2015 IL App (1st) 133971-U

SECOND DIVISION
March 31, 2015

No. 1-13-3971

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DAVID MCCLAIN and SANAA HACHEM,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellees and Cross-Appellants,	)	Cook County.
	)	
v.	)	
	)	
CHICAGO TITLE INSURANCE COMPANY;	)	No. 08 CH 28881
	)	
Defendants-Appellant and Cross-Appellee	)	
	)	
(Timothy Spann; Ananya Spann; Standard Bank & Trust;	)	Honorable
Albert Czeszak; Beverly Bank; and Michael J. Robins,	)	Ronald F. Bartkowicz,
	)	Judge Presiding.
Defendants.)	)	

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Simon and Justice Neville concurred in the judgment.

ORDER

¶ 1 *HELD*: Circuit court's denial of defendant's section 2-1401 motion affirmed where underlying judgment was not void and defendant failed to exercise due diligence; order awarding damages affirmed where sufficient evidence was presented to justify attorney's fees.

¶ 2 Plaintiffs, David McClain and Sanaa Hachem, sued defendants, Chicago Title Insurance Company (Chicago Title) and Standard Bank & Trust (Standard Bank), for slander of title and obtained a default judgment in the amount of $75,000. Chicago Title filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)), seeking to vacate the default judgment and the award of damages. The circuit court granted the petition in part and denied it in part, vacating the damages award but not the default judgment. The court subsequently held a prove-up hearing and reduced plaintiffs' award to $20,925.

¶ 3 On appeal, Chicago Title contends that the circuit court erred in denying the request to vacate the default judgment pursuant to section 2-1401 of the Code. Chicago Title also contends that even though the court vacated the original damages award of $75,000, the court nonetheless erred in awarding attorney's fees and costs. In their cross-appeal, plaintiffs contend that the circuit court erred in not awarding full compensatory damages to them. Plaintiffs further contend that the court erred in denying the entire amount of the requested attorney's fees as well as punitive damages. Finding no error in the circuit court's judgment, we affirm.

¶ 4 BACKGROUND

¶ 5 A. The Underlying Dispute

¶ 6 This lawsuit arose from a dispute between members of 10340 S. Hamilton, LLC (the LLC), an Illinois limited liability company. Plaintiff filed their complaint on August 7, 2008 and alleged the following facts.[1] In 2005, plaintiffs and two other individuals, Timothy Spann and Ananya Spann (collectively, the Spanns), organized the LLC for the purpose of buying, developing, and selling single family residences in the Chicagoland area. The LLC held, as its

[1] We provide a limited narrative of only the facts that are pertinent and necessary to an understanding of the issues in this appeal.

sole asset, a residential lot located at 10340 South Hamilton Avenue, in Chicago (the property). The property was purchased with funds from the four members of the LLC; plaintiffs contributed $125,000 and the Spanns contributed $125,000. The LLC obtained a construction loan and mortgaged the property to George Washington Savings Bank in the amount of $510,150.

¶ 7 According to plaintiff's third amended complaint, the LLC members entered into a number of agreements with respect to the property. These included agreements: (1) that McClain would "oversee the construction of the project" and be compensated for this work as a general contractor; (2) that plaintiffs would recoup their original contribution for the property purchase, including interest and costs, and receive an equal division of the profits from the later sale of the property; (3) that the Spanns would "finance the project and make all payments on behalf of the [LLC]"; and (4) that the Spanns would purchase the property at fair market value if it failed to sell upon completion.

¶ 8 The development on the property was completed in April 2007. The members initially tried to sell it without a real estate broker and priced it below its purported fair market value of $1,100,000. Several people viewed the home in May 2007, but the Spanns rejected all offers. A subsequent listing of the property expired without success. Eventually, the Spanns began making arrangements to purchase the property from the LLC. Plaintiffs alleged that Timothy Spann prepared a document entitled "Quick Claim Deed" and requested plaintiffs' signatures on behalf of the LLC in return for a dissolution agreement setting forth the sums that plaintiffs would receive upon dissolution of the LLC. Plaintiff also alleged that Timothy never prepared a dissolution agreement and that the quitclaim deed was never signed in the presence of a notary.

¶ 9 On August 29, 2007, the Spanns mortgaged the property to Standard Bank & Trust (Standard Bank) for $580,000. According to the allegations of the third amended complaint, this

mortgage was not approved by plaintiffs or the LLC. The Spanns then listed the property for sale from September, 2007 until December, 2007. On March 17, 2008, the Spanns recorded a quitclaim deed dated August 29, 2007 that was "purportedly signed by David McClain" as the managing member of the LLC. On May 21, 2008, the Spanns executed two additional mortgages on the property: one for $580,000 and one for $417,000, both to Standard Bank. A release deed was subsequently executed on September 24, 2008 by Standard Bank releasing the August 29, 2007 mortgage as paid in full.

¶ 10 B. Allegations Against Chicago Title

¶ 11 Count VI of the third amended complaint sets forth a slander of title claim against Chicago Title.[2] Plaintiffs alleged that Chicago Title conducted the closing on August 29, 2007 for the $580,000 loan and mortgage (recorded April 3, 2008) between the Spanns and Standard Bank, as well as the May 21, 2008 closing on a second $580,000 loan and mortgage (recorded May 28, 2008) and a $417,000 loan and mortgage (recorded June 3, 2008). Plaintiffs further alleged that Chicago Title knew that the Spanns' quitclaim deed "was invalid and did not convey title to either Timothy Spann or Ananya Spann" and that Chicago Title knew—when it recorded the mortgages on April 3, May 28, and June 3—that the Spanns had no legal interest in the property and that the mortgages were invalid. Finally, they allege that the recording of these mortgages that were purportedly conveyed by the Spanns created a cloud on the title. Plaintiffs sought damages in the amount of $386,881, plus attorney's fees and costs.

¶ 12 C. Default Judgment Against Chicago Title

[2] The slander of title claim in Count VI was also directed against defendant, Standard Bank; Standard Bank, however, was dismissed from this lawsuit and is not a party to this appeal.

¶ 13 The instant lawsuit was filed on August 7, 2008. Chicago Title was served with process two weeks later, on August 21. Plaintiffs filed several amended complaints, including a third amended complaint on March 10, 2010. Chicago Title failed to appear or answer.

¶ 14 On November 12, 2010, plaintiffs moved for entry of a default judgment. Chicago Title was served by mail with a copy of plaintiffs' motion, and on December 21, 2010, the court entered default judgment and set the matter for prove-up. Plaintiffs filed a memorandum of damages, and on February 15, 2011, the court entered judgment against Chicago Title in the amount of $75,000, plus $927 in costs. On July 3, 2012, plaintiffs issued a garnishment summons to U.S. Bank to collect on the judgment, and on August 1, 2012, Chicago Title entered its appearance.

¶ 15 D. Chicago Title's Section 2-1401 Petition

¶ 16 On August 27, 2012, Chicago Title filed a section 2-1401 petition to vacate the default judgment (December 21, 2010) and the order awarding damages (February 15, 2011). Chicago Title asserted that it had a meritorious defense to the plaintiffs' slander of title claim, namely, (1) that it did not record one of the alleged mortgages; (2) that it was acting pursuant to the instructions of Standard Bank in recording the other two mortgages; (3) that the deed held by the Spanns was not void pursuant section 35c of the Conveyances Act (765 ILCS 5/35c (West 2012)); and (4) that it was, at most, negligent in its recording of the two mortgages. Chicago Title ascribed its failure to appear or answer plaintiffs' complaint as mere "excusable neglect." It asserted that a "Ms. Auvil, a terminated employee[,] did not forward the Complaint to have counsel appointed or notify anyone within Chicago Title to have it done." Chicago Title maintained that it exercised due diligence where it filed its section 2-1401 petition as soon as it

located the necessary records, reviewed "why customary procedure was not followed," and verified that it had a meritorious defense.

¶ 17 In support of its section 2-1401 petition, Chicago Title submitted the affidavit of its assistant vice president, G.M. Lovejoy. Lovejoy acknowledged that "service was effected on Chicago Title through its registered agent CT Corporation." He averred that, on August 21, 2008, CT Corporation (CT Corp) mistakenly e-mailed notice of the complaint to the Chicago Title Land Trust Company instead of Chicago Title. Although notice of the suit was also sent that day to a former employee, Dolly Auvil, at Fidelity National Title Insurance Company, "it appear[ed] that Ms. Auvil did not forward the instant lawsuit to have counsel appointed or notify anyone within Chicago Title to appoint counsel." According to Lovejoy, Chicago Title first became aware of the suit on July 27, 2012, when it received a phone call from a representative of U.S. Bank informing it of a garnishment hearing on July 30, 2012. Attached to Lovejoy's affidavit was a CT Corp document entitled "Service of Process Transmittal" (the transmittal). The transmittal, dated August 21, 2008 and addressed to Auvil, reflected that service of process had, in fact, been made, but identified the company served as Chicago Title Land Trust Company.

¶ 18 Plaintiffs moved to dismiss the section 2-1401 petition for lack of jurisdiction. They also filed a response arguing that Chicago Title failed to present a meritorious defense or establish due diligence. With respect to due diligence, plaintiffs argued that Chicago Title had failed to point out a pertinent fact about the transmittal: namely, that it showed notification of the instant suit was sent to two individuals with Chicago Title e-mail addresses, president David Lanciotti and Janice Pucci. Plaintiffs' attorney averred in an affidavit that he personally mailed copies of the following documents to Chicago Title: (1) notice of the motion for default judgment; (2) a continuance order of November 24, 2010; (3) the order of default judgment; (4) a notice of

motion on January 25, 2011; and (5) the order awarding damages. Plaintiffs argued that even though Chicago Title received service of process, notice of the motion for default, a copy of the default judgment, and a copy of the order awarding damages, Chicago Title made no attempt to appear in the underlying proceedings. They asserted that Chicago Title was also not diligent in filing its petition, as it waited an entire month to do so after becoming aware of the garnishment proceedings.

¶ 19 At a hearing on January 16, 2013, the court denied plaintiffs' motion to dismiss for lack of jurisdiction, and granted in part and denied in part Chicago Title's section 2-1401 petition. The court denied that part of Chicago Title's petition which sought to vacate the default judgment entered on December 21, 2010. The court stated that it was not satisfied with Chicago Title's claim that an employee had failed to pass along notice of the suit when it was filed. The court noted that numerous documents were mailed to Chicago Title during the pendency of the underlying suit. It stated, "I think any objective person looking at this, this is not really a good case for due diligence."

¶ 20 The court nonetheless granted that part of Chicago Title's petition that sought to vacate the damages award of February 15, 2011. The court noted that it was "troubled" by the original calculation of damages that had been made. It stated, "[T]he thought I had, and this may not be valid, is that the damages might be whatever it takes to clear title, whatever legal effort or otherwise it takes to clear title." The court then noted that it found no "indication that because these mortgages were allegedly erroneously recorded that some real estate deal that had been contemplated fell through and the plaintiffs may have lost the benefit of the bargain." As a result, the court ordered a new hearing on damages and requested that both parties present "what their understanding is of special damages" with respect to a slander of title claim.

¶ 21 Chicago Title moved the court to reconsider its decision to partially deny the section 2-1401 petition. However, on March 29, 2013, the court denied Chicago Title's motion. On June 5, 2013, plaintiffs moved to certify a question of law pursuant to Illinois Supreme Court Rule 308(a) (eff. Feb. 26, 2010) for the purpose of making an "immediate appeal to the Appellate Court." On June 13, 2013, the court denied plaintiffs' motion.

¶ 22 E. Prove-Up of Damages

¶ 23 The parties filed their respective memorandums on the issue of damages. As pertinent here, plaintiffs sought compensatory damages of $447,199.50, which included: $125,000 for their initial investment in the property; $170,000 in lost profit; $147,500 in attorney's fees, and $4,699.50 in costs. In addition, plaintiffs sought punitive damages in the amount of $250,000. Chicago Title asserted that plaintiffs could not establish any damages flowing from the allegedly improper recording of the deed.

¶ 24 At a hearing on March 20, 2013, the court determined that attorney's fees would be the appropriate damages for slander of title. Plaintiffs' counsel thus filed an affidavit attesting to his fees. Counsel averred that these fees are determined by the sums that he actually collects for his clients. He stated that, at the time of the affidavit, he had collected $172,000 for plaintiffs and was seeking 50% as fees, *i.e.*, $86,000. He added to that the time that he spent drafting e-mails and engaging in telephone conversations and came up with a total fee amount of $97,770. Counsel maintained that these fees were reasonable given that it took three years from the date of the quit claim deed to recover the above sum. Counsel sought costs in the amount of $3,527.50 in addition to an award of attorney's fees. He attached to his affidavit an hourly breakdown of the work that he had performed.

¶ 25 The court held an evidentiary hearing on the issue of counsel's fees. Counsel for plaintiffs testified about how he came to be involved in this case and the underlying dispute. He testified that plaintiffs reached a settlement with the Spanns that involved a financial exchange and a deed exchange, and he acknowledged that the deed exchange cured the slander of title. Counsel explained that he took this case on a contingency fee basis and, therefore, "did not keep records in a way that you would want to keep them if you were billing your client [on] an hourly basis." Some of the items on the time sheets attached to counsel's affidavit were added at a later date. However, counsel testified, he was not "trying to pull a fast one." Counsel testified about the entries on the billing sheet attached to his affidavit and maintained that all of his fees flowed from the actions of Chicago Title. As he described it, all of his work in the case was "intertwined" with the slander of title action brought against it.

¶ 26 Chicago Title called an attorney, James Larson, to testify as an expert on attorney's fees. Larson testified that the damages recoverable in a slander of title action "relate to those associated with the loss of vendibility of title." He testified that a plaintiff may also recover special damages for slander of title, which are the legal fees incurred in "resolving the publication of the slanderous material." Larson opined that "the plaintiffs in this case took no title-curative action which would give rise to an entitlement to any type of attorney fee award." He testified that there was "no claim asserted in the various iterations of the complaint that [sought] to address the vendibility of title," *e.g.*, an action to quiet title. He also testified that the party with standing to bring a "title-curative action," *i.e.*, the LLC, was not a party to the suit. It was also his opinion that the matter was neither novel nor complex.

¶ 27 Larson also took issue with the billing records submitted by plaintiffs' counsel. Larson testified that they did not follow Illinois guidelines and may also have violated Rule 1.5 of the

Rules of Professional Conduct in that they were retroactively entered. He could not say, however, that the failure to keep detailed time records resulted in counsel's forfeiture of his claim for legal fees. Larson, however, testified to a number of other alleged defects in counsel's billing records, such as: the alleged lack of detail in counsel's entries; counsel's failure to delineate the work performed specifically on the slander of title claim; counsel's attempt to recover fees incurred in attempting to collect his own attorney's fees; and counsel's billing for services ordinarily performed by support staff. On cross-examination, Larson admitted that 5 to 10% of his billings arise from his representation of Chicago Title, which amounts to between $50,000 and $100,000 per year.

¶ 28 On November 19, 2013, the circuit court issued its ruling on damages. The court disagreed with counsel's assertion "that the entire legal effort that was expended by counsel is attributable to the activities for which the Court found the title company to be responsible" but nonetheless determined that "some award of attorneys fees is appropriate for what [it] characterize[d] as the misconduct of the title company." It decided to award plaintiffs a total of 58 hours, based upon its specific findings that these hours were related to the handling and resolution of the title dispute. The court multiplied those hours by counsel's rate of $300 per hour and awarded plaintiffs $19,400 in attorney's fees. The court declined to award punitive damages.

¶ 29 Chicago Title subsequently requested a clarification of the court's November 19, 2013 order, asserting that the court incorrectly calculated the fees amount and that plaintiffs were entitled, instead, to $17,400, *i.e.*, 58 hours multiplied by $300 per hour. On December 9, 2013, the court entered a clarified order, adjusting counsel's rate to $350 per hour and awarding plaintiffs $20,300 in attorney's fees.

¶ 30 The court denied plaintiff's post-trial motion to modify the December 9, 2013 judgment.

However, on January 13, 2014, the court again modified the judgment to include court costs of $625, bringing the total judgment amount to $20,925. Chicago Title filed this appeal, and plaintiffs subsequently cross-appealed.

¶ 31 ANALYSIS

¶ 32 Chicago Title contends that the circuit court erred in denying its request to vacate the default judgment and in awarding plaintiffs their attorney's fees and costs. Plaintiffs contend, in their cross-appeal, that the court erred in failing to award them full compensatory damages, and contend they were entitled to all of the requested attorney's fees as well as punitive damages. We first address our jurisdiction over this appeal.

¶ 33 A. Jurisdiction

¶ 34 Plaintiffs contend that Chicago Title did not timely appeal the partial denial of its section 2-1401 petition. They therefore argue that this court cannot consider the circuit court's decision to let the default judgment stand. Chicago Title responds that its notice of appeal was timely under Illinois Supreme Court Rule 304(b) (eff. Feb. 26, 2010). In support, it cites *Gatto v. Walgreen Drug Company*, 61 Ill. 2d 513 (1975). In *Gatto*, the defendant filed a petition under section 72 of the Civil Practice Act—the precursor to section 2-1401 of the Code—seeking to vacate a judgment entered against it. *Gatto*, 61 Ill. 2d at 517; see *Workforce Solutions v. Urban Services of America, Inc.*, 2012 IL App (1st) 111410, ¶ 91 (noting that section 72 of the Civil Practice Act is now section 2-1401 of the Code). The circuit court denied the petition on June 1, 1973; however, it also continued the case and granted the defendant leave to file a motion to limit execution. *Gatto*, 61 Ill. 2d at 517. On June 15, the defendant filed its motion to limit

execution, which was denied on August 21. *Id.* On September 13, the defendant filed a notice of appeal from the orders of June 1 and August 21. *Id.*

¶ 35 At the time, Rule 304(b)(3) provided for interlocutory appeals of any " 'judgment or order granting or denying any of the relief prayed in a petition under section 72 of the Civil Practice Act.' " *Id.* at 518 (quoting Ill. Rev. Stat. 1973, ch. 110A, ¶ 304). This court "read this provision as intended to make immediately and separately appealable every order that disposes of any portion of the total relief sought under a section 72 petition." *Id.* Based on our reading of the rule, we held that we did not have jurisdiction to consider the June 1 order because notice of appeal was not filed within 30 days of its entry. *Id.* at 517. The supreme court subsequently reversed our decision, finding that we had misread the purpose of the rule. *Id.* at 518. The supreme court noted that the circuit court had expressed its intent to have only one appeal commenced and had continued the cause for an additional motion and order. *Id.* at 519-20. It found that "the judge's statement, coupled with the terms of his order, shows that he intended that the June 1 order would become appealable only when the entire cause was disposed of." *Id.* at 520. The supreme court concluded, under the circumstances, that this court had jurisdiction to review the June 1 order. *Id.*

¶ 36 Illinois Supreme Court Rule 304(b)(3) continues to allow for an interlocutory appeal of "[a] judgment or order granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure." The language of the rule has not changed since *Gatto* other than to refer to section 2-1401 of the Code, instead of section 72 of the Civil Practice Act.

¶ 37 As in *Gatto*, we find that the circuit court's language and orders indicate that it intended only one appeal to be taken in this case. The court denied part of Chicago Title's section 2-1401 petition on January 16, 2013; however, it also granted Chicago Title's request to vacate the award

of damages and ordered a new prove-up hearing. Notably, between this order and the hearing on damages, the court denied plaintiffs' request for Rule 308 certification. Where Chicago Title timely appealed from the orders awarding attorney's fees as damages, we find that, under *Gatto*, we have jurisdiction to review all of the orders that stemmed from judgment on the section 2-1401 petition. We therefore turn to the propriety of the court's order denying Chicago Title's request to vacate the default judgment.

¶ 38 B. Section 2-1401 Petition

¶ 39 Chicago Title asserts that it was entitled to section 2-1401 relief where it presented both a meritorious defense and due diligence as required. With respect to its meritorious defense, Chicago Title asserts that it did not record one of the alleged mortgages, that it recorded the other two mortgages under instructions from Standard Bank, that plaintiffs failed to sufficiently plead a slander of title claim, and that plaintiffs lack standing to bring their claim. As for due diligence, Chicago Title asserts that there was a breakdown in its customary procedure and that it filed its petition after investigating why such procedure was not followed. Chicago Title also claims, in its reply brief, that the default judgment was void because plaintiffs lacked standing, did not sufficiently plead slander of title, and did not vest the court with subject matter jurisdiction. We note that "a void order may be attacked at any time, either directly or collaterally, such as through a section 2-1401 petition." *Pekin Insurance Co. v. Rada Development, LLC*, 2014 IL App (1st) 133947, ¶ 19.

¶ 40 "Section 2-1401 of the [Code] establishes a comprehensive procedure by which final orders and judgments may be vacated or modified more than 30 days after their entry." *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 94 (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 (2007). "[A] typical section 2-1401 analysis is two-tiered: (1) the issue of a meritorious defense is a question of law and subject to *de novo* review; and (2) if a meritorious defense exists, then the issue of due diligence is subject to abuse of discretion review." *Cavalry Portfolio Services v. Rocha*, 2012 IL App (1st) 111690, ¶ 10 (citing *Rockford Financial Systems, Inc. v. Borgetti*, 403 Ill. App. 3d 321, 327 (2010)). An "allegation that the judgment or order is void substitutes for and negates the need to allege a meritorious defense and due diligence." *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002). "We review *de novo* a judgment entered on a section 2-1401 petition that is requesting relief based on the allegation that the judgment is void." *Pekin Insurance Co.*, 2014 IL App (1st) 133947, ¶ 19.

¶ 41 1. Void judgment

¶ 42 We initially find that Chicago Title has failed to establish that the default judgment entered in this case was void so as to negate its need to demonstrate a meritorious defense and due diligence. A judgment is only void where the court lacked personal or subject matter jurisdiction. *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 38. Here, Chicago Title does not dispute that the court had personal jurisdiction, and it is clear that the court had subject matter jurisdiction as well. The issue of whether subject matter jurisdiction exists is a legal question, which we review *de novo*. *In re Luis R.*, 239 Ill. 2d 295, 299 (2010).

¶ 43 "Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceeding in question belongs." (Internal quotation marks omitted.) *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 27. "Under the Illinois Constitution of 1970, the circuit courts have original jurisdiction of all justiciable matters

except where [the supreme] court has exclusive and original jurisdiction relating to the redistricting of the General Assembly and the ability of the Governor to serve or resume office." *Id*. (citing Ill. Const. 1970, art. VI, § 9). "[A] 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335 (2002). Further, our supreme court has explained that:

> "To invoke a circuit court's subject matter jurisdiction, a petition or complaint need only 'alleg[e] the existence of a justiciable matter.' [Citation.] Indeed, even a defectively stated claim is sufficient to invoke the court's subject matter jurisdiction, as '[s]ubject matter jurisdiction does not depend upon the legal sufficiency of the pleadings.' [Citation.] In other words, the *only* consideration is whether the alleged claim falls within the general class of cases that the court has the inherent power to hear and determine. If it does, then subject matter jurisdiction is present." (Emphasis in original.) *In re Luis R.*, 239 Ill. 2d 295, 301 (2010).

¶ 44 In light of the foregoing precedent, we reject Chicago Title's assertion that the failure to sufficiently plead slander of title rendered the default judgment in this case void. As stated in *Luis R.*, even a "defectively stated claim is sufficient to invoke the court's subject matter jurisdiction" so long as the claim falls within the class of cases that the court has the inherent power to hear. Here, the circuit court clearly had the power to hear a slander of title claim. See *e.g. Whildin v. Kovacs*, 82 Ill. App. 3d 1015, 1016 (1980) (noting that "[t]he act of maliciously

recording a document which casts a cloud upon another's title to real estate is actionable as slander of title"). The court was therefore vested with subject matter jurisdiction by the filing of plaintiffs' complaint.

¶ 45 As to plaintiffs' alleged lack of standing, we find that this would not have rendered the default judgment void either. Our supreme court has noted that "issues of standing *** do not implicate [a] court's subject matter jurisdiction." *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 253-54 (2010). Thus, any lack of standing on the part of plaintiffs in this case did not render the default judgment void.

¶ 46 Chicago Title asserts that no Illinois cases have addressed whether lack of standing to bring a slander of title claim divests a court of subject matter jurisdiction. It cites a number of foreign decisions, some of them unpublished, to argue that a court lacks subject matter jurisdiction where plaintiffs do not have standing to bring their claim. We disagree that Illinois law is silent on this issue; in fact, we find *Lebron* has settled the issue for good. We find Chicago Title's standing argument completely lacking in merit and conclude that the default judgment entered on December 21, 2010 was not void.

¶ 47 2. Due diligence

¶ 48 Because Chicago Title failed to establish that the underlying default judgment was void, it was required to establish that it was diligent in establishing its defense and bringing its petition. We find that the circuit court did not abuse its discretion in determining that Chicago Title failed to exercise diligence and, therefore, need not address its alleged meritorious defense.

¶ 49 "Due diligence requires the section 2-1401 petitioner to have a reasonable excuse for failing to act within the appropriate time." *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 222 (1986). "[T]he petitioner must show that his failure to defend against the lawsuit was the result of an

excusable mistake and that under the circumstances he acted reasonably, and not negligently, when he failed to initially resist the judgment." *Id.* "In determining the reasonableness of the excuse offered by the petitioner, all of the circumstances attendant upon entry of the judgment must be considered, including the conduct of the litigants and their attorneys." *Id.*

¶ 50 Here, Chicago Title claims that it was not negligent in failing to timely assert its defense because a former employee failed to properly notify an attorney of the suit upon service of summons in August, 2008. While this explanation may explain why Chicago Title did not appear at the commencement of the suit, it does not explain why Chicago Title took so long to assert its defense after plaintiffs' counsel sent notice of the motion for default judgment in November, 2010, as well as copies of the continuance order, the order of default judgment, notice of prove-up hearing, and the order awarding damages. Given the opportunities Chicago Title had to assert its defense in the underlying proceedings after it was given timely and proper notice of the proceedings, we cannot find that the due diligence requirements under section 2-1401 is satisfied because Chicago Title has not provided a "reasonable excuse" for its failure to appear and to participate in the underlying action until the commencement of the garnishment proceedings.

¶ 51 Chicago Title claims that it demonstrated due diligence because it alleged a breakdown in its customary procedure, citing *Verson Allsteel Press Co. v. Mackworth Rees, Division of Avis Industrial, Inc.*, 99 Ill. App. 3d 789 (1981). In *Verson*, the defendant received notice that a default had been entered against it one month after the default order was entered. *Verson*, 99 Ill. App. 3d at 791. Within three weeks, the defendant filed an emergency motion to vacate the default order, but the trial court denied the motion. *Id.* The defendant subsequently filed a petition to vacate the default judgment under section 72 of the Civil Practice Act, asserting that its failure to appear had been the result of "excusable neglect." *Id.* In an affidavit, the president of

the company acknowledged that he had signed the summons; however, he stated that he did not know what had happened to it afterwards. *Id.* at 791-92. He stated that he would ordinarily forward a summons to the insurance director, but the insurance director stated in an affidavit that he had never received it. *Id.* at 792. This court did not "believe that the breakdown of [the defendant's] customary procedure for processing legal documents constitute[d] inexcusable neglect or demonstrate[d] a conscious disregard of the court's process." *Id.* at 793. We noted that our conclusion was "strengthened by the fact that [the defendant] filed its emergency motion to vacate only nineteen days" after learning of the default. *Id.*

¶ 52 Here, even if there was a breakdown in customary procedure that resulted in Chicago Title not receiving a copy of the summons and complaint, Chicago Title has not explained its failure to act after receiving several additional notifications of the pending suit. Unlike in *Verson*, where the defendant filed an emergency motion to vacate the default order soon after being notified of its entry, Chicago Title did not appear for more than eight months after being notified that plaintiffs had filed a motion for default. We find *Verson* distinguishable from the case at bar and conclude that the circuit court did not abuse its discretion in finding a lack of due diligence.

¶ 53 We also decline to consider a section in Chicago Title's brief entitled, "Vacating All Aspects of the Default is Proper," which contains no coherent legal argument or citation to any authority in support of the propositions stated therein. This court "is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented." (Internal quotation marks omitted.) *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5 (quoting *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010)). We are "not a depository in which the appellant may dump the burden of argument and research." (Internal quotation marks omitted.) *Id.* (quoting *Gandy*, 406 Ill. App. 3d at 875). We conclude that the circuit court

properly denied Chicago Title's section 2-1401 request to vacate the default judgment for lack of due diligence.

¶ 54 C. Damages Award

¶ 55 Chicago Title next contends that the court abused its discretion in awarding plaintiffs attorney's fees and costs. Chicago Title claims that plaintiffs were not entitled to such damages because they failed to properly establish a claim of slander of title. Further, Chicago Title takes issue with the reasonableness of the fees awarded and the sufficiency of counsel's billing descriptions. Plaintiffs, in their cross-appeal, contend that the court abused its discretion by not awarding them compensatory damages. Plaintiffs further contend that the court abused its discretion by not awarding them *all* of their attorney's fees as well as punitive damages.

¶ 56 " '[T]he determination of damages is a question reserved to the trier of fact, and a reviewing court will not lightly substitute its opinion for the judgment rendered in the trial court.' " *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 247 (2006) (quoting *Richardson v. Chapman*, 175 Ill. 2d 98, 113 (1997)). " 'A reviewing court will order a new trial on damages only if the amount awarded bears no reasonable relationship to the loss suffered by plaintiff or is unsupported by the manifest weight of the evidence and the opposite conclusion is clearly evident.' " *Calloway v. Bovis Lend Lease, Inc.*, 2013 IL App (1st) 112746, ¶ 111 (quoting *Clarke v. Medley Moving & Storage, Inc.*, 381 Ill. App. 3d 82, 96 (2008)).

¶ 57 Chicago Title initially devotes an entire section of its brief to arguing the merits of plaintiffs' slander of title claim. Chicago Title claims that because plaintiffs did not establish a valid claim, there was no basis for the court's award of attorney's fees. Because we find no justification under section 2-1401 to vacate the default judgment entered against Chicago Title, we decline to consider the merits of the underlying slander of title claim.

¶ 58 Plaintiffs maintain that they were entitled to $447,199.50 in compensatory damages as set forth in the affidavit of McClain. Their sole argument as to why they are entitled to such damages is that Chicago Title did not refute this sum in an answer or affirmative defense. In support of this proposition, plaintiff recite the following quote from *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 61 (2009): "Plaza Bank's argument is not persuasive because it never raised the issue of restitution or its entitlement to a lien on the Niles Property in any pleading." Plaintiffs provide no context for this statement nor do they attempt to explain what it means in this case. Absent any explanation as to what this authority is intended to support, let alone a cogent argument or legal proposition, we will not assume "the burden of argument and research" on behalf of a party that has abandoned this responsibility. *Walters*, 2011 IL App (1st) 103488, ¶ 5 (quoting *Gandy*, 406 Ill. App. 3d at 875). Under the circumstances, we decline to consider plaintiffs' argument any further.

¶ 59 1. Attorney's fees

¶ 60 The parties also disagree as to the amount of attorney's fees to which plaintiffs were entitled on their slander of title claim. Chicago Title contends that the plaintiffs were not entitled to any attorney's fees; plaintiffs, on the other hand, contend that they were entitled to all of their attorney's fees. A trial court has broad discretion in awarding attorney's fees and will not be reversed on appeal absent an abuse of that discretion. *Gambino*, 398 Ill. App. 3d at 66. It is the burden of the party seeking fees to present sufficient evidence from which the court can determine their reasonableness. *Id.* "[A] petition for fees must specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor." *Id.* (citing *Fiorito v. Jones*, 72 Ill. 2d 73 (1978)). "Because of the importance of these factors, it is incumbent upon the petitioner to present detailed records maintained during the course of the

litigation containing facts and computations upon which the charges are predicated." *Id.* (citing *Flynn v. Kucharski*, 59 Ill. 2d 61 (1974)).

¶ 61 The trial court, in determining whether to award professional legal fees, should consider a number of factors, including: "the skill and standing of the attorneys, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter, the degree of responsibility required, the usual and customary charges for comparable services, the benefit to the client [citation], and whether there is a reasonable connection between the fees and the amount involved in the litigation." *Id.* at 66-67.

¶ 62 Chicago Title argues that plaintiffs' fee affidavit did not sufficiently describe the work that counsel performed. It complains that emails were billed without describing the substance of the communications; that phone calls were not separately itemized and detailed; that various entries were for work that could have been performed by support staff; and that, in general, there was a lack of sufficient detail. According to Chicago Title, the fee petition submitted by plaintiffs was insufficient to even warrant an evidentiary hearing pursuant to *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978 (1987).

¶ 63 This court has previously noted that *Kaiser* does not apply in the context of a contingency fee case. *Johns v. Klecan*, 198 Ill. App. 3d 1013, 1023 (1990). Accordingly, we find Chicago Title's reliance on that case to be misplaced. We believe that plaintiffs' fee affidavit was sufficiently detailed to support the court's award of fees. Counsel for plaintiffs provided a breakdown of his fees that included: the date of the work performed, a basic description of the work performed, the hours that were expended, and the rate charged. A hearing was then held on the petition where counsel testified, in detail, as to the alleged charges. Chicago Title was allowed to cross-examine counsel and presented its own expert testimony in opposition to the

fees. The court awarded plaintiffs only that proportion of attorney's fees that it found related to the slander of title claim. Chicago Title does not explain, with any specificity, why it believes the court abused its discretion in awarding the fees that it did. Chicago Title makes only conclusory assertions, such as that it "objects to the extent that damages were awarded based on testimony of facts that are proven to be inaccurate, contested and/or are outside his knowledge and which lack foundation." We will not attempt to address these assertions as it is not our duty to make cohesive legal arguments for Chicago Title. *Walters*, 2011 IL App (1st) 103488, ¶ 5.

¶ 64 We similarly decline to consider plaintiffs' argument that they were entitled to all of their attorney's fees. Plaintiffs assert a number of reasons why they believe they are entitled to all of their fees, including that: (1) they submitted "unopposed" affidavits; (2) they "proved-up every item of attorney's fees claimed"; (3) Chicago Title did not file an answer or affirmative defense; and (4) "[e]very aspect of the instant litigation is the direct result of [Chicago Title] recording the slanderous documents." Plaintiffs have not cited any pertinent authority for these arguments nor do they provide any substantive legal analysis. It is not enough to make the bare assertion that "[e]very aspect of the instant litigation" resulted from Chicago Title's slander of title. Supreme Court Rule 341(h)(7) requires each party in the appeal to cite authority in support of its arguments. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 65 2. Punitive damages

¶ 66 Finally, plaintiffs contend that they were entitled to punitive damages based on Chicago Title's conduct. "The purpose of punitive damages is: (1) to act as retribution against the defendant; (2) to deter the defendant from committing similar wrongs in the future; and (3) to deter others from similar conduct." *Gambino*, 398 Ill. App. 3d at 68. We will only award punitive damages "where the defendant's conduct is willful or outrageous due to evil motive or a reckless

indifference to the rights of others." *Id.* "Because punitive damages are not favored in the law they are only available in cases where the wrongful act complained of is characterized by wantonness, malice, oppression, willfulness, or other circumstances of aggravation." *Id.* "The question of whether the facts prove willfulness or other aggravating factors is a factual determination that is reviewed using the manifest-weight standard." *Id.* at 69. The ultimate question of "[w]hether punitive damages should be awarded is reviewed for an abuse of discretion." *Id.*

¶ 67 Plaintiffs argue that Chicago Title should be assessed punitive damages because they "recklessly caused great monetary damage." This is followed by the following sentence fragment: "By merely reviewing the Quit Claim Deed or telling the mortgagees that it would not under the present circumstances record 2 mortgages." We cannot even begin to address plaintiffs' argument regarding Chicago Title's alleged recklessness. Plaintiffs' first sentence is simply a conclusion; their second "sentence" is incomprehensible. We decline to address plaintiffs' "contention" of recklessness, as plaintiffs have not provided any cohesive argument in support of this issue. See *Mack v. Viking Ski Shop*, 2014 IL App (1st) 130768, ¶ 17 (finding that a party forfeits his contentions where he fails to present "clearly defined issues, cohesive legal arguments and citations to relevant authority").

¶ 68 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 69 Affirmed.