

Trial Briefs

The newsletter of the Illinois State Bar Association's Section on Civil Practice & Procedure

Appellate court clarifies how to properly complete a summons

BY RONALD D. MENNA, JR.

Recently, in *Arch Bay Holdings, LLC-Series 2010B v. Perez*, 2015 IL App (2d) 141117, the Appellate Court set another trap for the unwary plaintiff, holding that service of summons is ineffective where a defendant's name is not listed on the face of the summons, even though her name is listed on the attachment directing that she be served.

Illinois Supreme Court Rule 101 ("Summons and Original Process—Form and Issuance") requires that summons "shall be in substantially the following form". The summons forms set forth in Rule 101 states that all plaintiffs and all defendants shall be named in the caption, and that immediately below the paragraph captioned "SUMMONS," there shall be a line which states "To each defendant."¹ The "use of the wrong form of summons shall not affect the jurisdiction of the court."² Moreover, Supreme Court Rule 131(c) ("Form of Papers"; "(c) Multiple Parties"), provides that, in cases where there are multiple parties, "it is sufficient in entitling documents, *except a summons*, to name the first-named plaintiff and the first-named defendant with the usual indication of other parties"³ (Emphasis added).⁴

In *Arch Bay Holdings*, a foreclosure complaint was filed and three identical summons were issued using the DuPage

County clerk's form.⁵ Each summons listed the defendants as "Isais Oerez et al."⁶ The line on which names could be added ("To each Defendant:_____") was left blank.⁷ A second page attached to each summons directed that the summons be served on a list of defendants.⁸ The complaining defendant was served by substitute service, and did not contend that she was not actually served.⁹

After the entry of a default judgment and confirmation of a judicial sale, the complaining defendant filed a § 2-1401 petition seeking to quash service because the summons was defective on its face under Supreme Court Rule 101(d) as it did not name her as a defendant.¹⁰ While the trial court found that the summons was defective, it nevertheless dismissed the § 2-1401 petition.¹¹

The Appellate Court began its analysis by reviewing *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc.*,¹² which held "[t]he procedures for issuance of summons set forth in section 2-201(a) and the supreme court rules must be adhered to in order to give the court personal jurisdiction over a defendant." It further noted that our Supreme Court stated "a summons which does not name a person on its face and notify him to appear, is no summons at all, so far as the unnamed person is concerned."¹³

Relying upon our Supreme Court's holding in *Ohio Millers Mutual*, the Appellate Court held that since "the summons failed to name defendant on its face [it] was no summons at all."¹⁴ Thus, "the missing name from the face of the summons was a barrier to obtaining personal jurisdiction. *Ohio Millers Mutual* flatly holds that, for a summons to be valid, the defendants' names must appear on its face. Thus, precedent from our supreme court defeats the conclusion that the summons and the complaint may be considered in conjunction or that actual knowledge of the action through a flawed summons will vest the court with jurisdiction."¹⁵ Accordingly, the Appellate Court found that the summons was invalid and the trial court was without jurisdiction.¹⁶

In light of the Appellate Court's analysis, I believe the better practice is for plaintiff's counsel to prepare a separate summons for each named defendant, naming him/her/it on the "To each Defendant" line. While this goes beyond what is required by Supreme Court Rule 101, it should prevent a motion to quash based upon *Arch Bay Holdings*. ■

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1. Illinois Supreme Court Rules 101(b), 101(d).
2. Illinois Supreme Court Rule 101(g).
3. Illinois Supreme Court Rule 131(c).
4. In other contexts, our Supreme Court has consistently held that its Rules are not advisory, have the force of law, and shall be obeyed and enforced as written. See, *In re Denzel W.*, 237 Ill.2d 285, 294 (2010) (Supreme Court Rule 711); *People v. Houston*, 226 Ill.2d 135, 152 (2007) (Supreme Court Rule 608(a)); *People v. Norris*, 214 Ill.2d 92, 96-97 (2005) (Supreme Court Rules 504,

505); *Roth v. Illinois Farmers Insurance Company*, 202 Ill.2d 490, 497 (2002) (Supreme Court Rule 315); *Bright v. Dicke*, 166 Ill.2d 204, 210 (1991) (Supreme Court Rule 216); *People v. Wilk*, 124 Ill.2d 93, 103 (1988) (Supreme Court Rules 402, 604(d), 605(b)).

5. *Arch Bay Holdings, LLC-Series 2010B v. Perez*, 2015 IL App (2d) 141117, ¶ 3.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*, ¶ 4.

11. *Id.*, ¶ 5.

12. *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc.*, 172 Ill.App.3d 993, 1001 (2nd Dist.

1988); *Arch Bay Holdings*, 2015 IL App (2d) 141117, ¶¶ 11, 14.

13. *Arch Bay Holdings*, 2015 IL App (2d) 141117, ¶ 14, citing, *Ohio Millers Mutual Insurance Co. v. Inter-Insurance Exchange of the Illinois Automobile Club*, 367 Ill. 44, 56 (1937)(a summons that failed to name approximately 3,000 people on its face was invalid), and *Theodorakakis v. Kogut*, 194 Ill.App.3d 586, 588-90 (1st Dist. 1990) (summons which contained a typographical error for the defendant land trust's number was invalid).

14. *Arch Bay Holdings*, 2015 IL App (2d) 141117, ¶ 16.

15. *Id.*, ¶ 19.

16. *Id.*

**THIS ARTICLE ORIGINALLY APPEARED IN
THE ILLINOIS STATE BAR ASSOCIATION'S
TRIAL BRIEFS NEWSLETTER, VOL. 61 #5, DECEMBER 2015.
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