

No. 1-11-2224

NOTICE: This order was filed under Supreme Court Rules 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

SUMMITBRIDGE CREDIT INVESTMENTS,) Appeal from
) the Circuit Court
Plaintiff-Appellee,) of Cook County
)
v.) No. 09 CH 16102
)
ZIAD FARHAN and MAHER FARHAN, <i>et al.</i>) Honorable
) Margaret Brennan,
Defendants-Appellants.) Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Quinn and Justice Harris concurred in the judgment.

ORDER

Held: Trial court properly granted plaintiff's section 2-1401 petition to vacate the default judgment in a foreclosure action where the trust number of a party defendant was incorrect in the original action.

¶ 1 This appeal arises out of a mortgage foreclosure action, which was initiated by MB Financial Bank, N.A. (MB) against defendants Ziad and Maher Farhan (defendants), Chicago Title Land Trust Company, as trustee under a trust agreement dated April 27, 2007, and known

as "Trust number 8802348605," and Standard Bank Land Trust as a trustee for a different trust, as well as other unknown owners and non-record claimants. After mortgage foreclosure summons were issued to all party defendants, MB filed a motion to substitute Summitbridge Credit Investments (Summitbridge), the assignee of interest in and to certain mortgage loan documents from MB, as the named plaintiff in the case. The trial court granted the motion. The foreclosure action concluded on August 10, 2010, and an order was subsequently entered confirming the foreclosure and sale of the subject property.

¶ 2 Approximately nine months after the judgment, Summitbridge learned of an error in the number of the land trust named in the foreclosure proceeding and filed a 2-1401 petition (735 ILCS 5/2-1401 (West 2008)), to vacate the foreclosure judgment and to change the number of the land trust in question from 8802348605 to 8002348605. Defense counsel orally agreed to the change and an order was entered granting the requested relief. The default judgment against defendants was vacated. On June 1, 2010, an alias summons was issued to Chicago Title Land Trust Company, which reflected the correct land trust number. On June 16, 2010, defendants moved to vacate the order granting the section 2-1401 petition, arguing that the attorney who appeared for the hearing on the petition inadvertently agreed to the order. The trial court denied defendants' motion to vacate, and defendants now appeal. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On May 19, 2011, nine months after the order confirming the foreclosure and sale of the subject property was entered, Summitbridge filed a section 2-1401 petition to vacate the order approving the report of sale and distribution, the order confirming sale, and the order for

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possession. In support of its petition, Summitbridge claimed that subsequent to the trial court's order confirming the judicial sale, it determined that it had incorrectly identified defendant Chicago Title Land Trust Company's trust as "Trust No. 8802348605" throughout the proceedings, when it was actually "Trust No. 8002348605." Summitbridge, in an attempt to correct "this misnomer," requested the entry of an order vacating the confirmation of judicial sale. It further requested an order substituting the correct trust number with the incorrect trust number as one of the named defendants.

¶ 5 Attached to the section 2-1401 petition was an affidavit from Casey B. Hicks, Summitbridge's attorney. Hicks stated that subsequent to the order confirming the judicial sale, she was advised of an error in the trust number. Hicks "exercised due diligence in filing the section 2-1401 petition." She further stated that as the record title holder of the property in question, the new trust number was a permissible party in the matter, and thus should be substituted as a party-defendant.

¶ 6 On May 31, 2011, the trial court entered an order granting Summitbridge's motion to vacate the order approving the judicial sale, to vacate the judicial sale, and to substitute the correct trust number as the party-defendant in the case, "with summons to issue."

¶ 7 On June 1, 2011, an alias summons for Chicago Title Land Trust Company, as trustee of the correctly-numbered trust, was filed with the court. On June 10, 2011, proof of service of process of the alias summons was filed with the court. The affidavit of service indicated that a copy of the alias summons had been properly served upon Chicago Title Land Trust Company, as trustee of the properly named trust.

¶ 8 On June 16, 2011, defendants Ziad and Maher Farhan filed a motion to vacate the trial court's May 31 order granting Summitbridge's section 2-1401 petition, and requesting the court to set a briefing schedule on the petition. Defendants contended in their motion that Summitbridge filed its motion to vacate "as a way of circumventing a suit to quiet title action." Defendants argued in their motion to vacate that Stephen D. Richek, their attorney, sent an associate attorney to ask the court for a briefing schedule on the motion. Defendants alleged that the associate never asked for a briefing schedule and instead indicated that "Richek and his clients would be happy with the order as entered."

¶ 9 Attached to defendants' motion to vacate were two affidavits: one from Richek and one from the associate attorney. According to Richek, he was defendants' attorney and instructed his associate to obtain a briefing schedule in response to Summitbridge's section 2-1401 petition, "and nothing more." Richek stated that apparently due to a misunderstanding, the associate did not follow his instructions. According to the associate's affidavit, he was instructed by Richek to appear in court on May 31, 2011, and ask for a briefing schedule. However, he "failed to follow [Richek's] instructions and ask for a briefing schedule. It was a mistake on my part alone."

¶ 10 On July 6, 2011, the trial court entered an order denying defendants' motion to vacate the May 31 order, finding that having considered the matters set forth, it would not have permitted defendants to file a response to Summitbridge's section 2-1401 petition. Defendants now appeal.

¶ 11 **II. ANALYSIS**

¶ 12 Defendants contend that the trial court erred in granting Summitbridge's section 2-1401 petition. Specifically, defendants contend that (1) the section 2-1401 petition was not properly

disposed of, (2) defendants should have been permitted to make the argument that a misnumbered trust is not the same as a misnomer, and (3) defendants should have been allowed to raise lack of due diligence and lack of meritorious defense in response to the section 2-1401 petition.

¶ 13 Section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)) establishes a comprehensive procedure by which final orders and judgments, in both criminal and civil cases, may be vacated or modified more than 30 days but not more than two years after their entry. *People v. Vincent*, 226 Ill. 2d 1, 8 (2007); 735 ILCS 5/2-1401(c) (West 2008). A petition brought under this provision is not a continuation of the original proceeding, but a commencement of a new cause of action with the purpose of bringing to the attention of the trial court facts not of record which, if known by the court at the time of judgment, would have prevented its rendition. *In re Marriage of Streur*, 2011 IL App (1st) 082326, ¶ 30. A section 2-1401 petition may also be used to "challenge a purportedly defective judgment for legal reasons." *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 94 (2006) (citing *People v. Lawton*, 212 Ill. 2d 285, 297 (2004)).

¶ 14 Generally, a section 2-1401 petition "must set forth allegations supporting the existence of a meritorious claim or defense; due diligence in presenting the claim or defense to the circuit court in the original action; and due diligence in filing the section 2-1401 petition." *Paul*, 223 Ill. 2d at 94 (citing *People v. Coleman*, 206 Ill. 2d 261, 289 (2002)). A section 2-1401 petition must be "supported by affidavit or other appropriate showing as to matters not of record." 735 ILCS 5.2-1401(b) (West 2008).

¶ 15 In the case at bar, Summitbridge's section 2-1401 petition was timely filed after 30 days and within two years of the mortgage foreclosure judgment. It set forth a meritorious claim, which was that it had named the wrong trust as a party defendant in the original action, a fact which if known by the court at the time of the judgment would have prevented its rendition. See *In re Marriage of Streur*, 2011 IL App (1st) 082326, ¶ 30. Additionally, the petition was supported by the affidavit of Summitbridge's attorney, who stated that subsequent to the order confirming the judicial sale, she was advised of an error in the trust number. She "exercised due diligence in filing the attached petition." Hicks further stated that as the record title holder of the property in question, the new trust number was a permissible party in the matter. Accordingly, we find that Summitbridge's petition sufficiently met the requirements of a section 2-1401 petition

¶ 16 Defendants' first argument on appeal is that the trial court did not properly dispose of the section 2-1401 petition by granting it in the manner that it did. Initially, the parties disagree as to the standard of review that applies to a grant of a section 2-1401 petition. Defendants contend that the standard of review is *de novo*, while Summitbridge maintains that the standard of review is abuse of discretion. Our supreme court addressed this very issue in *People v. Vincent*, 226 Ill. 2d 1 (2007). The court in *Vincent* held that "when a court enters either a judgment on the pleadings or a dismissal in a section 2-1401 proceeding, that order will be reviewed, on appeal, *de novo*." *Vincent*, 226 Ill. 2d at 18. The court noted that the *Vincent* case involved only two dispositions under section 2-1401: "judgment on the pleading and dismissals." *Vincent*, 226 Ill. 2d at 16. Accordingly, the decision was limited only to the standard of review applicable to

those two dispositions. The court specifically found that "other dispositions are possible in section 2-1401 actions, *i.e.*, grant of relief after an evidentiary hearing, and denial of relief after an evidentiary hearing," and that the standard of review for those dispositions "await other cases." *Id.* at 17. We will treat the grant of an unopposed section 2-1401 petition, which was not subject to an evidentiary hearing, as a judgment on the pleadings, and therefore review the trial court's decision *de novo*.

¶ 17 In the case at bar, a hearing, though not an evidentiary hearing, was held, at which time a representative for defendants indicated that defendants would be happy with the May 31 order granting Summitbridge's section 2-1401 petition. Accordingly, the petition was unopposed and thus we cannot find that the trial court did not improperly dispose of the petition by granting it.

¶ 18 Defendants' next argument on appeal is that they should have been allowed to respond to the petition and cite *Theodorakakis v. Kogut*, 194 Ill. App. 3d 586 (1990), for the proposition that a misnumbered trust account is not the same as a misnomer. Summitbridge contends that defense counsel waived the right to respond in light of his oral agreement to the order, but that, nevertheless, *Theodorakakis* does not support defendants' argument. We agree with Summitbridge.

¶ 19 We start by noting that neither an objection to, nor a motion to strike, the section 2-1401 petition appears anywhere in the record. The first time the petition was attacked was after judgment was rendered. "[A]n objection to the sufficiency of a petition to vacate under section [2-1401] cannot be raised on review unless it was properly presented and preserved in the trial court." *Bourne v. Seal*, 53 Ill. App. 2d 155, 161 (1964). Because this issue was not preserved in

the trial court, it is therefore waived on appeal. Even if we were to consider this issue, however, we would find that defendants' argument is misplaced.

¶ 20 In *Theodorakakis*, the plaintiff filed a complaint for mechanic's lien against two defendants including "Maywood Proviso State Bank U/T/A # 4289." *Theodorakakis*, 194 Ill. App. 3d at 587. A summons was issued reflecting the two defendants to be served. The summons served upon Maywood Proviso State Bank indicated that the trust number was "44289." *Id.* at 588. On September 17, 1987, plaintiff filed a notice of motion for default judgment directed and mailed to the bank, trust number 4289, the correct trust number. The trial court entered a default against the bank. *Id.*

¶ 21 Thereafter, on December 6, 1988, the Bank filed a notice of motion to vacate the April 1988 judgment pursuant to section 2-1401 of the Code, due to the fact that the incorrect trust number had appeared on the summons. On February 20, 1989, the trial court entered an order vacating the judgment.

¶ 22 The plaintiff appealed, alleging that although the summons incorrectly stated the trust number as 44289, the complaint caption and body correctly designated the trust number as 4289, and thus it was a mere misnomer. *Theodorakakis*, 194 Ill. App. 3d at 587. This court found that when a defendant is not properly served, any order entered against that defendant is void regardless of whether he had knowledge of the proceedings. *Id.* at 588 (citing *Hatcher v. Anders*, 117 Ill. App. 3d 236 (1983)). This court found that the summons was delivered to a trust account number which did not exist, and therefore we did not have jurisdiction to enter a judgment against the bank. *Id.* at 589.

¶ 23 A very similar situation is presented in the case at bar: a summons was delivered to a trust account number which did not exist, and moreover, all of the pleadings throughout the proceeding named the wrong trust number. This is precisely why Summitbridge filed a section 2-1401 petition seeking to vacate the judgment of the trial court - to name the correct trust number as a party defendant and to issue a new summons upon the proper party. The trial court properly entered an order vacating the judgment against the non-existent trust account, and ordering another summons to issue to Chicago Title Land Trust Company, naming the correct trust account number. Accordingly, we are unclear as to why defendants are arguing that they should have been afforded an opportunity to respond to Summitbridge's section 2-1401 petition to vacate and cite *Theodorakakis*. *Theodorakakis* directly supports the trial court's decision to grant Summitbridge's section 2-1401 petition to vacate the foreclosure judgment. Although Summitbridge used the term "misnomer" in its section 2-1401 petition, the substance of the petition does not argue for mere party substitution, but rather for vacatur of the judgment. Thus, we do not see how defendants' use of *Theodorakakis* in support of its argument in the trial court would have changed the outcome. Accordingly, defendants' argument regarding *Theodorakakis* has no merit.

¶ 24 Defendants' final argument is that they "could have raised lack of due diligence and lack of meritorious defense argument." This proposition is wholly unsupported by either argument or authority, and is thus waived for failure to supply proper argument as required by Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008). A reviewing court is entitled to have issues clearly defined with pertinent authority cited and coherent argument presented. *Chicagoland*

Chamber of Commerce v. Pappas, 378 Ill. App. 3d 334, 365 (2007) (citing *Eckiss v. McVaigh*, 261 Ill. App. 3d 778, 786 (1994)). Arguments inadequately presented on appeal are waived. *Id.* Mere contentions without argument or citation of authority do not merit consideration on appeal, nor do statements unsupported by argument or citation of relevant authority. *Id.* We thus find that defendants have waived this argument on review.

¶ 25 Nevertheless, as explained above, Summitbridge had a meritorious reason for filing its section 2-1401 petition, as it inadvertently named a non-existent trust as a party defendant in the original action. Additionally, Summitbridge supported its section 2-1401 petition with an affidavit by its attorney indicating that subsequent to the default judgment against all defendants, Summitbridge learned that it had incorrectly identified the subject trust number. Hicks was advised of the error and "exercised due diligence in filing the [section 2-1401] petition." Accordingly, we find that Summitbridge did not lack due diligence or a meritorious defense and thus the trial court properly granted Summitbridge's unopposed section 2-1401 petition.

¶ 26 **III. CONCLUSION**

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.