

No. 11-____

IN THE
Supreme Court of the United States

STEVE DEL,
Petitioner,

v.

TUMARA FOOD MART, INC.,
Respondent.

**On Petition for a Writ of Certiorari to the
Illinois Supreme Court**

PETITION FOR A WRIT OF CERTIORARI

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October 24, 2011

QUESTIONS PRESENTED

1. Whether the Due Process Clause of the Fourteenth Amendment to the United States' Constitution does not mandate that a judge recuse herself from a case when the judge's brother's law firm was recruited by an interested insurance company to prosecute a petition to vacate a default judgment entered against the insurance company's interest, with the obvious intent of getting a favorable ruling from the judge?

2. Whether the Due Process Clause of the Fourteenth Amendment to the United States' Constitution does not mandate that a judge disclose that she has a connection or relationship to the law firms representing the insurance company's interest on a contentious matter that the judge presided over on countless occasions for up to a year?

3. Whether the Due Process Clause of the Fourteenth Amendment to the United States' Constitution does not mandate that the defense law firm disclose the connection or relationship between their law firm and the judge hearing the highly contested matter?

PARTIES TO THE PROCEEDINGS

Petitioner is Steve Dei. Respondent is Tumara Food Mart, Inc.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDINGS.....	ii
TABLE OF AUTHORITIES.....	iv
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	1
STATEMENT	2
Background.....	3
REASON FOR GRANTING THE PETITION....	8
I. IN ORDER TO FOSTER PUBLIC CONFIDENCE IN THE FAIRNESS, THE IMPARTIALITY, THE TRANS- PARENCY, THE INDEPENDENCE, AND THE INTEGRITY OF THE JUDICIAL SYSTEM, AND THE RULE OF LAW, THIS HONORABLE COURT SHOULD SPEAK OUT LOUD AND CLEAR THAT A JUDGE MUST DIS- CLOSE AND/OR RECUSE HERSELF UNDER THESE CIRCUMSTANCES.....	8
CONCLUSION	22
APPENDIX	
A. Trial Court Order Vacating Judgment.....	1a
B. Illinois Appellate Court Decision.....	5a
C. Illinois Appellate Court Order	24a
D. Illinois Supreme Court Oder.....	25a

TABLE OF AUTHORITIES

CASES	Page
<i>Aetna Life Ins. Co. v. Lavoie</i> , 475 U.S. 813 (1986).....	<i>passim</i>
<i>Caperton v. A.T. Massey Coal Co.</i> , 129 S. Ct. 2252 (2009).....	<i>passim</i>
<i>In re Murchison</i> , 349 U.S. 133 (1955).....	9
<i>Republican Party of Minn v. White</i> , 536 U.S. 765 (2002).....	9
<i>Tumey v. Ohio</i> , 273 U.S. 510 (1927).....	9
<i>Ward v. Village of Monroe</i> , 409 U.S. 57 (1972).....	9
<i>Withrow v. Larkin</i> , 421 U.S. 35 (1975).....	9

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Steve Dei, respectfully submit this petition for a writ of certiorari to review the order of the Illinois Supreme Court denying the petition for leave to appeal the decision of the Illinois Appellate Court which affirmed trial Judge Lynn Egan's judgment in favor of the respondent, Tumara Food Mart, Inc., because the whole exercise is a sham as it violates the petitioner's Constitutional Due Process Rights to a Fair and Impartial Hearing by a Fair and Impartial Trial Judge.

OPINIONS BELOW

The final order of the Illinois Supreme Court denying the petition for leave to appeal on May 25, 2011 is unreported (Appendix, 25a). The decision of the Illinois appellate court affirming the trial court's decision is reported at 406 Ill.App.3d 856, 941 N.E.2d 920 (2010) (Appendix, 5a). The trial court's decision vacating the default judgment is unreported (Appendix, 1a).

JURISDICTION

The jurisdiction of this Court is invoked pursuant to the Fourteenth Amendment to the United States' Constitution, and 28 U.S.C. Section 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States' Constitution provides, in relevant part:

No state shall . . . deprive any person of life,
liberty, or property, without due process of law. . .

United States Constitution, Amendment XIV, Sec. 1

STATEMENT

Petitioner, Steve Dei, alleges that his fundamental and Constitutional Due Process Rights to a Fair and Impartial Hearing by a Fair and Impartial Trial Judge was violated when Judge Lynn M. Egan usurped the judicial role and vacated the judgment in the amount of \$273,230.02 that was entered against American Family Insurance Company's insured, the respondent, because Judge Egan should have disclosed her connection to the case and/or recused herself from the case, when she knew that her brother Matthew J. Egan's law firm, named Pretzel & Stouffer, Chartered, was recruited by the insurance company to prosecute the petition to vacate the default judgment before her with the expectation of obtaining a favorable ruling from her.

The facts of the underlying case are irrelevant to the Constitutional violation alleged as basis for seeking this petition for writ of certiorari. However, a statement of those facts is helpful. Helpful because the trial court and the Illinois appellate court's fact findings and opinions would seem logical and reasonable when read in isolation, i.e., "within their four corners". But when those very same factual findings and opinions of the trial judge and the Illinois appellate court are seen in light of the true facts, one must conclude that the trial court and the Illinois appellate court's fact findings and opinions are incomplete, selective and distort the true facts of the case in order to reach an unjust end. The Constitutional issue

raised here are foundational and structural: i.e., “No one can go and hire the judge’s relative’s attorney or law firm to handle a case before the judge. Motive or intent of anyone is irrelevant. That arrangement is simply not fair to the opponent(s), it must be proscribed. No attorney or law firm should agree to such representation. No judge should entertain such.” It’s that simple.

Background:

On February 17, 2007, petitioner, Steve Dei, slipped, fell and broke the tibia and fibula bones of the left leg while walking towards the respondent’s cashier to pay for gasoline at the respondent’s gas station located at 2941 East 83rd Street in Chicago, Illinois. The gas station is a couple of minutes from a major expressway. On June 7, 2007, a premises liability lawsuit was filed against the gas station.

On June 22, 2007, a deputy sheriff of Cook County, Dimitrye Nikolich, served summons and complaint on Ahmed Sylla, the adult male cashier on duty at the gas station. On June 23, 2007, Ahmed Sylla informed Umair Nomani the assistant manager of the service of summons and complaint. On or about June 23, 2007, Umair Nomani faxed the summons and complaint to the insurance company. Respondent failed to appear, answer or otherwise plead to the complaint. On September 21, 2007, petitioner noticed a motion for default for October 4, 2007. On October 4, 2007, at the request made in open court, before Judge Lynn M. Egan, by Richard M. Witt, Esq., an American Family Insurance Company’s in house lawyer who did not file an appearance, petitioner’s motion for default was entered and continued by Judge Lynn M. Egan to November 15, 2007. On

November 15, 2007, a default order was entered against the respondent, and the case was continued to January 4, 2008 for a prove up hearing on damages. On November 15, 2007, petitioner's counsel mailed a copy of the default order by certified mail return receipt requested to the respondent. The green card of the certified mail was returned signed for on November 16, 2007, by Asif Nomani, the manager. Asif Nomani testified at his deposition that he then faxed the default order to the insurance company.

On January 4, 2008, at the prove up hearing, following the presentation of evidence as to petitioner's damages, a default judgment was entered by Judge Lynn M. Egan against the respondent in the amount of \$273,230.02. On July 10, 2008, over six months after the default judgment was entered, petitioner filed a citation to discover respondent's assets. American Family Insurance Company's in-house law firm then filed its appearance on behalf of the respondent. American Family Insurance Company found itself in a difficult situation with the default judgment entered against its insured. Knowing that the case was pending before Judge Lynn M. Egan, American Family Insurance Company's in house law firm withdrew its appearance. Judge Lynn M. Egan's brother Matthew J. Egan's law firm of Pretzel & Stouffer, Chartered, then substituted its appearance to prosecute the petition to vacate default judgment before Judge Lynn M. Egan. During the nine (9) months of countless legal wrangling before Judge Lynn Egan, specifically between September 2008 and June 2009, petitioner and his lawyer 'Lanre O. Amu, were kept in the dark about the connection between Judge Lynn M. Egan and the defense law firm of Pretzel & Stouffer, Chartered. Petitioner's counsel 'Lanre O. Amu instinctively knew from Judge Lynn

M. Egan's mini ruling in the nine (9) month period, including her rulings on respondent's motions to quash his subpoenas etc., that Judge Lynn M. Egan was compromised, but Amu was at a loss why. The distorted facts and flawed reasoning articulated by Judge Lynn Egan in vacating the judgment removed doubt that this was improper. The lone case law Judge Egan cited to support her decision did not even apply to the facts of this case. Petitioner immediately appealed to the Illinois appellate court with the expectation that the Illinois appellate court will restore integrity to the process. Instead, the Illinois appellate court simply granted comity and affirmed Judge Egan's flawed fact findings, reasoning and ruling.

After receiving the Illinois appellate court's flawed December 8, 2010 decision, petitioner's counsel conducted an investigation. The investigation put to rest all of petitioner's counsel's previous hunches that something fishy was afoot: the investigation revealed that Judge Lynn M. Egan should not even have presided over the defense's petition to vacate the default judgment because Judge Lynn M. Egan's older brother Matthew J. Egan is an equity partner in the defense law firm, Pretzel & Stouffer, Chartered. The investigation also revealed that the law firm of Pretzel & Stouffer, Chartered, was hired with the knowledge that the law firm will prosecute the petition to vacate the judgment before Judge Lynn M. Egan¹. Even when the Illinois appellate court was

¹ In this case, there was not merely an appearance of impropriety, there was actual impropriety in the fabrication of fictitious facts by the defense in its attempt to vacate the default judgment at all cost and by any means necessary. Normally the trial judge is presumed to be fair and impartial. However, in

this case, the illogical fact finding, reasoning and decision making by Judge Lynn M. Egan was glaring and complimented the defense's "the ends justifies the means" approach to prosecuting the petition to vacate the judgment-this in part prompted the investigation by petitioner's counsel. That investigation uncovered the relationship between the defense law firm of Pretzel & Stouffer, Chartered, and Judge Lynn Egan. As part of the defense's fabrications, the gas station cashier, an adult male, Ahmed Sylla, testified that he did not know who a sheriff is even though the gas station where he worked is just a couple of minutes from the expressway. Mr. Sylla blotted out at his deposition that he previously worked as a security guard prior to working as a cashier at the gas station. Judge Lynn Egan found that the gas station cashier, Ahmed Sylla, who the uniformed Cook County deputy Sheriff personally served with summons and complaint as agent of the gas station did not know the import of being served with summons and complaint, hence the judgment is void.

Now this is a cashier who had represented himself prose in administrative proceedings prior to being served with summons and complaint in this case. There is also testimony the summons and complaint served by the sheriff were faxed from the gas station to the insurance company within a couple of days of service by the sheriff.

Illinois statute, 735 ILCS 5/2-204 states, ". . . a private corporation may be served (1) by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law." Illinois case law states: A plaintiff may comply with the statute governing service on private corporations by serving agents other than the corporation's registered agent for service of process. *Taeb v. Ritchey Construction Company*, 234 Ill.App.3d 953, 602 N.E.2d 489 (1st Dist. 1992). An employee may qualify as an agent. To meet the requirement of agency for purposes of service, the employee must have some responsibility or must be someone who can be expected to be responsible. For example, service on an intelligent company clerk who acted as receptionist and understood the importance of the service of summons was sufficient service on a private corporation. *Megan v. L.B. Foster*

made aware of the newly discovered relationship between Judge Lynn M. Egan and the defense law firm of Pretzel & Stouffer, Chartered, the Illinois appellate court did nothing, but swept the Due Process Violation under the rug.

After the conflicting relationship was found out and exposed by petitioner's counsel, the respondent's law firm of Pretzel & Stouffer, Chartered's known response to date is that Judge Lynn M. Egan did nothing wrong after all. That Judge Lynn M. Egan did not need to disqualify herself or disclose the fact that her brother Matthew J. Egan is an equity partner of the defense law firm of Pretzel & Stouffer, Chartered prosecuting the contested matter before Judge Lynn Egan. The defense law firm further argued that there was no violation of Illinois Supreme Court Rule 63, Code of Judicial Conduct, Canon 3(C)(1)(e)(iii), because the judgment amount at issue in this case, \$273,230.02, is de minimis. De

Co., 1 Ill.App 3d 1036, 275 NE2d 426 (2d Dist. 1971).

Petitioner issued subpoena to the keeper of records for the City Colleges of Chicago, for transcript of the courses that the cashier Ahmed Sylla (who claims he does not know who a sheriff is) took while he was a student at Olive Harvey College in 1997. Respondent quickly filed a motion to quash the subpoena and for protective order stating that the discovery seeks unnecessary and unwarranted personal information concerning Mr. Sylla. Judge Lynn M. Egan agreed with respondent and quashed the subpoena for Mr. Sylla's college transcripts. Ahmed Sylla testified in part that prior to being served summons and complaint by the sheriff he had been to administrative proceedings representing himself pro se without a lawyer and without an interpreter-this is obviously relevant and contradicts Judge Egan's finding that the cashier Ahmed Sylla did not understand the nature or import of being served with the summons and complaint by a uniformed deputy sheriff.

minimis denotes an insignificant interest that could not raise a question as to a judge's impartiality. American Family Insurance Company however found the judgment amount significant enough to abandon its own team of experienced in-house trial lawyers, in favor of recruiting Judge Egan's brother's law firm to prosecute the petition to vacate the judgment before Judge Egan. In the interest of fairness, impartiality and transparency, the determination of "de minimis" cannot be an exclusive decision made by Judge Egan and/or the defense with the petitioner and his counsel kept in utter darkness about what is going on between them.

All of these contributed to deny petitioner Steve Dei, his fundamental Due Process rights to a fair and impartial hearing by a fair and impartial trial judge as guaranteed to him by the Fourteenth Amendment to the United States' Constitution.

REASON FOR GRANTING THE PETITION

IN ORDER TO FOSTER PUBLIC CONFIDENCE IN THE FAIRNESS, THE IMPARTIALITY, THE TRANSPARENCY, THE INDEPENDENCE, AND THE INTEGRITY OF THE JUDICIAL SYSTEM, AND THE RULE OF LAW, THIS HONORABLE COURT SHOULD SPEAK OUT LOUD AND CLEAR THAT A JUDGE MUST DISCLOSE AND/OR RECUSE HERSELF UNDER THESE CIRCUMSTANCES.

This Court being the final Court of resort in this land, has the moral obligation to hear this case and provide authoritative voice to avoid a slide into anarchy in our society when our courts fail to function as they are designed to function. The primary

function of our courts is the application of the facts to the law on contested issues that arise in our society. The law requires that the judge be fair, impartial, honest and transparent in the fact finding and the application of the law to the facts found. The concept of the rule of law which is the corner stone of freedom means that everyone must obey the law of the land. Judges and non-judges alike must obey the law. Lawyers and non-lawyers alike must obey the law. No one is above the law. A judge's authority to preside on a case rests solely on the implicit understanding that he or she will be fair and impartial both in the fact finding and in the application of the facts to the law as it is laid down. Confidence and trust in our courts must rest on this fundamental principle.

Courts, in our system, elaborate principles of law in the course of resolving disputes. The power and the prerogative of a court to perform this function rests, in the end, upon the respect accorded to its judgments. The citizen's respect for judgments. . . depends in turn upon the issuing court's absolute probity. Judicial integrity is, in consequence, a state's interest of the highest order. *Republican Party of Minn v. White*, 536 U.S. 765 (2002).

It is axiomatic that a fair trial in a fair tribunal is a basic requirement of due process. This Court has enunciated these fundamental principles in numerous cases including: *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252 (2009); *Republican Party of Minn v. White*, 536 U.S. 765 (2002); *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986); *Ward v. Village of Monroeville*, 409 U.S. 57 (1972); *Withrow v. Larkin*, 421 U.S. 35 (1975) ; *In re Murchison*, 349 U.S. 133 (1955) and *Tumey v. Ohio*, 273 U.S. 510 (1927). To

this end, no person is permitted to try cases where s/he has an interest in the outcome.

This is not the situation in which there is a mere appearance of impropriety, in this case, there is actual evidence of bias. When plaintiff's counsel sent subpoena to get the college transcript of the cashier who testified that he does not know who a sheriff is, Judge Egan quashed the subpoena. Of course she had to quash it because the subpoena threatens to expose the defense's inchoate fraud. Every objective finding that a fair judge ought to make as part of a judge's responsibility in holding the balance "nice, clear, and true", including recognizing that the cashier was lying and making a mockery of the judicial process was jettisoned by Judge Egan. Of course, they must be ignored because they would not have led to the desired result and threatened the defense's inchoate fraud.

This also is not a situation in which a judge made a mistake. There was no mistake here as Judge Lynn Egan believed that by virtue of her position as a so called "veteran trial judge" she could not be held to account and she is so connected within the judicial system that she is virtually above the law.

By this approach literally any case can be fixed and the little guy is simply railroaded and given the run around in the court house on his own time with no compensation while the fraudsters are billing huge amounts for each and every minute they compile tons and tons of briefs and drag the matter through every level of the court system.

Any honest person who has tried any substantive case in our courts before some of these judges must know that just as a picture speaks a thousand words,

there are myriad latent and patent ways a biased judge can fix a case under the radar, even in a jury trial setting. These judges have confidence in their misdeeds as they know that the appellate court for the most part will find whichever way (knowing or not knowing of the underlying fraud) to rubber stamp and ignore their misdeeds. Judge Egan and her cohorts never contemplated that the underlying connection in this case could be exposed. This is akin to a divine sting operation on a sinister plot aimed at bankrupting a legal opponent and securing victory by any means necessary.

No human being is above error, but what happened in this case is not a mistake. It happened in part because petitioner's counsel was perceived as the little guy with no connections within the court system. This is a deliberate and calculated action on the part of Judge Lynn Egan and the defense. It was obvious to the plaintiff's attorney that Judge Egan was clearly biased and not thinking straight. The puzzle on the corrupt relationship was yet to be unraveled to plaintiff's counsel about 18 months later through an investigation.

The real danger to society is that a corrupt judge by his or her corrupt behavior can decide not only who wins or loses, but also who and who is qualified and fit to practice in his or her courtroom. They turn themselves into semi-gods and turn legal practice in their courtrooms by lawyers they have not endorsed unnecessarily tasking, risky, and financially unprofitable. The actual facts of what happened on the street plays second fiddle to grandstanding and artificial roadblocks erected in the name of the law. By this behavior certain segments of society can then be permanently eliminated from the courtroom envi-

ronment. By this behavior the courtroom may never reflect society. No one can challenge that except the lawyers who work the courtroom trenches day in and day out and see what is transpiring. The insurance company lawyers who have the big bucks to contribute over and under the table for elections and re-elections, and the few handpicked law firms who are admitted into the million dollar club remain the ones freely admitted to practice successfully in lucrative areas. Not because the others cannot, but because by corrupt means that have nothing to do with truth, transparency and honesty, they can erect obstacles in their paths. It becomes a risky venture for a lawyer to bring a death case worth millions to the courthouse if one is not one of those admitted into the million dollar club. Invariably, one way or the other, at the appropriate point in the process a spurious motion will be brought before a corrupt judge who will find a way to turn the tide on your case and turn you and your aggrieved client out of court with nothing. The message is you have to go to a select group of lawyers or law firms only. With them, your case will sail through without any hindrance or obstacle. What a slap in the face. What an insult to common sense?

Who in his or her right senses will not objectively see a conflict in the situation here presented in *Dei v. Tumara*? The defense lawyers from Pretzel & Stouffer, Chartered, did not know of the conflict? Judge Egan did not know of the conflict in the nine (9) months of back and forth contentious litigation before her? If she knew of the conflict, why did she not recuse herself prior to deciding the pivotal issue in the case? If she did not know of the conflict, is she really qualified to sit on the case?

Judge Egan's brother Matthew Egan of the law firm of Pretzel & Stouffer, Chartered, recently won a \$387,422,000, yes \$387million, judgement in the same Daley Center courthouse. How will Matthew Egan and his law firm of Pretzel & Stouffer, Chartered, have felt if they took the almost four hundred million dollar case on a contingency, invested tens of millions of their own money in cash and bank loans into the case, then lost that case and also lost all of their financial investment totaling tens of millions of dollars in the case only to realize some months after the "not guilty verdict" that the trial judge who presided over the case was the brother of the equity partner of the opposing law firm? Now Matthew Egan and the law firm of Pretzel & Stouffer, Chartered have lost their monetary investment and in addition they are now stuck with tens of millions of dollars in bank loans that they must pay back. How will they feel? After all, what is good for the geese should be good for the gander? If its good for Steve Dei, it should be good for Matthew Egan. Otherwise, we are using the governmental system to create an unjust and an unequal society-just as in the days of slavery. Hence, man's ingenuity has found other means, albeit more sophisticated, latent, and complex, of achieving essentially the same end.

The cause of social justice in our society demands that we sum up the courage to confront these abuses and wrongs. It is in fact hypocritical to pay lip service to talk about an egalitarian society or the need for a more fair and a more just society yet keep the systems and institutions that maintain the status quo firmly in place.

Caught in a corrupt act in a sting operation, the law firm of Pretzel & Stouffer, Chartered's only defense is that the amount at issue in this case is de minimis. De minimis from who's perspective? If it was de minimis why did the defense engage in the year long contentious litigation to vacate the "de minimis" judgement? Why should they be the ones deciding among themselves what is and what is not de minimis? The corrupt act here created a financial shock wave for petitioner's counsel, a solo practitioner, and almost sent petitioner's counsel into bankruptcy given the years of litigation, the expenses expended in fighting the unfairness of the whole thing. The defense by contrast was generously paid by the insurance company to perpetrate this fraud and drag this matter for as long as it takes through all the courts in this land with the aim and objective of bankrupting the petitioner's counsel. Now contrast this, if petitioner's counsel is now caught misappropriating some client's funds, even a meager sum, caused in part because of this type of ruinous corruption within the court system, not only will petitioner's counsel get a full hearing before the Illinois Attorney Registration and Disciplinary Commission (called ARDC) which will then suddenly spring out of the woodwork, but petitioner's counsel also stands a good chance of criminal prosecution and going to jail for defrauding a client. By that time, it will be too late to ask where was ARDC when all of the underlying ruinous corruption within the court system was taking place? How can this scenario be fair? Corruption in our court system is an evil that destroys those in its tracks, those on its receiving end. There is a legitimate reason to confront any evil.

The mighty and the little guys must have Equal access to our courts, and court proceedings should be transparent. The same set of laws must apply equally to all who are before the court, so there are settled expectations. The concept of “Equal Justice for All” must move from being an empty and a hollow slogan to becoming a day to day reality in our courts. The cause of Social Justice in our Society demands no less. Arguably, the courts by far play the most significant role in effecting Equality, and Justice in our Society, and must not shirk in its responsibility and obligation in this regard to the detriment of certain members of our Society. We know for a fact that “Injustice Breeds and Perpetuates Inequality”

As an illustration: a case litigated for five years under this perverted arrangement can bring hundreds of thousands of dollars and victory to the law firm and entity that employs them in this perversion as they drag this matter through the courts, while it brings financial ruin and destruction to the litigant and the attorney on the receiving end of the perversion. Hence, the perverted arrangement generously rewards its perpetrators just as it oppresses and destroys those wronged. Therein lies the evil. The Illinois courts in their opinions failed to recognize this undeniable truth in this case. With all due respect, this truth impeaches and undermines all of the Illinois courts’ opinions in this case to date. If we are acting responsibly, judging should not be about protecting collegial interests (i.e., judges closing ranks or watching each other’s backs so to speak) to the detriment of the sacred responsibility our Society entrusts to the judicial branch of government. Injustice Breeds and Perpetuates Inequality.

In this case, the respondent strategized and fabricated this fictitious situation, packaged it in the form of a petition before Judge Lynn Egan and Judge Egan took the baton and ran with it. Judge Lynn Egan turned a blind eye to the true facts, and never asked the required hard questions of the respondent concerning their fictitious presentation. Petitioner and his counsel were simply railroaded to vacating the judgment. Nothing petitioner and/or his counsel had to say mattered. To make matters worse, the Illinois appellate court failed to correct this error. The Illinois appellate court simply granted overly broad discretion to the trial judge and echoed the trial court's distorted fact findings and flawed logic without meaningful probity. These violated petitioner's Constitutional Due Process rights to a fair and impartial hearing by a fair and impartial trial judge.

Quantitatively, as a matter of principle, the Due Process violation alleged in this case is arguably five times in magnitude when compared to the violation addressed by this Court in *Caperton v. A.T. Massey Coal Company, Inc.*, 129 S.Ct. 2252 (2009). In *Caperton* there were five justices on the supreme court of appeals of West Virginia, and the recusal concerned only one justice, Justice Brent Benjamin. One justice out of five has a 20 percent voting influence in the entire decision making panel of justices on the *Caperton* case. That one justice's vote becomes more critical in a close vote where at least two justices favor the party moving to recuse. Here, Judge Lynn Egan's vote is 100 percent. Judge Egan's influence in this case is quantitatively five times more than Justice Brent Benjamin's influence in the *Caperton* case. Its all or nothing. Also, there was nothing secret or hidden in the *Caperton* case. All the parties in *Caperton*

ton were aware of the conflict at the outset, and had the opportunity to file motions to recuse. In this case, the petitioner and petitioner's counsel were the only ones left in utter darkness concerning the conflict. Petitioner and his counsel were knowingly robbed of the opportunity to file motions to recuse. This makes this case all the more important from a Due Process stand point.

Of Constitutional dimension is the fact that Judge Lynn Egan knew of the conflict at the outset but intentionally kept numb in the over nine (9) months that this matter was vigorously litigated in stages and on countless times before her. The defense that procured the conflict also knowingly kept numb concerning the conflict in the nine (9) months of contentious back and forth litigation before Judge Egan. The noble notions of transparency, fairness, impartiality, full disclosure, and the rule of law were jettisoned in an attempt to win at all cost. Anything and everything goes, and the end justified the means approach to judging so to speak. Petitioner and his counsel were simply being given the run around and wasting their time, in hours, days, weeks, months and years on the case, at their own expense as the outcome was already known to Judge Egan and the defense.

The facts of this contentious case screamed out loud for recusal under both the subjective and objective standard for recusal. If for argument sake, Judge Lynn Egan subjectively felt she was able to be fair and impartial, then ethics required that she disclose and announce that fact to the contending parties before her at the outset, and wait for any objections from the parties before proceeding to preside over the petition.

Objectively, what Judge Egan subjectively thinks about her own ability to be fair and impartial in the dispute is irrelevant. Even if Judge Egan was also concurrently the Pope, she must recuse herself because she can never overcome the objective appearance of impropriety and the inference of bias and unfairness. The Integrity of the process is of the highest priority and must trump every other consideration Judge Egan had.

We know that every human being has the light of Conscience. Can Judge Lynn M. Egan honestly claim that in all of the countless back and forth litigation of this matter before her in the nine (9) months spanning September 2008 through June 2009, it never once crossed her mind that her brother's law firm was the defense and she ought to disclose and/or recuse herself? If it did cross her mind, why did she not heed that tug of Conscience? If it never once crossed her mind, then new issues are raised about whether or not Judge Egan really should be judging anything at all.

As at today, neither the defense nor Judge Lynn M. Egan has taken responsibility for the occurrence. In fact, the stance they have taken to date is that there is nothing wrong with this type of arrangement. They are dug-in, bent on protracting the litigation in an unjust fight knowing that every hour they spend is generously paid for by some insurance company, while the underdog is burning his or her own time without compensation. No judicial or attorney regulatory authority has taken any stand on this to date. So one must ask, how many other cases involving Judge Egan's brother's law firm of Pretzel & Stouffer, Chartered has Judge Egan presided over in the past, how many is she presiding over now, and how many

will she preside over in the future? Injustice Breeds and Perpetuates Inequality. Using the power of access to the institution of justice as a tool of oppression and taking undue advantage of others is an evil worse than that done by a lone armed robber given the ripple effect of the harm, and the mass impact on Society. A lone armed robber's harm to society arguably is contained to the persons robbed. When the lone armed robber is caught he or she is swiftly apprehended and processed through the criminal court and sent to jail. But who polices or apprehends the second more damaging type of misconduct by those in authority? Has society formally recognized that the second type is really misconduct? Of the two kinds of misconduct, which misconduct is quantitatively more lethal to Society? A judge using her pen to pervert justice and violate another person's rights in the serenity of a courtroom or a robber using the barrel of a gun to achieve the same end from his victim in a dark alley? Yes, the tools are different: a pen and a gun. But realistically how is the mind set different? Aren't both just essentially using the same mental state to commit lawless acts? Could the perceived class, status, and clout of those who engage in the second type of misconduct be the reason they are immune from the prosecution that the other class is condemned to?

These types of infractions are serious because they encourage fraudulent conspiracies to undermine justice, and thwart people's rights. These are no victimless infractions. Respondent reaped monetary benefits from having the judgment vacated, and the law firm of Pretzel & Stouffer, Chartered that they hired to do the magic also made a lot of money over the years from their improper conduct in this case, while those on the receiving end of the scam: the peti-

tioner and his counsel were impoverished because of that very same misconduct. So analytically, we can vividly see here an exchange that uses the government's institution of justice "the Court" to corruptly enrich one segment of society and impoverish another segment of society with impunity. All of this is done "legally" and in the open and calm atmosphere of the courtroom. But in a just and fair society, Might must not make Right.

In part, as a result of the harm we suffered, an articulate and highly intelligent 80 year old African American woman without financial means whose husband, a veteran, died as a result of an alleged wrongdoing at a hospital walked into our office with the legal problem, seeking redress through the courts. She did not even have the court filing fee, and could not come up with it. Taking up her cause through the courts would have required an investment of money by us. But given our experience with what often goes on in the courts, we dare not. Sad, but we really had no choice but to turn the old lady away. In this very example, we were unable to serve a member of the community in need of the legal services we should have been eager and able to competently provide her under normal circumstances. We simply told the old lady to find some other lawyers. But the fact that the old lady has not picked up her files from our office to give to another lawyer indicates to us that she did not find any lawyer to take up her cause. What impression will this old lady carry to her grave about our system of justice and lawyers in America? This is one example of a ripple effect of the harm.

These types of practices enrich the perpetrators when there are no rules to police the misconducts, and the very same practices destroy the victims. A vivid portrayal is to imagine a society where armed robbery by a select group of people with clout is legal: safe haven, no questions asked, no prosecutions. Will anyone doubt such will be a boom to the armed robber (a member of the select group) and unfair to the victim of the armed robbery (a non-member of the select group)? The more the robber robs the more the victim is victimized and impoverished. Where is the corrective mechanism under such an arrangement?

The only losers in this scheme, unless this Honorable Court intervenes, are the petitioner, his counsel, and past, present, and future victims of similar scams. When winning becomes the ultimate goal, then the end justifies the means approach such as this becomes the order of the day in our courts. Such signal an end to the notion of Equal Justice for All ever becoming a reality in our courts. The notion of striving for Equality in our Society as an ideal then becomes an empty slogan and an illusion because there are systems firmly in place to thwart that effort. We now see why what happened here which is akin to the concept portrayed in the novel "Animal Farm" must be seen by any fair and just society as a call for reform. Hence the need for the United States Supreme Court to give due consideration to this very important issue.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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October 24, 2011

APPENDIX

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

STEVE DEI,)
)
)
 Plaintiff,)
) No. 07 L 5875
 vs)
)
 TUMARA FOOD MART, INC.)
)
 Defendant.)

Order

This matter coming to be heard pursuant to defendant, Tumara Food Mart, Inc.'s, section 2-1401 petition to vacate, due notice having been given, discovery having been undertaken, oral argument having been heard and the court being duly advised in the premises, **IT IS HEREBY ORDERED THAT** said petition is granted, as more fully set forth below.

FACTS

On June 7, 2007, plaintiff filed this lawsuit alleging he fell and injured himself while on defendant's premises. On that same day, plaintiff caused a summons to be issued to defendant. On

June 22, 2007, the sheriff's office served Ahmed Sylla, an employee of Tumara Food Mart, Inc., with summons and complaint. No appearance was filed on behalf of defendant and plaintiff presented a motion for default on October 4, 2007. The motion was continued until November 15, 2007, at which time an order of default was entered by judge John A. Ward. The matter was continued for prove-up on damages until January 4, 2007. Following presentation of evidence as to plaintiff's damages, this court entered judgment in plaintiff's favor and against Tumara Food Mart, Inc. in the amount of \$273,230.02. After a citation to discover assets was served upon Tumara Food Mart, Inc.'s registered agent, an appearance was filed and the current petition was ultimately briefed.

ISSUE

Whether Ahmed Sylla was an agent authorized by Tumara Food Mart Inc. to accept service of process such that service of summons and complaint upon him was sufficient to confer jurisdiction over Tumara Food Mart, Inc. The answer is no.

ANALYSIS

Service on a private corporation is governed by 735 ILCS 5/2-204, which provides that a corporation may be served "1) by leaving a copy of the process with its registered agent or any officer

or agent of the corporation found anywhere in the State; or 2) in any other manner now or hereafter permitted by law.” Needless of say, where service is not obtained in accordance with section 2-204, it is invalid, no personal jurisdiction is acquired, and any default judgment rendered against a defendant is void. Since it undisputed that neither the registered agent nor an officer of Tumara Food Mart, Inc. was served, it is important to acknowledge that agency for purpose of accepting service of process is not created by “implication or construction” and cannot exist if it is “contrary to the intention by “implication or construction” and cannot exist if it is “contrary to the intention of the parties.” Mason v. Freeman National Printing Equipment Co., 51 Ill. App.3d 581 (1st Dist., 1977).

The record before this court is clear that Ahmed Sylla was not authorized by Tumara Food Mart, Inc. to accept service of process on its behalf. Moreover, there is nothing in the record to contradict his testimony that he did not understand the nature or import of the documents received. Thus, the court did not obtain jurisdiction over Tumara Food Mart, Inc., rendering the orders of November 15, 2007 and January 4, 2007 void.

CONCLUSION

The November 15, 2007 order of default, the January 4, 2007 default judgment and April 7, 2008 memorandum of judgement are all vacated. All

4a

further matters shall be heard before Judge Bill Taylor pursuant to the transfer order entered by Judge Maddux.

ENTERED: /s/ Judge Lynn M. Egan Jun 19, 2009
Lynn M. Egan, Circuit Court Judge

5a

2010 Ill. App. LEXIS 1296,*;406 Ill. App. 3d 856;

941 N.E.2d 920;347 Ill. Dec. 51

STEVE DEI, Plaintiff-Appellant, v. TUMARA
FOOD MART, INC., Defendant-Appellee.

No. 1-09-1749

APPELLATE COURT OF ILLINOIS, FIRST
DISTRICT, THIRD DIVISION

406 Ill. App. 3d 856; 941 N.E.2d 920; 2010 Ill. App.
LEXIS 1296; 347 Ill. Dec. 51

December 8, 2010, Decided

December 8, 2010, Filed

SUBSEQUENT HISTORY:

Publication allowed December 1, 2010. Released for
Publication February 15, 2011.

Appeal denied by Dei v. Tumara Food Mart, Inc.,
2011 Ill. LEXIS 868 (Ill., May 25, 2011)

PRIOR HISTORY: [*1]

Appeal from the Circuit Court of Cook County.
Honorable Lynn M. Egan, Judge Presiding.

DISPOSITION:

Affirmed.

COUNSEL: For Appellant: Law Office of 'Lanre O. Amu, Esq., of Chicago ('Lanre O. Amu, of counsel).

For Appellee: Pretzel & Stouffer, Chartered, of Chicago (Robert Marc Chemers, Scott L. Howie and Peter G. Syregelas, of counsel).

JUDGES: PRESIDING JUSTICE QUINN delivered the opinion of the court. NEVILLE and STEELE, JJ., concur.

OPINION BY: QUINN

OPINION

PRESIDING JUSTICE QUINN delivered the opinion of the court:

Plaintiff Steve Dei appeals from an order of the circuit court granting defendant's petition, pursuant to section 2-1401 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1401) (West 2006)), to vacate an order of default and a default judgment entered against it and from an order quashing his subpoena requests and granting a protective order. On appeal, plaintiff contends that this court should reinstate the default judgment because the trial court erred in finding that

plaintiff failed to properly serve defendant pursuant to section 2-204 of the Code (735 ILCS 5/2-204 (West 2006)). Plaintiff also contends that the circuit court erred in quashing his subpoena requests, because they are relevant to the issue of [*2] whether service of process was proper. For the reasons set forth below, we affirm the circuit court.

On June 7, 2007, plaintiff filed a complaint in the circuit court of Cook County alleging that on February 17, 2007, he slipped and fell on ice and grease, breaking his tibia and fibula, while walking toward the cashier at a gas station and mini-mart owned by defendant, Tumara Food Mart, Inc. (Tumara). On that same date, plaintiff filed a summons that directed that service be made on an "agent at Tumara Food Mart, Inc., 2941 East 83rd Street, Chicago, Illinois." On June 22, 2007, the sheriff's office served Ahmed Sylla, n1 an employee of Tumara at that location. No appearance was filed by defendant, and on October 4, 2007, plaintiff presented a motion for default. The motion was continued until November 15, 2007, at which time the Hon. John A. Ward entered an order of default against defendant and continued the case to January 4, 2008, for a prove-up hearing on damages. On January 4, 2008, after a presentation of evidence as to plaintiff's damages, the trial court entered judgment in favor of plaintiff and against defendant in the amount of \$ 273,230.02. A memorandum of judgment was entered [*3] by the Hon. Lynn M. Egan on April 7, 2008.

----- Footnotes -----1

The return of service states that service was made on "Ahmed Silatt (agent)."

----- End Footnotes-----

On July 15, 2008, plaintiff filed a citation to discover assets, which was served on "Ahmed Minhaj and his wife," owners of the gas station/mini-mart. On August 11, 2008, defendant filed a special and limited appearance for the purpose of contesting service. On August 12, 2008, the Hon. Sheldon Gardner dismissed the citation to discover assets, with prejudice Plaintiff filed a motion with the trial court to vacate the dismissal of the citation, which the court granted on August 19, 2008. The court also granted defendant's motion to stay the citation proceedings for 60 days to contest the underlying judgment

On August 27, 2008, defendant filed a petition pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2006)) to vacate the default judgment, asserting that plaintiff did not properly serve defendant pursuant to section 2-204 of the Code (735 ILCS 5/2-204 (West 2006)), because service of the summons and complaint was not made on either a registered agent or an officer of the corporation. Before filing an answer to defendant's petition, plaintiff was granted [*4] leave to conduct discovery with regard to issues raised by the petition.

On September 24, 2008, Thomas Walsh testified at his discovery deposition that he is the registered agent for Tumara Food Mart, Inc., that he has served in that capacity for 8 to 10 years, and that his status as registered agent has been provided to the Illinois Secretary of State. Walsh testified that he does not know anyone by the name of Ahmed Sylla and that no one by that name has ever been an officer or agent of Tumara for purposes of accepting service. Walsh stated that he has been Tumara's attorney since its inception, "know[s] all of the legal issues involved in Tumara Food Mart, Inc.," including "people who are authorized to accept service," and "Ahmed Silatt [sic] is not one of them." Walsh testified that he is not familiar with the daily operations at Tumara, but knows that Asif Nomani is Tumara's manager, that Nomani's son assists his father at the store, and that Minhaj Ahmed is the owner. He stated that he first became aware of plaintiff's lawsuit when Ahmed sent him a copy of a citation to discover assets.

Minhaj Ahmed testified at his deposition that he is the president, secretary, and sole shareholder [*5] of Tumara., which he has owned for approximately 15 years. Ahmed said that he is an absent owner and does not manage the day-to-day operations of the station but goes there once a month or once every few months. Ahmed testified that Asif Nomani is the manager at Tumara and that his son, Umair Nomani, helps with the daily operations of the store. He said that Asif and

Umair Nomani are responsible for hiring and firing employees at Tumara. Ahmed testified that he does not know whether a sheriff served the summons and complaint on a Tumara employee on June 22, 2007 and that he does not know Ahmed Sylla. Ahmed further testified that he first found out about plaintiff's complaint on July 15, 2008, when he received a citation to discover assets. He said that he then called his attorney, Thomas Walsh, and faxed him a copy of the documents. He then called the store to find out who Ahmed Sylla is and was told by Asif or Umair Nomani that Sylla was an employee at the gas station. Ahmed also testified that only he and Thomas Walsh were authorized to accept service on behalf of Tumara in June 2007.

On October 22, 2008, Asif Nomani testified at his deposition that in June 2007 he was the store manager [*6] for Tumara and that he hired Ahmed Sylla. In June 2007, Sylla was a cashier and "floor man," meaning that he was responsible for cleaning, stocking inventory, and keeping an eye on the car wash. Asif testified that prior to June 2007, Sylla did not receive instructions or training about what to do if he was served with legal papers while working at Tumara. On June 22, 2007, Asif was in Pakistan and testified that when he returned, in August or September, his son, Umair, informed him that the sheriff had served "some court papers" regarding a customer who had slipped and fallen on the premises. Umair told Asif

that he sent the papers to the insurance company, but that the insurance company did not subsequently contact him. Asif testified that on January 4, 2008, he signed for the notice of default that was sent by certified mail and then faxed the notice to Tumara's insurance company agent.

On October 22, 2008 Umair Nomani testified at his deposition that he began working for Tumara in 2001 on a part-time basis until he became a full-time cashier/assistant manager in 2006. Umair's responsibilities include ordering inventory, making schedules, acting as cashier, and customer service. [*7] Umair testified that sometime between May and June 2007, he found a summons and complaint on a counter or in a drawer near where the cashier usually works at Tumara. Umair said that he faxed the summons and complaint to Tumara's insurance agent. Umair testified that Sylla then told him that the previous day someone had given him the summons and complaint and that he put it on the counter.

Ahmed Sylla testified at his December 2, 2008, deposition, with the assistance of an interpreter, that on June 22, 2007, he was employed as a cashier for Tumara and was still working in that capacity on the date of his deposition. He testified that his first language is Wolof, and that he also speaks Arabic and French, and "a little bit" of English. He stated that while at work he speaks to some coworkers in French and to others in English,

and that he speaks to customers in English. Sylla testified that while employed at Tumara he was never told that he was an authorized person to accept service on behalf of the corporation, nor does he understand what it means to be an authorized agent to accept legal papers on behalf of Tumara. He stated that no one at Tumara talked to him about legal papers. He [*8] said that he does not know Tom Walsh or Minhaj Ahmed, Sylla stated that he could not recall receiving a summons and complaint on June 22, 2007, but that whenever he received papers while at work, he did not open them but just placed them on the table, without informing anyone.

In a letter to Tumara's lawyer, dated December 2, 2008, plaintiff requested the following information: (1) Sylla's driver's license; (2) all social security numbers Sylla has used; (3) the name, address, and telephone number of Sylla's landlord; and (4) the name, address, and telephone number of Sylla's last employer. On December 5, 2008, plaintiff served a notice to produce requesting "the entire personnel file of Ahmed Sylla (also called Ahmed Silatt), including but not limited to: all employment records, application for employment, references, background checks, performance evaluations, W2s, disciplinary actions, etc." On December 8, 2008, plaintiff issued a subpoena to the management company that owned the apartment where Sylla lived, seeking a copy of Sylla's tenant file including background checks, notices, references and leases.

On that same date, plaintiff issued a subpoena to the City Colleges of Chicago [*9] for transcripts regarding courses Sylla took while a student at Olive Harvey College in 1997. On December 9, 2008, plaintiff issued a subpoena to the Illinois Secretary of State to obtain records and documents concerning Sylla's application for a driver's license, including copies of any written examinations taken by Sylla.

On December 11, 2008, defendant filed a motion to quash and for protective order asserting that plaintiff was seeking unnecessary and unwarranted personal information concerning Sylla and that the discovery requests were made in a harassing manner. On December 16, 2008, the trial court granted defendant's request to quash and for protective order regarding plaintiff's discovery requests for Sylla's college transcript, his tenant file, and his records on file with the Illinois Secretary of State.

On June 19, 2009, after both parties submitted briefs and arguments were heard, the trial court granted defendant's petition to quash service of summons and to vacate the default judgment. In that order, the trial court stated:

'The record before this court is clear that Ahmed Sylla was not authorized by Tumara Food Mart, Inc. to accept service of process on its behalf. Moreover, [*10] there is nothing in the record to contradict his testimony that he did not understand the nature or import of the documents received. Thus, the court did not obtain jurisdiction over Tumara Food Mart, Inc., rendering the orders of November 15, 2008 and January 4, 2007 [sic]

void."As a result, the court vacated its November 15, 2007, order of default, its January 4, 2008 default judgment and the April 7, 2008, memorandum of judgment. This appeal followed.

On appeal, plaintiff argues that the trial court erred in granting defendant's petition to vacate judgment because the summons and complaint were properly served on Ahmed Sylla, as an agent of the defendant corporation, and that the trial court erred in quashing his subpoenas seeking Sylla's college transcript, his tenant file, and his driver's license examination records.

As a preliminary matter, we must first address defendant's contention that this court should affirm the trial court because plaintiff has failed to sustain his burden to demonstrate any reversible error. In essence, defendant asserts that plaintiff's brief fails to present any legal theory upon which this court could base a reversal of the trial court's order vacating [*11] the default judgment and that it is "neither the function nor the obligation of this court to act as an advocate or search the record for error." *People v. Williams*, 385 Ill. App. 3d 359, 368, 895 N.E.2d 961, 324 Ill. Dec. 246 (2008), quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682, 624 N.E.2d 928, 191 Ill. Dec. 740 (1993).

In *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 76 Ill. Dec. 823 (1984), our supreme court addressed whether there is a "sufficiently complete record of the proceedings at trial to support a claim of error." The sufficiency of the record to address a claim of error turns on the question presented on appeal. In *Foutch*, the question was whether the trial court abused its

discretion in denying the motion to vacate an ex parte judgment. *Foutch*, 99 Ill. 2d at 391-92. Absent a transcript of the hearing below where evidence was heard, review for an abuse of discretion of the trial court's denial of the motion, where no specific grounds for the denial were given, was foreclosed. *Foutch*, 99 Ill. 2d at 392. Here, the question presented on appeal is whether plaintiff effectuated proper service of process on defendant. The record, which includes discovery depositions from individuals testifying about the events surrounding that service, is sufficiently complete [*12] to address the merits of that question on appeal.

Section 2-1401 of the Code establishes a comprehensive, statutory procedure that allows for the vacatur of a final judgment older than 30 days. 735 ILCS 5/2-1401(a) (West 2006). Relief under section 2-1401 is predicated upon proof, by a preponderance of evidence, of a defense or claim that would have precluded entry of the judgment in the original action and diligence in both discovering the defense or claim and presenting the petition. *People v. Vincent*, 226 Ill. 2d 1, 7-8, 871 N.E.2d 17, 312 Ill. Dec. 617 (2007). When a trial court enters a judgment on the pleadings or a dismissal in a section 2-1401 proceeding, review is de novo. *Vincent*. 226 Ill. 2d at 18.

Pursuant to section 2-204 of the Code (735 ILCS 5/2-204 (West 2006)), service upon a private corporation is obtained "(1) by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law." 735 ILCS 5/2-204 (West 2006).

In the instant case, it is clear that neither Tumara's sole officer, Minhaj Ahmed, nor its registered agent, Thomas Walsh, was served with the summons and complaint. It is [*13] also clear that Ahmed Sylla was neither a registered agent nor an officer of defendant corporation. Therefore, in order for service on Sylla to have been proper under the statute, he would have to be an agent of the corporation for purposes of accepting service.

Generally, the sheriff's return of service is prima facie evidence of service, which can be set aside only by clear and satisfactory evidence. *Island Terrace Apartments v. Keystone Service Co.*, 35 Ill. App. 3d 95, 98, 341 N.E.2d 41 (1975). When a corporation is sued, however, a sheriff's return as to the fact of agency is not conclusive. *Island Terrace*, 35 Ill. App. 3d at 98. For service of process on a corporation to be effectively made upon an agent of defendant, such agent must have actual authority to accept service on behalf of the corporation. *Slates v. International House of Pancakes, Inc.*, 90 Ill. App. 3d 716, 728, 413 N.E.2d 457, 46 Ill. Dec. 17 (1980). See also *Cleeland v. Gilbert*, 334 Ill. App. 3d 297, 301, 774 N.E.2d 821, 266 Ill. Dec. 382 (2002) (holding that service on insurance company's claims analyst is proper service on the company since the analyst was a responsible agent of the corporation); *Knapp v. Bulun*, 392 Ill. App. 3d 1018, 1030, 911 N.E.2d 541, 331 Ill. Dec. 720 (2009) (holding that service on a paralegal who worked [*14] for a corporate defendant's registered agent did not constitute proper service on the corporation since she was not designated as an agent to receive process). There appears to be some disagreement among Illinois appellate courts as to which party has the burden of proof on the presence or absence

of the agency relationship. The majority of courts have held that the burden is on the plaintiff (see *Slates*, 90 Ill. App. 3d at 724; *Harris v. American Legion John T. Shelton Post No. 838*, 12 Ill. App. 3d 235, 297 N.E.2d 795 (1973)), but some courts have held that the defendant has the burden of proving that the person served was not an agent for purposes of accepting service (see *Island Terrace*, 35 Ill. App. 3d at 98; *Millard v. Castle Baking Co.*, 23 Ill. App. 2d 51, 161 N.E.2d 483 (1959) (abstract of op.)). Regardless of who had the burden of proof, because the evidence presented clearly shows that Sylla was not an agent of Tumara for service of process, we find that the trial court did not err in granting defendant's section 2-1401 petition to quash service of the summons and complaint and vacate the order of default.

Defendant's primary argument on appeal appears to be that because Sylla was an employee of Tumara Food [*15] Mart, Inc., he had authority to accept service of the summons and complaint on behalf of the corporation. Plaintiff cites *Megan v. L.B. Foster Co.*, 1 Ill. App. 3d 1036, 275 N.E.2d 426 (1971), to support his argument. In *Megan*, following an automobile accident, plaintiff filed suit in small claims court and process was served upon a receptionist at defendant's company. The corporation failed to appear and was subsequently defaulted, and a default judgment was entered. The defendant corporation's motion to vacate the default judgment was denied. On appeal, the Second District reversed the trial court but found that "service upon an intelligent clerk of a company who acts as a receptionist and who understood the purport of the service of summons was sufficient" to comply with the predecessor of section 2-204 of the

Code. Megan, 1 Ill. App. 3d at 1038.

Plaintiff contends that like the receptionist in Megan, Sylla, was a "responsible" employee of Tumara and, therefore, qualified to act as an agent of the corporation. We disagree. Although we do not pass judgment on Sylla's intelligence, as the court did in Megan, it is clear from his testimony that he did not understand what it meant to be an agent of the [*16] corporation for purposes of accepting legal papers and that no one talked to him about what to do in the event that legal papers were served upon him. Further, the fact that upon receipt of the summons and complaint he left it on a table, unopened, as he did with all other papers and documents he received while at work, is further evidence that he did not understand their import.

A case that is more closely aligned with the instant case is Island Terrace, 35 Ill. App. 3d 95, 341 N.E.2d 41. In Island Terrace, a plaintiff landlord file suit to recover possession of premises against its tenant, defendant Keystone Service Co., which operated a coin-operated laundry equipment business on the premises. Island Terrace, 35 Ill. App. 3d at 96. Summons was returned by the sheriff showing service on "Mrs. Breck, agent" of defendant. Island Terrace, 35 Ill. App. 3d at 96. Defendant did not appear or answer the complaint and a default judgment was entered. Island Terrace, 35 Ill. App. 3d at 96-97. Defendant filed a petition to vacate the default judgment, arguing that it did not employ anyone by the name of "Breck" and that although it did employ a woman by the name of Dianne Brick, she was neither an agent [*17] nor an officer of the corporation and

was not authorized to receive service of summons. Island Terrace, 35 Ill. App. 3d at 97. Accompanying the petition was the affidavit of Dianne Brick, who stated that as defendant's employee, she was responsible for answering phones and receiving customer complaints and was not authorized to accept legal documents on defendant's behalf. Island Terrace, 35 Ill. App. 3d at 97. She further stated that she did not recall being served with legal documents on the date listed on the return of service, that she did not talk to a sheriff or other person serving writs, and that on the afternoon of the day in question, she became violently ill and was taken home and then to a hospital. Island Terrace, 35 Ill. App. 3d at 97. Brick also asserted that if she did receive legal documents, she did not give them to an officer of the corporation and that she did not understand their import. Island Terrace, 35 Ill. App. 3d at 97. At the hearing on defendant's petition, Brick testified to the matters set forth in her affidavit. Island Terrace, 35 Ill. App. 3d at 98. At the conclusion of the hearing, the trial court found that the evidence presented by defendant rebutted [*18] the prima facie return of service by the sheriff, and an order vacating the default judgment was entered. Island Terrace, 35 Ill. App. 3d at 98.

On appeal, this court affirmed the trial court, noting that "employment and agency generally are not considered identical." Island Terrace, 35 Ill. App. 3d at 98-99. For instance, although "[s]ervice on a secretary or receptionist 'who understands the purport of the service of summons' may be service on the corporation (Island, 35 Ill. App. 3d at 99 quoting *Union Asbestos & Rubber Co. v. Evans Products Co.*, 328 F.2d 949 (7th Cir. 1964)), "service

on a receptionist who does not understand her duty to deliver the summons to her employer may be in sufficient." *Island*, 35 Ill. App. 3d at 99, citing *Gurtz Electric Co. v. Kamenir*, 10 Ill. App. 3d 56, 294 N.E.2d 20 (1973) (abstract of op.). The court concluded, based on Brick's affidavit stating that she did not recognize or understand the import of the service of process and that she did not deliver it to an officer of the corporation, that "we cannot say that the trial court erred in finding that Dianne Brick was not defendant's agent for service of process." *Island Terrace*, 35 Ill. App. 3d at 99.

More recently, [*19] in *Knapp v. Bulun*, 392 Ill. App. 3d 1018, 911 N.E.2d 541, 331 Ill. Dec. 720 (2009), plaintiffs, who brought a medical malpractice action against several parties, including a doctor and the corporation through which the doctor conducted his medical practice, delivered a summons for discovery to a woman who was the paralegal and secretary to the registered agent of the corporation. This court found that this did not constitute proper service on the corporation because the paralegal was not designated as an agent to receive process. *Knapp*, 392 Ill. App. 3d at 1030.

In this case, Sylla, who was employed as a cashier, stated in his deposition that he does not understand what it means to be an authorized agent for purposes of accepting legal papers for Tumara, that no one instructed him as to any procedures for handling the receipt of legal papers, that he does not recall receiving the summons and complaint, and that if he did, he put them on a table and did not forward them to an officer of the corporation. Based on the deposition testimony, it

is clear that Sylla, like the receptionist in Island Terrace, did not understand the import of the service of summons or his duty to deliver it to his employer, and like the paralegal [*20] in Knapp, was not a designated agent for service of process.

Plaintiff also cites *Gurtz Electric Co. v. Kamenir*, 10 Ill. App. 3d 56, 294 N.E.2d 20 (1973) (abstract of op.), to argue that when determining whether an employee is an agent for purposes of accepting service of process, a court should look to the actions the employee took after process was served. However, aside from the fact that *Gurtz* is an abstract opinion with no precedential value, it fails to support plaintiff's argument. In *Gurtz*, a wage deduction summons was served on a judgment debtor's corporate employer's receptionist. In finding that service on the receptionist was not proper, this court considered the fact that the receptionist delivered the summons to the judgment debtor rather than the corporate employer to whom the summons was addressed. The court concluded that the receptionist did not understand the import of the summons and her responsibilities with respect to it and was not a proper agent for that purpose. *Gurtz*, 10 Ill. App. 3d 56, 294 N.E.2d 20.

In the instant case, plaintiff asserts that after receiving the summons and complaint, Sylla informed the assistant manager, Umair Nomani, who promptly faxed them to the insurance company. [*21] However, Sylla testified that he simply put the documents on a shelf, as he did with all papers or documents delivered to the gas station, and they were subsequently found by Umair Nomani. Therefore, as in *Gurtz*, Sylla's

actions after receiving the summons and complaint do not provide evidence that he understood their import or substance. Further, the fact that the summons and complaint were found by Umair Nomani, who like Sylla is neither a registered agent nor an officer of the corporation, and faxed to defendant's insurer do not demonstrate proper service on Tumara. In *Isaacs v. Shoreland Hotel*, 40 Ill. App. 2d 108, 188 N.E.2d 776 (1963), this court held that notice of a suit to an insurance company is not service of process on the insured. *Isaacs*, 40 Ill. App. 2d at 115. Therefore, notification to Tumara's insurer did not relieve plaintiff of his duty to comply with the requirements of section 2-204 of the Code.

Based on the foregoing, we find that service of process on Ahmed Sylla was not proper service on the defendant corporation under section 2-204 of the Code, which precluded the trial court from exercising jurisdiction over defendant in order to enter a default judgment. Therefore, the court [*22] did not err in granting defendant's petition to vacate that judgment pursuant to section 2-1401 of the Code.

Next, plaintiff contends that the trial court erred in quashing its subpoena requests and entering a protective order. "A trial court's discovery order is usually reviewed for an abuse of discretion." *Wisniewski v. Kownacki*, 221 Ill. 2d 453, 457, 851 N.E.2d 1243, 303 Ill. Dec. 818 (2006). A trial court does not have discretion to order discovery of information that does not meet the threshold requirement of relevance to matters actually at issue in the case. For purposes of discovery, relevance includes not only that which is

admissible at trial, but also that which leads to admissible evidence. *TTX Co. v. Whitley*, 295 Ill. App. 3d 548, 557, 692 N.E.2d 790, 229 Ill. Dec. 801 (1998). Discovery should be denied where insufficient evidence suggests the requested discovery is relevant. *Whitley*, 295 Ill. App. 3d at 557. At issue in defendant's section 2-1401 petition was whether Sylla was an agent of Tumara, authorized to accept service on the corporation's behalf. The information sought by plaintiff in his discovery requests, namely Sylla's ability to speak and understand English and his prior employment history, were not relevant to that issue. Therefore, [*23] we do not find that the trial court abused its discretion in granting defendant's motion to quash.

For the foregoing reasons, we affirm the circuit court.
Affirmed.

NEVILLE and STEELE, JJ., concur.

Docket Number 09-1749
IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

STEVE DEI,)
Plaintiff-appellant,)
vs.)
TUMARA FOOD MART, INC.,)
Defendants-appellee)

Order

THIS MATTER coming to heard on Appellant's Motion to appraise the appellate court of errors in its revised (2nd) opinion dated December 8, 2010, and a request that this court vacate its opinion and all orders entered by Judge Lynn Egan after her brother's law firm took over the defense of the case she was presiding over.

IT IS HEREBY ORDERED that the motion
is: GRANTED _____ DENIED X

ORDER ENTERED

Jan 21 2011

APPELLATE COURT, FIRST DISTRICT

Patrick J. Quinn

Justice

John Steel

Justice

P. Scott Neville

Justice

25a

Supreme Court of Illinois
Clerk of the Court
Supreme Court Building
Springfield, Illinois 62701
(217) 782-2035

111889

May 25, 2011

Mr. 'Lanre O. Amu
The Law Office of 'Lanre O. Amu
407 S. Dearborn Street, Suite 1550
Chicago, Illinois 60605

No. 11889 - Steve Dei, petitioner, v. Tumara Food
Mart, Inc., respondent. Leave to appeal, Appellate
Court, First District.

The Supreme Court today DENIED the
petition for leave to appeal in the above entitled
cause.

The mandate of this court will issue to the
Appellate Court on June 29, 2011.