

1301 (West 2010)), her emergency petition for relief from judgment and to vacate sale pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)), and her emergency motion for extension of time to respond *instanter* pursuant to section 2-1007 of the Code (735 ILCS 5/2-1007 (West 2010)) and Illinois Supreme Court Rule 183 (eff. Feb. 16, 2011).

¶ 3 The common law record filed in this case shows that on June 23, 2009, plaintiff Residential Credit Solutions Inc., filed a complaint to foreclose mortgage, alleging that defendant¹ was in default on her mortgage loan for the property at 5075 West Van Buren Street, in Chicago (the mortgaged property). A special process server appointed by the circuit court averred in an affidavit that personal service was made upon defendant at the mortgaged property on June 24, 2009, and that "[B]arbara refused to sign."

¶ 4 On June 28, 2010, plaintiff filed a motion for entry of an order of default and judgment of foreclosure and sale, asserting that defendant had not filed an appearance, answer or any motions. On August 12, 2010, the court ordered that defendant was in default and granted plaintiff the relief sought as set forth in the judgment for foreclosure and sale of the mortgaged property.

¶ 5 On September 13, 2010, defendant filed a motion through counsel to vacate the default judgment, asserting, *inter alia*, that she had "lacked counsel and was unaware of her rights and responsibilities" in the action. She also asserted that she had "meritorious defenses to the complaint," including that the allegations contained therein were factually incorrect, that the closing documentation provided to her "suggest[s] that she has affirmative defenses," and that there was "a question of fact as to who has the original note and who is the real party in interest." On November 1, 2010, the court denied defendant's motion without articulating its reasons for doing so.

¶ 6 On December 14, 2010, defendant filed an emergency section 2-1401 petition for relief

¹ The complaint also named other parties as defendants who held an interest or lien on the property. These defendants are not parties to this appeal.

from judgment asserting that she had meritorious defenses, and that she had exercised diligence in bringing her section 2-1401 action. In support, she attached her own affidavit to the petition.

¶ 7 On December 16, 2010, the court entered a briefing schedule order which required that defendant respond to plaintiff's motion for an order approving the report of sale and distribution by January 20, 2011. Defendant did not respond by that date, however, and on February 22, 2011, she filed an emergency motion for an extension of time to respond *instanter* pursuant to section 2-1007 of the Code and Rule 183. In the motion, defendant set forth a brief history of her case and indicated that she had attached to the motion, *inter alia*, an answer and an application that she had submitted for a loan modification under the Making Home Affordable Program. She then asserted, "Based on the above-mentioned facts, Defendant has shown good cause for an Extension of Time." On February 24, 2011, the court denied defendant's motion for an extension of time and entered an order approving the report of sale and distribution.

¶ 8 On March 24, 2011, defendant filed a motion to reconsider the order approving sale, and on April 12, 2011, the court entered an order striking defendant's motion for failure to file an appearance. That same day, defense counsel filed an appearance in the matter and re-filed the motion to reconsider, and on April 28, 2011, the court denied defendant's motion "on the merits." This appeal follows.

¶ 9 Defendant first contends that the trial court abused its discretion in denying her motion to vacate the default judgment. She claims that she demonstrated diligence by hiring an attorney and filing her motion to vacate the judgment within 30 days of its entry, that "the mere allegation that meritorious defenses exist should be sufficient," and that the loss of her home without an opportunity to defend herself is a far more severe penalty than plaintiff having to litigate its mortgage foreclosure case on the merits. She also claims that the trial court's dismissal of her motion to vacate based on her failure to file an answer suggests that the court evaluated her motion under the wrong standard.

¶ 10 Plaintiff responds that the trial court properly denied defendant's motion to vacate the default judgment based on the events that led up to the entry of the default order. In addition, plaintiff states that defendant's contention that her motion to vacate was denied because she failed to file an answer is speculation.

¶ 11 In ruling on a motion to vacate a default judgment, the primary concern of the trial court is whether substantial justice is being done between the parties and whether it is reasonable under the circumstances to proceed to trial on the merits. *Mann v. Upjohn Co.*, 324 Ill. App. 3d 367, 377 (2001). However, the court may also consider whether the defendant has a meritorious defense, her due diligence, the severity of the penalty as a result of the judgment, and the hardship to the plaintiff if required to proceed to trial. *Mann*, 324 Ill. App. 3d at 377. Ultimately, the trial court should consider all events that led up to the judgment, and the reviewing court will not reverse its ruling on a motion to vacate absent an abuse of discretion. *Mann*, 324 Ill. App. 3d at 377.

¶ 12 Here, the record shows that on June 24, 2009, defendant was served with a summons and complaint to foreclose the mortgage on her home. Defendant "refused to sign" upon being served and took no court action thereafter. One year later, plaintiff filed a motion for entry of an order of default and provided notice. However, defendant still did not respond, and on August 12, 2010, the court ordered defendant in default and entered judgment for foreclosure and sale of the mortgaged property.

¶ 13 Although defendant subsequently obtained counsel and filed a motion to vacate the default judgment, her "meritorious defenses to the complaint" lacked any supporting details which rendered them vague, *i.e.*, the allegations in the complaint were factually incorrect, the closing documentation suggested that she had affirmative defenses, and there was a "question of fact" regarding the real party in interest. Considering defendant's lack of diligence defending herself in the instant action, her failure to articulate a *meritorious* defense, and the hardship to

plaintiff that would be occasioned by further delays in the proceedings, we cannot say that the trial court abused its discretion in denying defendant's motion to vacate default judgment. *Mann*, 324 Ill. App. 3d at 377.

¶ 14 Defendant still claims that the court applied the wrong standard when it denied her motion to vacate default judgment on the basis that she failed to file an answer. However, as plaintiff correctly points out, the court did not note in its written order the reason for the denial of defendant's motion, and defendant has failed to provide transcripts or an acceptable substitute from the hearing on the motion to support her assertion (Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005)).

¶ 15 It is the defendant's burden, as the appellant, to present a sufficiently complete record of the proceedings at trial in support of her claim of error, and any doubts which arise from the incompleteness of the record will be resolved against her. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Here, defendant has failed to provide transcripts from the hearing in which the trial court allegedly denied her motion to vacate default judgment on the basis that she failed to file an answer. Under these circumstances, we must presume that the court's denial of her motion conformed with the law and was properly supported by evidence. *Foutch*, 99 Ill. 2d at 392.

¶ 16 Defendant next contends that the trial court abused its discretion in denying her emergency section 2-1401 petition for relief from judgment. Plaintiff responds that defendant never called her section 2-1401 petition for a hearing, and that the petition should be deemed abandoned as a result. Before addressing the merits of defendant's claim, we must consider, *sua sponte*, our jurisdiction to do so. *Village of Sugar Grove v. Rich*, 347 Ill. App. 3d 689, 693 (2004).

¶ 17 The jurisdiction of a reviewing court is generally limited to reviewing appeals from final judgments. *Cribbin v. City of Chicago*, 384 Ill. App. 3d 878, 885 (2008). A final judgment is one that terminates the litigation between the parties on the merits of the cause. *Cribbin*, 384 Ill. App. 3d at 885.

¶ 18 In this case, defendant filed a section 2-1401 petition which initiated a new proceeding, separate from her foreclosure case. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002)) (citing 735 ILCS 5/2-1401(b) (West 2000)). However, the record discloses, and defendant does not deny, that the trial court never ruled on her petition. It is therefore clear that defendant never obtained a final judgment on her section 2-1401 petition, and, consequently, we must dismiss her appeal of the issue for lack of jurisdiction. *Cribbin*, 384 Ill. App. 3d at 885.

¶ 19 Defendant finally contends that the trial court abused its discretion in denying her emergency motion for extension of time to respond *instanter* pursuant to section 2-1007 of the Code and Rule 183. She claims that good cause existed for the granting of her motion because she had previously advised the court and opposing counsel that she had meritorious affirmative defenses to the action, and argues their merits here. She also claims that the court abused its discretion in denying her motion because it could have found that justice was not done and denied the order confirming the sale of the mortgaged property.

¶ 20 Plaintiff responds that the trial court never had discretion to entertain defendant's request for an extension of time because she made no showing of good cause for her non-compliance with the deadline. Plaintiff also responds that whether defendant's allegedly meritorious defenses could have created issues of fact is irrelevant because she was required to explain her inability to comply with the deadline for responding to plaintiff's motion for an order approving sale.

¶ 21 Under section 2-1007 of the Code (735 ILCS 5/2-1007 (West 2010)), the trial court has discretion, upon good cause shown, to grant additional time for the doing of any act or the taking of any step or proceeding prior to judgment. Similarly, Rule 183 provides that the trial court, for good cause shown, may extend the time for filing any pleading or the doing of any act which the rules require to be done within a limited period, either before or after the expiration of the time. Ill. S. Ct. R. 183 (eff. Feb. 16, 2011).

¶ 22 "Good cause" is a prerequisite to relief under Rule 183, and the burden of establishing it

rests on the party who is seeking relief under the rule. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 353 (2007). In determining whether good cause exists, the trial court may consider all objective, relevant evidence as to why there is good cause for the failure to comply with the original deadline and why an extension of time should be granted. *Vision Point of Sale, Inc.*, 226 Ill. 2d at 353. The determination of what constitutes good cause is fact-dependent and rests within the sound discretion of the trial court; we will not disturb the decision rendered absent an abuse of that discretion. *Vision Point of Sale, Inc.*, 226 Ill. 2d at 353-54.

¶ 23 Here, defendant's emergency motion for an extension of time to respond did not offer any explanation as to why she could not comply with the deadline to respond to plaintiff's motion for an order approving sale and distribution. In this court, defendant also presents no argument as to why she could not comply with that deadline. Since defendant has failed to make a showing of good cause, we find no abuse of discretion by the trial court in denying her motion for an extension of time. 735 ILCS 5/2-1007 (West 2010); *Vision Point of Sale, Inc.*, 226 Ill. 2d at 353-54.

¶ 24 For the reasons stated, we dismiss for lack of jurisdiction defendant's appeal with respect to her section 2-1401 petition and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 25 Affirmed in part; dismissed in part.