

2013 IL App (2d) 121139-U
No. 2-12-1139
Order filed June 14, 2013

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
SECOND DISTRICT

PEMBROKE ESTATES CONDOMINIUM ASSOCIATION,)	Appeal from the Circuit Court of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-LM-3830
)	
EWA GULCZYNSKA,)	Honorable
)	Michael A. Wolfe,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The trial court properly denied defendant's section 2-1401 petition, which asserted that the court lacked subject-matter jurisdiction to enter the underlying judgment: neither the pendency of another action between the parties, nor an allegedly improper substitution of judges, divested the court of jurisdiction; (2) the record was insufficient to support defendant's claim that plaintiff collected more than the judgment awarded.
- ¶ 2 Plaintiff, Pembroke Estates Condominium Association, sued defendant, Ewa Gulczynska, seeking possession of a condominium unit for nonpayment of association fees. Following a bench trial, the court awarded plaintiff possession of the unit, as well as a judgment for the unpaid fees plus

attorney fees. After this court affirmed, defendant filed a section 2-1401 petition alleging that the trial court lacked subject-matter jurisdiction. See 735 ILCS 5/2-1401 (West 2010). The trial court denied the petition and defendant appeals. As best as we can determine from defendant's *pro se* brief, she contends that (1) the trial court erred in denying her section 2-1401 petition because the trial court lacked jurisdiction of the underlying action, because there was a pending action between the parties covering the same subject matter and because of an improper substitution of judges; and (2) the trial court erred in denying her request to require plaintiff to disgorge ill gotten gains because plaintiff has collected more money than the judgment in the underlying action authorized. We affirm.

¶ 3 This dispute arose out of a damaged garage door. Our prior disposition sets out the facts at length, and we need not repeat them here. See *Pembroke Estates Condominium Ass'n v. Gulczynska*, 2011 IL App (2d) 110103-U (*Pembroke Estates I*). Briefly summarized, Lynn Dee, an employee of plaintiff's property manager, inspected the property and noticed that defendant's garage door was damaged. Dee notified defendant that it was her responsibility to repair the damage. The door was not repaired, and plaintiff imposed a series of escalating fines. Defendant sent letters disputing the fines—claiming that plaintiff's snow plower had damaged the door—but did not formally request a hearing pursuant to the association's bylaws. Defendant did not pay the fines, but continued to tender her assessments, which plaintiff refused to accept because of the unpaid fines. At some point, defendant sued plaintiff and perhaps others, seeking damages for the door.

¶ 4 Plaintiff served defendant with a 30-day notice seeking possession and filed the underlying action under the Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-101 *et seq.* (West 2010)). Defendant filed several versions of a motion to dismiss under section 2-619(a)(3) of the Code of

Civil Procedure, contending that another action was pending between the parties covering the same subject matter. See 735 ILCS 5/2-619(a)(3) (West 2010). The trial court denied the motion to dismiss and scheduled a bench trial. At trial, Dee testified to the sequence of events noted above. Through an interpreter, defendant refused to testify, claiming that she was not ready for trial. The court awarded plaintiff possession of the unit, as well as \$5,312.25 in unpaid assessments and \$2,132 in attorney fees and costs.

¶ 5 Defendant made several arguments in the first appeal. We rejected them and affirmed. Pertinent here, we could not review the trial court's denial of defendant's section 2-619(a)(3) motion because the record did not contain a copy of the complaint in the other pending case. Thus, we could not decide whether the two cases were based on the same facts. We further noted that, even where two pending cases involve the same parties and are based on the same facts, dismissal of the second action is not automatic, but is discretionary with the trial court. *Pembroke Estates I*, 2011 IL App (2d) 110103-U, ¶ 15 (citing *Village of Bensenville v. City of Chicago*, 389 Ill. App. 3d 446, 479-80 (2009)).

¶ 6 Defendant then filed a section 2-1401 petition (735 ILCS 5/2-1401 (West 2010)). Although defendant claimed to have newly discovered evidence, the petition largely recast her earlier arguments in jurisdictional terms. The trial court denied the petition and defendant appeals.

¶ 7 Section 2-1401 establishes a comprehensive statutory procedure that allows for the vacation of a final judgment older than 30 days. 735 ILCS 5/2-1401 (West 2010). Generally, to be entitled to relief under section 2-1401, a petitioner must affirmatively allege specific facts showing: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for

relief. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986). However, a petition challenging a judgment as void is not subject to the limitations period or due diligence requirements. *Parker v. Murdock*, 2011 IL App (1st) 101645, ¶ 18. Nevertheless, such a petition must demonstrate that the underlying judgment actually is void. This court reviews *de novo* the disposition of a section 2-1401 petition alleging voidness. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007). Here, the trial court properly denied the petition, as the court had jurisdiction of the underlying action.

¶ 8 Defendant first contends that the trial court did not have subject-matter jurisdiction because another action, involving defendant's claim for damage to the garage, was pending between the parties. However, defendant misunderstands the nature of subject-matter jurisdiction.

¶ 9 In *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325 (2002), the supreme court held that the circuit courts' subject-matter jurisdiction is conferred by the state constitution and extends to all "justiciable matters." *Id.* at 334 (quoting Ill. Const. 1970, art. VI, § 9)). While the legislature may create new "justiciable matters" by enacting legislation that creates new causes of action unknown at common law, the requirements of a statutory cause of action are not "nonwaivable conditions precedent to a court's exercise of jurisdiction" such that the failure to comply with the statutory prerequisites deprives the court of jurisdiction. *Id.* at 335-36. This means that, even if the trial court erroneously denied defendant's section 2-619 motion, it was not deprived of subject-matter jurisdiction, because "jurisdiction or power to render a particular judgment does not mean that the judgment rendered must be one that should have been rendered, for the power to decide carries with it the power to decide wrong as well as to decide right." *People v. Davis*, 156 Ill. 2d 149, 156 (1993).

¶ 10 In any event, we are still unable to say that the trial court's ruling on the motion to dismiss was erroneous. As we noted in the first appeal, the record did not contain a copy of the complaint in the other pending action. Defendant's section 2-1401 petition included only the first page of that complaint. Also attached to the petition was an amended complaint, filed *after* the complaint at issue, which incidentally incorporates some allegations related to this case. However, the fact remains that defendant's complaint in the other pending action was one for money damages for various torts that plaintiff allegedly committed, while plaintiff's complaint in the underlying action was for possession of the property based on unpaid assessments. Moreover, the Act is meant to provide a quick and efficient remedy for persons entitled to possession of property. Accordingly, "no matters not germane" to the Act's purpose, except a claim for rent, "shall be introduced by joinder, counterclaim, or otherwise." 735 ILCS 5/9-106 (West 2010); see also *Spanish Court Two Condominium Ass'n v. Carlson*, 2012 IL App (2d) 110473, ¶ 48 (holding that the defendant's counterclaim for damages to her condominium unit was not germane to the issue of possession under the Act). Finally, as noted, even if the two actions were undeniably based on the same matter, the trial court still would have had discretion to permit the second action to proceed. *Village of Bensenville*, 389 Ill. App. 3d at 479-80.

¶ 11 Defendant makes several subarguments under the same general theme. All are based on the outmoded concept of special statutory jurisdiction, and all of the cases she cites predate *Belleville Toyota*. We note that plaintiff agrees with defendant that a party requesting relief under the Act must strictly comply with its requirements, "especially those requirements that relate to jurisdiction" (while arguing that it did so). Indeed, some recent cases continue to state this rule in forcible-entry actions. See., e.g., *Figueroa v. Deacon*, 404 Ill. App. 3d 48, 52 (2010). Such statements are patently

inconsistent with *Belleville Toyota*'s holding that, with the single exception of administrative review, circuit courts' jurisdiction is conferred by the constitution and the failure to comply with statutory requirements will not defeat jurisdiction. In any event, we note that plaintiff sent defendant the required 30-day demand notice. See 735 ILCS 5/9-104.1(a) (West 2010).

¶ 12 Defendant next contends that the trial court lost jurisdiction because it did not comply with local court rules governing the substitution of judges. She contends that “for reasons unknown” Judge Michael Wolfe presided over the trial although Judge Robert Gibson had presided over earlier proceedings. Defendant cites a local rule that governs cases where a motion to substitute a judge for cause has been filed. 18th Judicial Cir. Ct. R. 1.23 (Aug. 17, 2004). Here, no such motion ever was filed, so the rule did not apply. It appears that Judge Wolfe presided over the trial pursuant to routine assignment procedures. In any event, jurisdiction lies in the court itself, not in an individual judge. *People ex rel. Sandbach v. Weber*, 403 Ill. 331, 335 (1949); *Generes v. Foreman*, 277 Ill. App. 3d 353, 356 (1995). Thus, the change in judges did not divest the court of jurisdiction.

¶ 13 Defendant's final contention, that the trial court erred in denying her request to require plaintiff to “[d]isgorge ill gotten gains,” is forfeited. Defendant claims that plaintiff has collected “over \$25,000” while the judgment awarded it only \$7,444.25. Other than a copy of the judgment, defendant points to no evidence in the record to show how much plaintiff has collected or, if it has collected more than the judgment amount, what those amounts represent. The appellant has the burden to present a sufficiently complete record of the proceedings to support a claim of error and, in the absence of such a record, we must presume that the trial court's order conformed with the law and had a sufficient factual basis. Any doubts arising from the incompleteness of the record will be

resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Thus, this contention is forfeited.

¶ 14 The judgment of the circuit court of Du Page County is affirmed.

¶ 15 Affirmed.