In the District Court of Appeal
Fourth District of Florida

CASE NO. [redacted]

(Circuit Court Case No. [redacted])

[redacted]

Appellant,

v.

WACHOVIA BANK, NATIONAL ASSOCATION, et al.,

Appellee.

ON APPEAL FROM THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

Respectfully submitted,

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

Rules

STATEMENT OF THE CASE AND FACTS

I. Introduction

This is a foreclosure action filed by Plaintiff/Appellee, WACHOVIA BANK, NATIONAL ASSOCIATION ("the BANK"), against Defendant/ Appellant, [redacted] ([redacted]).

II. Appellant's Statement of the Facts

When attempting to serve process upon [redacted] on February 9, 2009, the BANK's process server failed to write the time of service, his initials, and his identification number on the summons as required by both Florida Statute § 48.031(5) and Florida Rule of Civil Procedure 1.070(e).[1] The next day, on February 10, 2009, [redacted] sent a *pro se* letter to the BANK's attorney requesting a loan modification and filed the letter with the court.[2] On March 17, 2009, [redacted] moved to quash service of process based upon the process server's non-

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[1] *See*, copy of Summons attached as Exhibit A to Defendant, [redacted] Mot. to Quash Service of Process. (App. to IB, 12.)

[2] Defendant, [redacted] Pro Se Letter to Bank Requesting Modification attached as Exhibit A to Plaintiff's Memorandum in Opposition to Motion to Quash Service of Process. (App. to IB, 25.)

compliance.[3] On May 27, 2009, [redacted] filed an amended motion to quash raising the additional defense of a defective return of service.[4]

A hearing on [redacted]'s motion was held before Judge Sasser on October 5, 2009. At the hearing, the BANK did not dispute that the required information was missing from the Summons but argued that Defendant could not show prejudice as a result of the deficiencies and that Defendant had waived jurisdictional defenses by filing an answer.[5] Ultimately, the court denied the motion to quash finding that Defendant's *pro se* letter requesting a modification from the BANK constituted her answer.[6] [redacted] timely appeals this non-final order.

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[3] Defendant, [redacted] Mot. to Quash Service of Process. (App. to IB, 9.)

[4] Defendant, [redacted] Am. Mot. to Quash Service of Process. (App. to IB, 13.)

[5] Transcript. of Proceedings Held Before the Honorable Meenu Sasser, October 05, 2009 ("Hrg. Tr."), pp. 13-16. (App. to IB, 43, 55-58.)

[6] Hrg. Tr., 27-28. (App. to IB, 69-70.)

SUMMARY OF THE ARGUMENT

The BANK's burden in the lower court was to show it effectuated valid service of process by strictly complying with the service of process statute and the Rules of Civil Procedure. It is undisputed that the actual service of process, as well as the return of service, was defective. The issue is whether [redacted]'s request for a loan modification from the bank constituted an "answer" such that she unknowingly waived her jurisdictional objections. It does not.

A party waives jurisdictional objections only when the party makes a request for affirmative relief that goes to the merits of the case and is inconsistent with the party's subsequent jurisdictional objection. The request for a modification does not ask for any relief from the court and is not even addressed to the court. Treating a *pro se* hardship letter to the BANK as an answer that waives all defenses (not just jurisdictional defenses) is against public policy.

Further, a showing of prejudice is not required to quash defective service of process. That [redacted] had actual notice of these proceedings is of no consequence. Actual notice is not, and cannot be, the standard in Florida, because such a standard would vitiate the service statutes and procedural rules.

Accordingly, the lower court's denial of [redacted]'s motion to quash service of process should be reversed.

STANDARD OF REVIEW

This Court has jurisdiction to review the non-final order denying the motion to quash under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(i), which permits review of non-final orders that determine the jurisdiction of a person. *See Re-Employment Servs., Ltd. v. Nat'l Loan Acquisitions Co.*, 969 So. 2d 467, 470 (Fla. 5th DCA 2007) (citing *Fisher v. Int'l Longshoremen's Ass'n*, 827 So. 2d 1096, 1097 (Fla. 1st DCA 2002)); *see also Gaspar, Inc. v. Naples Fed. Sav. & Loan Ass'n*, 546 So. 2d 764, 765 (Fla. 5th DCA 1989). The standard of review is *de novo*. *Anthony v. Gary J. Rotella & Assocs.*, 906 So. 2d 1205 (Fla. 4th DCA 2005); *Re-Employment Servs.*, 969 So. 2d at 470. As such, absolutely no deference is to be accorded the decision of the lower court. *D'Angelo v. Fitzmaurice,* 863 So. 2d 311, 314 (Fla. 2003). The Plaintiff bears the burden of demonstrating "[s]trict compliance with the statutes governing service of process..." *Schupak v. Sutton Hill Assocs.*, 710 So. 2d 707, 708 (Fla. 4th DCA 1998).

ARGUMENT

I. [redacted] Did Not Waive Her Right to Object to Defective Service of Process.

A. Filing an "innocuous" paper does not waive objections to jurisdiction.

Waiver is defined as "the intentional relinquishment of a known right." *Anthony*, 906 So. 2d at 1208 citing *Fireman's Fund Ins. Co. v. Vogel*, 195 So. 2d 20, 24 (Fla. 2d DCA 1967). As a general rule, a party waives any jurisdictional objections when the party makes a request for affirmative relief that goes to the merits of the case and is inconsistent with the party's subsequent jurisdictional objection. *See generally*, *Ginsberg v. Lamour*, 711 So. 2d 182, 183 (Fla. 4th DCA 1998); *Cumberland Software, Inc. v. Great Am. Mortg. Corp.*, 507 So. 2d 794, 795 (Fla. 4th DCA 1987).

Generally, the filing of an answer or a responsive pleading waives objections to personal jurisdiction. *See Brivis Enters., Inc. v. Von Plinski*, 976 So. 2d 1244 (Fla. 4th DCA 2008) (filing an answer and a motion to set aside default waived any objections to jurisdiction); *see also Solmo v. Friedman*, 909 So. 2d 560, 564 (Fla. 4th DCA 2005) (participating *pro se*, without objection, in two hearings and submitting a proposal for the supplement to the final judgment waived objections to personal jurisdiction); *Lennar Homes, Inc. v. Gabb Constr. Serv., Inc.*, 654 So. 2d 649, 650-51 (Fla. 3rd DCA 1995) (finding that a party waived right to contest

service of process by filing a motion to dismiss for, among other things, failure to state a cause of action).

On the other hand, a paper filed that is neither an answer nor a responsive pleading does not waive objections to personal jurisdiction. *Moo Young v. Air Can.*, 445 So. 2d 1102, 1104 (Fla. 4th DCA 1984) (filing a motion for a more definite statement and a motion to vacate default did not go to the merits and therefore did not constitute a general appearance); *Weatherhead Co. v. Coletti*, 392 So. 2d 1342, 1344 (Fla. 3d DCA 1980) ("[t]here is no basis in the rules and no reason in policy for a determination that the mere filing of an entirely neutral and innocuous piece of paper, which indicates no acknowledgment of the court's authority, contains no request for the assistance of its process, and, most important, reflects no submission to its jurisdiction should nevertheless be given just that effect."), *affirmed sub nom. Public Gas Co. v. Weatherhead Co.*, 409 So. 2d 1026 (Fla.1982).

B. The *pro se* letter to the BANK requesting a modification is not an answer that waives jurisdictional objections.

The filing of such "neutral" papers does not and should not waive an objection to jurisdiction. Looking to Defendant's *pro se* letter, it is clear the document is not an answer or a responsive pleading; it is merely a "hardship letter" to the BANK requesting a loan modification. The letter makes no attempt to

respond to the merits of the Complaint or take any position in regard to the litigation.

The homeowner's request for a modification is, on its face, directed to the BANK, not the court. It is addressed to Scott Simowitz as the attorney for the BANK, not the court. Nor does the letter begin with a salutation to the court, such as "Dear Judge" or "Your Honor." The body of the letter merely explains what steps [redacted] had already taken to try to resolve the BANK's grievance that her ex-husband had not paid the loan as agreed – steps that had met with difficulty because [redacted] is not even the debtor on the loan. The letter simply cannot be read as seeking assistance of the court's process or a submission to jurisdiction.

Nevertheless, the court below found that it did just that by reasoning that the letter filed does not have to respond to every single claim to be an answer. This reasoning misses the point. To the contrary, the letter did not respond to any of the claims. All of the information provided in the hardship letter relates to a request for a loan modification directed at the Bank. The lower court turned the request directed at the BANK into a general appearance. When determining the character of an appearance the court must look to the substance not the form. *McKelvey v. McKelvey*, 323 So. 2d 651 (Fla. 3d DCA 1976).

The lower court confused the issue when it stated that hardship letters filed in cases are answers because the Clerk treats them as such.[7] This is fundamentally incorrect. The Clerk properly refuses to enter defaults under Rule 1.500(a) when such a letter is in the file – but not because it is an "answer," but because it is "any paper." Such a "paper" merely triggers the requirement that the defendant be put on notice of an application for default. *See Americana Associates, Ltd. v. Coleus*, 697 So. 2d 573 (Fla. 5th DCA 1997) (Rule 1.500 "provides a safety net for a defendant who believes that he or she has answered a complaint or is making good faith efforts to resolve the matter through negotiation."(emphasis added)).

The standard, therefore, is not whether a clerk would treat the letter as a "paper," but whether what was filed goes to the merits of the cause of action and seeks affirmative relief from the court. *See Ginsberg*, 711 So. 2d at 183; *Cumberland Software*, 507 So. 2d at 795; *cf. Shepheard v. Deutsche Bank Trust Co. Ams.*, 922 So. 2d 340, 345 (Fla. 4th DCA 2006) (sending a letter to the judge asking that the case be dismissed, and later a fax asking the court to set aside the judgment constituted an appearance that waived objections to jurisdiction).

[7] Hrg. Tr., 12. (App. to IB, 54.)

C. Treating Hardship Letters as "Answers" is Against Public Policy.

Pro se defendants are constantly advised to file something with the court to avoid a default. The conventional wisdom is that filing a hardship letter will avoid a default being entered by the clerk while one retains an attorney or otherwise attempts to negotiate a solution with the bank. Under the trial court's view, however, every such letter is actually an "answer," because it confesses, at least tangentially, that the loan has not been paid as agreed – one of the allegations of the Complaint. Every other allegation of the Complaint is then admitted – precisely because it was not addressed in the letter. In short, this circular analysis deems hardship letters to be answers that admit, not only jurisdictional issues, but every issue in the case. By attempting to avoid a default, the homeowner has accomplished the same result, if not worse.

Upholding the trial court view of the function of hardship letters will effectively default thousands of homeowners. (The Court estimated there to be 10,000 cases in Palm Beach County alone with "pro se handwritten letters" in the court file.)[8] It is contrary to Florida's strong public policy of hearing cases on the merits to bar these homeowners from defending their cases. *See Szteinbaum v. Kaes Inversiones y Valores, C.A.*, 476 So. 2d 247, 250 (Fla. 3d DCA 1985) ("[T]he

[8] Hrg. Tr., 12. (App. to 54.)

strong public policy in favor of having cases decided on the merits has likewise been recognized in cases dealing with entry of defaults...")

The trial court erred because it looked to Rule 1.110(c), Fla. R. Civ. P. (entitled "The Answer") – rather than established case law – to determine whether the hardship letter should be deemed an answer. Rule 1.110(c), however, is instructional, not definitional. While an answer should contain the elements listed in that Rule, it does not state that anything with one of those elements must be an "answer." This is a classic logical fallacy exemplified by the invalid syllogism: 1) all birds have beaks; 2) that creature has a beak; 3) therefore, that creature is a bird.

Worse, the Court's initial premise – that [redacted] admitted at least one of the allegations of the Complaint – is factually incorrect:

> THE COURT: I'm just reading from the Rules of Civil Procedure Rule 1.10 (c) answer, in the answer a pleader shall state in short and plain terms the pleaders defenses to each claim asserted and shall admit or deny the averments on which the adverse party relied. ... Is this not a short and plain response to the complaint seeking that she -- indicating to this – Ms. Brown, that she owes money to the bank on a mortgage. She indicated that her husband was – had stopped payment. ...[9]

The notion that [redacted]'s letter admits that she executed a loan and then defaulted on the loan was reinforced by the BANK's attorney when attempting to

[9] Hrg. Tr., 21-22 (emphasis added). (App. to IB, 63-64.)

distinguish the *Weatherhead* case:

> MR. ARMBRUSTER: I think that [*Weatherhead*] is clearly not on point. There was one where an attorney filed a notice of appearance. And it's obviously dramatically different than a pro se litigant filing a paper with the Court acknowledging or admitting that they executed a loan, that they defaulted under the terms of the loan asking for equitable relief.[10]

In reality, [redacted]'s letter did not admit that she signed the note, owed the money, or had stopped making payment, but just the opposite. It states that the loan is in the name of her ex-husband. Indeed, the Complaint does not even allege that [redacted] owes any money to the BANK. It alleges that "[redacted] [the ex-husband] executed and delivered that certain Negotiable Promissory Note ...to Plaintiff..."[11] The Defendant/Appellant here, [redacted], could not have admitted that which was never pled against her.

The lower court erred, therefore, in finding that [redacted]'s request for a modification was an answer that waived her jurisdictional defenses. Since there was no waiver in this case, the Court must determine whether service of process complied with Florida law.

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[10] Hrg. Tr., 25 (emphasis added). (App. to IB, 67.)

[11] Complaint, ¶ 7. (App. to IB, 3.)

II. Plaintiff's Process Server Failed to Comply with Florida Statutes and the Florida Rules of Civil Procedure.

The BANK's process server failed to comply with the statutory law of Florida and the Florida Rules of Civil Procedure governing service of process. Specifically, the process server did not place the time of service, his initials, and his identification number on the Summons for [redacted]. Florida Statute § 48.031(5) provides:

> **Service of process generally; service of witness subpoenas.--** (5) A person serving process shall place, on the copy served, the date and time of service and his or her identification number and initials for all service of process.

(emphasis added). This requirement is underscored in Florida Statute § 48.29(6) which adopts § 48.031(5) as the standard for certified process servers.

Additionally, Florida Rule of Civil Procedure 1.070(e) provides that "[t]he date and hour of service shall be endorsed on the original process and all copies of it by the person making the service." (emphasis added). Notably, of the four items of information required by the statute, the Florida Supreme Court emphasized half of them by including them in its Rules of Procedure. The time of service is one of those – one of the two items of information required by both the statute and the procedural rule. In other words, it represents half the information that both the

legislature and the Supreme Court thought important enough to specifically mention.

The BANK does not deny that the Summons is missing this required information or that the process server failed to perform the fundamental task which he was sworn to perform. The absence of a factual or legal basis for advocating (much less, holding) that service had been properly performed is fatal to the BANK's cause. "The burden of proof to sustain the validity of service of process is upon the person who seeks to invoke the jurisdiction of the court..." *Carlini v. State Dep't. of Legal Affairs*, 521 So. 2d 254, 255 (Fla. 4th DCA 1988).

A. Florida Courts Demand Strict Compliance with § 48.031 and Other Statutes Governing Service of Process.

The Fourth District Court of Appeals holds that "[s]trict compliance with the statutes governing service of process is required." *Schupak v. Sutton Hill Assocs.*, 710 So. 2d at 708 (Fla. 4th DCA 1998) (leaving process at the door is insufficient service); s*ee also Sierra Holding, Inc. v. Inn Keepers Supply Co.*, 464 So. 2d 652, 655 (Fla. 4th DCA 1985) ("Since...the statute requiring that alternative service be made on an 'employee' must be strictly construed, mere 'connections' with the corporation are insufficient"); *Baraban v. Sussman*, 439 So. 2d 1046 (Fla. 4th DCA 1983) (service by an employee of an appointed process server insufficient); *Carlini,*, 521 So. 2d at 256 (attempted substituted service on a person who was not

a resident of the abode was insufficient). The BANK, therefore, has the burden of showing strict compliance with the statute mandating that the time of service, the process server's initials, and the process server's identification number be written on the Summons delivered to Defendant.

B. "Actual Notice" Is Not – And Cannot Be – the Standard.

That Defendant had actual notice of these proceedings is of no consequence. Actual notice is not, and cannot be, the standard in Florida, because such a standard would vitiate the service statutes and procedural rules. Process servers could deliver the summons in any manner they see fit (serving on Sunday, dropping the summons on the defendant's doorstep or mailbox, or even tossing it through an open window) and then later claim that these violations should be excused because the defendant had "actual notice."

The Florida Supreme Court has directly addressed this very issue and steadfastly holds that a defendant's actual notice of the proceedings is irrelevant. "The fact that the defendant received actual notice of this lawsuit does not render the service of process valid." *Bedford Computer Corp. v. Graphic Press, Inc.*, 484 So. 2d 1225 (Fla. 1986); *Napolean B. Broward Drainage Dist. v. Certain Lands Upon Which Taxes Were Due*, 33 So. 2d 716, 718 (Fla.1948) (the fact that the

defendant had actual knowledge of the attempted service cannot justify the failure of the plaintiff to strictly observe the service statute).

Likewise, the Fourth District Court of Appeals has repeatedly held that actual notice of the proceedings does not excuse compliance with service statutes. *S.H. v. Dep't of Children and Families*, 837 So. 2d 1117 (Fla. 4th DCA 2003); *Panter v. Werbel-Roth Sec., Inc.*, 406. So. 2d 1267, 1268 (Fla. 4th DCA 1981). Accordingly, any argument that Defendant's actual notice of the proceedings excused their compliance with the service statute and rule is completely without merit and not supported by the law. It is not the province of the trial court to substitute its own judgment for that of the legislature or the Florida Supreme Court as to the relative importance of what is required on the summons itself. Service of process should be quashed.

C. Completing a Return of Service Does Not Cure a Failure to Comply with § 48.031 or Rule 1.070(e).

Meeting the requisites of the return of service statute is only one of the process server's obligations (one which Defendant contends was also unmet). He must first comply with the separate and distinct requirements of Florida Statute § 48.031(5) and Rule 1.070(e). Clearly, "[f]ailure to make proof of service shall not affect the validity of the service." Fla. R. Civ. P. 1.070 (b). Just as clearly, the converse is also true. Making proof of service – i.e. filing the return of service –

does not affect the *in*-validity of service. A return of service in the court file, therefore, does not cure defects in the actual procedure used to attempt service, especially when those defects are admitted.

In *Russell v. Zulla*, 556 So. 2d 1241 (Fla. 5th DCA 1990), the Fifth District addressed a failure to comply with the same procedural rule at issue in this case (then, Rule 1.070(f)). In *Russell*, the defendant was served twice, the first time by a process server who had not been properly appointed. The second time service was attempted the process server failed to attach a copy of the complaint as required by Rule 1.070(f), and also failed to note required information in the return of service.

When the defendant moved to quash the second attempted service, the process server provided an affidavit which contained the information missing from the return. The process server also attached a copy of the complaint to the affidavit. The lower court denied the second motion to quash, holding that the copy of the complaint attached to the affidavit satisfied the requirement that a copy be delivered at the time of service.

Although not discussed by the court in *Russell*, in addition to the copy of the complaint belatedly provided by the process server, the defendant undoubtedly had access to the complaint in the court file, and presumably, had even received a copy

during the first service attempt. Yet, the Fifth District reversed on the grounds that service had not been effectuated:

> The procedures providing for proper service are clear and explicit. . . . It is fundamental that a copy of the initial pleading be delivered at the time of personal service of process. ...While the trial court could properly deem the return of service amended by the affidavit of the process server which set out the required information, the trial court erred in holding that the complaint attached to the affidavit cured the failure to originally serve a copy of the complaint on Russell.

Id. at 1243 (emphasis added). Similarly, in this case, the failure of the process server to note the hour of service and to provide his or her initials and identification number on the original Summons cannot be cured by including that information in the Return.

D. Excusing Plaintiff's Non-Compliance with Three Out of Four Requirements of the Service Statute Would Completely Vitiate the Statute and Violate the Constitutional Separation of Powers Requirement.

The Florida Supreme Court has held that "the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless." *Borden v. East-European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006) (citing *State v. Goode*, 830 So. 2d 817, 824 (Fla. 2002)). Excusing a failure to comply with three out of the four requirements of the statute (and half of the procedural rule) is to leap with great abandon upon the bottom quarter of the slippery slope. There is no discernible difference between excusing a failure to

comply with three quarters of the statute and excusing the failure to comply with the statute in its entirety.

Avoidance of the slippery slope, however, is not the only reason that the decision cannot turn on a jurist's opinion of the importance of a particular statutory provision. A court's refusal to enforce such a provision effectively legislates the statute out of existence – a direct violation of the separation of powers doctrine. Under this doctrine, the courts of Florida are compelled to respect the will of the legislature as codified in the Florida Statutes (regardless of how meritless or trivial it may seem to the court). Florida Constitution in Article II, Section 3.

In *Pepper v. Pepper*, 66 So. 2d 280, 284 (Fla. 1953), the Florida Supreme Court held that a lower court's refusal to apply the residency requirement of a divorce statute was, in effect, an unlawful statutory amendment by the court. As such, it constituted an unlawful encroachment by the judiciary on the legislative branch:

> There are many laws of the State of Florida which are not in conformity with the views of all of the people of the State or even some members of the judiciary.
>
> * * *
>
> The Judicial Department is not concerned with the wisdom of such legislation as that involved in the present litigation. Whether divorces should be granted, and if granted, only for the cause of adultery; whether the residence requirement should be three months, six

> months, or two years, are matters for the Legislature to decide; and when the decision has been made, it becomes incumbent upon the Judicial branch to enforce it.

Id. at 283-84 (emphasis added). Similarly, this Court should not be concerned with the wisdom of the legislative enactment involved in the present litigation. Whether process servers should be required to place certain information on the summons, and what that information should be, are matters for the legislature to decide; and the decision having been made, it is incumbent upon this Court to enforce it. *See Bush v. Holmes*, 919 So. 2d 392, 398 (Fla. 2006) ("courts may not reweigh the competing policy concerns underlying a legislative enactment"); *Askew v. Schuster*, 331 So. 2d 297, 300 (Fla. 1976) ("The propriety and wisdom of legislation are exclusively matters for legislative determination."), *quoting In re Apportionment Law, Senate Joint Resolution No. 1305*, 263 So. 2d 797 (Fla. 1972); *Kahn v. Shevin*, 416 U.S. 351 (1974), (courts do not substitute their beliefs for the judgment of legislative bodies which are elected to pass the laws).

Nor is a court free to pick and choose those parts of a statute it believes need not be enforced. The Florida Supreme Court has instructed that "[i]n construing statutes, we must, to the extent possible, give effect to all parts of a statute." *Kepner v. State*, 577 So. 2d 576, 578 (Fla. 1991); *see also State ex rel. City of*

Casselberry v. Mager, 356 So. 2d 267, n.5 (Fla. 1978) ("[a] statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts."). Accordingly, no portion of the statute may be arbitrarily deemed too unimportant to enforce.

It is undisputed that the Summons is missing the required information, therefore, the trial court should have granted the motion to quash.

III. The Return of Service is Defective Because it Omits Required Information.

Not only did the process server fail to provide the required information on the copy of the summons given to Defendant, he also failed to provide required information on the return of service. First, the process server claims to have endorsed the Summons with the date and hour of service – an assertion the Summons (Exhibit A) shows to be false.[12] Second, the process server failed to put his identification number on the return of service. This violates the Fifteenth Judicial Circuit's Administrative Order No. 2.702 - 9/08, which provides:

> Certified process servers shall utilize and complete a form captioned "RETURN OF SERVICE," containing the following information: ...

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[12] See Return of Service attached as Exhibit B to Plaintiff's Memorandum in Opposition to Motion to Quash. (App. to IB, 18.) Compare with copy of Summons attached as Exhibit A to Defendant, [redacted] Mot. to Quash Service of Process. (App. to IB, 4.)

h. The printed name and identification number of the certified process server;...

Most importantly, it fails to comply with § 48.21 Florida Statutes because the process server did not state the date and time that the summons came into hand. This alone "invalidates the service." § 48.21 Fla. Stat. (2009); *Re-Employment Servs.*, 969 So. 2d at 472 (omission of the time that the process came to hand, and the ambiguous use of "on or about" before the date made the return of service "facially defective" such that "trial court was not permitted to presume that the service of process was valid").

If, as here, the return is defective on its face, it cannot be relied upon as evidence that the service of process was valid. *Klosenski v. Flaherty*, 116 So. 2d 767, 768-69 (Fla. 1959); *Gonzalez v. Totalbank*, 472 So. 2d 861 (Fla. 3d DCA 1985). When there is an error or omission in the return of service, personal jurisdiction is suspended and it "lies dormant" until proper proof of valid service is submitted. *Klosenski*, 116 So. 2d at 769; *Schneiderman v. Cantor*, 546 So. 2d 51 (Fla. 4th DCA 1989); *Re-Employment Servs.*, 969 So. 2d at 472..

Here, the trial court acknowledged during the hearing on [redacted]'s Motion to Quash that the Return of Service was defective, but ultimately withheld any specific findings to that effect because it believed that these defects had been

waived by [redacted]'s *pro se* letter.[13] Because the letter was not a waiver, the motion to quash should have been granted on the additional basis that the Return of Service was improper.

[13] Hrg. Tr., 19, 32 (App. to IB, 61, 74.)

CONCLUSION

The process server did not comply with Florida law because he failed to include required information on the Summons and failed to correctly complete the Return of Service. Because the *pro se* hardship letter was not an "answer," it did not waive [redacted] objections to the service and the Return of Service. Accordingly, the lower court's denial of [redacted] motion to quash service of process should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing and the attached appendix was served by U.S. Mail this October 22, 2009 to all parties on the attached service list.

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CERTIFICATE OF COMPLIANCE WITH FONT STANDARD

Undersigned counsel hereby respectfully certifies that the foregoing Brief complies with Fla. R. App. P. 9.210 and has been typed in Times New Roman, 14 Point.

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