice Francis;
Justices Fillmore and Schenck participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee AWC, Inc. recover its costs of this appeal from appellant Amor Real Estate Investment, Inc. d/b/a Amor Real Estate Investments.

Judgment entered this 10th day of May, 2016.