2011 IL App (1st) 101431-U

SIXTH DIVISION
NOVEMBER 23, 2011

No. 1-10-1431

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GLADYS OKAPALOKE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 L 6518
	)	
CYRINA ULUOCHA,	)	Honorable
	)	Bill Taylor,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court.
Justices Cahill and Garcia concurred in the judgment.

O R D E R

¶ 1 *Held*: Denial of defendant's section 2-1401 motion to vacate affirmed where defendant failed to present a meritorious defense.

¶ 2 A judgment of $87,500.83 plus court costs was entered against defendant Cyrina Uluocha in favor of plaintiff Gladys Okpaleke in a property dispute. Uluocha filed a motion to vacate the judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2008)), which the circuit court denied. Uluocha, *pro se*, now appeals from that denial.

¶ 3 The pleadings in the common law record show that Okpaleke and Uluocha entered into a real estate investment agreement in which real property would be purchased, rehabbed, and sold. Under the agreement, Uluocha's daughter, Carol Ayangbile, would lend her name and credit to Okpaleke and Uluocha to accomplish these ends. On September 15, 2005, Okpaleke gave Uluocha $73,000 to purchase the property at 10726 South Champlain in Chicago. Uluocha, however, purchased the property at 10728 South Champlain, which was owned by TCF National Bank (TCF), and named her daughter as the buyer.

¶ 4 On June 25, 2007, Ayangbile filed a complaint against TCF, Re/Max Cumberland (Re/Max), Re/Max agent Lou Sotteras, and JNT Land Surveying Services Inc. (JNT) alleging that these defendants negligently and fraudulently represented that TCF owned the property at 10726 South Champlain when it owned the property at 10728 South Champlain. Ayangbile alleged that based on defendants' representations she believed she purchased the building at 10726 South Champlain from TCF, not 10728 South Champlain. She subsequently completed substantial improvements to the property at 10726 South Champlain, and when she tried to sell it in April 2006, she learned that the property was owned by another party.

¶ 5 While that underlying lawsuit was pending, the circuit court allowed Okpaleke to intervene and file a third party complaint against Ayangbile and Uluocha. Okpaleke alleged that she gave Uluocha $73,000 to purchase the property at 10726 South Champlain, and that it was unknown whether Uluocha and Ayangbile intentionally or erroneously purchased the property at 10728 South Champlain. Okpaleke requested a judgment naming her as an equal owner of 10728 South Champlain.

¶ 6 Okpaleke subsequently filed an amended third party complaint against Ayangbile and Uluocha requesting judgment of $73,000 plus interest and court costs against them, and to be

named an equal owner of the property bought by Uluocha and Ayangbile. During the pendency of the third party complaint, Ayangbile settled with TCF, JNT, Sotteras, and Re/Max.

¶ 7 On April 17, 2009, Okpaleke filed a verified amended third party complaint alleging that Uluocha and Ayangbile made fraudulent representations to induce her to give them money for the purchase of 10728 South Champlain. On June 8, 2009, Okpaleke filed a motion to default Uluocha and Ayangbile based on their failure to respond. On June 17, 2009, the circuit court entered a default judgment against Uluocha. Ayangbile filed a motion to dismiss Okpaleke's complaint, which was denied, and a trial between the two was set for July 2010.

¶ 8 On July 16, 2009, Uluocha filed a *pro se* motion to vacate the default judgment entered against her alleging that she was sick and unable to come to court. There is no indication in the record that this motion was brought to the attention of the circuit court and ruled upon.

¶ 9 On August 18, 2009, the circuit court heard testimony from Okpaleke, then entered judgment in the amount of $87,500.83 plus court costs against Uluocha. Six days later, Uluocha filed a letter from her doctor , dated August 17, 2009, and stating that she had brain surgery in December 2007, and should be excused from testifying for at least three months to allow her to completely recover.

¶ 10 On October 1, 2009, a citation to discover assets was issued on Uluocha based on the judgment entered on August 18, 2009. On October 26, 2009, the court entered a written order stating that Uluocha is required to provide a detailed doctor's note explaining her recovery period, and when she will be able to answer questions in open court in relation to the citation to discover assets. The matter was continued to November 23, 2009.

¶ 11 On November 4, 2009, Uluocha filed a *pro se* motion to vacate the August 18, 2009, judgment alleging that she had surgery for a brain tumor in December 2007, that since the surgery she has been confined to a wheel chair, cannot see properly, has difficulty writing, and is

not functioning normally, and that she received the summons very late. On November 18, 2009, the circuit court denied Uluocha's motion to vacate.

¶ 12 Uluocha subsequently failed to appear in court to answer and respond to the citation to discover assets, and the matter was continued to December 7, 2009, for a rule to show cause as to why she should not be held in civil contempt of court. Uluocha failed to appear again, and Okpaleke filed a motion to advance the court date, to issue a bench warrant for the arrest of Uluocha if she fails to comply with the citation to discover assets, and to order Uluocha to pay her attorney fees.

¶ 13 On December 30, 2009, the court noted that Uluocha has been previously served and has never appeared in open court or filed an appearance. The court continued the citation to discover assets to February 9, 2010, noting that if Uluocha fails to appear, a bench warrant would be issued for her. Uluocha failed to appear again, and the matter was continued for a rule to show cause as to why she should not be held in civil contempt of court.

¶ 14 On February 22, 2010, Uluocha, through counsel, filed a motion to vacate the judgment entered on August 18, 2009, alleging that she underwent major brain surgery in December 2007, and could not come to court because she was recovering. Uluocha further alleged that under section 2-1401(a) relief may be had from a final order and judgment 30 days after the entry of that judgment, and that she was recovering from an illness and was unable to defend herself. Uluocha attached to her motion a copy of the letter from her doctor which she had previously filed on August 24, 2009.

¶ 15 On March 18, 2010, the circuit court entered a written order finding there was no just reason to delay enforcement of the August 18, 2009, judgment. Thereafter, Okpaleke filed a response to Uluocha's motion to vacate. A copy of that response was not included in the record. On April 21, 2010, Uluocha filed a reply to Okpaleke's response to her motion to vacate alleging

that Okpaleke requested that the motion to vacate be denied because Uluocha failed to allege a meritorious defense, to demonstrate due diligence in presenting the motion, and to properly serve the motion. Uluocha responded, respectively, that she "does have a meritorious defense, in that the sum of money in question was paid to [TCF] in error," that she was recovering from an illness which prevented her from defending and her appearance was filed incorrectly but has since been corrected and re-filed, and that there was no factual basis to support the claim that her motion to vacate was not properly served.

¶ 16 On May 3, 2010, the circuit court denied Uluocha's motion to vacate in a written order noting that it had been fully advised, and there was no just reason to delay enforcement of the judgment, an appeal, or both. Uluocha filed a timely *pro se* notice of appeal.

¶ 17 As an initial matter, we observe that Uluocha has failed to comply with the supreme court rules governing appellate review. Ill. S. Ct. R. 341 (eff. July 1, 2008); R. 342 (eff. Jan. 1, 2005). Uluocha, for example, has failed to succinctly state the issue, cite legal authority or the pages in the record relied upon for her statement of facts and argument, or the errors entitling her to relief. We also observe that Okpaleke's brief may most charitably be described as cursory and fails to explain why Uluocha's challenge to the circuit court's ruling should be denied. *First Illinois Bank & Trust v. Galuska*, 255 Ill. App. 3d 86, 94 (1993). Notwithstanding these deficiencies, we find on the record before us, that we may review Uluocha's challenge to the denial of her section 2-1401 motion to vacate the monetary judgment entered against her on August 18, 2009. *Twardowski v. Holiday Hospitality Franchising, Inc*., 321 Ill. App. 3d 509, 511 (2001).

¶ 18 Pursuant to section 2-1401 of the Code, petitioner must set forth, in relevant part: (1) the existence of a meritorious defense; (2) due diligence in presenting the defense in the original cause of action; and (3) due diligence in filing the section 2-1401 petition. *Jones v. Unknown Heirs or Legatees of Fox,* 313 Ill. App. 3d 249, 254 (2000). The decision to deny a motion to

vacate is reviewed *de novo* where, as here, the motion was dismissed on the pleadings. *People v. Vincent*, 226 Ill. 2d 1, 15-18 (2007). For the reasons that follow, we find no error in the court's denial of Uluocha's motion to vacate.

¶ 19 Uluocha alleged in her motion to vacate that she could not come to court and defend herself because she underwent major brain surgery in 2007, and was still recovering. This, however, is not a meritorious defense to the cause of action filed by Okpaleke.

¶ 20 The only time Uluocha attempted to raise any kind of defense to Okpaleke's complaint was in reply to Okpaleke's response to her motion to vacate. There, her stated meritorious defense was that she had given the money in error to TCF, but she presented no further explanation as to why, how, in what manner, and under what circumstances she erred. This conclusory statement without any supporting documentation (735 ILCS 5/2-1401(b) (West 2008)) and factual explanation is insufficient to state a meritorious defense (*Blazyk v. Daman Exp., Inc.*, 406 Ill. App. 3d 203, 208 (2010); *Graf's Beverages of Illinois, Inc. v. Tauber*, 50 Ill. App. 3d 1047, 1051-52 (1977)). In addition, a mistake by one party does not excuse that party's obligation to perform in a contract dispute. *Zink v. Maple Investment and Development Corp.*, 247 Ill. App. 3d 1032, 1038 (1993).

¶ 21 Moreover, the existence of a meritorious defense is indispensable regardless of whether Uluocha was able to exercise due diligence for the courts will not grant a section 2-1401 petition if no relief is merited. *Graf's Beverages of Illinois, Inc.*, 50 Ill. App. 3d at 1051. Here, we find no error by the circuit court in denying Uluocha's motion to vacate which was insufficient as a matter of law given her failure to present a proper allegation of a meritorious defense and proper supporting matter. *Blazyk*, 406 Ill. App. 3d at 208.

¶ 22 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.